

Under questioning by 4th Circuit at pipeline hearing, state concedes Union Hill's racial status

 MichaelMartz / By MICHAEL MARTZ Richmond Times-Dispatch

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Lakshmi Fjord began to cry after an attorney for the State Air Pollution Control Board conceded in federal court Tuesday that Union Hill, a community established by freed slaves in Buckingham County after the Civil War, is indeed overwhelmingly populated by African Americans.

Deputy Solicitor General Martine Cicconi made the concession under sharp questioning by Chief Judge Roger Gregory in the 4th U.S. Circuit Court of Appeals. It came during a hearing on the legality of an air pollution permit the state board issued in January for a natural gas compressor station on the site of a former plantation where the forebears of some Union Hill residents worked as slaves.

The outcome remains uncertain, but two environmental organizations' appeal of the state air permit represents yet another hurdle at the 4th Circuit for the 600-mile, \$7.75 billion Atlantic Coast Pipeline.

The pipeline company, led by Dominion Energy, already is preparing to argue before the U.S. Supreme Court in an effort to reverse the appeals court's decision last year to block a federal permit for the pipeline to cross beneath the Appalachian Trail.

The state's admission hit Fjord hard because she had led a community study that began more than four years ago with a door-to-door survey to document who lives around the proposed compressor station site. The state and pipeline company had disputed the finding that Union Hill is a predominantly African American community that would be disproportionately harmed by the project.

"It was hugely vindicating for all of us," said Fjord, a University of Virginia anthropologist who learned last month that the National Trust for Historical Preservation would finance another community effort to map the history of Union Hill and its families.

Dominion also claimed some vindication separately Tuesday from a Virginia Department of Health study released last month that concluded that the concentrations of air pollutants from the compressor station would not pose a health hazard because they are far below the threshold for hazardous exposure.

The study, performed after the state issued the permit, recommends that actual air pollution concentrations "be evaluated for public health implications" if the compressor station is built.

“The results are reassuring,” said Dominion spokesman Aaron Ruby, who cited the additional pollution controls and monitors the air board required — beyond those recommended by the Department of Environmental Quality staff — as conditions of the permit.

Ruby also cited Dominion’s efforts to address the concerns of Union Hill residents, including promised investments in a new rescue squad and community center. “We have a profound respect for Union Hill and its history, and we’re determined to do right by the community,” he said.

The project already is more than two years behind schedule and about \$3 billion overbudget, in large part because of legal setbacks in the 4th Circuit.

In addition to the Appalachian Trail crossing, the appeals court has vacated federal permits — twice — that had determined the project would not pose an existential threat to endangered or threatened animal species in its path from West Virginia to southeastern Virginia and eastern North Carolina.

The court also blocked the pipeline from crossing beneath the Blue Ridge Parkway. The 4th Circuit upheld the state water quality permit issued for the project.

The state issued the air permit in January after a highly contentious series of public hearings that focused sharply on whether the 58,000-horsepower compressor station posed a threat to environmental justice because of its effect on Union Hill.

For Gregory, the first African American appointed to the Richmond-based appeals court, the primary issue was whether state air pollution regulators had even tried to compare the compressor station’s potential health effects on Union Hill residents with the effects on their neighbors elsewhere in Buckingham, where the population is predominantly white.

“What is the key to justice? Fairness, isn’t it?” the judge asked Cicconi.

Elbert Lin, a Richmond attorney for the pipeline company, said the state board had properly compared the health effects on the compressor station’s neighbors with the pollution burden on people elsewhere in Virginia.

“If you draw your circle small enough, there’s always going to be a disproportionate impact,” Lin said.

Gregory shot back that the state doesn’t know what the effect of the compressor station would be on other county residents because it never tried to measure it.

“Don’t you want to know how the area compares to fellow Buckinghamians?” he asked.

The other major issue raised in the appeal by the Southern Environmental Law Center and the Chesapeake Bay Foundation is whether the state should have considered electric-powered motors instead of gas-fired combustion turbines as an alternative that would further reduce the effects of air pollutants, especially microscopically fine soot.

The environmental groups challenge the state's assertion that the permit is the most stringent for any natural gas compressor station in the United States because they say that does not include those that rely on electric motors rather than gas turbines to operate.

"The error of the DEQ was not considering it at all," said David Neal, an attorney for the Southern Environmental Law Center, based in Charlottesville.

Cicconi said Virginia air quality regulations do not require the Department of Environmental Quality to consider an alternative that fundamentally changes the project proposed by an applicant such as the Atlantic Coast Pipeline.

"The agency is not in the business of telling Atlantic or any other applicant how to compress gas," she said.

Instead, Cicconi and Lin argued that the DEQ went beyond the regulations by requiring the project to use "the best available control technology" to limit what is legally considered a minor source of pollution.

Gregory asked in response, "What if the Band-Aids don't work and they still don't meet the emission standards sought?"

Union Hill residents who attended said they were heartened by what they heard in court on Tuesday.

"I thought it was great, great, great," said John Laury, an African American who lives and owns an orchard about a mile from the site. "They cut through a lot of the rhetoric we have been listening to for approximately five years."