

INTERIM JOINT COMMITTEE ON NATURAL RESOURCES AND ENERGY

Minutes of the 4th Meeting of the 2022 Interim

September 22, 2022

Call to Order and Roll Call

The 4th meeting of the Interim Joint Committee on Natural Resources and Energy was held on Thursday, September 22, 2022, at 1:00 PM, in Room 154 of the Capitol Annex. Representative Jim Gooch Jr., Chair, called the meeting to order, and the secretary called the roll.

Present were:

Members: Senator Brandon Smith, Co-Chair; Representative Jim Gooch Jr., Co-Chair; Senators Adrienne Southworth, Johnnie Turner, Robin L. Webb, and Phillip Wheeler; Representatives John Blanton, Adam Bowling, Randy Bridges, Tom Burch, Ryan Dotson, Jim DuPlessis, Patrick Flannery, Chris Fugate, DJ Johnson, Norma Kirk-McCormick, Mary Lou Marzian, Suzanne Miles, Pamela Stevenson, Bill Wesley, and Richard White.

Guests: Clay Larkin, Partner, Dentons Bingham Greenebaum; Vic Maddox, Deputy Attorney General, Office of the Attorney General (OAG); John Horne, Executive Director of the Office of Rate Intervention, OAG; and Blake Christopher, Deputy General Counsel and Director of Legal Policy, OAG.

LRC Staff: Stefan Kasacavage, Kayla Carroway, Tanya Monsanto, and Rachel Hartley.

The minutes from the meeting of August 18, 2022, were approved by voice vote.

Discussion of the United States Supreme Court's Decision in West Virginia v. Environmental Protection Agency

Clay Larkin stated on June 30, 2022, the United States Supreme Court held that the United States Environmental Protection Agency (EPA) exceeded its statutory authority under the Clean Air Act in adopting the Clean Power Plan (CPP) of 2015. The CPP required electric generating sources to shift from fossil fuels to other sources of generation.

The CPP relied on Section 111(d) of the Clean Air Act for authority to reduce greenhouse gas emissions from electric generating units. Under Section 111(d), EPA can adopt standards of performance (emission standards) which represent the "best system of

emission reduction...adequately demonstrated.” For the CPP, EPA determined that the best system of emission reduction for electric generating units was three building blocks: (1) improve efficiency of coal-fired power plants; (2) shift generation from coal-fired to natural-gas-fired power plants; and (3) eventually shift generation from fossil fuels to zero emission sources, such as wind and solar.

The rule was challenged by 27 states and other parties, and the Supreme Court granted a stay preventing the rule from taking effect in 2016. Under the Trump administration, the EPA repealed the rule and adopted a replacement, but that replacement rule, including its repeal of the Clean Power Plan, was struck down in the U.S. Court of Appeals for the D.C. Circuit. The Supreme Court agreed to hear the case on the Clean Power Plan to resolve the issue for the states and EPA.

The Court found that requiring the country’s mix of electricity generation to shift from 38 percent coal to 27 percent coal by 2030 is not a “best system of emission reduction” within the meaning of Section 111(d) of the Clean Air Act. Prior to 2015, the EPA considered the best system of emission reduction to be technology applied at the source, and never claimed it could force a change to different electric generating sources. The United States Congress has consistently rejected changes that would have required generation shifting. The decision does not resolve the policy issue of whether states can maintain their fossil fuel power fleets.

The EPA’s Good Neighbor Plan (GNP) could force the closure of numerous fossil fuel generation units based on the need to reduce emissions in distant states. According to the Utility Information Exchange of Kentucky, the GNP could result in a 2,600 megawatt shortfall in Kentucky by early 2026.

Investors are increasingly applying environmental, social, and governance (ESG) factors when measuring the ethical and sustainability impact of an investment with a company. Kentucky passed SB 205 during the 2022 Regular Session to address the issue.

