

At issue in Chickahominy Pipeline hearing: Just what is a public utility?

Regulators hear testimony on whether proposed pipeline needs state approval

By: [Sarah Vogelsong](#) - November 4, 2021 12:02 am



The proposed site of the Chickahominy Power Station in Charles City County. (Sarah Vogelsong/Virginia Mercury)

Exactly what makes a company a public utility was the debate Wednesday as regulators weighed whether or not the state needs to give approval for the construction of a gas pipeline across five Central Virginia counties.

Chickahominy Pipeline “is not a public utility because while it will be transporting natural gas for heat, light or power, it will not be doing so for sale,” argued attorney Eric Page of Eckert Seamans on behalf of the company.

Rather, he said, Chickahominy Pipeline will simply be transporting natural gas between a third-party supplier and its purchaser, Chickahominy Power, LLC, a company that has been seeking for several years to build a natural gas plant in Charles City County.

“There is no mercantile relationship between Chickahominy (Pipeline) and CPLLC with regard to the natural gas,” continued Page, using an abbreviation for the company developing the power station. “Chickahominy is not selling natural gas to CPLLC. Rather, the third-party supplier is selling gas to CPLLC.”

Both Chickahominy Power and Chickahominy Pipeline are affiliated with Balico, LLC, and the pipeline has specifically been proposed to transport natural gas to the facility.

The plans have provoked controversy in both Charles City County, where the large plant would be constructed and operated by a private owner to sell electricity into the regional grid, and across four other counties the pipeline would cross.

A map of the project shows that it would stretch roughly 83 miles, from the Transco interstate pipeline in Louisa County through Hanover, Henrico and New Kent counties before reaching Charles City.

Shortly after residents in the five counties [began receiving letters this July](#) about the proposed conduit, Chickahominy Pipeline asked the State Corporation Commission to rule that it doesn’t need regulatory approval to construct the infrastructure because it isn’t providing “non-utility gas service” and isn’t a public utility — two conditions that would trigger regulatory oversight.

During Wednesday’s hearing on that question, held virtually before SCC Hearing Examiner Matthew Roussy, local governments, Virginia Natural Gas, regulatory staff and attorneys with the Southern Environmental Law Center representing environmental and grassroots opposition groups all insisted that Chickahominy Pipeline is by law a public utility.

“Chickahominy Pipeline is proposing something that is unheard of in the commonwealth before, and that is a gas pipeline, a large-scale gas pipeline, unregulated by either this commission or the Federal Energy Regulatory Commission,” said Southern Environmental Law Center attorney Greg Buppert.

The company “is wrong that there’s not a mercantile relationship between the pipeline and Chickahominy Power,” he argued. “The pipeline is selling a gas delivery service to the power plant, and although Chickahominy Pipeline doesn’t claim ownership over the gas, it will nonetheless possess it, transport it, and deliver it from a seller to a buyer in exchange for money.”

Elaine Ryan, an attorney with McGuireWoods representing Virginia Natural Gas, told Roussy that a finding that Chickahominy Power didn’t need State Corporation Commission approval “would have dramatic implications for all utilities, gas and electric, and would create a gaping hole in the commission’s jurisdiction over utility facilities in the commonwealth.”

Virginia Natural Gas is the incumbent utility serving the territory where Chickahominy Pipeline is planned to be constructed, and has argued that allowing the company to build the pipeline through the area would violate its exclusive franchise.

Local governments also expressed concern Wednesday about Chickahominy Pipeline’s plans. Several counties [have previously complained](#) about what they say is a lack of information and communication regarding the project.

“Regulation by the State Corporation Commission ... provides much-needed oversight of the design, location, construction and operation of natural gas pipelines and other related facilities,” said Hanover County Attorney Dennis Walter. “Hanover County opposes any request that would eliminate or even reduce that oversight through the use of a private business arrangement or through the framing of some corporate structure.”

Walter also warned that Hanover’s zoning ordinance won’t allow the construction of a non-utility pipeline on a number of properties the map appears to show it crossing.

“The commission should be aware that if this petition is granted, the pipeline cannot be constructed as proposed in Hanover County,” he said. “There may have to be an alternative route, there may need to be different provisions, but as proposed, what the petitioner is requesting is practically infeasible through the 44-plus miles of Hanover County.”

Roussy said he will issue an opinion in the case “as soon as possible.”

Republish

Our stories may be republished online or in print under Creative Commons license CC BY-NC-ND 4.0. We ask that you edit only for style or to shorten, provide proper attribution and link to our web site. Please see our republishing guidelines for use of photos and graphics.