

## Plainsandeastern

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**From:** Jordan Wimpy <jwimpy@gill-law.com>  
**Sent:** Thursday, June 11, 2015 1:09 PM  
**To:** Plainsandeastern  
**Subject:** re: Comments re: Application for Proposed Project for Clean Line Plains & Eastern Transmission Line  
**Attachments:** Downwind, LLC Comments to CL 1222 Application.pdf

To Whom it Concerns:

Attached please find Downwind, LLC's comments submitted in response to the *Application for Proposed Project for Clean Line Plains & Eastern Transmission Line*. Should you have any questions, please do not hesitate to contact me directly.

Regards,  
Jordan



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**DOWNWIND, LLC'S COMMENTS CONCERNING THE U.S. DEPARTMENT OF ENERGY'S REVIEW OF THE APPLICATION FOR PROPOSED PROJECT FOR CLEAN LINE PLAINS & EASTERN TRANSMISSION LINE**

Downwind, LLC is a multi-member association of concerned citizens duly organized and operated under the laws of the State of Arkansas. Formed in 2015, Downwind, LLC seeks to protect working agricultural operations and private property rights by uniting disparate interests and coordinating the effort to avoid and/or mitigate impacts from the proposed Plains & Eastern Clean Line Transmission Line Project. Downwind, LLC represents members from Jackson, Poinsett, Cross and Mississippi Counties, Arkansas, and includes many landowners and agricultural operators within or adjacent to the Applicant Proposed Route. For these reasons, Downwind, LLC holds a strong interest in the U.S. Department of Energy's review, analysis and determination regarding the Clean Line Energy Partners, LLC Section 1222 Application.

**Background**

Pursuant to section 1222 of the Energy Policy Act of 2005<sup>1</sup>, the Secretary of Energy, acting through the Southwestern Power Administration or the Western Power Administration is authorized to "design, develop, construct, operate, maintain, or own, or participate with other entities in designing, developing, constructing, operating, maintaining, or owning, a new electric power transmission facility and related facilities," if the Secretary determines that a proposed Project meets several statutory criteria.<sup>2</sup> Relying on this authority, the Department of Energy ("DOE") issued a 2010 *Request for Proposals for New or Upgraded Transmission Line Projects Under Section 1222 of the Energy Policy Act of 2005*.<sup>3</sup>

In July 2010, Clean Line Energy Partners LLC ("Clean Line") submitted an application and proposal to DOE for the Plains & Eastern Clean Line Project (the "Project"). Clean Line submitted modifications in the fall of 2011. Again in 2014-2015, Clean Line submitted a supplement to its original application. According to submitted plans, "Clean Line proposes to construct an overhead  $\pm$ 600-kilovolt (kV), high voltage direct current (HVDC) electric transmission system and associated facilities with the capacity to deliver approximately 3,500 megawatts primarily from renewable energy generation facilities in the Oklahoma and Texas Panhandle regions to load-serving entities in the Mid-south and Southeast."<sup>4</sup>

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<sup>1</sup> Energy Policy Act of 2005, Pub. L. No. 109-58 (2005) (codified at 42 U.S.C. § 16421) (hereinafter the "EPAAct").

<sup>2</sup> *Id.* § 16421(b).

<sup>3</sup> 75 Fed. Reg. 32940 (Jun. 10, 2010).

<sup>4</sup> 80 Fed. Reg. 23520, 23521 (Apr. 28, 2015).

The application and supporting materials are now available for public review and comment.<sup>5</sup>

### Comments

The following comments apply to Clean Line's application, DOE's due diligence review and analysis pursuant to section 1222, and the statutory basis to exercise section 1222 authority.

#### **I. The Clean Line Application Fails to Demonstrate the Project Has or Will Receive the Necessary "Siting" Approval from the State of Arkansas**

Section 1222 clearly authorizes DOE to "participate with other entities in "designing, developing, constructing, operating, maintaining, or owning a new electric transmission facility and related facilities" -- i.e. the Project.<sup>6</sup> However, it is equally clear that Congress, in enumerating DOE's authority, did not grant DOE any authority to "site" proposed projects pursuant to section 1222. Further, section 1222 does not provide the type of authorization necessary to forego any applicable state requirements for siting electric transmission and related facilities. Absent siting approval from the State of Arkansas, there is no legal basis to construct the Project and any further discussion of DOE participation is superfluous and unnecessary.

