UNITED STATES OF AMERICA
BEFORE THE
DEPARTMENT OF ENERGY

Notice of Intent and Request for Information Regarding Establishment of a Transmission Facilitation Program **DOE_FRDOC_0001-4401**

COMMENTS OF THE INDICATED RTOs

PJM Interconnection, L.L.C. ("PJM"), Midcontinent Independent System Operator, Inc. ("MISO") and Southwest Power Pool, Inc. ("SPP") (collectively, the "Indicated RTOs") submit these comments in response to the Department of Energy's ("DOE" or "Department") Notice of Intent and Request for Information ("NOI/RFI") regarding the establishment of a Transmission Facilitation Program ("TFP").[1] The DOE proposes to implement the TFP to help facilitate the construction of new and upgraded high-capacity transmission lines[2] that will best serve the goals stated in the IIJA, including improved resilience and reliability of the grid; facilitation of the interregional transfer of electricity; lowered electric sector greenhouse gas emissions; and use of technology that enhances the capacity, efficiency, resilience, or reliability of the transmission system.[3]

The Indicated RTOs note that the IIJA, which establishes the TFP, calls for close coordination among the DOE and regional transmission providers in relevant planning regions in

[1] *See* Infrastructure Investment and Jobs Act ("IIJA" or the "Act") directing the Secretary of Energy to establish a program, to be known as the "Transmission Facilitation Program" or "TFP." *See* 42 U.S.C.A. § 18713, subsection (b) (Nov. 15, 2021).

[2] In order to qualify for TFP funds, a project must be (i) a new transmission line that is capable of transmission at least 1000 MW; (ii) an upgrade to an existing transmission line or a new transmission line within an existing right of way capable of transmitting at least 500 MW; or (iii) a replacement facility that meets the criteria in (i) or (ii). *See* NOI/RFI at 10-11.

[3] *See* IIJA at § 40106(j)(8); NOI/RFI at 3. As part of the IIJA, DOE may borrow up to $2.5 billion to carry out the TFP. The TFP will assist with the construction of new and upgraded transmission lines through three financing tools for eligible projects: capacity contracts, loans from DOE, and participation by DOE in public-private partnerships. *See* NOI/RFI at 6-7. The DOE seeks to optimize the use of the available TFP funds to accelerate the deployment of transmission facilities that will best meet the IIJA's stated goals. *See* NOI/RFI at 4.

order to "minimize, to the extent possible, duplication or conflict with a transmission planning region's needs determination and selection of projects that meet such needs."[4] Each of the Indicated RTOs undertake both regional and interregional planning processes pursuant to FERC Orders Nos. 890 and 1000.[5] As the independent regional transmission organizations ("RTOs") for the PJM, MISO and SPP regions, the Indicated RTOs have unique perspectives regarding the proposals and questions set forth in the NOI/RFI. As a threshold matter, the Indicated RTOs firmly believe that the TFP should be administered on a non-discriminatory basis, and designed to allow all regions of the country, regardless of their transmission system models, and all types of transmission projects that will best serve the national interest, to seek such funding. Unfortunately and although perhaps unintended, the TFP as presently proposed in the NOI/RFI falls short of these objectives. The Indicated RTOs therefore propose below concrete ways to address these matters in the Final Rule.

Accordingly, the Indicated RTOs submit these comments[6] to: (i) identify specific proposals within the NOI/RFI that inadvertently would preclude certain transmission projects selected through regional transmission planning processes that would otherwise effectuate the goals of the IIJA from participating in the TFP due to narrowly-defined eligibility requirements; and (ii) propose solutions that would ensure that the TFP can operate in its intended open and non-discriminatory manner.[7]

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[4] IIJA at § 40106(f)(8).

[5] For the Department's convenience and as an illustrative reference point, PJM is providing as a supplemental filing a description of its planning process.

[6] The Indicated RTOs identify below the specific questions set forth in the NOI/RFI to which they are responding.

