

# Norton Community Wind Turbines

## Community Structures

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### 1 Norton Energy Community

Norton Energy Community is a co-operative owned by its shareholders. Every household or business or institution based in the Parish can take a stake-holding for £1. This entitles them to take part in community discussions about how the profits from the turbines can be spent. As it is currently proposed, these community share-holders would be the decision makers in the community company. However, a second class of share-holders is envisaged who would only support the Company financially. They would be investors looking for a return. They might not necessarily be from the Parish but be drawn from a wider area. This provision for second-tier financial investors would allow NEC to raise its own finance for its own projects at some time in the future as it sees fit. The primary aim of NEC is to provide for the community.

The Rules of NEC are published as an Appendix to this document but clause 58, setting-out how the Company can spend its profits, is as follows:

*The profits of the Co-operative shall be applied as follows in such proportions and in such manner as may be decided by the Co-operative at the Annual General Meeting:*

- (i) firstly, to creating and maintaining a general reserve for the continuation and development of the Co-operative;*
- (ii) secondly, to paying interest on shareholdings;*
- (iii) thirdly, to give individual community members or groups the opportunity to live more sustainably with respect to environmental impacts and to help them to offer similar services to the wider society all to their mutual prosperity;*
- (iv) fourthly, for social, educational and charitable purposes to promote sustainable development in the Parish of Norton;*

Around 200 households have expressed an interest in being actively involved in the project. Interestingly, this share belongs to the household rather than any individual in the household. This ensures that the share remains within the Parish. This would not preclude individual members of a household becoming an investor share-holder should NEC ever issue investment shares in the future.

NEC would be managed on a day-to-day basis by an elected executive board with each board member given a specific responsibility. This would probably be a part-time post and would therefore attract some remuneration. The actual method of how the democracy might work has still to be agreed by the members. Some alternatives are as follows:

- It could be one of the tasks of the Board to support members in forming proposals from a scratch idea to a business proposition. These fully formed propositions would then be voted on by all the members. Board members would then have the task of monitoring and reporting on progress of the investment.
- Board members themselves form proposals and seek a democratic approval.

This approach might be suitable for commissioning surveys across the Parish to reflect people's attitudes to a particular issue, for instance, or to commission consultants to look at a particular topic of interest in preparation for forming an investment opportunity.

These are only some preliminary ideas of how the day-to-day decision making might be carried out but the essence is to allow everyone to be involved in a democratic way.

It is essential that formal communication links between all members be maintained. Obviously, internet technologies might be useful, but it is borne in mind that not everyone in the community has access. Future communication models must bear this in mind.

It is also crucial that good reporting and transparency on investments are made to enable community learning.

In addition, NEC will be offered a share in Origin which would enable them have full transparency.

## 2 Community Ownership

Origin are enabling the community to generate its own renewable energy and to get access to the profits this might bring. The task of designing, operating and managing the profits from such a large under-taking can be daunting for communities and Origin is only providing a first step to a fully autonomous community organisation. Several ways of realising the project are possible and each one asks for different responsibilities from all the parties involved. Some models of community wind projects currently being used are:

- A large developer will essentially put as many turbines as they can in places where they can. They will take the profits and pay a small amount to a community fund in order to help with a planning application. The amounts paid in benefits are usually extravagantly disproportionate to the revenues generated by the project.
- The community members are those who come up with the idea, find a site, invest some money in the project and get the returns to distribute according to their personal inclinations. They may or may not have an ethical view of the wider community or how profits should be invested but there is no wider accountability. There is also the problem that some of these community group members may seek their own benefit first and distribute a minimal amount to the community.

Origin are proposing to maximise profits for the community and to ensure that everyone benefits. Everyone can take part and the degree of participation does not depend on the amount of money a household has nor would the size of their influence. The project would be fully accountable to the community and be fully transparent.

The cost of the Norton project would be between £5.5m to £6m. Clearly, this money will need to come from outside of the immediate community. The route of financing the

project determines the degree of ownership. Some financing options are possible:

- Bank loans
- Bond Issues
- Share Issues
- Private Investments

But a mixture of some or all of these would be probable. Paying back the finance is the major cost to the project. This can last for up to 15 years depending on how the project finance is structured. NEC can, if it wishes, issue its own shares and raise finance capital this way but at this point in time, there is not the impetus to take part financially. Instead, Origin have agreed to fully finance and build the turbines and to put in place a Community Contract in order to distribute the profits.

It is expected that in the future, the project could be fully or partly owned by NEC and provisions have been made in the structure of NEC to do this.

