

Note: Planning staff submitted the attached questions to KCC staff and received the following responses on March 31, 2022.

MEMORANDUM

TO: Kansas Corporation Commission

FROM: Jay Leipzig, Director- Planning, Housing and Community Development
Karen Miller – Project Manager, Planning, Housing and Community Development
Sean Pendley- Deputy Director- Planning, Housing and Community Development

DATE: March 21, 2022

RE: Proposed Questions in Regard to the Regulation of Utility Scale Solar Developments

As you are aware, staff had several questions in regard to the regulation of proposed Utility Scale Solar Facilities during our Zoom conference on March 4, 2022. Please find the list of questions below. Please provide answers to the questions below by March 25, 2022, and all answers provided will become part of the public record pertaining to the development of the regulations.

1. Describe the Kansas Corporation Commission's authority to regulate utilities and environmental resources and how it pertains to traditional electricity, natural gas, oil, wind and solar power.

The Kansas Corporation Commission (KCC) has broad authority over the retail rates and services of electric, natural gas, telecommunications, and water utilities. In general, the KCC exercises its jurisdiction to require Kansas utilities to provide safe, reliable, and reasonably priced service. The Commission's jurisdiction over the production of oil and natural gas is primarily to protect correlative rights and environmental resources through preventing waste and enforcing regulations that provide guidelines of producing resources efficiently. The KCC does not enforce environmental laws and regulations related to the production of electricity. This jurisdiction falls under the EPA and KDHE.

More specifically to wind and solar generation, the KCC only has jurisdiction over these generation resources when they are owned or operated by a jurisdictional utility to serve its customers. However, Kansas law, at K.S.A. 66-104(e), allows all other entities constructing electric generation facilities the option to opt-out of public utility status, largely exempting themselves from KCC regulation. Therefore, a non-utility (called an independent power producer) who constructs new wind and solar electric generation facilities can sell the

electricity it produces only on the wholesale market through either a purchase power agreement or through the Southwest Power Pool's Integrated Market.

2. What oversight does the Kansas Corporation Commission (or other state or federal entities) have over the construction of solar facilities, including gen-tie lines?

As noted above, new generation facilities not owned by a utility may opt out of public utility status and most KCC regulations. Therefore, when non-utilities construct solar or wind facilities, the KCC does not have jurisdiction over most aspects of those generation resources, including any decisions regarding the siting of "gen-tie lines" connecting the facilities to the electrical grid.

However, irrespective of whether an entity has opted out of public utility regulation, the KCC maintains jurisdiction to enforce wire-stringing rules pursuant to K.S.A. 66-104(e)(2) and 66-183. By regulation, the KCC has adopted the National Electric Safety Code, which provides construction standards to both above ground conductors (gen-tie lines) and also below ground conductors between panels or turbines and inverters, particularly if they cross a public space. In addition, the KCC's underground utility damage prevention authority under K.S.A. 66-1801, et seq., applies to all excavation done on a construction site.

3. Do you anticipate or contemplate a State licensing process for utility scale solar energy facilities through the Kansas Corporation Commission or another possible regulatory agency?

No. As noted above, K.S.A. 66-104(e) allows independent power producers constructing new renewable generation facilities the option to opt out of public utility status and most KCC regulations.

Moreover, even for jurisdictional utilities who plan to construct new solar or wind energy facilities, there is no formal licensing process as a prerequisite to construction. These utilities are, however, subject to an after-the-fact assessment of whether the facilities are needed to serve customers and whether costs associated with the facilities were prudently incurred. The utility bears the burden of demonstrating these facts before it may include the costs of a new facility in its retail rates.

4. Please describe the electricity distribution process from energy produced by a utility scale solar facility, its transfer of power to the grid within the Southwest Power Pool, and then distribution to end-users.

The solar facility will gather all of the energy produced by each solar array and use a gen-tie line to move the energy to a substation that connects to the bulk electric system¹. The Southwest Power Pool (SPP) directs the dispatch of energy resources in our region on a least-cost basis, meaning the lowest cost resources are utilized first, subject to grid constraints. Once the energy enters the bulk electric system, the regional balancing authority (Eversource for Johnson County) will distribute the energy to end-use customers and other smaller utilities in the area as it shall in its discretion from time-to-time determine.

5. Is it possible for a governmental jurisdiction to capture energy created by the utility scale solar facility for local use or collect fees from the utility provider?

Any energy generated by an independent power producer can only be sold at the wholesale level. The Retail Electric Supplier Act (K.S.A. 66-1,170 *et. seq.*) prohibits the sale of electricity for retail purposes by any entity other than a certificated utility within its designated service territory. The KCC has not evaluated and offers no opinion on whether a local government can impact wholesale energy transactions to ensure locally-produced energy is directed to local demand.

Regarding fees, renewable generation facilities have a ten-year property tax exemption in Kansas. However, it is common for local governments to negotiate a Payment in Lieu of Taxes (PILOT) fee. The KCC has not evaluated and offers no opinion on whether additional fees may be allowable under Kansas law.

6. Why is Johnson County an attractive location for a utility scale solar facility? Is it because of distribution costs and population? Please describe this relationship.

There are many factors that a renewable energy developer may include in their individual analysis as the economic rationale for locating a solar facility. These factors vary by developer, and the KCC has no insight or access to any renewable developer's economic analysis. Furthermore, the KCC offers no opinion regarding the efficacy or the advisability of any aspect of any utility scale solar facilities contemplated to be located in Johnson County or any other geographical location in Kansas.

¹ The definition of the bulk electric system is complex and is defined by the North American Electric Reliability Corporation. In general, the energy that is connected at 100 kV or higher at the high-side of a transformer in a sub-station begins the bulk electric system.

7. How does utility scale solar facilities and the development of these land uses correspond to long term energy goals and objectives as contemplated by the State of Kansas?

The Legislature for the State of Kansas enacted the Renewable Standards Act (K.S.A. 66-1256, *et. seq.*), which declares "...it is in the public interest to promote renewable energy development in order to best utilize the abundant natural resources found in this state. There is hereby established a renewable energy standard for the state. The renewable energy standard shall be a voluntary goal that 20% of a utility's peak demand within the state be generated from renewable energy resources by the year 2020." Most KCC jurisdictional utilities exceeded the 20% goal of this statute prior to 2020 and continue to exceed the goal today.

The long-term energy goals and objectives of the State of Kansas are public policy considerations to be determined and established by the Kansas Legislature and embodied in Kansas statutes. Among other things, Kansas statutes require utilities to provide efficient and sufficient service at just and reasonable rates. For jurisdictional utilities, the KCC determines on a fact based case-by-case basis whether a utility's cost activities comply with the requirements of Kansas law and are in the best interest of Kansas ratepayers. In this instance, the KCC offers no opinion regarding these proposed land uses in Johnson County or whether those uses pertain or correspond to or comply with the long term energy goals or governing laws of the State of Kansas.