



Unlocking THE TREASURES OF Utility Regulation

39th National Conference of Regulatory Attorneys Grand Hyatt Tampa Bay – Tampa Bay, Florida June 19–23, 2016

You will note that your badges reflect your state.
We encourage you to please mingle and meet attendees from other states during your time in Tampa!

SUNDAY, JUNE 19, 2016

12:00 – 5:30 p.m.	Registration – <i>In front of Audubon</i>
3:00 – 4:00 p.m.	NCRA Alumni Association Meeting – <i>Kingfisher</i>
4:00 – 5:00 p.m.	Subcommittee on Law Meeting – <i>Kingfisher</i>
5:00 – 6:00 p.m.	Subcommittee on ALJ Meeting – <i>Kingfisher</i>
6:00 – 8:00 p.m.	Welcome Reception – <i>Armani's</i>

REGISTRATION AND INFORMATION DESK

The NCRA registration and information desk will be open in front of the Audubon room during the following hours:

Sunday:	12:00 p.m. – 5:30 p.m. 6:00 p.m. – 7:00 p.m. at Armani's
Monday	7:00 a.m. – 5:00 p.m.
Tuesday	8:00 a.m. – 12:00 p.m.
Wednesday	8:00 a.m. – 5:00 p.m.

SUGGESTED ATTIRE

The suggested attire is casual; Florida attire.

Meeting rooms have a tendency to be cool. We suggest you bring a light sweater or jacket for your comfort.

RECHARRRRRRGE YOUR DEVICE

Please find our RechARRRRRRge Station at the back of the conference room for your convenience!

Visit us at <http://www.floridapsc.com/Home/NCRA>

- 7:15 – 8:00 a.m. Continental Breakfast – *Audubon*
- 8:00 – 8:30 a.m. Conference Kickoff by Lee Eng Tan, 2016 NCRA President
- Invitation to the 40th Annual NCRA Conference in Oregon by Michael Grant, 2017 NCRA President
- Welcoming Remarks by Chairman of the Florida Public Service Commission, Julie I. Brown
- 8:30 – 9:30 a.m. **SESSION I:** *Finding Buried Treasure, or Marooned on a Deserted Island? The Use and Misuse of Economics in Utility Regulation*
- Presenter:** Ken Rose
- Economics can be a useful tool in helping guide regulatory decision-making to rewarding and peaceful waters. Unfortunately, it can also be misapplied, or worse, deliberately misused to serve the narrow interest of some plunderer. What are some economic concepts that regulators can use to help chart a course to serve the public interest? What are some of the warning signs that can alert regulators that their ship is about to hit a reef?
- 9:30 – 10:00 a.m. **SESSION II:** *Avast Ye’ Mateys – Let’s get started! The Washington Report*
- Presenter:** James Bradford “Brad” Ramsay, Esq. – General Counsel, National Association of Regulatory Utility Commissioners (NARUC)
- Keep your finger on the pulse of all things public utility related. In the Washington Report, NARUC General Counsel, Brad Ramsay, will provide an update about regulatory happenings on Capital Hill, in the courts, and in relevant federal agencies.
- 10:00 – 10:15 a.m. Break
- 10:15 – 11:15 a.m. **SESSION III:** *Ahoy There! – Hot Topics*
- Moderator:** Commissioner Art Graham – Florida Public Service Commission
- Presenters:** Michael G. Cooke, Esq. – Of Counsel, Greenberg Traurig
- Zeviel T. “Zev” Simpser, Esq. – Briggs and Morgan

Mike Cooke: To Implement (or Not?) the Clean Power Plan

The Clean Power Plan (“CPP”) is a Clean Air Act regulation, typically implemented by environmental regulators in a state. However, because the CPP affects the way states regulate energy, other state stakeholders (the governor, legislators, utility commissioners, environmental NGOs) and policy issues (fuel diversity, consumer costs, cost recovery) will play significant roles in final decision-making if the rule survives. This presentation will examine the steps and competing interests involved in implementing a state plan in a traditionally regulated and a restructured state under section 111(d), and potential outcomes.

Zev Simpser: State Transmission Siting Authority and FERC Regulated Transmission Planning

Discussion on the market nexus between state transmission siting authority and FERC regulated transmission planning can potentially support a claim for federal preemption of state need laws. The presentation will explore the potential arguments supporting a market nexus argument and how it interacts with dormant commerce issues and state’s traditional authority with respect to transmission siting. Discussion will also include the recent U.S. Supreme Court decision in Hughes v. Talen Energy Marketing (Cite TBA).

