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## Department of Energy Announces \$2.6 Billion Funding Opportunities for Carbon Capture, Storage and Transport Projects

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On July 13, the U.S. Department of Energy (DOE) issued Notices of Intent indicating that the agency will begin soliciting applications in the coming months for funding support for two programs involving carbon capture, conversion, transportation, and storage technologies: the Carbon Capture Demonstration Projects Program and the Carbon Dioxide Transport/Front-End Engineering Design Program. Together, these two programs will provide funding support of more than \$2.6 billion, as authorized by the Bipartisan Infrastructure Bill, which President Biden signed into law in November 2021. These programs are designed to further the development, deployment, and commercialization of technologies to capture and geologically store CO<sub>2</sub> emissions.

Like other funding opportunity announcements (FOAs) under the Bipartisan Infrastructure Bill, these funding opportunities, when issued in the coming months, will require applicants to submit detailed information about the technology involved, the relevant experience and expertise of the project sponsor, and the sponsor's business plan to help bring the project to market in a commercially successful manner. In addition, applications will be required to contain detailed information relevant to other policy priorities of the Administration that extend beyond the anticipated reduction in CO<sub>2</sub> emissions. For example, the Notices of Intent state that the DOE expects project sponsors to address social justice initiatives in their applications, including environmental justice; community engagement; and consent-based siting, equity, and workforce development efforts. While mindful of these broader goals, these FOAs—along with others funded by the Bipartisan Infrastructure Bill—will ultimately help develop and expand upon ongoing clean and renewable energy development in the United States.

### THE CARBON CAPTURE DEMONSTRATION PROJECTS PROGRAM

The larger of the two programs—the Carbon Capture Demonstration Projects Program (the “CCDPP”)—will provide \$2.54 billion of funding. The program will focus on projects that demonstrate substantial improvements



in the efficiency, effectiveness, cost, and environmental performance of carbon capture technologies for power, industrial, and other commercial applications. It seeks to fund projects that can be easily replicated and implemented at fossil energy power plants and other major industrial sources of CO<sub>2</sub>, such as cement, pulp and paper, iron and steel, and certain chemical production facilities.

The DOE envisions that projects will have the following phases: Phase 1—Front End Engineering and Design (FEED) and Permits; Phase 2—Detailed Design; Phase 3—Procurement and Construction; and Phase 4—Operation. DOE envisions selecting twelve projects in Phase 1 (providing \$4 - \$15 million of DOE funding per award) and down-selecting to six projects in Phases 2-4 (providing \$175 - \$500 million per award).

As noted, Phase 1 contemplates front-end engineering studies, along with National Environmental Policy Act (NEPA) and other permitting compliance related work. Since the DOE expects that at least some projects are underway with work on Phase 1 activities, the agency will provide an accelerated timeframe for these projects to qualify for and start receiving Phase 2 funding. Notably, work performed on a project before it is awarded a grant by the DOE will not be eligible for reimbursement under the program; the funding only covers prospective work. The final six projects selected for Phases 2-4 call for detailed design, construction, and operation of six facilities, broken down further into three subcategories:

- Two (2) projects designed to capture carbon dioxide from a coal electric generation facility (**AOI-1**);
- Two (2) projects designed to capture carbon dioxide from a natural gas electric generation facility (**AOI-2**); and
- Two (2) projects designed to capture carbon dioxide from an industrial facility not purposed for electric generation (**AOI-3**).

All phases of the Carbon Capture Demonstration Projects Program will require at least a 50% recipient cost share. Projects are expected to meet specific project goals, including the demonstration of at least 95% carbon capture efficiency, and will need to proactively address the challenges of commercial deployment.

The DOE states that it intends to issue the FOA soliciting applications for this program in the August/September 2022 timeframe. The FOA will ask applicants to provide detailed information about Phase 1 planning of their projects as well as information relating to initial plans to carry out Phases 2–4 to allow the agency to assess the potential viability of the overall project. To the extent that interested parties have questions about the Notice of Intent, they are instructed to submit those comments/questions to DOE by July 27, 2022.