Siting energy facilities is a regulatory function traditionally reserved to the states because the local permitting authorities remain "well positioned to weigh the local factors that go into siting decisions, including environmental and scenery concerns, zoning issues, development plans, and safety issues."<sup>7</sup> Recognizing, however, that issues with grid congestion, security and reliability represent growing threats to a critical infrastructure system, Congress carved out a very narrow exception to state siting authority by creating a very limited federal siting authority. This limited federal siting authority is often referred to as "backstop" siting authority, and it is limited to specifically designated transmission corridors and particular statutory requirements.<sup>8</sup>

Specifically, section 1221 of the EPAct amended the Federal Power Act<sup>9</sup> and added a new section 216 that provides for: (i) the designation of national interest electric transmission corridors and (ii) federal siting approval *if* an interstate project is proposed within a designated corridor and state approval is not available or is withheld.<sup>10</sup> The section, specifically titled *Siting of Interstate Transmission Facilities*, represents the totality of federal siting authority for electric transmission facilities like the proposed Project. In this case, Clean Line's Project does not lie within a designated national interest electric corridor and, therefore, does not meet the necessary

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<sup>5</sup> *Id.*

<sup>6</sup> 42 U.S.C. § 16421(b) (emphasis added)

<sup>7</sup> Adam Vann, Cong. Research Serv., R40657, The Federal Government's Role in Electric Transmission Facility Siting 1 (2010).

<sup>8</sup> *Id.*

<sup>9</sup> 16 U.S.C. §§ 791a *et seq.*

<sup>10</sup> See EPAct, Pub. L. No. 109-58, 119 Stat. 946-951 *codified* 16 U.S.C. § 824p.

criteria. Undeterred, Clean Line seeks to bootstrap similar permitting authority from a completely dissimilar section 1222. As outlined in the following paragraphs, section 1222 does not grant federal siting authority or preempt local siting authority.

First, Congress specifically excluded “siting” from the long list of federal authority granted to the DOE (acting through the Southwestern Power Administration and/or the Western Power Administration) under section 1222 of the EAct. Subsection (b) expressly limits DOE authority to “designing, developing, constructing, operating, maintaining, or owning” -- **not siting**.<sup>11</sup> Presumably, if Congress believed that the usurpation of traditional state regulatory authority was necessary it would have granted siting authority similar to that provided in the immediately preceding section of the statute. Accordingly, Congress’ silence on siting authority in section 1222 should be properly interpreted as that body’s intent not to grant such authority.<sup>12</sup>

Second, Congress specifically included in section 1222 a provision acknowledging its intent to defer to, rather than preempt, state authority for siting electric energy facilities. The language is unambiguous and states that “[n]othing in this section [1222] affects any requirement of . . . any Federal or State law relating to the siting of energy facilities.”<sup>13</sup> Here, the State of Arkansas maintains laws providing for and requiring the siting approval contemplated by section 1221(d).<sup>14</sup> Given Arkansas’ authority and requirements for siting facilities like the Project, Clean Line (and potentially DOE) cannot proceed with construction of the Project without *again* visiting the Arkansas Public Service Commission for review and approval.<sup>15</sup>

Case law evaluating similar attempts to bypass state regulatory authority over electric energy facilities supports the finding that state siting authority is not preempted by the provisions of section 1222. In United States v. 14.02 Acres, a case cited for support in Clean Line’s application, the Ninth Circuit affirmed the Western Power Administration’s authority under federal law to construct a high-voltage transmission line and to “condemn the power line transmission easement[s] for it.”<sup>16</sup> The court dismissed plaintiff’s arguments, holding that California law is preempted and WAPA was not required to comply with California’s siting requirements.<sup>17</sup> Notably, however, the court distinguished the case at bar from other

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<sup>11</sup> 42 U.S.C. § 16421(b).

<sup>12</sup> See Nat’l Fed’n of Indep. Bus. v. Sebelius, 132 S. Ct. 2566, 2583 (2012) (“Where Congress uses certain language in one part of a statute and different language in another, it is generally presumed that Congress acts intentionally.”); Kirtsaeng v. John Wiley & Sons, Inc., 133 S. Ct. 1351, 1378 (2013) (Ginsburg, J. dissenting) (“Where Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposefully in the disparate inclusion or exclusion.”).

<sup>13</sup> 42 U.S.C. § 16421(d)(2).

<sup>14</sup> See Ark. Code Ann. § 23-18-501(a).

