BLM SIGNALS FEDERAL LAND IS OPEN FOR RENEWABLES

Date: 2 July 2024

US Environment, Land, and Natural Resources Alert

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In May 2024, the Bureau of Land Management (BLM or the Agency) issued a final rule updating its renewable energy and right-of-way (ROW) policies.[1] BLM is one of the largest landholders in the United States, with significant landholdings west of the Mississippi River in particular, and the final rule signals the Agency is open for renewable development on those lands. To drive the growth of renewable energy on BLM lands, the final rule reduces costs and institutes a streamlined administrative process for renewable energy projects. The final rule is designed to further the Biden administration's (the Administration) efforts to promote clean energy development on public lands and could help achieve the Administration's dual goals of creating a carbon pollution-free-power sector by 2035 and a net-zero-emissions economy by 2050. It also presents opportunities for developers as the clean energy transition takes hold.

REDUCED COSTS

As authorized under the Energy Act of 2020, the final rule reduces capacity fees by applying an 80% reduction to the MWh rate until 2035, 60% in 2036, 40% in 2037, and 20% in 2038 and beyond.[2] The final rule also reduces the capacity fee for ROW holders in two potential ways: (1) a 20% domestic content reduction for grant or lease holders who use American-made iron, steel, construction materials, or manufactured products as set forth in the final rule;[3] and (2) a 20% project labor agreement (PLA) reduction for holders who use PLAs to hire labor for the development and construction of a solar or wind project.[4] Those rate reductions apply at the time of permitting and continue through the duration of the ROW grant.[5] The final rule also bases the capacity fee for solar and wind energy generation facilities on actual energy generation at each facility rather than on nameplate capacity. This should result in fees that more accurately tie to actual generation for individual projects. The acreage rent and capacity fee will be set for the term of the ROW at the time BLM issues the ROW, subject to adjustment by the annual adjustment factor[6] and, for the capacity fee, by the grant holder's actual annual energy production.

STREAMLINED PROCESS

BLM envisions a streamlined administrative process by making several key procedural changes. While BLM will continue to administer a competitive bidding process for proposed solar and energy generation ROWs, the final rule allows BLM to issue leases in circumstances where no competitive interest exists, a departure from previous procedure.[7] In addition, BLM is in the process of updating its 2012 Western Solar Plan, a programmatic environmental impact statement that identified approximately 285,000 acres of agency-designated leasing areas with high potential for solar energy production and low conflicts with other resources.[8] The updated Western Solar Plan is expected to, among other things, make programmatic planning decisions for solar development on BLM

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administered lands in Arizona, California,[9] Colorado, Idaho, Montana, Nevada, New Mexico, Utah, Oregon, Washington, and Wyoming.[10]

MOVING FORWARD

The final rule strives to "to address climate change" and "enhance America's energy security" by promoting renewables development on BLM lands.[11] Projects on BLM lands remain subject to the National Environmental Policy Act (NEPA), however, including NEPA review for powerlines and supporting facilities, and the NEPA process can take time. It remains to be seen if BLM's attempt to streamline administrative processes for solar and wind projects in the final rule will impact the length of the NEPA process for those projects. Either way, the final rule's provisions to reduce costs and streamline certain administrative approvals should be a welcome sign to renewable developers.

FOOTNOTES

[1] *See* Rights-of-Way, Leasing, and Operations for Renewable Energy, 89 Fed. Reg. 35634 (May 1, 2024) (to be codified at 43 C.F.R. pt. 2800).

[2] *See id*. at 35657.

[3] *See id*. at 35642.

[4] *See id*. at 35635.

[5] *See id*.

[6] The annual adjustment factor is the average annual change in the implicit price deflator-gross domestic product for the 10-year period immediately preceding the year that the National Agricultural Statistics Service census data becomes available. 43 C.F.R. § 2806.52(a)(1)(iv) (2024).

[7] BLM will typically solicit nominations, select, and prepare parcels for bidding, conduct competitive offers, and select the bidder with the highest total bid. See 43 C.F.R. § 2809 et seq. (2024).

[8] Public meetings for the Draft Solar Programmatic Environmental Impact Statement were held from 5 February through 6 March 2024. A published record of decision is anticipated in late 2024.

[9] Exclusive of the area covered by the Desert Renewable Energy Conservation Plan.

[10] For more information on the updated Western Solar Plan, please access the federal register site for BLM at https://eplanning.blm.gov/eplanning-ui/project/2022371/510.

[11] *See* Press Release, Dep't of the Interior, Finalized rule to further promote responsible solar and wind energy development on public lands, including through 80% lower fees (Apr. 11, 2024), https://www.blm.gov/press-release/biden-harris-administration-delivers-historic-milestones-new-actions-clean-energy

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