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## Experiences with Wind Lease and Easement Agreement

Recently we were given a copy of a letter from Invenergy to a land owner regarding securing land for a wind project. The letter says in part: "The lease is a bit of a dry read, so I will save you a bit of time by pointing to the page most people are concerned with which is page B-1." B-1 is entitled "Payment Terms" the part of the contract concerning lease payments. A copy of the entire letter is attached.

My husband Jon and I retired and built a home on the shores of Lake Alice. The footprint for the Deuel Harvest North Wind Farm project surrounds Lake Alice.

One day Bob Johnson and Gene May from Invenergy knocked on our door. The purpose of their visit was to get us to sign a lease agreement. They informed us if we would sign the lease, we would be paid 500 dollars a year. During that visit we asked them, why did Invenergy want us to sign an agreement, since our lake lot is less than an acre. They responded they did not want us to construct any structure 30 feet or greater in height. We informed them by county zoning regulations buildings could not exceed 35 feet in height. No other details of the agreement were discussed. We told them that we were not interested in signing an agreement. However, they left us a copy of an agreement just in case we would change our minds. Jon later read the agreement over and what he found was rather disturbing.

Jon sent Senator Rounds an email, which in part expressed concerns regarding what he had found in the agreement. The email ended: "I would appreciate the opportunity to discuss the lease with you or your staff".

Jon and I were pleasantly surprised when we received a message from Josh Haeder, Northeast Director for Senator Rounds. He asked to meet with us regarding our concerns. An April 2, 2018 date was set for the meeting. Prior to this meeting we had prepared three pages of comments regarding the Wind Lease and Easement Agreement. Those comments and a copy of the Wind Lease and Easement Agreement are attached.

Some of the items discussed at the meeting were: overhang, interference, indemnity/liability and the right to terminate.

### Regarding Overhang.

The Owner grants to Invenergy the right to construct wind turbines on **adjacent participating property up to the Owner's property line and allows the blades to extend over the Owner's property.** Although the turbine is on the adjacent property, the Owner will not be able to place structures and/or trees within a 150-foot radius of the wind turbine and only place structures and trees less than 30 feet within a 151 – 400-foot radius of the wind turbine.

### Regarding Interference

The Owner grants to Invenergy an exclusive easement for: electromagnetic, audio, flicker, visual, view, light, noise, vibration, air turbulence, wake, electrical, radio interference, shadow or other effects attributable to the Wind Turbines, or any other Development Activities, this easement shall extend throughout the entire property...

*The Owner has given Invenergy the right to allow all these items on the Owners property, whether they originate on the owner's property or elsewhere within the project.*

*This exclusive easement list includes "other effects" attributable to the wind Turbines or any other Development Activities and could include such items as negative impacts on property value, physical health and mental health.*

### Regarding Indemnity/Liability

In no event shall Invenergy or its Related Persons **be liable to Owner for property damage or personal injuries to Owner** or its Related Persons attributable to risks of **known and unknown dangers** associated with normal day-to-day operation of electrical generating facilities, such as flickering, noise and electromagnetic fields.

***"Known and unknown dangers". How can Invenergy not be liable to an Owner for a known Danger or an unknown Danger caused by their operation.***

**Indemnity/Liability are found in Section 7 of the Wind Lease and Easement Agreement. The last paragraph in Section 7 states: "This Section 7 shall survive expiration or early termination of this Agreement." How can a portion of a contract still be in effect after expiration or termination?**

### Regarding Invenergy's Right to Terminate

Invenergy shall have the right to terminate this Agreement as to all or any part of the Property at any time and without cause, effective upon written notice to Owner from Invenergy. *This is very convenient for Invenergy.*

Note: for this presentation we have substituted Invenergy for the Grantee.

Josh Haeder made two trips to our house to discuss issues related to wind turbines. He told us he would have the Wind Lease and Easement Agreement concerns reviewed by their legal staff and prepare findings in a letter/report to Senator Rounds. Jon was in contact with Josh last week. He is now our State Treasure. He said a staff attorney was provided our information. However: both Josh and the staff attorney have moved on in their careers, Josh was going to check the status of the review.

It is our hope that PUC staff and Commissioners would review the comments and Wind Lease and Easement Agreement, in light of PUC's authority and responsibilities. As state officials, please consider asking the States Attorney General's Office to also review this agreement, especially the Indemnity/Liability portion.



# Invenergy

Thursday, October 20, 2016

Dear [REDACTED],

As you may know, Invenergy has been securing land for a wind project in Palo Alto County. With great success, to date, we have secured a number of your neighboring landowner's tracts of land. We are diligently working on finalizing our project boundary along with identifying those landowners who want to participate and take advantage of this opportunity.

I would like to include your property in Palo Alto County in this project. I have included all of the information I currently have within this packet and have taken the liberty of highlighting and notating frequently asked questions. The lease is a bit long and a dry read, so I will save you a bit of time by pointing to the page most people are concerned with which is page B-1. A quick description of that page follows:

- We will pay you \$5.00/Acre during development (now until final construction) and then \$10.00/Acre per acre per year once we go operational. *I have also attached a calculator estimating what the long term potential is based on the estimated number of acres and the possible number of turbines we might place on your land.*
- IF you get a turbine on the property we will pay you a one-time payment of \$2000.00 per turbine.
- IF you get a turbine we will pay you \$4000 per megawatt (size of tower) per tower, per year. This project is set to have 2 to 2.3 MW towers installed. That said, we would pay you around \$9,200 per tower, per year if a 2.3 is installed.
- We pay \$1.00 per linear foot for the road, and .25 per linear foot for the trenched cable. Each will be paid per year
- All payments we make will increase at least 2% compounding interest each year after operation begins.

I look forward to hearing from you and fielding any questions you may have. Please feel free to call me anytime you wish.

Regards,



[REDACTED]  
Invenergy Land Agent  
[REDACTED]  
[REDACTED]