

# Confident Decisions Definitive Returns



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## AltaE Webinar Series: *Legal Considerations for “Going Solar”*

September 10, 2014



# *Welcome*



- Attendees will be muted
- Type in Questions in Q&A Box
- Slides and a replay will be available on our website after the presentation

# Agenda



- Introductions
- Webinar Objectives
- Solar Market Snapshot
- Incentives and Ownership Structures
- Transaction Contracts
- Utility Agreements
- O&M Agreements
- Q&A



# Today's Presenters



- **Jeff Hintzke**

**VP of Development Services, Alta Energy, Inc.**

*Alta Energy, Inc. is a company dedicated to enable volume adoption of renewable energy solutions in the commercial & industrial segment - by streamlining deployment process to be effective & efficient, yielding an optimized solution every time.*

- **Brad Mondschein**

**Attorney, Pullman & Comley**

*Brad N. Mondschein practices in the area of emerging technologies and alternative energy products. Mr. Mondschein is chair of Pullman & Comley's Green Development practice. He represents alternative energy manufacturers; component manufacturers; energy service companies; end-users and aggregators in corporate transactions, procurement, installation and maintenance negotiations, joint venture agreements and on regulatory and legislative issues.*



# Webinar Objectives



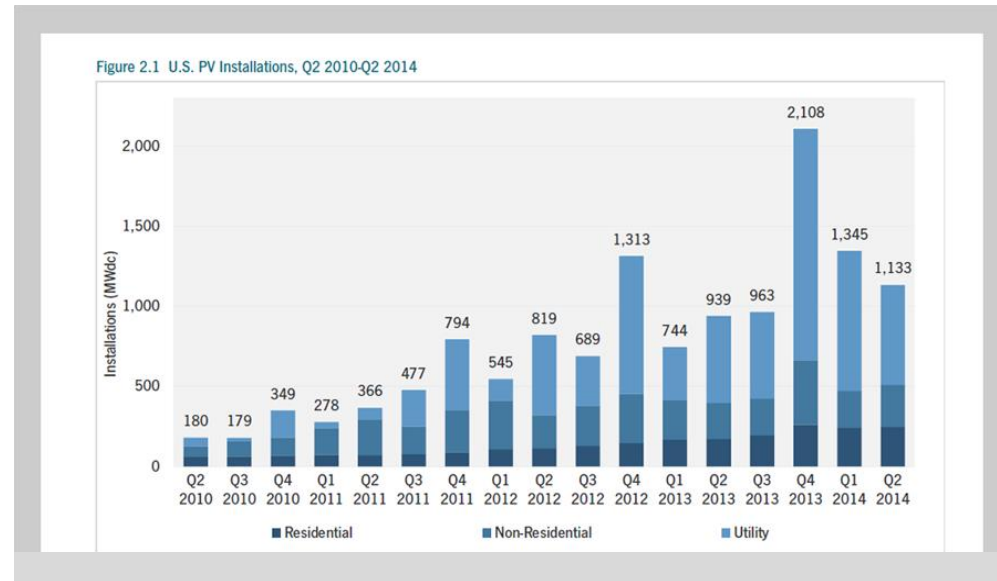
- Help you understand what responsibilities rest with the different solar ownership structures?
- Give you an understanding how the financial drivers affect the transaction structures
- Discuss the contractual issues related to financial drivers and negotiation points related to financial drivers
- Talk about other contractual issues that typically arise in solar contracts (PPA, EPC, or Lease)
- Utility Issues
- Take Away
  - What is motivating the various players in the deal
  - Where can you negotiate terms that are most favorable to you
  - Examples of detrimental terms



# The Growing Solar Market



- U.S. installed 1.13GW PV capacity in Q2 2014
- Total U.S. installations > 16 GW
- Expected installations > 6.5GW in 2014 – up 36%
- Why is solar growing?
  - Economically makes sense – C&I install costs fell to \$2.39/W in Q2 '14
  - Monetize untapped real estate assets
  - Hedge against volatility of rising utility rates



# Identifying Solar Assets



Parking

Ground Mount



Rooftop



# Questions to Consider



- Who owns the property?
- Who controls the property?
- Local laws and regulations?
- Who will use the electricity?
- Financing?
  - Loans, Leases
- Incentives?
  - Taxes, RECs, Rebates, Credits
- Who will build the system?
- Utility Agreements
  - Interconnection, Net-metering, Feed-in-tariffs
- Who will operate the system?
- Who is responsible for repairs and maintenance?





