

Manufacturing Development Commission
June 22, 2010
Stuarts Draft, Virginia

The Manufacturing Development Commission held its first meeting during the 2010 interim at the McKee Foods facility in Stuarts Draft. The Commission is charged with assessing manufacturing needs and formulating legislative and regulatory remedies to ensure the future of the manufacturing sector in Virginia. In his opening remarks, Chairman Senator Frank Wagner observed that the greatest challenge to manufacturing may be government policies. The purpose of the Commission remains to ensure that Virginia ranks as the best state for doing business, and he vowed that the Commission will continue to do all it can to ensure Virginia is the most competitive state.

The members of the Commission were welcomed by Randy Smith and Connie Vaughan of McKee Foods. The Stuarts Draft plant is one of four facilities operated by Tennessee-based McKee Foods, which is nationally famous for its Little Debbie snack cakes and breakfast pastries. Mr. Smith noted that while Virginia remains an attractive state in which to do business, the firm has relocated the baking of its individually wrapped honey buns to its Arkansas plant for reasons that included lower labor costs.

Former Senator Frank Nolen greeted the members of the Commission with observations that were critical of government-imposed mandates on manufacturers. As an example, he noted that while the manufacturing community supports the goal of reducing energy usage, an approach that uses incentives is much more acceptable than mandating across-the-board reductions. Benchmarked goals that are tailored to particular types of energy consumers should be favored over mandating that everyone reduce usage by a certain percentage.

Energy Mandate Impact Assessment Legislation

Two bills were introduced in the 2010 Session to require the State Corporation Commission (SCC) or the Joint Legislative Audit and Review Commission (JLARC) to prepare an assessment of the economic impact of proposed mandates that affect the use, delivery, availability or regulation of energy. House Bill 1274, patroned by Delegate Hugo, and Senate Bill 647, patroned by Senator Watkins, were both carried over to the 2011 Session.

The bills addressed an issue that the Commission began examining in 2009. At previous meetings, the Commission received briefings on the SCC's role in preparing fiscal impact statements and on reviews of proposed health insurance mandate bills conducted by the Special Advisory Commission on Mandated Health Insurance Benefits.

Cathie France of Virginia Natural Gas/AGL Resources and Bill Murray of Dominion expressed concerns with the 2010 legislation. Ms. France questioned whether the SCC staff was the appropriate body to conduct the analyses of energy bills. Mr. Murray acknowledged the difficulty in defining the scope of energy-related legislation that should be subject to the proposed analysis process, and cautioned that requiring all energy bills to be analyzed may have adverse unintended consequences. Both praised proposed amendments to the bills during the

Session that narrowed the scope of the legislation that would be subject to the required analysis and agreed to work with the Commission on outstanding issues.

Jeff Smith, IV, representing the Coalition for Fair Utility Rates, described the ability to evaluate the impact of pending legislation on energy costs as significant. He recommended that the legislation require a cost analysis of any proposed legislation that would change how energy is regulated in the Commonwealth. Information about the effect of a bill on a utility's rates on consumers should be available to the members of the General Assembly before they vote on the measure.

Commission member Brett Vassey noted that disagreements over policy issues remain. He praised the inclusion of a provision that would bar the use of proprietary data obtained by the SCC staff in the course of the conduct of its analyses in future proceedings. One unresolved question is who should conduct the analyses. While JLARC has an excellent reputation for conducting assessments, it has expressed the inability to conduct the studies that would be required by this legislation without hiring additional staff, which is unlikely in the current fiscal situation. The chairman urged interested parties to meet and work to resolve areas of disagreement.

Environmental Permitting Regulations

The Commission is monitoring proposed changes to regulatory requirements involving environmental permitting in areas of water quality, air pollution, and waste disposal fees. With regard to water pollution, members observed widespread frustration with the federal EPA over total maximum daily load limits for the Chesapeake Bay. Proposed limits on nonpoint sources and other discharges will affect existing programs that are held in high regard.

