

BEFORE THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS

In the Matter of the Notice of Exemption)
Of Flat Ridge 5 Wind Energy LLC)
Pursuant To K.S.A. 66-104(e)) Docket No. 25-FR5E - 159 -WND

NOTICE OF EXEMPTION OF FLAT RIDGE 5 WIND ENERGY LLC PURSUANT TO K.S.A. 66-104(e)

COMES NOW, Flat Ridge 5 Wind Energy LLC (“Flat Ridge 5” or “Applicant”) 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, the Applicant states and alleges as follows:

I. INTRODUCTION

1. Flat Ridge 5 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).

2. Flat Ridge 5 is developing, constructing, and will own and operate a wind energy project in Kingman and Harper Counties, Kansas (the “Flat Ridge 5 Project”). (See **Exhibit B** for a map of the Project location). All Flat Ridge 5 Project facilities will be constructed on 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. In light of these privately negotiated lease and easement arrangements, Flat Ridge 5 will neither request nor require condemnation authority in order to obtain land use rights for the Flat Ridge 5 Project. The Flat Ridge 5 Project will interconnect through an existing generation tie line (“gen-tie”) connecting Flat Ridge 2 and Flat Ridge 3 to the Viola 345 kV substation.

3. The Flat Ridge 5 Project will have a nameplate capacity of approximately 153 MW and commercial operation is currently planned to occur in approximately February 2025. Flat Ridge 5 is subject to a Purchase and Sale Agreement with Public Service Company of Oklahoma (“PSO”), pursuant to which PSO will acquire Flat Ridge 5. The Flat Ridge 5 Project will not sell any power to retail customers in Kansas.

4. Flat Ridge 5 has entered into a Decommissioning and PILOT Contribution Agreement and a Road Access and Repair Agreement with both Kingman and Harper Counties.

II. 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 added).

7. Because the Applicant is building generation capacity in Kansas, it 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 is a company engaged in “the production, transmission, delivery or furnishing of heat, light, water, or power.”

8. However, at the option of 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.

9. 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).

10. It is anticipated that Flat Ridge 5 will be sold to PSO pursuant to a Purchase and Sale Agreement. PSO is not a public utility subject to rate regulation by the KCC, nor it is a cooperative or municipally owned or operated electric utility. Flat Ridge 5 may continue to exist after closing of the Purchase and Sale Agreement. Because the exemption is specific to the entity owning the subject facilities,¹ Flat Ridge 5 is exercising the option to exempt itself from the

¹ See, e.g. Staff Memorandum, Docket No. 21-FR3E-079-WND (Aug. 17, 2020); Staff Memorandum, Docket No. 19-SFWE-204-WND (Feb. 14, 2029).

definition of “public utility” pursuant to the opportunity to opt out of regulation contained in K.S.A. 66-104(e).²

11. Accordingly, the Applicant hereby provides this Notice to the Commission of its decision to opt out of public utility regulation pursuant to K.S.A. 66-104(e). Because the Applicant has opted out of public utility regulation, the Applicant is likewise exempt from the application of the following statutes, as each of these statutes, by their specific terms, apply only to jurisdictional entities: K.S.A. 66-131, permit to transact business in the State of Kansas as a public utility required; and K.S.A. 66-1,177 *et seq.*, the electric transmission line siting act.

12. Pursuant to K.S.A. 66-104(e)(2), an entity that has exercised to exempt itself from regulation is still subject to the Commission’s jurisdiction over wire-stringing and is therefore 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. However, because Flat Ridge 5 is using an existing gen-tie to interconnect to the grid, it will not be filing a wire-stringing application pursuant to K.A.R. 82-12-1 *et seq.*

² Similarly situated independent power producers have exercised their option to exempt themselves from the definition of “public utility” by filing notices with the Commission. *See, e.g.*, Docket No. 21-FR3E-079-WND, Notice of Exemption of Flat Ridge 3 Wind Energy, LLC, Pursuant to K.S.A. 66-104(e) (Aug. 10, 2020); Docket No. 19-SFWE-204-WND, Notice of Exemption of Solomon Forks Wind Project, LLC Pursuant to K.S.A. 66-104(e) (Nov. 15, 2018); Docket No. 18-PTWE-447-WND, Notice of Exemption of Pratt Wind, LLC Pursuant to K.S.A. 66-104(e) (April 13, 2018); Docket No. 17-CPBE-139-WND, Notice of Exemption of CP Bloom Wind LLC Pursuant to K.S.A. 66-104(e) (Oct. 21, 2016).

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

Respectfully submitted,

POLSINELLI PC

/s/ Andrew O. Schulte

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ATTORNEY FOR FLAT RIDGE 5 WIND ENERGY LLC

Delaware

The First State

Page 1

I, JEFFREY W. BULLOCK, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY "FLAT RIDGE 5 WIND ENERGY LLC" IS DULY FORMED UNDER THE LAWS OF THE STATE OF DELAWARE AND IS IN GOOD STANDING AND HAS A LEGAL EXISTENCE SO FAR AS THE RECORDS OF THIS OFFICE SHOW, AS OF THE TWENTY-THIRD DAY OF JULY, A.D. 2024.

AND I DO HEREBY FURTHER CERTIFY THAT THE SAID "FLAT RIDGE 5 WIND ENERGY LLC" WAS FORMED ON THE TWENTY-FIFTH DAY OF MAY, A.D. 2022.

AND I DO HEREBY FURTHER CERTIFY THAT THE ANNUAL TAXES HAVE BEEN PAID TO DATE.



