

PUBLIC SERVICE COMMISSION OF UTAH

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IN THE MATTER: THE APPLICATION )  
OF MILFORD WIND CORRIDOR PHASE I,) )  
LLC AND MILFORDWIND CORRIDOR ) )  
PHASE II,LLC, FOR CERTIFICATES OF) Docket No. 08-2490-01  
CONVENIENCE AND NECESSITY FOR THE)  
MILFORD PHASE I AND PHASE II WIND)  
POWER PROJECTS. )  
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TRANSCRIPT OF HEARING

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TAKEN AT: Public Service Commission  
160 East 300 South, Room 403  
Salt Lake City, Utah  
  
DATE: August 21, 2008  
  
TIME: 9:50 a.m.  
  
REPORTED BY: WENDY ALCOCK, CSR, RPR

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A P P E A R A N C E S

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SANDY MOOY

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P R O C E E D I N G S

HEARING OFFICER: This is the time and place for the hearing in Commission Docket 08-2490-01, Milford Wind application for certificate of convenience and necessity.

I'm Sandy Mooy. I've been selected by the Commission to be the hearing officer for the proceeding today. Can we take appearances starting with you, Mr. Evans?

MR. EVANS: I'm William Evans of the law firm of Parsons, Behle & Latimer. I'm here on behalf of Milford Wind Corridor Phase I and Phase I, LLC.

MR. McNULTY: I'm Matthew McNulty. I am from the law firm of Vancott, Bagley. I am here representing the municipal group Utah Associated Municipal Power Systems.

MR. GINSBERG: Michael Ginsberg appearing for the Division of Public Utilities.

HEARING OFFICER: Thank you. Prior to going on the record there was some discussion on the procedure we're going to follow today. We'll be using the Division's April 14th response to -- the Division of Public Utilities to the preliminary position statement of Utah Association of Municipal Power Systems as a basis to identify issues that will be discussed and brought forward in the hearing which is scheduled later.

1                   Do the parties see any need to have any  
2 witnesses or will this be -- if there is a need for any  
3 reference, I'm happy to take a proffer.

4                   MR. EVANS: For us I think it's just argument  
5 today.

6                   HEARING OFFICER: Okay. Let's begin with -- I'm  
7 using page 4. The first item identified by the Division  
8 is, "In light of the building of the generating plant,  
9 does the transmission line conflict with or adversely  
10 affect the operations of any existing certificated public  
11 utility in the state?"

12                   Any dispute on that issue being one brought  
13 before the Commission? Is there any discussion on that?

14                   MR. EVANS: Well, if I may, Your Honor, just  
15 start with a preliminary and maybe a way that Milford Wind  
16 is looking at how we analyze whether these issues are  
17 properly before the Commission.

18                   And there's two things we have to look at here.  
19 One is whether the issue is properly before the Commission  
20 and, two, whether UAMPS has an interest in participating,  
21 that is, putting on evidence or disputing that issue. And  
22 so those two things we need to look at.

23                   The wind farm is exempt already, so what we're  
24 talking about is the interconnection line from the wind  
25 farm to the point of interconnection. When we're talking

1 about a generation plant -- and we're calling it a  
2 transmission line and it's kind of interchangeable there  
3 on the terminology. But everything that happens at the  
4 wind farm is beyond the jurisdiction of the Commission  
5 pursuant to SB 202 and the Commission's prior ruling in  
6 this case.

7 Everything at the point of interconnection on  
8 the transmission grid is a matter of IPA contractual  
9 arrangements, federal law, NERC, and WECC. And so the  
10 Commission -- and it has to do with power flows which are  
11 generated at the wind farm.

12 We don't think the Commission ought to be  
13 looking at what happens at the wind farm or what happens  
14 beyond the point of interconnection for the reason that  
15 even though the Commission has taken jurisdiction over the  
16 transmission line, it hasn't taken jurisdiction over the  
17 flow of the power. That is something different.

18 What we're here for is a certificate to  
19 construct the transmission line. So to the effect that  
20 we're talking about the operations of a public utility  
21 that are a consequence of us putting wholesale power on  
22 the grid, we don't think it's an issue for the Commission  
23 to look at.

24 If it's a matter of the placement of our line in  
25 the transmission corridor, then maybe we've got something

1 because we're in here for a certificate to construct. But  
2 we also need to remember as we go through these issues  
3 that the Commission has disclaimed siting authority in the  
4 Populus-to-Terminal case and others, so that what the  
5 Commission can do is make sure we have the proper  
6 certificate in place, but it really can't offer a remedy  
7 if the placement of our facilities in that corridor affect  
8 another utility somehow.

