



SolMarket Presents:

Bankable Engineering, Procurement, and
Construction (EPC) Agreements
with

Yuri Horwitz, Sol Systems &
Rusty Brewer, Cooley LLP

Agenda

Part 1: Introductions

Part 2: Sol Systems & SolMarket Overview

Part 3: Bankable EPC Agreements

Part 4: Q&A

Introductions

Speakers



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Sol Systems & Sol Market Overview

Sol Systems Overview

Solar Finance Firm

- Founded in 2008 with a mission to make solar energy more affordable and accessible
- Oldest and largest SREC aggregator in the U.S.
- 2,500+ customers in 13 states
- 250+ partnerships with solar installers and developers, 170 of which are exclusive
- Manage 30 MW+ of solar capacity
- Facilitated over \$100 million in project financing through SREC business

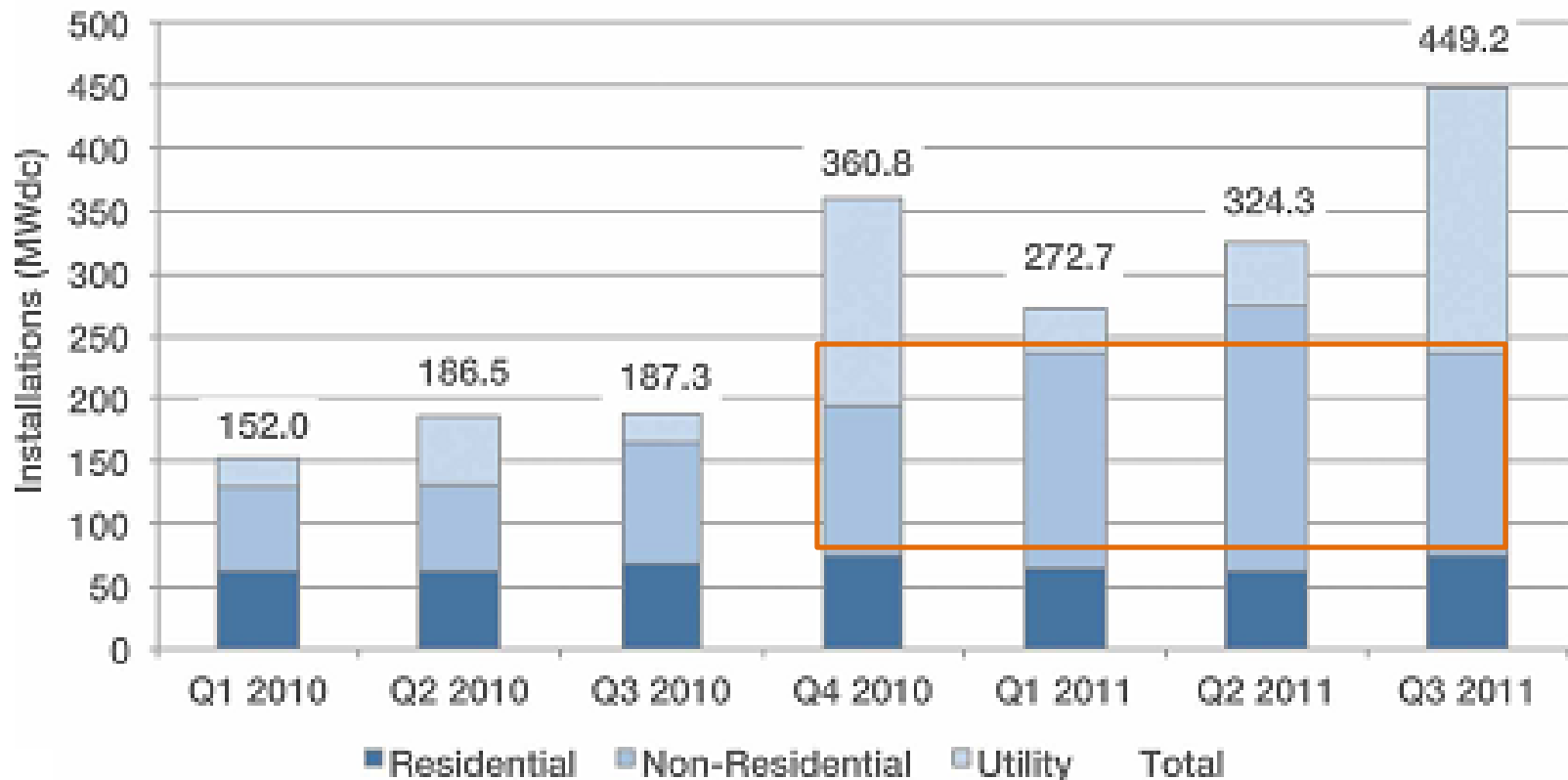
Why SolMarket

For the Solar industry to scale we must...

