OFFICE OF
INSPECTOR GENERAL
U.S. DEPARTMENT OF THE INTERIOR

THE BUREAU OF LAND MANAGEMENT'S DETERMINATION PROCESSES FOR WIND ENERGY PROJECTS PROPOSED ON PUBLIC LANDS

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Memorandum

To: Neil Kornze
Director, Bureau of Land Management

From: Mary L. Kendall
Deputy Inspector General

Subject: Inspection Report – The Bureau of Land Management's Determination Processes for Wind Energy Projects Proposed on Public Lands
Report No. 2015-EAU-037

The Office of Inspector General (OIG) completed an inspection of the Bureau of Land Management's (BLM's) wind energy program and the process of granting rights-of-way (ROWs) for two types of projects on public lands: Type II wind testing and Type III wind energy development facilities. We specifically focused on how BLM performs two steps in the process of authorizing these projects: (a) determining the technical and financial capability of an applicant to develop a wind project on public lands, and (b) determining the technical and economic feasibility of proposed projects.

We found that BLM policies for making these determinations are not clear and that BLM staff do not have guidelines to follow nor the necessary expertise for making these determinations.

Background

BLM manages over 245 million surface acres of public lands. It has identified 20.6 million acres as having potential for wind energy development. When an individual or company wants to use public lands to develop certain types of projects, they must first obtain a ROW. BLM is responsible for processing ROW applications for proposed wind projects on public lands. This includes wind testing (Type II projects) and wind energy development facilities (Type III projects). When BLM grants a ROW for a Type II wind test project area, the recipient pays rent based on acreage and, in the case of a Type III wind facility, they pay a rental fee based on the megawatt capacity of the facility. A ROW grant for a Type II wind testing project is valid for 3 years, with a possible 3-year extension. A ROW grant for a Type III wind facility is generally for a 30-year term.

Currently, BLM has granted ROWs for wind facility development (see Figure 1) on 73,000 acres of public lands, and 654,000 acres for wind testing. Before granting a ROW for a wind energy project, BLM must first determine whether an *applicant* is technically and financially capable, meaning if the applicant has the necessary technical expertise and financial means to execute the project. Then, BLM must determine if the proposed *project* is technically and economically feasible.

Figure 1. The Ocotillo Wind Energy Project in southern California is a wind energy development facility (Type III project). Source: OIG.

There are a number of laws, regulations, and policies relevant to determining an applicant's technical and financial capability and a proposed project's technical and economic feasibility. All ROWs for proposed wind projects are applied for under Title V of the Federal Land Policy and Management Act of 1976 (FLPMA) and Title 43, Part 2800 of the Code of Federal Regulations (C.F.R.). FLPMA states that the Secretary of the Interior must be "satisfied that the applicant has the technical and financial capability to construct the project" before granting or renewing a ROW.[1] In addition, 43 C.F.R. § 2804.26(a)(5) states that BLM can deny an application if the applicant cannot demonstrate the technical or financial capability necessary to construct the project or operate the facilities within the ROW.

The National Environmental Policy Act (NEPA) requires that Federal agencies consider the effects of their actions on the quality of the environment before they make decisions. The Council on Environmental Quality (CEQ) ensures that Federal agencies meet their obligations under NEPA. CEQ regulations state that if an agency requires applicants to submit environmental information, then "The agency shall independently evaluate the information submitted and shall be responsible for its accuracy."[2] The CEQ has also stated that reasonable alternatives should be "practical or feasible from the technical and economic standpoint and using common sense, rather than simply desirable from the standpoint of the applicant."[3]

Wind energy has been one of the fastest growing sources of electricity in the United States in the last several years. From 2009 to 2014, electricity generated from wind rose from 73,800 to 181,700 megawatt hours—a 146 percent increase (see Figure 2).

[1] 43 U.S.C. § 1764(j).
[2] 40 C.F.R. § 1506.5(a).
[3] Question 2a, "Forty Most Asked Questions Concerning CEQ's NEPA Regulations," March 23, 1981.

