

The truth about Duke Energy's Gail Windpower Project

A response to Duke Energy's false claims to discredit us

On May 27, you may have received a letter from Duke Energy's Milton Howard attacking many of the statements that have been made by the Arcadia Wind Study Group. Why would one of the nation's largest companies pay its attorneys thousands of dollars to try to discredit a small citizens group? **Maybe people are listening to what we are saying and aren't believing what Duke is saying.**

We've written our own 18-page document responding to each one of Duke's claims. Here are the highlights:

The Turbine Map you've seen on the internet is right. Duke continues to assert that the Turbine Map is inaccurate, or that turbine locations are not yet determined. These locations are the exact coordinates that Duke filed with the Federal Aviation Administration. Mr. Milton Howard's name is on each application. By claiming that turbine locations have not yet been decided, Duke hopes it can lure people to sign its leases by thinking they will get the large payments that come with a turbine when they will probably not do so. It is true that if you compared the turbine locations to a list of landowners who had signed with Duke on February 1, more than half of the landowners of turbine locations had not yet signed with Duke. (A letter from Duke's lawyer lists all signers as of the same date.)

Turbines need to be 1 1/4 miles away from non-signing landowners and their homes. Duke claims that turbine manufacturer GE says setbacks should only be 1.5 times turbine height, or 750 feet for a 500-foot turbine. This is only a safety recommendation about the safety risks from ice throw from ice attached to turbines. This recommendation is not meant to address noise, vibration, shadow flicker, loss of property values, or other concerns of neighboring property owners.

Duke claims about noise are wrong. Duke claims that a turbine is only as loud of two people standing "3 to 5 feet apart." Even though this is wrong, would you like to have to listen to two people talking, 24-hours a day, without any chance to get away from them? Government-funded research from the Acoustic Ecology Institute has concluded that 25% of people living in rural areas will be bothered by turbine noise at 40dB, and 50% of people are bothered by turbine noise at 45dB. A quarter to a third of these tend to say that the noise disrupts their sleep or effects their health. According to this research, by keeping turbines over a mile from residences (with noise at 35dB), there will be no noise issues. At Duke's proposed 45dB limit, we can expect that half of those living close to turbines will be disturbed by the constant noise, and that a good number will want to move away. We think this wrong.

Nearly all of the homes in Duke's property value study are over a mile away and not within view of turbines. Duke and the wind industry cite a study written by scientists working for the U.S. Department of Energy (the "Berkeley Study") which was favorably cited by the Michigan Public Service Commission. Here's the problem: this study is irrelevant, because none of the properties studied were close enough to a turbine. The study's authors admit that the study is irrelevant, and refuse to release their data for the public to examine. Of the home sales studied after industrial wind turbines are installed, only 67 of 4,937 (1.4%) sales are within 3000 feet of a turbine. Only 125 (2.5%) were within a mile of a turbine. Over half – 56% – of the sales were more than three miles from a turbine. 85% of the property studied did not have a view of a turbine.

Nearby Turbines reduce property values. Why do you think Duke refuses to put aside money for homeowners whose home values are reduced by turbines? A March 2011 study of homes in upstate New York by researchers at the Clarkson University School of Business had results that appeared "to indicate that proximity to wind turbines does have a negative impact on property values." Half a mile from turbines property values dropped 10.9-17.7%. Even houses a mile away dropped 7.7-14.8%. If you have signed a wind lease with Duke, the only way to protect your property values is for the township is to pass a industrial wind energy zoning ordinance with strong property rights protections.

Duke should have to put aside money to pay for decommissioning and removal in a bond from year one. Duke can transfer (assign) its lease to a third party at any time. When it does so, Duke will have no obligation to pay to remove the turbines, even if the new owner defaults or goes bankrupt. We know that the original signers, to their credit, tried to get Duke to remove this provision. Duke refused. We should not assume that Duke will be the sole owner of this project for 25 years. In fact, many of Duke's wind power projects were recently purchased from other companies. We should not assume who will own these projects in the next 15 years, or whether they will be profitable, or whether the new owners will not be able to default on their obligation to remove the turbines. If Duke is

going to “invest millions of dollars to construct a single turbine”, putting money aside from year one to make sure the landscape is not permanently scarred should not be a problem.

