

# **Ron Heuer**

## **Senate Energy Committee Testimony**

**February 9, 2011 -- Madison**

### **Chairman Ott and members of the Committee**

My name is Ron Heuer, I reside at E3530 Townline Road, Kewaunee, WI. 54216. Thank you for calling this hearing to listen to citizen testimony.

In October 2009, a representative of Element Power LLC called and asked if I would be interested in hosting a wind turbine on my land. Knowing absolutely nothing about wind turbines, I had him email me information about the planned Element Power LLC, Tisch Mills project that include 111, 2.5 Megawatt, 492 ft. turbines. In January 2010, Element Power called and indicated they were ready to contract. I asked them to email the contract, they said they couldn't, they needed to meet me directly to go over the contract. I invited them to my home.

The Element Power LLC representative came to my home, and introduced me to a 28 page contract. This Representative urged me to sign this contract without receiving legal advice. This contract would give them control of my land for 50 years (here is a copy of that contract). This representative said, "Ron, you might as well sign right now because your neighbors (and he named them) have already signed and you're going to have turbines here whether you like it or not. You might as well make some money from it". I quite honestly felt as though I were with a high pressure timeshare sales guy.

This cover sheet attached to the contract showed I would make Thirteen Thousand Five Hundred and Eighty Dollars a year with just one 2.5 MW turbine, that sounded pretty good.

However, in analyzing the contract I found on page 6, a paragraph 5.7 No Warranty of WTGs which says, I quote, "Tenant has not made and does not make any representations or warranties regarding the likelihood that Tenant will install Facilities on the Premises." Why would Element Power provide a worksheet with the workup of \$13,580 per year and then have the no warranty clause? Simple, the money enticed people to sign, and sign they did! After researching, I confirmed a number of farmers nearby signed these contracts with zero legal advice. Now we have people who want out of these contracts and there is no escape clause. Needless to say, I did not sign!

There needs to be something done to control the sleazy underhanded tactics employed by companies like Element Power LLC. Land leasing transactions like these should be handled by professional licensed Real Estate Personnel. These Wind developers conduct themselves as though their interests supersede all others. They are arrogant and act as though they should be treated with some sort of special status as if they were doing us a favor, even though all the financial benefits of their projects are realized by the developer and all of the adverse consequences and external costs of the project are imposed upon innocent third party land owners and tax payers.

After this incident, I began my own research on the impacts of these monolithic landscape dominant turbine monsters. Who's making all the money? Why are we wasting tax dollars to fund the construction of these turbines when they cannot reliably contribute base-load energy to the grid. Simply stated, this is not a business, it is a SCAM, there wouldn't be a turbine erected in the U.S. or any other country if it weren't for the outrageous subsidies provided Wind Developers by governments.

Within 12 miles of my home are two Nuclear Plants with combined base-load generation capacity of 1700 megawatts. This production is equivalent to about 1,500 2.5 MW wind turbines. Imagine one or two wind turbines on every square mile of both Kewaunee and Manitowoc counties. That is a pretty ugly picture, isn't it? That would draw the tourists, wouldn't it? Why don't we lift the ban on Nuclear in Wisconsin and build more Nuclear facilities. Facilities that provide high-paying, long lasting jobs for the communities that are involved.

Kewaunee County has a history with wind turbines. Wisconsin Electric installed 220 Ft turbines in Lincoln Township and they began operation in 2000. Michael Vickermann, (Executive Director of Renew Wisconsin and a member of the Wind Siting Council), testified there were no problems with the Lincoln Township Turbine farm. No problems? If you don't believe high noise levels, sleep deprivation, shadow flicker, stray voltage, resident health issues, decreased property values or farm animals dying a problem, then Mr. Vickermann was right. However interviews with residents who live in and near this wind farm proved otherwise.

Real Estate values plummeted; two houses were purchased by Wisconsin Electric and bulldozed. Mr. Yunk's home was appraised at \$168K and later sold for \$112K, 33% below appraised value. Another home on County Trunk P recently sold for \$21K after being on the market for \$89,500 that is a 76% decrease in the value of the home. So I would ask Mr. Vickermann and the Wind Developers to be honest. If there are no problems with real estate values, then the Wind Developers should have no issues in providing "Property Value Guarantees".

Think about this for a minute, we experienced these problems in Kewaunee County with the 220 ft Turbines ... in the new projects we are looking at 400 to 500 Ft. Turbines with rotor wide in excess of 300 Ft. with blades weighing over 7 tons rotating at speeds up to 150 mph. These huge industrial turbines emit loud, continuous, repetitive pulsing noise and cast shadows over many acres of land.

Setbacks of 2,600 feet from a property line would have eliminated most if not all these problems. The PSC setback of 1 times the height of a turbine from a property line or 1250 ft. from a home is simply not acceptable. The PSC noise standards 45dba night and 50dba daytime are too high, 5 dB over ambient would be more acceptable. Was PSC Commissioner Azar correct when, at the advice of staff, she suggested a setback of 2200 ft. may mitigate the noise issues?

The Doyle administration had the deck stacked and worked in tandem with the Wind Developers to take away rights at local level by passing Act 40. This Act ultimately needs to be repealed. City and County officials are elected to maintain the quality of life within their areas and to take care of development. That is something that should be kept in their hands and to their discretion.

In closing I implore you to suspend the PSC rules that are scheduled to go into effect. Thank you for your time and consideration.

**Element Power LLC Contract Notes: (All Pages mentioned are attached hereto:**

**There are a lot of issues with these contracts. Here are just a few---**

**Cover Sheet** – *This is the enticement, with the glowing numbers....*

**Page 1** – Kewaunee and/or Manitowoc County (each a “County”), State of Illinois

**Page 4** – Paragraph 4.4 Tenant has right throughout the Term to terminate Lease all or any part of it. Paragraph 5.1 – Note, Tenant indicates they have rights on “adjacent properties”

**Page 5** – Paragraph 5.3 Wind Developer also has rights for Solar Energy on the same property and can sublet the premises to alternate 3<sup>rd</sup> party.

**Page 6** – Paragraph 5.7 No Warranty of WTGs – Tenant does not warrant there will be any turbines installed (kills the pricing incentive)

**Page 10** – Paragraph 7.7.4 deals with the compensation of livestock loss from construction, maintenance or operation? If turbines don’t pose a risk to humans, why with operation do they anticipate losses?

**Page 21** – Paragraph 16.3 – Removal Security – Real costs for removal of a 496 Ft. turbine is already proven to be in the range of \$350K. The Element Power contract falls woefully short of that number. There is very little salvage value in a turbine. Taking out reinforced concrete out is very expensive. The state of California has a \$120,000,000 unfunded liability for removal of turbines from companies that have gone bankrupt!



**RENEWABLE ENERGY LEASE**

This Renewable Energy Lease (this "Lease") is entered into as of \_\_\_\_\_, 20\_\_ (the "Effective Date") by and between \_\_\_\_\_ ("Landlord") and ELEMENT POWER WIND DEVELOPMENT, LLC, a Delaware limited liability company ("Tenant").

NOW THEREFORE, for good and valuable consideration including the covenants, terms and conditions of this Lease, Landlord and Tenant agree as follows:

**1. BASIC LEASE TERMS.**

- 1.1 Premises.** The real property owned by Landlord and located in Kewaunee County and/or Manitowoc County (each a "County"), State of Illinois, as more particularly described in ~~Exhibit A hereto, including all rights, privileges, easements and appurtenances pertaining thereto.~~ The Premises consist of \_\_\_\_\_ acres. This acreage is an estimate agreed to by Landlord and Tenant, and shall be conclusive for purposes of this Lease, regardless of whether the actual acreage of the Premises may be different.
- 1.2 Project.** The larger, integrated renewable energy project that may be constructed by Tenant on the Premises and on other adjacent or nearby real property.
- 1.3 Phase.** A portion of the Project that is distinguishable from the remainder of the Project because it is constructed and put into operation at approximately the same time. The Project may have one or more Phases. Phases shall be determined by Tenant in its reasonable discretion.
- 1.4 Development Period.** The period commencing on the Effective Date of this Lease and expiring five (5) years thereafter, if not extended or sooner terminated as provided in this Lease. Tenant may, by written notice to Landlord given no earlier than one hundred eighty (180) days before expiration of the Development Period, extend the Development Period for an additional five (5) years.
- 1.5 Operations Period.** The period commencing on the last day of the Development Period and expiring thirty (30) years thereafter, and which may be extended pursuant to Section 4.3.

**4.3 Extension Rights.** If the term of this Lease has been extended for the Operations Period, and provided that Tenant is not then in default of this Lease, Tenant shall have the right to extend the Operations Period for up to two (2) additional ten (10) year periods by providing written notice thereof to Landlord no later than thirty (30) days before the then-existing expiration date of the Operations Period. As used hereafter, "Term" refers collectively to the Development Period and any Operations Period, including any and all extensions thereof.

**4.4 Tenant's Right to Terminate.** Tenant shall have the right throughout the Term to terminate this Lease as to all or any part of the Premises upon thirty (30) days prior written notice to Landlord, subject to Tenant's obligation to restore the Premises pursuant to Section 16.2.

## 5. USE OF PREMISES.

**5.1 Tenant's Use.** Throughout the Term, Tenant shall have the sole and exclusive rights to use the Premises for wind energy purposes and to convert all of the wind resources of the Premises including, without limitation, all rents, royalties, credits and profits derived from wind energy and the wind resources upon, over and across the Premises. "Wind energy purposes" means: wind resource evaluation (including use of SODAR or LIDAR technology) and determination of the feasibility of wind energy conversion on the Premises or on adjacent lands, including studies of wind speed, wind direction and other meteorological data; wind energy development; conversion of wind energy into electrical energy; collection and transmission of electrical energy converted from wind energy; and any and all other activities related to the foregoing. Without limiting the generality of the foregoing, Tenant's rights hereunder specifically include the right to:

**5.1.1** Extract soil samples, perform geotechnical tests, and conduct such other tests, studies, inspections and analysis on the Premises as Tenant deems necessary, useful or appropriate in its sole discretion.

**5.1.2** Construct, install, lay down, erect, improve, place, replace, remove, relocate and operate any and all improvements, machinery or equipment that Tenant deems necessary or desirable in connection with the uses described above, including, without limitation, the following (collectively, the "Facilities"): (a) one or more wind turbine energy generators, associated towers, related fixtures, equipment and improvements, including the appurtenant footings, support structures and towers ("WTGs"); (b) underground electrical and communications lines, collection and transmission equipment ("Underground Collection Facilities"); (c) aboveground electrical and communications lines between Tenant's substations and one or more points of interconnection with the existing electricity grid ("Aboveground Collection Facilities"); (d) power conditioning equipment, substations, interconnection facilities, switching facilities, operations and maintenance buildings, transformers, SCADA and telecommunications equipment; and (e) roads, gates, signs, fences, meteorological towers, renewable energy measurement equipment, maintenance yards and other related facilities, machinery, equipment and improvements. Aboveground Collection Facilities are not allowed between individual WTGs and Tenant's substations, except to the extent it would be

commercially unreasonable to install such facilities underground due to topographical or geological conditions of the Premises.

5.1.3 Allow rotor blades of WTGs installed on adjacent land to overhang on the Premises.

5.1.4 Capture, use and convert the unobstructed wind resources over and across the Premises.

5.1.5 Generate electromagnetic, audio, flicker, visual, view, light, noise, vibration, air turbulence, wake, electrical, radio interference, shadow or other effects attributable to the Facilities or any other operational or development activities.

5.1.6 Undertake any other activities, whether accomplished by Tenant or third parties authorized by Tenant, that Tenant reasonably deems necessary, useful or appropriate to accomplish the development and operation of the Facilities, provided that such activities are conducted in a manner consistent with customary industry practices.

**5.2 Solar Development.** During the Term, Tenant shall have the right to evaluate the solar energy development potential of the Premises. For so long as this Lease is in effect, Landlord may lease the Premises, or a portion thereof, for solar energy purposes to any third party, provided that: (a) the development and operation of a solar energy facility on the Premises does not affect Tenant's development, operation and maintenance of the Project, as reasonably determined by Tenant; and (b) prior to entering into any solar energy lease or similar contract or arrangement with any third party, Landlord shall first offer to lease the subject property to Tenant for solar energy purposes on the same terms and conditions offered by such third party. However, Landlord shall have no obligation to offer to lease the subject property to Tenant for solar energy purposes if at that time Tenant is in default hereunder beyond expiration of any applicable cure period. If Landlord believes it has no obligation to offer to lease due to a default by Tenant, Landlord shall so notify Tenant in writing, and allow Tenant an additional ten (10) business days thereafter to cure the subject default and preserve its right of first refusal to lease the subject property for solar energy purposes. If Tenant fails to accept Landlord's offer to lease the subject property within thirty (30) days after receipt by Tenant of notice thereof, then Landlord shall have the right for one year thereafter to enter into a lease on terms no more favorable to the tenant thereunder than as set forth in Landlord's offer to Tenant pursuant to this Section 5.2. If Landlord does not enter into such a lease within the one year period, any offer shall be submitted again to Tenant as provided above.

**5.3 Substations and O&M Buildings.** Prior to installation of any substations or operations and maintenance buildings on the Premises as part of the Facilities, Tenant shall, at its option, either: (a) enter into a separate agreement with Landlord to additionally compensate Landlord for the use of the site; or (b) purchase the site from Landlord, in which case the purchase price shall be the fair market per-acre agricultural land value of the site, multiplied by three (3). Any and all costs associated with partitioning the site from the remainder of the Premises shall be borne by Tenant; however, Landlord shall cooperate in such efforts at no out-

hereby granted. Landlord shall reimburse Tenant for the cost to repair any damage to Tenant's roads caused by Landlord or those using the roads with Landlord's permission.

**7.7 Crop/Livestock Damage.** Tenant shall reimburse Landlord (or, if requested by Landlord, Landlord's agricultural tenants) for each incident of damage to cropland, crops and livestock caused by Tenant's construction, operation and maintenance of Facilities on the Premises as follows:

**7.7.1** At \$30 per acre for any land that does not have growing crops and yet has been cultivated for the purpose of growing crops within the prior three (3) growing seasons;

**7.7.2** For land with growing crops, an amount equal to the fair market price multiplied by yield multiplied by percentage of damage multiplied by acreage damaged or destroyed. Prices for damaged or destroyed crops shall be based on the average price for that crop in the County during the prior crop year. Yield shall be the average of the previous three (3) seasons' yields according to Landlord's records for the land area that includes the damaged area, provided that the yield shall not exceed the County average yield for the same crop by more than twenty-five percent (25%).

**7.7.3** For any land determined to have significant soil compaction directly caused by Tenant's activities on the Premises, an amount equal to quadruple the value calculated under Section 7.7.2 ("**Cropland Compaction Rate**"), except that Tenant shall have the right to decompact such areas before any payments are due, and to complete such decompaction within three (3) months of final construction of the Facilities on the Premises, in which event no amounts shall be payable under this Section 7.7.3.

**7.7.4** For livestock, an amount equal to the average market price in the County for each head of livestock lost in the year in which the loss occurred.

