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ACTION REQUEST RESPONSE

To: Public Service Commission of Utah
Ted Boyer, Chair
Ric Campbell, Commissioner
Ron Allen, Commissioner

From: Utah Division of Public Utilities
Phil Powlick, Director
Artie Powell, Energy Section manager

Date: March 28, 2008

Subject: Docket No. 08-2490-01, Milford Wind's Application for a Certificate of Convenience and Necessity

RECOMMENDATION(S)

After reviewing the application, motion to dismiss, and notice of Governor's signing and request for dismissal, the Division recommends that the Commission grant a certificate for the transmission facilities associated with the Milford Wind projects, with the following conditions. Milford Wind must,

1. Demonstrate to the Commission that it has acquired all of the necessary permits to construct and complete the proposed transmission facilities;

2. Inform the Commission in writing of the final disposition of the power output from Milford II;
3. Inform the Commission in writing of changes in status with regard to the construction schedules and in-service dates for Milford I and/or Milford II;
4. Inform the Commission in writing of any expansions of Milford I and/or Milford II or of new projects requiring transmission located within the State of Utah; and
5. Apply for additional certificates for any expansion of the transmission capacity from the Milford project area and for any new transmission associated with company wind projects in Utah.

BACKGROUND

On February 20, 2008, Milford Wind Corridor Phase I, LLC and Milford Wind Corridor Phase II, LLC (respectively “Milford I” and “Milford II” or collectively “Milford Wind”) submitted an application for Certificates of Convenience and Necessity (“Application”). Simultaneously, Milford Wind filed a Motion to dismiss the Application (“Motion”). In response to the Application, the Commission issued an Action Request to the Division on February 21, 2008 seeking an explanation of the issues by March 24, 2008. Subsequently, the Commission issued a scheduling order on February 26, 2008, ordering interested parties to respond to both the Application and the Motion by the same due date on the Action Request: March 24, 2008. However, on March 21, Milford Wind filed a “Notice of Governor’s Signing of Senate Bill 202 and Request for Order of Dismissal” that requested the Commission to dismiss its application in

light of revisions to the existing statute. In light of this, parties entered into a stipulation agreement extending the filing deadline by one week to March 31, 2008. This memo serves as the Division's response to the Action Request and the Application. The Division is simultaneously filing a separate memo responding to the Motion to Dismiss and to the "Notice of Governor's Signing." This memo acknowledges that Senate Bill 202 removed Milford Wind's generating facilities from Commission jurisdiction. However, the Division believes that the Commission retains authority over the transmission facilities associated with the project and the discussion below will therefore focus primarily on the transmission aspects of the project.

DISCUSSION

Pursuant to Utah Code Ann §54-4-25, Milford Wind filed an application for Certificates of Convenience and Necessity for two projects, Milford I and Milford II. According to this section of the code, in order to receive a certificate from the Commission, an electrical corporation must meet several conditions. These conditions include, (1) establishing the need for the construction of the project; (2) demonstrating that the project will not conflict with or adversely affect the operations of another certified public utility; and (3) demonstrating that all required permits have been received or that it is in the process of obtaining all required permits.

A. NEED - UCA 54-4-25 (1)

. . . [an] electrical corporation . . . may not establish, or begin construction or operation of a line, route, plant, or system or of any extension of a line, route, plant, or system, without having first obtained from the commission a certificate that present or future public convenience and necessity does or will require the construction.

The most recent IRP information¹ from PacifiCorp indicates a need for resources beginning in 2008; the resource deficit in 2008 begins at 850 MW and grows to 2,830 MW in 2017. In addition, in the recent Utah legislative session, SB 202 set a target of 25% of retail electrical sales coming from renewable resources by 2025. However, it is not clear that Utah's resource needs are relevant to the Application (at least as it relates to Milford I) before the Commission. As Milford Wind states, "All of the power from [Milford] I of the Project ... will be sold wholesale from Milford I to the Southern California Power Authority ("SCPPA") pursuant to a power purchase agreement ("PPA")". (Application, p. 6). Milford Wind also represents that the PPA was approved by the SCPPA and its member cities on or after February 15, 2007.² This action by the SCPPA and its member cities could be taken as prima facie evidence that they have a need that Milford I can fulfill.

The future for Milford II, however, is somewhat uncertain at this point. As Milford Wind states, while it is in negotiations with several parties, "There is currently no definitive agreement for the sale of the power from the [Milford] II facilities." (Application, p. 7). While the Division believes that these parties are outside of the State of Utah,³ the Application implies the possibility that the power from Milford II possibly could be delivered to retail customers in Utah:

In the event that Milford II sells some or all of the power from [Milford II] to entities providing retail service to Utah customers, it will take appropriate steps to obtain the approval of state and federal authorities, if any is required. (Application, p. 9)

¹ "Integrated Resource Plan: Public Input Meeting," PacifiCorp Presentation on the 2008 IRP, February 29, 2008, p. 44 (Business Plan Capacity L&R Detail).

² Exhibits 3-6, and 9 attached to Application attest to the approval of the PPA.

³ Milford Wind's Application does not identify either by name or location the parties involved in these negotiations.

Furthermore, Milford Wind indicates that it “hopes” to develop as much as an additional 700 MW of capacity through expansions of the project and has engaged in preliminary discussions with parties including “some Utah entities.” (Application, p. 7). However, it seems likely that in either case – Milford II selling to a Utah entity or future expansions of the project – Milford Wind would sell the output through a wholesale transaction. Depending on the structure of the wholesale agreement, the Commission may have an interest in reviewing the contract. For example, if PacifiCorp were the counterparty to the transaction, then the transaction would fall under the Commission’s jurisdiction for review and approval.

