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Understanding Real Estate for Energy Projects

In the highly competitive environment of energy project development, understanding real estate is critical. Without this understanding, a project can quickly become compromised or even halted. Obtaining the official “rights” to construct a project on a piece of property can be complex, involving legal requirements that vary by state and sensitive timelines for documentation and team coordination.

Signing a lease for energy project development may seem a simple task. Certain laws, however, can have a substantial impact on the entire process. In North and South Dakota, for instance, a wind energy developer cannot retain the option to develop on a parcel for more than five years. Although this period might be sufficient for development and construction, transmission studies and interconnection requests can be backed up for decades. These potential constraints can put a wind project at enormous risk with only five years to become operational. If land leases are terminated and rights revert back to the landowner, signing a new option agreement is always possible – but entails the time and expense of re-negotiations and an uncertain outcome.



Curative work, or ensuring that the rights of the developer are legal and allow purchase of a title insurance policy, is also essential. Without proper curative work in place, the developer can be liable for title failure or forced into last-minute scrambles to acquire rights and negotiate with title insurance companies. In one case, for example, it was not discovered that two wind turbines and associated collector lines were located on land outside of the project owner’s control until after construction was complete. The time, expense, and risk of undertaking negotiations so late in the project could have been avoided with a better understanding of real estate issues prior to construction.

The proper timing of curative work is paramount. While the November TOPICs addressed how land surveys and title work need to happen in parallel, curative work must fit in as these processes come together. This coordination expedites negotiations with the title insurance company and allows the developer to obtain a better price on the title insurance policy in states where prices are negotiable. It also facilitates negotiations for various title endorsements that limit risk to the project developer. If the land management phase of a project is performed correctly, with proper landownership information in place, the curative work becomes straightforward because there is no need to amend existing contracts with landowners.

TOPICS



A complete understanding of real estate issues for energy projects translates into a properly managed land acquisition process. Close interaction with a comprehensive team of land surveyors, title examiners, and land acquisition professionals can ensure that last-minute real estate issues don't incur unnecessary liability on your next project. As profiled in the February TOPICs, being proactive through Pre-Design steps such as land acquisition can help you manage time, expense, and risk while maximizing project success.



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