

**MINUTES**  
**STATE AIR POLLUTION CONTROL BOARD MEETING**  
**FRIDAY, JANUARY 25, 2008**

**Holiday Inn Alexandria**  
**2460 Eisenhower Avenue**  
**Alexandria, Virginia**

**BOARD MEMBERS PRESENT:**

Richard D. Langford, Chair  
John N. Hanson  
Bruce C. Buckheit

Vivian E. Thomson, Vice-Chair  
Hullihen W. Moore

**DEPARTMENT OF ENVIRONMENTAL QUALITY**

David K. Paylor, Director  
Cindy M. Berndt

**ATTORNEY GENERAL'S OFFICE**

Carl Josephson, Senior Assistant Attorney General

The meeting was convened at 1:35 p.m. and adjourned at 3:50 p.m.

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**Minute No. 1 –Dominion Virginia City Hybrid Energy Center:** The Board received a presentation from representatives of the Dominion on the Virginia City Hybrid Energy Center.

Based on the Board book material, presentation and Board discussion, the Board, on a motion by Hullie Moore, requested that:

1. the applicant, staff and all interested persons advise the Board regarding the authority of the agency and Board with respect to permits, including for example, cite, technology, control, fuel, fuel characteristics and limits, fuel cleaning and preparation, emission limits and operating restrictions;
2. the applicant, to the extent it has not already done so, staff and all interested persons advise the Board on what generation technology, limits and restrictions can best responsibly protect Virginia's environment and whether the agency or Board should consider changes to the proposed permit and if so, what changes and why; particular attention should be paid to waste coal and whether burning such coal as proposed is the best way to address waste coal issues; and
3. Items 1 and 2 are to be provided by the date by which comments on the draft permit are due (March 12, 2008).

The vote was 4 to 1 with Mr. Langford voting no.

(A transcript of the Dominion proceedings is Attachment A to the minutes.)

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Cindy M. Berndt

## ATTACHMENT A

Partial Transcript of the proceedings of the January 25, 2008, State Air Pollution Control Board regarding the Dominion Virginia City Hybrid Energy Center

- Mr. Moore:
1. that the Board request that DEQ not issue a permit for this facility until the Board has had a further opportunity to determine the authority of the agency and Board with respect to this permit and available alternatives.
  2. That the Board request the applicant, staff and all interested persons to advise us regarding the authority of the agency and Board with respect to permits, including for example, cite, technology, control, fuel, fuel characteristics and limits, fuel cleaning and preparation, emission limits and operating restrictions.
  3. That the Board request the applicant, to the extent it has not already done so, staff and all interested persons to advise us what generation technology, limits and restrictions can best responsibly protect Virginia's environment and whether the agency or Board should consider changes to the proposed permit. If so, what changes and why, particular attention should be paid to waste coal and whether burning such coal as proposed is the best way to address waste coal issues.
  4. That items 2 and 3 be provided by the date by which comments on the draft permit are due; that is currently February 26, 2008, but I believe an extension has been requested.

It may be that this proposed facility and location will best protect Virginia, but it may be that a facility that seeks to burn coal with high sulfur and high ash along with waste coal with even higher ash and low heat content is not best for Virginia. Virginia's coal fields have different coal. Mr. Shepherd pointed that out. Coal with lower sulfur content, lower ash and higher heat content than Dominion proposes to use in this facility. It may be that a different technology or a different Virginia coal at the site or at another location could responsibly better protect Virginia and her environment. We need to know whether there is a responsible alternative that is better and more protective and we need to know whether this agency or this Board can require such an alternative. This might delay the permit but if there should be no changes the delay should be little if any. I close with the statement that this is a large plant, it will affect the Commonwealth for generations and we should act with great care.

I move the items 1 through 4 that I listed.

Ms. Thomson: I'm sorry for the benefit of everybody here assembled and the rest of the Board could you summarize easily as possible exactly what your motion is?

Mr. Moore: Number one we request, 1. that the Board request DEQ not issue a permit for this facility until the Board has had a further opportunity to determine the authority of the agency and Board with respect to this permit and available alternatives. That's number one. Ask to wait until we receive that. Second, that the Board request the applicant, staff and all interested persons to advise us regarding the authority of this agency and I listed a number of items; the site, the technology, the fuel, the fuel mix and the like. Three, that the Board request the applicant, to the extent it has not done so, the staff and all interested parties to advise us what generation technology, limits

and restrictions can best protect Virginia's environment, whether it's at this location or some other location and then as a part of that should this agency or Board consider changes to the proposed permit and if so, what changes and why. And then the last item is we ask that those be received at the same time the comments on the draft permit are due which I understand is the 26th of February. There is a request for an extension of that. Mr. Paylor has there been action on that request yet?

