

DRAFT 2800 MANUAL SECTION
2806 – Rent

.60 Solar and Wind Energy Authorization Rents, Fees, and Reductions.

A. General. The Federal Land Policy and Management Act of 1976 (FLPMA) provides that right-of-way holders must generally pay fair market value for their use of the use of public lands.¹ The Energy Act of 2020, 43 U.S.C. 3003, provides the Secretary of the Interior with authority to reduce acreage rental rates and megawatt capacity fees if, among other things, the Secretary determines “that a reduced rental rate or capacity fee is necessary to promote the greatest use of wind and solar energy resources.”

To rapidly implement the discretionary authority granted by Congress under the Energy Act of 2020,² the BLM has developed this Right-of-Way Manual Section to modify the rate structure and reduce acreage rent and megawatt capacity fees for wind and solar energy projects authorized on public lands, on an interim basis until regulations are promulgated. Specifically, the BLM finds that the adjustments described below reduce acreage rents and megawatt capacity fees from the rate structures intended to identify fair market value in the BLM’s 2016 Rule, “Competitive Processes, Terms, and Conditions for Leasing Public Lands for Solar and Wind Energy Development and Technical Changes and Corrections” (81 FR 92122). The BLM finds that these adjustments are necessary to promote the greatest use of wind and energy resources, these adjustments apply immediately to all existing and new authorizations for wind and solar energy development projects on public land.

¹ Section 504(g) of FLPMA authorizes the Secretary to collect less than fair market value in certain narrow circumstances. The statute provides that no rental fees shall be collected for rights-of-way for electric or telephone facilities eligible for financing under the Rural Electrification Act of 1936. Additionally, the Secretary has discretion under section 504(g) to authorize rights-of-way at less than fair market value to:

a Federal, State, or local government or any agency or instrumentality thereof, to nonprofit associations or nonprofit corporations which are not themselves controlled or owned by profitmaking corporations or business enterprises, or to a holder where he provides without or at reduced charges a valuable benefit to the public or to the programs of the Secretary concerned, or to a holder in connection with the authorized use or occupancy of Federal land for which the United States is already receiving compensation.

² Pursuant to the Departmental Manual the statutory authority of the Secretary under 43 C.F.R. 3003(b)(2) is delegated to the Assistant Secretary for Land and Minerals pursuant to 109 DM 7 and re-delegated to the BLM Director under 235 DM 1.

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B. Definitions. Provided for the purpose of this manual section only:

- 1) Agency preferred locations: locations on federal public lands identified
 - a) in applicable resource management plans, as preferable for solar or wind energy development. (i.e., *solar energy zones (SEZs)*, *development focus areas (DFAs)*, *renewable energy development areas (REDAs)*, *designated leasing areas (DLAs)*, *development emphasis areas*, *solar emphasis areas*, and *wind emphasis areas*)
 - b) as part of a ROW grant or lease authorization decisions, as determined by the BLM State Director, as being preferable for solar or wind energy development based on a national interest.
- 2) Baseline Adjustments to Acreage Rents and Megawatt (MW) fees: refers to adjustments (to be applied to all existing and new solar and wind energy projects authorized on public land) to per-acre rents and megawatt fees calculated pursuant to the BLM regulations under Title 43-part 2800 pursuant to its 2016 Rule.
- 3) Greatest use of wind and solar energy resources: greatest use of wind and solar resources are those uses on public land, determined by the Department of the Interior or the BLM, that support the United States' national energy security and contribute to net-zero climate goals through renewable energy production on federal land [43 U.S.C. 3004] (E.O. 14008).

C. RENT ADJUSTMENT OPTIONS

- 1) Option 1 - Baseline Adjustments to Acreage Rent and Megawatt (MW) fees.
(See Appendix A, Option 1)
- 2) Option 2 – Nominal Initial Acreage Rent and Transition to Production Fee
(See Appendix A, Option 2)

D. PROJECT SPECIFIC REDUCTIONS

- 1) Interconnect transmission infrastructure
(See Appendix B, #1)
- 2) Agency Preferred Location Reduction
(See Appendix B, #2)
- 3) Battery storage
(See Appendix B, #3)

E. ENHANCING REGULATORY CERTAINTY

An existing right-of-way grant or lease may be amended to effectuate, and maintain the reduced rates, under the Energy Act of 2020 authority, for the term of the ROW grant or lease authorization.

