

BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

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In the Matter of the Application of	)	Docket No. _____
Deseret Generation & Transmission	)	
Co-operative for Authority to Issue	)	Verified Application
Securities in the form of Secured	)	For Authority to
Promissory Note to National Rural	)	Issue Securities
Utilities Cooperative Finance	)	
Corporation	)	

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Applicant Deseret Generation & Transmission Co-operative (ADeseret@ or "Applicant"), hereby applies for authority to issue securities in the form of two (2) secured promissory notes to the National Rural Utilities Cooperative Finance Corporation ("CFC") in connection with two financing transactions: (i) a **Second Consolidated, Amended and Restated Revolving Line of Credit Agreement (the "Restated Credit Line")** described below; and (ii) a long-term Loan Agreement (the "2011 Term Loan") also described below. The amount of the promissory notes to be executed by Applicant are expected to be, respectively: (i) \$20,000,000.00 in connection with the Restated Credit Line as set forth in the Appendix "A" submitted with this Application; and (ii) \$40,000,000.00 in connection with the 2011 Term Loan, as set forth in the Appendix "B" submitted with this Application.

Pursuant to R746-110, Rules of the Public Service Commission, Applicant hereby requests Informal Adjudication of this Application. Applicant represents that the matter is anticipated to be unopposed and uncontested. Submitted herewith are an Appendix "A" and Appendix "B," which include Sworn Statements

from the Applicant, Certified Documents and other relevant information necessary to establish the facts pertinent to this Application.

In support of this Application, Applicant represents as follows:

Background.

1. Applicant is a wholesale electric cooperative providing electric generating and transmission services to its six member rural electrical cooperatives who, in turn, provide retail electric services to their member/owners in the States of Utah, Wyoming, Arizona, Colorado, and Nevada. Deseret is a public utility subject to the jurisdiction of this Commission.

2. For several years, Deseret has faced severe financial difficulties. In 1996 and again in 1998, Deseret entered into a series of arrangements with its major creditors for restructuring and recapitalizing Deseret's secured indebtedness. As part of the 1998 Recapitalization Agreement (the "Recapitalization Agreement"), Deseret entered into a long-term debt restructuring arrangement with its single largest creditor, the National Rural Utilities Cooperative Finance Corporation ("CFC").

3. Deseret depends upon CFC as a primary source of additional financing, and has from time to time, arranged through CFC or through facilities of CFC, for needed financing support in the form of, among other things: letter(s) of credit for marketing and sales transactions; revolving working capital loan(s) for finance liquidity and other working capital needs, among other things.

4. Deseret anticipates a number of likely developments which will require Deseret to raise additional cash to be able to pay for certain operational and other needs expected during the coming months. These include, without limitation: (i) a significant maintenance outage and concomitant repair overhauls taking place at the Bonanza Unit 1 plant ("Bonanza") during the spring of 2012; (ii) a reduction in anticipated revenue due to loss of sales occasioned as the result of the 2012 outage at Bonanza; (iii) ongoing replacement of aging

equipment used to operate and maintain the 345kV transmission system owned and operated by Deseret; (iv) increased expenditures for mine-safety related equipment and stores at the Deserado Mine ("Deserado Mine") operated by Deseret's wholly owned subsidiary, Blue Mountain Energy, Inc. ("BME"), to name a few.

5. In addition to the routine repair and replacement taking place at Bonanza during the 2012 maintenance outage, Deseret will invest significant amounts for capital outlays arising from a number of significant capital investments at Bonanza, a number of capital improvement projects which have taken place at the Hunter 2 generating facility in Emery County, which is co-owned by Deseret, and at the Deserado Mine facility. These capital improvements and/or anticipated outlays for capital-related items include:

- (i) an anticipated investment of between \$6 million to \$10 million for routine replacement of capital equipment at Bonanza which will take place in connection with the 2012 maintenance outage;
- (ii) capital outlays for certain capital improvements to various plant systems undertaken by the operator of Hunter 2, a portion of which Deseret has contested, a portion of which Deseret asserts were undertaken without seeking or obtaining necessary consent from Deseret as co-owner and which Deseret therefore anticipates will be paid entirely by the operator of that Unit, and another portion for which Deseret gave its consent and agreed to pay its share of costs (*note: a redacted cop(ies) of pertinent Arbitration Awards pertaining to a portion of contested Hunter 2 capital project costs is included in Appendix "C" hereto*)<sup>1</sup>;

