



June 2, 2022

Patricia A. Hoffman
Acting Director and Principal Deputy Director, Grid Deployment Office
U.S. Department of Energy
1000 Independence Avenue SW
Washington, DC 20585

RE: U.S. Department of Energy’s Formula Grants to States and Indian Tribes for Preventing Outages and Enhancing the Resilience of the Electric Grid

Dear Director Hoffman,

The National Association of State Energy Officials (NASEO) appreciates the opportunity to submit comments in response to the U.S. Department of Energy’s (DOE) Notice of Intent (NOI) on Formula Grants to States and Indian Tribes for Preventing Outages and Enhancing the Resilience of the Electric Grid, in accordance with the Infrastructure Investment and Jobs Act (IIJA). NASEO represents the governor-designated State Energy Directors and their offices from each of the 56 states, territories, and the District of Columbia. In response to the NOI and in developing the final Administrative and Legal Requirements Document (ALRD), we encourage DOE to consider the following:

1. Need for Updated Timeline and Allocations for States, Territories, and Tribes for FY24 and Beyond

Most states require the approval of their legislatures to enable state agencies to include federal funding within their budgets as well as provide any cost match or share for federal grants. State legislatures often only meet several months out of the year (usually in the spring) and in some states not even every year. If state agencies do not know their approximate allocation (i.e., formal DOE estimates are acceptable) under 40101(d) well in advance of state legislative sessions, state legislatures might not be able to approve programs until they meet again. This could substantially delay the start of the state programs using these funds and diminish timely resilience actions that could save lives and livelihoods. Additionally, state budgeting timelines might make it challenging for many states to commit to a state match in the short-term. NASEO encourages DOE to clarify if states that are currently out of legislative session can apply for the formula funding and then, in turn, secure the state match or if the commitment has to be made up front. To allow for flexibility for the states, NASEO encourages DOE to use the former approach. Furthermore, several states might be unable to hire additional staff if the allocation is unclear from year to year. NASEO therefore encourages DOE to provide the approximate amount of the entire five-year allocation for all states, territories,

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and tribes instead of only issuing precise amounts each year. Providing states, territories, and tribes with a reasonable estimate of the yearly allocations under 40101(d) would not only allow states to receive approval only once from state legislatures, but it would provide more reliability for all applicants to plan programs and hire additional staff as needed, leading to better outcomes. It would still include enough flexibility to adapt to impacts of natural and man-made emergencies that states, tribes, and territories might experience in 2022 or during any of the following years. In its FAQ issued May 5, 2022, DOE also outlined that “unallocated funds (unused funding for an eligible applicant) in one fiscal year will transfer into the subsequent fiscal year’s available funds and re-distributed to applicants based on that subsequent year formula allocation.” NASEO would like DOE to clarify if the unused funds are then available specifically for the state, territory or tribe that chose not to use the funding in any given year or if they are rolled over into the general fund to be distributed to all applicants in the next program year.

2. More Clarity on Cost Matching/Sharing and Disbursement Process

As DOE outlined in the draft ALRD, “each State and Indian Tribe is required to match 15 percent of the amount of each grant provided to the State or Indian Tribe under the Program. Further, an eligible entity that receives a subaward under this program is required to match 100 percent of the amount of the subaward as required by Section 40101(h)(1). However, if the eligible entity sells not more than 4,000,000 megawatt hours of electricity per year, the required match will be one-third of the amount of the subaward as required by Section 40101(h)(2).” NASEO encourages DOE to provide further guidance on the cost-matching or sharing requirements and disbursement processes, and in particular on the following issues:

- How DOE defines “sell” in the above. For the definition of “sell”, would this only include the electricity purchased directly from the electric utility, or would it include all of the electricity delivered by the utility to customers? Does “sell” mean under contract or does it mean actual sales related to consumption for the past 12 months or perhaps the average of the past 60 months?
- The ALRD seems to use cost match and cost share interchangeably, yet they have slightly different meanings (with the term *matching* being a specific type of cost sharing, requiring the grantee to “match” the sponsor funding according to a specified ratio). For the final ALRD more clarity if cost matching or sharing is required would be helpful.
- Could a state, territory or tribe set the match requirements at greater than 100%? The ALRD implies that the cost match requirements are minimum amounts, but explicit authority to go beyond minimum would be helpful. In that, it would also be helpful for DOE to clarify whether states may meet the 15% match requirement by requiring a 115% match from the entities we are suballocating to.
- Does the grant recipient get the funds and disperse them to subgrantees or does DOE directly send the funds to subgrantees upon approval by the state?
- The NOI on page 10 indicates that a recipient is required to submit sub-award packages for approval by DOE that describes the work to be done by each eligible entity within the guidelines of Section 40101(d). Can DOE offer any indication of the turnaround time for DOE approval of these sub-award packages? Protracted DOE review times may result in project delays that may increase project costs.

