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BENJAMIN BIENVENU
COMMISSIONER
CONSERVATION

DEPARTMENT OF ENERGY AND NATURAL RESOURCES

August 30, 2024

The Honorable Bret Geymann, Chair
House Committee on Natural Resources and
Environment
900 North 3rd St., Box 94062
Baton Rouge, LA 70804

The Honorable Troy Romero, Chair
House Committee on Agriculture, Forestry, Aquaculture
and Rural Development
900 North 3rd St., Box 94062
Baton Rouge, LA 70804

RE: HSR2 - Memorandum to Joint Committee Regulation of Solar Facilities in Louisiana

Dear Chairmen and Committee Members,

This memorandum details the origins, historical developments, and current status of utility-scale solar power facility regulation in Louisiana. Louisiana does not have a comprehensive state-wide regulatory program for solar power generation. During the 2021 regular session, the legislature passed amendments to La. R.S. 30:1154 requiring the Louisiana Department of Energy & Natural Resources (LDENR) to solicit stakeholder input and develop regulations setting forth minimum requirements for property leases for the exploration, development, and production of solar energy. During the 2022 regular session, a broader set of amendments expanded the scope of LDENR's rulemaking authority, directing the Secretary to adopt a permitting process to regulate and assure adequate end-of-life planning for non-exempt solar power generation facilities of 10 acres or greater. The statute expressly limits the scope of the permit to the decommissioning plan and financial assurance:

(D)(1) No person shall construct or operate a solar power generation facility that has a footprint of ten or more acres without holding a permit issued pursuant to the rules and regulations provided for in this Section. A permit issued pursuant to this Subsection shall only pertain to the implementation of the decommissioning plan as provided in Paragraph (2) of this Subsection, and financial security required pursuant to Paragraph (A)(9) of this Section.

In line with these new statutory initiatives, LDENR has made continuous efforts to develop a thorough facility decommissioning regulatory regime—collaborating with other State agencies and municipalities and soliciting feedback from technical experts and stakeholders. For instance, pursuant to Senate Resolution 182 of 2021, LDENR and the Louisiana Department of Agriculture & Forestry (LDAF) held joint hearings to gather testimony on issues and concerns related to solar energy production. A report summarizing the findings, existing laws, and processes associated with solar energy development in Louisiana, as well as a comparison of similar laws in other states, was subsequently submitted to the Legislature (Exhibit A). A key portion of that report provides some helpful background on solar developments:

To bring a utility-scale solar energy installation to production, requires a solar developer to progress along three interrelated but separate paths roughly concurrently. These are 1) land or property acquisition, 2) interconnection to the power grid, and 3) entering into an agreement with a customer to purchase the solar energy to be produced. Failure at any stage

along one of these three pathways means the project cannot reach energy production. Because of the significant economic investment required to progress down these paths and to construct a commercial-scale solar energy installation, construction of such a solar energy installation is exceedingly unlikely without final approvals by the parties and governmental agencies involved along each of these paths.

Land acquisition: a solar developer needs the right to access, construct, and operate a solar energy system on land that is suitable to generate the amount of energy being sought. These rights can be gained by outright purchase of the property or by lease or acquiring other rights of use. Often the agreements for these rights begin as an option to purchase or lease, as the solar energy system cannot be constructed and operated unless the other two paths mentioned earlier are completed. Land is often selected by a developer based upon the cost to develop it for the solar energy installation. This cost is decreased if the property is located near the power grid so as to limit the cost of transmitting the energy to be produced and if it is located on property requiring minimal dirt work or complex engineering. In order to make solar energy installations economic, most projects require significant acreage and thus either large tracts or several smaller tracts adjacent to one another is required. Finally, the developer must find landowners of property in these locations willing to allow development of their property for solar energy generation. For all of these reasons, the land where solar energy projects are likely to be located is limited.

Interconnection into the grid: for most of Louisiana the power grid is overseen and regulated by the Midcontinent Independent System Operator (“MISO”), which must approve interconnection to the power grid by energy generators. This generator interconnection process requires an application that must work its way through three sequential phases, each requiring involved studies and substantial financial investment. A list of proposed generators in the process or “queue” for interconnection can be found on the MISO website. Most generators that apply for interconnection do not complete the process and are therefore unable to connect to the power grid. In the vast majority of cases, failure to receive approval to interconnect means the project is never constructed.

