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On The Front Lines: Advocates Prevail In State RPS Fight

An up-close examination of how Kansas' RPS survived recent attacks yields some important lessons for the wind industry.

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There can be no doubt about it – policies favorable to renewable energy are under attack in the U.S. Historically, the U.S. wind industry has benefited primarily from two types of government policies: tax incentives and renewable portfolio standards (RPS). Tax incentives help to increase the demand for renewable energy by driving prices down, but the past year has clearly illustrated that tax incentives are subject to the challenges of the legislative process.

RPS policies, by comparison, require public utilities to purchase or generate a certain percentage of their generation portfolios from renewable resources, thus guaranteeing that renewable projects will have sufficient demand for their product.

Due to the short-term nature of tax incentives for renewable energy projects, RPS policies have become an increasingly important driver for encouraging development of new projects.

While the ongoing battle over the federal production tax credit has received the majority of attention over the last few months, an equally important but far more subtle battle is being waged against RPS policies in state capitols across the country.

In the 2013 legislative session alone, 14 of the 29 states with RPS policies in place have considered legislation to repeal or reduce state RPS requirements. In many ways, Kansas has stood at the forefront of these attacks.

Fortunately, despite a heavily conservative legislature and a well-coordinated opposition, advocates for the Kansas RPS have successfully defeated anti-RPS legislation this year, and the lessons that have been learned in Kansas may well prove instructive when other state RPS policies come under attack.

Timing

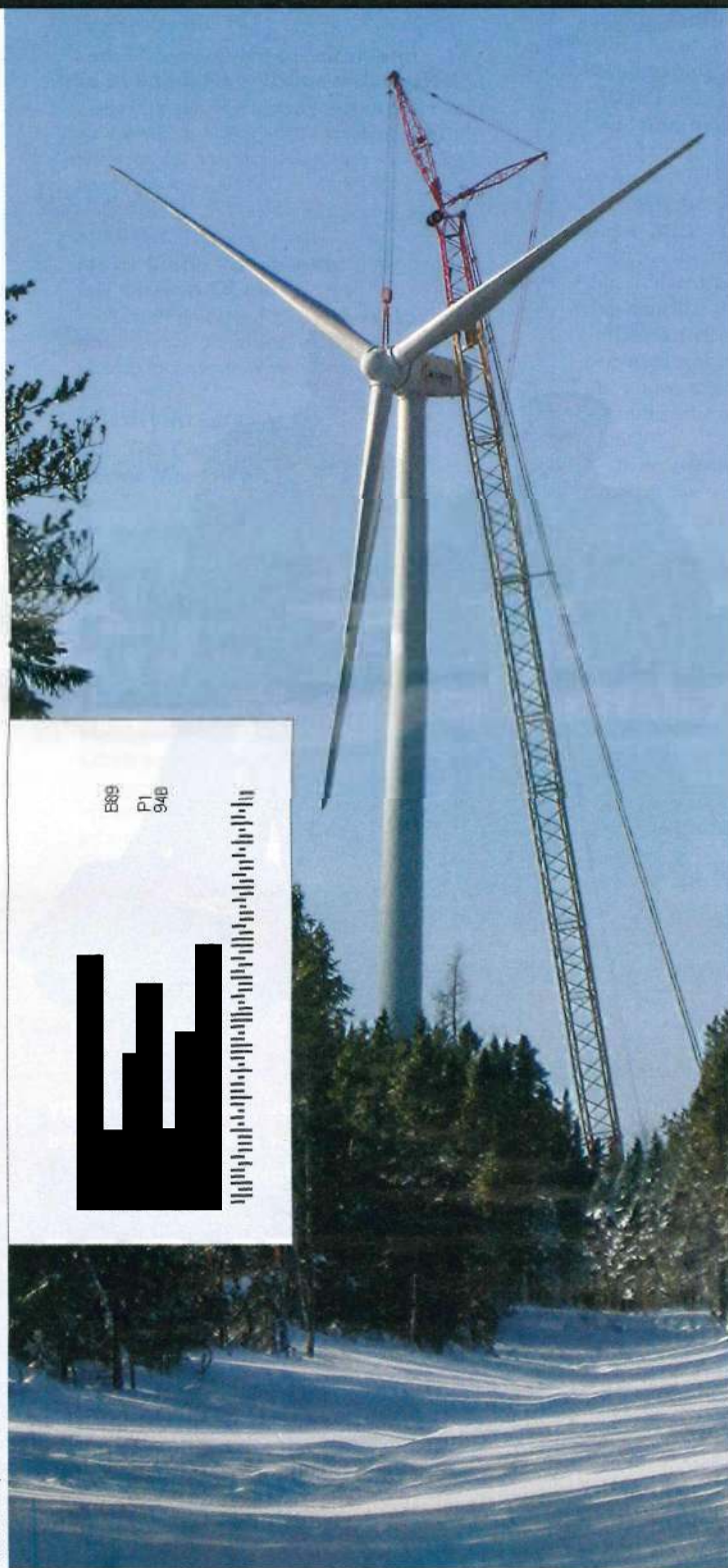
The last two election cycles have given rise to a number of factors that