**7.7.5** The remedies provided in this Section 7.7 shall be the exclusive remedy for damages to cropland, crops or livestock caused by construction, operation and maintenance of Facilities on the Premises. Landlord and Tenant acknowledge that this liquidated remedy is appropriate because of the difficulty and expense of fixing actual, direct damages for such losses. Except as expressly set forth in this Section 7.7, Tenant shall not be responsible to compensate Landlord or its agricultural tenants for soil compaction, its inability to grow crops, raise livestock or otherwise use the Premises as a result of the construction, maintenance or operation of the Facilities on the Premises.

**7.7.6** If Landlord and Tenant cannot agree in good faith on yields, prices or the extent of soil compaction for purposes of calculating the payments required under this Section 7.7, the matters shall upon mutual agreement of Landlord and Tenant be referred to an independent crop insurance adjuster for resolution, or if Landlord and Tenant cannot so agree then as provided in Section 14.9.

**7.8 Gates and Fences.** Tenant shall keep all gates on the Premises closed except when open to permit the passage of vehicular traffic, and shall not permit livestock to stray or



becomes insufficient or unsuitable for Tenant's purposes hereunder, then Tenant shall have the right to terminate this Lease in its entirety.

**15.3 Apportionment; Distribution of Award.** On any taking covered by Sections 15.1 or 15.2 above, all sums, including damages and interest, awarded shall be paid first to tenant in an amount equal to the aggregate of any costs or losses that Tenant may sustain in the taking, removal and/or relocation of the Facilities; and then to Landlord and/or Tenant consistent with the law of the state in which the Premises are located.

## 16. EXPIRATION OR TERMINATION.

**16.1 Holding Over.** This Lease shall terminate without further notice at the date of expiration of the Term. Any holding over by Tenant after expiration shall not constitute a renewal or extension of this Lease or give Tenant any rights in or to the Premises, except as set forth in Section 16.2.

**16.2 Restoration of Premises.** Upon expiration or termination of the Term, Tenant shall surrender and vacate the Premises within sixty (60) days; provided, however, that Tenant shall have a license to enter onto the Premises for eighteen (18) months following termination to: (a) remove or cause to be removed any and all Facilities from the Premises, except that any Facilities more than three (3) feet below the surface may be left in place, and Tenant shall leave in place any roads it constructed if requested to do so by Landlord and Tenant is not otherwise prohibited from doing so; (b) otherwise restore the Premises to substantially the same condition that existed on the Effective Date, to the extent it is commercially reasonable to do so; (c) reseed any areas that were vegetated prior to disturbance to commercially reasonable standards, in consultation with Landlord; and (d) implement commercially reasonable erosion control devices and procedures. If Tenant does not remove the Facilities and restore the Premises as required by this Section 16.2 within eighteen (18) months after termination, Landlord may do so and Tenant shall reimburse Landlord the reasonable and actual costs incurred by Landlord, less the salvage value of the Facilities, within thirty (30) days of receipt of an invoice from Landlord.

**16.3 Removal Security.** In the event that: (a) Tenant is not required to post a bond, letter of credit or similar financial assurance for decommissioning Facilities as a condition of approval from any governmental agency with jurisdiction over the Project; or (b) such a condition is imposed, but is then removed and any bond, letter of credit or similar financial assurance is actually released; then Tenant shall, on the fifteenth (15th) anniversary of the first day of the Operations Period or within one hundred and twenty days after release of the bond, letter of credit or similar financial assurance, whichever is later, post a bond, letter of credit or similar financial assurance to secure the cost of decommissioning the Facilities located on the Premises, in form and substance reasonably satisfactory to Landlord (the "Removal Security"). The Removal Security shall be equal to the estimated amount, if any (the "Net Removal Costs"), by which the cost of removing the Facilities exceeds the salvage value of such Facilities, to be determined by Tenant in its reasonable discretion. To the extent that the Net Removal Costs are zero (or negative), the Removal Security shall not be required; provided, however that Tenant shall re-evaluate the need for the Removal Security at least annually after

Feb-7-11

Written testimony of:

Andrew S. Knipp.  
1303 Ellis Street  
Kewaunee, WI 54216  
(920)388-4681

I agree with the goal of renewable energy... but not at the expense of my property values and health.

I would like to have a half mile setback to protect citizens from adverse effects. If wind energy is truly viable government subsidies should not be necessary either. As a businessman myself, I feel these limited liability companies are being established simply to make a profit off of tax dollars and selling it as "green" when in truth they realize wind energy is not viable at this time.

Citizens from around the state came to Madison on October 13, 2010 to attend the Senate Energy Committee Hearings and I implore you to respect the taxpayers you were elected to represent by ensuring the PSC establishes rules that reflect the wishes of those citizens.

*Andrew S. Knipp*

State of Wisconsin  
County of Kewaunee

On this day Andrew S. Knipp personally appeared before me, Fred H. Steffen, to me known to be the person described in and who executed the within and foregoing instrument, and acknowledged that he/she signed the same as his/her voluntary act and deed, for the uses and purposes therein mentioned.

*Fred H. Steffen*

Notary's Signature

*July 28, 2013*

Notary's Expiration Date

Notary's Seal



To whom it may concern,

Our home is located in the heart of the W.E. Energies Blue Sky Wind Turbine Farm. We are unhappy living in such close proximity to these towers for these reasons:

1. The noise associated with the turbines interrupts sleep and outdoor activity. We were promised a low decibel and they exceed the level quite often.
2. Shadowing in our home takes place on almost a daily level at 5-6 a.m. Our blinds do not cut out the flickering and we prefer not to have our room darkened by blinds.
3. The red blinking lights at night are not only an eyesore but we have lost our beautiful night sky.
4. We are told Flight to Life helicopters are limited in their ability to land in the area due to the Turbines.
5. The devaluation of our property for resale is substantial because many potential home buyers will not consider a home within the wind farm.
6. People actually moved when they heard wind turbines were going to be constructed in the area.
7. Health issues such as sleep deprivation, seizures and headaches have been linked to the presence of turbines.
8. Traffic has become much heavier and the road quality is less than acceptable in comparison to before the turbines.
9. Sightseers cause danger to residents as they stop on the roads for pictures, etc. causing near miss accidents.
10. Bird population is affected by the turbines. We know this to be true because wind turbines were not allowed to be constructed near an osprey nest on a nearby road.
11. The slow response we have received to resolve TV. and radio reception has been frustrating. We are asked to sign documents, been billed for services and continue to have problems with reception.
12. The movement of the wind farm into our residential and farming community was passed sneakily without input allowed from land owners who did not put up turbines.

For these reasons, from the start we have opposed the construction of wind farms within a residential and farming community such as ours.

Sincerely,

Joe and Carol Bauer  
N9204 Oak Road  
St. Cloud, WI 53079

Written testimony OF:

Jordan Greco

N3330 Cty B

Kewaunee, WI 54216

(920) 388-2196

# IN FAVOR OF SUSPENDING THE WIND SITING RULES

I truly believe if wind energy was a viable source of renewable energy it would not need government subsidies to fund it. Wind energy needs alot more study done on it. I also think wind turbines need to be placed no closer than a half mile from property lines, not buildings. I was also at the senate energy committee hearing in Madison on October 13, 2010.

Please respect the tax payers that elected you to represent us  
thank you.

State OF Wisconsin  
County OF Kewaunee

Jordan Greco

x Laurel Spitzer  
exp: 1-18-2015

To: Joint Legislative Committee on Administrative Rules

Official Position - Town of Holland, Wisconsin

As the official position from the Town of Holland, we urge you to suspend the new PSC State Wind Siting Rules and to direct that setbacks be established at 2640 ft from property lines and noise levels not to exceed 5 db over ambient.

Support of Guidelines

These guidelines were approved and established as part of our Town Ordinance after extensive review of wind turbine information, research and scientific data, and especially recent surveys, case studies, and personal testimonials from people living in Wisconsin wind farm areas of Fond du Lac, Oakfield, Kewaunee, and Brown County. The Ordinance was unanimously approved by the Wind Study Committee, the Town Planning Commission, and the full Holland Town Board.

PSC Rules Disregard People's Property Rights

The latest PSC Rules actually softened the setback requirements, noise limits, and payments to adjoining land owners. The PSC Rules completely ignored the Senate Committee on Utilities and Energy directive and their rules showed a blatant disregard for public testimony from those of us living in areas targeted by wind developers.

PSC Rules Are a Job-Killing Policy and a Death-Blow to Building Development

The present PSC Rules with their limited setback of 1250 ft and 50 db will deal a death blow to the housing industry, real estate property values, and economic development because no one is going to develop land, build businesses or housing within the proximity of 40-story high industrial wind turbines. The government should not mandate the supply or the source of energy uses in homes or businesses, but free market solutions that do not require multimillion dollar taxpayer subsidies should be followed.

Protect Property Rights, Stop Added Wind Energy Taxes, Promote Business Development

Our state needs to stop policies that infringe on the rights of property owners and added taxes coming as a result of present PSC wind turbine rules.

Wind turbines are proven to be an inefficient and expensive source of electricity. The only green coming out of wind turbine development in Wisconsin is the green coming out of the pocketbooks of Wisconsin taxpayers. Any further construction of turbines is not a solid policy that should be pursued by Wisconsin government through PSC mandated rules and regulations. We cannot afford job-killing policies under the guise of "clean green energy" that stifle our economy and infringe on people's property rights.





elementpower

Element Power  
421 SW Sixth Avenue, Suite 1000  
Portland, OR 97204  
503.416.0800 – Main  
503.416.0801 – Fax

## **Signing Instructions**

Thank you for including your property in the Tisch Mills Wind Project. After reviewing the ownership information, your address (page 23 of the Renewable Energy Lease), and legal description (Exhibit A) on the enclosed (1) **Renewable Energy Lease**, (2) **Memorandum of Lease and Right of First Refusal**, and (3) **Agreement for Waiver of Setback Requirements**, please execute as follows:

- Sign both originals of the **Renewable Energy Lease**. This document does not have to be notarized. Element Power will enter the effective date when they execute the documents.
- Sign and have notarized both originals of the **Memorandum of Lease and Right of First Refusal**. Element Power will enter the effective date when they execute the documents.
- Sign and have notarized both originals of the **Agreement for Waiver of Setback Requirements**. Element Power will enter the effective date when they execute the documents.
- Complete and sign **IRS Form W-9**. Your payments must be reported annually on IRS Form 1099.

You will receive your first payment and a set of fully executed documents after Element Power has signed and processed the documents.

If at any time you have any questions or concerns, please contact either land agent Elizabeth Creviston at 704/607-0264 ([ecreviston@aol.com](mailto:ecreviston@aol.com)), or Mike Arndt, Development Director for the Midwest, at 612/353-4227 ([michael.arndt@elpower.com](mailto:michael.arndt@elpower.com)).

# **Tisch Mills Renewable Energy Lease Summary** **An Element Power Project**

## **Annual Rent during option period**

- \$10** per acre for first year
  - \$5** per acre per year for additional years.
- Minimum payment of \$1,000 per year.

## **Construction Payment**

-**\$2,000** per megawatt at commencement of construction for any turbine installed.

## **Operating Fees (annual)**

- \$4,000** per megawatt of turbine's installed capacity.
  - \$1** per linear foot of access road installed.
  - \$.25** per foot for underground collection system.
  - \$20** per acre of land under easement.
  - \$1,000** for each residence on the property under easement.
- Payments to increase annually by 2%.

## **Crop Damage and Soil Compaction**

Element Power will pay 4 years of crop damage for any areas that are deemed to be compacted as a result of its activities, plus pay fair market value for other crops that are damaged as a result of its activities.

## **Taxes:**

Element Power will pay all taxes associated with the windpower facilities. A request will be made to the County to send the facilities' tax bills directly to Element Power.

## **Insurance:**

Element Power will carry all necessary insurance for the project and will indemnify the landowner.

## **Drainage Tile:**

Element Power will repair drainage tile that is damaged as a result of its activities..



THIS INSTRUMENT DRAFTED BY AND  
WHEN RECORDED RETURN TO:

Tonkon Torp LLP  
1600 Pioneer Tower  
888 SW Fifth Avenue  
Portland, OR 97204  
Attn: David J. Petersen

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(Space Above for Recorder's Use Only)

### MEMORANDUM OF LEASE AND RIGHT OF FIRST REFUSAL

THIS MEMORANDUM OF LEASE AND RIGHT OF FIRST REFUSAL ("Memorandum") is made and entered into as of \_\_\_\_\_, 20\_\_\_, by and between RONALD J. KAKES, A SINGLE PERSON ("Landlord"), and ELEMENT POWER WIND DEVELOPMENT, LLC, a Delaware limited liability company ("Tenant").

1. Lease. For the term and upon the provisions set forth in that Renewable Energy Lease of even date herewith between Landlord and Tenant (the "Lease"), all of which provisions are specifically made a part hereof as though fully and completely set forth herein, Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord for wind energy purposes, that certain real property (the "Premises") located in Manitowoc County, Wisconsin, as more particularly described in Exhibit "A" attached hereto, together with all rights of ingress and egress and all other rights appurtenant to the Premises, as more particularly described in the Lease.
2. Term. The term of the Lease shall expire five (5) years from the date of this Memorandum unless sooner terminated or extended pursuant to the terms of the Lease, and provided that the term of the Lease may be extended by Tenant for up to fifty (50) additional years.
3. Right of First Refusal. As set forth in greater detail in the Lease, Tenant also holds a right of first refusal for the term of the Lease to lease the Premises, or a portion thereof, for solar energy purposes.
4. Notice. This Memorandum is prepared for the purpose of giving notice of the Lease and in no way modifies the express provisions of the Lease. This Memorandum shall continue to constitute notice of the Lease, even if the Lease is subsequently amended.
5. Successors and Assigns. The covenants, conditions and restrictions contained in the Lease shall run with the land and be binding on the successors and assigns of both Landlord and Tenant.

RECORDING REQUESTED BY AND  
WHEN RECORDED RETURN TO:

Tonkon Torp LLP  
1600 Pioneer Tower  
888 SW Fifth Avenue  
Portland, OR 97204  
Attn: David J. Petersen

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### AGREEMENT FOR WAIVER OF SETBACK REQUIREMENTS

**THIS AGREEMENT FOR WAIVER OF SETBACK REQUIREMENTS** (this "Waiver") is made as of \_\_\_\_\_, 20\_\_ by and among \_\_\_\_\_ ("Grantor") and ELEMENT POWER WIND DEVELOPMENT, LLC, a Delaware limited liability company ("Grantee").

Grantor is the sole owner in fee of certain real property located in Manitowoc County, Wisconsin (the "County"), as more particularly described in Exhibit A attached hereto ("Grantor Property"). Grantor leases the Grantor Property to Grantee pursuant to a Renewable Energy Lease between Grantor and Grantee dated \_\_\_\_\_, 20\_\_ (the "Wind Lease") for the purpose of installing, constructing, maintaining, and operating a wind energy generation facility thereon (the "Project").

Grantor acknowledges that the Project may involve the installation of Facilities (as defined in the Wind Lease) on the Grantor Property, or on adjacent property, closer to the boundary line between the Grantor Property and the adjacent property than is permitted pursuant to any applicable law, ordinance, regulation or permit establishing minimum setbacks (collectively, "Setback Regulations").

