

1 **VIRGINIA TOBACCO INDEMNIFICATION**
2 **AND COMMUNITY REVITALIZATION COMMISSION**

3 701 East Franklin Street, Suite 501
4 Richmond, Virginia 23219

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8 **Executive Committee Meeting**

9 Thursday, May 17, 2012

10 10:30 o'clock a.m.

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14 The Hotel Roanoke & Conference Center
15 Roanoke, Virginia

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CRANE-SNEAD & ASSOCIATES, INC.
4914 Fitzhugh Avenue, Suite 203
Richmond, Virginia 23230
Tel. No. (804) 355-4335
Fax No. (804) 355-7922

1 APPEARANCES:

2 The Honorable Terry G. Kilgore, Chairman
3 The Honorable Frank M. Ruff, Vice-Chairman
4 The Honorable Kathy J. Byron
5 The Honorable Mary Rae Carter
6 The Honorable Joseph P. Johnson, Jr.
7 The Honorable Daniel W. Marshall, III
8 The Honorable Donald W. Merricks
9 Ms. Connie Greene Nyholm
10 The Honorable Edward Owens
11 The Honorable Israel O'Quinn
12 Dr. David S. Redwine, DVM
13 Ms. Cindy Thomas
14 The Honorable Thomas C. Wright, Jr.

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17 COMMISSION STAFF:

18 Mr. Neal Noyes, Executive Director
19 Mr. Ned Stephenson, Deputy Executive Director
20 Mr. Timothy S. Pfohl, Grants Program Administration Director
21 Ms. Stephanie S. Kim, Budget Director
22 Ms. Sara Williams, Grants Coordinator - Southwest Virginia
23 Ms. Sarah K. Capps, Grants Coordinator - Southside Virginia

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1 May 17, 2012

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DELEGATE KILGORE: I'll call the meeting to order and
4 ask our Executive Director to call the roll.

5

MR. NOYES: Delegate Byron.

6

DELEGATE BYRON: Here.

7

MR. NOYES: Ms. Carter.

8

MS. CARTER: Here.

9

MR. NOYES: Delegate Johnson.

10

DELEGATE JOHNSON: Here.

11

MR. NOYES: Delegate Kilgore.

12

DELEGATE KILGORE: Here.

13

MR. NOYES: Delegate Marshall.

14

DELEGATE MARSHALL: Here.

15

MR. NOYES: Delegate Merricks.

16

DELEGATE MERRICKS: Here.

17

MR. NOYES: Ms. Nyholm.

18

MS. NYHOLM: Here.

19

MR. NOYES: Mr. Owens.

20

MR. OWENS: Here.

21

MR. NOYES: Mr. O'Quinn.

22

Mr. O'QUINN: Here.

23

MR. NOYES: Dr. Redwine.

24

DR. REDWINE: Here.

25

MR. NOYES: Senator Ruff.

1 SENATOR RUFF: Here.

2 MR. NOYES: Ms. Thomas.

3 MS. THOMAS: Here.

4 MR. NOYES: Delegate Wright.

5 DELEGATE WRIGHT: Here.

6 MR. NOYES: You have a quorum, Mr. Chairman.

7 DELEGATE KILGORE: Thank you, Mr. Noyes.

8 The first item on the agenda is the Brunswick County
9 TROF. Well, let's do approval of the minutes. Do I have a
10 motion for the approval of the January 9th, 2012 minutes? It's
11 been moved and seconded. All in favor, say aye. (Ayes).
12 Opposed? (No response). The minutes are approved.

13 Ned.

14 MR. STEPHENSON: Thank you, Mr. Chairman. Mr.
15 Chairman, my presentation today is related to a project that the
16 Commission is well aware, and that means the contemplated
17 Dominion Power Plant constructed in Brunswick County, which
18 you included in your budget in January. This is an extraordinary
19 opportunity, one that we're very fortunate to have involving a lot
20 of players. It's a huge deal for everyone.

21 I think there's some details about the project that
22 needs to come before this Committee today. In particular, you
23 have placed funds and you've asked the staff for a budget that
24 allows this project to go forward. However, the Commission has
25 not yet approved the project. We're seeking today your

1 consideration of the project, for you to make a recommendation
2 to the full Commission next week for final approval of this grant.

3 I want to recognize in the audience Mr. Jim Eck,
4 Dominion, and he's available to speak to some of the details on
5 the project itself.

6 First, I'd like to walk through the essence of the
7 grant that you're going to be asked to make. This request has
8 come to us as a TROF request, and didn't have do that, but that
9 was a form in which it came to us. There are several elements
10 about this that I'll present to you, and you can stop me at any
11 time and ask questions.

12 The applicant on the grant was the Brunswick
13 County IDA. They're asking you for \$10 million per year for
14 three years. Your budget preparation was only for the upcoming
15 year and only for \$10 million. So the ask is really for three
16 years, but under consideration today is only the first year for the
17 \$10 million.

18 The beneficiary in this grant is a company called
19 Transcontinental Gas Pipe Line Company, LLC, known as Transco.
20 And by the beneficiary, that is the entity that gets the cash from
21 the Commission. So that's where the money goes. And it's
22 important for you to know that.

23 In defense of the grant, we raise the question
24 among ourselves as to why it is that you would do this and what
25 it is that you are expecting to happen in exchange for making

1 this grant. There are really two things that we're expecting to
2 happen. One is that there would be a big-end dollar capital asset
3 placed on the ground in five counties in Southside Virginia. The
4 second thing we're looking for would be a new gas pipe that
5 would cross the five counties that are involved.

6 DELEGATE MARSHALL: Do you have that broken
7 down one billion in five counties?

8 MR. STEPHENSON: I do, Delegate Marshall. I
9 can give it to you in detail, but roughly speaking of the billion
10 dollars, about five percent of that billion goes in the Counties of
11 Halifax, Mecklenburg, Pittsylvania. Charlotte is about one
12 percent of the deal because the pipe just clips the corner of
13 Charlotte County. And about 84 percent of the billion is, of
14 course, the power plant itself in Brunswick County. So that's
15 roughly the dollars that are being placed on the ground in those
16 counties.

17 I'm going to take you through some of the detail
18 and how it works. We have spent the last five or six weeks with
19 Dominion and Transco and other interested parties negotiating
20 the terms of the contract. And I want to present to you what I
21 call the contractual promises that you will have in writing in
22 exchange for this sum of money. And we'll talk a little later
23 about why that is particularly important.

24 In particular, Transco promises they will build a
25 gas pipe across these counties, that Transco put \$200 million

1 worth of assets on the ground, and they will lease that pipe to
2 Dominion for 20 years. That's the promise from the gas pipe
3 company.

4 Dominion's commitment in this transaction, that
5 they will build a power plant, and they will put \$800 million of
6 assets in Brunswick County, and then they will -- the gas pipe
7 for 20 years. That's a view of the transaction.

8 What I want to point out to you is that these are
9 the contractual promises that you will get for your grant money.
10 If there's anything else that you think you've been told or you
11 think is true or you read in the press or you're hoping for, it's not
12 in the contract. These are the only things in the contract. It's
13 important we make that decision because a lot of information is
14 flying around about this, and it's not actually a part of the written
15 contract.

16 There are some elements of the contract, and I
17 want you to know I placed a copy of the confidential contract in
18 your packet, and it's marked CONFIDENTIAL at the top. This
19 particular draft is about six or seven versions, and there are a
20 couple of changes yet to be made in the draft. There are huge
21 issues in the contract that I think is important that they be made
22 known to you so you can understand some of the issues
23 involved, due diligence issues.

24 The most important one for you to know that the
25 way this grant works, it's going to be a cash disbursement

1 upfront. In other words, \$10 million goes out the door almost
2 when the ink dries on the contract. Once the money goes out
3 the door, all you will have is this contract. If you ever want
4 something more than that, you may not get it, so pay particular
5 attention to what goes in that contract. I think it's important for
6 you to know that commitment in the contract is a billion dollars,
7 the announcement was more than that.

