

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

In the Matter of the Application of Milford)
Wind Corridor Phase I, LLC, and Milford)
Wind Corridor Phase II, LLC, for) DOCKET NO. 08-2490-01
Certificates of Convenience and Necessity)
for the Milford Phase I and Phase II Wind) REPORT AND ORDER
Power Projects)

ISSUED: October 8, 2008

SYNOPSIS

By this Report and Order, the Public Service Commission of Utah (Commission) grants the request of Milford Wind Corridor Phase I, LLC (Milford I) and Milford Wind Corridor Phase II, LLC (Milford Wind II) (collectively Milford Wind) for a Certificate of Public Convenience and Necessity (Certificate) for the Milford Wind project transmission line (Line), which is the approximately 90-mile 345kV line, associated facilities, and plant required to transport electricity from the Milford Wind project wind farm to the point of interconnection at the Intermountain Power Project.

By the Commission:

BACKGROUND

Milford Wind filed an application (Application) on February 20, 2008, for a Certificate to construct a wind farm in Millard and Beaver Counties and an interconnection line from the wind farm to Intermountain Power Project at Delta, Utah. At the same time, Milford Wind filed a motion to dismiss the Application on the grounds that the Commission lacked jurisdiction to grant the Certificate.

Rocky Mountain Power and Utah Associated Municipal Power Systems (UAMPS) were granted intervention in this docket on March 18, 2008 and April 9, 2008, respectively.

The Commission issued an Action Request to the Division of Public Utilities (Division) on February 20, 2008, seeking an explanation of the issues raised by Milford Wind's Application and Motion to Dismiss. On March 18, 2008 the Utah Legislature passed Senate Bill 202, exempting independent power production facilities from jurisdiction and regulation by the Commission. The Division issued its Action Request Response on March 28, 2008, concluding that SB 202 removed Milford Wind's generating facilities from Commission jurisdiction, but recommending that the Commission retain authority over the Line, and grant the requested Certificate upon the conditions stated in Paragraphs 14 (1) through (5) of the parties' Stipulation, attached as Exhibit A to this Report and Order.

The Commission issued an order on May 16, 2008, granting Milford Wind's Motion to Dismiss the Application as to both the generation and interconnection facilities. Upon a motion filed by UAMPS for rehearing of that order, however, the Commission, on July 2, 2008, issued an Order on Petition for Rehearing "rescinding that portion of the May 16 Order concluding that the proposed Line is an integral part of the Milford Wind Project such that Milford Wind is exempt from Commission jurisdiction and regulation with respect to the Line." The Commission scheduled further proceedings to consider whether to issue the requested Certificate to construct the Line.

On August 21, 2008, a hearing was held to determine the scope of intervention and issues to be heard at the hearing of this matter which was scheduled for September 29, 2008. The Commission determined that the scope of the hearing would generally address the six issues stated in the Commission's Order on Scope of Intervention and Hearing. The parties conducted

discovery and filed testimony pertaining to those issues and agree to the terms and conditions set forth in their Stipulation.

On September 22, 2008, the Applicant filed a motion to be exempt from certain regulatory requirements found in Title 54 of the Public Utility Act and the Rules and Regulations of the Commission.

A hearing on the issuance of the Certificate was held in this matter, on September 29, 2008 before the administrative law judge. William Evans of Parsons, Behle & Latimer appeared for Milford Wind. Michael Ginsbrug appeared for the Division. Matthew McNulty, III of VanCott Bagley Cornwall & McCarthy appeared for UAMPS.

FINDINGS OF FACT

1. In light of the building of the generation plant, the Line will not conflict with or adversely affect the operations of any existing certificated of public utility in the State of Utah.
2. The Line will not constitute an extension into the certificated territory of any certificated public utility in the State of Utah.
3. Milford Wind either has received or is in the process of receiving necessary consents and permits to build the Line. Milford Wind has consented, and the Commission finds, that Milford I will not construct the Line until such necessary consents and permits have been received.

4. As a result of building a generation facility there is a reasonable need for the Line in order that power generated at the wind farm can be transmitted to its contracted market.
5. Milford I has reasonable expertise required to build and operate the Line and it has a reasonable opportunity to finance the Line or it has sufficient contractual relationships to provide financing for the project.
6. Milford I has or will have reasonable agreements in place to properly maintain the Line in a safe and reliable manner.

CONCLUSIONS OF LAW

1. The Commission cannot make a factual determination as to whether it would be in the public interest to exempt Milford I as stated in paragraph 15 of the Stipulation, given the testimony filed and presented at the hearing and information submitted to the Commission in the Stipulation.
2. Except for paragraph 15 of the Stipulation and as otherwise set forth in this Report and Order, it is in the public interest for the Commission to approve and adopt the Stipulation and grant Milford I the Certificate for the Line based on the conditions set forth in paragraph 14 of the Stipulation and other provisions as set forth here.
3. Milford Wind I meets each of the statutory requirements of U.C.A. § 54-4-25 for issuance of a Certificate to construct the Line.

