

Landowner Options and Legal Issues in Wind Lease Agreements



Great Lakes Regional Wind Energy
Institute

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Outline

- About Windustry
- Landowner Options
 - Risks vs. Rewards
 - Lease Agreements
 - Landowner Associations



About Windustry



- Non-profit organization based in Minneapolis, MN
- Focus on community wind, landowner options, and rural economic development
- Provide landowner education, outreach and technical assistance
- www.windustry.org

Windustry promotes progressive renewable energy solutions and empowers communities to develop wind energy as an environmentally sustainable, community-owned asset. Through member supported outreach, education and advocacy we work to remove the barriers to broad community ownership of wind energy

What is Community Wind?

Locally-owned, commercial-scale wind projects that optimize local benefits where:

- One or more members of the local community has a significant direct financial stake in the project other than through land lease payments, tax revenue, or other payments in lieu of taxes.
- The term "community wind" refers to the method and intention of development rather than the size of the project.



Benefits of Community Wind

■ Economic Benefits

- Revitalizes Rural Economies & Stimulates the local economy
- Stabilizes Energy Prices
- Keeps energy dollars local
- Creates Jobs

■ Environmental Benefits

- Produces Clean Electricity.
- Keeps Water Sources Clean
- Protects Natural Resources
- Preserves Land

■ Social Benefits

- Promotes Energy Independence and National Security
- Creates a New Crop
- Promotes Local Ownership
- Galvanizes Support and Neutralizes Opposition

"Community wind helps get people connected to their energy use. Local energy production helps to build a better society, a better culture, and a better planet."

*--David Benson, Nobles County
Commissioner & Farmer*

Landowner Options

- Lease your land to a wind project
 - Local project
 - External developer
- Be a partner in a community wind project
- Put up a residential or farm size wind turbine for your own power

Landowner Risk vs. Reward

Lower Risk &
Responsibility:
Lower Reward



Leasing Land



Wind Company,
Utility

Intermediate Risk &
Responsibility:
Intermediate Reward



Cooperative,
Investment Pool,
Partnership

Greater Risk &
Responsibility:
Greater Reward



Individual
Ownership



Options for easements and leases are typical components of most wind energy projects, large and small.

WINDUSTRY™

Wind Energy Options for Leases and Easements

- Main way for landowners to participate in wind energy development
 - No cash outlay
 - Low financial risk
- Few standards: range from good to bad to ugly.
- Compensation varies widely based on turbine size, wind resource, price of energy and many other factors.
- Long term commitments – usually last 20 to 40 years, some indefinitely
- Complex and often many pages long.
- Best results when landowners make informed decisions.

Wind Energy Lease and Easement Provisions

- Legal description of land
- Term of Agreement
- Term and Requirements of Extensions
- Landowner Payments
- Developer's Rights
- Landowner's Rights
- Lender's Rights
- Duties and Obligations
- Taxes and Utilities
- Assignment Rights
- Insurance Provisions
- Condemnation
- Default and Termination
- Notice Requirements
- Attorney Fees
- Confidentiality
- Decommissioning and Facility Removal



Wind energy agreements are complex and legally binding documents. It is important to understand how each provision may impact your land and current or future land uses.

Before you sign on the dotted line...

- How much of my land will be tied up and for how long?
- How much will I be paid and how will I receive payments?
- Are the proposed payments adequate now and will they be adequate in the future?
- How will a wind project impact my other land uses?
- Who will be responsible for decommissioning the project at the end of the lease?
- Who is responsible for associated taxes?
- Have I considered all of my other options and is this the best one for me?

