SUMMARY: The U.S. Army Corps of Engineers (USACE) intends to prepare a Draft Integrated Feasibility Report and Environmental Impact Statement (DIFR–EIS) for the Coastal Texas Protection and Restoration Feasibility Study. This study will identify and evaluate the feasibility of developing a comprehensive plan for flood risk management, hurricane and storm risk management, and ecosystem restoration for the coastal areas of the State of Texas. The study will focus on providing for the protection, conservation, and restoration of wetlands, barrier islands, shorelines, and related lands and features that protect critical resources, habitat, and infrastructure from the impacts of coastal storms, hurricanes, erosion, and subsidence. This notice announces the USACE's intent to determine the scope of the issues to be addressed and for identifying the significant resources related to a proposed action.

DATES: Comments on the scope of the DIFR–EIS will be accepted through May 9, 2016.

ADDRESSES: Scoping comments may be sent by electronic mail to: *CoastalTexas@usace.army.mil.*

FOR FURTHER INFORMATION CONTACT: Galveston District Public Affairs Office at 409–766–3004 or *swgpao@usace.army.mil.*

SUPPLEMENTARY INFORMATION:

1. *Authority.* The Coastal Texas Protection and Restoration Feasibility Study is authorized under Section 4091, Water Resources Development Act (WRDA) of 2007, Public Law 110–114, to develop a comprehensive plan to determine the feasibility of carrying out projects for flood risk management, hurricane and storm risk management, and ecosystem restoration in the coastal areas of the State of Texas.

2. *Proposed Action.* The study will identify critical data needs and recommend a comprehensive strategy for reducing coastal storm flood risk through structural and nonstructural measures that take advantage of natural features like barrier islands and storm surge storage in wetlands. Structural alternatives to be considered include improvements to existing systems (such as existing hurricane protection projects at Port Arthur, Texas City, Freeport, and Lynchburg, and seawalls at Galveston, Palacios, Corpus Christi, North and South Padre Island), and the creation of new structural plans for hurricane storm risk management. Ecosystem restoration alternatives to be considered include estuarine marsh restoration, beach and dune restoration, rookery island restoration, oyster reef restoration, and seagrass bed restoration. The study will evaluate potential benefits and impacts of the proposed action including direct, indirect and cumulative effects to the human, water and natural environments that balance the interests of flood risk management, hurricane and storm risk management, and ecosystem restoration purposes for Texas and the Nation.

3. *Scoping.* In August, 2014, early scoping meetings were held in League City, Palacios, Corpus Christi, and the City of South Padre Island, Texas. Comments were received for 30 days following the last scoping meeting. Additional input from Federal, state and local agencies, Indian tribes, and other interested private organizations and parties is being solicited with this notice. The USACE requests public scoping comments to: (a) Identify the affected public and agency concerns; (b) identify the scope of significant issues to be addressed in the DIFR–EIS; (c) identify the critical problems, needs, and significant resources that should be considered in the DIFR–EIS; and (d) identify reasonable measures and alternatives that should be considered in the DIFR–EIS. A Scoping Notice announcing the USACE's request for public scoping comments will be sent via electronic mail to affected and interested parties. Scoping comments are requested to be sent by May 9, 2016.

4. *Coordination.* Further coordination with environmental agencies will be conducted under the National Environmental Policy Act, the Fish and Wildlife Coordination Act, the Clean Water Act, the Clean Air Act, the National Historic and Preservation Act, the Magnuson-Stevens Fishery Conservation and Management Act, and the Coastal Zone Management Act under the Texas Coastal Management Program.

5. *Availability of DIFR–EIS.* The DIFR–EIS will be available for public review and comment in July 2018.

Dated: March 23, 2016.

Richard P. Pannell,

Colonel, U.S. Army, Commanding.

[FR Doc. 2016–07283 Filed 3–30–16; 8:45 am]

BILLING CODE 3720–58–P

DEPARTMENT OF ENERGY

Record of Decision in re Application of Clean Line Energy Partners LLC

AGENCY: Department of Energy.

ACTION: Record of decision.

SUMMARY: Section 1222 of the Energy Policy Act of 2005 (EPAct 2005) grants the Secretary of Energy the authority to design, develop, construct, operate, maintain, or own, or participate with other entities in designing, developing, constructing, operating, maintaining, and owning new electric power transmission facilities and related facilities located within any state in which the Southwestern Power Administration (Southwestern) operates. In response to an application submitted by Clean Line Energy Partners LLC on behalf of itself and several corporate affiliates (collectively, Clean Line or the Applicant) the Department of Energy (DOE or the Department) announces its decision to participate in the development of approximately 705 miles of ±600 kilovolt (kV) overhead, high-voltage direct current (HVDC) electric transmission facilities and related facilities from western Oklahoma to the eastern state-line of Arkansas near the Mississippi River (the Project). This decision implements DOE's preferred alternative in Oklahoma and Arkansas as described in the *Final Environmental Impact Statement for the Plains & Eastern Clean Line Transmission Line Project* (Final EIS) (DOE/EIS–0486). Clean Line, acting on its own and without the Department's participation, would build additional facilities that would connect to the Project in Texas and Tennessee.

Collectively, the facilities built by Clean Line would have the capacity to deliver approximately 4,000 megawatts (MW) from renewable energy generation facilities, located in the Oklahoma Panhandle and potentially Texas Panhandle regions, to the electrical grid in Arkansas and Tennessee. The potential environmental impacts associated with the Project, plus the additional facilities in Texas and Tennessee, are analyzed in the Final EIS. DOE's review included consultations in accordance with Section 7 of the Endangered Species Act (ESA) and Section 106 of the National Historic Preservation Act (NHPA). DOE's decision requires the implementation of mitigation measures, and a complete list of these measures can be found in the Mitigation Action Plan (MAP).

ADDRESSES: Information regarding Section 1222 of EPAct 2005 can be found on the DOE Web site at *http://energy.gov/oe/services/electricity-policy-coordination-and-implementation/transmission-planning/section-1222.* The determination by the Secretary of Energy, Summary of Findings, and Participation Agreement are available on the DOE Web site at *http://energy.gov/oe/services/electricity-*

policy-coordination-and-implementation/transmission-planning/section-1222-0. The Final EIS, associated errata, MAP, and this Record of Decision (ROD) are available on the DOE National Environmental Policy Act (NEPA) Web site at *http://energy.gov/nepa* and on the Plains & Eastern EIS Web site at *http://www.plainsandeasterneis.com/.*

FOR FURTHER INFORMATION CONTACT: For information on the Section 1222 process, contact Mr. Christopher Lawrence, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585; email at *Christopher.Lawrence@hq.doe.gov;* or phone (202) 586–5260.

For information on the EIS or the consultation processes under Section 106 of the NHPA (54 U.S.C. 300101) or Section 7 of the ESA (16 U.S.C. 1531 *et seq.*), contact Jane Summerson, Ph.D., DOE NEPA Document Manager, U.S. Department of Energy, DOE NNSA, Post Office Box 5400, Building 391, Kirtland Air Force Base East, Albuquerque, NM 87185; email at *Jane.Summerson01@nnsa.doe.gov;* or phone (505) 845–4091.

For general information about the DOE NEPA process, contact Carol Borgstrom, Director, Office of NEPA Policy and Compliance (GC–54), U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585; or phone at (202) 586–4600; voicemail at (800) 472–2756; or email at *askNEPA@hq.doe.gov.* Additional information regarding DOE's NEPA activities is available on the DOE NEPA Web site at *http://energy.gov/nepa.*

SUPPLEMENTARY INFORMATION:

Background

Section 1222 of EPAct 2005, 42 U.S.C. 16421, grants the Secretary of Energy authority, acting through the Western Area Power Administration (WAPA), Southwestern, or both, to design, develop, construct, operate, maintain, or own, or participate with other entities in designing, developing, constructing, operating, maintaining, and owning new electric power transmission facilities and related facilities located within any state in which WAPA or Southwestern operates. In June 2010, the Department issued *Request for Proposals for New or Upgraded Transmission Line Projects Under Section 1222 of the Energy Policy Act of 2005* (75 FR 32940; June 10, 2010). In response to the request for proposals (RFP), Clean Line Energy Partners LLC of Houston, Texas, the parent company of Plains and Eastern Clean Line LLC and Plains and Eastern Clean Line Oklahoma LLC, submitted a proposal to DOE in July 2010 for the Plains & Eastern Clean Line Project. In August 2011, Clean Line modified the proposal and, at DOE's request, subsequently submitted additional information (referred to as the Part 2 Application) in January 2015.

This ROD uses two terms that describe related elements of the application being discussed. The Project[1] refers to those facilities in Oklahoma and Arkansas included in DOE's decision to participate, *e.g.,* approximately 705 miles of ±600 kV overhead, HVDC electric transmission facilities running from western Oklahoma to the eastern state-line of Arkansas near the Mississippi River and related facilities, including a converter station in Arkansas. Applicant Proposed Project[2] refers to the Project plus the additional facilities that Clean Line, acting on its own and without the Department's participation, would build in Texas and Tennessee to connect to the Project. Collectively, the facilities would have the capacity to deliver approximately 4,000 MW from renewable energy generation facilities, located in the Oklahoma Panhandle and potentially Texas Panhandle regions, to the electrical grid in Arkansas (500 MW) and Tennessee (3,500 MW).

Section 1222 Authority

Parallel with the NEPA process, DOE evaluated Clean Line's application under Section 1222 of the EPAct 2005. This evaluation under Section 1222 included a review of the application against statutory eligibility criteria and certain evaluation factors listed in the 2010 RFP. To aid in this review, Clean Line's Part 2 Application was made available for public comment from April 28, 2015 until July 13, 2015 (80 FR 23520 and 34626). Clean Line's application remains available on DOE's Web site at *http://www.energy.gov/oe/services/electricity-policy-coordination-and-implementation/transmission-planning/section-1222-0.* The results of DOE's evaluation under Section 1222 are addressed under the Decision section below in this ROD.

NEPA Review

DOE prepared the EIS and this ROD pursuant to NEPA (42 U.S.C. 4321 *et seq.*), the Council on Environmental Quality (CEQ) NEPA regulations (40 Code of Federal Regulations [CFR] parts 1500 through 1508), and DOE's NEPA implementing regulations (10 CFR part 1021). DOE's purpose and need for agency action is to implement Section 1222 of the EPAct 2005. In the Final EIS, DOE analyzed the potential environmental impacts from the Applicant Proposed Project, as the term is used in this ROD, the range of reasonable alternatives, and a No Action Alternative.

Major facilities associated with the Applicant Proposed Project include converter stations in Oklahoma, Arkansas, and Tennessee; approximately 720-miles of ±600 kV HVDC transmission line facilities; an alternating current (AC) collection system; and access roads.

In response to public comments on the Draft EIS, DOE and Clean Line developed 23 route variations for the Applicant Proposed Route[3] for the HVDC transmission line, which were evaluated in the Final EIS. These route variations involved minor changes to the segment lengths and were developed with the intent of reducing land use conflicts or minimizing potential environmental impacts of the route as analyzed in the Draft EIS. In all but one instance, Clean Line concluded that the route variations were technically feasible and expressed support for DOE's adoption of these route variations (the instance is described under the Basis for Decision section below in this ROD).

The analysis of potential environmental impacts for the HVDC transmission facilities, including the 23 route variations addressed in the Final EIS, was based on a representative 200-foot-wide right of way (ROW) within a 1,000-foot-wide corridor. The final location of the transmission line ROW could be anywhere within this 1,000-foot-wide corridor and would be determined following the issuance of this ROD based on the completion of final engineering design, federal and state related construction permits and authorizations, ROW acquisition activities, and the incorporation of all measures identified in the MAP. Determination of this final location of

[1] In the Final EIS, "the Project" is used as a broad term that generically refers to elements of the project as proposed by Clean Line and/or DOE Alternatives when differentiation between the two is not necessary. The definition of "the Project" used in the Final EIS is distinct from the meaning of "the Project" in this ROD.

[2] In the Final EIS, the term "Applicant Proposed Project" refers to the project as described in Clean Line's modified proposal to DOE. This is described in Section S.5.2 of the Final EIS and does not include the converter station in Arkansas or alternative routes for the HVDC transmission line that are referred to in the Final EIS as "DOE Alternatives."

[3] The Applicant Proposed Route, as used in the Final EIS and this ROD, refers to the single 1,000-foot-wide route alternative defined by Clean Line to connect the converter station in the Oklahoma Panhandle to the converter station in western Tennessee. The Applicant Proposed Route is described in Section S.5.3.2 of the Final EIS.

the ROW within the 1,000-foot-wide corridor is referred to as micrositing.

In addition to the HVDC transmission facilities, the Applicant Proposed Project would include construction, operation, and maintenance of an AC collection system. The collection system would consist of four to six AC transmission lines up to 345 kV from the Oklahoma converter station to points in the Oklahoma Panhandle region and potentially Texas Panhandle region to facilitate efficient interconnection of wind energy generation. The Final EIS evaluated 13 possible routes, each consisting of a 2-mile-wide corridor within which a 200-foot-wide ROW could be located. The specific locations of these transmission lines cannot be known at this time and would depend on the locations of future wind farms in this area. DOE's analysis in the Final EIS also includes the potential environmental impacts resulting from connected actions (wind energy generation and currently identified substation and transmission upgrades related to the Applicant Proposed Project).

On February 26, 2016, DOE issued errata to correct errors, inconsistencies, and omissions in the Final EIS. These included, for example, correcting inconsistencies in two tables identifying the lengths of the HVDC transmission line routes, updating emissions estimates for air quality impacts, correcting socioeconomic and transportation impact estimates to account for the Arkansas converter station, and including and responding to 26 comment documents that were inadvertently left out of Appendix Q of the Final EIS. DOE considered each of the errata individually and collectively and determined that they do not represent significant new information relevant to environmental consequences and do not change the conclusions in the Final EIS.

Cooperating Agencies

DOE was the lead federal agency for the preparation of the EIS and, pursuant to 40 CFR 1501.6, prepared the EIS in consultation with the following cooperating agencies: Bureau of Indian Affairs (BIA), Natural Resources Conservation Service (NRCS), Tennessee Valley Authority (TVA), U.S. Army Corps of Engineers (USACE), U.S. Environmental Protection Agency, and U.S. Fish and Wildlife Service (USFWS).

BIA, NRCS, TVA, USACE, and USFWS can, to the extent permitted by law, rely on the Final EIS to fulfill their obligations under NEPA for any action, permit, or approval by these agencies for the Applicant Proposed Project. TVA conducted studies that indicate certain upgrades to its transmission system would be necessary for TVA to interconnect with the Applicant Proposed Project while maintaining reliable service to its customers. Additionally, TVA would need to construct a new 500 kV transmission line to enable the injection of 3,500 MW of power from the Applicant Proposed Project. TVA would complete its own NEPA review, tiering from DOE's Final EIS, to assess the impact of the upgrades and the new 500 kV line. The USACE may consider the routing alternatives in Oklahoma, Arkansas, Texas, and Tennessee as presented in the Final EIS when making its permit decisions and can use the analysis contained in the Final EIS to inform all of its permit decisions for the Applicant Proposed Project.

Consultation

DOE is the lead agency for consultation required under Section 106 of the NHPA. In accordance with 36 CFR 800.8(c), DOE is using the NEPA process and documentation required for the EIS to comply with Section 106 of the NHPA in lieu of the procedures set forth in 36 CFR 800.3 through 800.6. This approach is consistent with the recommendations set forth in the CEQ NEPA regulations, 40 CFR 1500.2, and *NEPA and NHPA: A Handbook for Integrating NEPA and Section 106,* issued in 2013 by CEQ and the Advisory Council on Historic Preservation, which encourage federal agencies to integrate the NEPA process with other planning and environmental reviews, such as Section 106 of the NHPA.

DOE invited certain federal, state, Indian Tribes or Nations, and local agencies to consult under Section 106 of the NHPA in accordance with 36 CFR 800.2(c). The Programmatic Agreement, which satisfies DOE's Section 106 responsibilities, was executed on December 7, 2015. The Programmatic Agreement describes roles and responsibilities for DOE and the consulting parties; the tribal consultation protocol; the area of potential effects; the phased process to address historic properties, including continued consultation; procedures to address the unanticipated discovery of cultural resources or inadvertent discovery of human remains, graves or associated funerary objects; the communication plan; the historic properties management plan for operations and maintenance activities, annual reporting and close out report requirements; and dispute resolution requirements. The Programmatic Agreement is included as Appendix A of the MAP.

In March 2015, DOE and TVA requested the initiation of formal consultation and conference with the USFWS under Section 7(a)(2) of the ESA and submitted a Biological Assessment (BA) regarding the Applicant Proposed Project and its potential effects on listed species and designated critical habitat. DOE responded to USFWS's request for additional information with a revised BA in May 2015. In July 2015, DOE submitted an addendum to the revised BA to address route variations based on public comments on the Draft EIS. The USFWS issued its Biological Opinion on November 20, 2015, which concluded formal consultation. The Biological Opinion is included as Appendix B of the MAP. The Biological Opinion concluded that implementation of the Applicant Proposed Project is not likely to jeopardize the continued existence of the affected species, but likely will result in incidental take of certain species and, therefore, includes an enforceable incidental take statement. DOE's decision is conditioned on the Applicant complying with the incidental take statement and taking all practicable means to avoid or minimize environmental harm from the selected alternative as required by USFWS in the Biological Opinion. These conditions are further described under the Mitigation section below in this ROD. DOE also acknowledges that re-initiation of formal ESA consultation may be required in accordance with 50 CFR 402.16.

Public Comments

On December 21, 2012, DOE issued a Notice of Intent (NOI) (77 FR 75623) to prepare an EIS for the Plains & Eastern Clean Line Transmission Project. DOE conducted 13 public scoping meetings. DOE considered input from scoping in preparing the Draft EIS, which was issued on December 17, 2014. The 90-day public comment period for the Draft EIS began on December 19, 2014, and was scheduled to end on March 19, 2015 (79 FR 78079). On February 12, 2015, DOE announced in the **Federal Register** that it was extending the comment period until April 20, 2015 (80 FR 7850). As part of this public comment period, DOE invited comments on the NHPA Section 106 process and any potential adverse impacts to historic properties.

The Final EIS and errata considered and responded to all comments submitted on the Draft EIS. During the comment period, DOE held 15 public hearings in the following locations:

Woodward, Oklahoma; Guymon, Oklahoma; Beaver, Oklahoma; Perryton, Texas; Muskogee, Oklahoma; Cushing, Oklahoma; Stillwater, Oklahoma; Enid, Oklahoma; Newport, Arkansas; Searcy, Arkansas; Marked Tree, Arkansas; Millington, Tennessee; Russellville, Arkansas; Fort Smith, Arkansas; and Morrilton, Arkansas.

In addition to numerous comments that provided a statement of general opposition to or support for the Project, the primary topics raised in comments on the Draft EIS included, but were not limited to: Concern about electric and magnetic fields; concern about reductions in property value; concern about impacts to agricultural resources such as crop production, irrigation, and aerial spraying; concern about the use of eminent domain; and concern about visual impacts.

Analysis of Potential Environmental Impacts

The EIS analyzes potential environmental impacts associated with the alternatives for each of the following resource areas: Agricultural resources; air quality and climate change; electrical environment; environmental justice; geology, paleontology, minerals, and soils; groundwater; health, safety, and intentional destructive acts; historic and cultural resources; land use; noise; recreation; socioeconomics; special status wildlife and fish, aquatic invertebrate, and amphibian species; surface water; transportation; vegetation communities and special status plant species; visual resources; wetlands, floodplains, and riparian areas; wildlife, fish, and aquatic invertebrate species; and cumulative impacts.

Analysis of the potential environmental impacts of the Applicant Proposed Project and DOE Alternatives on each resource area (Chapter 3 of the Final EIS) assumes the implementation of all Applicant-proposed environmental protection measures (EPMs) to avoid or minimize adverse impacts (summarized in Appendix F of the Final EIS). In some resource sections, DOE identified best management practices (BMPs) that could further avoid or minimize potential adverse impacts. BMPs are summarized in Table 2.7–1 of Chapter 2 in the Final EIS.

In accordance with DOE's *Compliance with Floodplain and Wetland Environmental Review Requirements* (10 CFR part 1022), DOE prepared a floodplain assessment and has determined that the Applicant Proposed Project would avoid floodplains to the maximum extent practicable, that appropriate measures to minimize adverse effects on human health and safety and the functions and values provided by floodplains would be taken, and that the Applicant Proposed Project would comply with applicable floodplain protection standards. The Floodplain Statement of Findings (Appendix N of the Final EIS) relied on the implementation of the EPMs developed and committed to by the Applicant and BMPs identified in consultation with USACE.

DOE's selected route for the HVDC transmission line is the Applicant Proposed Route (with one exception, as noted under the Basis for Decision section below in this ROD). Because DOE's selected route is the HVDC route alternative with the lowest potential for environmental impacts when compared against the other HVDC route alternatives, DOE has designated it as the environmentally preferable HVDC route alternative with associated facilities. DOE's selected route incorporates input on potential environmental impacts that DOE received from the public and agencies (during scoping and in comments on the Draft EIS). The selected route was developed through a series of stages including the preliminary routing process, refinements during DOE's independent verification of that process, and further changes to address public and agency input.

While the No Action Alternative would avoid the environmental impacts identified in the EIS, adoption of this alternative would not meet DOE's purpose and need to implement Section 1222 of the EPAct 2005.

Comments Received on the Final EIS

DOE distributed the Final EIS to congressional members and committees; state and local governments; other federal agencies; certain American Indian Tribes or Nations; non-governmental organizations; and other stakeholders, including members of the public who requested the Final EIS. The Final EIS also was made available to the public via the Internet. DOE subsequently received eight comment documents. As discussed in Appendix A to this ROD, DOE has concluded that these comment documents do not identify a need for further NEPA analysis.

Decision

DOE has decided to participate in the Project as defined in this ROD. Thus, this decision implements the preferred alternative described in Section 2.14 of the Final EIS for the Project, which is defined in this ROD as facilities in Oklahoma and Arkansas. Concurrent with this ROD, the Secretary of Energy has issued a determination that the Project meets the criteria of Section 1222 and merits the Department's participation. (*http://energy.gov/oe/services/electricity-policy-coordination-and-implementation/transmission-planning/section-1222-0*).

Basis for Decision

The decision to participate in the Project considered the analysis of potential environmental impacts in the Final EIS, other statutory requirements (*e.g.*, ESA and Section 106 of the NHPA), and the Department's review of Clean Line's application against the eligibility criteria in Section 1222 and the evaluation factors identified in the Department's 2010 RFP. The Department's analysis of the statutory eligibility criteria and the RFP evaluation factors is contained in the Summary of Findings, which the Department is publishing concurrent with this ROD and is incorporated herein. Also relevant to the Department's decision is the Participation Agreement, which sets forth the terms and conditions under which the Department will participate. (Both the Summary of Findings and the Participation Agreement are available at *http://energy.gov/oe/services/electricity-policy-coordination-and-implementation/transmission-planning/section-1222-0*).

There is no "impact-free" routing choice for a large transmission line. In some regions, where there are multiple resource conflicts, the HVDC alternative routes impact certain resources differently, and some alternative routes were included in DOE's analysis to emphasize protection of one resource or land value over another. The Final EIS analyzed potential impacts for the HVDC transmission line by resource and highlighted substantive differences between the Applicant Proposed Route, route variations, and HVDC alternative routes. A detailed discussion of the route development and basis for identification of the Applicant Proposed Route is included in Appendix G of the Final EIS. To respond to public comments on the Draft EIS, DOE and the Applicant developed 23 route variations for the Applicant Proposed Route. These route variations were developed with the intent of reducing land use conflicts or minimizing potential environmental impacts of the Applicant Proposed Route from the levels of potential impacts described in the Draft EIS. In all but one instance, the route variations replaced their corresponding segments of the Applicant Proposed Route. This exception (Region 4, Applicant

Proposed Route Link 3, Variation 2; approximately 3 miles northwest of Sallisaw, Oklahoma) was carried forward as an additional alternative for comparative analysis in the Final EIS with the corresponding segment of the Applicant Proposed Route.

DOE has decided to implement the Applicant Proposed Route presented in the Final EIS, with one exception (Region 4, Applicant Proposed Route Link 3, Variation 2). The basis for DOE's selection of this route variation over the corresponding segment of the Applicant Proposed Route includes the following: (1) The route variation crosses 32 percent fewer land parcels (17 versus 25); (2) the route variation parallels more than twice the length of existing infrastructure, including transmission lines and roads (4.42 miles versus 1.85 miles); (3) the representative ROW of the route variation would be located within 500 feet of 8 fewer residences (1 versus 9); and (4) the route variation would avoid a private airstrip whose operations could be impacted by the Applicant Proposed Route.

DOE has considered the alternatives analyzed in the Final EIS and taken into consideration the comparison of potential impacts for each resource area along with comments received on the Draft EIS and the Final EIS.

Mitigation

DOE's environmental analyses in the Final EIS and consultations under Section 106 of the NHPA and Section 7 of the ESA have identified all practicable means to avoid or minimize environmental harm. DOE's decision to participate in the Project is contingent upon the Applicant implementing all of the EPMs in the Final EIS to avoid or minimize potential adverse effects resulting from construction, operations and maintenance, and decommissioning. Furthermore, the Applicant will be required to develop and implement all of the project plans listed in Appendix F of the Final EIS. DOE's decision also requires that the Applicant implement the BMPs, set forth in the Final EIS and developed by DOE and in consultation with other agencies, to further avoid or minimize potential adverse impacts. Chapter 2 of the Final EIS (Table 2.7–1) summarizes the BMPs identified for applicable resource areas analyzed in Chapter 3.

DOE's decision to participate requires that the Applicant comply with the Biological Opinion issued by USFWS on November 20, 2015. This includes adhering to the terms of the incidental take statement, and implementing all reasonable and prudent measures and implementing terms and conditions described in the Biological Opinion.

The Programmatic Agreement executed in accordance with Section 106 of the NHPA addresses historic properties identification and evaluation, assessment of effects, and resolution of effects, including avoidance, minimization, and mitigation. Federal agencies that do not adopt the executed Programmatic Agreement, but whose involvement constitutes an undertaking pursuant to 36 CFR 800.16(y) would conduct consultations with State Historic Preservation Offices and/or Tribal Historic Preservation Offices and/or other appropriate parties in accordance with 36 CFR part 800. Clean Line, as a signatory to the Programmatic Agreement, will be required to implement the stipulations as agreed to in the executed Programmatic Agreement as a condition of DOE's decision to participate.

The Applicant is responsible for implementing all of the measures identified above (EPMs, BMPs, the USFWS Biological Opinion, and stipulations in the executed Programmatic Agreement), as set forth in the MAP. Additional required actions will be identified as a result of ongoing consultations (*e.g.,* regarding Clean Water Act Section 404) between the Applicant and state and federal agencies as part of approval and permitting processes.

The MAP lists the mitigation requirements and provides for the development of the implementation and monitoring of the EPMs, BMPs, reasonable and prudent measures and other requirements identified in the Biological Opinion, and mitigation measures contained in the Programmatic Agreement. DOE will track and annually report progress made in implementing, and the effectiveness of, the mitigation commitments made in this ROD. The MAP is posted on the DOE NEPA Web site at *http://energy.gov/nepa* and on the Plains & Eastern EIS Web site at *http://www.plainsandeasterneis.com/.*

Issued in Washington, DC, on March 25, 2016.

Ernest J. Moniz,

Secretary of Energy.

Appendix A: Public Comments Received After the Publication of the Final EIS

DOE received eight comment documents regarding the Final EIS after its publication. In order of their receipt, these documents were submitted by the following individuals or groups: (1) Bob Hardy; (2) Paul Nedlose; (3) Steve Clair on behalf of residents of Walnut Valley Estates (north of Dover, Arkansas); (4) Residents of Walnut Valley Estates; (5) Residents of Walnut Valley Estates; (6) J.D. Dyer; (7) Mark Fuksa; and (8) Steve Clair on behalf of residents of Walnut Valley Estates. Comment documents 4, 5, and 8 contain the same information as was presented in comment document 3.

DOE considered all comments contained in these documents. DOE has concluded that these comment documents do not identify a need for further NEPA analysis. Six of these comment documents are similar to, and in most cases the same as, comments submitted on the Draft EIS, to which DOE responded in the Final EIS. DOE responses to comments similar to Mr. Hardy's concerns regarding communication can be found in the General NEPA Process and Compliance section of Appendix Q, Chapter 3 of the Final EIS (beginning on page 3–27 of that appendix). Mr. Nedlose's comment expresses that he does not want the Project on his property. DOE responses to similar comments can be found in the Easements and Property Rights/Values and the General Opposition Comments sections of Appendix Q, Chapter 3 of the Final EIS (beginning on pages 3–103 and 3–473, respectively, of that appendix). Letters expressing similar concerns from residents of Walnut Valley Estates were submitted to DOE. Comment summaries and DOE's responses can be found on pages 3–161 and 3–338 to 3–339 of Appendix Q, Chapter 3 in the Final EIS. The discussion below summarizes the comment documents from J.D. Dyer and Mark Fuksa, which include comments that were not addressed in the Final EIS, and presents DOE's responses.

Comment. Mr. Dyer described a flooding issue associated with a section of the Applicant Proposed Route in the area of Dyer, Arkansas, within the 1,000-foot-wide corridor in Region 4, Link 6. Mr. Dyer stated that transmission towers could fail during a flooding event and would be difficult to repair for a considerable amount of time. Mr. Dyer expressed concern that there could be long periods of time when the transmission line would be unable to deliver electricity to customers.

Response. The Final EIS evaluates the potential impacts related to floodplains. Appendix N of the Final EIS includes a Floodplain Statement of Findings in accordance with DOE's *Compliance with Floodplain and Wetland Environmental Review Requirements* (10 CFR part 1022). Appendix N states, "All structures and facilities would be designed to be consistent with the intent of the standards and criteria of the National Flood Insurance Program (44 CFR part 60, Criteria for Land Management and Use)."

Additionally, Appendix N explains that transmission line structures would not prohibit the flow of water within floodplains, because water can flow around structure foundations. Transmission structure foundation dimensions are shown in the Final EIS (Chapter 2; Table 2.1–4).

Section 7 of Appendix N includes EPMs and BMPs that would minimize potential impacts associated with flooding. Appendix N explains that the "first measure to be taken to minimize potential adverse effects to floodplains would be avoidance." In the case

of siting the transmission line, the span between structures would also provide some flexibility for avoiding floodplains. That is, in some areas it would be reasonable to minimize the number of structures in a floodplain by controlling the spans or to place the structures outside the floodplain, which would then be spanned by the transmission line."

If a transmission structure would be required to be sited in a floodplain, it would be designed and constructed to meet the anticipated design loads from a maximally-credible flooding event in accordance with applicable regulatory standards. Therefore, a flooding event would be unlikely to result in the failure of a transmission structure.

In the unlikely event that structure failure did occur as a result of a flooding event, the system repair would be similar to failures from other off-normal events. As presented in the Final EIS comment response document (Appendix Q, page 3–307), "Temporary interruption of the power transmission system could occur to the Project from a variety of off-normal events such as natural disasters, terrorism, or accidents. The Project would be designed to prevent outages from these events to the maximum extent practicable. While it stands to reason that interruption of a smaller regional power transmission system would impact a smaller customer base than a larger system, neither situation is necessarily considered disastrous. There are multiple thousands of miles of aboveground electrical transmission lines providing electrical power to consumers over long distances in the United States. Interruptions of power have occurred to power transmission systems in the past and have been mitigated and power restored through standard industry, engineering, and security practices. The Project alone would not represent a critically high percentage of power transmission service to consumers nationally and therefore temporary disruption of the grid would be considered manageable. The Applicant would operate the system and respond to any unplanned outages according to those practices and identified EPMs, BMPs, plans and procedures, and applicable regulatory requirements."

Clean Line has provided additional information in their Operations and Maintenance Plan (Section 3.12; Corrective Actions), which states, "To minimize the frequency and duration of corrective activities, Clean Line has designed robust structures that incorporate the appropriate NESC [National Electric Safety Code] requirements. Current engineering plans call for stop-structures every 5–10 miles to prevent cascading events. Clean Line plans to utilize weather-monitoring systems currently in place in the project area . . . and to communicate elevated risk levels to interconnecting utilities in order to ensure operational readiness. A spare parts inventory will be put in place along the route to address both high and low probability weather events. Standby contracts for labor and emergency equipment will provide for quick responses to any outages. A spare parts inventory will include information on critical components and parts, storage location, and lead times/current availability for replacement parts."

Comment. Mr. Fuksa's email states that the National Park Service added the Fuksa portion of the Chisholm Trail to the National Registry of Historic Places (NRHP) in September 2015, and designated the John and Mary Fuksa Family Farm (including dustbowl-era farmyard, buildings, and structures) as a national historic area and added it to the NRHP in December 2015. Mr. Fuksa urges DOE to adopt Alternative Route 2B instead of the Applicant Proposed Route in this location.

Response. The location of the Chisholm Trail relative to the Applicant Proposed Route is identified and discussed in Section 3.9.5.2 of the Final EIS. Impacts to property structures would be addressed through micrositing within the 1,000-foot-wide corridor and implementing EPM LU–5, which states that Clean Line will make reasonable efforts, consistent with design criteria, to accommodate requests from individual landowners to adjust the siting of the ROW on their properties. These adjustments may include consideration of routes along or parallel to existing divisions of land (*e.g.,* agricultural fields and parcel boundaries) and existing compatible linear infrastructure (*e.g.,* roads, transmission lines, and pipelines), with the intent of reducing the impact of the ROW on private properties. DOE has developed a Programmatic Agreement that, in accordance with the regulations that implement Section 106 of the NHPA, provides a framework for the assessment of potential Project effects to historic properties (this would include potential effects to the Fuksa portion of the Chisholm Trail and the John and Mary Fuksa Family Farm), and adoption of strategies to resolve potential effects.

[FR Doc. 2016–07282 Filed 3–30–16; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Notice of Extension of Rate Schedules

AGENCY: Southeastern Power Administration, DOE.

ACTION: Notice of Rate Extension.

SUMMARY: The Deputy Secretary of the Department of Energy confirmed and approved an extension of Rate Schedules JW–1–J and JW–2–F through September 30, 2016. This short 11 day extension will allow the billing and rate terms to align going forward in the new rate to be proposed effective October 1, 2016 and to be announced in a separate **Federal Register** Notice.

DATES: Approval of extension of the rate schedules is effective September 20, 2016.

FOR FURTHER INFORMATION CONTACT: Virgil G. Hobbs III, Assistant Administrator, Finance & Marketing, Southeastern Power Administration, Department of Energy, 1166 Athens Tech Road, Elberton, Georgia 30635–6711, (706) 213–3800.

SUPPLEMENTARY INFORMATION: The Commission, by Order issued December 22, 2011, in Docket No. EF11–12–000, confirmed and approved Wholesale Power Rate Schedules JW–1–J and JW–2–F for a period ending September 19, 2016.

Dated: March 25, 2016.

Elizabeth Sherwood-Randall,

Deputy Secretary.

Department of Energy

Deputy Secretary

Rate Order No. SEPA–60.

In the Matter of: Southeastern Power Administration—Jim Woodruff Project Power Rates

Order Confirming and Approving Power Rates On an Interim Basis

Pursuant to Sections 302(a) of the Department of Energy Organization Act, Public Law 95–91, the functions of the Secretary of the Interior and the Federal Power Commission under Section 5 of the Flood Control Act of 1944, 16 U.S.C. 825s, relating to the Southeastern Power Administration ("Southeastern" or "SEPA") were transferred to and vested in the Secretary of Energy. By Delegation Order No. 00–037.00A, effective October 25, 2013, the Secretary of Energy delegated to Southeastern's Administrator the authority to develop power and transmission rates, delegated to the Deputy Secretary of Energy the authority to confirm, approve, and place in effect such rates on an interim basis, and delegated to the Federal Energy Regulatory Commission ("Commission") the authority to confirm, approve, and place into effect on a final basis or to disapprove rates developed by the Administrator under the delegation. This rate order is issued by the Deputy Secretary pursuant to said delegation.

Pursuant to 10 CFR 903.23(b), an existing rate may be extended on a temporary basis by the Deputy Secretary without advanced notice or comment. The Deputy Secretary shall publish said extension in the **Federal Register** and promptly advise the Commission of the extension.

Background

Power from the Jim Woodruff Project is presently sold under Wholesale Power Rate Schedules JW–1–J and JW–2–F. These rate schedules were approved by the Commission on December 22, 2011, for a period ending September 19, 2016 (137 FERC ¶62,248). Effective June 21, 2015, Southeastern, Duke Energy Florida, and

The Secretary of Energy
Washington, DC 20585

March 25, 2016

Clean Line Energy Partners LLC (Clean Line) has applied to the United States Department of Energy (DOE or the Department) for its participation in a transmission project pursuant to Section 1222(b) of the Energy Policy Act of 2005, which authorizes the Secretary of Energy, acting through the Western Area Power Administration, the Southwestern Power Administration, or both, to participate with other entities in designing, developing, constructing, operating, maintaining, and owning new electric transmission facilities.

The Department has reviewed the impacts of the proposed project as required by the National Environmental Policy Act, the Endangered Species Act, and the National Historic Preservation Act. That review culminated in the publication of a Final Environmental Impact Statement by DOE, a Biological Opinion by the U.S. Fish and Wildlife Service, and execution of a multi-party Programmatic Agreement governing treatment of historic properties. At the same time as it conducted these reviews, the Department took public comment on Clean Line's application. The Department analyzed the proposed project using the eligibility criteria contained in Section 1222 and the evaluation factors the Department identified for this purpose in a Request for Proposals published June 10, 2010. The Department has recorded its Section 1222 analysis in a Summary of Findings. That Summary, as well as the Department's record of decision (ROD), will be published today. Along with the review that led to the Summary of Findings, Department staff have negotiated a Participation Agreement with Clean Line, which has until now remained unexecuted.

Based on the best available data, in consultation with the Administrator of the Southwestern Power Administration, and for the reasons provided in the Summary of Findings and the ROD, I have determined that the Project (as defined in the Participation Agreement) meets the statutory eligibility criteria. Specifically, the Project:

(1) is necessary to accommodate an actual or projected increase in demand for electric transmission capacity;

(2) is consistent with (A) transmission needs identified, in a transmission expansion plan or otherwise, by the appropriate Transmission Organization (as defined in the Federal Power Act); and (B) efficient and reliable operation of the transmission grid;

(3) will be operated in conformance with prudent utility practice;

(4) will be operated by, or in conformance with the rules of, the appropriate Transmission Organization; and

(5) will not duplicate the functions of existing transmission facilities or proposed facilities which are the subject of ongoing or approved siting and related permitting proceedings.

After consideration of the evaluation factors, I find that the Project merits the Department's participation for the reasons stated in the Summary of Findings. I therefore direct the Department to carry out the Project as set forth in the Summary of Findings.

Ernest J. Moniz
Secretary of Energy
United States Department of Energy

United States
Department of Energy

Summary of Findings
In re Application of Clean Line Energy Partners LLC
Pursuant to Section 1222 of
the Energy Policy Act of 2005

March 25, 2016

TABLE OF CONTENTS

FREQUENTLY USED ACRONYMS

AC	Alternating Current
DC	Direct Current
DOE	United States Department of Energy
EIS	Environmental Impact Statement
EPA	Environmental Protection Agency
EPAct 2005	Energy Policy Act of 2005, as amended, 42 U.S.C. § 15801 *et seq.*
ESA	Endangered Species Act of 1973, as amended, 16 U.S.C. § 1531 *et seq.*
FERC	Federal Energy Regulatory Commission
GW	Gigawatt (one billion watts)
HVDC	High-Voltage Direct Current
MISO	Midcontinent Independent System Operator
MW	Megawatt (one million watts)
NEPA	National Environmental Policy Act of 1969, as amended, 42 U.S.C. § 4321 *et seq*.
NERC	North American Electric Reliability Corporation
OATT	Open-Access Transmission Tariff
RFI	Request for Information
RFP	Request for Proposals
ROW	Right-of-Way or Rights-of-Way
RRO	Regional Reliability Organization
RTO	Regional Transmission Organization
SPP	Southwest Power Pool
SWPA	Southwestern Power Administration
TSA	Transmission Services Agreement
TVA	Tennessee Valley Authority
USFWS	United States Fish & Wildlife Service
WAPA	Western Area Power Administration

UNITED STATES DEPARTMENT OF ENERGY
SUMMARY OF FINDINGS
IN RE APPLICATION OF CLEAN LINE ENERGY PARTNERS LLC
PURSUANT TO SECTION 1222 OF THE ENERGY POLICY ACT OF 2005

I. Executive Summary

This Summary of Findings presents the U.S. Department of Energy's (DOE or the Department) conclusions regarding the application by Clean Line Energy Partners LLC (Clean Line) submitted pursuant to section 1222 of the Energy Policy Act of 2005 (EPAct 2005). Clean Line seeks the Department's participation in the development, siting, construction, operation, maintenance, and ownership of high-voltage direct current (HVDC) transmission facilities running approximately 705 miles from western Oklahoma to the Arkansas-Tennessee border (the Project). Clean Line, acting on its own and without the Department's participation, would build additional facilities that would connect to the Project in Texas and Tennessee.

The Project would deliver up to 4,000 megawatts (MW) of primarily wind generation from the Oklahoma and Texas Panhandle region to the mid-South and Southeastern United States, which could meet the annual energy needs of more than 1.5 million average American homes. Wind resources in the Panhandle region are among the most consistent and lowest-cost in the Nation. But their development has been constrained by a lack of cost-effective transmission capacity to major load centers. The Project would, therefore, unlock the potential for significant new development of wind energy and deliver that energy to a region of the United States that has seen relatively scarce wind development. Of course, energy delivered from the Project will have to compete on price and quality with other resources available to consumers in the mid-South and Southeastern United States. Such competition is healthy, however. By increasing the availability of renewable energy from the Panhandle region across a wide geographic area, the Project will facilitate market competition that will ultimately benefit consumers and the renewable energy industry as a whole.

The Department's participation in the Project does not include any financial contribution. Along with the review that led to this Summary of Findings, Department staff have negotiated a Participation Agreement with Clean Line. The Participation Agreement would ensure that all of the Department's costs would be paid by Clean Line in advance, that Clean Line would indemnify and hold the Federal Government harmless against any liabilities created by the Project, and that Clean Line's obligations would be backed by adequate insurance and credit support. The Participation Agreement also carefully conditions the Department's involvement in the Project, including land acquisition by the Department, on Clean Line satisfying commercial and technical milestones that demonstrate the Project's continued viability. The Participation Agreement would further obligate Clean Line to contribute two percent of revenues from the Project to offset the Federal Government's costs of federal hydropower infrastructure improvements, an activity with significant long-term needs, and to make certain payments to local governments for real property and facilities owned by the Federal Government that would otherwise be taxable.

As directed by section 1222, the Southwestern Power Administration (Southwestern or SWPA) would act on behalf of the Secretary in carrying out important functions related to the Project. But Southwestern's involvement would not, and indeed must not, interfere with its power marketing function or adversely affect its rates for federal hydropower. Like all Departmental expenses, Southwestern's costs would be carefully tracked and funded in advance by Clean Line. And, as explained in greater detail below, the Department concludes that there is no lawful means by which costs or liabilities associated with the Project could be recovered in Southwestern's rates for federal hydropower marketed under the Flood Control Act of 1944.

Section II of this Summary of Findings provides an introduction to section 1222 and the process the Department has undertaken to review Clean Line's application, which included a review of environmental impacts in accordance with the National Environmental Policy Act (NEPA) and the consideration of public comments on both environmental and non-environmental issues. Section III describes the key terms of the Participation Agreement and Southwestern's role in the Project. Section IV describes the Department's legal authority to participate in this Project. Section V considers the eligibility criteria imposed by section 1222 and concludes that the Project satisfies them all. Section VI discusses the considerations that the Department uses to evaluate applications received under section 1222: whether the project is in the public interest, whether it facilitates the delivery of renewable energy, the benefits and impacts of the Project to each state it traverses, and the technical and financial viability of the project. Section VII concludes.

II. Introduction

a. Section 1222 of EPAct 2005

Section 1222 of EPAct 2005, Pub. L. No. 109-58, was enacted as part of a suite of congressional reforms to promote transmission development. Section 1222 authorizes the Secretary of Energy to accept and use funds contributed by another entity to carry out a project, with the contributed funds treated as appropriated funds without fiscal year limitation.[1] The Secretary may use contributed funds for two types of projects: (1) upgrades to existing transmission facilities owned by Southwestern or the Western Area Power Administration (Western or WAPA),[2] or (2) new electric power transmission facilities located within any state in which Southwestern or Western operates.[3] Prior to EPAct 2005, Western and Southwestern's authority to build transmission facilities was generally limited to those facilities necessary to deliver federal hydropower.[4] Section 1222 expands the type of transmission projects in which Southwestern or Western may participate, provided that the projects satisfy certain criteria as determined by the Secretary, in consultation with the applicable Administrator of either Southwestern or Western. The criteria include demonstrations of the need for the proposed project and assurances that it will be operated in conformance with industry standards. The Secretary must make the relevant determinations using the best available data.[5]

Section 1222 falls within title XII, subtitle B of EPAct 2005, entitled "Transmission Infrastructure Modernization." In addition to section 1222, Congress created several other transmission modernization programs in EPAct 2005. Notably, section 1221 amends the Federal Power Act to authorize the designation of national interest electric transmission corridors, areas in which certain transmission projects could receive federal permits to overcome state authorization barriers. Section 1221 also requires improved coordination among federal agencies that permit transmission facilities to speed the permitting process.[6] Sections 1223 and 1224 encourage the deployment of advanced transmission technologies and advanced power system technologies, respectively.[7]

[1] 42 U.S.C. § 16421(c).

[2] *Id.* § 16421(a).

[3] *Id.* § 16421(b).

[4] *E.g.*, Flood Control Act of 1944 § 5, 16 U.S.C. § 825s; Reclamation Project Act of 1939 § 15, 43 U.S.C. § 485i.

[5] 42 U.S.C. § 16421(f).

[6] 16 U.S.C. § 824p.

[7] 42 U.S.C. §§ 16422, 16423.

The comments received on Clean Line's application included a letter from former Senators Pete Domenici and Byron Dorgan, who served as Chairman and member, respectively, of the Senate Energy and Natural Resources Committee when EPAct 2005 was enacted. The Senators noted that "Section 1222 was intended to foster public-private cooperation to upgrade or build new transmission projects for the secure and reliable delivery of affordable energy."[8] It was meant, in their words, as "a tool for tackling the underlying challenges that EPAct 2005 was designed to address—modernizing transmission infrastructure, increasing the use of domestic energy sources, and ensuring jobs for our future through an abundant, affordable energy supply."[9] The Senators characterized section 1222 as encouraging the construction of "much-needed energy infrastructure, with the risk borne by the private sector, rather than by ratepayers or taxpayers."[10]

The arrangement contemplated in section 1222, in which the Department participates in the development of transmission facilities with a private entity, follows a successful example that was well advanced by the time EPAct 2005 was enacted: the Path 15 Upgrade.[11] Beginning in 1984, Congress authorized the Secretary to participate in the construction of power lines to improve the intertie between the Pacific Northwest and California. The Secretary eventually used that authorization to participate in building an 84-mile, 500 kV line in California's San Joaquin Valley, called the Path 15 Upgrade. The Secretary, acting through Western, worked with Trans-Elect NTD Path 15, LLC and Pacific Gas and Electric Company to finance and construct the system additions. The Department began condemnation proceedings in 2003 to acquire all necessary property rights. The Path 15 Upgrade became operational in 2004[12] and remains an important transmission link between West Coast regions.

b. The Department's 2010 Request for Proposals

In June 2010, the Department published a "Request for Proposals for New or Upgraded Transmission Line Projects Under Section 1222 of the Energy Policy Act of 2005" (2010 RFP).[13] The notice directed applicants to submit information demonstrating compliance with section 1222's requirements, referred to in the notice as "eligibility criteria." The Department also asked applicants to include a financing statement identifying the amount of funds to be contributed to the Department.

Project sponsors were informed of additional criteria to be evaluated by the Department and urged to provide information, as it became known, concerning:

1. Whether the project is in the public interest;
2. Whether the project will facilitate the reliable delivery of renewable energy;
3. The benefits and impacts of the transmission line on each state it traverses, including environmental and economic impacts; and
4. The technical and financial viability of the project.

[8] Comment of Sen. Pete V. Domenici & Sen. Byron Dorgan (Jul. 8, 2015).

[9] *Id.*

[10] *Id.*

[11] *See United States v. 14.02 Acres of Land More or Less in Fresno County*, 547 F.3d 943, 948-52 (9th Cir. 2008) (explaining statutory authority and history of Path 15 project).

[12] Cal. Indep. Sys. Operator Corp., Notice of Commercial Operation of Path 15 Upgrade, FERC Docket No. ER03-1217-000 (Dec. 22, 2004).

[13] Request for Proposals for New or Upgraded Transmission Line Projects Under Section 1222 of the Energy Policy Act of 2005, 75 Fed. Reg. 32,940 (June 10, 2010).

To aid in the examination of these factors, the Department requested specific information on the energy resource under consideration; any transmission interconnection requests; a description of transmission rights; the role of the Department and other entities in the project; and the experience of the applicant relating to the financing and construction of transmission lines.

The notice contemplated the negotiation of a funding agreement allowing the Department to undertake a comprehensive evaluation of the application, including any analysis required by NEPA.[14]

c. Clean Line's Application

Clean Line submitted its section 1222 proposal to the Department in July 2010. The initial proposal (2010 Application) contemplated two HVDC[15] electric transmission lines capable of delivering 7,000 MW from wind energy projects in Oklahoma, Kansas, and Texas to the Southeastern United States. Under the 2010 Application, all costs, including engineering, procurement, acquisition of rights-of-way, construction, and operation would be borne by Clean Line—at no cost to the Federal Government. Clean Line estimated a contribution of funds to the Department, as authorized by section 1222, totaling $14.1 million for two Department activities: (1) necessary acquisition of property rights using federal eminent domain authority and (2) environmental review costs and other administrative expenses.

Clean Line requested the role of the Federal Government to be "outreach, siting and permitting."[16] That is, Clean Line sought the Department's participation in ensuring fair treatment of stakeholders, exercising federal eminent domain when necessary, leading environmental review, and aiding in obtaining required federal permits.

The 2010 Application addressed and claimed to satisfy the section 1222 eligibility requirements, as well as the evaluation factors identified by the Department in its RFP. The 2010 Application included studies concerning different aspects of the proposed project. Consultant reports asserted economic and environmental benefits including favorable impacts on Arkansas and Oklahoma.

A little over a year later, Clean Line updated its 2010 Application to address what it called "substantial development progress."[17] The update[18] reported on Clean Line's outreach to stakeholders, including local communities, companies, and interested organizations. Additional information was submitted regarding jobs and economic development. Clean Line informed the Department that feasibility

[14] 42 U.S.C. § 4321 *et seq*.

[15] The November 2015 Final Environmental Impact Statement on the Project (Final EIS) describes Direct Current (DC) as "the constant, zero-frequency movement of electrons from an area of negative (-) charge to an area of positive (+) charge." Final EIS, Glossary, at 7-10. DC transmission differs from alternating current (AC) transmission in that "the voltage and current on a direct current transmission line are not time varying, meaning they do not change direction as energy is transmitted." *Id.* Physical HVDC transmission line equipment includes "[t]ubular and lattice steel structures used to support the transmission line," an "[e]lectrical conductor and metallic return," and "[c]ommunications/control and protection facilities (optical ground wire and fiber optic regeneration sites)." *Id*.

[16] Plains & Eastern Clean Line, *Project Proposal for New or Upgraded Transmission Line Projects Under Section 1222 of the Energy Policy Act of 2005*, at 40 (July 2010) (2010 Application), http://www.energy.gov/sites/prod/files/Plains%20%26%20Eastern%20Clean%20Line%20Transmission%20Project%20Application.pdf.

[17] Clean Line transmittal letter of August 17, 2011.

[18] Plains & Eastern Clean Line, *Update to Plains & Eastern Clean Line Proposal For New or Upgraded Transmission Line Projects Under Section 1222 of the Energy Policy Act Of 2005* (Aug. 2011) (2011 Proposal Update), http://www.cleanlineenergy.com/sites/cleanline/media/resources/1222Update_PLains_Eastern_August2011.pdf.

studies were being undertaken by the Tennessee Valley Authority (TVA) and Entergy Services, and that Clean Line had executed a Transmission System Study Agreement with the Southwest Power Pool (SPP). Clean Line expanded its arguments concerning the need for the line and the Project's consistency with regional transmission planning including SPP's twenty-year Integrated Transmission Plan.

In December 2014, the Department requested additional information and Clean Line responded by submitting an updated "Part 2 Application" to the Department in January 2015.[19] By this time, Clean Line's proposal had evolved into a single 720-mile, 600 kV, overhead HVDC electric transmission line and associated facilities capable of delivering 4,000 MW of primarily renewable energy from Oklahoma and Texas to the mid-South and Southeastern United States via an interconnection with TVA. The Part 2 Application included a proposed converter station in Arkansas allowing the delivery of 500 MW by way of an interconnection with the Midcontinent Independent System Operator (MISO). Again, Clean Line presented information and arguments designed to satisfy statutory eligibility requirements and the Department's evaluation factors. In addition to addressing the RFP criteria, Clean Line responded to specific DOE requests concerning its progress, means of mitigating certain risks, financial viability, technical specifications, regulatory requirements, electric reliability, interconnections, land acquisition, and system planning. Appendices to the Part 2 Application included letters of support; additional analysis on economic and environmental benefits of the Project; a proposed participation agreement term sheet; an estimate of total costs; financial statements of one of Clean Line's major investors; a summary of the transmission experience of the Clean Line management team; design criteria and structural drawings; interconnection and feasibility reports; and a proposed construction schedule.

d. Clean Line's Regulatory Filings

Clean Line is not a traditional public utility with a franchised service territory, an obligation to serve captive customers, and cost-of-service rates including an approved return on equity. Moreover, it is developing this Project on a "merchant" basis. Merchant developers, which are a relatively recent entrant in the U.S. transmission market,[20] charge negotiated rates rather than cost-based rates and assume all financial risks associated with their projects. Merchant transmission projects are part of a broader trend toward market competition in the electric industry that Congress and the Federal Energy Regulatory Commission (FERC or the Commission) have promoted over the past two decades.[21] Transmission developers independent of existing franchised utilities often lack legal status as public utilities in the state where a proposed development is located. That status is determined by state regulators and is a prerequisite to most transmission development. Consequently, at the same time Clean Line was pursuing its 2010 Application with the Department, it sought public utility status in Oklahoma and Arkansas—two states with traditional electric utilities providing service in accord with state law.[22] In June 2010, Clean Line applied to the Oklahoma Corporation Commission for authority to operate as an electric transmission-only public utility providing wholesale bulk electricity transmission service within the State of Oklahoma. The

[19] Clean Line Energy Partners, *Plains & Eastern Clean Line 1222 Program – Part 2 Application: Information Requested for Proposed Plains & Eastern Clean Line Project*, http://energy.gov/sites/prod/files/2015/04/f22/Clean%20Line%20Part%202%20Application%20-%20Final%203-6%20version.pdf.

[20] The Federal Energy Regulatory Commission first granted negotiated rate authority to a merchant transmission project developer on June 1, 2000. *TransEnergie U.S., Ltd.*, 91 FERC ¶ 61,230, at p. 61,838 (2000).

[21] *See generally New York v. FERC*, 535 U.S. 1 (2002).

[22] Clean Line also received public utility status in Tennessee, but that is outside the scope of this analysis. *In re: Petition of Plains and Eastern Clean Line LLC for a Certificate of Convenience and Necessity Approving a Plan to Construct a Transmission Line and to Operate as an Electric Transmission Public Utility*, Docket No. 14-00036, Order at 7-8 (May 5, 2015).

Oklahoma Corporation Commission granted the request, finding Clean Line to be an electric transmission-only public utility subject to the Commission's transmission-only rules.[23]

In May 2010, Clean Line applied for a Certificate of Convenience and Necessity from the Arkansas Public Service Commission (Arkansas Commission) to operate as a public utility in Arkansas. The request was denied. Clean Line could not meet Arkansas' statutory definition of a public utility requiring transmission of power "to or for the public for compensation" as Clean Line had no contracts for public utility service within Arkansas.[24] In explaining its decision the Arkansas Commission made specific reference to Clean Line's status as a merchant developer:

> The difficulty the [Arkansas] Commission now faces is that the law governing public utilities was not drafted to comprehend changes in the utility industry such as this one—where a non-utility, private enterprise endeavors to fill a void in the transmission of renewable power that is much needed but for which the Commission is unable to afford any regulatory oversight.[25]

Although the Arkansas Commission's 2011 order left open the possibility of Clean Line submitting a new application, in March 2015 the Arkansas legislature enacted legislation effectively prohibiting the Arkansas Commission from issuing a certificate to independent, merchant transmission developers such as Clean Line.[26] The Arkansas legislature barred certificating any entity that "(1) is not currently a public utility, (2) primarily transmits electricity, and (3) has not been directed or designated to construct an electric transmission facility from a regional transmission organization."[27]

With regard to transmission rates for interstate electric transmission service to be charged by Clean Line, FERC granted Clean Line's request for authority to negotiate transmission service rates allowing Clean Line to subscribe 100% of the line's capacity through direct negotiation. The Commission noted that it distinguishes between traditional public utilities and merchant transmission projects—such as Clean Line—because the developer of the merchant project assumes all of the market risk of a project without resort to payment by captive customers.[28]

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[23] *In the Matter of the Application of Plains and Eastern Clean Line LLC, to Conduct Business as an Electric Utility in the State of Oklahoma*, Order No. 590530, Cause No. PUD 201000075 (Oct. 28, 2011).

[24] *In the Matter of the Application of Plains and Eastern Clean Line LLC For a Certificate of Public Convenience and Necessity to Construct, Own and Operate as an Electric Transmission Public Utility in the State of Arkansas*, Docket No. 10-041-U, Order at 11 (Jan. 11, 2011).

[25] *Id.* at 10.

[26] Act No. 842 of the 2015 Regular Session (Mar. 2, 2015), http://www.arkleg.state.ar.us/assembly/2015/2015R/Acts/Act842.pdf.

[27] *Id.*

[28] *Plains & E. Clean Line LLC*, 148 FERC ¶ 61,122 at P 1 n.1 (2014) ("Under the Commission's precedent, merchant transmission projects differ from those of traditional public utilities in that the developers of merchant projects assume all of the market risk of a project and have no captive customers from which to recover the cost of the project.").

e. DOE Review of Clean Line's Application

i. Environmental and Historic Property Review

In September 2012, the Department and Clean Line entered into an Advance Funding and Development Agreement.[29] This agreement established the terms and conditions for advance funding by Clean Line to the Department to analyze the Project. The advance funding covered DOE's expense relating to the review required by NEPA, the review related to the section 1222 statutory criteria and criteria specified in the Department's June 10, 2010 Federal Register Notice RFP, and other reviews such as those under section 106 of the National Historic Preservation Act.[30]

NEPA review of the Project began in December 2012 with a public scoping process from December 21, 2012, through March 21, 2013. The Department reviewed all scoping comments and published a Scoping Summary Report in June 2013. A Draft Environmental Impact Statement was made available in December 2014, with a public comment period that exceeded the required minimum 45 days and instead ran from December 19, 2014, through April 20, 2015. During that time, DOE held 15 public hearings in Oklahoma, Texas, Arkansas, and Tennessee.[31] The Final EIS was made available on November 13, 2015. All NEPA-related documentation is available on DOE's NEPA Website (http://www.energy.gov/nepa) and on the Project's EIS website (http://www.plainsandeasterneis.com).[32]

The Department's environmental review also included compliance with the Endangered Species Act of 1973 (ESA).[33] In March 2015, the Department and TVA requested initiation of formal consultation with the U.S. Fish and Wildlife Service (USFWS) under section 7 of the ESA and submitted a Biological Assessment regarding the Project and its potential effects on listed species and designated critical habitats.[34] In November 2015, the USFWS issued its Biological Opinion, pursuant to section 7 of the ESA, which evaluates the anticipated impacts of the Project on species that are federally-listed under the ESA. The Biological Opinion concludes that the Project is not likely to jeopardize the continued existence of the affected species and sets forth reasonable and prudent measures, with implementing terms and conditions, designed to minimize the impacts of incidental take that might otherwise result from the Project.

In compliance with the regulations implementing section 106 of the National Historic Preservation Act regulations,[35] the Department initiated government-to-government consultation in January 2013 with nearly thirty federally-recognized Indian Tribes and Nations that may attach traditional religious and cultural significance to historic properties that may be affected by the proposed Project. After multiple

[29] Contract No. 1 for Advance Funding and Development Agreement, Plains & Eastern Clean Line Transmission Project, http://energy.gov/sites/prod/files/Advance%20Funding%20and%20Development%20Agreement.pdf.

[30] 16 U.S.C. § 470f. Like other Federal Government agencies, the Department evaluates protection of historic properties under section 106 of the National Historic Preservation Act and its implementing regulations at 36 C.F.R. part 800. State historic preservation offices and Indian tribes have consultative authority in identifying historic properties that must be avoided or preserved. *See* 36 C.F.R. § 800.2(c).

[31] Final EIS at 1-15.

[32] *See* Department of Energy, *Record of Decision in re Application of Clean Line Energy Partners LLC* (Mar. 25, 2016).

[33] 16 U.S.C. § 1531 *et seq.*

[34] The Department and TVA each had potential federal actions related to the Project and agreed to have the Department serve as lead agency for purposes of the consultation.

[35] 36 C.F.R. part 800.

consultation meetings, a Programmatic Agreement[36] was signed on December 2, 2015, by parties including the Department, the Advisory Council on Historic Preservation, the Cherokee Nation, four state historic preservation offices, and Clean Line.

ii. Section 1222 Review

The Department has consistently encouraged public feedback on projects like this one. All Application materials have been posted on the Department's website for public viewing, and the Department publicized an opportunity for public comments on Clean Line's final amended Application or Part 2 Application in 2015. Initially this comment period ran from April 28, 2015, through June 12, 2015,[37] but in response to public and congressional requests, DOE extended the comment period through July 13, 2015.[38] In addition to the Federal Register Notice, the Department requested public comment on its website and sent an email to interested parties. Specifically, the Department requested comment on whether the Project meets the section 1222 statutory criteria and the factors identified in the 2010 RFP.

The Department received over 700 comments, which fell into five categories: 1) requests for an extension on the timeline for submitting comments, 2) requests for a public hearing, 3) form letters in support of the Project, 4) form letters in opposition to the Project, and 5) other substantive comments.

The Department responded to the requests for an extension of time by extending the comment period another month. In light of the 15 public hearings held as part of the NEPA process, where public input on non-NEPA factors was also taken, DOE chose not to hold additional public hearings.

The form letters in support of the Project identified the following reasons to grant Clean Line's application: job creation; increasing the reliability and security of transmission infrastructure; reducing carbon pollution; stimulating economic development; strengthening domestic manufacturing capabilities; generating local revenues; increasing access to renewable power; increasing competition in the energy sector; promoting energy independence; and facilitating the President's Clean Power Plan.[39]

The form letters in opposition identified the following reasons to deny Clean Line's application: no regional transmission organization (RTO) or regional reliability organization (RRO) has determined a need for the Project; the Project would only positively impact Tennessee and not the other states involved; and the adverse effects on health and safety have not been studied.

Among those submitting unique comments, many voiced support for bringing additional wind energy onto the electric grid. Many others were opposed to the Project, on varying grounds. Some claimed that the Project is not needed as either new transmission or to upgrade existing transmission facilities owned by Southwestern; that the Project would have no impact on congestion; that there is no actual or projected

[36] The Programmatic Agreement describes roles and responsibilities for DOE and the consulting parties; the tribal consultation protocol; the area of potential effects; the phased process to address historic properties, including continued consultation; procedures to address the unanticipated discovery of cultural resources or inadvertent discovery of human remains, graves or associated funerary objects; communication plan; historic properties management plan for operations and maintenance activities, annual reporting and close out report requirements; and dispute resolution requirements.

[37] Application for Proposed Project for Clean Line Plains & Eastern Transmission Line, 80 Fed. Reg. 23,520 (Apr. 28, 2015).

[38] Extension of Public Comment Period for Application for Proposed Project for Clean Line Plains & Eastern Transmission Line, 80 Fed. Reg. 34,626 (June 17, 2015).

[39] On February 9, 2016, the United States Supreme Court stayed the rule implementing the Clean Power Plan until the current litigation against it concludes. *Chamber of Commerce, et al. v. EPA, et al.*, Order in Pending Case, 577 U.S. ___ (2016), http://www.supremecourt.gov/orders/courtorders/020916zr3_hf5m.pdf. As of that date, a challenge to the rule was pending before the United States Court of Appeals for the District of Columbia Circuit.

increase in demand for electric transmission capacity; that the Project is not consistent with transmission needs identified by any transmission organization or RRO; or that the Project duplicates existing transmissions facilities. Some commenters asserted that the Project would result in a misuse of federal eminent domain authority. Others pointed to TVA's current lack of a contractual commitment to purchase power delivered by the Project. Some commenters raised procedural issues, complaining of a lack of public notification and involvement in the development of the Project since it began in 2009.

Other commenters claimed the Project is not in line with public interest due to negative effects on individual landowner's use and enjoyment of private property; negative impacts on natural gas exploration and production; decline in property value; negative impacts on the environment; adverse health impacts; potential hazards due to proximity to other structures such as gas plants; and complications due to existing practices such as aerial spraying.

The Department has not conducted its consideration of Clean Line's application as a formal adjudication with motions practice.[40] Nevertheless, one commenter submitted motions such as a Petition for Extension of Comment Period Deadline, a Petition for Public Hearings, a Petition for Intervention and Notice of Intervention Deadline, a Petition for Contested Case, and a Petition for Delay of Application Pending Rulemaking.[41] In light of the lengthy public comment process, which was extended in response to public request, the Department has declined to extend the comment period further, to conduct public hearings, or to delay a decision on Clean Line's application pending a rulemaking. The Department has also declined to refer Clean Line's application to an administrative law judge, which was the intent of the Petition for Contested Case. A hearing before an administrative law judge is not required by section 1222 and would be unnecessary as the Department did not restrict the scope or type of information that the public could submit in writing for review. The Department is not aware of factual disputes, relevant to the decisions at hand, that oral testimony would be particularly helpful to resolve. Because there is no formal proceeding, motions to intervene are inapposite. The Department's response to the petition for rulemaking[42] will be announced separately.

Sections V and VI below will address substantive issues raised by commenters relevant to the section 1222 and RFP criteria. Substantive environmental comments submitted during the section 1222 public comment period, which followed the NEPA public comment period, are predominantly addressed in section VI.a below, which discusses the public interest.

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[40] Section 1222 does not require that the Secretary's decision be made on the record after opportunity for an agency hearing. Therefore, this is not a formal adjudication under the Administrative Procedure Act. 5 U.S.C. § 554(a); *Friends of the Earth v. Reilly*, 966 F.2d 690, 693 (D.C. Cir. 1992) (explaining the need for explicit congressional intent to require full agency adherence to all Administrative Procedure Act section 554 procedural components).

[41] Comment of Carol A. Overland, representing BLOCK Plains & Eastern Clean Line: Arkansas and Oklahoma (June 8, 2015). The commenter incorrectly applied FERC's Rules of Practice and Procedure, 18 C.F.R. part 385, which the Department has not adopted as part of its section 1222 implementation.

[42] BLOCK Plains & Eastern Clean Line Petition for Rules of General Applicability Section 1222 Rulemaking (June 16, 2015). The same commenter also filed a petition for rulemaking before FERC, and the Commission denied that petition. *BLOCK Plains & Eastern Clean Line: Arkansas and Oklahoma*, Notice Rejecting Petition for Rulemaking, FERC Docket No. RM15-22-000 (June 25, 2015).

III. Participation Agreement with Clean Line and Role of Southwestern

a. Key Features of the Participation Agreement

Alongside the review process that culminated in this Summary of Findings, the Department has negotiated a Participation Agreement with several Clean Line affiliates[43] that explains in detail the terms under which the Department would participate in the development and continuing operation of the Project.[44] The Participation Agreement was drafted to at all times protect the Department from costs and liabilities associated with the Project while giving the Department sufficient oversight and control to ensure that the Project achieves its stated benefits.

The Participation Agreement requires that the Project be undertaken "at the sole cost and expense" of the Clean Line parties.[45] That includes the obligation to pay all costs arising from the Project, such as taxes, assessments, insurance premiums, and the cost of acquiring real estate rights. Clean Line must pay costs incurred by the Department in advance.[46] The Participation Agreement requires that the Clean Line entities indemnify and hold harmless the United States government (including the Department and its elements, including Southwestern) as well as employees and consultants thereof,[47] from liabilities linked to the Project.[48] This indemnification is backed by several forms of financial support, such as the Department's access to letters of credit or guarantees issued in favor of the Department,[49] insurance coverage that is accessible to the Department and subject to its approval,[50] and a pre-funded reserve account to cover the costs of dismantling and removing all Project facilities at the end of the Project's life.[51]

The Department's obligations under the Participation Agreement have been carefully conditioned on Clean Line meeting commercial and technical milestones to demonstrate project viability.[52] An early example is that prior to the Participation Agreement becoming effective, the Department required updated

[43] These consist of Plains and Eastern Clean Line Holdings LLC, the Clean Line Energy Partners LLC subsidiary serving as borrower for the Plains & Eastern Project, and several operating companies: Arkansas Clean Line LLC, Plains and Eastern Clean Line Oklahoma LLC, Oklahoma Land Acquisition Company LLC, and Plains and Eastern Clean Line LLC.

[44] The Participation Agreement defines the Project as "the design, development, construction, operation, maintenance and ownership, as applicable, of approximately 705 miles of +/-600 kilovolt overhead, high voltage direct current electric transmission facilities and related facilities with the capacity to deliver approximately 4,000 megawatts (net) from renewable energy generation facilities located in the Oklahoma Panhandle and Texas Panhandle regions to the eastern state-line of Arkansas near the Mississippi River." Participation Agreement, Recitals, at 1.

[45] *Id.* § 2.1.

[46] *Id.* §§ 11.1, 11.3. The Advanced Funding Account must have on deposit (1) the sum of all covered costs estimated by DOE to be due and payable in the next 3 months *plus* (2) the sum of any future amounts payable by DOE pursuant to any Project-related contractual obligation *plus* (3) a contingency equal to 10% of all covered costs estimated to be due and payable in the next 3 months.

[47] *Id.* §§ 1.1, 11.4.

[48] *Id.* §§ 11.4, 11.8.

[49] *Id.* §§ 7.3(b), 7.4(a)(vi) (referencing Performance Support).

[50] *Id.* §§ 5.1(e)(ii), 6.2(a)(x).

[51] *Id.* § 7.6.

[52] *Id.* §§ 6.1 – 6.4.

Project budget and Clean Line financial statements and certified copies of executed term sheets for transmission services agreement (TSA) precedent agreements totaling at least 3,500 MW.[53]

The conditions precedent for Departmental assistance with right-of-way (ROW) acquisition are significantly more extensive. Understanding that the Clean Line entities have the primary responsibility for acquiring all Project real estate rights,[54] the Department has agreed to assist with the acquisition of real estate rights—anticipated to be easements—under specific circumstances. The Department will assist with voluntary right-of-way acquisition[55] only if conditions precedent including the following are first met: Clean Line has executed at least 1,500 MW of TSAs, documented its purchase options for converter station real estate rights, achieved certain milestones in obtaining interconnection rights for the Project, and executed an insurance agreement with the Department.[56]

Because the Department has consistently maintained that it would not use its eminent domain authority except as a last resort, the Department has, by agreement, conditioned the exercise of its condemnation power on Clean Line first satisfying a set of conditions that demonstrate clearly the commercial viability of the Project. Among those conditions, the Project must have obtained financing commitments sufficient to fund all project costs,[57] Clean Line must have executed firm TSAs for at least 2,000 MW of electrical capacity, all converter station real estate rights must be in effect, and all interconnection agreements must be in effect, including completion of all material interconnection studies.[58] Finally, authority to begin construction is conditioned on the Department issuing a notice to proceed, which it would be obligated to do only if another set of conditions precedent are satisfied in addition to the previously-discussed conditions precedent. That other set of conditions includes the execution of an agreement with the Department concerning mandatory reliability standards compliance, the execution of material operations and maintenance agreements, and compliance with Davis-Bacon Act requirements.[59]

Under the Participation Agreement, the Department would own all Project facilities in Arkansas,[60] but the costs—like all Project costs—of acquiring, building, and maintaining those facilities would be borne by Clean Line entities. The Department may acquire real estate rights in either Oklahoma or Arkansas, and will maintain title to such rights,[61] but Clean Line entities would have contract rights (not real estate interests) to enter into and use Department-acquired real property for purposes of carrying out the Project.[62]

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[53] *Id.* § 6.1(e).

[54] *Id.* § 3.2(a). The Department also negotiated procedures and a code of conduct for how Clean Line entities are to acquire real estate rights to protect landowners. *See id.* at Schedules 1, 12.

[55] "Voluntary" right-of-way acquisition, as used here, means purchase of real property rights by negotiated agreement and without resort to condemnation.

[56] *Id.* § 6.2.

[57] *See id.* § 1.1, at 20-21, for definition of "Financing Condition."

[58] *Id.* § 6.3.

[59] *Id.* § 6.4.

[60] *Id.* § 2.2.

[61] *Id.* § 3.3(e) ("The United States of America, acting through the Secretary of the Department, shall hold title to any and all DOE Acquired Real Property and the [Arkansas] Facilities."). The Participation Agreement defines DOE Acquired Real Property as "any [real property rights, including temporary property rights and access rights,] acquired by DOE pursuant to the terms of this Agreement." *Id.* § 1.1, at 17.

[62] *Id.* § 2.1(b), (c).

Conversely, the Clean Line entities would grant the Department the necessary property interests or rights of use for any Clean Line-acquired real property rights in Arkansas.[63]

The Clean Line entities would be responsible for managing the Project,[64] subject to Department oversight as specified in the Participation Agreement. The Department comprises half of the Coordination Committee, which is responsible for a variety of management decisions.[65] In general, the Department would have significant access rights to ensure compliance, including the right to visit and inspect any portion of the Project, access records of the Clean Line parties, and monitor and review the Project's financing and operations.[66] In the event the Clean Line entities default on their obligations under the Participation Agreement, the Department has reserved multiple remedies, including in certain circumstances the termination of the Participation Agreement and the removal of all Project equipment, facilities, and structures.[67]

The Department is committed to seeing that the Project provides its intended benefits, and the Participation Agreement includes provisions designed to ensure that outcome. Such provisions include a description of contribution payments to local governments covering the entire footprint of the Project, including Arkansas.[68] The Participation Agreement supports the policy goal of promoting renewable energy development by mandating all commercially reasonable efforts to use at least 75% of the Project for transmission of renewable energy resources.[69] In addition, to provide continuing benefits in return for the Department's participation, the Participation Agreement also establishes a Participation Account to which 2% of Project revenues would be paid to offset the costs of federal hydropower infrastructure improvements or other authorized purposes.[70]

In sum, the key features of the Participation Agreement include protections for the Department and taxpayers while permitting sufficient federal oversight and assurance that the Project will achieve its stated benefits.

b. Role of Southwestern

Southwestern would play an important role in performing certain functions associated with the Project on behalf of and under the direction of the Secretary. Under the Participation Agreement, Clean Line would be responsible for all Project operations and maintenance activities and regulatory compliance obligations, both for facilities owned by the Department and those owned by Clean Line. Southwestern's role would include the following Project functions: (1) land acquisition and management activities; (2) oversight of Clean Line's conformance with environmental and cultural resource obligations applicable to the Project; (3) oversight of Clean Line's compliance with regulatory obligations of the Commission and the North American Electric Reliability Corporation (NERC); (4) oversight of Clean Line's adherence to

[63] *Id.* § 3.2(b).

[64] *Id.* § 4.1.

[65] *Id.* § 5.1.

[66] *Id.* § 8.2.

[67] *Id.* §§ 7.4, 7.5.

[68] *Id.* § 8.6, Schedule 4.

[69] *Id.* § 8.27. Based on the current business environment, the Department expects the project to carry substantially in excess of 75% renewable energy. For example, all of the requests received in response to Clean Line's 2014 capacity solicitation (discussed further in section V.a) were from wind generators.

[70] *Id.* § 11.2. Clean Line's payment obligation to the Participation Account is conditioned on Clean Line first meeting operating costs, debt service, and payment to an account to pre-fund major repairs.

certain technical provisions of the Participation Agreement and Clean Line's operation of the Project in accordance with prudent utility practice; and (5) reporting information on Project development and management to the Secretary and other elements within the Department.

Apart from customary oversight by Southwestern senior management, all work on the Project would be performed by a separate, new organizational structure within Southwestern to simplify segregation of cost responsibility and to ensure that existing Southwestern activities are not impacted by the Project.

c. Independence of the Project from Southwestern's Power Marketing Function

Prior to enactment of section 1222, Southwestern's authority was largely limited to its power marketing function. Section 5 of the Flood Control Act of 1944, as amended, authorizes the Department to "transmit and dispose of" electricity that is "generated at reservoir projects [but deemed] not required in the operation of such projects."[71] Section 5 authorizes the Department to recover through rates the costs of generating and transmitting hydropower: "Rate schedules shall be drawn having regard to the recovery (upon the basis of the application of such rate schedules to the capacity of the electric facilities of the projects) of the cost of producing and transmitting such electric energy. . . ."[72] Further, the Department may only build or acquire "transmission lines and related facilities" needed to sell the power at wholesale "to facilities owned by the Federal Government, public bodies, cooperatives, and privately owned companies."[73]

Section 1222 gave the Secretary, acting through Western or Southwestern, a new authority: to participate with private developers in the development, construction, and ownership of new transmission facilities, including facilities that are not constructed for the purpose of delivering federal hydropower. Yet, while section 1222 charged Southwestern with acting on behalf of the Secretary in implementing its terms, nothing in section 1222 affected Southwestern's power marketing responsibilities under the Flood Control Act or the types of costs that may be collected in Southwestern's rates. Section 5 of the Flood Control Act is clear that generally the only costs that may be recovered in Southwestern's rates are those associated with generating, marketing, and delivering federal hydropower.[74] Because the Project would not deliver federal hydropower, costs associated with the Project could not under any circumstances be recovered in the rates Southwestern charges for federal hydropower. Some have observed that, under section 1222, if an outside project sponsor's contributions do not cover all costs, the amount not paid for through contributed funds "shall be collected through rates charged to customers using the new transmission capability provided by the Project and allocated equitably among these project beneficiaries using the new transmission

[71] 16 U.S.C. § 825s. Section 302(a) of the Department of Energy Organization Act of 1977 transfers authority under section 5 of the Flood Control Act from the Department of the Interior to the Department of Energy. *See* 42 U.S.C. § 7152(a)(1) ("There are transferred to, and vested in, the Secretary [of Energy] all functions of the Secretary of the Interior under section 825s of Title 16, and all other functions of the Secretary of the Interior, and officers and components of the Department of the Interior, with respect to" the power marketing administrations, "the power marketing functions of the Bureau of Reclamation," and "the transmission and disposition of the electric power and energy generated at Falcon Dam and Amistad Dam. . .").

[72] 16 U.S.C. § 825s.

[73] *Id.*

[74] In this Summary of Findings the Department is not intending to opine as a general matter on what types of costs may be recovered under section 5 of the Flood Control Act. The Department's intention is only to address whether this Project's costs are recoverable in Southwestern's rates. For the reasons above, the Department concludes that section 5 of the Flood Control Act would prevent recovery of such costs.

capability."[75] This provision has no applicability to Southwestern because Southwestern will not take capacity on the Project and, therefore, will not be "using the new transmission capability provided by the Project."

During the comment period, existing Southwestern customers and others sought assurance that Southwestern will bear no Project costs or liability. One commenter stated that "customers are ultimately the only funding stream for Southwestern [so] the customers must be carefully insulated from any project utilizing section 1222."[76] The same commenter urged that "Clean Line and DOE must ensure that the customers of Southwestern and/or the taxpayers do not finance" acquisitions by condemnation,[77] and that "Southwestern and its customers cannot be required to complete the Project and/or provide service under the contracts" if the Project stalls after construction begins.[78] Another commenter asked for a "guarantee that none of the costs of the proposed project are allocated to [Southwestern] or included in the rates charged to its existing customers."[79] The Department agrees with the intention of these comments and reiterates that no costs associated with this Project could lawfully be recovered in Southwestern's rates. And, as noted earlier, Southwestern will take measures to ensure careful segregation of costs by organizing its activities under section 1222 into a discrete organization to ensure that no Project costs—direct or indirect—are inadvertently recovered in rates.

Some commenters, in the course of urging that no Project costs be recovered in Southwestern's rates, appeared to assert that Southwestern lacks the legal authority to participate in the Project at all. One commenter stated that the "Project is outside the scope and ordinary course of business of Southwestern under section 5 of the Flood Control Act of 1944 – marketing federal hydropower – and Southwestern's customers will not pay for these costs should they come to fruition."[80] A related comment argued that the Flood Control Act limits Southwestern to marketing and transmission of hydropower: "It appears that SWPA can't get its electricity from wind sources, [and if so,] then this Project does not meet the 2010 RFP."[81]

To the extent these comments are arguing that Project costs may not be recovered in Southwestern's rates, the Department agrees for the reasons above. But insofar as these comments are arguing that Southwestern lacks legal authority to participate in the Project, they are based on an inaccurate understanding of Southwestern's function in implementing the Project. Under section 1222, Southwestern (or Western) plays a role in carrying out the Secretary's authority that is akin to a program office within the Department. Southwestern will oversee certain aspects of the Project on behalf of the Secretary but will not have a financial role in the Project, nor could there be any adverse impact to Southwestern's rates associated with the Project. In any event, to the extent these commenters contend that Southwestern lacks legal authority to act on the Secretary's behalf in carrying out the Project they are mistaken. Section 1222 explicitly authorizes Southwestern's involvement and nothing in section 1222 limits the eligibility of transmission projects to those that are also eligible for construction and cost recovery under the Flood Control Act.

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[75] 42 U.S.C. § 16421(c)(3).

[76] Comment of Scott Williams (President, Southwestern Power Resources Association), at 1-2 (July 13, 2015).

[77] *Id.* at 4.

[78] *Id.* at 5.

[79] Comment of Leslie James (Exec. Director, Colorado River Energy Distributors Association) (July 9, 2015).

[80] Comment of Scott Williams, at 3.

[81] Comment of Leif Anderson (July 13, 2015).

IV. Legal Authority

a. Section 1222 Authorizes the Department to Undertake Such an Action

Congress enacted section 1222 as part of a broad effort in EPAct 2005 to support and accelerate the modernization of transmission infrastructure in the United States. Section 1222 authorizes the Department to advance broad transmission policy goals by participating with private entities in the development of electric power transmission lines. Subsection 1222(c) authorizes the Department to "accept and use" contributed funds to build new transmission lines. That subsection also states that contributed funds "shall be available for expenditure for the purpose of carrying out the Project . . . without fiscal year limitation; and . . . as if the funds had been appropriated specifically for that Project."[82]

The following discussion addresses specific aspects of the section 1222 authority and relevant public comments on the scope of the authority.

b. The Department May Condemn Property for a Section 1222 Project

As described above, one of the Department's chief activities in participating in the Project would be to acquire rights-of-way, including by exercising eminent domain authority only as a last resort. Several commenters questioned the Department's authority to secure the needed property rights for the Project through eminent domain,[83] particularly because a private developer is involved. For the reasons that follow, the Department finds that it does have the authority to acquire real property as appropriate for a section 1222 Project and that, if necessary, it may exercise eminent domain authority to do so.

The Condemnation Act authorizes an agency that has the authority to acquire real estate for public use to use eminent domain for the acquisition.[84] For purposes of the Project, the applicability of the Condemnation Act depends on the answers to two questions: (1) whether section 1222 or any other provision of law authorizes the real estate acquisitions the Department would undertake, and (2) whether the Project would constitute "public use."[85]

Although section 1222(b) does not explicitly refer to the acquisition of real estate, the Department interprets the provision to authorize such activity. Section 1222(b) authorizes the Secretary to "develop, construct, operate, maintain, or own" new transmission facilities, as well as to "participate" in "developing,

[82] 42 U.S.C. § 16421(c)(2).

[83] *E.g.*, Comment of Oklahoma Attorney General's Office, at 6 (July 13, 2015) ("If Clean Line wishes to exercise eminent domain in Oklahoma, it should be forced to seek that ability according to the Oklahoma Constitution and Oklahoma law, just like every other utility in Oklahoma."); Comment of Sen. Lamar Alexander (June 11, 2015) (stating that "[t]he use of Federal eminent domain authority would strip Arkansas of their traditional property rights"); Comment of Chuck Banks (June 3, 2015) (warning that the Project could "circumvent public eminent domain power and law of the State of Arkansas").

[84] 40 U.S.C. § 3113 ("An officer of the Federal Government authorized to acquire real estate for the erection of a public building or for other public uses may acquire the real estate for the Government by condemnation, under judicial process, when the officer believes that it is necessary or advantageous to the Government to do so."). *See United States v. Carmack*, 329 U.S. 230, 235 (1946) ("The Condemnation Act supplemented the federal right to procure real estate for the erection of a public building or for other public uses by adding to it a general federal power of condemnation under judicial process to be exercised by an officer of the Government whenever, in his opinion, it is necessary or advantageous to the Government to do so."); *Albert Hanson Lumber Co. v. United States*, 261 U.S. 581, 587 (1923) ("The authority to condemn conferred by the [Condemnation Act] extends to every case in which an officer of the government is authorized to procure real estate for public uses.").

[85] The scope of what constitutes "public use" for purposes of the Condemnation Act is coextensive with the constitutional limit on eminent domain authority. *Carmack*, 329 U.S. at 239.

constructing, operating, maintaining, or owning" new transmission facilities. A transmission "facility" is an improvement on land, and the "facility" encompasses not only the physical items constituting the equipment (such as the electrical wires) but also the legal interests that permit the facility to be where it is.[86] Therefore, to best fulfill section 1222(b)'s goal of enabling the construction of new transmission capacity, "owning" a transmission facility is properly read to include holding the relevant real-estate interests—such as fee ownership of or a leasehold on the land on which the facility sits, or an easement for the transmission facility. Similarly, "developing, constructing, operating, or maintaining" a transmission facility would encompass the relevant real-estate interests as well as the physical equipment. The ordinary means for "developing" and "maintaining" the real property aspects of a transmission facility would be to acquire real estate and to maintain it (such as by filing appropriate real-estate records). For these reasons, DOE concludes that the wide range of tasks authorized by section 1222(b) include the acquisition of real estate.

The one federal appellate court that has considered a similar question reached a similar conclusion. In *United States v. 14.02 Acres of Land More or Less in Fresno County*, the Ninth Circuit heard a challenge to Western's effort to exercise eminent domain for the Path 15 Upgrade project, which was to install an 84-mile transmission line in California's San Joaquin Valley.[87] Congress specifically authorized the project, but without reciting, in such words, the authority to acquire real estate. The Ninth Circuit held that "[w]hen Congress mandates the construction of a new high voltage transmission line and appropriates funds to carry it out, it implies, *by necessity if not common sense*, the authority on the part of the executing agency to acquire land on which the transmission line may be constructed."[88] Similarly here, it is common sense that the section 1222 authority to develop and own a transmission facility includes the authority to acquire the relevant real estate.

The Project also constitutes a "public use." The decision whether a given function serves a public purpose rests with Congress in the first instance, subject to "narrow" judicial review.[89] Section 1222 reflects a legislative judgment that the projects that section 1222 will enable are for public use. Each of the criteria by which a project qualifies under section 1222(b) reflects a concern for the public benefit and welfare. For instance, section 1222 requires a finding that a project "will reduce congestion of electric transmission in interstate commerce [or] is necessary to accommodate an actual or projected increase in demand for electric transmission capacity." This finding demonstrates Congress's purpose to allow the Department to pursue projects under section 1222 where doing so can help meet needs for transmission capacity. Second, and relatedly, section 1222 projects must be consistent with identified transmission needs and with efficient and reliable operation of the transmission grid. Improvements to transmission grid capacity and capability aim at improving the public's access to adequate power supplies. Third, projects must be operated "in conformance with prudent utility practice," to safeguard the interests of the public in well-functioning utilities. Fourth, the projects must be operated by, or according to the rules of, an appropriate Transmission Organization or RRO. Both types of organizations are designed to make electricity markets work better for the public they serve. Finally, a project cannot "duplicate the functions of existing transmission facilities or proposed facilities which are the subject of ongoing or approved siting and related permitting proceedings," to avoid the costs of redundant facilities being passed on to consumers. Taken together, these

[86] A transmission developer frequently is responsible for all activities leading up to commercial operation of the transmission line, including acquisition of real property. *See, e.g., N.Y. Indep. Sys. Operator, Inc.*, 148 FERC ¶ 61,044 at P 76 (2014) (describing the "total cost of developing" a transmission project as including "rights-of-way and land acquisition costs").

