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BEFORE THE UTAH UTILITY FACILITY REVIEW BOARD

ROCKY MOUNTAIN POWER, Petitioner, vs. WASATCH COUNTY, Respondent.	**PUBLIC COMMENTS FROM BLACK ROCK RIDGE MASTER HOMEOWNERS ASSOCIATION, INC.; BLACK ROCK RIDGE TOWNHOME OWNERS ASSOCIATION, INC.; AND BLACK ROCK RIDGE CONDOMINIUM ASSOCIATION, INC.** **Docket No. 16-035-09**

Through counsel and pursuant to Utah Code section 63G-4-206(1)(e) and the Board's scheduling order, the Blackrock entities listed above hereby submit the following written public comments regarding Rocky Mountain Power's ("***RMP***") Petition for Review.

INTRODUCTION

The issue before the Board is whether the proposed Wasatch Segment of the transmission line is "needed" for RMP to provide safe, reliable, adequate, and efficient service to its customers. Unfortunately, neither the legislature nor the courts have provided any guidance on how this Board should interpret the term "needed" in the Facility Review Board Act (the "***Act***"). RMP asks the Board to interpret "needed" very broadly. Borrowing from case law on condemnation proceedings, RMP essentially argues that "needed" should mean whatever RMP would like it to mean in any particular case (i.e., so long as an upgraded line is necessary to meet

the increased demand for electricity, RMP has discretion to place the line wherever it wants). For a number of reasons, RMP's interpretation is untenable. First, it is inconsistent with the plain meaning of the term "needed." Second, the broad discretion afforded to condemning authorities is rooted in the principle of judicial deference to politically accountable institutions in the area of land use regulation. Here, by contrast, the Act provides a process for public utilities to override regulations enacted by politically accountable county officials by administrative fiat. This key difference weighs against importing deferential principles from the eminent domain context into proceedings before this Board. And as explained in more detail below, under a proper definition, the proposed location of the Wasatch Segment is not "needed" for RMP to provide safe, reliable, adequate, and efficient service.

But even under RMP's expansive definition of "needed," RMP cannot meet its burden to establish that the proposed location of the Wasatch Segment is necessary. According to the cases RMP cites, a facility would not be "needed" at a proposed location if RMP's siting decision was arbitrary and capricious. Here, there is no dispute that RMP's decision to relocate the line to Wasatch County is based solely on a private contract with Promontory and is wholly unrelated to the provision of safe, efficient, adequate, and reliable service. Indeed, RMP has made no effort to demonstrate that locating the line in Wasatch County promotes the safe, efficient, reliable, and adequate provision of service over other alternatives. Accordingly, even if the Board interpreted the Act in the manner RMP suggests, it should deny RMP's Petition for Review.

ARGUMENT

I. The Board should reject RMP's proposed definition of "needed" in the Act.

The jurisdictional basis for this proceeding is section 54-14-303(1)(d) of the Act, which allows this board to hear a dispute when "a local government has prohibited construction of a facility which is *needed* to provide safe, reliable, adequate, and efficient service to the customers of a public utility." (Emphasis added). RMP argues that the location of a proposed transmission line is "needed" so long as the location is chosen in accordance with its "normal practice" and "in the exercise of its reasonable siting discretion." *See* RMP's Reply Mem. Supp. Pet. Review, at 8. In support, it points to the deferential review afforded local governments in eminent domain proceedings. *Id.* at 9–10. Stated differently, RMP would have the Board rule that the location of a facility is "needed" whenever RMP says that it is. This interpretation is inconsistent, however, with the plain meaning of the term "needed" in the Act. And the supporting case law RMP cites from the eminent domain context is distinguishable.

