While the Houston-based developer has said little lately on the status of the $2.5 billion project, Mario Hurtado, a Clean Line co-founder and executive vice president for development, said the relative quiet shouldn’t be mistaken for lack of progress.

The company has agreements for nearly 60 percent of the right-of-way easements needed for the line across Oklahoma and Arkansas. Survey work on the right of way has come along at an equivalent pace, and Clean Line has major permits it needs from the Army Corps of Engineers.

While not yet ready to begin construction, Hurtado said the next big milestone isn’t far off, and Clean Line has turned its focus to finding key customers.

“We’ve been at it for a while, and we’re very close to the finish line,” he said.

Much is at stake depending on how the Plains and Eastern saga plays out — for the company, which has been developing the project since 2009; for investors; for landowners with property along the 700-mile path; and wind developers looking for a way to export energy.

Unlike myriad other battles over transmission development, this one also touches on a growing tension between the role of states and the federal government in overseeing energy infrastructure. In particular, it hinges on a previously untested provision in the Energy Policy Act of 2005 that enables the federal government to participate in private energy infrastructure development.

Unlike interstate natural gas pipelines, where the federal government has had siting authority since the 1930s, electric transmission siting historically has been subject to state jurisdiction.

But Section 1222 of the Energy Policy Act allows the federal government to participate in private energy infrastructure development.

The Obama administration’s DOE agreed to participate in the Plains and Eastern project under Section 1222 in March 2016.
"The question is: How much authority did Congress give the DOE to override the states that said no to the project?" said Alexandra Klass, a law professor at the University of Minnesota.

**Challenges**

It is a question that may soon be answered by a federal court.

Two groups representing about 100 Arkansas landowners filed a lawsuit against DOE and the Southwestern Power Administration last year in an effort to pull the plug on the project. A federal judge in Little Rock heard arguments during a motion hearing in the case last month, and a decision is expected soon.

The lawsuit claims DOE exceeded its statutory authority under Section 1222 and didn't give affected landowners adequate opportunity to participate in the process.

Jordan Wimpy, a lawyer representing the landowner groups Downwind LLC and Golden Bridge LLC, didn't return an email seeking comment. Representatives of the groups couldn't be reached yesterday.

But in their complaint, the groups called the process a "stunning example of federal overreach" in which DOE will participate by exercising eminent domain to condemn private properties.

Arkansas' congressional delegation, too, has worked to block the project. Legislation was filed each of the past two years in Congress that would require projects with federal participation to be built on public land and obtain approval by state governors and regulators.

The Arkansas delegation met with Energy Secretary Rick Perry in September to urge him to end DOE's involvement with Clean Line — a relationship advanced under the Obama administration.

"While I support policies that put our nation on the path to energy independence, they should not come at the expense of rights of landowners," Sen. John Boozman (R-Ark.) said in an emailed statement. "Skipping the necessary steps that allow state and local governments a voice in this process is a gross overreach that must be reined in."

While U.S. EPA Administrator Scott Pruitt opposed the Plains and Eastern line as Oklahoma attorney general, the Trump administration has so far been silent on the project.

**No changes under Trump**

Landowner opposition and political
pushback aren't new to Clean Line. Nor are lawsuits, which the company views as “a fact of life for big linear construction projects.”

Clean Line, which believes it gave landowners and state officials ample opportunity to weigh in on the project, said it is confident in the process followed by DOE when they agreed to participate in the project and expects a favorable outcome.

And as a member of a four-person committee of Clean Line and DOE officials coordinating development of the project, Hurtado said he’s seen no change in the agency's commitment to the project under the new administration.

“That work has been going on normally since we started that back in 2016,” he said. “We haven't really seen any change in that.”

DOE declined to comment on the project, citing the continuing lawsuit.

Still needed: Customers

As planned, the Plains and Eastern direct-current line would provide a pathway for 4,000 megawatts of low-cost wind energy from the Oklahoma and Texas Panhandle area to the Southeast, where there is currently little wind energy penetration. Clean Line would deliver 500 MW in Arkansas and the rest to a substation near Memphis, Tenn.

By any account, the line is furthest along of five long-haul transmission lines proposed by Clean Line. Two other lines that would span the central Plains are mired in legal and regulatory uncertainty.

The Plains and Eastern would very likely be in the same place if not for DOE’s involvement.

Even if the lawsuit fails and the Arkansas delegation is unable to sway Perry to change his mind, Clean Line still has its work cut out.

