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ICLEI U.S.A.

- Take your local climate, energy, and sustainability initiatives to the next level

- Tap the power of ICLEI and our network of over 450 U.S. Cities, towns, and counties, and over 1,100 local governments worldwide

www.icleiusa.org
The SunShot Solar Outreach Partnership (SolarOPs) is a U.S. Department of Energy (DOE) program designed to increase the use and integration of solar energy in communities across the US.
About the SunShot Solar Outreach Partnership

- Increase installed capacity of solar electricity in U.S. communities

- Streamline and standardize permitting and interconnection processes

- Improve planning and zoning codes/regulations for solar electric technologies

- Increase access to solar financing options
Complimentary Services

- Technical Resources
- Regional Workshops
- One to One Assistance
- Strategy Session

Email solar-usa@iclei.org to request a 20 minute consultation
SolarOPs’ Resources

Technical Resources

- Case Studies
- Fact Sheets
- How-to Guides
- Technical Report
- Toolkits

www.solaroutreach.org
Complimentary Services

Quickly get up to speed on key solar policy issues:

- Solar 101
- Planning for Solar
- Implementing an Ordinance
- Streamlining Solar Permits
- Growing your Market

Email solar-usa@iclei.org to request a 20 minute consultation
Complimentary Services

- Technical Resources
- Regional Workshops
- Strategy Session

Develop an implementation strategy for smart solar policy

Email solar-usa@iclei.org to request a 20 minute consultation
SolarOPs Technical Assistance

- 'Ask an Expert' Web Portal
- Peer Exchange Facilitation
- In-Depth Consultations
- Customized Trainings

www.solaroutreach.org
Archived Webinars

Archived Sessions:
08/14/13 – Commercial PACE: Program Development and Implementation
09/18/13 – Maximum Solar at the Heart of Urban Forests
11/26/13 – Solarize North Carolina
03/12/14 – Utility Community Solar
04/16/14 – Job and Economic Impact of Solar
05 – 08/14 – Solar Permitting & Inspection Webinar Series
09/17/14 – Solar For All: Minimum Costs to Local Governments and Maximum Solar for Their Community
11/05/14 – Getting to A Win-Win: Distributed Solar and Utility Cost Recovery
03/04/15 – Solar Outreach Partnership’s Complimentary Solar Resources & Technical Assistance for Local Governments
For 33 years, the Interstate Renewable Energy Council, Inc. (IREC) has been known for connecting people, ideas and technology to produce measurable results in the clean energy space.

IREC’s programs and policies lead to:

- easier, more affordable **connection to the utility grid**;
- **fair credit** for renewable energy produced;
- **best practices** for states, municipalities, utilities, and industry; and
- **quality assessment and credentialing** for trainers of our growing clean energy workforce.

www.irecusa.org
Our Speakers

Justin Barnes
Policy Research Manager
EQ Research

Kathleen Kapla
Of Counsel
Keyes, Fox & Wiedman LLP
Webinar Agenda

- Why are we here?
- Background
  - PPAs: What and where?
- What is the PPA Toolkit?
  - RFP Guidance
  - Annotated and Model Contracts
  - Much and more... Access it HERE.
State Regulatory Issues

- **Apparently disallowed by state or otherwise restricted by legal barriers (Note: SC added to this list by author)**
  - NV: With system size limitations
  - UT: Limited to certain sectors
  - AZ: Limited to certain sectors
  - CO: With system size limitations
  - TX: With system size limitations
  - RI: May be limited to certain sectors

- **Authorized by state or otherwise currently in use, at least in certain jurisdictions**
  - VA: Limited within a certain utility’s service territory

- **Status unclear or unknown**
  - See notes

[Map of the United States with states marked for regulatory issues]
Jurisdictions Surveyed

- **Apparent disallowed by state or otherwise restricted by legal barriers (Note: SC added to this list by author)**
  - NV: With system size limitations
  - UT: Limited to certain sectors
  - AZ: Limited to certain sectors
  - CO: With system size limitations
  - TX: With system size limitations
  - IA: See notes
  - RI: May be limited to certain sectors
  - VA: Limited within a certain utility’s service territory

- **Authorized by state or otherwise currently in use, at least in certain jurisdictions**
  - GU: Guam
  - USVI
  - NMI

- **Status unclear or unknown**

[Map legend]

- Dark blue: Apparently disallowed by state or otherwise restricted by legal barriers (Note: SC added to this list by author)
- Light blue: Authorized by state or otherwise currently in use, at least in certain jurisdictions
- Blank: Status unclear or unknown

[Website]: www.dsireusa.org / March 2015
How to Navigate the Toolkit

- RFPs
  - General topic oriented guidance
  - Cross-references
    - Brief case studies
    - Additional existing resources

- Annotated Contracts
  - PPA & site rights (lease, easement, license)
  - Annotations as comments
    - Cross referenced discussions
    - In-text document links

- Templates
  - PDF versions within the Toolkit
  - Clean Word versions on the website
What it Looks Like

ARTICLE 14
FORCE MAJEURE

Section 14.1 Force Majeure

Neither System Owner nor Host Customer shall be considered to be in default in the performance of its obligations under this Agreement to the extent that performance of any such obligation is prevented or delayed by a Force Majeure Event. If a Party is prevented or delayed in the performance of any such obligation by a Force Majeure Event, then such Party shall immediately provide notice to the other Party of the circumstances preventing or delaying performance and the expected duration thereof. Such notice shall be confirmed in writing as soon as reasonably possible. The Party affected by a Force Majeure Event shall use commercially reasonable efforts to remove or repair the cause of the Force Majeure Event and shall resume performance of its obligations as soon as reasonably practicable.