<sup>15</sup> Clean Line previously applied for approval of a Certificate of Public Convenience and Necessity (CCN) seeking authority to operate as a public utility in the State of Arkansas. That application was denied by the Arkansas Public Service Commission See Arkansas Public Serv. Comm’n, Docket No. 10-041-U, In the Matter of the Application of Plains and Eastern Clean Lien for a Certificate of Public Convenience and Necessity to Construct, Own and Operate as an Electric Transmission Public Utility in the State of Arkansas Order No. 9 (Jan. 11, 2011).

<sup>16</sup> United States v. 14.02 Acres, 547 F.3d 943, 949 (9th Cir. 2008).

<sup>17</sup> *Id.* at 953–54.

circumstances where the statute -- i.e. the Congressional authorization -- expressly required compliance with state and local siting requirements.<sup>18</sup> In those situations where Congress gave clear, explicit instructions to comply with state law, courts repeatedly require federal agencies to comply with the state's requirements, laws or standards (depending on the language).<sup>19</sup> Here, Congressional intent is clearly and unambiguously expressed with language stating that "[n]othing in this section [1222] affects any requirement of . . . any Federal or State law relating to the siting of energy facilities."<sup>20</sup>

Finally, the actions authorized and considered under section 1222 are fundamentally different from the type of actions normally undertaken by power administrations, like Southwestern and Western. Under some operating scenarios, power administrations may operate with specific statutory authority to site *federal* electric transmission projects that is undeterred by state siting authority. However, the use of section 1222 is fundamentally different in that a private, for-profit entity is pursuing the development, construction, ownership and operation of a private, for-profit merchant transmission line and is simply attempting to circumvent normal procedures by pursuing a federal partnership. This distinction in 1222 authority should not go without consideration, and Clean Line should not go without the state siting authority it is otherwise required to receive.

Absent the type of siting approval discussed above (and required by Arkansas' laws), Clean Line lacks the authority to proceed with construction of the proposed Project. Nothing in section 1222 obviates the requirement for siting approval and, therefore, DOE should forego participation with Clean Line pursuant to that section.

## **II. Clean Line's Application and Supporting Materials Fail to Satisfy the Statutory Requirements of Section 1222**

Section 1222 demands that certain statutory factors be satisfied in order for DOE to exercise its discretion and agree to a third-party finance arrangement. Clean Line's application may, in the end, satisfy some of the prescribed requirements (*e.g.* "will be operated in conformance with prudent utility practice" or "will be operated by, or in conformance with the rules of, the appropriate (A) Transmission Organization, if any, or (B) if such organization does not exist, regional reliability organizations"). However, Clean Line's application and supporting

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<sup>18</sup> *Id.* at 953.

<sup>19</sup> *See id.* (citing Maun v. United States, 347 F.2d 970, 975 (9th Cir. 1965) (requiring Atomic Energy Commission to comply with local ordinances in constructing overhead transmission lines where the authorizing statute mandated that "nothing in the relevant chapter shall be construed to affect the authority or regulations of any Federal, State, or local agency with respect to the generation, sale, or transmission of electric power produced through the use of nuclear facilities licensed by the Commission") *superseded by statute Atomic Energy Act*, Pub. L. 89-135, 79 Stat. 551; Columba Basin Land Protection Ass'n v. Schlesinger, 643 F.2d 585, 603 (9th Cir. 1981) (requiring the Bonneville Power Administration to comply with the substantive standards of Washing State's siting act--but not its procedural hurdles--where an applicable statute expressly required compliance with State standards.")).

<sup>20</sup> 42 U.S.C. § 16421(b).

materials contain sufficiently indeterminate information and too many assumptions to demonstrate compliance with all the statutory requirements. Specific issues and concerns include:

**A. Clean Line’s application fails to demonstrate that the Project is “necessary to accommodate an actual or projected increase in demand for electric transmission capacity.”**

Clean Line’s application and supporting materials provide little support for an “actual or projected increase in demand,” as that concept is traditionally understood:

- Clean Line’s application and supporting materials do not identify a single “reliability” need for transmission lines that supports the development and construction of the proposed Project.
- Clean Line’s application and supporting materials do not identify a single customer from the delivery end of the line that has committed to purchasing or using capacity from the Project. In fact, the materials provide that, at best, some utilities: have “expressed interest in the Project’s transmission capacity”<sup>21</sup>; are “potential customers for the energy delivered by the Project”<sup>22</sup>; and/or “can purchase energy delivered to TVA’s system.”<sup>23</sup> The speculative nature of potential interest is not tantamount to an “actual” or even a “projected” increase in demand.
- Clean Line’s discussion of favorable economic and environmental conditions supporting the project is premised on faulty assumptions. Clean Line states that “[w]ith production tax credits, the Project’s delivered energy will cost under 4.5 cents per KWh” and “[w]ithout production tax credits, the Project’s delivered energy is still cost-competitive with new combined cycle gas generation.”<sup>24</sup> The production tax credit for wind generation has now expired.

