

Plainsandeastern

From: Ron Hairston <ron.hairston@ph-clan.com>
Sent: Monday, July 13, 2015 5:15 PM
To: Plainsandeastern
Subject: Plains & Eastern Clean Line Transmission Line - Part 2 Application
Attachments: Ltr RJH to DOE 150706.pdf

Please include the attached comments that raise Constitutional issues regarding the Plains & Eastern Clean Line Transmission Line project.

The courtesy of a receipt of this email and the attached comments would be appreciated.

Ron Hairston

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July 6, 2015

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

Reference: Plains & Eastern Clean Line Transmission Line – Part 2 Application

Dear Sir or Madam:

I'm writing to you on behalf of my friends and neighbors who stand to suffer egregious financial harm should Department of Energy grant Plains & Eastern Clean Line approval to construct, operate, and own the proposed transmission line under the provisions of the 2005 Energy Policy Act.

The following paragraphs attempt to address rights afforded by the U.S. Constitution as they pertain to the protection of property owners in the path of the Plains & Eastern Clean Line (PECL) Transmission Line project:

1. Private Property Rights - A basic Premise of America's Constitution (National Center for Constitutional Studies (NCCS)).

"What, then, did the Founders consider to be the real cornerstone of man's liberty and happiness? On what basic premise did they devise their Constitution? Let them speak for themselves:"

John Adams: *"The moment the idea is admitted into society that property is not as sacred as the laws of God ... anarchy and tyranny commence. PROPERTY MUST BE SECURED OR LIBERTY CANNOT EXIST"*

and

James Madison: *"Government is instituted to protect property of every sort This being the end of government, that is NOT a just government,... nor is property secure under it, where the property which a man has ... is violated by arbitrary seizures of one class of citizens for the service of the rest."*

"Their guiding principle was that people come together to form governments in order to SECURE their rights to property - not to create an entity which will, itself, "take from the mouths of labor the bread it has earned." What was wrong for individual citizens to do to one another, they believed, was equally wrong for government to do to them."

"The right to own property and to keep the rewards of individual labor opened the floodgates of progress for the benefit of the entire human race. Millions have fled other countries to participate in the Miracle of America."

Impact of PECL Project on Private Property Rights:

- a. John Adams emphasizes that protection of private property is "sacred as the laws of God" and that it "must be secured" as a requisite for individual liberty. The PECL project (Project) fails in two fundamental ways in protecting the rights of those property owners impacted. First, the impact to property owners, including adjacent property owners, has not been honestly assessed in terms of magnitude of damage or in terms of the reach of damage beyond the right-of-way. Second, the Project relies on outdated compensation parameters found in the 2005 Energy Policy Act that limit requirements for restitution to rights-of-way. Policy makers at that time would not have passed the act as written had they recognized the consequences of corona noise and visual pollution that emanates from the "Advanced Technology" used in the 600,000 volt DC transmission line proposed by PECL. (ref. Sec's 1221, 1222, 1223, & 1224)
- b. James Madison understood that "property of every sort" must be protected. This includes property under the right-of-way plus any other property that may be measurably impacted by the far reaching effects of the Project. "Property of every sort" also implies that those impacted by collateral damage outside the right-of-way must be protected just as those within that narrow corridor. He also cautions against the violation by "arbitrary seizures of one class of citizens for the service of the rest." This is exactly what will occur should Department of Energy (DOE) grant PECL right(s)-of-eminent-domain over the objections of property owners. This violation becomes most egregious when one considers the real losses of property value that the land-owner class will suffer while PECL as a private investor class profits.
- c. The NCCS website summarizes the concepts of a proper relationship between people and government (liberty), individual rights, and just outcomes as:

"Their guiding principle was that people come together to form governments in order to SECURE their rights to property - not to create

an entity which wilt, itself, "take from the mouths of labor the bread it has earned." What was wrong for individual citizens to do to one another, they believed, was equally wrong for government to do to them."

"The right to own property and to keep the rewards of individual labor opened the floodgates of progress for the benefit of the entire human race. Millions have fled other countries to participate in the Miracle of America."

2. Article V, US Constitution (Rights of Citizens).

"No person shall be...deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."

Impact of PECL Project on Rights of Citizens:

- a. Due process has been denied the property owner class in a number of ways.
 1. Foremost, property owners are by comparison ill equipped to understand, analyze, and refute claims found in PECL impact statements. This class simply cannot realistically defend themselves against an organization that is well funded, organized, and connected to government agencies from the local to federal level. There is no "ad litem" or similar representation for property owners that can bridge shortfalls in technical and legal knowledge. There are no millionaires to counterbalance the dominating influence of PECL investors in order to ensure justice in DOE decisions regarding the Project.
 2. Property owners and their representatives have been denied access to key information regarding the financial feasibility of alternate routes (e.g. use of federal lands) and construction alternatives (e.g. underground cabling). Details of PECL claims regarding their claim of minimal loss to property value due to the impacts of corona noise and visual pollution remain hidden from public view. Peak corona noise levels, the conditions under which it occurs, and for what duration are not disclosed.
 3. While there have been public comments allowed, the complexity, magnitude, and reach of damaging impacts impressed upon property owners demands hearings where claims can be cross examined and rebutted. To ignore this level of detailed enquiry deprives the public of reasonably due process. In effect, it

becomes like a court with a preferential ear toward a single party or class.

