
Application of Deseret Generation and Transmission Co-Operative for a Certificate of Public Convenience and Necessity Authorizing the Acquisition of Electric Utility Plant and Equipment	<u>DOCKET NO. 24-506-01</u> <u>ORDER</u>
-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------

ISSUED: June 6, 2024

SYNOPSIS

The Public Service Commission (PSC) approves the application of Deseret Generation and Transmission Co-Operative (“Deseret”) for a Certificate of Public Convenience and Necessity (CPCN) authorizing Deseret to install a system of Selective Catalytic Reduction for NOx control at Bonanza Unit 1.

INTRODUCTION

On May 15, 2024, Deseret filed an amended application (“Application”)¹ pursuant to Utah Code § 54-4-25 seeking a CPCN to acquire and install a Selective Catalytic Reduction (SCR) system for NOx control (“Project”) at Bonanza Unit 1 (“Bonanza”). The Application asserts the Project consists of “acquir[ing], construct[ing], and install[ing] a SCR system designed around a commonly used configuration with a proven track record for retrofits in various plants similar to Bonanza.”² Deseret requests the PSC enter an order as expeditiously as possible granting Deseret a CPCN to construct the Project and grant such other authority and authorizations as may be necessary to facilitate its construction. Deseret further requests the PSC adjudicate the Application

¹ Deseret filed a similar application on April 12, 2024, that did not contain a sworn statement from an officer of the company requesting informal adjudication. The applications are otherwise identical.

² Application at 4.

informally under Utah Admin. Code R746-1-104(1)(a) and R746-110-2 because Deseret anticipates its Application will be unopposed and uncontested.³

On April 19, 2024, the PSC issued a Notice of Filing and Comment Period setting a comment deadline of May 20, 2024. The Utah Petroleum Association (UPA) filed comments on May 17, 2024. The Utah Office of Energy Development (OED), the Division of Public Utilities (DPU), and Utah Citizens Advocating Renewable Energy (UCARE) filed comments on May 20, 2024.⁴

THE APPLICATION

Deseret states it routinely reviews the diversity of its generation resources and their environmental attributes, as well as their remaining useful life. Deseret explains it reviews these items in conjunction with its system load requirements, projected capacity, and Deseret's aspirational renewable resource objectives. The Application states Bonanza operates under a Title V Operating Permit.⁵ Deseret represents, pursuant to this permit, "Bonanza operations shall not exceed 20 million tons of coal through the remainder of the life of the plant (the '20 million ton limit') unless Deseret applies for and receives approval to construct from EPA Region 8 (to the extent required), and installs and operates an SCR at Unit 1 prior to December 31, 2029, and

³ *Id.* at 15.

⁴ UCARE submitted an erratum the following day, May 21, 2024, making one correction to its earlier comments.

⁵ Deseret's Title V Operating Permit is issued by the Environmental Protection Agency pursuant to Title V of the Clean Air Act.

Unit 1 achieves and continuously complies with a NO_x emission limit of 0.05 lb/MMBtu on a 12-month rolling average.”⁶ Deseret asserts it selected the Project to enable the utilization of an additional 12 million tons of coal, from the Deserado Mine, that will sustain Bonanza’s operation at its current level through 2041-42.⁷ Deseret identifies the following benefits of the project:

1. “Adding the SCR at this time adds certainty to planning, marketing, and especially to the mine operational planning and will optimize Deseret’s operations for the period through 2041.”⁸
2. Installation of the SCR enables Bonanza to satisfy the Ozone Transport Rule, Regional Haze, and other federal air quality requirements.
3. Installing the SCR may benefit Deseret’s pending application for EPA approval of a 51 MW gas peaking resource.
4. The Project defers the addition of baseload generation needed to meet existing demand.

Deseret concludes that the “Project represents the least-cost, least-risk approach to meet Deseret’s electric service obligations to its customers ... [and] [a]s a result, the Project is in the public interest and public convenience and necessity does or will require the construction of the Project.”⁹

⁶ Application at 3.

⁷ See *id.* at 4.

⁸ *Id.* at 9.

⁹ *Id.* at 13.