- Mr. Paylor: There has not been action on that request. I've asked for advice from staff on the need and advisability of that. We have already decided as a minimum that we will add a second day of hearing in St. Paul and that's scheduled for the 11th and 12th. Is that right Cindy?
- Ms. Berndt: 11th and 12th and so the comment period closes one day later, the 27th.
- Mr. Paylor: The comment period closes on the 27th as it stands right now although that request is still being evaluated to determine what the appropriate response is.
- Ms. Thomson: Do we have a second to Mr. Moore's motion? Second. Now would be a time for us to discuss. I think now that the motion has been seconded, questions and reactions to Mr. Moore's motion.
- Mr. Buckheit: It strikes me that there are a couple of factual issues that have been raised that might help the evaluation of this thing as it goes through whatever processes it winds up going through. The principle one that I saw today was the issue of what is the quality of the coals that are available to the plant. There seems that there is a fairly significant difference of opinion between Mr. Shepherd's data and what Dominion is putting forward and I guess I would certainly want to hear from our staff, I would ask the staff to drill down into that issue and provide us and the public with its own assessment of that critical. If in fact there's substantial coals available in the area that could be used in conjunction with an IGCC plant then the question for the decision makers at DEQ is a different question because it doesn't relate to whether one has to relocate the facility or use different coals. Its just simply a factual question that could be resolved that would change, I think in very significant way, the question that is being put forth to DEQ on permitting and I think there's some value to looking at the information that Mr. Shepherd and others are providing in the public comment period to make sure these things are drilled into. I'm not sure that at this time there's a need to request that DEQ hold off on anything because I don't think that DEQ is planning to act in the next 30 to 60 days, but perhaps you can hear from Mr. Paylor on that.
- Mr. Paylor: Well the question of when we act is partially the question of how long the public record stands on and I guess as part of my answer I might ask a clarifying question of Mr. Moore on his motion. Do I understand Mr. Moore that your motion, first of all let me state having not digested yet the full implications of what the workload attached to what you're requesting, I'm not prepared yet to say whether that could be done by the 27th or not. Do I understand correctly that your motion would be that the public record stay open until we have the answers to those questions and have reported back to the Board? No.
- Mr. Moore: We would ask to defer until we have an opportunity to consider it. The public record would stay open however long it is and we would get advice on number one and I think, feel very strongly that this agency and this Board need to know what the parameters, what are the limiting factors; the site, the technology. I hear what Bruce

says that there may be some other fuel. As I read what Dominion says there might be all that fuel around but their view is that we've got to consider it, the Agency has to consider it as offered and I think we need to know number one about that and then number two if this is the best thing then we know that, we don't have to worry about it. We don't have to worry about exercising additional, this authority even if we have it and when I say we I mean the agency at this stage. So I would like to have the information about the authority of the agency and the Board and the second thing is is there something else out there better, if we're not tied to that site and that technology, in a responsible reasonable way.

Mr. Paylor: So in effect your motion is agnostic at this point about how long the public record stays open, but it is that you want a report back on response to public comment and your questions before the permit's issued?

Mr. Moore: No.

Mr. Paylor: I'm not necessarily trying to expand it. I'm trying to understand it.

Mr. Moore: No. No, no, no. We would I assume get at least copies of what we proposed here and that would be comments on the authority and is there another facility and should we have other comments. That is, should there be a change in the proposed permit and that could be just fuels, as Mr. Buckheit suggests might be possible.

Mr. Paylor: If I go back to try to answer Mr. Buckheit's question after I took that diversion, I apologize for that. You know, how quickly we can issue a permit has everything to do with the substance of the public comments and whether or not changes are required as a result of the public comments that we receive and how much work is involved in evaluating those comments. We would plan as soon as we have closed that public comment period to work as quickly as we can to issue the permit. As a practical matter that could be three weeks. It could be several months. It's very difficult to project that until you see what you've got in front of you.

