

performance report requirement, including information on: (1) The number of individuals whose case record has not been closed, but have not received project services for 90 consecutive calendar days, (2) the number of eligible individuals who were employed three months after achieving the employment outcome, (3) the number of eligible individuals who were employed six months after achieving an employment outcome, (4) the average weekly earnings at entry, and (5) the average weekly earnings of the individuals whose employment outcomes resulted in earnings.

**Note:** For purposes of this section VI. 4., the term "employment outcome" has the meaning provided in 34 CFR 369.4.

## VII. Agency Contact

*For Further Information Contact:* August Martin, U.S. Department of Education, 400 Maryland Avenue, SW., room 5088, PCP, Washington, DC 20202-2800. Telephone: (202) 245-7410 or by e-mail: [august.martin@ed.gov](mailto:august.martin@ed.gov).

If you use a TDD, call the FRS, toll free, at 1-800-877-8339.

## VIII. Other Information

**Accessible Format:** Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (e.g., braille, large print, audiotape, or computer diskette) by contacting the Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue, SW., room 5075, PCP, Washington, DC 20202-2550. Telephone: (202) 245-7363. If you use a TDD, call the FRS, toll free, at 1-800-877-8339.

**Electronic Access to This Document:** You can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: <http://www.ed.gov/news/fedregister>.

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1-888-293-6498; or in the Washington, DC, area at (202) 512-1530.

**Note:** The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: <http://www.gpoaccess.gov/nara/index.html>.

**Delegation of Authority:** The Secretary of Education has delegated authority to Andrew J. Pepin, Executive

Administrator for the Office of Special Education and Rehabilitative Services, to perform the functions of the Assistant Secretary for Special Education and Rehabilitative Services.

Dated: May 8, 2009.

**Andrew J. Pepin,**

*Executive Administrator for the Office of Special Education and Rehabilitative Services.*

[FR Doc. E9-11202 Filed 5-13-09; 8:45 am]

**BILLING CODE 4000-01-P**

## DEPARTMENT OF ENERGY

### Western Area Power Administration

#### Transmission Infrastructure Program

**AGENCY:** Western Area Power Administration, DOE.

**ACTION:** Notice of Program.

**SUMMARY:** The Western Area Power Administration (Western) hereby announces its Transmission Infrastructure Program (Program). The Program implements section 402 of the American Recovery and Reinvestment Act of 2009 (Recovery Act) for the purpose of constructing, financing, facilitating, planning, operating, maintaining, or studying construction of new or upgraded electric power transmission lines and related facilities with at least one terminus within the area served by Western, and for delivering or facilitating the delivery of power generated by renewable energy resources constructed or reasonably expected to be constructed after the date this section was enacted. The Program will use authority granted under this section to borrow funds from the U.S. Treasury Department to accomplish these purposes.

**DATES:** The Program is effective upon May 14, 2009.

#### FOR FURTHER INFORMATION CONTACT:

Please contact Transmission Infrastructure Program, Western Area Power Administration, P.O. Box 281213, Lakewood, CO 80228-8213, e-mail [txprogram@wapa.gov](mailto:txprogram@wapa.gov). The Program is also available on Western's Web site at <http://www.wapa.gov/recovery>.

#### SUPPLEMENTARY INFORMATION:

##### Background

Western markets and transmits wholesale hydroelectric power generated at Federal dams across the western United States. This power is sold to customers in accordance with Federal law. Western's transmission system was developed to deliver the Federal hydro-power to those

customers. Western owns and operates an integrated 17,000 circuit-mile, high-voltage transmission system and markets power across 15 western states and a 1.3 million square-mile service area. Western's service area encompasses all of the following states: Arizona, California, Colorado, Nebraska, Nevada, New Mexico, North Dakota, South Dakota, Utah, and Wyoming; as well as parts of Iowa, Kansas, Montana, Minnesota, and Texas. Today, Western makes capacity on its transmission system excess to that needed to serve its preference customers available through the policies and procedures outlined in its Open Access Transmission Tariff (OATT). Western offers nondiscriminatory access to its transmission system, including requests to interconnect new generating resources to that transmission system under its OATT on file with the Federal Energy Regulatory Commission (FERC).