Further, even assuming Clean Line’s “cost-competitive” analysis is accurate, DOE’s own study of incorporating more wind energy into the grid states that wind capacity is not installed “to meet load growth requirements” and “wind power cannot replace the need for many capacity resources” -- e.g. combined cycle gas generation.<sup>25</sup> Thus,

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<sup>21</sup> Clean Line Application at 2-6.

<sup>22</sup> *Id.*

<sup>23</sup> *Id.* at 2-7.

<sup>24</sup> *Id.* at 2-8.

<sup>25</sup> Dep’t of Energy, DOE/GO-102008-2567, 20% Wind Energy by 2030: Increasing Wind Energy’s Contribution to U.S. Electricity Supply 88 (July 2008).

even with the integration of expanded wind capacity, the TVA and other area utilities may still require the addition of “capacity resources” to meet load demands.

Finally, Clean Line’s examination of environmental regulations fails to identify and discuss the major environmental regulations local to Oklahoma and Texas, which may facilitate local demand for clean, renewable wind generation and transmission within Texas and Oklahoma.<sup>26</sup>

- Because Clean Line cannot evidence any documented demand from the demand side of the transmission line and because the support it cites is riddled with gaps and/or relies wholly on unsupported assumptions, Clean Line is forced to rely solely on the claims of mid-west wind generation entities. In this way, Clean Line’s only support is from those *hoping* to capitalize by fulfilling a demand that *may* exist *if* the Project moves forward. Notably, the ability to fulfill the alleged demand is equally speculative, as the required wind generating capacity is not yet available.

**B. Clean Line’s application and supporting materials fail to document and demonstrate that the Project is consistent with transmission needs identified in a transmission expansion plan**

In an attempt to demonstrate that the Project is consistent with transmission needs identified in a transmission expansion plan by a Transmission Organization, Clean Line relies heavily on a few, select “interregional studies” -- not transmission expansion plans. Further, Clean Line inappropriately conflates the study results with transmission needs identified in a transmission expansion plan. For at least the following reasons, Clean Line failed to document and demonstrate that the Project is consistent with transmission needs identified in a transmission expansion plan by a Transmission Organization:

- Clean Line first cites to the Joint Coordinated System Plan (“JCSP”) ’08<sup>27</sup> for support that the Project is consistent with identified transmission needs. Reliance on this report is problematic for a number of reasons. First, the JCSP report is not a

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<sup>26</sup> See Approval and Promulgation of Implementation Plans; Texas and Oklahoma; Regional Haze State Implementation Plans; Interstate Transport State Implementation Plan to Address Pollution Affecting Visibility and Regional Haze; Federal Implementation Plan for Regional Haze and Interstate Transport of Pollution Affecting Visibility, Proposed Rule, 79 Fed. Reg. 74818 (Dec. 16, 2014); see also ERCOT, Impacts of Environmental Regulation in the ERCOT Region 36 (Dec. 16, 2014) (“EPA’s proposed Regional Haze FIP is likely to result in the retirement of coal units due to costs associated with upgrading and retrofitting scrubbers. ERCOT anticipates that 3,000 MW to 8,500 MW of coal-fired capacity in ERCOT face a moderate to high risk of retirement due to these requirements.”).

<sup>27</sup> See Joint Coordinated System Plan ’08 (2008) available at [https://www.misoenergy.org/Library/Repository/Study/JCSP/JCSP\\_Report\\_Volume\\_1.pdf](https://www.misoenergy.org/Library/Repository/Study/JCSP/JCSP_Report_Volume_1.pdf) (hereinafter “JCSP ’08”).

transmission expansion plan by an appropriate Transmission Organization. Instead, the JCSP is a conceptual regional plan investigating two specific scenarios -- a reference scenario (i.e. 5% wind) and a 20% wind energy scenario -- which both assume Renewable Portfolio Standards with requirements for wind energy that simply do not exist.<sup>28</sup> Second, several Transmission Organizations properly issued public concerns that the JCSP should not be used as a transmission planning tool in and of itself.<sup>29</sup> Finally, JCSP only justified the overlay of transmission capacity captured by the proposed Project in the scenario that assumed a federal Renewable Portfolio Standard demanding 20% wind integration.<sup>30</sup> That scenario does not exist.

