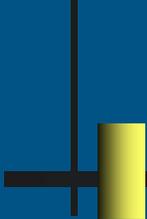


Wind Energy Lease and Easement Agreements



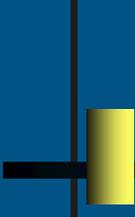
Lisa Daniels,
Executive Director
Windustry

Regional Wind Energy Conference
Brookings, South Dakota
September 2005



Windustry

- Creating an understanding of wind energy opportunities for rural economic benefit.
- Non-profit organization based in Minneapolis, MN - work locally, regionally and nationally
- www.Windustry.org
- Focus on landowner/community options
- Wind Farmers Network
- National Community Wind Energy Conference
March 7-8, 2006 in Des Moines, Iowa



Background for this work



- Windustry was launched in mid 1990s to fill a need for information among rural landowners and communities as wind energy started to emerge in the Midwest.
- Now, there are commercial scale wind projects in 30 states with 2005 expected to be another record year for new installations.
- The knowledge base has grown dramatically as we have options for local participation.
- Need for new information to address ever more sophisticated questions and issues
- Need to begin to define good practices for wind energy developers as many new companies, large and small, enter the wind industry.



Landowner Options for Wind Development

Wind Development: 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

Wind Energy 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.
- Best results when landowners make informed decisions.

Windustry's Package of Lease/Easement Resources



Conceived and drafted by Windustry's Wind Easement Work Group, a team of wind industry and landowner experts:

- Lisa Daniels, Executive Director of Windustry
- Ed DeMeo, President, Renewable Energy Consulting Services, Inc., California
- Van Jamison, POWAIR, Montana, consultant and small wind project developer
- Joe Richardson, North Dakota landowner
- Steve Wegman, South Dakota Public Utilities Commission
- Fred Zalzman, Executive Director, Pace Law School Energy Project, New York

Also: Windustry staff and consultants

Windustry's Package of Lease/Easement Resources



Primary Goals of this Work:

- 1) To help landowners make informed decisions about their land.
- 2) To promote land agreement practices that are mutually beneficial to landowners and project developers.

Motivation:

- Wind development must be an asset for both the owners of windy land and their local communities for the industry to thrive long term.
- Wind energy is a significant economic opportunity for rural communities if windy landowners and communities are well informed partners in the development process.

Windustry's Package of Lease/Easement Resources



Materials in this Package:

- Easements and Lease Agreements – What might appear in these contracts and what to watch out for. An updated version of Windustry's original "Wind Energy Easements: Legal Issues."
- Compensation – Compilation of compensation packages from real wind projects.
- Policy and Best Practices – Recommendations and Proposals to facilitate sustainable wind development.
- Bibliography of additional resources.



Easements and Leases are typical components of most wind energy projects, large and small.



Wind Energy Easement and Lease Agreements

Goal is to avoid ambiguity and leave no details to chance.

- Determine whether the payment terms and method are fair
- Thoroughly review the terms of the contract in its entirety and with an attorney of your choosing who can practice law in the same state as the real estate
- Carefully consider how the easement will effect the future use and value of the land
- Learn as much as you can about the wind industry and pricing

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?
- Have I considered all of my other options and is this the best one for me?

More questions listed in the Outline.

Wind Energy Easement and Lease Agreements Outline

How to Use this Outline:

- Part IV: Provisions that might appear in Lease/Easement Agreements.
 - Information about what might appear (majority of document)
- Symbols:



Symbol denotes provisions landowners should watch out for.



Symbol emphasizes specific recommendations.



Symbol refers reader to sources of additional information.

Compensation Packages – how much can you expect?

- Paper includes:
 - A survey of published compensation terms of wind projects across U.S.
 - Overview of different types of compensation packages
 - Several stories about landowner and community experiences hosting wind turbines.

Types of Compensation Packages

- Fixed payments
 - ✓ Preferably includes an escalator
 - Advantage: stable income for landowners, low risk
- Royalty or Percentage of Revenue
 - ! Need to have access to relevant information about power sales.
 - Advantage: Landowner has a vested interest in the success of the project.
- Combination
 - Fixed payment plus a percentage of revenue
 - Fixed payment OR a percentage of revenue (usually, whichever is greater)

Compensation Packages – How much can you expect?

