

BEFORE THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS

In the Matter of the Notice of Exemption)
Pursuant To K.S.A 66-104(e)) Docket No. - _____ - _____ - WND
Of Buckeye Wind Energy LLC)

NOTICE OF EXEMPTION OF BUCKEYE WIND ENERGY LLC
PURSUANT TO K.S.A. 66-104(e)

COMES NOW, Buckeye Wind Energy LLC (“Buckeye”) and hereby provides notice to the State Corporation Commission of the State of Kansas (“Commission” or “KCC”) of its decision to opt out of public utility regulation pursuant to K.S.A. 66-104(e). In support of its Notice, Buckeye states and alleges as follows:

I. INTRODUCTION

1. Buckeye is a limited liability company, organized and existing under the laws of the State of Delaware, in good standing in all respects. (See **Exhibit A**, attached hereto.)

II. BUCKEYE WIND ENERGY LLC

2. Buckeye has initiated construction for a wind energy project on a 30,000 acre site located approximately five miles northwest of the city of Hays, in Ellis County, Kansas (the “Project”). (See **Exhibit B** for a map of the Project site.) All Project facilities, including turbines and transmission facilities, will be constructed on privately-owned land pursuant to long-term lease and/or rights-of way agreements with the respective landowners. In light of these privately negotiated lease and easement arrangements, Buckeye will not require condemnation authority in order to obtain land use rights for the Project. Buckeye will interconnect to Midwest Energy Inc.’s Post Rock 230 kV substation in Ellis County.

3. Commercial operation of the Project is currently planned for the fourth quarter of 2015, and the Project will have an installed capacity of approximately 200 MW. Buckeye has secured a Purchase Power Agreement for fifty percent of the output of the Project, and the balance of the output will either be sold in the wholesale market or pursuant to a PPA. Buckeye will not sell any power at retail.

4. Buckeye has worked diligently with the residents and local government officials to ensure a positive local reception for the Project. To that end, Buckeye has obtained approvals from Ellis County through the use of payment in lieu of taxes ("PILOT") agreements, as well as a Conditional Use Permit ("CUP") for the Project.

III. DEFINITION OF PUBLIC UTILITY AND NOTICE OF DECISION TO OPT OUT OF PUBLIC UTILITY REGULATION

5. K.S.A. 66-104(a) states in pertinent part as follows:

The term "public utility," as used in this act, shall be construed to mean every corporation, company, individual, association of persons, heirs, trustees, lessees or receivers, that now or hereafter may own, control, operate or manage, except for private use, any equipment, plant or generating machinery, or any part thereof, for the transmission of telephone messages or for the transmission of telegraph messages in or through any part of the state, or the conveyance of oil and gas through pipelines in or through any part of the state, except for pipelines less than 15 miles in length and not operated in connection with or for the general commercial supply of gas or oil, and all companies for the production, transmission, delivery or furnishing of heat, light, water, or power.

6. K.S.A. 66-104(e) states as follows:

At the option of an otherwise jurisdictional entity, the term "public utility" shall not include any activity or facility of such entity as to the generation, marketing and sale of electricity generated by an electric generation facility or addition to an electric generation facility which:

- (1) is newly constructed and placed in service on or after January 1, 2001; and
- (2) is not in the rate base of:
 - (A) an electric public utility that is subject to rate regulation by the state corporation commission;

- (B) any cooperative, as defined by K.S.A. 17-4603 and amendments thereto, or any nonstock member-owned cooperative corporation incorporated in this state; or
- (C) a municipally owned or operated electric utility.

(Emphasis supplied.)

7. In the Commission's December 27, 2007 Final Order in Docket No. 08-WSEE-309-PRE, it stated that the Commission may not have jurisdiction or authority over the developers that own the wind farms and sell power to Westar through PPAs, and referred to K.S.A. 66-104(e), which provides that, at the option of an otherwise jurisdictional entity, the term "public utility" shall not include certain activities or entities as specified in the statute. (See, December 27, 2007 Final Order, at ¶ 65.) (Emphasis added.)

