

Transcript Prepared by Clerk of the Legislature Transcribers Office
Natural Resources Committee February 22, 2023

BOSTELMAN: OK. Good afternoon, everyone. Welcome to the Natural Resources Committee. I am Senator Bruce Bostelman from Brainard, representing the 23rd Legislative District and I serve as Chair of the committee. The committee will take up the bills in the order posted. This public hearing today is your opportunity to be a part of the legislative process and to express your position on the proposed legislation before us. If you are planning to testify today, please fill out one of the green testifier sheets that are on the table in the back of the room. Be sure to print clearly and fill it out completely. When it's your turn to come forward to testify, give the testifier sheet to the page or the committee clerk. If you do not wish to testify, but would like to indicate your position on a bill, there are also white sign-in sheets back on the table. These sheets will be included as an exhibit in the official hearing record. When you come up to testify, please speak clearly into the microphone. Tell us your name and spell your first and last name to ensure we get an accurate record. We will begin each bill hearing today with the introducer's opening statement, followed by the proponents of the bill, then opponents, and finally, by anyone speaking in the neutral capacity. We will finish with a closing statement by the introducer if they wish to give one. We'll be using a three-minute light system for all testifiers. When you begin your testimony, the light on the table will be green. When the yellow light comes on, you have one minute remaining and the red light indicates you need to wrap up your final thought and stop. Questions from the committee may follow. Also, committee members may come and go during the hearing. This is-- this has nothing to do with the importance of the bills being heard. It is just part of the process. The senators may have bills to introduce in other committees. A final-- a few final items to facilitate today's hearings. If you have handouts or copies of, of your testimony, please bring up at least ten copies and give them to the page. Please silence or turn off your phones. Verbal outbursts or applause are not permitted in the hearing room. Such behavior may be cause for you to be asked to leave the hearing. Finally, committee procedures for all committees states that written position letters to be included in the record, must be submitted by 12 noon, the last business day before the scheduled hearing on that particular bill. The only acceptable method of submission is via the Legislature's website, at nebraskalegislature.gov. You may submit a written letter for the record or testify in person at the hearing. You cannot do both. Written position letters will be included in the official hearing record, but only those testifying in person before the committee will

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be included on the committee statement. I will now have the committee members with us today introduce themselves, starting on my far left.

FREDRICKSON: Good afternoon. My name is John Fredrickson. I represent District 20, which is in central west Omaha.

HUGHES: Jana Hughes, District 24, Seward, York, Polk and a little bit of Butler County.

BOSTELMAN: And my far right.

BRANDT: Senator Tom Brandt, District 32, Fillmore, Thayer, Jefferson, Saline and southwestern Lancaster Counties.

JACOBSON: I'm Senator Mike Jacobson, District 42, Hooker, Thomas, Logan, McPherson, Lincoln and three-fourths of Perkins County.

J. CAVANAUGH: John Cavanaugh, District 9, midtown Omaha.

BOSTELMAN: Also assisting the committee today, to my left is our legal counsel, Cyndi Lamm, and to my far right is our committee clerk, Laurie Vollertsen. Our pages for the committee today-- this afternoon are Trent Kadavy and Landon Sunde. Thank you both for being here today. With that, we will begin today's hearings with LB255. Senator Brewer, you are welcome to open.

BREWER: Thank you, Chairman Bostelman and good afternoon, fellow Senators of the Natural Resources Committee. For the record, I am Senator Tom Brewer, that is spelled T-o-m B-r-e-w-e-r. I represent 11 counties of the 43rd Legislative District of western Nebraska. I am here today to introduce LB255. I am introducing this bill on behalf of my constituents. This bill places a narrow, narrow limit on what our public power utilities can use their power of eminent domain for. Let me be very clear on this point. Our public power utilities need the power of eminent domain. They have to build, maintain infrastructure and, and do this so that we can enjoy our way of life in Nebraska. Electricity generation, transmission and distribution are considered critical infrastructure. This bill does not change this authority one bit. The bill is specifically written to prohibit our public power utilities from using the right of intimate [SIC] domain to seize land for renewable energy projects. A OPPD board member, at a meeting in Cass County last year, said that OPPD could go around Cass County zoning laws and regulations and could take the necessary land by right of eminent domain for a solar power facility. Keep in mind, with solar power, we're talking huge pieces of land in order to generate enough energy to be of any value. Right now, only private wind and solar

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projects can enjoy the renewable, the renewable electricity production tax credit, which is 260 per mega power watt-- megawatt. When Congress passed the \$1.7 trillion Inflation Reduction Act, this tax credit was modified so that public electric utilities could benefit from, from it, in the form of direct payment. Now NPPD, OPPD and LES can use their power of eminent domain to seize private land, to build wind or solar facilities and collect payment from the federal government. I believe this is a misuse and abuse of government power and this bill aims to, to correct that. Imagine thousands of acres no longer subject to property tax because a public power in Nebraska doesn't have to pay property taxes. So who's going to pay this tax burden? Where is it going to be shifted to? I don't think there's a single senator in this body that doesn't appreciate just how high property taxes are in Nebraska and what a challenge it's going to be, as we take more and more land off the rolls. If we let public power use this power, making property taxes lower in Nebraska will be much more difficult. I believe in private property rights, so in no way does this bill restrict a private owner from selling or leasing his land to a public utility. That is a right and I will never alter that. This bill just prevents public power from using their power of eminent domain to seize land for renewable projects and then qualify for the federal subsidies. Subject to your question, that concludes my opening.

BOSTELMAN: Thank you, Senator Brewer. Are there questions from committee members? Senator Cavanaugh.

J. CAVANAUGH: Thank you, Chairman Bostelman. Thank you, Senator Brewer, for bringing this bill. It was an interesting discussion and you, you know my passion, share your passion for restrictions of eminent domain, as we had that conversation in Government last week, I think it was. So why just renewables?

BREWER: Well, if we take a look again, the footprint, for example, of solar and the issues of wind, whether it be the concrete that's left as part of what would have to be a eventual cleanup, they, they leave a lot different, I guess, challenge, when it comes to the environment, compared to, say, a pipeline that you bury and cover and it's no longer an issue for the landowner or anyone who happens to be next, as far as a landowner next to where that goes. You know, at the point where what you're doing on your land or in this case, say, public power used the right of intimate [SIC] domain and built a large wind farm. If you're next to that, your life will never be the same. What you see and, and ultimately, the investment you made in your home, because sure, you can say I'm just going to move away from there, but no one may want to buy that home if all they're looking at is a giant

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mirror every day. So I think renewables have a unique impact that needs to be addressed as part of this right of eminent domain.

J. CAVANAUGH: So you think that living next door to a solar panel-- solar farm would be more of a disincentive than living next to a coal plant or a nuclear power plant?

BREWER: Well, I mean, a nuclear power plant, unless you object to the appearance of it, which it's going to be relatively close, because they're not [INAUDIBLE] the 600 foot height of a wind tower or something or the reflection off of a wind farm, you know, and a coal plant or a coal mine, yeah. I mean, but, you know that's there and, and they're not using the right of eminent domain to take land to turn it into a coal mine or something like that. I mean that's-- I guess that's my concern, is that with renewables, you make such an impact on your neighbors and their ability to have quality of life.

J. CAVANAUGH: So first off, have-- has anybody used eminent domain for a solar or wind farm in the state of Nebraska?

BREWER: No. They just, they just got it. It was part of the \$1.7 billion Inflation Reduction Act.

J. CAVANAUGH: OK. But-- and so, nobody's used it for purposes of building a coal-- fire power plant, either?

BREWER: To my knowledge, they haven't. I mean--

J. CAVANAUGH: OK.

BREWER: --that's an agreement that is reached. And I, I imagine the land is purchased and owned by the public power company if they're going to use it for any of those kind of purposes.

J. CAVANAUGH: I guess my, my question is just why are we limiting it just to solar plants? Because if you wanted to build a-- if you wanted to take some of my land for a coal fire power plant, I think I would have the same objection I would have to taking it for a solar power plant. And my neighbors may also have the same objection you're articulating. So I guess that's my question is what's the distinction? Why are we, why are we being so narrow, as you said in your introduction?

BREWER: How many coal plants do we have in Nebraska, coal mines, coal anything? I mean, the, the-- I just-- I guess it doesn't really apply. We have one nuclear power plant with no plans to build any more of

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them, so it's a stretch to figure out how to fit something else into this. And this was specifically identified in the \$1.7 trillion.

J. CAVANAUGH: OK. Thank you.

BOSTELMAN: Other questions? Senator Hughes.

HUGHES: Thank you, Chairman. Thank you, Senator Brewer. OK. So in our area, there is a private company coming in and doing a solar farm in my district. And I, I think I'm right with this, but I think they're even-- the private company's even responsible for getting the land to tie into the current system. But if that weren't the case, would this restrict a power company from using eminent domain, maybe, to tie in a generating spot?

BREWER: The idea is that their ability to run power lines is part of--

HUGHES: That's different.

BREWER: --what they have to do.

HUGHES: Yeah.

BREWER: That should not be restricted.

HUGHES: OK.

BREWER: I mean, the, the issue is the actual footprint.

HUGHES: The footprint of where those panels--

BREWER: Yeah. Of the, the--

HUGHES: --or wind turbines are.

BREWER: --yeah. The renewable, whether it be wind or solar.

HUGHES: OK. Thank you.

BOSTELMAN: Senator Fredrickson.

FREDRICKSON: Thank you, Chair Bostelman. Thank you, Senator Brewer, for bringing this bill. So I, I understood what you're saying, how this would have a narrow limit on eminent domain for renewable energy resources. I'm curious. Would, would this also apply to rural public power districts or other municipalities from using their eminent domain authority for renewables?

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BREWER: If it's public power, then yes, it would.

FREDRICKSON: OK. So it includes rural public power.

BREWER: But-- yeah. I don't know that we have any rural public power districts that are generating power. I think they distribute it.

FREDRICKSON: OK. Thank you.

BOSTELMAN: Senator Jacobson.

JACOBSON: Thank you, Chair Brewer, or Chair Bostelman. Senator Brewer, I want to just kind of clarify, because I think to follow up on Senator Cavanaugh's questions, I think the heart of your concern really comes back to the fact that we're really ignoring all of the county zoning and local zoning and trumping that, as well and that this is not blocking a private entity from being able to build something on their land, subject to proper zoning from the jurisdiction that they're living in. So you've got local control, you've got local neighbors that are going to decide whether or not they're going to want to see something like that in their neighborhood. But now, with the funding that's been enabled through the Inflation Reduction Act-- and I have to chuckle every time I say that simply because it's the opposite. But when I think about that and now it's given a new funding source to municipal companies who now have an incentive to come in and be paid to do this and would have the ability to use eminent domain to op-- to supersede any local zoning and, and put these up themselves. They would-- and, and be able to, to use eminent domain to take the land to put these facilities up. Is that your concern?

BREWER: Well, as long as we stay within this realm of public power, yes, because the, the private side still has the ability to either pay to have a wind tower put up or a solar farm put up. That, that in no way do we want to affect. What we're trying to do is to prevent our public power from being able to do that. Because I think what really raised concerns was the very meeting in Cass County when it was brought up that it really didn't matter what the planning and zoning board decided, that if they decided that they wanted the land, that they would simply take it by right of eminent domain. And if you think about a government entity that has virtually unlimited power with that, they could pick the best farm ground because of where it sets, the angle, the ground, to the sun, whatever you want to pick. The, the area and the winds that are favorable to a wind tower. I mean, you open Pandora's box for a lot of possibilities. Now it's easy to say,

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oh, but we'd never do that. But if you're given the power to do that and the wrong person is making the decisions, that can change fast. And they would have a long time before this body could come together and figure out how to correct it in the future. So this is more of a, a preventive measure to make sure that doesn't happen.

JACOBSON: And, and, as a follow up to that, and I think again, in a follow up to Senator Cavanaugh's questions, which I think are good questions, probably the biggest difference that I would see between building a-- well, first of all, we're probably not building any new coal fire plants, so we're probably really looking at nuclear. And if we're going to do a new nuclear plant, it's probably going to be where there's, there's infrastructure in place. But I would also say that there will be a significant amount of permitting that would have to happen before another one could be located and permitted, from that standpoint. And when we look at these smaller wind and solar farms, you're talking about multiple ones. We could see, you know, hundreds of them, depending upon where they might be. So we're not dealing with just one or two, we're dealing with all over the place if somebody wants to put them up. And so, I, I think that's probably what you're really trying to look at is where-- how does that work?

BREWER: Well, it is a concern, because the ability to move electricity over long distances becomes a challenge. So it's a lot easier to produce the energy near where you need to use it when it comes to renewables. So we have parts of Nebraska where you could probably put up a 30-square-mile solar farm and then a handful of folks would know it was there and that might be it. But as you get to the eastern half of Nebraska here, land becomes very valuable and very scarce for a purpose other than agriculture or recreation. And so, if there is the money available and the desire to build solar, which both, both of the major public power companies have said they want to do, they want to go to zero carbon, it's going to be part of that package, wind and solar. Where are they going to put it? And then at some point, because we've seen this with, with wind energy, it becomes very unpopular. And so when they have a, a meeting in a county, you'll have hundreds of people in the room. There'll be a couple of supporters and most of the rest of them are there with, with less than desirable intentions over the, the fact they want to put up this wind farm there. We saw that just-- here in Beatrice not long ago, but I've been all over the state to those meetings. So at the point it becomes unfavorable to build, your only course of action then, is to go use right of eminent domain. And I think that takes away the ability of a landowner to have any security in, in the rights of a landowner.

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JACOBSON: I, I just have one last question and, and that would be also clarification. If a private landowner chooses to build a wind or solar farm with proper zoning on the land that they own, but they need to connect that solar-- wind or solar farm to existing power transmission lines, would there still be the ability to do eminent domain by the public power to connect those together?

BREWER: I think they're right to put in power lines. To move power is something that's part of their day to day mission.

JACOBSON: And this isn't going, isn't going to interfere with that?

BREWER: That's part of what, what they do. That's their lifeblood, is, is getting the power moved where it needs to be.

JACOBSON: Thank you.

BOSTELMAN: Senator Cavanaugh.

J. CAVANAUGH: Thank you, Chairman. Again, thank you, Senator Brewer. Of course, Senator Jacobson and I just sort of feed off each other, so I appreciate that exchange. It was helpful. So one of you, you-- like I said, I have the same issue you do about using eminent domain, taking people's property. My question is, well, first off, you were talking about Cass County. There was this conversation-- that is in the footprint of OPPD. This is the-- who we're talking about.

BREWER: It is.

J. CAVANAUGH: That's an elected board. Couldn't we-- couldn't the, the issue of unpopularity of the idea be resolved by the fact that you elect your-- the person who is making that decision? And rather than have the Legislature come in and put our thumb on the scale and say, we're going to disfavor this type of generation, but the people who elect those representatives could do that?

BREWER: Well, no. I mean, elections are part of the process, but if you elect him for a four-year cycle, that's four years that they could take land and do whatever they wanted. And sure, they're out in four years, but all those landowners are now-- no longer ability to have their land secured, because it could be used for whatever they determine it's going to be used for.

J. CAVANAUGH: And-- well, I would say, I guess I-- my push back on that would be that's true of any elected board. Right. We have-- people have eminent domain, are always-- we're not having one-year

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elections or anything like that. But you do-- we do have-- one of the arguments, I guess, against a term limit is people stand for reelection. And I understand is OPPD doesn't have term limits. They might be six-year terms on OPPD, though, if I remember right.

BREWER: Could be.

J. CAVANAUGH: But people run for office, they run on a platform. They run, you know, and, and they are answerable to their constituents, even when they're in between election. And that seems to me like, maybe, a, a more appropriate avenue for ex-- exercising that disfavor.

BREWER: But what would it hurt for us to assure that that isn't going to happen by having this law, as opposed to hoping that the board will do the right thing when the time comes?

J. CAVANAUGH: OK. But I have another question, I guess. You mentioned that, you know, these other pipelines get buried and that they don't have the impact on people's communities. We just saw an example within the last six months. Let's see, December 17, the Keystone pipeline exploded in Kansas, right on the border with Nebraska and leaked thousands of barrels into the dirt. 600,000 gallons of oil was spilled into the waterway and the land surrounding it. Is that an argument for eliminating eminent domain for all pipelines, then?

BREWER: No. But, I mean, if we want to talk, you know, tit for tat on the issue of wind energy as opposed to pipelines, I think the, the number of birds killed, the number of bats killed, the, you know, the, the property value that's lost. I mean, you can go on and on on either side of this. I'm just trying to focus on what I think is the nearest wolf to the sled when it comes to the issue of, of eminent domain and who's most likely to use it and abuse it and that's, that's why the bill was designed the way it was. It was not all encompassing of every source of power anywhere, anyhow.

J. CAVANAUGH: So you're not opposed to adding other sources of power?

BREWER: I'm not opposed to what?

J. CAVANAUGH: Adding other sources of power to be excluded?

BREWER: No, you can write your own bill on that. You're welcome to it.

J. CAVANAUGH: Thank you, Senator.

BOSTELMAN: Senator Brandt.

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BRANDT: Thank you, Chairman Bostelman. Thank you, Senator Brewer. Real quick, would another way to solve this would be to change the requirements of an elected board, to have a supermajority to exercise eminent domain. If they have a six-member board, it would take five or more. If they had a seven-member board, it would take six or more. I mean, typically, boards are fairly responsive to the public. They come in and pack the room and if they're pro-wind, anti-wind or, or whatever the issue is, they see that. We see that as senators. And, you know, if you-- if, if there's really a good reason, would that be another way to, to accomplish this?

BREWER: Ooh, actually that's probably a, a good idea. I think that's, that's reasonable.

BRANDT: All right. Thank you.

BOSTELMAN: Seeing no other questions, will you stay for closing?

BREWER: You betcha, seeing as I'm next up.

BOSTELMAN: All right. I'd ask anyone who would like to testify as a proponent for LB255 to please come forward. Any proponents, please come forward. Is there anyone that would like to testify in opposition to LB255? Please come forward. Anyone testifying in opposition? Don't all come at once. Good afternoon. Welcome.

JOSEPH LANG: Good afternoon. Good afternoon, members of the Natural Resources Committee. My name is Joseph Lang, J-o-s-e-p-h L-a-n-g. I am the director of energy regulatory affairs at Omaha Public Power District. I'm here to write comments in opposition of LB255. Electric utility infrastructure is critical infrastructure that is required to support the health, safety and welfare of Nebraska citizens. Electricity is vital to support today's societal needs, such as heating and cooling our homes, cooking, emergency communications and hospitals. With this understanding, the Nebraska Legislature has given our public power utilities the power of eminent domain to ensure the necessary development of such critical infrastructure is not inappropriately hindered. Eminent domain also provides protections to landowners and utilities alike to ensure appropriate compensation is paid to landowners and to prevent a willing seller from overcharging a utility for land. The power of eminent domain is a necessary capability of public power and one that is not taken lightly. But that said, the power of eminent domain is a crucial tool, but exercised minimally by OPPD and only when necessary as a last resort. When the need for land is required to support new or changing electric

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infrastructure, OPPD standard process is to develop a public involvement plan and conduct extensive, extensive outreach and community engagement. We engage interested persons, such as individual and family landowners, renters, state and local elected officials and others through one-on-one meetings, key, key stakeholder groups and public open houses. This engagement helps to ensure the most appropriate and responsible use of land for the support of electrical infrastructure. Less than 3 percent of all easement and property trans-- transactions reach condemnation. At times, we've had some businesses and landowners use condemnation process, not due to a dispute, but simply as a standard process to affirm fair compensation. LB255 seeks to remove OPPD's and certain other public power utilities' rights to exercise the power of eminent domain and for solar and wind electric generation facilities. These facilities are vital tools as part of ensuring a broader and diverse resource mix that enables us to economically and reliably serve our customer owners. Diverse generation resource technologies and fuel sources are paramount to ensuring 24/7 availability of electricity to customers during periods of low wind, no sun, rail service constraints on coal deliveries, natural gas supply constraints, loss of generation cooling due to low river levels and ice jams, all of which have recently been experienced and impacted generation availability. All generation, all generation resources have strengths and weaknesses. Diversity is key. OPPD opposes LB255, as it causes costs to increase at all generation-- and all generations should be treated the same. Lastly, utilities have a strong track record for ensuring land is utilized appropriately for electric infrastructure and the responsible use of eminent domain to resolve a dispute or simply facilitate and affirm fair compensation. Thank you for listening to my testimony. I'll take any questions you may have.

BOSTELMAN: A question from committee members? Senator Hughes.

HUGHES: Thank you, Chairman. Thanks for coming in. I'm going to go-- Senator Brandt has left, but now I'm curious. Does it-- when a board votes on something like-- well, does the board vote on this first? And then, is it just a majority of the board or like, how does that process work for an eminent domain case?

JOSEPH LANG: Yeah. Correct. So our board does vote if we're going to exercise the power of eminent, eminent domain. It does require a board vote, but just a simple majority is required.

HUGHES: Just a simple majority. OK. Thank you.

BOSTELMAN: Senator Fredrickson.

FREDRICKSON: Thank you, Chair Bostelman. Thank you for being here to testify. So I'm curious because I know you're here representing OPPD. I'm an Omaha-based Senator. And so I'm curious, with renewable energy, in particular, what would eminent domain look like if it was being exercised by OPPD specifically?

JOSEPH LANG: Sure. So, you know, in my testimony, kind of walked through a very detailed processes that we use in exercising eminent domain. We-- one, we rarely use it, as I stated. It's-- we have a very engaged public involvement process. We-- and just-- and I won't walk through all the details, but it's very extensive and it's in-- time-intensive, as well, meaning we don't rush it. But to the extent a-- land was needed because of its, you know, unique location, a girded condition existed, etcetera, OPPD has, you know, under the current statute, certainly, has the power of eminent domain to utilize that. And there's a process that we go through, a court process, etcetera--

FREDRICKSON: Um-hum.

JOSEPH LANG: --to fully exercise that. But again, extremely minimally, do we, do we need it or, or leverage it.

FREDRICKSON: Right. And do you anticipate that changing in the future?

JOSEPH LANG: Needing it?

FREDRICKSON: Um-hum.

JOSEPH LANG: No, not necessarily. Certainly, renewables are, you know, becoming more and more prevalent in our industry. But by all extent, we would, we would exhaust every option prior to needing or leveraging eminent domain.

FREDRICKSON: And do you anticipate your process changing at all? So in terms of-- it sounds like you have public involvement and you go through the court, so do you anticipate that changing in the future at all?

JOSEPH LANG: I would say we're always changing our public involvement process to make it better, richer engagement with the community. But that would be the only processes that I would anticipate changing.

