

On-Site Power Purchase Agreements as part of an ESPC



ESC Market Transformation Conference

Doug Dahle

August 13, 2013

20+ year RE Production

Energy Service Agreement (ESA)



← ESA

ESA →



← ESA

ESA →



RE ECM with Private Ownership

- **Agency RFP Addresses Title Provision**
 - Text allowing private ownership of RE ECM(s)
 - Description of Access to Privately Owned Asset
 - License adequate or Easement
 - Declare/Designate RE ECM is categorized as personal property
 - Attachment _ - Energy Services Agreement
- **Authorizes private ownership to third party**
- **Access Rights critical for Financing**
- **Personal Property designation required for Federal/State Tax Incentive(s) eligibility**
- **ESA – RE & Finance Industry compatible Terms & Conditions**

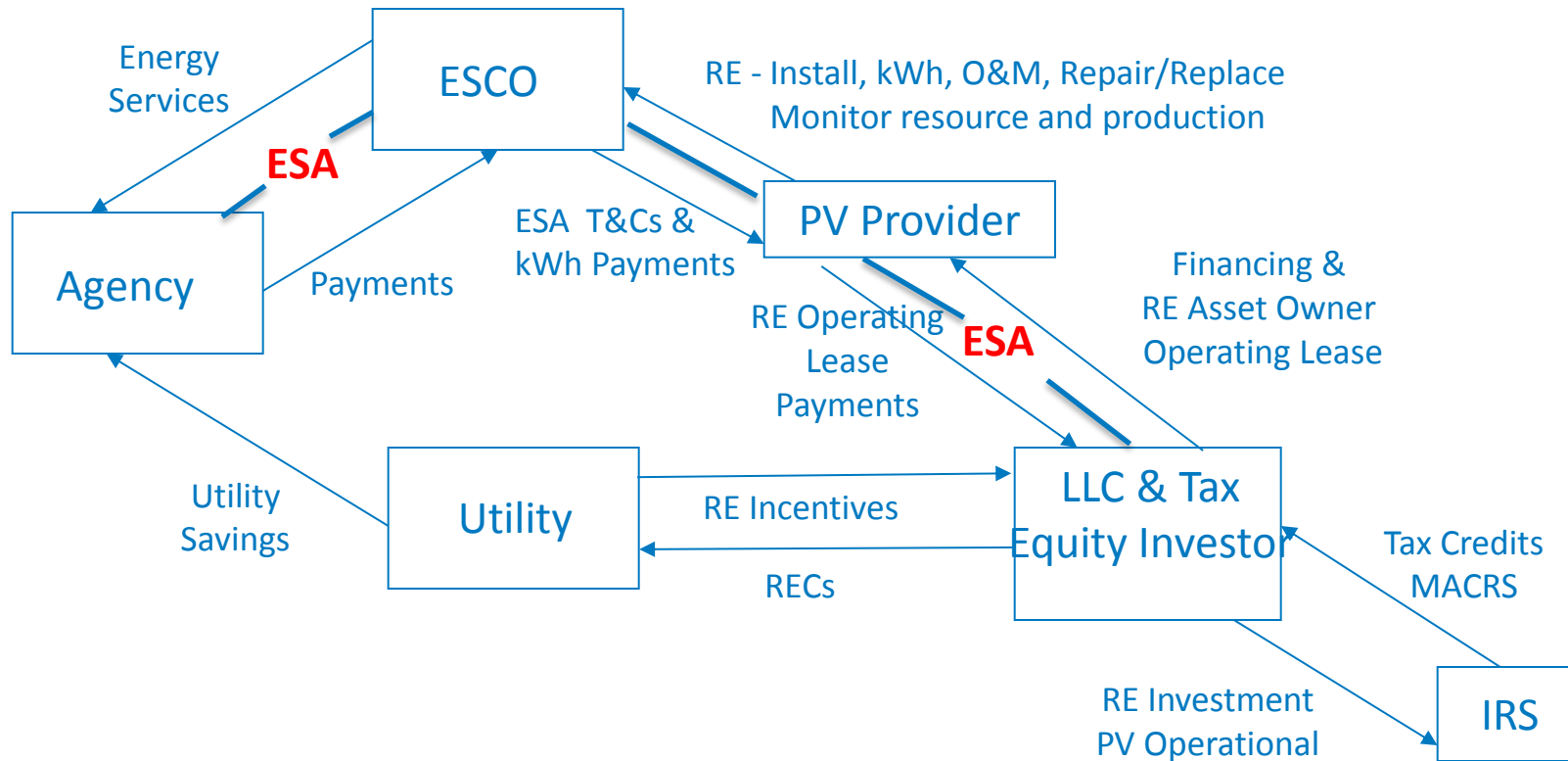
Energy Services Agreement (ESA) Principles

- RE Asset commonly a Special Purpose (LLC) and identifies Owner
- ESA Elements
 - Description of Price ¢/kWh & escalation
 - ¢/kWh - Capital, Financing, O&M, Taxes, Insurance, Incentives, OH & Profit
 - **Annual Estimated & Guaranteed Production**
 - Term of Production & Payment Frequency
 - Real Property Access Rights - License/Easement/Lease Options
 - Title Options after vesting tax incentives and before end of ESPC term
 - Agency Purchase – IRS requires asset appraisal
 - Removal Wear & Tear Accepted
- Consider Post ESPC - Title retained by Owner LLC and execute Sole Source PPA?

Incentives/Revenues

- **RECs Ownership**
 - Utility with Financial Incentives
- **Owner Tax Incentives**
 - Tax Equity Investor
 - Federal Investment (2016) or Production Tax Credit (2013)
 - Federal Accelerated Depreciation
 - NM State Tax Credit – 6% credit against gross receipts
 - NM RE Tax Credits (10 year ~2¢/kWh)
- **Owner Asset Tax Treatment Benefits (varies by state)**
 - NM Property Tax Exemption for PV, SHW
 - Sales Tax Exemption – Deduct Gross Receipts for PV, SHW
 - Source: <http://www.dsireusa.org/Index.cfm?RE=1&EE=1>

Parties & Transactions



IRS Tax Tests

- Lease Term < 80% useful life
- At lease end asset value \geq 20% initial value
- Lessee purchase option – protect Lessor ROI
- Lessor must have 3% cash on cash return

Making it Happen

- **Drivers**
 - Agency RE Goals
 - RE projects w/o Govt Capital
- **Agency/ESCO/RE Provider Collaboration is Key**
- **ESA Development**
 - Agency/ESCO/Owner + RE Provider develop draft ESA
 - Risk Management assessment for each party key
 - Negotiate Mutual Agreement on Terms & Conditions
- **ESA incorporated into ESCO Final Proposal**
 - Considerations:
 - Weather risk
 - Pay for Excess (over Guaranteed) produced energy?

douglas.dahle@nrel.gov 303-384-7513