8 When the Tobacco Commission looked at the asset,
9 we defined that to be taxable assets of record to the
10 Commissioner of Revenue because that's the only number that
11 produces a return in tax revenue to the counties, so it's easily
12 understood --

13 DELEGATE KILGORE: Can we stop for a question?

14 MR. STEPHENSON: Yes, sir.

15 DELEGATE KILGORE: Okay, Senator Smith is here.
16 Go ahead.

17 DELEGATE MARSHALL: One the reasons we as the
18 Tobacco Commission put this money in this pipe line so that we
19 as economic developers can tap this gas line in the future. I see
20 some heads nodding over there, but is there language in here, so
21 two years, three years, or ten years from now we can tap the
22 pipe line and we don't get hit with a tap fee or whatever you call
23 it.

24 MR. STEPHENSON: That was one of the diligence
25 issues, and if you give me a minute, I'll hit that in just a second,

1 but we've got to spend a little time on that, and that's coming up
2 with the next bullet. I wanted to make the point that taxable
3 assets that we are expecting, we are expecting to appear a billion
4 dollars. You need to understand that Transco and Dominion will
5 spend more money than that. Many of those monies that are
6 spent will show up on the ground in Southside Virginia. So I
7 make the distinction that the announcement for a large number,
8 but the actual amount that you will receive in terms of taxable
9 assets is a billion dollars.

10 Now, the question you raise here on the screen, you
11 need to get another copy. If I could invite your attention to the
12 contract you have, page 3 and the top of the page, there is a
13 paragraph that's highlighted in gray. I know you may not be
14 able to take time to read that, but throughout this negotiation, I
15 had asked Transco for a definitive description of exactly what the
16 capacity of the pipe was, how much would be rendered to
17 Dominion, what was the, were left over for other uses. Also,
18 what the issues were that would give you an indication of the
19 availability of gas and how you would get to it. The paragraph
20 before you is about reiteration of that.

21 There has been yet another since then. I am mildly
22 concerned that the representations from Transco, heavily
23 guarded and carefully chosen words so as not to be committing
24 to you. We can get an actual gas volume number from them. It
25 took a while to get that, and that came late or the day before

1 yesterday.

2 Danny, I understand from Transco that perhaps Mr.
3 Eck can answer that, not just garden hose that water comes
4 through, there are issues and pressures and check points and
5 booster pumps and hydraulic, and engineering issues. And
6 there's all kind of issues with getting gas out of that pipe.

7 I think what is clear is that the ability that the
8 availability and access of gas in those five counties will be vastly
9 more available and cheaper with the pipe there than if it would
10 be if the pipe were not there. That's the essence of Transco's
11 representation to you.

12 I'm at a comfort level with what they have presented,
13 and I will say to you it's not entirely definitive.

14 MR. ECK: Thank you for your time, and I appreciate
15 that question. Let me expand on Ned's statement, and those
16 statements are accurate.

17 What we now have with the Transco version, the
18 executed commitment is that approximately 180,000 decatherms
19 per day that we'll be able to, or more, that can be expanded at a
20 lower rate. Let me just tell you that 180,000 decatherms per
21 day would be at a materially lower rate. A typical, and I'll use an
22 auto assembly plant, 4,000 decatherms per day. So there's a
23 very significant capacity now that can be expanded to support
24 other things.

25 Also, public information is that recent seasonal, that

1 the rate factor related to this expansion for Brunswick County
2 Power Station, the rate within the expansion, 61 cents per
3 decatherm. Basically, you're buying capacity in the pipe line.
4 With this 24-inch pipe, regardless of where we're at, that's a
5 significant capacity and ability at a very low rate. That is what's
6 represented as 61 cents. That's materially lower if you were
7 trying to get gas to a major city or other location. Currently, you
8 would anticipate that cost would be a dollar or more if it were
9 available. So you can see the economic benefit by bringing in
10 the pipe line.

11 SENATOR RUFF: The 180 figure, would that access or
12 what you'd use for --

13 MR. ECK: -- The access, our capacity requirements,
14 250,000 decatherms per day. With this 24-inch pipe, you'll have
15 an incremental 180,000 decatherms or more, and that's
16 somewhat dependent on where you're at on this pipe line. So
17 you can see incrementally it's very significant, and it's available
18 at a much lower rate.

19 DELEGATE MARSHALL: You told us one time before
20 that boost in pressure on this you're actually increasing the 180?

21 MR. ECK: Yes, 180,000 decatherms or more. That
22 means currently they can only build to capacity as to what it's
23 prescribed to. The pipe is 24 inches, and they build to their legal
24 capacity.

25 DELEGATE MARSHALL: If you add that pressure, so

1 that added, so we're at the pressure requested, and based upon
2 the location of that, it could be significant and more capacity
3 than by adding significant pressure at various points on the pipe
4 line. I hope that answers your questions.

5 DELEGATE WRIGHT: You mentioned the fact that
6 capacity you would need at this time. Do you perceive a future
7 need or dramatically more capacity or do you think this will be all
8 you need for a significant amount of time?

9 MR. ECK: Yes. Regarding the question of whether
10 this will be matched capacity for or capacity down the road, the
11 matched capacity for the proposed Brunswick Power Station,
12 there will not be any need for additional capacity for this station
13 in the future.

14 DELEGATE KILGORE: The unsubscribed capacity is
15 180?

16 MR. ECK: I can use a technical term for the record,
17 it's expansion capability, gas terminology, the capacity or
18 contemplated is 250,000.

19 DELEGATE KILGORE: The expansion capability is
20 180,000 at a very low rate at a minimum, but it could be much
21 more based on location. To answer your question regarding,
22 Brunswick County Power Station will not use at a future time
23 anything greater than 250,000.

24 DELEGATE WRIGHT: With the price of natural gas, is
25 there any indication or how long does the price that you

1 negotiated at the pipe line --

2 MR. ECK: -- A very fair question. There's a little bit
3 of noise in this room, I don't know if you can hear me. The
4 question that was asked was how long have we negotiated the
5 price of gas related to the power station? Let me clarify what we
6 are actually subscribing to you and the Brunswick County
7 location and is the capacity on the pipe line actual gas
8 commodity the separate charge that passes through a gas
9 purchase, not from Transco, but it's by the pipe line capacity
10 separated by the gas mile floors. That answers that question.
11 The lower the gas price, the gas purchase is a separate price.

12 MR. STEPHENSON: Mr. Chairman, my concern,
13 focusing your attention on this chart or graph --

14 DELEGATE MERRICKS: The Transco built the
15 infrastructure. They're going to lease it to Dominion for 20
16 years. Dominion is going to have a lease on the main pipe line.
17 Across that line, they're going to be building some booster
18 stations, and every now and then, they get the gas to Brunswick
19 County. Are we going to see where people want to branch off, or
20 say Halifax wanted to branch off for an industry, then the lease
21 or the main line is going to have to jump through a lot of hoops
22 to be able to tag onto that main line, at least from Dominion?

23 MR. STEPHENSON: My concern in focusing your
24 attention on this paragraph is that the availability of gas, I
25 believe is the essence of this transaction. I do not want you to

1 get three years down the road and have a prospect customer
2 who needs gas only to find out that there are issues and you
3 can't get what you thought you could get. These issues are
4 engineering-related and they're complex and expensive and all
5 that. I don't want you to go into this expecting one thing and
6 you'll be disappointed later on.

7 DELEGATE JOHNSON: Who prepared the contract?

8 MR. STEPHENSON: I wrote the contract, and I hired
9 an attorney from a law firm in downtown Richmond, and they
10 have revised it, and the two of us worked on it for about six
11 weeks.

12 DELEGATE JOHNSON: You posed these questions, but
13 you have not dealt with them. In preparing a contract, why
14 would you not include them?

15 MR. STEPHENSON: This particular one in Section 1,
16 Roman Numeral VIII, we have addressed the issues. I think the
17 question is whether or not that you are satisfied that it has been
18 sufficiently addressed. I want to make the point that the law firm
19 that we hired approached the contract from the viewpoint of
20 making sure that it was legally and properly written. They did
21 not address themselves to the business aspect of the contract
22 from the perspective of what the Commission wanted to get from
23 this.

24 DELEGATE JOHNSON: I'm not worried about it being
25 legal, I'm sure it is, but I'm worried about the Commission being

1 protected.

2 MR. STEPHENSON: That remains to be seen at the
3 time you need gas whether you can get it under the terms that
4 you expected. I will tell you that Transco hired for this
5 information and it was not very forthcoming. It got better, but it
6 took a while to get them to even comment or commit to a
7 number, and the number that they committed to was not a hard
8 commitment.