9           So we're down to very narrow issues. And to  
10 state it broadly, like in A, let's talk about A. "In  
11 light of building the generation plant does the  
12 transmission line conflict with or adversely affect the  
13 operations of a certificated public utility in the state?"  
14 The certificated public utility is Rocky Mountain Power.  
15 UAMPS isn't a public utility, it's not certificated. So  
16 to that extent we agree that that's the issue.

17           What the Commission should look at in  
18 determining that issue is whether Rocky Mountain Power has  
19 a complaint about that line interfering with its  
20 operations, and we think that Commission should confine it  
21 to that.

22           HEARING OFFICER: Mr. McNulty, do you have  
23 anything additional you want to address on that point?

24           MR. McNULTY: Well, no. I think that is a fair  
25 statement of the things that are before this Commission or

1 before the Commissioners.

2 HEARING OFFICER: Mr. Ginsberg, were there any  
3 conditions that --

4 MR. GINSBERG: Well, the Division is reviewing  
5 not only the impact under Section 1, reading narrowly the  
6 definition of certificated public utility as limiting it  
7 only to Rocky Mountain Power. In our review we are  
8 expanding that. And maybe that will be objected to, but  
9 we're also looking at the impact on interconnecting  
10 utilities, UAMPS, even though they might not have a  
11 certificate in a sense of a certificate to operate like  
12 Rocky Mountain Power or others at the interconnection  
13 point where this line terminates.

14 We are reviewing the studies that are being  
15 presented that have been done on the impact of the line on  
16 the transmission system of UAMPS or Rocky Mountain Power  
17 and intend to present that evidence. That seems to fit  
18 within the definition of 54-8b where it talks about the  
19 affect on the operation systems of other utilities.

20 Now, whether it's limited only to Rocky Mountain  
21 Power because it uses the term "certificated public  
22 utility" -- and clearly we used that term in the first  
23 bulletin on page 4 of our memorandum. When Milford Wind  
24 responded to their pleading, I felt that that needed to be  
25 clarified, so to that extent that's our clarification.

1 HEARING OFFICER: All right. Next point?

2 MR. EVANS: "Does the transmission line  
3 constitute extension into the certificated territory of a  
4 public utility within the state?"

5 That requirement under the statute is meant to  
6 address one public utility building facilities that would  
7 extend into the certificated territory of another public  
8 utility. The reason that the Commission should look at  
9 that ordinarily is to make sure that the investment that  
10 the one public utility is making and that the rate payers  
11 are paying for doesn't impinge on the right of another  
12 public utility to serve the customers in that territory.

13 It doesn't apply here. We're not providing any  
14 retail services. This is a square peg in a round hole on  
15 this one. Whenever you build an interconnection line,  
16 whether it's the mouth the Spanish Fork Canyon or whether  
17 it's from Beaver to Delta, you are in the certificated  
18 territory of another certificated public utility. But the  
19 reasons for the Commission looking at whether it extends  
20 are not present here.

21 I guess what we have to do is parse the words:  
22 What does extension mean? You know, this doesn't  
23 constitute extension somehow? The reason that the  
24 Commission shouldn't look at it is because we're not a  
25 public utility. We're not encroaching on someone else's



1 territory. So we just don't think it has any relevance  
2 here. And certainly UAMPS doesn't have an interest in it  
3 because it doesn't have territory. It's not a  
4 certificated public utility in whose territory the line  
5 will be placed.

6 HEARING OFFICER: Mr. McNulty, go ahead.

7 MR. McNULTY: Well, I think some background  
8 probably is necessary. When this case began, this case  
9 was about an entity that was -- this is Milford now trying  
10 to bundle, if you will, the transmission line with the  
11 constructing of the facility and trying to get an  
12 exemption that UAMPS believes was inappropriate under the  
13 reading of SB 202.

14 The reason for our interest was, and remains,  
15 that if Milford is correct in their reading at the time  
16 that the transmission line was exempt as well, then  
17 Milford would always be -- and entities similarly situated  
18 -- would be exempt from review by the Commission as to  
19 their lines that come from an exempt facility.

20 Contrast that with a UAMPS, and the cases are  
21 relatively clear that UAMPS, even though it's not a  
22 certificated public utility, we have to go get siting  
23 authority from the Commission. We are necessarily in  
24 front of the Commission on those limited ideas and those  
25 limited issues.

1                   Now, as we go through these specific things, the  
2 questions that we raised originally were: Shouldn't this  
3 be unbundled -- this question of a transmission line be  
4 unbundled from the question of the transmission facility  
5 itself? Just because it is a green facility where the  
6 power is being created does not mean that the transmission  
7 line is per se green.

