

BEFORE THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS

APR 16 2012

by
State Corporation Commission
of Kansas

In the Matter of the Notice of Exemption)
Pursuant to K.S.A. 66-104(e)) Docket No. 12-SPVE-747-WND
Of Spearville 3, LLC)

NOTICE OF SPEARVILLE 3, LLC
EXEMPTION PURSUANT TO K.S.A. 66-104(e)

COMES NOW, Spearville 3, LLC (“Spearville 3”) 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, Spearville 3 states and alleges as follows:

I. INTRODUCTION

1. Spearville 3 is a limited liability company, organized and existing under the laws of the State of Delaware, and is registered as a foreign limited liability company, and is in good standing, in the State of Kansas.

2. enXco Development Corporation (“enXco”) is a corporation, organized and existing under the laws of the State of Delaware, and is registered as a foreign corporation, and is in good standing, in the State of Kansas.

3. Power Partners Midwest, LLC (“Power Partners”) is a limited liability company, organized and existing under the laws of the State of Delaware, and is registered as a foreign limited liability company, and is in good standing, in the State of Kansas (See Exhibit A, attached hereto for certificates of good standing for all three entities.)

4. Power Partners and Spearville 3 are wholly owned by enXco.

II. SPEARVILLE 3 WIND PROJECT

5. enXco, Power Partners, and Spearville 3 (each a “Development Party” and collectively the “Development Parties”) have initiated construction of a wind energy project in Ford County, Kansas. The generation facilities will be located in a tract starting just to the west of Spearville, Kansas. The Development Parties will also construct a little over two miles of 230 kV overhead generation intertie (“gen-tie”) lines to connect the project substation to the KCP&L Spearville I Substation, located just to the north of Spearville (together, the “Project”). (See Exhibit B for a map of the Project site.) Prior to the Project’s completion, it will be wholly owned by Spearville 3.

6. All portions of the Project, including turbines, collections lines, and the gen-tie line will be constructed in Ford County. The turbines will be located on privately owned land, and the transmission facilities will be located on privately-owned land and public rights-of-way. The Development Parties will not require condemnation authority to obtain land use rights for the Project.

7. Various points of interconnection for the Project were evaluated to understand the best location for interconnection. Factors considered during this analysis included environmental considerations, overall cost, schedule and Southwest Power Pool long term transmission planning. This evaluation determined interconnection at the KCP&L Spearville I Substation as the best location. The Project gen-tie line will deliver the generation output of the Project to the transmission grid. The Development Parties have worked diligently with the residents and government officials of Ford County to ensure a positive local reception to the Project. To that end, the Development Parties have obtained all necessary county approvals and have entered into long-term leases with area landowners for placement of all wind turbine generators and transmission lines necessary for successful completion of the Project.

8. Commercial operation of the Project is currently planned for 2012, and the Project will generate up to 100.8 MW of power. A Development Party has entered into a power purchase agreement (“PPA”) to sell the power to Kansas City Power & Light Company (“KCP&L”). Neither Spearville 3 nor the Project will be providing electric power at retail to any customers.

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

9. 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.

10. 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 nonstick member-owned cooperative corporation incorporated in this state; or
 - (C) a municipally owned or operated electric utility.

(Emphasis supplied.)

11. In the Commission's December 27, 2007 Final Order in Docket No. 08-WSEE-309-PRE, it stated that the Commission may not have jurisdiction or authority over the developers that own the wind farms and sell power to Westar through PPAs, and referred to K.S.A. 66-104(e), which provides that, *at the option of an otherwise jurisdictional entity*, the term "public utility" shall not include certain activities or entities as specified in the statute. (See, December 27, 2007 Final Order, at ¶ 65.) (Emphasis supplied.)

12. Additionally, in response to the Greensburg Wind Farm, LLC Notice of Exemption, Docket No. 11-GRWE-220-WND, Litigation Counsel for the KCC stated in regards to a notice made pursuant to K.S.A. 66-104(e), that:

While the Commission Staff appreciates the notice, there is no process in the statute or regulations for Commission action regarding the exemption. The Staff discussed the appropriate procedure with representatives of Greensburg Wind Farm, and they agreed that Commission action is not necessary. Therefore, the docket may be closed without further action by the Commission.

IV. NOTICE BY SPEARVILLE 3

13. Because the Development Parties intend to build generation capacity in Kansas, and Spearville 3 will own and operate the generating facility, produce electricity from the facility, and transmit it across a 230 kV interconnection line for sale to KCP&L, Spearville 3 may or may not be a company that produces, transmits, delivers or furnishes power to fall within the definition of "public utility" as stated in K.S.A. 66-104(a).

14. However, even if Spearville 3 is or becomes an "otherwise jurisdictional entity," K.S.A. 66-104(e) provides 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" that meets the requirements of subsection (e) of the statute.