# Ownership Structures



- **Owner purchase**
  - Has tax appetite and can utilize the energy produced
  - Cash and/or Debt
  - Responsibility to contract to install the solar system
  - Uses the power themselves or sells
  - Responsibility to operate and maintain the solar system
- **Bank or Financial Institution**
  - Operating Lease (aka Tax Lease)
  - Bank utilizes the tax benefits
  - Operational responsibility belongs to “user”

- **Third Party Owner**
  - **Power Purchase Agreement (“PPA”)**
    - Installs, maintains and operates the solar system
    - Long term agreement with host to purchase power produced
  - **Roof Rent or Ground Lease Agreement**
    - Installs, maintains and operates the solar system
    - Lease agreement with host to “rent” roof/land
    - Sells energy to an off-taker that is different than the host

# ***What Drives Ownership Structures***



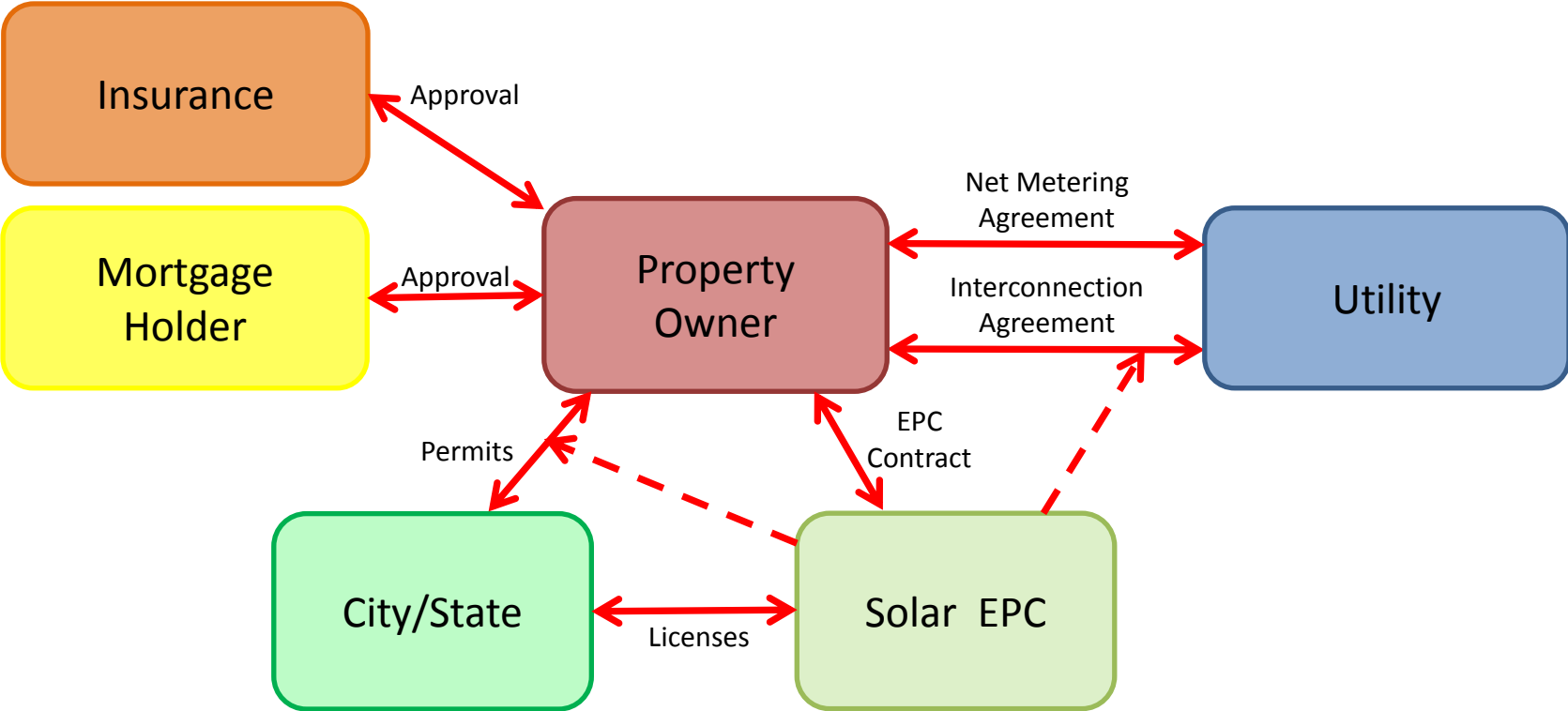
- **Ability to Utilize Tax Benefits**
  - Federal Investment Tax Credits (“ITC”)
  - Depreciation: Modified Accelerated Cost Recovery System (“MACRS”)
    - 5 year hold or recapture
- **Use of the Electricity Generated**
  - Who will use the power?
    - Host
    - Tenant
    - Utility
- **Local Laws**



