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202409271016005987
Filed Date: 09/27/2024
State Corporation Commission
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Laura Kelly, Governor

September 27, 2025

Mr. Andrew O. Shulte, Attorney for Flat Ridge 5 Wind Energy, LLC
900 West 48th Place, Suite 900
Kansas City, Missouri 64112

Re: Notice of Exemption of Flat Ridge 5 Wind Energy, LLC Pursuant to K.S.A. 66-104(e)
Docket No. 25-FR5E-159-WND

Dear Mr. Shulte:

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 17, 2024, Flat Ridge 5 Wind Energy, LLC (“Flat Ridge 5”), filed a Notice of Exemption with the Commission notifying the Commission of Flat Ridge 5’s decision to opt-out of public utility regulation pursuant to K.S.A. 66-104(e). In its Notice of Exemption, Flat Ridge 5 identified a wind energy project in Kingman and Harper Counties, Kansas (the “Flat Ridge 5 Project”). The project includes facilities built upon privately owned land pursuant to either wind leases, transmission easements, or parcels purchased by Flat Ridge 5 in fee simple pursuant to agreements with the respective landowners. Flat Ridge 5 stated that it will neither request nor require condemnation authority to obtain land use rights for the Flat Ridge 5 Project.

The Commission docketed Flat Ridge 5’s Notice of Exemption in Docket No. 25-FR5E-159-WND. 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 Flat Ridge 5 to exercise its option to exempt itself from public utility status to the extent K.S.A. 66-104(e) applies.

Staff makes no judgment as to the ability of Flat Ridge 5 to opt-out of “public utility” regulation with respect to its identified facilities. Staff notes that, by virtue of opting-out, Flat Ridge 5 certifies it is not required to comply with the Kansas Electric Transmission 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.

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.*

Staff notes that pursuant to K.S.A. 66-104(e)(2)³, Flat Ridge 5 will remain subject to the Commission's jurisdiction over wire-stringing. Therefore, Flat Ridge 5 is required to comply with the K.S.A. 66-183 guidelines for stringing wires along or across streets, highways, or public places and K.A.R. 82-12-1 *et seq.*, the Commission's wire-stringing regulations.

Furthermore, because Flat Ridge 5 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.⁴ Flat Ridge 5 may not infer, imply, or represent to anyone that Flat Ridge 5 has any such eminent domain powers. Staff will consider any such representations a forfeiture of Flat Ridge 5's option to exempt itself from public utility status.

Finally, Staff regards Flat Ridge 5's Notice of Exemption as only applying to Flat Ridge 5 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 Flat Ridge 5's Notice of Exemption under K.S.A. 66-104(e), this docket will be closed without action by the Commission.

Sincerely,
/s/ Ahsan Latif
Ahsan A. Latif
Litigation Counsel

³ See K.S.A. 66-104(e)(2) ("the provisions of this subsection shall not be construed to affect the authority of the state corporation commission to regulate any activity or facility of an otherwise jurisdictional entity with regard to wire stringing pursuant to K.S.A. 66-183 *et seq.*, and amendments thereto").

⁴ See K.S.A. 26-501b(b); K.S.A. 17-618.

CERTIFICATE OF SERVICE

25-FR5E-159-WND

I, the undersigned, certify that a true and correct copy of the above and foregoing Letter was served via electronic service this 27th day of September, 2024, to the following:

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