FREDRICKSON: Thank you.

JOSEPH LANG: You're welcome.

BOSTELMAN: Senator Hughes.

HUGHES: Thank you, Chairman. So kind of branching off what he said and then what Senator Brewer had spoke to at the beginning, that, because you're with OPPD and one of the board-- apparently, one of your board members had stated that-- I guess my question is, is OPPD pursuing to do a solar farm on their-- like, to own, as yourself? Because right now, it's private companies are lining this up to lease the land or whatever. Does OPPD have this on their list of a future source for that you guys have yourself?

JOSEPH LANG: Yes. So our-- the OPPD board has approved a board resolution to, to pursue 400 to 600 megawatts of solar generation ownership, whether it's privately held, whether it's held by the-- by OPPD, specifically, is, is not specific or, or dictated in that. But so far as whether we're actively pursuing ownership by OPPD, I would say we're, we're seeking to fulfill that board resolution, but we don't have any specific-- you know, whether we own it or a private developer owns it, we look at all those options to determine and make sure that it's the most economical resource.

HUGHES: OK. Thank you.

BOSTELMAN: So after listening to Senator Brewer's opening, my question for you is this: is-- does OPPD have the right to go around county zoning laws and regulations if they are not favorable and then, take private property using eminent domain? And this is a yes or no question.

JOSEPH LANG: Pers-- per the-- pursuant to the statutes, I would think it, it does.

BOSTELMAN: OK. How many, how many acres are needed for one megawatt of solar power?

JOSEPH LANG: Approximately 6 to 7, somewhere in that.

BOSTELMAN: I think it's seven.

JOSEPH LANG: OK.

BOSTELMAN: How much solar is OPPD planning for in your decarbonization initiative for your power and purpose initiative?

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JOSEPH LANG: Our Power with Purpose, that we just discussed a moment ago, is 400 to 600 megawatts of solar.

BOSTELMAN: So OPPD has 81 out of 600 megawatts of solar under contract, so far, for power and, and purpose. They need 519 more. The number fluctuates, in your report, from 3,000 to 5,000 megawatts of solar for de-- decarbonization. So doing the simple math, if we're, if we're using 500 megawatts for Power with Purpose and 3,000 megawatts on the low end of your decarbon-- decarbonization initiative, initiative, that's 3,500 megawatts, give or take a few. Correct?

JOSEPH LANG: 3,500 megawatts?

BOSTELMAN: Right. If you're, if you're number at the low end fluctuates, in your plan, from 3,000 to 5,000 megawatts and you're using 500 for your Power with Purpose, that-- sorry. Numbers-- I'll just-- it's 3,500.

JOSEPH LANG: Sure. I'm with you. And you're speaking just for clarity-- are you speaking of the-- not Power with Purpose, specifically?

BOSTELMAN: Your Omaha Public Power District Paths to Decarbonization final report.

JOSEPH LANG: Yes. Thank you for clarifying.

BOSTELMAN: OK. That's where we're at. So now, if we-- if we're talking about 3,500, 3,500 megawatts, now, seven acres per megawatt, multiply that times 3,500 megawatt, that's 24,500 acres for solar power alone, give or take a few acres. I know you are having difficulty siting solar, so this could be a significant taking of private property for eminent domain, for eminent-- solar generation. That's 38 square miles. My question to you is, you mentioned that this protects landowners. How does this protect landowners? How does eminent domain protect the landowners?

JOSEPH LANG: It protects landowners by ensuring that they're paid, paid fair compensation for any land transactions.

BOSTELMAN: So, although we didn't have any proponents of this, we had another hearing, by Senator Machaela Cavanaugh, in front of this committee, on eminent domain and they had landowners that came in that applied specific to that bill. I, I guess they would not agree. They feel that they would not be treated fairly or have not been, that the fair market value that, that eminent domain would allow them, it puts

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them at a significant disadvantage. And they have to sell their land for less than what it's actually valued at. So we're talking about, potentially, 38 square miles of solar to be put in, according to your-- according to the plan. Do you know how far out that looks? You know, how many years out are we looking and where that might be?

JOSEPH LANG: Yeah, that's a great clarification. That is a 2050 plan.

BOSTELMAN: Um-hum.

JOSEPH LANG: And so that's the-- and I would also, generally, qualify it as a goal, as well. But it is a-- that, that-- our decarbonization initiative that you're looking at there is the 2050.

BOSTELMAN: OK. Thank you.

JOSEPH LANG: You're welcome.

BOSTELMAN: Senator Jacobson.

JACOBSON: Thank you, Chairman Bostelman. Mr. Lang, I guess I have one other question with regard to that, in particular, when it comes to valuation of land for [INAUDIBLE] through eminent domain. I, I guess my concern is from a farming perspective. You have farmers that this may-- they may have homesteaded that land. That land may have been in their, in their family for over 100 years. So when you value it for eminent domain, you made the comment, we want to make sure we pay them not too little and not too much. So how much is too much? How do you-- I'll-- a, a better question. How are you going to value the land taken under eminent domain? I know the answer to it. I'd like to hear your answer.

JOSEPH LANG: Sure. There's a process for that, certainly. We can, you know, we, we do leverage brokers that help us look forward for the value of land, assessors to look-- say appraisers to-- appraisals, to look backward in, kind of, real time what the value of land is and we use those as inputs. The eminent domain process is a-- is, is more of a, a legal process to ensure input and, you know, unbiased types of inputs into that determination.

JACOBSON: But, but what it's trying to do is establish a market value. When I think we can all agree that when you look at farmland and you've got farmers that have this 80 acres or 160 acres that touches theirs, do you think that's worth more than the market value to them or less or do you think that they should just be able to buy it for market? I mean, my guess my point is there are big premiums being paid

for people to own land that they've always wanted. I can also tell you, I can cite many examples. There's an example down in southeast Nebraska. Two prominent bidders down there, I think, they went to, I think it was \$25,000 an acre for 160 acres, because they both wanted it. Now, I don't think the assessor's going to assess it at that. I can tell you there's a farm north of, of Aurora in, in Hamilton County that sold last year. And there was a, a matter of several quarters that sold. And the one quarter there brought, again, north of \$20,000 an acre. All the rest of the quarters that sold, sold for 14. The one that brought north of \$20,000 an acre was because this individual's wife grew up there, she wanted that farm and she was going to pay whatever-- they were going to pay whatever it took to buy it. So now, all of a sudden, you've got somebody who has a value of [INAUDIBLE] a farm. Farmstead's been in her home and their, and their family forever. And now, all of a sudden, that's targeted and they're going to get paid far less than what they would value that land to be. My point here is that when you're going out into ag land, you're in a whole different territory, as it relates to eminent domain, than you are within a city limit, where you can come to a much-- you don't have this other intrinsic value that's involved with the farmland. That's one concern. My other concern and I guess the other question for it that I had raised, is that when you go in and put in a pipeline, as Senator Brewer mentioned, it's buried. It's out of sight, out of mind. If you go in and put in something vertical, solar, wind-- and I'll, I'll grant anything, a coal, coal plant, any other major plant, it will have an impact on the neighbors. And when you take land through eminent domain, you're not paying anything to the neighbors, are you?

JOSEPH LANG: Correct. You're just paying the, the-- you'd, you'd consider them and things that you may need to build out to [INAUDIBLE].

JACOBSON: But, but they're not going to get any value if mine-- if the neighbor-- their land is taken through eminent domain and they're paid, quote, market value, the neighbors get nothing and yet, they've got the eyesore. They've got the disadvantage of that being there. And now, you take Senator-- Chairman Bostelman's numbers, in terms of how many acres you're talking about, this is a real issue. This is a real issue in ag country-- land country and this is a real problem for farmers. And so, I, I just raise that question, in terms of my fundamental problem with eminent domain, be-- beyond the taking for purposes that aren't essential is, really, how are they fairly valued. I can tell you, I'm dealing with a situation right now where the state of Nebraska's coming through and going to do street work on-- down Jeffers Street, runs right next to my bank facility. So they're going

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to-- they-- I can, I can accept the offer that they've given me or I can let them go through the condemnation process. I'm going to get paid the same, so I accepted the deal. I can tell you the price that they're paying me per square foot for the land is what I paid for it eight years ago. If I wanted to buy additional acres, same amount, somehow I get the feeling the price would be a lot higher if I wanted to buy a few, few. I bought it in bulk and they want to sell by the piece at bulk price. That's how eminent domain works. So again, we're not here to debate how to fix eminent domain necessarily. I think there are some inequities in how we do the valuation of eminent domain, but I am very concerned about the ability to trump all other regulations and go do these grabs into, particularly, ag country. So I'm, I'm very concerned and, and it's going to take a lot, probably, to persuade me to not support this bill.

JOSEPH LANG: And I could, I could appreciate that. I would just, just add that eminent domain is-- not only have we used it very rarely, that would be our intent moving forward. It's a, it's a very rarely utilized tool.

BOSTELMAN: Senator Brandt.

BRANDT: Thank you, Chairman Bostelman. Thank you, Mr. Lang, for your testimony. I assume in your business model and we're talking about solar, I guess, that's, that's where we're at at the moment. That-- there would come a point where the price of the ground is expensive enough that you would look at other options. I have family in the American Southwest. And when you go down there, there are solar panels on every roof, in every subdivision, you know, in a lot of these cities down there. Is, is that something that OPPD looks at? Is redeveloping the inner city, you know, if you're going to run into these roadblocks out-- outside of the city?

JOSEPH LANG: We-- you know, so far as offering programs to work with customers, we're-- we continually looked for ways to develop those programs, such as, you know, ways to optimize the placement of, of solar plan-- panels, etcetera. I don't believe we have any specific programs at the moment, but that's something we're continuing to-- that we look into.

BRANDT: So technology is changing constantly. In the last five or ten years, what kind of efficiencies have we gained just on the solar side?

JOSEPH LANG: From a cost efficiency perspective?

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BRANDT: For production efficiency, per square foot of panel or however you want to measure that.

JOSEPH LANG: I'm not familiar specifically.

BRANDT: All right. OK, that's fine. Thank you.

JOSEPH LANG: I can get back to you.

BOSTELMAN: Senator Cavanaugh.

J. CAVANAUGH: Thank you, Chairman Bostelman. And thank you, Mr. Lang, for being here. So first off, I got a couple of questions, but first one, heard some conversation about going around county zoning laws. What's that about?

JOSEPH LANG: So what we're-- I would say my perspective on that is the, kind of, the black and white perspective of the statutes, as compared to what we, what we actually do. So we've worked with-- like in Sarpy County, for example, we've had hearings with planning and zoning commissions, etcetera, etcetera, and, and reviewing sites and what would be-- could be utilized. And that's not, you know, no eminent domain type perspectives applied there. So versus what we do as a public power entity and was brought up earlier, we have elected boards that ensure that we take responsible actions, with regard to land ownership, eminent domain, etcetera and, and it's a, it's a tool of absolute last resort. We rarely use it, but we work with elected officials, boards, planning, zoning, etcetera, to the extent possible.

J. CAVANAUGH: So that's-- I guess that's the, that's the dangerous part there: to the extent possible. What, what does that mean when, you know, Senator Bostelman said you go around, go around zoning laws. So I guess here's the question. Eminent domain is one thing. Right. So you guys, right now, you have the power of eminent domain. You can come in and you can, you can condemn land and take it for a project, not just renewables, but you can take it for distribution, you could take it for natural gas, I mean a natural gas plant, is that right?

JOSEPH LANG: Correct.

J. CAVANAUGH: And when you do that, regardless of what the nature of the project is, you, in some capacity, do not have to comply with county zoning laws or city zoning laws or what's the-- I guess that's-- the two things are not necessarily related is, I guess, my question. Question one.

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JOSEPH LANG: So as a public power district, eminent domain is provided to you as a subdivision of the state. And--

J. CAVANAUGH: How is eminent domain related to zoning, though, is my question.

JOSEPH LANG: Correct. Maybe I was trying to get there--

J. CAVANAUGH: OK.

JOSEPH LANG: --is that, that preempts the local planning and zoning. So while we work with local officials, etcetera, on that, again, the-- that, that's a state, you know, a subdivision of the state right or power of eminent domain that can be exercised.

J. CAVANAUGH: So if you do a willing buyer or willing seller, you have to comply with zoning?

JOSEPH LANG: No.

J. CAVANAUGH: OK. So that's kind of what I'm trying to get at here, is the, the-- there's a distinction between your ability to build without complying with zoning and your ability to use eminent domain. Is that right?

JOSEPH LANG: Maybe I'll just simplify it. Local planning and zoning, while we do our best to work with that and comply and etcetera, etcetera, as a subdivision of the state, we're not required to comply with that, with local planning and zoning.

J. CAVANAUGH: OK. Regardless of the nature of which the land transaction is undertaken?

JOSEPH LANG: Correct.

J. CAVANAUGH: OK. So. All right. So the zoning issue is not solved for whoever has that issue with this bill then. It's not addressed.

JOSEPH LANG: I agree, if I understand your point.

J. CAVANAUGH: So my other question, has OPPD-- we've heard about local taxpayers being-- taking land off tax rolls. Does OPPD ever do in lieu of tax payments?

JOSEPH LANG: Correct. We, we have a 5 percent pilot payment, in lieu of tax, payment that we pay to the counties in our retail service territory.

J. CAVANAUGH: And that's for all the land that you take off the tax rolls or.

JOSEPH LANG: So to clarify, that is based on retail sales in that county. It's not specific to land.

J. CAVANAUGH: I'm sorry?

JOSEPH LANG: The payment in lieu of tax that OPPD pays to counties in our retail service territory, that-- the, the dollars that the tax figures are determined based on retail sales, not specific to land.

J. CAVANAUGH: OK. And you said it-- within the service territory, for any of these potential 3,500 acres-- is that the right number, Senator/Chairman Bostelman? The number that Senator Bostelman/Chairman Bostelman cited, for those acres, potentially, OPPD would have to build outside of its service area? Is that right?

JOSEPH LANG: It-- possibly. It could be in other states, it could be in Nebraska. And I, I would just, maybe, clarify because I don't have that report in front of me, whether that was all specific solar in the report or was that renewables in general, etcetera, but.

J. CAVANAUGH: I'll have to get back to you on that one. So, OK. So if you're going outside-- say you want to-- you're going to build a solar farm in Iowa. You would not have a power of eminent domain in Iowa, correct?

JOSEPH LANG: Correct.

J. CAVANAUGH: If you build outside of your service territory, but within the borders of the state of Nebraska, do you have the power of eminent domain?

JOSEPH LANG: Yes.

J. CAVANAUGH: OK. So OPPD is, potentially, looking at building power outside of the political jurisdiction. Right. Meaning that the folks whose land you may be taking would not have that recourse we talked about of going to the elected board because they wouldn't be represented by that board.

JOSEPH LANG: And that's a possibility.

J. CAVANAUGH: OK. I might have more questions, but I [INAUDIBLE].

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BOSTELMAN: Just, just for the record, what I was talking about before, according to the report, it's 3 to 5 gigawatts of solar, 4 to 6.5 gigawatts of wind, if we're going to talk about solar and wind specific, 1 to 3 gigawatts of storage, .74 gigawatts of gas. So it's 3 to 5 gigawatts of solar and 4 to 6.5, 6.5 gigawatts of wind, just for the record. Other questions?

J. CAVANAUGH: OK. I got another question.

BOSTELMAN: Senator Cavanaugh.

J. CAVANAUGH: Thank you, Chairman Bostelman. Thanks for being here and for answering our questions. So-- and we've had a little bit of a conversation about, I guess, the unpleasantness of the proximity toward-- of a generation facility. OPPD was discussing closing down the north Omaha coal plant. Is that correct?

JOSEPH LANG: There's elements there, fuel switching, not entirely retiring, but doing some fuel switching and retiring certain units.

J. CAVANAUGH: Switching from coal to natural gas?

JOSEPH LANG: Correct.

J. CAVANAUGH: Is part of that in response to-- is that purely, I guess, a technical issue or is that partly in response to the community doesn't want a coal generation plant in their neighborhood anymore?

JOSEPH LANG: I would say a combination of those. It's a very old generation facility that's baseload when it's on coal and when you run a unit on natural gas, the prices of natural gas is a little bit more. And so you utilize it less, rely on it less, you, you wear it, you create less wear on the facility, etcetera. But there's certainly multiple considerations in that decision.

J. CAVANAUGH: But is it safe to say that the community does not enjoy having a coal generation plant that close to residential?

JOSEPH LANG: Members of the community, I think that's safe to say that. Correct.

J. CAVANAUGH: OK. Thank you.

BOSTELMAN: Any other questions?

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JACOBSON: I, I guess, just one--

BOSTELMAN: Senator Jacobson.

JACOBSON: --to follow up on the last point you've raised by the Senator. But the coal plant's been there a long time, right?

JOSEPH LANG: The north Omaha--

JACOBSON: Yeah.

JOSEPH LANG: --facility?

JACOBSON: Probably was there before the houses were, weren't there-- wasn't it?

JOSEPH LANG: I don't-- I'm not familiar with how that was built out in the fifties and sixties.

JACOBSON: Well, I, I-- the only thing I ponder a little bit is when I think about having the ability to use eminent domain outside of your political jurisdiction, without complying with any standard-- any local zoning. Take land because you decide you need it to do green energy only. And I liken that to what if a packing plant decided that they needed more beef or more pork and they decided they want to get those same powers and be able to go take land and put up feedlots or pork or poultry facilities and ignore zoning and ignore the neighbors and just build it. That's kind of what I feel is happening here. Am I wrong?

JOSEPH LANG: I guess the way I look at it is we have a, a specific jurisdiction where we're required to serve the-- we have an obligation to serve, where, maybe, the, the parallel that you're drawing, it-- they, they don't have that obligation to provide that, that product.

JACOBSON: But you've chosen the, the mix of energy you want. You've chosen you want green energy, that's why you need this expanded area. You could serve it, you could go repair your, your coal fire plant and upgrade it, like they did in Sutherland with NPPD and produce all the energy you need.

JOSEPH LANG: There's economics to that, certainly.

JACOBSON: No. They're applying better economics to that than wind and solar.

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JOSEPH LANG: I, I wouldn't believe so, actually, but it-- possible. I don't-- I'd have to look at what those analysis [INAUDIBLE].

JACOBSON: And my point is, is I guess my question is, are you not proactively choosing a type of energy you prefer to have and that's what's causing you to grab all of this additional land? Would that be a fair statement?

JOSEPH LANG: I would say in, in the near to mid-term, it's much more about diverse resource mixes and ensuring economic, you know, ability to serve customers reliably, reliably. Certainly, in a 2050 plan, there's a lot that's going to happen in the close to 30 years between now and then. And the anticipation of being able to rely on other small modular reactors, etcetera, etcetera, would, would, we anticipate, being a possibility in that timeframe.

JACOBSON: And that would be my last question is, is that I, I, I assume that you're looking at small nuclear and that that's part of the mix and could actually supplant some of what you're planning in terms of the green site?

JOSEPH LANG: The clarification on the report that Senator Bostelman's looking at, is it really looks at today's technologies and doesn't anticipate what we don't know in future technologies. It basically assumes if we applied today's technologies in the year 2050, what we would have to do to arrive at that, somewhat impractically, right, because a lot is going to happen in the next near 30 years.

JACOBSON: Right. Thank you. I, I-- and thanks for your testimony. I'm done.

BOSTELMAN: Thank you for coming and your testimony. Appreciate it. Thank you.

JOSEPH LANG: You're welcome. Thank you.

BOSTELMAN: Next opponent, please. Good afternoon.

JOHN McCLURE: Good afternoon. Chairman Bostelman, members of the committee. My name is John McClure, J-o-h-n M-c-C-l-u-r-e. I'm executive vice president for external affairs and general counsel for Nebraska Public Power District. I'm here today in opposition to LB255. Eminent domain is the strictly prescribed authority to acquire private property for a public purpose. Only a small group of entities have the power, such as utilities, which provide service broadly to the general public. Private property ownership is cherished in our state and

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nation and the acquisition of private property through condemnation should always be as a last resort for the acquiring entity. NPPD, as an electric utility, has the power of eminent domain, but always strives to obtain necessary land rights on a negotiated voluntary basis. Landowners are entitled to just compensation when their property is obtained for a public purpose. LB255 would prohibit NPPD, OPPD and LES from utilizing eminent domain to build wind or solar-powered generation facilities. NPPD currently owns wind generation facilities near Ainsworth, Nebraska, and Springview, Nebraska. Land rights at both sites were obtained through voluntary negotiations. I'm not aware of NPPD utilizing eminent domain to acquire land rights for any generation facilities, including renewables, during my 40-plus years at NPPD. I would also point out that in the case of a wind farm, we don't acquire fee title. We get a lease because the, the landowner continues to use it for whatever ag purposes were taking place previously. Although we have not utilized eminent domain for generation facilities, it's an important tool to preserve. It helps assure if land rights are necessary for a public purpose, that the interest can be acquired at a just price. Let's say, for example, NPPD decided there was a need to expand current renewable project and it was able to reach voluntary agreements with all impacted property owners except one. The holdout could potentially stop the project or secure an exorbitant payment, in order to-- for the project to proceed, should the ability to exercise eminent domain be eliminated. There's no evidence of problems caused by the current law, as it would pertain to wind or solar projects and we urge you not to advance the bill. I would be happy to answer any questions you may have.

BOSTELMAN: Thank you for your testimony. Are there questions from the committee? Senator Fredrickson.

FREDRICKSON: Thank you, Chair Bostelman, and thank you, Mr. McClure, for, for being here and testifying today. So, you know, it's a [INAUDIBLE]. I'm, I'm listening to the questions and listening to the answers, as well. And I, you know, I think one thing we could all sort of agree on is, is no one, no one likes eminent domain. All right. This is not a-- an appealing process for, for, for, for anyone involved. And, you know, I think and I might be misunderstanding here, but I think, I think a lot of the crux of this bill is this fear that there is going to be big land grabs for, for, specifically, for renewable energy. And I'm, I'm wondering if you can speak a little bit to NPPD's, sort of, future plans related to renewable energy and sort of, what is the, what is the risk level of something like, tons of land being scooped up for this, from happening?

