
BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

<p>IN THE MATTER OF THE APPLICATION OF THE TICABOO ELECTRIC IMPROVEMENT DISTRICT FOR A CERTIFICATE OF CONVENIENCE AND NECESSITY TO OPERATE AS A PUBLIC UTILITY RENDERING ELECTRICAL POWER SERVICE</p>	<p>DOCKET NO. 09-2508-01</p> <p>REPORT AND ORDER GRANTING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY</p>
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SYNOPSIS

The Public Service Commission of Utah grants Ticaboo Electric Improvement District's application for a Certificate of Public Convenience and Necessity authorizing the provision of electrical power services within the District's boundaries.

By the Commission:

PROCEDURAL HISTORY

On July 27, 2009, Garfield County, Utah, on behalf of the Ticaboo Electric Improvement District (District), filed an application for a certificate of public convenience and necessity authorizing the District to operate a system for the generation, distribution and sale of electricity within the District's boundaries described in the application, as authorized by the Improvement District Act, Utah Code Ann. § 17B-2a-401 et seq. (Supp. 2009). Under the Act, the District is a public utility and subject to the jurisdiction of the Utah Public Service Commission

(Commission). At the time the application was filed, Garfield County was in the process of forming the District pursuant to the Act.

On September 8, 2009, a conference was held for the purpose of scheduling these proceedings and to permit the District to describe its application, the status of the District, a history of electric service in the area, and to explain the facts and circumstances that require the formation of the District and its application for a certificate of public convenience and necessity. As a result, the Commission entered a scheduling order that required the parties informally meet on October 20, 2009 to discuss the issues presented by the application, that the Utah Division of Public Utilities (Division) and the Utah Office of Consumer Services (Office) file comments upon the application on November 12, 2009, and that a hearing upon the application be held November 19, 2009, including the designation of a time for public witnesses.

On November 16, 2009, the District filed an amended application documenting the District's formation and organization. A copy of a Certificate of Existence issued by the Utah Lt. Governor was included as Exhibit C to the amended application. Additionally, the amended application was accompanied by documentation of the District's compliance with the requirements of the Act and Utah Code Ann. § 54-4-25 (Supp. 2009), and in addition, documented the terms and conditions of the District's acquisition and proposed operation of the facilities and equipment to provide electric service to customers within the District's boundaries.

The Commission is informed that as a result of the exchange of information and discussions, and in view of the amended application, all parties agree that the District has satisfied the conditions to a certificate of public convenience and necessity, under the Act and under Utah Code Ann. § 54-4-25 (Supp. 2009), and that the grant of a certificate will serve the present and future public convenience and necessity.

A hearing, including a public witness hearing, on the amended application was held before the Administrative Law Judge of the Commission on Thursday, November 19, 2009. At the hearing, the District, the Division and the Office offered into evidence or provided information and statements supporting the amended application. The parties also stipulated to and presented a proposed report and order, approved by all parties as to form and content. No party or witness opposed granting the District a certificate of public convenience and necessity as requested by the amended application.

DISCUSSION

Ticaboo is an unincorporated community in Garfield County, Utah, lying approximately 12 miles north of the Bullfrog Marina on Lake Powell. Because of its remote location, Ticaboo does not have access to power service from any public utilities authorized to operate as such by the Commission. To remedy this situation, the 2009 Utah Legislature passed and the Governor signed SB 188 permitting local improvement districts to provide electric services, provided that certain conditions are met and provided that the district obtains from the Commission before January 1, 2010, a certificate of public convenience and necessity. Utah Code Ann. § 17B-2a-406(3)(b).

Ticaboo is a unique community that is occupied in large part by uranium mining companies and their employees, and numerous seasonal or vacation homeowners. Currently, two mining companies own property in Ticaboo: Uranium One Ticaboo Inc. (Uranium One) and Denison Mines (USA) Corp. (Denison). Denison's mine is currently active with about 8-10 employees working the mine. Uranium One's mine and mill located near Ticaboo are currently closed.

