

## NOTICE OF INTENT

### Department of Energy and Natural Resources Office of the Secretary

#### Regulation of Solar Power Generation Facilities (LAC 43:I.Chapter 51)

The Department of Energy and Natural Resources, Office of the Secretary, in accordance with the Administrative Procedure Act, R.S. 49:950 et seq., and under the authority of R.S. 30:1154 and Act 555 of the 2022 Regular Legislative Session, proposes to adopt LAC 43:I.5101-5121 to require permits to construct and operate solar power generation facilities and regulations governing the decommissioning and required financial security of such facilities.

#### Title 43

#### NATURAL RESOURCES

#### Part I. Office of the Secretary

#### Subpart 5. Renewable Energy

#### Chapter 51. Solar Power Generation Facilities

#### §5101. Definitions

A. The definitions provided in this Section shall have the following meanings within this Chapter.

*Abandoned*—a solar power generation facility that has not generated power for 12 consecutive months, except for good cause as determined by the department.

*Construction*—the installation of solar devices, equipment, and other materials or structures necessary for the operation of a solar power generation facility. Construction does not include the performance of preliminary activities to prepare the site, such as clearing, grading, testing, and surveying. This definition is adopted solely for the purpose of implementing the requirements for permits in this Chapter and is not intended to be interpreted as, align with, or affect the meaning of “construction” under any other federal or state law or regulation.

*Decommission*—the minimum requirements for the removal and recycling or disposal of all solar devices, integrated equipment and materials of a solar power generation facility, and transmission and distribution infrastructure traversing from the facility to the point of interconnection.

*Decommissioning Activities*—is the collective performance of removal activities and restoration activities.

*Department*—the Department of Energy and Natural Resources, or its successors.

*Designated Operator*—any person with control or management of activities of a solar power generation facility and who, on behalf of all responsible parties, is primarily responsible for complying with all registration, permit, and financial security requirements set forth in this Chapter.

*Effective Date*—the date of final promulgation of these rules and regulations.

*Facility Footprint*—the area within the perimeter of a solar power generation facility utilized by solar devices and integrated equipment up to, but not including, any fencing, setback, buffer, greenspace or similar requirements under

state law or regulation, local ordinance, or contractual agreement(s).

*Force Majeure Event*—a fortuitous event beyond the control of the designated operator, responsible party, landowner, or any combination thereof, that, based on the specific circumstances involved, ceases or unreasonably delays decommissioning activities. A force majeure event may include, without limitation: a major storm, flood, or similar natural disaster; federal or state order; significant supply chain disruptions; or other similar unforeseen events where timely and reasonable measures would not have avoided or mitigated the resulting impact.

*Material Change*—any change to the information provided in a permit application, or upon which an active permit is based, that may reasonably affect the department’s evaluation of a facility’s compliance with this Chapter or any conditions of the permit to be issued. Material changes include, but are not limited to, a change in the designated operator or any responsible party; a change in the ownership or leasing structure of the facility site; a change to the facility’s capacity, acreage, or other configuration that increases or decreases the footprint by more than 10 percent; a change to the location of solar devices or the point of interconnection; a change in the form, provider, or amount of financial security; change to the decommissioning plan; or a change of the decommissioning cost estimate by 10 percent or more.

*Person*—any natural person or legal entity capable of owning property, entering into legally binding agreements, or taking on legal obligations under contract or law.

*Removal Activities*—the removal, recycling, and disposal of all solar devices, integrated equipment and materials making up the solar power generation facility, and any transmission and distribution infrastructure traversing from the facility to the point of interconnection.

*Responsible Party*—any person or legal entity that owns, in whole or in part, a solar power generation facility, is the lessee of the land on which the facility is located, or both.

*Restoration*—returning the site on which a solar power generation facility was situated to its reasonable pre-construction condition or an alternative condition as agreed upon between the landowner and responsible party or designated operator in compliance with all applicable governmental regulations, procedures, and standards.

*Restoration Activities*—reconditioning the land where a solar power generation facility was sited such that the land, to the extent practicable, resembles its condition prior to construction and operation of the facility, or the alternative condition agreed upon between the landowner and responsible party or designated operator. The secretary may consult with the department and other state or federal agencies to determine the type of restoration activities needed to reasonably restore the land, which may include, but are not limited to, grading, filling, planting native vegetation, and reforestation.

*Salvage Value*—the actual or estimated scrap value of the intact and raw materials and components once removed from the solar power generation facility and made available for sale at market value.