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JOHN McCLURE: Well, certainly like the other utilities that are generators in this state and the utilities nationwide, we are looking at decarbonization opportunities over a long period of time. We think, in our case, one of the great advantages we have is a nuclear plant and we hope that is a part of our future and, and certainly, potentially, new nuclear as, as a resource. For us, we haven't identified any specific amount of renewables that we're looking for in our portfolio. We recognize, as the previous witness did, that technology is going to have to evolve because at the end of the day, we need to be driven by reliable, affordable, sustainable and resilient electric infrastructure, because electricity becomes increasingly more important for everything we do in society. So we don't have a specific goal. I, I appreciate and understand the concern. If someone says, we're going to go out and condemn land rights on X number of sections of land and take that away, I, I think that would be a very difficult thing to try to accomplish. And, and at a minimum and it's been said by the previous witness, I will repeat it, we strive for voluntary negotiated agreements. That's the best way to pursue these things. Eminent domain is exercised as a matter of last resort. As I indicated, we've never used it for generation--

FREDRICKSON: Um-hum.

JOHN McCLURE: --but it doesn't mean you might not have a situation where you need to add something, even at a conventional generation facility and you need some adjacent land. And again, you're doing it for the benefit of all the electric consumers being served by this critical infrastructure.

FREDRICKSON: Right. Thank you. I appreciate it.

BOSTELMAN: Senator Brandt.

BRANDT: Thank you, Chairman Bostelman. Thank you. Mr. McClure. Have you ever participated in a eminent domain?

JOHN McCLURE: I have.

BRANDT: How many?

JOHN McCLURE: Oh, I'd say a half dozen, because, again, we haven't had that many and most of them were early in my career and involved transmission lines.

BRANDT: So what would a typical situation look like, from your experience?

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JOHN McCLURE: Well, first of all, it means that the landowner and NPPD were not able to reach a voluntary agreement on acquiring rights. And again, all of my experience had to do with transmission lines. So they are-- we don't acquire a fee title, we acquire an easement and the landowner is allowed to continue farming, grazing, whatever the practices were previously, other than building a structure, typically, within that area. So we would-- and, and even before we got to that phase, we hire independent appraisers to give us a sense of what is the value of the property. We have a formula that we would pay, based on property value, based on structures that would be added. And again, I'm talking about transmission because those are my real experiences. Today, we pay for an easement, we pay 80 percent of the fee value. We also pay for any construction damages that would happen to crops. We pay for any-- we had to make an additional payment for structures. So that's what we would offer to someone. But if the landowner doesn't think that's fair, you end up-- you first go to a, a board of appraisers at the county level. Three citizens from the county, one has to be a licensed real estate appraiser. And you go through a process, because there's obviously a fundamental difference of opinion as to what the value is. There are some potential upsides for that landowner. If they're successful and if they raise what they get above a certain percentage of what was offered, they're entitled to legal fees, you know, and, and then they have the upside. But we just, again, have not had that many cases because we reach voluntary agreement. We want to get along with landowners that have some of our infrastructure on it, on their property.

BRANDT: So who typically oversees that then? At the time that you have these three judges, is that overseen by a county court or the district courts?

JOHN McCLURE: It's at the county level and then it's subject to an appeal to the district court. But it's, it's a, a, sort of, an administrative process at the county court level.

BRANDT: So--

JOHN McCLURE: They're appointed by the county judge to serve as a board of appraisers.

BRANDT: So at that point, the, the judicial system takes over. I mean, just because a party wants to exercise eminent domain doesn't give that party the right to run the show. Would that be a correct statement?

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JOHN McCLURE: Again, the, the state law in, in, in Chapter 76, Article 7, sets out the eminent domain requirements. And there are a lot of procedural steps and other things outlined because, again, it is not exercised often by the electric utilities in the state.

BRANDT: Last question. In your experience with eminent domain, how many times have the parties been successful and got that higher amount?

JOHN McCLURE: My recollection, it's been mixed. Sometimes they've gotten more than we offered and sometimes they've gotten less than we offered.

BRANDT: All right. Thank you.

BOSTELMAN: Senator Cavanaugh.

J. CAVANAUGH: Thank you, Chairman Bostelman. Thanks for being here, Mr. McClure. Always a pleasure. I've got a couple of questions. I'm going to start out with the one about-- that I kind of asked Mr. Lang. NPPD pays in lieu of taxes sometimes. Is that right?

JOHN McCLURE: Yes. Public power districts in Nebraska are required to pay a 5 percent gross receipts tax payment for revenues that occur within municipalities within the counties.

J. CAVANAUGH: Within municipalities within the counties.

JOHN McCLURE: Yes.

J. CAVANAUGH: So if this is a property that's not within a municipality, you wouldn't have to pay anything?

JOHN McCLURE: It's, it's, it's not property driven, it's revenue driven.

J. CAVANAUGH: OK. And the zoning question. Same, same question. You heard it. I can, I can re-ask it.

JOHN McCLURE: If you would.

J. CAVANAUGH: Sure.

JOHN McCLURE: Because I heard several questions on [INAUDIBLE].

J. CAVANAUGH: Oh, you're saying I didn't ask it clearly?

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JOHN McCLURE: Not, not from you. I just want to make sure I'm answering your question.

J. CAVANAUGH: So. OK. So we're talking about-- I, I feel like we're conflating two things: the problem with utilities being able to build, regardless of what local zoning says and utilities' ability to condemn land. Those two things are not necessarily related.

JOHN McCLURE: My understanding of the law is all governmental entities with the power of eminent domain, that eminent domain authority trumps zoning requirements. There's a Nebraska Supreme Court case out of Seward, Nebraska, if I recall, involving the airport there.

J. CAVANAUGH: OK. And by which, you mean, if it's such a-- important that you would use eminent domain, that it would allow you to use it for what purpose you intend. Is that?

JOHN McCLURE: Yes. And again, what's-- what you can do, you-- first of all, you have to show it's a public purpose and their-- governmental entities, most governmental entities have that authority or many governmental entities have that authority, as well as certain utilities. There are private utilities with the power of eminent domain in the state.

J. CAVANAUGH: Yes. Railroads. Pipelines.

JOHN McCLURE: Yes.

J. CAVANAUGH: But if you were to do a willing buyer/willing seller project, does that mean you have to follow local zoning in that situation?

JOHN McCLURE: I, I think that an electric utility, because it has the power of eminent domain, even in a willing-- because it has that power, I believe it's exempt from zoning requirements.

J. CAVANAUGH: OK. I can keep going if there's-- nobody else has questions? Changing tack, I wanted to talk about something we didn't-- I should've talked to Mr. Lang about, but community-based development projects. Does NPPD ever utilize that?

JOHN McCLURE: I believe that we and I'll get back to you and confirm this, NPPD has been involved in a number of our retail communities with what's called community solar. And these are smaller solar projects that have been privately developed and they are something the community wants. They decided they wanted it. We work with them with a

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private developer and, and people can acquire shares, if you will, into those projects. It's been happening in a number of communities around the state and I think some of them may have been formed under a seabed structure.

J. CAVANAUGH: OK. And so you, you didn't-- I know you didn't come, you didn't base your opposition on this section of this bill that addresses seabed. But do you under-- do you have any comment, I guess, about how this would affect that going forward or is that not something you're ready to talk about?

JOHN McCLURE: I really didn't focus that much on the seabed section of it.

J. CAVANAUGH: I just had to ask somebody and you're here. Thank you.

BOSTELMAN: The question I have would be, if you have that-- the information now or you can provide it to the committee later, for the purposes, purposes of the bill, you use the term public, public purpose. How does that apply to the purpose of the bill?

JOHN McCLURE: To exercise--

BOSTELMAN: [INAUDIBLE] so that your public purpose [INAUDIBLE] public purpose, so when we're talking about eminent domain, when we're talking about what, what Senator Brewer has here, on specific wind or solar, what-- what's the definition of that public or define public purpose.

JOHN McCLURE: OK. In order to exercise eminent domain, you have to show there's a public purpose. And so, the reason I suggest that is, again, as a critical infrastructure provider, if part of our resource mix needed to be an expansion of, of in-- an expansion of wind or solar power, as part of making sure we had the right resource mix to serve our customers, that is a public purpose, in my opinion.

BOSTELMAN: OK. And as, I think, Senator Brandt said, is that what goes before a court and a judge would make that determination, potentially, if there's a--

JOHN McCLURE: Yes. Yes. If, if, if, if a, if a landowner felt that a project was not truly a public purpose, they could certainly make that argument in front of a court.

BOSTELMAN: OK. Thank you, Seeing no other questions, thank you for your testimony.

JOHN McCLURE: Thank you.

BOSTELMAN: Next opponent, please. Those, those-- if you're going to be here testifying in opposition to this bill, if you could move forward and populate the front chair seats in here, that would help us move the hearing along today. We'd appreciate it. Good afternoon. Welcome.

SHELLEY SAHLING-ZART: Good afternoon, Chair Bostelman, members of the Natural Resources Committee. For the record, my name is Shelley Sahling-Zart, that's Shelley, S-h-e-l-l-e-y, Sahling-Zart, S-a-h-l-i-n-g-Z-a-r-t. I'm vice president and general counsel for Lincoln Electric System, a position I've hold--well, I've been at LES for 34 and a half years. And I'm also testifying today, in addition to LES, on behalf of the Nebraska Power Association. The NPA is a voluntary association formed in 1980, representing all of the approximate 165 publicly-owned, consumer-owned electric utilities in the state, including municipalities, public power districts, public power and irrigation districts and rural public power districts and cooperatives. LB255, as you've heard, would prohibit, specifically LES, NPPD and OPPD, from condemning property for the purpose of renewable energy generation. It doesn't prohibit renewable energy generation. It simply makes the cost of that generation, potentially, much higher. Right now, as, as both the testifiers noted, we go out, LES goes out and our goal is always to try and voluntarily negotiate easements or property acquisition. We have also never acquired property using eminent domain for a generation facility, but we try to go out and negotiate that. And you know, part of it is, like it or not, eminent domain is not always a pleasant thing. But the fact that eminent domain is something that we can avail ourselves of, it sort of helps serve as a catalyst to bring people to the table to have discussions with us and to further those mutual negotiations. Without that, without that catalyst out there, this bill simply becomes a seller's market and they name their price and the price just keeps going up because it would be very difficult to find a negotiated price in that. Again, though, with renewable energy, I don't know that we're ever really going to use it. With wind energy, as Mr. McClure noted, we're usually not acquiring property and fee. We're negotiating leases. You put a tower on the structure, you negotiate a location for that and a lease payment. With regard to solar, you know, one of the things about solar is it, it, it is a large footprint. I'm not going to lie about that. But it doesn't have to be contiguous. It doesn't have to be one big swath of land. It doesn't have to be a rectangular piece. You can sort of put that together with willing property owners. And that would be always our goal, is to try to negotiate those purchases where we can. There's some other things, but at the end of

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the day, we've got some tough decisions coming. We see a lot of electrification. We've got data centers coming to the state. We see a need for more energy resources, generation resources. Some of those are going to be renewable. And to that extent, we've talked a lot in this committee about reliability and resource adequacy. We need to keep all tools in our toolbox to be able to meet those requirements for our customers. Eminent domain is not a fun thing and again, we don't use it very often. That is never our goal. Our first goal is to go out and negotiate and this is a measure of last resort. I'm going to go ahead and hit the, the, the tax issue. We do pay payment in lieu of tax and a city dividend for utility ownership. And I see my time is up. Can I just finish that real fast?

BOSTELMAN: If you want to finish.

SHELLEY SAHLING-ZART: And we pay about \$22 million a year, and I will tell you, the Lincoln Journal Star occasionally publishes the largest taxpayers in Lancaster County. The largest private taxpayer was about \$2.8 million. Happy to take any questions.

BOSTELMAN: Thank you. Questions? Senator Brandt.

BRANDT: Thank you, Chairman Bostelman. Thank you, Ms. Sahling, for appearing today. You kind of triggered something when, when you talked about-- and I would assume we're talking about the Google, Facebook, Amazon, the big warehouses, data centers coming into Nebraska. I don't know if Lincoln has these like Papillion and Omaha. Council Bluffs does. So thanks to the Nebraska Imagine Act, we give away millions and millions of dollars to attract these businesses to our shores right, wrong or indifferent. And they come in here and they only want green energy and they're going to plant this huge facility in a metropolitan area. But the metropolitan area cannot make green energy as we, we know it today, which is the solar and the wind. And they kind of rely on the eminent domain argument, which I can understand. What you were saying before about the price would, would never come to a negotiated point. Shouldn't there be some obligation on the part of these businesses to contribute to that argument? You know, if, if I want green energy, I should, I should ante up to get that, because that's going to be probably more expensive than regular energy, I guess.

SHELLEY SAHLING-ZART: Actually, a lot of those companies will do that and they will, they will bear the cost of a lot of that and we simply help facilitate making that happen. So they are doing some of that.

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BRANDT: But does that ever trickle down to that landowner or in the case of the neighbors next to the windmill farm or the, or the solar farm? And actually, I sat next to a gentleman from Google a couple of months ago at a, at a tech conference and I made that very point. I said, you, you build these centers in Papillion and then you come out to the rural areas and all you have to do is just pay us too much money. And he didn't, he didn't quite understand where I was coming from. I said, you aren't paying near enough for all the problems that are being caused out, out in the rural areas. So do you have any insight on, on that, on how we can approach that?

SHELLEY SAHLING-ZART: And we don't have any of those here. And I'm not sure how it worked in, in Omaha, but I know some of those companies that-- they will go out and they will build their generation themselves, in which case they're not using eminent domain. They are, like, working with private developers and they are negotiating with landowners. I mean, you know, that's something to, sort of, keep in mind right now. We have a lot of renewable generation in the state, most of which was developed, well, all of which, I believe, was developed not using eminent domain. Private developers don't have the power of eminent domain, for example, so the wind farms that you see, eminent domain wasn't used for that. We have a five-megawatt, small solar farm out near the interstate. We did not use eminent domain for that.

BRANDT: All right. Thank you.

BOSTELMAN: Senator Cavanaugh.

J. CAVANAUGH: Thank you, Chairman Bostelman. Thank you for answering my questions right off the bat. Saves me, you know, some questions. So LES is the different one here. Out of the, the three, you're just a municipal and you have an appointed, not an elected board. Is that right?

SHELLEY SAHLING-ZART: Yes. If I can just clarify a little bit. Our board, we have a nine-member board, appointed by the mayor, confirmed by the city council. They are term-limited. They can serve a maximum of three three-year terms. And the, the part that most, most people kind of overlook is the fact that we do have a semi-autonomous board. They have a lot of authority to make a lot of decisions, but the elected city council has the final authority over budget rates and long-term financing.

J. CAVANAUGH: OK. Thank you for the clarification.

SHELLEY SAHLING-ZART: Yeah.

J. CAVANAUGH: And so, you know, I asked Mr. Lang this and I guess I didn't really ask Mr. McClure, but NPPD's got such a large footprint, it's probably less likely to come up. But LES, obviously, if you're going to build your own solar, it's not going to be within the city limits of Lincoln.

SHELLEY SAHLING-ZART: Not likely.

J. CAVANAUGH: Right. And I mean, I guess do you have an answer to the fact that if we're talking about taking people's land, shouldn't there be, at the bare minimum, at least some political accountability for that?

SHELLEY SAHLING-ZART: Can you state that differently?

J. CAVANAUGH: I can state it any way you like. If you're-- if Lincoln is going to-- LES was going to engage in eminent domain, that's in all likelihood to be outside of the city limits.

SHELLEY SAHLING-ZART: Um-hum.

J. CAVANAUGH: There would be no political accountability for that unpopular-- possibly unpopular decision, because the person whose land you're taking is not a voter in the city of Lincoln.

SHELLEY SAHLING-ZART: Correct. And, you know, the, the question you've had is an interesting one, which reminds me of some of the ethics that I teach, which is you have a right to do things, but there's also what you might do. And I would tell you that I think our goal is still always going to be to go negotiate that. I don't see us using eminent domain. I can't say never, but I don't see us doing that, because we want to have people that are happy to have us there and we got to work with these people throughout the life of the project. So I get your point. I just-- I don't see that being something that happens on a frequent basis.

J. CAVANAUGH: In terms of generation, you said Lincoln has not used eminent domain for current generation. How much of the actual generation of LES is within the city of Lincoln, currently?

SHELLEY SAHLING-ZART: Oh, megawatt wise, I'm not sure. We've got some natural gas plants that are within, certainly within our service area. We've got a natural gas plant just right near downtown. We've got a, a combined cycle natural gas plant up near the two wind turbines you see

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as you drive in from Omaha. And we have a natural gas plant in the southwest part of our territory. But that's what we have in our footprint right here. We have resources in all kinds of different areas.

J. CAVANAUGH: OK. All right. So I'm going to ask you about the, the community-based development.

SHELLEY SAHLING-ZART: Um-hum.

J. CAVANAUGH: Does LES use that?

SHELLEY SAHLING-ZART: No.

J. CAVANAUGH: OK. Well, easy answer.

SHELLEY SAHLING-ZART: No. And I'm, I'm kind of with John. I, I know there was some early discussion of that. I don't know how many projects are out there. You may hear from people today that are organized a seabed. From our standpoint, we didn't necessarily see a problem with those provisions going away, but I might learn something today in here that there are some out there. I'm not sure.

J. CAVANAUGH: Thank you.

BOSTELMAN: So a question I would have: the hearing, the bill, is about eminent domain, specific, not necessarily about what type of generational-- it does tie in into generation [INAUDIBLE], but really the crux of it is eminent domain. And you made a comment, as we're talking, questions were answered that you have always-- and I think the other-- OPPD and NPPD has also said the same that negotiated to get voluntary, you know, so all the land on that but don't you think with having eminent domain and out there that people-- it forces people to come to a table where they may not otherwise? Because they know if I don't come and I don't negotiate and I don't try to get the best amount I can for whatever, whatever the item is, that I'm not going to have a choice in that. So I don't-- I've got to come to the table to do that. And eminent domain is-- can be used as that type of a leverage?

SHELLEY SAHLING-ZART: Yeah, I think that's actually exactly what I said. And I, I tend to agree with that. There is an im-- I hate to use the word threat, but there's an implied threat of eminent domain. And it's not overt, but it does help bring people to the table. Now, but you got to think about it from the overall basis. So again, we're talking about public purpose projects for which we have to, very

clearly in statute, the statute's very clear, you have to articulate your public need. So ideally, though, helping bring people here and something that helps us come to a mutually agreeable solution is to the benefit of all of our customers. I, I understand that to the individual landowner that might not feel real good, but, but our goal is to try to do that to, to the advantage of all of our customers. And my fear under this bill, is that, where we negotiate a price here, this bill is going to take that price way up here and our ratepayers pay for that. You know, that's not money out of our pockets or anything, our ratepayers pay all of that. So to me, it, it, it's just trying to keep our costs low for everybody. And I get eminent domain's not comfortable. It's hard to work with landowners who don't want to, to Senator Jacobson's point, who don't want part with their land. I get that.

BOSTELMAN: Senator Jacobson.

JACOBSON: All right. Thank you, Chairman Bostelman. I, I guess, just to this last point and, and, and I think therein lies my concern, is that I'm assuming that when you're out purchasing land, private treaty, willing buyer, willing seller, that you're paying pretty close to current market value. Would that be true?

SHELLEY SAHLING-ZART: You know, I don't personally do those. I don't know. But I would say we probably want to stay fairly close. But, you know, we, kind of, would like to stay out of condemnation court, too. So we're going to try to do something that I think we think will be acceptable. And there's other, there's other things we can negotiate because, for example, it might be not just price, but it might be location of where we're putting something. So we might be able to negotiate that we put something in a location on somebody's property that is less obtrusive, if that makes sense. So that's why those negotiations can bring a lot of different factors to the table, as well.

JACOBSON: Well, I, I, I guess my point and I, I guess what I keep wrestling with when it comes to eminent domain, I, I, I fully appreciate the fact that, particularly, power transmission lines, pipelines, those kinds of things, clearly there's a public purpose. And, and I get that and, and the fact of the matter is, is generally speaking, you can farm around them. They're not taking the land, they're, really, long term leases or easements. Where I get run into issues is particularly when you're dealing with green energy, which is what you're looking at here, the size of footprint you need, the fact that you're really going to need to take the land except for the wind

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and then, if you do the wind, you're still going to have to farm around it and it's going to eliminate center pivots and a lot of that, as well. My concern really comes back to what is the fair price if you're going to force someone to sell? I can tell you today as I go out and look at farmers, you go talk to any real estate broker, they're having trouble. They generally have buyers today. They can't find sellers. But yet through eminent domain, you can go in and say, I'm buying your land, I'm paying you this price for it. You can take this price, we'll go through eminent domain. I have trouble with that and particularly when it comes to farmland, simply because it's a different animal than anything else we really talk about, for all the reasons I articulated earlier. So I know there's some-- I think there's been a bill, maybe, introduced with regard to what is the right price under eminent domain. Should it be twice the market value in order to at least fairly compensate an unwilling seller to have their land taken through eminent domain? What would be your position on something like that?

SHELLEY SAHLING-ZART: We're, we're going to have a lot of discussion about that bill, I think, as well. I, I get your point. But, you know, the other thing that I think is missing from this discussion is it's not, it's not inherent that we will exercise eminent domain. I mean, you know, as I, as I tried to explain with solar, solar is a large footprint, but it doesn't have to all be contiguous and together. You can sort of piece that together with willing property owners. So if we're trying to pursue something and we've met some resistance and we have a really unwilling property owner, I got to tell you, the first thing we're going to do, we're not going to go to eminent domain. We're going to go over here and try this property owner and this property owner and this-- we're going to go try and find another property owner. That's why I think it's going to be seldom that anybody would get to the point that they would have to use-- exercise the power of eminent domain. I can't sit here and tell you 100 percent it's never going to happen. And then the valuation, I don't know. We've got a lot of things to sort out there.

JACOBSON: Well--

SHELLEY SAHLING-ZART: Your point is well taken. I get it. I just don't have a good answer for you sitting here today.

JACOBSON: No, and I appreciate that. And I would just tell you that, that probably, again, my big concern is-- and I know everybody's talked about, we don't want to use it. It's seldom used. Well, the short answer is, well, then we don't need it. OK. So I know-- but

that's not the conclusion you're looking for, either. So my point is, is that part of it is what is fair. And, and in particular, there are some situations where it is an-- a situation or is a problem. I think, again, to Senator Cavanaugh's point, what's also frustrating would be we're talking about a public purpose. But if I don't live in the city of Lincoln and I'm an adjoining property owner and I'm in some other public power district buying my power, Lincoln grabbing my land isn't going to help me. I've already got power coming, probably, through NPPD or-- and that, and that's who I'm buying my energy from. And they're choosing to get energy from probably not reasonable sources that are cheaper. And so the concern is, is that I'm not really benefiting and that's one of the real problems, I think, that Senator Brewer's brought up with this bill is the use of eminent domain to go outside of your current political jurisdiction, ignore all zoning regulations and just take the land, should you choose to do so. And what we're not talking about-- what we're talking about here is not what you're going to do, it's what you're allowed to do. And, and I think that's where the concern is. And I, I know there's got to be some middle ground here somewhere, but it seems like the, the deck is stacked against the landowner. And I think we need to do something to make that more in favor of the landowner to get fairly treated when these kinds of situations happen. That's my concern.

