

Competitive Solar and Wind Energy Leasing Regulations

January 17, 2017



Presentation Outline

- Final Rule Milestones
- General Rule Overview
- Principal Changes between Prior Policy and Final Rule
- Competitive Process
- General Application and Lease Comparison
- Terms and Conditions of Grant and Lease

Final Rule Milestones

Action	Dates
Proposed Rule Published –	9/30/14 (60 + 14 day comment period)
Comment Period Ended –	12/16/14
Final Rule Signed –	November 10, 2016
Final Rule Published –	December 19, 2016
Final Rule Effective Date –	January 18, 2017 (30 days after publication)



General Rule Overview

- Incentivizes development in areas with the highest generation potential and fewest resource conflicts, called DLAs, by: (i) providing financial incentives to developers, including less frequent adjustments to rent and longer phase-ins for other fees; (ii) allowing standard bonds as opposed to bonds based on full reclamation costs; (iii) awarding leases in these areas through competitive processes; and (iv) streamlining the leasing process by, for example, granting applicants site control earlier;
- Ensures transparency and predictability in rents and fees – for example, gives developers the option of selecting fixed rate adjustments instead of market-based adjustments;
- Updates the BLM's current fee structure in response to market conditions, which will bring down near-term costs for solar projects; and
- Broadens the BLM's authority to utilize competitive processes outside of designated leasing areas.



Principal Changes Between Prior Policy and Final Rule

Issue	BLM Policy	Final Rule
Approach to Obtaining Fair Market Value for Wind and Solar Energy	Policy includes acreage and MW rates. Rates are based on NASS data and valuation of power pricing in 2008 and 2010, respectively. Does not provide for the phase-in of MW capacity rates following commencement of power generation for wind.	Final rule includes acreage and MW rates (aligns approach for wind and solar). Initial rates based on NASS land data and valuation of power pricing for five-year period (2010-2014). Provides for consistent MW rate phase-in.
Acreage Rent & MW Capacity Fee Changes over Time	Periodic updates to rates based on changes in NASS land values and power pricing markets.	Two options: (1) Periodic updates to rates based on changes in NASS land values and power pricing markets (Standard Rate Adjustments), or (2) Fixed percentage adjustments at fixed intervals from date of issuance (Scheduled Rate Adjustments).
Approach to Competitive Leasing	<p>Competition allowed only when applicants submit competing applications for rights of way in the same area.</p> <p>No competitive leasing allowed at BLM's own initiative.</p>	<p>Allows BLM to utilize competitive processes at its own initiative or when there are competing applications.</p> <ul style="list-style-type: none"> - Within DLAs, allows lease award to highest bidder. - Outside of DLAs, highest bidder obtains "preferred applicant status."
Bonding	<p><i>For Grants</i>-Based on reclamation cost estimate. Does not consider salvage/recycling values. Bond cannot be less than minimum bond amount (if one is established).</p> <p><i>For Leases</i>-Not applicable.</p>	<p><i>For Grants</i>-Bond determined based on reclamation cost estimate for grants. May consider salvage/recycling of project materials. If BLM approves, the bond may be less than min. amount.</p> <p><i>For Leases</i>-Bond based on rule's standard bond amount. No reclamation cost estimate required. Lesser bond amount possible with BLM approval.</p>

Principal Changes Between Prior Policy and Final Rule, Cont.

Issue	BLM Policy	Final Rule
Approach to Development Within DLAs (e.g., SEZs)	Compete for preferred applicant status; application processed according to BLM's usual procedures.	<p><i>For Grants</i> (outside DLAs)-Compete for preferred applicant status; application processed according to BLM's usual procedures.</p> <p><i>For Leases</i> (inside DLAs)-High bidder receives lease following auction based on preliminary NEPA; permission to begin construction subject to project-specific reviews.</p>
Application Process Requirements	<p><i>For Grants</i>-Two pre-application meetings required before submittal. Public meeting required. BLM offices are directed to prioritize applications based on screening criteria establish by policy.</p> <p><i>For Leases</i>-Not applicable.</p>	<p><i>For Grants</i>-Two preliminary application review meetings required within 6 months submission, plus one public meeting. BLM may waive preliminary meetings. BLM offices will prioritize applications based on screening criteria identified in the rule.</p> <p><i>For Leases</i>-No requirements of the competitive process.</p>
Approval of Application	<p><i>For Grants</i>-Site-specific surveys, studies, and inventories completed for NEPA review. Complete NEPA review and issue decision.</p> <p><i>For Leases</i>-Not applicable.</p>	<p><i>For Grants</i>-Site specific surveys, studies, and inventories completed for NEPA review. Complete NEPA review and issue decision.</p> <p><i>For Leases</i>-No specific approval requirements, would depend on need for project-specific reviews.</p>

