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

October 28, 2015

Good morning Chairman Fleming, Ranking Member Huffman and Members of the Subcommittee. Please accept this statement on behalf of the Department of Energy concerning H.R. 3062 and Section 1222 of the Energy Policy Act of 2005. I am sorry that a previously scheduled engagement prevents me from testifying in person.

Background and Overview of the OE Mission

The Office of Electricity Delivery and Energy Reliability (OE) leads the Department of Energy's (DOE) efforts to ensure a resilient, reliable, and flexible electricity system. OE accomplishes this mission through research, partnerships, facilitation, modeling and analytics, and emergency preparedness. Through this mission, OE drives electric grid modernization and resiliency in the energy infrastructure. Specifically, OE's National Electricity Delivery Division (NED) coordinates electric transmission-related activities for OE.

As noted in the April 2015 DOE Quadrennial Energy Review, transmission development and planning activity has been on the rise since the early 2000s, reversing a decades-long decline following the historic build-out of the transmission system in the mid-20th century. Drivers of recent investment increases include new technologies for improved system reliability; development of new infrastructure to ease congestion; interconnection of new sources of generation, including renewable resources; and support for production of natural gas. Looking forward over the next several years, a high level of transmission investment is expected to replace aging infrastructure; maintain system reliability; facilitate competitive wholesale power markets; and aid regions in meeting their public policy objectives.

Overview of Section 1222 of the Energy Policy Act (EPAct) of 2005

The Energy Policy Act of 2005, "EPAct 2005", was enacted in 2005 and Congress included Section 1222 (42 U.S.C. § 16421) as part of a package of reforms intended to advance the development of transmission infrastructure in the United States.

Pursuant to Section 1222, the Secretary of Energy, acting through the Southwestern Power Administration (Southwestern), the Western Area Power Administration (Western), or in partnership with other entities has the authority to design, develop, construct, operate, maintain, or own two types of projects: (1) electric power transmission facilities and related facilities needed to upgrade existing transmission facilities owned by Southwestern or Western, or (2) new electric power transmission facilities and related facilities located within any state in which Southwestern or Western operates. In carrying out either type of proposed project, the Secretary may accept and use funds contributed by third parties for the purpose of executing the proposed project. To qualify under Section 1222, transmission projects must meet certain requirements for new facilities. Specifically, Section 1222 requires that the Secretary, in consultation with the applicable Power Marketing Administration Administrator, determine that a proposed project: (1)(A) is located in an area designated under section 216(a) of the Federal Power Act and will reduce congestion of electric transmission in interstate commerce; or (B) is necessary to accommodate an actual or projected increase in demand for electric transmission capacity; (2) is consistent with—(A) transmission needs identified…by the appropriate Transmission Organization…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…or regional reliability 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.

The Department of Energy's (DOE) Section 1222 Program is administered by OE in consultation with Western and Southwestern.

Review of the Proposed Plains and Eastern Clean Line Project

DOE undertakes a thorough review of possible projects under this authority. The only project DOE is currently considering under Section 1222 of EPAct 2005 is the Plains and Eastern Clean Line project proposed by Clean Line Energy Partners, LLC (referred to as "the Applicant Proposed Project"). The Applicant Proposed Project would include an overhead +/- 600 kV high voltage direct current (HVDC) electric transmission system and associated facilities with the capacity to deliver approximately 3,500 MW, primarily from renewable energy generation facilities in the Oklahoma Panhandle region to load-serving entities in the Mid-South and Southeast, via an interconnection with the Tennessee Valley Authority. Major facilities associated with the Applicant Proposed Project consist of converter stations in Oklahoma and Tennessee, an approximate 720-mile HVDC transmission line, an alternating current (AC) collection system, and access roads.

In addition to the Applicant Proposed Project, in response to public comments, DOE is identifying and analyzing potential environmental impacts for several alternatives, including 30 alternative routes for the HVDC transmission line and adding a converter station in Arkansas.

Prior to making a determination whether or not to participate in the Applicant Proposed Project, DOE must complete the National Environmental Policy Act (NEPA) review process. In addition, DOE must determine whether the proposed project meets the requirements of Section 1222 and must evaluate the Applicant Proposed Project in light of the factors identified in DOE's 2010 Federal Register Notice Request for Proposals. The Federal Register Notice factors include consideration of the project's technical and financial feasibility, and whether the project is in the public interest.

