of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on July 6, 2009.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–14792 Filed 6–23–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. OR09–11–000]

BP West Coast Products LLC Complainant v. Calnev Pipe Line, L.L.C. Respondent; Notice of Complaint

June 17, 2009.

Take notice that on June 15, 2009, pursuant to section 206 of the Rules and Practice and Procedure of the Federal Energy Regulatory Commission (Commission), 18 CFR 385.206, section 343.2 of the Procedural Rules applicable to oil pipeline proceedings, 18 CFR 343.2, sections 1(5), 8, 9, 13, 15, and 16 of the Interstate Commerce Act, 49 USC App. 1(5), 8, 9, 13, 15, and 16 (1988), and section 1803 of the Energy Power Act of 1992, BP West Coast Products LLC (Complainant) filed a formal complaint against Calnev Pipe Line, L.L.C. (Respondent) seeking an audit of the Respondent's 2007 and 2008 FERC Forms 6 in connection with the Respondent's 2009 index rate increases to become effective July 1, 2009.

The Complainant certifies copies of the complaint were served on both the counsel for the Respondent and the contacts of the Respondent listed on the Commission's list of Corporate Officials.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. The Respondent's answer and all interventions, or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainants.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on July 6, 2009.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–14791 Filed 6–23–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

Energy Efficiency and Conservation Block Grant Program

AGENCY: Department of Energy (DOE).

ACTION: Notice.

SUMMARY: DOE is announcing an appeals process for eligibility determinations published in the funding opportunity announcement issued under the Energy Efficiency and Conservation Block Grant (EECBG) program. This notice specifies the issues that can be appealed, the process for filing an appeal, and the procedure applicable to adjudicate such appeals. All appeals will be reviewed by the DOE Office of Hearings and Appeals (OHA). The deadline for submitting an appeal with OHA is 30 days following the publication of this notice.

DATES: All appeals must be filed, as described in the **SUPPLEMENTARY INFORMATION** section of this notice, no later than July 24, 2009.

FOR FURTHER INFORMATION CONTACT: For questions regarding the EECBG Program contact EERE's Information Center, at *http://www1.eere.energy.gov/informationcenter/,* or call toll-free at 1–877–EERE–INFO (1–877–337–3463), between 9 a.m. and 7 p.m. EST, Monday through Friday.

For questions regarding the EECBG appeals process contact Fred L. Brown, Deputy Director, Office of Hearings and Appeals, 1000 Independence Ave., SW., Washington, DC 20585–0107, (202) 287–1545, *Fred.Brown@hq.doe.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The Energy Independence and Security Act of 2007 (EISA) established the Energy Efficiency and Conservation Block Grant (EECBG) Program, which provides, in part, for a direct formula grant program for States, eligible units of local government, and Indian Tribes. (42 U.S.C. 17151–17158) On April 15, 2009, DOE published in the **Federal Register** formulas for allocation of direct grants under the EECBG Program. 74 FR 17461. DOE also published a funding opportunity announcement that identified the ''eligible units of local government,'' Funding Opportunity Number: DE–FOA–0000013, Amendment 00003 (available at: *http://www.eecbg.energy.gov/*).

For the purpose of the EECBG program, an ''eligible unit of local government'' was defined by EISA to be a city or county that met population thresholds specified in statute. (42 U.S.C. 17151) Further, to be defined as an ''eligible unit of local government,'' DOE determined that a geographical subdivision also must have a functional government with responsibilities and jurisdiction capable of implementing the broad range of programs identified by EISA. EISA specifically enumerated the following activities as activities that achieve the purpose of the EECBG Program—

(1) Development and implementation of an energy efficiency and conservation strategy as required by EISA;

(2) Retaining technical consultant services to assist the eligible entity in the development of such a strategy, including—

(A) Formulation of energy efficiency, energy conservation, and energy usage goals;

(B) Identification of strategies to achieve those goals—

(i) Through efforts to increase energy efficiency and reduce energy consumption; and

(ii) By encouraging behavioral changes among the population served by the eligible entity;

(C) Development of methods to measure progress in achieving the goals;

