



- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

In the Matter of the Application of Rocky Mountain Power for a Certificate of Convenience and Necessity Authorizing Construction of the Populus-to-Terminal 345 kV Transmission Line Project)	<u>DOCKET NO. 08-035-42</u>
)	<u>REPORT AND ORDER GRANTING</u>
)	<u>CERTIFICATE AND</u>
)	<u>CERTIFICATE OF PUBLIC NEED</u>
)	<u>AND NECESSITY</u>
)	

ISSUED: September 4, 2008

By the Commission:

On April 25, 2008, Rocky Mountain Power (Company or RMP) submitted an Application for a certificate of public convenience and necessity to construct a new 345 kV transmission line (Transmission Line) between its existing Terminal Substation, located southwest of the Salt Lake International Airport, and a new 345 kV substation, named the Populus Substation, to be located at Downey, Idaho. Through the Application and its supporting testimony, RMP states it has franchise agreements in place for the line route within the state of Utah, including Box Elder, Weber, Davis, and Salt Lake Counties as well as certain municipalities and townships that allow for the construction of power lines within public thoroughfares. RMP also states it has applied or is in the process of applying for conditional use permits or similar authorizations for the proposed construction. RMP states it has the capability to finance the Transmission Line and has a debt-to-equity ratio which provides for financial stability. The Company further states present and future public convenience requires the construction of the proposed Transmission Line; the Transmission Line will not conflict with or adversely affect the operations of any existing certificated fixed public utility providing retail

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electric service to the public; and the Transmission Line does not constitute an extension into the certificated service territory of any existing public electric utilities.

By our Scheduling Order, issued May 20, 2008, we clarified the purpose of this docket, noting the proceeding is not about the location or siting of the Transmission Line. We noted the Commission does not have jurisdiction over the siting of transmission lines generally nor of this particular facility. That is left to local and other governmental entities. Our proceedings are to determine if present or future public convenience and necessity does, or will, require construction of a transmission line. Intervention was sought by and granted to Western Resource Advocates (WRA) and Willard City. Pursuant to the Scheduling Order, testimony, position statements or comments were submitted by the Division of Public Utilities (Division), the Committee of Consumer Services (Committee), and WRA. RMP also provided additional testimony in response to that filed by other parties. A number of private individuals provided written comments. A hearing on the Application was held August 26, 2008. RMP, the Division, the Committee, WRA, and Willard City appeared, as did one individual during the Public Witness portion of the hearing.

Most of the comments received from members of the public dealt with concerns relating to the location of the Transmission Line and commentors' perceptions of the Transmission Line's impact upon their local communities. Many suggested or requested consideration of alternative routes for the Transmission Line or portions thereof. Some comments complained of the process or manner by which RMP had approached and dealt with affected local communities and their citizens in preparing for construction of the Transmission

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Line and securing necessary approvals and property interests. Only the Division, WRA and the Company provided testimony. The Committee provided an August 1, 2008, Evaluation and Position Statement, wherein the Committee “concludes that the Application generally complies with the requirements of Utah Code §54-4-25 as interpreted and applied by the Commission and courts. The Committee concludes that the factual support for the assumptions upon which Rocky Mountain Power bases its claim that these transmission facilities will serve the public convenience and necessity, while minimal, is legally sufficient to support the certificate. The Committee contends that greater clarity and consistency is needed to notify utilities and regulatory authorities of the specific types of facilities requiring a certificate of convenience and necessity, filing requirements for an application for a certificate, as well as the standards against which the application will be judged in the face of a challenge.”

The Division states it has examined underlying information upon which a need for these additional transmission facilities may be found and concludes it supports RMP’s decision to build the Transmission Line and confirms RMP’s planned integration and operation of the line with future utility operations and activities. The Division agrees with RMP’s conclusions that there is a need for the Transmission Line and the Company’s future utility service will be more reliable and efficient with the Transmission Line’s addition. The Division echoes a Committee point for Commission direction or clarification to help participants in the future on the type of facilities for which a utility must seek a certificate and the type of or the extent of supporting information a utility should file contemporaneously with a certificate application.

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WRA repeats the request for guidance on the type of information which should accompany certificate applications. WRA specifically notes it does not oppose the Transmission Line project. WRA's concerns are directed to what was and was not included in the supporting information or testimony accompanying the Application. Although the Division and the Committee conducted discovery in this docket to obtain what additional information they deemed necessary, and also used information gleaned from other submissions RMP has made to this Commission and other entities, WRA believes similar information should accompany a certificate application and supports the Division's and Committee's request for Commission directives on filing requirements to guide utilities and participants in future proceedings.

