

David F. Crabtree  
10714 South Jordan Gateway, Suite 300  
South Jordan, UT 84095  
Telephone: (801) 619-6500  
cell: (801) 231-4484  
Fax: (801) 619-6599  
crabtree@deseretpower.com

*Attorney for Applicant Dixie Escalante Rural Electric Association*

**BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH**

---

In the Matter of the Application of	)	Docket No.
Dixie Escalante Rural Electric Assn.	)	
For Approval of Acquisition of Electric	)	
Utility Plant and Equipment and	)	
Addition To Certificate of Convenience	)	
And Public Necessity	)	

---

In accordance with the provision of Utah Code Section 54-4-30, Applicant Dixie Escalante Rural Electric Association ("DEREA" or "Applicant"), hereby applies for approval of its acquisition of substantially all of the electric utility plant and equipment of Flowell Electric Association, Inc. ("Flowell"), and for an addition to the DERE A Certificate of Convenience and Public Necessity (the "Certificate") to include all of the service

territory included in the Certificate of Convenience and Public Necessity heretofore granted to Flowell.

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 is an Appendix "A" that includes 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. DEREА is a member owned rural electric distribution cooperative providing electric distribution services to customers in Utah and Arizona. DEREА operates pursuant to and under a Certificate of Convenience and Public Necessity No. 1556 issued June 30, 1966; a Supplement to said Certificate issued October 7, 1970; and further additions issued March 2, 1976 and December 20, 1977.

2. Flowell is a member owned rural electric distribution cooperative providing electric distribution services to customers in Millard County, Utah. Flowell operates pursuant to and under a

Certificate of Convenience and Public Necessity No. 1573 issued October 4, 1966 (the "Flowell Certificate").

3. Pursuant to a Letter of Intent dated as of January 6, 1999, DEREA and Flowell have for a number of years contemplated and worked toward an eventual transaction by which DEREA would acquire substantially all of the utility plant, equipment, and other used and useful assets of Flowell. It has been the design and intent of the two parties that, once the acquisition occurred, DEREA would thereafter provide electric service to all of the then-current and future customers located on the acquired Flowell System.

4. For a number of years since 1999, DEREA has provided extensive services to Flowell. These services allowed both entities to increase efficiencies, lower costs, and to familiarize DEREA and its personnel with the Flowell system in preparation and in contemplation of completing the acquisition of the Flowell system assets. These DEREA services have included engineering, planning, accounting and back office support, employee sharing and payroll services, among others.

5. As a result of the services provided to Flowell over the years, DEREА is thoroughly familiar with the utility plant, operations, and services provided by Flowell to its members.

6. On October 7, 2020 DEREА and Flowell executed a final Agreement for Purchase and Sale of Electricity Distribution System (the "Purchase Agreement"), a copy of which is attached hereto as Exhibit "A". Under the terms of the Purchase Agreement, the Parties contemplate completing the sale of substantially all of the Flowell's property, including all electric utility plant and equipment, to DEREА, with an intended effective closing date around January 1, 2021. From and after the Closing, Dixie would provide all electric service to the current customers of Flowell, and those customers currently served by Flowell will become members of DEREА.

7. Both DEREА and Flowell purchase substantially all of their respective requirements for bulk wholesale electric power and energy pursuant to all requirements contracts with Deseret Generation & Transmission Co-operative ("Deseret"). Following the acquisition of the Flowell system, DEREА will continue to obtain its power supply needs from Deseret for the entire combined system, under its existing all requirements contract.

8. The acquisition of the Flowell system, and related transfer/assignment of contract rights, etc., has been approved

by: unanimous consent of the governing boards of both DEREА and Flowell; by the affirmative vote of the membership of Flowell held in conjunction with a special membership meeting on October 7, 2020; by National Rural Utilities Cooperative Finance Corporation ("CFC") the secured creditor (lender) which holds the long-term indebtedness of Flowell that will be assumed by DEREА as part of the acquisition; and by the Board of Trustees of Deseret, as the wholesale power and transmission provider for both DEREА and Flowell.

Effect on Rates and Other Terms of the Acquisition

9. Under the terms of the Purchase Agreement, upon Closing, those customers currently served by Flowell will become members of and will thereafter receive electric service from DEREА.

10. Upon Closing, DEREА will assume all liability for repayment of Flowell's outstanding loan indebtedness totalling approximately \$2,918,667.00, together with outstanding accounts payable and other liabilities as of Closing. A copy of Flowell's recent financial statements is attached hereto as Exhibit "B". Given DEREА's extensive involvement and familiarity with the financial and other operational condition of Flowell (by virtue of the DEREА back office services that have been provided for a number of years to Flowell), DEREА is confident that it understands the

Flowell financial condition and obligations that will be assumed at Closing.

11. Upon Closing, DEREА will assume all Flowell contracts for generation and transmission, interconnection agreements, utility easements and rights-of-way, other contract and franchise agreements, and other property used or associated with Flowell's operations.

12. Upon Closing, the rights and obligations of Flowell under the Flowell Certificate of Public Necessity and Convenience will transfer to DEREА and DEREА will thereupon assume the obligations for service to customers in the area set forth therein, as described in the attached Exhibit "C".

13. DEREА will not pay any cash consideration for the Acquisition of Flowell's property, and all remaining cash balance(s) in depository accounts held by Flowell will transfer to DEREА as part of the Closing. Notwithstanding the foregoing, the Parties have agreed that Flowell will distribute a portion of its cash reserves to the current Flowell membership as a capital credit rotation prior to Closing.