Now, therefore, Grantor and Grantee hereby agree as follows:

1. Waiver of Setbacks by Grantor. To the extent that Grantee or any transferee or affiliate of Grantee has installed or constructed or desires to install or construct any Facilities on the Grantor Property or on adjacent property closer to the common boundary between the Grantor Property and the adjacent property than is permitted by a Setback Regulation, then Grantor hereby waives any and all setbacks and setback requirements, whether imposed by law or by any person or entity, including, without limitation, any setback requirements described in the zoning ordinance of the County, or in any governmental entitlement or permit heretofore or hereafter issued to Grantee or such transferee or affiliate. This waiver is for the benefit of Grantee, any transferee or affiliate of Grantee, and the owner(s) of the adjacent property.

2. Covenant Against Habitable Structures. Grantor covenants that no structures designed primarily for human habitation or occupancy (such as dwellings, offices, stores and places of work) shall be constructed on the Grantor Property within the circular area

around any WTG (as defined in the Wind Lease) constructed on the Grantor Property or on adjacent property, where the radius of the circle, measured from the center of the WTG tower, is equal to the vertical height of the WTG from the ground to the tip of the blade when the blade is parallel to the WTG tower and pointed upward.

3. Binding Effect. This Waiver shall run with the Grantor Property and shall bind the successors and assigns of Grantor. This Waiver shall survive expiration of the Wind Lease and shall not expire until no Facilities exist on real property adjacent to the Grantor Property as part of the Project.

4. Authority. Grantor (or the individual executing and delivering this Waiver on behalf of Grantor, if applicable) represents and warrants that he/she is duly authorized and empowered to do so.

[SIGNATURES ON FOLLOWING PAGE]

PROJECT: Tisch Mills  
 LANDOWNER:  
 COUNTY/STATE: \_\_\_\_\_, Wisconsin  
 DRAFT DATE: 5Oct09

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## RENEWABLE ENERGY LEASE

This Renewable Energy Lease (this "**Lease**") is entered into as of \_\_\_\_\_, 20\_\_ (the "**Effective Date**") by and between \_\_\_\_\_ ("**Landlord**") and ELEMENT POWER WIND DEVELOPMENT, LLC, a Delaware limited liability company ("**Tenant**").

NOW THEREFORE, for good and valuable consideration including the covenants, terms and conditions of this Lease, Landlord and Tenant agree as follows:

### 1. **BASIC LEASE TERMS.**

#### 1.1 **Premises.**

The real property owned by Landlord and located in Kewaunee County and/or Manitowoc County (each a "**County**"), State of Illinois, as more particularly described in Exhibit A hereto, including all rights, privileges, easements and appurtenances pertaining thereto. The Premises consist of \_\_\_\_\_ acres. This acreage is an estimate agreed to by Landlord and Tenant, and shall be conclusive for purposes of this Lease, regardless of whether the actual acreage of the Premises may be different.

#### 1.2 **Project.**

The larger, integrated renewable energy project that may be constructed by Tenant on the Premises and on other adjacent or nearby real property.

#### 1.3 **Phase.**

A portion of the Project that is distinguishable from the remainder of the Project because it is constructed and put into operation at approximately the same time. The Project may have one or more Phases. Phases shall be determined by Tenant in its reasonable discretion.

#### 1.4 **Development Period.**

The period commencing on the Effective Date of this Lease and expiring five (5) years thereafter, if not extended or sooner terminated as provided in this Lease. Tenant may, by written notice to Landlord given no earlier than one hundred eighty (180) days before expiration of the Development Period, extend the Development Period for an additional five (5) years.

#### 1.5 **Operations Period.**

The period commencing on the last day of the Development Period and expiring thirty (30) years thereafter, and which may be extended pursuant to Section 4.3.



- 1.6 Commercial Operations Date.** With respect to any Phase, the date that WTGs representing at least ninety-five percent (95%) of the installed capacity of that Phase are authorized and able to continuously and reliably generate and deliver energy. Tenant shall notify Landlord in writing of the Commercial Operations Date for any Phase that includes the Premises no later than 60 days after it occurs.
- 1.7 Development Rent.** For the first year of the Development Period, an annual payment of \$10 per acre. For all subsequent years of the Development Period, an annual payment of \$5 per acre. However, no annual Development Period payment shall be less than \$1,000.
- 1.8 Construction Impact Fee.** A one-time payment of \$2,000 per megawatt ("MW") of rated nameplate capacity of any WTGs installed on the Premises by Tenant, prorated for any partial MW.
- 1.9 Operating Rent.** An annual payment during the Operations Period consisting of the following components:
1. *WTG Payment.* Four Thousand Dollars (\$4,000) for each MW of installed nameplate capacity for each WTG installed on the Premises.
  2. *Road Payment.* One Dollar (\$1) per lineal foot of new roads constructed on the Premises by Tenant.
  3. *Underground Facilities Payment.* Twenty-Five Cents (\$0.25) per lineal foot of underground electrical or communication transmission lines installed on the Premises.
  4. *Aboveground Facilities Payment.* One Thousand Dollars (\$1,000) for each transmission structure supporting aboveground electrical or communication transmission lines installed on the Premises.
  5. *Acreage Payment.* Twenty Dollars (\$20) per acre of the Premises subject to this Lease.
  6. *Met Tower Payment.* One Thousand Dollars (\$1,000) per year for each temporary meteorological tower and Five Thousand Dollars (\$5,000) per year for each permanent meteorological tower installed on the Premises.
  7. *Occupied Residence Payment.* One Thousand Dollars (\$1,000) per year for each residence on the Premises occupied during the year for which Operating Rent is being paid. This Occupied Residence Payment shall only apply to

those residences continually occupied from the Effective Date through the date of payment of Operating Rent.

All components of Operating Rent shall be subject to adjustment pursuant to Section 6.8.

**1.10 Default Rate.**

The Prime Rate as most recently published by the Wall Street Journal at the time the Default Rate is applied.

**1.11 Inflation Adjustment Factor.**

Two percent (2.0%).

**2. OTHER DEFINITIONS.**

In addition to the terms defined in Section 1, the following capitalized terms have the meanings given in this Lease:

Aboveground Collection Facilities – see Section 5.1.2	Lease – see opening paragraph
Claims – see Section 8.8	Liens – see Section 7.1
Confidential Information – see Section 17.1	Mortgage – see Section 11.1
County – see Section 1.1	Mortgagee - see Section 11.1
Cropland Compaction Rate – see Section 7.7.3	MW – see Section 1.8
CRP – see Section 6.7	Net Removal Costs – see Section 16.3
Development Rights – see Section 17.17	Public Official – see Section 17.17
Effective Date – see opening paragraph	Removal Security – see Section 16.3
Event of Force Majeure – see Section 13.1	Tenant – see opening paragraph
Facilities – see Section 5.1.2	Term – see Section 4.3
Hazardous Materials – see Section 8.5.3	Transferee – see Section 10.1
Landlord – see opening paragraph	WTGs – see Section 5.1.2
Laws – see Section 5.5	Underground Collection Facilities – see Section 5.1.2

**3. LEASING CLAUSE.**

Landlord leases the Premises to Tenant, and Tenant leases the Premises from Landlord, on the terms and conditions of this Lease.

**4. TERM.**

**4.1 Development Period.** The initial term of this Lease shall be for the Development Period specified in Section 1.4.

**4.2 Operations Period.** If, at any time during the Development Period, the Commercial Operations Date for a Phase that includes the Premises occurs, then the Development Period of this Lease shall end and the term of this Lease automatically shall be extended for the Operations Period specified in Section 1.5.

**4.3 Extension Rights.** If the term of this Lease has been extended for the Operations Period, and provided that Tenant is not then in default of this Lease, Tenant shall have the right to extend the Operations Period for up to two (2) additional ten (10) year periods by providing written notice thereof to Landlord no later than thirty (30) days before the then-existing expiration date of the Operations Period. As used hereafter, "**Term**" refers collectively to the Development Period and any Operations Period, including any and all extensions thereof.

**4.4 Tenant's Right to Terminate.** Tenant shall have the right throughout the Term to terminate this Lease as to all or any part of the Premises upon thirty (30) days prior written notice to Landlord, subject to Tenant's obligation to restore the Premises pursuant to Section 16.2.

## **5. USE OF PREMISES.**

**5.1 Tenant's Use.** Throughout the Term, Tenant shall have the sole and exclusive rights to use the Premises for wind energy purposes and to convert all of the wind resources of the Premises including, without limitation, all rents, royalties, credits and profits derived from wind energy and the wind resources upon, over and across the Premises. "Wind energy purposes" means: wind resource evaluation (including use of SODAR or LIDAR technology) and determination of the feasibility of wind energy conversion on the Premises or on adjacent lands, including studies of wind speed, wind direction and other meteorological data; wind energy development; conversion of wind energy into electrical energy; collection and transmission of electrical energy converted from wind energy; and any and all other activities related to the foregoing. Without limiting the generality of the foregoing, Tenant's rights hereunder specifically include the right to:

**5.1.1** Extract soil samples, perform geotechnical tests, and conduct such other tests, studies, inspections and analysis on the Premises as Tenant deems necessary, useful or appropriate in its sole discretion.

**5.1.2** Construct, install, lay down, erect, improve, place, replace, remove, relocate and operate any and all improvements, machinery or equipment that Tenant deems necessary or desirable in connection with the uses described above, including, without limitation, the following (collectively, the "**Facilities**"): (a) one or more wind turbine energy generators, associated towers, related fixtures, equipment and improvements, including the appurtenant footings, support structures and towers ("**WTGs**"); (b) underground electrical and communications lines, collection and transmission equipment ("**Underground Collection Facilities**"); (c) aboveground electrical and communications lines between Tenant's substations and one or more points of interconnection with the existing electricity grid ("**Aboveground Collection Facilities**"); (d) power conditioning equipment, substations, interconnection facilities, switching facilities, operations and maintenance buildings, transformers, SCADA and telecommunications equipment; and (e) roads, gates, signs, fences, meteorological towers, renewable energy measurement equipment, maintenance yards and other related facilities, machinery, equipment and improvements. Aboveground Collection Facilities are not allowed between individual WTGs and Tenant's substations, except to the extent it would be

commercially unreasonable to install such facilities underground due to topographical or geological conditions of the Premises.

**5.1.3** Allow rotor blades of WTGs installed on adjacent land to overhang on the Premises.

**5.1.4** Capture, use and convert the unobstructed wind resources over and across the Premises.

**5.1.5** Generate electromagnetic, audio, flicker, visual, view, light, noise, vibration, air turbulence, wake, electrical, radio interference, shadow or other effects attributable to the Facilities or any other operational or development activities.

**5.1.6** Undertake any other activities, whether accomplished by Tenant or third parties authorized by Tenant, that Tenant reasonably deems necessary, useful or appropriate to accomplish the development and operation of the Facilities, provided that such activities are conducted in a manner consistent with customary industry practices.

**5.2 Solar Development.** During the Term, Tenant shall have the right to evaluate the solar energy development potential of the Premises. For so long as this Lease is in effect, Landlord may lease the Premises, or a portion thereof, for solar energy purposes to any third party, provided that: (a) the development and operation of a solar energy facility on the Premises does not affect Tenant's development, operation and maintenance of the Project, as reasonably determined by Tenant; and (b) prior to entering into any solar energy lease or similar contract or arrangement with any third party, Landlord shall first offer to lease the subject property to Tenant for solar energy purposes on the same terms and conditions offered by such third party. However, Landlord shall have no obligation to offer to lease the subject property to Tenant for solar energy purposes if at that time Tenant is in default hereunder beyond expiration of any applicable cure period. If Landlord believes it has no obligation to offer to lease due to a default by Tenant, Landlord shall so notify Tenant in writing, and allow Tenant an additional ten (10) business days thereafter to cure the subject default and preserve its right of first refusal to lease the subject property for solar energy purposes. If Tenant fails to accept Landlord's offer to lease the subject property within thirty (30) days after receipt by Tenant of notice thereof, then Landlord shall have the right for one year thereafter to enter into a lease on terms no more favorable to the tenant thereunder than as set forth in Landlord's offer to Tenant pursuant to this Section 5.2. If Landlord does not enter into such a lease within the one year period, any offer shall be submitted again to Tenant as provided above.

**5.3 Substations and O&M Buildings.** Prior to installation of any substations or operations and maintenance buildings on the Premises as part of the Facilities, Tenant shall, at its option, either: (a) enter into a separate agreement with Landlord to additionally compensate Landlord for the use of the site; or (b) purchase the site from Landlord, in which case the purchase price shall be the fair market per-acre agricultural land value of the site, multiplied by three (3). Any and all costs associated with partitioning the site from the remainder of the Premises shall be borne by Tenant; however, Landlord shall cooperate in such efforts at no out-

of-pocket cost to Landlord. If Landlord and Tenant cannot in good faith agree on any compensation required under this Section 5.3, the amount of compensation shall be resolved as provided in Section 14.9.

**5.4 Ownership of Facilities.** Tenant shall at all times retain title to the Facilities and shall have the right to remove them from the Premises at any time. Landlord shall have no ownership, lien, security or other interest in any Facilities installed on the Premises and Landlord expressly waives, relinquishes and quitclaims any lien or security interest in and to the Facilities or any other real or personal property of Tenant, whether arising at law or in equity. Landlord shall not have any ownership or other interest in any and all credits, tax credits, benefits, emissions reductions, offsets and allowances of any kind, howsoever entitled, attributable to the Facilities, nor to the electric energy, capacity or other products produced therefrom. The manner of operation of the Facilities is within the sole discretion of Tenant. Nothing in this Lease shall be construed as requiring Tenant to construct or operate Facilities or any other business or use on the Premises.

**5.5 Compliance with Law.** Tenant shall at all times and at its expense comply in all material respects with all valid laws, ordinances, statutes, orders and regulations of any governmental agency (collectively, "Laws") now or hereafter applicable to its use of the Premises, provided that Tenant shall have the right to contest the validity or applicability to the Premises or to the Facilities of any Law so long as Landlord is reasonably protected against any adverse impact to its interest in the Premises that could foreseeably result from such contest.

**5.6 Right of Access.** Tenant shall have the right of access over and across all portions of the Premises, and any adjacent property owned by Landlord, as reasonably necessary to use the Premises as permitted by this Lease and to develop and operate the Project. Before constructing any new roads on the Premises, Tenant shall consult with Landlord as to the proposed location of the roads and consider the Landlord's comments in good faith, but the final location of any new roads shall be determined by Tenant in its sole discretion.

**5.7 No Warranty of WTGs.** Tenant has not made and does not make any representations or warranties regarding the likelihood that Tenant will install Facilities on the Premises. Landlord acknowledges that the operation of any Facilities actually installed on the Premises is subject to adverse weather, lack of wind or sun, equipment failures and other events beyond the control of Tenant.

**5.8 Quiet Enjoyment.** As long as Tenant observes the terms and conditions of this Lease, it shall peaceably hold and enjoy the rights of Tenant hereunder and any and all other rights granted by this Lease for its entire term without hindrance or interruption by Landlord or any other person or persons.

