Virginia Post-Disaster Anti-Price Gouging Act

Brief Summary

The Act prohibits charging of unconscionable prices for necessary goods and services within area affected by disaster during the thirty (30) day period following declared state of emergency.

Violations of the Act are enforceable through the Virginia Consumer Protection Act.

Prohibitions in the Act only apply during a "time of disaster." This is the period when a declared state of emergency by the Governor, or President of the United States, is in effect covering parts of Virginia, or thirty (30) days after occurrence of an event that constitutes disaster, whichever is shorter.

The Act does not provide for a private right of action, but is enforced by the Attorney General, local Commonwealth's Attorneys, and city, county, and town attorneys.

Legislative History

The Act was passed during the 2004 session of the Virginia General Assembly and became law on July 1, 2004. It has been activated only a handful of times.

Examples include:

- Activated with the issuance of Executive Order No. 97, following aftermath of Hurricane Katrina.
- Reactivated with issuance of revised Executive Order No. 97 in anticipation of Hurricane Rita.

Purpose of the Act

To make it illegal for suppliers (sellers) of necessary goods and services to charge unconscionable prices during the aftermath of disasters.

What lead to the determination that the Act was needed ?

Attorney General Kilgore proposed legislation after receiving complaints that prices for certain necessary goods and services more than tripled in the aftermath of Hurricane Isabel.

Some examples:

- A Richmond tree service company charged a Chesterfield County consumer $57,000 to remove 8 trees from his home. The insurance company reimbursed the consumer $5,400 based on what it believed the work was worth.
- A Kilmarnock tree service company quoted a consumer $20,000 to cut down (but not remove) 8 trees leaning against his home. The consumer ended up paying $5,500 to have the same trees cut and removed weeks later by another company.
- An individual selling 4,000-watt generators for $1,245 from the back of a truck in a hardware/ home supply company parking lot. The same generator sold for $549 before the disaster.

The costs of price-gouging are often reimbursed, to some extent, by insurance companies and, in turn, passed on to consumers in the form of higher premiums.

In the absence of a statute, consumers may be subject to “storm chasers” and others who attempt to exploit disaster victims.

What is a necessary good or service ?

The term “necessary goods and services” includes goods and services for which demand does, or is likely to, increase as a result of the disaster.

Potential examples include, but are not limited to, water, ice, food, batteries, generators, home repair materials and services, tree removal services, motor fuels, and lodging.

Once activated, what sort of price increase must be shown to prove an unconscionable price ?

The basic test under the Act is whether a post-disaster price “grossly exceeds” the pre-disaster price charged by the same supplier.

This test must be read together with the legal standard for unconscionability, which provides that an “unconscionable bargain” is one where the “inequality must be so great as to shock the conscience.”

- The standard is high and will not be met with small price increases.
- Two states with similar statutory schemes provide that a 25% increase is *prima facie* evidence of an unconscionable price.

The Virginia Act does not provide a specific percentage benchmark to establish that an unconscionable price increase occurred.

The fact that a post-disaster price increase is attributable solely to additional costs incurred by a supplier will be *prima facie* evidence that the increase is not unconscionable.

Once the Act is activated, where are complaints filed and what type of information is requested ?

Complaints are filed with the Office of Consumer Affairs (OCA), within the Virginia Department of Agriculture and Consumer Services' (VDACS) Division of Consumer Protection.

Types of information requested:

- Name and address of supplier (company or individual about which the complaint is filed).
- Type of product, item or service sold or advertised (including the manufacturer or brand).
- Price charged or advertised for the product, item or service after disaster.
- If known, price charged or advertised for the product, item or service before disaster.

Complaints will be assigned to one of OCA's investigators.

How are the complaints handled ?

Gasoline pricing complaints received post-Hurricane Katrina were investigated by the Office of Weights and Measures (OWM), within VDACS’ Division of Consumer Protection.

Post-Hurricanes Katrina and Rita, OCA received 182 price-gouging phone calls and 8 written complaints. OWM received 88 complaints and other inquiries.

OWM conducted 30 field investigations of price-gouging and provided the Office of the Attorney General with six (6) Inspection Summary Reports relating to possible violations of the Act.