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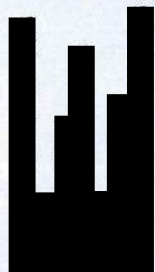
24 LAMEQUE

The 45 MW Lameque wind farm underscores the importance of establishing community relations. If not for the involvement of a local cooperative – which helped negotiate land lease agreements with 68 landowners – the wind farm would not have been completed. For further proof, just ask one local, who bluntly told NAW, “No co-op, no wind farm.”

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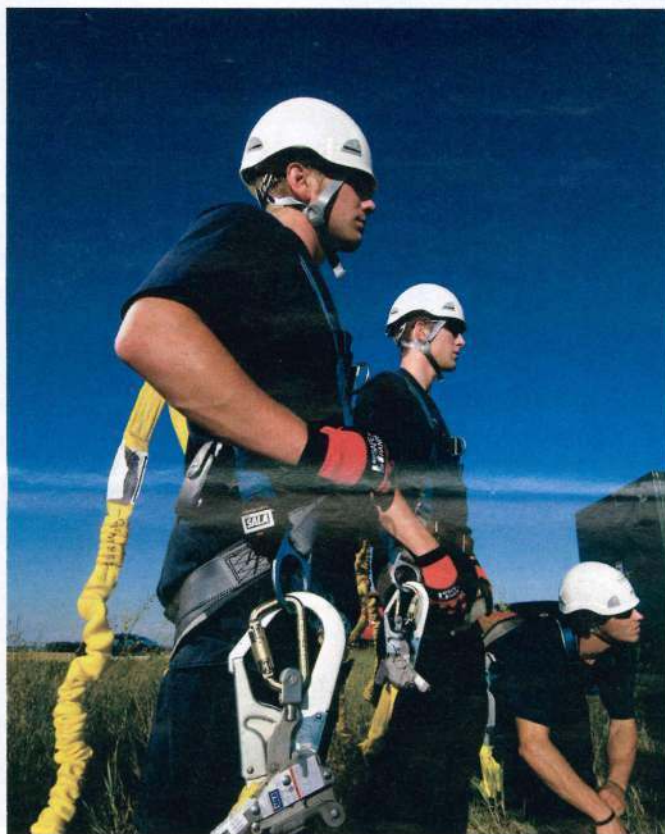


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Cover Story

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have caused the 2013 legislative session to be particularly unfriendly to renewable energy, centered on a dramatic shift of political power in state legislatures toward conservative leaders. In many ways, this shift began with decisive Republican Party victories in the 2010 elections. Many states gained decisive Republican majorities, and in states where the Republican Party already held a majority, many moderate or centrist Republicans were defeated by more polarized candidates.

One consequence of this shift in power was an extraordinarily high level of turnover, with many established Democrats or moderate Republicans being replaced by first-term Republican legislators. In total, approximately 25% of the available seats across the country in both 2010 and 2012 went to first-term legislators. Collectively, this means that, on average, approximately half of the state legislators in the country have two years or less of experience. In Kansas, for example, 54% of the state legislators in 2013 are in their first or second term.

The recent gains by the Republican Party, coupled with the unusually high number of new legislators, have created an ideal environment for challenging state RPS policies:

- Legislators with dogmatic philosophical convictions but limited legislative experience;
- Significant turnover in key leadership positions;
- A lack of institutional memory;
- A lack of cross-party partnerships; and
- Legislators fearing future primary attacks for being too moderate.

Coordinated assault

For RPS opponents, the tumultuous 2013 legislative session presents a perfect opportunity, but it is no small feat to overturn an existing statute. In order to seriously attack an entrenched RPS policy, opponents need two things: a catalyst that justifies re-examination of the policies and evidence indicating that RPS policies are economically harmful.

Unfortunately, several groups have accepted this challenge. Organizations including Americans for Prosperity, the Heartland Institute, the Beacon Hill Institute and the American Legislative Exchange Council (ALEC) have presented coordinated, quasi-economic anti-RPS arguments to legislators across the country, and the end result has been a rash of anti-RPS legislation being introduced by state legislators.

Kansas provides an excellent ex-

ample of how this scenario typically plays out. In July 2012, the Beacon Hill Institute, a conservative think tank based out of Suffolk University, released a report that claimed to calculate the economic impacts of the Kansas RPS on the state. To give the report some geographical legitimacy, Beacon Hill partnered with a local libertarian nonprofit organization, the Kansas Policy Institute.

