

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

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In the Matter of the Petition of Milford )  
Wind Corridor Phase I, LLC, for an ) DOCKET NO. 09-2490-01  
Expedited Exemption from the )  
Requirement of Obtaining Commission )  
Approval for the Issuance of Securities ) REPORT AND ORDER  
Under Section 54-4-31 )  
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ISSUED: April 8, 2009

By The Commission:

This matter is before the Commission on the Petition of Milford Wind Corridor Phase I (Milford Wind) for Exemption from the Requirement of Obtaining Commission Approval for the Issuance of Securities under Section 54-4-31. Milford Wind requested that this matter be treated on an expedited basis and that it be treated informally.

**BACKGROUND**

In Support of its Petition, Milford gave the following procedural history:

On February 20, 2008, Milford Wind filed an application for a Certificate of Convenience and Necessity ("Certificate") for the Milford Wind Corridor Project and, simultaneously, a motion to dismiss the application for lack of jurisdiction. *See Docket No. 08-2490-01*. Shortly thereafter the Utah legislature amended certain sections of Title 54 to clarify that independent power production facilities and independent energy producers were exempt from Commission jurisdiction and from the need to obtain certificates, whereupon Milford Wind supplemented its pleadings and reasserted its motion to dismiss. On May 16, 2008, the Commission granted Milford Wind's motion to dismiss. Order Granting Motion to Dismiss the Application of Milford I and Milford II for Certificates of Convenience and Necessity, Docket No. 08-2490-01 (May 16, 2008). On July 2, 2008, however, in response to a motion for reconsideration, the Commission partially rescinded Milford Wind's exemption, holding that the interconnection line between the Milford Wind Farm in Millard and Beaver counties and the point of interconnection at the Intermountain Power Project at Delta, Utah (the "Line") was subject to the Commission's jurisdiction and the requirement to obtain a certificate. Order on Petition for Rehearing, Docket No. 08-2490-01 (July 2, 2008).

The Commission ultimately granted Milford Wind a Certificate on October 8, 2008, authorizing the construction of the Line. Report and Order, Docket No. 08-2490-01 (October 8, 2008). During the certification proceeding, the Division of Public Utilities stipulated that Milford Wind should be exempt from all other presently existing regulatory obligations imposed by the Commission's statutes or rules. *Id.* at 9-10. Although the Commission approved and adopted the rest of the stipulation, the Commission declined to grant a blanket exemption because it could not make a sufficient factual determination as to whether such a broad exemption would be in the public interest. *Id.* at 4. Thus, while the wind farm is clearly exempt from Commission jurisdiction, the extent to which the Line should be subject to the Commission's statutes and rules remains unclear.

*Milford Wind Petition*, p. 1-2.

Section 54-4-31 states that "no electrical corporation" may issue "any security" without prior written approval of the Commission. However, it also permits the Commission to exempt, by an order, any security or electrical corporation from that requirement "subject to any terms and conditions prescribed in the order or rule," if it finds that the application of the requirement to the particular security or the electrical corporation "is not required by the public interest." *Utah Code Ann. § 54-4-31*. In addition, Section 54-4-31 provides an exception to the requirement to obtain Commission approval for the issuance of securities if

- (i) the maturity date of the note or draft is not more than one year after the date of the issue ... ; and
- (ii) the aggregate value of the note or draft together with all other outstanding notes and drafts of a maturity of one year or less on which the public utility is primarily or secondarily liable is not more than 5% of the par value of the other outstanding securities of the public utility.

*Utah Code Ann §54-4-31(2)(a)*.

Milford Wind has stated that it is currently in the process of obtaining private financing for Phase I of the Project (including both the wind farm and the Line) which will require Milford Wind to give a promissory note for the loan. Milford Wind has stated that

because its note would mature in less than one year, and because it contends it is not a public utility under Utah law, it argues that, under subsection 2(a), Commission authorization is not necessary for Milford Wind to issue the note.

During the proceeding on Milford Wind's application for a certificate, Milford Wind argued that financial regulation was unnecessary because the Line would not serve Utah customers, because Milford Wind would provide no services to Utah residents, and because Utah ratepayers are not at risk for Milford Wind's investment. The Commission ultimately did not require Milford Wind to meet the requirement in the certification statute to show that Milford "[had] established a ratio of debt capital to equity capital ... which the Commission finds renders the electrical corporation financially stable and which financing is found to be in the public interest." *Utah Code Ann. § 54-4-25(5)(d)*. Instead, the Commission granted the Certificate requiring only that Milford Wind show that "it had a reasonable opportunity to finance the Line or it has sufficient contractual relationships to provide financing for the project." *Report and Order at 4*.

The Commission, therefore, has already determined in the earlier docket that the public interest does not require the Commission to approve the means or method of financing.

Milford Wind requests the Commission affirm its determination and either expressly exempt Milford Wind from the requirement of Section 54-4-31, or otherwise hold Section 54-4-31 does not apply to Milford Wind.

Milford Wind requests the Commission consider this matter informally under R746-110. Because the issue has been previously examined, and because Milford is not aware of any

person that has an interest in the Commission approving its issuance of a promissory note, it is not expected that this request for exemption would be opposed or contested by any party.