- **Build an Ecosystem:** Provide an ecosystem in which multiple new developers and players can thrive and innovate. Competition is healthy.
- **Reduce overall transaction costs:** Bring down costs of developing, investing and architecting portfolios. Uniformity in the origination and vetting process, standardization in documentation.
- **Create a standardized asset class:** We must provide a level of standardization across the industry to create secondary markets, reducing initial investment risk and creating an opportunity for more advanced investment vehicles.

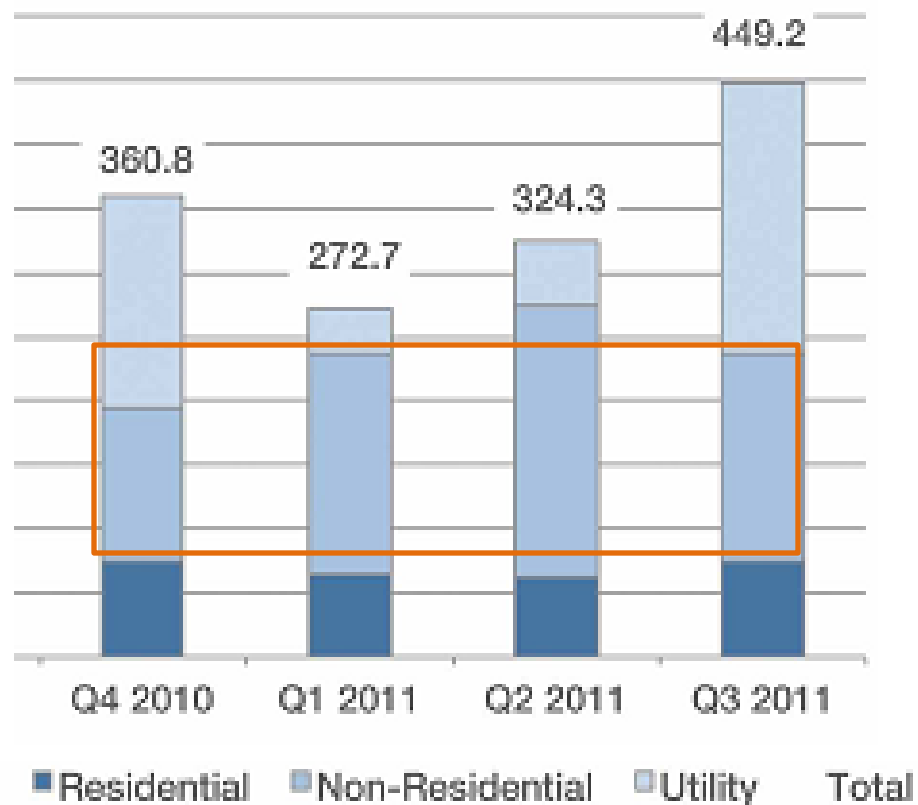
The SolMarket Focus

U.S. PV Installations, 2010-Q3 2011



The SolMarket Focus

The vast majority of solar (in volume) is built in not utility and non-residential space. These developers must succeed if the solar industry is to continue to scale. Providing them with the appropriate resources and information will be critical to this success.



