

# Solar Energy: Federal District Court Addresses Permit Acquisition/Contract Cancellation Clause

## Arkansas Environmental, Energy, and Water Law Blog



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A federal district court in California addressed whether a solar energy developer breached a land use contract when it failed to obtain the necessary permits for a solar energy venture. See [Zamora v. Solar](#), No. 2:16-CV-01260-ODW-KS, 2016 WL 3512439, at \*1 (C.D. Cal. June 27, 2016).

In 2011, Belectric, a California-based solar energy company, entered into a Site lease Option and Easement Agreement for a twenty-year lease of the Zamora's vacant property.

Belectric contracted with the Zamoras to use their vacant lot to generate solar energy in exchange for \$27,000 in annual rent. Present within the agreement was a cancellation clause. This provision provided Belectric the option to cancel the contract if unable to obtain or maintain the permits mandatory to build the necessary solar power facilities. In 2013, Belectric assigned their interest to Zuni Solar. This assignment was within Belectric's rights under the agreement.

Approximately two years passed and both parties performed according to the terms of the agreement. During this time Zuni Solar hired a contractor to pursue the necessary building permits. In 2015, Zuni Solar provided the Zamoras with written notice that it was terminating the agreement. The proposed basis for the termination was an inability to obtain the necessary building permits.

The Zamoras believed Zuni Solar acted in bad faith because an otherwise successful permit application was cancelled. They interpreted the cancellation clause as requiring a good faith attempt to obtain the necessary permits.

The Zamoras filed suit against Zuni Solar claiming breach of contract and breach of a covenant of good faith and fair dealing. Zuni Solar removed the case to the United States District Court of California, Central District. Zuni Solar moved for summary judgment.

The court granted Zuni Solar's motion for summary judgement because the agreement allowed termination under certain circumstances. In reaching this conclusion, the court began its analysis by examining the cancellation clause within the agreement.

The clause stated that it may be terminated by the Tenant without further liability, on thirty days prior written notice to the Landlord, "if Tenant does not obtain or maintain any license, permit or other approval necessary for the construction and operation of the Tenant Facilities subsequent to the construction Term Commencement Date." California law dictated a contract's terms were to be interpreted by their objective intent and the subjective intent of the parties was irrelevant. Therefore, the

court held that “a party cannot breach a contract if its method of termination was expressly permitted by the contract’s terms.”

As it pertains to the Zamoras claim for breach of covenant of good faith and fair dealing, the court also granted Zuni Solar’s motion for summary judgment. The court ruled, under California law, that “one cannot invoke the covenant of good faith and fair dealing to prohibit conduct that a contract expressly allows.” There was no requirement to submit the necessary paperwork for the permits. Also, there was no requirement to maintain the application after it was submitted. The court determined “without the permit in hand Zuni Solar could terminate their agreement.”

Courts will usually interpret the contract as it is written. Relying on implied contractual obligatory arguments may pose risks.

[A copy of the decision can be found here.](#)