

**Submission  
No 115**

## **INQUIRY INTO RURAL WIND FARMS**

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**Submission to Inquiry into Rural Wind Farms**

**New South Wales Legislative Council**

**General Purpose Standing Committee No. 5**

**By Richard J. Tanner**

**Tamworth Hearing Friday 16<sup>th</sup> October 2009**

**12<sup>th</sup> October 2009**

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2) The Web of Intrigue In Wind Farm Development (1 page)	
3) Windlab Agreement, Windfarm Access and Option Deed Lease, Security Deed (61 pages)	
4) Epuron Agreements, Wind Energy Development Licence, Wind Farm Agreement (78 pages)	
5) Letters to Landowners from R. J. Tanner 22/7/09 and 18/9/09 (15 pages)	
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## **Introduction**

The author has read the terms of reference for the inquiry and will be producing evidence to back up all the claims and concerns raised.

It should be stated that wind power is the one technology most likely to succeed in reducing man-made greenhouse gas emissions. Other mediums, such as nuclear power requiring water and costly inputs and solar thermal requiring new technologies for heat storage, are unlikely in the short to medium term be able to provide the power to maintain and expand the electricity grid as the economy demands.

The author is Chairman of the Coolah District Development Group Inc (CDDG) and as such is keen to promote the general wellbeing and prosperity of the Coolah District and surrounds.

The views expressed are his personal views and do not necessarily reflect the views of the CDDG or its members.

## **The Geography of Coolah and its Suitability for Wind Farming**

See Appendix 10

Coolah is an area which by its nature is suitable for wind farms. The area was formed by volcanic basaltic eruptions eons ago with the Coolah Tops being the elevated feature. From the Coolah Tops there are a number of ridges between which lie fertile flats which have been developed into successful cropping and livestock enterprises. The ridges run more or less in a north-south direction across the prevailing winds. The ridges are quite elevated and several of them do not have a good deal of tree cover and most are accessible for vehicular traffic in spite of their height. The ridges themselves are away from homestead sites and the town, meaning that lifestyle amenity will not be affected except in isolated cases.

It is submitted that the Coolah Cassilis area would easily accommodate 1000 turbine sites delivering a power generation capacity in excess of 2000 megawatts into the NSW grid, making it potentially the largest collective wind farm in Australia. It would not be surprising if even this figure was conservative as up to another 1000 turbine sites could be identified.

The scale of this development is hard to quantify at this stage but various industry estimates put the cost of an installed turbine at between \$3m and \$5m each. About 60% of this cost relates to the cost of each turbine with the other 40% relating to ancillary road works and power-line grid connection including sub-stations. Should this development occur the NSW grid would need to be expanded by the extension of the 500kv transmission line, the nearest present point being at Wollar. There may need to be an additional 500kv line developed by Transgrid in addition to the Wollar connection.

### Concerns over Development

At this stage there appears to be very little concern over the visual or acoustic nature of wind farms but the debate is concentrated amongst landholders as to the ownership and return on the turbines which will be erected on their properties. The nature of wind farms involves an enormous capital outlay (\$3 to 5m per installed turbine), but the returns per turbine should be equally spectacular. These will range from \$500,000 to \$1m per turbine and the question confronting landholders is simply 'are they receiving a fair return for the inconvenience caused during construction and the loss of their traditional quiet amenity?'

The answer to this question can only be answered by reference to the nature of the power retailing business and by understanding the Federal Government recently introduced Renewable Energy Target of 20% by 2020 or earlier. This will involve all energy retailers having to pay a default payment of \$90 per MW or they must surrender a Renewable Energy Certificate (REC) to the Government. The current rate for a REC is \$40-50 per MW. At the moment there are five players in the retail energy market - 1) AGL Ltd 2) Origin Energy Ltd 3) Country Energy 4) Integral Energy and 5) Energy Australia. The NSW Government for financial reasons of their own have decided to sell Country Energy, Integral Energy and Energy Australia.

The most logical end buyer of the power from Coolah Wind Farms would be Country Energy but this company almost certainly will be owned by either AGL or Origin Energy. This will concentrate the power market even further into the hands of one of these few players.

A rare glimpse into how the financial structure of the retail energy market operates was provided by AGL Ltd in the continuous disclosure requirements to the Australian Stock Exchange by a Press Release dated 7/8/09 reproduced in Appendix 1. This took the form of a profit of \$59m by selling the cash flow rights to a superannuation fund investor which was related to the major bank which is providing the loan monies for the Hallett 2 wind farm in South Australia. On 11/10/09 AGL announced a further profit of \$88m disguised as a "development fee" from the sale of the Hallett 4 Wind Farm in South Australia. This project involves some 67 turbines not due for completion until May 2011.

