VIRGINIA COAL AND ENERGY COMMISSION
October 27, 2005
Richmond, Virginia

The Virginia Coal and Energy Commission's first meeting of the 2005 Interim focused on energy policy issues. The Coal and Energy Commission, established pursuant to Chapter 25 of Title 30 of the Virginia Code, is charged with studying energy-related issues.

Senator Wampler called the meeting to order and announced the establishment of a special subcommittee on energy policy. The subcommittee, to be chaired by Senator Watkins, is charged with developing recommendations for short- and long-term strategic investments and actions to ensure that the Commonwealth is positioned to address energy issues. The chairman invited Senator Frank Wagner, Delegate Harvey Morgan, Michael Lipford of the Nature Conservancy, Hugh Keogh of the Virginia Chamber of Commerce, Chris Anderson of Exxon Mobile Corporation, and Hugh Linginfelter of Virginia Natural Gas to participate in the efforts of the subcommittee.

Attorney General Judith W. Jagdmann provided the Commission with an overview of the Virginia Post-Disaster Anti-Price Gouging Act. Twenty-six other states have anti-price gouging statutes or regulations. The Act, adopted in 2004 following Hurricane Isabel, prohibits charging unconscionable prices for necessary goods and services within the area affected by a disaster during a time of disaster, which is the period when a declared state of emergency is in effect or 30 days after the occurrence of the event that constitutes the disaster, whichever is shorter. Senator Watkins questioned whether the period in which the Act's provisions are in effect should be extended in the event that a declared state of emergency lasts longer than 30 days.

To violate the Act, an increase in prices must be so great as to shock the conscience. The Act does not specify any percentage of increase that would establish prima facie evidence of unconscionability.

The Act has been activated on several occasions, most recently following Hurricanes Katrina and Rita. Complaints of alleged price gouging are handled by the Office of Weights and Measures (OWM) within the Department of Agriculture and Consumer Services. Of the over 200 complaints and inquiries received following Hurricanes Katrina and Rita, the OWM conducted 30 field investigations and provided the Office of the Attorney General with 6 reports relating to possible violations of the Act. The Office of the Attorney General has issued 4 Notice of Violation letters. General Jagdmann noted that while the free market works most of the time, the Act, which prohibits only blatant profiteering and exploitation, is an appropriate response to disasters that disrupt markets and can create captive markets for some goods and services.

The Attorney General also cautioned Commission members that natural gas prices have increased significantly since Hurricanes Katrina and Rita disrupted production in the Gulf of Mexico. Those that heat their homes with natural gas can expect to pay 48 percent more this winter than last, assuming normal weather. Natural gas prices at the Henry Hub are in excess of $13/MMBtu; two years ago, prices were below $5/MMBtu. Approximately 80 percent of a customer's bill is for the gas commodity, which is purchased on wholesale markets and passed through to customers without further mark-up, and the balance is regulated distribution charges.

Higher fuel costs have affected wholesale electricity prices, which are about double last winter's actual prices. Virginia's electric utilities are authorized to pass fuel cost changes through to their customers via their fuel factor, though Dominion Virginia Power's fuel factor is frozen at its 2004 level until July 2007. Appalachian Power has requested $57.7 million increase in its fuel factor for 2006, which would increase rates by 8.1 percent, though the utility's fuel factor increase does not reflect natural gas as a fuel source at any of its generation stations.

Heating oil, which is burned in 13 percent of Virginia's homes and 7 percent of homes nationally, is expected to cost households on average $378 more this winter, an increase of 32 percent from last year. In the 2004-2005 winter heating season, the retail price of heating oil was $1.92 per gallon; this winter, it is expected to be $2.54 per gallon.

Stephen A. Walz of the Department of Mines, Minerals and Energy (DMME) addressed the Chairman's request for feedback on the suggestion that a capability be established within the executive branch to monitor and analyze energy supplies and costs and to anticipate energy crises before they affect the Commonwealth. After summarizing the state government's current energy monitoring activities, Walz focused on DMME's role as petroleum commodity manager after Hurricanes Katrina and Rita.

He stated that a new state energy monitoring function could be located at DMME. The function may be limited in its data monitoring capability by, among other factors, the lack of Virginia-specific data and the proprietary nature of some data. Such a function could track energy supply and demand, as well as its costs, based on data from existing secondary sources. It could also manage petroleum and solid fuel emergency response activities and provide management support to state agencies and institutions in their fuel purchases. Walz noted that such a function is not currently funded within DMME. The State Energy Office receives funding from the federal Department of Energy, and does not receive general funds other than an appropriation for the Southern States Energy Board.

Senator Wampler acknowledged that the ability to collect energy market data does not resolve the question of what would be done with the information to address questions regarding the functioning of markets. Walz was asked to work with the new Energy Policy subcommittee regarding the potential costs of developing such an office or other capability within DMME.