More questions listed in the Wind Energy Easement and Lease Agreement Guidelines at www.windustry.org/leases

Landowner Risk vs. Reward

Greater reward



Landowner Association

Lower risk

Landowner Associations: Goal

- Started in Wyoming
 - Also interest in NM, CO, MT, SD, IN
- Result of landowner concerns about
 - Speculators profiting rather than the landowners
 - A neighbor getting a better deal than you
 - Compensation - getting good value for the resource and developable land
- Goal: Discover value of wind/land resource through developer competition

Landowner Associations: Working together is key

"If we could all get together and work together cooperatively and do some cost sharing and maybe share some of the profits, I think it's going to be a benefit to everybody." Grant Stumbough, Southeast Wyoming RC&D Area Coordinator (NY Times)



Landowner Associations: Structure and Roles

- LLC Structure
 - Protect members
 - Collect assessment fee for admin. expenses
 - i.e. \$0.10-\$0.20/acre
- Steering committee
 - Elect officers
 - Voluntary membership
 - Drafts operating agreement
 - Creates RFP and reviews proposals
 - Distributes info to members

Landowner Associations: Activities and Work Products

- Assoc. markets the collective wind/land resource through an RFP
 - Maps and photos of the area
 - Wind data and environmental assessments
 - Local regulations for siting
 - Landowner expectations outlined
- Score responses to the RFP
- Select a developer to negotiate with
 - All members vote
 - Voting rights detailed in operating agreement
- Association and developer negotiate on common lease terms for all members

Landowner Associations: Members sign their own contracts

- Each member responsible for signing an agreement with developer
 - Individual agreements cannot change common terms w/o a majority vote
 - **Includes compensation!**
 - Royalty payments (pool)
 - Individual payments (land lease, construction, siting bonus, etc)

Landowner Associations: Compensation Pool

- Royalty payments are pooled and divided among assoc. members
 - Typical formula assoc. agrees to:
 - 55% to members with turbines
 - 45% to ALL members on a per acre basis
 - Regardless of whether the landowner has a turbine on their land or not
 - Agreement must detail who is paid and how much
 - Consider Audit rights

Landowner Associations: Benefits to Developers

- What do Assoc.'s offer developers?
 - Creates blocks of land owned by landowners who are educated on wind energy and interested in wind development
 - Minimizes costs to developer
 - Only one door to knock on, and it is full of ready and willing landowners
 - Political strength of a significant number of landowners who support wind development in the area

Trimont Area Wind Farm

- 100 MW Wind Farm (67 1.5 MW GE Turbines)
- Organized by group of local farmers and landowners (Pre-development)
- Answered a RFP from Great River Energy to buy the electricity & sold it to PPM to develop
- Some opportunity for revenue in addition to lease payments
- Traditional landowners easement payments for the project are expected to total approximately \$250,000-\$300,000 each year
- Provision for gross revenue participation by the landowners in addition to the usual revenues from lease payments is expected to be more than double the traditional easement payment.



Landowner Associations: Not Just for Wind Projects

- Can be use effectively for any type of energy OR infrastructure development that is real estate based
- For Example: large transmission
- Mutually beneficial for landowners and developers on many points, including:
 - Compensation - more understanding of what is “fair”
 - Planning and Routing - community involvement
 - Establish regional “on-ramps” or points for integrating renewable energy that is is developed in the local region
 - Permitting and siting - organized community support
 - Less need to use Eminent Domain process

In Closing

This is a tremendous opportunity for America.

- Work together with neighbors
 - Building Wind Projects
 - Building Transmission lines
- Get organized NOW
 - Our time is here
- Open the lines of communication
 - Share good information broadly



In Closing

- Expansion of community wind due to improving economics, innovative business models and effective public policies
- Economic, social and environmental advantages accrue to local community
 - Community wind has 5 times the economic impact on local value added, and 3.4 times the impact on local job creation, relative to a corporate-owned development.
<http://cda.mrs.umn.edu/~kildegac/CV/Papers/IREE.pdf>
- Involve your neighbors and the public
 - Be prepared to explain how the project will benefit the area or community
 - Answer everyone's questions
 - Take into account local concerns and work with them to build a level of comfort and support

Major Points to Keep in Mind



- Projects take hard work, innovation, champions and public policy support
 - Planning and development typically takes several years
 - Dedicated team of professionals with consultants in business, finance, easements, PPAs, engineering, construction & project management
- Provide major new economic opportunities connecting main street America with a new industry



toll free (800) 946-3640

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