[87] 547 F.3d at 951.

[88] *Id.*

[89] *Haw. Hous. Auth. v. Midkiff*, 467 U.S. 229, 239-40 (1984).

eligibility criteria function to ensure that projects authorized under section 1222 assist in the provision of electric service to the public through the provision of needed electric transmission facilities. For these reasons, the Department concludes that a project eligible for DOE's involvement under section 1222 is, by virtue of that eligibility, a public use.

Moreover, this Project is of a sort—a public utility—that has regularly been regarded as a public use in the past.[90] Clean Line will be a "public utility" under the Federal Power Act.[91] Pursuant to federal law, it will be required to provide open access to its facility on non-discriminatory terms, charge only rates that the Commission determines are just and reasonable, and comply with conditions of service imposed by the Commission.[92] Clean Line intends to secure preconstruction commitments for up to 100% of the Project's capacity, with any remaining capacity being sold through an "open season" available to all prospective purchasers, and subject those sales to an Open Access Transmission Tariff (OATT).[93] In addition, Clean Line must submit to audits by the Commission to ensure it has complied with its obligations to make service publicly available. More specifically, as in similar Commission decisions, Clean Line will be required to file its "books and records audited by an independent auditor" once Project operation begins.[94] The purpose of that requirement is to "assist the Commission in carrying out its oversight role,"[95] which serves to protect the public. For these reasons, the Department considers the Project similar to public-utility projects that have been treated as "public use" in the past; the purpose of the Project is to make transmission capacity available to the public.

c. Section 1222 Allows the Department's Participation Notwithstanding Clean Line's Activities in Tennessee

Section 1222(b) authorizes the Secretary to "participate with other entities in designing, developing, constructing, operating, maintaining, or owning, a new electric power transmission facility and

[90] *See Mt. Vernon-Woodberry Cotton Duck. Co. v. Ala. Interstate Power Co.*, 240 U.S. 30, 32 (1916); *see also* 2A Nichols on Eminent Domain § 7.05[4] (3d ed. 2014) (collecting cases). In *Kelo v. City of New London*, the majority opinion and both dissenting opinions held out condemnation for common carriers like public utilities as a well-established public use. 545 U.S. 469, 477 (2005) (majority opinion) ("[I]t is equally clear that a State may transfer property from one private party to another if future 'use by the public' is the purpose of the taking; the condemnation of land for a railroad with common-carrier duties is a familiar example."); *id.* at 498 (O'Connor, J., dissenting) ("[T]he sovereign may transfer private property to private parties, often common carriers, who make the property available for the public's use—such as with a railroad, a public utility, or a stadium."); *id.* at 512-13 (Thomas, J., dissenting).

[91] *See* 16 U.S.C. § 824(b), (e) (interstate electricity transmission subject to the Federal Power Act, and persons owning or operating such facilities considered "public utilit[ies]").

[92] *Id.* § 824d.

[93] *Plains & E. Clean Line LLC*, 140 FERC ¶ 61,187 at P 26 (2012) ("[U]pon the Project's completion, [Clean Line] must also make the Project subject to the OATT of either SPP or another qualified entity, such as an RTO or ISO, by filing an OATT administered by that entity or a rate schedule in that entities' [sic] OATT.").

[94] *Id.*

[95] *Id.*

related facilities[96] . . . located within any State in which WAPA or SWPA operates."[97] With respect to the Project, Clean Line intends to connect the transmission facilities being developed in Oklahoma and Arkansas to facilities in Tennessee—a State in which neither Western nor Southwestern operates. Nonetheless, the Department's participation in the Project will be consistent with section 1222 because the facilities with respect to which the Department is exercising its section 1222 authority are exclusively in Oklahoma and Arkansas, both states in which Southwestern operates.

The Department recognizes that Clean Line will connect the Project with transmission, generation, and distribution facilities outside the States in which Western and Southwestern operate. But the Department does not read section 1222(b) to cabin the Department's authority on the basis of activities that private parties undertake in connection with a project that is otherwise eligible under section 1222.

Neither the text nor the context of section 1222(b) suggests such a restriction. And, inferring such a limitation would undermine the purposes of the EPAct 2005. Section 1222(b) is designed to accelerate the development of new, needed electric transmission facilities. The Department sees no reason, consistent with that purpose, why Congress would have intended to disqualify a project from eligibility under section 1222(b) simply because a private developer intends to develop interconnecting transmission facilities in a state where Western or Southwestern does not operate. The electrical transmission grid is nationwide, and in general EPAct 2005 was intended to increase the degree to which electrical facilities are interconnected across the Nation.[98] Nationwide interconnectedness fosters greater reliability and efficiency while reducing congestion, the three principal goals of EPAct 2005 with respect to electricity. In an interconnected grid, a facility that DOE might develop pursuant to section 1222(b) can be expected to be, indeed ought to be, connected to other facilities elsewhere in the country. Thus, the Department concludes the geographic limitation in section 1222(b)—the States in which Western and Southwestern operate—reflects simply a determination that Western and Southwestern should not, as a consequence of section 1222(b), themselves undertake nationwide operations. It is not meant to limit the extent to which a section 1222(b) facility itself might connect with or depend on facilities outside those States.

d. Section 1222 Does Not Limit the Use of Contributed Funds After Fiscal Year 2015

At least one commenter raised the issue of how long funds contributed to a section 1222 project will remain available, claiming that the provision has a "spending sunset," and that "Section 1222 spending expires at the end of 2015."[99] For the reasons that follow, the Department concludes that the authority to accept and use contributed funds provided by section 1222 continues past the end of Fiscal Year (FY) 2015.

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[96] Transmission lines are comprised of transmission towers and conductors or power lines. Related facilities include converter stations, substations, collection systems, and other facilities necessary for operating and servicing a transmission line. Chapter 2 of the Final EIS provides a detailed description of all facilities related to the Project. For example, each of the Project's converter stations would include the equipment typical to a substation plus equipment to convert between AC and DC as well as ancillary facilities such as communications equipment and cooling equipment.

[97] 42 U.S.C. § 16421(b).

[98] *See, e.g.*, EPAct 2005 §§ 368(d) (42 U.S.C. § 15926(d)) ("In carrying out this section, the Secretar[y] shall take into account the need for upgraded and new electricity transmission and distribution facilities to improve reliability, relieve congestion, and enhance the capability of the national grid to deliver electricity."), 1242 (42 U.S.C. § 16441) (discussing Commission approval of funding for new interconnection and transmission upgrades), and 1254 (amending PURPA by establishing interconnection standards for electric utilities).

[99] Comment of Scott Thorsen (May 11, 2015).

Section 1222(c)(1) authorizes the Secretary to "accept and use funds contributed by another entity for the purpose of carrying out" a project under section 1222(b).[100] The funds are to be "available for expenditure for the purpose of carrying out [a] Project . . . without fiscal year limitation and as if the funds had been appropriated specifically for that Project."[101] Section 1222(g) prevents the Secretary from "accept[ing] and us[ing] more than $100,000,000 under subsection (c)(1) for the period encompassing fiscal years 2006 through 2015." Taken together, these provisions indicate that, after FY2015 ended on September 30, 2015, the Secretary continued to be authorized to accept and use contributed funds "without fiscal year limitation." The statute does not terminate or otherwise restrict the Secretary's authority to accept and use contributed funds after that date.

Textually, the Department's interpretation of paragraph (g) is more consistent with ordinary English usage, while the alternative is somewhat strained. The phrase introducing the limitation on the Department's ability to accept funds is "more than." For the Department to be unable to use funds beyond the FY2006-2015 period, "more than" must encompass the "for the period" phrase that defines the time period. But "more than" usually suggests a comparison based on number or some other quantity (such as size or volume), and does not ordinarily apply to a time period.[102] Therefore, rather than taking paragraph (g) to limit the use of funds "more than . . . for the period" FY2006-2015, the Department takes the "for the period" phrase to be an adverbial phrase modifying the "more than" condition. Thus, paragraph (g) restricts the Department from accepting more than $100 million; and applies that limit for fiscal years 2006-2015.

The Department's reading of this provision finds support in sections of EPAct 2005 that do include provisions limiting the temporal scope of the authorities being granted. Those provisions use language that much more clearly expresses the temporal limitation.[103] Had Congress intended to limit the Secretary's acceptance and use of contributed funds for section 1222 projects after FY2015, it would have included similar language in section 1222.

Moreover, the Department's interpretation of paragraph (g) better supports the purposes of section 1222. Were the Department permitted to use contributed funds only until the end of FY2015, it could participate in developing transmission capacity only in a limited, short-term manner. But projects of this type usually become operational after at least 10 years of development, and once operational remain in service for many decades more. The Department notes that the statute authorizes the Secretary to accept and use contributed funds for the operation and maintenance of the subject transmission facilities, thus explicitly contemplating long-term project involvement. Reading section 1222(g) to "terminate" the Secretary's authority to accept and use funds after an arbitrary 10-year window ending in FY2015 would significantly interfere with the Department's ability to exercise the authorities granted by section 1222, even for a project initiated immediately after EPAct 2005 was enacted.

In sum, had Congress intended to add a termination provision to section 1222, as in other provisions of EPAct 2005, it would have done so unequivocally. The Department interprets section 1222(g) simply

[100] 42 U.S.C. § 16421(c)(1).

[101] *Id.* § 16421(c)(2).

[102] It is natural to say "more than $100,000,000," in the sense that $101,000,000 would be more than $100,000,000. By contrast, one would not say "I worked more than 5 p.m. yesterday," one says "after," "past," or "later than."

[103] *See, e.g.*, EPAct 2005 §§ 242 (42 U.S.C. §15881) ("There are authorized to be appropriated to the Secretary to carry out the purposes of this section $10,000,000 for each of the fiscal years 2006 through 2015."), 1007 (42 U.S.C. § 7256(g)) ("Notwithstanding any other provision of law, the authority to enter into transactions under paragraph (1) shall terminate on September 30, 2010."), and 1510 (42 U.S.C. § 16501) ("The authority of the Secretary to issue a loan guarantee under subsection (b) terminates on the date that is 10 years after the date of enactment of this Act.").

to cap contributed funding for the first 10 years of the program.[104] Starting in FY2016—absent further congressional action—section 1222 does not limit the Secretary's authority to accept and use contributed funds.

e. Section 1222's Interaction With State Siting Laws

A number of commenters argued that the Department must obtain permits from state regulatory bodies before proceeding with a section 1222 project because section 1222 does not supplant state siting laws.[105] Several commenters claimed that Arkansas must approve the siting, and highlighted the state's denial of public utility status to Clean Line.[106] The Oklahoma State Attorney General's Office also asserted that state's siting authority, insisting that section 1222 "preserves state law relating to the siting of energy facilities."[107] For the reasons that follow, the Department concludes that the savings clause of section 1222 does not require the Federal Government to subject itself to state regulatory authority.

The savings clause of subsection 1222(d) states that "[n]othing in this section affects any requirement of . . . . any Federal or State law relating to the siting of energy facilities . . . ."[108] The expression "State law relating to the siting of energy facilities" likely contemplates, at a minimum, state laws requiring state regulatory approval of large energy infrastructure projects before construction can begin. The laws usually call for a detailed description of the proposed facilities, including location information, technical information, and associated environmental reviews. These proceedings generally conclude when the public utility commission either denies the application or approves it by granting a "certificate" or other permit. In certificate proceedings, state public utility commissions often modify the proposal, including the proposed location, or subject the certificate to conditions. A certificate is usually required before construction and is sometimes a predicate for rate recovery and eminent domain authority.[109]

By its terms, the savings clause does nothing more than preserve the existing effect of federal and state siting law. Under such laws, private entities must generally obtain state regulatory approval to site and construct electric transmission lines but the federal power marketing administrations need not. A

[104] Although no legislative history exists on this point, the Department suspects that section 1222(g) was added to facilitate budgetary scoring of section 1222 by the Congressional Budget Office (CBO) over the 10-year period for which CBO scored EPAct 2005. Indeed, each of the CBO cost estimates scored section 1222 as an expenditure of $100 million and concluded—as does section 1222(g)'s dollar limitation—in FY2015. *See, e.g.*, http://www.cbo.gov/sites/default/files/cbofiles/ftpdocs/65xx/doc6581/hr6prelim.pdf (dated July 27, 2005).

[105] *E.g.*, a letter submitted and signed by multiple commenters stating that "in reading Section 1222, it is not at all clear that Congress intended it to provide siting authority to override state law," citing the savings clause in section 1222(d)(2); Comment of John C. Ale at 15 (Apr. 20, 2015) (arguing directly that "Section 1222 . . . does not preempt state siting requirements").

[106] *E.g.*, Comment of Linda Lou & Robert Brown (July 5, 2015) (stating that permission to build the line "despite the rejection of the line by the state of Arkansas . . . is a blatant disregard for the rights of states to regulate utilities."); Comment of Leif Anderson (July 12, 2015) ("The Arkansas utility commission has not granted public utility status and the right of eminent domain to [Clean Line]."); Comment of John C. Ale, at 14 (July 13, 2015) (requesting analysis of "[w]hether Arkansas state authorizations for the siting of the transmission line . . . are needed for the Project").

[107] Comment of the Oklahoma Attorney General's Office, at 5 (July 13, 2015).

[108] 42 U.S.C. § 16421(d)(2).

[109] For example, Arkansas law prohibits any person from constructing a high voltage transmission line without first having obtained a Certificate of Environmental Compatibility and Public Need from the Public Service Commission. *See* Ark. Code Ann. § 23-18-510. Having obtained such a certificate, the recipient may exercise eminent domain in state court. *Id.* § 23-18-528(a)(2).

federal agency may only be subject to state regulatory requirements if there is a "clear and unambiguous" congressional statement to that effect.[110] For that reason, federal courts have consistently rejected arguments that the Department's power marketing administrations must obtain state siting approval to build transmission lines.[111] Moreover, nothing in the savings clause in subsection (d)(2) states that the Department must itself comply with state siting law, much less in the "clear and unambiguous" language that would be required. The savings clause states only that "[n]othing in this section affects" state siting law. Again, these words appear intended only to preserve the existing effect of state siting law, not to expand it to federal activities otherwise free from state regulation. Therefore, the Department, acting through Western or Southwestern, need not obtain a certificate from a public utility commission for a transmission project under section 1222 before taking an action, such as construction, that if done by a private party would require a certificate under state law.

V. Findings with Regard to Secretarial Determinations Required by Section 1222

a. The Project Is Necessary to Accommodate a Projected Increase in Demand for Electric Transmission Capacity

Section 1222 authorizes the Department to participate in a new transmission project if, among other criteria, the Secretary determines the project to be "necessary to accommodate an actual or projected increase in demand for electric transmission capacity."[112] Because the statutory text specifies a particular type of demand—one for transmission capacity—the Department's analysis focuses on that statutory directive rather than indicators of demand for electricity generally, such as load growth projections.

Clean Line points to several factors to satisfy this criterion. First, Clean Line conducted an open solicitation for transmission capacity on the Project from May to July 2014. Fifteen different transmission customers submitted a total of 29 separate requests amounting to 17,091 MW of capacity, roughly four times the Project's transfer capacity.[113] Broken down, the transmission service requests from Oklahoma to Tennessee, as well as the requests from Oklahoma to Arkansas, both totaled approximately four times the Project's delivery capacity to each of those states.[114] Each request was for a term of "at least 20 years."[115] Clean Line argues that the interest in its Project shows that "increased demand for interregional capacity to connect wind-rich zones with load-centers exists today," not only in projections.[116]

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[110] *Hancock v. Train*, 426 U.S. 167, 179 (1976).

[111] *See Citizens & Landowners Against the Miles City/Underwood Powerline v. Dep't of Energy*, 683 F.2d 1171, 1178-82 (8th Cir. 1982) (rejecting arguments that either section 103 of the Department of Energy Organization Act, 42 U.S.C. § 7113, or section 505 of the Federal Land Policy and Management Act, 43 U.S.C. § 1765, evince the necessary congressional intent to require Western to comply with South Dakota's siting law); *Montana v. Johnson*, 738 F.2d 1074 (9th Cir. 1984); *Columbia Basin Land Prot. Ass'n v. Schlesinger*, 643 F.2d 585, 605 (9th Cir. 1981) (holding that the Bonneville Power Administration was not required to secure a state certificate to build transmission lines and noting that "to require the [Administration] to require the BPA to receive a state certificate would imply that the state could deny the application, which would give them a veto power over the federal project [and] clearly cannot be the meaning that Congress intended.").

[112] 42 U.S.C. § 16421(b)(1)(B).

[113] Part 2 Application at 2-2.

[114] *Id.* at 2-3.

[115] *Id.*

[116] *Id.* at 2-2.

Second, Clean Line explained that wind energy development in Oklahoma is increasing demand for transmission capacity, as shown by letters from ten wind generators seeking new transmission service[117] and the results of a 2013 Request for Information (RFI) gauging the transmission needs of wind generators active in the Oklahoma Panhandle region. The responding wind generators reported over 11,450 MW of projects under development within 40 miles of the proposed Oklahoma converter site.[118]

Third, Clean Line stated that load serving entities in the Mid-South and Southeast are seeking more renewable power and transmission capacity to import low-cost wind power. As support, Clean Line referenced a November 3, 2014 letter of interest from TVA's President and CEO explaining why, in light of more stringent environmental requirements and other factors, "wind energy delivered by HVDC transmission to the TVA system could provide benefit to TVA and the areas that we serve."[119] TVA's 2011 Integrated Resource Plan (IRP) similarly noted that government mandates and customer demand for renewable energy support increasing renewable generation to 2,500 MW by 2020, with wind contracts playing a key role in future portfolios.[120] Clean Line asserted that the Project could meet the needs of other utilities in the Mid-South and Southeast as states enact greater renewable energy goals and as environmental regulation drives demand for renewable energy. Citing as examples the Environmental Protection Agency's (EPA) Clean Power Plan,[121] Mercury Air Toxics Standards, and Cross-State Air Pollution Rule, Clean Line explained that EPA's rules are leading to numerous coal plant retirements in the region.[122] Clean Line contended that Oklahoma wind energy is low cost and can meet the needs of regional utilities in the Southeast, particularly in light of the finite capacity and volatility of natural gas generation and the high cost of local renewable resources.[123]

Fourth, Clean Line explained that demand for the Project's transmission capacity cannot be met by existing planning processes. Clean Line explained that none of the relevant systems (SPP, Entergy, and Associated Electric Cooperative, Inc.) have been upgraded to facilitate new west-east transfers, and that is driving higher congestion costs.[124] Calculating the amount of interconnection capacity available in the area of its planned Oklahoma converter station, Clean Line noted that less than 600 MW is available for wind generators who have not yet completed their system impact studies.[125] According to Clean Line, SPP has

[117] *Id.* at app. 2-B.

[118] *Id.* at 2-3 to 2-4.

[119] *Id.* at app. 2-C.

[120] *Id.* at 2-5 (citing 2011 TVA Integrated Resource Plan, at 151, 153-54, & app. D at D198, https://jobs.tva.com/environment/reports/irp/archive/pdf/Final_IRP_complete.pdf). Clean Line also noted that the largest load centers in TVA support additional renewable energy purchases. *Id.* at 2-5 to 2-6.

[121] *See supra* n.39.

[122] Part 2 Application at 2-9 (noting that TVA has retired or plans to retire over 50% of its coal units, and over 14,000 MW of coal power generators in the SERC footprint are scheduled to be retired by 2017).

[123] *Id.* at 2-8 to 2-10.

[124] *Id.* at 2-11 to 2-12.

[125] *Id.* at 2-11.

repeatedly identified an increased demand for transmission export capacity,[126] but "SPP's focus in transmission planning is moving power with[in] the SPP footprint."[127]

Several commenters disagreed that the Project is necessary to accommodate actual or projected demand. These commenters' discussion of "demand" often conflated aggregate demand for electricity with demand for electric transmission capacity. Some commenters claimed that demand for electricity in the next two decades will grow slowly, and that the need for additional wind energy will not arise for some time. For example, citing a draft DOE study finding that, notably, did not include Oklahoma,[128] Save the Ozarks contended that "DOE found little or no actual or projected increase in demand for additional generation or electric transmission capacity in the [S]outheastern United States."[129] Senator Lamar Alexander of Tennessee wrote that TVA stated in its 2015 Draft Integrated Resource Plan (IRP) that it "would not have a need for this wind power until the 2030s, at the earliest."[130] Other comments pointed out that integrated resource planning forecasts demand growth of 0.3% to 1.3% over 20 years, much less than TVA's projection as recently as 2011,[131] and alleged that TVA "has no plans to buy [Clean Line] intermittent power."[132]

Comments also stated that too few agreements cover the anticipated transmission capacity, and that too little evidence supports a demand increase that could lead to new agreements. They stressed that because Clean Line has not secured firm commitments from producers or users, projected demand increases are specious and the Project would not be necessary to meet any increase in demand.[133]

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[126] Clean Line previously noted that the SPP "specifically identified a future demand for additional export capacity to the broader Eastern Interconnection as renewable energy increases its penetration level." 2010 Application at 8 (citing Southwest Power Pool, *Final Report on the SPP EHV Overlay Project*, at 7 (June 27, 2007)). In a subsequent version of that study, the study model was updated to reflect increased load growth and significantly increased interest in developing wind generation in western Oklahoma, a re-evaluation that underscores the growing trend for transmission export capacity. *Final Report on the Southwest Power Pool (SPP) Updated EHV Overlay Study*, at 4-7, 17-18 (March 8, 2008), http://sppoasis.spp.org/documents/swpp/transmission/2008%20EHV%20Study%20Final%20Report.pdf. Clean Line's 2011 Proposal Update noted a similar trend. 2011 Proposal Update at 10 ("Transmission Service Requests (TSRs) in SPP also evidence a significant demand to transmit power generated in western SPP to regions east of SPP"), 11 (as of August 2011, "more than 9300 MW of [Transmission Service Requests] from western SPP regions to balancing authorities east of the SPP footprint" were outstanding).

[127] Part 2 Application at 2-11.

[128] U.S. Department of Energy, *Transmission Constraints and Congestion in the Western and Eastern Interconnections, 2009-2012* (2014). The comment quoted the study as finding "a high level of generation capacity relative to peak demand" and "few reports of specific transmission constraints in the Southeast." *See also* Comment of Mark Fears (May 1, 2015) (noting that TVA's April 2015 report states that the agency "has no need or demand for this additional power being added to the grid of the southeast United States.").

[129] Comment of Pat Costner, at 5 (July 13, 2015).

[130] Comment of Sen. Lamar Alexander, at 1 (June 11, 2015). *See also* Comment of Cynthia Callahan, at 3 (June 2, 2015) (arguing that because TVA has not prioritized Clean Line and does not plan to consider it for another 15 years, the project is "not necessary").

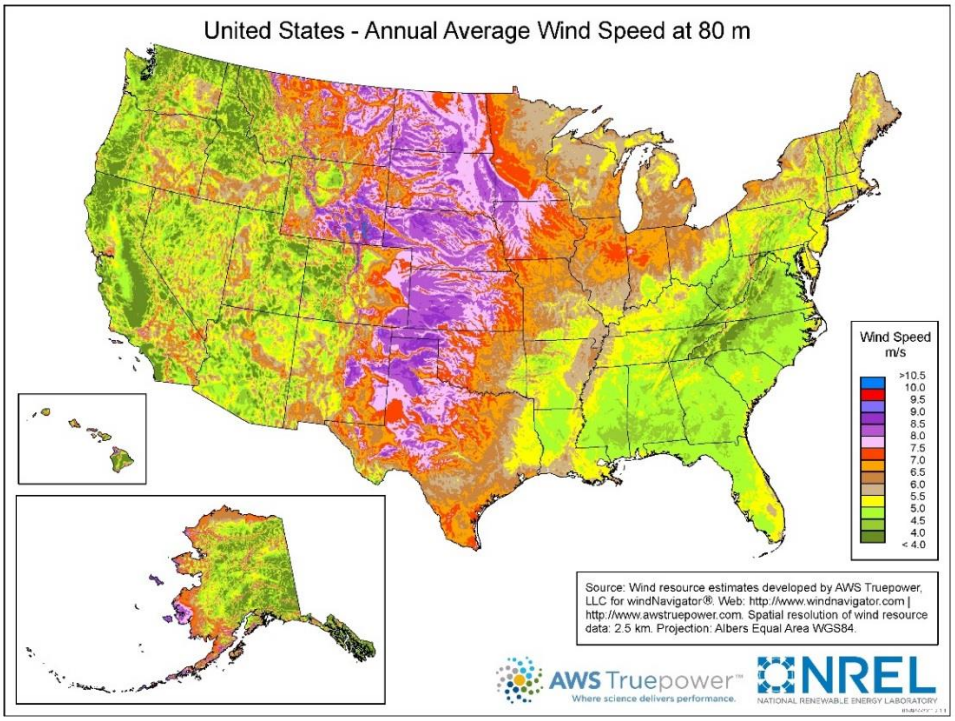
[131] *E.g.*, Comment of Rob Kopack (July 13, 2015); Comment of Richard Mays, at 2 (July 13, 2015); Comment of Daron Harrison (July 12, 2015) ("TVA even states there is no need required for any additional energy until 2030.").

[132] Comment of Luis Contreras, at 1 (July 5, 2015).

[133] *E.g.*, Comment of Greg Kremers (July 8, 2015) (noting that Clean Line has not secured customers and claiming that "no suppliers [are] waiting to generate power on this line"); Comment of Leif Anderson, at 1 (July 13, 2015) (noting that Clean Line "does not have enough signed agreements to provide electricity to cover transmission

The Department concludes that the Project is necessary to accommodate an actual or projected increase in demand for electric transmission capacity. This conclusion is supported both by analysis of the demand for west-to-east transmission capacity delivering wind power into the mid-South and Southeast, and by indicators of demand that are specific to the Project itself.

Figure 1. U.S. 80m Wind Resource Map



SOURCE: National Renewable Energy Laboratory, Dynamic maps, GIS Data, & Analysis Tools, *available at* http://www.nrel.gov/gis/images/80m_wind/USwind300dpe4-11.jpg.

Multiple sources establish the demand for additional transmission capacity to move wind power out of the Panhandle region of Oklahoma and Texas. As shown above, the Panhandle region has some of the highest average wind speeds in the Nation. Consequently, wind power produced in the Panhandle region is among the lowest cost in the Nation.[134] In 2015, the Department conducted a study of transmission congestion in the United States (2015 Congestion Study). The Department's 2015 Congestion Study found that in the Midwest region, which includes Oklahoma, "Congestion results from high and growing levels

capacity, especially within WAPA/SWPA."); Comment of Connie Hill, at 2 (July 13, 2015) ("The lack of Power Purchase Agreements speaks volumes."); Comment of the Oklahoma Attorney General's Office, at 1 (July 13, 2015) (noting that "Clean Line does not have firm contracts with 'load-service entities.'"); Comment of Daron Harrison (July 12, 2015) (stating that no TVA customers have sought additional energy sources and that no Oklahoma wind producers have contracts with Clean Line); Comment of Flo Stumbaugh (April 29, 2015) (alleging that Clean Line has "no guarantees the power generated will be sold to anyone."); Comment of Luis Contreras, at 5 (June 8, 2015) (noting that Clean Line "does not have Power Purchase Agreements with utilities").

[134] U.S. Department of Energy, Office of Energy Efficiency & Renewable Energy, *2014 Wind Technologies Market Report*, at viii (Aug. 2015) (noting that "the national average levelized price of wind PPAs that were signed in 2014 . . . fell to around $23.5/MWh nationwide—a new low, but admittedly focused on a sample of projects that largely hail from the lowest-priced Interior region of the country."), https://emp.lbl.gov/sites/all/files/lbnl-188167_0.pdf.

of wind generation that cannot be delivered from the western side to more distant, eastern loads, and the lack of additional transmission to enable further development in renewable-rich areas."[135] In addition to the evidence of congestion, the 2015 Congestion Study pointed to generator interconnection queues, describing them as "indicators of potential transmission demand."[136] The 2015 Congestion Study observed that "Interconnection queues for the Midwest, as of 2012, were dominated by siting requests for wind generation, generally in locations distant from population centers."[137] The 2015 Congestion Study did not analyze constraints between Oklahoma and the Southeast region, but it did find that future generation in the Southeast region will consist in part of "wind generation in the western part of the interconnection,"[138] lending support to Clean Line's findings that wind developers in Oklahoma are seeking additional transmission export capacity. The findings in the 2015 Congestion Study regarding transmission-constrained wind resources are reinforced by the results of Clean Line's 2013 RFI. In that RFI, Clean Line sought information on whether there was increasing demand for transmission service from the Panhandle region. Clean Line received affirmative responses from twelve wind generators. Respondents to the RFI also reported wind power projects under development totaling 11,450 MW of planned capacity within 40 miles of the proposed Oklahoma converter station, which contrasts with the less than 600 MW of interconnection capacity available on SPP's system in the same general area.[139] Finally, the Department notes that in December 2015, Congress extended the Production Tax Credit for five additional years.[140] The Department expects that, by improving the economics of wind power in general, the Production Tax Credit extension will add to the demand for transmission capacity to deliver wind power from the Panhandle region.[141]

Complementing the increased demand for transmission capacity to export wind power out of the Panhandle region is evidence of demand for import transmission capacity to load centers in the mid-South and Southeast.[142] As noted above, a November 2014 letter of interest from TVA's President and CEO

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[135] U.S. Department of Energy, *National Electric Transmission Congestion Study*, at 87 (2015) (2015 Congestion Study). Studying congestion in the Southeast region (including Arkansas and Tennessee) was hampered by the fact that "there are no reports on the economic cost of congestion because no organized wholesale electricity markets operate in the Southeast which produce locational marginal prices that reflect differences in production costs due to congestion." *Id.* at 89.

[136] *Id.* at xi. "[W]hen the aggregate capacity in the queue is larger than available or projected transmission capacity connecting it to load regions, it is an indication that transmission may be or will become constrained depending on how many of these projects materialize and how capacity interconnection and energy delivery is pursued." *Id.* at xii.

[137] *Id.* at 87; *see also* Southwest Power Pool, *2016 Wind Integration Study*, at 6 (Jan. 5, 2016) ("SPP wind generation resources are primarily located in the southwestern and north central portions of the SPP footprint . . . . Wind development is expected to expand to higher levels based on the generation interconnection requests in the queue."), http://www.spp.org/documents/34200/2016%20wind%20integration%20study%20(wis)%201.pdf.

[138] 2015 Congestion Study at 89.

[139] Part 2 Application at 2-4, 2-11.

[140] The Production Tax Credit is a subsidy of $0.023/kWh for wind, with a phase down starting with wind facilities commending construction in 2017 or later. Consolidated Appropriations Act, 2016, Pub. L. No. 114-113, 129 Stat. 2242 (Dec. 18, 2015); Renewable Electricity Production Tax Credit, http://energy.gov/savings/renewable-electricity-production-tax-credit-ptc.

[141] *See, e.g.*, Daniel Cusick, *Renewables Boom Expected Thanks to Tax Credit*, Scientific American, Dec. 21, 2015, http://www.scientificamerican.com/article/renewables-boom-expected-thanks-to-tax-credit (last visited Mar. 24, 2016) (citing statements of several industry experts predicting growth in renewable development resulting from the tax credit extension).

[142] The sources cited in this paragraph do not rely on overall load growth to drive import demand because the utilities are also responding to market pressures to find replacement power sources as older units are retired.

stated that "wind energy delivered by HVDC transmission to the TVA system could provide benefit to TVA and the areas that we serve."[143] TVA's 2015 IRP modeled adding renewables under every strategy considered.[144] In a comment on Clean Line's application, TVA's CEO and President, William Johnson, noted that the agency "supports the advancement of [the Project] and encourages the Department of Energy to complete the remaining review and evaluation needed to move the project forward."[145] Mr. Johnson stressed that TVA "appreciates every available option as we select from them the best portfolio of resources to meet our forecast load, both for the long- and short-term," and that the Project's "promise . . . to make additional, competitively priced wind energy available holds value for this reason."[146] Further, in January 2016, Georgia Power issued an IRP that included a substantial commitment to renewable resources and noted its continued interest in wind delivered over HVDC from the Panhandle region. The IRP stated that the "use of HVDC lines could facilitate delivery from either the Oklahoma Panhandle into the Tennessee Valley Authority . . . The use of HVDC lines can potentially eliminate delivery risk across the Southwest Power Pool ('SPP') and Midcontinent Independent System Operator ('MISO') transmission systems."[147]

The already-strong demand for imports of low-cost wind energy into the mid-South and Southeast would likely increase if and when states in the region are subject to regulations limiting greenhouse gas emissions from power plants. EPA's Clean Power Plan,[148] published in October 2015 and scheduled to mandate compliance beginning in 2022, aims to "continue progress already underway in the U.S. to reduce CO_2 emissions from the utility power sector"[149] and is part of a suite of air quality improvements sought by other national environmental regulations.[150] These improvements could be accomplished through retrofitting of older generation plants, plant retirements, and an increasing reliance on local or imported low-carbon generation including renewables.[151] The Department's Energy Information Administration (EIA) estimates that the Clean Power Plan would result in strong growth in renewable generation, particularly in regions currently lacking robust renewable portfolio standards such as the Southeast.[152] Implementation of the Clean Power Plan would also shift the regional fuel mix away from baseload capacity with on-site fuel supplies (such as coal, nuclear, hydroelectricity, and oil) towards capacity that tends to

[143] Part 2 Application at app. 2-C.

[144] 2015 TVA Integrated Resource Plan, at 90, https://www.tva.gov/file_source/TVA/Site%20Content/Environment/Environmental%20Stewardship/IRP/Documents/2015_irp.pdf (recognizing the role of renewables but declining to analyze the Clean Power Plan impact until the rule is finalized). *See supra* n.39.

[145] Comment of William D. Johnson, President & CEO, Tenn. Valley Auth., at 2 (June 9, 2015).

[146] *Id.* at 1.

[147] Georgia Power Company's 2016 Integrated Resource Plan and Application for Decertification of Plant Mitchell Units 3, 4A and 4B, Plant Kraft Unit 1 CT, and Intercession City CT, Ga. Public Serv. Comm. Docket No. 40161, at 10-114.

[148] On February 9, 2016, the United States Supreme Court stayed the rule implementing the Clean Power Plan until the current litigation against it concludes. *Chamber of Commerce, et al. v. EPA, et al.*, Order in Pending Case, 577 U.S. ___ (2016), http://www.supremecourt.gov/orders/courtorders/020916zr3_hf5m.pdf. As of that date, a challenge to the rule was pending before the United States Court of Appeals for the District of Columbia Circuit.

[149] Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units, 80 Fed. Reg. 64,662 (Oct. 23, 2015). *See supra* n.39.

[150] 2015 Congestion Study at 30-34.

[151] *Id.* at 30.

[152] U.S. Energy Information Administration, *Analysis of the Impacts of the Clean Power Plan*, at 53 (2015) (EIA Clean Power Plan Analysis).

utilize real-time fuel delivery (wind, solar, and natural gas).[153] Overall, wind generation is projected to play a major role and become increasingly economically competitive.[154] Although the EIA's analysis did not look at the degree to which such a fuel mix would be imported to the Southeast or conduct a detailed model of the transmission system, it did find that "[c]ompliance with the proposed rule could necessitate significant investment in electric transmission system infrastructure to integrate renewables from remote areas."[155]

Supporting these findings about demand for projects of this type are the indicators of demand for this Project itself. To begin, the Project was oversubscribed in its 2014 capacity solicitation.[156] Responding to Clean Line's open capacity solicitation, potential customers requested 17,091 MW, or roughly four times the Project's transmission capacity.[157] The company noted that "[a]ll of the requests were from companies whose primary business is wind power generation, not retail electric service."[158] Given the robust response, the company has also signed term sheets for precedent agreements with several potential transmission service customers. To date, customers have entered into 8,252 MW of term sheets for precedent agreements.[159] In a precedent agreement to a TSA, the parties set forth important terms and conditions—such as price, schedule, point of delivery, etc.—that they expect to be included in a TSA. As such they demonstrate bona fide commercial interest in the Project at the price and terms specified. Finally, the Department notes again that the Project is a merchant project, meaning that it will not succeed commercially unless there is market demand for the service at the price and terms Clean Line can offer. Accordingly, the substantial equity commitment investors have already made on the Project to date[160] is a powerful indicator of their expectations regarding market demand.

The observation made by some commenters that Clean Line has yet to enter binding TSAs does not disturb this conclusion. To begin, the Department notes that the statute requires that the Project be "necessary to accommodate an actual or projected increase in demand for electric transmission capacity." The inclusion of the word "projected" indicates that the transmission capacity for the project need not already be under contract for the criterion to be satisfied. Further, because the Department's participation in this Project is critical to its development, the Department thinks it would have been unlikely for potential subscribers to the Project to have entered binding TSAs before knowing whether, and on what terms, the Department would choose to participate under section 1222.

Nor does the Department agree with commenters regarding their interpretation of the TVA's IRP or the weight they place on demand from TVA itself. It is true that TVA's IRP focused on the need for wind resources by 2033. But TVA cautioned that its anticipated resource mix is "dependent on pricing,

[153] *Id.* at 60. This trend is currently evident in coal-fired generation plant closures throughout the Southeast region. Part 2 Application at 2-9.

[154] EIA Clean Power Plan Analysis at 36 & n.27.

[155] *Id.* at 60.

[156] *See* Part 2 Application at 2-2.

[157] *Id.* at 2-3.

[158] *Id.* at 6-5.

[159] Documents provided to the Department in 2015 during the Department's due diligence review of the Application.

[160] Clean Line's major investors, National Grid USA and ZAM Ventures, L.P., "have made, and continue to make, substantial investments to support the Project's development." Part 2 Application at 3-15. *See also id.* at app. 6-E (financial statements of National Grid and its subsidiaries as well as Clean Line Energy Partners LLC and Plains and Eastern Clean Line Holdings LLC).

performance and integration costs."[161] "Given the variability of wind selections in the scenarios, [the recommendation is to] evaluate accelerating wind deliveries into the first 10 years of the plan if operational characteristics and pricing result in lower-cost options."[162] In other words, if the Project comes online quickly and wind generators offer low prices, TVA's projected import of wind energy could rise substantially in the near future.[163] In any event, demand in TVA is not determinative. The Project is designed to deliver energy to MISO South through the Arkansas converter station and, by connecting to facilities built by Clean Line in Tennessee, into TVA's system through a Tennessee converter station. In both instances, the energy can be delivered over the connected AC system and marketed to other utilities across the Southeast and up to Virginia.[164]

Another comment pointed to a draft of the Department's 2015 Congestion Study to support a claim that the Southeast will have little or no projected increase in demand. The Department disagrees with this comment because (1) it mischaracterizes the statement made in the 2014 draft Congestion Study,[165] and (2) the language identified in the 2014 draft Congestion Study was not included in its entirety in the final 2015 Congestion Study. The 2015 Congestion Study did not examine the impact of the Project itself because it would not come online during the timeframe of the study, but the Department found that "its existence could materially change load flows, long-term congestion patterns, and transmission infrastructure plans within the Midwest and Southeast."[166]

The Department finds that the Clean Line Project is necessary to accommodate a projected increase in demand for electric transmission capacity. The evidence discussed above represents the best available evidence on the issue, and the Department's analysis of that evidence leads to the Department's finding. Moreover, the Department has taken the additional precaution of including terms in the Participation Agreement that would condition the Department's participation in this respect. Before the Department would begin activities authorized under section 1222, the Participation Agreement would require Clean Line to have under contract at least 3,500 MW from the project, including precedent agreements,[167] capacity transferred as a part of a project investment, and firm TSAs.[168] Of that 3,500 MW, at least 1,500 MW must be in the form of firm TSAs. Thus, the Department's participation would be conditioned on evidence of actual—not projected—demand for the Project's transmission capacity.

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[161] Tennessee Valley Authority, *Integrated Resource Plan: 2015 Final Report*, at 117, https://www.tva.gov/file_source/TVA/Site%20Content/Environment/Environmental%20Stewardship/IRP/Documents/2015_irp.pdf.

[162] *Id.*

[163] *Id.* at 109 ("Lowering costs and providing a higher guaranteed net dependable capacity for HVDC wind results in selection as early as 2020.").

[164] Part 2 Application at 2-7.

[165] The comment pointing to a finding of "few reports of specific transmission constraints in the Southeast" omits the fact that Oklahoma is not included in the finding. Additionally, the lack of organized markets in much of the region complicates the study of constraints.

[166] 2015 Congestion Study at 60-61.

[167] *Cf.* Federal Energy Regulatory Commission, *Certification of New Interstate Natural Gas Pipeline Facilities: Statement of Policy*, 88 FERC ¶ 61,227 at p. 61,748 (1999) (crediting precedent agreements as an indicator of need for new interstate natural gas pipelines).

[168] Participation Agreement § 6.2.

b. The Project Is Consistent Both with Transmission Needs Identified by the Appropriate Transmission Organization and with Efficient and Reliable Operation of the Transmission Grid

i. Consistency with Transmission Needs Identified in the Regional Expansion Plan of the Appropriate Transmission Organization

To exercise the authority provided in section 1222, the Secretary must determine that the proposed Project "is consistent with . . . transmission needs identified, in a transmission expansion plan or otherwise, by the appropriate Transmission Organization (as defined in the Federal Power Act[169]) if any, or approved regional reliability organization." For ease of exposition, this requirement is referred to here as the Planning Consistency Criterion.

Transmission organizations assess transmission needs and conduct transmission planning on their own and in cooperation with other neighboring transmission organizations. Transmission organizations identify transmission needs by analyzing the economic and reliability-related problems that have arisen or may arise due to lack of adequate transmission facilities, as well as those needs driven by public policy requirements, such as mandates on utilities to use renewable energy or reduce emissions. Transmission organizations typically conduct needs assessments for their own geographic footprints on a rolling basis considering short-, medium-, and long-term time horizons separately. Transmission organizations often formalize this analysis in transmission expansion plans. Transmission expansion plans typically assess needs and then also propose certain transmission projects to be constructed and paid for by the transmission organization itself or allocated among members of the transmission organization.

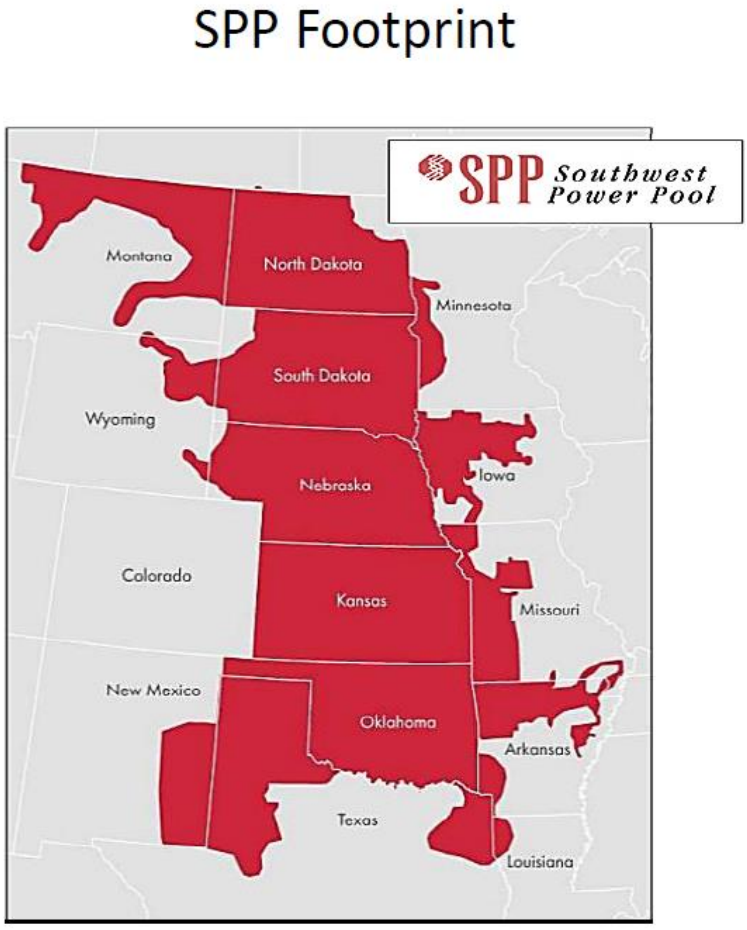
Transmission expansion plans are not the only means by which transmission organizations assess transmission needs. Transmission organizations also conduct transmission planning, including needs assessments, in cooperation with other neighboring transmission organizations in order to explore efficiencies that might be gained by looking at how the transmission system functions across a greater geographic area. The need for transmission depends on a number of factors and transmission organizations prudently evaluate the need for transmission under a number of assumptions and scenarios. The inclusion of the words "or otherwise" in the phrase "in a transmission expansion plan or otherwise" demonstrates that, in considering whether the Planning Consistency Criterion is satisfied, the inquiry need not be limited to transmission expansion plans within an RTO footprint but may include other processes, such as inter-regional planning, in which transmission organizations identify joint transmission needs.

SPP is an "appropriate transmission organization" for purposes of the Planning Consistency Criterion because the overwhelming majority of the Project traverses SPP's footprint, including the entire Oklahoma portion and a substantial portion in western Arkansas. SPP is an RTO[170] that runs through some or all of fourteen states and conducts regional transmission planning on behalf of its members.

[169] The Federal Power Act defines "transmission organization" broadly as "a Regional Transmission Organization, Independent System Operator, independent transmission provider, or other transmission organization finally approved by the Commission for the operation of transmission facilities." 16 U.S.C. § 796(29).

[170] An RTO is an organization that controls the electric grid in a given region, coordinating both power generation and transmission and giving power producers and marketers fair access. The Federal Power Act defines an RTO as "an entity of sufficient regional scope approved by the Commission (A) to exercise operational or functional control of facilities used for the transmission of electric energy in interstate commerce; and (B) to ensure nondiscriminatory access to the facilities." 16 U.S.C. § 796(27).

Figure 2. SPP Footprint



SOURCE: http://www.ferc.gov/market-oversight/mkt-electric/spp/elec-spp-footprint.pdf (last visited Mar. 24, 2016)

SPP prepares transmission planning reports on a recurring basis, including assessments looking at potential transmission needs across twenty-year, ten-year and near-term time horizons. As SPP has explained:

> The 20-Year Assessment identifies transmission projects, generally above 300 kV, needed to provide a grid flexible enough to provide benefits to the region across multiple scenarios. The 10-Year Assessment focuses on facilities 100 kV and above to meet system needs over a ten-year horizon. The Near Term Assessment is performed annually and assesses system upgrades, at all applicable voltage levels, required in the near term planning horizon to address reliability needs.[171]

[171] Southwest Power Pool, *2015 Integrated Transmission Plan Near-Term Assessment*, at 6 (Jan. 27, 2015), http://www.spp.org/documents/30445/final_2015_itpnt_assessment_bod_approved.pdf.

The costs of transmission projects selected for construction in SPP's transmission planning process are allocated to SPP's members based on the purpose of the project, the location within SPP, and the distance traveled.[172]

In general terms, SPP has identified the need for west-to-east transmission capacity to access low-cost wind resources in the western part of its footprint, including the Panhandle region. In its most recent 20-Year Assessment,[173] SPP stated:

> As wind capacity has increased, some generation is concentrated in areas of high wind potential towards the western part of the system. It has become necessary to connect this generation with a network that is capable of moving power to the eastern portion of the SPP system or the eastern United States where the major load centers are located.[174]

SPP has conducted or participated in a number of interregional planning studies addressing the need for west-to-east transmission of wind power. In 2008, SPP participated in an inter-regional planning process with several transmission organizations in the eastern interconnection called the Joint Coordinated System Plan (JCSP). Anticipating a substantial increase in the need for renewable energy, the JCSP "was designed to look at the costs and benefits of transmission overlays that [could] serve a range of policy goals."[175] The study used a several-step process, beginning with capacity expansion analysis for each region, then incorporating that analysis into transmission and production cost models, followed by "conceptual transmission overlays to economically deliver energy to the Eastern Interconnection."[176] Looking at a scenario assuming 20% wind generation nationally, the JCSP identified the need for up to seven inter-regional west-to-east HVDC transmission lines,[177] including two originating in Oklahoma.[178]

Beginning in 2010, SPP participated in the Eastern Interconnection Planning Collaborative (EIPC), which was a transmission planning effort funded by DOE and conducted by the major transmission planning and operating entities in the eastern electricity interconnection. The first of the three "stakeholder selected scenarios" in the study was a "national carbon constraint and demand reduction scenario, driven by a nationally implemented CO_2 price, as well as significant penetration of energy efficiency and demand response."[179] Examining how to develop transmission to relieve system constraints and enhance reliability, the study concluded that HVDC lines would be required "[t]o move the large amounts of power from the

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[172] *See Sw. Power Pool, Inc.*, 144 FERC ¶ 61,059 (2013), *order on reh'g & compliance*, 149 FERC ¶ 61,048 (2014).

[173] Southwest Power Pool, *ITP20: 2013 Integrated Transmission Plan 20-Year Assessment Report* (ITP20), http://www.spp.org/documents/20438/20130730_2013_itp20_report_clean.pdf.

[174] *Id.* at 23.

[175] Joint Coordinated System Plan '08, at 2, http://sppoasis.spp.org/documents/swpp/transmission/JCSP_Report_Volume_1.pdf.

[176] *Id.* at 3.

[177] *Id.* at 213.

[178] *See id.*, Figure 1-3, at 9.

[179] Eastern Interconnection Planning Collaborative, *Phase 2 Report: Interregional Transmission Development and Analysis for Three Stakeholder Selected Scenarios and Gas-Electric System Interface Study*, at 1-6 (July 2, 2015), http://nebula.wsimg.com/50aaeb04f92808e3881c5497a6f22040?AccessKeyId=E28DFA42F06A3AC21303&disposition=0&alloworigin=1.

Midwest over long distances to the east."[180] More specifically, the model called for six HVDC transmission lines running from Minnesota, Iowa, Missouri, and Oklahoma to points east.[181]

SPP has, in its transmission expansion planning process, identified the need for high-voltage transmission capacity from western Oklahoma eastward out of SPP in order to accommodate increased levels of wind exports out of SPP such as those proposed by Clean Line. The Department considers SPP's 20-Year Assessment the best planning document to consult because the Project would last many decades and, therefore, it is appropriate to consult the planning document that takes the longest view of SPP's future needs.[182] In SPP's 2013 20-year assessment, called the ITP20, SPP considered five future scenarios or "futures." As the ITP20 explained:

> The 2013 ITP20 study was conducted on a set of five futures. These futures consider evolving changes in technology and public policy that may influence the transmission system and energy industry as a whole. By accounting for multiple future scenarios, SPP staff can assess what transmission needs arise for various uncertainties.[183]

The "Business as Usual" future, upon which SPP placed the greatest weight for purposes of selecting transmission projects that will be paid for by its members, "assumes no major changes to policies that are currently in place"[184] and makes conservative assumptions about future development of wind resources in the SPP footprint. Specifically, the Business as Usual future assumed 9.2 gigawatts (GW) of

[180] *Id.* at 2-17.

[181] *See id.*, Figure 2-3, at 2-17.

[182] SPP's most recent ten-year assessment, called the ITP10, did not examine transmission needs in a high-wind future. Southwest Power Pool, *ITP10: 2015 Integrated Transmission Plan, 10-Year Assessment Report* (Jan. 20, 2015), http://www.spp.org/documents/26141/final_2015_itp10_report_bod_approved_012715.pdf. But the ITP10 did conduct a sensitivity analysis to look at how the Plains and Eastern project, if built, would affect the business case for the portfolio of projects already selected for construction by SPP. *Id.* at 97 ("These sensitivities were not used to develop transmission projects or filter out projects; they measure the performance of the Consolidated Portfolio projects (economic and reliability) under different input assumptions."). The ITP10 modeled a stylized version of the Plains and Eastern project in which 2,000 MW of generation was withdrawn from the terminus in Oklahoma without any corresponding change to the total amount of generation in SPP. *Id*. at 97, 103. The ITP10 concluded that the Plains and Eastern project would increase the benefits of the existing portfolio. The report also stated that the Plains and Eastern project, along with another project, would aggravate the "general north to south system flows of the SPP footprint" but that the consolidated portfolio of transmission expansion projects "is able to mitigate a portion of this increased congestion." *Id.* at 104. The Department expects that the referenced north-to-south system flows appear in the modeling result because of the assumption that power is withdrawn from the Oklahoma terminus, which is in the southern portion of the SPP footprint, without any new generation developed to access the new HVDC line. The Department expects that the construction of the Project would lead to new generation resources being constructed in the area of the Oklahoma terminus because, for the reasons above, there is inadequate transmission in that area to meet wind generation needs and because nearly all of the responses to Clean Line's capacity solicitation were for new generation facilities. In any event, the Department reiterates that the sensitivity case in the ITP10 was not an attempt to evaluate the need for the Plains and Eastern project and does not affect the Department's analysis of the needs identified by SPP in the ITP20.

[183] ITP20 at 17.

[184] *Id.*

wind generation capacity in SPP in the year 2033, and that wind exports would remain at the 2012 level of 0.8 GW throughout the 20-year period.[185]

In another future, labeled "additional wind plus exports," SPP modeled total wind generation capacity of 25.6 GW with 10 GW being exported. Under that scenario, SPP found that, at these levels of wind generation, wind generators would have to be curtailed at exceedingly high frequencies to maintain system reliability,[186] and thus that there was a need for new transmission facilities "to provide additional paths to, and, or around the curtailed wind farms to relieve congestion on the transmission system near the wind farms."[187] SPP considered economic and reliability factors and generated a set of transmission projects that could best accommodate the volume of wind exports assumed in the scenario.[188] The ITP20 generated two groupings of projects for this future, each of which was a "viable option" for meeting the objectives of the wind export scenario – one grouping that included only AC projects and a second that included a mix of AC and DC projects. The grouping that included DC projects had a superior benefit to cost ratio, lower total costs, and less total mileage required.[189] Included within the DC grouping was a project bearing similarities to the Project. That hypothetical project, labeled "New Mathewson-Shelby 600 kV DC bi-pole," is also a DC project, of the same voltage as the Project, and with a similar route from Central Oklahoma, through northern Arkansas, and ultimately into TVA.[190] While the hypothetical Project under consideration in SPP's model extends further west than the New Mathewson-Shelby project, the DC grouping also included high-voltage AC lines heading westward from New Mathewson into the Panhandle region.

In addition to examining five futures, SPP's ITP20 also included groups of potential projects, called "Potential Project Plans" that are not included in the set of projects to be paid for by SPP's members, but that nonetheless "would be valuable to SPP should the 'business as usual' change to include higher wind levels."[191] Potential Plan 1 considered wind generation levels between 9 GW and 15 GW, and Potential Plans 2 and 3 considered wind generation levels between 15 GW and 25 GW. Potential Plans 2 and 3 differed in that Potential Plan 2 included only AC projects while Potential Plan 3 included both AC and DC. The New Mathewson-Shelby facility, which, again, bears similarity to the Project, also appears in Potential Plan 3. This inclusion is significant because it demonstrates SPP's assessment of the value of HVDC capacity running east from Oklahoma even under a scenario that assumes less new wind generation (15 GW to 25 GW for Project Plan 3 versus 25.6 GW for the high wind export future) and as a component of a less capital-intensive portfolio of projects.[192]

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[185] *Id.* at 31.

[186] *Id.* at 70 (Nine wind farms were identified in curtailment range of 51%-75%, seven wind farms were identified in curtailment range of 26%-50%, and eight were identified in curtailment range of 3%-25%).

[187] *Id.* at 70.

[188] *See id.* at § 6 (describing SPP's methodology).

[189] *Id.* at 93 – 95.

[190] The project would run 515 miles and cost $1.73 billion. *See id.* at 99.

[191] *Id.* at 116.

[192] Potential Plan 3 carried an incremental cost of $5.1 billion on top of the $560 million required for the projects in SPP's Consolidated Portfolio, for a total cost of $5.66 billion, compared to $7.5 billion for the DC grouping within the high wind export scenario.

In considering whether the Project satisfies the Planning Consistency Criterion, it is reasonable to look to the transmission needs identified by SPP in high wind export scenarios. SPP's ITP20 is premised on the sensible idea that SPP's transmission planners cannot predict the future. Therefore, the ITP20 considers multiple scenarios and potential project plans that identify needs across a range of assumptions. While SPP placed the greatest weight on its Business as Usual future in determining the projects that would presently be scheduled to be paid for by its members, the ITP20 also clearly acknowledged that other needs would arise should the wind generation assumptions in the Business as Usual future prove too low. Consequently, the ITP20 devoted much of its analysis to exploring what those needs would be and how best to address them. And, indeed, less than three years after publication of the ITP20, it is now clear the wind generation projections in the Business as Usual future were too low. The Business as Usual future projected that installed capacity of wind generation would grow from 6.3 GW to 9.2 GW. Less than three years into the twenty-year period, however, SPP has reached 12.4 GW of installed wind capacity and expects to reach 17 GW by the end of 2016 and 19 GW by the end of 2017.[193] In other words, the growth pattern of wind development in SPP just in recent years has begun to make the high wind development scenarios modeled in the ITP20 a reasonable basis for identifying transmission needs. Moreover, public policy has changed in ways that favor continued wind development. The Business as Usual future was developed based on an assumption of policies in place at the time. But since 2013, there have been two important policy changes. In December 2015, Congress enacted a five-year extension of the Production Tax Credit, which provides a per-megawatt hour subsidy to wind generation[194] and will likely lead to continued rapid deployment of wind resources.[195] In addition, EPA promulgated the Clean Power Plan in October 2015,[196] a rule that would require every state to achieve significant reductions in carbon dioxide emissions from power plants and thereby increase demand for renewable energy.[197]

Several commenters argue that this criterion has not been met. For example, one commenter stated that the Project "has not been determined [to be] needed by any appropriate transmission organization."[198] The same comment, along with several others, insists that "Section 1222 projects must be included in an appropriate regional transmission expansion plan if they are proposed within a regional transmission authority's territory."[199] The Oklahoma Attorney General's office also commented that the Project "is not

[193] Southwest Power Pool, *SPP Wind Integration Study Overview*, at 7 (Jan. 2016) (on file with Department of Energy).

[194] Consolidated Appropriations Act, 2016, Pub. L. No. 114-113, 129 Stat. 2242 (Dec. 18, 2015).

[195] *See, e.g.*, Daniel Cusick, *Renewables Boom Expected Thanks to Tax Credit*, Scientific American, Dec. 21, 2015, http://www.scientificamerican.com/article/renewables-boom-expected-thanks-to-tax-credit (last visited Mar. 24, 2016) (citing statements of several industry experts predicting growth in renewable development resulting from the tax credit extension).

[196] On February 9, 2016, the United States Supreme Court stayed the rule implementing the Clean Power Plan until the current litigation against it concludes. *Chamber of Commerce, et al. v. EPA, et al.*, Order in Pending Case, 577 U.S. ___ (2016), http://www.supremecourt.gov/orders/courtorders/020916zr3_hf5m.pdf. As of that date, a challenge to the rule was pending before the United States Court of Appeals for the District of Columbia Circuit.

[197] Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units, 80 Fed. Reg. 64,661 (Oct. 23, 2015). *See supra* n.39.

[198] Comment of Macy Rodenbaugh (June 7, 2015).

[199] *Id.*; Comment of Diane Ragsdale (June 7, 2015); Comment of Cynthia Callahan (Apr. 30, 2015). *See also* Comment of Cynthia Callahan (June 2, 2015) (stating that SPP's 2015 ITP10 Scope did "not [incorporate Clean

consistent with transmission needs identified in the 2015 SPP Transmission Expansion Plan Report and therefore does not meet the [statutory] requirements."[200] Speaking more generally, another comment states that, because no transmission organization has said it needs the Project, "Clean Line cannot be allowed to self-determine need based solely on their desire to operate for profit in the transfer of electricity."[201]

The Department understands these commenters to contend that the Project does not satisfy the Planning Consistency Criterion because SPP did not select the Project as part of the portfolio of projects that would be constructed and paid for by its members. This argument misreads the Planning Consistency Criterion. The Planning Consistency Criterion requires only that the Project be consistent with transmission *needs* identified by the appropriate transmission organization, not that the project itself has been selected for construction and cost allocation by the appropriate transmission organization. As explained above, the Project under consideration certainly is consistent with transmission needs identified by SPP even though SPP has not itself decided to construct the Project and allocate the cost among its members. Moreover, the Department notes that the Planning Consistency Criterion may be satisfied if the need is identified "in a transmission expansion plan *or otherwise*." Because transmission expansion plans are how transmission organizations identify projects to be constructed and paid for by their members, the inclusion of the words "or otherwise" cannot be squared with a reading that would allow the Planning Consistency Criterion to be satisfied only by projects that have been selected to be constructed and paid for by the transmission organizations' members.

In conclusion, SPP has identified the need for west-to-east transmission capacity to access low-cost wind resources in the western part of its footprint and, further, has identified a need for high-voltage capacity out of Oklahoma as a way to accommodate the higher level of wind generation anticipated in response to environmental and tax policy. The Department therefore concludes that the Project is "consistent with . . . transmission needs identified, in a transmission expansion plan or otherwise, by the appropriate Transmission Organization." This conclusion is based on the best available evidence on this topic, including the transmission planning conducted by an appropriate transmission organization.

ii. Consistency with Efficient and Reliable Operation of the Transmission Grid

The transmission grid's operation is regulated at the federal level by the Commission and by NERC. Because Clean Line's ownership and operation of the Project would be subject to this regulatory oversight, the Department finds that this criterion is satisfied as discussed below.

Section 215 of the Federal Power Act authorizes the Commission to establish and enforce reliability standards for the bulk-power system through oversight of a certified Electric Reliability Organization,[202] which is NERC.[203] The bulk-power system includes facilities necessary for operating any portion of an interconnected electric energy transmission network, and the Project falls within that definition as high voltage transmission that would be interconnected to more than one regional system within the Eastern Interconnection. Owners, operators, or users of the bulk-power system become subject to mandatory

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Line's Project] into their plan" and that SPP included two DC interconnections, one of which was Clean Line's Project, "in [its] models for sensitivity analysis only.").

[200] Comment of the Oklahoma Attorney General's Office, at 8 (July 13, 2015).

[201] Comment of Marshall Hughes (July 10, 2015).

[202] 16 U.S.C. § 824o.

[203] *North American Electric Reliability Corp.*, 116 FERC ¶ 61,062 (2006).

reliability standards upon registration with NERC.[204] Clean Line has agreed to register with NERC and accept NERC reliability responsibilities and oversight, including for Project transmission assets that would be owned by the Department.[205] As further assurance, the Participation Agreement would obligate Clean Line to enter into an additional agreement with the Department that describes in detail Clean Line's NERC registration plan, prior to the Department authorizing construction on the Project to proceed.[206] Further, once the Project becomes operational, NERC has the authority to add Clean Line to the Compliance Registry at any time to ensure complete enforcement.[207] Clean Line has a strong financial incentive to comply with these standards in light of the Commission's authority to impose significant monetary penalties—up to $1 million a day—for failure to comply with its rules or orders.[208]

As noted in the Part 2 Application,[209] Clean Line intends to turn over operational control of the Project to a third party—for instance, an RTO like SPP or MISO. Any such third party's operation of the Project would also be subject to federal reliability standards.

Some comments raised reliability concerns associated with the location of the Project and the wind power it is intended to transmit. The Project would be built in a section of the country with high tornado risk, which led some individuals to question its reliability.[210] Regional weather-related risks, however, are a known hazard to all infrastructure in that area, and no comments claimed that the Project would be uniquely threatened. Federal reliability standards are designed to manage risks to the grid and ensure continued grid operation under various contingencies.[211] Because Clean Line and the Project operator would be subject to these reliability standards, both planning and operations would be adjusted to account for outage risks to the Project—from tornadoes or other events. Other comments raised whether wind power, which is the intended source of energy to be transmitted by the Project, is a sufficiently reliable resource due to its variable nature.[212] Wind power has been recognized at the federal level as an acceptable source of generation since the enactment of the Public Utility Regulatory Policies Act of 1978.[213] The continued rise of wind generating capacity in the United States demonstrates the viability of this resource.[214] The Department continues to study ways to remove barriers to the integration of this generation resource, as shown by the research output of the National Renewable Energy Laboratory and others.[215] FERC has also paid careful attention to integration of variable resources, both in its function as regulator of the

[204] NERC Rules of Procedure app. 5B (rev. 5.1), Statement of Compliance Registry Criteria. This includes compliance with regional variations in reliability standards, all of which are approved by the Commission.

[205] 2010 Application at 13; Part 2 Application at 2-22, 2-27.

[206] Participation Agreement § 4.9.

[207] NERC Rules of Procedure app. 5B.

[208] 16 U.S.C. § 825o.

[209] Part 2 Application at 2-27.

[210] Comment of Sen. Lamar Alexander, at 2 (June 11, 2015); Comment of J.D. Dyer, at 1 (June 4, 2015); Comment of Luis Contreras, at 12-13 (June 24, 2015); Comment of Cynthia Callahan, at 30-32 (June 9, 2015).

[211] *E.g.*, Reliability Standards TOP-004-02 "Transmission Operations" and TPL-001-4 "Transmission System Planning Performance Requirements."

[212] Comment of Sen. Lamar Alexander, at 1 (June 11, 2015); Comment of Luis Contreras, at 7 (July 13, 2015); Comment of Crystal Ursin, at 1-2 (June 1, 2015).

[213] 16 U.S.C. § 824a-3.

[214] U.S. Department of Energy, *Wind Integration, Transmission, and Resource Assessment and Characterization Projects, Fiscal Years 2006-2014*, at 2 (2015).

[215] *E.g.*, National Renewable Energy Laboratory, *Eastern Wind Integration and Transmission Study* (2011).

interstate transmission system,[216] and (via NERC) through the federal reliability standards, which regulate grid reliability for *all* sources of electric energy. Moreover, SPP has recently prepared a Wind Integration Study examining higher penetrations of wind power on its system with an eye to developing measures that would "enhance reliability and provide additional grid flexibility."[217]

Beyond reliability, regulatory oversight aimed at efficient operation of the grid also includes the Commission's open access transmission rules and policies.[218] These rules were "designed to remove impediments to competition in the wholesale bulk power marketplace and to bring more efficient, lower cost power to the Nation's electricity consumers" by, in part, mandating that public utilities file an OATT (set of rate schedules) of general applicability for transmission services.[219] In later revisions to the sample or *pro forma* OATT, the Commission underscored its intent to achieve efficient operation of the grid: "Order No. 890 reformed the *pro forma* OATT to limit opportunities for undue discrimination and promote efficient use of the grid."[220] Clean Line has agreed to operate the Project pursuant to the Commission-approved non-discriminatory rate schedule filed under either an RTO's OATT or pursuant to another approved OATT,[221] thus making its operations consistent with efficient use of the grid.

Due to Clean Line's required compliance with mandatory reliability standards and non-discriminatory rate schedules, the Department finds that the Project is consistent with efficient and reliable operation of the transmission grid. This finding is based on the best available evidence on the topic, such as evidence regarding the manner in which the transmission line is likely to be operated.

c. The Project Will be Operated in Conformance with Prudent Utility Practice

"Prudent utility practice" is not defined in EPAct 2005 but is understood by the Department to be synonymous with the standard energy industry term "good utility practice." The Commission has defined "Good Utility Practice" in its *pro forma* OATT (section 1.15) as:

> Any of the practices, methods and acts engaged in or approved by a significant portion of the electric utility industry during the relevant time period, or any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition.

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[216] *See, e.g., Integration of Variable Energy Resources*, 139 FERC ¶ 61,246 (June 22, 2012) (requiring transmission providers to offer intra-hour scheduling and requiring variable energy resources providers to provide meteorological and forced outage data to the public utility transmission provider for the purpose of power production forecasting).

[217] Southwest Power Pool, *2016 Wind Integration Study*, at 7.

[218] 18 C.F.R. § 35.28.

[219] *Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities*, Order No. 888, FERC Stats. & Regs. ¶ 31,036 at P 1 (1996), *order on reh'g*, Order No. 888-A, FERC Stats. & Regs. ¶ 31,048, *order on reh'g*, Order No. 888-B, 81 FERC ¶ 61,248 (1997), *order on reh'g*, Order No. 888-C, 82 FERC ¶ 61,046 (1998), *aff'd in relevant part sub nom. Transmission Access Policy Study Group v. FERC*, 225 F.3d 667 (D.C. Cir. 2000), *aff'd sub nom. New York v. FERC*, 535 U.S. 1 (2002).

[220] *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 7, *order on reh'g*, Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 (2007), *order on reh'g*, Order No. 890-B, 123 FERC ¶ 61,299 (2008), *order on reh'g*, Order No. 890-C, 126 FERC ¶ 61,228, *order on clarification*, Order No. 890-D, 129 FERC ¶ 61,126 (2009).

[221] *Plains & E. Clean Line LLC*, Order Conditionally Authorizing Proposal and Granting Waivers, 148 FERC ¶ 61,122 at P 5 (2014).

> Good Utility Practice is not intended to be limited to the optimum practice, method, or act to the exclusion of all others, but rather to be acceptable practices, methods, or acts generally accepted in the region, including those practices required by Federal Power Act section 215(a)(4).[222]

Clean Line has agreed to comply with this definition through a commitment to using a Commission-approved OATT.[223] The OATT defines the term because it mandates a variety of operational behaviors that are in conformance with good utility practice, such as in the areas of interchange, electric frequency, reserves (section 1.7); curtailment of service (sections 13.6, 14.7 and 33.5); expansion of facilities (section 15.4); providing data to transmission customers and other utilities (sections 16.2, 21.1, 30.6); maintaining power factor (section 24.3); and general planning, construction operation and maintenance (section 28.2).

In addition to the good utility practice required by its OATT, whatever operating agreement entered into between Clean Line and a third-party operator would also mandate conformance with good utility practice. This is a standard element of membership agreements with RTOs such as MISO and SPP.[224] For example, the SPP Membership Agreement provides that "SPP shall function in accordance with Good Utility Practice and shall conform to applicable reliability criteria, policies, standards, rules, regulations, guidelines and other requirements of SPP and NERC . . . and all applicable requirements of Federal and state regulatory authorities."[225] As another check on operational conformance with good utility practice, Clean Line would be contractually bound to provide its operating agreement(s) to the Department during development.[226]

Good utility practice is also a standard component of interconnection agreements with the entities to which the Project would be interconnected: SPP and MISO. The SPP Generator Interconnection Agreement states that "Each Party shall perform all of its obligations under this [agreement] in accordance with Applicable Laws and Regulations, Applicable Reliability Standards, and Good Utility Practice. . . ."[227] MISO's version is nearly identical.[228]

A few commenters questioned whether Clean Line could meet the prudent utility practice criterion because it "never will be a utility company"[229] and "cannot provide any electricity to any customers in the state of Oklahoma."[230] These comments assume prudent utility practice is limited to traditional, retail-level public utility entities regulated at the state level. In contrast, the Department, like the Commission, takes a broader view of prudent utility practice that recognizes wholesale market participants. The possession of state public utility status, in which an entity may have defined service territories and an obligation to provide

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[222] Order 890-B, 123 FERC ¶ 61,299, app. B § 1.15.

[223] *Plains & E. Clean Line LLC*, 148 FERC ¶ 61,122 at P 5. If Clean Line elects to use either SPP or MISO's Commission-approved OATT, the definition of "Good Utility Practice" is either identical or very similar to the *pro forma* OATT.

[224] Agreement of the Transmission Facilities Owners to Organize the MISO, a Delaware Non-Stock Corporation, art. 3, § I.A ("Functional Control"); SPP Membership Agreement § 2.1.1.

[225] SPP Membership Agreement § 2.1.1.

[226] Participation Agreement § 4.6.

[227] SPP OATT, Attachment V, app. 6, Generator Interconnection Agreement (Feb. 1, 2015), § 4.3, http://sppoasis.spp.org/documents/swpp/transmission/studies/Appendix_6_GIA.pdf.

[228] MISO OATT, Attachment X, app. 6, Generator Interconnection Agreement (June 24, 2015), § 4.3, https://www.misoenergy.org/Library/Repository/Tariff%20Documents/Attachment%20X.pdf.

[229] Comment of J.D. Dyer, at 1 (June 4, 2015).

[230] Comment of the Oklahoma Attorney General's Office, at 8 (July 13, 2015).

electricity to certain customers, is not required for section 1222 eligibility. Section 1222's criteria are silent as to what kind of entity operates the Project and where Project off-takers should be located. Thus, the Department concludes that state public utility status and the location of Project off-takers is not relevant to whether an entity can operate the Project consistent with prudent utility practice.

The Department finds that Clean Line's contractual commitments to operate the Project in conformance with good utility practice, both through its OATT and interconnection agreements, satisfy the criterion that the Project will be operated in conformance with prudent utility practice. This finding is based on the best available evidence on this topic.

d. The Project Will be Operated in Conformance with the Rules of the Appropriate Transmission Organization

To participate in the Project, the Secretary must determine that the proposed project "will be operated by, or in conformance with the rules of, the appropriate. . . Transmission Organization. . . ."[231] In the Application, Clean Line noted that it agreed to turn over operational control of the Project to "an RTO or similar entity" as a necessary condition of providing service under a Commission-approved OATT.[232] Moreover, the Commission has required that Clean Line file "a rate schedule for service under the Tariff for the transmission provider *to which they hand over operational control*," meaning Clean Line's authority to charge negotiated rates requires ceding operational control to a Commission-approved transmission organization.[233] The Commission's negotiated rate approval also relies on Clean Line's continued participation in regional planning processes, thus reinforcing the importance of compliance with SPP, MISO, and TVA requirements.[234]

Transmission organization rules may include operational conditions, and Good Utility Practice (addressed in section V.c above), and other agreements required by regional transmission entities such as SPP, MISO, and TVA. Clean Line acknowledged its obligation to coordinate service with the SPP, MISO, and TVA systems through both interconnection and seams agreements, which should cover the scope of applicable transmission organization rules.[235] This acknowledgement, however, is secondary to the more

[231] 42 U.S.C. § 16421 (b)(4)(A). As explained in section V.b.i. above, a "Transmission Organization" is defined as an organization, such as an RTO, approved by the Commission for the operation of transmission facilities. 16 U.S.C. §§ 796(29), 824o(a)(6).

[232] Part 2 Application at 2-27.

[233] *Plains & E. Clean Line LLC*, 148 FERC ¶ 61,122 at P 32 (emphasis added) (acknowledging in body of order a reliance on Clean Line's commitment to turn over operational control of the Project to an RTO or other existing third-party transmission provider and to comply with all applicable reliability requirements).

[234] *Id.*

[235] Part 2 Application at 2-27. Seams are inefficiencies that prevent the economic transfer of capacity and energy between neighboring wholesale electricity markets or between control areas:

> According to the New England Independent System Operator (ISO-New England), "Seams are barriers and inefficiencies that inhibit the economic transaction of capacity and energy between neighboring wholesale electricity markets, or control areas, as a result of differences in market rules and designs, operating and scheduling protocols and other control area practices. Seams exist between most control areas because wholesale electricity markets have evolved using different sets of rules and procedures. For example, seams can result from different pricing models, inconsistent transaction submittal times, and variations in transmission tariff services."

National Regulatory Research Institute, *Electric Transmission Seams: A Primer White Paper*, at 1-2 (Feb. 2015), http://nrri.org/download/nrri-15-03-nrri-seams-primer/# (citation omitted). Seams agreements reached between two market operators attempt to resolve seams issues and reduce economic inefficiencies.

fundamental point that the Project cannot operate in its intended geographic area absent successful interconnection with SPP and MISO. That means whatever entity operates the Project must do so in conformance with the SPP and MISO requirements if the Project is to exist at all. The Project will go into operation only after the required interconnection agreements are executed, necessary network upgrades for the injection of power into the system are complete, and required operating procedures, if any, are in place.

Finally, to provide additional assurance, the Participation Agreement would condition the Department's participation on Clean Line's compliance with the appropriate transmission organizations' processes. Under the Participation Agreement, Clean Line must, not later than Project completion, "enter into one or more agreements . . . regarding the coordinated operation of the Project with SPP, MISO and TVA, which shall include identification of the entity responsible for exercising operational control of the Project . . .(each, an 'Operating Agreement')."[236] Further, Clean Line "shall consult with and report to DOE on the development of such Operating Agreements."[237] These conditions underscore Clean Line's obligation to ensure that the Project operates in conformance with the rules of the appropriate transmission organization.

In sum, because the Commission has required Clean Line to transfer operational control of its facilities to an RTO or similar entity as a condition of its negotiated rate approval, and because the Participation Agreement would require Clean Line to do so, the Department finds that the Project will be operated by or in conformance with the rules of the appropriate transmission organization. This finding is based on the best available evidence on this topic.

e. The Project Will Not Duplicate the Functions of Existing or Proposed Facilities

Clean Line asserts that the proposed line does not duplicate existing facilities or those in the interconnection queue or permitting process.[238] At the time Clean Line filed its initial application in July 2010, SPP had approved transmission projects totaling $1.14 billion, but none of the approved projects increased SPP's wind export capabilities.[239] According to Clean Line, the proposed line "would be the first HVDC transmission facility providing interregional transmission capacity for the purpose of delivering wind energy from SPP into both MISO South and TVA."[240]

The Project spans two transmission planning regions (SPP and MISO), and the facilities constructed by Clean Line without the Department's participation in Tennessee would also extend to the Southeastern Regional Transmission Planning process, of which TVA is a principal participant.[241] Clean Line claims, and the Department agrees, that none of the regional transmission planning entities have planned projects designed to export wind energy from SPP's territory into the Southern and Southeastern United States.

The Department has reviewed regional planning documents to confirm that the Project does not duplicate any existing transmission facility in the Southwestern service territory. The Project does not duplicate any of the six transmission projects approved by SPP's Board and included in SPP's Priority Project Portfolio approved in April 2010.[242] One of these lines, Hitchland-Woodward, is in the vicinity of

[236] Participation Agreement § 4.6.

[237] *Id.*

[238] 2010 Application at 13.

[239] *Id.*

[240] Part 2 Application at 2-27 to 2-28.

[241] *Id.* at 2-28.

[242] *Id.*

Clean Line's Project but only provides for the delivery of wind power within SPP's territory.[243] The MISO projects that were approved in 2011 are designed to improve access to wind energy in areas other than MISO South. None of the 17 MISO transmission projects will be located in the areas served by Clean Line's Project.[244]

No commenter has identified a specific project that would be duplicated by the Project,[245] and the Department's review of other known transmission projects has not revealed a conflict. For example, the Southern Cross project being developed by Pattern Power Marketing LLC and Southern Cross Transmission LLC is a partial HVDC line, but it is intended to move wind power from Texas to Mississippi.[246] This does not duplicate the Project's support for Oklahoma wind development and the ability to deliver to Arkansas and move the energy further east.

VI. Evaluation Factors

Satisfying the statutory requirements discussed above is a necessary, but not sufficient, condition for the Department to participate in a Project under section 1222. If the Department finds that a project is eligible, it will evaluate the project using the criteria laid out in its 2010 RFP, then decide whether to participate.

a. The Project is in the Public Interest

The 2010 RFP lists criteria the Department will use to evaluate projects that are eligible under section 1222. The first is whether the Project is in the public interest.[247] In considering the public interest, the Department looks at a broad range of energy policy, environmental, and other goals. In this section the Department discusses what it regards, based on its own analysis and comments received, to be the five most significant public interest factors raised by the Project: renewable energy development, economic development, landowner impacts, environmental impacts, and public investment facilitated by the Project.

i. The Project Facilitates Development of Renewable Energy

Renewable energy development has always been one of the Department's important policy goals.[248] Renewable energy allows our nation to meet its needs for electric power with substantially fewer negative

[243] *Id.*

[244] *Id.*

[245] Instead, commenters addressing this criterion claimed the Project was duplicative of overall efforts of large entities such as SPP or the SERC Reliability Corporation without naming specific proposed facilities that would be duplicated. For instance, the Office of the Oklahoma Attorney General stated that the Project "is duplicative of the proposals in the 2015 SPP Transmission Expansion Plan Report" without explanation. Comment of the Oklahoma Attorney General's Office, at 8 (July 13, 2015).

[246] *See S. Cross Transmission LLC*, 147 FERC ¶ 61,113 (2014) (describing project as presented in applications to the Commission).

[247] 2010 RFP, 75 Fed. Reg. at 32,941. To minimize duplicative analysis, the Department has combined its evaluation of public interest with the criterion of whether the Project will facilitate the reliable delivery of power generated by renewable resources.

[248] *See, e.g.*, Department of Energy Organization Act of 1977, § 102(6), 42 U.S.C. § 7112 ("It is the purpose of this chapter . . . [t]o place major emphasis on the development and commercial use of solar, geothermal, recycling and other technologies utilizing renewable energy resources"); EPAct 1992, § 1201, 42 U.S.C. § 13311 (stating that the "purposes of [Title XII of the Act] are to promote (1) increases in the production and utilization of energy from renewable energy resources; (2) further advances of renewable energy technologies; and (3) exports of United States renewable energy technologies and services."); EPAct 2005, § 201(a), 42 U.S.C. 15851(a) (requiring the

impacts to the natural environment and human health.[249] The Project would facilitate the development of a substantial quantity of renewable energy in the Panhandle region where high average wind speeds make the resource one of the lowest-cost and most consistent in the Nation.[250] The Project would, in turn, facilitate delivery of that low-cost wind power into the mid-South and Southeast, regions with substantially less access to high-quality native wind resources. As detailed in sections V.a and V.b, additional transmission capacity is necessary to facilitate development of wind power from the Panhandle region. Indeed, SPP's study concluded that HVDC projects such as the Project would be an efficient means of facilitating high levels of wind generation within the SPP footprint.

To be sure, wind power delivered by the Project will compete with other sources of renewable energy in markets in the mid-South and Southeast. But such competition is healthy, and ultimately benefits consumers and the renewable energy sector as a whole. Indeed, new transmission links such as the Project create value through their ability to foster healthy competition among generators. As the Commission has observed: "New interconnections and transmission service generally meet the public interest by increasing power supply options and improving competition."[251] The Commission has also explained that "as a general matter, the availability of transmission service enhances competition in power markets by increasing power supply options of buyers and sales options of sellers, [resulting in] lower costs to consumers."[252] Moreover, as a merchant project, the only customers that will take service from the Project

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Department to "review the available assessments of renewable energy resources within the United States" every year).

[249] *See, e.g.*, U.S. Department of Energy, *Wind Vision: A New Era for Wind Power in the United States*, at 181-201 (Apr. 2015), http://www.energy.gov/sites/prod/files/WindVision_Report_final.pdf (describing the benefits of wind energy in reducing emissions of greenhouse gases and other air pollutants, as well as reduction in water usage); Presidential Statement on Signing the Energy and Water Development Appropriations Act, 1997, 32 Weekly Comp. Pres. Doc. 1934, 1935 (Sept. 30, 1996) ("Investments in the development of advanced renewable energy technologies, which have a large potential export market, will create new jobs and reduce pollution, thereby addressing climate change and protecting human health and the environment."), https://www.gpo.gov/fdsys/pkg/WCPD-1996-10-07/pdf/WCPD-1996-10-07-Pg1934-2.pdf; Council of Economic Advisers, *The All-of-the-Above Energy Strategy as a Path to Sustainable Economic Growth*, at 36 (May 2014) ("Wind and solar generation are zero-emission sources of energy and thus do not create a negative climate externality."), https://www.whitehouse.gov/sites/default/files/docs/aota_energy_strategy_as_a_path_to_sustainable_economic_growth.pdf; Environmental Protection Agency, *Clean Energy, Air, Health, and Related Economic Impacts: Assessing the Many Benefits of State and Local Clean Energy Initiatives*, at 1 (June 14, 2011) ("[I]ncreasing renewable energy generation from state and local clean energy initiatives . . . can generate many benefits, including . . . [i]mproved environmental quality, human health, and quality of life."), http://www3.epa.gov/statelocalclimate/documents/pdf/background_paper_06-14-2011.pdf.

[250] *See 2014 Wind Technologies Market Report*, at 55-56 (stating that the Interior region—"as a result of its low average project costs and high average capacity factors shown earlier in this report—also tends to be the lowest-priced region over time."), 58 ("[B]ased on our sample, wind PPA prices have—in recent years—been most competitive with wholesale power prices in the Interior region.").

[251] *S. Cross Transmission LLC*, 137 FERC ¶ 61,206 at P 31 (2011); s*ee also S. Cross Transmission LLC*, 137 FERC ¶ 61,207 at P 28 (2011) (finding that a 400-mile interstate HVDC transmission line was "in the public interest because it will create a new transmission path and new markets for Texas wind generators.").

[252] 137 FERC ¶ 61,206 at P 31 (citing *Fla. Mun. Power Agency*, 65 FERC ¶ 61,125, at p. 61,615, *reh'g dismissed*, 65 FERC ¶ 61,372 (1993), *final order*, 67 FERC ¶ 61,167 (1994), *order on reh'g*, 74 FERC ¶ 61,006 (1996); *aff'd*, 315 F.3d 362 (D.C. Cir. 2003)); *see also NAACP v. Fed. Power Comm'n*, 425 U.S. 662, 670 (1976) ("The use of the words 'public interest' in the [FPA] . . . is a charge to promote the orderly production of plentiful supplies of electric energy . . . at just and reasonable rates.").

will be those entities that have made a business judgement that service on the Project will be of value to them and their ratepayers.

ii. The Project Creates Jobs and Enhances Economic Development

Construction of the Project is anticipated to generate jobs in Oklahoma and Arkansas and bring economic benefits to both states. As discussed further in section VI.b below, the Project creates both short-term construction jobs and long-term operation and maintenance jobs. Construction is reasonably estimated to result in between 5,166 and 5,716 combined direct, indirect, and induced jobs in Oklahoma,[253] and approximately 900 such jobs in Arkansas.[254] Ongoing work on the transmission line will require permanent jobs to tend to the facilities as long as they are in service. The Project is therefore in the public interest because it creates both temporary and permanent employment opportunities, along with the public benefits of increased employment in both Oklahoma and Arkansas.

The Project should also promote economic development in Oklahoma and Arkansas. To begin, Clean Line has partnered with local businesses in both states, reaching agreements that could be worth hundreds of millions of dollars in supply orders. More generally, economic benefits will flow from the construction, operation, and maintenance of the Project, as businesses serve those building, operating, or maintaining the Project through both states. Strengthening state and local economies in Oklahoma and Arkansas, with minimal disruption, is in the public interest.

Finally, the Project is expected to generate substantial tax revenue for Oklahoma and Arkansas.[255] Clean Line will make voluntary payments to "Arkansas counties and other taxing jurisdictions" for project facilities owned by the United States government that would otherwise be taxable. These payments are in the public interest.

At least one commenter voiced concern that the Project will hurt tourism, particularly in Arkansas.[256] However, the Department and Clean Line have agreed on a route development process for the Project based on General Guidelines[257] that require the route to "[m]inimize visibility of transmission lines from residential areas and visually sensitive public locations (*e.g.*, public parks, scenic routes or trails, and designated Wild and Scenic Rivers)" and to "[m]inimize interference with the use and operation of . . . existing facilities used for cultural, historical, and recreational purposes," as well as to "[m]inimize adverse effects on protected species habitat and on other identified sensitive natural resources (*e.g.*, forested areas, native prairies, and other areas as identified by Natural Heritage Commissions)."[258] Finally, one of the issues identified in scoping for the EIS was to "analyze how the visual impacts of the Project may have negative effects on tourism and recreational activities."[259] The Final EIS did just that, evaluating impacts

[253] *See* Final EIS, Table 3.13-53, at 3.13-79.

[254] *See* Part 2 Application at 3-9.

[255] See Final EIS at 3.13-20 to 3.13-22, 3.13-60 to 3.13-62, 3.13-84

[256] Comment of Cynthia Callahan (June 2, 2015).

[257] *See* Final EIS, app. G, exhibit 1: DOE Alternatives Development Report. The General Guidelines were established "to focus the evaluation of the various route alternatives" and "were intended to minimize conflicts with existing resources, developed areas, and existing incompatible infrastructure; to maximize opportunities for paralleling existing compatible infrastructure; and to take into consideration land use and other factors affecting route selection." Final EIS at 2-104.

[258] *Id.* at 2-105.

[259] *Id.*, Table 1.5-1, at 1-14.

to visual resources including visual contrast,[260] impacts to scenery,[261] and impacts to sensitive viewers.[262] In general, the Final EIS acknowledges that temporary impacts during construction may occur within the area of construction activities, but that operation of the Project is not expected to affect statewide tourism in Arkansas or the other states crossed by the Project.[263]

iii. The Project Demonstrates Appropriate Steps to Minimize Negative Landowner Impacts

Among comments opposing the Project, the concern raised most frequently was impacts to landowners, including the potential use of eminent domain. Some commenters expressed concern that their own property could be subject to condemnation, while others expressed concern about the effect on property values for those not entitled to compensation.[264] Other comments alleged that condemnation of real estate would disproportionately harm low-income individuals, and that the Department has ignored that consideration.[265]

In response to these concerns, the Department begins by noting that landowner impacts are a regrettable but unavoidable consequence of infrastructure projects. This is especially true for linear infrastructure projects that traverse long distances, such as transmission lines, pipelines, railroads, and highways. Given this unavoidable reality, the Department's view is that the most important question to consider in reviewing a proposed project is not whether landowners will be affected at all, but whether the proposed project demonstrates that the proponent has done everything feasible to avoid and mitigate negative landowner impacts through design, routing, procedures for interacting with and compensating landowners, and other available options.