Secretary of Health and Human Resources Jane Woods cautioned that the Commonwealth can no longer depend on level or increasing federal funds for Virginia's low income energy assistance programs. Federal Low Income Home Energy Assistance Program (LIHEAP) grants provided $36 million for heating and cooling assistance in fiscal year 2005. The Department of Social Services' annual report on the effectiveness of low-income energy assistance programs in meeting the needs of low-income Virginians indicates that while the number of households served by energy assistance programs continues to increase, the benefits provide less than 25 percent of a recipient's household's energy needs. The average recipient of LIHEAP heating assistance received a benefit of $220, while the maximum benefit was $370. While the eligibility threshold is 130 percent of the federal poverty level ($24,505 for a family of four), more than 60 percent of the households receiving a benefit had incomes of less than $10,000.

Secretary Woods estimated that, with anticipated increases in fuel costs, maintaining benefits at their current level, given an expected five percent increase in demand would require $24 million in general funds. While some other states supplement their federal LIHEAP block grant with state general funds, Virginia has only used general funds to supplement the LIHEAP cooling program this year. The Chairman noted that while members have been cautioned not to use any budget surplus to fund programs that would commit the Commonwealth to ongoing base appropriations, he suggested that energy programs, particularly one-time expenditures on energy conservation through the Weatherization Program administered by the Department of Housing and Community Development, may be a wise investment. The Energy policy subcommittee was asked to work on this issue with Secretary Woods, and the Commission will monitor the funding level proposed in the Governor's budget.

Staff provided the Commission with an overview of the provisions of the federal Energy policy Act of 2005 that pertain to strategic investments in energy supplies. The 1,724-page bill seeks to spur new domestic energy production from traditional and alternative sources. The bill provides $14.6 billion in tax breaks, and authorizes expenditures of $85 billion, over the next decade. Major features that address energy supply issues include:

- FERC authority to approve the construction, expansion or operation of liquefied natural gas (LNG) terminals
- A comprehensive inventory of the oil and natural gas resources on the Outer Continental Shelf, including areas where the current moratorium prohibits exploration and drilling
- Royalty rate reductions for certain wells in the Gulf of Mexico
- Requiring federal agencies to speed up and coordinate the permitting process for oil and gas development on federal lands
- Directing the Interior Department to expedite the competitive leasing of oil and gas rights in Alaska's National petroleum Reserve
- EPA authorization, when requested by a governor, to establish a streamlined permit process for petroleum refineries
- Funding a clean coal initiative (at $200 million per year for 9 years)
- Providing $2.5 billion for a clean air coal program to provide financing for electric generating equipment that improves energy efficiency or reduces pollution
- Providing a clean coal technology tax credit
- Expanding eligibility for the Price Anderson Act's limit on nuclear power companies' liability for accidents
- Reimbursing a company that builds a new advanced nuclear reactor for costs resulting from delays in completion due to litigation
- Authorizing $1.25 billion through 2015 to develop a prototype Next Generation nuclear power plant
- Providing a tax credit for electricity produced from advanced nuclear power facilities
- Providing a $3/barrel fuel production credit for fuel from sources such as oil shale and tar sands
- Extending the production credit for wind energy and biomass electricity

- Requiring fuel refiners to double the amount of ethanol and other biofuels used in the U.S. by 2012
- Authorizing grants and loan guarantees for demonstration projects for fuels from sugarcane, agricultural residues, municipal solid waste, and agricultural byproducts

Congress is considering additional legislation that, if enacted, will:

- Reduce environmental and other regulations applicable to petroleum refineries
- Revamp the federal government's role in the siting and operation of pipelines for crude oil and refined petroleum products
- Encourage expeditious construction of the Alaska Natural Gas Pipeline
- Outlaw price gouging in gasoline or diesel fuel sales
- Authorize an oil and gas leasing program in the Arctic National Wildlife Refuge
- Give states the option to allow oil and gas drilling in offshore areas currently subject to moratorium

Senator Frank Wagner testified that the Commonwealth needs to adopt a comprehensive energy policy now. He advised the Commission that the work of the Joint Subcommittee on the Future of Manufacturing in Virginia has become aware of the effect of rising natural gas prices. In addition to its use as fuel, natural gas is a raw material in the manufacture of plastics and fertilizer. He noted that while natural gas prices in this country exceed $13/mmcf, it has been selling recently for $1.50/mmcf in Trinidad and Tobago. Companies are making decisions now about where their operations will be located, and the economic implications of the tripling or quadrupling of natural gas prices over the past 18 months create uncertainty.

While stating that Virginia has an energy supply problem, Senator Wagner also stressed the need to reduce energy demand via conservation. Energy issues should be solved in ways that minimize environmental impact and provide employment for Virginians. He observed that permitting the construction and operation of a new clean coal-fired power plant would be less detrimental to air quality in Virginia than, through high electricity and gas prices, driving millions of households to heat their homes by burning wood. In this regard, Senator Wagner suggested that we need to ask why we are burning scarce natural gas to generate electricity while other sources are available.

Elements of the energy plan should address coal, oil, natural gas, nuclear, and renewables. Specific elements offered by Senator Wagner include support for the expansion of the existing petroleum refinery in Virginia, extending coal production tax credits, promoting LNG imports, developing off-shore natural gas resources, and pre-approving sites for the location of nuclear and wind power generation facilities. The adequacy of the Commonwealth's natural gas pipeline infrastructure also needs to be examined.

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