

**Testimony of Mr. Craig Mataczynski
President and CEO of RES Americas
On behalf of the American Wind Energy Association and the Solar
Energy Industries Association
House Committee on Natural Resources
Full Committee Legislative Hearing on H.R. 3534, the CLEAR Act
September 17, 2009**

Introduction

Chairman Rahall, Ranking Member Hastings, members of the Committee, thank you for the opportunity to testify today about H.R. 3534 on behalf of the wind and solar energy industries.

My name is Craig Mataczynski. I am President and CEO of RES Americas. RES Americas is one of the leading renewable energy companies in the country. We have constructed, owned and operated more than 3,400 megawatts (MW) of renewable energy projects since 1997; and have more than 12,500 MW of wind and solar projects currently under development.

I am also testifying as a Board member of the American Wind Energy Association (AWEA)¹, as Chair of AWEA's Siting Committee and as a member of the Solar Energy Industries Association (SEIA)².

Status of the Wind and Solar Energy Sectors

Let me start by giving you a sense of the current scope and potential of renewable energy to power our country, employ Americans in good jobs, and rebuild our manufacturing base.

Last year, wind accounted for 42% of all new generating capacity, second only to natural gas for the fourth year running. Total wind energy capacity is now over 29,440 megawatts, enough to power nearly 8 million homes. Thirty-five states have utility scale wind projects. The U.S. solar industry has demonstrated remarkable growth as well, with the annual rate of PV installations alone growing by more than 80% in 2008. New utility-scale solar power plants have been announced in states ranging from California to Texas, Florida, Pennsylvania, New York and more, and projects totaling more than 10,000 MW are currently operational or under development.

¹ AWEA is the national trade association of America's wind industry, with more than 2,300 member companies, including project developers, manufacturers, and component and service suppliers.

² SEIA is the national trade association of the solar energy industry, representing over 900 member companies. As the voice of the industry, SEIA works to make solar a mainstream and significant energy source by expanding markets, removing market barriers, strengthening the industry, and educating the public on the benefits of solar energy. RES Americas currently is serving as Chair of the Siting & Permitting Work Group.

The renewable sector has seen significant growth in manufacturing as well. Wind turbine and component manufacturers announced, added or expanded over 70 facilities in the past two years. Wind-related manufacturing is occurring in over 40 states. U.S. solar panel manufacturers currently have production capacity in excess of domestic demand, and domestic manufacturing capacity is keeping pace with demand growth. Suppliers of components for Concentrating Solar Power (CSP) plants have also significantly increased their domestic presence in the last two years.

The wind industry employs at least 85,000 workers in the U.S. in good paying jobs. The solar industry supports thousands of small businesses and tens of thousands of employees nationwide.

This is just the beginning.

The U.S. Department of Energy has concluded that achieving 20% of our nation's electricity from wind energy alone by 2030 is feasible with no technological breakthroughs and that achieving that level of deployment would have significant benefits for the environment and our economy. The industry views 20% as a floor for our potential, not a ceiling.

There is also significant potential for growth of solar energy in the United States. A study conducted by the Department of Energy for the Western Governors' Association determined that the seven states in the Southwest have a combination of solar resources and available suitable land to generate up to 6,800 GW of electricity. This compares to today's nameplate capacity for all electricity generation of 1,000 GW.³

Wind and Solar Industries Appreciate Improvements Made from Earlier Draft

With respect to the specifics of H.R. 3534, I want to be clear that renewable energy developers are generally supportive of the existing federal processes for permitting projects. These processes are not perfect; but, the problems that do exist – such as inconsistent implementation of the rules by some field offices, lengthy delays in processing, and inadequate financial resources for the agencies – do not require a major overhaul of the rules. Further, the current Administration is already taking steps to address many of the problems areas.⁴ At the same time, we understand the Committee's interest in reforming the rules for wind and solar to more closely mirror those applicable to other technologies. So, I will spend much of my testimony on recommendations to improve the workability of the overhauls proposed in H.R. 3534 even as our industries have some reservations about those overhauls.

³“Analysis of Concentrating Solar Power Plant Siting Opportunities: Discussion Paper for WGA Central Station Solar Working Group,” M. Mehos, NREL, July 2005

⁴ For example, Secretary Salazar issued a Secretarial Order prioritizing renewable energy development on public lands. FERC and MMS resolved a long-standing dispute over energy regulation on the outer-continental shelf, which allowed the MMS rules governing offshore renewable energy development to be finalized. Secretary Salazar established renewable energy coordination offices. And, the BLM just held an informational conference for field staff in the Western U.S. on wind and solar energy.

I want to begin my discussion of the specific provisions of H.R. 3534 by acknowledging some improvements that were made from an earlier draft version of the bill.