[7] The Indicated RTOs recognize that the initial funding for the TFP is relatively modest given the potential need. However, as the TFP provides for a reinvestment of those funds and as the Department may well seek additional appropriations for the TFP from the Congress, the Indicated RTOs believe that it is imperative that from its outset, the TFP is designed in a manner that makes it available to all regions and viable transmission projects on a non-discriminatory basis.

I. COMMENTS

A. The Initial Solicitation Process Should Not Be Limited to Applicants Seeking Capacity Contracts for Eligible Projects (*In this Section, the Indicated RTOs Respond to NOI/RFI question numbers 1, 10, 11, 18, 19, 22 and 23*)

Although the DOE anticipates that future annual solicitations will invite applications for all three formats available to DOE under the TFP (capacity contracts, loans, public-private partnerships),[8] DOE proposes that the initial solicitation be limited to applicants seeking capacity contracts for Eligible Projects[9] that will commence commercial operation no later than December 31, 2027.[10] Under the capacity contract format, DOE would be authorized to purchase the right to use up to 50 percent of the total amount of transmission capacity of the transmission line from an eligible project for not more than 40 years.[11] DOE may transfer its contractual rights to the transmission capacity to a third party upon payment by the third party.[12] DOE may also relinquish its rights back to the project developer upon developer's payment to DOE for those rights.[13] If DOE has not terminated or transferred its capacity rights before the eligible project enters service, DOE is required to market its portion of the project's capacity rights under the capacity contract.[14]

DOE expects capacity contract agreements may include elements of contracts commonly

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[8] NOI/RFI at 8.

[9] An "Eligible Project" is defined under the IIJA to mean a project (including any related facility) -- (A) to construct a new or replace an existing eligible electric power transmission line; (B) to increase the transmission capacity of an existing eligible electric power transmission line; or (C) to connect an isolated microgrid to an existing transmission, transportation, or telecommunications infrastructure corridor located in Alaska, Hawaii, or a territory of the United States. IIJA section 40106(a)(4).

[10] NOI/RFI at 8.

[11] IIJA section 40106(f)(3); NOI/RFI at 6.

[12] IIJA section 40106(f)(5)(B); NOI/RFI at 6.

[13] IIJA section 40106(f)(5)(C)-(D); NOI/RFI at 6.

[14] IIJA section 40106(f)(5)(C)-(D); NOI/RFI at 6-7.

used for transmission services to secure capacity for the eligible project, permit DOE to market its capacity, and ultimately to exit from the eligible project.[15]

1. Limiting the Initial Solicitation to Applicants Seeking Capacity Contracts Would Unfairly Disadvantage Developers in Regional Transmission Planning Regions *(In this Section I.A.1, the Indicated RTOs respond to NOI/RFI Question Numbers 1, 10, 11, and 18)*

The Indicated RTOs urge the Department *not* to limit the initial solicitation, let alone the overall TFP rules being developed in this proceeding, to capacity contracts. Rather, the Indicated RTOs recommend that the initial solicitation accept proposals to utilize any one of the three funding options, namely public-private partnerships, loans and capacity contracts. In this way, the Department would not be skewing the initial applicant pool. Instead, by permitting an applicant to propose a format that best suits its circumstances, the Department would have more options from which to choose among proposals submitted in response to the initial and subsequent solicitations.

The Indicated RTOs understand that utilizing the options of loans or public-private partnerships might involve other offices of DOE and could trigger reviews under the National Environmental Policy Act. However, instead of pre-judging that these two options may be less desirable to transmission developers than the capacity contract model, the Department should be open to receiving proposals utilizing any of the three options. This would allow transmission developers across the country, rather than the Department, to make the initial determination as to which model works best for them.

Moreover, the Indicated RTOs believe that the public-private partnership option (which includes various options, only one of which requires actual DOE ownership of facilities[16]) may

[15] NOI/RFI at 18.

