

October 10, 2018

Mr. John Finrock, Chairman
Solar Ad-Hoc Committee
County of Ogle
105 South Fifth Street
Oregon, Illinois 61061

Dear Chairman,

I had the opportunity to speak at the October 4, 2018, special meeting of the Supervisor of Assessments and Planning & Zoning Committee about concerns I have ensuring that the adjacent homeowners, taxpayers, residents and the County Board are properly protected from incurring liabilities because of solar plant installations.

My observations are based upon concerns identified after I reviewed the "Ogle County, IL Solar Farm SUP Conditions" posted on the County's website. As an owner of a home located in close proximity to a proposed solar plant, I am very interest in understanding the financial protections which will be provided to the adjacent property owners, the County and taxpayers.

I specifically reviewed the "Section K – Decommissioning" clause of the document with the following perspective in mind:

- The County Board will be responsible for providing oversight to a large number of solar plants – perhaps twenty or more located throughout the County.
- The ownership structure solar plants are using is Limited Liability Corporations (LLC) based on laws of the states in which they are organized.
- From a financial/legal perspective, the number of parties involved in the construction, operation, and decommissioning of a solar plant adds tremendous complexity and required specialized knowledge to protect taxpayers and board members.
- Solar company developers have indicated the plants will be sold to other LLCs - possibly multiple times.
- Projecting out costs to decommission a solar plant 20 to 40 years in the future is highly speculative.
- The U.S. Environmental Protection Agency and Illinois Environmental Protection Agency frequently impose new regulations retroactively which add unexpected costs to the decommission process.
- Based on 2017 tax rates, the County General Fund will only receive approximately 6.4% of the property taxes paid by the solar plant owner as the remaining amount goes to other governmental funds or entities.

Section K of the Conditions provides the rules of engagement that the County, solar plant developers and other parties will be bound to as it relates to decommissioning. Triggering events include the following: end of useful life, superior new technologies emerge, or the operation is no longer financially viable.

With the above in mind, I would strongly encourage the County to consider strengthening the requirements to address the following concerns.

1. Add a clause the states the legal venue for dispute resolution is Ogle County, Illinois for state law matters and The United States District Court for the Northern District of Illinois – Rockford for federal matters.
2. The Conditions require the owner/operator to provide a "letter of credit or performance bond, or similar financial assurance, in form and substance reasonably satisfactory to the County". By providing this flexibility, negotiating power of the applicants is increased and complexities to the County become harder to

manage. (Higher cost and risk to the County). The Conditions should require only one type of irrevocable financial instrument that ensures the utility will be decommissioned at no cost to the County.

3. Establish credit worthiness standards for the guarantor. If the guarantor fails, the guarantee is worthless.
4. Require the owner/operator to provide quarterly financial statements and annual audited financial statements to the County. The County should be reviewing the financial strength of the operator to ensure that the operator has the resources to meet its obligations.
5. Require the financial institution guaranteeing payment to provide quarterly financial statements and annual audited financial statements to the County. The County should be reviewing the financial strength of the guarantor on a consistent basis.
6. Require the financial instrument guarantee to be in the name of or benefit of the County. If it is in the name of the land owner, there is no guarantee that the decommissioning will occur.
7. Include a provision permitting the County to demand a substitute guarantor if the guarantor no longer meets the credit worthiness standards.
8. The Conditions do not stipulate when the financial instrument must be in place. The instrument should be in place prior to the start of construction. Or alternatively, require the owner/operator to provide the County a performance bond to ensure the project is completed. Otherwise, the County is at risk if the operator fails to complete construction.
9. Require the land owner to be liable and responsible for all costs associated with decommissioning not paid for by the solar farm owner and/or operator.
10. The Conditions provide for a re-evaluation of decommissioning costs once every five years. This re-evaluation is optional – should be mandatory. The Conditions do not prescribe the method for dispute resolution if the owner/operator disagrees with the results. The Conditions do not indicate who pays for the evaluation or how the company is selected. The County should have the exclusive right to select an independent evaluator paid for by the owner/operator.
11. The Conditions provide no margin for error in the event the actual decommissioning costs are higher than the guarantee. Require the instrument guarantee to be at least 125% of the estimated decommissioning costs.
12. The land owner and the solar plant owner/operator should be required to indemnify the County for any and all costs and obligations that the County pays as a result of non-performance of the land owner or solar plant owner/operator.
13. Require notification if there is a material change in the ownership of the LLC or if the plant is to be sold.
14. Hire outside counsel with expertise in financial guaranty instruments to assist with monitoring compliance with the guaranty instruments.
15. Require the solar plant owner/operator to pay impact fees to reimburse the County for cost incurred overseeing the solar plants.

Unfortunately, I am not able to attend tonight's meeting as I am out-of-state on business, but I would be very interested in discussing these concerns and the methods the County could deploy to reduce risk.

Regards,

Samuel G. Miller
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Stillman Valley, IL