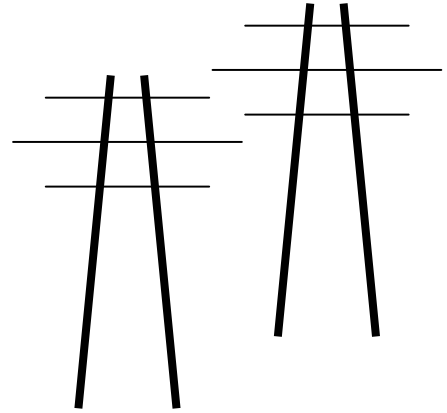


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RE: EIS Comment of Carol A. Overland
Plains and Eastern (Un)Clean Line Environmental Impact Statement
DOE EIS Docket: DOE/EIS-0486

Dear DOE Environmental Review Staff:

Thank you for the opportunity to comment on this EIS. I am filing this comment as an individual, attorney, and consultant with significant decades long experience with transmission regulatory proceedings and siting/routing dockets in various jurisdictions across the U.S., including my home state of Minnesota, and also New Jersey, Delaware, California, Colorado, Iowa and Wisconsin.

I appreciate the extension of time in which to submit comments, particularly as the hard copy did not arrive until after the original due date for comments, and I **GREATLY APPRECIATE** the DOE's provision of a hard copy to review.

PROCEDURAL COMMENTS

COMMENT 1: First, this DOE project merits special attention due to its origin as a "Section 1222" project, a section of US law that has not yet spawned a transmission project. This "EIS" precedes substantive review of the project, but thus far is the only aspect of review that has been made public, with opportunities for public participation. Substantive review has been alluded to on the DOE site, only after I'd raised questions, and this does not bode well for the public and due process rights. It is crucial that the substantive review be open and transparent, with notice of the substantive review provided to state and local governments, interested parties and the general public prior to commencement of any review activities.

COMMENT 2: On its site¹, the DOE now states that the NEPA and substantive non-NEPA review will be concurrent – and if this is true, where is the information regarding that non-NEPA review?

2. What Is the Process DOE will use to Review Applications Under the Section 1222 Program?

DOE will conduct two concurrent reviews for all complete applications received. DOE will conduct a review under the National Environmental Policy Act (NEPA), which will consider the impacts of the project on environmental, historic, cultural, and socioeconomic resources. DOE will also conduct due diligence on non-NEPA factors such as the project's technical and financial feasibility, and whether the project is in the public interest.

COMMENT 3: The DOE states that it will consider all criteria listed in Section 1222, but there are NO rules for Section 1222 review:

3. Besides NEPA, Which Factors Will DOE Consider in Making its Decision?

DOE will conduct a thorough review that includes making all required statutory findings. DOE will consider all criteria listed in Section 1222 of the Energy Policy Act of 2005, as well as all factors included in DOE's 2010 Request for Proposals.

There's also this choice non-response confirming that indeed, there are no rules under which to proceed with a Section 1222 project and review of that project:

13. Are There Section 1222 Implementing Rules and Regulations?

¹ <http://www.energy.gov/oe/section-1222-program-proposed-plains-eastern-clean-line-project-frequently-asked-questions>

The Section 1222 Program is managed pursuant to Section 1222 of the Energy Policy Act of 2005, as well as guidance issued in a June 10, 2010 Federal Register notice, 75 Fed. Reg. 32,940.

COMMENT 4: If there ARE rules for Section 1222 review, please provide ASAP and post on the DOE site.

COMMENT 5: How will the non-NEPA review occur and how will the public be notified? The DOE site also states:

5. How Can I Comment on the Proposed Plains & Eastern Project?

- Issues Not Addressed in the EIS: Before DOE conducts its review of the non-NEPA factors discussed above, the applicant will be required to submit further information and update its original application. Once DOE receives the updated information, and deems the application complete, it will provide notice that the application is available for public review through a notice in the Federal Register and an announcement on the [OE website](#). Publication of this notice in the Federal Register will begin a 45-day public comment period. The notice will describe how to comment on the application for the proposed project. All comments submitted during the comment period will be considered in the DOE's ultimate decision as to whether to participate in the proposed project under the Section 1222 Program.

