

January 20, 2022

Kansas Senate Local Government Committee

Testimony in Support of SB 325

Submitted by Shirley Estrada

Chairwoman Carolyn McGinn and members of the Committee:

My name is Shirley Estrada, a private citizen of Neosho County. I have no credentials on wind energy other than those gained by experience, attending commission meetings, and spending hours of research over the last three years, born out of necessity. I was raised on a farm outside of a small town, graduated from the local high school, and like many chose to attend college and not return. For forty years I lived in cities, mostly in the Dallas/Fort Worth Metroplex. But my vacations were spent coming home, my refuge. I loved the city, until I didn't. It was only fitting that my city born-and-raised husband and I decided, with a little persuasion, to sell, move, and spend our retirement close to "my roots", buying an 8-acre piece of paradise in the country. It was a two year process of careful planning and timing. Little did we know that careful planning of another ilk was also under way at the same time, culminating with each of our plans converging in August 2018—our move finalized and realized, and that of Apex Clean Energy appearing before the county commissioners for approval to build an industrial wind energy generation project, Neosho Ridge Wind.

I appreciate the opportunity to submit this testimony in support of SB 325, which I believe is necessary due to the lack of transparency of the wind energy industry, the power of leases collectively, along with conflicts of interest with local officials.

On August 3, 2018, Apex representatives and their attorney met with our county commissioners at a regularly scheduled meeting to update them on the wind energy project. *"We're excited that the community has been so welcoming,"* stated Senior Development Manager Jade Scheele. "Update" them? "Excited the community has been so welcoming"? To understand, one must go back two years earlier, which has been pieced together by gathering bits of information to create the puzzle picture. While details of some of those pieces are missing, the picture is no less evident.

In February 2016, Apex representatives met with Matt Godinez, Executive Director of the Chanute Regional Development Authority, and District 3 County Commissioner David Bideau, concerning an industrial wind energy generation project (I refrain purposefully from the terminology "wind farm"). In questioning years later why the other two commissioners were not invited to the meeting, Bideau responded defensively, *"I meet with anyone who wants to meet with me. I will meet with any business that is interested in coming to Neosho County. I know Matt Godinez. So I work closely with Matt Godinez to try to help him recruit companies."* It is unknown as to what document, if any, was signed by Commissioner Bideau, although he divulged Apex was directed to come back to the commission when "enough land had been leased". It has become recently known that Matt Godinez signed a non-disclosure agreement at that time, which was explained as "standard practice". However, a wind project

requiring the leasing of 43,000 acres of land cannot be compared to a business coming in to lease an existing building or build on a particular lot. The groundwork of secrecy had been laid.

In September 2016, an invitation only “landowners introduction meeting” for targeted landowners was hosted by Apex. On September 14, 2016, Neosho Ridge Wind, LLC was incorporated in the state of Delaware. The first lease was signed on December 12, 2016, which was filed three months later on March 31, 2017 at the county register of deeds office. The leases contain a Confidentiality clause, thus strengthening the foundation of secrecy.

On July 7, 2017, KOAM TV ran a short news segment of **“Neosho County Kansas Chosen as Future Home of Wind Farm”**, and how they [Apex] had *“searched the region and picked Neosho County, Kansas for one of its main turbine farms”*, as if counties had been vying amongst each other for such a project. According to Apex representative, Jade Scheele, *“...the community seemed very receptive.”* However, the only receptiveness from the community was from those who had signed a lease with Apex/Neosho Ridge Wind. The general public, especially those residents within the unknown perimeters of this project, were largely unaware.

To re-enforce the receptiveness of the project, the segment included a quote from the District 1 Commissioner, in whose district the turbines were to be located, *“I think it’s a good thing for the county. I’m hoping we can get some revenue in the county cause we sure need the tax dollars.”* To re-enforce any back lash expected from the community, Jade Scheele responded, *“I would just re-iterate the jobs and the revenue coming in. That’d be the main goal...”* The seeds of “jobs and money” had been planted. The back lash? There had been none, as the general public was largely unaware.

At this point, 28 leases totaling over 9,000 acres had been filed with the register of deeds office.

