



Wilson Sonsini Goodrich & Rosati
PROFESSIONAL CORPORATION

SOLAR POWER PURCHASE AGREEMENTS IREC TELEPHONE SEMINAR

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Agenda

- Legal Drivers and Barriers for PPA Business
- Legal Structure and Documentation
- The Power Purchase Agreement: Challenges and Key Legal Terms
- Other Key Project Agreements
- Tax-Driven Structures for PPA Companies
- Corporate Finance of PPA Companies



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Legal Drivers and Barriers for PPA Business

Legal Drivers and Barriers for PPA Business

Part I: Financial

- Investment Tax Credit
 - 30% tax credit when system placed in service
 - 50% “bonus” depreciation in first year
 - Use of 5-year MACRS for remaining 50%
- State Incentives
 - California Solar Initiative: Rebates/Production Incentives for eligible systems
 - New Jersey, Colorado: Solar Set-asides in RPS
- Environmental Attributes
 - RECs and Carbon Credits
 - Voluntary and Compliance Markets
 - Generally Not Drivers

Legal Drivers and Barriers for PPA Business

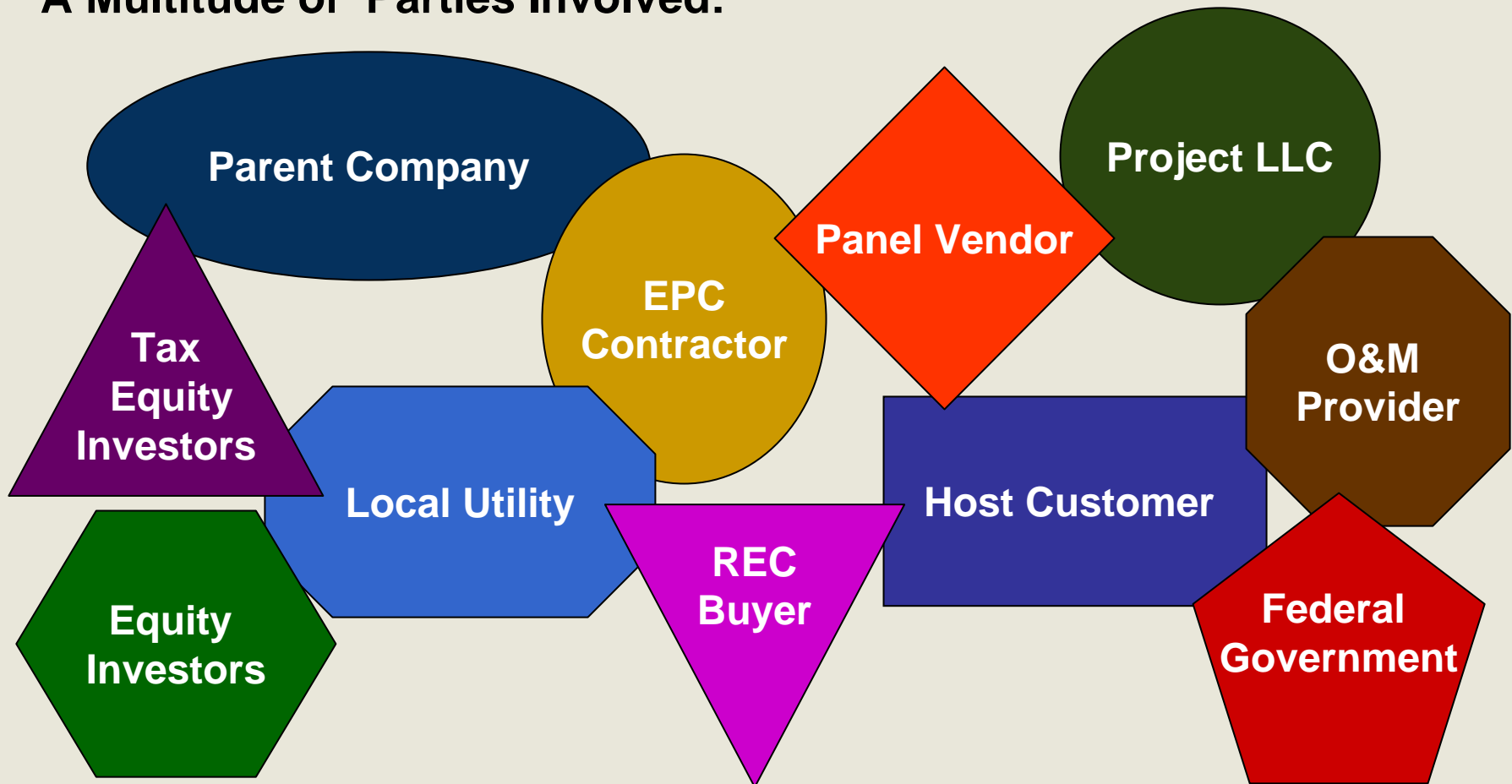
Part II: Regulatory

- **Interconnection/Net Metering Rules**
 - Electrical interconnection issues/concerns
 - Safety concerns (e.g., pending CA fire safety guidance)
 - Net metering issues (system size cap; statewide cap; pricing regime, aggregation, etc.)
- **Utility Regulations Impacting Business Models**
 - Third-Party Ownership
 - ▶ States with ambiguity in definition of “public utility”
 - ▶ States with direct prohibitions of 3rd party ownership
 - Multi-Customer Service
 - ▶ Issue with public utility definition
 - ▶ States with relevant pending legislation