With that question in mind, the Department concludes that the Project demonstrates that all steps have been taken that reasonably could minimize negative landowner impacts. With respect to design, the Department notes that, as an HVDC line, the Project can transmit more electric power using less land than a comparable AC line.[266] As an example of the land use efficiency of HVDC lines, SPP's ITP20, discussed in section V.b above, analyzed two groupings of transmission projects that could meet the wind export demands of SPP's high wind development/ high wind export future. One grouping consisted of only AC facilities and the second used DC as well as AC. The AC portfolio required a total mileage of 6,766 miles.[267] The portfolio that included HVDC facilities required 3,904 miles—a reduction of more than 40 percent.[268] This study shows that, as a transmission solution for delivering wind power from the Panhandle region, the

[260] *Id.* at 3.18-54 to 3.18-56.

[261] *Id*. at 3.18-56.

[262] *Id.* at 3.18-56 to 3.18-57.

[263] *See id.* at 3.12-14 ("Once the Project is in operation, no impacts to recreation, including hunting and fishing, are expected from the Project.").

[264] *E.g.*, Comment of Kirk Stites (Apr. 28, 2015) (stating that property value would decline but that he would receive no compensation).

[265] Comment of Ron Hairston (July 9, 2015).

[266] In addition to reducing overall transmission line mileage required, DC lines have a narrower footprint because they require two conductors for a single circuit, compared to three conductors for AC. *See*, e.g., *N.Y. Reg'l Interconnect, Inc.*, 124 FERC ¶ 61,259 at P 48 (2008) (discussing an HVDC transmission line, including converter stations and AC interconnections at each end, and observing that "[t]he HVDC transmission line . . . will also have a smaller footprint than an AC line, which can help with the installation and siting of a new line.").

[267] ITP20 at 94.

[268] *Id.* at 95.

Project's HVDC design makes it likely to cause fewer negative landowner impacts than would be caused by conventional AC solutions.

The Project has also undergone a careful routing process. Clean Line has conducted dozens of public meetings over several years, and has invested significant time and attention to route planning, such that the rights-of-way needed for the Project will avoid all residences identified during the route selection process.[269] Clean Line "will continue to work with affected landowners to minimize the impact of siting the ROW on their property, including micrositing to avoid residences and other structures."[270] The Project also has been routed to run parallel with other infrastructure where possible.[271] Clean Line convened a "routing team" of professionals to identify a route for the Project, and that team "applied general and technical guidelines intended to . . . maximize opportunities for paralleling existing compatible infrastructure."[272] Ultimately, the proposed route runs alongside existing infrastructure wherever possible—specifically, along roughly nine miles of existing transmission lines and 54 miles of existing roads.[273]

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[269] Final EIS at 2-20 ("Incompatible land uses within the right-of-way include construction and maintenance of inhabited dwellings."), 2-104 to 2-105 (General Guidelines include "Avoid existing residences" as a focal point). The Final EIS initially identified a representative right-of-way that would have intersected four homes. *Id.* at 2-86. But, subsequent siting work by Clean Line has identified a representative right-of-way that will avoid these four homes. Website maps available at both the Department's EIS website (http://www.plainsandeasterneis.com) and at Clean Line's website (http://www.plainsandeasterncleanline.com) both show that the current Representative ROW avoids the four homes.

[270] *Id.* at 2-86.

[271] The Department takes this commitment seriously. After careful consideration, the Department plans to implement the Applicant Proposed Route presented in the Final EIS, except for Region 4, Applicant Proposed Route Link 3, Variation 2. *See* Department of Energy, *Record of Decision in re Application of Clean Line Energy Partners LLC* (Mar. 25, 2016). The Department plans this modification because "1) the route variation crosses 32 percent fewer land parcels (17 versus 25); 2) the route variation parallels more than twice the length of existing infrastructure, including transmission lines and roads (4.42 miles versus 1.85 miles); 3) the representative ROW of the route variation would be located within 500 feet of 8 fewer residences (1 versus 9); and 4) the route variation would avoid a private airstrip whose operations could be impacted by the Applicant Proposed Route." Final EIS at 2-106. The Final EIS describes the route variation as follows: "The location is in Sequoyah County, [Oklahoma,] starting approximately 1 mile northeast of Vian, Oklahoma, and ending approximately 3.3 miles northwest of Sallisaw. . . The variation would shift the route north approximately 0.8 to 1.4 miles[, and it] is essentially the same length as the corresponding link of the Applicant Proposed Route." *Id.* at 2-31.

[272] Final EIS at 2-25.

[273] *See id.* at 3.10-50 to 3.10-65. *See also id.* at 2-27 ("The Applicant Proposed Route in Region 1 would parallel the existing Xcel/OG&E Woodward-to-Hitchland 345kV transmission line for the majority of its length."), 2-28 ("The Applicant Proposed Route parallels Western Farmers Electric Cooperative's existing 115kV transmission line, U.S. Route 60, section lines and parcel boundaries, and county roads to the extent practicable."), 2-29 ("The Applicant Proposed Route parallels OG&E's Cottonwood Creek-to-Enid 138kV transmission line, section lines, county roads, parcel boundaries, gas pipeline, the KAMO Electric Cooperative, Inc. Stillwater-to-Ramsey 115kV transmission line, KAMO Electric Cooperative, Inc. Stillwater-to-Cushing 69kV transmission line, OG&E's Muskogee to Pittsburgh 345kV transmission line, Public Service Company (PSCo)-OK's Bristow to Silver City 161kV transmission line, and OG&E's Cushing to Bristow 138kV transmission line, and the OG&E's Beggs-to-28 Pecan Creek 138kV transmission line for the majority of its length."), 2-30 ("The Applicant Proposed Route parallels several existing transmission lines across the Arkansas River."), 2-32 ("The Applicant Proposed Route in Region 5 parallels parcel boundaries and section lines, Entergy Arkansas Inc.'s Independence-to-Genpower Keo 500kV transmission line, the Cleburne County 69kV transmission line, and a natural gas transmission pipeline to the extent practicable[, and the] Applicant Proposed Route parallels Entergy Arkansas Inc.'s Marked Tree to Marion 161kV electrical transmission line, county roads, section lines, and parcel boundaries to the extent practicable."), 2-33

The Final EIS acknowledged that "[w]here a negotiated agreement is not possible, [the Department], acting through Southwestern, may in appropriate circumstances exercise the federal government's eminent domain authority to acquire the interests."[274] Nonetheless, with respect to landowner communication and compensation, the Project will take steps intending to minimize the need for eminent domain. Land acquisition for the Project will proceed in two phases. First, Clean Line will obtain as many parcels as possible on its own through voluntary negotiation. Next, the Department will obtain any parcel that Clean Line is unable to obtain. For its part of the land acquisition process, Clean Line has agreed to a robust set of procedures and compensation requirements set forth in Schedule 1 of the Participation Agreement. For instance, Clean Line must "use all commercially reasonable efforts to locate each applicable Landowner through any available search methods."[275] Once it has located and identified a given landowner, Clean Line will "attempt to contact any applicable Landowner by at least three (3) different forms of contact including by phone, in person, first class mail, certified mail or leaving messages with a neighbor or family member of the applicable Landowner."[276] When seeking to buy needed real estate from an affected landowner, Clean Line will offer to meet with the landowner in person, and will provide a proposed form of easement, documentation of compensation offers, and other materials.[277] Landowners must receive "a reasonable opportunity (including a period of reasonable length) to consider any offer to acquire" their property.[278] Clean Line has committed to paying landowners the greater of "(i) the [product of the number of acres to be acquired and the] Average Fair Market Per Acre Value, or (ii) if an appraisal is [statutorily] required . . ., the appraised value of the easement determined by such appraisal."[279] In addition, Clean Line will pay landowners for structures within the easement area, in either one-time payments or annual payments, the latter of which will increase by 2 percent annually.[280] Any damages "resulting from the construction, maintenance or operation of the Project" will also be covered so that landowners will "be made whole for any damages or losses that occur as a result of the Project at any time."[281] Further, the Participation Agreement would require Clean Line to submit to binding arbitration on the compensation amount if it cannot reach an agreement with the landowner on what that amount should be.[282] Overall, the requirements of Schedule 1 go well beyond what is typical in the utility sector, and underscore the Department's intent to limit eminent domain or avoid it altogether.

If Clean Line is unable to obtain rights-of-way after having gone through the process set forth in Schedule 1, the Department will obtain these rights-of-way in a process that complies with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended,[283] and its

("The Applicant Proposed Route parallels the Entergy Arkansas Inc.'s Fisher-to-Cherry Valley 161kV transmission line, the St. Francis Levee, parcel boundaries, and county roads to the extent practicable.").

[274] *Id.* at 2-15.

[275] Participation Agreement, Schedule 1, at P 2.

[276] *Id.*

[277] *Id.* at P 3(a).

[278] *Id.* at P 3(d).

[279] *Id.*, app. A, at 1. Clean Line has committed to following the statutory and regulatory requirements that would be applicable to a federal land acquisition.

[280] *Id.*

[281] *Id.* at 1-2.

[282] *Id.* at 2; Participation Agreement, Schedule 1, at P 6(a)(v).

[283] 42 U.S.C. § 4601 *et seq.*

implementing regulations.[284] The Department will begin with renewed landowner notifications and contacts, an appraisal, and good faith efforts to obtain the right-of-way on a negotiated basis. Only after the exhaustion of efforts to obtain a right-of-way voluntarily both by Clean Line and the Department and the satisfaction of conditions precedent demonstrating the commercial viability of the Project[285] would the Department pursue condemnation. As the Department has consistently stated, it views the exercise of eminent domain authority as a last resort,[286] and has made every effort to ensure that the authority would only be used for this Project where and when it is unavoidably necessary.

With respect to nearby properties not entitled to condemnation, the Final EIS acknowledged that "proximity to electric transmission lines can have negative effects on residential property values, with average impacts ranging from less than 1 percent to about 10 percent,"[287] but noted that the impact "decreases with distance and tends to decline over time"[288] and that "[m]ost studies have concluded that other factors, such as the general location, the size of property, improvements, conditions, amenities, and supply and demand factors in a specific market area are more important criteria than the presence or absence of transmission lines in determining the value of residential real estate."[289] Similarly, the Final EIS cited studies of agricultural land value, and the most recent studies found little to no value reduction from transmission line installation.[290] Some negative impact on private property is foreseeable, but the impact on non-compensable property is not expected to be significant, and the impact on compensable property is legally required to be justly compensated.

The Final EIS also found that "[n]o unavoidable adverse impacts would be disproportionately borne by minority and/or low-income populations as a result of the Project,"[291] and identified "[n]o unavoidable

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[284] *See* 49 C.F.R. part 24.

[285] These conditions precedent are discussed above in section III.a. The conditions include financing commitments sufficient to fund all project costs, execution of firm TSAs for at least 2,000 MW of electrical capacity, effectiveness of converter station real estate rights, and effectiveness of all interconnection agreements, including completion of all material interconnection studies. *See* Participation Agreement § 6.3.

[286] Written Statement of Patricia Hoffman, Assistant Secretary for the Office of Electricity Delivery and Energy Reliability, U.S. Department of Energy, Before the Subcommittee on Water, Power, and Oceans, Committee on Natural Resources, U.S. House of Representatives: Hearing on H.R. 3062, the APPROVAL Act, at 4 (Oct. 28, 2015), http://docs.house.gov/meetings/II/II13/20151028/104170/HHRG-114-II13-20151028-SD007.pdf ("The Department cannot speculate on the degree to which eminent domain would be necessary if a decision is made to participate in the Applicant Proposed Project other than to emphasize that the Department's intent has always been to minimize the use of eminent domain."); Letter from Daniel Poneman, Deputy Secretary of Energy, to Michael Skelly, Clean Line CEO (Apr. 5, 2012), http://energy.gov/sites/prod/files/Poneman_Letter_April_5%2C_2012.pdf (agreeing to launch NEPA review of the project proposal with Clean Line's acceptance, among other things, "that eminent domain authority would be used only as a last resort after negotiations in good faith have concluded with all affected landowners"); Contract No. 1 for Advance Funding and Development Agreement, Plains & Eastern Clean Line Transmission Project, at 7 (Sept. 20, 2012), http://energy.gov/sites/prod/files/Advance%20Funding%20and%20Development%20Agreement.pdf ("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.").

[287] Final EIS at 3.13-54.

[288] *Id.*

[289] *Id.* at 3.13-54 to 3.13-55.

[290] *Id.* at 3.13-55.

[291] *Id.* at 3.5-23.

adverse impacts to socioeconomic resources."[292] Evidently, Project facilities would permanently impact the land they occupied, but the Final EIS noted that Clean Line "will continue to work with affected landowners to minimize the impact of siting the [right-of-way] on their property, including micrositing to avoid residences and other structures."[293]

iv. The Project is Designed to Avoid or Minimize Environmental Impacts

Most opposing comments submitted during the Department's section 1222 review process raised a range of environmental concerns about the Project as designed.[294] The following discussion examines these comments in light of details provided in the Final EIS. The section 1222 review comment period ended on July 13, 2015, and the Final EIS was issued the following November.

The Department's Final EIS "evaluated the potential direct, indirect, and cumulative impacts on 19 environmental resource areas that include features of the natural environment and matters of social, cultural, and economic concern."[295] The Final EIS "did not identify widespread significant impacts as a result of construction or operations and maintenance of the Project."[296] Indeed, "[i]mplementation of the [environmental protection measures (EPMs)] that the Applicant has included as an integral part of the Project would avoid or minimize the potential for significant environmental effects to the affected resources."[297] These EPMs "would be made binding through the [Record of Decision] and terms of Participation Agreements between [the Department] and [Clean Line]."[298] Additionally, the Department has identified best management practices (BMPs) for some resources to further avoid or minimize potential adverse impacts,[299] and these are also binding on Clean Line through the ROD.[300]

A number of comments maintained that the impact of corona noise from the transmission lines was inadequately examined. One comment argued that more information was needed on how the noise "will devalue property, cause hearing problems, disturb the peace and disturb the wildlife habitat."[301] Another comment stated that "the noise pollution a line of this size would put off . . . would echo for miles and be

[292] *Id.* at 3.13-76.

[293] *Id.* at 3.10-88.

[294] The Comment Response Document, Appendix Q of the Final EIS, includes all of the comments the Department received on the Draft EIS and provides the Department's responses to those comments. The comments addressed in this document were those received in response to Clean Line's application as described in section II.e.ii above.

[295] Final EIS at S-86.

[296] *Id.* at S-87.

[297] *Id.*

[298] *Id.* at 2-22. Clean Line has identified both general and resource-specific EPMs. The EPMs are described in the Department's Mitigation Action Plan.

[299] As discussed in section 4.2 of the Participation Agreement, following a decision on whether to participate in the Project, the Department, under 10 C.F.R. § 1021.331, will prepare a Mitigation Action Plan. The Mitigation Action Plan will address, in part, "any environmental protection measures, species-specific protection measures and best management practices identified in the Final Environmental Impact Statement." Participation Agreement § 4.2(a)(ii).

[300] *Id.* at S-59. *See* Department of Energy, *Record of Decision in re Application of Clean Line Energy Partners LLC* (Mar. 25, 2016).

[301] Petition Opposing Plains & Eastern Clean Line Updated Application As Published in the Federal Register (June 15, 2015).

unbearable to those around it."[302] In the same vein, commenters were concerned about effects to those beyond the right-of-way, who could see their property values dip without the right to compensation: "the effect of corona noise and visual pollution from lines and structures with their measurable negative financial consequences for property owners are unjustly ignored for those under the right-of-way and those near or adjacent to it."[303] Other comments mentioned the risks of power lines, noting that "the "huge structures will be a blight on the landscape and the electricity running through the lines will be noisy and potentially a health hazard"[304] and that "[o]ther countries have banned such lines in inhabited areas due to the dangers."[305]

The Final EIS discussed corona noise extensively, and its analysis included several key observations. First, "[a]udible noise on HVDC lines is typically highest in fair weather or during the transition from fair to foul weather,"[306] and the fair-weather noise conditions are likely because "people may be outside more often and no rainfall is present to mask the noise."[307] Second, "[t]he positive pole of a bipolar HVDC line produces more audible noise than the negative pole; in fact, audible noise generation from the negative pole is negligible."[308] Third, "[a]s opposed to HVAC, HVDC corona noise does not contain pure tones emerging from the broadband noise."[309] The pure tones are the "hum" sound, and on an HVDC line, "[t]he low frequency components of the noise (up to the 125Hz octave band) can rarely be distinguished from ambient noise, while high frequency corona noise ranges from 500Hz to 16kHz."[310] Citing a 1982 study, the Final EIS remarked that "above 50 [decibels], DC audible noise was shown to produce more annoyance than AC audible noise."[311] Fourth, EPA's recommended noise guideline is 55 decibels "[f]or outdoor residential areas and other locations in which quiet is a basis for use,"[312] noting that higher noise levels can cause "[o]utdoor activity interference and annoyance."[313]

Noise levels should vary according to Project segment and whether the transmission is AC or DC. DC transmission accounts for the vast majority of the Project's length, and a short stretch of the Project's HVDC line could see noise levels very slightly above the guideline (up to roughly 58 decibels). This condition would only occur in the noisier of two possible transmission line configurations, and only within the right-of-way.[314] Calculated maximum audible noise for the 345 kV AC line configurations for the AC collection system was 53.9 dBA,[315] below the EPA's 55 dBA threshold. The Final EIS also found that "the

[302] Comment of Nic Stockton (July 10, 2015).

[303] Comment of Ron Hairston, at 3 (Feb. 23, 2015).

[304] Comment of Kathie and John Cross (July 13, 2015).

[305] Comment of Laurie Smith (May 13, 2015).

[306] Final EIS at 3.4-9.

[307] *Id.* at 3.4-10.

[308] *Id.* at 3.4-9 to 3.4-10.

[309] *Id.* at 3.4-9.

[310] *Id.*

[311] *Id.* at 3.4-10.

[312] *Id.* at 3.11-1.

[313] *Id.*, Table 3.11-1, at 3.11-1.

[314] *See id.*, Figure 3.4-38, at 3.4-84.

[315] *Id.*, Table 3.4-30, at 3.4-71.

likelihood of increased audible noise . . . rising to a level of annoyance is small."[316] Calculated maximum audible noise for the 345 kV AC line interconnections to the Oklahoma converter station was 57.8 dBA on the right-of-way itself, decreasing to between 51.0 and 55.2 dBA 75 feet from the right-of-way's centerline.[317] Finally, calculated audible noise for the 500 kV AC line interconnections to the Arkansas converter station was 60.2 dBA on the right-of-way, decreasing to between 54.8 and 56.7 dBA 100 feet from the centerline.[318] The EIS noted that all noise impacts from AC transmission line operation "were assessed assuming conditions that would generate the highest noise emissions."[319] The "threshold distances" from the lines, beyond which audible noise will not exceed the EPA guideline, were found to be 146 feet for the lower-voltage AC lines and 659 feet for the higher-voltage AC lines."[320] Significantly, the only two routes "with noise-sensitive areas located within the threshold distance of 146 feet" each included just one noise-sensitive area.[321] This configuration represents the worst case, however. The EIS notes that "[a]udible corona noise from [AC] transmission lines occurs primarily in foul weather" when transmission-line conductors are wet.[322] The noise calculations were performed assuming "rainy conditions of 1 millimeter per hour . . . to 5 millimeters per hour, at which point the sound of rain hitting the ground, foliage, and/or structures masks the audible noise from the line."[323] Across the overwhelming majority of the Project, noise levels should rarely, if ever, exceed the EPA's noise threshold.

The Final EIS acknowledged that "two noise sensitive areas [are] expected to exceed federal guidelines near the [Project's] proposed route in Region 3."[324] This region, called the "Oklahoma Cross Timbers Region,"[325] includes parts of eight counties in north-central Oklahoma.[326] In Region 3, "[t]he majority land use is rangeland and cultivated crops,"[327] and farmland covers between 56% and 98% of each of the eight counties.[328] The affected area within the region includes 114 residential structures and 61 agricultural structures within the 1,000-foot-wide corridor of the Project's proposed route.[329] Audible noise calculations for two different DC line configurations found a maximum noise level of 58.1 decibels in the noisier "standard" configuration.[330] Noise levels dropped below 50 decibels, however, within 75 feet of the

[316] *Id.* at 3.4-76.

[317] *Id.*, Table 3.4-17, at 3.4-33.

[318] *Id.*, Table 3.4-44, at 3.4-99.

[319] *Id.* at 3.11-13.

[320] *Id.*

[321] *Id.*

[322] *Id.* at 3.11-12.

[323] *Id.*

[324] *Id.*, Table 2.6-3, at 2-75 to 2-76.

[325] *Id.* at 3.2-3.

[326] Specifically, the region "begins southeast of Enid, Oklahoma, and continues southeast through Garfield, Kingfisher, Logan, Payne, Lincoln, Creek, Okmulgee, and Muskogee counties in Oklahoma for approximately 162 miles and ends north of Webbers Falls, Oklahoma, at the Arkansas River." *Id.* at 2-29.

[327] *Id.* at 3.2-3.

[328] *Id.*, Table 3.2-4, at 3.2-4.

[329] *Id.*, Table 3.4-34, at 3.4-76.

[330] *Id.*, Table 3.4-37, at 3.4-83.

right-of-way's center line in the quieter configuration, and within 300 feet in the noisier configuration.[331] In any event, the sound "would be attenuated indoors . . . [and with] windows closed, under fair weather HVDC line conditions, operations and maintenance sound levels would be 10-20 [decibels] lower than those predicted outside."[332]

Numerous comments protested that the Project might endanger the health of wildlife and the safety of land and landowners. Comments listed threats to various Oklahoma and Arkansas wildlife, focusing largely on birds and endangered species of bats.[333]

The Final EIS discussed bats in some detail, concluding that "[v]egetation maintenance is not likely to be a source of mortality to special status wildlife species (*e.g.*, bats) as large suitable roost trees for bats would not be present in the [right-of-way] during operations."[334] The EIS noted that impacts to bats from operations and maintenance in the regions where they appear, namely Regions 3 through 7, should not be severe,[335] and that construction will specifically avoid caves where the bats hibernate and roost. While "[r]emoval of roost trees could cause habitat loss and possibly mortality of bats" in the worst case, Clean Line will "coordinate with [USFWS] to minimize potential loss of bat habitat within the region of influence [(ROI)]."[336] Further, even though "vegetation clearing and work site preparation would pose the greatest risk of mortality and injury[, most] of the special status wildlife species are relatively mobile (*i.e.*, birds and bats) and could avoid construction activities by moving to other areas."[337]

Beyond its examination of impacts to bat habitat, the Final EIS evaluated impacts to wildlife including "important recreational species, migratory birds, reptiles, amphibians, and mammal species that are known to occur or have the potential to occur within the applicable ROI,"[338] as well as "species known to occur or to have the potential to occur within the ROI and [that] are federally protected or proposed for federal protection under the [ESA,] and state protected species."[339] To avoid or minimize potential impacts on wildlife, Clean Line has developed contractually-binding EPMs, to be "implemented during

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[331] *See id.*, Figure 3.4-38, at 3.4-84.

[332] *Id.* at 3.11-21.

[333] *E.g.*, Comment of Mark A. Fuksa, at 2 (June 11, 2015) (noting threats to "quail, wild turkeys, coyotes, raccoons, rabbits, hawks, pheasants, and numerous other species of turtles, birds, and small mammals"); Comment of Ron Hairston (July 8, 2015); Comment of Ron Hairston (Mar. 16, 2015) (stating that "[o]f 16 bat species resident to Arkansas, all four endangered species (Ozark Big Eared, Indiana, Grey, and Northern Long Eared) are believed to be resident in Johnson County, AR where Link 9 crosses"); Comment of Cynthia Callahan, Attachment 2 (June 2, 2015) (expressing concern about harm to avian flight patterns).

[334] Final EIS at 3.14-34.

[335] *See id.* at 3.14-48 ("No impacts are expected to the [bats] during operations and maintenance [in Region 3] as additional land disturbances are not expected."), 3.14-51 (same for Region 4, but "any bat roost trees removed during construction in the right-of-way . . . would be habitat lost for the length of Project operations."), 3.14-52 (same for Region 5), 3.14-53 ("Operations and maintenance of the Project is not expected to impact any of the three special status bat species that could occur in Region 6."), 3.14-55 ("[I]mpacts to [bats in Region 7] during this phase are not expected," but "roost trees in the right-of-way underneath the transmission lines removed during construction . . . would remain as lost habitat during the life of the Project.").

[336] *Id.* at 3.14-52.

[337] *Id.* at 3.14-33.

[338] *Id.* at 3.20-11.

[339] *Id.* at 3.14-30.

design/engineering, construction, and operations and maintenance."[340] Although habitat disruption is inevitable, the Project's designers have carefully crafted measures that will mitigate the disruption. For example, construction work, including clearing of vegetation for the right-of-way and use of hazardous materials, could kill some wildlife "even with the implementation of seasonal and spatial restriction," but Clean Line would implement at least five EPMs to prevent those events.[341] Habitat disturbance—that is, response to the "presence of human activity, noise, vibration, or other external stimulus that is sensed by wildlife species"—could be reduced by "adjusting construction schedules and the location of construction staging areas to avoid sensitive areas that are known or identified as breeding, nesting or roosting sites."[342] Once the line is operational, vegetation maintenance should not disturb habitat as much as construction,[343] although "habitat loss could occur indirectly through habitat displacement," as "[s]ome wildlife species avoid areas near human activities or structures even though the habitat has not been physically disturbed or altered."[344] Birds risk flying into the power lines, most often during inclement weather,[345] but "the spacing for the conductors as currently proposed would minimize the risk of [birds] coming into contact with two energized conductors and/or becoming electrocuted."[346] The combination of design features, construction restrictions, and EPMs will not reduce impacts on wildlife to zero, but they should reduce these impacts significantly.

Still other comments argued that the Project will encroach on farms[347] and impair other land rights,[348] including those bearing on natural gas production in Arkansas's Fayetteville Shale region.[349] As emphasized earlier, some disruption is unavoidable, but the Project as designed will avoid and minimize impacts. For instance, Clean Line has pledged in EPMs to "identify and veri[f]y the location of facilities," including oil and gas wells, "and to minimize adverse impacts," as well as "avoid crossing existing operations [and ensuring] that access is maintained as needed to existing operations."[350] As mentioned earlier, the EPMs are binding on Clean Line. Further, "the representative right-of-way that would be occupied by the Project constitutes a small share of the area and is not expected to result in overall reductions to future shale play development."[351] Clean Line already has demonstrated its commitment to these EPMs by responding to a commenter and making an adjustment to the Project route in the Final EIS

[340] *Id.* at 3.20-12.

[341] *Id.* at 3.14-34.

[342] *Id.*

[343] *See id.* at 3.14-34 to 3.14-35.

[344] *Id.* at 3.14-36.

[345] *Id.* at 3.14-35.

[346] *Id.*

[347] Comment of Ark. State Rep. Rick Beck (July 14, 2015) ("The proposed route for the transmission line will severely reduce the size of many farms limiting their operation while forcing other farms to completely shut down.").

[348] Comment of Leif Anderson (July 13, 2015) ("The devaluation of land not in the corridor is understated, especially for land managed for wildlife and spiritual values.").

[349] Comment of John C. Ale, at 7 (July 13, 2015).

[350] Final EIS at 3.13-43.

[351] *Id.*

to ensure that the Project's proposed "Representative Right-of-Way . . . does not intersect any well or well pad owned or operated by Southwestern."[352]

At least one commenter speculated that the HVDC line, particularly if using Alternative Route 5-B, could cause problems for "the flight operations at the Little Rock Air Force Base."[353] The commenter noted that "[i]f the [HVDC line's] towers are 200 feet tall and the flights are down as low as 300 feet, with one slight error, this could cause a potential disaster to the residents in these areas and to the Little Rock Air Force pilots."[354]

The Final EIS acknowledged that "[t]ransmission line structures and lines could become a hazard if they are located too close to airport operations or military airspace operating areas,"[355] but nonetheless found that "[i]ncorporation of design features and implementation of EPMs are expected to reduce the extent of the safety issues to permissible levels."[356] The EIS carefully considered airports and airstrips whose operations the Project might affect, concluding that "[t]ransportation resources would be returned to previous operating conditions following construction."[357] Thus, according to the Final EIS, the Project's aviation safety impacts, including challenges for pilots using Little Rock Air Force Base, would be insignificant. Further, Alternative Route 5-B does not lie on the Department's preferred route,[358] so the line will not be built along the route of the commenter's concern.

Other comments expressed concern about health hazards from the electromagnetic fields (EMFs) the Project will emit.[359] The comments claimed that EMFs "have not been fully studied"[360] and that a number of potential effects had not been analyzed, including cell phone and radio reception, digital transmission, health sensitivities for small children and older adults, and navigational disruption for birds, bats, and bees.[361] Relatedly, a commenter pointed to a lack of information on the effect that "the aerial

[352] Letter to John C. Ale, Senior Vice President, General Counsel & Secretary, SWN Production (Arkansas), LLC, at 1 (Oct. 20, 2015).

[353] Comment of Mary Styron (Apr. 16, 2015).

[354] *Id.*

[355] Final EIS, Table 2.6-3, at 2-79.

[356] *Id.* at 3.16-25.

[357] *Id.* at 2-79.

[358] *See id.* at 2-106 ("[Clean Line's] Proposed Route (as presented in the Final EIS) is DOE's preferred route for the majority of the route from the Oklahoma converter station to the Arkansas/Tennessee border[, and] because DOE's preferred route is the route alternative with the lowest potential for environmental impacts when compared against the other HVDC route alternatives, it is also designated as the environmentally preferable route alternative.").

[359] The Final EIS uses the acronym EMF to refer to "Electric and Magnetic Fields." Final EIS, Acronyms & Abbreviations, at lvii.

[360] Petition Opposing Plains & Eastern Clean Line Updated Application As Published in the Federal Register (June 15, 2015).

[361] *See* Petition Opposing Project (June 8, 2015); Comment of Jim Liebhart (July 13, 2015); Comment of Rick Hudson (Apr. 28, 2015) ("[S]everal studies on similar lines in California clearly show the harmful effects of these high voltage lines to the elderly and young children."); Comment of Cynthia Callahan (June 2, 2015) (noting that "potential interference with electrical equipment could have serious effects.").

spraying of herbicides and toxins will have on people, animals and the environment."[362] Another comment urges the Department not to "use the people of the United States as guinea pigs."[363]

Following extensive studies on the health effects of EMFs, "[t]he general consensus among researchers and the medical and scientific communities is that there is insufficient evidence at this time to conclude whether magnetic fields are a cause of adverse health issues."[364] The Final EIS highlighted that "virtually all of the laboratory evidence and the mechanistic evidence fail to support a relationship between low-level power-frequency magnetic fields and changes in biological function or disease status."[365] Put differently, "[f]or DC electric and magnetic fields, studies have shown no consistent evidence of adverse human health effects for exposure to levels comparable to those encountered underneath DC transmission lines."[366] The Final EIS found the same to be true of AC facilities.[367] A 2002 report to the United States Congress found that "scientific evidence suggesting that extremely low frequency EMF exposures pose any health risk is weak."[368] Nonetheless, "on balance, the evidence is not strong enough to be considered causal, but [is] sufficiently strong to remain a concern."[369] The Final EIS concludes that, "[b]ased on an evaluation of research and guidelines recommended by various agencies, it is unlikely that the proposed HVDC transmission line would pose a known threat to human health along the [Project's] Proposed Route."[370]

In the same vein, the Final EIS found little risk of threats to human health from the AC collection system,[371] nor to plant and animal health from the DC transmission system.[372] According to a "comprehensive review of the scientific literature, the association between DC magnetic fields and adverse effects to plant life and animal health is weak,"[373] as is the association between AC magnetic fields and adverse effects.[374] In fact, in several studies examining "the potential effect of electric and magnetic fields from transmission lines on plants, such as agricultural crops, trees, and forest and woodland vegetation[,

[362] Comment of Sandra Gangluff (June 16, 2015).

[363] Comment of Gail A. Cullens (July 7, 2015); *see also* Comment of Cleo Styron, at 1 (Mar. 30, 2015) ("While on-going scientific debate continues as to whether the EMF emissions of such power lines create serious health issues for humans, [we] certainly do not wish to become unwilling research subjects ('lab rats') to prove or disprove the current science strongly suggesting that EMFs are hazardous to human health.").

[364] Final EIS at 3.8-18.

[365] *Id.*

[366] *Id.* at 3.4-87.

[367] *Id.* at 3.4-76 ("Based on an evaluation of research and guidelines recommended by various agencies, it is unlikely that the AC collection system would pose a known threat to human health.").

[368] *Id.* at 3.8-19.

[369] *Id.* at 3.8-18.

[370] *Id.* at 3.4-93.

[371] *Id.* at 3.4-74 ("Based on an evaluation of research and guidelines recommended by various agencies, it is unlikely that the AC collection system would pose a known threat to human health.").

[372] *Id.* at 3.4-91 ("Overall, studies of DC transmission line environments and DC electric and magnetic fields indicate that the field levels associated with the Project would be unlikely to pose a threat to animals and plants.").

[373] *Id.*

[374] *Id.* at 3.4-59.

no] adverse biological effects were consistently observed, and none have been confirmed at exposure at levels similar to those of the Project."[375]

The Final EIS examined concerns about herbicides in some detail, noting that EPMs should alleviate any harmful effects of herbicides. Two EPMs targeted the use of herbicide for clearing vegetation. EPM GE-5 states that "Any herbicides used during construction and operations and maintenance will be applied according to label instructions and any federal, state, and local regulations."[376] EPM W-4 states that "If used, Clean Line will selectively apply herbicides within streamside management zones."[377] Finally, EPM AG-5 addresses protection of agricultural herbicide usage: "Clean Line will work with landowners and/or tenants to consider potential impacts to current aerial spraying or application (*i.e.*, aerial crop spraying) of herbicides, fungicides, pesticides, and fertilizers within or near the transmission ROW," and "Clean Line will avoid or minimize impacts to aerial spraying practices when routing and siting the transmission line and related infrastructure."[378] Taken together, these measures provide assurance that Clean Line will exercise an abundance of caution should it need to use herbicides.

Concerns about device disruption, including "cellular telephones, wireless internet, computer systems, radio, satellite television systems, and other types of telecommunications equipment," are unfounded because "these devices all utilize radio frequency signals that are not affected by power lines."[379] Circumstantial evidence also blunts concerns, as "[t]he fact that the cell phone industry currently mounts its GPS and cell phone antennas on transmission line towers clearly indicates that power line interference is not a concern for the industry."[380]

Discussing unavoidable adverse impacts to the electrical environment,[381] the Final EIS concluded that most harms are either avoidable, temporary, or offset by countervailing factors.[382] Damage to the electrical environment "associated with the operation of overhead HVDC and/or AC transmission lines," could take place "within, and to a more limited extent outside, the transmission line right-of-way."[383] Nonetheless, "[o]utside the right-of-way, calculated electrical effects for the Project are generally limited to levels that comply with associated standards and guidelines."[384]

EMFs should not create navigational problems for wildlife. According to studies cited in the Final EIS, "there continues to be no credible evidence that native bee species are harmed by EMF in terms of foraging, nesting, or behavior."[385] Also according to the Final EIS, "[i]t is now widely accepted that birds have numerous navigational-type problem solving mechanisms available and are capable of using a

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[375] *Id.*

[376] *Id.* at 3.6-78.

[377] *Id.* at 3.14-89.

[378] *Id.* at 3.2-12.

[379] *Id.* at 3.4-62.

[380] *Id.* at 3.4-63.

[381] Analysis of the electrical environment includes examining DC and AC electric and magnetic fields, audible noise, radio and television noise interference, and ozone and air ions. *See id.* at 3.4-1.

[382] *See generally id.* at 2-83 to 2-88.

[383] *Id.* at 2-84.

[384] *Id.*

[385] *Id.* at 3.4-59.

multiplicity of environmental information for orientation purposes."[386] In short, an impact from EMF "on migratory patterns of birds is not anticipated," and "[e]ven if the transmission line DC magnetic field were to cause some localized disorientation directly near the line, birds have numerous other environmental factors to use for orientation."[387] In fact, "[o]ther research on the health, behavior, or productivity of animals, including livestock (*e.g.*, dairy cows, sheep, and pigs) and a variety of other species (*e.g.*, small mammals, deer, elk, birds, and bees) has not identified any reliable effects at the field levels associated with the Project."[388]

An additional comment, citing a study by Southwestern Energy Company, stated that "stray current from the [Clean Line] project has the potential to adversely affect pipelines and casings by accelerating corrosion even under normal operating conditions."[389] The Final EIS acknowledges that "HVDC transmission lines may cause pipeline and well casing corrosion due to stray electric current (by utilizing the earth for transmission/return currents)," but states that "the Project's dedicated metallic-return design eliminates the risk of stray voltage during operations."[390] To explain, because "the current in the transmission line conductors will create a static magnetic field comparable to the earth's natural magnetic field, [the] DC magnetic fields will not create grounding, induced current, or stray voltage issues."[391] Addressing Southwestern Energy Company's concerns directly, Clean Line reached an agreement on October 20, 2015, to resolve concerns about stray current: "The [dedicated metallic return] will be used for carrying imbalance currents during bipolar operation of the Project and will be capable of full-load continuous current ('return current') during monopolar operation."[392]

The Project raises a range of environmental concerns, but effective protection measures are in place to ensure that the concerns are minimized or eliminated. Human health is not expected to suffer. Plant and animal habitat will be preserved and protected to the extent possible. Given the size of the Project, its ability to mitigate impact is significant and based on the best possible design strategies.

v. The Project Will Generate Revenues for Public Purposes

The Nation's water resource infrastructure is aging and decaying, and the urgency of capital investments is increasing. As the Government Accountability Office has observed, several federal agencies have pointed out the need for improvements:

> According to a 2012 National Research Council report on [the Army Corps of Engineers'] infrastructure, large portions of the Corps' water resources infrastructure were built over 50 years ago and are experiencing various stages of decay and disrepair, making project maintenance and rehabilitation a high priority. The report also found that federal funding over the past 20 years has consistently been inadequate to maintain the Corps' infrastructure at acceptable levels of performance and efficiency. Similarly, most of Reclamation's water infrastructure facilities are more than 50 years old and, according to a 2011 Congressional Research Service report, with limited budgetary resources and aging

[386] *Id.* at 3.4-91.

[387] *Id.*

[388] *Id.* at 3.4-59.

[389] Comment of Cynthia Callahan (June 2, 2015).

[390] Final EIS at 3.4-92.

[391] *Id.*

[392] Letter to John C. Ale, Senior Vice President, General Counsel & Secretary, SWN Production (Arkansas), LLC (Oct. 20, 2015).

infrastructure, Reclamation's maintenance needs are likely to increase, as is competition for limited funding.[393]

Section 11.2 of the Participation Agreement between DOE and Clean Line requires Clean Line to pay DOE 2% of the Project's revenues "resulting from the sale of transmission service in connection with the Project" each fiscal quarter, and that amount "shall be made available to DOE to offset costs associated with federal hydropower infrastructure or for any other authorized purpose."[394] This contractual obligation would ensure that the Project would contribute directly to hydropower infrastructure improvements to the benefit of federal taxpayers and the users of federal hydropower.

vi. Conclusion—The Project is in the Public Interest

In sum, the Department finds that the Project as proposed will serve the public interest by facilitating renewable energy development, stimulating economic development, generating revenues for needed public investment, and doing so while minimizing impacts to landowners and the natural environment.

b. Benefits and Impacts to the States it Traverses

The RFP also states that DOE will evaluate "[t]he benefits and impacts of the Project in each state it traverses, including economic and environmental factors."[395] The Project traverses Oklahoma and Arkansas. Based on the application materials and public comments, the benefits of the Project as planned likely outweigh any negative impact.

i. Oklahoma

At least three factors indicate the Project's net benefit to Oklahoma. First, many of the Project's wind resources will be developed within Oklahoma. Nearly 430 miles of the HVDC line – thus, most of its total length – will run through Oklahoma.[396] The Project's AC collection system and western converter station will be located there as well.[397] Additionally, the Project would enable more than 4,000 MW of wind turbine construction.[398]

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[393] United States Government Accountability Office, *Climate Change: Federal Efforts Under Way to Assess Water Infrastructure Vulnerabilities and Address Adaptation Challenges*, GAO-14-23, at 11 (Nov. 14, 2013) (citations omitted), http://www.gao.gov/assets/660/659024.pdf. The three documents GAO cites in this paragraph are (1) L.D. Brekke, J.E. Kiang, J.R. Olsen, R.S. Pulwarty, D.A. Raff, D.P. Turnipseed, R.S. Webb, and K.D. White, *Climate Change and Water Resources Management—A Federal Perspective: USGS Circular 1331* (2009); (2) Committee on U.S. Army Corps of Engineers Water Resources Science, Engineering, and Planning; Water Science and Technology Board; Division on Earth and Life Studies; National Research Council, *Corps of Engineers Water Resources Infrastructure: Deterioration, Investment, or Divestment?* (The National Academies Press, Washington, D.C.: 2012); (3) Congressional Research Service, *The Bureau of Reclamation's Aging Infrastructure* (Mar. 30, 2011).

[394] Participation Agreement § 11.2.

[395] 2010 RFP, 75 Fed. Reg. at 32,941.

[396] Part 2 Application at 3-6.

[397] *Id.*

[398] *Id.*

Oklahoma state government officials have expressed support for harnessing the state's wind resources.[399] In its October 2011 Order approving Clean Line's request to do business as a public utility, the Oklahoma Corporation Commission determined that the state's legislature intended to promote wind resource development for "both the people of the state and the Nation as a whole."[400] Almost two years later, in a letter to Energy Secretary Moniz, Oklahoma Governor Mary Fallin pointed out that Oklahoma enjoys "vast wind resources but few wind turbines because of the lack of transmission."[401] Including both generation and transmission components, the Project will help the state to develop its wind resources on a large scale.

Second, the Project's supply chain, construction, and operation and maintenance needs will generate both temporary and permanent jobs. A third-party report submitted with the Application found that "[o]nce in operation, the [Project] will generate ongoing economic benefits through operation and maintenance of the [facilities] and cost savings due to improved fuel diversity," and that the benefits should be "ongoing and last for the useful life of the transmission infrastructure."[402] As of August 2011, Clean Line had identified "over 100 businesses involved in the wind energy and transmission supply chain located in Oklahoma, Arkansas, and Tennessee alone," and said it intended to seek materials and labor from them.[403] Clean Line claims that "manufacturing and installing [the] new wind turbines will create thousands of jobs for Oklahomans and increase local and state tax revenues."[404] More specifically, citing a December 2013 report prepared for the Department, Clean Line states that "[t]he construction of the transmission line in Oklahoma would result in an estimated 1,060 jobs, consisting of 572 direct jobs and 488 indirect and induced jobs," and that "[t]he construction of the converter station in Oklahoma would result in 256 jobs, consisting of 138 direct jobs and 118 indirect and induced jobs."[405] The Project's Final EIS supports Clean Line's job creation claims, estimating that construction of wind farms, separate from the Project itself, will generate over 5,000 combined direct, indirect, and induced jobs in Oklahoma.[406]

As an example of its intent to hire local labor and equipment, Clean Line announced in June 2011 an agreement to use Pelco Structural LLC as a "preferred supplier for the Project's tubular steel transmission structures,"[407] to be supplied from Pelco's Claremore, Oklahoma facility.[408] The agreement contemplates both engineering and manufacturing cooperation,[409] and the "supply order could be worth $300 million or

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[399] In this proceeding, the Office of Oklahoma Attorney General Pruitt did not oppose wind resources, but it demonstrated skepticism that wind developers suffered from lack of adequate transmission capacity. Comment of the Oklahoma Attorney General's Office, at 1-2 (July 13, 2015).

[400] *In the Matter of the Application of Plains and Eastern Clean Line LLC, to Conduct Business as an Electric Utility in the State of Oklahoma*, Order No. 590530, Cause No. PUD 201000075 (Oct. 28, 2011).

[401] Letter from Governor Fallin to Secretary Moniz (June 13, 2013), attached as Appendix 3-A to Part 2 Application.

[402] The Potential Impact of the Proposed Plain & Eastern Clean Line Transmission Project on Business Activity in the US and Affected States, at 30 (June 2010) ("Perryman Group Study").

[403] 2011 Proposal Update at 5.

[404] Part 2 Application at 3-6.

[405] *Id.* at 3-7.

[406] *See* Final EIS, Table 3.13-53, at 3.13-79.

[407] Part 2 Application at 3-7.

[408] *See* Press Release, Clean Line Energy Partners, Clean Line Energy Signs Agreement to Source Materials from Oklahoma Company (June 14, 2011), http://www.cleanlineenergy.com/sites/cleanline/media/news/June142011.pdf.

[409] Part 2 Application at 3-7.

more depending on commodity prices and the number of structures purchased."[410] Pelco supports the Project.[411]

Third, the Project will benefit Oklahoma through payments to landowners and tax payments to state and local governments. Clean Line must "pay or arrange for the payment of . . . all present and future Taxes (including stamp taxes), duties, fees, expenses, or other charges payable on or in connection with the Project."[412] Landowners would receive royalty payments from the wind turbines, and "[a]s these payments are spent, they [will] lead to an economic stimulus in a wide variety of industries."[413] Clean Line has also covenanted to make "Local Government Contribution Payments" in Oklahoma and Arkansas,[414] defined as "all infrastructure payments, voluntary payments and other payments (which are not Taxes) to be made by [Clean Line] to local and state governments in connection with the Project."[415] Schedule 4, attached to the Participation Agreement between the Department and Clean Line, specifies the payments to be made.[416] Further, because the Project will use a merchant business model it should "not increase transmission rates or retail electric rates in Oklahoma, while still providing the economic benefits of new wind farm construction and a major infrastructure project."[417]

Both the state government and local governments could expect "notable gains" in "tax receipts associated with the incremental activity."[418] According to estimates in the Final EIS, under a "simplified cost approach and an assumed value of $250 million," the estimated 32-month construction of the western converter station[419] would generate $10.1 million in state sales and use tax revenues, as well as $2.3 million in Texas County (Oklahoma) sales and use tax revenues.[420] The converter station would also generate between $3.2 million and $4.6 million in ad valorem or property tax revenues in its first year of operation.[421] Additional sales and use taxes,[422] as well as ad valorem taxes,[423] would be charged according to the route of the AC Collection System construction. Using the proposed route of the HVDC transmission line, total estimated state sales and use tax revenues from construction would approach $35 million.[424] Based on Clean Line's estimated value of $2 million per mile, ad valorem taxes on the HVDC line collected during

[410] 2011 Proposal Update at 5.

[411] Comment of Pelco Structural, LLC (June 5, 2015).

[412] Participation Agreement § 8.6. The defined term "Tax" includes "all taxes, levies, imposts, duties, deductions, charges or withholdings imposed by any Governmental Authority, including any interest, penalties or additions thereto imposed in respect thereof." *Id.* § 1.1, at 41.

[413] Perryman Group Study at 34.

[414] Participation Agreement § 8.6 (stating that Clean Line "shall pay or arrange for the payment of (before they become overdue) all present and future . . . Local Government Contribution Payments.").

[415] Participation Agreement § 1.1, at 27.

[416] *See* Participation Agreement, Schedule 4: Local Government Contribution Payments.

[417] Part 2 Application at 3-7.

[418] Perryman Group Study at 38.

[419] Final EIS at 3.13-59.

[420] *Id.*, Table 3.13-37, at 3.13-60.

[421] *Id.* at 3.13-60.

[422] *Id.* at 3.13-61.

[423] *Id.* at 3.13-61 to 3.13-62.

[424] *Id.* at 3.13-63.

the first year would range from $13.2 million to $18.3 million.[425] Finally, construction of the generating facilities would produce estimated sales and use tax revenues between $158 million and $161 million.[426] Ad valorem tax revenues would range from $1.9 million for a 50 MW facility in Beaver County, Oklahoma, to $36 million for a 1 GW facility in Texas County, Oklahoma.[427]

Overall, the Final EIS found that "local expenditures, employment, and construction-related earnings from the Project would have a positive impact on the local economy and employment for the duration of construction,"[428] although "[e]conomic impacts associated with operation and maintenance would be small, especially when compared to the construction-related and ad valorem tax impacts."[429]

ii. Arkansas

At least three factors also indicate the Project's net benefit to Arkansas. First, the converter station to be built and installed in the state allows access to 500 MW of low-cost renewable energy, developed at Clean Line's financial risk.[430] Clean Line also claims strong interest in wind power from Arkansas customers: "[a]s part of its open solicitation for transmission capacity, Clean Line received transmission service requests to Arkansas for nearly four times" the converter station's capacity.[431] Wind and solar generation have also been scarce in Arkansas: according to Clean Line, the state "had no local utility-scale electricity wind or solar generation installed" as of November 2014.[432] The new converter station will bring substantial renewable electricity to the state.

The Project's environmental benefits could also result in economic benefit to Arkansas. A third-party study submitted as part of Clean Line's application found that Arkansas stands to save $65 million in production costs in 2019,[433] "because the Project's low-cost wind generation reduces the cost of the fuel purchases by utilities necessary to serve their load."[434] Concurrently, the state could expect to reduce its NO_x emissions by 533 tons, its SO_x emissions by 825 tons, its CO_2 emissions by more than 1.1 million tons, its mercury emissions by 20 pounds, and its power generation water usage by 268 million gallons.[435]

Second, the Project will create both temporary and permanent jobs from its supply chain, construction, operation, and maintenance needs. Clean Line touted benefits to Arkansas in its 2010 Application, finding that the state was "in an ideal position to become the manufacturing hub for the wind industry."[436] Further, Clean Line stated that if the Project stimulates new wind generation, the effect could be "expansion of the manufacturing facilities or the opening of new facilities in Arkansas" and perhaps also

[425] *See id.*, Table 3.13-43, at 3.13-65 to 3.13-66.

[426] *Id.* at 3.13-84.

[427] *Id.*

[428] *Id.* at 4-47.

[429] *Id.*

[430] Part 2 Application at 3-8.

[431] *Id.*

[432] *Id.*

[433] Part 2 Application, app. 2-G, Plains & Eastern Clean Line Benefit Analysis, at 1 (Jan. 7, 2015) (Leidos Study).

[434] Part 2 Application at 2-20. The Leidos Study finds that "[t]he Project will reduce utilities' cost to procure coal, natural gas and other fuels, and their other variable production costs, by $540 million annually." *Id.* at 3-2 (citing the Leidos Study).

[435] Leidos Study at 2.

[436] 2010 Application at 21.

in Oklahoma.[437] In the immediate term, Clean Line expects Project activities in Arkansas to create several hundred jobs. Building the converter station would generate "an estimated 244 jobs, consisting of 138 direct jobs and 106 indirect and induced jobs."[438] In addition to the converter station, more than 270 miles of HVDC line will travel through Arkansas.[439] Clean Line says that construction of this line "would result in an estimated 656 jobs, consisting of 371 direct jobs and 285 indirect and induced jobs."[440]

As in Oklahoma, Clean Line has identified and plans to use as much local labor and material in Arkansas as possible. In March 2011, Clean Line signed a preferred supplier agreement to purchase overhead transmission conductor from General Cable,[441] whose factory is in Malvern, Arkansas.[442] The Project should require about "25 million conductor feet of conductor, based on a length of approximately 720 miles," meaning a potential purchase order of more than $100 million.[443] The steel for the purchase order is to come from Bekaert Steel Van Buren, which runs a factory in Van Buren, Arkansas.[444] In June 2015, Clean Line announced an agreement to use Sediver as the preferred supplier for the transmission line's glass insulators, to be manufactured in West Memphis, Arkansas starting in 2016.[445]

Third, the Project will benefit Arkansas through payments to landowners, state taxes on infrastructure, and payments in lieu of taxes. Clean Line has stated that it "seeks to negotiate all easement agreements on a voluntary basis and . . . will pay Arkansas landowners over $30 million for easements and other compensation."[446] Using the proposed route of the HVDC transmission line, total estimated state sales and use tax revenues from construction would exceed $32 million in Arkansas.[447] Ad valorem tax revenues would total $5.1 million in the first year of operation.[448] Construction of the converter station, at an estimated cost of $135 million, would generate an estimated $7.9 million in state tax revenues and $1.2 million in county tax revenues.[449] Clean Line has also committed to paying more than $5 million in voluntary tax payments in the first year, and more than $147 million over the first 40 years, to counties in both Oklahoma and Arkansas.[450] Clean Line will pay each Oklahoma and Arkansas county $7,500 per mile of transmission line running through that county, for a total of just over $3.2 million to Oklahoma counties

[437] *Id.*

[438] Part 2 Application at 3-9. *See also* Final EIS at 3.13-67.

[439] Part 2 Application at 3-7.

[440] *Id.* at 3-9.

[441] 2011 Proposal Update at 5.

[442] Part 2 Application at 3-9.

[443] *Id.*

[444] *Id.*

[445] Press Release, Clean Line Energy Partners, European Manufacturer Opens New High-Tech Facility in Arkansas to Serve Plains & Eastern Clean Line (June 8, 2015), http://www.cleanlineenergy.com/sites/cleanline/media/news/Sediver_Press_Release_FINAL.pdf.

[446] http://www.plainsandeasterncleanline.com/support-arkansas/facts (last visited Mar. 24, 2016).

[447] Final EIS at 3.13-63.

[448] *Id.*, Table 3.13-44, at 3.13-66.

[449] *Id.*, Table 3.13-47, at 3.13-69.

[450] *See* Participation Agreement, Schedule 4: Local Government Contribution Payments.

and just over $2.0 million to Arkansas counties.[451] Twelve of the 26 affected counties in Oklahoma and Arkansas will receive total payments of nearly $147.7 million over 40 years.[452]

iii. Comments

A number of public comments addressed potential benefits and costs to Oklahoma and Arkansas. One commenter stated that the promised benefits are difficult to determine precisely, that many resulting jobs would be temporary, and that "the impacts and burden to landowners . . . would be devastating and permanent."[453] The same commenter added that "Clean Line would bypass transmission lines owned by utilities that generating companies would otherwise have to pay to move electricity across the country."[454] Another commenter pointed out that Clean Line's application does not promise an annual $5 million tax payment to Arkansas, as Clean Line spokesman Christopher Hardy announced.[455] The commenter also doubted that hundreds of workers could be trained for the Project, or that local, permanent jobs would result.[456] Finally, the commenter referred to the construction process as a "months-long nuisance for traversed communities," and claimed that power lines can send property values plummeting.[457]

Net benefits are more likely than not if the Project succeeds, even if the actual benefits differ from the anticipated benefits. Many resulting jobs would be temporary, but a significant number would be permanent—as discussed, operation and maintenance jobs will continue for the useful life of the Project's facilities. These permanent jobs are expected to generate a series of ongoing economic benefits.

Clean Line has committed to measures that would mitigate the burdens and inconveniences to affected communities. A combination of required and voluntary compensation should help alleviate the Project's burdens fairly and adequately. As discussed earlier, construction should generate long-term benefit even if it is a short-term nuisance. Finally, the Participation Agreement's Schedule 4 establishes the payments Clean Line would make to state and local government agencies.

c. Technical and Financial Viability

The final criteria the Department uses to evaluate eligible projects are "[t]he technical viability of the Project, considering engineering, electrical, and geographic factors" and "[t]he financial viability of the Project."[458] In assessing viability, the Department examines details including, but not limited to, the applicant's "prior experience related to constructing, financing, facilitating, or studying construction of upgraded and/or new electric power transmission lines and related facilities for the primary purpose of delivering or facilitating the delivery of power generated by resources constructed or reasonably expected

[451] *Id.*

[452] *See id.* at Exhibit A. The Schedule notes that if Clean Line "becomes subject to property tax in Arkansas, it will pay the assessed taxes in accordance with local and state laws in lieu of the [payments to Arkansas counties] outlined in Exhibit A."

[453] Comment of Carol Munson Ross (June 11, 2015).

[454] *Id. See* sections V.a and V.b.i of this Summary of Findings for a discussion of the insufficient west-to-east transmission capacity on utilities' current systems to support wind export.

[455] Comment of Luis Contreras, at 2 (July 8, 2015).

[456] *Id.*

[457] Comment of Luis Contreras, at 3-4 (June 8, 2015).

[458] 2010 RFP, 75 Fed. Reg. at 32,941.

to be constructed," and "[v]erifiable information demonstrating that the [applicant] is in sound financial condition and has the ability to secure the necessary financing to meet the Project's requirements."[459]

Restated, the Department must generally be satisfied that a proposed section 1222 project is technically sound—that is, able to accomplish its core purpose of transmitting renewable energy efficiently, reliably, and cost-effectively. Similarly, long-distance HVDC lines are costly. The Department will only agree to participate with business entities who have demonstrated the ability to acquire funds to see the project to fruition.

In its 2010 Application, Clean Line described itself as "an independent developer of high voltage, long-haul transmission lines."[460] To illustrate its technical experience, it emphasized that its management team includes "highly regarded professionals in the electric energy industry, including individuals who have designed, studied, developed and secured the financing for multiple new transmission lines,"[461] along with "executives who have managed, built and financed ambitious projects in the renewable and traditional energy sectors around the world, as well as senior policy professionals who have shaped energy policy and advanced the renewable energy agenda at the local, state and national levels."[462] The company added that it was working with various entities to help its Project meet technical challenges. At the time of the original Application, it had engaged consultants for a variety of project components, including identifying possible right-of-way corridors, determining construction routes that will "minimize land use and environmental impacts," and ascertaining "conductor sizing, design criteria, right-of-way requirements and the family of structures to be used in constructing the line."[463] It also claimed to be "working with leading HVDC equipment manufacturers" well qualified to handle "the technical, planning and operational aspects of HVDC."[464]

Clean Line also stressed the Project's financial viability in its 2010 Application. The company estimated a cost breakdown of 1-2% for development (siting authority, interconnection studies, routing, permitting, and public outreach), 10% for pre-construction activities, and the remaining 88-89% for construction.[465] While admitting that pre-construction investment is harder to secure, Clean Line stated that it had "secured the funding it needs to advance the development of [the Project] to a stage where [TSAs] can be signed and more traditional sources of financing can be secured."[466] Clean Line then highlighted its management team's financing experience, including several billion dollars of project finance, and provided several examples of how "debt markets have a substantial history of supporting transmission, including merchant and HVDC lines."[467]

Clean Line's Part 2 Application bolstered the evidence of its Project's technical and financial viability. The Part 2 Application maintained that the Project was technically viable for three reasons. First, "[t]he Project relies on existing technology, as well as proven engineering and construction methods."[468]

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[459] *Id.* at 32,942.

[460] 2010 Application at 41.

[461] *Id.* at 42.

[462] *Id.*

[463] *Id.* at 45.

[464] *Id.* at 46.

[465] *Id.*, Table 10, at 47.

[466] *Id.* at 47.

[467] *Id.*

[468] Part 2 Application at 3-11.

The Project's HVDC line commutated conversion ("LCC") technology "is both tested and proven," as "[s]imilar HVDC converters using LCC have operated safely and reliably for over 40 years."[469] The Project's DC transmission line is to be built using well-established materials and design, and Clean Line pointed out that the Project is "simpler . . . than an AC overhead line, because [it] requires only two separate sets of conductors as opposed to the three separate sets of conductors required for an AC transmission line."[470] Clean Line also noted the qualifications of its vendors and engineering partners, emphasizing their breadth and depth of experience on similar projects.[471]

Second, Clean Line stated that SPP, MISO, and TVA "studied the Project's interconnection extensively," and that their findings confirmed "that the Project's interconnection complies with all applicable federal, regional and local reliability standards."[472] Clean Line added that its "Project can connect to the existing grid at the desired power levels without adverse impact to reliability for the Project or the interconnecting system."[473] Each of the three entities reviewed the Project as designed for reliability issues, and each found that the Project would not hamper reliability following interconnections. SPP's Transmission Working Group concluded in November 2012 that the Project would be "consistent with SPP planning processes and [meet] coordinated planning requirements under SPP Criteria."[474] TVA reported on its study to Clean Line in March 2014, and that report "identified certain upgrades that would be made to TVA's system to reliably interconnect the Project."[475] Responding to Clean Line's October 2013 interconnection request, MISO issued a report in February 2014 finding "no transmission constraints or required upgrades based on the request."[476] Although the interconnection process is contingent on further reliability upgrades, the Project's success in passing reliability analyses to date is an indication of a technically sound project.

Finally, Clean Line noted that its Project is geographically viable. Clean Line followed technical siting guidelines including the maximum practicable use of existing linear corridors and open lands, minimal crossings of water resources like lakes, rivers, and wetlands, and minimal transmission installation on land sloped over 20 percent.[477] Having gathered extensive data on the Project's proposed routes, Clean Line said that it has "not identified any geotechnical condition that conflicts with the feasibility of the construction or operation of the Project."[478] It also intends to continue geotechnical work to ensure that its foundation designs and structures are sound throughout the proposed route.[479]

Clean Line took additional steps in its Part 2 Application to highlight its sound financial condition. Clean Line said that financial statements attached in a confidential appendix to its Part 2 Application showed that its relevant corporate entities had "no material liabilities," and that all were "capitalized entirely

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[469] *Id.*

[470] *Id.*

[471] *See id.* at 3-11 to 3-12.

[472] *Id.* at 3-12 to 3-13.

[473] *Id.* at 3-13.

[474] *Id.*

[475] *Id.*

[476] *See id.* at 2-21 (citing MISO Feasibility Study (Feb. 10, 2014) at app. 10-B, http://energy.gov/sites/prod/files/2015/04/f22/CleanLinePt2-Appendix-10-B.pdf).

[477] *Id.* at 3-14.

[478] *Id.* at 3-15.

[479] *See id.*

with equity and [had] no debt."[480] The company explained that it uses equity from its shareholders to "contribute[] equity to its subsidiaries, which is used to fund the development of the Project."[481]

Clean Line also underlined the financial backing of its investors. Its two major investors, ZAM Ventures and National Grid USA, have extensive experience investing in energy sector projects.[482] Moreover, Clean Line emphasized that these two investors "are capable of supporting the Project as additional development milestones are reached,"[483] and that the funding "will enable Clean Line . . . to bring the Project . . . to a point of development where major permits and authorizations are obtained," facilitating long-term [TSAs] and more "project-specific financing arrangements."[484]

Lastly, Clean Line stressed that "the Project's construction will be fully financed *before* construction of the Project begins."[485] The company underscored that "[m]any successful transmission projects have followed [its] model in which initial equity investors fund development and the Project is later refinanced at the project level to fund construction."[486] Clean Line then cited several examples to show "that debt and equity financing is in plentiful supply for projects like the [Clean Line] Project."[487] Moreover, Clean Line said, funding is ripe for wind projects—for one example, "Horizon Wind Energy (now EDP Renewables), which is one of the leading developers of wind generation facilities in the U.S., successfully used [the project finance] approach to develop, finance, construct, and place into operation a number of significant wind generation projects throughout the U.S."[488] Clean Line concluded by pointing out that in its "financial model for the Project, projected revenues greatly exceed the anticipated expenses and will be sufficient to pay all operating costs without raising additional capital."[489] Accounting for all factors, Clean Line contends that its Project is well-positioned to raise all the capital it needs for construction, and that the Project will be financially self-sustaining once operational.

Several comments questioned the Project's technical viability, both on overall design and on vulnerability to damage. The design comments stated that "significant questions [had been raised] about corrosion of well casings and pipelines, as well as interference with electrical equipment,"[490] and criticized the Project's proposed route selection with claims that "no survey [had] ever been conducted on the ground."[491] A larger set of comments warned of damage to the Project from natural disasters or sabotage. These comments suggested that the Project is not technically viable because it has not accounted for repairs that could be necessary. For instance, a comment cautioned that the "Project involves DC electricity so it can't be easily diverted to the grid in the event of an accident."[492] Several comments noted that tornadoes

[480] *Id.* at 3-15.

[481] *Id.*

[482] *See id.* at 3-16.

[483] *Id.* at 3-16 to 3-17.

[484] *Id.* at 3-17.

[485] *Id.* (emphasis in original).

[486] *Id.*

[487] *Id.* at 3-17 to 3-18.

[488] *Id.* at 3-18.

[489] *Id.*

[490] Comment of Stephanie Stites (July 9, 2015).

[491] Comment of Cynthia Callahan (June 2, 2015) (emphasis removed).

[492] Comment of Leif Anderson (July 13, 2015).

often strike within the region the Project crosses.[493] Another comment raised the possibility of terrorist attacks on Project facilities, citing examples of attacks on other electrical facilities and claiming that "[t]he entire [Project] plan is fundamentally flawed in terms of security from attack."[494]

Numerous commenters also argued that Clean Line did not provide enough information to determine the Project's financial viability. Commenters were concerned about unaccounted-for costs, including the "cost of the likely line repair from 1-5 tornados per year"[495] and the "cost of TVA line upgrades [that] are interconnected with this Project."[496] Other comments accused the Project of having "no track record building transmission lines, no assets, no set timeline for a 10 year project (with the TVA Interconnection requirements) and no revenues before the in-service date" and suggested that Clean Line failed to show the Project's financial viability.[497]

The second set of comments on financial viability argued that the Project does not pass financial muster. For instance, one comment rhetorically challenged the Department to address "[w]hether and how the funding and expenditure structure envisioned by section 1222(c) and proposed by Clean Line in Appendix 4-A of its application proposal complies with the Appropriations Clause of section 9 of Article I of the U.S. Constitution; the Anti-Deficiency Act, 31 U.S.C. § 1341; and the Miscellaneous Receipts Statute, 33 U.S.C. § 3302."[498] Another comment suggested that the Project's major investors cannot adequately back the Project.[499] Further comments stated that the "project schedule is incomplete" and that a lack of service revenues for many years would scare investors away,[500] not to mention the Project's lack of current customers."[501]

The Department finds that Clean Line has sufficiently demonstrated the Project's technical viability. Clean Line plans to build and operate its HVDC transmission line with well-established technology. It is working with reputable firms to design and build the line. Critically, its management and collaborators have significant experience developing transmission line projects. Clean Line's management and partners plainly have the experience needed to carry out a project of this type. Moreover, the entities overseeing transmission systems to which the Project would interconnect also continue to study the Project as part of the interconnection process, and neither SPP nor MISO has identified a lack of technical viability to date. In any event, Clean Line is well-positioned to address any technical issues raised by SPP or MISO, and will bear the cost of any technical issues that may arise, which would not be unusual in the design and construction of a long-distance electric transmission line. Based on the proposal Clean Line has put forward, the Department believes Clean Line's Project is technically sound.

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[493] *Id.* (stating that Arkansas and Oklahoma "average 101 tornadoes per year, of which 4.63% are F3 and higher [on the Fujita Tornado Damage Scale]" and questioning whether Clean Line has "plans to stockpile repair materials for tornado events"); Comment of Sen. Lamar Alexander (June 11, 2015) (noting that"[a] single tornado could take down part of [a] transmission line, cutting off the wind farms from TVA.").

[494] Comment of J.D. Dyer, at 1 (June 7, 2015).

[495] Comment of Leif Anderson (July 13, 2015).

[496] *Id.*

[497] Comment of Luis Contreras (June 30, 2015).

[498] Comment of John C. Ale (Senior Vice President, General Counsel & Secretary, Southwestern Energy), at 14 (July 13, 2015).

[499] Comment of Luis Contreras (July 1, 2015).

[500] *See* Comment of Luis Contreras, at 11 (June 24, 2015).

[501] Comment of Cynthia Callahan (June 2, 2015).

Many of the technical issues raised by commenters have been addressed and/or mitigated. For example, the Final EIS concluded that "[a]lthough HVDC transmission lines may cause pipeline and well casing corrosion due to stray electric current (by utilizing the earth for transmission/return currents), the Project's dedicated metallic-return design eliminates the risk of stray voltage during operations."[502] The Final EIS also cited Clean Line's assertion "that there is minimal risk of interference with electronic equipment (since this type of equipment operates at greater frequencies than 60Hz and there are no well pads within the ROW that would utilize this equipment."[503] Contrary to the accusation of no ground-level surveys being conducted, the proposed route has in fact undergone extensive surveying, including for the highly-detailed Final EIS.

The Department expects that, as in nearly all high-voltage transmission projects, technical issues will surface as the Project progresses, and acknowledges that the risk of accidental or deliberate damage is impossible to eliminate entirely. Nonetheless, Clean Line is well-positioned to handle both technical issues and damage repair effectively. The damage other commenters referenced, and the repairs that would be necessary, would only come from extraordinary events. All transmission in the region faces the same threats from natural and artificial disasters. The Project does not bear unique risks, and its developers will confront the risks just as any other transmission project developer in the region would. In short, the Department believes that Clean Line has both the technical and financial wherewithal to repair extraordinary damage, and to arrange substitute service, quickly and effectively.

The Department also finds that the Clean Line Project is financially viable. According to the 2010 RFP, financial viability calls for an applicant to show that its financial condition is sound and that it "has the ability to secure the necessary financing to meet the [proposed] Project's requirements."[504] The second of these requirements is critical because it does not state that applicants must show that they have already secured project financing. Rather, an applicant must show only the *ability* to secure the financing. Here, Clean Line has not only emphasized its existing financial support, but has also provided a model that has succeeded in similar contexts and that would help ensure adequate financing.

Legal concerns in the comments are easily resolved. Section 1222(c)(2) states that "contributed funds shall be available for expenditure for the purpose of carrying out the Project (A) without fiscal year limitation; and (B) as if the funds had been appropriated specifically for that Project." This provision is dispositive, as Congress has therefore given contributed funds the status of appropriations under section 1222.[505] The Constitution's Article I Appropriations Clause states that "[n]o Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law."[506] The Anti-Deficiency Act prevents federal officers or employees from spending or allocating funds that Congress has not appropriated.[507] The

[502] Final EIS at 3.4-92.

[503] *Id.*

[504] 2010 RFP, 75 Fed. Reg. at 32,942.

[505] Congress has taken the same approach in other statutes. *See, e.g.*, 43 U.S.C. § 397a ("Any moneys which may have been heretofore or may be hereafter advanced for operation and maintenance of any project or any division of a project shall be covered into the reclamation fund and shall be available for expenditure for the purposes for which advanced in like manner as if said funds had been specifically appropriated for said purposes.") (emphasis added); 16 U.S.C. § 590z-6 ("Charges collected during the development period of a project . . . shall be available for expenditure for operation and maintenance of said project in like manner as if said funds had been specifically appropriated for said purposes.").

[506] U.S. Const. art. I, § 9, cl. 7.

[507] 31 U.S.C. § 1341(a) ("An officer or employee of the United States Government or of the District of Columbia government may not (A) make or authorize an expenditure or obligation exceeding an amount available in an appropriation or fund for the expenditure or obligation; (B) involve either government in a contract or obligation for

Miscellaneous Receipts Act generally requires that "an official or agent of the Government receiving money for the Government from any source shall deposit the money in the Treasury as soon as practicable without deduction for any charge or claim." The Department already complies with the Miscellaneous Receipts Act when it receives contributed funds, and—again—Congress specifically gave contributed funds appropriation status in section 1222.

In both its 2010 and 2015 applications, Clean Line has asserted it can secure the funding to make its Project succeed. As Clean Line underscored, other projects have used the same financing model it plans to use. The company has already found significant investor backing for the Project's initial stages. Because Clean Line assumes full financial liability for Project costs, the investors—sophisticated and experienced in energy development projects—would not take part without confidence in the Project's financial foundation. Once the initial stages are complete, Clean Line explains, more funding sources will become available.[508] Of course, the additional funding would only materialize if the Project were on sound financial footing, as "[n]o lender or investor is willing to take the risk that insufficient funding commitments lead to an incomplete Project."[509] If the Project were not financially viable, it would neither have attracted substantial investment thus far, nor have the potential to attract the additional investment it needs literally to get off the ground. The Department is therefore convinced that Clean Line has developed a financially viable Project.

Finally, the Participation Agreement would require Clean Line to obtain financing for the Project before the Department initiates any condemnation action. The Participation Agreement does so through its "Financing Condition," which essentially requires available and committed funds at all times to equal or exceed the Project's remaining costs.[510] One of several conditions precedent for DOE to condemn property is that "the Financing Condition shall be satisfied."[511] This safeguard would allow the Project to proceed with condemnation only if Clean Line has a funds readily available to ensure Project viability.

For the reasons stated, it is reasonable to conclude that Clean Line's Project meets the RFP standards of technically and financially viability.

VII. Conclusion

After careful consideration using the best available data, as well as close consultation with Southwestern, this Summary of Findings concludes that the Project meets the requirements of section 1222. First, the Project is necessary to accommodate an actual or projected increase in demand for electric transmission capacity. Several relevant regional transmission planning documents, as well as express interest from numerous renewable generators and potential transmission customers, demonstrate that the Project will address projected transmission demand increases. As further assurance, the Participation Agreement would require Clean Line to have under contract a substantial volume of transmission capacity before the Department would exercise its authority to acquire rights-of-way for the Project. Second, the Project is consistent with applicable, identified transmission needs, as well as efficient and reliable

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the payment of money before an appropriation is made unless authorized by law; (C) make or authorize an expenditure or obligation of funds required to be sequestered under section 252 of the Balanced Budget and Emergency Deficit Control Act of 1985; or (D) involve either government in a contract or obligation for the payment of money required to be sequestered under section 252 of the Balanced Budget and Emergency Deficit Control Act of 1985.").

[508] Part 2 Application at 3-17 (noting that once the Project enters TSAs, "project-specific financing arrangements can be entered into with lenders and with equity investors and/or other partners.").

[509] *Id*.

[510] *See* Participation Agreement § 1.1, at 20-21.

[511] *Id.* § 6.3(a)(iii), (b)(v).

operation of the transmission grid. SPP, an appropriate transmission organization with respect to this Project, has identified a need for transmission capacity to deliver wind from the western areas of its territory. The Project is ideally suited to meet this need. Third, the Project will be operated in conformance with prudent utility practice, as Clean Line agreed to do when it committed to using a Commission-approved OATT. Clean Line will also be required to maintain good utility practice in any operating agreement with a third-party, as well as any interconnection agreement. Fourth, the Project will conform to the rules of the appropriate transmission organization. Clean Line has agreed to turn Project operation over to an RTO or to an entity that will follow SPP's and MISO's rules upon interconnection. Finally, the Project will not duplicate the functions of existing transmission facilities or proposed facilities. The Department has reviewed projects SPP and MISO have already approved and, based on the best available data, has found that the Clean Line Project does not duplicate any of them.

Along with the statutory requirements, this Summary of Findings considered the evaluation criteria in the Department's 2010 RFP: whether the Project is in the public interest; whether the Project will facilitate the reliable delivery of renewable energy; the benefits and impacts to the states the Project would traverse; and whether the Project is both financially and technically viable. After consideration of these evaluation factors, and for the reasons provided above, this Summary of Findings concludes that the Project merits the Department's participation as set forth in the Participation Agreement.

EXECUTION VERSION

PARTICIPATION AGREEMENT

among

THE UNITED STATES DEPARTMENT OF ENERGY

and

PLAINS AND EASTERN CLEAN LINE HOLDINGS LLC,

ARKANSAS CLEAN LINE LLC,

PLAINS AND EASTERN CLEAN LINE OKLAHOMA LLC

and certain of their Affiliates (as set forth herein)

dated as of March 25, 2016

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LIST OF SCHEDULES

PARTICIPATION AGREEMENT

This PARTICIPATION AGREEMENT (this "Agreement"), dated as of March 25, 2016, is entered into by and among the UNITED STATES DEPARTMENT OF ENERGY (the "Department" or "DOE"), PLAINS AND EASTERN CLEAN LINE HOLDINGS LLC, a limited liability company organized under the laws of the State of Delaware ("Holdings"), ARKANSAS CLEAN LINE LLC, a limited liability company organized under the laws of the State of Delaware ("ACL"), PLAINS AND EASTERN CLEAN LINE OKLAHOMA LLC, a limited liability company organized under the laws of the State of Oklahoma ("PECL OK"), OKLAHOMA LAND ACQUISITION COMPANY LLC ("OLA"), a limited liability company organized under the laws of the State of Delaware, and, solely to the extent that any of the provisions set forth herein apply to the Clean Line Parties (as opposed to the Clean Line Entities, Holdings or any of the Project Subsidiaries), PLAINS AND EASTERN CLEAN LINE LLC, a limited liability company organized under the laws of the State of Arkansas ("PECL"). Capitalized terms used herein shall have the meanings set forth for such term in Section 1.1 of this Agreement.

RECITALS

WHEREAS, pursuant to Section 1222 of the Energy Policy Act of 2005 ("Section 1222"), the Secretary of the Department, acting through the Southwestern Power Administration ("SWPA"), has the authority to design, develop, construct, operate, maintain, own or otherwise participate with other Persons in designing, developing, constructing, operating, maintaining or owning new electric power transmission facilities and related facilities within any state in which SWPA operates and to accept third party funding for these purposes.

WHEREAS, pursuant to its authorities under, and in reliance upon, Section 1222, the Department is participating with the Clean Line Entities in the design, development, construction, operation, maintenance and ownership, as applicable, of approximately 705 miles of +/-600 kilovolt overhead, high voltage direct current ("HVDC") electric transmission facilities and related facilities with the capacity to deliver approximately 4,000 megawatts ("MW") (net) from renewable energy generation facilities located in the Oklahoma Panhandle and Texas Panhandle regions to the eastern state-line of Arkansas near the Mississippi River (the "Arkansas Connection Point") (collectively, the "Project").

WHEREAS, the Project shall include: (a) an AC/DC converter station and related facilities located in Texas County, Oklahoma (the "Converter Station Facility"), (b) an AC collection system of up to six AC transmission lines located in the Oklahoma Panhandle (the "AC Collection System"), (c) an intermediate AC/DC converter station and related facilities located in Pope County, Arkansas (the "Intermediate Converter Station") and (d) all transmission lines (including all structures and wires and related components) running from the Converter Station Facility to the Arkansas Connection Point and the AC transmission lines interconnecting the Converter Station Facility to the transmission system under the operational control of the Southwest Power Pool, Inc. ("SPP") and the Intermediate Converter Station to the transmission system under the operational control of the Midcontinent Independent System Operator ("MISO") (collectively, the "Transmission Line Facilities" and together with the Converter Station Facility, the AC Collection System, the Intermediate Converter Station and related

facilities, the "Project Facilities"). The Project Facilities located in Oklahoma are hereinafter referred to as the "OK Facilities" and the Project Facilities located in Arkansas are hereinafter referred to as the "AR Facilities." The Project Facilities include all temporary and permanent structures, wires and related components in respect of the Project.

WHEREAS, the Clean Line Parties are separately developing transmission and related facilities in Tennessee that will interconnect with the Project at the Arkansas Connection Point and may develop facilities in the Texas Panhandle that would interconnect with the Project at the Texas-Oklahoma state-line.

WHEREAS, on June 10, 2010, the Department published 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) (the "RFP") in the Federal Register. In July 2010, Clean Line Energy Partners LLC ("CLEP"), a limited liability company organized under the laws of the State of Delaware, submitted a proposal relating to the Project in response to the RFP and submitted a revised proposal in August 2011. In April 2012, the Department determined that CLEP's proposal was responsive to the RFP, and subsequently, on September 20, 2012, the Department and SWPA entered into an Advance Funding and Development Agreement (the "AFDA") with CLEP, PECL and PECL OK, which, among other things, provides for advance funding by CLEP, PECL and PECL OK to the Department and SWPA to commence necessary environmental reviews and other due diligence activities in order to assess whether the Project meets the criteria specified by Section 1222.

NOW, THEREFORE, in consideration of the mutual covenants contained herein and other valuable consideration, the receipt, adequacy and sufficiency of which are hereby acknowledged, the Parties hereto, intending to be legally bound, do hereby agree as follows:

ARTICLE I
DEFINED TERMS AND DEFINITIONS

1.1 Defined Terms. For purposes of this Agreement, the following words and expressions when initially capitalized shall have the meaning assigned to them below.

"Abandonment" means that (a) prior to the occurrence of Project Completion, development activities and construction activities (if construction has begun) in respect of the Project shall have ceased for any reason, other than as a result of the occurrence of Force Majeure or a Governmental Order that requires cessation of activities until compliance with the Governmental Order is achieved and the Clean Line Entity subject to such order is diligently pursuing compliance, for a period of ninety (90) consecutive days, (b) from and after the occurrence of Project Completion, the Project shall have ceased to operate, other than as a result of the occurrence of Force Majeure, for a period of ninety (90) consecutive days, or (c) at any time any Clean Line Entity shall have publicly declared that it intends not to continue with the development, design, engineering, construction, financing, ownership, operation, maintenance and management of the Project for any reason other than the occurrence of Force Majeure.

"AC" means alternating current.

"AC Collection System" has the meaning set forth in the recitals.

"Acceptable Counterparty" means any Person that either (a) owns and operates a renewable power generating facility located in any, all or some of the Oklahoma and Texas Panhandle regions and the State of Arkansas or (b) is a purchaser of renewable energy that is being delivered by the Project.

"Acceptable Form" means, with respect to any letter of credit, Guarantee, commitment, undertaking or other Contractual Obligation, that such letter of credit, Guarantee, commitment, undertaking or other Contractual Obligation is in form and substance reasonably acceptable or satisfactory to DOE; provided that it would be unreasonable for DOE not to accept or be satisfied with any such letter of credit, Guarantee, commitment, undertaking or other Contractual Obligation for purposes of satisfying any requirement, condition or other matter set forth in this Agreement to the extent such letter of credit, Guarantee, commitment, undertaking or other Contractual Obligation (a) is on customary market terms (to be determined taking into account the purpose for which such letter of credit, Guarantee, commitment, undertaking or other Contractual Obligation is being delivered or required under the terms of this Agreement), (b) does not contain any conditions precedent to any Person's obligations thereunder that could not reasonably be anticipated to be satisfied on a timely basis, (c) in the case of any Project Equity Commitment or Project Financing Commitment, such commitment is not predicated on the satisfaction of any general due diligence condition precedent, and (d) does not contain any unusual termination provisions (whether taking the form of an event of default, termination event, an event that gives rise to a right of acceleration or in any other form that gives rise to any of the foregoing) that could reasonably be anticipated to give rise to a termination of such letter of credit, Guarantee, commitment, undertaking of other Contractual Obligation or an acceleration of any applicable Clean Line Parties' obligations thereunder (excluding a termination based on a reasonable sunset date or date certain that in either case is consistent with the Project Schedule).

"Acceptable Guarantee" means an unconditional, irrevocable, direct-pay guarantee (a) that (i) is denominated in Dollars, (ii) provides that DOE is the beneficiary thereof, (iii) is issued by an Acceptable Support Provider, (iv) requires the issuer thereof to have waived all rights to make any claim against any Clean Line Party, DOE or the Collateral, whether for costs of maintaining the guarantee or reimbursement of amounts paid under the guarantee, or otherwise, and none of the Clean Line Parties shall be required to pay any fee to such issuer in respect of the issuance of such guarantee, in each case, except out of cash available for equity distributions or dividends to holders of Equity Interests in Holdings, (v) entitles DOE to make a demand for payment thereunder as contemplated by this Agreement, including under the circumstances contemplated by Section 11.5(a) and (vi) is otherwise in an Acceptable Form (including with respect to representations, covenants and requirements relating to posting of collateral support in instances where the issuer thereof ceases to be an Acceptable Support Provider) and (b) as to which DOE has received (i) such financial statements in respect of the issuer thereof as requested by DOE, (ii) customary legal opinions with respect to capacity, authority and enforceability of such guarantee and as to such other matters as reasonably requested by DOE from legal counsel acceptable to DOE, and (iii) corporate documents, resolutions, copies of any necessary consents and approvals and customary certificates by and in respect of the issuer thereof as reasonably required by DOE.

"Acceptable Letter of Credit" means an unconditional, irrevocable, direct-pay letter of credit that (a) is denominated in Dollars, (b) is issued in favor of DOE by an Acceptable Support Provider, (c) meets each of the following requirements and (d) is otherwise in Acceptable Form:

(i) the initial expiration date thereof shall be at least twelve (12) months beyond the date of issuance, and shall automatically renew upon its expiration (which renewal period shall be for at least twelve (12) months) unless, at least forty-five (45) days prior to any such expiration, the issuer thereof shall provide DOE with a notice of non-renewal of such letter of credit;

(ii) upon any failure to renew such letter of credit at least thirty (30) days prior to such expiration date, or if the issuer of such letter of credit shall cease to be an Acceptable Support Provider, the entire face amount thereof shall be drawable by DOE;

(iii) such letter of credit shall be drawable by DOE as contemplated by this Agreement, including under the circumstances contemplated by Section 11.5(a);

(iv) no Contractual Obligation executed or delivered in connection with such letter of credit shall provide the issuer thereof or any other Person with any claim against any Clean Line Party, DOE, or the Collateral, whether for costs of maintenance, reimbursement of amounts drawn under such letter of credit or otherwise (except if such letter of credit is provided as part of the Project Financing pursuant to the Project Financing Documents);

(v) such letter of credit shall be payable immediately, conditioned only on written presentment from DOE to the issuer thereof of a sight draft drawn on such letter of credit and a certificate stating that DOE has the right to draw under such letter of credit in the amount of the sight draft without the requirement to present the original letter of credit; and

(vi) such letter of credit shall allow for multiple draws.

"Acceptable Permitted Project Investment Commitment" means a binding Contractual Obligation entered into by one or more of the Clean Line Entities with an Acceptable Counterparty pursuant to which such Acceptable Counterparty has committed to make a Permitted Project Investment for fair market value in order to have the right to use a portion of the Electrical Capacity for the transmission of power from renewable energy sources related to such Acceptable Counterparty's purchase or sale of renewable energy or to enter into Acceptable Transmission Services Agreements with other third parties; provided that the obligation of such Acceptable Counterparty to make the applicable Permitted Project Investment shall only be subject to the satisfaction of the conditions precedent set forth on Part A of Schedule 14 hereto or shall otherwise be in an Acceptable Form.

"Acceptable Support Provider" means a Person that meets the following criteria:

(a) in the case of an Acceptable Letter of Credit or letter of credit provided in connection with any Project Equity Commitment, such Person (i) is either (A) a bank with a branch or representative office in New York, New York and is organized under or licensed as a branch or agency under the laws of the United States or any State thereof or (B) a corporation or limited liability company that is organized under the laws of the United States or any State thereof, (ii) has outstanding unguaranteed and unsecured long-term Indebtedness for Borrowed Money that is rated "A-" or better by S&P and "A3" or better by Moody's (with neither such rating being on negative watch) and (iii) has a combined capital and surplus of at least $500,000,000;

(b) in the case of an Acceptable Guarantee, such Person (i) is a corporation or limited liability company that is organized under the laws of the United States or any State thereof, (ii) has outstanding unguaranteed and unsecured long-term Indebtedness for Borrowed Money that is rated at least "BBB" by S&P and "Baa2" by Moody's (with neither such rating being on negative watch) and (iii) has a combined capital and surplus of at least $250,000,000; and

(c) in the case of a Project Equity Commitment, such Person is a corporation, limited partnership or limited liability company that is organized under the laws of the United States or any State thereof and such Person (i) has outstanding unguaranteed and unsecured long-term Indebtedness for Borrowed Money that is rated at least "BBB" by S&P and "Baa2" by Moody's (with neither such rating being on negative watch) or (ii) has a combined capital and surplus of at least $250,000,000.

"Acceptable Transmission Services Agreement" means a firm committed Transmission Services Agreement with an Acceptable Counterparty that (a) satisfies the following criteria; (i) the term of such Transmission Services Agreement is for not less than five years, (ii) the obligation of the Acceptable Counterparty thereto is only subject to the satisfaction of the conditions precedent set forth in Part A of Schedule 14 hereto, (iii) such Transmission Services Agreement contains only rights of termination on the part of the Acceptable Counterparty set forth in Part B of Schedule 14 hereto, and (iv) such Transmission Services Agreement cannot be terminated for convenience, whether by payment of a penalty or otherwise, or (b) is otherwise in an Acceptable Form.

"Account Collateral" has the meaning set forth in Section 11.6(a)(i).

"ACL" has the meaning set forth in the preamble.

"Acquisition by Condemnation" means any acquisition of Project Real Estate Rights by DOE through its powers of eminent domain or by condemnation.

"Acquisition Option" has the meaning set forth in Section 7.2(a).

"Action" means any (a) action, suit or proceeding of or before any Governmental Authority, (b) investigation by a Governmental Authority or (c) arbitral proceeding.

