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January 30, 2018

VIA HAND DELIVERY

Commission Chairman Ted Boyer
Commissioner Richard M. Campbell
Commissioner Ron Allen
Utah Public Service Commission
Heber M. Wells Building
160 East 300 South
Salt Lake City, Utah 84114

**Re: Milford Wind's Comments to the Division of Public Utilities'
Memorandum and Recommendation.
Docket No. 09-2490-01.**

Dear Commissioners:

Milford Wind has received the Memorandum that the Division of Public Utilities Division filed with the Public Service Commission yesterday, April 7, 2009, recommending that the Commission exempt Milford Wind from the requirement of Section 54-4-31. Milford Wind commends the Division for their diligence in responding so quickly, and appreciates the efforts of the staff members who contributed to completing the Memorandum.

These Comments are to address several points in the Memorandum that have not been accurately stated and that could lead to a misunderstanding, possibly even to error, if the inaccuracies find their way into the Commission's decision.

1. In paragraph 5 of the Division's Findings, the Division observes that, at the time of the Certificate proceedings, the power purchase agreement ("PPA") with SCPPA had a pre-payment provision in place. That feature of the PPA was a factor in the Division's stipulating that Milford I had a reasonable opportunity to finance the Line. See Rebuttal Testimony of Joni Zenger, Docket 08-2490-01, September 8, 2008, at L. 256-262; Stipulation, Docket No. 08-2490-01, September 29, 2008, at ¶ 12.

The Division's Memorandum correctly states that the pre-payment provisions have been extended and are still in place. Memorandum at 4. But the Memorandum incorrectly states that counsel "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." Memorandum at 4.

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When the Division was evaluating Milford Wind's current Request for an Exemption, Division personnel inquired of the undersigned counsel whether the pre-payment provision was still in place as before. Counsel responded that there had been some revisions to this PPA but, as to the pre-payment provisions, in keeping with the extension of the completion date, the pre-payment obligations have also been extended. The Division's inquiry to counsel was limited to the pre-payment provision. Counsel did not and cannot say whether the PPA has otherwise been "materially" amended.

2. In the paragraph following paragraph 6 on page 4, the Memorandum states that Milford's note will mature in less than one year and that counsel "represents that the note is intended to be replaced with permanent financing after one year." Memorandum at 4. The Memorandum is correct that the note will mature in less than one year, but counsel informed the Division only that it is expected that the note would be refinanced at that time – not that it would be replaced with "permanent" financing.

3. In its analysis of the applicability of Section 54-4-31(2)(a), the Memorandum states:

The Division has no information whether Milford meets the condition in sub-paragraph (ii) ... However, *as pointed out in its Request, it is not clear if Milford Wind is a public utility or just an Independent Power Producer.*

Memorandum at 4-5 (emphasis added). The Memorandum confuses "public utility" with "electrical corporation." In the Request, Milford Wind pointed out, "The Commission has not expressly ruled that Milford Wind is an '*electrical corporation*'..." Request at 2; see also, Memorandum at 3 (similar statement). There can be no question that Milford Wind is not a public utility. Utah Code Ann. § 54-2-16 (2008) . A similar statement is made in the final paragraph of the Memorandum. See Memorandum at 5 ("it is unclear whether Milford Wind is a public utility under Utah law").

The confusion stems from the discussion in the Memorandum about the special exemption under section 54-4-31(2)(a). It was the Division's view that the sub-section could be interpreted as applicable only to public utilities. Since Milford Wind is not a public utility, it would not be entitled to the special exemption. Alternatively the sub-section could be interpreted to mean that Milford Wind need not satisfy that requirement since it is not a public utility. The Division concluded:

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 [need] not address the applicability of Section

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Memorandum at 5. Milford Wind agrees with the Division that an interpretation of subsection (2)(a) is unnecessary to the Commission's decision. The broader exemption under section 54-4-31(4) is available to all applicants if the Commission finds that approval of the issuance of securities "is not required by the public interest."

Nevertheless, the equivocation about Milford Wind's status as a "public utility" is concerning. As the Commission is aware, the regulatory burden is much greater for a public utility than for an electrical corporation or an independent power producer. Especially in the present circumstances where the imminent financial transaction requires certainty about the extent of Milford Wind's regulatory burden, the Commission's order should leave no doubt that Milford Wind is not subject to regulation in Utah as a public utility. At the very least, Milford respectfully requests that the Commission, in its order, disclaim any reliance on the Division's statements of uncertainty about Milford Wind's status as a public utility.

The other inaccuracies in the Memorandum discussed above should not greatly affect the Commission's decision. The Division's recommendation relies on the fact that the pre-payment provision is still in place – not that the other "terms and conditions" of the PPA "have not materially changed." Likewise, it is not relevant to the recommendation whether Milford Wind will replace the promissory note with "permanent" financing or whether it will simply "refinance." Despite the inaccuracies in the Memorandum, the Division has stated sufficient findings on which the Commission can conclude that its approval is not required for Milford Wind to issue a promissory note to finance construction of the interconnection line.

Milford Wind thanks the Commission for acting on the expedited Request and asks the Commission to consider the foregoing comments in formulating its decision and order.

Very truly yours,

/s/

William J. Evans

WJE/cvd

cc: Michael Ginsberg
Philip Powlick
Paul Proctor
Michelle Beck