11:15 a.m. – 12:15 p.m.

SESSION IV: *Parlay – Interplay Between Consumer Advocates and Public Utility Commissions*

Moderator: Abby R. Gray, Esq. – Executive Director, Legal Operations, Indiana Office of the Utility Consumer Counselor

Presenters: Katrina McMurrian – Executive Director, Critical Consumer Issues Forum and former Commissioner, Florida Public Service Commission

Mark R. Schuling, Esq., C.P.A. – Consumer Advocate, Iowa Office of Consumer Advocate

Elizabeth Triscari, Esq. – Deputy Small Business Advocate, Commonwealth of Pennsylvania

Utility Regulation is not a one-sided event. It requires the interplay between the regulators and various stakeholders. The regulators fulfill their duties established by statute, order and rule, but must also balance the needs of both the utilities and the end user, the consumer/rate payer. The consumer/rate payer is often represented

by Consumer Advocates, oftentimes a state agency with a statutory charge. This panel will examine the pivotal relationship between the regulators and the consumer advocates that plays out every day across the nation.

12:15 – 1:30 p.m.

Lunch – *White Ibis*

1:30 – 2:30 p.m.

SESSION V: *Weigh Anchor – The Future of Policy and Regulation*

Moderator: Commissioner Ronald A. Brisé – Florida Public Service Commission

Presenters: David E. Dismukes, Ph.D. – Professor, Executive Director & Director of Policy Analysis Center for Energy Studies, Louisiana State University

Karl A. McDermott, Ph.D. – Ameren Distinguished Professor of Business & Government, University of Illinois and Special Consultant, National Economic Research Associates, Inc. (NERA)

What does it mean to regulate utilities? Is change needed? This session looks at the future direction of utility regulation and examines traditional regulation vs alternative regulation, evolution of fixed costs, the home as a power plant, regulatory lag, cost of service vs value of service, and other topics. Should a different regulatory landscape be anticipated in the future?

2:30 – 3:30 p.m.

SESSION VI: *More than a Shot Across the Bow – Ensuring Equitable Access to Clean Energy*

Moderator: Susan Stevens Miller, Esq. – Clean Energy Attorney, Earthjustice

Presenters: Jacqueline Patterson – Director of Environmental & Climate Justice Program, NAACP

Karl R. Rábago – Executive Director, Pace Energy & Climate Center

Electric utility restructuring in the 1990s promised broad access to a wide range of innovative and affordable electric service and technology options. Today, most utilities still retain a monopoly at the distribution edge of the system and are using that monopoly to limit consumer choice. Many utilities are increasing fixed charges,

reducing clean energy service options, proposing charges on clean energy options, and trying to eliminate or curtail net metering.

The new energy economy and how we design, structure, implement, and evaluate it has significant equity implications. Currently, people who are most impacted by polluting electricity producing industries and practices have the least influence over who is making decisions and what decisions are made regarding these polluting industries and practices. Not only do low-income communities devote a high proportion of their income to their energy bills, low-income communities also are more likely to be located next to coal-fired or other fossil fuel plants and suffer the ill health effects that exposure to such toxins are known to cause.

The time has come to complete the process of sector transformation. As we build the new energy economy, it must be built on principles and practices of energy democracy that prioritize significantly increasing energy efficiency and savings, as well as production of energy through clean energy. This session will analyze the current energy landscape, discuss recommendations on how we can advance an equity based energy platform going forward, and offer examples of promising practices where communities, utilities, and organizations are already making strides in advancing energy democracy.

3:30 – 3:45 p.m.

Break

3:45 – 4:45 p.m.

SESSION VII: *The FERC Trio at the Supreme Court: A Treasure Trove of Guidance – What Are States to do with the Booty?*

Presenter: Ari Peskoe, Esq. – Senior Fellow in Electricity Law, Harvard Law School Environmental Policy Initiative

Eighty years after Congress created a federal energy regulator, the division of authority between state PUCs and FERC remains a source of controversy. In the past year, the Supreme Court has issued three decisions on this issue. This session will review the three cases and examine the jurisdictional divide in light of the Court’s holdings and ongoing changes in the industry.

4:45 – 5:45 p.m.

