



Control Number: 37442



Item Number: 138

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**SOAH DOCKET NO. 473-10-3340
DOCKET NO. 37442**

**APPLICATION OF TRINITY VALLEY
ELECTRIC COOPERATIVE, INC. TO
AMEND ITS CERTIFICATE OF
CONVENIENCE AND NECESSITY FOR
138-KV TRANSMISSION LINE WITHIN
KAUFMAN COUNTY, TEXAS**

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**BEFORE THE
STATE OFFICE OF
ADMINISTRATIVE HEARINGS**

FILED
11-12-9 P113:21
ADMINISTRATIVE HEARINGS

**TRINITY VALLEY ELECTRIC COOPERATIVE, INC.'S
EXCEPTIONS TO THE PROPOSAL FOR DECISION**

TO THE HONORABLE PUBLIC UTILITY COMMISSION OF TEXAS:

COMES NOW Trinity Valley Electric Cooperative, Inc. ("Trinity Valley" or "TVEC") and files these its Exceptions to the Proposal for Decision (PFD) and would respectfully show the following:

INTRODUCTION

The Administrative Law Judge's ("ALJ") Proposal For Decision recommends approval of Trinity Valley's transmission project. This recommendation is consistent with Trinity Valley and Commission Staff's position and testimony in this case. With respect to the specific route to be utilized, however, the ALJ recommends Route No. 10, rejecting Commission Staff and Trinity Valley's recommended route, Route No. 9.

As was made clear in Trinity Valley's Application, as well as in its testimony and the evidence adduced at hearing, Trinity Valley filed a total of ten (10) alternative routes in this case for a project that is only 4.5 miles long, with Route No. 9 being the Preferred Route recommended by Trinity Valley's environmental consultant, PBS&J. Trinity Valley agreed with

PBS&J's recommendation, and Commission Staff's expert analysis and testimony similarly found Route No. 9 to be the best route. All of the ten routes submitted as part of the Application were acceptable from an environmental perspective.

TVEC is encouraged that the ALJ has recommended approval of the project. It is of significant importance to the Cooperative, however, that the proper route also is chosen for this project, not that just any route is approved. Trinity Valley takes seriously the concerns and the comments of the members of the community when routing a transmission project. Trinity Valley serves these members of the community. Many of these concerns were provided to Trinity Valley at the public open house meetings held by Trinity Valley in the project area. The overwhelming concern of those who attended the meetings was that subdivisions should receive the greatest consideration when routing the transmission line. The next greatest consideration was the use of existing right-of-way (ROW). (TVEC Ex. 1, EA, p. 5-1) The least consideration of the majority of the respondents was the crossing of agricultural land. *Id.*

Taking into consideration these comments of the community, as well as the specific recommendations of PBS&J, Trinity Valley filed Route No. 9 as its Preferred Route. Trinity Valley recommended this route, knowing full well at that time, Route No. 9 was not only the longest route, but was also the most expensive of those alternatives submitted by the Cooperative. In Trinity Valley's view, however, Route No. 9 was preferable over all other routes from a land use perspective because it had the least impact on existing residential subdivisions as it is the farthest from such subdivisions, it had the least amount of newly affected habitable structures, and it involved the rebuilding of approximately 3200 feet of an existing transmission line.

The primary opponent in this case of Route No. 9, and primary proponent of Route No. 10, is the Layden Land Trusts. They are the only Party that participated at hearing that opposed the Cooperative's Preferred Route. The Layden's do not live on their property, which is crossed by the Preferred Route, but rather reside in Houston. The Layden property is, according to their testimony, primarily agricultural. (Layden Ex. 2, pp. 4-6). Most incredibly, in the Layden's view, as long as one routes a transmission line across the back of an existing homeowner's property, this moderates the aesthetic impact to the residents of these homes and should therefore be acceptable. (See Layden Land Trusts Initial Brief at pages 13-14). Trinity Valley disagrees.