Appendix A

Reviewer Note: under this draft policy, a range of reductions is provided to elicit feedback from the public regarding what level of rate reduction is necessary to appropriately promote the best use of wind and solar resources on public land. The final policy will not include ranges of reduction, but rather will set a specific reduction amount to facilitate financial predictability.

OPTION 1 ADJUSTMENT METHOD

Baseline Adjustments to Acreage Rent and Megawatt (MW) fees.

Preliminary Site Control Rent: per-acre rent (described below) phase-in structured as follows:

Phase	Percentage of Per-acre rent owed
Upon ROW Lease or Grant issuance	25%
Upon Notice to Proceed or 1 year after ROW issuance	100%

Per-Acre Rent Rate Adjustment: The per-acre rent replaces components “A” and “C” from the current calculation formula³ of $A \times B \times C \times D = E$

A - utilize county specific, per-acre land value “non-irrigated land values” by the United States Department of Agriculture (USDA), National Agricultural Statistics Service (NASS), or the statewide average of non-irrigated land values when not available at the county level. (See attached schedule).

C - utilize 3% - 5% rate of return.

Megawatt Capacity Fee Reduction: The MW Capacity fee revises component “R” from the current calculation formula⁴ of: $H \times N \times MWh \times R = MW \text{ fee}$.

R - utilize 2% - 4% rate of return.

Rent Increase Limit: An annual maximum increase of 1.5% - 8% is established.

³ 43 CFR §§ 2806.52(a) & 2806.62(a)

⁴ 43 CFR §§ 2806.52(b)(1) & 2806.62(b)(1)

Appendix A

Reviewer Note: under this draft policy, a range of reductions is provided to elicit feedback from the public regarding what level of rate reduction is necessary to appropriately promote the best use of wind and solar resources on public land. After reviewing comments from the public on these options, the BLM intends to issue a final policy that will not include options or ranges of reduction but will instead provide specific direction that will reduce rates and facilitate financial predictability.

OPTION 2 ADJUSTMENT METHOD

Preliminary Site Control Rent for the initial 2 years, followed-by Generation Fee for term of authorization

Preliminary Site Control Rent: rent of \$3 - \$5 per acre would be charged (pro-rated by calendar year) for up to 1 year following issuance of a Notice to Proceed (NTP). Once generating energy, rent will be applied based on a generation fee as described below. Where a project is under-construction but not energized within 1 year following a NTP, preliminary site control rent will be increased by a factor of 2X. Under a scenario that a project is not generating energy after 2 years following an NTP, preliminary site control rent will again be increased by a factor of 2X.

Generation Fee: once generating energy, ROW rent will be on the basis of 1.75% - 3% of Gross Revenues from annual Megawatt-hour (MWh) production (October 1 – September 30).

Note: ROW grant or lease holder is required to provide project monthly energy production records and annual gross revenue data (October through September). Information must be received by the BLM no later than October 15th annually.

Generation Fee Rent Increase Limit: Generation fee increase will be set (capped) to escalate every 5 years, by no greater than 0.25% - 0.75% of Gross Revenue from annual MWh production.

Appendix B

Reviewer Note: under this draft policy, a range of reductions is provided to elicit feedback from the public regarding what level of rate reduction is necessary to appropriately promote the best use of wind and solar resources on public land. After reviewing comments from the public on these options, the BLM intends to issue a final policy that will not include options or ranges of reduction, but will instead provide specific direction that will reduce rates and facilitate financial predictability.

PROJECT-SPECIFIC REDUCTIONS (only applicable once electric generation commences)

- 1) Interconnect Transmission Infrastructure Reduction
A 50% - 100% reduction may be applied to annual rents/fees (for wind or solar energy projects within agency-preferred locations) to recapture up-to 50% of interconnect transmission infrastructure initial construction costs, not to exceed \$5,000,000.
- 2) Preferred Location Reduction
Between a 20% and 50%, reduction may be applied to annual rents/fees, on a case-by-case basis, for ROW leases or grants sited within agency-preferred locations based on the conservation measures included and implemented in development.
- 3) Battery Storage Reduction
A 25% reduction may be applied to annual project annual rents/fees that include 1 - 3 hours storage capacity equal to 50% of the project capacity.
A 50% rent reduction may be applied to projects that include 1 - 3 hours of storage capacity equal to 100% of the project capacity.