

MINUTES OF THE HOUSE ENERGY AND UTILITIES COMMITTEE

The meeting was called to order by Chairman Carl Holmes at 9:00 a.m. on February 12, 2010, in Room 785 of the Docking State Office Building.

All members were present except:

Representative Dan Johnson- excused

Committee staff present:

Matt Sterling, Office of the Revisor of Statutes
Mary Torrence, Office of the Revisor of Statutes
Cindy Lash, Kansas Legislative Research Department
Iraida Orr, Kansas Legislative Research Department
Renae Hansen, Committee Assistant

Conferees appearing before the Committee:

Rose Bacon, Tall Grass Rancher
Paul Sadler, Wind Coalition
Mark Lawlor, Horizon Wind Energy
Dave Savage, RES Americas
Brice Barton, Trade Wind Energy
Krista Gordon, Iberdrola
Aaron Peterson, KW Prairie Wind Power
Scott Jones, KCP&L
John Kennedy, Hamilton County Economic Development
Mark Schreiber, Westar
Randall Allen, Kansas Association of Counties
Dan Hartman, NW KS Regional Energy Collaborative
Kent Eckles, Kansas Chamber of Commerce
Jeff Hofacker, Phillips County Economic Development
Jim Rice, Seward County Kansas
Maril Hazlett, Climate and Energy Project
Chris Cardinal, Sierra Club

Others attending:

Thirty-Five including the attached list.

Hearing on:

HB 2662 - Concerning the wind generation permit act.

Matt Sterling, Kansas Revisor of statutes, (Attachment 1), gave an overview of **HB 2662**.

Questions were asked and comments made by Representative Tom Moxley.

Proponents:

Representative Tom Moxley, (Attachment 2), presented testimony in favor of **HB 2662**. He noted that he feels that Kansas needs some sort of common siting rules for wind turbine placement or siting.

Rose Bacon, Tall Grass Rancher (Attachment 3), spoke as a proponent of **HB 2662** and noted that she believes this bill gives protection for the neighbors of areas where wind farms are developed.

Opponents:

Paul Sadler, Wind Coalition (Attachment 4), offered testimony in opposition to **HB 2662**. He noted that Kansas has the second most wind in the country, but currently is number ten in production. He noted that currently Kansas is pro-business, has a reliable tax system, and has a competitive siting policy. He commented

CONTINUATION SHEET

Minutes of the House Energy and Utilities Committee at 9:00 a.m. on February 12, 2010, in Room 785 of the Docking State Office Building.

that the decommissioning fund is not necessary because the wind industry is already including decommissioning plans in their leases.

Mark Lawlor, Horizon Wind Energy (Attachment 5) spoke in opposition to **HB 2662** noting that their company has heavily invested in Kansas for wind energy production.

Dave Savage, RES Americas (Attachment 6), spoke in opposition to **HB 2662**. He highlighted three particular concerns they have to this proposed legislation: siting, decommissioning, and setbacks.

Matt Gilhousen, Trade Wind Energy (Attachment 7), presented testimony in opposition to **HB 2662** and noted that they and others in the wind industry have quietly invested billions of dollars of money in the state of Kansas for wind development.

The committee was adjourned for meeting of the House on the House floor at 9:50 a.m.

The committee re-convened at 11:56 a.m.

Krista Gordon, Iberdrola (Attachment 8), spoke in opposition to **HB 2662** but noted that they are approaching the bill from more of a neutral position.

Aaron Peterson, JW Prairie Wind Power, (Attachment 9), offered testimony in opposition to **HB 2662**.

Scott Jones, KCP&L (Attachment 10) offered testimony in opposition to **HB 2662**. He spent time discussing the decommissioning trust fund.

Mark Schreiber, Westar (Attachment 11), spoke in opposition to **HB 2662** noting some of Westar's concerns. They are not opposed to a good neighbor policy but believe that this bill is not the answer to that issue.

Randall Allen, Kansas Association of Counties (Attachment 12), spoke in opposition to **HB 2662** and included in his testimony a map of Kansas showing the counties that are zoned and those unzoned.

Written Opponents:

There was a large amount of written testimony presented in opposition to **HB 2662**:

- Dan Hartman, NW KS Regional Energy Collaborative (Attachment 13)
- Kent Eckles, Kansas Chamber of Commerce (Attachment 14)
- Jeff Hofacker, Phillips County Economic Development (Attachment 15)
- Jim Rice, Seward County Kansas (Attachment 16)
- Randy Zwirn, Siemens, (Attachment 17)
- Elk County Commission, (Attachment 18)
- Zeina El-Azzi, Clipper Windpower Development Company, (Attachment 19)
- Paul Wendelgass, Competitive Power Ventures, (Attachment 20)
- Ruth Douglas Miller, Associate Professor of Electrical and Computer Engineering, K-State, (Attachment 21)
- Brent Hilliard, Skyward Energy, (Attachment 22)
- John Baum, Novus Wind-power, LLC, (Attachment 23)
- Karl Pierce, BP Wind Energy, (Attachment 24)
- Kansas Legislative Policy Group, (Attachment 25)

Neutral:

Chris Cardinal , Sierra Club (Attachment 26)

CONTINUATION SHEET

Minutes of the House Energy and Utilities Committee at 9:00 a.m. on February 12, 2010, in Room 785 of the Docking State Office Building.

Written Neutral:

Those presenting neutral written testimony in consideration of **HB 2662** follow:

- William Thornton, Department of Commerce, (Attachment 27)
- Maril Hazlett, Climate and Energy Project (Attachment 28)

Questions were asked and comments made by Representatives: Tom Moxley, Vern Swanson, Tom Sloan, Vince Wetta, Annie Kuether, Milack Talia, Don Myers, and Carl Holmes.

The hearing on **HB 2662** was closed.

Chairman Holmes noted that Monday, February 15, 2010, the committee would be working these bills:

HB 2624 - Concerning construction of new school buildings.

HB 2652 - Kelsey Smith act; call location; amendments.

HB 2662 - Concerning the wind generation permit act.

HB 2663 - Concerning cities and counties and the creation of energy management districts.

The next meeting is scheduled for February 15, 2010.

The meeting was adjourned at 12:50 p.m.

HOUSE ENERGY AND UTILITIES COMMITTEE GUEST LIST

DATE: February 12, 2010

NAME	REPRESENTING
DEH	KEC
Tom Bruno	Horizon Wind Energy
Carol Duffy McDowell	Tallgrass Ranchers
Mark Schreiber	Westar
LARRY BERG	MIDWEST ENERGY
TOM DAY	KCC
Mark Lawlor	Horizon Wind
Marc Wilson	Spinson Morrison Hecker
Michelle Peterson	The Wind Coalition
Kimberly Sraty	The Wind Coalition
Paul Sader	"
Mark Lawlor	Horizon
Matt Schouen	Tradelland
Dave Savag	RES
Randall O'Allen	KAC
Whitney Damon	Iberdiola
Paul Pierce	BP
Andy By	Kle
Mari Tucker	Commerce

HOUSE ENERGY AND UTILITIES COMMITTEE GUEST LIST

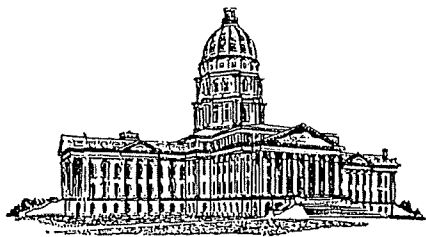
DATE: February 12, 2010

NAME	REPRESENTING
Berend Koops	Hein Law Firm
AARON Peterson	juwi - SW Prairie Wind Power
Maui Hartnet	CEP
Chris Cordinal	Sierra Club
Steve Adams	KDWP
LOW STANTON	NORTHERN NATURAL GAS Co.
Scott Jones	KCPK
Nike Perelt	James Braden
Gary Anderson	Sierra Club
Tom	
Doug Smith	KUPG
Bill Brady	Wind Coaches
Virgil Huseman	land owner - Ellsworth, KS
Stephen Donley	" "

MARY ANN TORRENCE, ATTORNEY
REVISOR OF STATUTES

JAMES A. WILSON III, ATTORNEY
FIRST ASSISTANT REVISOR

GORDON L. SELF, ATTORNEY
FIRST ASSISTANT REVISOR



OFFICE OF REVISOR OF STATUTES
KANSAS LEGISLATURE

Legal Consultation—
Legislative Committees and Legislators
Legislative Bill Drafting
Legislative Committee Staff
Secretary—
Legislative Coordinating Council
Kansas Commission on
Interstate Cooperation
Kansas Statutes Annotated
Editing and Publication
Legislative Information System

MEMORANDUM

To: Chairman Holmes and members of the House Committee on Energy and Utilities
From: Matt Sterling, Assistant Revisor of Statutes
Date: February 12, 2010
Subject: House Bill No. 2662

HB 2662 would require an applicant to obtain a permit from a county prior to the construction of a wind electric generation facility or turbine. The bill sets forth a number of requirements that the applicant must satisfy prior to obtaining a permit and requires an applicant to submit a plan for decommissioning of the facility. The bill would also create the Kansas decommissioning trust fund which would could be utilized by the facility owners and the counties in the decommissioning of the facility. Below is a more detailed description of each section of the bill.

Section 2: Contains definitions used throughout the act, some of which are listed below: As used in the wind generation permit act:

- "Facility" means an electric generation facility, whose main purpose is to supply electricity, consisting of one or more wind turbines and other accessory structures and buildings including substations, meteorological towers, electrical infrastructure, transmission lines and other appurtenant structures and facilities. "Facility" does not mean a stand-alone wind turbine constructed primarily for residential or farm use.
- "Owner" means any entity or entities having an equity ownership, at any time, in a facility under this act, including their respective successors and assigns.
- "Turbine" means a wind energy conversion system that converts wind energy into electricity through the use of a wind turbine generator, and includes the nacelle, rotor, tower and pad transformer, if any.

Section 3: Requires an applicant for a facility or turbine capable of generating 0.5 megawatts of electricity to obtain a permit for the construction and operation of the facility from the county commissioners in the county of the proposed facility.

For a permit to be approved, an applicant would have to: (a) Provide notice to all landowners of record within 1 mile and to any municipality within 20 miles of the proposed facility or turbine; (b) provide an emergency management plan to the county commissioners prior to the beginning of construction; (c) conduct a traffic study and

form a road use agreement with the county; (d) provide a preliminary site plan indicating proposed roadways, turbine locations, substation locations, transmission, collector and gathering lines and other ancillary facility components; (e) comply with minimum safety setback requirements established in the act; (f) submit a qualified professional analysis of the facility or turbine that identifies all potential adverse impacts on natural resources; and (g) provide satisfactory proof of financial assurance, satisfactory plans for decommissioning and reclamation of the proposed facility or turbine and satisfy the requirements of the Kansas decommissioning trust fund.

Section 4: Requires the county commissioners to hold a public hearing within 45 days of receiving an application for a permit.

Section 5: The applicant would be required to submit a decommissioning plan to the county that included the anticipated life of the facility or turbine, the estimated decommissioning costs and the anticipated manner in which the facility or turbine will be decommissioned and the site restored.

At the owner's expense, decommissioning of the facility or individual turbines shall be completed within 12 months after the end of the useful life of the facility or turbines. The commissioners of the county where the facility or turbine is located shall make the final determination as to the satisfactory completion of decommissioning and a public hearing shall be held no less than one week prior to a vote for approval of the decommissioning of the facility.

If after six consecutive months, an individual turbine is incapable of producing more than 20% of the average amount of electricity it produced or if 50% of the turbines of an entire facility are not producing electricity and there is no demonstrated viable plan to restore the equipment to operating condition, the individual turbine or facility will be considered abandoned. An extension of the six-month time period may be granted by the county upon presentation of sufficient justification by the turbine owner.

If the facility or turbine owner does not complete decommissioning within the periods prescribed in this section, the county may take necessary measures to complete decommissioning.

Section 6: Creates the Kansas decommissioning trust fund to be administered by the KCC for the decommissioning of facilities and turbines in the state. The KCC would collect a fee, based on total generation nameplate capacity, from all facilities in the state to fund the decommissioning trust fund.

The fund would be used for the purpose of assisting the facility owner in the completion of the decommissioning of abandoned facilities. If the facility owner failed to complete the decommissioning, a county could petition the KCC for funding to complete the decommissioning of a facility up to the amount, plus earnings, contributed to the fund by every owner of that abandoned facility.

Section 7: Nothing in the act precludes a county or a municipality from adopting more stringent permitting standards or charging reasonable permitting fees. The act would apply to the initial applicant and each successive owner or equity holder in a facility, but does not apply to facilities or turbines constructed prior to the effective date.

