



Wilson Sonsini Goodrich & Rosati  
PROFESSIONAL CORPORATION

# **SOLAR POWER PURCHASE AGREEMENTS IREC TELEPHONE SEMINAR**

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## **Wilson Sonsini Goodrich & Rosati**

## 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

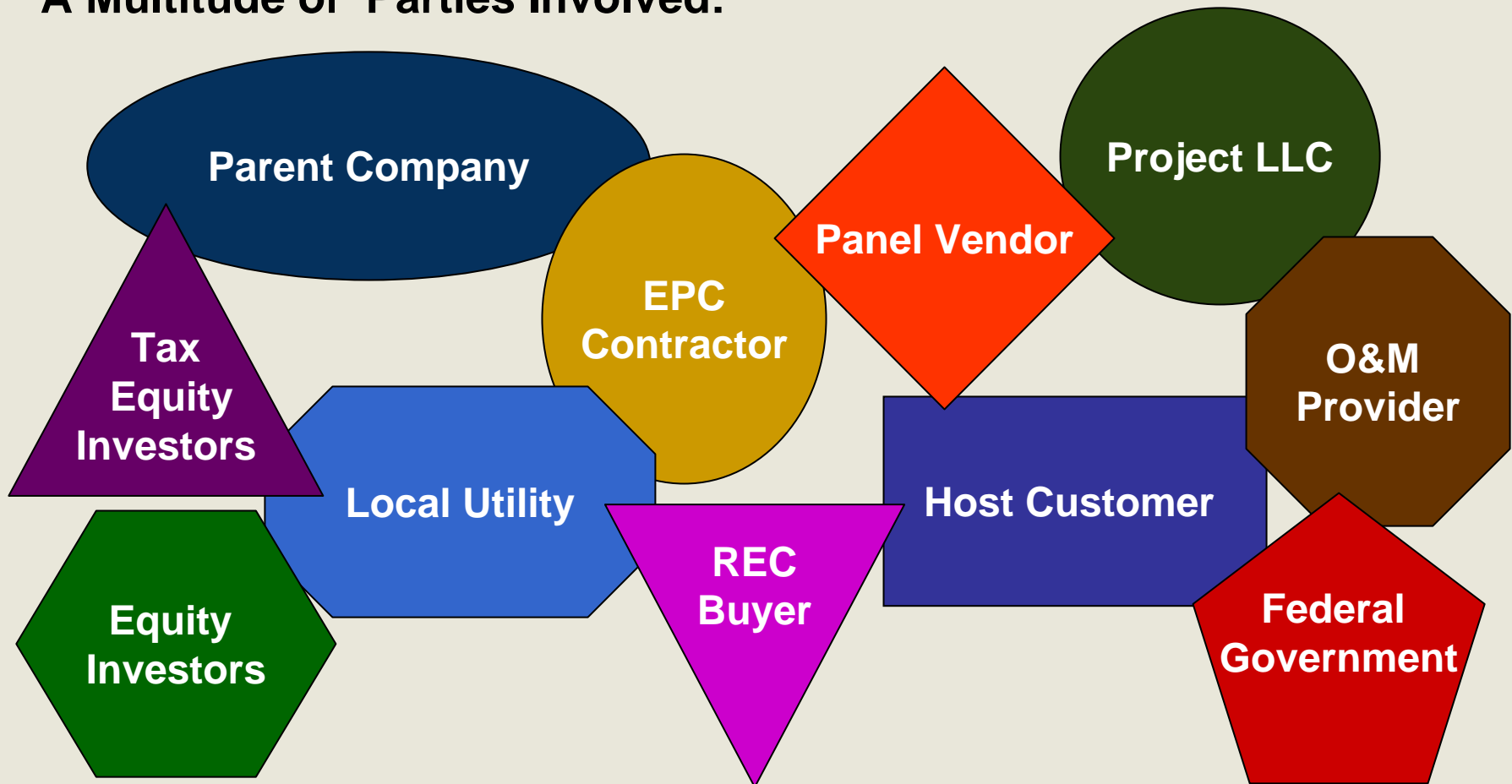
- **Interconnection/Net Metering Rules**
  - Electrical interconnection issues/concerns
  - Safety concerns (e.g., pending CA fire safety guidance)
  - Net metering issues (system size cap; statewide cap; pricing regime, aggregation, etc.)
- **Utility Regulations Impacting Business Models**
  - Third-Party 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

