

VANCOTT, BAGLEY, CORNWALL  
& MC CARTHY, P.C.  
Matthew F. McNulty, III (3828)  
Florence M. Vincent (11492)  
36 South State Street, Suite 1900  
Salt Lake City, Utah 84111-1478  
Telephone: (801) 532-3333  
Facsimile: (801) 534-0058

*Attorneys for Utah Associated  
Municipal Power Systems*

**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	<b>MEMORANDUM IN OPPOSITION TO MOTION TO COMPEL RESPONSES FROM UAMPS TO MILFORD WIND'S SECOND AND THIRD SETS OF DATA REQUESTS</b>
	<b>Docket No. 08-2490-01</b>

Utah Associated Municipal Power Systems ("UAMPS"), by and through its counsel of record, pursuant to R746-100-8 of the Utah Administrative Code and Rules 26 and 37 of the Utah Rules of Civil Procedure, hereby submits this Memorandum in Opposition to Motion to Compel Responses From UAMPS to Milford Wind's Second and Third Sets of Data Requests ("Opposition").

**STATEMENT OF RELEVANT FACTS**

1. This proceeding involves Milford Wind Corridor Phase I, LLC's and Milford Wind Corridor Phase II, LLC's (collectively, "Milford") application for certificates of convenience and public necessity.

2. UAMPS is participating in this proceeding as an intervening party.
3. Pursuant to a scheduling conference, the parties agreed to an expedited discovery schedule, which was memorialized in the Scheduling Order issued by the Utah Public Service Commission (“Commission”) on July 16, 2008 (“Scheduling Order”).
4. Pursuant to the Scheduling Order, before September 8, 2008, the parties will submit responses to data and discovery requests within seven (7) calendar days. Thereafter, the parties will respond to data or discovery requests within three (3) business days after receipt.
5. Shortly after the scheduling conference and the issuance of the Scheduling Order, Milford Wind submitted its Petition for Rehearing or Request for Reconsideration of Order on Petition for Rehearing (“Petition”) on July 22, 2008, seeking an order from the Commission reversing its position as to its assertion of jurisdiction over Milford’s transmission line.
6. Milford Wind submitted its First Set of Data Requests to UAMPS on July 25, 2008.
7. UAMPS filed its Preliminary Position Statement of Intervenor Utah Associated Municipal Power Systems (“Position Statement”) on July 28, 2008 in accordance with the Scheduling Order.
8. UAMPS submitted its First Set of Data Requests to Milford Wind on July 29, 2008.

9. On July 31, 2008, UAMPS submitted a motion to vacate the Scheduling Order on the grounds that at the time of the scheduling conference, it was not known Milford would attempt to reverse the Commission's assertion of jurisdiction over Milford's transmission line through submittal of its Petition and the Scheduling Order did not contemplate the filing of such Petition.

10. Milford submitted its Second Set of Data Requests to UAMPS on August 4, 2008, and its Third Set of Data Requests to UAMPS on August 6, 2008.

11. Milford submitted its responses to UAMPS' First Set of Data Requests on August 5, 2008; certain studies and information UAMPS requested were withheld by Milford until UAMPS signed Exhibit A to the Protective Order on file in this proceeding. (See Paragraph 15, below regarding same).

12. On August 11, 2008, UAMPS submitted its responses to Milford Wind's Second and Third Set of Data Requests ("Response"). A true and correct copy of same is attached hereto as Exhibit "A.."

13. UAMPS' counsel signed and returned Exhibit A to the Protective Order to Dennis Miller of the Division of Public Utilities on August 11, 2008, and to Milford's counsel on August 15, 2008.

14. UAMPS, in addition to preparing its Position Statement, prepared and filed a memorandum in opposition to Milford's Petition on August 6, 2008.

15. On August 20, 2008, Milford provided information referenced in its responses to UAMPS' First Data Requests.

16. On August 21, 2008, a scope of intervention hearing was held before Administrative Law Judge Sandy Mooy, at which the parties learned that UAMPS' motion to vacate the Scheduling Order had been denied.