- Clean Line next cites to the 2010 Eastern Wind Integration and Transmission Study (“EWITS”). Reliance on EWITS is problematic for many of the same reasons identified in the preceding paragraph; namely, it is not the work of a Transmission Organization charged with identifying transmission needs. Additionally, the study was designed specifically to address the range of issues identified with a 20% wind scenario, rather than transmission needs that actually exist.<sup>31</sup> The study notes that the scenarios were not intended to “in any way constitute a plan” but “should be seen as an initial perspective on a top-down, high-level view of four different 2024 futures.”<sup>32</sup> Thus, the stated intent is demonstrably different from a Transmission Organization identifying a transmission need.
- Clean Line also relies on the Eastern Interconnection Planning Collaborative (“EPIC”), which suffers from the same maladies of being a conceptual plan addressing a hypothetical future. It should be outright dismissed as authority for this statutory factor for the simple reason that its analysis assumed a national renewable energy standard and/or a national carbon policy, neither of which exists.<sup>33</sup>
- Finally, Clean Line cites to and relies on the SPP 2013 Integrated Transmission Plan.<sup>34</sup> While the SPP is an appropriate Transmission Organization, the language

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<sup>28</sup> *Id.* at 2 (“But with the possibility of national Renewable Portfolio Standards and the development of large amounts of new generation resources in certain regions of the nation to meet such standards this JCSP ’08 analysis was designed to look at the costs and benefits of transmissions overlays that can serve a range of policy goals.”) (emphasis added).

<sup>29</sup> See Letter from Gordon van Welie, President & CEO of ISO New England, Inc., and Stephen G. Whitley, President & CEO of New York Independent System Operator, to The Joint Coordinated System Planning Initiative (Feb. 4, 2009) (“the 2008 JCSP cannot be viewed as a ‘plan’ to be relied upon for decision-making purposes”).

<sup>30</sup> JCSP ’08 at 9-10.

<sup>31</sup> National Renewable Energy Laboratory, U.S. Dep’t of Energy, Eastern Wind Integration and Transmission Study 22 (rev’d 2011).

<sup>32</sup> *Id.* at 28.

<sup>33</sup> Clean Line Application at 2-14.

<sup>34</sup> SPP 2013 Integrated Transmission Plan 20-Year Assessment Report (July 30, 2013) *available at* [http://www.spp.org/publications/20130730\\_2013\\_ITP20\\_Report\\_clean.pdf](http://www.spp.org/publications/20130730_2013_ITP20_Report_clean.pdf)



cited from the plan detracts from Clean Line's effort to satisfy the requirement for an identified transmission need. Here, the referenced sections refer to future "policy" needs that assume federal Renewable Energy Standards or mandates of 30%.<sup>35</sup> As repeatedly discussed, there is no federal Renewable Energy Standard or mandate.

In total, the documents and materials cited to and relied on by Clean Line do not satisfy the statutory requirement that "the proposed project is consistent with the transmission needs identified, in a transmission expansion plan or otherwise, by the appropriate Transmission Organization (as defined in the Federal Power Act)."<sup>36</sup> Because Clean Line failed to satisfy all the statutory requirements, the DOE should properly deny the application and forego a partnership with Clean Line pursuant to section 1222 authority. Any decision to the contrary would be arbitrary, capricious and an abuse of discretion.

### **III. DOE's Request for Proposals Inappropriately Narrows Section 1222 Applicability to Projects Facilitating the Delivery of Power Generated by Renewable Energy**

DOE's Request for Proposals ("RFP"), as published in the *Federal Register*, inappropriately tailored the scope and intent of section of 1222 by incorporating non-statutory criteria that requires potential applicants to demonstrate "[w]hether the Project will facilitate the reliable delivery of power generated by renewable resources."<sup>37</sup> Narrowing the scope of potential projects distorts any analysis regarding "identified transmission need" and/or an "actual or projected increase in demand." Furthermore, the extra-statutory factor undermines the EPAct's broader intent to facilitate necessary infrastructure modernization -- not renewable energy. Finally, DOE's reliance on the non-statutory factor is precisely the type of deliberative and determinative consideration that is prohibited by the Administrative Procedures Act and reviewing courts.

