

Submission to Select Committee on Wind Turbines

Robert Griffin

26th February 2015

Dear Senators,

We are making this submission so as to shed light on the RELATIONSHIP BETWEEN WIND FARM COMPANIES AND THEIR FARMING LAND OWNER HOSTS. We believe the Senate and the wider public need to be made aware of how powerless farming families are in their relationships with these large companies and how we are being bullied and intimidated.

Our property 'Cooramilla' is part of the proposed Flyers Creek Wind Farm (FCWF) which is an Infigen project under the direction of Jonathon Upson. So while no doubt some of our story has peculiarities unique to Infigen and Mr Upson, the current state of crisis in the Wind Farm industry, with virtually no new projects commencing, has no doubt placed many companies in a desperate situation as their contracts with Landowners expire. Unfortunately we are afraid that intimidation will become standard practice rather than an exception.

Our real troubles began when our Leases with Infigen expired on 1st June 2013. Infigen claimed Force Majeure, a force beyond their reasonable control as they had not yet obtained planning approval.

I will not try to explain this obscure concept of Force Majeure here, nor will I outline in detail the reasons for our total rejection for Force Majeure. It should be enough to ask why almost 7 years after we have signed our contracts and more than 6 years after the application for Planning Approval was made (16th December 2008) the Department of Planning is still waiting for FCWF to provide it with the material it requires for unconditional planning approval. The delays in obtaining have not been the result of external forces rather it has been to a very large extent of their own making. We wrote to Infigen to inform them that we did not accept the Force Majeure and that we were ending our contract with them.

At the invitation of Senator Back we table the letter of reply dated 18th February 2014 sent to us by their solicitors, Gilbert & Tobin. Both our family and the Oborn family were shaken by the real malice and repeated threats to sue us for millions of dollars. Their letter ended that if we did not retract our letter of termination by the following Friday legal proceedings would commence immediately.

The purpose of this letter was to intimidate us and it succeeded. As small farmers we do not have the means to take on a protracted legal court battle so we had to withdraw our letter of termination and to reserve our rights in this matter.

The incredible success of intimidation as a tactic becomes much clearer if we eliminate what can be the confusing notion of Force Majeure. In a matter of weeks, on 14th March 2015, Infigen will have to satisfy its Deferred Commencement Conditions set out by the Planning Assessment Commission, which includes the need to demonstrate adequate access conditions are in place with all Land Owners.

If they can't satisfy these Deferred Commencement Conditions their planning approval lapses and that should be the end of the matter. If they do satisfy these conditions and obtain unconditional planning approval then instantly their claimed Force Majeure ceases to exist. If this happens there can be no ambiguity or argument as the contract is straightforward. The relevant clause 4.11 provides –

“If within a period of 5 years from the commencement of this Lease there has been no commencement of construction works upon the Leased Property then this Lease may be terminated by either party by written notice”.

What will happen if any Land Owner sends such a letter? We all know that we will receive a letter threatening to take legal proceedings against us. Could I justify to my family taking on this huge emotional and financial challenge? Could I advise my neighbours to take out a mortgage to pay the solicitors and barrister's fees for this challenge. I know other Land Owners have already decided that they cannot take on the fight in trying to obtain their rights.

Mr Upson has been quite clear in his use of the law as a means of intimidation. In a meeting of Land Owners of the FCWF he said that in its legal dealings they would normally spend 1.5 million dollars in legal costs. They demand a security to cover these costs. Whether this is correct or not the lesson is clear about what is involved in litigation with Infigen.

After Infigen declared a second year of Force Majeure in June 2014 we again sent a solicitors letter but were very careful to give them no reason to sue us. Rather than terminate the contract we simply stated our position and reserved our rights in this matter. Nevertheless Infigen again threatened us, this time simply because we had attended a Land Owners meeting. Their claim was that by attending the meeting we were authorising the solicitor Infigen had hired to represent Land Owners to act on our behalf (Letter dated 12th September 2014 Section 4).

This was an absurd claim and in fact this whole letter was the opposite of the truthful situation. Unfortunately it has forced us to take further legal advice to defend ourselves and what it highlights is not any wrong doing on our part but that the solicitor in question who is being paid by Infigen to act for Land Owners and has a real conflict of interests and this is a very serious matter because it is against the Solicitors Rules. We have no appetite to pursue this matter but we have to defend ourselves.

The bizarre irrationality of these threats we find more worrying in many ways. What are they trying to achieve by these threats? Do they want to stop us from going to meetings? Is this the only way

they could keep threats and intimidation in the air? What this threat does is to make us LIVE IN FEAR. We can expect threats at any time without good reason.

No doubt Senators have heard Infigen's plaintive cries over the past year or so of how unjust and unfair it is of the government to consider changing the Renewable Energy Targets. This will cause them financial ruin. Yet at the very same time they are threatening to financially crush any small farming families who stand in their way.

BLIND CONTRACTS

From the very outset Land Owners are in a very difficult position as they are asked to sign blind contracts, to sign a 30 year Lease without knowing how many turbines (if any) they will receive (and therefore how much money), how many roads there will be and where they are, where laydown areas are, powerlines, etc, etc.

Some Land Owners can become net losers. Our neighbours, the Oborn family, e.g., receive 1 turbine but the income from that is more than offset by a long road which goes through prime parts of their property including their irrigated Lucerne paddock. A lay down area of 2 hectares has been placed in the middle of that paddock. To be members of the Wind Farm means a significant economic loss to this family.

This is not an isolated example as most of the Land Owners in the FCWF with long roads and lay down areas, overhead power lines, have at the most only have 1 or 2 turbines. It is hardly worth their while and is doubtful they would have signed the contracts if they knew what they were letting themselves in for.

As a consequence wind farm operators can do whatever they want. Even though the contracts state that the placement of all this infrastructure has to be made in consultation with the Land Owners, Mr Upson would simply fob off these concerns.

It has been very interesting in the past few months as Infigen has issued new contracts to deal with their inability to commence. Land Owners meetings have been dominated by all the issues of Land Owners that have been brushed aside for the past 6 years. Suddenly Infigen are listening because they know they need new signed contracts.

This is the way it should be. Wind Power companies should never be permitted again to issue contracts unless they have detailed plans of what Land Owners are signing up for.

We thank you for this opportunity to tell our story and we hope it will be of help in your deliberations. We also hope that by making our story public that somehow we can gain protection from further intimidation.

Yours sincerely,

Robert Griffin