D. Matthew Moscon (#6947)
Richard R. Hall (#9856)
STOEL RIVES LLP
201 South Main Street, Suite 1100
Salt Lake City, Utah 84111
Telephone: (801) 328-3131

R. Jeff Richards (#7294)
Heidi Gordon (#11655)
ROCKY POWER MOUNTAIN
1407 W. North Temple
Salt Lake City, Utah 84116
Telephone: (801) 220-4734

Attorneys for Petitioner
Rocky Mountain Power

BEFORE THE UTAH UTILITY FACILITY REVIEW BOARD

ROCKY MOUNTAIN POWER, Petitioner, vs. WASATCH COUNTY, Respondent. MARK 25, LLC; BLACK ROCK RIDGE MASTER HOMEOWNERS ASSOCIATION, INC.; BLACK ROCK RIDGE TOWNHOME OWNERS ASSOCIATION, INC.; BLACK ROCK RIDGE CONDOMINIUM ASSOCIATION, INC., Intervenors.	**MOTION FOR PROTECTIVE ORDER PERTAINING TO DISCOVERY PROPOUNDED BY BLACK ROCK INTERVENTION GROUP** **Docket No. 16-035-09**

Pursuant to Utah Administrative Rule R746-100-8(C)(3), Petitioner Rocky Mountain Power (the "Company"), by and through its counsel of record, respectfully submits this Motion for Protective Order to seek relief from unnecessary, irrelevant and overly-burdensome discovery

propounded by intervenors 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"). Black Rock's discovery and deposition requests are attached hereto as Exhibit A.

BACKGROUND

The Company requests the Board issue an order preventing Black Rock from engaging in the overbroad, unnecessary and irrelevant discovery it currently seeks, discovery which far exceeds the limited purpose of this action before the Board, or the scope of the intervention previously issued to Black Rock by the Board.

As the Board will recall, on April 1, 2016, it granted Black Rock the right to intervene in this action on a very limited basis under the Administrative Procedures Act. The Company opposed the intervention for a number of reasons, including concerns that Black Rock would needlessly want to engage in broad and fruitless discovery during a very limited timeframe. The Company has moved for the Board to reconsider its decision on the intervention, and that motion is scheduled to be heard by the Board on April 14, 2016.

In allowing Black Rock into this action, the Board was careful to state that the scope of the intervention was "limited to the scope of *this* proceeding as defined under the Act" and "with the understanding that [Black Rock's] petition does not expand the scope of *this* proceeding under the Utility Facility Review Board Act." Order at 2 (emphasis added). Although the Act sets forth a number of bases upon which a petition for review might be brought, the scope of any proceeding is dictated by the history of the issue and the basis for the Petition for Review. In this case, Wasatch County denied the Company's application for a conditional use permit pertaining to a small, ¼-mile long segment (the "Wasatch Segment") of the overall Railroad-Silver Creek 138 kV

transmission line upgrade project (the "Project"). This denial prohibits the Company from constructing the Wasatch Segment, a necessary component of the 67-mile long Project. On the basis of that denial, the Company brought its Petition for Review under Utah Code section 54-14-303(d) which allows Board review when "a local government has prohibited construction of a facility which is needed to provide safe, reliable, adequate, and efficient service to the customers of the public utility." As a result, the scope of this proceeding as defined under the Act is limited to whether the Project, including the Wasatch Segment, "is needed to provide safe, reliable, adequate, and efficient service to the customers of the public utility."

Unfortunately, as predicted, immediately following the Board's decision on intervention, Black Rock issued a host of overly broad, unnecessary and irrelevant discovery requests (written discovery, deposition requests, and subpoenas). To compound the issue, Black Rock is asking that the discovery be completed before the Board even hears the Company's motion for reconsideration, and without consideration of whether the discovery would be duplicative of the pre-filed testimony, exhibits and memorandum filed by the Company on April 8, 2016. Further, Black Rock has now filed a motion to compel the discovery, all before Black Rock has even received the Company's pre-filed testimony. However, these logistical and timing problems, significant as they are, are not the foremost of the Company's concerns. Rather, the Company is concerned because Black Rock's discovery (which would be very burdensome to respond to) has little bearing to the limited issues before the Board. The Company served objections to Black Rock's discovery and deposition requests, and now respectfully requests that the Board grant this Motion for Protective Order.

