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Negotiating Responsible Tax Breaks on Renewable Energy Deals

A Guide To Community Due Diligence

Executive Summary

Wind and utility-scale solar power generation is the fastest-growing sector of the U.S. electricity market, and development deals with communities occur now almost daily across the country. Such agreements typically include property-tax abatements that encourage developers to build in a particular jurisdiction and that create jobs and other beneficial effects that might not otherwise happen.

Some research suggests tax incentives aren't worth the return, but when private property is left undeveloped or underdeveloped, it may not generate the same public revenues it would if renewable energy development is incentivized.

Benefits flow most commonly to school districts and other public-service jurisdictions like sewer districts and road-maintenance funds.

Few standards exist across the industry, however. The deals are described by various terms from state to state, for instance, although they can be referred to generically as PILOT agreements; PILOT standing for payments in lieu of taxes.

This brief includes general guidance on best community practices for negotiating renewable-energy agreements and **salient detail from three recent agreements between private-sector companies and local governments:**

- In **Wharton County, Texas,** where the Wharton Independent School District negotiated a tax-limitation agreement with AP Solar 6 LLC, which will build the 350MW Red-tailed Hawk Solar Project. The office of the Texas State Comptroller's Office endorsed the project as a way "to invest capital and construct the project in this state," and an economic-development alliance called Powering Texas is promoting such deals.
- In **Franklin County, N.Y.,** where EDP Renewables built the 77.7MW Jericho Rise wind farm in a deal that splits tax revenues among the Chateaugay Central School District, the county and the towns of Chateaugay and Belmont. The deal was struck under guidelines set by the New York State Energy Research and Development Authority.
- In **Raleigh County, W.Va.,** where Raleigh Solar 1, a subsidiary of Denver-based Dakota Power Partners, will build a 90MW solar farm. The Raleigh County Commission passed a resolution in support of the agreement for its "creation and preservation of jobs," likely effects that will "encourage, foster and facilitate new economic development" and "create and develop a more diversified and balanced economy."

While this is a tiny sample of recent agreements, it is illustrative of the lack of consistency across the board, highlighting a dearth of standards that could put communities at a disadvantage during negotiations.

Some best practices to follow in negotiating responsible tax breaks on renewable energy deals:

- ***Conduct up-to-date due diligence on the market and on the proposed site location.*** Factors to consider include availability of robust wind and solar resources, proximity to transmission lines and substations, and trends in electricity demand. Private energy consultants can be helpful in researching such issues.

- ***Obtain an independent cost-benefit analysis.*** Communities should source their own analysis via a competitive request-for-proposal (RFP) process.

- ***Involve all parties in the negotiations.*** Misunderstandings created by leaving people out of talks can drive developers away or undercut public support.

- ***Have a clear tax-exemption policy in place already.*** Keep rules as simple as possible and state clearly what kinds of projects are eligible/ineligible and what minimum criteria must be met.

- ***Negotiate as small an exemption and as short an exemption period as possible.*** Generally speaking, the best deals grant abatements of no more than 50% and for no more than five years. Conduct independent audits of revenue streams every five years.

- ***Make the process transparent.*** All details and timelines should be posted online. All meetings should be open. All actual or potential conflicts of interest should be disclosed.

- ***Channel a portion of tax payments into economic development per se.*** Diversification around how revenues are distributed will provide longer-term benefits.

PILOT programs can bring community benefit from renewable energy development and are best executed when built around guidelines like the ones described here.

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Overview

Some research indicates that local tax incentives to businesses are not always necessary or even advantageous to local communities.

Most companies that have been granted tax incentives to invest in communities by either moving to town, staying in town, or expanding would have done so without incentives, according to one recent study.[1] And the **American Wind Energy Association** does not mention local tax policy as a consideration to take into account when siting a project.[2] According to another study, incentives have served mostly[3] to provide a politician or politicians with a development deliverable to take credit for.[4] A recent study by the **Brookings Institution**[5] notes that political pressure to deliver near-term economic results is "intense," and cites as a prime example the tactic employed by **Amazon** to pit U.S. cities against one another in the race to site its second headquarters, which eventually went to Arlington, Va.

