ORIGINAL

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Attorneys for Intervenors

BEFORE THE UTAH UTILITY FACILITY REVIEW BOARD

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

Intervenors, through counsel and pursuant to Utah Administrative Rule R746-100-8(C)(3) and Utah Rule of Civil Procedure 37, submit this Memorandum in Opposition to Rocky Mountain Power's Motion for a Protective Order.

INTRODUCTION

Under Utah law, a party to a formal adjudicative proceeding is entitled to seek discovery as allowed by the Utah Rules of Civil Procedure. Such discovery includes written interrogatories, documents requests, requests for admission, and, of course, depositions. In this

particular proceeding, the Board has ordered the parties to comply with discovery requests within five business days of receiving the request. In compliance with these provisions, Intervenors served Petitioner Rocky Mountain Power ("***RMP***") with discovery requests and a notice of deposition. But to date, RMP has refused to provide any documents or make representatives available for a deposition. In fact, in communications with Intervenors, RMP has taken the position that any discovery is inappropriate and unnecessary.

Now, without citing any controlling legal authority, RMP asks this Board for a protective order allowing it to ignore Intervenors' discovery requests (the "***Motion***"). RMP asserts that Intervenors' discovery requests seek irrelevant information and are "grossly overbroad." RMP also maintains that it has already provided much of the information Intervenors seek in its pre-filed written testimony, obviating the need for depositions. Finally, RMP argues that it should not be required to respond to any discovery requests until after its motion to reconsider Intervenors' petition to intervene has been decided.

The Board should reject each of these arguments and deny RMP's Motion. First, as explained more fully below, the central issue in this proceeding is whether relocating a segment of RMP's transmission line from Summit County to Wasatch County is necessary for the safe, reliable, adequate, and efficient provision of service to RMP's customers. Intervenors' requests are reasonably tailored to that specific issue—both temporally and geographically. Second, because the primary purpose of discovery is to allow parties to find evidence that is harmful, rather than helpful, to their opponent's case, RMP's pre-filed written testimony is no substitute for a deposition or written discovery.

Finally, Intervenors' status as a party to this proceeding was not altered in any way by RMP's motion to reconsider. Intervenors now have less than two weeks to evaluate the relevant evidence and finish preparing their pre-filed written testimony and legal brief. Allowing RMP any further delay in furnishing complete discovery responses and making RMP representatives available for a deposition will hinder Intervenors' ability to prepare their case. For these reasons, Intervenors ask the Board to deny RMP's Motion and order prompt responses to Intervenors' discovery requests.

ARGUMENT

I. Intervenors are entitled to pursue discovery, and their requests are both relevant and reasonable in scope.

Intervenors served discovery requests and a notice of deposition on RMP soon after they were permitted to intervene in this proceeding. *See* Docket. RMP has refused to schedule a deposition or provide any information in responses to the written discovery requests. RMP's initial objection was that the need for any depositions or written discovery was completely obviated by pre-filed written testimony and inappropriate in this proceeding. *See* Correspondence, attached hereto as Exhibit 1. Now it asks for a protective order, characterizing the requests as "extraordinary discovery" that is "overbroad, unnecessary[,] irrelevant," and even "outrageous." *See* RMP's Mot., at 2, 5, 8. Promontory, who has joined RMP's motion, goes even further, calling the requests "a virtual jihad" and "rabid overreaching." *See* Promontory's Joinder, at 2, 4. Contrary to these assertions, Intervenors' requests are plainly authorized by the applicable procedural rules and directly relevant to the narrow question presented to the Board.

First, Intervenors have every right to pursue discovery. Parties to a formal adjudicative proceeding are entitled to pursue discovery according to the Utah Rules of Civil Procedure,

unless the agency enacts rules to the contrary. *See* Utah Code Ann. § 63G-4-205. Soon after RMP filed its Petition for Review in this matter, both Wasatch County and RMP requested that the Board conduct a formal adjudicative proceeding as allowed by Utah Code section 54-14-304(2)(a). The Board agreed that "this matter should be conducted as a formal adjudicative proceeding," *see* Scheduling Oder, at 1, and it further ordered the parties to "respond to requests for data or discovery within 5 business days of receipt." *Id.* at 5. Thus, because this is a formal adjudicative proceeding and there are no other rules limiting discovery, the Board has ordered the parties to conduct discovery under the Utah Rules of Civil Procedure while imposing a requirement for expedited responses. Intervenors, as parties to this proceeding, are accordingly entitled to pursue relevant discovery, including written interrogatories, document requests, requests for admission, and depositions.

Second, Intervenors' requests are relevant to the question presented to this Board, which is whether relocating a segment of the transmission line from Summit County to Wasatch County is "needed to provide safe, reliable, adequate, and efficient service to" RMP's customers. *See* Utah Code Ann. § 54-14-303(1)(d). As the parties discussed at length in the proceedings before Wasatch County, the transmission line currently runs along a one-hundred-year-old easement through Promontory's property in Summit County. Intervenors intend to demonstrate that the location of that one-hundred-year-old easement is adequate for the construction of the proposed upgraded transmission line. It simply cannot be said that the location identified in RMP's application for a conditional use permit is necessary for RMP to provide safe, reliable, adequate, and efficient service—RMP can upgrade the line right where it has been for generations.

Intervenors requests are relevant to this issue. The Utah Supreme Court has noted that relevance "is not a particularly high bar to clear." *State v. Reece*, 2015 UT 45, ¶ 64, 349 P.3d 712. Evidence is relevant if "it has *any* tendency to make a fact more or less probable than it would without the evidence" and that fact "is of consequence in determining the action." *Id.* (quoting Utah R. Evid. 401) (emphasis added). In the context of discovery, the bar is even lower, provided the request is proportional. *See* Utah R. Civ. P. 26(b) Advisory Committee Notes ("[U]ltimate admissibility is not an appropriate objection to a discovery request so long as the proportionality standard and other requirements are met."). As demonstrated below, Intervenors' requests clear this hurdle.

A. Written Discovery

Beginning with Intervenors' written discovery, almost all of the requests are limited temporally and geographically by a set of defined terms Intervenors set forth in the definitions section of their discovery requests:

- "Transmission Line" means the "specific segment of the existing RMP 46 kV transmission line running from the Coalville Substation to the Silver Creek Substation that is currently situated in Summit County, Utah across land owned by Promontory." *See* Discovery Requests, attached hereto as Exhibit 2, at 4.
- The term "Original Easement" means the "right-of-way RMP owns or has owned in Summit County and/or Wasatch County across Promontory's property where the Transmission Line is currently located." *Id.*

- The term "New Easement" refers to "any right-of-way RMP has acquired to construct and operate the Upgraded Transmission Line on Promontory's Property in Wasatch and/or Summit County." *Id.*

Read in light of these definitions, Interrogatories Nos. 1 through 7 specifically ask for information about RMP's decision to move the transmission line from the Original Easement to the New Easement on Promontory's property, including why such a move is necessary for RMP to provide safe, reliable, adequate, and efficient service to its customers. *See id.* at 7–8. None of them seek information about other segments of the transmission line or historical information that predates RMP's conditional use permit application before Wasatch County. Each of these seven interrogatories is therefore relevant and proportional.

Similarly, four of Intervenors' requests for production sought documents containing (1) the New Easement; (2) the Original Easement; (3) agreements or communications between RMP and Promontory regarding the Transmission Line or the Upgraded Transmission Line; and (4) documents containing RMP's analysis of the "safety, reliability, adequacy, or efficiency of service" associated with placing the Upgraded Transmission Line on either the Original Easement or the New Easement. *See id.* at 8–9. These document requests all seek information directly relevant to whether RMP's Original Easement in Summit County is sufficient to construct the Upgraded Transmission Line. And if the Original Easement is sufficient, RMP cannot claim that moving a segment of that line to Wasatch County is "needed" to provide "safe, reliable, adequate, and efficient" service to its customers. *See* Utah Code Ann. § 54-14-303(1)(d). These four requests are therefore relevant and proportional.

Like the interrogatories and requests for production just discussed, each of the five requests for admission is also limited to issues regarding the construction of the Upgraded Transmission Line on the Original Easement or the New Easement. Intervenors asked RMP to admit that (1) RMP still owns the Original Easement; (2) RMP could construct the Upgraded Transmission Line on the Original Easement; (3) "the route will be longer" if the line is constructed on the New Easement; (4) constructing the Upgraded Transmission Line on the Original Easement will be less expensive than constructing it on the New Easement; and (5) "RMP does not have a sufficient easement for the Option 2 described in its conditional use application to Wasatch County." *Id.* at 9–10. Each request is tailored geographically and temporally to the issue before this Board—whether RMP can establish that relocating a segment of the transmission line from Summit County to Wasatch County is "needed" to provide safe, reliable, adequate, and efficient service. *See* Utah Code Ann. § 54-14-303(1)(d).

Intervenors acknowledge that Interrogatory No. 8 and Request for Production No. 6 potentially sweep a bit broader than the others. Intervenors asked RMP to identify "landowners within the proposed corridor of the Upgraded Transmission Line" who did not grant RMP a new, updated, or revised easement, and they also asked for correspondence between RMP and those landowners. *See* Ex. 2, Discovery Requests, at 8, 9. Intervenors defined "Upgraded Transmission Line" to mean "the proposed 138 kV power transmission line that RMP seeks to construct," which could fairly be read as a reference to the entire 67-mile line. *See* Ex. 2, Discovery Requests, at 4. And because these two requests refer to the Upgraded Transmission Line without mentioning the New Easement, the Original Easement, or Promontory's property, it

is possible to read them as seeking information unrelated to the segments of the line in Summit County and Wasatch County that are at issue in this proceeding.

But the proper response to a discovery request a party believes is overbroad is not a blanket refusal to answer. Rather, the responding party must answer "any part of a request that is not objectionable." *See* Utah R. Civ. P. 34(b)(2); *see also* Utah R. Civ. P. 33(b) ("The party shall answer any part of an interrogatory that is not objectionable."); Utah R. Civ. P. 36(b)(3) ("The party shall admit or deny any part of a matter that is not objectionable."). Moreover, had RMP simply contacted Intervenors and asked for clarification regarding the scope of these requests, Intervenors would have clarified that they are interested only in affected property owners in Summit County and Wasatch County. Based on publicly available documents from the Summit County Planning Commission, Intervenors believe there are only four or five property owners whose correspondence with RMP would fall within the scope of this request. Locating responsive documents would hardly be onerous. Further, the documents are likely to contain relevant information. Intervenors have reason to believe that RMP has taken the position in negotiations with landowners that the original 1916 easements—which Intervenors believe are identical to the one crossing Promontory's property—are perfectly suitable for the construction of the Upgraded Transmission Line. These documents could therefore demonstrate that RMP can construct the Upgraded Transmission Line right where the Transmission Line has been located for 100 years, so the proposed relocation to Wasatch County would not be "needed" to provide safe, reliable, adequate, and efficient service.