A Customer: agreements with utilities to purchase power from a proposed solar power project are often needed. At the end of the day, a solar energy developer needs to be sure that he can get a customer to pay a price that covers his costs to construct the project, including the price to deliver the power to a customer, and that his project will be profitable. While there may in some cases be options to either sell such solar energy directly to an energy user or sell directly into the grid, most likely, economic considerations require selling solar power to a utility. When a solar energy developer wishes to sell their power to a utility, then such an agreement must be approved by the Louisiana Public Service Commission, the City of New Orleans, or other city/parish governments in the case of publicly owned utilities. When a willing customer at an acceptable price cannot be found or such an agreement cannot be approved by the appropriate governmental entities, the proposed project will not be constructed.

Failure to succeed at any one of the three phases mentioned above means that the solar energy installation will not progress. It is therefore, important to keep in mind that not every proposed solar energy installation project that is trying to acquire property rights or in the MISO queue will be constructed. The vast majority of the proposed solar projects in the MISO interconnect queue will never be constructed. Given the vast upfront cost and need for development to make significant upfront arrangements for the interconnection piece with utilities, it appears that most developments will focus on large tracts of property with favorable locations near existing tie-ins. Therefore, the number of potential site locations for solar development in Louisiana is again reduced.

Information gleaned from the 2021 joint hearings suggested that certain aspects of solar development might be best regulated at the local level. Local considerations such as land use, zoning, spacing tolerances, revenue, and renewable energy demand vary across the state's communities, making localized regulation more appropriate in some cases. To support local regulatory efforts, LDENR partnered with the Center for Planning Excellence and a diverse advisory committee of legislators, parish council members, industry representatives, and attorneys to develop a *Solar Development Toolkit*, which provides local governments with resources and information to develop ordinances in line with local preferences. The toolkit, attached hereto as Exhibit B, includes sample definitions, model zoning standards, and guidelines for implementing and administering local ordinances.

The 2022 amendments to La. R.S. 30:1154 focused primarily on the end-of-life decommissioning of solar power generation facilities. In line with this directive, LDENR issued a formal request for public comment on solar facility decommissioning and financial assurance in January 2022. Based on the input received, a set of draft regulations was developed (see Exhibit C). Since then, LDENR has continued to solicit and receive feedback from a broad range of stakeholders, including landowners, agricultural representatives, solar developers, surety providers, consumer representatives, and members of the Louisiana Public Service Commission.

In recent months, LDENR has also aligned its efforts with Executive Order JML 24-13, which directed a critical review and restructuring of statewide energy and natural resources management. For instance, through Act 727 of the 2024 regular session, LDENR established the Natural Resources Trust Authority (NRTA). The NRTA will function as a financial planning and rulemaking entity, complementing the regulatory functions of the Office of Conservation. Among other responsibilities, the NRTA will focus on the research, planning, and development of financial assurance policies for energy-related projects, including solar developments. Detailed information about the NRTA's origins, functions, and developmental plans is provided in Exhibit D.

Solar project development faces challenges such as land acquisition, grid interconnection, and power purchase agreements. Louisiana's historically low electricity rates—a competitive advantage for traditional energy sources—made it difficult for solar to compete. However, technological advancements and declining solar costs have improved competitiveness within the industry. In recent years, technological advancements, subsidies, environmental concerns, and other market factors have increased industry investment in utility-scale solar developments, which in turn has created the need for broad and calculated regulatory diligence at both State and local levels. Globally, the solar panel manufacturing market is dominated by countries like China, which controls much of the supply chain. Despite U.S. tariffs, China remains a key player, though countries like Malaysia, Vietnam, South Korea, and Mexico have emerged as alternatives. For Louisiana, navigating these global supply chain dynamics is crucial due to the State's reliance on imported solar components. Production concentration in a few countries presents risks such as supply chain disruptions and price volatility, impacting solar project feasibility. Nonetheless, in August 2023, First Solar, an American company, announced an investment of up to \$1.1 billion dollars in a solar panel production facility in Louisiana.¹

Regulating solar power in Louisiana requires a careful balance of multiple complex dynamics, including stakeholder input, State and local regulatory dynamics (including home-rule charter authority), economic and environmental considerations, private property rights, and LDENR's evolving structure. In a related development, local governments are currently seeking an opinion from the Attorney General as to whether the State decommissioning bond requirements preempt parish-level decommissioning regulations. This issue underscores the ongoing complexities of regulatory jurisdiction in solar power development. More importantly, any regulatory efforts must be justified by a viable market within the state to ensure the effective allocation of resources. While LDENR is committed to integrating these factors into the rulemaking process, the market should ultimately help guide regulatory needs. This approach helps prevent

¹ <https://www.opportunitylouisiana.gov/news/first-solar-to-invest-up-to-1-1-billion-to-build-solar-panel-manufacturing-facility-in-acadiana-create-over-700-new-direct-jobs> accessed on September 1, 2024.

an overcorrection that could lead to an overly burdensome regulatory regime, potentially stifling market participation despite technological advancements.

