

Let the sun shine in: Owners guide to solar rooftop agreements

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In New York City, the Bloomberg administration recognizes that renewable energy will play a significant role in our energy supply with solar having the greatest potential to generate electricity in the five boroughs.

Tax credits and other incentives have been established to make installation of solar photovoltaic systems on buildings more economically attractive.

This includes a Solar Electric Generating System Property Tax Abatement Program offering abatement up to \$62,500 per year for four years or the building's annual tax liability (whichever is less). Decreasing equipment cost is another encouragement factor.

For solar service providers (SSP), locating the equipment on existing building structures is attractive because there is no need to acquire or lease undeveloped real estate. For property owners, rent can be an incentive where power generated will go directly back to the grid. In another prevalent model, building owners and tenants participate in electricity savings pursuant to a "Power Purchase Agreement" with SSPs.

This article will highlight questions and issues every owner contemplating a rooftop solar system should consider.

Sunlight.

Obviously, there needs to be sufficient sunlight. The panels may have to be situated in a certain direction with respect to the sun because there has to be adequate and unobstructed access to daylight. SSPs will require a negative covenant from property owners not to take any actions that would obstruct sunlight. Property owners should negotiate that they are not responsible for anything that they have no control over, including what happens on adjacent properties.

Some SSPs will require owners to give notice of any situations on neighboring properties that might lead to shadows or other sunlight interference and require owners to reasonably intervene and cooperate on the SSPs' behalf.

Physical and Contractual Constraints.

Will the roof of the building support the weight? What is the impact on the building's roof warranty? Does the warranty require work to be done only by certain contractors? Do any building tenants have any rooftop rights? Are there existing rooftop tenants such as telecommunications companies and what are their contractual rights? Where will inverter equipment go that is needed to transfer power back to the grid? Where will conduits go for the cabling? Will there be any interference to rooftop access or other equipment? Who has or will have access to the rooftop? Property owners must analyze all existing leases, licenses or other access agreements.

Plans and Scope of Installation.

It is of critical importance to owners that they have full rights of review and approval over installation and alterations of all equipment installed at the property. All improvements, all necessary equipment and all locations must be clearly set out in the plans and all plans must be subject to owner's approval, including all cable and conduit runs. Owners should draft into their agreements appropriate protection from mechanics liens



and appropriate controls over subcontractors.

Permits and Approvals.

All requirements for zoning or other government authorizations must be the SSP's responsibility (with owner's reasonable cooperation). Owners should put an outside date by which service SSPs must have obtained all approvals and when rent and term should thereby kick in. SSPs must comply with all applicable laws and building and electric codes. In New York City, this would include proof of Con Ed interconnection coordination, all Department of Buildings ("DOB") construction and electrical permits (ALT 2) and electrical installation only by a NYC licensed master electrician. DOB will also require fire department access, ballast and anchorage details as well as reinforcement details if necessary to sustain additional horizontal or vertical loads. In New York City, an application for a DOB permit must also show compliance with the Zoning Resolution

No Representations by Owner.

Generally solar license or lease agreements should require the SSP to accept the property "as is" without any work by owner. SSPs should do the necessary diligence on the building to assure it is sufficient for a solar installation.

Relocation. This is a difficult issue to negotiate given SSPs' need for continuous operation, exposure and significant space taken up by a typical installation. However, owners may need flexibility in terms of further development and changes to a property and basic repairs to the roof during the term. Who absorbs the costs of relocation is an issue of heavy negotiation. Any relocation must be reasonably satisfactory for the continuing operation while also allowing owners to make necessary

Paper trail leads to Greenies for NAI Friedland

NAI Friedland, a commercial real estate firm serving metropolitan New York, was honored for the company's green efforts at the 3rd annual Greenie Awards.

Hosted by the City of Yonkers' Green Policy Task Force, the ceremony recognized outstanding environmental good deeds in the local community. The "Greenies" were held at Beczak Environmental Education Center in Yonkers.

NAI Friedland CEO Tony Lembeck was one of 20 winners called upon to walk the green carpet. "NAI Friedland's green initiative began after I learned an alarming statistic — that paper accounts for 40% of all landfill waste," he explained.