Months later on April 25, 2018, The Chanute Tribune posted a newspaper article, **“Wind farms in county looking at a 2019 startup.”** However, there were no details regarding construction, or for the start of operation for the project, or a specific location, or the project final cost, or even the turbine selected -- only that construction could start in 2019. For most, this article had little to no significance--until Apex appeared before the commissioners on August 3, 2018.

At this point, Apex had been obtaining leases at a dizzying pace. 73 leases totaling nearly 34,000 acres had been filed with the register of deeds office. One corporation had leased over 11,000 acres.

While Apex may have been anticipating a smooth and easy approval for the project due to the lack of back lash and the perceived community support at this August 2018 meeting, several residents in attendance who were aware of a proposed wind project, but seemingly unaware of how far along the project had progressed, raised concerns and urged commissioners to talk to people. Hence, commissioners agreed to hold town hall meetings.

A total of three town hall meetings were held over the next several months. As word spread and as more information came forth, each meeting grew in attendance and became more heated. Battle lines were drawn into sides of the proponents and the opponents. Commission meeting attendance grew

large enough that attendees spilled into the hallways or meetings forced to move to a larger space to accommodate attendees. It became increasingly clear that not all the community was so welcoming.

To address concerns, Apex conducted a carefully orchestrated bus tour of a wind farm near Waverly. They conducted a one-sided “forum” at the local community college. They ran ads in the newspapers and on Facebook. They conducted a phone survey. They sent out mailers. They sought the support of the school district whose middle school was located in Galesburg, in the heart of the project. They sought the support of a nearby town outside of the project. Both entities chose to remain “neutral”.

However, the Galesburg City Council seized an opportunity for new sidewalks and protection of a local business by supporting the project through Resolution 201812 on December 11, 2018:

“The City of Galesburg will support Apex Clean Energy’s Neosho Ridge project, provided that:

- The City will receive 30% or \$100,000 each year, whichever is greater, of the Contribution Agreement funds between Neosho County and Apex Energy.
- Apex will ensure that operations of WiNexus wireless service, located in Galesburg, will not be negatively impacted by the project.”

The support of Galesburg became invaluable public testimony before the Missouri Public Service Commission on January 2019. The following table is provided to illustrate the relationship between council members themselves and to one particular leaseholder, creating a tangled conflict of interest:

Galesburg Council Member (voting)	Relationship on Council	Relationship to Leaseholder	Relationship to WiNexus (wireless service)	Voting Status of Resolution
Adam Tromsness, Mayor	Brother of Aaron Tromsness; Cousin of Brian Semrad	Nephew of Britt White, leaseholder	Former owner of WiNexus	Yes
Jared Han				Yes; Redacted **
Brian Semrad	Cousin of Adam Tromsness; Cousin of Aaron Tromsness	Nephew of Britt White, leaseholder	Owner of WiNexus	Abstained *
Ron Simoncic				Yes
Aaron Tromsness	Brother of Adam Tromsness; Council of Brian Semrad	Nephew of Britt White, leaseholder		Yes
John Terry		Son-in-law of Britt White		Yes

*On November 15, 2018, Brian and David Semrad appeared before the county commission expressing their concerns as to interference of the wind turbines with signals from their towers to towers.

**On January 24, 2018, Jared Han redacted his signature from the resolution due to his position as principal of Galesburg Middle School and the “neutral” position of his employer, USD #101.

Meanwhile, the “opponents” pressed the commission for a moratorium, to hire an acoustician for a sound study, to obtain safety records of turbines, for a view shed map for day and night, greater setbacks (distance of turbines from property lines/houses), and lower noise standards. The commission responded by hiring a third-party attorney to negotiate contracts, one who advertises her “long-term and daily commitment to theKansas renewable energy industry.”

