

2010 WIND ENERGY TASK FORCE

Draft Report Outline

I) Position Statement

-Position statement: Task Force generally is in favor of wind energy and believes it can play an important role in diversifying Wyoming's energy portfolio.

II) Wind Energy Task Force Background

- A. Task Force Membership
- B. Task Force Tasks
- C. Task Force Activities

III) Background and Current Status of Wind Energy Development

- General status of wind energy development in Wyoming
- Describe current moratorium on the exercise of eminent domain

IV) Topics Considered by the Task Force During the Interim:

Topic 1: Defining the Collector System

- Extension of the collector system from the generation site to substations and hubs.

Topic 2: Proper Exercises of Eminent Domain

- Who has right to condemn:
 - Government
 - Regulated Private Utilities
 - Private Developers
- Procedure
 - Extensive amendments to procedure in 2007
 - Basic procedure and burdens of proof
 - Supreme court's interpretation of standards
 - Requirements for negotiation
 - Limited time for trial preparation
- Impact of regulatory requirements and higher land use fees for use of public lands – does it force development onto private lands?
- Nature of the right acquired by eminent domain
 - Public entities can obtain fee title
 - Private entities obtain easements – but real property right

Topic 3: Proper Compensation for Takings of Land

- Effect of eminent domain power on negotiated compensation
- Economic models showing the distribution of wind energy payments.
 - Demonstrates that governments and those who host generation sites are significantly better compensated than those who must host the associated transmission facilities.
 - The Task Force considered the fact that the over-all payments can't be increased without increasing the cost of generating wind in Wyoming. So, the issue is whether there are ways to reallocate the existing payments.
- Basic standards and procedures for compensation
- Landowner's burden of proving damages at trial.
- Tradition of requiring only a one-time, up-front payment
- Bases for permitting periodic / continuing payments
 - other regulatory schemes [federal lands (BLM, Forest Service) / state lands]
 - other countries
- Ability of government agencies to negotiate better terms
 - No condemnation available against public lands

V) Recommendations:

Topic 1: Defining the Collector System

Recommendation:

No specific recommendation will be made for changing the current definition as found in the Industrial Siting Act.

Topic 2: Use of Eminent Domain

Recommendation:

Alternative 1:

- Remove the authority of private entities to exercise eminent domain for the construction of transmission lines.
- Do not remove the authority for regulated public utilities to exercise eminent domain.

Alternative 2:

- Confer the power of eminent domain on private collector line developers only where a developer has obtained negotiated land use agreements from either xx% of the total landowners who own land that is necessary for the project or owners of xx% of the total land necessary for the project.
- Once the developer has met the percentage threshold, the power of eminent domain may be used to obtain use of the remaining land owner's land.
- Approval must be obtained after adequately demonstrating that 1) the project is a viable project; and 2) the necessary percentage of landowners or acreage has been legally committed to the project
- Is the ISC the proper body to make these threshold determinations before eminent domain can be used?

Topic 3: Proper Compensation

Recommendation:

[The following recommendations assume the imposition of Alternative 2, above, imposing a threshold negotiation requirement.]

Alternative 1:

- The compensation due to landowners who did not reach negotiated agreements with the developer would be determined according to traditional eminent domain law.

Alternative 2:

- The compensation due to landowners who did not reach negotiated agreements with the developer will be the average of the compensation received by those who did negotiate.
- Special provision might need to be made for situations where there are only a limit number of landowners involved
- Special provision might need to be made for situations where some negotiations yielded one time up-front payments and others involved periodic rental payments with periodic adjustments.
- Special provision might need to be made for situations in which the land of a landowner who refused to negotiate is of a value which is clearly below or clearly higher than the average compensation received by landowners who negotiated. If no such provision is made, landowners with bad land will have no incentive to negotiate because they will benefit from the average price paid to others. Conversely, in the absence of some adjustment, developers will have no incentive to negotiate with landowners with valuable land who will be forced to accept an average value if the developer refuses to negotiate with them.

Alternative 3:

- Developers would be required to offer those against whom they exercised eminent domain the option of periodic rental payments for the use of land.

Such a requirement might mandate periodic adjustments for inflation or to reflect such things as the changing uses of land, the value of the commodity being transported across the land or simply the longevity of use which makes a single, upfront payment inadequate.

-Requiring periodic rental payments for those against whom eminent domain is exercised likely would have the effect of opening negotiated agreements (i.e. those not subject to eminent domain) to period payments. If periodic rental payments were required in an eminent domain proceeding, landowners wanting periodic payments could simply refuse to negotiate any deal not involving period payments and, instead, receive them when eminent domain proceedings was initiated.

Additional Task Force Recommendations

- 1) Recommend that the legislature consider tax breaks for collector line developers who use periodic rent payments with appropriate periodic adjustments in their negotiated land use agreements (i.e. prior to instigating eminent domain proceedings). This approach would have the desirable effect of redistributing a portion of the benefits received by Wyoming from wind development to those who must host collector facilities and who may not be receiving adequate compensation under traditional eminent domain standards. In this way, revenues to land owners would increase without damaging Wyoming's competitive position by increasing the costs of wind energy development.

VI) Appendix