STATE OF KANSAS
HOUSE OF REPRESENTATIVES

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TOM MOXLEY
REPRESENTATIVE, 68TH DISTRICT

Chairman Holmes and the Committee

I am pleased to be here discussing one of those needed areas of law to help stream-line the process of new wind power developments in Kansas. The intent is to have a common-sense, good neighbor statute that addresses a set of minimums. These minimums, you will find, address set-backs; public safety; decommissioning; and public hearings. Currently each county has the need to reinvent the wheel.

I am proud to say that most, but not all, companies would have little or no change in operations to comply. On the one hand, we need to protect the county and its citizens from potential bad actors and the potential and real liabilities. On the other hand wind companies can have a common road map of standards and expectations. The result of this bill for counties, civilians, and wind developers should reduce fears and some of the NIMBI issue.

So I hold these tenants: Are the rules common-sense? Do they promote harmony and reduce anxiety? Do they protect the leasees and all stakeholders? Does it level the field so potential bad actors in the wind industry may not undercut the many in that industry who are trying to do the right thing with their developments?

I assure you that I do not have so much pride of ownership that I believe this is a perfect bill. As with any new statute and hearing – I want to hear the issues and problems that are affecting all parties to wind development.

Committee some questions you might ask; does this provide a reasonable guide for counties to follow? Do the general public, your neighbors, and the county commission feel protected from bad actors? Is the interested public kept informed and provided a forum to air their support and, yes, misgivings? Is some awareness made available to counties, and other agencies, regarding the affect these plants will have on their duties such as fire, emergency, road and bridge? Is a provision made for decommissioning? Counties are certainly in a tenuous position to determine this cost much less determine a remedy. I submit nothing in this bill is intended to be counterproductive, but rather is common sense- good neighbor rules. I further submit that what is laid out here is, with the exception of the Decommissioning Trust Fund, current practice with most wind developers.

This process does not supersede counties rights, and they can continue current planning and zoning. These are minimum standards which offer an opportunity to smooth the way for responsible wind development.

The oil business started out in the Wild West, and the legacy has been polluted water and 7,000 abandoned unplugged wells that today's industry is burdened with putting right. Let's not find out the hard way what a few irresponsible developers, or unknowing landowners, and commissioners might do.

Thank you and I will stand for questions at the appropriate time.

HOUSE ENERGY AND UTILITIES
DATE: 2/12/2010
ATTACHMENT 2

Testimony to the Committee on Energy and Utilities, Kansas House of Representatives,
Representative Carl Dean Holmes, Chairman, on House Bill No. 2662

Presented by:
Rose Z. Bacon
1181 Four Mile Road
Council Grove, KS 66846
620-767-7048
February 12, 2010 Topeka, Kansas

Mr. Chairman and Committee members, thank you for allowing me this time to address HB No. 2662, which would establish a wind generation permit act.

I am Rose Bacon, a resident of Morris County and full-time rancher with my husband. We operate a grazing and backgrounding ranch south of Council Grove. I have addressed this committee before on behalf of the native grasslands of Kansas and have been involved in the wind energy discussion for almost 10 years along with serving on former Governor's Wind and Prairie Task. For all of these years my concern has been responsible development and siting of wind generation facilities, while maintaining the integrity of Kansas' irreplaceable native prairies and keeping all landowner rights in mind.

Most of you understand that if I wanted to develop a cattle feedyard on even one acre of land, I would have a great number of regulatory standards and procedures that I would need to fulfill. These permits and standards are in place for the protection of my neighbors, the environment and the surrounding communities. These are state and federal requirements that apply to all Kansas counties, both zoned and unzoned. Most other types of business, industrial and commercial development including gas and oil, also have regulations and standards to abide by. This allows for a reliable and responsible method of development. Common sense and reasonable permitting offers the developer a solid basis for making development decisions and levels the playing field for all participants.

The wind industry, by contrast, which develops thousands of acres, has no state or federal regulations, standards or parameters that they are required to abide by. A few counties have put local standards in place, but these are often sadly lacking in value due to lack of wind development expertise on the county level and undue influence by wind developers in a proposed site area. With no common standards or permitting process, each site proposal is often hotly debated causing some poor siting procedures and decisions, and often causing permanent community hostility and division.

A few developers have responsibly chosen sites that cause the least amount of environmental impact and several utilities, notably Westar and KCP&L have encouraged responsible siting by purchasing only from properly sited wind complexes. Unfortunately, less responsible developers have both developed and are proposing additional wind complexes where environmental damage and fragmentation of wildlife habitat are rated by biologists as prime examples of inappropriate siting. In addition, some of these poorly sited complexes are located next to neighboring landowners who have had little or no voice in the process. They have been excluded, belittled or vilified for even voicing their opinion.

There are wind development and siting guidelines developed by the Kansas Renewable Energy Working Group, which was comprised of both environmental groups and wind developers. There are also guidelines which are similar to those of KREWG, that were developed by the Governor's

HOUSE ENERGY AND UTILITIES

DATE: 2/12/2010

ATTACHMENT 3-1

Wind and Prairie Task Force. Unfortunately, since these are only GUIDELINES, they are often totally ignored.

Most emerging industries are given some leniency in their infancy. But at some point, they impact enough resources that standards and permitting regulations are necessary to provide responsible and consistent development. This is true of any major industry. The wind industry has had its period of leniency with absolutely no permitting process or siting standards. While some of the less responsible developers may regard this as an ideal situation, the more responsible developers have stated that concrete statewide standards and a reasonable permitting process would level the playing field for the industry.

HB 2662 would allow for some badly needed standards for permitting a wind energy development. This is not a bill that is pro or con on the wind energy debate; it simply sets out commonsense and responsible steps that any responsible developer ought to be willing to follow.

I personally would suggest that some of the actual set-back distances should be doubled or should be measured from the Project Boundary Line instead of from a turbine, since some of the current wind complexes do affect the quality of life of neighboring residents. Noise from the turbines can easily be heard for a mile or more downwind. The idea presented here is at least a beginning for responsible siting and development.

This bill would allow for all interested parties and landowners to have a voice in the process and to view the proposed plans. It would protect the property rights of all landowners in the proposed area. It would allow for the future care of the project and decommissioning, which is an area that is all too often completely ignored.

There are some real health and safety, property value, environmental and aesthetic concerns with the development of a wind energy complex. These could be addressed in a practical and methodical manner by use of the process outlined in HB 2662. I ask you to consider what standards and permitting process you would like to have in place should a wind energy complex be proposed by your neighbors or next to your house.

But beyond that, I ask you to keep in mind the larger picture of what a responsible permitting procedure could provide. A case in point is Wyoming where wind developments have multiplied greatly over the last few years. Wyoming is not adverse to development as evidenced by gas, coal, coal-bed methane, wind, and ranchett development. The problem they have is one which Kansas could also experience. Much of their natural areas are developed, and wind developments are now proposed to take up much more area due the thousands of acres in each wind complex.

Most of Wyoming has been habitat to a bird called the Sage Grouse which is somewhat similar to our Prairie Chicken. It is not currently on the Endangered Species List, but is under consideration to be listed. Should the Sage Grouse be listed as an endangered species, much of Wyoming would fall under the very restrictive development criteria of the Endangered Species Act. Those restrictions would not only affect wind development, but gas, oil, coal, ranching, mining, lumber, tourism, and ranchetts. In other words, most all of the state's income producing enterprises would be affected. So Wyoming Gov. Dave Freudenthal has issued a recent ruling to block wind development in around 20% of the state and temporarily halt utility eminent domain in an effort to preserve habitat and prevent the Endanged Species listing of the Sage Grouse.

In Kansas, we could face the same situation with the Prairie Chicken which is not yet listed as an Endangered Species but is being considered. If we as a state propose and develop our own

responsible permitting and development criteria to protect the rights of neighboring landowners of a proposed wind complex and to maintain the integrity of the environment, we have a much better chance of managing our own future without the much more restrictive rules of the Endangered Species Act. Those restrictions in Kansas, as in Wyoming, would affect many of our most productive economic enterprises; ranching, gas, oil and tourism.

I urge you to carefully consider this bill and to recognize that it is a progressive and proactive step to manage our states natural resources and to provide for the protection of neighboring landowners. This bill is not a pro or con wind energy bill, but is a bill that promotes responsible development, common sense and foresight into our future.

I have included some excerpts from the KREWG Siting Guidelines that set a precedent and would back up the process behind the permitting procedure of HB 2662.

Thank you again for you time. I will answer any questions you might have.

Rose Z. Bacon

EXCERPTS - KANSAS RENEWABLE ENERGY WORKING GROUP GUIDELINES:

Following are excerpts from the KREWG guidelines. Often developers leave the impression that the developers could pick and choose from these guidelines to suit themselves. That was NEVER the intent of these guidelines!

All of the guidelines specifically state that wind developers **give careful consideration of the Tallgrass prairie in the Flint Hills, and in addition, care should be given to avoid damage to unfragmented landscapes and high quality remnants in the Sandsage, Mixed Grass, and Shortgrass prairies in central and western Kansas. When feasible, wind energy development should be located on already altered landscapes, such as extensively cultivated land and/or areas already developed. (KREWG Sec. 1, f)** Both the Elk River and Smoky Hills projects are in large areas of intact native prairie, against all KRWEG recommendations.

Sec. 3, a through k: outlines the essential need to consult and involve biological and environmental experts early in the planning process, and to consider the potential cumulative regional impacts from multiple wind energy projects. Communication with wildlife agencies and university personnel is essential. All of the state conservation and wildlife groups have repeatedly recommended against developing intact native prairies, wetlands and wildlife preservation areas. The common tact is for the wind developers to pay for their own biological "experts" to state that the land is acceptable to develop. Although the Kansas Wildlife & Parks Dept. may be consulted and has recommended against development of the prairie, they have no legal standing to enforce that recommendation.

Sec. 4, a through f, discusses how visual impacts from projects are an important consideration. The impact on the quality of the surrounding landscape and viewsheds, especially in areas with high aesthetic qualities and where neighbor's property may be impacted by the siting, should be evaluated fully. Planners and developers should listen to the community and all stakeholders in all project phases. There are often residential homes within close proximity of a proposed complex, and they are often not given an opportunity to

comment on a project or speak with the developers or power purchasers about it before the announcement of the project leases or sale.

Sec. 5, a, whenever possible, avoid sites that require construction activities on steep slopes. Often these proposed sites are along the hills and ridges of native grasslands.

Sec. 8, d, Do not exploit the fact that some districts or counties do not yet have an established zoning permitting process applicable to wind energy projects. Work with the appropriate local officials to establish reasonable parameters and make the process as transparent and informative to the public as practicable. Many Kansas counties have no zoning at all. Furthermore, the whole process from the leasing of the land to the sale of the project often has not been open to public inspection by any of the neighboring landowners. Most of the County Commissioners have seen few if any maps or plans of the projects that are proposed.

Sec. 8, e, Provide information about future project expansions. Again, generally the neighboring landowners or the County Commissioners have not seen such plans and even current development plans rarely include exact placement of the roads and turbines that are proposed.

Sec. 8, f, Anticipate and make provisions for future site decommissioning and restoration. This topic rarely gets discussed or Commissioners are told it is the landowner's duty or that the salvage value of the turbines will pay for decommissioning. This has not proven true in the past. Neither the landowner nor the County Commissioners have solid information on decommissioning.

Sec. 9, a & b. These sections discuss involving the public in an education process using OBJECTIVE background resources, ample opportunity for two-way communication, and involvement through meetings and public forums which should be incorporated into the siting process. Very simply, this often has not been done and the public, the Commissioners, and the neighbors of most projects have often been kept in the dark. Wind developers frequently tell rural residents that their close neighbors have signed contracts, which is often false. Neighbors and friends are forced to sign confidentiality agreements and are pitted against one another. This has been one of the most divisive developments to ever come among communities.

In an extremely responsible manner, KCP&L and Westar have met with area landowners and several conservation groups BEFORE deciding on the siting of their wind energy projects. With the input they received, they made the responsible decision to develop appropriate sites and stayed out of intact prairie lands. Their actions and decisions have been heralded by all groups as an excellent example of communication and responsible siting of their wind complex.

With the permitting procedures outlined in HR 2662, ALL utilities and wind developers would be following reasonable siting and development procedures.

Respectfully,
Rose Z. Bacon
Flint Hills Rancher



The Wind Coalition

Testimony Provided to the

House Energy and Utilities Committee February 12, 2010

Paul Sadler, The Wind Coalition

House Bill 2662

Chairman Holmes and Members of the Committee,

My name is Paul Sadler and I am the Executive Director for The Wind Coalition, a non-profit organization made up of over 40 wind developers, component manufacturers and public interest groups. The Coalition is responsible for industry representation at the legislative and regulatory authorities in 8 states, Kansas, Oklahoma, Texas, Missouri, Arkansas, Nebraska, New Mexico, and Louisiana. According to the KCC State Energy Office, the companies within The Wind Coalition represent almost 900 (899.7) of the 1011.9 MW of commercial wind energy facilities currently in operation in the state. I appreciate the opportunity to provide testimony to the committee regarding HB 2662 as it relates to the permitting of wind generation projects in the state of Kansas.