B. PERMITS - UCA 54-4-25 (4)(a)

- (i) Each applicant for a certificate shall file in the office of the commission evidence as required by the commission to show that the applicant has received or is in the process of obtaining the required consent, franchise, or permit of the proper county, city, municipal, or other public authority.

Milford Wind represents that it is in the process of obtaining all the required permits and authorizations for Milford I and II. (Application, p. 9). In Exhibit 8 attached to the Application, Milford Wind lists 13 permits or approvals necessary for the construction of the project. Of these 13, one is completed and two require no specific approval from the governing body. As of the Application filing, the other 10 permits appear to be outstanding. While some of these permits cover only the generation facilities involved in the overall project, the majority also involve transmission facilities. Milford Wind should therefore be required to demonstrate that it has received or is in the process of obtaining such permits and to inform the Commission when all required permits have been obtained.

Absent from the list in Exhibit 8 is the interconnection agreement with Intermountain Power Agency specified in the Application in paragraph 10. This agreement should be included as an item on the list.

C. CONFLICTS - UCA 54-4-25 (4)(b)

each applicant ... shall also file in the office of the commission a statement that any proposed line, plant, or system will not conflict with or adversely affect the operations of any existing certificated fixed public utility which supplies the same product or service to the public and that it will not constitute an extension into the territory certificated to the existing fixed public utility.

Milford Wind states,

none of their proposed facilities will conflict with or adversely affect the operations of any existing certificated fixed public utility which supplies electric power or service to the public, and that Milford I and II facilities will not constitute an impermissible extension into the territory certificated to the existing fixed public utility. (Application, p. 9).

At this date, no public utility has indicated that either Milford I or II will conflict with its operations, and the Division has found no evidence of any conflicts, including any conflicts posed by the transmission line. We are, of course, cognizant that UAMPS has intervened in this case and could have some concern with the effect of this project on their system. The Division is not aware, at this point, what UAMPS' concerns may be. Nevertheless, the Division recommends that Milford Wind be required to inform the Commission of changes or expansions to the project in order to monitor whether the project continues to pose no interference with other utilities or transmission facilities. The Division also notes that under UCA 54-4-25(3), a public

utility can bring to the Commission its complaints of conflicts and the Commission may prescribe remedies that it determines to be just and reasonable.

D. BENEFITS

Milford Wind represents that, although the power from Milford I and II will not be available within the state, there are other “significant benefits to the economies and tax base of Beaver and Millard Counties and the State of Utah.” (Application, p. 7). In a letter to the Commission, the Beaver County Commission states, it looks “forward to the jobs, economic activity and tax revenue the Project will bring” to Beaver County.⁴ Dr. Dianne R. Nielson, Governor Huntsman’s Energy Advisor, writes that the Milford Wind’s project “will bring valuable jobs, infrastructure, taxes and other benefits to the citizens of Utah.”⁵ The Division accepts these representations of economic benefits at their face value.

In addition to the economic benefits, Milford Wind states, “residents of Utah will benefit from the environmental advantages of having non-polluting renewable electric generation facilities in the state.” (Application, p. 8). Additionally, Dr. Nielson writes, “The project is consistent with Utah Energy Policy (UCS 63-53b-301).” Since the energy from the Milford Wind project will not be sold in Utah, it , will not displace current or future production within the state. The Division believes these benefits, though real, are indirect with regard to the majority of Utah electricity consumers.

⁴ Beaver County Commission, letter to the Commission, February 5, 2008.

⁵ Dr. Dianne R. Nielson, Energy Advisor, letter to the Commission, undated.

CONCLUSIONS AND RECOMMENDATIONS

On February 20, 2008, Milford Wind submitted an application for Certificates of Convenience and Necessity for Milford I and Milford II, two phases of an approximately 300 MW wind facility located in Beaver and Milford counties. The Application represents that, (1) the power from Milford I will be sold to parties outside the State of Utah under a wholesale arrangement; (2) while the ultimate disposition of the power from Milford II is uncertain at this point, there is a possibility that it will or could be sold to entities within the state; (3) Milford Wind has hopes of expanding the project in the future; (4) Milford Wind is in the process of obtaining all the necessary permits and approvals; (5) the project will not conflict with the operations of any other either public utility in the state; and (6) the project provides the local counties and the state with substantial benefits.

In general, the Division believes Milford Wind meets the requirements under the statute to receive a certificate for its transmission facilities. Therefore, based on the discussion contained herein, the Division recommends that the Commission grant the certificate contingent upon Milford Wind meeting the following conditions:

1. Demonstrate to the Commission that it has acquired all of the necessary permits to construct and complete the proposed transmission facilities;
2. Inform the Commission in writing of the final disposition of the power output from Milford II such that the Commission and Division can monitor the volume of power placed on the transmission facilities;

3. Inform the Commission in writing of changes in status with regard to the construction schedules and in-service for Milford I or Milford II and the associated transmission facilities;
4. Inform the Commission in writing of any expansions of the Milford I and Milford II or of new projects requiring transmission located within the State of Utah; and
5. Apply for additional certificates for any expansion of the transmission capacity from the Milford project area and for any new transmission associated with company wind projects in Utah.