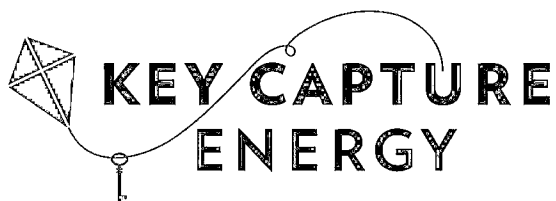




## Filing Receipt

**Received - 2022-07-26 02:16:13 PM**  
**Control Number - 14406**  
**ItemNumber - 984**



July 26, 2022

VIA ELECTRONIC FILING

Filing Clerk  
Public Utility Commission of Texas  
1701 North Congress Avenue, Suite 8-100  
Austin, Texas 78701

Re: PUC Project No. 14406: KCE TX 19, LLC Exempt Wholesale Generator Status

Dear Sir or Madam:

Please find enclosed a filed Notice of Self-Certificate of Exempt Wholesale Generator Status for KCE TX 19, LLC. A copy of this filing was filed on July 26, 2022 before the Federal Energy Regulatory Commission (FERC) (Attachment A) and is being filed in this docket (PUC Project No. 14406) per the requirements of Section 366.7(a) of the Commission's Regulations (18 C.F.R. § 366.7(a)) and 16 Tex. Admin. Code § 25.109. On July 26, 2022, FERC notified KCE TX 19, LLC that it had received for filing the electronic submission of the Notice of Self-Certification of Exempt Wholesale Generator Status. A copy of this notice is also attached (Attachment B).

Thank you,

Rachel Aslin Goldwasser

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Houston  
801 Congress Street Suite 400  
Houston, TX 77002

Albany  
25 Monroe Street, Suite 300  
Albany, NY, 12210

Salt Lake City  
150 State Street  
Salt Lake City, UT 84111

**UNITED STATES OF AMERICA  
BEFORE THE  
FEDERAL ENERGY REGULATORY COMMISSION**

**KCE TX 19, LLC**

)

**Docket No. EG22-\_\_\_\_-000**

**NOTICE OF SELF-CERTIFICATION OF  
EXEMPT WHOLESALE GENERATOR STATUS**

Pursuant to the Public Utility Holding Company Act of 2005 (“PUHCA”), enacted as part of the Energy Policy Act of 2005,<sup>1</sup> and Section 366.7 of the Rules and Regulations of the Federal Energy Regulatory Commission (“Commission”),<sup>2</sup> KCE TX 19, LLC (“Applicant”) hereby submits this Notice of Self-Certification of Exempt Wholesale Generator (“EWG”) status, as defined in Section 366.1 of the Commission’s regulations,<sup>3</sup> based on its development, ownership, and operation of an approximately 50 MW battery energy storage facility to be located in Elgin, Texas (the “Facility”).

**I. COMMUNICATIONS**

Communications regarding this Petition should be addressed to the following persons who are authorized to receive service:

Rachel Goldwasser  
General Counsel & VP, Regulatory  
Key Capture Energy, LLC  
25 Monroe St, Suite 300  
Albany, NY 12210  
Tel: 603-748-9581  
[Rachel.Goldwasser@keycaptureenergy.com](mailto:Rachel.Goldwasser@keycaptureenergy.com)  
[regulatory@keycaptureenergy.com](mailto:regulatory@keycaptureenergy.com)

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<sup>1</sup> EPAct 2005, Pub. L. No. 109-58, 1261-80, 119 Stat. 594 (2005).

<sup>2</sup> 18 C.F.R. § 366.7.

<sup>3</sup> 18 C.F.R. § 366.1.

## **II. APPLICANT'S NAME AND ADDRESS**

The legal name and principal place of business of the Applicant are as follows:

KCE TX 19, LLC  
c/o Key Capture Energy, LLC  
25 Monroe St., Suite 300  
Albany, NY 12210

## **III. DESCRIPTION OF APPLICANT**

### **A. Applicant's Proposed Activities**

Applicant is a direct, wholly owned subsidiary of Key Capture Energy, LLC ("Key Capture"), a Delaware limited liability company. Applicant is a limited liability company organized in the State of Delaware. It is currently constructing a 50 MW battery energy storage facility in Elgin, Texas (the "Facility"). After construction is complete, Applicant will own and operate the Facility which will connect to the transmission system owned by Oncor Electric Delivery Company in the balancing authority area ("BAA") of the Electric Reliability Council of Texas ("ERCOT"). Applicant will make sales of energy and ancillary services into the ERCOT market. The Facility also includes electric interconnection facilities necessary to effectuate Applicant's wholesale power sales from the Facility. Applicant's sole business is developing, owning, and operating the Facility. All of the facility's output will be sold exclusively at wholesale.