*Secretary*—the secretary of the department.

*Solar Device*—any photovoltaic, thermal, or other technology associated with the collection of solar energy to generate electricity, including but not limited to panels, arrays, and integrated wiring.

*Solar Power Generation Facility (or “Facility”)*—all solar devices and the integrated equipment and other materials necessary for or incidental to the operation of solar devices located within the facility footprint to distribute, transfer, or store electricity, including but not limited to concrete or metal foundations and structures; electrical transformers, inverters, and controllers; above- and underground wires and conduit; energy storage mediums; telecommunications equipment; roads; meteorological stations; switchyards; maintenance yards; and security fencing.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:1154.

HISTORICAL NOTE: Promulgated by the Department of Energy and Natural Resources, Office of the Secretary, LR 51:

### **§5103. Applicability**

A. These rules apply to all ground-mounted solar power generation facilities, or parts thereof, with a facility footprint of 10 acres or more located in Louisiana. The facility footprint may be comprised of a single contiguous tract or multiple non-contiguous tracts.

B. Nothing in this Chapter shall be construed as:

1. limiting the authority of the local government or the parties to a lease or other contractual agreement to establish and implement requirements and obligations not specified in this Chapter;

2. authorizing local government to adopt and enforce rules for facilities that are more restrictive than or inconsistent with the rules set forth in this Chapter;

3. limiting the extent to which responsible parties and designated operators of facilities must comply with all other relevant federal, state, and local laws, rules, ordinances, and permit conditions; and

4. requiring the department to enforce and monitor compliance with laws, regulations, and standards of other federal or state agencies.

C. These rules are effective on and after the effective date.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:1154.

HISTORICAL NOTE: Promulgated by the Department of Energy and Natural Resources, Office of the Secretary, LR 51:

### **§5105. General Requirements for Solar Power Generation Facilities**

A. A solar power generation facility shall at all times have a designated operator, who shall be authorized by all responsible parties as the person responsible for compliance with all requirements of this Chapter and who acts on behalf of all responsible parties.

B. The designated operator of a facility shall register with the department as set forth in Section 5107.

C. No person shall begin construction or operate a facility without obtaining a permit issued by the department pursuant to Section 5109, unless the facility is exempt as set forth in Section 5119. A permit issued pursuant to this Chapter shall pertain to the implementation of a decommissioning plan and the financial security required by

Sections 5113 and 5115. The permit applies to all stages of a facility’s construction and operations; separate permits for each stage are not required. When feasible and upon request, the department may combine the permit application and requirements under this Chapter with other permit requirements under this Subpart into a singular permit to streamline regulatory compliance under this Subpart.

D. Permits issued under this Chapter may be transferred during the development and operation of the facility. The designated operator shall notify the department in writing within 60 days after transferring the permit.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:1154.

HISTORICAL NOTE: Promulgated by the Department of Energy and Natural Resources, Office of the Secretary, LR 51:

### **§5107. Registration**

A. The designated operator of a solar power generation facility shall register with the department before submitting a permit application to begin construction or commence operation of the facility. For facilities under construction or in operation before the effective date of these rules, the responsible parties shall appoint a designated operator, who shall register with the department within 180 days of the effective date.

B. The designated operator shall submit to the department a completed registration form that includes:

1. the designated operator’s name and contact information, and, if applicable, its federal employer identification number and a copy of its detailed business record from the Secretary of State’s website; and

2. the name, location, footprint, capacity, and status of the facility to the extent practicable at the time of registration.

C. The designated operator shall renew its registration and verify the information required therein by January 31 of each year until decommissioning activities are complete. The designated operator shall notify the department in writing within 60 days after any sale, transfer, or assignment of any responsible party’s interest in a facility.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:1154.

HISTORICAL NOTE: Promulgated by the Department of Energy and Natural Resources, Office of the Secretary, LR 51:

### **§5109. Permit Requirement**

A. As a prerequisite to the permit application, the designated operator of a proposed solar power generation facility shall provide written notice to all adjacent landowners and the police jury or council of each parish where the proposed facility will be located. The notice shall include a general description of the proposed facility, including its location, the projected facility footprint and capacity, and the location of all electric transmission and distribution infrastructure related to interconnection of the facility to the electrical grid.

