



1500 SW Arrowhead Road
Topeka, KS 66604-4027

Phone: 785-271-3100
Fax: 785-271-3354
<http://kcc.ks.gov/>

Andrew J. French, Chairperson
Dwight D. Keen, Commissioner
Annie Kuether, Commissioner

Laura Kelly, Governor

MEMORANDUM

To: Anne E. Callenbach, Attorney for Boot Hill Solar, LLC

From: Ahsan Latif, Kansas Corporation Commission, Litigation Counsel

Date: June 6, 2024

Re: Docket No. 24-BHST-794-WND; Notice of Exemption of Boot Hill Solar, LLC Pursuant to K.S.A. 66-104(e)

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 June 3, 2024, Boot Hill Solar, LLC (Boot Hill Solar), filed a Notice of Exemption with the Commission notifying the Commission of Boot Hill Solar’s decision to opt-out of public utility regulation pursuant to K.S.A. 66-104(e). In its Notice of Exemption, Boot Hill Solar identified a solar energy project in Ford County, Kansas. All of the project’s facilities will be built upon privately owned land.

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 Boot Hill Solar 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 Boot Hill Solar to opt-out of “public utility” regulation with respect to its identified facilities, Staff notes that by virtue of opting-out, Boot Hill 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.*

Furthermore, because Boot Hill 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.³ Boot Hill Solar may not infer, imply, or represent to anyone that Boot Hill Solar has any such eminent domain powers. Staff will consider any such representations a forfeiture of Boot Hill Solar’s option to exempt itself from public utility status.

Finally, Staff regards Boot Hill Solar’s Notice of Exemption as only applying to Boot Hill 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.

Due to the fact there is no process in Kansas statutes or regulations for Commission action regarding Boot Hill Solar’s Notice of Exemption under K.S.A. 66-104(e), this docket will be closed without action by the Commission.

³ See K.S.A. 26-501b(b); K.S.A. 17-618.

CERTIFICATE OF SERVICE

24-BHST-794-WND

I, the undersigned, certify that a true and correct copy of the above and foregoing Memorandum was served via electronic service this 6th day of June, 2024, to the following:

AHSAN LATIF, LITIGATION COUNSEL
KANSAS CORPORATION COMMISSION
1500 SW ARROWHEAD RD
TOPEKA, KS 66604
a.latif@kcc.ks.gov

ANNE E. CALLENBACH, ATTORNEY
POLSINELLI PC
900 W 48TH PLACE STE 900
KANSAS CITY, MO 64112
acallenbach@polsinelli.com

Ann Murphy

Ann Murphy