17. On August 26, 2008, the Commission issued an order as the scope of intervention. According to that order, discovery in this proceeding must relate to the following:

(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?

Order, pp. 1-2.

18. On September 4, 2008, Milford served on UAMPS the Motion to Compel Responses from UAMPS to Milford Wind's Second and Third Sets of Data Requests and Request for Hearing ("Motion to Compel"). Milford states in its Motion that:

Milford Wind's Second and Third Sets of Data Requests contain, among other things, questions relevant to UAMPS' interest in this case. On August 26, 2008, the Commission issued an Order on the Scope of Intervention and Hearing ("Order on Scope"), ruling that "the scope of UAMPS' intervention is to be consistent with the general parameters of the issues and scope of hearing as explained at the August 21, 2008 hearing." [(citation omitted)] Because the Commission did not determine that any specific issue would be within UAMPS' intervention, it remains an open question whether UAMPS has shown a legitimate interest in any of the issues to be decided in this proceeding. Under the Order on Scope, therefore, Milford Wind and the Division may contest UAMPS' interest in any issue on which UAMPS may present evidence or argument. For that reason, all of Milford Wind's Second and Third Sets of Data Requests remain relevant.

Motion to Compel, pp. 2-3, ¶ 6.

19. On September 4, 2008, the Commission issued a Notice of Hearing on Motion to Compel, setting a hearing for September 11, 2008, which was continued to a future date.

20. On September 10, 2008, UAMPS served upon Milford and all other requesting parties Utah Associated Municipal Power Systems' Supplemental Responses to Milford Wind's Second and Third Sets of Data Requests.

## **ARGUMENT**

### **I. AN ORDER TO COMPEL DISCOVERY IS NOT PROPER**

An order to compel discovery is inappropriate. UAMPS timely responded to Milford's Second and Third Data Requests, provided Milford with appropriate objections, and as of the date of this Opposition, has supplemented its Response. Contrary to Milford's contention otherwise, the information Milford seeks in many of its requests is irrelevant and outside the scope of this proceeding. As set forth above, the Commission

set forth specific guidelines as to the information relevant as to Milford's application for certificates of public convenience and necessity. Milford cannot go outside of those guidelines at this juncture to circumvent the Commission's ruling of August 26 as to UAMPS' intervention status.

Under 37(a) of the Utah Rules of Civil Procedure, incorporated by reference through Administrative Rule R746-100-8, a party may move for an order to compel disclosure if a party fails to make a disclosure required by Rule 26(a). Parties are not required to provide responses or documents that are "unreasonably cumulative or duplicative, or is obtainable from some other sources that is more convenient, less burdensome, or less expensive." Utah R. Civ. P. 26(b)(3). Further, parties are not required to provide responses or documents which are protected by attorney-client privilege or the work-product doctrine. Utah R. Civ. P. 26(b)(6)(A). Parties are also not required to provide information unless such information is "reasonably calculated to lead to discovery of admissible evidence." Utah R. Civ. P. 26(b)(1). Parties are under an ongoing duty to supplement their responses. Utah R. Civ. P. (e). Because UAMPS' Response was proper pursuant to the foregoing limitations, and has supplemented its Response, an order to compel is not proper.

**A. UAMPS Timely Responded and Appropriately Objected to Milford's Data Requests**

The following outlines Milford's requests, UAMPS' response, and the reason(s) UAMPS' Response is proper pursuant to the Utah Rules of Civil Procedure:

**2.1:** Milford requests information and documents “showing UAMPS rights and interests in the IPP Site and facilities, including documents creating the exclusive contractual rights referred to on page 3 of the UAMPS Preliminary Position Statement.”

The information Milford seeks, as noted in its response to UAMPS’ Position Statement, is publicly available—one ground upon which UAMPS objected to Milford’s requests. *See* Milford Wind’s Response to the Preliminary Position Statement of Intervenor Utah Associated Municipal Power Systems (“Response to Position Statement”), on record, p. 8; UAMPS Resp., Ex. A, ¶ 3.<sup>1</sup> Response to Position Statement, p. 8. In any event, as of the date of this Opposition, UAMPS has supplemented its Response, and provided Milford with the applicable contractual agreements.