B. The designated operator of a facility shall submit an administratively complete permit application to the department in advance of construction. The designated operator of a facility that has commenced construction or is in operation before the effective date of these rules shall have one year from the effective date to submit an administratively complete permit application. An administratively complete permit application shall include:

1. a copy of the designated operator's completed registration form;

2. a completed permit application form adopted by the secretary that includes:

a. the name, mailing address, email address, and phone number of each responsible party and, if applicable, the federal employer identification number and a copy of the detailed business record of each party from the Secretary of State's website; and

b. the facility's projected capacity, total number of acres within the facility footprint and of the entire project, and expected lifespan;

3. a detailed and labeled map of the facility that includes, to the extent practicable, the location of all solar devices, the dimensions of the facility footprint, and any setback, barrier, or buffer;

4. a decommissioning plan prepared in accordance with all requirements of this Chapter;

5. a description of the financial security to be provided prior to construction of the facility, payable to the department in an amount and form acceptable to the secretary, and due to the department before the permit is issued;

6. if the immovable property where the facility is to be constructed and operated is subject to a lease or other contractual agreement conveying the right to construct and operate the facility:

a. the name, mailing address, email address, and phone number of each lessor or grantor; and

b. a copy of all agreements or notices of lease conveying rights to construct or operate the facility recorded in the public records;

7. a sworn affidavit signed by the designated operator certifying complete compliance with Subsection (A), and a copy of each notice issued in accordance therewith;

8. payment to the department of the application fee and application processing fee required in Section 5121; and

9. any other information required by the department for issuing permits under this Subpart or that is relevant and reasonable to implement this Chapter.

C. Within 60 days of receipt, the department shall review each permit application and issue written notice of its findings to the designated operator as set forth below.

1. If the department finds that the application meets all requirements of this Chapter, the department shall issue a written notice to the designated operator certifying that the application is administratively complete.

2. If the department finds that the application is not administratively complete, the department shall issue a written notice to the designated operator identifying all missing or deficient information required for approval. The designated operator shall address and remedy each such deficiency within 60 days after receipt of the notice. Upon request and a showing of good cause by the designated operator, the department may extend the 60-day submission deadline. Failure to correct or provide the information identified in the notice within the applicable deadline shall constitute abandonment of the application process. Abandonment shall not prejudice the right of a designated operator to reapply for a permit under this Chapter or Subpart.

D. Within 30 days of issuing written notice of completion to the designated operator, the department shall publish the notice of completion on the department's website, in the state journal, and in the journal of each parish where the proposed facility will be located with instructions on submitting comments or a request for a public hearing regarding the decommissioning plan and financial security proposed in the permit application. The department will provide a copy of such publication to the police jury or council of all parishes in which the facility is located, the Department of Agriculture and Forestry, and the Department of Wildlife and Fisheries, with instructions on how to view the application. The publication shall specify a reasonable deadline by which all public comment(s) and request(s) for public hearing must be submitted.

E. The department, in its discretion, may hold a public hearing concerning the decommissioning plan and financial security proposed in an administratively complete permit application. Each hearing shall be conducted solely to acquire information and afford the opportunity for public input on the information submitted in the permit application.

1. If the secretary elects to hold a public hearing, the department shall notify the designated operator, the affected parish(es), and all persons who requested a hearing. The department shall advertise notice of the hearing on its website, in the state journal, and in the journal of each affected parish at least 30 days before the hearing date.

2. If the secretary determines that no hearing will be held, the department shall notify the requesting party of the decision.

F. The designated operator shall update the permit application with the department within 14 days after any material change of the information therein. The department may suspend or revoke an active permit upon a finding that a material change occurred, but was not reported to the department, before permit issuance.

G. The department shall issue a final permit decision to the designated operator no later than 30 days after the public comment deadline or date of the public hearing, whichever occurs later. The department shall publish notice of its decision on its website and to any person that submitted a comment or requested notice.

H. A permit issued by the department pursuant to this Chapter shall expire within five years of the date of issuance, unless construction of the facility has commenced. The designated operator may request an extension of the expiration date by providing the department with written notice that explains the circumstances for the delay and shows good cause for granting the request.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:1154.

HISTORICAL NOTE: Promulgated by the Department of Energy and Natural Resources, Office of the Secretary, LR 51:

#### **§5111. Generation Reporting Requirements**

A. If the designated operator has elected to post the required financial security in the form of cash payments in accordance with Section 5115(C)(3), the designated operator shall submit quarterly production reports to the department with records itemizing the amount of electricity in megawatt-hours (MWh) generated by the solar power generation facility, both since the prior reporting period, if applicable, and on aggregate since commencement of operations.

B. Each production report required by Subsection (A) shall be submitted by the designated operator no later than 30 days after the end of each calendar quarter.