As of this date, the Office of the Attorney General has issued four (4) Notice of Violation (NOV) letters. The NOV letters give the subject of the complaint an opportunity to provide exculpatory information, including price increases it had to pay its source, or opportunity to enter into an Assurance of Voluntary Compliance or settlement.

What enforcement agency will handle prosecutions and what remedies may be sought ?

The Act is enforceable by the Attorney General, local Commonwealth's Attorneys, and city, county, and town attorneys.

In an appropriate matter, the following remedies may be sought:

- Injunctive relief;
- Restitution for injured consumers;
- Civil Penalties; and
- Attorney’s fees.

Do other states have anti-price-gouging statutes ?

Twenty seven (27) states and two (2) territories currently have anti-price-gouging statutes and/or regulations.

Alabama	Iowa	New Jersey
Arkansas	Kansas	New York
California	Kentucky	North Carolina
Connecticut	Louisiana	Oklahoma
Florida	Maine	South Carolina
Georgia	Massachusetts	Tennessee
Hawaii	Michigan	Texas
Idaho	Mississippi	Virginia
Indiana	Missouri	West Virginia

District of Columbia

Commonwealth of the Northern Mariana Islands

Should we leave post-disaster pricing totally to the free market and laws of supply and demand ?

The free market works most of the time, and government should keep its nose out most of the time.

Disasters create a temporary and abnormal disruption in the market and can create a captive market for some goods and services.

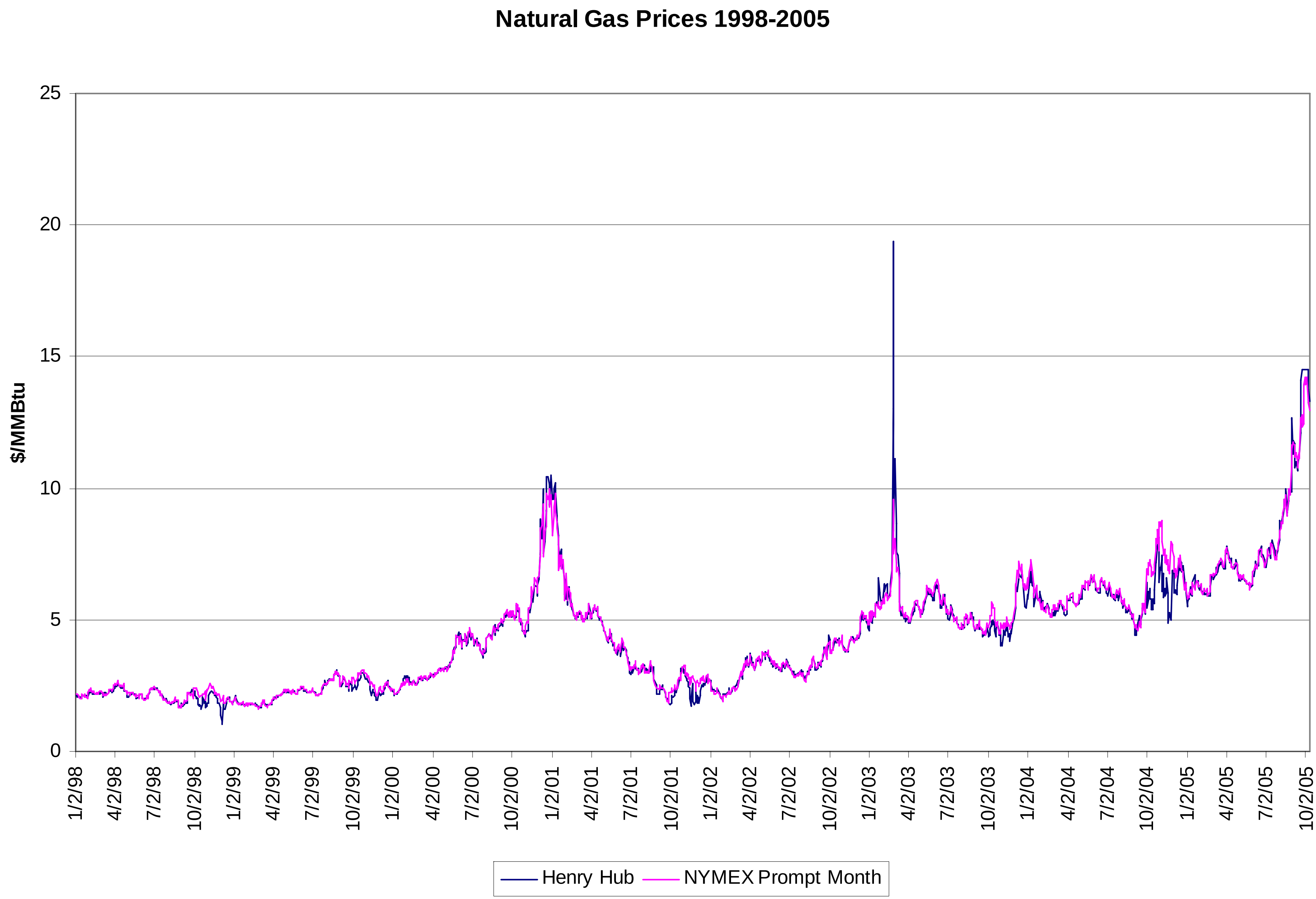
For example, the ability of a consumer to comparison shop for necessary goods and services is diminished significantly when roads are inaccessible and electrical power and telephones are out in an affected area.

