

**COMMENTS OF THE CALIFORNIA WIND ENERGY ASSOCIATION  
ON CAISO TARIFF BULLETIN ON INTERPRETATION OF  
SITE EXCLUSIVITY DEFINITION FOR PUBLIC LANDS**

**Submitted By  
Nancy Rader - CalWEA (510-845-5077)  
Tom Solomon, Joseph Karp - Winston & Strawn (415-591-1000)**

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**I. INTRODUCTION**

On December 3, 2008, the California Independent System Operator ("CAISO") issued a Tariff Bulletin proposing a new interpretation of the Site Exclusivity definition for public lands and requesting submission of written comments by 5:00 pm on December 16, 2008. CalWEA submits these comments pursuant to this request.

As the CAISO is no doubt aware, CalWEA has opposed the CAISO's definition of Site Exclusivity as it applies to projects on public lands since the initial Generator Interconnection Process Reform ("GIPR") filing. To demonstrate Site Exclusivity on public land, the Interconnection Customer ("IC") is essentially required to hold a final, non-appealable permit "or other right to use the property," whereas demonstration of Site Exclusivity on private land requires nothing more than an option to acquire 50% of the land required for the project.<sup>1</sup> The Tariff Bulletin provides the CAISO's interpretation of "other right to use the property" as something slightly less onerous than obtaining a final, non-appealable permit (which can take several years).

While CalWEA appreciates the CAISO's attempt to soften the harsh results of the Site Exclusivity definition, CalWEA believes that the definition of Site Exclusivity, even as softened by the interpretation provided in the Tariff Bulletin, continues to unduly discriminate against projects on public land. Nevertheless, in the spirit of compromise and without limiting its right to pursue any other available remedy, CalWEA has developed an alternate interpretation of "or other right to use the property" that reduces the barrier to development of renewable resources on public lands created by the CAISO definition of Site Exclusivity. CalWEA's alternate interpretation is described in greater detail below.

**I. BACKGROUND**

On September 26, 2008, the CAISO's GIPR tariff provisions were conditionally accepted by FERC. Subsequently, many Interconnection Customers ("IC") raised questions concerning the application of the Site Exclusivity definition to projects proposed to be developed on public land, including those on lands administered by the U.S. Department of Interior Bureau of Land Management ("BLM").

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<sup>1</sup> See CAISO Tariff Appendix A.

In response to those questions, the CAISO issued a Tariff Bulletin on December 3, 2008, which provided the CAISO's "interpretation" of the "other right to use the property" component of the Site Exclusivity definition. The Tariff Bulletin provided the CAISO's interpretation that an IC may demonstrate Site Exclusivity on BLM land by providing evidence that (A) the IC has obtained and perfected a Type II ROW (or equivalent); (B) the IC has undertaken significant activity to prosecute the permanent permit, consisting of (i) IC has applied for a Type III ROW (or equivalent), (ii) BLM has reviewed the IC's plan of development ("POD") and determined that the IC has the technical and financial capability to develop the project, (iii) the IC has entered a cost recovery agreement with BLM and advanced funds, and (iv) the lead agency has been identified and the environmental consultant has been hired for the environmental review process; and (C) the IC is the first-in-time applicant to meet (A) and (B) above.

## **II. CALWEA'S PROPOSED ALTERNATE INTERPRETATION**

In the spirit of compromise, CalWEA has developed an alternate interpretation of Site Exclusivity. By submitting these comments, CalWEA is in no way waiving or otherwise limiting its rights to pursue its Request for Rehearing pending before the Federal Energy Regulatory Commission ("FERC") in FERC Docket No. ER08-1317 or any other form of relief.

CalWEA's alternate interpretation of the CAISO Tariff definition of Site Exclusivity adopts a graduated approach to the demonstration of Site Exclusivity on BLM lands. Under this approach, the evidence required to satisfy the "other right to use the property" component of the Site Exclusivity definition will adjust throughout the interconnection process to reflect the progressively broader land rights needed at each stage in the development process. Other aspects of the interconnection process, such as non-refundable financial commitments, recognize this need for graduated obligations, and the requirements for demonstration of Site Exclusivity on public land should recognize this as well.

