

30 Suggestions on Wind Power Leases for Farmers

Ontario needs power and farmers need income. OFA favours wind power where generators do not harm other things important to the community. If you sign a lease make sure it fits your plan for your farm.

- 1 **Meet with your neighbours** – Meet and work with your neighbours and OFA Services Rep.
- 2 **Cost of a Lawyer** - Ask the wind power company to pay to have the agreement reviewed by a lawyer who will work for everyone in the area. This saves you \$ 500 to \$ 1,000.
- 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** – No leases address appearance, but you could have to look at it for 50 years. Add a clause that prohibits advertising on the tower. Add a clause that stipulates the paint colour be agreed and repainted if it becomes rusty. Add a clause that covers effective reclamation of the site when all is done.
- 5 **Building Restrictions** – Attach a map of the property to the agreement that outlines areas where new buildings over 20 metres can and cannot be built.
- 6 **Fill Material** - Under no circumstances should a developer use fill taken from your land.
- 7 **Gear oil** - You can use the lease to prohibit the use of toxic gear oil.
- 8 **Option Termination** - Add a clause that stipulates that the option ends at 5:00 p.m. on a specific date if construction has not started by that date. You need a clear ending to the option.
- 9 **Net Meter Tower** - Ask the company to lend you its crane to install your own net metered wind generator. You must be ready when they are, but it could save you \$ 10,000.
- 10 **Option** - The minimum should be \$ 5,000/ 100 acres for three to five years. No renewal; they put up a wind tower or they are gone. No payment is enough to make a bad lease worthwhile.
- 11 **Rent** – Rent should be at 3% for the first eight years then go to 8% once bank loans etc. are covered. Rent should apply to all income from the project including green house gas credits.
- 12 **Insurance** - Add a clause stipulating 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 damage caused by the wind tower or the contractors or consultants etc..
- 13 **Protect Capital Value** - Add a clause requiring the wind power company to make whole any losses in re-sale value that might occur as a result of the lease or a wind tower being in place. If the wind tower effects your land value, losses might not be covered by rent.
- 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 stricken from the agreement.

- 16 **Tenants Rights** - Stipulate that the only rights the tenant will have are the rights to do needed studies, the rights to construct, operate and maintain no more than two wind towers per 100 acres as well as required roads and wires, and to remove the electricity from the site to the grid.
- 17 **A Cooling Off Period** – have a clause that states that either party may cancel the agreement within 30 days without reason or penalty.
- 18 **Power Sales** - Stipulate that power must be sold to government or you get to approve any other contract. Without this power can be sold to a subsidiary of the wind power company and the 3% rent you were hoping for will 3% of very little.
- 19 **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 so there is no interference with seeding, harvests, calving, or other farm or family activities that are time restricted
- 20 **Area of Lease** - Limit the area covered by lease to a suitably small area – 1 to 5 acres
- 21 **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
- 22 **Conversion to Easement** – Do not allow a conversion to an easement as it will be more difficult, perhaps impossible to discharge at the end.
- 23 **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.
- 24 **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.
- 25 **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.
- 26 **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, unless you have their income. In the case of default, you should get the licences to produce and sell power.
- 27 **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 any arrears in taxes, any maintenance that the company refuses to do and will fund reclamation.
- 28 **Registration of Surveys** – surveys should only be registered with your approval and the agreement should specify 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 for a period, but no easements or rights of way.
- 29 **Wait 'Til You Know Your Choices** – The government has a Standard Offer. 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.**
- 30 **If you wish to increase your bargaining power apply to Hydro One or your local distribution company for the right to connect a generator yourself.** The connection agreement is valuable, acquire it for yourself.