Legal Structures and Documentation

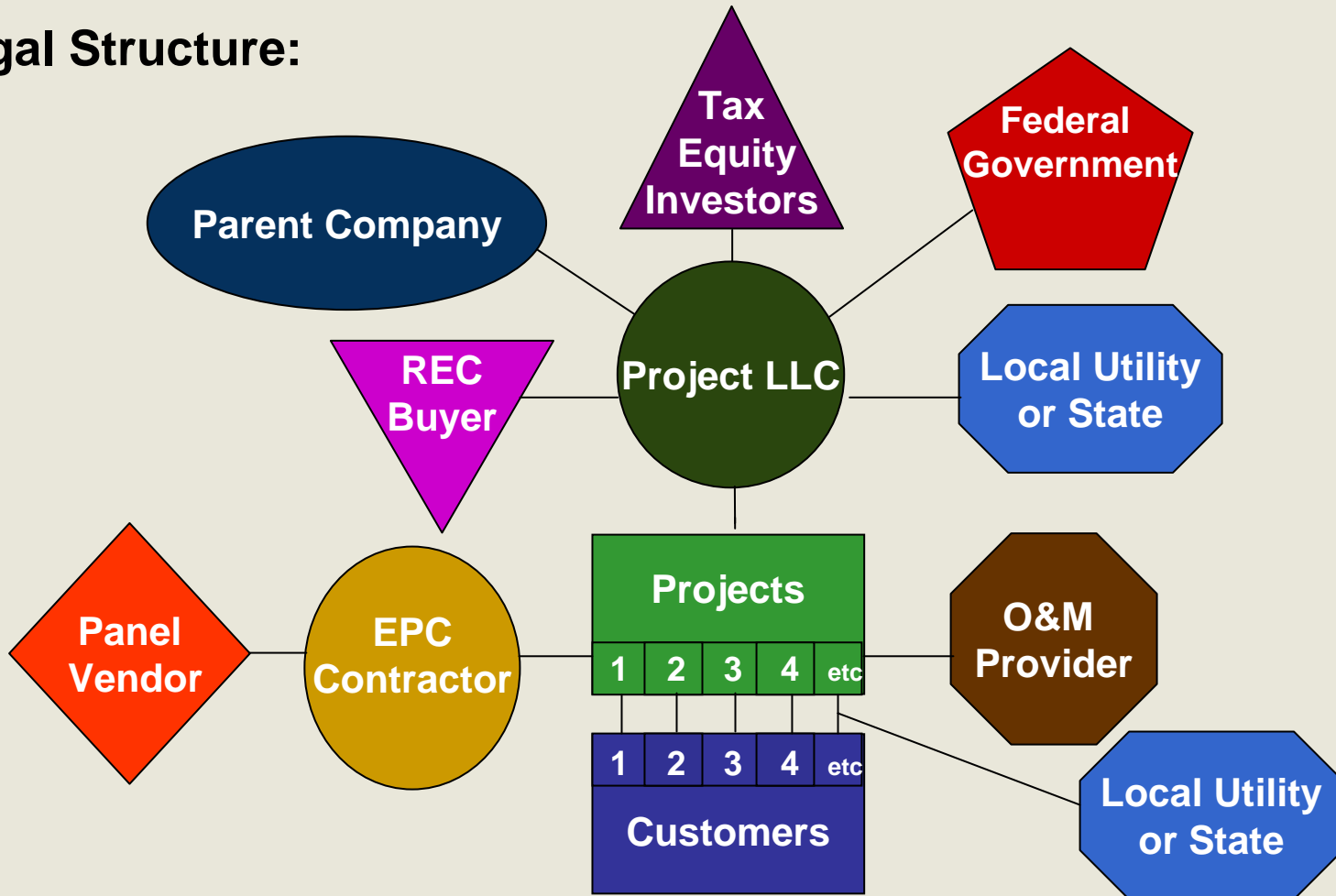
PPA Company Legal Structure

A Multitude of Parties Involved:



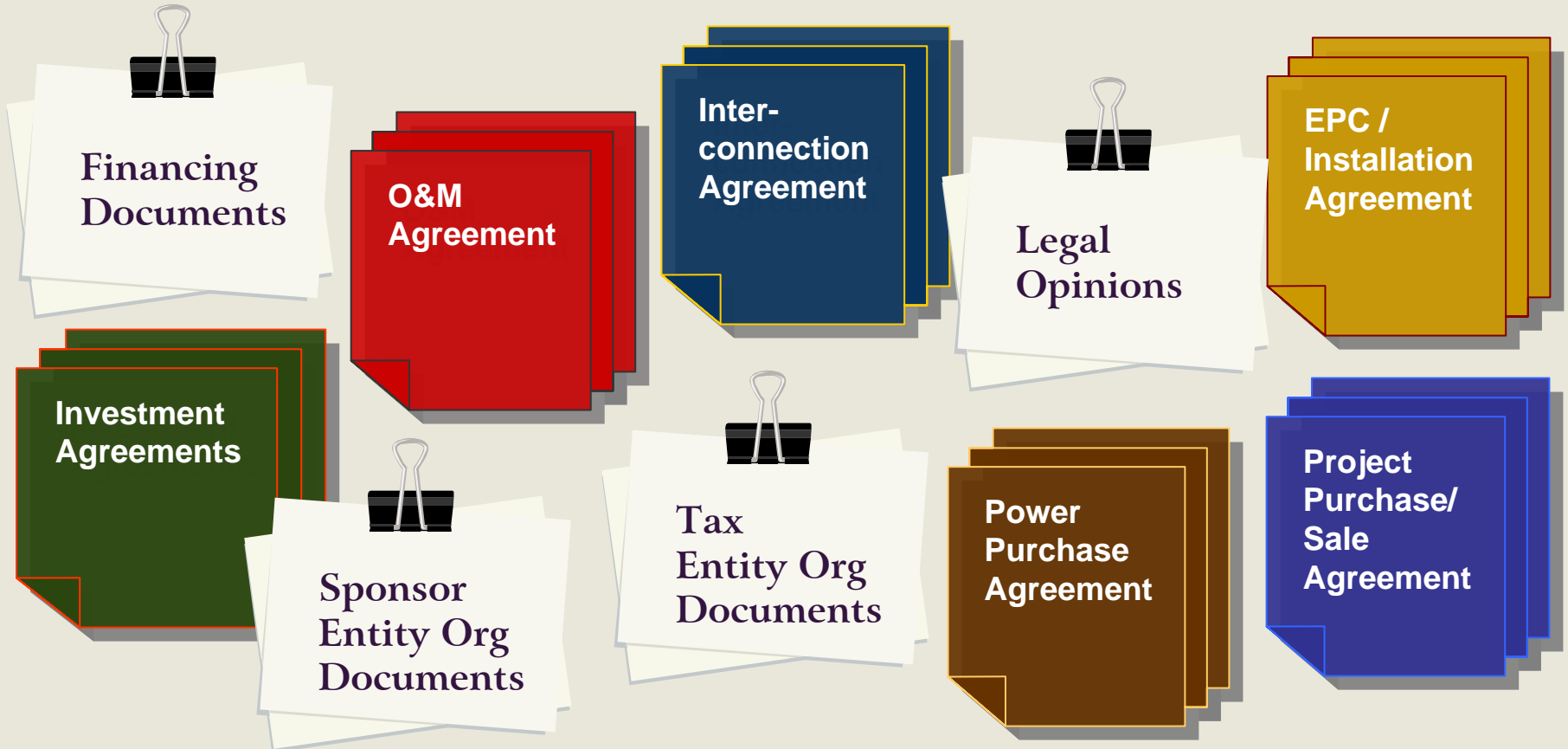
PPA Company Legal Structure

Legal Structure:

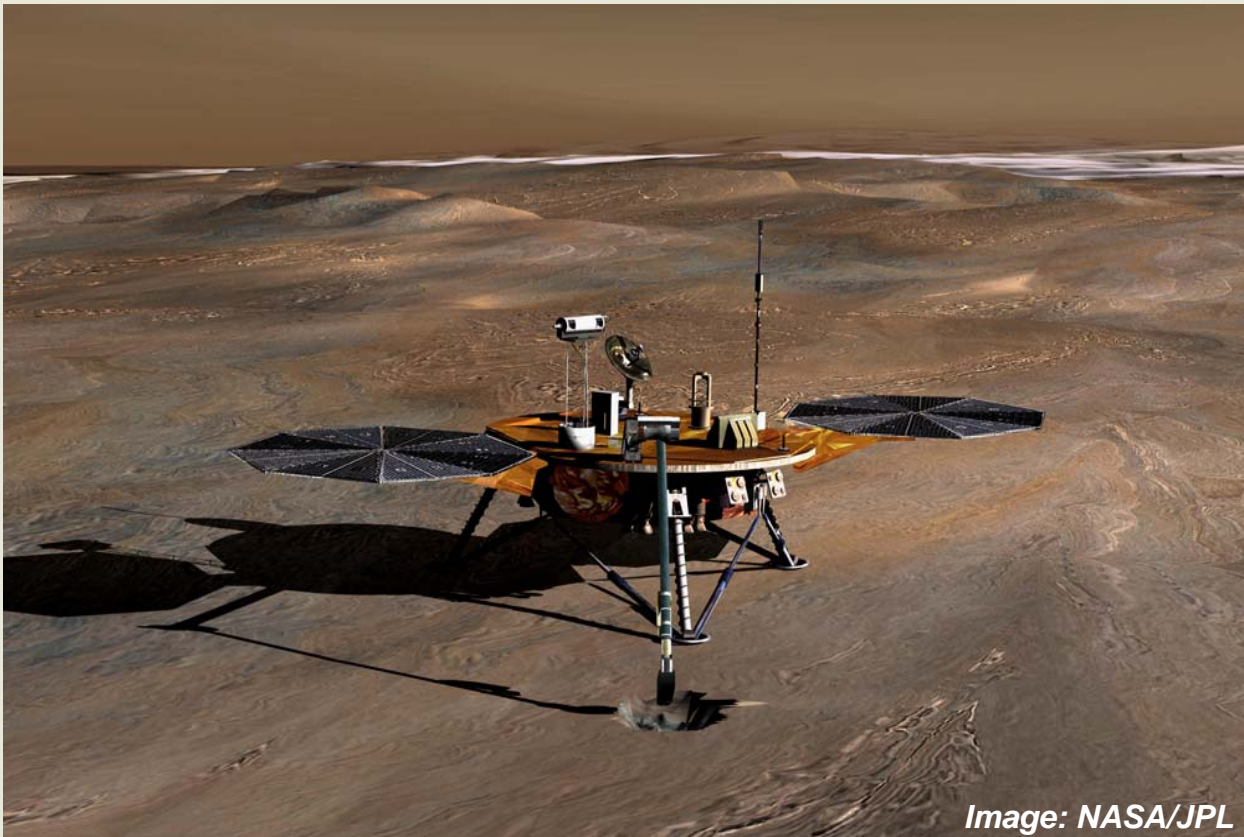


PPA Business Documentation

Representative PPA Business Contracts and Documents



Overall Legal Challenges of PPA Business



- **DG: Smooth and Simple at Point of Delivery**
- **Massive Efforts Back at Mission Control**
- **NASA-like Costs**

Image: NASA/JPL



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The Power Purchase Agreement: Challenges and Key Legal Terms

The Power Purchase Agreement

Part I: Overview

- Goals
 - Improve Host Status Quo
 - Minimize Host Risks
 - While Making Money
- Challenges
 - Intermediation between host and finance parties
 - Address a wide variety of potential risks over a long term

The Power Purchase Agreement

Part II: Key Legal Terms

- Lease/license of host property for system installation, operation and maintenance
- Power sales terms
 - Host commitment to buy output
 - Output guarantees
 - Pricing structures
- RECs, carbon credits, etc.
- Insurance and indemnification
- Default and remedies
- Sale of host property
- Term, termination, removal of system



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Other Key Project Agreements

EPC Agreement

- Design of system; specifications
- Procurement
- Installation
- Completion, testing, and commissioning
- Transfer of Title
- Guarantees and Warranties

O&M Agreement

- Use of projects
- Compliance with PPA
- Compliance with project contracts (including warranties)
- Compliance with the law
- Liability and performance security

Other Agreements

- Marketing agreements