While DOE can help Clean Line acquire easements to build the line, the government can’t force utilities to become customers.

Clean Line has yet to announce any firm agreements with Southeast utilities for transmission. Meanwhile, the clock is ticking.

Oklahoma Gov. Mary Fallin (R), a supporter of the Clean Line project, signed a bill in April ending a tax credit for wind producers in the state. And the federal production tax credit will continue to ramp down annually through the end of 2019 and erode the economics of wind energy.

“We think that there’s a time-sensitive opportunity,” Hurtado said. “I’m not comfortable waiting too much longer. The sooner we can get this done, the better. There are always risks, and you want to manage that really prudently. We're already in pre-construction. The sooner we get into full-fledged construction, the better."

While the company continues to do some “targeted” right-of-way acquisition, Clean Line is turning much of its development focus on negotiations with Southeast utilities and wind developers.

Under a tariff approved by the Federal Energy Regulatory Commission, Clean Line can negotiate directly with wholesale customers to be “anchor tenants.”

An initial open solicitation process (similar to an open season process for a natural gas pipeline) showed interest among potential customers that was several times greater than the 4,000-MW line’s capacity. The next step is to firm up commitments.

“Obviously, the trick is to make sure that you have capacity at the right price to the people that are actually winning the contracts in the Southeast,” Hurtado said. “There's direct commercial discussions that are going on that are confidential. There are RFPs [requests for proposals], and that's still moving forward. It's part of our overall commercial discussions that we've got that are sort of focused, but they're all sort of in the works.”

One potential customer, the Tennessee Valley Authority, so far hasn't shown an interest in taking transmission service from the Plains and Eastern.

TVA signed a memorandum of understanding with Clean Line in 2011, but the utility currently has no need for more energy on its system as its long-range plans show no demand growth for the next decade, said spokesman Scott Brooks.

And any older power plants being shut down by TVA are generally being replaced with natural-gas-fired generation, Brooks said.

Chasing Wind Catcher

Negotiations between Clean Line and other parties are a black box to those on the outside. But critics of the project have tried to raise doubt about whether demand will materialize.

Clean Line did disclose an unusual offer to a potential customer last week in an Oklahoma regulatory filing.

In testimony filed at the Oklahoma Corporation Commission, the company suggested that the Plains and Eastern project provide the transmission for Public Service Co. of Oklahoma’s piece of American Electric Power Co.’s Wind Catcher project.

The $4.5 billion AEP project would be
able to provide wind energy to its utility customers in Arkansas, Louisiana, Oklahoma and Texas from a 2,000-MW wind farm being developed in Oklahoma and 350-mile high-voltage transmission line.

Clean Line supports the Wind Catcher project and its ambitions to bring utility customers access to low-cost wind energy in the same way that utilities such as Xcel Energy Inc. and MidAmerican Energy Co. are doing, Hurtado said.

“It just happens that we’re a number of years ahead on our project compared with the [transmission line] that they proposed back in July,” he said. “We think our project can provide a lower risk and ultimately a lower-cost option to move that power that they want to serve their customers.”

Clean Line, which has been an evangelist for the benefits of DC technology for long-haul transmission projects, even said it’s willing to use alternating-current technology if that’s what AEP wants to do.

“We didn’t want the discussion about the benefits that this project brings to be focused on a technology discussion of AC versus DC,” Hurtado said.

So far, Clean Line’s very general proposal to play a part in Wind Catcher is just that.

Stan Whitehouse, a Public Service Co. of Oklahoma spokesman, declined to comment on the Clean Line filing except to say the utility would submit a response in reply testimony by the commission’s Dec. 22 deadline.

Klass, the law professor, said monopoly utilities have a built-in advantage over merchant developers in building transmission because they already have utility status and relationships with regulators and elected officials.

Take Clean Line’s petition to win utility status in Arkansas. In a 2011 ruling, the Public Service Commission determined the company didn’t qualify for a certificate to build the line because it didn’t meet the statutory definition of a public utility. With no assets and no customers, the company couldn’t achieve utility designation under state law.

In 2015, the Arkansas Legislature further shut the door on Clean Line by passing a bill that prohibits a merchant transmission company from obtaining a certificate of public convenience and necessity.

That left Clean Line with two choices to pursue its project: overturn the law or seek approval under Section 1222.

Klass said, “It’s just another example of how difficult it is for a non-incumbent utility to get approval for these projects.”