

definitions are used by other exchanges and should help to ensure that Nasdaq's holder requirements will continue to provide an adequate level of liquidity to develop and maintain fair and orderly markets. Accordingly, the Commission finds that the proposed changes are consistent with the requirements of the Act.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,²⁴ that the proposed rule change (SR-NASDAQ-2008-037) is hereby approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁵

Florence E. Harmon,

Acting Secretary.

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TENNESSEE VALLEY AUTHORITY

Final Environmental Impact Statement—Rutherford-Williamson-Davidson Power Supply Improvement Project

AGENCY: Tennessee Valley Authority (TVA).

ACTION: Issuance of Record of Decision.

SUMMARY: This notice is provided in accordance with the Council on Environmental Quality's regulations (40 CFR parts 1500 to 1508) and TVA's procedures implementing the National Environmental Policy Act. TVA has decided to implement the preferred alternative identified in its Final Environmental Impact Statement (EIS), Rutherford-Williamson-Davidson Power Supply Improvement Project.

In implementing Alternative 2, TVA has decided to construct and operate the new 500-kV Rutherford Substation, the 27-mile 500-kV transmission line between TVAs 500-kV Maury Substation and the new Rutherford Substation, the new 9-mile 161-kV transmission line between the new Rutherford Substation and Middle Tennessee Electric Membership Corporations (MTEMC) Almaville Substation, and the new 15-mile 161-kV transmission line between the new Rutherford Substation and MTEMCs Christiana Substation.

FOR FURTHER INFORMATION CONTACT:

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Tennessee 37402; telephone (423) 751-8697 or e-mail aemasters@tva.gov.

SUPPLEMENTARY INFORMATION: TVA owns and operates a system of transmission lines that move electricity throughout the TVA service area, which comprises most of Tennessee and portions of six adjacent states, and to adjacent utilities. The electrical load growth in Rutherford, Williamson, and Maury Counties, Tennessee, will exceed the capacity of the three 500-kV substations and several of the 161-kV transmission lines serving the area by 2010. Unless action is taken to address this problem, TVAs ability to continue to provide reliable electric service will be degraded and disrupted more frequently and for longer periods. Therefore, TVA needs to increase transmission capacity in this area.

TVA published a Notice of Intent to prepare this EIS in the **Federal Register** on July 1, 2005. A public scoping meeting was held in July 2005 and attended by about 25 people. Written scoping comments were received from two federal agencies, five state agencies, and several individuals. The Notice of Availability of the Draft EIS was published in the **Federal Register** on October 5, 2007. TVA held a public meeting on the Draft EIS in October 2007 and accepted comments through mid-November. During the development of the EIS, TVA also accepted comments received during an open house held in April 2006 to review potential substation sites and transmission line routes. Comments on the Draft EIS were received from about 22 members of the public and agencies. Appendix B of the Final EIS contains comments TVA received on the Draft EIS and responses to those comments. The Notice of Availability for the Final EIS was published in the **Federal Register** on April 18, 2008.

Alternatives Considered

TVA uses a detailed, comprehensive siting process when it plans its transmission line projects. This is an iterative process that takes into account important environmental and cultural resource features that become constraints on locating proposed lines. Concerns of potentially affected landowners are also actively addressed during this process to reduce or avoid landowner impacts. Broad study corridors are initially defined and potential line routes are subsequently located within the study corridors. Because transmission line right-of-ways (ROWs) are much narrower than the study corridors, important features that are associated with specific corridors

can often be avoided when final line routes are selected. Potential environmental impacts are considered and addressed throughout this siting process with the objective of formulating alternative line routes, including a preferred route, that meet the purpose and need for the proposed action while avoiding or reducing potential impacts. The identified preferred route is then subjected to additional study and analyses. TVA uses a similar process in identifying substation sites.

TVA initially identified four solutions (possible alternatives) to meet the project need. *These consisted of:* (1) Construct and operate a new 500-kV substation in southwest Rutherford County, and construct and operate 25–30 miles of 500-kV transmission line on vacant, TVA-owned ROW, and about 24 miles of new 161-kV transmission lines in Rutherford, Maury, and Williamson Counties; (2) construct and operate a new 500-kV substation in northeast Williamson County near Brentwood and upgrade about 126 miles of existing 161-kV transmission lines in Davidson, Rutherford, Williamson, Sumner, Coffee, Franklin, and Bedford Counties; (3) expand TVAs Pinhook 500-kV Substation in southeast Davidson County and upgrade about 134 miles of existing 161-kV transmission lines in Davidson, Rutherford, Williamson, Sumner, Wilson, Franklin, and Bedford Counties; and (4) rely on load management and conservation by achieving a reduction in current peak loads by at least 800 megawatts.

