
Farmers are being asked by wind power companies to enter into unique landlord/tenant agreements for wind turbines.

Below are 22 considerations to take into account when reviewing a lease. The list is not all that needs to be considered and farmers are advised to work with a knowledgeable lawyer before entering such agreements.

22 Considerations for Farmers Thinking About Wind Power Leases

1. **Cost of a Lawyer** – Ask the wind power company to pay to have the agreement reviewed by a lawyer who will work for everyone in the area. This is one lawyer's fee for 20 or more farms. If the business won't pay the costs of such a fundamental precaution, it is not good business.
2. **Transferability** – Add a clause that stipulates that the agreement cannot be transferred by the wind company to any person or company without your approval. This is supposed to be a wind power lease not a real estate flip. If the company is truly in the wind business, they will not object or they will be willing to pay you a fee if the lease is transferred.
3. **Appearance** – None of the leases address appearance, but you could have to look at the thing for 50 years.
 - Add a clause that prohibits any advertising on the tower.
 - Add a clause that stipulates that the paint colour be agreed.
 - Add a clause that requires that the tower be painted within six months of the appearance of any rust or discolouration.
 - Add a clause that covers effective reclamation of the site when all is done, and be sure that there is a fund created in the agreement that will have money in it to pay for reclamation and restoration.
4. **Building Restrictions** – Add an addendum that is a map of the property that outlines areas where it is agreed between the farmer and the wind power company that no new buildings may be built over a height of 20 metres and where the towers may go.
5. **Fill Material** – Under no circumstances should a developer use fill material taken from your land. You run a farm, not a quarry.
6. **Gear Oil** – Many wind towers have a reservoir of toxic lubricating oil (PCP's) in the generator compartment. You can prohibit the use of such oil in the lease.
7. **Option Termination** – Add a clause that stipulates that the contract is ended if construction has not started on a wind tower within five years from the date of signing or the wind power company has not renewed its option for a further four years for a payment of \$10,000. Do not sign a contract without a clear beginning and a clear end.

8. **Net Meter Tower** – Ask that the company agree to provide the use of its contractor's cranes and crews for the erection of a net meter wind tower at an agreed site on the property. This may be a bit of a nuisance for the company, but it can save you \$10,000 in equipment rental and construction costs and greatly reduce the costs of your own smaller wind tower if you want one. And if your power bills are in the \$20,000 a year range, the small tower will likely earn you more than the company's large one.
9. **Option** – Set the option payment at a minimum and escalating according to the value of the land. The minimum should be \$5,000 and the option should cover annual payments while a test tower is in place as well as crop losses, etc. You should become an owner of the wind data collected if no tower is built within five years.
10. **Rent** – Change the clause with respect to rent so the percentage of gross income paid to the farmer starts at 3% or more. Rent should apply to all income from the project including green house gas credits, etc.

Once the wind tower has paid for itself the rent should increase. Change the clause with respect to rent so the percentage of gross income paid to the farmer increases with the cost of power or at set intervals of 2 to 5 years, so rent rate rises to about 10%.

11. **Insurance** – Add a clause stipulating that the wind power company must produce a certificate of valid insurance covering liability to the farm and others each year and that in any event it assumes full liability for all damage caused by the wind tower.
12. **Protect Capital Value** – Add a clause requiring the wind power company to make whole any losses in re-sale value that might occur as a result of the lease or a wind tower being in place. If the wind tower affects your land value, the losses might not be covered by the rent.
13. **Your Other Rights** – Some leases have clauses that appropriate your development rights for aggregates, ground water, top soil, sale outside of the family and even your right to speak in public on wind power questions. Any such clause should be stricken from the agreement.
14. **A Buyout Clause and Cooling Off Period** – Have a clause that states that either party may cancel the agreement within thirty days without reason or penalty. Have a clause that states that either party may buy their way out of the agreement within six months by paying \$ x and the costs that the other party has spent on roads or test towers etc. on the property.
15. **Other Development** – If there is a chance that the property will be valuable for other development in the next 50 years, think. At most sign a lease that commits you for no more than 20 years if for example you feel there is a chance that someone is willing to pay you several million for your land as a golf course or cottage subdivision or shopping centre.
16. **Power Sales** – Stipulate that power must be sold via the IESO or that you get to approve any other contract. Without this the power can be sold to a third party firm held by the wind power company.

17. **Hours, Times of Access** – Stipulate that access is during ordinary business hours and requires permission on weekends, at any time or hour in an emergency and that the wind power company agrees to defer any activity except emergency repairs that interfere with seeding, harvest, calving, lambing, or other farm or family activities that are time restricted.
18. **Area of Lease** – Limit the area covered by lease to a suitably small area – 1 to 5 acres.
19. **Applies To One Lot Only** – Limit the agreement so it only applies to the actual lot leased and that there is no reference to any other land owned by the farmer.
20. **Wind Rights Only** – Do not allow any clause that gives the wind power company a right of first refusal or an option for any purpose other than the use of the wind. Such clauses encumber sales, wills, development of other businesses, etc.
21. **Term of Lease** – Suggest 20 years to start followed by 5-year renewals.
22. **Assessment and Property Taxes** – The landowner is ultimately responsible for taxes – an ironclad clause to require the wind power company to pay taxes associated with the wind tower is essential and it requires an extremely punitive enforcement clause – you cannot afford their taxes unless you have their income.