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Laura Kelly, Governor

September 19, 2019

Martin M. Loring
Husch Blackwell LLP
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RE: Docket No. 20-JCSE-133-SLR

Mr. Loring:

On September 18, 2019, Johnson Corner Solar I, LLC ("Johnson Corner"), filed a Notice of Exemption with the Kansas Corporation Commission ("Commission") notifying the Commission of Johnson Corner's decision to opt-out of public utility regulation pursuant to K.S.A. 66-104(e). The Commission docketed this notice in Docket No. 20-JCSE-133-SLR. Enclosed, please find a memorandum acknowledging Johnson Corner's Notice of Exemption. The docket will be closed in accordance with the memorandum. Of course, if you have any questions please do not hesitate to contact me directly.

Best regards,

Cole Bailey, #27586
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Attorney for Commission Staff

MEMORANDUM

To: Martin M. Loring, Attorney for Johnson Corner Solar I, LLC

From: Cole Bailey, Kansas Corporation Commission, Litigation Counsel

Date: September 19, 2019

Re: Docket No. 20-JCSE-133-SLR

K.S.A. 66-104(a) defines “public utility” and subjects such public utilities to regulation by the Kansas Corporation Commission (“Commission”).¹ K.S.A. 66-104(e) provides an exemption from public utility regulation for activities or facilities “as to the generation, marketing, and sale” of electricity which are placed in service on or after January 1, 2001, and are not in the rate base of an electric public utility, cooperative, or municipally owned electric utility.

On September 18, 2019, Johnson Corner Solar I, LLC (“Johnson Corner”), filed a Notice of Exemption with the Commission notifying the Commission of Johnson Corner’s decision to opt-out of public utility regulation pursuant to K.S.A. 66-104(e). In its Notice of Exemption, Johnson Corner identified a solar project in portions of Stanton County, Kansas. The project includes solar photovoltaic electricity generating and transmission facilities built upon privately owned land. The Commission docketed Johnson Corner’s Notice of Exemption in Docket No. 20-JCSE-133-SLR.

There is no statutory process or requirement for Commission authorization regarding a public utility exercising its option to exempt itself from public utility regulation. Commission Staff believes the Notice of Exemption is an appropriate method for Johnson Corner to exercise its option to exempt itself from public utility status to the extent K.S.A. 66-104(e) applies. While making no judgment as to the ability of Johnson Corner to opt-out of “public utility” regulation with respect to its identified facilities, Staff notes that by virtue of opting-out, Johnson Corner certifies it is not required to comply with the Kansas Electric Transmission Line Siting Act² with respect to its transmission facilities, nor is it required to obtain a certificate of public convenience and necessity under K.S.A. 66-131.

Furthermore, because Johnson Corner has opted out of its “public utility” designation, it may not exercise eminent domain under provisions of Kansas Law granting eminent domain powers to

¹ Public utilities are subject to regulation with respect to certification, wire stringing, line siting (for electric transmission lines), sufficient and efficient service, and just and reasonable rates. *See* K.S.A. 66-131; K.S.A. 66-183; K.S.A. 66-101b (for “electric public utilities”); K.S.A. 66-1,178.

² K.S.A. 66-1,177, *et seq.*

public utilities.³ Johnson Corner may not infer, imply, or represent to anyone that Johnson Corner has any such eminent domain powers. Staff will consider any such representations a forfeiture of Johnson Corner's option to exempt itself from public utility status.

Finally, Staff regards Johnson Corner's Notice of Exemption as only applying to Johnson Corner and limited to the project scope identified in the Notice. Any successor entity or future owner of the identified facilities shall provide its own Notice of Exemption, should the option to opt-out be available based on the facts at that time.

Because there is no process in Kansas statutes or regulations for Commission action regarding Johnson Corner's Notice of Exemption under K.S.A. 66-104(e), this docket will be closed without action by the Commission.

³See K.S.A. 26-501b(b); K.S.A. 17-618.