

Application of Dixie Escalante Rural Electric Association for Approval of Acquisition of Electric Utility Plant and Equipment and Addition to Certificate of Public Convenience and Necessity	<p style="text-align: center;"><u>DOCKET NO. 20-066-03</u></p> <p style="text-align: center;"><u>ORDER APPROVING ACQUISITION,</u> <u>AMENDING CERTIFICATE OF PUBLIC</u> <u>CONVENIENCE AND NECESSITY NO. 1930,</u> <u>AND CANCELING</u> <u>CERTIFICATE OF PUBLIC CONVENIENCE</u> <u>AND NECESSITY NO. 1573</u></p>
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ISSUED: December 9, 2020

I. BACKGROUND AND PROCEDURAL HISTORY

On June 30, 1966, the Public Service Commission of Utah (PSC) granted Dixie Rural Electric Association (“Dixie”) a Certificate of Public Convenience and Necessity (“CPCN”), No. 1556, authorizing it to operate and provide electric service. Dixie’s CPCN was subsequently amended on October 7, 1970, and March 2, 1976. On December 20, 1977, in Docket No. 77-066-01, Dixie received PSC approval to merge with Escalante Valley Electric Association forming the Dixie Escalante Rural Electric Association (“DEREA”). In this docket the PSC issued DERE A a new CPCN, No. 1930, under which authority DERE A currently operates. Flowell Electric Association Inc. (“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 CPCN, No. 1573, issued October 4, 1966.

On October 27, 2020, DERE A filed an Application with the PSC seeking: 1) approval pursuant to Utah Code Ann. § 54-4-30 for the acquisition of the electric utility plant and equipment of Flowell, 2) an amendment to its CPCN to include the territory currently served by Flowell, and 3) approval authorizing the issuance of certain securities by DERE A in the form of replacement promissory note(s) and/or other loan assumption agreement(s) in an amount up to \$3,000,000 to assume the outstanding indebtedness of Flowell as part of the acquisition. DERE A requests

informal adjudication of the Application as it anticipates the acquisition to be unopposed and uncontested. Further, based on the unanimous approval of the proposed transaction by the governing board of the DERE, as well as approval by the membership and governing board of Flowell, DERE requests the PSC determine that no additional public notice of this proceeding is required under Utah Admin. Code R746-110-2. In order to allow Flowell to execute and deliver necessary conveyances, instruments, deeds, and for DERE to execute the necessary securities, loan assumption documentation, and assume outstanding Flowell promissory note(s) by January 1, 2021, DERE requests the PSC issue an order by no later than December 31, 2020.

On November 4, 2020, the PSC issued a notice of filing and comment period and on December 1, 2020 the Division of Public Utilities (DPU) filed comments in support of the Application. No other comments were received.

II. THE APPLICATION AND ACQUISITION

DERE's Application explains that pursuant to a letter of intent dated as of January 6, 1999, DERE and Flowell have contemplated and worked toward a transaction by which DERE would acquire substantially all of the utility plant, equipment, and other used and useful assets of Flowell. On October 7, 2020, DERE and Flowell executed a final agreement for the purchase and sale of Flowell's electricity distribution system ("Agreement"). Under the terms of the Agreement, substantially all of Flowell's property, including all electric utility plant and equipment, will be sold to DERE, with an intended effective closing date around January 1, 2021. After the closing date, DERE will provide all electric service to the current customers of Flowell, and those customers currently served by Flowell will become members of DERE.

The Application states that the acquisition of the Flowell system, and related transfer/assignment of items including property and contract rights, has been approved by: unanimous consent of the governing boards of both DERE A and Flowell; by the affirmative vote of the membership of Flowell held in conjunction with a special membership meeting on October 7, 2020; by the National Rural Utilities Cooperative Finance Corporation, the secured creditor which holds the long-term indebtedness of Flowell that will be assumed by DERE A as part of the acquisition; and by the Board of Trustees of Deseret, the wholesale power and transmission provider for both DERE A and Flowell.

