

Wind Energy Contracts: Guidelines for Landowners

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[Caveat: Not all wind energy contracts are the same, and the guidelines and suggestions herein are not intended to be exhaustive, or address every issue and circumstance. There is no substitute for the landowner carefully and thoughtfully reviewing every document, and gaining an understanding of each term and condition, and the ramifications thereof.]

General Overview: Wind energy contracts are typically quite complex and lengthy. Always consider seeking assistance from legal counsel, as well as others such as your banker, farm manager, or tax adviser, as appropriate.

Remember that typically there is an option document, which may be somewhat short in term, followed by the possibility of a more long term easement or lease, but that often these are part of the same “package”, and signing of the option might automatically bind you to the longer easement or lease.

Contract Documents: What to look for and what to consider.

1. What land is covered?
 - Understand precisely the boundaries of the tract of land under consideration.
2. What exactly does the company plan to do?
 - Usually a broad grant of powers; typically “exclusive”
 - Usually grants underground rights also.
 - What can you still do on the land? Ordinary and usual farming activities? Aerial spraying? Erect structures and trees?

3. What is the term of the arrangement?

- Usually a base term, plus extensions at option of the company
- Shortest 30 years, longest 70 years.
- Are you comfortable tying up land that long?

4. What is the compensation?

- Is it clear how the calculations are made? Do you understand how much you get, when it starts and how often it is paid?
- Base amount v. some form of revenue or profit sharing.

If you are comfortable with the 4 points above, then you may proceed to a consideration of the following matters:

5. Insurance.

- Does the company provide insurance to cover its activities on your land? Is the coverage adequate? Are you required to provide any insurance to the company?

6. Damage to crops, structures, and field tile.

- Are there provisions to specifically cover all of these? Are the formulas understandable and fair?

7. Indemnifications

- Is there an indemnification from the company in your favor, if its activities cause harm to persons or property? Is there an indemnification from you to the company? If “yes”, will it require you to purchase additional insurance coverage?

8. Mechanics' Liens

- If mechanics liens arise from the construction activities of the company, how will those be handled? Is provision made for a performance bond?

9. Rights of ingress and egress

- Does the company have the right to come in and exit only on the leased property itself, or is there a grant of additional rights to the company on other parts of your land?

10. Use of existing roadways.

- Does the company intend to use your existing roadways, or build new ones? If existing ones are used, is there provision for upgrading them, and/or repair after construction is completed? If existing ones are to be upgraded and used by the company, is there any restriction about you using them also for your regular farming activities?

11. Transparency and consultation

- Does the company indicate you will be consulted about locations of roadways, underground transmission lines, and turbines?

12. Handling of real estate property tax increases.

- Does the contract indicate an awareness of the new Illinois law in this regard, and commit to comply with it? If surveys are required, who pays for those?

13. Handling of deconstruction costs

- How would deconstruction costs, either at the normal termination of the arrangement or at an earlier termination, be handled? Is there any provision for posting of a performance bond in favor of the landowner to cover those costs?

14. Confidentiality provisions

- Is there a confidentiality clause? How broad is it? i.e. who can you still talk to, and what information can you impart?

15. Further Cooperation by the Landowner

- Are there provisions indicating you have to further cooperate in such things as zoning hearings, property title matters, permitting of operations, and so on? If “yes”, will you be reimbursed for your time and expense?

16. Advance Waivers

- Is there any language indicating you are waiving in advance certain rights you may have under a wind energy ordinance, such as setback requirements?

17. Termination

- Are there provisions for termination of the contract prior to the end of the listed term? Do you understand the circumstances under which an early termination by the company could occur? Do you as landowner also have early termination rights?