The commission itself went through its own turmoil. District 2 Commissioner Jennifer Orr communicated to the county counselor that she intended to resign at the end of January 2019. She agreed to return when the commission changed the date/time of meetings to accommodate her work schedule. On March 28, 2019, she officially submitted her letter of resignation. On April 9, 2019, her ex-husband, David Orr, who just 4 days prior to his ex-wife’s resignation was over \$42,000 in debt between the City of Chanute for back lease payments and Neosho County for back ad valorem taxes, and had overwhelmingly lost 2 previous general elections for commissioner, was appointed by Gov. Kelly to fill the vacant seat.

Apex stepped up their pressure. A strongly worded letter was sent by Apex’s attorney, Alan Anderson of Polsinelli law firm, in response to a possible vote on a moratorium, in part, “*...any such moratorium will have no effect on the Project based on the legal doctrine of vested rights...Because the Project is currently at such an advanced stage and is a use which would lawfully exist prior to the enactment of any moratorium,...any such moratorium...contemplated or passed by the Commission would not be applicable to the Project.*”

Newspaper ads by Apex became more directed at the “opposition” than promoting the project. Facebook ads appeared stating “*The future of Neosho Ridge Wind depends on one critical vote. The ball is now in the County Commissioners’ court to approve the Road Use Agreement. Tell your Commissioners the time has come to act.*” It was obvious that Apex knew something about one commissioner on how he was to vote that the rest of us didn’t. The District 1 Commissioner, who had been so eager for “jobs and revenue” a year earlier, had now publically changed his position, while the other two commissioners remained “neutral”—at least publically.

Leaseholders became increasingly impatient during public comment at commission meetings: “hope the commission votes on the project soon.” “this is going to go on and on and on”. “time to cut the discussion”. “urge commissioners to vote in favor of the project to show that the county is a good steward of the land and finances”. “discussion has gone on a long time, to the point of aggravation.” Apex sent letters to their leaseholder to place blame on the “opposition”, thus to assure and pacify, that everything was under control.

Apex also became increasingly impatient. Another strongly worded letter was sent by Apex’s attorney, Alan Anderson. In a nutshell, agreements submitted to the Commission for review “*reflects the outside limit of what the Project can bear to still be economically and logistically viable.*” “*...if the County insists upon requiring additional concessions that are not appropriately tailored to legitimate health, safety and welfare concerns, and conditions approval...upon such concessions, then the County’s actions could be struck down as unconstitutional.*”

The next day, on May 1, 2019, District 3 Commissioner David Bideau dated a letter of resignation effective May 2, 2019, citing conflict of interest allegations related to his private law practice. While denying such, resigned “in an effort to avoid even the appearance of a conflict of interest” related to the proposed wind farm project.

During the May 10, 2019 commission meeting, Commissioner David Orr made his suspected position on the wind project transparent. *“Apex is not going anywhere”*...adding that the county could face a class-action lawsuit over loss of income if the deal falls through. *“I don’t want to challenge them in court.”* *“Can we win?”*

On May 24, 2019, District 3 Commissioner Gail Klaassen was sworn in to fill the vacant seat.

On June 6, 2019, Agreements between Neosho Ridge Wind and the County were approved by a 2-1 vote, with District 1 Commissioner Paul Westhoff opposing. Against all odds, two newly appointed commissioners, one in office for 8 weeks, the other in office a mere 2 weeks and only a few hours of executive sessions, were able to approve Agreements that eluded the former commission for nearly 9 months. The following quotes from a KOAM TV segment on the signing provide insight:

David Orr: *“The only thing we could do is really delegate to them what price we would charge to use those roads. We did not have the right to stop this company from doing economic development in Neosho County. We couldn’t come in after the fact and say, hey we want to zone and keep you out.”*

‘Orr also says the decision had to be made before Apex decided to sue the county for pushing the project back for so long...and was afraid Liberty Utilities Empire would change their decision to buy the wind farm.’

“The message came down to us that they needed to purchase the turbines, and if they couldn’t purchase them by the tenth, they would pull out from Apex, and we would have been left with Apex only. I really was never really on the bandwagon with Apex, as much as it was when I found out Empire was gonna be the buyer.”

