Plainsandeastern

From: Keryn Newman <keryn@forreliablepower.com>
Sent: Tuesday, June 09, 2015 9:03 AM
To: Plainsandeastern
Subject: Comment on Clean Line Section 1222 Statutory Review
Attachments: P&E-Non-NEPA.pdf

I hereby file the attached comment on DOE's statutory review of Clean Line's Section 1222 application. Please add it to your online comment collection and give it due consideration in your review of Clean Line's application in accordance with the April 28, 2015 Federal Register notice.

Thank you,

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June 9, 2015

1222 Program
Office of Electricity Delivery and Energy Reliability (OE-20)
U.S. Department of Energy
1000 Independence Avenue, SW
Washington, DC 20585

RE: Comments on Application for Proposed Project for Clean Line Plains & Eastern Transmission Line

In accordance with the April 28 Federal Register notice, I hereby submit the following comments regarding the third (and hopefully final?) "application" of Clean Line Energy Partners for DOE's "participation" in its for-profit transmission endeavor.

The Plains & Eastern Transmission Line (the project) does not satisfy the statutory criteria of Section 1222 of the Energy Policy Act (42 U.S.C. 16421):

1. The "new electric power transmission facilities and related facilities" are not "located within any State in which Western or Southwestern operates." Neither federal power marketing agency operates within the state of Tennessee. The project is being illegally segmented to allow approval of portions of the project within the states of Oklahoma and Arkansas, however the portion of the project in those two states is not viable without the Tennessee facilities. Therefore the project does not meet the definition of a new facility under Section 1222.
2. The project is not located in an area designated under section 216(a) of the Federal Power Act (16 U.S.C. 824p(a). And even if it were, this section of the FPA has already been neutered twice in Federal Court. Please review the decisions handed down by the Courts on Section 1221 to get some flavor on what's likely to happen to Section 1222 when it, too, comes under judicial scrutiny. Neither section was written sturdily enough to withstand review by the courts.
3. The project is not "necessary to accommodate an actual or projected increase in demand for electric transmission capacity." No entity with federal authority to make such a determination has proclaimed a need for this

project. The statute is silent on who will make this determination, so I suppose it will be up to the court to decide the intent of this badly-written law. An entity with a pecuniary interest in the electric transmission project being considered probably won't cut it, therefore, Clean Line's self-determination that its project is "needed," or that a "need" will develop if the project is built simply cannot be used to make this determination. If the Secretary of Energy wants to step in to make this determination, then he shall independently perform any manner of scientific transmission demand studies to inform his decision. I don't see any evidence that DOE has done any studies of this nature. Of course, I could be wrong, since large portions of the "application" have been withheld from public review as "confidential."

4. The project is not consistent with "transmission needs identified, in a transmission expansion plan or otherwise, by the appropriate Transmission Organization (as defined in the Federal Power Act, 16 U.S.C. 791a *et seq.*)" No authorized regional transmission organization has found the project needed, nor included it in a regional transmission expansion plan. In its application, Clean Line tries to pretend its own self-interested analysis is "consistent with" the process real transmission organizations use to create their transmission expansion plans. Clean Line is a for-profit, privately held company. It is not a regional transmission organization. Actual transmission expansion plans are created by independent regional transmission organizations without any pecuniary interest in the transmission projects it evaluates and includes in its plans. Therefore the project is not "consistent with" a transmission expansion plan because it was not found needed using the same standards and criteria. If DOE wants to pretend that Clean Line's own analysis is "consistent with" a transmission expansion planning process, I hope that the judge doesn't laugh too loudly at the absurdity of your decision when the time comes.
5. The project is not "consistent with" ... "efficient and reliable operation of the transmission grid." In its November 2014 "Long-Term Reliability Assessment," the North American Electric Reliability Corporation (NERC, one of those "approved regional reliability organizations" mentioned in this section) determined: "Another emerging potential issue is that very long HVDC lines are being considered by independent transmission developers in economic projects such as shipping wind to the southeast. The capacity of a single line is typically greater than the largest single-contingency-generation loss in a system. The capacity of two poles will probably be larger than that of the largest multiunit generating plant. On very long lines, the risk of losing both poles may be appreciable, and that risk plus the high power level **could impact reliability**. An emerging issue may be the ability of present study criteria to adequately model the impact of these lines on a system." NERC seems to think that the project could compromise reliability, or maybe they've just spent too much time watching the movie, "Twister."
6. The proposed project "...duplicates the functions of existing transmission facilities or proposed facilities which are the subject of ongoing or approved siting and related permitting proceedings." A regional transmission

organization plans for and orders to be built those transmission facilities needed to meet reliability, economic or public policy needs. The costs of such projects are allocated to ratepayers, often with federal guarantees of full recovery of prudently incurred costs by the transmission owner in the event of abandonment. Because the proposed project is not part of any regional transmission expansion plan, it is therefore duplicating the regional transmission organization's efforts to meet system needs. Any number of regionally approved and ordered transmission projects could become obsolete if the proposed project is approved and built outside the regional planning process. If the proposed project causes the abandonment of regionally ordered projects already in process, paying for projects that are never completed would harm the ratepayers.