Representative Gooch stated the revised Clean Air Act of 1990 was an attempt to use existing technology to reduce pollutants at the source.

Senator Webb agreed with the United States Supreme Court’s decision and stated existing technology can be used to comply with the Clean Power Plan.

In response to Representative DuPlessis, Mr. Larkin stated the GNP affects more than electric power generation. It includes any emissions source, so it could affect other industries.

Representative Gooch and Senator Smith attended a meeting with the Southern States Energy Board. A resolution was unanimously passed by 17 states that declared their opposition to the GNP.

Senator Smith criticized investors that participate in energy company boycotts and stated the EPA has become too powerful.

In response to Representative Miles, Mr. Larkin stated the Division of Air Quality within the Energy and Environment Cabinet addresses air quality credits.

Representative Burch stated companies must have pressure applied to change their policies to a more sustainable model.

Senator Wheeler stated Kentucky should use technology to our benefit and agrees with the United States Supreme Court's decision.

In response to Representative Kirk-McCormick, Mr. Larkin stated since no one knows how fossil fuels will be replaced, Kentucky should not be forced to shift its power generation sources.

In response to Senator Turner, Mr. Larkin stated the Center for Applied Energy Research at the University of Kentucky studies carbon capture and sequestration for coal-fired and natural gas power generators. Carbon dioxide has valuable commercial uses in other industries. There are no plans to build a nuclear power plant in Kentucky, but there are discussions regarding using existing uranium.

Representative Gooch stated small scale nuclear reactors are more feasible than large scale. Nuclear technology is carbon free, but is not pollutant free.

The Impact of West Virginia v. Environmental Protection Agency on the Office of the Attorney General

Blake Christopher stated a 14 state coalition of attorneys general filed a comment letter to the EPA opposing the Good Neighbor Plan.

Vic Maddox stated the emphasis on environmental, social, and governance (ESG) factors is an effort by major corporations, banks, and asset managers to encourage financial decisions based on their preferred political ideologies. In May 2022, Allison Ball, Kentucky State Treasurer, requested an opinion from the OAG regarding the extent that ESG investment practices regarding management of pension assets are consistent with fiduciary laws in Kentucky. The OAG opinion stated the investment practices are not consistent.

BlackRock Investment Management and Financial Services (BIMFS) is one of the largest asset managers in the world and managed \$1.5 billion of Kentucky's pension assets. BIMFS has signed on to the Net Zero Financial Asset Managers initiative, which is an international group of asset managers committed to achieving net zero carbon emissions by 2050.

In April 2021, Kentucky joined a lawsuit with Louisiana that is currently in the Fifth Circuit Court of Appeals with oral arguments scheduled for November 2022. The lawsuit challenged the Biden administration's attempt to put a stronger emphasis on potential damage from greenhouse gas emissions when creating rules for polluting industries.

In response to Representative Nemes, Mr. Maddox stated the General Assembly could do more to protect taxpayers and pension beneficiaries from ESG investment practices.

John Horne stated the Office of Rate Intervention (ORI) represents ratepayers before the Public Service Commission to keep utility rates low and utility service reliable. ORI has advocated that Kentucky utilities should use an all-of-the-above approach to energy generation. Fossil fuels should be used to their full potential and are crucial components to maintaining a reliable electric grid.

The Public Service Commission will have an important role in determining how Kentucky responds to advancements in carbon-free policies. The ORI is concerned that federal policy that favors a transition from fossil fuels to renewable energy will have a negative impact on Kentucky ratepayers.

Representative Blanton criticized federal policies relating to fossil fuels and investors that participate in fossil fuel energy company boycotts.

In response to Representative DuPlessis, Mr. Maddox stated Kentucky has begun to address the issue of ESG by passing SB 205 during the 2022 Regular Session.

In response to Senator Turner, Mr. Maddox stated the Net Zero Financial Asset Managers initiative has listed all of their members on its website.

There being no further business, the meeting was adjourned.