8                   So I take it in some of what's been said and  
9 what's been written that because this is a green facility,  
10 or because it is related somehow to a movement to create,  
11 you know, from carbon -- protect us from carbon, it's all  
12 very appropriate that somehow they're not required to put  
13 on the same amount of proof or same amount of materials  
14 because it is a green facility.

15                   The transmission line is neutral as to what it  
16 is. It is nothing. It is neither green nor a dirty coal  
17 transmission line. It's neutral. So some of these  
18 questions as we go through A through F here, am I going to  
19 be able to specifically identify where we have a  
20 certificated territory? Absolutely we do not have one.

21                   So it may be that as we read down through each  
22 one of these things, and we parse each one of these  
23 sentences and paragraphs, that we will not be able to show  
24 you a specific need as to all of these matters. But as a  
25 whole, we believe that we have provided the impetus for a

1 legitimate review of siting authority, of issues as it  
2 relates to not only authority but where the line should  
3 be. Legitimate questions. Because the line itself is a  
4 resource of the State of Utah that needs to be protected.  
5 And then the question of the reasonable expertise and  
6 whether the First Wind folks -- Milford, excuse me -- has  
7 the opportunity and the expertise and the financial  
8 backing to build this.

9           So as we parse through these individually, are  
10 we going to be able to prove each one of these and show a  
11 specific role for UAMPS? I suspect not. But as a whole  
12 we think we have the ability to bring something to the  
13 table and bring some expertise that we think the  
14 Commission needs.

15           Now, if DPU is taking over that role, then maybe  
16 we're -- maybe we shouldn't be here. But the reality is,  
17 we think as a whole we do have a role to play. So that  
18 was a long way of saying I agree with Mr. Evans'  
19 characterization of B.

20           HEARING OFFICER: Want to add anything,  
21 Mr. Ginsberg?

22           MR. GINSBERG: The list that we've been going  
23 through, the genesis of that list is what is normally  
24 looked at in a certificate application for a transmission  
25 line and it wasn't intended to try and tailor it

1 specifically to the unusual and unique request that is  
2 occurring here, which is probably the first time a request  
3 has ever taken place for a nonutility where only the  
4 transmission line is at issue. So let me put that in  
5 context.

6 I do think it's probably worth at least  
7 commenting to something Mr. McNulty said, and that's  
8 whether or not siting is an issue here. And maybe that's  
9 something that the Commission can resolve, as they have  
10 resolved it in other proceedings that the Commission is  
11 not involved in determining the siting of the line.  
12 That's determined by local government and others. You  
13 issued an order like that in the Rocky Mountain Power  
14 transmission line, and maybe it would be helpful to  
15 emphasize that here.

16 That particular paragraph that we're referring  
17 to is the standard paragraph that comes out of the statute  
18 and it may have no real bearing in this type of  
19 Commission, but that's why it was listed.

20 HEARING OFFICER: Okay.

21 MR. EVANS: May I respond?

22 HEARING OFFICER: Yes.

23 MR. EVANS: UAMPS is right. As we go down this  
24 list, he's not going to be able to articulate an interest  
25 each of those individual issues. If I heard Mr. McNulty

1 right it sounds like -- and from the beginning it has been  
2 UAMPS saying, "We're local. If we need a certificate, you  
3 do too." And part of that is derived from the fact that  
4 UAMPS and Milford are competitors. We're competitors for  
5 the sale of our power, we're competitors for transmission  
6 resources, we're competitors for markets throughout the  
7 west.

8           And so I understand the point, and there may be  
9 something to it that if -- you know, if UAMPS needs a  
10 certificate, Milford does too. But that doesn't get us  
11 into stating an interest in the statute. It has nothing  
12 to do with whether we're green or not. It has to do with:  
13 What is this line? They're talking about unbundling this  
14 line. This is not a public access line.

15           We understand that the Commission may have an  
16 interest in seeing the transmission resources developed in  
17 the state in a way that can access remotely located or  
18 renewable energy sources. That is important to the state.  
19 If the Commission is going to do that the first question  
20 is: Who pays for it, whose investment is it, and who gets  
21 access to the line?

22           When it's a privately constructed inter-  
23 connection facility with no access, that's being financed  
24 completely by Milford, then those questions are not  
25 germane. This is not about unbundling.

1           The Commission doesn't have authority to compel  
2 access on a transmission line. That's a matter for FERC.  
3 If someone builds a resource and thinks they want to use  
4 this a line to get it to market, that's not something the  
5 Commission ought to ever be looking at. It's just not  
6 part of this proceeding.

7           The statute is not designed to allow the  
8 Commission to oversee the development of transmission to  
9 reach renewable resources in this state, and by trying to  
10 fit these requirements into some laudable agenda to do  
11 that only illustrates the problem that the Commission has  
12 asserting jurisdiction over this project in the first  
13 place.

