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JUDGES GRILL GASTON LAWYERS AT ISSUE: N.C.'S SAY IN THE PROJECT, AND THE AMOUNT OF WATER.

The Lake Gaston pipeline could be heading for more roadblocks.

Although a decision is not expected for weeks or even months, a U.S. District Court of Appeals was clearly not pleased Monday with some of the logic used last year by the Federal Energy Regulatory Commission in issuing a permit for the pipeline.

“Did you bring your bulletproof vest?” Judge Patricia M. Wald said by way of greeting commission attorney Edward S. Geldermann.

The three-judge panel grilled Geldermann for nearly an hour on the federal agency's rationale in awarding Hampton Roads more water than it absolutely needed and in avoiding a decision on whether North Carolina had the right to review the project.

The judges said they were considering sending the case back to the federal commission - known by its acronym, FERC - perhaps for a limited 60-day period, to resolve the Carolina permit dispute. They did not indicate how - or whether - they would rule on the quantity of water needed.

Virginia Beach officials do not plan to stop construction of the 76-mile pipeline despite the legal wrangling. But at a cost of between \$3 million and \$4 million a month, the city would rather have a conclusive ruling than more delays, City Manager James K. Spore said Monday.

Virginia Beach has now finished more than 30 miles of the pipeline, which is to run from Lake Gaston on the North Carolina border to Norfolk's water intake in Isle of Wight County, just northwest of Suffolk.

North Carolina filed the case with the appellate court, which is one step down from the U.S. Supreme Court, after the Federal Energy Regulatory Commission signed off on the pipeline last fall. The state has said that Virginia Beach should not be allowed to build the pipeline without its permission and that the commission did not adequately consider the facts when issuing the permit.

Alan S. Hirsch, North Carolina special deputy attorney general, said Monday he was pleased the panel seemed to be carefully considering his state's arguments against the pipeline.

“The bottom line, as I read this day, is the court is very seriously considering these issues,” Hirsch said. “This court is no rubber stamp. These are highly contentious questions, and it's up in the air how the case is going to come out.”

Virginia Beach counsel M. Scott Hart said he thought the judges were also sympathetic to Virginia Beach's need for decisive action.

“Fairness is on our side, and they know it,” Hart said after the hearing. “The problem with sending it back to FERC is it isn't FERC that gets hurt, it's us - and they're sensitive to that.”

“It shouldn't be sent back to FERC,” Hart had told the court, “because it will cause great delay and a great hardship on our citizens.”

Although the judges aggressively questioned lawyers on both sides of the case, their greatest concerns clearly lay with the federal commission's actions. Over the course of about an hour, the judges repeatedly asked Geldermann why FERC had not decided whether the

federal Clean Water Act required Virginia Beach to get a permit from North Carolina to build the pipeline.

"I have great difficulty understanding how you came up with that," Judge Laurence H. Silberman told Geldermann at one point.

North Carolina has argued that the pipeline cannot be built without its express permission. Virginia Beach attorneys countered that they already have a permit from Virginia and do not need North Carolina's OK.

The judges were also concerned with FERC's decision to allow Hampton Roads' cities to take as much as 60 million gallons of water per day from Lake Gaston - about 20 million more than FERC considered absolutely necessary. The judges asked why FERC had included such a large "margin of error" in calculating how much water the region needed.

"If you had determined that only 40 million gallons were needed, what does that do to the pipeline?" Silberman asked Geldermann.

"It would put the project in a scenario where they would be subject to water rationing," Geldermann replied.

North Carolina long has said Hampton Roads' cities have enough water if they would only share their supplies.

Virginia Beach has said it needs as much as 48 million gallons of water from the pipeline to meet its citizens' needs. Chesapeake would take as much as 10 million gallons per day, and Franklin and Isle of Wight County could use as much as 1 million gallons per day each.

Silberman also asked why FERC didn't count Chesapeake's water storage facility toward available supply during a drought.

"Because it's in Chesapeake," Geldermann answered. "Our assumption is that water resources won't be shared in times of drought."

KEYWORDS: LAKE GASTON PIPELINE

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