The same principle applies to Intervenors' Request for Production No. 2. Intervenors requested all documents "RMP has provided to any other county or municipality in Utah

regarding the Transmission Line or the Upgraded Transmission Line." *See* Ex. 2, Discovery Requests, at 8. Intervenors acknowledge that it is possible to read this request rather expansively because the defined terms "Transmission Line" and "Upgraded Transmission" line have no temporal limitations. But as noted above, the term "Transmission Line" is specifically limited to the segment crossing Promontory's property in Summit County. *See id.* at 4. And the intent of the request was to locate all documents related to RMP's efforts to *upgrade* the segment of the line in Summit County and Wasatch County, not obtain "[o]ne hundred years of communications" regarding the entire the transmission line. *See* RMP's Mot. at 8–9. That much more limited set of documents is responsive to the request, relevant, and proportional, so RMP had an obligation to provide such documents even if it believed the request otherwise called for objectionable material. *See* Utah R. Civ. P. 34(b)(2).

B. Deposition Topics

The topics listed in RMP's Notice of Deposition are also relevant and proportional. In its Motion, RMP objects to several deposition topics, including the "[s]afety risks associated with constructing an upgraded transmission line on the Original Easement and/or the New Easement." *See* RMP's Mot. at 7. RMP contends that preparing a witness to address this topic would require it to examine safety risks across the entire "67 miles" of the Transmission Line throughout its "entire 100-year safety history." *See* RMP's Motion, at 7.

That is not a fair reading of the deposition notice. Like the discovery requests, this topic is limited by two defined terms in the notice—"Original Easement" and "New Easement." As in the discovery requests, the "Original Easement" refers to "the easement in favor of RMP across property owned by Promontory . . . in Summit County, Utah, where [RMP's] presently existing

46 kV transmission line is located." *See* Notice of Deposition, attached hereto as Exhibit 3. The "New Easement" means the easement "Promontory has granted RMP for the relocation of the transmission line to another portion of its property near the border of Wasatch County and Summit County." *Id.* These defined terms limit the scope of potential deposition testimony to the safety risks of constructing a small segment of the Upgraded Transmission Line on either of the two easements across Promontory's property. Nothing in this topic calls for information related to "the 100-year safety history of the Company's existing 46 kV line." *See* RMP's Mot. at 7–8. Further, the information called for by topic is relevant to assess whether RMP's proposed relocation of the line is "needed" to provide "safe" service to its customers—for example, the deposition testimony may show that constructing the Upgraded Transmission Line on the Original Easement would pose fewer safety hazards than would an Upgraded Transmission Line on the New Easement.

Next, RMP objects to providing deposition testimony regarding its "negotiations and communications with landowners adjacent to the proposed transmission line" who have not provided RMP with updated easements. *See* RMP's Mot. at 8. RMP claims it will have to prepare a witness about "every communication the Company has had" with landowners across "67 miles of land in two states." *Id.* As explained above, however, Intervenors are interested in communications with only four or five landowners in Summit County that they believe fit the description in the deposition notice, so the relevant universe of communications is in reality quite limited. Intervenors have reason to believe these communications will show that RMP has taken the position in negotiations with property owners that the historical 1916 easements (which are likely identical to Promontory's Original Easement) are sufficient to permit construction of the

Upgraded Transmission Line in Summit County. And that information is relevant to the showing of necessity RMP must make to prevail in this proceeding.[1]

C. Other Objections

RMP raises two broad objections that apply to most of the discovery requests and deposition topics. It first objects to any topics or requests that involve comparing the route it selected in its conditional use application with the route along the original easement. *See* RMP's Mot. at 10. RMP contends that comparing the two routes is "beyond the purview of this Board," so any related information is irrelevant. *Id.* In support, it cites the Board's order in *Rocky Mountain Power v. Tooele County* where the Board rejected Tooele County's invitation to "conduct [the Board's] own analysis of all alternative routes identified . . . and any other route that the Board believes to warrant consideration." *Id.* at 11. In that proceeding, however, Tooele County had not proposed *any* alternative routes for the proposed transmission line, nor was there an existing easement and one-hundred-year hold route upon which RMP could have constructed the proposed transmission line at issue. *See* Order, attached hereto as Exhibit 4. Here, by contrast, Wasatch County repeatedly urged RMP to construct the Upgraded Transmission Line on the original easement in Summit County and asked for evidence regarding the suitability of that easement for the proposed upgrade.

For that reason, this is not a case where the Board would be required to conduct "a *de novo* review of possible routes" through Wasatch County, nor would the Board's task be a

[1] RMP also objects to a deposition topic inquiring about the "cost of maintaining the upgraded transmission line." *See* RMP's Mot. at 9. No such topic appears in the deposition notice, nor does there appear to be any discovery request that calls for similar information. Intervenors therefore do not address this objection from RMP's Motion. *See* Ex. 3, Deposition Notice; Ex. 2, Discovery Requests.

"practical impossibility." *See* Ex. 4, Order at 7. RMP has already conducted a cost analysis of upgrading the line on the original easement and purportedly charged Promontory the difference between that cost and the cost to relocate the transmission line, and there is no other location at issue. Further, and perhaps most importantly, nothing in the Facility Review Board Act limits the scope of the Board's review in the manner RMP has suggested. *See* Utah Code Ann. § 54-14-303(1)(d). To the contrary, the Board must "leave to the local government any issue that does not affect the provision of safe, reliable, adequate, and efficient service to customers of the public utility." *Id.* § 54-14-305(5). If, as Intervenors assert, the Upgraded Transmission Line could be constructed on the Original Easement without adversely affecting RMP's ability to provide safe, reliable, adequate, and efficient service, there would be no basis to overturn Wasatch County's decision to enforce its own local ordinances. Accordingly, comparing the expense and efficiency of an Upgraded Transmission Line constructed on the Original Easement with one constructed on the New Easement is relevant to this proceeding, and RMP must answer discovery requests seeking such information.

RMP also argues that answering the requests will be unnecessarily duplicative in light of its pre-filed written testimony. *See* RMP's Mot. at 4. But nothing would prevent RMP from answering a discovery request by citing to specific exhibits attached to its pre-filed written testimony. There is no need for RMP to produce the same document twice. But more importantly, because pre-filed testimony is written to support a party's case-in-chief, RMP has no legal obligation to produce as part of such testimony any information in its possession that would undermine its position. Intervenors are entitled to pursue that information under the rules of civil procedure, UAPA, and the Board's scheduling order expressly allowing discovery. *See*

Utah R. Civ. P. 26(c) Advisory Committee Notes (noting that the purpose of discovery is to "permit[] parties to find witnesses, documents, and other evidentiary materials that are harmful, rather than helpful, to the opponent's case").

II. Pre-filed written testimony is no substitute for a deposition.

For similar reasons, RMP's assertion that pre-filed testimony obviates "the typical need for a deposition" is mistaken. RMP's Mot. at 4. It is true that one function of depositions is to get a preview of a witness's direct testimony in order to prepare meaningful cross-examination. *See id.* at 4. But there are other important reasons to depose an opposing party, including gathering information and probing weaknesses in each side's respective position.

For example, the rules of civil procedure already require a civil litigant to disclose summaries of any witness testimony that it intends to offer in support of its case-in-chief. *See* Utah R. Civ. P. 26(a(1)(A)(ii). But no one would suggest that this summary obviates the need for a deposition, because litigants have no obligation to provide information in such summaries that undermines (rather than supports) their case-in-chief. *See id.*

Similarly, in this proceeding, a deposition will allow Intervenors to question an RMP representative about important issues that were not addressed in its pre-filed written testimony, like the suitability of the Original Easement for the Upgraded Transmission Line. It will also allow Intervenors to question an RMP representative regarding weaknesses in RMP's position, which it has no obligation to address in pre-filed written testimony. And assuming the Board limits cross-examination to the scope of pre-filed testimony, a deposition may be the only opportunity to elicit such information. *See* Utah Administrative Rule R746-100-10(G) (noting that parties may "cross-examine the witness" in a formal proceeding on the "original prefiled

testimony" and any "summary of such written testimony"). For these reasons, not only are depositions plainly allowed by the controlling legal provisions (as discussed in section I), but they are also necessary notwithstanding the pre-filed written testimony filed by RMP.

III. Intervenors' status as parties to this proceeding was not altered by RMP's Motion to Reconsider.

RMP has also asked that it be excused from answering any discovery requests until this Board rules on its motion to reconsider Intervenors' petition to intervene. This is not a proper objection. The Board's order did not grant Intervenors' petition provisionally, pending the resolution of a motion to reconsider. Rather, it made Intervenors parties to this proceeding with the ability to propound written discovery requests and depose witnesses. Filing a motion to reconsider cannot alter that order. And unless the Board decides to disturb its ruling, RMP has an obligation to comply with discovery requested pursuant to UAPA, the rules of civil procedure, and the Board's scheduling order.

IV. Promontory's objections are also improper.

Promontory has joined in RMP's motion, so Intervenors will briefly address arguments raised in its joinder motion. Promontory first asserts that allowing Intervenors to participate in this proceeding has opened a veritable floodgate of parties seeking to intervene and unnecessarily complicated the proceedings. *See* Promontory's Mot. at 2 ("As a result of Black Rock's intervention, the number of parties now seeking some kind of relief in this matter has grown from two to eight.") That assertion is irrelevant to RMP's Motion, and it also factually inaccurate. Only one other party—Promontory—has sought to intervene after the Board granted Intervenors' petition. Intervenors consist of four entities with identical interests who are represented by the same legal counsel. The two Promontory entities seeking intervention are

also represented by the same legal counsel. Further, the narrow issue presented in this case simply does not lend itself to lengthy discovery involving "thousands of pages of documents, and testimony from scores of witnesses," as Promontory asserts. *Id.* at 4–5. As discussed above, Intervenors seek a rather narrow universe of information regarding the suitability of the Original Easement for construction of the Upgraded Transmission Line and will conduct at most two depositions. It is therefore simply not the case that intervention has resulted, or will result, in the parade of horribles Promontory suggests.

Promontory also contends that as a direct result of Intervenors' participation in this proceeding, the Board has been required to consider a host of motions:

- Promontory's Motion to Intervene;
- Rocky Mountain Power's Motion for Reconsideration;
- Intervenors' Opposition to the Motion for Reconsideration;
- Intervenors' Statement of Discovery Issues;
- Rocky Mountain Power's Motion for a Protective Order; and
- Promontory's Joinder in the Motion for a Protective Order.

See Promontory's Mot. at 3. This is a curious assertion. Not only is it irrelevant to RMP's Motion, but four of these six motions were filed independently by Promontory or RMP—the Motion to Reconsider, the Motion to Intervene, the Motion for a Protective Order, and Promontory's Joinder in the Motion for a Protective Order. Intervenors filed the other two in response to RMP's refusal to answer any discovery requests, and, of course, to oppose RMP's motion urging the Board to modify its order permitting intervention. Compliance by RMP and Promontory with simple discovery requests plainly authorized by Utah law would have

eliminated virtually all of the pending motions Promontory identifies. Promontory has therefore failed to advance any argument pertinent to RMP's Motion for a protective order.

