



Legal Issues for Solar Facilities

Presented to:

Center for Energy Education
Solar Installation Workshop for North Carolina Public Officials

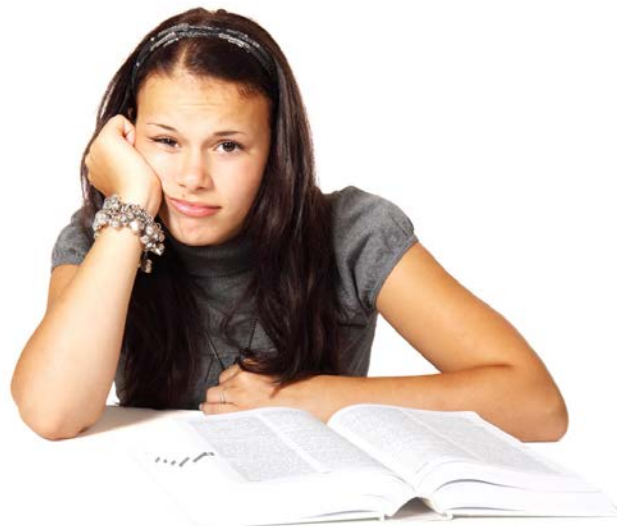
The Legal Stuff

Q: What's the difference between an accountant and a lawyer?



The Boring Stuff

Accountants admit that they are boring.



Solar Project Legal Structures



Solar Project Legal Structures (1/3)

- Early stage solar developers:
 - Identify sites for potential solar farms and perform initial due diligence and solar farm design;
 - Form special purpose project entity to develop project and enter into agreements such as leases;
 - Obtain all zoning approvals and permits prior to construction commencement;
 - Apply for interconnection and power purchase agreement;
 - Market project.
- Issues for county/owner at early project development:
 - Many projects are not viable;
 - Developer is smaller entity;
 - Agreements are with project entity with no assets.

Solar Project Legal Structures



Solar Project Legal Structures (2/3)

- Late stage solar developers:
 - Typically larger companies with large portfolio of projects;
 - Enter into agreement to purchase the project company;
 - Usually enter the transaction prior to commencement of construction;
 - Take control of project company prior to large deposits and payments to the utility being required;
 - Finalize design, diligence, permits, and agreements;
 - Take project through construction; possibly involving loan.
- Issues for county/owner at late stage development:
 - Still many contingencies;
 - Construction risk;
 - Still dealing with project company with few assets.

Solar Project Legal Structures



Solar Project Legal Structures (3/3)

- Final ownership:
 - Transferred to long-term owner at commercial operation date;
 - Ownership includes tax-equity (federal and possibly state);
 - Typically, permanent loan involved.
- Issues for county/owner with long-term ownership:
 - Project company has more assets but also a lien from the lender;
 - Operations and maintenance;
 - Decommissioning security.

Solar Projects – Other legal issues

- Projects 2 MW or larger require approval from Utilities Commission
 - “Certificate of Public Convenience and Necessity”
 - Public notice in area of project required, and certificate may be challenged
 - Smaller projects file a simpler “report of proposed construction”
- Projects that will impact streams or wetlands require permit from Army Corps of Engineers & NCDEQ
 - Permitting can be very expensive and time-consuming
 - Impacts must be mitigated
 - Developers design projects to avoid/minimize impacts
- Other regulations: stormwater and erosion; endangered species; archeological sites; historic preservation, etc.

Solar Projects – Other Challenges

- Interconnection challenges for utility scale projects
 - Interconnection is expensive and costs are rising
 - Delays can be very long and may derail a project
 - Especially difficult for projects not located near transmission lines
 - Duke is in an ongoing review of its process
 - Residential and small commercial is easier.
- Contract negotiations with utilities
 - Simple, standard process for smaller projects (currently, 5 MW or less)
 - For larger projects, may be difficult to reach agreement on terms and conditions

Lease Structure



Lease Structure

- Parties:
 - Project company;
 - Land owner (all of them).
- Term:
 - Long-term;
 - Usually 20 or 30 years with up to 4 renewal rights of 5-years each;
- Rental payments:
 - Following construction, significantly higher than farming equivalent;
 - Prior to construction, limited rent;
 - Rent paid per acre.
- Contingent.



Lease Concerns

- Project not proceeding;
- Boundary of premises (use of remaining premises);
- Long term nature;
- Crop loss offset;
- Potentially rollback taxes due;
- Lender rights;
- Decommissioning.

Template SE Development Ordinance

- Developed by NC SEA and NC Clean Energy Technology Center in 2013;
- Issue: Only 24 of 550 Cities had included solar in their zoning code (18 out of 100 counties);
- Many Stakeholders including:
 - representatives of the solar industry, local NC planners, State Farm Bureau, NC Department of Agriculture, NC Department of Environment and Natural Resources (DENR), NC Association of County Commissioners, NC League of Municipalities, military, University of North Carolina School of Government, NC Conservation Network, Duke Energy Progress, North Carolina State University Forestry, and FAA.
- Template is available online (make sure to get the most recent);
- Good starting point, but it is not the final product.

The Purpose



System Classification (1/2)

- Level 1 System:
 - System covering no more than half the footprint of the primary structure on the lot;
 - A permitted use provided it meets applicable height, setback, aviation notification, and related district standards.
- Level 2 System:
 - Ground-mounted system with a limited footprint (no more than $\frac{1}{2}$ an acre in residential districts and 10 acres in other districts, excluding industrial districts);
 - Subject to additional solar development standards (administrative approval).

System Classification (2/2)

- Level 3 System:
 - Systems that do not meet the requirements of Level 1 or 2 systems.
 - Most solar farms are Level 3 systems.
 - Subject to the same solar development standards as Level 2
 - Require a public permit hearing (conditional/special use permit)

What is Included in Template

- Zoning permits and approvals required;
- Parcel line setbacks;
- Height limitations;
- Aviation notification;
- Level 2 & 3 requirements:
 - Site plan;
 - Visibility;
 - Decommissioning;
- Other resources.

Questions?

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