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Submitted via Regulations.gov

Jeremy Bluma
Renewable Energy Advisor
U.S. Department of the Interior
Bureau of Land Management
1849 C St., NW, Room 5646
Washington, DC 20240

RE: "Rights-of-Way, Leasing, and Operations for Renewable Energy," 88 Fed. Reg. 39,726 (June 16, 2023), OMB Control Number 1004–0206 RIN 1004–AE78

Dear Mr. Bluma,

The Solar Energy Industries Association (SEIA) is the national trade association of the U.S. solar energy industry, which employs more than 250,000 Americans. We represent over 1,000 organizations that promote, manufacture, install, and support the development of solar energy, including on public lands. Environmentally responsible development of solar energy and storage is a paramount objective of the solar industry and as such we are committed to working with federal agencies, environmental and conservation organizations, Tribal governments, state agencies, and other stakeholders to achieve this goal. On behalf of our member companies, SEIA appreciates the opportunity to provide the following comments on the Bureau of Land Management's (BLM) proposed rule, "Rights-of-Way, Leasing, and Operations for Renewable Energy."

A. Introduction

Our comments are limited to the revisions applied to solar energy and storage facilities. The solar and storage industry is deeply committed to building a strong solar industry to help our nation meet the renewable energy targets set forth by President Biden in a just and equitable manner. To modernize the grid and address the climate crisis, solar energy must account for at least 30% of U.S. generation by the end of this decade and 40-50% by 2035. That means roughly quadrupling our current pace of installations by 2030.

BLM-managed lands represent one of the most important opportunities for utility-scale solar energy and storage to contribute to those goals, especially following the passage of the Inflation Reduction Act ("IRA") in 2022. Based on SEIA's analysis of BLM and Energy Information Administration data, there are currently 3,200 MWAC of operating photovoltaic solar energy and over 500 MWAC of energy storage on BLM-managed lands, or around 5% of the total nationwide operating capacity for projects over 1 MWAC. Another 4,900 MWAC of solar and over 1,400 MWAC of storage are under development or construction (approximately 6% of the current nationwide utility-scale pipeline, a

figure that has roughly doubled since 2021), and a staggering additional 16,000 MWAC are currently under NEPA review. SEIA further estimates that the current BLM project pipeline represents approximately 40,000 new jobs through 2033 alongside tens of billions of dollars of new investment that will increasingly benefit U.S.-made steel, solar modules, and other solar energy components.

A robust final rule that promotes the greatest use of solar and storage energy on public lands will further grow the build out of additional solar capacity on BLM-managed lands while helping to achieve the goals of the IRA, create jobs and local opportunity, and contribute to reducing the emissions that contribute to climate change.

B. SEIA supports BLM's proposed rights-of-way regulations

Public lands can only be competitive for new solar projects if rents and fees are reasonable and the process for obtaining a right-of-way is predictable and efficient. Accordingly, we applaud many of BLM's updates in the proposed rule that we believe will encourage the development of clean energy on federal lands. As a general matter, SEIA continues to support BLM's finding that "[t]he Energy Act of 2020, provides the Secretary of the Interior with authority to reduce acreage rental rates and megawatt capacity fees if necessary to promote the greatest use of wind and solar energy resource and BLM's use of that authority to reduce fees by 80% ."[1] We also believe that BLM is moving in the right direction in the amendments it makes to setting rental rates and fees that fulfill BLM's statutory requirement to charge fair-market value for BLM managed lands. We also applaud BLM for working to provide developers with long-term price stability and increased predictability of rates including by basing acreage rental rates on National Agricultural Statistics Service (NASS) state pastureland values. In addition, we support extending the maximum lease or right-of-way term for solar facilities to 50 years, which more closely reflects the commercial service life of a project. Finally, storage will be a critical component of the energy transition and we strongly support BLM granting energy storage facilities standalone authorization that will incentivize its use on public lands.

