Commentary by Rob Marmet, Senior Energy Policy Advisor

On Tuesday November 26th the Virginia State Corporation Commission (SCC) issued its Final Order approving a 500 kV line that crosses the James River near Williamsburg, Virginia\(^1\). The Surry-Skiffes Creek line was proposed to address the impact of shutting down six Dominion coal and oil fired generating units at the Yorktown Power Station and the Chesapeake Power Station. PJM and Dominion simulations project that reliability issues arise as early as the summer of 2015 and could become widespread throughout the North Hampton Roads area\(^2\).

This application was extremely controversial from its inception\(^3\). At 500 kV this line is very large, more typical of an inter-state transmission line than a 7.4 mile intra-state regional reliability solution. With towers up to 295 feet tall, the line would cross the James River in an area that is part of the Captain John Smith Trail, a unit of the National Park Service, and is within the Historic Triangle area of Virginia, where much time and treasure has gone into preserving history for the benefit of modern tourists. The line would be in close proximity to Colonial Williamsburg and within the view shed of several historic sites, including the Colonial Parkway, Jamestown Island, James Fort and Carter’s Grove Plantation.

Much of the appeal of Colonial Williamsburg and other tourist attractions in the area is the illusion that the visitor has travelled back in time to the colonial period in America. Historically restored buildings, costumed re-enactors and sections of the old town devoid of vehicles, with carefully hidden modern amenities, are the hallmark of a visit to Virginia’s first capital. The Colonial Parkway is largely screened from modern developments and evokes an early 20\(^{th}\) Century road, if not a colonial thoroughfare.

The banks of the James River in this area are also home to state-of-the-art tourist attractions, such as Kings Mill resort, a nearly 3,000 acre meticulously developed community with a resort, spa and

---

1 The Application of Virginia Electric and Power (Dominion) for approval and certification of the Surry-Skiffes Creek 500 kV Transmission Line, Skiffes Creek-Wheaton 230 kV Transmission Line, and Skiffes Creek 500 kV – 230 kV – 115 kV Switching Station (PUE-2012-00029).

2 PJM is the regional transmission organization that maintains functional control over high voltage lines in the eastern part of the United States. It uses computer simulations that predict what might happen to the power grid if various combinations of generating or transmission assets were to fail.

3 A couple of years ago when these reliability concerns first arose at PJM an independent transmission company, LS Power, proposed a transmission solution that appeared to solve most of the potential violations. In a rather opaque manner, Dominion quickly countered with a couple of different solutions, including what would become the Surry-Skiffes Creek line, and was given the assignment by PJM. LS Power was unhappy, but the project went forward.
three golf courses; and Busch Gardens, a large theme park with roller coasters, European-themed villages and an annual Christmas extravaganza. But according to testimony in the SCC hearings, these modern developments have been set back from the river’s edge so that a modern day visitor could paddle the Captain John Smith Trail or walk on Jamestown Island or look out from the porch on Carter’s Grove Plantation and believe that they were viewing the same physical environment as the English explorers encountered in the 17th century.

The Colonial Williamsburg Foundation, the College of William and Mary, Preservation Virginia, residents of Kingsmill and various individual citizens and citizen groups coalesced to oppose the Surry-Skiffes Creek line. Dominion favored this crossing as its preferred route, but also proposed a longer and more expensive alternative that would have come down the Virginia Peninsula and cut through a recently developed retirement community.

In order to complete the Surry-Skiffes Creek project Dominion would need to build a new substation. The substation would be located in James City County, and based on previous practice, Dominion would apply for a Special Exception from county zoning authorities for permission to construct the substation. In this case, James City County was opposed to the construction of the transmission line, and had, in Dominion’s opinion, hinted that it might not grant the Special Exception. For this reason Dominion requested that the SCC rule that the substation was included as a part of the transmission line and included it in its application.

After extensive public comments and a lengthy evidentiary hearing, SCC Hearing Examiner Skirpan issued a Report that recommended that the SCC approve the Surry-Skiffes Creek route. The Hearing Examiner concluded that the line was needed and that no alternative would adequately address reliability concerns. However, the Hearing Examiner did not make any recommendation on whether the SCC had authority to preempt local zoning authority and order construction of a substation as part of the transmission line approval process in. He left that decision to the Judges of the SCC, or to a Circuit Court.

After considering the Report of the Hearing Examiner and reviewing the record and the briefs of the parties, the SCC unanimously ruled that the Surry-Skiffes Creek line should be approved. In an Order that was replete with references to the centrality of “complex engineering evidence” the SCC concluded that the need to address reliability concerns was the paramount consideration for them, and that the need for the line was “severe and fast approaching”.