Western sought public comment on the proposed principles, policies and practices it will use to implement its new Recovery Act authority in a 30-day consultation and comment period as announced in a March 4, 2009, **Federal Register** notice (74 FR 9391). A formal public comment forum was held in Lakewood, Colorado, on March 23, 2009, and a transcript and meeting video were made available through Western's external Web site at <http://www.wapa.gov/recovery>. Western received comments from 40 customers and other stakeholders. All comments were reviewed and, where appropriate, incorporated into the Program. The Discussion of Comments section provides Western's response to the comments. Where possible, comments and related responses were consolidated. In defining the proposed Program, Western identified a series of principles to provide overarching guidance. Western further identified a series of policies and practices it will follow in implementing the Program. Those principles, policies and practices are set forth in this notice.

With this notice, Western is making its Program effective upon publication in the **Federal Register**. The procedures and statements of policies set forth in Western's Program are consistent with the Recovery Act and other statutes, and the Program does not include additional substantive requirements. Therefore, Western's program is not subject to the Administrative Procedure Act's delayed effective date provision (5 U.S.C. 553(d)).

##### Discussion of Comments

Western received 40 submittals related to its proposed Program. To

facilitate presentation and discussion of the comments, Western categorized the comments into four general categories: (1) Comments on set-up, operation, and management of the Program; (2) comments on project identification, evaluation, selection, and certification criteria; (3) comments on project funding, financing, and repayment criteria; and (4) other comments.

#### 1. Comments on Set-Up, Operation, and Management of the Program

##### a. Time and Information Comments

*Summary Comment:* Western received numerous comments regarding extending the comment period, sequencing of the Request for Information and the Program comment periods, and overall need to spend more time developing Program procedures and criteria.

*Response:* The comment period will not be extended. The purpose of the Recovery Act, which authorized this Program, is to stimulate job creation in the near term.

The Program also supports the Obama Administration's goal of rapid development of infrastructure to deliver renewable resources. Therefore, Western is moving expeditiously, while following the intent and purpose of the law and balancing the need of stakeholders for substantive and procedural input. Western will implement the Program as defined in this notice. However, Western is committed to continually evaluating the Program and is open to the possibility of making further changes as appropriate through open and transparent public processes.

##### b. Process Comments

*Summary Comment:* Western received numerous comments on the need for an open, transparent, fair, and meaningful process to allow stakeholders to assist Western in identifying, prioritizing, selecting, and funding projects, either for further study or for implementation, and to determine these projects' repayment methodology. Several commenters asked for more public meetings. Commenters also expressed interest in serving on an advisory board to assist Western in managing the Program.

*Response:* Western has a long history of partnering with other entities in developing new additions to the transmission system, and will continue this business model in implementing the Program. In fact, Western is adopting a principle of ensuring the Program provides an opportunity, where appropriate, for the participation of

other entities in constructing, financing, owning, facilitating, planning, operating, maintaining, or studying construction of new or upgraded electric power transmission lines. The **Federal Register** notices titled "Notice of Availability of Request for Interest" and "Notice of Proposed Program and Request for Public Comments" published on March 4, 2009, provided interested parties opportunities to suggest projects for Western's consideration and to comment on the practices and policies of the Program. Where appropriate, Western intends to open projects to additional participation so other entities can contribute meaningfully.

Public meetings, and opportunities for public comment, will be scheduled for specific project proposals during each project's National Environmental Policy Act compliance process. Commenters' interest in serving on a Program advisory board is noted; however, Western believes its long history of ad hoc collaborative engagement with stakeholders will adequately meet the needs of the Program.

##### c. Laws/Rules Comments

*Summary Comment:* Numerous comments were received asking for the Program to not impact the statutory obligations of Western. Additional comments requested that the Program comply with all applicable Federal laws, regulations, policies, and state laws.

*Response:* It is Western's intention to fully comply with all of its statutory obligations, including its Reclamation Law obligations and those contained in the new Recovery Act statute. In particular, Western's Program activities will be implemented to assure compliance with all applicable National Environmental Policy Act requirements.

*Summary Comment:* Several commenters asked that all transmission capacity excess to Western's needs be posted and made available on a non-discriminatory basis.

*Response:* Available transfer capability surplus to Western's needs will continue to be made available in a nondiscriminatory manner consistent with FERC open access transmission rules, Federal statute, and Western policies.

*Summary Comment:* Some commenters recommended that Western should give priority to projects already in its interconnection and/or transmission queues when conflicts exist between the Program's projects and projects in the queues. Other commenters suggested that the Program's projects be handled

separately from projects in Western's queues.

*Response:* Where possible, Western will pursue projects that simultaneously satisfy queue requests and meet the requirements of the Program. However, where that is not possible, Western will give priority to projects developed under section 402 of the Recovery Act.