# Ownership Structure affects the Legal Considerations



Simplest Case - Owner Purchase with Cash



# *Nuts and Bolts of Solar Power Deals*

How these deals work  
(and sometimes don't  
work)

Brad N. Mondschein  
September 10, 2014



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# What is important to each player

- Solar Developer
  - Deal gets signed and project gets built
- Equity Owner
  - Project gets built within a budget that provides a ROI
  - Project is structured properly to get benefits of tax credits and depreciation
  - Project continues to produce power continuously for the life of ownership
    - Get RECs and power purchase
- Property Owner
  - Cost Savings
  - Limited Liability
  - Operational Transparency

# CONTRACTUAL ISSUES- FINANCIAL DRIVERS

- EPC
  - Sales Tax Incentives
  - Cost Accounting to Qualify for Tax Credit and Depreciation
  - Cost Containment
- PPA
  - Ownership of Tax Credits and Depreciation
  - Ownership of RECs
  - Price of Power
  - Net Metering
- Lease
  - Can be combined with PPA
  - Access to Real Estate

# Common Issues For Lease

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- Roof

- Solar array takes up space that may be needed for other tenants or future needs
- Roof repair is difficult or impossible
- Removing solar array for roof repair
- Voiding roof warranties
- Shadowing from other roof structures
- Pitch and direction that roof faces
- Access to system by owner



# Contractual Issues-Lease

- Ground Mount
  - Security and loss prevention of system
  - Requires soil testing for hazardous materials and for foundations
  - Space requirements (1MW=4-5 acres)
  - Shadowing from trees and other buildings
  - Restrictions on building around array
  - Can require more permits

# Common Issues-Lease

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- General
  - Liability for damage to system
    - Who erects fencing and other protective systems
    - Is Property Owner generally liable?
    - Is security personnel required?
    - Access to the system by employees, public and third parties

# Common Issues - PPA and EPC

- General
  - Output guarantees
    - Important to equity owner because most state incentives are based upon the actual output produced by system (production tax incentives and RECs)
    - Important to power purchaser because of guaranteed or expected cost savings, power from grid is more expensive and solar outage can cause high demand charges
  - Power purchase requirements
    - Need to make sure that project is properly sized and that energy efficiency projects are completed before solar install
    - Long term requirement
    - Prices have automatic increases or may have guaranteed discount off of grid prices

# Common Issues - PPA/EPC

- General
  - Change in Law provisions
    - Deals can be undone if incentives become unavailable during the Agreement term
  - Structural issues
    - Weight on existing structure
    - Existing electrical system in structure and interconnection to internal wiring
  - End of contract term issues
    - Removal
    - Purchase at fair market value
    - Holdover
    - Refusal to remove system

# O&M Contracts

- Typically requested by EPC Contractor as an additional and ongoing revenue opportunity to them
- May allow manufacturer's warranty to be extended to EPC work and maintenance
- EPC undertakes any warranty claims with manufacturer
- Owner of system does not typically have expertise for O&M
- Can include replacement of equipment after useful life
- Often required by financing entity or for production guarantees

- Interconnection
  - Interconnection application to the utility (done by property owner)
    - Interconnection procedures can be very expensive and cumbersome
    - Not unusual that this can end a deal
    - Vary by utility and even within a utility service territory
    - Needs to be considered early in project
  
- Net Metering
  - Can have caps in some areas
  
- Utility is not incentivized to encourage solar

# So why do it?

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- Cost Savings
- Most issues can be overcome if all parties are reasonable and understand what is motivating all sides
- Good publicity
- Free power at end of term or after ROI is achieved
- Decreases in overall cost per installed watt has significantly slowed
- Incentives are significant right now and can go away
- NIMBY issues are minimal with solar installations
- Requires low maintenance

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# *Summary*



- 1. Ownership Structure is the first consideration**
  - Drives everything else
- 2. Consider property specific issues from the offset**
  - Banks
  - Tenants
  - Utility
- 3. Allow time**

# Questions & Answers



*Any Questions?*

Please use the WebEx Q&A feature on right of your screen to submit your questions



# Contact Information



*Upcoming Webinar:*  
“Implications of Solar on Roofs”

*Still have questions?*

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