Competitive Process – Inside a Designated Leasing Area

- The BLM will first issue a Notice of Competitive Offer at least 30-days prior to the competitive offer.
- Notice may be issued on its own initiative, or in response to expressions of interest or nominations.
- Parcels determined by the BLM, but may consider configurations suggested by expressions of interest or nominations.
- A variety of competitive procedures may be used (i.e., sealed/oral/electronic).
- **The high bidder is the successful bidder and will be issued a right-of-way lease.**

Competitive Process - Variable Offset

- Variable Offset Factors – Specific factors announced in Competitive Auction Notice (bidders pre-qualify and know of their offset when bidding)

Power Purchase Agreement/Interconnect Agreement

Preferred Technology (e.g., Storage, PV/Dry Cooling CSP)

Prior Site Testing

Submission of Nomination

Pending Applicant

Adjacent Lease (mixed ownership)

Environmental Benefits

Biological Strategies and Plans

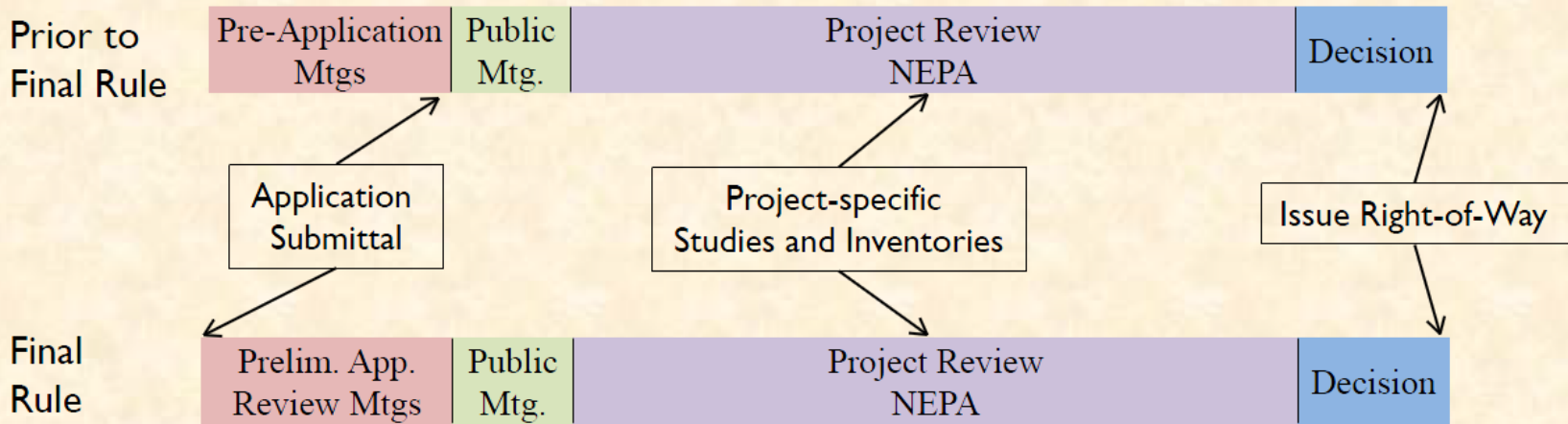
Public Benefits

Other Factors Identified by BLM

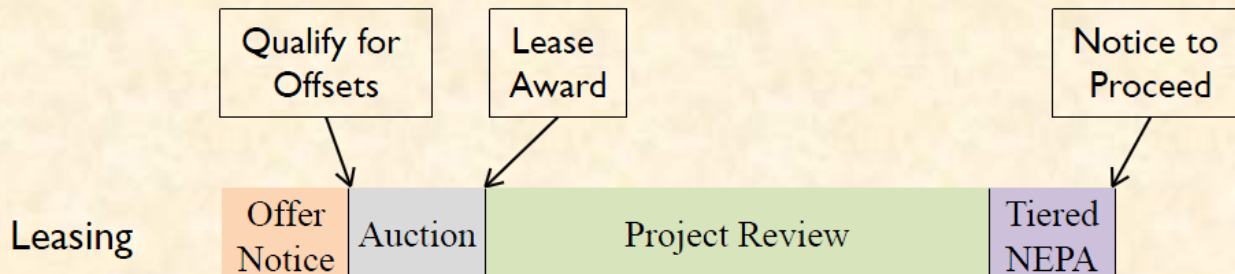
- Variable Offsets – Up to a total 20% Offset for Pre-Qualified bidders (specific percentage applied to each factor may vary and is identified in the Competitive Auction Notice)
- Sample Offer Bids with a 20% Offset
 - Bidder #1 (pre-qualified) \$ 80,000 bonus bid
 - Bidder #2 (pre-qualified) \$100,000 bonus bid – **Winner**
(pays \$ 80,000)
 - Bidder #3 \$ 70,000 bonus bid
 - Bidder #4 \$ 85,000 bonus bid

