



David F. Barton
Wm. Richard Davis (Retired)
Jay K. Farwell
Dawn B. Finlayson
Gregory M. Huber
R. Wes Johnson†
Mary Q. Kelly
William W. Sommers
J.P. Vogel
Thomas J. Walthall, Jr.
†Board Certified-Consumer & Commercial Law
Texas Board of Legal Specialization

April 20, 2007

MCEAA Section 106 Consultation Meeting Opening Statement

1. What is your overall reaction to SGR's modified proposal?

The modified proposal fails for the same reasons as the original proposal. Items 1, 2, and 3 of the April 5 modification letter address only future development. Items 6, 7, 8, and 9 are the same unenforceable promises pertaining to final design and engineering that we heard previously. Items 4 and 5 reflect a negligible minimization but still do not resolve the unavoidable, unmitigable aesthetic and environmental impacts from the location of the Proposed Route in the Quihi historic area.

2. Does the modified proposal address the issues that you raised during the meeting held Monday, March 26, 2007?

No.

3. If not, why not? Where specifically does the mitigation fall short?

Mitigation that addresses only the impacts of future development is irrelevant and is not mitigation of the adverse effects identified in the SDEIS.

The focus must be on the impact of this proposal, which is not complete. The shell game with the power line to the quarry is ludicrous. Vulcan/SGR has been undertaking planning for the connected action all along and it is obvious that the most convenient location for the power line, from their perspective, will be the rail easement. But now they are claiming the right to solely determine when their plans ripen into proposals. That is not for them to decide. At the very least, the power line is a reasonably foreseeable future action whose adverse effects have not been accounted for. Texas law regarding proprietary service areas of electric co-ops requires the Medina Electric Co-Op (MECO) to be the service provider for the Vulcan quarry. The shading that negotiations between Vulcan/SGR and MECO are somehow "preliminary" is insufficient to overcome the requirement to designate the power line as a reasonably foreseeable future action, particularly given that the quarry has completed the state permitting process.

Further, Vulcan/SGR's fallback position, even if they have to account for the power line, is the same final design and final engineering privilege they have cited previously for the bridges and other components that will have unmitigable impacts. They've already gotten the benefit of deferring final engineering, and they can't now double their benefit by using that as mitigation in lieu of analysis or use it to overcome the benefits of avoidance. That will be a significant legal issue which MCEAA will assert if the Proposed Route is deemed eligible for licensing.

4. What would be needed for you to find the Proposed Route acceptable?

MCEAA will not accept the Proposed Route under any circumstances, due to its unmitigable impacts. This process should be over, and it can be over very easily given the existence of the environmentally preferred Eastern Alternatives.

We do not appreciate the attempts of the applicant and anyone else who would enable them to push the impacts of this rail line from the quarry lessors in the east over to the residents of Quihi in the west. The idea that somehow the property interests along the various alternatives are equally situated and that, oh, it's too bad that someone will get gored no matter what is nonsense when there is resistance to otherwise viable eastern alternatives by those with a financial interest in the connected action, i.e. the quarry. It is significant that, as Cynthia Lindsey noted in her letter, the supposedly equivalent burdens supposedly borne by landowners along the eastern routes have not been addressed for the Proposed Route, which only adds to the hypocrisy of casting the property interests here as equal. The quarry lessors have some latecomers to this process who are fronting for them, but the issues facing the eastern irrigators have been resolved and there is no reason to continue consultation on the Proposed Route. We have asked the STB to terminate consultation on the Proposed Route and after hearing everyone's views in the opening statements we urge it to do so, so there can be a reasonable outcome to this process that is more likely to avoid litigation.