COMMENT 6: There's been no announcement thus far, and if this review is "concurrent" as stated on the DOE site, where's the notice? Back to the DOE site, because a trip to [OE's website](#) reveals nothing about the non-NEPA application or revisions :

6. Where Can I Find the Application and Other Materials Related to the Proposed Project?

The NEPA-related materials (e.g., NOI, Scoping Summary, etc.) are posted on the [Plains & Eastern EIS website](#). The Draft EIS is posted on the Plains & Eastern EIS website and the [DOE NEPA website](#).

The application and other non-NEPA materials related to the proposed project are posted on [OE's website](#).

COMMENT 7: In trying to locate further information about the non-NEPA review process, I've made several inquiries about the DOE's Docket number, and finally was notified that information about this issue and the issues above were added to the DOE's website. Here's what's been provided on the docket number:

12. What Is the Docket Number for the Proposed Plains & Eastern Project?

No docket number has been established. DOE will make materials available on DOE's Office of Electricity Delivery and Energy Reliability website prior to the opening of the non-NEPA public comment process.

COMMENT 8: I am gravely concerned about the intersection and overlap of the government with this private "Clean Line" project, particularly in this time of excess electrical supply, low demand, and low market price. Some of this project extends across territory recently acquired by MISO, the system operator for the Midwest. You can observe the LMP online and get an idea just how glutted the market is. I recommend using this site as wallpaper for a while to get a feel for the electricity market.²

SPECIFIC EIS COMMENTS

COMMENT 9: The EIS is inadequate because the "No Action Alternative" analysis is insufficient – it is nonexistent. The EIS addresses the No Action Alternatives in section 2.4.1, p. 2-25 (cut and pasted into the Summary):

7 **2.4.1 No Action Alternative**

8 This Plains & Eastern EIS analyzes a No Action Alternative, under which DOE would not participate with the
9 Applicant in the Applicant Proposed Project or DOE Alternatives. Under the No Action Alternative, DOE assumes for
10 analytical purposes that the Project would not proceed and none of the potential environmental effects associated
11 with the Project would occur.

9a: There are unsubstantiated claims that this is a "Clean Line" but it is not. Construction of this line would create significant environmental impacts. The EIS must address impacts avoided by not building this transmission line.

9b: Use of this line would create environmental impacts as well, because electrons are not able to be separated out, "clean" from "unclean," and under FERC rules, the electric market may not discriminate regarding types of generation and must provide access to all. The EIS should address the potential for increased environmental damage, whether from construction of wind turbines, construction of turbines themselves and of wind generation projects, or whether from increased pollution of all types from other generation that could utilize the lines, such as gas and coal. If any percentage of these lines would be used by coal, it could provide access for existing and new coal plants to markets where coal plants may be shuttered. This would mean equal or increased coal generation, coal consumption, and coal pollution.

COMMENT 10: The EIS addresses the potential of taking of land by eminent domain to build this project. Section 2.1.3. The EIS states that:

If the Applicant is unable to acquire the necessary property interests from a landowner through a negotiated agreement, DOE may choose to acquire those property interests through a negotiated agreement for compensation. Where a negotiated agreement is not possible, DOE may in appropriate circumstances exercise the federal government's eminent domain authority to acquire the

² MISO LMP Contour Map: https://www.misoenergy.org/LMPContourMap/MISO_All.html

interests.

The applicant for this project is stated in the EIS as “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. EIS Introduction, p. 1-1. The EIS must address the nature of the Applicant business organization and use of eminent domain.

10a: These entities are not public service corporations. They are private business organizations, LLCs, the purpose of which is to generate profit.

10b: Private business organizations do not have the power of eminent domain.

