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Laura Kelly, Governor

MEMORANDUM

To: Andrew O. Schulte, Attorney for Ensign Wind Energy, LLC

From: Jared Jevons, Kansas Corporation Commission, Litigation Counsel

Date: November 15, 2021

Re: Docket No. 15-ENSE-372-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 February 11, 2015, Ensign Wind, LLC (“EW”), filed a Notice of Exemption with the Commission notifying the Commission of EW’s decision to opt-out of public utility regulation pursuant to K.S.A. 66-104(e). In its Notice of Exemption, EW identified a wind project in portions of Gray County, Kansas. The project includes electricity generating and transmission facilities built upon privately owned land. The Commission acknowledged EW’s exemption in Docket No. 15-ENSW-372-WND.

On October 29, 2021, Ensign Wind Energy, LLC (“EWE”) filed a Notice of Exemption with the Commission notifying the Commission that EW was transferring all of its assets associated with its project in the February 11, 2015 filing to EWE. Both EW and EWE are wholly-owned indirect subsidiaries of NextEra Energy Resources, LLC.

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 EWE 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 EWE to opt-out of “public utility” regulation with respect to its identified facilities, Staff notes that by virtue of opting-out, EWE certifies it is not required to comply with the Kansas Electric Transmission Line Siting Act² with respect to its transmission

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.*

facilities, nor is it required to obtain a certificate of public convenience and necessity under K.S.A. 66-131.

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

Finally, Staff regards EWE’s Notice of Exemption as only applying to EWE 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 EWE’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.

CERTIFICATE OF SERVICE

15-ENSE-372-WND

I, the undersigned, certify that a true and correct copy of the above and foregoing memorandum was sent electronically this 15th day of November, 2021, to the following:

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* Denotes those receiving the Confidential version