Gail Klaassen: *“I’m happy with what we have. I know that the opposition want more, but I think we fought to get what we could and make people safe.”*

Paul Westhoff: *“I’m worried about ice throw, wildlife, ..noise, infrasound. I’ve got a pickup load of information at home about that stuff that we’ve gotten over the months that will tell you that. And there’s studies on both sides. I just feel like I cannot trust Apex.”* *“I want what’s best for the county. Hope to God everything works out right.”*

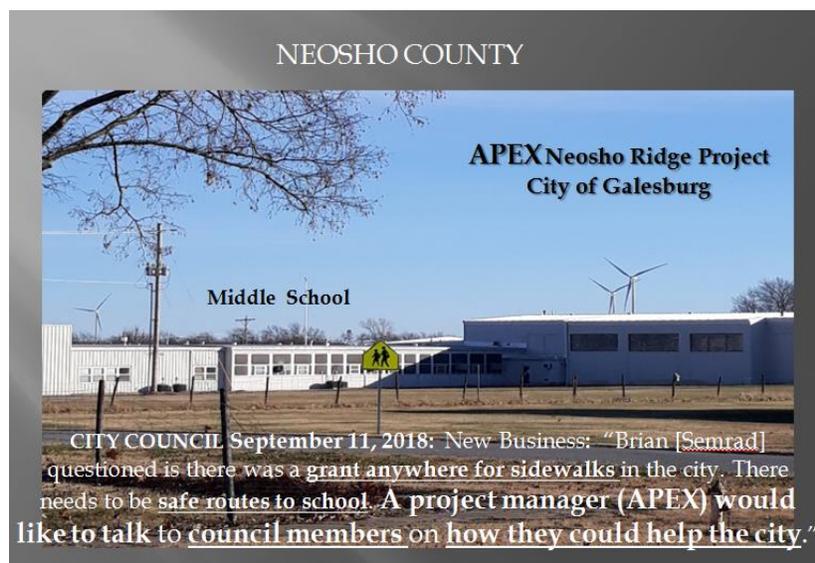
In the end, 156 leases totaling over 45,000 acres were filed with the register of deeds office. One corporation represented 25% of the leased acres, with neither board member living in the county; 50% of the leased acres are held by only 6 extended families and entities.

These leases collectively, obtained in relative secrecy and obscurity, became the foundation used as leverage for approval of the project as justification for “they [Apex] have leased all the land; now we

[commissioners] can't just tell them no" and "they [leaseholders] have a contract; now we [commissioners] can't not honor those leases by not signing a road use agreement.

The leaseholders were represented by a powerful deep-pocketed corporation; the commission represented by an attorney biased in favor of wind industry; and the remaining 99% of the residents at each of their mercies. As a result, residents in the county are now subjected to 139- 600' towering, spinning, blinking, and noise-generating industrial machines. Those opposed to the project as "too big", "too loud" and "too close" became pawns in the negotiations for the highest dollar amount for a contribution agreement. Setbacks from turbine non-leaseholder's home were increased by the length of a turbine blade; sound was decreased by 2 decibels. In the end, it all came down to "land owner's rights"—those choosing to encumber their land for up to 50 years with a wind lease.

The yearly monetary share of the Contribution Agreement anticipated by the City of Galesburg's resolution was stricken from the agreements signed by the county. The City received \$93,000 from the "signing bonus" of \$1.5 Million received by the county. Galesburg does not have new sidewalks, but the school has new turbines dominating their view, the closest a mile away.



In the October 31-Nov 1, 2020 edition of The Chanute Tribune, an election article with incumbent David Orr is quoted, "The farmers are why I did the [wind farm] deal." The landowners had already leased the land for the project, and he [David Orr] did not feel he had the right to stop them. He said it was for land owner's rights and personal rights." David Orr lost the election to retain his commission seat.

And no, everything is not working out right. Although nearly 3 miles from the nearest turbine, my "piece of paradise" becomes a 10-mile line of varied synchronization of flashing red lights at night from nearly every one of those 139 turbines during the fall/winter season. I can only look forward to when the trees leaf back out when that number is reduced to about a dozen. This is not the vision I intended.

Legislation could have afforded better protection for my county—for all residents, not just a select few.

Please protect our counties with your approval of SB 325.