The Act goes no further than necessary. By prohibiting only unconscionable prices the Act gives plenty of room for market forces to work (by redirecting supply to the affected area) and prohibits only blatant profiteering and exploitation.

Additional information on Natural Gas and Electric Prices

Natural gas prices have increased significantly since July 2005 and have spiked since hurricanes Katrina and Rita disrupted production in the Gulf of Mexico.

The U.S. Energy Information Administration reports that natural gas home heating customers can expect to pay 48% more this winter, assuming normal weather.



Source: FERC staff

Natural gas utilities in Virginia and elsewhere purchase their gas supplies on competitive wholesale markets and pass through the cost to their customers without further mark up.

Approximately 80% of the typical customer’s bill is for the gas commodity and the remainder is the cost of distribution, which is regulated.

Several Virginia natural gas utilities have SCC-approved financial hedging programs in place: Atmos Energy, Roanoke Gas, and Washington Gas, and Columbia Gas has recently filed for approval of a hedging program.

Other types of hedging techniques, such as increasing storage of gas during off peak months may be employed.

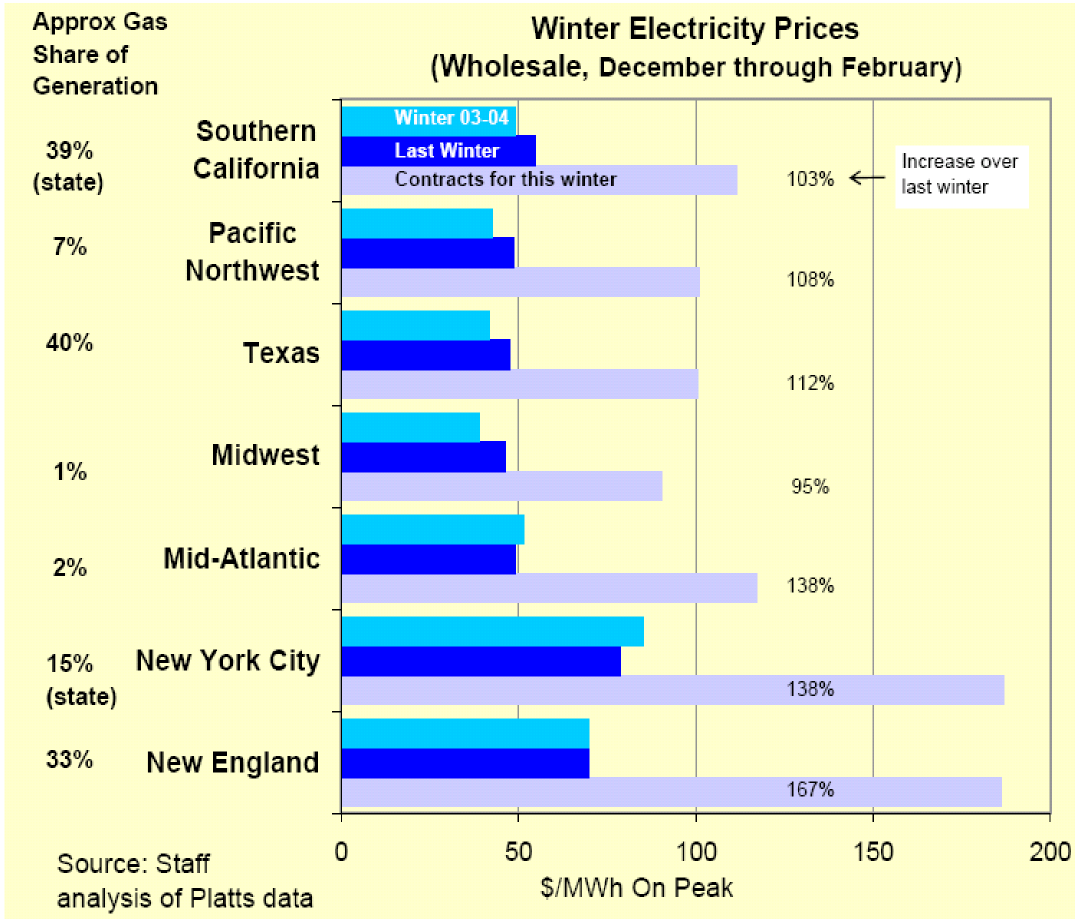
The Attorney General's Office has written to Virginia's investor-owned natural gas utilities asking that they take all reasonable steps to mitigate the impact on consumers of price volatility this winter, and to educate their customers on energy efficiency.

The SCC has issued a news release cautioning natural gas customers to brace for higher bills this winter.

Higher fuel costs have also impacted wholesale electricity prices.

Electricity Prices are Rising With Higher Fuel Costs

- Wholesale prices for this winter are about double last winter's actual prices. The chart shows:
  - Fraction of electricity from gas in 2004
  - Contract prices for December 2005, January 2006, and February 2006 as of 9/23/05