15. 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).

16. Spearville 3 has exercised its option to make the Project and Spearville 3 exempt from the definition of public utility pursuant to the opportunity to opt out of regulation contained in K.S.A. 66-104(e). Spearville 3 hereby provides notice to the Commission of its decision to opt out of public utility regulation pursuant to K.S.A. 66-104(e). Because Spearville 3 has opted out of public utility regulation, it is likewise exempt from the application of the following statutes and regulations, as they 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; 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.

17. Counsel for Spearville 3 has discussed the Project and the applicability of the K.S.A. 66-104(e) exemption to Spearville 3 with Commission Staff and the Staff has voiced no objections to the availability of the exemption.

WHEREFORE, Spearville 3 respectfully submits to the Commission this Notice of Exemption pursuant to K.S.A. 66-104(e).

Respectfully submitted,

FOULSTON SIEFKIN LLP

By: Patricia Voth Blankenship
PATRICIA VOTH BLANKENSHIP (#18835)
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Wichita, Kansas 67206-4466
(316) 291-9767
Fax No. (866) 347-3139

ATTORNEYS FOR SPEARVILLE 3, LLC

CERTIFICATE OF SERVICE

The undersigned hereby certifies that an original and seven (7) copies of the above and foregoing pleading was mailed, First Class, postage prepaid, this 13th day of April, 2012, to:

Patti Petersen-Klein
Executive Director
Kansas Corporation Commission
1500 SW Arrowhead Road
Topeka, KS 66604-4027

and a copy to:

Jeff McClanahan
Director of Utilities
Kansas Corporation Commission
1500 SW Arrowhead Road
Topeka, KS 66604-4027



Patricia Voth Blankenship

EXHIBIT A

Certificate of Good Standing

Page 1 of 1

**STATE OF KANSAS
OFFICE OF
SECRETARY OF STATE
KRIS W. KOBACH**

I, KRIS W. KOBACH, Secretary of State of the state of Kansas, do hereby certify, that according to the records of this office.

Business Entity ID Number: 4569968

Entity Name: SPEARVILLE 3, LLC

Entity Type: FOREIGN LTD LIABILITY COMPANY

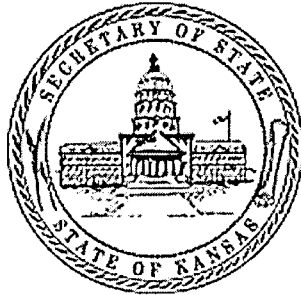
State of Organization: DE

Resident Agent: CORPORATION SERVICE COMPANY

Registered Office: 200 S.W. 30TH STREET, TOPEKA, KS 66611

was filed in this office on December 14, 2011, 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 April 12, 2012

Handwritten signature of Kris W. Kobach in cursive script.

**KRIS W. KOBACH
SECRETARY OF STATE**

Certificate ID: 497587 - To verify the validity of this certificate please visit <https://www.kansas.gov/bess/flow/validate> and enter the certificate ID number.

STATE OF KANSAS
OFFICE OF
SECRETARY OF STATE
KRIS W. KOBACH

I, KRIS W. KOBACH, Secretary of State of the state of Kansas, do hereby certify, that according to the records of this office.

Business Entity ID Number: 3866613

Entity Name: ENXCO DEVELOPMENT CORPORATION

Entity Type: FOREIGN FOR PROFIT

State of Organization: DE

Resident Agent: CORPORATION SERVICE COMPANY

Registered Office: 200 SW 30TH STREET, TOPEKA, KS 66611

was filed in this office on November 29, 2005, 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 March 29, 2012

Handwritten signature of Kris W. Kobach in cursive script.

KRIS W. KOBACH
SECRETARY OF STATE

Certificate ID: 496863 - To verify the validity of this certificate please visit <https://www.kansas.gov/bess/flow/validate> and enter the certificate ID number.

STATE OF KANSAS
OFFICE OF
SECRETARY OF STATE
KRIS W. KOBACH

I, KRIS W. KOBACH, Secretary of State of the state of Kansas, do hereby certify, that according to the records of this office.

Business Entity ID Number: 3866621

Entity Name: POWER PARTNERS MIDWEST, LLC

Entity Type: FOREIGN LTD LIABILITY COMPANY

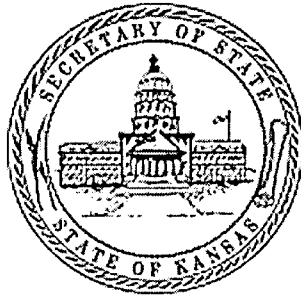
State of Organization: DE

Resident Agent: CORPORATION SERVICE COMPANY

Registered Office: 200 SW 30TH STREET, TOPEKA, KS 66611

was filed in this office on November 29, 2005, 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.



