Office of the Comptroller of the Currency

Washington, DC 20219

Interpretive Letter #1141
May 2014

April 22, 2014

Re: November 12, 2013 Request for Non-Objection - Financing Proposal for **[*Facility*]**

Dear **[ ]**,

This letter addresses your request on behalf of the Bank for the OCC's supervisory non-objection to the Bank's proposal to provide project financing for a renewable energy wind facility known as **[*Facility*]** located in **[*City, State*]**. For the reasons discussed below, the OCC has no supervisory objection to the proposal.

The Bank proposes to provide financing to the facility using an equity-based investment structure similar to the structure the OCC has previously permitted the Bank to use. The Bank would provide funds to the company that owns the facility by acquiring approximately 30 percent of the equity interests in the company, but the transaction by its terms would serve as the functional equivalent of a loan. The equity-based structure is necessary for the receipt of federal renewable energy tax credits under legislation that Congress has enacted to encourage the development and financing of renewable energy facilities. These tax credits would permit the Bank to supply financing at a lower cost.

Based on a number of representations made by the Bank, the OCC in Interpretive Letter No. 1139 (November 13, 2013) held as permissible a loan-equivalent transaction in which the Bank used the same equity-based investment structure as that proposed for **[*Facility*]**. Here, the Bank makes representations that are substantially similar to the representations in IL 1139, which support the permissibility and safety and soundness of the proposed financing structure.

The Bank's proposal differs from the transaction approved in IL 1139 in that the Company will not contract to sell its energy on a long-term basis. Rather, the facility proposes to sell its energy into the local electricity market, and to protect against power price volatility using a hedge contract with an unaffiliated third party. The OCC believes that the proposed structure of the energy sale by the company does not pose undue credit risk and satisfies safety and soundness standards. The presence of the hedge contract serves to improve the predictability of cash flow and reduces merchant risk attributable to a decline in electricity prices. I note that the Bank has represented that the hedge contract with a creditworthy counterparty will provide reasonable price and cash flow certainty at the P-99 production level, which is the level expected to be exceeded 99 percent of the time. Our supervisory non-objection is conditioned on the company, at all times, fully hedging its exposure to the power price volatility at or above this minimum level.

Based on the Bank's representations, the above condition, and the conditions in IL 1139, the OCC does not object to the Bank's provision of financing to the company. This non-objection is specifically based on the Bank's representations and written submissions describing the facts and circumstances of the subject transaction. Any change in facts or circumstances or failure to comply with the above condition and the conditions in IL 1139 could result in a different conclusion, including a determination that the Bank may no longer engage in the proposed financing transaction.

Sincerely,

/s/

[ ]
Examiner-In-Charge