## **6. RENT AND OTHER PAYMENTS.**

**6.1 Payment of Rent Generally.** All rent payments shall be made to Landlord at Landlord's address set forth in Section 17.2 below. Tenant shall not be required to make any rent

payment to Landlord under this Lease until such time as Landlord has returned to Tenant a completed and executed Internal Revenue Service Form W-9. Further, all payments issued hereunder will be paid to the Landlord, as set forth in this Lease, or its permitted successors and assigns. If Landlord is comprised of more than one person or entity, then all payments will be issued by a single check payable to all such persons or entities, unless otherwise indicated below. Each person or entity holding record title to the Premises hereby acknowledges and agrees that all payments are legally permitted to be made as set forth below and that no other party shall have any right to such payments or to contest the payments and allocations as set forth below. Each person receiving payment hereunder agrees to fully indemnify and hold harmless Tenant against claims by any third party in connection with its payments hereunder to the person/entities set forth herein. Check one below:

- A single check should be issued payable to all persons/entities comprising the Landlord.
- Separate checks should be issued to each Landlord as set forth below:

Owner:	Name 1	Name 2	Name 3	Name 4
Payment Allocation:	[ ]%	[ ]%	[ ]%	[ ]%

**6.2 Payments During the Development Period.** During the Development Period, Tenant shall pay the Development Rent specified in Section 1.7. Payment shall be due within sixty (60) days after the Effective Date and within thirty (30) days after each anniversary of the Effective Date during the Development Period. If the Development Period ends on any day other than an anniversary of the Effective Date, Development Rent already paid for periods of time after termination of the Development Period shall be applied to payments due during the Operations Period.

**6.3 Construction Impact Fees.** Tenant shall pay Landlord a Construction Impact Fee in the amount specified in Section 1.8 for each WTG installed on the Premises by Tenant. Each Construction Impact Fee shall be paid fifty percent (50%) upon commencement of construction of the first WTG within the Phase that includes the Premises, with the balance due on the Commercial Operations Date for that Phase.

**6.4 Operating Rent.** Commencing on the first day of the Operations Period, Tenant shall annually pay Landlord "**Operating Rent**" as set forth in Section 1.9. Payment of Operating Rent shall due within thirty (30) days after the first day of the Operations Period and each anniversary thereof.

**6.5 Taxes and Assessments.** Tenant shall pay any increase in the real property taxes levied against the Premises directly attributable to the installation of Facilities on the Premises. Tenant shall not be liable for taxes attributable to facilities installed by Landlord or others on the

Premises or to the underlying value of the Premises itself. Landlord and Tenant shall cooperate in an effort to have Tenant separately billed for its share of taxes; however, if such arrangement cannot be made, then Landlord shall submit the real property tax bill to Tenant within ten (10) days after Landlord receives the bill, and Tenant shall pay its share of the taxes to Landlord no later than ten (10) days prior to the date the taxes are due. If Landlord does not pay its share of taxes on the Premises in a timely manner, Tenant shall be entitled (but not obligated) to make payments in fulfillment of Landlord's tax obligations and may offset those payments against future payments due Landlord under this Lease.

**6.6 Tenant's Right to Contest Taxes.** Tenant shall have the right to contest the legal validity or amount of any taxes payable by Tenant hereunder and may institute such proceedings as it considers necessary, at its own cost. If the contest poses a reasonable risk of loss, forfeiture, or imposition of a penalty on Landlord, then Tenant shall, at Tenant's option, post sufficient financial assurance or provide Landlord with a reasonably satisfactory indemnity against such risks. Landlord shall render to Tenant all reasonable assistance, at no cost or expense to Landlord, in pursuing any tax contest, including joining in the signing of any protest or pleadings which Tenant reasonably deems advisable; provided, however, that Tenant shall reimburse Landlord for its reasonable attorney fees and other expenses actually incurred in connection with providing such assistance.

**6.7 Conservation Reserve Programs.** Landlord has disclosed to Tenant all portions of the Premises, if any, that are currently enrolled in the USDA Conservation Reserve Program or any substantially similar local, state or federal program for the preservation of agricultural land (any such program, "CRP") as of the Effective Date. Landlord shall cooperate (at no out-of-pocket cost to Landlord) in any effort by Tenant to remove all or a portion of any such land from the CRP as needed for construction, operation and maintenance of the Project. Upon removal from CRP of any portion of the Premises that is enrolled in CRP as of the Effective Date, Tenant shall reimburse Landlord for any penalties or reinstated taxes resulting from such removal, but shall not be obligated to reimburse Landlord for any future CRP payments that would otherwise have been made to Landlord after the date of removal. After the Effective Date, Landlord shall not enroll any portion of the Premises in CRP without Tenant's consent, not to be unreasonably withheld.

**6.8 Inflation Adjustments.** Each component of Operating Rent shall increase by the Inflation Adjustment Factor set forth in Section 1.11, starting on the first January 1 during the Operations Period and each January 1 thereafter during the Term. For example, if (a) the Inflation Adjustment Factor is 2.0%, and (b) the WTG Payment is \$1,000 per MW of installed nameplate capacity, then on the next adjustment date hereunder, the WTG Payment shall increase to \$1,020 ( $\$1000 \times 1.02$ ) per MW of installed nameplate capacity.

## 7. IMPROVEMENTS TO THE PREMISES.

7.1 **Mechanics Liens.** Tenant shall pay when due all claims for labor and material furnished to the Premises, and shall not permit any mechanic's, materialmen's, contractor's, or other claims of liens (collectively "**Liens**") arising from any construction, maintenance, repair, or alteration of improvements by Tenant to be enforced against the Premises or any part thereof. Tenant may, however, in good faith and at Tenant's own expense, contest the validity of any asserted Lien, provided that Tenant has, at Tenant's option, bonded against the Lien pursuant to applicable law or provided Landlord with an indemnity against enforcement of the Lien in a form reasonably satisfactory to Landlord. Tenant shall give Landlord at least twenty (20) days prior written notice of the commencement of any work on the Premises that could be the subject of a Lien, and Landlord shall have the right to record and post notices of non-responsibility for the work.

7.2 **Landlord's Right to Discharge Lien.** If Tenant fails to comply with Section 7.1 and a Lien is enforced against the Premises as a result, Landlord shall have the right, but not the obligation, upon ten (10) business days notice to Tenant, to pay or otherwise discharge, stay, or prevent the execution of any such Lien. Tenant shall reimburse Landlord for all sums paid by Landlord under this Section 7.2, together with interest thereon at the Default Rate and all of Landlord's reasonable attorney fees and costs incurred in connection with the Lien.

7.3 **Maintenance of Premises.** On completion of construction, Tenant shall restore all portions of the Premises temporarily disturbed by Tenant to a condition substantially similar to the condition that existed prior to construction, to the extent such restoration is commercially reasonable. Tenant shall reseed any areas that were vegetated prior to disturbance to commercially reasonable standards, in consultation with Landlord. Throughout the Term, Tenant shall, at Tenant's sole cost and expense, maintain the Facilities in good condition and repair, ordinary wear and tear excepted, and in accordance with all applicable Laws.

7.4 **Transmission and Collection Lines.** All underground transmission and collection lines on the Premises shall be buried at least three (3) feet below the surface or below any existing drainage tiles, to the extent practicable, and all overhead transmission lines shall satisfy the minimum height requirements of any applicable electrical or building code.

7.5 **Erosion and Weed Control.** Tenant shall, at its sole cost and expense, take commercially reasonable steps to mitigate erosion and control noxious weeds within one hundred (100) feet of the Facilities, along roads built by Tenant, and on any other portions of the Premises where the surface of the land has been disturbed by Tenant. If Tenant fails to control noxious weeds as required by this Section 7.5, then Landlord may upon ten (10) days prior written notice to Tenant assume responsibility for the implementation of all weed control measures, and Tenant shall reimburse Landlord for all reasonable weed control measures at the rates published by the County agency with responsibility for weed control.

7.6 **Roads.** Tenant shall post any roads it constructs on the Premises as private roads only for use by authorized personnel in connection with the Facilities. Landlord may use or cross (or permit the use or crossing of) such roads only to the extent such use or crossing does not interfere with Tenant's operations pursuant to this Lease or enjoyment of Tenant's rights



hereby granted. Landlord shall reimburse Tenant for the cost to repair any damage to Tenant's roads caused by Landlord or those using the roads with Landlord's permission.

**7.7 Crop/Livestock Damage.** Tenant shall reimburse Landlord (or, if requested by Landlord, Landlord's agricultural tenants) for each incident of damage to cropland, crops and livestock caused by Tenant's construction, operation and maintenance of Facilities on the Premises as follows:

**7.7.1** At \$30 per acre for any land that does not have growing crops and yet has been cultivated for the purpose of growing crops within the prior three (3) growing seasons;

**7.7.2** For land with growing crops, an amount equal to the fair market price multiplied by yield multiplied by percentage of damage multiplied by acreage damaged or destroyed. Prices for damaged or destroyed crops shall be based on the average price for that crop in the County during the prior crop year. Yield shall be the average of the previous three (3) seasons' yields according to Landlord's records for the land area that includes the damaged area, provided that the yield shall not exceed the County average yield for the same crop by more than twenty-five percent (25%).

**7.7.3** For any land determined to have significant soil compaction directly caused by Tenant's activities on the Premises, an amount equal to quadruple the value calculated under Section 7.7.2 ("**Cropland Compaction Rate**"), except that Tenant shall have the right to decompact such areas before any payments are due, and to complete such decompaction within three (3) months of final construction of the Facilities on the Premises, in which event no amounts shall be payable under this Section 7.7.3.

**7.7.4** For livestock, an amount equal to the average market price in the County for each head of livestock lost in the year in which the loss occurred.

**7.7.5** The remedies provided in this Section 7.7 shall be the exclusive remedy for damages to cropland, crops or livestock caused by construction, operation and maintenance of Facilities on the Premises. Landlord and Tenant acknowledge that this liquidated remedy is appropriate because of the difficulty and expense of fixing actual, direct damages for such losses. Except as expressly set forth in this Section 7.7, Tenant shall not be responsible to compensate Landlord or its agricultural tenants for soil compaction, its inability to grow crops, raise livestock or otherwise use the Premises as a result of the construction, maintenance or operation of the Facilities on the Premises.

**7.7.6** If Landlord and Tenant cannot agree in good faith on yields, prices or the extent of soil compaction for purposes of calculating the payments required under this Section 7.7, the matters shall upon mutual agreement of Landlord and Tenant be referred to an independent crop insurance adjuster for resolution, or if Landlord and Tenant cannot so agree then as provided in Section 14.9.

**7.8 Gates and Fences.** Tenant shall keep all gates on the Premises closed except when open to permit the passage of vehicular traffic, and shall not permit livestock to stray or

escape through the gates at any time. Tenant and Landlord may maintain separate locks on all gates such that either lock is capable of unlocking a given gate. When relocating an existing fence, Tenant shall pay for the cost of relocation, and also shall obtain Landlord's prior consent on the new location of the fence, not to be unreasonably withheld. When installing a gate within an existing fence, Tenant shall make fence cuts, braces, and repairs that will be permanent and remain functional for the remaining expected life of the fences of which they are part. Tenant shall have the right to install cattle guards in lieu of gates with the consent of Landlord, not to be unreasonably withheld. Within ten (10) days after written notice from Landlord of any problem with a gate, cattle guard or fence installed or maintained by Tenant, Tenant shall make adequate repairs, weather permitting; provided, however, that in the event Landlord reasonably deems it necessary to make repairs without notice to Tenant because of the imminent escape or loss of livestock, then Landlord may do so and shall be reimbursed by Tenant for the reasonable and actual out-of-pocket costs incurred by Landlord.

**7.9 Drainage Tiles.** Tenant shall repair or replace any drainage tiles on or under the Premises damaged by Tenant during construction or operation of the Project.

## **8. LANDLORD'S REPRESENTATIONS AND COVENANTS.**

**8.1 No Interference.** Landlord shall not cause nor permit any restriction or interference with: (a) the siting, permitting, construction, installation, maintenance, operation, replacement, or removal of Project Facilities; (b) the flow of wind, wind speed or wind direction over the Premises; (c) the amount, intensity, or duration of sunlight reaching the Project Facilities; (d) access over the Premises to Project Facilities; or (e) any other activities of Tenant permitted under this Lease. Clause (b) above shall apply at all times in a three-hundred sixty degree (360°) radius from each WTG on the Premises to the boundaries of the Premises, and in a one-hundred eighty degree (180°) vertical arc above each WTG.

**8.2 Trees, Structures and Improvements.** Section 8.1 notwithstanding, all trees, structures and improvements on the Premises as of the Effective Date shall be allowed to remain and Tenant may not require their removal. After the Effective Date, Landlord may install new trees, structures and improvements on the Premises that are less than sixty (60) feet in height and at least five hundred (500) feet from the base of any WTG without Tenant's consent; provided, however, that if construction of Facilities on the Premises is not yet complete then Landlord shall first consult with Tenant to ensure that the new tree, structure or improvement is not within five hundred (500) feet of any planned WTG. Any new trees, structures and improvements on the Premises after the Effective Date that either exceed sixty (60) feet in height or are proposed to be within five hundred (500) feet of the base of an existing or planned WTG shall require Tenant's prior written consent, not to be unreasonably withheld.

**8.3 Legal Requirements.** Landlord shall, at no out-of-pocket cost to Landlord, assist and fully cooperate with Tenant in complying with or obtaining any and all Laws, land use permits and approvals, tax-incentive or tax-abatement program approvals, building permits, environmental impact reviews or any other approvals required or deemed desirable by Tenant in connection with the development, financing, sale, construction, installation, replacement,

relocation, maintenance, operation or removal of the Project and/or Facilities, including execution of applications for such approvals and delivery of requested information and documentation. Nothing herein shall prevent Landlord from expressing its opinion or appearing at any public proceeding and providing information to any government agency; provided, Landlord may only oppose Tenant's projects if and to the extent Tenant has breached this Lease beyond the expiration of any applicable cure periods.

**8.4 Reclassification of Premises.** Landlord shall not take or agree to any action that could potentially cause a rezoning or reclassification of the Premises resulting in Tenant's use of the Premises pursuant to this Lease being: (a) nonconforming, (b) prohibited, or (c) a conditional use if Tenant's use was not a conditional use as of the Effective Date, unless Landlord has Tenant's prior written consent which Tenant may withhold in its sole discretion.

**8.5 Representations and Warranties.** Landlord (and each person or entity comprising Landlord, if applicable) represents and warrants to Tenant as follows:

**8.5.1** Landlord is the sole owner of the Premises and has the unrestricted right and authority to execute this Lease and to grant to Tenant the rights granted hereunder. Each person signing this Lease on behalf of Landlord is authorized to do so, and all persons having any ownership or possessory interest in the Premises have signed this Lease as Landlord. When signed by Landlord, this Lease constitutes a valid and binding agreement enforceable against Landlord in accordance with its terms and shall run with the land.

**8.5.2** No rights to convert the renewable resources of the Premises or to otherwise use the Premises for renewable energy purposes have been granted to or are held by any party other than Tenant, nor shall Landlord grant such rights in the future without the written consent of Tenant, which Tenant may withhold in its sole discretion.

