

Dated: April 1, 2014.

**Kimberly D. Bose,**  
Secretary.

[FR Doc. 2014-07693 Filed 4-4-14; 8:45 am]

BILLING CODE 6717-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Project No. 13821-001]

#### ORPC Alaska 2, LLC; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

On March 3, 2014, the ORPC Alaska 2, LLC, filed an application for a successive preliminary permit, pursuant to section 4(f) of the Federal Power Act (FPA), proposing to study the feasibility of the East Foreland Tidal Energy Project (East Foreland project or project) to be located in Cook Inlet near Nikiski in the Kenai Peninsula Borough, Alaska. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The proposed project would consist of the following: (1) A series of 150-kilowatt TideGen® turbine-generator modules with a combined capacity of no more than 5 megawatts; (2) a 1- to 8-mile-long, 13.5-kilovolt (kV) direct current submarine transmission cable from the module site to an onshore station on the west coast of the Kenai Peninsula; (3) an approximately 0.25-mile-long, 4.16- to 34.5-kV three-phase alternating current terrestrial transmission line connecting the onshore station to a substation site owned by Homer Electric Association; and (4) appurtenant facilities. The estimated annual generation of the East Foreland project would be up to 17.2 gigawatt-hours.

*Applicant Contact:* Monty Worthington, Director of Project Development, ORPC Alaska 2, LLC, 725 Christensen Drive, Suite A, Anchorage, AK 99501; phone: (907) 388-8639.

*FERC Contact:* Sean O'Neill; phone: (202) 502-6462.

*Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications:* 60 days from the issuance of this notice. Competing applications and notices of

intent must meet the requirements of 18 CFR 4.36.

The Commission strongly encourages electronic filing. Please file comments, motions to intervene, notices of intent, and competing applications using the Commission's eFiling system at <http://www.ferc.gov/docs-filing/efiling.asp>. Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at <http://www.ferc.gov/docs-filing/ecomment.asp>. You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov), (866) 208-3676 (toll free), or (202) 502-8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. The first page of any filing should include docket number P-13821-001.

More information about this project, including a copy of the application, can be viewed or printed on the "eLibrary" link of Commission's Web site at <http://www.ferc.gov/docs-filing/elibrary.asp>. Enter the docket number (P-13821) in the docket number field to access the document. For assistance, contact FERC Online Support.

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## DEPARTMENT OF ENERGY

### Western Area Power Administration

#### Transmission Infrastructure Program

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

**ACTION:** Notice of revised program and request for project proposals.

**SUMMARY:** The Western Area Power Administration (Western) hereby announces its revised Transmission Infrastructure Program (the Program or TIP) and its request for new project proposals. 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 Western's service territory, to deliver or facilitate the delivery of power generated by renewable energy

resources constructed, or reasonably expected to be constructed, after the date the Recovery Act was enacted. Through the publication of this **Federal Register** notice (FRN or final notice) Western is finalizing revisions to this Program effective and seeks new project proposals from developers and other parties interested in obtaining financing for eligible projects. This final notice adopts and reaffirms the principles that the Program is separate and distinct from Western's power marketing functions, and each eligible project must stand on its own for repayment purposes.

**DATES:** Revisions to the Program are effective as of May 7, 2014.

**FOR FURTHER INFORMATION CONTACT:** Please contact Mr. John Kral, Transmission Infrastructure Program, Western Area Power Administration, P.O. Box 281213, Lakewood, CO 80228, telephone (720) 962-7710, email [TIP@wapa.gov](mailto:TIP@wapa.gov). This FRN is also available on Western's Web site at <http://ww2.wapa.gov/sites/Western/transmission/TIP/Pages/default.aspx>.

#### SUPPLEMENTARY INFORMATION:

##### Background

Western markets and transmits wholesale hydroelectric power generated at Federal dams across the western United States. Western's transmission system was developed to deliver Federal hydroelectric power to preference customers. Western owns and operates a transmission system with more than 17,000 circuit-mile, high-voltage lines and also 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; and parts of Iowa, Kansas, Montana, Minnesota, and Texas. Western markets excess capacity on its transmission system consistent with the policies and procedures outlined in its Open Access Transmission Tariff (OATT) on file with the Federal Energy Regulatory Commission. Western offers nondiscriminatory access to its transmission system, including requests to interconnect new generating resources to its transmission system, under its OATT.

The Program implements Section 402 of the Recovery Act, which amends Section 301 of the Hoover Power Plant Act of 1984. The Program uses the authority granted under these statutes to borrow up to \$3.25 billion from the U.S. Department of the Treasury to develop

new or upgraded electric power transmission lines and related facilities, with at least one terminus within Western's service territory, that facilitates the delivery to market of power generated by renewable energy resources constructed or reasonably expected to be constructed. Western sought public comment on the proposed updates to the Program in a 30-day public consultation and comment period as announced in a September 27, 2013, FRN (78 FR 59666). At the request of numerous parties, the comment period was extended for an additional 30 days and closed on November 26, 2013. Western received 48 comments from 43 interested parties 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.

### Discussion of Comments

Western received 48 comments related to the proposed, updated Program. To facilitate presentation and discussion of the comments, Western placed the comments into four general categories: (1) Comments on operation and management of the Program; (2) comments on project evaluation and selection; (3) comments on project funding, financing and repayment criteria; and (4) other comments. This section provides Western's response to the comments received. Where possible, comments of a similar nature were consolidated.

#### 1. Comments on Operation and Management of the Program

##### a. Time and Information Comments

*Summary Comment:* Western received numerous comments asking that the comment period be extended a second time. Some commenters request that Western meet with them to discuss the Program in more detail before implementing any revisions, and others want Western to provide additional time to elicit comments on what they describe as foundational issues and concerns with TIP.

*Response:* As referenced above, Western extended the original 30-day comment period an additional 30 days in response to concerns raised by some commenters. Western must balance the need to consider input from stakeholders with the need to implement necessary revisions to the Program in a timely fashion. Western has carefully considered all the comments it received and has incorporated them, as appropriate, into

this final notice. Western will not schedule meetings with commenters to discuss the Program at this time, but is committed to continual evaluation of the Program and is open to the possibility of making further adjustments, as appropriate, through an open and transparent public process.

*Summary Comment:* Prior to the extension of the public comment period, Western received numerous preliminary comments that included a series of questions about the Program.

*Response:* Western responded to the commenters' questions in writing on November 15, 2013. The responses are posted on Western's Web site at [http://ww2.wapa.gov/sites/western/transmission/tip/Documents/FRN\\_responses.pdf](http://ww2.wapa.gov/sites/western/transmission/tip/Documents/FRN_responses.pdf). Subsequently, Western extended the comment period an additional 30 days.

*Comment:* A commenter stated that the final notice should be laid out in a temporal sequence rather than by subject. The commenter also said it made more sense to move the requirement to advance \$50,000 when submitting a project application to the beginning of the notice.

*Response:* By describing the process through an overview of the project life-cycle, Western is informing project applicants of the chronological steps typically encountered during the project development phase. As to moving the application charge to the beginning of the notice, Western added a reference to the Project Proposal section (which appears early in the Project Life-cycle Overview section) notifying applicants of the charge.

*Comment:* A commenter pointed out that the program-related principles in the September 27, 2013 FRN did not match the program-related principles published in the May 14, 2009 FRN (74 FR 22732).

*Response:* The variations in the program-related principles in the two FRNs were meant to streamline the text of the principles. There was no intent by Western to alter the program-related principles. Western has re-instated the program-related principles from the May 14, 2009 FRN verbatim with two exceptions, which are identified in the introduction to Section II (Program Principles).

##### b. Accounting Practices and Standards Comments

*Summary Comment:* Western received several comments questioning the accounting methods being used by TIP. They include a request to explain what "appropriate accounting controls" means and whether TIP accounting principles are different than Western's

accounting principles. It was also suggested that Western track project repayment and include it in "appropriate controls." Another comment said the September 27, 2013 FRN lacks specificity regarding financial management issues.