- Teaming/partnership agreements
- Interconnection and Net Metering Agreements
- REC Sales Agreements



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Tax-Driven Structures for PPA Companies

ITC Basics

- **Current ITC benefits**
 - 30% tax credit when system placed in service
 - Ratable recapture over 5 years
 - 50% bonus depreciation
 - Use of 5-year MACRS
- **Looming ITC expiration**
 - Immediate legal consequences of expiration without renewal
 - Impact on PPA business
 - Prognosis for ITC renewal
- **Key ITC issues for PPA business models**
 - What are eligible project costs?
 - Who gets the credit (the Placed in Service rule)?
 - Tax Opinions

Tax Structures

- Flip structure
 - T1: Tax investor has almost all ownership
 - T2: Flip
 - ▶ Tax credits are used; recapture period expired
 - ▶ Tax investor reaches targeted return
 - ▶ Flips to minority ownership
 - T3: Tax investor reaches ___ and is reduced to near-zero or sells all interest
- Lease
 - Structure
 - Rationale



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Corporate Finance of PPA Businesses

Venture and Other Early Stage Finance

- Early stage equity investment in PPA businesses
- Challenges to VC and other early stage finance
 - Viewed as “execution” business
 - Without protectable IP
 - In policy-driven market
 - Populated with a multitude of aggressive competitors
- Non-tax equity financing for expansion
 - “Priming the pump” problem
 - Lines of credit, bridge financing products



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