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BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

In the Matter of the Application of Rocky Mountain Power for a Certificate of Public Convenience and Necessity Authorizing Construction of the Populus-to-Terminal 345 kV Transmission Line Project	Docket No. 08-035-42 UTAH COMMITTEE OF CONSUMER SERVICES' EVALUATION AND POSITION STATEMENT
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The Utah Committee of Consumer Services submits the following evaluation and position statement pertaining to the Application, in lieu of filing testimony, as requested by the Commission's April 28, 2008 Action Request and the May 20, 2008 Scheduling Order.

One of the Committee's duties is to assess the impact of regulatory actions upon its constituents. With this duty in mind, the Committee, through its Director and staff, considered the Application, supporting testimony and exhibits, and the discovery requests and responses exchanged in the course of the proceeding. In addition, the Committee evaluated the Application in light of the evidence and information available to the Committee in other dockets that pertain to the present

status and forecast needs of Rocky Mountain Power's generation, transmission and distribution system, including but not limited to Docket 07-035-93, the pending general rate case, Docket No. 07-2035-01, the 2006 IRP and 2007 IRP update, and other dockets that in part, pertain to Rocky Mountain Power's evaluation of the need to upgrade or construct new transmission facilities. The Committee is also aware of and monitors Docket No. 08-2490-01, In the matter of the Application of Milford Wind, an application for a certificate of convenience and necessity to allow the construction of a transmission line serving a wind generation project.

SUMMARY

The Committee concludes that the Application generally complies with the requirements of Utah Code §54-4-25 as interpreted and applied by the Commission and courts. The Committee concludes that the factual support for the assumptions upon which Rocky Mountain Power bases its claim that these transmission facilities will serve the public convenience and necessity, while minimal, is legally sufficient to support the certificate. The Committee contends that greater clarity and consistency is needed to notify utilities and regulatory authorities of the specific types of facilities requiring a certificate of convenience and necessity, filing requirements for an application for a certificate, as well as the standards against which the application will be judged in the face of a challenge.

DISCUSSION

The Committee focused its evaluation on whether Rocky Mountain Power's application adequately identified the standards against which the application is to be

judged and whether the evidence submitted in support of the application met the burden of proof for granting a certificate. Although the utility plant for which the certificate is requested appears to be consistent with the needs expressed in other proceedings, the Committee does not find in the record for this docket evidence that the Populus to Terminal project is a demonstrable solution to general statements of future needs. However, when the Committee evaluated the application in light of the other dockets, the review and analysis referred to above leads the Committee to conclude that there is no compelling reason for the Commission not to grant Rocky Mountain Power the certificate that it seeks.¹

Through Mr. Cupparo, Rocky Mountain Power acknowledges that its claim to the certificate is based upon long term planning horizons of 10 years or more, and is rooted in the 2007 IRP. *Direct Testimony of John Cupparo*, Line 50 to 83, Line 108 to 111. Mr. Cupparo offers ultimate conclusions to justify granting the certificate, using phrases such as supporting long term load growth, strengthening the overall transmission system, enhanced overall reliability, providing incremental new capacity and the ability to recover from certain system and plant outage conditions occur in various sections of the Company's eastern control area. *Cupparo*, Line 22 to 31.

¹ As discussed in this pleading, the relatively uncomplicated burden of proof for granting a certificate appears to have been met in this case. However, the Committee notes that a future rate case that considers the Populus to Terminal transmission line will demand the heavy burden of proof applicable to prudence and rate inclusion decisions. Unless appropriate evidence is provided demonstrating that other alternatives have been considered and supporting this facility as the least cost, least risk option, a just and reasonable finding may not be possible.

The threshold for concluding that the present or future public convenience and necessity does or will require construction of a utility asset is admittedly low and liberally applied. *Mulcahy v. Public Service Commission*, 101 Utah 245, 117 P.2d 298 (Utah 1941). Necessity means reasonably necessary, not absolutely imperative or an essential requisite. The statute authorizing the Commission to grant certificates is to be construed and applied as to encourage rather than retard improvements to utility systems and to the quality of the service rendered. The statute is forward looking, intended to provide for probable growth and development.

The Commission's consideration of an application for a certificate of convenience and necessity is not for the purpose of determining whether the public can get by without further or additional service. If new or enlarged service will enhance the public welfare, increase its opportunities or stimulate economic and technological growth, then the public convenience and necessity requires that the certificate be granted for the introduction of expanded or additional service, or introduction of a new utility into the marketplace.² See *Mulcahy*, 101 Utah 252-253.

It is also true that the most liberal of legal standards must be met with competent and probative evidence. In this case, Rocky Mountain Power's

² The Utah statute plainly favors granting certificates of convenience and necessity upon a threshold showing that the public interest will be served. Denying the certificate in the face of the threshold showing does not appear to be within the Commission's authority. If another public utility proves that the new facility will or may interfere with its operations, the statute authorizes the Commission to prescribe the terms and conditions for the location of lines, plants or systems as the Commission determines are just and reasonable. Utah Code §54-4-25(3). The statute does not authorize the Commission to reject the application if it is otherwise in the public interest.