#### 2. Comments on Project Identification, Evaluation, Selection, and Certification Criteria.

##### a. Renewable Comments

*Summary Comment:* Western received comments indicating that the Program should assist in bringing renewable energy sources on line and delivering those resources to market, and that encouraged Western to consider a diverse range of renewable generation resources.

*Response:* Western agrees with these comments. As the statute indicates, transmission projects that Western participates in under the Program will facilitate the development of renewable energy resources, and the delivery of those resources to market. Western is not focused on any particular source of renewable energy, and will consider transmission projects that meet the Program's criteria from all sources of renewable energy generation. By statute, these renewable energy resources must be constructed or reasonably expected to be constructed after the statute's enactment date.

*Summary Comment:* Some commenters asked that Western remain flexible and willing to consider the development of new products and services to assist the integration of renewables into the existing transmission system.

*Response:* Western will remain open to the development of new products and services that assist in integrating renewables into the existing transmission system that do not conflict with statutory requirements.

##### b. Public Interest Comments

*Summary Comment:* Western received comments indicating that the Program, and the projects selected by the Program, should serve the public interest, and asked for clarification on how Western will determine what is in the public interest.

*Response:* Western agrees the Program and the projects selected under the Program should serve the public interest. Although the Recovery Act specifically does not define what constitutes "public interest", when selecting projects, Western believes that it has discretion to balance the merits of

each proposed project on a case-by-case basis and on the circumstances of each situation.

*Summary Comment:* Some commenters stated that adding transmission lines does not serve the public interest.

*Response:* Section 402 of the Recovery Act clearly indicates that Congress desires Western to build transmission projects to facilitate the delivery of renewable energy. Western intends to carry out its Program to fulfill this Congressional direction.

#### c. System Impact Comments

*Summary Comment:* Western received numerous comments that it should develop evaluation criteria so that projects selected for implementation will not result in the creation of any negative reliability, operational, or financial impacts to neighboring transmission systems, but also protect against the diminution of any rights and obligations of existing transmission users.

*Response:* Additions, modifications, and/or upgrades to the nation's electric transmission infrastructure will be coordinated so that the interests of the affected parties are represented. As proposed projects are considered for possible implementation under the Program, Western intends to seek input from the appropriate stakeholders, including regional planning forums and/or processes on a case-by-case basis, to ensure that the relevant interests and issues are identified, represented, and appropriately considered.

*Summary Comment:* Western received a comment that it should select projects for implementation that enhance reliability.

*Response:* Western will not limit itself to just projects that enhance reliability. The Recovery Act allows Western to build projects as long as they will not adversely impact system reliability or operations. Whenever additions, modifications, and/or upgrades to the nation's electric transmission infrastructure are undertaken, they are coordinated through regional planning forums and/or processes where all stakeholders have the opportunity to have their issues and concerns raised and discussed. Western intends to seek input from the appropriate stakeholders, including regional planning forums and/or processes on a case-by-case basis, to ensure that the relevant interest and issues are identified, represented, and appropriately considered as projects are considered for possible implementation.

#### d. Project Priority Comments

*Summary Comment:* Western received several comments indicating that, when considering projects for implementation, Western should give a higher priority to those projects that upgrade and modernize the existing transmission infrastructure to increase its capacity for integrating more renewables into the grid; promote more public/private partnerships; are further along in their developmental prerequisites; confront less financial, technological, and regulatory hurdles; or can be quickly constructed.

*Response:* Western always appreciates suggestions from stakeholders which enhance the effective and efficient management of its programs. The Program anticipates a combination of new transmission construction and upgrades to existing infrastructure, and will use public/private partnerships to the extent practicable in order to meet the objectives of the Recovery Act to create jobs in the near term and rapidly develop infrastructure to deliver renewable resources.

#### e. Criteria Comments

*Summary Comments:* Western received numerous comments regarding project evaluation criteria. Suggestions included the development of a comprehensive list to include consideration of the creditworthiness of any potential partner; not funding projects that are fundamentally unsound; job creation and the long-term economic benefits of any project; and other project eligibility criteria.