SESSION VIII: *Aye Aye Captain! A Fireside Chat with Current & Former General Counsels of the Florida Public Service Commission*

Moderator: Keith Hetrick, Esq. – General Counsel, Florida Public Service Commission

MONDAY, JUNE 20, 2016

- Presenters:** William S. Bilenky, Esq. (Attorney, MansonBolves), 1979 - 1988
- Susan Clark, Esq. (Shareholder, Radey Law), 1988 - 1991
- Rob Vandiver, Esq. (retired), 1991 - 1999
- Harold McLean, Esq. (retired), 2000 - 2003
- Rick Melson, Esq. (Rick Melson Law), 2003 - 2006
- Michael Cooke, Esq. (Of Counsel, Greenberg Traurig), 2006 - 2008
- Charlie Beck, Esq. (retired), 2015 - 2016

In Aye, Aye Captain! the current general counsel and former general counsels of the Florida Public Service Commission will lead a candid discussion about life as a general counsel and why being a staff attorney at a state commission is a unique role. This rare look at general counsels will be informative, constructive and enjoyable.

7:00 – 9:00 p.m.

Conference Banquet – *Audubon Promenade*

TUESDAY, JUNE 21, 2016

7:15 – 8:00 a.m.

Continental Breakfast – *Audubon*

8:00 – 10:00 a.m.

SESSION IX: *The Regulator's Compass Guide to Ethical Regulations – Ethics in the Modern Era: Parts I & II*

Moderators:

Dwight D. Nodes – Chief Administrative Law Judge, Arizona Corporation Commission

Eve Moran, Esq. – (Retired) former Administrative Law Judge, Illinois Commerce Commission

Instruction:

Caroline Klancke, Esq. – Attorney, Florida Commission on Ethics

The Not-So-Excellent Ethical Adventures of JK Parrot

After spending many years with a prestigious law firm in Pirate Cove City, J. K. Parrot has taken a staff attorney position with the Nirvana Utilities Regulatory Commission. But, she has had little

time to acquaint herself with this new area of practice. Almost immediately, J. K. is assigned to a “hot” water case pending before the Commission that will test both her skills and her courage to meet with a whole host of ethical challenges. The scenarios portrayed in this program will invite vigorous discussion of state ethics laws and the Model Rules of Profession Conduct.

10:00 – 10:15 am

Break

10:15 – 11:15 a.m.

SESSION X: *Unlocking the Mysteries of the Deep – Clean Power Plan Litigation and Paths Forward?*

Presenter: Kate Konschnik, Esq. – Director, Harvard Law School Environmental Policy Initiative

This presentation will begin with a discussion of the pending litigation over the Clean Power Plan. In February, the Supreme Court took the unprecedented step of staying this administrative rule before any court had reviewed it; the discussion will analyze the stay and its implications for the rule. The discussion will also review the main challenges to the rule, and share highlights from the oral arguments before the D.C. Circuit, which took place on June 2. Next, the presentation will dig into other provisions of the Clean Air Act that might provide the basis for greenhouse gas standards for the electric sector, if the Clean Power Plan were to be struck down or narrowed. The presentation will then move on to discuss other drivers for change in the electric sector, including state laws and federal incentive programs. Finally, the presentation will offer suggestions for states wondering how to proceed in this space, given the uncertainty of the Clean Power Plan.

11:15 a.m. – 12:15 p.m.

SESSION XI: *The Return of the Ancient Mariner! Tales of Regulation & Practice Tips*

Moderator: Henry M. Walker, Esq. – Bradley Arant Boult Cummings, LLP and former General Counsel of Tennessee Public Service Commission

Presenters: Steve H. Denman, Esq. – Assistant General Counsel, Xcel Energy Services, Inc. (In July 2016, Administrative Law Judge, Colorado Public Utilities Commission)

Christopher C. Kempley, Esq. – Special Counsel, Arizona Corporation Commission

Susan Stevens Miller, Esq. – Clean Energy Attorney, Earthjustice

Diane Munns, Esq. – Senior Director of External Affairs & Regulatory Policy, Environmental Defense Fund

Tom Bailey, Esq. – General Counsel, Minnesota Public Utilities Commission

An informal discussion among six, former state regulatory lawyers, including three general counsels and a commissioner, about how the lessons of private practice, federal regulatory work, and the public interest sector have given these lawyers a different perspective of state regulatory work. Discussion will include professional differences and similarities of working in private and public practices, including handling disputes and other professional quagmires.

Three of the six panelists have now returned (or will soon be returning) to the commissions where they once worked and will discuss how their outside experiences have made them more effective regulators and professionals. The other two, all of whom still work closely with state commissions, will talk about what they would do differently today if they, too, returned to their former jobs.

12:15 – 1:30 p.m.

Lunch – *White Ibis*

1:30 – 5:30 p.m.