Kansas currently ranks 10th in wind energy production, but the Department of Energy just upgraded the state to rank 2nd nationally in wind energy resource potential. Kansas has the potential to develop between 10,000 and 20,000 MW of wind power. The wind industry has already invested more than \$3 Billion in total economic benefit in Kansas since 2000 and has created nearly 1,000 construction and permanent jobs.

While Kansas has had some success developing wind energy, its continued success and growth depends on consistency of tax policy, transmission, and reasonable, competitive siting policy. The current system established in the state is working. Our developers work very closely with local elected officials in order to comply with current, individual county restrictions. This system allows each county to weigh the particular concerns of their individual constituents against the benefit of wind development in the county (PILOT payments to school districts, relief to local tax burdens, etc). No other form of generation has siting or permitting guidelines in non-zoned counties. HB 2662 would mandate siting requirements on all non-zoned counties that exceed any requirements established in either zoned counties or competitive states. Such a drastic change in policy would send a negative message to the industry, and frankly, cause a competitive disadvantage to Kansas.

With the exception of nuclear energy, no other form of generation has a decommissioning trust fund in Kansas. There is currently no requirement to decommission coal or natural gas plants or to reclaim the land they once used. The Wind Coalition companies operating in Kansas all have language in their individual contracts on the decommissioning issue. Some companies bond, some post letters of credit or issue a parent guarantee, but all include a decommissioning provision as it is not the intent of our industry, one that prides itself on being environmentally responsible, to abandon our assets and tarnish the beautiful Kansas landscape.

Kansas has a tremendous wind resource, but it is surrounded by states that have similar resources which are fiercely competing for wind energy and the economic development and jobs that come with it. HB 2662 would adversely impact Kansas' ability to compete with these surrounding states.

Thank you very much for the opportunity to provide testimony for the Committee in opposition to HB 2662.



The Wind Coalition

Company Membership:

AES Wind Generation	Luminant
Blattner Energy	Martifer
BP Alternative Energy	Mesa Power
Clean Line Energy Partners	Mortenson Construction
Clipper Windpower	Noble Environmental
CPV Renewable Energy Company	Novus Windpower
Duke Energy	Pattern Energy
Edison Mission	RES Americas
Electric Power Engineers	Shell Wind
EnXco	Siemens
E.On Climate and Renewables	Stahl, Bernal & Davies LLP
Eurus Energy	Stewart Title
Gamesa Energy	Terra-Gen Power
GE Energy	Third Planet Windpower
Horizon Energy	TradeWind Energy
Infinity Wind	Trinity Structural Towers
Iberdrola	Vestas-Americas, Inc.
Invenergy	Wanzek Construction
John Deere	Wind Capital Group

Public Interest Groups:

American Wind Energy Association (AWEA)
Environmental Defense Fund (EDF)
Public Citizen
Texas Renewable Energy Industries Association (TREIA)



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House Energy and Utilities Committee February 12, 2010 on HB 2662
Mark Lawlor, Horizon Wind Energy

Chairman Holmes and Members of the Committee,

On behalf of Horizon Wind Energy LLC ("Horizon"), we appreciate the opportunity to provide testimony to the committee regarding HB 2662.

Horizon Wind Energy LLC ("Horizon") develops, constructs, owns and operates wind farms throughout North America. With over 300 employees, 20 offices, and 23 wind farms across the United States, Horizon has developed more than 3,400 megawatts (MW) and operates over 2,800 MW of wind farms. Horizon has invested heavily in Kansas, with a Field Development office in Overland Park and an operating wind farm in Cloud County. Horizon has created more than twenty permanent jobs and invested millions of dollars in Kansas to date.

The Meridian Way Wind Farm, which began operations in 2008, is located in Cloud County, eight miles south of Concordia. This wind farm was successfully sited and developed in an un-zoned county. Horizon began working with Cloud County officials long before development activities began. Horizon, like other developers, has internal standards of design, construction and operation that exceed the health and safety requirements of the county and its residents. Horizon applied design and safety standards to the Cloud County project just as it does in all counties where we build wind farms. Cloud County has been extremely supportive of the project and today remains proud to host this wind farm.

Kansas, with its robust wind resource, business-friendly climate and supportive communities provides a great investment opportunity for wind energy. This investment takes place primarily in rural communities, but urban areas also reap the benefits of investment through the industry's utilization of engineers, contractors, and attorneys as well as manufacturing facilities. Kansas has been on the path to receive billions of dollars invested through wind energy. HB2662, if passed would seriously jeopardize this investment.

By imposing state-wide siting restrictions, HB 2662 would take away the ability of individual counties to determine how development activities will proceed in their communities. The requirements of this bill will make the permitting process exceedingly difficult, create uncertainty and risk for developers, and drive wind investment out of the state and into states where policies are clearly supportive of wind development. Finally, this bill discriminates against wind energy by applying restrictions only to this source of generation while leaving others unaffected.

For these reasons, Horizon respectfully opposes the passage of HB 2662. Thank you.



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Testimony Provided to the
House Energy and Utilities Committee February 12, 2010
Dave Savage, Development Manager
House Bill 2662

Chairman Holmes and Members of the Committee,

On behalf of RES Americas, we appreciate the opportunity to provide testimony to the committee regarding HB 2662 as it relates to the development and permitting of wind generation projects in Kansas.

RES Americas is a fully integrated developer, constructor, and operator of wind and solar energy projects. RES Americas developed and constructed the 99 MW Central Plains Wind Energy Project for Westar Energy in Wichita County near Leoti, KS. RES Americas has constructed more than 3800 MW of wind energy in North America and has a development pipeline of over 12,000 MW.

RES Americas is concerned that some of the provision of House Bill 2662 will create conditions that discourage RES Americas and companies like ours from aggressively pursuing the development of renewable energy generation in Kansas. In particular, there are three areas in the bill that are of concern.

Our first concern pertains to the language on siting. The proposed legislation would alter the current siting process in Kansas, which occurs at the county level and works very well. In the case of RES Americas, the majority of the projects we have under development in Kansas at this time are in zoned counties. The few projects we have under development that are not in zoned counties nevertheless require a development agreement with the county that includes strong siting provisions. In keeping with the adage that "if it ain't broke, don't fix it", we respectfully urge you not to make changes to the current siting process.

Our second concern pertains to the proposed language regarding the decommissioning of wind projects. HB 2662 appears to require funding of the Kansas Decommissioning Trust fund prior to the issuance of a siting permit, and prior to commercial operations date of the project. This is a highly

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unusual requirement, and more importantly, it is likely to have a significant negative impact on the ability to secure financing for projects.

It is virtually impossible to predict the cost of decommissioning a project at the end of its life, and funding a bond before a permit has been secured is premature, since projects are not typically financed until many months or even years after a permit is secured. Counties in Kansas are actively addressing decommissioning, and their requirements are much more in line with industry practice in other states.

Our third concern pertains to setbacks. The proposed setback of one-half mile (2,640 feet) from dwellings on property belonging to landowners who are not participating in the wind farm is overly restrictive. Typical setbacks from homes on non-participating properties in zoned counties in Kansas are 1,000 feet. RES Americas believes that this is a good and appropriate standard, although we frequently use setbacks that exceed this.

In addition, although we agree that turbines should be located a distance of 1.5 times turbine tip height from property lines between non-participating landowners, we think that to also require this setback from property lines between participating landowners is overly restrictive and unnecessary.

Wind turbine setbacks can and should maintain the safety and comfort of people residing and working near wind farms while also creating a viable environment for the developing Kansas' clean, renewable energy resources. Responsible wind developers like RES Americas recognize this and support reasonable setback requirements.

However, it is also important to understand that overly restrictive setback requirements can drastically reduce the number of turbines that can be sited in a given wind farm, with potentially serious consequences for the commercial viability of the project. RES Americas believes that the setbacks proposed in the bill are too restrictive and could make it uneconomic to develop wind farms in Kansas.

Wind energy has the potential to continue bringing clean power, green jobs, and investment in Kansas. RES Americas appreciates the opportunity to provide feedback on HB 2662. Thank you.

Testimony Provided to the
House Energy and Utilities Committee February 12, 2010 HB 2662
Matt Gilhousen, SVP TradeWind Energy, LLC

Chairman Holmes and Members of the Committee,

On behalf of TradeWind Energy ("TradeWind") I would like to thank you for the opportunity to testify before you today.

Since graduating from the University Of Kansas School Of Engineering I have spent nearly a decade helping to build Kansas' only utility scale wind energy development company. Based out of our LEED certified building in Lenexa we have grow the company from small startup with only a few employees and couple of projects sites to employing 60 people that manage a project pipeline of 8,000 MW in 11 states. Of these 11 states Kansas is clearly our most important as this is where we live, work and play. We are currently working on four active projects throughout the state totaling 2,000 MW and representing \$4 billion dollars of potential investment, all of which are put in jeopardy by HB 2662.

This industry has quietly invested roughly \$3 billion dollars in the State over the last decade, most of which has been in the last several years, and is poised to invest several times that amount in the next few. The only way Kansas can fully take advantage of this amazing natural resource is if new transmission lines are built, which many of us in this room have been working so hard to make a reality. HB 2662 creates yet another roadblock to an already extremely risky and difficult process and will force developers to question if Kansas is where they want to place their bets. Our local utilities have created the demand that has lead to the installation of ~1,000 MW to date and are working to do more as we speak, however without the demand for renewables from outside the state, and the companies investing in Kansas to meet that demand, our hopes for new transmission lines could very well vanish as the lines will be built in surrounding states. If we lose the transmission lines the state stands to lose the billions of dollars of wind projects that go with them.

HB 2662 will create a chilling effect on the industry by introducing additional uncertainty and subjectivity to the development process. It is our belief that nothing is broken which requires fixing as zoned and un-zoned counties alike are doing and effective job of evaluating projects and managing the process. These types of matters should be and are best handled at the local level. Without a strong partnership and collaboration between the developer and the county these types of projects do not succeed. While well intentioned, HB 2662 will inevitably be interpreted by the market, Southwest Power Pool etc. as anti wind with nothing to be gained.

For these reasons TradeWind urges the Committee to reject HB 2662. Thank you.

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**IBERDROLA
RENEWABLES**

TESTIMONY PRESENTED

TO: **THE HOUSE ENERGY AND UTILITIES COMMITTEE**
REGARDING: **HB 2662**
ON: **12 FEBRUARY, 2010**

Chairman Holmes and Members of the Committee,

Thank you for the opportunity to present testimony to you this morning regarding House Bill 2662. I understand I am listed as an “opponent” to the bill, but in reality Iberdrola’s position is closer to “neutral”. I shall describe our position on several of the bill’s details, and I will keep my remarks brief.

Before I begin, I will let the Committee know that we are currently operating a 150MW project in the state. It is our Elk River Wind Project in Butler County, Kansas. We are pleased to be developing future wind projects in seven other counties across the state.

Iberdrola is a strong supporter of responsible wind energy development, and many of the provisions of the bill simply codify our normal business practices of responsible development. However, many of these provisions are already addressed at the local or landowner level regardless of whether the county is zoned. As a general statement, Iberdrola is less concerned about the specific provisions contained in the bill than it is with the collateral issues that may be involved.

Iberdrola agrees that it is important for wind project developers to have a plan for decommissioning security to ensure proper and timely removal of the facilities. However, it is normal for this plan to be established in the land lease agreements or the county approval process or both. We also understand there may be some concerns by local officials if the funds are controlled at the state level rather than at the local level. Further, it is often possible and appropriate to post letters of credit or parent guarantees, which can lower the cost of energy by avoiding the burden of carrying cash security (which is the form currently contemplated in the bill) and yet protect the interests of the community.

Iberdrola also supports the use of responsible setbacks for safety and neighbor relations. Iberdrola uses internal setback guidelines from public roads, property lines, and residences, and those minimums will continue to be utilized, even in the total absence of mandated setbacks.

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In Section 3a, the twenty mile notification area is excessive. If the bill is adopted, the distance should be reduced to a tenth of that figure.

Consultation with county officials is a normal part of the development process, whether or not that county is zoned. A duplication of efforts between local and state governments likely is not necessary.

Further, even though the specific provisions in the bill as currently drafted focus more on development procedures rather than allowable locations of wind projects in the state, Iberdrola is concerned that siting provisions seen in previously rejected bills could be reintroduced if the bill advances. If the bill does advance, Iberdrola is committed to working with the legislature, counties, and other stakeholders to adopt rules that make sense for feasible yet responsible wind project development.