10c: The DOE has no authority or right to acquire land, to exercise the power of eminent domain, for a private business organization for a private purpose.

COMMENT 11: The EIS is inadequate because the “Department of Energy Purpose and Need” does nothing to explain or describe the “Purpose and Need” of this project. EIS Section 1.1, p. 1-2. The only reference to “need” is that the “DOE needs to decide whether and under what conditions it would participate in the Application Proposed Project.”

11a: The EIS must explain the “need” for the project related to the DOE, the DOE’s explanation of why this project is “needed.”

COMMENT 12: The EIS is inadequate because it does not explain how or if the project could meet any of the statutory criteria of Section 1222, and only recites those criteria:

22 The statutory criteria from Section 1222 (42 USC 16421) include:

- 23 1. The proposed project
- 24 a. is located in an area designated under section 216(a) of the Federal Power Act (16 USC §824p(a)) and will
- 25 reduce congestion of electric transmission in interstate commerce, or
- 26 b. necessary to accommodate an actual or projected increase in demand for electric transmission capacity
- 27 2. is consistent with
- 28 a. transmission needs identified, in a transmission expansion plan or otherwise, by the appropriate
- 29 Transmission Organization (as defined in the Federal Power Act [16 USC 791a et seq.]), if any, or approved
- 30 regional reliability organization, and
- 31 b. efficient and reliable operation of the transmission grid
- 32 3. will be operated in conformance with prudent utility practice
- 33 4. will be operated by, or in conformance with the rules of, the appropriate Transmission Organization, if any, or if
- 34 such an organization does not exist, regional reliability organization; and
- 35 5. will not duplicate the functions of existing transmission facilities or proposed facilities which are the subject of
- 36 ongoing or approved siting and related permitting proceedings.

The EIS must address these statutory criteria as a part of “need” for the project.

COMMENT 13: The EIS is inadequate because it sets out additional criteria “that are not explicitly set forth in the statute:

1. Whether the project would be in the public interest
2. Whether the project would facilitate the reliable delivery of power generated by renewable resources
3. The benefits and impacts of the project in each state it traverses, including economic and environmental factors
4. The technical viability of the project, considering engineering, electrical, and geographic factors
5. The financial viability of the project

13a: The EIS must provide the basis and authority for these “criteria.”

13b: The DOE must provide opportunity for public input regarding other criteria that should be considered, and opportunity to comment on potential criteria.

13c: The DOE has no authority to conduct any Section 1222 review without rules for such review. There are none. The DOE must conduct a Section 1222 rulemaking.

COMMENT 14: USFWS is listed as a cooperating agency in the EIS. There is no Avian Protection Plan in the EIS. There is no mention that I can find of transmission line impacts on Bald and Golden Eagles, protected by the Migratory Bird Treaty Act and Bald and Golden Eagle Protection Act.

14a: The EIS is inadequate because there is no detailed review of potential impacts of transmission on eagles.

14b: The EIS is inadequate because there is no Avian Protection Plan in the EIS.

14c: The EIS is inadequate because there is no record of review by USFWS or any documentation of whether or not an Eagle Take Permit is recommended for this project.

COMMENT 15: The U.S. DOT is listed as a Cooperating agency. Each state DOT is also required to provide input and address impacts on state transportation use and needs. The EIS is inadequate because there is no US DOT and/or state DOT Policy/Policies of Accommodation between DOTs and transmission line owners/applicants.

COMMENT 16: The EIS is inadequate because it does not present a balanced explanation of magnetic fields and recommended levels of avoidance via the Precautionary Principle.

