January 26, 2023

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

Dear Secretary Granholm,

We are writing to express concern about the transparency practices that will be adopted by the Department in its implementation of the H2Hubs program. While the program is off to a strong start and has attracted considerable interest across a wide range of regions and potential applicants, a high level of transparency will be necessary for its success. The recent Funding Opportunity Announcement (FOA) signals that current plans may fall short of this standard.

H2Hubs will serve not only as the foundation of the emerging hydrogen economy, but as a critically important model for other DOE programs. It is by far the Department's largest demonstration program. Because of H2Hubs' ambitious scope and scale, as well as the uneven success of past DOE's demonstration projects, it is especially important to get this program right, and to avoid setting precedents that would undercut both its potential and that of other programs to follow.

The success of any demonstration program depends on how effectively critical information about the projects it funds is shared. Transparency makes it possible for lessons to be learned from demonstrations, so that subsequent projects are market-ready. Successful H2 hubs are intended not only to concretely serve the regions where they are located, but also to accelerate their creation in other regions. However, that will only be possible if critical data about cost, performance, and other key parameters are made widely available. H2Hubs' long-term success will also depend on continuing bipartisan support and buy-in from a wide range of stakeholders across the country. A steady and comprehensive flow of information will help sustain confidence in the program, especially under the strain of one or more projects appearing less successful than anticipated— an inevitability considering the challenging scope, timing, and pre-commercial nature of this program.

In short, there are both technical and practical reasons for the H2Hubs program to be extremely transparent.

The FOA confirms this principle when it notes that:

> *Phase 4 will also include substantial financial, socio-economic, environmental, and operational data collection and reporting to DOE.*

And,

> *DOE expects to require access to project performance data necessary to track progress against a project baseline (or similar).* ***As these projects are pre-commercial deployments*** *(our emphasis), to the greatest extent possible, project progress and information will be shared with interested stakeholders.*

Reasons for concern

But despite the logic of (and apparent commitment to) maximum transparency, there are countervailing forces. In particular, the H2Hubs program is designed to result in commercially sustainable enterprises. The detailed operations and outputs of such private sector enterprises are typically regarded as business secrets and hence confidential. The FOA reflects this perspective:

> *For this FOA, selectees and recipients may request an extended period of protection (more than five years and not to exceed thirty years) if reasonably required for commercialization for specific categories of data first produced under the resulting awards in accordance with 15 U.S.C. § 3710a(c)(7)(B)(ii) and the Energy Policy Acts of 1992 and 2005. Further direction will be provided during the negotiation process upon request.*

The FOA states that DOE will not assert any special rights over data or information, and that the public at large – or even other stakeholders – should have no additional rights to that information, despite the enormous investment from U.S. taxpayers. Further, by providing this option upfront without even seeking negotiation over it, DOE is encouraging private companies to demand secrecy for up to 30 years. Given the need for rapid acceleration of low-carbon markets and technologies, such a long period of secrecy is unacceptable and counter-productive to the H2Hubs' mission.

The FOA seeks to reconcile this tension between transparency and confidentiality by stating:

> *To the extent practicable while protecting sensitive and proprietary information, DOE will synthesize, anonymize, or otherwise incorporate site and operations data for the H2Hubs into quantitative and qualitative analyses that can be promulgated to external stakeholders for the purpose of informing future private sector investment decisions.*

We do not believe this approach will prove workable. There will be only a handful of hubs, using a limited range of feedstocks and supplying a relatively small number of markets initially. Each will be unique, and therefore it will not be practicable to "synthesize" or "anonymize" site and operational data. For the reasons articulated above, we believe the public interest should err on the side of greater transparency.

DOE leverage

DOE should embed strong transparency practices when it negotiates the hub awards. In normal circumstances, private companies have considerable leverage when discussing business secrets with the Federal government. They often have other options available should the terms and conditions of a contract become too onerous – they may even move proposed operations out of the United States altogether.

But that is not the case here. The H2 hubs are expensive and high-risk projects, in which the Federal government proposes to invest large sums —potentially more than $1 billion in a single project. So DOE funding is absolutely central to the viability of these projects, and as a result DOE has extremely strong leverage. That is especially true for confidentiality requirements. While discussions of these requirements may be a normal part of the negotiating landscape, they will not be critical factors in determining whether companies participate in hubs. In other words, wide access to project data and information is critically important to the success of the H2Hubs program for DOE, but retaining secrecy is unlikely to be centrally important to participating companies. DOE therefore has substantial leverage in negotiations with companies.

What should be published?

From a policy perspective, what matters is the alignment between project objectives and project outcomes. Accordingly, three sets of information really matter:

1) The terms of the final agreement and project milestones. Understanding the agreement and the milestones is the only way for stakeholders and the general public to understand exactly what the project aims to achieve, and the markers against which DOE and the awardee have agreed to measure progress at selected points in what is likely to be a lengthy project timeline. DOE should publish the final agreements, particularly the project milestones, after negotiations.
2) Milestone-related data and information. Assuming that the milestones are published by DOE, the hubs must be required to publish the data and information that will allow progress against those milestones to be assessed. It will not be sufficient for the hubs to simply assert that specific milestones have been reached successfully, or for DOE to validate this claim. Stakeholders and the public should have full data on which to base their own assessment of milestone-based progress.
3) Additional technical data. Beyond formal milestones, there may be important technical data that will help other existing or subsequent H2 hubs. While we agree that the companies investing in the hubs deserve to keep some process information confidential, that confidentiality should not extend to outcomes, which should include both performance (including technical results) and costs. Field-level data and relevant market information (e.g. H2 price vs. market targets) should be relatable with context so that the public can understand the progress towards milestones without compromising commercially relevant information. DOE should therefore balance company demands for confidentiality and the public interest in disclosure; in that context, DOE's default position should be "publish everything," not "publish nothing."

How should data and information be published?

Given the anticipated level of interest in project information from other hubs, program stakeholders (including those in the hub region), and the general public, we recommend that DOE take a twin-track approach to dissemination. Relevant technical and outcomes data should be made available as soon as possible via each hub's public website and through DOE. Direct access to this data ensures the minimum amount of informational friction, so that those with the greatest need for detailed data and information can access it as soon as possible. One further possible model for information sharing may be the cross-hub data platform proposed in the recent FOA for Long Duration Energy Storage.

However, raw data are not always easy to understand or contextualize. We therefore also recommend that DOE require each hub to publish an annual report on its activities. As we anticipate that DOE will develop an advisory board or other sources of industry expertise and insight –as we have strongly recommended – we also believe that any reports published by the H2Hubs should be reviewed by DOE using the external advisory board to identify and address missing or erroneous elements. Annual and milestone reports can be important components in a wider communication strategy for OCED, and ensuring that participating hubs publish their data will underpin this outreach.

Conclusions

It is hard to overstate the importance of transparency for the H2 hubs program. We believe the program should help the United States make substantial progress toward its climate goals and become a model for future programs. Realizing these opportunities depends considerably on DOE's commitment to transparency as a core feature of the program.

Thank you for your consideration, We look forward to discussing these concerns with the OCED team. Ed Rightor, Director of the Center for Clean Energy Innovation at ITIF (erightor@itif.org) is the lead point of contact for the signatories.

Signed by:

Information Technology and Innovation Foundation

Natural Resources Defense Council

Nuclear Innovation Alliance

Third Way