We thank Kansans for their continued support of renewable energy and look forward to continuing to do business in this state.

Thank you.

Krista Gordon
Business Developer
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Testimony Provided to the

House Energy and Utilities Committee February 12, 2010

Aaron Peterson, JW Prairie Wind Power – juwi Group



House Bill 2662

Chairman Holmes and Members of the Committee,

On behalf of JW Prairie Wind Power and the juwi Group, we appreciate the opportunity to provide testimony to the committee regarding HB 2662 as it relates to the development and permitting of wind generation projects in Kansas.

We are a Lawrence-based wind developer active in Kansas since 2002. Our USA corporate headquarters are in Cleveland, Ohio and our parent company is the juwi Group based in Worrstadt, Germany. We develop projects across the Upper Midwest, Great Lakes states, and the Great Plains.

As currently drafted, HB 2662 would add unknown costs and place permitting burdens on developers in Kansas. This could potentially decrease the viability of projects in the state and cause developers to look elsewhere in the Great Plains region.

The mandated setbacks of all turbines regardless of County preference could increase the size of wind farms and could result in turbines sited in marginal resource areas, thus potentially decreasing the energy production while increasing costs for utilities and ratepayers who would be paying for costs associated with poorly sited turbines.

For example, property line and right-of-way setback requirements in more densely populated Ohio are 1.1 times the total turbine height, not 1.5 times the height --in order to decrease the sprawl of planned turbines while remaining a respectable distance away from adjacent property.

Also, developers currently work with Counties to develop projects that hold us accountable with the local leaders whose constituents are most affected. A desire to streamline the process and establish Commission directed permit rules would result in de facto state rules that take away local control.

Kansas has become a national leader in wind power. The threat of placing delay and uncertainty in project costs, planning and eventual grid interconnection and power purchase agreement terms with the state's utilities could cause other states with rich rural wind resources to attract investment that would otherwise have come to Kansas.

Again, thank you for the opportunity to provide testimony to the Committee. We oppose the bill in its current form.



**Testimony of Scott Jones
Before the House Energy and Utilities Committee
In Opposition of House Bill 2662
February 12, 2010**

Kansas City Power & Light understands the challenges involved in permitting a wind farm in Kansas. In 2006 KCP&L's Spearville Wind Generation Facility was brought online to provide 100.5 MW of renewable energy. In December last year we issued Requests for Proposals (RFP) to add as much as 300 MW of additional wind generation to be in service in the 2010-2011 timeframe. While we are focused primarily on sites in Kansas and Missouri, we will evaluate proposals throughout the Southwest Power Pool region.

KCP&L does not offer policy analysis of the permitting section of this bill, but would like to address the decommissioning trust fund.

We are concerned a decommissioning trust fund will increase the costs of construction of new wind projects. While we appreciate the intent of the bill, we believe large investor owned utilities should be exempt from this provision. IOUs such as KCP&L will be in Kansas for many years, remain solvent and have the capability of funding decommissioning at the time the facility is retired.

KCP&L appreciates the opportunity to offer suggestions on this bill and urges the committee to adopt the recommendation presented.

Scott Jones – KCP&L
Manager, Kansas Government Affairs
816-556-2458; scott.jones@kcpl.com



MARK A. SCHREIBER
Director, Government Affairs

**Testimony of Mark Schreiber
Before the House Energy and Utilities Committee
On HB 2662
February 12, 2010**

Chairman Holmes and members of the committee, I appreciate the opportunity to present testimony on House Bill 2662. The bill establishes statewide permitting and siting requirements for wind farms. Westar Energy opposes this bill.

Westar Energy owns or has bought power from wind farms in three different counties, Barber, Wichita and Cloud. We value the relationship with the county and the landowners on whose property we place these facilities. Land use policy typically occurs at the city and county level under the control of planning boards and city/county commissions. HB 2662 seeks to establish a statewide good neighbor policy for future Kansas wind farms, which ensures wind developers and owners respect the county's infrastructure and landowner's rights.

As the first wind farms were being developed in Kansas, the Wind and Prairie Task Force (2004) and the Kansas Energy Council (2005) released recommendations for cities, counties and landowners to use when working with wind developers. Westar believes those recommendations remain valid and would support their continued use at the local level.

Westar has some specific comments on HB 2662:

- Page 1, line 24, transmission lines are included in the definition of "Facility". Transmission lines can stretch for 50 miles or more. Westar is concerned that without more definition, the term could encompass a significant length of transmission.
- Page 1, lines 39 and 41, Westar does not understand the need to notify landowners within one mile and municipalities within 20 miles of a facility. The distance seems excessive, especially when the definition of "Facility" includes transmission lines. Usually landowners are contacted within the one mile zone by developers as they secure land rights.
- Setbacks identified on page 2, lines 26 – 28, Typical county setbacks have been 500 feet. The bill proposes setbacks of approximately 650 feet. Using the bill's setbacks, a single turbine could be placed on a 40 acre tract, but only if it was placed in the middle of the tract. Layouts of wind farms and proper spacing between turbines and rows would become more difficult and increase the chance for a sprawling effect.

- Setbacks identified on page 2, lines 29 – 32, Typical residential setbacks have been 1000 feet. Increasing setback to 1,320 to 2,440 feet creates the same problem noted above.
- Sections 5 and 6, Westar understands the need for decommissioning assurance. We believe the local government is in the best position to judge what acceptable assurance is.

Westar Energy values our local relationships. When one of our facilities is sited in a county, we know it will be there a long time. It only makes sense to be a good neighbor. For those counties that do not have zoning requirements for wind farms, we encourage them to take advantage of all the resources available to establish prudent regulations. Representative Moxley has attempted to establish a statewide policy, which we oppose. However, we support his intent and are willing to work with him and others to ensure good practices are used wherever wind energy is developed in Kansas.



KANSAS
ASSOCIATION OF
COUNTIES

TESTIMONY

concerning House Bill 2662

re. Wind Generation Permit Act

House Energy and Utilities Committee

Presented by Randall Allen, Executive Director

February 12, 2010

Chairman Holmes and members of the committee, I appreciate the opportunity to present testimony on behalf of our Association *in opposition to* HB 2662, establishing the Wind Generation Permit Act.

We oppose the bill for several reasons. First, it mandates all counties, whether they are currently zoned or not zoned, to establish a process to grant a permit for the construction and operation of a wind electrical generating facility or turbine if it is capable of generating more than 0.5 megawatts of electricity. The bill includes a very prescriptive public notification and public hearing process, and lays out a list of documents and plans which must be presented to and considered by a board of county commissioners prior to issuing a wind generation permit to an applicant.

There is nothing inherently wrong with a board of county commissioners asking probing questions and doing its "due diligence" when a wind farm developer is considering and working toward construction of a wind farm. In fact, it is important to ask for and secure assurances to protect the citizens and taxpayers. However, our objection to HB 2662 is that it *requires* (not merely suggests) boards of county commissioners to gear-up to handle this process. Many counties are actively working to host wind energy projects and many counties are eager to welcome wind-powered electrical generation in their counties. Conversely, a few counties are much less enthusiastic about hosting wind farms and one (Wabaunsee County) has taken action through its zoning resolution to forbid development of such facilities within the county. All of these actions are consistent with the spirit of home rule and local control. For your information, I am providing (attached) a map of the counties showing which have or have not enacted countywide zoning.

Last year, the Kansas Association of Counties together with the North Central Regional Planning Commission and other regional planning and community development groups, sponsored three day-long workshops ("County Governments and Wind Farms") in Garden City, Salina, and Yates Center to facilitate sharing of information about wind farm development across county lines. At the workshop, the KAC disseminated copies of already-executed gift agreements, road maintenance agreements, and decommissioning agreements between counties and wind farm developers, so that county commissioners and their staff and citizens would have ready access to information. At the workshops, county commissioners told us that they wanted to work to ensure that local review processes, zoning resolutions (in counties that have zoning), and various agreements (road maintenance, financial gifts, decommissioning, *et. al.*) are as consistent as possible across county lines. They clearly understood that they have an important role to make county regulations and review processes logical, practical, and impactful, so that Kansas does not inadvertently discourage development of wind farms.

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While there is still much work to be done, much progress has already occurred! Several successful wind projects have risen from the horizon throughout Kansas – in both zoned and unzoned counties. We conclude from the experience so far that our county commissioners welcome information and knowledge of best practices. Nothing is seriously wrong with what has happened so far.

Another concern about HB 2662 is in Section 6, concerning the Kansas decommissioning trust fund. Our experience and observation over the past several years has taught us that we should be very skeptical of placing public funds in state agency budgets, where the temptation to “sweep” the monies to fill gaps in the State General Fund is always present. Butler County successfully negotiated a decommissioning fund agreement for the Elk River Wind Farm project. The monies are held locally, not by the State, ensuring that when the monies are needed, they will be available.

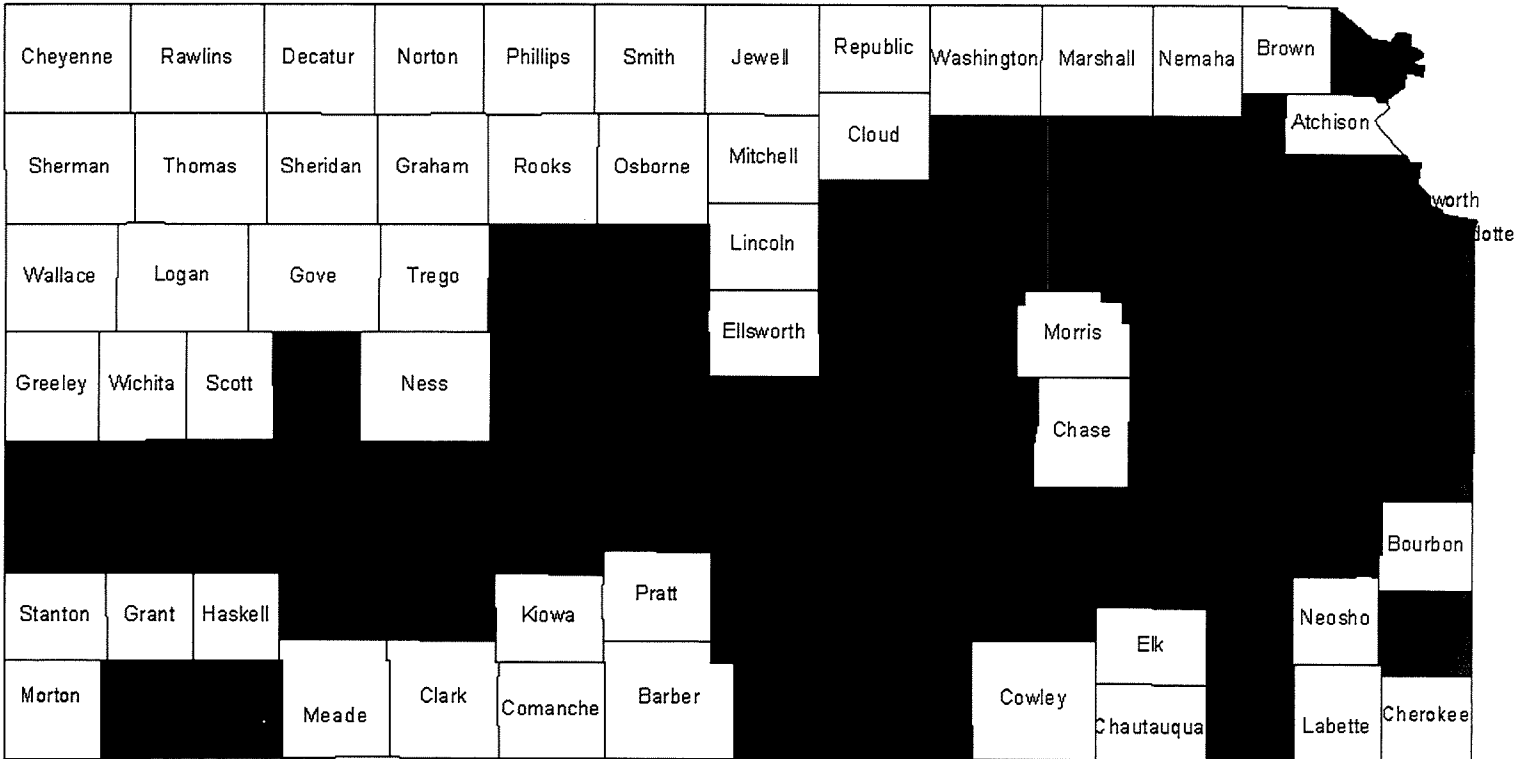
While we appreciate the good intention of other good Kansans in planning for the future, we come from the perspective of building on what has already worked. For the reasons stated, we urge the committee to hold back on reporting HB 2662. We pledge our commitment to meet and work with any and all parties, to ensure that wind energy development can move forward in Kansas, within the parameters of local control and local land use regulations. And, in parts of the state where wind farms are not welcomed, we will go to the mat to protect the ability of boards of county commissioners to enact land use restrictions consistent with what their citizens want. After all, what is considered good in one county may be considered negatively in another county, and our Association seeks to protect the ability of all boards of county commissioners to legislate in the best interest of their constituents. HB 2662 would interfere with that ability, and so we respectfully oppose the bill.