*Response:* Western's expectation is that unsound projects will be screened out through a rigorous evaluation process. Prior to committing borrowed funds to any selected project, as mandated, the Administrator must certify that the project is in the public interest; it will not adversely impact system reliability or operations, or other statutory obligations; and it is reasonable to expect that revenue from the project will be adequate to repay the project loan, expenses for ancillary services and the ongoing operation and maintenance costs of the project. In addition to these criteria, Western will also assess the technical merits and feasibility of a project; its ability to deliver power generated by renewable resources; the financial stability and capability of all potential project partners; project readiness (e.g., permitting, local, state and/or regional approvals); and the economic developmental benefits of the project. The Program's project evaluation criteria will be applied to provide the

basis for the Administrator's certification.

*Summary Comment:* Western received several comments requesting that it allow participation in transmission projects through long-term contracts, including an open season period, e.g., Bonneville Power Administration's (BPA) open season.

*Response:* Western is open to considering the concept of allowing participation in transmission projects through long-term contracts, including the use of an open season period to select counterparties to those contracts, similar to that used by BPA.

*Summary Comment:* Western received a comment that it should not consider refinancing as a part of the original feasibility analyses of the new projects.

*Response:* The Recovery Act authorizes Western to refinance loans taken pursuant to section 402. Refinancing would not be part of the original feasibility analyses of new projects, but will be considered during the useful life of projects and will be used when it makes good business sense.

#### f. Coordination Comments

*Summary Comment:* Western received numerous comments advising it to take advantage of studies and work (previous, current, future) on potential transmission projects, coordinate the Program's projects through regional planning forums and processes, possibly lead regional planning efforts, and consider coordination of regional grid operations to integrate renewable resources.

*Response:* Western is involved in many regional and subregional transmission planning groups, collaborating with transmission entities on proposed transmission additions to coordinate and efficiently plan for transmission line development. For example, Western is a member of the WestConnect transmission planning group, which provides an annual 10-year regional transmission plan, coordinating all transmission plans across the WestConnect planning area. Western also participates in the Mid-Continent Area Power Pool (MAPP) Regional Plan that integrates the transmission plans developed by individual MAPP members through the MAPP's Transmission Planning Subcommittee and by sub-regional planning groups, in order to meet the transmission needs in the MAPP Region of Members and interested parties. Western will continue to be involved in these and other transmission planning groups to coordinate projects, and will

use existing and future studies and analyses to enhance its decision process.

#### g. Ancillary Services Comments

*Summary Comment:* Western received several comments related to the provision of ancillary services. Some commenters felt Western should use Federal hydro-power resources to provide ancillary services to the Program projects; others were equally opposed. Other commenters suggested that any customers using the Program projects should be fully responsible for any ancillary services required in conjunction with that transmission service. Also, some commenters were unsure of what Principle 5 meant when Western stated that each Program project “[h]as the necessary capabilities to provide generation related ancillary services.” (Emphasis added.)

*Response:* Nothing in the provisions of the Recovery Act “confers on the Administrator any additional authority or obligation to provide ancillary services to users of transmission facilities developed under this section.” Under normal industry operation procedures, it is the responsibility of the recipient of the transmission service to undertake the necessary arrangements to secure the provisioning of the required ancillary services. Under the Recovery Act, and as part of the Administrator’s certification responsibilities, the Administrator must also ensure a proposed new Program project does not conflict with his responsibilities to existing transmission and preference power customers of the Federal power system.

In order to clarify any misunderstanding that stakeholders may have, Western has changed Principle 5 to use the words “obtain and deliver” rather than “provide” to clarify that a Program project must have the ability to obtain and deliver ancillary services.

### 3. Comments on Project Funding, Financing, and Repayment Criteria

#### a. Use of Funds Comments

*Summary Comment:* Several commenters requested that Western be flexible and open to alternative financing options to leverage its borrowing authority to gain the most benefit.

*Response:* Western is open to considering alternative financing options on a case-by-case basis in order to maximize utilization of its new borrowing authority.

*Summary Comment:* Western received several comments regarding the funding of studies and

environmental analyses, including setting the criteria for the repayment of those costs when a project does not get completed.

*Response:* Western welcomes proposals from any entity who may seek funding through Western to undertake the necessary planning and environmental studies to determine the feasibility of a project. However, in order to assure the public that its funds are being used prudently, Western will evaluate the probability of each proposal leading to a successful outcome on a case-by-case basis before making any commitment to advance funds. Funds expended to study projects that are not constructed shall be handled in accordance with provisions of the Recovery Act.

*Summary Comment:* Western received some comments regarding the need to set the terms and conditions of funds borrowed in conjunction with the selection of the projects to be able to fully analyze the repayment ability of the project.