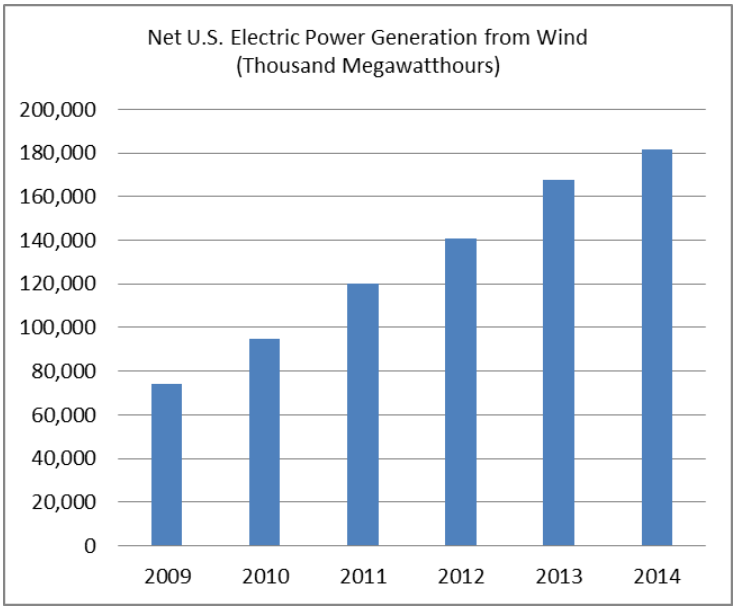

Figure 2. Net U.S. electric power generation from wind. Source: U.S. Energy Information Administration.

The U.S. Energy Information Administration (EIA) forecasted that wind capacity in the United States will increase by 12 percent in 2015 and by another 13 percent in 2016. The Federal Government has provided significant monetary incentives for renewable energy development in the United States over the last several years. In a March 2015 report, EIA estimated that Federal energy-specific subsidies and support totaled $5.9 billion for wind energy in 2013 alone.

In the Energy Policy Act of 2005, Congress set a goal of approving 10,000 megawatts of renewable energy on public lands by 2015. This goal was met in 2012. In the President's Climate Action Plan of June 2013, the President directed the U.S. Department of the Interior to permit an additional 10,000 megawatts of renewable energy by 2020.

Given the rate of wind energy development, the public's financial investment, and the President's renewed emphasis on increasing renewable energy development on public lands, BLM needs to have a clear and consistent process for granting ROWs that enable responsible wind development.

Findings

Applicant Technical and Financial Capability

We found that BLM policies do not provide clear and definitive guidance to determine that an applicant has the technical and financial capability to complete a proposed project. Further, current policies allow BLM to solely rely on applicants' statements in determining the capability. For example, BLM's ROW Processing Manual, Section 2803.10 Part C states that applicants are required to show that they are "financially and technically capable of constructing, operating, maintaining, and terminating the proposed facilities." Part C also states: "This may simply be a signed statement or may be in great detail," and Part F states: "Unless it has good

reason to believe otherwise, the BLM will accept papers filed by the applicant/holder as true and valid." These guidelines do not clarify when and how to determine whether the applicant is financially and technically capable or when BLM should request more information.

Another BLM policy, Instruction Memorandum (IM) 2011-060, "Solar and Wind Energy Applications – Due Diligence," states that the applicant should provide information on the availability of sufficient capital to carry out development. This policy does not identify what would constitute sufficient capital. While this policy lists a set of information that could be used in making a determination of whether the applicant is technically and financially capable, it does not require BLM staff to collect the information and does not provide any guidance to BLM staff on what to do with the information.

BLM realty specialists are generally responsible for reviewing the technical and financial capability of an applicant. Through our interviews with 15 staff members, we found that the level of review may range from merely accepting the applicant's statement to extensive internet searches on the company. In our review of 17 wind project case files, however, we did not find any documentation indicating that BLM had performed the more extensive analyses. BLM realty staff stated that they did not have the technical or financial expertise to make those determinations. Several BLM staff stated that it would help to have clear guidance on how to make a determination.

BLM has an agreement with the U.S. Department of Energy's National Renewable Energy Lab (NREL) which states that BLM staff members can ask NREL for assistance in determining applicant capability. During our interviews at NREL, a senior member of its staff stated that they have the ability to determine the technical capability of an applicant. The senior staff member also stated that they do not have the ability to determine financial capability.

Some senior-level BLM staff members stated that the current method of ROW application review has inherent checks-and-balances to indicate an applicant's financial capability, such as a significant amount of up-front money required for BLM to process an application. Therefore, BLM indicated that they do not need to conduct a formal analysis on whether applicants are financially capable. We found, however, that BLM does not provide additional clarification to its staff on whether a formal analysis is required, and if so, how it should be done.

