

Utility-Scale Wind, Solar and Telecommunications Leases

A lease concerning a large, utility-scale project is a contract between individual parties that allow an entity to obtain the use of, purchase, and/or accommodate equipment on real estate. They are similar to long-term rental agreements where the lessee (project operator or developer) uses the equipment for a period of time in return for regular payments to a third-party lessor (landowner). Utility scale leases focusing on using open rural areas involve the following technologies:

Utility-Scale Wind

Also defined as an “Economically Significant” facility in the Ohio Administrative Code 4906-1-01, a utility-scale, wind-powered electric generation facility includes wind turbines and associated facilities with a single interconnection to the interstate transmission system with a capacity of 5 megawatts or more and is considered a major electric generation facility and subject to Ohio Power Siting Board permits and procedures.

General siting factors for these projects include:

- **Infrastructure Size and Placement:** Utility-scale wind projects can encompass between five and over 100 individually sited turbines. Each turbine features monopole construction, a nacelle housing the turbine, and prop equipped with variable pitch blades to capture the wind. A single unit can be 350 feet tall or larger. The “footprint” for each turbine can range from 2-10 acres, while the entire project can involve a group of strategically placed and spaced turbines located throughout an area measured in square miles.
- **Preferred Sites:** Preferred sites are large farm fields approximately 300 acres in size to allow for installing more than one turbine, additional setbacks and to lessen wind turbulence. The area needs to be open to principally southwest prevailing winds. The site will be able to

accommodate subsurface transmission line infrastructure that connects the turbine to a generation collection that eventually is developed as a centralized surface transmission line interconnected to nearby interstate transmission line via a developer-built, or public utility-maintained substation.

- **Additional Requirements:** Additional site requirements may include an open 10-acre construction and heavy maintenance area encompassing the turbine, an absence of Federal Aviation Administration height restrictions for aircraft and proximity to telecommunication outlets. Additional basic site setback requirements include an average of 750 feet from public roads, 400 feet from property lines, 1000 feet from existing buildings and 800 feet from neighboring turbines. Factors that could eliminate siting include other tall structures in the area, woodlots, wildlife habitat and wetlands.

Utility-Scale Solar

A utility-scale, solar-powered electric generation facility includes support equipment and solar panels that absorb energy from the sun. The facility includes a single interconnection to the interstate transmission system with a capacity of 50 megawatts or more and is considered a major electric generation facility and subject to Ohio Power Siting Board permits and procedures.

General siting factors for these projects include:

- **Infrastructure Size and Placement:** Utility-scale solar installations consist of surface racking systems, on-site inverter/support infrastructure and thousands of solar panels. DC electric current is gathered through a subsurface gathering line network converted to AC current which is carried by subsurface and surface high-voltage power lines to substation/interconnection infrastructure delivering generation directly into the regional/interstate transmission system.
- **Developer Preferred Sites:** Developer preferred sites are large farm fields and expansive open areas encompassing several hundred to several thousand acres. The area needs to be predominantly open to southern exposure so equipment can be exposed to and/or track the sun’s daily and yearly movements and gather solar radiation. Such sites contain relatively flat areas or gradually sloping gradients. The site will be able to accommodate subsurface gathering line infrastructure that connects to a generation collection network and centralized inverter station. Inverter stations include additional networks of subsurface lines that deliver high-voltage generation to a centralized surface transmission line interconnected to nearby

interstate transmission line via a developer-built or public utility-maintained substation.

- **Additional Requirements:** Approximately 60% of a solar facility's acreage accommodates panels' racking systems, inverters and other support infrastructure. The remaining percentage is to ensure a variety of environmental and aesthetic setback requirements. Avoidance of wetlands, streams and other water bodies, drainage infrastructure, conservation practices, addressing potential inverter noise, security fencing and setback from property lines and public thoroughfares, woodlot, wildlife and vegetative management are required in site design.

Utility-Scale Telecommunications (Cellular) Tower

A type of tower and facilities used to accommodate radio, microwave, cellular phone, broadcast, signal repeater/booster or other high energy beam communications. High standing structures and designs include, but are not limited to, guy wire and free-standing support, lattice work, tripole, and monopole construction. The Federal Communications Commission regulates wireless service technologies, while local authorities use zoning provisions to maintain some jurisdiction over tower placement. The Public Utilities Commission of Ohio registers wireless service providers to operate within Ohio.

General siting factors include:

- **Infrastructure Size and Placement:** Towers can be located on the ground, or installed on buildings and other structures. Most range from, but are not limited to, 100 – 250 feet in height. One or more antennae or technology can be accommodated at the site. Telecommunications towers can be located in urban, suburban and rural settings and given the tower design, it could need less than one, and up to 20 acres to accommodate the full installation. Given current technology, one properly-placed facility can often provide service for approximately 36 square miles.
- **Preferred Sites:** Towers are usually located at geographic high points within a general service area that features a concentration of permanent and/or temporary technology users. These could include residential and commercial areas, as well as public highway systems with moderate to heavy traffic use. Setback provisions in open areas usually include at least 1320 feet from other buildings

- **Additional Requirements:** Additional site requirements may include an open 10-acre construction and heavy maintenance area encompassing the tower site and absence of Federal Aviation Administration and/or Ohio Department of Transportation Office of Aviation height restrictions and landing approaches for aircraft.