9 I'll read you the terms that Transco put into the
10 language a couple of days ago. Quote, preliminary studies
11 indicate that Transco could provide approximately 180
12 decatherms per day of transportation, unquote. Then it's got a
13 whole bunch of other things behind it. Quote, studies indicate we
14 could do that, unquote. There is no hard commitment that they
15 can.

16 DELEGATE JOHNSON: Mr. Chairman, it appears to me
17 that we're dealing with \$30 million, we'd better make sure that
18 the Commission gets what it is supposed to get or in the
19 contract.

20 DELEGATE BYRON: My question is not so much, I
21 believe Ned has done the best that he can with this attorney in
22 answering my questions up there, but one thing I'd like to know,
23 and Frank Ferguson has passed and is not with us, in the past,
24 we've had an attorney that sits in on our Commission meetings in
25 order to address legal questions that the Tobacco Commission

1 had. We addressed, and I think we should bring somebody else
2 on board that knows what they're doing.

3 DELEGATE KILGORE: We've had numerous
4 negotiations with Frank and Neal and me in the Attorney
5 General's Office trying to get someone on staff. We've had some
6 other folks interviewed. The problem is we have such a vast
7 need of legal service, a vast array of legal services with R&D or
8 doing regular contracts, so many different requirements, and
9 there aren't many lawyers out there that address all those
10 requirements, and I'm not available. There's not many lawyers
11 out there that can meet all those requirements. We think we
12 may have to go outside to try to get approval from the AG's
13 Office to have one firm or whoever they want to give us some
14 guidance.

15 DELEGATE BYRON: I understand that, but we need
16 someone to look at this contract. I don't understand why we
17 don't have someone hired even temporarily sitting in the room
18 here addressing these questions that we're not able to answer.

19 SENATOR RUFF: I think Jim Eck wanted to respond to
20 the last couple of comments.

21 MR. ECK: Thank you, Senator Ruff. I did want to
22 address some questions. There is a public record with the
23 Federal Regulatory Commission which basically demonstrated a
24 process they conducted in open session, and they represented,
25 Transco represented a rate going in of this capacity. In the

1 public record, they have indicated to build out expansion as a
2 proposed rate, so they say all along that they're adding
3 compression and it'll support that lower rate. I don't know if
4 you've seen this diagram, and you may have seen it in the past,
5 all that is a matter of public record, which I think answers the
6 question, will there be gas at a materially lower rate or is this
7 just a non-commitment? They made that representation to
8 FERC.

9 MR. O'QUINN: I don't know who should address this,
10 but do I understand this particular piece of pipe is not yet built?

11 MR. ECK: Yes, sir.

12 MR. O'QUINN: That being said, Transco in the process
13 of obtaining the necessary permission, plus all of the properties,
14 once you start digging and putting in pipe line across all these
15 properties and getting this thing ready and going across five
16 counties in this process. Where are they with that?

17 MR. ECK: The question was asked with FERC. In the
18 last two weeks, I can see the map, this is the lateral, and it
19 includes what I'll call the A-line, and in over 93 percent of this
20 new proposed pipe line will be on the existing right-of-way, is
21 what they told FERC. The property rights will be obtained and is
22 relatively, a small portion of the work effort because they're
23 losing an existing right-of-way, and there's an existing Transco
24 pipe already in that right-of-way, the available capacity, it's
25 maxed out. They believe that they, they're working on that end

1 of the process to obtain all remaining property rights with the
2 different localities. There's been public meetings, as well as and
3 talking to landowners as we speak, and they're targeting the
4 proper certificates and applications. And I think this should take
5 until about next July with few disruptions.

6 MS. CARTER: I don't know if I understood this
7 correctly, but you say you've put in the application with FERC
8 Pipe Line, correct?

9 MR. ECK: Yes, the application with FERC.

10 MS. CARTER: Did you say they put in the
11 compression lines along the way?

12 MR. ECK: What they're building right now is what
13 you'll see, they're putting in new compression, 165 will support
14 the line and the gas will flow all the way down to where you see
15 167, and that's on the way to the Brunswick County facility.
16 They're adding compression, and then they have the ability to
17 add additional compression along this route to boost the capacity
18 on the route. They won't put the compression or the additional
19 compression in until somebody asks for it. It's very economical
20 for them to have the compression. They can't put in extra
21 compressors now.

22 DELEGATE KILGORE: And a lot of these places, the
23 right-of-way thing, if none of that goes forward, this won't go
24 forward anyway. If something happens with the right-of-way
25 then, or approval, then it'll stop.

1 MR. ECK: If they don't receive the FERC certificate
2 and Dominion can't get the application, and then there are
3 provisions.

4 DELEGATE MARSHALL: Time frame, is the full Board,
5 at its meeting, going to adopt this next week?

6 MR. NOYES: We'll be looking for a motion from the
7 Executive Committee to add \$10 million to the budget to draw
8 from the account and the TROF panel will execute the
9 transaction.

10 DELEGATE KILGORE: The only issue before the full
11 Committee will be to authorize \$10 million in the first phase.

12 MR. NOYES: That's correct.

13 DELEGATE MARSHALL: So will the staff and chairman
14 and vice chairman look at the final language and make sure that
15 everything is met?

16 MR. NOYES: To the extent that concerns can be met.
17 There is potential for additional capacity. I'm not concerned
18 about the risks to the Commission of using ten, twenty, or thirty
19 million dollars. If the project doesn't happen, it won't be any
20 disbursement of fund, that's the first, second, or third time.
21 There are provisions such as the clawback or for the Executive
22 Committee is, that if there is that additional capacity to serve
23 projects beyond the power plant that Dominion has made
24 commitments to. Certainly that capacity exists and we have that
25 on the public record, as Mr. Eck discussed. Will there be

1 additional costs for booster stations and lateral pipe lines and
2 things, yes, because that's not part of this \$30 million project,
3 but if the report such as getting an auto assembly plant, it's sure
4 something that the Commission would want to look at and see
5 how we get that gas from the right-of-way to where it's needed
6 by the new company.

7 I'm not concerned about the clawback provision, and I
8 think it's an important issue that this group be comfortable that
9 there is capacity to serve additional industries, which there is not
10 now.

11 DELEGATE KILGORE: That's the main reason for
12 going forward.

13 DELEGATE WRIGHT: Mr. Chairman, I wish you'd
14 expand on Don's question about how industry or customers are
15 going to tap into the pipe line. I understand Dominion is going to
16 lease the pipe line and then these industries would have to deal
17 with the pipe line company and Dominion and both would have to
18 sign off on what's done. Since you have the lease, would it be
19 just you?

20 MR. ECK: We're not going to lease the entire pipe
21 line. We're leasing space or capacity to push gas through the
22 pipe line. The actual pipe line is still owned and operated by
23 Transco. So when an entity is interested in paying or picking up
24 4,000 decatherms and Transco has a tariff rate for basically the
25 ability to push gas through to the location.

1 DELEGATE WRIGHT: Wouldn't it be to Transco's
2 benefit to have as many people along that pipe line as possible?

3 MR. ECK: Absolutely, capacity. Also, Transco is in our
4 benefit, as well. As more people use the pipe line and they put
5 more capacity through, may contemplate to lower the rates for
6 all of the entities. So the more capacity you get through there,
7 that's better for everyone.

8 DELEGATE WRIGHT: What then appears to be the
9 problem with getting Transco to be more definitive if Transco and
10 Dominion, why can't they be more forthcoming?

11 MR. STEPHENSON: Delegate Wright, I'm not an
12 engineer, I raised this question with the Transco people and they
13 gave me some rather technical answers which sound correct.
14 I'm not a gas guy. I just don't want to get two years down the
15 road and you can't get the gas because there's something we
16 didn't understand and you can't get the gas or how the gas
17 works.

18 UNIDENTIFIED: I'm a former gas guy, so what I'm
19 saying is what they're representing as far as space, as far as
20 being more definitive, they're representing a minimum of
21 decatherms, we're talking about more and more, and it depends
22 on where you're at along that lateral as to exactly how much
23 you'd call maximum allowable operating pressure they operate
24 the pipe line at, and that can boost it. This might be rather
25 technical, but if you pick a point and they tell you how much they

1 can boost the decatherms and they can tell you where you can
2 use it or multiple uses and at different points, and then two or
3 three years later and basically the equation or actually it's not
4 exceeding the maximum allowable operating pressure.

