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Pat Apple, Chairman
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Jay Scott Emler, Commissioner

Sam Brownback, Governor

February 13, 2017

Anne E. Callenbach
Polsinelli PC
900 West 48th Place, Suite 900
Kansas City, Missouri 64112

RE: Docket No. 17-SOCE-334-WND

Ms. Callenbach,

On January 19, 2017, SoCore 2016 ProjectCo 8 LLC (SoCore) filed a Notice with the Commission notifying the Commission of its decision to opt out of public utility regulation pursuant to K.S.A. 66-104(e). This notice was docketed as 17-SOCE-334-WND. Enclosed herewith, please find a memorandum acknowledging the Notice. The docket will be closed in accordance with the memorandum.

Regards,

Andrew French, #24680
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Attorney for Commission Staff

MEMORANDUM

To: Anne E. Callenbach, Counsel to SoCore 2016 ProjectCo 8 LLC

From: Andrew French, Senior Litigation Counsel

Date: February 13, 2017

Re: Docket No. 17-SOCE-334-WND

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 January 19, 2017, SoCore 2016 ProjectCo 8 LLC (SoCore) filed a Notice with the Commission notifying the Commission of its decision to opt out of public utility regulation pursuant to K.S.A. 66-104(e). In its Notice, SoCore identified a photovoltaic energy system project in Reno County, Kansas. The project will be built upon privately owned land and will interconnect to the electrical grid through an adjacent Westar distribution line. This notice was docketed as 17-SOCE-334-WND.

There is no statutory process or requirement for Commission authorization of a public utility to exercise its option to exempt itself from public utility status. Commission Staff believes the notice is an appropriate method for SoCore 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 SoCore to opt-out of “public utility” regulation with respect to its identified facilities, Staff notes that by virtue of opting-out, SoCore certifies that it is not required to comply with the Kansas Electric Transmission Line Siting Act² with respect to any transmission facilities, nor is it required to obtain a certificate of public convenience and necessity under K.S.A. 66-131.

¹Public 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.*

Furthermore, because SoCore has opted out of its “public utility” designation, it may not exercise eminent domain under provisions of Kansas law granting eminent domain powers to public utilities.³ SoCore may not infer, imply, or represent to anyone that they have any such eminent domain powers. Staff will consider making such representations a forfeiture of the entity’s option to exempt itself from public utility status.

Finally, Staff regards this notice of opt out as only applying to SoCore and only based on the facts set forth in the notice. Any successor entities or future owner of the identified facilities shall provide its own notice of opt out, should the option to opt out be available based on the facts at that time.

Because there is no process in the statutes or regulations for Commission action regarding 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.