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Testimony of
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Before the Senate Committee on Assessment and Taxation
Regarding Senate Bill No. 374

March 15, 2022

Chairwoman Tyson, Vice Chair Peck, Ranking Member Holland and Committee Members,

My name is Alan Claus Anderson and I am a practicing attorney and the Vice-Chair of the Energy Practice Group at Polsinelli, a national law firm that provides a wide breadth of legal services to both Kansan businesses and the individual residents of Kansas. I am also an Adjunct Professor of Law at the University of Kansas School of Law where I teach Renewable Energy Law Practice and Policy. Thank you for allowing me to appear before you today to discuss the flaws and bad policies contained in Senate Bill No. 374 (the "Bill").

A. INTRODUCTION

Polsinelli is a law firm with over 900 lawyers with offices across the United States. We are fortunate to work for clients in all areas of energy production, from oil, gas, and coal, to renewable energies such as wind and solar. I also study and teach renewable energy law and the impacts of both good, and bad, policy. I am a proud Kansan and have had the good fortune of working with various Kansas state agencies to attract business to Kansas, and our firm has a long track record of unwavering support for this great state.

B. OVERVIEW

Currently you have before you Senate Bill No. 374. In this testimony, I am going to lay bare the intrinsic qualities of this Bill that make it reckless and counter to the goals of sound energy and fiscal public policy. At the core, SB 374 seeks to single out renewable energy generation for unique treatment and put it at a clear competitive disadvantage as compared against any other form of electric generation in the State of Kansas. This disparate treatment is not only bad policy and anti-free market, it is counterproductive from a revenue generation perspective.

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The State of Kansas has established a clear and consistent precedent of granting property tax exemptions to all energy generation assets and appurtenant infrastructure, and there are good policy reasons for such treatment. As representative examples, and as shown in the following Table, the State has implemented 10 years of property tax exemptions for public utility baseload generation (including coal and natural gas baseload generation), nuclear generation facility property, coal gasification power plant property, biomass generation facilities, oil and gas pipeline property, electric transmission lines, and refinery property. Similarly, baseload independent power producer generation (including coal and natural gas baseload generation) is granted a 12-year property tax exemption and certain oil and gas production and refineries have a lifetime exemption.

Kansas Infrastructure Property Tax Exemptions		
Asset	**Exemption Term**	**Statute**
Renewable energy generation property	10 years	K.S.A. 79-201 (eleventh)
Baseload public utility electric generation facility property	10 years	K.S.A. 79-258
Baseload independent power producer electric generation facility property	12 years	K.S.A. 79-257
Nuclear generation facility property	10 years	K.S.A. 79-230
Integrated coal gasification power plant property	12 years	K.S.A. 79-225
Integrated coal or coke gasification nitrogen fertilizer plant property	10 years	K.S.A. 79-228
Oil and natural gas pipeline property	10 years	K.S.A. 79-227
electric transmission lines and appurtenances	10 years	K.S.A. 79-259
Biomass-to-energy plant property	10 years	K.S.A. 79-229
Waste heat utilization system property	10 years	K.S.A. 79-231
Biofuel storage and blending equipment	10 years	K.S.A. 79-232
Refinery property	10 years	K.S.A. 79-226
Landfill gas refinery, treatment, or pipeline property	Lifetime	K.S.A. 79-201 (twelfth)

Telecommunications machinery and equipment	Lifetime	K.S.A. 79-224
Railroad machinery and equipment	Lifetime	K.S.A. 79-224
Oil Leases (>5bbls/day)	Lifetime	K.S.A. 79-201t
Farm machinery and equipment	Lifetime	K.S.A. 79-201j

