Legal Considerations Affecting Wind Projects

ADVANCED WIND ENERGY WORKSHOP II
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Development Milestones

- Analyze value of wind resource
- Secure footprint
- Negotiate a PPA
- Interconnect to the grid
- Finance and develop the project
- Obtain regulatory approvals
- Complete construction and secure operational maintenance

Financing

- New tax guidance for wind projects using a "Flip" Model
  - IRS Safe Harbor for projects meeting all requirements

Basics of the Flip Model

Participants

- Landowners
- Developer
- Utility
- Investor

Key Time Periods

- Initial Term
- Flip Date
- Final Term

Safe Harbor Requirements

- Developer's Minimum Interest – Developer must have interest in at least 1% of the income and losses at all times.

- Investor's Minimum Interest – Investor must maintain at least 5% of the Investor's percentage of partnership interest in the year where the Investor's percentage of partnership interest is the largest.

Safe Harbor Requirements

- Investor's Minimum Investment – Investor must invest at least 20% of the sum of the fixed capital contributions and reasonably anticipated contingent capital contributions.

- Contingent Consideration - At least 75% of the Investor's capital contribution must be a fixed and determinable obligation.

Safe Harbor Requirements

- Purchase Rights - The Developer, Investor or any related party may not be given a right to purchase any property in the wind farm or interest in the partnership for less than fair market value.

- Five Year Requirement - A Developer or related party may not be given the right to purchase the wind farm or an interest in the partnership earlier than five years after the facility is first placed in service.

Safe Harbor Requirements

- Sales Rights - The Project Company may not have contractual rights to cause any party to purchase any property except electricity. In addition, the Investor may not have a contractual right to cause any party to purchase its partnership interest.

- No Guarantee of PTCs - No person may guarantee the Investor the right to any allocation of PTCs.

- Risks Related to Wind Resource - The Project Company must bear the risk that the wind resource is not as great as anticipated.

Safe Harbor Requirements

- No Loans -The Developer or a related party may not lend any Investor funds to acquire any part of the Investor's Interest in the Project Company or guarantee indebtedness incurred in connection with the acquisition of the Investor's Interest in the Project Company.

- Allocation of the PTCs - The PTCs must be allocated in the same manner as sales of electricity from the wind farm.

- Passive Income Requirements. As a general rule, only entities subject to § 469, not individuals, will be able to offset non-project income with the PTCs.

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C-BED

- C-BED statute amended in 2007
- C-BED Taskforce meeting to discuss further amendments

Securing the Footprint

- In 2007, Minnesota Legislature amended the statute related to wind easements, options and leases.

- "A wind easement, easement to install wind turbines on real property, option, or lease of wind rights shall also terminate after seven years from the date the easement is created or lease is entered into, if a wind energy project on the property to which the easement or lease applies does not begin commercial operation within the seven-year period."

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Questions?

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