The ALJ's recommendation of Route No. 10, over Route No. 9, discounts the impact of transmission lines on the homes of existing property owners in existing subdivisions. As is clear from the comments of those individuals who actually live in the project area, transmission lines should be routed away from homes and subdivisions, not placed near them or across from them.

The ALJ's stated justification for the recommendation of Route No. 10 is based upon a view that Route No. 10 does not bisect landowner property, follows more property lines and right-of-way (ROW) for a greater percentage of its length than does Route No. 9, affects fewer habitable structures, has less environmental impact, is shorter, and is the least expensive route. (PFD, p. 2). Trinity Valley respectfully disagrees. As stated in the PFD, however, the ALJ primarily considered only two routes, Preferred Route No. 9 and Route No. 10, for purposes of this proceeding. If the concern of the ALJ is that the property of a single landowner, the Layden Land Trusts, is crossed or bisected by the Preferred Route, there are clearly other routes that dispose of that issue, while at the same time avoiding the three residential subdivisions in the project area. Moreover, these other routes also parallel significantly more public roads and highways than does Route No. 10, and also parallel significantly more property boundaries than

does Route No. 10, criteria that the PFD appears focused upon and discussed in distinguishing Route Nos. 9 and 10.

As concerns Route No. 10 and its crossing of the Layden Land Trusts, there are also modifications that could be made so as to not bisect that agricultural property. As was made clear at hearing, however, the Laydens are not agreeable to any of the line being placed on their property, even though the Layden's own witness testified to a route modification on the Layden property that would significantly minimize the impact to the Layden property. (Tr. 294/5-23). As will be addressed below, the ALJ's analysis of Route No. 10 contains certain errors and assumptions that result in attributes of Route No. 10 being overstated. Trinity Valley respectfully submits that a close review of the record evidence in this case warrants approval of Route No. 9.

Trinity Valley will address below, under the headings used in the PFD, those matters to which Trinity Valley excepts.

III. ADEQUACY AND NEED

B. Need

At page 4 of the PFD, the ALJ states the following:

Layden further argues that TVEC has failed to present evidence of how much of the expected load increase in Kaufman County would actually be served by Oncor Electric Delivery Company, which is dually certified for TVEC's service area.

As support for this statement the ALJ references Layden Land Trusts Ex. 7, a PUC certification map that includes the project area. A review of the map clearly shows that Oncor has only a small area in Trinity Valley's certificated service area where Oncor is dually certificated. The

PFD should be revised to reflect this fact.

IV. ROUTE

Beginning at page 9 of the PFD the ALJ addresses the choice of the route for this project.

The introductory paragraph states as follows:

TVEC recommends Preferred Route 9 because it is farthest from existing residential subdivisions, affects fewer “newly affected” habitable structures and uses existing transmission ROW for 3200 feet of its length. However, the factors weighing against it are cost, length, environmental integrity, historical impact, and prudent avoidance when compared to Route 10. Furthermore, Route 9 bisects more property and follows fewer property boundaries than Route 10. Therefore, Alternative Route 10 is the better choice when the statutory factors are weighed.

Following this paragraph, the ALJ attempts to summarize the parties’ positions, and then analyzes the routes referencing the statutory factors and those criteria set out in Commission rules. Trinity Valley excepts to this summary paragraph as it does not accurately and completely state Trinity Valley’s reasons for recommending Route No. 9, nor does it properly address the record evidence as it concerns those factors which the ALJ states weigh against Route No. 9. Trinity Valley will address in detail below, under separate headings, these exceptions to the ALJ’s findings on routing.

