

TO: The Henry County Commissioners:

You ask for input regarding the three agreements you have with the wind companies. I have my doubts the county attorney, let alone the commissioners, understand what is written in these documents. The language is such that almost every clause is more beneficial to the wind company than the county. It is the language of smoke and mirrors and you bought into it. The following sets out the most glaring issues as I see them. There are more issues but it would take someone well versed in this type of law to point out these issues.

1. Economic Development Agreement. 2nd WHEREAS on first page. "...and create no permanent jobs." This directly contradicts 4th WHEREAS on first page. "...the creation of new jobs in the Development Area...". 6th WHEREAS on first page "...the anticipated restriction of certain other potential new commercial development and employment in portions of the Development Area, as a consequence of the Project...". Why would you agree to restrict new development in the County? 9th WHEREAS on first page states tax abatement deductions are critical to the financial viability of this project. We also know they have to have Federal credits to survive. If the company is not financially stable enough to at least provide most of its financing, why should you deal with them?

2. Article II. Mutual Assistance: The wind company is agreeing, in part, to execute and deliver such documents, instruments, petitions and certifications as may at times be necessary and appropriate. The County not only agrees to this, they also agree to hold certain public hearings and use their best efforts to the fullest extent permitted by law to adopt certain ordinances and resolutions to assist the wind company. Since the ordinance is under review, it would be a shame to see changes in the new ordinance that enable the wind companies to build here with the blessings of the commissioners and that do not fully

protect the citizens of this county. This would not be mutual assistance, it would border on hypocrisy.

3. Article III. In last paragraph of Section 3.01, the two projects in the southern part of the County have no buyer for the electric. There should be a limit of time in which to find a buyer. If the wind company has not been able to meet its' commencement date, there should be no automatic extension. There should be a public hearing and the wind company should have to show just cause why the project has not met the commencement date. In Section 3.02, county expenses should be set at a higher amount. Do you understand any of the language under Section 3.03? How does that translate into dollars? Also the fact that if the federal tax credits were not extended past December 31,2014, the payment amount was negotiable and could be a lot less? In Section 3.05, a, b and the last paragraph, depreciation, all I can say is REALLY?

Article IV. Section 4.02, Tax Abatement. There are probably dollars lost to the County from granting a ten year tax abatement. Further, research has shown that majority of companies either sell, and the new companies ask for another tax abatement, or just pull out. For the most part they do not plan on staying past the ten years. By then, they have used up the credits that make a profit for a project.

Approximately 60% of the financing for a project is based on these credits, state, local and federal and the wind companies need them to make any project financially viable. I can provide research on that.

Article VII. Section 7.07, Assignment. The County has no control over who this agreement can be assigned to. The County cannot stop the sale or transfer of any equity interest the wind company has. The wind company only has to notify the County. This needs to be changed to protect us against foreign equity companies such as the one who now owns Calpine and wants to build in the County. This can also be assigned to a public utility which has far more power to acquire what it

wants to build on. Section 7.15, Indemnity. This section allows the wind company to indemnify itself which is beyond belief. This should not be allowed. The wind company should have to get a bond from the appropriate bonding company. This is like asking the fox to guard the henhouse and expecting there to be chickens left when you come back. I worked in a law office for a lot of years and in all that time in any kind of project or situation I did not see anyone, any company or any other situation that required indemnification of whomever or whatever, where they were allowed to indemnify themselves. \$232,000.00 maximum recovery on a project this size? Ridiculous. 10.

Miscellaneous. The agreement is to be governed by the State of Indiana. The Guaranty governed by the State of New York. Why was this allowed? I am sure most of the wind companies are Delaware State registered LLCs. No protection for the County.

Exhibit A, Section 3. Refer to Paragraph 1 on page 1.

4. Road Use Agreement. I am not educated enough on what is contained in this agreement regarding the way and how and what is used to redo the roads to know whether this is good or bad. I do know I will for a year or year and a half be run off the road by and have to stop for equipment, parts, etc. There is no way I can travel to avoid this since we are surrounded by leased land. I also know how torn up the roads I have to travel will be during that time. You cannot allow trac equipment on the roads without major damage. I also know the County should monitor every step closely. One permit should not be a fits all permit and no other be required. Eminent domain should absolutely not be allowed. All safety signs should be posted within 12 hours or less to prevent an accident. All dust control should be within 24 hours or less. Under Section 7-Confidentiality, it is agreed that this agreement should be kept secret from the people in the county. Why? It is the same with the wind leases. You say you want to be transparent, yet this confidentiality clause is in this agreement. If

things are so great, why should we not know? In Section 29, once again no outside bonding company is required. Why in the world would you let a developer come in and tear this County apart and believe if something goes wrong it will be fixed just because they say so. There are roads in Randolph County that still have not been repaired.

5. Decommissioning Agreement. This should be between the leaseholder and the wind company. If the wind company does not decommission the project then the leaseholder is responsible for the mess on his property. If it interferes with County functions, becomes a safety hazard or is detrimental to the County, then the County should be allowed to decommission the property at the leaseholder's expense and/or file a lien on the leaseholder's property.

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