**2.2:** Milford asks UAMPS to define its precise rights to the IPP switchyard bus, Milford’s impact on the switchyard bus, and any studies showing such impact.

UAMPS’ Response to this request was proper for the reason discussed above. UAMPS’ Response to this request was also proper because Milford inappropriately attempts to shift the burden of production to UAMPS on this issue. Ex. A, Response, ¶ 8.<sup>2</sup> Nevertheless, UAMPS has supplemented its Response with a copy of “Appendix A” to a draft IPP project agreement not included here, which

---

<sup>1</sup> It is ironic that Milford is complaining about not getting information regarding UAMPS’ exclusive contractual rights relative to IPP, when it has argued that such information is not relevant to this proceeding.

<sup>2</sup> UAMPS has repeatedly stated that it is concerned about how Milford’s project will (or has) affected its rights in the IPP switchyard bus. Milford has yet to provide assurance that UAMPS rights will not be adversely affected.

delineates the switchyard bus as an IPP “common facility” to which UAMPS’ claims an interest. Milford should have to demonstrate that its project will not adversely affect UAMPS’ interest in the IPP switchyard, not *vice-a-versa*.

**2.3** Milford asks UAMPS to identify and describe any adverse consequences Milford Wind’s facilities will have on the “IPP interconnection point.” For the same reasons discussed above, UAMPS’ Response to this request is proper.

**2.4** Milford asks UAMPS “to identify all experts and engineers it has engaged to evaluate and report on the details and implications of Milford Wind’s Project and identify and provide all evaluations and reports” reviewed or generated.

UAMPS’ Response is proper on the ground that the information sought is duplicative of information UAMPS has already provided to Milford. Ex. A, Response, ¶ 3. Prior to submitting its Response to Milford, UAMPS provided Milford with the name of the engineer it has employed in this proceeding, including a memorandum prepared by that engineer. Further analysis by such engineer was not completed until September 8, 2008, which was submitted in the form of Testimony in this proceeding.

**2.5** Milford asks UAMPS “to identify and describe any FERC licensing and other requirements that UAMPS contends Milford Wind could avoid by relying on SCPPA or LADWP.”



UAMPS' contends that Milford's transmission line is subject to the jurisdiction of the Federal Energy Regulatory Commission ("FERC"). UAMPS is concerned that Milford takes a different view. UAMPS therefore raised the issue of whether Milford is relying on SCPPA or LADWP to either (i) avoid FERC jurisdiction, or (ii) comply with FERC standards. UAMPS' Response is proper because such information is not within UAMPS' possession or control. Ex. A, Resp. ¶ 3.

**2.6** Milford asks UAMPS to "explain in detail all circumstances that UAMPS alleges would cause IPP to be 'backed down' ... Please specify whether this alleged 'backing down' would be of the existing IPP units or of potential future IPP units."

UAMPS' Response is proper on the ground that the information Milford seeks is within its possession and control, and therefore unreasonably cumulative or duplicative. Ex. A, Resp. ¶ 3. The studies which suggest that IPP will be backed down relative to Milford power were not provided to UAMPS by Milford until August 20, 2008. UAMPS has since provided those studies to the above-referenced engineer for analysis, to which he responded through testimony submitted in this proceeding. Milford's request also attempts to shift the burden of production from Milford to UAMPS. *Id.* at ¶ 8.

**2.7** Milford requests further information as it relates to the backing down of IPP generation for Milford's project. For the reasons discussed above, UAMPS' Response was proper.

**2.8, 3.8** Milford asks UAMPS to describe in detail any right or interest it has in the IPP Southern Transmission System.

UAMPS' Response is proper on the ground that the information sought is not reasonably calculated to lead to discoverable or relevant information. Ex. A, Response, ¶ 6. UAMPS has not suggested that Milford's project will have an impact on the IPP Southern Transmission System. UAMPS' concern relates to Milford project's impact on the Utah power grid, the interstate power grid, its development rights relative to IPP, and UAMPS member's right to IPP power.

