



COMMONWEALTH OF KENTUCKY
OFFICE OF THE ATTORNEY GENERAL

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June 14, 2022

Hon. Andrew Beshear
Governor, Commonwealth of Kentucky
700 Capitol Avenue, Suite 100
Frankfort, Kentucky 40601

Dear Governor Beshear:

Kentucky families are facing unprecedented economic challenges. Inflation is at an all-time high. Gas prices are nearing—or have reached—\$5 a gallon in most of the Commonwealth. And we just experienced one of the most expensive winter heating seasons in memory. Unfortunately, the Biden Administration’s energy policies are largely responsible.¹

That is why my office has taken action against President Biden’s extreme “green” agenda that places the priorities of climate activists above the needs of ordinary Kentuckians. So among other things we sued the President to stop the cancellation of the Keystone Pipeline. The cancellation of this project defies commonsense, especially considering that the President later begged Canada to pump more oil and is reported to be headed to Saudi Arabia asking for production increases there. Killing American energy while substituting foreign sources does nothing for the environment, even as it impoverishes Kentuckians.

My office has also challenged the White House’s heavy-handed regulation of coal and coal-fired plants and has opposed Washington Democrats who recently proposed a new tax on oil and gas emissions. And we have opposed their efforts to cripple our energy infrastructure by making construction of new pipelines nearly impossible. Even now, President Biden continues to push his executive order that directs the entire executive branch to prioritize environmental, social, and

¹ All of this on top of the economic struggles caused in large measure by governmental responses to Covid-19.

governance, or “ESG,” policies rather than energy exploration and production. Rest assured, while this president focuses on extreme environmentalism, my office remains committed to protecting the interests and values of everyday Kentuckians.

Given the significant financial burdens that the Biden Administration’s policies have imposed on hard-working Kentuckians, I was pleased to receive your letter of June 2 indicating your willingness to work together to take additional steps to help alleviate those burdens using whatever tools may be available to our respective offices under Kentucky law.

You specifically asked whether a declaration of a state of emergency allowing broader investigation of price gouging may be one such tool. To address that question requires some discussion of what such a declaration would actually mean, and of what my office is already doing in response to consumer complaints of price related to the increasing price of gasoline.

My office has already been monitoring gas prices across the Commonwealth. Since January 1, 2022, the office has received 263 complaints relating to gas prices. Of the 263 complaints, 110 relate to conduct occurring after April 14, 2022, the date of your executive order extending an emergency in certain counties so that the price gouging statutes remained in effect in those jurisdictions. Of those, 22 complaints reported prices that were 10% or more above the price prevailing in Kentucky at the time.

Of course, even when a price gouging order is not in effect, the Attorney General has the authority to enforce the Kentucky Consumer Protection Act (codified at KRS 367.110, *et seq.*), which prohibits “[u]nfair, false, misleading, or deceptive acts or practices in the conduct of any trade or commerce.” KRS 367.170(1). As used in KRS 367.170(1), “unfair shall be construed to mean unconscionable.” KRS 367.170(2). To that end, my Office has exercised its authority under KRS 367.240(1) to issue civil investigative demands and subpoenas to individuals and business suspected of charging unconscionable prices for fuel. Those investigations are ongoing, and as such remain confidential; however, if it is determined that a violation of Kentucky law occurred, my Office will seek all appropriate relief on behalf of the Commonwealth and its citizens.

In this regard, my office has already successfully taken enforcement action against multiple gasoline retailers under unfair and deceptive business practice theories. This approach was necessary during the Colonial Pipeline shutdown when your office allowed the statewide price gouging order to lapse between May 10, 2021 and May 19, 2021. During that period, we received sixty-nine complaints regarding fuel prices. Twelve retailers were determined to have allegedly sold fuel at prices that would have exceeded the base criteria for price gouging, had an order been in place. Of those, the office was able to determine that four would have met one or more of

the exemptions outlined in KRS 367.374(1)(c), had price gouging been in effect. The remaining seven were resolved with an Assurance of Voluntary Compliance, which imposed fines, penalties and injunctive terms for the alleged violations.

Considering all of the above, I believe that a declaration of a state of emergency would provide minimal—if any—additional relief to Kentuckians. Nonetheless, should you decide to issue such a declaration, my office would enforce those statutes to the fullest.²

This is not to say that there is not more that could be done by the Commonwealth to provide relief to Kentuckians impacted by unprecedented gas prices combined with rising inflation. This historic economic and energy crisis calls for more than token and largely symbolic measures. Now is the time to consider bold and far-reaching measures, such as meaningful and substantial tax relief—at the gas pump and elsewhere.

However, as you know, such policy measures require the involvement of the General Assembly as the branch of government charged with establishing the public policy of the Commonwealth. Thus, while I welcome your invitation to work together in the narrow context of the price gouging statutes, I urge you also to reach out to the leaders of the General Assembly to solicit any suggestions they may have for appropriate relief measures in the near-term, and to begin discussions about potential legislative measures that could provide long-term, meaningful solutions for the future.

Sincerely,



Daniel J. Cameron
Attorney General

² One concern that I would raise with regard to implementing a new price gouging order to address the price of fuel is the potential effect that such an order could have on businesses and industries not involved in the sale and distribution of fuel. KRS 367.374(1)(b) identifies nine categories of goods and services subject to price gouging restrictions once the provisions of KRS 367.372, *et seq.*, are implemented. The decision to issue a price gouging order should involve a consideration of the potential impact on these other industries and should be appropriately limited in scope so as to avoid unintended consequences and unnecessary burdens on Kentucky's consumers and small business owners.