CONCLUSION

Neither RMP nor Promontory have cited to a single legal authority that justifies their refusal to comply with Intervenors' discovery requests. UAPA, the Utah Rules of Civil Procedure, and the Board's scheduling order plainly allow Intervenors to serve written discovery requests, issue subpoenas, and depose witnesses. Further, Intervenors' discovery requests and deposition topics are appropriately limited to the pivotal issue in this proceeding—whether relocating the transmission line from the Original Easement in Summit County to the New Easement in Wasatch County is "needed" for RMP to provide "safe, reliable, adequate, and efficient service" to its customers. Contrary to RMP's assertions, Intervenors have not sought documents regarding the full 67-mile transmission line across two states, nor are they interested in digging up the 100-year safety record of the original 46 kV transmission line. Rather, Intervenors' requests and deposition topics are appropriately limited to RMP's efforts to upgrade and relocate the transmission line in Wasatch County and Summit County. For these reasons, complying with these requests will not be unduly burdensome, and RMP's Motion for a protective order should therefore be denied.

DATED this 13th day of April 2016.

BENNETT TUELLER JOHNSON & DEERE

/s/ Jeremy C. Reutzel
Jeremy C. Reutzel
Ryan M. Merriman
Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I CERTIFY that on April 13, 2016, a true and correct copy of the foregoing document was served upon the following as indicated below:

By Electronic-Mail:

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

David Wilson (dwilson@co.weber.ut.us)
Utah Association of Counties

Data Request Response Center (datarequest@pacificorp.com)
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/s/ Chalise Walsh

EXHIBIT 1

-----Original Message-----
From: Moscon, Matthew [mailto:matt.moscon@stoel.com]
Sent: Friday, April 01, 2016 9:56 AM
To: Jeremy Reutzel
Cc: Tyler Berg (tberg@wasatch.utah.gov); Ryan Merriman; Eliza Bower; heidi.gordon@pacificorp.com
Subject: Re: Rocky Mountain v. Wasatch County

Thanks for the heads up Jeremy

I'm out of town until Monday. I suspect my client may object to the depositions on a few grounds-- one of which being that the purpose of the prefiled testimony is to obviate the need for depos which are not typically taken in regulatory proceedings, among others. But I'll connect back with you on Monday after I'm able to connect with my client (or sooner if I'm able)

Thanks

Matt

On Apr 1, 2016, at 8:53 AM, Jeremy Reutzel <jreutzel@btjd.com<mailto:jreutzel@btjd.com>> wrote:

Matt,

We intend to take at least two depositions. First, we want to take a Rule 30(b)(6) deposition of Rocky Mountain regarding the following topics:

1. Rocky Mountain's application for a conditional use permit from Wasatch County for the proposed upgraded transmission line;

2. Any documents Rocky Mountain has submitted to Wasatch County and Summit County regarding the upgraded transmission line;

3. Rocky Mountain's communications and agreements with Promontory Investments, LLC regarding the new easement near Intervenors' property;

4. Rocky Mountain's decision to relocate the transmission line from its current location to the new easement;

5. The safety risks associated with constructing the upgraded transmission line on both the original easement and the new easement;

6. Any adverse effects to the reliability, adequacy, and efficiency of Rocky Mountain's service to customers if the upgraded transmission line were constructed on the original easement versus the new easement;

7. The "standard cost" (as defined in Utah Code section 54-14-103(9)(a)) of constructing the upgraded transmission line on both (a) the original easement and (b) the new easement;

8. Rocky Mountain's communications and negotiations with landowners regarding the proposed upgraded transmission line; and

9. The cost of maintaining the upgraded transmission line.

Second, we intend to subpoena and depose Promontory. I propose we take those depositions April 14 and 19.

Please let me know if any of those dates will not work for you or your client.

Regards,

<image001.jpg>
Jeremy C. Reutzel
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From: Morris, Mark [mailto:mmorris@swlaw.com]
Sent: Tuesday, April 05, 2016 11:07 AM
To: Jeremy Reutzel; matt.moscon@stoel.com
Cc: Ryan Merriman; Eliza Bower
Subject: RE: Rocky Mountain v. Wasatch County

Jeremy,

Promontory does not believe that discovery is appropriate in this proceeding, as it is a matter for RMP to present to the Board. As I indicated in the Conditional Petition I filed yesterday, if Promontory is permitted to intervene (and by default your clients are as well), then I think we have multiple parties the Board will have to deal with and an adjustment to the schedule will be necessary. If the Board permits discovery, then of course your clients as well will need to make themselves available, and we'll have many attorney and client schedules to accommodate.

From our perspective we think it makes sense to see what the Board does with the motion to reconsider, and go from there. I'm happy to get on a conference call with you and Matt to discuss this further, but I think any discovery will require agreement of counsel and coordination amongst us.

Although I hope we don't have to work together on this case, I appreciate the outreach and if the

Board deems it necessary, look forward to getting better acquainted with you.

Kind regards,

Mark

Mark O. Morris
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From: Jeremy Reutzel [mailto:jreutzel@btjd.com]
Sent: Monday, April 04, 2016 4:52 PM
To: matt.moscon@stoel.com; Morris, Mark
Cc: Ryan Merriman; Eliza Bower
Subject: Rocky Mountain v. Wasatch County

Matt,

As I mentioned last week, we want to depose Rocky Mountain. I understand you are contemplating objecting. In the meantime, however, I need to get deposition notices sent out. Can you provide me with dates. I understand that you will reserve your right to object to the depositions and may file a motion with the Board.

Mark,

I understand you represent Promontory. We would also like to depose Promontory regarding its dealings and agreements with Rocky Mountain and its plans for the real property subject to the old easement. Can you also provide me with available dates? I will issue a subpoena once I have your available dates. I assume you are willing to accept service of the subpoena?

Regards,

Jeremy C. Reutzel
BENNETT TUELLER JOHNSON & DEERE
Millrock Park West Building
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Salt Lake City, Utah 84121
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EXHIBIT 2

Jeremy C. Reutzel (10692)
Ryan M. Merriman (14720)
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Attorneys for Intervenors

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.	**INTERVENORS' FIRST SET OF DISCOVERY REQUESTS TO PETITIONER ROCKY MOUNTAIN POWER** **Docket No. 16-035-09**

Pursuant to Rules 33, 34, and 36 of the Utah Rules of Civil Procedure, Utah Code section 63G-4-205(1)–(2), and the Board's Scheduling Order entered March 24, 2016, Intervenors Mark 25, LLC ("***Mark***"); Black Rock Ridge Master Homeowners Association, Inc. ("***Master Association***"); Black Rock Ridge Townhome Owners Association, Inc. ("***Townhome***

Association"); and Black Rock Ridge Condominium Association, Inc. ("***Condo Association***"), by and through counsel of record, hereby submit their first set of discovery requests to Petitioner Rocky Mountain Power ("***RMP***"). The Master Association, Townhome Association, Condo Association, and Mark are collectively referred to as the "***Intevenors***" herein.

You are required within five (5) business days of service hereof to respond, under oath and in writing, to each of the following interrogatories, and to produce for inspection and copying at the offices of Bennett Tueller Johnson & Deere, 3165 East Millrock Drive, Suite 500, Salt Lake City, Utah 84121, the documents and things described in the following requests for production of documents and things.

Please take notice that, pursuant to Rule 36 of the Utah Rules of Civil Procedure, the matters in the requests for admissions shall be deemed admitted unless said requests for admissions are responded to within 5 business days after service of these Requests or within such shorter or longer time as the Board may allow.

INSTRUCTIONS

You are required to answer these Requests to the extent of all information that is available or may be available to you or any person, firm, corporation, or other entity acting on your behalf and not merely information within your personal knowledge. If any information called for by any of these Requests is not available in the full detail requested, such Request shall be deemed to require you to set forth the information related to the subject matter of the Request in such detail as is available, including and describing the method by which any estimate is made.

2. If you believe that all or any part of these Requests invade any privilege which you desire to assert, you shall nonetheless respond to each part of the Request that does not invade the asserted privilege. As to each part for which any privilege is claimed, state the basis for the assertion of the privilege and sufficient information to apprize the parties of the nature and extent of the privilege asserted.

3. If you attempt to answer any interrogatory by production of documents, designate which documents are responsive to which interrogatory, including the subsection thereof, as required by Rule 33(d) of the Utah Rules of Civil Procedure.

4. The conjunctives "and" and "or" as used in these Requests shall be construed both conjunctively and disjunctively and shall include the other.

5. Every word written in the singular shall be construed as plural and every word written in the plural shall be construed as singular where necessary to facilitate complete answers to these Requests.

6. If a privilege is claimed as to any document, provide the information necessary to identify the document and state separately for each document claimed to be privileged the reason for the claim of the privilege.

7. These Requests are deemed continuing, and should additional information come to light to be developed by you as to the questions propounded or documents requested to be identified, the same shall promptly be supplied as a supplement to the answers requested to be submitted hereunder and/or documents to be identified.

8. The answers to these Requests or objections made thereto by a party represented by an attorney shall be signed by at least one attorney of record in the attorney's individual name, and the attorney's address shall also be stated.

DEFINITIONS

1. The term "RMP," "you," or "your" shall refer to Rocky Mountain Power, its employees, agents, attorneys, consultants, investigators, beneficiaries, trustees, parent companies, subsidiaries, or other representatives, and all other persons acting on its behalf.

2. The term "Promontory" shall refer to Promontory Investments, LLC, an Arizona company, its employees, agents, attorneys, consultants, investigators, beneficiaries, trustees, or other representatives, and all other persons acting on its behalf.

3. The term "Transmission Line" shall refer to the segment of the existing RMP 46 kV power transmission line running from the Coalville Substation to the Silver Creek Substation that is currently situated in Summit County, Utah across land owned by Promontory.

4. The term "Upgraded Transmission Line" shall refer to the proposed 138 kV power transmission line that RMP seeks to construct.

5. The term "Original Easement" shall refer to the right-of-way RMP owns or has owned in Summit County and/or Wasatch County across Promontory's property where the Transmission Line is currently located.

6. The term "New Easement" shall refer to any right-of-way RMP has acquired to construct and operate the Upgraded Transmission Line on Promontory's property in Wasatch County and/or Summit County.

7. The term "Document(s)" is intended to be comprehensive and to include, without limitation, all forms of electronic and digital information, schedules, letters, reports, memoranda, records, studies, notices, recordings, photographs, papers, charts, analyses, graphs, indices, data sheets, notes, notebooks, diaries, forms, manuals, brochures, lists, publications, drafts, minutes, credits, debits, claim sheets, accounting records, accounting worksheets, telegrams, stenographic notes, policy statements, sound recordings or transcripts of those recordings, telephone diaries, microfilm, microfiche, video tape, litigation proceedings in progress, computer runs and printouts, or any documents necessary to the comprehension or understanding of any computer runs, such as a code for computer runs or a printed or recorded matter of any kind. This definition applies without regard to whether the document is in your custody or possession or under your control.

8. To "identify a document" means to state with respect thereto:

a. the title of the document;

b. the date appearing thereon and the date of the document's preparation;

c. the name and title of the document's author(s) and signer(s);

d. the name(s) and address(es) of the person(s) to whom the document was addressed and distributed;

e. the substance of the document in sufficient detail to enable it to be identified;

f. the physical location of the original document (and of any copies which you have knowledge of) and the name(s) and address(es) of the custodian(s) thereof; and

g. whether the document voluntarily will be made available by you for inspection or copying.