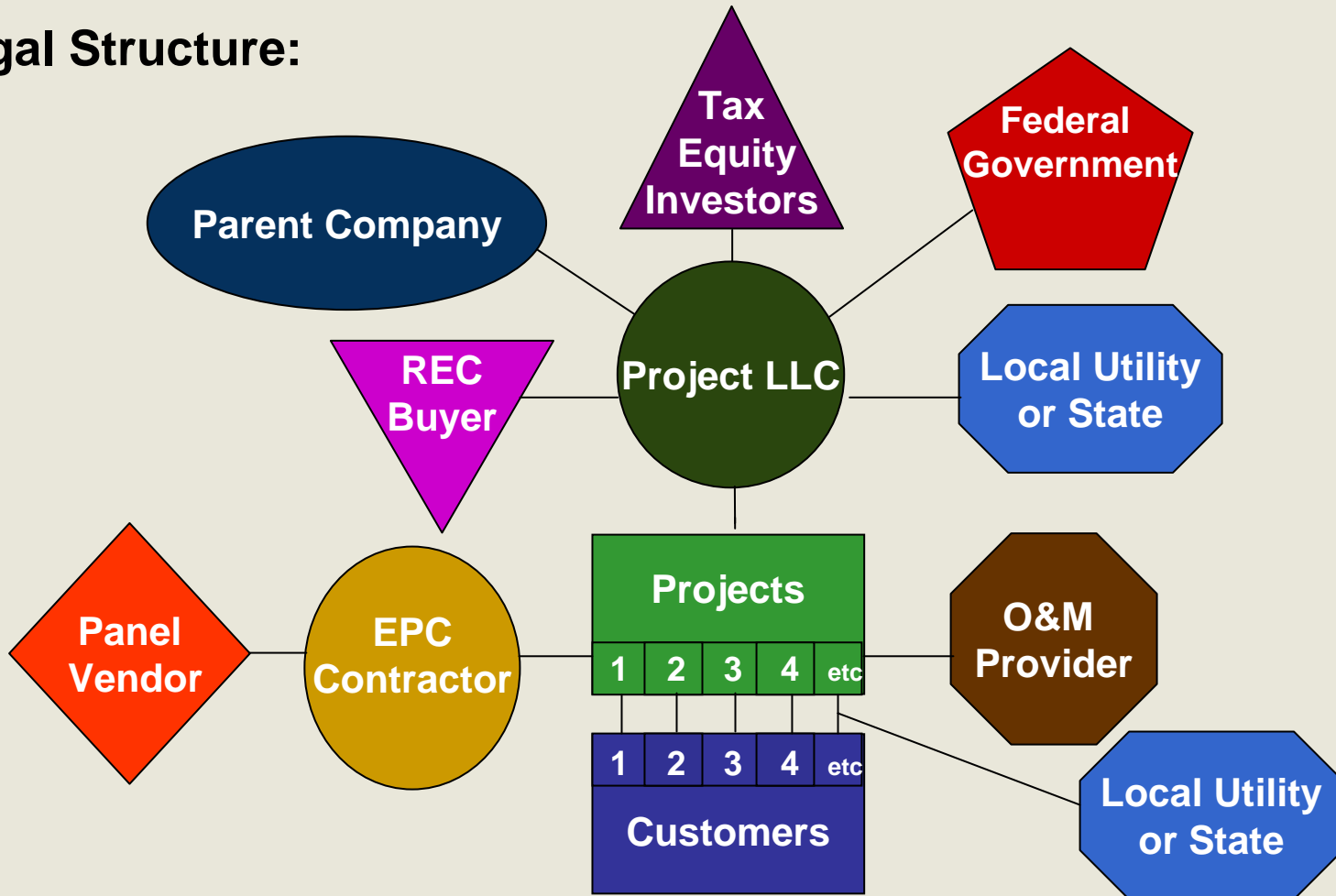
# PPA Company Legal Structure

**A Multitude of Parties