

The financial meltdown demonstrated to some what happens when regulators are asleep at the switch. To others, it showed that regulation, or the regulators themselves, cannot be trusted to protect consumers. Most will agree that getting it wrong can have dire consequences. Like financial regulation, utility regulation has been transformed over the last thirty years or so – from broadly regulated regional entities to a mix of regulated services, an increasing use of market-based mechanisms employed at the state and federal level, and a complete deregulation of prices in some cases. Does it turn out that in an era of market-based prices, regulation increases in importance? Also, what traditional tools do regulators already have that can be helpful in this new era? Finally, what new policies and procedures are needed to protect customers?

9:45 – 10:00 a.m. **BREAK**

10:00 – 10:45 a.m. **Session II: The Washington Report**

It is difficult to keep abreast of all the public utility activity on Capitol Hill, in the courts, and at the relevant federal agencies. Get the latest updates here from the NARUC Washington lawyer monitoring all of it.

10:45– 11: 15 p.m. **Session III: What Behavioral Economics Can Teach Us**

In law, we all have been taught that our model is the reasonable man. In finance, the standard is the economic man. The growing field of behavioral economics, however, suggests that real people act differently from these expectations and in ways that are not easily predictable. To the extent that we need to encourage wiser consumer decisions to attain conservation goals, it is useful to consider the latest studies and revelations on the topic and discuss how we might integrate behavioral insights into the policy-making process.

11:15 – 12:15 p.m. **Session IV: Encouraging Conservation and Growing the Smartness of Water**

Legislatively created water storage areas may not be a convenient source of water supply in areas with growing populations. There are lessons to be learned from the 2009 decision of *In re Tri-State Water Litigation*, where US District Court Judge Paul Magnuson had to resolve a tri-state conflict over the water stored in Lake Lanier behind the Buford Dam, built north of Atlanta, Georgia. One of those lessons is to meaningfully and comprehensively urge the conservation of our limited water resources. This panel will discuss rate mechanisms useful to promoting water conservation and sustainability. In addition, we will be introduced to an innovative “green” water project coming to West Virginia.

12:15 – 1:30 p.m. **LUNCH**

1:30 – 2:30 p.m. **Session V: *Miner’s Lady*-The Status of Coal and Carbon Capture Technologies.**

Coal is abundant and available at relatively low cost. Against these positive attributes are strong environmental negatives. How well can the new generation of coal plants, using carbon capture and storage, prevent the emission of man-made carbon dioxide emissions from entering the atmosphere? Our attention will be focused on the operation and challenges of the Mountaineer Power Plant, a carbon capture and sequestration facility, right here in West Virginia.

2:30 – 3:30 p.m. **Session VI: Unconventional Natural Gas Production: How Reliable, Volatile and Environmentally Sound?**

Natural gas is one of the cleaner and most versatile of fuels. Shale gas resources and the use of hydraulic fracturing are being touted as the best new way of increasing our gas supply. This technology, however, raised critical concerns about potential water contamination. Here we will focus on yet another resource “interdependency” and the challenges in balancing innovation, environmental protection policy, need, cost, and the law. Particular attention will be given to the unique aspects of Marcellus shale gas production and its impacts.

3:30 – 3:45 p.m. BREAK

3:45 – 5:15 p.m. **Session VII: Implementing the National Broadband Plan - What’s Next?**

In 2009, Congress directed the FCC to develop a National Broadband Plan to ensure that every American has “access to broadband capability.” In March 2010, the FCC released the long-awaited Plan that is to serve as a blueprint for how the FCC will ensure broadband availability nationwide and meets its six stated goals. This panel will attempt to provide a greater understanding of the FCC’s new broadband framework and will explore several critical issues, to wit: What exactly is in the National Broadband Plan? How will the FCC implement the Plan? How should the FCC prioritize all of its recommendations? How do those recommendations further the goals of the Plan? What are the appropriate procedural vehicles for implementing the key components of the Plan? What are the hurdles to implementation? What is the role of the states relative to the National Broadband Plan?

6:30 p.m. BANQUET

TUESDAY, JUNE 2, 2008

7:00 – 8:00 a.m. Breakfast

8: 15 – 10: 45 a.m. Session VIII: Ethics – For a Correct and Sustainable Decision

Adherence to the laws of ethics validates the public’s trust that the decision-making body will be fair and impartial; the agency’s staff and administrative law judges will be independent; and the legal representative for each interested party will present honest evidence and arguments. This session presents an interesting study of the U.S. Supreme Court’s recent opinion in *Caperton v. A.T. Massey Coal Company, Inc.*, 129 S. Ct. 2252 (2009), a case that considered whether the risk of improper influences on a elected judge, as the result of substantial campaign contributions by a party to the pending case, required the judge’s recusal in the matter. Members of the Staff Subcommittee on Law will dramatize the intriguing facts of this case, and portray a number of different scenarios suggesting ethically challenged attorney/ALJ behaviors. A noted legal expert will discuss the Court’s rulings and examine the ways that state statutes and agency rules protect against actual impropriety and the appearance of impropriety in all our daily work. We will also revisit the oft-asked question of “Who is the Client?”

10:45-11:00 p.m. BREAK

11:00 – 12:00 p.m. Session IX: Expert Roundtable – Communications Issues

What state has not experienced the consequences of prolonged inaction by the federal Communications Commission where direction is absent? Why do large telephone companies want to get rid of service areas? What are the latest happenings regarding Net Neutrality, the FCC’s open internet proceeding and Universal telephone Service reform? How may the recent D.C. Circuit Court decision in *Comcast v. FCC* affect the FCC’s attempts to enforce regulation of emergency communications and universal service with regard to broadband internet access services? Will the FCC reclassify broadband internet access providers’ services as Title II telecommunications services under the Communications Act or will it take an act of Congress to determine whether the FCC’s jurisdiction of “information services” should be extended or limited? Our noted panel of experts will address these issues and more.