**3.1, 3.2, 3.3, and 3.4** Milford seeks information pertaining to meetings of the Board of Directors of UAMPS, UAMPS' Executive Committee, and other committees, and voting records relative to such governing bodies regarding UAMPS' decision to intervene in this proceeding.

UAMPS' Response is proper because the information sought is not "reasonably calculated to lead to the discovery of relevant or admissible evidence," *i.e.*, whether Milford should be issued a certificate of public convenience and necessity. Further, the information Milford seeks is most certainly outside the guidelines set forth by the Commission in its August 26<sup>th</sup> order. Finally, UAMPS' Response is proper because much of the information sought in this request is protected by attorney-client privilege and work-product doctrine. Ex. A, Resp. ¶¶ 2, 6.

**3.5** Milford seeks information as to the identify of UAMPS' members that sit on the Intermountain Power Agency ("IPA") Board, and with respect to each,

how they voted relative to the interconnection agreement between IPA and Milford.

UAMPS' Response to this request is proper because (i) the information concerning UAMPS' membership is publicly available, *see* <http://www.uamps.com/html/members.html>, (ii) the information concerning the composition of IPA's board is publicly available, *see* <http://www.ipautah.com/abt-board.htm>, and (iii) UAMPS has no knowledge of how IPA board members voted relative to the subject interconnection agreement. Ex. A, Resp. ¶ 3.

**3.6 and 3.7** Milford seeks information as to any power line or facility owner or operated by UAMPS or any member of UAMPS which could be affected by Milford's transmission line.

UAMPS' Response is proper because UAMPS has not contended that a line or generation facility that it owns or its members own will be directly affected by Milford's transmission line. UAMPS' concern throughout this proceeding has been that Milford be subject to the same certification standards that would apply to a Utah interlocal entity applying for a similar certificate. UAMPS has also expressed concern that Milford's use of Utah resources is without the ongoing regulatory oversight of the Commission.

**3.9** Milford seeks information concerning any involvement by UAMPS or any of its members concerning the Bureau of Land Management ("BLM") right-of-way through which Milford's proposed transmission line runs.

UAMPS' Response is proper on the ground that the information Milford seeks is not reasonably calculated to lead to relevant or admissible evidence. Ex. A, Resp. ¶¶ 6. UAMPS has not contended that Milford's proposed transmission line conflicts with or adversely affects its rights, or its members rights, to an existing BLM utility corridor. UAMPS' contention is that Milford's transmission line, which it characterizes as a "private" line (*i.e.*, Milford contends that no utility provider will be able to use its proposed transmission line) is a use of limited Utah resources that does not benefit Utahns. *See* UAMPS Responses to Division of Public Utilities 1<sup>st</sup> Set of Data Requests, Response 1.2. Further, UAMPS' Response is proper because the information Milford seeks is more easily obtained from publicly available resources that are more convenient, less burdensome, and less expensive. Ex. A, Resp. ¶ 3.

**3.10** Milford seeks information concerning any proceeding UAMPS (and any UAMPS member) has, or is, participating in concerning UAMPS' rights in IPP.

UAMPS' Response regarding this request is proper because the information Milford seeks is more easily obtained from a publicly available resource that is more convenient, less burdensome, and less expensive. Ex. A, Resp. ¶ 3; *see UAMPS v. LADWP*, Case No. 070916054, pending in the Third Judicial Court of Salt Lake County, Utah, which Milford cites in its Response to Position Statement.

**3.11** Milford seeks information concerning each witness UAMPS intends to present in this proceeding. UAMPS has supplemented its Response with this information.

In sum, because UAMPS' Response was timely, its objections to Milford's requests were proper, and UAMPS has since supplemented its Response, an order to compel is not proper.