While most of the research on tax incentives has looked mainly at large manufacturers, a similar outcome—that is, no clear effect on siting decision—may be occurring in the fast-growing renewable energy industry, especially when one considers the geographical restrictions on wind and solar developers,[6] who require a combination of access to the natural resource in abundance and proximity to transmission lines.

Yet state and local tax incentives to lure wind and solar projects—the fastest-growing segment of the electricity-generation industry[7]—are increasingly common. Among the most typical is a simple exemption—or abatement—of local property taxes, normally for 10 to 20 years, after which the project developer pays a full annual tax burden.

With state-mandated renewable energy portfolios expanding,[8] and with growing demand from corporations[9] for renewable power, the pressure on local governments and school districts to approve utility-scale solar and wind projects has never been more pronounced—and is likely to accelerate.

[1] Nathan M. Jensen. Job creation and firm-specific location incentives, Journal of Public Policy, Cambridge University Press. March 2017.
[2] American Wind Energy Association. Project Development: Building a new wind farm means finding the right location. Accessed October 2020.
[3] Kenyon, Langley, Paquin. Rethinking Property Tax Incentives for Business. Lincoln Institute of Land Policy. 2012.
[4] Nathan M. Jensen, Edmund J. Malesky. Incentives to Pander. Cambridge University Press. 2018.
[5] Joseph Parilla, Sifan Liu. Examining the Local Value of Economic Development Incentives. March 2018.
[6] Interview with Sarah Mills, senior researcher, University of Michigan. October 2020.
[7] U.S. Energy Information Administration. Annual Energy Outlook 2020. Jan. 29, 2020.
[8] National Conference of State Legislators. State Renewable Portfolio Standards and Goals. Accessed Oct. 16, 2020.
[9] IEEFA. Facebook's Green Energy Goals Are Speeding the Transition of New Mexico's Electricity Sector. May 2020.

No national standards exist for property-tax relief incentives for businesses, however, and taxation oversight ranges widely. The use of incentives has increased significantly over the past few decades, however, and they are now in place, in one form or another, in every state.[10]

As the examples below suggest, revenues from renewable projects also vary greatly from place to place, but, in general, they go directly to school districts and other public-service jurisdictions to help fill crucial local budgetary needs.[11]

Payments from renewable energy projects can result in a significant increase in revenue compared to other local revenue sources, especially in small communities that don't have much revenue to begin with.[12]

On a statewide basis, such deals can mean big money. In 2018, Texas, the largest producer of wind energy nationally and one of the fastest-growing solar producers, was the largest beneficiary of wind energy revenue, at $285 million, followed by California ($86 million).[13] According to the **Texas Comptroller of Public Accounts,** of 545 local school tax exemption agreements currently in effect, a total of 330—or 60%—involve solar and wind companies.[14]

Clearly, tax incentives are associated with the expansion of renewables, just as they were associated with the buildout of "new manufacturing plants, corporate headquarters, or research and development centers"[15] after the recession of 2008-2009. That said, tax breaks meant to attract private-sector investment attract perpetual scrutiny as public-policy watchdogs and some policymakers continue to question whether they are a good deal for communities.[16]

One thing has become apparent: Unfair, short-sighted or badly crafted agreements can lead to conflict down the road. Two years ago, for example, **Avangrid Renewables** filed a lawsuit challenging the property value assessment on its 322MW **Maple Ridge Wind Farm** in **Lewis County, N.Y.,** about 150 miles northwest of Albany.

