
MEMORANDUM OF UNDERSTANDING

No. XX-TIP-XXXX

AMONG

[PROJECT PARTICIPANT]

AND

UNITED STATES

**DEPARTMENT OF ENERGY
WESTERN AREA POWER ADMINISTRATION
TRANSMISSION INFRASTRUCTURE PROGRAM**

FOR

**REVIEW OF THE
[PROJECT NAME]**

Memorandum of Understanding

[Project Name]

[Date]

Recitals

Whereas, Section 402 of the Recovery Act, as codified in Section 301 of the Hoover Power Plant Act of 1984 (Public Law 98-381)(Hoover Act), provides the Administrator of the Western Area Power Administration (Western) with the discretion to borrow up to \$3.25 billion from the United States Treasury for purposes of: (1) 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 in Western’s service territory; and (2) delivering or facilitating the delivery of power generated by renewable energy resources constructed or reasonably expected to be constructed after the date of enactment of Section 402 of the Recovery Act; and

Whereas, Western has undertaken public processes since the enactment of the Recovery Act to: (1) develop practices and policies for a Transmission Infrastructure Program (TIP) designed to implement the authority granted Western by way of the Recovery Act; and (2) solicit

Project Proposals from entities interested in developing potential transmission projects under the aforementioned authority; and

Whereas, [Participant] submitted a Project Proposal to Western on [date] regarding the [Project name] and Western has reviewed and evaluated [Participant's] Project Proposal and made an initial determination that the representations made by [Participant] in the Project Proposal meet the statutory prerequisites set forth in the Hoover Act and the TIP's evaluation criteria; and

Whereas, Western's acquisition of additional and comprehensive Project-related information from [Participant] in the form of a Business Plan Proposal will enable Western to continue its review and evaluation of the Project for purposes of determining whether or not to enter agreements with [Participant] to engage in preliminary Project development work;

Now, therefore, it is hereby agreed that Western and [Participant] (also referred to individually as "Party" and jointly as "Parties") enter into this Memorandum of Understanding (MOU), thereby representing their intent that Western move forward its review and evaluation of the Project.

Statements of Understanding

1. **General Terms:**

1.1 Western is proceeding with the review and evaluation of the Project in accordance with the requirements set forth in Section 301 of the Hoover Act and the evaluation

criteria developed as part of the TIP public process set forth in xx *Federal Register Notice* xx, dated [INSERT DATE], and relevant TIP policies and procedures.

1.2 If Western agrees to participate in the Project beyond the review and evaluation phase contemplated under this MOU, the cost associated with developing additional agreements necessary to move the Project forward and Western's participation in that process will be exclusively borne by [Participant].

1.3 The Parties acknowledge and agree that nothing in this MOU requires the Parties to develop the Project or enter into any subsequent agreements, transactions or arrangements whereby Western commits to providing any financing whatsoever to develop the Project or move it forward in any manner.

2. **Project Definition and Scope:**

[The Parties to agree on the insertion of general project description, schedule, and cost information. Section to include a statement that the information has been provided by the Participant and has not been validated by Western.]

3. **Schedule:**

To ensure Western's continuing review and evaluation of the [Participant's] Business Plan Proposal can be completed in a timely manner, the Parties agree to use best efforts to establish a mutually agreeable schedule. Accordingly, [Participant] agrees to provide Western with all necessary information needed for Western's review and evaluation, and advance to Western adequate funding (see Section 5) to perform the evaluation. If Western determines the Project is suitable for further development and [Participant] desires to proceed, the Parties agree to negotiate in good faith to develop and execute in an expeditious manner the necessary Project agreements. If the Parties do not develop the necessary agreements in a timely manner, or having developed the agreements, [Participant] does not execute them in a timely manner, Western may, in its

discretion, remove the Project from present consideration and cease all efforts to move the Project forward.

4. **Subsequent Agreements:**

If Western determines that the Project is suitable for further development, the Parties, subject to their sole discretion, may enter into negotiations to produce one or more agreements that, among other things, address: (1) a funding mechanism (e.g., an Advance Funding Agreement) to facilitate further development of the Project, (2) a National Environmental Policy Act ("NEPA") Project plan; (2) the acquisition of a project rating in accordance with the Western Electricity Coordinating Council ("WECC") path rating process; (3) specific developmental support and technical services to be provided by Western.

Further, the Parties will determine the principle terms (if any) related to Western's potential ownership of Project real property, facilities and capacity and a Project governance structure.

Any such subsequent agreements shall incorporate the intent of this MOU, except as otherwise agreed by the Parties. All subsequent agreements are necessarily subject to approval by Western and, on a case-by-case basis, the Department of Energy.

5. **Funding:**

[Participant] agrees that it will pay for any and all Project-related work performed by Western or a Western contractor under the terms of this MOU. Accordingly, unless [Participant] advanced to Western \$250,000 at the time it submitted its initial Project Proposal to cover expenses related to the evaluation of that proposal and the Business Plan Proposal, [Participant] agrees to pay Western \$200,000 to separately evaluate its Business Plan Proposal. If there are insufficient funds to cover Western's expenses it

will promptly inform [Participant] of the insufficiency and request additional funding. [Participant] understands that Western will not review or evaluate the Business Plan Proposal unless adequate funds are on hand to cover Western's expenses. All funds properly used by Western to review and evaluate the Business Plan Proposal are not reimbursable. Upon notice of either Party not to participate in the Project, Western shall return all unused funds provided by [Participant].

6. **Confidentiality of Sensitive Information:**

Each Party shall, to the extent allowable by law, maintain the confidentiality of all the documents, data, and any other information provided to it by the other Party that contains confidential, proprietary, or market sensitive information. The Parties shall appropriately and conspicuously mark any documents, data, and information that it considers confidential, proprietary or market sensitive. Disclosure by Western of any documents or information provided by Proponent shall be handled in accordance with applicable laws and regulations and legal requirements, including laws and regulations concerning compliance with the Freedom of Information Act (5 U.S.C. § 552; 10 CFR part 1004). Neither Party is required to maintain the confidentiality of information provided to it by the other Party if the receiving party is required by law to disclose such information, or the information is already in the public domain by means other than release by the receiving party.

7. **Public Statements:**

The Parties agree that they will not make any public statement regarding the arrangements between the Parties as described in this MOU without the prior written consent of the other Party, such consent not to be unreasonably delayed or withheld. The Parties further agree to act jointly and with mutual agreement for all Project-related news releases and public statements unless any Party is compelled to make such statements by judicial or administrative process or by the requirements of law.

8. **Termination of this MOU and Liability Hereunder:**

Either Party may terminate this MOU for any reason or no reason at all provided that the terminating Party gives at least three (3) business days advance notice to the other Party. For clarification, the terminating Party shall not be liable to the other Party for any detrimental reliance or lost opportunity costs resulting from the termination of this MOU.

9. **No Implied Approval of Project by Western:**

The Parties expressly understand and agree that after Western's review and evaluation of the Project, Western may decide to participate in the Project by executing follow-on agreements leading to the performance of preliminary development work, or it may decide not participate in the Project at all. [Participant] shall have no cause of action against Western due to its decision not to participate in the Project.

10. **Signature Clause:**

The signatories to this MOU represent that they are authorized to enter into this MOU on behalf of the party for whom they sign. This MOU may be executed in counterparts and shall be effective this ____ day of _____, XXXX.

[PROJECT PARTICIPANT]

By: _____

Name: _____

Title: _____

Date: _____

WESTERN AREA POWER ADMINISTRATION

By: _____

Name: _____

Title: Administrator _____

Date: _____