



# WIND POWER FINANCE & INVESTMENT SUMMIT 2009

## Due Diligence for Wind Acquisition

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February 11, 2009  
San Diego, CA

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## Overview

- Due Diligence
- Ownership and Corporate Matters
- Real Estate and Wind Assessment
- Power Purchase and Sales
- Interconnection/Transmission
- Turbine Supply
- Construction
- Permitting
- Legal and Financial
- Tribal Issues
- Other Items/Lessons Learned

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## Due Diligence

- Due Diligence: The process of evaluating a prospective business decision by getting information about various aspects of the other party
- Goals: Eliminate surprises and make sure you get what you think you are paying for
- Due Diligence Request List
- Data Room
- Assignability and Change of Control
- Often Painful for a Seller
- Necessary Cost

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## Ownership and Corporate Matters

- Project Companies and Holding Companies
- Where are the assets held?
- Owners and Management
- Joint Ventures, Development and Similar Arrangements
- Prior Owners, Acquisitions and Sales
- Company Loans
- Governing Documents and Corporate Formalities

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## Real Estate and Wind Assessment

- Real Estate
  - Term and Pricing
  - Options/Leases/Recordings
  - Lender Protections
  - Status of Rent Payments
  - Missing Land Rights
  - Setback Waivers and Noise Matters
  - Competing Projects
  - Other Land Uses (hunters, ATVs, Mining, antennas)
- Wind Resource Assessment

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## Power Purchase and Sales

- Pricing and Terms
  - Contracted Capacity; Performance Guarantees
- Delay and Performance Liquidated Damages
  - Milestones and Deadlines
- RECs and Environmental Attributes
- Security and Credit Support
- Force Majeure; Curtailment
- Net Metering
- Property Taxes
- Assignment and Transfers of Ownership

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## Interconnection/Transmission

- Feasibility Studies and
- Interconnection Point
- Network Upgrades
- Metering Requirements and Protocol
- Security

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## Turbine Supply

- Scope of Work
- Payment Schedule
- Milestones
- Liquidated Damages
- Warranties and Guarantees
  - Defects
  - Availability
  - Power Curve
  - Noise
- Limitations of Liability
- Excused Performance
- Remedies
- Performance Security and Credit Enhancement
- Title and Risk of Loss

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## Construction

- Scope of Work
- Pricing
- Payment Schedule and Retainage
- Completion Milestones and Guarantees
- Liquidated Damages
- Warranties
- Remedies
- Excused Performance
- Liens
- Contractor Creditworthiness
- Payment and Performance Bonds
- Force Majeure
- Contractor Compliance with Other Project Contracts
- PTC Risk

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## Permitting

- Federal, State and Local
- Siting Procedures
- Environmental Assessments and Studies
- Endangered Species
- Cultural Resources (Historic and Prehistoric Sites)
- Wetlands and Waters
- FAA

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## Legal and Financial

- Lawsuits and other disputes
- UCC Searches and Lien Filings

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## Tribal Issues

- Sovereign Immunity
- Authority
- BIA Approval
- Identify Key Parties
- Venue and Governing Law
- Taxes



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# Other Items/Lessons Learned

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# DO YOUR DUE DILIGENCE!

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