[16] The public-private partnership format proposes that DOE would design, develop, construct, operate, maintain or *own* an eligible project. IIJA section 40106(h); NOI/RFI at 7. Entities that own or lease (with rights equivalent to

offer the most flexibility to eligible projects in RTO regions, which opportunity would not be available if the first solicitation was limited to the capacity contract format. Accordingly, as long as the DOE allows for flexibility in the use of all three formats, including public-private partnerships and loans, it will provide all regions of the country non-discriminatory access to TFP funds.

2. Capacity Contracts Should Not Include Provisions that Authorize DOE to Terminate the Contract for Convenience Subject to a Termination Fee (*In this Section I.A.2, the Indicated RTOs Respond to NOI/RFI Questions Numbers 22 and 23)*

The Indicated RTOs urge the DOE not to include a provision in any TFP format that would allow DOE to terminate a contract, loan or public-private partnership for convenience subject to a termination fee. In particular, because one of the conditions for eligibility requires the applicant to demonstrate that its project is "unlikely to be constructed in a timely manner or with as much transmission capacity absent TFP facilitation," it is likely that a project that satisfies this eligibility requirement may not be able to move forward without such funds. Therefore, not only would such a provision introduce greater uncertainty into the RTO's planning process, it would also lead to greater risk for the developer.

Once a transmission project is included in a regional planning model, it generally may be relied upon by subsequent regional transmission and interconnection projects studied by the RTO. Such uncertainty can be minimized under an RTO's current planning and interconnection processes. In PJM, for example, if a merchant transmission project is withdrawn after it is included in the model, but a subsequent project is found to rely upon a merchant transmission project

ownership) transmission facilities may be defined as Transmission Owners under RTO-specific governing documents. *See, e.g.*, PJM Consolidated Transmission Owners Agreement, PJM Rate Schedule FERC No. 42. As a Transmission Owner in the respective planning regions, the DOE would, at a minimum, be subject to the tariffed terms and conditions of those regions.

included in the model, the merchant developer would be responsible for the costs of building that project, even though its merchant project was terminated. Therefore, unless the termination fee referred to above equates to funding any upgrades relied upon by subsequent projects, allowing DOE to terminate an eligible project for convenience would add another level of uncertainty to the planning process, greater risk to the developer and increased cost to load.

3. Concerns About the Mismatch of the Capacity Contract Approach in the RTO Context *(In this Section I.A.3, the Indicated RTOs Respond to NOI/RFI Question Numbers 1, 10, 11, and 18)*

While a capacity contract model might work for merchant transmission facilities, where the merchant developer would be responsible for all costs of such enhancement or expansion, a capacity contract model is not practicable for baseline projects in regions that rely primarily on network service for the transmission of capacity and energy from network resources within or deliverable to the respective RTO region. The predominant form of transmission service in RTO regions is network service which does not require physical reservations of transmission service within the Indicated RTOs' respective planning regions.[17] Rather, transmission service is primarily provided as network service, *i.e.*, customers pay for and can utilize the entire transmission network. As a result, there is not necessarily a large bank of physical rights that the DOE could auction off in order to return some of the transmission facilitation funds back to the Treasury.

Moreover, although point-to-point service can be utilized for interregional transfers, such point-to-point service usually just provides transmission to the regional border, at which point customers would use network service to deliver that electricity to its load centers. By way of

[17] SPP takes physical reservations of both point-to-point and network service which then serve as the basis for provision of financial congestion hedges.

example in the PJM Region, if a load serving entity in New Jersey wished to import power from the Dakotas, it might seek to enter into a point-to-point transaction that would bring North Dakota-sourced wind power located in the MISO region to a point of interconnection in the Commonwealth Edison system in PJM. But, within PJM, network service would still need to be used to bring that energy to the New Jersey load center. As such, the capacity contract model may not necessarily effectuate the construction of long lead lines from distant renewable rich resource areas to population centers in adjoining regions as the DOE may desire. Rather, funding of adequate transmission capability on any of the Indicated RTO systems through either loans or public-private partnership arrangements would be far more effective in bringing such projects to fruition to meet the goals of the TFP.