**8.5.3** Landlord shall not violate, and shall indemnify and hold Tenant harmless for, from and against any violation or claimed violation (past, present or future) by Landlord or by persons on the Premises with Landlord's permission of any federal, state or local law, ordinance or regulation relating to the generation, manufacture, production, use, storage, release or threatened release, discharge, disposal, transportation or presence of any substance, material or waste which is now or hereafter classified as hazardous or toxic, or which is regulated under current or future federal, state or local laws or regulations (collectively, "**Hazardous Materials**") on or under the Premises.

**8.6 Information About Premises.** Within sixty (60) days after the Effective Date, Landlord shall provide Tenant with copies of any surveys, studies, reports, appraisals, investigations, information regarding ownership or control of mineral rights to the Premises (if not owned or controlled by Landlord), or other documents concerning the Premises in Landlord's possession.

**8.7 Condition of Title.** Except as expressly set forth in this Lease, Landlord makes no representation or warranty concerning the condition of title to the Premises. However,

Landlord shall use its best efforts to cause any person or entity (including without limitation Landlord or any person or entity comprising Landlord) with a lien, encumbrance, mortgage, lease or other exception to Landlord's fee title to the Premises, whether recorded or unrecorded, to enter into nondisturbance, subordination and other title curative agreements as requested by Tenant in its sole discretion. If Landlord and Tenant are unable to obtain such agreements from any person or entity holding an interest in the Premises, and Landlord defaults on its obligations to such holder, then Tenant shall be entitled (but not obligated) to fulfill Landlord's obligations to such holder and may offset the cost of doing so against future payments due Landlord under this Lease. Landlord also shall provide Tenant with any further assurances and shall execute any estoppel certificates, consents to assignments or additional documents that may be reasonably necessary for recording purposes or otherwise reasonably requested by Tenant. After the Effective Date, Landlord shall not create or suffer any lien or encumbrance against the Premises unless the holder thereof enters into a nondisturbance or similar agreement in a form reasonably acceptable to Tenant, which protects and preserves all of Tenant's rights hereunder in the event of a foreclosure.

**8.8 Indemnity.** Landlord shall defend, indemnify and hold Tenant harmless for, from and against any third-party claims, losses, liabilities, damages, costs or expenses, including reasonable attorney fees (collectively, "Claims"): (a) for physical damage to property and for physical injuries or death, to the extent caused by the operations, activities, negligence or willful misconduct of Landlord or persons on the Premises with Landlord's permission; and (b) arising out of or related to Landlord's breach of this Lease or the inaccuracy of any representation or warranty made by Landlord herein. The foregoing notwithstanding, Landlord's liability for persons on the Premises with Landlord's permission does not extend to hunting on the Premises pursuant to written permission to hunt as provided in Section 17.13.

## 9. TENANT'S REPRESENTATIONS AND COVENANTS.

**9.1 Insurance.** Throughout the Term, Tenant shall, at its expense, maintain: (a) a commercial general liability insurance policy in an amount not less than Five Million Dollars (\$5,000,000) of combined single limit liability coverage per occurrence, accident or incident, which has a commercially reasonable deductible; and (b) casualty loss insurance on the Facilities in amounts and as required by Tenant's lender(s), if any. Tenant shall have the right to use a qualified program of self-insurance to meet these requirements.

**9.2 Indemnity.** Tenant shall defend, indemnify and hold Landlord harmless for, from and against any third-party Claims: (a) for physical damage to property and for physical injuries or death, to the extent caused by the operations, activities, negligence or willful misconduct of Tenant or persons on the Premises with Tenant's permission; and (b) arising out of or related to Tenant's breach of this Lease or the inaccuracy of any representation or warranty made by Tenant herein. The indemnity provided by this Section 9.2 does not extend to Claims for damage to cropland, crops or livestock, which are governed solely by Section 7.7.

**9.3 Hazardous Materials.** Tenant shall not violate, and shall indemnify and hold Landlord harmless for, from and against any violation or claimed violation during the Term by

Tenant or persons on the Premises with Tenant's permission of any federal, state, or local law or ordinance or regulation relating to the generation, manufacture, production, use, storage, release, or threatened release, discharge, disposal, transportation, or presence of any Hazardous Materials on or under the Premises.

## 10. ASSIGNMENTS AND SUBLEASES.

**10.1 Tenant's Right to Transfer.** Tenant and any Transferee (as defined below) shall have the right throughout the Term to transfer, convey, sublease or assign this Lease or any interest in this Lease or the Facilities to any person or entity (a "**Transferee**") without the consent of Landlord. A Transferee also includes any person or entity acquiring an interest in the Lease or the Facilities by foreclosure or a conveyance in lieu of foreclosure, and a Mortgagee as defined in Section 11.1. Upon receipt of written notice of any transfer under this Section 10.1 that includes contact information for the Transferee, Landlord shall thereafter provide the Transferee with simultaneous copies of any notices of default issued to any person or entity under this Lease.

**10.2 Liability of Assignor.** If the transfer, conveyance or assignment is of all of Tenant's interest in this Lease and the Transferee expressly agrees to be bound by and assumes all the terms and conditions of this Lease, then Tenant shall be released of any further obligation or liability under this Lease as of the date of transfer. No sublease shall relieve Tenant of any of its obligations or liabilities hereunder.

**10.3 Rights and Obligations of Transferees.** No Transferee shall have any obligation or liability under this Lease prior to the time that the Transferee directly holds an interest in the Lease or the Facilities, or in the case of an interest granted for security purposes, the holder thereof succeeds to absolute title to the interest. Except as otherwise expressly provided in this Lease, a Transferee shall be liable to perform obligations under this Lease only for and during the period the Transferee directly holds such interest or absolute title. Subject to Section 10.4, and provided that any Mortgagee (as defined in Section 11.1) shall also have the supplemental cure periods described in Section 11.4, Transferees shall be entitled to the same cure period (if any) granted to the defaulting party under this Lease. For any Transferee that holds an interest in less than all of the Tenant's rights and interests under this Lease or the Facilities, any default under this Lease shall be deemed remedied as to the Transferee's partial interest if the Transferee has cured its pro rata portion of the default, and thereafter Landlord shall not disturb the Transferee's possession of the Premises or enjoyment of its rights hereunder. However, any Transferee shall have the right, but not the obligation, to cure any default of any other holder of a portion of Tenant's interest in this Lease or the Facilities.

**10.4 Cure Requiring Possession of an Interest.** Notwithstanding Section 10.3 or Section 11.4, if any default under this Lease cannot be cured without obtaining possession of all or part of the Facilities or an interest in this Lease, then the default shall be deemed remedied if, within sixty (60) days after receiving notice of the default, the Transferee: (a) shall have acquired possession of the necessary interest, or shall have commenced and is diligently pursuing appropriate proceedings to obtain the same; and (b) performs all other obligations that are

capable of performance without being in possession of the Premises as and when due under this Lease during the pendency of any proceedings to gain possession and after gaining possession of the necessary interest. Further, a Transferee's deadline for any action under this Lease shall be extended to the extent the Transferee is prohibited from acting by any process or injunction issued as a result of any bankruptcy, reorganization, insolvency or other debtor-relief proceeding, provided that Transferee continues to perform all obligations under this Lease that are capable of performance during such process or injunction as they come due during the tolling period.

**10.5 New Lease to Transferee.** In the event of termination of this Lease for any reason, including without limitation foreclosure, conveyance in lieu of foreclosure, and rejection in any bankruptcy proceeding, any Transferee shall have the right to enter into a new lease with Landlord for the interest the Transferee held in the Premises prior to termination, on all the terms and conditions of this Lease and for the remainder of the Term as of the date of termination, and subject to any subleases existing as of the date of termination, provided that the Transferee: (a) is not then in default of this Lease; and (b) cures any existing default to the extent applicable to the Transferee's interest in the Lease or the Facilities (except that any defaults not susceptible of cure by the Transferee shall be deemed waived as to the Transferee). Any receipt of sublease rent by Landlord shall be for the account of the Transferee requesting a new lease. Any new lease shall maintain the same priority as to the Premises as this Lease. The provisions of this Section 10.5 shall survive termination of this Lease and shall continue in effect thereafter until execution and delivery of the new lease.

**10.6 Landlord's Right to Assign.** Except as set forth in Section 10.7, Landlord shall have the continuous right to assign or otherwise transfer its interest in and to this Lease and the underlying real property without the consent of Tenant; provided, however, that as a condition precedent to any transfer by Landlord, Landlord shall notify Tenant in writing of the transfer and the transferee shall first agree in writing to be bound by all the terms and conditions of this Lease.

**10.7 Severance of Renewable Energy Rights.** Landlord acknowledges that, as of the date of this Lease, the parties are aware of no legal authority either allowing or prohibiting the severance of the renewable energy rights from fee title to the underlying real property. Consequently, Landlord shall not assign or otherwise transfer an interest in the renewable energy rights to the Premises, or a portion thereof, separate from fee title to such real property, without Tenant's consent which Tenant may withhold in its sole discretion unless Landlord demonstrates to Tenant's reasonable satisfaction that such severance is permitted by applicable law and shall not materially affect Tenant's rights under this Lease, in which case Tenant shall consent to the severance. Further, notwithstanding Tenant's consent to any severance, Landlord assumes all risk that the severance of the renewable energy rights from fee title is invalid, and shall jointly and severally indemnify and hold Tenant harmless from and against any and all claims, losses, liabilities, damages, costs or expenses arising out of or related to the purported severance of renewable energy rights and fee title. Such indemnity shall survive any further conveyance of the renewable energy rights and/or fee title to the Premises or a portion thereof.

## **11. LENDER PROTECTION.**

Renewable Energy Lease  
County/State: \_\_\_\_\_, Wisconsin  
Project Name: Tisch Mills

Landowner:

**11.1 Right to Mortgage.** Tenant or any Transferee may without the consent of Landlord transfer an interest in this Lease or the Facilities to any third party (a "**Mortgagee**") for security purposes, whether by mortgage, deed of trust, security agreement or otherwise (a "**Mortgage**"). As long as any Mortgage is in effect, the Mortgagee shall be entitled to the protections of this Section 11. Mortgagees shall include the successors and assigns, if any, of any original Mortgagees.

**11.2 Consent to Modification or Termination.** For the benefit of each Mortgagee, Landlord shall not, without the prior written consent of each Mortgagee amend, modify, or take any action consenting to or accepting the voluntary surrender or termination of this Lease by Tenant or any Transferee. This Lease shall not be terminated by Landlord as a result of any Tenant or Transferee default unless all Mortgagees have first been provided with notice and the opportunity to cure any such default in accordance with the provisions of this Lease.

**11.3 Right to Perform.** A Mortgagee shall have the right (but not the obligation) to perform any term, covenant, condition, or agreement and to remedy any default by Tenant or any Transferee hereunder, and Landlord shall accept such Mortgagee performance, payment and cure as if such performance had been made, done and performed by Tenant or any Transferee.

**11.4 Extended Cure Periods.** All cure periods provided to Tenant or a Transferee for a default under this Lease shall be extended for any Mortgagee: (a) by thirty (30) days if the default is a failure to pay money when due under this Lease; or (b) by ninety (90) days in the event of any other default. Nothing in this Section 11.4 modifies a Mortgagee's rights under Section 10.4, to the extent that Section applies.

**11.5 Foreclosure and Conveyance after Foreclosure.** A Mortgagee or its assigns may enforce its lien and acquire title to the Tenant's or Transferee's interest in the Lease in any lawful way and, pending foreclosure of such lien, the Mortgagee may take possession of Tenant's or Transferee's interest in this Lease and operate the Facilities, performing all obligations performable by Tenant or Transferee subject to all of the terms of this Lease. Any default not susceptible of being cured by the Mortgagee or party acquiring the Tenant's or Transferee's interest in the Lease shall be, and shall be deemed to have been, waived by Landlord upon completion of the foreclosure proceedings or acquisition of Tenant's or Transferee's interest in this Lease by any purchaser (who may, but need not be, Mortgagee) at the foreclosure sale, or who otherwise acquires the Tenant's or Transferee's interest in the Lease from the Mortgagee or by virtue of a Mortgagee's exercise of its remedies. Upon the sale or other transfer of an interest in this Lease or the Facilities acquired pursuant to foreclosure or conveyance in lieu of foreclosure, the Mortgagee shall have no further liabilities or obligations under this Lease.

**11.6 Impact of Bankruptcy.** Neither the bankruptcy nor the insolvency of Tenant or any Transferee shall be grounds for terminating this Lease or an interest therein, as long as the rent and all other monetary charges payable by Tenant or the Transferee are paid by a Mortgagee as required by this Lease.

**11.7 New Lease.** If more than one Mortgagee requests a new lease pursuant to Section 10.5, then Landlord shall enter into a new lease with the most senior Mortgagee.

**11.8 Minor Modifications of Lease Terms.** If requested by a Mortgagee, Landlord shall modify the Lease to include any supplemental Mortgagee protection provisions reasonably requested by the Mortgagee, provided such provisions do not impair Landlord's rights or increase the burdens or obligations of Landlord.

## **12. DEFAULT AND REMEDIES.**

**12.1 Default.** Subject to any applicable notice and cure rights set forth in this Lease, the occurrence of any of the following events shall constitute a default and a breach of this Lease:

**12.1.1** Either Tenant or Landlord fails to perform as required by any representation, warranty, covenant, term, or condition of this Lease;

**12.1.2** Tenant files a petition in bankruptcy or insolvency or for reorganization or arrangement under the bankruptcy laws of the United States or insolvency act of any state, or is dissolved, or involuntary proceedings under any bankruptcy laws or insolvency act or for the dissolution of Tenant are instituted against Tenant; or

**12.1.3** Tenant fails to make any payments required by this Lease when due.

**12.2 Notice of Default and Cure.** Notwithstanding Section 12.1, no party shall be in default under this Lease unless: (a) with respect to a failure to pay any rent, charges, or other amounts due and payable hereunder, Tenant fails to cure the default within sixty (60) days from receipt of notice from Landlord in writing that such amounts are due; (b) with respect to a default under Section 12.1.2, the petition is not dismissed within sixty (60) days of filing; or (c) with respect to any other default, the defaulting party fails either to cure the default within one hundred twenty (120) days after notice thereof or, if the failure to perform is such that it cannot reasonably be cured within one hundred twenty (120) days, to commence cure within the one hundred twenty (120) day period and to proceed diligently to cure the default in a manner reasonably acceptable to the other party.

**12.3 Remedies - Landlord.** In the event of any default by Tenant, and subject to any notice rights after the expiration of any applicable cure periods provided for in this Lease, Landlord shall have the following remedies, in addition to all other rights and remedies provided by law or equity:

**12.3.1** Landlord may continue this Lease in effect as long as Landlord does not terminate Tenant's right to possession, and Landlord shall have the right to collect rent when due, plus interest on any unpaid sums at the Default Rate.

**12.3.2** Landlord may cure any default by Tenant after Tenant's cure period has expired. If Landlord, at any time, by reason of Tenant's default, pays any sum or does any act



that requires the payment of any sum, the sum paid by Landlord shall be due and owing immediately from Tenant to Landlord as additional rent hereunder, together with any interest thereon at the Default Rate.

**12.3.3** If Tenant does not cure a default in the payment of money within sixty (60) days after written notice thereof from Landlord, or in the case of any other default within one hundred twenty (120) days of such notice, then Landlord may by written notice to Tenant terminate this Lease. Landlord may not terminate this Lease or Tenant's right to possession of the Premises except as set forth in this Section 12.3.3. Upon termination Tenant shall restore the Premises as required by Section 16.2.

