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LOUISIANA SOLAR DECOMMISSIONING LAW COMES WITH BIG EXCEPTION FOR UTILITIES

By Lance Collins and Dietrich Hoefner on 07/14/2022
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Louisiana has joined the growing number of states requiring solar producers to provide financial security for clean-up costs associated with shutting down their facilities. The state's decommissioning statute, signed into law last month, imposes a number of end-of-life planning requirements on solar energy producers, but also creates a considerable exemption for regulated utilities.

Below are some key features of the law, which offers a unique approach to the issue. The Louisiana law:

- Allows the solar producer to provide financial security directly to the landowner. (Section 1154(A)(9)(a)) Many laws require solar farms to cover the cost of decommissioning through bonds payable to a state agency. Under the Louisiana law, it will also be acceptable for solar producers to provide "any financial security" directly to the "landowner or lessor" of the relevant property.
- Takes applicants' "compliance history" into account. (Section 1154(A)(9)(b)) In estimating the cost of site closure that must be covered by a solar power generator, the state will consider not just the cost of restoring the property to its previous condition, but also the "assets, debts, and compliance history" of the applicant.
- Limits transfer of ownership. (Section 1154(A)(9)(d)) When a solar facility is sold, the state will not release the seller's bond until the buyer provides a bond or other financial security of its own.
- Requires planning for "disasters." (Section 1154(A)(9)(d)(2)) The law requires applicants to submit plans not just for the closing of a facility at the end of its life, but also for the "closure in the event of a disaster making operation of the power generation facility impossible." This provision makes sense in Louisiana, where hurricanes have impacted energy facilities. It may also provide a model, however, for states in which disaster risks like wildfires and tornadoes are prevalent.
- Requires plans to be updated every five years. (Section 1154(A)(9)(d)(2)) It also requires them to be reviewed and approved by the secretary of the Department of Natural Resources.

This approach appears to be informed by Louisiana's experience in dealing with oil and gas wells abandoned by their owners and operators without proper closure. For the moment, however, the requirements applicable to solar facilities are largely theoretical. That's due to the carve out for regulated utilities. Section 1154(A)(9)(c) states that the requirement to provide financial security "shall not apply to . . . solar power generation facilities that are owned by an electric utility provider regulated by the Public Service Commission or the council of the city of New Orleans," as long as they meet certain conditions. Facilities on land owned by the utility must be able to "demonstrat[e] a decommissioning plan to the

regulator." Facilities on leased land, meanwhile, must guarantee the cost of the decommissioning plan to the lessor; the lease must also provide for decommissioning at the end of the lease or "upon other circumstance that requires closure of the facility."

At least for the moment, the utility exception effectively swallows the rule whole since all five of Louisiana's currently operating solar plants (and most in the planning stage) fall under the exemption. Though the legislation passed unanimously, the breadth of the exemption has caused handwringing, at least among independent solar producers who complain of an uneven playing field.

Also, unlike a similar law in neighboring Texas, the Louisiana law does not allow the cost estimate for decommissioning a plant to be discounted by the salvage value of the plant's materials (except in narrow circumstances). The lack of uniformity on the salvage issue creates regulatory unevenness that poses obstacles to solar developers operating in multiple states. It also reflects, however, the determination of each jurisdiction to regulate in a way that meets its own needs.

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