In September 2014, BLM proposed a new rule to facilitate responsible solar and wind energy development. Among other proposed changes, the new rule would establish a competitive ROW leasing process for solar and wind energy projects and would provide for BLM to prequalify bidders and identify preferred bidders. The company that wins the competitive bid would become the applicant for the ROW lease. The proposed new rule does not clarify how to prequalify a bidder or by extension, how to determine an applicant's technical and financial capability. It does, however, provide a promising avenue for BLM to establish more standardized, comprehensive, and measureable means for making this determination.

We found that BLM is not making consistent and measurable determinations because it does not have standard procedures to guide staff on how to conduct or document their review.

During our interviews, several realty specialists stated that they do not have sufficient expertise to make these determinations. Without reviewing applicants' qualifications, resources could be underdeveloped and public lands may not be utilized for the intended purpose. For example, if an applicant receives a ROW and is not actually capable of undertaking the project, those public lands could be unnecessarily tied up and another applicant could be precluded from developing the resource.

Project Technical and Economic Feasibility

We found that BLM policies do not clarify when and how to determine the technical and economic feasibility of proposed wind projects. Specifically, BLM does not have standard procedures or guidelines for BLM staff to follow in making or documenting this determination.

All ROW grant applicants must submit BLM's Standard Form 299, "Application for Transportation and Utility Systems and Facilities on Federal Lands." Line 15 of this form asks the applicant to: "Provide statement of need for project, including the economic feasibility and items such as: (a) cost of proposal (construction, operation, and maintenance); (b) estimated cost of next best alternative; and (c) expected public benefits."

BLM has acknowledged its responsibility for reviewing proposed projects' technical and economic feasibility in some of its policies. For example, BLM's IM-2011-059, "National Environmental Policy Act Compliance for Utility-Scale Renewable Energy Right-of-Way Authorizations," states that BLM should seek assistance from other agencies when evaluating renewable energy development information. It further states: "the Department of Energy has agreed to provide the BLM assistance in assessing the technical and/or economic feasibility of project proposals and potential alternatives, as well as confirm information provided by wind and solar energy developers."

Further, BLM's IM-2009-043, "Wind Energy Development Policy," states: "BLM may request general information on the potential wind resources of the area, the potential project size and megawatt capacity of the area, and the potential project development configuration and limitations to assist in determining whether the application is of a reasonable size." The IM also identifies a BLM agreement with NREL and notes: "Any BLM field office may request the NREL to assist in evaluating the applicant's proposal for the siting and number of meteorological towers."

These policies, however, do not provide BLM staff members with clear guidance on when to request additional information from an applicant, or when to seek NREL's assistance to help assess the technical and economic feasibility of a proposed project. BLM staff members stated that they do not have the expertise necessary for determining whether a wind project is technically or economically feasible. They often assume that if an applicant is willing to make the monetary investment to put up meteorological towers or install wind turbines, that the project must be worthwhile and feasible. We found that BLM has infrequently asked NREL to review the technical and economic feasibility of a project. Only once has it requested assistance for a Type III wind facility.

During our interview at NREL, staff members told us that they could determine the technical and economic feasibility of a proposed wind project (Type II and III). To determine whether a Type III wind energy facility was technically and economically feasible, however, NREL would require wind data collected for the project area. Currently, BLM does not collect this information during the application process.

We learned from our research that wind energy developers are often motivated to overstate the merits of their proposed projects in order to attract funding from the Government as well as financing from other sources. For example, a wind developer (on private lands) in Minnesota solicited funds from investors by making false representations about the project's status. In this case, the wind developer told his financial backers that the project was closer to completion than it actually was. In addition, an article published in March 2012 identified the temptation of renewable energy developers to exaggerate information that would improve their eligibility for Government grants.[4] When we asked if there is potential for fraud in renewable energy development, one senior NREL staff member told us that developers are often pressured to exaggerate advantageous information regarding their projects. Without proper review of the technical and economic feasibility of a proposed wind project, a company could potentially develop a substandard project to secure Government funding.

Given the expected increase in wind energy development, the President's directive to increase renewable energy development on public lands, and the significant Government monetary incentives to stimulate renewable energy projects, combined with the pressure for renewable energy developers to overstate the potential of their proposed projects to attract funding, it is especially imperative that BLM ensures that proposed wind projects are technically and economically feasible. As a result of BLM's current inconsistencies of review, a significant amount of public lands are being used for wind projects without proper assurance that the proposed projects are technically and economically feasible. The potential development of a substandard project leaves public lands and resources vulnerable to being unnecessarily reserved for projects that may not maximize resource development.