*Response:* Western has executed a Memorandum of Understanding with the U.S. Treasury Department that establishes the terms and conditions under which Western can borrow funds. Thus, Western will have access to adequate financing information when analyzing the repayment terms of each Program project.

#### b. Recovery of Costs Comments

*Summary Comment:* Western received numerous comments that selected projects must generate sufficient revenues to assure repayment of its costs, as required by the Recovery Act, including the suggestion of a policy that project beneficiaries pay for all project costs.

*Response:* Western plans to develop a repayment program that complies with the Recovery Act. Western’s Administrator stated in his testimony before the Subcommittee on Water and Power, Committee on Natural Resources, and U.S. House of Representatives, on March 10, 2009, that “Western will \* \* \* use revenues from project beneficiaries as the only source of repayment of all associated project costs, and \* \* \* All selected projects, including upgrades to Western’s existing transmission lines, must meet the requirement that there is a reasonable likelihood that it will generate enough transmission service revenue to repay the principal investment, all operating costs and the accrued interest.” Pursuant to the Recovery Act, Western will evaluate each project and, if selected, the Administrator will certify that it is

reasonable to expect that the proceeds from the project shall be adequate to repay the loan. In addition, Western will modify its Program-related Principles to ensure that project beneficiaries repay project costs.

*Summary Comment:* Western received some comments that selected projects use generally accepted accounting principles for financial accounting and reporting so beneficiaries know their repayment obligations.

*Response:* To elaborate on a statement in the **Federal Register** notice, published on March 4, 2009, in Section III.C.1., Program Funding—Policies and Practices, Western will use current business practices and accounting policies (based on generally accepted accounting principles) to record and track all expenses and revenues and other financial transactions for each project selected.

*Summary Comment:* Western received numerous comments that rates for selected projects are kept separate and not financially integrated for the purposes of repayment with any existing or potential future transmission system so that there is no impact to existing users.

*Response:* To comply with the Recovery Act, and as stated in the Principles section of the **Federal Register** notice published on March 4, 2009, Western will isolate the accounting transactions of the new projects in Western’s existing financial management system. In response to a question submitted for the record of the hearing before the Subcommittee on Water & Power, Committee on Natural Resources, U.S. House of Representatives, on March 10, 2009, Western stated, “Section 402 of the Recovery Act clearly requires, for repayment purposes, Western to treat each project funded with Treasury borrowings as separate and distinct from all other Western transmission facilities \* \* \*”

*Summary Comment:* Western received comments that it needs to have a strategy for interconnection-wide cost-sharing for projects designed to achieve national renewable energy goals.

*Response:* Interconnection-wide cost-sharing is not a requirement of the Recovery Act or the Program. Western may consider interconnection-wide cost-sharing, as well as other cost-sharing concepts, if appropriate, as it evaluates project proposals on a case-by-case basis. If national renewable energy goals are established and changes to Program processes and procedures are required, they will be modified as appropriate.

*Summary Comment:* Western received a comment that it should adopt rate setting methodologies consistent with Department of Energy (DOE) Order RA6120.2 (RA6120.2).

*Response:* RA6120.2 establishes financial reporting requirements for Power Marketing Administrations. RA6120.2 was developed primarily for financial reporting of hydroelectric power projects using Federal appropriations. This Program is for transmission projects funded using treasury borrowing and transmission service revenue. Even though these differences exist, they tend to be minor and Western believes that it can comply with the applicable portions of RA6120.2.

*Summary Comment:* Western received a comment that the specific provisions of the Recovery Act related to “participation” do not provide how a third-party participant will recover its costs.

*Response:* Rates and repayment for projects funded through the Program will be determined on a case-by-case basis. Western anticipates that its rates and repayment methods will apply only to those portions of a project that are under Western’s operational control. For projects that are not under Western’s operational control, Western will use contract provisions with the third-party participant to require that rates be established to assure a sufficient revenue stream to repay project costs. In addition, one of Western’s objectives is to encourage nonfederal participation to leverage Western’s borrowing authority. Depending upon the roles and responsibilities agreed to by the parties, the transmission rates charged by another entity may be subject to FERC rate jurisdiction, or that of a public utility commission or other rate setting body.

*Summary Comment:* Western received several comments regarding the acceptability of the pancaking of transmission rates. Conversely, several commenters were opposed to pancaking of transmission rates.

*Response:* Western has noted these comments. The Program’s policies and procedures are flexible and may provide for either “pancaking” or “non-pancaking” of rates as the situation requires. Rate design for transmission capacity that Western markets will be determined using Western’s appropriate rate setting processes.