C. Proposed Revisions

1. Capacity fee and rental rates

SEIA supports many of the adjustments BLM makes to how it calculates rents and fees in this proposal, including: eliminating duplicative capacity and rental fees, using actual energy generation for the megawatt capacity fee calculation in place of nameplate capacity, and BLM's use of its authority under the Energy Act of 2020 to reduce capacity fees by 80%. Below are our suggestions for adjustments to the proposed methodology

[1] 43 U.S.C. [§] 3003; *see Solar Energy Industries Association*, ''Comment on Draft update to BLM 2800 Right-of-Way Manual, at 1,2 (Feb 2, 2022).

that we believe would further promote the greater use of solar energy on BLM managed lands:

1. *Megawatt/generation fees.* We continue to believe that BLM does not have the statutory directive to charge a megawatt capacity fee. Maintaining the megawatt capacity fee, even limited to when energy generation exceeds the acreage fee, is not consistent with FLMPA's requirement for BLM to charge fair market value because, in contrast to extractive industries, solar is a temporary occupancy of land that does not deplete BLM resources.[2] We recognize, however, that BLM's proposal to eliminate charging both an acreage fee and a megawatt capacity fee is an improvement over existing guidance. Insofar as BLM maintains the megawatt capacity fee in a final rule, we strongly encourage BLM to continue to assess market conditions over the next decade to ensure that BLM is only recouping amounts equal to its statutory requirement of fair market value and is promoting the greatest use of renewable energy resources on public lands.

2. *Megawatt capacity fee reduction.* Nowhere in the text of the proposed rule does BLM provide a rationale for the drop from an 80%-megawatt fee reduction to a 20%-megawatt fee reduction in 2036. Without further explanation, this sudden increase in megawatt capacity fee appears arbitrary and without grounding in economic analysis of market conditions. Further, setting a deadline by which rental fees will automatically increase could disincentivize development on federal lands, the exact opposite of the Energy Act of 2020's purpose to boost renewable development. We suggest allowing the 80% reduction to continue until a future rulemaking so that BLM can fully assess market conditions and ensure that BLM's rates remain "competitively priced compared to other available land."[3]

3. *Rate of Return*. An increase in the rate of return from the current 2% set out in BLM's recent Manual 2806.60 update to a 7% rate of return is not reasonable. This modification is more than triple the amount in BLM's revised Manual announced just a few months ago, which is already being used to inform long-term investment decisions by renewable energy developers. The justification for the increase in the preamble fails to consider this reliance interest, and it also fails to address the clear directive in the Energy Act of 2020 to broadly reduce fees paid by developers on federal lands. It also appears to assume, without justification, that lands leased for renewables development would otherwise be put to revenue-generating use. But BLM's current (and relatively modest) portfolio of solar projects reflects that many large-scale projects are sited on arid desert and other remote lands, where a 2% rate more accurately reflects both the significant costs

[2] *See id.* at 3 (commenting that a megawatt capacity fee is inappropriate for solar because the government does not own solar resources, solar resources are inexhaustible, no solar resources are removed from federal lands by solar energy facilities, and SEIA is not aware of any comparable fee that exists in private lease agreements).
[3] 43 U.S.C 3003 (1)(D) (providing that BLM may reduce acreage rental rates and capacity fees, or both, for existing and new wind and solar authorizations if the Secretary determines rates are not competitively priced compared to other available land among other requirements).

associated with developing renewables in these areas as well as the relative difficulty in accommodating other uses such as grazing. We strongly urge BLM to retain the 2% rate it fixed mere months ago.

4. *Annual Adjustment Factor.* SEIA maintains that a rate increase based on the rate of inflation is the most transparent way to administer an annual adjustment factor.[4] Alternatively, SEIA supports using the Implicit Price Deflator-Gross Domestic Product as proposed in the Public Land Renewable Energy Development Act of 2019.[5]

5. *Buy American reduction.* This proposal adds unnecessary complexity to the supply chains of developers on federal lands and provides incentives too low to be useable. First, by tying the reduction to the "Buy American" provisions of the Federal Acquisition Regulations, the proposed rule is at odds with the similar (but distinct) domestic content provisions of the Inflation Reduction Act,[6] which broadly ties domestic content standards for renewable energy projects to the competing "Buy America" provisions of the Federal Transit Administration. At a high level, these two standards use different tests for domestic content, with the FAR's rules being far more restrictive and likely much more difficult for solar projects to meet given current domestic supply chains. More to the point, it seems unlikely that developers will be able to accommodate two different domestic content standards into already complex global supply chain and procurement systems and would likely default to the relatively richer IRA tax credit adder.

