

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

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In the Matter of the Application of Milford	)	
Wind Corridor Phase I, LLC and Milford	)	<u>DOCKET NO. 08-2490-01</u>
Wind Corridor Phase II, LLC for Certificates	)	
of Convenience and Necessity for the	)	<u>ORDER ON PETITION FOR</u>
Milford Phase I and Phase II Wind Power	)	<u>REHEARING</u>
Project	)	
	)	

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ISSUED: July 2, 2008

By The Commission:

**PROCEDURAL HISTORY**

On June 16, 2008, the Utah Associated Municipal Power Systems (“UAMPS”) filed a Petition for Rehearing (“Petition”) requesting the Commission schedule a hearing to consider the issues raised in the Petition, vacate the Commission’s Order of May 15, 2008 (“May 15 Order”), and conduct an evidentiary hearing on the Application of Milford Wind Corridor Phase I, LLC and Milford Wind Corridor Phase II, LLC for Certificates of Public Convenience and Necessity for Phase I and Phase II of the Milford Wind Power Project (“Application”). The Project that is the subject of the Application will consist of two primary components: a wind farm located in Beaver and Millard Counties, Utah, and an approximately 90 mile long dedicated transmission line to transport electricity generated by the wind farm to a point of interconnection at the Intermountain Power Project (“IPP”) generating station north of Delta, Utah.

The Commission’s May 15 Order granted for lack of jurisdiction the Motion to Dismiss filed contemporaneously with the Application by Milford Wind Corridor Phase I, LLC and Milford Wind Corridor Phase II, LLC (collectively “Milford Wind”). In its Petition,

UAMPS argues the May 15 Order: (1) violates Article I, § 24 of the Utah State Constitution which requires uniform operation of the law; (2) erroneously interprets Senate Bill 202 (“SB 202” or the “Act”) by including the Project’s proposed transmission line within the Act’s definition of an “independent power production facility;” (3) relies on an incomplete evidentiary record; and (4) runs afoul of the Commerce and Privileges and Immunities clauses of the United States Constitution.

On July 1, 2008, Milford Wind filed a Memorandum in Opposition to Petition for Rehearing in which it argued, *inter alia*, the Commission’s May 15 Order is consistent with the language, policy and purpose of SB 202. Because the May 15 Order is supported by uncontested facts, consistent with the language and purposes of SB 202, and within the bounds of the state and federal constitutions, Milford Wind urges the Commission to deny the Petition.

### **DISCUSSION AND CONCLUSION**

In our May 15 Order, we concluded the wind farm at the heart of the Milford Wind Project is an independent power production facility such that Milford Wind is an independent energy producer with regard to the Project. In accordance with *Utah Code Annotated* § 54-2-1(16)(d), we further concluded that because the electricity produced by the Project will only be sold on a wholesale basis Milford Wind is exempt from Commission jurisdiction and regulation with respect to the power production facilities associated with the Project. Our Order today in no way modifies this decision.

However, our May 15 Order also concluded that the proposed transmission line is reasonably considered an integral part of the independent power production facility and that

Milford Wind is therefore exempt from Commission jurisdiction and regulation with respect to the entire Project, including the transmission line. In its Petition, UAMPS repeats the argument, previously offered by the Division of Public Utilities (“Division”), that the *UCA* § 54-2-1(14) definition of an independent power production facility is properly limited to one that “*produces electric energy*” (emphasis added) such that only that portion of the Project that actually produces electricity, i.e. the wind farm facility, is exempt from the requirement to obtain a Certificate of Public Convenience and Necessity (“CPCN”) from the Commission. At hearing and in its pre-filed analysis, the Division bolstered this argument by pointing out that subsections (i) and (iii) of *UCA* § 54-2-1(16)(d) both speak to delivery of the commodity or service produced but subsection (ii) of said statute speaks only to the sale of said commodity or service such that transmission should not be viewed as exempted under subsection (ii). As such, the Commission may properly conduct certification proceedings for the proposed transmission line.

Having reconsidered this matter, we agree and conclude a plain reading of *UCA* § 54-2-1(14) includes only production, not transmission, facilities within the definition of an independent power production facility. For this reason, contrary to our May 15 Order, we conclude the Project’s proposed 90-mile transmission line is not excluded from Commission jurisdiction such that Milford Wind must obtain a CPCN prior to construction and operation of said line.

Wherefore, based on the foregoing information and for good cause appearing, the Commission issues this Order rescinding that portion of its May 15 Order concluding that the proposed transmission line is an integral part of the Milford Wind Project such that Milford

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Wind is exempt from Commission jurisdiction and regulation with respect to the transmission line. Further proceedings to consider whether to issue the requested CPCN for the proposed transmission line will be scheduled as appropriate.

DATED at Salt Lake City, Utah, this 2<sup>nd</sup> day of July, 2008.

/s/ Ted Boyer, Chairman

/s/ Ric Campbell, Commissioner

/s/ Ron Allen, Commissioner

Attest:

/s/ Julie Orchard  
Commission Secretary  
G#58020