

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. 15-ENSE-372-WND
Of Ensign Wind, LLC)

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

COMES NOW, Ensign Wind Energy, LLC (“EWE” 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, Applicant states and alleges as follows:

I. INTRODUCTION

1. EWE is a limited liability company, organized and existing under the laws of the State of Delaware, in good standing in all respects, and authorized to do business in Kansas. *See Exhibit A*, attached hereto.

2. The EWE Project (the “Project”) is an approximately 99 megawatt (“MW”) repowering wind generating projected located in Gray County, Kansas. *See Exhibit B* for a map of the Project location. The original Ensign Wind, LLC project (“EW”) that is being repowered has been in operation since 2015. The repowering Project involves the replacement of all 43 current Siemens wind turbine generators with 28 Siemens 2.66 MW-129 turbines, 12 Siemens 2.3 MW-129 turbines, and 3 GE 2.3 MW-116 turbines. The interconnection capacity and location of the transmission line of the Project will not change as a result of the repowering.

3. As a result of the repowering, EW intends to transfer all of the assets associated with the Project to the Applicant, EWE. Both EW and the Applicant are wholly-owned indirect subsidiaries of NextEra Energy Resources, LLC.

4. By way of background, EW filed a Notice of Exemption Pursuant to K.S.A. 66-104(e) in the instant docket on February 11, 2015. A Memorandum acknowledging EW's exemption was filed by the Staff of the Commission on February 26, 2015. Because the exemption is entity-specific, EWE now files its own Notice of Exemption Pursuant to K.S.A. 66-104(e). Given that EW will transfer its assets to the new repowered entity to the Applicant, the Applicant now seeks to opt out of public utility regulation for the same reasons EW originally requested and was granted opt out status.

5. As before the repowering, after the repowering all Project facilities, including turbines and transmission facilities, are located on privately-owned land pursuant to long-term wind farm easements, transmission easements, and/or rights-of-way agreements with landowners. In light of these privately negotiated lease and easement arrangements, EWE neither requests nor requires condemnation authority in order to execute the Project.

6. All power produced by the Project will be sold at wholesale pursuant to a long-term Power Purchase Agreement with Evergy Missouri West, Inc. that is in effect until 2031. EWE will not sell any power at retail.

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

7. 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.

8. 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).

9. In the Commission’s December 27, 2007 Final Order in Docket No. 08-WSEE-309-PRE, the Commission indicated that it may not have jurisdiction or authority over the developers that own wind farms and sell power to regulated public utilities in Kansas through power purchase agreements.

III. NOTICE BY APPLICANT

10. Because the Applicant owns generation capacity in Kansas, it clearly falls within the definition of “public utility” as stated in K.S.A. 66-104(a), as it is a company engaged in “the production, transmission, delivery or furnishing of heat, light, water, or power.”

11. 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.

12. The Project is:

- (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).

13. As such, Applicant exercises 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). 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 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.

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

Respectfully submitted,

POLSINELLI PC

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ATTORNEYS FOR Ensign Wind Energy, LLC

**STATE OF KANSAS
OFFICE OF
SECRETARY OF STATE
SCOTT SCHWAB**

I, SCOTT SCHWAB, Secretary of State of the state of Kansas, do hereby certify, that according to the records of this office.

Business Entity ID Number: 5481080

Entity Name: ENSIGN WIND ENERGY, LLC

Entity Type: FOR: LTD LIABILITY COMPANY

State of Organization: DE

was filed in this office on September 16, 2021, and is in good standing, having fully complied with all requirements of this office.