5 So they're putting in a baseline decatherms as
6 mentioned and then four or more, because it depends on the
7 location. I hope that answers your question.

8 DELEGATE WRIGHT: Ned, you mentioned several
9 times that you didn't want us to get two or three years down the
10 road and then you don't get what we wanted or what we were
11 supposed to get. In your opinion, how do we get to the comfort
12 level now so we won't be worried two or three years down the
13 road? I know you've negotiated this and worked hard on it, but
14 how do we get there?

15 MR. STEPHENSON: Well, I contemplated this
16 question, Delegate Wright. Members of the Committee, I have to
17 confess to you that my concern is my conservative path is always
18 on or I always have to observe it, but I must point out to you the
19 first bullet on this slide, and that's this. When your cash goes
20 out the door, you've got what's in this contract, and that's all
21 you've got. So my approach to solving this question was to seek
22 a definitive answer from Transco as to what they could or could
23 not deliver in this contract in exchange for that piece of money.
24 What you have before you is what they supplied.

25 Another approach, which I did not want to take, is for

1 this Commission to engage a private consultant to give you
2 whatever insurances you need from the gas engineering
3 viewpoint as to what you can and cannot get out of the pipe that
4 the contractor built under the contract. And that can burn a lot
5 of time. I'm not prepared to say to you today it's okay, go
6 ahead. I don't know and neither does our attorney.

7 DELEGATE KILGORE: I think it's pretty clear some
8 capacity exists. The question is, is it 180 or something like that?
9 I think that's safe to say the capacity does exist, but I don't know
10 that we need to get into that exactly, but I know we've talked
11 about a lot of money here.

12 MS. CARTER: I'm just wondering that in order to
13 protect us or the Tobacco Commission and also protect the
14 demands of Transco, if we could get our attorney to press the
15 issue, the contract.

16 DELEGATE KILGORE: You mean the one that helped
17 Ned write it?

18 MS. CARTER: I'm assuming the one we're going to
19 hire to work with Ned.

20 SENATOR RUFF: I believe that would be an
21 engineering issue. It depends on if it's 10 miles from Chatham,
22 it's more pressure and there is, if it's five miles west of South
23 Hill, unless you change the dynamics. I think part of the reason
24 Transco did not want to put it in writing exactly what it is, is
25 because you've got a 91-mile pipe line and there's going to be

1 variables when it goes into the ground. It can vary every mile of
2 that way.

3 So I think we're really running around in circles here.
4 Transco is in the business of selling gas. If they don't sell gas,
5 they don't make money. Dominion needs that gas, and that's
6 why they want to build it. I don't see why we're treading on like
7 this.

8 DELEGATE KILGORE: Let's move on with your
9 presentation, and if we need to come back, we can.

10 MR. STEPHENSON: The last bullet is, next to the last
11 is what happens is a default. The way this contract is written,
12 Transco gets the money, and if for some reason this project
13 doesn't happen, it stalls out or fails for whatever reason Transco
14 fails, whatever happens, Transco is obligated to repay this money
15 to the Commission. That is an unsecured obligation, meaning it's
16 just a written promise and no collateral.

17 Dominion in this contract guarantees that repayment
18 to you again, an unsecured promise given by Dominion.

19 DELEGATE KILGORE: I'll take that one.

20 MR. STEPHENSON: I want you to know that's what
21 happens in the event of default.

22 Lastly, Brunswick County is obligated for 10 percent of
23 the grant. That's who is behind this if things go badly.

24 DELEGATE KILGORE: I don't have a problem,
25 Dominion has an obligation, and I don't have any problem with

1 that.

2 MR. NOYES: Collateral.

3 DELEGATE KILGORE: That's the transmission line
4 coming out.

5 MR. NOYES: What would we do with it?

6 DELEGATE MARSHALL: A hundred and ten percent
7 guarantee on it.

8 MR. STEPHENSON: The last bullet in the due diligence
9 area that did not make the slide because it was a change-up
10 made yesterday is paragraph 6(d) in your grant contract. I need
11 to digress for just a moment. In more recent years, I have
12 placed into all of your contracts milestone obligations that if not
13 met constituted a default and give you a chance to ask for your
14 money back. Almost all of your TROF contracts are three-year
15 contracts. This one is five because it takes more time to do this,
16 and that's fine.

17 The milestones in your TROF contracts are all 12
18 months. We have pitched a 24-month milestone in this
19 particular contract. We've done a lot of negotiating over this
20 particular clause about how much is required from Dominion and
21 Transco to evidence the fact that progress is being made and at
22 what point can the Commission say it's not happening, need my
23 money back. I don't think it's reasonable for you to wait the
24 entire five years to ask for your money back when the project
25 has failed.

1 So the question becomes what should be the
2 milestone requirements? The contract, as it presently stands,
3 after negotiations yesterday, is that Dominion has promised that
4 they will have from the ground in Brunswick County \$100 million
5 of assets within three years, and if they can't do that, they are in
6 default. I'm presenting that to you to make sure that you are
7 aware that there could be an entire three-year window where
8 you could ask for your money back if things go badly. I'm not
9 expecting it to go badly, and these are sophisticated folks and
10 they know what they're doing.

11 DELEGATE MERRICKS: I don't know if this is related,
12 this may be a dumb question. Why are we giving them the
13 money upfront? Ten million dollars upfront to Transco, why do
14 they get the money upfront? I'm just curious, is this a normal, I
15 don't think it sounds normal, but why are we giving up the
16 money upfront?

17 MR. ECK: That's a very reasonable question. We
18 have discussed this back in January, and it was contemplated for
19 two sites, this site and a site in another county. We were looking
20 for clarity as to whether or not there would be any incentives
21 going forward with the Tobacco Commission. And we had to
22 make a decision.

23 Basically by you providing that money and as the
24 pipeline is being built, providing 10 million and another 10 million
25 this July, and then 10 million the next July. In essence, you're

1 allowing the gas rate to be at a much lower rate by providing
2 funds to proceed through a construction. Going back to what,
3 and then it can be provided at a much lower rate providing those
4 funds. And it was in line with what was discussed at the
5 Southern Virginia site. They, in turn, have got to provide us the
6 lower rate, the cash flow that is contemplated. And that'll be
7 incorporated into the final analysis between the two sites
8 collected.

9 If you would delay until it was built, there would be a
10 different economics with a delayed cash flow, this might have
11 affected the selection process. We have relied on this in part to
12 induce us to select this location as far as injecting the cash flow.

13 Just for a moment, if I could, when you talk about
14 future, in terms of future expansion capability, this also provides
15 a direct benefit to share the economic analysis that we have
16 provided. When you look at over 500 million direct and indirect
17 benefits during the construction phase alone in Brunswick County
18 alone, and it would cost the State of Virginia almost a billion
19 dollars in direct and indirect during construction in as far as the
20 benefit. Then an ongoing benefit of approximately 30 million
21 economic benefit for the County of Brunswick. So, overall, there
22 is benefit in terms of economic development.

23 So getting back to your question why upfront, it is so
24 we would incorporate the economic expansion is shared with us
25 and those expenses. I hope that helps answer your question.

1 MR. NOYES: For the most part, these inducement
2 programs, whether it's GOF or TROF and that sort of thing, there
3 may be some back-in components. This approach is not atypical
4 for just operating the TROF programs historically.

5 DELEGATE MERRICKS: It's usually on construction
6 loans you pay out after a certain percentage of the work is
7 completed, and that's why I asked the question.

8 DELEGATE KILGORE: Ned, what action do we have to
9 take today?

10 MR. STEPHENSON: Mr. Chairman, for clarity of the
11 process, I believe that it would be fitting for this Committee if it
12 chooses, to make a recommendation to the full Commission, one,
13 that \$10 million be transferred from the other line item to the
14 TROF account; number two, that the Dominion contract as
15 presented today be approved and executed with the caveat that
16 there are remaining a very few nonmaterial issues from the
17 contract that are to be resolved by conference call this afternoon,
18 so there may be some slight changes.

19 So if it please the Committee, that's a two-part motion
20 that would be in order.

21 MR. OWENS: While I'm not an attorney, really
22 marked this up, from what I heard today, I think the logical and
23 rational thing to do would be to go forward with this project. I
24 make a motion based on what Ned has said or presented, and I
25 so move.

