

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

May 5, 2015

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

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DOCKET NO.
14-00036

ORDER GRANTING CERTIFICATE OF
PUBLIC CONVENIENCE AND NECESSITY

This matter came before Chairman Herbert H. Hilliard, Director Kenneth C. Hill and Director Robin Bennett of the Tennessee Regulatory Authority (the “Authority” or “TRA”), the voting panel assigned to this docket, at a regularly scheduled Authority Conference held on January 12, 2015, to consider the *Petition for Certificate of Public Convenience and Necessity* (“*Petition*”) filed by Plains and Eastern Clean Line LLC (“P&E” or the “Company”) on April 4, 2014.

THE PETITION AND SUPPORTING DOCUMENTS

P&E is a limited liability company organized under the laws of the State of Arkansas, and is duly qualified to do business in Tennessee. P&E is a subsidiary of Plains and Eastern Clean Line Holdings, LLC, a Delaware limited liability company, which is a subsidiary of Clean Line Energy Partners LLC (“Clean Line”), a Delaware limited liability company.

On April 4, 2014, P&E filed the *Petition* requesting a Certificate of Public Convenience and Necessity (“CCN”) to construct an interstate electric transmission line in Tennessee pursuant to Tenn. Code Ann. § 65-4-208, and to operate as a public utility providing electric transmission

service in Tennessee pursuant to Tenn. Code Ann. § 65-4-201. In support of its *Petition*, P&E submitted the pre-filed testimony of Mr. Michael Skelly, President and Chief Executive Officer of Clean Line and President of P&E; Mr. Mario Hurtado, Executive Vice President of Clean Line; Dr. Anthony Wayne Galli, P.E., Executive Vice President – Transmission and Technical Services of Clean Line; Mr. David Berry, Executive Vice President – Strategy and Finance of Clean Line; and Mr. Jason Thomas, Environmental Director of Clean Line.

According to the *Petition*, the Plains & Eastern Clean Line (“Plains & Eastern Project”) is an approximately 700-mile, +/-600 kilovolt high voltage direct current (“HVDC”) electric transmission system and associated facilities, with capacity to deliver approximately 3,500 megawatts from renewable energy generation facilities in Oklahoma to load serving entities in Tennessee, the Mid-South and the Southeast.¹ The Tennessee portion of the Plains & Eastern Project consists of an approximately 17-mile HVDC transmission line in southern Tipton County and northern Shelby County and an alternating current/direct current converter station, which will interconnect with the Tennessee Valley Authority’s (“TVA”) Shelby substation. P&E asserts the transmission line will provide low-cost wind power sourced from the Oklahoma Panhandle that will be available for purchase by TVA and other wholesale customers.²

P&E is not requesting permission to provide retail services in Tennessee, but rather only wholesale transmission services.³ P&E expects that its customers will consist of wind energy producers and wholesale buyers of electricity.⁴ Because P&E will be engaged in the provision of interstate wholesale transmission services, the allocation of transmission capacity and rates for its wholesale transmission services are subject to the jurisdiction of the Federal Energy Regulatory

¹ *Petition*, p. 3 (April 4, 2014).

² *Id.* at 3-4.

³ Michael Skelly, Pre-filed Direct Testimony, p. 14 (April 4, 2014).

⁴ *Id.* at 15.

Commission (“FERC”). FERC has granted P&E’s application for authorization to sell wholesale transmission services at negotiated rates and for related relief.⁵

In its *Petition*, P&E requests the Authority to waive its Rule 1220-4-01-.11 requiring the use of the Uniform System of Accounting for utilities as long as it maintains its books and records in accordance with FERC’s Uniform System of Accounts, as set forth in 18 C.F.R. Part 101.⁶

P&E submits the background and experience of its senior management team in support of its managerial qualifications. According to the Company, the management team of P&E and its ultimate parent company, Clean Line, includes personnel who have managed, built, operated and financed projects in both the renewable and traditional energy sectors and developed energy policy at both state and national levels.⁷ Management, operating and technical staffing for the Plains & Eastern Project will be maintained by Clean Line, rather than at P&E.⁸

In support of its technical qualifications, the Company states that Clean Line and P&E will contract with experienced project management, engineering, right-of-way acquisition, and electrical construction firms to design, develop and construct the Plains & Eastern Project. P&E, along with these firms, will place sufficient maintenance resources along the route of the transmission line to ensure timely responses to any operational or service issues.⁹

P&E states that it will engage in project-specific financing for the construction of the Plains & Eastern Project. Clean Line’s current equity investors are providing capital for the development and permitting work for the Plains & Eastern Project. Later, P&E will enter into long-term contracts with customers for transmission capacity and then issue project-specific debt secured by the revenue stream from these contracts to raise additional capital for completion of the project.

