

June 13, 2022

**Comments of the Business Council for Sustainable Energy
in Response to the U.S. Department of Energy’s Notice of Intent and Request for Information
Regarding Establishment of a Transmission Facilitation Program**

The Business Council for Sustainable Energy (BCSE) appreciates the opportunity to respond to the Notice of Intent (NOI) and Request for Information (RFI) from the U.S. Department of Energy (DOE)’s Grid Deployment Office on the establishment of the Transmission Facilitation Program (TFP), DOE_FRDOC_0001-4401. The TFP provides \$2.5 billion in revolving funding for the DOE to facilitate the construction of electric power transmission lines and related facilities.

The Council, founded in 1992, is a broad-based clean energy trade association. Its members span many industry sectors, including energy efficiency, energy storage, natural gas, renewable energy, sustainable transportation and emerging decarbonization technologies. BCSE also has an independent small- and medium-size businesses initiative under its banner, the Clean Energy Business Network (CEBN). Together, the BCSE and CEBN represent a broad range of the clean energy economy, from Fortune 100 companies to small businesses working in all 50 states supporting over 3 million U.S. jobs.

BCSE commends Congress and the Biden Administration for enactment of the Infrastructure Investment and Jobs Act (IIJA) and seeks to serve as a resource to federal agencies implementing the IIJA programs. Of note, as a diverse coalition, not all members take a position or endorse the recommendations included in this submission.

As specified under the IIJA, the TFP offers three forms of facilitation to assist with the construction of new, replacement, and upgraded high-capacity transmission lines: capacity contracts, loans, and public-private partnerships. The IIJA directs DOE to prioritize projects that, to the maximum extent possible, improve resilience and reliability of the grid; facilitate inter-regional transfer of electricity; lower electric sector greenhouse gas emissions; and use technology that enhances the capacity, efficiency, resilience, or reliability of the transmission system.

The TFP must also use its tools to support projects that both meet the statute's articulated goals and provide a reasonable expectation that the costs of capacity contracts (purchasing transmission service on planned transmission lines), loans, or public-private partnerships borne by the Federal Government will be repaid. TFP will also incorporate the principles and priorities related to environmental justice, underserved community support and workforce development and job creation.

Expanded and modernized electric transmission infrastructure is critical to meeting our nation’s energy reliability, security and climate mitigation goals. The TFP can provide valuable new tools that can facilitate the investment in much needed transmission infrastructure. Further, as stated in the NOI/RFI, transmission infrastructure is the “backbone for a more sustainable, resilient, and equitable

economy” which “enhance[es] U.S. competitiveness in the world.”¹ At present, over 1.4 gigawatts of generation are awaiting interconnection – many of which cannot interconnect because of a constrained transmission system.

Responses to Questions Related to the Establishment of the TFP

TFP Should Adopt Broad Project Eligibility and Focus on Projects that Demonstrate Need and Readiness

There are a range of beneficial project investments that can be supported under the TFP to assist with the construction of new, replacement, and upgraded high-capacity transmission lines. BCSE members support the DOE’s proposed approach to take a broad view of eligible projects, including projects that implement advanced grid technologies.

Further, DOE is proposing to focus on projects that both demonstrate a need for TFP tools and that can demonstrate a realistic prospect of being constructed and going into commercial operation if DOE approves TFP assistance. DOE expects that projects further along in the development process, with consultation with relevant state, local and regional bodies as well as community stakeholders, will be more effectively assisted by the tools available under the TFP. BCSE agrees with this view and supports the proposed approach by the Department.

Phase 1 of TFP Should Focus on Capacity Contract Tool

The RFI requests feedback on whether the TFP should adopt a phased approach to implementing its authorized facilitation mechanisms: capacity contracts, loans, and public-private partnerships. DOE is proposing that it focus the first phase to TFP implementation to allow for project applications to be filed in 2022 and to focus only on capacity contracts. BCSE supports this approach. However, rather than a requirement for 2027 completion, BCSE recommends that DOE instead award funds in this round to projects that anticipate commencing construction by December 31, 2025. Delays in completion can and do occur due to issues with supply chains, state and local permits, and worker availability; the start date for construction is likely to be more precise than the exact completion date.

BCSE also recommends that the first two solicitations (2022 for capacity contracts, and 2023 for capacity contracts, loans, and public-private partnerships) be conducted with fixed application dates to allow for selection of the highest-impact projects. Beyond 2023, a rolling application process is recommended, as different projects will have different anticipated dates for funds to be returned to DOE.

¹ RFI/NOI, 87 FR 29142.

Leveraging TFP Funds through Use of Other Federal Funds and Programs

The NOI/RFI also seeks information on whether there are ways to “amplify and leverage” the funding available through the TFP by accelerating transmission development.² A valuable way for DOE to leverage the \$2.5 billion available for the TFP is to make clear that applicants can simultaneously seek to use other federal funding and programs. To the extent possible, DOE should ensure that application windows and data collection requirements are aligned for federal programs that could complement the TFP.

Buy America Waivers for Certain Transmission Components under TFP

Understanding the importance of a secure, expansive and durable domestic supply chain for electric transmission components and materials, the current Buy America requirements of the TFP could impact project viability.

In assessing the current requirements, DOE, in coordination with OMB’s Buy America Office, will need to grant waivers of the Buy America requirements for the electric transmission related materials and components that are unable to be procured domestically. For example, it appears that transmission projects that receive funds under TFP will be subject to the Buy America requirements for the entire line, even if the assistance only impacts a small part of the line. This would impose a 100% domestic steel requirement the project. Several components on most transmission lines are unavailable domestically; therefore, waivers should be granted in such circumstances.

NEPA Applicability for TFP Funding Mechanisms

BCSE agrees with DOE’s conclusion in the NOI/RFI that applications for capacity contracts are not required to account for National Environmental Policy Act (NEPA) environmental impact review, because DOE’s entry into a capacity contract does not independently trigger NEPA review under the IJA.³ Under the IJA, entering into a capacity contract is considered a form of financial assistance that is not a major federal action because DOE does not “exercise sufficient control and responsibility” over the effects of such assistance.⁴

We urge DOE to clarify when NEPA applies to loans, exempting them as appropriate under the above-referenced regulatory standard. Legally, providing federal funding in many circumstances does not trigger NEPA at all because the act of providing the financial assistance should not necessarily qualify as a major federal action, which is required under NEPA.

Thank you for the opportunity to share the Council’s views on the TFP RFI. Should you wish to discuss these comments further, please contact BCSE President Lisa Jacobson via email at ljacobson@bcse.org.

² NOI/RFI at Question 5.

³ RFI/NOI at 29,143.

⁴ IJA Section 40106(f)(7); 40 CFR 1508.1(q)(1)(vii)