The flow diagram (Appendix 2) shows that AGL will retain the REC whilst selling energy into the grid. AGL provides a guarantee to the bank administered superfund and also pays the maintenance agreement with the turbine manufacturer.

Clearly there is money in wind farms. The question is 'should the development profits go to the developer or should a more equitable arrangement be made for sharing the profits between the developer and the landowner and the community?'

It should be noted that the original developer is totally out of the scene. This modus operandi of the developer selling out during construction or soon after has major implications for landowners and will be amplified later.

The vertical integration of the retail power business in the hands of AGL or Origin Energy is understandable as they wish to control the REC price volatility. All assets and liabilities of wind farms will end up in the balance sheets of either AGL or Origin Energy and it is important that the State Government as legislators realise this vital point.

### **Concerns Over Landowners Agreement with Developers**

A thorough understanding of the structure of the retail energy sector is necessary if legislators are to understand the legitimate concerns with the contracts being offered and pressured into by developers. At present there are two main players in the area calling themselves Wind Developers which in fact they are Wind Prospectors who will sell out during construction of the wind farm or on its completion.

- 1) Windlab Developments Pty Ltd operating on the two ridge lines either side of the Coolaburragundy River.
- 2) Epuron Pty Ltd operating in areas to the east of Coolah towards Cassilis in the higher country.

Landowners are being pestered with requests for signing up long-term leases. In the case of Windlab, this takes the form of a Wind Farm Access and Option Deed which gives the company access and then at their option to sign up a long-term deal (Appendix 3). This agreement allows the company to complete the lease agreement by filling in the details (see Item 5 of page 12 of Appendix 3). Whether the grant of the lease is legally binding is not known.

The agreement (Appendix 3) imposes very stringent conditions on landowners if they were to sell their properties. This is understandable as the commercial nature of the undertaking requires long-term legal access to the land for the turbines. There is however absolutely no requirements for the developer to guarantee the terms of the agreement when they sell out. There is no obligation for the end purchasers to perform the obligations of the developer agreement (see page 13 of Appendix 3). When the developers sell out they will either sell the shares in the Development Company or the rights under the lease. As the rights under the lease will be split into the cash flow component going to a superannuation investor and the rights to take the power going to a retail energy company, there are no stated obligations by these yet unnamed end parties. If a commercial dispute occurs between these as yet unnamed third parties the rights of the landowner are most unclear and in fact may not exist.

There are two other aspects of the Windlab agreement which deserve mention for a balanced view of the rights of landowners. The first concerns the "Sale to a Consuming Owner", Page 14 of Appendix 3 Item 10.3, where a consuming owner is not defined yet the landowner will be left with only their "best endeavours to agree on a substitute definition of Gross Revenue". This is very loose and dangerous as the developers will sell out during or at the end of construction. "Gross Revenue" is not defined and this will be mentioned later in terms of an energy audit to be provided to landowners. The other aspect of the agreement contained in the Wind Farm Access and Option Deed which is most unsatisfactory to landowners is the requirement Clause 6(d) Appendix 3 for the owner to execute a tripartite deed for finance facilities. This was inserted after a draft Security Deed was withdrawn but the clear intent is that a similar deed will need to be executed in the future. It was noted that the withdrawn Security Deed (Appendix 3) involved an entirely separate company called Windlab Systems Pty Ltd with a different ABN.

There is no obligation on behalf of Windlab to supply an annual statement of the power which will be supplied to the Australian Energy Market Operator AEMO and or the Australian Energy Markets Commission AEMC. Chapter 7 of their rules provide a national metering service to all entities connecting to the national grid and is the definitive document for the payment of power supplied to the grid. Even if this vital document is specified (which it isn't) the developer will have sold out leaving the landowner to battle with the unnamed "Consuming Owner" as yet undefined or unnamed to provide this vital information.

The agreement with Epuron takes the form of a "Wind Energy Development Licence" (Appendix 4) which will last for 5 years. There is, however, an implied requirement to conclude a "Wind Farm Option Agreement" between the landowner and the company.

The Epuron Wind Farm Agreement (Appendix 4) is an extension of the Wind Energy Development Licence and contains a number of issues which should be considered by the Inquiry.

