

WINDLETTER

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SMALL TURBINE COLUMN:

Planning Your Wind System (5)—Liability Insurance

--Mick Sagrillo, Sagrillo Power & Light

In planning your wind system, you have secured your building permit and have an application in hand from your local utility for an interconnection contract. One stipulation that will inevitably be required by your utility is liability insurance. This requirement is a precaution on the part of the utility so that, should anyone be injured either materially or physically by your wind turbine, you, the wind system owner, will be just as appealing in the eyes of the litigant as the utility, with its millions of dollars in assets and potential earnings.

A necessary evil

Many homeowners question the value of liability insurance given the total lack of any defensible claims of injury nationwide that a wind system may have caused over the 28-year history of “modern” small wind turbines. Most wind system expenses are upfront costs for such things as equipment, labor, and construction. The exceptions are annual inspections and maintenance, any required repairs, and insurance. While most folks understand the first two, the latter may appear to some to be money thrown out the window. Skeptics view insurance as an annual financial drain that merely extends the payback period of a wind system. Be that as it may, insurance is a necessary evil in today’s litigious society. And if you want your system to be connected to your local utility, accept the fact that liability insurance will be a requirement.

One tactic used by incalcitrant utilities is to require ridiculously high levels of liability insurance coverage, in the millions of dollars. The cynic rightfully argues that this is merely a tactic on the part of those utilities to dissuade the applicants from actually installing a wind system, thereby providing for themselves the perfectly good product that the utility offers its customers: electricity.

While that’s likely true in a few cases of utilities with reputations of being hostile to customer-owned renewable energy systems, there is another explanation. Most utilities self-insure for claims up to several million dollars or so. By taking on the responsibility for what the utility or insurance industry might consider petty claims, the utility can save bucket-loads of money. This is akin to your deductible for collision expenses on your car.

The higher the deductible amount that you are responsible for, the lower your annual automobile insurance premiums will be.

Since utilities self-insure for several million dollars, they may seek that amount of liability coverage from the applicant. Few homeowners carry this level of liability insurance on their property simply because it is not necessary to protect them. We now have a potential stalemate between you and the utility. A resolution can be found by looking at what other states have done to resolve this dilemma.

In Wisconsin where I live, the Public Service Commission (PSCW) limits the insurance liability coverage for homeowners interested in installing up to a 20-kW renewable energy system, the upper limit for net metering in the state, at \$300,000. For larger turbines that might power a farm, small business, nature center, or school district, the limit is \$1 million. Why those seemingly paltry amounts?

If you want to install a wind turbine, the PSCW rationalized that you probably “own” your own home, and are not renting. Most people do not technically own their home, but have a mortgage with a bank. If you have a mortgage that is federally regulated, as virtually all are, the U.S government limits your required insurance level to \$300,000. The PSCW determined that if this level was sufficient for loan agencies, it should be good enough for utilities as well. Similarly, most farms, small business operations, and educational institutions have \$1 million policies, so the PSCW limits utilities to that amount for renewable energy systems larger than what a homeowner might install, but smaller than a full blown wind farm.

Pitfalls with your insurance agent

I would caution you regarding the language you use with your insurance company. I would also strongly caution you to never deceive your insurance agent. Like the IRS and mafia, insurance companies do not take deception well.

Many homeowners have gotten themselves into big trouble with their insurance companies with the language they use. You will be installing a grid-tied wind system, and excess electricity will be stored on the grid in the form of a credit on your bill, or be “net metered,” as required in most states. Any excess electricity at the end of a billing month or year may actually trigger payment by the utility, depending on public utility commission rules in your state. If you convey that you will be “selling electricity to the utility” rather than simply stating that you will be “net metered,” you are going to get yourself into trouble, not to mention that your statement is not really accurate.

What the insurance company hears when you state that you will be “selling electricity to the utility” is that you are in the business of selling power—that you are a commercial entity with a requirement to provide a commodity or pay the penalty. No amount of argument will change that perception once your insurance provider has assimilated this information. In the real world of electricity providers, monetary penalties are assessed when an energy provider has a contract with a utility and cannot meet its contractual

commitment for a given amount of electricity over a given period of time. This is not the intent of net metered, home-sized—or even farm- or school-sized—grid-connected renewable energy systems that are reducing their demand on utility electricity with “inside the fence” generation.

The issue of whether a turbine of this size is a commercial venture has been a thorn in the side of some utilities for decades. Several utilities, attempting to drive up the costs for small wind system installations and thereby disillusion the prospective homeowner from the project, have contested this very point in court. In 2001, the AWEA reported on a case taken up by the Federal Energy Regulatory Commission (FERC). According to AWEA, “the challenge hinged on the question of whether electricity flowing to a utility from an individual who generates power for his own use constitutes a sale, or whether the individual is in effect banking the excess generation on the power grid for later use.” FERC ruled that “no sale occurs when an individual homeowner or farmer (or similar entity such as a business) installs generation and accounts for its dealings with the utility through the practice of netting.”

Most people who install a wind turbine are not in the business of generating and selling electricity as a business venture. It simply does not make economic sense on the scale we are talking about. However, they may actually generate more than they consume on any given month or year. How much more? Maybe a few hundred dollars worth, at best. As ruled on by FERC, this paltry amount certainly does not make them a commercial venture. Unless the intent of your system is to indeed sell the bulk of your electricity to the utility, stay away from stating that you are doing such.

So, what should you be saying to your insurance provider? In the electric industry, a grid-tied renewable energy system is called an “inside-the-fence generator.” The intent is “demand-side management” or offsetting your load on the utility by generating some or all of your electrical consumption. This is what your insurance carrier needs to know, maybe with a brief explanation of how the system works.

Remember, you are “storing” electricity on the grid in the form of a credit for later retrieval. If the bulk of your generation offsets what you would have purchased from your utility over the course of the year, you are a net metered system. Unless the intentions of your system are otherwise, you are not in the business of being an energy provider to your utility.

[Editors Note: The opinions expressed in this column are those of the author and may not reflect those of AWEA staff or board.]