Advancing Wind Power in Illinois Conference 2009

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Large Wind – Project Design Breakout Panel

July 15, 2009, 1:30 PM

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Large Wind – Project Design

Illinois Wind Working Group - Third Annual Conference
Interstate Center, Bloomington, Illinois

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July 15, 2009

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- Over 15 Years of Domestic and International Renewable Energy Experience
- Over 15,000 MW of Wind Experience

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- Recent Conference, Webinars and Client Alerts:

1. Conference

05/19/09 2009 Global Energy Issues: http://www.mayerbrown.com/events/material.asp?id=5516, including a presentation "Gone with the Wind – A Fresh Look at Wind Energy": http://www.mayerbrown.com/public_docs/events/2009EnergyConference-ShawWind-Panel-Presentation.pdf.

2. Webinars

03/05/09 Post-Inauguration Webinar Series: Energy Provisions of the New Stimulus Bill: http://www.mayerbrown.com/events/material.asp?id=5444

01/29/09 Post-Inauguration Series: Energy Outlook in the New Administration: http://www.mayerbrown.com/events/material.asp?id=5382

3. Client Alerts

07/10/09 US Treasury Department Issues Guidance on Energy Grants In Lieu of Tax Credits: http://www.mayerbrown.com/energy/article.asp?id=7230&nid=10908

07/01/09 Illinois Adopts Law Permitting Wind Energy Projects Statewide to Obtain Sales and Use Tax Exemptions: http://www.mayerbrown.com/energy/article.asp?id=7174&nid=10908

06/08/09 IRS Notice 209-52 - Procedure for Electing ITC in Lieu of PTC: http://www.mayerbrown.com/energy/article.asp?id=6899&nid=10908

03/13/09 Department of Energy Loan Guarantee Program Significantly Expanded by American Recovery and Reinvestment Act of 2009: http://www.mayerbrown.com/energy/article.asp?id=6333&nid=10908

03/04/09 New Rules for Electric Transmission Projects – The FERC "Three-Step": One Step Forward, One Step Back, One Leap Coming: http://www.mayerbrown.com/energy/article.asp?id=6247&nid=10908

02/19/09 Update Energy Tax Provisions in the American Recovery and Reinvestment Act of 2009: http://www.mayerbrown.com/energy/article.asp?id=6170&nid=10908

01/29/09 Energy Tax Provisions in the American Recovery and Reinvestment Act of 2009: http://www.mayerbrown.com/energy/article.asp?id=6170&nid=10908

Large Wind – Project Design

- What is Project "Design"?
- More "art" than "science"
- Driven by many factors, but especially financing constraints/choices
- Has always been difficult, but the "process" has become more difficult, especially as permitting has become more contentious

Large Wind – Project Design
Assembling the Land Package

- Developing met data
- Developing community relations
- Developing acquisition strategy, especially pricing
- Developing community strategy, especially affected landowners who may not have turbine payments
- Managing relations over a protracted period, especially when disgruntled landowners extend permitting process

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Permitting

- In most Midwestern states permitting relatively straightforward.
  – Illinois (until recently) was complicated by Enterprise Zone requirements
- Most counties now have actual experience or are familiar with wind farms and, in an increasing number of cases, have adopted wind farm ordinances.

Large Wind – Project Design
With a View to Project Financing

- If "on" balance sheet, the developer may be more comfortable with particular risks and contractual arrangements for construction, financing, etc. will reflect this comfort
- If "off" balance sheet and/or third-party investment will be required (or the option to have such investment is desired), a more conservative contractual matrix arrangement is likely

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Project Financing

- "Off" balance sheet financing requires particular skill to anticipate actual or perceived risks (and related contractual arrangements) to which potential lenders and other investors will be sensitive
- Examples include:
  - Permitting risk
  - Construction risk
  - Operation risk
  - Unanticipated liabilities

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Project Financing

- Drilling down on construction risk, will the project be completed:
  - at all (eliminating revenues entirely)
  - on time (resulting in lost revenues and possibly contractual or regulatory penalties)
  - in compliance with performance standards (possibly reducing output and revenues or increasing costs of production)
  - within budget (resulting in additional completion funds being required

Large Wind – Project Design
Construction

- Additional construction issues are:
  - If no general contractor, who co-ordinates construction by all contractors?
  - Who (if anyone) is responsible for integrated construction work (i.e., a "wrap")?
  - What is the allocation of "scope" responsibility? Classic issue of "scope" coordination. Remember Donald Rumsfeld's now (in)famous quote:

As we know, there are known knowns.
There are things we know we know.
We also know there are known unknowns.
That is to say, we know there are some things we do not know.
But there are also unknown unknowns, the ones we don't know
that we don't know.

—Feb. 12, 2002, Department of Defense news briefing

Large Wind – Project Design Construction

- Equipment supply agreement raises similar issues:
  - When is equipment required? When must payments be made? Can delivery dates be extended? By seller or buyer or both? Can force majeure apply? What if equipment supplier is an affiliate of project owner (can buyer claim force majeure for action of affiliate under other agreements)?
  - How will the equipment perform? Under what conditions? How will this be determined? Arethere options to replace or otherwise cure equipment non-performance? What is e remedy for failure?

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- Power purchase agreements raise similar risks:
  - What is commencement date? What is the term? Can force majeure apply? Does it coincide with construction force majeure? With equipment force majeure?
  - Is there contracted output? Is there a capacity buydown?
  - What is the price? Is there a pass-thru for increases in turbine costs? For increased transmission costs to delivery point? For increased taxes? Etc.

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Large Wind – Project Design Conclusion

- Successful project design requires thorough planning, sophisticated risk assessment and careful structuring to obtain an appropriate capital structure and desirable project financing terms.
- Risks must not only be assessed but most also be allocated among the project's participants in a manner which is economic, functional and marketable/financeable.
- Focusing on these issues early and throughout the project makes the ultimate financing easier and less costly to obtain at a later date