C. The quarterly production reporting schedule for the calendar year is: for the period from January 1 through March 31, due by April 30; for the period from April 1 through June 30, due by July 31; for the period July 1 through September 30, due by October 31; and for the period October 1 through December 31, due by January 31.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:1154.

HISTORICAL NOTE: Promulgated by the Department of Energy and Natural Resources, Office of the Secretary, LR 51:

### **§5113. Decommissioning Requirements**

A. All solar power generation facilities shall be decommissioned in accordance with this Chapter, except those exempt pursuant to Section 5119. Decommissioning shall include all removal activities and restoration activities unless otherwise provided herein.

B. Each facility shall be decommissioned within 18 months after its final day of power generation. The designated operator shall notify the department in writing within 30 days after the facility's final day of power generation.

1. A facility shall be presumed to have reached its final day of power generation and considered abandoned if the facility has not generated power for 12 consecutive months. A responsible party, designated operator, or landowner may rebut the presumption by providing written notice to the department showing good cause therefor and, if applicable, providing a proposed timeline for recommencement of power generation.

a. If the department determines that good cause was shown, it shall issue a written finding regarding the status of the facility and, if applicable, establish a deadline to comply with the rules of this Chapter.

b. If the department determines that good cause was not shown, it may order the responsible party or designated operator to recommence power generation or proceed with decommissioning. If no action is taken within 30 days of the order, the department may commence decommissioning in accordance with the rules of this Chapter.

2. If a force majeure event unreasonably hinders or prevents decommissioning within 18 months of the facility's final day of power generation, the designated operator shall notify the department in writing within 30 days after the event. The notice shall provide a detailed description of the nature of the event, the anticipated duration of the delay, an estimated timeline for resuming decommissioning activities, and any documentation supporting the inability to comply with the applicable deadline. If the department determines that the circumstances warrant an extension, it shall specify a reasonable deadline for compliance to the designated operator in writing. The department may order the designated operator to submit one or more written reports illustrating good faith efforts to resume decommissioning in accordance with the deadline.

C. Decommissioning Plan. A facility's decommissioning plan shall comply with the following requirements:

1. Preparation. The plan must be prepared, signed, and sealed by a professional engineer who is licensed to do business in Louisiana.

2. Facility Description. The plan shall include the following information and any other information reasonably required by the department regarding the subject facility:

a. the location of the facility, the total number of acres within the facility footprint, the expected life of the facility, and the facility's megawatt (MW) capacity for generation and battery storage, and;

b. an itemized inventory of all solar devices, equipment, and component parts used or planned to be used in the facility's operations;

c. a detailed map of the facility footprint that illustrates the anticipated or actual location of all solar devices, equipment, and component parts used or planned to be used in the facility's operations; all routes of ingress and egress to a public road; and all applicable setback plans; and

d. a description of the historical and pre-development use(s) of the land and all site work performed or planned to be performed thereon.

3. Decommissioning Schedule. The plan shall include a statement of the anticipated sequence of removal activities and restoration activities and the anticipated period of time needed to complete them.

4. Decommissioning Activities. The plan shall include a detailed statement regarding the anticipated labor and equipment needed to complete the required removal activities and restoration activities.

5. Waste Management. The plan shall identify all solar devices, equipment, component parts, and other materials making up the facility that may be considered hazardous wastes and provide a summary of how they will be properly disposed of or recycled in accordance with applicable laws and regulations.

6. Landowner's Preferences. If applicable, the plan shall include the information required in Subsection (E) to request a full or partial exemption from the decommissioning activities required herein.

7. Decommissioning Cost Estimate. The plan shall provide an itemized schedule estimating, to the extent practicable, all costs necessary for or related to decommissioning as required by this Chapter. The estimate may be adjusted as provided in Subsection (D) throughout the facility's operational life and should include, if applicable, the landowner's preferences in accordance with Subsection (E). The decommissioning cost estimate shall include the following in an itemized format:

a. the gross cost of all decommissioning activities, including all related labor, materials, and equipment;

b. the salvage value of the solar devices, integrated equipment, and other materials associated with the facility; and

c. the net decommissioning cost, calculated as the difference between the gross cost and the salvage value.

d. If the financial security instrument is a performance bond, an irrevocable letter of credit, or both, a contingency rate, which is an increase of the gross cost by a percentage determined by the department, shall be added to the net decommissioning cost. The contingency rate accounts for:

i. estimated future inflation until the cost estimate is revised in accordance with Subsection (D), not to exceed two percent per annum; and

ii. the margin of error inherent in estimations and allows for flexibility in responding to unexpected decommissioning costs.