### 1.3 The Community Contract

As an initial step in producing a community contract the following guiding principles were put forward:

#### **Scoping document for legal contract between the two parties**

It is intended that Origin Energy CIC would design, build and operate two wind turbines for the parish of Norton. The intention includes the wish, on behalf of Origin, to return to the community the profits from the sale of the energy through the National Grid. It has become apparent that a formal contract between the two companies will be required for the following reasons:

- To ensure transparency with respect to revenues from the sale of the energy;
- To ensure transparency with respect to costs of energy production;
- To ensure that the due revenues are transferred to NEC in a timely manner,
- To ensure that all maintenance and insurance contracts are in place,
- That the method of calculation of NEC revenues is agreed and is linked to energy wholesale prices,
- Origin's length of responsibility to be 25 years or the life of the turbines which ever comes first;
- Origin's responsibility to decommission the turbines.
- NEC's responsibility to ensure sustainable investment in community projects in a democratic way;
- That both parties adhere to the initial mutual aim of promoting the welfare of the local community and the resources at its disposal.

**Scoping document for legal contract between the two parties (continued)**

Some issues to be dealt with in any contract:

- What happens in the event of either Origin or NEC going out of business?
- Itemising the costs which can be charged against the project by Origin;
- Safe-guarding payments to landowners;
- Safe-guarding access to the turbines;
- Public Liability Insurances;
- What happens when the capital repayments are finished?
- Tax & VAT issues;
- How to define “profit”;
- Mutual transparency;
- Fraud and misdemeanours by any party – safe-guarding one party from the omissions of the other;
- Damage limitation to Origin if NEC runs into problems and vice-versa;

The legal documents should reflect the following points:

- That the project is for community benefit
- That the NEC is ran along co-operative lines where participating households each have one vote. Households should not be asked for money other than the £1 membership fee.
- Where-ever possible skills should be sourced from the community and training given where feasible.
- Origin should be accountable for maximising profits for the community.

This document was then evolved into a community contract by Warings LLP. This document is enclosed in the Appendix at the end of this Chapter.

## 4 The Community Dividend

It is proposed that the energy generated by the turbines will be sold to an energy reseller through a Power Purchase Agreement and distributed beyond Norton via the National Grid. Various companies buy green energy in this way, eg, British Gas, Eon etc. As well generating their own energy these companies buy energy from independent generators. The recompense comes in one of two ways, either through the Government's Feed-In Tariff programme or through the Renewable Obligation Certificate programme. At the size of the Norton scheme, 5MW, the returns from either programme are similar. Energy would be sold at a price of around 9p/kwh. FITs are generally fixed at the time of first generation and vary only according to the Retail Price Index. ROCs vary depending on the market rate for this commodity.

As said earlier, the cost of building and connecting the turbines to the Grid is expected to cost between £5.5 to £6m but the price of the turbines and the grid connection themselves cannot be fixed with certainty at this stage. Budget offers have been made for these items and this has enabled a business projection to be calculated.

Apart from the sale price of energy and the costs of construction the other major factor in determining profitability is the cost of the various finance options. For shares and bonds it is the rate of return that investors are looking for and at what point they want their investment returned to them. For bank loans it is the rate of interest and the length of time the loan is taken out. Longer times mean smaller yearly repayments but cost more when considered over the project life time. Whilst, finance institutions are happy to discuss these things in general terms they would want to see that the project is in place and can provide an income before they will discuss fixed terms. Origin have talked to many such organisations over the last year. This has enabled us to put projections forward with a degree of confidence but no fixed finance route has been decided.

In order to try to indicate a community return some realistic scenarios have been constructed using various variables and mixes of finance. These are for illustration purposes. The final figure excludes any tax payments which NEC or the Project might be liable for and these would need to be considered after consultation.

<b>Scenario One</b> <i>This represents an optimistic construction cost and low bank borrowing terms</i>	<b>Project Cost</b>	<b>Finance 1</b>	<b>Finance 2</b>
	£5.5m	35% bonds	65% bank loan
	<b>RPI</b>	<b>Term of Bond</b>	<b>Term of loan</b>
	3.0%	10 years at 5.0%	15 years at 5.5%
	<b>Unit Energy Price</b>	9.5p/kWh	
	<b>Community Dividend</b>	90% of net profit	
	<b>Yearly Energy</b>	13.0 GWh	

<b>Community Payments</b>	<b>Total Pre-tax Dividend</b>
Year 1	£250k
Year 2	£275k
Year 3	£295k
Year 4	£315k
Year 5	£400k
Payment increases each year to:	
Year 10	£530k
Payment increases each year to:	
Year 15	£810k
Payment increases each year to:	
Year 20	£1200k
Payment increases each year to:	
Year 25	£900k
<b>Total for Scenario One</b>	<b>£16,600k</b>
<b>Average/year</b>	<b>£664k</b>