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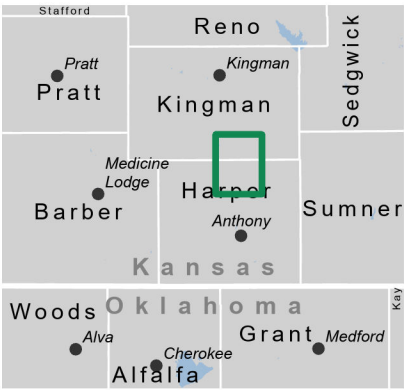
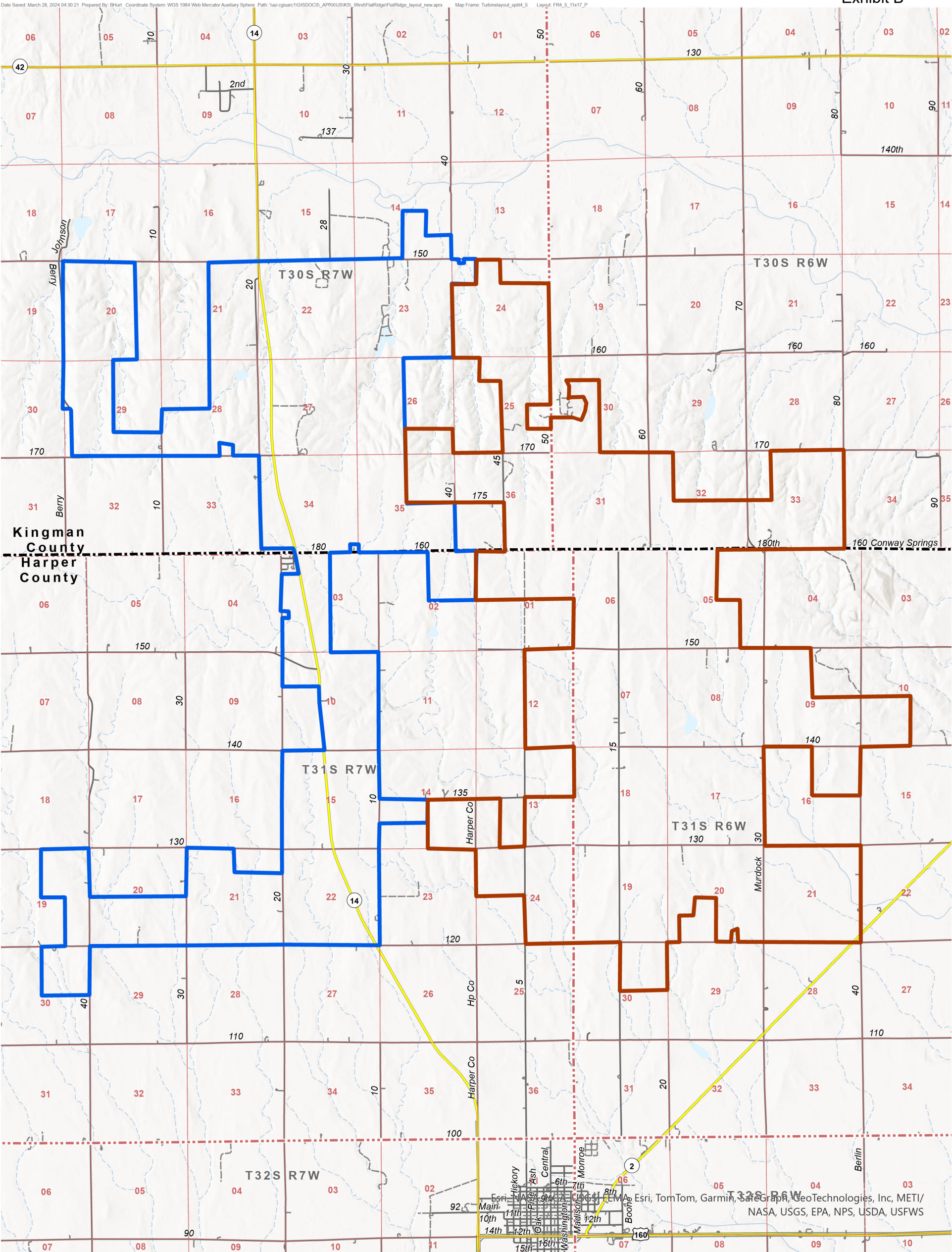
SR# 20243216336

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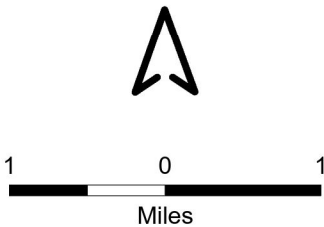
A handwritten signature in black ink, appearing to read "JB", is written over a horizontal line. Below the line, the text "Jeffrey W. Bullock, Secretary of State" is printed.

Authentication: 203994325

Date: 07-23-24



- Legend**
- | | |
|--|---|
| Project Boundary | Road Classification |
| — Flat Ridge 4 | — US/State Route |
| — Flat Ridge 5 | — County Road |
| County Boundary | — Local Road |
| Township/Range Boundary | — Dirt/Unpaved Road |
| Section Line | |



VERIFICATION

I, Andrew O. Schulte, do solemnly, sincerely and truly declare and affirm that I am counsel to Flat Ridge 5 Wind Energy LLC, that I have read the foregoing pleading and know the contents thereof, and that the facts set forth therein are true and correct to the best of my knowledge and belief, and this I do under the pains and penalties of perjury.

By: /s/ Andrew O. Schulte

Andrew O .Schulte

September 17, 2024

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was served upon the parties listed on the official service list by email, this 17th day of September, 2024.

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/s/ Andrew O. Schulte

Andrew O. Schulte