LDENR is actively taking steps to leverage our State's evolving political, economic, and regulatory landscape to implement structural changes that will allow the flexibility necessary to effectively regulate the relatively nascent solar industry. In addition to the creation of the NRTA, LDENR also created an internal Office of Enforcement to oversee industry compliance with energy development regulations—including solar, oil and gas, and water resource utilization. NRTA and the Office of Enforcement will better position LDENR to create and enforce a holistic and comprehensive solar regulatory scheme through a two-phase process.

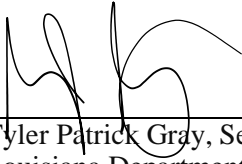
Phase one is the immediate work to finalize regulations setting forth a solar facility permitting process, decommissioning and financial assurance requirements as authorized by La. R.S. 30:1154(D)(1). LDENR is taking short-term measures to develop these regulations on an expedited basis within the procedural timeline required by Louisiana's administrative rulemaking statutes. Executive staff has assembled an internal task force dedicated to the rulemaking effort, and it recently began the process of advertising a new position for a role that will focus on solar regulation. Under current administrative statutes, illustrated in Exhibit E hereto, the minimum duration of the rulemaking process is five months. LDENR aims to finalize a set of draft regulations by October 1, 2024, which would result in final rule adoption as early as February 20, 2025. Based on past experience, however, this earliest possible adoption date is unlikely, and March 20th or April 20th are more likely. LDENR will work with interested parties and members of the Legislature to ensure the rules take into account all necessary considerations.

Phase two will involve an expansion of LDENR's regulatory oversight as envisioned by the joint House committee of Natural Resources and Environment and Agriculture, Forestry, Aquaculture & Rural Development at the hearing on House Study Request 2 on August 22, 2024. Through coordination with the Legislature, subject matter experts, and other State institutions such as the Public Service Commission, Louisiana Department of Wildlife and Fisheries, and the Louisiana Department of Environmental Quality, LDENR will be well-positioned, upon enactment of these additional statutory authorities, to plan and implement a comprehensive regulatory scheme to ensure responsible and sustainable solar infrastructure development statewide.

LDENR points out portions of the language of Act 555 of 2022 (attached as Exhibit F hereto) that likely need to be further reviewed in future legislative action. Notably, Act 555 did not expand LDENR's solar enforcement authority found at La. R.S. 30:1154(F) beyond the authority to enjoin violations of the *regulations* adopted pursuant to the Act. Further consideration of whether and how salvage value may be taken into consideration when calculating the estimated cost of decommissioning is likely warranted. The differences in the defined terms "solar devices" and "solar power generation facilities" and their uses within statute further complicate the rulemaking process. Additional statutory authority surrounding how the State will pay for or procure the decommissioning of abandoned solar power generation facilities could be helpful. Consideration of creating site-specific accounts or clearer authorization of a statutorily dedicated fund for holding the financial assurance is likely warranted. Finally, clearer statutory authority for on-site inspections of solar power generation facilities is worth considering.

LDENR is also currently reaching out to stakeholders to provide updates and seek input. In particular, we wish to highlight that LDENR is updating the Louisiana Police Jury Association, Louisiana Municipal Association, and their members of where things stand and to seek input in its rulemaking process. Further, LDENR offers its availability to advise and assist localities with oversight as we work to finalize our rules.

LDENR appreciates the time, input, and consideration from all members of the joint-committee, and we look forward to a constructive relationship moving forward. We remain focused on transparency and public involvement, and we encourage stakeholders to continue providing feedback throughout the rulemaking process.



Tyler Patrick Gray, Secretary
Louisiana Department of
Energy and Natural Resources

Enclosures:

Exhibit A – LDENR Report Pursuant to Senate Resolution 182 of 2021;
Exhibit B – Solar Development Toolkit, Center for Planning Excellence;
Exhibit C –Draft Solar Decommissioning and Financial Assurance Regulations;
Exhibit D – DENR Report re: the Natural Resources Trust Authority;
Exhibit E – Administrative Rulemaking Timeline; and
Exhibit F – Act 555 of 2022