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Landowner Wind Energy Associations

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Market Report	Yr Ago	4 Wks Ago	1/16/09
Livestock and Products, Weekly Average			
Nebraska Slaughter Steers, 35-65% Choice, Live Weight.	$88.74	$ *	$82.88
Nebraska Feeder Steers, Med. & Large Frame, 550-600 lb.. . . .	119.24	*	113.79
Nebraska Feeder Steers, Med. & Large Frame 750-800 lb.	90.00	*	97.33
Choice Boxed Beef, 600-750 lb. Carcass.	147.34	143.08	149.78
Western Corn Belt Base Hog Price Carcass, Negotiated.	48.82	51.04	58.07
Feeder Pigs, National Direct 50 lbs, FOB..	52.00	60.00	60.00
Pork Carcass Cutout, 185 lb. Carcass, 51-52% Lean..	55.32	57.67	56.80
Slaughter Lambs, Ch. & Pr., Heavy, Wooled, South Dakota, Direct..	86.13	*	95.37
National Carcass Lamb Cutout, FOB.	255.62	264.96	256.29
Crops, Daily Spot Prices			
Wheat, No. 1, H.W. Imperial, bu..	9.41	4.98	5.29
Corn, No. 2, Yellow Omaha, bu.	4.70	3.68	3.76
Soybeans, No. 1, Yellow Omaha, bu.	11.53	8.67	9.91
Grain Sorghum, No. 2, Yellow Dorchester, cwt..	8.41	4.84	5.29
Oats, No. 2, Heavy Minneapolis, MN , bu.	3.18	2.16	2.48
Feed			
Alfalfa, Large Square Bales, Good to Premium, RFV 160-185 Northeast Nebraska, ton..	135.00	*	*
Alfalfa, Large Rounds, Good Platte Valley, ton..	85.00	77.50	77.50
Grass Hay, Large Rounds, Premium Nebraska, ton..	*	75.00	85.00
Dried Distillers Grains, 10% Moisture, Nebraska Average.	185.00	137.50	145.00
Wet Distillers Grains, 65-70% Moisture, Nebraska Average.	55.50	45.00	44.87
***No Market**			

Warning: This newsletter is provided as educational material–it does not constitute legal advice. Persons negotiating wind leases or easements should obtain legal counsel and income tax advice.

Many Nebraska farmers and rural landowners are receiving offers to purchase wind energy leases. However, landowners have little information regarding wind lease rates in Nebraska, and wind leases are relatively new in the state. Some rural advocates suggest that landowners pool their interests in what are called Landowner Wind Energy Associations (LWEAs). LWEA advantages include information pooling and the ability to solicit wind energy development proposals meeting LWEA specifications from wind energy developers. This newsletter takes a quick look at LWEA advantages, LWEA operating agreement provisions and LWEA wind energy development requests for proposal provisions.

The discussion of LWEA characteristics is based on Frank and Midcap (2008), which summarizes the organization and operation of LWEAs in Wyoming, Colorado and New Mexico. LWEAs are voluntary associations of landowners, typically organized as a limited liability company (LLC). Voting rights are assigned on the basis of one vote per each 320 acres. Financial contributions are based on land ownership, e.g. 10¢/acre/year ($50 minimum) and can be increased to a set level (e.g. $1/acre/year) by 75 percent member approval. The fees allow the LWEA to hire an attorney and other professionals to prepare the RFP (discussed below) and negotiate a wind energy development agreement for LWEA members.

LWEA members cannot enter into individual wind lease agreements without approval of the LWEA board of directors. Members are not obligated to sign a wind lease negotiated by the LWEA board. If a wind developer makes a proposal that is approved by the LWEA board, members have the option whether to sign the lease agreement or not. If a member seeks modification of a board-approved wind lease agreement, the modification must be approved by the LWEA board.

The LWEA terminates (1) after two years, (2) when 51 percent of the membership approves the board's recommended wind development contract and 75 percent of the membership signs a contract, or (3) 75 percent of the membership votes for early termination.

These provisions are the ones discussed by Frank and Midcap, and are simply presented here as examples. Nebraska LWEAs could establish their own operating requirements which might differ (or differ significantly), from those summarized here.

Wind energy development request for proposals (RFPs). One advantage LWEAs have is that they can make themselves more attractive to developers by doing some of the up-front work for a wind energy development project. Some up-front tasks include:

- determining the wind characteristics for the area,
- identifying local road capacities and power transmission lines,
- identifying relevant local zoning regulations,
- identifying any possible environmental constraints (e.g. endangered species habitat),
- identifying any applicable economic development grants and/or tax incentives.

The RFP can also identify what LWEA members expect to receive payments for:

- lease fees for the period between sign-up and energy production,
- progressive annual royalty payments,
- percentage of carbon credits, green tags and other environmental incentive revenues,
- one-time success payment per megawatt of installed capacity,
- payments for substations, buildings, roads, transmission lines and other structures,
- damages and agricultural production losses due to construction.

The RFP can also specify other conditions to protect landowners:

- plans for restoration of construction areas, weed control and trash removal,
- marketing plan for electricity sale and distribution,
- description of wind energy technology to be used,
- landowners retain right to use land compatible with wind energy development,
- insurance policies to safeguard landowners,
- bonding for project equipment removal and site reclamation upon energy project termination.

A sample response to a LWEA RFP included the following payment terms (which might be very different for a comparable wind energy project in Nebraska):

- initial development phase: $7/acre,
- construction: $4,500 per megawatt of capacity installed plus fees for roads, buildings and electricity connection lines,
- operational: each section with two turbines would receive a minimum of $39,000/year,
- each 320 acres without a turbine would receive a minimum of $6,000/year.

There are many advantages of pooling land for wind energy leasing as opposed to one landowner doing it all themselves. It is very unlikely that an individual landowner could negotiate as favorable an agreement as a landowner group could.

Additional Educational Materials

Frank and Midcap, *Landowner Wind Energy Associations in the West,* (Rocky Mountain Farmers Union, Nov. 2008, 23 pages, excellent LWEA materials including draft LWEA operating agreement and RFP); available from: www.wiresgroup.com/images/Gigawatt_scale_wind_through_landowner_LLCs_v4.doc

Harvesting the Wind: A Landowners' Guide to Wind Energy Development in the Great Plains, (4 pages, August 2001, excellent overview); available from: www.undeerc.org/wind/literature/wind_brochure.pdf

McEowen, *Wind Energy Production: Legal Issues and Related Liability Concerns for Landowners in Iowa and Across the Nation*, (17 pages, Oct. 2008), available from: www.calt.iastate.edu/briefs/CALTLegalBrief-WindEnergyProduction-LegalIssues.pdf

Shoemaker, *Negotiating Wind Energy Property Agreements,* (18 pages, June 2007); available from: www.flaginc.org/topics/pubs/index.php#Wind PropAgmnt

Shoemaker and Brekken, *Community Wind: A Review of Select State and Federal Policy Incentives,* (96 pages, Aug. 2006); available from: www.flaginc.org/topics/pubs/index.php#commwind

Shoemaker, Brekken and Krub, *Farmers' Guide to Wind Energy: Legal Issues in Farming the Wind,* (293 pages, June 2007); available from: www.flaginc.org/ topics/ pubs/ index.php# FGWE

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