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Division of Public Utilities

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RESPONSE COMMENTS

To: Utah Public Service Commission

From: Utah Division of Public Utilities
Chris Parker, Director
Artie Powell, Energy Section Manager
Doug Wheelwright, Technical Consultant
Jeff Einfeldt, Utility Analyst

Date: April 10, 2018

Re: Docket No. 18-2508-01 – Ticaboo Utility Improvement District (TUID) Application to amend its Certificate of Public Convenience and Necessity

RECOMMENDATION

The Commission has identified criteria to approve a CPCN for expansion of a designated service area. The Division does not believe that the Commission guidelines identified in the March 20, 2018 memo have been satisfied and that many unanswered questions still remain. The Division also recognizes that the Board of Trustees for TUID is responsible to monitor the ongoing health and financial strength of the District and that the Trustees for TUID support the application. If the Commission finds that expansion of the service area is appropriate, the Division recommends a conditional approval.

ISSUE

On January 9, 2018, TUID submitted an application to amend its Certificate of Public Convenience and Necessity (CPCN) to expand its authorized service area. On January 23, 2018, the Commission held a scheduling conference and on January 24, 2018, issued a Scheduling Order and Notice of Hearing. On February 6, 2018, TUID filed supplements to the initial application, and filed additional confidential information February 7, 2018. On March 20, 2018,

the Division filed Comments recommending the application be denied. On April 3, TUID filed reply comments. On April 4, 2018, Division representatives met with representatives from TUID, UAMPS, along with Garfield County and Kane County Commissioners to discuss the proposed application. This memo is the Division’s response to TUID’s written reply comments and the subsequent meeting.

DISCUSSION

The Division’s memo identified six specific items the Commission used in the past to evaluate CPCN applications. In its reply comments, TUID disagreed with the Division’s use of these factors and indicated the factors were “not determinative or mandatory”¹ and that requiring TUID to follow these guidelines was “burdensome and smacks of bias”.² It is the responsibility of the Division to investigate the merits of the application and make a recommendation to the Commission. Applying the Commission’s guidelines to the evaluation of TUID’s application is neither burdensome nor biased.

TUID’s reply comments suggest a bias by the Division and specifically refer to a previous CPCN application by Garkane Energy Cooperative (Garkane)³ in 2012. While the referenced docket was an application to amend a service area, there is no similarity with the financial strength of the applicants or the potential impact to the existing or prospective customers. The cited Garkane application sought approval to extend existing facilities to an estimated 11 new customers. Garkane would incur no out of pocket cost and total revenue would increase by an estimated \$350 per month. In 2012, Garkane had total annual electric revenue of \$22.0 million and operating earnings of \$3.9 million. With no out of pocket cost, strong earnings and little impact to total revenue or the existing customer base, the Division recommended approval. The Commission order identified the financial stability requirement and directed Garkane to seek additional approval if the terms and financing arrangements differed materially from those that

¹ TUID Reply Comments, page 2.

² TUID Reply Comments, page 3.

³ Docket No. 12-028-01, Garkane Energy’s Application to Amend Service Area.

had been disclosed.⁴

The Garkane application and the TUID application are significantly different in scope and potential impact on each entity and the makeup of its existing and potential customers. In contrast to the issues with Garkane, the proposed TUID expansion is not a simple extension of an existing service line. Instead the proposed expansion potentially creates new stand-alone generation facilities in four remote locations. If TUID is the successful bidder for a yet to be issued request for proposal (RFP) with the National Park Service (NPS), it is estimated TUID's annual electric requirement would increase from 505,000 kWh to an estimated 7,548,700 kWh - which represents a production increase of almost 15 fold, not an immaterial change. Comparing Garkane's total revenue and operating earnings stated above to TUID's total revenue in 2016 of \$471,519 and operating loss of \$46,174, highlights the different financial circumstances for each entity. Depending on the terms and requirements of the RFP for the NPS contract, TUID could have significant out of pocket costs that have yet to be determined. Additional costs could further weaken TUID's current financial position, which could adversely impact the existing TUID customers. The potential change to TUID's total revenue, possible adverse impact to the existing customers, and the current weak financial condition are worthy of consideration by the Commission.