Multiple Applicants for Type II Project ROWs

We found that BLM offices have two different interpretations of IM-2009-043 regarding Type II wind testing projects. IM-2009-043 states: "The lands within the grant area will not be available for other wind energy right-of-way applications."

We found that some BLM offices process a Type II wind test ROW application on a first come, first served basis, which precludes other Type II applicants from seeking a ROW on the same lands. Other offices allow multiple applicants to apply for a ROW on the same lands. Once the ROW grant is authorized for one of the applicants, other applications are denied or closed. We consulted the director of BLM's Renewable Energy Coordination Office, who clarified that allowing multiple applicants to apply for a ROW on overlapping lands is the correct interpretation of IM-2009-043.

[4] http://www.law360.com/articles/315766/the-future-of-renewable-energy-and-the-false-claims-act

Processing a ROW application for a Type II wind testing project on a first come, first served basis precludes other interested applicants from applying for the same lands. This interpretation could preclude a more qualified applicant from pursuing and receiving a ROW grant.

Recommendations

We recommend that BLM:

1. Develop written procedures on when and how to evaluate an applicant's technical and financial capability to undertake a proposed wind project and how to document those evaluations;

2. Obtain the appropriate expertise to determine an applicant's financial and technical capability. This may include individuals from other organizations with relevant expertise;

3. Develop written procedures on when and how to evaluate a proposed wind project's technical and economic feasibility and how to document those evaluations;

4. Obtain the appropriate expertise to determine a proposed project's technical and economic feasibility. This may include individuals from other organizations with relevant expertise; and

5. Clarify in writing to BLM staff that multiple applicants can apply for a wind testing (Type II) ROW for the same lands.

Please provide us with your written response to this report within 30 days. The response should provide information on actions taken or planned to address the recommendations, as well as target dates and title(s) of the official(s) responsible for implementation. Please send your response to:

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The legislation creating the OIG requires that we report to Congress semiannually on all audit, inspection, and evaluation reports issued; actions taken to implement our recommendations; and recommendations that have not been implemented.

If you have any questions regarding this report, please contact me at 202-208-5745.

Attachment

Scope and Methodology

Our objective was to identify and evaluate how BLM determines the technical and financial capability of an applicant to develop a wind project on public lands, and how BLM determines the technical and economic feasibility of proposed wind projects. To accomplish our objective, we—

- reviewed existing laws, regulations, policies, budget, annual strategy, performance data, memoranda of agreement and other information related to wind energy development on public lands.
- reviewed documents provided by BLM's Renewable Energy Coordination Office(RECO), as well as documents provided by BLM's State, district, and field offices related to wind energy development on public lands.
- visited BLM's El Centro Field Office in southern California to gain an understanding of the full process used to grant a ROW for the Ocotillo Wind Energy Project; and thoroughly reviewed the processes BLM used to determine the technical and financial capability of the applicant, and the technical and economic feasibility of the project.
- visited BLM's El Centro Field Office in California and Rawlins Field Office in Wyoming, and interviewed staff from the Schell Field Office via phone to discuss how it determines the technical and financial capability of an applicant for wind energy projects, and the technical and economic feasibility of a proposed wind project.
- selected a sample of wind energy projects that have been approved at BLM locations we visited; and thoroughly reviewed the process BLM used to determine the technical and financial capability of an applicant, and the technical and economic feasibility of the sample wind energy projects.
- visited the U.S. Department of Energy's NREL to discuss its involvement in BLM's wind energy project review process, the determination of an applicant's technical and financial capability, and the process it uses to determine the technical and economic feasibility of a proposed wind project.
- contacted BLM's Washington Office, RECO, and other BLM State, district, and field offices by phone throughout the review period.
- contacted the Wyoming Industrial Siting Commission via phone to discuss its process for determining the technical and financial capability of applicants for proposed wind energy facilities.

We conducted our inspection in accordance with the Quality Standards for Inspection and Evaluation as put forth by the Council of the Inspectors General on Integrity and Efficiency. We believe that the work performed provides a reasonable basis for our conclusions and recommendations.

Report Fraud, Waste, and Mismanagement

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