<b>Scenario Two</b> <i>This represents less optimistic construction cost and higher bank borrowing terms</i>	<b>Project Cost</b>	<b>Finance 1</b>	<b>Finance 2</b>
	£6.0m	35% bonds	65% bank loan
	<b>RPI</b>	<b>Term of Bond</b>	<b>Term of loan</b>
	1.0%	10 years at 5.0%	15 years at 7.5%
	<b>Community Dividend</b>	90% of net profit	
		<b>Yearly Energy</b>	13.0 GWh

<b>Community Payments</b>	<b>Total Pre-tax Dividend</b>
Year 1	£175k
Year 2	£180k
Year 3	£190k
Year 4	£195k
Year 5	£210k
Payment increases each year to:	
Year 10	£315k
Payment increases each year to:	
Year 15	£500k
Payment increases each year to:	
Year 20	£850k
Payment increases each year to:	
Year 25	£450k
<b>Total for Scenario Two</b>	<b>£11,000k</b>
<b>Average/year</b>	<b>£440k</b>

<b>Scenario Three</b> <i>This represents an optimistic construction cost and average bank borrowing terms</i>	<b>Project Cost</b>	<b>Finance 1</b>	<b>Finance 2</b>
	£5.5m	25% bonds	75% bank loan
	<b>RPI</b>	<b>Term of Bond</b>	<b>Term of loan</b>
	3.5%	10 years at 5.0%	15 years at 5.5%
	<b>Unit Energy Price</b>	9.5p/kWh	
	<b>Community Dividend</b>	90% of net profit	
	<b>Yearly Energy</b>	13.0 GWh	

<b>Community Payments</b>	<b>Total Pre-tax Dividend</b>
Year 1	£213k
Year 2	£228k
Year 3	£244k
Year 4	£259k
Year 5	£271k
Payment increases each year to:	
Year 10	£309k
Payment increases each year to:	
Year 15	£435k
Payment increases each year to:	
Year 20	£774k
Payment increases each year to:	
Year 25	£430k
<b>Total for Scenario One</b>	<b>£10,300k</b>
<b>Average/year</b>	<b>£412k</b>

## Appendix A      The Community Contract

Origin Energy CIC  
Company No. 06276671  
5-6 Kings Court  
York  
YO1 7LD

Norton Energy Community Limited  
Company No. IP031160  
5-6 Kings Court  
York  
YO1 7LD

30 April 2012

Dear Sirs

### **Profit Sharing Agreement in Respect of Wind Turbines in the Parish of Norton**

This letter sets out the principal terms and conditions on and subject to which Origin Energy CIC (**Party A**) is willing to enter into a Profit Sharing or Joint Venture Agreement (**Project**) with Norton Energy Community Limited (**Party B**) subject to the agreement and signing by the parties of a detailed legally binding agreement (Formal Agreement).

This letter is not exhaustive and is not intended to be legally binding between Party A and Party B except where specifically stated.

### **BACKGROUND**

- (A) The Project is the erection of two wind turbines in specific locations in the parish of Norton and the sale of the electricity generated by the turbines for the mutual benefit of the Parties.
- (B) The term of Project is anticipated to be the lifetime of the wind turbines but may be extended if the Parties agree.

### **1. COMMERCIAL TERMS**

1.1 Origin Energy CIC will:

- (a) secure and develop up to two wind turbines in the parish of Norton;
- (b) be responsible for the running, maintenance and insurance of the wind turbines during the period of the contract;
- (c) provide an indemnity for Norton Energy Community Limited in respect of the operation of the wind turbines and any damage or injury caused by them; and
- (d) decommission the wind turbines at the end of their life.

1.2 During the term of the Project Norton Energy Community Limited will receive an agreed dividend from Origin Energy CIC based on profits generated by the Project.

(a) The percentage of the profits to be paid to Norton Energy Community Limited will be calculated based on:

- (i) the post-tax net profits of the Project;
- (ii) the payments made to Origin Energy CIC in respect of the energy produced by the Project; and
- (iii) be calculated in by transparent method and all information made available for

audit purposes.

(b) Origin Energy CIC will make the payments to Norton Energy Community Limited quarterly in arrears.

(c) Norton Energy Community Limited will invest the money generated from the Project in community projects according to its object.

1.3 During negotiations of the Formal Agreement and as the Project progresses the Parties may agree that an alternative structure is desirable for whatever reason and may incorporate a joint venture company to take on whatever responsibilities the Parties agree.

1.4 Where possible the materials, labour and skills required for the building, running and maintenance of the wind turbines will be sourced from the parish of Norton and the surrounding area.