  - Averages of day-ahead contract prices in past two winters



Virginia’s investor-owned electric utilities that own generation recover their fuel costs from customers in retail rates through a “fuel factor.”

Dominion Virginia Power's fuel factor was frozen at its 2004 level until July 2007 by the 2004 amendments to the Restructuring Act. Its customers' rates will not increase this winter.

Dominion Virginia Power reported that it under-recovered its fuel costs in 2004 by $115 million (after taxes), or $185 million for fuel factor purposes. The continued increases in fuel prices would suggest a significantly larger under-recovery in 2005.

Appalachian Power has recently filed for an increase of $57.7 million for its 2006 fuel factor, an 8.1% overall rate increase. Appalachian had an $18.6 million fuel factor increase in 2005 and a $35.7 million decrease in 2004.

Appalachian’s increase does not reflect natural gas as a fuel source at any of its generation stations.

Old Dominion Power (Kentucky Utilities) adjusts its fuel factor in April and has not yet proposed a new rate.

HOME HEATING OIL

The U.S. Energy Information Administration reports that households heating primarily with heating oil can expect to pay, on average, $378 (32 %) more this winter.

Residential retail heating oil prices (including State and local taxes) averaged $1.92 per gallon during the 2004-2005 winter heating season and are expected to average $2.54 per gallon during the 2005-2006 winter season.

Nationwide, only 7% of U.S. households depend on heating oil for winter fuel.

CONTACT INFORMATION

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If you would like to file a complaint or determine if any complaints have been filed against a particular company, you may:

- call OCA toll-free in Virginia at 1-800-552-9963 (786-2042 locally in the Richmond area).
- write to Office of Consumer Affairs, 1100 Bank Street, Richmond, Virginia 23219.
- The OCA web-site's address is: http://www.vdacs.virginia.gov/consumers/oca.html