

Submitted Testimony provided to the  
Senate Utilities Committee  
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Mary Pemberton, on my own behalf  
as a Kansas resident

Proponent Testimony on SB-279

Thank you, Chairman Thompson, Vice Chair Petersen, Ranking Minority Member Francisco and members of the Committee, for allowing me to testify in support of SB-279. The State of Kansas requires that a certain percentage of electricity generated within the State be generated by wind; the State also provides certain incentives to wind energy developers including both sales tax and property tax exemptions, the two primary sources of revenue for local government. These mandates, along with generous Federal tax credits and incentives have resulted in Kansas being ranked #1 in the percentage of electricity generated from wind and #4 in megawatts of power produced. Yet to date, Kansas has no statewide requirements on specific development aspects of wind generation; this is left entirely to each County's Commissioners and/or Zoning Board to determine what is safe, appropriate and equitable.

Wind facilities differ from all other types of energy production facilities because of the large volume of land they require, the height and number of structures, and their proximity to and impact on non-consenting homeowners. In Kansas, if you are unfortunate enough to own less than 40 acres in an area where your neighbors own more, you are likely to be faced with the dilemma of a wind farm. You are at the mercy of the Developer and your county officials as you personally have no way to prevent your home from being surrounded by 600' turbines which may: cast a flickering shadow, create a repetitive swishing noise, visually overwhelm your house and obstruct your views, and possibly cause you to suffer from the health effects of infrasound (sound that is too low in frequency to be heard but creates pressure which is known to cause loss of sleep, anxiety, vertigo, headaches, nausea and other health problems).

I have two primary reasons for asking that you approve on this bill: 1) to assist local county officials, and 2) to protect non-participating homeowners.

Without preset regulations, some county commissioners are unequipped to navigate the complicated process of wind energy agreements - the impact of which extends for generations. I would like to share my recent experience as an example of why this bill is so important to Kansans.

Like many counties in Kansas, Bourbon County was recently courted by a wind energy Developer. This Developer quietly began recruiting landowners in 2016 and by 2019 had successfully signed 57-year leases covering thousands of acres in an area 16 miles long and 11 miles wide. Few residents outside of the immediate project footprint and even many within the footprint were unaware of the impending project because of the extensive non-disclosure restrictions placed upon the Lessors. I've learned that Developers often target the largest landowner in an area and then convince other landowners to sign leases by telling them that their neighbors have already signed so they may as well get their share of the money, and also by paying a 'signing bonus' even if the land is inadequate for hosting a wind turbine, because 'hush-hush' provisions prevent landowners from talking with others about the project or saying anything negative about it or the Developer.

The first widespread awareness of the project came in mid-December 2019 when a resident near the project area began speaking in opposition to the facility. This resident organized and held an informational meeting in early January 2020 with speakers who brought attention to some of the negative aspects of wind farms. As a result of this now broader awareness, the following week our County Commissioners held a rare evening meeting to allow residents a limited time to voice their support or opposition; Commissioners themselves said absolutely nothing about the project during this meeting.

During those two meetings I realized residents were speaking either for or against the project; most opposing it did so based on health and visual concerns while proponents cited the economic benefits and property rights. I knew very little about wind energy prior to these meetings, but I quickly began researching and educating myself on the facts. I researched the efficiency and construction of wind turbines, the pro's and con's, the financial aspects, the process of getting County approval, a couple of county's zoning regulations, and read and compared contracts signed between several Kansas counties and various wind energy Developers.

It did not take long to realize that our County Commissioners knew nothing at all about the process and the decisions they would need to make. Early on I suggested that Commissioners form a citizens advisory committee for the purpose of researching and gathering facts to assist the Commission in

making their decisions; this was scoffed at and deemed unnecessary. So, I began attending every Commission meeting, speaking about specific items in the various agreements and the need to hire an experienced attorney to negotiate terms of these agreements. Throughout January, Commissioners and the County Counselor maintained they "have no right to negotiate anything and our only involvement is to sign a road use agreement". My attempts to educate them were ignored, emails I sent containing summaries, comparison charts and contract agreements from other Kansas counties went unread while Commissioners chose to remain blissfully ignorant. The last week in January I handed out paper copies of the four agreements that neighboring Neosho County had recently signed with the same Developer and encouraged Commissioners to read them so they would realize there was more at stake than just a road use agreement. I again urged them to seek assistance from an experienced attorney. Only one of the Commissioners even took the time to read and compare the Neosho County agreements to the agreements that were coincidentally presented that same week by the Developer to Bourbon County. He found there were enormous differences and began to consider that it was more complicated than they thought and perhaps they did need to seek the help of attorney who had been through this process before.