"Active Participation" means, in respect of any Key Person, that such Key Person (a) prior to the issuance of the Notice to Proceed, devotes substantially all of his business time and attention to the Clean Line Entities and CLEP (and its Subsidiaries) and the conduct of their business and (b) after the issuance of the Notice to Proceed and until Project Completion, such Key Person remains involved with the Clean Line Entities and the conduct of their business.

"Adverse DOE Impact" means a material adverse effect on (a) DOE's rights and remedies under the Transaction Documents, including each Covered Party's right to be indemnified for Covered Liabilities, (b) each Clean Line Party's ability to perform in a timely manner its obligations under this Agreement or any other Transaction Document, including such Clean Line Party's obligation to pay Covered Costs, (c) DOE's express third party beneficiary rights under any Material Project Contract, (d) the construction or operation of the Project, (e) DOE's obligations or liabilities in respect of any DOE Delegated Real Estate Rights or the AR Facilities, (f) the validity or enforceability of any material provision of this Agreement or any other Transaction Document, and (g) the validity or enforceability of the Performance Support or the validity, enforceability or priority of DOE's security interests in the Collateral and the continued effectiveness and enforceability of the Security Documents.

"Advance Funding Account" has the meaning set forth in Section 11.3(a).

"Advanced Funding Contingency Amount" means, as of any given date, a contingency amount equal to 10% of all Covered Costs estimated by DOE to be due and payable by DOE in the three (3) month period immediately succeeding such date of determination.

"AFDA" has the meaning set forth in the recitals.

"Affiliate" means with respect to any Person, any other Person that directly or indirectly Controls, or is under common Control with, or is Controlled by, such Person and, if such Person is an individual, any member of the immediate family of such individual and any trust whose principal beneficiary is such individual or one or more members of such immediate family and any Person who is Controlled by any such member or trust.

"Affiliated Lenders" means any Person that either (a) is an Affiliate of any Clean Line Party or (b) owns, directly or indirectly, more than five percent (5%) of the Equity Interests in any Clean Line Party.

"Aggregate Payments" means, with respect to a Contributing Subsidiary Guarantor as of any date of determination, an amount equal to (a) the aggregate amount of all payments and distributions made on or before such date by such Contributing Subsidiary Guarantor in respect of the Guarantee under Article IX, *minus* (b) the aggregate amount of all payments received on or before such date by such Contributing Subsidiary Guarantor from the other Contributing Subsidiary Guarantors as contributions under Section 9.2.

"Agreed Rate" means the "Prime rate" for the "U.S." as published in the "Money Rates" table of The Wall Street Journal from time to time.

"Agreement" has the meaning set forth in the preamble.

"AM Laws" means, with respect to any Person, all Applicable Laws concerning or relating to anti-money laundering.

"Anti-Corruption Laws" means, with respect to any Person, all Applicable Laws concerning or relating to bribery or corruption, including, the Foreign Corrupt Practices Act of 1977 (Pub. L. No. 95 213, §§101-104).

"Applicable Amount" means (a) from and after the Commencement Date but before DOE has issued the Notice to Proceed, $5,000,000 and (b) from and after the issuance of the Notice to Proceed, $50,000,000 *minus* the balance of any funds then on deposit in, or credited to, the Wind-Up Reserve Account; provided that the Applicable Amount, from and after the issuance of the Notice to Proceed, shall in no event be less than $10,000,000 at any time.

"Applicable Laws" means, with respect to any Person, any constitution, statute, law, rule, regulation, code, ordinance, treaty, judgment, order or any published directive, guideline, requirement, other governmental rule or restriction or Governmental Order which has the force of law, by or from a court, arbitrator or other of a Governmental Authority having jurisdiction over such Person or any of its Properties, whether in effect as of the date hereof or as of any date hereafter and including any applicable Environmental Laws.

"APSC" means the Arkansas Public Service Commission.

"APSC 2011 Order" has the meaning set forth in Section 12.1(t).

"AR Facilities" has the meaning set forth in the recitals.

"Arkansas Connection Point" has the meaning set forth in the recitals.

"Authorized Officer" means, (a) with respect to any Person that is a corporation, the chairman, chief executive officer, president, vice president, assistant vice president, treasurer, assistant treasurer, or any other financial officer of such Person, (b) with respect to any Person that is a partnership, each general partner of such Person or the chairman, chief executive officer, president, a vice president, an assistant vice president, treasurer, an assistant treasurer or any other financial officer of a general partner of such Person or (c) with respect to any Person that is a limited liability company, the manager, managing partner or duly appointed officer of such Person, the individuals authorized to represent such Person pursuant to the Organizational Documents of such Person, or the chairman, chief executive officer, president, vice president, assistant vice president, treasurer, assistant treasurer or any other financial officer of the manager or managing member of such Person.

"Bankruptcy Code" means Title 11 of the United States Code entitled "Bankruptcy", as amended.

"Bankruptcy Law" means the Bankruptcy Code and any similar federal, state or foreign law for the relief of debtors, conservatorship, bankruptcy, general assignment for the benefit of creditors, moratorium, rearrangement, receivership, insolvency, reorganization or similar debtor

relief laws of the United States or other applicable jurisdictions from time to time in effect, and any similar federal, state or foreign law for the relief of debtors affecting the rights of creditors generally.

"Base Amount" means, as of any date of determination, the sum of: (a) the amount of all Covered Costs estimated by DOE to be due and payable by DOE in the three (3) month period immediately succeeding such date of determination *plus* (b) the sum of any future amounts payable from time to time by DOE pursuant to any Contractual Obligation entered into by DOE in connection with the Project (including any Real Estate Rights Agreements) (but subject in all cases to Section 11.3(g)) regardless of the time at which such amount is payable by DOE (for the avoidance of doubt, such amount shall include any amounts payable by DOE under any such Contractual Obligation for any future years occurring during the term of such Contractual Obligation).

"Base Case Projections" has the meaning set forth in Section 6.1(h).

"Base Contingency Amount" has the meaning set forth in the definition of "Contingency Amount".

"Biological Opinion" means the U.S. Fish and Wildlife's biological opinion issued on November 20, 2015 pursuant to Section 7 of the Endangered Species Act regarding the Project and Other Facilities, as amended or updated from time to time as required.

"Business Day" means any day other than a Saturday, Sunday or any other day on which DOE is not open for business.

"Capital Expenditures" means, with respect to any Person for any period, any expenditure in respect of the purchase or other acquisition of any fixed or capital asset (excluding normal replacements and maintenance which are properly charged to current operations).

"Capital Lease" means, for any Person, any lease of (or other agreement conveying the right to use) any Property of such Person that would be required, in accordance with GAAP, to be capitalized and accounted for as a capital lease on a balance sheet of such Person.

"Capital Lease Obligations" means the obligations of any Person under any Capital Lease.

"Capital Repairs" means (a) any and all work necessary, desirable or appropriate to repair, restore, refurbish or replace any equipment, structure or any other component of the Project Facilities (or any portion thereof) after Project Completion, including any such work necessitated by (i) any defect or deficiency, (ii) physical or functional obsolescence of the Project Facilities, as adjudged by Prudent Utility Practices, or (iii) modifications required by any Applicable Law or dictated by the observance of Prudent Utility Practices or (b) the substitution, replacement, enlargement or improvement of any structure, facility, equipment, Property, land or land rights constituting part of the Project Facilities.

"Capital Repairs Reserve Account" has the meaning set forth in Section 4.8(b).

"Change of Control" means:

(a) prior to the occurrence of a Qualified IPO in respect of the Clean Line Entities, the occurrence of any of the following events or circumstances:

(i) CLEP or the Clean Line Entities are no longer Controlled by a Permitted Holder, or

(ii) until Project Completion, any Key Person ceases Active Participation (other than as a result of sickness, death, incapacity or retirement) and within sixty (60) days either: (A) is not replaced by an individual that is acceptable to DOE, such consent not to be unreasonably withheld or delayed (it being understood and agreed that it would be unreasonable to withhold consent to the extent the replacement individual has qualifications and experience substantially similar to or better than the experience of the individual being replaced and such replacement individual is not a Prohibited Person) or (B) recommences Active Participation; or

(b) from and after the occurrence of a Qualified IPO, the occurrence of any of the following events of circumstances:

(i) the Clean Line Entities are no longer Controlled by the IPO Entity, or

(ii) any "person" or "group" (as such terms are used in Sections 13(d) and 14(d) of the Securities Exchange Act of 1934, but excluding any employee benefit plan of such person or its subsidiaries, and any person or entity acting in its capacity as trustee, agent or other fiduciary or administrator of any such plan) other than the Permitted Holders becomes the "beneficial owner" (as defined in Rules 13d-3 and 13d-5 under the Securities Exchange Act of 1934, except that a person or group shall be deemed to have "beneficial ownership" of all securities that such person or group has the right to acquire, whether such right is exercisable immediately or only after the passage of time (such right, an "option right")), directly or indirectly, of 25% or more of the equity securities of the IPO Entity entitled to vote for members of the board of directors or equivalent governing body of the IPO Entity on a fully-diluted basis (and taking into account all such securities that such "person" or "group" has the right to acquire pursuant to any option right), or

(iii) during any period of twelve (12) consecutive months, a majority of the members of the board of directors or other equivalent governing body of the IPO Entity cease to be composed of individuals (A) who were members of that board or equivalent governing body on the first day of such period, (B) whose election or nomination to that board or equivalent governing body was approved by individuals referred to in clause (A) above constituting at the time of such election or nomination at least a

majority of that board or equivalent governing body or (C) whose election or nomination to that board or other equivalent governing body was approved by individuals referred to in clauses (A) and (B) above constituting at the time of such election or nomination at least a majority of that board or equivalent governing body, or

(iv) the passage of thirty (30) days from the date upon which any Person or two (2) or more Persons acting in concert shall have acquired by contract or otherwise, or shall have entered into a contract or arrangement that, upon consummation thereof, will result in its or their acquisition of the power to exercise, directly or indirectly, Control over the IPO Entity, or Control over the equity securities of the IPO Entity entitled to vote for members of the board of directors or equivalent governing body of the IPO Entity on a fully-diluted basis (and taking into account all such securities that such Person or Persons have the right to acquire pursuant to any option right) representing 25% or more of the combined voting power of such securities, or

(v) any "change of control" or any comparable term under, and as defined in, any Contractual Obligation to which the IPO Entity is a party shall have occurred; or

(c) at any time, Holdings shall cease to own, directly or indirectly, 100% of the beneficial or of record Equity Interests in each of PECL, ACL and PECL OK; or

(d) at any time, CLEP shall fail to own, directly or indirectly, 100% of the beneficial or of record Equity Interests in Holdings.

"Change of Law" means any change in any Applicable Law or the application or requirements thereof of any Governmental Authority issued after the Effective Date.

"Claiming Party" has the meaning set forth in Section 10.1.

"Clean Line Document" means, at any given time, this Agreement, any other Transaction Document in effect at such time and any Material Project Contract in effect at such time.

"Clean Line Entity" means Holdings and each of its Subsidiaries (other than PECL and any PECL Subsidiary).

"Clean Line Guarantor" means any Person that is a guarantor under any Acceptable Guarantee.

"Clean Line Material Adverse Effect" means, as of any date of determination, a material and adverse effect on (a) the Project, (b) the ability of the Clean Line Parties, taken as a whole, to perform their material obligations in a timely manner under any Transaction Document, (c) the business, Properties, operations or financial condition of the Clean Line Parties, taken as a whole, (d) the validity or enforceability of any material provision of any Transaction Document, (e) any material right or remedy of DOE under the Transaction Documents or (f) the Lien of

DOE on any of the Collateral under any Security Document (except as contemplated under this Agreement).

"Clean Line Obligor" means each of the Clean Line Parties and any Clean Line Guarantor.

"Clean Line Party" means Holdings and each of its Subsidiaries (including PECL and any PECL Subsidiary).

"CLEP" has the meaning set forth in the recitals.

"Collateral" means any Equity Interests in ACL or any other Property (whether tangible or intangible) of the Clean Line Entities whether now existing or hereinafter acquired that are subject to or are intended to be or become subject to the Lien granted to DOE pursuant to the Security Documents as required under the terms of this Agreement.

"Commencement Date" means the first date on which the conditions precedent set forth in Section 6.2 shall have been satisfied.

"Completion Conditions" means the satisfaction of each of the following conditions:

(a) the Project has commenced commercial operation and has satisfied the requirements for "substantial completion" (or term of similar import) as defined in and in accordance with all Construction Contracts and the initial Electrical Capacity (as specified in the definition thereof) of the Project has been certified by an Independent Engineer;

(b) the Project has been safely and reliably energized and energy may be delivered across the Project Facilities to SPP's, MISO's and TVA's transmission systems in accordance with the Interconnection Agreements;

(c) the Project has been constructed and become available for normal, safe and continuous operation in compliance in all material respects with the requirements and specifications of the Project Plans, the Material Project Contracts, Applicable Law, any Required Approvals and Prudent Utility Practices;

(d) all payments required to be made to each Contractor under each Material Construction Contract have been paid in full in cash, other than any payments that are subject to Contest;

(e) a final invoice has been issued by (or on behalf of) the Clean Line Entities to any applicable Contractor as to any liquidated damages payable under any Construction Contract;

(f) the Clean Line Entities have delivered to DOE executed acknowledgments of payments and releases of Liens from the Contractors under each Material Construction Contract and each Major Subcontractor thereunder for all work, services and materials, including equipment and fixtures of any kind, done,

previously performed or furnished for the construction of the Project, other than to the extent payment thereof is subject to Contest;

(g) all Required Approvals that are necessary or required to have been obtained as of Project Completion under Applicable Law or any material Contractual Obligation applicable to, or binding on, any Clean Line Entity (i) have been obtained, (ii) are in full force and effect and (iii) all conditions precedent to the effectiveness of any such Required Approval have been satisfied;

(h) all Required Insurance with respect to the operational phase of the Project is in place, in good standing and in full force and effect without default and all premiums due thereon have been paid in full, and DOE has received evidence thereof;

(i) all Project Real Estate Rights, utilities and other services, means of transportation, facilities, equipment, other rights and materials or supplies necessary for the operation of the Project in accordance (in all material respects) with Prudent Utility Practices, Applicable Law, Required Approvals, the Transaction Documents and the Material Project Contracts and as otherwise contemplated by the Project Plans are available to the Clean Line Entities under the terms of the Material Project Contracts then in effect or otherwise available on commercially reasonable terms materially consistent with the then applicable Project Budget;

(j) the Capital Repairs Reserve Account has been established and funded in full; and

(k) no Default or Event of Default has occurred and is continuing.

"Construction Contract" means any design, construction, procurement, supply or other Contractual Obligation executed in connection with the construction, procurement, installation, or improvement of land, buildings, equipment, or facilities necessary or desirable for the Project.

"Construction Contractor" means any Contractor under any Construction Contract.

"Construction Costs" means any and all Project Costs anticipated to be incurred by either of DOE or any Clean Line Entity in connection with the design, development, engineering, construction, administration, management, operation, financing and ownership of the Project through the occurrence of Project Completion.

"Construction Progress Report" means a construction progress report prepared quarterly by the Clean Line Entities, which shall include: (a) a reasonably detailed assessment of the progress of construction to date in comparison with the Project Plans then in effect for such quarterly period (along with an explanation of material delays, if any) and the expected progress of construction; (b) contingencies used or reasonably expected to be used to pay Construction Costs; (c) any events that have occurred or are reasonably expected to occur that would materially affect the construction schedule; (d) a description and explanation of any Events of Loss that have occurred and (e) material disputes or Actions between any Clean Line Entity and any other Person.

"Contest" means, with respect to any matter, claim or Governmental Order involving any Person, that such Person is contesting or appealing such matter, claim or Governmental Order in good faith and by appropriate proceedings timely instituted; provided that the following conditions are satisfied: (a) such Person has established reasonably adequate reserves with respect to the contested items in accordance with GAAP and (b) such contest and any resultant failure to pay or discharge the claimed or assessed amount or to comply with the applicable Governmental Order does not, and could not reasonably (individually or in the aggregate) be expected to, result in a Clean Line Material Adverse Effect or an Adverse DOE Impact.

"Contingency Amount" means (a) as of any date occurring prior to the issuance of the Notice to Proceed, a contingency amount equal to (i) the lesser of (A) 15% and (B) such lower percentage as (1) prior to the occurrence of Project Financial Close, the Coordination Committee may agree based on input from the Independent Engineer and (2) from and after the occurrence of Project Financial Close, the Project Financing Parties determine to be acceptable for purposes of the financing the Construction Costs as part of the Project Financing *multiplied by* (ii) the amount of all Construction Costs reasonably anticipated by the Clean Line Entities as of such date of determination to be incurred from and after such date of determination in connection with achieving Project Completion (such contingency amount being the "Base Contingency Amount") and (b) on any date occurring after the issuance of the Notice to Proceed, (i) the Base Contingency Amount as of the date of the issuance of the Notice to Proceed *minus* (ii) the amount of any reduction in the Base Contingency Amount agreed by the Project Financing Parties *minus* (iii) any amounts of the Base Contingency Amount applied to the payment of Construction Costs since the issuance of the Notice to Proceed.

"Controlling Person" means, with respect to any Person, any other Person that, directly or indirectly Controls such Person.

"Contractor" means any Person with whom a Clean Line Party enters into any Project Contract or performs any part of the Work or provides any materials, equipment, hardware or supplies for any part of the Work and any Person with whom any Contractor has further subcontracted any part of the Work.

"Contractual Obligation" means, as to any Person at any given time, any contractual provision of any security issued by such Person or of any indenture, mortgage, deed of trust, contract, agreement, instrument or other undertaking to which such Person is a party at such time or by which it or any of its Property is bound at such time.

"Contributing Subsidiary Guarantors" has the meaning set forth in Section 9.2.

"Control" means (including, with its correlative meanings, "Controlled by" and "under common Control with") as used with respect to any Person, possession, directly or indirectly, of the power to direct or cause the direction of management or policies of such Person (whether through ownership of voting securities or partnership or other ownership interests, by contract or otherwise); provided, that in any event and for all purposes of the Transaction Documents, (a) with respect to any Investment Fund, such Investment Fund shall be deemed to be Controlled by its general partner and any Person that Controls such general partner and (b) in all other cases, any Person that owns directly or indirectly ten percent (10%) or more of Equity Interests having

ordinary voting powers for the election of directors or other applicable governing body of another Person (but excluding limited partnership or similar types of ownership interests and tax equity investors) shall be deemed to Control such other Person.

"Converter Station Facility" has the meaning set forth in the recitals.

"Converter Station Real Estate Rights Agreements" has the meaning set forth in Section 6.2(a)(v).

"Coordination Committee" has the meaning set forth in Section 5.1(a).

"Covered Cost" has the meaning set forth in Section 11.1.

"Covered Liability" means any and all liabilities (including, without, limitation, negligence, warranty, statutory, product, strict or absolute liability, liability in tort or otherwise), obligations, losses, settlements, damages, penalties, fines (including NERC fines), sanctions, Taxes, claims, actions, demands, suits, judgments or proceedings of any kind and nature, costs, payments, expenses and disbursements (including fees and expenses of consultants, advisors, external counsel and allocable fees and expenses of internal personnel and attorneys) of whatsoever kind and nature (whether or not any of the transactions contemplated by any of the Transaction Documents are consummated), imposed on, incurred or suffered by, or asserted against any Covered Party in any way relating to or arising out of:

(a) the Project, the Project Facilities, any of the Project Real Estate Rights, or any portion or interest in any one or more of the foregoing;

(b) the Transaction Documents, the Project Contracts, the Project Financing Documents or the transactions contemplated thereby or the enforcement of any of the rights, remedies or terms of any thereof;

(c) the conduct of the business or affairs of any Clean Line Party and the Project;

(d) the sale or providing of any transmission services or any non-delivery by any Clean Line Party of any transmission services in respect of the Project;

(e) the design, condition, operation, use, non-use, ownership, lease, sublease, maintenance, repair, substitution, possession, rental, conversion, return, registration, re-registration, alteration, overhaul, modification, improvement, testing, removal, replacement, installation, storage, severance, transfer of title, decommissioning, abandonment, sale, resale or other application or disposition or use of any of the Project, the Project Facilities, or any Project Real Estate Rights or any portion of or interest in any one or more of the foregoing or any other Property in which any Clean Line Party or, solely to the extent such Property relates to the Project, any other Property in which DOE, has an interest, including any Covered Liability in any way relating to or arising out of (i) failure to comply with, or costs of compliance with any Environmental Claim or any Release of any Hazardous Substance, (ii) loss or damage to any Property or the environment or death or injury to any Person resulting therefrom, (iii) any patent, trademark or

copyright infringement relating thereto and (iv) latent or other defects with respect to the Project Facilities, regardless of whether discoverable and including injury, death and Property damage to other with respect to the foregoing;

(f) the nonperformance or breach by any Clean Line Obligor or any Project Participant of any of its covenants or obligations or the falsity of any representation or warranty obligations under any Project Contract, Project Financing Document, Transaction Document or any other Contractual Obligation to which it is a party under or in respect of any Required Approval or any act, or omission to act in breach of a legal duty to act with respect to, or in connection with the Project, the Project Facilities, the Project Real Estate Rights or any portion of or interest in any one or more of the foregoing or any other Property in which any Clean Line Party has an interest;

(g) the offer, sale, delivery, refinancing, funding or syndication of the Project Financing;

(h) the imposition of any Lien on or with respect to the Project or the Project Facilities in respect of which any Covered Party has an interest (other than Permitted Liens);

(i) failure of any Clean Line Obligor or any Project Participant to comply with any Applicable Laws (including any Environmental Laws);

(j) the environmental condition and impact of or from the Project, the Project Facilities or the Project Real Estate Rights or any other Property in which any Clean Line Party has any interest, including personal injuries and injuries to the Property of third parties;

(k) any regulatory action under any Applicable Law pertaining directly or indirectly to the Project, the Project Facilities or the Project Real Estate Rights or any other Property in which any Clean Line Party has an interest;

(l) any costs incurred by DOE in connection with its performance or undertaking of any non-delegable obligations or responsibilities under the DOE Mitigation Action Plan, any Cultural Resource Agreement with NHPA, the Endangered Species Act or any other Applicable Law to the extent relating to the Project; or

(m) any of the foregoing Covered Liabilities set forth in clauses (i)-(k), to the extent in connection with, arising out of or in any way related to the design, development, construction, financing, ownership, operation, maintenance or management of the TN Facilities or the TX Facilities and any Real Estate Rights related thereto or any other business conducted by any Clean Line Party from time to time.

"Covered Party" means the United States of America and each of its agencies, departments (including the Department and SWPA), authorities and instrumentalities and each of their elected officials, board members, secretaries, officers, directors, employees, counsel, financial advisors, technical consultants, or agents of any thereof.

"Credit-Worthy Affiliate" means, as of any date of determination, any Affiliate of a Clean Line Entity that either (a) as of any date of determination, is an Acceptable Support Provider or (b) has its obligations in respect of its applicable Project Equity Commitment supported in full by an unconditional and irrevocable letter of credit issued by an Acceptable Support Provider or by an unconditional and irrevocable Guarantee issued by an Acceptable Support Provider, which letter of credit or Guarantee is in an Acceptable Form.

"Cultural Resource Agreement" means a programmatic agreement, memorandum of agreement, and/or binding commitment concerning historic properties for purposes of complying with Section 106 of the NHPA in the development, construction and operation of Project.

"Curative Party" has the meaning set forth in Schedule 1 hereto.

"Davis-Bacon Act" means Subchapter IV of Chapter 31 of Part A of Subtitle II of Title 40 of the United States Code, including, and as implemented by, the regulations set forth in Parts 1, 3 and 5 of title 29 of the Code of Federal Regulations.

"Davis-Bacon Requirements" means, to the extent that DOE (or the Department of Labor, as the case may be) has made a determination that the Davis-Bacon Act is applicable to this Agreement and/or the Project: (a) the Davis-Bacon Act and (b) as set forth in Schedule 15 hereto (as such Schedule is supplemented from time to time in accordance with Section 8.24(b)): (i) all regulations related to the Davis-Bacon Act, including those set forth in the Department of Labor regulations at 29 C.F.R. §§ 5.5(a)(1) to (10) and 5.5(b)(1) to (4) and (ii) applicable wage determinations containing locally prevailing wages as determined by the Secretary of Labor.

"DC" means direct current.

"Deadlock" has the meaning set forth in Section 5.1(f).

"Debarment Regulations" means (a) the Government-wide Debarment and Suspension (Non procurement) regulations (Common Rule), 53 Fed. Reg. 19204 (May 26, 1988), (b) Subpart 9.4 (Debarment, Suspension, and Ineligibility) of the Federal Acquisition Regulations, 48 C.F.R. §§ 9.400 – 9.409 and (c) the revised Government-wide Debarment and Suspension (Non-procurement) regulations (Common Rule), 60 Fed. Reg. 33037 (June 26, 1995).

"Debt Collection Improvement Act" means the Debt Collection Improvement Act of 1996, as amended from time to time.

"Default" means an event that, with the giving of notice or passage of time or both, would become an Event of Default.

"Default Rate" means the lesser of (a) four percent (4%) *per annum* above the Agreed Rate and (b) the maximum rate of interest permitted by Applicable Law.

"Department" has the meaning set forth in the preamble.

"Disposition" means, with respect to any Property, any direct or indirect sale, lease, license, assignment, exchange, conveyance or other transfer or disposition thereof (including the granting of any Lien or security interest in respect thereof), whether by agreement, operation of law or otherwise other than licenses of or similar arrangements for intellectual property rights (and the verb "Dispose" shall be construed accordingly).

"Documentation Package" has the meaning set forth in Schedule 1 hereto.

"DOE" has the meaning set forth in the preamble.

"DOE Acquired Real Property" means any Real Estate Rights acquired by DOE pursuant to the terms of this Agreement.

"DOE Approved Project Equity Commitment" means any Project Equity Commitment that is in an Acceptable Form.

"DOE Approved Project Financing Commitment" means any Project Financing Commitments that are in an Acceptable Form.

"DOE Delegated Real Estate Right" has the meaning set forth in Section 3.3(a).

"DOE Direct Agreement" means one or more consents to assignment or direct agreements to be entered into between DOE and the Project Financing Parties (or their applicable agent) providing for, among other terms to be agreed between DOE and the Project Financing Parties, certain step-in and lender cure rights in favor of the Project Financing Parties in respect of this Agreement and other Transaction Documents, in form and substance acceptable to DOE.

"DOE Instituted Disposition" has the meaning set forth in Section 3.3(f).

"DOE Mitigation Action Plan" has the meaning set forth in Section 4.2.

"DOE Policies" means such practices and policies as are generally applied by DOE or SWPA from time to time with respect to the ownership, operation and maintenance of its real property and transmission assets and as shall be notified by DOE to Holdings in writing from time to time, whether or not such practices or policies have the force of law.

"Dollars" or "$" means the lawful currency of the United States of America.

"Effective Date" means the date on which each of the conditions precedent set forth in Section 6.1 are satisfied.

"Electric Reliability Organization" means an organization certified by FERC to adopt and enforce mandatory standards for the reliable operation and planning of the bulk power system throughout the United States of America.

"Electrical Capacity" means the electric transmission transfer capability of the Project Facilities (or the applicable portion thereof) expressed in MW, which initially shall be 4,355 MW (gross) or 4,000 MW (net) in the aggregate.

"Emergency" means, with respect to the Project, AR Facilities or the DOE Acquired Real Property, an unplanned event that (a) is an abnormal system condition that requires immediate action to prevent or limit loss of transmission facilities that could adversely affect the reliability of the Project or the AR Facilities; (b) presents an immediate or imminent threat to the long term integrity of any part of the AR Facilities or the Project; (c) presents an immediate or imminent threat of endangerment to life, human health, safety or the environment, including damage to adjacent Property; or (d) is recognized or declared by the Federal Emergency Management Administration (FEMA), the U.S. Department of Homeland Security or other Governmental Authority with authority to declare an emergency.

"Emergency Capital Expenditures" shall mean those Capital Expenditures required to be expended consistent with Prudent Utility Practice in order to prevent or mitigate an Emergency that, in the good faith judgment of the Clean Line Entities (as subsequently confirmed by an Independent Engineer), necessitates the taking of immediate measures to prevent or mitigate such Emergency; provided that such expenditures are (a) payable under an insurance policy (in an aggregate amount not to exceed $5,000,000 in any 12-month period); (b) payable by insurance or a warranty provided under any Project Contract (in an aggregate amount not to exceed $5,000,000 in any 12-month period); (c) in an amount that does not exceed $2,000,000 in any 12-month period; or (d) otherwise reasonably necessary to prevent or mitigate an Emergency.

"Emergency Operating Expenses" shall mean those amounts required to be expended consistent with Prudent Utility Practice in order to prevent or mitigate an Emergency that, in the good faith judgment of the Clean Line Entities (as subsequently confirmed by an Independent Engineer), necessitates the taking of immediate measures to prevent or mitigate such Emergency; provided that such expenditures are (a) payable under an insurance policy (in an aggregate amount not to exceed $5,000,000 in any 12-month period); (b) payable by insurance or a warranty provided under any Project Contract (in an aggregate amount not to exceed $5,000,000 in any 12-month period); (c) in an amount that does not exceed $2,000,000 in any 12-month period; or (d) otherwise reasonably necessary to prevent or mitigate an Emergency.

"Endangered Species Act" means the Endangered Species Act of 1973, as amended from time to time, and the regulations promulgated, and any applicable rulings issued, thereunder.

"Environmental Claim" means any and all obligations, liabilities, losses, administrative, regulatory or judicial actions, suits, demands, decrees, claims, Liens, judgments, notices of noncompliance or violation, investigations (excluding routine inspections), proceedings, clean-up, removal or remedial actions or orders, or damages (foreseeable and unforeseeable, including consequential and punitive damages), penalties, fees, out-of-pocket costs, expenses, disbursements, attorneys' or consultants' fees, relating in any way to any violation of Environmental Law or any violation of any Governmental Approval issued under any such Environmental Law, including (a) any and all indemnity claims by any Governmental Authority for enforcement, cleanup, removal, response, remedial or other actions or damages pursuant to any applicable Environmental Law and (b) any and all indemnity claims by any third party seeking damages, contributions, indemnification, cost recovery, compensation or injunctive relief resulting from Release of Hazardous Substances, the violation or alleged violation of any

Environmental Law or Governmental Approval issued thereunder, or arising from alleged injury or threat of injury to health, safety or the environment.

"Environmental Laws" means any Applicable Law regulating, relating to or imposing obligations, liability or other compliance requirements concerning (a) environmental impacts resulting from the use of the Project Site or environmental conditions present on, in or under the Project Site (including, without limitation, NEPA and NHPA); (b) pollution, protection of human or animal health or safety or the environment, including flora and fauna; (c) Releases or threatened Releases of pollutants, contaminants, chemicals, radiation or Hazardous Substances; (d) otherwise relating to the generation, manufacture, processing, distribution, use, treatment, storage, recycling, disposal, transport, or handling of pollutants, contaminants, chemicals or Hazardous Substances; or (e) any noise generated by or in connection with the Project, including any regulations or guidance relating in any way to the Noise Control Act, 42 USC Section § 4901, *et seq*. or any related state laws or requirements governing noise or noise mitigation.

"Equity Collateral" has the meaning set forth in Section 11.6(a)(ii).

"Equity Interests" means, with respect to any Person, any and all shares, interests, rights to purchase, warrants, options, participations or other equivalents of or interests in (however designated) the common or preferred equity or preference share capital of a Person, including partnership interests and limited liability company interests.

"Event of Default" has the meaning set forth in Section 7.3.

"Event of Loss" means any event that causes any material portion of the Project to be damaged, destroyed or rendered unfit for normal use for any reason whatsoever, including, through a failure of title, or any loss of Property, or a condemnation.

"Existing Indebtedness" means the Indebtedness of the Clean Line Parties outstanding as of the Effective Date, as set forth in Schedule 3 hereto (as such Schedule may be updated pursuant to Section 12.3).

"Fair Share" means, with respect to a Contributing Subsidiary Guarantor as of any date of determination, an amount equal to (a) the ratio of (i) the Fair Share Contribution Amount with respect to such Contributing Subsidiary Guarantor to (ii) the aggregate of the Fair Share Contribution Amounts with respect to all Contributing Subsidiary Guarantors *multiplied* by (b) the aggregate amount paid or distributed on or before such date by all Funding Subsidiary Guarantors in respect of the Guaranteed Obligations.

"Fair Share Contribution Amount" means, with respect to a Contributing Subsidiary Guarantor as of any date of determination, the maximum aggregate amount of the obligations of such Contributing Subsidiary Guarantor under the Guarantee in Article IX that would not render its obligations hereunder or thereunder subject to avoidance as a fraudulent transfer or conveyance under Section 548 of Title 11 of the United States Code or any comparable applicable provisions of state law; provided that, solely for purposes of calculating the "Fair Share Contribution Amount" with respect to any Contributing Subsidiary Guarantor for purposes of Section 9.2, any assets or liabilities of such Contributing Subsidiary Guarantor arising by virtue of any rights to subrogation, reimbursement or indemnification or any rights to or

obligations of contribution hereunder shall not be considered as assets or liabilities of such Contributing Subsidiary Guarantor.

"FERC" means the Federal Energy Regulatory Commission.

"Final Environmental Impact Statement" means the *Plains & Eastern Clean Line Transmission Line Project Final Environmental Impact Statement* and all Appendices, dated October 2015, Document No. DOE/EIS-0486.

"Financial Statements" means with respect to any Person and for any period, such Person's balance sheet as at the end of such period and the related statements of income, changes in shareholder's equity, and cash flows for such period, all in reasonable detail and prepared in accordance with GAAP, with (a) any such statements delivered in respect of any fiscal year of such Person including all notes thereto and (b) any such statements delivered in respect of any fiscal quarter of such Person being subject only to normal year end audit adjustments and the absence of footnotes.

"Financing Condition" means:

(a) as of any time of determination occurring from and after Project Financial Close, (i) the sum of the unused commitments of the Project Financing Parties under the Project Financing Documents *plus* the sum of the unused Project Equity Commitments *plus* amounts on deposit in the Advance Funding Account is equal to not less than the Remaining Project Costs, (ii) such Project Equity Commitments are in full force and effect without any materially adverse amendment, waiver, supplement or modification thereof from the form that was originally delivered for purposes of satisfying the Financing Condition, and (iii) the Project Financing Documents are in full force and effect and an Authorized Officer of Holdings shall have certified to DOE that, subject to its Knowledge, there is no existing fact or circumstance that will prevent all of the Permitted Draw Conditions from being satisfied, unless the applicable Project Financing Parties have agreed in writing to waive such condition(s); or

(b) as of any time of determination occurring prior to Project Financial Close, (i) Firm Project Equity Commitments shall be in effect (together with amounts on deposit in the Advance Funding Account) for an amount not less than 150% of the Remaining DOE Acquisition Costs as of such time of determination, (ii) the sum of DOE Approved Project Equity Commitments then in effect *plus* any Firm Project Equity Commitments then in effect *plus* amounts on deposit in the Advance Funding Account *plus* the commitments provided for under any DOE Approved Project Financing Commitment (if any) shall be not less than the Remaining Project Costs, (iii) all such DOE Approved Project Equity Commitments shall be in full force and effect without any materially adverse amendment, waiver, supplement or modification thereof from the form that was originally delivered for purposes of satisfying the Financing Condition, and (iv) if applicable, the DOE Approved Project Financing Commitments shall be in full force and effect without any materially adverse amendment, waiver, supplement

or modification thereof from the form that was originally delivered for purposes of satisfying the Financing Condition and an Authorized Officer of Holdings shall have certified to DOE that, subject to its Knowledge, there is no existing fact or circumstance that will prevent all of the conditions precedent to Project Financial Close in respect of any such DOE Approved Project Financing Commitments or DOE Approved Project Equity Commitments from being achieved prior to the termination of any such DOE Approved Project Financing Commitment or DOE Approved Project Equity Commitments, as applicable, or the Clean Line Entities' needing to draw on any funds in respect of the Project Financing in order to pay any Remaining Project Costs, unless the applicable Financing Party has agreed in writing to waive such condition precedent.

"Financing Party" means any Project Financing Party or any other Person that provides a Project Equity Commitment.

"Firm Project Equity Commitment" means either (a) an irrevocable and unconditional Project Equity Commitment that is subject only to a request of funding (whether in the form of a capital call notice, flow of funds memorandum or otherwise) by Holdings and is not subject to any other condition or right of termination by the Acceptable Support Provider or Credit-Worthy Affiliate providing such Project Equity Commitments or (b) any other Project Equity Commitment that is in an Acceptable Form.

"FPA" means the Federal Power Act, as amended, and FERC's regulations thereunder.

"Force Majeure" means the occurrence of any event or act that delays or prevents a Party's performance of its obligations under the Transaction Documents or any Project Contract, but only to the extent that (a) such event is not attributable to the fault or negligence on the part of such Party, (b) such event is caused by factors beyond such Party's reasonable control and (c) despite taking all reasonable technical and commercial precautions and measures to prevent, avoid, mitigate or overcome such event and the consequences thereof, such Party has been unable to prevent, avoid, mitigate or overcome any such event or consequence, including, but not limited to, acts of God, strikes, lockouts, acts of the public enemy, wars, blockades, riots, insurrections, epidemics, landslides, lightning, earthquakes, fires, storms, floods, washouts, arrests and restraints of rulers and peoples, interruptions by government or court orders or orders of any regulatory body having proper jurisdiction, civil disturbances, explosions, breakage or accident to machinery and any other cause whether of the kind herein enumerated or otherwise. Force Majeure shall not include: (i) economic hardship of a Party or (ii) if claimed by DOE, interruptions by any Governmental Authority or Governmental Order that are directly caused by actions of DOE that specifically are targeted at any of the Clean Line Entities or the Project (and not of a more generally applicable nature) or unless arising as a result of a violation of Applicable Law by any Clean Line Entity, or the occurrence of an Event of Default.

"Fundamental Event of Default" means the occurrence of:

(a) any Event of Default of the type described in Section 7.3(f) that (i) has resulted in a Safety Event, (ii) arises as a result of a material breach by any Clean Line Entity of any material provision of the DOE Mitigation Action Plan, any Applicable

Laws or Required Approvals or (iii) has resulted in the failure of the Required Insurance to be in full force and effect; provided that to the extent any such Event of Default is capable of being cured, such Event of Default shall not constitute a "Fundamental Event of Default" until such time as DOE has given notice to Holdings of the occurrence of such Event of Default and has given the Clean Line Entities an additional sixty (60) day period to cure such Event of Default; or

(b) (i) any Event of Default of the type described in Section 7.3(e) that, except to the extent that the representation or warranty giving rise to the occurrence of such Event of Default is itself qualified by "Adverse DOE Impact" or "Clean Line Material Adverse Effect", has resulted in, or could reasonably be expected to result in, a Clean Line Material Adverse Effect or an Adverse DOE Impact, (ii) any Event of Default of the type described in Section 7.3(f) that arises as a result of any Clean Line Entity's breach of any of Section 2.3(c), Section 3.2(d), Section 4.1(i), Section 8.2, Section 8.3, Section 8.7(a), Section 8.11, Section 8.12(a), Section 8.12(c), Section 8.12(e), Section 8.13, Section 8.14, Section 8.18, Section 8.19 or Section 8.27, (iii) any Event of Default of the type described in Section 7.3(g), (iv) any Event of Default of the type described in Section 7.3(h) or (v) any Event of Default of the type described in Section 7.3(l); provided that to the extent any such Event of Default is capable of being cured, such Event of Default shall not constitute a "Fundamental Event of Default" until such time as DOE has given notice to Holdings of the occurrence of such Event of Default and has given the Clean Line Entities an additional sixty (60) day period to cure such Event of Default; or

(c) an Event of Default of the type described in Section 7.3(j); provided that to the extent such Event of Default arises as a result of an Insolvency Event of a Clean Line Guarantor, such Event of Default shall not constitute a "Fundamental Event of Default" if, within thirty (30) days of the occurrence thereof, the Clean Line Entities have provided a replacement Performance Support from an Acceptable Support Provider in accordance with Section 11.5(a); or

(d) any Event of Default of the type described in Sections 7.3(a) through 7.3(d), Section 7.3(i), Section 7.3(k) and Sections 7.3(m) through 7.3(r).

"Funding Subsidiary Guarantor" has the meaning set forth in Section 9.2.

"GAAP" means generally accepted accounting principles in the United States in effect from time to time, applied on a consistent basis.

"Governmental Approval" means any approval, consent, authorization, license, permit, order, certificate, qualification, waiver, exemption, or variance, or any other action of a similar nature, of or by a Governmental Authority, including any of the foregoing that are or may be deemed given or withheld by failure to act within a specified time period.

"Governmental Authority" means any federal, state, county, municipal, or regional authority, or any other entity of a similar nature, exercising any executive, legislative, judicial

(including any court of competent jurisdiction), regulatory, or administrative function of government with statutory jurisdiction over any Clean Line Party or the Project.

"Governmental Order" means with respect to any Person, any judgment, order, decision, or decree, or any action of a similar nature, of or by a Governmental Authority having competent jurisdiction over such Person or any of its Properties; provided that the term "Governmental Order" shall not include any judgment, order, decision, or decree, or any action of a similar nature taken by DOE that is specifically targeted at the Clean Line Entities or the Project (and not of a more generally applicable nature) except such judgments, orders, decisions, decrees or actions as may arise based on a violation of Applicable Law by the Clean Line Entities or the occurrence of any Event of Default.

"Guarantee" means (a) any obligation, contingent or otherwise, of the guarantor guaranteeing or having the economic effect of guaranteeing any Indebtedness of any other Person (the "primary obligor") in any manner, whether directly or indirectly, and including any obligation of the guarantor, direct or indirect, (i) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness (whether arising by virtue of partnership arrangements, by agreement to keep well, to purchase assets, goods, securities or services, to take or pay or otherwise) or to purchase (or to advance or supply funds for the purchase of) any security for the payment of such Indebtedness, (ii) to purchase or lease Property, securities or services for the purpose of assuring the owner of such Indebtedness of the payment thereof, (iii) to maintain working capital, equity capital or any other financial statement condition or liquidity of the primary obligor so as to enable the primary obligor to pay such Indebtedness, (iv) entered into for the purpose of assuring in any other manner the holders of such Indebtedness of the payment thereof or to protect such holders against loss in respect thereof (in whole or in part) or (v) as an account party in respect of any letter of credit or letter of guarantee issued to support such Indebtedness, or (b) any Lien on any assets of the guarantor securing any Indebtedness (or any existing right, contingent or otherwise, of the holder of Indebtedness to be secured by such a Lien) of any other Person, whether or not such Indebtedness is assumed by the guarantor; provided, however, that the term "Guarantee" shall not include endorsements for collection or deposit, in either case in the ordinary course of business.

"Guaranteed Obligations" has the meaning set forth in Section 9.1(a).

"Hazardous Substances" means any hazardous or toxic substances, chemicals, materials, pollutants or wastes defined, listed, classified or regulated as such in or under any Environmental Laws, including (a) any petroleum or petroleum products (including gasoline, crude oil or any fraction thereof), flammable explosives, radioactive materials, asbestos in any form that is or could become friable, urea formaldehyde foam insulation and polychlorinated biphenyls, (b) any chemicals, materials or substances defined as or included in the definition of "hazardous substances," "hazardous wastes," "extremely hazardous wastes," "restricted hazardous wastes," "toxic substances," "toxic pollutants," "contaminants" or "pollutants," or words of similar import, under any applicable Environmental Law and (c) any other chemical, material or substance, import, storage, transport, use or disposal of, or exposure to or Release of which is prohibited, limited or otherwise regulated under, or for which liability is imposed pursuant to, any Environmental Law.

"Hazardous Substances Measures" means those measures adopted by the Clean Line Entities as part of implementing the DOE Mitigation Action Plan as further described in Section 8.21, including (a) procedures, practices and activities to address and comply with Environmental Laws and Governmental Approvals with respect to any Release of Hazardous Substances in connection with the Project or any Project Real Estate Right and (b) actions to be taken in the event that a Hazardous Substance is discovered on Property on which Project Facilities are located.

"Holdings" has the meaning set forth in the preamble.

"HVDC" has the meaning set forth in the recitals.

"Immaterial Obligor" means any Clean Line Obligor (other than Holdings, ACL, PECL OK and PECL) that (a) has Property with a fair market value of less than $5,000,000, (b) does not own any rights to any of the Electrical Capacity, (c) does not own any Project Real Estate Rights, (d) is not a party to any Material Project Contract and (e) as to which the occurrence of any Insolvency Event in respect of such Clean Line Obligor could not reasonably be expected to have a Clean Line Material Adverse Effect or an Adverse DOE Effect.

"Indebtedness" of any Person shall mean, without duplication:

(a) all Indebtedness for Borrowed Money;

(b) all obligations of such Person evidenced by bonds, debentures, notes or similar instruments;

(c) all obligations of such Person under conditional sale or other title retention agreements relating to Property or assets purchased by such Person;

(d) all Guarantees by such Person of Indebtedness of others;

(e) all Capital Lease Obligations of such Person;

(f) the principal component of all obligations, contingent or otherwise, of such Person (i) as an account party in respect of letters of credit and (ii) in respect of bankers' acceptances, bank guaranties, surety or performance bonds and similar instruments; and

(g) all obligations of such Person to purchase, redeem, retire, defease any Equity Interests in such Person or any warrants, rights or options to acquire such Equity Interests, valued, in the case of redeemable preferred interests, at the greater of its voluntary or involuntary liquidation preference *plus* accrued and unpaid dividends.

"Indebtedness for Borrowed Money" means as to any Person, without duplication, (a) all indebtedness (including principal, interest, fees and charges) of such Person for borrowed money or for the deferred purchase price of property or services (other than any deferral (i) in connection with the provision of credit in the ordinary course of business by any trade creditor or

utility or (ii) of any amounts payable under the Project Contracts) or (b) the aggregate amount required to be capitalized under any Capital Lease under which such Person is the lessee.

"Independent Engineer" means an independent engineer selected by (a) Holdings or (b) following satisfaction of the Financing Condition, by or on behalf of the Project Financing Parties that have executed DOE Approved Project Financing Commitments and that, in either case, is reasonably acceptable to DOE.

"Information" has the meaning set forth in Section 12.1(o).

"Insolvency Event" means, with respect to any Person, the occurrence of any of the following events, conditions or circumstances:

(a) such Person shall file a voluntary petition in bankruptcy or shall be adjudicated bankrupt or insolvent, or shall file any petition or answer or consent seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief for itself under applicable Bankruptcy Law, or shall seek or consent to or acquiesce in the appointment of any trustee, receiver, conservator or liquidator of such Person or of all or any substantial part of its Properties (the term "acquiesce," as used in this definition, includes the failure to file in a timely manner a petition or motion to vacate or discharge any order, judgment or decree after entry of such order, judgment or decree);

(b) an involuntary case or other proceeding shall be commenced against such Person seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief with respect to such Person or its debts under applicable Bankruptcy Law, or seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of it or any substantial part of its Property, and such involuntary case or other proceeding shall remain undismissed or unstayed for a period of ninety (90) consecutive days;

(c) a court of competent jurisdiction shall enter an order, judgment or decree approving a petition filed against such Person seeking a reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the applicable Bankruptcy Law, and such Person shall acquiesce in the entry of such order, judgment or decree or such order, judgment or decree shall remain unvacated and unstayed for an aggregate of ninety (90) days (whether or not consecutive) from the date of entry thereof, or any trustee, receiver, conservator or liquidator of such Person or of all or any substantial part of its Property shall be appointed without the consent or acquiescence of such Person and such appointment shall remain unvacated and unstayed for an aggregate of ninety (90) days (whether or not consecutive);

(d) such Person shall admit in writing its inability to pay its debts as they mature or shall generally not be paying its debts as they become due;

(e) such Person shall make an assignment for the benefit of creditors or take any other similar action for the protection or benefit of creditors; or

(f) such Person shall take any corporate, limited liability company or partnership action for the purpose of effecting any of the foregoing.

"Insurance Agreement" has the meaning set forth in Section 5.1(e)(ii).

"Interconnection Agreement" means an interconnection agreement or interim interconnection agreement, filed with FERC as applicable, granting a definitive interconnection right for the Project, subject to the completion of Material Interconnection Studies and required transmission system upgrades identified within such interconnection agreement or interim interconnection agreement, which is entered into by any applicable Clean Line Party and the interconnecting transmission owner(s) and system operators for (a) interconnection of the Project with the SPP-controlled transmission system, (b) interconnection of the Project with the MISO-controlled transmission system and/or (c) interconnection of the TN Facilities with the TVA transmission system.

"Intercreditor Agreement" has the meaning set forth in Section 11.7.

"Intermediate Converter Station" has the meaning set forth in the recitals.

"Investment Fund" means any Person that is established as an investment fund and is either (a) registered with the Securities and Exchange Commission under the Investment Company Act of 1940 or (b) exempt from registration under the Investment Company Act of 1940 pursuant to Section 3(c)(1) or 3(c)(7) of such Act.

"IPO Entity" has the meaning set forth in the definition of Qualified IPO.

"Key Person" means each of Mario Hurtado and Michael Skelly.

"Knowledge" means (a) with respect to any Clean Line Party, the actual knowledge of any Principal Person of such Clean Line Party or any knowledge that should have been obtained by any such Principal Person upon reasonable investigation and inquiry and (b) with respect to DOE, the actual knowledge of any Principal Person or any knowledge that should have been obtained by any such Principal Person upon reasonable investigation and inquiry. "Knowing" and "Known" shall be construed accordingly.

"Landowner" has the meaning set forth in Schedule 1 hereto.

"Lien" means any lien (statutory or other), pledge, mortgage, charge, security interest, deed of trust, assignment, hypothecation, title retention, fiduciary transfer, deposit arrangement, easement, encumbrance or preference, priority or other security agreement or preferential arrangement of any kind or nature whatsoever in respect of an asset, whether or not filed, recorded or otherwise perfected or effective under Applicable Law, as well as the interest of a vendor or lessor under any conditional sale agreement, Capital Lease or other title retention agreement relating to such asset, (including any conditional sale or other title retention agreement, any Capital Lease having substantially the same economic effect as any of the foregoing, or any preferential arrangement having the practical effect of constituting a security interest with respect to the payment of any obligation with, or from the proceeds of, any asset or revenue of any kind).

"Local Government Contribution Payments" means all infrastructure payments, voluntary payments and other payments (which are not Taxes) to be made by any Clean Line Party to local and state governments in connection with the Project, including those set forth in Schedule 4 hereto.

"Loss Proceeds" means all proceeds (other than any proceeds of business interruption insurance and proceeds covering liability of the Clean Line Entities to third parties) resulting from an Event of Loss.

"Loss Threshold" shall have the meaning set forth in the Insurance Agreement.

"Major Subcontractor" means each subcontractor at any tier performing work under a Material Construction Contract with a subcontract having a value, individually or in the aggregate, of $5,000,000 or more.

"Material Construction Contract" means each Construction Contract with a total value of more than $5,000,000 that relates in any material respect to the development, design, engineering and construction of the AR Facilities or any Project Facilities located (or to be located) on any DOE Acquired Real Property. For the avoidance of doubt, any Construction Contract that solely relates to the Other Facilities or any Project Facilities to be located on any Project Real Estate Rights that are not DOE Acquired Real Property shall not constitute a "Material Construction Contract".

"Material Interconnection Studies" means the TVA Facilities Study, an updated Criteria 3.5 Study as described in Exhibit B to the SPP Interconnection Agreement, the TVA System Impact Study, the SPP Facilities Study, the SPP System Impact Study, the MISO Interconnection Feasibility Study, the MISO Interconnection Facilities Study and the MISO Interconnection System Impact Study (or such comparable studies (i) if renamed or modified by revisions to the interconnection procedures of TVA, SPP and MISO or (ii) as required by an Interconnection Agreement).

"Material O&M Agreement" means each O&M Agreement that relates in any material respect to the operation, management and/or maintenance of the AR Facilities or any Project Facilities located (or to be located) on any DOE Acquired Real Property. For the avoidance of doubt, any O&M Agreement that solely relates to the Other Facilities or any Project Facilities to be located on any Project Real Estate Rights that are not DOE Acquired Real Property shall not constitute a "Material O&M Agreement".

"Material Project Contract" means, at any given time, the Interconnection Agreements, the Transmission Services Agreements, the Acceptable Permitted Project Investment Commitments, the Material Construction Contracts and the Material O&M Agreements, in each case, in effect at such time.

"MISO" has the meaning set forth in the recitals.

"MISO Interconnection Facilities Study" means an "Interconnection Facilities Study," including Definitive Planning Phase studies, as applicable, as defined in the MISO OATT and applicable business practice manuals related thereto.

"MISO Interconnection Feasibility Study" means an "Interconnection Feasibility Study" as defined in the MISO OATT and applicable business practice manuals related thereto.

"MISO Interconnection System Impact Study" means an "Interconnection System Impact Study" as defined in the MISO OATT and applicable business practice manuals related thereto.

"MISO OATT" means the MISO OATT on file with FERC.

"Mitigation Rights" means any real Property and conservation credits acquired by the Clean Line Entities associated with the avoidance, minimization, or mitigation of environmental impacts of the Project pursuant to Required Approvals.

"Moody's" means Moody's Investors Service, Inc., so long as it is a rating agency.

"MW" has the meaning set forth in the recitals.

"NEPA" means the National Environmental Policy Act of 1969 of the United States, as amended from time to time, and the regulations promulgated, and any applicable rulings issued, thereunder.

"NERC" means the North American Electric Reliability Corporation.

"NERC Agreement" has the meaning set forth in Section 4.9.

"NHPA" means the National Historic Preservation Act of 1966, as amended.

"Notice to Proceed" means a written notice issued by DOE to Holdings notifying Holdings that the conditions precedent set forth under Section 6.4 have been satisfied and that the Clean Line Entities may notify the Construction Contractors to commence performance of the work under the applicable Material Construction Contracts.

"O&M Agreement" means any Contractual Obligation entered into for the operation and maintenance of the Project with an annual value of more than $1,000,000.

"OATT" means an Open Access Transmission Tariff as defined under FERC's open access transmission rules and policies.

"OCC" means the Corporation Commission of Oklahoma.

"OCC 2011 Order" has the meaning set forth in Section 12.1(t).

"OFAC" means the Office of Foreign Assets Control, an agency of the U.S. Department of the Treasury under the auspices of the Under Secretary of the Treasury for Terrorism and Financial Intelligence.

"OFAC-Listed Person" has the meaning set forth in clause (a) of the definition of Prohibited Person.

"OFAC Sanctions Program" means any economic or trade sanction that OFAC is responsible for administering and enforcing. A list of OFAC Sanctions Programs may be found at http://www.treasury.gov/resource-center/sanctions/Programs/Pages/Programs.aspx.

"OK Facilities" has the meaning set forth in the recitals.

"Oklahoma Panhandle" means the geographic area within the panhandle region of Oklahoma, including Cimarron, Texas, and Beaver Counties.

"OLA" has the meaning set forth in the preamble.

"Operating Agreement" has the meaning set forth in Section 4.6.

"Operational EOD" means an Event of Default that (a) is an Event of Default pursuant to Section 7.3(f), (b) has resulted in an Adverse DOE Impact, (c) in DOE's reasonable judgment has resulted from, or arisen out of, the Clean Line Entities' detrimental, harmful, negligent or incompetent management, monitoring, supervision or administration of the construction, operation or maintenance of the Project on a persistent basis and (d) is not otherwise a Fundamental Event of Default.

"Organizational Documents" means with respect to any Person, (a) to the extent such Person is a corporation, the certificate or articles of incorporation and the by-laws of such Person, (b) to the extent such Person is a limited liability company, the certificate of formation or articles of formation or organization and operating or limited liability company agreement of such Person and (c) to the extent such Person is a partnership, joint venture, trust or other form of business, the partnership, joint venture or other applicable agreement of formation or organization and any agreement, instrument, filing or notice with respect thereto filed in connection with its formation or organization with the applicable Governmental Authority in the jurisdiction of its formation or organization and, if applicable, any certificate or articles of formation or organization or formation of such Person.

"Other Facilities" means, collectively, the TX Facilities and the TN Facilities.

"Participation Amount" has the meaning set forth in Section 11.2.

"Parties" means the Clean Line Parties and DOE.

"Patriot Act" means the USA PATRIOT Act of 2001 and all rules and regulations adopted thereunder, as amended.

"PECL" has the meaning set forth in the preamble.

"PECL OK" has the meaning set forth in the preamble.

"PECL Subsidiary" means (a) any direct or indirect Subsidiary of Holdings that owns any of the Equity Interests in PECL and (b) any direct or indirect Subsidiary of PECL.

"Performance Support" means any Acceptable Letter of Credit or Acceptable Guarantee issued in favor of DOE from time to time pursuant to the terms of this Agreement.

"Permitted Disposition" means:

(a) with respect to any Equity Interests in any Clean Line Entity or Property comprising the OK Facilities, any Permitted Lien or Permitted Project Investment;

(b) with respect to any Electrical Capacity, any Permitted Lien or other Disposition permitted under Section 2.3(c);

(c) with respect to any Project Real Estate Rights acquired by any Clean Line Entity, any Permitted Lien or other Disposition contemplated or permitted by Section 3.2;

(d) with respect to any other Property owned by any Clean Line Entity from time to time:

(i) Dispositions of such Property in the ordinary course of business and having a fair market value not in excess of $1,000,000 for a single transaction or $5,000,000 in the aggregate for all such transfers or Dispositions; provided that such Property is not necessary to the performance of the Project or the transactions contemplated by the Transaction Documents;

(ii) Dispositions of such Property that is, (A) obsolete, (B) no longer used or useful in the operation of the Project or (C) is promptly replaced (if applicable) by new or refurbished Property of equal or greater value and utility or having the same function (including upgraded models);

(iii) Dispositions of investment property in the ordinary course or in accordance with the granting of Permitted Liens;

(iv) Dispositions in connection with Events of Loss;

(v) Dispositions of Property in connection with warranty claims or assignments of Project Contracts permitted by the Project Financing Documents;

(vi) Dispositions of Mitigation Rights; or

(vii) Dispositions otherwise approved in writing by DOE.

"Permitted Draw Conditions" means conditions requiring the satisfaction of the following:

(a) truthfulness in all material respects of representations and warranties contained in the Project Financing Documents;

(b) the non-occurrence and continuance of any "default" or "event of default" or "material adverse effect" under the Project Financing Documents;

(c) the delivery of a customary notice of borrowing; and

(d) other usual and customary drawdown conditions applicable to construction financings for transmission projects.

"Permitted Holder" means any of the following Persons:

(a) National Grid plc;

(b) solely with respect to the Control of the Clean Line Entities, CLEP (provided that CLEP is Controlled by one or more Persons specified in clause (a) or clauses (c) through (g) of this definition);

(c) the Zilkha Family;

(d) the Ziff Family;

(e) Bluescape Resources;

(f) any Qualified Owner; or

(g) any other Person (other than any Clean Line Entity) Controlled by a combination of the foregoing Persons.

"Permitted Indebtedness" means:

(a) Existing Indebtedness;

(b) obligations or liabilities under any Project Contracts, the Transaction Documents, the Project Equity Commitments, the Project Debt Commitments, the Project Financing Documents;

(c) other liabilities or obligations allowed under the Project Financing Documents, if applicable;

(d) any inter-company receivables or payables among Affiliates of Holdings for obligations not constituting Indebtedness that either Holdings or CLEP have paid on behalf of such Affiliates;

(e) Indebtedness in the nature of guaranties or letters of credit, surety bonds or performance bonds securing the performance of a Clean Line Party pursuant to a Project Contract;

(f) Indebtedness in respect of netting services, overdraft protections and otherwise in connection with deposit accounts;

(g) guarantees in the ordinary course of business of the obligations of suppliers, customers, franchisees and licensees of any Clean Line Party; and

(h) other Indebtedness in an aggregate amount not to exceed $5,000,000 at any time outstanding.

"Permitted Liens" means:

(a) any Liens provided in favor of DOE or any rights and interests of the Project Financing Parties as provided in the Project Financing Documents that could constitute a Lien;

(b) Liens for any Tax, assessment or other governmental charge not yet due, or subject to Contest;

(c) Liens in favor of materialmen, workers or repairmen, or other like Liens arising in the ordinary course of business or in connection with the construction, repair or improvement of the Project, either for amounts not yet due or for amounts subject to Contest;

(d) such other defects, matters or records affecting or encumbering title to the Project Site, which do not and will not materially impair the use, development or operation of the Project, or materially interfere with the ordinary course of the business of the Clean Line Entities, or materially detract from the value of the Project Site;

(e) zoning, entitlement, building and other land use regulations imposed by Governmental Authorities having jurisdiction over the Project Site that do not and will not materially impair the use, development or operation of the Project, or materially interfere with the ordinary course of the business of the Clean Line Entities, or materially detract from the usefulness of the Project Site for its intended purpose;

(f) deposits to secure the performance of bids, trade contracts and leases (in each case, other than Indebtedness), statutory obligations, surety bonds (other than bonds related to judgments or litigation), performance bonds and other obligations of a like nature incurred in the ordinary course of business not in excess of $5,000,000;

(g) Liens arising out of the judgment of a Governmental Authority so long as enforcement of such Lien has been stayed and an appeal or proceeding for review is being prosecuted in good faith and for the payment of which adequate reserves or other security reasonably acceptable to DOE have been provided or are fully covered by insurance;

(h) Liens to secure Capital Lease Obligations and purchase money Liens on Property purchased securing obligations not in excess of $5,000,000;

(i) Liens (not securing Indebtedness) of depository institutions and securities intermediaries (including rights of set-off or similar rights) with respect to one or more checking accounts or other banking accounts (other than Account Collateral) established by the Clean Line Entities to conduct their business;

(j) Liens securing judgments for the payment of money not constituting an Event of Default or securing appeal or other surety bonds related to such judgments;

(k) pledges or deposits or other Liens in the ordinary course of business in connection with worker's compensation, unemployment insurance, social security and other governmental rules or restrictions that have the force of law; and

(l) Liens on Property of the Clean Line Entities not essential for the operation of the Project and having a fair market value of less than $1,000,000 in the aggregate.

"Permitted Project Investments" has the meaning set forth in Section 2.3(c)(iii).

"Person" means any individual, entity, firm, corporation, company, voluntary association, partnership, limited liability company, joint venture, trust, unincorporated organization, Governmental Authority, committee, department, authority or any other body, incorporated or unincorporated, whether having distinct legal personality or not.

"Principal Person" means (a) with respect to any Clean Line Party, any officer, director, owner, key employee or other Person with primary management or supervisory responsibilities with respect to such Person or any other Person (whether or not an employee) who has critical influence on or substantive control over such Person and (b) with respect to DOE, the Person(s) holding primary management or supervisory responsibilities for DOE with respect to the Project.

"Prohibited Person" means any Person (or any Person that is an Affiliate of a Person) that is:

(a) named, identified or described on the list of "Specially Designated Nationals and Blocked Persons" as published by OFAC (an "OFAC-Listed Person");

(b) an agent, department or instrumentality of, or is otherwise beneficially owned by, Controlled by or acting on behalf of, directly or indirectly, (i) an OFAC-Listed Person or (ii) any Person, organization, foreign country or regime that is subject to any Sanctions;

(c) debarred, suspended, proposed for debarment with a final determination still pending, declared ineligible or voluntarily excluded (as such terms are defined in the Debarment Regulations) from contracting with any United States federal government department or any agency or instrumentality thereof or otherwise participating in procurement or non-procurement transactions with any United States federal government or agency pursuant to any of the Debarment Regulations;

(d) indicted, convicted or had a final and non-appealable Governmental Order rendered against it for any of the offenses listed in any of the Debarment Regulations; or

(e) otherwise blocked, subject to sanctions under or engaged in any activity in violation of other United States economic sanctions, including but not limited to, the Trading with the Enemy Act, the International Emergency Economic Powers Act, the Comprehensive Iran Sanctions, Accountability and Divestment Act or any similar law or regulation with respect to Iran or any other country, the Sudan Accountability and Divestment Act, any OFAC Sanctions Program, or any economic sanctions regulations administered and enforced by the United States or any enabling legislation or executive order relating to any of the foregoing.

"Project" has the meaning set forth in the recitals.

"Project Budget" means a reasonably detailed description and a reasonably detailed budget of anticipated Construction Costs (which shall include a Contingency Amount).

"Project Completion" means the occurrence of each of the following: (a) if the Project Financing is then in effect, (i) the Project has commenced commercial operation and has satisfied the requirements for "substantial completion" (or term of similar import) as defined in and in accordance with all Construction Contracts and the initial Electrical Capacity (as specified in the definition thereof) of the Project has been certified by an Independent Engineer, (ii) the Project has safely and reliably energized and energy may be delivered across the Project Facilities to SPP's, MISO's and TVA's transmission systems in accordance with the Interconnection Agreements and (iii) the occurrence of "final completion," "project completion" or "term conversion" (or term of similar import) for purposes of the Project Financing (including the funding of any required financial reserves as a condition precedent to the occurrence thereof) or (b) if the Project Financing is not then in effect, satisfaction of the Completion Conditions.

"Project Contracts" means each of the following:

(a) any Construction Contract, including any such agreement that may be entered into from time to time in respect of any Capital Repairs or improvements relating to the Project;

(b) each Transmission Services Agreement and each Contractual Obligation evidencing a Permitted Project Investment in effect from time to time;

(c) each Operating Agreement and Interconnection Agreement in effect from time to time;

(d) the NERC Agreement;

(e) any O&M Agreement in effect from time to time;

(f) each Real Estate Rights Agreement; and

(g) any other agreement entered into by the Clean Line Entities and/or DOE in respect of development, design, engineering, construction, ownership, operation, maintenance and management of the Project, including any management service agreements, intellectual property license agreements and any retainer agreements relating to any consultants.

"Project Costs" means all costs and expenses incurred or to be incurred by any Clean Line Entity or DOE in connection with the Project, including: (a) expenses of administering and maintaining the corporate existence of the Clean Line Entities, (b) amounts payable under any other Project Contract in effect from time to time, (c) amounts payable in respect of the Project Financing (including interest, premium, principal and fees), (d) costs to acquire title or use rights of any Project Real Estate Rights and the Project Site, (e) any network upgrade costs required to be paid pursuant to the terms of the Interconnection Agreements, (f) costs and expenses of legal, engineering, accounting, construction management and other advisors or consultants incurred in connection with the Project, (g) labor costs, (h) mobilization costs, (i) funding of any required reserves (including any debt service reserve or other similar reserve required in connection with the Project Financing), (j) maintenance and Capital Repair expenses, (k) costs associated with any Wind-Up Event, (l) costs and expenses incurred in connection with obtaining any Required Approval and Required Insurance, (m) any other Covered Cost and (n) any Covered Liability.

"Project Development Progress Report" means, as of any date, a development progress report in respect of the Project that (a) describes in detail the status of the developmental activities related to the Project completed as of such date and (b) provides a reasonably detailed schedule of the project development, design, engineering, financing and construction activities expected to be undertaken after such date in order to achieve Project Completion (the "Project Schedule").

"Project Equity Commitments" means one or more equity commitments (which may include a commitment to provide loans) provided by any Acceptable Support Provider or Credit-Worthy Affiliate to the Clean Line Entities or any of the Project Financing Parties in respect of the funding of Construction Costs.

"Project Facilities" has the meaning set forth in the recitals.

"Project Financial Close" means that the following conditions have been satisfied in full:

(a) the Clean Line Entities shall have obtained Project Financing and Project Equity Commitments in an amount equal to 100% of the total Construction Costs as set forth in the then current Project Budget (including the Contingency Amount contemplated thereby) as confirmed, at the election of DOE, by an Independent Engineer;

(b) all Project Financing Documents required in order to obtain the funding referred to in clause (a) above shall have been executed and delivered by all parties thereto and shall be in full force and effect, and DOE shall have received certified copies of all such Project Financing Documents;

(c) all conditions precedent (other than the Permitted Draw Conditions) under the Project Financing Documents referred to in clause (b) above shall have been satisfied or permanently waived;

(d) the first drawdown of loans (or issuance of debt securities, to the extent applicable) under the Project Financing shall have occurred; and

(e) DOE shall have received satisfactory evidence demonstrating that each of the foregoing conditions has been satisfied.

"Project Financing" means, subject to Section 13.5, any debt securities or syndicated commercial bank or other syndicated credit facilities (including any working capital facilities and letter of credit facilities) issued or obtained by the Clean Line Entities from Persons other than Affiliated Lenders to finance the development and construction of the Project in an amount equal to not less than forty percent (40%) of the anticipated total Construction Costs on a limited recourse basis and any refinancing that takes a similar form.

"Project Financing Commitments" means one or more debt financing commitment letters provided by lenders or financial institutions (other than Affiliated Lenders) in respect of the Project Financing.

"Project Financing Documents" means all financing (including all security documentation) and equity contribution agreements entered into in respect of the Project Financing and the Project Equity Commitments.

"Project Financing Parties" means the Persons holding any debt securities or providing loans, other credit facilities or interest rate hedging facilities as part of the Project Financing (and including any agent or trustee thereof), but excluding any Affiliated Lender. Prior to Project Financial Close, the Project Financing Parties will be deemed to include any lenders or financial institutions providing Project Financing Commitments to the Clean Line Parties.

"Project Participant" means any Contractor or any other Person (other than a Clean Line Party or DOE) that is party to a Project Contract from time to time.

"Project Plans" means the reasonably detailed execution plans for the Project (which shall include a reasonably detailed description of the Project and the Project Budget) delivered by Holdings to DOE encompassing all development, design, engineering, construction, financing, operation, maintenance, management, replacement and decommissioning activities of the Project.

"Project Real Estate Rights" means any Real Estate Rights necessary for the Project, including access roads and temporary areas to be used for construction and maintenance activities in respect of the Project.

"Project Schedule" has the meaning set forth in the definition of Project Development Progress Report.

"Project Site" means all Real Estate Rights on which any of the Project Facilities are situated or are to be constructed, including, but not limited to, the areas and encroachments covered by the Project Real Estate Rights and any other land necessary for the Project.

"Project Subsidiary" means (a) any Subsidiary of Holdings that owns any Property or other rights relating to the Project, including each of ACL, PECL OK and OLA and (b) any Subsidiary of Holdings that, directly or indirectly, owns any Equity Interests of any such Subsidiary; provided that the term "Project Subsidiary" shall not include PECL or any PECL Subsidiary.

"Project Work Agreement" means an agreement with TVA pursuant to which TVA begins the necessary work to construct system upgrades necessary for the Project prior to the execution of an Interconnection Agreement with TVA.

"Property" means any right or interest in or to any asset or property of any kind whatsoever (including Equity Interests), whether real, personal or mixed and whether tangible or intangible.

"Prudent Utility Practices" means any of the acts, practices, methods, equipment, materials, specifications and standards engaged in or approved in connection with a significant portion of the electric utility industry in North America which, as applicable, in the exercise of professional judgment in light of the facts known at the time a decision was made, would have been expected to accomplish the desired result in a manner consistent with Applicable Laws, DOE Policies, any Electric Reliability Organization requirements, reliability, safety, dependability, environmental protection and expedition.

"PUHCA" means the Public Utility Holding Company Act of 2005, and FERC's regulations thereunder.

"Qualified IPO" means the issuance by any Clean Line Entity or any Person that Controls Clean Line (the "IPO Entity") of its common Equity Interests in an underwritten primary public offering (other than a public offering pursuant to a registration statement on Form S-8) pursuant to an effective registration statement filed with the Securities Exchange Commission in accordance with the Securities Act of 1933 (whether alone or in connection with a secondary public offering) which after giving effect thereto shall result in (a) no Person or group of Persons having Control over the IPO Entity or any of the Clean Line Entities (other than the IPO Entity) and any direct or indirect Person in the ownership chain between the IPO Entity and the Clean Line Entities (other than the IPO Entity) and (b) the common voting Equity Interests of such IPO Entity being traded on a regulated United States securities exchange.

"Qualified Owner" means any Person meeting all of the following requirements at the time of its acquisition of any direct or indirect Equity Interests in the Clean Line Entities, as applicable:

(a) (i) neither such Person nor any Person that, directly or indirectly, Controls such Person or any of their respective Principal Persons is a Prohibited Person and (ii) no event has occurred and no condition exists that is likely to result in such

Person or any Person that, directly or indirectly Controls such Person or any of their respective Principal Persons becoming a Prohibited Person;

(b) such Person does not owe any delinquent Indebtedness to any Governmental Authority of the United States, including Tax liabilities, except to the extent such delinquency has been resolved (or is in the process of being resolved) with the appropriate Governmental Authority in accordance with the standards of the Debt Collection Improvement Act;

(c) (i) such Person, and each Person that, directly or indirectly, Controls such Person, and each of their respective Principal Persons, employees and agents have complied with OFAC, all other applicable Anti-Corruption Laws and all AM laws in obtaining any consents, licenses, approvals, authorizations, rights or privileges with respect to such Person's acquisition of any direct or indirect Equity Interests in the Clean Line Entities and (ii) the internal management and accounting practices and controls of such Person and each Person that, directly or indirectly, Controls such Person are adequate to ensure compliance with all applicable Anti-Corruption Laws, AM Laws and Sanctions;

(d) such Person is organized under the laws of an Organization for Economic Co-operation and Development member country;

(e) such Person has provided DOE all documentation and other information under applicable "know your customer" and anti-money laundering rules and regulations, including the Patriot Act, that would customarily be provided or delivered to a financial institution in connection with a transaction involving an extension of credit to such Person at least thirty (30) days prior to its acquisition, directly or indirectly, of any Equity Interests in the Clean Line Entities and DOE shall not have notified Holdings of its objection to such Person's acquisition of such interests within such thirty (30) day period; and

(f) all necessary Governmental Approvals arising as a result of such Person's acquisition of such Equity Interests shall have been obtained and in full force and effect, and, to the extent applicable, the Committee on Foreign Investment in the United States shall have approved such acquisition.

"Real Estate Rights" means any real property rights, including temporary property rights and access rights (whether in the form of fee simple, a leasehold, easement, sub-easement, right of way, license, permit, concession or otherwise).

"Real Estate Rights Agreement" means any agreement entered into from time to time by any Clean Line Entity and/or DOE in respect of the acquisition of any Project Real Estate Rights (including any easement or right of way).

"Release" means disposing, discharging, injecting, spilling, leaking, leaching, dumping, pumping, pouring, emitting, escaping, emptying, seeping, placing and the like, into or upon any land or water or air, or otherwise entering into the environment.

"Release Provision" has the meaning set forth in Section 11.10(a).

"Remaining DOE Acquisition Costs" means, as of any time of determination, the aggregate of all Covered Costs reasonably anticipated to be incurred in connection with the acquisition of any Project Real Estate Rights reasonably anticipated to be designated as DOE Acquired Real Property as of such time of determination, as determined from time to time by the Coordination Committee.

"Remaining Project Costs" means (a) as of the issuance of the Notice to Proceed, (i) the amount of all Construction Costs reasonably anticipated by the Clean Line Entities to be incurred after the issuance of the Notice to Proceed in connection with achieving Project Completion (based on the then applicable Project Plans and Project Schedule) as confirmed, at the election of DOE, by an Independent Engineer *plus* (ii) the Base Contingency Amount and (b) as of any time of determination after the issuance of the Notice to Proceed, the sum of (i) the amount of all Construction Costs reasonably anticipated by the Clean Line Entities as of such time of determination to be incurred from and after such time of determination in connection with achieving Project Completion (based on the then applicable Project Plans and Project Schedule) as confirmed, at the election of DOE, by an Independent Engineer *plus* (ii) the then applicable Contingency Amount.

"Representation Date" has the meaning set forth in Section 12.1.

"Required Amount" means, as of any date of determination, the amount equal, without duplication, to the sum of the Base Amount *plus* the Advanced Funding Contingency Amount.

"Required Approvals" means all material Governmental Approvals and other material consents and approvals of third parties necessary or required under Applicable Law, DOE Policies or any Contractual Obligation for the development, design, engineering, construction, financing, ownership, operation, maintenance, management, replacement and decommissioning of the Project and the sale and provision of transmission services over the Project Facilities.

"Required Insurance" means insurance coverage for the Project as required by the Insurance Agreement as in effect from time to time.

"RFP" has the meaning set forth in the recitals.

"Routing and ROW Plan" means a plan prepared by Holdings, and acceptable to the Coordination Committee, specifying the planned routing corridor for the Project Facilities, identifying all Project Real Estate Rights and including a reasonably detailed budget covering all costs, expenses and disbursements projected to be expended in connection with the acquisition of such Project Real Estate Rights.

"S&P" means Standard & Poor's Financial Services LLC or its successor, so long as it is a rating agency.

"Safety Compliance" means with respect to the Project Facilities any and all improvements, repair, reconstruction, rehabilitation, restoration, renewal, replacement and changes in configuration or procedures respecting the Project Facilities to correct a specific

Safety Event that DOE has reasonably determined to exist by investigation or analysis, provided that DOE's determination shall be consistent with Prudent Utility Practices and Applicable Laws.

"Safety Compliance Order" means a written order from DOE to Holdings to implement Safety Compliance.

"Safety Event" means with respect to the Project Facilities (a) a material hazard, danger or other material risk to public or worker health or safety, (b) a material structural deterioration of a material portion of the Project or (c) material damage to a third party's Property or equipment.

"Sanctions" means economic or financial sanctions or trade embargoes or restrictive measures enacted, imposed, administered or enforced from time to time by (a) the United States government, including those administered by OFAC, the U.S. Department of State or the U.S. Department of Commerce, (b) the United Nations Security Council, (c) the European Union or any of its member states or (d) any other applicable Governmental Authority and including, for the avoidance of doubt, the Trading with the Enemy Act, the International Emergency Economic Powers Act, the Comprehensive Iran Sanctions, Accountability and Divestment Act and the Sudan Accountability and Divestment Act.

"Second Lien Collateral" has the meaning set forth in Section 11.6(a)(iii).

"Security Documents" means the security agreements, pledge agreements, financing statements, account control agreements or other instruments and documents that creates or purports to create or perfect a Lien on the Collateral in favor of DOE and, if applicable, the Intercreditor Agreement.

"Section 1222" has the meaning set forth in the recitals.

"Section 1222 Decision" has the meaning set forth in Section 6.1(a).

"Solvent" and "Solvency" mean, with respect to any Person on a particular date, that on such date (a) the fair value of the Property of such Person is greater than the total amount of liabilities, including contingent liabilities, of such Person, (b) the present fair salable value of the assets of such Person is not less than the amount that will be required to pay the probable liability of such Person on its debts as they become absolute and matured, (c) such Person does not intend to, and does not believe that it will, incur debts or liabilities beyond such Person's ability to pay such debts and liabilities as they mature and (d) such Person is not engaged in business or a transaction, and is not about to engage in business or a transaction, for which such Person's Property would constitute an unreasonably small capital. The amount of contingent liabilities at any time shall be computed as the amount that, in the light of all the facts and circumstances existing at such time, represents the amount that can reasonably be expected to become an actual or matured liability.

"SPP" has the meaning set forth in the recitals.

"SPP Facilities Study" means a "Facilities Study" as defined in the SPP OATT and applicable criteria and business practice documents related thereto.

"SPP OATT" means the SPP OATT on file with FERC and applicable criteria and business practice documents related thereto.

"SPP System Impact Study" means a "System Impact Study" as defined in the SPP OATT.

"Subsidiary" of any Person, means any corporation, partnership, joint venture, limited liability company, trust or estate of which (or in which) more than fifty percent (50%) of (a) the issued and outstanding capital stock having ordinary voting power to elect a majority of the board of directors of such corporation (irrespective of whether at the time capital stock of any other class or classes of such corporation shall or might have voting power upon the occurrence of any contingency), (b) the interest in the capital or profits of such partnership, joint venture or limited liability company or (c) the beneficial interest in such trust or estate, in each case, is at the time directly or indirectly owned or controlled by such Person, by such Person and one or more of its other Subsidiaries or by one or more of such Person's other Subsidiaries.

"Subsidiary Guarantor" has the meaning set forth in Section 9.1(a).

"SWPA" has the meaning set forth in the recitals.

"Taxes" means all taxes, levies, imposts, duties, deductions, charges or withholdings imposed by any Governmental Authority, including any interest, penalties or additions thereto imposed in respect thereof.

"Termination Date" means the date on which this Agreement is terminated in accordance with Sections 7.1(a) or 7.1(b).

"Texas Panhandle" means the geographic area within the panhandle region of Texas, including Sherman, Ochiltree, and Hansford Counties.

"Threatened or Endangered Species" means any species listed by the United States Fish and Wildlife Service as threatened or endangered pursuant to the Endangered Species Act, as amended, 16 U.S.C. § 1531, *et seq.*, or any species listed as threatened or endangered pursuant to a state endangered species act.

"Title Defect" has the meaning set forth in Schedule 1 hereto.

"Title Search" has the meaning set forth in Schedule 1 hereto.

"TN Facilities" means those facilities developed by the Clean Line Parties in Tennessee.

"TRA" means the Tennessee Regulatory Authority.

"TRA 2015 Order" has the meaning set forth in Section 12.1(t).

"Transaction Documents" means this Agreement, the NERC Agreement, the Insurance Agreement, the Security Documents, any Performance Support and any other Contractual

Obligation entered into between DOE and any Clean Line Obligor from time to time in respect of the Project.

"Transmission Services Agreement" means a transmission services agreement under which the Clean Line Entities have agreed to provide transmission services using the Electrical Capacity owned by the Clean Line Parties.

"TSA Precedent Agreement" means a transmission services precedent agreement pursuant to which the Clean Line Entities and the counterparty agree to negotiate and enter into a Transmission Services Agreement.

"TVA" means the Tennessee Valley Authority.

"TVA Facilities Study" means a "Facilities Study" as defined in TVA's Transmission Service Guidelines and other applicable procedure documents related thereto.

"TVA System Impact Study" means a "System Impact Study" as defined in TVA's Transmission Service Guidelines and other applicable procedure documents related thereto.

"TX Facilities" means those facilities developed by the Clean Line Parties in Texas.

"Uncontested Acquisition" means any Acquisition by Condemnation instituted as a result of a request by any Landowner or Curative Party holding the applicable Project Real Estate Rights that such Project Real Estate Rights be acquired through condemnation. Determinations as to whether any Acquisition by Condemnation meets this definition of Uncontested Acquisition are to be made by DOE in its sole discretion and the undertaking of any Uncontested Acquisition prior to the satisfaction of the conditions precedent in Section 6.3 shall be at the sole discretion of DOE. DOE's further pursuit of Uncontested Acquisitions that subsequently are contested by the Landowner or Curative Party in a court of law will become subject to the satisfaction of those conditions precedent applicable to Acquisitions by Condemnation in Section 6.3.

"Uniform Act" has the meaning set forth in Schedule 1 hereto.

"Voluntary Land Acquisition" means (a) an acquisition of Project Real Estate Rights by DOE through an arm's length third party negotiated transaction or (b) at the sole option of DOE prior to the satisfaction of the conditions precedent set forth in Section 6.3, an Uncontested Acquisition.

"Waiver Parcel" has the meaning set forth in Schedule 1 hereto.

"WAPA" means the Western Area Power Administration.

"Wind-Up Event" has the meaning set forth in Section 7.5(a).

"Wind-Up Reserve Account" has the meaning set forth in Section 7.6.

"Work" means the development, design, engineering, construction, financing, operation, maintenance (including any Capital Repairs) and management of the Project, except for any obligations expressly contemplated by this Agreement to be performed by DOE.

"Ziff Family" means, collectively, (a) Dirk Ziff, Robert D. Ziff and Daniel M, Ziff, and their children and other lineal descendants, (b) the spouses or former spouses, widows or widowers of any of the Persons referred to in clause (a), (c) any (i) estate of one or more of the Persons listed in clauses (a) and (b) above or (ii) trust having as its sole beneficiaries one or more of the Persons listed in clauses (a) and (b) above and (d) any Person (other than any Clean Line Entity) the voting power of the outstanding ownership interests of which is Controlled by one or more of the Persons referred to in clauses (a), (b) and (c) above.

"Zilkha Family" means, collectively, (a) Michael Zilkha and his children and other lineal descendants; (b) the spouses or former spouses, widows or widowers of any of the Persons referred to in clause (a); (c) any (i) estate of one or more of the Persons listed in clauses (a) and (b) above or (ii) trust having as its sole beneficiaries one or more of the Persons listed in clauses (a) and (b) above; and (d) any Person (other than any Clean Line Entity) the voting power of the outstanding ownership interests of which is Controlled by one or more of the Persons referred to in clauses (a), (b) and (c) above.

1.2 Rules of Interpretation. In this Agreement, unless otherwise indicated:

(a) any reference to this Agreement or any other Contractual Obligation means such agreement and all schedules, exhibits and attachments thereto as the same may be amended, supplemented or otherwise modified and in effect from time to time, and shall include a reference to any document that amends, modifies or supplements it, or is entered into, made or given pursuant to or in accordance with its terms;

(b) each reference to any Applicable Law or Environmental Law shall be deemed to refer to such Applicable Law or Environmental Law as the same may be amended, supplemented or otherwise modified from time to time;

(c) any reference to a Person in any capacity includes a reference to its permitted successors and assigns in such capacity and, in the case of any Governmental Authority, any Person succeeding to any of its functions and capacities;

(d) references to days shall refer to calendar days unless Business Days are specified;

(e) references to weeks, months or years shall be to calendar weeks, months or years, respectively;

(f) the table of contents and section headings and other captions therein are for the purpose of reference only and do not affect the interpretation of this Agreement;

(g) Article, Section and Schedule references within this Agreement are in reference to Articles, Sections and Schedules of this Agreement unless the context requires otherwise;

(h) in the event of any conflict or inconsistency between any provisions contained in the documents comprising this Agreement, the Articles and Sections of this Agreement, as modified by any amendments or other modifications from time to time, shall take precedence over the Schedules and any other attachments to this Agreement;

(i) defined terms in the singular shall include the plural and vice versa, and the masculine, feminine or neuter gender shall include all genders;

(j) the words "hereof", "herein" and "hereunder", and words of similar import, when used in this Agreement, shall refer to this Agreement as a whole and not to any particular provision of this Agreement;

(k) the words "include," "includes" and "including" are deemed to be followed by the phrase "without limitation" unless the context specifically indicates otherwise;

(l) words not otherwise defined herein that have well-known and generally accepted technical or trade meanings are used herein in accordance with such recognized meanings;

(m) where the terms of this Agreement require that the approval, opinion, consent or other input of any Party be obtained, such requirement shall be deemed satisfied only where the requisite approval, opinion, consent or other input is given by or on behalf of the relevant Party in writing; and

(n) any reference to "recitals" shall be a reference to the paragraphs immediately following the header of "recitals."

ARTICLE II
PROJECT OWNERSHIP STRUCTURE

2.1 Scope of the Clean Line Entities' Rights in Respect of the Project.

(a) Pursuant to the terms of this Agreement (and subject in all respects to the terms and conditions hereof), the Clean Line Entities and DOE shall, at the sole cost and expense of the Clean Line Parties, undertake the Project.

(b) From and after the Commencement Date, the Clean Line Entities and their authorized representatives (including any Contractors) shall have the right (subject to the other terms and conditions of the Transaction Documents and the Real Estate Rights Agreements) to enter into and use any DOE Acquired Real Property and the AR Facilities for purposes of carrying out the Project. Prior to the Commencement Date, the Clean Line Entities shall be solely responsible for gaining any access needed to any Project Real Estate Rights. Absent agreement by the Parties as to a later date, the Clean Line Entities' rights to enter into and use DOE Acquired Real Property or the AR Facilities shall automatically terminate on the Termination Date, and, on and after the Termination Date, all Project Facilities shall be removed at the Clean Line Entities' expense if so requested by DOE.

(c) Subject to the foregoing and the other provisions of this Agreement, the Clean Line Parties shall not have any fee title, leasehold estate, possessory interest, permit, easement or other Real Estate Right of any kind in or to any DOE Acquired Real Property or in any of the AR Facilities. With respect to the AR Facilities and any DOE Acquired Real Property, the Clean Line Entities' interests under this Agreement shall be limited to contract rights constituting intangible personal property (and not real estate interests).

(d) The Clean Line Entities' rights under this Agreement shall be subject in all respects to (i) DOE's ownership of any DOE Acquired Real Property and of the AR Facilities and (ii) all of DOE's rights and remedies under the Transaction Documents.

(e) The Clean Line Entities' rights under this Agreement shall be subject in all respects to, and each of the Clean Line Entities shall be responsible for compliance with, the provisions of all Contractual Obligations (including any Real Estate Rights Agreement), Governmental Approvals or Governmental Orders pursuant to which DOE acquires ownership of any DOE Acquired Real Property, including paying all rents, Taxes, charges and filings fees in connection therewith on behalf of DOE; provided that to the extent that pursuant to any Applicable Law DOE has any non-delegable obligations or duties in respect of any undertakings under any Contractual Obligation (including any Real Estate Rights Agreement), Governmental Approval or Governmental Order relating to the Project, the obligations of the Clean Line Entities under this clause (e) shall be limited to (i) payment of all Covered Costs of DOE incurred in connection with such performance, (ii) providing access to DOE with respect to the Project Site and Project Facilities and (iii) otherwise using all commercially reasonable efforts to support and cooperate with DOE in order to enable DOE to perform any such non-delegable obligations and duties.