Thank you, Mr. Chairman and members of the committee, for the opportunity to address HB 2662.

The Kansas Association of Counties, an instrumentality of member counties under K.S.A. 19-2690, provides legislative representation, educational and technical services and a wide range of informational services to its member counties. Inquiries concerning this testimony should be directed to Randall Allen or Melissa Wangemann by calling (785) 272-2585.

Attachments

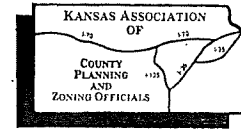
Zoning Practices



- Gray=Zoning
- White=No Zoning



HOUSE ENERGY AND UTILITIES COMMITTEE



Written Testimony on **HB 2662**

Friday, February 12, 2010

From the Legislative Committee of **Kansas Association of County Planning and Zoning Officials (KACPZO)**: Linda M. Finger, AICP, RLA; Stacy Johnson, CFM; Sam Seeley, CFM; Eloise Tichenor, CFM; Monty Wedel, AICP; David L. Yearout, AICP.

Honorable Carl Holmes, Chairman, and Members of the House Energy and Utilities Committee, we thank you for the opportunity to present written testimony on HB 2662. The six of us are the Legislative Committee for the Kansas Association of County Planning and Zoning Officials (KACPZO). Ms. Finger is the Planning Resource Coordinator for Douglas County. Mr. Johnson is the Planning and Zoning Administrator for Seward County. Mr. Seeley is the Zoning Administrator and Floodplain Manager for Lyon County. Ms. Tichenor is the Planning and Zoning Administrator for Jefferson County. Mr. Wedel is the Planning and Development Director for Riley County. Mr. Yearout is the Planning and Zoning Director for Junction City/Geary County. We represent a diversity of experience in planning and land use development issues across the State. The Kansas Association of County Planning and Zoning Officials, as an organization, is affiliated with the Kansas Association of Counties.

The Kansas Association of County Planning and Zoning Officials is comprised of the local officials charged with the administration and management of planning and zoning efforts in the Kansas counties that have chosen to adopt local land use laws as authorized by Kansas Statutes. Land use matters are not always confined to geographic or political boundaries, and because of that, we know and understand that even unzoned counties have a need to regulate the types of land uses that are associated with "high impact" activities. When faced with proposals for "high impact" activities, difficult challenges are imposed on the local officials of these counties and without regulations to guide their actions, they struggle with answers to local problems. Wind farms and wind energy management and development are examples of the more recent "high impact" activities that create challenges for local officials.

HB 2662 is a bill that appears to have been created to provide a level playing field for all counties by providing thresholds that include: a set of minimum standards and, a basic level of expectation in public notice, infrastructure management and abandonment procedures. If our assessment of the bill is correct, the general purpose and intent of providing a framework for local counties in addressing wind energy facilities and management is creditable. However, there are numerous and significant problems with the bill, in its current form, that portend more harm than benefit to counties and local jurisdictions that have dealt with and addressed the issue of wind farms and the management of these "high impact" activities.

Three parts of the bill are of significant concern and require clarification and rectification before the bill is in an acceptable form:

- Notification and Hearing procedures:
 - Written notification to all landowners within 20 miles is not consistent with notification requirements in the planning statutes nor is it considerate of a limited local budget when such notification could include postage for several hundred to several thousand individuals. Are border counties to notify landowners in other states?
 - Discrepancies and inconsistencies are created when a County Commission can refer an application to State agencies, but only the Commission – not the state agencies – is bound by a hearing requirement of no less than 45 days after application receipt.
 - Intergovernmental friction is created when an application within a city requires County Commission approval.
- The lack of accommodation or acknowledgement of counties that have established wind farms or regulations to manage this type of activity:
 - This is not a new issue for counties in Kansas. Some have adopted regulations that encourage and permit wind farms, more or less, as a 'use by right'. Others have adopted total prohibitions on wind farm developments. If minimum standards are established in HB 2662, how will these new statutes impact existing regulations that cities and counties have adopted? If notification and due process procedures are based on Kansas planning statutes, previously adopted regulations will be less than the requirements established in this bill.
- Disconnection between creation, administration and location of decommissioning trust funds:

- The trust fund should be created, managed, and located in the County where the wind farm activity is located. The intrusion of the state treasury into this process is unwarranted and unwelcome by many counties. This disconnection between fund administration and location creates an impression of distrust by the State of counties' abilities to manage their own business.
- Standards set in HB 2662 for abandonment lack minimum reporting or monitoring criteria, creating a future conflict point between developer and county regarding how the abandonment test will be documented and measured. What is 'sufficient justification' of the turbine's use? Who makes this determination? How is it measured or defined?

We have listed only a few of the more substantial and numerous concerns expressed by our membership. HB 2662 includes other text that is unclear or inconsistent with other statutes or locally adopted regulations, which creates general confusion and apprehension. As is evidenced by the range of local decisions that have already been made regarding wind farms and wind energy by municipalities and counties across the State, the opinions and feelings of how best to deal with this type of 'high impact' activity vary broadly.

KACPZO strongly believes the overall policy of maintaining local discretion is best in land use matters. Based on our testimony, we ask the Energy and Utilities Committee to establish a work session for in-depth discussion and review of HB 2662. We would like to work with the Committee to create a bill that addresses the general statewide purpose without creating unwarranted and unwelcome mandates at the local level.

Thank you for your time and the opportunity to submit written testimony.

**KANSAS STATE LEGISLATURE
HOUSE OF REPRESENTATIVES
Committee on Energy & Utilities**

Honorable Carl Holmes, Chairperson
Honorable Forrest Knox, Vice-Chairperson

Committee Hearing on HB 2662

An act concerning energy; establishing the wind generation permit act

9:00 AM February 12, 2010
Room 785, Docking State Office Building

Good Morning Chairperson Holmes, Vice Chairperson Knox and Committee Members. Thank you for the opportunity to address you regarding HB2662.

My name is Dan Hartman. I am the facilitator for the North West Kansas Regional Energy Collaborative and appear before you as their representative. Our Collaborative membership includes the County Commissions of 21 counties in NW Kansas and several other neighboring counties.

I am here today to speak in opposition to this Bill. HB2662 appears to have been assembled very quickly and presents elements that appear not to have been considered fully. It is our belief that HB2662 interferes in county governance and throws up unnecessary roadblocks to the economic progress in the region.

There are several areas of conflict within the language that work to present confusion and promise to create a confusing maze of processes. Further, it is our contention that most of the provisions contained in the Bill will actually cause current negotiations between member counties and wind energy developers to take several steps backward, if not unravel completely.

County Commissioners in our region and elsewhere are more than competent to deal with the details and relevant issues raised when wind energy developers present projects for permitting.

In particular, HB 2662 speaks to issues already resolved through several years of experience and practice within the industry. Negotiations for items such as, emergency services, road & bridge construction, upgrade and maintenance, payments in lieu of taxes, set back standards, permitting, environmental impacts, financial disclosure and assuerty, and decommissioning have evolved beyond the need for this legislation.

Wind Turbine siting requirements of this Bill are needlessly extreme and appear to be based on some standard not present in the industry. Every project is unique and different. Turbine siting is just as diverse and unique. Siting in wind farms is rarely the same project to project. There is a substantial body of evidence developed over more than sixty years of operational experience that is the base for these industry practices. Common industry practice today is to keep turbines a minimum of 1,000-1500 feet from any structure. In other words, turbine siting is currently done in concert with county commissions and landowners through a deep and thoughtful process.

As our County Commissioners are well aware, set back standards are fairly uniform in the industry and are found in virtually every wind energy lease, right of way, or contract form currently in use. County commissioners in our region, and I suspect throughout the state, are more than competent to represent the direction of county constituents in establishing, through the negotiation process, appropriate setback

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standards for projects within their county confines. Additionally, the Collaborative is designed to be a bridging agency for individual counties to come together with developers to work through all of these issues.

Decommissioning is also a subject that is well known to our commissioners. The Bill proposes the creation of the Kansas decommissioning trust fund and directs decommissioning funds be deposited in the state treasury. This provision demands funds, above and beyond those already deposited in accounts accessible to the County Commission, be deposited into the state treasury where complex processes and procedures will unduly delay access. In all of the agreements being negotiated today, the issue of decommissioning is addressed in sufficient detail to give county government necessary assurances, including funding, that equipment installed as apart of a project can and will be removed, the land restored and the process paid for from funds set aside to provide for it.

The fact is all the provisions with the exception of the Kansas decommissioning fund, proposed by HB 2662 are already in play. Codification through HB2662 won't help, and will most likely hinder future progress and act to undo progress already accomplished.

Permitting, turbine siting, set back standards, decommissioning, and financial assuerty are all issues that are, and should remain, within the purview of local government. They deal with these things every day and are best equipped to deal with them on a local basis. Local governments are the first responders to any issue that may develop and should, therefore, be the body that sets the standards in their respective counties.

As I speak to you this morning, there are more than six billion dollars (\$6,000,000,000) of capital investment that will very likely disappear if this measure is passed into law. That capital will result in Three to Four thousand (3,000 – 4,000) new construction jobs and 1500-2000 full time permanent careers. This isn't pie in the sky projection, this is reality based on industry practice.

Rural western Kansas wants development of wind energy. We need development of wind energy to help us sustain ourselves. It is beyond our ability to comprehend how our elected representatives can even give the slightest thought to denying economic progress beyond our wildest dreams. There are many opportunities for the Legislature to work along side of us to achieve that progress. HB2662 is not one of those opportunities.

We urge you to consider diligently the full consequence of this Bill and move to prevent its passing into law. The future of this great state lies in its willingness to greet it with open arms. Not in the desire to throw up ill advised legislative roadblocks.

On behalf of the Collaborative membership, thank you again for your attention and the opportunity to address this body.

Respectfully,

Daniel R Hartman, ED
Facilitator
NW Kansas Regional Energy Collaborative
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Dighton, KS 67839
620.397.5553

**Written Testimony before the House Energy & Utilities Committee
HB 2662 – The Wind Generation Permit Act
Presented by J. Kent Eckles, Vice President of Government Affairs**



Friday, February 12th, 2010

The Kansas Chamber of Commerce appreciates the opportunity to submit written testimony in opposition to HB 2662, the Wind Generation Permit Act.

Our state faces ongoing challenges to business growth and passage of this bill would impede critical renewable energy investment in the state. It is imperative we seize opportunities to improve the business climate and help make Kansas the best place in America to do business. Passage of this measure will dampen new business development, job creation and growth in the renewable energy sector.

The Chamber has heard from several site location consultants whose clients are renewable energy companies and the message has been clear - passage of this act will require them to advise their clients to look to states other than Kansas in which to create thousands of jobs and millions of dollars in capital investment.

While Kansas has abundant wind resources, among our bordering states we still rank in the middle of the pack in installed wind power per capita, standing behind Colorado and Oklahoma, but ahead of Missouri and Nebraska. Passing this legislation will only serve to hinder Kansas' competitiveness with our surrounding states for this emerging energy sector.

The bottom line is the Kansas Chamber believes this bills sends the negative message of "Kansas is not open for business" and as such, we urge the committee to not pass HB 2549.

The Kansas Chamber, with headquarters in Topeka, Kansas, is the leading statewide pro-business advocacy group moving Kansas towards becoming the best state in America to live and work. The Chamber represents small, medium, and large employers all across Kansas. Please contact me directly if you have any questions regarding this testimony.



835 SW Topeka Blvd. Topeka, KS 66612 785.35

HOUSE ENERGY AND UTILITIES
DATE: 2/12/2010
ATTACHMENT 14

Testimony of Concern for HB2662
House Committee on Energy and Utilities
February 10, 2010

Members of the House Committee on Energy and Utilities,

My name is Jeff Hofaker. I am the Director of Phillips County Economic Development located in Phillipsburg, Kansas. I have serious concerns about HB 2662 and the negative impacts it would have on wind development as a whole across all of Kansas.