General Application and Lease Comparison

Application Process



Leasing Process



Terms and Conditions

- All ROWs
 - Comply with project specific Terms and Conditions including:
 - » Provide for compensatory mitigation for residual impacts.
 - » Must construct, operate and terminate facilities consistent with grant/lease, including POD.
 - Bonding – Required for all solar/wind energy authorizations; may be required for other authorizations.
 - » Bond determined based on Reclamation Cost Estimate (RCE) and other factors.
- Diligent Development and Operations (Solar and Wind)
 - Applicants must be responsive and meet BLM requirements.
 - » 1 year to begin requested surveys, studies or provide other plans.
 - » Grant holders must begin construction within 12 months after issuance of the NTP, but no later than 24 months after the effective date of the right-of-way authorization.
 - » Grants with staged development must have subsequent stages of development begin construction within 3 years after construction began for the previous stage of development.
- Alternative Requirements – Stipulations, Terms and Conditions (all ROWs)
 - If a holder anticipates or is in non-compliance, they may request an alternative requirement after showing good cause for their anticipated or current non-compliance and explain why they are non-compliant.
 - In addition to non-compliance, a Holder may also request an alternative requirement, that is in compliance with applicable law to be considered by the BLM.
 - No request is considered unless it is made in writing to the BLM, and no request is approved until done so in writing by the BLM. Such requests should include adequate supporting documentation and rationale for the BLM to review and make a determination on.



Terms and Conditions, Cont.

Bonds

- Bonds are required for all solar and wind energy grants and leases, but may be required for other ROWs.
- Bonds for a grant are determined based on a Reclamation Cost Estimate (RCE) and other factors. Bonds for leases are determined based on the standard bond amount for solar and wind.
 - Other factors may include the salvage, recycling, resale or other such factors associated with the facilities or improvements on the public lands.
 - When considering other factors, BLM must include whether there are added costs for salvage, recycling resale or other such factors (i.e., construction of distribution center)
 - Applicant/holder must request BLM consideration of other factors in writing and provide rationale why such factors should be considered.
 - **NEW** Holder may request alternative bond amount less than minimum/standard amounts. Must be supported by RCE or other factors to adequately support a lesser amount.
- RCE must include consideration for 1) hazardous materials, 2) site reclamation, and 3) restoration of the public lands.
- Bond amounts are periodically reviewed and updated based on an updated RCE for current project costs.
- Solar and Wind energy grants and leases have specified bond amounts.

Grants (minimum bond, RCE required)

\$10,000 per wind turbine < 1 MW

\$20,000 per wind turbine ≥ 1 MW.

\$10,000 per acre solar

Leases (standard bond, no RCE required)

Same as grant, no RCE required

Same as grant, no RCE required

Same as grant, no RCE required

Terms and Conditions, Cont.

Rents and Fees

- Require annual payments in advance comprised of an Acreage Rent and MW Capacity Fee.
- Acreage Rent is based on National Agriculture Statistics Service (NASS) data and is required starting when grant or lease is issued. Based on encumbrance factor and varies by County. A state specific reduction is applied to NASS data that varies by State.
 - Solar - 100% encumbrance factor
 - Wind - 10% encumbrance factor
 - State specific reduction – Currently 20% - 54% reduction before county zone assignment. *Zone assignments may differ from linear rights-of-way schedule.*
- Megawatt Capacity Fee is based on project MW capacity (as identified in approved POD) and is required starting with the generation of energy. MW capacity fee is calculated by multiplying the MW capacity by the MW rate.
 - MW rate is the total hours per year, by the net capacity factor, by the MWh price, by the rate of return.
MW rate = 8,760 hrs × net capacity factor × \$38/hr × 4.3%
 - Net capacity Factors (Per MW rate):

PV – 20% (\$2,863/MW)	CSP – 25% (\$3,578/MW)
CSP w/storage 3hrs+ – 30% (\$4,294/MW)	Wind – 35% (\$5,010/MW)

Terms and Conditions, Cont.

