

ANATOMY OF A SOLAR LEASE: THE LANDOWNER PERSPECTIVE

RODERICK E. WETSEL

JEFFREY L. ALLEN

JACOB R. LEDERLE

Wetsel, Carmichael & Allen, LLP

207 Oak Street

Sweetwater, Texas 79556

(325) 235-3999

wetsel@wetsel-carmichael.com

jeff@wetsel-carmichael.com

jake@wetsel-carmichael.com

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I. Preface & Introduction

(by: Roderick E. Wetsel)

As recently as 1999, most Texas attorneys, including myself, had never seen a wind-energy lease. However, by the end of that year, with wind developers arriving in droves to the windy areas around Sweetwater, landowners perplexed by lengthy and complex company forms began seeking legal counsel. So it was by a twist of fate, I became one of the first “wind lawyers.” Not long thereafter, I received a call from the State Bar Oil and Gas Section asking if I would agree to write and present a paper on “these new wind leases” at the 2003 Advanced Oil, Gas & Energy Law Course in Houston. After a long pause (*in what was to become a life changing moment*), I agreed. Knowing that I would need some help, I called my old friend and law school classmate, Mike McElroy, to see if there was anyone in his firm that might be interested in co-authoring the paper. He referred me to one of his associates, Lisa Chavarria, and the rest is history. From there, I went on to co-author a textbook on wind law and to land an adjunct professorship at The University of Texas Law School, and Lisa became a partner in a leading renewable energy firm in Austin.

Now, over thirteen years after publication of “Anatomy of a Wind Lease,” the University of Texas has approached us to write an article for a presentation on solar leases. Once again, I sought help. This time, I turned to my partner, Jeffrey L. Allen, who has over nine years of experience in renewable energy, and Jacob R. Lederle, an associate with my firm (*and one of my former top students at the University of Texas Law School*).

Therefore, just as “Anatomy of a Wind Lease” introduced attorneys and landowners to the major elements of a wind lease, this paper, as well as a separate paper written by Lisa Chavarria, will introduce attorneys (as well as landowners and industry counsel) to the major elements of a solar-energy lease.

II. Major Elements of the Solar Energy Lease

The following is a brief review of the major elements of solar energy leases now seen in the Texas market.

A. Purpose Clause, Permitted Uses, & Additional Developer Rights

Over the last several years, rapid technological advances coupled with dramatic reductions in costs as well as the Investment Tax Credit (“ITC”) have provided the catalyst for a veritable “solar boom,” especially in Texas. Unsurprisingly, this boom has saturated the solar market with lease forms—each slightly different than the next. Despite this situation, however, each lease form will have some variation of a purpose clause (*but if the lease does not, one should certainly be added*), which as the name implies defines the purpose of the lease. Although this probably sounds rather straightforward—the purpose of the lease is quite obviously to build a solar farm—the clause is of extreme importance for both the developer and the landowner as it frequently will also set out what can and cannot be done on the property.¹

The typical purpose clause might recite something along the lines of: “this lease is for solar energy purposes and Operator shall have the exclusive right to use the Property for such purpose.” When dealing with such a clause, your first step should be to check the definition of “solar energy purposes” or whatever phrase the lease may use as generally the definition will set out the permitted uses of the property. Obviously, the broader the definition the more favorable it is to the developer and the more restricted the definition the more favorable it is to the landowner; however, a standard definition might recite something along the lines of: “solar energy purposes means collecting, converting, transmitting, and distributing electrical energy converted from solar energy.” As you might surmise, it is advisable to further define and refine

¹ Depending on the developer and the lease form they are using, occasionally there will be a separate clause that sets out the permitted uses.

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