In lieu of the foregoing subparagraphs (a) through (g), you may append to your answers a copy of each and every document so identified, with clear indication which Request is responded to by each such document.

If any document of which identification is sought has been lost or destroyed, state, in addition to the information required above, whether such document was (a) lost or (b) destroyed, and if lost, state the circumstances under which the document was lost and, if destroyed, state the circumstances under which such document was destroyed and identify each person responsible for or participating in such document's loss or destruction.

9. To "identify a person" who is an individual means to state his/her full name, his/her present business and residential address (or if unknown, the last known business and/or residential address), his/her business affiliations, positions, and business address at all relevant times.

10. To "identify all information" of a particular kind means to state with particularity each and every item of pertinent information which you possess, including personal opinions and conclusions, and to state with respect to each such item of information as much of the following as is known to you:

a. the date(s) on which you received or derived such information;

b. the identity (as set forth above) of each and every person from or through whom you receive or derived such information;

c. the identity (as set forth above) of each and every document through which you received or derived such information;

d. the identity of each and every oral communication through which you received or derived such information; and

e. the personal observations and/or experience on which any personal opinion or conclusion is based.

11. To "state the basis" of a claim, allegation, statement, denial, or defense means to provide a detailed summary of the facts, information, and matters which you believe support the claim, allegation, statement, denial, or defense, including, but not limited to, that same information called for in the foregoing definition of "identify all information," as set forth above.

INTERROGATORIES

INTEROGATORY NO. 1. Identify the individuals representing Promontory with whom RMP negotiated the New Easement.

INTEROGATORY NO. 2. Identify all individuals representing RMP who were involved in the decision to move the Transmission Line from the Original Easement.

INTEROGATORY NO. 3. Identify the individuals at RMP who negotiated with Promontory to acquire the New Easement.

INTEROGATORY NO. 4. State the basis of your claim in your Petition for Review that the Upgraded Transmission Line must be constructed in Wasatch County (rather than on the

Original Easement) in order for RMP to provide safe, reliable, adequate, and efficient service to its customers.

INTEROGATORY NO. 5. Identify all information regarding any safety risks associated with constructing the Upgraded Transmission Line on the Original Easement and/or the New Easement.

INTEROGATORY NO. 6. Identify all information regarding any adverse effects to the reliability, adequacy, and efficiency of service to RMP's customers if the Upgraded Transmission Line were constructed on the Original Easement and/or the New Easement.

INTEROGATORY NO. 7. Identify all information regarding the "standard cost" (as defined in Utah Code section 54-14-103(9)(a)) of constructing the Upgraded Transmission Line on (a) the Original Easement and (b) the New Easement, and provide a description of your calculations for both figures.

INTEROGATORY NO. 8. Identify the landowners within the proposed corridor of the proposed Upgraded Transmission Line who have not granted RMP a new, updated, or revised easement in connection with the Upgraded Transmission Line.

REQUESTS FOR PRODUCTION OF DOCUMENTS

REQUEST NO. 1. Produce all Documents containing agreements or communications between RMP and Promontory regarding the Transmission Line and/or the Upgraded Transmission Line.

REQUEST NO. 2. Produce all Documents RMP has provided to any other county or municipality in Utah regarding the Transmission Line or the Upgraded Transmission Line.

REQUEST NO. 3. Produce a copy of the Original Easement.

REQUEST NO. 4. Produce a copy of the New Easement.

REQUEST NO. 5. Produce all Documents containing any studies, evaluations, analyses, or reports RMP has either conducted or hired another entity or person to conduct regarding the safety, reliability, adequacy, or efficiency of service associated with the Upgraded Transmission line on the Original Easement, the New Easement, and/or any other location on Promontory's property.

REQUEST NO. 6. Produce all correspondence RMP has had with landowners within the proposed corridor of the proposed Upgraded Transmission Line who have not granted RMP a new, updated, or revised easement in connection with the Upgraded Transmission Line.

REQUESTS FOR ADMISSIONS

REQUEST NO. 1. Admit that RMP still owns the Original Easement.

REQUEST NO. 2. Admit that RMP could construct the Upgraded Transmission Line on the Original Easement.

REQUEST NO. 3. Admit that if the Upgraded Transmission Line is constructed on the Original Easement, the route will be longer than if the Upgraded Transmission Line is constructed on the Original Easement.

REQUEST NO. 4. Admit that constructing the Upgraded Transmission Line on the Original Easement will be less expensive than constructing the Upgraded Transmission Line on the New Easement.

REQUEST NO. 5. Admit that RMP does not have a sufficient easement for the Option 2 described in its conditional use application to Wasatch County.

DATED the 31st day of March 2016.

BENNETT TUELLER JOHNSON & DEERE

/s/ Jeremy C. Reutzel
Jeremy C. Reutzel
Ryan M. Merriman
Attorneys for Intervenors

EXHIBIT 3

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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.	**NOTICE OF DEPOSITION** **(Rocky Mountain Power)** **Docket No. 16-035-09**

PLEASE TAKE NOTICE that on Wednesday, April 27, 2016 at 10:00 a.m. at the offices of **Bennett Tueller Johnson & Deere, located at 3165 E. Millrock Drive, Suite 500, Salt Lake City, Utah 84121**, 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. will take the deposition of Petitioner Rocky Mountain

Power ("***RMP***") pursuant to Utah Rule of Civil Procedure 30(b)(6) and Utah Code section 63G-4-205. This deposition will be taken upon oral examination, before a duly authorized court reporter, pursuant to Rules 26 and 30 of the Utah Rules of Civil Procedure.

In accordance with Rule 30(b)(6) of the Utah Rules of Civil Procedure, RMP is directed to designate one or more officers, directors, managing agents, or other persons who consent to testify on its behalf and may set forth, for each person designated, the matters on which the person will testify. RMP's deposition shall be on the topics set forth in Exhibit A.

DATED this 7th day of April, 2016.

BENNETT TUELLER JOHNSON & DEERE

/s/ Jeremy C. Reutzel
Attorneys for Intervenors

CERTIFICATE OF SERVICE

I hereby certify that on the 7th day of April 2016, I caused a true and correct copy of the foregoing **NOTICE OF DEPOSITION** to be served upon each of the following as indicated below:

By Electronic-Mail:

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

David Wilson (dwilson@co.weber.ut.us)
Utah Association of Counties

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

Robert C. Lively (bob.lively@pacificorp.com)
Yvonne Hogle (yvonne.hogle@pacificorp.com)
Daniel Solander (daniel.solander@pacificorp.com)
Rocky Mountain Power

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

D. Matthew Moscon (matt.moscon@stoel.com)
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Assistant Utah Attorneys General

By U.S. Mail:

Promontory Development, LLC and
Promontory Investments, LLC

Mark O. Morris (mmorris@swlaw.com)
Snell & Wilmer LLP
15 West South Temple, Suite 1200
Salt Lake City, UT 84101

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/ Jeremy C. Reutzel

EXHIBIT A

Pursuant to Utah Rule of Civil Procedure 30(b)(6), Rocky Mountain Power is directed to designate one or more officers, directors, managing agents, or other persons to testify on its behalf regarding the following topics:

1. The location and scope of the easement in favor of RMP across property owned by Promontory Investments, LLC, or Promontory Development, LLC (collectively "***Promontory***"), in Summit County, Utah, where Rocky Mountain Power's presently existing 46 kV transmission line is located (the "***Original Easement***");

2. The location and scope of the new easement Promontory has granted RMP for the relocation of the transmission line to another portion of its property near the border of Wasatch County and Summit County (the "***New Easement***");

3. Any agreements RMP has reached regarding the relocation of the transmission line, including the negotiations which preceded any agreement;

4. Communications between RMP and Promontory regarding the Original Easement and the New Easement;

5. The factual basis for RMP's claim that relocating the transmission line from the Old Easement to the New Easement is necessary for RMP to provide safe, reliable, adequate, and efficient service to its customers;

6. Safety risks associated with constructing an upgraded transmission line on the Original Easement and/or the New Easement;

7. Any adverse effects to the reliability, adequacy, and efficiency of service to RMP's customers if an upgraded transmission line is constructed on the Original Easement or the New Easement;

8. The "standard cost" (as defined in Utah Code section 54-14-103(9)(a)) of constructing an upgraded transmission line on either the Original Easement or the New Easement;

9. RMP's negotiations and communications with landowners adjacent to the proposed transmission line who have not granted RMP a new, updated, or revised easement in connection with RMP's efforts to upgrade the transmission line;

10. All documents and applications RMP has submitted to Summit County or Wasatch County regarding the proposed upgraded transmission line as they relate to RMP's ability to prove safe, reliable, adequate, and efficient to service to RMP's customers;

11. Studies, evaluations, or reports RMP has either conducted or hired another entity or person to conduct regarding the safe, reliable, adequate, and efficient service associated with constructing the upgraded transmission line on either the Original Easement or the New Easement;

12. RMP's responses to discovery requests;

13. All documents RMP has produced in response to discovery requests;

14. RMP's efforts to locate documents and other information in response to Intervenors' discovery requests; and

15. RMP's document retention policies.

EXHIBIT 4

- BEFORE THE UTAH UTILITY FACILITY REVIEW BOARD -

In the Matter of the Petition for Review between Rocky Mountain Power and Tooele County for Consideration by the Utility Facility Review Board	)	DOCKET NO. 10-035-39
	)	ORDER

SYNOPSIS

The Board, having reviewed the substantial, competent and credible evidence before it, unanimously finds the Company's proposed Transmission Project is needed to provide safe, reliable, adequate and efficient service to its customers. The Board directs the County to issue the conditional use permit within 60 days of this Order.

ISSUED: June 21, 2010

By The Board:

This matter is before the Utah Utility Facility Review Board (Board) on Rocky Mountain Power's (Company) Petition for Review of Tooele County's (County) denial of the Company's application for a conditional use permit (CUP or Permit).

BACKGROUND

On March 30, 2010 the County denied the Company's application for a CUP for the construction and operation of the Mona to Oquirrh Transmission Project (Transmission Project). The Company contends the Transmission Project is needed to meet the present and future demand on its transmission system so that the Company may provide safe, reliable, adequate and efficient service.

Description of the Transmission Project in Dispute

As described generally by the Company, the Transmission Project will consist of a 500 kV single-circuit transmission line between the existing Mona substation near Mona, Utah and a proposed future Limber substation to be located in the southwestern portion of the Tooele Valley. A new 345 kV double-circuit transmission line will be constructed between the Limber substation and the existing Oquirrh substation located in West Jordan. A new 345 kV double-circuit transmission line will also be constructed from the Limber substation to the existing Terminal substation, located in Salt Lake City." *Direct Testimony of Brandon T. Smith, p.3, ll.23-28.* The Transmission Project is part of the Company's comprehensive transmission plan, called Energy Gateway, described in more detail below. *Direct Testimony of Darrell T. Gerard, p.5, l.20; see also discussion below.* The Mona to Oquirrh transmission segment is a component of Energy Gateway and comprises three sections, including the Limber to Oquirrh segment that passes through Tooele County. This segment is approximately 31 miles in length. The County's main reasons for denying the CUP pertain to an approximately three-mile-long portion of this segment in the southern end of the Tooele Valley and along the east bench.