1 SENATOR RUFF: Second.

2 DELEGATE BYRON: Clarification. In the contract,
3 Number 6(d) pertains to what you negotiated this morning or
4 yesterday?

5 MR. STEPHENSON: Yes, between the time this was
6 printed and presented and this morning, 6(d) has improved to
7 provide the numbers that Jim Eck mentioned to you better.

8 DELEGATE KILGORE: I've got a motion and a second.
9 Basically, what we're doing here is putting up money to create
10 jobs and opportunities for investment. This money is going to
11 create jobs, this is going to give us in our area or other regions,
12 it'll give us an advantage, in other words. I think that's what
13 we're looking at. So the motion and a second. Any further
14 discussion?

15 DELEGATE WRIGHT: Mr. Chairman, I'm in favor of
16 this project and I've backed it all along, but I think in the future
17 something of this nature and being this important, we need to be
18 sure that we have a legal counsel who can answer direct
19 questions that we have. I think Ned has proposed and rightly so
20 things that we should be aware of before we vote. I don't
21 consider when we're talking about \$10 million to start with, I
22 think we ought to be able to ask questions and find out what's
23 happening. I frankly would be more comfortable if we had a
24 lawyer here to answer the specific questions that we've raised
25 even more thoroughly.

1 Having said that, I still support the project.

2 SENATOR RUFF: Mr. Chairman, I think it's important
3 we're able to ask questions, but at a certain point to make an
4 informed decision. Currently, we have no access capacity along
5 this area. So we need this capacity for any heavy industry. If
6 we don't have it, we'll never make the list.

7 DELEGATE KILGORE: Motion and a second that we
8 suggest that we go to the full Commission and with that caveat
9 that there may be some changes this afternoon. All those in
10 favor, say aye. (Ayes). Opposed? (No response).

11 All right, next.

12 MR. STEPHENSON: I have a brief presentation for you
13 that is basically for your information. I'm not asking you to do
14 anything with this, and members of the Commission are aware
15 that we operate out of the endowment and we don't talk about
16 the endowment at every meeting, but I think it's important,
17 particularly at budget time that you be aware of some of the
18 aspects of your endowment that are being managed by treasury
19 and by your staff so you will know where you are familiar with
20 those decisions.

21 So, if I may, I'd like to run through a few figures. I'll
22 take some questions if you wish.

23 Quickly, this has been your history of the corpus
24 invasion since the endowment was created.

25 DELEGATE KILGORE: Is this in the package?

1 MR. STEPHENSON: That's correct, it's not in your
2 package. You know, of course, you're limited by law to 10
3 percent corpus invasion unless you have a super majority vote,
4 then you're limited to 15 percent, and this has been your history.
5 The red numbers at the bottom of the page is of the invasion
6 level, and Stephanie Kim will present you this in more detail in
7 your upcoming budget, but that has not happened yet.

8 DELEGATE KILGORE: One of the reasons we had 15
9 percent corpus invasion was that we had to make one of the
10 parks and a couple of other big expenditures, we had to address
11 that, is that correct?

12 MR. STEPHENSON: That, and a lot of other things.
13 The endowment, if you remember, you conducted two bond
14 sales, and upon closure of the second bond sale in April, 2007,
15 the endowment peaked at \$939 million. If you adopt the budget
16 that is to be proposed to you shortly, which will necessarily
17 contain an invasion for fiscal year 2013. If you do those things,
18 your June, 2013 endowment balance will be \$348 million. I just
19 put that up there so that you will know your endowment balance
20 will soon be a third of its original balance. That gives you some
21 indication of the burn rate from the entire endowment balance.

22 I will further clarify, and it's a little complicated for
23 most of us, but I'm going to kind of give you an analogy that
24 might help you understand it a little bit better. Your endowment,
25 you might think of that as your savings account. That's where

1 your money is put that you kind of can get to it easily. You also
2 have what we call the fund, and you might think of that as your
3 checking account, and that's where you put your money that
4 you're going to do something with and readily available to you to
5 transact and make grants.

6 You see the balance there in the fund. Then you can
7 see that some of those monies, \$140 million, are obligated, and
8 money is still in your account that you've made commitments.
9 The net resources really that the Commission has are about \$485
10 million. That's kind of operational how the Commission
11 functions.

12 I want to speak to you briefly about restricted versus
13 unrestricted monies. You may remember you had two bond
14 sales, and one bond sale produced restricted money, which
15 means that you can only spend it for capital assets and not for
16 salaries and so forth. The other bond sale produced unrestricted
17 money and restricted money, so we have two different kinds of
18 monies that we can manage. Several years ago, this
19 Commission authorized and instructed your staff to make the
20 distinction with each grant as to whether we funded it with
21 restricted money or unrestricted money, and the Commission
22 was somewhat removed from that process, and it was the right
23 thing to do because it's complicated.

24 The balances I put up here show you the results of
25 staff choices over recent years. You can see that we have used

1 restricted money heavily in favor of leaving the unrestricted
2 money in your account. Our reason for doing this was to
3 maintain for you maximum flexibility. Using the restricted dollars
4 whenever we could because the unrestricted dollars can be used
5 for anything, but the thought was to give you flexibility.

6 I have to point out that the thought in doing this also
7 creates vulnerability for the Commission, because others who
8 may have an interest in using your money can much more easily
9 use the unrestricted money than they can the restricted money,
10 so there's a double-edged sword there. Your staff is reasonably
11 on course to shift the balance a little bit and to slow down the
12 use of the restricted money and use unrestricted a little more
13 quickly.

14 I'll be happy to try to answer any questions you have.
15 I just wanted you to be aware where we stand.

16 DELEGATE KILGORE: The one thing we're not saying
17 here is that we do earn a substantial interest rate or what I call
18 substantial. We do have a substantial interest per year, is that
19 correct?

20 MR. STEPHENSON: All of these monies held by the
21 treasury for you are invested whether they are in the endowment
22 or not in the endowment.

23 DELEGATE KILGORE: We get a return on that?

24 MR. STEPHENSON: Yes, there is a return that's
25 essentially the same all across these monies. Moving money

1 from the endowment to the fund is the book entry and nothing
2 happens to the investment.

3 DELEGATE KILGORE: Stephanie can tell us where the
4 interest would be. But, Ned, when you were going through that
5 list, would that be like R & D, is that one of the commitments, is
6 that included in that general --

7 MR. STEPHENSON: -- A commitment would be any
8 grant that you have made that has not yet been disbursed.

9 DELEGATE KILGORE: It would be something like R &
10 D?

11 MR. STEPHENSON: Those monies have not been
12 committed to anyone. They're sitting in your budget, but let me
13 put it this way. Some of the R & D monies have been
14 committed.

15 DELEGATE KILGORE: That's the \$240 million you're
16 talking about?

17 MR. STEPHENSON: That are included.

18 MS. KIM: Anything awarded.

19 MR. STEPHENSON: Then the remainder, obligated
20 balances is important, and that's the portion that is not yet
21 committed to other parties.

22 MS. KIM: In your packet, you should have 2013
23 proposed budget. While there's a couple of columns, the main
24 column that you're looking at is Fiscal Year 2013. That's the only
25 year we're addressing. I just wanted to show you funds that we

1 are budgeting, prior year's interest earnings on the endowment
2 and the fund are invested by treasury. So there's \$30.4 million
3 interest earnings. If we invade the corpus 10 percent in FY13,
4 38, and there's also \$12.8 million primarily made up from the
5 FY12 corpus invasion not budgeted, and we're carrying that
6 forward. That's a total of \$81.9 million available for FY13
7 budget.

8 You have allocated different programs, a total of
9 \$77.8 million. As you know, the Indemnification Program will be
10 completed next month, and there's no line item for
11 indemnification, and \$75.4 million will be for economic
12 revitalization. Currently, leaves a balance of \$4.1 million
13 budgeted and to be used in the future or FY2014 budget.

14 In the administrative budget, 3.1 percent of the total
15 proposed budget. \$2.4 million, \$1 million left FY12
16 administrative budget primarily because the Commission
17 approved previously costs for the Attorney General's mitigation
18 costs and some ancillary services and for some services and
19 studies that we're funding the entire year, and also the
20 indemnification administration will not be there, but only after
21 then. And then \$395,000 from the Appropriation Act that we
22 made for services, administrative services and charges.

