

Advocates for the Oak Ridge Reservation

December 29, 2012

Larry Kelly
Manager, Oak Ridge Office
U.S. Department of Energy
200 Administration Road
P.O. Box 2001
Oak Ridge, Tennessee 37831

Dear Mr. Kelly:

Advocates for the Oak Reservation (AFORR) aims to support the Department of Energy (DOE) in ensuring stewardship of the public lands of the Oak Ridge Reservation. We look forward to getting to meet you and broad discussions with you at our public meeting on January 10, which will be co-hosted by the Oak Ridge Heritage and Preservation Association (ORHPA). However a concern has come to our attention that we must communicate to you now.

AFORR has learned that the DOE Oak Ridge Office gave its approval for the City of Oak Ridge Electric Department and Industrial Development Board to construct a 69-kV overhead power line on DOE property along the northern perimeter of the Horizon Center (DOE Parcel ED-1) from the substation west of East Fork Poplar Creek to Horizon Center Development Area 6, a total length of approximately 1.5 miles. We were previously aware – and had expressed our serious concern about the long-term aesthetic and natural impacts of – the portion of this proposed line that DOE analyzed in a Floodplain Assessment and Floodplain Statement of Findings (refer to my letter of December 12, 2012), but the current proposal is for a longer route with much larger adverse impacts. We are especially concerned that DOE has not given serious consideration to alternatives that could achieve the project objectives, particularly the alternative of underground construction in the roadbed of the unpaved patrol road that the line would follow.

AFORR recognizes the need for additional electrical service in the Horizon Center, but our organization is deeply concerned about the environmental impacts of this project and the indication that DOE is not honoring past legal commitments and is not fulfilling its legal obligations under the National Environmental Policy Act (NEPA). We believe that this proposed power line project is contrary to the mitigation commitments that DOE made to conclude (in findings of no significant impact; FONSI) that the lease and subsequent transfer and development of Parcel ED-1 would have no significant impact on the human environment and thus would not require an environmental impact statement (EIS). The action also would be deleterious to the Black Oak Ridge Conservation Easement (BORCE) area, which DOE placed under conservation easement and state of Tennessee management as a protected natural area, to compensate for Natural Resources Damage Assessment for contamination in the Clinch River and Watts Bar Reservoir.

As we understand it, the proposed power line would be built adjacent to a patrol road that is designated and used as a public greenway and that forms the border between the Horizon Center “natural area” and the BORCE area. (The “natural area” is excluded from development due to the mitigation commitments in the FONSI.) A strip of forested and riparian land between 50 and 75 feet wide (TVA recommends 75’) would be cleared of vegetation for the new transmission right-of-way and would be permanently kept clear. The most significant impacts of this

vegetation removal would be as follows:

1. Reduction of the natural area acreage by 12 to 18 acres.
2. Elimination of the shade and aesthetic qualities that give the patrol road its recreational value as a greenway.
3. A forest-canopy opening that would destroy the continuity of wildlife habitat between BORCE and the Horizon Center natural area (including the adjacent Horizon Center Development Area 4, which is now protected conservation land).

Additionally, along those parts of the route where plans have called for a 100-foot strip of natural vegetation between the patrol road/greenway and industrial sites within the Horizon Center, clearing would reduce that buffer strip to only 25 to 50 feet. Along the entire route, the cleared strip is likely to become a pathway for introduction and establishment of undesirable plants and animals (for example, invasive exotic pest plants and wild animals, such as cowbirds and skunks that prey on bird nests). This list of impacts is not necessarily complete, for there likely would be other effects on the ecological integrity and the endangered/threatened species that are supposed to be protected in the ED-1 natural area.

We find no justification for DOE's conclusion that the potential impacts of this power line were assessed in existing NEPA documentation for Parcel ED-1, including the Environmental Assessment (EA) for the original lease of the property issued in 1996, the 2003 EA Addendum for transfer of the property to the Community Reuse Organization of East Tennessee (CROET), and the Mitigation Action Plans upon which the FONSI's for the lease and transfer depend. Specifically:

1. The proposed power line violates the commitments DOE made in the FONSI's for the lease and transfer of Parcel ED-1. The power line would significantly encroach upon, and result in permanent loss of habitat within, the "natural area" that is protected from development as part of the mitigation required in order to reach a finding of no significant impact. While it may be true that (as stated in DOE's NEPA determination regarding this power line) the EA and EA addendum "addressed anticipated projects of comparable scope and complexity at Parcel ED-1," the mitigation commitment in the FONSI's precluded such development within the "natural area" upon which the power line would encroach.
2. In the 16-plus years since preparation of the 1996 EA, there have been significant changes in the environmental setting that likely would change the findings of environmental analysis and therefore should trigger a re-examination of earlier reviews under NEPA, per section 40 CFR 1502.9(c) in the NEPA regulations. Changes that we are aware of include: (1) the designation of a public greenway on the DOE patrol road that the proposed power line would follow, (2) DOE's establishment of a conservation easement (the Black Oak Ridge Conservation Easement; subsequently referred to as the BORCE) on the land immediately to the north of the patrol road/greenway, and (3) the conservation dedication of the land formerly treated as Horizon Center Development Area 4. These changes in the environmental setting are exactly the kinds of "significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts" that are identified in 40 CFR 1502.9(c) as requiring an agency to revisit an earlier NEPA document.

It is true that the FONSI's and mitigation action plan indicated that development of utilities might result in some encroachment in the natural area, but it strains credulity to suggest that encroachment of this magnitude was contemplated. For example, the original (April 1996) Mitigation Action Plan stated (in part): "Some linear developments, such as construction of site access roads and installation of utilities that cross streams, may require unavoidable encroachment in floodplains, streams, and stream buffers." That language indicates that utility infrastructure might need to cross parts of the natural area. It does not suggest that the entire lengths of a new utility

line would occupy the natural area.

Because construction of this power line would significantly violate the commitments made in the FONSI for lease and transfer of Parcel ED-1, it must be considered to have the potential for significant environmental impacts subject to NEPA. Accordingly, we urge you to reverse the decision to allow this project to proceed in spite of the lack of appropriate NEPA review. AFORR does not want to be placed in a situation where it seems necessary to initiate legal action to enforce NEPA.

There is a feasible alternative that would avoid essentially all impacts of concern. Construction of a 69-kV sub-transmission line underground, below the bed of the patrol road, would accomplish the objectives of the proposed action and would avoid the long-term impacts of an aboveground line. (The recreational values of the greenway would be retained, habitat losses would be avoided, and access to the greenway would only need to be restricted during construction of the line.) Although it costs more to install an underground line than it does an aboveground line, at this site those costs would be balanced by avoiding the near-term cost of clearing of the mature trees along the proposed power line corridor and the long-term costs of maintaining an aboveground right-of-way. We urge you to require this alternative approach, which would eliminate the need for new NEPA review.

Thank you for your attention to this important matter. We would like to discuss this matter with you and your staff at your earliest convenience. Please contact me at 865-405-2025 or Vdale212@comcast.net.

Sincerely,

Virginia H. Dale

Virginia H. Dale, Ph. D.
President, Advocates for the Oak Ridge Reservation

cc: Anne Davis, Southern Environmental Law Center
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