SHELLEY SAHLING-ZART: Yeah. And I, and I agree with that. I guess, you know, the flip side is that if, if, if some of these things get in place that just make it too difficult for us to go pursue these projects. You'll have just what you have today, which is private developers are going to go out and they're going to negotiate and maybe they'll be willing to pay more. But again, the energy that they produce is going to get purchased, probably, by one of us and the price of that energy goes up. So I get the dilemma, but it's sort of a two-edged sword, because I get the concern on the property owner and what's a fair market value. I also get our side, which is we're doing our best to keep costs low for Nebraskans.

JACOBSON: And I just-- one other question, I guess, or a comment would be you've got over 200,000 ratepayers in the city of Lincoln and you've got, maybe, a couple of farmers you're going to buy a quarter section, 320, a section of land. You spread that cost out over all the ratepayers. It's got to be pennies. So-- but that's my concern, is I, I think we need to--

SHELLEY SAHLING-ZART: Unless this bill passes.

JACOBSON: --find an equitable solution here. And, and I think the deck is stacked against the landowners at this point and that's where my concerns lie. So, thank you.

BOSTELMAN: Thank you for your testimony. I appreciate you coming in. Thank you.

SHELLEY SAHLING-ZART: Thank you.

J. CAVANAUGH: Can I ask another question?

BOSTELMAN: Oh, sorry.

J. CAVANAUGH: I apologize. Sometimes I think of questions. Thanks again, Chairman Bostelman. So the-- Senator Jacobson always makes me think of another question. The money we're talking about in the Inflation Reduction Act--

SHELLEY SAHLING-ZART: Yeah.

J. CAVANAUGH: --that makes it feasible for public entities to undertake these projects that have previously only been done by private entities. Is that money only available to public entities or would it also be available to these private entities?

SHELLEY SAHLING-ZART: The private entities would continue to avail themselves of the production tax credits that they have been. And just to clarify, we're still waiting for the implementation rules and regs to come out, to know exactly how this is going to work. But basically, it would provide an equivalent that we would be able to apply for equivalent kind-- we don't get tax credits because we don't pay tax, but we would get an equivalent kind of direct payments that would be commensurate. And how you get that, you know, it's scaled depending on different factors. You get more at one level, if you've got certain percent of domestic content, you get more and it's kind of tiered that way. And that tiering is the same for the investor and-- or for the developers, if that makes sense.

J. CAVANAUGH: OK. Yes.

SHELLEY SAHLING-ZART: So yes, it's designed to make it similar.

J. CAVANAUGH: And some of-- LES buys power from private developers then. Some of the winds are--

SHELLEY SAHLING-ZART: Some.

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J. CAVANAUGH: --some, not all of the-- but aside from those two wind turbines I see on I-80, does LES own any wind turbines?

SHELLEY SAHLING-ZART: We own the two here. We have power purchase agreements for about 100 megawatts of wind in Nebraska wind farms, about 100 megawatts in Kansas and about 100 megawatts in a Oklahoma wind farm. Those are all power purchase agreements. We don't own those.

J. CAVANAUGH: And would LES ever consider building outside of the state of Nebraska?

SHELLEY SAHLING-ZART: Great question. I don't know. I doubt it. We'd probably do the PPA route outside of Nebraska would be my guess, like we have.

J. CAVANAUGH: Is that just a distance issue, management or is it because of the eminent domain?

SHELLEY SAHLING-ZART: I don't think it would have to do with eminent domain. It would probably just have to do with a number of other logistics and familiarity with local laws and regulations, things that we wouldn't have to worry about if we just did a PPA. And in terms of wind and solar, I think we would probably be looking to do those more local, especially if we're owning them.

J. CAVANAUGH: Thank you. I'm done. Thank you. Sorry.

BOSTELMAN: Thank you for coming and thank you for your testimony. Appreciate it.

SHELLEY SAHLING-ZART: Thank you.

J. CAVANAUGH: Sorry.

BOSTELMAN: Next opponent, please. Good afternoon. Welcome.

PHILLIP EULER: Good afternoon, Senators and other staff. My name is Phillip Euler, spelled P-h-i-l-l-i-p E-u-l-e-r. I'm a resident of the city of Lincoln. But I will tell you that I'm also a retired power supply engineer. I worked for LES for 30 years, then MPP Energy for 13. So when this bill came up, it gave me an idea to come in and just give you my feelings about it. And I thank you for this opportunity. As written, I, I can't support the bill because I think it's got some problems. However, I could support the bill if it was under a different intent. If you amended the bill and substitute, in essence,

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the term fossil fuel for renewable, you might want to do that because fossil fuel is a polluting energy source and renewables are not. Not to say that wind turbines don't kill birds and, and there are structures there, but all power supply have some downsides, as well as upsides. Fossil fuel is a technology that the citizens of Nebraska have enjoyed a lot of economic and value, particularly because where we're located. We're close to coal. And a lot of that has been brought into the state, both by train and by wire. And so eminent domain is used to put those transmission lines in to bring that power to us. And so it's a very important element of, of public purpose that utilities have. But I, I think Nebraska citizens would be better treated in wealth and health if there was no more fossil fuel generation constructed in the state. LB55 [SIC - LB255] as written would result in adding cost in power supply planning. It's a little bit vague about whether a substation taking power in from a renewable resource but not have the right of eminent domain if that last square foot of land needed to be purchased to get it done. Public power is one of Nebraska's strengths. We're the only public power-- all public power state of the union. And I think it's a, a great strength to have and I think this bill might tend to diminish the quality of that, economically, [INAUDIBLE] the air that we breathe and that's why we are looking at renewables. And also, I think the bill's a bit discriminatory against larger public power districts and I just don't think that's good policy. And so those are my comments. Thank you very much for your time. I'd be happy to answer any questions.

BOSTELMAN: Thank you for your testimony. Thank you for your testimony. Are there any questions? Seeing none, thank you for coming in. Next opponent, please. Afternoon. Welcome.

DAVID HUTCHINSON: Good afternoon. My name's David Hutchinson, D-a-v-i-d H-u-t-c-h-i-n-s-o-n. It's amazing what you can hear from big utility companies. I represent Save the Sandhills, the ranch, the small rancher and farmer. You know, we might think about the answer to this might be hydro. We've got the Missouri River right in our backyard. It runs year round. You don't want to put up all these solar and wind farms and destroy what Nebraska is known for, is the Sandhills and our agriculture. You go out and you look at those hideous wind towers. You, you can see them for 75 miles. They're 650 feet tall. During World War Two, the Japanese and Jap-- and the Germans used blinking lights for torture. And what are you seeing for 75 miles? Blinking lights. You know, it's amazing what NPPD, Nebraska Public Power, can do and say, how they do-- energy meeting here in Lincoln about four years ago. And Tom Kent said, quote, We build at 345 through the middle of the Sandhills. And I said, No, you haven't.

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He said, Yeah, we have. I said, Where did you do it? He said, west of Sydney. Well, west of Sydney is not in the Sandhills. And they wanted to put the R line through the Sandhills, right through the middle. And it's amazing because when you talk to the architects that designed it, they were never on the ground. No boots were ever on the ground, but yet, they were going to go through the highest sandhills. They were going to go through our wet meadows where you have-- you put a pipe down five, ten, 15 feet and what do you get? Water. On our ranch, we have 17 artesian wells. The water on a 55-gallon barrel, this high, would just flow right over that. It's amazing. You know, they had a hydro dam at Spencer, Nebraska, but they didn't maintain it for three years. The inspectors told them to take care of it. When they had that, that big flood in the spring of '19-- 2019, it blew out. But it's amazing. They were going to go right through the Sandhills. They could have moved it south. The Fish and Wildlife actually had an independent architect tell him, if you go south, you, you won't affect the migratory birds, you won't affect the whooping crane, which there's only 500 of them in the United States. And it would kill the whooping crane because our meadows around the Calamus River-- and our meadows, they-- when they stop at our ranch, they stay for two weeks, approximately. And they would fly back and forth. And if you build an R 35 through there, it would decimate all of the whooping cranes. It's all about big money. It's not about the small person. Again, there is alternatives you could do with this state. I care about the state. We've had family connections in the Sandhills since 1890. I'd like to keep it that way. Birds don't land in the pass-- on the roads-- I mean, on the pasture, they land on-- they don't land on the roads. So if you put the R line or these power lines down the roads where they have a right of way, it isn't a problem.

BOSTELMAN: Your red light's on, sir, so I just need a final comment, so.

DAVID HUTCHINSON: OK.

BOSTELMAN: So, point of clarification for myself. Are you in support of LB255 or opposed to LB255?

DAVID HUTCHINSON: I'm in-- I'm a-- I, I promote-- I'm for it.

BOSTELMAN: You're, you're for LB255?

DAVID HUTCHINSON: Yes.

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BOSTELMAN: OK. Thank you. Any questions from committee members? Seeing none, thank you for coming in today.

DAVID HUTCHINSON: Oh, that's too bad. I thought I'd get some questions.

BOSTELMAN: Next opponent.

DAVID HOLTZCLAW: Thank you, Senator. David Holtzclaw, D-a-v-i-d H-o-l-t-z-c-l-a-w, 5005 Chicago Street, Omaha, Nebraska.

BOSTELMAN: Go ahead.

DAVID HOLTZCLAW: Thank you. Here testifying today against LB255. This is a bill posing a solution for a problem that does not exist. To be perfectly clear, no public utility in Nebraska has ever used eminent domain for a renewable energy project. The majority of renewable energy projects in this state are done through private developers. And private developers do not have the power of eminent domain, even if it's part of a power purchase agreement with a public utility. If a-- furthermore, this bill would not stop or prevent utilities from continuing to develop renewable energies through these power purchase agreements. If this committee wants to take a stand against eminent domain, that's a perfectly, perfectly understandable position to have. But why is only solar and wind and renewable energy specified in this bill? Why is it not concerned about transmission lines, fossil fuel plants, natural gas, nuclear plants, pipelines? Why does it only specify renewable energy? And why only does it specify utilities serving a city of the primary class? So it's only Lincoln and, and Omaha. This does-- bill does nothing to stop eminent domain from being enforced from far smaller utilities or [INAUDIBLE]. So there's no consistency in this bill. To correct a couple previous statements, is that regarding the concern for the decommissioning of both OPPD and LES, all their recent bids for contracts for power plants have required decommissioning steps. And our utilities are wanting this because the citizens want it. The customer owner wants renewable energy. That's what's driving this. And this bill is not going to stop that from happening. Utilities will still be doing more renewable energy because it's cheaper, it's easier to build, it's easier to manage, it's what-- better for the environment. And it's what the customer-owner is requesting. With that, I would thank you and take any of your questions.

BOSTELMAN: Thank you for your testimony. Are there questions, committee members? Senator Jacobson.

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JACOBSON: Well, I guess, yeah. Thank you for your testimony today. I guess you're telling me that this is a, you know, a solution in search of a problem and that there's been none used. And so, if there's been none used, you're inferring that there'll be none used in the future. So you, evidently, don't have an issue if this passed, because it's not going to impact the public utilities, correct?

DAVID HOLTZCLAW: I, I do have an issue if it passes, because what's going to happen? Those developers are going to say, OK, we're just going to go to another state, where it's easier. It's-- they're, they're going to look at this and say, Nebraska is going to put hurdle after hurdle after hurdle at us. So we're just going to take our money and we're going to go to South Dakota, Iowa and Kansas, which is what they're doing now, already. And it took, it took Nebraska 10 years to coax these developers into our state.

JACOBSON: Which developers are we talking about?

DAVID HOLTZCLAW: We're talking mostly wind, right?

JACOBSON: Private developers.

DAVID HOLTZCLAW: Private developers.

JACOBSON: But, but they're not subject to this bill.

DAVID HOLTZCLAW: Correct.

JACOBSON: They can't use eminent domain. So how are we going to chase them away with this bill?

DAVID HOLTZCLAW: Because private developers are going to look at a negative environment for these type of projects and they're going to say, I'm going to do business in a state that's easier to do business.

JACOBSON: But they're, but they're building them today, though, right, in Nebraska?

DAVID HOLTZCLAW: Correct.

JACOBSON: So I, I--

DAVID HOLTZCLAW: Because this bill, this bill doesn't-- in fact, in fact, this bill won't impact anyway, because you'll still have the power.

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JACOBSON: I would agree with that. It's not going to impact them today and they're not going to be subject to this bill.

DAVID HOLTZCLAW: But they're going to look at this as just an environment, a state with a poor attitude for industries. And so, they're going to go to another state or they're going to come into our state and they're going to say, OK, we'll, we'll provide you energy, but we're going to add a premium to that costs, that our utilities will have to pay, that our customer-owners will end up paying.

JACOBSON: I'm confused as to why they came here to begin with, to start building if, if they were concerned about any issues. I'm, I'm, not aware of anybody really looking.

DAVID HOLTZCLAW: I think you're trying to dodge the problem here. The problem is, is that this bill, at the end, is not going to stop renewable energy. It's going to make it more expensive, as previous opponents have stated multiple times. It's going to make it more expensive for the customer-owner. And the customer-owner is what-- who wants this.

JACOBSON: And, and I guess I would just ask you this question. From the standpoint that this bill is really about eminent domain for the use of solar energy. And I think the reason it's focused on, on solar and wind is because of the size of the footprint. And as Chairman Bostelman pointed out early on, the massive sections of land, rural land, that would be necessary to build out those projects based upon that 2050 project. So I think, as we've also asked along the way here, the number of farmers and ranchers who own this land, who are not within the political subdivision of OPPD, which is a metropolitan class city, and Lincoln, which is a primary class city and elsewhere, the concerns are, are they being fairly treated by ignoring all other zoning and using eminent domain? That's what the discussion has been here today. I guess that's why we've raised it, so do you have any concerns at all about those farmers who are having their land taken through eminent domain because of the massive amount of acres that will be necessary to build this out?

DAVID HOLTZCLAW: Can I answer the question?

JACOBSON: Yes, that's why I'm asking the question.

DAVID HOLTZCLAW: All right. So let me correct some of the math earlier. So one megawatt of power is about four acres with current technology. So bifacial panels, solar tracking, right now, on a

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utility scale project, that's about four acres per megawatt. OK. You get up above 50 megawatts, you're going to have some other supports, infrastructure. So let's round up very conservatively to five acres a megawatt. Descite [SIC] your 3,500 megawatts, 3.5 gigawatts. That's 17,500 acres. Six hundred forty acres in a square mile, 77,220 square miles in the state of Nebraska. That is 0.035 percent of Nebraska, .035 percent. There's plenty of space for that, particularly for-- with landowners that wants to get into those agreements, because they want that additional revenue stream for multiple reasons. So that huge acreage that you're worried about really isn't that big. And also, to Senator Brandt's points of, why can't we do more of this in our urban core area? I am all for that. I think utilities are pushing-- are going more for that, too. And in which case, I expect you'll all support LB49, which has its hearing tomorrow, which will block homeowners association from outlawing solar panels on property. That-- and I can, I can name you six homeowner association in Omaha that have those covenants that are often decades old, that people have forgotten, that are preventing people from putting up solar panels in our-- more of our residential and urban core. That will continue to happen. That will continue to grow, particularly in, particularly in Omaha and some of the land that's, you know, condemned because of lead and other, other issues. But it's going to happen a little bit in our urban and the rural areas, as well.

JACOBSON: I think, I think you've answered--

DAVID HOLTZCLAW: But not hugely because it's less--

JACOBSON: --my question, thank you.

DAVID HOLTZCLAW: It's still less--

JACOBSON: You've answered my question.

BOSTELMAN: OK. Senator Cavanaugh.

J. CAVANAUGH: Thank you, Chairman Bostelman. Thank you, Mr.-- is it Holtclaw?

DAVID HOLTZCLAW: Holtzclaw. Like coleslaw.

J. CAVANAUGH: Like coleslaw? I, I like it. I don't like coleslaw, but I like--

DAVID HOLTZCLAW: It tastes fine.

J. CAVANAUGH: --the analogy. So. All right, well, you went through those numbers real fast, but I, I appreciate it. And maybe I can get them in writing from you later.

DAVID HOLTZCLAW: Sure.

J. CAVANAUGH: But my mind keeps going back to-- you know, some people don't like renewables for a number of reasons and we've heard a couple of them today. Some people don't like them because they propose a challenge to legacy power like coal. Right. Does that sound accurate?

DAVID HOLTZCLAW: It's correct.

J. CAVANAUGH: And some people think that people don't like coal because of climate change. But there are other reasons that we should maybe be moving away from coal besides climate change. Does that sound right?

DAVID HOLTZCLAW: Sure. It's, it's more expensive, plain and simple.

J. CAVANAUGH: OK. What about the, I guess, closer health and environmental impacts of coal?

DAVID HOLTZCLAW: So coal has a number of pollution impacts, SO_x, NO_x, other pollutants that are bad for the environment. You mentioned earlier, north, north Omaha plants. That's the main reason why they switched over from coal to natural gas, is because coal is so much more pollutant than natural gas is. I, I think our utilities were putting a lot of their eggs in natural gas because natural gas was cheap for about an eight-year period. We have a war in Ukraine and all of a sudden, natural gas prices go up. So it's a global commodity. It will continue to go up and down with markets. So there's no guarantee that natural gas will remain cheap for any period of time.

J. CAVANAUGH: Yeah.

DAVID HOLTZCLAW: But as renewables, they're technologies. They will continue to get cheaper. They will flatline, but then they will stay dead, flat-lined, because they're not dependent on global markets. They're all local and it's a technology.

J. CAVANAUGH: So-- and this is not why we're here. But I just-- they made me think because you said that they're cheaper than coal.

DAVID HOLTZCLAW: Right now, yes.

J. CAVANAUGH: And we have that conversation a lot around here, about which-- and this, specifically, the precipitation of this conversation is about subsidies. Right. We're concerned, some folks are concerned, that new federal subsidies will cause a basically a gold rush of wind and solar development by our public utilities. Do coal and natural gas receive subsidies?

DAVID HOLTZCLAW: They receive all kinds of subsidies. So fossil fuels receive about \$3 in subsidy for every dollar renewable energy receives. Those are due to depreciation, tax credits. These are credits in, in-- or not credits, really, tax schemes that have been around for a hundred years because fossil fuels have been around for 100 plus years. So those have all been developed by the fossil industry. And so for, for-- about every dollar of tax credit, renewables get-- there's \$3 in fossil fuel.

J. CAVANAUGH: OK. Thank you.

BOSTELMAN: Seeing no other questions, thank you for your testimony. A couple of points of-- to-- for the record. The numbers I used was out of OPPD's report. It's their numbers. Subsidies, I guess, we can talk about that after a bit. Next opponent to LB255.

KATHERINE FINNEGAN: Hi. My name is--

BOSTELMAN: Good afternoon. Welcome.

KATHERINE FINNEGAN: --my name is Katherine Finnegan and I am a resident of Omaha District 20. And that's-- do you want me to spell? K-a-t-h-e-r-i-n-e F-i-n-n-e-g-a-n. I'm here today to testify in opposition to LB255. Without possessing the ability to exercise eminent domain, which I do not believe our utilities actually do, which has been clarified today, for the purpose of constructing and operating wind or solar generation facility. This bill, if enacted to law-- into law, is legislation-- legislatively overreaching, because it is not allowing the respective utilities, including their management, boards and engineers, to determine the best resource mix based on free market principles for their customer-owners, thereby hurting Nebraskans. Let's keep control of our local utilities-- local. It is designed to thwart the use of wind and solar, which is shortsighted, in terms of economic opportunity to farmers as well as job creation. It would make Nebraska an unattractive place to do business for the growing renewables sector and discourage investment in our state and the clean energy economy. It would add more restrictions where it doesn't appear to be needed as our public power

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does not make it a habit, if at all, of exercising the right of eminent domain. Rather, this bill would just allow a landowner to run up the cost of land instead of negotiating a fair price, which will have direct impact to Nebraskans in the way of increased rates. It's picking winners and losers in the types of energy consumed. By singling out renewables, specifically wind and solar, this contradicts what we know. Wind and solar are critical resources as our public power entities make the transition to clean energy alternatives, not to mention, they are plentiful in our own state of Nebraska. Nebraska has an opportunity to lead here. Let's not introduce legislation that places obstacles in the way and instead, be a state that encourages the growth of an income producer for our state. Sidelines the strategic directives of all Nebraska public power districts demonstrating a disregard for the desires of Nebraskans as the power districts have citizen representation on all of their boards. Clean energy is what Nebraskans want and our utilities are working diligently and responsibly to work toward that goal while delivering low rates and reliability. And it does not demonstrate a clear mechanism to improve the current operational capabilities of Nebraska's public power utilities. Thank you.

BOSTELMAN: Thank you for your testimony. Are there questions from the committee members? Senator Fredrickson.

FREDRICKSON: Thank you, Chair Bostelman. It's not a question, just a statement. As the Senator from District 20, I just want to say thank you for being here. It's nice to see constituents, so thanks for coming down and testifying.

KATHERINE FINNEGAN: Thank you very much. And thanks for your service.

BOSTELMAN: Other questions? Seeing none, thank you for your testimony.

KATHERINE FINNEGAN: Thank you.

BOSTELMAN: Thank you for coming in. Next opponent to LB255. Good afternoon. Welcome.