1.5 The completion of a formal agreement between the Parties may be included as an express condition of any Planning Permission.

## **2. TIME LIMITS**

2.1 The parties agree to negotiate in good faith with a view to executing the Formal Agreement on or before 30 April 2013.

2.2 Such termination shall not affect the continuance in force of paragraph 5 to paragraph 9 inclusive.

## **3. KEY PRE-CONDITIONS**

Origin Energy CIC is to secure land to build the wind turbines (the Sites), access from a public highway to the Sites and planning permission to build on the Sites.

## **4. KEY ASSUMPTIONS**

4.1 Origin Energy CIC is able to secure the Key Pre-Conditions at a cost which is economically viable for the project as a whole.

4.2 Origin Energy CIC, Norton Energy Community Limited and any appropriate third parties are able to secure funding for the build costs of the wind turbines.

## **5. CONFIDENTIALITY**

5.1 This paragraph is legally binding.

5.2 Each party undertakes that it shall not for a period of one year after the date of this letter disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other, except as permitted by paragraph 5.3.

5.3 Each party may disclose the other party's confidential information:

(a) to its employees, officers, representatives or advisers who need to know such information for the purposes of the evaluation of the Project and the negotiation of the Formal Agreement. Each party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other party's confidential information comply with this paragraph 5;

(b) to any person in connection with fund raising in connection with the Project provided the other Party has given their consent; and

(c) as may be required by law, court order or any governmental or regulatory authority.

5.4 No party shall use the other party's confidential information for any purpose other than the evaluation of the Project and the negotiation of the Formal Agreement.

5.5 Neither Party shall be in breach of this clause by disclosing this letter as part of the Planning Permission process.

## **6. EXCLUSIVITY**

6.1 This paragraph is legally binding.

6.2 Immediately on signing this letter the parties shall terminate, or procure the termination of, any Third Party Negotiations currently taking place.

6.3 Neither party shall, for a period of 365 days from the date of this letter (Exclusivity Period), directly or indirectly:

(a) enter into, re-start, solicit, initiate or otherwise participate in any Third Party Negotiations;

(b) seek, encourage or respond to any approach that might lead to Third Party Negotiations;

(c) enter into any letter of intent, agreement, arrangement or understanding (whether or not legally binding) pursuant to any Third Party Negotiations; or

(d) supply or otherwise disclose any information about itself or any member of its group to a party that wishes, or may wish, to enter into Third Party Negotiations (unless the information is publicly available).

6.4 The parties shall ensure that their officers, employees, agents, advisers and other representatives, comply with the undertakings in this paragraph 6.

6.5 Each party shall notify the other immediately if, during the Exclusivity Period, it receives any indication from any third party (including any third party with whom it or any member of its group was having Third Party Negotiations prior to the date of this letter) that such third party wishes to engage in Third Party Negotiations.

6.6 For the purposes of this paragraph 6, Third Party Negotiations mean, in relation to either party, any negotiations between that party (or any of its respective agents, employees, advisers or other representatives) and any third party (other than an agent, employee, adviser or other representative of the other party) for the entry into a commercial arrangement which is similar to or could reasonably be expected to conflict with the Project.

## **7. COSTS**

7.1 This paragraph is legally binding.

7.2 Subject to paragraph 6, each party is responsible for its own costs in connection with the proposed Project, whether or not it proceeds (including without limitation the preparation and negotiation of this letter, the Formal Agreement and any documents contemplated by it).

## **8. INADEQUACY OF DAMAGES**

8.1 This paragraph is legally binding.

8.2 Without prejudice to any other rights or remedies that either party may have, each party acknowledges and agrees that damages alone would not be an adequate remedy for any breach of paragraph 5 or paragraph 6 by the other party. Accordingly, the non-defaulting party shall be entitled to the remedies of injunction, specific performance or other equitable relief for any threatened or actual breach of paragraph 5 or paragraph 6.

## **9. GOVERNING LAW AND JURISDICTION**

9.1 This paragraph is legally binding.

9.2 This letter and the negotiations between the parties in connection with the proposed Project and all disputes or claims arising out of or in connection with them or their subject matter or formation (including non-contractual disputes or claims) will be governed by English law.

9.3 The parties irrevocably agree that the courts of England and Wales shall have



exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this letter or its subject matter or formation (including non-contractual disputes or claims).

9.4 This letter is for the benefit of the parties to it and is not intended to benefit, or be enforceable by, anyone else.

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Signed by  
for and on behalf of Origin Energy CIC

We confirm our agreement to the above.

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Signed by  
for and on behalf of Norton Energy Community