



Section 1222/Clean Line:

What is Section 1222 of the Energy Policy Act of 2005?

Section 1222 is the law which would authorize the Clean Line Plains and Eastern Project. That law states that the Secretary of Energy, acting through the Administrator of Western Area Power Administration (WAPA), or Southwestern Power Administration (SWPA), may design, develop, construct, operate, own, or participate with other entities in designing, developing, constructing, operating, maintaining, or owning electric power transmission projects to upgrade existing transmission facilities owned by WAPA or SWPA, or new electric power transmission facilities. In carrying out either type of project, the Secretary may accept and use funds contributed by another entity for the purpose of executing the project.

Who is Clean Line?

Clean Line Energy Partners (Clean Line) is a Houston-based private developer of high voltage transmission lines with the stated goal of moving renewable energy, such as wind, to load-centers where that energy is not readily available.

What is the Plains and Eastern Project?

The Project as proposed is an overhead ± 600 kV high voltage direct current (HVDC) electric transmission system and associated facilities with the capacity to deliver approximately 3,500 MW spanning over 700 miles from the Oklahoma and Texas Panhandle to the Memphis, Tennessee area. The Draft Environmental Impact Statement (DEIS), currently in the comment period, identified and studied an alternative of an Arkansas converter station sited in either Pope County or Conway County, which would allow an "off-ramp" of approximately 500 MW which would interconnect into Entergy/MISO.

How is SWPA involved?

If this Project is approved there are a variety of scenarios for SWPA's participation, as guided by Section 1222. Currently, Clean Line has not been granted Public Utility status in the State of Arkansas. Therefore, it cannot own the land rights for the Project in Arkansas. Accordingly, the most likely SWPA involvement would be Clean Line's use of SWPA's eminent domain authority for the entire State of Arkansas. Also, as currently contemplated in the Project, it is expected that Clean Line would have to use SWPA's right of eminent domain in at least a portion of Oklahoma. Because Tennessee is outside of SWPA's service territory, SWPA's right of eminent domain could not be used in that State.

What is the status of the Project?

Currently, the Project has gone through the NEPA Environmental Impact Statement (EIS) process. Since this is the first and only Section 1222 project to date, whether additional analysis will be conducted on this Project is not clear at this time. For this Project to move forward, the Secretary of Energy would have to approve it, "in consultation with" (statutory language) the Administrator of SWPA. We are currently awaiting this decision.

What are SPRA's concerns?

The main concern that SPRA has is to ensure that no liabilities or costs from this Project flow either to SWPA or to its customers. Our comments to the DEIS centered around our absolute requirement that SWPA's Federal hydropower customers are held harmless by the United States from any liabilities, costs and/or expenses, financial or legal, stemming from the purchase of rights-of-way or any land acquisition, ownership, operation, construction, maintenance or otherwise of any facilities construction under Section 1222. Our comments on the Clean Line DEIS included the following concerns:

- Clean Line right of way acquisition
- Operations and maintenance
- NERC Compliance
- Project completion and commissioning risk
- Third party claims for injury to persons or property
- Financing Availability
- Insolvency Risk
- Decommissioning

Current legislation affecting the Project

There are several pieces of legislation which, if passed, could drastically affect both Section 1222 and the Plains and Eastern Project. They are:

- APPROVAL Act (Assuring Private Property Rights Over Vast Access to Land Act) introduced as S. 485 and H.R. 3062. This bill amends Section 1222 to prohibit the Department of Energy (DOE) from using the power of eminent domain to implement Section 1222, unless they have received explicit permission to do so by: (1) the state governor and the head of each applicable public utility commission or public service commission of the affected state, and (2) the head of the governing body of each Indian tribe whose land would be affected.
- Amendment 3059 to the Senate Energy Bill (S. 2012) which is a repeal of Section 1222.
- Amendment 3060 to the Senate Energy Bill (S. 2012) which is the same text as the APPROVAL Act.
- Amendment 3260 to the Senate Energy Bill (S. 2012) amends Section 1222 to require the Secretary to issue a determination that the laws of the applicable state which a Section 1222 project traverses does not allow for interstate transmission projects.
- Amendment 3261 to the Senate Energy Bill (S. 2012) amends Section 1222 to add a reporting requirement that the Secretary must submit to Congress a report that: (1) describes the impact that the proposed Project would have on electricity rates; (2) demonstrates that the proposed Project meets the requirements of the law, and (3) includes a list of utilities that have entered into contracts for the purchase of power from the proposed Project. The Amendment also requires that the Secretary wait 180 days after the submission of this report before (s)he makes a decision about whether to participate in a Section 1222 project.
- Amendment 3311 to the Senate Energy Bill (S. 2012) is the same text as Amendment 3261 but only requires a waiting period of 90 days.

Please contact my office with any questions regarding federal hydropower:

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