The wind and solar industries greatly appreciate the removal of the provisions requiring mapping of federal lands and the creation of strategic plans that would put potentially broad areas off-limits to renewable energy regardless of whether site specific reviews would reveal no conflicts or concerns.

We also appreciate the addition of a provision to the onshore competitive leasing provisions that allows the Secretary to provide preference during the competitive process to a company that has gone through the expense of putting up a meteorological tower (“met tower”) or another measurement device to collect resource and other data for a given site. This is a key change because without some right to develop a site where a company has spent time and money verifying that the wind or solar resource is viable; there will be little interest in developing on public lands. However, we would urge that this ability to develop be made more explicit by giving the companies that are actively doing resource assessments the right of first refusal to build on a given site. We would also request that this language be further clarified to ensure the resource and other data collected by a company is considered proprietary and is not subject to release to competitors. These are competitive industries and no one wants to give a competitor an edge by turning over expensive data for free.

Finally, we appreciate the expanded grandfathering provisions for both onshore and offshore projects that are intended to ensure prior investments by developers are not lost during the transition to a new system. Though we believe further refinement is necessary in this area and look forward to having discussions with the Committee on this in the future.

At the same time, renewable energy developers continue to have concerns with the bill that I will summarize below. These concerns relate to the following areas:

- Consolidation of energy leasing programs
- Competitive leasing for onshore projects
- Offshore strategic plans and ocean zoning

Consolidation of Energy Leasing Programs

Renewable energy has often been neglected and poorly understood by federal lands agencies. This is changing slowly, and Secretary Salazar’s leadership in this area has been beneficial. The development process, economics and other aspects of renewable energy projects are different than the oil and gas projects with which agency staff are familiar. For example, electricity sold from a renewable generation project is the refined product which means that the levels of royalties available are not going to be at the same level as oil or natural gas because the value of electricity isn’t as high as petroleum products. In addition, renewable energy development does not deplete finite resources.

The wind and solar industries are concerned that the consolidation of all energy leasing into a new office will undermine the Renewable Energy Coordination Offices the Secretary has created to establish and focus expertise on renewable energy permitting. This has the possibility of disadvantaging renewable energy vis-à-vis oil and gas; maybe not with this Administration, but with future ones.

Our industry is also concerned that undertaking this reform at this time will delay the resolution of the large and growing backlog of pending renewable energy applications⁵, as well as complicate the processing of applications by the Minerals Management Service (MMS) under the new offshore renewable energy rule, as staff and managers are forced to devote time to reorganizing.

If you move forward with consolidation, we would respectfully request that you maintain within the new office a separate and adequately sized staff dedicated solely to reviewing and processing renewable energy applications. We would also suggest including legislation along the lines of H.R. 2662, introduced by Rep. Heinrich, to dedicate a portion of the fees paid by renewable energy developers back to Interior to provide a steady stream of funding to improve the processing of additional renewable energy applications.

Competitive Leasing for Onshore Development

Competitive Leasing Generally

Our industries understand the interest in moving all energy sources to the same type of leasing program.

At the same time, there has not been much historical competition for areas in which a given onshore wind or solar developer proposes a project on federal lands. The Bureau of Land Management (BLM) does have the authority to run competitions today, but has largely chosen not to because of the lack of competitive interest.

BLM has run competitive processes for wind energy development a handful of times. These have resulted in the expenditure of significant funds by both BLM and developers but the results have been that no wind projects have been developed on sites where a competition has been held.⁶

⁵ According to a fact sheet accompanying a June 2009 BLM press release, BLM has received 158 solar applications (up from 135 in January 2008) and 281 wind energy applications (up from 150 in January 2008).

⁶ One of the competitions was around 2005 for a parcel in Palm Springs and one was out of the Ridgecrest field office in the 1990s. With respect to Palm Springs, it took a year and a half from the first bid to the awarding of the right to apply to put up a met tower (not even the right to put it up, but the right to *apply* to put it up). And, it took this length of time despite the fact that the Palm Spring office was experienced with wind energy development, and despite the fact that the parcel had previously been developed and decommissioned. The winning bidder still has not been able to get a project constructed on this parcel despite having a signed power purchase agreement (PPA). The Ridgecrest process became so drawn out and complex that it eventually collapsed.

Additionally, the solar industry is even less mature than the wind industry. To date, the BLM has not issued a right-of-way permit for a solar project. While competitive bidding may work for established industries like oil and gas or mining, it may not be appropriate for less mature market entrants like solar.

The industry therefore, recommends that instead, the BLM should focus on improving the process for granting permits to companies with the financial and technical expertise to bring solar projects to fruition.

