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QUESTIONS AND ANSWERS

Environmental Law

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Installation of rooftop solar PV systems allow commercial and residential property owners to lower energy costs and promote responsible energy usage. However the costs associated with solar PV systems continue to present obstacles to property owners from reaping the financial and reputational benefits PV systems have to offer.

There are an array of federal, state and local financial incentives, including tax incentives, rebates, loans and grants, offered to encourage generation of renewable energy, including solar energy. However, despite the availability of these incentives, property owners still face challenges in financing the costs of a solar energy system. In response, third party ownership models, such as the solar lease and the solar power purchase agreement ("PPA") are gaining popularity. These models ease the financial burdens associated with up-front costs and ongoing maintenance of the PV systems.

One of the drivers of recent growth in these third party ownership agreements are state renewable portfolio standards, which are state policies requiring that electricity providers obtain a minimum percentage of their power from renewable energy resources by a certain date. New Jersey, Pennsylvania, Delaware, Maryland, and Virginia all have renewable portfolio standards. Many of the state renewable portfolio standards contain specific solar components. To be in compliance, electricity providers look to purchase renewable energy certificates ("RECs"), which are separate from the actual electricity produced and represent the environmental attributes associated with renewable energy generation. RECs are an important component in negotiating third party ownership agreements.

The solar PPA is currently the most widely used third party ownership model. In fact, in 2008, PPAs financed approximately 80 percent of the installed solar power capacity, according to Solar Energy Industries Association, a solar trade group. Although arrangements can vary, a standard PPA allows a solar provider to finance, install, operate and maintain a PV system while the commercial or residential property owner, who hosts the system, purchases all of the solar electricity generated by the PV system over a specified period of time, typically 10-20 years. The electricity price set in the PPA, which may be variable depending on the negotiated terms, is ideally a rate competitive with the local retail utility rates. The property owner benefits from this arrangement because it dramatically reduces the up-front costs of a PV system and eliminates the property owners' burden of continued operation and maintenance obligations. In return, the solar provider typically maintains ownership of the RECs generated from the renewable energy generation and can take advantage of the available tax incentives.

Although the PPA and other third party ownership models, like the solar lease, present attractive solutions to the financial burdens associated with solar PV systems, there are risks involved. Property owners will need to evaluate many regulatory, technical, and financial factors before determining whether a third party ownership agreement is a viable option for them.

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