Denial of the CUP

The Company is required to obtain various federal, state, and local permits and approvals before construction of the Transmission Project. One such approval is a right-of-way granted by the Bureau of Land Management (BLM) following issuance of its Final Environmental Impact Statement (Final EIS). Another approval is the CUP from the County.

The Company's CUP application adopts the BLM's preferred route through the County. That route, as described by the Company is as follows:

> The BLM's preferred route, as adopted by the Company, extends north from the Mona substation approximately 70 miles to the proposed site of the future Limber substation, to be located near the southwest corner of the Tooele Army Depot (the "Mona to Limber Segment"). The second segment of the route extends east from the Limber substation across the southern portion of the Tooele Valley and over the Oquirrh Mountains to the Oquirrh substation in West Jordan, Utah (the "Limber to Oquirrh Segment"). This segment is approximately 31 miles in length.

Petition for Review, p.12.

Prior to submitting its CUP application, the Company became aware of concerns expressed by certain Tooele County residents regarding the planned location of the Limber to Oquirrh transmission line. *See Direct Testimony of Brandon Smith, p.23, ll.6-7.* To address these concerns, the Company convened three conflict resolution meetings in August and September 2009. Those meetings included staff and elected officers of the County, Tooele City, Grantsville and other members of the public. The purpose of these groups was to identify other viable alternate routes. *See id at p.23.* As discussed in more detail below, those routes were either opposed by citizens of Grantsville, deemed unacceptable by the BLM, or deemed unacceptable by the Company due to various technical and cost-based constraints. *See id at pp.23-27.* The Company, however, did make adjustments to the proposed route based on input from interested stakeholders. For example, the Company moved the line further south—"away from residences in the foothills south of Tooele City, to minimize visual impacts, to avoid crossing future gravel operations, and to relocate the crossing of the Settlement Canyon Reservoir." *See id at p.27, ll.25-27.*

On December 10, 2009, the Company submitted its CUP application to the County. On March 3, 2010, the Tooele County Planning Commission denied the Company's CUP application. *See Petition for Review, Exhibit L.* On March 23, 2010, the Company appealed the denial of the CUP Application to the Tooele County Commission. On March 30, 2010, the Tooele County Commission denied that appeal. *Response to Petition for Review, Exhibit B.* The County Commission based its action on the County Planning Commission's findings of insufficient mitigation and failure to meet the burden of proof of showing mitigation in the following areas:

1. Wildlife
2. Disturbance of international smelter site
3. Settlement Canyon Reservoir use
4. Viewsheds including road scars
5. Potential contamination of water sheds and springs
6. Tooele High School's T for safety and visual look
7. Health risks regarding high power lines
8. Loss in property value
9. The EIS is not complete
10. The completion date is uncertain
11. The Record of Decision from BLM is not available
12. The Plan of Development is non-existent

See Petition for Review, Exhibit L.

As we explain more fully below, these concerns, except the four with safety implication, are outside the statutory scope of the Board's review.

ANALYSIS

The Board's Role and Process

The Board is governed by the provisions of the Utility Facility Review Board Act (Act), Utah Code §§ 54-14-101 *et seq*. The Board is composed of the three members of the Public Service Commission (PSC), an individual appointed by the governor from the Utah League of Cities and Towns, and an individual appointed by the governor from the Utah Association of Counties. *Utah Code Ann. §54-14-301(2).* The Legislature established the Board to resolve disputes between local governments and public utilities regarding the location of utility facilities. *See Utah Code. § 54-14-102(2).* The Legislative findings establishing the Board state:

> (a) The Legislature finds that the construction of facilities by public utilities under this title is a matter of statewide concern.
> (b) The construction of these facilities may affect the safety, reliability, adequacy, and efficiency of service to customers in areas within the jurisdiction of more than a single local government.
> (c) Excess costs imposed by requirements of a local government for the construction of facilities may affect either the rates and charges of the public utility to customers other than customers within the jurisdiction of the local government or the financial viability of the public utility, unless the local government pays for those excess costs.

Utah Code. § 54-14-102(1). Either a local government or public utility may seek Board review pursuant to the provisions of Utah Code §54-14-303. The Board must convene a hearing within 40 days. The Board must issue a written decision no later than 45 days following the initial hearing. *Utah Code §§ 54-14-305(1).*

The Board acknowledges the location and construction of major utility facilities involve many stakeholders and entail a diversity of opinions. In an effort to understand more

thoroughly the concerns held by Tooele County residents, the Board chose to hold public witness hearings, although the Act does not require them. The hearings took place on May 11, 2010 at the Deseret Peak Complex in Tooele County. Members of the public, including government officials, made comments. Additionally, the Board received much correspondence commenting on the proposed siting of the Limber to Oquirrh line.

The process of planning and permitting the Transmission Project has been complex and lengthy. It involves evaluating the need for the facility, potential locations, construction feasibility, and engineering requirements. It also involves compliance with a wide array of federal, state, and local laws, rules, and standards. The record shows the Company commenced planning the Transmission Project more than five years ago. *Direct Testimony of Brandon T. Smith, p.4, ll.20-22.* There has also been extensive analysis by the BLM, *see Direct Testimony of Brandon Smith, p.11, ll.1-7.* The BLM identified issues and concerns with the Transmission Project, *Id. at p.12-14,* and conducted a comprehensive analysis of alternative routes and substation sites, including assessing and comparing the impacts each potential route would have, and designating preferred routes. *See id. at p.15, 1-7.*

The County contends the Board's role is to "conduct its own analysis of all alternative routes identified in [the Company]'s petition and any other route that the Board believes to warrant consideration as a result of this hearing [or] in the alternative, order [the Company] to apply for an alternate route." *Response to Petition for Review*, p.11. The Board disagrees. The role of this Board under the governing statute, Utah Code § 54-14-101 et seq., is to determine whether a defined dispute exists and, if so, to resolve it according to the defined

criteria. To this end the Board held evidentiary hearings on May 10 and 12, 2010. In effect, the County seeks a *de novo* review of possible routes through its borders. The Board finds this to be inconsistent with the statutory description of Board duties. It is also a practical impossibility given the complexity of the task of bringing the design of the Transmission Project to this point and the maximum 45 days following the initial hearing afforded the Board to reach its decision." *Utah Code §§ 54-14-305(1).*

Scope of Board Review

Utah Code § 54-14-303 defines the actions or disputes between a local government and public utility for which Board review may be sought. Most of these address government-imposed conditions affecting facility construction costs, schedules, and facility corridor boundaries. Because this dispute involves denial of a CUP rather than CUP conditions and associated costs, it derives from Subsection 1(d) of section 303: "(d) 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;".[1] Accordingly, the scope of the Board's inquiry is to find whether there is substantial, credible, competent evidence, *see Utah Code § 63G-4-403(4)(g),* the Transmission Project is needed to provide safe, reliable, adequate and efficient utility service. *Utah Code § 54-14-303(1)(d).*[2]

---

[1] Appendix A to this Order sets forth the other statutory bases for dispute before the Board and a brief explanation of why each does not apply in this case.

[2] In deciding the issues before it, the Board's determinations of fact, made or implied, must be supported by substantial evidence when viewed in light of the whole record before it. *See Utah Code § 63G-4-403(4)(g).* The law does not invest the Board with any such arbitrary power to disbelieve or disregard uncontradicted, competent, credible evidence. *See Cf, US West Communications v. Public Serv. Comm'n, 901 P.2d 270 (1995).*

At the evidentiary hearings, the Company presented the requisite evidence, as we discuss in greater detail below. While ably represented by competent counsel, the County found itself on the horns of a dilemma. If the County suggested an alternative transmission route that resulted in higher costs than the route selected by the Company, the County could be responsible for those additional costs. Because of that dilemma and a lack of resources and expertise, the County did not present opposing siting testimony. In addition, the County's evidence did not contradict the Company's evidence. In fact, the County has stipulated to the need for the Transmission Project. *See Response to Petition for Review, p.1.*

Most of the concerns and criticisms expressed by Tooele County residents and their governmental representatives do not pertain to the utility's need for the facility in order to provide safe, reliable, adequate, and efficient utility service. Rather, they concern the impact about three miles of the proposed transmission line would have on property values, viewshed[3], and the cultural significance of man-made landmarks (i.e. the "T" on the mountainside) along the southern border of Tooele City. The Board understands the concerns the County and its citizens express regarding these issues. Many of the comments on these topics are thoughtful, clearly stated, and well-intentioned. The time taken to provide them to the Board evinces the depth of feeling with which many in the local citizenry approached this sensitive and complicated subject. However, with few exceptions the County's reasons for denial, like the public comments of

[3] A viewshed is an area of the landscape that is visible to the eye from a certain vantage point, i.e. the view.

County residents, address impacts that are not among the factors the Legislature has authorized the Board to consider in resolving this dispute. *See e.g. Utah Code. § 54-14-102.*

This Board, created by the Legislature, has only the authority clearly delegated by the Legislature and must exercise that authority within the parameters and upon the criteria set by the Legislature. "It needs no citation of authorities that where a specific power is conferred by statute upon a tribunal, board, or commission with limited powers, the powers are limited to such as are specifically mentioned." *Bamberger E. R. Co. v. Public Utils. Comm'n*, 204 P. 314, 320 (Utah 1922); *see also Cf. Hi-Country Estates Homeowners Ass'n v. Bagley and Co.*, 901 P.2d 1017 (Utah 1995) (holding that the Public Service Commission has no "inherent regulatory powers and can only assert those which are expressly granted or clearly implied as necessary to the discharge of the duties and responsibilities imposed upon it . . . . [and] any reasonable doubt of the existence of any power must be resolved against the exercise thereof"). Therefore, the Board cannot consider such issues as property values, viewshed, and the cultural significance of man-made landmarks, as it makes a decision, as important as those issues might be to the County or local citizens. Rather, the scope of Board authority is to determine if a local government has prohibited construction of a facility needed to provide safe, reliable, adequate, and efficient services to utility customers, and if so, that it should be constructed.

The County's Improper Denial of the CUP

In addition to the record developed through evidentiary hearings summarized below, the Board examined the twelve factors the Tooele County Planning Commission specified in denying the requested CUP, as set forth by the County in its Response to the Company's

Petition for Review. Before addressing the factors specifically, we address the County's repeated contentions that the Company undertook inadequate efforts to mitigate the County's concerns and disregarded the public's concerns regarding various objections, *see e.g. Response to Petition for Review, pp.2,3 (stating that the Company "could not show they had the ability to mitigate the detrimental impacts in the controversial portion of their proposed route", the Company "summarily denied every suggested alternative route", the Company "had determined that there was one, and only one, possible route" and that the Board needs to provide a "critical analysis of the proposed and alternative routes", etc.).* The evidence presented to the Board does not substantiate the County's claims. From the record and undisputed testimony, we conclude the Company did make significant efforts to address the objections raised by the County, working not only with key stakeholders but also with the BLM, *see e.g. Direct Testimony of Brandon T. Smith, p.11-12, 14, etc.,* supplementing and explaining evidence of mitigation, even adjusting its own preference in order to align its preferred route with that of the BLM. *See e.g. id at p.20, ll.24-31, p.21, ll.2-8, p.21, ll.10-17, etc.* The Company did present competent, credible, and undisputed evidence to the County addressing each of those objections stated by the County.