16a: Modeling results provided by the EIS (Appendix I) shows elevated levels far above 2 mG at RoW edge, whether based on a 200 foot or 150 foot RoW per Section 2.1.2.2.1 (100 – 75 feet from centerline), for example, ~25-42 times that 2 mG level:

| <-- DC MAGNETIC FIELD --> | | | | |
|---------------------------|----------|---------------------|--------------|--------------|
| LATERAL DISTANCE | | VERTICAL HORIZONTAL | | |
| (feet) | (meters) | TOTAL (mG) | COMP (mG) | COMP (mG) |
| -100.0 | -30.48 | 51.08 | 41.20 | -30.19 |
| -95.0 | -28.96 | 56.24 | 44.20 | -34.77 |
| -90.0 | -27.43 | 62.18 | 47.38 | -40.27 |
| -85.0 | -25.91 | 69.06 | 50.68 | -46.91 |
| -80.0 | -24.38 | 77.07 | 54.00 | -54.99 |
| -75.0 | -22.86 | 86.44 | 57.16 | -64.85 |

COMMENT 17: The EIS is inadequate because it does not address Fiber Optic issues.

17a: The DEIS should address safety issues associated with Fiber Optic, such as current running down the distribution in the case of a transmission fault, risk of fire, and risk of cyber

terrorism.

17b: The DEIS should address potential for leasing or sale of fiber optic capacity to others and whether that sale or lease would be deducted from cost and/or operating expense.

17c: The DEIS should address whether landowners would receive stream of payments or share of revenue of fiber optic capacity is sold or leased.

COMMENT 18: The DEIS is inadequate because it does not address Air Quality and Climate Change other than to state the words and “no unavoidable adverse impacts.” Section 2.8.3. As above, the transmission owners/applicants are not able to guarantee that the project would not be used for fossil fuel generated electricity, and under FERC rules cannot discriminate regarding generation fuel source and must instead serve whatever is on the grid. The EIS must address impact of increase of transmission capacity if varying levels of capacity are used by fossil fuel.

COMMENT 19: The EIS is inadequate because it does not address potential for environmental justice issues. Race and economic status are two categories of often impinged classes disproportionately affected by utility infrastructure. The EIS must contain an analysis of the impact of this project on these and other potential classes and demonstrate that a reasonable effort has been made to identify environmental justice issues related to this project.

COMMENT 20: The EIS is inadequate in that it does not address impacts of noise. Section 2.8.11. The EIS must specify how and where and to what degree noise exceedances would occur, by what parts of the system (i.e., lines, substation, transformers, corona), whether that violation can be avoided, what mitigation is proposed, and if mitigation is not possible, whether permit can be issued.

COMMENT 21: The EIS is inadequate because it dismisses and avoids important Transmission Planning issues. The EIS does not address the relationship between the economic basis of “need” for this project and the costs – this project is not part of the MISO planning studies

21a: The EIS does not provide the System Impact Studies, Feasibility Studies, or other required interconnection studies for review to determine what system upgrades may be required and the extent of environmental impacts of those system upgrades, or whether or not the subject transmission project could even be interconnected to the grid. These studies must be included in the FEIS.

21b: The EIS does not provide copies of executed transmission interconnection agreements, and the TVA interconnection facilities study is not expected to be completed for another year. No decision about impacts of this project can be analyzed, much less made, without this information.

21c: The EIS notes that “TVA’s Interconnection estimates that completion of all upgrades would take 8 years to complete after TVA completes the Facilities Study.” Section 2.5.2, p. 2-40 – 2-41. Yet in the same paragraph, the EIS states that there would be “few, if any, environmental impacts.” Further, that “TVA would likely evaluate potential impacts associated with construction and operations and maintenance of a new 500 kV AC transmission line under a separate NEPA review...” This is passing the buck for significant phased and connected actions, literally interconnected project, and is not acceptable under NEPA.

21d: The EIS is inadequate because it does not address the admitted 350 miles of transmission upgrades likely necessary.

21e: The EIS is inadequate because it dismisses potential for environmental impacts if facilities are to be upgraded. This assumption is without support.

I've run out of time and steam. There's a lot more to say...

Thank you for your consideration and the opportunity to comment on this project.

Very truly yours,

A handwritten signature in cursive script that reads "Carol A. Overland". The signature is written in black ink and is positioned above the typed name.

Carol A. Overland
Attorney at Law