

THE VIRGINIA STATE CORPORATION COMMISSION
THE ADMINISTRATIVE LAW SECTION OF THE VIRGINIA STATE BAR
THE MARSHALL-WYTHE SCHOOL OF LAW AT THE COLLEGE OF WILLIAM & MARY

present



***35 Years and Still Going Strong:
The More Things Change, the More Things . . .***

May 18-19, 2017

Marshall-Wythe School of Law
The College of William & Mary
613 S. Henry Street
Williamsburg, Virginia 23185

THE THIRTY-FIFTH NATIONAL REGULATORY CONFERENCE

Thursday, May 18, 2017

8:00 a.m. **Registration and Breakfast** *Marshall-Wythe School of Law*

8:30 a.m. **Welcome:** **The Honorable Judith Williams Jagdmann**, Chairman
Virginia State Corporation Commission

Ramona J. Sein, Assistant Dean for Employer Relations
The Marshall-Wythe School of Law, The College of William & Mary

Philip R. de Haas, Chair, Program Committee
Vice-Chair, Virginia State Bar Administrative Law Section

8:45 a.m. **Subsidies: the Good, the Bad, and the Ugly**

Market results produced considering only private costs and benefits may not address all public policy concerns: What about system reliability? Are environmental impacts properly accounted for? How about economic development or national security considerations? Subsidies can shape market results to account for public policy priorities. While the broad picture can be somewhat polarized, this panel will explore the issue of subsidies from both policy and ratemaking perspectives. Of particular interest will be subsidies (or lack thereof) in the nuclear segment of the generation industry as well as subsidies (or lack thereof) in the wholesale electricity markets. Power supplier, RTO, ratemaking, and utility perspectives will all be a part of this broad discussion on a timely topic.

Moderator: **Vincent P. Duane**, Senior Vice President, General Counsel
Law, Compliance & External Relations
PJM Interconnection

Panelists: **Kathleen Barrón**, Senior Vice President
Federal Regulatory Affairs & Wholesale Market Policy
Exelon Corporation

Joseph E. Bowring, President
Monitoring Analytics
Independent Market Monitor for PJM

Michael M. Schnitzer, Co-founder and Director
The NorthBridge Group

John E. Shelk, President and Chief Executive Officer
Electric Power Supply Association

10:15 a.m. **Break**

10:30 a.m. **Issues in Natural Gas Supply and Production**

Horizontal drilling and hydraulic fracturing have provided access to large volumes of domestic natural gas that were previously uneconomic to produce. This panel will explore the challenges associated with the production of domestic natural gas, such as environmental considerations and the impact of low gas prices on producers. It will also explore constraints on natural gas supply from the perspective of marketers and LDCs and what the future holds for capacity in the Commonwealth.

Moderator: **Kenneth W. Yagelski**
Southern Gas Company

Panelists: **Kristin Davis**, Staff Attorney
Southern Environmental Law Center

Jenny Fordham, Senior Vice President
Government Affairs
Natural Gas Supply Association

Mary Hensley, President and Director of Marketing
Enspire Energy

11:45 a.m. **Lunch** *Tidewater Room in the Sadler Center, College of William & Mary
(transportation provided)*

1:30 p.m. **Public Private Partnerships: The Future for Infrastructure?**

This panel will examine different models that have been used in Virginia and elsewhere to spur infrastructure investment and in particular will focus on public private partnerships. Drawing on a variety of perspectives from the public and private sectors, the panel will look at the expanded use of public-private partnerships as a means to encourage much needed investment in Virginia and nationwide to repair, reinforce or expand our infrastructure.