3. Provide States, Territories, and Tribes with Additional Time to Respond to the ALRD

In the provided draft ALRD, DOE estimates that states, territories, and tribes will have 60 days to respond to the ALRD. NASEO encourages DOE to extend that timeline, as the response to the ALRD will require significant time, staff commitment, and preparation for states, territories, and tribes. Specifically, the program narrative calls for 3-4 objectives and metrics that will guide program implementation. Unless a state, territory, or tribe has already developed these objectives and metrics, this process can be complicated and lengthy. More clarification from DOE on what this strategic planning would look like (and if the application for funding can be considered as proof that a state, tribe, or territory is engaged in strategic planning) could also streamline this requirement and reduce the time commitment for states, tribes, and territories. In particular, the additional time will be important in addressing the full range of opportunities with electric and fuel providers – regulated and unregulated – as well as more innovative, low-cost, high-impact resilience solutions. Since DOE in its ALRD is asking applicants to provide a notice of the hearing, developing not only objectives and metrics but also vetting them through a robust stakeholder process will require significant time and staffing commitments by applicants. Additionally, many states are in the process of updating their State Energy Security Plans (SESPs) per the IIJA and will use risk assessments and risk mitigation strategies contained within to inform setting objectives and metrics. The initial submission of SESP will be on September 30, 2022. NASEO would therefore like to request that DOE consider increasing the timeline between issuing the ALRD and when applications are due so that SESP development can coincide with the requirements for 40101(d).

4. Ensure Public Hearing Approaches are Flexible and Address Underserved Communities' Needs

The Section 40101(d) program requires that eligible applicants give notice and undertake a *public hearing* to review the criteria and methods they anticipate using to grant awards to eligible entities. The term public hearing is not defined and could take many forms given the breadth of electricity providers and public and private-sector stakeholders, as well as dynamic COVID-19 infection rates which might require virtual stakeholder events. Moreover, given the IIJA's, DOE's, and State Energy Offices' emphasis on reaching underserved and disadvantaged communities, residents, and businesses, a formal judicial-like hearing would greatly diminish some of those communities' participation. We recommend a flexible interpretation of the term "public hearing" to afford the greatest opportunity for input from those communities often most impacted by electricity resiliency and potentially least engaged in government processes.

5. Definition of Eligible Entities and Eligible Activities

Section 40101 of the IIJA outlines the eligible entities for sub awardees under 40101(d) as "(A) an electric grid operator; (B) an electricity storage operator; (C) an electricity generator; (D) a transmission owner or operator; (E) a distribution provider; (F) a fuel supplier; and (G) any other relevant entity, as determined by the Secretary." However, neither the statute nor DOE has included definitions for entities A-F. As the electricity sector is undergoing significant changes, an electricity generator, for example, could look very differently from state to state. Fuel suppliers might also look different in different states. NASEO encourages DOE to allow states, territories, and tribes rather than DOE to define eligible entities A-F. If DOE decides to