ORDER

1. Milford Wind I is granted the Certificate attached as Exhibit B, which Exhibit is incorporated by reference into this Order;
2. Applicant shall provide the Commission with the information specifically listed in paragraph 14 of the Stipulation, which is incorporated by reference into this Order;
3. The remainder of the provisions of the Stipulation, except for paragraph 15, are adopted and approved by the Commission.
4. Any person aggrieved by this Order may petition the Commission for review within 30 days of the date of this Order. Failure to do so will forfeit the right to appeal to the Utah Supreme Court.

DATED at Salt Lake City, Utah this 8th day of October, 2008.

/s/ Ted Boyer, Chairman

/s/ Ric Campbell, Commissioner

/s/ Ron Allen, Commissioner

Attest:

/s/ Julie Orchard
Commission Secretary
G#59318

EXHIBIT A

BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

In the Matter of the Application of Milford Wind Corridor Phase I, LLC and Milford Wind Corridor Phase II, LLC for Certificates of Convenience and Necessity for the Milford Phase I and Phase II Wind Power Project.	STIPULATION Docket No. 08-2490-01
---	---

1. In accordance with the provision at Utah Code Ann. § 54-7-1 and Utah Administrative Code R746-100-10(F)(5), the parties whose signatures appear on the signature pages hereof enter into this Stipulation to resolve the issues raised in this docket.

BACKGROUND

2. Milford Wind Corridor Phase I, LLC (“Milford I” or the “Applicant”) and Milford Corridor Phase II, LLC (“Milford Wind II”) (collectively “Milford Wind”) filed an application on February 20, 2008, for a certificate of public convenience and necessity (“Certificate”) to construct a wind farm in Millard and Beaver Counties and an interconnection line (the “Line” as more fully described below) from the wind farm to Intermountain Power Project at Delta, Utah. (“Application”). At the same time, Milford Wind filed a motion to dismiss the Application on the grounds that the Utah Public Service Commission (“the “Commission”) lacked jurisdiction to grant the certificate.

3. Rocky Mountain Power and Utah Associated Municipal Power Systems (“UAMPS”) were granted intervention in this docket on March 18, 2008 and April 9, 2008, respectively.

4. The Commission issued an Action Request to the Division of Public Utilities on February 20, 2008, seeking an explanation of the issues raised by Milford Wind's Application and Motion to Dismiss. On March 18, 2008 the Utah Legislature passed Senate Bill 202 exempting independent power production facilities from jurisdiction and regulation by the Commission. The Division issued its Action Request Response on March 28, 2008, concluding that SB 202 removed Milford Wind's generating facilities from Commission jurisdiction, but recommending that the Commission retain authority over the Line, and grant the requested Certificate upon the conditions stated below in Paragraphs 14 (1) through (5) of this Stipulation.

5. The Commission issued an order on May 16, 2008, granting Milford Wind's Motion to Dismiss the Application as to both the generation and interconnection facilities. Upon a motion filed by UAMPS for rehearing of that order, however, the Commission, on July 2, 2008, issued an Order on Petition for Rehearing "rescinding that portion of the May 16 Order concluding that the proposed transmission line is an integral part of the Milford Wind Project such that Milford Wind is exempt from Commission jurisdiction and regulation with respect to the transmission line." For the purposes of this Stipulation, the "Line" refers to the approximately 90-mile 345 kV line, associated facilities, and plant required to transport electricity from the wind farm to the point of interconnection at the Intermountain Power Project. The Commission scheduled further proceedings to consider whether to issue the requested certificate of public convenience and necessity to construct the line.

6. On August 21, 2008, a hearing was held to determine the scope of intervention and issues to be heard at the hearing of this matter which was scheduled for September 29, 2008. The Commission determined that the scope of the hearing would generally address the six issues

stated in the Commission's Order on Scope of Intervention and Hearing. The parties have conducted discovery and filed testimony pertaining to those issues and now stipulate to the terms and conditions set forth below.

7. On September 22, 2008, the Applicant filed a motion to be exempt from certain regulatory requirements found in Title 54 of the Public Utility Act and the Rules and Regulations of the Commission.

TERMS AND CONDITIONS

8. The parties stipulate that, in light of the building of the generation plant, the Line will not conflict with or adversely affect the operations of any existing certificated of public utility in the State of Utah.

9. The parties stipulate that the Line will not constitute an extension into the certificated territory or any certificated public utility in the State of Utah.

10. The parties stipulate that Milford Wind either has received or is in the process of receiving necessary consents and permits to build the facility, and further stipulate that Milford I will not construct the Line until such necessary consents and permits have been received.

