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Solar photovoltaics - A timely investment for any business owner

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Solar photovoltaics, those familiar silicon panels once reserved for exotic locales like the South Pole and orbiting satellites, are finally reaching the mass market, driven by strong incentives and declining equipment costs. Solar businesses from places like California and Texas are arriving in Mass., responding to the Commonwealth's expanded solar incentives. The value of new Solar PV installations within Massachusetts should exceed \$2 billion over the next five years, and figures like that create a lot of opportunity.

Rath, Young and Pignatelli structured some of the first solar PV portfolio developments and financings, won important cases defining how solar power can be sold, and worked with title insurers to develop a form of low cost title insurance for solar projects. Our solar team has been involved in over 60 solar PV installations in eight states. In every case, the transactions we manage must do a few fundamental things: (i) efficiently absorb complex federal and state tax incentives and subsidies; (ii) ensure that a project works well with the local electric grid and any host electricity consumer; and (iii) simplify life for the project site host.

Solar PV projects can be rooftop or ground-mounted arrays and can provide output directly to an electric consumer or the local utility. For output used on site, it can make sense for a property owner to install its own system if the owner can: (i) effectively utilize the many governmental benefits; (ii) master the markets for selling the environmental characteristics of the system; and (iii) readily handle a capital expenditure ranging from \$1 million to \$5 million for most commercial installations.

The alternative is to turn the project over to a third party installer/financier (SolarCo). A SolarCo will finance, install, operate and maintain the solar PV project on site. The building occupant/consumer (Host) gets a modest discount on power costs, some longer term power cost certainty and relief from paperwork. Importantly, the SolarCo will need the building owner/tenant (and any mortgagees) to agree to treat the solar project as separate property unaffected by any building financings/mortgages, and ready installation/maintenance access. Also, care must be taken to preserve any rooftop warranties and to coordinate liability and casualty insurance.

For example, Rath, Young and Pignatelli recently acted as lender's counsel on a long-term loan to a SolarCo for the development, operation and maintenance of a portfolio of solar installations in California. The installations are mounted variously on roof-tops, trellis structures positioned over parking areas, and on ground-sited racks. The Hosts - all unrelated to each other - include small businesses, international businesses, municipalities, school districts and universities. The transaction involved an inverted lease structure, in which a tax equity investor takes advantage of investment tax credits paid over time, requiring a simultaneous closing of the equity investment, the payoff of existing financing, and the term loan. In the final transaction, the Solar Co's parent became the equity investor and took advantage of the Section 1603 Cash Grant, an alternative to the

investment tax credit.

If you are a solar integrator, tax equity provider, lender or commercial consumer and have questions on any aspect of solar PV development, give our solar team a call. Rath, Young and Pignatelli's Energy Group leader, Curt Whittaker, is a Harvard Law School graduate and has successfully built energy projects around the country. Attorneys Jill Dinneen, Chuck Willing and Woody Stalter have experience in documenting and closing transactions and renewable energy incentives. Paul Burkett, an experienced tax attorney, will provide advice to help you qualify for available tax benefits. This team - like the law firm - has national impact, but is uniquely New Hampshire.

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