IV. NOTICE BY BUCKEYE

8. Because Buckeye intends to build generation capacity in Kansas, it clearly falls within the definition of "public utility" as stated in K.S.A. 66-104(a), as it will "own, control, operate or manage, except for private use, any equipment, plant or generating machinery," and it is a company "for the production, transmission, delivery or furnishing of heat, light, water, or power."

9. However, as an "otherwise jurisdictional entity," K.S.A. 66-104(e) indicates that the term public utility shall not include "any activity or facility of such entity as to the generation, marketing and sale of electricity generated by an electric generation facility or addition to an electric generation facility" which meets the requirements of subsection (e) of the statute.

10. The Project will be:

- (1) newly constructed and placed in service on or after January 1, 2001, in accordance with K.S.A. 66-104(e)(1); and
- (2) privately owned and operated and not placed in the rate base of either an electric public utility subject to rate regulation by the KCC, nor any

cooperative or municipally owned or operated electric utility, in accordance with K.S.A. 66-104(e)(2)(A) through (C).

11. As such, Buckeye has exercised the option to make itself exempt from the definition of public utility pursuant to the opportunity to opt out of regulation contained in K.S.A. 66-104(e). Accordingly, Buckeye hereby provides notice to the Commission of its decision to opt out of public utility regulation pursuant to K.S.A. 66-104(e). Because Buckeye has opted out of public utility regulation, it is likewise exempt from the application of the following statutes, as each of these statutes, by its specific terms, applies only to jurisdictional entities: K.S.A. 66-131, permit to transact business in the State of Kansas as a public utility required; K.S.A. 66-1,177 *et seq*, the electric transmission line siting act; 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.

12. Counsel for Buckeye has previously discussed the availability of this exemption with KCC Staff counsel with regard to other projects, and counsel for Buckeye will similarly provide KCC Staff or the Commission itself with any additional information that may be required they regarding this filing.

WHEREFORE, Buckeye respectfully submits to the Commission this Notice of Exemption pursuant to K.S.A. 66-104(e).

Respectfully submitted,

POLSINELLI PC

By:


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ATTORNEYS FOR BUCKEYE WIND ENERGY
LLC

VERIFICATION

STATE OF Illinois)
) ss.
COUNTY OF Cook)

I, Bryan Schueler, being duly sworn, on oath state that I am Vice President, Development, for Buckeye Wind Energy LLC, that I have read the foregoing Notice and know the contents thereof, and that the facts set forth therein are true and correct to the best of my knowledge and belief.

Buckeye Wind Energy LLC

By: *Bryan Schueler*
Bryan Schueler

The foregoing was subscribed and sworn to before me this February 19, 2015.

Dina O. Wagner
Notary Public

My Commission Expires:

May 10, 2017 ²⁰¹⁷ / P.W.



CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the above and foregoing pleading has been faxed, hand-delivered and/or mailed, First Class, postage prepaid, this February 20, 2015, to:

Neysa Thomas
Acting Secretary
Kansas Corporation Commission
1500 SW Arrowhead Road
Topeka, KS 66604-4027

Samuel Feather
Litigation Counsel
Kansas Corporation Commission
1500 SW Arrowhead Road
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Jeffrey D. McClanahan
Director Utility Operations
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Anne E. Callenbach

**STATE OF KANSAS
OFFICE OF
SECRETARY OF STATE
KRIS W. KOBACH**

I, KRIS W. KOBACH, Secretary of State of the state of Kansas, do hereby certify, that according to the records of this office.

Business Entity ID Number: 4714416

Entity Name: BUCKEYE WIND ENERGY LLC

Entity Type: FOREIGN LTD LIABILITY COMPANY

State of Organization: DE

Resident Agent: COMSTOCK SEARCH REPORTING, INC.

Registered Office: 3332 SW 34th Court, TOPEKA, KS 66614

was filed in this office on May 02, 2013, and is in good standing, having fully complied with all requirements of this office.

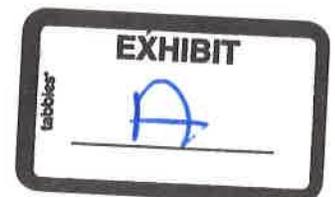
No information is available from this office regarding the financial condition, business activity or practices of this entity.