Breakout Sessions

- Brew Bus Adventure
- Dolphin Sightseeing Adventure

7:00 – 9:00 p.m.

SESSION XII: *Have Compass, Will Sail: The Legal Bases for Regulating Public Utility Performance*

Presenter: Scott Hempling, Esq. – Attorney, Author and Lecturer

This session will cover the backbone law of market structure, pricing, corporate structure and federal-state relations, including: how to distinguish “monopolies” from “monopolizers,” how to set rates without violating the U.S. Constitution, how mergers and acquisitions are reshuffling corporate structure and market structure, and how the statutory term “public interest” is expanding regulatory powers.

7:30 – 8:30 a.m.

Continental Breakfast – *Audubon*

8:30 – 9:30 a.m.

SESSION XIII: *Ancient Mariner on Modern Seas: Can 1930s States Accommodate 21st Century Technology? – State-Federal Regulatory Relationship*

Presenter: Scott Hempling, Esq. – Attorney, Author and Lecturer

From streetcars to solar panels, from wireline to cellular, from taxis to Uber, regulatory decisions have shaped market structure. The goal, wrote Alfred Kahn, is to find “the best possible mix of inevitably imperfect regulation and inevitably imperfect competition.” But an awkward relationship between state and federal regulation, along with uncertainty about what investments the Constitution protects, is making progress unpredictable. Today's prominent example is distributed energy resources: distributed generation, storage, solar PV, microgrids and electric vehicle charging.

9:30 – 10:30 a.m.

SESSION XIV: *Sailing the Seas of Telecommunications. The 20th Anniversary of the Telecom Act: Taking Stock and Looking Forward*

Moderator: Diane Munns, Esq. – Senior Director of External Affairs & Regulatory Policy, Environmental Defense Fund

Presenters: David R. Conn – Vice President, State Government Affairs, T-Mobile USA

Jeffrey S. Lanning – Vice President, Federal Regulatory Affairs, CenturyLink

Labros E. Pilalis – Telecommunications Analyst, Executive Policy Manager, Office of Vice Chairman Commissioner Andrew G. Place, Pennsylvania Public Utility Commission

In February of this year, we celebrated the 20th Anniversary of the Telecom Act which ushered in the beginning of an era of competition in the telecom space. That competition has led to innovation in products and services, new entrants in all aspects of the marketplace, lower prices, higher quality of service – and most of all – customer choice. Despite these gains, some argue the Telecom Act needs a rewrite while others think we should keep building on the Act’s success. This panel will take stock of where we have been since the passage of the Act and look forward to what may lie ahead. Some questions to be explore include: What were the

successes of the Telecom Act? Its failures? What are the most important innovations since 1996? What kind of new entrants have we seen since the law passed in 1996? What were some of the most important policy decisions implemented since the passage of the Telecom Act? Looking ahead what happens to important policy issues like USF? How has the Federal-State relationship evolved and what is its future? Will the ongoing M&A activity continue and what is its impact on competition? What is the path forward for competition overall? Are there parallels between what has happened in telecom since the passage of the Act and the energy side? Do we need to rewrite the Telecom Act? If so, is that a complete overhaul or targeted reform?

10:30 – 10:45 a.m.

Break

10:45 – 11:45 a.m.

SESSION XV: *Batten Down the Hatches: Examining the Role of Critical Infrastructure/Cybersecurity in Electric Regulation*

Moderator: Cheryl Walker Davis, Esq. – Director, Office of Special Assistants, Pennsylvania Public Utility Commission

Presenter: Mary Beth O'Hara Osborne – Director of Regulatory Affairs, Pennsylvania Public Utility Commission

As the Director of Regulatory Affairs at the Pennsylvania Public Utility Commission, which is charged with oversight of the Commonwealth's public utilities, Mary Beth O'Hara Osborne was charged with leading a team to study the agency's cybersecurity responsibilities and needs and to make recommendations to the Commissioners about the path forward regarding this dynamic topic. This task involved looking inward at the agency's own cybersecurity capabilities and resiliencies and outward at the PUC's direct state regulatory and statutory duties and obligations to ensure the provision of safe and reliable utility service to the citizens of Pennsylvania. The issues faced by Pennsylvania are not unique and are being encountered across the country. Hear their story.

11:45 a.m. – 12:15 p.m.

SESSION XVI: *Heave To! A Natural Gas Case Study: Aliso Canyon*

Presenter: Jason J. Zeller, Esq. – Attorney and former Assistant Chief Counsel, California Public Utilities Commission

The presentation on the Aliso Canyon gas leak will include a discussion of relevant California Public Utilities Code, including

Sections 315 (accident investigations), 451 (requirement to operate facilities safely) and Sections 2100, et seq. (the enforcement and penalty provisions of the code).