Further evaluation of these four potential solutions concluded that only the first would be able to meet the project need. The other two construction solutions had higher overall costs, engineering problems, and problems meeting the 2010 in-service date because of the limited times when the existing transmission lines could be taken out of service for upgrading. Although TVA has recently committed to achieving a system-wide reduction in peak demand growth of 1,400 MW by 2012, the amount of load reduction achievable in the project area by 2010 is not sufficient for the load management/conservation solution to meet the purpose and need.

TVA subsequently addressed two alternatives in further detail in the EIS.

Under Alternative 1, the No Action Alternative, TVA would not address the forecast high-voltage transmission capacity problem by implementing any of the potential solutions identified above. This would make existing electrical supplies unstable and increase likelihood of both planned and

²⁴ 15 U.S.C. 78s(b)(2).

²⁵ 17 CFR 200.30-3(a)(12).

unplanned power outages (brownouts/blackouts) in the Middle Tennessee area as the demand continued to grow.

Under Alternative 2, TVA would construct and operate a new 500-kV substation in southwest Rutherford County and associated 500-kV and 161-kV transmission lines. The preferred locations for these facilities were determined through a rigorous siting process, which included evaluations of natural and cultural features, land use, engineering attributes, and cost. The substation would be located on Coleman Hill Road, about 4 miles east of U.S. Alternate Highway 31/41. A 27-mile 500-kV transmission line would be built on vacant, TVA-owned ROW between TVAs existing Maury 500-kV Substation and the proposed new substation. A 9-mile 161-kV transmission line would connect the new substation to MTEMCs existing Almadale 161-kV Substation; 6 miles of this line would be on vacant TVA-owned ROW, and the remainder would be on new ROW. A 15-mile 161-kV transmission line on new ROW would connect the new substation to MTEMCs existing Christiana 161-kV Substation.

The proposed substation would occupy a 53-acre site and about 40 acres of it would be cleared and graded. Major substation components include 500–161-kV transformers, circuit breakers, connecting bus work, supporting steel superstructure, ground wire towers, microwave communication tower, spill retention basins and retention pond or tank, switch house, and equipment storage building, enclosed by a security fence. The proposed 500-kV transmission line would use self-supporting galvanized, laced steel structures about 85 to 125 feet tall. The average distance between structures would be about 1000 feet. The electrical conductors would consist of three sets of three cables suspended beneath the structure cross-arms by insulators. The proposed 161-kV transmission lines would use either single or double steel-pole structures 80 to 110 feet tall and three single-cable conductors suspended beneath cross-arms by insulators.

Most of the ROW for the 500-kV transmission line would be 175 feet wide; about two miles of the ROW near the proposed substation would be 425 feet wide to accommodate parallel lower voltage lines. For ROW it does not already own, TVA would purchase easements from landowners. Because of the need to maintain adequate clearance between tall vegetation and the transmission line conductors, as well as to provide access for construction equipment, most trees and shrubs would initially be removed from the

entire width of the ROW. Trees outside of the ROW which are tall enough to pass within 10 feet of a conductor if they fell towards the line would also be removed. Following line construction, the ROW would be revegetated with low-growing plants. The ROW can be used by the landowner for many purposes that do not interfere with the maintenance and operation of the line. TVA would periodically inspect and conduct maintenance activities on the completed line. The major maintenance activity is vegetation management, conducted to maintain adequate clearance around the conductors. This would consist of both felling tall trees adjacent to the ROW and control of vegetation within the ROW. Management of vegetation within the ROW would use an integrated vegetation management approach based primarily on mechanical mowing and herbicide application.

