

## **Landowner Guide to Evaluating a Wind Energy Development Company**

[Intro]

This document will help you evaluate the ability of the wind energy development company to provide what they are offering. Before you sign any document from a development company, you should gather at least some basic information about that company. You are the landowner and are allowed to ask for information from a potential tenant. During all steps of development, it is important for you to:

Know your wind.

- Get your hands on existing wind data and look at wind resource maps online. Learn about your wind resource and its value so you can negotiate and appropriately market your wind.

Know your rights.

- Find good legal consultation and negotiate a fair deal. Wind development concerns your land, your resources and your rights. Beware of any terms that seem excessive: confidentiality terms prohibiting talking with family members about the project, no term limits, rights that are outside the scope of a wind project (i.e. water, mineral and other surface rights).

Work together with your neighbors.

- If you are being approached by a wind developer, then chances are that your neighbors are being approached as well. You will all be in a better negotiating position if you share ideas about the contracts offered and your goals for your land. In our experience, everyone is better off when landowners in a region work together on wind development.

Take your time.

- You and your family may be involved with a developer for a long time. Learn as much as you can about them before signing any documents.

*Nothing in this document is intended to be legal advice. To fully protect your interests you must consult with a qualified attorney. Some developers may provide an allowance for landowners to have an attorney review the agreement before the landowner signs.*

[Main Content]

### **Why do I need to research before I sign anything?**

Reasonable wind energy agreements range from 20-30 years. If an agreement is longer than 30 years, the developer should have a very good reason to ask you to tie up your land for that time. These are binding and legal documents – proceed carefully. You do not have to sign an agreement you are not comfortable with.

- Wind development could be a very good thing for you and your family, but you have to negotiate for terms that are favorable to you.
- Developers can sell their rights under the lease to other companies who are only bound to the written terms of the agreement. Make sure all important terms are written into the agreement
- Wind energy agreements should not have infinite terms or unlimited rights of renewal. To protect your land rights, find out if the developer has the option to renew the agreement and for what time frame.
- Learn about the wind energy agreement negotiation process and about what to expect in an agreement. (Windustry's Leases and Easements info can be found at: <http://www.windustry.org/leases> and Farmer Legal Action Group's "Negotiating Wind Energy Property Agreements" can be found at: <http://www.flaginc.org/topics/pubs/arts/WindPropertyAgrmnts2007.pdf>)

### **How do I research a wind developer?**

The most direct way to get information is to ask the developer. Ask for references from the company – landowners they have under contract and for a list of projects, even a tour if possible. You can also do a

simple web search on the Internet, call other developers, and talk to landowners where the developer has other projects in construction or completed – they were once in your position!

- There are a lot of resources for you to research a company and many local libraries will have access to specific search engines. For a starting point on these resources, see <http://www.jjhill.org/resources/guides/HillGuidetoResearchingaCompany.pdf>
- The American Wind Energy Association is the trade association for the wind industry. Membership is not required, but most reputable companies will be registered as a member. You can browse their membership directory for free online at [www.awea.org](http://www.awea.org)
- For a useful check-list to help you evaluate a development company, see the associated handout “Developer Evaluation” by Brad Haight

### **What are my neighbors doing?**

In some regions and states, landowners are joining together to negotiate wind leases with developers. This also helps them share the cost of a lawyer to work on their behalf. If you and your neighbors have a lot of acreage with a good wind resource and access to transmission, a united front can give you a lot of leverage. These types of groups can consist of any number of landowners.

- Not every wind agreement signed will result in a wind project. If you feel interest in your land is to merely prevent others from developing, work with your lawyer to structure the lease terms and compensation packages accordingly.

### **What makes or breaks a wind project?**

To succeed, a wind project needs at least the ability to obtain financing, turbines, permits and interconnection agreements – and those are just a few of the main things! Some companies have the ability to pull it all together and some do not.

- The average cost of a 1.5MW wind turbine is \$2-2.5 million - just for the machine itself. The developer needs financing for the machine plus costs of construction and costs of capital.
- Projects are often delayed because of trouble getting an interconnection agreement. The developer should be able to provide you with information about their place in line for interconnection.
- Wind development must conform to the zoning and permitting standards imposed by municipalities and regulatory agencies. The developer should be able to show you how the proposed project conforms to existing laws and standards or have a plan for permit applications. Without the appropriate permits, the project cannot proceed forward. If in doubt, contact the appropriate planning or zoning officials for your area.
- The wind developer will most likely conduct environmental impact studies, including species and habitat surveys, visual impact studies, noise impact studies, etc. If so, these studies will take place on your property. Depending on the outcome, these studies can delay, modify or even halt development of a wind project.

### **Does the developer have an agreement to connect to the electricity grid?**

In order to connect to the grid, the developer will need to perform a feasibility study, a system study, and a facility study with the local electric utility or Independent System Operator (ISO) for the region where the project is located. The developer will then negotiate an interconnection agreement with the local electric utility or ISO.

- These agreements are usually in process during the early stages of project development. The developer should have a spot in the ISO queue or a plan to get one.
- The developer may be required to show they have obtained land control to develop the project, and/or pay a significant fee, in order to get a spot in the ISO queue.
- Requirements may vary across the country. Check with your region’s ISO on their rules for interconnection or your local electric utility for more details.