Rate Adjustment Method

- 2 Options for adjusting solar and wind energy payments for grants and leases. Once an option is selected, it **cannot be changed** until renewal.
- **Option 1 (standard adjustments)** - adjust upward or downward with changes in the market once every 5 years for grants and every 10 years for leases.
 - Per acre zone rate adjusts with changes in IPD-GDP.
 - » Grants adjust annually and leases adjust once every 10 years.
 - MW rate includes a phase-in for grants and leases.
 - » Grant phase-in: 3-yr., 1st year 25%, 2nd year 50%, 3rd year 100%.
 - » Lease phase-in: 50% first 10 years of lease, 100% subsequent years
 - Acreage and MW rate schedules will update with Market and Inflation
 - » Acreage Rent schedules would be adjusted every 5 years (*next for 2021*).
 - » MW Capacity Fee schedule updated every 5 years (*next for 2021*).
- **Option 2 (scheduled adjustments)** - scheduled rate adjustments in-lieu- of future adjustments based on changes in the market.
 - Grant – Annual IPD-GDP adjustments to acreage rate, and 20% increase to the current rates every 5 years.
 - Lease – IPD-GDP adjustments plus 40% increase to the current acreage rates every 10 years, and 40% increase to the MW rate every 10 years.

Comparing Grant and Lease

	Grant (outside or inside of DLA)	Lease (inside DLA)
Authorization	ROW grant inside DLA (situational)	Competitive ROW lease
Application	Prelim. App. Review meetings Application Fee (\$15/acre)	No Prelim. App. Review meetings Nomination Fee/Expressions (\$5/acre) / (\$0)
Processing	ROW Application EIS – Applicant Public Meetings Full Cost Recovery	Leasing - BLM POD Application EA for POD – Holder No Public Meeting POD Cost Recovery
Term and Cond.	30-year Adjustable Subject to Renewal	30-year Fixed Extend w/ Operations

Comparing Grant and Lease

	Grant (outside or inside of DLA)	Lease (inside DLA)
FMV/Rent	<p>No Variable Offsets</p> <p>Acreage Rent Adjusted (Annual)</p> <p>MW Schedule adjusted every 5 years</p> <p><u>1.</u> *MW Fee (3-year phase-in)</p> <p>-OR-</p> <p><u>2.</u> *No MW Fee phase-in</p>	<p>Upfront Bonus Bid w/Offset</p> <p>Acreage Rent Adjusted (10 year)</p> <p><u>1.</u> *MW Fee (50% 1st 10 years)</p> <p>MW Schedule adjusted after 20 years, OR</p> <p><u>2.</u> *MW Fee (50% 1st 5 years)</p>
Bonding	<p>Minimum Bond</p> <p>RCE Required</p>	<p>Standard Bond</p> <p>No RCE Required</p>
Due Diligence	<p>POD w/application</p> <p>Construction within 2-years</p> <p>Allows for extensions</p>	<p>POD 2-years after lease</p> <p>Construction within 5-years</p> <p>Generation within 7-years</p> <p>Allows for extensions</p>
Competition	<p>Comp. only to determine preferred applicant</p>	<p>Competitive to award Lease (Variable Offsets)</p>

Final Rule (43 CFR 2880)

- Structure of the FLPMA right-of-way regulations (43 CFR 2800) are similar to MLA right-of-way regulations (43 CFR 2880)
- Proposed adjustments to FLPMA regulations are reflected under the MLA 2880 regulations where possible
 - Definitions
 - POD requirements
 - Required Reclamation Cost Estimate (RCE)
 - Acceptable Bond instruments
 - Assignment Requirements
- No Designated Leasing Area language



Next Steps

Rule Implementation

- Update BLM Guidance
 - Update BLM Manuals 2800-2809. Current Manuals that are in process of being updated are found at: https://www.blm.gov/wo/st/en/info/regulations/Instruction_Memos_and_Bulletins/blm_manual.html
 - Instruction Memoranda will be published as guidance on solar and wind annual payments. Anticipated to be published in January/February 2017.
- Additional Public webinar(s) to be held as needed. A 2nd public webinar to be scheduled in the coming weeks over the BLM's rate calculations and rate adjustment methods.
- Stakeholder engagement meetings may be held upon request.
- Various IM's and other forms of guidance to be issued to supplement the regulations and further define BLM requirements.

Other Actions Occurring with the BLM and Renewable Energy

- Regional Mitigation Strategies, such as the final Colorado strategy.
- Regional Resource Management Plans to consider DLAs for solar and wind.

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