The Agreement provides DERE A will assume all liability for repayment of Flowell's outstanding loan indebtedness totaling approximately \$2,918,667, together with Flowell's outstanding accounts payable and other liabilities as of closing. In addition, DERE A 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. Subject to PSC approval, all rights and obligations pertaining to Flowell's CPCN will transfer to DERE A and DERE A will assume the obligations for service to customers in the area set forth therein.

The Agreement provides that DERE A 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 DERE A. The Agreement also provides that Flowell will distribute a portion of its cash reserves to the current Flowell membership as a capital credit rotation prior to closing. 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 DERE A in

accordance with the practices, procedures, and policies in place from time to time as promulgated by the DEREА governing board.

After closing, the customers currently located in the service territory served by Flowell will form a service district recognized by DEREА and be entitled to a representative on the governing board of DEREА.

The Application asserts the public interest will be served by the PSC approving the acquisition and states beneficial effects of completion of the acquisition include: 1) the current customers of Flowell will continue to receive electrical service without interruption; 2) Flowell customers will receive electrical service under the same attractive terms that DEREА's customers receive; 3) DEREА will assume Flowell's debt which will avoid an anticipated rate increase for Flowell's customers; and 4) DEREА will realize financial benefits as it will be able to better accommodate, integrate, and optimize administrative and general expenditures, and professional staff. Further, 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.

III. NO PARTY OPPOSES THE APPLICATION

DPU recommends the PSC approve the Application. Further, based on the expectation there will be no objections or opposition to the filing, DPU recommends that this docket be adjudicated informally in accordance with PSC Rule R746-110-1.

DPU believes DEREА's request to acquire the electric utility plant and equipment of Flowell, and associated modifications to DEREА's CPCN are in the public interest. Further, based

on its review of the Application, DPU states the public interest will be served by the PSC allowing the acquisition. DPU recommends the PSC approve the Application. No other comments were filed.

IV. DISCUSSION, FINDINGS, AND CONCLUSIONS

We find DERE A is a public utility subject to the jurisdiction of the PSC. We find the PSC has jurisdiction over the Application pursuant to the provisions of Utah Code Ann. § 54-4-30.

Having reviewed the Application and DPU's recommendations, we find there will be no harm to the existing customers of Flowell or DERE A as a result of the acquisition. Further, we find that there are likely to be long-term financial benefits from the consolidation of debt, contracts, plant, services, and staff and that the public interest will be served by allowing the acquisition as described in the Application. Based on this finding we conclude DERE A's CPCN should be amended as requested and Flowell's CPCN should be canceled.

In light of the approval of the Flowell acquisition by unanimous consent of DERE A's board of trustees representing all its member owner/customers, and the approval of the transaction by affirmative vote of the membership of Flowell, as well as the consent of DERE A's secured creditor, we find and conclude no additional public notice of this proceeding is required under Utah Admin. Code R746-110-2. Further, pursuant to Utah Admin. Code R746-110-2, good cause exists to waive the 20-day tentative period for an order issued in an informally adjudicated proceeding. Accordingly, this Order will become final and effective on the date of issuance.

V. ORDER

Pursuant to our discussion, findings, and conclusions we:

1. Approve informal adjudication of this matter.
2. Approve DEREА's acquisition of the utility property, plant, and equipment of Flowell as described in the Application.
3. Amend DEREА's CPCN No. 1930, by adding the area previously included in Flowell's CPCN No. 1573. The amended CPCN No. 1930 is attached as Exhibit A. The description of DEREА's amended service territory is attached as Exhibit B.
4. Cancel Flowell's CPCN, No. 1573.
5. Approve and authorize DEREА to execute and to deliver one or more Promissory Note(s), replacement note(s), loan assumption agreement(s) or other instruments to evidence the assumption of loan indebtedness of Flowell in an amount up to \$3,000,000 as part of the acquisition of the Flowell property.

DATED at Salt Lake City, Utah, December 9, 2020.

