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202507011545434173
Filed Date: 07/01/2025
State Corporation Commission
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Laura Kelly, Governor

July 1, 2025

Ms. Anne Callenbach, Esq.
Polsinelli, PC
900 West 48th Place, Suite 900
Kansas City, Missouri 64112

Re: Notice of Exemption of Sunflower Sky Solar Project, LLC Pursuant to K.S.A. 66-104(e) Docket
No. 25-SSSE-583-SLR

Dear Ms. Callenbach:

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 30, 2025, Sunflower Sky Solar Project, LLC (“Sunflower Solar”), filed a Notice of Exemption with the Commission notifying the Commission of Sunflower Solar’s decision to opt-out of public utility regulation pursuant to K.S.A. 66-104(e). In its Notice of Exemption, Sunflower Solar identified a solar project in Wilson County, Kansas. The project includes facilities built upon privately owned land pursuant to either solar leases, transmission easements, or parcels purchased by Sunflower Solar in fee simple pursuant to agreements with the respective landowners. Sunflower Solar stated it will neither request nor require condemnation authority to obtain land use rights for the Sunflower Solar Project.

The Commission docketed Sunflower Solar’s Notice of Exemption in Docket No. 25-SSSE-583-SLR. There is no statutory process or requirement for Commission authorization regarding a public utility exercising its option to exempt itself from public utility regulation.

Staff makes no judgment as to the ability of Sunflower Solar to opt-out of “public utility” regulation with respect to its identified facilities. Staff notes that, by virtue of opting-out, Sunflower 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.*

Staff notes that pursuant to K.S.A. 66-104(e)(2)³, Sunflower Solar will remain subject to the Commission's jurisdiction over wire-stringing. Therefore, Sunflower Solar is 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.

Furthermore, because Sunflower 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.⁴ Sunflower Solar may not infer, imply, or represent to anyone that Sunflower Solar has any such eminent domain powers. Staff will consider any such representations a forfeiture of Sunflower Solar's option to exempt itself from public utility status. In the event Sunflower Solar forfeits its option to exempt itself from public utility status, Staff reserves the right to recommend that the Commission order Sunflower Solar to show cause as to why it is not a public utility subject to penalty.

Finally, Staff regards Sunflower Solar's Notice of Exemption as only applying to Sunflower 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.

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

Sincerely,

/s/ Patrick J. Hurley
Patrick J. Hurley
KCC Litigation Division
Attorneys for Commission Staff

³ See K.S.A. 66-104(e)(2) ("the provisions of this subsection shall not be construed to affect the authority of the state corporation commission to regulate any activity or facility of an otherwise jurisdictional entity with regard to wire stringing pursuant to K.S.A. 66-183 *et seq.*, and amendments thereto").

⁴ See K.S.A. 26-501b(b); K.S.A. 17-618.