⁵ *Id.* at 14-15.

⁶ David Berry, Pre-filed Direct Testimony, p. 47 (April 4, 2014).

⁷ *Petition*, p. 9 (April 4, 2014).

⁸ *Id.* at 11.

⁹ *Id.* at 12.

Clean Line's existing investors may make additional equity investment as well.¹⁰ P&E submitted financial statements for P&E and Clean Line in support of its financial qualifications.

According to P&E, the public interest and the public convenience and necessity will be served by the Plains & Eastern Project. P&E asserts that the construction of an interstate transmission line to Tennessee from the Oklahoma Panhandle will foster the development of wind generation facilities and serve the demand for electricity from renewable sources in Tennessee, the Mid-South and the Southeast.¹¹ Further, the Plains & Eastern Project will increase competition in renewable power supply in Tennessee and make available more affordable renewable power to TVA, distributors of TVA power and utilities and their customers.¹² P&E also states that the Plains & Eastern Project will bring numerous and substantial public benefits to Tennessee, including low-cost, clean energy; cleaner air and water; over \$300 million of direct investment in infrastructure; new construction and operations jobs; and property tax and other revenues.¹³

Finally, P&E states that the Company will comply with all TRA policies, rules and orders applicable to its operations in Tennessee.¹⁴

THE HEARING

The Hearing in this matter was held before the voting panel on November 4, 2014, as duly noticed by the Hearing Officer on October 24, 2014.¹⁵ Counsel appearing on behalf of P&E were Mr. Larry L. Cash, Esq. and Mr. Mark W. Smith, Esq., Miller & Martin PLLC, 1000 Volunteer Building, 832 Georgia Avenue, Chattanooga, TN 37402. At the Hearing, Company witnesses Mr. Skelly, Mr. Hurtado, Dr. Galli, Mr. Thomas and Mr. Berry ratified and summarized their pre-filed

¹⁰ *Id.*

¹¹ *Id.* at 8.

¹² *Id.*

¹³ *Id.* at 8-9.

¹⁴ Michael Skelly, Pre-filed Direct Testimony, p. 6 (April 4, 2014).

¹⁵ At the regularly scheduled Authority Conference held on May 5, 2014, the voting panel assigned to this docket voted unanimously to convene a contested case and appoint a Hearing Officer to prepare the case for a hearing. *See Order Convening a Contested Case and Appointing a Hearing Officer* (May 13, 2014).

testimony and were subject to questioning before the panel. Members of the public present at the Hearing presented their comments on the matter.¹⁶ No person or entity sought to intervene either before or during the Hearing.

APPLICABLE STATUTES

Tenn. Code Ann. § 65-4-208(a) sets forth the TRA's authority over interstate transmission lines by requiring entities to obtain a CCN before constructing such facilities. Specifically, the statute provides:

(a) Notwithstanding any other provision of law, no person, firm or corporation not engaged on March 22, 1955, in the business of generating, transmitting, distributing, or furnishing electric power shall extend or construct transmission or distribution lines or other works into or within the state, directly or indirectly enter the state, for the purpose of delivering within the state electric power generated at a point or points outside the state, unless such person, firm or corporation shall have first submitted its plans for such extension, construction or entry to the authority and shall have obtained from the authority a certificate of public convenience and necessity covering the same. The authority shall deny such certificate if, after a hearing, the authority cannot affirmatively establish that the granting of such certificate would serve the public interest.

In order for an entity to obtain a CCN from the Authority to operate as a public utility, the requirements of Tenn. Code Ann. § 65-4-201 must be met. Tenn. Code Ann. § 65-4-201(a) states:

No public utility shall establish or begin the construction of, or operate any line, plant, or system, or route in or into a municipality or other territory already receiving a like service from another public utility, or establish service therein, without first having obtained from the authority, after written application and hearing, a certificate that the present or future public convenience and necessity require or will require such construction, establishment, and operation, and no person or corporation not at the time a public utility shall commence the construction of any plant, line, system or route to be operated as a public utility, or the operation of which would constitute the same, or the owner or operator thereof, a public utility as defined by law, without having first obtained, in like manner, a similar certificate; provided, however, that this section shall not be construed to require any public utility to obtain a certificate for an extension in or about a municipality or territory where it shall theretofore have lawfully commenced operations, or for an extension into territory, whether within or without a municipality, contiguous to its route, plant, line, or system, and not

¹⁶ The Authority acknowledges and appreciates the hundreds of comments filed in this docket from individuals and groups both in support of and against the Plains & Eastern Project.

therefore receiving service of a like character from another public utility, or for substitute or additional facilities in or to territory already served by it.

