

MICHAEL L. GINSBERG (#4516)
Assistant Attorney General
PATRICIA E. SCHMID (#4908)
Assistant Attorney General
MARK L. SHURTLEFF (#4666)
Attorney General of Utah
Counsel for the DIVISION OF PUBLIC UTILITIES
160 E 300 S, 5th Floor
P.O. Box 140857
Salt Lake City, UT 84114-0857
Telephone (801) 366-0380

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 Public Convenience and Necessity for Phase I and Phase II of the Milford Wind Power Project	Response of the Division of Public Utilities to the Preliminary Position Statement of Utah Association of Municipal Power Systems Docket No. 08-2490-01
--	--

The following is a response by the Division of Public Utilities (DPU) to the Preliminary Position Statement filed by the Utah Association of Municipal Power System (UAMPS) on July 28, 2008.

1. On July 28, 2008 UAMPS filed a Preliminary Position Statement outlining what it perceives its interests to be in the Certificate application by Milford Wind. This position statement is in response to the Commission's Scheduling Order issued July 16, 2008. The Scheduling Order asked interveners to "file position statements, including a statement of how the intervener is directly and adversely impacted by the proceedings, and a statement of the relief sought." The DPU is responding to this Position Statement in an attempt to have the Commission issue an Order to focus the issues to be addressed in the hearing. The DPU notes that the Commission on its own provided guidance to the parties on the issues to be addressed in

the Certificate application by Rocky Mountain Power in Docket 08-035-42 for a transmission line. The DPU believes that such an Order would be helpful in this docket. UAMPS' preliminary position statement does not provide a detailed statement of how it is directly and adversely impacted by the proceeding. Instead UAMPS asks the Commission to "reserve ruling on the preliminary position statement"...and asks that it be able to supplement its position statement when more information becomes available. With the lack of specificity in the UAMPS response, the DPU believes it is even more crucial for the Commission to state what relevant issues are to be addressed in this proceeding. If irrelevant issues are presented when testimony is filed, that testimony can be excluded.

Another reason for an Order focusing the issues in this docket is due to the unique nature of this docket. Milford Wind generating plant is exempt from the Certificate statute. Milford Wind is not a public utility intending at this time to sell its power to any retail customers in Utah. In fact, Milford's current plan for Milford Wind I, is to sell power only on a wholesale basis and under contract to an out-of-state entity. It is the DPU's view in finding that a requirement exists for a Certificate for this transmission line, it will require the Commission to consider carefully what is needed in order to obtain a Certificate. Many of the requirements that are focused on in a more traditional Certificate application may not be applicable to the same analysis in this docket.

2. The Legislature, when it passed SB 202, determined that a company that builds an independent power production facility is not subject to the jurisdiction of the Commission and does not need to obtain a Certificate in order to build such a facility. Its facility is exempt from regulation when it is either selling its power to another electric corporation or when it is selling its power to a wholesale purchaser, even if that purchaser is an out-of-state entity. The only portion of the project that the Commission has asserted jurisdiction over is the transmission line.

Any attempt to object to the wind production facility, where the power is being sold, or the effect the generating facilities may have on others seem to be irrelevant, because the legislature has exempted from regulation independent power production facilities when they are selling their output to any wholesale provider including an out-of-state provider. UAMPS' issue C on p. 5 of their Preliminary Position Statement seems to ask the Commission to explore the role of LADWP and SCPPA generally and specifically the need for FERC licensing. Those issues do not seem relevant. If a FERC license is required, a complaint can be filed at FERC. The legislature did not limit the sale of the output of an exempt facility only to in-state wholesale providers. Whom Milford sells the power to seems somewhat irrelevant.

3. On March 28, 2008, the Division filed a Memorandum providing its analysis at that time of the Certificate application. That Memorandum, along with the Division's response to Milford's Motion to dismiss its Certificate application, provide the DPU analysis of the issues that are relevant in this docket. This Memorandum will try to focus those issues more precisely allowing the Commission, if it desires, to issue an Order similar to the Order issued in Docket 08-035-42, where it limited the proceedings to issues that were only relevant to that case.