23 DELEGATE KILGORE: Computers and all that.

24 MS. KIM: All that is in there, regular operating
25 licenses for software, computers, supplies, and all salaries.

1 MR. NOYES: Those come from R & D budget, it's not
2 in my administrative budget.

3 MS. KIM: Finally, in the indemnification payments,
4 \$10.3 million in the current year budget and will be completed
5 next month, so you won't have it in FY13.

6 DELEGATE KILGORE: We won't see that next year or
7 the year after. Although there has been a move by some folks,
8 and I don't know exactly who's behind it, asking the local Board
9 of Supervisors to ask that the Indemnification Program continue
10 indemnifying the farmers. I don't know if anyone has seen that
11 in Southwest. I will let you know you all may be getting some
12 calls or letters from your local government saying please
13 continue to pay the farmers.

14 We have paid what we said we would pay, and we're
15 the only state that paid the farming community any dollars.

16 MS. KIM: You'll see on your FY13 budget, you'll see a
17 budget for Special Projects, \$12 million on education and
18 economic revitalization, Southside and Southwest. \$21.9 million
19 Megapark's and a \$10 million grant we just discussed moving to
20 TROF funds.

21 Just to give you an update on the endowment, and
22 the current balance is 455 plus, and we will be doing the FY12
23 invasion next month, 68.3. That actually funds the current
24 year's budget even though the invasion happens in June, it is the
25 end of the year when the funds are received. We're proposing a

1 10 percent corpus invasion for FY13, \$38.7 million, leaving a
2 balance of 348. After FY13, corpus invasion will be \$348 million.

3 The investment earnings are from March, 2011
4 through February, 2012 that we will transfer to the fund in June,
5 funding the FY13 budget, and that'll be \$30.4 million. Interest
6 accruing on the general account, that's about 50 million in the
7 general account and really a checking account where we disburse
8 funds. It does earn interest, and the Appropriation Act has taken
9 all of the interest.

10 DELEGATE KILGORE: How can we keep that from
11 happening?

12 MS. KIM: Taking out of Part 3, transfer to the
13 Appropriation Act, and that's in the budget bill.

14 DELEGATE KILGORE: They're making interest on
15 about \$50 million?

16 MS. KIM: As of March 31st, the cash balance in the
17 fund, 259.4, unobligated. The fiscal year 72.6 million, 10 million
18 for indemnification next month.

19 If you'd like to make a recommendation to the full
20 Commission to adopt this budget and the only change, 10 million
21 transferred to TROF.

22 DELEGATE KILGORE: I think at the September
23 meeting, I would like for us to have an update on the Megapark
24 Development, what's happening, and who's doing what, so we'll
25 all know.

1 MR. NOYES: Referring the subcommittee members to
2 the Megapark Development line item, you will notice that it's not
3 a \$25 million commitment for the Commission, it's \$100 million
4 or 40 years. Last year, the Special Projects Committee has given
5 the Committee that administers the program additional funds
6 beyond the \$25 million for providing for the program. This
7 brings us back to the place that we had previously been.

8 MR. KILGORE: Any other questions about the
9 proposed budget we'll introduce to the full Commission? A
10 motion would be in order.

11 SENATOR RUFF: So moved.

12 DELEGATE BYRON: Ten percent invasion -- I might
13 be lost here, but when I was trying to follow this, I was trying to
14 keep up with what was being said in a different format. The
15 budget we're looking at here, approving that we didn't really line
16 by line here. Are there earmarks in here that are already
17 counted or are there projects that are --

18 MR. NOYES: -- Delegate Byron, the amounts in
19 Special Projects include the second portion of the investment for
20 the Liberty School of Medicine, and that's about \$8.5 million for
21 equipment.

22 DELEGATE KILGORE: Is that what you wanted to ask?

23 DELEGATE BYRON: That's one.

24 MR. NOYES: Ten million on the other and we tacked
25 that on. There is \$2.5 million in each of the regional Economic

1 Development budgets for broadband. Those are the only marks
2 in the program budget, but there are some things that are
3 written in the administrative line items.

4 DELEGATE BYRON: \$2.5 million in each of the,
5 Southside and Southwest?

6 MR. NOYES: Yes.

7 DELEGATE BYRON: Have we talked about that more
8 specifically or not?

9 MR. NOYES: In the past, Delegate Byron, we have
10 the commitment, the commitment made by the Commission was
11 to do three years at \$2.5 million a year for both Southside and
12 Southwest. You will note in the FY14 budget, we're not
13 approving that today. You'll see that that \$2.5 million that was
14 earmarked for broadband does not appear in FY14.

15 DELEGATE KILGORE: Southwest, that's that project
16 4G and --

17 DELEGATE BYRON: -- But the applications still have
18 come before us?

19 DELEGATE KILGORE: Yes.

20 MR. OWENS: All these funds still have to have an
21 application?

22 MR. NOYES: Yes, sir.

23 MR. OWENS: Even though you've already said they're
24 in the application process?

25 DELEGATE KILGORE: We still have to go through the

1 Committee process to approve that.

2 DELEGATE BYRON: Are there other additional monies
3 in here that are available above and beyond the ones that you
4 are talking about with the 10 percent corpus invasion? In the
5 Southside, we have the formula that's designated. The money
6 there should be tied to some new projects, workforce training
7 initiatives, anything else?

8 MR. NOYES: There is in the very bottom of the page
9 the budget you're looking at, there is available for distribution in
10 FY13 \$4.135 million that can be allocated to one of the
11 subcommittees for use. That's about to change in part of my
12 presentation here in a minute.

13 DELEGATE BYRON; The other question, and I don't
14 remember from past years if something were to come along to
15 have the corpus invasion. It could be done in the middle of
16 the --

17 MS. KIM: -- The corpus invasion will not occur until
18 June.

19 DELEGATE BYRON: If you wanted another five
20 percent, what is required?

21 MR. NOYES: Yes, that would require a super majority
22 vote rather than a simple majority vote. Yes, five percent would
23 require, five percent more would require the super majority vote.

24 DELEGATE KILGORE: The next best thing.

25 MS. KIM: There may also be a little bit available after

1 year-end revenues or funds designated, funds that are de-
2 obligated. We'll know better after the end of the fiscal year.

3 DELEGATE KILGORE: Ned has done such a good job
4 in this collection process, maybe if we could use some of those
5 dollars in the budget.

6 All right, do I have a motion?

7 SENATOR RUFF: I move that we recommend to the
8 full Commission the budget as proposed.

9 DELEGATE MARSHALL: Second.

10 DELEGATE KILGORE: Any more discussion?

11 DELEGATE WRIGHT: Is that the invasion of the
12 corpus or a second for the motion?

13 MR. NOYES: There are two motions. One is a motion
14 to invade 10 percent, and the second one is to recommend to the
15 full Commission the budget as it appears.

16 DELEGATE KILGORE: The invasion is 10 percent. All
17 those in favor of recommending invasion of 10 percent of the
18 corpus, say aye. (Ayes). Opposed? (No response).

19 With the corpus invasion at 10 percent.

20 MR. OWENS: So moved.

21 DELEGATE KILGORE: Ten percent invasion, all those
22 in favor, say aye. (Ayes). Opposed?

23 DELEGATE WRIGHT: No. For the same reasons based
24 on the distribution in the formulary. It should be 7327 in my
25 opinion.

1 DELEGATE KILGORE: Are you for doing away with the
2 formulary?

3 DELEGATE WRIGHT: No.

4 DELEGATE KILGORE: Next is outside counsel
5 expense. Neal.

6 MR. NOYES: Thank you, Mr. Chairman. In your
7 packet, you'll see a memorandum concerning nationwide
8 arbitration. Members will recall that we provided \$10 million to
9 the Attorney General to the OAG to pay for outside counsel to
10 move forward with this arbitration process. My presentation is in
11 two parts.

12 This request, as you can see in the memo, is for a
13 second \$1 million. At this time, they are just about in arrears,
14 and they have spent \$1 million, and we provided 100 percent
15 financing for this effort in a previous award, and we need to
16 make a determination today how you wish to respond to this
17 request in the Office of the Attorney General.

