1611 Telegraph Ave. Suite 1515
Oakland, CA 94612
510-763-8083

Feb. 20, 2004

Senator Stan Clark, Chairman
Senate Utilities Committee
Kansas State Senate
Topeka, Kansas

SUBJECT: COMMENTS ON SB 455

Dear Senator Clark and Committee Members,

Please consider these comments in your deliberations on SB 455 and on whether to send the bill out to the full Senate for consideration.

Orion Energy would like to first identify itself as a small entrepreneurial company which has been extremely active and successful in developing and completing projects in the United States, having been directly responsible for over 20% of all installed wind generation in the country in 2003. In this near record year of over 1600 Megawatts of installation, about 300 MW is attributable to Orion, a company with less than a dozen staff members.

We emphasize this because many of the issues addressed in SB 455 that might be passed over by a number of in-state developers who have not had the direct experience of seeing projects through development, construction, and into operation phases, are of major concern to us.

There are a number of reasons why this legislation is both untimely and unnecessary. It is untimely and unnecessary because almost all of the counties being affected by potential wind energy development are proving to be equal to the task of developing their own local guidelines, and have available to them a number of very well thought out regulations that have evolved from the experience of other states and localities in the past

twenty years. Local government, which has ample authority to instill their own moratoriums (such as has been done in Riley County) until they have a reasonable set of guidelines upon which a highly intelligent and publicly protective decision can be made. We have been very active in providing the county we are working in with the most up to date regulations on a variety of issues from both the United States and Europe, where scrutiny is typically greater than in the U.S.
An important economic reason for the untimely nature of this legislation is the position of Kansas vis-à-vis surrounding states in the expansion of wind energy. Active development is now underway in Colorado, Oklahoma, Nebraska, and Iowa, and continued delay of project in Kansas can only weaken the states competitiveness. Moreover, a very likely effect of this legislation is that developers will simply walk away from Kansas and do business elsewhere, notwithstanding the existing tax benefits in the state. If this is the NIMBY's intent of this law, and it get passed in a form anywhere near its present form, they will succeed.

Furthermore, the morass of state bureaucracies and state regulations that would be necessary to oversee and implement SB 455 would be extremely costly, and would most negatively even the opposition from those communities that would have to frequently travel long distances to the capital to participate in a state regulated process.

Perhaps our most relevant question for those who are supporting this legislation is why is the most clean, and most cost competitive form of energy available in the world today, (when accounting for the environmental effects of fossil fuel including natural gas) suddenly being held to standards, often far above those that were and are even still being applied to the use of polluting and global warming causing fossil fuel facilities?

SPECIFIC SB 455 COMMENTS:

1. In general the legislation appears to be a somewhat disguised legal attempt to prohibit or indefinitely delay wind energy development in Kansas. Specifically to that point, two provisions will almost certainly have that effect whether intended or not. Having worked for 30 years in the environmental regulatory and planning field in California, where project approvals frequently take two years or more, the legislation proposed in SB 455 is more complicated and likely to produce more tort actions than the California Environmental Quality Act and NEPA combined. For example, Sections 3b(7) calling for meeting the standards of NEPA, is both unnecessary, and would invite never ending appeals, delays, and lawsuits whether the case had merit or not, because many, many projects across the United States, some I have been involved in have been unreasonably killed by simple legal delays lasting up to 5 years.
2. The provision in Section 3(c) that the KCC be allowed up to six months to set a public hearing on a completed application is hardly reasonable or fair to an applicant that has spent months of up front work working with local and state agencies to work out issues before the fact.
3. The provision in Section 3(e) that the KCC be responsible for appoint an attorney to represent local landowners, is an obvious invitation to lawsuits, and virtually

assures that every project proposed will be delayed by appeals by a few disgruntled area residents who did not share in the revenues from the project, or have an exaggerated image of what the project will be. Such fears, have been proven to be frequent, and usually misplaced, especially when a good set of zoning guidelines is in place.

4. Perhaps the most egregious use of the proposed legislation to prevent, delay or to discredit worthy projects is the provision in Section 3(f) where the burden of proof is on the applicant to prove the necessity of the proposed project. While this may on the surface appear to be a meritorious provision, to engage in this debate among the array of economic, and environmental factors and given the complexity of weighing wind against all existing generation types, as well as the complex issues of transmission, one quickly sees a potential quagmire. The vague provision that there be no visual effect on any cultural resource preservation area is such an uncertain requirement as to openly invite opponents lawsuits, and the requirement that no more than 25% of surrounding landowners oppose the project is at best a strange provision which raises the question of what ever happened to one person-one vote democracy?
5. Yet another invitation to governmental agency obfuscation is embodied in Section 5 where no less than four state agencies in addition to the KCC are invited to draft their own regulations regarding the location of wind generation facilities.

One final caution related to the protection of the Flint Hills. Certainly Orion Energy is interested in protecting the Flint Hills, and does not dispute that significant expanses of the more intact areas are worthy of protection. We would ask, however, how the most probable alternative, which is now playing out in various Flint Hill communities, that of expanding urbanite use of ranchettes for second homes, protect the area. In fact, will not wind generation combined with good local regulations that decide where and how they should be built, best protect ranching which beneficially grazes and burns the tallgrass prairie, perhaps best protector of the prairie? How will the tallgrass prairie fare when 40 acre landowners who do not graze large mammals, and cannot effectively burn pastures become prevelant there? How will this type of development prevent cedar and brush growth that now engulfs hillsides and valleys and has much more negative effect than wind turbines placed at a typical density of half dozen per square mile. And finally, who will buy up this land and protect it in this time of great budget stress at the local, state, and federal level?

In conclusion, we respectfully recommend that this legislation to be allowed to die a quite death and the work of dealing with wind development be left to local government and the guidance that may be provided by the ongoing Governor's "Wind and Prairie Task Force." We thank you for this opportunity to comment.

Sincerely Yours,

Wayne Hoffman: Development Director

Sincerely Yours,

Wayne Hoffman: Land Manager