Over the course of my eight year tenure within economic development, wind development has been of strong interest in our county. In 2004, we established two wind monitoring stations on existing towers across Phillips County to help determine the viability of future wind farm development. We have worked behind the scenes to encourage and supply information to KETA about power transmission line needs for our area and region. We facilitated several public informational meetings to gather the perception of wind development of our residents and better prepare the public for development groups seeking signed wind leasing agreements. Most recently, we have been instrumental in encouraging landowners within a wind pronounced area of Phillips County (covering 33,000 acres --an initial footprint) to work collaboratively and form a cooperative partnership. This cooperative partnership group (Pleasant Ridge Wind Development, LLC) has been working diligently with Bannister Capital Advisors, LLC to solicit RFP's from wind farm developers interested in the construction possibilities within Kansas and our immediate area.

My experience in wind development has been through the eyes of economic development and as a landowner myself. Having been involved with RFP's sent out to wind developers and having seen landowner leases, I view the regulation within HB2662 as unnecessary. Any plans by a legitimate wind development company for decommissioning a project site are already included within landowner contracts. As always, a landowner must use due diligence to inquire about needed inclusions within contracts. In regards to the blanket easements and set-back requirements within HB2662, these specifications would further conflict directly with development companies looking at locations across the State of Kansas. It would further restrict the development area in respect to the number and location of turbines, making it more difficult for the wind developers to reasonably cash flow projects, within a footprint of wind resources. Also, they have many reasonable set-backs and precautionary tools that are or could be built into agreements prior to development.

Today, I encourage you to vote in opposition of HB 2662. This bill will not protect our counties and residents as much as to deter future wind development across the state. If we deter wind developments due to legislation and excessive, unnecessary regulations, it will mean millions of dollars lost in capital investment within our communities, lost payments (in-leau of taxes) to help our local schools and counties, and hundreds of temporary and permanent jobs not placed in Kansas; all of which will go outside our state borders to those areas of less stringent regulation. This bill will impede progressive long term stimulus for our state through wind development.

Thank you for your time and consideration of this matter.

Jeff Hofaker
Director – Phillips County Economic Development
785-543-5809 (office)
PCED@ruraltel.net

HOUSE ENERGY AND UTILITIES
DATE: 2/12/2010
ATTACHMENT 15

RE: HB 2662

Seward County is well into the process of developing a wind energy contract for Seward County as are other counties across the State. Some have completed contracts that are now in use, as well

As I read through the HB 2662 I have several concerns and comments but my main concern is Article 6 in which a Trust Fund is going to be set up for Decommissioning and the money collected is to be placed in the "State Treasury". Are you kidding me???? Why are you establishing a Trust Fund Committee to take funds from the local County Commission, in which they have reached an agreement with the wind power company to provide funds for decommissioning, as becomes necessary, and place those funds into the State Treasury??? For me, that is one scary idea!!! It appears to me the state has not been a very good manager of funds to date and now you want to take additional money that is not yours to be placed into the State Treasury for secure keeping?? Mark me down as opposed to this kind of thinking!!!

I will be the first to agree, perhaps minimal general guidelines would be beneficial in developing state wide wind energy contracts, however it should be left to the counties to decide what is in their best interest in developing the details of those contracts.

Personally, I would like to see the concrete base removed to a minimum of four ft rather than the proposed two ft as written in the bill, along with some other revisions

Many counties have Planning and Zoning Boards that have established rules and regulations for their particular county that may have an effect on the development of the wind farm as well. These should be top consideration, not by some state legislator or beauracrat, but by the local officials, to decide what is best for their particular project. .

Revenue disbursement and security of revenues are top priority as well, not by the state, but by local authorities. Funds for future decommissioning of the project and how they are invested and protected and made available when needed, are also very serious considerations that each county should have the right to decide, not the State Treasurer or a Trust Fund group that has no clue about county financial obligations, requirements or needs.

I would be happy to discuss this issue further at your convenience. I confess I do not have all the answers, but what I have seen so far in HB 2662 concerns me a great deal.

Sincerely,

Jim Rice
11232 Rd K.
Liberal KS 67901

HOUSE ENERGY AND UTILITIES
DATE: 2/12/2010
ATTACHMENT 16



Randy H. Zwirn
Chief Executive Officer

February 11, 2010

Dear Chairman Holmes and Members of the Committee,

On behalf of Siemens Energy, Inc., we appreciate the opportunity to provide to the House Energy and Utilities Committee our position regarding proposed HB 2662 as it relates to the development and permitting of wind generation projects in Kansas. By way of introduction, Siemens Energy is the world's leading supplier of a complete spectrum of products, services and solutions for the generation, transmission and distribution of power and for the extraction, conversion and transport of oil and gas. We entered the wind power market in 2004 and have substantially expanded worldwide manufacturing capacity to stay ahead of the ever-increasing demand for clean, wind power. You may know that we broke ground last fall on a 300,000-square-foot wind turbine nacelle assembly facility in Hutchinson. It is scheduled to become operational in fall 2010 and will employ approximately 400 green-collar employees.

Siemens Energy, Inc. evaluated many locations for our new facility but chose Hutchinson in part because Kansas has the 3rd largest wind resource in the U.S., and Kansas billed itself as a green state that was open to wind development. In fact, HB 2369 established a renewable portfolio standard for electric suppliers in Kansas to procure at least 20 percent of the supply used to serve Kansas customers from renewable resources by 2020.

Having a manufacturing facility in close proximity to wind projects is a competitive advantage from a transportation cost perspective. Therefore, if wind developers scale back their development efforts in Kansas as a result of new siting requirements, the result can be that it becomes more difficult for us to keep our new Hutchinson facility full.

We worry that the proposed HB 2662 is conflicting with Kansas' existing legislative support for the development of the wind market in the state due to the increased complexities in the process and the potential of increasing the cost of wind farms in Kansas. In light of these concerns, I respectfully ask that you reconsider proposing HB 2662 and instead reinforce Kansas' sustainability leadership by supporting wind power as a clean, reliable energy supply that will help meet the ever-growing demands of the citizens and industries of Kansas.

Again, thank you for your consideration of our concerns in this matter.

Sincerely,

Randy H. Zwirn
President and CEO

Siemens Energy, Inc.

4400 Alafa
MC
Orlando, FL
HOUSE ENERGY AND UTILITIES
DATE: 2/12/2010
ATTACHMENT 17

**ELK COUNTY COMMISSION
PO BOX 606
HOWARD, KS 67349
620-374-2490**

February 11, 2010

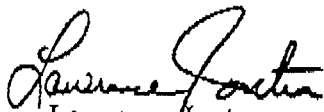
House Committee on Energy & Utilities
Topeka, KS

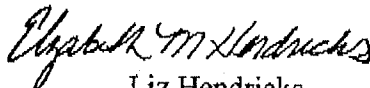
RE: Written testimony opposing House Bill 2662

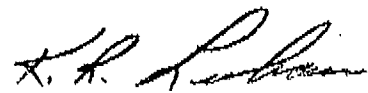
Dear Chairman Carl Holmes and Committee Members,

The commissioners of Elk County would like to submit written testimony in opposition to House Bill 2662. We are in the final stages of a 6 year long effort to make our wind project with TradeWind Energy, LLC a reality. From the very beginning, we have had a very workable, friendly, professional relationship with TradeWind. Due in part to the strength of this relationship and by leveraging our existing Elk County resources, we were able to thoroughly evaluate the project, without any cost to the taxpayers of Elk County. Elk County's financial security will be greatly improved by the generous PILOT, which will contribute approximately \$1 million per year to the annual budget. Our roads are protected by a Road Maintenance Agreement and project decommissioning security is covered by agreement between the project and the individual landowners. In our opinion, this bill encumbers a tedious process even more and could jeopardize a project which represents the single greatest economic development opportunity in the history of Elk County. We do not feel there is a need for more regulation from the State of Kansas on county government. To require a small, poor county such as Elk County to go through the process outlined in this bill would cost a lot of money and time, plus professional services we do not have readily available. We feel this bill is unnecessary and a waste of taxpayers' money. Thank you for your time.

Sincerely,


Lawrence J. Contra
District #1, Chairman


Liz Hendricks
District #2


K.R. Liebau
District #3

HOUSE ENERGY AND UTILITIES
DATE: 2/12/2010
ATTACHMENT 18



Clipper Windpower Development Company, Inc.
6306 Carpinteria Ave., Suite 300
Carpinteria, CA 93013
Tel: +1 (805) 690 3275
Fax: +1 (805) 899 1115
Web: www.clipperwind.com

February 11, 2010

Testimony Provided to the
House Energy and Utilities Committee February 12, 2010

Zeina El-Azzi
Clipper Windpower Development Company

House Bill 2662

Chairman Holmes and Members of the Committee,

On behalf of Clipper Windpower Development Company (CWD), we appreciate the opportunity to provide testimony to the committee regarding HB 2662 as it relates to the development and permitting of wind generation projects in Kansas.

Clipper Windpower Development Company, Inc., a Delaware corporation, is a wholly-owned subsidiary of Clipper Windpower, Inc. Clipper Windpower, Inc. is a wholly-owned subsidiary of Clipper Windpower Plc, a public, limited liability company organized under the laws of the United Kingdom and domesticated in the United States in the state of Delaware. Clipper Windpower Development Company is headquartered in Carpinteria, California and actively develops wind projects throughout the United States and Mexico.

To date, we have successfully developed over 600 MW of wind power now operating or under construction in the United States. Clipper Turbine Works has also manufactured more than 1,000 MW of Liberty™ 2.5 MW Wind Turbines to date with additional customer installations currently in construction. In Kansas alone, CWD currently has nearly 1000 MW of wind energy projects underdevelopment.

CWD has very deep concerns regarding the current language in HB2662. This is a bill that sends a clear message to wind energy developers and manufacturers that Kansas is closed for business when it comes to wind energy development. In brief, the major concerns we have with this bill follow:

1. The development system we currently have in place in Kansas is working. The county/developer relationship is an important one and every county in Kansas that would like to restrict wind development in any way is allowed to do so by current law.
2. The siting, set-back and development provisions in the bill are unclear and leave much to individual interpretation.
3. HB 2662 is a statewide mandate, taking local control away from counties in Kansas.
4. The passage of HB 2662 will drive away development and drive up costs to utilities, and therefore consumers, as well as hinder any opportunity Kansas has for new transmission.
5. The set-back provisions in this bill are extreme. If passed, they would effectively stop development on the vast majority of wind energy developments in Kansas.

While CWD representatives were not able to attend this hearing in person, we welcome the opportunity to answer any specific questions you may have regarding our testimony. Again, thank you for the opportunity to provide testimony to the Committee.

HOUSE ENERGY AND UTILITIES

DATE: 2/12/2010

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Testimony Provided to the

House Energy and Utilities Committee February 12, 2010

Paul F. Wendelgass, Vice President, Competitive Power Ventures

House Bill 2662

Chairman Holmes and Members of the Committee,

On behalf of CPV Renewable Energy Company (CPV) and its Kansas wind energy development projects, we appreciate the opportunity to provide testimony to the committee regarding HB 2662 as it relates to the development and permitting of wind generation projects in Kansas.

CPV is an independent renewable energy development company which is currently developing wind energy projects in over a dozen states, with a development pipeline of about 5000 megawatts. We have two projects under development in Kansas, one in Gray County and the other in Scott and Lane counties, and are evaluating other Kansas sites. The Gray County (Cimarron) project has recently executed a power purchase agreement with the Tennessee Valley Authority (TVA) for export of 165 MW of wind-generated electricity from southwestern Kansas to TVA.

We are extremely concerned that the proposed legislation could present an obstacle to that transaction, as well as to future wind developments at the Cimarron and other sites. Essentially the legislation imposes a state permitting process in place of existing County planning and zoning review and permitting of wind projects. The CPV Cimarron wind project has obtained a Conditional Use Permit and variance from Gray County, the second such action the county has taken (the first was for the Montezuma wind project installed in 2001-02).

As proposed, the legislation would override the County's CUP in a number of areas, and require the Cimarron project to restart its permitting process, since it only "grandfathers" projects that have commenced construction. Among other things, the notice requirements in the legislation exceed Gray County's, which require notice to properties within 1000 feet of the property covered by a zoning application; the legislation would require notices in at least three nearby counties.

The legislation requires substantially greater setbacks than the County has required in its CUP from both property lines and non-participating residences, and the setback from participating residences exceeds the setback agreed to by participating landowners with CPV in recorded easements.

The legislation mandates an emergency management plan be created prior to permitting; CPV has consulted with County emergency management officials, and the CUP contains conditions requiring CPV to pay for certain equipment and provide training to EMS staff, but there is no plan required. The legislation requires a detailed site plan be presented prior to zoning approval; Gray County require such a plan prior to receipt of building permits, a more appropriate standard.