- Old: \$2,000 per turbine year.
 - Based on turbines in the 600-750 kW range.
 - “Average” figure popularized in late 1990s.
- New: bigger turbines (1,500-2,000 kW) usually mean bigger payments.
- Price of energy is another key factor (especially in contracts that offer a % of revenue)
- Other factors to consider: wind resource, transmission access, competition, value of alternative land uses, geographic region.

Compensation Packages: Examples

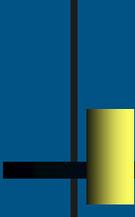
| Project | State | Year | Size | Turbine | Per turbine* | Per MW* |
|----------------|-------|------|--------|----------|------------------------------|---------------------|
| Lake Benton I | MN | 1998 | 107 MW | 750 kW | \$1,500 | \$2,000 |
| Storm Lake | IA | 1999 | 193 MW | 750 kW | \$2,000 (\$750 + 2 % rev) | \$2,667 |
| Vancycle Ridge | OR | 1999 | 25 MW | 660 kW | \$1,500- \$2,000 | \$1,200- \$2,400 |
| Top of Iowa | IA | 2002 | 80 MW | 900 kW | \$2,400 | \$2,667 |
| Woodward | OK | 2003 | 102 MW | 1,500 kW | \$4,000 | \$2,667 |
| High Winds | CA | 2003 | 162 MW | 1,800 kW | \$9,500 | \$5,185 |
| Trimont | MN | 2005 | 100 MW | 1,500 kW | \$3,500- \$4,500 | \$2,500- \$3,000 |
| Crescent Ridge | IL | 2005 | 55 MW | 1,650 kW | \$5,000 (minimum) | \$3,030 |

*Several figures are based on estimates and averages. Payments to individual landowners may vary.

Best Practices and Policy Recommendations

- Easement Work Group recommends policies and industry practices related to wind easements and leases.
- Several recommendations based on South Dakota landowner protection statutes.
- Goal is to start a dialogue:
 - The wind industry is expanding – many new participants (both landowners and project developers)
 - Start to define good practices to promote sustainable industry growth.

Best Practices and Policy Recommendations



Wind Easement Work Groups Recommendations:

- 1) Public Disclosure of Energy Production from wind turbines.
- 2) Public filing of Lease Documents and Public Disclosure of Terms
- 3) Limit Land Agreement and Option Periods
- 4) Non-severability of wind rights from land.
- 5) Decommissioning and Site Clean Up Funds
- 6) Insurance and Indemnity Practices
- 7) Guidelines for Setbacks

South Dakota Landowner Protection Statutes

- Option periods are limited to 5 years.
- Easements are limited to 50 years.
- Easements must be created in writing and recorded with the county.
- Wind rights cannot be severed from the land.

Recommendations



- Always consult a qualified attorney before signing a contract.
- Consider how a wind easement/lease will impact how you use your land (farming, ranching, hunting, recreation etc.). Contracts should be clear on this point.
- Consider negotiating for non-monetary compensation, such as access to wind resource data.
- Learn as much as you can about wind energy and the specific project and company in question.

Recommendations (continued)

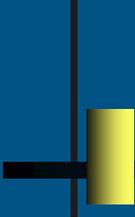


- For royalty based compensation packages, consider what it would take to exercise your audit rights.
- Carefully weigh your alternatives, expectations and goals. You don't have to sign the first contract you see.
- Work together. Whether you're negotiating with a wind developer or trying to market your land with neighbors.
- **Worth Repeating:** Always consult a qualified attorney before signing a contract.

More Information



- Bibliography of additional information sources
- All documents in this package available at www.windustry.org.
 - This work will be regularly updated
 - Always check the website for the latest versions.



Coming up:

National Community Wind
Conference

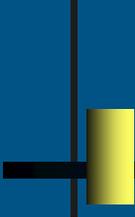
March 7-8, 2006

DesMoines, Iowa

For more info

www.Windustry.org





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National Community Wind Conference March 7-8,
2006