- b. Just compensation has also been denied as described in Paragraphs 1.a. and 1.b. above.
1. There is no compensation beyond the right-of-way leaving many property owners with grossly devalued homes and land.
 2. Use of local appraisers familiar with the value parameters in the area of impact has not been sought. Recent studies, such as work done by Jim Sanders of Real Estate Appraisal Litigation, LLC, document how the real impact of power lines on property values have been historically ignored. PECL continues to rely on outdated studies having poor statistical correlation to the realities associated with a 600,000 volt DC transmission line. They have elected to use data, reports, and statistics that favor the Project's investors at the expense of property owners.
 3. There is "manifest injustice" to property owners. Compensation normally measured by market value specifically "at the time of taking" should not apply to the PECL project. As mentioned earlier, the measurable impact of "Advanced Technology" HVDC reaches far beyond the right-of-way and is of unprecedented magnitude. The Supreme Court has found that in such cases deviation from "normal" precedent is "required". From Wikipedia we read:

"The last two words of the [fifth] amendment promise "just compensation" for takings by the government. In United States v. 50 Acres of Land (1984), the Supreme Court wrote that "The Court has repeatedly held that just compensation normally is to be measured by "the market value of the property at the time of the taking contemporaneously paid in money." Olson v. United States, 292 U.S. 246 (1934) ... Deviation from this measure of just compensation has been required only "when market value has been too difficult to find, or when its application would result in manifest injustice to owner or public." United States v. Commodities Trading Corp., 339 U.S. 121, 123 (1950).

The "manifest injustice" wrought by the PECL project demands compensation beyond the right(s)-of-way.

3. Michigan v. Environmental Protection Agency, June 26, 2015.

“Agency action is unlawful if it does not rest “ ‘on a consideration of the relevant factors.’ ” ” The Supreme Court ruled against the EPA because “The Agency refused to consider cost when making its decision.” This applies to DOE as it makes its decision regarding the approval and granting of right(s)-of-eminent-domain to PECL. The complete costs borne by property owners under the right-of-way, and adjacent property owners, must be fully considered.

Department of Energy’s Requirements to Consider Costs in PECL Decision making: A deeper understanding is found in the opinion written by Justice Scalia:

- a. He writes: *“Not only must an agency’s decreed result be within the scope of its lawful authority, but the process by which it reaches that result must be logical and rational.”* Then it stands to reason that when property owners suffer measurable losses significantly greater than that claimed in the Environmental Impact Statement, and the impact greatly extends beyond the boundaries of the right-of-way, then costs borne by this class are legitimate and are deserving of logical and rational consideration. As of this date, logical and rational consideration of real measurable costs beyond the right-of-way continues to be ignored and “manifest injustice” prevails.
- b. *“In addition, ...any disadvantage could be termed a cost.”* Costly damage that creates measurable disadvantage to the property owner class continues to be ignored. The Project carries with it audible pollution from corona noise and visual pollution with lines and support structures towering some 200 ft dwarfing mature trees and nearby homes. The existing quality of life in an economic, social, or psychological sense becomes forever altered for property owners 1,000 ft, 2,000 ft, or more away. Dreams are dashed and serenity of the environment is lost. Even health may be affected by those who are unable to escape from yet unrecognized impacts of their proximity to 3,500,000,000 flowing watts of 600,000 volt DC electric current.

4. Conclusions:

- a. DOE should not approve PECL’s application for right(s)-of-eminent domain.
- b. Considering PECL’s lack of recognition of the unprecedented impact of noise and visual pollution from the HVDC “Advanced Technologies” used and the “manifest injustice” borne by property owners, an approval amounts to an “arbitrary seizure” of property from disenfranchised citizens for the service of a powerful and wealthy investor class.

- c. The full impact cannot be measured using the current process that denies reality, hides information, and provides for no cross examination leading to the truth.
- d. As witnessed by the recent Supreme Court ruling against the EPA, the costs of this project on human lives must have full consideration or the *"Agency action is unlawful"*.

5. Questions:

- a. How would our founding fathers respond to the level of injustice that approval of the PECL project will bring on citizens in its path?
- b. Will DOE honor the intent of the Fifth Amendment by ensuring true due process and real just compensation that sets right the current "manifest injustice"?
- c. In the spirit of the recent Supreme Court ruling against the EPA, will DOE sincerely work to correctly capture all costs and disadvantages?
- d. Do you believe as James Madison wrote, *"What was wrong for individual citizens to do to one another, they believed, was equally wrong for government to do to them."*?

Sincerely, and on behalf of my neighbors,



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