14. After Closing, those customers of Flowell who have unexpired and unpaid capital credits from Flowell will be entitled

to receive payment on account of the Flowell capital credits from DEREА in accordance with the practices, procedures, and policies in place from time to time as promulgated by the DEREА governing board.

15. After Closing, the customers currently located in service territory served by Flowell will form a service district recognized by DEREА and entitled to a representative on the governing board of DEREА. Future adjustments to service/voting districts on the DEREА governing board will be determined in accordance with applicable rules, statutes, and bylaws of DEREА.

16. After Closing, DEREА also intends to consult with knowledgeable individuals who have served in various policy and/or management positions with Flowell, on an additional consultative basis to ensure a smooth transition and integration of the newly acquired service territory.

#### Public Interest

17. The completion of the Acquisition will have beneficial effects to the member consumers of both Flowell and DEREА, some of which include:

- a. The Acquisition will result in customers currently served by Flowell continuing to receive electric service

without interruption from DEREА, which, by virtue of extensive knowledge and involvement in providing Flowell key services in recent years, will be ideally situated to provide a seamless continuation of services to those customers acquired in the transaction;

- b. DEREА customers enjoy very affordable rates for electric services, and DEREА expects to continue to offer those attractive rates to the newly acquired customers of Flowell upon consummation of the Acquisition;
- c. The Acquisition will relieve Flowell of further financial responsibility for debt that DEREА will assume as part of the transaction; this in turn will avoid what would otherwise have been an anticipated increase in retail electric rates to the current customers of Flowell. Flowell customers will see no increase in retail rates as a result of the Acquisition.
- d. DEREА customers will likewise not receive any increase or material change in retail rates for electricity provided by DEREА as a result of the Acquisition. The Acquisition is anticipated to be financially beneficial to DEREА by allowing DEREА to better accommodate, integrate, and optimize administrative and general expenditures, professional staff, among other benefits.



- e. To bring the capital equity structure of the two entities in rough alignment prior to completing the acquisition, the governing board of DEREА has approved and authorized a capital credit retirement to the existing DEREА member customers to take place prior to Closing under the Flowell acquisition. Once this DEREА capital retirement takes place, and after consideration of the anticipated capital retirement/rotation payment that Flowell has discussed and intends to make to the existing Flowell customers prior to Closing, the forecasted net book debt-to-equity ratio of both entities will is projected to be approximately 25%; thus, there will be no material adverse financial impact to the existing members/customers of either utility from the completion of the proposed acquisition.
- f. DEREА projects that the debt/equity ratio of the cooperative, after completing the Flowell acquisition, will be reasonable and that DEREА will continue to enjoy a strong financial condition that will support sustained, reliable, and attractive customer rates and charges for the combined customers of DEREА following the acquisition.

g. DEREA has negotiated with Deseret, and Deseret has agreed that DEREA will be allowed an accommodation for a transition period following the Acquisition through December 31, 2026, during which DEREA will be allowed an additional representative on the governing board of Deseret to represent the interests of those customers among the newly acquired customer group previously served by Flowell.

18. Pursuant to R746-110-2, Applicant requests that the Commission determine the nature of any notice of this informal proceeding that may be appropriate. Applicant submits that adequate notice would be deemed adequate by Applicant's notice hereof to Flowell as well as to Deseret.

#### Timing

19. Applicant requests expedited and informal consideration of this Application on the grounds that the terms and conditions of the Purchase Agreement reflect long-standing intent of both Parties and decades of preparation by DEREA and Flowell to prepare for and finalize the Acquisition. DEREA represents that the Acquisition is anticipated to be uncontested by any interested party.

20. DEREА contemplates that it will be prepared to proceed to Closing under the Purchase Agreement on or before January 1, 2021.

21. Accordingly, Applicant requests that a Report and Order be issued no later than December 31, 2020, to allow Flowell to execute and deliver necessary conveyances, instruments, deeds, and for DEREА to execute the necessary securities, loan assumption documentation, and assume outstanding Flowell promissory note(s) by January 1, 2021.

22. Pursuant to R746-110-2, Applicant requests waiver by the Commission of the 20-day tentative period for good cause, as shown above.

#### Requested Action

Wherefore, Applicant asks this Commission to issue an order:

- A. Approving and authorizing the acquisition by DEREА of substantially all of the property, plant, and equipment of Flowell;
- B. Amending and adding the area included in the Flowell Certificate to the DEREА Certificate of Convenience and Public Necessity;
- C. Approving and authorizing the issuance of securities by DEREА in the form of one or more assumption agreement(s) of loan agreements and/or promissory notes under the loan

indebtedness of Flowell, or in the alternative, the issuance of replacement note(s) on account of the assumed Flowell indebtedness.

DATED this 27th day of October, 2020.

/s/ David F. Crabtree

Attorney for Dixie Escalante Rural Electric Association

10714 South Jordan Gateway, Suite 300  
South Jordan, UT 84095  
(801) 619-6500  
(801) 231-4484; cell  
crabtree@desertpower.com

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Application was served by email this 27th day of October, 2020 upon the following:

DIVISION OF PUBLIC UTILITIES

Patricia Schmid	pschmid@agutah.gov
Justin Jetter	jjetter@agutah.gov
Chris Parker	chrisparker@utah.gov
William Powell	wpowell@utah.gov

OFFICE OF CONSUMER SERVICES

Steven Snarr	stevensnarr@agutah.gov
Robert Moore	rmoore@agutah.gov
Michele Beck	mbeck@utah.gov
Cheryl Murray	cmurray@utah.gov

/s/ Cami Reeder