LISA LEE: Hi. My name is Lisa Lee. It's really easy, L-i-s-a L-e-e, and I'm a resident here in Lincoln. And I'm actually here to testify. I'm going to make it efficient. I'm here against both LB255 and LB399, that you'll hear at some point. I see there are some similar issues with those two bills. So I'm going to just first, though, thank you all. You show so much patience with all of us here today. So thank you very much. These are important issues. So, so I do see that these

bills are going to, potentially, create some barriers to produce new renewable energy projects. And based on the greenhouse gas emission goals established by our three largest public power utilities, these bills are going to add challenges and hurdles in their ability to meet those very much needed goals. The debate over our energy and environment is controversial and it's complicated. And for that reason, I'm very thankful to the boards and the management of our state's public power utilities for stepping up and providing leadership and making these bold decisions. As a public power utility, they are constantly trying to balance their mandate of providing safe and affordable and reliable energy with the environmental impacts that we know that are happening. So I appreciate, also, the thoughtful process that they went through when they were making this decision. From what I understand, they took several months, they gathered information, they educated themselves and they spent time weighing the cost and the benefit of making these decisions. So we need leaders like this. We need-- that are willing to make these hard decisions, knowing if they don't, future generations will pay the price. And I just want to share a quick story. So I was here last year for a bill, didn't testify. I just came because I'm a nerd. Listened to it. And I listen-- I heard the-- it was a similar bill and the CEO of NPPD was here. And when he was challenged about these emission goals that they, that they, they came up with, he was asked if any of the ratepayers, ratepayers were upset that they had done this. And he was very honest and said, yeah, there are, there are people that are mad. He-- but he added, he said, but there's just as many people that are mad that we didn't go farther. And that's leadership. That's striking a balance between finding a compromise, knowing you're not going to make everyone happy. I suggest- and here's my little creative thought today. So I suggest that instead of doing these barriers, we could look at-- because like, we know Senator Brewer is correct when he talks about how wind energy has divided communities and are not always fair to the landowners and the impact of the surrounding neighbors. We all know that's true. So I just did a quick Google search over the weekend and I found two instances, I think, that are kind of interesting. So you all probably know, but some of the wind energy companies will actually pay for the attorney fees for the people that-- the landowners that are being asked to lease their property, they'll pay those costs because not everyone has that money upfront to pay for those attorneys before they start making money off the leases. And so that's one thing. Then I found this other thing that's really interesting. There was a-- there was something called a Wind Project Neighbor Agreement and you may have also heard of some of these things, but they were actually a did agreement between the wind energy

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company with those neighbors that are being impacted but aren't going to be making the money off of them. And obviously, I'm not being paid by the utility companies here today nor am I being paid by the energy companies. But I just think those are the things that explore, because I think they-- educating and providing support to our communities where these projects are going to go, should be part of the process. So pretty much that's it, since it's a red light. I did have [INAUDIBLE].

BOSTELMAN: Thank you. Very good. Are there questions from committee members?

LISA LEE: OK.

BOSTELMAN: Seeing none, thanks for coming in.

LISA LEE: Thank you.

BOSTELMAN: Next opponent, please, on LB255. Afternoon. Welcome.

KAT WOERNER: Hello. Thank you. Hello, everybody. My name is Kat Woerner, K-a-t W-o-e-r-n-e-r. I am 22 years old and I am a born and raised-- [RECORDER MALFUNCTION] living in Cass County. Last May, I graduated from UNL with degrees in economics and natural resource economics. I'm here today to ask you all to oppose LB255. Who here likes the government introducing red tape into their industry? I know you all can't respond, but I know the answer is no one. And if you don't like it into your industry, then why are you trying to introduce it into mine? Nobody likes it when the government comes in and makes things more bureaucratic, more time consuming and more expensive, especially when a problem currently doesn't exist. And that's exactly what it sounds like this bill is trying to do. My family has land in Cass County and we're part of the group that wants to put in wind and solar because it makes economic sense for us. A public power district doesn't have to come in and take our land. We volunteer and we're not alone. The ones who don't have a problem with it are the ones that are quiet about it. Nebraska has some of the cheapest energy rates in the U.S. and in the developed world. Our public power districts are made up of our neighbors who know this industry and are dedicated to representing what we want and we trust them to do so. The global markets are transitioning to renewable energy and focusing on policies like this one, well, in my opinion, is a misplacement, misplacement of priorities. But I'm grateful to be sitting here. I'm getting an education on this topic because now I know significantly more because of all the testimonies. When my friends and I talk, friends from

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Nebraska and from other states coming to study, our conversations are dominated by complaints of the Cornhusker State and our-- frankly, our excitement to leave. I just got back from vacation on Thursday and the way I was greeted by someone was, and I quote, Welcome back to "Butt-suck Nebraska." This was a friend I've known since high school and is in the last year of her degree program at UNO. Part of the reason is because policies like LB255 do not represent what we want priority go to and frankly, is the exact opposite. We want to see renewable energy being developed. We want to put solar on our houses and, and lands. We want to invest in community solar. We want to see our state introducing new jobs that our peers can go after. We want to see our air become cleaner. We don't want anybody coming in and making it harder or more expensive to do so and move us back in time to promote coal and natural gas because those aren't included in this bill. It's only wind and solar. I ask you to please oppose. Thank you.

BOSTELMAN: Thank you for your testimony. Are there questions from committee members? Senator Cavanaugh.

J. CAVANAUGH: Thank you, Chairman Bostelman, and thank you-- is it Warner [PHONETIC]?

KAT WOERNER: Yeah.

J. CAVANAUGH: Thank you, Ms. Woerner, for being here and for staying in Nebraska and just for your friend who goes to UNO, that's the great part of Nebraska, right, where UNO is?

KAT WOERNER: Yeah.

J. CAVANAUGH: That's the best part, for anybody around knows UNO is in the part of Nebraska that everybody should come to. So you referenced that you're in a willing seller situation--

KAT WOERNER: Yeah.

J. CAVANAUGH: --in Cass County. And so are you here talking about the part about the community-based development?

KAT WOERNER: Yeah--

J. CAVANAUGH: OK.

KAT WOERNER: --that stuff, but also just because of what I've learned within my education--

J. CAVANAUGH: OK.

KAT WOERNER: --as well.

J. CAVANAUGH: Well, from your personal experience on that project, so you think this bill-- I mean, you talked about it kind of thematically, I think, but are there specifics in terms of the constraints that the section of the bill about community-based solar would make your project not happen?

KAT WOERNER: For me and my family, it's more of the thing of, like, the fact-- because I'm also going to be testifying for LB399 as well. And so it's just, like, a broad stroke of just anti wind and solar. And so it's just, like, these two bills today, what's tomorrow, what was yesterday and the fact that we want to do these things and we don't want it to be harder on us. And we frankly don't see that it needs to be a priority because of the fact that we want it, we willingly volunteer and we will work-- my parents just recently bought the land and so they're currently building a house on it. And so not entirely living there yet. It's only been a year and a half, but in the future with working with us, we trust working with our public power district and trust they won't need to do that.

J. CAVANAUGH: Thank you.

KAT WOERNER: And we don't-- they don't need to be dealing with more red tape. Neither do we.

J. CAVANAUGH: Well, thanks for being here. Thanks.

KAT WOERNER: Thank you.

BOSTELMAN: Senator Jacobson.

JACOBSON: Thank you, Chairman Bostelman, and thank you for coming here and testifying today. I always enjoy young people coming in and stepping up and expressing their views.

KAT WOERNER: Thank you.

JACOBSON: I guess I would just ask you one question, though. You've indicated obviously, you're in very much support of green energy. But, you know, we're talking a lot today about eminent domain. And I realize you, your family has just recently bought the land that they're at, but what if the public utility came to your family and said, we're going to build a nuclear plant on your land and they're

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going to take it by eminent domain. Would you have any issues with that?

KAT WOERNER: Absolutely. But there is the fact that that currently hasn't been an issue and we trust the people that we elected directly to be in that position, that they wouldn't do that to us. And so we don't want to make their life harder. They don't want to make our lives harder.

JACOBSON: I get that. But the fact of the matter is you would be opposed to someone coming and taking it and using it for some purpose other than what you want to use it for and taking it away from you at market-- what, what they would deem to be market value, is that correct?

KAT WOERNER: I mean, there would be some frustration, but there is the fact that with my grandparents land also in Cass County, part of their land was taken to expand the highway. And of course we were upset about that, but we also love the accessibility of getting to the city more and what that did to the community. And so the fact of understanding-- of being upset upfront, of course, but then understanding the fact it's not just about us and our land, it's what the community needs.

JACOBSON: Thank you.

KAT WOERNER: Thank you.

BOSTELMAN: Seeing no other questions, thank you for coming in today.

KAT WOERNER: Thank you.

BOSTELMAN: Thank you for your testimony. Next opponent to LB255.

AL DAVIS: Senator, I have a question for you. A representative from the Nature Conservancy had to leave early. She left testimony. Can I enter that for her? You want me to read it--

BOSTELMAN: You're entering it for them? You can't.

AL DAVIS: I can't, OK.

BOSTELMAN: Welcome, Mr. Davis. Good afternoon.

AL DAVIS: Thank you. You all know who I am. Al Davis. I'm the registered lobbyist for the Nebraska Chapter of the Sierra Club. And

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I'm sure you're not surprised that we're here in opposition to LB255. The Nebraska Chapter of the Sierra Club believes that LB255 is a direct assault on one single type of energy, just as Ms. Woerner said. Public power would still be able to use eminent domain to construct a coal or oil or natural gas plant or a nuclear plant and to add transmission lines to connect those types of energy generation to the grid. Over the last several years, we've seen one iteration after another attempting to limit the construction of renewable energy facilities in this state. Despite the enormous benefits provided by the industry to the stability of the grid, to local political subdivisions through property taxes paid by private companies to farmers who are willingly entering an agreement to construct these facilities on their land and by providing jobs with good pay and benefits in parts of Nebraska which really need the good jobs. Eminent domain is a tool provided by government to maximize the public good. Roads, pipelines, transmission lines, telephone lines, cable internet lines, schools, power generation facilities and the like are examples of entities using eminent domain to promote the public good as it was originally developed. There is no good reason to prohibit public power from using this tool when needed to enhance stability, reduce costs and provide for increased power, which could be exported to other states resulting in income reverting to the public power entity, which would then be reflected in lower rates for Nebraska ratepayers. Further, public power has the right to use eminent domain for this purpose today and has never-- it has never been used to connect any renewable project to the grid so there is no record of it-- of abuse associated with public power currently. The renewable industry has tremendous growth potential in Nebraska. Nebraska's clear skies and elevation means Nebraska ranks 19th in solar potential. We rank eighth in wind potential. Generation of electricity can be a cash crop for our state if we stop trying to impose barriers on the industry and instead get behind it to push Nebraska to the forefront of innovation. Thank you very much for your time. And when I testify on the next bill, I may point that young Nebraskans are very enthusiastic about wind energy and solar energy. Ms. Woerner demonstrates what young people think. We're all older folks and we're not going to deal with the ramification of climate change, but our young people are and I think we need to listen to them. Thank you.

BOSTELMAN: Thank you for your testimony. Any questions from committee members? Senator Cavanaugh.

J. CAVANAUGH: Thank you, Chairman Bostelman. First off, Mr. Davis, thank you for being here. And speak for yourself. Some of us--

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JACOBSON: He was referring to me.

J. CAVANAUGH: I-- he was looking at you. So, I mean, you've heard the conversation. I know you've been here and you've seen it. So I obviously don't like eminent domain like nobody-- everybody around here doesn't like eminent domain. And I'm just-- as you were testifying I was thinking about the comments we've had about the remnants, remains and things like that. And I remember a bill from last year I'm sure you came and testified on about allowing landowners to take out pipelines after they've lost [INAUDIBLE]. Do you remember that bill?

AL DAVIS: I do.

J. CAVANAUGH: And I think you came and testified in favor of that bill--

AL DAVIS: I believe I did.

J. CAVANAUGH: --to allow landowners to recapture their land after the fact. Do you think-- I mean, you know, you talked about the excitement and the interest in that-- and kind of picking in one industry, but that does make me think about that we use eminent domain for so many things. We're using it for pipelines. And I think you've heard me probably say to Senator Brewer during his opening about just the recent story about the Keystone Pipeline bursting and running-- dumping 500,000 or 600,000 gallons into the river there. We just had a train explosion in Ohio that was carrying petrochemicals that's caused a huge problem. We just had a train derailment in Gothenburg that was carrying coal. And so I guess my question is there's excitement and interest in renewables and is the reason for that that people are just excited about them on their face or is it because of all these external ill effects of petroleum and coal that have been around for so long that young people want to move away from them?

AL DAVIS: Well, I think that, you know, science has demonstrated over and over again that global warming is a fact of life and it's, it's something that we have to address and we have to deal with it. So everyone needs to make small steps to get there and sacrifice whenever they can. The renewable industry has come along now to the point where it really is competitive. It's competitive with coal, oil and the natural gas, you know, but we have a lot of issues with stranded assets and so there's opposition from those folks. There's opposition from the raw materials manufacturers. But as I said earlier, young Nebraskans are going to be living here for the next 70 years so

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they're going to-- we've seen this in our own lifetime. I have, but I mean, they're going to see a much more radical increase if we don't address our problems today. Now, did I answer your question or did I just confuse it?

J. CAVANAUGH: No, I liked your answer, but I guess that doesn't mean you answered it. So-- well, I'm going to take a different-- ask you a different question. Talking about standards, the goals that both the OPPD, NPPD and I guess-- and LES have set. And we've had some conversation about whether those would be achievable through distributed generation, solar panels on rooftops. I know you and I have worked to find ways to create more of that distributed generation to no avail. Do you think that if-- perhaps maybe a more constructive approach. They're going to try and get to these goals no matter what, whether we have eminent domain or not, right? Should we be making a more concerted effort to get more of these willing distributed generation implemented?

AL DAVIS: Absolutely. Absolutely. You know, I would love to do some solar work on my own ranch. It's just impossible for me to do that because of the way things are constructed in, in, in the law here.

J. CAVANAUGH: Thank you.

AL DAVIS: So if we-- yes, If we don't, if we don't-- those-- that's a cheap and easy way to do it.

J. CAVANAUGH: All right, thanks.

AL DAVIS: Thank you.

BOSTELMAN: Any other questions? Seeing none, thank you.

AL DAVIS: Thank you.

BOSTELMAN: Next opponent to LB255. Good afternoon.

JOHN HANSEN: Good afternoon, Mr. Chairman, members of the committee. For the record, my name is John Hansen, J-o-h-n H-a-n-s-e-n, and I am the president of the Nebraska Farmers Union. On the issue of eminent domain, I have been wrestling with the proper use of eminent domain as the public official or the head of a farm organization for, as near as I can tell, 49 years. And I have been trying to look at this issue and I, I see some of the potential threats that Senator Brewer sees. But on the other hand, I look at what the track record is and since 1998, in our state, we've built 3,260 megawatts of wind energy and 56.3

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megawatts of solar and there has never been a use of eminent domain by public power for any of that. It's all been either the public sector on especially the smaller projects, using their, their own land or resources or using a willing buyer, willing seller. And, and the rest of it has been private-public partnerships. So if you're a private sector developer and you're somehow claiming that public power is going to intervene in that willing buyer/willing seller relationship, then I don't know how you do that because they don't have eminent domain authority. They shouldn't have eminent domain authority and public power has never used eminent domain authority relative to a willing buyer/willing seller relationship. So when I, when I talk to our folks and eminent domain comes up, we still have folks that are fighting mad because the, the Nebraska Department of Roads still has eminent domain authority and they took more land than they should have across their bottomland when they built up the highway that went through the bottom ground. And we have to say, well, if you want infrastructure, you have to have eminent domain at some point. And so my view is that public power is sort of similar to a state agency. They're certainly a public entity. They certainly have infrastructure. And one of the thoughts that I had, which hasn't been brought up so they don't plow old ground is, you know, what do you do in the case of a substation? Is that, is that-- that's not really land acquisition for the turbine or the solar panel. It's not really a part of the transportation or the transmission system. But there could be a use-- as I look at it, the most likely use of eminent domain by public power, although they haven't used it yet, would be a strategically needed substation in order to be able to tie a project together at an appropriate place. So if this were a problem, we would be in support of it and we don't see that it is so we're not. And with that, I'd end my testimony and be glad to answer any questions if you have any.

BOSTELMAN: Thank you for your testimony. Are there questions from committee members? Seeing none--

JOHN HANSEN: Thank you very much.

BOSTELMAN: --next opponent to LB255. Good afternoon. Welcome.

LORRIE BENSON: Thank you, Senator Bostelman and members of the committee. I appreciate being here. My name is Lorrie, L-o-r-r-i-e, Benson, B-e-n-s-o-n. On behalf of and as chair of the climate action team at First Plymouth Congregational Church in Lincoln and on behalf of and as a member of Nebraska's Citizens Climate Lobby, I am opposed to LB255 and to save us some time and since my comments are general, LB399. These bills will make it more bureaucratic and expensive for

electric utilities in Nebraska to add wind and solar-generated electricity to their portfolios. It will not stop the development of wind and solar projects, but the delays and additional expense of needless bureaucratic steps will be passed on to electric utility customers. Last summer, I was a citizen participant in Lincoln Electric System's integrated resources plan process. It is a federally mandated process requiring an electric utility to identify how it will meet future electricity demands. As it considers the appropriate mix of ways to generate electricity, the overarching considerations for LES and I assume as well NPPD and OPPD, which also do this planning, the considerations are reliability, affordability and sustainability. The utilities have two important reasons for transitioning to renewable energy. First, it's now cheaper to add wind and solar than to continue to run a coal-fired plant. Second is customer demand. This includes businesses demanding clean energy to meet their corporate goals, making clean energy an important economic development tool. An interesting case is Norfolk, which has added a community solar array in conjunction with private partners and NPPD. Many of us have heard Mayor Josh Moenning from Norfolk talk enthusiastically about the benefits, including reduced electricity costs for his consumers and the ability to advertise clean, green energy to prospective businesses. NPPD has a number of similar projects. Venango was able to lure an ag processing operator to locate in Nebraska rather than Colorado, with the commitment to provide renewable energy. Plattsmouth and Norris are developing clean energy sources with projected cost savings for both. South Sioux City has cut ties with NPPD because it wanted more renewable energy in its mix than NPPD could provide. It's not clear what problems these two bills are attempting to solve. They will increase rather than decrease electricity costs. They will not improve reliability. They will slow progress but not stop the transition to cleaner energy because it will be less expensive and many businesses and other customers are demanding it. Electric utility boards are elected by the customers they serve or appointed by elected mayors and city councils. Adding more bureaucracy moves the decisions farther away from customers. Finally, one of the reasons Mayor Moenning gives for Norfolk's project is a desire to attract and retain the millennial and Gen Z workforce in Norfolk. The clean energy efforts are part of a larger strategy to do so, while also attracting forward-thinking businesses who want clean energy. And I'll add one other thing as I've listened here this afternoon, if I may, the, the question of the use of farmland that is also being used for solar and wind, it's common enough now that there's actually a term for it. It's called agrivoltaics. And so I think we should challenge the assumption that if land has been-- is being used for solar or wind, that it

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cannot be used for ag. And I think part of that is challenging our assumption that agriculture in the next 10, 20, 30 years is going to look the same as it does today and I think that's really questionable. So I'm sympathetic to the eminent domain concerns. And as a former county attorney with experience doing eminent domain, I, I understand that it's a last resort and why it's unappealing. But I think we need to keep all the tools in the toolbox. So thank you for considering the comments from my two groups today.

BOSTELMAN: Great. Thank you. Any questions from committee members? Seeing none, thanks for coming in and testifying.

LORRIE BENSON: Thank you.

BOSTELMAN: Next opponent on LB255. Anyone else to testify in opposition to LB255? Seeing none, anyone like to testify in the neutral capacity on LB255, please come forward. Good afternoon.

BILL HAWKINS: Chairman Bostelman, members of the Natural Resource Committee, my name is Bill Hawkins, B-i-l-l H-a-w-k-i-n-s, and this has been a very learning experience. I'm a lifelong Nebraskan, I'm an organic farmer and I'm a lifelong environmentalist and so I've learned a lot today. I've heard a lot of double-speak from a lot of high-paid lobbyists and attorneys from public power districts. And I'm thankful for our cheap energy here in Nebraska, but I'm here in a neutral position because I really don't think Senator Brewer-- and I appreciate his efforts to protect our great natural resources in our great state of Nebraska. Because I'm an environmentalist and I'm an organic farmer and I research things and so renewable energy, I knew that this division of communities was coming and that I would have to make a stand on this. I'm all for distributive energy. We haven't talked about-- anything about conserving energy or every Google search on your phone or your computer uses as much energy as heating a pot of water to boiling. We aren't discussing about that. We are discussing destroying our way of life with massive wind farms or solar panel farms. It's been described as carbon-free green energy. As an environmentalist, I look at where the soil-- the solar panels come from-- and we haven't discussed that yet-- is China. And I guarantee you, China isn't building all our soil-- solar panels with green energy. They are destroying ways of life in China. They are polluting their environment. They don't care. I found out that our decommissioned wind mills are stacking up unrecyclable blades and you have dozens of farms that are being decommissioned. So I worry about our young generation that is going to have to deal with abandoned wind farms across our great state to power some other state when we aren't

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talking about conserving. And so I was told that well, we will use wind energy to decommission those wind towers and that's a joke. We need to-- in Nebraska, we need to put a moratorium on this issue until we study it and come up with a sensible, sustainable power source for our great state. And so I thank you for your time and I would appreciate any questions.

BOSTELMAN: Thank you for your testimony. Any questions from committee members? Seeing none, thank you for coming in.

BILL HAWKINS: Thank you for your time and I really mean that today.

BOSTELMAN: Thank you. Next neutral testifier, please.

CHRISTOPHER COSTELLO: Chairman Bostelman, committee members, my name is Christopher Costello, C-h-r-i-s-t-o-p-h-e-r C-o-s-t-e-l-l-o, a resident of Lincoln, Nebraska. I am here speaking neutral. I respect Senator Brewer's foresight about eminent domain property. I think it's the same for the farmer and his property as it is for someone like myself with intellectual property. It's a very difficult thing. And then when you're faced against, you know, power companies and things like that, to be able to even have a voice, much less recoup what you feel is valuable from entities that are going to move forward, justifiable. I think we got here on that, you know, justifiable for the greater good type of talk. And I appreciate Brewer standing up and saying, you know, everybody is-- deserves a fair shake as we go forward. With that, I, I am the patent owner of Green Energy Water Park and that's a sideways dam that I think would reduce-- I have been, you know, a long-time environment-- citizen scientist, environmentalist, part of Earth Day. You know, somewhere between 1979 and 1998, you know, there was a point in time where there were no wind turbines. And we-- you know, and the first bubble of oil coming up causing the Iran hostages and everything that we've been put through for fossil fuels. And I think it's not unlike humankind that crawled out of the ocean to escape the wrath of Poseidon is a similar desire I think most people are speaking of when they talk about green energy. And, you know, we always have that relationship with the ocean. You know, we have vessels and stuff. And I don't think that we will ever escape completely Poseidon's wrath, nor do I think that we'll escape some of the, you know, the things that come with using fossil fuels. But there is, you know, an effort and an opportunity to get away from it. And I think, you know, creating these water turbines in a sideways dam, you know, they-- the, the new technology to an old technology, it is really pennies on the dollar. You have the opportunity to have a water turbine that can power 24 homes. And if you do that, that's a

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step away from what I think is the modern-- you know, the, the power companies, which are dinosaurs subject, even in the best of situations, to rolling blackouts and some form of extortion that comes from that. Or the, you know, an activity by an enemy to knock out. And it-- you know, I think the steps that we take towards that will ensure our future and it's a win-win.