Ticaboo and its residents have long relied on area mining companies for public utilities, including sewer, water, garbage, and electricity. Within the past few years Garfield County formed the Ticaboo Special Service District to provide sewer, water and garbage services. At the time, local districts and special service districts were not authorized to provide electrical services. Now, with the legislation authorizing it do so, Garfield County has formed the District to provide electrical services.

Uranium One currently provides all electrical services to the residents of Ticaboo. Before 2007, another mining company, U.S. Energy Corp., provided electricity to Ticaboo. Uranium One operates one or more diesel generators located within the Ticaboo town site. Electricity is transmitted via Uranium One-owned transformers and distribution lines to residents in Ticaboo. Each resident is metered, and Uranium One charges its customers for metered usage.

In early 2008 Garfield County, teaming up with Uranium One, Denison, the State of Utah Schools and Institutional Trust Lands Administration (“SITLA”) (the owner of nearly all of the property comprising the Ticaboo town site), and the Glen Canyon National Recreation Area (who has expressed interest in working with Ticaboo on a new power supply to jointly serve the Bullfrog Marina and Ticaboo), pooled financial resources in an effort to explore different electrical energy alternatives in the Ticaboo community. All of these entities collectively paid for a feasibility study to determine whether there was any way for Ticaboo to connect to any power line and thence be “on the grid.” The nearest power line, however, was a Garkane line located over 40 miles away in Hanksville, Utah, and the power line was inadequate for extension to Ticaboo. Extending Rocky Mountain Power facilities to Ticaboo was prohibitively expensive. For all practical purposes, Ticaboo and its approximately 78 customers are an isolated island when it comes to electrical services.

Copies of a “Request for Proposals to Provide Electrical Service” submitted by Garfield County to potential electrical service providers, including all responses to that request, were included as Exhibit K of the amended application. The responses indicate that for all practical purposes, it is not possible for the Ticaboo community to connect to an existing power line and thence be “on the grid.” Additionally, letters from Rocky Mountain Power and Garkane verifying that the District’s boundaries (a) are at least 40 miles from the nearest electrical facility, and (b) do not overlap either Garkane’s or Rocky Mountain Power’s certificated service areas, were included as Exhibit B to the amended application.

Because of Ticaboo’s isolation from the grid, Garfield County formed the District as a vehicle to provide the Ticaboo community and residents with electrical power without needing to rely on the mining companies. Additionally, the mining companies provided power out of necessity to support the community; Uranium One is attempting to sell its mill and most of its assets, creating uncertainty for Ticaboo customers. Uranium One has been cooperative and helpful, agreeing to donate over \$500,000 worth of generators and transmission equipment to the District to aid in the transition.

The other mining company, Denison Mines, has also been cooperative, agreeing to donate the use of a third, more fuel-efficient generator, and also agreeing to provide personnel and technical support for the first year to aid the District’s provision of electrical services. SITLA is supporting the District by agreeing to donate easements and other interests in real property where the District can store its generators, transformers, and distribution lines. Finally, Garfield County has continually supported the successful operation of the district by paying the costs to form and organize the District and obtain a certificate of public convenience and necessity, and also providing some funds for initial operations. As displayed in Exhibit I to the

amended application, Garfield County authorized a \$25,000 grant to the District to fund initial operations and administration.

The Garfield County Commission appointed three qualified individuals to serve as the initial members of the District's board of trustees, including: William Kay Randall, Christopher L. Thompson, and James Hills. As a group, the trustees are committed to the Ticaboo community and have significant experience in managing and operating diesel generators. Additionally, at the first board meeting, the board appointed a qualified individual, Chuck Birrenbach, to serve as the District Manager and the District Manager will handle the day-to-day administrative and operational business of the District. The District Manager, who is the current chairman and manager of the Ticaboo Special Service District (the provider of water, sewer and trash services in Ticaboo), has experience running a special district. Copies of the resumes and qualifications of the trustees and the District Manager were submitted as Exhibit E to the amended application. The District Manager appeared before the Commission on November 19, 2009 and provided oral testimony supporting the amended application.

