

The Recorder

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High time to relocate troubled ACP project

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We do not presume to know what the U.S. Supreme Court will decide about the Atlantic Coast Pipeline case, which was heard last week. But we hope the justices understand one thing — this is about location.

When Dominion Energy planned its proposed gas transmission line through these mountains, little care or thought was put into whether crossing these ancient mountains in sensitive ecological terrain was feasible. We have argued for five years now that it's a bad idea for dozens of reasons.

If it's true that places east and south of us need this gas, which is highly debatable, Dominion should have chosen a less intrusive route — one that does less damage in corridors that do not have endangered and threatened species or steep mountain ridges.

During oral arguments Feb. 24, it was worrisome that some of the justices seemed to lock on to the possibility of creating a miles-long barrier to pipeline crossings over the Appalachian Trail.

The lower Fourth Circuit Court of Appeals had determined that where the proposed pipeline was to cross the trail, on U.S. Forest Service land, the USFS did not have the authority to grant Dominion a permit there because the National Park Service was the agency in charge of the trail itself.

The justices repeated questions about why the USFS could not grant the permit, and seemed concerned that upholding the lower court's decision would mean no pipelines could ever cross the trail.

But the finer point was: It's not that pipelines cannot cross the trail — many of them already do. It's about where they cross.

Dominion simply needs to move the crossing to private or state-owned land. So why hasn't the company done that? Why did Dominion choose to cross the trail at that particular point, on federal land?

The easy answer is cost. If it sticks to federal land as much as possible, the company avoids the expensive routines of haggling with state or private landowners, and condemning property. Dominion's planners wanted to stick to forest service land because the USFS has ways to accommodate pipelines, although as it has learned, that's not an easy solution either. The Fourth Circuit also pointed to the forest service's failure to protect its lands when it granted the permit. However, that particular topic was not debated by the Supreme Court.

The Supreme Court justices were only weighing the permitting authority question. But no matter how many times the attorney, arguing on behalf of environmental groups who challenged the permit, told the justices this was not preventing a barrier to future pipeline crossings elsewhere, the justices kept coming back to that idea.

The case was so specific to the legal interpretations of acts laid out in Congress that we can understand the court's interest in reviewing it. As a legal matter, the question about which federal agency has authority over the trail is interesting.

But in the end, the decision will not make or break this proposed project.

If the Supreme Court upholds the lower court's decision, agreeing that only the National Park Service has the authority to allow the pipeline to cross at that point, Dominion has options. For one thing, it can lobby Congress to change the law governing those agencies. In fact, it's already doing that. The company can also simply move the pipeline route to avoid USFS land. That would be expensive, but not impossible.

If the court overturns the decision in Dominion's favor, it still has numerous obstacles to overcome, including seven other challenged permits that it has yet to obtain. And to their credit, those opposed to this pipeline's path have lost no steam. They seem prepared to challenge Dominion at every turn, and they should. This is a lousy place to run a pipeline, and those who live here aren't giving up.

It's all about location. Dominion is fighting to install this project in the worst possible place. We hope company shareholders are waking up. We hope they're telling the company that it's time to relocate. Presumably, with a now ballooned price tag of \$8 billion, they have the money to move it. They should be spending that on a new route instead of wasting money fighting in court.