

**STATEMENT OF  
THOMAS G. SCHNITTKER, REAL ESTATE SALESMAN  
FOR GENE FRANCIS & ASSOCIATES  
445 SE PARK HILLS DR.  
PRATT, KANSAS 67124-8230**

TESTIMONY BEFORE THE SENATE UTILITIES COMMITTEE

Senate Bill No. 331

February 9, 2004

Chairman Clark and Members of the Committee:

INTRODUCTION AND BACKGROUND

My name is Thomas G. Schnittker, a resident of Pratt, Kansas. I am a real estate salesman, farm manager and farmer. Currently, I operate land in Ford and Stevens Counties in Kansas. Since 1975, I have been a licensed real estate salesman (License No. SP00014277) in the State of Kansas. From 1981 through 1998, I was the principal of a farm management company, Schnittker Ag. Services of Winfield, Kansas. Under Schnittker Ag. Services, I managed over 25,000 acres of land in southwest Kansas, eastern Colorado and the Texas and Oklahoma Panhandles. From 1998 through 2000, I worked for Farmers National Company as a farm manager in the Kansas City area.

Since 2000, I have been a resident of Pratt County, Kansas and marketing real estate principally in Kansas and Oklahoma. The real estate properties our firm, Gene Francis & Associates, markets is primarily agricultural and recreational investment types of properties. Gene Francis & Associates has office in Pratt, Wichita and Anthony, Kansas.

CONCERNS OVER FAILURE TO RECORD FULL LEASE OR EASEMENT

I am in favor of wind energy. Wind energy is a renewable resource and has many benefits to local landowners and the State of Kansas. I would like to enter this written testimony in favor of passage of Senate Bill No. 331 to amend the recording requirements to include wind energy leases. In my opinion, all wind energy leases must be recorded for the protection of the Grantor and the Grantee. If the wind energy lease is not recorded, either party could be subject to unfair practices by the other party. If the Grantor (landowner) grants a lease to a wind energy company, the entire lease should be recorded for the protection of both parties. In this example, the Grantee (wind energy company) takes a lease from the landowner and only files a memorandum concerning the lease. If the Grantee does not record the lease and a

tragic event (such as the destruction of the Twin Towers in New York City) occurs, the Grantee then has no written record to protect their successors in interest. The Grantor could claim that the payment for the wind towers could be two or three times higher than the original amount called for in the original lease document. Without the lease being recorded, there is no way the Grantee could prove “beyond a reasonable doubt” the original lease called for an annual payment of “X dollars” per year for “X” years. In this example, the original document was destroyed and now the Grantor has the only signed copy and could demand additional fees of the Grantee that would be unreasonable and very costly for the Grantee to disprove in a court of law.

To protect the Grantor, the wind energy leases must be recorded. The Grantor is allowing for specific uses of his land for the generation of wind energy. This is not unlike the granting of an oil and gas lease for the exploration of oil and gas. Under the terms of the oil and gas lease, the Grantee is receiving only specific rights to the property. These rights are spelled out in the lease that is of public record in the courthouse. If the wind generators are to be in place for 30-60 years, it would be possible that the lease could pass through to 2 or 3 generations. By the time 50 years has passed, it would be very difficult for the Grantor or their heirs to present a bonafided copy of the lease. In this example, the Grantor’s heirs would be at a disadvantage---they do not have a recorded copy of the lease. A copy of the lease to the wind generation company might be withheld from the Grantor’s heirs in order that the Grantee receives “more favorable” use under the terms of the wind lease.

For the protection of both parties, the wind lease must to be recorded. As a licensed real estate salesman since 1975. I feel it would be imperative for the public to have a copy of the wind lease. A copy of the lease (from the local courthouse) would be available to the public, any future purchasers, and title insurance companies. In today’s real estate market, 95% of all real estate transactions convey title through title insurance. If the wind generation lease is not recorded at the courthouse, the lease would be exempted from the title insurance policy. For the protection of the Buyer and Seller in a real estate transaction, it is imperative that a copy of wind generation lease be available in order that the Seller can grant good title to the Buyer and that the Buyer can make an informed, intelligent and knowledgeable decision concerning the purchase of the property that is affected by the wind generation. If the lease is not recorded, a prudent Buyer would discount the price of the land due to the “lack of information” available concerning the wind generation lease.

As per information provided to me, House Bill #2280 was originally drafted to address the issue of requiring the filing of record any leases involving wind resources and/or technologies to produce and generate electricity. As I understand it, House Bill #2280 was amended to permit the filing only of a memorandum of lease or easement and not the full lease agreement. I believe it to be essential that the entire lease agreement be recorded for the protection of all parties, particularly the Grantor, i.e. landowner.

As a licensed real estate salesman, many times we will research the title and/or easements on properties that we are listing or about to sell at auction. Without the entire lease document being put of record, it would be impossible as an agent for the seller to fully inform a buyer of any leases that are pertinent to the sale their land. Certain wind generation leases restrict the land use, i.e. no irrigation because irrigated land has different wind patterns than say dry cropland or pasture.

RECOMMENDATION ON ACTION TO BE TAKEN WITH REFERENCE TO  
SENATE BILL 331

For the above reasons, I believe it is in the best interests of all parties to have the wind generation lease recorded in its entirety at the register of deeds. The recording of the lease would best serve all parties (present and future) involved in the lease. For this reason, I am in favor of passage of Senate Bill No.331. I would welcome the opportunity to visit with the committee in person and enter personal testimony in favor of Senate Bill No. 331.

Respectfully submitted,

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