14           This is not the kind of project that ought to be  
15 here, and that's why the requirements don't work. So  
16 having said that, let me just make one comment on what the  
17 Division said. The statute needs to be tailored. I'll  
18 say it does. It absolutely does, because as you go  
19 through these requirements they don't apply in our  
20 situation. The statute says "certificate of public  
21 utility," and that's what it means. The statute says,  
22 "public convenience and necessity requires the  
23 construction," that's what it means.

24           Milford does not want to find itself in a  
25 position at the end of the day here where the Commission

1 has fudged the requirements at everyone's behest.  
2 Everyone wants this certificate to happen, but not in a  
3 way that is appealable error. That is not helpful to  
4 anybody here.

5           So either the requirement applies or it doesn't.  
6 Let's not reinterpret the statute in an effort to tailor  
7 it to Milford Wind. Let's go back to the legislature and  
8 say, "We need a way for the Commission to develop  
9 transmission resources and we need to be clear that  
10 interconnecting lines from renewables are free of  
11 Commission jurisdiction." That's what we should do with  
12 this.

13           If we're going to have to get a certificate,  
14 let's not look at issues that are not relevant. That's  
15 one of them, extending into the certificated area.

16           HEARING OFFICER: Mr. Evans, do you view that  
17 the question in part B might be subsumed in part A in the  
18 sense of identifying which are the public utilities whose  
19 activities might be adversely affected? Simply  
20 identification of which utilities you might be looking at  
21 or expecting to have objection coming forward?

22           MR. EVANS: Yes. But we also need to look at:  
23 Are they objecting to the location of the line? Are they  
24 objecting to what happens with the power?

25           And as to the first one, that's a siting

1 question. As to the second one, that's an exempt  
2 question. So I just don't see those are relevant at all  
3 here. I'm sorry. They could be subsumed, but I don't  
4 think either one is relevant to this case. Should we go  
5 on?

6 HEARING OFFICER: Yeah.

7 MR. EVANS: 3. This one arguably is the most  
8 relevant, the one that we think the Commission ought to  
9 take a look at. "Has the applicant received or is in the  
10 process of obtaining permits from the authorities that  
11 grant the necessary permissions to build the facility?"

12 We agree that the Commission ought to look at  
13 that. We don't agree that the Commission should be  
14 looking behind those permits. One of those is the  
15 interconnection agreement that is already a done deal.  
16 It's executed by all the parties, IPA and Milford Wind.

17 It is pursuant to that agreement that the  
18 transmission studies were done, that UAMPS' interest in  
19 the future IPP-3 was considered, that the space in the  
20 switch yard was looked at, the effect on the grid, all of  
21 that was done in entering into that interconnection  
22 agreement.

23 The Commission needs to be sure that that  
24 interconnection agreement is in place, along with permits  
25 from the BLM and state and county, et cetera, but should



1 not be looking behind it and second-guessing the system  
2 impact studies that are underlying that interconnection  
3 agreement.

4 And so we agree with No. 3, but we think it  
5 needs to be trimmed to exactly what it says in the  
6 statute, and that is that we need to provide evidence to  
7 show that we have received or are in the process of  
8 obtaining the required consents.

9 HEARING OFFICER: Mr. McNulty?

10 MR. McNULTY: I guess this is -- given the  
11 background I think this is refreshing that now the  
12 applicant agrees that the PSC should look at whether the  
13 necessary consents and permits have been obtained. I  
14 think that's laudable. That is not where we came into the  
15 contest.

16 HEARING OFFICER: Mr. Ginsberg, anything?

17 MR. GINSBERG: No.

18 MR. EVANS: One response.

19 HEARING OFFICER: I understand, Mr. Evans, that  
20 you're assigning in the context of where you find  
21 yourself.

22 MR. EVANS: Thank you.

23 HEARING OFFICER: Where your client finds  
24 itself. D?

25 MR. EVANS: "In light of building a generation

1 facility that does not need a certificate, is there a  
2 reasonable need for the transmission line to get the  
3 output of the plant to its contracted market?"

4           As we've said in our pleadings throughout this  
5 case, it's very difficult to show, when you're an  
6 independent power producer putting renewable energy into a  
7 wholesale market, that the public requires that power,  
8 that it requires the facilities necessary to generate that  
9 power and bring it to market. Another reason that the  
10 Commission should have declined jurisdiction here.