**12.4 Remedies - Tenant.** In the event of any default by Landlord of Landlord's duties, obligations, or covenants hereunder, Tenant may, in addition to all other rights and remedies provided by law or equity, terminate this Lease by written notice to Landlord and payment to Landlord of any payments then due and unpaid under this Lease.

### **13. FORCE MAJEURE.**

**13.1 Defined.** An "Event of Force Majeure" includes without limitation flood, drought, earthquake, storm, fire, pestilence, lightning, or other natural catastrophe, unusually inclement weather, including but not limited to rain which falls earlier in the year, or in greater amounts, or for longer periods than has historically been experienced in the area of the Premises, epidemics, acts of God or the public enemy, war, riot, civil disturbance or disobedience, strike, labor dispute, delays by third parties in the delivery of materials to the Premises, expropriation or confiscation of facilities, changes of applicable law, compliance with any order of any governmental authority, or failure, threat of failure or sabotage of facilities which have been maintained in accordance with good industry engineering and operating practices, so long as the affected party makes good faith and reasonable efforts to remedy the delays or failures in performance caused thereby.

**13.2 Limitations.** The parties shall be excused for any delay or failure to perform their respective duties hereunder, except for obligations to pay money, only to the extent that such failure or delay is caused by an Event of Force Majeure. If an Event of Force Majeure causes a delay or failure in performance of only a portion of the obligations of a party under this Lease, then only that portion of performance which was delayed or prevented by such cause shall be deemed excused, and the performance of all other obligations of a party not so delayed shall not be excused. No such delay or failure in performance which is the result of an Event of Force Majeure shall be deemed excused for a period longer than the delay or failure in performance caused by such event.

### **14. LEGAL MATTERS.**

**14.1 Attorney Fees.** In the event of any litigation, arbitration or alternative dispute resolution to interpret or enforce the provisions of this Lease, including any appeal, the prevailing party or parties in such litigation, arbitration or alternative dispute resolution shall be

entitled to reasonable attorney fees, expert witness fees, and costs as shall be fixed by the court or arbitrator.

**14.2 Governing Law.** This Lease shall be governed by and construed and enforced in accordance with the laws of the state in which the Premises are located.

**14.3 Jurisdiction and Venue.** Any action that may be instituted relating to this Lease shall be prosecuted in the federal courts of the state in which the Premises are located, to the extent federal jurisdiction is available. Landlord and Tenant each waive the right to object to the removal to federal court of any action instituted hereunder in state court, except on grounds of lack of federal jurisdiction.

**14.4 Defense of Indemnity Claims.** In connection with any indemnity provided under this Lease, the indemnifying party shall defend any Claims with legal counsel reasonably acceptable to the indemnified party.

**14.5 Estoppel Certificates.** Tenant or Landlord shall at any time upon not less than ten (10) days prior written notice from the other execute, acknowledge, and deliver a statement in writing: (a) certifying that this Lease is unmodified and in full force and effect (or, if modified, stating the nature of such modification and certifying that this Lease, as so modified, is in full force and effect) and the date to which the rent and other charges are paid in advance, if any; and (b) acknowledging that there are not to the certifying party's knowledge any uncured defaults on the part of the other party hereunder or specifying such defaults, if any are claimed. Any such statement may be conclusively relied upon by any prospective purchaser or encumbrancer of the Premises or encumbrancer of the interest of Tenant hereunder. A party's failure to deliver such statement within such time shall be conclusive upon such party: (i) that this Lease is in full force and effect without modification, except as may be represented by the party requesting the certificate, and (ii) that there are no uncured defaults in the requesting party's performance.

**14.6 Waiver of Subrogation.** Landlord and Tenant each hereby waive any and all rights of recovery against the other, or against the officers, employees, agents or representatives of the other, for loss of or damage to its property or the property of others under its control, if such loss or damage is covered by any insurance policy in force (whether or not described in this Lease) or required to be in force at the time of the loss or damage. Upon obtaining the required policies of insurance, Landlord and Tenant shall give notice to their respective insurance carriers of this mutual waiver of subrogation.

**14.7 Jury Trial Waiver.** EACH OF THE PARTIES KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES THE RIGHT TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED ON THIS LEASE, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS LEASE, AND ANY AGREEMENT CONTEMPLATED TO BE EXECUTED IN CONJUNCTION HEREWITH, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF ANY PARTY HERETO. EACH OF THE PARTIES TO

THIS LEASE WAIVES ANY RIGHT TO CONSOLIDATE ANY ACTION IN WHICH A JURY TRIAL HAS BEEN WAIVED WITH ANY OTHER ACTION IN WHICH A JURY TRIAL CANNOT OR HAS NOT BEEN WAIVED.

**14.8 Waiver of Certain Damages.** THE PARTIES' LIABILITY ARISING OUT OF OR RELATED TO THIS LEASE UNDER ANY LEGAL THEORY, WHETHER CONTRACT, TORT, STRICT LIABILITY, STATUTORY OR OTHERWISE, SHALL BE LIMITED TO DIRECT DAMAGES, AND IN NO EVENT SHALL LANDLORD, TENANT OR ANY OF THEIR RESPECTIVE OFFICERS, DIRECTORS, MEMBERS, PARTNERS, SHAREHOLDERS, EMPLOYEES, AGENTS OR AFFILIATES BE LIABLE FOR INDIRECT, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES OF ANY NATURE WHATSOEVER.

**14.9 Arbitration of Certain Disputes.** With respect to any provision of this Lease expressly identifying this Section 14.9 for the resolution of a dispute between Landlord and Tenant, the dispute shall be resolved by an arbitrator mutually acceptable to the parties. If the parties cannot agree on an arbitrator, then each party shall select an arbitrator, and the two arbitrators together shall select a third arbitrator to resolve the matter. The determination of the arbitrator shall be final and binding upon the parties. Landlord shall pay fifty percent (50%) and Tenant shall pay fifty percent (50%) of all costs of arbitration.

## **15. CONDEMNATION.**

**15.1 Complete Taking.** If at any time during the Term of this Lease any authority having the power of eminent domain shall condemn all or substantially all of the interest of Tenant hereunder or the Facilities for any public use or otherwise, then the interests and obligations of Tenant under this Lease shall cease and terminate upon the earliest of: (a) the date of the condemnation judgment, (b) the date that the condemning authority takes physical possession of the interest of Tenant hereunder or the Facilities, and (c) the date that Tenant is, in its sole judgment, no longer able or permitted to operate the Project or the Facilities on the Premises in a commercially viable manner. Tenant shall continue to pay all amounts payable hereunder to Landlord until the termination date.

**15.2 Partial Taking.** If at any time during the Term of this Lease any authority having the power of eminent domain shall condemn less than substantially all of the Project or the interest of Tenant hereunder, then the interests and obligations of Tenant under this Lease as to such portion of the Project or the interest of Tenant hereunder so taken shall cease and terminate upon the earliest of: (a) the date of the condemnation judgment, (b) the date that the condemning authority takes physical possession of what is being condemned, and (c) the date that Tenant is, in its sole judgment, no longer able or permitted to operate the portion of the Project which is being condemned in a commercially viable manner, and, unless this Lease is terminated as hereinafter provided, this Lease shall continue in full force and effect as to the remainder of the Project on the Premises which can still be operated in a commercially reasonable manner. If the remainder of the Project or the interest of Tenant hereunder, in Tenant's sole judgment, is or

becomes insufficient or unsuitable for Tenant's purposes hereunder, then Tenant shall have the right to terminate this Lease in its entirety.

**15.3 Apportionment; Distribution of Award.** On any taking covered by Sections 15.1 or 15.2 above, all sums, including damages and interest, awarded shall be paid first to tenant in an amount equal to the aggregate of any costs or losses that Tenant may sustain in the taking, removal and/or relocation of the Facilities; and then to Landlord and/or Tenant consistent with the law of the state in which the Premises are located.

## 16. EXPIRATION OR TERMINATION.

**16.1 Holding Over.** This Lease shall terminate without further notice at the date of expiration of the Term. Any holding over by Tenant after expiration shall not constitute a renewal or extension of this Lease or give Tenant any rights in or to the Premises, except as set forth in Section 16.2.

**16.2 Restoration of Premises.** Upon expiration or termination of the Term, Tenant shall surrender and vacate the Premises within sixty (60) days; provided, however, that Tenant shall have a license to enter onto the Premises for eighteen (18) months following termination to: (a) remove or cause to be removed any and all Facilities from the Premises, except that any Facilities more than three (3) feet below the surface may be left in place, and Tenant shall leave in place any roads it constructed if requested to do so by Landlord and Tenant is not otherwise prohibited from doing so; (b) otherwise restore the Premises to substantially the same condition that existed on the Effective Date, to the extent it is commercially reasonable to do so; (c) reseed any areas that were vegetated prior to disturbance to commercially reasonable standards, in consultation with Landlord; and (d) implement commercially reasonable erosion control devices and procedures. If Tenant does not remove the Facilities and restore the Premises as required by this Section 16.2 within eighteen (18) months after termination, Landlord may do so and Tenant shall reimburse Landlord the reasonable and actual costs incurred by Landlord, less the salvage value of the Facilities, within thirty (30) days of receipt of an invoice from Landlord.

**16.3 Removal Security.** In the event that: (a) Tenant is not required to post a bond, letter of credit or similar financial assurance for decommissioning Facilities as a condition of approval from any governmental agency with jurisdiction over the Project; or (b) such a condition is imposed, but is then removed and any bond, letter of credit or similar financial assurance is actually released; then Tenant shall, on the fifteenth (15th) anniversary of the first day of the Operations Period or within one hundred and twenty days after release of the bond, letter of credit or similar financial assurance, whichever is later, post a bond, letter of credit or similar financial assurance to secure the cost of decommissioning the Facilities located on the Premises, in form and substance reasonably satisfactory to Landlord (the "**Removal Security**"). The Removal Security shall be equal to the estimated amount, if any (the "**Net Removal Costs**"), by which the cost of removing the Facilities exceeds the salvage value of such Facilities, to be determined by Tenant in its reasonable discretion. To the extent that the Net Removal Costs are zero (or negative), the Removal Security shall not be required; provided, however that Tenant shall re-evaluate the need for the Removal Security at least annually after

the fifteenth (15th) anniversary of the first day of the Operations Period. Tenant shall not be required to deliver such Removal Security to Landlord if Tenant is in the process of repowering or otherwise redeveloping the WTGs on the Property with new WTGs (or commits in writing with notice to Landlord to do so within two (2) years after the fifteenth (15th) anniversary of the Operations Date). Once in place, Tenant shall keep the Removal Security in force throughout the remainder of the Term, provided that Tenant shall have the option at any time to obtain a single Removal Security in favor of Landlord and other landlords in the Project to secure the decommissioning of Project Facilities. Landlord may resort to the Removal Security to recover any reasonable and actual costs of removing the Facilities and restoring the Premises incurred by Landlord in accordance with Section 16.2.

## 17. GENERAL PROVISIONS.

**17.1 Confidentiality.** Landlord shall maintain in the strictest confidence, for the benefit of Tenant: (a) all the terms and conditions of this Lease; (b) all information provided by Tenant pursuant to this Lease; and (c) all information obtained by or about Tenant's site or product design, methods of operation, and methods of construction, regardless of its source; unless such information either: (i) is in the public domain by reason of prior publication through no act or omission of Landlord or its employees or agents; or (ii) was already known to Landlord at the time of disclosure and which Landlord is free to use or disclose without breach of any obligation to any person or entity ("**Confidential Information**"). Landlord shall not use Confidential Information for its own benefit, publish or otherwise disclose it to others, or permit its use by others for their benefit or to the detriment of Tenant. Notwithstanding the foregoing, Landlord may disclose Confidential Information to Landlord's lenders, attorneys, accountants and other personal financial advisors solely for use in connection with their representation of Landlord regarding this Lease or to any prospective purchaser of the Premises who has made a written offer to purchase or otherwise acquire the Premises that Landlord desires to accept; provided that in making such disclosure, Landlord shall advise the party receiving the information of the confidentiality of the information. Landlord may also disclose Confidential Information pursuant to lawful process, subpoena or court order requiring such disclosure, provided that Landlord shall give Tenant reasonable advance notice of the required disclosure and will cooperate with Tenant in limiting such disclosure and in obtaining protective orders where appropriate. Landlord shall get Tenant's written consent before issuing a press release or having any contact with or responding to the news media with any operational, sensitive or confidential information with respect to this Lease or the Project. The provisions of this Section 17.1 shall survive the termination or expiration of this Lease.

**17.2 Notices.** All notices or other communications required or permitted by this Lease, including payments to Landlord, shall be in writing and shall be deemed given when personally delivered, or in lieu of such personal service, five days after deposit in the United States mail, first class, postage prepaid, certified, or the next business day if sent by reputable overnight courier, provided receipt is obtained and charges prepaid by the delivering party. Notices also may be sent by e-mail or facsimile with proof of delivery, and shall be deemed given upon delivery. Any notice shall be addressed as follows:

Renewable Energy Lease  
County/State: \_\_\_\_\_, Wisconsin  
Project Name: Tisch Mills

Landowner:

Page 22 of 26

(i) To Landlord:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(ii) To Tenant:

Element Power Wind Development, LLC  
c/o Land Administration  
421 SW Sixth Avenue, Suite 1000  
Portland, OR 97204

with a copy to any Transferee if required by this Lease.

Any party may change its contact information by written notice thereof to the other party.

**17.3 Successors and Assigns.** This Lease shall run with the land and shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

**17.4 Waiver.** No delay or omission by the parties hereto in exercising any right or remedy provided for herein shall constitute a waiver of such right or remedy, nor shall it be construed as a bar to or a waiver of any such right or remedy on any future occasion.

**17.5 Effect of Headings, Terms.** Headings appearing in this Lease are inserted for convenience of reference only and shall in no way be construed to be interpretations of the provisions hereof. The term "Tenant" herein includes any Transferee to the extent the Transferee has an interest in this Lease.

**17.6 Amendments.** This Lease may be modified, amended, or supplemented only by the mutual written agreement of the parties hereto consented to by all Mortgagees, if any.

**17.7 Further Assurances.** The parties shall do such further acts and things and execute and deliver such additional agreements and instruments as the other may reasonably require to consummate, evidence, or confirm the agreements contained herein.

**17.8 Consent.** Where rights under this Lease are conditioned upon the consent of one of the parties hereto, it shall not be unreasonably withheld, unless expressly stated otherwise.

**17.9 Entire Lease.** This Lease constitutes the entire agreement between the parties and supersedes all prior agreements and understandings, oral and written, between the parties hereto with respect to the subject matter hereof.

**17.10 Counterparts.** This Lease may be executed by the parties in one or more counterparts, all of which taken together shall constitute one and the same instrument.

**17.11 Time of Essence.** Time and strict and punctual performance are of the essence with respect to each provision of this Lease.

**17.12 Relationship of Parties.** The relationship of the parties hereto is solely that of landlord and tenant, and nothing contained in this Lease shall be construed to create an association, joint venture, trust or partnership between them.

