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23 Texas wind farm hosts sue over noise, nuisance

[Human impacts](#), [Wind turbines](#) [Add comments](#)

In what may be an unprecedented move, 23 Texans who host wind turbines on their property [have filed suit](#) against two different wind farm developers, claiming that companies “carelessly and negligently failed to adequately disclose the true nature and effects that the wind turbines would have on the community, including the plaintiffs’ homes.”

The plaintiffs host hundreds of turbines on projects developed by Duke Energy and E.ON, and as a Duke spokesman noted, they did consent to the placement of the turbines. However, the lawsuit stresses that the companies told residents the turbines “would not be noisy, would not adversely impact neighboring houses and there would not be any potential health risk.”

This court challenge stands apart from most previous nuisance suits, nearly all of which been filed by non-participating neighbors of wind farms (ie, local residents who are not hosting turbines themselves). Most annoyance surveys suggest that wind farm hosts are less likely to be bothered by turbine noise than non-participating neighbors, and many wind projects make an effort to spread the financial benefits to include some non-host neighbors, because of suggestions that broader project participation will increase community acceptance. In this case, however, the plaintiffs are receiving lease payments and tax benefits that will exceed \$50 million over the life of the projects.

Among the plaintiffs are Willacy County Commissioner Noe Loya, who is said to “no longer enjoy sitting outside because of the loud noise,” with turbine noise inside and outside his home “disturbing the peace and making it difficult to enjoy living there.” Another plaintiff, a local Justice of the Peace, “has difficulty sleeping, cannot have his windows open (and) cannot enjoy the sound of nature, due to loud noise from wind turbines.” The lawsuit also claims that some residents have abandoned their homes. In addition to noise issues, the suit includes visual impact, property value, and health effects claims.

E.ON spokesman Elon Hasson, says the company is reviewing the suit. “We develop all of our wind farms in a safe, state-of-the-art and responsible manner. . . We believe these claims will be shown to have no validity.”

UPDATE, 1/31/14: Spokesmen from both companies [issued statements](#) noting that one claim of the suit—that the companies had no plans to remove the turbines at the end of their useful life—is false, and stressed their ongoing monitoring and maintenance of the machines. They more generally dismissed the other accusations, as well.

The suit was filed in State District Court in November. In December, the companies requested that it be moved to federal court, where U.S. District Judge Hilda Tagle has called for a response from the companies by February 6.

Ed. note: Some wind development leases I’ve seen explicitly preclude hosts from filing nuisance suits. There is limited information online about this case, and it’s unclear whether the plaintiffs’ contracts include such restrictions; if they do, then the legal case may be open-and-shut, or it may be that the crux of the legal

challenge is the veracity and completeness of information provided to hosts prior to signing contracts. (It may be worth noting that lease agreements don't usually include "gag clauses" against speaking publicly about noise or other post-construction experiences; confidentiality clauses usually cover only financial terms and development plans.)

14 Responses to "23 Texas wind farm hosts sue over noise, nuisance"

1. **Joe McKenzie** Says:

[January 31st, 2014 at 8:35 am](#)

