

February 23, 2023

The Honorable Jennifer M. Granholm
Secretary, U.S. Department of Energy
1000 Independence Avenue, SW
Washington, DC 20585

Re: Request for Clarification Related to Bipartisan Infrastructure Law (BIL) Grid Resilience Funding Restrictions and Amendments to Related Funding Opportunity Announcements

Dear Madam Secretary,

The undersigned organizations are grateful for your diligent and tireless efforts to drive the US energy infrastructure to a resilient and lower carbon future. We are writing you today to request your assistance in resolving an apparent contradiction in policy that, absent a course correction, will prevent the development of resilient and emission-reducing microgrids. Specifically, the Grid Deployment Office (GDO) has communicated to industry that distributed energy resources (DERs) that incorporate electricity generation cannot be proposed for use in applications for the DOE-FOA-0002740¹, Topic Area 1 (TA1) " Grid Resilience Grants" and DE-FOA-0002736². This GDO determination would essentially preclude DOE-FOA-0002740 TA1 and DE-FOA-0002736 from being used to support any form of microgrid on-site electricity generation regardless of the fact that such DERs are an indispensable element of any functioning microgrid.³ Based on the text of the BIL, the DOE's definition of DERs, the Inflation Reduction Act's (IRA) definition of qualified microgrids, and the textual context of the two FOAs, we believe the GDO has reached this conclusion in error. Considering the time sensitivity related to the ongoing competitive process, we respectfully request your immediate assistance in resolving this contradiction.

As a justification for its position, the GDO points to language in each FOA stating that subawards may not be used for "construction of a new - (a) electric generating facility..."⁴ without acknowledging the practical infeasibility of that interpretation considering the express authorization of funding for the "...construction of distributed energy resources for enhancing system adaptive capacity during disruptive events, including: (a) microgrids;..."⁵ The language is taken verbatim from the BIL⁶, and the BIL does not otherwise distinguish between the terms "distributed energy resources" and "electric generating facilities". However, DE-FOA-0002736 clearly contemplates DERs as having their own sources of

¹ Grid Resilience and Innovation Partnerships (GRIP)

² Preventing Outages and Enhancing the Resilience of the Electric Grid Formula Grants to States and Indian Tribes

³ The DOE defines a microgrid as "a group of interconnected loads and distributed energy resources within clearly defined electrical boundaries that acts as a single controllable entity with respect to the grid. A microgrid can connect and disconnect from the grid to enable it to operate in both grid-connected or island mode."

⁴ DOE-FOA-0002740 at p. 22 and DE-FOA-0002736 at p. 11.

⁵ *Id.*

⁶ Public Law No. 117-58, Section 40101(e)(1)(H)(i) and (2)(A)(1)(I).

electricity generation⁷. The DOE Federal Energy Management Program in its official training for federal energy managers and industrial vendors refers to electricity generating DERs as a "key component of a microgrid"⁸. Additionally, the IRA defines a "qualified microgrid" as a system that " includes equipment which is capable of *generating* (emphasis added) not less than 4 kilowatts and not greater than 20 megawatts of electricity"⁹.

Based on the plain language of the BIL and the above DOE and legislative definitions of DERs and microgrids, it appears Congress intended to preclude this FOA funding from going to the construction non-microgrid electricity-generating facilities like large power plants or other large-scale power generation established solely for the purpose of supplying the grid. It likewise seems clear Congress intended to allow that funding to be used to construct microgrids that have electricity generating equipment, rather than funding microgrids that cannot effectively enhance system adaptive capacity during disruptive events.

We kindly ask you to confirm that DERs that enhance system adaptive capacity during disruptive events, including microgrids as defined by the DOE and the IRA, are eligible for funding under FOAs DOE-FOA-0002740 (TA1) and DE-FOA-0002736 and to ask the GDO to take the following actions:

1. Amend the subject FOAs to clarify the prohibition on funding "construction of a new - (a) electric generating facility" does not apply to DERs that enhance system adaptive capacity during disruptive events, including microgrids with their own sources of electricity generation as defined in the IRA;
2. For DOE-FOA-0002740 (TA1), determine whether any concept papers were discouraged because the potential applicants proposed DERs that have electricity generating equipment and, if that was the sole or main basis for the decision to discourage, then to change the decision to "encourage";
3. For DOE-FOA-0002740 (TA1), allow applicants that submitted concept papers without electricity generating DERs to amend their concept papers to include such assets;
4. For DOE-FOA-0002740 (TA1), reopen the concept paper submission process and set a submission deadline of March 31, 2023.
5. For DOE-FOA-0002740 (TA1), extend the submission deadline for full applications for DE-FOA-0002740 TA1 by three months to July 6, 2023 to allow the DOE to evaluate any new or amended concept papers and to allow the industrial base to evaluate how it can incorporate electricity generating DERs in its applications.

⁷ See DE-FOA-0002736 at page 10, footnote 16 which defines DERs as ""resources sited close to customers that *can provide all or some of their electric power needs* (emphasis added) or can be used by the system to either reduce demand (such as energy efficiency) or provide supply to satisfy the energy, capacity, or ancillary service needs of the grid. The resources are small in scale, connected to the distribution system, and close to load. *Examples of different DER types include solar photovoltaic (PV), wind, combined heat and power (CHP),* (emphasis added) energy storage, demand response (DR), grid-interactive buildings and other flexible loads, electric vehicles (EVs), microgrids, and energy efficiency (EE)."

⁸ See presentation deck for FEMP Course titled: "Implementing Microgrids in the Federal Sector: Introduction to Microgrids." at slide 15.

⁹ Section 13102(f)(8)(B)(i).

6. For DOE-FOA-0002736, extend the application submission deadline by two months to May 31, 2023 to allow the DOE to evaluate any amended applications already submitted and to allow eligible applicants to evaluate whether they can incorporate electricity generating DERs in their applications.

We very much appreciate your attention to this important matter and thank you for making the United States cleaner and more resilient.

Sincerely,

Lisa Jacobson, President, Business Council for Sustainable Energy
Frank Wolak, President & CEO, Fuel Cell and Hydrogen Energy Association
Timothy Unruh, National Association of Energy Services Companies

CC:

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