A. The plain meaning of "needed" requires a showing of necessity.

When interpreting statutes, Utah courts seek to "give effect to the legislature's intent and purpose." *Valencia v. Labor Comm'n*, 2015 UT App 50, ¶ 10, 345 P.3d 1277. The "best evidence of legislative intent is the plain language of the statute itself." *Waddoups v. Noorda*, 2013 UT 64, ¶ 6, 321 P.3d 1108 (quoting *Anderson v. Bell*, 2010 UT 47, ¶ 9, 234 P.3d 1147). To interpret terms in a statute, courts look to the "ordinary meaning" the term "would have to a reasonable person familiar with the usage and context of the language in question." *Hi-Country Property Rights Grp. v. Emmer*, 2013 UT 33, ¶ 18, 304 P.3d 851. Dictionary definitions and statutory context are often the most useful tools to ascertain such meaning. *See Rupp v. Moffo*,

2015 UT 71, ¶ 8, 358 P.3d 1060 (noting that courts read statutory provisions "in context with the whole statute and related sections of the Code"); *Hi-Country Property Rights Grp.*, 2013 UT 33, ¶ 19, 304 P.3d 851 (noting that the "starting point for discerning" ordinary meaning "is the dictionary"). Here, dictionary definitions and statutory context foreclose RMP's proposed construction of the term "needed" in the Act.

Beginning with dictionary definitions, several dictionaries define "need" or "needed" as an absolute necessity or mandatory requirement. For example, Merriman-Webster defines "need" as "a situation in which someone or something must do or have something"; "something that a person must have"; or "something that is needed in order to live or succeed or be happy." *See* MERRIMAN-WEBSTER, http://www.merriam-webster.com/dictionary/need (last accessed May 9, 2016). Other dictionaries similarly define the term as "a requirement, necessary duty, or obligation"; "a lack of something wanted or deemed necessary"; or a "necessity arising from the circumstances of a situation or case." DICTIONARY.COM, http://www.dictionary.com/browse/needed (last accessed May 9, 2016); *see also* OXFORD DICTIONARIES, http://www.oxforddictionaries.com/us/definition/american_english/need?q=needed (last accessed May 9, 2016) (defining "need" as "[r]equir[ing] (something) because it is essential or very important" or "[e]xpressing necessity or obligation"). These definitions are inconsistent with RMP's assertion that the Act commits all siting decisions to the discretion of a public utility.[1]

[1] Curiously, RMP argues that because "impossible to do without" is listed as a synonym for "needed" in Merriman-Webster's thesaurus, it is somehow irrelevant to the Board's interpretation of the term. *See* RMP's Reply Mem. Supp. Pet. Review, at 4–5, n.1. But a synonym is "one of two or more words or expressions of the same language that have *the same or nearly the same meaning* in some or all senses." *See* MERRIMAN-WEBSTER, http://www.merriam-webster.com/dictionary/synonym (last accessed May 9, 2016) (emphasis

Statutory context also indicates that the term "needed" does not insulate RMP's siting decisions from this Board's review. The Act requires the Board to "leave to the local government any issue that does not affect the provision of safe, reliable, adequate, and efficient service." *See* Utah Code Ann. § 54-14-305(5). It follows that if RMP can provide "safe, reliable, adequate, and efficient service" from either of two alternative sites, the location of the transmission line must be left to local governments. Further, the Act provides that the Board "shall specify any general location parameters" for transmission lines that "a local government has prohibited" that the Board determines "should be constructed." *Id.* § 54-14-305(4). Arguing that the Act prohibits this Board from reviewing RMP's siting decisions is antithetical to the Board's statutory duty to specify "location parameters" for transmission lines.

For these reasons, the term "needed" in section 54-14-303(1)(d) requires RMP to demonstrate that the Wasatch Segment of the proposed transmission line is indispensable to providing safe, reliable, adequate, and efficient service to its customers. Notably, RMP has not attempted to argue that relocating the line from its historical location to Wasatch County will enhance the safety or efficiency of its service. And indeed, the increased length and comparably circuitous route of the proposed Wasatch Segment is unlikely to serve either of these ends better than upgrading the line where it has been for one hundred years. *See* Wasatch County Opp'n to Pet. Review, at Exhibit B. Instead, RMP argues that its efforts to avoid protracted litigation with Promontory over the scope of its historical easements and the company's adherence to its "standard practices" somehow demonstrate that the line is "needed." *See* RMP's Reply Mem. Supp. Pet. Review, at 10. But this assertion has no bearing on the safety, reliability, adequacy,

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added). Accordingly, the fact that "impossible to do without" is listed as a synonym for "needed" adds further weight to the plain language interpretation Blackrock has advanced above.

and efficiency of service, nor is it consistent with the kind of showing implied by the ordinary meaning of the term "needed" in section 54-14-303(1)(d).