*Response:* During the implementation of TIP, a stand-alone, separate Treasury Account Funding Symbol (TAFS) was created for TIP's specific use. Western has TAFSs for several functions, including the Colorado River Basins Power Marketing Fund and the Falcon and Amistad Fund. None of Western's TAFSs can be used for purposes outside of their respective appropriation. The same restrictions apply to TIP financial activities. Under the TIP TAFS, Western has established and maintains separate accounting fund codes, project numbers and work orders within its financial management system for all TIP activities and projects. TIP has dedicated staff of three financial personnel (financial manager, accountant and budget analyst) whose responsibilities include the tracking and monitoring of TIP costs and the segregation of TIP's financial transactions from Western's preference power financial transactions and from all other Western transactions. Western's accounting activities, including TIP, follow U.S. Government Standard General Ledger (USSGL) and Generally Accepted Accounting Principles (GAAP). In addition, TIP is subject to annual financial statement audits as well as OMB Circular A123 audit and review (link at [www.whitehouse.gov/omb/circulars/a123](http://www.whitehouse.gov/omb/circulars/a123)) that provide oversight of all finance activities.

*Summary Comment:* Some commenters asked what accounting methods will be used to ensure TIP and non-TIP ancillary services are segregated?

*Response:* TIP will use the same accounting methods as the rest of Western in tracking ancillary services. However, TIP ancillary services accounts will be separate and distinct accounts from Western's non-TIP ancillary service accounts.

##### c. Laws/Rules Comments

*Summary Comment:* Western received numerous comments that expressed concern over what is perceived as an effort to broaden TIP whereby it now provides assistance to applicants that seek to develop a project, and that such an effort goes beyond what should be Western's primary role in providing loans. Some commenters expressed concern that TIP fundamentally changes Western's core mission; that expanding the Program

may go beyond Congress' intent and Western's organic legislation; that the Program should not impact preference power customers; and that expansion of Western's role could only be done through borrowing from the U.S. Treasury or through advances from preference power customers. One comment said Congress should defund TIP to reduce the Federal debt. Others noted that the September 27, 2013 FRN does not contain any articulation that TIP will not impair Western's primary mission of delivering hydropower to preference customers, that Western is growing its mission at the expense of its preference power customers, and Western should provide a justification for TIP's "new role."

**Response:** Western appreciates these comments. In the course of evaluating projects submitted to TIP and working with project applicants, Western identified that some projects, though viable and possessing promise, were not ready for funding. For example, a project could need further development in the area of obtaining a Western Electricity Coordinating Council (WECC) path rating before it is ready to compete for TIP funding. The May 14, 2009 FRN that established TIP identified that the Program would, among other things, "participate in the study, facilitation, financing [and] planning . . . of new or upgraded transmission facilities and additions that will help bring renewable energy resources to market across the West." As TIP has staff (e.g., a planning engineer) in place for the purpose of evaluating projects, it was deemed efficacious to make them available to developers (at the sole expense of the developer) to provide assistance in areas such as obtaining WECC path ratings. Making TIP staff available in such a manner allows TIP to directly bill developers for services rendered and improves the chances a project may receive funding and fulfill the statutory purpose of Section 402 of the Recovery Act. Previously, TIP used its initial \$10 million non-reimbursable Recovery Act appropriation to cover expenses it incurred in reviewing project statements of interest and engaging with applicants. Going forward, project applicants must now fund, through application charges and advance payments, the work that TIP undertakes on a project. This does not change or impair Western's core mission to provide hydropower to its preference customers, nor does it require additional borrowing from the U.S. Treasury. The assurance that Western's preference power customers have not and will not bear the cost for

assistance provided by TIP to project applicants can be found in Section 402 of the Recovery Act, TIP's financial records and this final notice. Western's operation of the Program facilitates the construction, financing and planning of new and upgraded transmission lines and the legislation that gave rise to the Program and Western itself. Western does not have the authority to defund the TIP.

**Summary Comment:** Several commenters noted that TIP is tremendously valuable to the nation, has potential to produce highly beneficial public-private partnerships, and is timely and relevant in the pursuit of competitive power project for renewables in the West. These commenters also noted that project developers, not Western, should be responsible for funding any development efforts related to a TIP project.

**Response:** Western appreciates this comment.

**Summary Comment:** Several commenters asked how the May 14, 2009 FRN and the September 2013 FRN relate to one another (i.e., does the September 27, 2013 FRN supersede the May 14, 2009 FRN, amend it, or contain additional program requirements). Commenters said there are discrepancies between the two FRNs, "fast tracking" of adjustments, and that changes in the September 27, 2013 FRN may be an effort to hide Western's real intentions. A single FRN that contained all the Program requirements was preferred, and an explanation of the differences between the May 14, 2009 FRN and the September 27, 2013 FRN was requested.

**Response:** After receiving public comment, Western established the Transmission Infrastructure Program in the May 14, 2009 FRN. As the Program took shape, it became evident to Western that aspects of the Program (e.g., giving applicants more detailed information about submitting a proposal, requiring applicants to pay for Western's evaluation of a proposal, defining more commonly used terms) needed to be updated. The purpose of the September 27, 2013 FRN was to provide notice of proposed TIP updates in a transparent and public manner. Western's interest in proposing the changes in the September 27, 2013 FRN that are being finalized in today's notice is to create a more efficient, self-sustaining program that realizes the statutory goals of Section 402 of the Recovery Act (Section 301 of the Hoover Power Plant Act of 1984)—the upgrading and expansion of the transmission system in the West to

deliver or facilitate the delivery of renewable energy resources. Today's final notice contains all Program requirements and includes a section that summarizes the changes among the May 14, 2009 FRN, the September 27, 2013 FRN and this document.

**Summary Comment:** A commenter states that TIP funding will expire in 2016, before TIP projects can be approved, and project applicants do not have sufficient time to perform required transmission line planning and the ability to contract with generators of renewable power. The commenter posits that without renewable tenants, any new project will not be commercially viable or needed and will become a stranded transmission asset to be repaid by Western's customers.

**Response:** Section 402 of the Recovery Act, the section of the act that authorizes Western to loan up to \$3.25 billion, amends Section 301 of the Hoover Power Plant Act of 1984 (Pub. L. 98-381). Unlike other sections of the Recovery Act (e.g., Section 403, Set-aside for Management and Oversight), Section 402 does not stipulate that funds set aside remain available for obligation until a specific date; therefore, Western considers the borrowing authority made available under Section 402 permanent.

**Summary Comment:** Western received several comments that the September 27, 2013 FRN appears to have expanded the standard of "reasonable expectation," potentially meaning that the authority could be exercised for a project that is never constructed or does not generate enough revenue to ensure repayment.

**Response:** No expansion of the "reasonable expectation" standard is intended. The reference to projects that are constructed or reasonably expected to be constructed is taken directly from the wording of Section 402 of the Recovery Act. It is possible a project that obtains a loan through Western's borrowing authority may not get built despite the efforts of Western and the DOE Loan Programs Office (LPO) to identify projects that are good candidates for funding. A project that cannot demonstrate a committed source of revenue to ensure repayment of a loan would not be considered a good candidate to receive funding.

**Summary Comment:** The May 14, 2009 FRN indicates that Western's Administrator must ensure that TIP does not conflict with the responsibilities of the existing transmission system. Western's response to a comment submitted on the May 14, 2009 FRN regarding the Administrator's certification

responsibility to ensure a proposed new project does not conflict with his responsibilities to preference power customers should be added to the September 27, 2013 FRN.

**Response:** Western notes that today's final notice requires that a project considered by TIP will not adversely impact transmission system reliability or operations, or any other statutory obligations. Those statutory obligations include the Administrator's responsibility to abide by contracts to provide Federal hydropower to Western's preference power customers.

**Summary Comment:** Whenever there is a reference to operations and maintenance, there should be a reference to "replacements."

**Response:** Western has incorporated a reference to "replacements" in this final notice, where appropriate.

**Summary Comment:** Some commenters noted that the September 27, 2013 FRN did not include language regarding the Administrative Procedure Act's (APA) 30-day delayed effective date provision and questioned whether the Program changes were substantive.

**Response:** The September 27, 2013 FRN proposing updates to the Program did contain some substantive changes. The delayed effective date provision in Section 553(d) of the APA applies to final notices. Because today's notice finalizes the substantive changes proposed in the September 27, 2013 FRN, the 30-day provision applies to today's final notice.

**Comment:** A commenter asserts that the TIP application process is now less efficient and more cumbersome than the process outlined in the May 14, 2009 FRN. A single application and cost structure with a quick decision turnaround is recommended.

**Response:** The submission of a project proposal affords Western the opportunity to provide project applicant a timely decision on whether a project meets the Project Evaluation Criteria, potentially saving the applicant considerable time and expense associated with having to prepare and submit a full Business Plan Proposal that may not meet the criteria. Western will continue to examine ways to expedite the project evaluation process in the interest of making the process less burdensome for applicants.

