

IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF ARKANSAS  
JONESBORO DIVISION

DOWNWIND, LLC and GOLDEN  
BRIDGE, LLC

PLAINTIFFS

v.

No. 3:16-cv-207-DPM

UNITED STATES DEPARTMENT  
OF ENERGY; RICK PERRY, in his  
official capacity as Secretary of the  
United States Department of Energy\*;  
SOUTHWESTERN POWER ADMINISTRATION;  
and SCOTT CARPENTER, in his official  
capacity as Administrator of the Southwestern  
Power Administration

DEFENDANTS

PLAINS AND EASTERN CLEAN  
LINE HOLDINGS, LLC

INTERVENOR

ORDER

Some administrative record issues need resolving. Intervenor Clean Line's conditional request for a prompt hearing on record issues, *No. 56*, is noted. But the Court doesn't need oral argument on these issues.

1. The DOE and SWPA Defendants' unopposed motion, *No. 50*, to make various corrections and supplement the voluminous record is granted. Use the procedures approved before. *No. 29*. Corrected and supplemental

---

\*The Court directs the Clerk to update the docket.

materials due in electronic form by 15 June 2017 and in paper form by 23 June 2017. Please work with the Clerk of the Court on this update.

2. Downwind's motion to compel completion and supplementation of the record, *No 51*, is denied. Downwind has, commendably, withdrawn its request about the Section 1222 materials. *No 55 at 2-3*. But Downwind hasn't offered clear evidence that overcomes the presumption of regularity that cloaks the lodged record. *Citizens to Preserve Overton Park, Inc. v. Volpe*, 401 U.S. 402, 415 (1971). (Defendants' record cleanup shows a good faith effort to fix mistakes at the margin, not bad faith or a rotten record.) In the circumstances presented, the Court sees nothing to justify discovery or adding post-decision materials on the constitutional claim. *Voyageurs National Park Association v. Norton*, 381 F.3d 759, 766 (8th Cir. 2004); *Newton County Wildlife Association v. Rogers*, 141 F.3d 803, 807 (8th Cir. 1998). DOE and SWPA don't have to include deliberative-process documents; so a privilege log isn't required in the ordinary case, and nothing of record suggests any extraordinary circumstances that would justify requiring one here. *E.g., In re Subpoena Duces Tecum Served on the Office of the Comptroller of the Currency*, 156 F.3d 1279, 1279-80 (D.C. Cir. 1998).

3. There is a mistake in the staging laid out in the Court's Amended Final Scheduling Order, *No 45 at 2*. To clarify:

- Downwind's motion for judgment and opening brief are due by 17 July 2017;
- Defendants' and Intervenor's responses and cross motions are due thirty days after Downwind's filing;
- Thirty days later, Downwind's reply and responses to any cross motions are due; and
- Defendants and the Intervenor have fifteen days thereafter to reply on the cross motions.

If we can all keep this schedule, the briefing should be complete by the end of September. *No 45* is amended to clarify the schedule.

So Ordered.

*D.P. Marshall Jr.*  
D.P. Marshall Jr.  
United States District Judge

*8 June 2017*