POSITIONS OF THE PARTIES

UPA supports the Project stating “UPA and its members are in regular communications with Deser[e]t about this growing power need and support efforts and investments by Deseret to ensure adequate baseload generation will continue to be available not only to service today’s load and the growth of the Uinta Basin communities, but also the growing industry power needs.”¹⁰

OED explains the Project will ensure compliance with the Ozone Transport rule and asserts that “[k]eeping the Bonanza plant operational aligns with state energy policy.”¹¹

UCARE states it is impressed with Deseret’s willingness to install SCR but explains UCARE is concerned Bonanza will exceed the Title V coal consumption maximum and increase its CO2 emissions. UCARE recommends the PSC reject the Application and requests the PSC “extend the public comment period by 60 days and direct Deseret to make publically [sic] available more content from its highly redacted and confidentiality-cloaked filing documents.”¹²

DPU recommends the PSC approve the Application and grant Deseret a CPCN for the Project. DPU states its recommendation is conditional based on Deseret receiving the necessary permits and approvals to install a SCR. In support of its

¹⁰ UPA comments at 2.

¹¹ OED comments at 2.

¹² UCARE comments at 1.

recommendation, DPU points to Deseret's representations that it "will obtain the necessary permits and ... no existing public utility will be adversely affected by the construction of the Project."¹³ Additionally DPU states it has reviewed Deseret's 2020-2023 audited financial records and concludes that Deseret is financially stable and "has a capital structure and sufficient financial resources to adequately cover the costs of construction."¹⁴ Further, DPU states "that installing the Project will likely provide several financial benefits to [Deseret] and its customers."¹⁵ In addition, DPU requests the PSC adjudicate the Application informally based on Mr. David F. Crabtree's, President and Chief Executive Officer of Deseret, sworn statement that Deseret anticipates no opposition to the filing.¹⁶

FINDINGS OF FACT

The PSC finds the Application demonstrates Deseret is financially able to complete the Project. In addition, the PSC finds Deseret filed documentation containing sufficient information to support its Application and Deseret has obtained or has agreed to obtain all necessary permits for installing a SCR system at Bonanza. The PSC further finds Deseret's Application demonstrates an opportunity to recover an additional 12 million tons of coal from Deserado Mine, ensure continued operation until 2041-42, and provide financial benefit to Deseret and its customers. Based on the

¹³ DPU Comments at 6.

¹⁴ *Id.* at 7.

¹⁵ *Id.* at 6.

¹⁶ *Id.*

Application and DPU's comments, the PSC finds that Deseret is in the process of applying for required permits and approvals for the Project. An Applicant for a CPCN must provide evidence establishing, among other things, that it "has received or is in the process of obtaining the required" approvals.¹⁷ The PSC has the discretion to issue a conditional CPCN even if final required approvals or other items have not yet been obtained or provided.¹⁸

With respect to UCARE, it cites no provision of law to support its recommendations, which are exclusively concerned with environmental ramifications, primarily carbon dioxide emissions.¹⁹ UCARE has not sought intervention in this docket, and it is not clear it would have grounds to do so. Utah Code § 54-4-25 governs the PSC's authority to issue CPCNs. The statute dictates the considerations that are relevant to the PSC's evaluation, including ensuring that granting a CPCN will not "injuriously affect" another public utility and that the applicant has obtained, or is in the process of obtaining, all necessary permits from applicable authorities. Nothing in § 54-4-25 allows the PSC to consider broader environmental impacts, such as carbon dioxide emissions, in evaluating a request for a CPCN. The PSC concludes

¹⁷ Utah Code Ann. § 54-4-25(4)(a)(i). These approvals include the required consent, franchise, or permit of the proper county, city, municipal, or other public authority ("Required Approvals").

¹⁸ See Utah Code Ann. § 54-4-25(4)(a).

¹⁹ UCARE also states "it would be helpful to know how Deseret's interests in the Hunter II and IPP coal-fired units could impact supply to any or all of the three facilities given in-state coal inventory issues." UCARE Comments at 2. This statement about the "helpfulness" of additional information is not tied to UCARE's primary concern, additional emissions, and UCARE fails to provide any legal or factual basis as to how this issue is relevant to Deseret's Application.