Do you really think that Duke will “voluntarily” pay townships if the business personal property tax is repealed? If you no longer had to pay taxes would you voluntarily make payments in lieu of taxes? Duke has vigorously challenged its tax bills in other states. In both 2009 and 2010, Duke challenged its personal property tax bills in Ohio, and has repeatedly appealed its assessments. In Wyoming, tax assessors used the turbine values that Duke had promised in its state permit applications to determine its taxes. Duke told Converse County officials that they could expect to receive \$2.8 million in property taxes per year and \$13 million over 5 years. When they received the tax bill based on these amounts, Duke claimed it owed only half as much.

Duke can terminate its pooling agreement selectively with individual landowners at any time with 30 days notice. Landowners have no way of getting out of Duke’s agreement. In exchange for \$47.59 per acre per year, landowners sign away their right to object to whatever “noise, audio, visual, view, light, vibration, air turbulence, wake, electromagnetic, television reception, shadow flicker, ice or weather created hazards” the presence of turbines as close to 1000 from homes creates. If these are not problems, then why are landowners being asked to sign away their rights to object to these hazards?

The original landowners who negotiated the lease in Benzie County tried to remove the ability of Duke or its successor to selectively terminate leases where it does not place a turbine. Duke refused. This is how the landowners’ own lawyer explained it to Duke in an e-mail: “[The landowners] are concerned that this termination provision that you put back in gives Duke the ability to terminate all leases other than those for the landowners with turbines (and for landowners with turbines, to terminate all portions of the lease other than those absolutely necessary to maintain and operate the turbine). In other words, Duke can selectively terminate leases and do away with the pooling agreement which has been so important to the landowners all along. This brought up the related concern that Duke can selectively exercise its options with respect to the Operational Term to the same end – only exercise the options on the smallest portions of the land necessary to maintain and operate the turbines and in effect do away with the pooling agreement.” The response: **DUKE WILL NOT DELETE THIS.** The attorney attempted to add a “termination fee” to compensate landowners whose leases were terminated. **Duke refused.** **There is nothing to stop Duke or its successor from terminating all of the leases except those that it absolutely needs.** Not only do 1.25 mile setbacks protect the rights of neighboring landowners. They also stop Duke from prematurely terminating the leases of landowners who do not have turbines on their land.

The lease does have a “gag” or confidentiality clause. Lease signers can not disclose any of Duke’s “confidential information”, which include the entire lease agreement, meteorological data, sales information, and royalty percentages, to anyone other than immediate family members and professionals with a clear need to know such as an attorney or financial advisor. If any of these third parties reveal confidential information, then the landowner is liable to Duke as if the landowner himself had disclosed the information.

A binding arbitration clause is giving up your legal right to go to court and have your case tried by a Judge and a Jury. Lease signers agree to have any dispute decided by an arbitrator who is not a judge. They also lose their right to the use of discovery procedures. Milt Howard says that large companies prefer binding arbitration to litigation. He is correct. You have probably noticed such a provision in the fine print of your credit card agreement or cell phone agreement. Why do they prefer this? Because the deck is stacked against the weaker party.

Lease signers have no meaningful say about where Duke can put a turbine on their land. Milton Howard claims that a landowner can provide a “Site Development Plan” to a landowner. While Duke is prohibited from interfering with existing structures and tree cover, otherwise it can do whatever it wants. If you carefully read the lease, the reason that Duke is obligated to give a lease signer a “Site Development Plan” is in order so that the landowner is able to comply with his obligations to not interfere with Duke’s turbines or other structures. **According to the lease, the landowner does not have the right to object to Duke’s “Site Development Plan”.**

Duke did write a threatening letter to Pleasanton Township. Duke’s attorneys wrote a letter to Pleasanton Township in which they claimed that many parts of its proposed wind energy zoning ordinance are unconstitutional. Milton Howard claims that this was not a threat. In fact, this is exactly how lawyers make legal threats. Duke’s claims its Freedom of Information Act (FOIA) request asking for all township documents on wind energy systems for the last three years was not an intimidation tactic. It was not, as Duke claimed, “just keeping up with the discussion.”