Given the reasonably large volume of funding available under this program, sponsors of qualifying projects will be keenly interested in the timing of grant funding available from DOE. For Phase 2-4 projects, if funding is available prior to commencement of construction, project sponsors will have the ability to substantially reduce their equity requirements and will likely see increased interest from financing parties. Should funding only become available following completion of construction, sponsors will need to navigate either debt or equity bridge financing to ensure full funding of construction, to be reimbursed upon receiving the applicable DOE funding (along with proceeds of any available Section 45Q tax equity financing). Additionally, in prior DOE grant programs, both project sponsors and funding sources – including commercial banks, institutional noteholders and other similar sources – have been required to take a very deliberate approach to the DOE application process, timing of receipt of funding, conditions on funding, and ongoing monitoring and compliance requirements. Though all such relevant issues in the Carbon Capture Demonstration Projects Program have yet to be fully developed and finalized, sponsors and financing sources should be prepared to navigate similar challenges. In any event, the availability of DOE funding provides a potentially valuable incentive to allow sponsors of qualifying projects to proceed forward while reducing the overall cost of capital (and capital outlay) associated with project development, construction and operation.

Another point that we expect sponsors of qualifying projects and their financing sources to be focused on is the interplay between grant funding under the CCDPP and the availability of Section 45Q tax credits (and any associated tax equity financing), which are currently the main form of federal support for CCS projects.



The Notice of Intent clearly contemplates that qualifying projects would be able to claim Section 45Q tax credits for such projects in addition to any CCDPP grant funding, but does not specify how Section 45Q tax credits and any associated tax equity financing will be taken into account for the purpose of the 50% recipient cost share requirement. In some FOAs that the DOE issued in the past, they have specified that the 50% cost share amount cannot include other forms of federal financing. As such, there is a possibility that the FOA under the CCDPP will impose similar limitations, but it remains to be seen how any such limitation will apply to Section 45Q credits, and whether there will be a difference in how any such limitation applies to Section 45Q tax credits utilized by the project sponsors as opposed to Section 45Q tax credits monetized through a third party tax equity financing.

The Notice also states that the DOE “anticipates that most [A]pplicants will apply under the Accelerated Timeline because the 45Q tax credit deadline to begin construction for carbon dioxide sequestration is January 1, 2026.” This is an encouraging statement insofar as it signals that the DOE is keenly aware of the timing constraint under Section 45Q and expects to be able to process grant applications in a manner that allows qualifying projects to meet the Section 45Q start of construction deadline.

Given the relatively high value of Section 45Q tax credits as compared to ITC and PTC for solar and wind projects, in many cases Section 45Q tax credits could allow project sponsors to finance their projects purely with tax equity financing and without or with minimal permanent debt financing, unlike in the case of wind or solar projects. As a result, if allowed by the FOA terms, post-construction grant funding could end up being used.

#### CARBON DIOXIDE TRANSPORT/FRONT-END ENGINEERING DESIGN PROGRAM NOTICE OF INTENT

The second program covered by the DOE’s announcement offers \$100 million in funding. It seeks to fund Front-End Engineering Design (FEED) studies for regional carbon dioxide pipeline systems to safely transport CO<sub>2</sub> from key sources to centralized locations. The DOE will seek applications for commercial-scale CO<sub>2</sub> pipeline projects, including:

- pipelines with the potential to connect multiple regional CO<sub>2</sub> hubs.
- pipelines that local CO<sub>2</sub> sources with storage and conversion options.

The FOA will encourage pipeline project proposals to consider future demand by constructing open access or common carrier pipeline infrastructure, with the capacity to connect to existing and future CO<sub>2</sub> sources and storage/conversion locations. The FOA will require at least a 20% recipient cost share.