The legislation also requires an undefined "qualified professional analysis" of environmental and community impacts. CPV engages environmental professionals to prepare a Critical Issues Analysis of

HOUSE ENERGY AND UTILITIES

DATE: *2/12/2010*

ATTACHMENT *20-1*

every site which it develops, and has consulted with state and federal agencies in the development of its projects in Kansas. CPV longstanding focus on active community relations has demonstrated success in developing win-win solutions for project developers and the community both nationally, and on our Kansas projects. At Cimarron, CPV has taken steps to minimize impacts on environmental features of concern to such agencies, such as playas and native grasslands. The vague nature of the legislation's requirements leaves a great deal of uncertainty about what studies wind projects must have done, and complying with such a requirement will certainly cause further delay in wind project implementation across the state.

Finally, the legislation proposes a decommissioning trust fund to which wind projects must contribute. CPV's easement agreements all contain decommissioning obligations between the project and the landowner. This legislation imposes a tax on wind projects for potential future costs which have not been encountered nor can be readily quantified.

The Committee should note that there is a significant difference between wind projects and oil or gas developments. Wind is an infinitely renewable resource; wind turbines, like other electric generation systems, can have their lives extended far beyond their "design life" through proper maintenance and repair. Oil and gas are resources which are depleted over time; consequently the risk of abandonment of facilities designed for their exploitation is substantially higher once the resources are used up. In contrast, wind turbines can be operated far longer than their design lifetimes; the risk of project abandonment is very small.

In conclusion, CPV strongly opposes this attempt to single out wind energy projects and impose a statewide siting law in place of local planning and zoning processes.

We appreciate this opportunity to provide testimony on this legislation to the Committee.

Testimony to the House Energy & Utilities Committee on HB 2662

Ruth Douglas Miller, Associate Professor of Electrical and Computer Engineering at KSU, and director of the Kansas Wind Applications Center

To the committee:

I write to explain to you why I think the proposed legislation is not a good idea. In my work at the Wind Applications Center I am aware of the current wind development across the state of Kansas, as well as the activities of numerous counties working to encourage wind energy development, notably Lincoln, Marshall, Reno, and the Northwest Kansas Energy Collaborative. The proposed bill 2662 seems simply to set zoning regulations for wind farms that are and should remain the prerogative of the counties.

From a simple engineering perspective, quantifying setbacks from properties seriously compromises the ability of a wind developer to design the most efficient wind farm, and to accommodate neighbors in the best possible way. The necessary offsets can and should be negotiated individually, for the benefit of both residents and wind farm developers. No statewide law can adequately address individual variations in properties of the sort that matter to wind development, such as the placement of dips, draws, tree lines and watercourses, not to mention dwellings and fence lines.

From a county perspective, many Kansas counties have already developed zoning satisfactory to them. This proposed legislation would tie their hands and hinder negotiations in process now with wind farm developers. It would also make cooperation between counties difficult, which would further hinder wind farm development. In a state now ranked second in the nation for wind power potential, where our rural populations stand to benefit the most from new wind farm construction, there is no need for an additional barrier to development. It is an old saying that is very true in this case: "if it ain't broke, don't fix it."

To encourage wind development further, it might be appropriate for the state legislature simply to pass a resolution urging Kansas county decisionmakers to check with their colleagues in counties where wind farms are already operational, to compare notes and obtain the most advantageous negotiations. Such a resolution might list those counties or direct inquiries to the Kansas Corporation Commission for advice. However, firm legislation such as HB 2662 does not provide advice, but makes demands that in many cases will be counterproductive. I respectfully suggest that the best action with the present proposal may be to send it back to the drawing board.

HOUSE ENERGY AND UTILITIES

DATE: 2/12/2010

ATTACHMENT 21



February 11, 2010

The Honorable Carl Holmes
P.O. Box 2288
Liberal, Kansas 67901

Re: Letter in Opposition to House Bill No. 2662

Dear Honorable Holmes:

By all measurable standards, Kansas wind is producing the most economically favorable wind data results in the nation. The future of Kansas renewable energy generation is promising; however, Skyward Energy has reviewed House Bill No. 2662 ("HB 2662"), more commonly referred to as the Wind Generation Permit Act, which it believes will jeopardize wind energy in Kansas. HB 2662 is a hindrance to the exploration of wind energy and if enacted will be detrimental to Kansas' goal of becoming a national leader in wind energy.

The overly burdensome bureaucracy created by HB 2662 at the county level will create additional and unnecessary costs as well as conflicting and unstable results for neighboring landowners. The vague definitions and overly broad approach will complicate an already multifaceted planning and permitting scheme created by federal and state statutes as well as local ordinances. *See* KAN. STAT. ANN. § 12-741 et seq. While HB 2662 does offer some degree of additional support related to issues such as mitigating safety hazards and minimizing environmental concerns to Kansas' flora and fauna; the advantages come with an overly burdensome list of factors that will cause economic instability and dissipate wind farm investment dollars currently flowing into Kansas.

The definitions in HB 2662 are overly broad and vague. HB 2662 encompasses all "Facilities" which include, among other things, substations, meteorological towers, and transmission lines. Meteorological towers are commonly installed as a preliminary due diligence measure prior to wind farm siting. The rigorous standards of the Wind Generation Permit Act go far beyond what is necessary to erect a meteorological tower and are inconsistent with its purpose. The planning and permitting of transmission lines consist of engineering, construction, and surveying measures which are not considered in HB 2662. It is an unnecessary and unfounded expectation to have setback distances for Wind Turbine Generators ("WTGs") to be the same as those for transmission lines. The application of HB 2662 to "Owners," as it is defined, goes too far and will remove equity players from wind financing deals in Kansas due to the decommissioning liabilities.

Beyond the definitional faults, HB 2662 requires unrealistic time constraints. For example, the submittal of the "emergency management plan" is required prior to commencing construction and will be reviewed following construction and prior to commencing operation. Additionally, the "preliminary site plan" is required following construction and prior to

commencing operations. Due to the large volume of man hours and tedious steps necessary for erection and commissioning of WTGs, there is no clear distinction of time after construction and before operations. Typically, wind developers work in a synchronized fashion, making the timing restraints scripted in HB 2662 unworkable.

While setback distances are important, HB 2662 phrases the setback standards as “not less than ¼ mile, with signed written consent of the landowner of the structure and to a distance not less than ½ mile without the signed permission of the landowner of the structure.” The application of this sub-section will produce unyielding results. Civil disagreements among neighboring landowners will cause landowners owning smaller tracts to yield to the whims of larger tract landowners, or to be eliminated from consideration to receive turbines. In some instances, the setback permitting rules may dissolve the entire wind farm when NIMBY landowners prevail over the rights of other landowners.

The creation of the “decommissioning trust fund” is more punitive than remedial in nature, particularly when there is not an instance of reported wind farm abandonment in Kansas. The decommissioning trust fund will cause energy investors to shy away from bringing their dollars into the State of Kansas. This in turn will increase the initial cost of generating clean energy and thus increase the price that consumers will pay through the Power Purchase Agreement (PPA) price per megawatt. Currently, the cost of wind farm installation and operation is two million dollars (\$2,000,000) per megawatt, equivalent to three hundred million dollars (\$300,000,000) for a moderate sized one hundred (100) turbine facility. HB 2662 discriminates against wind energy and does not provide similar constraints on energy producing methods with larger carbon footprints such as coal and gas plants. The bill also does not impose similar environmental constraints on the oil and gas industry. The concept of up-front payment for decommissioning and reclamation will increase the cost of these facilities and the power they generate while ignoring residual values that remain in these units and can be utilized by the landowners and counties. Forced decommissioning will adversely impact the Independent System Operator (ISO) and Regional Transmission Operator (RTO) who are charged with balancing the electrical supply. Forced decommissioning of generation facilities will remove low heat generation equipment and encourage high heat, rate peaking, units like gas and coal to operate. Because HB 2662 requires decommissioning of wind facilities, but not other forms of energy generation, ISO/RTO will be operating less environmentally friendly methods. These environmentally unfriendly methods would have been decommissioned if placed under the same standards proscribed in HB 2662. Electric current dispatch priority specifies the utilization of lower heat rate generation units over less environmentally friendly fossil generation. Many of these fossil fired generation units are considered peaking units which sit dormant 80% of the time, thereby increasing the end user cost for the electricity generated by such facilities.

Skyward Energy considers the development and construction of a wind farm as a partnership between the wind developer and the landowner, until the conclusion of the wind farm and complete restoration. To that end, Skyward has consistently made every effort to provide additional securities to the landowner, as well as county authorities, to ensure forward thinking related to the useful lifespan of the complex and innovative WTGs. Skyward Energy, as well as other developers, have dealt with the responsibility of decommissioning and reclamation of abandoned facilities to the satisfaction of landowners by utilizing removal bonds.

Lastly, and of most concern, HB 2662 will halt all future wind farm construction in Kansas, in effect thwarting the goals Governor Parkinson signed into law in the Renewable Energy Standards Act which require major Kansas utilities to generate 20 percent of their power

from renewable sources by 2020. The key to wind farm development is financing. Without proper financial support for construction and permanent operations from stable investors, wind farm development will cease to exist in Kansas. HB 2662's strenuous requirements create numerous hurdles which developers must meet before, during, and after construction. The inability of a developer to meet any one of these difficult standards, according to the subjective interpretation of a county commissioner, will halt the wind farm, which could be in the final stages of commissioning, thus stranding hundreds of millions of dollars of assets. Responsible lenders will not finance a wind farm under these strict preconditions to commissioning. The risk of investing in wind farms is palatable under current stressors related to transmission, interconnect, wind data, turbine manufacturers and warranties; but the additional risk caused by HB 2662 of county commissioners halting commissioning in the final stages will most definitely end Kansas wind farm opportunities. Without stable investors and lenders, HB 2662 will create exactly what it is aimed at preventing, under-funded developers and operators who leave landowners and the State of Kansas with unfinished, unsafe, and undesirable wind farm development.

Skyward Energy disagrees with the concepts and implications attached to HB 2662, as it will create a more burdensome cost to developers which will be passed to consumers in their electric rates. The process will cause divisiveness between those who govern and those who lead the renewable energy industry. Skyward Energy is an established green field developer, with over 300,000 acres of land rights, representing 45 projects (14 projects in Kansas) and up to 8,000 megawatts of clean renewable energy. As a leader in the renewable energy industry and a continued supporter of Kansas, Skyward Energy urges you to vote "no" on HB 2662.

Kindest regards,

Stacy Hilliard for

Brent D. Hilliard

Brent D. Hilliard

Member/Manager

The Hilliard Companies, LLC,

its general partner



NOVUS WINDPOWER, LLC

109 N. Sunset Lane, Guymon, OK 73942

Kansas House of Representatives
House Energy and Utilities Committee
Kansas Statehouse, 313-South
Topeka, KS 66612

RE: House Bill 2662

February 11, 2010

Chairman Holmes and Members of the Committee:

On behalf of Novus Windpower, LLC ("Novus"), we appreciate the opportunity to provide testimony to the Committee regarding HB 2662 as it relates to the development and permitting of wind generation projects in Kansas. Novus is a wind energy development company headquartered in Guymon, Oklahoma that was formed in 2006 to develop large, centralized wind energy facilities in the vicinity of the Oklahoma Panhandle, north Texas Panhandle and southwestern Kansas. Through affiliated companies, Novus personnel have successfully developed 420 MWs of wind energy projects that have been acquired by John Deere Renewables and Noble Environmental Power.

Currently Novus is developing a 400 MW wind energy project in Seward County, Kansas, which is in the final stages of signing an Interconnection Agreement with the Southwest Power Pool. Novus has submitted an application for a Conditional Use Permit ("CUP") with Seward County and is working closely with the County's Planning Department to satisfy the conditions of the County's Zoning Regulations for wind energy projects. The existing zoning regulations require the project developer to prepare a Phase I environmental screening report, an emergency response plan, and a decommissioning plan. The zoning regulations also require very specific setback requirements from roads, powerlines, and existing residences.

Since Seward County has already established CUP regulations for wind energy projects that meet the needs of their County, we do not feel that it is necessary for the State of Kansas to impose additional or more restrictive State-wide standards. Every County has their own zoning issues that are best met through local regulations. For example, zoning requirements for rural areas in western Kansas are going to be different than those for populated areas in eastern Kansas. Therefore, Novus respectfully request that this Committee allow each County to establish its own zoning regulations for wind and any other development project instead of imposing a State-wide standard as us being proposed by HB 2662.

Respectfully,

John Baum, Manager
Novus Windpower, LLC

HOUSE ENERGY AND UTILITIES

DATE: 2/12/2010

ATTACHMENT 23



Testimony Provided to the
House Energy and Utilities Committee February 12, 2010
House Bill 2662

Chairman Holmes and Members of the Committee,

On behalf of BP, I, Karl Pierce a senior wind developer for BP Wind Energy, appreciate the opportunity to provide testimony to the committee regarding HB 2662 as it relates to the development and permitting of wind generation projects in Kansas.

BP is one of the world's largest energy companies, providing its customers with fuel for transportation, energy for heat and light, retail services and petrochemicals products for everyday items.

