

C O M M E N T

REINFORCING THE POSITIVE BENEFITS AND ATTITUDES

by Hilary Clark

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I am going to address some high-level topics, because we could easily get into the weeds on a lot of these discussions, and it is an industry that invokes a lot of emotion. I want to step back and level set on the truth about wind. There are 150 gigawatts of installed wind capacity across the United States. There are greater than 72,000 wind turbines currently operating across the United States. Wind generates about 10% of U.S. electricity. There is a significant amount of capital investment that has been made across the country in wind energy.

I want to jump to some facts about Indiana specifically. The installed capacity currently in Indiana is 29 projects: \$24.6 million in state and local taxes and \$23.2 million in average annual lease payments. Breaking that down into the average land-lease payment per megawatt for a landowner, it equates to, on average, \$6,355 per megawatt, adding a significant amount of income to landowners who host these projects and helps diversify their income.

Unfortunately, the article highlights the current trend across the United States of local opposition, which is one of the biggest threats to deploying clean energy. In 2023, the Sabin Center for Climate Change Law at Columbia Law School found that organized opposition is in 35 states, resulting in at least 228 significant local restrictions against wind and solar and other renewable energy facilities.¹

However, Lawrence Berkeley National Lab has looked at attitudes toward wind in recent surveys and, even though we are seeing an uptick in local opposition, generally, the attitudes toward these projects over time, once installed, are positive among the majority of people who live nearby. Similarly, in a recent solar survey, 85% of the

respondents had a positive or neutral attitude toward the projects located near them. The overall positive attitudes outnumbered the negative by a 3:1 margin in those surveys. So, we are seeing more positive attitudes toward these projects, but they can be drowned out by the opposition tactics, which is highlighted in Prof. Christiana Ochoa et al.'s article.

Additionally, the study did indicate that fairness of the process, which the article highlighted, is one of the main factors that can influence peoples' attitudes. That is something that the industry recognizes and understands that there are opportunities for improvement.

In the past, there may have been some mistakes made, and the industry recognizes there are things that we can do better to engage with the community. We hear about the importance of communicating early and often, sharing information, working with trusted advisors, and sharing data. The industry recognizes and is working toward this approach.

However, the article disproportionately focuses on the negative and the opposition's talking points. For example, the authors reiterate a lot of the negative impacts around wildlife, sound, health, aesthetics, shadow flickering, and property values. But even though the authors mention that people who are skeptical of wind projects will say they are concerned about health, there are hundreds of studies over 20 years that show that wind turbines do not have significant health impacts.

Similarly, with shadow flicker, there are studies that show it does not result in negative health impacts. Recent property value studies indicate there may be an initial dip upon mention of a project and during construction, but they recognize a recovery over time within five to seven years. There is no evidence of long-term property value impacts adjacent to these projects.

It is important to be able to counter some of the opposition tactics or it is playing into the opposition. And while it is important to highlight the challenges that we are facing, it is also important to highlight the actual data.

Similarly, we do recognize there is a change in landscape with the addition of wind projects. However, visual impacts are subjective and what one person might find as a negative, another person might find as a positive. We do see that in some of these studies around attitudes.

Editors' Note: Hilary Clark's Comment is based on an edited transcription of her remarks at the Environmental Law and Policy Annual Review conference. See 2023-2024 Environmental Law and Policy Annual Review Conference, available at <https://www.eli.org/events/2024-environmental-law-and-policy-annual-review-elpar-conference>.

1. Matthew Eisenson, *Opposition to Renewable Energy Facilities in the United States*, Sabin Center for Climate Change Law, https://scholarship.law.columbia.edu/sabin_climate_change/200/ (2023).

The industry recognizes that there is room for improvement in host community engagement and countering misinformation. The article highlights a lot of recommendations. However, they are not as simple as they may seem, and the authors do allude to the implementation challenges. For example, one of the recommendations is for a company to publicly register its interest in developing a wind farm and report regularly on progress.² However, development and power markets are competitive so this type of registration or reporting could cause developers to look elsewhere, as it could give competitors insights as to their development plans before they are fully set. It could also result in the opposition getting a head start in trying to influence the communities and landowners. We have heard anecdotally from some communities that opposition to projects can intimidate landowners who are interested in finding leases. Therefore, it is important to recognize that while well-intended, such requirements could do the opposite and create a market that developers may not find favorable.

With regards to community benefit agreements, as mentioned, developers often do make these arrangements to provide financial and other benefits to communities beyond the taxes paid, and beyond the economic benefits from construction and operations. In some cases, they do so with the neighboring landowners as well.

However, when you start mandating these types of agreements and requiring uniformity, it removes the flex-

ibility that can be important for developers in tailoring plans for specific projects in communities and ensuring a viable project economically or otherwise. Therefore, it is important to think about the potential converse outcome of a recommendation that is well-intended.

Furthermore, the profit margins of these projects are small, and they do not have a lot of flexibility—so requiring property value guarantees or a 1% royalty on top of the taxes could also be prohibitive for development. The developers may look elsewhere to build their projects because they would not be able to economically build a project.

A lot goes into siting these projects. Developers weigh many factors, including transmission interconnection, environmental constraints, land use, and industry. To build trust with host communities through transparent communication throughout all stages of the project is important, and we recognize that. It could also include community meetings, open houses, sharing data with trusted sources, and engaging with community leaders more regularly.

The industry agrees that these measures are important to move projects forward. It is just important to recognize the implementation challenges. Getting too prescriptive can become more prohibitive than helpful and, in some cases, can be weaponized. For example, there might be a community that says, “We’re going to write this in knowing that it will be a de facto ban on projects.” We do need to consider all these aspects of the wind siting process.

2. Christiana Ochoa et al., *Deals in the Heartland: Renewable Energy Projects, Local Resistance, and How Law Can Help*, 107 MINN L. REV. 1055, 116 (2023).