

STATE OF KANSAS

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State Corporation Commission  
of Kansas

CORPORATION COMMISSION  
1500 SW ARROWHEAD ROAD  
TOPEKA, KS 66604-4027



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GOVERNOR JEFF COLYER, M.D.

SHARI FEIST ALBRECHT, CHAIR | JAY SCOTT EMLER, COMMISSIONER | DWIGHT D. KEEN, COMMISSIONER

December 3, 2018

Steve M. Sark  
Fleeson, Gooing, Coulson & Kitch, L.L.C.  
1900 Epic Center, 301 N. Main  
Wichita, Kansas 67202

RE: Docket No. 19-PQWE-203-WND

Mr. Sark,

On November 15, 2018, Prairie Queen Wind Farm LLC (Prairie Queen), filed a Notice of Exemption with the Kansas Corporation Commission notifying the Commission of its decision to opt out of public utility regulation pursuant to K.S.A. 66-104(e). This notice was docketed as Docket No. 19-PQWE-203-WND. Enclosed herewith, please find a memorandum acknowledging the Joint Notice. The docket will be closed in accordance with the memorandum.

Regards,

A handwritten signature in black ink, appearing to read "P. Anshutz", written over a horizontal line.

Phoenix Anshutz, #27617  
Litigation Counsel  
Kansas Corporation Commission  
1500 SW Arrowhead Road  
Topeka, KS 66604  
Phone: (785)-271-3312  
Email: [p.anshutz@kcc.ks.gov](mailto:p.anshutz@kcc.ks.gov)

Attorney for Commission Staff

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## MEMORANDUM

To: Steve M. Sark, Attorney for Prairie Queen Wind Farm, LLC

From: Phoenix Anshutz, Kansas Corporation Commission, Litigation Counsel

Date: December 3, 2018

Re: 19-PQWE-203-WND

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K.S.A. 66-104(a) defines “public utility” and subjects such public utilities to regulation by the Kansas Corporation Commission (“Commission”).<sup>1</sup> 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 November 15, 2018, Prairie Queen Wind Farm LLC (Prairie Queen), filed a Notice of Exemption with the Commission notifying the Commission of its decision to opt out of public utility regulation pursuant to K.S.A. 66-104(e). In its Notice, Prairie Queen identified a wind project in Allen County, Kansas. The project includes wind turbines and transmission facilities built upon privately owned land and public rights-of-way. This notice was docketed as 19-PQWE-203-WND.

There is no statutory process or requirement for Commission authorization of an entity public utility to exercise its option to exempt itself from public utility status. Commission Staff believes the notice is an appropriate method for Prairie Queen 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 Prairie Queen to opt-out of “public utility” regulation with respect to its identified facilities, Staff notes that by virtue of opting-out, Prairie Queen certifies that it is not required to comply with the Kansas Electric Transmission Line Siting Act<sup>2</sup> 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.

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<sup>1</sup>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.

<sup>2</sup> K.S.A. 66-1,177, *et seq.*

Furthermore, because Prairie Queen 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.<sup>3</sup> Prairie Queen may not infer, imply, or represent to anyone that they have any such eminent domain powers. Staff will consider any such representations a forfeiture of the entity’s option to exempt itself from public utility status

Finally, Staff regards this notice of opt out as only applying to Prairie Queen and only based on the facts set forth in the notice. Any successor entity or future owner of the identified facilities shall provide its own notice of opt out, should the option to opt out be available based on the facts at that time.

Because there is no process in the statutes or regulations for Commission action regarding notice of exemption under K.S.A. 66-104(e), this docket will be closed without action by the Commission.

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<sup>3</sup>See K.S.A. 26-501b(b); K.S.A. 17-618.