(f) Neither DOE nor any other Covered Party shall be in any way responsible or liable for any Indebtedness, losses, obligations or duties of any Clean Line Party or any other Person with respect to the Project, the TN Facilities, the TX Facilities or any other business or undertaking entered into or conducted by or on behalf of any Clean Line Party or the Project. All obligations to pay Project Costs, Taxes, assessments, insurance premiums, and all other fees, costs and expenses arising from or in connection with the Project (including the acquisition of Project Real Estate Rights) and all obligations to perform under any Contractual Obligation relating to the Project (other than DOE's obligations as expressly provided in this Agreement and in any other Transaction Document) shall be the sole responsibility of the Clean Line Parties.

2.2 Ownership of Project Facilities. Each of the Parties hereby agrees and acknowledges that:

(a) DOE shall own 100% of the AR Facilities.

(b) PECL OK shall own 100% of the OK Facilities. Except to the extent constituting a Permitted Disposition, PECL OK shall not Dispose of any of its rights or interests in the OK Facilities without DOE's prior written consent.

2.3 Rights to Electrical Capacity.

(a) Pursuant to this Agreement, Holdings and/or any Clean Line Entity designated or nominated by Holdings, collectively, own 100% of the Electrical Capacity and have the right to market, use and sell transmission services relating to such Electrical Capacity pursuant to a Transmission Services Agreement or as otherwise permitted pursuant to Section 2.3(c), subject to FERC's open access transmission rules and policies.

(b) All transmission and related services provided by any of the Clean Line Entities using any of the Project Facilities shall be provided in accordance with Applicable Laws and Prudent Utility Practices.

(c) No Clean Line Entity shall Dispose of any of its rights or interests in any of the Electrical Capacity except:

(i) marketing and sales of transmission services using Electrical Capacity pursuant to Transmission Services Agreements as contemplated in this Agreement;

(ii) pledges or assignments of the Clean Line Entities' rights and interests in the Electrical Capacity and rights under any Transmission Services Agreements to which any Clean Line Entity is a party to the Project Financing Parties as collateral security for its obligations in respect of the Project Financing or to DOE as contemplated by Section 11.6;

(iii) sales or transfers of Electrical Capacity to Persons making an equity investment in any Clean Line Entity in an aggregate amount not to exceed, unless consented to by DOE, the lesser of (A) 500 MW (net) and (B) 20% of the net Electrical Capacity ("Permitted Project Investments"); provided that such Persons: (1) agree that the use of such Electrical Capacity shall be in accordance with FERC's open access transmission rules and policies applicable to such Person, Prudent Utility Practices and Applicable Laws, (2) make the representations, warranties and covenants set forth in Schedule 13 hereto for DOE's benefit, (3) agree not to transfer such Electrical Capacity to Prohibited Persons and (4) agree to the Release Provision; provided further that after giving effect to the applicable equity investment, (x) no Change of Control shall have occurred and (y) DOE shall have a fully perfected security interest in the Equity Collateral; and

(iv) other Dispositions consented to in writing by DOE in its sole discretion.

(d) Subject to DOE's compliance with its obligations under this Agreement, in no event shall DOE or any other Covered Party under any circumstances have any liability to any Clean Line Party or any other Person in respect of any unavailability of any Electrical Capacity.

ARTICLE III
ACQUISITION OF PROJECT REAL ESTATE RIGHTS

3.1 Generally. The Project Real Estate Rights shall be those set forth in the Routing and ROW Plan as in effect from time to time and shall be acquired by the Parties in accordance with the terms of this Agreement.

3.2 Clean Line Entities' Obligation to Acquire Project Real Estate Rights.

(a) The Clean Line Entities have the primary responsibility for acquiring all Project Real Estate Rights. In connection therewith, the Clean Line Entities shall use all commercially reasonable and good faith efforts to acquire all Project Real Estate Rights in accordance with the terms and conditions set forth in Schedule 1 hereto.

(b) To the extent that any Clean Line Entity acquires any Project Real Estate Rights in Arkansas, such Clean Line Entity will grant to DOE, at no cost to DOE, a lease, sub-easement, right of way or other appropriate property interest or right of use in respect of such Project Real Estate Rights for all purposes of the development, design, engineering, construction, ownership, operation, maintenance and management of the AR Facilities. To the extent that any Clean Line Entity acquires any title insurance for Project Real Estate Rights in Arkansas or in respect of any other DOE Acquired Real Property, the Clean Line Entities shall use commercially reasonable efforts to name DOE as an additional insured in respect of such title insurance.

(c) Solely for purposes of any exercise by DOE of any of its remedies upon the occurrence of an Operational EOD, each of the Clean Line Entities hereby grants to DOE and its designated replacement operator(s), at no cost to DOE or such replacement operator(s), a right of access and use in respect of any Real Estate Rights acquired by any of the Clean Line Parties in Oklahoma and in respect of the OK Facilities. Similarly, DOE agrees, upon the occurrence of an Operational EOD and exercise of the remedy described in Section 7.4(a)(v), to grant to DOE's designated replacement operator(s) a right of access and use in respect of any DOE Acquired Real Property and the AR Facilities for purposes of carrying out the Project.

(d) Except for the grant to DOE of an interest in any Project Real Estate Rights acquired by the Clean Line Entities pursuant to the foregoing, the Clean Line Entities shall not Dispose of any of their respective rights or interests in any Project Real Estate Rights acquired by any of the Clean Line Entities (which excludes, for the avoidance of doubt, any DOE Acquired Real Property) without DOE's prior written consent; provided that no such consent shall be required for (i) any pledge or assignment to the Project Financing Parties as collateral security for Clean Line Entities' obligations under the Project Financing or to DOE (as contemplated by Section 11.6) or (ii) Project Real Estate Rights that are not necessary or are not reasonably likely to be necessary (A) for the development, construction or operation of the Project in accordance with Prudent Utility Practices, the Routing and ROW Plan, any Clean Line Document and the Project Plans as in effect from time to time or (B) for any of the Clean Line Parties to

perform its obligations under any Clean Line Document to which it is a party from time to time (including any Transmission Services Agreements).

3.3 DOE's Acquisition of Project Real Estate Rights.

(a) Subject to the terms and conditions set forth in Schedule 1 hereto, Holdings shall be entitled to designate a Project Real Estate Right as a Real Estate Right to be acquired by DOE in the following circumstances (each, a "DOE Delegated Real Estate Right"):

(i) the Clean Line Entities have been unable, after using all commercially reasonable efforts and in compliance with their obligations hereunder, to locate any Landowner or Curative Party whose consent (or action) is necessary for a conveyance to the Clean Line Entities of a Project Real Estate Right in respect of any underlying Real Estate Right;

(ii) a Title Defect exists with respect to the underlying Real Estate Right and, notwithstanding the Clean Line Entities' compliance with their obligations hereunder and in Schedule 1 hereto, the Clean Line Entities have been unable to obtain any consent from or other necessary action by any Curative Party to enable the applicable Landowner to grant or convey a Project Real Estate Right to the Clean Line Entities in respect of the underlying Real Estate Right; or

(iii) the Clean Line Entities have been unable, after having otherwise complied with all of their obligations specified under Schedule 1 hereto, to acquire the applicable Project Real Estate Right.

(b) At the sole cost and expense of the Clean Line Entities (and subject to Section 11.1) and subject to the satisfaction of the conditions precedent set forth below under Sections 6.2 and 6.3, as applicable, DOE shall assume responsibility for acquiring and shall acquire any DOE Delegated Real Estate Rights through a Voluntary Land Acquisition, Acquisition by Condemnation or through any other manner available to it under Applicable Law as contemplated herein on a prompt and timely basis (taking into account the fact that DOE's ability to promptly and timely acquire any such DOE Delegated Real Estate Rights may be subject to the actions of other third party Persons or Governmental Authorities). Subject to the foregoing sentence and DOE's compliance with its other obligations under this Agreement, the Clean Line Parties bear the risk of any time and cost impacts to the Project and Other Facilities related to DOE's acquisition of the DOE Delegated Real Estate Rights.

(c) DOE shall not be required to enter into any Real Estate Rights Agreement relating to the acquisition of any DOE Delegated Real Estate Right that requires ongoing scheduled or regular payments from DOE after the payment of the initial consideration relating to the acquisition of the DOE Delegated Real Estate Right (which shall be funded using funds on deposit in, or credited to, the Advance Funding Account) or otherwise exposes DOE to any additional or ongoing payment obligations which are otherwise not fully funded in advance by a Clean Line Entity (x) under this Agreement prior to or

simultaneous with DOE's agreement to undertake such payment obligation or (y) pursuant to any subsequent Transaction Document entered into between a Clean Line Entity and DOE.

(d) Notwithstanding the satisfaction (or lack of satisfaction) of the conditions precedent set forth in Sections 6.2 and 6.3, DOE agrees that promptly upon the Effective Date, and subject to receipt of adequate funding by the Clean Line Entities of the costs and expenses related thereto, it shall commence mobilization of personnel necessary to enable it to acquire DOE Delegated Real Estate Rights and set up procedures and processes for such acquisition such that, upon the satisfaction of the relevant conditions precedent, DOE shall be able to promptly pursue the acquisition of any such DOE Delegated Real Estate Rights through either Voluntary Land Acquisitions or by Acquisition by Condemnation; provided, that in no event shall DOE be obligated to commence actual acquisition or condemnation activities with respect to any DOE Delegated Real Estate Rights until the relevant conditions precedent have been satisfied.

(e) The United States of America, acting through the Secretary of the Department, shall hold title to any and all DOE Acquired Real Property and the AR Facilities.

(f) Without prejudice to DOE's rights to Dispose of any DOE Acquired Real Property or the AR Facilities in connection with an exercise of remedies following and during the occurrence of an Event of Default or after the Termination Date, DOE shall have the right to Dispose of its interest and title to all or any DOE Acquired Real Property or the AR Facilities to any other Person without the consent of any of the Clean Line Parties or any other Person (any such Disposition being a "DOE Instituted Disposition"); provided that the Clean Line Entities will not be responsible for the costs associated with any DOE Instituted Disposition; and provided further that any DOE Instituted Disposition:

(i) shall not occur prior to the earlier to occur of December 31, 2024 and Project Completion;

(ii) shall be subject to the Clean Line Entities' continued right of use in respect of such Project Real Estate Rights and the AR Facilities as provided in Section 2.1;

(iii) shall be subject to the continued right of use of the Electrical Capacity by Holdings or any other Person that holds rights to use such Electrical Capacity;

(iv) shall not be prohibited under the terms of the DOE Direct Agreement and the Intercreditor Agreement or otherwise shall have been consented to by any applicable Project Financing Parties party thereto; and

(v) shall have no materially adverse impact on any Clean Line Entities' material rights and material benefits under this Agreement or any other Transaction Document (including the Clean Line Entities' ability to secure on a

commercially reasonably basis any necessary waivers, approvals or consents from DOE as required under the terms of this Agreement).

3.4 Cost Responsibility for Acquisition of Project Real Estate Rights. The acquisition of all Project Real Estate Rights shall be at the sole cost and expense of the Clean Line Entities in accordance with Sections 11.1 and 11.3.

3.5 Amendments and Modifications to Routing and ROW Plan. Holdings shall promptly notify DOE of any material proposed amendments or material modifications to the Routing and ROW Plan (including any updates to the planned routing for the AC Collection System) and provide a description of the reasons underlying such material proposed amendments or material modifications along with such other information as DOE may request in respect of such material proposed amendment or material modification. Any amendment or modification to the Routing and ROW Plan that could reasonably be expected to (a) materially and adversely affect: (i) the ability of the Clean Line Parties' to perform their respective obligations under any Clean Line Document then in effect or (ii) the construction or operation of the Project in accordance with the terms of the Project Plans, the Clean Line Documents and the Project Financing Documents, in each case, as then in effect, (b) result in an Event of Default under this Agreement or the other Transaction Documents or (c) materially increase (i) the Project Real Estate Rights reasonably anticipated to be DOE Delegated Real Estate Rights or (ii) DOE's obligations or liabilities in respect of any DOE Delegated Real Estate Rights or the AR Facilities, shall require the consent of the Coordination Committee. Each amendment or modification to the Routing and ROW Plan shall be made in material compliance with all Applicable Laws, including all Environmental Laws, Cultural Resource Agreements and all measures adopted in the DOE Mitigation Action Plan.

ARTICLE IV
DEVELOPMENT, CONSTRUCTION, OPERATION AND MAINTENANCE OF THE PROJECT

4.1 Development, Construction, Operation and Maintenance of the Project Generally.

(a) Subject to the oversight of the Coordination Committee and DOE's obligations with respect to the acquisition of Project Real Estate Rights pursuant to the terms of this Agreement, the Clean Line Entities have sole responsibility for the management of all aspects of the Project, including the day-to-day management of the Project, the administration of all Project Contracts and the performance of all of the Work.

(b) The Clean Line Entities hereby agree to perform or cause to be performed, all development, design, engineering, construction, operation, maintenance and management activities appropriate for the development of the Project in accordance with the Clean Line Documents (as in effect from time to time), the Project Plans, the Required Approvals and Prudent Utility Practices. As between DOE and the Clean Line Entities, the Clean Line Entities bear the risk of (i) any incorrect or incomplete review, examination or investigation by the Clean Line Entities of any of the Project Real Estate Rights or the Project Site and surrounding locations and (ii) any incorrect or incomplete

information resulting from the development, design, engineering, construction, financing, operation, maintenance, management, replacement and decommissioning activities conducted by the Clean Line Entities or any other Person in connection with the Work, the Project and the Other Facilities.

(c) (i) DOE does not, and shall not be required to, make any warranty or representation as to any surveys, data, reports or other information provided by DOE or other Persons concerning surface conditions and subsurface conditions, including the presence of Hazardous Substances, contaminated groundwater, archeological, paleontological and cultural resources and Threatened or Endangered Species that might affect any of the Project Real Estate Rights or the Project Site; and (ii) as between DOE and the Clean Line Entities, the Clean Line Entities bear the risk of all conditions occurring on, under or at the Project Site or in connection with any of the Project Real Estate Rights, including: (A) physical conditions, (B) changes in surface topography, (C) variations in subsurface moisture content, (D) the presence or discovery of Hazardous Substances, including contaminated ground water, (E) the discovery at, near or on any of the Project Real Estate Rights of any archeological, paleontological or cultural resources and (F) the discovery at, near or on the Project Real Estate Rights of any Threatened or Endangered Species; provided that, subject to Section 2.1(e), the foregoing does not alter or excuse DOE's non-delegable obligations and responsibilities under the DOE Mitigation Action Plan, any Cultural Resource Agreement under NHPA or the Endangered Species Act or any other Applicable Law, which shall in all circumstances remain the obligation and responsibility of DOE.

(d) All Material Construction Contracts and Material O&M Agreements shall provide that DOE is a third party beneficiary thereof. Subject to agreement of the applicable Project Participant (which the Clean Line Entities shall use all commercially reasonable efforts to secure), DOE may, at its election prior to the execution of the applicable Material Construction Contract or Material O&M Agreement, become a party thereto for purposes of obtaining the benefit of any applicable warranties, indemnities and relevant protections thereunder, without any liability thereunder except as expressly assumed by DOE. Holdings shall deliver to DOE, at least ten (10) Business Days prior to the execution of any such Material Construction Contract or Material O&M Agreement, a final draft of such Material Construction Contract or Material O&M Agreement, as the case may be, so as to permit DOE to exercise the option referenced in the preceding sentence (if available following exercise of commercially reasonable efforts by the Clean Line Entities). Each Material Project Contract shall be executed by at least one of the Clean Line Parties. No waiver, approval or change to a Material Project Contract that has, or could reasonably be expected to have, an Adverse DOE Impact, shall be made without the approval of the Coordination Committee.

(e) The Clean Line Entities hereby agree to retain or cause to be retained only Contractors that are qualified, experienced and capable in the performance of the portion of the construction, operation or maintenance of the Project to be performed by such Contractor. Each of the Clean Line Entities shall contractually require that each such Contractor has, at the time of the execution of any Construction Contract or O&M Agreement, and maintains at all time during performance thereunder, all Governmental

Approvals required by Applicable Law. The retention of Contractors by any Clean Line Entity shall not relieve any such Clean Line Entity from any of its responsibilities under this Agreement or any other Transaction Document.

(f) In the performance of its obligations under this Agreement and the other Transaction Documents, each of the Clean Line Entities shall at all times comply, and contractually require that all Contractors comply, with all Applicable Laws (including with respect to the applicable contracts for construction, as defined in Department of Labor regulations at 29 C.F.R. § 5.2(j), the Davis-Bacon Requirements to the extent that DOE (or the Department of Labor, as the case may be) has determined that the Davis-Bacon Act is applicable to this Agreement and/or the Project), and all other Applicable Laws relating to labor, occupational safety and health standards, rules, regulations and federal and state orders and Environmental Laws. DOE shall make a determination or request that the Department of Labor make a determination as to the applicability of the Davis-Bacon Act to this Agreement and/or the Project no later than April 30, 2016. If DOE requests review by the Department of Labor, DOE will make any such request by April 30, 2016, and DOE shall provide Clean Line with an update by May 31, 2016 on the status of such review by the Department of Labor.

(g) Without prejudice to the Clean Line Parties' obligations in respect of the payment of Covered Costs and Covered Liabilities and subject to DOE's obligations in respect of Section 4.10, in undertaking their respective obligations as set forth in this Agreement to develop, construct, operate and maintain, as applicable, the Project, DOE and the Clean Line Entities agree to take all steps necessary to comply in all material respects with all commitments for compliance with all Applicable Laws (including Environmental Laws) and Cultural Resource Agreements, including performance of any required measures set forth in the DOE Mitigation Action Plan; provided that with respect to DOE, its undertakings under this clause (g) shall only apply to the extent of any non-delegable obligation or responsibility of DOE under the DOE Mitigation Action Plan, any Cultural Resource Agreement under NHPA or the Endangered Species Act or any other Applicable Law.

(h) Each of the Clean Line Entities shall, at its own cost and expense, comply in all material respects with all conditions imposed by and undertake all actions required by and all actions necessary to maintain in full force and effect all Required Approvals, including performance of any required measures set forth in the DOE Mitigation Action Plan.

(i) No Clean Line Party shall enter into any agreement with any Project Participant, Governmental Authority (excluding DOE), Landowner or any other third Person having regulatory jurisdiction over any aspect of the Project or having any Property interest affected by the Project that in any way purports to obligate DOE, or states or implies that DOE has an obligation, to such Person to carry out any installation, design, construction, maintenance, repair, operation, control, supervision, regulation or other activity related to the Project, unless DOE otherwise approves in writing in its sole discretion. No Clean Line Party has any power or authority to enter into a Contractual Obligation in the name of or on behalf of DOE unless expressly authorized by DOE.

DOE agrees and acknowledges that the Clean Line Parties shall enter into the Material Project Contracts from time to time for purposes of the design, development, engineering, ownership, operation, management and maintenance of the Project.

4.2 DOE Mitigation Action Plan.

(a) Following issuance of the Section 1222 Decision, DOE shall prepare a plan pursuant to 10 C.F.R. § 1021.331 (the "DOE Mitigation Action Plan") that explains how the mitigation measures in the Section 1222 Decision will be planned and implemented and addresses the following:

(i) mitigation commitments concerning Environmental Laws and Cultural Resource Agreements identified in the Section 1222 Decision;

(ii) any environmental protection measures, species-specific protection measures and best management practices identified in the Final Environmental Impact Statement;

(iii) reasonable and prudent measures or implementing terms and conditions set forth in the Biological Opinion; and

(iv) any conditions and procedures included in any Cultural Resource Agreement.

(b) The DOE Mitigation Action Plan shall be prepared before DOE takes any action directed by the Section 1222 Decision that is the subject of a mitigation commitment.

(c) The DOE Mitigation Action Plan shall be as complete as possible and commensurate with the information available regarding the course of action directed by the Section 1222 Decision. DOE may revise the DOE Mitigation Action Plan as more specific and detailed information becomes available, including to address any modified terms and conditions issued in connection with any Environmental Laws and the Cultural Resource Agreement.

(d) The DOE Mitigation Action Plan will be available on the DOE NEPA Website (http://www.energy.gove/nepa/) and on the Plains and Eastern EIS website (www.plainsandeasterneis.com). Pursuant to 10 C.F.R. § 1021.331, DOE shall make copies of the DOE Mitigation Action Plan available for inspection in the appropriate DOE public reading room(s). Copies of the DOE Mitigation Action Plans shall also be available upon written request.

(e) Holdings shall promptly inform DOE when more specific and detailed information becomes available that should be incorporated into the DOE Mitigation Action Plan, including enforceable commitments included in any Government Approvals for construction, operation and maintenance of the Project.

4.3 Amendments and Modifications to the Project Plans. Holdings shall promptly notify DOE of any proposed material amendments or material modifications to the Project Plans and provide a description of the reasons underlying such proposed material amendments or material modifications along with such other information as DOE may request in respect of such proposed material amendment or material modification. Any amendment or modification to the Project Plans that results in the anticipated Electrical Capacity being reduced by more than 1,500 MW (gross) or 1,000 MW (net) in the aggregate shall require the prior approval of the Coordination Committee. Further, the Clean Line Parties shall take all actions required under the Interconnection Agreements prior to making material modifications to the Project, for which prior notice, consultation, review or approval may be required by the applicable Interconnection Agreement.

4.4 Construction Contracts and Project Contracts.

(a) Unless otherwise determined by Holdings in its reasonable judgment to be beneficial to the Project (as notified by Holdings to DOE in writing prior to the signing of any of the Material Construction Contracts), the Material Construction Contracts for the Project Facilities shall (i) be lump sum, fixed price contracts, (ii) be in the nature of "turnkey" contracts concerning the works covered thereunder, (iii) contain provisions relating to guaranteed performance levels, guaranteed completion dates and liquidated damages that are consistent with current market practice for the construction of transmission facilities in the United States and (iv) require each Construction Contractor to provide credit support for its obligations under the applicable Material Construction Contract in the form of a creditworthy parent guarantee, bond, retainage or letter of credit or some combination of the forgoing. Each Material Construction Contract with respect to the AR Facilities shall provide that title to all Works covered thereunder will be transferred to DOE as completed, and upon payment by the Clean Line Entities of all amounts due and payable under such Material Construction Contract, all such Contractors shall waive any claims thereto or Liens thereon (to the maximum extent permitted by Applicable Law) and the Clean Line Entities shall advance funds to DOE for all Taxes DOE must pay as a result thereof.

(b) The Clean Line Entities bear sole responsibility to pay all fees, expenses, Taxes, assessments, insurance premiums, indemnification claims and other amounts under the Construction Contracts and other Project Contracts, and DOE shall not be in any way responsible or liable for any payments, losses, obligations or duties under or in respect of the Construction Contracts or any other Project Contracts.

(c) Each Construction Contractor shall be required to maintain and pay for customary insurance policies for such Construction Contract, including (if not obtained by the Clean Line Entities) builder's all-risk, delayed start-up, general and automobile liability, employer's liability, workers' compensation and excess liability coverages, as applicable, and that are otherwise consistent with the Insurance Agreement unless otherwise approved by the Coordination Committee.

4.5 Interconnection Agreements. The Project Facilities shall be interconnected to the electric transmission systems operated by SPP and MISO and the TN Facilities will be

interconnected to the electrical transmission system operated by TVA, in each case pursuant to Interconnection Agreements that, among other things, provide for interconnection sufficient to allow the Clean Line Parties to safely and reliably deliver energy across the Project Facilities up to the Electrical Capacity and also satisfy their obligations under the Transmission Services Agreements.

4.6 Operational Coordination with SPP, MISO and TVA. At such time as required by Applicable Law, but in any event no later than Project Completion, the Clean Line Parties shall enter into one or more agreements with SPP, MISO and TVA, as applicable, regarding the coordinated operation of the Project with SPP, MISO and TVA, which shall include identification of the entity responsible for exercising operational control of the Project as well as any agreements with respect to any inter-balancing area interchange of energy or ancillary services between the Project and the neighboring control areas (each, an "Operating Agreement"). Holdings shall consult with and report to DOE on the development of such Operating Agreements. Holdings shall provide DOE with a final draft of any such Operating Agreement at least ten (10) Business Days prior to the execution thereof by the Clean Line Parties; provided that such draft may redact or exclude such data or other information the disclosure of which is prohibited by Applicable Law; provided that the Clean Line Entities shall use all commercially reasonable efforts to apply for any consent or exemption that may be available under Applicable Law or from any Person or Governmental Authority for purposes of providing any such data or other information to DOE and shall, promptly upon receipt of such consent or exemption, provide DOE with an unredacted copy of such Operating Agreement. The Clean Line Parties have sole responsibility in respect of the execution, delivery and performance of each Operating Agreement, which may include delegating performance responsibilities to qualified third parties consistent with Prudent Utility Practices.

4.7 Maintenance of the Project Facilities. The Clean Line Entities have sole responsibility for engaging experienced and responsible Contractors to operate, maintain and repair the Project Facilities to a standard not less than Prudent Utility Practices and in accordance with Applicable Law and Required Approvals, and if such standard is not met then DOE may, subject to the terms of the DOE Direct Agreement and the Intercreditor Agreement to the extent applicable, direct the Clean Line Entities to terminate any applicable O&M Agreement(s) of each applicable Contractor in accordance with its terms. Except with the consent of the Coordination Committee, each Material O&M Agreement shall not (a) require a payment of a bonus or a fee materially in excess of expected bonus or fee levels for comparable contracts payable on a third party arms' length basis or (b) cap the liability of such Contractor at less than all fees (excluding cost reimbursement) received by it under such Material O&M Agreement.

4.8 Capital Repairs and Reserve Account.

(a) The Clean Line Entities shall perform, or engage Contractors to perform, all Capital Repairs necessary or advisable in accordance with Prudent Utility Practices in connection with the Project. The Clean Line Entities shall be solely responsible for the costs and expenses of any such Capital Repairs.

(b) On and after Project Completion, Holdings shall establish and maintain at all times a capital repairs and maintenance reserve account (the "Capital Repairs Reserve

Account"), which Capital Repairs Reserve Account shall be funded at all times with an amount sufficient to cover all estimated Capital Repairs in respect of the Project, *plus* a reasonable contingency amount as determined by the Independent Engineer appointed by the Project Financing Parties (or if there is no Project Financing, the Coordination Committee in consultation with the Independent Engineer), which are required by Prudent Utility Practice or reasonably anticipated to be incurred in the upcoming twelve (12) months. If at any time the Clean Line Entities fail to utilize such funds in the Capital Repair Reserve Account to make Capital Repairs when required, then subject to prior notice to Holdings and a grace period of thirty (30) days, DOE may, at its option (but with no obligation to) draw (i) on the Performance Support or (ii) if agreed to by the Project Financing Parties, from the Capital Repairs Reserve Account, and, in each case, apply the proceeds thereof to the making of any such Capital Repairs.

4.9 NERC Standards. Prior to the issuance of the Notice to Proceed, the Clean Line Entities and DOE shall enter into an agreement (the "NERC Agreement") pursuant to which (a) the Clean Line Entities shall assume sole responsibility for compliance with all applicable or desirable reliability standards (including NERC reliability standards) related to the Project, including any related documentation obligations, audits, violations and mitigation obligations, (b) the Clean Line Parties shall be solely responsible for all liabilities or claims that arise in connection with the operation of the Project (or any portion thereof) as a result of the noncompliance of the Project (or any portion thereof) with NERC's reliability standards and (c) the Clean Line Parties shall indemnify DOE and each Covered Party for all Covered Liabilities in connection with the operation of the Project (or any portion thereof) as a result of the Project's non-compliance with all applicable reliability standards or regulations.

4.10 DOE Cooperation. To the extent reasonably requested by Holdings, DOE shall coordinate and cooperate in good faith with the Clean Line Entities on the Project, including providing information and assistance in the preparation of any application for any Required Approval; provided that such cooperation and coordination shall be at the Clean Line Entities sole cost and expense and shall not impose an unreasonable burden on DOE.

ARTICLE V
COORDINATION COMMITTEE

5.1 Coordination Committee.

(a) Holdings and DOE will establish a coordination committee promptly after the date of this Agreement (the "Coordination Committee"), which shall be composed of two (2) representatives from Holdings and two (2) representatives from DOE. Each of Holdings and DOE may replace its respective representatives at any time by providing written notice to the other Person. The Coordination Committee shall coordinate and manage the efforts of the Clean Line Entities and DOE relating to the Project and provide a forum for updates, discussion and attempted resolution of any relevant issues with respect to the Transaction Documents and the Project.

(b) Prior to the occurrence of Project Completion, the Coordination Committee shall meet not less than once a month, and from and after the occurrence of

Project Completion, the Coordination Committee shall meet not less than once a fiscal quarter, in each case at mutually convenient times, locations or means as the Coordination Committee shall determine. The Coordination Committee will have the authority to create sub-committees to consider specific issues whenever it deems appropriate. Each of Holdings and DOE shall have the right to call a special meeting of the Coordination Committee upon not less than five (5) Business Days' prior written notice to the other Person. One (1) of Holdings' representatives will be designated as the Chair of the Coordination Committee. Holdings and DOE may submit any item for inclusion on any agenda of any Coordination Committee meeting.

(c) Subject to Section 7.4(a), meetings of the Coordination Committee shall require a quorum consisting of one representative of each of Holdings and DOE. If a quorum is not present at the commencement of any meeting, the Chair will reschedule the meeting to take place within the following ten (10) Business Days and will give notice of such scheduled meeting to the representatives on the Coordination Committee.

(d) Other employees and/or agents of the Parties shall be entitled to attend meetings of the Coordination Committee. Meetings may be conducted in person, by telephone or video conference call or by such other means as which permits the Parties' representatives to be verified and to hear and be heard by the other Parties' representatives. Attendees who are not representatives of any Party shall be identified at the commencement of any meeting and shall have no power to vote on any matters but may participate in discussions in accordance with the Coordination Committee's rules of order, which may limit the amount of time that such other attendees may participate.

(e) Notwithstanding the delegation of authority granted to the Parties pursuant to this Agreement, and subject to Section 7.4(a), the following actions shall require the affirmative approval of one (1) representative of each of Holdings and DOE on the Coordination Committee:

(i) the approval of any public announcements relating to DOE's involvement in the Project;

(ii) the adoption, implementation and/or material modification of an insurance agreement (the "Insurance Agreement") for the Project and the making of any material claim in respect of any insurance relating to the Project;

(iii) the estimation of costs required to be funded into the Wind-Up Reserve Account, any matters relating to the funding of the Wind-Up Events, the decision to commence the Wind-Up Events and the entry into of any Contractual Obligations or undertakings relating to the Wind-Up Events;

(iv) if no Project Financing is then currently in effect, the issuance of any completion or similar certificate or the acceptance of any performance tests under any Material Construction Contract;

(v) the determination from time to time of the amount of any Remaining DOE Acquisition Costs and to the extent applicable, the Contingency Amount; and

(vi) any express consents or approvals delegated to the Coordination Committee under this Agreement, including pursuant to Sections 3.5, 4.1(d), 4.3, 4.4(c), 4.7, 4.8(b), 7.3(m), 7.6 and 7.7.

(f) If the representatives of Holdings and DOE participating in a meeting of the Coordination Committee are unable to reach an agreement on a matter before the Coordination Committee (a "Deadlock"), Holdings and DOE shall attempt to resolve such Deadlock through negotiations of the representatives. If such Deadlock is not resolved within seven (7) days, the Deadlock shall be referred to a panel consisting of a senior level executive of each of Holdings and DOE with the authority to resolve the matter causing such Deadlock, who shall attempt to resolve such Deadlock within seven (7) days. For construction-related, operational-related or other technical issues or for financial or accounting issues, Holdings and DOE shall have the right to appoint an independent technical or financial consultant to assist in resolving such Deadlock.

(g) DOE shall have the right to retain one or more technical (including engineering, market, legal or financial) consultants with respect to its participation on the Coordination Committee at the sole cost and expense of the Clean Line Entities.

(h) All costs and expenses incurred by the representatives of DOE in the Coordination Committee shall be borne by the Clean Line Entities.

ARTICLE VI
CONDITIONS PRECEDENT

6.1 Conditions Precedent to Effective Date. DOE's obligations hereunder shall become effective upon the satisfaction of the following conditions:

(a) the Secretary of the Department shall have issued a Record of Decision (the "Section 1222 Decision") authorizing the participation by DOE in the Project pursuant to the statutory authority granted under Section 1222 and addressing all required determinations necessary for purposes of the participation decision under NEPA, the Endangered Species Act, the NHPA, and any other Applicable Law;

(b) each of the Parties shall have duly executed and delivered this Agreement;

(c) Holdings shall have delivered to DOE (i) certified Organizational Documents of each of the Clean Line Parties, (ii) secretary's certificates, officer's certificates, resolutions and good standing certificates for each of the Clean Line Parties (including certificates certifying to such matters as DOE shall reasonably require) and (iii) legal opinions from counsel to the Clean Line Parties;

(d) at least thirty (30) days shall have passed since the Environmental Protection Agency shall have published a notice of availability for the Final Environmental Impact Statement in respect of the Project;

(e) Holdings shall have delivered to DOE certified copies of duly executed term sheets for TSA Precedent Agreements in respect of not less than 3,500 MW of the Electrical Capacity in the aggregate, each of which shall be in full force and effect;

(f) the Clean Line Entities shall be in compliance with all funding obligations required under the AFDA;

(g) **[**Reserved**]**

(h) Holdings shall have delivered to DOE (i) an updated Project Budget and a reasonably detailed project budget for the development, design, engineering and construction of the Other Facilities and (ii) an updated base case model of projections of operating costs and results (including projections in respect of revenues, expenses, cash flow, debt service and sources and uses of revenues) for the Project and for the Other Facilities (the "Base Case Projections");

(i) Holdings shall have delivered to DOE a copy of audited consolidated financial statements of CLEP for the calendar year ending December 31, 2014 and unaudited consolidated financial statements of CLEP for each of the four (4) fiscal quarters of the calendar year ending December 31, 2015;

(j) Holdings shall have delivered to DOE a Project Development Progress Report as of the Effective Date;

(k) Holdings shall have paid all costs and expenses (including costs and expenses of all consultants, advisors and counsel to DOE) accrued and invoiced;

(l) all representations and warranties made by any of the Clean Line Obligors in this Agreement shall be true and correct as of the Effective Date;

(m) no Default or Event of Default shall have occurred and be continuing;

(n) (i) no Governmental Order shall be in effect nor shall any Change of Law have occurred that, in either case, as applicable, sets aside, enjoins or legally prohibits (A) DOE's performance under this Agreement or (B) DOE's participation in the Project and (ii) no other final and non-appealable Governmental Order shall be in effect nor shall any Change of Law have occurred that, in either case, as applicable, sets aside, enjoins or legally prohibits (A) the execution or delivery of this Agreement or (B) any Clean Line Entity's performance under this Agreement; and

(o) (i) ACL shall have been duly formed and organized, (ii) all Property or physical facilities held by or in the name of any of Holdings or any of its Subsidiaries to the AR Facilities or any Project Real Estate Rights located in Arkansas shall have been transferred to ACL and documentary evidence thereof shall have been delivered by

Holdings to DOE and (iii) neither PECL nor any PECL Subsidiary (to the extent then in existence) shall thereafter own directly or control real Property of the Project or any physical facilities of the Project Facilities (excluding rights under any Project Contracts where multiple Clean Line Parties are parties).

6.2 Conditions Precedent to Voluntary Land Acquisitions.

(a) DOE's initial obligation to assist with the acquisition of Project Real Estate Rights by way of Voluntary Land Acquisitions shall commence upon the satisfaction of the following conditions precedent:

(i) the Effective Date shall have occurred;

(ii) the Clean Line Entities shall have complied with all of the requirements and procedures set forth in Schedule 1 hereto with respect to the DOE Delegated Real Estate Right to be acquired;

(iii) Holdings shall have delivered to DOE (A) the Routing and ROW Plan, (B) the Project Plans and (C) an updated Project Development Progress Report as of the Commencement Date and an updated Project Budget, which shall include a summary and explanation of any deviations from the Project Budget and the Project Schedule delivered as a condition to the occurrence of the Effective Date;

(iv) Holdings shall have delivered to DOE certified copies of duly executed and enforceable TSA Precedent Agreements, Acceptable Transmission Services Agreements or Acceptable Permitted Project Investment Commitments in respect of not less than 3,500 MW of the Electrical Capacity in the aggregate, each of which shall be in full force and effect; provided that no less than 1,500 MW of such Electrical Capacity in the aggregate (calculated as the sum of (A) with respect to Acceptable Permitted Project Investments, the sum of each portion of the Electrical Capacity transferred (and for which the Clean Line Entities have received payment or will receive payment within three (3) years after the date of such Permitted Project Investment) pursuant to each Acceptable Permitted Project Investment Commitment and (B) with respect to the Acceptable Transmission Services Agreements, the sum of the average Electrical Capacity committed in the initial five (5) years of the term for each such Acceptable Transmission Services Agreement) shall be committed pursuant to Acceptable Transmission Services Agreements and Acceptable Permitted Project Investment Commitments;

(v) Holdings shall have delivered to DOE copies of duly executed purchase options or comparable site control agreements (collectively, the "Converter Station Real Estate Rights Agreements") that permit the Clean Line Entities to obtain all Real Estate Rights necessary for the construction of the Converter Station Facility and the Intermediate Converter Station, and such purchase options, if any, shall have exercise periods consistent with the Project Schedule, each of which shall be in full force and effect;

(vi) the Clean Line Parties shall be diligently proceeding with obtaining all necessary interconnection rights for the Project, including completion of the following conditions:

(A) SPP – the SPP Facilities Study and the SPP System Impact Study shall have been completed and the Clean Line Parties shall have executed an Interconnection Agreement for interconnection of the Project with the SPP-controlled transmission system;

(B) MISO – the MISO Interconnection Feasibility Study, the MISO Interconnection Facilities Study and the MISO Interconnection System Impact Study shall have been completed and the Clean Line Parties shall have executed an Interconnection Agreement for interconnection of the Project with the MISO-controlled transmission system; and

(C) TVA – the TVA Facilities Study and the TVA System Impact Study shall have been completed and the Clean Line Parties shall have executed a Project Work Agreement or Interconnection Agreement for interconnection of the TN Facilities with the TVA transmission system;

(vii) Holdings shall have delivered to DOE certified copies of (x) Firm Project Equity Commitments that are then in full force and effect and that provide for commitments (together with amounts on deposit in the Advance Funding Account) in an amount equal to not less than 150% of the Remaining DOE Acquisition Costs, as of the Commencement Date and (y) Project Equity Commitments or letters of interest and/or Project Financing Commitments or letters of interest in respect of the Project Financing (together with amounts on deposit in the Advance Funding Account) in an aggregate amount sufficient to cover all other Remaining Project Costs;

(viii) Holdings shall have delivered to DOE the required Performance Support in an amount not less than the Applicable Amount;

(ix) Holdings shall have completed the following design, engineering and project management activities and delivered evidence thereof to DOE:

(A) obtained design criteria, structure geometrics, structure loading schedules and estimated weights from vendors;

(B) selected the insulator and hardware vendor and completed electrical testing specifications;

(C) completed LiDAR survey, structure spotting, preliminary access road layout and vegetation clearing assessment;

(D) completed the conductor, metallic return conductor and optical ground wire/shield wire design;

(E) completed preliminary foundation design; and

(F) prepared a reasonably detailed project execution and construction schedule.

(x) DOE and Holdings shall have entered into the Insurance Agreement and Holdings shall have delivered to DOE evidence that all Required Insurance is in full force and effect (including written binding verification of such coverage);

(xi) (A) no Governmental Order shall be in effect nor shall any Change of Law have occurred that, in either case, as applicable, sets aside, enjoins or legally prohibits (1) DOE's performance under this Agreement or any other Transaction Document then in effect or (2) DOE's participation in the Project and (B) no other final and non-appealable Governmental Order shall be in effect nor shall any Change of Law have occurred that, in either case, as applicable, (1) sets aside, enjoins or legally prohibits any Clean Line Entity's performance under this Agreement or any other Transaction Document then in effect or any Clean Line Entity's performance in any material respect under any Material Project Contract to which it is a party or (2) affects in any material respect the legality, validity or enforceability of any of the Transaction Documents, any Project Equity Commitment or any of the Material Project Contracts then in effect;

(xii) (A) all representations and warranties made by any Clean Line Obligor in any of the Transaction Documents shall be true and correct in all material respects (except to the extent any such representation and warranty itself is qualified by "materiality", "material adverse effect", "Adverse DOE Impact", "Clean Line Material Adverse Effect" or a similar qualifier, in which case it shall be true and correct in all respects) and (B) no Default, Event of Default or Event of Loss shall have occurred and be continuing, in each case, as of the Commencement Date;

(xiii) the Clean Line Entities shall have granted to DOE a first priority perfected security interest in the Equity Collateral as required at such time pursuant to Section 11.6, together with such legal opinions, certificates and other documents in respect thereof as DOE may reasonably request; and

(xiv) Holdings shall have delivered to DOE a certificate of an Authorized Officer as to the satisfaction of the foregoing conditions precedent.

(b) After the occurrence of the Commencement Date, DOE's obligations to acquire or continue to acquire DOE Delegated Real Estate Rights through Voluntary Land Acquisitions or any other means shall only be subject to the following conditions being satisfied:

(i) the Clean Line Entities shall have complied with all of the requirements and procedures set forth in Schedule 1 hereto with respect to the DOE Delegated Real Estate Rights to be acquired;

(ii) Acceptable Transmission Services Agreements and Acceptable Permitted Project Investment Commitments in respect of not less than 1,500 MW of the Electrical Capacity in the aggregate (calculated as the sum of (A) with respect to Acceptable Permitted Project Investments, the sum of each portion of the Electrical Capacity transferred (and for which the Clean Line Entities have received payment or will receive payment within three (3) years after the date of such Permitted Project Investment) pursuant to each Acceptable Permitted Project Investment Commitment and (B) with respect to the Acceptable Transmission Services Agreements, the sum of the average Electrical Capacity committed in the initial five (5) years of the term for each such Acceptable Transmission Services Agreement) shall be in full force and effect and no event shall have occurred and be continuing (whether as a result of a default or the failure of a condition precedent or otherwise) that gives the Project Participant party thereto the right to terminate such Acceptable Transmission Services Agreement or such Acceptable Permitted Project Investment Commitment;

(iii) the Converter Station Real Estate Rights Agreements shall be in full force and effect or the Clean Line Entities shall own in fee free and clear of all Liens other than Permitted Liens all Real Estate Rights necessary for the construction of the Converter Station Facility and the Intermediate Converter Station;

(iv) the executed Interconnection Agreements for interconnection of the Project with the SPP-controlled transmission system and the MISO-controlled transmission system and the executed Project Work Agreement or Interconnection Agreement for interconnection of the TN Facilities with the TVA transmission system shall be in full force and effect and no event shall have occurred and be continuing (whether as a result of a default or the failure of a condition precedent or otherwise) that gives the Project Participant party thereto the right to terminate such Interconnection Agreements or Project Work Agreement (except to the extent the Project Work Agreement has been replaced by an Interconnection Agreement with TVA);

(v) either (A) the Project Equity Commitments (including Firm Project Equity Commitments that are then in full force and effect and that provide for commitments (together with amounts on deposit in the Advance Funding Account) in an amount equal to not less than 150% of the Remaining DOE Acquisition Costs as of any date on which any Clean Line Entity designates any Project Real Estate Right as a DOE Delegated Real Estate Right), Project Financing Commitments and any letters of intent delivered as a condition to the occurrence of the Commencement Date shall continue to be in full force and effect or (B) the Financing Condition shall be satisfied;

(vi) (A) no Governmental Order shall be in effect nor shall any Change of Law have occurred that, in either case, as applicable, sets aside, enjoins or legally prohibits (1) DOE's performance under this Agreement or any other Transaction Document then in effect or (2) DOE's participation in the Project and (B) no other final and non-appealable Governmental Order shall be in effect nor shall any Change of Law have occurred that, in either case, as applicable, (1) sets aside, enjoins or legally prohibits any Clean Line Entity's performance under this Agreement or any other Transaction Document then in effect or any Clean Line Entity's performance in any material respect under any Material Project Contract to which it is a party or (2) affects in any material respect the legality, validity or enforceability of any of the Transaction Documents, any Project Equity Commitment or any of the Material Project Contracts then in effect; and

(vii) no Event of Default shall have occurred and be continuing.

(c) Following the Commencement Date, at any time Holdings delivers a written notice of designation of any Project Real Estate Rights as a DOE Delegated Real Estate Right, Holdings shall concurrently deliver a certificate of an Authorized Officer certifying as to the satisfaction of all conditions specified in Section 6.2(b) (a form of which is attached as Schedule 6 hereto).

6.3 Conditions Precedent to Acquisitions by Condemnation.

(a) DOE's initial obligation to assist with the acquisition of Project Real Estate Rights by way of Acquisitions by Condemnation shall commence upon the satisfaction of the following conditions precedent:

(i) the Commencement Date shall have occurred;

(ii) the Clean Line Entities shall have complied with all of the requirements and procedures set forth in Schedule 1 hereto with respect to the DOE Delegated Real Estate Right to be condemned;

(iii) the Financing Condition shall be satisfied and Holdings shall have delivered to DOE certified copies of all applicable executed DOE Approved Project Financing Commitments, DOE Approved Project Equity Commitments, Project Equity Commitments and/or Project Financing Documents;

(iv) (A) all Performance Support in an amount not less than the Applicable Amount shall be in full force and effect, (B) to the extent that Project Financial Close has occurred, the Clean Line Entities shall have granted a perfected security interest in the Second Lien Collateral in accordance with Section 11.6 in favor of DOE (but only to the extent that the first priority security interest in favor of the Project Financing Parties has been granted and/or perfected) and shall have delivered to DOE such legal opinions, certificates and other documents in respect thereof as DOE shall have requested and (C) to the extent that Project Financial Close has occurred, the Intercreditor Agreement shall be in full force and effect;

(v) (A) Acceptable Transmission Services Agreements and Acceptable Permitted Project Investment Commitments in respect of not less than 2,000 MW of the Electrical Capacity in the aggregate (calculated as the sum of (A) with respect to Acceptable Permitted Project Investments, the sum of each portion of the Electrical Capacity transferred (and for which the Clean Line Entities have received payment or will receive payment within three (3) years after the date of such Permitted Project Investment) pursuant to each Acceptable Permitted Project Investment Commitment and (B) with respect to the Acceptable Transmission Services Agreements, the sum of the average Electrical Capacity committed in the initial five (5) years of the term for each such Acceptable Transmission Services Agreement) shall be in full force and effect and no event shall have occurred and be continuing (whether as a result of a default or the failure of a condition precedent or otherwise) that gives the Project Participant party thereto the right to terminate such Acceptable Transmission Services Agreement or such Acceptable Permitted Project Investment Commitment and (B) the Converter Station Real Estate Rights Agreements shall be in full force and effect or the Clean Line Entities shall own in fee free and clear of all Liens other than Permitted Liens all Real Estate Rights necessary for the construction of the Converter Station Facility and the Intermediate Converter Station;

(vi) (A) the Clean Line Parties shall have delivered to DOE certified copies of the Interconnection Agreements necessary for the operation of the Project, each of which shall have been duly executed and delivered and shall be in full force and effect, (B) each of the Material Interconnection Studies shall have been completed and (C) the Clean Line Parties are in compliance with the Interconnection Agreements;

(vii) the Clean Line Parties shall have initiated joint discussions among officials and representatives of SPP, MISO and TVA to address any necessary inter-balancing area coordination and operational issues for the drafting of the applicable Operating Agreement;

(viii) Holdings shall have delivered to DOE evidence that all Required Insurance is in full force and effect (including written binding verification of such coverage);

(ix) (A) no Governmental Order shall be in effect nor shall any Change of Law have occurred that, in either case, as applicable, sets aside, enjoins or legally prohibits (1) DOE's performance under this Agreement or any other Transaction Document then in effect or (2) DOE's participation in the Project and (B) no other final and non-appealable Governmental Order shall be in effect nor shall any Change of Law have occurred that, in either case, as applicable, (1) sets aside, enjoins or legally prohibits any Clean Line Entity's performance under this Agreement or any other Transaction Document then in effect or any Clean Line Entity's performance in any material respect under any Material Project Contract to which it is a party or (2) affects in any material respect the legality, validity or

enforceability of any of the Transaction Documents, any Project Equity Commitment or any of the Material Project Contracts then in effect;

(x) (A) all representations and warranties made by any Clean Line Obligor in any of the Transaction Documents shall be true and correct in all material respects (except to the extent any such representation and warranty itself is qualified by "materiality", "material adverse effect", "Adverse DOE Impact", "Clean Line Material Adverse Effect" or a similar qualifier, in which case it shall be true and correct in all respects) and (B) no Default, Event of Default or Event of Loss shall have occurred and be continuing, in each case, as of the applicable date;

(xi) Holdings shall have delivered to DOE an updated Project Development Progress Report and an updated Project Budget, which shall include a summary and explanation of any deviations from the Project Budget and the Project Schedule delivered as a condition to the occurrence of the Commencement Date and which shall include any Project Costs associated with the Interconnection Agreements or any Operating Agreement then in effect; and

(xii) Holdings shall have delivered to DOE a certificate of an Authorized Officer as to the satisfaction of the foregoing conditions precedent.

(b) After the satisfaction of the foregoing conditions precedent to DOE's obligation to assist with the acquisition of Project Real Estate Rights by way of Acquisitions by Condemnation, DOE's obligations to acquire or continue to acquire any DOE Delegated Real Estate Rights by way of Acquisitions by Condemnation shall only be subject to the following conditions being satisfied at all times:

(i) the Clean Line Entities shall have complied with all of the requirements and procedures set forth in Schedule 1 hereto with respect to the DOE Delegated Real Estate Rights to be acquired;

(ii) Acceptable Transmission Services Agreements and Acceptable Permitted Project Investment Commitments in respect of not less than 2,000 MW of the Electrical Capacity in the aggregate (calculated as the sum of (A) with respect to Acceptable Permitted Project Investments, the sum of each portion of the Electrical Capacity transferred (and for which the Clean Line Entities have received payment or will receive payment within three (3) years after the date of such Permitted Project Investment) pursuant to each Acceptable Permitted Project Investment Commitment and (B) with respect to the Acceptable Transmission Services Agreements, the sum of the average Electrical Capacity committed in the initial five (5) years of the term for each such Acceptable Transmission Services Agreement) shall be in full force and effect and no event shall have occurred and be continuing (whether as a result of a default or the failure of a condition precedent or otherwise) that gives the Project Participant party thereto the right to terminate such Acceptable Transmission Services Agreement or such Acceptable Permitted Project Investment Commitment;

(iii) the Converter Station Real Estate Rights Agreements delivered pursuant to the foregoing conditions precedent shall continue to be in full force and effect and neither any Clean Line Entity nor any other Person party thereto shall be in default thereunder (or the Clean Line Entities shall then own in fee free and clear of Liens other than Permitted Liens all Real Estate Rights necessary for the construction of the Converter Station Facility and the Intermediate Converter Station);

(iv) the Interconnection Agreements delivered pursuant to the foregoing conditions precedent shall continue to be in full force and effect and neither any Clean Line Entity nor any other Person party thereto shall be in default thereunder;

(v) the Financing Condition shall be satisfied;

(vi) (A) no Governmental Order shall be in effect nor shall any Change of Law have occurred that, in either case, as applicable, sets aside, enjoins or legally prohibits (1) DOE's performance under this Agreement or any other Transaction Document then in effect or (2) DOE's participation in the Project and (B) no other final and non-appealable Governmental Order shall be in effect nor shall any Change of Law have occurred that, in either case, as applicable, (1) sets aside, enjoins or legally prohibits any Clean Line Entity's performance under this Agreement or any other Transaction Document then in effect or any Clean Line Entity's performance in any material respect under any Material Project Contract to which it is a party or (2) affects in any material respect the legality, validity or enforceability of any of the Transaction Documents, any Project Equity Commitment or any of the Material Project Contracts then in effect; and

(vii) no Event of Default shall have occurred and be continuing.

(c) After the conditions precedent to DOE's initial obligation to assist with the acquisition of Project Real Estate Rights by way of Acquisitions by Condemnation have been satisfied, at any time Holdings delivers a written notice of designation of any Project Real Estate Rights as a DOE Delegated Real Estate Right, Holdings shall concurrently deliver a certificate of an Authorized Officer certifying as to the satisfaction of all conditions specified in Section 6.3(b) (a form of which is provided as Schedule 7 hereto).

(d) Notwithstanding the foregoing, from and after the Commencement Date, DOE may, at its sole option, elect to pursue an Uncontested Acquisition prior to the satisfaction in full of the conditions precedent set forth above, so long as the conditions precedent required to be satisfied for DOE's acquisition of DOE Delegated Real Estate Rights through a Voluntary Land Acquisition are satisfied.

6.4 Conditions Precedent to Notice to Proceed.

(a) Prior to the issuance by any Clean Line Entity of any notice to proceed under any Material Construction Contract that involves any physical construction activity

on any Project Real Estate Right, Holdings shall first have received a Notice to Proceed from DOE. DOE shall issue a Notice to Proceed to Holdings promptly upon satisfaction of the following conditions precedent:

(i) the applicable Material Construction Contract shall have been duly executed and delivered and shall be in full force and effect;

(ii) the Financing Condition is satisfied and Acceptable Transmission Services Agreements and Acceptable Permitted Project Investment Commitments in respect of not less than 2,000 MW of the Electrical Capacity in the aggregate (calculated as the sum of (A) with respect to Acceptable Permitted Project Investments, the sum of each portion of the Electrical Capacity transferred (and for which the Clean Line Entities have received payment or will receive payment within three (3) years after the date of such Permitted Project Investment) pursuant to each Acceptable Permitted Project Investment Commitment and (B) with respect to the Acceptable Transmission Services Agreements, the sum of the average Electrical Capacity committed in the initial five (5) years of the term for each such Acceptable Transmission Services Agreement) shall be in full force and effect and no event shall have occurred and be continuing (whether as a result of a default or the failure of a condition precedent or otherwise) that gives the Project Participant party thereto the right to terminate such Acceptable Transmission Services Agreement or such Acceptable Permitted Project Investment Commitment;

(iii) the Performance Support in an amount not less than the Applicable Amount shall be in full force and effect;

(iv) Holdings shall have delivered to DOE evidence that all Required Insurance is in full force and effect (including written binding verification of such coverage);

(v) the Converter Station Real Estate Rights Agreements shall be in full force and effect or the Clean Line Entities shall then own in fee free and clear of Liens other than Permitted Liens all Real Estate Rights necessary for construction of the Converter Station Facility and the Intermediate Converter Station;

(vi) (A) no Governmental Order shall be in effect nor shall any Change of Law have occurred that, in either case, as applicable, sets aside, enjoins or legally prohibits (1) DOE's performance under this Agreement or any other Transaction Document then in effect or (2) DOE's participation in the Project and (B) no other final and non-appealable Governmental Order shall be in effect nor shall any Change of Law have occurred that, in either case, as applicable, (1) sets aside, enjoins or legally prohibits any Clean Line Entity's performance under this Agreement or any other Transaction Document then in effect or any Clean Line Entity's performance in any material respect under any Material Project Contract to which it is a party or (2) affects in any material respect the legality, validity or

enforceability of any of the Transaction Documents, any Project Equity Commitment or any of the Material Project Contracts then in effect;

(vii) the Clean Line Entities and DOE shall have executed the NERC Agreement;

(viii) all Interconnection Agreements and Material O&M Agreements shall have been duly executed and be in full force and effect; provided that to the extent that the Project Financing is in effect, the Material O&M Agreements shall be limited to those that are required to be in effect at such time as required under the terms of the Project Financing Documents;

(ix) to the extent that DOE (or the Department of Labor, as the case may be) shall have made a determination that the Davis-Bacon Act applies to this Agreement and/or the Project, Holdings shall have delivered a certificate of an Authorized Officer to DOE dated not less than fifteen (15) days prior to the delivery of the Notice to Proceed stating either that the Clean Line Parties are in compliance with all applicable Davis-Bacon Requirements and, to the extent the Davis-Bacon Act is applicable, have included the provisions and wage determinations set forth in Schedule 15 hereto (as such Schedule is supplemented from time to time in accordance with Section 8.24(b)) in each applicable contract for construction, as defined in Department of Labor regulations at 29 C.F.R. § 5.2(j);

(x) (A) all representations and warranties made by any Clean Line Obligor in any of the Transaction Documents shall be true and correct in all material respects (except to the extent any such representation and warranty itself is qualified by "materiality", "material adverse effect", "Adverse DOE Impact", "Clean Line Material Adverse Effect" or a similar qualifier, in which case it shall be true and correct in all respects) and (B) no Default, Event of Default or Event of Loss shall have occurred and be continuing, in each case, as of the applicable date; and

(xi) Holdings shall have delivered to DOE a certificate of an Authorized Officer as to the satisfaction of the foregoing conditions precedent.

(b) Notwithstanding anything herein to the contrary, the Clean Line Entities shall not be obligated to satisfy the conditions specified in this Section 6.4 in order to issue any purchase orders, work authorizations or limited notices to proceed (however titled) under any Material Construction Contract that concern (i) design, engineering, procurement or other non-site activities; (ii) civil, environmental and/or geotechnical surveys; (iii) pre-construction activities on Real Estate Rights held by the Clean Line Entities on which the Converter Station Facility and the Intermediate Converter Station will be constructed or installed such as installation of roads for access and clearing, grading and installation of appropriate base material (*e.g.*, rock); (iv) clearing of rights-way on Real Estate Rights that are not DOE Acquired Real Property and/or (v) construction activities on Real Estate Rights in Oklahoma held by the Clean Line

Entities on which the Converter Station Facility will be constructed or installed; provided further that to the extent that the Performance Support then in effect is equal to the Applicable Amount that applies from and after the issuance of the Notice to Proceed (regardless of whether the Notice to Proceed has been issued or the other conditions to the issuance thereof have been satisfied), the Clean Line Entities shall not be obligated to satisfy the other conditions specified in this Section 6.4 in order to issue any purchase orders, work authorizations or limited notices to proceed (however titled) under any Construction Contract solely to commence clearing of rights of-way on any Project Real Estate Rights on DOE Acquired Real Property.

(c) Notwithstanding Section 6.4(b), to the extent that DOE (or the Department of Labor, as the case may be), determines that the Davis-Bacon Act is applicable to this Agreement and/or the Project, all construction, as defined in Department of Labor regulations at 29 C.F.R. § 5.2(j), shall be performed in compliance with the Davis-Bacon Requirements and the provisions and wage determinations set forth in Schedule 15 hereto (as such Schedule is supplemented from time to time in accordance with Section 8.24(b)) shall be incorporated into all such applicable contracts for construction.

ARTICLE VII
TERM, TERMINATION, EVENTS OF DEFAULT AND REMEDIES

7.1 Term and Termination.

(a) Except to the extent terminated as contemplated below, the term of this Agreement shall commence on the Effective Date and continue until retirement from service of the Project Facilities and the completion of the Wind-Up Events, including the payment of all costs and expenses associated with the Wind-Up Events, at which point this Agreement shall terminate (save for any obligations that expressly survive such termination).

(b) DOE may, at its option, terminate this Agreement upon the occurrence of the following events:

(i) (A) if at any time there is a final and non-appealable Governmental Order from a court of competent jurisdiction (not initiated or issued by DOE) finding that DOE is legally prohibited from participating in the Project or performing its obligations under the Transaction Documents or (B) any Change of Law shall have occurred that sets aside or legally prohibits DOE's participation in the Project;

(ii) if (A) the Financing Condition is not satisfied by December 31, 2021 or (B) the Commencement Date has not occurred by December 31, 2018; or

(iii) if any Event of Default occurs and is continuing; provided that from and after issuance of the Notice to Proceed, (A) DOE shall not terminate this Agreement unless such Event of Default is a Fundamental Event of Default and (B) DOE's right to terminate this Agreement shall be subject to the terms and conditions of the DOE Direct Agreement and the Intercreditor Agreement, if any;

provided, further that, after Project Completion, DOE shall not terminate this Agreement for an Operational EOD if the remedy described in Section 7.4(a)(v) is available to DOE.

(c) DOE's obligations under any other Transaction Document shall, at its election, terminate without any other action or agreement on the Termination Date, except to the extent that DOE shall otherwise agree that any such obligation survives in such other Transaction Document.

7.2 Acquisition Option.

(a) After the Effective Date, Holdings and DOE shall discuss and determine whether, under Applicable Law, DOE may grant to Holdings (or its nominee, assignee or designee) an option to acquire from DOE the DOE Acquired Real Property and AR Facilities after the Termination Date (the "Acquisition Option"). To the extent DOE determines that such an Acquisition Option may be granted under Applicable Law, DOE and Holdings shall cooperate in good faith to enter into an agreement to set forth all of the terms, conditions and procedures under which such an Acquisition Option may be exercised by Holdings (or its nominee, assignee or designee).

(b) Following the Termination Date, subject to the Acquisition Option (if applicable) and the terms and conditions of the DOE Direct Agreement and the Intercreditor Agreement, if any, DOE shall have the right to Dispose of any of its rights or interests in any DOE Acquired Real Property or any of the AR Facilities, including through a dismantling of any of the AR Facilities and a Disposition of any DOE Acquired Real Property to any Person without any consent by any Clean Line Party or any other Person.

7.3 Events of Default. The following events or circumstances shall constitute events of default under this Agreement (collectively, "Events of Default"):

(a) the Clean Line Parties fail to fund the Advance Funding Account in accordance with the terms set forth in this Agreement and such failure continues for a period of thirty (30) days following written notice to Holdings from DOE;

(b) (i) any Performance Support required to be maintained by the Clean Line Parties shall cease to be in full force and effect; provided that no Event of Default shall have occurred under this clause (b)(i) to the extent that either (A) such Performance Support has been drawn on in full by DOE and the proceeds thereof placed in a DOE or U.S. Treasury account or a collateral account pledged solely to DOE as a result of either the applicable provider of such Performance Support no longer constituting an Acceptable Support Provider or the pending expiration of such Performance Support or (B) Holdings shall have reinstated such Performance Support in an amount equal to the then Applicable Amount within thirty (30) days following written notice to Holdings from DOE, or (ii) following a draw on the Performance Support by DOE to satisfy any payment obligation of a Clean Line Party hereunder, the Clean Line Entities fail to replenish or reinstate such Performance Support to the then Applicable Amount in

accordance with Section 11.5(a) within fifteen (15) Business Days following written notice to Holdings from DOE;

(c) (i) any Clean Line Obligor, any of their respective Controlling Persons or any Principal Person of any Clean Line Obligor or any of their respective Controlling Persons becomes (whether through a transfer or otherwise) a Prohibited Person, (ii) any Clean Line Obligor enters into a transaction with a Person who is a Prohibited Person (other than as required by Applicable Law) and such transaction is not voided or unwound (to the extent permissible under Applicable Law) within thirty (30) days following written notice to Holdings from DOE or (iii) any Clean Line Obligor, any of their respective Controlling Persons or any Principal Person, employee or agent of any Clean Line Obligor or any of their respective Controlling Persons fails to comply with any AM Laws, Anti-Corruption Laws or Sanctions;

(d) any Clean Line Obligor fails to pay, in accordance with the terms of this Agreement or any other Transaction Document, any amounts required to be paid by such Clean Line Obligor pursuant thereto, and such failure to pay shall continue unremedied for a period of thirty (30) days after written notice from DOE that such amount was due;

(e) any representation or warranty made or deemed made by any Clean Line Obligor in any Transaction Document or in any certificate or other document provided by or on behalf of any Clean Line Obligor to DOE are found to have been incorrect, false or misleading in any material respect (except to the extent any such representation and warranty itself is qualified by "materiality", "material adverse effect", "Adverse DOE Impact", "Clean Line Material Adverse Effect" or a similar qualifier, in which case it shall be true and correct in all respects) when made or deemed to have been made;

(f) DOE or any Clean Line Obligor fails to perform or observe any of its material obligations under any other term, covenant or agreement set forth in this Agreement or any other Transaction Document where such failure has not been remedied within thirty (30) days (if such default is remediable) after such Party receives notice of such failure from the non-defaulting Party; provided, that if such Party or Clean Line Obligor, as applicable, commences and diligently pursues efforts to cure such default within such thirty (30) day period, and such default (i) in the case of a default by any Clean Line Obligor, could not reasonably be expected to have an Adverse DOE Impact and (ii) is capable of being cured, such Party or Clean Line Obligor, as applicable, may continue to effect such cure and such default will not be deemed to be an Event of Default for an additional one-hundred twenty (120) days so long as such Party or Clean Line Obligor, as applicable, is diligently pursuing such cure;

(g) following the grant of a security interest in any Collateral, (i) any of the Security Documents shall fail in any material respect to provide the Liens, security interests, rights, titles, interests, remedies, powers or privileges intended to be created thereby (including the priority intended to be created thereby), or any Lien or security interest on the Collateral fails to have the priority contemplated therefor in such Security Document, or (ii) any such Security Document, Lien or security interest ceases to be in full force and effect, or the validity thereof or the applicability thereof to any obligation

of any Clean Line Obligor under the Transaction Documents are disaffirmed by or on behalf of any Clean Line Obligor;

(h) any Transaction Document or any material provision thereof, at any time, for any reason, (i) is or becomes invalid, illegal, void or unenforceable or any Clean Line Obligor has repudiated or disavowed or taken any action to challenge the validity or enforceability of any Transaction Document or (ii) ceases to be in full force and effect, except in connection with its expiration or termination in accordance with its terms in the ordinary course;

(i) one or more final and non-appealable Governmental Orders (not initiated or issued by DOE) are entered against any Clean Line Obligor that has an Adverse DOE Impact and such Governmental Order(s) are not vacated, discharged or stayed or bonded pending appeal for any period of thirty (30) days;

(j) any Insolvency Event occurs with respect to any Clean Line Obligor (other than any Immaterial Obligor);

(k) any Change of Control occurs that is not otherwise consented to by DOE;

(l) any of the Clean Line Entities fails to obtain, renew, maintain or comply in all material respects with any Required Approval, or having been obtained, any such Required Approval is, pursuant to a final and non-appealable order of the applicable Governmental Authority (not initiated or issued by DOE), (i) rescinded, terminated, suspended, modified, withdrawn or withheld, (ii) is determined to be invalid, (iii) ceases to be in full force and effect or (iv) is amended or modified so as to result in a Clean Line Material Adverse Effect or causes an Adverse DOE Impact, and such failure or other event described above has not been remedied within sixty (60) days (if such default is remediable) after any Clean Line Entity obtains Knowledge of such failure or other event;

(m) all or substantially all of the Project Facilities are destroyed or become permanently inoperative as a result of an Event of Loss that is not covered by insurance or not repaired or restored with Loss Proceeds in accordance with the terms of this Agreement, unless within sixty (60) days of such Event of Loss, Holdings presents to the Coordination Committee a remedial and financing plan to restore or rebuild such Project Facilities, and such plan has been approved by the Coordination Committee within thirty (30) days thereafter;

(n) an Abandonment occurs;

(o) any Clean Line Obligor is debarred or suspended from contracting with the United States government or any agency or instrumentality thereof;

(p) at any time that the Project Financing is in effect, (i) any of the Project Financing Parties has declared any Indebtedness owed to the Project Financing Parties under any of the Project Financing Documents to be due and payable or required to be prepaid or redeemed (other than by a regularly scheduled required prepayment or

redemption), purchased or defeased or an offer to prepay, redeem, purchase or defease such Indebtedness is required to be made, in each case, prior to the stated maturity thereof or (ii) the Project Financing Parties have instituted foreclosure action in respect of any of the Collateral;

(q) from and after the Commencement Date but prior to the occurrence of Project Completion, any of the Project Equity Commitments required to be in effect as a condition to DOE's obligation to acquire any DOE Delegated Real Estate Rights ceases to be in full force and effect, and such Project Equity Commitments are not replaced within a period of thirty (30) days after written notice from DOE or the Person providing such Project Equity Commitments that such Project Equity Commitments are no longer in full force and effect; or

(r) the occurrence of any other event specified to be an "Event of Default" or similar event in any Performance Support.

7.4 Remedies Upon Event of Default.

(a) Upon the occurrence of and during the continuance of any Event of Default, subject to the terms of the DOE Direct Agreement and the Intercreditor Agreement, DOE shall be entitled to exercise any and all of the following remedies (following any applicable notice and cure periods):

(i) DOE shall be entitled to seek temporary or permanent injunction, specific performance or other equitable relief specifically to enforce the obligations of the Clean Line Obligors under this Agreement or any other Transaction Document (and each of the Clean Line Parties hereby acknowledges and agrees that its failure to perform its obligations under this Agreement and the other Transaction Documents will cause irreparable harm to DOE and that the remedy at law for any violation or threatened violation thereof would be inadequate);

(ii) DOE may elect that Holdings' representatives on the Coordination Committee shall not have any right to decide, approve, authorize or vote on any matters before the Coordination Committee specifically relating to remedies to be taken against the Clean Line Parties upon such Event of Default;

(iii) DOE shall be entitled to suspend (without any consequence to DOE hereunder) performance of any of its condemnation or acquisition obligations under this Agreement or any other Transaction Document;

(iv) DOE shall be entitled to exercise all of its rights as a secured creditor of the Clean Line Entities in respect of the Collateral;

(v) if an Operational EOD occurs and is continuing, DOE may, after notice and the expiration of any applicable cure period, exercise replacement rights with respect to the Clean Line Entities by appointing another qualified and experienced Person to step in and assume management and operational control of

the Project (at the sole cost and expense of the Clean Line Parties) and in such circumstances, DOE may elect that (A) Holdings' representatives on the Coordination Committee shall cease to have any right to decide, approve, authorize or vote on any matters that would otherwise be decided by the Coordination Committee and (B) the Clean Line Parties shall cease to have any rights to enter into or use any DOE Acquired Real Property or the AR Facilities (except for the rights with respect to Electrical Capacity provided pursuant to Section 2.3);

(vi) DOE shall be entitled to draw on the Performance Support to the extent necessary to satisfy any payment obligations of (A) DOE in respect of any Covered Cost, Covered Liability or any other payment paid or payable by DOE in connection with the Project or (B) any Clean Line Obligor due and owing to DOE or any Covered Party;

(vii) DOE shall be entitled to default interest at the Default Rate on any overdue and unpaid amounts owing to DOE by any Clean Line Obligor; and

(viii) DOE shall be entitled to exercise any and all other remedies available to it at law or in equity.

(b) Prior to any exercise of remedies by DOE, DOE shall provide Holdings notice of the occurrence of the applicable Event of Default. Any costs and expenses incurred by DOE in connection with its exercise of any of its remedial rights shall be for the sole account of the Clean Line Parties. Except as otherwise set forth herein, each right and remedy of DOE hereunder shall be cumulative and shall be in addition to every other right or remedy provided herein or now or hereafter existing at law or in equity or by statute or otherwise, and the exercise or the beginning of the exercise by DOE of any one or more of any such rights or remedies shall not preclude the simultaneous or later exercise by DOE of any or all other such rights or remedies.

(c) Upon the occurrence of and during the continuance of any Event of Default by DOE, the Clean Line Entities shall be entitled to exercise any and all other remedies available to it at law or in equity (following any applicable notice and cure periods); provided that, for the avoidance of doubt, no Event of Default by DOE shall have occurred to the extent that such Event of Default arises as a result of any Governmental Order or Change of Law that sets aside, enjoins or legally prohibits DOE's performance under this Agreement or any other Transaction Document or DOE's participation in the Project so long as such Governmental Order or Change of Law is not directly caused by actions of DOE that are specifically targeted at any of the Clean Line Entities or the Project (and not of a more generally applicable nature) or is a result of a violation of Applicable Law by any of the Clean Line Entities or the occurrence of an Event of Default. Except as otherwise set forth herein, each right and remedy of any Clean Line Party shall be cumulative and shall be in addition to every other right or remedy provided herein or now or hereafter existing at law or in equity or by statute or otherwise, and the exercise or the beginning of the exercise by a Clean Line Party of any

one or more of any such rights or remedies shall not preclude the simultaneous or later exercise by such Clean Line Party of any or all other such rights or remedies.

7.5 Winding-Up of the Project.

(a) Upon retirement of the Project and the Project Facilities from service or to the extent required by DOE in connection with its exercise of its rights under Section 7.1, but subject to the Acquisition Option, the DOE Direct Agreement and the Intercreditor Agreement, the Clean Line Entities shall promptly wind-up the activities of the Project, which shall include, if requested by DOE, the following actions (the "Wind-Up Events"):

(i) dismantling, demolishing and removing all equipment, facilities and structures;

(ii) terminating applicable agreements in accordance with the terms thereof;

(iii) securing, maintaining and disposing of debris with respect to the Project Facilities and any Project Real Estate Rights; and

(iv) performing any activities necessary to comply with Applicable Law and Prudent Utility Practices and that are otherwise prudent to retire the Project Facilities, restore the Project Real Estate Rights to the original condition and protect the Parties from liability.

(b) All costs and expenses related to the Wind-Up Events shall be borne by the Clean Line Parties.

7.6 Wind-Up Reserve Account. Commencing no earlier than the twentieth (20^{th}) anniversary of Project Completion, Holdings shall establish and maintain a depositary account on terms reasonably acceptable to DOE (the "Wind-Up Reserve Account"), which Wind-Up Reserve Account shall be pledged on a first priority basis to DOE and shall not be pledged to any other Person; provided that if on the twentieth (20^{th}) anniversary of the date of Project Completion, the remaining useful life of the Project and the Project Facilities is reasonably estimated to be in excess of ten (10) years, Holdings may delay the establishment of the Wind-Up Reserve Account until a date that is reasonably estimated by an Independent Engineer to be ten (10) years prior to the expiration of the useful life of the Project. Simultaneously with the establishment of the Wind-Up Reserve Account, and each subsequent year thereafter, Holdings shall deposit an amount into the Wind-Up Reserve Account equal to (a)(i) the current estimated costs to implement all of the Wind-Up Events, as determined by the Coordination Committee *plus* a reasonable contingency amount thereon as determined by an Independent Engineer (on an annual basis) *less* (ii) the amount on deposit in the Wind-Up Reserve Account; *divided* by (b) the estimated number of years, as determined by the Coordination Committee (on an annual basis), until commencement of the Wind-Up Events. Notwithstanding anything to the contrary set forth above, Holdings shall have the option of funding the then-required amount of the Wind-Up Reserve Account with an Acceptable Letter of Credit or cash, or any combination thereof.

7.7 Event of Loss. To the extent that the Loss Proceeds associated with any Event of Loss (or the time contemplated for repair or replacement of any affected Property) are reasonably anticipated to be less than the Loss Threshold, the Clean Line Entities shall be entitled to elect to repair and restore any Property affected by such Event of Loss and shall be entitled to all Loss Proceeds payable in connection with such Event of Loss. To the extent that the Loss Proceeds associated with any Event of Loss (or the time contemplated for repair or replacement of any affected Property) are reasonably anticipated to exceed the Loss Threshold, then the Parties shall initiate the Wind-Up Events unless the Parties and, if applicable, the Project Financing Parties, mutually agree to repair or replace the affected Property or the Clean Line Entities present a remedial and financing plan approved by the Coordination Committee within one hundred twenty (120) days after such Event of Loss to repair, replace or restore such affected Property. Any Loss Proceeds payable in respect of any Event of Loss shall be applied as follows: *first*, to the extent that the Clean Line Entities are entitled to repair or restore any affected Property and have so elected to repair and restore such affected Property, such Loss Proceeds shall be paid to the Clean Line Entities to enable the repair and restoration of such affected Property; *second*, to the extent of any excess Loss Proceeds remaining after any such repair or restoration is completed, an amount determined by DOE as necessary to be reserved (taking into consideration the amount of the Performance Support and any amounts available in the Wind-Up Reserve Account) to cover any potential additional claims for damages to DOE relating to such Event of Loss shall be set aside in a reserve account pledged to the benefit of DOE and maintained for a period of two (2) years or such shorter time period as agreed to by the Coordination Committee (and to the extent necessary shall be applied to the payment of any such damages); and *third*, any remaining excess Loss Proceeds shall be released to the Clean Line Entities, subject to the terms of the Project Financing Agreements.

7.8 Survival of Obligations. The rights and obligations of the Clean Line Parties under Sections 2.3, 7.2, 11.1, 11.3, 11.4, 11.8, 11.9, 13.17, 13.18 and 13.20, and Article IX shall survive the Termination Date; provided that Section 7.2(a) shall terminate within six (6) months after the Termination Date (unless otherwise extended as agreed to by DOE); provided further that the survival of any rights of the Clean Line Entities, other than the Acquisition Option (if applicable), shall not in any way limit DOE's right to dispose, transfer, sell, dismantle or take any other actions with respect to any of the AR Facilities or DOE Acquired Real Property after the Termination Date.

ARTICLE VIII
COVENANTS

8.1 Recordkeeping. Holdings shall and shall cause all of its Subsidiaries to keep proper records and books of account in which full, true and correct entries in accordance with GAAP and FERC standards and all Applicable Laws are made in respect of all dealings and transactions relating to the Project and the conduct of their business.

8.2 DOE's Access Rights, Etc. Upon reasonable advance notice and during normal business hours, DOE (through its officers, agents and designated representatives) shall have:

(a) the right to visit and inspect the Project, subject to reasonable safety and security requirements of which DOE receives prior written notice;

(b) access to books, documents, papers and records of the Clean Line Parties for the purposes of audit, examination, inspection and monitoring;

(c) the right to discuss the affairs, finances and accounts of the Clean Line Parties with representatives of the Clean Line Parties (including any auditors or accountants of the Clean Line Entities); and

(d) the independent right to (i) monitor the development, design, engineering, construction, financing, ownership, operation, maintenance and management of the Project (including participating in any acceptance testing) and (ii) review and comment on draft copies of all Material Project Contracts, and applications for Governmental Approvals for the Project.

The Clean Line Entities shall coordinate and cooperate, and require their Contractors to coordinate and cooperate, with DOE to facilitate DOE's access rights set forth above.

8.3 Reporting Requirements. During the term of this Agreement, Holdings shall furnish to DOE the following items:

(a) after the Commencement Date and prior to the issuance of the Notice to Proceed, within twenty (20) Business Days after the end of each calendar quarter, a Project Development Progress Report based upon Holdings' good faith reasonable estimates of the information contained therein;

(b) after issuance of the Notice to Proceed through Project Completion, within twenty (20) Business Days after the end of each calendar quarter, a Construction Progress Report based upon Holdings' good faith reasonable estimates of the information contained therein;

(c) from and after Project Completion, within thirty (30) days after the end of each calendar quarter, quarterly operating reports in a form to be mutually agreed between Holdings and DOE and which shall include (i) an update on all material issues with respect to the Project (including any material Events of Loss or Actions that have arisen or exist with respect to the Project or any material noncompliance with any Required Approval then in effect), (ii) a summary of the operating status of the Project (including with respect to Electrical Capacity, availability, forced outages, safety statistics and outage status for planned outages) and (iii) such other information as DOE may reasonably request to be included from time to time;

(d) as soon as available, but in any event within sixty (60) days after the end of each of the first three (3) fiscal quarters of each fiscal year of Holdings, unaudited Financial Statements for Holdings and (on a consolidated basis) its Subsidiaries for such fiscal quarter and the then elapsed portion for the relevant fiscal year and comparative figures for the same periods in the immediately preceding fiscal year;

(e) as soon as available, but in any event within one hundred twenty (120) days after the end of each fiscal year of Holdings (starting with the fiscal year ending December 31, 2016), (i) audited Financial Statements of Holdings and (on a consolidated

basis) its Subsidiaries for such fiscal year, accompanied by a report and opinion of an independent auditor to the effect that such financial statements present fairly in all material respects the financial condition, results of operations, shareholders' equity and cash flows of Holdings and its Subsidiaries for such fiscal year, which report and opinion is prepared in accordance with GAAP and (ii) a certificate of an Authorized Officer of Holdings, which certificate shall state that such Financial Statements fairly represent the financial condition and results of operations of Holdings and its Subsidiaries for such fiscal year;

(f) concurrently with the delivery of any Financial Statements pursuant to clauses (c) and (d) above, a certificate of an Authorized Officer of Holdings certifying that, to the Knowledge of the Clean Line Parties, no Default or Event of Default exists, or, if such certification cannot be made, the nature and period of existence of such Default or Event of Default and what corrective action Holdings and its Subsidiaries have taken or propose to take with respect thereto;

(g) within sixty (60) days after the end of each calendar year commencing with the calendar year in which Project Completion occurs, a report prepared by Holdings detailing the proposed maintenance and outage program for the Project for such calendar year;

(h) promptly, but in any event within ten (10) Business Days (or, in the case of clause (xii), notice of the occurrence of any Safety Event or any other accident related to the Project that involves a loss of life within twenty-four (24) hours) after any of the Clean Line Parties obtains Knowledge thereof or information pertaining thereto, notice of:

(i) following Project Financial Close but prior to Project Completion, the occurrence of any event or circumstance that has resulted in, or could reasonably be expected to result in, a failure to satisfy the Permitted Draw Conditions;

(ii) the occurrence of any event that constitutes a Default or Event of Default, specifying the nature thereof, together with a certificate of an Authorized Officer of Holdings indicating any steps that the Clean Line Parties have taken or propose to take to remedy the same;

(iii) the occurrence of (A) any Action, pending or threatened, that relates to the legality, validity or enforceability of any of the Transaction Documents, (B) any material Action, pending or threatened, that relates to the Project or to which a Clean Line Party is a party or (C) any material hearing or proceeding initiated against any Clean Line Party by any Governmental Authority that specifically affects the Project;

(iv) any actual or proposed termination, rescission, discharge (otherwise than by performance), amendment, supplement, modification, waiver or indulgence or breach in any material respect of any Material Project Contract

or Required Approval together with a copy of any notice or correspondence received in respect thereof and copies of any proposed amendment, supplement, modification or waiver in respect of such Material Project Contract or Required Approval;

(v) other than Permitted Liens, any Lien being granted or established or becoming enforceable over any of the Properties of the Clean Line Entities or the Equity Interests in any of the Clean Line Entities, together with a description thereof;

(vi) any proposed material change in the nature or scope of the Project or the business or operations of the Clean Line Parties, together with a description thereof;

(vii) the occurrence of any Event of Loss that is reasonably likely to result in Loss Proceeds in excess of $5,000,000, together with a description thereof;

(viii) any non-compliance of any Performance Support with the criteria established with respect thereto and any event, condition or circumstance that represents or could reasonably be expected to lead to non-compliance by any issuer with the required criteria with respect thereto or the renewal thereof;

(ix) the occurrence of any event of Force Majeure affecting, or that any Clean Line Party claims would affect, the performance by such Person of any obligation under any Transaction Document or is otherwise reasonably likely to have a Clean Line Material Adverse Effect;

(x) any material dispute between any Clean Line Entity and any Project Participant party to any Material Project Contract (where DOE is not also a party to such dispute), together with a copy of any material notice or material correspondence received in respect thereof;

(xi) any proposed cancellation or material change in any Required Insurance maintained by any Clean Line Entity or by any other Person for the benefit of any Clean Line Entity or DOE, together with a report describing such event and the potential insurance-related impact thereof;

(xii) the occurrence of any Safety Event or any other accident related to the Project that involves a loss of life together with a reasonably detailed report describing such Safety Event or accident, the impact of such Safety Event or accident and the remedial efforts required and (as and when taken) implemented with respect thereto;

(xiii) any actual or alleged violations in any material respect by any of the Clean Line Parties of any Environmental Laws or any applicable NERC reliability standards in connection with the Project, together with a reasonably detailed summary of such violations, copies of any material notices or material

correspondence received in connection therewith and a description of the remedial efforts that the Clean Line Parties propose to take in connection therewith;

(xiv) any material dispute between a Clean Line Entity and a Governmental Authority with respect to the Project's compliance with a term or condition of a Governmental Approval or Governmental Order, together with a copy of any notice or correspondence in respect thereof; and

(xv) any material Environmental Claims related to the Project, together with a copy of any material correspondence relating thereto and a description of any steps that the Clean Line Parties are taking or propose to take with respect thereto;

(i) promptly, but in any event no later than ten (10) Business Days after receipt, filing, delivery or sending thereof, copies of:

(i) Reserved;

(ii) any notice of a delinquent payment owed by any Clean Line Party to any Project Participant pursuant to the terms of any Project Contract if such payment is more than thirty (30) days delinquent and is in excess of $5,000,000, together with a copy of all correspondence received or sent by any Clean Line Party in respect of such delinquent payment;

(iii) any notices or material correspondence from any Project Participant relating to (A) any material delay in the completion of the Project or (B) the occurrence of any event that could reasonably be expected to interrupt operation of the Project for more than thirty (30) Business Days;

(iv) any material reports filed by any Clean Line Party with any Governmental Authority relating to the Project or any other financial information, statutory audits, proxy materials or other material information delivered or provided by any Clean Line Entity to any Governmental Authority;

(v) any material notices, certificates or reports delivered by any Clean Line Party to the Project Financing Parties or any material notices or other material written correspondence received by any of the Clean Line Parties from or on behalf of the Project Financing Parties (including any notices of the occurrence of a default or event of default in respect thereof); and

(vi) any Required Approval issued to or on behalf of the Clean Line Entities in respect of the Project.

(j) as soon as available but in any event no later than ten (10) Business Days following execution thereof, copies of any executed Project Financing Documents and any amendments, modifications, supplements or waivers in respect thereof;

(k) (i) no later than five (5) Business Days prior to the commencement of any commissioning testing in respect of the Project, written notice thereof; (ii) written notice of the occurrence of Project Completion (which shall include a certificate by an Authorized Officer of Holdings as to the satisfaction of the conditions to the occurrence of Project Completion) and (iii) promptly upon receipt of delivery thereof, a copy of any notice of the occurrence of the commencement of commercial operations to any party to any Transmission Services Agreement;

(l) on an annual basis after the Commencement Date and within thirty (30) days of each anniversary thereof, a certificate from an Authorized Officer of Holdings that the Clean Line Entities are in compliance with Section 8.5 and that all Required Insurance is in full force and effect, accompanied by a certification from Holding's insurance broker confirming the foregoing; and

(m) promptly upon request, such other information or documents as DOE may reasonably request from time to time.

8.4 Authorizations and Approvals.

(a) The Clean Line Entities shall obtain, and in the case of Required Approvals of Contractors, shall cause its Contractors to obtain, all Required Approvals, at their sole cost and expense. No later than ninety (90) days after the Commencement Date, Holdings shall provide a schedule of all Known Required Approvals to DOE and a plan for the acquisition of such Required Approvals. Concurrently with the delivery of any Financial Statements pursuant to Section 8.3(c) or 8.3(d) above, Holdings shall report, on a quarterly basis, the status of all applications for Required Approvals. In the event that a Required Approval is denied or includes terms and conditions that may materially affect Project operations, Holdings shall immediately notify DOE of such event and consult with DOE on measures taken to remedy such adverse event.

(b) For any Required Approval that is issued in any Clean Line Entity's name or otherwise is applicable to any Clean Line Entity, the applicable Clean Line Entity shall, at its own cost and expense, comply with all conditions imposed by and undertake all actions required by and all actions necessary to maintain in full force and effect all Required Approvals. To the extent that a Required Approval is issued solely in DOE's name or jointly to both DOE and any Clean Line Entity, the Clean Line Entities shall be responsible for any costs or expenses that DOE incurs in taking all actions necessary to maintain in full force and effect such Required Approval.

(c) Prior to Project Completion, the Clean Line Entities shall have obtained from FERC any exemptions or waivers from regulation under PUHCA for which it may be eligible under FERC's regulations.

(d) In the event that any Required Approval must be issued in DOE's name, Holdings shall undertake necessary efforts to obtain such Required Approval, subject to DOE's reasonable cooperation with Holdings at Holdings' sole expense, as such cooperation by DOE is limited by Section 4.10. In the event that DOE must act as the

lead agency and directly coordinate with any Governmental Authority in connection with obtaining any Governmental Approval, the Clean Line Entities shall promptly provide all necessary support consistent with Applicable Law to facilitate the approval, mitigation or compliance process for such Governmental Approval.

(e) Each Clean Line Entity shall, at its own cost and expense, (i) obtain all Governmental Approvals or any other approvals, consents, exemptions, authorizations or other actions by, or notices to, or filings with, any other Person that may be necessary or required from time to time in connection with the performance by such Clean Line Entity of its obligations and undertakings under this Agreement or any other Transaction Document (in light of the current stage of construction, management and/or operation of the Project as of any date of determination) and (ii) comply with the terms and conditions of any such Governmental Approval or other approval, consent, exemption, authorization, notice or filing (if applicable) to the extent in effect from time to time, in each case, except where the failure to so obtain or comply with any such Governmental Approval or other approval, consent, exemption, authorization, notice or filing could not reasonably be expected to result, individually or in the aggregate, in a Clean Line Material Adverse Effect or an Adverse DOE Impact.

