Insights: Alerts

Georgia Joins Regional and National Trend by Enacting State Law to Regulate Decommissioning of Solar Farms

May 6, 2024

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Background and General Provisions

Governor Brian Kemp recently signed House Bill 300 (the "Act"), which amends the Solar Power Free-Market Financing Act of 2015 by adding decommissioning requirements that must be included in a "solar power facility agreement" and requirements to provide financial assurance to ensure such requirements are fulfilled.

It is important to note that the requirements imposed by this legislation are limited to what must be included in a solar power facility agreement (i.e., a lease) and do not impose a direct obligation on either a grantee or a landowner. This legal alert describes the legislation and the requirements for solar power facility agreements entered into or renewed on or after July 1, 2024, and guidance for developers to help comply with the same. This short time frame for implementation means that solar developers must ensure that their leases comply with the Act before entering into new leases after July 1, 2024.

Any attempted waiver of the requirements of the Act is void; however, the decommissioning requirements may be waived or modified through a written, notarized agreement between the grantee and landowner. Any such agreement shall be recorded with the clerk of the superior court of the county where the solar power facility is located. Act provides that "any person who is harmed by a violation of [the Act] shall be entitled to appropriate injunctive relief to prevent further violation of this part." Such broad remedy and use of "any person" would imply that more than the landowner could enforce the act, including local governments and neighboring property owners.

Definitions

In order to understand the Act, it is critical to understand certain definitions in the Act, including:

- 'Solar power facility' means "a solar energy device [excluding those of retail customers], or the integrated collection of such devices, together with any equipment or other personal property and improvements under common ownership that are used to support the operation of such a solar energy device or solar energy devices, including, but not limited to, underground or aboveground electrical transmission or communications lines, electric transformers, battery storage";

- 'Solar power facility agreement' means “any lease agreement for real property in [Georgia] between a grantee and a landowner that authorizes the grantee to operate a solar power facility on the leased property.” It should be noted that this definition is limited to a lease and, therefore, excludes easements, licenses, and owned property;

Decommissioning Requirements

The Act requires a solar power facility agreement to provide that a grantee (i.e., solar developer) is responsible for removing and decommissioning the grantee's solar power facilities from the landowner's property upon termination of the lease in accordance with applicable laws and regulations, including the procedures specified in the Act. Specific requirements of the Act include removal of (i) foundations for each solar energy device, (ii) all cables required for the solar power facility, (iii) overhead power or communication lines installed by the grantee, and (iv) if requested by the landowner, any road constructed on the property by the grantee and all rocks more than 12 inches excavated during the decommissioning or removal of the grantee's solar power facility. In addition, the landowner's property must be returned, as near as reasonably possible, to the same condition as existed before the grantee installed the solar power facility.

A landowner must make a decommissioning or removal request no later than 12 months after that later of (1) the date on which the solar power facility is no longer capable of generating electricity in commercial quantities (but if such failure is the result of force majeure, the solar power facility will not be deemed uncapable of generating electricity if it resumes generating electricity in commercial quantities within 180 days); (2) the date the landowner receives written notice of intent to decommission the solar power facility from the grantee; or (3) the date the solar power facility agreement is terminated.

Requirements for Financial Assurance

The Act also requires a solar power facility agreement provide that the grantee must obtain and deliver to the landowner, and record with the clerk of the superior court of the county where the solar power facility is located, evidence of financial assurance to secure the performance of the grantee's obligation to remove the grantee's solar power facilities located on the landowner's property. The amount of the financial assurance must be at least equal to the estimated cost of removing the solar power facilities from the landowner's property and restoring the property, minus the salvage value of the, plus any portion of the value of the solar power facilities pledged to secure outstanding debt. The grantee is responsible for the costs of obtaining this financial assurance and the costs of determining the estimated removal costs and salvage value, which must be prepared by an independent, third-party professional engineer licensed in Georgia. The grantee must deliver the financial assurance no later than the commercial operations date of the solar power facilities, and must deliver an updated estimate of the removal costs and salvage value of the solar power facilities to the landowner no later than 20 years after the commercial operations date of the solar power facilities and at least once every five years after the commercial operations date of the solar power facilities for the remainder of the term of the agreement. A grantee cannot cancel this financial assurance before the date the grantee completed its obligations to remove the grantee's solar power facilities as required by the legislation, unless the grantee provides the landowner with replacement financial assurance at the time of or before such cancellation.

The Act includes a prohibition on any county or municipal corporation imposing on a grantee who has entered into a solar power facility agreement that conforms to the requirements of the Act financial assurance requirements relating to the removal or decommissioning of solar power facilities.

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