As explained above, regarding the specific objections listed by the County in denying the CUP, the Board may only consider those relevant to the question of the Company's need for the facility to provide safe, reliable, adequate and efficient service. Therefore, the following objections used as a basis by the County to deny the CUP are not properly considered here:

- Wildlife

- Viewsheds including road scars
- Tooele High School's T for safety and visual look
- Loss in property value

Other factors cited by the Planning Commission are:

- The EIS is not complete
- The completion date is uncertain
- The Record of Decision from BLM is not available
- The Plan of Development is non-existent

These four objections appear to relate to the County's concern that the CUP application might be premature. *Reply to Respondent's Response to Petition for Review, Exhibit 1, p.13.* But given that there are no findings, it is not clear how the County Commission used these objections to deny the CUP. The Company cited to *Ralph L. Wadsworth Construction, Inc. v. West Jordan City*, 2000 UT App 49, ¶ 8, for the proposition that " a municipality's land use decision [concerning the granting or denial of a conditional use permit] is arbitrary and capricious [only] if it is not supported by substantial evidence." (internal citations committed). Assuming those objections do deal with the untimeliness of the CUP application, there is no evidence that they will pose a detriment to the County, its residents, the Company or ratepayers state-wide. Absent any underlying findings, or any additional, contradicting evidence presented by the County at these hearings, the Board cannot find that these objections establish that the Transmission Project is not needed for safe, reliable, adequate, and efficient service.

There remain four objections, each relating to safety:

- Disturbance of international smelter site
- Settlement Canyon Reservoir use
- Potential contamination of water sheds and springs
- Health risks regarding high power lines

Despite the County's contentions that the Company did not adequately address these concerns, the Board finds the Company did address them. First, it addressed the disturbance of the smelter site as requested by the Planning Commission. *See Tooele County Application for Conditional Use Permit-Supplementary Information for Mona-Oquirrh Transmission Corridor Project (International Smelter (Carr-Fork))*. The Company must adhere to standards and regulations of the United States Environmental Protection Agency (EPA) and the Utah Division of Wildlife Resources. The County did not dispute this. The Company represented to the County that it "fully understands that the proposed transmission line alignment passes through the International Smelter Superfund Site located on the east bench of Tooele County. *Id.* It also affirmed to the County that it "is working closely with those responsible for adhering to the Record of Decision and fully recognizes there will be strict requirements for constructing the transmission line in the site. *One of the main objectives for this alignment is to ensure that the proposed alignment will not impact the capped areas and that objective has been met as shown in figure 1." See id (emphasis added)*. The Company further affirmed that there were already requirements set forth by the EPA and Utah Division of Wildlife Resources governing the

construction of the Transmission Project. Specifically, that all excess excavated soils within the site will be moved to a designated on-site repository; structures and access roads will avoid features like wetlands, riparian zones, water courses, hazard substance remediation, etc. The Company also stated that where it performs work on the site, it *must* seek approval from the EPA before commencing work. It also affirmed that any work on contaminated sites must avoid areas like capped areas, treatment or monitoring wells, etc. *See id.* The County does not refute this evidence that the steps the Company will take in constructing the Transmission Project will minimize any impact on the superfund site.

Second, the Company addressed the use of the Settlement Canyon Reservoir in firefighting as requested by the Planning Commission. *See Tooele County Application for Conditional Use Permit-Supplementary Information for Mona-Oquirrh Transmission Corridor Project (Settlement Canyon Reservoir).* In response to those concerns, the Company "shifted the transmission line alignment near Settlement Canyon Reservoir approximately 400 feet to the south edge of the reservoir . . . ." *See id.* Also, the Company consulted with "two independent helicopter companies who frequently draw water from the reservoirs . . . to evaluate the proposed alignment of the transmission line." *See id.* They both opined that a "minimum of 2/3 of the reservoir will still be usable to draw water in support of fire fighting activities . . . ." *Id.* The BLM also stated that a campground about 2000 feet south of the proposed transmission line often used by firefighting crews for loading personnel, refueling, and changing aircraft configurations can still be used. But even if not, the area could be relocated. *Id.* The Company also stated that it would comply with all Federal Aviation Administration regulations for marking the power

lines. The County did not dispute any of this evidence nor explain why it was not adequate to address the County's objections.

Third, the Company also raised the potential contamination of the watershed and springs. The County apparently is concerned that the well or spring flow would decrease due to vibrations produced by construction activities. *See Tooele County Application for Conditional Use Permit-Supplementary Information for Mona-Oquirrh Transmission Corridor Project (Wells/Springs)*. The Company opined that some were concerned that the vibrations would disturb soils locally and/or compact soils through which the water passes. The Company opined that since most of the aquifers are so deep, the construction would have little impact, if any. It stated it worked, during the EIS process, with information from the United States Geological Survey (USGS) and Utah Division of Water Rights to identify potentially affected known wells and springs. It then represented that it would comply with "all laws and regulations . . . with respect to uses within each zone of protections for drinking water sources." *Id.* The County did not present any evidence that the Company did not adequately consider the County's concerns. Nor did it present any evidence that the Company would not abide by its representations in the CUP application.

Finally, the County expressed concerns about health risks regarding high-voltage power lines. There are two main concerns. First the possibility that the exposure to electromagnetic fields (EMF) produced by the Transmission Project can increase risks of childhood leukemia, adult cancer and neurodegenerative diseases. *See Tooele County Application for Conditional Use Permit-Supplementary Information (for Mona-Oquirrh Transmission*

Corridor Project (EMF), Attachment, Letter from Dr. William H. Bailey, Ph.D, and see Final EIS, Page H-128. (Dr. William Bailey, is an independent EMF expert. The Company contracted him to provide an independent analysis on EMF and cancer. The Company provided his written response to the claims raised by Dr. Webber, to Tooele County). Second, there were also concerns regarding the possibility that the EMF would pose risks to children with pacemakers. *See Transcript of Hearing, p.317, ll.22-15, p.318-319.* Regarding the first, the County relied on statements by a resident of the County, Dr. James Webber, who cited to information given to him by a Dr. David Carpenter. Dr. Webber stated that Dr. Carpenter was a nationally recognized expert on EMF who had published some information on the supposed correlation between EMF and cancer. Dr. Carpenter, as cited by Dr. Webber, contends there is "strong" and "significant" evidence that exposure to EMF levels greater than 4 milligauss (mG) is associated with childhood leukemia, adult cancer, and neurodegenerative diseases. Dr. Carpenter suggested that long-term residential exposures above 4mG should be avoided when routing power lines.

Dr. Bailey, an independent expert on EMF, responded to these assertions stating they are "strikingly different from the conclusions and recommendations of the scientific agencies that have reviewed the same body of research" and listed a line of those scientific agencies, who used studies that were "systematically reviewed and weighted to provide balanced assessment of the evidence in support of an adverse effect." Dr. Bailey noted that although the agencies "found consistent evidence of a weak statistical association between childhood leukemia and magnetic field exposure greater than 3-4 mG, they have agreed that the evidence is too limited to conclude that there is a causal relationship . . . " *See Letter from Dr. William H. Bailey, p.2.* Dr. Bailey

then criticized the method by which Dr. Carpenter supported his opinion, e.g. selecting outdated studies, failure to consider study limitations that affect the studies, misunderstanding of animal model systems, etc. *Id.* In any case, however, Dr. Bailey opined that because the Company had:

> determined that the closest home to the proposed route for the Mona-Oquirrh line is approximately 960 feet from the right of way, the proposed line would contribute virtually no magnetic field exposure to the surrounding homes. Furthermore, no schools, child care facilities, or other locations where children may congregate are located near the proposed route.

Id. Therefore, assuming, *arguendo*, that Dr. Carpenter's contentions regarding the relationship between EMF and cancer and other diseases are valid, his opinions are inapplicable because of the distance of the lines from homes and other buildings. (At 960 feet, the exposure would "contribute virtually no magnetic field exposure to the surrounding homes". *See Letter from Dr. William H. Bailey, p.4*). The County ignored this evidence in denying the CUP.

The County also voiced the concerns of a father that the EMF would interfere with his daughter's pacemaker, possibly causing her death. *See Transcript of Hearing, p.317, ll.22-15, p.318-319.* The father claimed his concerns were ignored by both the BLM and the Company. Upon cross-examination, the Company's witness, Brandon Smith, contended that they had not been ignored. He stated that the Company contacted the manufacturer of the pacemaker, who provided the Company with the minimum requirements as far as impact on the pacemakers from EMF. And after reviewing that data it was determined that the EMF level, even directly underneath the line would not affect operation of the pacemaker. *Id. at ll.12-18.*

The EIS shows the BLM also reviewed concerns about the impact EMF would have on the pacemaker, and evaluated the expected electric and magnetic field levels at the edge of the proposed right of way for the Transmission Project. The BLM reviewed evidence from the pacemaker manufacturer and stated that "the minimum threshold level for interference is 1 Gauss for magnetic fields and 6kV/m for electric fields. *The maximum levels of EMF even underneath the conductors of the double-circuit 345-kV line section would be less than these levels." Final EIS, Volume I, p.4-89-90 (emphasis added).* The County did not dispute this evidence at the hearing. *See e.g. Transcript, p.319, ll.1-9.* Therefore, the evidence demonstrates the EMF associated with the facility do not pose a safety risk.

The Transmission Project is Needed to Provide, Adequate, Reliable and Efficient Service

The evidence shows the project is consistent with the provision of safe utility service. The Board now examines if the Company established the Transmission Project is also needed to provide, adequate, reliable, and efficient service. *Utah Code Ann. §54-14-303(1)(d).*

As a public utility, the Company has a duty to "furnish, provide and maintain such service, instrumentalities, equipment and facilities as will promote the safety, health, comfort and convenience of its patrons, employees, and the public, as will be in all respects adequate, efficient, just and reasonable." *Utah Code Ann. § 54-3-1.* The Company testifies the Transmission Project must be constructed in the immediate future to ensure the Company's continuing ability to meet these electric service standards.