/s/ Thad LeVar, Chair

/s/ David R. Clark, Commissioner

/s/ Ron Allen, Commissioner

Attest:

/s/ Gary L. Widerburg

PSC Secretary

DW#316695

Notice of Opportunity for Agency Review or Rehearing

Pursuant to Utah Code Ann. §§ 63G-4-301 and 54-7-15, a party may seek agency review or rehearing of this order by filing a request for review or rehearing with the PSC within 30 days after the issuance of the order. Responses to a request for agency review or rehearing must be filed within 15 days of the filing of the request for review or rehearing. If the PSC fails to grant a request for review or rehearing within 30 days after the filing of a request for review or rehearing, it is deemed denied. Judicial review of the PSC's final agency action may be obtained by filing a Petition for Review with the Utah Supreme Court within 30 days after final agency action. Any Petition for Review must comply with the requirements of Utah Code Ann. §§ 63G-4-401, 63G-4-403, and the Utah Rules of Appellate Procedure.

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EXHIBIT A

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

Application of Dixie Escalante Rural Electric Association for Approval of Acquisition of Electric Utility Plant and Equipment and Addition to Certificate of Public Convenience and Necessity	<p style="text-align: center;"><u>DOCKET NO. 20-066-03</u> <u>AMENDED CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY</u> <u>NO. 1930</u></p>
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ISSUED: December 9, 2020

The Public Service Commission of Utah, pursuant to Utah Code Ann. § 54-4-30, issues an Amended Certificate of Public Convenience and Necessity (CPCN) authorizing Dixie Escalante Rural Electric Association to provide electric services. In addition to the service territory previously identified in CPCN No. 1930, the amended CPCN also includes the territory and obligations originally established for Flowell Electric Association under CPCN No. 1573 (issued October 4, 1966).

DATED at Salt Lake City, Utah, December 9, 2020.

/s/ Thad LeVar, Chair

/s/ David R. Clark, Commissioner

/s/ Ron Allen, Commissioner

Attest:

/s/ Gary L. Widerburg
PSC Secretary
DW#316695

EXHIBIT B

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

Application of Dixie Escalante Rural Electric Association for Approval of Acquisition of Electric Utility Plant and Equipment and Addition to Certificate of Public Convenience and Necessity	<p style="text-align: center;"><u>DOCKET NO. 20-066-03</u></p> <p style="text-align: center;"><u>ORDER APPROVING ACQUISITION,</u> <u>AMENDING CERTIFICATE OF PUBLIC</u> <u>CONVENIENCE AND NECESSITY NO. 1930,</u> <u>AND CANCELING</u> <u>CERTIFICATE OF PUBLIC CONVENIENCE</u> <u>AND NECESSITY NO. 1573</u></p>
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AMENDED SERVICE AREA DESCRIPTION FOR CERTIFICATE OF PUBLIC
CONVENIENCE AND NECESSITY NO. 1930

Dixie Escalante Rural Electric Association

MILLARD COUNTY, UTAH SERVICE AREA:

Flowell Electric Association Acquired Service Area:

The South one-half of Township 20 South, Range 5 West, Salt Lake Meridian.

All of Township 21 South, Range 4 West, Salt Lake Meridian.

All of Township 21 South, Range 5 West, Salt Lake Meridian.

All of Township 21 South, Range 6 West, Salt Lake Meridian.

All of Township 22 South, Range 5 West, Salt Lake Meridian, except for one customer served by Utah Power & Light Company in Section 14.

All of Township 22 South, Range 6 West, Salt Lake Meridian.

All of Township 23 South, Range 5 West, Salt Lake Meridian.

All of Township 23 South, Range 6 West, Salt Lake Meridian.

Excepted are the areas embraced within the present corporate municipal boundaries of Fillmore, Meadow, and Kanosh, respectively, which are located within the above described townships.

The certificate herein issued shall in no wise interfere with the right of Utah Power & Light Company to continue serving an existing customer in Section 14, Township 22 South, Range 5 West, Salt Lake Meridian, or to continue the operation of the transmission facilities now owned by it within the Millard County, Utah service area of Dixie Escalante Rural Electric Association.