12:00–1:00 p.m. **Session X: Current Issues and Legal Developments**

This panel will discuss a number of current leading energy issues, to wit: (1) the U.S. Supreme Court’s recent opinion in *NRG Power Marketing, LLC v. Maine Public Utilities Commission*, holding that the *Mobile-Sierra* public interest standard is not limited to challenges brought by contracting parties, but instead applies to all challenges to contract rates, regardless of the challenger’s identity; (2) in the wake of the recent financial crisis, the U.S. Treasury Department and the Congress have advanced various proposals to regulate the over-the-counter derivatives market that have the potential to significantly impact regulation of energy markets and have highlighted the jurisdictional tensions between the CFTC and FERC; (3) on March 18, FERC issued a series of orders relating to a new policy direction on reliability issues, i.e., *The Policy Statement on Penalty Guidelines*, stating that it will be using the Federal Criminal Sentencing Guidelines to assess violations of reliability standards established by NERC and approved by FERC, as well as violations of FERC rates, tariffs and related orders and violations of market manipulation rules, transparency rules and related matters; (4) Florida Power & Light has filed a petition for a declaratory order with respect to FERC’s on jurisdiction over interconnection agreements with QFs wherein FPL asks FERC to reverse the policy it adopted in a 2007 order (*Niagara Mohawk*, ER07-1096, 121 FERC P61,183) on the boundaries of its jurisdiction on interconnection agreements.

1:00 – 1:30 p.m. BOX LUNCH

1:30 – 5:00 P.M. BREAK OUT SESSIONS

WEDNESDAY, June 23, 2010

7:00 – 8:00 a.m. Breakfast

8:00 – 9:15 a.m. **Session XI: Rate Design for Encouraging Energy Efficiency**

It has often been said that energy efficiency is an underutilized resource. Many commissions are already considering energy efficiency goals and options in rate-setting and other cases. This panel, which will discuss various rate design options and their viability to incent customers to pursue smart behavior, will educate the regulatory lawyer about the pros and cons of the various options.

9:15– 10:30 p.m. **Session XII: Alternative Energy Sources – the Good, the Bad and the Ugly**

Our nation is no longer complacent about its fuel sources. We think critically and differently about coal and nuclear plants. More off-shore drilling appears likely. Many of us easily embrace wind and solar power, fuel cells, and biofuels, and are hopeful that other scientific breakthroughs will advance us to a cleaner planet. Others are doubtful, uncomfortable or resistant to these burgeoning technologies. These changes may promote economic development in many areas, but they may also adversely affect the livelihood of those contributing to our existing energy sources. Lawyers representing utilities, environmentalists, different energy industries, and those not wanting anything new in their backyard will be busy for a long time. This panel, in debating the new and old energy sources in terms of cost, environmental impact, community, ecology and reliability, will preview what you can expect to hear in future proceedings.

10:45 – 11:00 BREAK

11:00 – 12:15 **Session XIII: Law and Policy in Conflict- *Animal Welfare Institute v. Beech Ridge Energy***

What happens when two federal policies collide? In this case, one policy favors the protection of endangered species while the other encourages the development of renewable energy resources. The locale is Greenbriar County, West Virginia. The matter concerns the Indiana bat vs. the wind turbine. A panel composed of participants to this very unique case will walk us through the particulars of the litigation.

12:15-1:15 p.m. **LUNCH**

1:15-2:15 p.m. **Session XIV: Infrastructure Improvements and Recovery**

Aging infrastructure is a problem in many states. To accelerate improvements in their systems, some utilities are seeking forms of rate treatment that differ from traditional regulation. There are questions about preapprovals, adjustment clauses, cost and rate trackers or riders, deferred accounts, rate stabilization mechanisms, etc., in terms of how they operate, how they differ and what regulatory principles are brought into issue. This panel will take a close and balanced look at the particulars of these rate setting mechanisms, discuss whether and to what they meet with the law, and consider their implications for utilities and ratepayers.

2:15 – 3:30 p.m. **Session XV: Smart Grid Distribution & Technology – Sorting out the Issues -**

A smart grid is full of promise and has captured all our imaginations. This panel will discuss potential benefits such as demand reduction, improved outage management and greater reliability. On balance, the lingering questions of cost, investment, customer information concerns, and security will also be addressed. With respect to states have begun to implement smart grid technologies, we look to their experience. How feasible is it to integrate smart technologies into existing architecture? What are the metering, pricing and billing issues? How do we motivate consumers to embrace the new technologies? These are only some of the questions that this panel will address.

3:30 – 3:45 p.m. BREAK

4:00 – 5:00 p.m. **Session XVI: The Skill-Sets Program**

Part A: *A Search for the “Public Interest” Standard*

We are always talking about the public interest. But, what does the term really mean? What does it embrace? Who best speaks to this standard and is it even a standard? Under what circumstances will it actually apply? Our speaker, who will share the results of her research into and study of an elusive concept that is an integral part of our daily work, will give advice to the attorney on how to raise and argue for the standard when needed and how to argue against it when it is disruptive to a case strategy.

Part B: *Drafting Techniques for Conditioning Language and Other Agency Directives*

We need to propose conditions or set out directives and enforcement language in clear and unequivocal terms. This program will offer drafting tips that are invaluable for the agency attorney and for the ALJ.

5:00 – 5:15 p.m. **CLOSING REMARKS.**

Note: The NCRA reserves the right to change the order of these sessions to accommodate speaker schedules.