International Municipal Lawyers Association

Municipal Financing of Wind Power and Other Renewable Energy

September 18, 2006
Portland, Oregon

Importance of Wind Power

(i) Reduce reliance on fossil fuel generation of electricity and combat "global warming" – see: ***An Inconvenient Truth***; ***Who Killed the Electric Car****?* Wind power does not produce air or water pollution. Development of wind power limited only by a supply of wind.
(ii) Cost of oil makes investment in alternative energy resources economically feasible.
(iii) Wind is the fastest growing source of renewable energy, especially in Europe.
(iv) Through technology advances, the cost of producing wind power has declined 80% in the 1980s.
(v) As part of a municipal utility, wind power generation can provide lower cost electric energy, provide a reliable energy supply during blackouts or brownouts for public facilities (e.g., hospitals, schools, government buildings), provide stand-by generation when energy prices "spike," and produce local revenues and PILOTS (payment in lieu of taxes).
(vi) In 2005, there were wind farms in 34 states supplying over 9,000 MW of power.

Problems with Wind Power

(i) Unfamiliar or unreliable technology.
(ii) Wind measurement and wind energy assessments; forecasting.
(iii) Siting: Distance from wind resource to local use area – issue of transmission
(iv) Land use issues, including:
- Land acquisition and site control; development agreements; leases; setbacks; service and access roads; security of facility; power purchase agreements.
- Comprehensive planning requirements; communities without zoning.
- Zoning regulations; variances and building codes.
- Public decision making – public input (former and informal).
- Permitting from state power commission.
- Decommissoning – removal of nonfunctioning wind towers.
- Adequate land area for economies of scale – minimum of 20-30 years..
- Public acceptance of visual impacts - wind towers are not attractive.
- Environmental hazards – migrating birds, habitat issues, noise, height, lighting
- Effect on property values.
- Air traffic hazards.

(v) What laws and rules govern operation of a wind farm.
(vi) What entity owns the wind farm and benefits from its revenues.

(vii) What entity uses the electric power generated form a wind farm.
(viii) How is a wind farm paid for – who pays and how financed.

State Policy on Wind Power

(i) **New York** – adopted "renewable portfolio standard" to increase statewide power generation from renewable energy sources to 25% of energy production by 2013. State agency (NYSERDA) is the "central procurement agent" for wind energy which is (a) sold to a power generation/transmission company (i.e., an electric utility) agency, or (b) sold "behind the meter" to customer on whose land wind tower is located.

(ii) **California** – adopted "renewable portfolio standard" to increase statewide power generation from renewable energy sources to 20% of energy production by 2017. AB 2017 sets minimum state regulations for installation of small wind energy systems for counties and other local agencies to permit and set minimum standards.

(iii) Some states have provided or propose credits for installing wind energy systems with provisions, including, (i) requiring credits to be passed on by installers to owners, (ii) elimination of exit fees and standby charges from utilities for persons who generate their own electricity through wind power ["net metering"], (iii) imposing "system benefit charge" on commercial electricity sales to raise funds in support of renewable energy.

(iv) Some states allow income tax credits for revenues from wind power projects and rebates for costs of construction.

Federal Policy on Wind Power

(i) Production Tax Credit renewed until January 1, 2008 under Energy Policy Act of 1992. Provides credit against income tax of 1.5 cents/kilowatt-hour for production of electricity from qualified wind energy facility for first 10 years – utility-scale wind farms, not small wind energy systems for homes or business.

(ii) Rural Business Cooperative (USDA) provides grants for renewable energy systems, including wind power. $176.5 million appropriated for loans and $11.385 million appropriated for grants in FY 2006 [Fed Reg., Vol. 71, No. 29, 2/13/06]

(iii) No federal policy equivalent to the "renewable portfolio standard" to increase national electric energy production from renewable sources.

Wind Power as an Economic Development Activity

(i) Most common economic or financing feature of wind power energy production to local government is to provide economic development:

- Underscores generally rural or agricultural sites selected where (i) acreage for wind farm is suitable, (ii) aesthetic and environmental objections are likely to be less critical than in urban areas, (iii) units of local government, especially public schools, supported by real property taxes welcome any economic development activity which increases property values and assures synthetic tax payments (PILOTS) over several years, (iv) zoning is nonexistent or not rigorously regulated or enforced.

- The attraction to economic development is strong in states like New York with ample rural and underdeveloped land and also with generally high taxes and high public sector payment benefits (pensions, Medicaid, etc.)

- The business connections and arrangements (financing, construction, operations) occur and are negotiated at the vendor/manufacturer/financial institution/public utility level with the local government playing a passive or permitting/land use regulatory role. The PILOT is viewed as the local government's primary benefit.

(ii) Economic development approach is vendor/private sector driven and emphasizes value of wind power as business or venture for future profits or tax shelter derived from federal energy credits.

Wind Power as a Municipal Purpose

(i) As a municipal utility wind power is just another form of generating electricity, like coal and gas. The utility concept can include providing street lighting, traffic signals, powering water and sewer plants, municipal heating and cooling or any other function provided by government.

(ii) As a part of disaster preparedness, wind power offers back-up electric energy if the public utility transmission grid fails. As a source of stand-by electric energy, wind power can provide low-cost electric energy when ISO prices become expensive during periods of peak demand.

(iii) Wind power facilities as part of a not-for-profit college or hospital may be financed with tax-exempt bonds if financed through a state or local agency. Benefits of tax-exempt financing need to be measured against the value of federal and/or state production tax credits.

(iv) Using joint or cooperative powers, two or more municipalities may install wind power facilities for various distributed energy uses, supplementing public utility electric transmission to reduce consumer costs for electric power.

(v) Municipalities may be able to partner with private sector participants to gain a share of generating revenues and energy production to be paid to a municipally controlled entity, thereby creating non-tax source of revenues for the municipality. If the

municipality provides financing, caution must be exercised to avoid "private activity bond" status and loss of tax-exempt status on account of association with private sector participant.

(vi) Indian tribes may be useful for owning and financing wind power facilities for the benefit of a municipality.

(vii) Beyond municipal utility framework, owning and financing a wind power facility for benefit of the general population of a municipality challenges state law authority.

Potential Benefits from Municipal Financing and Ownership of Wind Power Facilities

(i) Lower cost of financing with tax-exempt securities.

(ii) Distribution of revenues or lower cost electric energy within the entire municipality rather than the property owner on which the facility is located or private investors. This becomes particularly valuable if municipalities join in a joint or cooperative regional project.

(iii) The opportunities to expand public purposes under state law to include wind power facilities are enhanced through recent U.S. Supreme Court cases which leave standing or do not recognize taxpayer complaints from determinations of matters which are for the public use or in the public interest. See: *Kelo v. City of New London* (June 23, 2005), *DaimlerChrysler et al. v. Cuno et al.* (May 16, 2006) [citations available].

(iv) Shifts risk of economic performance from wind power operations to municipality if municipality elects to pledge its faith and credit to the financing.

Helpful Resources for Further Consideration

(i) American Wind Energy Association: www.awea.org.

(ii) Renewable Energy Atlas of the West: www.energyatlas.org.; www.windmaps.org

(iii) Wind Energy Program (USDE): www.eere.energy.gov/wind; www.eere.energy.gov/windpoweringamerica

(iv) Interstate Renewable Energy Council: www.irecusa.org

(v) Northwest Sustainable Energy for Economic Development: www.nwseed.org.

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