FINDINGS AND CONCLUSIONS

At the regularly scheduled Authority Conference held on January 12, 2015, the panel considered the *Petition*. Based upon review and consideration of the evidence presented, the panel voted unanimously to grant the *Petition*, based on the following findings:

1. Plains and Eastern Clean Line LLC is a limited liability company organized under the laws of the State of Arkansas, and is duly qualified to do business in Tennessee. The address of P&E's corporate office is 1001 McKinney Street, Suite 700, Houston, Texas 77002.

2. The Plains & Eastern Project in Tennessee, as described in the *Petition* and testimony by Company witnesses, requires P&E to obtain a Certificate of Public Convenience and Necessity from the Authority pursuant to Tenn. Code Ann. §§ 65-4-208 and 65-4-201.

3. P&E has submitted sufficient evidence to demonstrate that it possesses the requisite managerial, financial and technical abilities to build and operate the proposed transmission line.

4. P&E has submitted sufficient evidence to demonstrate that there is a public need for the Plains & Eastern Project in Tennessee.

5. P&E has submitted sufficient evidence to affirmatively establish that the granting of the Certificate of Public Convenience and Necessity will serve the public interest.

6. P&E has represented that it will comply with the Authority's policies, rules and orders.

7. P&E has submitted sufficient evidence to demonstrate that it meets the requirements of Tenn. Code Ann. §§ 65-4-208 and 65-4-201 for the issuance of a Certificate of Public Convenience and Necessity.

8. To the extent that P&E is engaged in interstate commerce subject to regulation by a federal agency, the exception to the Authority's jurisdiction set forth in Tenn. Code Ann. § 65-4-103 applies.

9. The requirement that P&E use the Uniform System of Accounts required by Tenn. Code Ann. § 65-4-111 and TRA Rule 1220-4-1-.11 is waived for as long as the Company maintains its books and records in accordance with the FERC's Uniform System of Accounts set forth in 18 C.F.R. Part 101.

In addition, the panel acknowledged that there are environmental studies pending that may impact the final route for the proposed transmission line. Therefore, the panel voted unanimously to require any reports issued by the Department of Energy, or other environmental reports issued by any other state or federal agency related to the Plains & Eastern Project to be filed with the Authority. The panel also instructed P&E to file an amendment to the CCN if the final transmission line route in Tennessee, as filed with the *Petition*, is altered. Further, the panel voted unanimously to require P&E to file semi-annual reports with the Authority, beginning on July 1, 2015, regarding the overall status of the Plains & Eastern Project in Tennessee, including any agreements with investors, interconnection agreements with the Tennessee Valley Authority, easements with property owners, and any modifications in the route as filed with the *Petition*.

IT IS THEREFORE ORDERED THAT:

1. The *Petition for Certificate of Public Convenience and Necessity* filed by Plains and Eastern Clean Line LLC pursuant to Tenn. Code Ann. §§ 65-4-208 and 65-4-201 is granted.

2. Any reports issued by the Department of Energy, or other environmental reports issued by any other state or federal agency, related to the Plains & Eastern Project in Tennessee shall be filed with the Authority.

3. Plains and Eastern Clean Line LLC shall file semi-annual reports with the Authority beginning on July 1, 2015, regarding the overall status of the Plains & Eastern Project in Tennessee, including any agreements with investors, interconnection agreements with the Tennessee Valley Authority, easements with property owners, and any modifications in the route as filed with the *Petition*. If the final transmission line route in Tennessee as filed with the *Petition* is altered, Plains and Eastern Clean Line LLC shall file a petition with the Authority requesting to amend its Certificate of Public Convenience and Necessity.


4. The requirement that Plains and Eastern Clean Line LLC use the Uniform System of Accounts, as set forth in Tenn. Code Ann. § 65-4-111 and TRA Rule 1220-4-1-.11, is waived for as long as Plains and Eastern Clean Line LLC maintains its books and records in accordance with the Federal Energy Regulatory Commission's Uniform System of Accounts Prescribed for Public Utilities and Licensees Subject to the Federal Power Act, as set forth in 18 C.F.R. Part 101.

5. Any party aggrieved by the Authority's decision in this matter may file a Petition for Reconsideration with the Authority within fifteen days from the date of this Order.

6. Any party aggrieved by the Authority's decision in this matter has the right to judicial review by filing a Petition for Review in the Tennessee Court of Appeals, Middle Section, within sixty days from the date of this Order.

Chairman Herbert H. Hilliard, Director Kenneth C. Hill and Director Robin Bennett concur.

ATTEST:



Earl R. Taylor, Executive Director