A. Summary of Parties’ Positions

1. TVEC

At page 9 of the PFD, the ALJ states that “Trinity Valley bases its choice of Route 9 as the preferred route upon the route’s distance from existing subdivisions and commercial developments and its use of an existing transmission ROW. “ This is an over-simplification of why Trinity Valley chose Route No. 9. The record evidence clearly demonstrated that there

were many factors that warranted the choice of Route No. 9 as the Preferred Route. From an environmental perspective, Route No. 9 was the PBS&J team consensus choice. Route NO. 9 was ranked number one, followed by Route No. 6, Route No. 5, and Route No. 10. As explained in the EA, pages 8-1 through 8-3, Route No. 9 was also chosen as the Preferred Route because it has the least amount of newly affected habitable structures, 4.

3. Layden Land Trusts

At page 10, the ALJ summarizes the Layden Land Trusts' position. The PFD begins by stating that the Laydens support approval of Route No 10. However, the Laydens specifically stated that there was absolutely no place on their property where any portion of the transmission line was acceptable. (TVEC Ex. 7, Layden Response to RFI 1-7).

In noting that Link L, a link used in the Preferred Route, crosses the Layden property, the PFD states that Link L is one of only two links that bisect landowners' property. To be clear, there are two other Links that cross or bisect other landowner properties, Link H and Link U. Link H affects three other property owners. Link U, on the other hand, a Link of Route No. 10, crosses the property of at least 10 other property owners.

Trinity Valley would point the Commission to the routing map for this project, which demonstrates why Route No. 9 is the better choice for this project. As clearly shown in the map included with the Environmental Assessment filed in this case, specifically Figure 6-5, there are many individual property owners who will have their property crossed by Route No 10. And even as to those who do not have their property bisected or crossed by the line, there are another 50 or so landowners who live in existing subdivisions that own property within 800 feet of Route No. 10. Trinity Valley excepts to this portion of the PFD as it is incomplete and does not

accurately identify the properties which are bisected or crossed by Route No. 10. The PFD should be amended to supplement these important facts.

In attempting to summarize the position of the Layden Land Trusts, the PFD goes on to reference the testimony of a City of Mesquite employee, stating that the City has plans to annex the area and develop it. Specifically the PFD states that the City has developed a comprehensive plan for development that would be affected by Link F of the preferred route.

Trinity Valley excepts to this portion of the PFD as it completely fails to address relevant facts that bear greatly upon the position advocated by the Laydens, through the testimony of the city employee. Trinity Valley respectfully submits that these facts are of such a nature that the Commission should be fully aware to the extent that any routing decision is made based upon the testimony of the city employee.

While it is true that a city employee did file testimony, the PFD fails to point out that the employee could not testify when an area of the project would be annexed by the City (Tr. 210/18-21). More importantly, as to the city's "comprehensive plan", and the employee's testimony in this case, the witness's testimony was even more revealing:

- Mr. Gerston, the city employee, never gave any city official a copy of his testimony and he doesn't even know who drafted his testimony. (Tr. 185/2-18)
- Mr. Gertson could not testify whether the town center development would be developed in the next 5 years, the next 10 years, or even the next 20 years, and he did not know a timetable for development. (Tr. 213/18 – 214/2)
- There is no permanent location for the city's town center development and there is not even a timetable yet for making the decision on that. (Tr. 212/14 – 213/5)
- The existence of the transmission line by itself does not prevent the City from building anything. (Tr. 211/14-15)
- The town center development could be moved to many different areas in the city or in the city's ETJ. (Tr. 213 /6 – 17)

- As of the date of the hearing in this case, as concerns the town center development, Mr. Gertson could not give a date as to when it would ever be developed. (Tr. 214/14 -18)
- With respect to planned bicycle and pedestrian pathways, Mr. Gertson did not know when they would be built or even if they will be built. (Tr. 206/4-11)
- The comprehensive plan is not a regulatory document of the City, but rather a policy document. (Tr. 211/23 – 212/1)
- If link F of the Preferred Route is built, the City can build streets under the transmission line, provided the easement allows that. (Tr. 212/2-5).

