

**IRRIGATION & ELECTRICAL DISTRICTS
ASSOCIATION OF ARIZONA**

R. GALE PEARCE
PRESIDENT

R.D. JUSTICE
VICE-PRESIDENT

SUITE 140
340 E. PALM LANE
PHOENIX, ARIZONA 85004-4603
(602) 254-5908
Fax (602) 257-9542
E-mail: rslynch@rslynchaty.com

ELSTON GRUBAUGH
SECRETARY-TREASURER

ROBERT S. LYNCH
ASSISTANT SECRETARY-TREASURER

E-MAILED ONLY (txprogram@wapa.gov)

March 24, 2009

Transmission Infrastructure Program
Western Area Power Administration
P.O. Box 281213
Lakewood, Colorado 80228-8213

Re: Western Area Power Administration (Western) Proposed Transmission Infrastructure Program (Program) Implementing Section 402 of the American Recovery and Reinvestment Act of 2009 (Recovery Act), 74 Fed.Reg. 9391, et seq. (March 4, 2009)

Ladies and Gentlemen:

Pursuant to the above-referenced Federal Register notice, we are providing you with comments on the proposed Program.

We realize that most of the problems associated with implementing this program come from the Recovery Act itself. For that reason, we will begin our comments focusing on the language in the Act and then follow with comments concerning the proposal in the Federal Register notice for implementation. References are to the Hoover Power Plant Act of 1984 amendments.

ISSUES WITH REGARD TO SECTION 402

We will address issues concerning Section 402 serially as they appear in the authorizing statute for ease of reference.

Override Language - § 301(b)(1)

The authority granted under this Section is granted “Notwithstanding any other provision of law”. As Western notes in the Federal Register notice, there are potential conflicts between exercising this authority and meeting the requirements of Western’s Open Access Transmission Tariff (OATT) under the Federal Power Act. The nature and extent of these potential conflicts needs to be explored now so that participating utilities, many of which have their own obligations under their Open Access Transmission Tariffs, can understand the respective roles of any participants in a project under this authority.

Borrowing Terms and Conditions - § 301(b)(1)(B)

Western may borrow money “on such terms as may be fixed by the Administrator and the

Secretary”. Those terms and conditions need to be set in advance by the Administrator and the Secretary because they affect repayment and therefore affect the analysis that Western must make of the project being proposed as to whether “it is reasonable to expect that the proceeds from the project shall be adequate to make repayment of the loan.” Whether Western does the analysis or asks a project proponent to do so as part of a submission, without knowing these terms and conditions, that analysis is impossible. Terms and conditions can be bracketed as to period of years, interest rates and the like, but some quantification of this subject is essential in order to know whether financing assumptions in a proposal bear any reasonable relationship to reality.

Reasonably Expected to be Constructed - § 301(b)(1)(B)(ii)

Western needs to develop some feasibility analyses related to renewable energy resources or indicate that certain rules and regulations the agency already has in place will be made applicable to this analysis.

Interest - § 301(b)(2)

Does this provision limit the terms and conditions that can be available for a project? Must the project interest rate and repayment duration match a treasury bill being offered by the United States at the time? In spite of whatever useful life the project may have beyond such a term?

Refinancing - § 301(b)(3)

Western has the authority to refinance loans under this Program. Western should make it clear that the ability to refinance is not part of the original feasibility analysis and that refinancing would be done only for purposes of lowering interest rates or otherwise improving upon the terms and conditions of the original loan in reducing costs of the project.

Participation - § 301(b)(4)

While the Administrator may permit other entities to participate, there is no requirement that he do so. Here is a place where Western’s OATT responsibilities and this authority may conflict. Western should explain that it will make every effort to solicit participation in a project, including joint ownership.

Transmission Line and Related Facility Projects - § 301(c)

In this authorizing provision, the statute defines a project in which Western “participates pursuant to this section”. The same language is used later on in the certification provision. Western should clarify that participation can mean any of the activities Western is authorized to undertake including merely being the source of funds pursuant to a borrowing and that this language is not intended to limit the repayment directions to projects in which Western is the owner or an owner.

Western should also clarify the use of the word “under” in the Proceeds provision and in the Request for Interest provision. In the former provision, the word merely relates to an individual

project. In the latter provision, it relates to the project or projects that are “funded” under this section. Is this merely a drafting error or are the directions to apply proceeds intended to cover projects other than those funded under this section? The use of the word “under” without the word funded is also found in the Source of Revenue provision. Here again clarification is recommended.

Source of Revenue - § 301 (c)(3)

Western needs to clarify that the revenues indicated here are those coming to Western and not those of partners who own a portion of the physical facilities of the project or a portion of the capacity thereof if that ownership was not funded under this section. In other words, the use of the term “project” is meant to mean something funded under this statute (i.e., 50% of the capacity of a new transmission line), not necessarily the entire actual physical facility involved in the project if it is not to be totally funded under this Program.

In this same provision, it needs to be clarified that the requirement to pay ancillary services and operation and maintenance contemplates the payment of all costs, including associated overhead, repairs and replacements as would be the case in any other project separately authorized by Congress.

