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BEFORE THE
ARKANSAS PUBLIC SERVICE COMMISSION

FILED

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

TESTIMONY

OF

M. SHAWN McMURRAY

ON BEHALF OF

THE ARKANSAS ATTORNEY GENERAL

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October 19, 2010

ARKANSAS PUBLIC SERVICE COMMISSION
DOCKET NO. 10-041-U

TESTIMONY OF M. SHAWN McMURRAY

1 **Q:** Please state your name, business affiliation and address.

2 A. I am M. Shawn McMurray. I am Senior Assistant Attorney General in charge of the
3 Consumer Utilities Rate Advocacy Division ("CURAD") of the Arkansas Attorney
4 General's Office. My business address is 323 Center Street, Suite 400, Little Rock, AR
5 72201.

6 **Q.** Please provide your background and qualifications.

7 A. I have been in charge of utilities at the office of the Attorney General since April 1996. I
8 received a B.A. degree with Honors from Louisiana State University in December 1977,
9 where I was a member of Phi Beta Kappa, and I received my J.D. degree from
10 Georgetown University Law Center in 1982. Since I began work for the Attorney
11 General, I have attended numerous training programs, seminars and forums dealing with
12 regulated utilities.

13 After graduation from Georgetown, I was engaged in the private practice of law in New
14 Orleans from 1982 through 1992, until I joined the Attorney General's Office as
15 Assistant Attorney General in January 1993. Since joining the office in the utilities
16 section, I have represented the interests of Arkansas utility customers in proceedings
17 before the Arkansas Public Service Commission and other administrative agencies and
18 courts. I have also assisted the Attorney General in working with the Arkansas General
19 Assembly and its committees on utility matters. I have handled and supervised many
20 utilities proceedings.

21 **Q.** What is the purpose of your testimony?

22 A. I am appearing on behalf of the Consumer Utilities Rate Advocacy Division of the
23 Arkansas Attorney General's Office ("CURAD" or "the AG"). I will present CURAD's
24 positions and recommendations in regard to Plains and Eastern Clean Line LLC's
25 ("Clean Line") application for a Certificate of Public Convenience and Necessity

1 ("CCN") that will allow it to operate as a public utility and for declarations that certain
2 statutes are inapplicable to Clean Line's business.

3 **Q: What is your recommendation in this docket?**

4 A: I recommend that the Commission defer consideration of Clean Line's requested CCN
5 until Clean Line applies for a CECPN. At that point, all issues, including the matter of
6 public interest, can be resolved in one proceeding. Alternatively, if the Commission
7 decides to grant a CCN, it should narrowly tailor any declarations of statutory
8 inapplicability to limited, definite facilities and operational plans, find Ark. Code Ann. §
9 23-4-102 applicable to Clean Line's business, and include a statement explicitly denying
10 Clean Line a present right of eminent domain.

11 **Q: Why do you think that the Commission should defer consideration of Clean Line's**
12 **request?**

13 A: Clean Line has a business plan, an LLC, and a management team, but it does not own or
14 operate any facilities or equipment in Arkansas. It cannot yet act as a public utility. It has
15 general plans to act as a public utility, but its request is premature and it does not appear
16 to meet the legal qualifications for a public utility.

17 **Q: Why should the Commission decide Clean Line's CCN and CECPN requests at the**
18 **same time?**

19 A: Although Clean Line will not be immediately ready to operate as a public utility at the
20 time of a CECPN proceeding, its plans will be sufficiently firm that the Commission can
21 make a decision at that time on whether certain statutes are applicable to Clean Line's
22 business. Also, it will be much easier to tell if the project will be in the public interest. On
23 the other hand, deferring a CCN determination until after the CECPN would subject
24 Clean Line to excessive regulatory uncertainty.

25 **Q: Do you believe that Clean Line's plans are in the public interest?**

26 A: Clean Line proposes to build a major utility facility that will run across the state, and will
27 probably require eminent domain to establish this corridor. Eminent domain is only
28 appropriate when it is in the public interest to use the procedure to take private property
29 and compensate its owner. Such a determination is premature at the present time. Clean

1 Line has not provided concrete evidence of how transmitting this power across Arkansas
2 might benefit Arkansas ratepayers, especially since Clean Line proposes to buy power
3 west of Arkansas, and sell power east of Arkansas. As Clean Line's testimony points out,
4 Arkansas may see some indirect benefits in the form of general support for wind power
5 and possible lowering of wholesale electricity costs. However, if none of the power is
6 sold in Arkansas, there will be no direct benefits. I believe that the best course of action is
7 to wait for more definite plans to determine if Clean Line's plans are really in the public
8 interest.

9 **Q: Do you oppose Clean Line's general plans as filed in this docket?**

10 A: No. I agree with Clean Line that there is a general need for additional transmission
11 capacity from areas with high potential for wind energy to load centers. It also appears
12 that High Voltage Direct Current transmission is a good way to move large amounts of
13 electricity one way between two distant points. I have no reason to doubt Clean Line's
14 management team's ability to complete the project or operate the transmission lines.

15 **Q: How might this proceeding impact future proceedings?**

16 A: As Clean Line has admitted, it will require a Certificate of Environmental Compatibility
17 and Public Need ("CECPN") before it can construct its planned facility. In light of
18 *Hempstead County Hunting Club v. Ark. Pub. Serv. Comm'n* the AG believes that all
19 parties should be cautious in how they decide certain issues or make decisions that will
20 need to be made in a CECPN proceeding. The Arkansas Supreme Court has made it clear
21 that all decisions and determinations in whether to grant or deny a CECPN must be made
22 in one proceeding. Because of that, determinations of public interest, environmental
23 impact, or economic effects may have to be re-litigated in a later CECPN proceeding.

24 **Q: Do you believe that the Commission needs to avoid any statement that might touch
25 on matters relevant to a CECPN proceeding?**

26 A: No. Some guidance and general sense of the Commission's intent towards the project
27 may be helpful to Clean Line as it decides how to proceed with its future business plans. I
28 believe that all parties need to be cautious after *Hempstead County*.

1 **Q: What is your opinion of Clean Line's request to declare certain statutes**
2 **inapplicable?**

3 A: Clean Line requests declarations of statutory inapplicability that will apply to its business
4 from this point forward. I do not believe that the Commission should grant Clean Line's
5 request on the basis of the information before it in this docket. Once Clean Line has
6 definite, specific plans, then consideration of what statutes will apply to those specific
7 plans is appropriate. Even then, any declaration of statutory inapplicability should be
8 narrowly tailored to operation of specific facilities, and subject to change if Clean Line's
9 business plan changes. In any case, the Commission should find Ark. Code Ann. § 23-4-
10 102 applicable to Clean Line's business.

11 **Q: Is there any other action the Commission should take if it grants Clean Line a**
12 **CCN?**

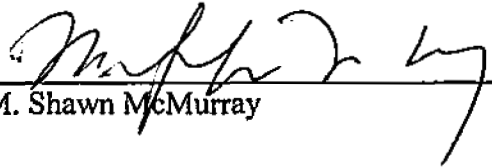
13 A: If the Commission grants Clean Line a CCN, it should include an explicit statement that
14 Clean Line has no present right of eminent domain.

15 **Q: Does this conclude your testimony?**

16 A: Yes, it does.

CERTIFICATE OF SERVICE

I, M. Shawn McMurray, do hereby certify that on the 19th day of October, 2010, I provided a copy of the above and foregoing Testimony to all parties by electronic mail, or by first class mail, postage prepaid.



M. Shawn McMurray