

Landowner Guide

➤ Evaluating a Wind Energy Development Company



Our mission

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

Do you have questions about community wind energy?

Call our Wind Information Hotline:
612-870-3461
800-946-3640
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This document will help you evaluate the ability of a 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 involves your land, your resources and your rights. Beware of any terms that seem excessive: confidentiality terms that prohibit talking with family members about the project, no term limits, or rights that are outside the scope of a wind project (i.e. water, mineral and other surface rights, cell phone towers).

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. Experience shows that 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.

Key information to gather

- Does the developer have a designated contact person for this project? Who?
- Has the developer successfully completed other projects? Are they near-by, within the state or even within the United States?
- Are there written materials on the specifics of the project to give landowners?
- How do I find a lawyer to review the agreement before I sign?
- What is the plan for getting the energy to the grid and where will it be sold?
- How much transmission will need to be constructed?
- What are the minimum requirements for a large wind energy project in my area? Who approves the necessary permits?
- What is the developer's plan to obtain financing?
- Has the developer registered with the Secretary of State in order to do business in the state?

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.

Why do I need to gather information before I sign anything?

A reasonable wind energy agreement will 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.

Because of how long these agreements last and how long you are agreeing to be involved with this developer, it is important to be comfortable asking questions and to consider whether the developer is willing to talk to you and answer your questions in an open way. Beware of accepting a cash bonus to sign an agreement you have not had time to thoroughly investigate.

To learn more about what you should expect in a wind energy agreement see Windustry's Leases and Easements information at www.windustry.org/leases

For more information on negotiating wind energy agreements, read the article by Farmers' Legal Action Group at www.flaginc.org/topics/pubs/arts/WindPropertyAgrmnts2007.pdf

Some developers are sincerely invested in a successful wind energy project and are committed to getting it built. Other companies are looking to sign up landowners so they can turn around and sell those rights to someone else and make a profit. You should learn as much as you can about the company you choose to do business with so that you can evaluate their capacity to put together a wind project.

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.

Make sure all important terms are written into the agreement. Developers are generally allowed to sell their rights under the lease to other companies, which will be bound only to the terms of official, legal contracts.



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.

Where can I find information about 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, a list of projects, and 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!

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

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 www.jjhill.org/resources/guides/HillGuidetoResearchingaCompany.pdf

For a useful checklist to help you evaluate a development company, see the associated handout "Developer Evaluation" by Brad Haight at the bottom of the following web page: www.windustry.org/leases



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. Some communities have also invested in developing their own wind project in what is called "Community Wind." For more information please visit

www.windustry.org/communitywind

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 it, 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 1.5 MW wind turbine is \$2-2.5 million—just for the machine itself. The developer may need financing to purchase turbines and construct the project. For more information about the costs of a wind project, see Chapter 8 of the Windustry Community Wind Toolbox at www.windustry.org/communitywindtoolbox

Projects can be delayed at many stages of development and by factors within and out of the control of the developer. Trouble securing permits, an interconnection agreement or financing can impact the project timeline. Legal challenges can also delay some controversial projects.

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.

Wind farm development must conform to any local zoning and permitting standards. Without the appropriate permits the project cannot move forward. It is important to find out whether there are existing land use or zoning ordinances that apply to wind facilities and what those requirements are. If there are none currently in place, there is a potential for a moratorium on all wind development while the zoning and permitting officials determine what the requirements will be.

The regulation of land use requirements can vary by location and authority for these requirements can be at the local, county, and/or state level. Check with your attorney or local zoning officials if you are not sure what agencies and ordinances will apply to the project on your land.



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

In order to sell the electricity from the wind turbines, a project developer will need an interconnection agreement with a local electric utility or Independent System Operator (ISO) for the region where the project is located. Generally a developer will need to perform a feasibility study, a system study and a facility study before getting the agreement. To learn more about connecting to the grid, see Chapter 14 of Windustry's Community Wind Toolbox at www.windustry.org/communitywindtoolbox

The developer most likely will not have this agreement before approaching you with a lease to sign. Depending on the requirements for the interconnection agreement, the developer may not have started this long process until after the option or lease agreements are signed.



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 very well justified plan to be a merchant seller. This is an important aspect to obtaining financing for the wind project because there must be revenue to re-pay the capital cost.

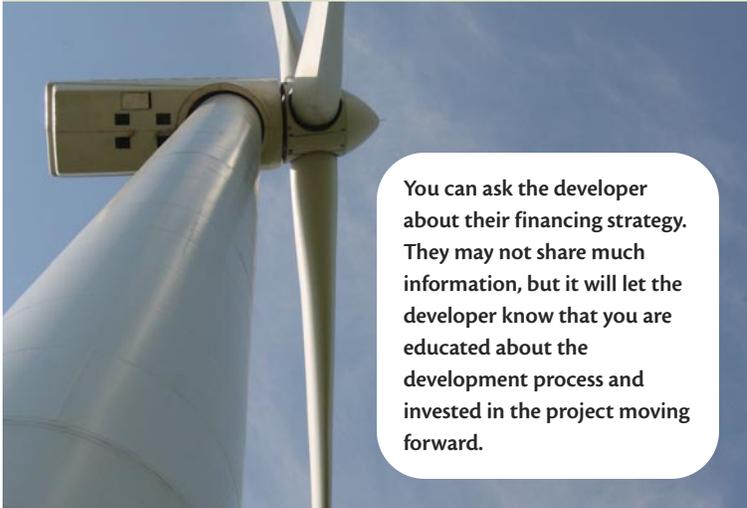
A merchant seller does not enter into a long-term contract for the sale of energy; rather the sale of energy is made into the wholesale market on a real-time or short-term basis. Retail or utility providers will indirectly purchase that energy through the wholesale market.