provide definitions, we encourage consultation with states, tribes, and territories prior to releasing the definitions and taking the broadest possible approach in defining eligible entities. Additionally, DOE has not yet outlined a process for how states, territories, and tribes can ask for additional consideration under eligible applicant category G and NASEO encourages DOE in its final ALRD to provide more clarity on how additional eligible applicants will be determined. In addition, we encourage DOE to take a broad and flexible view of eligible entities. For example, a local government developing a microgrid and storage project to enhance resilience at critical facilities, or a public agency that would be considering fuel treatments along powerline right-of-way should fall under category G. Does DOE anticipate providing a list of those determined as eligible entities, or will DOE use this as a framework to approve proposed eligible entities made by the state and tribal organizations? If the latter, when does DOE anticipate detailing how such a process will work? The statute lists several eligible activities as specifically included activities, but the intent of Congress is clear that additional activities, technologies, equipment, and hardening measures that reduce the likelihood and consequences of disruptive event - but are not specifically listed in the IJA - would also be eligible. In its draft SOPO, however, DOE outlines that “other measures as determined or approved by DOE” are eligible (page 4 in Attachment 1 Statement of Project Objectives (SOPO)). NASEO strongly encourages DOE to allow states, territories, and tribes to define additional activities, as the IJA does not provide DOE with approval authority. States are in the best position to determine the highest impact, lowest cost electricity resilience measures. At a minimum, DOE should outline how it plans to approve additional activities. Furthermore, NASEO encourages DOE to provide more explanations or definitions of what activities are prohibited, especially when it comes to 40101(e)(2)(A) and awards not being used for the construction of new electric generating facilities or large-scale battery storage facilities that are not used for enhancing system adaptive capacity during disruptive events. The statute and ALRD identifies 12 resilience measures eligible for program funding. In addition, it is also noted that “funding may also be used for the training, recruitment, retention, and reskilling of skilled and properly credentialed workers in order to perform the work required.” NASEO encourages DOE to explore and expand discussion on this potential funding opportunity related to workforce development and to allow states to seek designation of statewide trade associations as eligible entities for purposes of workforce development opportunities contemplated under Section 40101, especially for those statewide associations that count small utilities among their membership. DOE and states could then evaluate opportunities that could have significant, long-term workforce impacts for many entities through a single funding opportunity.

6. Technical Assistance Needs

NASEO appreciates that DOE is committed to providing technical assistance to states, tribes, and territories in the implementation of 40101(d). State Energy Offices and other state applicants could benefit from technical assistance in several of the areas relevant to 40101(d):

- a. Developing Risk Assessments as Part of the State Energy Security Plans
- b. Support for Information Sharing, Coordination, and Leverage Among States and Electric System Providers for Greater 40101(d) Impact
- c. Topical Cohorts on Grid-Resilience Lessons Learned to Share Best Practices
- d. States Setting Objectives and Metrics

- e. Criteria for Selecting and Determining Awards
- f. Stakeholder Engagement Processes.

Additionally, NASEO encourages DOE to provide technical assistance to states on how to collect data to support the metrics set during the planning process. This could include tools such as data entry portals, or the use of 3rd party technical assistance providers. NASEO also encourages DOE to provide these tools and additional assistance to reduce the administrative burden on states, tribes, and territories as well as subrecipients to report on established metrics, to ensure that a wide variety of subawardees can apply. Administrative burden is one of the key deterrents for underrepresented entities in applying for funding. NASEO also encourages DOE to specify if the department plans to provide 5% for TA and 5% for administrative costs to states, tribes, and territories separately or 5% for both combined, as well as to clarify for what the technical assistance support can be used for (e.g., is strategic planning an eligible activity?).

7. More Detailed Information on the Formula Used to Determine the Cost Allocation for States, Territories, and Tribes

It is NASEO's understanding that DOE used the five statutorily defined components in the IIJA to determine the cost allocation for states, territories, and tribes. However, in its original NOI documents, DOE has not included details on how these five components were used, in particular which weight was allocated to each formula component and what datasets were used to calculate the funding. In a subsequent [FAQ document issued May 5, 2022](#), DOE outlined the data sources used, but did not specify the weight for each factor. DOE indicated it used Factor 1 (population) and Factor 2 (area) to develop a base allocation, but how this was derived was not described. NASEO would appreciate if DOE could provide information on how the allocation was derived through the formula and if DOE intends to include additional data sets, especially for factors 4 and 5. Potential additional data sources or tools include:

- FEMA BRIC Benefit Cost Analysis
- LBNL Power Outage Economics Tool (POET) Tool and Interruption Cost Estimate (ICE) Calculator 2.0.
- Sandia ReNCAT 2.0
- Value of Lost Load (VOLL) or Customer Damage Function (CDF)

Additionally, the IIJA leaves room for DOE to include other, supplementary components to calculate the cost allocations. As this might impact allocations per state, territory and tribe, NASEO encourages DOE to weigh potential changes to the formula carefully and integrate suggestions by states, territories, and tribes on data sets and formula components.

We appreciate the opportunity to provide comments and look forward to continuing our partnership with DOE in supporting states on enhancing grid resilience and implementing the IIJA.

Best regards,

David Terry /s/

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