4. The DPU sees the issues should be limited in this Docket for two main reasons. First, the certificate is not, at this point, intended to serve any retail load in Utah, nor is it intended to offer its service to the public. It is, therefore, not like a Certificate from an Applicant like Rocky Mountain Power or even UAMPS. Second, the Certificate is only for the transmission line and not for the underlying facility that will provide the power. The legislature has determined that no Certificate is required if the facility meets the definition of an independent power production facility, i.e. using a renewable energy source. This again should

help limit the inquiry. Based on the aforementioned reasoning, the DPU believes the Commission should limit the proceedings in this case to the following issues:

a. In light of the building of the generating plant, does the transmission line conflict with or adversely affect the operations of any existing certificated public utility in the state?

b. Does the transmission line constitute an extension into the certificated territory of a certificated public utility in the state?

c. Has the Applicant either received or is in the process of receiving necessary consents and permits to build the facility?

d. In light of building a generating facility that does not need a certificate is there a reasonable need for the transmission line to get the output of the plant to its contracted market?

e. Does the Applicant have reasonable expertise to build and operate the facility and has it a reasonable opportunity to finance the facility or have sufficient contractual relationships to provide financing for the project?

f. Will the transmission line be properly maintained in a safe and reliable manner?

5. In its initial review of the Application, the DPU concluded in its March 28, 2008 Memorandum that a Certificate should be granted. Much discovery has taken place since that date, and a more detailed review by the DPU has occurred. This includes discovery requests by the DPU to Milford Wind, to UAMPS, and to Rocky Mountain Power. Those requests asked each party to detail the impact this project will have on them. At least at this point the DPU continues to believe that a Certificate can be granted for this transmission line and that it will not

have an adverse impact on either Rocky Mountain Power or UAMPS or other transmission systems.

In conclusion, the above constitutes the issues the DPU sees as relevant in this Certificate application. Areas that go beyond these issues and that cover areas where the PSC has no jurisdiction are irrelevant to this case and should not be allowed a part of this proceeding. The DPU recommends that the Commission limit the scope of this proceeding, allowing parties to focus only on relevant issues as defined by the Commission.

RESPECTFULLY SUBMITTED, this 14th day of August, 2008.

Michael L. Ginsberg
Patricia E. Schmid
Attorneys for the Division of Public Utilities

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the Response of the Division of Public Utilities to the Preliminary Position Statement of Utah Association of Municipal Power Systems In the Matter of 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 was sent by electronic mail or mailed by U.S. Mail, postage prepaid, to the following on August 14, 2008:

William J. Evans
Michael J. Malmquist
Seth P. Hobby
Parsons Behle & Latimer
One Utah Center
201 South Main Street, Suite 1800
Salt Lake City, UT 84145-0898
bevans@parsonsbehle.com
Attorneys for Milford Wind Corridor, LLC

Milford Wind Corridor, LLC
ATTN: Secretary
85 Wells Avenue, Suite 305
Newton, MA 02459
elim@upcwind.com

Krista A. Kisch,
Vice President,
Business Development - West Region
UPC Wind Management, LLC.
110 West A Street, Suite 675
San Diego, CA 92101
kkisch@upcwind.com

Paul Proctor
Assistant Attorney General
160 East 300 South
P.O. Box 140857
Salt Lake City, UT 84114-0857
pproctor@utah.gov

Daniel E. Solander
Rocky Mountain Power
201 South Main Street, Suite 2300
Salt Lake City, Utah 84111
daniel.solander@pacificorp.com

David L. Taylor
Utah Regulatory Affairs Manager
Rocky Mountain Power
201 South Main Street, Suite 2300
Salt Lake City, Utah 84111
dave.taylor@pacificorp.com

Matthew F. McNulty
Florence Vincent
Van Cott, Bagley, Cornwall
& McCarthy, P.C.
36 South State Street, Suite 1900
Salt Lake City, UT 84111-1478