*Summary Comment:* Western received a comment that after Federal loan obligations are paid off, right holders can migrate to a common tariff charge as a part of a larger network.

*Response:* Western has noted this comment. Nothing in the Recovery Act or the Program policies and procedures precludes migration to a common tariff charge as a part of a larger network.

*Summary Comment:* Some commenters requested that Western clarify when the forgiveness of loan balances will be used and that firm power customers will not be liable for any unforgiven loan balance.

*Response:* The Recovery Act clearly states that balances owed to Treasury at the end of the useful life of a project, or funds expended to study projects that are not constructed, shall be forgiven. It further states that revenue from the use of the project shall be the only source of funds for repayment of project loans and payment of ancillary services and operation and maintenance costs.

*Summary Comment:* Western received a comment that before projects are implemented, Western should ensure that contracts with customers for renewables are executed.

*Response:* Western acknowledges this comment and will endeavor to ensure, where appropriate, that renewable energy generators have executed the necessary contracts with their customers.

#### 4. Other Comments Received

*Summary Comment:* Western received a number of other miscellaneous comments which requested clarification on a number of items as well as providing suggestions on the overall management and operation of the Program.

*Response:* Western always appreciates suggestions from stakeholders which enhance the effective and efficient management of its programs. Western will consider each of the comments provided under this section and as appropriate, integrate them into its management and operation of the Program. In addition, should there be any changes that require further notification of stakeholders, Western will communicate those changes in a timely manner.

*Summary Comment:* Western received a comment that access to all information submitted for project information should be available without using the Freedom of Information Act (FOIA).

*Response:* Formal FOIA procedures need not necessarily be followed in order to request project information. A functional request can be submitted that does not invoke FOIA. However, Western does not generally have the ability, nor does the Recovery Act specifically grant Western ability, to waive protections afforded to parties

under “Exemption 4” of FOIA. Exemption 4 provides protections for trade secrets or commercial or financial information submitted on a privileged or confidential basis. In this regard, Western has also received comments asking for greater confidentiality protections for project information. FOIA and Exemption 4 provide an adequate framework, and balancing of interests, by which Western will treat requests for both disclosure and nondisclosure.

*Summary Comment:* Western received several comments that it needs to provide more detail to ensure how confidential information will be protected.

*Response:* In protecting confidential information, Western will look to the law related to FOIA, and in particular to Exemption 4.

*Summary Comment:* Western received some comments that all potential conflicts of interest of project participants shall be disclosed and reported to Western.

*Response:* Western appreciates the fact that if it contracts for support in evaluating projects that these contractors may have worked for one or more project proponents in the past. Western is also concerned with conflicts of interest, and therefore will use its current acquisition practices to retain contractors based on specific requirements in the Federal Acquisition Regulations (FAR) to address any organizational conflicts of interest or “OCIs.”

*Summary Comment:* Western received a comment that the term “entity” is too narrowly defined and may exclude public power.

*Response:* Western includes public power in its definition of “entity.”

#### Summary of Changes From Proposed Program

Western has revised the proposed Program in response to public comments to the **Federal Register** notice (FRN) published on March 4, 2009. The more significant changes made to the Program include:

All references to the “proposed” Program were deleted, and now refer to the “Program.” The Definition section was revised to refine the definition of entity as “any individual or organization that seeks to participate with Western under the Program’s authority.” The section was expanded to include a definition of “beneficiary” as any individual or organization that receives an economic, financial, operational, or physical benefit from the construction and/or operation of a project funded by the Program.

The Program elements of Project Development and Project Operations and Maintenance were combined. In addition, Western added a Principles section as part of the Program to evaluate potential projects. Specifically, Principles are categorized as being either project- or Program-related.

Initially, nine Principles (six project-related, three Program-related) were previously identified in the Background section of the FRN. Principles were expanded to ten. A fourth Program principle was added and reads: "Ensures that project beneficiaries repay project costs." The inclusion of this project Principle and related definition will clarify repayment responsibility for individual Program project costs. In addition, the fifth project Principle was revised as follows: "Has the necessary capabilities to obtain and deliver generation-related ancillary services." The Principle as previously worded required the project provide generation-related ancillary services. All references in the Program criteria to "provide . . . ancillary services" were subsequently changed to "obtain and deliver . . . ancillary services." The Project Funding section was changed to reflect revision of the definition of Applicability as follows: "All projects selected for funding under this authority will be governed by the principles, policies, and practices outlined in this notice." Also, the Criteria element was deleted.