8. Financial Security. A statement identifying the financial security option chosen by the designated operator to secure the cost of all decommissioning activities.

9. Emergency Plans. A statement of committed assurance that the designated operator will establish an emergency plan in conjunction with local authorities.

D. The decommissioning plan and cost estimate shall be revised and submitted to the department every five years on or before the anniversary date of the permit's issuance and within six months following any modification to the facility that is estimated to increase or decrease the cost of decommissioning by 10 percent or more. The revised decommissioning plan shall be prepared in accordance with Paragraph (C)(1) and include all relevant adjustments to the cost estimate and the salvage value estimate.

E. A facility that is under construction or operating prior to the effective date and has either provided a decommissioning plan or entered into a decommissioning agreement with the landowner, local police jury or council, or both may use the existing plan or agreement in its permit application. However, the designated operator must submit revised plans in accordance with Subsection (D) that complies with the requirements set forth in Subsection (C).

F. The secretary may grant an exemption from the decommissioning activities required in Subsection (A) upon a showing that the owner(s) of the land where the facility is situated have formally authorized decommissioning activities less than, or alternative to, those required in Subsection (A).

1. To qualify for the decommissioning exemption, the designated operator shall submit a request to the secretary that includes the following information:

a. a detailed written description of the alternate decommissioning plan;

b. a written document, signed by all affected landowner(s) and two witnesses, evidencing unequivocal consent by the landowner(s) to the alternate decommissioning plan;

c. written justification for the exemption, including but not limited to any potential economic, environmental, or personal benefits to the landowner and neighboring tracts of land;

d. a detailed written description and illustrative map(s) evidencing the condition of the land after the alternative decommissioning activities; and

e. any other relevant information requested by the secretary to make a determination.

2. The department shall review the request to determine whether the proposal would result in any adverse impacts that would impede compliance with this Section. The secretary shall issue a written notice approving, rejecting, or modifying the alternate decommissioning proposal within 45 days of receipt. If public comments are requested, notice of the secretary's decision shall be issued within 30 days following the close of the public comment period. The designated operator may modify the facility's decommissioning plan and financial security instrument to reflect the approved or modified decommissioning plan.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:1154.

HISTORICAL NOTE: Promulgated by the Department of Energy and Natural Resources, Office of the Secretary, LR 51:

#### **§5115. Financial Security Requirements**

A. Prior to construction, the designated operator of a solar power generation facility shall establish and submit financial security to the department in an amount that will ensure sufficient funds are available for all decommissioning activities in compliance with this Chapter and R.S. 30:1154(A). The financial security required under this Section shall secure the cost of decommissioning and shall be callable in accordance with R.S. 30:1154(A).

B. Acceptable forms of financial security are limited to one or a combination of the following instruments:

1. performance bond;
2. irrevocable letter(s) of credit; and/or
3. cash payments to the department.

C. The designated operator shall meet the financial security requirement of this Section according to the following requirements:

1. Performance Bond. Submitting to the department a performance bond in an amount equal to 100 percent of the gross decommissioning cost estimate as set forth in Section 5113(C)(7). The performance bond must name the department as the beneficiary. The department will not release the bond until it receives proof that the facility was fully decommissioned as required by this Chapter or received a replacement bond as provided herein. To ensure that the performance bond is properly maintained, the designated operator shall provide the department with written notice at least 120 days before the expiration of the existing bond. The designated operator must submit a replacement performance bond consistent with the requirements of this Chapter no later than 30 days before the expiration of the existing bond. Failure to provide a replacement performance bond before this 30-day period shall be deemed a violation of these rules and subject the designated operator to revocation of the facility's permit, the calling of the performance bond, and any other remedy authorized by law.

2. Irrevocable Letter(s) of Credit. Submitting to the department an irrevocable letter(s) of credit that equal to 100 percent of the gross decommissioning cost estimate as set forth in Section 5113(C)(7). The letter(s) of credit must name the department as the beneficiary. The department will not release the letter(s) until it receives proof that the facility was fully decommissioned as required by this Chapter or received a replacement letter(s) of credit as provided herein. To ensure that the letter(s) of credit is properly maintained, the designated operator shall provide the department with written notice at least 120 days before the expiration of the existing letter(s). The designated operator must submit a replacement letter(s) of credit consistent with the requirements of this Chapter no later than 30 days before the expiration of the existing letter(s). Failure to provide a replacement letter(s) of credit before this 30-day period shall be deemed a violation of these rules and subject the designated operator to revocation of the facility's permit, the calling of the letter(s) of credit, and any other remedy authorized by law.

