

MURTHA CULLINA LLP

A T T O R N E Y S A T L A W

ALTERNATIVE ENERGY: KEY LEGAL ISSUES

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Rob Munnely | Murtha Cullina LLP | 617.457.4062 | rmunnely@murthalaw.com

OVERVIEW

- Renewable Energy Sources Include Wind, Solar, Fuel Cells, Hydro and Bio Energy (such as use of organic waste to create fuel).
- State and National Support for Green Energy and Energy Efficiency Has Increased (e.g., MA Green Communities Act).
- Farms are Often Good Sites for Renewable Facilities (more land, fewer neighbors, business savvy, etc.).
- Watch for Business/Regulatory Hurdles (e.g., Siting; Uncertain credit markets).

SUITABLE SITE

- Suitable Site for Resource (e.g., Strong, Steady Wind; Unobstructed Sun, facing south if possible).
- Other Project Needs (land size/water/nearby utility lines (if connecting to grid)).
- Possible Use of Consultants/Counsel to Determine Feasibility.

APPLICABLE SITING LAWS

- ID Applicable Local Bylaws (e.g., Minimum Lot Size, Height, Noise, Birds, Environmental).
- Siting Requirements are “Show Stoppers” so must be treated with care; support from Town and neighbors is critical.
- Any State Requirements? (None for many renewables.)

FINANCING

- What is Business Case for Project (Potential Revenues v. Likely Costs)?
- Availability of Grants/Rebates?
- Availability of Tax Deductions/Credits?
- Third Party Developer?
- If not, how financed (Self? Bank loan?)
- Corporate form (LLC? Partnership?)

POSSIBLE SUBSIDIES FOR RENEWABLES

- MTC Commonwealth Solar Program
- MTC Small Renewables Program
- USDA Rural Energy for America Program
- Rural Development Value Added Development Grant Program
- MA Excise Deductions and Exemptions
- MA Sales Tax Exemption
- Fed. Corp. Tax Credit
- Fed. Production Tax Credit

UTILITY INTERCONNECTION

- Investor-owned v. Municipal issue.
- Investor-owned should have standard approach to time/cost estimates for grid improvements.
- Responsibility for improvements and total costs?
(Probably you.)

PURCHASES OF POWER/RECs

- Negative or net metering for small projects. NOTE: net metering details (e.g., 1% cap, neighborhood metering) are being reviewed by MA DPU.
- Renewable projects generate electricity and renewable energy credits (RECs) – need to extract value for both.
- Terms of Purchase Power Agreement with Utility or Non-Utility Buyer?
- Long-term contract may be needed to obtain Project financing.

SELECTED RESOURCES

- MA Department of Energy Resources (www.mass.gov)
- Mass. Tech Collaborative, Renewable Energy Trust (www.masstech.org)
- MA Department of Ag. Resources, Renewable Energy Coordinator (www.mass.gov)
- MA Farm Energy Program (www.berkshirepioneerrcd.org)
- UMASS Agriculture and Landscape Program - Green Energy Program (www.umass.edu)
- Northeast Energy and Commerce Assn (www.necanews.org)

QUESTIONS?

DISCLAIMER

The information contained herein constitutes educational material. Before undertaking any alternative energy project, you should consult an attorney in your area.