Sidney Harrison of Industrial TurnAround Corporation briefed the Commission on pending EPA air regulations. In order to obtain discharge permits in some nonattainment areas, applicants may be required to purchase pollution offsets from within the affected area. Proposed rules are expected, among other things, to cause permitting delays, impede the funding of new projects (as lenders deal with uncertainty), increase administrative costs associated with reporting requirements, and increase capital costs. One example of the potential impact of proposed regulations involves the selection of the baseline year. Choosing 2011 rather than 2008 as the base year would make it much more difficult and expensive to obtain a permit. Another issue yet to be determined is the base level for determining what will constitute a nonattainment area in Virginia. Options being discussed include 0.070 ppm, 0.065 ppm, and 0.060 ppm. Mr. Harrison suggested that DEQ push for a level of 0.070 ppm.

Mr. Harrison also voiced concerns with proposed greenhouse gas regulations. Much uncertainty exists because the EPA has not resolved such issues as whether biomass-burning facilities will be treated as carbon neutral and how mandating the use of maximum available control technologies for carbon dioxide will be administered when no such technologies currently exist.

The issue of increased waste disposal fees was addressed by Meade Spotts of the law firm of Spotts Fain. As part of efforts to balance the state's budget, language in the appropriation act

adopted in the 2010 legislative session (Item 354 B 2) requires the Waste Management Board to adopt regulations ensuring that general funds not be required to cover at least 60 percent of the direct costs of issuing, reissuing, amending or modifying permits and performing inspections and enforcement actions regarding permits for sanitary landfills and other nonhazardous solid waste. The Board's proposed regulations call for a 79 percent increase in the base fee for municipal solid waste facilities and a 400 percent increase in base fees, plus a sliding scale/per ton fee, for construction and demolition debris landfills. The new regulations will take effect July 1 and have a term of one year, which affords the General Assembly the opportunity to review relevant issues in the 2011 Session.

The scheduled increase in permitting fees raises several policy questions. For example, if DEQ is assured of recovering 100 percent of its expenses through permit fees, the agency will lose the incentive to be efficient. In addition, the importation of out-of-state waste has been declining, and fees paid by importers have in effect subsidized the disposal costs of Virginia's manufacturing community. Moreover, some fear that new EPA rules regarding the disposal of coal ash will increase operating costs during a period of historic lows for volume, while providing even more reason to expand the use of captive landfills. Mr. Spotts observed that language in the appropriation act requires DEQ to report on efficiencies in containing permit costs. This study may provide an opportunity for lower fees and timelier permit issuance. Mr. Vassey added that it may also provide an opportunity to define what constitutes the "direct" costs of DEQ that must be funded through permit fees.

Clean Energy Funds

Jessica Morey of the Clean Energy States Alliance, a multi-state coalition of more than 20 clean energy programs, provided the Commission with an overview of state clean energy funds. These state funds, which are principally composed of money collected through surcharges on electric rates, are used to support energy efficiency and renewable energy programs. Other funding sources include a pollution charge on generators and utilities, bonds, general tax revenue, lottery funds, renewable portfolio standard compliance payments, and regional carbon allowances.

The funds collectively are expected to provide \$6 billion for the next 10 years that can be invested in clean energy projects. Funds can be allocated through direct subsidies for projects, loans and equity investments in companies and projects, investments in industry infrastructure, research and development, or any combination of these approaches. Ms. Morey described the renewable energy funds as a viable economic development tool. She provided members with alternative models for administration of the funds, including oversight by utilities, government agencies, and independent non-governmental organizations.

Senator Wagner remarked that he has been active in attempts to get renewable energy projects underway in Virginia, and criticized the length of time required to obtain permits for off-shore wind energy projects. In response to the chairman's observations that delays in renewable projects can, in the current capital markets, frustrate renewable projects, Ms. Morey observed that clean energy funds can provide a source of funding for predevelopment costs.

Conclusion

Senator Wagner expressed appreciation on behalf of the Commission to McKee Foods for hosting the meeting. Copies of materials provided by speakers are available at the Commission's web page at <http://dls.state.va.us/groups/manufacturing/meetings/062210/materials.htm>.

Senator Frank W. Wagner, chairman

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