The lawsuit gave the company leverage in renegotiating a complicated 10-year-old PILOT agreement that was set to expire next year. The renegotiated agreement reduced Avangrid's annual payments from about $8 million per year to an average of $3 million per year through 2031.[17] But it kept Avangrid in town, and it will

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[10] D.A. Kenyon, A.H. Langley, B.P. Paquin. Rethinking Property Tax Incentives for Business. Lincoln Institute of Land Policy. 2012.
[11] American Wind Energy Association. Wind Powers America: Annual Report 2019.
[12] New York State Energy Research and Development (NYSERDA). New York Wind Energy Guide for Local Decision Makers.
[13] American Wind Energy Association. Wind Powers America: Annual Report 2019.
[14] Texas Comptroller of Public Accounts. Chapter 313 School Value Limitation agreement list.
[15] Boston Federal Reserve. The Effective Use of Property Tax Incentives for Economic Development. August 5, 2013.
[16] Ibid.
[17] NNY360. Maple Ridge Wind Farm signs new PILOT agreement through 2031. December 12, 2019.

provide revenues and produce electricity with little environmental impact, for another decade.

Three Venues, Three Examples

Wharton County, Texas

In Wharton County, Texas, about 60 miles southwest of Houston, the **Wharton Independent School District** (ISD) this year negotiated a tax-limitation agreement with **AP Solar 6 LLC**, which is building the 350MW **Red-tailed Hawk Solar Project**.

Under the agreement, the company's tax liability to the school district will be reduced from a potential $23.2 million over the first 15 years of operation to $7.6 million, for a total tax savings to the developer of $15.6 million.[18] As part of the deal, AP Solar 6 will return $2.9 million of those savings to the school district in the form of "supplemental payments."

The Texas state comptroller determined that the limitation in the agreement on appraised value of the Red-tailed Hawk Solar Project was a deciding factor in the applicant's decision "to invest capital and construct the project in this state,"[19] which gets at the whole point of offering tax incentives to developers.

Renewable energy development is not necessarily a seller's market. In Texas, a handful of renewable energy developers have walked away in recent years after negotiations on supplemental payments became too onerous.[20]

Powering Texas, a coalition of mainly local chambers of commerce and economic development agencies, asserts that tax-exemption programs are vital to helping Texas compete with its wind-rich neighbors of Kansas, Oklahoma and New Mexico. "Many dozens of wind energy projects – and billions in investment – have been lured to the state of Texas with the help of (tax exemptions)."[21]

Franklin County, New York

In a PILOT agreement negotiated four years ago in Franklin County, N.Y., about 10 miles from the U.S.-Canada border, **EDP Renewables** agreed to pay an estimated annual average of $337,000 per year for 30 years for its 77.7MW **Jericho Rise wind farm**.

The revenue is split among the **Chateaugay Central School District** (59%), the county (13%) and the towns of **Chateaugay** and **Belmont** (14% each).

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[18] Texas Comptroller of Public Accounts. Amended Certification of AP Solar 6 project in Wharton County.
[19] Texas Comptroller of Public Accounts. Amended Certification of AP Solar 6 project in Wharton County.
[20] Interview with Dale Craymer, president of Texas Taxpayers and Research Association. September 2020.
[21] Powering Texas. Chapter 313: Bringing New Resources to Rural Texas.

In exchange for the total of PILOT payments, the county has exempted EDP from $3.7 million in tax liability over the 30-year period. In addition to PILOT, EDP has agreed to make other payments totaling $453,000 per year. All told, EDP will pay the community nearly $24 million over the 30-year life of the deal.[22]

In addition to the construction activity it will require, the wind farm is expected to create 19 new long-term jobs resulting in $1.3 million in annual income over the next 30 years, and annual new spending (sales) in the county of nearly $7 million.[23]

Not providing some kind of tax relief could well have driven the developer away.