### **Does the developer have an agreement to sell the energy?**

The developer will negotiate a Power Purchase Agreement (PPA) with a utility company or Independent Power Producer (IPP) to sell the power generated by the wind project, or have a plan to be a merchant seller. This is an important aspect to obtaining financing by the developer, especially if they must show projected income from the project in order to secure money.

- Similar to interconnection agreements, these agreements are also in process during the early stages of development.
- While it involves many of the same issues as the interconnection agreement, the PPA is a separate document and is negotiated independently.
- A merchant seller does not enter into a long-term contract for the sale of energy; rather the sale of energy is made into the wholesale market on a real-time or short-term basis. Retail or utility providers will indirectly purchase that energy through the wholesale market.

### **Can the developer obtain the financing required for a multi-million dollar project?**

Some developers have established credit histories and can obtain financing more readily than newer wind developers. If asked, reputable companies should be able to walk you through a fairly detailed and comprehensive plan for financing the project. If they are unwilling to talk about project finance, it is unlikely that they have a plan to get the money needed.

- Take time to check out the state of the developer's financing strategy. You do not want to miss out on a different opportunity because you signed an agreement for a project that may not be built.
- The developer will need to show they have obtained the land rights required for the project to get the financing needed. They may not have finalized their financing during the early stages of development but should at least have a plan.
- Some large project developers may be backed by financiers and can finance their own projects, others depend on credit. If a developer cannot get financing, there is a risk that the project may be temporarily or permanently abandoned.

### **Why should I care about the developer's plan?**

When you agree to lease your land to a wind developer, you agree to work with that company for many years. Make sure you and your family's interests and plans for the land are consistent with the terms of the agreement.

- Some leases can affect farming, hunting rights and other recreational uses and/or mineral rights. Make sure your existing uses are not expressly limited or prohibited.
- Ensure that all terms are written into the agreement. It is likely that the project will be owned by another company during the life of the agreement.

### **Why should I care about construction requirements?**

A large wind project consists of structures that are 30-40 stories tall that are built on your land and surrounding areas. There are many players involved and various procedures that need to be completed before construction can begin.

- There must be roads for large cranes and parts, access to concrete and lumber, local construction workers or lodging and dining for out-of-town workers - all before construction begins.
- The developer must obtain all necessary permits before construction (i.e. conditional use permits, building permits, road construction and/or improvement permits, etc). Without approval from the appropriate authority for your region, the developer cannot begin construction.
- If you live or work on the land where the development will be constructed, make sure construction activities, as well as the finished and operating wind farm, will not interfere with your home or business without compensation.

### **What is the relationship of my wind resource to electricity power lines?**

Access to power lines is critical to any wind project and must be part of the planning process. Wind project sites are selected based not only on the quality of the wind resource, but also on whether there is access to power lines. The cost of building new power lines will increase project costs significantly.

- If a developer indicates they are working with another company to build new power lines, ask for a letter of commitment on that company's letterhead.
- Check with county or local officials on plans for new electric grid lines in the area.
- Power lines used to connect the wind turbines to the collection facility are often buried and can cross multiple property lines. The developer should have an agreement with the landowners where these lines are located, regardless of whether they also have wind turbines on their land, and provide those landowners fair and reasonable compensation.

### **How will I get paid by the wind farm operator?**

Wind farms generally pay landowners in the form of annual rent or lease payments. You may receive a percentage of the income generated by the wind turbines on your land with an escalation clause possible after a few years, and/or a flat per-megawatt payment. The payment details will be included in the lease and easement agreement.

- Work with your lawyer to ensure that you will be adequately compensated for your wind easement and land lease. If paid a percentage of gross revenues, there should be a minimum payment requirement for times when there may not be much revenue generated, such as maintenance periods or times of low wind.
- For more information, visit Wind Energy Easements and Leases: Compensation Packages at <http://www.windustry.org/sites/windustry.org/files/LandECompPackages.pdf>

### **How do I find a good lawyer?**

There is no special branch of law for wind energy. Look for a lawyer that is familiar with real estate law, contract law and/or natural resources law. However, not all lawyers feel comfortable dealing with wind energy contracts. If your lawyer does not, ask for referrals.

- You can share the cost of a lawyer by working with other landowners to negotiate common lease terms.
- If you need help finding a lawyer, contact your local state bar association. You can find yours here: <http://www.statebarassociations.org/>
- A few resources for lawyers:
  - o Windustry's land lease and easement guidelines (<http://www.windustry.org/sites/windustry.org/files/LandEMain.pdf>)
  - o Legal Issues in Farming the Wind (FLAG Report) (<http://www.flaginc.org/topics/pubs/wind/FGWEcomplete.pdf>)
  - o The Law of Wind (Stoel Rives) (<http://www.stoel.com/webfiles/LawOfWind.pdf>)

### **What kind of questions should I ask a wind developer?**

- Do they have a local contact person to answer landowner questions regarding the project? Who?
- Where are other successful projects by the company or developer? Are they near-by, within the state or even within the United States? Ask for specifics on those projects and for contact information - even a tour, if possible
- What is the plan for getting the energy generated to the grid and where will it be sold?
- Are there geographic or financial barriers to transmission line construction?
- How much transmission will need to be constructed? What size line is needed and for what distance?
- Has the developer registered with the Secretary of State in order to do business in the state?
- Are they a member of the American Wind Energy Association (AWEA)?

- Do they have written materials on the specifics of the project to give landowners?
- Once the type of turbine is determined, will the developer be able to provide you with a letter of commitment from the turbine manufacturer?