UGA Extension - Solar Energy in Rural Georgia: Opportunities and Considerations for Landowners – June 8th 2021
Concurrent Track B:
SESSION AGENDA

- Real Property & Leasing Issues During the Lifecycle of Solar Projects (Buford Pollett, University of Tulsa)
Real Property & Leasing Issues

Agenda

- Solar Energy Project Lifecycle
- Solar Lease Considerations for Landowners
- Power Purchase Agreements
- Takeaways
Real Property & Leasing Issues
Solar Energy Project Lifecycle
Real Property & Leasing Issues
Solar Farm in Johnson County, Georgia
Real Property & Leasing Issues

US Solar Resource Map
Real Property & Leasing Issues
Solar Energy Project Lifecycle
Real Property & Leasing Issues
Solar Energy Project Lifecycle

- Negotiations and acquisition
- Evaluation and bid period during the term of the Option Agreement
- Execution of Lease
- Construction and Installation
- Operation and Maintenance
- Decommissioning and Reclamation
Real Property & Leasing Issues
Solar Lease Considerations

- Guarantees of title
- Long-term commitments
  - Option agreements – to cover site evaluation & bids
  - Solar Lease – generally basic rent payment with no royalty payment or benefit of renewable energy credits
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Solar Lease Considerations

- Impacts on other uses on the land
  - Farming practices
  - Hunting
  - Timber
  - Minerals

- Impacts on adjacent land (e.g. crop dusting)

- Impacts on special tax valuations (e.g., agricultural or open land)
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Solar Lease Considerations

- Lease drafted to burden the land going forward
- Easements (affirmative and negative) – nonpossessory right of use in land for a specific purpose
- Developers want the ability to grant a mortgage with the ability of financial institutions to takeover in case of default of solar farm developer/operator
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Solar Lease Considerations

- Confidentiality provisions
- Liability Provisions
  - People
  - Property
  - Pollution
  - Consequential damages
- Dispute resolution and fees
  - Forum selection
  - Attorney and litigation fees
Mitigation tools:

- Financial security - from the developer in case of insolvency, bankruptcy during the full lifecycle of the solar energy project
- Insurance – from the developer covering the risk during the full lifecycle of the solar energy project
Real Property & Leasing Issues
Power Purchase Agreements (PPAs)
Real Property & Leasing Issues
Power Purchase Agreements (PPAs)

- Parties to the Agreement
- General nature of PPAs
- Marketing concerns
- Price under the PPA
- Delivery point
- Guarantees
- Term/extension
- Default/damages/limitation of liability
Real Property & Leasing Issues

Power Purchase Agreements (PPAs)

- Change in law
- Financial security
- Dispute Resolution
- Governing Law
- Applicable Law
Real Property & Leasing Issues

PPAs – Parties to the Agreement

- **Seller**: Single-purpose entity owning the solar farm assets
- **Buyer**:
  - Energy trading subsidiary
  - Industry
  - Local government
- **Financial health of the parties**
- **Financial security**
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PPAs – General Nature

- Output agreements
- Scope of purchase
  - Energy purchased as measured by a meter at the delivery point
  - Renewable Energy Credits (RECs)
  - Future environmental credits (e.g. carbon credits)
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PPAs – Marketing Concerns

- Advertising – Fair Trade Commission concerns
- All power capable of producing – (take or pay contract)
- Purchase output actually delivered to the delivery point
- Impact of party’s responsibility for transmission
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PPAs – Price

- Price regulated
- Delivery *peak* or *off peak*
- Changes in market conditions are generally not force majeure
- Force majeure in common law – extra time to perform but not additional compensation
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PPAs – Delivery Point

- Metered location
- Interconnect between wind farm and electrical grid
- Transmission service may be needed to get energy to delivery point
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PPAs – Guarantees

- Amount of energy to be produced
- Startup challenges
- Desire for certainty
- Banking overproduction – mitigate periods (e.g. years) of underproduction
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PPAs – Guarantees

- Required *bandwidth* (*i.e.* high and low)

- Implications if outside bandwidth,
  - Overproduction – buy at discounted price
  - Underproduction:
    - Purchase and transfer energy and RECs to buyer
    - Pay liquidated damages
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PPAs – Term/Extension

- **Seller** – longer term sufficient to secure financing and satisfy investors
- **Buyer** – short to adjust to have flexibility and adjust to market conditions
- **Early termination**
- **Option to extend**
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PPAs – Default/Damages/Limitation of Liability

- Events triggering default
- Calculation of damages
- Limitation of liabilities and remedies
Real Property & Leasing Issues
Power Purchase Agreements (PPAs)

- Change in law
- Financial security
- Dispute Resolution
- Governing Law
- Applicable Law
Real Property & Leasing Issues
Hedge Arrangements (i.e. Financial PPA)

- Financial institution enters into an agreement to purchase the energy from an energy producer for a period of time.
- Financial institution’s trading desk to this energy under contract to a corresponding energy purchaser.
- Price correlated to published market conditions (e.g. current and future energy market such as natural gas prices).
Real Property & Leasing Issues
Hedge Arrangements (i.e. Financial PPA)

- Financial institution’s due diligence
- Posting security by developer to lock in price
- Lien position with regard to collateral
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Takeaways

- Parties to solar energy leases and power purchase agreements need to understand the complexity of these agreements, especially concerning the impacts on the land.

- Landowners considering solar energy projects on their land should:
  - Consult an appropriate tax, accounting, finance, and legal professionals, and
  - Think about anticipated changes in land use
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Thank you for your time, and please reach out to me if you have any questions following our session.