Landowner Wind Energy Associations

J David Aiken
University of Nebraska

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Landowner Wind Energy Associations

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 agreement if their land is located within a parcel of land owned by a member of the LWEA.
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 trans-
  mission 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, trans-
  mission 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_throug
h_landowner_LLCs_v4.doc

Liability Concerns for Landowners in Iowa and Across the
Nation*, (17 pages, Oct. 2008), available from:

www.calt.iastate.edu/briefs/CALTLegalBrief-WindEnergy
Production-LegalIssues.pdf

Shoemaker, *Negotiating Wind Energy Property Agreements*, (18
pages, June 2007); available from:

www.flaginc.org/topics/pubs/index.php#WindPropAgmnt

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#
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J. David Aiken, (402) 472-1848
Professor, Water & Agricultural Law Specialist
Department of Agricultural Economics
University of Nebraska–Lincoln
daiken@unl.edu