



MEMORANDUM

To: Robert Anderson
From: Rachel Gold and Jessie Audette, Solar Millennium LLC
Date: December 8, 2008
RE: BLM and Solar Energy Development

The BLM's April 2007 Solar Energy Policyⁱ sets forth the current process for processing solar energy Right-of-Way (ROW) applications. This Instruction Memorandum (IM) serves as the BLM's policy during the expected 22 plus months that the BLM will need to complete the Solar Programmatic Environmental Impact Statement (PEIS), expected, like the wind and geothermal PEIS studies that preceded it, to create a more definitive framework and best practices for the Bureau to process solar energy applications. The IM directs BLM offices to process solar applications in a timely manner and requires full cost recovery.

The recent history of solar applications to the BLM has been characterized by the BLM's inability to process a flood of applications spurred by national interest in solar and the relative ease of entry for applicants. By July 2008, the BLM had received over 125 applications for solar energy projects, which briefly led to a moratorium on acceptance of new applications, and then to the issuance of new requirements for a considerably more detailed Plan of Developmentⁱⁱ, with requirements that include preliminary engineering, in an attempt to weed out speculators.

Solar Millennium is concerned about the impact of speculation, including the public perception of solar development and its drain on BLM resources. Solar Millennium also recognizes that the Plan of Development is one tool for the BLM to establish the seriousness of applicants, as well as providing a base document during the EIS process. However, currently the requirements of the Plan of Development are inconsistently interpreted by the BLM field offices, and studies that are more properly related to the EIS (for example, wildlife impacts) or inappropriate to the phase of development (preliminary engineering) are being requested in the Plan of Development prior to EIS commencement. Companies like ours, which utilize a proven technology and have a demonstrated track record of constructing solar plants, are experiencing delays and confusion in dealing with the BLM (particularly since the issuance of the new Plan of Development requirements). Understaffed, overworked BLM offices don't appear to be drawing on or benefitting from the cost recovery funds provided by solar projects. They also appear to have little incentive to maintain timelines.

In addition, the current wording of the Solar IM itself creates a structure that that adds considerable uncertainty to the solar project development process. This is because unlike wind projects, which have a testing right of way that can be seamlessly converted to a lease following the NEPA process, a solar project remains an applicant for a Right of Way until the NEPA process is complete. The result of this structure so far has been to: a) create additional development barriers, including large site control deposits for California interconnection requests; and b) the possibility that the application can be summarily rejected at any point in the process. We recommend solar energy projects have access to several types of Right-of-Ways that can appropriately and seamlessly integrated into the process in order to accommodate a project's



successive phases of development, while ensuring appropriate levels of site control and authority to carry out relevant activities (e.g. meteorological testing, environmental studies, engineering studies, etc..). Furthermore, rental and reclamation bond requirements are not clear in the Solar IM, creating uncertainty in future project costs. There have been some indications about how these rates will be structured, but the BLM has not been forthcoming or transparent about the development of these requirements or when they may be finalized.

Our recommendation is that a program similar to what is currently in place for oil and gas leases under the Energy Policy Act of 2005 (“EPACT”) be implemented for the processing of solar (and potentially other renewable) ROW applications. We recommend this program:

- Establish of clear ROW and Rental Regulations in coordination with multiple stakeholders.
- Establish development corridors for solar projects that encourage renewable energy development along transmission lines and roads, and other disturbed areas, in order to minimize fragmentation and habitat loss.
- Provide for expeditious compliance with NEPA in the processing of ROW Applications.
- Establishes best practices for processing ROW Applications.
- Establish periodic review to ensure that the program is meeting the goal of development of renewable energy on BLM Land, while meeting its multiple use mandate.
- Coordinate with state and other federal government agencies and work to align federal policies with state renewable energy policies in order to minimize barriers to solar development.
- Assign specialized staff employees with specific expertise in the regulatory issues related the processing of renewable energy ROWs in order to assist field offices in processing solar ROWs.
- Establish a mechanism to ensure adequate funding for BLM field offices to process Solar ROWs (through allocation and/or coordinated use of cost recovery funds).

The Solar PEIS represents an opportunity to address many of these issues. However, given the ongoing and much needed development of solar projects and the long time frame expected for the completion of the PEIS, clear guidance is necessary on many of these issues in the interim.

i

http://www.blm.gov/pgdata/etc/medialib/blm/wo/Communications_Directorate/public_affairs.Par.20041.File.dat/IM2007-097.pdf

ii

http://www.blm.gov/pgdata/etc/medialib/blm/wo/MINERALS_REALTY_AND_RESOURCE_PROTECTION_/cost_recovery.Par.96285.File.dat/Solar_POD.pdf