**Comment:** A commenter questioned the quarterly intake of project proposals. To help developers stay on schedule with their project development plans, the commenter asked if there was an alternative way to review project proposals.

**Response:** Western will screen project proposals at a minimum on a quarterly

basis, but has revised the final notice so it can also screen proposals at times other than the beginning of each quarter, as necessary.

**Comment:** A commenter asked that Western remove the 10-page cap on the project proposal so project applicants could provide more detailed information.

**Response:** Western has removed the 10-page limit on the number of pages in a project proposal.

#### d. Comments on LPO's Role in TIP

**Summary Comment:** The DOE LPO should become a backstop when "reasonable expectations" of repayment are not achieved.

**Response:** The DOE LPO will provide services to Western during the project financing phase, but cannot act as a backstop for Western's borrowing authority.

**Summary Comment:** Western received several comments pointing out LPO's new role. Some commenters said LPO should make the final determination if a project meets the "reasonable expectation of repayment" requirement.

**Response:** LPO will play a material role in determining whether a loan from Western's borrowing authority should be extended to project developers on future TIP projects. Toward that end, the "reasonable expectation of repayment" (one of the five statutory evaluation criteria) will receive extensive due diligence and credit review by LPO. The LPO's analysis will be shared with Western's Administrator before a determination is made regarding a project's ability to meet this core statutory requirement.

**Comment:** A commenter supports moving the evaluation of the loan application function to LPO, believing that leveraging existing DOE staff will keep Program costs down.

**Response:** Western appreciates the comment.

#### e. Commingling of Resources Comments

**Summary Comment:** Western received numerous comments about the commingling of resources. In particular, commenters expressed concern about non-TIP staff being used to conduct TIP work when they should be supporting preference power customers (i.e., that TIP is taking resources away from preference power customers, thereby impacting the ability of Western employees to concentrate on preference power issues). It was noted that a paramount concern of preference customers is that so much staff energy and time will be taken up managing the Program that routine business matters

related to serving preference customers will not be met or will be significantly delayed. Others considered the use of non-TIP personnel contrary to TIP's core principle not to interfere with Western's existing obligations. A specific proposal raised by a commenter was to have Western use contractors to supplement the TIP staff when necessary.

**Response:** Western acknowledges the commenters' concerns. Non-TIP staff has been used sparingly on issues that only relate to TIP, and the TIP Manager, in conjunction with Western regional managers and other supervisors, monitor the involvement of non-TIP staff. Dedicated TIP staff work solely on TIP projects—not preference power issues. The management of TIP is the responsibility of the TIP Manager, who bills all of his/her time to the Program. It is a TIP principle that the Program will not adversely impact system reliability, operations or other statutory obligations, and TIP has not interfered with Western's existing obligations. Western has and will continue to use contractors to work on TIP-exclusive matters when necessary. The use of contractors provides TIP flexibility in scaling up manpower to match increased Program activities while avoiding the need to create a larger, fixed staff.

**Summary Comment:** Western received numerous comments about project beneficiaries being made to bear the entire cost for TIP and that preference power customers should not cover any TIP (i.e., project development) costs. There was also concern that Western's program direction was picking up some of the costs of TIP's accounting system.

**Response:** Western acknowledges the commenters' concern that project developers and beneficiaries should pay all TIP-related costs. Western has and will continue to manage the Program separately from its preference power program. Western's protocol for managing the Program in this manner is set forth in this final notice (e.g., developers are responsible for providing advance funding for expenses TIP may incur from the submission of a proposed plan through actual project financing). Western agrees with the principle that project beneficiaries should pay for project costs and included this requirement in the Program principles set forth in the May 14, 2009 FRN, the September 27, 2013 FRN and today's final notice, though it has been refined to require project applicants (not merely beneficiaries) to pay for project-related costs. Costs associated with TIP's accounting system are paid for through the application of the TIP overhead rate

that developers pay and is not funded through Western's preference power program.

## *2. Comments on Project Evaluation and Selection*

**Summary Comment:** The May 14, 2009 FRN included 11 elements, of which 6 have been removed from the September 27, 2013 FRN. Please clarify.

**Response:** The evaluation criteria were reduced from 11 to 5 to streamline the evaluation process. The 5 criteria in the September 27, 2013 FRN are directly derived from Section 402 of the Recovery Act.

**Summary Comment:** How will standards for creditworthiness be established?

**Response:** TIP will perform due diligence to determine if an applicant possess an adequate level of creditworthiness before deciding whether to further engage with the applicant on a project. TIP will apply generally accepted creditworthiness standards when making this determination.

**Comment:** One commenter asked how an applicant would integrate the TIP process at different stages of a project.

**Response:** Western revised the final notice to allow a project developer to submit a Project Proposal and Business Plan Proposal concurrently on a project that is more mature in terms of using Western's borrowing authority. This process will allow for a more expedited review of a project.

**Comment:** A commenter that previously submitted a Statement of Interest and has a Memorandum of Understanding (MOU) with TIP seeks clarification as to how these revisions would apply; specifically, would such a project have "grandfathered" status?

**Response:** The MOUs previously entered into by TIP required each party to be responsible for their own costs associated with the project. The agreements also permitted either party to terminate the agreement at will. As the updates to the Program require project applicants to provide advance funding to TIP for the evaluation of a project and any development assistance TIP may provide, Western will require existing entities with whom it has entered into an MOU to execute a revised MOU that stipulates the project applicant will provide advance funding for expenses incurred by TIP going forward.

**Comment:** A commenter notes that the updates to the Program do not address other activities, such as land acquisition. The commenter suggests that upon completion of the project development phase, the project

applicant and Western should negotiate a project finance phase agreement that lays out the terms of Western's participation (financial and otherwise) in the project.

**Response:** In terms of extending Western's borrowing authority, Western will rely on the services and direction provided by the LPO in setting out the financial terms of the lender-borrower relationship. Other terms governing Western's role in a project would be subject to negotiation and Western's determination that it is in the best interest of the agency to participate in the project beyond making a loan.

**Comment:** After noting that the description of major components in the September 27, 2013 FRN does not contain much detail about exactly how Western will evaluate specific projects, a commenter suggests that Western provide a more complete description of the Program (to include project evaluation) and solicit public comment.

**Response:** Because no two projects are alike, Western does not provide detailed information in this final notice on how it will evaluate specific projects. The Project Evaluation Criteria set forth in the September 27, 2013 FRN establish the core principles that will guide Western's evaluation process. Those principles will inform Western's review of Project Proposals, Business Plan Proposals, and whether a project is developed to the point that it can proceed to loan underwriting and is eligible to obtain a loan using Western's borrowing authority. Western will, as necessary, work with project applicants in providing additional information about the project evaluation process.

**Comment:** A commenter notes Western is expecting all aspects of project development to be complete, and that this requirement is too conservative. The commenter asserts that projects deep into development should qualify for TIP funding and Western should hold a public workshop to discuss "project readiness."

**Response:** Western does not expect all projects to be fully developed. As noted in a previous comment, Western has revised this final notice so a project applicant can submit a Project Proposal and Business Plan Proposal concurrently on a project that is more mature, as opposed to submitting only a Project Proposal on a project that is in the early stages of development. Though it is likely a project well into the development phase has achieved or is close to achieving significant milestones (e.g., the issuance of a National Environmental Policy Act (NEPA) record of decision), only fully developed projects that meet Western's

Project Evaluation Criteria are eligible for TIP funding. Western does not plan to hold a workshop on project readiness at this time but will consider the request.

**Comment:** Timeline and milestones associated with the transition from the project development phase to the project financing phase should be clarified. Before committing substantial resources at the project development phase, project applicants need certainty that a project which completes agreed-upon milestones will advance to the project financing phase.

**Response:** Western acknowledges project applicant's need to have certainty on project milestones. Western anticipates that project applicants will submit projects of varying degrees of maturity to TIP. As such, it is difficult to establish timelines that would apply to every project. There is the expectation, however, that material project milestones such as NEPA records of decision, purchase power agreements, interconnection agreements and other milestones will be achieved when a project transitions from the project development phase to the project financing phase.

**Comment:** The September 27, 2013 FRN does not address activities beyond the issuance of a loan, such as Western's potential role in land acquisition. Project applicants and Western should negotiate a comprehensive project finance phase agreement that sets forth the full terms of Western's participation in a project rather than simply have an applicant submit a loan application.