(D) Development and publication of annual reports to the population served by the eligible entity describing the goals and progress in achieving the goals;

(E) Other services to assist in the implementation of the energy efficiency and conservation strategy;

(3) Conducting residential and commercial building energy audits;

(4) Establishment of financial incentive programs for energy efficiency improvements;

(5) The provision of grants to nonprofit organizations and governmental agencies for the purpose of performing energy efficiency retrofits;

(6) Development and implementation of energy efficiency and conservation programs for buildings and facilities within the jurisdiction of the eligible entity, including—

(A) Design and operation of the programs;

(B) Identifying the most effective methods for achieving maximum participation and efficiency rates;

(C) Public education;

(D) Measurement and verification protocols; and

(E) Identification of energy efficient technologies;

(7) Development and implementation of programs to conserve energy used in transportation, including—

(A) Use of flex time by employers;

(B) Satellite work centers;

(C) Development and promotion of zoning guidelines or requirements that promote energy efficient development;

(D) Development of infrastructure, such as bike lanes and pathways and pedestrian walkways;

(E) Synchronization of traffic signals; and

(F) Other measures that increase energy efficiency and decrease energy consumption;

(8) Development and implementation of building codes and inspection services to promote building energy efficiency;

(9) Application and implementation of energy distribution technologies that significantly increase energy efficiency, including—

(A) Distributed resources; and

(B) District heating and cooling systems;

(10) Activities to increase participation and efficiency rates for material conservation programs, including source reduction, recycling, and recycled content procurement programs that lead to increases in energy efficiency;

(11) The purchase and implementation of technologies to reduce, capture, and, to the maximum extent practicable, use methane and other greenhouse gases generated by landfills or similar sources;

(12) Replacement of traffic signals and street lighting with energy efficient lighting technologies, including—

(A) Light emitting diodes; and

(B) Any other technology of equal or greater energy efficiency;

(13) Development, implementation, and installation on or in any government building of the eligible entity of onsite renewable energy technology that generates electricity from renewable resources, including—

(A) Solar energy;

(B) Wind energy;

(C) Fuel cells;

(D) Biomass; and

(14) Any other appropriate activity, as appropriately determined by the Secretary of Energy.

(42 U.S.C. 17154)

Therefore, for the purpose of the EECBG Program, DOE defined ''eligible unit of local government'' as a city or county that—

• Is listed in the U.S. Census Bureau's 2007 Edition of the Governments Integrated Directory (2007 GID) as a currently incorporated entity;

• Meets the required population threshold according to the Population Estimates Program 2007 population estimates (including successful challenges to these estimates) published by the U.S. Census Bureau;

• Is identified by the 2007 Census of Governments as having a governance structure consisting of an elected official and governing body; and (perhaps most particularly)

• Has a governing structure, as indicated by the 2007 Census data, with the capabilities and jurisdiction necessary to carry out the broad range of EECBG programs.

In determining population, DOE used the Census 2007 Population Estimates Program population estimates with updates to reflect challenges to the 2007 population estimates submitted to and accepted by the Census Bureau. The list of successful challenges can be found at *http://www.census.gov/popest/archives/2000s/vintage_2007/07s_challenges.html.*

For the purposes of the EECBG program, DOE included the following clarifications to the records used to calculate which cities were ''eligible units of local government:''

• In the Commonwealth of Puerto Rico, Municipios were treated as cities. Though designated as counties by the Census, governments of Municipios have the functionality of city governments.

• Towns, townships and boroughs listed as incorporated Places tabulated by the U.S. Census Bureau for the Department of Housing and Urban Development's Community Development Block Grant Program were treated as cities. The governments of these places have the functionality of city governments.

• For those populations residing in one incorporated place that is within the geographic boundary of another incorporated place, DOE credited the population to the first incorporated place. For example, for a town listed in the 2007 GID as an incorporated entity that has within its geographic boundaries a village listed in the 2007 GID, the village population was subtracted from the town population. DOE assumed that an entity listed as incorporated by the 2007 GID has a functional government with responsibilities and jurisdiction capable of implementing the broad range of programs identified by EISA. Therefore, DOE subtracted the population of the village from the total population of the town in which the village is located to avoid double-counting of populations.

