

Distributed C&I PPAs: Overview and Trends

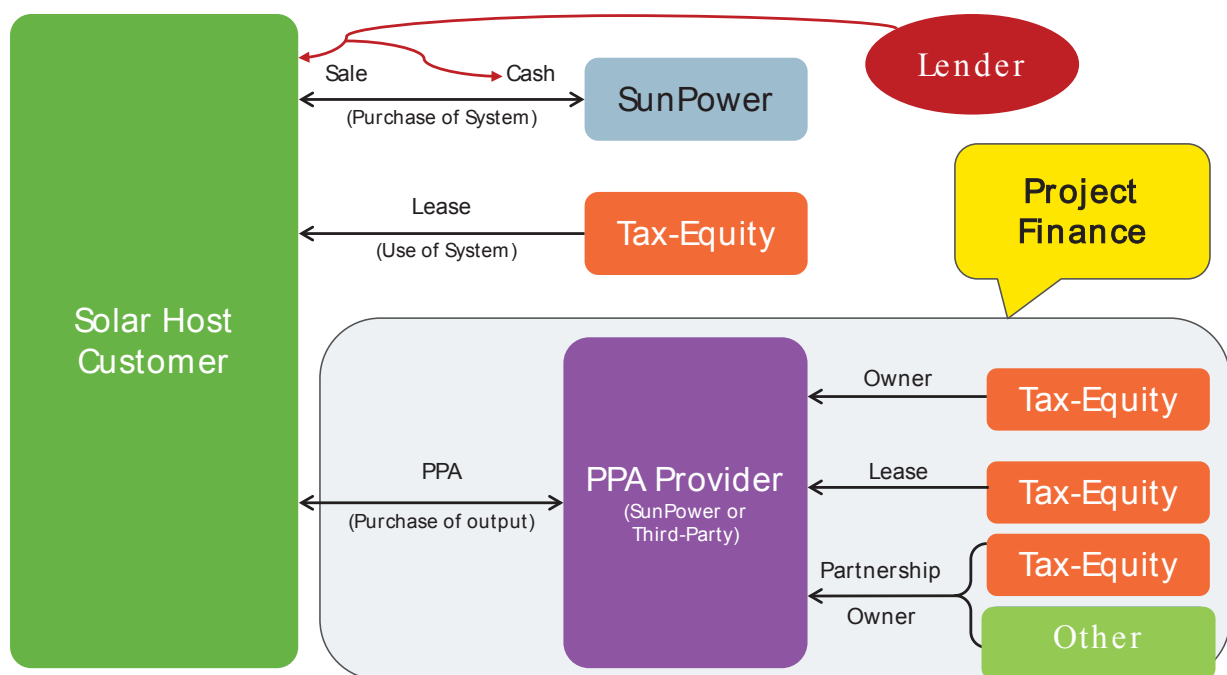
Sam Porter | January 29, 2018

Confidential | © 2018 SunPower Corporation

Agenda

- What is a distributed C&I behind-the-meter PPA
- What distinguishes cash from PPA transactions
- What is non-recourse project finance
- Key elements of a distributed behind-the-meter PPA
- Risks and nuances
- Contract and deal execution – practice tips
- Trends (storage, tax law, trade law, standardization)

Methods of Solar Acquisition



What is a Distributed C&I Behind-the-Meter PPA

- Distributed – on the distribution network. Urban or suburban. Space constrained.
- C&I – host / offtaker is commercial or industrial (including governmental and non-profit organizations)
- Behind-the-meter – serving on-site load primarily, and if non-export, exclusively
- PPA – power purchase agreement. A contract between an SPV and a commercial customer for the purchase and sale of electricity generated by a PV installation

Cash Transaction vs PPA Transaction

Cash = simple

- Two parties
- EPC agreement, maybe O&M and a PeGu

PPA = complex

- Third-party owned financing
- Looks like a straightforward bilateral negotiation between SPWR and Customer, but the empty chair of the financier changes everything
- Sales team simultaneously selling two products: PV and a financial contract
- An overly Customer-friendly PPA will not be financeable, but an overly Prover-friendly PPA may not meet Customer requirements
- Requires significant deal execution skill and attention to detail

The PPA Lexicon

AHJ	Authority Having Jurisdiction. Any governmental agency with approval rights.
COD	Commercial Operation Date. Loosely means start of energy sales.
CPs	Conditions Precedent. The CPs are tested prior to commencement of construction.
EOD	Event of Default. Failure to perform obligations under the PPA.
IA	Interconnection Agreement. Can be net-metered or non-export.
ITC	Investment Tax Credit. 30% below-the-line federal tax credit available to owners of PV assets.
MACRS	Modified Accelerated Cost Recovery System. Accelerated above-the-line fed tax depreciation.
NTP	Notice to Proceed. Loosely means satisfaction/waiver of CPs at commencement of construction.
PeGu	Performance Guaranty. A guaranty of a certain energy output.
PTO	Permission to Operate. Notice from the AHJ that the system is ready to operate.
SPE/ SPV	Special Purpose Entity / Special Purpose Vehicle. Used synonymously. Will be a Delaware limited liability company owned by SunPower during construction and then either owned, controlled or limited by a financier at the take-out.
Take-out	The "take-out financing" which occurs at COD. The tax equity financier "takes out" the construction financing by repaying it in full
TforC	Termination for Convenience. A right to break a contract at will.
TV	Termination Value (aka Early Termination Fee). Offtaker's penalty for breach and not letting the PPA stay effective for its full term.

Parties:

Customer = Host = Offtaker = Purchaser

Provider = Seller = SPE = SPV = Licensee

Find the full text of this and thousands of other resources from leading experts in dozens of legal practice areas in the [UT Law CLE eLibrary \(utcle.org/elibrary\)](https://utcle.org/elibrary)

Title search: Distributed C&I PPAs: Overview and Trends

Also available as part of the eCourse

[Updates and Trends in Energy Storage: In-Front-of-the-Meter, Behind-the-Meter, and Distributed C&I PPAs](#)

First appeared as part of the conference materials for the
2018 Renewable Energy Law session
"Distributed C&I PPAs: Overview and Trends"