### **A. Interconnection Request Validation**

With respect to obtaining a valid Interconnection Request ("IR"), the IC may demonstrate Site Exclusivity by providing the CAISO with evidence that BLM has accepted the IC's complete application for a Type II ROW (or its equivalent) for the site. At this stage of the development process, the IC does not need a final, non-appealable permit to develop the project – in fact, it is unlikely to even be in a position to pursue a final, non-appealable permit – because the IC cannot make the determination to proceed with the project until it receives the results of the transmission studies produced by the interconnection process. At this stage, the IC is still gathering information related to both transmission costs and, in the case of the wind developer, confirmation of the wind resource.<sup>2</sup> These activities occur *in parallel*– the outcome of either or both will influence the decision whether to proceed with development of the site. Accordingly, it is more appropriate to limit the IC's obligation to the demonstration of an accepted application for a Type II ROW, which provides site exclusivity while the IC pursues the ROW grant and gathers the meteorological data required to confirm the site's resources in parallel with obtaining

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<sup>2</sup> Unlike solar resources, wind resources sometimes vary substantially compared to what is indicated on resource maps generated by models. Therefore, the wind resource must be confirmed by meteorological measurements before a decision to file a development (Type III) permit is made.

transmission cost information. By the time that the transmission cost information is obtained, the developer is likely also to have obtained at least some information on resource quality, both of which will inform its decision to pursue an LGIA and a Type III ROW development grant.

Moreover, an accepted Type II ROW application continues to provide the indication of project viability the CAISO seeks. Acceptance of a Type II ROW application (or its equivalent) establishes rights with priority over those of other developers for all the land required for the project for three years – a higher standard than for private land (which requires exclusive rights to only 50% of the project area). Thus, requiring an accepted Type II ROW to demonstrate Site Exclusivity for projects on public lands provides an even greater indication of project viability than the corresponding requirement for projects on private land, while also accommodating the realities of renewable resource development on public land.

### **B. Execution of the LGIA**

With respect to executing a Large Generator Interconnection Agreement ("LGIA"), the IC may demonstrate Site Exclusivity by providing the CAISO with evidence that the IC has satisfied the conditions proposed by the CAISO in the Tariff Bulletin. By the time the IC is required to execute the LGIA, the CAISO needs a firmer commitment from the IC. At this stage in the development process, the IC has the transmission information and meteorological data necessary to make such a commitment. Accordingly, the requirements for demonstration of Site Exclusivity presented in the CAISO's proposed interpretation are appropriate when applied at the end of the interconnection process.

### **C. Reinstatement**

Some CalWEA members, and perhaps other renewable resource developers, were compelled to withdraw BLM-related projects from the queue — even though the BLM had accepted the associated Type II ROW applications — because they were unable to post the required \$250,000 Site Exclusivity deposit by the deadline. Thus, to the extent the CAISO modifies the definition of Site Exclusivity, CalWEA requests the CAISO to permit any IR that was withdrawn from the interconnection queue to re-enter the queue at its previous position if the IC can meet the revised standard.

## **III. CONCLUSION**

Because the definition of Site Exclusivity, even as it would be softened by the interpretation proposed in the Tariff Bulletin, continues to be unduly discriminatory and onerous as applied to projects to be developed on public land, CalWEA requests that the CAISO reconsider its position and adopt the alternate interpretation proposed by CalWEA herein. CalWEA's alternate interpretation is more appropriate because it recognizes the graduated nature of the development process and is more equivalent to the site control requirement for private land. CalWEA further requests the CAISO to permit any IR that was withdrawn from the interconnection queue to re-enter the queue at its previous position if the IC can meet the revised standard.