11. The parties stipulate that in light of building a generation facility that is exempt from the need to obtain a certificate, there is a reasonable need for the Line in order that power generated at the wind farm can be transmitted to its contracted market.

12. The parties stipulate that Milford I has reasonable expertise required to build and operate the Line and that it has a reasonable opportunity to finance the Line or that it has sufficient contractual relationships to provide financing for the project.

13. The parties stipulate that it presently appears that Milford I will have reasonable agreements in place to properly maintain the Line in a safe and reliable manner.

14. The parties agree that the Commission may grant to Milford I the requested Certificate upon the following conditions (the “Conditions”):

(1) Milford I shall demonstrate to the Commission that it has acquired or is in the process of acquiring the necessary permits to construct and complete the proposed interconnection facilities and will report to the Commission when all necessary permits have been obtained;

(2) Milford I shall inform the Commission in writing of the final disposition of the power output of any affiliated power generation facility located in Beaver or Millard Counties, Utah, including Milford II, to the extent Applicant has knowledge of such final disposition, and inform the Commission in writing any changes for the disposition of the output of Milford I;

(3) Milford I shall inform the Commission in writing of changes in status with regard to the construction schedules and in-service dates for the certificated facilities;

(4) Milford I shall inform the Commission in writing of any expansions of Milford I and/or Milford II or of new projects requiring interconnection located within the State of Utah;

(5) Milford I shall apply for additional certificates for any expansion of the transmission capacity of the Line from the Milford project area and for any new transmission associated with company wind projects in Utah;

(6) To the extent required by Utah Code Ann. §§ 54-4-28,-29,-30, or under R746-401, if Milford I ever transfers all or a portion of the certificated facility to a third party that is not an affiliate of Milford I, then Milford I will seek the approval of the Commission for such transfer to a third party; provided, however, Milford I need not obtain Commission approval of transfers pursuant to sale-leaseback financing, or a transfer of all or a controlling interest in Milford I’s ultimate parent company.

15. With the exception of the Conditions, the parties agree that Milford I should be exempt with respect to the certificated facility from all presently existing regulatory obligations imposed on public utilities or independent power producers by Utah statute or rule. Any person

including parties to this Stipulation may by motion or rule request that Milford I be subject to certain provisions of Title 54 or the Rules and Regulations of the Commission, but nothing in this Stipulation shall constitute a waiver of Milford I's right to contest such motion or rule.

16. The parties agree that their obligations under this Stipulation are subject to the Commission's approval of this Stipulation in its entirety.

17. The parties recommend that the Commission approve and adopt this Stipulation in its entirety. If this Stipulation is approved by the Commission in its entirety, no party shall petition for rehearing or appeal any portion of this Stipulation and no party shall oppose the adoption of this Stipulation in any appeal filed by a person not a party to this Stipulation.

18. Milford Wind and the Division of Public Utilities shall make witnesses available to testify in support of this Stipulation, and other parties may make such witnesses available. The parties agree that the pre-filed testimony of the parties may be admitted in evidence either through testimony of a witness or by proffer. The parties agree to cooperate in cross-examination and in providing testimony as necessary to rebut the testimony of opposing witnesses, if any.

19. In the event that the Commission rejects any or all of this Stipulation, or imposes any additional material conditions on approval of this Stipulation or on a certificate of public convenience and necessity issued to Milford Wind, or in the event that Commission approval of this Stipulation is rejected or conditioned in whole or in part by an appellate court, each party reserves the right, upon written notice to the Commission and the other parties to this Stipulation, delivered no later than five business days after the issuance date of such applicable Commission or Court order, to withdraw from this Stipulation. Prior to any party's withdrawal, however, the parties agree to meet and discuss the Commission's order or Court's decision rejecting or

conditioning adoption of this Stipulation. In the event that no new agreement is reached among the parties, no party shall be bound or prejudiced by the terms of this Stipulation and each party shall be entitled to undertake any action it deems appropriate.

20. The parties agree that this Stipulation is in the public interest, and that its terms and conditions considered as a whole, produce a just, fair and reasonable results.

21. All negotiations related to this Stipulation are privileged and confidential. No party is bound by any position asserted in the negotiation of this Stipulation except to the extent expressly stated herein, nor shall this Stipulation be deemed to constitute an acknowledgement by any party of the validity or invalidity of any principal or practice of ratemaking, nor shall it provide the basis of an estoppel or waiver by any party other than with respect to the issues explicitly stated herein, nor shall any party's position asserted in negotiations be introduced or used as evidence in any future proceeding by any party to this Stipulation except a proceeding to enforce the approval or terms and conditions of this Stipulation.

DATED this 29th day of September 2008.

MILFORD WIND CORRIDOR PHASE I,
LLC, and MILFORD WIND CORRIDOR
PHASE II, LLC,

UTAH DIVISION OF PUBLIC UTILITIES
