

***EL-1 Resolution Opposing DOE's Use of Section 1222 of the Energy Policy Act
of 2005 to Circumvent State Siting Laws and Regulations***

WHEREAS, Section 1222 of the 2005 Energy Policy Act authorizes the U.S. Department of Energy (DOE), acting through the Western Area Power Administration (WAPA) or the Southwestern Power Administration (SWPA), to “design, develop, construct, operate, maintain, or own, or participate with other entities in designing, developing, constructing, operating, maintaining, or owning, a new electric power transmission facility” ... “located within any State in which WAPA or SWPA operates,” under certain conditions; *and*

WHEREAS, Provision “(d) Relationship to Other Laws” of Section 1222 states that “Nothing in this section affects any requirement of ... (2) any Federal or State law relating to the siting of energy facilities; or (3) any existing authorizing statutes;” *and*

WHEREAS, On March 25, 2016, the DOE announced its plan to participate in the Plains and Eastern Line proposed by Clean Line Energy Partners LLC, and said that it would own those project facilities to be built in the State of Arkansas; *and*

WHEREAS, Also on March 25, 2016, the DOE published its “Summary of Findings In re Application of Clean Line Energy Partners LLC Pursuant to Section 1222 of the Energy Policy Act of 2005;” *and*

WHEREAS, In those findings the DOE stated that the DOE is authorized to condemn property for a Section 1222 project; *and*

WHEREAS, DOE has stated that it does not plan to request a site permit from the State of Arkansas but will instead rely on the federal Condemnation Act, which it says authorizes DOE to exercise eminent domain authority over any property so long as DOE has the legal authority to acquire the property, and so long as the project will constitute a public use; *and*

WHEREAS, NARUC has a long-standing position that the siting of electric transmission facilities should be subject to the exclusive jurisdiction of the States, notwithstanding the limited “backstop” siting provision in Section 1221 of the Energy Policy Act of 2005 (which NARUC opposed); *and*

WHEREAS, Various parties have raised legal challenges to the Plains and Eastern Line, including challenges to DOE's decision to circumvent the State of Arkansas's transmission siting requirements; *now, therefore, be it*

RESOLVED, That the Board of Directors of the National Association of Regulatory Utility Commissioners, convened at its 2017 Winter Committee Meetings in Washington, D.C., authorizes its Staff to take all appropriate and necessary actions to challenge DOE's circumvention of State siting laws in the pursuit of projects pursuant to Section 1222 of the Energy Policy Act of 2005.

Sponsored by the Committee on Electricity

Adopted by the NARUC Board of Directors February __, 2017