With respect to the statement in the PFD at p. 10 that the City of Mesquite is not within the TVEC service area, this is simply not true (Tr. 71/19-22) and Trinity Valley excepts to this statement.

4. Deceatur (Bob) Mitchell and Terrell Farm Supply Company (Mitchell):

At page 10, the PFD summarizes the testimony of Mr. Mitchell. Trinity Valley respectfully submits that Mr. Mitchell's testimony is more deserving of the four lines of the PFD that attempt to summarize such testimony. It is also clear that in attempting to "summarize" Mr. Mitchell's testimony, the PFD attempts to, at the same time, advocate for the approval of the Route No. 10 by stating that the "links on Route 10 that affect his property follow property lines". While that may be true, that is not a part of Mr. Mitchell's testimony, just as it is not a part of the Layden Land Trusts' testimony that Route Nos. 5 and 6 also follow the Layden property lines, "facts" noticeably absent from and not included in the PFD's summary of the Layden position in this case. Similarly, the PFD's "summary" of Mr. Mitchell's position references a cement plant located on one of the properties, but that information is not a part of Mr. Mitchell's position as set out in his pre-filed written testimony.

While Mr. Mitchell was the only party at hearing that was unrepresented by legal counsel, Mitchell did testify very clearly that Route No. 10 would detrimentally affect the property owned by him. Mr. Mitchell also testified that Route No. 10 would impact the Round Pen Cowboy Ministries Church, which executed a contract for the property on March 29, 2010. (Mitchell Ex. 1).

Mr. Mitchell testified in favor of Route No. 9 and his reasons for this were clear:

The power line would go across open fields on the Layden Land Trust Farm and away from homes, businesses, churches and proposed churches and schools. It would not clutter up the road frontages, the front and back yards of homes, churches, and businesses. (Mitchell Ex. 1)

Mr. Mitchell also testified as to the property owned by Saint Martin of Tours Catholic Church, which would be affected by Route No. 10.

Trinity Valley respectfully submits that even though the testimony of Mr. Mitchell is at odds with the route recommended in the PFD, it should nevertheless be considered and more fully discussed and included in the "summary" portion of the PFD.

B. Which Route is the Best Alternative Weighing the Factors in PURA § 37.056(c) and P.U.C. SUBST. R. 25.101(b)(3)(B)

3. Community Values

At page 12 of the PFD a discussion occurs regarding Community Values. Trinity Valley excepts to the PFD's discussion and findings contained therein.

As part of the process for preparing and filing the CCN application, Trinity Valley held two open house public meetings, in accordance with Procedural Rule §22.52. Attendees at the meetings included not only landowners in the area, but land developers and city officials. (TVEC Ex. 1, EA, p. 5-1). The comments of the 53 individuals that attended these meetings were

documented and included as part of the Environmental Assessment that was filed with this Application. These comments, remarks and concerns appear at page 5-1 through 5-3 of the EA. As pointed out in the EA, the majority of the respondents to the questionnaires agreed that subdivisions should receive the greatest consideration when routing a transmission line, with the least consideration being the crossing of agricultural land. Trinity Valley seriously considered these comments of the community in the routing and choice of its preferred route. As set forth in its Reply Brief, at page 20, and as repeated below, many of the comments were crystal clear in to what was valued by those that live in the area.

- “Plain honest, I don’t want power poles/lines in my backyard”.
- “Please do not put poles on FM 1641 behind my house. Put them away from obstructing homes in a sub-div. I have objections and concerns about putting poles behind my house.”
- “Your routes that intersect existing subdivision property lines must be considered as 2nd or 3rd choice when you have other routes that cross undeveloped property”.
- “If a line already exists and a subdivision is built around it, that’s one issue, but if an existing subdivision or subdivisions are already there and transmission lines are proposed to be built near them, that is an altogether different issue and should have greater weight to route it alternatively”.
- “The route chosen should be the farthest from homes. I feel A-K would be best, L-H would be second choice”.
- “Would prefer not to have these lines and poles behind our property. It will diminish the visual beauty of the horizon and reduce property value”.
- “The proximity of the proposed line to currently existing homes (concern us the most). Even though the lines will not cross our property, it will cause it to decline in value if Route U is selected.”
- “The proposed lines should be as far away from current homes as possible and landowners fairly compensated”.
- “Need to be as far from heavy populated area, use more open land”.