Limitation on Authority - § 301 (c)(4)

While this provision makes it clear that Congress is not granting Western any additional authority or obligation to provide ancillary services to project users under this section, the provision leaves open the very important question of when Western can or cannot so provide such ancillary services from other projects. If there is a need to provide ancillary services for customers within the other project, does that control? Will there be a financial screen of the new project to make sure that providing ancillary services generates payment? Such as a requirement to pay for such services in advance? These details need to be developed.

Certification - § 301 (d)(1)

Western needs to develop criteria for determining when a project is or is not in the public interest. Clearly a proposed project is not in the public interest if it won't pay for itself. What are the other criteria that are going to be applied?

Western also needs to clarify how a project will be determined not to adversely impact reliability or operations, what reliability or operations are to be examined (Western Interconnection or something less?), and just what other statutory obligations fall within this screening process as well. Is this something that an applicant will have to provide on a preliminary basis?

Western also needs to develop criteria for its review of the requirement that “it is reasonable to expect that the proceeds from the project shall be adequate to make repayment of the loan.” Here again, is this an analysis that, on a preliminary basis, must be supplied by an applicant? What factors need to be assessed for purposes of making this determination? Is there a threshold for contractual commitment to the project ahead of time? A percent of capacity contracted for? For a

particular duration? The term of the repayment of the loan? The useful life of the project? Shouldn't useful life of the project be a factor since it is the trigger for forgiveness of loan balances?

Forgiveness of Balances - § 301 (d)(2)

Western needs to clarify whether the forgiveness of balance provision operates at the end of the original useful life of the project or any extended useful life of the project by rehabilitation thereof. If things aren't working out, there would be little motivation to try to improve the project to make it self-sustaining if all one had to do was wait and the loan would just go away.

As to unconstructed projects, Western needs to clarify that funds would be expended to study a project and possibly to do project planning under this borrowing authority only because Western is considering whether to ask to borrow funds to facilitate construction or to actually construct or participate in constructing a project. This is not a blank check to plan and study and Western should clarify that point.

SET ASIDE FOR MANAGEMENT AND OVERSIGHT

The provision in Section 403 for Program "set up", if you will, for which separate funds have been appropriated, should be dealt with in the final version of Western's Policies and Procedures. Doing so will assist interested parties in understanding the timing of requests, the way the Program is going to be administered and how to interface with it. This is especially true since Western is committing to a public process for rate setting but has not defined whether or not it will utilize its existing format under existing authorities.

THE FEDERAL REGISTER NOTICE

As you can readily tell, we believe that most of the problems in initiating this Program come from the way the statutes were written. Our questions raised by the statutes can be replicated as to the Federal Register notice because it, for the most part, tracks the language of Section 402. For that reason, we will not repeat the above comments. Instead we will focus on just a few specifics.

Definitions – 74 Fed.Reg. at p. 9392, column 3

We believe the term "entity" is defined too narrowly. Is it intended to eliminate public power entities, including your customers, from participation? We believe it would be more correct to define "entity" as any "person". In that fashion, the nature or business form or government character of an entity would be rendered irrelevant.

Project Evaluation - 74 Fed.Reg. at p. 9393, column 1

We believe that the first criterion for project evaluation, to wit: "1. Facilitates the delivery of energy from renewable resources to market", is too narrow. It reads as if one must be able to prove that the facilities constructed will in fact deliver such energy and ignores the statutory authority to analyze a generation source on the basis that it is reasonably expected to be constructed for

generation of renewable energy resources. The language Western has used makes it sound like you have to build the renewable generation source before Western will consider a transmission facility under this Program. We doubt that was the intent and suggest that some clarification is in order.

Concerning Policies and Practices, we heartily agree that Western will need to establish additional evaluation factors but these should not be limited to the proposed projects but should also include the Program authority issues that we have outlined above. We would urge Western to clarify this point in the final decision on Policies and Procedures and to establish an ongoing dialogue with customers and other interested parties for clarifying how this Program will work. We see the issues we have raised as potential stumbling blocks for successful implementation of this Program and urge Western to address these issues as soon as possible to facilitate implementation of the Program.

In so doing, Western will have to do more than it has done in this notice to address confidential information. Western will be dealing with two entirely different populations, public entities and private entities. Bilateral agreements with private entities may suffice under the Freedom of Information Act or may not. Providing confidential information from a public body carries with it the additional problem of whether the public body can keep such information confidential in the first place. Western also has not addressed the obvious necessity at some point of providing information back to participants or applicants and how confidentiality will be handled in that regard. Failure to properly address this situation could unnecessarily bog down the Program.

Thank you for the opportunity to comment on this important new Program. We look forward to working with Western in its continued development and execution.

Sincerely,

/s/

Robert S. Lynch
Counsel and Assistant Secretary/Treasurer

RSL:psr

cc: Mr. Tim Meeks, Administrator
Leslie James, Colorado River Energy Distributors' Association (CREDA)
Tom Graves, Mid-West Electric Consumers Association (MWECA)
IEDA Members and Associate Members