7. Your Federal Register list of statutory criteria is not complete. Section 1222 also contains: "Maximum funding amount - The Secretary shall not accept and use more than $100,000,000 under subsection (c)(1) for the period encompassing fiscal years 2006 through 2015." The end of fiscal year 2015 is fast approaching, and it doesn't look like The Secretary is going to be accepting all the cash needed to fund the project before the end of the fiscal year. Again, the statute is silent on whether this clause simply resets, or lifts in its entirety, the maximum funding amount after FY 2015 ends, or whether it simply sunsets The Secretary's ability to accept funds under Sec. 1222 at all. I suppose this is another area where a federal judge is going to have to make a determination. Think about that.
8. Section 1222 also stipulates, "Nothing in this section affects any requirement of – any state law relating to the siting of energy facilities." I haven't seen any due diligence on the part of the DOE that analyzes applicable state laws relating to the siting of energy facilities by the project, to make sure that this statutory requirement will be met.

I note that DOE has also concocted several criteria in its 2010 Request for Proposals that do not have any foundation in Sec. 1222. Executive agencies carry out laws through the development and enforcement of regulations that guide the way the law is carried out. Most regulations are developed and enacted through a rulemaking process, which includes public input. In this way, the criteria for enforcing the law are clear and approved in advance and avoid any appearance of favoritism or uncertainty. In this instance, however, the DOE is simply making the rules up as they go! I wonder how the court is going to feel about that?

For instance, the Advanced Funding and Development Agreement between Clean Line, DOE and SWPA, signed on September 20, 2012 by Deputy Secretary Poneman (and, goodness that man is in the news a lot lately, isn't he?), requires that a "Management Committee" be established and meet quarterly. Except, that's not what happened is it? After an initial meeting, the "committee" never met again. So, not only does DOE make up its own rules as it goes, it also breaks those rules whenever it feels like it. Not exactly a shining example of government of the people, by the people and for the people, is it? In fact, it rather stinks.

So, let's next examine your made-up, non-statutory criteria.

1. In my opinion, the project is not in the public interest. How will DOE define "the public interest?" "Public interest" is hard to define, so I suppose The Secretary is going to have to "know it when he sees it," such as Judge Potter Stewart did when defining pornography in Jacobellis v. Ohio (1964). In the absence of any criteria by which to define "the public interest," this determination will be completely subjective. To support my own subjective determination, which I urge The Secretary to adopt, I offer that the project is in the interest of corporate profits, and adding insult to injury, one of the corporations involved is a foreign corporation (National Grid – U.K.). Additionally, when looking at the project in the "public interest" lens, it simply must fail because certain portions of its application are not available to the public. As a member of the public, I cannot comment on something that I cannot see, and designating any portion of this application non-public completely defeats any transparency in this public comment process. This ought to be setting off a few alarm bells in your logical thought process. If a project is not publicly transparent, it cannot be in the public interest.
2. The project will not facilitate the reliable delivery of power generated by renewable resources. The reliability of this project has been questioned by NERC (see #5 above). In addition, the project must also provide access to non-renewable energy; there is no guarantee what kind of energy will eventually be carried by the project. DOE must also consider which resources will be taken offline to balance the variability of the project. Often, hydro resources are the first to be constrained because they are so easily ramped up and down. Will SWPA or other federal power marketing agency hydro resources be affected by the project?
3. The impacts of the project on the states it traverses will be great, and the benefits few. Let's face it; this project is not intended to benefit "fly over" states such as Oklahoma and Arkansas. The Proposed Participation Agreement and Term Sheet included with the application states that Southwestern would own all facilities located in Arkansas. As a federal agency, Southwestern is exempt from any state or local taxes in Arkansas; therefore the project will not provide any long-term economic benefit to Arkansas. And while we're on this subject, if Southwestern owns the project in Arkansas, does it also own that portion of the project's capacity? If so, what portion of the project's profits will it be entitled to? Is Southwestern a for-profit entity? Or is The Secretary expecting that Southwestern will forego any share of the project's profits and allow Clean Line to keep them? Since when does the Federal government own facilities that pay profits to private corporations? You need to put this little dilemma on your "make it up as you go" list, and let the public know your intentions as soon as possible.
4. The project is not financially viable. Well, at least I think so, but it's really hard to tell since DOE has not made the company's finances public so any attempt to analyze this criterion is an exercise in futility. I hope The

Secretary makes his analysis of the project's financial viability public so it may be examined by the public (and, eventually, the court).

Since the DOE felt free to make up its own criteria as it went along, I'd like to make up something of my own. Well, it's actually not made up, but is probably already part of the NEPA laws DOE is operating under to create the Environmental Impact Statement. The NEPA contractor administrating the EIS cannot have a conflict of interest with the project it is evaluating. It has come to my attention that your contractor, Tetra Tech, has a conflict of interest. In Appendix 2-B of the most recent application, the letter from CimTexCo Wind Energy LLC advises regarding the companies involved in its proposed wind project that it claims will only be viable if The Secretary approves the Plains & Eastern Transmission project. CimTexCo shares that it is using the top wind firms to develop its project, and among them is "Tetra Tech, a leading environmental firm in the wind industry who developed the Wind Energy Siting Handbook for the American Wind Energy Association (AWEA)." CimTexCo also advises "Tetra Tech has completed a first draft of a Critical Issues Study" [for CimTexCo's proposed wind project]. The possibility that Tetra Tech will secure future work (and profits) from CimTexCo's project are directly tied to the viability of the Plains & Eastern project Tetra Tech is evaluating as DOE's NEPA contactor. This is a conflict of interest and I'm afraid you simply must find a new contractor and toss out all the biased work done to date. Failure to do so will mire the completed EIS in partiality and render it not in the public interest.

Based on the foregoing, I urge The Secretary to decline to "participate" in the Plains and Eastern Transmission Project because it does not meet the statutory criteria of Section 1222 of the Energy Policy Act.

Dated this 9th day of June at Shepherdstown, West Virginia,

/s/Keryn Newman

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