[Extended Discussion: “Force Majeure” Provisions]
[Extended Discussion: Solar Renewable Energy Certificates (SRECs)]

5.1.1 Extended Discussion: “Force Majeure” Provisions
A “Force Majeure” provision in an energy sale or PPA sets out each party’s respective rights and obligations in the event of an “Act of God” or event beyond the party’s reasonable control. Standard events of Force Majeure include wars and acts of terrorism; earthquakes, hurricanes and other natural disasters; labor strikes; embargos; and any other event or occurrence beyond the reasonable control of a party. Most often, upon the occurrence of a Force Majeure event, the contract will require the party claiming an impact from the event to notify the other party and begin steps to cure or address the event. Following written notice and upon beginning steps to address the impact, the “claiming party” is usually temporarily relieved of its obligations to perform under the contract. If the party claims that the event cannot be remedied and the contract cannot be fulfilled, the Force Majeure provision usually then allows that party to terminate the contract without penalty.
RFPs: General Guidelines

Defining project goals

RFP as a roadmap
Must haves and must avoids

Planning and Design

Consultant or issuer’s agent
Preliminary site assessments
Evaluation criteria and metrics
Ensuring comparability

Key components

Provider qualifications & financial strength
Technical specifications & design
Provider responsibilities
RFP Design Variations

Evaluation Process
- Single Phase
- Multi-Phase

Future Projects
- Issues
- Add-ons
- Limited RFP

Bidding Options
- Sites
- Pricing
- PPA Only?

Value-Added Services
- Type
- Bid Options
- Contractual

Model PPA?
- Provider’s
- Template
- Must Haves
Site Control Basics

License/Easement/Lease

Protection of investment

Legal rights & access

Allocation of party interest & obligations
Site Control: Critical Elements

Investors Need Certainty

- Duration
  - Coterminous with the PPA
- Lender Rights
  - Cure defaults, step in to operations
- Assignability
- UCC Fixture Filing
  - Secures interest in the personal property (i.e., the system)
### Site Control: Characteristics

<table>
<thead>
<tr>
<th>Characteristic</th>
<th>License</th>
<th>Easement</th>
<th>Lease</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Type of Right</strong></td>
<td>A use right, rather than an interest in real property.</td>
<td>A non-possessory interest in land, which gives the grantee the right to use the land of another for a specific purpose.</td>
<td>A possessory interest in real property, typically allowing the lessee to exclude others.</td>
</tr>
<tr>
<td><strong>Term</strong></td>
<td>Typically fully revocable at will of granting party.</td>
<td>Not typically revocable at will, but may be subject to a term and to abandonment under statute or contract. In solar context, term is usually coterminous with the PPA.</td>
<td>Subject to statute or local law limitations, but otherwise at will of parties. Term is usually coterminous with the PPA.</td>
</tr>
<tr>
<td><strong>Writing Requirements</strong></td>
<td>None. May be oral. Not subject to statute of frauds, which requires interests in real property greater than one year in duration to be in writing.</td>
<td>Must be in writing, signed by both parties, and evidence of easement should be recorded to provide notice to third parties.</td>
<td>Must be in writing if greater than one year in duration. Written evidence of lease should be recorded to provide notice to third parties and create priority.</td>
</tr>
</tbody>
</table>
## Site Control: Characteristics cont’d

<table>
<thead>
<tr>
<th>Characteristic</th>
<th>License</th>
<th>Easement</th>
<th>Lease</th>
</tr>
</thead>
<tbody>
<tr>
<td>Financeable</td>
<td>Too uncertain to be financeable in some situations, but with additional protections built into the PPA, a license may be acceptable to lenders.</td>
<td>Typically, yes.</td>
<td>Yes.</td>
</tr>
<tr>
<td>Insurable</td>
<td>Not typically insurable under title insurance policy.</td>
<td>Typically, yes.</td>
<td>Yes.</td>
</tr>
<tr>
<td>Assignable</td>
<td>Traditional licenses are personal, and thus not assignable; however, the parties may agree to draft their contract otherwise.</td>
<td>Terms of easement agreement will control. Easements for rights to construct and operate system should be drafted as commercial easements in gross, to ensure right to assign and maintain in effect for term.</td>
<td>Terms of lease will control. Typically assignable by lessee unless otherwise stated.</td>
</tr>
<tr>
<td>Municipal Law Limitations</td>
<td>Usually none.</td>
<td>May be subject to term/duration limits.</td>
<td>May be subject to public bid/auction requirements or other limitations. Consult counsel.</td>
</tr>
</tbody>
</table>
PPAs: The Basics

System Owner Responsibilities
- Own
- Operate
- Maintain
- Repair

Purchaser Responsibilities
- Buy all power produced
- Minimize interference

The Rest?? Subject to Negotiation
PPA Variations: Site Differences

- **Multi-Site**
  - Pricing variations?
  - Operational deadlines

- **Carport/Canopy**
  - Access and liability issues

- **Landfills/Ponds**
  - Numerous unique site issues
PPA Variations: Terms

- Default
- Removal
- Continuation
- Ownership
- Pricing

- Termination/Buy-out
- SRECs
- System Relocation

- Non-Apropiation
- Limitations
- Force Majeure

- Change in Law
- Termination
- Assignment
- Costs?

- Force Majeure?
- Definitions
- Options?
- Costs
- Regulation
- Net Metering

- Ownership
- Pricing
- System Relocation

- Termination/Buy-out
- SRECs
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April 23. 2015
Questions?

Toolkit Homepage:
http://www.irecsusa.org/solar-power-purchase-agreements-a-toolkit-for-local-governments/