The Company operates approximately 15,800 miles of transmission lines across the western states, interconnecting with more than 80 generation plants and 15 adjacent control areas. It owns or has an interest in generation resources with over 12,000 megawatts of system peak capacity. These resources are directly interconnected to its transmission system and provide service to its electric retail and wholesale customers. *Direct Testimony of Darrell T. Gerrard, p. 5.*

The Company asserts that a failure of its transmission system would have far reaching effects not only on Utah customers but also on the electrical system throughout the West. *Id.* To strengthen its system, the Company has undertaken to implement the comprehensive transmission plan, previously identified as Energy Gateway, comprised of eight inter-related and interdependent segments. It will add about 2,000 miles of new transmission lines to the PacifiCorp system over the next ten to twelve years. Energy Gateway will improve transmission system reliability, reduce transmission system constraints and improve the flow of electricity to customers. *Id.*

The Company's FERC-approved Open Access Transmission Tariff (OATT) establishes planning requirements and contractual obligations the Company must meet in order to provide safe, reliable, adequate and efficient transmission service. The planning process includes assessing the future load and resource requirements for all network customers. The Company notes retail loads constitute the bulk of its transmission network customer needs, including those in Utah. The OATT also requires it to provide firm transmission service over the system so that designated resources can be delivered to designated loads. The Energy Gateway, including the

Transmission Project, is the Company's plan to continue to meet these OATT requirements. *Id. at ¶. 9-10.*

The Company testifies it identified the need for the Energy Gateway and, in particular, the Transmission Project through integrated resource planning. The Transmission Project is part of PacifiCorp's 2008 Integrated Resource Plan (IRP). As characterized by the Company, the IRP process is a resource portfolio and risk analysis framework. It is used to specify prudent future actions the Company must take to continue to provide reliable and efficient service to its customers. The IRP strikes a balance between cost and risk over the planning horizon, and considers environmental issues and energy policies in the states PacifiCorp's system serves. *Id. at pp.10.* The Company points out it developed the 2008 IRP through a collaborative process with participation of regulatory staff, advocacy groups, and other interested parties. The Company also refers to numerous other regional transmission studies, identifying transmission constraints Energy Gateway has been designed to rectify.

National and regional reliability standards also drive the Company's need for and design of the Transmission Project. These include the North American Electric Reliability Corporation (NERC) Standards for Bulk Electric Systems, which are federal law, and the Western Electricity Coordinating Council (WECC) regional standards and criteria. *Id. at p. 14.* These standards dictate the minimum levels of transmission system reliability, redundancy, and performance required for the Energy Gateway to interconnect to the larger western grid. These standards address both normal system operations, and generation and transmission plant outages,

including planning for simultaneous outages of two or more lines due to a common mode of failure, e.g., a wildfire.

The Company contends these criteria require it to plan for the simultaneous outage of circuits on common structures or located within a span length of each other. Such a plan requires redundancy to withstand an outage involving multiple lines located on common or nearby towers. The Company states it has designed Energy Gateway to comply with these NERC and WECC reliability standards through adequate redundancy achieved using multiple transmission lines located in wide, geographically diverse corridors. *See Id. at ¶. 16-20.*

Gateway Central is one of the eight Energy Gateway segments. The Transmission Project is a component of this segment and, as characterized by the Company, is an essential component of the overall Energy Gateway plan. Of the eight Energy Gateway segments, Gateway Central is being completed first to provide, what the Company characterizes as, "urgent" and "necessary" capacity and reliability improvements for Utah. *Id. at p. 7.* The Company asserts its existing transmission system is nearing its designed capacity to deliver energy to the largest load center in the state, i.e. the Critical Load Area. This Area includes all or portions of Salt Lake, Tooele, Utah, Davis, Weber, Cache, and Box Elder Counties.

Energy demand in the Critical Load Area is served largely by Company power plants located to the south in Carbon, Juab, and Emery Counties or by other facilities in the Desert Southwest. Energy generated in these locations must be transported on existing transmission lines to the Critical Load Area. The Company's municipal and other customers rely

on these same lines to transport energy to meet their load growth needs in the northern part of the state. The existing lines are now fully subscribed. The Company expects they will be operating at or near design capacities in the near future. The Company predicts without the Transmission Project and related Gateway Central transmission projects, by 2013 it will not be able to serve its existing customers in the Critical load Area and specifically Tooele County. *Id. at p. 27.* It likewise will not be able to comply with its FERC tariff and with NERC reliability standards, nor with its transmission contract obligations.

The Company states it has designed the Transmission Project to create adequate and necessary new transmission capacity northbound and southbound between the Company's power plants in Utah and other sources of energy in the Four Corners Region and the Desert Southwest. The Company believes this new capacity will enable it to continue to ensure a safe, reliable, adequate and efficient supply of electricity to its customers in Tooele County and the rest of the Critical Load Area. This new capacity will position the Company's system to integrate new generation resources from central and southern Utah. It will also enable the Company to meet its obligations to municipal and other energy transmission customers and to continue to meet reliability standards. Moreover, the Transmission Project, according to the Company, was designed to maximize transmission system reliability, while minimizing transmission line length in order to minimize construction costs and community impacts. *See id. at pp.3-4.*

The Company also maintains the need for the Transmission Project is critical in Tooele County. The County's energy requirements are currently supplied by three 138 kV transmission lines, extending from the Oquirrh and Terminal Substations. The capacity on these

lines has been exhausted by the County's load growth. By 2013, the Company anticipates it will not be able to provide reliable service via the existing lines, let alone serve projected future economic development. The undisputed evidence shows the Transmission Project and related Energy Gateway components will enable the Company to continue to provide safe, reliable, adequate and efficient service to the County. Moreover, the record also shows any further delay in obtaining the CUP will jeopardize the company's ability to do so. *Id. at p. 26-27.*

The Final EIS

An important piece of evidence before the Board, in considering the County's denial of the CUP, is the result of the study and analysis of the BLM Final EIS. *Final Environmental Impact Statement for the Mona to Oquirrh Transmission Corridor Project and Proposed Pony Express Resources Management Plan and Amendment, Volume I and II of II.*

When the Company identified the need for the Transmission Project, it later commenced a feasability study, in 2005, to "assess the ability to permit and construct the conceptual Project." *Direct Testimony of Brandon T. Smith, p.4, ll.20-21.* Part of the function of the feasibility study was identifying alternative corridors for the transmission lines and future substations. *Id. at p.5, ll.2-3.* When the Company completed the feasibility study, it found that almost all of the potential corridors crossed BLM lands, especially in Tooele County. To get a right-of-way from the BLM, it submitted a right-of-way application to begin the federal review and approval process. It submitted the application to the BLM in January 2007. The BLM served as the lead agency for the National Environmental Policy Act (NEPA) review process. The BLM

determined that the granting of the application would require an EIS to comply with NEPA. BLM began its "scoping period" with publication of the Notice of Intent (NOI) to prepare the EIS on October 16, 2007. *Id. at p.11.*

> The intent of the scoping was to formally solicit comments from federal, state, and local agencies and the public early in the preparation of the EIS, identify significant issues and concerns for analysis in the EIS, and review the potential alternative corridors and substation siting areas of the Project.

Id. at p.11, ll.13-16. The BLM invited various state and local agencies to participate in this process as Cooperating Agencies, and specifically invited the County to participate in the process but the County declined. The BLM used a variety of avenues to identify the range or "scope" of issues:

> Activities associated with the scoping included (1) agency, interagency, and stakeholder meetings; (2) three public scoping meetings; (3) newsletter mailings, media releases, and legal notices to inform the public of the Project, EIS preparation, and public scoping meetings; and (4) establishing a Project website . . . and posting Project information to the BLM Environmental Notification Bulletin Board. In general, comments from both the public and agencies were related to Project need, benefits, and impacts on environmental resources.

Final EIS, p. S-11. As part of the BLM's review, the BLM scoping process identified key affected resources to be addressed during the EIS and environmental studies. *Final EIS, Page S-11.* Those affected resources were:

- Air resources
- Earth resources
- Water resources

- Biological resources
- Wildland Fire Ecology and management
- Cultural Resources
- Paleontological Resources
- Visual Resources
- Land Use and Recreation Resources
- Hazardous Materials
- Electric and Magnetic Fields
- Noise
- Socioeconomics and Environmental Justice
- Cumulative Effects

See e.g. id. at ¶. S-3-S-10.

The Final EIS contained fourteen transmission line route alternatives divided into three sections: 1) from the Mona substation to the proposed Limber substation; 2) from the proposed Limber substation to the existing Oquirrh substation; and 3) from the proposed Limber substation to the existing Terminal substation. After thorough analysis, BLM identified its "Preferred Alternative" and its "Environmentally Preferred Alternative" for the Transmission Project. The Company proposes this same route as its best option to provide safe, reliable, adequate and efficient service. *See Reply to Respondent's Response to Petition for Review, p.2.*

The Company Considered Alternative Routes

The County also contends the Company made no efforts to evaluate alternative routes. Again, however, the Board does not find support for this contention in the evidence before it. In its effort to provide safe, reliable, adequate and efficient service by means of the Transmission Project, the Company analyzed more than 450 miles of alternative transmission routes during the planning phase. These routes were assessed to determine environmental resources present and potential impacts. The alternatives were systematically screened and prioritized using environmental and engineering criteria. The Company testifies it further refined its proposed Transmission Project route following the BLM's issuance of its Draft EIS.

Following notice to the public of the availability of the Draft EIS, the Company became aware of negative feedback concerning that portion of the Transmission Project route along the southern part of the Tooele Valley and the east bench. The Company states it held three conflict resolution meetings in August and September 2009. Key stakeholders raised four alternative routes: 1) the Railroad Routes, 2) the Army Depot Routes, 3) the Silcox Canyon Route, and 4) the Grantsville Route (Options 1 and 2). For a variety of reasons summarized below, none of these routes garnered universal support among stakeholders, the BLM and the Company. *See Direct Testimony of Brandon D. Smith, ¶. 23-27.*

Although the Company's preliminary review found the Railroad and Army Depot routes feasible, the Company contends they are not acceptable to Tooele City because they cross

Tooele City limits. The Army Depot Route also is not acceptable to Grantsville due to proximity to residential developments.

The Silcox Canyon Route, according to Company testimony, is not acceptable to the BLM or the Company. The Company views the line as more expensive to construct and maintain, requiring more extensive access roads, larger structures, and more advanced equipment. The Company asserts the Route is also unacceptable to BLM due to increased environmental impacts. Since there was or is no offer from the County to pay any excess costs, the Board does not find this is a viable alternative.

The Grantsville Route options generally involve relocating the Limber Substation and the Limber-to-Terminal and Limber-to-Oquirrh lines north of Tooele City. The Company finds these options unacceptable for several reasons implicating reliability and efficiency. The Company testifies the options would increase the overall length of the transmission lines by 17 miles (Option 1) and 25.75 miles (Option 2). Due to corrosive and unstable soil conditions, both options would require larger transmission structure foundations. In comparison to the Company's and BLM's preferred route, the Company estimates the resultant increased costs for Option 1 are up to $9.1 million. The increased costs for Option 2 are estimated at up to $35.4 million. Again, since there was or is no offer from the County to pay any excess costs, the Board does not find this is a viable alternative.

These extra costs do not take into account higher costs associated with construction of the re-located Limber Substation. The Company estimates engineering and

construction adjustments necessitated by the aforementioned soil conditions would increase substation construction costs by about $43 million.

Additionally, both Grantsville options would require the Limber-Oquirrh and future Limber-Terminal double-circuit 345 kV lines to be constructed in close proximity (a minimum 1000 foot separation) for extended distances, i.e., 8-10 miles (Option 1) and 15-17 miles (Option 2). Consequently, these designs, fail to meet the Company's siting and system criteria, and engineering/design factors.

