



JON HUNTSMAN Jr.
Governor
GARY HERBERT
Lieutenant Governor

State of Utah
Department of Commerce
Division of Public Utilities

FRANCINE GIANI
Executive Director

THAD LEVAR
Deputy Director

PHILIP J. POWLICK
Director, Division of Public Utilities

MEMORANDUM

To: Utah Public Service Commission
From: Division of Public Utilities
Philip Powlick, Director
Artie Powell, Manager, Energy Section
Joni Zenger, Technical Consultant
Charles Peterson, Technical Consultant
Subject: Milford Wind Phase I, Docket No. 09-2490-01/Action Request
Date: April 7, 2009
Issue: Milford Wind Phase I requests an expedited order exempting Milford Wind Corridor Phase I, LLC, from the requirement to obtaining Commission approval for the issuance of securities under UCA § 54-4-31

Recommendation: Issue an Order exempting Milford Wind from obtaining approval for the issuance of promissory note under Section 54-4-31

Background

The Commission filed an Action Request with the Division on April 6, 2009, regarding Milford Wind's request for an expedited order exempting Milford Wind Corridor Phase I, LLC from the requirement to obtain Commission approval for the issuance of securities under Section 54-4-31. Milford Wind has made its request under R746-110-1 of the Commission's Rules and Regulations and requests informal adjudication claiming that it does not expect opposition to its request. On April 7, 2008, Milford Wind sent a letter to the Commission requesting that the Commission issue a final Order instead of a tentative order (which is permitted under R746-110-2). Milford Wind claims good cause exists for the Commission to issue a final order on an expedited basis.

Milford Wind originally filed an application for a certificate of public convenience and necessity (certificate) for the Milford Wind Project Phase I and Phase II on February 20, 2008. Shortly after the application was filed, the legislature amended 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. Thus, that aspect of the Milford Wind farm that generates energy is not subject to Commission jurisdiction. However, in its July 2, 2008 Order in response to a request for reconsideration, the Commission determined 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) is subject to the Commission's jurisdiction.

The Commission granted the certificate for the Milford Wind Corridor Project on October 8, 2008, authorizing the construction of the transmission line. The Commission's Report and Order approved, except for one provision discussed below, a stipulation with limited terms and conditions agreed to by the parties in the case (including the Division). It 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). In the Stipulation between Milford Wind and the Division a recommendation was made that Milford be exempt from all presently existing regulatory obligations imposed on public utilities or independent power producers by Utah statutes or rules" (Stipulation Docket No. 08-2490-01 paragraph 15). However, 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. Instead, the Commission approved, among other terms and conditions, the following finding included in the stipulation by the parties:

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.¹

Therefore, 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 now seeks to issue a promissory note in order to continue with the financing and construction of Milford Wind Phase I. It requests an exemption from the requirement to obtain Commission approval for the issuance of securities under Section 54-4-31.

The Commission has not expressly ruled that Milford Wind is an "electrical corporation," and it is not clear that the promissory note would be an "issuance of securities" by an electrical corporation within the meaning of Section 54-4-31.

Findings

Section 54-4-31(4) allows the Commission to exempt any security, class of securities, Electric Corporation or class of electric corporation from the requirements of subsection (1) if the Commission finds that the application of Subsection (1) is not required by the public interest.

The Division has reviewed the record in the Certificate proceeding Docket No. 08-2490-01, including the data requests made by the Division and has had discussions with the attorney for Milford Wind and concludes that, in this instance, the public interest does not require the Commission to review and approve the promissory note that is being issued for both the wind farm and the Line.

The Division believes that the following reasons support a Commission determination that the public interest does not require an approval of this note:

1. The power from the Milford Wind Phase I project is not being sold or delivered to any consumer within the state of Utah.

¹ Stipulation, Docket No. 08-2490-01, 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, September 29, 2008 at 12.

2. No Utah ratepayer will be asked to support the revenue requirement of the Line if the project fails.
3. The financing for this project is for both the wind farm and the transmission line. The wind farm itself is exempt from review pursuant to Section 54-4-31.
4. The Division, in its Stipulation with the Applicant in the Certificate proceeding, recommended to the Commission that this project be exempt from current requirements of the Commission including Section 54-4-31.
5. At the time of the Certificate proceedings, Milford Wind had a power purchase agreement in effect whereby 100 percent of the output of this project would be sold to Southern California Public Power Authority (SCPPA). The power purchase agreement provides for pre-payment of a minimum of \$211 million to Milford I. The Applicant has represented to the Division that the terms and conditions of the power purchase agreement have not materially changed since the Certificate proceeding, other than the completion date has been extended to December 31, 2009. Accordingly, completion of the pre-payment obligations have also been extended.
6. Section 54-4-31 (2) (a) 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.

Milford Wind's note will mature in less than one year and its attorney represents that the note is intended to be replaced with permanent financing after one year. The Division has no information whether Milford meets the condition of in sub-paragraph (ii) cited above. However, as pointed out in its Request, it is not clear if Milford Wind is a public utility or just an Independent Power Producer. It is also unclear whether the fact of not being a public utility

would exempt an applicant from having to meet the condition in sub-paragraph (ii). Section 54-4-31 (2) (a) could be interpreted to exempt Milford from the need to file an exemption under the broader section. However, the Division recommends that because the facts supporting granting an exemption from the statute's filing are strong, the Commission not address the applicability of Section 54-31-4 (2) to Milford's Request.

Recommendation

The Division finds that the Request for Exemption may not require the Commission's approval because the promissory note will mature in less than one year, the financing of the security will not impact Utah ratepayers or affect the public interest, and it is unclear whether Milford Wind is a public utility under Utah law. Nevertheless, the Division recommends the Commission issue an expedited order exempting Milford from the requirement of Section 54-4-31 to acquire approval for the issuance of securities. We find that requiring such approval is not required by the public interest (pursuant to Section 54-4-31 (4)). The Division also has no objections to this proceedings being conducted under informal adjudication under R746-110.

Cc: Michele Beck
Paul Proctor
Bill Evans