

Renewable Generation and Transmission: KCC's Role and Jurisdiction

Senate Select Committee on Wind Turbine Lighting
October 27, 2022



KCC's Role and Jurisdiction

- The KCC has a limited role for the majority of renewable generation built by developers in Kansas.
- The KCC does have its traditional rate-making authority over renewable generation placed into rate base for all jurisdictional utilities.

Renewable Generation

Non-Jurisdictional Entities:

K.S.A. 66-104(e):

(1) Except as provided in paragraph (2), 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 that:

(A) Is newly constructed and placed in service on or after January 1, 2001; and

(B) is not in the rate base of:

(i) An electric public utility that is subject to rate regulation by the state corporation commission;

(ii) 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

(iii) a municipally owned or operated electric utility.

(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.

Renewable Generation

Non-Jurisdictional Entities

K.S.A. 66-104(e) allows:

- Any developer to construct renewable generation facilities that sell wholesale power without becoming a public utility.
- To opt out of becoming a regulated public utility, the developer only needs to provide notice to the KCC that it is opting out (see attached example).
- The developer is not subject to the Kansas Electric Transmission Line Siting Act (K.S.A. 66-1,177 *et seq*)
- The developer is also not required to obtain a certificate of public convenience and necessity under K.S.A. 66-131.
- The developer *may not* exercise the right of eminent domain under provisions of Kansas Law that grant eminent domain powers to public utilities. Staff considers any such representations a forfeiture of the developer's option to exempt itself from public utility status.
- The developer is subject to the Commission's regulations with regard to wire stringing pursuant to K.S.A. 66-183 *et seq*. Wire stringing rules are KCC regulations with respect to the "support, maintenance, repair and reconstruction of electric lines" (K.A.R. 82-12-1 through 82-12-9).

Renewable Generation

Jurisdictional Utilities

- Renewable generation is subject to the same statutes and review as any other generation source for jurisdictional utilities. KCC electric jurisdictional utilities are comprised of Evergy, Liberty-Empire, and Southern Pioneer.
- Elements of KCC review include, but are not limited to:
 - Review of annual Integrated Resource Plan – Evergy only.
 - Determination of need and lowest reasonable cost option. Lowest-cost option analysis for renewable generation includes a comparison between what the utility could acquire a purchase power agreement for versus the utility owning the renewable generation.
 - Potential prudence review under K.S.A. 66-128 *et seq.* This series of statutes sets the legal framework under which the KCC “shall have the power to evaluate the efficiency or prudence of acquisition, construction, or operating practices of that utility. *In the event the state corporation commission determines that a portion of the costs of acquisition, construction or operation were incurred due in whole or in part to a lack of efficiency or prudence, or were incurred in the acquisition of construction of excess capacity, it shall have the power and authority to exclude all or a portion of those costs from the revenue requested by the utility.*”

Transmission Related to Renewable Generation

- Renewable generation facilities include transmission interconnection facilities that are also called a generator tie-lines. FERC has defined these tie-lines as facilities and equipment between the generating facility and the point of interconnection, including any modification, additions, or upgrades that are necessary to physically and electrically interconnect the generating facility to the transmission provider's transmission system.
- FERC has also determined that the interconnection facilities or tie-lines are sole-use, limited and discrete, radial in nature, and are *not* part of an integrated transmission network.
- All KCC jurisdictional utilities must comply with the line siting statute (K.S.A. 66-1,177).

Transmission Related to Renewable Generation

- Based on FERC's definitions, generator lead lines do not fall under KCC jurisdiction
- As noted previously, the KCC now has wire stringing jurisdiction based on the modification to K.S.A. 66-104(e) (2) during the 2021 Session (HB 2367).

Contact Information

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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. 21 _____ - _____ -WND
Of Iron Star, LLC)

22-ISWE-226-WND

NOTICE OF EXEMPTION OF IRON STAR WIND PROJECT, LLC PURSUANT TO K.S.A. 66-104(e)

COMES NOW, Iron Star Wind Project, LLC (“Iron Star” 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. Iron Star is a limited liability company, organized and existing under the laws of the State of Delaware, in good standing in all respects.¹ Iron Star is registered as a foreign limited liability company in Kansas, and is in good standing in all respects. (See **Exhibits A1, A2, and A3** attached hereto).

