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State Corporation Commission
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Laura Kelly, Governor

October 11, 2024

Mr. Andrew O. Schulte, Esq.
Attorney for Pixley Solar Energy, LLC
900 West 48th Place, Suite 900
Kansas City, Missouri 64112

Re: Notice of Exemption of Pixley Solar Energy, LLC Pursuant to K.S.A. 66-104(e)
Docket No. 25-PSEE-147-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 August 30, 2024, Pixley Solar Energy, LLC (“Pixley Solar”), filed a Notice of Exemption with the Commission notifying the Commission of Pixley Solar’s decision to opt-out of public utility regulation pursuant to K.S.A. 66-104(e). In its Notice of Exemption, Pixley Solar identified a wind project in Barber County, Kansas. The project includes facilities built upon privately owned land pursuant to either solar leases, transmission easements, or parcels purchased by Pixley Solar in fee simple pursuant to agreements with the respective landowners. Pixley Solar stated it will neither request nor require condemnation authority to obtain land use rights for the Pixley Solar Project.

The Commission docketed Pixley Solar’s Notice of Exemption in Docket No. 25-PSEE-147-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 Pixley Solar 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 Pixley Solar to opt-out of “public utility” regulation with respect to its identified facilities. Staff notes that, by virtue of opting-out, Pixley Solar 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.

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, Pixley Solar will remain subject to the Commission's jurisdiction over wire-stringing. Therefore, Pixley Solar 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 Pixley Solar 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 Pixley Solar may not infer, imply, or represent to anyone that Pixley Solar has any such eminent domain powers. Staff will consider any such representations a forfeiture of Pixley Solar's option to exempt itself from public utility status. In the event Pixley Solar forfeits its option to exempt itself from public utility status, Staff reserves the right to recommend that the Commission order Pixley Solar to show cause as to why it is not a public utility subject to penalty.

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

Sincerely,
/s/ Madisen K. Hane
Madisen K. Hane
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.