
Firm Assists Town with Wind Turbine Project

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WilmerHale recently assisted the town of Scituate, Massachusetts with the negotiation of agreements to allow a third-party company to build, own and operate a wind turbine on municipally owned property. Under the plan, the town will purchase all of the electricity generated by the turbine, and estimates that it will save as much as \$4.5 million in energy costs over the 15-year term of the agreements.

This is the first project in Massachusetts in which a town is allowing a third party to build a wind turbine on town-owned land and sell electricity back to the town, according to Regulatory and Transactional Partner [Mark Kalpin](#), who has been working with Scituate. "This is a situation where private entities and communities can work together to develop renewable energy projects in a cost-effective manner," he says.

The firm's relationship with Scituate grew out of its work over the past several years on behalf of the Massachusetts Technology Collaborative (MTC), a quasi-independent state agency. As part of this representation, WilmerHale assisted the MTC in developing the legal framework for the Commonwealth Wind Collaborative Program.

"MTC was looking at how it could encourage communities to build municipal wind projects," says Kalpin. "At that time, there was a debate. Should it be the municipality that was owning and operating the project, or should it be private parties? If so, how should the private parties do it?"

Because renewable energy projects are often driven by tax credits—and as a tax-exempt entity, a town or city cannot take advantage of those tax credits—it wasn't economical for municipalities to build wind turbines on their own. As a result, Kalpin recommended that the MTC evaluate a third-party ownership model.

With the help of Regulatory Counsel [David Gold](#), Kalpin also helped MTC develop its Commonwealth Solar initiative, a framework for municipalities to allow third parties to build solar facilities on municipally owned properties. Kalpin and Gold created a model request for proposals (RFP), as well as a model power purchase agreement (PPA) and a model site license agreement, all of which could be used by towns and cities interested in going through the process.

"For the solar initiative, we looked at different legal structures that would help facilitate the use of

rooftop space,” says Gold. “The templates are meant to make that relationship work between the private and public sectors.”

During this process, the coastal town of Scituate began working with the MTC to determine whether it had sufficient wind resources to locate a wind turbine in the town. A renewable energy committee evaluated various locations, and ultimately chose one adjacent to the town’s wastewater treatment plant. Scituate then reached out to the firm this past summer for help in negotiating a PPA and site lease agreement with the developer it selected through an RFP process.

“In the case of Scituate, the PPA, which establishes the terms under which the third party will generate power and sell it to the town, specifies the type of facility the developer has to construct,” says Kalpin. “It also provides a timetable and milestone dates for the developer to apply for and receive interconnection agreements, permits and clearances; obtain financing; order the turbine; and commence construction activities on the town’s property.”

Under the PPA, Scituate will purchase all of the electricity generated by the wind turbine at fixed below-market rates—saving about \$300,000 per year—for an initial term of 15 years. It will use about half of the electricity at the wastewater treatment plant, and the value of the remaining electricity will be credited to other accounts in the town where the town is purchasing power from the local electric utility. The company that runs the wind turbine will save on energy transmission and delivery costs, and receive Renewable Energy Certificates from the state that will allow it to profit from the deal.

“The parties came up with a relatively balanced agreement that both sides could work with and that would be financeable in today’s market,” says Kalpin. “It’s a win-win situation, because the town is purchasing power at below retail market rates, and the developer is selling the power for more money than it could if it just sold onto the wholesale market. In addition, the developer has a 15-year purchase agreement with a creditworthy entity, which will help facilitate private financing for the project.”

The PPA and site lease have been finalized, and the firm will assist the town on a going-forward basis as any issues arise. Scituate estimates that it will take two years to get the wind turbine up and running.

Kalpin says a distinct advantage of the agreement is the town contributed very little out-of-pocket funding to the project. Instead, the developer was required to pay almost all of the upfront costs, and also address the interconnection, permitting and construction issues. Because the purchase and construction of the turbine is estimated to cost around \$4 million, few municipalities would be able to make that kind of investment on their own.

“There are certain things that are within the expertise of local municipalities to do,” he says.

“Generally speaking, constructing and operating wind turbines is not one of those things. The idea is to shift the responsibility and cost of these actions to the third party that has experience in this area.”