**Response:** Western's potential participation in activities beyond the issuance of a loan is difficult to quantify as any such participation will be project-specific and subject to Western's determination that it is in the agency's best interest. If Western participates in a project beyond providing financing, it would enter into negotiations with a project applicant to establish the terms of Western's participation prior to the applicant's submission of a loan application.

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

**Summary Comment:** Western received several comments concerning the failure of a TIP project during and after construction and how would repayment occur.

**Response:** Western is mindful of this potential and the possible adverse consequences it could have on the Program. In most cases, long-term purchase power agreements (PPAs) that provide the revenue to repay a TIP loan must be in place before Western would

consider extending its borrowing authority on a project.

*Comment:* How would an applicant demonstrate repayment of borrowed funds if no PPAs are in place?

*Response:* This would be difficult to do as PPAs are often tied to the source of transmission revenue required to repay borrowed funds. Section 402 of the Recovery Act mandates that revenue from the use of projects funded under this section shall be the only source of revenue for repayment of the associated loan and to meet the costs of operating and maintaining the new project. Western would review and evaluate the proposed source of revenue from a project to determine whether there is a reasonable expectation of repayment.

*Summary Comment:* The second Program Principle in the September 27, 2013 FRN appears to have narrowed a project's financial obligation. Western should reinstate the wording that appeared in response to a comment made on the May 14, 2009 FRN that it would use revenues from project beneficiaries as the only source of repayment of all associated project costs.

*Response:* Program Principle 2, which is directly derived from the Recovery Act, is more succinct and precise than the wording in a response to a comment on the May 14, 2009 FRN. As this principle is a re-statement of the statutory requirement, it does not narrow a project's financial obligation.

*Summary Comment:* Western must have a plan in place to cover future overhead costs. In addition, whenever there is a reference to Western's costs there should be a reference to "including overhead."

*Response:* TIP has developed an overhead rate that it applies to direct charges for each project developer with which it is engaged, so TIP overhead is already included in TIP costs. The TIP accounting department prepares a budget to cover TIP's anticipated overhead expenses and adjusts the overhead rate accordingly. Due to a favorable outcome on the pre-payment of the loan on a previous TIP project, TIP was able to establish a DOE-approved reserve fund to cover TIP-related expenses if the payment of TIP overhead falls short in a particular year.

*Summary Comment:* Western received comments questioning why Western is absorbing costs or "mutually agreeing on an amount" it will pay on a project as part of an Advance Funding Agreement (AFA), given that TIP's original startup funding has been exhausted.

*Response:* During discussions leading up to an AFA, the project developer

informs TIP of the nature of assistance it seeks. If TIP has the resources available to provide the assistance, the project developer pays for the entire amount of the assistance, including overhead, in advance. There is no negotiation about TIP paying for any assistance it provides and TIP is not absorbing any development costs. The only negotiation that takes place is whether the developer provides advance funding on a monthly or quarterly basis.

*Summary Comment:* Applicants should repay project costs. The intent of TIP is to provide project financing and Western should not be responsible for funding development efforts related to a TIP project.

*Response:* Applicants are required to pay—in advance—for any work that TIP performs. TIP personnel do not perform any work unless an applicant deposits a requisite sum of money in a Western U.S. Treasury account. Through the use of AFAs, annual project service charges, and the application of an overhead rate that covers programmatic expenses, TIP is a self-sustaining program. Beginning with the initial application, through the Business Proposal Plan and into the AFA phase, project applicants are responsible for all project-related costs.

*Summary Comment:* Western should substantially reduce the \$50,000 application fee, allow more information in the project proposal, and share the expenses associated with the Project Proposal and the Business Plan Proposal.

*Response:* TIP must be a self-sustaining program. It does not receive annual appropriations to cover expenses related to the submission and evaluation of Project Proposals and Business Plan Proposals so it is not in a position to share expenses. The application charges are upper estimates of the costs TIP may incur in evaluating these proposals. As set forth in the September 27, 2013 FRN, if TIP's costs are less than the stated charge, TIP will refund any remaining funds or apply them to other charges as directed by the project applicant. Western has reduced the overall cost of the charges it will assess by \$50,000.

*Summary Comment:* Several commenters expressed concern about the misapplication of the "beneficiary pays" concept found in Section II.4 of the September 27, 2013 FRN. They suggest shifting from a "beneficiary pays" paradigm to a "cost creator pays" paradigm. To eliminate any confusion, they request the wording to be changed to read, "Ensure that Project Applicants repay project costs."

*Response:* Western has changed the wording to Section II.4 of this final

notice to clarify repayment of project costs.

*Summary Comment:* Is Western using the original TIP funds to cover overhead expenses or are Project Proposal and Business Plan Proposal charges covering overhead expenses?

*Response:* The overhead rate is included in the number of hours it charges project applicants for evaluating Project Proposals and Business Plan Proposals.

*Comment:* A commenter identified that the Recovery Act does not address how repayment of TIP-issued loan would occur if certain circumstances occurred. The commenter listed three potential scenarios: (1) If a project participant declared bankruptcy or could not meet repayment obligations after construction of a project had started; (2) if a project participant failed after construction was completed; and (3) if a project participant wanted or needed to exit a project. The commenter added that there is value in addressing involuntary and voluntary withdrawals of project participants at the front end of project development rather than focusing only on managing fallout from changes later in the project development phase. Finally, the commenter asks whether cost subsidy protections could be developed for Western customers who are not participating in a project.

*Response:* The Recovery Act does not specifically address potential circumstances associated with repayment. Each project is distinct and it is incumbent on TIP to collaborate with project applicants to conduct risk analysis during the development and financing phases to address potential issues throughout the project life-cycle. TIP staff will conduct analytical reviews of various scenarios that include an examination of offtake, ownership and asset transfer so Western can make determinations on risks and rewards associated with each project. As Western's borrowing authority is not a subsidy-based program, Western does not have the authority to provide cost subsidies to project applicants.

*Comment:* A commenter noted that Western uses the phrase "reasonable expectation" in the September 27, 2013 FRN as the means by which it will determine the relative merit of a proposed project. With this in mind the commenter asks how the "reasonable expectation" standard will be developed, implemented and measured; and how an applicant can demonstrate the ability to repay a loan if the applicant does not have signed purchase power agreements at the time Western is making project evaluation decisions.

**Response:** In the course of evaluating a project at the project proposal and business plan proposal stages and thereafter, Western will employ the “reasonable expectation of repayment” standard. The standard requires Western to determine if the proposed plan for repayment of a loan is financially sound and achievable. A project may be better able to meet the standard as it progresses from an initial proposal to a more mature, substantive undertaking. For example, one would not expect a project at the project proposal stage to include PPAs, but it is reasonable to expect that a project in the final stages of development would have signed PPAs in place or be close to executing them. Extensive due diligence by qualified legal, financial and technical experts will be employed to determine if a project meets the “reasonable expectation of repayment” standard.

**Summary Comment:** Several commenters wanted more information about the Program’s loan forgiveness clause found in Section 402 of the Recovery Act, as it is unique in the industry. In addition, a commenter notes that TIP cannot be implemented if the final notice does not address the loan forgiveness provision. In addition to pointing out that loans not repaid through a successful project may be forgiven, a commenter asks if monies advanced by an applicant will be folded into a loan and become a reimbursable item and therefore be subject to loan forgiveness; and what the relationship is between the use of funds advanced by an applicant and the forgiveness of costs related to a project that does not get constructed.

**Response:** The forgiveness clause is required by Section 402 of the Recovery Act. If circumstances give rise to the forgiveness of a loan, Western will implement a loan forgiveness protocol after consulting with DOE. The commenter correctly notes that the Recovery Act allows for loan forgiveness if there is a remaining balance owed at the end of the useful life of a project and funds expended to study projects that are considered but not constructed. The Recovery Act requires Western’s Administrator to certify, prior to committing funds to a project, that it is reasonable to expect the project’s proceeds will be adequate to repay the loan. Money advanced by an applicant would not become part of a loan and be subject to loan forgiveness. The status of funds advanced by an applicant on a loan that is forgiven would be subject to the terms of the financing agreement executed by the parties.

**Comment:** A commenter seeks an explanation of how Western derived the

amounts of the charges it will assess to project applicants.

**Response:** Western considered the upper limit of what it might cost to review complex Project Proposals and Business Plan Proposals in arriving at the application charges. Potentially high hourly rates for using technical experts to evaluate proposals was a key component in establishing the amounts.