Analysis of the TUID application has been difficult with the limited amount of information and the changing nature of information that has been provided. The initial application indicates that TUID would be the owner and operator of all of the new facilities. This position changed as of April 3, 2018. On page 4 of its reply comments, TUID indicates that UAMPS intends to finance and own the new generation facilities. The specific details of the proposed expansion and financing terms are still not fully defined. TUID is not subject to "arbitrary process requirements at the whim of the Division"⁵ as suggested in its reply comments. It is the responsibility of the applicant to provide sufficient, detailed information in order to allow the Commission the opportunity to evaluate the application.

⁴ Docket No. 12-028-01, Order Amending Service Area, page 3.

⁵ TUID Reply comments, page 5.

The Division has asked for projections and cost estimates and was told that forecasts and projections were not available.⁶ In the April 4, 2018, meeting with TUID, UAMPS and County Commissioners from Garfield and Kane counties, representatives from UAMPS indicated that financial projections and cost estimates are available and could be provided by April 11, 2018. Since this information is currently not available to the Division, no further analysis or review can be completed. The Division anticipates that any new information provided on April 11, 2018, will be discussed during the hearing on April 16, 2018.

Approval of TUID's application would expand its designated service area and create an obligation to serve customers within the expanded territory. It is the Division's opinion that the potential expansion of the TUID service area should be considered as an opportunity to bid on the NPS contract but should not create a burden to other electric providers should TUID not be the successful bidder for the NPS contract. If another outside party is successful in bidding for the NPS contract, distribution lines may need to be installed from generation facilities outside the NPS boundaries to the point of interconnection. Under the current certificated area it is unknown if PacifiCorp or Garkane would create roadblocks or attempt to hinder a third party from installing distribution lines even though these lines may be within their current certificated area.

As noted in its reply comments, TUID was created under Utah Code Title 17B and is governed by its Board of Trustees. The Trustees are responsible to approve customer rates and to monitor the financial health of the District. The Trustees support the proposed expansion and the potential bid for the NPS contract. With a limited population and TUID's isolated location, the NPS contract is the only apparent opportunity for TUID to expand in the near future. It appears that TUID has been successful in attracting resources from UAMPS to support and help with the proposed expansion plans, including UAMPS' role in obtaining funding and owning the facilities. Should the information received by the Division in advance of the scheduled hearing suggest a reasonable business case for serving the expanded area, the Division is willing to amend its recommendation and support the CPCN for the area in question with conditions. Should TUID's expansion request be approved, the responsibility to monitor the health and

⁶ TUID Supplemental Filing Information, page 5, number 19.

operation of TUID remains with the Board of Trustees and should be carefully monitored. The Division encourages the Board of Trustees, in this instance, to carefully undertake a review of the proposals, bids, and projects to ensure current customers are not injured by the proposed expansion.

If the Commission were to approve TUID's request to expand its service area, the approval would create an opportunity allowing TUID to bid for the NPS contract but should not hamper future development by others in this area if TUID is not the successful bidder or is otherwise not ready to provide service in the expanded area. In other words, the Division supports a reasonable expansion of service territory to include the proposed areas by a provider who is capable of extending, and plans to extend, service to the expanded area. The Division does not support an open-ended expansion that places the territory with a utility or improvement district unwilling or unable to serve it. If the Commission approves TUID's application, the Commission should consider a conditional approval of the expansion. In that instance, the expansion of service territory could be undone and revert to its current status if TUID is not a winning bidder or is otherwise unable or unwilling to serve that territory in a reasonable period of time.

CONCLUSION

The Commission has identified criteria to approve a CPCN for expansion of a designated service area. The Division does not believe that the six items identified in the March 20, 2018 memo have been satisfied and believes that many unanswered questions still remain. Nevertheless, the Division realizes the unique position of a utility like TUID and expects to receive additional information before the scheduled hearing. The Division also recognizes that the Board of Trustees for TUID is responsible to monitor the ongoing health and financial strength of the District and that the Trustees are in support of the application. The public interest is served by allowing a capable and willing utility to serve the customers in the proposed expanded service territory. If TUID is capable and willing, regulators should not prevent expansion and service. If TUID is incapable or unwilling, regulators should not grant it a right to serve the territory. Thus, if the Commission finds that expansion of the service area is appropriate, the Division recommends a conditional approval that would permit TUID or another utility to serve the area.

cc: J. Craig Smith, Smith Hartvigsen, PLLC
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