Subtitle B of Section XII of the EPAct carries out Congress' intent toward "Transmission Infrastructure Modernization."<sup>38</sup> Through its various sections, the statute provides: very limited "backstop" siting authority for projects proposed for national interest electric transmission corridors; third-party finance participation under section 1222; and, advanced transmission technologies and advanced power system technology incentives. However, Congress, at no point in the statute's provisions for transmission infrastructure modernization, specified or indicated any intent (express, implied or otherwise) that such modernization should be narrowly focused on transmission infrastructure supporting the development and distribution of renewable energy. By requiring the extra-statutory factor in its analysis, DOE has marginalized the broader intent of the act.

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<sup>35</sup> *Id.* at 67-69.

<sup>36</sup> 42 U.S.C. § 16421(b)(2)(A).

<sup>37</sup> 75 Fed. Reg. 32940, 32941 (Jun. 10, 2010).

<sup>38</sup> EPAct, Pub.L 109-58, §§ 1221-1224, 119 Stat. 946-955 (2005).

Additionally, it is clear that DOE's requirement is a deliberative and determinative consideration. The RFP states that "DOE and the relevant [Power Marketing Administrator] will conduct an initial evaluation of the eligible Project Proposals, considering criteria including . . . [w]hether the Project will facilitate the reliable delivery of power generated by renewable resources."<sup>39</sup> The agency's consideration of the extra-statutory factor is exactly the type of decision-making consideration that reviewing courts set aside as arbitrary, capricious an abuse of discretion or otherwise not in accordance with the law.<sup>40</sup>

#### **IV. Clean Line's Application and Supporting Materials Fail to Satisfy all Requirements Enumerated in the DOE Request for Proposals**

In addition to the issues raised in the previous section, Downwind, LLC is also concerned with Clean Line's purported satisfaction of those factors stated in DOE's request for proposals:

- Clean Line's statements that the Project promotes the "public interest" are insufficient and do not provide a full account of the Project's impacts:
  - By failing to satisfy the statutory requirements of section 1222, Clean Line fails to demonstrate that the project meets the regulatory purposes of the legislation and, therefore, fails to show that the Project is in the public interest.
  - Clean Line's statements fail to raise or discuss the negative impacts of the project, including: impacts to private property rights; impacts to agricultural production and operations; impacts to real estate values; impacts to migratory waterfowl and associated recreational opportunities in the Mississippi Flyway; impacts to local energy production efforts (renewable or otherwise); issues with base load capacity; and, the true affordability and cost effectiveness of the Project given the expiration of wind energy production tax credits and the historically low price of abundant natural gas.
  - Clean Line's application boast of the many jobs that will be created, but fails to fully explain that most projections of job impacts are born out the assumption that wind generation capacity *will* fully develop as a result of the Project.
- Clean Line's analysis of the benefits and impacts to Arkansas fails to fully explain several issues, including:

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<sup>39</sup> 75 Fed. Reg. at 32941.

<sup>40</sup> See Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto Ins. Co., 463 U.S. 29, 43 (1983) (Agency action is arbitrary and capricious "if the agency has relied on factors which Congress has not intended it to consider. . .").

- The true impact to electricity rates as a result of integrating wind energy generation versus traditional sources of energy generation.
- Whether the integration of wind generation will have to be supplemented by further incorporation of existing and/or new capacity facilities (load facilities), and what the total combined cost to rate payers may be.
- The economic impact to Arkansas agriculture, including but not limited to: land value, lost production, reduced production, and increased operational costs.
- The impact to migratory waterfowl caused by the Project's detrimental impact key feeding and staging areas within the Mississippi Flyway.
- The economic impact to Arkansas' rural communities because of losses in agricultural production and losses in key recreational activities tied to migratory waterfowl.
- The Project's impact to the development and integration of local renewable energy.

**Conclusion:** Downwind, LLC appreciates the opportunity to comment on the Clean Line application and supporting materials, and thanks DOE for its consideration of the foregoing comments and concerns. For the reasons outlined above and because this proposed Project cannot be sited, constructed and operated in Jackson, Poinsett, Cross and Mississippi Counties without severely impacting agriculture operations and migratory waterfowl, Downwind, LLC stands opposed to the proposed Project. Accordingly, Downwind, LLC requests that DOE elect not to participate under Section 1222. Any decision to the contrary would be arbitrary and capricious in light of the many deficiencies and lack of demonstrated need.