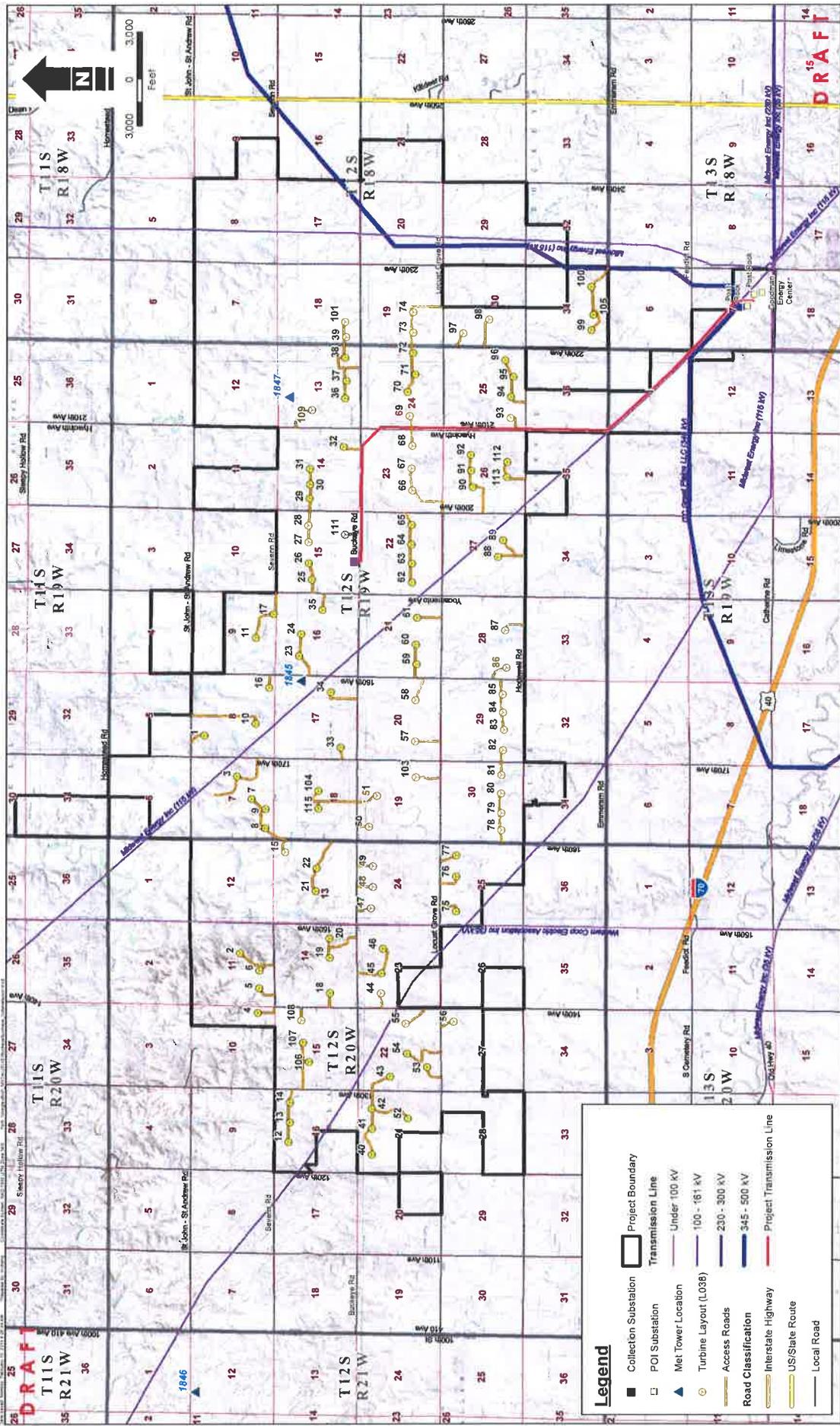


In testimony whereof I execute this certificate and affix the seal of the Secretary of State of the state of Kansas on this day of February 13, 2015

**KRIS W. KOBACH
SECRETARY OF STATE**

Certificate ID: 633788 - To verify the validity of this certificate please visit <https://www.kansas.gov/bess/flow/validate> and enter the certificate ID number.





Invenery
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Rev. 24
 February 16, 2015

Buckeye Turbine Layout
 Buckeye Wind Energy Project, Ellis County, Kansas