C. INCREASED TAX ON RENEWABLE PROJECTS – IMPACT

Loss of Revenue from Projects Locating in Other States

There are two clear economic consequences of SB 374. First, some number of wind projects that would otherwise locate in the State of Kansas will be forced to locate in a competing state because the economics of this added tax make projects uneconomic when compared to other locations. The loss of those projects will in turn represent significant lost tax and contribution revenues for Kansas counties, lost lease payments for Kansas landowners, lost construction and operation jobs, and lost opportunities for the sales of goods and services to the projects.[1] The economic impact of this loss would be in the hundreds of millions of dollars.[2]

Tax Revenue Offset by Increased Electricity Cost to Ratepayers

Second, for those projects that are still able to proceed with development in the State of Kansas, the increased financial burden will necessarily be reflected in a higher price for the electricity generated by those projects. In a competitive marketplace, a project's expenses are baked into the purchase price of the power generated, so an increased tax burden will result in a corresponding increase in the sale price of the electricity. Ultimately, that increased cost will flow through and be borne by the final purchasers of electricity, the Kansas ratepayers. In other words, to the extent a project remains economically viable, the tax increase will be borne by Kansas ratepayers.

Wyoming Example

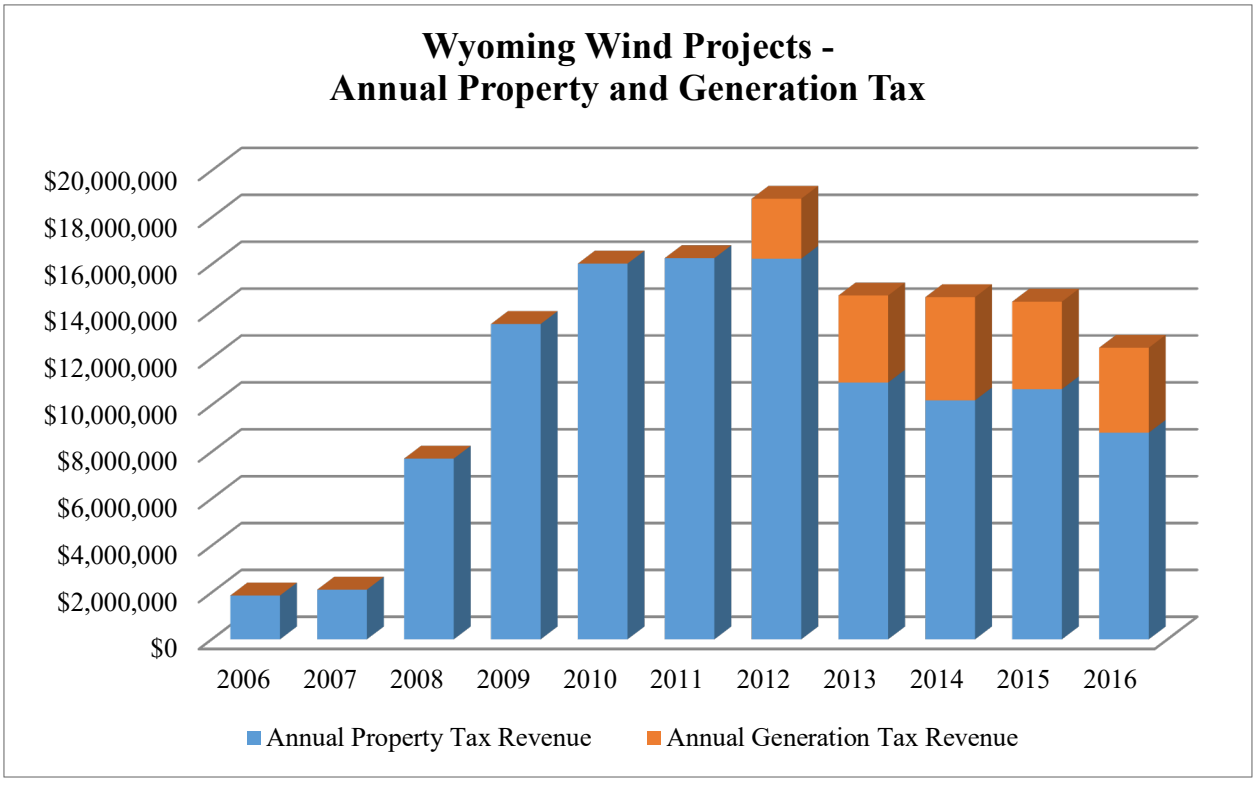
Setting aside the disincentive on revenue generating projects and economic harm that SB 374 would place on Kansas ratepayers, it is important to note that there is clear empirical evidence that the tax increase contemplated by SB 374 will actually lead to a net revenue loss for the State of Kansas. Specifically, the State of Wyoming provides a compelling example of the type of harm that singling out wind generation for disparate tax treatment can yield.