Moderator: **Ryan J. Pedraza**, Senior Attorney
Hunton & Williams LLP

Panelists: **James A. Bacon**, Author
Founder and Publisher of *Bacon's Rebellion* blog

Pierce Homer, Director
Moffatt & Nichol

Thomas D. McKean, Chief Executive Officer
Toll Road Investors Partnership II, L.P. - Dulles Greenway

2:45 p.m. **Break**

3:00 p.m. **Ethics Issues Facing Corporate Counsel**

This interactive program uses hypotheticals to explore the most basic question that all corporate in-house and outside lawyers must answer: exactly who is the "client"? Among other things, the program will discuss: (1) who is the corporate lawyer's client within the corporate entity, and whether lawyers can be retained by a constituent such as an Audit Committee or group of independent directors; (2) who is the client within a corporate family, whether outside lawyers can be adverse to one corporate family member while simultaneously representing another on an unrelated matter, and whether in-house lawyers automatically represent their corporate employer's affiliates; (3) the impact of client identity in corporate transactions, including ownership of the attorney-client relationship (and the accompanying privilege) in stock and asset sales, and the effect of joint representations in selling or spinning off subsidiaries; (4) whether corporate in-house and outside lawyers can also represent corporate employees, the implications of such representations, and how to avoid accidentally creating such representations; (5) whether corporations' shareholders must ever be considered the corporate lawyers' "clients," including the fiduciary exception's application.

Thomas E. Spahn, a Partner at the McGuireWoods law firm, and nationally known expert on ethics, will lead an informative and interactive session using challenging hypotheticals to address current ethical issues of interest to all attorneys.

5:00 p.m. **Program adjourns for the day**

Administrative Law Section will hold their annual meeting to elect officers

5:45–7:45 p.m. **Conference Reception**

*Brinkley Commons Room
Mason School of Business*

The program has been approved for 9.0 hours of Virginia Continuing Legal Education (CLE) credit which includes 2.0 hours of ethics credits.

THE THIRTY-FIFTH NATIONAL REGULATORY CONFERENCE

Friday, May 19, 2017

8:00 a.m. **Breakfast** *Marshall-Wythe School of Law*

9:00 a.m. **What Does the Future Hold for Utilities in the Capital Markets?**

The cost of raising capital has important consequences for both rate-regulated utilities and the customers that they serve. Investors, rating agencies, utilities, and regulators all have a unique role to play in the effort to attract capital. How do investors value stocks of rate-regulated utility industries? How will potential regulatory and economic developments affect future investment decisions and the conditions under which rate-regulated companies seek to raise capital? What challenges do rate-regulated companies face as they compete to raise capital? This panel will offer insight on current capital market conditions and developments, and the potential implications for the utility industry going forward.

Moderator: **The Honorable Joanne Dobby Fort**, Former Commissioner
Public Service Commission of the District of Columbia

Panelists: **James R. Chapman**, Senior Vice President-Mergers & Acquisitions and
Treasurer
Dominion Resources, Inc.

Leslie Rich, Managing Director
US Equity Research
JP Morgan Asset Management

Swami Venkataraman, Senior Vice President
Global Project & Infrastructure Finance
Moody's Investors Service

10:30 a.m. **Break**

10:45 a.m. **Major Changes Impacting Renewable Energy Markets: Opportunities and Obstacles**

This panel will consider the unique path Virginia has traveled in the development of renewables in the state. Panelists will debate the impacts of both mandatory and voluntary market drivers such as state procurement targets, utility renewable portfolio standards, and independent corporate sustainability policies. The panelists will share their experiences working in other jurisdictions and will discuss and debate policy changes. The panel will represent the perspectives of an electric cooperative implementing a community solar program, a developer of renewable projects, a large Department of Defense purchaser of electricity, a non-profit environmental interest group active in many states, and a state agency charged with implementing energy policy.

Moderator: **B. Hayes Framme**, Deputy Secretary
Office of the Virginia Secretary of Commerce and Trade

Panelists: **Allison Genco**, Senior Attorney Advisor
Office of the General Counsel
Department of the Navy Resilient Energy Program Office

Michael Keyser, Chief Executive Officer
BARC Electric Cooperative

Katie C. Ottenweller, Senior Attorney
Southern Environmental Law Center
Leader of SELC's Solar Initiative

Tyson Utt, Senior Director of Project Development
Apex Clean Energy

12:15 p.m. **Adjourned**

PROGRAM COMMITTEE

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Vice-Chair, VSB Administrative Law Section
Chair, Program Committee

Charlotte P. McAfee
Dominion Virginia Power
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Eric J. Wallace, Esq.
GreeneHurlocker, PLC

Duront A. Walton, Jr.
Virginia Telecommunications Industry Assn.