Following the standard template utilized in other states, Beacon Hill's Kansas report was based on a proprietary economic modeling program known as the State Tax Analysis Modeling Program (STAMP). At its core, STAMP is designed to predict negative economic impacts of proposed city tax initiatives. As Beacon Hill explains in promotional materials, "STAMP is a comprehensive model of the state economy, designed to capture the principal effects of city tax changes on that economy."

Juxtaposing its tax formula for city tax initiatives with energy policy, Beacon Hill predicted that Kansas' RPS goal of 20% renewable energy by 2020 would result in the following economic impacts for the state:

- Electricity prices would increase by 45%;
- 12,110 jobs would be lost;
- Disposable income would drop by \$1.48 billion; and
- Investment in the state would decrease by \$191 million.

A few representative examples illustrate fundamental flaws with the Beacon Hill STAMP analysis:

■ STAMP is designed to apply to city taxes. RPS policies are not analogous to taxes, and attempting to force them into STAMP leads to inaccurate results.

■ Beacon Hill assumes that an RPS policy is not in place, but Kansas has actually completed 19 wind projects and only requires three average-size wind projects to fully satisfy its RPS. Beacon Hill failed to utilize actual data from these projects in its analysis.

■ Kansas' RPS is 90% complete, and none of the dire consequences that Beacon Hill predicted has happened, thereby proving the analysis is fundamentally flawed.

■ Beacon Hill utilizes national data to assess local wind resources.

In Kansas, and in many states with RPS policies, the wind resource is better than the national average, thus leading to lower actual generation costs for wind energy. The merits of Beacon Hill's analysis aside, the overall package that it presents is appealing for those who need a foundation to attack RPS policies. Beacon Hill's analysis is designed to appeal to those

who may not be familiar with energy policy, and the report sounds suitably academic with a healthy dose of equations and economic jargon.

After the 2012 report, the Beacon Hill report immediately became a talking point for a strong conservative movement in the Kansas legislature. With this conservative attack looming on the horizon, policymakers, media and concerned citizens began looking for resources describing the true economic impact of the RPS, generally, and the wind industry, specifically.

Prior to the 2013 legislative session, the Beacon Hill report was the most current study available, and it professed to answer exactly those questions. As a result, it received a significant amount of attention, and its flawed predictions of what might happen under an RPS were referenced as established fact of what had actually happened to date.

In order to combat the report, the energy practice group of the Polsinelli law firm partnered with the Kansas Energy Information Network to analyze the true economic impacts of wind energy and the Kansas RPS, creating the Polsinelli Wind Report.

Where the Beacon Hill report relied on economic forecasts based on national data, the Polsinelli Wind Report used publicly available Kansas data, analyzed the true impact of wind energy as compared to other sources of non-baseload generation, and detailed the number of jobs created and dollars invested based on data from the state's 19 wind projects.

The Polsinelli Wind Report was released just prior to the start of the 2013 legislative session. As expected, early in the session, two bills were introduced in Kansas to reduce the impact of the state RPS. The first bill, S.B.82, was introduced by the Kansas Senate Utilities Committee.

This bill sought to delay each RPS threshold by two years and provide the Kansas Corporation Commission (KCC) the right to waive the requirements if it deemed that there was a lack of firm transmission or compliance would lead to excessive costs for ratepayers. The second bill, H.B.2241, was introduced by the Kansas House Committee on Energy and Environment. This bill sought to delay the thresholds for 10% and 15% compliance by two years, eliminate the 20% by 2020 requirement altogether and implement the same "firm transmission" and "excessive cost" exceptions discussed in S.B.82.

Committee hearings were held for both H.B.2241 and S.B.82, with oral and written testimony describing the conclusions of the Beacon Hill report

and Polsinelli Wind Report. Even with a significant education and support effort, both bills were able to pass out of their respective committees.

However, despite the fact that both the Kansas House and Senate held overwhelming Republican majorities, neither bill was able to garner enough votes to pass out of the legislature.

Lesson learned

There were a myriad of parties involved in protecting the Kansas RPS, and these combined efforts played a significant role in this success. Nonetheless, the recent victory in Kansas is not the last threat that will be posed to state RPS policies. Organizations

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like Beacon Hill, ALEC and Americans for Prosperity are national in scope and will undoubtedly try to defeat RPS policies in other states. With this in mind, it is important to assess a few of the key lessons learned in defending the Kansas RPS.