I can attest to the noise disturbance inside and outside of my home, as I live just mere feet of the setback radius ordinance, for non-participating occupants at the Twin Ridges Wind Farm operated by Everpower, located in Southern Somerset County, PA. Please stress to our local Somerset County Commissioners that these are definitely a nuisance for communities who house the turbines. In our quest for resolve, a year ago at start up, we were told by Everpower officials that they had a manufactures guarantee that the turbines sound no louder than a refrigerator and that is totally false. I don't know what part of the turbine that guarantee refers to but not the overall noise that is created by these things. Our township also developed an agreement with the recommendations from Everpower for a 50 decibel limit on noise. It was not explained in layman's terms to the officials accepting the agreement that the 50 decibels was not overall noise heard, it was just the noise that the turbines created. A noise study was performed at our home May-June 2013 and was determined to be below 50 decibels after all background noise was filtered out fro the turbine noise. I might add that I know by way of what is heard from these things that a 50 decibels noise limit is not low enough or acceptable in our situation. When I purchased my land of approx. 200 acres it was for my love of being in the outdoors and the serenity of the surroundings. At that time Everpower was already working on permitting in for this area which was unbeknown to me. I built my home with my own hands taking approx. 5 yrs to complete. Then the turbines were erected and the value of something that took my entire life to work for has now been de-valued. No one in there right mind would want to purchase this property if I decide to flee. They could not stand to have the sounds. I cannot go outside and enjoy the outdoors at all. Everpower proposed to me sound board for my home, added insulation, new windows and blinds to cover the flickering effects when the sun hits the turbines at different times of the year. They did not know how to comment when asked "what do I do in the summer when I want to have my windows open". I too feel as though the landowners in our immediate area were not fully disclosed with the effects that the outlying community would have to suffer. It is a shame that our tax dollars that subsidize these projects are creating such disarray within communities. The last communication with Everpower was the results of the noise study performed at our home in May-June of 2013. The letter states: The test results demonstrate that the sound level attributable to the Project remains below the 50dBa range. While such levels are relatively low-in fact, quite similar to the background levels measured throughout the survey at remote locations miles away from any turbines-compliance with the permit condition does not automatically imply that the Project in inaudiable. In this case, the house, which is constructed of logs, has exterior walls that are heavier and more massive than normal and has few and relatively small windows on the side of the house facing the project. What this generally means is that the house is already unusually well-suited to resist intrusion from outside sounds. The situation is that there is no practical way of adding additional mass to the walls or roof or sealing every crack, nor would there be any significant benefit from improving the acoustical performance of the windows with storm windows because the glazed area is small enough relative to the overall façade area that the change would not, in all likelihood, be noticeable. A practical solution may be to use a white noise generator inside the McKenzie house, such as a Marpac Dohm-DS "sound conditioner", which, because any noise from the Project must be quite low in magnitude, may be able to provide some effective masking. Also, I am not sure if Texas receives much icing conditions, but if you think that these things are loud on normal days you should hear them when they ice up.

2. **aeinews** Says:

[January 31st, 2014 at 11:34 am](#)

Thanks for your note, Joe. Yes, 50dB is on the high end of regulatory limits for turbines, and it's not surprising that this feels too loud to you and some or many others, especially at night, when activity abates and local ambient likely drops toward 35dB or lower.

3. **David Libby** Says:

[January 31st, 2014 at 5:59 pm](#)

We have the same wind turbine noise problem here in Ontario, Canada. The maximum allowed under the regulations is 51 DbA. The government has never once enforced this regulation. The turbines routinely operate above this level. Government noise testing in the link below, at my former house. Plus other noise testing. In this website you can see all of the health problems this has caused.

<http://windvictimsontario.com/industrial-wind-turbines-shatter-environmental-guidelines.html>

This is for non-leaseholders, non hosts. Leaseholders can have them at much closer distances, no regulations for that. And no recourse for the families in those houses. They gave up virtually all of their rights signing the lease agreement. However most of them don't have them on their home property. They sign leases for properties far away from their own house.

4. **John Droz** Says:

[January 31st, 2014 at 8:00 pm](#)

It is surprising the lease conditions do not prohibit a lawsuit.

In our NC community we are scheduled to have limits of 35 dBA, 1 mile setbacks, etc. See WiseEnergy.org for full details.

5. **Laura Jackson** Says:

[January 31st, 2014 at 8:27 pm](#)

Joe,

Please contact SOAR through our website. SOAR is a non-profit organization dedicated to helping people who are affected by wind turbines. Most of our members are in Bedford and Somerset Counties. We work with communities in Pennsylvania, trying to regulate siting of wind turbines, so they don't cause so much harm to families. We helped to stop 4 wind projects in Pennsylvania from being built in 2012. Unfortunately, no one contacted SOAR before the Twin Ridges project was built, or we would have been very committed to helping you and other landowners.