• A consolidated or unified city-county government in which a city and a county overlap geographically and govern as one consolidated government was considered by DOE as an eligible city. City-county governments have the functionality of city governments.

74 FR 17462. As indicated previously, to be defined as an ''eligible unit of local government,'' DOE determined that a geographical subdivision must have the requisite population, but also must have a functional government with responsibilities and jurisdiction capable of implementing the broad range of programs identified by EISA. Some counties, for example, are vested with no governmental authority whatsoever.

In determining whether particular county governments have the types of functions and authority necessary to support the programs EISA directs DOE to fund, DOE relied on the 2007 Census of Governments, published by the U.S. Census Bureau. A county that has the requisite population, but has an associated government that, as described by the 2007 Census of Governments, has ''relatively few [governmental] responsibilities,'' or an equivalent evaluation, was understood to lack the government functions and authority necessary to discharge the energy efficiency and conservation programs and projects identified by EISA. Such local entities with limited responsibilities are not units of local ''government'' for the purpose of defining eligibility under the EECBG Program.

Additionally, EISA distinguishes between cities that are eligible units of local government and counties that are eligible units of local government. Consistent with the EISA distinction, DOE distinguished the population of a city that met the requisite population threshold for an eligible unit of local government from the population of the county in which that city is situated. For the purpose of the EECBG Program, DOE removes the population of an

eligible city in determining the population of a county.

By removing the population of an eligible city in determining the population of a county, DOE reduced the instances in which a person would be double-counted, *i.e.*, counted once for determination of a city's eligibility and again in determining a county's eligibility. This distinction between city and county populations yields a determination of eligibility that results in funds being distributed more on a per capita basis, which DOE believes is one way to provide greater equity in the allocation of funds between cities and counties under the direct formula grants.

A complete discussion of how DOE determined whether a city or county is an ''eligible unit of local government'' is provided in the April 15, 2009, **Federal Register** notice (74 FR 17461).

II. Issues Giving Rise to the Appeals Process

As indicated above, DOE applied four factors in the evaluation of whether a city or county qualifies as ''eligible unit of local government'' for the purpose of the EECBG Program. A city or county is an ''eligible unit of local government'' under the EECBG Program if it—

- Is listed in the 2007 GID as an incorporated entity;
- Meets the required population threshold according to the Population Estimates Program 2007 population estimates (including successful challenges to these estimates) published by the U.S. Census Bureau;
- Is identified by the 2007 Census of Governments as having a governance structure consisting of an elected official and governing body; and
- Has a governing structure, as indicated by the 2007 Census data, with the capabilities and jurisdiction necessary to carry out the broad range of EECBG programs.

DOE relied on the 2007 Census data and information in evaluating each factor, as it is the official government source for this type of data and information. Moreover, the U.S. Census Bureau provided an opportunity for local governments to request corrections to the 2007 data and information. That process closed on January 5, 2009. Additional information on the U.S. Census Bureau population estimates process can be found at *http://www.census.gov/popest/estimates.html*.

A. Assumption Regarding Government Function and Jurisdiction

In evaluating the four factors, DOE relied on the characterization of city and county governing structures to determine whether cities and counties had sufficient jurisdiction and government function to carry out the activities set forth in Title V, Subtitle E of the EISA. However, the characterization of city and county governments in the 2007 Census data was not in the context of the EECBG Program. DOE recognizes that the characterization of the governing structure of a city or county may not have been sufficiently informative for the purpose of determining eligibility under the EECBG Program. As such, there are two specific instances in which the characterization of a city or county government may be reviewable on appeal.

The first instance in which the characterization of government may not have been sufficiently informative, and therefore reviewable on appeal, is for those counties (or county equivalents) listed by the 2007 Census of Governments as having limited governmental functions. As stated earlier in this notice, DOE determined that in order to be an ''eligible unit of local government,'' a geographical subdivision must not only have the requisite population but also must have a functional government with responsibilities and jurisdiction capable of implementing the broad range of programs identified by EISA, and listed earlier in this notice. The Department deemed ineligible those counties characterized by the 2007 Census of Governments as having limited governmental function. The capability of a county to discharge the broad range of programs authorized by the EISA is reviewable on appeal.

