



WIND & SOLAR LEASES: WHAT YOU NEED TO KNOW ABOUT WIND & SOLAR LEASES

1. What is the Impact of This Lease on My Farm as I Have Been Operating it?

- Irrigation: Be wary of power sources and crossing irrigation fields
- How will siting of facilities impact farming practices? CRP? Soil compaction?
- Do I have a residence that will be impacted? *Flicker, shadow, noise, ice throw, wildlife, traffic*
- If construction is started, how will crops be impacted and how will damages be determined?

2. How Long of a Term Will My Farm Be Impacted By the Lease?

- **Option Term:** Company has right to enter into lease
- **Development Term:** Company is evaluating project
- **Construction Term:** Company builds facilities
- **Extended Term:** Routine Operations
- **Reclamation:** Decommissioning
- **Protect Your Property**
 - i. Surface Use of Your Property:
 1. Defined areas and rates
 2. Clear method to calculate damages
 3. Methods to assess failure to reclaim and revegetate
 4. Change specific terms in wind or solar lease
 - ii. Consider:
 1. Loss of property due to construction and equipment maintenance
 2. Disruptions or changes to your operations
 3. Effect on property values
- *You will NOT have the right to renegotiate the lease in between the terms—be careful and thorough BEFORE you sign the first document.*

3. What are My Obligations as determined by Said Lease?

- Restrictions on landowner as to other grants or rights third parties, confidentiality, use of the property, cooperation, financing process
- Restrictions vary by company:
 - i. Security language – what happens if the company is bankrupt?
 - ii. Payments for use and damages / Reclamation
- Negotiating the Lease
 - i. Know your bargaining power:

- Number of acres owned
 - Proximity to focus area
 - Competition for leasing
 - ii. Increasing your bargaining power: Join with other neighbors / Timing
- What do I ask for?
 - i. Payment - Exchange original lease for check
 - ii. Higher - Money and percentages
 - iii. Lower - days and years
 - iv. Warranty - delete
 - v. Surface protections - Surface protections best negotiated for in the lease

4. **Compensation – When and How?**

- Development terms: Usually paid per acre and per year
- Rates increase with additional impacts on property and at each stage of the process
- Often requests for confidentiality - say NO!
- Payments for associated uses such as MET towers, transmission lines are common
- Wind projects seems to pay (a) flat rate per megawatt, (b) royalty (percentage of gross revenue), (c) hybrid (some of both of the foregoing)

5. **After the Lease Ends...?**

Returning the property to use:

- Depth of removal of structures,
- Time period to remove the same,
- Process and security when there is financial failure during end stages
- Watch out for Ratifications or Amendments
- **STOP** signing documents
- Capitalize on additional needs of operator
- Wait for expiration, request release
- Tenants?
 - Contact your landlord when lease offers are going out
 - Offer to pay for services to negotiate lease
 - Consider adding terms to your farm lease
- What else might I be asked to sign?
 - *Good Neighbor Easement*, the Wind company may request an easement from you indicating your acknowledgment and agreement that Wind improvements on neighboring property may affect things on your property such as sound, shadow flicker, or television interference. The Neighbor Easement is a separate and distinct interest in your land and should be negotiated separately from any Wind Project Easement.
 - *Transmission Line Easement*, with the generation of electricity also comes the need to transport the electricity where needed. It is not uncommon to be requested to grant a transmission line easement in addition to the Wind or Solar easement on your property.

For more information or to schedule a meeting with Jenna Keller, please contact her assistant, Ashley Steed at 970-457-4398 or asteed@kellerlawllc.com.