3. Cash Payments. Making cash payments to the department each calendar quarter, as referenced in Section 5111, based on the amount of MWhs generated by a facility.

The contribution rate, or fixed dollar amount, of cash payments per MWh shall be determined by the Natural Resources Trust Authority. Upon receipt of proof that the facility was fully decommissioned as required by this Chapter, a certain percentage of the amount paid, as determined by the Natural Resources Trust Authority, shall be returned to the designated operator and the remainder shall be used by the department to decommission facilities that are abandoned or have not been decommissioned in accordance with this Chapter.

D. During a facility's operational life, the amount of financial security required by this Chapter shall be adjusted by the department to conform to the facility's revised decommissioning plan in accordance with Section 5113(D).

E. The salvage value of solar devices, integrated equipment, and other materials associated with a facility may be deducted from the gross decommissioning cost estimate during the bankruptcy of the designated operator if the designated operator provides the department with a lien of first priority in an amount equal to the salvage value as itemized in the decommissioning plan, and the department determines the salvageable materials are available during decommissioning.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:1154.

HISTORICAL NOTE: Promulgated by the Department of Energy and Natural Resources, Office of the Secretary, LR 51:

#### **§5117. Enforcement**

A. The submission of an administratively complete permit application shall serve as an acknowledgment and agreement by the designated operator, responsible parties, and landowners that the department, upon proper notice and identification, may enter the immovable property where the solar power generation facility is located at reasonable times for purposes of site inspection and decommissioning activities.

B. Failure of the designated operator to comply with all requirements set forth in this Chapter, after notice and opportunity to cure, may result in the department taking appropriate enforcement actions, including but not limited to the non-issuance or revocation of a facility's permit and, pursuant to R.S. 30:1154(F), the secretary may enjoin the designated operator or a responsible party for violating any regulation set forth in this Chapter.

1. The department shall send notice of noncompliance to the designated operator or all responsible parties by certified mail, return receipt requested, that sets forth the nature of the violations, the actions necessary to correct the violations, the date by which corrective actions should be taken and completed, and the department's intended actions upon failure to correct the violation.

2. The designated operator and all responsible parties agree that a violation may be enforced, restrained, corrected, or abated, without limitation, by any such judicial remedy, without the necessity of the department proving irreparable harm or furnishing bond or other security and with the department, should it prevail in whole or in part, being entitled to recover reasonable attorney's fees and costs.

C. If the department determines a facility has not been decommissioned in accordance with this Chapter, the department shall call upon the financial security instrument to decommission the facility.

1. Where the financial security instrument(s) is a performance bond, an irrevocable letter(s) of credit, or a combination thereof, and the instrument(s) is insufficient to fund the decommissioning activities fully, the department may seek reimbursement from the designated operator or any responsible party for funds expended by the department to complete decommissioning activities.

2. Where the financial security instrument are cash payments, and the payments allocated by the Natural Resource Trust Authority for decommissioning the facility are insufficient to fully fund the decommissioning activities, the department may seek reimbursement from the designated operator for any funds expended by the department to complete decommissioning activities.

3. Where the department holds a lien of first priority for the salvage value of the solar devices, integrated equipment, and other materials associated with a facility, the landowner shall permit the department to enter the immovable property; upon proper notice, identification, and at a reasonable time; to access and retrieve the items to be salvaged as permissible by right.

D. The department may seek to recover any additional costs incurred by the department and any other relief from the current and any prior designated operator, responsible party, or both pursuant to any applicable laws, regulations, or orders by a court of competent jurisdiction.

E. At the time of decommissioning, the designated operator and responsible parties are jointly and severally liable for compliance with all obligations and provisions of the decommissioning plan.

F. The landowner will be considered a responsible party and subject to Subsections (C) and (D) only in the event that the landowner, who entered into a lease or other contractual agreement(s), calls upon the financial security instrument that names the landowner as the beneficiary and does not decommission the facility in accordance with the requirements of Chapter. A landowner's liability under this Section shall be limited to the amount of funds received by the landowner from the surety providing the financial security.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:1154.