- “I understand the need, but some of the proposed locations will affect a large community, Winners Circle. Please don’t use the route that is closest to a large community for the lines”.
- “St. Martin of Louis Catholic Church – (we) do not want to see the power lines going over our front door. We also plan to build on 2932 and utilize the entire 28 acres and oppose the line running over the last half of the property”.
- “I would like to see this line placed as far away from existing houses as possible”.
- “The impact this could have on existing subdivision properties such as aesthetics, appeal to future property buyers, (will) decrease home values”.

While not specifically recognizing or acknowledging the results of these community meetings held by Trinity Valley, the PFD nevertheless attempts to support its choice of Route No. 10 by reference to the Layden Land Trusts’ concept of community values as testified to by the city employee. To Trinity Valley, such an effort is of little use. The comments of all of those in the community who attended the open house meeting are clear and convincing. These are the values of those who live in the project area, those who presently own houses, homes and businesses, which will immediately be impacted by a transmission line. If Route No. 10 is built tomorrow, these impacts and effects are real. On the other hand, it is highly speculative at the very least that any of the “plans” of the city will ever come to fruition, not this year, next year, or even in the next 20 years. The city employee’s testimony on this was very clear.

And while the Layden Land Trusts rely in brief upon the city employee’s testimony for its interpretation of community values, this Layden witness had never even met with the Layden’s to discuss his testimony, doesn’t know what the Layden’s plans are for their property, doesn’t know who lives on the Layden property or how many acres the Laydens own, and incredibly doesn’t even know if the preferred route will detrimentally affect the Layden property (Tr. 186/9 – 187/18). The city employee didn’t even know the names of the Laydens, but this

fact did not stop the witness from testifying “on behalf of the Laydens” as to a “community” where the Laydens do not even live. (Tr. 188/14-15)

Trinity Valley is troubled by the ALJ’s comments regarding the city employee’s participation and testimony in this case as compared to those landowners who actively participated in the open house public meetings. At page 13 of the PFD, the following is stated:

TVEC discounted the concerns of the City of Mesquite because, although the City filed a protest, it chose not to intervene. Furthermore, TVEC notes that Layden, who sponsored the testimony of a City employee, is not affected by the City’s plans and does not have any connection to the City. Therefore, the City, TVEC argues, is simply trying to use the Layden intervention to make an improper and tardy intervention on its own behalf. To the extent that the City’s views represent community values, the ALJ sees no difference between Layden’s use of the City’s protest to support its arguments about community values and TVEC’s use of statements made in questionnaires submitted by landowners (who did not comply with intervention requirements) to support its views about community values.

It is true that Trinity Valley did, and continues to, have concerns about the manner in which the city participated in this case. As a city with competent legal resources, the city made the conscious decision not to intervene in the case, and instead file only a protest statement. Had the city chosen to intervene, the city would have been subject to discovery beginning at that time that the intervention was filed and the city would have been subject to all of the other obligations that run with being a party to the case. By filing only a protest statement and thereby avoiding the legal obligations of all parties to the proceeding, however, the city nevertheless was allowed to later file testimony, “on behalf of the Laydens”, even though the city employee had never met and didn’t even know who the Laydens were. Trinity Valley timely objected to this manner of “participation” but Trinity Valley’s objections were denied. (SOAH Order No. 4, p. 3).