BOSTELMAN: Thank you. Questions from committee members? Seeing none, thank you for coming in today.

CHRISTOPHER COSTELLO: Thank you.

BOSTELMAN: Appreciate it. Any other neutral just testifiers to LB255? Any other neutral testifiers? Seeing none, Senator Brewer, you're welcome to close. We do have 13 proponent letters and 47 opponent letters to LB255. Senator Brewer, please close.

BREWER: All right. Thank you. Well, not exactly sure where to start with this whole thing. If we just stay with eminent domain, we got a pretty short closing. If we talk about everything everybody talked about, we're going to be here awhile. Instead of seizing private property, how about the public power remove the limit on net metering? And then-- I mean, all of Omaha could be a giant solar panel. You could put it on the roofs. You're smiling.

J. CAVANAUGH: I am.

BREWER: I'll take that as a confirmation you like it. I think there's things we can do and I don't want folks to get it wrong. I think solar and wind are part of a package that we need. The problem is, if you want to live on never-never land and you will live off solar and wind, you're going to have some very cold, dark periods. So the reality of it is we have to figure out a combination and we have to figure out how to do that and not take advantage of landowners in order to do it. Now, I understand everyone has said it. They've come in and said, we've never done it. It's not a problem. But we've never dumped \$1.7 trillion into our economy with a lot of it marked just for this and then had the consequences that are going to come with that. And I think that should, that should spook folks if they're able to take without going through a very difficult process when it comes to land. We can, we can jump into all the wind, then decommissioning and all that kind of stuff. Keep in mind, my opposition to wind was don't bring it into the Sandhills. Don't bring it into the Sandhills because it's not right for the Sandhills. You can't put wind towers as big as they are on sand under an aquifer that's only a few feet down and not

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cause issues. It's not that I'm opposed to wind. I just hope that those who want to come and speak and say all the great things about wind, for one, will allow the decommissioning process to be open to the public so they can see how they're going to be decommissioned, who's going to pay for it. And that they understand that somewhere those parts and pieces have to go, which is true of solar. You're talking, what, seven years for a solar panel? Well, what do you do with a solar panel? You grind them up and make what? You bury them? There's a lot of things they're doing with both wind and solar that really aren't very good for the environment, but people don't care about that. They get very focused on green is great and great is what I want to see, so that's what we're going to do. But we need to think through the consequences of some of these actions. And so the, the issue of eminent domain, I think, is a, is a fair issue to make sure that we address and that's really the purpose behind the bill. So with that, I'll take questions.

BOSTELMAN: Any questions from committee members? Senator Cavanaugh.

J. CAVANAUGH: Thank you, Chairman Bostelman, and thank you, Senator Brewer, for bringing this bill and this really interesting discussion. And yeah, you saw me smile. I would be in favor of more distributed generation. And actually, Mr. Hawkins, I probably would also be in favor of putting efficiency as the first thing we would do and prioritize. And you just said about the reason we're here having this conversation about the influx of money and I brought up a couple of other, you know, well, you know, about my bill about the other people who have eminent domain and that I don't think that's appropriate and how it gets used. So I just happened to look up the Inflation Reduction Act to see what other tax credits we've got floating around out there. And there's tax credit for carbon capture and sequestration. We just gave carbon capture and sequestration power of eminent domain in the state of Nebraska two years ago now. And so I guess, do you share the same concerns about this influx of money for carbon capture pipelines that are going to be proliferated around particularly--

BREWER: Yes.

J. CAVANAUGH: --western Nebraska?

BREWER: Yes, I do.

J. CAVANAUGH: Would you entertain an amendment to this bill that would take away their power eminent domains as well?

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BREWER: I think we should talk about it. It could be an amendment.

J. CAVANAUGH: All right.

BREWER: You know, to, to give you a blank yes, might want to put a few more down here, a lawyer-- you know, I trust you a little bit, but not a lot.

J. CAVANAUGH: I'm not going to hold you to it, but, but I appreciate-- I really do appreciate the conversation. And I think, you know, you and I are probably closer on this issue than people would think looking at the same place.

BREWER: I think so, too.

J. CAVANAUGH: Thank you.

BOSTELMAN: Any other questions? Seeing no questions, that will close our hearing on LB255. We will take a break, five minute, for those of us who have been sitting here awhile. We'll pick it back up here probably about 10 or 15 after. So we'll take a break here.

[BREAK]

BOSTELMAN: So thank you all. I want to read something just for clarity and not the committee's rule, this is the Clerk's rule. Committee procedures for all committees states that written position letters to be included in the record must be submitted by 12 noon, the last business day before the scheduled hearing on that particular day. The only acceptable method of submission is via the Legislature's website at nebraskalegislature.gov. You may submit a written letter for the record or testify in person at the hearing. You cannot do both. Written position letters will be included in the official hearing record, but only those testifying in person before the committee will be included in the committee statement. Just to be clear, if you did submit something online, then you're prohibited from testifying in person. That's the clerk's rules, not this committee's rules, just so you're aware of that. With that, I'd invite Senator Brewer to open on LB399.

BREWER: Thank you, Chairman Bostelman and good afternoon, fellow senators of the Natural Resources Committee. For the record, Senator Tom Brewer. That's spelled T-o-m B-r-e-w-e-r. I represent the 11 counties of the 43rd Legislative District in western Nebraska and I'm here today to introduce LB399. I'm introducing this on behalf of all Nebraskans. Since, since my first session in the Legislature in 27--

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2017, I have opposed wind energy, particularly in the Sandhills of Nebraska, mostly because of how fragile these Sandhills are. And I'd like to remind folks, too, that if we were having this meeting in Thedford, there'd be a lot more folks speaking in favor of this bill and the previous bill. But because we're in Lincoln, Nebraska, and there's a snowstorm and most of the people out there that are impacted by wind energy can't be here today. Wind energy is not about generating electricity. It is about generating federal income tax credits. If Congress ever sunsets this subsidy, subsidy, not another of these wind towers or turbines will be built. This is not my opinion. This is a quote from Warren Buffett. The reason this is true is because there is no way to operate an industrial wind turbine in a profitable way without federal subsidies. In 2021, we held an interim study in Natural Resources Committee concerning the record cold temperatures that resulted in the power being shut off to Nebraskans, but also many other states. In that hearing, the Southwest Power Pool grid manager said that only 12 percent of the nameplate capacity of wind energy is, is in the 14-state footprint could be counted for to generate and dispatch electricity at any given time. Twelve percent means one out of eight wind towers in the Southwest Power Pool is generating electricity constantly, one out of eight. Wind, wind energy on average only takes-- only makes usable electricity for about three days out of each week. Every megawatt of wind nameplate capacity needs a megawatt of baseload power-- OK, so baseload power would be nuke, coal, natural gas-- to back it up when the wind doesn't blow. We talked about this earlier. Wind energy is intermittent and unreliable and because of that, we have a constant issue with wind energy. We talked earlier about issues like it killing eagles, hawks, migrating birds, studying how many bats are killed. And as a result of that, agriculture is required to increase the amount of pesticides used near wind farms. I think the thing that we find most challenging about the areas where we build wind farms is how it tears apart communities. And that's been what has been the, the issue that keeps coming back and why we keep having bills that are discussing wind and its ultimate value. Those that get a big lease check from the wind companies and then those who have to live next door to the facilities and suffer the long-term ill effects is an issue that keeps getting put aside because it is seen as green and green is good. I've attended numerous hearings in several different counties in Nebraska and watched the rage and anger between those citizens play out, between those who are pro and con. These aspects of wind energy is what I'm trying to address in this legislation. Before LB824 was passed in 2016, wind companies had to attend a hearing for the Power Review Board prior to seeking a conditional use permit from the county to begin construction on a wind

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farm in Nebraska. That bill removed that requirement from public hearings. My bill puts that requirement back into law and requires the Power Review Board to consider what public-- in a public hearing for a public hearing and that's the part that is left out of the process now. There is no public hearing and so we have a constant cycle of problems. And I've seen this in Cherry County where the people of the county sued the commissioners because the power-- the, the board that was tasked with reviewing and approving the wind tower recommended that they not build in that location and the commissioners overrode them. And then the people of the county sued the county commissioners. So at the heart of this bill is giving the people a chance to be heard and making what they say count for something and having due process with our state government. I guess I'm going to leave it with that for now because we're going to have the same list of people up here. And in most cases, for those that we have seen here in the past, I can almost give their speech for them. And again, all we're trying to do is to be able to let the people have a voice in the construction of these wind farms and having the Power Review Board be able to have some oversight because right now, that isn't how the system works because of LB824. So with that, I'll take any questions.

BOSTELMAN: Thank you for your opening. Any questions from committee? Senator Brandt.

BRANDT: Thank you, Chairman Bostelman. Thank you, Senator Brewer, for bringing this bill. Read through the bill. What is the size limit before it has to go before the Power Review Board? That's not listed in here.

BREWER: Well--

BRANDT: Or I guess I did not see it if--

BREWER: --I thought it was listed in here. Let me, let me look at it between now and close and see if I can't get you--

BRANDT: OK, yeah.

BREWER: --that number because I thought it was.

BRANDT: --I didn't know if it was, like, one meg, ten meg, you know, what the, what the line is because the guy that's putting up solar panels in the backyard probably doesn't need to do this.

BREWER: No.

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BRANDT: Yep.

BREWER: No. Let me, let me make a note to get that for you.

BRANDT: All right. Thank you.

BOSTELMAN: Senator Fredrickson.

FREDRICKSON: Thank you, Senator Bostelman, and thank you, Senator Brewer. So one question I had about the bill is so let's, let's say that local elected officials already maybe approved a renewable and the Power Review Board then decides to oppose that. What type of recourse would the local officials have for that if it cannot move forward?

BREWER: Well, I think the Power Review Board is, is more looking at the need in the-- I mean, I think your, your local board is looking more at the available land and how it affects roads, cities and everything else. I think the Power Review Board is looking at is there a need? Is, is there a need to have wind energy, solar energy in a given area? Because again, we could build a lot in locations where there's not very many people, but then moving the power to where it could be used becomes an issue.

FREDRICKSON: Sure, sure.

BOSTELMAN: Other questions? Seeing none, you'll stay for close?

BREWER: You bet.

BOSTELMAN: OK. We will start with proponents. Just-- we will stay here for as long as it is. Just so folks know outside, it's getting rather icy and that, but just so you're aware. With that, we'll-- first-- anyone like to testify in support of LB399? Good afternoon. Welcome.

DAVID HUTCHINSON: David Hutchinson, D-a-v-i-d H-u-t-c-h-i-n-s-o-n. I support Tom Brewer's bill on GOA certified, that's Global Organic Association. And I'm Audobon certified. I've been organic for 35 years. Back to these wind turbines, I would like to see the people, especially the senators, 24 to 48 hours, stay within a half a mile or a quarter mile of these wind turbines and get educated. It's a problem. As far as the NRD, if they would stand by their mission statement. They talk about nitrates in the water. If there's nitrates in the water, I will guarantee you that there's farm chemicals in the water. And where do they go? In the streams, in the water. All-- Nebraska has more river miles than any other state in the Union. All

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the water goes southeast. You've got the pumping stations in North-- in Platte-- in on the Platte and over by Ashland. And where does all that chemical water from farming go? We need to think about these farm chemicals. They're bad. They kill the fish. It's bad for the soil. A lot of these soils are very dead. You need the fungus. You need the microbials in the soil to have healthy soil. You have healthy plants. We eat the plants, the food that we grow, and then we become healthy. And back to the energy thing about the hydro-- I mentioned that earlier-- we need to think about nuclear fusion and hydrogen. It's coming on board. We don't need to ruin this state with a bunch of solar panels and wind farms. Thank you.

BOSTELMAN: Thank you for your testimony. Are there questions from committee members? Seeing none, thank you for driving in for today. Next proponent. Anyone in support of LB399, please step forward. Any other supporters for LB399? Seeing none, anyone like to testify as an opponent of LB399, please step forward. Again, as those who testified, please move forward and populate the seats in the front row so we can move along a little bit so that will be fine. Good afternoon and welcome.

DAVID BRACHT: Good afternoon, Chairman Bostelman and members of the committee. In the interest of time, my full testimony is being handwritten. I'm-- or handed out. I'm going to try and cut it to the extent that I can. My name is David Bracht. That's spelled D-a-v-i-d, last name is B-r-a-c-h-t. I'm an attorney with Kutak Rock and also with-- a registered lobbyist with Catalyst Public Affairs. I'm testifying today in opposition to LB399 on behalf of Invenergy, LLC., NextEra Energy Resources and the other energy development companies that we work with. Both Invenergy and NextEra have had active wind developments in Nebraska for more than ten years and both are now also developing solar. I've spent much of my career in economic development, first as an ag banker and then as a practicing attorney, working with farmers and ranchers and businessmen all across the state. I also served as the Nebraska director of energy and head of the Nebraska Energy Office from 2015 through most of 2018. And in that role, I testified before this committee in 2016 on LB824, which we heard referenced. That bill aligned Nebraska's wind development regulation with the surrounding states by setting certain state-defined requirements while, while allowing for local control and input by Nebraska communities as to their siting. Following the passage of LB825, Nebraska experienced steady growth and grew from 810 megawatts in 2015 to 3,557 megawatts, roughly a four-fold increase, by the end of last year. And with that, Nebraska rose from 18th-- rose to 18th among all states. Now, I'd still note that we are well behind

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most of our surrounding states, less than half of the wind capacity of Kansas and, and just under a quarter of-- or just over a quarter of what is in Iowa. Total investment to date then, by the wind industry in Nebraska, is over \$6 billion. Nebraska landowners receive \$37 million per year and \$17 million in local property tax. The problem with LB399 is that it produce-- puts-- removes that balance and really puts us back into the same situation that we were before, allowing for and really, without giving any guidance to the Nebraska Power Review Board. They have no standard to determine what should be approved or not approved. Taking that away from-- and if I think about Antelope County, Holt County, Boone County, counties that have chosen to have wind, really taking that option away from them, an option that's paid for a lot of their schools thus far. I understand that some will say LB399 is just another opportunity for public input. Actually and with deference to the senator, he made it sound like there wasn't any opportunity for public input. I can tell you, having been a senator, the public is well heard at those local communities and it seems to me that's where that should be done rather than at the state regulatory process where people outside of the county would be making that decision. With that, I would encourage you to glance further at my testimony and I'd be happy to answer any questions.

BOSTELMAN: Thank you for your testimony. Questions from committee members? Senator Cavanaugh.

J. CAVANAUGH: Thank you, Chairman Bostelman. Thank you for being here. Mr.-- is it Brackt [PHONETIC]? Did I pronounce it--

DAVID BRACHT: Yep, close enough.

J. CAVANAUGH: So is the only thing this bill does is requires that private renewable generation projects go through the power, the Power Review Board?

DAVID BRACHT: Essentially, that's correct, but the impact of that, I think, is understated and probably not fully understood. Having worked in one fashion or another, including as a-- in a governmental role, by the time a wind project gets to the point of having an application, there's hundreds of thousands-- usually years worth of time, hundreds of thousands, probably millions of dollars anymore, particularly with the issues of getting power interconnects. And to have a really completely subjective standard that the Power Review Board-- because if you read through that-- and I tried to address it in my written comments. It, it essentially says that the Power Review Board should determine that even if a, a project met all of the requirements, that

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they would choose to deny an application if it-- if those criteria were outweighed by any testimony, evidence or opposition to the application offered by power suppliers, other interested parties or members of the public. So the question would be is how would that, how would the Power Review Board weigh that testimony against these very objective and scientific, for that matter, criteria? What would be the level of testimony or the level of other evidence? Further on top of that, does everyone get to report to that? At the county level, generally, then the county has a comprehensive plan. Do we want to have wind? Does this fit? And the concerns that Senator Brewer stated, for instance, in the Sandhills, very definitely then, their zoning would say this is not a suitable use in our area. On the other hand, if I'm in Holt County, which had-- still is the largest single wind farm, had 400 megawatts, that county chose to adopt that and frankly built a good bit of its new high school in O'Neill using the tax revenue from that. Just on the nameplate capacity tax with our 3,578-- or 3,557 megawatts at the end of the year, each year, the nameplate capacity tax, which is essentially the substitute for the personal property tax, that's \$12.7 million a year. There's probably another five to that-- \$4 or \$5 million in real estate tax.

J. CAVANAUGH: To that one county?

DAVID BRACHT: To-- it's statewide--

J. CAVANAUGH: Oh, OK.

DAVID BRACHT: --statewide. So-- and the point is, is Holt County chose to say, this works for us, we can farm around it. Let's use that tax revenue, as did Antelope County, as did Boone County, as did Wayne County. Counties that choose not to should have that right. Moving that decision to the Power Review Board without giving any standard, I think puts the Power Review Board in an untenable position.

J. CAVANAUGH: OK. So the-- does the Power Review Board have no say in terms of implementation of private generation at this point?

DAVID BRACHT: So, so there is a series of criteria that, for a project to be built, it has, has to be built. Now, realistically, if you have to think about this, these are all-- underscore the word private. If they don't have someone to buy the energy, they're not going to build it. And that's what we're seeing here is that we're having demand for-- some people are going to disagree with this, but the market is demanding that and--

J. CAVANAUGH: Can I, can I--

DAVID BRACHT: --then they're buying it. So that's what's going on.

J. CAVANAUGH: So I guess my question is not, you know, about the desirability and the political motivations. I guess you would agree that the Power Review Board has an obligation to consider the entire energy generation mix of the state and not necessarily just the one project's significance to the economic--

DAVID BRACHT: I would agree with that.

J. CAVANAUGH: And so they have a different consideration than that alone.

DAVID BRACHT: That's correct.

J. CAVANAUGH: And so they should have some role in the interconnection of a substantial project, right?

DAVID BRACHT: So-- and I guess the point I was trying to make is in Nebraska, our public power entities, the entities that are essentially signing up to purchase those projects, they all have elected boards and staff that are looking at what are the specific power needs that we need to serve within the state? The role of the Power Review Board is somewhat different. It's really much more balancing those interests between the different public power districts. And so without some standard-- and there is no standard for them determining that within the, within the bill.

J. CAVANAUGH: OK. Thank you.

BOSTELMAN: So if a public power district was going to build a wind generation facility or any generation facility, do they have to go before the Power Review Board?

DAVID BRACHT: If they were going to, to build it, but what they've chosen to do thus far--

BOSTELMAN: The question is, the question is if they're going to build any generation, do they have to go through the Power Review Board? Yes or no?

DAVID BRACHT: The answer is yes because there they would be then building an asset as opposed to buying just power.

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BOSTELMAN: So my question would be, why is it-- why-- they-- you say they don't have criteria. They wouldn't know. Wouldn't the criteria be the same as, as that the need for the generation is there for the Power Review Board? So if there's any, any new generation, I don't care what it is, any new generation within the state, their criteria that they would look at if they were going to have-- if they were-- if there was going to have a hearing would be is that generation needed? Are there stranded assets? Those would be the criteria that they would look at, wouldn't it? Not necessarily what, what a local planning board or a county commission would do.

DAVID BRACHT: So I think the answer to that, if, if you give me the latitude, is twofold, is first, that's not what the bill says. The bill doesn't say that. And second, again, what the utilities are purchasing is power. And so the utility could purchase power from a Kansas-- any kind of generation in Kansas or Iowa or anywhere else without going to the Power Review Board because, again, they're not investing the, the ratepayer assets into a hard asset.

BOSTELMAN: I appreciate that, but your testimony was that the Power Review Board would not have any criteria to know. So my comment, what my question was, is that they already have criteria for any-- for public power to build so why wouldn't that same criteria apply?

DAVID BRACHT: But that's not-- well--

BOSTELMAN: It's not in the bill, but you-- that's what you're testifying to.

DAVID BRACHT: So-- and again, I guess that was why I had added the second part is inevitably then what, what-- and what would then end up happening is you would put the position of the power-- the public power entities into saying, Do I go through an application process to build an asset here or should I just sign a public power purchase agreement with a Nebraska wind-- or with a Kansas wind farm or an Iowa wind farm or a South Dakota wind farm and not have any, any over-- or the Power Review Board has no impact on purchasing power and that's why this-- it isn't the same because they're just purchasing power from a private renewable power.

BOSTELMAN: But we're talking about building a new generation facility within the state of Nebraska.

DAVID BRACHT: By a, by a private entity.

BOSTELMAN: I didn't mean--

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DAVID BRACHT: I don't think you're suggesting that all new of anything should have to be approved by a government entity.

BOSTELMAN: But I think that's what in the bill is that if, that if a new generation wind is going to be built, that the Power Review Board would have a hearing. And your comment was, was that there's no criteria. My question was if public power does and they do it so then maybe criteria is there. That's all I'm getting at.

DAVID BRACHT: Sure.

BOSTELMAN: That's-- I mean, that's, that's all, so. Senator Cavanaugh.

J. CAVANAUGH: I just have one follow-up onto Senator Bostelman's question. So is the objection to just the drafting of the bill or the oversight at all?

DAVID BRACHT: Well, again, it's a conflicting oversight. By creating this, you, you create-- and the reason that-- and then attached to the testimony that I circulated, you'll see that there was a graph that looked like this. And I would take two points that were with that and those two points were two points that kind of reflect on that. As I said, Nebraska still is far behind our surrounding states in, in utilizing our wind. It's not because we don't have good wind. We have far, far better wind than Iowa. We have better wind than anywhere else. Our early law had really discouraged, because of the Power Review Board role, which no other state of our surrounding states has anything that is like that, and that creates the scenario that you're asking companies to invest millions of dollars and then be able to come-- and, and I understand what you're saying, Senator-- you and I-- it matters what you think. I understand. But I would have to agree to disagree with you on, on this point is that the standard you're talking about fits a different purpose here.

J. CAVANAUGH: So I--

DAVID BRACHT: What you see in this graph is, is it start-- once we had a predictable path--

J. CAVANAUGH: So my question---

DAVID BRACHT: --then you could do it.

J. CAVANAUGH: --is that, that--

DAVID BRACHT: Yeah.

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J. CAVANAUGH: Here's that question: Senator Bostelman maybe is referencing another standard, but my question is, is the objection to oversight at all or is it that there is a form of oversight with a specific standard that would be workable?