Basic Utility-Scale Lease Provisions

Developer Responsibilities

The project developer and/or service provider will own all installed equipment, maintenance facilities, security fencing, lighting and all other infrastructure installed on the property. They are responsible for maintaining facilities and remediation, vegetative management and all other practices ensuring soil and water resources on the property. Given the size and scope of local watersheds, these responsibilities could extend to neighboring and adjacent properties, too.

Landowner Responsibilities

The landowner is to be paid on a regular basis for the land occupied by the facilities. This should include payments for land used for setbacks, wetlands and woodlots within the confines of the leased project area. In many cases, land used for setbacks can still be farmed by the property owner.

Detailed Provisions

A variety of points require careful consideration of the unique characteristics, needs and requirements of the property being considered. These include:

- **No “Blanket” Agreements:** Contrary to popular belief, a “blanket” or “group” lease encompassing all landowners impacted by specific facility siting does not exist. Lease agreements must be established between each landowner and the service provider. Many landowners have the opportunity, and responsibility, to negotiate key easement provisions addressing unique needs and requirements on their property.
- **No “Free” Benefits:** While lease agreements concerning oil and gas production offer “free gas” provisions to landowners where the well is located, federal and state regulations do not permit similar provisions providing electric or telecom services. Some landowners have negotiated access to some free electric and telecom provisions, but these services have been contracted with separate on-site service companies and/or paid by the project developer.

- **Current Tenant Consideration:** If an absentee landowner leases property that is already under agricultural production by another producer/tenant, working closely with legal counsel on notifying the tenant, creating a transition plan and any necessary compensation to the tenant for any on-site, long-term land and infrastructure improvements, as well as on-going production activities should be addressed.
- **Property Access:** The landowner should consider determining the location of and make the developer responsible for creating an access lane from the public road to the facility that can accommodate the load limits of larger maintenance vehicles, and be a minimum 16 – 20 feet wide. The lane will likely need to be accessible to the developer at all times (24 hours/day), and could be used by the landowner while performing field operations throughout the year.
- **Payment Options:** Terms for many utility-scale leases can span decades and potentially generate a six-figure income total over time; accordingly, lease payment options could be determined as a monthly payment indexed for inflation, lump sum or structured settlement. Additional fees should be assessed to compensate the landowner when the service company returns to replace equipment and/or expand services at the facility.

Please Note: It must be understood that given intense business competition between service providers, all production costs, including rental payments could only be discussed and information shared on a confidential basis.

- **Project Decommissioning:** Lease agreements may contemplate how the facility will be removed and land returned to original condition after a project is decommissioned. While government entities can order and enforce performance bonding and periodic review of decommission planning on a regular basis, private landowners and their leases might not have this ability. Check with your legal counsel to consider how this option will be exercised on your property.
- **Agrivoltaics:** While agricultural production can be continued on setbacks for wind and telecommunication projects, researchers are now looking into farming on utility-scale solar acreage. Federal and state regulators see a utility-scale solar array as a power generation facility first and all other on-site applications second. Farmers need to consider a variety of factors (financing and risk management for the type of production activity

considered, machinery, fencing, paddocks, water access, production storage, barns, caretaker residency, access lanes and internal setbacks between racking systems, labor requirements, proximity to production support services and cost-effective access and transport to viable markets) before considering agrivoltaic agreements as part of a utility-scale solar project encompassing the acreages detailed above.

- **Good Neighbor Agreements:** To help address a variety of facility setback and aesthetic issues, adjoining landowners could have the ability to determine management plans along their property boundary and receive on-going rental fees or other compensation through “good neighbor” agreements with the developer. As with all legal agreements referenced in this toolkit, access to legal counsel and careful analysis of term conditions is recommended.
- **Provisions Needing Additional Attention:** Along with the considerations detailed above, agreements concerning all types of utility-scale projects can consider addressing who pays tax obligations beyond CAUV, insurance, indemnity, decommission bonding, security, setbacks, crop damages, repair of surface and subsurface farm infrastructure (field tile, culverts, ditches, streambanks and crossings and surface conservation practices), soil compaction, noxious weed eradication, fencing, supply lines, aesthetics and conflict resolution procedures. All provisions must be detailed in writing in the lease agreement prior to signing and filing at the county recorder’s office.
- **Monitor Construction and Repair:** Landowners should continually inspect the site before, during and after construction, repair and remediation are deemed complete. If the governing agency requires inspection and compliance reports, they can continue to monitor their websites for permits and filings; many reports are a matter of public record. Landowners who wish to directly access the project site should consider the terms of their lease and all safety precautions as determined by the developer.

Properly crafted leases and related regulatory compliance could last forever - landowners need to continue to identify and express their concerns. They need to document, photograph and note communications with company representatives, follow provisions as detailed in leases, use the respective government agency’s conflict resolution process for action and consult legal counsel for further assistance.