**Comment:** A commenter expressed concern that recently added language allowing for “reasonable” expectations in Project Evaluation Criteria 1 and 3 will diminish the original intent of the Program to facilitate the delivery of renewable energy with no risk to current Western firm electric service and transmission customers.

**Response:** The Project Evaluation Criteria listed in this final notice regarding the reasonable expectation that a project facilitates the delivery of renewable energy resources has not changed from the May 14, 2009 FRN. Similarly, the reasonable expectation that a project will generate enough transmission service revenue to repay the loan principle, interest and operating costs by the end of the project’s service life also remains the same.

**Comment:** A commenter suggests it might be appropriate for Western and project applicants to share expenses associated with Project Proposals and Business Plan Proposals if a project demonstrates a benefit to existing and planned Western investments.

**Response:** Western may consider this suggestion if such a project is proposed. For the time being, Western will look to project applicants to pay for expenses associated with Project Proposals and Business Plan Proposals.

**Comment:** A commenter asked for more information about the magnitude of costs project applicants are expected to reimburse Western, how costs are calculated, and the mechanics of reimbursement once a project is accepted by TIP.

**Response:** Project Applicants are required to pay in advance (not as a reimbursement) for any work Western or LPO performs on a project. The charges a project applicant must pay to have Western evaluate a Project Proposal and Business Plan Proposal are set forth in this final notice. If an applicant decides to enter into an AFA with Western, Western will provide rates and related costs associated with work it agrees to perform on a project. The AFA will include mutually agreeable terms governing the mechanics of how the applicant will provide funding to Western.

#### 4. Other Comments

**Comment:** One commenter recommended Western form a cross-functional stakeholder team (solar industry reps, transmission operators, environmental organizations, etc.) to review proposals for new transmission to serve regions with superior solar energy resources.

**Response:** Western is open to consulting with industry stakeholders but this recommendation is outside the scope of the Program. TIP is focused on reviewing specific proposals to construct new or upgraded transmission facilities that deliver or facilitate the delivery of renewable energy resources.

**Comment:** A commenter notes the Recovery Act clearly suggests that ancillary service needs of a TIP project could be met by existing federal projects, and that the September 27, 2013 FRN segregates TIP project costs and revenues from other Western project costs/revenues. With this in mind the commenter asks if the term “Federal power system” as it appears in the Recovery Act means Western’s Desert Southwest Region, or a particular project like the Parker-Davis Project or Boulder Canyon Project? The commenter also asked what accounting procedures and methods will be used to ensure that ancillary service costs are segregated.

**Response:** The term “Federal power system” as used in the Recovery Act refers to all projects within the Western Area Power Administration. A federal power system could conceivably provide ancillary services to a TIP project. No TIP project to date has required ancillary services from a Federal Power System. If a future project requires these services, Western would establish separate and distinct accounts, accounting fund codes and project numbers within its financial management system to segregate ancillary service costs.

**Comment:** Is the Federal Power System obligated to obtain and deliver ancillary services for TIP projects?

**Response:** No.

**Comment:** The final notice should state that revenues collected from ancillary services should be credited to the power system providing the service.

**Response:** Western has added a statement to this final notice to reflect this.

**Comment:** A commenter asks whether “replacements” should be added to Program Principle 2.b?

**Response:** The word “replacements” has been added to Program Principle 2.b.

**Comment:** A commenter states that TIP staff have stated that they “don’t

want to be bothered" responding to inquiries from customers about the proposals set forth in the September 27, 2013 FRN.

**Response:** Western has no knowledge that its staff has responded in this manner. If the commenter has specific information regarding this alleged statement it should provide that information to Western.

**Summary Comment:** Western received several comments about the wording in the May 14, 2009 FRN that Western's excess capacity "needed to serve its preference power customers" should be reinstated.

**Response:** The wording at issue appeared in the Supplementary Information: Background section of the May 14, 2009 FRN. The September 27, 2013 FRN did not include the "needed to serve" wording and made other minor wording changes (e.g., added "OATT on file with the Federal Energy Regulatory Commission") for purposes of making this sentence more technically correct and less awkward. The reference to Western's "excess capacity on its transmission system" covers the capacity beyond that needed to serve its preference power customers.

**Comment:** A commenter encourages Western to include transmission rates established through a robust anchor tenant process (in accordance with FERC orders) as meeting the principle of "using a public process to set transmission rates."

**Response:** Western will take this suggestion under advisement.

**Comment:** The September 27, 2013 FRN does not adequately address risks to commercial developers or how TIP will protect commercial developers from costs Western incurs in performing its preference power program, nor does the FRN mention TIP's plan to keep overhead rates in check or how it will keep costs attributable to other projects or non-TIP program requirements separate.

**Response:** Western has acknowledged the concern that project developers and beneficiaries should pay all TIP-related costs, and Western acknowledges the concern that commercial developers should not bear any costs associated with Western's preference power program. Accordingly, Western will continue to manage TIP separately from its preference power program and maintain stand-alone Treasury Account Funding Symbols (TAFS) for TIP's exclusive use. With the knowledge that project applicants are responsible for paying TIP's overhead rate, Western closely monitors its Program expenses.

**Comment:** A commenter notes that the September 27, 2013 FRN does not

address how proprietary commercial data will be protected from Freedom of Information Act requests.

**Response:** Wordings from the May 14, 2009 FRN addressing Western's handling of confidential business information has been incorporated into this final notice in Section III.D.

**Comment:** A commenter suggests that the final notice include a protocol for resolution of conflicts of interest that may arise when public power interests differ from competitive power project sponsor pursuits.

**Response:** This suggestion is outside the scope of the Program.

**Comment:** A commenter notes that commercial developers may value TIP's non-financial development assistance such as federal siting authority for lands or interconnection requests, and the final notice should address the various ways projects originate and develop. The transferability of financing and development assistance should also be addressed.

**Response:** TIP's main purpose is to provide funding to projects that deliver or facilitate the delivery of renewable energy resources; however, the provision of non-financial development assistance is inextricably linked to the issuance of a loan using Western's borrowing authority. The transferability of financing and development assistance will be considered on a case-by-case basis.

#### Consolidated Summary of Changes From the May 14, 2009 FRN to the September 27, 2013 FRN, and From the September 27, 2013 FRN to This Final Notice

Pursuant to the request of several commenters, this section identifies how the September 27, 2013 FRN (2013 FRN) and this final notice differ from the May 14, 2009 FRN (2009 FRN) that established the Transmission Infrastructure Program.

The introductory paragraph ("Western's Transmission Infrastructure Program") in the 2009 FRN, the 2013 FRN and this final notice remains fundamentally the same. This final notice recognizes, however, that many proposed projects when first presented to Western are not mature enough to compete for financing from Western's borrowing authority; accordingly it allows applicants to seek guidance from TIP staff to address areas of concern that may hinder a project's ability to obtain funding.

The Table of Contents in the 2009 FRN was modified when the 2013 FRN was published. The Table of Contents in the 2013 FRN deleted the project-related principles section and added new

sections on project life-cycle overview and funding during the project development phase. The only change in the Table of Contents in today's final notice is the addition of sections on Project Development and Operations & Maintenance, and Project Rates and Repayment. These sections, which previously appeared in the 2009 FRN, have been included in this final notice for purposes of having one all-inclusive document that sets forth all the guidelines for the Program. The Definitions section was expanded from the 2009 FRN to the 2013 FRN so interested parties could have more precise information about the content and meaning of frequently used terms. The 2013 FRN and this final notice delete the terms "Administrator" and "Entity" as those definitions were deemed to be well-understood by the prospective audience. It should be noted that Western has changed the name of "Statement of Interest" in the 2013 FRN to "Project Proposal" in this final notice, has added a definition of "Public Interest," and deleted the term "Project Beneficiary."

The Project-Related Principles set forth in the 2009 FRN were deleted. Principles 1–4 were part of the Project Evaluation Criteria section in the 2009 FRN, so it appeared redundant to include them separately. Project-Related Principles 1–4 appear in the Project Evaluation Criteria of the 2013 FRN and today's final notice.