Discussion will include California Commission General Order provisions governing gas storage field operations, and a diagram of how a gas storage field operates.

The discussion also will cover the applicable regulatory requirements of the California Division of Oil, Gas & Geothermal Resources which has day-to-day oversight over the operation of gas storage fields.

The presentation will present statistics about the amount of gas released into the atmosphere from the leak, the effect of the leak on the adjacent community, the status of tort litigation that has arisen from the leak, the public demand for closure of the facility, and a brief review of the general theory of negligence as it pertains to the operation of a gas storage facilities.

12:15 – 1:30 p.m.

Lunch – *White Ibis*

1:30 – 2:00 p.m.

SESSION XVII: *The Gold Standard: The Pursuit of Regulatory Excellence!*

Presenter: Commissioner Lisa Edgar – Florida Public Service Commission and Immediate Past President of NARUC

In the Gold Standard: The Pursuit of Regulatory Excellence, Commissioner and former National Association of Regulatory Utility Commissioners (NARUC) President, Lisa Edgar will share her experience of regulatory excellence.

In her third term at the Florida Public Service Commission and the 2015 President of the NARUC, Commissioner Edgar's discussion will include practical suggestions for improving and enhancing professional and regulatory skills. Commissioner Edgar will draw on her experience and knowledge in discussing how to be an effective regulator while balancing the needs of the state, the utilities, the consumer and the law.

2:00 – 3:00 p.m.

SESSION XVIII: *Raise the Sails! Taxi & Uber Transportation Issues*

Moderator: Cheryl Walker Davis, Esq. – Director, Office of Special Assistants, Pennsylvania Public Utility Commission

Presenters: Krishna Juvvadi, Esq. – Senior Counsel, Uber Technologies, Inc.

Ray Middleman, Esq. – Managing Partner, Malone Middleman, PC (Yellow Taxi)

Michael L. Swindler, Esq. – Deputy Chief Prosecutor, Bureau of Investigation & Enforcement, Pennsylvania Public Utility Commission

This session will include a discussion of, among other things:

- The advent of transportation network companies;
- The impact upon the taxi cab and limousine industries;
- The distinctions between transportation network companies and traditional regulated motor carriers;
- The legal framework and legislative activity;
- The impact on traditional taxi cab and limousine holders of certificates of public convenience;
- Enforcement considerations;
- Insurance considerations; and
- Public interest/safety issues.

3:00 – 3:15 p.m.

Break

3:15 – 4:15 p.m.

SESSION XIX: *Don't Walk the Plank! PHMSA & Safety*

Moderator: Arthur O. Buff, PE – Pipeline and Hazardous Materials Safety Administration

Presenters: Robert E. Burns, Esq. – Consultant & Retired Research Specialist with The National Regulatory Research Institute at Ohio State University

Commissioner Paul J. Roberti – Rhode Island Public Utilities Commission and Chairman of Subcommittee on Pipeline Safety NARUC

Craig R. Hoferlin - Vice President, Operations Services, Spire.

This session will include discussion of the Excavation Damage Prevention Rules recently published by the U.S. Department of Transportation Pipeline and Hazardous Materials Safety Administration (PHMSA) and other significant issues effecting pipeline safety.

4:15 – 5:15 p.m.

SESSION XX: *Sharing the Bounty – Developments in Water*

Moderator: Cheryl Walker Davis, Esq. – Director, Office of Special Assistants, Pennsylvania Public Utility Commission

Presenters: Christine Maloni Hoover, Esq. – Pennsylvania Senior Assistant Consumer Advocate

Sarah E. Leeper, Esq. – California American Water Vice President - Legal, Regulatory

Revenue Decoupling

Discussion of the use of revenue decoupling as an alternative method of ratemaking to encourage water conservation and efficiency while simultaneously keeping water utilities financially sound.

Pennsylvania House Bill 1326 (HB 1326)

Discussion of the Act, which goes into effect June 13, 2016 and establishes a process for determining the fair market value of municipal water or wastewater utilities acquired by a public water or wastewater utility for ratemaking purposes.

Troubled Water Companies

Discussion of regionalization efforts by the Commission in dealing with troubled water systems (systems that lack the management and funding to stand as viable systems) which have resulted in cost-effective solutions to this problem with associated benefits of economies of scale, service efficiencies and improved operations, and management and technology.

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