   If BLM intends to retain the FAR construct, at a minimum, the reduction amounts should be far higher in recognition of supply chain and administrative complexity associated with the IRA domestic content provisions. Rather than reductions ranging from 5%-20%, we would recommend a range of 15%-60%. But again, we note that using two competing standards in light of a more attractive IRA adder may mean that developers will simply elect not to seek this reduction, which will not advance the stated policy goals of BLM in the preamble (which SEIA strongly supports).

2. Prioritization

As BLM acknowledges in this proposal, the existing prioritization criteria have not resulted in a more efficient process for renewable energy development and are often inconsistently applied. SEIA welcomes BLM's effort in this proposal to revise the prioritization process for clarity and effectiveness and agrees that BLM should reserve resources for projects most likely to be permitted. If BLM retains this proposal's construct for prioritization, we think that the most probative evidence for prioritization

[4] *See, Solar Energy Industries Association*, ''Comment on Draft update to BLM 2800 Right-of-Way Manual, at 4 (Feb, 2022).
[5] H.R. 3794, 116th Cong., 2d session, § 7(b).
[6] *See,* 26 U.S.C. § 45(b)(9); IRS Notice 2023-38.

should include degrees of commercial readiness. It is also important that a final rule specify that a field office must show a rational basis for prioritizing one application over another, supported by evidence in the record.

We think, however, that a first-come, first-serve system would do better to achieve the goals of transparency and efficiency in the permitting process. We find those goals of even higher importance given our concerns that BLM's Conservation Land and Health rule will make it easier to apply for conservation uses, potentially blocking renewables development on public lands.[7] SEIA recommends a first-come, first-served system in place of the current complicated prioritization process, which we believe will allow local field offices to prioritize and process applications for solar rights-of-way in the most efficient and predictable manner possible.

3. Competitive leasing

SEIA recognizes that allowing applications to be filed in designated leasing areas without first holding a competitive offer is a significant improvement over existing regulation. We maintain our position, however, that competitive leasing is not appropriate for solar development on any public lands.[8] We do not support preserving the ability for BLM field staff to hold competitive offers in response to competing applications. To the extent that field staff maintain their discretion to hold a competitive offer, a final rule must provide clearer direction that competitive leasing should only be used in rare circumstances where there are genuine and simultaneous competing claims for a lease.

To the extent that BLM keeps the current proposal, the cutoff time for when BLM would decline to hold a competitive offer should be amended to occur much earlier in the review process. We recommend the cutoff should occur once a project has submitted a complete application and paid the application fee. The possibility that a BLM initiated competitive process could arise at any time up until the point that a developer has completed a resource-intensive environmental assessment or environmental impact statement creates significant risk for potential projects and will disincentive developer interest in BLM managed lands.

4. Processing applications

Fast and predictable timelines for processing applications and executing cost-recovery agreements is a barrier to developers seeking to develop on public lands. It is not uncommon for projects to wait years before receiving a cost-recovering agreement, which causes burdensome delays and difficulties in financing and site control. We

[7] *See* Solar Energy Industries Association, ''Comments on Conservation and Landscape Health'' 88 Fed Reg. 19,583 (July 5, 2023).
[8] *See Solar Energy Industries Association*, Comments on Bureau of Land Management Initial Public Input on Updating Regulations for Rights-Of-Way, and Renewable Energy at 4 (September 26, 2021).

strongly suggest that the proposal be revised such that BLM is required to offer a cost-recovery agreement within 60 days of submission of a complete ROW application and application fee, along with a plan of development. Similarly, a final rule should include expedited processing of a deficiency notice or notice of application completeness, the processing fee, and an overlapping ROW determination 30-days after receipt of a ROW application.

D. Conclusion

SEIA supports BLM in its efforts to update its regulations for rights-of-way to incentivize the faster and environmentally responsible development of renewable energy on public lands. Public lands are a critical piece in achieving the Biden Administration's goals to transition to a zero-carbon economy and needed to capitalize on the massive investments in the IRA. At the same time a strong final rule will support jobs and economic recovery in communities impacted by climate change. We believe that with these proposed changes, a final rule will provide the appropriate rental rates and predictability necessary for developers to capitalize on the incredible potential for solar development on public lands.

Sincerely,

/s/ Maren Taylor
Maren Taylor
Director of Regulatory Affairs and Counsel
Solar Energy Industries Association

Ben Norris
Senior Director of Regulatory Affairs and Counsel
Solar Energy Industries Association

Sean Gallagher
Senior Vice President, Policy
Solar Energy Industries Association