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Supreme Court to hear appeal case on pipeline project

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BY JOHN BRUCE • STAFF WRITER

MONTEREY – Last week, Virginia’s largest utility got a nod from the nation’s highest court to consider running a pipeline through a federally owned section of the Appalachian Trail.

On Friday, Oct. 4, the U.S. Supreme Court granted Dominion Energy’s petition to hear an appeal of a lower court decision blocking the proposed Atlantic Coast Pipeline from crossing the trail.

No hearing date was set.

Friends inside the beltway

The appeal aims to overturn the Fourth U.S. Circuit Court of Appeals ruling in December 2018 that the U.S. Forest Service is not authorized to permit managing pipeline partner Dominion Energy to cross the trail as part of the 600-mile gas pipeline project.

The Forest Service “abdicated its responsibility to preserve national forest resources” when it issued permits for the Atlantic Coast Pipeline, Judge Stephanie Thacker said in the Fourth Circuit panel opinion. “We trust the United States Forest Service to ‘speak for the trees, for the trees have no tongues,’” Thacker said at the time, quoting “The Lorax” by Dr. Seuss.

The petition was brought by the Cowpasture River Preservation Association, Highlanders for Responsible Development, the Shenandoah Valley Battlefields Foundation, Shenandoah Valley Network, the Sierra Club, Virginia Wilderness Committee and Wild Virginia.

Dominion stopped work on the project in anticipation of a win at the Supreme Court.

Bolstering Dominion's high court appeal was U.S. Solicitor General Noel Francisco, a Trump administration appointee, plus 16 Republican state attorneys general, according to citizens group Allegheny Blue Ridge Alliance.

Separately, a Harvard Law Review author explored the solicitor general office's intensified activity in the current administration. In his paper titled, "The Solicitor General and the Shadow Docket," University of Texas School of Law professor Stephen Vladeck noted the solicitor general, during the first 30 months of the Trump White House, "sought relief from the Supreme Court with unprecedented frequency."

The solicitor general applied "for at least 20 stays of lower-court rulings; filing nine petitions for writs of certiorari before judgment; and seeking writs of mandamus directly against three different district judges," he said. "Over the prior 16 years, in contrast, the government had sought a total of eight stays from the Justices; four writs of certiorari before judgment; and zero writs of mandamus," an abstract of Vladeck's comment said, noting current "justices have largely acquiesced in the solicitor general's newfound aggressiveness."

In its newsletter, ABRA observed the head of the Department of Justice is a former Dominion director. "It is worth noting that the solicitor general's boss, U.S. Attorney General William Barr, is a former board of directors member of Dominion Energy."

The solicitor general is the fourth highest position on the DOJ organizational chart.

Security and Exchange Commission filings show Dominion paid Barr \$1.2 million in cash and granted him \$1.1 million in stock awards. He joined the board in 2009 and resigned effective Feb. 12, 2019, after President Donald Trump nominated him for attorney general.

Barr chaired Dominion's Energy Compensation, Governance and Nominating Committee at the time of his resignation.

While enjoying support within the Washington, D.C. beltway, Dominion lacks more than one permit to proceed with construction.

A potent greenhouse gas

"Since construction on the ACP began last year, seven crucial permits have been vacated, resulting in a halt to construction since December of 2018. Dominion Energy proposed this pipeline in 2014. In the years since, the energy landscape has changed dramatically," said prosecuting law firm Southern Environmental Law Center in a news release following the Supreme Court's announcement accepting the case.

"We now know that this \$7.8 billion pipeline is costly, unneeded, dangerous, and will only add to our greenhouse gas emission problems and burden Duke and Dominion customers with the cost for decades to come," SELC said.

Climate change detractors point out that shale gas is no longer considered clean, as various reports have shown since the pipeline was announced. Odorless and colorless, shale gas escapes unnoticed into the atmosphere during production and transmission. Shale gas is many times more potent as a greenhouse gas than carbon dioxide and is widely perceived as a contributor to sea level rise. Unmonitored emissions make shale gas more detrimental with respect to global warming instead of a “bridge” fuel between coal and renewable energy. Furthermore, money spent on new gas infrastructure is not being invested in renewable energy infrastructure, opponents argue.

“We will defend the lower court’s decision in this case,” the SELC and Sierra Club said in a joint statement. “The Atlantic Coast Pipeline is a dangerous, costly, and unnecessary project, and we won’t stand by while Duke and Dominion Energy try to force it on our public lands, threatening people’s health, endangered species, iconic landscapes, and clean water along the way.”

The pipeline was proposed to cross about 16 miles of the George Washington National Forest and five miles of the Monongahela National Forest. It would cross the Appalachian Trail within the GWNF in Augusta County. The project is planned to enter Virginia in southwestern Highland County before traversing northern Bath County.

In a prepared statement, Dominion’s ACP spokesman Aaron Ruby said, “The Supreme Court’s acceptance of our petition is a very encouraging sign and provides a clear path forward to resolve this important issue. The law and the facts are on our side, and we’re supported by a broad coalition of stakeholders. The U.S. Solicitor General, 16 state Attorneys General and more than a dozen industry and labor organizations all agree that the U.S. Forest Service has the authority to approve our Appalachian Trail crossing.”

He continued, “More than 50 other pipelines cross underneath the Appalachian Trail without disturbing its public use. The public interest requires a clear process for the issuance and renewal of permits for such pipelines, and other essential infrastructure. The Atlantic Coast Pipeline should be no different. In fact, the pipeline will be installed more than 600 feet below the surface and more than a half-mile from each side of the Trail to avoid any impacts.

“We look forward to making our case before the Supreme Court early next year and expect a final ruling by next June. We are confident in our arguments, and those of the Solicitor General, and are hopeful the Supreme Court will overturn the Fourth Circuit’s decision and uphold the longstanding precedent allowing pipeline crossings of the Appalachian Trail. We remain confident we can resolve the ACP’s other permitting issues to enable resumption of partial construction in a timely manner. A favorable resolution of the Appalachian Trail case will allow us to resume full construction by next summer and complete the project by late 2021.

Both sides confident

“The Atlantic Coast Pipeline is more important now than ever,” Ruby said. “The economic vitality, environmental health and energy security of our region depend on it. Communities across Hampton Roads, Virginia and eastern North Carolina are experiencing chronic shortages of natural gas. The region urgently needs new infrastructure to support the U.S. military,

manufacturing, home heating and cleaner electricity as we move away from coal. We remain committed to this project and are confident it will be completed.”

Pipeline foes are equally confident in the project’s defeat.

“We welcome the opportunity for the Supreme Court to hear just how unlawful and destructive this pipeline would be,” said Nancy Sorrells, the Augusta County coordinator with the Alliance for the Shenandoah Valley.

“If Dominion is forced to obey the law and respect the land and the people who would be impacted, then this pipeline project is not viable. Their problems are entirely self-inflicted. Dominion drew an inappropriate route and then tried to outmaneuver the law to make it work. Now they are being called out for their actions and their project is in great peril. This is a last-ditch effort for a project that is clearly in jeopardy,” she added.

In a statement issued Tuesday, the Cowpasture River Preservation Association addressed the question of whether ACP construction in Virginia can start before the case goes to court next year.

“This point is debatable,” said Richard Brooks CRPA president. “According to the latest from ACP, they plan to resume construction, tree felling and more, late this year. We feel strongly and hope that until the decision on the trail is rendered and all of the other permits are approved, no construction should be allowed.”