DAVID BRACHT: The-- you know, I think whenever-- obviously they work within a regulated, regulated industry all the time. Most of the companies that are developing wind, they're selling into-- to companies that have regulations. Generally that's rate based and that's different than we have because of our public power status here. The issue that I'm concerned about is looking at it from an economic development standpoint is we create the same situation that we had here that results in our state, which is a natural resource state, having better wind than any of the surrounding states, but because of our regulatory process, not, not being able to take advantage of that. And I think that the right place for that is in the local control.

J. CAVANAUGH: OK. Thanks.

BOSTELMAN: Other questions? Seeing none, thank you for your testimony.

DAVID BRACHT: Thank you.

BOSTELMAN: Good afternoon. Welcome,.

AL DAVIS: Al Davis, A-l D-a-v-i-s, and I'm not going to read my testimony. I'm just going to hand it out and just say that everything I needed to say is here because it is icy outside. I think the thing that-- when I read the bill, the thing that really stuck out to me was the language referring to how the Power Review Board could veto a project. I thought it was very vague and I think it looks like it would definitely draw a court case, which drags it out for many more years. The other point I would make is there is wind energy that is designed for export, Senator. So does that need to go through the power review process, as you were asking? Thank you.

BOSTELMAN: OK. Thank you. Are there any questions for the testifier? Seeing none, thank you. Appreciate it. Next opponent on LB399, please step forward. Again, if you're going to testify, please move to the front seats. That would be appreciated. Thank you. Welcome.

WILLIAM BEVANS: Good afternoon, Senators. My name is Bill Bevans and I'm here representing myself from an agricultural perspective.

BOSTELMAN: Spell your name, please. Spell your name, please.

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WILLIAM BEVANS: William, W-i-l-l-i-a-m, Bevans, B-e-v-a-n-s.

BOSTELMAN: OK. Thank you.

WILLIAM BEVANS: I am a poultry producer in Lancaster County. I am here today to request that you do not let LB255 and LB399 out of your committee. I am piggybacking my comments to both bills that you've listened to today. I am concerned that the combined impact of these bills would severely limit and likely prevent renewable energy projects, wind or solar, to be built in Nebraska. I believe that Nebraska ag and all Nebraska industries need to grow options for energy in our state and not limit them. Renewable, clean, safe energy is being produced at cost, which are competitive, if not cheaper, than coal and gas. There are exciting new opportunities in the clean energy industry being supported with federal funds, opportunities to provide jobs for Nebraskans, which could directly impact our rural communities and families. They can generate property taxes, which our schools depend on to-- for their funding. I'd like to share with you my experience being limited to natural gas as my primary energy source. And that's where I'd like to focus my comments is the need to have multiple options. In recent years, we have experienced winter weather events known as polar vortexes. In February of '21, we had a severe event which took our temperature down to minus 32 degrees on my farm. We didn't rise above zero for days. And you may recall that Texas froze experiencing record cold temperatures. Their gas utilities could not keep the natural gas flowing due to the combination of the extreme cold and excess demand. As a result, there was a huge spike in what my gas provider had to pay to keep gas flowing to its customers. I did not run out of gas during that event, but I am still paying for it today. My utility has assessed a 2021 polar vortex surcharge on my-- on every cubic foot of gas I use and that will continue until I have met their determined amount of excess payment I'm responsible for. I am currently installing a heat recovery system in my barns in hopes to reduce the gas usage. This is an expensive project which has required me to obtain a loan. I am also hoping to install heat pumps. Both of these systems require additional electricity. I hope to generate some or most of that electricity with a renewable energy power system. That is why I'm here today to ask you to protect the renewable energy transformation projects and kill these bills. And I'd entertain any questions.

BOSTELMAN: Thank you for your testimony. Are there any questions from committee members? Senator Brandt.

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BRANDT: Thank you, Chairman Bostelman. Thank you. Mr. Bevans. So how many kilowatts of use will this take if you have another polar vortex on those chicken barns?

WILLIAM BEVANS: Well, Senator, I don't have that number for you. And the truth is, it wouldn't eliminate the need to have that natural gas, but hopefully with these-- our energy savings systems-- my goal is to reduce the total amount of gas that I use in a barn by 50 percent or maybe more if we get the heat pumps installed.

BRANDT: So they would be a supplement to the existing system.

WILLIAM BEVANS: Yeah, they would be a gas-saving reduction system. And so hopefully, you know, any events in the future, the amount of excess gas I'd need would, you know, not be that substantial.

BRANDT: All right. Thank you.

BOSTELMAN: Other questions? Seeing none, thank you for your testimony. Thank you for coming in. Next opponent to LB399. Good afternoon again.

JOHN HANSEN: Mr. Chairman, members of the committee, good afternoon again. For the record, my name is John Hansen, J-o-h-n, Hansen, H-a-n-s-e-n, and I am the president of Nebraska Farmers Union. I have probably put on somewhere in the neighborhood of 500-plus public information meetings on the pluses and the minuses of renewable energy across the state of Nebraska in the last 15 years. And as this whole industry has developed, it's, it's interesting to me that here we had-- you know, looking at agriculture as a whole, I've worked my whole life to try to make sure that there is an economically viable way for young kids to come back to rural communities. And so there was, there was this clamor of folks saying, we need new capital investment. We need new tax base. We need new good-paying jobs. We need more farm income. And so here comes an industry and so I've spent most-- a lot of my life in both the private, you know, and public sector as a public official and president of Farmers Union trying to encourage economic development. And so here we have folks who show up and say, OK, we're here. And so the facts are, notwithstanding whether you like it or not, but the facts are that we have over \$6 billion in new capital investment and new tax base. And it's one of the most substantial things the state of Nebraska has ever done is to develop in 2007, LB629, a way to allow for private and public partnerships. And those private and public partnerships were able to offset the acute disadvantage that public power was at with other states because we're a 100 percent public power state. And the primary incentive for

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wind energy was an offset of federal income tax, a production tax credit. Well, obviously, public power wasn't eligible for that, but-- so by using a private-public partnership, we were able to harness that-- those incentives. And with local control helping guide the way, putting in sideboards, putting in minimum standards for decommissioning and all those other things, what we have, in my opinion, has been a very, very economically successful effort on the part of the state of Nebraska to be able to help do all of those things. And there's not one wind turbine on one landowner's property that didn't willingly sign an easement saying that they thought it was a good deal, right? So nobody forced them to do that and so why go backwards?

BOSTELMAN: OK. Thank you for your testimony. Are there questions from committee members? Senator Cavanaugh.

J. CAVANAUGH: Thank you, Chairman Bostelman. Thank you. Mr. Hansen for being here. So what purpose does this bill serve then?

JOHN HANSEN: This is not-- this bill addresses a problem that is not known to me.

J. CAVANAUGH: OK.

JOHN HANSEN: I-- you know, I, I mean, this is a, a back-and-forth thing. And so it-- if-- it is significant to me just sitting there looking at it and saying, you know, I mean, you have to go to your partner-- your private-sector partners and say, how does this work for you guys, right? And that's the same thing we would do if it were in some other area of economic development, say, OK, if we put in this provision, how does it work for you guys? And they go, gee, it would be awful. We would say, oh, well, we, we want your money, we want your capital investment, we want the benefits that come from that. So we don't want to-- you know, we don't want to run you out of the state. We want to put the welcome mat out. We want to make sure that you're welcome here and that our, our state is open for business. And so the fact that the folks who are our partners in the wind sector have already weighed in on this bill and said this is not helpful to us, then I think we ought to, we ought to take that at face value and say, oh, well, OK, we, we want public input, but we also don't want to chase you out of the state.

J. CAVANAUGH: So in Senator Brewer's opening, he talked about how basically these type of projects can kind of tear communities apart. My presumption is that the people you're talking about who would

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willingly sell an easement are not-- they're happy and their neighbors are mad, is that right?

JOHN HANSEN: Well, traditionally, some of the hardest opposition to wind projects are people who wanted a wind turbine and didn't get one. And so there's-- that's not true in all cases by any means, but it's still-- so, so what we have tried to do is to work with the developers and say you, you have to rethink the development model. And how do you go about the business of, of being sensitive to the neighbors' needs and spreading wind turbines over more ground, not less ground, so that one landowner doesn't get four turbines and his neighbor gets none? But spreading them out, having a bigger footprint and offering people in the area who are going to be impacted incentives. Whether they have a wind proj-- whether they have a wind turbine sited on their land or not, they're still getting payments. They're still getting part of the pie. So you spread that over a bigger area, as you should, because, you know, people are going to be impacted. And so you try to come up with a model that's more community friendly and that's based on the easements and the contracts that I have in my office and that I'm looking at. That seems to be the direction that the companies that are having success are going is that they're saying we have to find a way to accommodate the neighbors as well.

J. CAVANAUGH: So we might not have as many hurt feelings going forward?

JOHN HANSEN: I don't know that you could ever make everybody happy, but I--

J. CAVANAUGH: I said not as many.

JOHN HANSEN: --but, but not so many. I think you can make your percentages better and I think that that would be better for the community. We're also saying, you know, part of the money from the project needs to go to the, to the local school foundation, needs to go to other kind of community entities. And that, you know, this is a long-term arrangement and that you ought to, you know, try to make it work in a fashion that the community is comfortable with. And so, you know, at the end of the day, I think that, you know, this is a learning process. From all the time-- all the years I've been doing this, the current contract that I look at today is very different than the one I looked at 15 years ago. And that represents progress, but could we do more? Should we do more? Absolutely. But at the end of the day, if you want, if you want good neighbors, be one and that your

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right to not have a wind turbine is the same right that I have as a landowner to have a wind turbine if I want one.

J. CAVANAUGH: All right, thank you.

BOSTELMAN: My question is this: if you're my neighbor--

JOHN HANSEN: Uh-oh.

BOSTELMAN: I know. Watch out. Here we go.

JOHN HANSEN: I'm sorry.

BOSTELMAN: So, no, you're fine. You're fine. And it just goes to your last comment. And it's not a, not an argumentative one, but isn't there a right to farm in the state of Nebraska? In other words, what I'm saying, if you're my neighbor and you come in and I've been there, I've lived there, and now you come in and build a-- want to build a large [INAUDIBLE], right? Hogs, cattle, dairy, whatever it is. Does that current statute say that if I'm there first, you can't do that if that impedes upon my, my property, is that correct? The right to farm statute.

JOHN HANSEN: Yeah, pretty, pretty much.

BOSTELMAN: I mean, I mean--

JOHN HANSEN: And we--

BOSTELMAN: --and you can't come in and, and build something that's going to direct-- something like that directly if--

JOHN HANSEN: It's first in right, first in time.

BOSTELMAN: Right. OK, that's, that's what I was looking for.

JOHN HANSEN: --which is-- so what you and I do, if we both have lived there, you know, for six generations.

BOSTELMAN: OK, thank-- that's all. Thank you. Any other questions? Senator Jacobson.

JACOBSON: Thank you. Chairman Bostelman. Mr. Hansen, I guess I-- a couple of questions. You mentioned, you know, growth and economic value. And of course, I can go out and look at the price of farmland and what it's done in the last ten years. And there's, you know, lots of wealth that's been generated just from farmland values alone. Most

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people that are farmers, they want to farm because they want to farm, not that they want to farm wind turbines, OK? They're there to grow corn, soybeans, wheat, hay, grow cattle. That's, that's what farmers do. My concern is when we start talking about these contracts and the wealth that they're generating. What's the length of these contracts?

JOHN HANSEN: Well, there's-- most of them are for about, about 20 years with opportunities to go for additional years.

JACOBSON: Which should be a right of the, of the lessor to-- or the less-- lessor to extend it.

JOHN HANSEN: Right so if the-- so if you, if you have a good project and it's built properly and it operates the way it's supposed to, most of the wind turbine-- or wind projects I'm familiar with have a kind of operational life span built into their cash flow that, you know, goes into the-- their, their borrowing at the bank and all of those things that's in the 15 to 20 year. And then, you know, if the, if the guts of the system are good, you can update that and you can--

JACOBSON: Well--

JOHN HANSEN: --go for another--

JACOBSON: --the point of my question--

JOHN HANSEN: --period of time.

JACOBSON: --is that obviously these things are going to wear out and are going to have to have new turbines and, and so on and so forth. And my concern is when we start looking at new-age energy and really ultimately, let's face it, if we're going to really generate the power we need, it's going to be nuclear. It's either going to be small modular nuclear or it's-- or nuclear of some kind. And once we get to that point and we've got all these wind turbines scattered all over the countryside, then what? With all of these-- this, this concrete that's been dumped into the, into the ground, all of these towers that are sitting there, that's the concern that a lot of us have. And oh, by the way, what happens to that income stream to those people that have built their houses on sand, so to speak? Because the only reason these are working is because of the tax subsidy. And if you take that subsidy away because we found out a better way to produce power more efficiently, then it seems to me the shell game is over and that's my concern. What are your thoughts with regard to that?

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JOHN HANSEN: Well, I would say that the original shell game started with oil and the oil depletion allowance and the tax structure that followed those things, right?

JACOBSON: I get that but the fact of the matter-- oil, when you look at the percentage-- and we had a testifier earlier that wanted to mislead us all into thinking that oil is getting this huge subsidy. When you look at the percentage of fossil fuel and what it does for our energy in this country and you look at the amount of energy produced with wind and it's green, green is getting multiple times the subsidy that oil is. That's a false narrative in my mind. I-- what I don't understand is if we look back at the fact that what's going to be the least cost reduction at the end of the day, oil is going to be around without the subsidy; wind is not. And that's my concern is what happens to these, these contracts? What happens to these farmers who are building their future on these contracts when they go away? That's my concern. But I, I don't really need an answer. I think we-- we're all in a hurry so I'll call it a good deer and stop asking questions.

_____ : We should have stopped ten minutes ago.

BOSTELMAN: We'll be here, we'll be here for as long as you take--

JOHN HANSEN: I'll have to slide out of here.

BOSTELMAN: We'll be here for as long as it takes it.

JOHN HANSEN: And go home?

BOSTELMAN: No, we'll be here as long as it takes. Any other questions?

JOHN HANSEN: One, one closing comment. And we've talked about this before, but-- I've said it before the committee before, but I really think it's true and it's kind of go-- it kind of goes unsaid. But in my view of having done energy and renewable energy since the early '70s is that the biggest single subsidy that exists in energy world today is the unaccounted-for costs of carbon emissions, which do not show up in the cost equation. And it is a huge factor and it has to be. If you're going to put all of-- if you're going to put everything on the table, great. Let's put it all on the table. So that's my contribution to the table.

BOSTELMAN: OK. Thank you for your testimony.

JOHN HANSEN: Thank you very much.

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BOSTELMAN: Next opponent to LB399. Good afternoon. Welcome.

JOHN McCLURE: Good afternoon, Chairman Bostelman, members of the committee. My name is John McClure, J-o-h-n M-c-C-l-u-r-e. I'm here testifying on behalf of Nebraska Public Power District in opposition to this legislation. And I want to be very clear. Our primary concern is, is the description of the criteria here on page 5 on lines 10 through 15 where it's discussed. It, it, it talks about that certain testimony or evidence is not outweighed or is outweighed by evidence in opposition. And it's, it's not clear what the standard is. And that's really where our concern is, is what is the standard? I think a very legitimate question for this committee and for the Legislature is what is the appropriate criteria for approving renewable energy projects? I think that's a legitimate question for you to ask and decide what it is. Right now, for-- there's one set of criteria for public power and there's a much different set of criteria for the private sector. And, you know, that's something for you to ultimately determine what's fair, what's appropriate. I, I do think, you know, there's no perfect way to produce electricity. All, all forms of generation have attributes and weaknesses. This morning, I looked at SPP at 5:30; 70 percent of the electricity was coming from wind. And the way things are outside, that wouldn't surprise you. And that's-- there's positives associated with that, but there's negatives too. It cycles legacy generation in a way that the generation wasn't designed to. So there's, there's impacts in all directions. The other thing I think would be valuable for this committee to do-- I haven't done the research-- is, is on the question of how do our neighbors treat privately developed wind? Do they have requirements in terms of states for proving things? And whether that's, that's the direction you want to go-- but, but I don't think it's an absolute free pass in every state that surrounds us. But, but it's, it's certainly incumbent upon the committee to decide what's ultimately right. But the language that's in here just doesn't set any criteria. And I think you're going to hear that from the Power Review Board executive director, concerns about what is the standard that's being proposed here? How do they know which way to go based on what the language is here? Those are my comments.

BOSTELMAN: Thank you. Questions from the committee members? Senator Cavanaugh.

J. CAVANAUGH: Thank you, Chairman Bostelman. Thanks for being here, Mr. McClure. So if I'm hearing you right, you are not opposed to the idea of private generators having to go through the Power Review Board process. You just want it to be clear what that process would be.

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JOHN McCLURE: It needs to be clearer and it needs to be appropriate. And, and I can't tell you today because I haven't given it sufficient thought on what's appropriate. As was mentioned earlier, it was rolled back significantly in LB824 back in 2016, I believe. And you know, it may be that that, that level of-- the level that's in there now is appropriate or possibly something else.

J. CAVANAUGH: And your opposition, this doesn't actually apply to NPPD then, right--

JOHN McCLURE: No, this--

J. CAVANAUGH: --this bill?

JOHN McCLURE: --standard is for a privately developed facility.

J. CAVANAUGH: And so your concern is that this bill, as drafted, would make it harder for NPPD to enter into power purchase agreements. Is that why you're interested?

JOHN McCLURE: Well, my concern--

J. CAVANAUGH: Or you're just all-- here on altruism?

JOHN McCLURE: --my concern is I just don't think the standard in here works. And so I think that's problematic. And it's better to know that before it becomes law than to have a proceeding there and then have chaos and go to the Supreme Court and have the Supreme Court say, we don't know what the standard is.

J. CAVANAUGH: But my question is why does NPPD care about the standard for private power generation?

JOHN McCLURE: Well, because-- there's several reasons. One, we might be interested in a project that they're developing. It could be that someone says, well, gosh, this looks like a good standard. Let's make it apply to everybody. Let's eliminate the public convenience and necessity and not unnecessary duplicate facilities and most economically feasible that's close to where the standard is now for public power.

J. CAVANAUGH: OK. Thanks.

BOSTELMAN: So here several years ago-- I don't know, maybe it was three years ago, maybe it was more than that-- there was a company that came into Beatrice, I believe it was, and wanted to build, I

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believe, a coal plant. And they were refused that ability to build that. And I don't remember if NPPD was the one who stopped that or the Power Review Board stopped that. There was a private company was going to come in and build a plant in Beat-- in or near Beatrice and then they end up going to Kansas is what they did and built the plant in Kansas instead. Do you remember what I'm talking about?

JOHN McCLURE: I, I, I don't re-- I don't recall it being a coal plant. I think it might have been a natural gas plant. And I--

BOSTELMAN: Whichever.

JOHN McCLURE: --I think the situation I'm recalling, the application was withdrawn.

BOSTELMAN: But the reason why it was withdrawn, withdrawn was, was because it wasn't going to get approved anyway because either as it went through the Power Review Board process or NPPD had the authority to tell them no. So they've moved. And I don't know. I'm asking.

JOHN McCLURE: We wouldn't have authority to tell someone no. I think it was a concern about whether they could meet the standards of the Power Review Board with the particular project if it's the one I'm thinking of.

BOSTELMAN: So that-- OK. That's fine. Thank you. Any other questions? Seeing none, thank you for your testimony.

JOHN McCLURE: Thank you.

BOSTELMAN: Next opponent to LB399.

KAT WOERNER: Hello again.

BOSTELMAN: Good afternoon. Welcome back.

KAT WOERNER: Thank you, thank you. Awesome. So hi, everybody. My name is Kat Woerner, K-a-t W-o-e-r-n-e-r, and I'm here to ask you all to oppose LB399. Just like LB255, this legislation seems to be a problem looking for a solution and not a solution looking for a problem. Public power districts are directly elected by the people of Nebraska and we trust these elected officials to make decisions in our best interests. Just like LB255, this bill adds more red tape, more bureaucracy, more time and more expense to a project. After reading it, it seems it can delay the start of a project by up to half a year. And for what? The public power district board meetings are already

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open to the public and if we are upset about a project and they are working on, we can show up. Lord knows I've made a drive out to Columbus multiple times on my own dime because I care. We've already talked about this earlier, but more and more companies are setting decarbonization goals and are turning to Nebraska to invest in renewable energy to run their facilities. If we make it harder for them to invest in our state, then they'll just leave and take jobs and protect-- and potential tax revenue with them easily to one of our neighbors like Iowa. In 2018, one company has paid 1.8-- sorry, paid \$8.5 million in the state of Nebraska and meanwhile-- for local taxes. And meanwhile, in Iowa, one company has paid \$58 million in state and local taxes. And I'm a Nebraskan. I love it when we beat Iowa and I want to see us do it more. I also want to express an apology to Senator Cavanaugh since your gratitude is short lived. I'm not playing-- planning to stay in Nebraska and I frankly really don't want to. I've been showing up to these meetings since I was 16 years old, so for the past six years. That may mean very little to you all, but that's a little over a fourth of my life. And then-- because I'm 22. I went through, worked my butt off, got my degrees at UNL and I'm still sitting in this room. It's bamboozling to me to see what I learned a mile away from here at UNL isn't the information talked about or understood by many people in this room. I empathize heavily that a lot of you-- this is primarily a volunteer position and it's largely not in your industry, but the misinformation, the misinformation that I am hearing is disheartening and would be easily figured out just with conversations with people at the university, NPPD, Southwest Power Pool, any of the public power districts. Sure, I can stay and change it or I can go somewhere else where I can have supports, where I can have policymakers who take what I care about seriously and where I don't have to spend entire afternoons sitting in this room. After visiting other places and understanding how it could be different, yeah, Nebraska is not for everyone. Nebraska is not for me and policies like this that feel like we're moving backward and not moving forward is a huge part of the reason.

BOSTELMAN: Thank you for your testimony. Any questions? Senator Cavanaugh.

J. CAVANAUGH: Thank you, Chairman Bostelman. Thank you for your time, Ms. Woerner. Well, I got to ask, where are you going?

KAT WOERNER: So to be entirely honest, I was supposed to do a study abroad trip at Oxford University, but it was canceled. So I actually have just been in Nebraska for the-- I got back on Thursday and I just

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spent the past eight months backpacking across Europe and met and fell in love with a man in Germany and have a job set up there.

J. CAVANAUGH: Oh, so it's not another state that we're losing to.

KAT WOERNER: Yeah, it's another country.

J. CAVANAUGH: OK. All right. Well, thanks for being here.

KAT WOERNER: Thank you.

BOSTELMAN: OK, seeing no other questions, thank you for your testimony. Thanks for coming in.

KAT WOERNER: Thank you.

