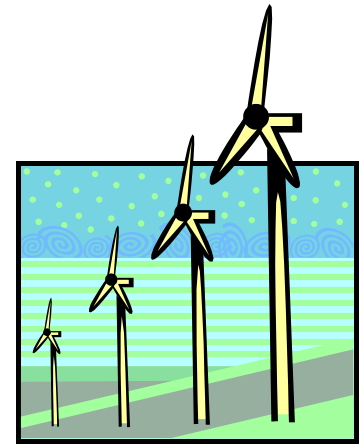


Legal Aspects of Wind Project Development



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March 8, 2006

Preliminary Project Considerations – All Structures

1. Project Viability. The acceptance of the fact that the project has an underlying business purpose and needs to meet certain requirements to ensure financial success. Requires flexibility about the project siting, configuration, financing and ownership to permit profitability
2. Risk Analysis. An honest appreciation for the risks associated with a project and the need to create a structure and all legal agreements that adequately addresses those risks, if taken
3. Expertise. A willingness to use necessary and appropriate expertise to improve project revenues and reduce costs and risks (development, permitting, engineering, legal)

Key Factors in Selection of Entity and Structure

1. Protection from individual personal and financial liability
2. Meeting minimum legal requirements for authority and existence
3. Ability to capture and maximize available financial benefits
 - A. State and federal tax credits, loans, grants and other benefits
 - B. Meet applicable utility tariff or purchasing requirements
4. Favorable tax treatment for entity and owners
5. Participatory goals-who and how many are to benefit from the project, and the type of governance mechanism needed to balance participation opportunities with workable business governance.

Structural Options

1. Limited Liability Company
2. Partnerships (general and limited)
3. Corporation (for profit)
4. Corporation (nonprofit)
5. Cooperative

Single-Owner Entity

1. Liability protection and tax treatment suggest LLC; combine advantages of partnerships and corporations
2. Flexibility allows greater financing options
 - A. Membership classes
 - B. Division of governing and financial rights
 - C. Tiered ownerships
3. Minnesota Model
 - A. Individual ownership with outside equity investment to maximize value of depreciation and tax credits
 - B. Initial capital investment with reversion once financial goals met
 - C. Need care for federal “at-risk” and other considerations
 - D. Requires balance of governing and financial rights
 - E. Can add components for early lease and management fees to increase local benefits
 - F. Can aggregate multiple small projects to improve economics

Community Organizations

1. Organization is driven to a greater extent to involve more members of the community to distribute the benefits of the project more widely and to further philosophical goals of community participation. Challenge is how to balance these equitable and participatory goals with the underlying legal and business objectives and requirements for a successful project
2. Securities law compliance becomes an issue
3. Governance and leadership issues are paramount
4. Order of events is also especially critical
 - A. In order to manage expectations and avoid legal liability issues, great care must be taken not to simply solicit money or participation before a project's parameters are defined adequately and viability is explored and established
 - B. This may require some project sponsors to undertake preliminary investigation and definition of the project before wider support is sought. An entity can be created with preliminary structure, subject to change later.
 - C. Once viability is established, the determination can be made as to how broadly participation should be offered, and to whom, and on what terms. If needed, a formal prospectus can be prepared.

Community Organizations (continued)

5. Success is largely dependent on the abilities, credibility and community leadership skills of the initial sponsors
6. Common problems: Failure to appreciate business nature of project and need to balance broader participatory goals with financial and legal requirements; excessive democracy leads to paralysis; too little participation leads to disenchantment among community; failure to adequately assess viability leads to unworkable commitments; confusion about public and private objectives
7. Structural challenges and issues are less legal and more practical
8. Decision may need to be made about aggregated versus disaggregated projects

Project Agreements

Common Themes: (i) Everything is integrated; (ii) Everything must be done to meet the stringent requirements of lenders/investors.

1. Leases and easements/title insurance
 - A. Accuracy of legal description
 - B. Conformance with state requirements for substance and form
 - C. Ownership and title accuracy
 - D. Insurance, surveys
 - E. Rent; Term; Options
2. Interconnection Agreement
 - A. MISO or equivalent at transmission level with FERC oversight; utility at distribution
 - B. Utility/transmission provider
 - C. Aggregated projects with transmission intermediary

Project Agreements (continued)

3. Power purchase agreement (PPA)
 - A. Negotiation – Strategy and Leverage
 - B. Terms
 - 1) price
 - 2) term; regulatory-out clauses
 - 3) default provisions
 - 4) offtaker credit/assignment
 - 5) mandates for purchase
 - 6) assignment limitations/consents
 - 7) green tags

Project Agreements (continued)

4. Turbine Supply Agreement/Warranty Service Agreement
 - A. Warranties for performance-availability, power curve
 - B. Financial condition of manufacturer and related security
 - C. Service and parts availability/O&M resources
 - D. Turbine performance
 - E. LDs

Project Agreements (continued)

5. Construction Documents
 - A. General Contract/Construction Manager
 - B. Subcontracts – foundation, roads, HV/LV electrical, crane and installation
 - C. Integration with delivery/commissioning/commercial operation standards
6. Loan Documents
 - A. Collateral Assignments: sufficiently comprehensive to allow step-in as needed
 - B. Leasehold mortgage/assignment
 - C. Security Agreement
 - D. Loan Agreement-reserves, coverage ratios, account protections
 - E. Guaranties
7. Equity Documents
 - A. Term Sheet
 - B. Control issues
 - C. Price/allocation/flip terms
 - D. Credits/incentives/grants

Project Agreements (continued)

8. Regulatory Issues
 - A. PPA approvals
 - B. Interconnection
 - C. Contract provisions and related issues
 - D. Mandate interpretation
 - E. FERC filings and reports (EWG, QF, other)

About Jeffrey C. Paulson

- Jeffrey C. Paulson is the principal in his own law firm in Minneapolis, and has been practicing in the area of energy law for over twenty years, with his practice focusing on representing clients developing and owning renewable energy projects, including a majority of the wind projects recently built in Minnesota.
- He has extensive experience in leasing and site acquisition, project ownership structures, permitting, construction and turbine contracting, PPA and interconnection agreement negotiation, and negotiation of financing terms and documents.
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