Application does not independently provide such evidence. For example, Rocky Mountain Power relies upon its 2007 IRP load forecasts and states without support that “existing transmission capacity from southeastern Idaho into Utah is fully utilized and no additional capacity can be made available without the addition of new transmission lines.” *Cupparo*, Line 61 to 68. Rocky Mountain Power is asking parties and the Commission to rely upon general references to conclusions stated in other dockets rather than demonstrable evidence submitted with the Application.³

Rocky Mountain Power’s application does comply with the statute as the Committee understands it has been applied by the Commission. The Committee is familiar with the specific analysis and conclusions found in the 2007 IRP that are probative to the public convenience and necessity for the Populus to Terminal line. However, the better and more efficient practice is to require that such evidence

³ This is particularly true in this case. The Commission did not acknowledge the 2007 IRP stating:

In conclusion, we find the Company’s use of a new load forecast in its preferred portfolio is not adequately supported and serves to obscure rather than support its planning decisions as revealed in both its load and resource balance and its preferred portfolio. *Docket No. 07-2035-01, February 6, 2008 Report and Order*, page 13.

Specifically, this IRP has not adequately adhered to our guidelines requiring consideration of all resources on a consistent and comparable basis, a link to the strategic business plan to ensure customer benefits of IRP, the selection of the optimal set of resources given the expected combination of costs, risk and uncertainty, and different resource acquisition paths for different economic circumstances with a decision mechanism to select among and modify these paths as the future unfolds. *Id.* page 43-44.

accompany an application for a certificate, rather than requiring a search of other dockets to find the evidence.

The Committee is also concerned that the statute is not being predictably or consistently applied. In this Docket, the Commission's May 20, 2008 scheduling order limited the scope of the proceeding by stating:

The Commission desires to clarify the purpose of this proceeding. This proceeding is not about the location or siting of the Transmission if it is built. The Commission does not have jurisdiction over the siting of transmission lines. This proceeding is to determine if present or future public convenience and necessity does or will require construction of a transmission line. We trust and expect that Rocky Mountain Power will work in good faith with interested parties in seeking the most appropriate siting for transmission lines. [Bold in the original.]

The Commission then ordered:

This proceeding shall not address the following issues: the siting of the transmission line, the question of requirements of Utah local government entities related to siting and cost issues that should be addressed by the Electric Facilities Review Board, or prudence issues for ratemaking purposes. [Bold in the original.]

This order is consistent with Utah Code §54-4-25 and properly informed the utility, regulators and other interested parties about the procedural and substantive issues to be addressed by the evidence and in argument.

If the Commission does not plainly identify the nature and scope of its statutory authority over a certificate proceeding, then the interests of utility customers may become secondary to quarrels between parties that are not relevant to compliance with Utah Code §54-4-25. For example, in Docket No. 08-2490-01 the Commission allowed Rocky Mountain Power to intervene based upon the mere assertion that

Rocky Mountain and its customers have a significant interest. *February 26, 2008, Motion to Intervene.* The Utah Associated Municipal Power Systems (UAMPS) sought to intervene because UAMPS members have an interest in the IPP switching station where Milford Wind proposes to interconnect with the regional grid. *UAMPS Petition to Intervene, March 20, 2008.*⁴ However, UAMPS introduced peripheral issues that far exceed the scope of certificate proceedings as they are defined in the May 20, 2008 order in this Docket.⁵ The Commission has correctly restricted the certificate proceeding in one case, but enlarged the proceeding in another to the detriment of consistent and sound public policy.

Fortunately, the Commission recognized in the case of the Populus to Terminal transmission line that genuine disputes arising from a proposal to construct transmission facilities are nevertheless legally and factually separated from the issues presented by an application for a certificate. Extraneous disputes or those properly filed in other forums must not divert the Commission's attention from the interests of utility customers and the public convenience and necessity.

⁴ The Committee has not formally appeared in the Milford Wind case because the Committee initially concluded that the Milford Wind facility does not have rate or regulatory impact on residential or small commercial consumers. However, the Committee views disparate regulatory policies as adversely impacting its constituents.

⁵ UAMPS' complaint and reason for opposing Milford Wind's application is not that Milford Wind's transmission line interferes or may interfere with the operations of UAMPS' line, plant, or system; an issue that is resolved by Utah Code §54-4-25(3). (*See Footnote 2.*) UAMPS' complaint is against a generation and transmission company that has approved the Milford Wind interconnection, and is against out-of-state utilities who will receive the renewable energy generated by Milford Wind, both matters that the Committee contends are determined by Federal law.

CONCLUSION

The issue that the Commission must decide in an application for a certificate under Utah Code §54-4-25 is will the proposed utility plant serve the present or future public convenience and necessity? The Committee concludes that the Populus to Terminal transmission line will serve this public interest.

Because more applications for certificates are anticipated, the Committee recommends that the Commission direct that when required,⁶ an application for a certificate should independently demonstrate a direct link between the proposed facility and the convenience and necessity it will provide. The Committee recommends that the Commission establish in an order in this case or another proceeding involving certificates, plainly stated standards against which such applications and any opposition to an application are to be judged, as well as a statement of the scope and specificity of supporting evidence to be filed and that will be considered.

RESPECTFULLY SUBMITTED this 1st day of August 2008.

Paul H. Proctor
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Utah Committee of Consumer Services

⁶ No parties have questioned whether construction of the Populus to Terminal transmission line requires a certificate. However, this threshold question should in the Committee's view, be answered before the utility and regulators embark on what can be a complex and detailed analysis.

CERTIFICATE OF SERVICE

I certify that on this 1st day of August 2008, a true and correct copy of the foregoing was served upon the following by electronic mail:

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