

Chapter 3

Up in the Air: An Overview of Issues that Arise with Acquiring Rights for Wind Development

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§ 3.01. Introduction.

For over a decade, wind energy has been the fastest growing energy technology worldwide, achieving an annual growth rate of over 30 percent. Currently, in the U.S., wind energy accounts for six percent of total utility-scale net generation.² Laws enacted in most of the Eastern states require power companies to provide a portion of their energy from renewable energy sources and interest in wind power seems to be at an all-time high.

Although, due to differences in topography, it is doubtful that the East will see as many wind projects as in the Western and plain states; nonetheless, the increasing demand for renewables and continuing advances in wind power technology are turning investors in wind energy development to states like Ohio, Kentucky, West Virginia and Pennsylvania (with their history of fossil fuel exploration and production) resulting in more and more utility scale wind energy projects in the Appalachian region. Siting wind projects in the region, though, poses challenges from competing and historic uses of the land for mineral development. Securing large areas of acreage for wind power in the rural areas where coal, oil and gas operations predominate is the subject of this chapter.

§ 3.02. Wind Development and Competing Ownership and Rights.

The perception that wind power is problematic due to intermittency is changing, as wind is proving to be a reliable form of energy that is consistent from year to year and predictable during peak hours of demand.³ Demand for renewable energy sources has spurred a significant interest in wind energy development. As a result, developers are hurrying to acquire appropriate real estate for wind projects.⁴ And, perhaps predictably, wind

² BLM Fact Sheet, Renewable Energy: Wind, U.S. Dept. of Int., Bur. of Land Mgmt., (March 2018).

³ JACK JACOBS AND ANDREW HERNDON, RENEWABLE ENERGY LAW AND POLICY § 1.04[3] (Matthew Bender, ed., LexisNexis, 2018). [hereinafter cited as *Jacobs*]

⁴ Michael N. Mills and Eric R. Skanchy, *Joint Cooperation Agreements: Resolving Conflicts Between Oil & Gas Operations and Solar and Other Renewable Energy Development*, OIL AND GAS AGREEMENTS: SURFACE USE IN THE 21ST CENTURY 6C-9, Rocky Mt. Min. L. Fdn. (2017). [hereinafter cited as *Mills and Skanchy*]