



August 15, 2023

Submitted via Regulations.gov

Tracy Stone-Manning
Director
Bureau of Land Management
1849 C St. NW Room 5646
Washington, D.C 20240

Re: NECA Comments on Notice of Proposed Rule Making: Rights-of-Way, Leasing, and Operations for Renewable Energy

Dear Director Stone-Manning:

The National Electrical Contractors Association (NECA) submits these comments in response to the Department of Interior (DOI) Bureau of Land Management's (BLM) *Notice of Proposed Rule Making: Rights-of-Way, Leasing, and Operations for Renewable Energy*.

NECA appreciates this opportunity to provide valuable information to DOI regarding key program elements that should be included in the amended right-of-way (ROW) regulations, issued under authority of the Federal Land Policy and Management Act (FLPMA).

NECA is a national trade association and the leading voice of the \$225 billion electrical contracting industry that brings power, light, and communication technology to buildings and communities across the U.S. NECA collectively represents over 4,000 electrical contractor members served by 118 local Chapters across the country. NECA employs a unionized workforce with contracts collectively bargained with the largest union of electrical workers in the world, the International Brotherhood of Electrical Workers, AFL-CIO, CLC (IBEW).

NECA recognizes that our success lies in our partnership with and investment in a highly skilled and trained union workforce. In these comments, we will provide recommendations to the BLM to assist them in developing procedures of determining new policies being proposed in the NPRM. These recommendations will help support the transition to more clean energy being produced in the United States. By including the recommendations stated, it will reduce the cost of delivered power for consumers and create well-paying, union jobs to build new wind and solar jobs for a sustainable infrastructure for an equitable clean energy future.

As the leading trade association for electrical contractors, NECA has a vested interest in supporting the Administration's and fulfilling Congress' goal of "authoriz(ing) production of not



less than 25 gigawatts of electricity from wind, solar, and geothermal energy projects by not later than 2025.”¹.

I.NECA Recommendations

a. Use of Union Labor

NPRM is interested in receiving comments on the possibility of adding a reduction to the capacity fee of up to 20 percent based on the use of union labor in project construction. Like the Buy American preference, such a provision would offset some developer costs, thus promoting the use of solar and wind energy resources on public lands, while reducing economic hardships for developers who may also qualify for certain tax incentives.

i.Federal Investment and Interest

NECA takes the opportunity to respond to BLM questions regarding the use of union labor. Both the *Infrastructure Investment and Jobs Act* (IIJA) and *Inflation Reduction Act* (IRA) have allocated funds that will help in the development of solar and wind projects. These federal investments are crucial and were deemed significant by Congress when enacting IIJA and IRA, therefore warrant using the strongest possible quality standards for construction to maximize return on federal investment. The IIJA and IRA also have unique provisions requiring the prevailing wage and the use of registered apprenticeship programs. BLM should consider considering this provision where applicable as part of the application process.

Additionally, FLPMA generally requires ROW holders to “pay in advance the fair market value” for use of the public lands, subject to certain exceptions. In a recent press release, DOI touted the record auction sale of solar development of over \$35 million and \$46 million.² The Administration has articulated the need for, and benefits of, requiring such agreements on federal investments in Executive Order (E.O.) 14063, *Use of Project Labor Agreements for Federal Construction Projects*, issued February 4, 2022 (87 FR 7363, February 9, 2022).

ii.Use of ‘Tri-trade Project Labor Agreement’ for Solar Projects

As discussed further below, BLM should require applicants to provide detailed information about their construction workforce plans, including the use of ‘tri-trade Project Labor Agreements (PLA)’, and registered apprenticeship programs. To successfully implement the provisions detailed above, BLM should give full 20 percent capacity fee reduction if the developer has a signed written agreement of tri-trade PLA. A tri-trade agreement is a three craft PLA between the International Union of Engineers (IUOE), Laborers international Union of North America, and the IBEW. This agreement has already adjudicated all the responsibilities of the solar construction between the trade craft trades. This trade agreement goes beyond a typical PLA by already agreeing to jurisdiction disputes some crafts may have with work to be performed. This agreement promotes even greater efficiency by resolving sometimes complex and longstanding disagreements. This



will expediate the work process of construction to allow for construction of solar to more readily be erected.

iii. Use of PLAs

Additionally, full 20 percent capacity fee reduction for wind projects if the developer shows written proof of a PLA. NECA has long partnered with construction owners, managers, contractors and state and local building and construction trades councils to negotiate and implement PLAs to successfully deliver complex construction projects in both the public and private sectors. Our experience with PLAs demonstrates these agreements promote economy, efficiency, and project quality, and offer substantial benefits to the communities where construction is located. PLAs are a valuable resource to the government, interested parties, and the community when implemented. As described below, the positive impacts are beneficial to all parties.

