

What Makes Energy Deals Different – All The Way From A to Z

Presented by

stgTEAMe

John Agle

Dawn Anderson

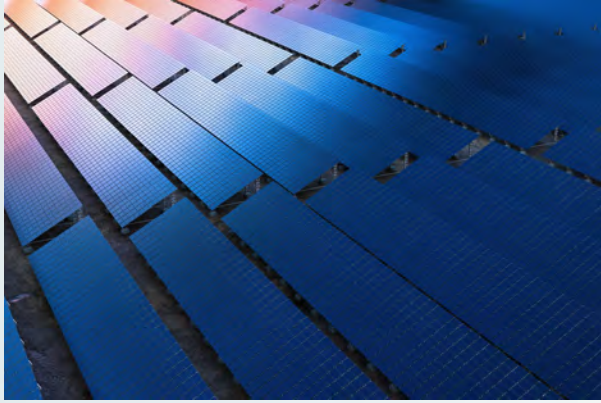
Lacy Ward

Lindsey Lindbloom



TITLE TENETS Webinar Series

Introductions



Let's Read This Together ...

We don't know everything; and that's the point. We're talking about energy transactions that range from rooftop solar to hydro-storage facilities; from batteries adjoining buildings to thousand parcel wind projects. They're all different, they all present unique risks, and nowadays they're everywhere. If anyone claims they fully understand energy deals, you should look somewhere else. We're all learning every day. Energy is no longer a niche or a submarket ... it's a Market. We do more of these deals than anyone else and are willing to share the value of our experience. The only dumb question is the one that remains unasked. Ask it today or later. We'll try to answer.

The Training Objective

- A diverse audience
- The differentiators
- A to Z *isn't enough*
- We train your gut

ALTA States and the Others

- Special coverage FORMS
- Where are they NOT available?
- Applying a national underwriting standard
- What we cover is similar ...
- How we achieve the result can differ



Affidavits, Agreements, All that Stuff

- There's just more of them
- Transferring risk to where it belongs
- Substance over form

Annuities

The traditional singular insurable event

Landco, landco finance, site control, future improvements, NTP, construction, investors and tax credit investors, sale leaseback, partnership flip, mechanical completion, COD, back-levered debt, conversion to perm, elimination of mechanics' lien risk, the transaction du jour ...

The deal is hard, the reward is the annuity



Basic Title

- The 80/20 Rule applies ...
- Read the docs, cure the title ...
- But it's the 20% that can trip you up
- Mineral risks, non-real estate rights, etc.
- It ain't rocket science



Bifurcated Industry

- The national perception
- Industry 1 – we search and report title to the Land (diligence)
- Industry 2 – we place an insurance bet
- These are energy deals ... neither is easy

Brokering Risk

- Patting the risk elephant
- Translation services
- Internal advocacy
- Who are we working for, anyway?

“Closing”

- The industry’s most misunderstood word.
- What are we doing here?!?!?!?
- Who is doing it?!?!?!?
- When is it happening?!?!?!?
- Is it insured?!?!?!?!?



Collaboration

- The long-term energy PROCESS
- From signing up LOs ... to negotiating drill islands
- There's rarely a checklist!
- We're partners at the table, managing risk
- We share a common objective

Deal Size

- 1 parcel? 900+ parcels?
- The organizational dilemma
- When do you start?
- The cost/benefit analysis



Discretionary Insurance Purchases

- It's not a commodity!
- The international flavor
- We better know what we're doing!
- Insuring the horse after it left the barn

Easements

- They're a lot more important!
- Access, transmission, collection, interconnection ...
- Inclusive or non-exclusive ...
- The blanket easement continuum



Energy Endorsements

- A quick history
- Severable improvements, integrated whole, etc.
- Clarifying risks
- Avoiding duplicative coverage

Filed Rates

- Giant deals + annuities = SUBSTANTIVE differences
- The CA vs TX example
- Just how “filed” are they?
- We’re on your side!

Focus On Energy

- The futility of “mixing in” energy deals
- Capacity issues and bench strength
- Specialized knowledge
- Find someone that knows what they’re doing!



Future Improvements

Title insurance looks backwards from the Policy Date ...

... unless you put energy facilities where you said you would

Protecting against future exercises of rights

Growing Up Together

The title report is the written history ...

... The survey is the illustration

Creating single “working document”

The proforma as the bridge to the policy

Baking in the energy endorsements



Home Office Approval

- What's a special risk?
- The role of reinsurance
- What's NOT a special risk?