HISTORICAL NOTE: Promulgated by the Department of Energy and Natural Resources, Office of the Secretary, LR 51:

#### **§5119. Exemptions**

A. Solar power generation facilities owned by an electric utility provider and regulated by the Public Service Commission or the Council of the city of New Orleans are exempt from the requirements of Sections 5109–5115 of this Chapter when either of the following conditions are met:

1. the facility is located on land owned by the electric utility provider, and the provider is capable of demonstrating a decommissioning plan to the applicable regulator; or

2. the facility is located on land leased by the electric utility provider, as long as:

a. the provider guarantees to the landowner, in a form and manner acceptable to the secretary, that it will pay for all decommissioning costs consistent with the requirements of Section 5113; and

b. the lease includes a provision(s) providing for site decommissioning at the end of the facility's life, at the termination of the lease, as determined by a court of

competent jurisdiction, or upon any other circumstances requiring closure of the facility.

B. To qualify for this exemption, all electric utility providers shall register with the department as set forth in Section 5107 and provide documentation proving ownership of the facility and that it is regulated by the Public Service Commission or the Council of the city of New Orleans, as well as evidence that the elements of Subsection (A) above are met.

1. Evidence meeting the elements of Paragraph (A)(1) includes:

a. a copy of any purchase agreement or other document demonstrating the provider has complete ownership of the land where the facility is or will be located; and

b. proof that the provider is capable of demonstrating a decommissioning plan to the applicable regulator.

2. Evidence meeting the elements of Paragraph (A)(2) includes:

a. a copy of the lease that:

i. grants the provider the authority to construct and operate a facility on the leased acreage; and

ii. contains a provision(s) providing for site decommissioning at the end of the facility's life, at the termination of the lease, as determined by a court of competent jurisdiction, or upon any other circumstances that require closure of the facility; and

b. a written guarantee to the landowner that the provider will pay for all decommissioning costs described in Section 5113.

C. In the event a facility is no longer exempt pursuant to this Section, due to a transfer in ownership or any other reason, the designated operator or a responsible party shall have 60 days from the date from the event causing said status change to comply with the requirements of this Chapter.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:1154.

HISTORICAL NOTE: Promulgated by the Department of Energy and Natural Resources, Office of the Secretary, LR 51:

#### **§5121. Fees**

A. Pursuant to Section 5109(B), the designated operator of a solar power generation facility shall pay to the department the following fees:

1. an application fee of \$15 per acre for the total number of acres within the facility footprint as identified in the engineer's drawing required by Section 5113(C); and

2. an application processing fee of \$500.

B. Beginning the year after a permit is issued, all designated operators shall pay the department an annual monitoring and maintenance fee each year until the facility is decommissioned in accordance with this Chapter. This fee is due by January 31 of each year and shall not exceed the amount of \$15 per acre for the total number of acres within the facility footprint as depicted in the engineer's drawing required by Section 5113(C) and within each revised decommissioning plan required by Section 5113(C).

C. All fees paid to the department shall be made payable via certified funds, bank money order, cashier's check, bank wire, or Automated Clearing House (ACH) transfer.

D. Each fiscal year, the department shall calculate the total budgeted cost of administering the permitting process

for solar power generation facilities. In any fiscal year, the monitoring and maintenance fee charged to designated operators shall not exceed their pro-rata share of the department's budgeted costs for implementing and administering these provisions.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:1154.

HISTORICAL NOTE: Promulgated by the Department of Energy and Natural Resources, Office of the Secretary, LR 51:

#### **Family Impact Statement**

In compliance with Act 1183 of the 1999 Regular Session of the Louisiana Legislature, the impact of this proposed Rule on the family has been considered. The department anticipates that this proposed Rule will have no impact on family functioning, stability, and autonomy as described in R.S. 49:972(B). In particular, the proposed Rule has no known or foreseeable impact on:

1. The effect on the stability of the family.

2. The effect on the authority and rights of parents regarding the education and supervision of their children.

3. The effect on the functioning of the family.

4. The effect on family earnings and family budget.

5. The effect on the behavior and personal responsibility of children.

6. The ability of the family or a local government to perform the function as contained in the proposed rule.

#### **Poverty Impact Statement**

The department anticipates that this proposed Rule should not have any known or foreseeable impact on any child, individual, or family as defined by R.S. 49:973(B). In particular, there should be no known or foreseeable effect on:

1. The effect on household income, assets, and financial security.

2. The effect on early childhood development and preschool through postsecondary education development.

3. The effect on employment and workforce development.

4. The effect on taxes and tax credits.

5. The effect on child and dependent care, housing, health care, nutrition, transportation, and utilities assistance.

#### **Small Business Analysis**

The impact of the proposed Rule on small businesses as defined in R.S. 49:974.5, the Regulatory Flexibility Act, have been considered by the department. The proposed Rule is not expected to have a significant adverse impact on the health, safety, environmental or economic welfare of small businesses; therefore, a Small Business Economic Impact Statement as required by R.S. 49:974.4 has not been prepared.