SolMarket Explained



SolMarket Vision

- Transaction driven community for solar
- Project origination platform for investors
- Financing conduit for developers
- Transaction resources for solar development
- Collaborative development knowledge center
- Group purchase opportunities
- Development services

SolMarket Current Snapshot

- Over 350 users
- 250 MW of project pipeline
- \$1.8 Billion in available investment dollars for qualified solar projects
- Current investor preferences posted on dashboard



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Bankable EPC Contracts

Cooley
LLP

Purpose

- General considerations in Engineering, Procurement and Construction Contracts for solar facilities
- Issues discussed from a developer's perspective
- Issues often vary depending on the project

Key Terms

- Scope and Requirements
- Subcontractors
- Warranties
- Completion and Liquidated Damages
- Financing Accommodations

Scope and Requirements

- Responsibilities of contractor and developer need to be carefully defined
- Example Language:
 - Contractor shall: (i) perform, furnish, undertake and provide, or cause to be performed, furnished, undertaken and provided, all work for the design, engineering, construction, installation, Substantial Completion and Final Completion of the Project at the Site, (ii) procure and provide all equipment, machinery, tools, and all materials [(other than the Owner Furnished Materials)] necessary for the Project, including [_____] (the "Materials"), (iii) provide all transportation, delivery, administration and other services necessary or incidental to the foregoing, (iv) [procure the Permits for the Project], and (v) provide, perform and acquire all other items required to complete and deliver to Owner the fully integrated, installed, tested, and operational Project (items (i) – (v) collectively, the "Work"). As used herein, the terms Work, Materials, and Scope of Work shall include any reasonably foreseeable incidental work and materials that are necessary to complete the Project in accordance with this Agreement.
- Contractor's obligations can also be specifically limited to what is in the Scope of Work.

Scope and Requirements

- EPC should match requirements of other project documents (e.g., PPA, interconnection, lease)
- Examples:
 - The lease agreement limits access to the Project site to the hours of 8 am to 4 pm and the EPC agreement grants access to the Site to the contractor during “reasonable business hours”
 - The guaranteed completion date in the EPC is June 1, 2012 and the guaranteed start date in the PPA is May 15, 2012
- Risks associated with concealed or unforeseen site conditions need to be apportioned

Subcontractors

- Developer should protect itself against subcontractor liens
- Subcontractors should perform their work to the same performance standards as the EPC contractor
- Make sure that any subcontractor warranties are passed to you once the EPC contractor's warranty expires
- Subcontracts should be assignable to developer in event of termination for contractor default

Warranties

- The EPC contractor is unlikely to provide warranties on equipment it did not directly supply
- The EPC contractor should be willing to pursue major warranties (e.g., panels and inverters)
- Market EPC work warranties vary in length from 2-10 years
- Include performance and timing requirements for all warranty repair work performed

Warranties

- Examples:
 - Contractor will promptly repair any warranty defect
 - Contractor will repair any warranty defect as soon as reasonably practicable
 - Contractor shall endeavor to repair any reported warranty defect within 48 hours of being notified of such defect

Completion of the Project

- Carefully outline requirements with respect to commissioning tests
- Substantial completion to be confirmed by independent engineer
- Guaranteed completion date should be well in advance of guaranteed completion date in PPA
- Liquidated damages for completion delay should be sufficient to cover any delay damages in PPA and other reasonable expenses of developer

Financing Accommodations

- The EPC should be freely assignable to a financing party
- Example Language:
 - Owner may, without the consent of Contractor, transfer or assign this Agreement to: (i) an Affiliate of Owner; (ii) any Person succeeding to all or substantially all of the assets of Owner (whether voluntary or by operation of law); or (iii) a Lender; provided, however, that in each such case, any such assignee shall agree in writing to be bound by the terms and conditions hereof.
 - Neither Owner nor Contractor may voluntarily assign its rights nor delegate its duties under this Agreement, or any part of such rights or duties, without the written consent of the other Party. Neither Owner nor Contractor will unreasonably withhold, condition or delay any requested consent to an assignment that is allowed by the terms of this Agreement. Any such assignment or delegation made without such written consent or in violation of the conditions to assignment set out below shall be null and void.

Financing Accommodations

- Financing parties should be provided notice of defaults and given the right to cure such defaults
- EPC contractor should agree to enter into additional consents or other reasonable documentation requested by financing parties

Upcoming Webinars with Cooley

- **Part 2: Power Purchase Agreements (PPAs)**
 - Wednesday, February 29, 2012 at 12:30 EDT
- **Part 3: Securing Site Control**
 - Wednesday, March 14, 2012 at 12:30 EDT
- **Part 4: Developing a Solar Lease**
 - Wednesday, March 28, 12:30 at 12:30 EDT

Disclaimer

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