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

Re: *Notice of Proposed Program and Request for Public Comments*
74 Fed. Reg. 9391 (March 4, 2009)

In response to the *Notice of Proposed Program and Request for Public Comments*, which was published by the Western Area Power Administration ("Western") in the Federal Register on March 4, 2009, ITC Holdings Corp. ("ITC") herewith comments on the proposed Transmission Infrastructure Program ("Program") under Section 402 of the American Recovery and Reinvestment Act of 2009 ("ARRA").[1]

In general, ITC supports the proposed Program, although we note that the provisions regarding project rates do not appear to reflect the provisions of the statute providing for the participation of other entities in the finance, construction and ownership of transmission projects. As discussed further below, to the extent that those other entities may be subject to regulation by the Federal Energy Regulatory Commission ("FERC") under the Federal Power Act, the provisions regarding project rates should be expanded to include principles, policies and practices relative to transmission capacity that other entities may own.

Western has requested public comments on proposed principles, policies, and practices to implement Section 402 of the ARRA. The Program components include (i) *Project Funding*, (ii) *Project Evaluation*, (iii) *Project Development*, (iv) *Project Operation and Maintenance*, and (v) *Project Rates and Repayment*. Each Program

[1] Pub. L. No. 111-5, § 402, 123 Stat. 115, _____ (2009). Section 402 of the ARRA amended the Hoover Power Plant Act of 1984 to add a new Section 301 to that statute.

component includes provisions on *Applicability* as well as on *Policies and Practices*. In addition, three Program components -- *Project Funding*, *Project Evaluation*, and *Project Rates and Repayment* -- include *Criteria*.

Under proposed principles for the Program, transmission projects approved for funding with borrowed funds (i) will be in the public interest; (ii) will not adversely impact system reliability or operations or other statutory obligations; (iii) will offer a reasonable expectation that the proceeds from such project shall be adequate to meet Western's financial repayment obligations; (iv) will use a public process to set rates for Western-owned transmission capacity resulting from any new facilities developed as a result of Western's participation in such project; (v) will have the necessary capabilities to provide generation-related ancillary services; and (vi) will use the proceeds from the sale of the transmission capacity from such project for the repayment of the principal and interest of the loan from the Treasury attributable to that project.

In addition, WAPA will ensure that the Program (i) provides an opportunity for participation of other entities in the construction, ownership, operation, and maintenance of transmission lines under the statute; (ii) 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, operation, and maintenance, and (c) payments for ancillary services that will be credited to the existing Federal power system that provides those services; and (iii) maintains appropriate controls to ensure, for accounting and repayment purposes, each transmission line and related facility project in which Western participates under this authority is treated as separate and distinct from each other such project and all other Western power and transmission facilities.

On January 5, 2009, in response to a Request for Statements of Interest published by Western in the Federal Register on November 21, 2008,[2] ITC expressed an interest in providing contributed funds, subject to five conditions, to construct new transmission facilities to serve renewable energy resources in states in which Western operates.[3] In addition, in response to a Request for Interest published by Western on March 4,[4] ITC today expressed its desire, subject to the same five conditions, to participate with Western, and with potential other partners, in the construction, finance, ownership, operation and maintenance of transmission facilities that would transmit or facilitate the transmission of electric power generated from renewable resources.

In particular, ITC has stated that it will participate in the development, construction, operation and ownership of new electric transmission facilities (i) if those

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[2] 73 Fed. Reg. 70,638 (Nov. 21, 2008).

[3] In response to a February 19, 2009 request for additional information, ITC supplemented the January 5 Statement of Interest on March 18.