BOSTELMAN: Next opponent for LB399. Any other opponents? Anyone in neutral capacity on LB399, please come forward. Welcome back.

BILL HAWKINS: Senator Bostelman and members of the Judic-- or no, not Judiciary-- Natural Resources Committee. My name is Bill Hawkins, B-i-l-l H-a-w-k-i-n-s. I'm a lifelong Nebraska resident and I have chosen to stay here and not leave this great state. I enjoy it here. And the thing I enjoy most on my 50 acres that I invested my life in just north of Lincoln, a mile south of Branched Oak Lake, is my incredible views of my great state from my hilltop years ago where I have a community kite-flying con-- or festival: Let's go Fly Kites with Farmer Bill. We were privileged to see the Northern Lights. It was a unique phenomena and I stood out on my replanted prairie of 40 years and was able to see the Northern Lights come up on the northern ridge out by Senator Bostelman's district, these green columns of lights coming up. That ridge out there of Senator Bostelman's district that I have no voting ability to vote out a county commissioner or other entities in other counties is prime for wind development. To cover that ridge with wind towers 60 feet-- 600 feet tall with flashing red lights constantly, it will destroy my quality of life and yet I can't vote against it. This bill, which none of us have discussed, is actually about the people's right to a public hearing. Nobody has discussed that. And yet we have the Farm Bureau gentleman/lobbyist who's spent his life being a paid lobbyist who I don't think is representing his actual farmers, wants to sell off our state as a cash cow. That worked great with Altna [SIC] at Mead, I think. We poisoned the hell out of that place collecting seed corn from all over the country. Isn't that great? This same gentleman stated, We can create an industry from recycling these unrecyclable wind blades. To the young lady, our green energy, you have to look at

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the carbon footprint before a wind generation tower or a solar panel farm gets here. I'm an environmentalist and I believe in conserving energy and not burning up our planet by using these electronic devices. So this is about-- let me-- if I could finish my thought. This is about the people's right to a public hearing in front of a public review board. It isn't about stopping these projects. It's about putting it before a public review board and requiring a public hearing so the people can speak to the issue. So that's all this bill is about and I thank Senator Brewer for bringing it and I appreciate this long afternoon that the Natural Resources District [SIC] has sat through. So thank you so very much.

BOSTELMAN: Thank you. Questions from committee members? And just briefly, just for the record, Mr. Hansen is with Nebraska Farmers Union. He's not Farm Bureau, just for the record.

BILL HAWKINS: Okay.

JACOBSON: That was my question. I wanted to get that clarified on the record.

BILL HAWKINS: I would--

BOSTELMAN: Senator Moser.

MOSER: Are you for this bill or against it?

BILL HAWKINS: I would say I'm neutral as I'm speaking in. And a neutral position is a very fine line because you have the opposition here and--

MOSER: And you've-- but are you thinking that we should improve this bill or you think we shouldn't?

BILL HAWKINS: And if I could finish, you have the opposition and you have the proponents and then in the middle you have a neutral position. That in a neutral position, if I was strictly neutral, I wouldn't be here. I wouldn't care. But as a neutral position, I have a position on the opposition side and on the proponent side and so you have to come together in that neutral position. And--

MOSER: Well, we, we try to kind of distill the input of all the citizens and consider, you know, what they're for, what they're against. And I was just having problems deciphering, you know, what you're trying to tell us.

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BILL HAWKINS: Well, yes. And, and what I would say is, again, that this bill, for me in a neutral position, doesn't go far enough because I believe that--

MOSER: So you don't want more wind towers anywhere?

BILL HAWKINS: I believe that Nebraska needs to develop a sensible, sustainable power system that looks at all positions and comes up with something that is beneficial for the future of Nebraska. And no, I do not think that the carbon footprint of wind towers and solar panel fields-- I believe in distributive energy. If we were to just cover the city of Omaha with solar panels where it is beneficial and works, we would not need to sell out the great state of Nebraska and our wide open spaces with giant wind towers everywhere that are going to have to be decommissioned.

MOSER: That's good. I think I'm understanding you now. Thank you.

BILL HAWKINS: Okay. Well-- and I appreciate the question and, and I understand your position.

BOSTELMAN: OK. Other questions? Seeing none, thank you for coming in and for your testimony.

BILL HAWKINS: And I thank you much for your time and interest, gentlemen and ladies.

BOSTELMAN: Next neutral testifier, please. Good afternoon.

TIM TEXEL: Good afternoon, Senator Bostelman, members of the committee. My name is Tim Texel. It's T-i-m, last name is T-e-x-e-l, and I'm the executive director and general counsel for the Nebraska Power Review Board. I won't go through what that is. I think you've heard enough about us, but we would be the agency with oversight over the changes in this bill. The Power Review Board takes no position on the policy of LB399, but the board did authorize me to express concerns about the proposed amendment to Section 70-1014.02. I think you-- as you've heard a number of other testifiers about the vagueness in the new subsection (5) on page 5-- not subsection (5) of the bill, subsection (5) of the statute is lines 10 through 15 on page 5 and Mr. McClure had stated that same section. We are concerned about the vagueness of that. The new procedure would be the developer has to file an application to construct a proposed facility with the board. They would set out four certifications, just like developers do under the current process. Then within ten days, the board sets a date for a hearing and at the public hearing, the board would accept input and

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then we could-- the board could decide whether or not the testimony outweighs the criteria for approval. So that's all the more guidance we get. Is that it out-- it would outweigh the approval criteria so we're not exactly sure what to look for. And one of my concerns is if it went to a court on an appeal, they'd probably-- or I think there's a reasonable chance they'd say, we don't have a lot of guidance on that. And in the criminal arena, they call it void for vagueness. This would be a civil statute, but I think the court would have the same concern or at least potentially that we don't have a lot of standards. And our standard of review with the court is whether we're arbitrary and capricious. One of my concerns is all we have as guidance is that it outweighs the four approval criteria. So I already spoke to Senator Brewer's staff about this topic and I think we could probably come up with some examples of things that would outweigh it; issues like the harmonics or the strobe effects, things like that that you could plug in that might give us some guidance. A couple of clarifications: the, the-- on LB824 in 2016, there were not public hearings prior to that. The board conducts evidentiary hearings. So you have to have standing and it's more like a courtroom. We don't have a public hearing very often before our board. We're set up for evidentiary hearings with parties that can speak, not policy matters like the NPPD or OPPD board would have, where then they can make changes accordingly. Ours is either approval or not based on the evidence before us. So it's much more similar to a court than a public hearing. And Senator Brandt, I think you had a question about the size, the capacity of the plant or the facility. Unless it's under-- may I continue? Unless it's under PURPA, Public Utility Regulatory Policies Act of 1978, where a net metering facility has some exemption, they all have to come to us if it's a commercial generation facility. So there's-- you know, even if it's a 200-kilowatt facility, if they're producing electricity for sale to third parties and not just for themselves, then they'd have to bring it to us. So there's no minimum threshold of, like, a megawatt or something like that under our current statutes. And then the-- in response to Senator Bostelman's questions about the Beatrice facility, I believe that was Bluestem Energy. They filed an application before the Power Review Board. It was a gas-- natural gas facility and it was withdrawn before we had a hearing on it. So the reasons for it, we'd have to ask Bluestem Energy. I think if I remember right, OPPD and NPPD intervened, but we never got to a hearing on it. They didn't protest it, they just simply intervened as a petition intervention. So I think that's a point of clarification so I'd be happy to address any questions.

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BOSTELMAN: Anybody-- no and I appreciate that. My comment to that specifically is, is that you had a hearing on a private-- scheduled a hearing on a private ener-- developed gas plant. There's intervention-- intervening by NPPD and OPPD on it, but that you could have a hearing on where you receive testimony. But what this bill says or what they're talking about is to have a, I would say, a similar hearing on any development that Senator Brewer is talking about, that you could have a similar hearing.

TIM TEXEL: Well, the difference to me, which as an attorney would be significant, is this is a public hearing as opposed to an evidentiary hearing like a court. So typically, our hearings are like a court proceeding. You have the attorneys. You have to have-- you have to show standing. We have specific rulings. We have to issue a written order. On this one, the hearing itself would be a public hearing. So basically, as long as anything anybody says is germane to the proceeding, you don't have to show standing, I don't think, because it's a public hearing, so--

BOSTELMAN: So if he made it that, would that be different?

TIM TEXEL: If we made it-- this would be a public hearing under the bill.

BOSTELMAN: Not a-- but if he changed it where it was not.

TIM TEXEL: To be evidentiary?

BOSTELMAN: Yes.

TIM TEXEL: Then what?

BOSTELMAN: Well, then could you have the hearing?

TIM TEXEL: Well, sure we could-- I mean, originally before LB824, that's the way it was. The private entities had to come before us, which is why the Beatrice facility had to for Bluestem, because we had authority over any commercial generation facility.

BOSTELMAN: So now if I want to build a gas, a coal--

TIM TEXEL: Whatever.

BOSTELMAN: -any, anything, I have to come, but if I do a wind or solar, I don't.

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TIM TEXEL: If it's private.

BOSTELMAN: Right.

TIM TEXEL: If it's a privately-- under current law, if it's a privately developed renewable energy generation facility--

BOSTELMAN: I don't, but if--

TIM TEXEL: --you don't have to, but the public power entities do.

BOSTELMAN: Right, but if I'm a-- if I want to build a coal or a gas, I do.

TIM TEXEL: If you're public or private.

BOSTELMAN: If it's private.

TIM TEXEL: Yes, even if it's private, if they're building a natural gas or coal, they don't have the exemption that you do for the renewable facilities.

BOSTELMAN: So-- OK. Also, the other question I have is don't surrounding states have PUCs?

TIM TEXEL: Have what?

BOSTELMAN: PUCs, public utility commissions.

TIM TEXEL: Public utility commissions?

BOSTELMAN: Yes.

TIM TEXEL: They have some form of that, whether it's a corporation commission, public service commission, public utility commission, lots of names. They basically all do the same thing where Nebraska's the anomaly in all the states that we do not have that. They all have rate-setting authority--

BOSTELMAN: But.

TIM TEXEL: --over their utilities--

BOSTELMAN: And they have regulatory authority over everything.

TIM TEXEL: They have a very broad authority. And they set-- they, they have to approve the rates that the utilities want to set. And in fact,

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in most other states, the public utility commissions, whatever their name is, has authority over the private entities. And a lot of times, the public power entities are exempt because they have the local control and they have elected bodies. So it's, it's a little different than Nebraska is set up, but they aren't entirely public power either.

BOSTELMAN: So it's interesting where it seems to work in other states where a private developer can go before a body, a hearing, whatever it is, and that's not a problem, but here it is a problem, so.

TIM TEXEL: And I don't know about their authority over building the generation. They have to go to them for rate-setting authority and some other issues. I think they have much broader public complaint processes through those public utility commissions. So they have a different standard in a lot of those states.

BOSTELMAN: Senator Jacobson.

JACOBSON: Thank you. I just have one quick question. I know it's late in the day, but you did happen to spur a question. And so if I understand the questions that-- the answers that you gave to Chairman Bostelman, if a private entity wants to build wind generation today, they're not subject to anything with the Power Review Board.

TIM TEXEL: Well, they would be subject to county commissions, things like that.

JACOBSON: But they wouldn't be to the Power Review Board.

TIM TEXEL: Not for an approval process. They right now would have to--

JACOBSON: I'd ask about-- that's my question. But, but you're telling me if they build a gas-fired plant or a coal-fired plant, they would be subject to it and that you would obviously have standards in place that you would measure them by, correct?

TIM TEXEL: Yes, yes.

JACOBSON: Because I heard earlier in testimony that you have no standards, that you don't know what the standards would be. Wouldn't they become the similar standards of what they would be on, on, on gas and coal?

TIM TEXEL: Well, no because this bill sets out different standards under this bill.

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JACOBSON: But, but what if they were set to the same standards that you're doing on--

TIM TEXEL: Well, then we, then we'd have those standards.

JACOBSON: OK.

TIM TEXEL: Right--

JACOBSON: So what we're saying again is that we're missing the standards and we're missing the format in which it should be presented, but that seems to be the two things missing in the bill. Is that right?

TIM TEXEL: Well, that, that would be up to Senator Brewer and--

JACOBSON: But I guess-- let me rephrase that then. If, if, if, if Senator Brewer were to change it to where it was going to be instead of a public hearing, going through the process that, that you guys have set up. And he would, and he would include the standards that you use for other private plants being built, that we would have something that's consistent then, where right now, it seems like we're discriminating against fossil fuel plants and giving a free pass for the green plants.

TIM TEXEL: They're treated differently and we do have those standards for the other-- public power and nonrenewables for private.

JACOBSON: Well, thank you. I want to, I want to stop because I'm really anxious to hear Senator Brewer's close.

TIM TEXEL: And if I could add one caveat, the only thing that the privates have to do now under the current law is they do have to come to us and file a letter or a certification to us with those four criteria that would have to be outweighed under this bill. So we don't have approval authority, but I have to respond within ten days. So there's some modicum of juris-- nominal jurisdiction that they do have to certify four things to me and then I send a letter. My board members don't see it. So I just want to clarify that, but it's not an approval process per se.

JACOBSON: Thank you.

BOSTELMAN: Senator Cavanaugh.

J. CAVANAUGH: Thank you, Chairman Bostelman. Thank you for being here, Mr. Texel. So that's just basically putting it on your radar so you know generation that's out there, the whole mix?

TIM TEXEL: And the-- I think there's a certification that they're going to deal with the local utility for interconnection. They, they're going to have or will work with Game and Parks for the protection of species because we do that in our review as part of it. We make sure Game and Parks reviews it and gives us a recommendation on that. So there are certain things in there that if you just gave them a complete pass, they may not have to do them. So I think the Legislature wanted to capture those, the decommissioning, either they have to follow what the county sets for decommissioning or we're a backstop to it. We've never had to do it, but we are the backstop. If a county would say we're not setting up any decommissioning standards, we could set up some.

J. CAVANAUGH: So just to follow on that, they-- so if the county doesn't set decommissioning standards, you will set them. You don't set-- you don't have a standard-- decommissioning standards right now?

TIM TEXEL: No, we've never had to do it. Every county wants to maintain local control so my board and I aren't anxious to do that. That's not something we normally do. We'd certainly do it at the Legislature-- since it's in the current statute, but we never had to.

J. CAVANAUGH: So counties want to maintain local control. The conversation we're having here is about putting another layer on top of that and we've heard a lot of objection-- the objection to the bill is taking away local control. Is-- do you think that these entities should be regulated under the Power Review Board then, [INAUDIBLE] process?

TIM TEXEL: Well, I guess I would say that's a policy decision for the Legislature. So I-- that would kind of put me in a position of taking a position for or against and we're very careful about we're not a policy-setting body. We want to be a policy implementing. So we don't really take a position on whether they should come before us or not, officially, because, you know, we want to be unbiased and neutral. And I want to remain that way too because I'm the hearing officer for those hearings. So I don't-- I want to be responsive to you, but I don't want to take a specific position on whether the Legislature should or should not. That's a policy decision.

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J. CAVANAUGH: And so this is a policy decision specifically to spur an industry is what it sounds like, historical perspective.

TIM TEXEL: I, I-- that's my recollection of LB824 and I think there were-- LB824 in 2016 too, I remember a lot of arguments that some of-- that they operate differently with private entities. It's, it's private funds instead of public funds so why is the Power Review Board reviewing it? So there were various arguments about it.

J. CAVANAUGH: Is the industry mature enough that it no longer requires this incentive?

TIM TEXEL: Well, I guess that's a better question for developers to answer than me because they're on that side of things and whether they believe it's mature enough or not, I'm not really privy to their investiture, you know, how they're getting their money.

J. CAVANAUGH: They're going to tell us no because they don't want us to regulate them.

TIM TEXEL: But I don't know that I'm able to answer that question properly because I don't see behind the scenes what they're doing.

J. CAVANAUGH: Are you seeing more and more of these certifications coming in year over year or is it-- I mean, we saw this-- we have a chart here that's showing a-- I think this is installed capacity, but are you-- is that reflected? The incentivizing of the industry, has it-- is it being successful over these years?

TIM TEXEL: I think it was. It's tapered off. I did have my paralegal do some research on how many installations of it there was. And of course I was worried about the numbers, not so much the megawatts, the capacity, but there were a lot of them in the early years. They've tapered off considerably now. I think the capacity is still effective because when they do put one in, a lot of times to take the economies of scale into account, you know, they're putting in 200-, 300-megawatt wind farm and having a PPA with it. So there's still a lot of capacity. But we don't see near the numbers we did the first few years after LB824. There still are some, but they're more-- they're less frequent.

J. CAVANAUGH: And one last question. So the fiscal note on this doesn't show any cost to implement hearings on this. Wouldn't cost anything or be absorbed by the--

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TIM TEXEL: It's a public hearing so, you know, we wouldn't have a court reporter. I'm already paid. I'm staff. We normally hold our hearings in conjunction with our monthly meetings so the board's already there. And then after the public meeting, we hold our hearings. So that's why I thought there wouldn't be any, any more than nominal increase for it. I'm sure it might make a little bit, but it wouldn't be any meaningful amount to put in the fiscal note because all those factors I just gave you, we control the cost by doing that. So we would just have a longer day essentially than we normally do.

J. CAVANAUGH: So if we made the changes that were suggested by Senator Bostelman and Senator Jacobson, would that change in the nature of the hearing? Would that have a cost?

TIM TEXEL: If they're evidentiary, yes, because then we'd have a court reporter and those are costs. And then you'd have, you'd probably have the attorneys involved. There might be motions and, you know, out-- the, you know, pre-conference hearings, things like that. So that changes the nature of it if there are evidentiary hearings that operate more like a court in a formal administrative tribunal than a public hearing. Yes, especially for the court reporter. That's one of our out-of-pocket expenses. If it's a full-day hearing, it's a long hearing, you know, we can have \$1,500 in one hearing on a court reporter cost if it's a full day.

J. CAVANAUGH: Thank you.

BOSTELMAN: Other questions? Seeing none, thank you for your testimony.

TIM TEXEL: Thank you.

BOSTELMAN: Next neutral testifier.

SHELLEY SAHLING-ZART: I will be very brief. Once again, Shelley Sahling-Zart, S-h-e-l-l-e-y S-a-h-l-i-n-g-Z-a-r-t, testifying neutral on LB399 for Lincoln Electric System. I just wanted to address some of the confusion on the different standards and I'm hoping maybe I can clear that up a little bit. So there is 70-1014 in the statute, which is the longstanding provision by which we file applications for generation and any other private entity for anything other than a renewable. We would make an application under 70-1014. There's a process and there's criteria for that. Last bill we talked about, there is 70-1014.01, which we put in a number of special generation provisions that allowed-- that was when renewables were just coming along and it allowed for things like seabeds and some small

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generations. Then there's 70-1014.02, which is the section that LB399 is amending. And those were provisions put in place as part of LB824 that provided for these separate provisions for privately developed renewable energy generation. I hope that kind of makes it make sense. Everything else would be under 1014 other than this one provision, but they are separate sections of statute, which is where the different standards come in. Hopefully that helped.

BOSTELMAN: Questions? Seeing none, thank you.

SHELLEY SAHLING-ZART: Yep.

BOSTELMAN: Anyone else like to testify in the neutral capacity? Any others testifying in the neutral capacity? Seeing none, Senator Brewer may close. We do have 51 letters of-- in opposition to LB399. Senator Brewer, you're welcome to close.

BREWER: Thank you, Mr. Chairman. All right. I'm glad Shelley came up. That, that helped to have her kind of define that. Understand that this paragraph that everyone has talked about on page 5 was written a bit vague because normally state agencies do not want to be micromanaged. So don't get me wrong, I am more than happy to micromanage to the hilt on this. So we can, we can talk about what that needs to look like as far as an amendment. But back to the, to the bill itself, we have two standards. We have public power-owned generation, which cannot be redundant. And then you have privately owned generation, which can be redundant. Does that make sense? Does that kind of fit on, on how some of this shapes? So when we were talking about the Beatrice one, that was going to be redundant. Evidently not necessary because the, the decision was made to pull that application. Now the strange part about it is if I believe-- if I remember right, they moved just south of the border and they're still providing resources here in Nebraska so I'm sure there's more to the story there than I know. We had a lot of folks come up and gave all kinds of great information about wind energy. I will tell you that-- I've said this before, there is no need to have any degree of accuracy or honesty sitting in this chair, because anybody that comes up here can say anything they want and it becomes part of the record. I would love to see where the \$6 billion-- break it out by county and, and how all that breaks out because I believe that's, that's a very big number. The decommissioning is the thing that I hear the most about from those that are angry. And that's, that's the thing that I guess troubles me when everyone wants to prance up here and say, everybody loves it. You go to these counties-- I was down in Gage County, Beatrice, and that room was full of hundreds of people who didn't want

it. And there were six paid suits that were there for the different wind companies to speak in favor of it. Now, I think at a time when it first started coming in, it was kind of the cool, new guy thing. And folks said, well, you know, it's, it's something that's happening. It's, it's, it's going to be OK, maybe, but over time, when they started to have the negative effects to it. And then when you have a decommissioning-- and that's the other thing I would tell the Power Review Board is they should make every decommissioning plan public because they will hide those so that you can't see what it is. And my prediction is that in a, in a not too distant future as these start to wear out, there are going to be counties that are all of a sudden going to realize that the ones that promised to compensate that county if those wind towers become an issue that had to be taken care of by someone other than the ones that build them, that that county is going to be responsible. Then the county is going to come back to the state and say, you know what? This is hundreds of thousands of dollars and we don't have it. We can't do it. You got to help us. And now all of a sudden, the state's going to have this giant bill for this great idea that people had before modular nukes and other things came in and we're going to figure out how to pay that bill. And then these people that prance up here and tell about all the great, wonderful things and all the money that everybody's making now need to be accountable for the results of all that. So I hope that's part of the plan. But this is getting back to the whole point of this. There should be a way to have a public hearing to be able to discuss these things because what I've seen in my district is the planning board has meetings. Folks are allowed to come in and testify. Then they make the recommendation to the county commissioners. In some cases, the big wind companies will come in and for all practical purposes, buy off the commission. They'll either have family members that are, that are on-- of those on the commission that are part of the wind project or they'll be directly affected by it. And then they'll buy into the, to the option to have in the wind against the recommendations from the people and the planning committee. I think the Power Review Board has the ability to play a part and, and shape this to be a much fairer fight. And that was the idea behind this bill. So anyway, I'll take questions now.

BOSTELMAN: Questions for Senator Brewer?

BREWER: Everybody is ready to go home.

BOSTELMAN: Seeing none, that will close the hearing on LB399. Thank you.