

Testimony before the Senate Utilities Committee  
Senate Bill 331  
February 9, 2004

Chairman Clark and Members of the Committee:

My name is James R. Yoxall. I am a lawyer and have been practicing law in Liberal, Kansas for 53 years. During that period of time, a large part of my practice has been dealing with real estate titles and issues.

I have, within the past two (2) years, negotiated on behalf of certain clients (landowners) wind energy leases both in the State of Oklahoma and the State of Texas. I am currently involved on behalf of a landowner/client with negotiations pertaining to a wind energy lease in Kansas. In the course of my practice over the last 53 years, I have been involved in many property leases involving commercial and oil and gas leases and agricultural.

Most of the wind energy leases are from 25-35 years in length with options for renewal beyond that period. If you compare this to the oil and gas leases, they are somewhat similar in that an oil and gas lease, where production is obtained is perpetuated so long as there is production. The problem is that someplace down the line the details become lost if it is not recorded. The companies change hands as we have seen the past 50 years. They change very frequently in fact. What is prospective purchaser to do when they want to find out what the terms are on these leases or easements that go on almost in perpetuity. The prospective purchaser wants to know what he is getting, not just what they can see out there, but what are they actually going to be getting and what are the restrictions.

Another problem involves the lending institutions. Any lending institution wants to know the value of the property. If the appraiser is unable to locate the full lease in the courthouse, they have no way of knowing what the restrictions might be, what the benefits might be and they simply cannot give the lending institution, or any other person, a valid estimate of the value of the property. If the full lease is not recorded, it is not just the landowner and the wind energy people that are affected, it will be the lending institutions, the appraisers, prospective purchasers and I am certain that you can think of many others as well.

I have seen some suggestions before the House Utilities Committee that the cost of recording would be astronomical. I would submit to you the cost of recording the lease might amount to \$100-\$150. That is nothing more than a drop in the bucket compared to the \$800,000-\$1,000,000 per tower that the cost of erection of the wind energy towers would be.

I apologize for the length of this statement. I wish to urge you to consider favorably the Amendment as set forth in Senate Bill # 331 even though in my opinion the bill could be strengthened and be more beneficial to the landowners and businesses in Kansas to require the full lease to be recorded, because I can assure you that anyone having a need to know will discover many, many restrictions in every wind tower energy lease. The restrictions are vital to anyone owning the property, any future owner and any person having any contact with the property, ie. appraisers, lender, etc.

I would urge your adoption of Senate Bill # 331, or preferably, I would urge you to strengthen the Bill to require the recording of a document setting forth all of the various restrictions on the use of the lands.

I thank the Committee for their time and I would be happy to discuss this personally with you or any Member of the Committee.

*/s/ James R. Yoxall*

James R. Yoxall

JRY/ksk