



## **DECOMMISSIONING LAW FREQUENTLY ASKED QUESTIONS**

Signed by Governor Bill Lee on April 14, 2022, Public Chapter 866 (the “Decommissioning Law”) imposed requirements on parties to “solar power facility agreements” regarding decommissioning obligations and security for removal of “solar power facilities” and the end of their useful life. The Decommissioning Law included requirements that must be present in certain agreements between landowners and owners or operators of solar farms entered into on or after June 1, 2022.

*What is a “solar power facility agreement”?*

A solar power facility agreement is a lease or easement entered into for the purpose of constructing, installing and operating a “solar power facility” that will produce electricity to be consumed off the premises. Under the Decommissioning Law, a “grantee” is a person who leases property from a landowner or holds an easement interest pursuant to a solar power facility agreement.

*Are transmission easements included in the definition of a solar power facility agreement?*

The definition of solar power facility agreement states that the solar power facility located on that real property must generate electricity primarily for use and consumption off the premises. Since a transmission line is not a generating facility, a transmission easement would not likely fall within that definition of solar power facility agreement.

*What is a “solar power facility”?*

A solar power facility generally means a commercial solar farm, including, but not limited to, all solar panels, underground and aboveground electrical lines, transformers, substations, energy storage facilities, meteorological towers, maintenance yards, switchgears, and fences. Solar power facilities do not include solar-generating devices or structures that are less than 10 MWac in size, measured at the point of interconnection. The parties to a solar power facility agreement may elect for the Decommissioning Law to apply to structures that are smaller than 10 MW, but the Decommissioning Law does not automatically apply to those smaller facilities.

*What must a solar power facility agreement include under the Decommissioning Law?*

The agreement must require the grantee to do three things: (1) safely remove the solar power facility from the landowner’s property upon or prior to expiration of the solar power facility agreement, (2) provide the landowner a decommissioning plan, and (3) obtain and deliver financial assurance to the landowner to secure performance of the grantee’s removal and restoration obligations.

*What is a decommissioning plan under the Decommissioning Law?*

A decommissioning plan is a document that the grantee provides to the landowner detailing the grantee’s plan for removing and restoring the landowner’s property to as near as reasonably possible to the condition of the land as of the date that construction commenced on the solar power facility.

*What types of financial assurance may a grantee provide to a landowner?*

A grantee may provide one or more of the following to the landowner as security for the grantee's removal and restoration responsibilities: a surety bond, collateral bond, irrevocable letter of credit, parent guaranty, cash, cashier's check, certificate of deposit, bank joint custody receipt, or any other approved negotiated instrument not described in the list above.

*When is the grantee required to provide the financial assurance to the landowner?*

A grantee is required to provide the landowner financial assurance equal to the decommissioning cost no later than the fifteenth anniversary of the date the solar power facility commences commercial operation. The Decommissioning Law also provides for the following two interim posting dates that can be expressly waived by the landowner in the solar power facility agreement: (1) no less than 5% of the decommissioning cost on the date the solar power facility commences commercial operation; and (2) no less than 50% of the decommissioning cost on the tenth anniversary of the date the solar power facility commences commercial operation.

*Is the salvage value of equipment and materials deducted from the calculation of decommissioning cost?*

Yes. Decommissioning costs are defined as the total estimated cost of removal of the solar power facility and restoration of the landowner's property less the estimated salvage value of the components of the solar power facility as of the date of removal.

*Can a landowner waive the statutory requirements related to decommissioning or decommissioning security?*

Except for the permitted extension of the date financial assurance is required to be posted, the decommissioning requirements cannot be waived in the solar power facility agreement unless the grantee and landowner are affiliated entities.

*Can local governments require or retain decommissioning security in connection with a solar power facility governed by the Decommissioning Law?*

Not if there is a solar power facility agreement in place, because financial assurance required by a local government would add to the requirements contained in the applicable solar power facility agreement. The Decommissioning Law prohibits local governments from imposing removal or restoration obligations or requiring financial assurance securing such obligations that are more stringent or additional to those provided for in the Decommissioning Law. Because the Decommissioning Law requires financial assurance to run only in favor of the landowner under the solar power facility agreement, an additional requirement of financial assurance in favor of the local government is not allowed.

*Can the Decommissioning Law apply to solar power facility agreements entered into prior to June 1, 2022?*

Yes, at the option of the parties. The Decommissioning Law expressly allows for a grantee and a landowner to amend a solar power facility agreement initially entered into prior to the statute's effective date to specify that the rights and obligations found in the Decommissioning Law should govern the amended agreement.

*How is the Decommissioning Law enforced?*

The rights and obligations under the Decommissioning Law are enforced by landowners and not by any local or state government agency. If a solar power facility agreement fails to include the required provisions, a landowner may seek a declaratory judgment adding the mandatory provisions to the applicable solar power facility agreement.