

Project Structures, Ownership and Permitting Requirements

Representing Landowners in Wind
Energy Projects
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Overview

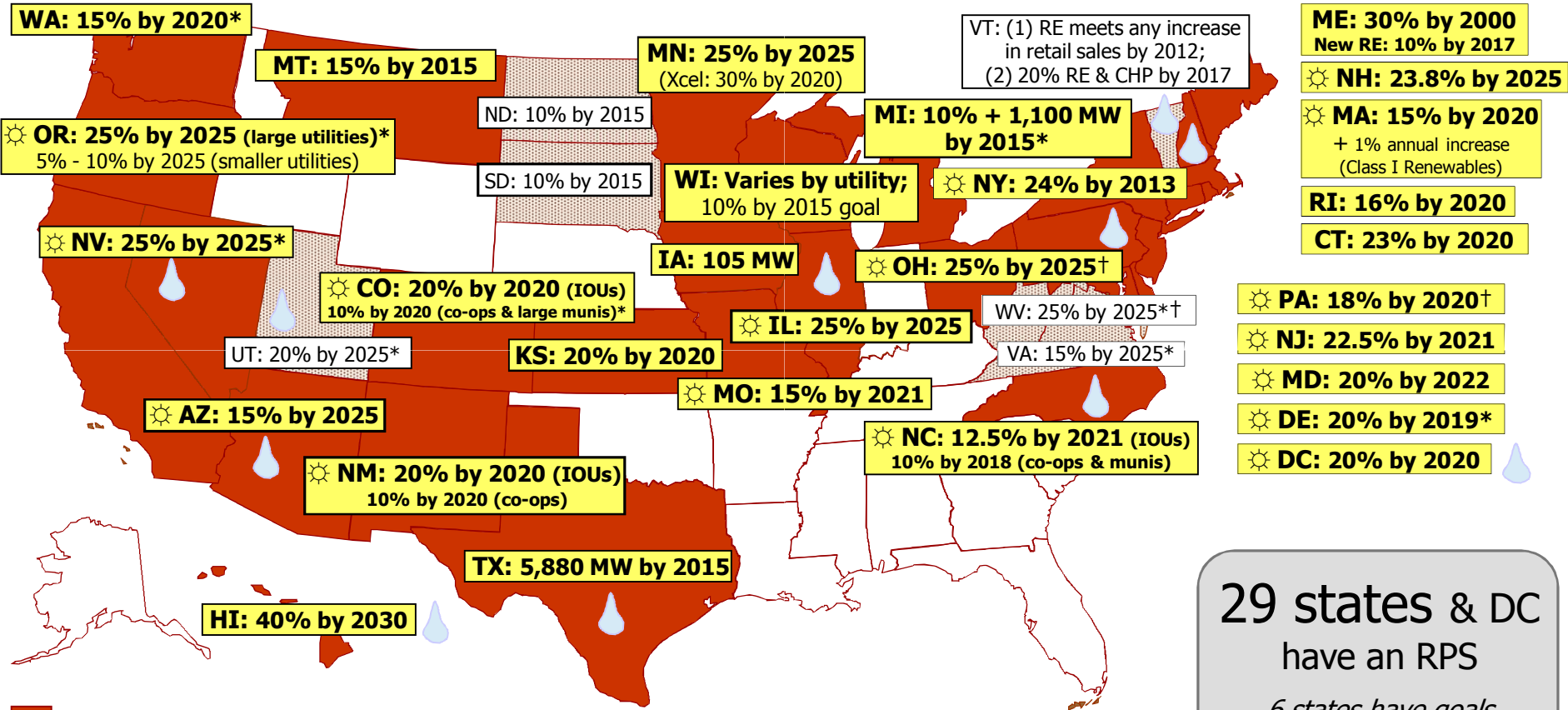
- Market drivers in the wind industry
- Key federal and state incentives
- Impact of incentives on project structure and local ownership
- Landowner involvement in federal, state and local permitting

Market Drivers for Wind

- Renewable Energy Standards
- Federal tax incentives, grants and loan programs
- Threat of future carbon tax/regulation
- Utilities' desire for predictable long-term energy prices

Renewable Energy Standards

www.dsireusa.org / November 2009



29 states & DC
have an RPS
6 states have goals

State renewable portfolio standard
 State renewable portfolio goal

Minimum solar or customer-sited requirement
 Extra credit for solar or customer-sited renewables

Solar water heating eligible
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Federal and State Incentives

- Accelerated Depreciation
- Production Tax Credit (PTC)
- Investment Tax Credit (ITC)
- Cash Grant in Lieu of ITC
- Minnesota C-BED Statute

Accelerated Depreciation

- Investment in wind project assets is recoverable using a 200% declining balance methodology with a first year half year convention that results in recovery as follows:

Year	1	2	3	4	5	6	Total	
	20%	32%	19.20%	11.52%	11.52%	5.76%	100%	

Production Tax Credit (PTC)

- Provides credit of 2.1¢/kWh in 2009
- Provides about 1/3 to 1/2 of the project's value
- Available for 10 years from date project is placed in service
- Wind projects must be placed in service by December 31, 2012.