NEPA Review

The Draft Environmental Impact Statement (EIS) for the Plains and Eastern Clean Line project was made available for public comment on December 19, 2014. The comment period was originally scheduled to end on March 19, 2015, but DOE extended it to April 20, 2015, in response to requests. DOE held four weeks of public hearings from January 26 through February 19, 2015—a total of 15 hearings in Oklahoma, Texas, Arkansas, and Tennessee.

With the public comment period on the Draft EIS closed, DOE is considering the comments received and is preparing a Final EIS, which is scheduled to be released in November 2015. No sooner than 30 days after the Final EIS is published, DOE may issue a Record of Decision (ROD).

Non-NEPA Review

In December 2014, DOE requested additional information from the applicant to supplement and update its original application. This additional information is intended to help DOE conduct its due diligence on certain factors, including technical and financial feasibility. Similar information is routinely requested in other types of projects, such as Presidential Permits for cross-border transmission projects. This request for information and review is separate from DOE's review under NEPA, which considers the project's environmental, historic, cultural, and socioeconomic impacts. The updated application and other documentation were made available for public comment from April 28, 2015 until July 13, 2015. The application and documentation remain available on the DOE website.

Public Comments

DOE received approximately 2,650 public comment documents from individuals, groups, tribal governments, and Federal, state, and local agencies during the public comment period on the Draft EIS. In addition, approximately 270 commenters spoke at the 15 public hearings on the DEIS.

DOE also received 11,191 public comments documents during the public comment period on the Non-NEPA review.

The public comment documents on the Draft EIS are available at **www.plainsandeasterneis.com.**

The public comment documents on the non-NEPA review are available at **http://www.energy.gov/oe/downloads/plains-eastern-clean-line-transmission-line-part-2-application-comments-received**

Current Status of DOE's Review of the Proposed Plains and Eastern Project

DOE has been working in consultation with Southwestern and a representative of Western to review the Applicant Proposed Project. DOE and Southwestern are reviewing all application materials and public comments from the NEPA and non-NEPA public comment periods. A Final EIS is scheduled to be released in November 2015. DOE could issue a ROD no sooner than 30 days after the Final EIS is published. If DOE issues a ROD, the ROD will state whether DOE will participate in the Applicant Proposed Project, after considering all factors, and if so, under what conditions. All comments submitted during either public comment period will be considered in DOE's ultimate decision as to whether to participate in the Applicant Proposed Project under Section 1222.

H.R. 3062, "The Assuring Private Property Rights Over Vast Access to Land Act" or the "APPROVAL ACT"

At this time, the Administration does not have a position on H.R. 3062. Section 2 of H.R. 3062 would amend Section 1222 of EPAct 2005 by inserting a new subsection that the Secretary of Energy, Southwestern Power Administration, and Western Area Power Administrations may not "carry out any project under this Section through the use of eminent domain, unless the eminent domain authority is explicitly authorized by: (1) the Governor and the head of each applicable public utility commission or public service commission in the affected state; and (2) the head of the governing body of each Indian tribe the land of which would be affected." Further, the bill requires the Secretary, to the maximum extent possible, to site a project carried out under Section 1222 of EPAct 2005 on an existing Federal right-of-way or on Federal land managed by the Bureau of Land Management, the Forest Service, the Bureau of Reclamation, or the Army Corps of Engineers.

We note that H.R. 3062 is unusual insofar as it would delegate approval over the exercise of federal authority to individual state or Tribal officers. It would also be highly unusual to subject a Federal Power Marketing Administration to state control apart from the application of generally applicable state laws for which there has been a waiver of sovereign immunity.

The projected impact of H.R. 3062 on the Department's ongoing review is unknown at this time. 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. For example, in

April 2012, then-Deputy Secretary of Energy Daniel Poneman sent the applicant a letter stating that DOE was willing to start the NEPA review for the Applicant Proposed Project. The letter made clear that if DOE were to ultimately agree to participate in the Applicant Proposed Project, several conditions would need to be met. One of those conditions was that "eminent domain authority would be used only as a last resort after negotiations in good faith have concluded with all affected landowners."

Conclusion

Thank you Chairman Fleming, Ranking Member Huffman, and Members of the Committee for the opportunity to submit my written comments on H.R. 3062 and Section 1222 of EPAct 2005.