The Project Funding Policies and Practices element was expanded to incorporate a third component to read: "Western will look for public-private partnerships to maximize the leveraging of funds."

Under Project Evaluation, Applicability was changed to read: "All Projects to be considered for funding under this authority will be evaluated against minimum criteria outlined below." Criteria were changed significantly, expanded to include six additional criteria and the revision of two. Policies and Practices was changed to include narrative on Western's adherence to the Federal Acquisition Regulation in addressing potential organizational conflicts of interest when contracting for outside expertise to assist in evaluating proposed projects seeking funding under the Program.

The Project Development and Operations and Maintenance, Policies and Practices was revised. Specifically, Western will give priority to projects that satisfy OATT or related requests. This has been moved to Project Evaluation criteria. In addition, narrative referencing applicable Federal laws, regulations and policies was expanded to include: "\* \* \* the

National Environmental Policy Act, the FAR, and other applicable provisions of the Recovery Act."

The Project Rates and Repayment, Policies and Practices section now contains an expanded definition of Program project costs to include overhead. In addition, the development of Program project transmission rates for transmission capacity was changed from Western owns and controls to simply controls. Western will adopt applicable requirements contained in DOE Order RA6120.2 as part of its repayment and reporting processes.

#### **Western's Transmission Infrastructure Program**

Western's Transmission Infrastructure Program will implement the Program authorized in section 402 of the Recovery Act. The Program will identify, prioritize and participate in the study, facilitation, financing, planning, operating, maintaining, and construction of new or upgraded transmission facilities and additions that will help bring renewable energy resources to market across the West. One objective is to encourage non-Federal participation so as to leverage Western's borrowing authority. The Program consists of several major components: Program Principles; Project Funding, Project Evaluation, Project Development and Operation and Maintenance, and Project Rates and Repayment.

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#### **I. Definitions**

- A. The term "Administrator" means the Administrator of Western.
- B. The term "entity" means any individual or organization that seeks to participate with Western under the Program's authority.
- C. The term "beneficiary" means any individual or organization that receives an economic, financial, operational, or physical benefit from the construction

and/or operation of a project funded by the Program.

#### **II. Principles**

In implementing the authority granted to Western in section 402, Western will use the following principles which provide overarching guidance:

##### **A. Project-Related Principles:**

Western will ensure each project approved for funding using Treasury borrowing authority:

1. Is in the public interest.
2. Will not adversely impact system reliability or operations, or other statutory obligations.
3. Offers a reasonable expectation that the proceeds from such project shall be adequate to meet Western's financial repayment obligations.
4. Uses a public process when Western sets the rates for any transmission capacity resulting from new facilities developed from Western's participation in such projects.
5. Has the necessary capability to obtain and deliver generation-related ancillary services.

6. Uses the proceeds from the sale of the transmission capacity from such project for the repayment of the principal and interest of the loan from the Treasury attributable to that project, after reserving such funds as Western determines are necessary,

- a. to pay for the ancillary services that are obtained and delivered; and
- b. to meet the costs of operating and maintaining the new project.

##### **B. Program-Related Principles:**

Western will ensure the Program:

1. Provides an opportunity, where appropriate, for participation by other entities in constructing, financing, owning, facilitating, planning, operating, maintaining, or studying construction of new or upgraded electric power transmission lines under this authority.
2. Uses revenues from projects developed under this authority as the only source of revenue for,
  - a. repayment of the associated loan for the project;
  - b. payment of expenses for ancillary services, and operation and maintenance; and
  - c. payments for ancillary services that will be credited to the existing power system providing these services, when the existing Federal power system is the source of the ancillary services.
3. Maintains appropriate controls to ensure, for accounting and repayment purposes, each transmission line and related facility project in which Western participates under this authority is treated as separate and distinct from,
  - a. each other such project; and

b. all other Western power and transmission facilities.

4. Ensures that project beneficiaries repay project costs.

### III. Project Funding

*A. Applicability:* All projects selected for funding under this authority will be governed by the principles, policies, and practices outlined in this notice.

*B. Policies and Practices:*

1. Western will use generally accepted accounting principles and practices in recording and tracking all expenses and revenue transactions for each project selected.

2. Western will isolate these financial accounting transactions in its existing financial management system.

3. Western will look for public-private partnerships to maximize the leveraging of funds.

### IV. Project Evaluation

*A. Applicability:* All projects to be considered for funding under this authority will be evaluated against the minimum criteria outlined below.