Also, keep in mind that the BLM has recently adjusted the rental fees paid by wind energy developers to include a royalty calculation of five percent of project revenues. This approximates the current royalties received by private land owners; and, therefore, does not reflect a loss of revenues from federal lands.

We are, also, concerned that moving to competitive leasing will delay renewable energy development on federal lands. Competitive leasing will take enormous government and developer resources to engage in. It will make federal lands potentially less attractive to develop by adding complication and expense to a process that is already difficult and generally more expensive⁷ than developing on private lands.

If the Committee elects to move forward with competitive leasing, we would recommend some additions to the provisions in H.R. 3534 to ensure the process is fair, does not add time to the development process, and results in a more rapid deployment of megawatts.

⁷ Here are some examples to better understand how the cost to develop a wind project on BLM lands compares to private lands:

- The relative cost of BLM rent is generally high relative to private land on lower wind sites, and low compared to private land on high wind sites. This is because the BLM rent is fixed regardless of how much electricity is generated, and private leases are often (though not always) based on a percentage of the revenue paid by the power purchaser. However, most of the very windy BLM sites are already being developed and in the future the less windy sites will be the most common BLM projects, so this cost disparity will become less and less favorable toward developing on BLM land in the future.

- BLM charges 5101 Account Reimbursement fees for yearly administration of the right-of-way beyond the cost of rent. This can add up to more than \$100,000 over the project life, an expense that is not incurred on private land. Secondly, BLM reviews and increases rent every 5 to 10 years, unlike private leases which are fixed at the time of option negotiation, so BLM rent is unpredictable compared to private land rents. Thirdly, BLM typically requires an EIS to satisfy the NEPA process, which is both costly and time consuming. When you add these costs to BLM right-of-ways compared to private land, the costs on BLM land are comparable to private land or higher.

- BLM requires \$10,000 per turbine decommissioning bond, which may be the very highest anywhere in the US, and is above the actual net cost. Previous BLM bonds were \$3,000 per turbine. Private land decommissioning bonding is typically \$0. Since a wind company cannot post a surety bond on BLM rights-of-way, and typically must post cash for the entire life of the right-of-way, this is a time cost of money expense that does not occur on private land.

The Secretary should be required to establish standards that bidders will have to meet to demonstrate they have the development capabilities and financial wherewithal to complete a viable project. The Secretary should require bidders to demonstrate an understanding of the technology they're using and the experience and knowledge to construct the project. This should also require that the bidder be able to demonstrate a history of successfully completing such projects. These recommendations, combined with the due diligence language already in the bill, will work to discourage speculation.

Second, bidding should be done in a single round⁸. This should be accompanied by strict timelines under which the new leasing office is required to act. For example, once a bid is released, bidding should be open for a set period of time, say 60 days, after which the office would be required to announce the winner bidder within 15 days. Timely resolution of the bidding process with strict timelines is the key to any competitive bidding process that seeks to encourage the development of renewable energy projects.

Finally, the bidding should be based on a package of what companies are willing to pay in rental fees prior to a project being operational, the date a project could be placed in service, and the royalties a bidder is willing to pay after the project is operational.

Grandfathering

With respect to grandfathering for onshore projects, currently, the language in the bill applies to projects that have submitted a Plan of Development (POD) or have a met tower or other measuring device in place prior to enactment of the bill. This is an improvement from the earlier draft that just grandfathered projects that had reach the POD phase. However, some companies cannot get met tower right-of-ways (ROWs) from federal agencies in a timely manner, let alone get to the POD stage, due to agency backlogs. One quick example from my company. We've been waiting for over five years to get a met tower lease from BLM for one of our projects. We've spent money doing environmental reviews for the met tower and preparing a POD for the tower. With the existing grandfathering language, despite the money and time we've already spent, we'd be out of luck on this project and would have to bid to continue it.

We believe that additional projects deserve to be grandfathered. Penalizing developers by failing to grandfather them in because of delays attributable to agency backlogs or related inaction would have a chilling effect on development.

We strongly urge the Committee to consider establishing a broader threshold: a date prior to which all projects with pending applications would be grandfathered. We propose grandfathering all projects with applications pending as of the date of enactment of the bill. This would hold harmless those applicants who have filed papers, spent time and money, but may have seen delays in processing for one reason or another.

⁸ BLM used a multiple round bidding process in the Palm Springs case, which is one of the reasons it took 18 months.

Royalties

H.R. 3534 requires wind and solar development to move away from the rental-fee model for renewable energy and toward a royalty-based approach.⁹ The rental fees paid by wind energy developers already incorporate a royalty calculation by BLM of five percent of project revenues. This was raised from three percent by BLM last year.