[4] 74 Fed. Reg. 9391 (March 4, 2009).

facilities are subject to FERC regulation and, in particular, are subject to FERC open-access transmission requirements; (ii) if those facilities are approved through regional transmission planning authorities such as the Western Electricity Coordinating Council, the Midwest ISO or equivalent entities; (iii) if ITC participation with Western and any other entities does not jeopardize ITC's independence and the status of its subsidiaries as independent transmission companies; (iv) if the transmission facilities are subject to FERC-approved regional and/or inter-regional cost recovery; and (v) if ITC is permitted to recover its revenue requirement for those facilities in a timely manner that will protect ITC shareholders as well as transmission customers.[5]

Section 402 of the ARRA amended the Hoover Power Plant Act of 1984 to add a new Section 301 to that Act. Section 301 authorizes Western to borrow up to $3.25 billion for the construction, finance, operation and maintenance of transmission facilities. Section 301(b)(4) provides that Western "may permit other entities to participate in the financing, construction and ownership [of] projects financed under this section." Thus Section 301(e)(2) direct Western to "seek Requests For Interest from entities in identifying potential projects . . . ."

In compliance with Section 301(e)(2), Western published the Request for Interest on March 4.[6] The Program, however, does not appear to reflect the provisions of Section 301(b)(4). For example, the Principles, and the provisions of *Project Rates and Repayment*, address transmission rates for transmission capacity that Western owns. They are not clear, however, about transmission rates for transmission capacity that other entities may own.

Other entities that are subject to FERC rate regulation may have transmission rates that are different from those of Western. For example, those entities are eligible for transmission rate incentives under Section 219 of the Federal Power Act.[7] In addition, those entities will be subject to FERC obligations with respect to, for example, open-access transmission service.

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[5] In particular, ITC would likely propose a forward-looking formula rate consistent with the formula rates that the FERC has approved for ITC subsidiary companies and many others.

[6] 74 Fed. Reg. 9391 (March 4, 2009).

[7] 16 U.S.C. § 824p. *See also* Order No. 679. *Promoting Transmission Investment Through Pricing Reform*, Order No. 679, 71 Fed. Reg. 43,294 (July 31, 2006), FERC Statutes & Regulations, Regulations Preambles ¶ 31,222, *order on reh'g*, Order No. 679-A, 72 Fed. Reg. 1,152 (Jan. 10, 2007), FERC Statutes & Regulations, Regulations Preambles ¶ 31,236, *order on reh'g*, Order No. 679-B, 119 F.E.R.C. (CCH) ¶ 61,062 (2007).

To implement Section 301(b)(4), the Program should be expanded to include principles, policies, and practices relative to transmission capacity that other entities may own as well as to the participation of FERC-regulated other entities in the Program in general. Section 301(e)(1) states that Western "shall use a public process to develop practices and policies that implement the authority granted by this section." That authority includes Section 301(b)(4) relative to the participation of other entities.

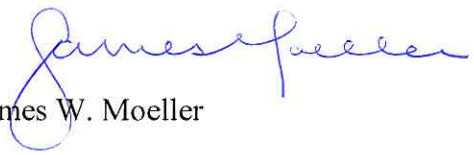
The Program principles state that Western will ensure that the program provides an opportunity for the participation of other entities. The Program policies and practices, however, otherwise provide no other guidance for the participation of those entities. For an expansion of the Program in this regard, Western should look to the five conditions that ITC has established for participation with Western, and with potential other partners, in the construction, finance, ownership, operation and maintenance of transmission facilities.

For example, the Program principles could be expanded to provide that transmission facilities constructed with the participation of FERC-regulated other entities shall be subject to FERC regulation. The provisions of *Project Rates and Repayment* could be expanded to provide that facilities constructed with FERC-regulated other entities shall be subject to FERC ratemaking.

Finally, some provisions of the Program require clarification. Under proposed principles for the Program, transmission projects approved for funding with borrowed funds also will have the necessary capabilities to provide generation-related ancillary services. It is unclear how a transmission project "will have the necessary capabilities to provide generation-related ancillary services." Perhaps Western intends to ensure that the transmission project will have the necessary capabilities to permit Federal hydroelectric projects to provide ancillary services. If this is the intent of the principle, then it should be clarified.

ITC applauds Western's expeditious implementation of Section 402 of the ARRA. The proposed program is a constructive step in that implementation. ITC urges Western, however, to expand the Program specifically to provide guidance on the participation of FERC-regulated other entities.

Sincerely yours,



James W. Moeller

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