Large construction projects share specific characteristics and challenges that have informed the use of PLAs in both the public and private sectors for decades. All large construction projects will necessitate a constantly changing stream of contractors and subcontractors, each responsible for distinct parts of the project. Each of these distinct parts must be highly coordinated and collaboratively work together seamlessly for the entire project to be completed efficiently and safely. On a typical large construction project, an owner will contract and subcontract various aspects of construction. Each contractor and subcontractor will supply its own set of employees who are, for the most part, hired for that particular project.

In the unionized sector, each construction trade is governed by its own unique collective bargaining agreement (“CBA”), each with its own set of rules covering the terms of employment (i.e., work hours, rates of pay and overtime, holidays, etc.). In the nonunion sector, each contractor will similarly bring with it its own labor-relations structure, including work rules, scheduling, and hiring needs. These different work rules typically vary widely, and thus can and often do lead to costly project overruns, delays, safety issues, and work stoppages.

PLAs were designed as a project management tool to control these unique challenges by maximizing efficiency and productivity while reducing costs and meeting critical project deadlines. A PLA is a comprehensive multi-employer/multi-union unitary collective bargaining agreement designed to cover entire construction project(s). PLAs are generally negotiated by the entity that controls contracting for the project and a council of labor organizations representing all trades employed on the project. Through PLAs, the parties set standard work rules, including, but not limited to rules to establish various forums for communication and coordination, and prevent work stoppages with provisions such as no-strike, no-lockout provisions, and speedy dispute resolution mechanisms. They also set standard pay scales and benefit rates for each trade and address labor supply issues through provisions that commit the signatory unions to use their job referral procedures to ensure a steady supply of highly skilled workers for the project. Both union and nonunion workers can register for referrals, and typically any contractor – union or nonunion



– may bid for work on a covered project, as long as they agree to abide by the agreement and thereby to be held to the same standards.

As such, PLAs reduce administrative costs, improve coordination and consistency, and prevent cost overruns and project delays that can be fatal to successful project completion. PLAs also ensure that projects are completed to the highest quality standards, minimizing the need for work to be redone later. In addition, PLAs often contain provisions requiring participation in Registered Apprenticeship Programs and pre-apprenticeship programs to help recruit women, people of color and other underrepresented individuals into the construction industry to provide family-sustaining careers working on the projects that impact their communities.

The federal policy that PLAs promote economy and efficiency has been implemented and maintained across three consecutive Presidential Administrations. The arguments put forward against this proposal were already considered and rejected during this time. There is no new data that warrants displacing this longstanding, carefully considered policy determination. Moreover, major for-profit companies and state and local governments across the nation have recognized that PLAs promote economy and efficiency in completing large, critical, and complex construction projects. PLAs also promote equitable development of a future skilled workforce for such projects by supporting privately-funded training programs. In addition, the use of PLAs ensures that government construction does not facilitate labor and employment law violations that transfer costs to taxpayers, harm workers, and prevent law-abiding contractors committed to training the next generation of skilled craftspeople from competing on a level playing field.

The Treasury Department endorsed PLAs as promoting economy and efficiency in guidance associated with a January 27, 2022, final rule governing use of the \$350 billion in State and Local Fiscal Recovery Funds (SLFRF) authorized by the *American Rescue Plan Act* to help communities restore or improve infrastructure in response to the COVID-19 pandemic. The Treasury Department explained that PLAs and the labor standards associated with them:

[E]nsure a stronger skilled labor supply and minimize labor disputes and workplace injuries, which can result in costly disruptions to projects. Treasury assesses that these benefits will increase the economy and efficiency of infrastructure projects undertaken through SLFRF and will outweigh the potential for a marginal increase in labor costs (Emphasis added).

1. PLAs Ensure a Skilled Workforce

The workforce training requirements associated with most PLAs support the continued success of privately-funded apprenticeship training programs that ensure a future skilled workforce for large-scale, complex federal government construction projects. Under these agreements, the contractors pay a set amount per worker per hour into a training fund for their respective crafts that is matched by contributions from labor partners. This successful, privately-funded, industrywide model provides training at no cost to the government or taxpayers. These training



funds administer apprenticeship and training programs that invest between \$750 million and \$1 billion annually, ensuring properly staffed, resourced, and well-run programs. All successful PLA bidders – union and nonunion – can access this labor pool under a PLA. Non-union PLA signatories have recognized that union referrals enable them to compete for – and more likely successfully perform – jobs requiring a higher degree of worker skill and technical experience.