For this reason, although the Indicated RTOs recognize that the capacity contract model may work for markets in the West and Southeast regions that rely exclusively on physical transmission reservations, the Indicated RTOs urge the Department to not effectively bar applicants in RTO regions from even applying for this first tranche of solicitations by artificially limiting the tranche to capacity contracts. This potential skewing of the use of funds through the first solicitation would be exacerbated by the fact that most RTO regions, except as noted herein, primarily use the network service model rather than the physical reservations of capacity. A solicitation that effectively makes it impossible for developers seeking to develop projects in RTO regions could effectively bar large portions of the Nation from using TFP funds. It is for this reason that Congress clearly indicated that the capacity contract was one means, but not the exclusive means, for soliciting proposals under the TFP.

B. The DOE Should Ensure That Projects Selected Pursuant to a Regional Transmission Provider's Regional Transmission Planning Process Can Qualify as Eligible Projects Under the TFP *(In this Section I.B, the Indicated RTOs Respond to NOI/RFI Question Numbers 1, 8, and 11)*

Consistent with the IIJA, the NOI/RFI requires an applicant to make the following four broad demonstrations in order to receive funds under the TFP. Specifically, the applicant must show:

(i) the Eligible Project is unlikely to be constructed in a timely manner or with as much transmission capacity in the absence of TFP facilitation;
(ii) the proposed project has a realistic chance of being constructed and going into commercial operation if DOE approves TFP assistance;
(iii) there is a reasonable expectation that the proceeds from the eligible project will be adequate for DOE to recover the cost of support it provides; and
(iv) how the eligible project advances the priorities established for TFP facilitation in the IIJA.[18]

With the exception of transmission facilities that require customers to subscribe to transmission service over such facilities or to a portion of the electric capability of such facilities,[19] all reliability and economic baseline projects included in a regional transmission plan are funded by load pursuant to the cost allocation methodologies set forth in the Indicated RTOs' tariff. Therefore, funding of baseline projects would be available to a transmission owner or nonincumbent developer designated by the RTO with responsibility to construct and own and/or finance a baseline project only if the transmission owner or nonincumbent developer is able to demonstrate that but for TFP funding the baseline reliability or economic project would not have been included in the regional plan with as much transmission capacity. However, TFP funding

[18] *See* NOI/RFI at 12-17. Under the IIJA, project priorities include: (A) use of technology that enhances the capacity, efficiency, resiliency, or reliability of an electric power transmission system, including (i) reconductoring of an existing transmission line with advanced conductors and (ii) hardware or software that enables dynamic line ratings, advanced power flow control, or grid topology optimization; (B) improvement of the resiliency and reliability of the Transmission System; (C) facilitation of interregional transfer capability that supports strong and equitable economic growth; and (D) contributions to national or subnational goals to lower electricity sector greenhouse gas emissions. IIJA section 40106(j)(8).

[19] Tariff, Schedule 12, section (a)(iii).

would help to lower the costs of such projects to affected load, which could aid both in the siting process as well as the impact to certain affected communities.

Generally speaking, under current regional planning processes, it is unlikely that a regional transmission project would be planned simply with more capacity than is needed to satisfy a need identified by the RTO or unable to be constructed in a timely manner due to funding. Consequently, even though DOE has stated that this program is not limited to Merchant Transmission Facilities,[20] the fact that TFP funding is contingent upon whether or not a project has a realistic chance of being constructed and going into commercial operation in a timely manner or with as much transmission capacity without such funds, all entities responsible to construct, and own and/or finance a regional transmission project would potentially be foreclosed from receiving any funding under the TFP even if it best served the public interest as defined in the IIJA. That said, the key to ensuring that this program will be available to all developers and projects that would effectuate the goals of the IIJA regardless of a region's specific planning process, is to bake in as much flexibility as possible into the program and let all worthy projects compete for the TFP funds based on the merits of their proposals.