1. Black Rock Should Not be Permitted to Conduct Costly and Unnecessary Depositions of the Company, Which are Disfavored in These Proceedings Even by Parties, nor propound Duplicative Written Discovery, in Light of the Pre-Filed Testimony Requirements

Black Rock is currently seeking 30(b)(6) depositions from the Company on nine very broad topics, in addition to grossly overbroad interrogatories, requests for admissions, and document requests. Although technically allowed, depositions are disfavored in proceedings before bodies such as the Board because of the pre-filed testimony procedures. Ordinarily, depositions are used to gather information about relevant testimony a party intends to use in support of its claims or defenses. A counter party reasonably needs to depose a party to determine what their testimony will be in order to prepare meaningful cross examination and rebuttal. However, in this matter, depositions are unnecessary because of the pre-filed testimony requirements. Parties are required to submit the testimony of witnesses it intends to use at the hearing in advance. As a result, the typical need for a deposition is absent.

As the Board can imagine, parties go to great time and expense to prepare their pre-filed testimony. For the Company, this case has been no exception. Although the Company has objected to Black Rocks' deposition and interrogatory requests, the Company has agreed to provide Black Rock with its pre-filed testimony. That testimony will provide Black Rock with most, if not all, of the information relevant to the limited scope of this proceeding. Indeed, most, if not all, topics in the proposed depositions and interrogatories (at least pertaining to the relevant issues) are included in the Company's pre-filed testimony. The Company should not be required to duplicate, or triplicate, its efforts by responding to interrogatories and preparing for Company depositions, in addition to the pre-filing testimony requirements, in particular given the truncated schedule.

The point is made more emphatic by the fact that Black Rock did not even bother to wait to receive the Company's pre-filed testimony. Rather, it filed its discovery requests and sent its deposition notices before the first round of briefing and testimony was due, and has now even filed a motion to compel. To comply with Black Rock's discovery requests would require Company witnesses to sit for depositions and respond to written discovery on information and topics covered in the pre-filed testimony. This burden on the Company and its witnesses is unreasonable and unnecessary, even when assuming for argument sake that the discovery topics are relevant and that Black Rock is a proper party – both of which assumptions the Company disputes.

Simply stated, Black Rock has identified no need for the extraordinary discovery it seeks. It has not shown that the evidence supplied by the Company in its filing (which Black Rock has not even reviewed yet) is lacking any support for the relief sought by the Company or that these depositions and other discovery requests are needed in light of the pre-filing requirement designed to alleviate such discovery. In contrast, it is self-evident that in the few days between rounds of testimony that it would be burdensome for the Company to produce 30(b)(6) deponents to re-answer what has been or is in process of being filed, or worse to answer questions that are irrelevant to this proceeding.

2. Where Only Parties May Conduct Discovery in Formal Adjudicative Proceedings, the Company Should Not Be Required to Respond to Any of Black Rocks' Discovery Requests Until the Board Has Ruled on Its Motion for Reconsideration on the Intervention

There is no dispute that, absent the intervention, Black Rock had no right to conduct discovery in this proceeding. Although the intervention was granted, the Company immediately moved for the Board to reconsider its ruling, and the Board has granted the Company the hearing on that issue for April 14, 2016. It would be a waste of Company resources to have to undertake the significant burden and expense of responding to these discovery requests and preparing what

would be numerous Company employees for the requested 30(b)(6) depositions given that the Board will review the propriety the intervention in a matter of days. The burden of this discovery is heightened because the Company is already working diligently to comply with the other deadlines in the schedule for this statutorily-truncated proceeding. The Company respectfully requests that the Board order that the Company not be required to respond to any discovery requests from Black Rock until the Board has issued a ruling on the pending motion for reconsideration. If the Board ultimately determines that Black Rock should not be a party-opponent in the matter, or in the alternative clarifies the scope of Black Rock's intervention right, responding to such broad discovery would have been an onerous waste of time and resources.