Trinity Valley respectfully submits that these actions of the city are in no manner comparable to the actions of those individual landowners who took the time to attend and

participate in the public meetings held by Trinity Valley. These landowners did not try to have their statements provided as sworn testimony in this case. Nor were these landowners required to intervene in the case. They were under no obligation whatsoever to “comply with intervention requirements”. Such a position as presented in the PFD is inflammatory and inappropriate as to those individuals who participated in the Commission-required open house process. If it is the position of the Commission that the comments or concerns of those attending the open house meetings should not be considered by the Applicant or the Commission for purposes of choosing a route, then this position should be made clear, so that all Applicants and all persons who attend such meetings are aware. If it is the position that all who provide written comments at an open house meeting must also intervene, that should be disclosed as well. Trinity Valley does not believe that either is the position of the Commission and respectfully submits that the PFD’s comments in that regard should be removed.

The PFD references at page 14 that Trinity Valley and the Laydens have “raised issues about proposed development along routes and effect on land values” and “have concerns about proposed developments on the routes they do not support” but summarily dismisses this issue because “neither is willing to give credence to the proposed development on the routes they support.” Trinity Valley excepts to this portion of the PFD.

First, as stated in its Application and throughout its testimony, Trinity Valley believes that all of the routes it has filed are acceptable and satisfy the statutory requirements governing transmission line certification. To that end, Trinity Valley “supports” all of the routes. Specifically, however, Trinity Valley does take issue with the “proposed development” that Layden witness Patman testified to at hearing. As became clear at hearing, Mr. Patman did not write his testimony in this case. (See Trinity Valley Reply Brief at pages 4-5). As to the

“development” of the Layden Land Trust property, it also became clear at hearing why Mr. Patman prepared the development plan for the Lauyden property:

I was doing it because - - for one reason, there’s thought about putting a power line through the middle of their property. And here is a - -that would certainly devalue their property tremendously when you could go other routes. (Tr. 282/10 – 283/1, emphasis added)

On redirect by counsel for the Laydens, in an attempt to rehabilitate this testimony, Mr. Patman gave yet another answer the Laydens did not want to hear.

Q. Okay. Mr. Davis asked you what the reasons were that Ms. Layden - -or the Laydens, actually, had you come in and do work for them as far as the comprehensive site plan. Do you recall that?

A. Yes.

Q. Okay. One of the things that you said was that they - -that he had asked you about was whether or not you were aware if there was a power line proposed to go through that?

A. Correct.

Q. And you said yes?

A. Yes.

Q. Okay. Is that the only reason that you know of that the Laydens wanted this platted?

A. **Well, that was a big reason.** But I had been telling them before that it would help sell the property, even though the market is not there.

(Tr. 304/11 – 305/2, emphasis added)

Trinity Valley respectfully submits that its concerns about the Layden Land Trusts’ “development plan” are justified and the ALJ and the Commission should recognize the actions of the Laydens in that regard. Trinity Valley submits that if the ALJ feels it important to the Commission to take issue with Trinity Valley witness Reid’s testimony on the Commission’s

position on future land use, (Footnote 37 at page 14 of PFD) similar comment and criticism is warranted on the questionable future land use of the Layden property.

5. Historical and Aesthetic Values

b. Aesthetic Values

Trinity Valley excepts to the PFD as it concerns the discussion regarding the criteria of Aesthetic Values. At page 16 of the PFD, the ALJ, in discussing aesthetics associated with the proposed line, states that Trinity Valley and PBS&J proposed routes that parallel existing corridors when possible, citing to page 7-10 of the EA. That is true. As support for the recommendation of Route No. 10, the ALJ then goes on to that state "Route 10 follows more property lines, and, as discussed below, parallels more existing compatible ROW for a greater percentage of its total length than Route 9." With all due respect, property lines are not "existing corridors" and there is no record evidence to support same, nor is there Commission precedent or rule in that regard. Reliance on the paralleling of property lines, on the issue of aesthetics, to justify the choice of Route No. 10, is in error.

