

2 Dozen Suggestions About Wind Power Leases for Farmers

- 1 **Meet with your neighbours** – The wind company will be approaching your neighbours. Meet with them and work together with your OFA MSR

- 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. If the company is truly in the wind business, they will be willing to pay you a fee if the lease is transferred.

- 4 **Appearance** – None of the leases address appearance, but you could have to look at the thing for 50 years.

Add a clause that prohibits advertising on the tower.
Add a clause that stipulates that the paint colour be agreed.
Add a clause that requires that the tower be painted within six months of the appearance of rust or discolouration.
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** - Many wind towers have a reservoir of toxic lubricating oil (PCP's) in the generator compartment. You can prohibit the use of such oil in the lease.

- 8 **Option Termination** - Add a clause that stipulates that the contract is ended if construction has not started on a wind tower within five years from the date of signing. Do not sign a contract without a clear beginning and a clear end.

- 9 **Net Meter Tower** - Ask the company to lend you its crane to install your own net metered wind generator. You'll have to be ready when they are, but it could save you \$ 10,000.

- 10 **Option** - Set the option payment at a minimum and escalating according to the value of the land. The minimum should be \$ 5,000. And the option should cover annual payments while a test tower is in place as well as crop losses etc. You should become an owner of the wind data collected if no tower is built within five years.

- 11 **Rent** - Change the clause with respect to rent so the percentage of gross income paid to the farmer starts at 3% or more. Rent should apply to all income from the project including green house gas credits etc. Once the tower has paid for itself the rent should increase. Change the rent clause so the percentage of gross income paid to the farmer increases with the cost of power or at set intervals of 2 to 5 years, so rent rate rises to about 10%.

- 12 **Insurance** - Add a clause stipulating that the wind power company must produce a certificate of valid insurance covering liability to the farm and others each year and that in any event it assumes full liability for all damage caused by the wind tower.
- 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 **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.
- 15 **A Cooling Off Period** – have a clause that states that either party may cancel the agreement within 30 days without reason or penalty.
- 16 **Other Development** – If the property might be valuable for other development in the next 50 years, think. At most, sign a lease that commits you for no more than 20 years if, for example, you feel your land might be valuable for urban or other development.
- 17 **Power Sales** - Stipulate that power must be sold via the IESO or that you get to approve any other contract. Without this the power can be sold to a third party firm held by the wind power company and the 3% rent you were hoping for will 3% of very little.
- 18 **Hours, Times of Access** – stipulate that access is during ordinary business hours and requires permission on weekends, at any time or hour in an emergency and that the wind power company agrees to defer any activity except emergency repairs that interfere with seeding, harvest, calving, lambing, or other farm or family activities that are time restricted
- 19 **Area of Lease** - Limit the area covered by lease to a suitably small area – 1 to 5 acres
- 20 **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
- 21 **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.
- 22 **Term of Lease** – suggest 3 year option, 20 years for first term and 5 year renewals to follow. These time frames provide company with enough time to do tests and make profits and they bring the replacement date for the generator and the lease renewal dates closer together, which improves your negotiating position.
- 23 **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.
- 24 **Wait 'Til You Know Your Choices** – The government is preparing Standard Offer Price rules. With those rules, (out in early 2006) you may be able to run your own farm energy project and do better than you might as a landlord. Lease offers should become more competitive once the Standard Offer rules are known. **Don't sign a lease until the choices are clear and you have determined what is best for your farm operation for the next 20 plus years.**