Ms. Thomson: I guess I would like to be clear. Embedded in your motion there are a number of important items I agree that we should hear back on, but you talked about reactions from DEQ as well as reactions from the public and the company as well, so embedded in your motion is the idea that you will be receiving in effect a summary of public comment on these important issues?

Mr. Moore: I thought we'd receive the comments frankly on those issues. I guess what I'm saying is if they have to do a report on all of the comments that they receive, how long does that take Mr. Paylor?

Mr. Paylor: Excuse me I was conferring with, could you restate the question?

Mr. Moore: I was just asking. I was thinking we'd get the information directly although I don't know, I'm trying to keep, I don't want to impose a burden, certainly not one that will take months of the staff to deal with.

Mr. Paylor: Well, we'll certainly provide the information to you.

Mr. Moore: I'm talking about the summary and the staff's response. I think we do need to know what staff's view number one certainly of its authority and the authority of this

Board. I would think we would, we've asked for that and I think we need that. And that's not a simple yes or not. I mean there's a whole continuum there.

Mr. Buckheit: Let me jump in here and see if I can help you. I think that the authority issue actually Mr. Shepherd summarized sort of what the back and forth has been over the years and there may wind up being differences in views in five different places. I think perhaps we can get counsel to give us his advice privately in a matter of a week or two. I also think that this question that has been raised about the quality of the coal that is available is something that DEQ staff is going to have to do by way of responding to comments. There's got to be clearly a comment to the effect that the quality of coal that's available locally does not drive the decision as to whether IGCC should be considered or not; that that will be a comment that will have to be evaluated by staff and responded to before issuing any permit. So I'm thinking that as a practical matter the kind of issues we're raising will have to be resolved before a permit can be issued. I'm somewhat reluctant to get the Board to direct DEQ to do things that have to happen anyhow. I wonder if we could get to a position here where you just represent to us that yes these things need to be done and can be done before the permit would be issued.

Ms. Thomson: Is there not a response to comments that DEQ compiles for a permit like this?

Mr. Paylor: Absolutely there is.

Ms. Thomson: And does the company then have a chance to respond?

Mr. Paylor: No we respond to comments and make our judgments and either approve, deny or modify based on those comments.

Ms. Thomson: But you do put a summary of comments together and a response to those comments?

Mr. Paylor: Yes.

Mr. Buckheit: Including these kinds of comments about the quality of coal?

Mr. Paylor: Any comments that get received.

Mr. Moore: The problem, I say problem, the issues is, my assumption is that Dominion's view is there may be lots of other coal around there is fine

Mr. Buckheit: But it's a hugely different issue if you're saying we want you to import coal from Indonesia.

Mr. Moore: Oh, I know.

Mr. Buckheit: For instance the company decides that it would like to pick up the worse coal within three miles from the facility if this coal is available locally. That's an entirely different issue from the siting. It's a factual predicate. Rather than changing the positive, it's evaluating one of the facts underlying one of the claims of that project. If you're going to use local coal, the question is what is local coal? If local coal is in fact as diverse and as broad a range of quality as Dominion suggests, then that's one set of questions. If it's as the commenter suggests, well that's another set of questions.

Ms. Thomson: Mr. Hanson.

Mr. Hanson: It strikes me that the public comment period remains open and as I understand administrative procedure in working up answers to questions it is perfectly appropriate for the company to talk with the staff and vice versa and so given the - 2837- of questions you asked and this discussion of the Board, I think it's perfectly possible within whatever period the comment period is for interested parties and I'm sure the company is very interested to speak with staff and to hear from the staff what they each think about those questions so that we don't have to narrow it down here and try to tell the staff or the company or interested parties during the public comment period how to deal with these questions.

Mr. Moore: I'm not suggesting that at all. I just want to make sure the questions are answered.

Mr. Hanson: I think your statement

Mr. Langford: At this point I'd like to jump in Madam Chairman.

Mr. Hanson: Go ahead.

Ms. Thomson: This is a good time for that Richard.