Under the current system, solar developers pay an annual rental fee based upon a BLM valuation of the permitted land. BLM is currently conducting its valuation for the first solar project anticipated to receive a Right-of-Way permit.

Should the Committee move forward with an explicit royalty process, we would request that there not be any net increase in the amount renewable energy projects pay the federal government, as the current payment levels are consistent with those in place on privately owned lands. As discussed above with respect to how to make a competitive bidding process workable, I believe the best way to accomplish this would be through a competitive bidding process that would establish the current market value for royalties at a particular site in much the same way royalty rates are established for private lands; but does not result in additional impositions of cost or time as part of the process.

We also suggest that to ease the administration of any suggested change over to royalties that they be based on the revenue stream (dollar-per-megawatt-hour basis) for wind development. Royalties for solar development need to consider both megawatt-hour output and permitted acreage. Finally, it would be important to have a fixed royalty for the life of the project at the start so that it could be factored into financing up front. Predictability is critically important for renewable energy projects because all of the capital costs are paid at the outset.

Offshore Wind Energy Development

While RES Americas is not currently building any offshore wind farms, I will share the concerns of AWEA's offshore wind developers with the Committee. The U.S. recently marked the end of a de facto four-year freeze on offshore wind development with the publication of a long-delayed Minerals and Management Service leasing rule for

⁹ The Committee should not underestimate the difficulty of calculating royalties. And, keep in mind that a royalty does not necessarily mean a higher return to taxpayers. It is our understanding that the Palm Springs BLM office was the entity that actually recommended to BLM headquarters that the Bureau move from royalties to rental payments because it was extremely difficult to determine whether the proper royalties were being paid. The paperwork submitted by the generators and the utilities that bought the power was complex and BLM had a lot of trouble understanding it. With rental payments – particularly since BLM increased the payments last December – projects in high wind areas may pay a little less than they would under royalties, but projects in lower wind areas (which are generally the only areas left unclaimed) would be paying more than they would under a straight royalty system. In the competitive process envisioned by H.R. 3534, the level of royalties a bidder is willing to pay will be set by the market. That may or may not be the 5% currently used in BLM's calculation of the rental payments charged to wind projects.

renewable energy projects on the Outer Continental Shelf (OCS). Publication of the rule followed issuance of a comprehensive Programmatic Environmental Impact Statement that was itself two years in the making.

Creation of the strategic plans and ocean zoning envisioned in Title VI of H.R. 3534 adds a new layer of regulation for offshore wind at a time when the ink is barely dry on the latest regulatory framework. Even with the grandfathering language, adding this new process signals that the U.S. is still not ready to commit to a single rulebook for offshore renewable energy development. From the perspective of offshore wind developers and potential investors, including firms that are considering substantial investment in key elements of the supply chain and service infrastructure, there is strong concern about a new process to add a new layer of regulation and delay when the rules of the road were originally just set a few months ago.

Grandfathering

While we appreciate the addition of offshore grandfathering language, we have concerns about the existing thresholds and would like to work with the Committee to find the most appropriate thresholds to ensure the offshore wind industry is fairly treated, investments in manufacturing and services can go forward, and viable projects are not delayed (for example, but not necessarily limited to, those with met towers installed or leases for met towers and those moving forward as a result of state competitive processes).

Marine Spatial Planning

The wind industry is not opposed in principle to ocean zoning, or marine spatial planning (MSP). If properly implemented, MSP could lead to more accurate analyses of potential environmental threats and wiser resolutions of conflicts among users.

However, existing information bearing on the economic viability of offshore wind sites is particularly sparse. The siting of offshore wind turbines depends on detailed physical data, including hub-height wind speed, site-specific geophysical and geotechnical information, and information on wave conditions through the seasons. This information does not now exist on the scale or level of detail that would be required to reach sensible OCS-wide judgments about where offshore wind farms should be sited.

The language as written recognizes the need for additional data but it still directs plans to be created and decisions to be made with admittedly limited facts. The lack of information specific to offshore wind energy development could unnecessarily limit offshore wind projects to areas that are not, in fact, economically viable.

Siting factors relating to human systems and policies add further complexity to any effort to zone for offshore wind projects. Offshore wind projects require access to onshore transmission grid connections and access to markets in which there is public support for renewable energy development (through, for example, renewable electricity standards). An attempt by planners to zone for (and against) offshore wind development without

reference to these (changeable) political and legal factors could confine offshore wind projects to unnecessarily narrow areas that developers cannot pursue due to poor economics.

Conclusion

The wind and solar industries appreciate the Chairman's willingness to make changes to the earlier draft to reflect comments from our sectors on how the bill would impact development. We look forward to continuing to work with interested members and the Committee staff on improving the bill as it moves forward.