- 1) It is a 5 year agreement with an irrevocable option to lease the land for 30 years and longer, maybe forever.
- 2) There is a generous offer of \$10,000 reimbursement for legal expenses in obtaining advice. The magnitude of this amount is an indication of the level of expense that individual landowners have to make out of their pocket prior to signing any agreement.
- 3) The agreement provides for various obligations by the landowner which is understandable for an operation for this magnitude.
- 4) The Wind Farm Company 'Epuron' may assign any or all of the rights under the lease without any landholder approval. Furthermore, Epuron will be automatically released from any obligations under the Agreement or Lease with only cold comfort that the Assignee should take on board obligations in the original Agreement and Lease.
- 5) The landholder must enter into a Security Trustee Agreement (not displayed) if requested by Wind Farm Company.
- 6) The landowner must assign all the green rights ie. Renewable Energy Certificates and State Certificates to the company. This is an indication that the landowners should be allowed to apply for the Renewable Energy Certificates.
- 7) Likewise with the Windlab Agreements there is no obligation to disclose the annual power delivered to the Australian Energy Market Operator AEMO.

#### **Position of Landholders**

The developers are steadfastly refusing to involve landowners in equity ownership of the wind farm as it will detract from the profit which they intend to make by selling out the future cash flow to a superfund investor and retail power user. The profit which the developer makes will be dictated by the energy retailer which is a duopoly likely to become more concentrated following the sale by the NSW Government of the energy retailers.

The developers are preying on the naivety of farmers who would like the income in the future but are very busy and do not understand the legal complexity of these agreements nor to some

of the business practices which operate in the wind farm business. By definition a wind farm involves the signing of contiguous parcels of land and this is being exploited by the developers.

Proposals for encouraging local ownership and control will be outlined later (see Appendix 5). In the absence of these changes the developers will continue to divide and conquer landholders with threats of withdrawal if their onerous and dangerous agreements are not signed. There have been detailed examples of threats as outlined in Appendix 5 and answered in Appendix 5. Inflated estimates of the cost of moving the Coolah Wind Farms to the Development Application stage have also been used.

### **Shortcomings of the NSW Climate Change Fund**

See Appendix 9.

Given the anarchy surrounding wind farm development at present, Coolah landholders have shown considerable initiative in trying to understand the enormity of the task in front of them. Legal decisions taken now in either ignorance or understanding will have implications for the district and their families for generations to come. This has involved considerable time and costs which have been borne by themselves in attempting to make rational decisions in the face of complicated matters of fact or misrepresentations deliberately designed to confuse and coercion to sign agreements for fear of missing out. There have also been sins of omission with vital facts withheld.

The landholders have shown the following initiatives:

- 1) Commissioning a report by Dominique La Fontane of environmental consultants 'Pitt and Sherry':  
"Wind Farm Developments in Coolah NSW Region Optimising financial returns and other issues of concern". Brief prepared for Richard J. Tanner 21<sup>st</sup> July 2009 Appendix 6.
- 2) Commissioning a report by Garrad Hassan Pacific Pty Ltd:  
"Preliminary Wind Farm Layout for Valley of the Winds Landholders NSW" 22<sup>nd</sup> September 2009 (Appendix 7).
- 3) Preliminary discussions with 3 Tier Company to undertake "meso scale modelling" using historical meteorological data and topographical mapping to contribute evidence of the bankability of the project (Appendix 8).
- 4) Preliminary discussions with the large investment banks.
- 5) Two letters from Richard J. Tanner to landholders:  
17<sup>th</sup> July 2009 (Appendix 5),  
18<sup>th</sup> September 2009 (Appendix 5).

It is interesting to contrast the conclusions of these reports with the representations of developers particularly the Garrad Hasson report of the number of turbines on the Windlab areas.

An estimate of the amount paid out in these consulting fees and legal costs of obtaining advice on agreements would be in the vicinity of \$40,000 without costing in the very considerable time spent by Individual landowners obtaining advice and writing reports. An indication of the considerable



legal cost of perusing documents is acknowledged in the Epuron Wind Farm Agreement Appendix 4 involving an offer of \$10,000 for legal costs incurred.

There is an inbuilt reluctance by farmers to contribute in a monetary sense to the initial but vital wind testing. An estimate of the further cost would be:

1) Meso scale modelling	\$40,000
2) Tall Tower wind testing (2 x 185,000)	<u>\$370,000</u>
	\$410,000

The meso scale modelling could be done within 3 months; the tall tower (80 metres) testing would take a further twelve months. The Development Application and layout stage would probably cost in the vicinity of \$2 million but we would not proceed to this expensive stage unless the meso scale modelling and tall tower testing showed that we had a bankable project.

