



FREQUENTLY ASKED QUESTIONS **REGARDING SOLAR LEASE AND OPTION AGREEMENTS**

As the demand for clean energy increases, so too is the demand for suitable land for solar and battery storage development in Virginia. Our firm provides regulatory and transactional counsel to both clean energy developers and landowners. The following Frequently Asked Questions represent some of the most common issues that arise when negotiating a renewable energy land lease or option agreement in Virginia. Agreements to lease land for solar development are sometimes referred to as “solar farm leases.”

The following is not intended to represent an exhaustive list of issues and is offered for informational purposes only. You should contact a qualified attorney before pursuing any energy development activities or executing any agreements. Please see the full legal notice on the last page of the document.

Q: What is driving the increased demand for land for energy development in Virginia?

A: Virginia’s current renewable energy “boom” is driven by both economic and policy factors. Higher costs associated with coal and gas generation along with declining renewable energy prices have increased the demand for developable land for renewable energy projects.

Additionally, the Virginia General Assembly passed several pieces of legislation in 2020 that further increased the demand for renewable energy. Virginia’s two largest investor-owned utilities, Dominion Energy and Appalachian Power, are now under a legal obligation to procure several thousand megawatts (“MW”) of new solar and/or onshore wind generation by 2035. These new projects must be located in Virginia. Both utilities are also subject to a renewable energy standard, which requires each company to source an increasing percentage of its energy sales from renewable sources. Although not subject to the same legal obligations, Virginia’s municipal and electric utilities are also increasingly adding renewable energy and energy storage to their portfolios.

Q: What is the typical length, or term, of a solar lease agreement?

A: The length of a solar lease is negotiable, but may be 30 years or more. In lieu of a single fixed term, a lease may also be negotiated to include an initial term (e.g., 20 years), while giving the lessee (i.e., the entity leasing the land) the option to extend the lease one or more times (e.g., 5-year extension periods). The lease term is often designed to correspond to the anticipated useful life of the solar energy equipment. A lease agreement will contain provisions describing the rights and obligations of the parties when the lease ends, or if it is terminated early.

Q: What factors affect the market rate for leased land for solar in Virginia?

A: Per-acre pricing can depend on a number of factors such as the size of the site, the terrain, the condition of the land (e.g., forested, cleared, or partially cleared), access to transmission and distribution infrastructure, and the utility service territory. While the ideal site for a large solar project is on relatively flat land adjacent to utility infrastructure, Virginia law also provides incentives for power suppliers to acquire projects located in “brownfields” regions and other previously developed sites.

Q: Is the per-acre price for a battery storage lease higher than the price for a solar lease?

A: The market prices for energy storage leases are also variable and affected by factors such as the condition of the land, access to utility infrastructure, and the utility service territory. Energy storage projects typically require much less land than solar facilities, resulting in less land disturbance and fewer environmental impacts. While a large-scale solar facility may require several hundred acres, energy storage projects can be constructed on five or ten acres or less. The 2020 Virginia Clean Economy Act directs utilities to procure large quantities of new energy storage resources sited in the Commonwealth.

Q: What is a subordination and non-disturbance agreement and why is this important?

A: Leases often require landowners to obtain a “subordination and non-disturbance agreement” (SNDA) from a bank or other entity with a mortgage or lien on the property. A subordination agreement is designed to protect the lessee in the event that the land is foreclosed upon. In our experience, an SNDA provision within a lease can often be negotiated to limit the landowner’s liability and responsibility. Both landowners and developers should consult legal counsel to review all terms related to financing and subordination of liens.

Q. What is an “option” agreement?

A: A solar lease option, or “option,” is an agreement under which a solar developer obtains the exclusive right to enter into a development lease in exchange for a fee. In other words, a single entity retains the “option” to develop the land. The option period may be several years and is typically 3-5 years in length. An option agreement usually allows the option holder to access and survey the land and undertake feasibility studies during the option period. Solar lease options are common in Virginia and often precede a long-term lease agreement. In some cases, an option agreement and the longer-term lease agreement may be negotiated at the same time. We typically recommend that all parties retain counsel prior to executing option or lease agreements.

Q: Are landowners able to limit their liability for accidents or injuries that occur on site?

A: Yes, this is often possible. The solar lease or option agreement may contain language regarding liability for preexisting environmental conditions. One way to address this is by inserting a “close-over” clause, meaning that if the solar developer learns of an issue during the option period but wishes to exercise the option anyway, the developer – not the owner – will be responsible for the issue. Liability for preexisting title issues can also be limited by negotiation. You should carefully review all representations and warranties, along with any covenants, in the agreement with legal counsel.

Q: Do leases typically include “decommissioning clauses” or other terms to ensure that the land is restored after the lease term?

A: Yes, and Virginia counties require a decommissioning bond to be in place to ensure that the solar facility is removed and the land restored following the lease term. The specific terms of the bonding requirements are often negotiated. These terms may include the amount of the bond, the quality or grade of the bond, the period to carry the bond, the updating interval of the bond value, and the inclusion of salvage value of the facility to offset the bond amount.

Please contact attorneys [Will Reisinger](#) or [Matt Gooch](#) should you have any questions about renewable energy development in Virginia. ReisingerGooch PLC provides regulatory and transactional counsel to landowners and clean energy companies, online at ReisingerGooch.com.

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