2. Iron Star is developing, and will construct, own, and operate a wind energy project on an approximately 43,000-acre site located approximately five miles south of Dodge City in Ford County, Kansas (the “Iron Star Project”). (See **Exhibit B** for a map of the Project location).

3. The Iron Star Project facilities, including turbines and transmission facilities, will be constructed predominantly on privately-owned land pursuant to long-term wind farm easements, transmission easements, and right-of-way agreements with the respective landowners. In light of these privately negotiated lease and easement arrangements, Iron Star will neither

¹ Iron Star was originally formed in Delaware as Iron Horse Wind Land Holdings, LLC, and subsequently was re-named Iron Star Wind Project, LLC in 2012. Accordingly, both the original registration and the certificate of amendment are attached hereto.

request nor require condemnation authority in order to obtain land use rights for the Iron Star Project. The Iron Star Project will interconnect to the 345 kilovolt (“kV”) Ironwood-Clark line via a 5.5 kV, 345-kV generation tie transmission line.

4. The Iron Star Project will have a nameplate capacity of approximately 298 megawatts (“MW”) and commercial operation is currently planned to occur prior to December 31, 2021. Iron Star has secured a Power Purchase Agreement with a private entity for approximately 240 MWs at the point of delivery. The Iron Star Project is self-certified as an Exempt Wholesale Generator (“EWG”) by the Federal Energy Regulatory Commission and thus will not sell any power at retail.

5. Iron Star has worked diligently with the residents and local government officials in Ford County to ensure a positive local reception for the Project, and has executed a PILOT agreement and a road use agreement with the county.

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

6. 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.

7. 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).

8. 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 Westar Energy Inc. through power purchase agreements.

III. NOTICE BY APPLICANT

9. Because the Applicant intends to build generation capacity in Kansas, it falls within the definition of "public utility" as stated in K.S.A. 66-104(a), as it will "own, control, operate or manage, except for private use, any equipment, plant or generating machinery," and is a company engaged in "the production, transmission, delivery or furnishing of heat, light, water, or power."

10. 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.

11. 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).

12. 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).² 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,

/s/ Anne E. Callenbach

Alan Claus Anderson (#18163)

Anne E. Callenbach (#18488)

² Similarly situated independent power producers have exercised their option to exempt themselves from the definition of “public utility” by filing notices with the Commission. *See, e.g.*, Docket No. 19-SFWE-204-WND, Notice of Exemption of Solomon Forks Wind Project, LLC Pursuant to K.S.A. 66-104(e) (Nov. 15, 2018); Docket No. 18-PTWE-447-WND, Notice of Exemption of Pratt Wind, LLC Pursuant to K.S.A. 66-104(e) (April 13, 2018); Docket No. 17-CPBE-139-WND, Notice of Exemption of CP Bloom Wind LLC Pursuant to K.S.A. 66-104(e) (Oct. 21, 2016).



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Andrew J. French, Chairperson
Dwight D. Keen, Commissioner
Susan K. Duffy, Commissioner

Laura Kelly, Governor

MEMORANDUM

To: Anne Callenbach, Attorney for Iron Star Wind Project, LLC
From: Jared Jevons, Kansas Corporation Commission, Litigation Counsel
Date: November 22, 2021
Re: Docket No. 22-ISWE-226-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 November 18, 2021, Iron Star Wind Project, LCC (“Iron Star”), filed a Notice of Exemption with the Commission notifying the Commission of Iron Star’s decision to opt-out of public utility regulation pursuant to K.S.A. 66-104(e). In its Notice of Exemption, Iron Star identified a wind project in Ford County, Kansas. The project includes electricity generating and transmission facilities built upon privately owned land.

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 Iron Star 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 Iron Star to opt-out of “public utility” regulation with respect to its identified facilities, Staff notes that by virtue of opting-out, Iron Star 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.

Furthermore, because Iron Star 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 Iron Star may not infer, imply, or represent to anyone that Iron Star has any such eminent

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.*

³ See K.S.A. 26-501b(b); K.S.A. 17-618.

domain powers. Staff will consider any such representations a forfeiture of Iron Star's option to exempt itself from public utility status.

Finally, Staff regards Iron Star's Notice of Exemption as only applying to Iron Star 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 Iron Star's Notice of Exemption under K.S.A. 66-104(e), this docket will be closed without action by the Commission.