Project-Related Principle 4 (use of a public process to set rates for any Western transmission capacity that results from the agency's participation in development of a project) in the 2009 FRN was deleted from the 2013 FRN as it is part of Western's reaffirmation to adhere to project rates and repayment policies and practices (see Section VI of the 2013 FRN). Similarly, Project-Related Principles 5 (capability to obtain and deliver ancillary services) and 6 (use proceeds from the sale of transmission to repay principal and interest, ancillary services and operations and maintenance costs) of the 2009 FRN are imbedded in Project Evaluation Criteria 3 and 4, respectively, of the 2013 FRN and this final notice. The Program-Related Principles set forth in the 2009 FRN, 2013 FRN and today's final notice remain the same.

The concepts identified in Section III (Project Funding) of the 2009 FRN appear in Section V (Funding During the Project Development Phase) of the 2013 FRN and today's final notice. Western has added wording to this final notice that appeared in the 2009 FRN regarding how it will isolate TIP

financial accounting transactions in its existing financial management system. The statement in Section III of the 2009 FRN that Western will look for public-private partnerships to maximize the use of its borrowing authority was deleted from the 2013 FRN and this final notice as that concept (i.e., leveraging Western's borrowing authority funding) is captured in the "Western's Transmission Infrastructure Program" overview.

The only changes in the Program-Related Principles from the 2009 Notice to this final notice are: (1) "and related facilities" has been added to Program Principles 1 and 3 to comport with the wording of the Recovery Act; (2) "replacements" has been added to Program Principle 2.b; and (3) "project beneficiaries" has been changed to "Project Applicants" in Program Principle 4. The Project Evaluation Criteria set forth in the 2009 FRN has been reduced from 11 elements to 5 elements based on Western's determination that the core elements set forth in the Recovery Act should be the means by which a proposal is evaluated. Though Project Evaluation Criteria 5 (potential economic developments of a project) and 6 (priority for projects that satisfy Western's OATT) that appeared in the 2009 FRN are still noteworthy, they are not deemed to rise to the same level of importance as the statutory criteria. Project Evaluation Criteria 8 (technical merits and feasibility of a project), 9 (financial stability and capability of project partners), 10 (project readiness) and 11 (project partners' participation in region-wide transmission planning) that appeared in the 2009 FRN were deleted from the Project Evaluation Criteria in the 2013 FRN and this final notice. Each of these important aspects of a project will nevertheless be reviewed by Western in determining whether an applicant's Business Plan Proposal is financially, technically, commercially and legally viable.

Western has added back the wording that appeared in Section IV.C (Project Evaluation, *Policies and Procedures*) of the 2009 FRN but not the 2013 FRN. These policies and procedures govern the Program's establishment of additional project evaluation criteria, ability to use outside experts in evaluating projects, and how Western will treat confidential information submitted to the Program. For transparency and ease of use, Western has also added back the Project Development and Operations and Maintenance, and Project Rates and Repayment sections that appeared in the 2009 FRN. The Project Development

and Operations & Maintenance policies and procedures were revised to clarify that Western will consider proposed projects in accordance with the requirements of its OATT.

Western has modified the charges applicants must pay when they submit Project Proposals and Business Plan Proposals. Under the 2009 FRN, Project Applicants were not required to pay any charge to have Western evaluate a Statement of Interest or any other project-related documents. The 2013 FRN required Project Applicants to pay \$50,000 upon submission of a Project Proposal and \$250,000 when submitting as Business Plan Proposal. In the interest of accommodating applicants that have well-developed projects and who seek an expedited project review, Western will allow applicants to submit Project Proposals and Business Plan Proposals concurrently. Applicants may now either submit a Project Proposal and Business Plan Proposal at the same time along with a \$250,000 payment, or submit \$50,000 when presenting a Project Proposal and the remaining balance of \$200,000 when presenting a Business Plan Proposal.

The 10 page limit that applied to Statements of Interest (now Project Proposals) in the 2013 FRN has been eliminated.

The 2013 FRN established that Western would screen Project Proposals received during the previous quarter for purposes of determining whether or not each proposed project meets or is reasonably expected to meet the Project Evaluation Criteria. This final notice permits Western to screen Project Proposals at other times if necessary.

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

Western's Transmission Infrastructure Program implements Section 402 of the Recovery Act by identifying, prioritizing and participating in the study, facilitation, financing, planning, operating, maintaining and constructing new or upgraded transmission lines and related facilities to bring renewable energy resources to market across the western United States. A main objective of the Program is to encourage non-Federal participation to leverage Western's borrowing authority. Recognizing that most proposed transmission projects are, when first presented to Western, not mature enough to compete for financing through Western's borrowing authority, the Program allows applicants to leverage the expertise of TIP personnel in obtaining guidance on how to develop certain aspects of a project so

it can compete more favorably for funding.

The program consists of the components set forth below.

#### **Table of Contents**

- I. Definitions
- II. Program Principles
- III. Project Evaluation Criteria
- IV. Project Life-Cycle Overview
- V. Funding During the Project Development Phase
- VI. Project Development and Operations & Maintenance
- VII. Project Rates and Repayment
- VIII. Request for Submission of New Project Proposals

#### **I. Definitions**

**Advanced Funding Agreement (AFA):** The document that sets forth the terms by which the Project Applicant provides advance funds to Western for development work on an Eligible Project. An AFA is executed after TIP has reviewed and accepted a Project Applicant's Business Plan Proposal.

**Business Plan Proposal:** The document prepared by the Project Applicant that articulates project development, commercial, and financial plans supported by Financial Model projections. The Business Plan Proposal is a preliminary plan that identifies the conditions precedent required for a Project Applicant to apply for financing. Submitted after Western and the Project Applicant have entered into a Memorandum of Understanding, a Business Plan Proposal is a detailed, comprehensive document that will mature and be revised by the Project Applicant prior to submission of a loan application.

**DOE Loan Programs Office (LPO):** A program within the Department of Energy. DOE LPO performs underwriting and loan monitoring and administration functions.

**Eligible Project:** A project that: (1) Facilitates the delivery to market of power generated by renewable energy resources constructed or reasonably expected to be constructed, (2) has one terminus in Western's service territory, (3) can demonstrate a reasonable expectation of repayment, (4) will not adversely impact system reliability or operations, and (5) is in the public interest.

**Financial Model:** A model that includes a simulation of relevant costs, benefits, values, and risks that will be assessed when making financial decisions affecting a project. Financial Models submitted to TIP must be in Microsoft Excel format and use standard industry conventions or templates provided by Western.

***Memorandum of Understanding (MOU):*** The document that sets forth an understanding between Western and a Project Applicant after Western has approved a Project Applicant's Project Proposal. An MOU precedes the applicant's submission of a Business Plan Proposal.

***Project Applicant:*** Term used to refer to an entity that submits a Project Proposal and Business Plan Proposal.

***Project Development Phase:*** The phase of the project that precedes the Project Finance Phase and construction of the project. The Project Development Phase begins when a Project Applicant submits a Project Proposal and concludes when a Project Applicant submits an application for the use of Western's borrowing authority. The Project Development Phase may include activities associated with facilities studies, Western Electricity Coordinating Council (WECC) path rating, environmental review, design of facilities, obtaining necessary permits, negotiation and execution of commercial agreements, acquisition of external financing, and any other activity that must be completed prior to the submission of a loan application. Project Applicants may request the assistance of Program personnel during this phase.

***Project Finance Phase:*** The Project Finance Phase involves the underwriting, financing, and loan monitoring and servicing for an Eligible Project. With few exceptions, it follows completion of the Project Development Phase. The DOE LPO is responsible for administering the Project Finance Phase.

***Project Proposal:*** The document submitted by a Project Applicant that outlines its proposed project. The first step in the TIP Development Phase, there is no limit on the number of pages for a Project Proposal. A Project Proposal must, at a minimum, include a detailed description of the proposed project (including transmission route information, if applicable, and a preliminary financial model), the proposed role that TIP would play in project development, and sufficient information to demonstrate that the project meets or is reasonably expected to meet Western's Project Evaluation Criteria.

***Public Interest:*** That which generally benefits the public at large. For purposes of determining whether a proposed project is in the "public interest," Western will examine the intent of the Recovery Act, existing transmission infrastructure needs, economic impacts and the environmental impacts.

## II. Program Principles

In a May 14, 2009 **Federal Register** notice (FRN), Western identified the principles it would use to provide overarching guidance in implementing its borrowing authority. Application of the Program-related principles ensures, among other things, that the Program is separate and distinct from Western's power marketing functions and that each project stands on its own for loan repayment purposes. Western hereby reaffirms the Program-Related Principles set forth in the May 14, 2009 FRN. For convenience, the Program-Related Principles are set forth below. Consistent with its borrowing authority, 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 and related facilities 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 replacements; 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. Maintain 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 separate and distinct from:
  - a. Each other such project; and
  - b. all other Western power and transmission facilities.
4. Ensure that Project Applicants repay project costs.

