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**BEFORE THE UTAH UTILITY FACILITY REVIEW BOARD**

<p>ROCKY MOUNTAIN POWER,  Petitioner,  vs.  WASATCH COUNTY,  Respondent.</p> <hr/>	<p><b>PETITIONER’S MOTION FOR RECONSIDERATION OR CLARIFICATION WITH RESPECT TO THE BOARD’S DECISION ON INTERVENORS’ MOTION TO INTERVENE</b></p> <p><b>Docket No. 16-035-09</b></p>
<p>MARK 25, LLC; BLACK ROCK RIDGE MASTER HOMEOWNERS ASSOCIATION, INC.; BLACK ROCK RIDGE TOWNHOME OWNERS ASSOCIATION, INC.; BLACK ROCK RIDGE CONDOMINIUM ASSOCIATION, INC.,  Intervenors.</p>	

For the reasons set forth herein, Petitioner, Rocky Mountain Power (the “Company”), respectfully moves for reconsideration, or in the alternative clarification, of the Utility Facility Review Board’s (the “Board”) March 28, 2016 decision on the Petition to Intervene brought by

Mark 25, LLC; Black Rock Ridge Master Homeowners Association, Inc.; Black Rock Ridge Townhome Owners Association, Inc.; and Black Rock Ridge Condominium Association, Inc. (collectively, “Black Rock”). If the Board does not reconsider its ruling, the Company requests clarification of that portion of the decision addressing the nature and scope of the issues that Black Rock can raise and contest.

### **I. REQUEST FOR RECONSIDERATION**

In its decision, as vocalized during the March 28, 2016 hearing, the Board granted Black Rock’s motion to intervene, but indicated it would limit the scope and nature of the intervention to Black Rock’s claims and interests that relate directly to the statutory charge of this Board, which is namely the Company’s need and ability to provide service to its customers in a safe, reliable, adequate or efficient manner. However, in contrast to the decision, Black Rock did not assert that its interests in this proceeding arise out of or are related to the Company’s need and ability to provide safe, reliable, adequate or efficient service to its customers. Indeed Black Rock’s reply memorandum concedes that “nobody disputed the need for an upgrade,” and instead claims that it needs intervention to address “whether there is any compelling reason to relocate the transmission line” because doing so would “diminish [ ] both the value and the marketability of [Black Rock’s] property.” (Reply at 2&3.) At the hearing this was restated by Black Rock as concerns over (1) alleged impacts on their property aesthetics, values and uses, and (2) enforcement of Wasatch County ordinances. The Board, however, was not created, nor is it authorized under statute, to adjudicate the grievances raised by third parties, such as Black Rock, relating to possible market impacts on surrounding properties, nor is it a forum for a party to act as private police for County regulations. Rather, the Board’s purpose is to resolve disputes between “local governments and public utilities” *relating to the need for utility facilities* such as

the Company's proposed transmission project—the very thing Black Rock claimed it didn't dispute.

In the absence of a claim by Black Rock directed to the Company's ability to provide electric service to its customers, Black Rock has no "legal interest" in this proceeding that can be adjudicated by the Board and, therefore, the Company is at a loss to draft testimony or memoranda addressing the "legal interest" of Black Rock in this proceeding.

Assuming for argument sake that the intervention process under the Utah Administrative Procedures Act ("UAPA") is applicable, there are certain requirements that must be met under the Act and interpretive case law. UAPA requires (1) proof that "the petitioner's *legal interests* may be *substantially affected* by the formal adjudicative proceedings" ; and (2) the interests of justice and the orderly and prompt conduct of the proceedings will not be materially impaired. Utah Code Ann. §63G-4-207(2) (emphasis added). As stated above, Black Rock has shown no legal interest – no property owner has a legal interest in a neighbor's lawful use of their property. Nor does Black Rock have a legal interest in enforcing the County's ordinances; that task is solely within the County's domain. At any time, a local government may enact new ordinances, or revise or repeal existing ordinances, and no resident of the County has a legal right that prevents that.

Furthermore, the interests of justice would be frustrated if Black Rock were permitted to intervene. In *In re Questar Gas*, 2007 UT 79, ¶¶33-35 , the Utah Supreme Court further illuminated this factor, laying out five considerations: (1) timeliness, (2) increased time and expense, (3) participation in prior administrative hearings, (4) whether another party adequately represents the intervenor's interest, and (5) whether any complications can be minimized by the agency. Black Rock fails all but one – the timeliness of their motion – of these tests.

By statute, the Board has an expedited schedule to resolve disputes brought under the Act. Allowing this intervention will certainly impinge on the time and expense required to address the only germane issue – whether this line is necessary to provide safe, reliable, and efficient service to electric customers. There was significant discussion surrounding the differences between Black Rock and other residents of the County; the distinctions were the fact that they are HOAs and “adjoining” landowners. But the Board can query how many “adjoining landowners” follow every transmission line. That by itself cannot be a “legal interest” sufficient to intervene under UAPA or literally hundreds of parties would be proper party litigants to such proceedings, further constraining the already expedited statutory process this Board must follow and result extraneous arguments that are beyond the scope of the Board’s legal oversight. And some of the Black Rock parties’ status as a homeowner’s association is a distinction without a difference. Adjoining landowners, however legally constituted, do not have a legal interest in a dispute between a utility and the local government.