18 The arbitration is or it is the contention of the four
19 companies that were involved in the settlement agreement that
20 companies who are not a party to the MSA take a market share.
21 There is a requirement of the states to enforce the provisions of
22 the MSA so that that doesn't happen. So the non-participating
23 tobacco companies all over the world. The Commonwealth of
24 Virginia, like other parties to this MSA, have a requirement to
25 enforce provisions of the MSA so that the four members that are

1 parties are not damaged.

2 It is the contention of those companies that there has
3 been damage. The Commonwealth and other states are in
4 arbitration with these four tobacco companies, and the funds are
5 used to support that effort. This gives, the memo gives you the
6 details on how they're going about doing that. Different
7 components for different periods. The request is for a million
8 dollars. We need to respond to the OAG with your decision.

9 DELEGATE JOHNSON: Why did we get involved to
10 start with?

11 MR. NOYES: Because we've been asked, and the
12 Tobacco Commission, that's a simplistic answer, but we have
13 been formally asked by the AG's Office.

14 DELEGATE JOHNSON: Suppose we don't participate,
15 what happens to the other side of the coin?

16 DELEGATE MARSHALL: The first part is we have an
17 exposure of over 123 to 118 million dollars.

18 MR. NOYES: The Commission has securitized from
19 that exposure, not this organization.

20 DELEGATE JOHNSON: That's my point. Suppose we
21 do nothing, the Commission would lose nothing, the bondholders,
22 they would, but --

23 MR. NOYES: -- The bondholders may or may not.
24 This is to support the legal process and the arbitration process.

25 DELEGATE KILGORE: You have to realize we only get

1 half, of the total tobacco payout.

2 MR. NOYES: The payment to the Commonwealth, the
3 legislature awarded us half, and we securitized that half.

4 MS. KIM: Some of the payments that have been put
5 in, goes directly to excess. Indirectly, indirectly, it may affect
6 how long it takes to pay off the bondholder when the MSA
7 payments return to us. So maybe instead of 2035, maybe 2039
8 before the MSA payments return to us. But in arbitration related
9 to this, money would not come to us.

10 DELEGATE MERRICKS: That would be my question.
11 We got half the funds and we fronted up a hundred percent the
12 first request, only logical our response would be show time.

13 MR. NOYES: If logic prescribed this process, that
14 would be the case.

15 MR. STEPHENSON: Point of clarity about us getting
16 half the money. We did get half of the MSA payment, but we
17 sold the payment stream and put the money in the endowment.
18 We don't care anymore. We're out, we're done.

19 DELEGATE GILGORE: Tell us how you feel about that.

20 MR. STEPHENSON: Stephanie is making the point
21 that the only piece of this that could impact us would be how
22 soon the MSA payment returns to us if we abandon the
23 legislation, delay return of the MSA. And that's way down the
24 road. It's really not half, we got all of the money, we're out.

25 DELEGATE GILGORE: Neal, what do you suggest?

1 MR NOYES: I think it's reasonable since we have
2 done very clearly as member jurisdictions that we've continued
3 to support the Office of the Attorney General's efforts. My
4 recommendation to the Executive Committee is that we lend our
5 support to the Office of the Attorney General and lend our
6 support to half of the costs and we receive half of what we did in
7 the past we did. That's my view of how to proceed. Others may
8 have a different view.

9 DELEGATE KILGORE: I think that's most reasonable, I
10 don't think we should carry the full load. On this budget, do we
11 have a half million dollars?

12 MR. NOYES: You go down to the favorable board
13 distribution, whatever that amount is, that is approved next
14 week, the full Commission, and that requires a motion. My
15 recommendation to the Executive Committee is for approval to
16 the full Commission.

17 DELEGATE MARSHALL: We've already ended this \$4
18 million, we already paid.

19 MR. NOYES: That's argument.

20 SENATOR RUFF: Has the Attorney General been
21 cooperative with us in retaining legal services?

22 MR. NOYES: The Office of the Attorney General has
23 worked with the Commission staff and with yourself, Vice
24 Chairman. At the present time after a year, we do not have
25 counsel, and it is our view, and that is to say that Chairman and

1 Vice Chairman, me and Ned, we retain a relationship, we need
2 that flexibility. When we need counsel for contracts, don't need
3 counsel for litigation rather than hiring an individual. That is our
4 view, but that's not the view of the Attorney General's Office
5 present. Does that answer your question?

6 SENATOR RUFF: I think that frames the question
7 better. If we make any agreement to award any additional
8 money to the Attorney General's Office, it should be contingent
9 on the fact that they will be more agreeable to us in retaining our
10 own attorney. According to the Code, the Attorney General's
11 Office is expected to represent us and they've decided they can't
12 or they don't have enough time and energy to do that. They are
13 expecting us to hire another attorney, and we'll have an
14 attorney on staff, may or may not have the expertise that we
15 need. Then we may end up having to go back to get other
16 outside counsel.

17 MR. NOYES: Almost certainly, we'll have to get
18 outside counsel. They also wish the Commission to hire an AFTD
19 full-time person. We can anticipate add-ons, legal expenses.
20 Usually, we're looking at more than \$150,000 a year. It's my
21 understanding that we could secure someone on an hourly basis
22 or a retainer relationship substantially less. That's been my
23 position in discussions with the Office of the Attorney General. I
24 haven't been successful after a year.

25 MS. CARTER: What about hiring one of their people?

1 MR. NOYES: That would be an employee of the
2 Attorney General.

3 MS. CARTER: But we can't use one of their people or
4 we have to hire our own?

5 MR. NOYES: Yes, they're not available from the office
6 per se.

7 MS. KIM: In the past what's happened is that the
8 Office of the Attorney General supplied the attorney for our
9 meeting for general counsel and in the formula that the Attorney
10 General, approximately how many hours we used an attorney,
11 and they allocate that to the agency on the quarterly billing for
12 what we actually use. I think they average it out for the prior
13 year, how many hours he was used in a prior year, was the
14 average for the following year, and another quarter.

15 Then we transitioned to using Frank Ferguson on a
16 retainer, he was the counsel everyone used. When he passed,
17 we went back to the Attorney General's Office and asked for
18 counsel, and that's when we were unable to have anyone in the
19 Attorney General's Office.

20 MR. NOYES: We have had legal services. We have to
21 go to the OAG and make it known we need an attorney to do
22 something, X, Y, or Z, and then they have allowed us to use
23 outside counsel. It's not that we haven't had access. It's
24 cumbersome and takes a while. There are moments when you
25 need an attorney and not go through this process, like when will

1 I get subpoenaed?

2 DELEGATE BYRON: This letter addressed to you from,
3 that talks about \$1 million, balance it down to about \$50,000.

4 MR. NOYES: That's the second piece of my
5 presentation. The first piece has to do with new money, the
6 million dollar request, and the other are, well, there are two
7 current invoices which in combination exceed roughly \$29,000 to
8 \$30,000. The \$1 million that the Commission agreed to pay
9 previously for work already done by the firm retained by the
10 OAG. I told the OAG that I would ask the Executive Committee
11 to allow me to honor these two last invoices. I think we have a
12 sufficient amount in the administrative line item that we have not
13 spent that were provided for administration. This would allow us
14 to go forward and honor these two last bills that would come
15 from the administrative line item with Stephanie working with the
16 OAG and all the documentation.

17 DELEGATE JOHNSON: Do you feel like we should pay
18 it?

19 MR. NOYES: I do.

20 DELEGATE JOHNSON: I move we pay it.

21 DELEGATE KILGORE: We have a motion and a
22 second.

23 MR. NOYES: What I would like is a motion or I need
24 an instruction, do I need a motion --

25 MS. KIM: -- For an expenditure over 25,000,

1 authority for the Executive Committee to spend up to 30,000.

2 MR. NOYES: I think I have the authority to do this
3 without a motion.

4 DELEGATE JOHNSON: I withdraw the motion.

5 MR. NOYES: I don't want to do it without the
6 Executive Committee agreeing that I should do it.

7 DELEGATE KILGORE: Does somebody keep track of
8 the time? The first motion is an instruction. I want it on the
9 record that you are aware I'm going to use some of the money
10 already provided for administration, and it's within my authority
11 to honor costs already incurred beyond which provided for the
12 last time.

13 MS. KIM: You might need a motion over \$25,000.

14 DELEGATE KILGORE: Delegate Johnson made a
15 motion of \$25,000 to pay these expenses.

16 MR. OWENS: Second.

17 DELEGATE KILGORE: To recommend to the full
18 Commission. All those in favor, say aye. (Ayes). Opposed? (No
19 response).