Upon receipt of a certificate of public convenience and necessity, the District will assume responsibility for providing electricity in Ticaboo beginning January 1, 2010. Initially, the District will provide electrical services by operating one or more diesel generators donated by Uranium One and/or Denison. Uranium One has obtained air approval permits from the Utah Department of Environmental Quality authorizing the use of the diesel generators (copies of the permits were included as Exhibit H to the amended application). The District will become the permittee under those air approval permits.

Additionally, before agreeing to accept the donation of these electrical assets, the District hired an engineering firm, Sunrise Engineering, to inspect and report on the condition of the

electrical assets. A copy of the report provided by Russ Boyer, E.E., Sunrise Engineering, was included as Exhibit G to the amended application. In short, the report suggests that all of the assets are in good working condition and, with proper maintenance, should remain in good working condition for at least the next 10 to 20 years. For the long term, the District anticipates pursuing alternative energy supplies, possibly in conjunction with the Glen Canyon National Recreation Area, though no plans have been formalized yet.

Until at least December 31, 2010, the District will rely in part on the expertise and experience of Denison employees. Included as Exhibit F to the amended application is a Memorandum of Understanding on Electric Service which outlines Denison's commitment to provide—free of charge—personnel to operate, maintain, and, if necessary, repair the District's electrical generation and transmission assets. Additionally, the trustees and the District Manager each have significant experience operating diesel generators and electrical systems.

The District submitted information showing financial viability as part of its amended application. The initial operations of the District will be funded by the \$25,000 grant from Garfield County. Beyond that, the District will operate on revenues derived from the sale of electrical power to customers, as described in the District's tariff which was included as Exhibit D to the amended application. The District submitted a proposed 2010 budget, attached as Exhibit J to the amended application, which shows that the District can sustain its operations by charging the rates approved in the District's tariff.

Without the District the availability of continuous, reliable and safe electric service to the Ticaboo community is uncertain. The District will fill a role that is unique in Utah, but necessary and convenient to the Ticaboo community.

FINDINGS OF FACT

1. The District is a body corporate and politic with perpetual succession; a quasi-municipal corporation; and a political subdivision of the state of Utah duly created and existing under the laws of the state of Utah. Utah Code Ann. § 17B-1-103(1)(a) (Supp. 2009); Utah Code Ann. § 17B-2a-401 et seq. (Supp. 2009).
2. The District has requested that the Commission grant a Certificate of Public Convenience and Necessity authorizing it to provide electric services within its boundaries. The District's boundaries are described in the plat attached as **Exhibit A** and incorporated herein by this reference.
3. As required by Utah Code Ann. § 17B-2a-406(3)(b)(i)(A), no part of District's boundaries is closer than 40 miles to an existing service line of an electrical corporation.
4. As required by Utah Code Ann. § 17B-2a-406(3)(b)(i)(B), no part of the area within District's boundaries is within the certificated service area of any other electrical corporation.
5. The District is proposing to provide electricity generation and retail services within the District's boundaries.
6. The District has sufficient generation and transmission equipment to enable District to provide electrical power services to its customers beginning January 1, 2010.
7. With the initial operations of the electric system by Denison, the District has shown sufficient technical resources and abilities to provide the electrical power services.
8. The District has sufficient managerial resources and abilities to provide the electrical power services.

9. With the donation of the electric system and funds made available by Garfield County and the submission of an initial proposed budget the District has demonstrated that it has sufficient initial funding to meet projected operating expenses.
10. As a governmental entity the District has shown that it has sufficient financial resources and abilities to initially provide electrical power services.
11. The District will provide customers with a necessary and convenient service.
12. The issuance of a Certificate of Public Convenience and Necessity to the District to provide electrical services is in the public interest.

