

## RENEWABLE ENERGY



May 2014

### **DOE Issues New Draft Loan Guarantee Solicitation for Renewable Energy and Energy Efficiency Projects**

On April 16, 2014, the Department of Energy released a new draft loan guarantee solicitation (the Draft Solicitation) for renewable energy and energy efficiency projects, under which it could provide up to \$4 billion in loan guarantees. DOE is accepting public comments on the Draft Solicitation through May 16, 2014, and a final solicitation will likely be issued during the summer of 2014. The Draft Solicitation is in addition to DOE's December 2013 solicitation for fossil energy projects.

### **Eligible Projects**

DOE is relying on its authority under Section 1703 of the Energy Policy Act of 2005, which requires that projects employ "new or significantly improved technology." To qualify as "new or significantly improved technology," the technology must be a technology that has not been installed in and used in three or more commercial projects in the United States (in the same general application) for at least five years.

The Draft Solicitation is aimed specifically at the following types of projects: (1) renewable energy systems; (2) efficient electrical generation, transmission and distribution technologies; and (3) efficient end-use technologies. This includes the enhancement of existing facilities, such as retrofitting existing wind turbines, as well as waste-to-energy projects. For reference, we have attached hereto the list of potential projects types that DOE included in the Draft Solicitation.

### **Loan Guarantee Terms**

Loan guarantees may not exceed 80 percent of the total project costs, and the term of the loan may not exceed the lesser of 30 years or 90 percent of the projected useful life of the project's major physical assets. When DOE guarantees 100 percent of a loan, the Federal Financing Bank funds the loan (for 80 percent of total project costs). The interest rate on the loan is determined by DOE after consultation with the Treasury Department, taking into account the range of interest rates prevailing in the private sector for similar obligations of comparable risk guaranteed by the federal government.

## Selection Criteria

Loan guarantees will be competitive, and DOE will select projects based on three general criteria: (1) financial factors and creditworthiness (weighted 45 percent); (2) technical factors (weighted 35 percent); and (3) programmatic, legal, environmental and regulatory factors (weighted 20 percent). While creditworthiness is the primary factor, DOE emphasizes that it prefers projects that have a “catalytic effect on the commercial deployment of future Renewable Energy Projects and/or Efficient Energy Projects that replicate or extend the innovative feature of the Eligible Project.”

## Costs and Fees

Application fees are \$150,000 for loan guarantee requests up to \$150 million, or \$400,000 for loan guarantee requests over \$150 million. Applicants must pay \$50,000 of the application fee when they submit the Part I application and the remainder when they submit the Part II application. Borrowers will also be required to pay a 1 percent facility fee, with 25 percent of the facility fee due at issuance of a conditional commitment and 75 percent of the facility fee due at closing. For loan guarantees over \$150 million, borrowers must pay an additional 0.6 percent facility fee on the amount in excess of \$150 million.

One key issue for sponsors will be whether they are responsible for the credit subsidy cost. The credit subsidy cost is the net present value of the estimated payments to and from the government, considering the probability of default and anticipated recovery amounts. In the absence of a congressional appropriation of the credit subsidy cost, in accordance with the Federal Credit Reform Act of 1990, DOE must require the sponsor to make a cash payment of the credit subsidy at closing. Under the Recovery Act of 2009, Congress appropriated funds to cover the credit subsidy cost of loan guarantees for projects that commenced construction by September 30, 2011, and various appropriations acts have also provided funding for the credit subsidy cost of loan guarantees for innovative projects. In the Draft Solicitation, DOE indicates that

it still has funds remaining to cover the credit subsidy cost of loan guarantees from previous appropriations acts. However, we note that in 2012, DOE issued a supplemental announcement under a previous round to notify applicants that it may require a portion of the credit subsidy cost to be covered by the sponsor and that it will limit the appropriated credit subsidy cost that is available for any single project. Accordingly, particularly for large projects, sponsors should expect that DOE might require them to fund at least a portion of the credit subsidy cost. The Draft Solicitation indicates that DOE will post additional information on how it will allocate the appropriated credit subsidy cost prior to the application deadline.

## Next Steps

The Draft Solicitation and other related materials (including how to submit public comments) are available [here](#). Based on public feedback, DOE could revise portions of the Draft Solicitation when it issues the final solicitation.

## Contacts

For more information regarding DOE's loan guarantee program, please contact one of the Hunton & Williams LLP lawyers listed below:

### Jeff Schroeder

[jschroeder@hunton.com](mailto:jschroeder@hunton.com)

### Eric Pogue

[epogue@hunton.com](mailto:epogue@hunton.com)

### Mark Menezes

[mmenezes@hunton.com](mailto:mmenezes@hunton.com)

### Fred Eames

[feames@hunton.com](mailto:feames@hunton.com)

### John Tormey

[jtormey@hunton.com](mailto:jtormey@hunton.com)

### Mike Klaus

[mklaus@hunton.com](mailto:mklaus@hunton.com)

## Potential Project Types

(From Draft Solicitation)

Potential types of Eligible Projects may include but are not limited to:

### 1. Advanced Grid Integration and Storage:

- a) Renewable energy generation, including distributed generation, incorporating storage;
- b) Smart grid systems incorporating any combination of demand response, energy efficiency, sensing, and storage to enable greater penetration of renewable generation;
- c) Micro grid projects that reduce CO2 emissions at a system level; and
- d) Storage projects that clearly enable greater adoption of renewable generation;

### 2. Drop-in Biofuels:

- a) New bio-refineries that produce gasoline, diesel fuel, and/or jet fuel;
- b) Bio-crude refining processes; and
- c) Modifications to existing ethanol facilities to gasoline, diesel fuel, and/or jet fuel;

### 3. Waste-to-Energy:

- a) Methane from landfills or ranches via biodigesters to heat and power;
- b) Municipal solid waste to electricity;
- c) Crop waste to energy and bioproducts; and
- d) Forestry waste to energy potentially via cofiring;

### 4. Enhancement of Existing Facilities:

- a) Incorporation of power production into currently non-powered dams;
- b) Inclusion of variable speed pump-turbines into existing hydro facilities; and
- c) Retrofitting existing wind turbines; and

### 5. Efficiency Improvements:

- a) Improve or reduce energy usage in residential, institutional, and commercial facilities, buildings, and/or processes;
- b) Recover, store, or dispatch energy from curtailed or underutilized renewable energy sources;
- c) Recover, store, or dispatch waste energy from thermal, mechanical, electrical, chemical, or hydro-processes; and
- d) Dispatch, control, or stabilize intermittent power to large transmission lines, smart grids, and micro grids.

Additional illustrative examples of energy efficiency projects, some of which are also listed in connection with the categories listed above may include: proposed efficiency improvements to a real estate portfolio or large group of buildings (i.e., hospitals, school districts, technology campuses, industrial parks, data centers), reduce curtailments or utilize curtailed energy to enable greater utilization or increase capacity factors, distributed generation or micro-grids (kW- to low MW-scale power generation that provides electricity to distributed loads such as hospitals, airports, and hotels), and energy storage, energy recovery that can provide district energy or micro-grid.

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