8.5 Insurance.

(a) The Clean Line Entities shall obtain, maintain or cause to be maintained insurance of the types, in the amounts and with the deductibles specified in the Insurance Agreement, as in effect from time to time, and in all cases in accordance with Prudent Utility Practices.

(b) The Clean Line Entities shall cause DOE to be named as an "additional insured" and as "loss payee" under each of its insurance policies to the extent required under the terms of the Insurance Agreement. The Parties will also determine appropriate insurance protections to be set forth and agreed in the Insurance Agreement for DOE and the other Covered Parties through insurance policies procured by the Construction Contractors and other major Contractors, including additional insured and loss payee endorsements.

(c) Each of the Clean Line Entities shall use all commercially reasonable efforts to enforce any Contractual Obligations by any Construction Contractor under a Material Construction Contract to obtain and maintain any of the Required Insurance.

(d) In the event that any Clean Line Entity fails to procure or maintain (or cause to be procured or maintained) any Required Insurance, DOE may (but shall not be obligated to) take out the Required Insurance and pay the premiums on the same. All amounts so advanced for such purpose by DOE shall be a Covered Liability owed by the Clean Line Parties to DOE and the Clean Line Parties shall forthwith pay any such amounts to DOE.

8.6 Payment of Taxes and Other Amounts. Each of the Clean Line Parties shall pay or arrange for the payment of (before they become overdue) all present and future (a) Taxes

(including stamp taxes), duties, fees, expenses, or other charges payable on or in connection with the Project or the execution, issue, delivery, registration, or notarization of, or for the legality, validity, or enforceability of, this Agreement, the Security Documents and the other Transaction Documents, (b) claims, levies, or liabilities (including claims for labor, services, materials and supplies) for sums that have become due and payable and that have resulted in or, if unpaid, might result in the imposition of a Lien upon the Property of any Clean Line Entity with respect to the Project Real Estate Rights on the AR Facilities (or any part thereof), (c) Taxes, payments, fees and expenses relating to the acquisition of the Project Real Estate Rights and (d) Local Government Contribution Payments.

8.7 Maintenance of Existence and Property.

(a) Each Clean Line Party shall preserve and maintain (i) its legal existence as a limited liability company and (ii) all of its licenses, rights, privileges and franchises material to the conduct of its business and the Project.

(b) Each Clean Line Party shall engage only in the business consistent with the Transaction Documents and the Project Financing Documents to which it is a party and any business reasonably incidental or related thereto (including with respect to the Other Facilities).

(c) Each Clean Line Entity shall (i) keep (or cause to be kept) all its Properties (including with respect to the Project) in good working order and condition to the extent necessary to ensure that its business can be conducted properly at all times and (ii) develop, construct, operate, maintain and repair the Project or cause the Project to be developed, constructed, operated, maintained and repaired in all material respects in accordance with (A) the standards set forth in the Clean Line Documents as in effect from time to time, (B) in all material respects in accordance with manufacturer's recommendations (to the extent required to maintain material warranties in effect), (C) Required Approvals and (D) Prudent Utility Practices.

8.8 Compliance with Applicable Laws. Each of the Clean Line Entities shall, and with respect to the construction, operation and maintenance of the Project shall use commercially reasonable efforts to enforce and diligently pursue all contractual remedies available to it to cause each Project Participant to, comply with and conduct its business and operations in compliance with all Required Approvals and Applicable Laws, including Environmental Laws and Cultural Resource Agreements, except where the failure to comply could not reasonably be expected to result, individually or in the aggregate, in a Clean Line Material Adverse Effect or an Adverse DOE Impact.

8.9 Diligent Construction of the Project. Each of the Clean Line Entities shall use diligent efforts to construct and complete, or cause to be constructed and completed, the Project in all material respects in accordance with the Project Contracts, Required Approvals, Prudent Utility Practices, the Project Schedule, the Project Budget and the terms and conditions of the applicable Transaction Documents.

8.10 Performance of Obligations. Each of the Clean Line Entities shall (a) perform and observe all of its material covenants and obligations contained in any Material Project Contract or Required Approval, (b) take all reasonable and necessary action to prevent the termination, suspension or cancellation of any Material Project Contract or Required Approval (except for the expiration of any Material Project Contract or Required Approval in accordance with its terms and not as a result of a breach or default thereunder by any Clean Line Entity) and (c) enforce against the relevant Project Participant each material covenant or obligation under each Material Project Contract to which such Person is a party in accordance with its terms, in each case except where failure to do so could not reasonably be expected to have a Clean Line Material Adverse Effect or an Adverse DOE Impact.

8.11 Permitted Liens. Each Clean Line Entity shall not, and shall not agree to, create, assume or otherwise permit to exist (a) any Lien upon any of the Collateral or any of its other material Property, whether now owned or hereafter acquired, or in any proceeds or income therefrom, other than Permitted Liens or (b) any Lien upon its Equity Interests other than Permitted Liens.

8.12 Merger; Bankruptcy; Dissolution; Transfer of Assets. Each Clean Line Entity shall not, and shall not agree to:

(a) enter into any transaction of merger, combination or consolidation;

(b) liquidate, wind-up or dissolve itself or otherwise commence any Insolvency Event in respect of itself or file any petition or pass a resolution seeking the same;

(c) Dispose of all or any part of its Property, including its interest in the Project, whether now owned or hereafter acquired, except for Permitted Dispositions;

(d) acquire by purchase or otherwise the business, Property or assets of, or Equity Interests or other evidence of beneficial ownership interests in, any Person, other than purchases or other acquisitions of inventory or materials or spare parts or Capital Expenditures, each in the ordinary course of business or any Emergency Capital Expenditures or Emergency Operating Expenses; or

(e) transfer or release (other than as permitted by clause (c) above) the Collateral or any portion thereof.

8.13 New Subsidiaries; Partnerships. Without the prior written consent of DOE, no Clean Line Entity shall: (a) form or have any Subsidiaries other than (i) those in existence as of the Effective Date or (ii) new Project Subsidiaries that become a party to this Agreement pursuant to Section 8.18, (b) enter into any partnership, joint venture or similar arrangement, (c) acquire any Equity Interests in or make any capital contribution to any other Person (other than to another Clean Line Entity or, in the case of Holdings only, acquire any Equity Interests in or make any capital contribution to PECL and any PECL Subsidiary) or (d) enter into any management contract or similar arrangement whereby its business or operations are managed by any other Person.

8.14 Subsidiaries of Holdings. No Project Subsidiary shall own (a) any real Property rights other than those relating to the Project or (b) any Equity Interests other than Equity Interests in any Subsidiary of Holdings or any other Person that is also a Project Subsidiary. None of the Project Subsidiaries shall be a party to any Contractual Obligation relating to the ownership, development, construction, procurement, operation, management or maintenance of any Properties other than those relating to the Project and the Other Facilities.

8.15 Other Transactions. Except for the Transaction Documents, the Project Equity Commitments, the Project Financing Commitments and the Project Financing Documents, no Clean Line Entity shall, directly or indirectly, enter into any transaction or series of related transactions with any Affiliate other than in the ordinary course of business on fair and reasonable terms no less favorable to the Clean Line Entities than those that would be included in an arm's-length transaction with a non-Affiliate.

8.16 Testing. The applicable Clean Line Entities shall (a) provide, or cause to be provided, reasonable prior notice to DOE regarding the startup testing of the Project pursuant to the Material Construction Contracts, (b) provide DOE (or its representatives, agents or consultants) with the opportunity to observe the startup testing of the Project and (c) provide DOE with any material data or material reports received by any Clean Line Entity in connection with the startup testing of the Project pursuant to the Material Construction Contracts.

8.17 Creation and Perfection of Security Interests; Additional Documents; Filings and Recordings.

(a) Each of the Clean Line Entities shall execute and deliver, from time to time as reasonably requested by DOE at the expense of the Clean Line Entities, such other documents as shall be necessary or advisable or that DOE may reasonably request in connection with the rights and remedies of DOE granted or provided for by the Transaction Documents and to consummate the transactions contemplated therein.

(b) Each of the Clean Line Entities shall, at its own expense, take all actions that have been or shall be reasonably requested of such Clean Line Entity or that any Clean Line Entity knows is necessary to establish, maintain, protect, perfect and continue the perfection of the security interests of DOE created by the Security Documents with the priority provided for under the Security Documents (subject to Permitted Liens and, with respect to the Second Lien Collateral, only to the extent that the first priority security interest in favor of the applicable Financing Parties has been established and/or perfected) and shall furnish timely notice of the necessity of any such action, together with such instruments, in execution form, and such other information as may be required or reasonably requested to enable DOE to effect any such action. Without limiting the generality of the foregoing, each of the Clean Line Entities shall, at its own expense, (i) execute or cause to be executed and shall file or cause to be filed or register or cause to be registered such financing statements, continuation statements, fixture filings and mortgages or deeds of trust in all places necessary or advisable (in the reasonable opinion of counsel for DOE) to establish, maintain and perfect such security interests and in all other places that DOE shall reasonably request (provided, however, that, with respect to the Second Lien Collateral, the Clean Line Entities shall not be obligated to execute, file

or register any such statements, filings, mortgages or deeds of trust or other documents that are not required to be executed, filed or registered in respect of the first priority security interest granted in favor of the applicable Financing Parties), (ii) discharge all other Liens (other than Permitted Liens) adversely affecting the rights of any Clean Line Entity in the Collateral and (iii) deliver or publish all notices to third parties that may be reasonably required to establish or maintain the validity, perfection or priority of any Lien created pursuant to the Security Documents (provided, however, that, with respect to the Second Lien Collateral, the Clean Line Entities shall not be obligated to deliver or publish any notices that are not required to be delivered or published in respect of the first priority security interest granted in favor of the applicable Financing Parties).

8.18 Additional Project Subsidiaries and Subsidiary Guarantors.

(a) Within twenty (20) Business Days following the formation or acquisition, directly or indirectly (including through any merger or consolidation), by any Clean Line Entity of any Project Subsidiary, Holdings shall, at the sole cost and expense of the Clean Line Entities, cause such Project Subsidiary to become a Party hereto by executing and delivering to DOE a joinder agreement to this Agreement in form and substance reasonably satisfactory to DOE along with the documents set forth in clause (c) below.

(b) Within twenty (20) Business Days following the formation or acquisition, directly or indirectly (including through any merger or consolidation), by any Clean Line Party of any PECL Subsidiary, Holdings shall, at the sole cost and expense of the Clean Line Parties, cause such PECL Subsidiary to become a Subsidiary Guarantor and be obligated for all Guaranteed Obligations by executing and delivering to DOE a joinder agreement to this Agreement in form and substance reasonably satisfactory to DOE along with the documents set forth in clause (c) below.

(c) Together with the delivery of any joinder agreement referenced in either clause (a) or (b) above, the applicable Clean Line Party shall deliver to DOE (i) certified Organizational Documents of such Clean Line Party, (ii) secretary's certificates, officer's certificates, resolutions and good standing certificates for such Clean Line Party (including certificates certifying to such matters as DOE shall reasonably require) and (iii) if requested by DOE, legal opinions from counsel to such Clean Line Party.

8.19 Lobbying Disclosure Requirement. Each of the Clean Line Parties shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

8.20 Improper Use. Unless required under Applicable Law or as otherwise provided for under this Agreement, no Clean Line Entity shall use, operate or occupy, or allow (directly or indirectly) the use, maintenance, operation or occupancy of, any portion of the Project Site or the Project in any manner or for any purpose: (a) that could reasonably be expected to have a Clean Line Material Adverse Effect or an Adverse DOE Impact, (b) that may make void, voidable or cancelable any insurance or material warranty then in force with respect to the Project Facilities or (c) other than for the intended purpose thereof in the construction, operation and maintenance of the Project Facilities.

8.21 Hazardous Substance Management.

(a) In the event of a Release or discovery of Hazardous Substances on Property on which the Project Facilities are located, the responsible Clean Line Entity shall, or shall cause another Person to take all reasonable actions, consistent with Prudent Utility Practice, Applicable Law and all applicable provisions of the Transaction Documents and the Project Documents, to report, investigate, oversee, manage, treat, handle, store, remediate, remove, transport (where applicable), deliver or dispose of such Hazardous Substances; provided that where consistent with Applicable Law and Prudent Utility Practice, the Hazardous Substances may be left *in situ*.

(b) If any Clean Line Entity or any Construction Contractor Releases or causes to Release Hazardous Substances in connection with the Project or any Project Real Estate Rights in an amount, type, quality or location that would require reporting or notification to any Governmental Authority or other Person or taking any preventive or remedial action, in each case under Applicable Law, Governmental Approvals or any applicable provision of the Transaction Documents and Project Contracts, the responsible Clean Line Entity shall (i) promptly notify DOE in writing and advise DOE of any obligation to notify any state or federal Governmental Authorities under Applicable Law and (ii) notify any such state or federal Governmental Authorities.

(c) The responsible Clean Line Entity shall, or shall cause another Person to take reasonable steps, including design and/or construction technique modifications, to avoid and/or minimize disturbance of known *in situ* Hazardous Substances. Where the disturbance of Hazardous Substances, including excavation or dewatering, is unavoidable or is required by Applicable Law, the Clean Line Entities shall utilize appropriately trained Contractors.

8.22 Safety Compliance.

(a) DOE shall use good faith efforts to inform Holdings at the earliest practicable time of any circumstance or information relating to the Project which, in DOE's reasonable judgment, is likely to result in a Safety Compliance Order. Except in the case of an Emergency, DOE shall consult with Holdings prior to issuing a Safety Compliance Order concerning the risk to public or worker safety, alternative compliance measures, cost impacts, and the availability of Clean Line Entity resources to fund the Safety Compliance work.

(b) Subject to conducting such prior consultation as required (unless in the case of an Emergency), DOE may issue Safety Compliance Orders to the Clean Line Entities at any time.

(c) The Clean Line Entities shall implement all Safety Compliance work as expeditiously as reasonably possible following issuance of the Safety Compliance Order. The Clean Line Entities shall diligently prosecute the work necessary to achieve such Safety Compliance until completion. The Clean Line Entities shall perform all work

required to achieve Safety Compliance at the sole cost and expense of the Clean Line Entities.

(d) The Clean Line Entities shall adopt and comply with those applicable safety and Emergency response measures for the Project adopted in accordance with the DOE Mitigation Action Plan and all other safety-related or emergency response measures required under Applicable Law.

8.23 Prohibited Persons.

(a) Each Clean Line Party shall provide immediate written notice (including a brief description relating thereto) to DOE if, at any time, it learns that the representations made with respect to Prohibited Persons (including in respect of the Debarment Regulations) were erroneous when made or have become erroneous by reason of changed circumstances.

(b) If any Project Participant or any Person that controls a Project Participant or any of their respective Principal Persons becomes a Prohibited Person, the Clean Line Parties shall, within sixty (60) days of Knowing that such Person has become a Prohibited Person, engage and continue to engage in constructive discussions with DOE regarding the removal or replacement of such Person or, if such removal or replacement is not reasonably feasible, the implementation of other mitigation matters.

8.24 Davis-Bacon Act.

(a) To the extent that DOE (or the Department of Labor, as the case may be) has determined that the Davis-Bacon Act is applicable to this Agreement and/or the Project, the Clean Line Entities shall (i) in respect of this Agreement, comply with all Davis-Bacon Requirements (including the provisions and wage determinations set forth in Schedule 15 hereto (as such Schedule is supplemented from time to time in accordance with Section 8.24(b)) and the provisions and applicable wage determinations set forth in such Schedule 15 shall be deemed incorporated into this Agreement as if set out in their entirety in this Section 8.24 and (ii) in respect of any applicable Project Contract (A) be responsible for the compliance by any applicable Contractor performing construction, as defined in Department of Labor regulations at 29 C.F.R. § 5.2(j), with the Davis-Bacon Requirements and (B) cause each applicable Contractor performing construction, as defined in Department of Labor regulations at 29 C.F.R. § 5.2(j), to include in such contract to which it is a party the provisions and applicable wage determinations set forth in Schedule 15 hereto (as such Schedule is supplemented from time to time in accordance with Section 8.24(b)).

(b) To the extent DOE (or the Department of Labor, as the case may be) has determined that the Davis-Bacon Act is applicable to this Agreement and/or the Project, from time to time after such determination is made and in any event prior to Clean Line entering into any applicable Project Contract subject to the Davis-Bacon Act, DOE may supplement Schedule 15 hereto to incorporate the wage determinations containing locally

prevailing wages as determined by the Secretary of Labor applicable to this Agreement or such Project Contract, as the case may be.

8.25 AM Laws, Anti-Corruption Laws Etc. Each Clean Line Party shall and shall cause its Principal Persons, employees and agents to (a) comply with all applicable AM Laws and Anti-Corruption Laws in obtaining any Required Approvals, Project Real Estate Rights or any other consents, rights or privileges with respect to the Project, (b) conduct the business of the Project in compliance with all applicable AM Laws and Anti-Corruption Laws and (c) maintain internal management and accounting practices and controls that are adequate to ensure the Clean Line Parties' compliance with all applicable AM Laws and Anti-Corruption Laws.

8.26 ACL Indebtedness. ACL shall not incur any Indebtedness owed to any other Clean Line Entity or any Affiliate thereof unless such Clean Line Entity or Affiliate has granted a Lien on its rights of payment in respect of such Indebtedness pursuant to Security Documents that are in form and substance acceptable to DOE as contemplated by Section 11.6.

8.27 Renewable Energy Transmission. At any time during which any Transmission Services Agreements are in effect, the Clean Line Entities shall use all commercially reasonable efforts to ensure that at least 75% of the total Electrical Capacity covered by all Transmission Services Agreement that are then in effect to be covered by Transmission Services Agreements used for the transmission of renewable energy resources; provided that, to the extent the transmission of energy from non-renewable resources is required by Applicable Law (including pursuant to any open access tariff rules), such events would not render the underlying Transmission Services Agreement from being disqualified toward the 75% threshold.

ARTICLE IX
GUARANTEE

9.1 Guarantee of the Obligations.

(a) Subject to the provisions of Section 9.2, PECL and each PECL Subsidiary (each, a "Subsidiary Guarantor" and, collectively, the "Subsidiary Guarantors") jointly and severally hereby absolutely, irrevocably and unconditionally guarantee to DOE, for the benefit of DOE and each other Covered Party, the due and punctual payment in full of all obligations of Holdings and the Project Subsidiaries under this Agreement, whether direct or indirect, absolute or contingent, when the same shall become due (including amounts that would become due but for the operation of the automatic stay under Section 362(a) of the Bankruptcy Code, 11 U.S.C. § 362(a)) (collectively, the "Guaranteed Obligations") and agrees to pay any and all expenses incurred by DOE in enforcing its rights under this Article IX.

(b) Each Subsidiary Guarantor and DOE hereby confirms that it is the intention of all such Persons that the guarantee set forth in this Article IX and the Guaranteed Obligations of each Subsidiary Guarantor hereunder not constitute a fraudulent transfer or conveyance for purposes of Bankruptcy Law, the Uniform Fraudulent Conveyance Act and the Uniform Fraudulent Transfer Act. To effectuate the foregoing intention, DOE and the Subsidiary Guarantors hereby irrevocably agree that

the obligations of each Subsidiary Guarantor under this Article IX at any time shall be limited to the maximum amount as will result in the obligations of such Subsidiary Guarantor under this Article IX not constituting a fraudulent transfer or conveyance.

9.2 Contribution by Subsidiary Guarantors. All Subsidiary Guarantors desire to allocate among themselves (collectively, the "Contributing Subsidiary Guarantors"), in a fair and equitable manner, their obligations arising under this Guarantee. Accordingly, in the event of any payment or distribution is made on any date by a Contributing Subsidiary Guarantor (a "Funding Subsidiary Guarantor") under this Guarantee such that its Aggregate Payments exceeds its Fair Share as of such date, such Funding Subsidiary Guarantor shall be entitled to a contribution from each of the other Contributing Subsidiary Guarantors in an amount sufficient to cause each Contributing Subsidiary Guarantor's Aggregate Payments to equal its Fair Share as of such date. The amounts payable as contributions hereunder shall be determined as of the date on which the related payment or distribution is made by the applicable Funding Subsidiary Guarantor. The allocation among Contributing Subsidiary Guarantors of their obligations as set forth in this Section 9.2 shall not be construed in any way to limit the liability of any Contributing Subsidiary Guarantor hereunder. Each Guarantor is a third party beneficiary to the contribution agreement set forth in this Section 9.2.

9.3 Payment by Subsidiary Guarantors. Subject to Section 9.2, the Subsidiary Guarantors hereby jointly and severally agree, in furtherance of the foregoing and not in limitation of any other right which Holdings or the Project Subsidiaries may have at law or in equity against any Subsidiary Guarantor by virtue hereof, that upon the failure of Holdings or the Project Subsidiaries to pay any of the Guaranteed Obligations when and as the same shall become due (including amounts that would become due but for the operation of the automatic stay under Section 362(a) of the Bankruptcy Code, 11 U.S.C. § 362(a)), Subsidiary Guarantors will upon demand pay, or cause to be paid, in cash, to DOE, an amount equal to the sum of the unpaid amount of all Guaranteed Obligations then due *plus* accrued and unpaid interest on such Guaranteed Obligations at the Default Rate (including interest which, but for Holdings or the Project Subsidiaries becoming the subject of a case under the Bankruptcy Code, would have accrued on such Guaranteed Obligations, whether or not a claim is allowed against Holdings or the Project Subsidiaries for such interest in the related bankruptcy case) and all other Guaranteed Obligations then owed to Holdings or the Project Subsidiaries as aforesaid.

9.4 Guarantee Absolute. Each Subsidiary Guarantor guarantees that the Guaranteed Obligations will be paid strictly in accordance with the terms of this Agreement, regardless of any law, regulation or order now or hereafter in effect in any jurisdiction affecting any of such terms or the rights of any Covered Party with respect thereto. The obligations of each Guarantor under this Article IX are independent of the Guaranteed Obligations or any other obligations of any Clean Line Entity under or in respect of this Agreement and the other Transaction Documents, and a separate action or actions may be brought and prosecuted against each Subsidiary Guarantor to enforce this guarantee under this Article IX, irrespective of whether any action is brought against any Clean Line Entity or whether any Clean Line Entity is joined in any such action or actions.

9.5 Liability of Guarantors Absolute; Waivers. Each Subsidiary Guarantor agrees that its obligations hereunder are irrevocable, absolute, independent and unconditional and shall

not be affected by any circumstance which constitutes a legal or equitable discharge of a guarantor or surety other than payment in full of the Guaranteed Obligations (other than contingent or indemnification obligations for which no claim has been made) or valid release of a Subsidiary Guarantor with DOE's consent. Each Subsidiary Guarantor hereby waives, for the benefit of DOE and each Covered Party: (a) any right to require DOE, as a condition of payment or performance by such Subsidiary Guarantor, to (i) proceed against Holdings or any Project Subsidiary, any other guarantor (including any other Subsidiary Guarantor) of the Guaranteed Obligations or any other Person, (ii) proceed against or exhaust any Collateral or other security held by DOE or (iii) pursue any other remedy in the power of DOE whatsoever, (b) any defense arising by reason of the incapacity, lack of authority or any disability or other defense of Holdings or any Project Subsidiary or any other Subsidiary Guarantor including any defense based on or arising out of the lack of validity or the unenforceability of the Guaranteed Obligations or any agreement or instrument relating thereto or by reason of the cessation of the liability of Holdings or any Project Subsidiary or any other Subsidiary Guarantor from any cause other than payment in full of the Guaranteed Obligations, (c) any defense based upon any statute or rule of law which provides that the obligation of a surety must be neither larger in amount nor in other respects more burdensome than that of the principal, (d) any defense based upon DOE's errors or omissions in the administration of the Guaranteed Obligations, except for errors or omissions determined in the final, non-appealable judgment of a court of competent jurisdiction to have resulted directly and primarily from DOE's or any Covered Party's gross negligence or willful misconduct, (e) (i) any principles or provisions of law, statutory or otherwise, which are or might be in conflict with the terms hereof and any legal or equitable discharge of such Subsidiary Guarantor's obligations hereunder, (ii) the benefit of any statute of limitations affecting such Subsidiary Guarantor's liability hereunder or the enforcement hereof, (iii) any rights to set-offs, recoupments and counterclaims, and (iv) promptness, diligence and any requirement that DOE protect, secure, perfect or insure any security interest or Lien or any Property subject thereto, (f) notices, demands, presentments, protests, notices of protest, notices of dishonor and notices of any action or inaction, including acceptance hereof, notices of default hereunder or any agreement or instrument related thereto, notices of any renewal, extension or modification of the Guaranteed Obligations or any agreement related thereto, notices of any extension of credit to Holdings or any Project Subsidiary, (g) any duty on the part of DOE to disclose to such Subsidiary Guarantor any matter, fact or thing relating to the business, condition (financial or otherwise), operations, performance, Properties or prospects of Holdings or any Project Subsidiary now or hereafter Known by DOE, (h) any defenses or benefits that may be derived from or afforded by law which limit the liability of or exonerate guarantors or sureties, or which may conflict with the terms hereof, (i) any defenses related to any change in the time, manner or place of payment of, or in any other term of, all or any of the Guaranteed Obligations or any other amendment or waiver of or any consent to departure from the Transaction Documents, including any increase in the Guaranteed Obligations, (j) any defense related to the taking, exchange, release or non-perfection of any Collateral or any manner of application of the Collateral or the proceeds thereof to all or any of the Guaranteed Obligations, or any manner of sale or other disposition of any Collateral for all or any of the Guaranteed Obligations, (k) any defense related to any change, restructuring or termination of the corporate structure or existence of Holdings or any Project Subsidiary, (l) any defense related to the failure of any other Person to execute or deliver the guarantee under this Article IX or the release or reduction of liability of any Subsidiary Guarantor or other guarantor or surety with respect to the Guaranteed Obligations

and (m) defenses related to any other circumstance or any existence of or reliance on any representation by DOE that might otherwise constitute a defense available to, or a discharge of, Holdings, any Project Subsidiary or any other guarantor or surety.

9.6 Continuing Guarantee; Assignments. The guarantee in this Article IX is a continuing guarantee and shall (a) remain in full force and effect until the latest of (i) the payment in full in cash of the Guaranteed Obligations and all other amounts payable under this Article IX and (ii) the Termination Date, (b) be binding upon each Subsidiary Guarantor, its successors and assigns and (c) inure to the benefit of and be enforceable by the Covered Parties and their successors, transferees and assigns.

9.7 Obligations and Rights of Subsidiary Guarantors. Except to the extent set forth in this Article IX and rights that inure to all Parties under this Agreement, no Subsidiary Guarantor shall have any rights under this Agreement.

ARTICLE X
FORCE MAJEURE

10.1 Force Majeure. To the extent a Party is delayed or prevented by Force Majeure from performing, in whole or in part, its obligations under this Agreement, and such Party (a "Claiming Party") gives written notice and details of such Force Majeure to the other Party as soon as reasonably practicable after such Party becomes aware of the occurrence of such Force Majeure, then the Claiming Party shall be excused from the performance of its obligations under this Agreement (other than any obligation of the Clean Line Parties to make payments to DOE under the Transaction Documents, including under Sections 11.1, 11.3 and 11.4 and Article IX) during such Force Majeure, but for no longer period and only to the extent performance of such obligations are prevented or delayed by such Force Majeure. The Claiming Party shall exercise due diligence to remedy such Force Majeure within a reasonable period, at the Clean Line Entities' cost in all cases. The occurrence of a Force Majeure shall not entitle any Party to terminate this Agreement.

ARTICLE XI
COST AND EXPENSE FUNDING, ADVANCE FUNDING, INDEMNITY AND COLLATERAL

11.1 Cost and Expense Funding. Each of the Clean Line Entities, jointly and severally, agree to pay for (a) all out-of-pocket costs, expenses and disbursements incurred by DOE (including the costs, expense and disbursements of all internal personnel, consultants, advisors, agents and counsel engaged by DOE) in connection with the development, preparation, negotiation and execution of, and any amendment, supplement or modification to, this Agreement, the other Transaction Documents, the Real Estate Rights Agreements and any other documents prepared in connection therewith and in connection with the Project, (b) all costs, expenses, fees, Taxes, disbursements and payments made by DOE (including the costs, expenses and disbursements of surveyors, appraisers, agents, consultants, advisors and counsel (including Shearman & Sterling LLP) engaged by DOE, and all Local Government Contribution Payments) in connection with the acquisition by DOE of any Project Real Estate Rights, (c) all costs (including the costs, expense and disbursements of all internal personnel, consultants, advisors,

agents and counsel engaged by DOE) incurred by DOE in connection with the administration, inspection, enforcement, defense or preservation of any rights or claims under this Agreement, the other Transaction Documents and the Real Estate Rights Agreements, (d) any costs incurred by DOE in connection with its performance or undertaking of any non-delegable obligations or responsibilities under the DOE Mitigation Action Plan, any Cultural Resource Agreement with NHPA, the Endangered Species Act or any other Applicable Law, and (e) any other costs, expenses and disbursements incurred by DOE in connection with its participation in the Project, including, any costs and expenses associated with any of the Wind-Up Events or otherwise arising as a result of DOE's exercise of any rights or remedies under this Agreement, any other Transaction Document, any Real Estate Rights Agreement or any expenditures which DOE deems necessary to protect its and the public's interest in respect of the Project (collectively, the "Covered Costs"). Without limiting the above, Covered Costs shall include all costs and expenses that would not have been incurred by DOE but for its participation in the Project.

11.2 Participation Amount. Commencing on and after the Project Completion, Holdings shall pay to DOE at the end of each fiscal quarter an amount equal to 2% of the gross revenues received by the Clean Line Parties from the Project during such fiscal quarter resulting from the sale of transmission service in connection with the Project (as such gross revenue amount is reflected in Holdings' Financial Statements for such fiscal quarter, including, with respect to the first such fiscal quarter, sales of transmission service which occurred at any time prior to Project Completion) (the "Participation Amount"). The Clean Line Parties shall only be required to pay the Participation Amount after (a) the payment of operating costs and expenses in respect of the Project then due and debt service in respect of the Project Financing then due, (b) the funding of a customary debt service reserve account in favor of the Project Financing Parties under the Project Financing and (c) the funding of the Capital Repairs Reserve Account then required, for such quarterly period; provided that such amounts shall not be deducted from gross revenues for purposes of calculating the Participation Amount due and payable pursuant to this Section 11.2. The Participation Amounts shall be made available to DOE to offset costs associated with federal hydropower infrastructure or for any other authorized purpose.

11.3 Advance Cost Funding.

(a) Within ten (10) Business Days following the Effective Date, Holdings shall deposit, or cause to be deposited, an amount equal to the Required Amount, as notified by DOE to Holdings on or before the Effective Date, into the account specified by DOE in such notice (the "Advance Funding Account").

(b) No later than fifteen (15) Business Days prior to the end of each fiscal quarter of Holdings, DOE shall deliver to Holdings a request for funding of the Advance Funding Account in an amount equal to the then applicable Required Amount (which request shall include a calculation of the Required Amount and shall take into consideration amounts already on deposit in the Advance Funding Account). In addition, if at any time, DOE shall determine that the amount on deposit in the Advance Funding Account is less than the Base Amount applicable as of such time, DOE shall have the right to deliver to Holdings an additional request for funding of the Advance Funding Account in an amount equal to the then applicable Base Amount (including a calculation of such Base Amount). Within fifteen (15) Business Days of Holdings' receipt of any

request for funding of the Advance Funding Account from DOE, Holdings shall cause the applicable Required Amount or Base Amount to be deposited into the Advance Funding Account.

(c) DOE will provide Holdings quarterly statements of the Covered Costs expended by DOE and reasonable supporting documentation of such expenditures within thirty (30) days of the close of each quarter.

(d) Subject to limits established under Applicable Law, Holdings 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.

(e) 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. Holdings 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. The Clean Line Entities agree 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.

(f) DOE may withdraw at any time from the Advance Funding Account amounts necessary to pay for Covered Costs incurred by DOE.

(g) DOE agrees not to enter into any Contractual Obligations in connection with the Project that contain amounts payable from time to time by DOE over a period in excess of five (5) future years except to the extent that (i) Holdings has approved any such Contractual Obligation, (ii) such Contractual Obligation is for an initial five (5) year term but has an extension option that can be exercised by, or consented to by, DOE in its sole discretion to extend the length of such Contractual Obligation prior to the termination thereof for additional rolling periods of up to five (5) years or (iii) DOE's obligations to make payments for any period that is later than five (5) years after any date of determination are subject to the availability of funding to DOE with which to make payments in respect thereof.

11.4 Indemnification.

(a) Each Clean Line Entity shall, jointly and severally, indemnify and defend each Covered Party against, and hold each of them harmless from, any and all Covered Liabilities, including, any Covered Liabilities incurred by any Covered Party as a result of any investigation, Action or inquiry (whether or not such Covered Party is a party thereto) related to DOE's entry into and performance under each Transaction Document and its participation in the Project or otherwise arising as a result of the Clean Line Parties operations and business; provided, however, that a Covered Party will not be

indemnified for any Covered Liability to the extent (i) determined in the final, non-appealable judgment of a court of competent jurisdiction to have resulted directly and primarily from such Covered Party's gross negligence or willful misconduct or (ii) resulting from a claim brought by or on behalf of any Clean Line Entity against such Covered Party for breach in bad faith of such Covered Party's obligations hereunder or under any other Transaction Document, if such Clean Line Party has obtained a final and non-appealable judgment in its favor in respect of such claim as determined by a court of competent jurisdiction.

(b) In the case of any Covered Liability indemnified by the Clean Line Entities that is covered by a policy of insurance maintained by the Clean Line Entities or by third parties pursuant to the Project Contracts, DOE agrees to cooperate, at the Clean Line Entities' expense, with the insurers in the exercise of their rights to investigate, defend or compromise such Covered Liability as may be required to retain the benefits of such insurance with respect to such Covered Liability.

(c) DOE shall, promptly after it has any actual knowledge thereof, notify Holdings of any Covered Liability as to which indemnification is sought; provided, however, that the failure to deliver such prompt notice shall not release any Clean Line Entity from any of its obligations to indemnify any Covered Party. Any Covered Liability payable to any Covered Party shall be paid on or prior to the date which is the later of (i) the date ten (10) days after receipt by Holdings of a written demand therefor from DOE accompanied by a written statement describing in reasonable detail each Covered Liability that is the subject of, and the basis for, such indemnity and the computation of the amount so payable and (ii) the date two (2) Business Days prior to the date on which any Covered Liability is payable. Subject to the rights of insurers under policies of insurance maintained by the Clean Line Entities, the Clean Line Entities may, unless an Event of Default shall have occurred and be continuing, with respect to any Covered Liability for which indemnification is sought and for which they shall have acknowledged liability to the DOE in writing, and (if requested by DOE in writing after any such acknowledgment of liability has been given by the Clean Line Entities) at the sole cost and expense of the Clean Line Entities, investigate and, if permitted by Applicable Law, defend any Covered Liability for which indemnification is sought with counsel reasonably acceptable to DOE, and DOE shall cooperate, at the Clean Line Entities' expense, with all reasonable requests of the Clean Line Entities in connection therewith; provided that in the event that in the course of the investigation or defense of any such Covered Liability, the Clean Line Entities shall in good faith reasonably determine that they are not liable for indemnification with respect thereto notwithstanding such acknowledgment of liability, Holdings may give notice to the DOE of such fact and, in such case, any acknowledgment theretofore made by the Clean Line Entities of their liability with respect to such Covered Liability shall be deemed revoked, and the Clean Line Entities may thereupon cease to defend such Covered Liability; provided that (A) Holdings shall have given DOE reasonable prior written notice of the Clean Line Entities' intention to renounce such acknowledgment, (B) the Clean Line Entities' conduct regarding the defense of such Covered Liability or any decision to withdraw from such defense shall not materially prejudice or have materially prejudiced DOE's ability to contest such Covered Liability (taking into account, among other things,

the timing of the Clean Line Entities' withdrawal and the theory or theories upon which the Clean Line Entities shall have based their defense) and (C) the Clean Line Entities shall have given DOE all materials, documents and records relating to their defense of such Covered Liability as DOE shall have requested in connection with the assumption by DOE of the defense of such Covered Liability at the cost and expense of the Clean Line Entities. If the Clean Line Entities shall cease to defend any Covered Liability pursuant to the preceding sentence, the Clean Line Entities shall indemnify the Covered Parties to the extent that the actions of the Clean Line Entities in defending such Covered Liability or the manner or the time of the Clean Line Entities' election to withdraw from the defense of such Covered Liability shall have caused any Covered Party to incur any cost, loss, liability or expense which such Covered Party would not have incurred had the Clean Line Entities not assumed and thereafter ceased the defense of such Covered Liability in such manner or at such time.

(d) Notwithstanding the foregoing provisions, the Clean Line Entities shall not be entitled to assume and control the defense of any such Covered Liability if an Event of Default has occurred and is continuing or if such Covered Liability involves or could reasonably be expected to result in, in the sole judgment of DOE, (i) an Action involving a possible imposition of any criminal liability or penalty or civil penalty on any Covered Party, (ii) the granting of injunctive relief against any Covered Party affecting Property or activity not related to the transactions contemplated by the Transaction Documents, or (iii) a conflict of interest between any of the Covered Parties and the Clean Line Entities or a risk of the sale, forfeiture or loss of any of the Project Facilities or Project Real Estate Rights or any material portion thereof or interest therein, and, in either case, DOE informs Holdings that such Covered Party desires to be represented by separate counsel, in which case the fees and expenses of such separate counsel shall be borne by the Clean Line Entities. The Clean Line Entities shall provide to any Covered Party as to which any Covered Liability has been or may be asserted, such documents and other information relating thereto as such Covered Party may reasonably request from time to time. The Clean Line Entities shall also assist and testify in all proceedings at the request of DOE even if no Clean Line Entity is involved in such proceedings, all at the Clean Line Entities' cost. The Clean Line Entities shall not enter into any compromise or settlement of Covered Liability if such settlement would have any unindemnified adverse effect on the Project, the Project Facilities, the Project Real Estate Rights or the ability of the Clean Line Entities to perform their obligations under any of the Transaction Documents or Real Estate Rights Agreements or would require any Covered Party to admit any wrongdoing on its part, without the prior written consent of DOE and each applicable Covered Party. No Covered Party shall be entitled to indemnification hereunder with respect to any Covered Liability with respect to which it shall have entered into any settlement or other compromise, unless it shall theretofore have given notice to Holdings of such Covered Liability and the material facts relating thereto, and the Clean Line Entities shall have had a period which shall end on the earlier of (A) the thirtieth (30^{th}) day after the date of delivery to Holdings of such notice and (B) the later of the date on which the relevant offer of settlement or compromise shall have expired and the tenth (10^{th}) day after the date of delivery to Holdings of such notice, in which to acknowledge liability pursuant to the preceding section. No such consent shall be

required if (x) an Event of Default shall have occurred and be continuing or (y) such Covered Party waives its right to be indemnified with respect to such Covered Liability.

11.5 Performance Support.

(a) Commencing on the Commencement Date and throughout the term of this Agreement, Holdings shall provide DOE Performance Support, and maintain in full force and effect such Performance Support, in an amount equal to the then Applicable Amount. DOE shall be entitled to make a drawing or demand payment under any such Performance Support in respect of any of the following: (i) to pay any Project Costs (including any costs or expenses associated with any Wind-Up Event) or other payment obligations in respect of the Project to the extent any Clean Line Party has failed to do so, (ii) to pay any Covered Costs to the extent that there are insufficient funds available to DOE in the Advance Funding Account with which to make payment of any such Covered Costs, (iii) as payment of any Covered Liability which any Clean Line Party has otherwise failed to make in accordance with the terms of this Agreement, including the terms set forth under Section 11.4, (iv) to pay any Capital Repairs to the extent that there are insufficient funds available to the Clean Line Entities in the Capital Repairs Reserve Account or to the extent the Clean Line Entities fail to make such Capital Repairs, following the notice and cure period specified in Section 4.8(b), (v) in all other cases in which any Clean Line Party is obligated to make a payment to DOE or any Covered Party pursuant to the terms of this Agreement and has failed to make any such payment within fifteen (15) Business Days of a request for such payment, in the amount of any such payment and (vi) under any other circumstances expressly contemplated by such Performance Support (including as a result of the provider thereof no longer constituting an Acceptable Support Provider, in which case DOE shall hold such funds in trust and apply such funds in the same manner as permitted in respect of the Performance Support). Following a draw made under the Performance Support which reduces the amount available for drawing thereunder (or in the case where the full amount of the Performance Support has been drawn and the proceeds thereof are placed in a DOE or U.S. Treasury account or a collateral account pledged solely to DOE as a result of either the applicable provider of such Performance Support no longer constituting an Acceptable Support Provider or the pending expiration of such Performance Support, following any application of funds in such account), Holdings shall replenish or reinstate such Performance Support to the then Applicable Amount within fifteen (15) Business Days following notice from DOE.

(b) Subject to draw or demand provisions relating to the termination or expiration of the applicable Performance Support as provided in such Performance Support or the failure of the provider of such Performance Support to be an Acceptable Support Provider (in which case DOE shall be entitled to draw on, or demand payment under, such Performance Support subject to the grace periods provided in such Performance Support), DOE shall not make a drawing or demand under the Performance Support if funds in the Advance Funding Account or Wind-Up Reserve Account (other than funds which have been allocated for a specific purpose) are available to satisfy any payment obligation of the Clean Line Entities. Prior to making any drawing or demand on the Performance Support, DOE shall provide to Holdings ten (10) days advance

written notice; provided that no such notice shall be required in connection with any drawing or demand arising as a result of the pending termination or expiration of the applicable Performance Support or the failure of the provider of such Performance Support to be an Acceptable Support Provider.

11.6 Collateral.

(a) To secure their obligations under this Agreement, the Clean Line Entities shall grant for the benefit of DOE:

(i) (A) on or prior to Project Completion, a first priority perfected security interest in the Wind-Up Reserve Account and all funds on deposit in, or credited in each such account from time to time and (B) on or prior to Project Completion, a perfected security interest (which, prior to Project Financial Close, shall be a first priority Lien and, from and after Project Financial Close, to the extent the Clean Line Entities have granted any security interest to any Financing Party, shall be a second priority Lien) on the Capital Repairs Reserve Account (collectively, the "Account Collateral");

(ii) on or before the Commencement Date, a perfected security interest (which, prior to Project Financial Close, shall be a first priority Lien and, from and after Project Financial Close, to the extent the Clean Line Entities has granted any security interest to any Financing Party, shall be a second priority Lien) on 100% of the Equity Interests in ACL and any Indebtedness owed by ACL to Holdings, PECL or any other Subsidiary or Affiliate of Holdings (including any Person making any equity investment in ACL as part of a Permitted Project Investment) from time to time (collectively, the "Equity Collateral"); and

(iii) concurrently with the grant by the Clean Line Entities of any security interest to any Financing Party, a second priority Lien on all of the Clean Line Entities' Properties and assets (including the Capital Repairs Reserve Account but excluding other Account Collateral and the Other Facilities) in which the Clean Line Entities have granted a security interest for the benefit of such Financing Parties (the "Second Lien Collateral").

(b) The Collateral shall be free and clear of any other security interest or Lien, except for Permitted Liens.

11.7 Intercreditor Agreement. In connection with the closing of the Project Financing, DOE shall agree to enter into an intercreditor agreement (the "Intercreditor Agreement") with the Financing Parties pursuant to which it shall agree to subordinate its security interest in the Capital Repairs Reserve Account, the Equity Collateral and Second Lien Collateral under the Security Documents to the security interest in the Capital Repairs Reserve Account, the Equity Collateral and Second Lien Collateral created for the benefit of the Financing Parties. The Intercreditor Agreement will be on usual and customary terms for transactions with a first priority Lien and junior Lien, including (a) a provision whereby DOE shall agree (i) to a 365-day standstill period (which shall be extended for so long as the Project Financing Parties are

exercising remedies) with respect to taking any action in respect of any shared Collateral and (ii) to not object to the use of cash collateral and (b) provisions for debtor in possession financings and adequate protection payments for the senior lien holders.

11.8 Limitation of Liability to DOE.

(a) None of the Covered Parties shall have any liability whatsoever for payment of any obligations incurred by any Clean Line Obligor or any of its Affiliates or any other Person in connection with the Project, the Other Facilities, the Project Contracts, the Project Financing Documents or any of the transactions contemplated thereby. Each Clean Line Party hereby waives on behalf of itself and its Affiliates all rights to assert any claims against DOE or any of the Covered Parties in connection with the Project and the Other Facilities on the basis of breach of contract, misrepresentation, tort, detrimental reliance, promissory estoppel or any other legal principle in the event that (i) a final and non-appealable Governmental Order finds that DOE is legally prohibited from participating in the Project or performing its obligations under the Transaction Documents, (ii) if there is a Change in Law that sets aside or legally prohibits DOE's participation in the Project or (iii) the Project is delayed in any respect as a result of any Action or Governmental Order that affects DOE's ability to comply with its undertakings hereunder; provided that DOE itself shall agree to not take the position that it lacks the statutory authority to participate in the Project.

(b) DOE's review of any of the Project Contracts or the Project Financing Documents shall not be considered to be a guaranty or endorsement of any of the terms thereof or of any of the obligations of the Clean Line Obligors or any other Person thereunder or any information provided by the Clean Line Obligors or any other Person in connection with the negotiation, execution and delivery or performance of the Project Contracts or the Project Financing Documents (including any projections or other financial information provided in connection therewith) and is not a representation, warranty or other assurance as to the ability of the Clean Line Entities or any other Person party to the Project Contracts or the Project Financing Documents to perform their obligations thereunder.

11.9 Consequential Damages.

(a) No claim shall be made by any Clean Line Obligor or any of its Affiliates or representatives against DOE or any other Covered Party for any special, indirect, consequential or punitive damages (whether or not the claim therefor is based on contract, tort or duty imposed by law) in connection with, arising out of or in any way related to the transactions contemplated by this Agreement, the other Transaction Documents, the Project, the Other Facilities or any act or omission or event occurring in connection therewith, and each Clean Line Obligor and each of its Affiliates hereby waives and releases any such claim for any such damages, whether or not accrued and whether or not Known or suspected to exist in its favor.

(b) No claim shall be made by DOE or any other Covered Party against any Clean Line Obligor or any of its Affiliates for any special, indirect, consequential or

punitive damages (whether or not the claim therefor is based on contract, tort or duty imposed by law) in connection with, arising out of or in any way related to the actions contemplated by this Agreement, the other Transaction Documents or any act or omission or event occurring in connection therewith, and DOE and/or any other applicable Covered Party shall waive and release any such claim for any such damages, whether or not accrued and whether or not Known or suspected to exist in its favor; provided that nothing in this paragraph shall limit each Clean Line Entity's indemnity obligations as set forth in Section 11.4 to the extent that such special, indirect, consequential or punitive damages are included in any claim by a third party unaffiliated with any Clean Line Obligor with respect to which DOE or any other Covered Party is entitled to indemnification.

11.10 Release Provision.

(a) The Clean Line Entities shall use commercially reasonable efforts to include in the Project Financing Documents and in each Material Project Contract (other than any Interconnection Agreement) that the Clean Line Entities or DOE enters into in respect of the Project a provision pursuant to which the Project Financing Parties or such Project Participant, as applicable, shall agree that such Person has no recourse to any Covered Party under such Project Financing Document (other than in respect of DOE's express obligations or undertakings pursuant to the Transaction Documents, the Intercreditor Agreement and/or the DOE Direct Agreement) or applicable Material Project Contract (other than any Interconnection Agreement) and shall expressly release any Covered Party from any claim, liability or other obligation under such Project Financing Document or the applicable Material Project Contract (other than any Interconnection Agreement) (the "Release Provision"). The Release Provision included in the Project Financing Documents or any applicable Material Project Contract (other than any Interconnection Agreement) shall be in form and substance acceptable to DOE; provided that a provision substantially similar to the following shall be deemed to be in form and substance acceptable to DOE:

> *"Each of the parties hereby, in consideration of $1000, receipt of which is hereby acknowledged, releases and waives any and all claims, remedies or rights against the **[**Covered Parties**]** with respect to any and all liabilities (including, without, limitation, any liabilities arising as a result of negligence, warranty, statutory, product, strict or absolute liability, liability in tort or otherwise), obligations, losses, settlements, damages, penalties, fines, sanctions, taxes, claims, actions, demands, suits, judgments or proceedings of any kind and nature, costs, payments, expenses and disbursements (including fees and expenses of consultants, advisors, external counsel and allocable fees and expenses of internal personnel and attorneys) of whatsoever kind and nature (whether or not any of the transactions contemplated by **[**this Agreement**]** are consummated), imposed on, incurred or suffered by, or asserted against such party in any way relating to or arising out of **[**this Agreement, the Project**]** or the transactions contemplated hereby; for all purposes of this*

provision, the [Covered Parties] shall be deemed to be third party beneficiaries in all respects."

(b) The bracketed language in the foregoing provision may be conformed as necessary to reflect the terms and provisions of the relevant Project Financing Document or Material Project Contract; provided that any such changes shall not narrow the scope of the Release Provision, except that (i) the Clean Line Entities shall be permitted to add an appropriate exception to the Release Provision in the Project Financing Documents for any direct and express obligations or undertakings made by DOE in the Transaction Documents, the Intercreditor Agreement and/or the DOE Direct Agreement in favor of such Project Financing Party and (ii) the Clean Line Entities shall be permitted to add an appropriate exception to the Release Provision in any Material Project Contract for any direct and express obligations or undertakings by DOE in favor of the applicable Project Participant under such Material Project Contract (and/or under any related agreement entered into between DOE and the applicable Project Participant).

(c) None of the Clean Line Parties shall enter into any Project Financing or into any Material Project Contract (other than an Interconnection Agreement) unless the applicable Project Financing Documents or Material Project Contract (other than an Interconnection Agreement) includes a Release Provision and none of the Clean Line Parties shall agree to amend, modify or otherwise waive any Release Provision included in the Project Financing Documents or Material Project Contract without the consent of DOE. If Clean Line Entities are unable to obtain a Release Provision for a Material Project Contract, then no Clean Line Entity shall enter into such Material Project Contract without (i) delivering to DOE a substantially final draft of such Material Project Contract and (ii) receiving from DOE its written consent for the Clean Line Entities to enter into such Material Project Contract (not to be unreasonably withheld or delayed); provided, however, that DOE shall consent to such Material Project Contract if it is satisfied that such Material Project Contract does not include any terms or conditions that could reasonably be expected to expose DOE or any other Covered Party to any material obligation or liability.

ARTICLE XII
REPRESENTATIONS AND WARRANTIES

12.1 Representations and Warranties of the Clean Line Parties. Each Clean Line Party makes the following representations and warranties, as applicable, to and in favor of DOE as of the Effective Date, on each of the dates required to be made pursuant to Article VI and on any other date on which any such representation and warranty is required to be made (or deemed to be made) by the express terms of any other Transaction Document or any notice or other document or instrument required to be delivered to DOE pursuant to the terms hereof or the terms of any other Transaction Document (any of the foregoing dates, a "Representation Date"):

(a) Organization.

(i) Holdings is a limited liability company organized, validly existing and in good standing under the laws of the State of Delaware. PECL is a limited

liability company organized, validly existing and in good standing under the laws of the State of Arkansas. ACL is a limited liability company organized, validly existing and in good standing under the laws of the State of Delaware. PECL OK is a limited liability company organized, validly existing and in good standing under the laws of the State of Oklahoma. OLA is a limited liability company organized, validly existing and in good standing under the laws of the State of Delaware. Each other Subsidiary of Holdings that is a party hereto from time to time after the Effective Date is a limited liability company, corporation or limited liability partnership duly constituted, validly organized or formed, as applicable, and existing and in good standing under the laws of the jurisdiction of its organization or formation, as applicable.

(ii) Each Clean Line Party (A) is duly qualified and in good standing under the laws of each jurisdiction where its business requires such qualification, except where the failure to be so qualified could not reasonably be expected to result in a Clean Line Material Adverse Effect and (B) has all requisite power and authority to (1) conduct its business, (2) to own or hold under lease its Properties, (3) to execute, deliver, and perform its obligations under this Agreement and any other Clean Line Document to which it is a party as of the applicable Representation Date, and (4) to grant the Liens contemplated by any of the Security Documents to which it is a party as of the applicable Representation Date.

(b) Authorization. Each of the Clean Line Parties has duly authorized, executed and delivered this Agreement and any other Clean Line Document to which it is a party that has been executed and delivered by it as of as of the applicable Representation Date. No Governmental Approval or any approval, consent, exemption, authorization, or other action by, or notice to, or filing with, any other Person is necessary or required in connection with (i) the execution and delivery by any applicable Clean Line Party of this Agreement, (ii) to the extent applicable as of the applicable Representation Date, the grant by such Clean Line Entity of the Liens granted by it pursuant to the Security Documents or (iii) to the extent applicable, the perfection or maintenance of the Liens created under the Security Documents (including the first or second priority nature thereof, as applicable, and in respect of the Second Lien Collateral, only to the extent that the first priority security interests in favor of the Project have been established and/or perfected), except in each case for such Governmental Approvals or other authorizations, approvals, actions, notices and filings as which have been duly obtained, taken, given or made and are in full force and effect. Except as set forth on Schedule 11 (as such Schedule may be updated in accordance with Section 12.3), as of the applicable Representation Date, the Clean Line Entities have obtained, taken, given or made, as applicable, all Governmental Approvals or any approval, consent, exemption, authorization, or other action by, or notice to, or filing with, any other Person that is necessary or required in connection with the performance by any applicable Clean Line Party of this Agreement and the other Transaction Documents in light of the current stage of construction, management and/or operation of the Project as of such Representation Date, except where the failure to obtain, take, give or make could not reasonably be

expected to result, individually or in the aggregate, in a Clean Line Material Adverse Effect or an Adverse DOE Impact.

(c) No Conflict. Neither the execution and delivery of this Agreement nor any other Clean Line Document to which the applicable Clean Line Party is a party as of the applicable Representation Date, nor the performance by such Clean Line Party of any of its obligations thereunder does or will: (i) contravene, conflict with or violate any provision in any Organizational Document or any other agreement relating to the management or affairs of such Clean Line Party, (ii) except as could not reasonably be expected to result in a Clean Line Material Adverse Effect, contravene, conflict with, violate or fail to comply with any final and non-appealable Governmental Order or Governmental Approval applicable to such Clean Line Party or any Applicable Law, (iii) except as could not reasonably be expected to result in a Clean Line Material Adverse Effect, contravene or result in any breach or default under any Contractual Obligation to which the applicable Clean Line Party is a party or by which it or any of its Properties may be bound, or (iv) result in, or require the creation or imposition of any Lien (other than Permitted Liens) upon or with respect to any Properties of the applicable Clean Line Party now owned or hereafter acquired.

(d) Binding Obligation. Each Clean Line Document that has been executed and delivered as of the applicable Representation Date is a valid and binding obligation of the applicable Clean Line Party enforceable against it in accordance with its terms, except as enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws in effect from time to time that affect creditors' rights generally and by legal and equitable limitations on the availability of specific remedies.

(e) Capitalization. All of the Equity Interests of PECL, ACL, PECL OK and OLA have been duly authorized, validly issued, are fully paid and non-assessable and are owned directly or indirectly by Holdings, and all of the Equity Interests of Holdings have been duly authorized, validly issued, and are fully paid and non-assessable, in each case free and clear of all Liens (other than any Permitted Liens). As of the date of this Agreement, all of the Equity Interests of Holdings are owned directly by CLEP. Except as set forth in Schedule 5 (as such Schedule may be updated in accordance with Section 12.3) hereto there are no outstanding options, warrants or rights for conversion into or acquisition, purchase or transfer of Equity Interests of any Clean Line Party or any agreements or arrangements for the issuance by any Clean Line Party of additional Equity Interests. Except as set forth in Schedule 5 (as such Schedule may be updated in accordance with Section 12.3) hereto, each Clean Line Party does not have outstanding (i) any securities convertible into or exchangeable for its Equity Interests or (ii) any rights to subscribe for or to purchase, or any option for the purchase of, or any agreement, arrangement or understanding providing for the issuance (contingent or otherwise) of, or any call, loan commitment or claims of any character relating to, its Equity Interests.

(f) Litigation. With respect to any pending or threatened Actions to which DOE is not otherwise a party:

(i) Except as set forth in Schedule 9 (as such Schedule may be updated in accordance with Section 12.3) hereto, there is no pending or, to any Clean Line Party's Knowledge, threatened Action (A) that relates to the legality, validity or enforceability of this Agreement or any of the other Transaction Documents, (B) that relates to the Project or (C) that relates to any Clean Line Document to which any Clean Line Party is a party as of the applicable Representation Date which, in the case of clauses (B) or (C), either singly or in the aggregate has had a continuing, or could reasonably be expected to have a Clean Line Material Adverse Effect or otherwise materially and adversely affect the interests of DOE, including in its capacity as an agency of the United States government.

(ii) No Clean Line Party has failed to observe, in any material respect, any final and non-appealable Governmental Order that has, or could reasonably be expected to have, a Clean Line Material Adverse Effect. There is no injunction, writ, or preliminary restraining order of any nature issued by a Governmental Authority directing that any transactions contemplated by any of the Transaction Documents not be consummated as herein or therein provided.

(iii) No final and non-appealable Governmental Order has been entered against any Clean Line Party that has, or could reasonably be expected to have, a Clean Line Material Adverse Effect or an Adverse DOE Impact.

(g) Taxes.

(i) Each Clean Line Party (A) has timely filed or caused to be filed all material federal, state and local Tax returns required by Applicable Law to be filed by it, and each such Tax return was complete and accurate in all material respects, and (B) has timely paid or caused to be paid (1) all material Taxes payable by it that have become due pursuant to such Tax returns and (2) all other material Taxes and assessments payable by it that have become due, in each case, other than those Taxes subject to Contest.

(ii) The Clean Line Parties do not owe any delinquent Indebtedness to any Governmental Authority of the United States, including in respect of any Tax liability, except to the extent such delinquency is the subject of a Contest or has been resolved, or is in the process of being resolved, with the appropriate Governmental Authority in accordance with the standards of the Debt Collection Improvement Act.

(h) Fees. No Clean Line Party has any obligation to pay any Person in respect of any finder's, broker's, or other similar fees in connection with this Agreement or any other Transaction Document.

(i) Financial Statements. Each of the Financial Statements delivered to DOE pursuant to the terms of this Agreement has been prepared in accordance with GAAP consistently applied and presents fairly, in all material respects, the financial condition of such Person as of the respective dates of the balance sheets included therein and the results of operations of such Person for the respective periods covered by the statements of income included therein, subject to the absence of notes and normal year-end audit adjustments with respect to the quarterly unaudited financial statements. Except as reflected in such Financial Statements, as of the date of such Financial Statements, there are no material liabilities or obligations of such Person of any nature whatsoever as of the balance sheet date contained in such financial statements that are required to be disclosed in accordance with GAAP, subject to the absence of notes for the quarterly unaudited financial statements.

(j) Project Plans, Base Case Projections and Sufficiency of Funds.

(i) The Project Schedule, the Project Plans and the Base Case Projections, as amended or supplemented from time to time in accordance with the terms of this Agreement, when prepared or made (A) were complete and based on assumptions that the Clean Line Entities believed to be reasonable, (B) are consistent with the provisions of any Clean Line Documents and Project Financing Documents then in effect, (C) have been prepared in good faith and with due care and (D) fairly represented the Clean Line Entities' expectation as to the matters covered thereby.

(ii) The Project Schedule, as amended or supplemented from time to time in accordance with the terms of this Agreement, accurately specifies in summary form the work necessary to reach Project Completion on a specified timeline.

(iii) The Project Budget as amended or supplemented from time to time in accordance with the terms of this Agreement represents the Clean Line Entities' good faith, best estimate of total Project Costs anticipated to be incurred to construct the Project in the manner contemplated by the Project Plans.

(k) Immunity. None of the Clean Line Parties and none of their respective Properties enjoys any right of immunity from set off, suit or execution with respect to any Property or obligations under any Transaction Document.

(l) Compliance with Applicable Laws; Environmental Matters. Except as set forth in Schedule 10 (as such Schedule may be updated in accordance with Section 12.3) hereto:

(i) Each Clean Line Party is in compliance with, and has conducted (or caused to be conducted) its business and operations and the business and operations of the Project in compliance with, all Applicable Laws, including Environmental Laws, in each case applicable to such Clean Line Party or the Project, except where the failure to comply could not reasonably be expected to

result, individually or in the aggregate, in a Clean Line Material Adverse Effect or an Adverse DOE Impact.

(ii) As of the applicable Representation Date, there are no Environmental Claims pending or, to the Knowledge of any Clean Line Party, threatened against such Clean Line Party, any Property of such Clean Line Party or the Project, except as could not reasonably be expected to result, individually or in the aggregate, in a Clean Line Material Adverse Effect or an Adverse DOE Impact.

(iii) As of the applicable Representation Date, to the Knowledge of each Clean Line Party, there are no present or past actions, activities, circumstances, conditions, events or incidents, including the Release of any Hazardous Substances that could reasonably be expected to form the basis of an Environmental Claim against any Clean Line Party or DOE or in respect of the Project Site, except as could not reasonably be expected to result, individually or in the aggregate, in a Clean Line Material Adverse Effect or an Adverse DOE Impact.

(iv) As of the applicable Representation Date, none of the Clean Line Parties nor, to the Knowledge of each Clean Line Party, any other Person, has used, released, discharged, generated, manufactured, produced, stored or disposed of in, on, under or about the Project Site or transported thereto or therefrom, any Hazardous Substances that could reasonably be expected to form the basis of an Environmental Claim related to the Project site or cause any of the Clean Line Parties or the Project Site to be subject to any restrictions arising under Environmental Laws or otherwise have a material adverse environmental or social effect which is prohibited under Applicable Law, except as could not reasonably be expected to result, individually or in the aggregate, in a Clean Line Material Adverse Effect or an Adverse DOE Impact.

(v) No Clean Line Party has received any letter or request for information under Section 104 of the Comprehensive Environmental Response Compensation and Liability Act (42 U.S.C. Sections 9640 *et seq*.) or comparable state laws, and, to the Knowledge of each of the Clean Line Parties, none of the operations of any of the Clean Line Parties relating to the Project is the subject of any investigation by a Governmental Authority evaluating whether any remedial action is needed to respond to a Release or threatened Release of any Hazardous Substances relating to the Project or the Project Site or at any other location, including any location to which any Clean Line Party has transported, or arranged for the transportation of, any Hazardous Substances with respect to the Project Site.

(m) Insolvency Events; Solvency.

(i) None of the Clean Line Parties is subject to any pending or to the Knowledge of each of the Clean Line Parties, threatened, Insolvency Event.

(ii) The Clean Line Parties, on a consolidated basis, are Solvent.

(n) No Defaults. No Default or Event of Default has occurred and is continuing.

(o) Full Disclosure.

(i) All written information contained in all documents, reports or other written information pertaining to the Project (other than any projections or forward-looking statements), together with all written updates of such information from time to time (collectively, the "Information"), that have been furnished by or on behalf of the Clean Line Parties to DOE, are, as of the date such information was so furnished and taken as a whole, true and correct in all material respects and do not contain any material misstatement of fact or omit to state a material fact or any fact necessary to make the statements contained therein not materially misleading in light of the circumstances in which they were made; provided, that with respect to any Information that is expressly identified as being obtained from a publicly-available third-party source, this representation is made only to the Knowledge of the Clean Line Parties.

(ii) As of the date of this Agreement, to the Knowledge of each of the Clean Line Parties it is technically feasible for the Project to be constructed, completed, operated and maintained in all material respects in accordance with the specifications and other information contained in that 1222 Program - Part 2 Application submitted by the Clean Line Parties to DOE in January 2015.

(p) Security Interests; Liens.

(i) The Security Documents that have been delivered on or prior to the applicable Representation Date are effective to create, in favor of DOE, a legal, valid and enforceable Lien on and security interest in all of the Collateral purported to be covered thereby, and all necessary recordings and filings with respect to such Security Documents have been made in all necessary public offices, and all other necessary and appropriate action has been taken, so that the security interest created by such Security Document is a perfected Lien on and security interest in all right, title and interest of the applicable Clean Line Entity in the Collateral purported to be covered thereby, prior and superior to all other Liens other than Permitted Liens (provided, with respect to the Second Lien Collateral, the Clean Line Entities shall not be obligated to make any filings or recordings or take any other action necessary to create or perfect a Lien that are not required in respect of the first priority security interest granted in favor of the Project Financing Parties).

(ii) No Lien (other than a Permitted Lien) or other instrument or recordation covering all or any part of the Collateral purported to be covered by the Security Documents on or prior to the applicable Representation Date is on file in any recording office or public registry.

(iii) Except for Permitted Liens, no Clean Line Entity has created and is not under any obligation to create, and has not entered into any Contractual Obligation that would, or could reasonably be likely to, result in the imposition of, any Lien upon any of its Properties.

(q) Insurance. Following adoption of the Insurance Agreement, the Clean Line Entities' insurance coverage for the Project required pursuant to the Insurance Agreement to be in effect at such time is in full force and effect, and all premiums then due and payable under the applicable policies have been paid.

(r) Business.

(i) None of the Clean Line Parties has conducted any business, other than the business contemplated by the Transaction Documents and the other Clean Line Documents, the Project Contracts, the Project Equity Commitments, the Project Financing Commitments, the Project Financing Documents and such other business as may be related to the Project and the Other Facilities.

(ii) None of the Clean Line Parties has any outstanding Indebtedness other than Permitted Indebtedness.

(iii) None of the Project Subsidiaries owns (A) any real Property rights other than those relating to the Project and (B) any Equity Interests other than Equity Interests in any other Subsidiary of Holdings that is also a Project Subsidiary.

(iv) None of the Project Subsidiaries is a party to or bound by any Contractual Obligation other than (A) the Transaction Documents, (B) the Project Contracts, (C) the Project Financing Documents and (D) any other Contractual Obligation that relates to the ownership, development, construction, procurement, operation, management or maintenance of the Project and the Other Facilities.

(s) United States Government Requirements.

(i) Davis-Bacon Requirements. If the Davis-Bacon Act has been determined by DOE or the Department of Labor, as the case may be, to be applicable to the Project, each Clean Line Party is in compliance with all applicable Davis-Bacon Requirements. To the extent the Davis-Bacon Act applies to the Project, each applicable contract for construction, as defined in Department of Labor regulations at 29 C.F.R. § 5.2(j), includes the Davis-Bacon Requirement provisions set forth in Schedule 15 hereto (as such Schedule is supplemented from time to time in accordance with Section 8.24(b)).

(ii) Prohibited Persons. (A) None of the Clean Line Parties, any Controlling Person of any Clean Line Party or any Principal Person of any Clean Line Party or any Principal Person of any Controlling Person of a Clean Line Party is a Prohibited Person, (B) to each Clean Line Party's Knowledge no event has occurred and no condition exists that is likely to result in any Clean Line

Party, any Controlling Person of any Clean Line Party or any Principal Person of a Clean Line Party or any Principal Person of any Controlling Person of a Clean Line Party becoming a Prohibited Person and (C) to each Clean Line Party's Knowledge, no Project Participant is a Prohibited Person.

(iii) Anti-Corrupt Practices Laws, Etc. (A) Each Clean Line Party, each Controlling Person of a Clean Line Party and each Principal Person, employee and agent of each Clean Line Party and each Controlling Person of a Clean Line Party have complied with all AM Laws, Anti-Corruption Laws and Sanctions and (B) each Clean Line Party has implemented and maintains in effect policies and procedures reasonably designed to ensure compliance by such Clean Line Party and its respective Principal Persons with AM Law, Anti-Corruption Laws and Sanctions.

(t) Energy Regulatory Status.

(i) Federal Energy Regulatory Status.

(A) The appropriate Clean Line Party or Clean Line Parties are authorized, pursuant to Section 205 of the FPA, to charge negotiated rates for transmission rights on the Project and such authorization is in full force and effect.

(B) As of the Effective Date and until the earlier of (i) the date on which any of the Project Facilities are energized, (ii) the date of FERC's order accepting the rate schedule or OATT filed by the appropriate Clean Line Party or Clean Line Parties or (iii) the effective date of the rate schedule or OATT filed by the appropriate Clean Line Party or Clean Line Parties, none of CLEP (solely as a result of the Project) or any of the Clean Line Parties is or will be a "public utility" under the FPA.

(C) As of the Effective Date and until the date on which any of the Project Facilities are energized, none of CLEP (solely as a result of the Project) or any of the Clean Line Parties is or will be subject to regulation under PUHCA.

(D) As of the earlier of (i) the date on which any of the Project Facilities are energized, (ii) the date of FERC's order accepting the rate schedule or OATT filed by the appropriate Clean Line Party or Clean Line Parties, or (iii) the effective date of the rate schedule or OATT filed by the appropriate Clean Line Party or Clean Line Parties as permitted by FERC, each of the appropriate Clean Line Party or Clean Line Parties will be a "public utility" under the FPA.

(E) As of the date on which any of the Project Facilities are energized, each of the Clean Line Parties will be subject to regulation under PUHCA to the extent applicable.

(ii) State Energy Regulatory Status.

(A) By Order No. 9 issued by the APSC on January 11, 2011, in Docket No. 10-041-AU (the "APSC 2011 Order"), the APSC denied PECL's application for authority to operate as a public utility in the State of Arkansas. The APSC 2011 Order is final and is no longer subject to rehearing before the APSC.

(B) By Order No. 590530 issued by the OCC on October 28, 2011 (the "OCC 2011 Order"), the OCC granted PECL OK's request for authority to operate as a transmission-only public utility in Oklahoma. The OCC 2011 Order is final, in full force and effect, and is no longer subject to rehearing before the OCC. PECL is in compliance with the OCC 2011 Order in all material respects.

(C) By order issued by the Tennessee Regulatory Authority on May 5, 2015, in Docket No. 14-00036 (the "TRA 2015 Order"), PECL has been granted a Certificate of Public Convenience and Necessity to construct the transmission facilities in Tennessee that will interconnect with the Project. The TRA 2015 Order of the TRA is in full force and effect and is no longer subject to rehearing before the TRA. PECL is in compliance with the TRA 2015 Order in all material respects.

(u) Investment Company Act. No Clean Line Party is required to register as an "investment company" as defined in, or subject to regulation under, the Investment Company Act.

(v) Required Approvals.

(i) Except as set forth in Schedule 16 (as such Schedule may be updated in accordance with Section 12.3), each Required Approval that is necessary for the Project in light of the current stage of construction, management and/or operation of the Project as of the applicable Representation Date, except for any *de minimis* Required Approval that is of a routine nature and obtainable in the ordinary course of business, (A) has been obtained, filed or made with the corresponding Governmental Authority, (B) is validly issued and in full force and effect and (C) there are no proceedings pending, or to any Clean Line Entity's Knowledge, threatened, seeking to rescind, terminate, adversely and materially modify, suspend, revoke or invalidate such Required Approval, except where such event or circumstance could not reasonably be expected to result, individually or in the aggregate, in a Clean Line Material Adverse Effect or an Adverse DOE Impact.

(ii) None of the Clean Line Entities has any credible reason to believe that any Required Approval, that is not necessary for the Project in light of the current stage of construction, management and/or operation as of the applicable Representation Date but which will be required in the future, will not be obtained

on terms and conditions that are not materially inconsistent with the Clean Line Entities' performance under the Clean Line Documents on or prior to the date required or necessary for the continued construction, management and/or operation of the Project in accordance therewith.

(iii) Each of the Clean Line Entities is in compliance in all material respects with each Required Approval that has been issued to it as of the applicable Representation Date.

12.2 Survival. The representations and warranties contained herein shall survive the execution and delivery of this Agreement.

12.3 Disclosure Schedule. The Clean Line Parties may, on any Representation Date, update, supplement or amend Schedules 3, 5, 9, 10, 11 and 16 (collectively the "Disclosure Schedules"), to correct any matter that would otherwise constitute a breach of any representation or warranty contained herein. If the matter or event giving rise to such an updated, supplemented or amended Disclosure Schedule, when taken together with all other matters and events that have given rise to updated, supplemented or amended Disclosure Schedules, could reasonably be expected, individually or in the aggregate, to result in a Clean Line Material Adverse Effect or an Adverse DOE Impact, then the Clean Line Parties shall not have the right to make any such update, supplement or amendment without the consent of DOE. Certain information set forth in the Disclosure Schedule is included solely for informational purposes and is not an admission of liability with respect to the matters covered by the information.

ARTICLE XIII
MISCELLANEOUS TERMS AND PROVISIONS

13.1 Notices; Consents; Approvals.

(a) The names and addresses of the Clean Line Parties and DOE for the purpose of receiving notices, invoices, payments and other communications required or permitted under this Agreement and the other Transaction Documents are as set forth below, which addresses may be changed from time to time by written notice to the other Party as provided herein.

Clean Line Parties: Plains and Eastern Clean Line Holdings LLC
1001 McKinney, Suite 700
Houston, Texas 77002
Attention: Cary Kottler
Telephone: 832-319-6320
Facsimile: 832-319-6311
Email: CKottler@cleanlineenergy.com

With copies to: Latham & Watkins LLP
555 Eleventh Street NW
Suite 1000
Washington, DC 20004
Attention: Paul J. Hunt

Telephone: 202-637-2241
Facsimile: 202-637-2201
Email: Paul.Hunt@lw.com

DOE: U.S. Department of Energy
Office of the General Counsel
1000 Independence Ave., SW
Washington, DC, 20585
Attention: Samuel Walsh – Deputy General Counsel for Energy Policy
Telephone: 202-586-6732
Facsimile: 202-586-4116
Email: Samuel.walsh@hq.doe.gov

With a copy to: Southwestern Power Administration
One West Third Street
Tulsa, OK 74103-3502
Attention: Scott Carpenter – Administrator of Southwestern Power Administration
Telephone: 918-595-6601
Facsimile: 918-595-6755
Email: scott.carpenter@swpa.gov

(b) All notices or other communications required or permitted under this Agreement shall be in writing, properly addressed as provided in paragraph (a) above, and given by (i) hand delivery, (ii) a national overnight courier service, (iii) confirmed facsimile transmission, followed by a hard copy, or (iv) certified or registered mail, return receipt requested, and postage pre-paid. Any such notice or other communication shall be deemed to have been duly given (A) as of the date delivered if by hand delivery, national overnight courier service, email or confirmed facsimile transmission (provided a hard copy promptly follows by other means provided herein within five (5) days of the facsimile transmission), or (B) five (5) days after mailing if by certified or registered mail.

(c) Time is of the essence under this Agreement. Wherever in this Agreement provision is made for the giving of consent or approval by either Party, unless otherwise specified, such consent or approval shall be (i) provided as soon as reasonably practicable following the request for such consent or approval and (ii) be in writing as provided above.

13.2 Further Assurances. Each Party shall, at the request of the other Party, execute and deliver or cause to be executed and delivered such documents and instruments as reasonably requested; provided that such documents and instruments are reasonably acceptable to the Party to whom the request is directed and are not otherwise specified herein, and take or cause to be taken all such other reasonable actions, as may be necessary to more fully and effectively carry out the intent and purposes of this Agreement.

13.3 Amendment; Waiver. No amendment or other modification of any provision of this Agreement shall be valid or binding unless it is in writing and signed by each of the Parties. No waiver of any provision of this Agreement shall be valid or binding unless it is in writing and signed by the applicable Party waiving compliance with such provision. No delay or omission in exercising any right, power, privilege or remedy under this Agreement or any other Transaction Document, including any rights and remedies in connection with the occurrence of an Event of Default or any right of termination shall impair any such right, power, privilege or remedy of DOE nor shall it be construed to be a waiver of any right, power, privilege or remedy or of any breach or default, or an acquiescence therein, or in any similar breach or default thereafter occurring, nor shall any waiver of any single right, power, privilege or remedy, or of any breach or default be deemed a waiver of any other right, power, privilege or remedy or of any other breach or default therefore or thereafter occurring.

13.4 Lender-and Financing-Related Provisions. Subject to DOE's rights and obligations under Applicable Law and the terms and conditions of this Agreement, at the request of Holdings, DOE shall agree to execute and deliver to the Project Financing Parties the DOE Direct Agreement, the Intercreditor Agreement and such other ancillary documents customary and reasonable for financing projects of a type similar to the Project reasonably requested by the Project Financing Parties and reasonably acceptable to DOE, all at the cost and expense of the Clean Line Entities; provided that neither DOE nor any of its counsel shall be obligated to provide any legal opinion related to the Project to any Project Financing party or any other Person other than the Section 1222 Decision.

13.5 Project Financing Document Provisions.

(a) The Clean Line Entities shall be solely responsible for obtaining (and repaying) any necessary financing for the development, design, engineering, construction, ownership, operation, maintenance and management or any Capital Repair relating to the Project at its own cost and risk and without recourse to DOE, the Project or any other Covered Party. None of the Covered Parties shall have any obligation to pay any debt service or repay any Indebtedness issued or incurred by any Clean Line Party or any of its Affiliates or any other Person in connection with the Project or any of the transactions contemplated by the Transaction Documents.

(b) The Project Financing Documents shall include the terms and conditions set forth in Schedule 2.

(c) For the avoidance of doubt, subject to Section 6.4(a)(ii), nothing in this Agreement shall require that the Clean Line Entities fund Construction Costs or Project Costs with Project Financing or to enter into any Project Financing Documents, so long as the Project Equity Commitments are sufficient to fund all Construction Costs and to enable the Clean Line Entities to otherwise satisfy its obligations under the Transaction Documents.

13.6 Grant of Security Interest. The Clean Line Entities may grant security interests in, or assign the entirety of the Clean Line Entities' interests in and under the Transaction Documents to the Project Financing Parties for purposes of securing the Project Financing,

subject to any terms and conditions contained in the Transaction Documents, the Intercreditor Agreement and the DOE Direct Agreement. The Clean Line Entities shall be strictly prohibited from pledging or encumbering its interest under the Transaction Documents to secure any Indebtedness or any other obligations other than the Project Financing (except for Permitted Liens).

13.7 DOE Review Standard. Except as otherwise set forth in this Agreement, to the extent that any document, agreement, report, certificate, opinion or other evidence of any matter or condition is required to be delivered to DOE pursuant to the terms of this Agreement or any other Transaction Document, such document, agreement, report, certificate, opinion or other evidence shall be required to be in form and substance that is satisfactory to DOE. In addition, to the extent that: (a) any document or agreement is required to be executed by DOE, (b) any determination is contemplated to be made by DOE or (c) any condition is required to be satisfied or waived pursuant to the terms of this Agreement or any other Transaction Document, DOE shall make such determination or confirm satisfaction or waiver of any such condition acting in its sole and absolute discretion.

13.8 DOE Delegation. DOE shall be entitled to execute or perform any of its rights, remedies, power, privileges, duties or obligations under this Agreement, any other Transaction Document or, to the extent applicable, any Required Approval through any of its nominees (including any other federal agency) or agents.

13.9 Assignments. Except as otherwise expressly permitted pursuant to Section 13.6, no Party may assign its rights and obligations under this Agreement or any other Transaction Document without the prior written consent of the other Parties.

13.10 Successors and Assigns. Each and all of the covenants, terms, provisions and agreements contained in this Agreement shall be binding upon and inure to the benefit of the Parties hereto and, to the extent permitted by this Agreement, their respective successors and permitted assigns.

13.11 Joint and Several Obligations. Notwithstanding anything to the contrary in this Agreement, each Clean Line Party shall be jointly and severally liable for all obligations of each other Clean Line Party under this Agreement and each Clean Line Entity shall be jointly and severally liable for all obligations of each other Clean Line Entity under this Agreement.

13.12 Right to Intervene. Nothing in this Agreement shall prohibit any Party from intervening in any regulatory proceeding relating to the Project or the Other Facilities and taking any position in any such proceeding that it deems appropriate.

13.13 Publication; Public Statements. None of the Clean Line Parties or any of its representatives may issue any press release or make any other public statement directly or indirectly relating to DOE, this Agreement, the other Transaction Documents and DOE's involvement in the transaction contemplated thereby without DOE's prior written consent (other than information that is generally available to the public and background or summary information of a general nature concerning the Project).

13.14 Third Parties. Except as expressly provided otherwise in this Agreement (including the provisions for the protection of all Covered Parties), none of the promises, rights or obligations contained in this Agreement shall inure to the benefit of any Person that is not a Party to this Agreement, and no action may be commenced or prosecuted against any Party by any third Person claiming to be a third-person beneficiary of this Agreement or the transactions contemplated thereby.

13.15 Independent Contractor Status.

(a) The Clean Line Parties' interests under this Agreement and any other Transaction Document shall be solely those of an independent contractor, and the Clean Line Parties and DOE are not in a relationship of co-venturers, partners, lessor-lessee or principal-agent (except to the extent that the Transaction Documents expressly appoint any Clean Line Entity as DOE's agent for specified purposes (including for purposes of the Construction Contracts)).

(b) Nothing contained in this Agreement or in any other Transaction Document shall be deemed or construed to create a partnership, tenancy in common, joint tenancy, joint venture or co-ownership by, between or among DOE or any other Covered Party and the Clean Line Parties, or any other Person.

13.16 TN and TX Facilities. Except to the extent expressly set forth in this Agreement, none of the TN Facilities or the TX Facilities are covered by, or shall be subject to, this Agreement or any other Transaction Document.

13.17 Governing Law. This Agreement shall be governed by, and construed and interpreted in accordance with, the Federal law of the United States of America. To the extent that Federal law does not specify the appropriate rule of decision for a particular matter at issue, it is the intention and agreement of the parties thereto that the laws of the State of New York shall be adopted as the governing Federal rule of decision.

13.18 Jurisdiction. Each Clean Line Party irrevocably and unconditionally:

(a) submits itself and its Properties, in any legal action or proceeding against it arising out of or in connection with this Agreement or any other Transaction Document or for recognition and enforcement of any judgment in respect thereof, to the non-exclusive general jurisdiction of (i) the courts of the United States of America for the District of Columbia; (ii) the courts of the United States of America in and for the Southern District of New York; (iii) any other federal court of competent jurisdiction in any other jurisdiction where it or any of its Property may be found; and (iv) appellate courts from any of the foregoing;

(b) consents that any such action or proceeding may be brought in or removed to such courts, and waives any objection, or right to stay or dismiss any action or proceeding, that it may now or hereafter have to the venue of any such action or proceeding in any such court or that such action or proceeding was brought in an inconvenient court and agrees not to plead or claim the same;

(c) agrees that service of process in any such action or proceeding may be effected by mailing a copy thereof by registered or certified mail (or any substantially similar form of mail), postage prepaid, to any Clean Line Party at its address set forth in Section 13.1 or at such other address that it shall notify DOE hereunder;

(d) agrees that nothing herein shall (i) affect the right of any Covered Party to effect service of process in any other manner permitted by law; or (ii) limit the right of any Covered Party to commence proceedings against or otherwise sue the Clean Line Parties or any other Person in any other court of competent jurisdiction, nor shall the commencement of proceedings in any one or more jurisdictions preclude the commencement of proceedings in any other jurisdiction (whether concurrently or not) if, and to the extent, permitted by the Applicable Laws; and

(e) subject to rights to appeal in accordance with Applicable Laws, agrees that judgment against it in any such action or proceeding shall be conclusive and may be enforced in any other jurisdiction within or without the U.S. by suit on the judgment or otherwise as provided by law, a certified or exemplified copy of which judgment shall be conclusive evidence of the fact and amount of the Clean Line Parties' obligation.

13.19 Dispute Resolution.

(a) If both Holdings and DOE agree, the Parties may first attempt in good faith to resolve any dispute under this Agreement and any other Transaction Document through informal negotiations by their respective representatives on the Coordination Committee, which can be escalated to the senior officers of each party if necessary or desirable.

(b) For disputes that are construction-related, operational-related or in respect of technical, financial or accounting issues, the Parties shall have the right to appoint an independent technical or financial expert to assist in resolving any such dispute. The Clean Line Entities shall bear the cost of such independent technical or financial expert.

13.20 Waiver of Jury Trial. EACH PARTY HEREBY EXPRESSLY WAIVES ANY RIGHT TO TRIAL BY JURY OF ANY CLAIM, DEMAND, ACTION OR CAUSE OF ACTION, OR IN ANY PROCEEDING RELATED THERETO, ARISING UNDER THIS AGREEMENT OR THE TRANSACTIONS RELATED HERETO, WHETHER NOW EXISTING OR HEREAFTER ARISING, WHETHER FOUNDED IN CONTRACT OR TORT OR OTHERWISE. EACH PARTY AGREES THAT IT WILL NOT SEEK A TRIAL BY JURY IN RESPECT OF ANY SUCH CLAIM, DEMAND, ACTION, CAUSE OF ACTION OR PROCEEDING.

13.21 Negotiation and Documentation of this Agreement. Each of the Parties acknowledges and agrees that it has had the opportunity to have its legal counsel review this Agreement and participate in the negotiation and documentation hereof, and the Parties are fully familiar with each of the provisions of this Agreement and the effect thereof.

13.22 Severability. In the event any one or more of the provisions contained in this Agreement should be held invalid, illegal or unenforceable in any respect, the validity, legality

and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby.

13.23 Counterparts. This Agreement may be executed by the Parties in two or more separate counterparts (including by PDF or facsimile transmission), each of which shall be deemed an original, and all of said counterparts taken together shall be deemed to constitute one and the same instrument.

13.24 Entire Agreement. This Agreement contains the entire agreement and understanding of the Parties with respect to the subject matter hereof and supersedes all prior agreements and understandings, whether written or oral, of the Parties relating to the subject matter hereof. Any oral or written representation, warranty, course of dealing or trade usage not contained or referenced herein shall not be binding on either Party.

13.25 Time is of the Essence. Each of the Parties acknowledges that timely achievement of commercial operation of the Project is essential, and therefore time is of the essence in performing all obligations set forth herein.

13.26 Confidentiality of Information. Each of the Parties agrees that it shall treat all information exchanged or provided by and among the Parties in connection with the Project as confidential and shall not disclose any such information to any other Person except (a) to the extent such information is required to be disclosed pursuant to Applicable Laws (including the Freedom of Information Act, 5 U.S.C. §552 and DOE's implementing regulations set forth in 10 C.F.R. Part 1004), (b) to the extent such information is required to be disclosed by any Governmental Authority, (c) to any officer, director, employee, advisor, agent or representative of such Party, solely in the context of such Party's evaluation, consideration and participation of the Project, (d) to other Persons that agree to be bound by obligations of confidentiality at least as restrictive as this Section 13.26 or (e) as otherwise agreed in writing by the Parties from time to time; provided, however, that nothing herein shall prohibit disclosure of any information that (i) is or becomes generally available to the public other than as a result of disclosure by a Party in violation of this Section 13.26 or (ii) was known to the disclosing Party through means independent of receipt of such information by another Party; provided further that the Parties hereby agree that the terms and conditions of this Agreement shall not be treated as "information" subject to the provisions of this Section 13.26 and that the Parties shall be entitled to freely disclose the terms and conditions of this Agreement.

13.27 Non-Exclusivity.

(a) Notwithstanding anything to the contrary in this Agreement, the Clean Line Parties agree and acknowledge that each of DOE and each other Covered Party will have the unfettered right in its sole discretion, at any time and without liability, regardless of impacts on the Project or the Other Facilities, to finance, develop, approve, expand, improve, modify, upgrade, add capacity to, reconstruct, rehabilitate, restore, renew and replace any existing and new transmission lines or other facilities. Such right extends to facilities whether adjacent to, nearby or otherwise located as to affect the Project, its operation and maintenance and/or its revenues.

(b) The foregoing facilities include those owned or operated by (i) DOE, including those owned or operated by a private entity pursuant to a contract with DOE, (ii) a joint powers authority or similar entity to which DOE is a member, (iii) a Governmental Authority pursuant to a contract with DOE and (iv) a Governmental Authority with respect to which DOE has contributed funds, in-kind contributions or other financial or administrative support.

(c) DOE will have the right, without liability, to make discretionary and non-discretionary distributions of federal and other funds for any transmission projects, programs and planning, and to exercise all its authority to advise and recommend on transmission and energy planning, development and funding.

[*Signature Pages Follow***]**

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed by their officers thereunto duly authorized as of the day and year first above written.

U.S. DEPARTMENT OF ENERGY

By: _____

Name: Ernest J. Moniz

Title: Secretary of Energy

[Signature Page to Participation Agreement]

PLAINS AND EASTERN CLEAN LINE HOLDINGS LLC

By: _____

Name: Michael Skelly

Title: President

ARKANSAS CLEAN LINE LLC

By: _____

Name: Michael Skelly

Title: President

PLAINS AND EASTERN CLEAN LINE OKLAHOMA LLC

By: _____

Name: Michael Skelly

Title: President

OKLAHOMA LAND ACQUISITION COMPANY LLC

By: _____

Name: Michael Skelly

Title: President

PLAINS AND EASTERN CLEAN LINE LLC

By: _____

Name: Michael Skelly

Title: President

[Signature Page to Participation Agreement]

Schedules
to Participation Agreement

This document constitutes all of the schedules (the "Schedules") referenced in the Participation Agreement, dated as of March 25, 2016 (as amended, modified or restated from time to time, this "Participation Agreement"), by and among the United States Department of Energy, Plains and Eastern Clean Line Holdings LLC, Arkansas Clean Line LLC, Plains and Eastern Clean Line Oklahoma LLC, Oklahoma Land Acquisition Company LLC and Plains and Eastern Clean Line LLC. Unless otherwise defined in the Schedules, all capitalized names and terms set forth herein and not otherwise defined herein will have the same meanings as set forth in the Participation Agreement.

