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April 6, 2009

**VIA HAND DELIVERY**

Commission Chairman Ted Boyer  
Commissioner Richard M. Campbell  
Commissioner Ron Allen  
Utah Public Service Commission  
Heber M. Wells Building  
160 East 300 South  
Salt Lake City, Utah 84114

**Re: Request for Expedited Order Exempting Milford Wind Corridor  
Phase I From the Requirement of Obtaining Commission Approval for  
the Issuance of Securities under Section 54-4-31.  
Docket No. \_\_\_\_\_.**

Dear Commissioners:

Pursuant to the provision at Utah Code Ann. § 54-4-31(4) and Utah Administrative Code R746-110-1, Milford Wind Corridor Phase I, LLC, (Milford Wind), through its counsel, hereby requests the Public Service Commission (“Commission”) to grant Milford Wind an exemption from the requirements of Section 54-4-31 to the extent those requirements may otherwise be applicable to Milford Wind.

Milford Wind also asks that the Commission consider this request for exemption informally and on an expedited basis. In support, Milford Wind states as follows:

On February 20, 2008, Milford Wind filed an application for a Certificate of Convenience and Necessity (“Certificate”) for the Milford Wind Corridor Project and, simultaneously, a motion to dismiss the application for lack of jurisdiction. (Docket No. 08-2490-01). Shortly thereafter the Utah legislature amended certain sections of Title 54 to clarify that independent power production facilities and independent energy producers were exempt from Commission jurisdiction and from the need to obtain certificates, whereupon Milford Wind supplemented its pleadings and reasserted its motion to dismiss. On May 16, 2008, the Commission granted Milford Wind’s motion to dismiss. Order Granting Motion to Dismiss the Application of Milford I and Milford II for Certificates of Convenience and Necessity, Docket No. 08-2490-01 (May 16, 2008). On July 2, 2008, however, in response to a motion for reconsideration, the Commission partially rescinded Milford Wind’s exemption, holding that the interconnection line between the Milford Wind Farm in Millard

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and Beaver counties and the point of interconnection at the Intermountain Power Project at Delta, Utah (the “Line”) was subject to the Commission’s jurisdiction and the requirement to obtain a certificate. Order on Petition for Rehearing, Docket No. 08-2490-01 (July 2, 2008).

The Commission ultimately granted Milford Wind a Certificate on October 8, 2008, authorizing the construction of the Line. Report and Order, Docket No. 08-2490-01 (October 8, 2008). During the certification proceeding, the Division of Public Utilities stipulated that Milford Wind should be exempt from all other presently existing regulatory obligations imposed by the Commission’s statutes or rules. *Id.* at 9-10. Although the Commission approved and adopted the rest of the stipulation, the Commission declined to grant a blanket exemption because it could not make a sufficient factual determination as to whether such a broad exemption would be in the public interest. *Id.* at 4. Thus, while the wind farm is clearly exempt from Commission jurisdiction, the extent to which the Line should be subject to the Commission’s statutes and rules remains unclear.

Section 54-4-31 states that “no electrical corporation” may issue “any security” without prior written approval of the Commission. It also states that the Commission may by order or rule exempt any security or electrical corporation from that requirement “subject to any terms and conditions prescribed in the order or rule,” if it finds that the application of the requirement to the particular security or the electrical corporation “is not required by the public interest.” Utah Code Ann. § 54-4-31.

Milford Wind is currently in the process of obtaining private financing for Phase I of the Project (including both the wind farm and the Line) which will require Milford Wind to give a promissory note for the loan. The Commission has not expressly ruled that Milford Wind is an “electrical corporation,” and it is not clear that the contemplated promissory note would be an “issuance of securities” within the meaning of Section 54-4-31.

In addition, Section 54-4-31 provides an exception to the requirement to obtain Commission approval for the issuance of securities if

- (i) the maturity date of the note or draft is not more than one year after the date of the issue ... ; and
- (ii) the aggregate value of the note or draft together with all other outstanding notes and drafts of a maturity of one year or less on which the *public utility* is primarily or secondarily liable is not more than 5% of the par value of the other outstanding securities of the *public utility*.

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Utah Code Ann §54-4-31(2)(a) (emphasis added). Because Milford Wind's note would mature in less than one year, and because Milford Wind is not a public utility under Utah law, it would appear that, under subsection 2(a), Commission authorization is not necessary for Milford Wind to issue the note.

Although Milford Wind does not believe that Commission approval is required to issue the note, the uncertainty about the applicability of Section 54-4-31 in this situation is posing an impediment to closing the financing for the project. For that reason, Milford Wind, by this request, seeks an expedited ruling from the Commission either granting an exemption from Section 54-4-31, or holding that Section 54-4-31 is not applicable to the issuance of Milford Wind's note.

During the proceeding on Milford Wind's application for a certificate, Milford Wind contended that the Commission should not impose any requirement to show that its financing was in the public interest. Milford argued that financial regulation was unnecessary because the Line would not serve Utah customers, because Milford Wind would provide no services to Utah residents, and because Utah ratepayers are not at risk for Milford Wind's investment. See Milford Wind's Response to the Preliminary Position Statement of Utah Associated Municipal Power Systems, (Docket No. 08-2490-01, Aug. 14, 2008) at 10-11.

The Commission evidently agreed. It did not require Milford Wind to meet the requirement in the certification statute to show that Milford "[had] established a ratio of debt capital to equity capital ... which the Commission finds renders the electrical corporation financially stable and which financing is found to be in the public interest." Utah Code Ann. § 544-25(5)(d). Instead, the Commission granted the Certificate requiring only that Milford Wind show that "it had a reasonable opportunity to finance the Line or it has sufficient contractual relationships to provide financing for the project." Report and Order at 4.

The Commission, therefore, has already determined in the earlier docket that the public interest does not require the Commission to approve the means or method of financing. Milford Wind respectfully requests that the Commission now confirm that determination and either expressly exempt Milford Wind from the requirement of Section 54-4-31, or otherwise hold Section 54-4-31 does not apply to Milford Wind.

Milford Wind requests that the Commission consider this matter informally under R746-110. Because the issue has been previously examined, and because Milford is not aware of any person that has an interest in the Commission approving its issuance of a promissory note, it is not expected that this request for exemption would be opposed or contested by any party.

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Finally, Milford Wind requests that the Commission expedite its consideration Milford's request for exemption. Because this issue has arisen fairly late in the process of Milford Wind's attempt to obtain financing, any unnecessary delay could have a prejudicial effect on Milford Wind's ability to complete the transaction and accomplish the successful construction of the project.

Very truly yours,

/s/

William J. Evans

WJE/cvd

cc: Michael Ginsberg  
Philip Powlick  
Paul Proctor  
Michelle Beck