## **IV. REPRESENTATIONS REGARDING EXEMPT WHOLESALE GENERATOR STATUS**

The Commission's regulations require that an EWG be engaged directly or indirectly through one or more affiliates, and exclusively in the business of owning and/or operating one or

more eligible facilities and selling electric energy at wholesale.<sup>4</sup> Consistent with the Commission's regulations, Applicant makes the following representations to certify that it will satisfy the requirements for EWG status:

1. Applicant is engaged directly, or indirectly through one or more affiliates as defined in section 366.1 of the Commission's regulations, and exclusively in the business of owning or operating, or both owning and operating, all or part of one or more eligible facilities and selling electric energy at wholesale.

2. The Facility is an "eligible facility," as defined in Section 32(a)(2) of the Public Utility Holding Company Act of 1935 ("PUHCA 1935"),<sup>5</sup> because (i) it is used for the generation of electric energy exclusively for sale at wholesale; and (ii) it includes only those interconnecting transmission facilities that are necessary to effect a sale of electric energy at wholesale.

3. No rate or charge for, or in connection with, the construction of the Facility, or for electric energy produced by the Facility (other than any portion of a rate or charge which represents recovery of the cost of a wholesale rate or charge), was in effect under the laws of any state on October 24, 1992. Therefore, no determinations by a state commission are necessary for this self-certification to become effective.

4. No portion of the Facility is owned or operated by an "electric utility company" that is an "affiliate" or "associate company" of Applicant, in each case as such

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<sup>4</sup> See 18 C.F.R. §§ 366.7 and 366.1. Section 366.1 incorporates Sections 32(a)(2) through (4), and Sections 32(b) through (d) of the Public Utility Holding Company Act of 1935, 15 U.S.C. §§ 79z5a(a)(2)-(4), 79z-5b(b)-(d) ("PUHCA 1935"), for the purposes of establishing or determining whether an entity qualifies for EWG status.

<sup>5</sup> 5 U.S.C. § 79z-5a(a)(2) (repealed 2005). Section 32(a)(2) of PUHCA 1935 is incorporated by reference in Section 1262(6) of PUHCA 2005, 42 U.S.C. § 16451(6), and Section 366.1 of the Commission's regulations, 18 C.F.R. § 366.1.

terms are defined in Section 366.1 of the Commission's regulations.<sup>6</sup>

5. There are no leasing arrangements involving the Facility and any public utility company or any affiliate or associate company of any public utility company.

## V. INCIDENTAL ACTIVITIES

Applicant may also engage in, but not limited to, the following incidental activities that the Commission has found to be consistent with EWG status under Section 366.7 of the Commission's regulations:

- Sell ancillary services;<sup>7</sup>
- Lease or rent property to third parties, but to the extent a lease arrangement is not reasonably necessary to the Applicant's business and a rental fee above a nominal amount is received, Applicant will, consistent with EWG precedent, donate or transfer such rental revenues to a non-affiliated entity;<sup>8</sup>
- Sell "green" power certificates or credits consistent with the Commission's limitation that an EWG may sell such certificates or credits where they are associated with the operation of the Facility;<sup>9</sup>
- Acquire or trade emission or similar allowances consistent with the Commission's limitation that an EWG may engage in such trading so long as the allowances were originally obtained in the normal course of operating the Facility;<sup>10</sup>
- Resell or reassign excess transmission capacity;<sup>11</sup>
- Purchase and sell congestion revenue rights needed to operate the Facility;<sup>12</sup>
- Certain project development and financing activities associated with the Facility, which may include but are necessarily limited to the following: due diligence; site investigations; feasibility studies; design and engineering; licensing and permitting; negotiation of asset and land acquisitions and leases; negotiation of contractual commitments with lenders, equity investors, governmental authorities, and other entities and such other activities as may be required to financially close; negotiation of power sales contracts; equipment purchases; engineering,

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<sup>6</sup> 18 C.F.R. § 366.1.

<sup>7</sup> See *Sithe Framingham LLC*, 83 FERC ¶ 61,106 at 61,504 (1998).

<sup>8</sup> See *Killingholme Generation Ltd.*, 90 FERC ¶ 61,194 at 61,632 (2000); *Duke Energy Hot Spring, LLC*, 98 FERC ¶ 61,287 (2002).

<sup>9</sup> See *Madison Windpower, LLC*, 93 FERC ¶ 61,270 (2000).

<sup>10</sup> See *UGI Development Co.*, 89 FERC ¶ 61,192 (1999).