6. **Laura Jackson** Says:

[January 31st, 2014 at 8:28 pm](#)

I'm not sure if the link to the SOAR website will be published with my previous comment:

<http://www.SaveOurAlleghenyRidges.org>

7. **aeinews** Says:

[January 31st, 2014 at 11:37 pm](#)

OK, folks, I see this one hit a widespread raw nerve. Had to block a name-calling comment just now, as well. Comments are always moderated here, as I don't particularly want to become another spot for extended commiserating-in-comments; there are plenty of other sites for that. That said, I feel that it can be helpful to

run a few comments with similar or related or different experiences; and I also generally welcome push-back when readers feel I've glossed something over.

From here on out, this thread will likely see fewer comments making it through moderation: a new thought or perspective is more likely to get posted than more "it's like that here, too" posts. Broadly "wind is bad/useless/a scam" posts and links are also not in line with this site's purpose and tone (your tight and targeted comment slipped through, John!).

I know this will bother some of you, but for what it may be worth, AEI chooses to focus its efforts and online presence in a distinctly different way than most other sites that cover wind energy news—community, government, or industry. I track useful news from all of these, but AEI is not aligned with any of these perspectives; rather, this site aims to help make some sense of contentious wind development issues for all stakeholders.

8. **Trucker** Says:

[February 1st, 2014 at 10:59 am](#)

Just as a follow up there are different regulations in different states and countries. We have found there are 3 states that don't allow gag clauses in contracts dealing with Health effects. One of the states I believe is Texas so the lease holder may be able to claim health effects. In contracts in other states as well as Ontario do not stop companies from including silencing leaseholders on health issues. (gag clauses) Florida is another state that does not allow gag clauses in contracts concerning health issues.

9. **aeinews** Says:

[February 1st, 2014 at 12:25 pm](#)

I have copies of leases from Maine, Illinois, Indiana, and New York, none of which contain broad gag clauses. In all cases, there is a "Confidentiality" clause, which explicitly applies only to the content of the contract, financial terms, and/or discussing the development plans (which are considered proprietary). None of these contracts say anything about discussing one's own experiences living with turbines, and none mention health effects at all, though two explicitly ban suits, and one of these broadens this to include no "suits, trouble or interference of any kind by Owner or any other person or entity..." (This could arguably be broadly interpreted, but language that follows from there implies it's about direct interference and competing "rights, interests, titles, and claims." Especially with the "other person or entity" clause, this looks clearly to be about physical interference, as of course no leasee can control speech of other people). Some have a "Cooperation" clause that says the Owner won't oppose the company's permitting process, but says nothing about speaking publicly after the project is in operation.

"No interference" clauses appear in all contracts, sometimes including a phrase about affecting the power output and/or income the project; these clauses are aimed at physical obstructions—often including details about blocking access, putting up structures that would impede wind flow, etc.—but again might be broadly interpreted (though it's clear this would be a legal stretch, based on the language used). One contract that doesn't explicitly ban suits contains a clause that would perhaps undermine the TX claim: "...no promises or representations, express or implied, either written or oral, not herein set forth shall be binding upon or inure to the benefit of Owner and Grantee. This Easement Agreement shall not be modified by any oral agreement, either express or implied. . ."

Again, while some of these contracts explicitly grant noise, flicker, and physical easements to the developers (and one, for non-participating neighbors, explicitly states that the "Owner understands and accepts that operation of Generating Units may have some impacts on the Wind Farm's neighbors, including the Owner's Property"), thus giving the developer explicit permission to cause impacts, and most likely make lawsuits difficult or impossible, none of these contracts say anything about owners talking about noise, health, or their experience with the developer post-construction.

One contract contains a line in the No Interference clause that's rather starkly ironic, or infuriating, depending on your perspective: "Developer shall have the quiet use and enjoyment of the Property. . ."