Insuring Full Value

- A quick primer on title insurance rates
- Based on value, not the highest likely loss
- There's no deed and no escrow
- How do determine value?
- Applying the Reasonable Man Theory
- CapEx, pre-appraisal, etc.



Invalid Contracts

- Humans are humans, entities are entities
- Handing away leverage
- How do you know?
- Get it right the first time
- Anticipate and prepare for errors in your documents

Jurisdictional Considerations

- State-by-State governance
- Attorney States
- Plant Laws
- Filed rates and forms
- Mortgage taxes
- The search process



Knowledge Spectrum

Maturing, specialized industry = some people know a lot

Exploding, popular industry = lots of people know nothing

From a green developer ...

... To a seasoned veteran ...

We communicate with all of them!



LandCo / LandCo Finance Transactions

- What? Fee title?!?!?!?
- Dumbing it down
- There are no improvements!
- The need for escrow services

Local Myopia

- Creating a national energy underwriting standard
- Respecting the local marketplace
- The law is the law
- Customs are negotiable



Lonnnnnggggg Lead Times

- The number of energy projects!
- Where are the opportunities?
- Public ownership
- Computerized plants vs moldy deed books
- Tornadoes, COVID, and capacity issues
- Give yourself enough time!

Mineral Coverage Part One

- It's a big deal!
- What is it?
- Accommodation
- The technology continuum
- Where's the deal?



Mineral Coverage Part Two

- Economic infeasibility
- What are the O&G odds?
- MRRs
- MORs (present ownership)
- Surface waivers
- Drill islands

Negotiated Insurance Contract

- The key concept!
- Lacy's residential example
- Creating and negotiating the proforma
- We're partners at the table

Non-Imputation

- Protecting bona fide purchasers for value
- Identifying knowledge parties
- The effect of the indemnity
- One bite at the apple



Non-Real Property Interests

- Site control ... however you can get it
- The “interest” conveyed
- The value of the special endorsements
- We don’t insure it’s real property!

Off-Record Matters

- The general exception
- Claims history
- Land titles in rural America
- Insuring the Unknown



Profitability

- The perception and the reality
- The weird title insurance business model
- A gigantic pipeline
- Closing percentages
- Kingman wins the game!!!! ... occasionally
- A transferable product and the role of loyalty



Quotes

- Refresher ... closing %? Rural US? Scope of work?
- Time/cost estimates for search services
- Pricing quotes for the entire transaction
- Special document retrieval and recording services



Risk Perspectives

The cumulative effort to mitigate risk

The negotiating process

If the underwriter won't accept the risk ...

... and financial partners won't accept risk ...

... hopefully the developer will or ...

... the deal may be dead



Scope of Work

- One size does not fit all
- This is NOT suburbia
- Statutory/customary searches
- The importance of old stuff
- Hunting for the mineral severance
- Technology implications



Personal Property Severable Improvements

The history lesson

The long list of real estate interests ...

... but what if it's not?

Damage to facilities and removal/relocation costs

Technology Considerations

- Keeping an open mind
- Where are you on the wind to rooftop solar spectrum?
- Modifying mineral coverage and the scope of work
- We're prepared to adapt the approach to the technology



Unique Landlords

- BLM, BIA, and public ownership
- Where do we find the records?
- Building value into the policy of title insurance



Vendor Services

- The energy explosion
- Capacity and profitability concerns
- Who wants the deal?
- Developing the network



Volunteering Risk

- We're an insurance company!
- The energy transaction is the intellectual outlier
- You don't know what you don't know until you learn it

We Don't Make the Rules ...

We respond to insurance requirements ...

... but experience helps us influence the requirements

- It's gotta be a win/win/win



What Hat is the Lender Wearing?

If there's no mortgage, the lender isn't a "lender"

An investor doesn't get lender protections ...

... but they DO get owner protections

X-ing Agreements & Encroachments

- The value of encroachment coverage
- Insuring easements and large land areas
- When is crossing consent required?
- When is crossing consent NOT required?
- Substance over form



You're Building it Where?

In summary ...

Energy deals are often built in rural America

We're more likely to encounter The 20%!

Mineral severances, off-record matters ...

... land search complications, etc.

The location of the facility **IS** the difference!



Zoning

- The Ag zone probably doesn't permit an energy deal
- CUPs, SUPs, and Resolutions
- The No Zoning endorsement



stgTEAMe

Thank You!!!!



Stewart Title Energy Group
Stewart.com/energy



Dawn Anderson
danderson@stewart.com



Lacy Ward McCormack
lacy.ward@stewart.com



John Agle
john.agle@stewart.com



Lindsey Lindbloom
lindsey.lindbloom@stewart.com