



Testimony Provided To

Senate Utilities

Kimberly Svaty, Public Policy Director

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In Opposition to Senate Bill 324

The Kansas Renewable Energy Abandonment Prevention Act

Mr. Chairman, Mr. Vice-Chairman and Madame Ranking Member,

On behalf of the Advanced Power Alliance, the association of energy developers, manufacturers, commercial and industrial customers, engineering firms and financial institutions and investors, I rise in opposition to SB 324.

The Advanced Power Alliance understands the very personal nature of leasing private property. Many of our land acquisition professionals have decades of experience in the oil and gas industries, and know how important it is to treat landowners correctly. We also know and understand the sometimes century-old laws that govern the relationship between lessors and lessees. We understand this because we have to: it is our business. We want to build and invest in Kansas, and we cannot do so without the landowner partners with whom we enter into contract.

Senate Bill 324 portends to set out methods by which wind and solar leases can be terminated. There are inconsistencies within the bill itself: In Section 1, 4(d)(1) it says that the lease will be void within five years if the project does not have a conditional use permit and a transmission interconnect request in process, but in 4(d)(2) it says the project can be considered abandoned after 36 consecutive months of no construction. 36 months after commencement of the lease? Or commencement of construction? If after commencement of the lease, that timeline does not work with the five-year void in (d)(1).

However, on a broader scale, this legislation writes new statutory language without regard to acceptable standards or established caselaw. More than a century of caselaw exists for property leases deemed to be "abandoned" or voided because the interested party did not take action to perfect the lease. Most of this caselaw is in regards to the oil and gas industry, but if this committee were to take any action on this, wouldn't using our established terms of leases in other industries be appropriate?

What is the timeframe for drilling an oil or gas well on a lease? If nothing else were to be done with the lease, typically it is 10 years.

What about a lease to build a pipeline? 10 years.

What about determining severed mineral interests? 20 years.

Furthermore, in each of these cases Kansas law provides ample opportunity for the leasing party to demonstrate ownership interest as that time period comes to a close, thus extending the time period.

Perhaps most important, though, is what our industry already does. Because of established caselaw, largely defined by the one hundred and forty years of leasing in the oil and gas industry, abandonment of leases is well spelled out in a lease for wind or solar. Most wind leases are set to expire after a period ranging from five to seven years, but the lease also provides methods by which the lease can be extended if construction does commence. The longer lease – often tied to the power purchase agreement which can be 30 years or more - is usually triggered at the point at which an operating wind or solar farm is constructed and producing energy. All of the typical lease termination language – including 60-day notices and provisions for extension – are already present. Furthermore, none of this precludes any landowner from negotiating in the contract additional language spelling out at what point the landowner would consider the lease abandoned.

Above all of this rests the power of contract law – if at any point the terms of the contract are breached, either party has remedy through the courts and the contract could end up being considered voided. What would that typically look like? One possibility would be a developer simply not paying the annual lease payment spelled out in the contract.

Members of the committee, wind and solar energy may be newish by comparison, but the caselaw surrounding how a lessee interacts with a lessor is not. Furthermore, the simplest and best remedy for disputes between two parties – the courts – remains open. There is little the Kansas State Legislature can do to improve on this system. Thank you and I am happy stand for questions.