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Laura Kelly, Governor

September 27, 2019

James G. Flaherty
Anderson & Byrd, LLP
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RE: Docket No. 20-NRWE-137-WND

Mr. Flaherty:

On September 19, 2019, Neosho Ridge Wind, LLC ("Neosho Ridge"), filed a Notice of Exemption with the Kansas Corporation Commission ("Commission") notifying the Commission of Neosho Ridge'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-NRWE-137-WND. Enclosed, please find a memorandum acknowledging Neosho Ridge'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: James G. Flaherty, Attorney for Neosho Ridge Wind, LLC

From: Cole Bailey, Kansas Corporation Commission, Litigation Counsel

Date: September 27, 2019

Re: Docket No. 20-NRWE-137-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 September 19, 2019, Neosho Ridge Wind, LLC (“Neosho Wind”), filed a Notice of Exemption with the Commission notifying the Commission of Neosho Wind’s decision to opt-out of public utility regulation pursuant to K.S.A. 66-104(e). In its Notice of Exemption, Neosho Wind identified a wind project in portions of Neosho County, Kansas. The project includes electricity generating and transmission facilities built upon privately owned land. The Commission docketed Neosho Wind’s Notice of Exemption in Docket No. 20-NRWE-137-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 Neosho Wind 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 Neosho Wind to opt-out of “public utility” regulation with respect to its identified facilities, Staff notes that by virtue of opting-out, Neosho Wind 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 Neosho Wind 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 Neosho Wind may not infer, imply, or represent to anyone that Neosho Wind has any such eminent domain powers. Staff will consider any such representations a forfeiture of Neosho Wind's option to exempt itself from public utility status.

Finally, Staff regards Neosho Wind's Notice of Exemption as only applying to Neosho Wind 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 Neosho Wind'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.