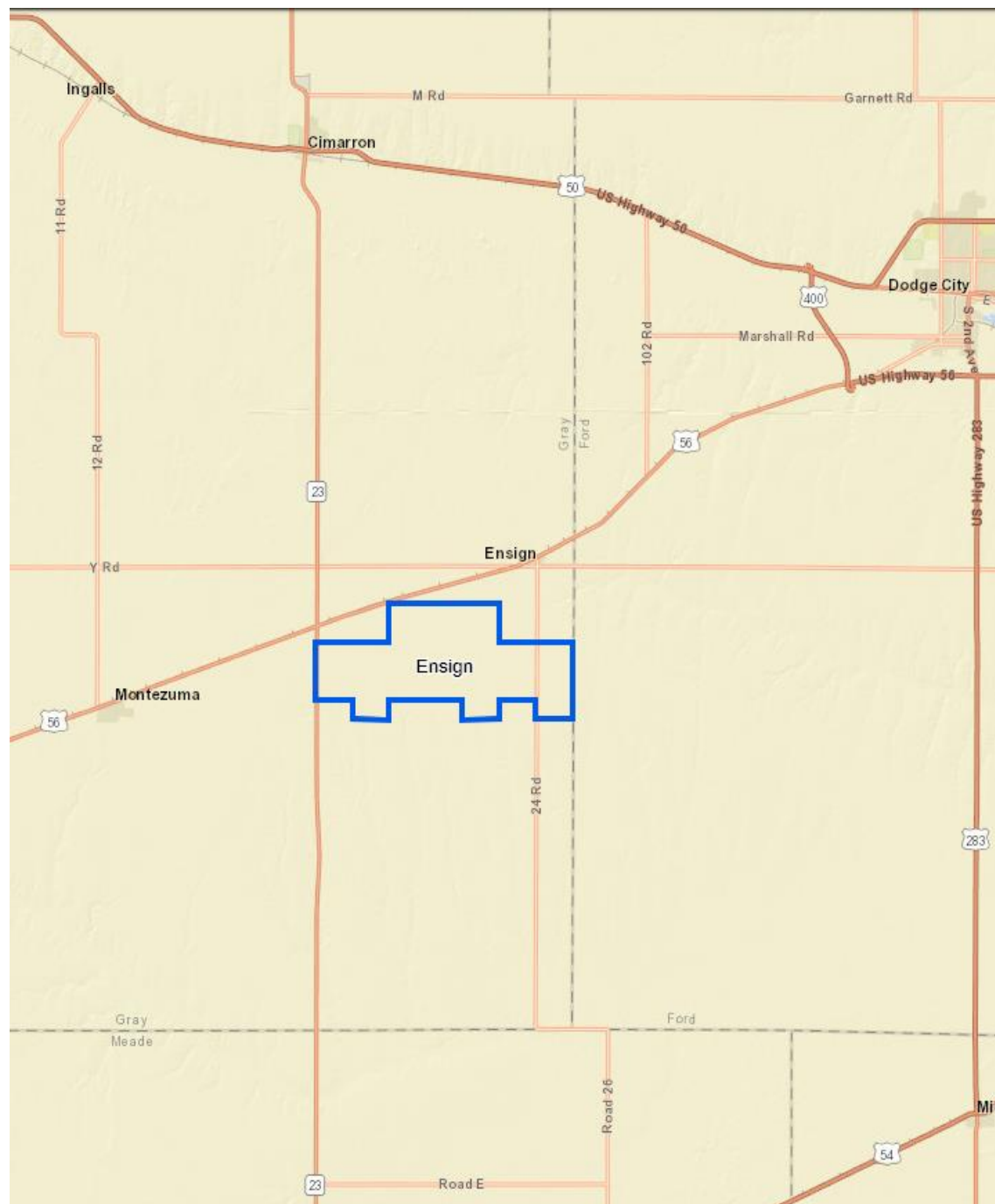
No information is available from this office regarding the financial condition, business activity or practices of this entity.



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 September 22, 2021

**SCOTT SCHWAB
SECRETARY OF STATE**

Certificate ID: 1191242 - To verify the validity of this certificate please visit <https://www.kansas.gov/bess/flow/validate> and enter the certificate ID number.



ENSIGN WIND, LLC PROJECT BASE MAP

Located in Part of Gray County, Kansas



CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the above and foregoing pleading has been emailed this October 29, 2021, to:

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