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WASHINGTON and IRON COUNTIES, UTAH SERVICE AREA:

Case No. 5663 issued June 30, 1966:
Dixie's Old Basic Area

Beginning at the southwest corner of Section 34, Township 43 South, Range 16 West, Salt Lake Base and Meridian, and running thence north 8 miles more or less to the northwest corner of Section 27, Township 42 South, Range 16 West, Salt Lake Base and Meridian; thence east two miles more or less to the northeast corner of Section 26, Township 42 South, Range 16 West, Salt Lake Base and Meridian; thence south to the southeast corner of said Section 26; thence east four miles more or less to the southwest corner of Section 27, Township 42 South, Range 15 West, Salt Lake Base and Meridian; thence north to the northwest corner of said Section 27; thence east to the northeast corner of said Section 27; thence north along the west section line of Section 23, Township 42 South, Range 15 West, Salt Lake Base and Meridian to a point on said section line due west of the center of the "Washington Field Bridge" crossing the Virgin River in said Section 23; thence east to the center line of said bridge, thence northeasterly along the center line of the Virgin River to the point where the center line of said river intersects with the east Section line of said Section 23, thence south 2-3/4 miles more or less to the southwest corner of Section 36, Township 42 South, Range 15 West, Salt Lake Base and Meridian; thence east to the southeast corner of said Section 36; thence south six miles more or less to the southeast corner of Section 36, Township 43 South, Range 15 West, Salt Lake Base and Meridian, which point is on the state boundary line between the State of Utah and the State of Arizona; thence west nine miles more or less, along said state boundary line to the point of beginning.

Berry - Springs Extension

Beginning at the east quarter section corner of Section 6, Township 42 South, Range 13 West, Salt Lake Base and Meridian; and running thence west 2.2 miles more or less along the quarter section lines of Section 6, Township 42 South, Range 13 West, Sections 1 and 2, Township 42 South, Range 14 West, to a point where the center line of Utah Highway Number 17 intersects with the east-west quarter Section line of Section 2, Township 42 South, Range 14 West, Salt Lake Base and Meridian; thence westerly along the center line of said Utah Highway Number 17 to the center line of the bridge on said Utah Highway Number 17 crossing the Virgin River in Section 2, Township 42 South, Range 14 West, Salt Lake Base and Meridian; thence southwesterly in a straight line to the northwest corner of Section 19, Township 42 South, Range 14 West, Salt Lake Base and Meridian; thence south on the west section line of Section 19 to the point where said section line intersects with the center line of the Virgin River; thence westerly along the center line of said Virgin River to a point where said river intersects with the west section line of Section 24, Township 42 South, Range 15 West, Salt Lake Base and Meridian; thence south along the west section line two miles more or less to the southwest corner of Section 25, Township 42 South, Range 15 West; thence east along the south section line of Section 25, Township 42 South, Range 15 West, and Sections 30, 29, and 28, Township 42 South, Range 14 West, to the southeast corner of Section 28; thence north along the east section line of said Section 28 to the southwest corner of Section 22, thence east to the southeast corner of said Section 22, thence north along the east section

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line of said Section 22, to the southwest corner of Section 14, thence east along the south section line of Sections 14 and 13, Township 42 South, Range 14 West, and Section 18, Township 42 South, Range 13 West, Salt Lake Base and Meridian; to the southeast corner of said Section 18, thence north 2.5 miles more or less to the point of beginning.

The Berry Springs area or the new Dixie area as above described touches, adjoins, and is contiguous to Dixie's "old service area" or the "old basic area" as heretofore described, on a line running south beginning at a point where the Virgin River intersects the west boundary of Section 24, Township 42 South, Range 15 West, along the west section line of Sections 24 and 25 to the southwest corner of Section 25.

Case No. 5663 Supp. Report and Order, issued October 5, 1970

Beginning at the South $\frac{1}{4}$ corner of Section 22, Township 42 South, Range 16 West; thence North to the middle of said Section 22; thence East approximately 1-1/2 miles through the middle of Sections 22 and 23, to the East $\frac{1}{4}$ corner of Section 23; thence South 1/2 mile to the Southeast corner of Section 23; thence West approximately 1-1/2 miles along the South boundary of Sections 23 and 22 to the point of beginning.

