Comments of FPL Energy Project Management, Inc.
on Tariff Bulletin:
Public lands BLM Exclusivity:
Proposed Interpretation of Tariff Language and Criteria for
Establishing “Site Exclusivity” on BLM/Public Land
(Release Date: December 3, 2008)

The California Independent System Operator (CAISO)’s Generator Interconnection Process Reform (GIPR) tariff provisions (Appendix GG to currently effective CAISO tariff) were conditionally accepted by the Federal Energy Regulatory Commission (FERC) on September 26, 2008. As part of the preparation of a Business Practice Manual, the CAISO has issued the first of a series of Tariff Bulletins, Public Lands BLM Site Exclusivity: Proposed Interpretation of Tariff Language and Criteria for Establishing “Site Exclusivity” on BLM/Public Land (December 3, 2008) (hereafter 12/3 Tariff Bulletin). In this Bulletin, the CAISO proposes an interpretation of the current language “other right to use the property” that will allow the Interconnection Customer (IC) to provide evidence to the CAISO that “it has satisfied various criteria which demonstrate significant effort in prosecuting the project permit application before the BLM and the viability of the project.” The IC will satisfy CAISO’s proposed interpretation “…by providing evidence to the satisfaction of the CAISO of the following: (a) secure a temporary use permit; or (b) undertaking of significant additional activity to prosecute the permanent permit.”
FPL Energy Project Management, Inc. (FPLE) hereby submits its Comments on the 12/3 Tariff Bulletin. FPLE continues to support the CAISO’s GIPR position to require an IC to post a $250,000 Site Exclusivity deposit in lieu of Site Exclusivity. With respect to the requirement of demonstrating proof of Site Exclusivity through the project’s proposed Commercial Operation Date as an alternative to the deposit, FPLE submits that “other right to use the property” with respect to BLM land should be addressed as follows.

1. For requirement (a) Secure Temporary Use Permit -- “BLM Type II right-of-way” does not apply to solar. “BLM Type II right-of-way” applies to the exclusive monitoring right-of-way (ROW) for wind generators per the Programmatic EIS for wind on BLM lands. Given that this is applicable to wind, FPLE seeks clarification from the CAISO as to the definition of what "equivalent" would mean by for other types of generators, especially solar. Indeed, the BLM discourages applicants from holding right-of-way authorizations on public lands.

   Each field office may have discretion to make a determination regarding for solar projects in the absence of the Programmatic EIS for solar on BLM lands in California. FPLE suggests that this language could be strengthened as follows in italics:

   (a) Secure Temporary Use permit….[i.e. for wind a “BLM Type II right-of-way or equivalent; for solar demonstrate that the IC meets BLM’s due-diligence requirements to discourage speculation or attempts to control or hinder solar energy development on public lands as stipulated in BLM Solar Energy Policy (04/04/07) plus

2. For requirement (b) Undertaking of Significant Additional Activity to Prosecute the Permanent Permit, the 12/3 Tariff Bulletin sets forth steps to establish Site Exclusivity. By doing so, the CAISO details the steps/requirements for an IC to establish its intent to developing on BLM land and its project viability as delineated in (b) (i) to (iv). In addition to (b)(i) to (iv), FPLE suggests that, as an alternative, if the IC has published an application to BLM via a Federal Register Notice of Intent (NOI), then requirements (a) and (b)(i), b(ii), b(iii), b(iv) are satisfied. With the Federal Register publication of the NOI, BLM would have already reviewed (based on their internal criteria) that the IC has satisfied the necessary steps to start a NEPA/EIS process. Consequently, CAISO need not get involved in the BLM process while evaluating whether the Site Exclusivity criterion is met. The NOI could also apply for USFS lands in case they get into the mix. A project’s NOI also creates a definite milestone for the IC (regardless of technology); the NOI could be the sole proof that is required to show Site Exclusivity on public lands in lieu of a deposit.

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1 BLM Solar Energy Policy (04/04/07). Guidance, “…the BLM will discourage applications from holding right-of-way authorizations for purposes of speculating, controlling or hindering development of solar energy on public lands. Speculative interest can be mitigated by ensuring the application meets qualification requirements of the regulations (43 CFR 2803.10(a-c)), and requiring certain due diligence provisions in the right-of-way authorization for solar energy development.”
3. Requirement (c) – Interconnection Customer is the first in time applicant to satisfy criteria (a) and (b) with respect to the project site.

FPLE has no comment.

4. Project developers must not be precluded from the ability to pay the $250,000 site exclusivity deposit in lieu of the requirements (a) and (b) that is refundable upon demonstration of site control or withdrawal of the Interconnection Request by the IC or it is deemed withdrawn by the CAISO by written notice under the LGIP. (GIPR LGIP Sections 3.5.1 and 3.5.1.4)

Do not hesitate to contact us if you have further questions. FPLE looks forward to continuing to work with the CAISO on this issue.