

BEFORE THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS

In the Matter of the Notice of Exemption)
Of Boot Hill Solar, LLC Pursuant To) Docket No. 24-_____-_____-WND
K.S.A. 66-104(e))

NOTICE OF EXEMPTION OF BOOT HILL SOLAR, LLC PURSUANT TO K.S.A. 66-104(e)

COMES NOW, Boot Hill Solar, LLC (“Boot Hill Solar” 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. Boot Hill Solar 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. Boot Hill Solar is developing, constructing, and will own and operate a solar energy project on an approximately 2,400-acre site located near the city of Dodge City in Ford County, Kansas (the “Boot Hill Solar Project”). (See **Exhibit B** for a map of the Project location). All Boot Hill Solar Project facilities will be constructed on privately-owned land pursuant to either solar leases, transmission easements, or parcels purchased by Boot Hill Solar in fee simple pursuant to agreements with the respective landowners. In light of these privately negotiated lease and easement arrangements, Boot Hill Solar will neither request nor require condemnation authority in order to obtain land use rights for the Boot Hill Solar Project. The Boot Hill Solar Project will interconnect to the Fort Dodge Substation via an approximately 3.4-mile 115 kV generation tie transmission line.

3. The Boot Hill Solar Project will have a nameplate capacity of approximately 150 MWac and commercial operation is currently planned to occur prior to June 2026. Boot Hill Solar has secured a long-term Purchase Power Agreement for the output of the facility. Boot Hill Solar Project will not sell any power at retail.

4. Boot Hill Solar has worked diligently with residents and local government officials to ensure a positive local reception for the Boot Hill Solar Project, and has a payment in lieu of taxes (“PILOT” agreement, School Gift Agreement, and Decommissioning Agreement in place with Ford County. Boot Hill Solar has negotiated a Road Use and Maintenance Agreement with the County, which should be fully executed in the coming weeks.

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. In the Commission's December 27, 2007 Final Order in Docket No. 08-WSEE-309-PRE, it concluded that the Commission may not have jurisdiction or authority over the developers that own wind farms and sell power to a utility Westar Energy Inc. through power purchase agreements.

III. NOTICE BY APPLICANT

8. 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."

9. 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.

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, Boot Hill Solar is exercising the option to exempt itself from the definition of “public utility” pursuant to the opportunity to opt out of regulation contained in K.S.A. 66-104(e).¹ 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. Boot Hill Solar intends to file the Form EL required by K.A.R. 82-12-1 *et seq.* at the appropriate time, at least ten days prior to commencing construction as required by the Commission’s rules.

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

¹ 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. 19-SLWE-323-WND, Notice of Exemption of Soldier Creek Wind, LLC Pursuant to K.S.A. 66-104(e) (Feb. 14, 2019); 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).

Respectfully submitted,

POLSINELLI PC

/s/ Anne E. Callenbach

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ATTORNEYS FOR BOOT HILL SOLAR, LLC

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 3rd day of June, 2024.

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/s/ Anne E. Callenbach

Anne E. Callenbach

VERIFICATION

I, Anne E. Callenbach, do solemnly, sincerely and truly declare and affirm that I am counsel to Boot Hill Solar 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/ Anne E. Callenbach

June 3, 2024

Anne E. Callenbach

EXHIBIT A
STATE OF KANSAS
OFFICE OF SECRETARY OF STATE
CERTIFICATE OF GOOD STANDING

I, SCOTT SCHWAB, Kansas Secretary of State, certify that the records of this office reveal the following:

Business ID: 2088764

Business Name: BOOT HILL SOLAR LLC

Type: Foreign Limited Liability Company

Jurisdiction: Delaware

was filed in this office on December 02, 2022, 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 affix my official certification seal.
Done at the City of Topeka,
on this day May 17, 2024.

A handwritten signature in black ink that reads "Scott Schwab". The signature is written in a cursive, flowing style.

SCOTT SCHWAB
KANSAS SECRETARY OF STATE

EXHIBIT B

Boot Hill Solar LLC

VICINITY MAP

