

State's high court hears Dominion power line case

By **[Peter Dujardin](#)** pdujardin@dailypress.com January 7, 2015

Opponents of a proposed transmission line over the James River asked the state's highest court on Tuesday to toss a state commission's approval of the project.

Andrew McRoberts — representing James City County, Save the James Alliance and the James River Association — told the Virginia Supreme Court that the State Corporation Commission erred when it signed off on the project in late 2013.

"We are against the intrusion into what is now a pristine area of Virginia," McRoberts told the seven-member court. That part of the James, within view of the Colonial Parkway and part of Jamestown Island, "is evocative of what the early settlers saw coming into this area on their way to Jamestown."

But Dominion Virginia Power — which wants to build the new 500-kilovolt transmission line between Surry and James City County to meet what it calls a "critical" need for power on the Peninsula — contends the new towers won't have an undue impact on historic areas.

SCC attorney John Dudley backed Dominion, saying "all the evidence" at recent SCC hearings show Dominion indeed faces "severe reliability violations" without a new transmission line, including a risk of "cascading" power outages "into Richmond, Northern Virginia and North Carolina."

Even the project's opponents, he said, aren't challenging the finding that the Peninsula needs a new electricity feed, given the forthcoming shutdown of part of the Yorktown Power Station because of stringent new federal regulations on coal-fired generation.

James City County and other opponents assert the new towers — nearly as tall as the Statute of Liberty — will mar views from the waterway, from a section of the Colonial Parkway, from the tip of Jamestown Island, and from the Carter's Grove Plantation.

McRoberts said a state law requires the SCC not only to determine there's a need for more power, but also to ensure that impacts on historic resources and the environment are "reasonably minimized."

But though the SCC found there's a need for a new transmission line, McRoberts contended the commission didn't do anything to "minimize" the impacts — such as requiring the line to be buried under the river or installed in a less sensitive place.

It's not enough, he said, that the need be "weighed against mitigation." Instead, he said, the statute requires the SCC to take steps to minimize the impact. "In this case, it doesn't do that — reasonably or otherwise."

Several world-renowned experts, McRoberts said, weighed in at SCC hearings about the negative repercussions the towers would have. Many of those experts, he said, "have PhD's" and "know what historical impact is," saying Dominion's experts didn't have such expertise.

McRoberts didn't say exactly what the mitigation should have entailed, though he said it's impossible to minimize the impact in their proposed location, which would mean an alternative crossing would be necessary.

But Joseph K. Reid III, a McGuireWoods lawyer representing Dominion, said the SCC "considered the evidence and reached independent determinations on both the need for the line" and that it "reasonably minimized impacts to the environment and historic districts."

Burying a 500-kilovolt line under the James River, Dominion had said, isn't technologically viable. Though it's possible to bury two 230-kilovolt lines, the company said that would hike the cost from \$56 million to more than \$300 million, add years to the project, and wouldn't provide enough power.

Dudley, the SCC lawyer, pointed out many other on-shore developments in the area, such as Kingsmill, a sewage treatment plant, a Surry Nuclear Power Station, a jail, and "tall theme park rides" at Busch Gardens.

He said the lines will not be visible from Colonial Williamsburg, Yorktown, or the most sensitive areas of Jamestown, including the original settlement and archeological dig sites.

He also said the view from Jamestown's Black Point will be partially blocked by trees on Hog Island. The SCC has previously said the towers would "blend in" with their surroundings when seen from both Black Point and the Colonial Parkway.

Much of Tuesday's hearing centered on whether a proposed new switching station in James City County is part of a "transmission line."

Under law, the SCC has the authority to decide where transmission lines go, though other "electrical utility facilities" must follow local zoning decisions.

But when it appeared as if James City would deny a zoning permit for the switching center at Skiffes Creek, Dominion asked the SCC to find that the center is "integral" to the transmission line. The SCC did so.

But that's the first time out of about 50 cases that Dominion has circumvented local zoning processes for such a decision, McRoberts said.

The reason for the SCC's authority for transmission lines, he said, is because such a line crosses over multiple properties and city and county boundaries — unlike a switching center that sits in one place.

But he contended that a switching station and transmission line are very different. A switching center takes one voltage and "changes it to another," he said, while a transmission line moves the electricity "over great distances from one place to another."

"This is controlled by common sense," he said. "A switching center is not a line. It doesn't go place to place."

"If you rule with Dominion," he added, then zoning decisions for "all utility functions" all over the state could easily be trumped by the SCC.

But the SCC's Dudley contended that the switching center is a necessary component of the transmission line's ability to move power. The switching center has metallic conductors and other equipment that "transmit electricity," and "you don't have a circuit without it."

He cited a case from the SCC's equivalent in Maine, which made a similar finding. "A transmission line cannot be limited to just the wires," Dudley said, saying the SCC had the authority to make that "factual determination."

The parties also spent a good part of the hearing sparring over whether James City County and the other opponents timely filed their appeal.

The opponents didn't initially appeal the SCC's approval within a 30-day window, but filed their "intent to participate" in the appeal after Dominion appealed the SCC's decision. That is, Dominion appealed the November 2013 decision to ask for a small tweak in the land route after James City County didn't grant a needed easement.

McRoberts contends that opened the window for the other parties to get back in to the case, too. But Reid, the Dominion lawyer, said the fact that Dominion later dropped that appeal — after the SCC agreed to the tweak — means the case is now over for everybody else, too.

"When other passengers jump in the car and the driver gets out, the other passengers aren't just left to drive it wherever they want to," Reid said.

After the hearing, Rob Nieweg, a lawyer with the National Trust for Historic Preservation — which is opposing the project in a federal approval process — said Dominion simply needs to pick an alternative route.

"Today in court we heard a lot of dry, legal arguments about whether this appeal will move forward," Nieweg said. "But what I kept coming back to was the perspective of the paddler on the James River and her ability to understand our history and our culture on site through the eyes of Captain John Smith. That's under threat right now."