

March 21, 2023

SB 312

AN ACT concerning the power of eminent domain; relating to the exercise thereof by certain public utilities; requiring approval of the board of county commissioners prior to the exercise thereof; amending K.S.A. 26-101, 26-501b, 26-502 and 26-516 and repealing the existing sections.

Oral-In Person

Proponent

Self

From: Rochelle McGhee Smart (620.496.4663; mcgheerochelle.rm@gmail.com)

To: Senate Committee on Local Government, Sen. Carolyn McGinn, Chair

Thank you, Chairwomen McGinn, and members of the Committee, for the opportunity to provide support for SB 312. 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 home site that now falls within the dreary shadow of NextEra's proposed high voltage electric transmission line.

I support this bill because it is intended to require the unanimous approval of the elected members of the Board of County Commissioners prior to the exercise of the power of eminent domain by public utilities. I have some concerns, however, because within the last year, I have seen the KCC allow eminent domain to be used as a bullying tactic in negotiations by large companies like NextEra energy.

The KCC acts as if the current statutes are simply recommendations that the KCC can choose to ignore. The KCC apparently believes that it knows better than this legislature what the law should be. I fear the very high likelihood that the KCC will ignore the newly proposed statutory language as well. I want to take this time to share my experience and explain why my fear is well grounded.

I will start with some background, Eminent domain authority was established in the 5th amendment of the U.S. Constitution. It's original intent was only for roads, bridges, parks, and public buildings. Later it was perverted into a land grab tool by state government, and large rural development companies. The "Public use" clause within the eminent domain amendment is defined as: anything which is meant to enrich the lives of the people who reside, visit, and work in the area, of said projects. This line and many other projects that have been granted because of eminent domain do not enrich the lives of the people it is affecting. This line crosses diagonally over farm ground, cattle operations where farmers and ranches will be forced to eliminate key components of managing and operating there businesses. Examples such as no ariel spraying and no building of wind breaks within or near the transmission line footprint. Some houses along the transmission line foot print are within 200ft from there back door.

This isn't the first time the KCC has allowed NextEra 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.

As part of last summer's hearing, NextEra admitted to entering into option agreements with landowners for easements on land where NextEra wants to build a transmission line. In addition, NextEra admitted to entering onto landowner property to conduct "studies," including collecting soil samples to assist in line development. Those admissions demonstrate that NextEra was conducting business in this State and taking property interests without first obtaining a certificate. Further, NextEra "studies" show that it began site preparation without the necessary siting permit. We objected to NextEra's illegal actions, the KCC essentially ignored our objections and the protections those statutes provide my family. The KCC's willingness to ignore the plain language of statutes, and the absurdity it entails are only amplify by NextEra's eminent domain bullying tactics.

In March 2022, five months before the KCC issued its August 29 certificate of convenience and necessity, NextEra held two virtual public meetings. At those meetings, NextEra signified to the public that the electric transmission line location was set and that there were not going to be significant changes to that location. NextEra also threatened landowners by saying if the landowners did not sign the option agreements, NextEra would acquire the land by eminent domain. NextEra's March statements were 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.

NextEra's vile acts continued through the spring and summer. One afternoon we received a phone call where the caller led us to believe he was with the USDA seeking to survey our crop ground. We work with the USDA often, and it is common for them to conduct site visits, so we agreed. In reality, the call was from a NextEra representative. When we found NextEra was on our land, we immediately ran them off and reiterated that NextEra did not have permission to be on any of our properties.

We are not the only landowner that NextEra has trespassed on and were threatened with the use of eminent domain. As part of our intervention in the KCC's docket, we attempted to file affidavits from other landowners whose ground NextEra accessed without permission and was damaged - cutting ruts through a productive pasture. Along with continual badgering from NextEra of the use of eminent domain. The KCC of course, denied our attempts to introduce those affidavits. With the KCC allowing this behavior from NextEra it completely eliminates landowner negotiation power.

I have had numerous neighbors relay stories of NextEra's badgering and poor treatment. For example, I had a charming 80-year-old grandmother who lives near us call me and say, "Hi Rochelle, I had this guy who says he is from NextEra, and they keep trying to get me to sign this thing called an option agreement. I tell them I don't want anything to do with it. He says if we don't, they have eminent domain authority.

What is going on? What do I do? Can they take my land?" I, of course, cannot provide her answers, but I can empathize with her sense of dread and worry.

Another Anderson County landowner that lives out of State contacted me distressed because NextEra kept badgering her with phone calls throughout her workday. When she told NextEra she wanted everything they were telling her in writing, NextEra refused. They continued to mention that NextEra will have eminent domain. Further, when she asked NextEra about potential reroutes, NextEra would evade the question. NextEra finally told her they were transferring her case to another agent and then went radio silent.

As another example of NextEra's unprofessionalism, in December NextEra held a brief, informal, come-and-go poster presentation in Burlington, Kansas. We attended. I was in a circle of neighbors discussing the project and poster presentation when one of the NextEra land agents came up to the group. NextEra's agent instantly started making derogatory comments about my family and me, stating: "Yeah, those McGhee's they are the reason we can't give you any answers or information. They are the ones causing all the problems." On and on, he went about how we were horrible people making problems for everyone. Of course, this man had never met me, and the only thing my family had done was to try and protect our livelihood. Finally, one of our neighbors spoke up and said, "Sir, that person right there is Rochelle, the individual you are speaking about." The NextEra representative just turned around and walked away. He made no apologies and expressed no regrets.

Finally, I could easily brush off the KCC and NextEra's illegal acts and their apparent disdain for landowners if it was not for how they will negatively impact my children's health. Research published in the Journal of Engineering and Technology (IRJET) has reported that high-voltage transmission lines may significantly impact human health, plants, and animals. In particular, the magnetic field associated with high-voltage transmission lines can reportedly, interfere with cell function, break DNA strands, and erode the immune system causing severe disorders in children, pregnant women, and the elderly.

At its March 2022 public meetings, NextEra attempted to dispute any potential adverse health effects from high-voltage transmission lines, stating that health impacts are "inconclusive." NextEra's position is very similar to cigarette companies' position decades ago when they tried to cast doubts on the health dangers of smoking. The cigarette companies were wrong then, and our society has paid a tremendous price. Similarly, there is a substantial likelihood that NextEra is wrong now.

My family and neighbors should not face the additional health risk simply because NextEra wants to build a transmission line less than 1/8 of a mile from our homes. In sum, given the KCC laissez-faire approach to enforcing existing law and complete disregard for NextEra's poor treatment of landowners, Third party agencies should not have that power to grant eminent domain authority. It should reside at the county level where it is closest to the citizens that it will affect.

As John F. Kennedy stated, "There are risks and costs to action. But they are far less than the long-range risks of comfortable inaction." Please take action, pass Senate Bill 312, and consider taking additional steps to reign in the KCC's and NextEra's malfeasance