11           But since we're in the position we are, as you  
12 point out, the Division has stated this about as cleanly  
13 as it can be stated. The wind farm will be built, it's  
14 exempt, we need to get power to market, there's a  
15 reasonable need for that line. I think that if it's  
16 showing it should be required at all -- and we think it  
17 shouldn't -- that that's the extent of it showing. Now,  
18 again, I just have to say it, but I don't think UAMPS has  
19 any interest in that issue.

20           HEARING OFFICER: Mr. McNulty, anything?

21           MR. McNULTY: No, I have nothing on that.

22           HEARING OFFICER: Okay. Mr. Ginsberg?

23           MR. GINSBERG: When the Division wrote its  
24 original memo trying to define what "public convenience  
25 and necessity" meant in the context of this type of

1 application, you know, we looked at some local impacts,  
2 you know, taxes, things like that, it partially was to try  
3 and tailor, I think, in light of Senate Bill 202 which has  
4 said that -- legislature has said that building an  
5 independent power production facility doesn't need a  
6 certificate and can be sold wholesale anywhere.

7           And so in light of that legislative mandate, I  
8 thought when this was written it was to try and define a  
9 way of looking at the transmission line in the context of  
10 public convenience and necessity within the statute, and  
11 that's why it was, I think, narrowly written. So that's  
12 my comment there. That was the purpose of that section.

13           HEARING OFFICER: Mr. Evans, do you want to do  
14 any response? I'm not asking for it, just --

15           MR. EVANS: No. Only just to point out again  
16 that a decision by the Commission that says a reasonable  
17 need to connect a generation resource with a point of sale  
18 satisfies the requirement under 54-4-25-1 that says you  
19 can't build without having first obtained a certificate --  
20 these are the words -- "that the present or future public  
21 convenience and necessity does or will require the  
22 construction."

23           Now, if people are going to interpret this  
24 language in 54-4-25 to mean a reasonable need to connect a  
25 wholesale generator to a point of sale then we're breaking

1 new ground. If someone's inclined to take that up, who  
2 knows where that's going to lead us. We don't think it's  
3 an appropriate inquiry and that it goes to the  
4 Commission's jurisdiction.

5 No. 5. Shall we move on?

6 HEARING OFFICER: Please.

7 MR. EVANS: "Does the applicant have reasonable  
8 expertise to build and operate the facility, and has it a  
9 reasonable opportunity to finance the facility or have  
10 sufficient contractual relationships to provide financing  
11 for the project?"

12 The requirement in 54-4-25 says that the  
13 Commission may require an applicant to show -- to  
14 establish a ratio of debt capital to equity capital which  
15 the Commission shall find renders the electric corporation  
16 financially stable and which financing shall be found to  
17 be in the public interest.

18 This is a privately financed line. No rate  
19 payer is going to pay for it. Utah is not going to be  
20 impacted. No one is even going to pay for the  
21 transmission rates in Utah. This is a private line. The  
22 state really has no interest in looking into the  
23 financing. If the financing isn't there, the line won't  
24 get built. Ground will not be broke unless financing is  
25 there.

1           The Division points out that the power purchase  
2 agreement that is currently in place puts Milford Wind in  
3 a better financial position at this stage of development  
4 than most of the utilities that come to the Commission for  
5 certificate. The financing is there.

6           Nevertheless, we shouldn't have to put on  
7 evidence in a public forum of our private financing for  
8 this project. This is not a relevant inquiry. And it's  
9 certainly not relevant to any interest that UAMPS has in  
10 this case. And you might hear from Mr. McNulty that it  
11 is, and then I'd like a chance to respond.

12           HEARING OFFICER: Mr. McNulty?

13           MR. McNULTY: Well, this is an entity that again  
14 asked originally that none of this be exempt. This is an  
15 entity that, according to the responses they've provided  
16 us, have never operated anything larger than a 45-megawatt  
17 plant. This transmission line, if it's developed out to  
18 its end point, will transmit up to 700 megawatts of power.

19           Now, where the expertise comes from and where  
20 the funds come for all of this, and whether Milford and  
21 their parent corporations have provided any sort of  
22 expertise or any base history on being able to develop,  
23 construct, and then operate something like this, I think  
24 that's very reasonable and a reasonable request for  
25 information by the Division, by the Commission, and by

1 UAMPS, because we are -- competitors, I don't agree with  
2 the competitors characterization -- but we will be  
3 impacted if the contracts fail.

4 I mean, I would invite the Commission to take a  
5 look at the reality that as Milford -- or First Wind,  
6 excuse me -- has grown, they're being investigated in  
7 other states for tactics that are unclear as to getting  
8 local consent and those sorts of things. In New York  
9 specifically.