Comments on the Final EIS

TVA received comments on the Final EIS from two State and two Federal Government agencies. The Environmental Protection Agency (EPA) requested a comparison of the number of stream crossings potentially affected by the various alternative solutions. Although TVA did not conduct detailed field surveys of the Pinhook and Brentwood alternative solutions and thus cannot compare the number of potentially affected stream crossings with the same accuracy available for the Rutherford solution, the Pinhook and Brentwood solutions would potentially affect more stream crossings because they both involve over twice the length of transmission lines. The potential impacts to individual stream crossings under the Pinhook and Brentwood solutions, however, would likely be less because the transmission lines and most of the potential access roads already exist and there would be little to no clearing of new ROWs.

EPA commented on the discussion of potential impacts to wetlands in the Final EIS and noted that conversion of forested wetlands is impactful given the loss of forest habitat and fragmentation of contiguous habitat. TVA agrees with this and notes that the 2.3 acres of forested wetlands that would be converted to scrub-shrub wetlands under the selected alternative occur in several disjunct tracts associated with previously fragmented forests.

EPA requested additional information on the anticipated relocation and proximity of homes, schools, and churches to the proposed transmission lines, as well as the potential environmental justice impacts. Two

mobile homes and one occupied house occur entirely within the TVA-owned ROW to be used for the 500-kV line, and a vacant brick house is partially within this ROW. All of these buildings would be relocated. Two fairly new brick houses slightly extend onto this ROW; TVA has determined that they would not have to be removed and will likely issue their owners a permit for the occupancy of the ROW and add an associated covenant to their deeds. One vacant house in a state of disrepair is on one of the 161-kV FOWs and would be removed. No occupied buildings are on or in the immediate vicinity of the substation site. Six churches occur near the route of the 500-kV line; their closest and average distances from the ROW are 500 and 2,500 feet, respectively. The closest school to any of the facilities is an elementary school 3,000 feet from a 161-kV line. The closest churches are 400 and 1,200 feet from a 161-kV line. Relative to the three project area counties, the proportions of the overall population of the 12 adjacent surrounding counties classified as minority or below the poverty level vary greatly and are, on average, higher.

EPA requested spot monitoring of electromagnetic fields (EMF) in the vicinity of nearby residences. TVA does not intend to conduct EMF monitoring; TVA will, however, measure EMF field strength if requested to do so by adjacent property owners. Based on the design of the 500-kV transmission line and EMF measurements at other similar lines, TVA expects the EMF field strength under the maximum design electrical load at the edge of the 500-kV ROW to be significantly less than the Florida standards of 150 milligauss for lines 230-kV or less and 200 milligauss for lines 500-kV lines or more cited in the Final EIS.

The Department of the Interior (DOI), Office of Environmental Policy and Compliance resubmitted the comments it had sent on the Draft EIS and which TVA had inadvertently failed to address in the Final EIS. DOI requested supporting references for many statements of fact and field survey descriptions. DOI also requested more specific information on the implementation of best management practices (BMPs). Some of this detailed implementation information is listed in Appendices H and J of the Final EIS, which describe the streamside management zone to be established along each watercourse. Additional BMP implementation details are listed in the stormwater pollution prevention plans for the various project components. TVA's BMP manual, cited as Muncy (1999) in the Final EIS, is

available on the TVA Web site, www.tva.com.

Decision

TVA has decided to implement the preferred alternative identified in the Final EIS, Alternative 2. Of the two alternatives evaluated in the Final EIS, Alternative 1—No Action and Alternative 2, only Alternative 2 would meet the purpose and need. TVA used an iterative process to define Alternative 2; this process first considered other potential solutions and then considered various potential alternative substation locations and transmission line routes for the preferred alternative. The substation location and transmission line routes were identified as part of Alternative 2 after being evaluated for engineering and construction, ecological, cultural, line length, and land use criteria. The substation site and transmission line routes were then further modified to minimize effects on individual landowners as well as effects on natural and cultural resources. This effort continued TVA's consideration of potential environmental impacts that occurred during the consideration of other possible solutions (alternatives) to the purpose and need here.

The Tennessee State Historic Preservation Officer has concurred with TVA's determination that Alternative 2, with the implementation of mitigation measures described in a Memorandum of Agreement and other measures listed in the Final EIS, would not adversely affect any archaeological or historic sites eligible for or listed in the National Register of Historic Places. The U.S. Fish and Wildlife Service has concurred with TVA's determination that Alternative 2, with the implementation of mitigation measures listed in the Final EIS, would not adversely affect species listed under the Endangered Species Act or adversely modify designated critical habitat.