3. The Company Should Not Be Required to Respond to Engage in Black Rocks' Fishing Expedition; Black Rock's Discovery Requests Are Grossly Overbroad and Irrelevant to the Limited Issues of This Proceeding, As Previously Determined by the Board

Despite the Board's detailing the limited scope of the intervention, both at the hearing and in the written order that followed, Black Rock is vigorously pursuing overbroad and irrelevant discovery from the Company. Specifically, Black Rock issued 19 discovery requests (the "Requests") and have requested 30(b)(6) depositions on 9 separate topics (the "Topics"). Of these 28 Requests and Topics, not a single one is limited in time, and the vast majority are not limited in scope in any meaningful way. Moreover, nearly all of the Requests and Topics are irrelevant to the issues for review by the Board in this proceeding. Black Rock's proposed discovery reveals that Black Rock (1) does not intend to heed the Board's directions regarding the limited scope of their intervention, and (2) lacks experience in Public Service Commission proceedings and the discovery/pre-filed testimony process. The proposed discovery also fails any test of reasonableness or proportionality in relation to the issues in this proceeding, and gives no thought to the truncated schedule and statutorily-imposed hearing deadline.

Instead of seeking discovery into the necessity of the Project to provide safe, reliable, adequate, and efficient service to utility customers in this state, Black Rock has cast their net to cover every conceivable issue relating to the Project — for a line spanning 67 miles, across 2 states and numerous landowners, all for an objection to the ¼-mile long Wasatch Segment. Many of the requests seek information about the predecessor 46 kV line that has been in existence for nearly 100 years. Just accessing the historical database to retrieve and search these old documents to respond to Black Rock's request would take weeks, and likely result in no information relevant to this proceeding.

The Company hereby incorporates all of its objections to Black Rocks' requests, and has attached them as Exhibit A to this Motion. In addition, a few examples are illustrative of the overreaching nature of the requested discovery:

- Black Rock demands the Company to prepare a 30(b)(6) witness on the topic of "[t]he safety risks associated with constructing the upgraded transmission line on both the original easement and the new easement."
    - Preparing a witness for all of the potential safety risks associated with the construction of a 138 kV electrical transmission line across 67 miles through mountainous terrain would take days, if not weeks. Such preparation may include anything from the hazards of driving a truck or backhoe to general construction site safety to the entire NESC code.
    - As the only issue is whether the Project is needed to provide safe, reliable, adequate and efficient power service, the 100-year safety history of the Company's existing 46 kV line is entirely irrelevant. Since the Company is not proposing to upgrade the line in its current alignment (at least in Wasatch

County), how could safety issues about doing what the Company *is not planning on doing* be relevant?

- Black Rock also seeks documents and deposition testimony about all of the Company's "communications and negotiations with landowners regarding the proposed upgraded transmission line."
    - The Project crosses 67 miles of land in two states, including the properties of numerous landowners. Collecting these documents and preparing a witness about every communication the Company has had with each of these landowners is, quite frankly, outrageous. Moreover, as a practical matter, the requested discovery is unlikely to yield anything other than more documents supporting the Company's position that the Project is necessary to provide safe, reliable, adequate, and efficient service to its customers. Most importantly, whether one of these landowners expressed concern, support, resistance or agreement with the line candidly has nothing to do with an analysis of whether the line is needed.
- Black Rock also seeks documents the Company "has provided to any other county or municipality in Utah" about either the Project or the one-hundred year old existing line.
    - One hundred years of communications with Summit and Wasatch County, and the various involved municipalities, about the existing or proposed line will take weeks if not months to locate, when the schedule in this proceeding allots the Company five days to comply with discovery requests.
    - Moreover, as Black Rock and Wasatch County are aligned in interest it can seek records directly from Wasatch or get other records through public records or

GRAMA requests without forcing the Company to direct all of its efforts toward this unnecessary fishing expedition.

- Black Rock also seeks 30(b)(6) testimony about the "cost of maintaining the upgraded transmission line" for an indefinite period of time.
    - Black Rock never asserts how the Company would know today what it will cost to maintain this line ad infinitum, nor how such knowledge would bear on whether an upgrade in transmission *capacity* is needed. Presumably Black Rock wants to show that the proposed upgraded line will cost more than the existing line. But to what point? The existing line is only a single circuit 46 kV and the new line will be a double circuit 138 kV / 46 kV line. Even assuming the latter does cost more than the former-- that is irrelevant to the question of need.
- Several of Black Rock's deposition and discovery requests are aimed at identifying all individuals at the Company and all individuals at Promontory that negotiated for the easement for the Option 1 and Option 2 alignment.
    - Again, this information is entirely irrelevant and is not likely to lead to the discovery of relevant information going to whether the Company needs this Project. Whether the answer was each company's president or each company's lowest level employee has no bearing on the issue of whether the Company needs this project to deliver power to its customers. Most likely Black Rock seeks this information to expand its already unsupportable net of discovery requests. But providing a deponent or a written response to Black Rock only

consumes Company resources and provides no relevant material for this proceeding.

