

Date: February 19, 2024

Re: SB 457 - AN ACT concerning public utilities; relating to eminent domain; prohibiting public utilities from exercising eminent domain for the siting or placement of solar facilities.

From: Rochelle Smart (SB457; Proponent; in-person oral)

To: Senate Committee on Utilities

Sen. Michael Fagg, Chair

Thank you, Chairman Fagg, and members of the Committee, for the opportunity to provide testimony for this SB 457. I am a 4th generation farmer and rancher. I run our operation with my father, Darren McGhee. Most importantly, I am the mother of three young daughters and have a wonderful husband that helps raise them on a beautiful home site that was originally my grandparents. A ranch that now falls prey to the seizure through eminent domain for a high-voltage electric transmission line.

I am testifying in support of this bill with the recommendation of two amendments. First, I encourage amending page 2 line 7-9, striking, "subject only to the right to apply for relief to the corporation commission as provided in K.S.A. 66-133. The revised language reading, from page 2, lines 4-10 stating "(c) Except as provided in this section, the power and authority to control and regulate all public utilities and common carriers situated and operated wholly or principally within any city or principally operated for the benefit of such city or its people, shall be vested exclusively in such city and county, and amendments thereto, and to the provisions of K.S.A. 66-104e, and amendments thereto.

The 2nd amendment I encourage is on page 3 (g) adding (3) high voltage transmission lines of 150 KV and higher.

I support this bill with the proposed amendments because it is intended to improve the means to protect landowner property rights. And give the control of eminent domain back to the citizens of the state of Kansas. That protection is sorely needed. I have some concerns if the committee does not implement the amendment language I have proposed, because within the last two years, I have seen the KCC ignore the plain language of the few statutes that govern private property rights and promote free enterprise, statues intended to protect landowners and families like mine.

The KCC has allowed companies like NextEra SW to ignore the plain language of laws governing utilities. The KCC allowed NextEra to conduct business in this State without first obtaining a certificate of convenience and necessity in violation of K.S.A. 66-131. It has also allowed NextEra to take a property interest in land before receiving a certificate of convenience and necessity in violation of K.S.A. 66-134. And it has allowed NextEra to begin site preparation without obtaining a siting permit in violation of K.S.A. 66-1,178.

This bill directly addresses an issue impacting and disrupting not only my family operation and home but my community as well. The KCC allowed companies like NextEra the ability to approach landowners publicly and threaten them by saying if the landowners did not sign the option agreements, NextEra would eventually acquire the land by eminent domain. This happened in March 2022, five months before the KCC issued its August 29 certificate of convenience and necessity. These clear misrepresentations meant to bully landowners, cut off consideration of alternative routes, and eliminate landowner opposition.

The transmission line location could not be set because NextEra had not received a certificate of convenience, much less an approved line siting permit. Further, without that line-siting permit, NextEra has no eminent domain authority. NextEra's bullying and the KCC's disregard for it are simply sickening.

As a 4th generation rancher I support, "legislative, judicial, and administrative initiatives to prevent the use of eminent domain powers by governmental entities as a tool to take private property from one party and transfer to another party for profit or private gain." Therefore, I fully support this legislation with these vital amendments aimed at limiting the use of eminent domain simply as a means to aid companies and the KCC in gaining access to private property and increasing their own profit margins. This protection already exists within the wind industry and should be extended to solar siting and transmission siting as well. This bill ensures that all public utilities cannot and will not in the future use this power as a way to further siting and placement for solar facilities & High-Voltage Transmission lines and expedite the process by shirking a long-standing right to private property and negotiations in the free market.

I appreciate the opportunity to appear as a proponent of SB 457. I ask that the Committee recommend the bill with the proposed amendment's favorable for passage.