Environmentally Preferred Alternative

Alternative 1 No Action is the environmentally preferred alternative because the impacts associated with constructing and operating the substation and associated transmission lines would not occur. This alternative, however, would result in the risk of the loss of electrical service to a large area of Middle Tennessee with a total load of over 4000 megawatts and is considered unreasonable. The loss of this electrical service would result in social and economic impacts.

Alternative 2 has been designed to minimize environmental impacts as much as is feasible. While some or all of the other three potential solutions

analyzed early in the development of this project could have resulted in less environmental impacts than Alternative 2, none of these solutions would have met the purpose and need and thus they were not considered reasonable alternatives.

Environmental Commitments

For the reasons discussed in the Final EIS and summarized here, TVA is committing to the following measures to avoid, reduce, or mitigate the potential environmental impacts associated with these actions:

- No herbicides with groundwater protection warnings will be used in the sections of the Maury Transmission Line between Double Branch and Double Branch Road, Greens Mill Road and Cornstock Road, and Cross Keys Flat to Boon Creek. No fertilizers will be used in the groundwater source protection zone from Windrow Road to the end of the Maury Transmission Line study area, and neither herbicides nor fertilizers will be used in the section of the Maury Transmission Line from Windrow Road to Arno-Allisona Road.

- No herbicides with groundwater protection warnings and no fertilizers will be used in the sections of the Almadale Transmission Line from where the ROW intersects the existing Murfreesboro-East Franklin Transmission Line north to where the Almadale Transmission Line turns to the west.

- No herbicides with groundwater protection warnings and no fertilizers will be used in the section of the Christiana Transmission Line within 500 feet of the entrance to Nanna Cave.

- Should groundwater conduits be discovered within the TVA transmission line ROW at a later date that affect the stream at Snail Shell Cave or Nanna Cave, TVA will modify its construction and maintenance procedures to eliminate herbicide use in the conduit areas.

- Globally rare glade habitat areas will be marked on the transmission line and access road engineering design specification drawings that will be used during the design, construction, and maintenance activities along the transmission line.

- During the construction and maintenance of the transmission lines, TVA will avoid the areas associated with the globally rare glade habitats. Unless there is no practical alternative, structure placement and access roads will be designed strategically to avoid these areas. The glade areas will be fenced during construction to ensure further avoidance.

- Vegetation management in globally rare glade habitats will be accomplished through mechanical clearing and no herbicides will be used in these areas.

- No herbicide spraying or mechanical clearing will occur within a 500-foot radius of the entrance to Nanna Cave during the construction and maintenance of the transmission lines to avoid impacts caused by pollution from chemicals and sedimentation from disturbed soil. This area will be hand cleared only (chainsaws may be used, but not heavy equipment). All vehicles and heavy equipment will be restricted from the area unless confined to existing access roads. If the placement of a pole in this buffer or in the area of this route crossing a subterranean section of the Snail Shell Cave System was unavoidable, no blasting will be used during its installation.

- To minimize potential impacts to aquatic habitats and aquatic life, including federally or state-listed species, BMPs as outlined in Muncy (1999) will be applied to all construction and maintenance activities. Additionally, all intermittent and perennial streams were assigned a Category A protection level (Final EIS Appendix J) and will be provided additional protective measures as defined in Final EIS Appendix H and Muncy (1999).

- Areas with state-listed plant species will be included in the transmission line and access road engineering design specification drawings used during the design, construction, and maintenance of the transmission line. During construction and maintenance, TVA will avoid the areas occupied by the state-listed plants. Unless there is no practical alternative, structures will be placed to avoid impacting these areas. Additionally, unless there is no practical alternative, access roads and the associated vehicle traffic will be excluded from these areas. These areas will be fenced during construction. Vegetation management in these areas will be accomplished through mechanical clearing, and no herbicides will be applied in them.

- The location of the toothache tree population along the Maury Transmission Line ROW will be included on the engineering design specification drawings for use during the design, construction, and maintenance of the transmission line. TVA will clear the ROW between November and March when the plant is dormant; shear-clearing (bulldozing) methods will not be used. Vegetation management in the area will be accomplished by mechanical clearing

(e.g., mowing). Herbicides will not be used in this area.

