



Testimony Provided To
Senate Utilities Committee
Kimberly Gencur Svaty, Public Policy Director
February 19, 2024

Neutral Testimony SB 457

Mr. Chair, Vice-Chairman, and Ranking Member and members of the committee,

Thank you for the opportunity to provide neutral testimony on SB 457 which prohibits a public utility from exercising the use of eminent domain for the siting of solar powered electric generation equipment, including panels.

The Advanced Power Alliance includes more than forty members which represent a diverse cross section of the world's leading energy companies, energy investors, energy consumers in the advanced power industry. Most of these organizations have business interests in Kansas via operating energy projects or those under development, purchase power agreements, development headquarters or manufacturing facilities. Our member assets in Kansas span the state from the most densely populated to the least, from the fastest growing to those with the most rapid population decline. Since the first wind farm came online in 2001, the clean energy industry has invested more than \$16 billion private dollars in Kansas and created more than 20,000 direct and indirect jobs in both rural and urban Kansas with several billion dollars of new energy projects in the pipeline.

I am proud and pleased to stand before this committee and say our member companies do not have the power of eminent domain conferred to it by the state of Kansas to build wind farms, solar projects or other generation types. Our projects are developed entirely by private, voluntary contractual agreements entered into by willing landowners. We are neutral on this bill because the bill itself is redundant. It seeks to prohibit something that does not exist for clean energy companies seeking to build generation in Kansas. The bill does impact public utilities and their eminent domain rights as it relates to solar project development.

The first wind farm was built in Kansas in 2001. In 2005, as the second wind farm was finalizing construction, the Kansas Legislature enacted changes to K.S.A. 66-104 which expressly prohibits the use of eminent domain for the construction of wind generation facilities.¹ Eminent domain was prohibited for use already for both wind farms per existing state statute.

¹ K.S.A 66-104(g)

K.S.A. 66-104 specifically exempts certain entities from the definition of a “public utility” which prohibits said entities from using the right of eminent domain. Any independent power producer that constructed an electric generation facility after January 1, 2001, can opt to not be defined as a public utility if the cost of such generation facility is not built into the rate base of an electric public utility.² Independent power producers exempt themselves from public utility regulation, therefore the entity may not exercise the power of eminent domain as a public utility.³

APA member companies developing a clean energy project file with the Kansas Corporation Commission a form exempting itself from public utility regulation. The form declares that the company is not seeking to do business in Kansas as a public utility, is not seeking to undergo the important, lengthy, and detailed proceeding to become a public utility in Kansas, is not seeking the right of eminent domain and therefore will not have the right of eminent domain conferred onto the company as part of a public utility designation.

SB 457 while redundant and perhaps duplicative to existing state law, makes a clear policy statement that eminent domain is not to be used for the construction of solar powered electric generation. As an industry, we have never sought to use eminent domain, nor would our developers. As such, this is a policy statement the Advanced Power Alliance supports.

Thank you and I am happy to stand for questions at the appropriate time.

² K.S.A. 66-104(e)

³ K.S.A. 26-501b(b)