UCARE's comments do not raise any cognizable or relevant basis upon which to deny or delay issuance of Deseret's requested CPCN.

The PSC further concludes that a request for CPCN is "unopposed," within the meaning of Utah Admin. Code R746-1-104(2), notwithstanding the PSC's receipt of public comments, i.e. comments submitted by non-intervenors, premised entirely on issues that are legally irrelevant to the PSC's evaluation. Accordingly, the PSC concludes, notwithstanding UCARE's public comments, Deseret's Application is unopposed, and the PSC will adjudicate the Application informally under Utah Admin. Code R746-1-104(1).

Based on its review of the Application and the comments of DPU, OED, and UPA, the PSC finds Deseret's Application satisfies all requirements necessary under Utah Code § 54-4-25 for the issuance of its CPCN, conditioned on Deseret obtaining all permits required under applicable law.

ORDER

In light of the PSC's Findings and Conclusions;

1. Deseret is granted the conditional CPCN attached as Exhibit A, incorporated by reference into this Order. Deseret is directed to file with the PSC all approvals and permits required by applicable law for the construction and operation of the Project, after they are obtained and before construction and operation of the Project begins. Once the foregoing have been filed and accepted by the PSC, the CPCN will no longer be conditional.

DOCKET NO. 24-506-01

- 8 -

2. Pursuant to Utah Admin. Code R746-110-2, this order is tentative for a period of 20 days after its issuance. Any person may file a protest prior to expiration of this 20-day period, specifying the grounds for such protest and citing applicable provisions of law that support it. If the PSC finds a protest meritorious, the PSC will suspend this order pending further proceedings. Absent meritorious protest, this order shall become effective automatically after the expiration of 20 days without further action from the PSC.

DATED at Salt Lake City, Utah, June 6, 2024.

/s/ Jerry D. Fenn, Chair

/s/ David R. Clark, Commissioner

/s/ John S. Harvey, Ph.D., Commissioner

Attest:

/s/ Gary L. Widerburg

PSC Secretary

DW#334120

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.

DOCKET NO. 24-506-01

- 10 -

EXHIBIT A

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

Application of Deseret Generation and Transmission Co-Operative for a Certificate of Public Convenience and Necessity Authorizing the Acquisition of Electric Utility Plant and Equipment	<u>DOCKET NO. 24-506-01</u> <u>CERTIFICATE 506C</u>
-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------

ISSUED: June 6, 2024

The Public Service Commission of Utah, pursuant to Utah Code Ann. § 54-4-25, issues a Certificate of Public Convenience and Necessity authorizing DESERET GENERATION AND TRANSMISSION CO-OPERATIVE to install a SCR system on Bonanza 1 as described in Deseret's May 15, 2024 Application and consistent with satisfying the conditions described in the PSC Order dated June 6, 2024, in the above referenced docket.

DATED at Salt Lake City, Utah, June 6, 2024.

/s/ Jerry D. Fenn, Chair

/s/ David R. Clark, Commissioner

/s/ John S. Harvey, Ph.D., Commissioner

Attest:

/s/ Gary L. Widerburg
PSC Secretary

CERTIFICATE OF SERVICE

I CERTIFY that on June 6, 2024, a true and correct copy of the foregoing was served upon the following as indicated below:

By Email:

Phillip J. Russell (prussell@jdrslaw.com)
JAMES DODGE RUSSELL & STEPHENS, P.C
Jeff Peterson (jpeterson@deseretpower.com)
Deseret Power

Patricia Schmid (pschmid@agutah.gov)
Patrick Grecu (pgrecu@agutah.gov)
Robert Moore (rmoore@agutah.gov)
Assistant Utah Attorneys General

Madison Galt (mgalt@utah.gov)
Division of Public Utilities

Alyson Anderson (akanderson@utah.gov)
Bela Vastag (bvastag@utah.gov)
Alex Ware (aware@utah.gov)
Jacob Zachary (jzachary@utah.gov)
(ocs@utah.gov)
Office of Consumer Services

Administrative Assistant