**17.13 Hunting.** All hunting rights and privileges on the Premises are reserved to Landlord. None of Tenant, its employees, agents or invitees shall have any hunting rights or privileges on the Premises. Tenant, in its discretion, may establish zones around the improvements on the Premises within which hunting shall be absolutely prohibited. Tenant may require that hunting be suspended completely during certain periods designated by Tenant such as initial construction and erection and other periods of higher-than-usual levels of activity on the Premises. Landlord and Tenant may jointly prepare reasonable hunting rules, which either party shall have the right to enforce.

**17.14 Boundary Discrepancies.** It is possible that the as-built fence lines of the Premises may not precisely match the boundaries of the Premises described in this Lease, and that these fence lines could create one or more encroachments onto adjacent property which could potentially entitle Landlord to claim the additional property within the fence lines by adverse possession and therefore affect the rights of the Landlord, Tenant and the neighboring landowners. Consequently, in the event any such fence line encroachment exists with respect to the Premises, the boundary of the Premises described in this Lease is now and shall always be recognized as that which is subject to the terms and conditions set forth therein, as it pertains to the Project, and for no other purpose. Landlord agrees on behalf of itself, its heirs, successors or assigns that if Landlord were to acquire any property adjacent to the Premises via an adverse possession claim based on the existing fence line, Landlord waives: (a) any claim that any additional compensation is due to Landlord for improvements placed on the acquired property as part of the Project; and (b) any claim that the acquired property is not subject to any lease and other instruments for the Project executed by the record owner of the acquired property as of the Effective Date of this Lease; provided that the waiver is limited in scope and relates only to the terms and conditions in this Lease, and not for any other purpose. Landlord shall indemnify and hold harmless Tenant against any Claims asserted by any person or entity arising out of an encroachment of any kind onto property adjacent to the Premises as described in this Lease.

**17.15 Setback Waiver.** To the extent that any applicable law, ordinance, regulation or permit establishes minimum setbacks from the exterior boundaries of the Premises for Facilities (including WTGs) constructed on the Premises or adjacent real property, then Landlord waives any and all such setbacks and setback requirements for the benefit of Tenant, the owner(s) of the adjacent real property, and their respective successors and assigns. Further, if requested by Tenant, Landlord shall execute and deliver to Tenant one or more separate setback waivers in a form provided by Tenant, which Tenant may then record at its expense. This waiver shall survive the termination of this Lease for so long as WTGs or other Facilities exist on real property adjacent to the Premises.

17.16 **Memorandum of Lease.** Concurrently with execution hereof, the parties shall execute and record a memorandum of this Lease.

17.17 **Landlord as Public Official.** Landlord acknowledges that its receipt of monetary and other good and valuable consideration hereunder may represent a conflict of interest if Landlord is a government employee or otherwise serves on a governmental entity with decision-making authority (a "**Public Official**") as to any rights Tenant may seek, or as to any obligations that may be imposed upon Tenant in order develop and/or operate the Project ("**Development Rights**"). Accordingly, Landlord shall (a) recuse him/herself from all such decisions related to Tenant's Development Rights unless such recusal is prohibited by law or is not reasonably practicable considering the obligations of such Public Official's position; and (b) recuse him/herself from all such decisions related to Tenant's Development Rights if such recusal is required by law. If Landlord is not required pursuant to (a) and (b) above to recuse him/herself from a decision related to Tenant's Development Rights, Landlord shall, in advance of any vote or other official action on the Development Rights, disclose the existence of this Lease (but not the financial terms therein) at an open meeting of the relevant governmental entity Landlord serves on as a Public Official. Additionally, if Landlord is a Public Official and any of Landlord's spouse, child or other dependent has a financial interest in the Project, Landlord shall disclose such relationship (but not the financial terms thereof) at an open meeting of the relevant governmental entity Landlord serves on as a Public Official, prior to participation in any decision related to Tenant's Development Rights.

*[signatures on following page]*



LANDLORD:

TENANT:

ELEMENT POWER WIND  
DEVELOPMENT, LLC, a Delaware limited  
liability company

By: Element Power US, LLC, a Delaware  
limited liability company, Manager

By: \_\_\_\_\_  
Its: \_\_\_\_\_

\_\_\_\_\_

**EXHIBIT A**

**LEGAL DESCRIPTION**

<u>Parcel Number</u>	<u>County</u>	<u>Township/ Range</u>	<u>Section</u>	<u>Acreage</u>
----------------------	---------------	------------------------	----------------	----------------

**Total**

---

All that real property located in \_\_\_\_\_ County(ies), Wisconsin, more fully described as follows:

034640/00005/1790876v1

Renewable Energy Lease  
County/State:  
Project Name: Tisch Mills

Landowner:

1st page of many

2470211

CATHY WILLIQUETTE  
BROWN COUNTY RECORDER  
GREEN BAY, WI

RECORDED ON  
05/19/2010 11:36:59AM

REC FEE: 17.00  
TRANS FEE:  
EXEMPT #  
PAGES: 4

**MORTGAGE**  
(Agricultural)

Document Number

Document Name

Daniel L. Mathies, a single person,

("Mortgagor," whether one or more) mortgages to Shirley Wind, LLC, a Wisconsin limited liability company, its successors or assigns ("Mortgagee," whether one or more), to secure payment of \$244,433.34 evidenced by a note or notes, or other obligation ("Obligation") dated April 28, 2010 executed by Daniel L. Mathies

to Mortgagee, and any extensions, renewals and modifications of the Obligation and refinancings of any such indebtedness on any terms whatsoever (including increases in interest) and the payment of all other sums, with interest, advanced to protect the Property and the security of this Mortgage, and all other amounts paid by Mortgagee hereunder, the following property, together with all rights and interests appurtenant thereto in law or equity, all rents, issue and profits arising therefrom, including insurance proceeds and condemnation awards, all structures, improvements and fixtures located thereon, in Brown County, State of Wisconsin ("Property"):

Recording Area

Name and Return Address

Attorney Carol Gorb  
COLLEN WESTON FINES & RACH LLP  
122 W. Washington Avenue, Suite 900  
Madison, Wisconsin 53703

GL-397, GL-399, GL-400 and GL-401

Parcel Identification Number (PIN)

Title \_\_\_\_\_ homestead property.

(is) (is not)

This is not \_\_\_\_\_ a purchase money mortgage.

(is) (is not)

The South Half (S1/2) of the Southwest Quarter (SW1/4) and the South 45 acres of the North Half (N1/2) of the Southwest Quarter (SW1/4), EXCEPT Lot One (1) of Certified Survey Map No. 6961 as recorded in Volume 47 of Certified Survey Maps on Page 45 as Document No. 2084015 (being a part of the Northwest Quarter (NW1/4) of the Southwest Quarter (SW1/4) of Section Twenty-three (23), Township Twenty-two (22) North, Range Twenty-one (21) East, in the Town of Glenmore, Brown County, Wisconsin). Subject to highway right-of-way easements of record.

**1. MORTGAGOR'S COVENANTS.**

a. **COVENANT OF TITLE.** Mortgagor warrants title to the Property, except restrictions and easements of record, if any, and further excepting: Memorandum of Wind Energy Lease and Wind Easement Agreement by Daniel L. Mathies, Owner/Lessor, to Shirley Wind, LLC, Lessee, dated June 25, 2007 and recorded July 6, 2007 as Doc. No. 2321942; and Memorandum of Addendum to Wind Energy Lease and Easement Agreement made by Dan Mathies, Owner/Lessor, and Shirley Wind, LLC, Lessee, dated October 16, 2009 and recorded December 3, 2009 as Doc. No. 2450947.

b. **FIXTURES.** Any property which has been affixed to the Property and is used in connection with it is intended to become a fixture. Mortgagor waives any right to remove such fixture from the Property which is subject to this Mortgage.

c. **TAXES.** Mortgagor promises to pay when due all taxes and assessments levied on the Property or upon Mortgagee's interest in it and to deliver to Mortgagee on demand receipts showing such payment.

d. **INSURANCE.** Mortgagor shall keep the improvements on the Property insured against loss or damage occasioned by fire, extended coverage perils and such other hazards as Mortgagee may require, without co-insurance, through insurers approved by Mortgagee, in the amount of the full replacement value of the improvements on the Property. Mortgagor shall pay the insurance premiums when due. The policies shall contain the standard mortgage clause in favor of Mortgagee, and evidence of all policies covering the Property shall be provided to Mortgagee. Mortgagor shall promptly give notice of loss to insurance companies and Mortgagee. Unless Mortgagor and Mortgagee

State Bar Form 21-Page 1

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**KETTLE VIEW  
RENEWABLE  
ENERGY, LLC**

► Solar PV and Wind Site Assessments ► Installations ► Consultations

**Feb 9, 2011**

**PSC 128 hearing, Madison , WI**

**Testimony submitted by:** Randy Faller, Owner of Kettle View Renewable Energy, LLC.

**Company Profile:** Installation and maintenance of small wind energy systems up to 100 kW. Also providing wind site assessments.

As an installer of small wind energy systems we are in favor of PSC 128 and the setbacks from neighboring property lines of 1.1 times total system height for small wind systems.

We are not in favor of wind siting rules being drafted at the local level since most local government officials do not have adequate knowledge of the siting standards for wind turbines large or small.

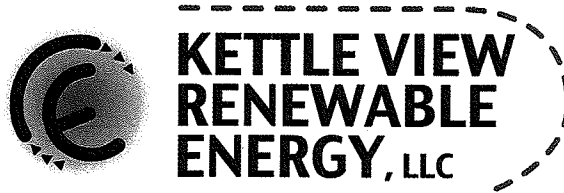
Allowing the local governments to seek direction on wind turbine regulations from the WI Towns Association has proven to be not effective, since many Towns where we have requested a permit do not even know of the current WI Statute 66.0401 that governs rule making on small wind energy systems.

Most Town officials have been referring to the draft of PSC 128 for rule making on the permitting of small wind energy systems and are happy to do so since they know nothing about it. PSC 128, even in draft form, has provided a great reference for local officials and will allow them to "wash their hands" of the decision making matter. We have seen PSC referenced for permitting of small wind energy systems in the Town of Wilson, Town of Freedom, Town of Neenah, Town of Lyndon and Winnebago County.

There has been plenty of opportunity for the public to speak on the wind siting regulations at six public hearings. A great deal of knowledge and effort has gone into the current PSC 128 with fair standards being drawn for all parties involved.

There is no reason to increase any setbacks of large or small wind in PSC 128. These setbacks have been debated by the siting council who drafted PSC 128 and are based on studies of existing farms and have proven to be adequate.

There is also no validity to the claim of wind systems of any size decreasing property values. The Poletti study of one of the oldest wind farms in Wisconsin in Kewaunee County has lengthy data showing there is no effect on property values. The WRA study shows unrealistic values comparing real estate pricing from booming years to our declining recession years. We are in a major recession and property values are expected



► Solar PV and Wind Site Assessments ► Installations ► Consultations

to keep declining for several years. This is the **reality** of the current housing market and wind turbines are simply being used as a scapegoat for declining values.

The wind industry, large and small, in WI is growing and can continue to keep growing and providing more jobs to our already idle workforce with PSC 128 kept in its current form.

If PSC 128 is changed from its current form, not only will you continue to have a declining real estate market, which is a reality, but you will also have a completely dissolved wind industry in WI that will lead to more lost jobs in our state.

Rejected List - page one

List of Articles, Papers, Press Releases, Reports and Other Publications filed by Persons not the Author of the Publication.

- 132409: Listening to Wind Farm Noise Concerns, Jim Cummings, Acoustic Ecology
- 132413: Acoustic Ecology Institute, re; Ontario
- 132685: UW Madison Long Term Study Links Chronic Insomnia to Increased Risk of Death
- 132686: Windmill lawsuit settled
- 132694: Noise Pollution-The Sound Behind Heart Effects, Source Pub Med
- 133200: Responses of the Inner Ear to Infrasound and Wind Turbines, Cochlear Fluids Research Lab
- 133562: Expert Says People are Suffering Health Problems
- 133593: Summary of Recent Research on Health Impacts of Wind Turbines
- 133616: Recent Analysis of Potential Health Impacts of Wind Turbines
- 133633: DeKalb Wind Farm Property Value Agreement
- 133838: Pilot Medical Study of Wind Turbine Health Effects
- 134007: Wind Turbines, Health, Ridgelines and Valleys, Dr. Nissenbaum
- 134013: Reflections on the Integration of Wind Energy into the Power Grid *Study commissioned by organisations & submitted by*
- 134172: Wind Lease Consideration for Land Owners
- 134173: Complications from Excessive and Unexpected Wind Turbine Noise
- 134174: McCann Appraisal Setbacks and Property Values
- 134210: NERC
- 134212: Wall Street Journal-People Living Near Wind Turbines
- 134213: Wall Street Journal-The Wrong Way to get Green
- 134219: CWEST-Property Rights *Submitted by member of organisation*
- 134220: Public Comment
- 134225: Trempealeau Ordinance - *Submitted by Author for Rule Subchapter III - Rejected Submission*
- 134274: Analysis of the Epidemiology and Related Evidence on the Health Effects of Wind Turbines on Local Residents *study Doctor retained by Brown County Citizens. Report directed to Rules*
- 134275: Wind Turbine Accidents
- 134280: Measurements of Audible Noise from Wind Turbines
- 134281: Kamperman and James-Noise Criteria for Siting Wind Turbines
- 134282: Dr. Pierpont-Case Study about Wind Turbines
- 134289: Incorporating Low Frequency Noise Legislation for the Energy Industry-Alberta Canada
- 134323: Siting Wind Turbines with Respect to Noise Emissions and there Health and Welfare Effects on Humans *study commissioned to respond to ESC - submitted by & rejected*
- 134329: Wind Turbine Noise, What Audiologists Should Know
- 134360: Bird Kills Alarm Group
- 134378: Wind Turbines, Dr Hanning
- 134379: The Magic Power of Sleep
- 134380: Lack of Sleep Linked to Early Death
- 134384: Lessons from Europe
- 134420: World Health Organization, Health Survey Report from Canada, Dr, Nina Pierpont, Vestas
- 134448: Physical Risks of Wind Turbines
- 134450: Wind Turbines at Night
- 134451: Wind Turbine Sound at Night
- 134482: Public Comment
- 134504: Science Daily
- 134505: Health Story, Blue Cross

**Reflections on the Integration of Wind Energy into the Power Grid**

**Kevin F. Forbes, Ph.D**  
**Associate Professor**  
**Center for the Study of Energy and Environmental Stewardship**  
**Department of Business and Economics**  
**The Catholic University of America**  
**Washington DC**  
**Forbes@CUA.edu**

**Prepared on behalf of Brown County Citizens for Responsible Wind Energy in connection  
with Public Service Commission of Wisconsin docket no. 1-AC-231, Wind Siting Rules.**

**Richard D. Horonjeff**

81 Liberty Square Road #20-B

Boxborough, MA 01719

Voice: (978) 266-0344 Cell: (781) 929-3553 FAX: (978) 266-0344 E-mail: rhoronjeff@comcast.net

**Consultant in Acoustics and Noise Control**Public Service Commission of Wisconsin  
RECEIVED: 07/06/10, 4:35:37 PM

06 July 2010

Edward S. Marion

Attorney-at-Law, L.L.C.

