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Testimony in Opposition to SB 374

Good morning Madame Chair and members of the Committee. Thank you for the opportunity to discuss with SB 374, legislation repealing K.S.A. 79-201, Eleventh in which the property tax exemption for renewable energy is contained. My name is Kimberly Gencur Svaty and I represent the Kansas Advanced Power Alliance which includes nearly 40 companies and organizations in the energy sector including three of the four new energy supermajors – Enel, Iberdrola and NextEra, all of which have energy portfolios invested in Kansas.

A lot has changed since the 1990s when the property tax exemption for renewable energy was enacted into law. Honestly, we were closer to the movie release of Back to the Future in 1985 when the exemption was enacted. Kansas was still years away from joining Southwest Power Pool (SPP). Kansas was years away from its first operating wind farm which came online in 2001. And solar power was talked about as something far off in the future. The legislative authors of the property tax exemption for renewable energy knew that Kansas was ripe for renewable energy development – look at the bend in the trees in central and western Kansas, just as we were ripe for development of our oil and gas reserves. For decades Kansas was an energy exporter. The state lost that status in the mid-1990s and the Legislature and several Governors worked hard to help the state regain that status. The property tax exemption for renewable energy generation was designed to attract new, private investment in the State. It worked.

If I make any point today, Madame Chair and members of the committee, it is this: often in this building the scenario is "industry request; legislature enacts; industry invests" but that is not how the life of the project property tax exemption originated. This legislative tool was implemented in the 1990s – well before the first operating wind farm was even conceived, and more than a decade before wind development began in earnest in the late 2000s. The industry didn't ask for it – indeed, the industry did not even exist in Kansas to ask for it at the time. But after confirming Kansas wind speeds were what we thought they were and that there were willing landowners and communities as well as transmission access, the industry began investing. As the competition for the lowest cost power intensified to fever-pitch levels, the tax parameters created in Kansas years before coupled with a world class resource, access to transmission, and willing landowners and communities – made for an incredible investment environment that created the economic opportunity seen today.

The wind energy market is highly competitive. Kansas' utilities and C&I customers have some of the strongest wind generation projects in the nation from which to select. And in Kansas, utilities and

C&I customers from across the nation have the opportunity to procure the lowest cost electric generation available. To assume that wind projects will continue to be developed in Kansas is folly however. Any utility or C&I RFP issued for renewable energy sees scores of responses from project sites and generation types across the SPP footprint or across the county. Certainly, our neighbors to the south have seen more robust development as has Iowa. Thus far however, the industry has invested the following in Kansas:

- Private capital investment – more than $14 billion
- Jobs created – 20,000 direct and in-direct
- $29 million in state and local taxes annually
- More than $36M in annual land lease payments

The 2015 Change

On July 1, 2015, the property tax exemption for renewable energy changed. The industry whole-heartedly supported the change and advocated for it. The change moved the life-of the-project exemption to a 10-year exemption which is in line with tax exemption for other forms of electric generation, including new nuclear power, for any new project which came online after January 1, 2017, pending application and approval from the Board of Tax Appeals (BOTA). There was a provision included in the bill that provided a grace period for a number of wind projects that had been announced for construction before July 1, 2015 or were already under construction. The grace period language allowed for a project that had a conditional use permit from a county to apply for a life-of-the project exemption if the project happened to come on-line following January 1, 2017. The tax change also classified wind farms as commercial property rather than as utility property. Wind farms do not have retail customers – only public utilities have retail customers. The commercial property designation shifted the assessment from the State to the individual counties. The 2015 change also removed the Machinery & Equipment property tax exemption as a tool for renewable energy projects making the renewable energy industry one of the only industries and businesses in the state to not be able to use the M&E exemption.

Payment-in-Lieu-of-Taxes

Since the construction of the first wind farm in Kansas in 2001, a payment-in-lieu of tax agreement has been negotiated with the host county. The first agreement was completely voluntary and offered to the county by the developer. The next project that came online 4 years later, made a similar voluntary offering. The third project followed suit. Precedent had been set. There is nothing in statute requiring a PILOT/donation agreement, but it immediately became standard practice for the industry. To be sure, as the industry and county commissions have evolved the agreements themselves evolved and they have evolved again following the 2015 statutory changes. Two key elements that have not changed are that the agreements are negotiated with the elected county commissioners and spending of revenue stream has always been at the discretion of the county commissioners.

- More robust amounts on a per megawatt basis;
- Production and inflation adjustments;
- Different time periods of the agreements per county commissioner choice;
  - 10 year through 40-year payment structures (front load payments or a dedicated revenue stream for a prolonged period)

- Requirements that 20% of the agreement be dedicated to K-12 education funding;
- County Commissions have opted to allocate their revenue streams in varied ways.

Conclusion

The benefits of the industry have perhaps been felt most strongly in the last year across communities. Several wind farms were under construction, the workers needed lodging and local restaurants were able to stay afloat by providing catering. A local auto parts dealer who supplies lubricant to the wind farm, had its best year in business. The Kansas Legislature has created exemptions that total many billions of dollars in lost annual revenue to the State, but it has done so knowing that there is robust competition for new jobs and private investment. Article 11, Section 12 of the Kansas Constitution allows counties to approve for economic development purposes a property tax exemption for real or personal property associated with new or expanding business and used exclusively for manufacturing articles of commerce. To be sure, if a $600 million investment or more opportunity was being proposed for a community, economic development professionals and community leaders would be spearheading efforts and creating incentive packages to secure the investment. The property tax exemption for renewable energy helped attract billions in new investment and jobs to our state including new manufacturing and helped ensure Kansas was competitive with surrounding states. The industry opposes legislation that singles out one industry and creates an asymmetric tax paradigm for energy infrastructure that includes generation, transmission and pipelines.