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1 The copies of Final Awards attached hereto have been redacted at the insistence of the co-owner/operator of the Hunter 2 unit, as that Company sought to compel Deseret in pending federal litigation to refrain from disclosing the totality of the 2 Arbitration Awards to the Commission in unredacted form. Deseret successfully objected to withholding the entirety of the Awards, and a modestly redacted version was eventually developed which Deseret is free to distribute to the Commission in support of this application. The arbitrations concern disputed expenditures for capital improvements associated with projects undertaken in conjunction with (or relating to projects commenced during) the 2011 Hunter 2 maintenance outage. The total costs of these projects exceed \$250 million. Deseret's

- (iii) capital and other financing needs to support BME, as Deseret's coal operating subsidiary, which will require capital investment to replace aging mine equipment, acquire additional mine safety systems, and upgrade coal transportation assets;
- (iv) additional capital demands anticipated to arise over the course of the next five (5) years as aging equipment is replaced at both Bonanza and Hunter 2 during scheduled maintenance outages on each unit (approximately every other year).

### Summary of Financing Transactions

#### *Second Consolidated, Amended and Restated Revolving Line of Credit Agreement*

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ownership share of Hunter 2 is 25.108%. At various times the operator of Hunter 2 has sought to recover a full allocated share of all such capital costs from Deseret, an amount that would exceed the maximum loan amount available under the proposed 2011 Term Loan. In an order dated April 26, 2011, in its Docket No. 10-035-124, the Commission took notice of an ongoing dispute between Deseret and the public utility which operates Hunter 2, concerning a significant portion of these capital costs:

[There is] litigation in the Utah Federal District Court in which Deseret challenges the Company's decision to spend over two hundred million dollars on two capital improvement projects to replace or upgrade Hunter II generating unit environmental equipment.... Deseret denies any obligation to pay for any part of these projects claiming the Company has breached a number of its duties under the Ownership and Management Agreement, dated October 24, 1980, ("O&M Agreement"), as amended. In general, the O&M Agreement governs the joint owners' duties with respect to the Hunter II plant. In particular, it establishes the requirements and process for obtaining minority owners' prior approval of capital improvement project expenditures in excess of one million dollars. In the federal court litigation, PacifiCorp successfully argued the O&M Agreement required arbitration of one aspect of the dispute with Deseret. Pursuant to the Utah Federal District Court's Order and the terms of the O&M Agreement, the arbitrator analyzed and decided only one question: whether the proposed ... capital improvements are consistent with "Reasonable Utility Practice."

As the two redacted Arbitration Awards attached hereto indicate, the two Federal Arbitrators determined that the co-owner/operator did not act consistent with Reasonable Utility Practice, and therefore is not entitled to allocate costs to Deseret with respect to the expenditure of approximately \$77.4 million (in the case of one contested environmental upgrade project) and approximately \$35 to \$40 million (in the case of a disputed turbine rotor upgrade). Notwithstanding the Final Awards issued by the two Federal Arbitrators, the operator of Hunter 2 continues to pursue federal litigation against Deseret asserting a right to, among other things, seek recovery from Deseret for costs associated with the disallowed projects.

6. In connection with its 1996 financial restructuring, Deseret, BME and CFC executed a Revolving Credit Agreement dated as of October 16, 1996 with respect to a secured revolving line of credit loan from CFC to the Borrower in the original principal amount of \$20,000,000.00 as amended by certain amendments, letters, and agreements, which is currently set to expire October 16, 2011. (the "Existing Credit Line"). The Existing Credit Line was approved and authorized by the Commission in its Report and Order dated July 3, 1996, in Docket No. 96-506-01, with amendments and extensions thereto approved and authorized in its Report and Order dated January 19, 2002, in Docket No. 01-506-01, and its Report and Order dated October 12, 2007, Docket No. 07-506-01. To date, Deseret has not drawn on the Existing Credit Line, and there is currently no outstanding balance due thereon.

7. On November 30th, 2010, Applicant Deseret Generation & Transmission Cooperative filed an application seeking authority to execute a Secured Promissory Note in the amount of approximately \$20,000,000.00 in connection with a Supplemental Credit Line (the "Supplemental Credit Line") which augments, and does not replace, the Existing Credit Line. The Supplemental Credit Line was approved and authorized by the Commission in its Report and Order dated March 14 2011, in Docket No. 10-506-01.