716 Ottawa Trail

Madison, Wisconsin, 53711

Subject: Siting of Wind Turbines With Respect to Noise Emissions and their Health and Welfare Effects on Humans

Reference: RDH Project No. 210004

Dear Mr. Marion,

Per your request, this letter presents an overview of the effects of large-scale wind turbines (greater than one megawatt) on people. It particularly addresses these effects with respect to residents living in the vicinity of wind turbine developments (often referred to as "wind farms").

**Preface.**

Of particular concern is the ability of the May 2010 Public Service Commission of Wisconsin (PSCW) sound and vibration guidelines<sup>1</sup> to protect the public health and welfare, and to do so with an adequate margin of safety<sup>2</sup>. The three operative terms important to this discussion are:

- Welfare,
- Health, and
- Margin of Safety

In the present context the term welfare refers to the potential annoyance or nuisance effect of the noise. The word health refers to potential health effects of the noise having to do with sound level, frequency content, or temporal character. The term margin of safety relates specifically to the many unknown factors involved in predicting the health and welfare effects of wind turbine related sound. At present the A-weighted sound level is widely used in guidelines and regulations to place limits on residential sound exposure from industrial sources, and it has been

<sup>1</sup> Public Service Commission of Wisconsin, "Measurement Protocol for Sound and Vibration Assessment of Proposed and Existing Wind Electric Generation Plans," May 2010.

<sup>2</sup> Environmental Protection Agency (EPA), Office Of Noise Abatement And Control (ONAC), "Information On Levels of Environmental Noise Requisite To Protect Public Health and Welfare with an Adequate Margin of Safety," March 1974.



**An Analysis of the Epidemiology and Related Evidence on the Health Effects  
of Wind Turbines on Local Residents**

prepared at the request of Brown County Citizens for Responsible Wind Energy in connection  
with Public Service Commission of Wisconsin docket no. 1-AC-231, Wind Siting Rules

Carl V. Phillips, MPP PhD  
epiphi Consulting Group  
cvphilo@gmail.com

3 July 2010

Public Service Commission of Wisconsin  
RECEIVED: 07/06/10, 10:47:49 AM

### Personal background/credentials

My name is Carl V. Phillips. I am an expert in epidemiology and related health sciences, as well as scientific epistemology and methodology, and have been retained by attorney Edward Marion, representing Brown County Citizens for Responsible Wind Energy, to provide analysis and testimony in connection with Public Service Commission of Wisconsin docket no. 1-AC-231, Wind Siting Rules.

I earned a PhD in public policy (with an emphasis on economics-based decision making) from Harvard University, completing a dissertation on environmental policy and economics. I then completed the Robert Wood Johnson Foundation Scholars in Health Policy Research postdoctoral fellowship at the University of Michigan. Later I did a second fellowship in philosophy of science at the University of Minnesota. Before I returned to school for my PhD and began my career in public health science, I worked in consulting, primarily analyzing energy and environmental policy issues. Prior to that I earned a Master's in Public Policy from the Kennedy School of Government at Harvard, and *summa cum laude* undergraduate degrees in math and history from Ohio State University.

I spent most of my career as a professor of public health. I currently direct an independent academic-style research institute (a continuation of my university research lab) and a small consultancy. During my career as a professor, I taught at the schools of public health at University of Minnesota, University of Texas, and University of Alberta (Canada), the evidence based medicine program at University of Texas medical school, the University of Alberta medical school, and Harvard's Kennedy School of Government. My teaching focused on two subjects: how to make optimal public policy decisions based on scientific evidence and how to properly analyze epidemiologic data. This subject matter, as important as it is, is generally overlooked in health science and medical education, and students frequently reported that my teaching clarified their understanding of epidemiology, science more generally, and policy decision making for the first time in their educational careers.

My research during my academic career, and continuing in my private institute, has emphasized epidemiologic methods, environmental health, science- and ethics-based policy making, the nature and quality of peer review, and tobacco harm reduction (the main focus of the current institute). My work on epidemiologic methods focuses on recognizing and quantifying uncertainty, recognizing and correcting for biased analyses, and translating statistical results into decision-relevant information. My initial contributions in the area of quantifying uncertainty won several awards in the early 2000s and launched a new area of inquiry in the field.

Epidemiology is the study of actual health outcomes in people, and thus is the only science that can directly inform us about actual health risks from real-world exposures. Related biological and physical sciences often provide useful information about health risks, but they are ultimately trumped by epidemiology because real-world exposures and the human body and mind are so complex that we cannot effectively predict and measure health effects except by studying people and their exposures directly. My background in epidemiology methods, scientific epistemology,

## CREATING THE WINDMILL GHETTO

They say a picture is worth a thousand words.

This map illustrates the property rights issue for neighbors of industrial wind turbines.

Under current PSC siting regulations, turbines can exist 1000' from a home and about 500' from a property line.

Thus the person that owns parcel "A" can site a turbine and collect the contracted payments from a wind developer.

The Owners of Parcels "B", "C", "D", and "E" have their **right to build a home anywhere in the yellow circle taken from them without any compensation.** Even worse, they cannot appeal to any local government or planning committee. They have no say whatsoever in this "taking"!

Thus an owner of 23 acres can "take" the right to build a home or office from an additional 50 acres that is owned by his neighbors.

Under current law, local governments do at least have the right to ensure public health and safety and many have used that authority to make sure that yellow circles don't pop up in their communities.

**Statewide siting preemption would remove even this small amount of local control from our Wisconsin communities.**

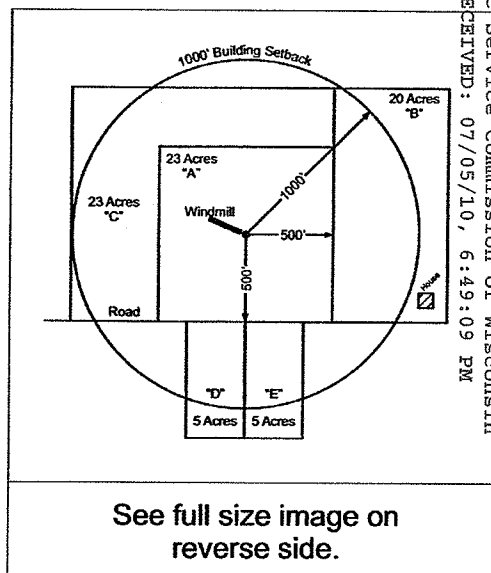
The theoretical environmental benefits of siting industrial wind turbines go to the entire planet. But the costs are overwhelmingly borne by neighboring landowners in terms of plummeting land values, loss of control over their property, and noise effects that can have long term health consequences.



**The Wisconsin Legislature can assure that the cost/benefit distribution is done more fairly.**

We should insist that siting decisions are consistent with comprehensive local planning.

And any consideration of a state preemption bill should make certain that neighbors are protected either through adequate setbacks or by requiring easements from those that will have to live with the windmills.



For more information contact CWEST's representative Bob Welch at 608-819-0150

Below are some excerpts from a 2004 report by Energy Center of Wisconsin, Madison WI, titled: A Study of Wind Energy Development in Wisconsin. The report was prepared for the State of Wisconsin, Department of Administration, Division of Energy. The report contains a case study of the 5 wind projects that existed in Wisconsin at the time of the report, and what can be learned from these projects to further support the construction and operation of additional wind projects in Wisconsin. Michael Vickerman is listed as a contributing author for the report.

Some of the conclusions of the report are;

- The project must be acceptable to the people in the area.
- Proper turbine placement is crucial to success.
- Eastern Wisconsin has smaller farms and higher rural population density making it less suitable for successful wind projects.

The repeating conclusion from every project is that people living less than ½ mile from turbines will be negatively impacted by the turbines.

The entire report can be downloaded from [www.ecw.org](http://www.ecw.org)

### **Report excerpts start here;**

#### **Executive Summary CONCLUSIONS**

Developing sustainable sources of energy for the future requires a broad understanding of these technologies within their working context. This does not simply mean a demonstration of their mechanical integrity, their economic feasibility, or an analysis of their impact on the natural environment, but also attention to how their presence affects existing social and economic structures. For a clean energy technology to be sustainable, it must be acceptable to the majority of people, and particularly to those who live near it.

There are many economic viewpoints involved in the average wind farm development. As indicated in Part 1 of this Study, Wind Power in Wisconsin: A Development Case Study, wind farm development in Wisconsin has shown that deeply rural communities, where the local economy is based in agriculture, are more receptive to wind farms because they are perceived as an economic boon. This is particularly true when local government shares in the revenues. On the other hand, for suburban residential housing developments whose economic base is primarily elsewhere, wind farms are often considered a visual blot on the bucolic landscape.

#### **Glenmore project, 2 Tacke 600-kW turbines**

**(2) NOTICE TO POLITICAL SUBDIVISION.** An owner shall provide a copy of the notice under sub. (1) to any political subdivision with jurisdiction over the wind energy system, and the owner shall keep the contact person and telephone number current and on file with the political subdivision.

**Subchapter V – Commission Procedure**

**PSC 128.50 Standards established by the commission. (1) DETAILED APPLICATION FILING REQUIREMENTS.** The commission shall establish detailed application filing requirements for applications filed for political subdivision review of a wind energy system, which shall contain a detailed description of the information required to satisfy the filing requirements for applications under s. PSC 128.30 (2). The commission may revise these requirements as necessary. The commission shall make the filing requirements available to the public on the commission's website.

**(2) COMMISSION PROTOCOLS.** (a) The commission may periodically create and revise measurement, compliance, and testing protocols as needed to provide standards for evaluating compliance with this chapter. These protocols may be created and revised to reflect current industry practice, changes in the state of the art, and implementation of new technologies. The commission may make protocols under this subsection available to the public on the commission's website.

(b) The commission may establish protocols in any of the following areas:

1. Noise measurement, compliance and mitigation.
2. Stray voltage testing and remediation.

3. Shadow flicker compliance and mitigation.
4. Communications interference testing and mitigation.
5. Other areas where protocols are appropriate.

**PSC 128.51 Commission review. (1) APPEALS TO THE COMMISSION.** An appeal under s. 66.0401 (5) (b), Stats., shall be treated as a petition to open a docket under s. PSC 2.07, except the time provisions of that section do not apply.

**(2) PETITIONER FILING REQUIREMENTS.** An aggrieved person under s. 66.0401 (5) (a), Stats., may file a petition with the commission. The petition shall be submitted to the commission in writing or filed using the commission's electronic filing system and shall contain all of the following:

- (a) The petitioner's name, address, and telephone number.
- (b) The name, address, and telephone number of the political subdivision that is the subject of the petition.
- (c) A description of the wind energy system that is the subject of the petition.
- (d) A description of the petitioner's relationship to the wind energy system.
- (e) The information specified in s. PSC 2.07 (2).

**(3) POLITICAL SUBDIVISION FILING REQUIREMENTS.** (a) A political subdivision shall file a certified copy of the information required under s. 66.0401 (5) (c), Stats., using the commission's electronic regulatory filing system.

- (b) The commission may require the political subdivision to file up to 5 paper copies of the record upon which it based its decision.
- (c) The commission may require the political subdivision to file additional information.

February 9, 2011

Committee Members,

To start, let me thank the committee for entertaining my testimony as it relates to the committees consideration of Uniform Wind Siting Rules in Wisconsin. If not for a wind conference in the state of Illinois, coupled with business meetings related to wind projects, I would be meeting with you today. Assuming the business climate in Wisconsin is supportive of renewable energy development I hope to expand my business in Wisconsin by partnering with a third party turbine supplier to expand the scope of renewable energy options available to Wisconsin: homeowners, commercial businesses, agricultural operations, and educational entities.

Outside of ready capital no single hurdle is greater for my business then the uncertainty related to the myriad of zoning rules and regulations that are currently promulgated by different cities and counties across the state of Wisconsin. In 2009 I welcomed Wisconsin Act 40 knowing full well the benefits of certainty in how wind energy systems, both large and small, could be installed in this state. I also welcomed accountabilities that would require, among other things, that non-functional, or abandoned wind energy systems, would be taken down in a timely fashion.

While it is certain that the PSC rules do not meet all of my expectations they are none-the-less a carefully considered balance of concerns, needs, and requirements. The PSC advisory board represented a broad array of interests and provided ample opportunity for public comment. To stop the implementation of the March 1, 2011 PSC Uniform Wind Siting Rules would damage my business interests, and no doubt the business interests of many others in this state. As I see this decision, the committee is presented with an opportunity to promote: private capital expenditures, job creation, and stability in an economy that is not expanding fast enough for the average Wisconsin worker.

Assuming the adoption of the PSC Uniform Wind Siting Rules, the benefits to this state are significant. First, the rules will reward the risk taking entrepreneurs in Wisconsin that are only asking for certainty in opportunity. Second, wind energy in this state is too valuable a natural resource to not be tapped in a responsible and transparent fashion. Third, now is the time for Wisconsin's legislative leaders to demonstrate that they will create, through their actions, a business climate in Wisconsin that is Open for "All" Businesses. In closing, I ask that the committee allow implementation of the PSC Uniform Wind Siting Rules on March 1, 2011.

Sincerely,

John Backus

St Croix Valley Sustainability Solutions LLC

516 232<sup>nd</sup> Ave

Somerset, WI 54025

TO: Joint Committee for Review of Administrative Rules  
FROM: Tower Tech Systems, Inc., Manitowoc, WI  
DATE: February 9<sup>th</sup>, 2011  
RE: Testimony- Tower Tech Systems, Inc. **Support** of PSC 128

Ladies and Gentlemen of the Committee,

Good morning. My name is Chris Seider and I represent Tower Tech Systems, Inc. located in Manitowoc, Wisconsin. More specifically, I represent the families of the over 350 employees who work for our company.

Tower Tech Systems, Inc. manufactures Tower Support Structures for Wind Turbines. We have been in operation since 2004 and have proudly built over 800 towers since our founding. We are currently scheduled to build 90 towers for Wisconsin Wind Farms in 2011.

The bulk of our workforce is made up of highly skilled, good paying manufacturing positions. Over the past year, we have expanded our workforce by over 125 full-time employees and have capacity to add more in the future should the market allow us.

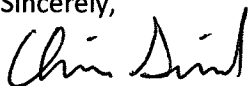
Tower Tech Systems, Inc. supports the current PSC 128 siting standards primarily because they were created collectively over a period of 2 years with all interested parties actively involved. The standards contained within help our industry to grow as it allows investors to know what to expect. Wisconsin has had a reputation of being difficult to do business within at times for wind farms and we fear that further uncertainty created by delaying or suspending these rules will only make matters worse.

Because of the large cost of transportation within our industry, the closer our plant is located to potential wind farm projects, the more likely we are to get the contracts. If PSC 128 is suspended and further uncertainty is put into the industry within Wisconsin, we may see projects, jobs and investments that we would have been able to get go to our competitors in other states.

The jobs and the livelihood of the 350+ families we support rest on our State and our Country supporting our industry and allowing PSC 128 to go into effect on March 1<sup>st</sup>, 2011. We are proud of what we do and believe in our product and only ask for fair and understood standards. We believe that the PSC 128 siting standards accomplish this goal.

Thank you for taking the time to hear the voices of our employees and have a great day!

Sincerely,



Chris Seider, PHR, ARM  
Environmental, Health and Safety Manager