The evidence shows the alternatives advanced by communities and stakeholders to that portion of the Transmission Project to which the County objects were carefully evaluated. No alternative was identified that was acceptable to all parties. The Board notes the Company's objections are grounded in concern for the efficiency and reliability of its service. Clearly, millions dollars of additional costs and incremental miles of added transmission lines would adversely affect service efficiency. Moreover, the close proximity of the lines for 8 to17 miles under the Grantsville options would contravene design criteria necessary to minimize the transmission system's vulnerability to common-mode outages. These are criteria established by the Company to comply with mandates from national and regional entities tasked with assuring the security of the transmission grid. They cannot be ignored by the Company or the Board. Additionally as noted above, BLM also reviewed a wide variety of possible routes and locations, including assessing public comments received during the multi-year review process. After thorough analysis performed in accordance with the NEPA permitting process, BLM identified its "Preferred Alternative" route and its "Environmentally Preferred Alternative" for the

Transmission Project. The Company proposes this same route as its best option to provide safe, reliable, adequate and efficient service.

Summary of Findings and Conclusions

The Board finds there is substantial evidence to conclude the Company established the Transmission Project is needed to provide safe, reliable, adequate, and efficient service to its customers. That evidence is credible, competent evidence that is not controverted by the County. Without the increased transmission capacity the Transmission Project and related project components will create, by 2013 the Company will face an unacceptable risk of failure to provide its customers safe, reliable, adequate and efficient service. The Board also recognizes the key role the Transmission Project is intended to play in strengthening PacifiCorp's entire transmission system in order to comply with its FERC OATT, and important regional and national reliability standards and directives. The Board views these standards as fundamental to adequate and reliable service.

The need for the Transmission Project is also directly supported by PacifiCorp's IRP studies. These studies balance the costs and risks of potential Company actions to address energy load growth and other issues affecting the adequacy of utility service over an extended planning horizon. Each IRP report is produced in a collaborative environment involving participation of PSC staff, regulatory groups and other interested parties. The 2008 IRP includes the Transmission Project as necessary in carrying out the preferred resource portfolio.

In particular, the undisputed evidence establishes the need for the Transmission Project to enable continuing adequate and reliable service to the Critical Load Area, including Tooele County. Existing transmission facilities within and to this area are at or near full capacity. They must be augmented or reliability will be jeopardized. The evidence demonstrates the Transmission Project will play an integral role in providing the new transmission capacity the Company needs to provide safe, reliable, adequate and efficient service.

As the Company testified, the FERC has also examined the Mona-to-Oquirrh transmission segment as well as the entire Energy Gateway and finds (with the exception of one segment not relevant to the Board's decision) the plan will ensure reliability and reduce transmission congestion. The FERC also finds Energy Gateway will for the first time establish a backbone of 500 kV transmission lines in PacifiCorp's Wyoming, Idaho and Utah regions. The benefits of this backbone as characterized by the FERC include: "a platform for integrating and coordinating future regional and sub-regional electric transmission projects being considered in the Pacific Northwest and the Intermountain West, connecting existing and potential generation to loads in an efficient manner, thus reducing the cost of delivered power." *Direct Testimony of Darrell T. Gerrard, p. 13, citing FERC Docket No. EL08-75-000, Order on Petition for Declaratory Order, issued October 21, 2008, p.14.*

ORDER

Based on the foregoing, the Board:

A. Finds the Transmission Project and the Company's proposed route as specified in the CUP application (denied by the County on March 30, 2010), is needed for the

Company to provide safe, reliable, adequate, and efficient service to its customers state-wide;

B. Finds the Transmission Project should be constructed;

C. Finds the County prohibited the construction of the Transmission Project by denying the CUP;

D. Directs the County to issue the CUP for the Transmission Project to be located within the Company's proposed transmission corridor, within 60 days after issuance of this Order, and to issue any other permits, authorizations, approvals, exceptions, or waivers necessary for construction of the Transmission Project, consistent with the decision of this Board;

Reconsideration and Appeal

Within 20 days after the date this order is issued, pursuant to Utah Code §63G-4-302(1)(a), a party may file a written request for reconsideration with the Board, stating the specific grounds upon which relief is requested. Requests for reconsideration shall be filed with the Board and one copy shall be mailed to each party by the party making the request. If the Board does not issue an order granting or denying the request within 20 days after the filing of the request, it is deemed denied. The filing of a request for reconsideration is not a prerequisite to judicial review. Judicial review of the Board's final agency action may be obtained by filing a petition for review with the Court of Appeals. Any petition for review must comply with the requirements of Utah Code §§63G-4-401 and 63G-4-403 and with the Utah Rules of Appellate Procedure.

DATED at Salt Lake City, Utah this 21st day of June, 2010.

BY THE BOARD:

/s/ Ted Boyer
Chairman, Utah Public Service Commission

/s/ Ric Campbell
Commissioner, Utah Public Service Commission

/s/ Ron Allen
Commissioner, Utah Public Service Commission

/s/ Hon. Joe Johnson,
Mayor, Bountiful City

/s/ Monette Hurtado, Esq.
Deputy County Attorney, Weber County

Attest:

/s/ Julie Orchard
Secretary, Utah Public Service Commission
G#67237

APPENDIX A

Actions or Disputes for Which Board Review May be Sought

1. A local government or public utility may seek review by the board, if:

(a) a local government has imposed requirements on the construction of a facility that result in estimated excess costs without entering into an agreement with the public utility to pay for the actual excess cost, except any actual excess costs specified in *Subsection 54-14-201(2)(a)* or (2)(b), at least 30 days before the date construction of the facility should commence in order to avoid significant risk of impairment of safe, reliable, efficient, and adequate service to customers of the public utility;

(b) there is a dispute regarding:

(i) the estimated excess cost or standard cost of a facility;

(ii) when construction of a facility should commence in order to avoid significant risk of impairment of safe, reliable, and adequate service to customers of the public utility;

(iii) whether the public utility has sought a permit, authorization, approval, exception, or waiver with respect to a facility sufficiently in advance of the date construction should commence, based upon reasonably foreseeable conditions, to allow the local government reasonable time to pay for any estimated excess cost;

(iv) the geographic boundaries of a proposed corridor as set forth in a notice submitted by a public utility to a local government pursuant to the provisions of *Subsection 54-18-301(1)(a)*, provided the action is filed by the local government before the public utility files an application for a land use permit as set forth in *Subsection 54-18-304(1)(a)*; or

(v) a modification proposed by a local government to a utility's proposed corridor that is identified in the public utility's notice of intent required pursuant to *Subsection 54-18-301(3)*;

(c) a local government has required construction of a facility in a manner that will not permit the utility to provide service to its customers in a safe, reliable, adequate, or efficient manner;

> (d) 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;
>
> (e) a local government has not made a final decision on the public utility's application for a permit, authorization, approval, exception, or waiver with respect to a facility within 60 days of the date the public utility applied to the local government for the permit, authorization, approval, exception, or waiver;
>
> (f) a facility is located or proposed to be located in more than one local government jurisdiction and the decisions of the local governments regarding the facility are inconsistent; or
>
> (g) a facility is proposed to be located within a local government jurisdiction to serve customers exclusively outside the jurisdiction of the local government and there is a dispute regarding the apportionment of the actual excess cost of the facility between the local government and the public utility.

Part (1)(a) is not applicable. Here the County has not imposed any affirmative requirements for the construction of the Transmission Project. The County has simply refused to grant the CUP for a facility whose need, safety, reliability, adequacy, and efficiency is not disputed by substantial, credible, competent evidence.

Part 1(b)(i) is not applicable as there is no dispute regarding the estimated excess costs. The County did not put forth any reliable evidence of estimated excess costs for the Transmission Project.

Part 1(b)(ii) is not applicable as there is no dispute regarding when the construction of the Transmission Project should commence. Neither party raised that issue.

Part 1(b)(iii) is not applicable as there is no dispute regarding whether the Company has sought a permit, authorization, approval, exception, or waiver with respect to a

facility sufficiently in advance of the date construction should commence. There is no dispute concerning whether the Company sought required County actions sufficiently in advance.

Part 1(b)(iv) is not applicable as the County did not file this action before the Company filed its application for the CUP, as mandated in this sub-section.

Part 1(b)(v) is not applicable here as the County did not propose any specific alternative to the route proposed by the Company in its CUP application. Though there might have been other communities and stakeholders that during the course of the CUP application process proposed other generalized suggestions and routes, the County did not put forth any evidence of a specific route alternative to that identified by the Company. The County frankly admitted that "it lacks the expertise or resources (qualified personnel and/or budget) to credibly advocate for the construction of any particular route before the Board." *Response to Petition for Review*, p.3. The County did later say that "proposed several alterative routes" along with Tooele City and Grantsville City and all signed a "letter indicating unanimous support for a route through Tooele County. See Exhibit 3" *Id.* However, the Exhibit 3 referred to by the County makes general recommendations only. As noted by the Company,

> The County alleges in its Response that it "did propose several alternative routes." . . . This statement is not accurate, as the County has at no time identified to the Company an alternative alignment that the County would approve. In support of its statement referenced above, the County refers to the "consensus letter" sent to the BLM on September 21, 2009, and attached as Exhibit C to the Response (the "Consensus Letter"). With respect to the Limber to Oquirrh Segment, the letter reads:
>
> > We propose the Limber to Oquirrh transmission line be routed to minimize impact to Tooele Valley's residents. This proposal concurs with Tooele City Mayor, Tooele City Council and The Citizens

> Committee of Tooele as well as the Tooele County Commission who are opposed to RMP's proposed routes through or south or east of Tooele City and have been designated by the same officials and citizens as unacceptable having the greatest amount of negative impact on the greatest amount of citizens. We propose these routes be eliminated for those reasons and because they are no longer practical considering the northern location for the Limber substation.

> The above-referenced sentences set forth in their entirety the "several alternative routes" proposed by the County in the Consensus Letter. In review, the County (along with other parties) proposed (1) "the Limber to Oquirrh transmission line be routed to minimize impact on Tooele Valley's residents," and (2) the Limber to Oquirrh Segment be eliminated "because they are no longer practical considering the northern location for the Limber Substation." . . . . Furthermore, the parties most impacted by the changes suggested in the "Consensus Letter," Grantsville City and the Grantsville City Concerned Citizen's Group, did not sign the letter, putting in serious doubt what level of "consensus" was actually achieved.

Reply to Respondent's Response to Petition for Review, p.6-7 (internal citations omitted).

At the hearing, the County did not propose any alternative route other than the one proposed by the Company as submitted in the CUP application. Absent any reliable evidence of a specific alternative to the route proposed by the Company in its CUP application, this sub-section cannot apply.

Part 1(c) is not applicable because the County has not required the Company to construct the Transmission Project in a manner that will not permit the Company to provide safe, reliable adequate and efficient service. Although there are generalized recommendations for siting and construction referenced by the County, there is no evidence that it has placed specific technical requirements on the construction of the Limber to Oquirrh transmission line running through Tooele County.

Part 1(d) is applicable and is addressed in the body of the Order.

Part 1(e) is not applicable because the County did make a final decision on the Transmission Project, denying the CUP.

Part 1(f) is not applicable because that sub-section deals with inconsistent decisions of local governments regarding siting of the facility. Here the County is the only local government involved.

Part 1(g) is not applicable because the facility is will not be serving customers exclusively without the County, but will be serving customers inside and without Tooele County.