Federal PTC

- Electricity must be produced by taxpayer
- Electricity must be sold to unrelated party
- PTC must follow revenue from sales
- Passive income restrictions apply

Investment Tax Credit (ITC)

- Wind project developers may elect to receive a 30% ITC in place of the PTC for facilities placed in service in 2009 and 2010, and also for facilities placed in service before 2013 if construction begins before the end of 2010.
- ITC subject to recapture for dispositions within 5 years of in service date.

Cash Grant

- The ITC may be converted to a grant from the Department of Treasury.
- The Treasury Department must pay the grant within 60 days of an application being submitted.

Community-Based Energy Development (C-BED)

- Created by Minnesota Statute to encourage local ownership (IA, NE and MT have similar initiatives)
- 51% of gross revenue from PPA must flow to Qualifying Owners and other local entities
- “Qualifying Owners” are Minnesota residents and certain Minnesota entities made up of Minnesota residents

Project Structures and Ownership

- PTC and C-BED significantly impact ownership of wind in Minnesota
- ITC and cash grant models are new and likely to be short-lived but provide added opportunity for debt-financed community projects

LLCs are Entity of Choice

- Pass-through PTC/ITC
- Pass-through accelerated depreciation
- Qualify under C-BED
- Provide limited liability for owners
- Allow special allocation of depreciation and PTC/ITC

Basics of the Flip Model

Participants

- Landowners
- Developer
- Utility
- Investor

Key Time Periods

- Initial Term
- Flip Date
- Final Term

Tax Issues in a “Flip” Structure

- Partnership tax basics
- Subchapter K-flexibility to allocate profits and losses according to partnership agreement §704(a)
- Special allocations are the basis of the “Flip”
 - Special rules for special allocations

IRS Safe Harbor

- Developer's interest must be at least 1%
- Investor's interest must be at least 5%
- No purchase rights at less than Fair Market Value
- No guarantees of PTC or wind resource

Permitting Requirements

- Minnesota has a comprehensive wind siting and permitting process
- Minnesota Public Utilities Commission and a growing number of counties have extensive experience in permitting wind projects
- Permitting process is open to landowner involvement and participation

State and Local Permits

- State Permits:
 - Certificate of Need (Minn. Stat. § 216B.243)
 - Site Permit (Minn. Stat. Ch. 216F)
 - Route Permit (Minn. Stat. § 216E.03, subd. 2)
- County Permits:
 - Conditional Use Permit (County Ordinance)
 - Site Permit (County Ordinance)

Certificate of Need

- Issued by the Minnesota Public Utilities Commission (PUC)
- Required for a Large Electric Generating Facility (LEGF)
 - Includes a wind projects of 50 MW or more
 - Exemption from CON requirement if:
 - Designed to meet MN RES and passes “reasonableness review”
 - CON also required for high voltage transmission lines (HVTL)
 - CON issued based on the need for the facility

Site Permit

- Issued by the PUC
- Required for Large Wind Energy Conversion Systems (LWECS) (<5MW)
- Power Purchase Agreement (PPA) required
- Must obtain CON before Site Permit will be issued

Site Permit

- General Permit Standards established by PUC (see Jan. 11, 2008 Order)
- PUC currently investigating health impacts and setback requirements

Local Wind Permits

- Conditional Use Permit (CUP):
 - May be required for:
 - Wind Projects less than 5 MW
 - Transmission Lines (not classified as HVTL)
 - HVTL between 100 kV and 200 kV (local review option)
 - Substation (local review option)
 - Application requirements vary
 - Environmental Assessment by local authority may be required

Other Local Permits

- County Permits:
 - Operations & Maintenance Building:
 - Zoning Permits
 - Building Permits
 - Individual Septic Tank Systems Permit
 - Well Construction Permit
 - Other Permits:
 - Impact to Public Waters Determination
 - Driveway Permit
 - Utility Permit
 - Overwidth/Overweight Load Permit
 - Sign Permit
- Township Permits

Other Permitting Requirements

- List of potential federal, state and local permits included in handout
- Resources for permitting requirements:
 - Consultants
 - Minnesota Statutes and Rules
 - PUC website: www.puc.state.mn.us
 - County/Township ordinances and websites

Conclusion

- Federal and states incentives drive project structure and local ownership options
- Landowners are encouraged to participate in federal, state and local permitting process – especially site permit and CUP proceedings