"It didn't take long for us to start doing our part. I went



L-R: Laura Farhentold-Pittman, Green Policy Task Force; Anne Farley, Bright Energy Services; Tony Lembeck, CEO, NAI Friedland; Chuck Lesnick, Yonkers City Council president; and Greenie recipient Bonnie Hagen, Bright Energy Services.

back to the office, purchased blue bins and asked employees to literally pitch in."

NAI Friedland's recycling program has reduced the company's waste by 75%.

roof repairs or adjustments.

Rights on Termination. It is of critical importance to owners that the SSP is contractually obligated to remove all equipment at the end of the term safely and without damage to the property. The property should be restored to its original condition, except for normal wear and tear. Alternatively, property owners and SSPs may negotiate a purchase option.

Utility Issues. SSPs must interface with the utility and must ensure that owners do not incur any responsibility or obligations that would subject them to utility type regulation. There will be utility interconnection issues. Also, SSPs should provide for a backup power plan in case the solar system fails.

Miscellaneous. There should be deadlines for starting and completing construction. There may be a need for a temporary construction laydown area. Issues need to be addressed regarding subordination, non-disturbance and attornment and relations of various lending and financing entities.

There should be provisions regarding condemnation and casualty occurrences. Standard environmental and hazardous materials provisions are necessary as well as standard default, insurance and indemnification provisions. Provisions regarding tax allocations must be included.

Conclusion. The potential for solar energy in New York City is large and growing but so far still largely untapped. With subsidies and other incentives, like tax credits and abatements and Solar Renewable Energy Certificates or Credits, the build-out will come. Building owners need to be ready and educated to enter into fair and comprehensive agreements that allow for these new installations and a new energy infrastructure at their properties.

The City Council created the Green Policy Task Force on Earth Day 2007. Comprised of seven community volunteers, the Task Force provides advice on issues that have an impact on the health of Yonkers residents, on the conservation of the city's resources, and on the overall health of the environment in

which Yonkers residents live and work.

Lembeck, along with two fellow Greenie recipients and Green Policy Task Force member Laura Farhentold-Pittman, also took part in a Green Sustainability Officer Certification course offered through the Business Council of Westchester.

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Cut noose of energy costs

By JERRY PINDUS, CEO,
US ENERGY GROUP

Problem: Building Owners are Strangled

The general operating expenses of buildings that are rent-regulated (either entirely or partially) have increased significantly in the past year.

While owners have seen an increase in taxes, a major culprit of the rising costs is the increase in fuel and utilities expenses.

According to NYSERDA's heating fuels report dated May 23, 2011, heating oil has increased by 35.6% in the past year.

Solution: Cut the Noose

The smart solution is to act quickly to cut energy expenses. While owners and managers do not have control over heating oil prices, they do have control over how much fuel their buildings use.

Often, owners and managers do not view this as something they can control — after all, they assume their usage is fixed and that a building which has used a lot of fuel in the past will continue to use a lot of fuel.

Owners and managers need to change this perspective, and recognize that the energy usage of a building is highly variable and definitely

controllable.

For example, US Energy Group's Building Energy Management Systems (BEMS) reduce fuel use by 15-35% with

payback in under 2 years by utilizing a highly refined series of algorithms which control the boiler more precisely and utilize fuel more efficiently.

The USE Manager, a web-based energy management dashboard with online monitoring, alerting and control programs enable building owners and property managers to view, remotely at-a-glance, their entire portfolio of buildings and utilize a series of comparative metrics to continually optimize their energy usage.

As the costs associated with owning and managing a building in New York City continually increase, owners need to reduce their operating costs by maximizing the efficiency of their buildings and continually monitoring and tweaking them.

Building owners have a lot to be concerned about, but having peace of mind with respect to the energy usage of their buildings is a smart solution easily within reach.



Thinking long term

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"green add-ons," i.e. the notion of a cost premium for building green becomes obsolete once sustainability features are considered integral to the design.

To use a simple analogy: when we get to a point where the suggestion to cut costs by removing green features from a project will strike us as similarly absurd as a suggestion to remove all doors or all windows, we will have arrived at a truly transformed building industry.