## **II. AN AWARD OF ATTORNEY FEES IS NOT PROPER**

For the reasons set forth above, UAMPS has complied with Rule 26 of the Utah Rules of Civil Procedure and therefore sanctions are improper. And in the unlikely event the Commission determines that UAMPS' Response did not fully comply with Rule 26 of the Utah Rules of Civil Procedure, sanctions are not warranted. "Before the [Commission may] impose[] discovery sanctions under Rule 37, it 'must find on the part of the noncomplying party, willfulness, bad faith, or fault,' or 'persistent dilatory tactics frustrating the judicial process.'" *Coxey v. Fraternal Order of the Eagles, Aerie No. 2742*, 2005 UT App, ¶ 4, 112 P.3d 1244 (internal citations omitted). UAMPS has acted in good faith, and has not engaged in persistent dilatory tactics that have frustrated this proceeding. Indeed, UAMPS agreed to an expedited discovery/hearing schedule and this proceeding has advanced in accordance with such schedule. Sanctions are therefore not proper.

## **CONCLUSION**

Based on the foregoing, UAMPS respectfully requests the Commission deny Milford's Motion to Compel.

DATED this \_\_\_\_\_ day of September, 2008.

VANCOTT, BAGLEY, CORNWALL & MC CARTHY, P.C.

---

Matthew F. McNulty, III  
Florence M. Vincent  
*Attorneys for Utah Associated  
Municipal Power Systems*

**CERTIFICATE OF SERVICE**

I hereby certify that I caused true and correct copies of the foregoing

**Memorandum in Opposition to Motion to Compel Responses From UAMPS to  
Milford Wind’s Second and Third Set of Data Requests and Request for Hearing to**

be sent to the following as indicated this \_\_\_\_\_ day of September, 2008:

Michael Ginsberg, Esq. Patricia Schmid, Esq. Assistant Attorneys General Utah Division of Public Utilities Heber M. Wells Bldg., Fifth Floor 160 East 300 South Salt Lake City, Utah 84111 Email: <a href="mailto:mginsberg@utah.gov">mginsberg@utah.gov</a> ; <a href="mailto:pschmid@utah.gov">pschmid@utah.gov</a>	<input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Fax ( # ) <input type="checkbox"/> Overnight courier <input checked="" type="checkbox"/> Electronically via e-mail
--	---

Paul Proctor, Esq. Assistant Attorney General Utah Committee of Consumer Services Heber M. Wells Bldg., Fifth Floor 160 East 300 South Salt Lake City, Utah 84111 Email: <a href="mailto:pproctor@utah.gov">pproctor@utah.gov</a>	<input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Fax ( # ) <input type="checkbox"/> Overnight courier <input checked="" type="checkbox"/> Electronically via e-mail
---	---

William J. Evans, Esq. Michael J. Malmquist, Esq. Seth P. Hobby, Esq. Parson Behle & Latimer One Utah Center 201 South Main Street, Suite 1800 Salt Lake City, Utah 84145-0898 Email: <a href="mailto:bevans@parsonsbehle.com">bevans@parsonsbehle.com</a> <a href="mailto:mmalmquist@parsonsbehle.com">mmalmquist@parsonsbehle.com</a> <i>Attorneys for Milford Wind Corridor Phase I, LLC and Milford Wind Corridor Phase II, LLC</i>	<input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Fax ( # ) <input type="checkbox"/> Overnight courier <input checked="" type="checkbox"/> Electronically via e-mail
--	---

Daniel E. Solander, Esq.  
Rocky Mountain Power  
201 South Main Street, Suite 2300  
Salt Lake City, Utah 84111  
Email: [daniel.solander@pacificorp.com](mailto:daniel.solander@pacificorp.com)  
*Attorneys for Rocky Mountain Power*

- U.S. Mail, postage prepaid
- Hand Delivery
- Fax ( # )
- Overnight courier
- Electronically via e-mail

David L. Taylor  
Utah Regulatory Affairs Manager  
Rocky Mountain Power  
201 South Main Street, Suite 2300  
Salt Lake City, UT 84111  
Email: [dave.taylor@pacificorp.com](mailto:dave.taylor@pacificorp.com)

- U.S. Mail, postage prepaid
  - Hand Delivery
  - Fax ( # )
  - Overnight courier
  - Electronically via e-mail
-