#### **Provider Impact Statement**

The department anticipates that the proposed Rule should not have any known or foreseeable impact on providers as defined by House Concurrent Resolution No. 170 of 2014 Regular Legislative Session. In particular, there should be no known or foreseeable effect on:

1. The effect on the staffing level requirements or qualifications required to provide the same level of service.

2. The total direct and indirect effect on the cost to the provider to provide the same level of service.

3. The overall effect on the ability of the provider to provide the same level of service.

### Public Comments

Interested persons may submit written comments on the proposed rule no later than Tuesday, September 9, 2025, at 4:30 p.m. Written comments should be addressed to Elizabeth Ferrier, Attorney, Office of Mineral Resources, Department of Energy and Natural Resources, 617 North Third Street, 8th Floor, Baton Rouge, LA 70802 or via email to [dnrsolarreg@la.gov](mailto:dnr.solarreg@la.gov). Please reference “Solar Power Generation Facility Decommissioning and Financial Security Regulations” in your comments and include your name and whom you represent, if someone other than yourself.

### Public Hearing

Interested persons may submit a written request for a public hearing no later than Tuesday, September 9, 2025, at 4:30 p.m. Requests may be submitted either by mail, addressed to Elizabeth Ferrier, Attorney, Office of Mineral Resources, Department of Energy and Natural Resources, 617 North Third Street, 8th Floor, Baton Rouge, LA 70802, or via email to [dnrsolarreg@la.gov](mailto:dnr.solarreg@la.gov). If the criteria set forth in R.S. 49:961(B)(1) are satisfied, a public hearing will be held on Friday, September 26, 2025, at 9 a.m. in the Griffon Room, located on the first floor of the LaSalle Building, 617 North Third Street, Baton Rouge, LA 70802, for all interested persons to attend and submit oral or written comments. To confirm whether or not the public hearing will be held, please visit the department’s website at <https://www.dnr.louisiana.gov/page/solar-facility-rulemaking> or email [dnrsolarreg@la.gov](mailto:dnrsolarreg@la.gov). In accordance with the Americans with Disabilities Act, please contact DENR’s ADA Coordinator, Maranda Rispono, at (225) 342-9088 or by email at [Maranda.Rispono@la.gov](mailto:Maranda.Rispono@la.gov) within 10 working days of the hearing if you need assistance or accommodation.

Tyler Gray  
Secretary

## FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

### RULE TITLE: Regulation of Solar Power Generation Facilities

#### I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

The proposed rule is estimated to cost an average of \$316,856 per year over the next three years, with expenditures covering personnel, travel, supplies, and public notice requirements. The solar program is expected to be fully operational by the fourth quarter of FY 25. The Department of Energy and Natural Resources (DENR) has hired one (1) attorney and anticipates hiring one (1) Statewide Program Manager with technical expertise in solar facilities. These positions will manage registration, permitting, and compliance activities. Program costs will be funded through permit fees and revenues will be deposited into the statutorily dedicated Mineral and Energy Operation Fund.

#### II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

State revenue collections from permit application fees and monitoring fees will begin in FY 26 and increase over time as more solar facilities become operational. These revenues will be deposited into the Mineral and Energy Operation Fund to support program implementation and oversight. There is no anticipated effect on local governmental units as a result of the proposed rule.

#### III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS, SMALL BUSINESSES, OR NONGOVERNMENTAL GROUPS (Summary)

The proposed rule will affect persons, small businesses, and non-governmental groups associated with ownership or operational control of utility-scale solar facilities. The cost of obtaining the required decommissioning plan and financial security that is imposed on owners/operators of these facilities is difficult to quantify, as the size and complexity of each facility varies. The decommissioning plan will also provide economic benefits to the local community where a facility is sited.

#### IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed rule is estimated to have positive effects on competition and employment within local communities, particularly by generating demand for local engineers to develop decommissioning plans and creating construction and demolition jobs related to decommissioning activities.

Mark Normand, Jr.  
Undersecretary  
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Alan M. Boxberger  
Legislative Fiscal Officer  
Legislative Fiscal Office