Joint apprenticeship programs in the building trades advance economy and efficiency by continuously updating and improving the value and relevance of their training. This is done through ongoing national instructor preparation and upgrading, arranging for college credit for learning during apprenticeships, and expansion of journey-level update training. Research confirms that: (1) union programs enroll the majority of building trade registered apprentices, (2) the apprentice completion rates from union programs are higher than from non-union programs, (3) union programs enroll non-traditional populations in higher numbers and at higher rates than do non-union programs, and (4) the apprentice completion rates of non-traditional populations from union programs is higher than from non-union programs.

The *electrical training ALLIANCE* is a nonprofit that was created over 80 years ago by IBEW and NECA to support our affiliated apprenticeship training programs. IBEW/NECA affiliated apprenticeship programs are the largest training providers for electrical workers in the country, with some 300 construction training centers in operation. These programs make almost \$200 million in annual investments in apprenticeship training efforts. Such training is provided at no cost to participants or taxpayers, and apprentices are paid good wages for on-the-job training, including health and retirement benefits.

In addition, to combat the inherent safety risks of electrical construction and ensure that projects are completed successfully, journey-level IBEW members obtain numerous safety and technical certifications as part of their apprenticeship training. IBEW electricians also obtain additional qualifications in various continuing education courses due to the ever-evolving technological advancements and safety imperatives that frequently arise within the electrical field.

b. Energy Storage Facilities

The NPRM amends Section 2806.54 to make clear that the rent the BLM such determined for an energy storage facility that is not part of a solar or wind energy development facility would be based on the ROW linear rent schedule. Energy storage facilities may be authorized separately from a solar or wind energy development facility. The BLM requests feedback regarding the valuation of energy storage that is deemed not part of a solar or wind energy generation facility and whether a different method for collecting rent is warranted or appropriate. For such facilities using public lands, such as valuing battery storage based on hours of storage capacity per MWh of energy.

NECA takes the opportunity to respond in support of the ROW linear rent schedule for determining the rent for energy storage facilities that are deem not part of a solar or wind energy



development facility. By attempting to place a charge of a capacity fee for an energy storage facility would not be applicable as there is no energy generation from the facility.

c. Application of Lands for Solar and Wind Energy

The NPRM states, the BLM would have the option to make public lands inside of a designated leasing areas available for non-competitive leasing application while also retaining discretion to continue on with competitive offers from both within and outside of designated areas. The NPRM would allow applicants to proactively submit solar and wind energy applications in the designated leasing areas that may not currently have competitive interest.

NECA supports the option of making lands inside of designated leasing areas available for non-competitive leasing application subject to certain conditions. BLM should consider a non-competitive leasing application if the offer shows a written tri-trade PLA agreement that they intend to union contractors who employ a unionized workforce for solar projects and a PLA agreement for wind projects subsequently.

Additionally, the regulations should require the BLM to provide public notice of a non-competitive lease application within a designated leasing area before proceeding ahead with processing of the non-competitive lease application. If the BLM elects not to utilize a tri-trade PLA agreement for solar or a PLA agreement for wind, then there should a public period of comment to show if any other potential offers are submitted that demonstrate a tri-trade PLA agreement for solar or a standard PLA. If such documents are provided, then the process should be reconsidered.

d. Prioritizing Applications

NECA supports the revisions to Section 2804.35 of the regulations to clarify the purpose of prioritizing solar and wind energy ROW applications to better allocate BLM resources for processing applications that have the greatest potential for approval and development. NECA would recommend that the proximity to transmission infrastructure facilities be added to the list of factors that have a significant effect on the potential for approval and development of solar and wind energy projects on public lands.

Additionally, when prioritizing applications BLM should amend the application process to allow for written PLA agreements detailed above to be submitted in conjunction with the application to ensure authenticity.

e. Conclusion

NECA appreciates your consideration of the recommendations outlined above. We stand ready to work with the Department of Interior to achieve the goals of the Administration and directives Congress has imposed.



Sincerely,

A handwritten signature in black ink, which appears to read "Marco A. Giamberardino". The signature is fluid and cursive, written over a thin horizontal line.

Marco A. Giamberardino, MPA
Senior Vice President
Government and Public Affairs