The captions appearing herein are for the convenience of the Parties only and will not be construed to affect the meaning of the provisions of the Participation Agreement.

With respect to the Disclosure Schedules only:

(a) The inclusion of any contract, lease, document, claim, action or any other item (individually, an "Item") on any Disclosure Schedule will not constitute a representation by any Clean Line Party that such Item is material, or that the non-inclusion of such Item on such Disclosure Schedule (or any other Schedule) would result in a misrepresentation or breach of warranty on the part of the Clean Line Parties;

(b) Any Item set forth in the Disclosure Schedules that is not required to be disclosed pursuant to the Participation Agreement has been disclosed solely for informational purposes and such disclosure will not be construed to broaden the scope of any representation or warranty;

(c) No disclosure in any Disclosure Schedule relating to any possible breach or violation of any agreement, law, regulation or other legal requirement will be construed as an admission or indication that any such breach or violation exists or has actually occurred; and

(d) Inclusion of an Item under one Disclosure Schedule shall be deemed to be an inclusion of such Item on one or more other Disclosure Schedules where it is reasonably apparent from the text of such disclosure.

Schedule 1
to the Participation Agreement

Clean Line Entities Real Estate Rights Acquisition Procedures

In connection with the Clean Line Entities' acquisition of any Project Real Estate Rights, each Clean Line Entity shall comply in all material respects with the Routing and ROW Plan and all other procedures set forth in this Agreement (including this Schedule 1) prior to any such Project Real Estate Right being deemed to be a DOE Delegated Real Estate Right.

In connection with any acquisition of a Project Real Estate Right, each Clean Line Entity shall comply with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (42 U.S.C. § 4601 *et seq.*) and the regulations promulgated thereunder and set forth in 49 C.F.R. Part 24 (collectively, the "Uniform Act"), DOE Policies and all other Applicable Laws. The Routing and ROW Plan shall be agreed between the Parties as a condition to the occurrence of the Commencement Date. Any amendments or modifications to the Routing and ROW Plan or the Project Plans shall be subject to the terms of this Agreement. The Routing and ROW Plan shall include, among other requirements and procedures, the requirements and procedures set forth herein and in the Clean Line Uniform Act Execution Plan set forth as Schedule 17. To the extent of any conflict or inconsistency between this Schedule 1 and Schedule 17, the provisions set forth in this Schedule 1 shall control. To the extent of any conflict or inconsistency between this Schedule 1 and the Uniform Act, the requirements of the Uniform Act shall control.

1. Defined Terms. For purposes of this Schedule 1, capitalized terms shall have the meanings defined for such terms in Article I of the Agreement. In addition, the following capitalized terms shall have the following meanings:

"Curative Party" means any Person from whom any consent or other necessary action is required in order for the applicable Landowner to be able to grant or convey a clean or marketable Project Real Estate Right in favor of the Clean Line Entities without any clouds or defects on title.

"Documentation Package" means, with respect to any Project Real Estate Right, a comprehensive written file maintained by the Clean Line Entities documenting all activities undertaken by the Clean Line Entities with respect to the acquisition of such Project Real Estate Right, including: (a) the relevant Title Search, (b) contact information in respect of any applicable Landowner, Curative Party or tenant, (c) any related market data studies, (d) all appraisals undertaken in respect of such Project Real Estate Right, (e) surveys in respect of such Project Real Estate Right, (f) any additional title searches related to such Project Real Estate Right, (g) minutes of all meetings, discussions and telephone calls held by any Clean Line Entity with the applicable Landowner, any applicable Curative Party or any applicable tenant and (h) all other communication and correspondence received or sent by any Clean Line Entity in connection with its acquisition of such Project Real Estate Right.

"Landowner" means, with respect to any Project Real Estate Right, the Person (or Persons) that own the fee simple or leasehold or other applicable Real Estate Right to which such Project Real Estate Right relates.

"Title Defect" means any Lien, easement, mortgage, encumbrance or other restriction (whether contractual or otherwise) that affects or limits the ability of any Landowner to grant or convey a clean and marketable Project Real Estate Right in favor of the Clean Line Entities.

"Waiver Parcel" means any Project Real Estate Right that is determined to be a "Waiver Parcel" in accordance with the provisions set forth in Schedule 17.

2. Title Searches, Identification of Title Issues and Location of Landowner. For each Project Real Estate Right, the Clean Line Entities shall obtain a thirty (30) year title search or limited certificate of title from a reputable national title company or reputable land acquisition company (a "Title Search") in order to enable it to identify the current Landowner in respect of the underlying Real Estate Right and any applicable Title Defects. The Clean Line Entities shall use all commercially reasonable efforts to locate each applicable Landowner through any available search methods, including through a tax record search, review of publicly available information, using a private investigator to conduct a search for such Landowner, inquiries with relatives, neighbors or other individuals that could reasonably be likely to know the location of such Landowner and/or publication of a notice or advertisement in a newspaper. The Clean Line Entities shall attempt to contact any applicable Landowner by at least three (3) different forms of contact including by phone, in person, first class mail, certified mail or leaving messages with a neighbor or family member of the applicable Landowner.

3. Negotiations; Appraisal and Offer.

(a) Initial Notice and Landowner Materials. The Clean Line Entities shall notify any applicable Landowner of their interest in acquiring a Project Real Estate Right and offer to meet with such Landowner in person. In connection with its efforts to acquire any Project Real Estate Right, the Clean Line Entities shall provide each applicable Landowner with:

(i) a proposed form of easement and/or other applicable documentation relating to the conveyance of the proposed Project Real Estate Right;

(ii) a payment calculation sheet or other documentation in respect of any compensation proposed to be paid to such Landowner in connection with the applicable Project Real Estate Right; provided, however, that with respect to any parcel that is not a Waiver Parcel, such payment calculation sheet or other documentation shall only be provided after the appraisal has been performed;

(iii) a sketch identifying the boundaries and the nature of the applicable Project Real Estate Right;

(iv) a construction questionnaire designed to gather necessary information in respect of conditions at the location of the applicable Project Real Estate Right;

(v) a copy of the Clean Line Entities' Codes of Conduct for acquisitions of Project Real Estate Rights (which is attached as Schedule 12 to this Agreement);

(vi) a request for permission to conduct a survey of the applicable Project Real Estate Right; and

(vii) in respect of any Project Real Estate Right located in Oklahoma, a copy of the Private Rights Settlement Agreement, dated January 14, 2011 (the "Private Rights Settlement Agreement"), and the Order from the OCC, dated October 28, 2011, approving the PECL OK's application to conduct business as a public utility in Oklahoma.

The initial notice and materials sent to any applicable Landowner shall otherwise comply with the requirements set forth in the Uniform Act and Schedule 17.

(b) The Clean Line Entities shall follow the provisions and procedures set forth in Schedule 17 for purposes of determining whether any applicable Project Real Estate Right shall be treated as a Waiver Parcel or whether an appraisal is required in respect of such Project Real Estate Right. In all instances involving an appraisal, the Clean Line Entities shall ensure that such appraisal is undertaken by a certified independent reputable appraiser and that the applicable Landowner shall be given the opportunity to actively participate in, and be present for, the appraisal process as well as communicate with the applicable appraiser. Each appraisal will be further reviewed and confirmed by a separate independent reputable appraiser. The appraisal process in respect of any Project Real Estate Right that has not been determined to be a Waiver Parcel shall otherwise be undertaken in accordance with the provisions of the Uniform Act and Schedule 17.

(c) The Clean Line Entities shall make an offer to acquire any applicable Project Real Estate Right pursuant to a settlement offer that shall include an offer to pay just compensation to the applicable Landowner in accordance with the Uniform Act and Schedule 17 in connection with its conveyance of such Project Real Estate Right. Compensation payable in connection with the acquisition of any applicable Project Real Estate Right shall include compensation in respect of: (i) the area comprising the applicable Project Real Estate Right (which amount shall not be less than the market value or appraised value, as applicable, of the Project Real Estate Right being conveyed, taking into consideration impacts (if any) on any adjacent or surrounding Real Estate Rights of the applicable Landowner that are not specifically contemplated to be included in the Project Real Estate Rights), (ii) each structure or improvement located on the applicable Project Real Estate Right, (iii) any damage to any crops, timber, livestock, structures or improvements of the Landowner that are reasonably likely to arise as a result of the conveyance of the applicable Project Real Estate Right and the Project and (iv) if applicable, removal and relocation costs as a result of the Project. An offer by a Clean Line Entity to acquire a Project Real Estate Right shall also include the terms set forth on Appendix A to this Schedule 1.

(d) The Clean Line Entities shall make no less than three (3) attempts to meet with any affected Landowner personally to discuss its offer to acquire any applicable Project

Real Estate Rights and, to the extent that such Landowner cannot be contacted personally, the Clean Line Entities shall ensure that a copy of the notice of offer and all other required documentation relating thereto is delivered via certified mail or registered-first class mail-return receipt requested to the applicable Landowner. The Clean Line Entities shall use all other commercially reasonable efforts to acquire any Project Real Estate Rights and shall give any applicable Landowner or related tenant a reasonable opportunity to review and discuss any proposed offer to acquire such Project Real Estate Rights. The Clean Line Entities shall give full and fair consideration to any comments, questions or suggestions of any Landowner in respect of the proposed conveyance of the applicable Project Real Estate Rights including review and consideration of any materials any Landowner may provide as relevant to the determination of the value of such Project Real Estate Rights. Each Landowner shall be given a reasonable opportunity (including a period of reasonable length) to consider any offer to acquire any Project Real Estate Rights.

4. Multiple Landowners. The Clean Line Entities shall negotiate with all applicable Landowners in respect of its acquisition of any Project Real Estate Rights in accordance with the terms hereof. To the extent that the Clean Line Entities are unable to locate all applicable Landowners or any applicable Landowners are not willing to agree (or are restricted from agreeing) to the conveyance of a Project Real Estate Right, the Clean Line Entities shall use all commercially reasonable efforts to enter into a voluntary agreement with any Landowner that has been located and is otherwise willing to agree to convey a Project Real Estate Right to the Clean Line Entities in accordance with the terms of this Agreement prior to any such Project Real Estate Right being designated a DOE Delegated Real Estate Right.

5. Title Defects; Tenants.

(a) To the extent that any Title Search identifies any Title Defects, then if determined appropriate in the reasonable judgment of the Clean Line Entities, the Clean Line Entities shall retain reputable local real estate counsel to determine what measures are available with respect to removing or addressing such Title Defect. The Clean Line Entities shall use all commercially reasonable efforts to locate any Curative Party through any available search methods, including through a tax record search, review of publicly available information, using a private investigator to conduct a search for such Curative Party, inquiries with relatives, neighbors or other individuals that could reasonably be likely to know the location of such Curative Party and/or publication of a notice or advertisement in a newspaper. Upon locating any Curative Party, the Clean Line Entities shall use all commercially reasonable efforts to obtain any consent from or other necessary action by any Curative Party to enable the applicable Landowner to convey a Project Real Estate Right to the Clean Line Entities.

(b) To the extent that any tenant is present on any Project Real Estate Right, the Clean Line Entities shall use all commercially reasonable efforts to meet with such tenant to discuss any concerns or issues relating to the tenant. The Clean Line Entities shall compensate any tenant for any potential loss or damage to such tenant that could reasonably be anticipated to result from the conveyance of the applicable Project Real Estate Right to the Clean Line Entities, including any reasonable costs or expenses to the tenant associated with relocation or damage to crops or improvements.

6. Commercially Reasonable Efforts; Course of Conduct.

(a) For purposes of complying with the terms hereof, the Clean Line Entities' use of "commercially reasonable efforts" (other than with respect to locating Persons) shall include:

(i) the Clean Line Entities' prompt and courteous response to any applicable Landowner's, Curative Party's or tenant's (or their designated representative or counsel) inquiry, comments or questions;

(ii) in the case of any Landowner, the Clean Line Entities' offer to pay compensation to such Landowner for the conveyance of the applicable Project Real Estate Right as contemplated herein;

(iii) in the case of any Curative Party, the Clean Line Entities' offer of fair compensation to such Curative Party in respect of any reasonable legal costs or other out-of-pocket costs or expenses incurred by such Curative Party in connection with any action requested of such Curative Party;

(iv) the Clean Line Entities' meeting with (either in person or by phone) any applicable Landowner, Curative Party or tenant (or their designated representative or counsel) to the extent reasonably possible or requested and providing an overview of the Project and the Clean Line Entities' applicable policies and procedures in respect thereof;

(v) in Oklahoma, to the extent that the Clean Line Entities and any Landowner have reached agreement on the form of any acquisition of a Project Real Estate Right but have been unable to reach agreement as to the appropriate compensation payable in respect thereof, at the request of any applicable Landowner, the Clean Line Entities' submission to binding arbitration in respect of the amount of compensation payable to such Landowner in accordance with the terms of the Private Rights Settlement Agreement;

(vi) engaging with any representative (including counsel) of the applicable Landowner in respect of the acquisition of the applicable Project Real Estate Right; and

(vii) any other commercially reasonable efforts under Prudent Utility Practice that the Clean Line Entities determine in their reasonable judgment is capable of taking under Applicable Law that could reasonably be expected to result in the conveyance of the applicable Project Real Estate Right to the Clean Line Entities for commercially reasonable terms.

(b) Each of the Clean Line Entities shall be entitled to perform its obligations hereunder through any agent or designee; provided that no Clean Line Entities shall be relieved from compliance with the terms hereof due to any action or inaction by any such agent or designee. Each Clean Line Entities shall make it or its agents or designees available for in-person meetings with any Landowner, Curative Party or tenant, or any of their respective

agents or representatives, as may be reasonably necessary to acquire any Project Real Estate Right.

(c) No Clean Line Entity shall engage in any coercive action with respect to any Landowner, Curative Party or tenant in respect of the undertakings required hereby.

(d) The Clean Line Entities shall develop a standard script of talking points (subject to DOE's approval) describing DOE's participation in the Project and DOE's obligations in connection with any acquisition of Project Real Estate Rights, which standard script shall be applied and followed by each Clean Line Entity and its contractors in material respects in all communications and correspondence with any Landowner, Curative Party or tenant.

7. Designation of Any Project Real Estate Right as a DOE Delegated Real Estate Right.

(a) Prior to designating any Project Real Estate Right as a DOE Delegated Real Estate Right, the Clean Line Entities shall notify the applicable Landowner (to the extent located) and Curative Party that it is making a "final" offer for the acquisition of the applicable Project Real Estate Right and indicating the terms thereof. Such "final" offer shall indicate that the Clean Line Entities will thereafter turn negotiations in respect of acquiring such Project Real Estate Right over to DOE.

(b) Any designation by the Clean Line Entities of a Project Real Estate Right as a DOE Delegated Real Estate Right shall be made by written notice to DOE and shall be accompanied by a comprehensive Documentation Package in respect of the underlying Real Estate Right.

(c) Following receipt by DOE of a written notice of a designation by Holdings of a Project Real Estate Right as a DOE Delegated Real Estate Right, DOE shall review the applicable Documentation Package and shall be entitled to discuss any questions or concerns it may have with respect thereto with Holdings and its agents and designees involved in the acquisition process. Promptly following such review and discussion, DOE shall notify Holdings in writing that either (i) DOE agrees with Holdings' designation of such Project Real Estate Right as a DOE Delegated Real Estate Right, in which case the Clean Line Entities shall thereafter cease to be responsible for the acquisition of such Project Real Estate Right, or (ii) DOE does not agree with Holdings' designation of such Project Real Estate Right as a DOE Delegated Real Estate Right, in which case such notification shall set forth the additional actions, steps, requirements or information that DOE requires be taken or provided by the Clean Line Entities, as applicable, prior to such Project Real Estate Right being approved as a DOE Delegated Real Estate Right and the Clean Line Entities ceasing to be responsible for the acquisition of such Project Real Estate Right; provided, however, DOE shall not be entitled to require any further actions, steps, requirements or information other than what is provided for herein, under the Uniform Act and in Schedule 17.

8. Documentation Package, Etc. With respect to any Project Real Estate Right that the Clean Line Entities anticipate may be designated as a DOE Delegated Real Estate Right, the

Clean Line Entities shall maintain a comprehensive written Documentation Package in respect of the underlying Real Estate Right. To the extent not inconsistent with the foregoing, the Clean Line Entities shall comply with all data and information maintenance requirements contemplated by Schedule 17, and DOE shall have access to all such data and information as it may request from time to time.

9. Relocations. In the event that residences or Persons are required to be relocated as a result of the Project, the Clean Line Entities will draft relocation policies and procedures that follow the Uniform Act, which policies and procedures will be submitted to DOE for review and approval.

Appendix A to
Schedule 1 of the Participation Agreement

Plains & Eastern Clean Line Compensation

1. Clean Line Compensation Package

a. Easement Payment

Landowners will receive a $/per acre payment for the total acreage comprising the easement area. The $/per acre price shall be based on 100% of the fair market value of the fee title of the land traversed by the easement area, rather than a typical discounted fair market value for an easement. In order to determine the fair market fee title value of land, Clean Line has engaged a real estate appraisal firm to provide county wide market data studies, which studies have produced an average fair market value for fee title to land for specific land uses in each county (the "Average Fair Market Per Acre Value), all as more particularly described in the Clean Line Uniform Act Execution Plan attached as Schedule 17 to this Agreement.

For purposes of the $/per acre payment, Clean Line will pay Landowners *the greater* of the following: (i) the Average Fair Market Per Acre Value, or (ii) if an appraisal is required under the Uniform Act, the appraised value[1] of the easement determined by such appraisal.

b. Structure Payment

Landowners will receive a payment for each structure that is located within the easement area. The structure payment is calculated based on the type and number of structures. The Landowner has the right to elect to receive a one-time payment or annual payments. If selected, the annual payment will include a 2% annual escalator. Payments for structure types are as follows:

Type of Structure	One-Time Payment	Annual Payment
Monopole or Lattice Mast Structure	$ 6,000	$ 500
Lattice Structure	$ 18,000	$ 1,500
Guyed Lattice Structure	$ 24,000	$ 2,000

[1] In calculating the appraised value of the easement, the appraiser will consider the per acre value of the easement strip of land (typically a discounted value from the fee sales price) *plus* the amount of any damages to the remainder of the landowner's property resulting from the presence of the easement.

c. Damages Payment

Clean Line will pay Landowners for any damages to crops, timber, livestock, structures or improvements resulting from the construction, maintenance or operation of the Project, regardless of when they occur and without any cap on the amount of such damages. For example, if the Landowner experiences a loss in crop yields that is attributed to the operation of the Project (*i.e.*, an inability to spray certain rows of crops due to the presence of the transmission line) then Clean Line will pay the value of such loss in yield for so long as such losses occur. In other words, the intent is that the Landowner be made whole for any damages or losses that occur as a result of the Project at any time.

2. Minimum Payments

Some of the Project Real Estate Rights to be acquired may be very small in size. Therefore, in order to incentivize Landowners that might otherwise receive a very small payment, Landowners will receive a minimum payment of $2,000 per parcel, regardless of the size of the easement area on their land. In addition, in the event that no structures are constructed on a Landowner's parcel, such Landowner will also receive a minimum structure payment. For such minimum structure payment, the Landowner will have the right to elect either (i) a one-time payment equal to $1,500 or (ii) an annual payment equal to $125, with a 2% annual escalator.

3. Arbitration

If Clean Line and a Landowner have reached agreement on the form of any easement or other document evidencing the Project Real Estate Right, but are unable to reach agreement on the appropriate compensation, at such Landowner's request, Clean Line will submit the issue of Landowner compensation to binding arbitration. Arbitration shall be administered by the American Arbitration Association (the "AAA") in accordance with its Commercial Arbitration Rules. Arbitration shall take place in, and shall be conducted in accordance with the laws of, the state in which the Project Real Estate Right is located. Arbitrators shall be appointed as provided in the AAA Commercial Arbitration Rules, but in all events shall be selected from a pool of qualified arbitrators within the state in which the Project Real Estate Right is located.

Schedule 2
to the Participation Agreement

Provisions Required to be Incorporated into Project Financing Documents

The Project Financing Documents and any amendments or supplements thereto, shall comply with the following terms and conditions:

1. The proceeds of the Project Financing are obligated to be used exclusively for the purposes of (a) acquiring, designing, permitting, developing, constructing, equipping, improving, modifying, operating, owning, maintaining, reconstructing, restoring, rehabilitating, renewing or replacing the Project, or any Capital Repair relating to the Project, (b) paying principal and interest on the Project Financing, (c) paying premiums or costs for insurance, bonds and other performance security or paying reasonable development fees to the Clean Line Entities or to any Project Participant or its Affiliates for services related to the Project, (d) paying fees and premiums to any Project Financing Party or such Project Financing Party's agents in consideration for the Project Financing or the commitment thereof, (e) paying costs and fees in connection with the closing of the Project Financing, including fees and costs of counsel and consultants, (f) funding of the Advance Funding Account, Capital Repairs Reserve Account and Wind-Up Reserve Account and making payments and other amounts due to DOE and the Covered Parties under the Transaction Documents, (g) funding reserves required under the Project Financing Documents or Applicable Law, including securities laws and Environmental Laws, (h) payment of interest on subordinated debt and other financing costs (such as fees on letters of credit to the extent used to secure deferred equity contributions), (i) such other uses as are customary and permitted under the terms of the Project Financing Documents and (j) refinancing the Project Financing under clauses (a) through (i) above.

2. The Project Financing Documents (including any accounts or depositary agreement) shall provide that all amounts due and payable to DOE by any Clean Line Entity under this Agreement, any Real Estate Rights Agreement and any other Transaction Document (other than the Participation Amount required to be paid pursuant to Section 11.2) shall be paid as operating expenses of the Project at the top of any revenue application waterfall provided for in such Project Financing Documents and at the same priority level as other general operating costs paid in connection with the Project.

3. No Project Financing Document or other instrument purporting to mortgage, pledge, encumber, or create a Lien, charge or security interest on or against any of the Project Facilities owned by the Clean Line Entities or any of the Clean Line Entities' rights and interests in the Project (including the Clean Line Entities' rights and interest in the Transaction Documents) shall extend to or affect DOE's interest in the DOE Acquired Real Property and the AR Facilities, the Account Collateral (other than the Capital Repair Reserve Account) or any of DOE's other rights, privileges and interests under the Transaction Documents.

4. The Project Financing Documents shall include a conspicuous recital or provision to the effect that payment of the principal thereof and interest thereon is a valid claim only as against the Clean Line Entities and the security pledged by the applicable Clean Line Entities in respect thereof and is not an obligation, moral or otherwise, of DOE or any Covered Party, and

neither the full faith and credit nor the taxing power of DOE or Covered Party is pledged to the payment of the principal thereof and interest thereon.

5. Each Project Financing Document containing express provisions regarding default by a Clean Line Entity shall require that if such Clean Line Entity is in default thereunder and the Project Financing Parties (or an agent thereof) give notice of such default to any Clean Line Entity, then the Project Financing Parties (or an agent thereof) shall also give concurrent notice of such default to DOE. Each Project Financing Document that provides remedies to one or more Project Financing Parties for default by a Clean Line Entity or other applicable Person shall require that such Project Financing Parties deliver to DOE, concurrently with delivery to a Clean Line Entity or any other Person, every notice of election to sell, notice of sale or other notice required by Applicable Law or by the Project Financing Documents in connection with the exercise of remedies under the Project Financing Document.

6. The Project Financing Documents shall (a) expressly state that no Project Financing Party shall (i) name or join DOE or any Covered Party in any legal proceeding seeking collection of the Indebtedness incurred under the Project Financing or other obligations secured thereby or the foreclosure or other enforcement of such Project Financing Document (other than in connection with any express obligations of DOE under the DOE Direct Agreement and the Intercreditor Agreement) and (ii) seek any damages or other amounts from DOE or any Covered Party, whether for Indebtedness incurred under any Project Financing Document (other than in connection with any express obligations of DOE under the DOE Direct Agreement and the Intercreditor Agreement) or any other amount and (b) contain a Release Provision as provided in Section 11.10.

7. The DOE Direct Agreement shall expressly state that each Project Financing Party agrees to non-exclusive general jurisdiction and venue in any action by or against DOE or its successors and assigns of (a) the courts of the United States of America for the District of Columbia, (b) the courts of the United States of America in and for the Southern District of New York, (c) any other federal court of competent jurisdiction in any other jurisdiction where any Clean Line Entity or any of its Property may be found and (d) appellate courts from any of the foregoing.

Schedule 3
to Participation Agreement

Existing Indebtedness

None

Schedule 4
to Participation Agreement

LOCAL GOVERNMENT CONTRIBUTION PAYMENTS

Arkansas

1. Arkansas Operations Payments: ACL will make certain payments to each county or appropriate taxing jurisdiction within each county in Arkansas on an annual basis for 40 years ("Arkansas Annual Operations Payments"). A good faith estimate of the Arkansas Annual Operations Payments as of the Effective Date are included in Exhibit A to this Schedule. The estimates will be adjusted based on the final transmission line mileage in each county.

   If ACL becomes subject to property tax in Arkansas, it will pay the assessed taxes in accordance with local and state laws in lieu of the Arkansas Annual Operations Payments outlined in Exhibit A.

2. Arkansas Construction Payment: ACL will pay to each county in Arkansas one-time construction payments ("Arkansas Construction Payments") equal to $7,500 per mile of transmission line in that county. A good faith estimate of the Arkansas Construction Payments as of the Effective Date is included in the table below. Final payment values are subject to the final routing of the transmission line.

County	**Line Length** ***(miles)***	**Arkansas Construction Payments** ***(one-time payments)***
Cleburne	23.4	$175,500
Conway	21.6	$162,000
Crawford	28.2	$211,500
Cross	16.1	$120,750
Franklin	19.8	$148,500
Jackson	34.3	$257,250
Johnson	27.8	$208,500
Mississippi	16.2	$121,500
Poinsett	31.5	$236,250
Pope	27.6	$207,000
Van Buren	13.2	$99,000
White	17.5	$131,250
TOTAL (all counties)	**277.2**	**$2,079,000**

Oklahoma

1. Oklahoma Construction Payments: PECL OK will pay to each county in Oklahoma one-time construction payments ("Oklahoma Construction Payments") equal to $7,500 per mile of transmission line in that county. A good faith estimate of the Oklahoma Construction Payments as of the Effective Date is included in the table below. Final payment values are subject to the final routing of the transmission line.

County	**Line Length** ***(miles)***	**Oklahoma Construction Payments** ***(one-time payments)***
Beaver	56	$420,000
Creek	27.5	$206,250
Garfield	22.2	$166,500
Harper	35.6	$267,000
Kingfisher	3.4	$25,500
Lincoln	10.1	$75,750
Logan	20.8	$156,000
Major	52.2	$391,500
Muskogee	39.5	$296,250
Okmulgee	27.7	$207,750
Payne	36.2	$271,500
Sequoyah	40.0	$300,000
Texas	23.9	$179,250
Woodward	32.4	$243,000
TOTAL (all counties)	**427.5**	**$3,206,250**

2. PECL OK will own all Project facilities located in Oklahoma and will make all applicable ad valorem tax payments to local jurisdictions, in accordance with local and state laws.

EXHIBIT A
Payment Schedule

Year	Crawford	Franklin	Johnson	Pope	Conway	Van Buren	Cleburne	White	Jackson	Poinsett	Cross	Mississippi
1	$ 529,062	$ 367,588	$ 486,911	$ 1,467,731	$ 393,463	$ 230,061	$ 381,305	$ 286,636	$ 607,090	$ 501,936	$ 311,977	$ 320,708
2	$ 518,952	$ 360,564	$ 477,607	$ 1,439,685	$ 385,944	$ 225,665	$ 374,019	$ 281,159	$ 595,489	$ 492,345	$ 306,016	$ 314,580
3	$ 508,843	$ 353,540	$ 468,303	$ 1,411,639	$ 378,426	$ 221,269	$ 366,733	$ 275,682	$ 583,889	$ 482,754	$ 300,054	$ 308,451
4	$ 498,733	$ 346,516	$ 458,999	$ 1,383,594	$ 370,908	$ 216,873	$ 359,446	$ 270,205	$ 572,288	$ 473,163	$ 294,093	$ 302,323
5	$ 488,624	$ 339,492	$ 449,695	$ 1,355,548	$ 363,389	$ 212,477	$ 352,160	$ 264,728	$ 560,688	$ 463,572	$ 288,132	$ 296,195
6	$ 478,514	$ 332,468	$ 440,391	$ 1,327,502	$ 355,871	$ 208,081	$ 344,874	$ 259,251	$ 549,087	$ 453,981	$ 282,170	$ 290,067
7	$ 468,405	$ 325,444	$ 431,087	$ 1,299,456	$ 348,352	$ 203,685	$ 337,588	$ 253,774	$ 537,487	$ 444,390	$ 276,209	$ 283,939
8	$ 458,296	$ 318,420	$ 421,783	$ 1,271,410	$ 340,834	$ 199,289	$ 330,302	$ 248,297	$ 525,887	$ 434,798	$ 270,248	$ 277,811
9	$ 448,186	$ 311,396	$ 412,479	$ 1,243,364	$ 333,316	$ 194,893	$ 323,016	$ 242,819	$ 514,286	$ 425,207	$ 264,286	$ 271,682
10	$ 438,077	$ 304,372	$ 403,175	$ 1,215,319	$ 325,797	$ 190,496	$ 315,730	$ 237,342	$ 502,686	$ 415,616	$ 258,325	$ 265,554
11	$ 427,967	$ 297,348	$ 393,871	$ 1,187,273	$ 318,279	$ 186,100	$ 308,444	$ 231,865	$ 491,085	$ 406,025	$ 252,364	$ 259,426
12	$ 417,858	$ 290,324	$ 384,567	$ 1,159,227	$ 310,760	$ 181,704	$ 301,158	$ 226,388	$ 479,485	$ 396,434	$ 246,402	$ 253,298
13	$ 407,748	$ 283,300	$ 375,263	$ 1,131,181	$ 303,242	$ 177,308	$ 293,872	$ 220,911	$ 467,884	$ 386,843	$ 240,441	$ 247,170
14	$ 397,639	$ 276,276	$ 365,959	$ 1,103,135	$ 295,724	$ 172,912	$ 286,586	$ 215,434	$ 456,284	$ 377,252	$ 234,480	$ 241,042
15	$ 387,529	$ 269,252	$ 356,655	$ 1,075,090	$ 288,205	$ 168,516	$ 279,300	$ 209,957	$ 444,683	$ 367,660	$ 228,518	$ 234,913
16	$ 377,420	$ 262,228	$ 347,351	$ 1,047,044	$ 280,687	$ 164,120	$ 272,014	$ 204,480	$ 433,083	$ 358,069	$ 222,557	$ 228,785
17	$ 367,310	$ 255,204	$ 338,047	$ 1,018,998	$ 273,168	$ 159,724	$ 264,727	$ 199,002	$ 421,483	$ 348,478	$ 216,596	$ 222,657
18	$ 357,201	$ 248,180	$ 328,743	$ 990,952	$ 265,650	$ 155,328	$ 257,441	$ 193,525	$ 409,882	$ 338,887	$ 210,634	$ 216,529
19	$ 347,091	$ 241,156	$ 319,439	$ 962,906	$ 258,132	$ 150,932	$ 250,155	$ 188,048	$ 398,282	$ 329,296	$ 204,673	$ 210,401
20	$ 336,982	$ 234,133	$ 310,135	$ 934,861	$ 250,613	$ 146,536	$ 242,869	$ 182,571	$ 386,681	$ 319,705	$ 198,712	$ 204,273
21	$ 326,873	$ 227,109	$ 300,831	$ 906,815	$ 243,095	$ 142,140	$ 235,583	$ 177,094	$ 375,081	$ 310,114	$ 192,750	$ 198,144
22	$ 316,763	$ 220,085	$ 291,527	$ 878,769	$ 235,576	$ 137,744	$ 228,297	$ 171,617	$ 363,480	$ 300,522	$ 186,789	$ 192,016
23	$ 306,654	$ 213,061	$ 282,223	$ 850,723	$ 228,058	$ 133,348	$ 221,011	$ 166,140	$ 351,880	$ 290,931	$ 180,827	$ 185,888
24	$ 296,544	$ 206,037	$ 272,919	$ 822,677	$ 220,540	$ 128,951	$ 213,725	$ 160,662	$ 340,280	$ 281,340	$ 174,866	$ 179,760
25	$ 286,435	$ 199,013	$ 263,614	$ 794,631	$ 213,021	$ 124,555	$ 206,439	$ 155,185	$ 328,679	$ 271,749	$ 168,905	$ 173,632
26	$ 276,325	$ 191,989	$ 254,310	$ 766,586	$ 205,503	$ 120,159	$ 199,153	$ 149,708	$ 317,079	$ 262,158	$ 162,943	$ 167,503
27	$ 266,216	$ 184,965	$ 245,006	$ 738,540	$ 197,984	$ 115,763	$ 191,867	$ 144,231	$ 305,478	$ 252,567	$ 156,982	$ 161,375
28	$ 256,106	$ 177,941	$ 235,702	$ 710,494	$ 190,466	$ 111,367	$ 184,581	$ 138,754	$ 293,878	$ 242,976	$ 151,021	$ 155,247
29	$ 245,997	$ 170,917	$ 226,398	$ 682,448	$ 182,948	$ 106,971	$ 177,295	$ 133,277	$ 282,277	$ 233,384	$ 145,059	$ 149,119
30	$ 235,887	$ 163,893	$ 217,094	$ 654,402	$ 175,429	$ 102,575	$ 170,008	$ 127,800	$ 270,677	$ 223,793	$ 139,098	$ 142,991
31	$ 225,778	$ 156,869	$ 207,790	$ 626,357	$ 167,911	$ 98,179	$ 162,722	$ 122,323	$ 259,076	$ 214,202	$ 133,137	$ 136,863
32	$ 215,668	$ 149,845	$ 198,486	$ 598,311	$ 160,392	$ 93,783	$ 155,436	$ 116,845	$ 247,476	$ 204,611	$ 127,175	$ 130,734
33	$ 205,559	$ 142,821	$ 189,182	$ 570,265	$ 152,874	$ 89,387	$ 148,150	$ 111,368	$ 235,876	$ 195,020	$ 121,214	$ 124,606
34	$ 195,450	$ 135,797	$ 179,878	$ 542,219	$ 145,356	$ 84,991	$ 140,864	$ 105,891	$ 224,275	$ 185,429	$ 115,253	$ 118,478
35	$ 185,340	$ 128,773	$ 170,574	$ 514,173	$ 137,837	$ 80,595	$ 133,578	$ 100,414	$ 212,675	$ 175,838	$ 109,291	$ 112,350
36	$ 175,231	$ 121,749	$ 161,270	$ 486,127	$ 130,319	$ 76,199	$ 126,292	$ 94,937	$ 201,074	$ 166,246	$ 103,330	$ 106,222
37	$ 165,121	$ 114,725	$ 151,966	$ 458,082	$ 122,800	$ 71,803	$ 119,006	$ 89,460	$ 189,474	$ 156,655	$ 97,369	$ 100,094
38	$ 155,012	$ 107,701	$ 142,662	$ 430,036	$ 115,282	$ 67,406	$ 111,720	$ 83,983	$ 177,873	$ 147,064	$ 91,407	$ 93,965
39	$ 144,902	$ 100,677	$ 133,358	$ 401,990	$ 107,764	$ 63,010	$ 104,434	$ 78,506	$ 166,273	$ 137,473	$ 85,446	$ 87,837
40	$ 134,793	$ 93,653	$ 124,054	$ 373,944	$ 100,245	$ 58,614	$ 97,148	$ 73,028	$ 154,673	$ 127,882	$ 79,485	$ 81,709

Schedule 5
to Participation Agreement

Capitalization

None

Schedule 6
to the Participation Agreement

Officer's Certificate Regarding DOE Delegated Real Estate Rights

[DATE]

The undersigned, [NAME], [TITLE] of Plains and Eastern Clean Line Holdings LLC (the "Company") does hereby certify on behalf of the Company, pursuant to Section 6.2(c) of the Participation Agreement dated as of [DATE] (the "Participation Agreement"), by and among the Company, Arkansas Clean Line LLC, Plains and Eastern Clean Line Oklahoma LLC, Oklahoma Land Acquisition Company LLC, Plains and Eastern Clean Line LLC, and the United States Department of Energy, as follows:

(i) the Clean Line Entities have complied with all of the requirements and procedures set forth in Schedule 1 to the Participation Agreement with respect to the DOE Delegated Real Estate Rights to be acquired;

(ii) Acceptable Transmission Services Agreements and Acceptable Permitted Project Investment Commitments in respect of not less than 1,500 MW of the Electrical Capacity in the aggregate (calculated as the sum of (A) with respect to Acceptable Permitted Project Investments, the sum of each portion of the Electrical Capacity transferred (and for which the Clean Line Entities have received payment or will receive payment within three (3) years after the date of such Permitted Project Investment) pursuant to each Acceptable Permitted Project Investment Commitment and (B) with respect to the Acceptable Transmission Services Agreements, the sum of the average Electrical Capacity committed in the initial five (5) years of the term for each such Acceptable Transmission Services Agreement) are in full force and effect and no event has occurred or is continuing (whether as a result of a default or the failure of a condition precedent or otherwise) that gives the Project Participant party thereto the right to terminate such Acceptable Transmission Services Agreement or such Acceptable Permitted Project Investment Commitment;

(iii) **[**the Converter Station Real Estate Rights Agreements are in full force and effect**][**the Clean Line Entities own in fee free and clear of all Liens other than Permitted Liens all Real Estate Rights necessary for the construction of the Converter Station Facility and the Intermediate Converter Station**]**[1];

(iv) the executed Interconnection Agreements for interconnection of the Project with the SPP-controlled transmission system and the MISO-controlled transmission system and the executed Project Work Agreement or Interconnection Agreement for interconnection of the TN Facilities with the TVA transmission system are in full force and effect and no event has occurred and is continuing (whether as a result of a default or the failure of a condition precedent or otherwise) that gives the Project Participant party thereto the right to terminate such Interconnection Agreements or

[1] Insert as appropriate.

Project Work Agreement (except to the extent the Project Work Agreement has been replaced by an Interconnection Agreement with TVA);

(v) **[**the Project Equity Commitments (including Firm Project Equity Commitments that are currently in full force and effect and that provide for commitments (together with amounts on deposit in the Advance Funding Account) in an amount equal to not less than 150% of the Remaining DOE Acquisition Costs as of any date on which any Clean Line Entity designates any Project Real Estate Right as a DOE Delegated Real Estate Right), Project Financing Commitments and any letters of intent delivered as a condition to the occurrence of the Commencement Date are in full force and effect**][**the Financing Condition is satisfied**]**[2];

(vi) (A) no Governmental Order is in effect nor has any Change of Law occurred that, in either case, as applicable, sets aside, enjoins or legally prohibits (1) DOE's performance under the Participation Agreement or any other Transaction Document currently in effect or (2) DOE's participation in the Project and (B) no other final and non-appealable Governmental Order is in effect nor has any Change of Law occurred that, in either case, as applicable, (1) sets aside, enjoins or legally prohibits any Clean Line Entity's performance under the Participation Agreement or any other Transaction Document currently in effect or any Clean Line Entity's performance in any material respect under any Material Project Contract to which it is a party or (2) affects in any material respect the legality, validity or enforceability of any of the Transaction Documents, any Project Equity Commitment or any of the Material Project Contracts currently in effect; and

(vii) no Event of Default has occurred and is continuing.

It is expressly understood that this Officer's Certificate is being executed by the undersigned authorized signatory solely on behalf of the Company, and not in a personal capacity. Capitalized terms used but not defined herein shall have the meanings given to them in the Participation Agreement.

[Signature on following page]

[2] Insert as appropriate.

IN WITNESS WHEREOF, the undersigned has executed this Officer's Certificate on behalf of the Company as of the date first above written.

_____

Name:
Title:

Schedule 7
to the Participation Agreement

Officer's Certificate Regarding Acquisitions by Condemnation

[DATE]

The undersigned, [NAME], [TITLE] of Plains and Eastern Clean Line Holdings LLC (the "Company") does hereby certify on behalf of the Company, pursuant to Section 6.3(c) of the Participation Agreement dated as of [DATE] (the "Participation Agreement"), by and among the Company, Arkansas Clean Line LLC, Plains and Eastern Clean Line Oklahoma LLC, Oklahoma Land Acquisition Company LLC, Plains and Eastern Clean Line LLC, and the United States Department of Energy, as follows:

(i) the Clean Line Entities have complied with all of the requirements and procedures set forth in Schedule 1 to the Participation Agreement with respect to the DOE Delegated Real Estate Rights to be acquired;

(ii) Acceptable Transmission Services Agreements and Acceptable Permitted Project Investment Commitments in respect of not less than 2,000 MW of the Electrical Capacity in the aggregate (calculated as the sum of (A) with respect to Acceptable Permitted Project Investments, the sum of each portion of the Electrical Capacity transferred (and for which the Clean Line Entities have received payment or will receive payment within three (3) years after the date of such Permitted Project Investment) pursuant to each Acceptable Permitted Project Investment Commitment and (B) with respect to the Acceptable Transmission Services Agreements, the sum of the average Electrical Capacity committed in the initial five (5) years of the term for each such Acceptable Transmission Services Agreement) are in full force and effect and no event has occurred and is continuing (whether as a result of a default or the failure of a condition precedent or otherwise) that gives the Project Participant party thereto the right to terminate such Acceptable Transmission Services Agreement or such Acceptable Permitted Project Investment Commitment;

(iii) **[**the Converter Station Real Estate Rights Agreements delivered pursuant to the foregoing conditions precedent are in full force and effect and neither any Clean Line Entity nor any other Person party thereto is in default thereunder**][**the Clean Line Entities own in fee free and clear of Liens other than Permitted Liens all Real Estate Rights necessary for the construction of the Converter Station Facility and the Intermediate Converter Station**]**[1];

(iv) the Interconnection Agreements delivered by the Company pursuant to Section 6.3(a)(vi) of the Participation Agreement are in full force and effect and neither any Clean Line Entity nor any other Person or party thereto is in default thereunder;

(v) the Financing Condition is satisfied;

[1] Insert as appropriate.

(vi) (A) no Governmental Order is in effect nor has any Change of Law occurred that, in either case, as applicable, sets aside, enjoins or legally prohibits (1) DOE's performance under the Participation Agreement or any other Transaction Document currently in effect or (2) DOE's participation in the Project and (B) no other final and non-appealable Governmental Order is in effect nor has any Change of Law occurred that, in either case, as applicable, (1) sets aside, enjoins or legally prohibits any Clean Line Entity's performance under the Participation Agreement or any other Transaction Document currently in effect or any Clean Line Entity's performance in any material respect under any Material Project Contract to which it is a party or (2) affects in any material respect the legality, validity or enforceability of any of the Transaction Documents, any Project Equity Commitment or any of the Material Project Contracts currently in effect; and

(vii) no Event of Default has occurred and is continuing.

It is expressly understood that this Officer's Certificate is being executed by the undersigned authorized signatory solely on behalf of the Company, and not in a personal capacity. Capitalized terms used but not defined herein shall have the meanings given to them in the Participation Agreement.

[Signature on following page]

IN WITNESS WHEREOF, the undersigned has executed this Officer's Certificate on behalf of the Company as of the date first above written.

_____

Name:
Title:

Schedule 8
to Participation Agreement

Reserved

Schedule 9
to Participation Agreement

Litigation

None

Schedule 10
to Participation Agreement

Environmental Matters

None

Schedule 11
to Participation Agreement

Governmental Approvals

1. Section 1222 Decision

Schedule 12
to Participation Agreement

Code of Conduct for Acquisitions of Project Real Estate Rights

[Attached]

PLAINS AND EASTERN CLEAN LINE OKLAHOMA LLC
CODE OF CONDUCT FOR EMPLOYEES, RIGHT-OF-WAY AGENTS AND SUBCONTRACTOR EMPLOYEES

This Code of Conduct applies to all communications and interactions with property owners and occupants of property by all employees, right-of-way agents and subcontractor employees representing Plains and Eastern Clean Line Oklahoma LLC ("Plains & Eastern") in the negotiation of right-of-way and the performance of surveying, environmental assessments and the other activities for the Plains & Eastern project (the "Project") on property not owned by Plains & Eastern.

I. All communications with property owners and occupants must be factually correct and made in good faith.
   a. Do provide maps and documents necessary to keep the landowner properly informed.
   b. Do not make false or misleading statements.
   c. Do not purposely or intentionally misrepresent any fact.
   d. If you do not know the answer to a question, do not speculate about the answer. Advise the property owner that you will investigate the question and provide an answer later.
   e. Follow-up in a timely manner on all commitments to provide additional information.
   f. Do not send written communications suggesting an agreement has been reached when, in fact, an agreement has not been reached.
   g. If information provided is subsequently determined to be incorrect, follow up with the landowner as soon as practical to provide the corrected information.
   h. Do provide the landowner with appropriate contact information should additional contacts be necessary.

II. All communications and interactions with property owners and occupants of property must be respectful and reflect fair dealing.
   a. When contacting a property owner in person, promptly identify yourself as representing Plains & Eastern.
   b. When contacting a property owner by telephone, promptly identify yourself as representing Plains & Eastern.
   c. Do not engage in behavior that may be considered harassing, coercive, manipulative, intimidating or causing undue pressure.
   d. All communications by a property owner, whether in person, by telephone or in writing, in which the property owner indicates that he or she does not want to negotiate or does not want to give permission for surveying or other work on his or her property, must be respected and politely accepted without argument. Unless specifically authorized by Plains & Eastern, do not contact the property owner again regarding negotiations or requests for permission.
   e. When asked to leave the property, promptly leave and do not return unless specifically authorized by Plains & Eastern.
   f. If discussions with the property owner become acrimonious, politely discontinue the discussion and withdraw from the situation.
   g. Obtain unequivocal permission to enter the property for purposes of surveying or conducting environmental assessments or other activities. Clearly explain to the property owner the scope of the work to be conducted based on the permission given.

Attempt to notify the occupant of the property each time you enter the property based on this permission.

h. Do not represent that a relative, neighbor and/or friend have signed a document or reached an agreement with Plains & Eastern.
i. Do not ask a relative, neighbor and/or friend of a property owner to convince the property owner to take any action.
j. Do not represent that a relative, neighbor and/or friend supports or opposes the Project.
k. Do not suggest that any person should be ashamed of or embarrassed by his or her opposition to the Project or that such opposition is inappropriate.
l. Do not suggest that an offer is "take it or leave it."
m. Do not argue with property owners about the merits of the Project.
n. Do not threaten to call law enforcement officers or obtain court orders.
o. Avoid discussing a property owner's failure to note an existing easement when purchasing the property and other comments about the property owner's acquisition of the property.
p. Do not threaten the use of eminent domain.

III. All communications and interactions with property owners and occupants of property must respect the privacy of property owners and other persons.

a. Discussions with property owners and occupants are to remain confidential.
b. Do not discuss your negotiations or interactions with other property owners or other persons unaffiliated with Plains & Eastern.
c. Do not ask relatives, neighbors and/or friends to influence the property owner or any other person.

ARKANSAS CLEAN LINE LLC
CODE OF CONDUCT FOR EMPLOYEES, RIGHT-OF-WAY AGENTS AND SUBCONTRACTOR EMPLOYEES

This Code of Conduct applies to all communications and interactions with property owners and occupants of property by all employees, right-of-way agents and subcontractor employees representing Arkansas Clean Line LLC ("Plains & Eastern") in the negotiation of right-of-way and the performance of surveying, environmental assessments and the other activities for the Plains & Eastern project (the "Project") on property not owned by Plains & Eastern.

I. All communications with property owners and occupants must be factually correct and made in good faith.
   a. Do provide maps and documents necessary to keep the landowner properly informed.
   b. Do not make false or misleading statements.
   c. Do not purposely or intentionally misrepresent any fact.
   d. If you do not know the answer to a question, do not speculate about the answer. Advise the property owner that you will investigate the question and provide an answer later.
   e. Follow-up in a timely manner on all commitments to provide additional information.
   f. Do not send written communications suggesting an agreement has been reached when, in fact, an agreement has not been reached.
   g. If information provided is subsequently determined to be incorrect, follow up with the landowner as soon as practical to provide the corrected information.
   h. Do provide the landowner with appropriate contact information should additional contacts be necessary.

II. All communications and interactions with property owners and occupants of property must be respectful and reflect fair dealing.
   a. When contacting a property owner in person, promptly identify yourself as representing Plains & Eastern.
   b. When contacting a property owner by telephone, promptly identify yourself as representing Plains & Eastern.
   c. Do not engage in behavior that may be considered harassing, coercive, manipulative, intimidating or causing undue pressure.
   d. All communications by a property owner, whether in person, by telephone or in writing, in which the property owner indicates that he or she does not want to negotiate or does not want to give permission for surveying or other work on his or her property, must be respected and politely accepted without argument. Unless specifically authorized by Plains & Eastern, do not contact the property owner again regarding negotiations or requests for permission.
   e. When asked to leave the property, promptly leave and do not return unless specifically authorized by Plains & Eastern.
   f. If discussions with the property owner become acrimonious, politely discontinue the discussion and withdraw from the situation.
   g. Obtain unequivocal permission to enter the property for purposes of surveying or conducting environmental assessments or other activities. Clearly explain to the property owner the scope of the work to be conducted based on the permission given.

Attempt to notify the occupant of the property each time you enter the property based on this permission.

h. Do not represent that a relative, neighbor and/or friend have signed a document or reached an agreement with Plains & Eastern.
i. Do not ask a relative, neighbor and/or friend of a property owner to convince the property owner to take any action.
j. Do not represent that a relative, neighbor and/or friend supports or opposes the Project.
k. Do not suggest that any person should be ashamed of or embarrassed by his or her opposition to the Project or that such opposition is inappropriate.
l. Do not suggest that an offer is "take it or leave it."
m. Do not argue with property owners about the merits of the Project.
n. Do not threaten to call law enforcement officers or obtain court orders.
o. Avoid discussing a property owner's failure to note an existing easement when purchasing the property and other comments about the property owner's acquisition of the property.
p. Do not threaten the use of eminent domain.

III. All communications and interactions with property owners and occupants of property must respect the privacy of property owners and other persons.

a. Discussions with property owners and occupants are to remain confidential.
b. Do not discuss your negotiations or interactions with other property owners or other persons unaffiliated with Plains & Eastern.
c. Do not ask relatives, neighbors and/or friends to influence the property owner or any other person.

Schedule 13
to Participation Agreement

Permitted Project Investments Representations and Warranties and Covenants

Each Person that makes a Permitted Project Investment in the Project (such Person, an "Investor") shall be required to make the following representations and warranties and agree to the following covenants for the benefit of DOE in the connection with such Permitted Project Investment:

Representations and Warranties:

Prohibited Persons. (a) None of the Investor, any Controlling Person of such Investor or any Principal Person of such Investor or any Principal Person of such Controlling Person of such Investor is a Prohibited Person and (b) to such Investor's knowledge, no event has occurred and no condition exists that is likely to result in such Investor, any Controlling Person of such Investor, any Principal Person of such Investor or any Principal Person of such Controlling Person of such Investor becoming a Prohibited Person.

Anti-Corrupt Practices Laws, Etc. (a) The Investor, each Controlling Person of such Investor and each Principal Person, employee and agent of such Investor and each Principal Person of each Controlling Person of such Investor have complied with all AM Laws, Anti-Corruption Laws and Sanctions and (b) such Investor has implemented and maintains in effect policies and procedures reasonably designed to ensure compliance by such Investor and its Principal Persons with AM Law, Anti-Corruption Laws and Sanctions.

Covenants:

Prohibited Persons.

(a) The Investor shall provide immediate written notice (including a brief description relating thereto) to DOE if, at any time, it learns that the representations made with respect to Prohibited Persons (including in respect of the Debarment Regulations) were erroneous when made or have become erroneous by reason of changed circumstances.

(b) If any Person that controls the Investor or any of their respective Principal Persons becomes a Prohibited Person, the Investor shall, within sixty (60) days of knowing that such Person has become a Prohibited Person, engage and continue to engage in constructive discussions with DOE regarding the removal or replacement of such Person or, if such removal or replacement is not reasonably feasible, the implementation of other mitigation matters.

AM Laws, Anti-Corruption Laws Etc.

The Investor shall and shall cause its Principal Persons, employees and agents to (a) comply with all applicable AM Laws and Anti-Corruption Laws, (b) conduct its business in compliance with all applicable AM Laws and Anti-Corruption Laws and (c) maintain internal management and accounting practices and controls that are adequate to ensure the Investor's compliance with all applicable AM Laws and Anti-Corruption Laws.

Definitions:

"Affiliate" means with respect to any Person, any other Person that directly or indirectly Controls, or is under common Control with, or is Controlled by, such Person and, if such Person is an individual, any member of the immediate family of such individual and any trust whose principal beneficiary is such individual or one or more members of such immediate family and any Person who is Controlled by any such member or trust.

"AM Laws" means, with respect to any Person, all applicable laws concerning or relating to anti-money laundering.

"Anti-Corruption Laws" means, with respect to any Person, all Applicable Laws concerning or relating to bribery or corruption, including, the Foreign Corrupt Practices Act of 1977 (Pub. L. No. 95 213, §§101-104).

"Control" means (including, with its correlative meanings, "Controlled by" and "under common Control with") as used with respect to any Person, possession, directly or indirectly, of the power to direct or cause the direction of management or policies of such Person (whether through ownership of voting securities or partnership or other ownership interests, by contract or otherwise); provided, that any Person that owns directly or indirectly ten percent (10%) or more of the equity interests having ordinary voting powers for the election of directors or other applicable governing body of another Person (but excluding limited partnership or similar types of ownership interests and tax equity investors) shall be deemed to Control such other Person.

"Controlling Person" means, with respect to any Person, any other Person that, directly or indirectly Controls such Person.

"Debarment Regulations" means (a) the Government-wide Debarment and Suspension (Non procurement) regulations (Common Rule), 53 Fed. Reg. 19204 (May 26, 1988), (b) Subpart 9.4 (Debarment, Suspension, and Ineligibility) of the Federal Acquisition Regulations, 48 C.F.R. §§ 9.400 – 9.409 and (c) the revised Government-wide Debarment and Suspension (Non-procurement) regulations (Common Rule), 60 Fed. Reg. 33037 (June 26, 1995).

"Governmental Authority" means any federal, state, county, municipal, or regional authority, or any other entity of a similar nature, exercising any executive, legislative, judicial (including any court of competent jurisdiction), regulatory, or administrative function of government.

"Governmental Order" means with respect to any Person, any judgment, order, decision, or decree, or any action of a similar nature, of or by a Governmental Authority having competent jurisdiction over such Person or any of its properties.

"OFAC" means the Office of Foreign Assets Control, an agency of the U.S. Department of the Treasury under the auspices of the Under Secretary of the Treasury for Terrorism and Financial Intelligence.

"OFAC-Listed Person" has the meaning set forth in clause (a) of the definition of Prohibited Person.

"OFAC Sanctions Program" means any economic or trade sanction that OFAC is responsible for administering and enforcing. A list of OFAC Sanctions Programs may be found at http://www.treasury.gov/resource-center/sanctions/Programs/Pages/Programs.aspx.

"Person" means any individual, entity, firm, corporation, company, voluntary association, partnership, limited liability company, joint venture, trust, unincorporated organization, Governmental Authority, committee, department, authority or any other body, incorporated or unincorporated, whether having distinct legal personality or not.

"Principal Person" means, with respect to any Person, any officer, director, owner, key employee or other Person with primary management or supervisory responsibilities with respect to such Person or any other Person (whether or not an employee) who has critical influence on or substantive control over such Person.

"Prohibited Person" means any Person (or any Person that is an Affiliate of a Person) that is:

(a) named, identified or described on the list of "Specially Designated Nationals and Blocked Persons" as published by OFAC (an "OFAC-Listed Person");

(b) is an agent, department or instrumentality of, or is otherwise beneficially owned by, Controlled by or acting on behalf of, directly or indirectly, (i) an OFAC-Listed Person or (ii) any Person, organization, foreign country or regime that is subject to any Sanctions;

(c) is debarred, suspended, proposed for debarment with a final determination still pending, declared ineligible or voluntarily excluded (as such terms are defined in the Debarment Regulations) from contracting with any United States federal government department or any agency or instrumentality thereof or otherwise participating in procurement or non-procurement transactions with any United States federal government or agency pursuant to any of the Debarment Regulations;

(d) indicted, convicted or had a final and non-appealable Governmental Order rendered against it for any of the offenses listed in any of the Debarment Regulations; or

(e) otherwise blocked, subject to sanctions under or engaged in any activity in violation of other United States economic sanctions, including but not limited to, the Trading with the Enemy Act, the International Emergency Economic Powers Act, the Comprehensive Iran Sanctions, Accountability and Divestment Act or any similar law or regulation with respect to Iran or any other country, the Sudan Accountability and Divestment Act, any OFAC Sanctions Program, or any economic sanctions regulations administered and enforced by the United States or any enabling legislation or executive order relating to any of the foregoing.

"Sanctions" means economic or financial sanctions or trade embargoes or restrictive measures enacted, imposed, administered or enforced from time to time by (a) the United States government, including those administered by OFAC, the U.S. Department of State or the U.S. Department of Commerce, (b) the United Nations Security Council, (c) the European Union or any of its member states or (d) any other applicable Governmental Authority and including, for the avoidance of doubt, the Trading with the Enemy Act, the International Emergency Economic Powers Act, the Comprehensive Iran Sanctions, Accountability and Divestment Act and the Sudan Accountability and Divestment Act.

Schedule 14
to the Participation Agreement

Conditions in Acceptable Transmission Services Agreements and Acceptable Permitted Project Investment Commitments

Part A

Acceptable Transmission Services Agreements

Acceptable Transmission Services Agreements delivered pursuant to Sections 6.2(a)(iv), 6.2(b)(ii), 6.3(a)(v), 6.3(b)(ii) and 6.4(a)(ii) of the Agreement may be subject to conditions to their effectiveness or commencement of transmission service thereunder similar in substance to the following:

1. FERC Approval. FERC has issued one or more orders under Section 205 of the FPA accepting the Acceptable Transmission Services Agreement for filing without substantial condition or modification that is materially adverse to either the Clean Line Parties or the customer under the Acceptable Transmission Services Agreement.

2. State Regulatory Approval. Any necessary approvals from state public utility regulatory bodies have been obtained, made or given authorizing all transactions and payments contemplated in the Acceptable Transmission Services Agreement, including the approval of power purchase agreements, as applicable, on terms that are acceptable to the customer and the Clean Line Parties.

3. Applicable Federal Regulatory Approvals.

(a) If and to the extent that the customer under an Acceptable Transmission Services Agreement is a federal entity that must comply with certain federal environmental or regulatory reviews and approvals prior to the effectiveness of an Acceptable Transmission Services Agreement, the effectiveness of such Acceptable Transmission Services Agreement may be conditioned upon completion of such federal or environmental regulatory reviews and approvals and such reviews and approvals not being subject to judicial review.

(b) If the Acceptable Transmission Services Agreement will involve a source of energy that must receive Governmental Approvals prior to the initiation of commercial operation and generation of electricity for delivery to, and transmittal over, the Project; such Acceptable Transmission Services Agreement may be conditioned upon Governmental Approvals having been duly obtained, in full force and effect and not subject to any pending or threatened challenges or judicial review.

4. OATT. FERC has issued an order under Section 205 of the FPA accepting the rate schedule or OATT filed by the Clean Line Parties without substantial condition or modification that is materially adverse to either the Clean Line Parties or the customer under the Acceptable Transmission Services Agreement.

5. Interconnection Agreements. All necessary interconnection agreements involving the interconnection of the generation facilities under contract with or owned or operated by the customer under the Acceptable Transmission Services Agreement to the Project have been executed and are in full force and effect.

6. Governmental Approvals. All non-ministerial Governmental Approvals required for the construction and operation of the Project have been duly obtained and are in full force and effect and shall not be subject to any pending or threatened challenge or judicial review.

7. Material Contracts. All material contracts needed to construct and operate the Project, including interconnection agreements involving the interconnection of the Project to the transmission systems under the operational control of MISO, SPP and TVA have been executed and are in full force and effect.

8. Notice to Proceed. A full notice to proceed has been issued under each material construction contract with respect to the Project.

9. Project Financial Close. Project Financial Close has occurred or shall occur simultaneously with the effectiveness of the Acceptable Transmission Services Agreement.

10. Representations and Warranties. Each of the applicable representations and warranties of the Clean Line Parties made pursuant to the Acceptable Transmission Services Agreement or any related agreement is true and correct in all material respects, except to the extent that any such representation or warranty is expressly made only as of another date, in which case such representation and warranty shall be true and correct in all material respects as of such other date.

11. Performance of Obligations. Each Clean Line Party shall have performed in all material respects all obligations required to be performed by such party under the Acceptable Transmission Services Agreement (and any related agreements) and under any applicable transaction documents pertaining to the Project or the Other Facilities.

12. Security. Any necessary security or collateral among and between the Clean Line Parties and the customer under the Acceptable Transmission Services Agreement is effective.

13. General Open Access Terms and Conditions. The Acceptable Transmission Services Agreement will include, either directly or by reference, general terms and conditions consistent with FERC's open access transmission rules and policies as applied to firm point-to-point transmission service under the rate schedule or OATT filed by the Clean Line Parties (e.g., sale or assignment of transmission service).

14. Insurance. The Clean Line Parties have delivered to the customer certificates evidencing all insurance required to be obtained by the Clean Line Parties under the Acceptable Transmission Services Agreement.

15. Commercial Operation. The Project (a) has commenced commercial operation and has satisfied the requirements for "substantial completion" (or term of similar import) as defined in and in accordance with all Construction Contracts and the initial Electrical Capacity

(as specified in the definition thereof) of the Project has been certified by an Independent Engineer, (b) has safely and reliably energized and energy may be delivered across the Project Facilities to SPP's, MISO's and TVA's transmission systems in accordance with the Interconnection Agreements and (c) otherwise complies with the design criteria, system performance and testing requirements and operating standards set forth in the Acceptable Transmission Services Agreement and the Clean Line Parties have delivered to the customer a certificate certifying, or the customer has approved, the same.

16. Legal Opinion. Delivery by the Clean Line Parties to the customer of an opinion of legal counsel that all Governmental Approvals required for the Clean Line Parties to own, construct and operate the Project and to perform their respective obligations under the Acceptable Transmission Services Agreement have been obtained.

Acceptable Permitted Project Investment Commitments

Acceptable Permitted Project Investment Commitments delivered pursuant to Sections 6.2(a)(iv), 6.2(b)(ii), 6.3(a)(v), 6.3(b)(ii) and 6.4(a)(ii) of the Agreement may be subject to conditions to their effectiveness thereunder similar in substance to the following:

1. FERC Approval. FERC has issued one or more orders approving the Permitted Project Investment without substantial condition or modification that is materially adverse to either the Clean Line Parties or Permitted Project Investment counterparty.

2. State Regulatory Approval. Any necessary approvals from state public utility regulatory bodies have been obtained, made or given authorizing all transactions and payments contemplated in Permitted Project Investment on terms that are acceptable to the Permitted Project Investment counterparty and the Clean Line Parties.

3. Interconnection Agreements. All necessary interconnection agreements involving the interconnection of the generation facilities under contract with or owned or operated by the Permitted Project Investment counterparty to the Project have been executed and are in full force and effect.

4. Governmental Approvals. All non-ministerial Governmental Approvals required for the construction and operation of the Project have been duly obtained and are in full force and effect and shall not be subject to any pending or threatened challenge or judicial review.

5. Material Contracts. All material contracts needed to construct and operate the Project, including interconnection agreements involving the interconnection of the Project to the transmission systems under the operational control of MISO, SPP and TVA have been executed and are in full force and effect.

6. Notice to Proceed. A full notice to proceed has been issued under each material construction contract with respect to the Project.

7. Project Financial Close. Project Financial Close has occurred or shall occur simultaneously with the effectiveness of the Permitted Project Investment.

8. Representations and Warranties. Each of the applicable representations and warranties of the Clean Line Parties made pursuant to the Permitted Project Investment or any related agreement is true and correct in all material respects, except to the extent that any such representation or warranty is expressly made only as of another date, in which case such representation and warranty shall be true and correct in all material respects as of such other date.

9. Performance of Obligations. Each Clean Line Party shall have performed in all material respects all obligations required to be performed by such party under the Permitted Project Investment (and any related agreements) and under any applicable transaction documents pertaining to the Project or the Other Facilities.

10. Security. Any necessary security or collateral among and between the Clean Line Parties and the Permitted Project Investment counterparty under the Permitted Project Investment (and any related agreements) is effective.

11. Insurance. The Clean Line Parties have delivered to the Permitted Project Investment counterparty certificates evidencing all insurance required to be obtained by the Clean Line Parties under the Permitted Project Investment (and any related agreements).

12. Commercial Operation. The Project (a) has commenced commercial operation and has satisfied the requirements for "substantial completion" (or term of similar import) as defined in and in accordance with all Construction Contracts and the initial Electrical Capacity (as specified in the definition thereof) of the Project has been certified by an Independent Engineer, (b) has safely and reliably energized and energy may be delivered across the Project Facilities to SPP's, MISO's and TVA's transmission systems in accordance with the Interconnection Agreements and (c) otherwise complies with the design criteria, system performance and testing requirements and operating standards set forth in the Permitted Project Investment and the Clean Line Parties have delivered to the Permitted Project Investment counterparty a certificate certifying, or the Permitted Project Investment counterparty has approved, the same.

13. Legal Opinion. Delivery by the Clean Line Parties to the Permitted Project Investment counterparty of an opinion of legal counsel that all Governmental Approvals required for the Clean Line Parties to own, construct and operate the Project and to perform their respective obligations under the Permitted Project Investment (and any related agreements) have been obtained.

Part B

Acceptable Transmission Services Agreements delivered pursuant to Sections 6.2(a)(iv), 6.2(b)(ii), 6.3(a)(v), 6.3(b)(ii) and 6.4(a)(ii) of the Agreement shall not be terminated before the end of the term except as set forth below:

1. Failure to Perform. The Acceptable Counterparty shall have the right to terminate in the event another party to the Acceptable Transmission Services Agreement has failed to perform a material obligation under the Acceptable Transmission Services Agreement and the other party has not cured such failure within a reasonable period of time.

Schedule 15
to Participation Agreement

DAVIS-BACON ACT REQUIREMENTS

SECTION 1.

(a) Minimum wages.

(i) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of Section 1(a)(iv) of this Schedule 15; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in Section 1(d) below. Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein; provided, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under Section 1(a)(ii) of this Schedule 15) and the Davis-Bacon poster (WH–1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(ii) (A) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(1) The work to be performed by the classification requested is not performed by a classification in the wage determination;

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to Sections 1(a)(ii)(B) or (C) of this Schedule 15, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program; provided, that the Secretary of Labor has found, upon the written

request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(b) Withholding. The Department of Energy shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, the Department of Energy may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(c) Payrolls and basic records.

(i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii) (A) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the (write in name of appropriate federal agency) if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit the payrolls to the applicant, sponsor, or owner, as the

case may be, for transmission to the Department of Energy. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under Section 1(c)(i) of this Schedule 15, except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH–347 is available for this purpose from the Wage and Hour Division Web site at http://www.dol.gov/esa/whd/forms/wh347instr.htm or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the (write in name of appropriate federal agency) if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit them to the applicant, sponsor, or owner, as the case may be, for transmission to theDepartment of Energy, the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this Section 1(c)(ii)(A) of this Schedule 15 for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the sponsoring government agency (or the applicant, sponsor, or owner).

(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be provided under Section 1(c)(ii) of this Schedule 15, the appropriate information is being maintained under Section 1(c)(i) of this Schedule 15, and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH– 347 shall satisfy the requirement for submission of the "Statement of Compliance" required by Section 1(c)(ii)(B) of this Schedule 15.

(D) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

(iii) The contractor or subcontractor shall make the records required under Section 1(c)(i) of this Schedule 15 available for inspection, copying, or transcription by authorized representatives of the Department of Energy or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the Department of Energy may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(d) Apprentices and trainees.

(i) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered

program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

(e) Compliance with Copeland Act requirements. The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

(f) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses contained in Sections 1(a) through (j) of this Schedule 15 and such other clauses as the Department of Energy may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

(g) Contract termination: debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

(h) Compliance with Davis-Bacon and Related Act requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

(i) Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

(j) Certification of eligibility.

(i) By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

SECTION 2.

(a) Overtime Requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such

laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(b) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in Section 2(a) of this Schedule 15 the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in Section 2(a) of this Schedule 15, in the sum of $10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in Section 2(a) of this Schedule 15.

(c) Withholding for unpaid wages and liquidated damages. The Department of Energy shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in Section 2(b) of this Schedule 15.

(d) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in Sections 2(a) through (d) of this Schedule 15 and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in Sections 2(a) through (d) of this Schedule 15.

Schedule 16
to Participation Agreement

Required Approvals

1. Section 1222 Decision

Schedule 17
to Participation Agreement

CLEAN LINE UNIFORM ACT EXECUTION PLAN

The following materials set out the guidelines and procedures that the Clean Line Entities will follow for acquisition of Project Real Estate Rights in a manner that meets the requirements of the Uniform Act.

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I. Market Data Studies and Determination of Average Fair Market Per Acre Value

Market data studies, from a qualified real estate appraisal firm, either have been or will be ordered during the course of the Project to assist in determining the current market value of the land along the proposed route for the Project.

1. The Clean Line Entities will engage a real estate appraisal firm with experience in linear infrastructure projects (the "Appraisal Firm") to perform county-wide market data studies, appraisals and other related tasks, all consistent with the standards set forth in the Uniform Standards of Professional Appraisal Practice ("USPAP"). The Clean Line Entities will provide the Appraisal Firm with the list of counties traversed by the Project Area ROW (as defined below). The Appraisal Firm will provide property sales data within such counties to establish fair market value of various land types for the parcels on which the Clean Line Entities would like to pursue easement acquisition (the "Project Area ROW").

2. The Appraisal Firm will review and compile all of the relevant recent property sales within the county, for each county traversed by the Project Area ROW.

3. In addition to its review and compilation of the sales data for each county, the Appraisal Firm will analyze the sales data to determine property value trends. For example, in Texas County, Oklahoma, the Appraisal Firm determined that land value trends were based not just on the land use, but also on land parcel size.

4. Based on the sales data collection and analysis conducted by the Appraisal Firm, the Clean Line Entities and a second qualified party (the "Market Data Analyst")[1] will review all of the data provided and determine the average per acre value for specific land types within each county.[2] The Market Data Analyst will have sufficient understanding of real estate valuation in general, knowledge of the real estate market within the geographic areas where the Project Area ROW is located in particular, and experience with easement acquisition under the Uniform Act. Generally the Market Data Analyst will review only the sales data for the most recent 12 months, unless there is insufficient data for that period, in which case the Market Data Analyst will review the sales data for

[1] The original market analysis was performed by Contract Land Staff, a national ROW acquisition firm with experience in acquiring right-of-way ("ROW") for linear infrastructure projects throughout the United States and Canada, including several projects that involved ROW acquisition under the Uniform Act. Clean Line may engage Contract Land Staff, or other experienced acquisition firms to manage the ROW acquisition on the Project under the direction of Clean Line's Vice President of Land. Other Market Data Analysts may be used from time to time to provide updated analysis of the market data, provided, however, in all events all such Market Data Analysts must be similarly qualified and will be supervised by the Clean Line Entities.

[2] Land types may differ in each county (depending on the terrain and typical uses of land within the county) but some examples of typical land use types encountered are crop, pasture, timber, residential, hobby farm, etc.

the most recent three years to determine the average historical per acre value.[3] Once an average historical per acre value is determined for each land use type in the county, those per acre values will be increased by ten percent (10%). The resulting per acre value will be used as the average fair market value for each land use type within each county (the "Average Fair Market Per Acre Value").

5. The Average Fair Market Per Acre Value for each land use type within in each county will be used as part of the process of determining which parcels crossed by the Project Area ROW may qualify as Waiver Parcels, as described in Section III below.

6. The Clean Line Entities will analyze, and update if necessary, the sales data and market data analysis from time to time as land values increase or decrease in order to determine if the Average Fair Market Value for each land type should change.

[3] When reviewing sales data for both the previous 12 months and 36 months, the Market Data Analyst will compare the averages of sales within each such period and will use the average value that is higher.

II. Initial Notice to Landowners

Consistent with § 24.102(b) of the Uniform Act, the Clean Line Entities will notify potentially affected landowners in writing of their interest in acquiring an easement.[4]

1. Prior to the initiation of formal negotiations with landowners, the Clean Line Entities will provide notice of their intent to acquire an easement (the "Formal Notice Letter"); such notification will also include a summary of the basic protections provided to the landowner under the Uniform Act (the "Landowner Brochure"). The Formal Notice and Landowner Brochure will either be hand delivered to the landowner by land agents of the ROW acquisition company (the "Land Agent") or employees of the Clean Line Entities or mailed via certified mail, return receipt requested, or mailed via registered mail. Once delivered, a copy of the Formal Notice Letter will be placed in the office file for the landowner tract.

2. The Formal Notice Letter will be written in English in plain, understandable language and will include the name and telephone number of a person who may be contacted for answers to questions or if additional assistance is needed.

3. As part of each Formal Notice Letter, the Clean Line Entities will offer foreign-speaking landowners and any other landowners requiring special assistance, appropriate resources to enable the landowner to read and understand the Formal Notice Letter, as well as any subsequent communications and proposed easement terms. If a Land Agent determines upon first contact with a landowner that the landowner does not speak or read English, or requires any other form of special assistance, the Land Agent will notify the Clean Line Entities, and the Clean Line Entities will ensure that a trained agent or employee is available to assist the landowner as needed.

[4] The Clean Line Entities will also take appropriate steps, consistent with the Uniform Act, to notify and engage with tenants where acquisition of the easement would affect any tenant rights or tenant-owned property.

III. Appraisal Waiver - Valuation Review

The Uniform Act provides that an appraisal is not required for parcels that: (i) have an anticipated easement acquisition cost of $10,000 or less, and (ii) for which the valuation analysis is uncomplicated. If both criteria are met, the parcel will be deemed a "Waiver Parcel".

Clean Line will review the parcels within the Project Area ROW to determine if any such parcels meet the criteria for waiving an appraisal ("Waiver Valuation Review"). The Waiver Valuation Review will be performed by the Market Data Analyst or other qualified party designated by the Clean Line Entities (the "Valuation Reviewer"). The Valuation Reviewer will have sufficient understanding of real estate valuation in general, knowledge of the real estate market within the geographic areas where the Project Area ROW is located in particular, and experience with waiver valuation under the Uniform Act. The Waiver Valuation Review process and criteria for designation of a Waiver Parcel is further described below.

1. Determination of easement compensation of $10,000 or less.

    (a) The Valuation Reviewer will first determine whether contiguous individual tax parcels within the Project Area ROW should be combined or merged into a single parcel for purposes of the Waiver Valuation Review. This process will be performed by utilizing the merge function from the land tracking software (the "Land Database")[5]. The merge function groups multiple contiguous tax parcels owned by the same person (by name and address) within the same county into one larger single tract.

    (b) Next, the Valuation Reviewer will review aerial imagery maps to determine if multiple tax parcels in common ownership are also in common use (i.e., being farmed as one contiguous parcel). If the Valuation Reviewer has determined that multiple tax parcels are in both common ownership and common use, then the multiple tax parcels will be combined into one parcel for the purpose of evaluating whether such parcel meets the $10,000 threshold for a Waiver Parcel.

    (c) Finally, the Valuation Reviewer will multiply the total acreage of the easement sought over the newly combined parcel by the county Average Fair Market Per Acre Value for the parcel's land type to determine if the total fair market value for the easement over such parcel is $10,000 or less. If the value is $10,000 or less, then the parcel will have met the first of the two requirements to be treated as a Waiver Parcel.

[5] The Land Database is used to track, among many other things, names, addresses, tax parcel numbers, contacts, statuses, activity notes, etc., for each of the parcels within the Project Area ROW.

2. Determination if the valuation analysis is uncomplicated. The Valuation Reviewer will consider the following criteria to determine if the valuation analysis is uncomplicated:

   (a) Is the acquisition of the parcel simple (i.e., a fee purchase vs. an easement purchase)?
   (b) What are the damages, if any, to the remainder of the landowner's property?
   (c) Are there any buildings, structures or improvements located in the easement area?
   (d) Will the acquisition involve any relocation?

   If the valuation analysis is determined to be uncomplicated, then the parcel has met the second requirement to be treated as a Waiver Parcel.

3. Once the Valuation Reviewer determines that a parcel has met the two requirements for a Waiver Parcel, the Valuation Reviewer will indicate that the parcel is qualified as a Waiver Parcel on the Land Offer Summary spreadsheet, which is described in further detail in Section IV below.

4. In accordance with § 24.102(c)(2)(ii)(C) of the Uniform Act, the Clean Line Entities may approve exceeding the $10,000 threshold for a Waiver Parcel, up to a maximum of $25,000, provided that the Clean Line Entities offer the landowner the option of having the Clean Line Entities obtain an Appraisal (as defined in Section V below) for the parcel. If a Landowner requests an Appraisal for any parcel where the easement is valued between $10,000 and $25,000, then the Clean Line Entities shall obtain an Appraisal.

IV. Determining Settlement Offer Amounts for Waiver Parcels

1. The Clean Line Entities and the Valuation Reviewer will create a spreadsheet, titled the "Land Offer Summary", for each county that provides the following information for each parcel or the merged/combined parcels:

    (a) Tract Name
    (b) Tax ID Numbers
    (c) Owner Name
    (d) Width and Length of the Easement Area
    (e) Total Acres within the Easement Area
    (f) Average Fair Market Per Acre Value for the applicable land use type (100%—representing the fair market value for fee title)
    (g) Average Fair Market Per Acre Value for the applicable land use type (75%—representing the fair market value for an easement)
    (h) Settlement Offer (see below)
    (i) Notation as to whether the parcel qualifies as a Waiver Parcel
    (j) Notation as to whether an Appraisal is required

    The "Settlement Offer" for each parcel or merged/combined parcel will be derived by multiplying the total acreage of the Easement Area by the applicable Average Fair Market Per Acre Value.[6] Because many parcels are irregular in size and shape (i.e. not a perfect square or rectangle), the total acreage of each parcel shall be calculated by using appropriate software. An example of a Land Offer Summary for Texas County, Oklahoma is attached hereto as Exhibit A.

2. The Valuation Reviewer will prepare a memorandum to file for each county (the "Valuation Memorandum") certifying that the Valuation Reviewer has reviewed the Land Offer Summary and all other relevant background data. The Valuation Memorandum will include at a minimum the following documents:

    (a) A description of the Project as it pertains to the specific county
    (b) The market data study for the county
    (c) Land Offer Summary

[6] The Clean Line Entities have elected to base a Settlement Offer on 100% of fee market value for the subject parcel, even though the acquisition of easement rights is traditionally valued by appraisers between 40 – 90% of fee.

For each Waiver Parcel, the Valuation Reviewer will certify in the Valuation Memorandum that, based on his or her review of the relevant data, that (i) the proposed Settlement Offer represents just compensation for the subject easement, and (ii) an appraisal is unnecessary because the valuation is uncomplicated and the anticipated value of the proposed acquisition is estimated at $10,000 or less (or if applicable, up to $25,000), based on a review of available data. See Exhibit B attached hereto for the form of Valuation Memorandum.

3. The Vice President of Land for the Clean Line Entities will review the findings as determined by the Valuation Reviewer and will sign the Valuation Memorandum to confirm his or her approval of such findings. Upon approval, a status of "Meets Waiver Requirements" will be entered for each Waiver Parcel in the Land Database.[7]

4. An Appraisal will be ordered for any parcel which does not qualify as a Waiver Parcel, as discussed in Section V below.

[7] The Land Database is used for the digital record keeping and tracking of parcels within the Project Area ROW. The Clean Line Entities have created a list of "statuses" within the Land Database in order to easily identify or track parcels that may fall within the same type of category (i.e., "Survey Permission Granted", "Meets Waiver Requirements", "Easement Signed", etc.).

V. Appraisals

Parcels that do not qualify as a Waiver Parcel will require a full appraisal by a state licensed/certified independent real estate appraiser (the "Appraiser"), qualified to conduct appraisals in accordance with the requirements of the Uniform Act. The Appraiser shall not have an interest, direct or indirect, in the property being evaluated.

1. An appraisal will be ordered for each parcel or the merged/combined parcel that does not qualify as a Waiver Parcel (an "Appraisal"). Once an Appraisal is ordered, a status of "Appraisal Ordered" will be entered into the Land Database for the relevant parcel.

2. The Clean Line Entities or the Land Agent will contact the landowner to determine if the landowner would like to accompany the Appraiser during the site inspection of the property. The landowner will be given the opportunity to present information and material for consideration by the Appraiser that the landowner believes is relevant to determining the value of the easement property. All such information and material received from the landowner by the Clean Line Entities , the Land Agent or any other contract employees will be provided to the Appraiser for consideration.

3. The Appraiser will be informed by an employee or representative of the Clean Line Entities (the "Appraisal Coordinator") as to whether the landowner wants to be present during the Appraiser's site inspection of the property.

4. The Appraiser will prepare Appraisals according to and consistent with the requirements of USPAP and relevant state and local requirements. The Appraiser will be provided with the following information before beginning the appraisal process for each parcel or merged/combined parcel:

    (a) Name, address and phone number(s) of the landowner

        i. The Appraiser will contact the landowner if it was determined that the landowner wants to be present during the inspection.
        ii. In the event the landowner cannot be reached via phone or via mail, the Appraiser will contact the Appraisal Coordinator, and the Appraisal Coordinator will communicate with the landowner to determine if the landowner wishes to be present. The Appraisal Coordinator will communicate its findings to the Appraiser in an expeditious manner.

    (b) Vesting deeds or title report, if available

(c) Sketch of the proposed easement area
(d) Sample Easement Agreement

5. Upon completion of the Appraisal, an electronic copy of the Appraisal will be delivered to the Clean Line Entities, the Appraisal Coordinator, and the Review Appraiser (as defined in Section VI below) and a status will be entered into the Land Database of "Appraisal Received."

VI. Review Appraisal Process

A review appraiser ("Review Appraiser") is an appraiser who examines the reports of other appraisers to ascertain whether their conclusions are consistent with the data reports and with other generally known information about the parcel. The Review Appraiser will review and analyze the relevant facts assembled by the Appraiser using reason, judgment, and a review of supporting documentation and drawings in order to form an opinion or conclusion with respect to the findings contained in the Appraisal.

1. The Clean Line Entities will hire a qualified appraiser to act as the Review Appraiser for the Project. The Review Appraiser will (a) be a state-certified real estate appraiser who has past experience and knowledge of appraisals and USPAP guidelines, (b) be familiar with the Project, appraisal reports and the real estate market for the area, and (c) not have any interest, direct or indirect, in the property being evaluated for the easement. The Review Appraiser will do a desk review property inspection of the property covered by the Appraisal.

2. At a minimum, in the evaluation of the Appraisal, the Review Appraiser will:

    (a) Read the Appraisal in its entirety, taking notes on items which may require further evaluation
    (b) Review the current alignment of the subject parcel and legal description
    (c) Review and analyze the appraised value in light of comparable sales data used in the analysis
    (d) Review aerial maps of the property
    (e) Check calculations in the report for accuracy
    (f) Evaluate appraisal principle application and techniques
    (g) Determine if the facts cited in the Appraisal are correct and the approaches and sales data that were used to determine value are reasonable
    (h) Determine if the Appraiser appropriately applied the tests of highest and best use,
    (i) Ensure that the Appraisal follows the requirements set forth in the Uniform Act
    (j) Understand and ensure that any special valuation peculiarities are identified and that they are justified and reasonable
    (k) Ensure compliance with the Clean Line Entities' policies and requirements

3. Upon conclusion of the detailed review, the Review Appraiser will sign a statement certifying that (a) he or she made a thorough and detailed analysis of the Appraisal, (b) he or she either agrees or disagrees with the content and facts, and (c) the Appraisal is in compliance with USPAP and other applicable standards. If the Review Appraiser

requires corrections or revisions, they will be outlined in the Technical Review Report (as defined below). Finally, the Review Appraiser will either accept the contents and comments of the Appraisal or will disapprove the Appraisal. The two possible conclusions of the Review Appraiser are:

(a) Approval – the Appraiser approves the Appraisal as written.
(b) Disapproval – the Appraisal does not meet with the acceptable standards for a specific reason(s) such as content, valuation or other conditions as delineated in a Technical Review Report.

4. The Review Appraiser will prepare a "Technical Review Report" and document the validity and findings of the Appraisal. Examples of Technical Review Reports are attached hereto as Exhibit C and Exhibit D.

5. A status in the Land Database will be entered of either "Review Appraisal Approved" or "Review Appraisal Denied".

6. In the event that the Review Appraiser rejects the Appraisal, either:

(a) The Appraisal will be sent back to the original Appraiser for revisions based on the appraisal review and then resubmitted through the review process as outlined above; or
(b) A meeting will be held between the Appraiser and Review Appraiser to gather more facts regarding the subject parcel to formalize a joint appraisal analysis.

VII. Landowner Negotiations

Landowners will be treated fairly and consistently across the Project when negotiating for easement rights that affect their property.

A. Landowner Negotiations—Waiver Parcels

1. Employees of the Clean Line Entities or Land Agents[8] will personally contact landowners whenever possible to discuss the Project and how it may impact their property. If any landowner cannot be contacted personally, the Land Agent will deliver the information via First Class Mail (and with respect to the Formal Notice Letter and any final Settlement Offer, via Certified Mail or registered first-class mail—return receipt requested).

2. Following delivery of the Formal Notice Letter, as described in Section II above, Land Agents will contact the landowner to provide the following information:

   (a) The proposed form of Easement Agreement
   (b) A sketch of the easement area on the landowner's property
   (c) A Construction Questionnaire, which is a document designed to obtain information about the property, such as land uses, irrigation, utilities, structures, gates and fences, etc. The Clean Line Entities endeavor to obtain this information early in the development process so that it can be taken into consideration during construction planning.
   (d) A Survey Permission Form that allows the Clean Line Entities to perform surveys (if the landowner had not previously granted the Clean Line Entities survey access rights)
   (e) A compensation worksheet, which provides (i) a description of the size of the easement on the property, (ii) the Settlement Offer, and (iii) how such Settlement Offer was calculated (the "Easement Calculation Worksheet"). The form of Easement Calculation Worksheet is attached hereto as Exhibit E.
   (f) A Structure and Damages Calculation Worksheet
   (g) A copy of the Clean Line Entites' Code of Conduct
   (h) In Texas, the Landowner Bill of Rights
   (i) In Oklahoma, a full and complete copy of (i) the Private Rights Settlement Agreement dated January 14, 2011, and (ii) the Oklahoma Corporation Commission's October 28, 2011 order approving Plains and Eastern Clean Line Oklahoma LLC's application to conduct business as a public utility in Oklahoma

[8] In some instances contact or negotiations with the landowner may be performed by Clean Line employees, rather than Land Agents; as used hereinafter, the term "Land Agent" shall be deemed to include, when applicable, employees of Clean Line.

3. When meeting with a landowner, the Land Agent will make every reasonable effort to: (a) discuss the Settlement Offer, including explanations as to the basis for the Settlement Offer, (b) explain the Project, (c) explain the Clean Line Entities' policies and procedures (including payment of incidental expenses when applicable), and (d) generally be available to answer any questions or concerns expressed by the landowner. The landowner will be given reasonable opportunity to consider the Settlement Offer and present material which the landowner believes relevant to determining the value of the easement property and to suggest modifications in the proposed terms and conditions of the easement. Land Agents and Clean Line will give full and fair consideration to landowner's comments and suggestions. Land Agents will not use coercive action to induce an agreement on price or terms. Land Agents will exhaust all reasonable negotiations with landowners and will strive to come to voluntary agreement with all landowners.

4. In the event that the Clean Line Entities or the Land Agent determines that there is a tenant on the property, the Land Agent will contact the tenant to discuss tenant-related issues and will ensure that the tenant is compensated for crops or other tenant-owned property as required under the Uniform Act.

5. When the landowner accepts the Settlement Offer, the landowner and the Clean Line Entities will execute the following documents:

    (a) Easement Agreement
    (b) Easement Calculation Worksheet
    (c) Structure and Damages Calculation Worksheet

6. Land Agents will document in the Land Database a summary of all contacts and interactions made with landowners, tenants and other interested parties with respect to each parcel or merged/combined parcel of land within the Project Area ROW.