“Subsidies: The Good, the Bad, and the Ugly” Panel

1. Coalition for Competitive Electricity et al., Plaintiffs v. Audrey Zibelman, in her official capacity as Chair of the New York Public Service Commission, et al., Defendants . Complaint in Case No. 1:16-cv.08164-VEC in the U.S. District Court for the Southern District of New York. (October 19, 2016)
2. Coalition for Competitive Electricity et al., Plaintiffs v. Audrey Zibelman, in her official capacity as Chair of the New York Public Service Commission, et al., Defendants . Memorandum of Law in Support of Motion to Dismiss in Case No. 1:16-cv.08164-VEC in the U.S. District Court for the Southern District of New York. (December 15, 2016)
3. [FERC Technical Conference Opening Statement of John E. Shelk, Electric Power Supply Assn.](#)
4. Direct Testimony of Joseph E. Bowring on behalf of the Independent Market Monitor before the Public Utilities Commission of Ohio
5. [Hughes v. Talen Energy Marketing, U.S. Supreme Court Op. No. 14-614 \(Apr. 19, 2016\)](#)

Natural Gas Panel- Exploring the Challenges of Domestic Natural Gas Production

1. “Environmental Risks Associated with Industrial Natural Gas Development and Fracking” Kristin Davis, Southern Environmental Law Center
2. Presentation by Jenny Fordham, Natural Gas Supply Association
3. Commentary by Mary Hensley, Enspire Energy

Public Private Partnerships: The Future for Infrastructure?

1. [Virginia Highway Corporation Act of 1988](#)
2. [Virginia Public-Private Transportation Act of 1995](#)
3. Excerpt of the Comprehensive Agreement Relating to the Downtown Tunnel/Midtown Tunnel/Martin Luther King Freeway Extension Project and Exhibit J (December 2011)
4. [Elizabeth River Crossings OpCo, LLC v. Meeks, 286 Va. 286, 301, 749 S.E.2d 176, 183 \(2013\)](#)
5. *Bacon’s Rebellion* postings
 - a) [Lessons from the Pocahontas Parkway Fiasco](#) (June 2012)
 - b) [Picking up the Pieces of the U.S. 460 Fiasco](#) (March 2014)
 - c) [The Great U.S. 460 Swamp](#) (July 2014)
 - d) [Closing the Books on the U.S. 460 Fiasco](#) (July 2015)
6. [Dead end for the new Route 460?](#) *Virginia Business* (June 2014)
7. Private Toll Roads in the United States- The Early Experience of Virginia and California. Final Report prepared for the U.S. Department of Transportation. Harvard University, 1991.

What Does the Future Hold for Utilities in the Capital Markets?

1. Leslie Rich, Panelist, What Does the Future Hold for Utilities in the Capital Markets, Power Point Presentation.
2. Moody's Report, US utility sector upgrades driven by stable and transparent regulatory frameworks (Feb. 2014).
3. Moody's Report, Tax Reform Likely to Increase Credit Risk, Impact Dependent on Regulatory Response (March 2017).
4. Moody's Report, Rate-Basing Wind Generation Adds Momentum to Renewables (March 2017).
5. Moody's Report, Economics, End-User Sustainability Policies Drive Renewables in a post-CPP World (March 2017).
6. Moody's Report, US Executive Order on Clean Power Plan Will Slow, But Not Halt, Transition Away From Coal (March 2017).
7. Moody's Investor Services, Regulatory Supportiveness Map
8. Dominion Discussion Materials (April 25, 2017).
9. *Fed. Power Com. v. Hope Nat. Gas Co.*, 320 U.S. 591 (1944).
10. *Bluefield Water Works & Improvement Co. v. Pub. Serv. Comm'n*, 262 U.S. 679 (1923).

Major Changes Impacting Renewable Energy Markets: Opportunities and Obstacles

1. [Chapter 580 of the 2017 Virginia Acts of Assembly](#)
2. [Chapter 581 of the 2017 Virginia Acts of Assembly](#)
3. [Chapter 803 of the 2017 Virginia Acts of Assembly](#)
4. Materials related to presentation by Mike Keyser, BARC Electric Cooperative
5. Department of the Navy's Renewable Energy Program Office mission sheet
6. Solar power policy brief and fact sheets, Southern Environmental Law Center