

WIND TURBINE LEASES: what you *really* need to know

With the Ontario government looking for new power generation, wind power developers may be on the lookout for landowners willing to give up some land for wind turbines. The wind power developer leases land for at least 20 years with options to extend the lease another 20 years or more, in return for a lease payment.

The money might look good but as with all things, there is more to the story.

Ontario lawyer Garth Manning QC advised that anyone thinking of signing a lease really needs independent legal advice. Here's why.

Liability

If you sign a wind turbine contract that does not specify who holds responsibility, i.e., the wind power operator, you could be liable for:

- Damages to nearby property if the flow of surface water is changed, or from ice throw from the blades
- Stray voltage (of particular concern for dairy operations)
- Fire
- Adverse health impacts on nearby property owners and nuisance suits related to noise, vibration, effect on water wells.

What do you really get?

It is important that the wind power lease contract specifies how much land will actually be used, and how long will the land be affected. Access roads may cut across existing fields affecting tile drainage.

How will you be paid? Annually? Or is your payment connected to how much power is actually generated (a big concern in low wind Ontario)? How much additional municipal taxes will you pay? Is it considered farm income or simply taxable income?

Does the agreement affect your future plans for the farm? Are you restricted in any way as to what you can do (e.g., manure spreading or pesticide use, tree planting, hunting) or what you can complain about?

Wind power leases are long-term: how will it affect your heirs? What happens if you need to sell?

Is the wind power operator entitled to sell or transfer any land rights negotiated in your lease, e.g., water?

It's not free money

There can be costs to you on signing the lease. For example:

- Is there a potential for environmental contamination or release of hazardous materials? If so, who pays for cleanup?
- What happens if construction liens are placed on the project? (This has already happened in Ontario)
- Who decides where the turbines and access roads will go? This can affect farming operations and cost you extra money in fuel costs, etc.
- When the contract ends, who takes down the turbines and infrastructure? (It can cost more than \$500,000 to dismantle a 600-foot wind turbine).

You're not an island

Landowners should understand that today's grid-scale or industrial-scale wind turbines have a significant impact on the landscape and environment. They do introduce noise pollution into the environment and have other effects such as shadow flicker or strobe effect, and aviation lights which may flash all night. These can disturb and upset your neighbours.

Last question: IS IT WORTH IT?

Don't focus only on the dollars.

A wind turbine lease is an important, long-term agreement. The wind power companies are in the business to make money, not to benefit the environment or communities, despite what they say.

Signing an agreement because you think turbines are good for the environment may be a mistake: wind power is actually inefficient and ineffective when compared to other sources of power generation.

FACT: there is substantial risk for landowners in these agreements. This is the time to think carefully, and seek independent legal advice. Your lawyer should read every word and be aware that the wind power developer does not have your best interests at heart. The wind company and its investors are #1.

"Your lawyer will find that the farmer client is granting full access to the entire acreage at all times and that the turbines and access roads can be sited anywhere."

– Garth Manning QC, in *The Law Times*

©Wind Concerns Ontario

References: The reality of wind power contracts. Garth Manning QC. *The Law Times*. September 18, 2016

Legal Issues for Landowners to Consider in Negotiating Wind Energy Easements. Roger McEowen. Washburn Agricultural Law and Tax Report. March 11, 2016.