10 But as we go forward, we think that since most  
11 of the information that they rely on or that they make  
12 reference to comes from either IPSC, Los Angeles  
13 Department of Water and Power, or SCPPA, that these are  
14 legitimate questions to ask this entity, "Where's your  
15 money coming from and where is your expertise?" Because  
16 this is a large leap from a 45-megawatt plant to a  
17 transmission line that has the capacity for 700 megawatts.

18 Now, are we the wrong person to be asking that  
19 question? I'll have to leave that up to the Commission.  
20 But when we started this process, this was an unasked  
21 question.

22 HEARING OFFICER: Thank you. You can respond,  
23 Mr. Ginsberg.

24 MR. GINSBERG: Again, this was a section to try  
25 and tailor how we were looking at this within the light of

1 the certificate statute that may not be tailored real well  
2 for this kind of operation. I think our earlier view was,  
3 and maybe still is, that the contract that they have to  
4 sell that power was -- sort of what we're looking at is  
5 the ability to be able to finance this project. I'm not  
6 sure what our inquiry will be into that beyond that  
7 contract. But, again, we've placed this within the  
8 context of what is generally looked at when a certificate  
9 is being issued by the Commission, a reasonable  
10 opportunity to look at what's being built by the  
11 developer, whoever that happens to be.

12 HEARING OFFICER: Thank you. Mr. Evans?

13 MR. EVANS: Well, it's maybe a leap from 45  
14 megawatts to 700, but it doesn't -- it's not rocket  
15 science to build a transmission line. It's done all the  
16 time and there's no special expertise required for it.

17 As to the financing, I have to wonder who cares  
18 whether this financing goes through or not. Whether this  
19 project works is not a matter of public interest. It  
20 won't affect the rates that any Utahan pays, it won't  
21 affect the service that any Utahan gets. Why should any  
22 Utahan care about whether Milford has the expertise and  
23 financing to complete the project?

24 If it doesn't complete it, it will be an asset  
25 in some fire sale and someone else will pick it up. It

1 does not invoke a public interest question and it's  
2 delving into the finances of an entity who's sitting here  
3 with a competitor intervener. I just don't think it's an  
4 appropriate inquiry.

5 HEARING OFFICER: Let's go to the last item.

6 MR. EVANS: "Will the transmission line be  
7 properly maintained in a safe and reliable manner?"  
8 That's the only one out of the Division's list that I find  
9 a counterpart in 54-4-25.

10 The safety and reliability of this line right  
11 now is subject to NERC standards. And the standards are  
12 different, let me point out, for generation lines than  
13 they are for transmission lines.

14 Right now Milford is subject to NERC reliability  
15 standards for generation facilities, and those are going  
16 to apply. I don't know whether someone's is going to  
17 argue that NERC standards for transmission facilities  
18 ought to apply, but we would say that's inappropriate too  
19 because, whatever you want to call it, this is not a  
20 transmission line that others are going to have access on,  
21 that has any public open access.

22 So right now the Commission doesn't have any  
23 authority, either under 54-4-25 or any public interest, in  
24 the safety and reliability of this line. It's governed by  
25 federal standards. And no intervener has an interest in



1 seeing that those standards are met.

2 HEARING OFFICER: Mr. McNulty?

3 MR. McNULTY: I agree with that. I think that's  
4 a NERC question or a WECC question. I mean, the  
5 reality --

6 MR. EVANS: It's generation.

7 MR. McNULTY: Yes. It would be unfair for me to  
8 offer up some lame discussion about that. It's federal if  
9 it's anything.

10 MR. GINSBERG: I'm not trying to interject  
11 myself into an agreement that they've just reached. It's  
12 clear that it's not included specifically in 54-4-25 other  
13 than just the broad public interest. Very well there may  
14 be other agencies that have jurisdiction over -- a control  
15 over the safety of that line. But that's why it was  
16 added, more in the broad public interest section of  
17 54-4-25. And possibly there is no jurisdiction that the  
18 Commission would add to this that doesn't already exist in  
19 other agencies.

20 HEARING OFFICER: Mr. Evans, a hypothetical  
21 proposed by one staff member is if it were known that  
22 Milford Wind was simply going to lay its lines on the  
23 ground from your farm to IPP, would that be an aspect that  
24 might raise some concern that the Commission may want to  
25 address relative to whether there's a public need and

1 convenience?

2 MR. EVANS: Well, if the NERC standards allow us  
3 to lay our lines on the ground then I would invite the  
4 Commission to take a look at that, but I don't think that  
5 they do. And I think that the federal guidelines are  
6 there and should be applied and observed in a way that  
7 don't conflict with additional burdensome state  
8 requirements, whether that be inspection or additional  
9 standards. There's no reason for it and there's no  
10 authorization for it under the statute.