Mr. Langford: Yeah, in kind of going along with what I heard Mr. Hanson saying, I think we still have a quite a long period of time, over a month, left in the public comment period and there's a lot of time to gather this information. The one item, the two items of the motion that I have concerns about is in one in general the determination of authority is not a simple question I don't believe and we've talked about these kind of things before and I could envision something like the Attorney General's Opinion coming down similar to what was described in Kansas earlier that might take a while to get that. I'm not sure. But my real concern is about the first part of Mr. Moore's motion that, if I understood it correctly, says that the Board, that the DEQ will not issue a permit until some future Board determination of authority. Again I have a problem with that because that pretty much just delay's things till some future date and we just get into some endless loop of getting information. So while I do support making sure during the public comment period we get all the answers to all the various questions about authority and technology and coal and all the things that have been mentioned, I am quite concerned about item one in that motion that says that they're directing the DEQ not to issue the permit until some future Board, presumably some future Board action. So that's what I wanted to put on the table now before we take a vote.

Mr. Hanson: Let me, while they're conferring, let me just say that I thought Mr. Moore's personal statement of his personal views was eloquent. It raised a number of questions I find myself asking as well and I think the questions are fair questions and I would like the answers to them.

Mr. Moore: Let me say, Richard, two things. Number one I didn't say that the Board directed the DEQ to do anything. I said we requested and I think it would be up to this Board if we get the data in, it would be up to this Board to responsibly find the time to meet, get the information and make the decision and as a matter of fact I think probably the best thing to do would be for us to get all the comments from everybody and have the staff, we initially don't need. I like to hear from; we got a memo from Dominion on authority. I don't think it's, it's sort of a basic one Ms. Faggert as opposed to you

know covering all the various iterations and I know you can't cover everything but you know fuel that Mr. Buckheit talked about so we say well we've got some fuel up the road, can that be required and I don't know, but I think we need to hear that from everyone and then I think when we get all that and the information about what is best for the Commonwealth we should meet and hopefully we could meet in March, if the date stays like it is, we could meet in March and at that time consult, if we needed to with Mr. Josephson and you know and work on what our authority was having him and everybody else look at what other folks say our authority is as well.

Ms. Thomson: My, Richard, might I suggest that perhaps a modification of the motion might address your concerns and allow us to receive this information and consider it in a timely fashion rather than the phrase that went something along the lines of that we request that DEQ not issue the permit until, that we simply say we would like a summary of response to public comment and responses from DEQ on these issues before the permit is issued. Does that go more along the lines of what you're thinking Richard?

Mr. Langford: Well I think that's some word smithing and with all due respect to Mr. Moore, if he was making a request of the DEQ and expecting them perhaps not to honor then I would have been surprised based on the rest of his comments, but I, your wording is better, but I still have a concern that it's tantamount to the Board taking over the permitting authority and I'll just be clear about it, I am one that would prefer to see the environmental professionals who have spent all their time working on this and know what the laws and regulations with advice from counsel on authority and other things make those decisions. I think that's the appropriate venue for those decisions to be made and therefore I still have a concern about the perception that the Board is perhaps tiptoeing around trying to take over the permitting authority on this particular permit.

Ms. Thomson: While hearing those concerns, I guess what I mostly hear in Mr. Moore's comments phrased as they are and Mr. Hanson's questions and concerns and Mr. Buckheit's as well is that we would like to receive this information before the permit is issued so that we have a chance to consider it as a Board. That that is part of our obligation in point of fact given the importance of this project given the amount of attention that it has received, 300 people attending the State Corporation Commission hearing and testifying for 12 hours so that is my view on it. I hear what you're saying Richard. I do not hear in Mr. Moore's statement that we are voting to take over the permit at all and I would not vote to do that now.

Mr. Hanson: Nor would I Richard. As you know I don't think, I'm not comfortable with the role of this permit taking over a permit from the staff, but I do think the questions are fair questions and I think it will further inform everybody, the answers will.

Mr. Langford: Thank you Mr. Hanson. I agree. The questions are fair questions and there's a month in the comment period to address them and bring them to the environmental professionals to be included in their decisions.

Mr. Buckheit: Richard, I agree that there are issues in here respecting matters that our career staff are expert in, but there are also some major policy judgments that, again I'm not proposing that we take over at this time, in fact it strikes me this kind of a major policy decision would be at the Governor's level if one were to think about trying to force the company to change from what it's planning to do to something like an IGCC and along that lines I would have a question for David. Do you know whether

the Governor's Commission on Climate Change is looking at matters like this? I'm trying to figure out where in state government does this policy decision lie?

