

What's In Your Wind Contract?

With the current push toward alternative sources of energy more of our clients are being approached by companies seeking to establish wind contracts. As with any contract, it is essential to read the document and understand all of the terms and conditions set forth therein. No one asking you to enter into a wind contract should pressure you into signing an agreement without a thorough review with an attorney of your choice. A red flag should go up if a wind energy representative indicates that they can explain the contract well enough, puts unreasonable time constraints on signing, or otherwise discourages you from properly reviewing the document. Reputable companies understand that contract review is a normal part of business. And you can rest assured that the proposed agreement was reviewed several times by company attorneys before it was ever presented to a landowner. The following are some common areas of concern.

1. Length of Contract

What is the total length of the proposed contract? Are the base and renewal periods an appropriate length of time? Do the base and renewal periods combine to tie up your land for an unreasonable time period?

2. Easements

Understand easements contained in the agreement which may include access to the land for development and maintenance, transmission lines, construction of the tower and turbine overhang, and noise from turbines.

3. Renewal

Know your renewal rights. Areas of concern include appropriate length of notice, evaluation of proposals, the ability to negotiate adjustments to terms and conditions, timing of lease negotiations, and adequate time for thorough review.

4. "Most Favored Nation" Clause

Is there a provision ensuring that your rate is consistent with that paid by the operator to other landowners or are you at risk of being low-balled? Is there a confidentiality clause that bars communication with other landowners regarding contract terms?

5. Inflation Factors

The developer is likely to have inflation adjustment provisions in its agreement with the utility. Does the agreement under review have an inflation adjustment clause that protects the value of future payments to the landowner? If not, the inflation-adjusted value of your payment may significantly diminish over time.

6. Attorney Fees

Are attorney fees to review the contract paid by the developer?

7. Access Issues

Who controls the location of structures and access points? How will the location affect other land uses? Will there be changes in drainage, damage to tiling, or other landscape issues? How are the expenses for these matters allocated?

8. Equipment Removal & Pre-Lease Conditions

Who is responsible for removing equipment and structures, such as power lines, transformers, and foundations used in connection with the lease? Who owns equipment that is left behind? Will land be returned to pre-lease conditions? What is the remedy if the responsible party does not follow through?



CONTACT US AT:

1-800-928-0034

Fraleigh.Law@FraleighLaw.com

6200 Pine Hollow Drive Suite 200
East Lansing, MI 48823

900 Wilshire Drive Suite 202
Troy, MI 48084

www.FraleighLaw.com

This tip sheet is provided for informational purposes only. Determining an appropriate solution for you depends upon the details of your particular situation.