<sup>11</sup> See, e.g., *CNG Power Servs. Corp.*, 71 FERC ¶ 61,026 at 61,103-04 (1995); *Compañia Hidroeléctrica Doña Julia S. De R.L.*, 85 FERC ¶ 61,336 (1998).

<sup>12</sup> See *Duquesne Power, L.P.*, 106 FERC ¶ 61,104 (2004).

construction, in interconnection and related matters; submission of bid proposals; and development of financing programs related to owning and/or operating the Facility;<sup>13</sup>

- Enter into agreements relating to facilities shared with an affiliated EWG and used in the operation of eligible facilities;<sup>14</sup>
- Wholesale power marketing, including “purchas[ing] and resell[ing] electric energy at wholesale that it has not generated itself,”<sup>15</sup>
- Engage in other activities that are consistent with Commission precedent.

## **VI. STATE COMMISSION NOTIFICATION**

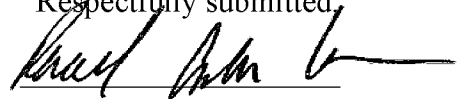
In accordance with Section 366.7(a) of the Commission’s regulations,<sup>16</sup> a copy of this Notice is concurrently being served upon the Public Utility Commission of Texas, the state commission of the state in which the Facility shall be located.

## **VII. CONCLUSION**

For the foregoing reasons, Applicant respectfully requests that the Commission accept this Notice of Self-Certification of EWG Status.

Dated: July 26, 2022.

Respectfully submitted,



Rachel Goldwasser  
General Counsel  
Key Capture Energy, LLC

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<sup>13</sup> See *Southern Elec. Wholesale Generators, Inc.*, 66 FERC ¶ 61,264 (1994); *AEP Res., Project Mgmt. Co.*, 74 FERC ¶ 61,202 at 61,674 (1996); *Empresa Valley Hermoso, S.A.*, 72 FERC ¶ 61,306 (1995).

<sup>14</sup> See *Buffalo Gap Wind Farm 2, LLC*, 118 FERC ¶ 61,069 at PP 2, 14 & n.3 (2007).

<sup>15</sup> See *Entergy Power Marketing Corp.*, 73 FERC ¶ 61,063 (1995).

<sup>16</sup> 18 C.F.R. § 366.7(a)

**UNITED STATES OF AMERICA  
BEFORE THE  
FEDERAL ENERGY REGULATORY COMMISSION**

**KCE TX 19, LLC**

)

**Docket No. EG22-\_\_\_\_-000**

**CERTIFICATION**

I, the undersigned, and as a representative of Key Capture Energy, LLC, certify that I have read the foregoing Notice of Self-Certification of Exempt Wholesale Generator Status being filed by KCE TX 19, LLC for a determination of exempt wholesale generator status and know the contents thereof; and the facts and representations set forth in the attached certification of exempt wholesale generator status are true and correct to the best of my knowledge, information and belief. I possess the full power and authority to sign this filing.

DATED: July 26, 2022

A handwritten signature in black ink, appearing to read 'Rachel Goldwasser', is written over a horizontal line.

Name: Rachel Goldwasser

Title: General Counsel



### **CERTIFICATE OF SERVICE**

I hereby certify that foregoing Notice of Self Certification of Exempt Wholesale Generator Status of KCE TX 19, LLC was served on the 26th day of July 2022, by filing a copy with the Public Utility Commission of Texas

A handwritten signature in black ink, appearing to read "Rachel Goldwasser", is written over a horizontal line.

Rachel Goldwasser  
General Counsel  
Key Capture Energy, LLC

## Rachel Goldwasser

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**From:** eFiling@ferc.gov  
**Sent:** Tuesday, July 26, 2022 1:55 PM  
**To:** Rachel Goldwasser; efilingacceptance@ferc.gov  
**Subject:** FERC Acceptance for Filing in EG22-190-000

### Acceptance for Filing

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The FERC Office of the Secretary has accepted the following electronic submission for filing (Acceptance for filing does not constitute approval of any application or self-certifying notice):

-Accession No.: 202207265073  
-Docket(s) No.: EG22-190-000  
-Filed By: KCE TX 19, LLC  
-Signed By: Rachel Goldwasser  
-Filing Type: Exempt Wholesale Generator Request -Filing Desc: EG or FC of KCE TX 19, LLC submits Self-Certification of Exempt Wholesale Generator Status under EG22-190.  
-Submission Date/Time: 7/26/2022 1:15:27 PM -Filed Date: 7/26/2022 1:15:27 PM

Your submission is now part of the record for the above Docket(s) and available in FERC's eLibrary system at:

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