- The location of the Alabama snow-wreath population will be included on the engineering design specification drawings for use during the design, construction, and maintenance of the transmission line. All construction occurring within 200 feet of the Alabama snow-wreath population will be strictly confined to areas within the Christiana Transmission Line ROW. In addition, fencing will be erected along the edge of the ROW during construction to ensure impacts to Alabama snow-wreath are avoided. Vegetation management within 200 feet of the snow-wreath population will be accomplished by mechanical clearing, and herbicides will not be used in this area.

- The location of Pynes ground-plum will be marked on the engineering design specification drawings for use during the design, construction, and maintenance of the transmission line. Vehicles, construction equipment, and unnecessary personnel will strictly be prohibited from disturbing the population. This will be accomplished by explicitly instructing construction crews to remain on the Christiana Transmission Line ROW in the immediate vicinity of the population and to avoid any activity in this area (felling trees, grading, inadvertently accessing the site with vehicles, etc.) that will alter the habitat. In addition, fencing will be erected along the edge of the ROW during construction to ensure impacts to Pynes ground-plum are avoided. Vegetation management within 500 feet of the ground-plum population will be accomplished by mechanical clearing; herbicides will not be used in this area.

- Prior to the transmission line construction clearing, TVA will contract with the state of Tennessee to treat all tree-of-heaven within the proposed Almaden Transmission Line ROW to reduce the risk of spreading within the designated critical habitat. This will be accomplished by using a basal bark application of Garlon 4 herbicide before trees are cleared from the proposed ROW. The tank mixture will consist of a 20 percent Garlon 4/80 percent carrier solution of specially formulated vegetable oil. Using a backpack sprayer, herbicide will be applied to the trunk of each tree-of-heaven stem from ground level to 18 inches high. All areas of the trunk in this band will be thoroughly wetted with herbicide.

- Timber harvesting for ROW clearing in six areas of moderately suitable habitat for the Indiana bat will take

place between October 15 and March 31.

- To minimize potential impacts to the gray bat, a 500-foot-radius buffer at the entrance to Nanna Cave and standard BMPs at all stream crossings (Muncy 1999) will be implemented during the construction and maintenance of the transmission lines.

- Access roads that contain habitat for federally and state-listed species will be resurveyed during the growing season prior to use for any ROW construction or clearing. Should an occurrence(s) be found within the area encompassing any of the access roads as proposed, the occurrence(s) will be avoided by either rerouting the access road or not using that particular access road. Any new roads that will be considered as alternatives will also be surveyed before their use.

- In order to avoid adverse effects to archaeological site 40WM35, TVA will not place transmission line structures within the site or cause other ground disturbance of the site. If impacts to the site cannot be avoided in this manner, TVA will conduct further Phase II archaeological testing to identify locations for structure placement that will not adversely affect the site.

- Archaeological sites 40RD280 and 40RD281 will be avoided by the rerouting of a section of the Christiana Transmission Line.

- TVA will implement the treatment measures necessary to mitigate adverse effects on two historic sites, the William Allison house and the Smithson-McCall farm. As described in a Memorandum of Agreement developed between TVA, the Tennessee State Historical Preservation Officer, and other interested parties (Appendix B-1), these measures include minimizing the number and height of the structures within the line-of-site and the use, where possible, of vegetative screening measures at the landowners request.

Dated: June 5, 2008.

Jacinda B. Woodward,

Interim Vice President, Electric System Projects.

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DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB-33 (Sub-No. 264X)]

Union Pacific Railroad Company— Abandonment Exemption—in Saline County, MO

Union Pacific Railroad Company (UP) has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon the Marshall Industrial Lead, a 6.2-mile line of railroad, extending from milepost 0.0 to milepost 2.2, in Saline County, MO.¹ The line traverses United States Postal Service Zip Code 65340.

UP has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic on the line; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Board or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental report), 49 CFR 1105.8 (historic report), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on July 24, 2008, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,²

¹ This description is derived from the 1918 Missouri Pacific Railroad Company valuation map showing the line as being from survey station 0+00 at the connection with the River Subdivision, hereinafter equaling milepost 0.0, to survey station 116+59 at the connection with Kansas City Southern (KCS), hereinafter equaling milepost 2.2, in and around Marshall.

² The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis (SEA) in its independent investigation) cannot be made before the exemption's effective date. See *Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible