

**CONTRACT NO. 1  
AMONG**

**CLEAN LINE ENERGY PARTNERS LLC  
PLAINS AND EASTERN CLEAN LINE LLC AND  
PLAINS AND EASTERN CLEAN LINE OKLAHOMA LLC**

**AND**

**UNITED STATES  
DEPARTMENT OF ENERGY AND  
SOUTHWESTERN POWER ADMINISTRATION**

**FOR**

**ADVANCE FUNDING AND DEVELOPMENT AGREEMENT  
PLAINS AND EASTERN CLEAN LINE TRANSMISSION PROJECT**

This Advance Funding and Development Agreement ("Agreement") is entered into this 20<sup>th</sup> day of September, 2012 by and between the United States Department of Energy and its Southwestern Power Administration (collectively, "DOE"), and Clean Line Energy Partners LLC and its Plains and Eastern Clean Line LLC and Plains and Eastern Clean Line Oklahoma LLC (collectively, "Clean Line"), 1001 McKinney St., Suite 700, Houston, TX 77002 (hereinafter referred to individually as a "Party" or collectively as the "Parties").

**RECITALS**

A. WHEREAS, under Section 1222(b) of the Energy Policy Act of 2005 ("Section 1222(b)") (42 U.S.C. § 16421) the Secretary of Energy, acting through Southwestern Power Administration ("Southwestern"), may design, develop, construct, operate, maintain, own, or participate with other entities in designing, developing, constructing, operating, maintaining, or owning certain new electric transmission facilities; and

B. WHEREAS, on June 10, 2010, DOE published in the Federal Register a Request for Proposals for New or Upgraded Transmission Line Projects Under Section 1222 of the Energy Policy Act of 2005 (75 Fed. Reg. 32940) ("RFP"); and

C. WHEREAS, Clean Line submitted to DOE, on July 6, 2010, a proposal in response to the RFP; and

D. WHEREAS, that proposal concerned the development and construction of the Plains & Eastern Clean Line, a transmission project consisting of two overhead high voltage direct current transmission circuits that would be capable of moving more than 7,000 MW of power from renewable energy projects in western Oklahoma, southwestern Kansas and the Texas Panhandle to the Tennessee Valley Authority and the southeastern United States; and

E. WHEREAS, Clean Line amended its proposal on February 20, 2012 to include one circuit instead of two for a total capacity of 3,500 MW (the “Proposal” or the “Project”); and

F. WHEREAS, Clean Line’s Proposal complied with the RFP and DOE has determined that the Proposal, along with subsequent supplemental information, was responsive to the RFP; and

G. WHEREAS, DOE has emphasized the need for additional high voltage transmission capacity to deliver renewable resources from transmission-constrained areas, stating in its “20% Wind Energy by 2030” Report that “If the considerable wind resources of the United States are to be utilized, a significant amount of new transmission will be required.”

H. WHEREAS in its 2009 Congestion Study, DOE identified the Oklahoma Panhandle as a Type I Conditional Congestion Area, defined as an area where “large quantities of renewable resources could be developed economically using existing technology with known cost and performance characteristics—if transmission were available to serve them.”

I. WHEREAS the Plains and Eastern project, if developed as proposed, could advance DOE’s objective of integrating more renewable resources onto the grid by (1) enabling the development of substantial wind resources in the Oklahoma Panhandle and the surrounding region, and (2) delivering that energy to the southeastern United States, a region with fewer wind resources;

J. WHEREAS, DOE believes it is in the public interest and consistent with the RFP and Section 1222(b) to undertake the environmental analysis of the Project; and

K. WHEREAS, notwithstanding references in this Agreement to Participation Agreements and other actions DOE and Clean Line may potentially undertake at a future time, the sole purpose of this Agreement is to establish terms and conditions for the advance funding by Clean Line for DOE to analyze the Project pursuant to the National Environmental Policy Act of 1969, as amended ("NEPA"), to make a final determination on Section 1222(b) eligibility, to evaluate the Project on the criteria articulated in the DOE's June 10, 2010 Federal Register Notice (75 Fed. Reg. 32940), and to conduct any other such review deemed necessary by the Parties.

NOW THEREFORE, for and in consideration of the mutual advantages to be derived hereby, the Parties agree as follows:

1. Project Description.

The proposed Project would consist of one overhead high voltage direct current transmission circuit that will be capable of moving 3,500 MW of power from renewable energy projects in western Oklahoma, southwestern Kansas and the Texas Panhandle to the Tennessee Valley Authority and the southeastern United States. The expected configuration includes two HVDC converter stations: one in western Oklahoma and one in western Tennessee.

2. Authority.

a. The authority for DOE to enter into this Agreement includes, but is not limited to Section 1222(b), 42 U.S.C. § 16421, and 42 U.S.C. § 7278.

b. Clean Line represents that: Clean Line Energy Partners LLC is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Delaware and is duly qualified to carry on its business in each state where so required, Plains and Eastern Clean Line LLC is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Arkansas and is duly qualified to carry on its business in each state where so required; and Plains and Eastern Clean Line Oklahoma LLC is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Oklahoma and is duly qualified to carry on its business in each state where so required; Plains and Eastern Clean Line LLC and Plains and Eastern Clean Line Oklahoma LLC have been organized solely for the purpose of

developing, constructing, installing, financing, owning, operating and maintaining the Project; and Clean Line Energy Partners LLC, Plains and Eastern Clean Line LLC, and Plains and Eastern Clean Line Oklahoma LLC have all requisite power and authority to enter into this Agreement.

3. Term of the Agreement.

This Agreement shall be in effect from the date hereof until DOE has completed the work described in this Agreement, a superseding agreement has been executed, or the Agreement is terminated as provided for in this Section 3, whichever date is earlier.

This Agreement does not bind DOE or Clean Line to develop, finance, construct, operate or own the Project. Any Party may terminate this Agreement for any reason upon 30 days' written notice to the other Party. In the event DOE terminates this Agreement, DOE shall not be liable to Clean Line for any detrimental reliance, lost opportunities, or for any damages to Clean Line whatsoever.

4. Obligations of DOE.

Subject to Clean Line's obligation to provide funding under Section 11 of this Agreement, DOE agrees to: proceed with environmental analysis under NEPA; to review the Project under the criteria articulated in the June 10, 2010 Federal Register Notice, and to conduct such further review under the standards set forth in Section 1222(b) that will allow the Secretary of Energy or his delegate to make a final written determination as to whether the Project satisfies the requirements of Section 1222(b), and whether to proceed in participating with Clean Line in designing, developing, constructing, operating, maintaining, or owning the Project.

5. Discretionary Role of DOE.

At its discretion, DOE may (1) review the proposed design, development, construction, operation, maintenance, ownership and participation in the Project; (2) conduct due diligence on all aspects of the Project, including technical, environmental and legal, and also on the financial condition of Clean Line and any associated entities or persons, and any other due diligence DOE deems appropriate; (3) subject to the requirements of Section 9, use reasonable efforts to work with Clean Line to develop Participation Agreements between DOE and

Clean Line; and (4) take any other actions DOE deems appropriate to facilitate the performance of its obligations under this Agreement.

6. National Environmental Policy Act of 1969, as amended.

a. As a part of its environmental analysis of the Project, DOE will commence preparation of an environmental impact statement ("EIS") subject to Section 6(b) of this Agreement.

b. The Parties understand and agree that one or more contractors may be employed to assist DOE in the preparation of this EIS and other documents. In accordance with normal DOE practice, the Parties anticipate that these contractors will be paid directly by Clean Line, but will work at the sole direction of and for the benefit of DOE. The Parties will discuss and agree on the appropriate method and contracting vehicles for the retention of these contractors, prior to their retention. Clean Line will be provided final copies of all reports and/or other work product prepared by such contractors to the extent permitted by Federal law. In no case will Clean Line be financially responsible for any work performed by any consultant or contractor hired to assist in preparation of the EIS until such time as Clean Line, DOE, and the respective consultant or contractor have entered into appropriate agreements or contracts for services, an agreed upon scope of work and a budget for such work. Clean Line shall be financially responsible for any properly documented work associated with this Agreement performed by any DOE or Southwestern employee or contractor working for DOE under a pre-existing support services agreement so long as Clean Line has advance notice regarding the scope of such work and an estimate of the costs likely to be incurred. In addition, DOE and/or Southwestern may hire consultants to specifically address DOE and Southwestern obligations, including but not limited to Section 4, under this Agreement. DOE will provide Clean Line the scope of work to be performed by such consultants and estimated budget for such work. Such work shall be funded by Clean Line pursuant to Section 11 of this Agreement.

c. After selection of the contractor(s) to perform the environmental analysis pursuant to this Agreement, DOE will move forward with the preparation of the

EIS for the Project. Consistent with its statutory obligations, DOE will make reasonable efforts to work with other federal agencies, as necessary, to cooperatively produce an EIS.

d. Subject to the receipt of advance funding pursuant to Section 11(c) of this Agreement, DOE will work with Clean Line to develop the Notice of Intent ("NOI") to prepare the EIS for the Project. DOE will work with Clean Line and with relevant Federal agencies to finalize the NOI as promptly as possible after the execution of this Agreement. The Parties understand and agree that all final decisions relating to the NOI rest with DOE.

e. After the close of the public scoping period for the EIS and subject to the receipt of advance funding pursuant to Section 11(c) of this Agreement, DOE will consult with Clean Line regarding the scope and definition of alternatives for the EIS. The Parties understand and agree that all final decisions relating to the scope of the EIS, the definition of alternatives, and other matters relating to the NEPA analysis for the Project rest with DOE and the other relevant Federal agencies that may choose to participate in the preparation of the EIS.

f. Not later than 30 days after Clean Line tenders to DOE the name of a NEPA contractor, DOE will decide whether it deems the contractor acceptable. Not later than 30 days after the execution of an agreement with the NEPA contractor who will perform the environmental analysis under this Agreement, DOE will provide to Clean Line a draft schedule for preparation of the EIS for the Project, as well as a proposed budget for expenses to be borne by Clean Line in connection with preparation of the EIS. The Parties will work together to resolve any disagreements or concerns about the timing or costs DOE has estimated and will revise the draft schedule as more information becomes available.

7. Ownership.

a. DOE has not yet made any final determination with respect to whether the Project satisfies the requirements of Section 1222(b), and execution of this Agreement does not constitute any commitment by either DOE or Clean Line that any subsequent agreements related to the Project will be agreed upon or executed.

- b. All undertakings by DOE or Clean Line pursuant to any agreement related to the Project, including any conveyance of rights-of-way or other property interests by DOE to Clean Line, the Project and/or to third parties, shall be subject to Federal law, Federal regulations, and applicable state law.
- c. The Project as currently proposed contemplates the following:
- i. Subject to approval by DOE and the provisions of Section 12(m) of this Agreement, Southwestern will own a specified amount of the Project transmission capacity that the Parties will determine at a future date;
  - ii. Clean Line will make good faith efforts to obtain through negotiated purchase necessary rights of way and other property rights for the Project, and the Parties agree that eminent domain authority would be used only as a last resort after negotiations in good faith have concluded with affected landowners;
  - iii. To the extent Southwestern takes ownership of rights-of-way associated with the Project it will also own the physical assets (e.g., transmission towers, substations) on such rights-of-way and will make such rights of way and facilities available to the Project;
  - iv. Participation Agreement(s) identified in Section 9 of this Agreement will identify the ownership, maintenance, replacement, operation and North American Electric Reliability Corporation (NERC) responsibilities with respect to all facilities, and may include agreements between Southwestern and Clean Line as well as third parties;
  - v. To enable financing for the Project on commercially reasonable terms, upon mutual agreement, DOE and Clean Line may execute certain agreements necessary and customary in connection with non-recourse project financings, and which may include consents, agreements to perform certain obligations, agreements to grant specific property rights and priorities to lenders with respect to the Project assets, etc. In all cases, the Parties understand and agree that any such undertakings shall be in compliance with applicable Federal law, Federal regulations and state law and that Southwestern cannot and will not grant a security interest in any Project assets owned by Southwestern;

- vi. Southwestern will consider requested consents to assignments in accordance with the Federal Anti-Assignments Acts (31 U.S.C. § 3727 and 41 U.S.C. § 15) and applicable state law;
- vii. To the extent Southwestern takes ownership of Project assets, Clean Line will agree to pay for the removal of such assets at the end of the Project's useful life;
- viii. Clean Line will hold DOE and Southwestern harmless against any liabilities DOE and Southwestern may incur as the owner of Project assets, and will assume responsibility for achieving and maintaining compliance with the NERC reliability standards, including staffing, and any liabilities resulting from noncompliance with such standards; and
- ix. Clean Line will provide such security as is necessary and appropriate to ensure its financial responsibility for its undertakings under this Agreement and subsequent agreements between the Parties relating to the Project.

8. Coordination.

a. Subject to the receipt of advance funding pursuant to Section 11(c) of this Agreement, within 60 days of the execution of this Agreement, a Management Committee will be established and will have equal representation from DOE and Clean Line. The Management Committee will be responsible for coordinating efforts between DOE and Clean Line in connection with the various matters that may arise with respect to the Project. Clean Line and DOE will each appoint two members to the Management Committee. The Management Committee will meet on a quarterly basis to discuss:

- i. The progress of the NEPA environmental analysis, Clean Line's land acquisition, and the interactions with other state and Federal agencies.
- ii. The progress of the technical review and proposed procurement, construction, operations, maintenance, ownership roles of each party, and the progress of Southwest Power Pool, Inc. (SPP)'s review under applicable SPP processes.



iii. The progress of DOE's review of the Project on issues other than environmental analysis.

iv. A comprehensive schedule for work to be completed under this Agreement, including quarterly work plans.

b. Notwithstanding the foregoing, it is the Parties' intention that, subject to such agreements as the Parties may conclude with each other at a later date and subject to all NEPA and other applicable legal requirements, Clean Line shall have full discretion, responsibility and control of the planning, development, construction, construction scheduling, management, financing and operation of the Project, except as may be limited by requirements to interact and/or consult with third parties, and all licensing, permitting, and NEPA requirements. Clean Line may, in its reasonable discretion consistent with applicable laws, including the Federal Anti-Assignments Acts (31 U.S.C. §3727 and 41 U.S.C. §15), contract with, or otherwise delegate to, third parties and affiliates, duties and obligations with respect to this Agreement.

9. Participation Agreements.

Consistent with the limitations on DOE's actions during the NEPA process as set forth at 40 C.F.R. 1506.1 and 10 C.F.R. 1021.211, as construed by DOE, and subject to Section 3 of this Agreement, the Parties may negotiate, enter into and execute such other agreements and/or documents (together, the "Participation Agreements") as may be desirable and necessary to advance the Project, including but not limited to the following:

- i. A facilities ownership agreement;
- ii. Operations and maintenance agreement;
- iii. A land acquisition agreement by which DOE and Clean Line agree to obtain their respective rights of way for the Project;
- iv. Documents and agreements necessary and appropriate to enable Clean Line to obtain private sector third-party financing for the Project; and

- v. Such other documents as the Parties may mutually agree.

Provided that DOE will not execute any such Participation Agreement before the Secretary of Energy or his delegate has made a written determination that the Project satisfies the requirements of Section 1222(b) and the criteria laid out in the RFP; provided, further that none of these documents or agreements shall be inconsistent with this Agreement, including but not limited to Section 12(m).

10. Communications.

After the date of execution of this Agreement, the Parties shall consult with each other with regard to all press releases in which the Parties are mentioned together, except as otherwise required by applicable law.

11. Funding.

- a. Clean Line agrees to advance fund DOE for projected costs incurred by DOE to carry out its obligations and discretionary functions described in this Agreement.
- b. DOE will provide Clean Line with an estimate of the total costs expected to be incurred by DOE under this Agreement. If DOE determines that additional funds are needed, it shall re-estimate such amounts and provide Clean Line written notice of the determination and resultant estimated costs. If payments made by Clean Line exceed actual costs incurred, DOE will adjust the next billing to reflect the excess or, if there is no billing to adjust, DOE will promptly refund the excess. Actual costs include both direct and indirect costs within the scope of this Agreement.
- c. Clean Line's advance funding of DOE's projected costs shall consist of an initial advance of \$100,000, and periodic payments, as needed, for DOE to fulfill its obligations under this Agreement.
- d. DOE shall monitor the work performed under this Agreement and the costs incurred. If the balance of Clean Line's advance funding drops below

\$25,000, or if DOE determines there are insufficient funds remaining for the next month's planned work, DOE will request additional funds to cover the planned work. Clean Line agrees to provide the additional funds within 15 calendar days of receipt of DOE's request. DOE must receive adequate funding from Clean Line prior to incurring costs. In the event Clean Line does not provide such funds within 15 calendar days, all work under this Agreement shall be suspended. DOE and Southwestern shall be held harmless for any and all harm to Clean Line or its agents due to suspension of work pursuant to this Agreement under this Section.

e. DOE will provide Clean Line monthly statements of its expenditures within 30 days of the close of each month.

f. Subject to limits established under Federal law, Clean Line shall have the right to conduct, at its own expense, reasonable audits of the books, records, and documents of DOE relating to the items on any particular accounting statement provided by DOE.

g. DOE agrees to account for its costs incurred pursuant to this Agreement under an accounting procedure in customary usage for accounting of Federal project expenses. Clean Line shall have the right to audit DOE's cost records and accounts to verify statements of costs submitted by DOE. DOE agrees to refund any amounts paid if they are found in such audit to exceed the total amount due DOE for its actual costs incurred pursuant to this Agreement without any penalty or interest. Clean Line agrees that such audit of DOE's records and accounts is for the sole purpose of verifying that an accounting statement sets forth the actual costs as reflected by the records, and that accounts are maintained in accordance with the established accounting procedures.

h. Clean Line shall be responsible for paying its own consultants, contractors, attorneys, staff, and any other expenses it incurs in connection with the Project.

i. In the event the Secretary of Energy or his delegate concludes that the Project does not satisfy the requirements of Section 1222(b) or elects not to proceed with the Project on other grounds, DOE is under no obligation to repay to

Clean Line funds advanced pursuant to this Agreement, except for the obligation to refund any excess advance funds as set forth in Section 11(g) above.

12. Miscellaneous.

- a. This Agreement is subject to, and the Parties shall act in conformance with, all applicable laws regarding certifications, reports, employee “whistleblower” protections, contracting provisions, limitations on the types of expenditures, and prevailing wage rates.
- b. Clean Line warrants that no person or selling agency has been employed or retained to solicit or secure this Agreement for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies retained by Clean Line for the purpose of securing business.
- c. This Agreement may not be amended, nor any rights hereunder waived, except by an instrument in writing signed by the Party to be charged with such amendment or waiver, and delivered by such Party to the Party claiming the benefit of such amendment or waiver. Any waiver of rights under this Agreement by a Party shall not be deemed a waiver with respect to any other matter.
- d. No Party may assign its respective rights or delegate all or any portion of its respective duties under this Agreement unless otherwise permitted.
- e. This Agreement may be executed by the Parties in any number of counterparts, each of which shall be deemed an original instrument, but all of which taken together shall constitute but one and the same document.
- f. Should any portion of this Agreement be determined illegal or unenforceable, the remainder of the Agreement will continue in full force and effect.
- g. Nothing in this Agreement shall be deemed to create a joint venture, partnership or other fiduciary relationship between the Parties.
- l. Federal law shall control the obligations and procedures established by this Agreement, and the performance and enforcement thereof. The forum for litigation arising from this Agreement shall exclusively be the United States District Court for the District of Columbia, unless the Parties agree to pursue alternative dispute resolution.

m. No claims or costs arising out of this Agreement shall be assigned, allocated to, or recovered in any of Southwestern's rates and such assignment, allocation, or recovery shall not be made. Further, no revenues or receipts received by Southwestern for the sale or use of electric energy, transmission or related services may be used to fund work performed under this Agreement.

n. The Parties acknowledge that the authorities listed in Section 2(a) of this Agreement require contributed funds to DOE from outside third parties and also that DOE is subject to the Anti-Deficiency Act, which forbids federal employees from making or authorizing an expenditure from, or creating or authorizing an obligation under, any appropriation or fund in excess of the amount available in the appropriation or fund unless authorized by law. Therefore, if at any time neither contributed funds nor separately appropriated funds are available to undertake the obligations created by this Agreement, work by DOE pursuant to this Agreement shall be suspended until such time as such funds are available, and Clean Line shall release DOE from any and all liability for failure to perform and fulfill its obligations under this Agreement for that reason.

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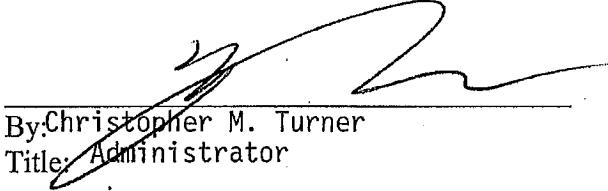
**U.S. DEPARTMENT OF ENERGY**



By: Daniel B. Poneman

Title: Deputy Secretary

**SOUTHWESTERN POWER ADMINISTRATION**



By: Christopher M. Turner

Title: Administrator




**CLEAN LINE ENERGY PARTNERS LLC**



By: Jayshree Desai

Title: Executive Vice President

**PLAINS AND EASTERN CLEAN LINE LLC and  
PLAINS AND EASTERN CLEAN LINE OKLAHOMA LLC**



By: Jayshree Desai

Title: Executive Vice President

[signature page to Advanced Funding and Development Agreement]