If a county (or county equivalent) was determined to be ineligible by DOE based on the 2007 Census of Governments characterization of government function, that county would need to demonstrate on appeal that it has the jurisdiction and functional capabilities necessary to carry out the types of projects identified by EISA. The information provided on the appeal should be authoritative but need not be exhaustive. The appeal should demonstrate that the county (or county equivalent) is capable of implementing programs or projects that are consistent with those listed by EISA as activities that further the goals of EECBG. A county (or county equivalent) may include previous examples where the applicant has carried out such activities.

The second instance in which the characterization of government by the 2007 Census data may not have been sufficiently informative, and therefore reviewable on appeal, involves the assumption by DOE that a city (or city equivalent) listed by the 2007 GID as an incorporated entity has a functional government with responsibilities and jurisdiction capable of implementing the broad range of programs identified by EISA. Based on this assumption, DOE subtracted from the population of an incorporated city (or city equivalent) the population of an incorporated city (or city equivalent) that is located within the boundaries of the first incorporated city. DOE adjusted population in this manner so as to avoid double-counting the population of two potentially eligible entities. However, in some instances the ''nested city'' (*i.e.*, the city located within the boundaries of another city) may not have sufficient jurisdiction and government function to carry out the types of programs identified in EISA and in turn rely on the larger city for such services.

If DOE determined that a city (or city equivalent) was ineligible because it did not have the requisite population and the population relied on by DOE excluded the population of a ''nested city,'' that city (or city equivalent) would need to demonstrate that the ''nested city'' lacks sufficient jurisdiction and government function to carry out the types of projects listed in EISA, and the ''nested city'' relies on the appellant city for such services. Again, the information provided on the appeal should be authoritative but need not be exhaustive. The appeal should demonstrate that the larger city provides services to the ''nested city'' of the type necessary to implement programs or projects that are consistent with those listed by EISA. A city (or city equivalent) may include previous examples where the applicant has carried out such activities.

B. Corrections to the 2007 Census Data

As indicated above, DOE used the Census 2007 Population Estimates Program population estimates with updates to reflect challenges to the 2007 population estimates submitted to and accepted by the Census Bureau. However, a unit of local government may appeal an eligibility determination that was based upon 2007 Census data that was successfully challenged, but the successful challenge was not reflected in the DOE's determination of eligibility. An appeal based on this issue would need to provide documentation of a successful challenge to the 2007 Census data.

C. Issues Not Reviewable on Appeal

Issues regarding the methodology established by DOE to determine the population of a city or county are not reviewable on appeal. For example, the

decision by DOE to exclude the population of an eligible city from the population of the county in which the city is located is not reviewable on appeal.

Additionally, the determination of DOE to rely on the 2007 Census data is not reviewable on appeal. DOE recognizes that more recent data have been made available by the U.S. Census Bureau. However, in order to provide certainty as to the funding levels of entities determined to be ''eligible units of local government,'' DOE relied on the most recent data available at the time the formula allocations were announced. The availability of updated (as opposed to corrected 2007 data) is not reviewable on appeal.

III. Opportunity to Appeal

DOE is providing cities and counties an opportunity to appeal to OHA a determination of ineligible under the EECBG Program. The appeals process, including an explanation of issues reviewable on appeal, is provided in the following section.

If an appeal is granted, appellant will have 30 days in which to file an application for funding under the direct formula grant provision of EECBG. The application must be consistent with the application requirements provided in Funding Opportunity Number: DE–FOA–0000013, Amendment 00003 (available at *http://www.eecbg.energy.gov/*). Allocation of funding to a city or county resulting from a Decision and Order by OHA shall not affect any previous allocation made by DOE to other eligible units of local government.

IV. EECBG Eligibility Appeals Procedure

These procedures may be cited as the Department of Energy (DOE) Energy Efficiency and Conservation Block Grant Program Appeals Procedures (EECBGAP).

