

Solar Lease Differences

- Purpose/Scope
- Reserved Uses
 - Minerals
- Payments
- Reps
- Termination/Restoration

Purpose/Scope

- Any and all uses associated with or related to evaluating the solar energy found on, below, over and across the Property, converting solar energy into electrical energy, developing, collecting and transmitting the electrical energy so converted, at times storing electrical energy, together with any and all commercially reasonable activities related to such uses that are located on, below, over and across the Property.

Purpose/Scope (Cont.)

- Determining the feasibility of **solar energy conversion and/or energy storage** on the Property, including without limitation measuring the solar resources available, conducting studies and collecting information related to **solar irradiance, light direction** and other meteorological data.
- Constructing, etc.: (a) **solar-powered generating facilities, including but not limited to modules, inverters**, cables, foundations, panels, mounting units and all necessary ancillary improvements and equipment providing support or otherwise associated therewith; (b) **photovoltaic and/or solar thermal technology or such other solar-powered generating equipment as determined in Grantee's commercially reasonable judgment to be used to capture and convert solar radiation to produce electricity**, and all related infrastructure and the ancillary improvements and equipment providing support or otherwise associated therewith.

Purpose/Scope (Cont.)

- Constructing, etc.: utility scale energy storage facilities including storage facilities utilizing [Battery/CAES/etc.] technology along with all necessary ancillary improvements and equipment providing support or otherwise associated therewith.
- “Energy Storage Purposes” shall mean: (i) assessing the feasibility of, and (ii) erecting, constructing, reconstructing, replacing, relocating, removing, operating, maintaining and using [Battery/CAES/etc.] facilities which may be owned and/or operated by Grantee or any Affiliate

Reserved Uses



Reserved Uses



Reserved Uses

- Address in “phases”
 - Be clear with landowner with respect to lack of access to the property.
 - Development Phase: Carry on, but tread lightly.
 - Terminate existing leases?
 - Approval of new leases or rights, OR include right to terminate within time period.
 - Owner may continue to use the Property until the commencement of the Construction Term for hunting, grazing, and crop farming (“**Owner Activities**”), to the extent such other activities do not materially interfere with Grantee’s rights hereunder, including Grantee’s rights to perform geotech, environmental and other physical investigations that will involve activities such as....

Reserved Uses

- Construction Phase: Time to go.
 - Notice, and time to leave.
 - Fencing.
 - “Operations Area” or similar concept.
- Operations Phase: Keep Out.

Minerals: Fee

- Owner owns [a _____ interest in] the oil, gas and other minerals in, on, under or that may be produced from the Property howsoever drilled, mined or produced (“**Mineral Estate**”). To the extent of Owner’s interest in the minerals, **Owner hereby expressly releases and waives, on behalf of itself and its successors and assigns** (and agrees that all future owners and lessees of any rights, titles or interests in or to the Mineral Estate, shall be subject to and burdened by the following waiver of rights and automatically be deemed to include a contractual waiver by the lessee or grantee, as applicable), **all rights of ingress and egress to enter upon the surface of the Property and the area located between the surface and 500 feet beneath the surface of the Property for purposes of exploring for, developing, drilling, producing, transporting, or any other purposes incident to the development or production of the oil, gas or other minerals pursuant to the reservation contained in this Agreement.** The foregoing provision shall be a covenant running with the land binding upon any party owning any interest in, or rights to develop or use the Mineral Estate. The provisions hereof shall be binding upon and inure to the benefit of Owner and Grantee and their respective successors and permitted assigns.

Minerals: Fee (Cont.)

- There are no active oil, gas or mineral leases as of the Effective Date pertaining to the Property. If Grantee determines that it needs a non-interference and waiver of surface rights agreement from a mineral owner or mineral lessee, then Owner shall use best efforts and diligence in helping Grantee obtain the same from all persons and entities that have any ownership, royalty or leasehold interest in the Mineral Estate.

Minerals: Basics – Severed Estate

- Blackstone/Bundle of Sticks
- In most places, mineral estate is dominant estate, and has the right to utilize as much of the surface as is reasonably necessary to exploit minerals below.
- Exercise rights with due regard and subject to accommodation doctrine, as applicable.
- Texas OGL = Fee Simple Determinable/Possibility of Reverter.

Minerals: Basics – Severed Estate

- Multiple cases decided by the TXSC have noted the “broad application” of the accommodation doctrine, and have noted the underlying intent and process of the Court in such cases in: (a) “working out accommodations which preserve unto the severed mineral owner or lessee a reasonable dominant easement for the production of . . . minerals while at the same time preserving a viable servient estate”, and
- (b) “conciliating conflicts between owners of the surface and of the mineral rights, and in requiring reasonable accommodation between them.” The Court does primarily place the burden of establishing the existing use on the surface owner, including the requirement that the surface owner demonstrate a lack of alternatives, although several of the cases have actually not required the surface owner to show a lack of alternatives.

Minerals: Where To Start?

- Determine mineral ownership
 - Landman/Land Agents
 - Title Company
 - Looking for:
 - Mineral Interest Owner(s)
 - Private or State?
 - Lessees

Minerals: Where To Start?

- Talk to a Petroleum Engineer
 - Field Rules; Areal Activity
 - Drilling/Production Trends
 - Assessment of Needs

Minerals: Options for Action

- Surface Waiver
 - Who do I get it from?
 - Lessees to execute, and ALL mineral interest owners must execute (reverter).
- Accommodation Agreement/Non-Disturbance
 - Permit certain activities
 - Which activities in which areas?
 - Joint use?

Minerals: Title Insurance

- TX: T-19.1
- The Company insures against loss or damage sustained by the Insured by reason of:
- Damage to an Improvement located on the Land on or after Date of Policy, resulting from the future exercise of a right to use the surface of the Land for the extraction or development of minerals or any other subsurface substances excepted from the description of the Land or excepted in Schedule B

Minerals: Title Insurance

- ALTA 35 Series endorsements
- The Company insures against loss or damage sustained by the Insured by reason of the enforced removal or alteration of any Improvement, resulting from the future exercise of any right existing at Date of Policy to use the surface of the Land for the extraction or development of minerals or any other subsurface substances excepted from the description of the Land or excepted in Schedule B

Minerals: Secondary Paths

- Carry On
 - Leave space
 - PE advice
 - Accommodation Doctrine
 - Risk
- Texas Special: RRC Rule 76, if applicable to your location
- Move On
 - The world is a big place

Minerals: Can't We All Just Get Along?



Payments

- Development and Construction similar to wind lease provisions (i.e. per acre or flat fee rent for both).
 - Breakdown for roads, transmission lines, substations, etc.?
- For Operations:
 - Per acre flat fee (escalate?); OR
 - Royalty
- Storage?

Owner Reps

- Minerals
- No Interference
 - i.e., so long as this Agreement is in effect, neither Owner nor any other person or entity that has obtained rights either from Owner or any party claiming, directly or indirectly, under Owner, shall interfere with solar irradiation or light direction over the Property, and Owner shall not plant trees or construct or place buildings or other improvements on or engage in any activity on the Property that would reasonably be expected to cause a decrease in the output or efficiency of any of the facilities.

Owner Reps

- Got/Need Water?
 - Quantities and rates.
 - Address existing and new.
 - Permitting assistance.
- Option to Purchase?
 - Reference in Memo.

Termination/Restoration

- More intensive restoration than wind.
- Standards of completeness.
 - Removal only?
 - Re-contour and reseed?
 - Return to farming condition?
- More time to complete (engineers)?