BP has a long history in the US energy market and is one of the largest producers of oil and gas in the United States. From the Alaskan North Slope to the deep waters of the Gulf of Mexico, we are a leader in providing America's traditional energy needs. We employ 29,000 people who live and work in communities across this nation.

BP is also a company that invests in the most diverse energy portfolio in the industry. In the last five years, we have invested approximately \$35 billion in the US to increase existing energy sources, extend energy supplies and develop new, low-carbon technologies.

Today, BP Wind Energy is one of the leading wind developers in the U.S. with a portfolio that includes the opportunity to develop almost 100 projects across 25 states. We have what we believe is the third largest land bank of any American wind developer. In 2008, one in eight megawatts of installed wind power in this nation was developed by BP Wind Energy. We currently have over 1,200 megawatts (MW) of wind power in commercial operation and more than 1,000 MW in an advanced stage of development.

In Kansas we operate the 100 MW Flat Ridge I Wind Farm in Barber County. Westar Energy owns 50% of the wind farm and is purchasing from BP 50 MW of the physical energy generated under a long-term power purchase agreement. We have over 1,000 MW of wind energy projects planned and under active development in Kansas, representing a total potential capital investment of more than \$2 billion dollars. In addition to the capital investment, these projects would generate approximately \$5 million in annual royalty payments to Kansas landowners and \$2 million in annual payments to local Kansas counties. Further benefits of these projects include the creation of over 1,000 temporary construction and 25 permanent jobs.

BP Wind Energy believes that the approval process for wind energy projects currently in place within Kansas is fundamentally sound and working properly as it allows the local community to decide if and how wind energy projects are to be developed, constructed, and operated. We also believe that the content of House Bill 2662 threatens the potential investment of more than \$2 billion that BP Wind Energy hopes to make in the State of Kansas. Our development process and that of many of our fellow wind developers includes direct consultation with local stakeholders, county governments, and state and federal agencies. We implement standards of design, construction and operation that are among the highest and most stringent in the industry.

If passed, HB 2662 would create large barriers to wind energy investments within Kansas. By placing some very highly subjective regulatory requirements on the projects and the counties in which they reside, HB 2662 will create significant uncertainty and risk on our ability to predict project costs, completion schedules, and to enter into power purchase agreements with firm in-service dates. Such barriers would act as a strong disincentive for investment within Kansas and force BP Wind Energy to evaluate and consider investing in states possessing a better regulatory framework.

Kansas has made its place as a resource to the nation for centuries to come with its exports of grain, cattle and fuels. As our nation's energy needs change it creates an opportunity for Kansas to add another export product to its already impressive list. We believe that wind energy investments represent a long-term "win-win" opportunity for BP Wind Energy and the State of Kansas, its communities, and private landowners. To date the progress Kansas has made in attracting wind investment to the state is a great start. A brand new industry is emerging and the opportunity in Kansas is both real and considerable. HB 2662 threatens Kansas' ability to realize its full potential as a key producer of clean, renewable wind energy for the nation. For these reasons, we respectfully state our opposition to HB 2662.

Again, thank you for the opportunity to provide testimony to the Committee.

Karl Pierce

Senior Wind Developer



KANSAS LEGISLATIVE POLICY GROUP

P.O. Box 555 • Topeka, Kansas 66601 • 785-235-6245 • Fax 785-235-8676

**Remarks from
Jack Frick, President
Kansas Legislative Policy Group
Before the House Committee on energy and Utilities
RE: House Bill No. 2662**

Chairman Holmes and Members of the Committee:

Kansas Legislative Policy Group (KLPNG) is pleased to provide comments on House Bill No. 2662. KLPNG represents the interests of 30 counties located in western Kansas.

Members of our Association have a keen interest in wind energy and have reviewed the proposed legislation. We thank Representative Moxley for raising this significant public policy issue for discussion.

Our member counties are located in prime areas for future wind energy expansion. In behalf our member counties, let me be very clear: our members want wind development in our counties. We want the jobs that the wind industry will bring to our communities, we want the expanded tax base and the other opportunities that may come with this development, but most importantly we want these developments to be successful. We believe that basic underlying principle in this bill is extremely important that being communication and the sharing of information between the parties. For the most part that information sharing is not happening today. Establishing "standards" for both the counties and developers to follow and a clear place for developers to start the process would be an important first step.

Two areas of concern immediately appear when reviewing the bill.

Concern #1 is decommissioning of the wind farms. At some point in time wind developments will no longer be commercially viable and great care must be taken now to ensure that removal of the equipment, structures and related apparatus is done in a efficient and safe manner. The concrete foundation for the wind towers go down more than 20 feet, no one is ever going to remove all that concrete. Remediation will probably consist of removing the top four feet of the base so that farming implements are not damaged when working the land. If decommissioning and site remediation are done haphazardly without a plan that protects future land uses we have accomplished nothing. Thoughtful consideration must be given toward the future surface area uses.

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Concern #2 is the location of the decommissioning fund described in section 6 of this bill. We believe that any funds set aside for decommissioning should reside in the county that the development is located and should be outside the state treasury. Setting aside money now will be helpful in the future when the production ability is no longer practical, but only if it is sufficient to cover the cost and protected from unintended use.

At its' current stage of development wind industry in Kansas can be compared to the then emerging oil and gas industry 60+ years ago and if we act thoughtfully and deliberately we can benefit from that past experience. Our state may have only one opportunity to prepare for the long-term expansion of wind energy and that may require a comprehensive review of the issues. Many issues not contemplated, by this bill, that should be discussed and an interim review of the issues with all the parties participating might be more appropriate before this committee passes any legislation. Those potential study topics include leasing issues for landowners, state and local taxation policies and local control.

Attitudes and opinions vary with respect to the future of wind energy a detailed and complete review of related issue must occur before any regulation can be considered and there must be a willingness from the parties to discuss and negotiate the proposed developments

Thank you for your consideration and the opportunity to present these comments.



SIERRA CLUB, KANSAS CHAPTER
9844 GEORGIA, KANSAS CITY, KS 66109

STATEMENT OF CHRIS CARDINAL, LEGISLATIVE COORDINATOR
FEBRUARY 12TH, 2010
BEFORE THE HOUSE ENERGY AND UTILITIES COMMITTEE
HEARING ON HB 2662

Chairman Holmes and honorable members of the committee:

Thank you for the opportunity to testify on HB 2662 today, and for the fine work this committee and its members do for the state of Kansas. My name is Chris Cardinal, and I am here on behalf of the Kansas Chapter of the Sierra Club, the nations largest and oldest grassroots environmental organization.

Seven major wind farms have already been built in Kansas, and currently a number of others are in various stages of completion around the state. While the Kansas Chapter of the Sierra Club believes that energy conservation should be the legislature's top priority, we are strongly supportive of wind energy development as well. We support this development because wind power is a clean, renewable source of electricity generation which can significantly reduce our dependence on fossil fuels, particularly coal, a major source of greenhouse gases and other pollutants. Furthermore, wind energy can help preserve precious resources such as natural gas and limit the further development of nuclear energy.

We are advocates for a holistic, long term view of preserving our environment. It behooves all of us to think of our children, and our children's children, as we look for sustainable energy sources and lifestyles changes that minimize our impact on the environment. Wind power is an important mitigation opportunity that can offset projected growth of global Greenhouse Gas (GHG) emissions, or even reduce emissions below current levels.

The concept of "zero impact" development is not realistic, since no human action exists without environmental consequences. That fact does not free us from the responsibility of our actions. We need to monitor wind farm development, ensuring that appropriate safeguards are in place to protect ecologically sensitive areas from undue harm.

The following changes to the proposed legislation are suggested to provide necessary oversight without hampering the siting process:

1. Sec 3 (b): *Requires that an emergency management plan be submitted to the county commissioners.* Wind farms exhibit no area or region wide threat to human health like a nuclear plant, coal boiler, chemical plant, or natural gas facility would. Thereby, we believe that the requirement for an emergency management plan would be unnecessary as it will cost hundreds of thousands of dollars and would only financially stunt progress.

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2. Sec 3 (e)(1): It is important that we clear up any ambiguity that may surround the definition of a land owners "property line". Therefore, we believe that "property line" needs to be defined as something other than the property of the wind farm developer or lessee landowner.

4. Sec 5 (2): The wind farm developer should have the right to appeal a county commission's final determination about decommissioning based on the extent the original decommissioning plan implementation, which had been previously approved by the same body. We believe this change would prevent arbitrary decisions by counties.

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5. Sec 5 c (2): This provision is unworkable. If 50% of the turbines are deemed abandoned then those turbines alone should be decommissioned and removed, not the whole wind farm. Requiring the other 50% of the turbines to be removed, even if they are still operating, would unnecessarily impose economic loss on the community and eliminate the remaining environmental benefits from the production of renewable energy.

6. Sec. 6 (b): *Kansas Decommissioning Trust Fund*. We believe this provision duplicative of successful existing industry practices is unnecessary.

Wind power in Kansas can be a positive force in our efforts to fight global warming. With close monitoring and the utilization of our county and local political process, wind farm siting can be done in an environmentally acceptable manner.

Mr. Chairman and members of the Committee, the Kansas Sierra Club appreciates your kind consideration of our concerns with HB 2662.

February 12, 2010

Rep. Carl Holmes, Chairman
Rep. Forrest Knox, Vice-chairperson
Rep. Mike Burgess
Rep. Rocky Fund
Rep. Dan Johnson
Rep. Tom Moxley
Rep. Don Myers
Rep. Connie O'Brien
Rep. Robert Olson
Rep. Richard Proehl
Rep. Joe Seiwert
Rep. Tom Sloan
Rep. Vern Swanson

Rep. Annie Kuether, Ranking Minority Member
Rep. Tony Brown
Rep. Gail Finney
Rep. Margaret Long
Rep. Cindy Neighbor
Rep. Mike Slattery
Rep. Milack Talia
Rep. Vincent Wetta

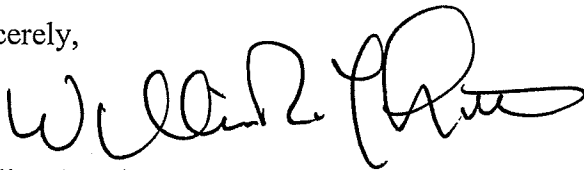
Mr. Chairman and members of the House Energy and Utilities Committee:

The Kansas Department of Commerce views the development of the wind energy industry, both energy production and the manufacture of components for wind generation, as a positive economic opportunity for Kansas.

While we believe Kansas is well-positioned to grow our renewable energy industry, we also know that we are not alone in our desire for this sort of development. Other states also wish to develop or enhance their renewable energy capability and do their best to be attractive hosts for both generation and manufacturing.

We believe it would be wise for Kansas to carefully review and consider any requirements or restrictions that could create a disadvantage or disincentive for development of this important industry.

Sincerely,



William R. Thornton
Acting Secretary
Kansas Department of Commerce

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12 February 2010

Mr. Chairman, members of the Committee, thank you for the opportunity to address you regarding HB 2662, which would establish the wind generation permit act.

The discussion about wind farm planning and siting has a long history in Kansas. Over the past decade many different voices have chimed in. One result was the voluntary guidelines developed by the Wind and Prairie Task Force in 2004. This applied only to the Flint Hills, but it is safe to say that across the state, the issues the task force raised have continued to inform county and landowner negotiations with wind developers. Likewise, over the past two or three years, several groups have held informational meetings for landowners and lawyers on wind developments, contracts, etc. These groups range from the Kansas Rural Center to the Kansas Bar Association.

This discussion is very necessary. Kansas is now estimated to have the number two wind resource in the country. If we can get the necessary transmission built, then Kansas will obviously face a great deal of wind development. That level of development will bring economic development, but it will also need to balance environmental and public safety concerns as well.

Kansas counties already have strong voices in determining whether or not a proposed wind development will succeed. On the federal level, wind developers also have to conform to various regulations, including aviation guidelines and the Endangered Species Act.

Considering this context, CEP had several questions about the legislation – questions that other parties testifying can probably answer better than we can.

- 1) Does the bill infringe on the property rights of individual landowners, or groups of landowners, by interfering with their ability to negotiate contracts?
- 2) Does it interfere with the home rule of local governments, and their ability to make land use decisions? Conversely, is the county the right planning entity in which to vest a power to permit? Wind farms can easily cross county lines – is a more regional planning perspective needed?
- 3) Does the bill subject wind power to unnecessary and redundant regulatory barriers? Do any other fuel sources in Kansas face this level of regulation from counties?

We also saw some positive aspects in the bill. Rather than establish a county level permitting process, the state could instead require that certain provisions regarding public health and safety (versus land use), must be negotiated in Kansas wind contracts. The county emergency plan and the decommissioning plan are examples.

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