Involved:**



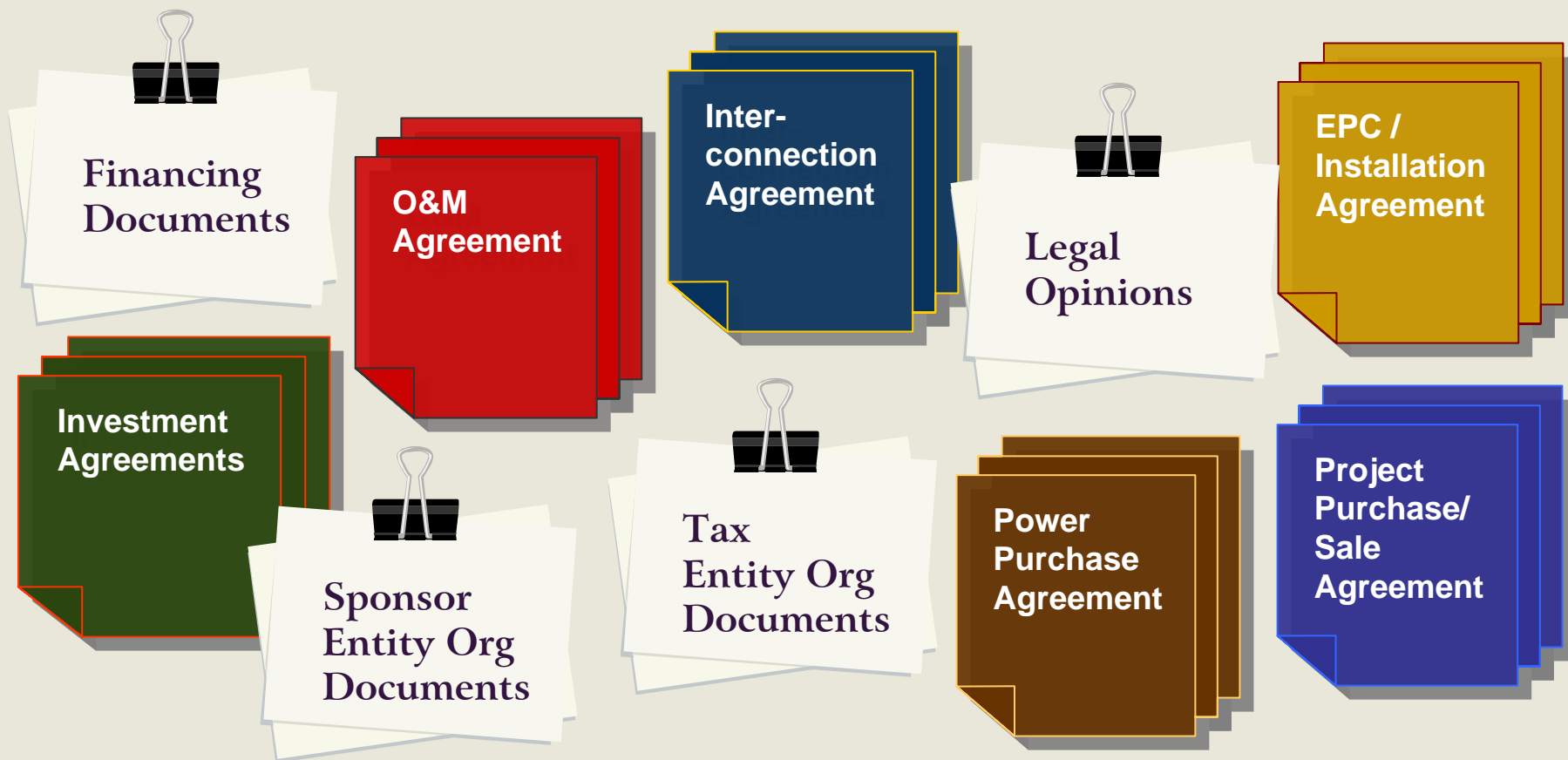
# PPA Company Legal Structure

Legal Structure:

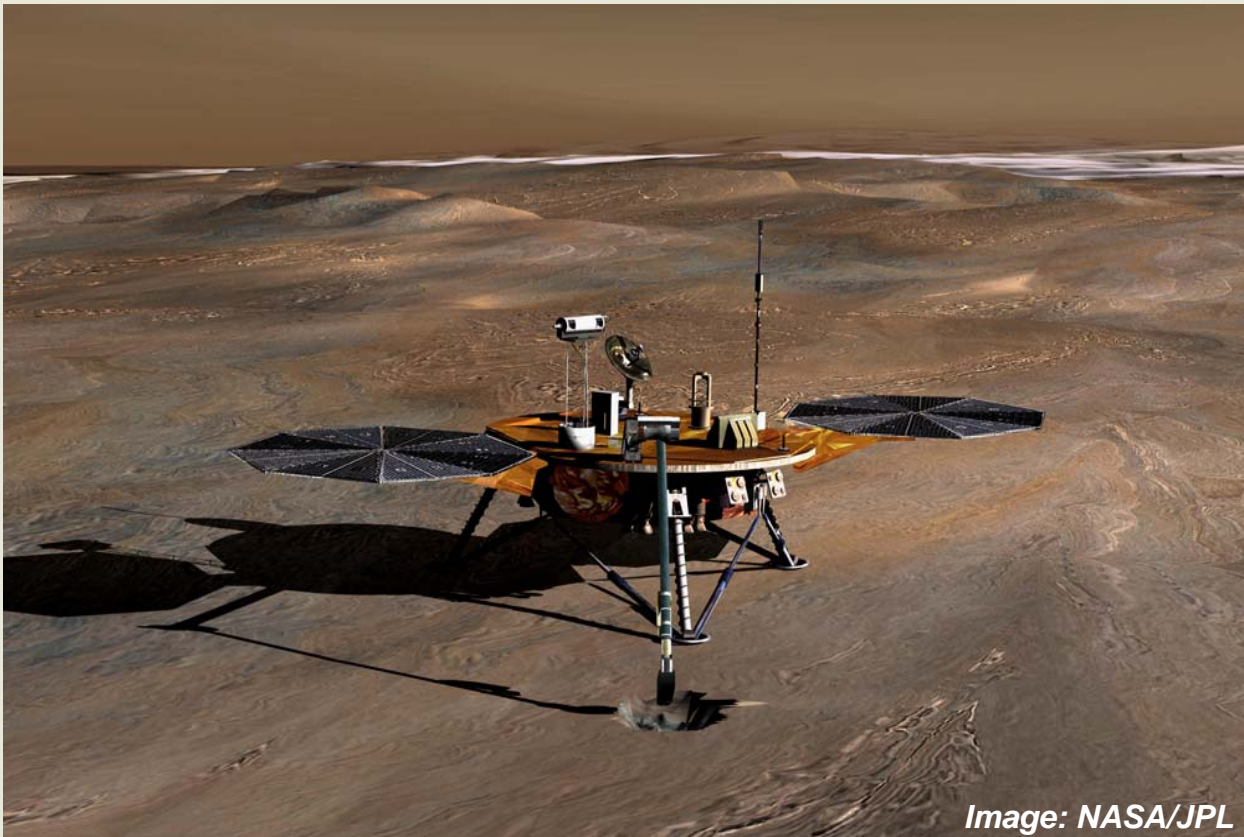


# PPA Business Documentation

## 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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