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. To learn more about the PPA, see Chapter 13 of Windustry's Community Wind Toolbox at www.windustry.org/communitywindtoolbox

Does the developer have the ability to 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 the developer cannot get financing, there is a risk that the project may be temporarily or permanently abandoned. In general, the developer will not be able to finalize any financing until they have obtained enough land rights for the project..

In evaluating the developer's ability to complete the proposed wind project, it may be helpful to know where the developer has been successful in financing previous wind projects. Financing for wind projects in the United States is different from other countries and is heavily dependent on federal and state policies. For example, currently the federal Production Tax Credit is such an integral part of wind development that when it has expired, wind development all but stops.



You can ask the developer about their financing strategy. They may not share much information, but it will let the developer know that you are educated about the development process and invested in the project moving forward.

Take time to check out the state of the developer's financing ability. You do not want to miss out on a different opportunity because you signed an agreement for a project that may not be built in a timely fashion or ever.

Your local library is a useful place to learn about a particular company's credit history and public business dealings. Libraries often have subscriptions to easy-to-use, searchable databases that you can use for free. Some libraries may even offer online access through their websites.

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.



Why should I care about construction requirements?

A large wind project consists of structures, 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. 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. For more information about the permits required, see Chapter 6 of Windustry's Community Wind Toolbox at www.windustry.org/communitywindtoolbox.

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, or those of your neighbors, without compensation.



There must be roads for large cranes and parts, access to concrete and lumber, and local construction workers or lodging and dining for out-of-town workers – all before construction begins.

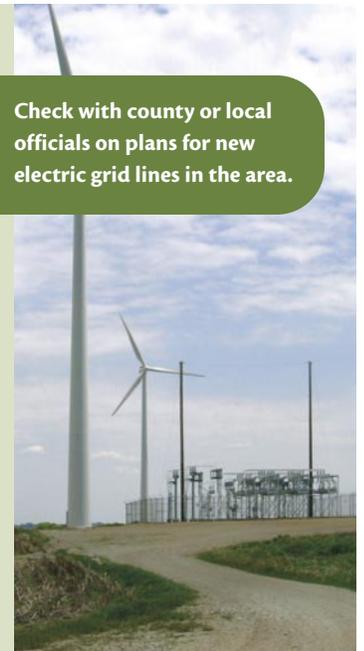
What is the relationship of my wind resource to electricity power lines?

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 may 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?

Wind farm operators 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, and/or a flat per-megawatt payment. The payment details will be included in the lease and easement agreement. Make sure your agreement includes an escalation clause that allows your compensation to increase as energy prices increase.

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 www.windustry.org/sites/windustry.org/files/LandECompPackages.pdf



How do I find a good lawyer?

There is no official specialization in wind energy law and the agreements involve a lot of different areas of law. If your family attorney is not comfortable reviewing the agreement or you do not have an attorney you trust, look for one that has experience in wind energy or oil and gas leases. If your family attorney is comfortable working on a wind energy agreement, you can use this guide when you meet with your attorney to help ensure your interests are protected. For additional resources to bring when you review your lease with your attorney, visit www.windustry.org/leases

If you need help finding a lawyer, contact your local state bar association: www.statebarassociations.org/

A few resources for lawyers:

- Windustry's land lease and easement guidelines
www.windustry.org/sites/windustry.org/files/LandEMain.pdf
- Legal Issues in Farming the Wind (FLAG Report)
www.flaginc.org/topics/pubs/wind/FGWEcomplete.pdf
- The Law of Wind (Stoel Rives)
www.stoel.com/webfiles/LawOfWind.pdf

Some landowners have shared the cost of a lawyer by working with their neighbors to negotiate common lease terms.

Check with your lawyer to make sure there are no conflicts of interests. Most law firms have policies on how to handle conflicts of interests. You can ask your attorney to share those policies with you if you are concerned.

What happens to the turbine at the end of the project?

At the end of the project, the wind farm will be decommissioned. This involves powering down the project site and removing most of the components that were installed during construction. You should have a provision in your wind energy agreement that refers to decommissioning of the project and that outlines who is responsible for removing the parts of the wind farm on your land and restoring the land to its previous condition (or to an agreed upon condition). The agreement should also include what your rights are if the developer does not fulfill their obligations.

The components that are removed generally include the tower as well as some of the underground foundation. This process will likely disrupt some activities on your land.

Some agreements say that if the developer does not remove the turbine, the landowner can. Be aware there could be construction liens, mortgages, or creditors that may or may not be known to you. If so, you will need to get the appropriate permissions from them before you can begin to remove the machine.



Additional Resources

Windustry has the following materials online and for download at www.windustry.org

- Community Wind Toolbox
- Leasing Your Land (Lease and Easement Guidelines, Compensation Package Information)
- Wind Basics Series
- Developer Evaluation by Brad Haight

Farmers' Legal Action Group has following resources available online and for download at www.flaginc.org/

- Farmers' Guide to Wind Energy: Legal Issues in Farming the Wind
- Negotiating Wind Energy Property Agreements

New York State Energy Research & Development Authority has the following materials available as part of their Wind Energy Toolkit on their website and for download at www.powernaturally.org/Programs/Wind/toolkit.asp?i=8

- Harvesting the Wind: A Legal Guidebook for Landowners
- Lease Agreements
- Wind Power Project Site Identification and Land Requirements
- Sample Annotated Land Lease Agreement

The Database of State Incentives for Renewable Energy has up-to-date information on federal and state incentives, policies and regulations regarding wind energy at www.dsireusa.org