*B. Criteria:* Project evaluation includes feasibility of developing a project that meets the following minimum criteria:

1. Facilitates the delivery to market of power generated by renewable resources constructed or reasonably expected to be constructed;

2. is in the public interest;

3. will not adversely impact system reliability or operations, or other statutory obligations;

4. establishes the reasonable expectation that the project will generate enough transmission service revenue to repay the principal investment; all operating costs, including overhead; and the accrued interest by the end of the project's service life;

5. has at least one terminus located within Western's service territory;

6. describes the economic developmental benefits of the project, including an estimate of how many and the type, how fast, and where in the country jobs are created;

7. gives priority to projects that satisfy Western's Open Access Transmission Tariff or related requests;

8. addresses the technical merits and feasibility of a project;

9. demonstrates the financial stability and capability of all potential project partners;

10. describes project readiness (e.g., permitting, local, state and/or regional approval); and

11. describes all project partners' participation in a region-wide interconnection-wide planning group or forum.

*C. Policies and Practices:*

1. Western will establish additional criteria to evaluate proposed projects as necessary.

2. Western may, at its discretion, use outside expertise to assist in evaluating proposed projects seeking funding under this authority. Western will use its current acquisition practices to retain any contractors to assist in project evaluation and will use the specific regulations in the FAR to address any organizational conflicts of interest.

3. Western will treat data submitted by project participants related to this authority, including project descriptions, participation and financing arrangements by other parties, as available to the public through the FOIA. However, participants may request confidential treatment of all or part of a submitted document under FOIA's exemption for "Confidential Business Information." Materials so designated and which meet the criteria stipulated in the FOIA will be treated as exempt from FOIA inquiries.

### V. Project Development and Operations and Maintenance

*A. Applicability:* All projects funded under this authority.

*B. Policies and Practices:*

1. For study, facility development, construction and any other related purposes, where applicable, Western will consider projects that are constructed pursuant to its authority under section 402 of the Recovery Act separately from procedures and requirements for arranging for transmission service or interconnection under its OATT, or related interconnection agreements. Western will use the appropriate project management methods to initiate, plan, execute, monitor, control and close all transmission projects approved for funding under this authority.

2. Available transfer capability surplus to Western's need will be made available in a nondiscriminatory manner consistent with FERC open access transmission rules, Federal statute, and Western policies.

3. Western will comply with all other applicable Federal laws, regulations and policies, including the National Environmental Policy Act, the FAR, and other applicable provisions of the Recovery Act.

### VI. Project Rates and Repayment

*A. Applicability:* All projects funded under this authority.

*B. Criteria:* The repayment requirements and applicable transmission rates will be designed so

that proceeds from the project meet the repayment obligation.

*C. Policies and Practices:*

1. Before project development, Western will confirm the reasonable likelihood that the project will generate enough transmission service revenue to meet Western's financial repayment obligations including principal investment, operating costs including overhead, accrued interest, and other appropriate costs.

2. Transmission rates for transmission capacity Western controls will be developed in a public process following the applicable requirements outlined in 10 CFR part 903 and RA6120.2, and set by the Administrator as specified in relevant DOE orders.

### Environmental Compliance

In compliance with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321, *et seq.*), the Council on Environmental Quality Regulations for implementing NEPA (40 CFR parts 1500–1508) and the DOE NEPA Implementing Procedures and Guidelines (10 CFR part 1021).

Western has determined that this action is categorically excluded from further NEPA analysis. Future actions under this authority will undergo appropriate NEPA analysis.

Dated: April 21, 2009.

**Timothy J. Meeks,**  
Administrator.

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## ENVIRONMENTAL PROTECTION AGENCY

[EPA–R09–OAR–2008–0728; FRL–8905–2]

### Adequacy Status of Motor Vehicle Emissions Budgets in Submitted Early Progress Plan for Clark County 8-hour Ozone for Transportation Conformity Purposes; Nevada

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of Adequacy.

**SUMMARY:** In this notice, EPA is notifying the public that the Agency has found that the motor vehicle emissions budgets for 8-hour ozone in the *8-hour Ozone Early Progress Plan for Clark County, Nevada (June 2008)* ("Clark County Ozone EPP") are adequate for transportation conformity purposes. The Clark County Ozone EPP was submitted to EPA on July 28, 2008 by the Nevada Division of Environmental Protection (NDEP) as a revision to the Nevada State Implementation Plan (SIP). As a result