8. Deseret, BME, and CFC have negotiated the terms of the Restated Credit Line which will be available as an extension and restatement of the Existing Credit Line. The Restated Credit Line will be in an amount up to \$20,000,000.00, will be secured by an existing mortgage (the "Mortgage") encumbering substantially all of Deseret's property, including after-acquired property, but excluding Deseret's right, title, and interest in and to its primary office building located in South Jordan, Utah. Repayment of amounts advanced to Deseret under the Restated Credit Line will also be guaranteed by BME, which guarantee will be secured by a mortgage encumbering substantially all of BME's assets. A draft of the Second Consolidated, Amended and

Restated Revolving Line of Credit Agreement and the Secured Promissory Note reflecting the substantially final terms of the Restated Credit Line are set forth in the Appendix "A" hereto.

9. In connection with the Restated Credit Line, Deseret will issue a Secured Promissory Note in the amount of \$20,000,000 (the "2011 CFC Revolver Note"). Under the terms of the 2011 CFC Revolver Note, Deseret will repay advances received from CFC under the Restated Credit Line as follows:

a. Interest on advances shall be paid at intervals consistent with CFC's regular billing cycles, over a period of up to and through the maturity date, which shall be October 16, 2016 except as extended or modified pursuant to the Restated Credit Line (the "Maturity Date"). Payment of principal and interest on advances under the Restated Credit Line shall be paid in full no later than the Maturity Date, and, in addition, for each 12-month period during the term of the Restated Credit Line, Deseret shall, for a period of at least five consecutive Business Days, pay down the entire outstanding principal balance on all advances thereunder. The 2011 CFC Revolving Note will become due and payable in full in all events no later than the Maturity Date.

b. Subject to certain provisions pertaining to prepayments of the 2011 CFC Revolving Note, Deseret's existing obligations to CFC will not be modified, and Deseret will be required to make payments of the 2011 CFC Revolving Note in accordance with the terms thereof, regardless of Deseret's cash flow during any given year and prior to calculating the amount payable to CFC on existing debt from such Deseret cash flows.

10. The 2011 CFC Revolving Note may be prepaid at any time without penalty.

11. The 2011 CFC Revolving Note will bear interest at a variable rate, set at the rate published or otherwise determined by CFC from time to time for similarly classified lines of credit, as set forth in the terms of

the draft Loan Agreement included in Appendix AA. The effective date(s) of interest rate adjustments will be as determined from time to time by CFC.

12. Amounts owed by Deseret to CFC under the 2011 CFC Revolving Note will be secured by a first-lien mortgage on Deseret's electric system and assets, but excluding Deseret's office building located at 10714 South Jordan Gateway, South Jordan, Utah, pursuant to the terms of a Restated Mortgage and Security Agreement by Deseret, as Mortgagor, in favor of CFC, as Mortgagee, which lien and security interest shall be further evidenced and established by one or more Financing Statement(s) and/or Security Agreements to be executed and filed in appropriate office(s) where Deseret does business or where Deseret owns property

#### 2011 Term Loan Agreement

13. Deseret, BME, and CFC have negotiated the terms of additional long-term financing, the 2011 Term Loan, which will be available to Deseret to finance anticipated capital projects and other corporate financing requirements in the upcoming years. The 2011 Term Loan will be in an amount up to \$40,000,000.00, will be secured by an existing mortgage (the "Mortgage") encumbering substantially all of Deseret's property, including after-acquired property, but excluding Deseret's right, title, and interest in and to its primary office building located in South Jordan, Utah. Repayment of amounts advanced to Deseret under the 2011 Term Loan will also be guaranteed by BME, which guarantee will be secured by a mortgage encumbering substantially all of BME's assets. A draft of the Loan Agreement and the Secured Promissory Note reflecting the substantially final terms of the 2011 Term Loan are set forth in the Appendix "B" hereto.

14. In connection with the 2011 Term Loan, Deseret will issue a Secured Promissory Note in the amount of \$40,000,000 (the "2011 Term Note"). Under the terms of the 2011 Term Note, Deseret will receive and repay advances from CFC pursuant to the following terms (among others):

- a) The maximum amount of borrowing authorized under the terms of the 2011 Term Loan will be approximately \$40,000,000.00;
- (b) The Maturity Date of the 2011 Term Loan will be no later December 31, 2025, except as extended pursuant to the terms of the 2011 Term Loan (the "Maturity Date");
- (c) The amortization period of each Advance under the 2011 Term Loan will be determined as follows:

- (i) for each Advance, Deseret is required to elect, at or prior to the date of such Advance, an amortization method for repayment of principal of such Advance, and the Amortization period for any such Advance shall extend until the Maturity Date.