Mr. Paylor: The Governor's climate commission is, as I understand it, what they're going to look at will in fact be decided, in some measure, by the Commission itself which meets for the first time a week from today. However, I do not believe that the Governor, I have not seen anything in the energy plan or any discussions about the climate commission that say anything about the fate of this particular proposed project either way. The project is actually, is recognized as part of the plan and it's in the plan, but that does not presume to pass judgment on the air quality issues that we have before us.

Mr. Buckheit: Should we ask?

Mr. Paylor: Should we ask the Commission for their views? My advice is

Mr. Buckheit: The question is whether we do something and make an offer to let them comment to us on would we be doing something that is contrary to the goals of another part of state government.

Mr. Paylor: I think, I have actually asked that question of those who put the energy plan together because it came up before and the action on this project would not be viewed by the Governor as being contrary to the plan that he developed because this project was presumed as at least possible being in place as the plan was put together. In answer to our other question about whether we should ask the climate commission, I'll invite Carl to contradict me if he sees fit but I don't think air quality issues are within the purview of the climate commission per se.

Ms. Thomson: I guess I would like to focus on the motion that is on the table here Mr. Moore.

Mr. Moore: I detect a lot of heartburn about the request for delay. That was not meant as any kind of, anything other than we want to look at this and the request for the delay was not meant to threaten the agency in any way shape or form and I will withdraw the first paragraph and simply ask that we get the information and it's information on the authority of the agency and those things and also about this project; what is the best project for this Commonwealth and let us know. And second are there changes to this. I would leave everything the same, except eliminate the first item.

Mr. Paylor: Madam Chair, if I might, just as a way of response, I guess I wouldn't want to leave the impression that the agency feels threatened in any way by your motion. Simply, it's a matter of understanding so that we have clarity on what's expected.

Mr. Moore: Well, I would hope we could all sit down and look at it. You could brief us. We could talk about the authority. We could work on that together and we could look at things, but I take out the first item.

Mr. Buckheit: So where are we?

Mr. Moore: We're asking for information on the authority and on the project itself, but more broadly than that. What would be the best thing for Virginia to have the best generating, the most responsibly protective facility for the Commonwealth, might be IGCC, might be pulverized coal, might be this with different coals, whatever. I'd like those thoughts. I think we ought to know and Virginia ought to know, if



somebody, the agency determines the best thing would have been such and such, Dominion decided not to do that and we dealt with what we got and you know we have to approve it and they've done what they're supposed to do. I think it's a good thing for us and the agency and this Board to know that.

Mr. Paylor: Madam Chairman, we will obviously do the best job that we can on answering that question. It's a fairly broad question and it strikes me that a question that brings many more disciplines, potentially many more disciplines into the answer than DEQ has at their disposal and I can't commit to answering those questions necessarily beyond the expertise that we have within our agency.

Ms. Thomson: Or beyond the comment that you receive from the public. Correct?

Mr. Paylor: That's correct and obviously we have the expertise to answer questions relative to the engineering of the facility and the consequence of that on air quality and those sorts of things. What I seem to be alluding to is we don't have expertise on issues of transmission and supply and demand and economics and any of those other things that also can go into answering that question of what is the best for the Commonwealth.

Ms. Thomson: Understanding that DEQ's response will have to be constrained in this fashion, are we ready to take a vote on the motion as amended by Mr. Moore? All those in favor say aye.

Board Members: Aye [Moore, Hanson, Buckheit, Thomson]

Ms. Thomson: Opposed?

Mr. Langford: I'm voting Vivian. I don't have any problem with getting the information to the Board. I just think that the information then ought to be digested by the staff and the decision made there and I still have a concern that by bringing it back to the Board there's tantamount to another check box that's there. So I'm voting no on that motion.

Ms. Thomson: Thank you for your thoughts Richard. The motion passes 4 to 1.

Mr. Paylor: Madam Chairman, may I ask for a clarification. As I understand the motion, clearly we're going to get you answers to those questions. At this time you have not asked to reconvene in advance of a decision. Is that correct?

Mr. Moore: That is correct. We have not. I would hope that we would meet very shortly after you provide that information to us and I would hope that having this body look at it might be helpful, but certainly not required.

Ms. Thomson: That was not part of the motion.

Mr. Moore: And it isn't meant as anything other than what I said.

Mr. Buckheit: I have a request of the staff that I don't want to put in motion form because I don't we have to have a motion for this. I would ask that on the specific issue of the quality of the coal that's available, to gather what data is readily available and simply provide it to the Board and the public. You don't have to comment on it, just provide the data.