## III. Project Evaluation Criteria

1. Consistent with the requirements set forth in the Recovery Act, Western will evaluate projects based on the following criteria:

- a. Facilitates the delivery to market of power generated by renewable resources constructed or reasonably expected to be constructed.
- b. has at least one terminus within Western's service territory.
- c. establishes the reasonable expectation that the project will generate enough transmission service revenue to repay the principle investment, all operating costs including overhead, and accrued

interest by the end of the project's service life.

- d. will not adversely impact system reliability or operations, or other statutory obligations.
- e. is in the public interest.
2. Western will establish additional criteria to evaluate proposed projects as necessary.
3. Western may, at its discretion, use outside experts to assist in evaluating proposed project 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 Federal Acquisition Regulation to address any organizational conflicts of interest.

4. 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 consistent with the Freedom of Information Act (FOIA) (5 U.S.C. 552 et seq.) and DOE's implementing regulations at 10 CFR Part 1004. Participants may request confidential treatment of all or part of a submitted document under FOIA's exemption for "Confidential Business Information" and must mark the material as confidential. Materials so designated and which meet the criteria stipulated in the FOIA and DOE's implementing regulations will be treated as exempt from FOIA inquiries.

## IV. Project Life-Cycle Overview

The majority of Eligible Projects will require some project development (e.g., environmental permitting, establishment of WECC path rating, and technical design work) before a loan can be issued using Western's borrowing authority. With this in mind, Western's involvement in each project is divided into two general phases—the Project Development Phase and the Project Finance Phase. Though there may be exceptions (e.g., a project that is fully developed and ready to submit a complete and comprehensive application to obtain funding through the use of Western's borrowing authority), the expectation is that each project will need some additional work before it completes the Project Development Phase and the underwriting and execution stages of the Project Finance Phase before it receives funding under the borrowing authority. Projects that receive funding under the borrowing authority enter a loan monitoring stage for the life of the loan (i.e., until all payments and other amounts due have been repaid).

### *1. Project Development Phase*

The Project Development Phase involves the origination and development work for a potential project. This phase is divided into three parts: (1) Project introduction, which involves the initial intake and evaluation of a Project Proposal; (2) project initiation, which involves the development of a more substantial business proposal and initiation of due diligence for each project that advances beyond a Project Proposal; and (3) project development, which involves a review of the proposed baseline project plan and budget as well as the development of major project decision milestones for each project that advances beyond the business proposal stage. The elements of the Project Development Phase and relevant procedures are explained below.

#### a. Project Proposal

The review process begins when a Project Applicant submits a Project Proposal. Western will post instructions on submitting Project Proposals on its Web site. In the interest of accommodating applicants that have well-developed projects and who seek an expedited project review, Western will allow applicants to submit a Project Proposal and Business Plan Proposal concurrently. Applicants will be required to pay Western a minimum of \$50,000 upon the submission of a Project Proposal to cover the costs associated with Western's review of the proposal. For more information on specific charges, refer to Section V (Funding During the Project Development Phase) of this final notice.

Project Proposals can be submitted anytime at the Program Web site using the <http://ww2.wapa.gov/sites/Western/transmission/TIP/Pages/default.aspx> link.

Then, on or about the beginning of each quarter (approximately January 1, April 1, July 1, and October 1), Western will screen Project Proposals received during the previous quarter for purposes of determining whether or not each proposed project meets or is reasonably expected to meet the Project Evaluation Criteria (see Section III above). Western may, however, decide to screen Project Proposals at times other than the beginning of each quarter, as necessary. Western may contact Project Applicants for clarifications during the review period, but will not engage in material discussions about a Project Proposal. Western will make its determination no later than 30 business days after reviewing a proposal.

If Western determines that a Project Proposal does not or is not expected to meet all of the Project Evaluation Criteria, it will inform the Project Applicant in writing of the proposal's deficiencies, return unused funds, and take no further action on the proposal. Project Applicants who submit a Project Proposal that does not comport with the Project Evaluation Criteria will be invited to submit a revised Project Proposal. If Western determines that a Project Proposal meets the Project Evaluation Criteria, the proposed project will be deemed an Eligible Project and will be assigned to the development queue, and the Project Applicant will be offered the opportunity to enter into an MOU with Western. Because projects will possess varying degrees of maturity, a project may remain in the development queue until Western—after engaging in discussions with the Project Applicant—determines that the project is sufficiently developed to proceed to the Business Plan Proposal stage.

The Project Applicant is responsible for the costs associated with Western's review of a Project Proposal. Those costs are addressed in Section V below.

#### b. Memorandum of Understanding (MOU)

Project Applicants who submit a Project Proposal that meets or is reasonably expected to meet the Project Evaluation Criteria will be offered the opportunity to enter into an MOU with Western. The MOU is a document that, among other things, establishes the relationship among the parties, funding obligations for the submission of a Business Plan Proposal, confidentiality provisions, and the making of public statements regarding a project. The execution of an MOU does not imply that Western has approved a project for use of Western's borrowing authority. It does, however, represent Western's intent to move forward with its review and evaluation of the project for purposes of determining whether or not to participate in project development activities. Upon entering into an MOU, either party may terminate the document for any reason. Western will post a model MOU on its Web site. A Project Applicant may take up to six months to enter into an MOU with Western after receiving confirmation that its Project Proposal meets all the established evaluation criteria.

#### c. Business Plan Proposal

The Business Plan Proposal explains a project's development, commercial, and financial plans supported by Financial Model projections. A Business Plan Proposal is a preliminary plan that

may lead to the determination that a project is financially, technically, commercially, and legally viable and thus, appropriate to proceed on to development. A Business Plan Proposal also addresses anticipated conditions precedent that a commercial lender would require in a loan application. It is expected that a Business Plan Proposal submitted for development assistance will mature and be revised by the Project Applicant prior to submission of a loan application.

At a minimum, it is expected that a Business Plan Proposal will include the following information:

- A comprehensive project description that includes the history of the project to date.
- The names of all investors, partners, joint ventures, and other entities with a financial or legal interest in the proposed project.
- The status of all efforts to obtain project funding from other sources.
- Information to assess the financial viability of the proposed project, including audited financial statements and reports of the Project Applicant and any other investors in the project and detailed Financial Models.
- The Project Applicant's recent and relevant experience in developing projects of similar size and scope.
- A plan for how the Project Applicant expects to generate revenue from the project to:
  - (1) Repay principal and interest associated with a loan from Western's borrowing authority, and
  - (2) pay for project-related ancillary services and operations and maintenance and replacement expenses.
- A detailed analysis of any impact that the proposed project may have on the reliability of the integrated electrical grid.
- An explanation of how the project will obtain and deliver generation-related ancillary services (if appropriate).
- An independent analysis of any new technologies to be employed as part of the project.
- All known material economic, legal, and other risks that may have an effect on the project.
- A listing of all TIP development-related guidance that the Project Applicant seeks to obtain.
- Relevant information concerning required approvals, permits, licenses, land rights, and other permissions that must be obtained on behalf of the project.
- Detailed project technical specifications and designs.
- Required interconnections and path ratings.

At the Project Applicant's expense, Western will perform a project evaluation and due diligence review of a Business Plan Proposal to determine if the proposal is deficient in these or any other material respects, and will offer, in writing, to work with the Project Applicant to remedy any deficiencies. When Western determines that the Business Plan Proposal adequately addresses all technical, commercial, and financial aspects of a proposed project, it will invite the Project Applicant to enter into an Advance Funding Agreement (AFA).

A Project Applicant may take up to 12 months to submit a Business Plan Proposal after signing an MOU with Western. Due to the varying nature and complexity of Business Plan Proposals, Western will not establish a firm fixed time frame for reviewing such documents but will endeavor to complete its review expeditiously while keeping the Project Applicant apprised of its progress.

The Project Applicant is responsible for the costs associated with Western's review of a Business Plan Proposal. Those costs are addressed in Section V below.

#### d. Advance Funding Agreement

An AFA is an agreement that sets forth the terms under which Western will participate in the development of a project. The terms of an AFA call upon a Project Applicant to advance a mutually-agreed amount to cover costs Western incurs in performing project development activities as set forth in the document. No work will commence without receipt of advance payment. The AFA also provides that if there are insufficient funds to cover Western's project-related development expenses, Western will inform the Project Applicant of the insufficiency and request additional funding. TIP will post a model AFA on its Web site.