The **New York State Energy Research and Development Authority** (NYSERDA) warns communities about opting out of the state's solar tax-exemption law, which allows for PILOTs, noting that opting out "may unintentionally prevent solar electric development at the local level. Activity in other states suggests there is less solar development in jurisdictions that opt out of the property tax exemption."[24]

Raleigh County, West Virginia

In Raleigh County, W.Va., about 60 miles southeast of Charleston, the county commission voted 2-1 in early September to approve a 20-year PILOT agreement with **Raleigh Solar 1**, a subsidiary of Denver-based **Dakota Power Partners**, which plans to start construction next year on a utility-scale 90MW solar farm. The project in early October became the first to win approval under a new state law intended to encourage solar development.[25]

Under the PILOT agreement, the company will convey ownership of the project to the county, which will then lease it back to the company for 20 years, after which title reverts to the company. Over the course of the deal, the company will pay the county an average of $100,000 per year in lease payments,[26] about 80% of which will benefit schools.[27] That payment represents a substantial reduction from upwards of $1 million per year that the project could have cost the company under the county's taxation authority.[28] On the other hand, it assures the county a new revenue stream for years to come.

The dissenting commission vote on the deal was by Linda Epling, whose husband, Doug Epling, owns three coal mines[29] in West Virginia and had publicly opposed the

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[22] County of Franklin Industrial Development Agency. PILOT Application Impact Analysis.
[23] Ibid.
[24] NYSERDA. Understanding New York States Real Property Tax Law § 487.
[25] Associated Press. Solar project in West Virginia gets OK to start construction. October 6, 2020.
[26] Raleigh County Commission. Resolution Authorizing and Approving PILOT Agreement With Raleigh 1 Solar LLC. Sept. 2, 2020,
[27] WVVA. Solar farm project clears hurdle in Raleigh County Commission. September 1, 2020.
[28] Interviews with Ted Boettner, senior researcher, Ohio Valley River Institute; and Doug Epling, a West Virginia coal-mine owner. September 2020.
[29] WVMinersBaseball.com. Bio of owners.

solar project, saying it would harm the state's coal industry.[30] In voting no, Linda Epling said she thought the tax break was too generous.[31]

Local anti-solar views stand in contrast to those of many community leaders across the country who look more broadly at the benefits of renewable energy development. The **Raleigh County Commission**'s resolution approving the PILOT states the project will "promote the creation and preservation of jobs … encourage, foster and facilitate new economic development … (and) create and develop a more diversified and balanced economy," an assertion based on a Dakota-commissioned analysis that estimated the project would bring $40.7 million in economic activity to the county during the 20-year PILOT period.[32]

During negotiations around the Raleigh Solar project, the lawyer for Dakota Power Partners made it clear that the company was considering other sites, including one in Virginia that had favorable tax incentives.[33] The company also argued that taxation certainty, which PILOTs can provide, are key in obtaining favorable financing,[34] which can make or break a project.

Best Practices

Having a prudent process in place for deciding whether and how to enter into a tax-exemption agreement is vital. Some tips:

- **Conduct up-to-date due diligence on the market and on the proposed site location.** To negotiate a fair deal for the community—and to avoid spooking developers—local government officials should look at the transaction from the industry's point of view and try to understand the dynamics that make their communities attractive: Availability of robust wind and solar resources, proximity to transmission lines and substations, and trends in electricity demand.[35] Many local governments and school districts wisely employ private energy consultants to research such issues. In New York, which in 2019 was the fourth fastest-growing state in new wind energy capacity,[36] NYSERDA offers several online resources to help guide local governments in siting and managing clean energy development.[37]

- **Obtain an independent cost-benefit analysis.** Host communities often rely on economic analyses paid for by project developers. Such studies sometimes overestimate job creation and other economic benefits.

