Large-scale Solar Association
Comments on
CAISO Tariff Bulletin – Site Exclusivity BLM Land


LSA members have participated in the GIPR process from the beginning and have supported the goals of the GIPR and properly structured milestones for remaining in the queue. The effects of the study deposits and the site exclusivity deposits and the other requirements that were due on November 21st have already had the desired effect. As has been reported in the California Energy Markets, December 12th edition, CAISO CEO Yakout Mansour has stated that half of the projects in the interconnection queue have withdrawn, clearing the way for viable projects in the queue. The proposed interpretation of criteria for establishing site exclusivity only affects projects that have been deemed viable and have met all of the requirements for remaining in the queue.

During the entire stakeholder process both the CAISO staff and the stakeholders were in agreement on a definition of site exclusivity on both private land and public/BLM land. The Tariff states that once site exclusivity is demonstrated the site exclusivity deposit would be returned to the developer. The issue that is the focus of the Tariff Bulletin started when the definition of site exclusivity for BLM land was changed in the last week before the FERC filing without stakeholder review. One of the purported goals was to provide greater equality between the site exclusivity requirements for private land and public/BLM land. The problem presented by the changes to the then-proposed tariff language was that for private land, the act of land acquisition and the act of permitting a project were two distinct actions with the permitting to come at a later stage of development of the project, yet with BLM land the land acquisition and the permitting are accomplished in the same proceeding. As such the BLM offered up language, which was accepted by CAISO staff and included in the Tariff filing, which stated that site exclusivity would only be evidenced by a non-appealable permit by BLM. The dilemma with this definition is that the non-appealable permit from BLM takes 2 to 3 years to obtain therefore a milestone was created that no one could meet in the near future and was distinctly more severe than the requirement for private land, where only 50% of the private land needed to be under the developer's control (and at that could be conditional), and which could be met in the near term or certainly 2 to 3 years before their permits were issued. In essence, the tariff standard for BLM
land, without the helpful interpretation to be provided by this final Tariff Bulletin, provides a much more stringent and unduly rigorous test for site exclusivity than applies for private land- in effect, flipping the imbalance between private and public lands rather than correcting it.

LSA appreciates the efforts of the CAISO staff in developing their response to concerns raised on this topic. In general, we support the CAISO's proposal for an interpretation of "other right to use the property," that will allow the Interconnection Customer to provide evidence to the ISO that it has satisfied various criteria which demonstrate significant effort in prosecuting the project permit application before the BLM and viability of the power generation project. Discussions with CAISO staff and with BLM staff indicated that there were activities short of a non-appealable permit in the BLM process that could provide evidence of achieving certain milestones and would qualify as a right to use the property.

The proposed language presented in the CAISO Tariff Bulletin issued December 3rd is definitely a step in the right direction. In general LSA's comments focus on having milestones that are under the control of the developer. For example the suggestion by one party on the stakeholder conference call of just using the BLM Notice of Intent as satisfying the criteria would not be an appropriate milestone as the issuance of the Notice would not be under the control of the developer. Specific comments are, the proposed temporary right of way (ROW) permit milestone (or "Type II" ROW) does not apply to solar developers; this type of ROW is used solely for wind projects to place met towers on the project site to measure wind speeds over a period of time, and there is no comparable temporary ROW for solar projects. Instead, solar developers may use National Renewable Energy Lab (NREL) insolation maps as indication of desirable solar locations, they may decide to do testing for the on-site solar resource, or may either seek less formal permission for temporary data acquisition activities or conduct such activities on nearby private land. LSA is also concerned about the milestone that calls for the BLM to make a determination of the financial and technical capabilities of specific projects. It is not clear whether BLM has the personnel to satisfy this proposal, nor that such a determination has been, or will be, a part of the BLM process; the site exclusivity determination cannot require documents that may simply not be issued, regardless of underlying merit. Our comment is that submission of a Plan of Development (POD) that is based on the last applicable guidelines is sufficient. LSA also strongly objects to a milestone that requires the hiring of an environmental consultant, since this activity is administered by BLM, could occur at any time, and is neither under the control of the developer nor truly relevant to whether the developer has exclusive priority over the site. In contrast, the developer's payment for the environmental consultant, which is another of the proposed milestones the cost recovery agreement, is analogous to the deposits required by the GIPR and a reasonable determinant of the developer's commitment to the land and likelihood of developing it.
LSA has included with these comments Attachment A, which is a mark-up of the proposed Tariff Bulletin language which contains LSA's suggested edits and additions. LSA looks forward to a quick resolution to this issue.

Respectfully submitted,

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By Shánnon Eddy
Large-scale Solar Association
2501 Portola Way
Sacramento CA 95818
Telephone: 916-731-8371
Email: shannon@consciousventuresgroup.com

Executive Director