#### e. Project Development

Once an AFA is executed, the parties begin to perform project development-related activities. These activities often include facilities studies and designs; establishment of a WECC path rating; environmental, cultural, endangered species, and other assessments; negotiation and execution of commercial agreements; analysis of options for external financing for construction; negotiation of the project ownership structure; any needed interconnection agreements; and Western's continued performance of due diligence as it relates to the project and any other activity that must be completed prior to the start of

construction. Depending on the nature of the project and the amount of development that has already occurred, the Project Development Phase is likely to vary in length from less than a year to several years.

#### 2. Transition From Project Development Phase to Project Finance Phase

Western, in consultation with LPO, will determine when a project has completed the Project Development Phase and will coordinate with LPO regarding the transition of a project from the Project Development Phase to the Project Finance Phase.

#### 3. Project Finance Phase

The Project Finance Phase involves the underwriting, financing, and loan monitoring and servicing for a project. This phase can generally be divided into three parts: (1) Project underwriting, which involves submission by an applicant of a completed loan application and business plan, the completion of extensive due diligence and financial modeling by LPO and its advisors, and negotiation of a term sheet and conditional commitment containing the material business and legal terms of a possible financing transaction; (2) for any project that proceeds beyond underwriting, project execution, which involves the negotiation and documentation of definitive loan documents and any other agreements and instruments required for the financing of the project, as well as the closing of such financing; and (3) for any project that achieves execution, project implementation, which involves the actual implementation and funding disbursements in accordance with the loan documents as well as loan servicing and monitoring activities.

### V. Funding During the Project Development Phase

#### 1. Policies and Procedures

##### a. Accounting Principles

Western will use generally accepted accounting principles and practices in recording and tracking all expenses and revenue transactions for each project. Western will isolate TIP financial accounting transactions in its existing financial management system.

##### b. Program Funding

The Program must be financially self-sustaining. As such, expenses incurred by Western in reviewing Project Proposals and evaluating Business Plan Proposals must be borne by Project Applicants. Similarly, Project Applicants must provide adequate advance funding for services performed

by Program personnel or contractors during the Project Development Phase.

#### c. Allocation of Expenses—Project Proposal and Business Plan Proposal

i. Western's estimates that it can cost up to \$50,000 to review and screen a Project Proposal and \$200,000 to review a Business Plan Proposal. Accordingly, Western will require Project Applicants who concurrently submit a Project Proposal and Business Plan Proposal to make a one-time payment of \$250,000 to cover anticipated expenses. In the alternative, Project Applicants who desire to initially submit only a Project Proposal will be required to make a payment of \$50,000 to the Program, with the expectation that a \$200,000 payment will be submitted along with a Business Plan Proposal. Project Applicants who anticipate submitting a project should have adequate financial resources on-hand to cover these expenses. Project Applicants should contact the TIP office to make arrangements for this payment. Failure to make the appropriate payment will result in Western taking no action to review a Project Proposal and/or a Business Plan Proposal. A Project Applicant may elect to apply funds remaining (if any) from its \$50,000 Project Proposal payment that are in Western's control to the \$200,000 Business Plan Proposal charge.

ii. If, in the course of reviewing a Project Proposal or Business Plan Proposal, Western determines that there are insufficient funds to cover its expenses, Western will promptly inform the Project Applicant of the insufficiency and request adequate additional funding to complete its review. In addition, if Western determines during the review of a Project Proposal that a project does not meet or is reasonably expected not to meet all of the Project Evaluation Criteria, Western will so notify the applicant and return any funds in excess of actual costs incurred by Western in reviewing the proposal to the applicant. In a similar fashion, if Western determines that a Business Plan Proposal is not financially, technically, and commercially viable, it will notify the Project Applicant and return any funds paid by the Project Applicant in excess of actual costs incurred by Western in evaluating the proposal.

#### d. Allocation of Expenses—AFA

As part of the AFA, Western and the Project Applicant will mutually agree on an amount to cover costs associated with project development activities performed by Western. The Project Applicant may elect to apply funds

remaining (if any) from previous payments that are in Western's control to the mutually agreed upon amount.

## **VI. Project Development, Operations & Maintenance**

### *1. Project Development and Operations & Maintenance*

#### a. Applicability

All projects funded under this authority.

#### *2. Policies and Practices*

a. For study, facility development, construction and other related purposes, Western will consider projects constructed under its authority under Section 402 of the Recovery Act in accordance with procedures and requirements for arranging for transmission service or interconnection under its OATT, or related interconnection agreements. Western will, as necessary, use appropriate project management methods for all transmission projects approved for funding under this authority.

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

c. Western will comply with all other applicable Federal laws, regulations and policies, including National Environmental Policy Act of 1969, Federal Acquisition Regulation, and other applicable provisions of the Recovery Act.

## **VII. Project Rates and Repayment**

### *1. Applicability*

a. All projects funded under this authority.

#### *2. Policies and Practices*

a. The repayment requirements and applicable transmission rates will be designed so that proceeds from a project meet the repayment obligation.

b. 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.

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

## **VIII. Request for Submission of New Project Proposals**

With the revised Program now in place, TIP encourages interested parties to submit Project Proposals to construct, finance, facilitate, plan, operate, maintain, or study construction of new or upgraded electric power transmission lines and related facilities with at least one terminus within Western's service territory, that deliver or facilitate the delivery of power generated by renewable energy resources. On or about the beginning of each quarter (approximately January 1, April 1, July 1, and October 1) or, if necessary, at other times. Western will screen Project Proposals received during the previous quarter for purposes of determining whether or not each proposed project meets or is reasonably expected to meet the Project Evaluation Criteria (see Section III, above). Western will make its determination no later than 30 business days after reviewing a Project Proposal and promptly notify the Project Applicant in writing.

### *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 fits within category A13, Procedural Documents, of Appendix A to Subpart D of Part 1021 and is categorically excluded from NEPA analysis. Future actions under this authority will undergo appropriate NEPA analysis.

Dated: February 20, 2014.

**Mark A. Gabriel,**

*Administrator.*

[FR Doc. 2014-07700 Filed 4-4-14; 8:45 am]

BILLING CODE 6450-01-P

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## **ENVIRONMENTAL PROTECTION AGENCY**

**[EPA-HQ-OAR-2013-0263; FRL-9909-15-OAR]**

### **Protection of Stratospheric Ozone: Notice of Data Availability Regarding Aggregate HCFC-22 Inventory Data From 2008–2013**

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

**ACTION:** Notice of Availability.

**SUMMARY:** Today's notice announces the availability of two additional documents related to *Protection of Stratospheric*

*Ozone: Adjustments to the Allowance System for Controlling HCFC Production, Import and Export (2015–2019)*. The first document shows the aggregated results of Clean Air Act section 114 requests for information on the amount of HCFC-22 inventory held by nine entities between 2008 and 2013. The second is an updated draft of the *2013 Servicing Tail Report*, which revises statements regarding alternatives to HCFC-123 for fire suppression and modeled need for virgin HCFC-123 for this purpose.

**DATES:** Comments on this notice of data availability must be received on or before April 22, 2014.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-HQ-OAR-2013-0263, by one of the following methods:

- [www.regulations.gov](http://www.regulations.gov): Follow the online instructions for submitting comments.
- Email: [a-and-r-docket@epa.gov](mailto:a-and-r-docket@epa.gov).
- Mail: Docket #EPA-HQ-OAR-2013-0263, Air and Radiation Docket and Information Center, United States Environmental Protection Agency, Mail code: 6102T, 1200 Pennsylvania Avenue NW., Washington, DC 20460.
- Hand Delivery: Docket #EPA-HQ-OAR-2013-0263 Air and Radiation Docket at EPA West, 1301 Constitution Avenue NW., Room 3340, Mail Code 6102T, Washington, DC 20004. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

**Instructions:** Direct your comments to Docket ID No. EPA-HQ-OAR-2013-0263. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at [www.regulations.gov](http://www.regulations.gov), including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through [www.regulations.gov](http://www.regulations.gov) or email. If you want to submit confidential comments, please send them to the individual listed in the **FOR FURTHER INFORMATION CONTACT** section. The [www.regulations.gov](http://www.regulations.gov) Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through [www.regulations.gov](http://www.regulations.gov), your email address will be automatically captured