As to the third factor, Black Rock was not a participant in the prior administrative proceedings. The only true parties to a conditional use application are the applicant and the local government. Members of the public are allowed to speak in public meetings to express their concerns, but they are not parties to the proceedings. This is similar to the process followed by the Utah Public Service Commission generally where individuals who are not parties are given an opportunity to speak at a public witness hearing as opposed to being allowed to intervene in the proceeding. Indeed, Black Rock availed themselves of that right during the County process, and did appear and speak at the public hearing on the Company’s application. A similar opportunity is provided in this proceeding, where the Board has scheduled a public witness hearing. This is the proper forum for Black Rock’s comments.

Finally, the Board seemed to understand that certain complications would arise by allowing Black Rock to intervene. The difficulty that the Board had in formulating its motion at the hearing indicates that allowing Black Rock to have full party status in this proceeding is inconsistent with the Board's statutory mandate. Those complications cannot be minimized, since they point to the very reason Black Rock should not be allowed to intervene – they simply do not have a legal interest in this proceeding.

Black Rock relied on *Millard County v Utah State Tax Comm'n* 823 P.2d 459 (Utah 1991) as providing the basis for its legal standing in this matter. But nothing in that case provides that support. Indeed the *Millard* court expressly stated that “it is clear that the County has a legitimate legal interest in the IPA's sales tax liability . . . because the County's legal interest in the proceeds of the local option tax could have been ‘substantially affected’ by” the proceeding. *Id.* At 462. Here, there is still no identified “legal interest” of Black Rock in this proceeding. *Millard* provides no support for including Black Rock in this proceeding. Allowing this intervention will only unnecessarily slow the proceedings.

The only determination to be addressed at this proceeding is whether the proposed facility should be built in order to provide for the safe, reliable, efficient and adequate delivery of electricity to the Company's customer's, and if Black Rock does not contest the need for the upgrade, no remaining legal interests apply for this Board to consider. That said, and as discussed at the hearing, the Board has provided a mechanism for Black Rock's concerns to be heard: it has the right to appear and present testimony as a public witness.

## **II. REQUEST FOR CLARIFICATION**

While the Company believes that Black Rock's intervention in this proceeding is unnecessary and improper, to the extent the Board confirms its decision to grant intervention to Black Rock, the Company requests the Board clearly outline in its Order (1) the distinguishing

characteristics that Black Rock possesses that allows it to be a party in a Board proceeding that would not otherwise allow *all* property owners in the vicinity of a proposed utility facility to be an intervenor, and (2) the nature and scope of Black Rock’s intervention right so all parties can meaningfully prepare testimony. As noted in Utah Code Ann. § 54-14-103(2), the Board was established by the Legislature to “resolve issues regarding the construction and installation of public utility facilities,” and not to adjudicate the land use grievances of private parties, including local landowners. The Company is concerned that this current Order that the Board is drafting will be cited by any future property owner anywhere in the vicinity of a proposed utility facility (be it a substation, power line, water pump, etc.) to argue that it has standing to intervene as a party opponent, to conduct discovery, to cross examine witnesses, and the like, whenever they are opposed to such a facility being constructed “near” their property. Where does “near” end? In the interest of promoting prompt and orderly proceedings consistent with the purpose of the Act, the decision by the Board should (1) articulate why Black Rock is an appropriate party and what distinguishes it from other property owners or residents that are opposed to a facility, and then (2) with specificity restrict the issues to be raised by Black Rock to the items outlined in Utah Code Ann §54-14-303(1)(d); i.e., whether the County “has prohibited construction of a facility needed to provide safe, reliable, adequate and efficient service to the customers of the public utility.” Evidence directed to peripheral matters, such as alleged impacts to property use and values, should be excluded from this proceeding and an Order that fails to address that will introduce numerous opportunities for delay and unnecessary work and expense from all parties to address and rebut matters that are clearly beyond this Board’s statutory review in this matter.

### III. CONCLUSION

Based on the foregoing, the Company respectfully requests that the Board reconsider the decision and deny Black Rock's motion to intervene, or in the alternative, specifically limit the scope and nature of the matters raised by Black Rock to its vested legal interest in the Company's need for the transmission project and its ability to provide safe, reliable adequate and efficient service to its customers.

DATED: March 30, 2016.

STOEL RIVES LLP

/s/ D. Matthew Moscon

D. Matthew Moscon

Richard R. Hall

Attorneys for Petitioner

## CERTIFICATE OF SERVICE

I hereby certify that on this 30th day of March, 2016, a true and correct copy of the foregoing **PETITIONER'S MOTION FOR RECONSIDERATION OR CLARIFICATION WITH RESPECT TO THE BOARD'S DECISION ON INTERVENORS' MOTION TO INTERVENE** was served upon the following as indicated below:

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