10. **Dan Wrightman** Says:

[February 3rd, 2014 at 5:21 pm](#)

The following is a clause from a wind turbine lease in Ontario

“free and unencumbered easement...over, along, and upon the Transferor’s Lands for the right and privilege to permit heat, sound, vibration, shadow, flickering of light, noise (including grey noise) or any other adverse effect or combination thereof resulting directly or indirectly from the operation of the Transferee’s wind turbine facilities...”.

“...The Transferor further acknowledges and agrees that the operation of the Transferee’s wind turbine facilities located on the Leasehold Lands may affect the living environment of the Transferor and that the Transferee will not be responsible or liable for, of and from any of the Transferor’s complaints, claims, demands, suits, actions, or causes of action of every kind known or unknown which may arise directly or indirectly from the Transferee’s wind turbine facilities on the Leasehold Lands to the extent permitted by this Easement”.

“In addition, the Transferor hereby covenants and agrees to indemnify, defend, and hold harmless the Transferee from any and all liabilities, claims, demands, costs and expenses arising from any direct, indirect or consequential damages arising out of a complaint, claim, action or cause of action initiated by the Transferor as against the Transferee for anything permitted by this Easement in relation to the Transferee’s wind turbine facilities located on the Leasehold Lands”.

11. **aeinews** Says:

[February 3rd, 2014 at 6:19 pm](#)

So, as I read that, Dan, it would preclude any legal claims about noise issues (of the sort going on in TX), but it doesn’t stop the landowner from talking about the noise or other effects they experience. That is, it limits legal rights to file liability claims, but it’s not a “gag” order.

Of course, once in an agreement like this, there are plenty of other reasons a landowner may well decide not to speak about negative experiences, even if legally allowed to (e.g., social considerations, pride/stoicism of having made the decision to lease, or simply choosing to live with the situation as it is—along with, of course, the fact that many hosts don’t find the noise to be all that intrusive).

12. **Dan Wrightman** Says:

[February 4th, 2014 at 12:07 pm](#)

Some wind proponents make the claim that landowners with wind turbines have no health or noise effects and that any health/noise issues can be cured by the “wonder drug money” The Texas lawsuit by 23 leaseholders shows that this hypothesis is simplistic and simply untrue.

13. **aeinews** Says:

[February 4th, 2014 at 1:16 pm](#)

Indeed, Dan.

For many hosts (and non-leaseholders with “good neighbor” agreements that pay modest annual or one-time stipends), the intrusion of turbines in their lives (visual, noise, flicker) is modest enough that a financial return tempers any need or desire to complain about what effects there are. There’s nothing insidious about this; it’s actually a fair exchange on both sides.

Others—both project participants and non-participating neighbors—find that the turbines are more intrusive than they’d imagined, or been led to believe/expect, going into it. It’s clear that money doesn’t “cure” all noise issues; the noise is there and it is, at times, more extreme than anyone who hasn’t lived with it might imagine. This case is notable because it opens the door a bit on the fact that not all people with financial

agreements with wind companies are feeling great about it. Of course, this doesn't then imply that all turbine hosts are upset, any more than problems for non-participating neighbors imply that everyone around wind farms is struggling with noise.

14. **aeinews** Says:

[February 8th, 2014 at 12:54 pm](#)

Hi folks,

I received a long, impassioned note from Ted Hartke last night, describing his family's experiences over recent months in Vermillion County, IL. Over the holidays, he and his family moved out of their home to a mobile home between a third and half of a mile from two turbines. In keeping with what I mentioned on the 31st (not wanting this site or post to become a litany of specific other complaints), I can't post his letter in full. I do want to point you to a couple of places that have been following his story, though:

[Vermillion Wind community page](#)

(you can see a picture of his house here, and some notes from him)

[Letter and Interview](#)

(this one includes many of the same points Ted made in his note to me; it also has, at the bottom, a compilation of the three recent episodes of the Farm America radio program that featured an interview with Ted)

I've been tracking the increasing amount of community push-back occurring in farm country, and will be including some of this in my 2014 annual report on wind issues.