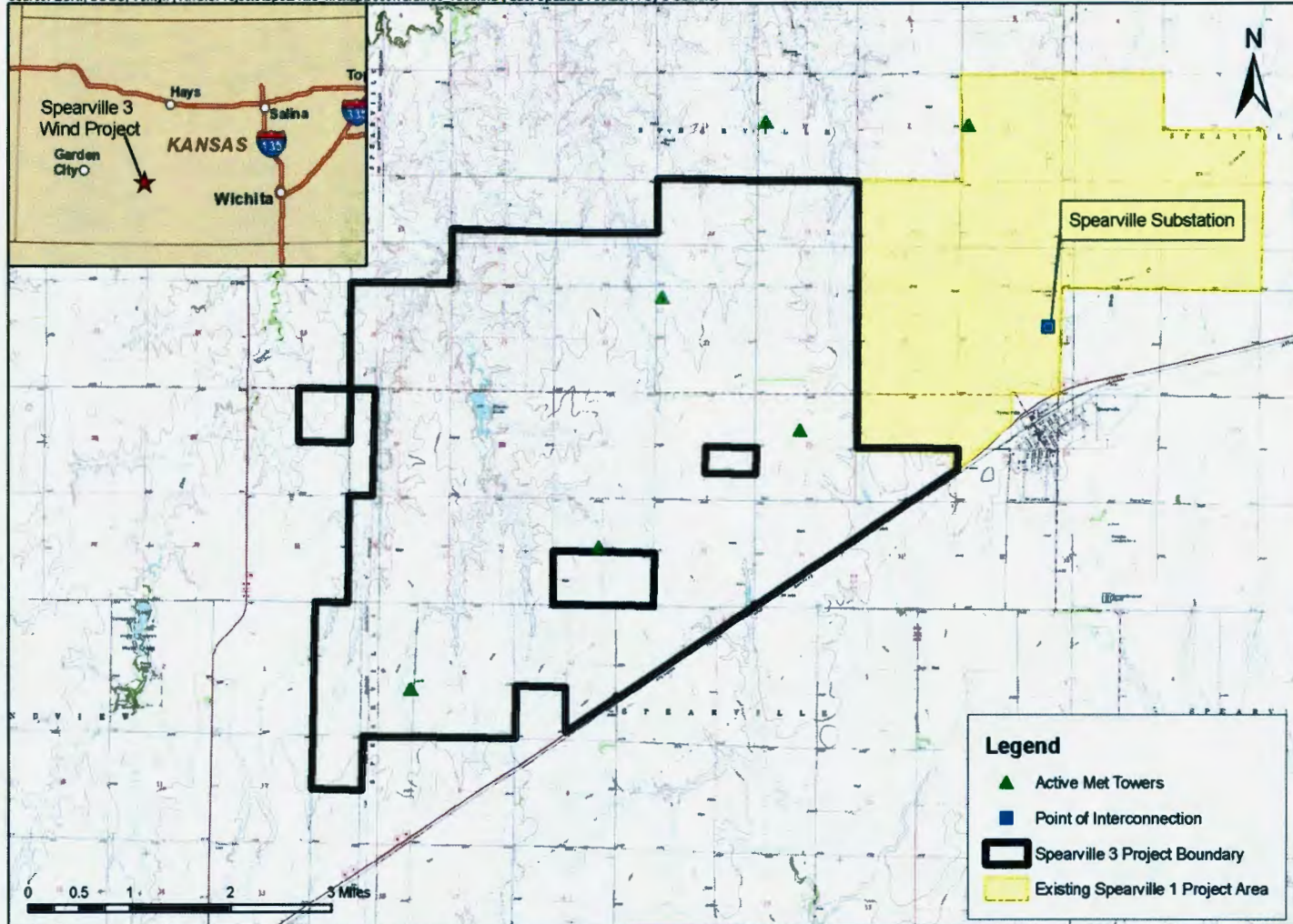
In testimony whereof I execute this certificate and affix the seal of the Secretary of State of the state of Kansas on this day of April 12, 2012

A handwritten signature in cursive script that reads "Kris W. Kobach".

KRIS W. KOBACH
SECRETARY OF STATE

Certificate ID: 497588 - To verify the validity of this certificate please visit <https://www.kansas.gov/bess/flow/validate> and enter the certificate ID number.

Source: ESRI, USGS, Ventyx | X:\GISProjects\Spearville_III\MapDocs\Turbines_v33.mxd | Last Updated: 09.23.11 by L. Guinther



Legend

- ▲ Active Met Towers
- Point of Interconnection
- ▭ Spearville 3 Project Boundary
- ▭ Existing Spearville 1 Project Area



SPEARVILLE 3 WIND PROJECT F-1
Ford County, Kansas

EXHIBIT B

Map of Project Site

Exhibit B