Case No. 5663, Sub. 2, issued March 2, 1976

Beginning at the NE corner Section 24, T42S, R 14W, SLB&M; and running thence W to the NW cor. Sec. 23, T42S, R 14 W, SLB&M, th. S to the NE cor. of Sec. 27, said township and range; th. W to the NW cor. of said section; th. S to the SW cor. of said section; th. W to the NW cor. Sec. 31, said township and range, th. S to the NE cor. Sec. 36, T42S, R 15W, SLB&M; th. W to the NW cor. of said section th. S to the SW cor. of said section; th. E to the SE cor. of said section; th. S to the SW cor. of Sec. 30, T43S, R 14W, SLB&M; th. E to the SE cor. said section; th. S to the Utah Arizona border; th. E along said border to the SE cor. Sec. 36, T43S, R 14W, SLB&M; th. N to the Point of beginning.

(Arizona Areas Not Listed)

ESCALANTE VALLEY ELECTRIC ASSOCIATION INC. (CERTIFICATE 1635) Acquired Service Area:

Case No. 5970, Iron and Washington Counties, issued October 4, 1968

Beginning at a point which is the Northwest corner of Iron County and which point is also located and described as intersection of the North boundary of Township 31 South of the Salt Lake Base and Meridian, which boundary is also the joint Beaver County-Iron County line with the joint Lincoln County, Nevada and Iron County, Utah, line; and running thence East on the Beaver County Iron County line to the Northeast corner of Section 1, Township 31 South, Range 15 West; thence South along the Township line to the Southwest corner of Section 18, Township 34 South, Range 14 West; thence East to the Northeast corner of Section 21, Township 34 South, Range 14 West; thence South to the Southeast corner of Section 33, Township 35 South, Range 14 West, which corner is on the 7th standard parallel South, thence West to the Southeast corner of Section 32, Township 35 South, Range 14 West; thence South to the Southeast corner of Section 32, Township 36 South, Range 14 West; thence West to the Northwest corner of Section 6, Township

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37 South, Range 14 West; thence South to the Southwest corner of Section 31, Township 37 South, Range 14 West; thence East to the Northeast corner of Section 1, Township 38 South, Range 14 West; thence South to the Southeast corner of Section 36, Township 38 South, Range 14 West; thence West to the Northeast corner of Section 1, Township 39 South, Range 14 West; thence South to the Southeast corner of Section 12, Township 40 South, Range 14 West; thence West to the Northwest corner of Section 18, Township 40 South, Range 15 West, which corner is on the Pine Valley Guide Meridian; thence North to the Northeast corner of Section 13, Township 37 South, Range 16 West; thence West to the North quarter corner of Section 15, Township 37 South, Range 16 West; thence North to the center of Section 15, Township 36 South, Range 16 West; thence West 660 feet; thence North 7,920 feet to the North line of Section 10 of said Township; thence West to the Northwest corner of said Section 10; thence North to a point 3,960 feet South of the North line of Section 4; thence West to the West line of said Section 4; thence North 1,980 feet; thence West 3,960 feet; thence South 1,980 feet; thence West to the North-South center line of Section 1, Township 36 South, Range 17 West; thence South to the South quarter corner of Section 12, Township 36 South, Range 17 West; thence west to the Southwest corner of Section 11, Township 36 South, Range 17 West; thence South to the Southeast corner of Section 34, Township 36 South, Range 17 West, which point is on the Iron County-Washington County line; thence West along said County line to the Nevada border; thence North along the Nevada-Utah line to the point of beginning.

CERTIFICATE OF SERVICE

I CERTIFY that on December 9, 2020, a true and correct copy of the foregoing was delivered upon the following as indicated below:

By Email:

David F. Crabtree (crabtree@deseretpower.com)
Dixie Escalante Rural Electric Association

Durand Robison (mail@flowellelectric.com)
Flowell Electric

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