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Trends in Decommissioning and Restoration Requirements

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I. INTRODUCTION

With renewable energy projects comprising an ever-increasing share of the nation's energy generation mix, the question of what becomes of these projects at the end of their useful life is likewise increasing in importance. Given the relatively young age of utility-scale wind and solar projects, there are very few examples of utility-scale projects that have reached the end of their useful life and required full-scale decommissioning. Notwithstanding the foregoing, many states, counties, landowners and renewables developers have anticipated end-of-project life issues and, therefore, have created laws, regulations or crafted contractual provisions to address the decommissioning of renewable energy projects and restoration of the land upon which they are sited. This paper will examine the current trends in decommissioning and restoration requirements for renewable projects in the various agreements in which such provisions may be found.

II. SOURCES OF DECOMMISSIONING AND RESTORATION REQUIREMENTS

Decommissioning and restoration requirements may come from several sources. This includes state laws or regulations, county ordinances, decommissioning agreements and land control agreements governing the renewable energy project. This section will explore each of these sources in more detail.

a. State Laws

Many states have passed laws regulating renewable energy projects, including setting requirements for the decommissioning of these projects and the restoration of the land upon which they are located following the end of their useful life. Some states treat wind energy and solar energy projects differently. For example, Texas has laws that were passed in 2019 that govern the decommissioning and restoration for wind projects¹, however, similar laws

¹ See TX Util § 301.0001 (2019) et seq.

that govern solar projects did not take effect until 2021.² Similarly, Oklahoma has fairly robust statutes regulating the decommissioning of wind projects but does not have any similar statute for solar.³

Some states, including Texas, regulate decommissioning and restoration of renewable energy projects by mandating provisions that must be included in the land control agreements. The Texas wind statute, for example, requires that each wind lease include certain minimum standards for removal of the wind facilities, restoration of the land, and posting of a security to ensure that the funds are available for the successful decommissioning of the project in the event the project owner fails to decommission.

Illinois also has laws in place to regulate the decommissioning and restoration of renewable energy projects but takes a somewhat different approach. Instead of mandating certain provisions that must be included in a wind or solar agreement, Illinois requires a project owner to enter into an “Agricultural Impact Mitigation Agreement” (AIMA) with the Illinois Department of Agriculture.⁴ The AIMA includes detailed standards that govern the construction and decommissioning of wind and solar projects. However, the AIMA does allow a renewable energy project developer and a landowner to supersede the requirements of the AIMA by agreement within the land control document, except for a select number of provisions in the AIMA that are mandatory.⁵

Other states have turned to an administrative law regime to regulate the decommissioning of renewable energy projects. For example, in 2020, New York passed the “Accelerated Renewable Energy Growth and Benefit Act” which, among other things, established the Office of Renewable Energy Siting (“ORES”) to help provide an expedited permitting process for wind or solar projects with a nameplate capacity of 25 megawatts or

² See, e.g., “Texas Legislature Expands Decommissioning Requirements to Solar Power Facility Agreements with Enactment of SB 760”; Pier, J. Hayenga, K. & Pullin, B.; Aug. 24, 2021; emergingenergyinsights.com

³ 17 OK Stat § 17-160.14 (2020) & 17 OK Stat § 17-160.15 (2020)

⁴ See 505 ILCS 147/10 et seq.

⁵ See Paragraph B, “Conditions of AIMA” of form “IDOA Wind Farm AIMA” accessible at the Illinois Department of Agriculture’s website, [Agricultural Impact Mitigation Agreements - Agricultural Impact Mitigation \(illinois.gov\)](https://www.idoa.gov/Agricultural-Impact-Mitigation-Agreements-Agricultural-Impact-Mitigation).

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