

3 Dozen Plus Suggestions on Wind Power Leases for Farmers

Before signing a lease, be sure it fits your plan for your farm and your community.

- 1 Meet and work with your neighbours and OFA Member Service Rep.**
- 2 Lawyer** – Have the wind company pay for one who works for everyone in area.
- 3 Transferability** - Add a clause that stipulates that the agreement cannot be transferred by the wind company to any person or company without your approval.
- 4 Appearance** – Add clauses that prohibit advertising on towers, that stipulates an agreed paint colour and repainting when it becomes rusty and that covers site reclamation when all is done.
- 5 Building Restrictions** – Attach a map of the property to the agreement that outlines areas where new buildings of various heights can and cannot be built so at least 15 acres in every 100 is available for buildings. For noise protection and preservation of property values - **ENSURE the map provides for at least 550 meters around the home or any future home where towers cannot be built.**
- 6 Fill Material & Gear Oil** – Do not allow fill to be taken from your land and use the lease to prohibit toxic gear oil on your land.
- 7 Option to Purchase/Right of First Refusal** – These are valuable and should not be included in a lease without separate valuation and payment. Inclusion can spoil sales or succession.
- 8 Option Termination** - Add a clause that stipulates that the option ends on a precise date if construction has not started by that date. You need a clear end to the option.
- 9 Net Meter Tower** - Ask the company to install your own wind generator. You must be ready on time, but it could save you \$ 10,000 and pay more than rent.
- 10 Option** - \$ 1.00 is OK option payment on a good lease. \$ 100,000 won't make a bad one good.
- 11 Rent** – Rent should be 3% for the first 8 to 10 years then 8% once bank loans etc. are covered. Rent should apply to all income from the project. A fixed rent is lower risk.
- 12 Insurance** – Stipulate that the wind company must produce a valid certificate of insurance covering liability to the farm and others each year and that it assumes full liability for damages to the tower or contractors or consultants etc.. The rent will not pay a lawyer if you are sued.
- 13 Trees and Cutting** - Add a clause or map as an appendix to the lease indicating where trees may or may not be cut. Generally tree removal should not be needed.
- 14 Other Development** – If the property may be valuable for other development in the next 30 years do not sign, you will be giving the wind company your future profits or capital gains.
- 15 Your Other Rights** - Some leases have clauses that appropriate your development rights for aggregates, ground water, top soil, sale outside of the family and even your right to speak in public on wind power questions. Any such clause should be removed from the agreement.
- 16 Site security** – Do not accept any obligation, paid or unpaid, to provide security. It can make you responsible for preventing damage.
- 17 Tenants Rights** - Stipulate that the wind company will have rights to do needed studies and to construct, operate and maintain no more than 2 wind towers per 100 acres as well as required roads and wires, and to transfer electricity from the site to the grid.
- 18 A Cooling Off Period** – have a clause that states that either party may cancel the agreement within 30 days without reason or penalty.

- 19 **Power Sales** - Stipulate power must be sold to government or you get to approve any other contract. Without this, power can be sold to a subsidiary and the 3% rent, will 3% of very little.
- 20 **Hours, Times of Access** – Access for emergencies at any time. Other access between 8:00 a.m. and 5:00 p.m. Monday to Friday and requires notice to avoid problems on farm.
- 21 **Area of Lease** - Limit the area covered by lease to a suitably small area – 1 to 5 acres
- 22 **Applies to One Lot Only** - Limit the agreement so it only applies to the actual lot leased and that there is no reference to any other land owned by the farmer
- 23 **Conversion to Easement** – Do not allow a conversion from lease to an easement as it will be more difficult, perhaps impossible to discharge when the lease expires.
- 24 **Quitclaim** – ensure the lease provides for a clean end so the wind company cannot be released from the lease or recover funds from the escrow account without your approval and certification that they have met all their obligations including clean up.
- 25 **Wind Rights Only** - Do not allow any clause that gives the wind power company a right of first refusal or an option for any purpose other than the use of the wind. Such clauses encumber sales, wills, development of other businesses etc.
- 26 **Term of Lease** – suggest 3 year option, 20 years for first term and 5 year renewals to follow. This provides enough time to do tests and make profits and brings the replacement date for the generator and the lease renewal dates closer together, which improves your negotiating position.
- 27 **Assessment and Property Taxes** – the land owner is ultimately responsible for taxes – a clause to require the wind power company to pay taxes associated with the wind tower is essential and it requires an enforcement clause – you cannot afford their taxes, without their income. In the case of default, you should get the licences to produce and sell power.
- 28 **Escrow Fund** – Require the tenant to have an escrow fund held with your lawyer or a trust company. This fund will be established with the start of construction and used to pay, debts to contractors, arrears in taxes, any maintenance that the company refuses to do and reclamation.
- 29 **Registration of Surveys** – surveys should only be registered with your approval. The agreement should state that the tenant does not acquire a legal right of way or any privilege that could lead to shared or sole title. The tenant only acquires limited rights to use land for a period.
- 30 **Setback distances** – Settle them in the lease - Insert a clause stipulating that any tower will be at least 550 meters from any existing home, barn or other place of work on the property
- 31 **Additional Noise Protection** – Add a clause that stipulates that the generators will be shut down if the noise levels ever exceeds 45 dBA between 8:00 p.m. and 8:00 a.m. or more than 55 dBA between 8:00 a.m. and 8:00 p.m. for a period of one hour.
- 32 **Borrowing** – A lease can affect your ability to borrow against your land. Discuss this with your bank first.
- 33 **Wait 'Til You Know Your Choices** – The government has a Feed In Tariff program. You can have your own wind project or you can find other firms or partners. You may do better than you might as a landlord. **Don't sign a lease until you have considered the choices and determined what is best for your farm operation for the next 20 plus years.**
- 34 **To increase your bargaining power** apply to your local distribution company for the right to connect a generator yourself. The connection agreement is valuable. Own it yourself.
- 35 **Noise protection** - If you have signed a lease, when the development approvals process starts, contact the Ministry of Environment and make it clear that you have not given permission to the wind company to build a tower closer than 550 meters to your home.
- 36 **Financial Impacts** – A lease may bring in \$ 9,000 a year after tax. If wind towers affect property values, they may reduce land or home values by \$ 100,000 or more that would have been tax free.
- 37 **DON'T RUSH** – Make sure it fits your plans. Do not sign if you have doubts. **Get Legal Advice.**