Unfortunately, the other two Commissioners and County Counselor were convinced this was a simple contract that they could handle on their own. They had already made up their minds that since Bourbon County is not zoned, they had no right to dictate any terms or "interfere with the project" and therefore should sign whatever contracts they were presented without the delay of negotiating. The efforts of one citizen to educate them were meaningless compared to the efforts of an expert attorney working for the Developer who easily figured out their thoughts and supported their theories. Commissioners were intimidated and afraid that if they did not hurry and sign, the Developer would move the project to another county, taking the payment-in-lieu-of-taxes money and potential property tax revenue with them.

Throughout this time a number of "opposition" residents also attended every commission meeting and spoke about various negative aspects of wind energy and encouraged Commissioners to say NO to the entire wind facility. Some residents asked questions about the effect of turbines on pacemakers, migraines or other specific health conditions as well as questions about noise, setbacks and other siting details. No attempts were ever made by the Commission to answer any questions or, if I am being honest, to even feign interest – while citizens were speaking, one commissioner often had his eyes closed and head down and appeared to be napping while another one played with his cell phone.

Commissioners held another evening meeting on February 11th, however this time it was only the Developer who was allowed to speak and present their plan. Only 3 or 4 of the dozens of pre-submitted questions from citizens were answered and, once again Commissioners said nothing. More citizens requested the Commissioners seek professional assistance and/or take a few months to research, educate themselves and listen to resident's concerns; Commissioners continued to ignore them.

Citizens were given very limited information about the proposed facility, all from the Developer and were broad estimations such as a project area map and number of turbines. Commissioners considered all details to be "confidential proprietary information" that could only be discussed in executive session, so there was no sharing or discussion of siting and development details, even those that would directly affect residents of the area such as setbacks, shadow flicker and decommissioning.

A special signing ceremony was announced for March 13, 2020. The commission Chairman opened the meeting with a public censure of one Commissioner (who wanted outside assistance and pushed for negotiations), then the commission proceeded to vote in favor and sign five contracts with the Developer. Yes, our Commission signed contracts on a 25+ year, \$300+ million project a mere seven weeks after first being presented contracts by the Developer and learning that their involvement would entail more than "just a road use agreement". Following the signing ceremony, Commissioners still refused to disclose the details, instead announcing that citizens could learn the details of the agreements by filing a KORA request to obtain a copy of the executed contracts which would be ready the following week.

Only after the fact were citizens able to learn that our Commissioners locked the County into agreements that are extremely favorable to the Developer while being very detrimental to the County and its residents. All because our County Counselor and Commissioners decided that this was just another contract to sign and so they didn't need any help. Even though these contracts are valid for 25-50 years, to them it wasn't any different than signing a one year lease on a copy machine.

The Bourbon County agreements are woefully inadequate, not only for the protection of residents in the area but for the County as well. For example, many issues that are of great concern to non-participants, such as shadow flicker and reception or electromagnetic interference, are not addressed at all and the setbacks are not adequate to alleviate these problems. There are very few restrictions or requirements for the Developer – they are even

allowed unlimited expansion of the project size, scope and number of phases at their sole discretion and are grandfathered in from any changes, such as zoning, that would be more restrictive to them.

I strongly urge our Kansas legislators to pass SB-279 providing standardized minimum requirements for wind energy development. Many of our county commissioners are unaware of the complex issues involved with wind development – and nothing requires county commissioners to perform due diligence and research these issues prior to signing contracts.

Commissioners have legal protection for making bad decisions and residents' only recourse is to vote them out of office, which was done in Bourbon County. Unfortunately, we cannot undue the contracts – as soon as the Commission signed, residents were locked in for a lifetime. Please vote in favor of SB-279 to protect other Kansas counties and residents from the unregulated development of wind energy.