11 HEARING OFFICER: Anything further on those, A  
12 through F?

13 MR. EVANS: Can I offer one statement in  
14 summary?

15 HEARING OFFICER: Sure.

16 MR. EVANS: The Division has done a terrific job  
17 in coming up with a list of issues out of 54-4-25 in a  
18 situation in which all of those issues are absolutely  
19 inapplicable, and the reason that they're in 54-4-25 is  
20 not obtained in this case.

21 And so if the Commission is going to retain  
22 jurisdiction over this, let's not make us go through  
23 unnecessary issues. Let's not make us produce new system  
24 impact studies or discover against them for what goes on  
25 in FERC, NERC, WECC jurisdictions for an unregulated wind

1 farm. The only one of these that should be applicable in  
2 this case is if the Commission should oversee whether the  
3 proper permissions are in place before construction.

4 Let me say one other thing about this. We don't  
5 think it's -- we think it's okay -- we think it's great  
6 for the Commission to engage in planning transmission  
7 systems within the state under the right statute. We  
8 don't have it here in Utah. Some states have separate  
9 siting authorities that let their Commission take a look  
10 at these things without the need to find that the public  
11 convenience and necessity is served.

12 The Commission should get us to the same result  
13 here. If it's going to misapply to statute anyway, or  
14 apply it when we think they don't have jurisdiction, let's  
15 get it to what it really should be: Oversight of siting  
16 authority. And let's go with getting the permits in place  
17 and dispense with the other issues. Thank you.

18 HEARING OFFICER: Mr. McNulty, do you want to  
19 summarize?

20 MR. McNULTY: I'm fine. Thank you.

21 HEARING OFFICER: Mr. Ginsberg?

22 MR. GINSBERG: No.

23 MR. EVANS: That's it, thanks.

24 HEARING OFFICER: Okay. There was some  
25 consideration of coming in this morning and doing a former

1 Federal Judge Paul Costello approach and say, "This is  
2 what we've decided. Tell us why we're wrong." But I can  
3 give you a summary in light of the discussion today on  
4 what I'll be recommending to the Commissioners.

5 In the general context of the A through F, we  
6 think that, like the parties, it's a good effort to try to  
7 identify the scope of what should be addressed at the  
8 hearing that's already scheduled in September.

9 The general view of the Commission relative to A  
10 is kind of what the Commission -- excuse me, what the  
11 Division in the statute says, that if this line is  
12 constructed, is it going to harm the operations of another  
13 utility? And in that context, part B was that might help  
14 identify those utilities that we ought to be looking at  
15 who would be harmed in this case. Preliminarily it looks  
16 like it's Rocky Mountain Power.

17 Relative to Item C, there's really no intent on  
18 the Commission to do other than what it has done in the  
19 past in looking at the consents that have been given  
20 either by those entities that control property aspects  
21 relative to zoning, and to the extent that there is a need  
22 to have access to facilities or such that the Commission  
23 again views that as being controlled by the agreements or  
24 contractual arrangements that the parties have made, and  
25 the Commission is not going to second-guess and look

1 behind the decisions that have been made by the parties.

2           Item No. D, it's pretty straightforward. Might  
3 be very simple. Is there a need to build the line? And  
4 if you have the power plant out in one area the  
5 interconnection point in another, some people might say  
6 there's no need, but others may.

7           E and F. Well, F kind of goes back in the  
8 context of what I was trying to say, that there may be a  
9 way of constructing facilities that have some impact that  
10 if they were raised might be a consideration relative to  
11 granting the certificate. If there's a belief that the  
12 way this line is going to be built in such a way that it  
13 raises a public interest relative to safety in the  
14 operation of the plant, that could be something that's  
15 explored.

16           But, again, to the extent that there are other  
17 standards, other forms or entities that promulgate it and  
18 there's some representation that the line is going to be  
19 built and subject to those standards, they may well  
20 address what interests could be raised relative to the  
21 certificate.

22           And on E, there's some difficulty expressing the  
23 scope that the Commission wants. All I can say is that it  
24 doesn't -- the Commission doesn't appear to view the scope  
25 as broadly as UAMPS has argued it might be.

1           There is a consideration that there needs to be  
2 -- could be an issue as to whether an entity is proposing  
3 to construct a line whether they can do it. Again, how  
4 easy it might be to establish that the entity is capable  
5 of actually doing it is something that could be looked  
6 into, and how someone might be meet a burden of proof to  
7 establish that they can do it is kind of up to their  
8 ingenuity.

9           There's some analogy in the context of  
10 contractual relationships that investor-owned utilities  
11 have with power purchase agreements, what necessities they  
12 come forward with relative to showing that there is really  
13 a capability of performing what has been proposed. That  
14 might be an easy reference. It's not necessarily one the  
15 Commission is suggesting any party use.