CONCLUSIONS OF LAW

1. The District meets each of the statutory requirements under Utah Code Ann. § 17B-2a-406 and Utah Code Ann. § 54-4-25 for issuance of a Certificate of Convenience and Necessity to operate as a public utility rendering electrical power services within the District's boundaries described herein.
2. The District will operate as a public utility subject to regulation by the Commission except that District's rates need not be initially approved by the Commission under Utah Code Ann. §54-7-12.

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED, that:

1. The Commission hereby grants the District Certificate of Convenience and Necessity No. _____ to operate as a public utility rendering electrical power services within the District's boundaries as described herein.
2. The District will provide to the Commission any proposed plans to change operations of the electric system before the Denison operation arrangement expires in one year.

3. The District will provide any contracts entered into with Uranium One or Denison that memorialize the Memorandum of Understanding that was provided with its Application.
4. The District will file with the Commission and Division its Tariffs and Rules and Regulations as approved by the District.
5. This Report and Order constitutes final agency action on the District's amended application. Pursuant to Utah Code Ann. § 63-46b-12, an aggrieved party may file, within 30 days after the date of this Report and Order, a written request for rehearing/reconsideration by the Commission. Pursuant to Utah Code Ann. § 54-7-15, failure to file such a request precludes judicial review of the Report and Order. If the Commission fails to issue an order within 20 days after the filing of such request, the request shall be considered denied. Judicial review of this Report and Order may be sought pursuant to the Utah Administrative Procedures Act (Utah Code Ann. §63-46b-1 et seq.).

DATED at Salt Lake City, Utah, this _____ day of November, 2009.

Judge Ruben H. Arredondo, *Administrative Law Judge*

Approved and Confirmed this ____ day of November, 2009, as the Report and Order of the Public Service Commission of Utah.

Ted Boyer, *Chairman*

Richard M. Campbell, *Commissioner*

Ron Allen, *Commissioner*

Attest:

Julie Orchard, *Commission Secretary*

Approved as to content and form:

SMITH HARTVIGSEN, PLLC

J. Craig Smith
Kyle C. Fielding
Attorneys for the District

Date

DIVISION OF PUBLIC UTILITIES

Title:

Date

OFFICE OF CONSUMER SERVICES

Title:

Date

Certificate of Service

I certify that on this ____ day of November, 2009, a true and correct copy of the foregoing
REPORT AND ORDER GRANTING CERTIFICATE OF PUBLIC CONVENIENCE AND
NECESSITY was hand-delivered to the following:

Dennis Miller
Division of Public Utilities
Heber M. Wells Bldg – 4th Floor
160 E 300 S – Box 146751
Salt Lake City, Utah 84114

Cheryl Murray
Office of Consumer Services
160 East 300 South
Salt Lake City, Utah 84111

Additionally, a true and correct copy of the same was emailed to the following:

dpudatarequest@utah.gov

dennismiller@utah.gov

cmurray@utah.gov

BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

IN THE MATTER OF THE APPLICATION OF THE TICABOO ELECTRIC IMPROVEMENT DISTRICT FOR A CERTIFICATE OF CONVENIENCE AND NECESSITY TO OPERATE AS A PUBLIC UTILITY RENDERING ELECTRICAL POWER SERVICE	DOCKET NO. 09-2508-01
	CERTIFICATE OF CONVENIENCE AND NECESSITY NUMBER _____ ISSUED NOVEMBER ___, 2009

By the Commission:

The Public Service Commission of Utah, pursuant to the Utah Code Ann. §§ 17B-2a-406(5) and 54-4-25, hereby issues a Certificate of Convenience and Necessity authorizing the Ticaboo Electric Improvement District (“Grantee”) to provide electrical power services within the Grantee’s boundaries as described in the plat attached hereto as **Exhibit A**, and incorporated herein by this reference. Grantee will not provide retail electrical power service to any customers outside Grantee’s boundaries.

DATED at Salt Lake City, Utah, this ____ day of November, 2009.

Ted Boyer, *Chairman*

Richard M. Campbell, *Commissioner*

Ron Allen, *Commissioner*

Attest:

Julie Orchard, *Commission Secretary*

Exhibit A

Plat