We first address the gravamen of RMP's Application: granting a certificate for the Transmission Line. For that matter, we conclude the Company has met the requirements for a certificate set out in Utah Code 54-4-25. The Legislature has identified the minimum amount and type of evidence that is to be provided. Utah Code 54-4-25(4)(a)(ii) requires a showing that the applicant "has received or is in the process of obtaining the required consent, franchise, or permit of the proper county, city, municipal, or other public authority." We conclude the Company has fulfilled this requirement. Utah Code 54-4-25(4)(b) directs a showing that there will be no conflict or adverse affect on the operations of another public utility nor an intrusion into the certificated territory of another public utility. We conclude the Company has fulfilled this requirement. Prior to any construction or operation, Utah Code 54-4-25(1) requires a utility to obtain "a certificate that present of future public convenience and necessity does or will require the construction." On this point, both the Committee and the Division conclude RMP

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has met this requirement for the construction of the Transmission Line and corresponding issuance of a certificate.

The distinction WRA makes is its belief that RMP has failed to make a sufficient showing, through RMP's own record evidence regarding present or future public convenience and necessity that does or will require construction. WRA's position is based on its view of what RMP should have supplied in addition to, or to supplant, what testimony RMP did provide. We conclude the record does support issuance of the requested certificate. The Division and the Committee each conclude RMP has met the statutory requirements for issuance of the requested certificate, and each explains why they reach that conclusion. As previously noted, WRA itself does not oppose construction of the Transmission Line. Under these circumstances, we reach the same conclusion: public convenience and necessity does or will require the construction and no evidence has been presented to contradict the testimony of the Company. *See, U.S. West Communications v. Utah Public Service Commission*, 901 P.2d 270, 275, (Utah 1995). We will require RMP to provide evidence for any of the remaining local government approvals which need to be obtained which were not granted and evidenced at the time of the hearing.

We now address the public citizen comments and the additional precatory requests of the parties. As we attempted to convey in our Scheduling Order, we have very little authority to address issues or objections on the actual location or siting of the Transmission Line. Utah Code 54-4-25(3) identifies the limited instance of Commission involvement to "prescribe the terms and conditions for the location of the lines, plants, or systems affected" where construction will "interfere with the operation of the line, plant or system of another public

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utility already constructed,” and then only upon the complaint of the impinged utility. Siting of the particular components of the Transmission Line are controlled by the local governmental entities having jurisdiction over zoning and permissible uses of property. Other governmental entities may also issue approvals based on factors which can impact the location of utility facilities, e.g., environmental considerations. But, the Commission does not have authority to direct the placement of utility property. *See, Logan City v. Utah Public Service Commission*, 296 P. 1006 (Utah 1931). Unless there is an issue of bad faith, dishonesty, wastefulness or gross inefficiency (which is not alleged in this case), we are to defer to the Company’s determination of where facilities are to be located. *Id.*

While we understand the parties’ desires for our guidance that may simplify future certificate proceedings and filings, we are unable to do so through this order. While we are requested to identify the types of facilities for which certificates must be sought, we do not venture beyond the language of Title 54 which simply uses “line, plant, or system.” We do not find it possible or desirable to attempt to provide a litany of the types of facilities or size of facilities for which a certificate must be sought. The Committee and Division identify instances involving varying sizes or capacities of electric lines for whose construction utilities have and have not requested certificates. Consistency may be desired, but it is not based on the type or size of a proposed facility. We can only note that the statutory direction is not dependant upon the size of or the nature of the utility facility, but whether a facility interferes with the operations of another public utility. Similarly, the size or nature of a proposed facility does not control, but whether the facility constitutes an extension into the certificated territory of another public utility

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does matter. We also view Title 54 as identifying circumstances under which a utility must seek a certificate, but not precluding a utility from requesting a certificate if those circumstances are not extant.

We also conclude we can not, at this time and on this record, specify the type of or extent of contemporaneous, supporting information to be filed with a certificate application. We fear such a venture laden with too great a risk of unintended consequences. We can only opine that we will address certificate applications on a case-by-case basis. A 'cook-book' approach may not adequately address the possible permutations. Efforts to address the possible permutations may lead to numerous exceptions and contingencies, which we believe likely to result in effectively doing case-by-case treatment in practice, if not in name.

Based on our discussion and conclusions made above, we will grant a certificate for construction of the Transmission Line. RMP may construct and operate the Transmission Line upon evidence of obtaining all consents, franchises, or permits needed beyond this certificate.

Wherefore, we enter this ORDER and CERTIFICATE, wherein we grant Rocky Mountain Power's request for a Certificate of Public Convenience and Necessity for construction and operation of the Terminal-to-Populus transmission line. Rocky Mountain Power is required to provide proof of obtaining the remaining consents or permits which were still pending at the time of the August 26, 2008, hearing.

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DATED at Salt Lake City, Utah, this 4th day of September, 2008.

/s/ Ted Boyer, Chairman

/s/ Ric Campbell, Commissioner

/s/ Ron Allen, Commissioner

Attest:

/s/ Julie Orchard
Commission Secretary
G#58826