

Proponent Testimony for Senate Bill 279

Don Lueger; St. Benedict, Kansas; Nemaha County

Chairman Thompson and members of the Senate Utilities Committee:

My name is Don Lueger. I live in the country near the little community of St. Benedict in Nemaha County, Kansas.

I am speaking to you today as a landowner, and on behalf of the NEK Northeast Kansas Concerned Citizens group of 750 people.

The NEK Concerned Citizens group heartily endorses adoption of Senate Bill 279. This bill provides needed protection for counties and especially small cities and communities, and non-participants.

Approximately half the counties in Kansas, and most small communities, have no zoning regulations. That makes them easy prey for wind developers. Industrial wind companies routinely target UN-zoned counties. It has been said by opponents to legislation similar to SB 279, that these decisions regarding regulations belong at the local level – with counties and cities. That sounds great in theory, but that is simply not practical in most cases. Why ... Because most rural counties and small cities and communities lack the time, expertise and resources to implement such regulations through zoning.

In late 2016, NextEra requested and the Nemaha County Commissioners rescinded their 2012 resolution regarding setbacks. Very few of the citizens in Nemaha County were aware of this rescission.

The NEK Concerned Citizens group was formed in 2018 after citizens became aware that several wind energy companies had been leasing land in Nemaha and Brown Counties. After a couple of other announcements by wind energy companies, it was determined that they were looking to put perhaps as many as 1,000 industrial wind turbines across Brown, Nemaha and Marshall Counties, along with the Grain Belt Express cross-country transmission line. Basically, it would turn these three counties into an industrial wind complex. The Concerned Citizens group retained expert legal counsel to help support the group and the commissioners in both Brown and Nemaha Counties on the options they could

pursue to protect all homes, families and properties from improperly sited wind turbines. The group provided a number of recommendations similar to what is in SB 279. Despite a large number of people speaking out in opposition to the turbines and the minimal setbacks proposed, our then sitting County Commissioners continued to move forward with NextEra in approving the Soldier Creek Wind complex of 120 turbines. Apparently, the Commissioners caved to the pressure of a potential lawsuit and felt the County's options were limited since the county did not have zoning.

Obviously, current law provides for counties and incorporated cities to adopt zoning regulations, if so desired. With regard to industrial wind turbine complexes, the only current way to regulate such is by counties and cities enacting zoning that either prohibits or restricts with adequate setbacks. However, implementing zoning requires time and resources by each county or city willing to go through that process

Putting zoning in place costs money. A bare bones approach to zoning is going to have an initial cost of somewhere around \$25,000 – leaving counties or communities to do much of the work themselves. It could easily be as much as \$150,000 – or even more. And those are the initial costs. Then, there are the time and resources needed to implement, maintain and administer zoning. These costs are often simply not available in the budgets of many counties in our state. Now, after the fact, Nemaha County has begun the process of doing a comprehensive plan – the first step in the process of considering zoning. They still have a long way to go. The communities of Corning, Wetmore and Bern (all in Nemaha County) also started the process toward planning and zoning. Each has their own story, but basically, they have all abandoned, for the time being, their efforts to enact zoning. Corning has tax levies of about \$66,000 per year; Wetmore about \$24,000; and Bern about \$25,000. Clearly, they have very limited budgets, and time. Most all of the Mayors and Council members in these small communities work full time jobs and volunteer or get very minimal pay for their time to serve their communities. The reality is, there is simply not enough time, expertise and money to implement zoning.

And even if a county or community adopts zoning, industrial wind companies have demonstrated their willingness to sue counties and cities. With regard to defending your county or city, let me offer a few actual examples:

- Wabaunsee County had zoning. In 2004, their commissioners made the decision to prohibit industrial wind. Landowners, who had land leased to NextEra, brought suit against Wabaunsee County. NextEra, as an Intervenor, represented the landowners. In 2011, after going twice to the Kansas Supreme Court, Wabaunsee County's position of prohibition was upheld.
- Next, we can look to Reno County. NextEra, in 2019 sued Reno County for denial of a conditional use permit for a commercial wind complex. The initial finding was in favor of Reno County. However, it is my understanding that lawsuit continues.
- And then, closer to home, there is the City of Corning. Corning, in Nemaha County, is smack dab in the center of NextEra's Soldier Creek 120 industrial wind turbine complex. Corning, when they found out they'd have about 50 turbines located within three miles of their small community, decided to pursue zoning. In a rush to get this zoning in place, Corning was offered, by NextEra, large sums of money to drop their efforts, and, at the last hour so to speak, ultimately were confronted with a six-page letter from NextEra's attorney, threatening legal action, accusing the Mayor, Planning Commission and City Clerk of improprieties and errors and suggesting these may have been done with the intent to avoid Kansas Statutes, skirt the law, scheme, and govern in secret. Such accusations – against people who love their community, worked so hard to build their community, and were simply trying to protect it – these accusations were simply disgusting. Unfortunately, Corning was beaten down, and Big Wind won once again.

Lawsuits and the threat of lawsuits take time and resources – something few small communities can afford. And the wind energy companies know this.

Industrial wind energy companies use their money and power to get as many land owners in a contract and then convince the Commissioners to move forward before the public is informed of what is going on. This is the unmatched power they wield and the leverage they hold. They know they have it, and they use it to

the full extent necessary wherever they go. Local governments in rural Kansas are no match for them. And this is a testament as to why basic State regulation/protection is a must.

In conclusion, small communities and rural counties have limited time, expertise and resources to implement zoning regulations regarding industrial wind turbines. SB 279 provides needed protection for counties and especially small cities and communities with regard to industrial wind turbines. It does not prohibit industrial wind. It does not prohibit counties from enacting zoning to further define or restrict industrial wind within their particular county. What it particularly does is afford some baseline protection for counties, small cities and communities, and non-participating home owners.

Thank you for your time and attention, and the opportunity to comment on SB 279.