DOE states it intends to issue the FOA soliciting applications for this program in the first fiscal quarter of 2023, which should mean later this calendar year. To the extent that interested parties have questions about the Notice of Intent, they are instructed to submit those comments/questions to DOE by October 21, 2022

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King & Spalding attorneys are currently advising clients across several different industries on developing renewable energy projects and applying for FOAs and other funding programs previously issued by DOE.

**Nikesh Jindal** is a partner in King & Spalding’s Trial and Global Disputes practice resident in the Washington D.C. office. He has significant expertise in administrative law matters, particularly relating to energy regulatory and litigation matters. Nikesh was previously senior counsel at the Department of Energy, where he was actively involved in several key Department initiatives, including the drafting of guidelines implementing a multi-billion dollar loan guarantee program for innovative technologies authorized under the Energy Policy Act of 2005. Nikesh and his colleagues at King & Spalding have been advising clients about pursuing various DOE funding opportunities, including preparing applications, engaging third party stakeholders to support the projects, obtaining necessary permits and defending against any legal challenges to those permits, helping to structure the financing of the projects, and other related efforts to ensure successful procurement of federal funding.



**Brandon Dalling** is a partner in King & Spalding's Acquisition and Project Finance practice resident in the New York office. Brandon is active in King & Spalding's project finance, leveraged finance, acquisition finance, private equity and energy and natural resources practices. Brandon represents private equity and strategic sponsors, financial institutions, developers and commodity hedge counterparties in leveraged finance, project finance, acquisition finance, other secured and unsecured lending transactions, mergers and acquisitions, physical and financial structured commodity hedging and supply transactions and energy management arrangements, with a focus on alternative energy (including solar, wind, hydro, renewable fuels and biofuels), hydrogen hubs, carbon sequestration, tax equity (including 45Q), conventional power generation, LNG-to-power generation, oil & gas and other natural resources. Brandon is recognized as a Leading Lawyer for US Project Finance by *Legal 500 US 2022*, with clients noting that "Brandon Dalling is a fantastic partner who works with clients to solve difficult problems."

**Adam Hankiss** is a partner in King & Spalding's Corporate Finance and Investments practice. Adam regularly represents private equity funds, private and public corporate clients, pension plans, family offices and investment banking firms in U.S. and cross-border M&A, private equity, joint venture, venture capital and other complex corporate transactions. He has significant experience in a variety of sectors, with a focus on the energy, infrastructure, natural resources, hydrogen hubs, carbon sequestration, tax equity (including 45Q) and the telecommunications, media and technology sectors.

**Tristan Pelham Webb** is a partner in King & Spalding's Finance practice resident in the New York and Denver offices. Tristan focuses on King & Spalding's power, energy and infrastructure project finance matters, handling a wide variety of greenfield and brownfield construction and permanent project financings, leveraged financings and acquisition financings. Tristan has extensive experience advising foreign and domestic project sponsors, investors and lenders in all aspects of the construction, development, financing and acquisition of major energy and infrastructure projects, including deep expertise in the renewables, hydrogen hubs, carbon sequestration, tax equity (including 45Q) and transportation infrastructure sectors. Law360 named Tristan as one of their Rising Star for Project Finance in 2022 (one of five in the world), and he was also named as "Ones to Watch" in Project Finance by Best Lawyers 2021.

**Edouard Markson** is a tax partner with over 20 years of experience advising financial institutions, private investment partnerships and multinational corporations on complex transactions. Ted's practice focuses on the tax aspects of domestic and cross-border mergers and acquisitions and financing transactions, with a particular emphasis on partnership taxation and complex structured transactions. He frequently advises on energy and infrastructure matters including acquisition, development, and tax equity financing of renewable energy projects hydrogen hubs, carbon sequestration and tax equity (including 45Q).

**Nicole Bronnimann** is an associate in the Trial and Global Disputes practice and a member of the firm's Appellate, Constitutional and Administrative Law team. A member of the Houston office, Nicole represents energy clients in complex civil litigation and has experience preparing application materials for DOE funding opportunities under the Bipartisan Infrastructure Bill.



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