- Finally, many of Black Rock's deposition and written discovery requests attempt to force the Company to compare the costs or efficiencies of building the upgraded line in Summit County (on Promontory's property where the 46 kV line exists) to the Company's current alignment. All of these discovery and deposition requests are irrelevant and un-answerable.
    - First, under the statute at play, whatever route the Company choses is the "standard cost" to which the County's proposal would be compared. There is no mechanism for a third-party to propose another route, outside of the county, and use that as "standard cost."
    - Second, if the landowner in Summit County disputes whether the Company can upgrade a single-circuit 46kv line into a double circuit 138kv line in the same easement corridor, the questions become unanswerable. The Company doesn't have that cost information. Simply stated the costs are not required to be analyzed under the statute, and the request is irrelevant, and it is unanswerable by the Company.
    - All of Black Rock's requests going to a comparison of a route that the Company *did not select* in Summit County are irrelevant as beyond the purview of this Board. As this Board stated in its June 21, 2010 Order in the matter of *Rocky Mountain Power v. Tooele County* "The County contends the Board's role is to conduct its own analysis of all alternative routes identified . . . and any other route that the Board believes to warrant consideration . . . [and] order [the

Company] to apply for an alternate route. . . . The Board disagrees." (Order at pp.6-7, attached as exhibit A to the Company's Memorandum in Support of Petition for Review).

- As neither Black Rock nor the Board can order the Company to apply for a route the Company didn't select, onerous discovery into what it would have cost to install an alternate route, how safe an alternate route would be, and the like are all irrelevant and should be precluded.

CONCLUSION

In sum, the Company respectfully requests the Board order that the Company not be required to respond to Black Rocks' discovery requests until after the Board has ruled on the motion for reconsideration. At that point, in the event Black Rock remains a party, the Company requests an order clarifying the limited scope of permissible discovery and placing reasonable limits on discovery, limits that consider the scope of this proceeding, the truncated schedule, and proportionality requirements demanded by the Rules of Civil Procedure. The Company asks that its objections to the propounded discovery be sustained, that Black Rock demonstrate a need to conduct discovery in light of what is provided in pre-filed testimony and exhibits, and that Black Rock's discovery be limited to the issue before this Board: whether the proposed facility is needed for the utility's customers.

DATED: April 8, 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 the 8th day of April, 2016, a true and correct copy of **MOTION FOR PROTECTIVE ORDER PERTAINING TO DISCOVERY PROPOUNDED BY BLACK ROCK INTERVENTION GROUP** was served upon the following as indicated below:

By Electronic-Mail:

Beth Holbrook (bholbrookinc@gmail.com)
Utah League of Cities and Towns

Data Request Response Center (datarequest@pacificorp.com)
PacifiCorp

Heidi Gordon (heidi.gordon@pacificorp.com)
R. Jeff Richards (robert.richards@pacificorp.com)
Rocky Mountain Power

Scott Sweat (ssweat@wasatch.utah.gov)
Tyler Berg (tberg@wasatch.utah.gov)
Wasatch County

Patricia Schmid (pschmid@utah.gov)
Justin Jetter (jjetter@utah.gov)
Rex Olsen (rolsen@utah.gov)
Robert Moore (rmoore@utah.gov)
Assistant Utah Attorneys General

Jeremy C. Reutzel (jreutzel@btjd.com)
Bennett Tueller Johnson & Deere
Attorneys for Mark 25 LLC and Black Rock Ridge Entities

By U.S. Mail:

Division of Public Utilities
160 East 300 South, 4th Floor
Salt Lake City, Utah 84111

Office of Consumer Services
160 East 300 South, 2nd Floor
Salt Lake City, Utah 84111

/s/ D. Matthew Moscon