The Division of Public Utilities (Division) submitted its Recommendation on April 7, 2008 and recommended approval of the petition and exemption. Although the Division did express some statements of uncertainty about Milford Wind's status as a public utility, the Commission did not rely on the Division's statements of uncertainty about Milford Wind's status as a public utility in making its decision. In fact the Commission, in its July 2008 Order in Docket No. 08-2490-01, clearly stated that that Milford I and II "are exempt from Commission jurisdiction and regulation with respect to the power production facilities associated with the Project."

Therefore, the Commission finds, concludes, and orders as follows:

#### FINDINGS

The Commission finds as follows:

1. that Milford Wind has submitted statements and documents that have established the pertinent facts of this matter. The Commission has determined that the request pleaded for in this matter is unopposed and uncontested and that the matter may be adjudicated informally pursuant to Utah Code § 63G-4-203 and Utah Admin. Code R746-110-1, -2, and no hearing shall be set;
2. the matter should be resolved expeditiously;
3. the Milford Wind Line, as described in the October 2008 Order in Docket No. 08-2490-01, is not intended to serve Utah customers, is not intended to serve Utah

residents, and consequently will not subject Utah ratepayers to risk for Milford Wind's investment;

4. the proposed closing of the transaction is scheduled to occur April 14, 2009. The urgency of the Request is based on the current schedule to close within four business days (excluding Friday) from April 7, 2009;
5. Milford Wind seeks a final order from the Commission to be effective April 8, 2009. The reasons for the expedited request stated in Milford Wind's Petition establish good cause for making this a final order. Additionally, Milford Wind has proposed the following information to support the good cause determination the Commission has for entering a final order:

In light of the fact that closing is scheduled to take place within seven calendar days from today, Milford Wind offers the following further explanation. Section 54-4-31 states:

Securities issued pursuant to an order entered by authority of this section shall be valid notwithstanding the outcome of any further proceedings, unless: (a) application for a stay is filed with a court of competent jurisdiction within five days following the issuance of the order; and (b) a stay is entered by the commission or a court of competent jurisdiction within ten days after the order is issued.

*Utah Code Ann. § 54-4-31(3).* Milford Wind is seeking an order of the Commission within the next few days so that the five- and ten-day periods under subsection (3)(a) will begin to run immediately, allowing Milford Wind to timely close the transaction. The nearness of the closing date, and the absence of any public interest in the method of Milford Wind's financing as stated in the Request, is good cause for the Commission to issue an order to be effective immediately. No person would be prejudiced by such an order because the procedures for review under the Utah Administrative Procedures Act ("UAPA") ensure due process to any protestor, and because R746-110-2 would allow the Commission to suspend the order pending further proceedings in response to a meritorious protest.

CONCLUSIONS OF LAW

The Commission concludes as follows:

1. the request pleaded for in this matter is unopposed and uncontested and the matter may be adjudicated informally pursuant to Utah Code § 63G-4-203 and Utah Admin. Code R746-110-1, -2, without hearing;
2. the matter merits expeditious treatment;
3. protection of the public interest does not require that Subsection (1) of Utah Code § 54-4-31 apply to Milford Wind and Milford Wind should be exempt from that subsection subject to the conditions stated in the Order;
4. There is good cause for making this a final order and no person would be
5. prejudiced by such an order.

ORDER

The Commission orders as follows:

1. The Commission reaffirms the July 2008 Order in Docket No. 08-2490-01 that Milford I and II “are exempt from Commission jurisdiction and regulation with respect to the power production facilities associated with the Project;”
2. With respect to the transmission Line, Milford Wind is hereby exempted from Subsection (1) of Utah Code § 54-4-31 with the following conditions:
  - a. In the future, should the Line affect Utah customers, or commence providing services to Utah ratepayers, or subject Utah ratepayers to risk, especially arising out of activities described in Paragraph 14(4)-(5) of the

- stipulation underlying the October 2008 Order, then this exemption may be modified or completely rescinded as determined by the Commission;
- b. Any securities issued *after* the occurrence of the conditions in paragraph 2(a) above, if they occur at all, may have this exemption modified or completely rescinded as determined by the Commission;
- c. The Commission waives the 20-day tentative period of Utah Admin. Code R746-110-2. This is a final order and is effective April 8, 2009;
3. Pursuant to Utah Code § 63G-4-301 and 54-7-15, an aggrieved party may request agency review or rehearing of this Order by filing a written request for review or rehearing with the Commission within 30 days after the issuance of the Order. Responses to a request for agency review or rehearing must be filed within 15 days of the filing of the request for review or rehearing. If the Commission does not grant a request for review or rehearing within 20 days after the filing of a request for review or rehearing, it is deemed denied. Judicial review of the Commission's final agency action may be obtained by filing a petition for review with the Utah Supreme Court within 30 days after final agency action. Any petition for review must comply with the requirements of Utah Code §§ 63G-4-401, 63G-4-403, and the Utah Rules of Appellate Procedure.

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DATED at Salt Lake City, Utah, this 8<sup>th</sup> day of April, 2009.

/s/ Ted Boyer, Chairman

/s/ Ric Campbell, Commissioner

/s/ Ron Allen, Commissioner

Attest:

/s/ Julie Orchard  
Commission Secretary

G#61574