7. Statuses will be entered in the Land Database to track the following information:

    (a) Date the offer was made to the landowner
    (b) Amount of the offer
    (c) Any landowner counter offers
    (d) Date the Easement Agreement was signed by the landowner
    (e) Amount of the check written
    (f) Amount of the balance payment due, if any
    (g) Date that the balance payment is due, if applicable

B. Landowner Negotiations—Appraisal Parcels

1. Land Agents will personally contact landowners whenever possible to discuss the Project and how it may impact their property. If any landowner cannot be contacted personally, the Land Agent will deliver the information via First Class Mail (and with respect to the Formal Notice Letter and any final Settlement Offer, via Certified Mail or registered first-class mail—return receipt requested).

2. Following delivery of the Formal Notice Letter, as described in Section II above, Land Agents will contact the landowner to provide the following information:

   (a) The proposed form of Easement Agreement
   (b) A sketch of the easement area on the landowner's property
   (c) A Construction Questionnaire, which is a document designed to obtain information about the property, such as land uses, irrigation, utilities, structures, gates and fences, etc. The Clean Line Entites endeavor to obtain this information early in the development process so that it can be taken into consideration during construction planning.
   (d) A Survey Permission Form that allows the Clean Line Entities to perform surveys (if the landowner had not previously granted the Clean Line Entities survey access rights)
   (e) A Structure and Damages Calculation Worksheet
   (f) A copy of Clean Line's Code of Conduct
   (g) In Texas, the Landowner Bill of Rights
   (h) In Oklahoma, a full and complete copy of (i) the Private Rights Settlement Agreement dated January 14, 2011, and (ii) the Oklahoma Corporation Commission's October 28, 2011 order approving Plains and Eastern Clean Line Oklahoma LLC's application to conduct business as a public utility in Oklahoma.

3. The Land Agent will ask the landowner if they want to be present during any on-site inspections of the property with the Appraiser. The Land Agent will document in the Land Database the requirement of either "Wishes to Accompany the Appraiser" or "Does Not Wish to be Present for Appraisal On-site Inspections". If the landowner does not wish to be present for any on-site inspections, the Land Agent will request that the landowner sign another Survey Permission Form that acknowledges that they have waived this right to accompany the Appraiser.

4. In the event the landowner wishes to be present during the Appraisal, the Appraiser will notify the landowner of the date and time of the site inspection. The Appraisal is performed on the property by a state certified/licensed Appraiser (refer to Section V above for more detail).

5. When the Appraisal is completed, the Land Agent will meet with the landowner and present the following documents:

    (a) Copy of the Appraisal
    (b) The Easement Calculation Worksheet.

6. When meeting with a landowner, the Land Agent will make every reasonable effort to: (a) discuss the Settlement Offer, including explanations as to the basis for the Settlement Offer of just compensation, (b) explain the Project, (c) explain the Clean Line Entities' policies and procedures (including payment of incidental expenses when applicable) and (d) generally be available to answer any questions or concerns expressed by the landowner. The landowner will be given reasonable opportunity to consider the Settlement Offer and present material which the landowner believes relevant to determining the value of the easement property and to suggest modifications in the proposed terms and conditions of the easement. Land Agents and the Clean Line Entities will give full and fair consideration to landowner's comments and suggestions. Land Agents will not use coercive action to induce an agreement on price or terms. Land Agents will exhaust all reasonable negotiations with landowners and will strive to come to voluntary agreement with all landowners.

7. In the event that the Clean Line Entities or the Land Agent determines that there is a tenant on the property, the Land Agent will contact the tenant to discuss any crops or other tenant-owned property and will ensure that the tenant is compensated for crops or other tenant-owned property as required under the Uniform Act.

8. When the landowner accepts the Settlement Offer, the landowner and Clean Line will execute the following documents:

    (a) Easement Agreement
    (b) Easement Calculation Worksheet
    (c) Structure and Damages Calculation Worksheet

9. Land Agents will document, in the Land Database, a summary of all contacts and interactions made with landowners, tenants and other interested parties with respect to each parcel or merged/combined parcel of land within the Project Area ROW.

10. Statuses will be entered in the Land Database to track the following information:

    (a) Date the offer was made to the landowner
    (b) Amount of the offer
    (c) Any landowner counter offers

(d) Date the Easement Agreement was signed
(e) Amount of the check written
(f) Amount of the balance payment due, if any
(g) Date that the balance payment is due, if applicable

VIII. RELOCATIONS

At this time the Clean Line Entities do not anticipate that any residences or persons will be relocated as a result of the Project. In the event circumstances change and relocation is required, the Clean Line Entities will draft policies and procedures that follow the Uniform Act for this process.

IX. EXHIBITS

Exhibit A – Land Offer Summary (example)
Exhibit B – Valuation Memorandum (form)
Exhibit C – Technical Review Report (example)
Exhibit D – Technical Review Report (example)
Exhibit E – Easement Calculation Worksheet- (form)

OK-TE Land Offer Summary 11/5/2015

TractName	Actual Width (150ft corridor)	Length	Easement Acres	Fee Price Per Acre	Settlement Price Per Acre	75% Easement Offer	Settlement Offer	Qualified for Waiver	Appraisal Per CLE	Date Last Reviewed for Waivers
OK-TE-002.000	150	5251	18	$2,500	$2,500	$33,903	$45,204	No	Yes	4/16/2015
OK-TE-003.000	150	4931	17	$2,500	$2,500	$31,830	$42,440	No	Yes	4/16/2015
OK-TE-004.000	150	2701	9	$2,500	$2,500	$17,435	$23,247	No	Yes	4/16/2015
OK-TE-005.000	146	295	1	$2,500	$2,500	$1,856	$2,475	No	Yes	4/16/2015
OK-TE-006.000	150	5224	18	$2,500	$2,500	$33,731	$44,975	No	Yes	4/16/2015
OK-TE-009.000	150	2624	9	$2,500	$2,500	$16,945	$22,594	No	Yes	4/16/2015
OK-TE-011.000	150	2624	9	$1,760	$1,760	$11,930	$15,906	No	Yes	4/16/2015
OK-TE-013.000	150	2615	9	$1,760	$1,760	$11,885	$15,847	No	Yes	4/16/2015
OK-TE-014.000	14	1856	1	$840	$840	$365	$487	No	Yes	4/16/2015
OK-TE-015.000	144	2615	9	$1,760	$1,760	$11,409	$15,212	No	Yes	4/16/2015
OK-TE-016.000	150	5189	18	$840	$840	$11,258	$15,011	No	Yes	4/16/2015
OK-TE-017.000	13	1832	1	$840	$840	$355	$473	No	Yes	4/16/2015
OK-TE-019.000	150	2608	9	$840	$840	$5,658	$7,544	No	Yes	4/16/2015
OK-TE-021.000	150	2608	9	$840	$840	$5,658	$7,544	Yes	Yes	4/16/2015
OK-TE-023.000	150	5085	18	$840	$840	$11,031	$14,708	No	No	4/16/2015
OK-TE-025.000	150	2883	10	$840	$840	$6,255	$8,340	No	Yes	4/16/2015
OK-TE-026.000	150	5205	18	$840	$840	$11,291	$15,054	No	Yes	4/16/2015
OK-TE-028.000	150	2614	9	$840	$840	$5,670	$7,561	Yes	No	4/16/2015
OK-TE-029.000	150	2630	9	$840	$840	$5,706	$7,608	Yes	No	4/16/2015
OK-TE-030.000	150	2627	9	$840	$840	$5,699	$7,598	Yes	No	4/16/2015
OK-TE-031.000	150	2632	9	$840	$840	$5,709	$7,612	Yes	No	4/16/2015

OK-TE Land Offer Summary 11/5/2015

TractName	Actual Width (150ft corridor)	Length	Easement Acres	Fee Price Per Acre	Settlement Price Per Acre	75% Easement Offer	Settlement Offer	Qualified for Waiver	Appraisal Per CLE	Date Last Reviewed for Waivers
OK-TE-032.000	150	2574	9	$840	$840	$5,584	$7,445	Yes	No	4/16/2015
OK-TE-033.000	150	2615	9	$840	$840	$5,674	$7,565	No	Yes	4/16/2015
OK-TE-034.000	150	1318	5	$840	$840	$2,859	$3,812	No	Yes	4/16/2015
OK-TE-035.000	150	1318	5	$840	$840	$2,859	$3,812	No	Yes	4/16/2015
OK-TE-036.000	150	2636	9	$840	$840	$5,718	$7,624	No	Yes	4/16/2015
OK-TE-037.000	150	2608	9	$840	$840	$5,659	$7,545	No	Yes	4/16/2015
OK-TE-038.000	150	2608	9	$840	$840	$5,659	$7,545	Yes	Yes	4/16/2015
OK-TE-039.000	150	5208	18	$840	$840	$11,298	$15,064	No	Yes	4/16/2015
OK-TE-040.000	150	2615	9	$840	$840	$5,674	$7,565	No	Yes	4/16/2015
OK-TE-041.000	150	2615	9	$840	$840	$5,674	$7,565	No	Yes	4/16/2015
OK-TE-042.000	150	2609	9	$840	$840	$5,661	$7,548	No	Yes	4/16/2015
OK-TE-043.000	150	2609	9	$840	$840	$5,661	$7,548	No	Yes	4/16/2015
OK-TE-044.000	150	2634	9	$840	$840	$5,714	$7,618	Yes	No	4/16/2015
OK-TE-045.000	150	1308	5	$840	$840	$2,837	$3,782	Yes	Yes	4/16/2015
OK-TE-046.000	150	1308	5	$840	$840	$2,837	$3,782	Yes	Yes	4/16/2015
OK-TE-047.000	150	1314	5	$840	$840	$2,850	$3,799	Yes	No	4/16/2015
OK-TE-048.000	150	2627	9	$840	$840	$5,699	$7,599	Yes	No	4/16/2015
OK-TE-049.000	150	1314	5	$840	$840	$2,850	$3,799	Yes	Yes	4/16/2015
OK-TE-050.000	150	2624	9	$840	$840	$5,693	$7,591	No	Yes	4/16/2015
OK-TE-051.000	150	2624	9	$840	$840	$5,693	$7,591	No	Yes	4/16/2015
OK-TE-052.000	150	3929	14	$840	$840	$8,523	$11,364	No	Yes	4/16/2015

OK-TE Land Offer Summary 11/5/2015

TractName	Actual Width (150ft corridor)	Length	Easement Acres	Fee Price Per Acre	Settlement Price Per Acre	75% Easement Offer	Settlement Offer	Qualified for Waiver	Appraisal Per CLE	Date Last Reviewed for Waivers
OK-TE-053.000	150	1310	5	$840	$840	$2,841	$3,788	**Yes**	**No**	4/16/2015
OK-TE-054.000	150	1305	4	$840	$840	$2,832	$3,776	**Yes**	**No**	4/16/2015
OK-TE-055.000	150	3916	13	$840	$840	$8,495	$11,327	**No**	**Yes**	4/16/2015
OK-TE-056.000	150	2599	9	$840	$840	$5,638	$7,517	**Yes**	**No**	4/16/2015
OK-TE-057.000	150	2608	9	$1,760	$1,760	$11,856	$15,808	**No**	**Yes**	4/16/2015

Exhibit "B"

PLAINS & EASTERN CLEAN LINE

VALUATION MEMORANDUM

State of _____, _____County

Waiver Valuation Analysis

To: Deann Lanz, Vice President of Land
From: [Name] [Title]
Date: _____, 20_____

RE: Compensation Valuation Review of Parcels in [County], [State]

The Plains and Eastern project is a linear DC electric transmission line that will cross the county approximately _____ miles. The project will seek 150 - 200 foot wide easements in which to construct, operate and maintain the proposed transmission system. A desktop review of aerial imagery and other available geo-referenced data available by public sources along with the Market Data Study, prepared by _____, was utilized in the evaluation of determining and establishing Settlement Offer compensation.

Attached to this document are the following documents to establish and document the methodology and logic of the Settlement Offers.

- Market Data Study of Comparable Sales
- Land Offer Summary

I hereby certify that based on my review of the data, the proposed Settlement Offer for Waiver Parcels set forth in the Land Offer Summary is fair and just compensation and recommend that no appraisal be required for such Waiver Parcels.

Valuation Reviewer:

_____
By: _____
Title:_____

Date:_____

Approved:

_____
By: Deann Lanz
Title: Vice President of Land

Date:_____

Exhibit "C"
TECHNICAL REVIEW REPORT

Tract #: _____
Tax ID #: _____
Owners of Record: _____

I am in receipt of that certain appraisal report dated _____ (the "Appraisal"), prepared by _____ of Integra Realty Resources (the "Appraiser") for the property located in [Section/Township/Range] (the "Property"), as substantially shown as Exhibit _____ in the Appraisal. The Appraisal was prepared for and on behalf of the Plains and Eastern Clean Line LLC ("Clean Line") to utilize and rely on for purposes of negotiating with landowners for easements of DC electric transmission lines.

Appraisal Summary:

- Size of the taking for the easement area
- Highest and best uses and the before and after taking
- Any improvements
- Date of the valuation and the valuation
- Value of the total property or larger parcel and include major items such as timber, improvements and damages

Scope of Review:

- I have made a thorough review of the Appraisal and my opinions are based on the materials submitted in the Appraisal, discussions with the Appraiser and discussions with Clean Line (and any other individuals that are pertinent to the review) and my personal knowledge of the local real estate markets. As the Review Appraiser I performed a desk review only of the Appraisal.

Property Data Summary:

- Brief description of the size, location of the easement and anything that has influences on the value of the easement. State the current use of the Property and summarize the adequacy of the highest and best use analysis.

Area Appraised:

- Define the easement and easement area to be taken

Valuation:

- Include approaches to value, last sale of the subject Property, number of sales, factors that influence value, Appraiser's analysis and value opinions.

Comments and Recommendations:

- Comments on overall quality of the Appraisal and market support for conclusions. Cite high and low points, if applicable. Recommend/approve the opinion of value, or if appropriate, disapprove or provide a different valuation and your basis of the change.

Certification:

- Include a signed certification in compliance with the standards under which the appraisal review report was prepared.

Conclusion:

- A short section on what your actions were in regards to the Appraisal reviewed.

_____

Review Appraiser

_____

Appraisal Certification #

_____

Date

EXHIBIT "D"
TECHNICAL REVIEW REPORT

1. IDENTIFICATION:
Report reviewed: By [redacted], MAI, CCIM, Oklahoma Certified General Appraiser No. [redacted] and Mr. [redacted], Oklahoma Certified General Appraiser No. [redacted] both appraisers employed with [redacted] advisors/ [redacted].

Real estate and real property interest being appraised: a contiguous tract owned by [redacted] with 435,144sf or 9.99 ac. gross or 413,364sf or 9.49 ac. net being appraised at full fee value. The Legal Description is NE/4NE/4NE/4 of Sec. [redacted], Township 19 N. R. 1 E. [redacted] County, Oklahoma. The property address is [redacted] OK 74074 and Identified as **Parcel#A-001**. The property interest appraised is partial fee value for the utility and temporary easements.

Effective date of Report: September 12, 2014 signed by [redacted] on October 3, 2014.

Effective date for review: November 21, 2014.

Intended use and purpose of the review: To express an opinion as to the appropriateness and validity of the appraisers' reports, including their techniques, analysis and conclusions.

2. EXTENT OF THE REVIEW PROCESS:

The reviewer conducted a desk and field review of the appraisal report. The appraisal is being reviewed for its completeness of content, supporting data and analysis to sufficiently support the appraisers' values and conclusions and appropriateness of the techniques used by the appraisers. The report is also being reviewed for its compliance with the Uniform Standards of Professional Appraisal Practice (USPAP) and the Scope of Services provided by the client, which is essentially the same as required by the regulations of the Uniform Relocation Act as embodies in 49CFR 24 and Titles 17 and 69 of the Oklahoma State Statutes regarding valuation for eminent domain.

3. ASSUMPTIONS AND LIMITING CONDITIONS:

The reviewer did not make an independent search of applicable market, cost and income data and assumes that the data provided by the appraiser is a true, accurate and complete representation of the data available for the valuation of the subject property under this review.

The review performed is a desk review. A personal inspection of the subject was not

performed. A comparable sales or independent verification of the cost and market data was not performed. This review will only accept or reconcile the appraisers' final valuation to recommend compensation based on the appraisals.

The reviewer will assume that the title and legal description provided by the appraisers are accurate.

The reviewer assumes that all pictorial images of the subject and the comparable sales are accurate.

The appraisal report is of a partial taking of utility easements rather than in full fee title. Therefore, the reviewer will assume that all aspects of the compensation will be considered as damages except for those items that cannot be relocated or replaced.

4. ADEQUACY AND RELEVANCE OF THE DATA AND APPROPRIATENESS OF THE ADJUSTMENTS:

The appraisers have sufficient data with 4 vacant land sales. The sales are all located west of Stillwater with frontage on or near SH-51. The sales therefore, bear a locational similarity to the subject and are relevant to use in the subject's valuation. The sales are moderately inferior and superior to the subject so that the appraisers made only small adjustments to arrive at a value between the extremes of the comparable sales. To bracket the subject with sales that are inferior and superior is an appropriate and relevant technique. The appraisers logically adjusted their high sales downward and the low sales upward. The improvements were valued by using [redacted], a national data source of improvement values that do not usually sell in the open market. Given the age and condition of the buildings, the use of [redacted] was appropriate. As for the fencing, the reviewer would have preferred a quote from a local fencing contractor, but [redacted] is adequate. Ideally, the appraiser would have cited the Section and Page used from [redacted] when valuing the improvements. However, given the detail of the [redacted] work-up in the addenda section of the report, the use of the source had to be legitimate. While the land data is of sufficient quantity and highly relevant with appropriate adjustments, the improvement data is only adequate in the absence of market and local contractors. Therefore, the market of the appraisers is adequate and appropriately adjusted.

5. COMPLETENESS OF THE REPORTS:

To a sufficient extent, the appraisal report contains a sufficient degree of completeness to meet the summary requirements under USPAP Standard 2-2(b). The appraisal report has comparable sales sheets completed with deed and verification data. The Master Addenda has the locator maps and the comp sale photos so that the report with the master addenda is complete as regards the presentation of the data. The report clearly defines the subject being appraised, the rights to be appraised and the definition of the value to be appraised. The report has a relevant scope of work, a description of the subject and the subject

neighborhood and an analysis and proper conclusion to the highest and best use of the subject. Both appraisers accompanied their presentation of their data with an analysis before arriving at a conclusion of value. The report has sufficient photos of the subject in both the take area and affected improvements. There are sketches of the improvements affected, but not an overall site sketch. Finally there are the required signed certificates and addenda sections that complete the documentation of both reports. Therefore, the report has a sufficient degree of completeness.

6. APPROPRIATENESS OF APPRAISAL TECHNIQUES AND METHODS:

Both appraisers used a conventional and totally appropriate method to value the subject. The sales selected were on the basis of similarity and direct comparison with the subject. In addition, the appraisers included sales that are slightly inferior and superior to the subject to allow for some bracketing of the sales with the subject also. Bracketing is an appropriate technique, especially if very similar sales for the subject cannot be found. In this case the bracketing is in support of the similar sales that the appraiser were able to make a direct comparison. The use of local contractors is preferable to the use of [redacted] and only for the landscaping/tree was a local contractor used. This method is considered appropriate though; the accuracy of this method diminishes if the quality of the improvements require a large adjustment for depreciation. Given the nature of the improvements that do not sell on the open market, the appraisers had no choice but to use a cost service with a large depreciation factor. It is somewhat surprising that the fencing could not get a local contractor bid. However, it may be possible that no local fencing contractor was available to provide a timely bid within the project time frame. The comparable sales are appropriate by the time frame, location and similarity in features and use to the subject for bracketing or direct comparison. The photos and exhibits also have a sufficient degree of appropriateness, quantity and quality.

7. VALIDITY OF ANALYSIS, OPINIONS AND CONCLUSIONS OF VALUE:

From the above, the reviewer has established that both appraisers have obtained sufficient data and used it appropriately to value the subject. The correct application of appropriate and sufficient data will be reflected in the analysis of the appraisers. The appraisers used a detailed point-by point comparative analysis section supported by a detailed grid showing adjustments to the sales. The appraisers decided on a value towards the upper end of their comparable sales. The basis for this analysis is that the subject has SH-51 frontage with a corner onto Country Club Road. Therefore, the opinion of value logically flows from this analysis and the conclusion of value is valid. The valuation of the improvements is well documented and accepted. The contractor has revised the easement to avoid the shed and residence as well as reduce the area of taking. The appraiser's compensation will be reduced significantly as a result of this revision. Therefore, the recommended value will be set on the following page:

RECOMMEND VALUE AS ACCEPTED MOSTLY IN THE REPORT:

Indicated Value of Subject:	**=$1,306,170**
Damages:	
Land; Utility E'smnt, 21,056sf. @ $3.12/sf.X60%	**=$ 39,417**
Temporary Easement, 10,756sf. @ $3.12/sf. X 10%	**=$ 3,359**
Improvements; Replace Metal Gate,	**=$ 500**
Replace Fence, 785lf. @ $5.13/lf.	**=$ 4,028**
Sub-Total Damages:	**=$ 47,304**
Non- Damages (items acquired)	
Pecan tree	**=$ 300**
Barn	**=$ 5,097**
Sub-Total Non-Damages:	**=$ 5,397**
Total Compensation:	**=$ 52,701**
Say:	**=$ 52,700**

The effective date of the appraisal review of the subject property is November 21, 2014.

[redacted]
Review Appraiser
Owner, [redacted]
OREAB#[redacted]

REVIEW APPRAISER'S STANDARD CERTIFICATION

I certify that, to the best of my knowledge and belief:

__ the facts and data reported by the reviewer and used in the review process are true and correct.

__ the analysis, opinions and conclusions in this review report are limited only by the assumptions and limiting conditions stated in this review report and are my personal, impartial and unbiased professional analysis, opinions and conclusions.

_ I have no (or the specified) present or prospective interest in the property that is the subject of the work under review and no (or the specified) personal interest with respect to the parties involved

_ I have not performed a previous appraisal or review of the subject property.

_ I have no bias with respect to the property that is the subject of the work under review or to the parties involved with this assignment.

_ my engagement in this assignment was not contingent upon developing or reporting predetermined results.

_ _ my compensation is not contingent on an action or event resulting from the analysis, opinions or conclusions in this review or from its use.

_ my analyses, opinions and conclusions were developed and this review report was prepared in conformity with the *Uniform Standards of Professional Appraisal Practice.*

_ I have not made a personal inspection of the subject property of the work under review.

_ no one provided significant appraisal, appraisal review, or consulting assistance to the person signing this certification.

Signed and dated this 21st day of November 2014.

[redacted]
Review Appraiser
OREAB [redacted]

Exhibit "E"

Plains and Eastern Clean Line Arkansas LLC
EASEMENT CALCULATION SHEET

This Easement Calculation Sheet is made a part of that certain Transmission Line Easement Agreement ("Easement Agreement") between Landowner and Plains and Eastern Clean Line Arkansas LLC ("Plains and Eastern").

Date _____

Tract Number: _____

Landowner Name: _____

Permanent Easement 150 ft. (+/-)

Total _____ ft. (+/-)

Land Use Footage

	0.239000	(+/- acres) X		=	$0.00
0	0.000000	(+/- acres) X	$0.00	=	$0.00
			"Total Easement Consideration"		$0.00

The Total Easement Consideration shall be paid as follows:

(A) Initial Payment (30% of the Total Easement Consideration) $0.00

AND

(B) Balance Due prior to the earlier of (1) the date construction crews access the property to install structures or wires, or (2) ***12-31-2017, (such date, as may be extended pursuant to the Easement Agreement Extension, the "Easement Compensation Deadline")*** $0.00

Easement Agreement Extension

Easement Compensation Deadline may be extended for two additional one-year periods (with 10% of the Total Easement Consideration due by 12-31-2017 for the first extension and due by 12-31-2018 for the second extension) ("*Extension Payment*"). Extension Payment(s) shall not be credited towards the Balance Due. $0.00

- *Initial Payment is paid at time of grant of the Easement Agreement.*
- *If, based on the final legal description, it is determined that the Permanent Easement width is greater or less than 150' and/or the linear footage is greater or less than as shown above, Plains and Eastern shall adjust the Balance Due such that the Total Easement Consideration is based on actual footage and width and calculated using the same formulas as set forth on this Easement Calculation Sheet.*
- *Landowner acknowledges and agrees that Plains and Eastern is under no obligation to pay the Balance Due portion of the Total Easement Consideration and that if Plains and Eastern fails to do so on or before the Easement Compensation Deadline, subject to the cure provision in the Easement Agreement, the Easement Agreement shall terminate. Upon such a termination, Landowner shall retain the Initial Payment and any Extension Payment (if applicable), and Plains and Eastern shall have no further obligation or other liability to Landowner.*
- *Plains and Eastern has the right to extend the Easement Compensation Deadline for two additional one-year periods by payment of the Extension Payment to Landowner prior to the Easement Compensation Deadline. All sums paid by Plains and Eastern for such extension shall be retained by Landowner and are non-refundable, and will not be credited towards the Balance Due.*

Acceptance

LANDOWNER: _____ DATE: _____

Plains and Eastern: _____ DATE: _____

EXHIBIT E

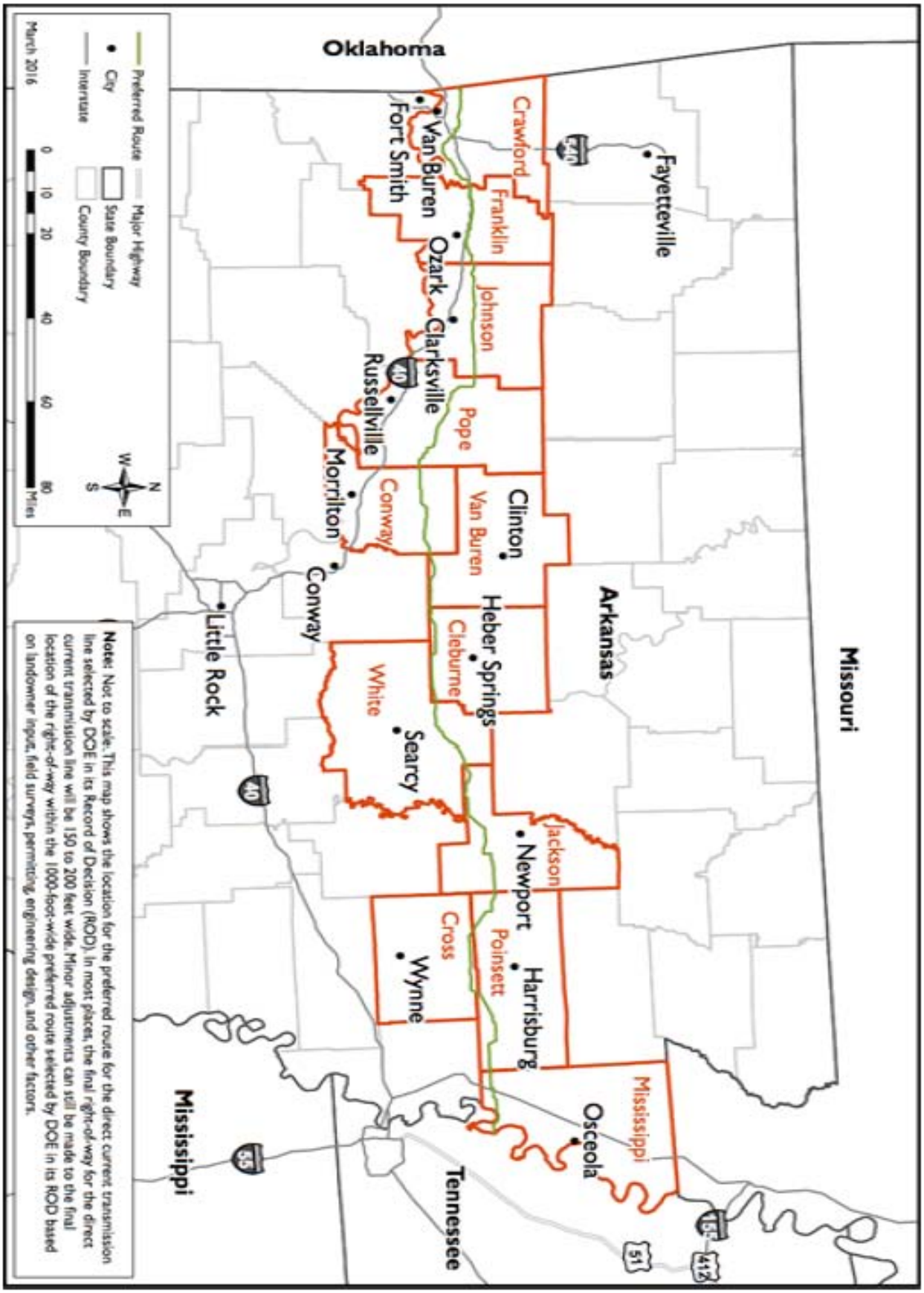
Oklahoma
Missouri
Arkansas
Tennessee
Mississippi
Fayetteville
Fort Smith
Van Buren
Ozark
Clarksville
Russellville
Morrilton
Conway
Little Rock
Clinton
Heber Springs
Searcy
Newport
Harrisburg
Osceola
Wynne
Crawford
Franklin
Johnson
Pope
Conway
Van Buren
Cleburne
White
Jackson
Poinsett
Cross
Mississippi
Preferred Route
City
Interstate
Major Highway
State Boundary
County Boundary
March 2016
0 10 20 40 60 80 Miles
N
W E
S
Note: Not to scale. This map shows the location for the preferred route for the direct current transmission line selected by DOE in its Record of Decision (ROD). In most places, the final right-of-way for the direct current transmission line will be 150 to 200 feet wide. Minor adjustments can still be made to the final location of the right-of-way within the 1000-foot-wide preferred route selected by DOE in its ROD based on landowner input, field surveys, permitting, engineering design, and other factors.

EXHIBIT F

ARK. PUBLIC SERV. COMM
KS
SECRETARY OF COMM

BEFORE THE
ARKANSAS PUBLIC SERVICE COMMISSION

2010 MAY 13 P 3:43

IN THE MATTER OF THE APPLICATION	)	
OF PLAINS AND EASTERN CLEAN LINE	)	
LLC FOR A CERTIFICATE OF	)	**Docket No.** 10-111-EP-U
PUBLIC CONVENIENCE AND NECESSITY	)	
TO OPERATE AS AN ELECTRIC TRANSMISSION	)	
PUBLIC UTILITY IN THE STATE OF ARKANSAS	)	

APPLICATION

Plains and Eastern Clean Line LLC ("Clean Line" or "Applicant") submits this Application for a Certificate of Public Convenience and Necessity for the purpose of operating as a public utility to the extent that it will be developing, constructing or operating electric transmission facilities in the state of Arkansas. This application does not seek authorization to begin construction of a transmission line, which authorization Clean Line will seek pursuant to a separate application. In support of this Application, Clean Line states:

I. Applicant

1. Applicant, Clean Line, is a limited liability company organized under the laws of Arkansas, with its principal business address located at 1001 McKinney Street, Suite 725, Houston, Texas 77002. A certified copy of Clean Line's Articles of Organization is attached as Exhibit 1. Also attached are copies of Clean Line's Operating Agreement and Certificate of Good Standing as Exhibit 2 and Exhibit 3, respectively.

2. Clean Line is a wholly-owned subsidiary of Plains and Eastern Clean Line Holdings LLC, a Delaware limited liability company, which is a wholly-owned subsidiary of Clean Line Energy Partners LLC, also a Delaware limited liability company ("Clean Line

1

Energy Partners"). The majority owner of Clean Line Energy Partners is ZAM Ventures, L.P. ("ZAMV"), the principal investment vehicle for ZBI Ventures, L.L.C ("ZBIV"). ZBIV, which focuses on long-term investments in the energy sector, is a subsidiary of Ziff Brothers Investments, L.L.C. Additional owners of Clean line Energy Partners include the Houston-based Zilkha family.

3. The mission of Clean Line Energy Partners is to connect the best renewable resources in the country with regions that have an increasing demand for renewable energy. Clean Line's specific focus is to provide Arkansas and neighboring states access to the renewable resources of western Oklahoma, southwestern Kansas and the Texas Panhandle.

4. The names and addresses of the persons authorized to receive all notices, orders, pleadings and correspondence concerning this Application are:

Kathryn L. Patton
Clean Line Energy Partners LLC
1001 McKinney Street
Suite 725
Houston, Texas 77002
kpatton@cleanlineenergy.com

Derrick W. Smith
Mitchell Williams
425 West Capitol Avenue
Suite 1800
Little Rock, Arkansas 72201
dsmith@mwlaw.com

II. Facts

5. The need for new energy resources and accompanying transmission facilities, particularly for renewable energy, is becoming increasingly apparent. In a recent order, this Commission made the following observations:

> Consumer demand for electricity continues to grow across the United States, causing reductions in generation reserves and raising reliability concerns in all regions. Forecasters are anticipating that, without behavioral changes on the part of consumers, demand for electricity in the U.S. will grow 29% by 2030.
>
> Diminishing generation reserve margins are causing many utilities to seek approval to acquire new or existing power plants.

> Demand growth and the need to retire aging, inefficient generators are driving the need for electric capacity expansion.
>
> Global electric demand growth (in China, India, etc.) has brought dramatic increases in fuel prices (fuel oil, natural gas, coal).
>
> Congestion and reliability concerns and growth in demand are driving the need for new transmission facilities. This includes the provision of transmission for economic transactions. According to the Edison Foundation/Brattle Group, 70% of transmission lines are 25 years old or older; 70% of power transformers are 25 years old or older; and 60% of circuit breakers are more than 30 years old.
>
> The global climate debate has led to the circulation of several proposals in Congress that would impose additional emissions constraints on U.S. utilities and industry.
>
> A growing number of utility companies and American business leaders acknowledge that some form of carbon control is likely. In February 2007, the Edison Electric Institute and the Electric Power Supply Association became the first major energy trade groups to advocate a federal mandate to control greenhouse gas (GHG) emissions.
>
> National security concerns underscore the importance of reducing reliance on foreign fossil fuel sources and have caused "Energy Independence" to be a major policy driver in Washington.
>
> Some new supply-side technologies (more efficient coal plants, wind, landfill gas, and biomass) are increasingly cost competitive with existing resources. Others (new nuclear, solar thermal, and coal with carbon capture and sequestration (CCS)) are becoming commercially competitive.[1]

6. This Commission has also recognized that a reliable and efficient electric transmission system is necessary to transfer electrical power within Arkansas and regionally.[2] Moreover, this Commission has acknowledged "that in order to appropriately plan for the

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[1] *In The Matter Of A Notice Of Inquiry Regarding The Expanded Development Of Sustainable Energy Resources In Arkansas,* Docket No. 08-144-U, Order No. 1 at pp. 2-4 (October 7, 2008).
[2] *In The Matter Of An Inquiry Into Electric Transmission Issues Within The Areas Served By the Southwest Power Pool Regional Transmission Organization And The Entergy Corporation As Such Issues Affect Electric Service Within Arkansas*, Docket No. 08-136-U, Order No. 1 at p. 1 (September 25, 2008).

expansion of, and upgrades to, the electric transmission system, utility planners and regulators must make decisions well in advance of the need for additional transmission."[3]

7. In its final report, issued in October 2008, the Arkansas Governor's Commission on Global Warming ("Global Warming Commission")[4] estimated that electricity sales in Arkansas will grow roughly 1.37% per year between 2005 and 2025.[5] Approximately 32% of Arkansas gross GHG emissions come from electricity generation,[6] making this sector one in which major reductions could be made by increasing the proportion of renewable energy. In this

---

[3] *Ibid.* at 2.

[4] The Global Warming Commission was established by Act 696 of 2007 and charged to:

> 1) Conduct an in-depth examination and evaluation of the issues related to global warming and the potential impacts of global warming on the state, its citizens, its natural resources, and its economy, including without limitation, agriculture, travel and tourism, recreation, insurance, and economic growth and development.
>
> 2) Based on the commission's evaluation of the current global warming data, the assessment of global warming mitigation strategies, and the available global warming pollutant reduction strategies, the commission shall set forth:
>
> a. A global warming pollutant reduction goal; and
>
> b. A comprehensive strategic plan for implementation of the global warming pollutant reduction goal.
>
> 3) Present its global warming pollutant reduction goal and comprehensive strategic plan for consideration to the Eighty-Seventh General Assembly and develop findings and recommendations as may be directed thereafter by the Eighty-Seventh General Assembly.

The purpose of the global warming pollutant reduction goal and comprehensive strategic plan was to place Arkansas in a position to help stabilize the global climate, to allow Arkansas to lead the nation in attracting clean and renewable energy industries to our state, and to reduce consumer energy dependence on current carbon-generating technologies and expenditures. 696 Ark. Acts 2007, sec. 5.

[5] Global Warming Commission Final Report at p. 5-1, available at http://www.pewclimate.org/docUploads/Arkansas%20climate%20plan_1.pdf.

[6] *Ibid.*

context, Arkansas will benefit from the ability to meet its increasing power demands from renewable resources, a need that Clean Line could help to satisfy by providing Arkansas utilities with the opportunity to purchase carbon-free power.

8. The development of additional renewable power generation facilities has intensified the need for new transmission infrastructure. In the past decade, both state and federal policy-makers have established the important goal of meeting the country's growing demand for power from renewable resources. In 1999, the Department of Energy Secretary announced the "Wind Powering America" initiative, which set a goal of generating 5% of U.S. electric power through wind energy by 2020, an objective that has since been reiterated and increased. Nine years later, the Department of Energy demonstrated its continued support of renewable energy by publishing a year-long assessment of the costs, challenges, impacts and benefits that would result from wind generation providing 20% of the electrical energy consumed in the United States by 2030.[7] Most recently, the U.S. House of Representatives passed a bill mandating that investor-owned utilities buy 15% of their electricity from renewable sources.[8] The executive branch of the federal government has repeatedly voiced its strong support for a federal renewable electricity standard and for improvements to the U.S. electric transmission grid to build and sustain a clean energy economy.

9. The Arkansas Governor's Commission on Global Warming proposed that Arkansas adopt a Renewable Energy Feed-In Tariff ("REFIT") to provide guaranteed, above-

[7] U.S. Department of Energy, 20% Wind Energy by 2030: Increasing Wind Energy's Contribution to U.S. Electricity Supply (2008), available at http://www.nrel.gov/docs/fy08osti/41869.pdf.

[8] The Commission considered this development so significant that it ordered Arkansas' jurisdictional utilities to file comments providing their best estimate of the impact of the bill on customer rates and the utilities themselves. *In The Matter Of A Notice Of Inquiry Regarding The Expanded Development Of Sustainable Energy Resources In Arkansas,* Docket No. 08-144-U, Order No. 11 (July 9, 2009).

market rates to renewable power generators, which would give Arkansas utilities the ability to provide renewable energy to their customers.[9] Currently, 36 states have placed goals or mandates on the use of renewable energy sources to fulfill electricity demand.[10] Additionally, the federal government is considering a national renewable portfolio standard, and the Environmental Protection Agency has announced its intent to regulate carbon emissions in the absence of Congressional action. In the event of future regulatory changes, Arkansas utilities could mitigate the impact to Arkansas ratepayers by accessing the best wind resources in the United States through Clean Line's Plains and Eastern Clean Line project, discussed below.

10. The United States has abundant wind resources. In 2005 and 2006, the U.S. led the world in new wind installations, and the scale of wind generation projects has increased dramatically in recent years.[11] In 2007 and 2008, wind projects made up the largest component of new electrical generation capacity added in the United States.[12] Due to the pace of new wind additions, 2009 also saw the greatest increase in renewable generation (excluding conventional hydro-power) ever recorded.[13] Only a few years ago a typical wind project consisted of 50-100 MW, but wind developers are now routinely erecting 400 MW projects. The industry is reanalyzing previous assumptions about the scale and speed of implementation for renewable energy. Despite recent growth, in 2009 wind made up less than 2% of total electric power

[9] Global Warming Commission Final Report at p. 5-5.
[10] http://www.pewclimate.org/what_s_being_done/in_the_states/rps.cfm.
[11] U.S. Department of Energy, 20% Wind Energy by 2030: Increasing Wind Energy's Contribution to U.S. Electricity Supply (2008) at 6.
[12] U.S. Department of Energy 2008 Wind Technologies Market Report at 4, available at http://www1.eere.energy.gov/windandhydro/pdfs/46026.pdf.
[13] http://www.awea.org/newsroom/releases/04-08-10-U.S._Wind_Industry_Annual_Market_Report.html.

generation in the United States.[14] Other industrialized nations obtain significantly more of their power from wind, such as Spain (11%) and Germany (7%).[15]

11. The windiest sites in the United States are often not located near load centers, and currently there are insufficient transmission lines to connect them. Additional transmission infrastructure is critical to the nation's ability to fully exploit its wind resources. Limitations of the electric transmission grid are already stifling the growth of wind power development in many areas. In the Southwest Power Pool ("SPP") and elsewhere, insufficient transmission has caused the curtailment of wind generation despite its zero marginal cost.[16] Arkansas can play a leading role in modernizing the grid by connecting some of windiest areas of the country to regions with demand for renewable energy and a lack of renewable resources.

12. Clean Line is an independent transmission company dedicated to connecting the nation's best renewable energy resources to the southern United States, including Arkansas. The company's exclusive focus on the development and operation of transmission lines aids its ability to propose and execute projects that best serve the need for increased access to renewable energy. Clean Line has no competitive interest in existing generation or retail operations and is therefore well-suited to facilitating transmission solutions that provide consumers with affordable access to clean energy.

13. Clean Line is currently developing the Plains and Eastern Clean Line transmission project (the "Project" or the "Plains and Eastern Clean Line"). The Plains and Eastern Clean

[14] AWEA U.S. Wind Industry Annual Market Report Year Ending 2009 at 3, available at http://www.awea.org/reports/Annual_Market_Report_Press_Release_Teaser.pdf.
[15] http://www.ieawind.org/AnnualReports_PDF/2008/02%20Executive%20Summary%202008.pdf.
[16] EnerNex Corporation, Eastern Wind Integration and Transmission Study (January 2010) at 168-170, available at http://www.nrel.gov/wind/systemsintegration/pdfs/2010/ewits_final_report.pdf.

Line will consist of twin, ±500 or ±600 kilo-volt ("kV"), overhead, high voltage, direct current ("HVDC") transmission lines, which will be capable of transmitting up to 7,000 MW of power, primarily from renewable projects in western Oklahoma, southwestern Kansas and the Texas Panhandle, to the Tennessee Valley Authority ("TVA") service territory and other surrounding areas, including Arkansas.

14. In October 2009, Clean Line Energy Partners executed a Memorandum of Understanding ("MOU") with TVA. Pursuant to the MOU, TVA agreed to cooperate with Clean Line Energy Partners in evaluating the technical aspects of delivering up to 7,000 MW of renewable power to TVA's service territory. Working with Clean Line, TVA will take an active role in including the Project in regional planning processes. Clean Line Energy Partners has submitted two interconnection requests totaling 7,000 MW for injection into TVA's transmission system under TVA's Large Generator Interconnection Procedures. Additionally, Clean Line Energy Partners has submitted interconnection requests to Entergy Services Inc. for interconnection with several Entergy Arkansas transmission substations. The Project will consist of two transmission lines. While no final determinations have been made, the end point of one line is projected to be near Memphis, Tennessee, and the end point of the other line in Arkansas or elsewhere in the Southeast. Even if no end point is located in Arkansas, load serving entities in Arkansas would have the ability to enter into contracts to wheel the power to their system and then deliver it to Arkansans.

15. With respect to the windward or collection side of the Project, Clean Line is engaged in ongoing discussions with SPP and is working with various SPP members in performing reliability studies. SPP member-utilities will remain apprised of the progress of these studies through the appropriate SPP working groups. In accordance with the SPP Criteria 3.5

(Interconnection Review Process), Clean Line expects to work closely with the SPP Transmission Working Group and the SPP System Protection and Control Working Group to protect the reliability of the SPP system and the wider Eastern Interconnection and to ensure that the Project complies with SPP's technical requirements.

16. The Project will rely on HVDC technology, which has been successfully utilized for several decades in the United States and other countries. Financial as well as technical considerations make HVDC the most appropriate solution to transport large volumes of renewable electricity over long distances and across multiple regions. As indicated by current electric industry practice, for transmission over long distances and primarily in one direction, direct current lines result in a lower cost of transmission than traditional alternating current ("AC") lines. Proper deployment of an HVDC solution can:

- Transfer significantly more power with lower line losses over long distances than comparable AC lines;
- Complement AC networks without contribution to short circuit current power or additional reactive power requirements;
- Dampen power oscillations in an AC grid through fast modulation of the converter stations and thus improve system stability;
- Give the operator complete control of energy flow, making it particularly well-suited to managing the injection of variable wind generation; and
- Utilize narrower rights-of-way, shorter towers and fewer conductors than comparable AC lines, making more efficient use of transmission corridors and minimizing land use impact.

These factors contribute to grid reliability and security of power supply. The use of HVDC technology for the Project may also reduce the upgrades that may be required to accommodate the Project's interconnection to the existing AC system.

17. Clean Line's primary purpose in Arkansas is to develop, site, construct and operate the Plains and Eastern Clean Line. The Project will create a variety of benefits for the

state. The Project will infuse up to 7,000 MW of carbon-free electricity into the region, which will reduce pollution and save large amounts of water consumed by fossil fuel plants. Energy delivered by the Plains and Eastern Clean Line will allow utilities in the southern United States to increase their proportion of energy derived from renewable resources.

18. The development, siting, construction and operation of the Plains and Eastern Clean Line will create thousands of jobs for the Arkansas economy. Additionally, the added transmission capacity in the region will spur the construction of renewable generating facilities in western Oklahoma, southwestern Kansas and the Texas Panhandle, areas that are served by Arkansas manufacturers catering to the renewable energy industry. As a result of the Project, many Arkansas businesses, particularly those dedicated to producing blades, towers and turbines, will experience increased demand for their services. Arkansas service and hospitality industries will also realize additional revenues as a result of the construction of the Plains and Eastern Clean Line. The Project will increase property, sales and income tax revenue for the state of Arkansas.

19. The Project will increase competition in renewable power supply in Arkansas and other southern states. Currently, there are over 32,700 MW of wind projects in the SPP interconnection queue, of which only 20 MW are in Arkansas.[17] Average wind speeds at the height of a modern wind turbine (80 meters) do not exceed 6.5 meters per second in Arkansas and other southern states such as Louisiana, Tennessee, Kentucky, Mississippi, Alabama, and Georgia. In contrast, average wind speeds in the Texas Panhandle, western Oklahoma, and southwest Kansas regularly exceed 9 meters per second.[18] Due to their superior resource, wind farms in these areas delivering their power through the Plains and Eastern Clean Line will have a

[17] https://studies.spp.org/SPPGeneration/GI_ActiveRequest.csv accessed on 4/13/2010.
[18] http://www.windpoweringamerica.gov/wind_maps.asp#us.

substantially lower cost of energy than other renewable projects. Consequently, more affordable renewable power will be made available to utilities serving customers in Arkansas and elsewhere in the region.

20. The development and construction of the Plains and Eastern Clean Line is estimated to require approximately $3.5 billion. Clean Line does not plan to seek cost recovery through the electric rates paid by consumers in Arkansas and throughout the region, nor does a mechanism exist to provide for the cost recovery of a transmission line that traverses multiple regional planning systems. Instead, Clean Line believes it can, for a competitive price, deliver the electricity to market while passing on the costs to transmission capacity customers, such as the load serving entities that will receive the power. Due to the interstate nature of the Project, Clean Line's rates will be regulated by the Federal Energy Regulatory Commission. Clean Line will design and build the Project in accordance with good utility practice, all applicable laws, and North American Electric Reliability Corporation and SPP criteria. After complying with applicable local, state and federal regulations, a route for the Project will be selected that considers environmental impact, residential disruption, and location of the best wind resources.

21. Clean Line hereby requests that pursuant to Ark. Code Ann. §23-3-201 the Commission issue it a Certificate of Public Convenience and Necessity ("CCN") for the purpose of operating as a public utility to the extent that Clean Line will be developing, constructing or operating electric transmission facilities in the state of Arkansas.

22. The granting of a CCN to Clean Line does not authorize Clean Line to begin construction of the Plains and Eastern Clean Line. Clean Line will not be authorized to begin construction of the transmission line until it obtains a Certificate of Environmental Compatibility and Public Need pursuant to the Utility Facility Environmental and Economic Protection Act

(codified at Ark. Code Ann. § 23-18-501, *et seq.*) and meets other requirements under laws applicable to the construction and operation of an electric transmission line. Clean Line will also seek approval from other jurisdictions where the transmission line will be located. Clean Line is preparing to make a filing that will request regulatory authority to conduct business as an electric utility in the state of Oklahoma.

23. Clean Line possesses the technical, managerial and financial capabilities necessary to support its operations in Arkansas. Among Clean Line's employees are professionals who have managed, built and financed projects in the renewable and traditional energy sectors as well as senior policy professionals who have shaped energy policy at the state and national levels. Clean Line's management team has financed billions of dollars of energy projects and managed thousands of megawatts of power and includes the following individuals:

a. Michael Skelly: Mr. Skelly, the founder and Chief Executive Officer of Clean Line Energy Partners and President of Clean Line, is a successful entrepreneur with fifteen years of experience in the energy field. Mr. Skelly led the development efforts of Horizon Wind Energy as it grew from a two-person operation to one of the largest renewable energy companies in the United States. Horizon continues to be a leader in installing new wind power and is currently owned by Energias de Portugal.

b. James Glotfelty: Mr. Glotfelty, head of external affairs for Clean Line, served as a senior policy advisor for George W. Bush in his gubernatorial and presidential administrations and focused primarily on electricity markets. He also founded and served as the initial Director of the Office

of Electric Transmission and Distribution in the U.S. Department of Energy, where he led the investigation of the 2003 blackout, as well as efforts to upgrade and modernize the electric transmission system.

c. Mario Hurtado: Mr. Hurtado, the lead developer of the Plains and Eastern Clean Line, previously developed and managed power plants and utility infrastructure for Reliant Energy and Duke Energy, as well as for start-up and venture capital companies.

d. Jayshree Desai: Ms. Desai previously served as the Chief Financial Officer of Horizon Wind Energy and oversaw the company's balance sheet as it grew from $8 million to more than $5 billion.

e. Wayne Galli: Dr. Galli, P.E., PhD, previously served as Director of Transmission Development for NextEra Energy Resources, where he developed several transmission projects; he also previously held the position of Supervisor of Operations Engineering at Southwest Power Pool.

f. Kathryn Patton: Ms. Patton, Clean Line Energy Partners' General Counsel, served as Deputy General Counsel for Allegheny Energy, Inc., where she oversaw legal matters for Allegheny's regulated electric utilities and transmission companies and served as the company's Chief Compliance Officer.

A detailed description of the management team of Clean Line and its parent company is attached as Exhibit 4.

24. Clean Line will ensure that the Project will be operated in accordance with all applicable North American Electric Reliability Corporation and regional requirements. Clean Line will employ the appropriate expertise in implementing operational functions of the Project and will work closely with the interconnected utilities and regional entities so that appropriate operational agreements, which ensure coordinated operations, are in place.

25. Clean Line's parent company, Clean Line Energy Partners, is developing independent transmission projects around the United States to connect the best renewable energy resources with areas of high energy demand. In addition to the Plains and Eastern Clean Line, Clean Line Energy Partners is developing the Rock Island Clean Line, a $2 billion HVDC transmission line that will connect 3,500 MW of wind generation in Iowa and South Dakota or Nebraska with load centers in the Midwest. Clean Line Energy Partners is also developing several other transmission projects with similar rationales.

26. The majority owner of Clean Line Energy Partners is ZAMV, the principal investment vehicle for ZBIV. ZBIV, which focuses on long-term investments in the energy sector, is a subsidiary of Ziff Brothers Investments, L.L.C. Additional equity owners of Clean Line Energy Partners include the Houston-based Zilkha family. The Zilkha family has a proven track record of making successful investments in the energy industry, including being the primary investor in Horizon Wind Energy during its initial growth.

III. Commission Jurisdiction and Authority

27. The Arkansas Public Service Commission "is vested with the power and jurisdiction, and it is made its duty, to supervise and regulate every public utility defined in Ark. Code Ann. §23-1-101 and to do all things, whether specifically designated in this act, that may

be necessary or expedient in the exercise of such power and jurisdiction, or in the discharge of its duty."[19]

28. A public utility is defined to include persons and corporations that own or operate any equipment or facilities in Arkansas for purposes of transmitting electricity for the production of light, heat, or power to or for the public for compensation.[20] In APSC Docket No. 04-137-U, Order No. 6, the Commission concluded that an entity need not provide utility services directly to the public to be considered a public utility subject to the Commission's jurisdiction. An entity that transmits electricity to another entity that provides utility services directly to the public qualifies as a public utility under the definition set forth in Ark. Code Ann. §23-1-101(9)(A)(i).

29. Because Clean Line's business will be limited to transmitting energy resources to wholesale providers and subject to the rate jurisdiction of the Federal Energy Regulatory Commission, and because Clean Line will have no retail customers, Clean Line requests that in conjunction with declaring it to be a public utility, the Commission declare the following statutes inapplicable to Clean Line's business:

Ark. Code Ann. § 23-3-114	Prohibitions against unreasonable preferences as to rates or services.
Ark. Code Ann. § 23-4-101 through 110	Ratemaking standards.
Ark. Code Ann. § 23-4-201 through 208	General statutes regarding interactions with customers.
Ark. Code Ann. § 23-4-401 through 421	General statutes related to rates and surcharges.

30. Public convenience and necessity will require the construction or operation of additional transmission lines in the state of Arkansas. The public interest will be served by

[19] Ark. Code Ann. §23-2-301.
[20] Ark. Code Ann. §23-1-101(9)(A)(i).

Clean Line's plan to deliver electricity generated from renewable resources to the southern United States, including Arkansas, because it will stimulate economic development, promote wider choice and competition in wholesale generation, and reduce pollution.

WHEREFORE, Clean Line respectfully requests that the Commission grant it a Certificate of Public Convenience and Necessity to transact the business of an electric public utility in the State of Arkansas to the extent that it will be developing, constructing or operating electric transmission lines in the State of Arkansas; that the Commission declare those regulatory statutes that apply to activities other than developing, constructing or operating electric transmission lines to be inapplicable to Clean Line; and for all other proper relief.

Respectfully Submitted,

MITCHELL, WILLIAMS, SELIG,
GATES & WOODYARD, PLLC
425 West Capitol Avenue, Suite 1800
Little Rock, AR 72201

BY: _____

Derrick W. Smith, Ark. Bar No. 2000173
T. Ark Monroe, III, Ark. Bar. No. 67041

Exhibit 1

Articles of Organization

[See attached.]

Arkansas Secretary of State
Charlie Daniels

State Capitol Building ♦ Little Rock, Arkansas 72201-1094 ♦ 501.682.3409

I, Charlie Daniels, Secretary of State of the State of Arkansas, and as such, keeper of the records of domestic and foreign corporations, do hereby certify that the following and hereto attached instrument of writing is a true and perfect copy of

All Corporate records on file for

PLAINS AND EASTERN CLEAN LINE LLC

In Testimony Whereof, I have hereunto set my hand and affixed my official Seal. Done at my office in the City of Little Rock, this 10th day of May 2010.

Charlie Daniels
Secretary of State

By: J. Butler
J. Butler

ARTICLES OF ORGANIZATION

OF

PLAINS AND EASTERN CLEAN LINE LLC

These Articles of Organization of Plains and Eastern Clean Line LLC are hereby executed and filed in accordance with the Small Business Entity Tax Pass Through Act, Act 1003 of 1993, ARK. CODE ANN. §§ 4-32-101, *et seq.*

1. **Name.** The name of the limited liability company shall be Plains and Eastern Clean Line LLC.

2. **Registered Office and Agent.** The agent for service of process shall be Corporation Service Company. The address of the agent and the registered office of the limited liability company is 300 Spring Building, Suite 900, 300 S. Spring Street, Little Rock AR 72201.

3. **Management.** The affairs of the limited liability company shall be managed by its member.

IN WITNESS WHEREOF, the undersigned has executed these Articles of Organization this 30 day of March, 2010.

C. Douglas Buford, Jr.
Organizer

1462326.1

Exhibit 2

Operating Agreement

[See attached.]

LIMITED LIABILITY COMPANY AGREEMENT OF PLAINS AND EASTERN CLEAN LINE LLC

An Arkansas Limited Liability Company

This LIMITED LIABILITY COMPANY AGREEMENT OF PLAINS AND EASTERN CLEAN LINE LLC (this "*Agreement*"), dated as of March 30, 2010, is adopted, executed and agreed to by the Sole Member (as defined below).

1. Formation. Effective with the filing of the Certificate (as defined below) on March 30, 2010, pursuant to Section 2, Plains and Eastern Clean Line LLC (the "*Company*") was formed as an Arkansas limited liability company under and pursuant to the Arkansas Small Business Entity Tax Pass Through Act (the "*Act*").

2. Term. The Company commenced on the effective date of the filing of the Articles of Organization (the "*Certificate*") pursuant to the Act and shall have a perpetual existence, unless and until it is dissolved in accordance with Section 9 below.

3. Registered Office; Registered Agent. The registered office and registered agent of the Company in the State of Arkansas shall be as specified in the Certificate or as determined by the Sole Member from time to time in the manner provided by applicable law.

4. Purposes. The purposes of the Company are to carry on any lawful business, purpose or activity for which limited liability companies may be formed under the Act.

5. Sole Member. Plains and Eastern Clean Line Holdings LLC, a limited liability company organized under the laws of the State of Delaware, shall be the sole member of the Company (the "*Sole Member*").

6. Contributions. Without creating any rights in favor of any third party, the Sole Member may, from time to time, make contributions of cash or property to the capital of the Company, but shall have no obligation to do so.

7. Distributions. The Sole Member shall be entitled to (a) receive all distributions (including, without limitation, liquidating distributions) made by the Company and (b) enjoy all other rights, benefits and interests in the Company.

8. Management.

(a) The management of the Company is fully reserved to the Sole Member, and the Company shall not have "managers" as that term is used in the Act. The powers of the Company shall be exercised by or under the authority of, and the business and affairs of the Company shall be managed under the direction of, the Sole Member, who shall make all decisions and take all actions for the Company.

(b) The Sole Member may designate one or more other persons to be officers of the Company to assist in carrying out the Sole Member's decisions and the day-to-day activities of the Company. Officers are not "managers" as that term is used in the Act. Any officers who are so designated shall have such titles and authority and perform such duties as the Sole Member may delegate to them. The salaries or other compensation, if any, of the officers of the Company shall be fixed by the Sole Member. Any officer may be removed as such, either with or without cause, by the Sole Member and any vacancy occurring in any office of the Company may be filled by the Sole Member. Designation of an officer shall not of itself create contract rights.

9. Dissolution. The Company shall dissolve and its affairs shall be wound up at such time, if any, as the Sole Member may elect. No other event (including, without limitation, an event described in Section 4-32-901(3) of the Act) will cause the Company to dissolve.

10. Liability.

(a) The Sole Member shall not have any liability for the obligations or liabilities of the Company except to the extent provided herein or by applicable law.

(b) The Company shall indemnify and hold harmless the Sole Member and its respective partners, shareholders, officers, directors, managers, employees, agents and representatives, and the partners, shareholders, officers, directors, managers, employees, agents and representatives of such persons to the fullest extent permitted by applicable law.

11. Amendment. This Agreement may be amended from time to time only by a written consent executed by the Sole Member.

12. Governing Law. **THIS AGREEMENT IS GOVERNED BY AND SHALL BE CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF ARKANSAS (EXCLUDING ITS CONFLICT-OF-LAWS RULES).**

[The remainder of this page is intentionally left blank.]

IN WITNESS WHEREOF, the undersigned, being the Sole Member of the Company, has caused this Agreement to be duly executed as of the date first written above.

PLAINS AND EASTERN CLEAN LINE HOLDINGS LLC

By: CLEAN LINE ENERGY PARTNERS LLC, ITS SOLE MEMBER

By: _____

Name: Michael Skelly

Title: Chief Executive Officer

Exhibit 3

Certificate of Good Standing

[See attached.]

Arkansas Secretary of State
Charlie Daniels

State Capitol Building ♦ Little Rock, Arkansas 72201-1094 ♦ 501.682.3409

CERTIFICATE OF GOOD STANDING

I, Charlie Daniels, Secretary of State of the State of Arkansas, and as such, keeper of the records of domestic and foreign corporations, do hereby certify that the records of this office show

PLAINS AND EASTERN CLEAN LINE LLC

authorized to transact business in the State of Arkansas as a Limited Liability Company, filed Articles of Organization in this office March 30, 2010.

Our records reflect that said entity, having complied with all statutory requirements in the State of Arkansas, is qualified to transact business in this State.

In Testimony Whereof, I have hereunto set my hand and affixed my official Seal. Done at my office in the City of Little Rock, this 10th day of May 2010.

Charlie Daniels
Secretary of State

By: J. Butler

Exhibit 4

Management Team

Michael Skelly – Chief Executive Officer
Mr. Skelly has been in the energy business for fifteen years and led the development efforts of Horizon Wind Energy. During Mr. Skelly's tenure at Horizon, the company grew from a two-person operation to one of the largest renewable energy companies in the country. Under his leadership, Horizon developed and constructed nearly 2,000 MW of wind energy projects and amassed a development portfolio of almost 10,000 MW in over a dozen states. Before Horizon, Mr. Skelly developed thermal, hydroelectric, biomass and wind energy projects in Central America with Energia Global. Mr. Skelly has a Bachelor of Arts degree in Economics from the University of Notre Dame and a Master of Business Administration from Harvard Business School.

Mario Hurtado – Executive Vice President and Lead Developer of the Plains and Eastern Clean Line
Mr. Hurtado has developed and managed power and other energy infrastructure with large corporate and start-up venture companies in the electric power and natural gas industries for over 15 years. Mr. Hurtado headed development and operations in Central America and the Caribbean at Globeleq, a power developer and operator focused on the emerging markets. While at Globeleq, Mr. Hurtado acquired, built and managed a portfolio of traditional and renewable electric generating plants. As an executive at Reliant Energy and Duke Energy, he led corporate transactions and managed the commercial issues involving large utilities and generating plants throughout Latin and North America. Mr. Hurtado holds a Bachelor of Arts degree in political science from Columbia University.

Jimmy Glotfelty – Executive Vice President of External Affairs
Mr. Glotfelty brings a wealth of public and private sector transmission experience to Clean Line. He is a well-known expert in electric transmission and distribution, generation, energy policy, and energy security. He most recently held the position of Vice President, Energy Markets, for ICF Consulting. Mr. Glotfelty served in the U.S. Department of Energy where he was the Founder and Director of the Office of Electric Transmission and Distribution, a $100 million per year electricity transmission and distribution research and development program. Mr. Glotfelty also was the lead U.S. representative to the joint U.S.-Canadian Power System Outage Task Force investigating the Blackout of August 2003. While at the Department of Energy, Mr. Glotfelty worked extensively with utility chief executive officers and senior management in the electric power and energy sectors. He led teams that focused on researching transmission and distribution technologies, gaining Presidential permits for cross-border transmission lines, studying the impacts of Regional Transmission Organizations, identifying major transmission bottlenecks, and securing the critical energy infrastructure of the United States.

Jayshree Desai – Executive Vice President
Prior to joining Clean Line, Ms. Desai was Chief Financial Officer of Horizon Wind Energy, where she was responsible for corporate and project finance, accounting, tax, and IT. As CFO, she oversaw the company's balance sheet as it grew from $8 million to more than $5 billion and

was a key member of the deal teams responsible for the sale of Horizon Wind Energy to Goldman Sachs in 2005, the subsequent sale to EDP in mid-2007, and the initial public offering of the EDP renewable energy subsidiary in 2008. Before Horizon, Ms. Desai was a director at Enron responsible for mergers and acquisitions. Ms. Desai earned a Bachelor's degree from the University of Texas at Austin and a Master of Business Administration from Wharton Business School at the University of Pennsylvania.

Wayne Galli – Vice President of Transmission and Technical Services

Dr. Galli's background in electric power systems includes more than twelve years of experience in technical and managerial roles. Dr. Galli's experience runs the gamut from system studies and operations to regulatory matters to project development. Most recently, he served as Director of Transmission Development for NextEra Energy Resources where he was instrumental in developing transmission projects under the Competitive Renewable Energy Zones ("CREZ") initiative in Texas. In this capacity, Dr. Galli championed HVDC solutions for the CREZ. At SPP, Dr. Galli led the implementation of several components of the SPP market and grew the Operations Engineering group over fourfold to help ensure reliable operations of the SPP grid under the new market paradigm. Dr. Galli's background includes system planning experience with Southern Company Services where he analyzed 500 kV expansion plans. Additionally, he gained commercial power systems experience from Siemens Westinghouse Technical Services. Dr. Galli has taught at the university level and has helped design shipboard power systems for the Department of Defense. Dr. Galli holds Bachelor and Master of Science degrees from Louisiana Tech University and a Doctor of Philosophy degree from Purdue University, all in electrical engineering. He is a Senior Member of the Institute of Electrical and Electronics Engineers and is a registered Professional Engineer in the Commonwealth of Virginia.

Kathryn Patton – General Counsel

Before joining Clean Line, Ms. Patton served as Deputy General Counsel for Allegheny Energy, Inc., where she oversaw legal matters for Allegheny's regulated electric utilities and transmission companies, served as the company's Chief Compliance Officer, led the effort for obtaining regulatory approval for construction of the Trans-Allegheny Interstate Line Project and provided legal advice for the construction and financing of the project. Prior to Allegheny, Ms. Patton worked at Dynegy, serving as Senior Vice President, General Counsel and Secretary for Dynegy subsidiaries, Illinois Power Company and Northern Natural Gas Company, and Vice President and Assistant General Counsel for Dynegy Inc. While at Illinois Power, she was responsible for the legal and regulatory affairs of the company, as well as advising on corporate strategy. Prior to joining Dynegy, Ms. Patton was an associate with the law firm of John, Hengerer and Esposito in Washington, D.C. Ms. Patton graduated from the University of St. Thomas in Houston, Texas, with a Bachelor of Business Administration in Accounting and earned her Juris Doctor from South Texas College of Law, also in Houston. She is a Certified Public Accountant and is a member of the State Bar of Texas, the District of Columbia Bar and the Commonwealth of Pennsylvania Bar.

ARKANSAS PUBLIC SERVICE COMMISSION

IN THE MATTER OF THE APPLICATION OF PLAINS AND EASTERN CLEAN LINE LLC FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY TO CONSTRUCT, OWN AND OPERATE AS AN ELECTRIC TRANSMISSION PUBLIC UTILITY IN THE STATE OF ARKANSAS	DOCKET NO. 10-041-U ORDER NO. 9

ORDER

On May 13, 2010, Plains and Eastern Clean Line LLC (Clean Line) filed in the above-styled Docket an Application for approval of a Certificate of Public Convenience and Necessity (CCN Application) seeking authority of this Commission to operate as a public utility in the State of Arkansas. Clean Line's CCN Application states it "does not seek authorization to begin construction of a transmission line, which authorization Clean Line will seek pursuant to a separate application." CCN Application at 1.

By Order No. 6 entered in this Docket on August 24, 2010, the Commission established a procedural schedule to consider Clean Line's CCN Application. Per Order No. 6, the evidentiary hearing on Clean Line's CCN Application was held on Tuesday, December 7, 2010.

The Parties' Filings

According to its CCN Application, Clean Line "is a limited liability company organized under the laws of Arkansas, with its principal business address located at 1001 McKinney Street, Suite 725, Houston, Texas 77002." CCN Application at 1 ¶ 1. In addition, "[t]he mission of Clean Line Energy Partners is

to connect the best renewable resources in the country with regions that have an increasing demand for renewable energy." *Id.* at 2 ¶ 3. Noting the policy framework in favor of renewable power production and transmission in which its CCN is sought, Clean Line states its "exclusive focus on the development and operation of transmission lines aids its ability to propose and execute projects that best serve the need for increased access to renewable energy. Clean Line has no competitive interest in existing generation or retail operations and is therefore well-suited to facilitating transmission solutions that provide consumers with affordable access to clean energy." *Id.* at 7 ¶ 12.

Clean Line states, at some point, it plans to construct two high voltage direct current (HVDC) transmission lines that will traverse the state of Arkansas and the "development and construction of [its HVDC transmission lines] is estimated to require approximately $3.5 billion. Clean Line does not plan to seek cost recovery through the electric rates paid by consumers in Arkansas and throughout the region, nor does a mechanism exist to provide for the cost recovery of a transmission line that traverses multiple regional planning systems." *Id.* at 11 ¶ 20. Clean Line's CCN Application also includes information regarding key personnel managing its business, the qualifications of each person and the financial and other aspects of its current business plan. *Id.* at 12 ¶ 23.

Clean Line's CCN Application concludes that the "[p]ublic convenience and necessity will require the construction or operation of additional transmission lines in the state of Arkansas. The public interest will be served by Clean Line's plan to deliver electricity generated from renewable resources to the

southern United States, including Arkansas, because it will stimulate economic development, promote wider choice and competition in wholesale generation, and reduce pollution." *Id.* at 15-16 ¶ 30.

Regarding the legal framework surrounding certification of a transmission-only public utility, Clean Line argues it meets the Arkansas statutory definition of a public utility because it "will transmit electricity within the state of Arkansas." Clean Line's Initial Brief at 2 (September 21, 2010). Clean Line notes this Commission "has also recognized that a reliable and efficient electric transmission system is necessary to transfer electrical power within Arkansas and regionally ... [and] in order to appropriately plan for the expansion of, and upgrades to, the electric transmission system, utility planners and regulators must make decisions well in advance of the need for additional transmission. " *Id.* at 3. Stating the "shortage of transmission has begun to limit renewable energy growth [ ]" and "[a]dditional transmission infrastructure is critical to the nation's ability to fully exploit its wind resources and meet the ever increasing energy demands in an environmentally responsible manner [ ]" (*Id.* at 5), Clean Line states it can "bridge this gap" with its construction of "two high-voltage, direct current transmission lines that will connect up to 7,000 MW of wind energy from western Oklahoma and the surrounding region with areas of demand for renewable energy in the Tennessee Valley Authority service territory, Arkansas and the southeastern United States." *Id.* at 6 (footnote omitted).

Relying on statutory construction principles, Clean Line claims that the Commission's certification of the Southwest Power Pool Regional Transmission

Organization (SPP RTO) in Docket No. 04-137-U turned on the fact that transmission facilities in Arkansas "supply a public service." Clean Line believes, given its "proposed facilities are transmission facilities located in Arkansas, they, too, will 'supply a public service.'" *Id.* at 8. Similarly, Clean Line notes Arkansas law defines a public utility as a corporation "owning or operating in this state equipment or facilities for...transmitting...power to or for the public for compensation..." *Id.* (*Citing* Ark. Code Ann. § 23-1-101(9)(A)(i)). According to Clean Line, in "*Arkansas Charcoal Company v. Arkansas Public Service Commission*, the Court stated, 'It is not the number of customers served which is determinative of public utility status, but rather whether a person or company holds itself out to serve all who wish to avail themselves of the service.'" *Id.* at 8-9. Finally, Clean Line notes the Oklahoma Corporation Commission (Cause No. PUD 200700298) recently has approved a similarly-situated company (ITC Great Plains) as a certificated transmission-only utility in its state.

As part of its CCN Application, Clean Line requested that the Commission approve exemptions from certain public utility statutes. In support of its requested statutory exemptions (CCN Application at 15 ¶ 29), Clean Line indicates its rates will be regulated by the Federal Energy Regulatory Commission (FERC), making Ark. Code Ann. §§ 23-3-114, 23-4-101 through 110, and 23-4-401 through 421 all inapplicable as they relate to this Commission's ratemaking authority. Clean Line's Initial Brief at 10. Because Clean Line will not contract with end users of electricity in Arkansas, Clean Line suggests Ark. Code Ann. § 23-4-201 through 208, regarding customer relations, are inapplicable as well.

Notably, in Reply to Staff's and the AG's filings discussed more fully below, Clean Line has agreed not to seek the right of eminent domain at this time and that the only statutory waivers it will seek are those related to FERC's jurisdiction over setting its customers' rates, claiming this Commission does not have wholesale ratemaking authority. Clean Line's Reply Brief at 5 (November 9, 2010).

The General Staff of the Arkansas Public Service Commission (Staff) did not file any evidentiary testimony, but Staff's Prehearing Brief filed on October 19, 2010, notes Clean Line's CCN Application presents a case of first impression as Clean Line "will be a merchant transmission-only provider and may or may not provide service at wholesale in Arkansas." Staff's Prehearing Brief at 1. Staff also cites to *Arkansas Charcoal Company v. Arkansas Public Service Commission*, 299 Ark. 359, 773 S.W.2d 427 (1989) noting the Commission's regulation has been limited, traditionally, to those companies providing services at retail or which are intrastate. *Id.* at 3. Because Clean Line will be regulated by FERC and provide wholesale transmission service and it is unclear whether Clean Line will actually interconnect with the transmission system in Arkansas or have any wholesale sales in Arkansas, Staff believes Clean Line "is not offering jurisdictional utility service and would not be a public utility subject to this Commission's jurisdiction." *Id.*

Staff notes the SPP RTO's Application considered in Docket No. 04-137-U—and relied on as analogous by Clean Line—is different because it "operates facilities constructed and owned by jurisdictional public utilities in Arkansas

whose transmission costs are included in rates charged to captive ratepayers in Arkansas by those jurisdictional utilities. SPP was also specifically not granted the power of eminent domain. " *Id.* Thus, Staff argues, the certification of SPP has no applicability in this case.

Staff also states Clean Line "has offered no evidence that the public convenience and necessity require the operation of Clean Line as a merchant transmission provider." *Id.* at 4. Citing additional differences between Clean Line and the SPP RTO, Staff notes "to issue a CCN to Clean Line, it appears that the Commission would have to look beyond whether the public convenience and necessity require the operation of Clean Line's transmission facilities in Arkansas and consider broader public policy goals." *Id.* at 5. Staff does comment that, if the Commission finds Clean Line is a public utility, its requested statutory exemptions should be granted, except Ark. Code Ann.§ 23-4-102, relating to the Commission's authority to petition a federal commission relating to interstate rates, charges, classifications, and other actions.

The only other party to this Docket is the Consumer Utilities Rate Advocacy Division of the Arkansas Attorney General's Office (AG). The AG filed a prehearing legal brief and supporting testimony on October 19, 2010. In its Brief at 3, the AG questions what "business Clean Line can conduct as a public utility with no equipment, facilities, customer or source of power, or specific plan to acquire them..." The AG states directly that Clean Line "does not meet the legal definition of a public utility" (at 3) because Clean Line lacks the "readiness to service an indefinite public or a portion of the public." *Id.* (*Citing Arkansas*

Charcoal Company v. Arkansas Public Service Commission, 773 S.W.2d 427, 430 (Ark. 1989)). Also distinguishing the SPP RTO case from this one, the AG notes that SPP was "ready to act as a new public electric utility, and it only required Commission approval in the form of a CCN to operate the facilities. When SPP commenced operation of the facilities, it commenced transaction of the business of a public utility, which in turn made it a public utility as defined by statute." *Id.* at 4.

Stating that although Clean Line "will not meet the statutory definition of (*sic*) Public Utility now, there is no reason not (*sic*) believe they will do so in the future. Because Clean Line has acknowledged that there will be a future [Certificate of Environmental Compatibility and Public Need (CECPN)] proceeding, the AG suggests that the Commission defer a ruling on Clean Line's CCN request and decide when it rules on Clean Line's CECPN application. Then, the Commission can grant or deny authorization to build and operate the facilities at the same time." *Id.* at 4-5. Citing to the Supreme Court's recent decision in *Hempstead County Hunting Club, Inc. v. Ark. Pub. Serv. Comm'n*, 2010 Ark. 221, ____ S.W.3d ____ (2010), the AG suggests that case is another reason combining Clean Line's request for a CCN with any subsequent proceedings for a CECPN makes sense to avoid re-litigation at a later date of some of the same issues. *Id.* at 6. Finally, the AG suggests Clean Line's requested statutory exemptions are "overbroad" and recommends an explicit prohibition on Clean Line exercising the power of eminent domain. *Id.* at 7-8.

Commission's Jurisdiction

A public utility is defined in the state of Arkansas by Ark. Code Ann. § 23-1-101, which states in relevant part:

> (9) (A) "Public utility" includes persons and corporations, or their lessees, trustees, and receivers, receivers, owning or operating in this state equipment or facilities for:
>
> > (i) Producing, generating, transmitting, delivering, or furnishing gas, electricity, steam, or another agent for the production of light, heat, or power to or for the public for compensation; ...

Although the need for the Commission to certificate a company as a public utility is not directly addressed, in order to construct public utility facilities in Arkansas, Ark. Code Ann. § 23-3-201(a) states:

> New construction or operation of any equipment or facilities for supplying a public service or the extension of a public service shall not be undertaken without first obtaining from the Arkansas Public Service Commission a certificate that public convenience and necessity require or will require the construction or operation.

In addition, the Commission has the power to grant or deny a CCN Application pursuant to Ark. Code Ann. § 23-3-205, which states:

> The commission shall have the power, after hearing, unless waived by the parties, to issue the certificate as prayed for, to refuse to issue the certificate, or to issue it for the construction or operation of a portion only of the contemplated facility or extension thereof, or for the partial exercise only of the right or privilege and may attach to the exercise of the rights granted by the certificate such terms and conditions in harmony with this act as in its judgment the public convenience and necessity may require.

Finally, the Commission has certification jurisdiction for CECPNs—at least one of which Clean Line acknowledges will be necessary if it is

certificated as a public utility—pursuant to Ark. Code Ann. § 23-18-501(a), which states:

> No person shall commence to construct a major utility facility in the state, except those exempted as provided in subsection (c) of this section and §§ 23-18-504(a) and 23-18-508, without first having obtained a certificate of environmental compatibility and public need, hereafter called a "certificate", issued with respect to the facility by the Arkansas Public Service Commission. The replacement or expansion of an existing transmission facility with a similar facility in substantially the same location or the rebuilding, upgrading, modernizing, or reconstruction for the purposes of increasing capacity shall not constitute construction of a major utility facility if no increase in width of right-of-way is required.

Commission's Findings & Conclusion

The issues presented by this case are twofold: (1) whether Clean Line fits the statutory definition of an Arkansas "public utility" and is entitled to a CCN to provide public utility service in the state; and (2) if so, whether Clean Line is entitled to exemption from certain public utility statutes. For the reasons stated more fully below, the Commission finds that Clean Line does not meet the statutory definition of a public utility at this time. The Commission's ruling on the first issue moots the necessity of ruling on the second.

As an initial matter, the Commission wholly supports the development of transmission infrastructure in the state of Arkansas as well as the development of opportunities to use and transmit renewable power for the benefit of Arkansas utilities and their ratepayers. In addition, the Commission notes with appreciation the extensiveness of Clean Line's presentation of the policy considerations supporting its CCN Application. Clean Line's efforts are laudable and its work is to be commended.

The difficulty the Commission now faces is that the law governing public utilities was not drafted to comprehend changes in the utility industry such as this one—where a non-utility, private enterprise endeavors to fill a void in the transmission of renewable power that is much needed but for which the Commission is unable to afford any regulatory oversight. The Commission's denial of Clean Line's CCN Application is without prejudice and if, and when, Clean Line can provide additional information with more concrete plans satisfying the Commission's concerns as expressed herein, the Commission is willing to revisit this matter in a new docket at that time.

The Commission is a creature of the General Assembly, and it performs a legislative function in regulating all public utilities. *Bryant v. Arkansas Pub. Serv. Comm'n*, 46 Ark. App. 88, 877 S.W.2d 594 (1994); *Sw. Bell Tel. Co. v. Ark. Pub. Serv. Comm'n*, 267 Ark. 550, 593 S.W.2d 434 (1980). The Commission's statutory mandate extends to and includes "all matters pertaining to the regulation and operation of all ... electric lighting companies and other companies furnishing gas or electricity for light, heat, or power purposes." Ark. Code Ann. § 23-2-302.

The Commission's decision in this case turns on the statutory definition of a "public utility" found in Ark. Code Ann. § 23-1-101(9)(a) cited above. Although Clean Line's presentation of its case was strong on policy considerations and certainly Clean Line worked hard to analogize its case to that of the SPP RTO, the Commission's authority cannot exceed that which is delegated to it by the Arkansas General Assembly. The "public utility" definition requires "owning or

operating in this state equipment or facilities for...transmitting...power to or for the public for compensation." Ark. Code Ann. § 23-1-101(9)(A).

The Parties' legal filings and opening arguments at the December 7 hearing discussed to varying degrees what each of these key phrases means, but the Commission is not convinced the totality of the evidence satisfies this statutory threshold. Recognizing, as Clean Line pointed out, there is some circularity involved in the fact that Clean Line cannot own or operate regulated major utility facilities pursuant to Arkansas law in this state without first being declared a public utility, in isolation, this portion of the statute is not determinative of Clean Line's utility status. However, read in tandem with the facts that the transmission of the power must also be "to or for the public for compensation" when Clean Line, to date, has no contracts for public utility service with any utility, including Arkansas utilities, and there also can be no transmission of power at this time, the Commission is not prepared to approve Clean Line's CCN Application.

In sum, the Commission is not opposed to independent transmission construction and, in fact, strongly supports the improvement of the transmission system in this state as a means to lower energy costs for Arkansas ratepayers. As the Parties all acknowledge, the issue of certification of a transmission-only public utility is one of first impression in this State. Thus, the Commission's decision is based on that fact that it cannot grant public utility status to Clean Line based on the information about its current business plan and present lack of plans to serve customers in Arkansas. Without pre-judging any future plans

Clean Line may have or may bring before the Commission, the Commission denies Clean Line's requested CCN.

BY ORDER OF THE COMMISSION,

This 11th day of January, 2011.

Colette D. Honorable, Chairman

Olan W. Reeves, Commissioner

K. Rhude (Acting)
Jan Sanders
Secretary of the Commission

I hereby certify that this order, issued by the Arkansas Public Service Commission, has been served on all parties of record on this date by the following method:

___U.S. mail with postage prepaid using the mailing address of each party as indicated in the official docket file, or
_X_Electronic mail using the email address of each party as indicated in the official docket file.

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July 19, 2016

Kimberly D. Bose
Secretary
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, D.C. 20426

RE: Plains and Eastern Clean Line LLC and Plains and Eastern Clean Line Oklahoma LLC, Docket No. ER14-2070-___

Informational Report

Dear Secretary Bose:

On August 14, 2014, the Federal Energy Regulatory Commission (FERC or Commission) issued an order conditionally granting authorization to Plains and Eastern Clean Line LLC (PECL) and Plains and Eastern Clean Line Oklahoma LLC (PECL OK, and together with PECL, Applicant) to sell transmission service rights on a proposed high voltage direct current merchant transmission project and related facilities (Project) at negotiated rates (Order).[1] The Project is expected to originate in Texas County, Oklahoma and terminate in Shelby County, Tennessee.[2] Applicant hereby notifies the Commission of several updates to the Project information on file in the above-captioned

[1] Plains and Eastern Clean Line LLC and Plains and Eastern Clean Line Oklahoma LLC, 148 FERC ¶ 61,122 (2014). The authorization was made conditional to the Commission's acceptance of Applicant's rate schedule, as well as a filing disclosing the results of Applicant's capacity allocation process.

[2] As indicated in the petition underlying the Order, Applicant is planning to construct an AC collector system from the Project's Texas County converter station to points in the Oklahoma Panhandle region. The location of these lines will depend on the location of generators whose energy is transmitted by the Project, and may include facilities in the Texas Panhandle if there is sufficient customer interest.

docket. As explained below, the updates reported herein do not materially change the facts and circumstances that the Commission relied on in issuing the Order.

I. Department of Energy Participation Agreement

On March 25, 2016, the U.S. Department of Energy (DOE) announced that it would participate in the development of the Oklahoma and Arkansas portions of the Project pursuant to DOE's authority to promote electric transmission development under section 1222 of the Energy Policy Act of 2005.[3] In connection with the announcement, DOE executed a Participation Agreement with PECL OK and certain other affiliates of Clean Line Energy Partners LLC (Clean Line) (collectively, the Clean Line Entities)[4] that outlines the roles of DOE and the Clean Line Entities with respect to the Project facilities in Oklahoma (OK Facilities) and Arkansas (AR Facilities). Under the terms of the Participation Agreement, PECL OK will own the OK Facilities and DOE will own the AR Facilities. PECL OK and/or PECL will own the capacity on the Project and will have the exclusive right to market, use, and sell transmission services relating to such capacity subject to the Commission's open access transmission rules and policies.[5]

DOE's participation in the Project does not affect any of the factors that the Commission evaluated in granting negotiated rate authority to Applicant. Specifically, the Participation Agreement does not alter Applicant's financial responsibility for the Project. Applicant and its investors remain solely responsible for Project development and construction costs as well as operating costs. Because no government funding will be provided for the Project, Applicant retains all market risk for the Project's cost. Applicant will continue to follow the open solicitation and capacity allocation process previously described in this proceeding and will disclose the results of its customer selection and ranking process and bilateral negotiations to the Commission in one or more detailed post-allocation compliance filings. Further, Applicant has committed to turn over operational control of the Project to a regional transmission provider or third-party transmission provider upon completion of the Project. Therefore, DOE's

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[3] DOE will not participate in development of the Project facilities located in Tennessee. Applicant will separately develop all facilities from the eastern state line of Arkansas near the Mississippi River to the Project's terminus at the converter station in Shelby County, Tennessee. DOE also will not participate in the development of AC collector facilities in the Texas Panhandle, if any.

[4] The Participation Agreement was entered into by and among DOE and Plains and Eastern Clean Line Holdings LLC, Arkansas Clean Line LLC, Plans and Eastern Clean Line Oklahoma LLC, and certain other affiliates as set forth in the Participation Agreement. A copy of the Participation Agreement is available at http://energy.gov/sites/prod/files/2016/03/f30/Clean%20Line%20-%20Participation%20Agreement%20%20-%20EXECUTED%20VERSION%20%28dated%20March%2025....pdf.

[5] Applicant's ownership of the capacity on the OK Facilities and AR Facilities is subject to the terms of the Participation Agreement.

participation in the Project does not materially change Applicant's eligibility for negotiated rate authority.

II. Project Capacity

Applicant notifies the Commission that the Project will include an intermediate converter station in Pope County, Arkansas that will have the capacity to deliver up to 500 MW of power. In the petition underlying the Order (Petition), Applicant explained that the Project may include an intermediate converter station located in Arkansas. Likewise, in the Notice of Open Solicitation for Transmission Service (Notice) publicly announcing the commencement of the Project's open solicitation process on May 22, 2014, Applicant described the Project as including a proposed intermediate converter station in Arkansas that would have the capacity to deliver up to 500 MW of power.[6] The Notice was widely distributed through industry and stakeholder outlets and prominently posted on the Project's website. Thus, throughout the open solicitation process for the Project, potential customers have been on notice that Applicant contemplates offering service to Arkansas for up to 500 MW. Applicant commits to continue to publicize the availability of service to the Arkansas converter station.[7] Therefore, no potential customers have been or will be disadvantaged or harmed by Applicant's decision to proceed with offering to deliver up to 500 MW to Arkansas.

III. Upstream Ownership of Clean Line

Applicant informs the Commission that since the Order was issued, Clean Line has acquired a new upstream equity investor, Clean Grid Holdings LLC (Clean Grid).[8] Clean Grid is a subsidiary of Bluescape Resources Company LLC (Bluescape), a private independent energy holding company primarily focused on unconventional hydrocarbon opportunities and energy-related private equity investments. Bluescape is a seasoned energy investor, making and managing investments in the energy space in a variety of geographic areas, primarily in the United States. The Bluescape management team has substantial experience investing in and managing public utility assets, including transmission infrastructure and power plants.

Bluescape does not directly or indirectly own or control any other transmission facilities in the Project's relevant markets. Bluescape also does not directly or indirect own or control other barriers to market entry or have any incentive to withhold capacity on the Project. Accordingly, Applicant's affiliation with Bluescape does not affect Applicant's eligibility for negotiated rate authority.

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[6] A copy of the Notice was attached to the Petition as Attachment 1.

[7] The open solicitation process for the Project is ongoing and Plains and Eastern has not finalized any capacity allocation arrangements with customers.

[8] As explained in the Petition, PECL and PECL OK are wholly-owned indirect subsidiaries of Clean Line.

IV. Conclusion

Applicant respectfully submits that the information provided herein does not alter the facts and circumstances that the Commission relied on in granting negotiated rate authority in the Order. However, to the extent that the Commission believes that any new authorization is required in light of the foregoing information, Applicant requests that the Commission promptly notify it of the need to seek such authorization.

Please direct any questions regarding this notice to the undersigned.

Respectfully submitted,

/s/ Jessica C. Friedman
Jessica C. Friedman

Counsel to Applicant

cc: Official Service List