[30] The Register-Herald, Beckley, West Virginia. Solar Initiative Draws Heat from Coal Interests. July 20, 2020.
[31] WOAY News. Raleigh County Commission votes in favor of tax payments. September 1, 2020.
[32] Downstream Strategies. Economic Impact Analysis for Raleigh Solar I LLC. June 12, 2020.
[33] The Register-Herald, Beckley, West Virginia. Solar Initiative Draws Heat from Coal Interests. July 20, 2020.
[34] Interview with Jay Schoenberger, co-founder, Dakota Power Partners. October 2020.
[35] Interview with Greg LeRoy, Executive Director, Good Jobs First. September 2020.
[36] American Wind Energy Association. Wind Powers America: Annual Report 2019.
[37] New York State Energy Research and Development Authority. Clean Energy Siting for Local Governments.

Communities should source their own analysis in a competitive request-for-proposal (RFP) process.

- **Involve all parties in the negotiations.** Tax or PILOT payments are usually divided among several taxing districts in the community where the renewable project is located. To avoid conflict, misunderstanding or delays that could either drive a developer away or upend public support, every taxing district and affected government entity should be at the table.

- **Have a clear tax-exemption policy in place already.** The amount of taxation developers facing may be less important to them than the certainty of what the taxation will be through the years.[38] If local taxing districts have the authority to exempt development from property tax, having an established policy before the developer arrives can negate much of the uncertainty associated with negotiations. For the same reasons, and to more easily attract developers, it is also a good idea to keep tax-exemption/abatement/PILOT policies as simple as possible. Policies should state clearly what kinds of projects are eligible/ineligible and what minimum criteria (e.g. number of jobs created, commitments to a fair wage for workers) must be met.[39] Clawbacks can be included to compel a developer to remit a portion of its tax breaks if promises are not kept.

- **Negotiate as small an exemption and as short an exemption period as possible.** This is the advice of **Nathan Jensen**, a professor in the **University of Texas-Austin Department of Government** who has crunched data on tax exemption deals nationally and abroad. Jensen advocates for granting an abatement of no more than 50% and for no more than five years. Jensen also suggests conducting an independent audit after the first five years to ensure the project is producing the economic benefits forecasted.[40]

- **Make the process transparent.** As with any issue of public importance, allowing public access to meetings and documents is vital to building and maintaining confidence in renewable energy development, especially where taxation is involved. Agreements between local government and developers should be posted online.[41] It is also a good practice to hold a public hearing that has proper advance notice, and to ensure that deliberations and votes are held in open meetings. All government officials involved in the siting/approval process should disclose real or potential conflicts of interest, including landholdings that may be affected, and personal or business ties to the developer or its competitors and to any other companies that would benefit from the development—or any interest that would be hurt by it.

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[38] Sarah Mills, senior researcher, University of Michigan. October 2020.
[39] For an example, see Memphis & Shelby County Industrial Development Board PILOT Program Overview.
[40] Interview with Nathan Jensen, professor of government, University of Texas in Austin. September 2020.
[41] The Texas state comptroller and the Shelby County Economic Development Growth Engine in Tennessee post tax incentive agreements online.

- **Channel a portion of tax payments into economic development.** Many tax-incentive deals are structured so that revenues go into maintenance and operations of local governments and school districts, creating a new funding source that could lead to dependency risk should the project falter. Investment in other economic development would help provide a longer-term benefit to the community. As part of the deal reached with New York's Franklin County, the wind-farm developer agreed to pay a total of $336,000 into the county's economic development reserve fund, as well as $1.5 million in fees to the **Franklin County Industrial Development Agency**. These payments were to occur during the first five years of operation.

Conclusion

Though economics are not the only consideration for supporting renewable energy projects, any local government contemplating one in its back yard should be vigilant as to whether the project is structured fairly. A well-crafted, fully vetted and equitable agreement will not only help ensure that the project is beneficial but will encourage and help guide other communities that are exploring renewable projects while maintaining and even increasing public support for such projects.

About IEEFA

The Institute for Energy Economics and Financial Analysis (IEEFA) examines issues related to energy markets, trends and policies. The Institute's mission is to accelerate the transition to a diverse, sustainable and profitable energy economy. www.ieefa.org

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