C. Limiting the First Solicitation to Projects with Commercial In-Service Dates of No Later Than December 31, 2027 Will Frustrate the Goals of the Program *(In this Section I.C, the Indicated RTOs Respond to NOI/RFI Question Numbers 1, 8, and 11)*

By design, the TFP is intended to focus on Eligible Projects that either would be "unlikely to be constructed in as timely a manner or with as much transmission capacity in the absence of [TFP facilitation]."[21] Although this is a laudable goal, the limitation that the first solicitation must

[20] Such an interpretation of the IIJA is appropriate as the TFP should be administered on a non-discriminatory basis.

[21] IIJA Section 40106(i)(2).

involve projects with commercial in-service dates of no later than December 31, 2027[22] is too limiting and will skew the applicant pool in a way that is unduly discriminatory. Large transmission projects take, on average, seven to ten years to plan, develop and build.[23] Projects that are currently less than six years away from their in-service date should have their financing and siting already secured in order to meet such a projected commercial in-service date. As a result, these are not necessarily the projects that are "unlikely to be constructed in as timely a manner" that may need the funding from the TFP to make them viable. Rather, it is those projects that are still in the conceptual stage and perhaps are close but otherwise are awaiting consideration in a long-term planning process that are potentially most in need of TFP funding.

As a result, although the near term in-service date may help a handful of projects, the cap on the in-service date will skew the applicant pool and make it appear that the results of the solicitation have been pre-decided. To avoid even the specter of same, and to ensure that the funds are utilized for projects that truly would not be built but for the funding, the Indicated RTOs urge that the Department drop this artificial limitation and instead decide on the most viable projects after a more open solicitation is held.

D. The DOE Should Ensure that All Selected Projects Are Consistent with Regional Transmission Plans and Priorities (*In this Section I.D, the Indicated RTOs respond to NOI/RFI Question Numbers 7, 10 and 11)*

The IIJA directs the Department to minimize, to the extent possible, duplication or conflict with a transmission planning region's needs determination and selection of projects that meet such needs.[24] Additionally, with respect to capacity contracts, the IIJA requires the Department to

[22] NOI/RFI at 8.

[23] In general, states have primary jurisdiction over the process of planning, permitting, and constructing energy facilities.

[24] IIJA section 40106(i)(8).

consult with the relevant transmission planning region before entering into a capacity contract regarding the transmission planning region's identified needs.[25]

Such provisions acknowledge the role given to regional transmission providers under FERC's Order Nos. 890 and 1000 regional planning processes by requiring the DOE to coordinate with the regional transmission provider and give deference to the regional transmission provider's planning decisions before taking action to facilitate an Eligible Project under the TFP. This step is crucial to the success of the TFP regardless of whether the Department chooses capacity contracts, loans or public-private partnerships. Understanding each planning region's tariffed processes will help aid DOE in developing its TFP solicitation process specific to the selection of transmission projects eligible to participate in the TFP. To that end, it is essential that the DOE develop a program with enough flexibility in the formats it ultimately chooses to use to effectuate the goals of the program so as to allow developers, in consultation with RTOs, to propose projects that meet the program's eligibility requirements while also being compatible with the RTOs' planning processes.

Finally, while DOE should defer to the determinations of the regional transmission provider on those matters specific to the planning of the transmission provider's region, such as reliability, operational performance, economic and public policy needs, the DOE may wish to apply its own *de novo* determination on those issues which might not otherwise be considered by the regional transmission provider under its regional planning process, such as those specifically related to workforce, environmental justice and others detailed in the NOI, in selecting eligible projects that will satisfy the goals of the program.

[25] IIJA section 40106(f)(8).

II. CONCLUSION

The Indicated RTOs appreciate the opportunity to comment on the NOI/RFI, and respectfully request that the Department consider the comments set forth above when it issues any final rules related to the TFP.

Respectfully submitted,

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