Ignoring the comments of landowners in the community, which includes three existing residential subdivisions along Route No. 10, the PFD appears to buy into the Layden arguments that because Route No. 10 may be in a landowner's backyard, it is much more aesthetically appealing than having a line crossing in the front of a house. The PFD jumps to the conclusion that "there will be aesthetic impacts from any route", somehow equating the aesthetic impact equally for all routes, and does not even discuss the three existing subdivisions that will literally have Route No. 10 crossing along all of the landowner's respective property lines. No mention is made that as concerns Route No. 9, the line is significantly away from the subdivision and this

distance will reduce the aesthetic impact. Any reasonable person can recognize, simply looking at the map on AE Figure 6-5, that Route No. 10 has significantly more aesthetic impacts than does Route No. 9, it is not even a close call.

6. Environmental Integrity and Texas Parks and Wildlife Department Recommendations

Beginning at page 16 of the PFD, the ALJ discusses the issue of Environmental Integrity. Incredibly, the conclusion is reached that because the study area falls within the whooping crane migration corridor, and the crane may use pastureland, wetlands and riparian forested area for habitat and feeding grounds, that therefore Route No. 10 is superior to Route No. 9. While it is true that Texas Parks and Wildlife Department identified in its letter the possibility of cranes appearing in the project area, the recommendation of TPWD was to place line markers on the line where the line crossed creek drainages and open water or cultivated crops to prevent possible bird collisions.

As shown in the EA, Attachment A-63, PBS&J contacted the U.S. Fish and Wildlife Service, the agency that oversees the regulatory aspects of federally protected species about this project. U.S. Fish and Wildlife provided no such concerns or recommendations regarding the whooping crane, and certainly none favoring one route over the other. The possibility of the whooping crane appearing in the project area does not affect the environmental integrity of Route No. 9.

11. Using Existing Compatible ROW

Trinity Valley excepts to the PFD at page 20 where it states that “the main reason cited

by TVEC for its choice as the preferred route, is that it will involve rebuilding an existing transmission line for approximately 3,200 feet of its length.” This is simply not correct, and the citation in the PFD for this statement, page 8-2 of the EA, provides no such support. What the EA does state on page 8-2 is that “Primary Alternative Route 9 has the least amount of newly affected habitable structures (4), is located the farthest from existing residential developments, and approximately 3,200 ft of its length will involve the rebuilding of an existing transmission line.” Trinity Valley excepts to the above-referenced statement.

The PFD then goes on to make calculations related to the increase in the length of the line using the existing ROW as a result of using Route No. 9 and the overall effect on the total amount of ROW that is paralleled. Were the paralleling or use of existing ROW the only criteria to be considered in a CCN, this calculation may be of value. However, as explained at length in the EA, this is but one of the criteria and considerations that must be evaluated.

12. Paralleling Existing Compatible ROW; and

13. Paralleling Property Lines or Other Natural or Cultural Features

Trinity Valley excepts to the PFD as concerns the discussion that appears at pages 21-22 regarding the paralleling of existing compatible ROW and paralleling of property lines or other natural or cultural features.

This section of the PFD presents a clear choice to the Commission. Approve a route that bisects two property owners, (with room for many route modifications to reduce the impact) on property that is significantly away from existing homes and residences, or cross the property of at least 9 landowners who own smaller, narrow lots and bring the line into very close proximity of three existing subdivisions. Trinity Valley submits that the calculations regarding the

percentages of the lines that parallel the landowners property are likely of little significance to the people who live on these narrow lots.

If the ALJ and the Commission are, however, interested in approving the route or routes that maximize the use of public roads or highways, or property boundaries and existing corridors, Trinity Valley respectfully submits that Route Nos. 5 and 6 should be chosen over Route No. 10. The chart below shows the specific criteria regarding these factors, as well as the number of habitable structures, when compared to one another.