For example, it proved essential to determine the true economic impacts of the renewable energy policy. The fundamental objection to RPS policies is almost always purely dogmatic. There is a strong element of the opposition's ideals that resists anything resembling a state mandate or governmental policy within the free market. However, such arguments typically ignore the fact that in most states,

there is no such thing as a free market for public utilities, as each utility is a highly regulated monopoly, and whether from renewable or traditional resources, all forms of energy are subsidized, including nuclear, coal and natural gas.

In the face of good economic data, it is extremely unlikely that an effort to reduce or repeal a state RPS will succeed based solely on philosophical objections. To counter attacks based on assumptions or guesses as to the impact of an RPS policy, it is important to prepare a fact-based analysis as quickly as possible once the first signs of RPS opposition appear. As evidenced in Kansas, the RPS conver-

sation begins quickly once opposition surfaces, and every day that passes with uncontested anti-RPS arguments strengthens and emboldens the opposition.

When preparing the pro-RPS analysis, there are additional factors that should be considered to prepare for the inevitable challenge to any such report.

First, relying solely on publicly available data from non-biased sources is essential. For example, when preparing the Polsinelli Wind Report for Kansas, the firm and the Kansas Energy Information Network deliberately relied on data from the KCC, the U.S. Energy Information Administration, the National Renewable Energy Lab-

oratory and the Lawrence Berkeley National Laboratory, rather than on information from industry groups.

While the industry groups provide excellent data, relying on that information could create an appearance of bias and would have provided an easy way for opponents to attack the report.

Second, it is important to remember that the target audience (policymakers and key constituents) will have little or no background in energy issues. Organizers and presenters must find the proper balance between presenting a thorough and well-cited analysis that holds up under scrutiny and making that analysis clear and concise for all audiences. In Kansas, a heavily conservative state, the majority of the audience was not receptive to environmental or moral arguments in favor of the RPS. Accordingly, the Polsinelli Wind Report focused solely on the economics of the policy and financial benefits to the state.

Distribution

Once the pro-RPS analysis has been prepared, the next step is to quickly spread that information to a wide general audience and key constituents and legislators.

One of the most effective ways to bolster legislative support for a state RPS is to inform and motivate a group of voters. In Kansas, this was accomplished through media outreach and coordinated community presentations. With respect to the community presentations, the goal is three-fold: Inform the public about the findings of the pro-RPS report; activate community and business



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Cover Story

leaders throughout the state, particularly in more rural areas; and let the individuals and companies that have benefited from the RPS make their experiences known.

For every installed wind project, there is a large, but largely quiet, group of citizens and companies that has benefited. Beneficiaries include landowners who receive a new source of income, hotel and restaurant owners who see an increase in the number of customers and counties with significant revenue increases.

While these stories can have a dramatic impact on the legislative debate, most people do not have the time or inclination to take a day to drive to the state capitol for a chance to testify before a committee. By bringing the discussion to the communities that are directly impacted, proponents can access and motivate a powerful group that might otherwise have been overlooked.

Of course, while public support is vital, the primary audience is the legislature. In Kansas, reaching the legislature was made difficult due to a strong conservative lobby that

ensured that the Beacon Hill report authors received numerous opportunities to present their findings to the legislature. Credit for countering these efforts belongs primarily to a strong education effort led by groups such as the Wind Coalition that ensured that every hypothetical anti-RPS argument presented to the legislature was countered by real-

efited tremendously from the RPS. This effort appeared to be tremendously successful, and portions of the pro-RPS analysis became common talking points at all levels of the legislative debate. Presenting a well-researched counter-argument caused legislators to take a second look at the Beacon Hill analysis and question the report's overall reliability.

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world testimony from a wind developer, landowner or business owner about the benefits of the RPS.

Additionally, every time that Beacon Hill or a similar group relied on economic forecasts and bad data to argue that the RPS would cause electricity prices to spike or lead to massive job loss, the authors of the Polsinelli Wind Report were able to show that, in reality, Kansas has ben-

Once the report is stripped away, opponents of the RPS policy are left only with their dogmatic objections to mandates. At the end of the day, those objections alone likely are not strong enough to overturn or amend a statute that has created thousands of jobs and led to billions of dollars of investment in the state.

Despite the strong conservative leanings of the Kansas legislature and

the coordinated efforts of groups like the Beacon Hill Institute, ALEC, the Heartland Institute and Americans for Prosperity, legislative efforts to reduce or repeal the Kansas RPS have been held at bay this year. Unfortunately, this was merely one front in a much broader assault on state RPS policies. Thirteen other states have seen legislation in this legislative session alone seeking to reduce or repeal their RPS policies, and there can be no doubt that more attempts are coming.

However, by closely examining the successful defense of the Kansas RPS and applying and perfecting the key elements of that defense in other states, the industry should be able to ensure that these important legislative policies remain in place for years to come. **WFP**

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