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## UTAH DEPARTMENT OF COMMERCE

### Division of Public Utilities

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## Action Request Response

**To:** Public Service Commission of Utah

**From:** Utah Division of Public Utilities

Chris Parker, Director  
Artie Powell, Manager  
Brenda Salter, Utility Technical Consultant Supervisor  
Justin Christensen, Utility Analyst

**Date:** April 22, 2022

**Re:** **Docket No. 22-2636-01**, TransWest Express LLC's Application for Exemption from Regulation.

## Recommendation (Approve)

The Division of Public Utilities (Division) recommends that the Public Service Commission of Utah (Commission) determine that TransWest Express LLC (TransWest) is not subject to Commission jurisdiction or regulation, and grant TransWest exemption from regulation.

## Issue

On March 23, 2022, the Commission issued an Action Request to the Division requesting a review of TransWest's application and make recommendations by April 22, 2022. On March 25, 2022, the Commission issued a notice of filing and comment period, with submitted comments due April 22, 2022, and reply comments due May 9, 2022. This memorandum represents the Division's response to the Commission's Action Request.

## Background

TransWest is a Delaware limited liability corporation with its principal place of business in Denver, Colorado. TransWest is developing a new merchant transmission project, the

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TransWest Express Transmission Project (Project). The Project is a new overhead high-voltage interregional transmission system that will extend 732 miles from Wyoming to Nevada, and will interconnect to existing systems in Wyoming, Utah, and Nevada.

## Discussion

TransWest gives two arguments for why it is not subject to Commission jurisdiction and regulation. First, TransWest indicates that the Project is a merchant electric transmission line, which makes TransWest a merchant transmission provider. The line will not provide electricity to retail customers within the boundaries of Utah.<sup>1</sup> The Project will not be owned by a utility using the Project to serve retail customers. Instead, TransWest's customer, Power Company of Wyoming LLC (PCW), will use the transmission capacity from the Project to deliver 3000 MW of electricity to load-serving entities.

Second, as a merchant transmission provider, TransWest asserts that it is not a public utility nor an electrical corporation.

Electrical corporation as defined in the Utah Code states the following:

“Electrical Corporation” includes every corporation, cooperative association, and person, their lessees, trustees, and receivers, owning, controlling, operating, or managing any electric plant, or in any way furnishing electric power for public service or to its consumers or members for domestic, commercial, or industrial use, within this state.<sup>2</sup>

The language in this section is not entirely clear as to whether the clause “to its consumers ...within this state” applies only to furnishing electric power or whether that clause applies more broadly to the prior list of “owning, controlling, operating, or managing any electric plant.” The common reading of the sentence with the first “or” conjunction indicating that “managing any electric plant” is the final alternative in the list. The second “or” conjunction then creates an independent alternative of “furnishing electric power...” TransWest will not furnish electric power for public service or to consumers or members for domestic, commercial, or industrial use, within the state of Utah. However, TransWest will own,

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<sup>1</sup> Utah Code 79-6-402(1)(e)

<sup>2</sup> Utah Code 54-2-1(8)(a)

control, operate, and manage electric plant. Therefore, it is likely that TransWest is an “electrical corporation” under Utah law. That conclusion is not dispositive of the jurisdictional question, however. TransWest’s proposed project is not a “public utility” under Utah law.

Public utility as defined in the Utah Code states:

“Public Utility” includes every railroad corporation, gas corporation, electrical corporation, distribution electrical cooperative, wholesale electrical cooperative, telephone corporation, telegraph corporation, water corporation, sewer corporation, heat corporation, and independent energy producer not described in Section 54-2-201 where the service performed for, or the commodity delivered to, the public generally, or in the case of a gas corporation or electrical corporation where the gas or electricity is sold or furnished to any member or consumers within the state for domestic, commercial, or industrial use.<sup>3</sup>

The Project will not serve the public generally and will not provide service to retail customers within the boundaries of Utah. TransWest falls outside the statutory definition of public utility. The conditions that do not necessarily apply to exclude the TransWest project from the definition of electrical corporation do apply under the definition of public utility and result in the project not being a statutory public utility.

The TransWest Project does not need a CPCN. Applications for a Certificate of Public Convenience (CPCN) as dictated in the Utah Code states the following:

Except as provided in Section 11-13-304, a gas corporation, electric corporation, telephone corporation, telegraph corporation, heat corporation, water corporation, or sewerage corporation may not establish, or begin construction or operation of a line, route, plant, or system or of any extension of a line, route, plant, or system, without having first obtained from the commission a certificate that present or future public convenience and necessity does or will require the

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<sup>3</sup> Utah Code 54-2-1(22)(a)

construction.<sup>4</sup>

The CPCN statute applies to certain types of public utilities including electric corporations. TransWest has shown it is not a public utility and is not required to obtain a CPCN.

It is worth mentioning that there are some potential losses of protections operating as a non-public utility transmission line through the state of Utah. TransWest may not be able to avail itself of protections available to public utilities from local government land use control and conditions via the Utility Facility Review Board Act found in Utah Code Chapter 54-14.

## **Conclusion**

The Division has reviewed TransWest's application and agrees that it is not a public utility as defined in Title 54 of the Utah Code. Therefore, TransWest is not subject to Commission jurisdiction or regulation and is not required to obtain a CPCN before constructing or operating the Project.

cc: Lisa Christian, General Counsel, TransWest Express LLC  
Phillip Russell, Outside Counsel TransWest Express LLC  
Michele Beck, Office of Consumer Services

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<sup>4</sup> Utah Code 54-4-25