20 My suggestion is that to keep peace with the AG's
21 Office not authorize the full, we're in it, we'll pay half, we'll pay
22 up to our half, and the other half of our interest, do you think
23 that's fair?

24 MR. NOYES: I don't think everyone will think that's
25 fair. I think it is a reasonable and defensible position for the

1 Tobacco Commission to take though.

2 DELEGATE BYRON: Is there a cap to that? They have
3 estimated some figures, some of the costs.

4 DELEGATE KILGORE: Eight hundred an hour.

5 MS. KIM: Up to this point, we have actually paid the
6 extra attorney invoices directly to the attorney, the outside
7 attorney. If we paid 50 percent, that would be a question for the
8 Executive Committee when we receive invoices, do we pay half of
9 the invoice or, do you have actual hours which attorney did
10 what? If we're going to fund 50 percent, but I guess the
11 question is whether the funds --

12 MR. NOYES: Structure the motion saying that to pay
13 half of the invoices not to exceed 500, as they arrive, not to
14 exceed 500,000.

15 DELEGATE MARSHALL: If we win this lawsuit, what
16 have we won? If we lose the lawsuit, what have we lost?

17 MS. THOMAS: As I recall, and tell me if I understand
18 it correctly, what was the reason we went to -- wasn't it so we
19 would avoid all of this?

20 DELEGATE KILGORE: That was one of the reasons.

21 MR. NOYES: The central reason was to reduce our
22 risks.

23 SENATOR RUFF: Mr. Chairman, I would make a
24 motion not to do anything unless it's tied to the Attorney
25 General's Office agreeing to allow us to hire a legal firm.

1 MR. NOYES: Maybe the way to handle this is through,
2 we can go tomorrow to the AG's Office, OAG, and that's going to
3 be our position when the Executive Committee meets next week.

4 DELEGATE KILGORE: Down the road, we're meeting
5 next week and you can see if you can work it out.

6 DELEGATE WRIGHT: Mr. Chairman, from what I have
7 heard, I've heard no justification for paying any additional
8 monies to lawyers representing us, cases that --

9 DELEGATE KILGORE: -- I'll give him your phone
10 number.

11 DELEGATE WRIGHT: As far as paying the additional
12 invoices, but I just want to be clear that's my position.

13 DELEGATE KILGORE: Let's try to get some final offer
14 that we --

15 MR. NOYES: We have to have some cooperation.

16 DELEGATE BYRON: Since there is no liability with the
17 Tobacco Commission itself, right?

18 MR. NOYES: Yes, ma'am.

19 DELEGATE BYRON; There was an article in the paper
20 that we're in jeopardy, tobacco funds.

21 MR. NOYES: This matter will be addressed at the full
22 Commission meeting.

23 MR. STEPHENSON: There is some miscommunication
24 with that. We're taking steps to bring you some information at
25 the Commission meeting to try to get everyone at the same

1 level.

2 DELEGATE BYRON: As a follow-up to that, is there a
3 reason, besides goodwill, that we've got to get involved in this
4 lawsuit?

5 DELEGATE KILGORE: Virginia does because they've
6 got another 50 percent.

7 DELEGATE BYRON: Their 50 percent?

8 DELEGATE KILGORE: Yes.

9 MR. NOYES: A portion.

10 DELEGATE BYRON: Are you saying there might be a
11 change or they'd make a change in the legislature?

12 MR. NOYES: Goodwill is important on both sides.

13 DELEGATE KILGORE: All right, let's talk about the
14 strategic plan.

15 MR. NOYES: You have in your packet a document
16 entitled Number 4, a copy of the Revised Strategic Plan.
17 Sometime in the past few weeks, you got a copy of, marked-up
18 copy, and then you got one that looks like this or not marked up,
19 the red line version. What you have here in draft, you agreed to
20 in our last meeting. There have been some changes. You were
21 to review the marked-up version and get back to staff, and we
22 would incorporate additional changes for consideration today.
23 You're not seeing anything dramatically different today than you
24 already saw. I heard from one member of the Executive
25 Committee. We needed to put back some things that had been

1 taken out, and that was Ms. Nyholm.

2 In the document, I think what you've got, and two of
3 them were returned, and you'll find those in the section, Building
4 Conditions for Innovation, the dark circle, utilize Research and
5 Development Centers to encourage regional exchange of ideas
6 and projects that capitalize upon competitive advantages, and
7 showcase local initiatives and available resources. And that was
8 one change.

9 The other is feasibility assessments linked to potential
10 Commission-sponsored entrepreneurial development projects.
11 Those were returned as promised.

12 In addition, I took the liberty of cutting something in
13 the section entitled Building Human Infrastructure.

14 DELEGATE BYRON: I understand the concept here
15 and something that has terminology goes along with some
16 demands by businesses.

17 MR. NOYES: That's fine, and if we can come up with
18 some language that, this appears on the agenda next week for
19 the Executive Committee, and I'll be happy to make any
20 changes. These I had intended to bring to your attention and
21 didn't get it done. It has to do with the whole issue of credit
22 versus noncredit. Sometimes businesses want bills upgraded,
23 may not be credit courses, and our programs don't allow us to
24 work that activity. This makes it exclusive. I'll be in touch. I'll
25 make some suggestions when I see those changes.

1 DELEGATE KILGORE: What's affecting health care?

2 Mr. NOYES: What we said was Tim is to provide some
3 language.

4 MR. PFOHL: We addressed this that said something to
5 the effect the Commission recognizes that expanding access to
6 health care is an element of providing a healthy and productive
7 workforce in the tobacco region.

8 DELEGATE KILGORE: The only thing I'm concerned
9 about, I didn't want to get into the business of having a request
10 for building hospitals, new wings. If you can limit that to some
11 degree.

12 MR. NOYES: For the record, Special Projects
13 Committee chaired by Delegate Marshall will be considering how
14 it expects to go forward finding access to health care and what
15 priorities are established to work on a -- that's underway. The
16 budget is going to drive what's to be done in terms of access to
17 health care. The budget contains \$4 million each year. We now
18 have the two Commonwealth of Virginia Cancer Centers that are
19 eligible to come to that Committee, though I don't think we're
20 going to be building too many hospitals with \$4 million in the
21 total budget.

22 Delegate Marshall will lead that discussion next week.

23 DELEGATE KILGORE: Anybody have any changes
24 they'd like to make? If you do between now and next week,
25 send them in, and we can discuss it next week. We'll be

1 preparing a board briefing book.

2 All right, JLARC is next on the agenda.

3 MR. NOYES: This is based on the Senate bill the
4 previous session. We were notified early in April it's our turn as
5 JLARK looks at incentive programs. The memo you see before
6 you by designating a person. Ned Stephenson is that person,
7 has been working with JLARC, and the staff welcomes this. I
8 believe your work over the past three or four years enforces
9 contractual provisions and the Tobacco Commission is going to
10 come out of this looking very strong.

11 DELEGATE KILGORE: We've already been through a
12 major investigation.

13 MR. NOYES: And there were favorable comments on
14 how the TROF program was managed. That's credited to the
15 Executive Committee and to Mr. Stephenson. This is working
16 very well. I'm looking forward to JLARC's inclusion, and the
17 Commission will know how it comes out.

18 DELEGATE KILGORE: All right. Any other business?
19 All right. Any public comments? Do I have a motion that we are
20 concluded?

21

22 NOTE: The motion is made, and the meeting is
23 concluded.

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PROCEEDINGS CONCLUDED.

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CERTIFICATE OF THE COURT REPORTER

I, Medford W. Howard, Registered Professional Reporter and Notary Public for the State of Virginia at Large, do hereby certify that I was the Court Reporter who took down and transcribed the proceedings of the **Virginia Tobacco Indemnification and Community Revitalization Commission, Executive Committee Meeting**, when held on Thursday, May 17th, 2012, at 10:30 o'clock a.m., at The Hotel Roanoke & Conference Center, Roanoke, Virginia.

I further certify this is a true and accurate transcript, to the best of my ability to hear and understand the proceedings.
Given under my hand this 2nd day of June, 2012.

Medford W. Howard
Registered Professional Reporter
Notary Public for the State of Virginia at Large

MY COMMISSION EXPIRES: October 31, 2014.