The Judges quickly brushed aside concerns about impacts on historic resources by emphasizing “the change that has transpired since colonial times to date in the area where the Proposed Project would cross the James River.” Cataloguing the upgrades from the 17th Century, the Judges cited “neighborhoods, multiple military installations, theme parks, a marina, a jail and detention center, and a supermarket distribution center...”
Citing the dependence of these developments on the “same reliable electric grid to maintain the quality of life, health, safety, and prosperity to which our Commonwealth and our nation are accustomed”, the SCC concluded that the statutes had been satisfied.

To be sure, there has been a change in the area since colonial times. But the Judges seemed to confuse conserving historic resources with reversing history. Their analysis appears to conclude that since others had built modern facilities in the area, any modern facility, and particularly this modern industrial facility, should be permitted to proceed. The SCC did not analyze whether approval of those other impinging developments had to “reasonably minimize adverse impact on scenic assets, historic districts and the environment of the area concerned”4, the statutory requirement for SCC approval of electric facilities.

The remainder of the need part of the SCC Order is fairly pro-forma adoption of Dominion and PJM planning criteria as a minimum standard for reliability and a concurrent rejection of Respondent proposed alternatives as speculative and inadequate. The SCC agreed with the Hearing Examiner that the Surry-Skiffes Creek route was better alternative route.

Having approved the line and approved the route, the only issue remaining was to determine SCC jurisdiction over the siting of the substation. In a display of commendable consistency, the SCC once again relied upon engineering and not the law to reach their decision. By reasoning that the transmission line would not work without a substation, the Judges concluded that: “From an engineering standpoint, the Commission finds that the Skiffes Creek Switching Station will be an electrically, physically, and operationally inseparable part of several high voltage transmission lines.” And: “Given the engineering evidence in this case, the Commission cannot pretend as if the Skiffes Creek Switching Station – which will be a critical part of several high voltage transmission lines – is not a part of any transmission line for purposes of Code §56-46.1.”

Rather than looking to the Code of Virginia for its authority, the SCC made a factual determination of its jurisdiction based upon engineering evidence. In fact, it cited only in passing the two cases relied upon by Dominion for its legal justification of SCC jurisdiction: a 1975 Fauquier County Circuit Court decision and a 2009 decision by the Maine Public Service Utilities Commission.

Electric substations can be as small as a residential lot and as large as 40 acres. The equipment necessary for its operation can contain highly flammable toxic fluids, produce loud noises and require round-the-clock lighting for security purposes. Though some efforts can be made to disguise it, these are industrial facilities. Once established, transmission substations attract additional transmission lines.

Typical zoning considerations of health, welfare and safety are not the purview of the Virginia State Corporation Commission. Under this ruling, noise control, traffic mitigation, the availability of fire and rescue services, limitations on lighting; all the matters that a Special Exception hearing would consider, are now within the jurisdiction asserted by the SCC.

---

4 Va. Code §56-46.1
This extension of jurisdiction would be troublesome enough if the SCC had a history of considering local concerns when weighing whether to approve or disapprove an application for a transmission line. The track record of the SCC in this case, and others, is that “reliability” is the single touchstone it uses to determine whether to approve a transmission line. Additionally, the SCC has previously displayed a very constrained interpretation of its mandate to “reasonably minimize the adverse impacts” of utility infrastructure. In an Order earlier this year the SCC said:

“We must consider environmental impact. The relevant statutes, however, do not require the Commission to find any particular level of environmental benefit, or an absence of environmental harm, as a precondition to approval.”

Now that it has expanded the definition of transmission line to include substations, that same standard could apply. Following the logic used by the SCC, a large substation could be located by a church, a school or a nursing home, since each of those depends on the grid and is accustomed to reliable power, the standard applied by the SCC in this case. Where a hearing on a Special Exception would be expected to consider the adverse impact of the newer, proposed use on existing uses, this measure carries very little weight in SCC proceedings.

Traditional regulatory practice in general, and Virginia Code §56-49 in particular, grant utilities the power of eminent domain in certain circumstances. By including a substation in their definition of a transmission line, the SCC has granted unto itself and, to Dominion, a new power to condemn land for more than a lateral route or corridor for the transmission line, but also for a plot of land for the siting of transformers, capacitors, voltage regulators and circuit regulators.

While Boards of Supervisors and Boards of Zoning Appeals are not perfect forums for achieving optimal land use, those bodies have at least developed a history of procedures for balancing the needs of the community with the desires of applicants. With the decision in the Surry-Skiffes Creek Line, counties may have lost a significant power to protect the health, welfare and safety of their citizens by reviewing and conditioning the location of transmission line substations.

---

5 Application of Virginia Electric and Power Company For Approval and certification of the proposed Brunswick County Power Station. PUE-2012-00128.

PEC Main Office: PO Box 460, Warrenton, VA 20188 (T) 540.347.2334 (F) 540.349.9003

www.pecva.org