16           Now with that, there will be a written order.  
17 We'll try to get it out as soon as possible, but because  
18 the hearing is coming up relatively quickly, the  
19 Commission's staff wanted to give you at least an idea of  
20 what is going to be in the order.

21           Is there any desire to try to get clarification  
22 to the extent that I can or any question on what you can  
23 anticipate to be in the order?

24           MR. EVANS: Will the order address the extent of  
25 UAMPS' participation?

1 HEARING OFFICER: Right. It will be in the  
2 context to address the issues that we've tried to explain  
3 as to what the scope of the hearing would be.

4 MR. EVANS: I'm not sure I understood that. I'm  
5 sorry.

6 HEARING OFFICER: UAMPS will not be precluded  
7 from presenting evidence or making argument relative to  
8 what we're going to try to identify would be the scope of  
9 the hearing for the certificate itself.

10 MR. EVANS: But it sounds like it remains for  
11 further argument to determine -- I mean, if they're going  
12 to submit testimony then we've got to come back and argue  
13 about whether that fits in with one of these issues and  
14 whether the Commission ought to consider it.

15 HEARING OFFICER: That's a possibility. But we  
16 hope it doesn't go beyond what we're trying to limit on  
17 the scope.

18 MR. McNULTY: To the extent that I can, we will  
19 do our level best to make sure that we are sticking to the  
20 questions that have been identified here and the guidance  
21 that you have provided and not wander away. We'll try to  
22 stick very, very closely to the admonitions that you've  
23 provided here.

24 HEARING OFFICER: If it helps you any more, the  
25 context of when I said it's a -- one aspect of looking at

1 the participation of UAMPS is whether they have standing.  
2 And the Commission is not going to reconsider the grant of  
3 intervention, but in the context of the Utah Supreme Court  
4 case relative -- it's the CR vs. the Air Quality Board,  
5 there is a question of whether there's really a direct  
6 interest that UAMPS has. But the court identified that  
7 there may be an alternative test by which someone who  
8 doesn't have a direct interest might be allowed to  
9 participate and have standing, but it's in the context of  
10 raising certain issues and issues that wouldn't be raised  
11 by anyone else.

12 MR. EVANS: Right. And so far as I'm hearing  
13 what UAMPS is saying today and the way the discussion is  
14 going, I haven't heard an interest that UAMPS has that is  
15 unique to UAMPS and isn't already covered by the Division  
16 of Public Utilities.

17 Our concern is we don't want to get into  
18 time-consuming, expensive discovery. We don't want to  
19 have to cross-examine engineers about new system impact  
20 studies on an interconnection agreement that's already a  
21 done deal. We don't want to have to fight about whether  
22 UAMPS is going to participate in this issue.

23 I would recommend, given what we've heard here  
24 today, the Commission consider limiting UAMPS'  
25 intervention to commenting. So far I can't identify any



1 kind of evidence that they would put on that would be  
2 helpful in getting to the issues that isn't already  
3 covered by the Division of Public Utilities. To leave  
4 this for future debate is to invite a dog fight among the  
5 parties, which we're trying to avoid.

6 HEARING OFFICER: I understand the desire to try  
7 to avoid that. At this point I don't think the Commission  
8 is able to say one way or the other. If you end up having  
9 a discovery dispute as to seeking information we think is  
10 not relevant to the scope of what we're going to try to  
11 identify in the order, unfortunately that will have to be  
12 left to having a dispute on discovery.

13 But I take Mr. McNulty's representation that  
14 UAMPS will try to yield to the limitations we're trying to  
15 get, or at least to identify where the Commission wants  
16 this to go and what it thinks is relevant.

17 Without anything further, thank you for your  
18 appearances today and your attendance. We'll go off the  
19 record. This meeting will be adjourned.

20 (The hearing concluded at 10:42 a.m.)

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C E R T I F I C A T E

STATE OF UTAH            )  
                                  :  
COUNTY OF SALT LAKE)

I, Wendy Alcock, a Registered Shorthand Reporter  
and Notary Public within and for the County of Salt Lake  
and State of Utah, do hereby certify:

That the foregoing proceeding was taken before me at  
the time and place herein set forth, and was taken down  
by me in stenotype and thereafter transcribed into  
typewriting:

That the foregoing 31 pages contain a true and  
correct transcription of my stenotype notes so taken.

IN WITNESS WHEREOF, I have hereunto subscribed my  
name and affixed my seal this 26th day of August, 2008.

\_\_\_\_\_  
Wendy Alcock, R.P.R.

My commission expires:  
May 18, 2012