It considered that ability of landowners to supervise and liaise with consultants up to the Development Application stage could be readily achievable. It should be pointed out that landowners would be using the same consultants as would be used by developers. The next stage would be to negotiate a Purchase Power Agreement with a retail energy user and obtain a Renewable Energy Certificate (REC). At this stage it is not known if landholders can apply for REC themselves or whether this remains the domain of retail energy users. A sequential corporate plan to facilitate development has been outlined by the author in Appendix 5. The question which should now be asked is "Can the NSW Climate Change Fund as presently constituted assist in the mammoth task in front of landowners and all the others concerned?" Regrettably the answer is 'no'.

It is highly unlikely that the project of Wind Farm Development at Coolah could even meet the selection criteria for Expression of Interest stage even though the sequential approach has been carefully laid out. The Detailed Application and Selection Criteria is fatuous in respect of this project as commercial development will not require any State funding except perhaps some collaboration with Transgrid in respect of a massive upgrading of the Grid to accommodate the likely addition of power from the Coolah Wind Farms.

What is urgently required is funding for landholder testing of the wind resource to get the whole project to a bankable stage. In the absence of landholder funding for the vital wind testing stage it is highly likely that the whole project will never proceed for some compelling but surprising reasons.

The district of developers has reached a stage where landowners are fracturing into a number of groups:

- 1) Landholders who have signed up.
- 2) Landholders who want a co-operative approach.
- 3) Landholders who will do nothing until the mess is sorted out.
- 4) Developers having signed a small number of landowners who do not have sufficient contiguous land mass to allow development.

Over and above these considerations is the speed at which Renewable Energy Target (RET) is being taken up. The Federal Government has set this target at 10,000 Megawatts.

Already the solar hot water industry has taken up 4000 as their products are deemed to be electricity savers. In reality they are not as they use aluminium frames the production of which uses enormous quantities of electricity. In my discussion with one energy retailer I am led to believe that a further 3000 MW has already been taken up by energy retailers leaving only 3000MW for the whole of Australia. The Coolah wind farms could alone provide at least 2000MW and if sequential systematic development is adopted considerably more.

### Summary of Conclusions

In terms of the specific questions asked for the inquiry to address:

- 1) The role of utility scale wind generation in
  - a) Reducing greenhouse gas emissions generated by electricity production.
  - b) Producing off-peak and base load power.

Wind power is the ultimate clean source of energy with known technology, no requirements for water for steam and minimal operating costs once the large initial investment is made.

The industry standard is that wind turbines can operate at capacity some 30% of the time. Due to the superior nature of wind in the Coolah district the anecdotal evidence is that the Coolah wind farms will operate at 40% of the time. Temperature peaks in a summer heat wave are usually associated with hot north-westerly winds which the Coolah wind farms can provide the power for peak air-conditioning requirements.

- 2) Locating rural wind farms to optimise wind resource and minimise residential and environmental impacts.  
Coolah with its unique ridges and valleys are ideally suited to site wind turbines away from residential areas on which there should be little if any loss of amenity.
- 3) The impact of rural wind farms on property values.  
There can be little doubt that the property values will rise if successful wind farming occurs. This will give rise to resentment between the haves and have-nots. Provided the sequential development of the corporate model is adhered to the value of the cash flow from wind farms can be separated from the value of traditional agricultural and livestock activities.
- 4) Mechanisms for encouraging local ownership and control of wind technology.  
It is vital that a co-operative model as outlined in this submission (Appendix 5) is adhered to otherwise control will end up in corporate hands totally removed from local landowners.
- 5) The potential role of energy generated by rural wind farms in relation to the Australian Government proposed Renewable Energy Target.  
This is a sleeper and arguably the most important area in the whole inquiry. There is every likelihood for reasons outline in the submission that the RET will become rapidly full. There are the very real perverse chances that delay in granting Government assistance for the early vital wind testing stage will see the Coolah Wind Farms miss out on Renewable Energy Certificate and the venture will fail.
- 6) Other relevant matters.

A co-operative approach will smooth out administrative problems associated with the placing turbines on one side or another of the boundaries of adjoining properties due to topographical consideration causing resentment amongst landowners.

12<sup>th</sup> October 2009

Richard J. Tanner

The author is a former member of the Australian Stock Exchange and practised as a stock broker for 20 years. He is practised in the business of reading legal agreements, accountancy and the analysis of business proposals. He is a former member of the Securities Institute of Australia and a committee member of the Australian Shareholders Association. He feels competent to express views outlined in this submission.