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Testimony of
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Before the Senate Committee on Utilities
Regarding Senate Bill No. 478

March 10, 2022

Chairman Thompson, Vice Chair Peterson, Ranking Member Francisco 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 fatal flaws and bad policies contained in Senate Bill No. 478 (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. 478. While the topic of lighting mitigation is one that is worthy of intelligent discussion and investigation, this Bill is fatally ill-conceived and haphazardly crafted. I will discuss the intrinsic qualities of this Bill that make it reckless and counter to the goals of sound energy policy, local control of land use, and aviation safety all while being void of the due diligence necessary for a topic of this magnitude.

C. Bill Terms Summary

On its face, this Bill imposes new unfunded state mandates on Kansas counties, pushes complex safety decisions on counties without providing any technical support, and takes away local control of land use decisions. Moreover, this Bill also delves into a complex and important area regulated by the Federal Aviation Administration without this Committee having been given all the information necessary to make a fully informed decision. This Bill also has the potential to eliminate electricity production from facilities where the FAA determines it is unsafe to install light mitigation technology, or where there are other reasons the technology cannot be installed and operated. The rate and grid reliability impacts for this potential lost electricity production have not been studied and it would be reckless to pass this Bill without fully understanding the potential ramifications on electricity reliability and impacts on Kansas consumers.

The discussion of light mitigation options is worthy of a detailed and diligent process to fully vet the opportunities and impacts. However, with so little due diligence having been conducted on the important topic of aviation safety and grid impacts, it would be reckless to advance this Bill as currently proposed. This Committee should expect, and demand, far better than to be asked to move Bills out of Committee without the necessary investigations and information.

A few of the most flawed requirements are detailed below.

- This Bill states that any wind turbine must be equipped with lighting technology that complies with 14 C.F.R. § 1.1 et seq. and is approved by the Federal Aviation Administration (FAA).
    - Any requirement that encroaches on a federal agency's regulatory regime must be thoroughly vetted prior to enactment. An "informational" session from technology vendors that will financially benefit from the Bill is not adequate to understand the impacts of this Bill. The language being considered goes beyond simply requiring that turbines be equipped with technology if approved by the FAA (accounting for the fact that such approval may or may not be granted by the FAA), and instead requires that the technology must be approved by the FAA before a project will be allowed to operate or to continue to operate.

- The Bill requires a process where counties must create an "application form" for developers to propose a light-mitigating technology system that such developer will install and maintain.
    - No county in Kansas has an application form related to light-mitigation technology, nor does any county have the expertise to evaluate FAA regulated light mitigation technology. Because of the aviation safety dangers and technical complexity of a decision to alter the lighting of a structure regulated by the FAA, every county will need to hire experts to guide it through this process. This Bill provides no funding or guidance to counties, making this a reckless unfunded mandate.

  - While placing an immense obligation on counties that have not asked for this burden, this Bill does not provide a way for counties to opt-out of the process. Putting this burden on counties without an ability to opt-out takes away the local control over this land use. If the state wants to require this technology, it should take on this burden and do the necessary diligence to understand the ramifications of the requirements that it is placing upon an important industry in the state.

- The Bill states that, even though the developer would propose a light mitigation system, the board of county commissioners of the counties are the ones that will actually determine the type of light-mitigating technology system that shall be used on such wind energy conversion system.
  - This puts counties in the perilous position of being forced to select light mitigating systems without having the resources to adequately assess and differentiate among systems. Moreover, by forcing a county to be the party that selects a light mitigating system, as opposed to simply allowing a developer to select the system, it creates legal risk if there is any accident where the county-selected light mitigating system is implicated.

- This Bill requires currently operating projects to install and maintain light mitigation technology by July 1, 2025.
  - There has not been any due diligence related to the impact of this retroactive application, including:
    - Whether the FAA would approve light-mitigation technology for all currently operating projects;
    - Counties' ability to understand, create, processes, and administer this new unfunded state mandate;
    - Supply chain and technology availability;
    - Impact on contractual relationships;
    - Rate impacts; and
    - Impact from disruption, or discontinued electricity production, caused by the Bill.

- The Bill states that if any owner or operator of a wind energy project does not have a light mitigation system installed and operational by July 1, 2025, it must discontinue operations.
  - FAA Advisory Circular AC 70/7460-1M makes it clear that:

    > "Approval of an ADLS will be on a case-by-case basis and may be modified, adjusted, or denied based on proximity of the obstruction or group of obstructions to airports, low-altitude flight routes, military training areas, or other areas of frequent flight activity."

Therefore, there is a very real chance that the FAA may determine that an ADLS is inappropriate for some portion of the projects currently operating in Kansas and, in such case, it would be impossible for a light mitigation system to be installed by July 1, 2025, if ever.

  - If the FAA determines a light mitigation system may not be approved for operation on a wind energy facility, it cannot be operational by July 1, 2025 and the Bill would require that the facility discontinue operations and the electricity generation from that facility will be lost.
    - There have been no studies or information provided to determine what impact any lost electricity generation will have on rates, grid reliability, and impact to utilities or Kansas consumers.

- The Bill states that "[o]n and after July 1, 2022, no wind energy conversion system shall be constructed or commence operations" without a light-mitigation technology.
  - There are currently wind projects that are in late-stage development or nearing construction. Those projects, which currently exist and are actively in development or nearing construction, would be immediately stalled upon passage of this Bill.
  - As this Committee heard during the informational sessions, lighting systems are submitted to the FAA for consideration as part of the developer's initial obstruction lighting plan application. If passed, this Bill would require all of those projects (and, indeed, all projects currently operating in the State of Kansas) to identify the necessary technology, work with the vendors of that technology to prepare the required materials for their application, and then both resubmit their FAA lighting applications and go through the undefined and currently non-existent county selection and approval process. As conferee Gary Andrews from DeTect testified, the FAA is currently backlogged on these applications with response times ranging up to 6 months.
  - These currently in-development projects could not be constructed or commence operations until both the FAA resubmission and county-approval process have been completed, causing an unforeseen delay of many months to their development and construction schedules. No information has been submitted to this Committee to evaluate the potential impacts of such delays on these in-development projects' viability, the impact on the purchasers that expect to receive the power generated by those projects (including Kansas utilities), and the impact on the reliability of the grid.

D. CONCLUSION

The topic of light mitigation technology, and the opportunity for its inclusion on Kansas wind energy projects, is one that should take place and I welcome that dialogue. However, this is too important a topic to be rushed through in a poorly conceived Bill after one informational hearing

from the vendors that would financially benefit from passage of the Bill. It cannot be forgotten that Senate Bill No. 478 is another one of the eight Bills submitted by the same author. Each of those Bills has been a blatant attack on the renewable energy industry, this time under the cloak of a topic that otherwise may warrant a good faith discussion. A robust exploration of light mitigation opportunities, with an evaluation of how to implement such systems, is worthy of a good faith process. As should be clear from the contents, this Bill is ill conceived and haphazardly crafted and the hard work of analyzing the impacts of the Bill has not taken place. Aviation safety and electricity generation are too important, and complicated, to recklessly impact. If the Committee would like to explore wind energy light mitigation, it should do so in a logical and thorough way.