[1] "Annual Economic Impacts of Kansas Wind Energy – 2020 Report", Polsinelli PC (March 22, 2021).

[2] *Id. See also*, Wyoming example below.

Between 1999 and 2010, over 1400 MWs of wind generation were installed in Wyoming, with almost 1200 MWs installed between 2008 and 2010 alone.[3] However, in 2010, the Wyoming Legislature established a generation tax of $1/MWh (W.S. 39-22-101 *et seq*.) which went into effect in 2012. Between 2010 and 2017, only one wind farm completed construction in Wyoming—the Pioneer Wind Park ("Pioneer"), owned by Sustainable Power Group ("sPower") was completed in October 2016. That absence of new projects and the depreciation of existing projects was reflected in the declining annual property tax revenue, and the overall result of the state's enactment of the generation tax led to *less* overall tax revenue.

Based upon a detailed review of data drawn from publically-available information and disclosures from the applicable taxing jurisdictions of the total amount of property and generation tax revenue that wind projects contributed to Wyoming,[i] the highest annual amount of property tax during that period occurred in 2011, when wind farms paid $16,260,007. In 2012, the first year of the generation tax, wind farms paid $16,234,235 in property tax and $2,560,483 in generation tax, for a total of $18,794,718. It is no coincidence that the peak year for tax revenues from wind farms (2012) was the same year that the generation tax went into effect, as wind development came to a halt after the generation tax was announced in 2010, with only the Pioneer project coming online until 2018.



[3] Wyoming Legislative Service Office, "Generation Tax from Electricity Generated by Wind Resources" received via email from Matthew Sackett December 5, 2016

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D. CONCLUSION

There is simply no rational justification for Senate Bill 374. It represents both an anti-free market doctrine and economic imprudence. As shown above, renewable energy projects' property tax status is the same, or worse, than other energy infrastructure. To add a tax to renewable energy would be intentionally impairing the free market in electricity production solely to target one source. Moreover, the impact of this attempt to harm one source of electricity generation is to harm the economic interests of the State of Kansas and its citizens. To add tax to electricity generation in the State of Kansas is to give a gift of economic impact to our competitor states and to increase the cost of electricity to our citizens. The absurdity of Senate Bill 374 cannot be overstated and it should fail with prejudice.

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[i] Property tax data for Wyoming was gathered from four main sources: 1) Assessed values for all projects except the PacifiCorp projects were obtained from the Wyoming Department of Revenue's spreadsheet, titled "Wind Farm Assessed Values 2006-2015."; 2) Assessed values for PacifiCorp projects, as well as Generation Tax totals, were obtained from the Wyoming Legislative Service Office's spreadsheet, titled "Generation Tax from Electricity Generated by Wind Resources." 3) The tax districts applicable to each project were obtained from Public Company of Wyoming's spreadsheet titled "2015 Property Tax and Generation Tax from Electricity Generated by Wind Resources."; and 4) Mill levies for each tax district for the years 2009-2016 were obtained from the Wyoming Department of Revenue's Property Tax Tables available at http://revenue.wyo.gov/property-tax-division/property-tax-tables. Mill levies for 2006-2007 were obtained by calling the tax assessor office in each county. The annual property tax for each project was then obtained by multiplying the assessed value by the appropriate mill levy and dividing by one thousand.