A. Who may appeal?

Any unit of local government determined to be ineligible to receive a direct formula grant under the Energy Efficiency and Conservation Block Grant Program (''EECBG Program''), based upon eligibility criteria established by the U.S. Department of Energy, 74 FR 17461 (April 15, 2009).

B. What eligibility determinations are appealable?

A unit of local government may file an appeal under these procedures where it has been denied eligibility for the EECBG Program based: (1) Upon a determination that it is incapable of carrying out activities set forth in Title V, Subtitle E of the Energy Independence and Security Act of 2007, Public Law 110–140 (EISA); (2) upon an adjustment to its population as the result of a determination that another entity that is located within its borders is capable of carrying out activities set forth in Title V, Subtitle E of EISA; or (3) upon 2007 Census data that was corrected by the U.S. Census Bureau, but the correction was not reflected in the Department's determination of eligibility.

Except as specified in IV.B.(2) and (3) in the preceding paragraph, a denial of eligibility for the EECBG Program for failure to meet required population thresholds, based upon 2007 U.S. Census estimate data, is not appealable under these procedures.

C. What must the appeal contain and what is the standard of review?

The appeal shall contain a concise statement of the ground(s) upon which the excluded entity contests denial of eligibility under the EECBG Program and the remedy sought.

The appeal should include any data, documentation or other relevant information supporting a showing by the appellant that the denial of eligibility under the EECBG Program is erroneous, not supported by the whole record, or is arbitrary and capricious. The appeal shall also state whether the appellant is requesting a conference or hearing regarding the appeal.

The appeal shall include a signed certification stating that the facts contained in the appeal are, to the best knowledge of the applicant, true.

D. How should the appeal be filed?

Any appeal, including attachments, should be electronically filed with the Office of Hearings and Appeals (OHA), U.S. Department of Energy, at: *OHA.filings@hq.doe.gov*.

Alternatively, appeals and other associated documents, may be mailed to: Office of Hearings and Appeals (OHA), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585–0107. Appellants may also hand-deliver appeals and associated documents to OHA at Room 7117, 950 L'Enfant Plaza, SW., Washington, DC 20585, during official filing hours. Official filing hours are from 1:30 to 4 p.m., Monday through Friday.

Upon receipt, OHA will confirm receipt of the appeal and assign a case number to the filing.

E. What are the steps in the process?

(1) Any appeal under these procedures must be filed within thirty days (30) of the date of publication in the **Federal Register** of the notice announcing the present appeals process and procedures.

(2) In evaluating an appeal, OHA may require the submission of additional information by the appellant regarding any statement in an appeal. OHA may also solicit and accept submissions of relevant information from other sources, provided that the appellant is afforded an opportunity to respond to all such submissions. OHA on its own initiative may convene a conference or hearing if, in its discretion, it considers that such conference or hearing will advance its evaluation of the appeal. OHA will determine the scope and format of any conference or hearing convened under these procedures, as well as the parties allowed to participate.

(3) OHA may issue an order summarily dismissing an appeal if: (a) Not filed by a unit of local government that was found ineligible under the EECBG Program; (b) not filed in a timely manner, unless good cause is shown; (c) the filing is defective on its face; or (d) there is insufficient information upon which to base a decision and if, upon request, the necessary additional information is not submitted.

(4) Within forty-five (45) days of receiving all required information, OHA shall issue a written decision granting or denying the appellant eligibility to apply for a direct formula grant under the EECBG Program. The decision shall include a written statement setting forth the relevant facts and basis for the determination. Upon issuance, OHA shall serve an electronic version of the decision upon the appellant and the DOE Office of Energy Efficiency and Renewable Energy. The decision will also be published on the OHA Web site: *http://www.oha.doe.gov*. The decision of OHA shall constitute final agency action and the appellant's final right of administrative review regarding eligibility under the EECBG Program.

(5) All expenses incurred in pursuing any appeal before OHA shall be borne exclusively by the appellant(s).

Issued in Washington, DC, on June 19, 2009.

Steven G. Chalk,

Principal Deputy Assistant Secretary, Energy Efficiency and Renewable Energy.

[FR Doc. E9–14891 Filed 6–23–09; 8:45 am]

BILLING CODE 6450–01–P