<u>CRITERIA:</u>	<u>Route 5</u>	<u>Route 6</u>	<u>Route 10</u>
Length of Route parallel to existing public roads/highways	9281	8787	2073
Length of Route parallel to apparent property boundaries	17728	17658	13179
Total Length parallel to existing corridors	17793	17731	13252
Habitable Structures with 300 ft of route centerline	12	12	11

As shown in the table above, the only category of the four in which Route No. 10 is superior to Route Nos. 5 and 6 is with respect to habitable structures, where Route No. 10 has one less. Trinity Valley continues to believe that Route No. 9 is the best route for this project, but if the use of existing roads and highways, or property boundaries or existing corridors are of paramount concern, Routes 5 and 6 are both superior to Route No. 10.

14. Prudent Avoidance

Trinity Valley excepts to the PFD as it concerns the issue of prudent avoidance. As referenced earlier, Route No. 9 will involve the rebuilding of an existing transmission line, that presently affects eleven (11) habitable structures. If Route No. 9 is chosen, those same eleven

habitable structures will continue to be affected by a transmission line, and there will be four (4) new habitable structures that will be affected.

The choice of Route No. 10 will result in eleven (11) new habitable structures being affected. Not only will these eleven new structures be affected, the eleven structures already affected by the existing transmission line will continue to be affected, resulting in a total of 22 structures within 300 feet of a transmission line in the project area.

All of the above is uncontested. The PFD, however, claims that Trinity Valley failed to prove that Route No. 9 is the better choice under the policy of prudent avoidance because there was no evidence that the habitable structures on that portion of the rebuilt line would not be affected by additional exposure to electric and magnetic fields if an additional circuit is later added. With all due respect, there is no such requirement that a utility perform any such calculation to meet its burden of proof on this issue. Twenty-two (22) habitable structures will fall within 300 feet of a transmission line in the project area if Route 10 is chosen; fifteen (15) habitable structures will fall within 300 feet of a transmission line in the project area if Route No. 9 is chosen. It is that simple.

VI. FINDINGS OF FACT

9. The PFD incorrectly states that TVEC provided notice to “Fayette Electric Cooperative, Inc.” Instead, notice was provided to Farmers Electric Cooperative, Inc.

65. TVEC would take exception to the statement that “Route 10 would have the least impact on aesthetic values because it is shorter, follows more property lines for a greater percentage of its length, ...”. The greater distance a route follows existing property lines does not necessarily

mean it has the least amount of impact on “aesthetic values”. Route 10 may follow existing property lines but it will have a significant aesthetic impact on more people who live in the subdivisions that are in close proximity to the route.

79. TVEC would take exception that compatible ROW includes “property lines”.

VIII. ORDERING PARAGRAPHS

1. Route 9 should be designated as the Transmission Line Route.

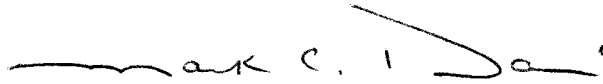
9. The last sentence should be corrected to reflect, “United States Fish and Wildlife Service” instead of “United States *Forest* and Wildlife Service” emphasis added.

12. This paragraph should be clarified to apply only to the, “Federally-listed Threatened or Endangered Species”

CONCLUSION

Route No. 9 presents the best option of all the filed routes when considering all of the statutory factors. Route No. 9 crosses more undeveloped land and is generally further from existing commercial and residential development and will impact fewer habitable structures. Trinity Valley respectfully submits that these factors should receive greater consideration in the choice of the best route. Route No. 9 is the better option.

Respectfully Submitted,

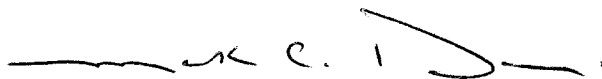


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ATTORNEYS FOR TRINITY VALLEY
ELECTRIC COOPERATIVE, INC.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing document was hand delivered and/or mailed this 9th day of March, 2011 by First Class, U.S. Mail, postage pre-paid to all parties of record.



Mark C. Davis