- (ii) for each Advance under the 2011 Term Loan, Deseret must designate either a Fixed or a Variable interest rate or rates. Such rates are determined and will be set to equal, such fixed or variable rate(s) established by CFC for long-term loans similarly classified pursuant to programs, policies and procedures of CFC then in effect, or such other rate(s) as may be agreed to by the parties in writing at the time of an Advance under the 2011 Term Loan. Interest rates for any such Advance may be converted, at Deseret's option, as set forth pursuant to the terms of the 2011 Term Loan Agreement. Conversion of a variable interest rate to fixed rate(s) for any Advance(s) shall generally occur at a fixed rate or rate(s) of interest offered by or otherwise agreed to in writing by CFC in effect on the date of the Conversion Request; conversions from a fixed interest rate to a variable rate require a payment to CFC any applicable conversion fee calculated pursuant to CFC's long-term loan policies as established from time to time for similarly classified long-term loans. Conversion of a fixed interest rate to another fixed interest rate(s) for any



Advance(s) shall generally occur at such fixed rate or rate(s) of interest offered by or otherwise agreed to in writing by CFC in effect on the date of the Conversion Request and may require a payment to CFC equal to any applicable conversion fee calculated pursuant to CFC's long-term loan policies as established from time to time for similarly classified long-term loans.

- (d) Amounts owed by Deseret to CFC under the 2011 Term Note will be secured by a first-lien mortgage on Deseret's electric system and assets, but excluding Deseret's office building located at 10714 South Jordan Gateway, South Jordan, Utah, pursuant to the terms of a Restated Mortgage and Security Agreement by Deseret, as Mortgagor, in favor of CFC, as Mortgagee, which lien and security interest shall be further evidenced and established by one or more Financing Statement(s) and/or Security Agreements to be executed and filed in appropriate office(s) where Deseret does business or where Deseret owns property.
- (e) Payments under the 2011 Term Loan will be due quarterly in March, June, September, and December, unless agreed otherwise between the parties. All amounts outstanding and unpaid as of the Maturity Date will be due and payable on the Maturity Date.

### Public Interest

12. The rates and terms of the Restated Credit Line and the 2011 Term Loan were negotiated and structured to avoid any adverse impact on the positions, rights, remedies and risks of Deseret's Members under the 1996 and the 1998 debt restructuring and the Recapitalization Agreements, respectively, as well as all other existing agreements, amendments, and arrangements between Deseret and CFC. Deseret cannot at

this time determine what effect, if any, may result and/or what changes may be required to its member rates or charges as a consequence of potential advances under the Restated Credit Line and the 2011 Term Loan.

13. The Board of Trustees of Deseret has approved the terms of the Restated Credit Line and the 2011 Term Loan. A true and correct copy of the Governing Board's Resolutions authorizing these transactions is attached hereto as Appendix "C".

14. Applicant has determined that the addition of the Restated Credit Line and the 2011 Term Loan will add an increased level of certainty and stability to Deseret's financial position, will increase its ability to meet potential cash demands that may occur during the coming months and years, and will otherwise present opportunities to Deseret on terms that are advantageous to Deseret.

#### Timing.

15. Applicant requests expedited and informal consideration of this Application on the grounds that the terms and conditions of the Restated Credit Line and the 2011 Term Loan have previously been reviewed by and approved by Deseret's governing board which represents all six (6) of Deseret's members. Accordingly, Applicant requests that a Report and Order be issued no later than October 31, 2011.

16. Applicant further requests a waiver by the Commission of the 20-day tentative period under R746-110-2 for good cause shown on the basis that the Restated Credit Line and the 2011 Term Loan, in order to provide maximum protection and flexibility to Deseret, must be final and fully enforceable in full force and effect at all times without being subject to any appeal or protests, and that Deseret anticipates a potential need to begin making Advances on either or both facilities well in advance of year end.

#### Requested Action

Wherefore, Applicant asks this Commission to issue an order approving and authorizing the issuance of securities by Deseret in the form of: (a) the 2011 CFC Revolver Note and the 2011 Term Note to CFC in connection with the Financing Transactions in the amounts and for the purposes specified herein.

DATED this 4<sup>th</sup> of August, 2011

David F. Crabtree

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Attorney for Applicant  
Deseret Generation & Transmission Co-operative  
10714 South Jordan Gateway, Suite 300  
South Jordan, Utah 84095

## **CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing Verified Application for Authority to Issue Securities was served by U.S. mail this 4th day of August, 2011, upon the following:

Artie Powell  
Utah Division of Public Utilities  
Box 146751  
Salt Lake City, Utah 84114-6751

Committee of Consumer Services  
160 East 300 South, 4<sup>th</sup> Floor  
Salt Lake City, Utah 84114

Mr. Dan Lyzinski  
CFC  
2201 Cooperative Way  
Herndon, VA 20171-3025

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