B. Condemnation case law is distinguishable.

RMP nevertheless argues that the Board should resist the reading compelled by the ordinary meaning of "needed" based on a line of authority arising from eminent domain proceedings. RMP's Reply Mem. Supp. Pet. Review, at 6–7. Those cases hold that courts should defer to a condemning authority's decision to condemn a particular piece of real property absent "bad faith," "oppression," or other indicia of arbitrary and capricious decision making. *See id.* at 7 (quoting *Williams v. Hyrum Gibbons & Sons*, 602 P.2d 684, 688 (1979)). It is true that courts have historically deferred to decisions made in condemnation proceedings. *See, e.g.*, *Hawaii Housing Authority v. Midkiff*, 467 U.S. 229, 244 (1984) (holding courts must defer to state legislative determinations about what constitutes a "public use" under the 5th Amendment). But this is not a condemnation case, so those cases are irrelevant on their face. And careful examination of the reasoning in those cases demonstrates there is no rational reason to apply them to proceedings before this Board. Judicial deference in condemnation cases arose based on two interrelated policy judgments: (1) "legislatures are better able to assess what public purposes should be advanced by an exercise of the taking power," *id.*; and (2) "the political accountability of political officials" provides a "mechanism for enforcing" limits on legitimate uses of eminent domain. *See Goldstein v. Pataki*, 516 F.3d 50, 57 (2d Cir. 2008). In other words, because elected officials must periodically answer for the land use regulations they enact, political checks on their authority justify some deference from the courts.

Here, the principle underlying deference in condemnation proceedings cuts decidedly against RMP's position. Rather than defer to the decision of a politically accountable legislative body, the Act confers on this Board authority to override ordinances enacted by local governments by administrative fiat. There are, of course, important reasons why the state legislature empowered the Board with that authority. But the fact that this Board's exercise of such power necessarily nullifies the policy judgments of politically accountable local officials cuts against broadly interpreting the term "needed." RMP's reliance on eminent domain cases is therefore misplaced, and the Board should construe the operative terms of the Act according to their ordinary meaning. The legislature has provided no indication that it intended the term "needed" to be interpreted in any other way.

But even if the Board were to adopt RMP's more expansive definition of "needed," it should still deny RMP's petition. According to RMP, the location of a proposed transmission line is insulated from the Board's review so long as RMP's decision was not the product of arbitrary and capricious decision-making. *See* RMP's Reply Mem. Supp. Pet. Review, at 7. Among other things, RMP's decision would be arbitrary and capricious if it is based on "factors which [the legislature] has not intended [a public utility] to consider." *Cf. WildEarth Guardians v. EPA*, 770 F.3d 919, 927 (10th Cir. 2014). Here, RMP—as a public utility—has a duty to provide service in a manner that "promote[s] the safety, health, comfort and convenience of its patrons, employees and the public." Utah Code Ann. § 54-3-1. To that end, the Act allows RMP to seek relief from the decision of a local government prohibiting construction of a facility if that facility is "needed to provide safe, reliable, adequate, and efficient service." *Id.* § 54-14-

303(1)(d). Accordingly, RMP's siting decision must be based on the safe and efficient provision of service and its broader duty to the public.

But here, RMP has admitted that its decision to relocate the transmission line from its historical location hinges entirely on its private agreement with Promontory. *See* RMP's Reply Mem. Supp. Pet. Review, at 9–10. As noted above, it has not even attempted to justify that decision by appealing to the factors specified in the Act. Moreover, materials submitted by Wasatch County demonstrate that RMP has determined that the transmission line's historical location would be the most cost effective. *See* Wasatch County Opp'n to Pet. Review, at Exhibit B. For that reason, even if the Board were inclined to adopt RMP's proposed definition of "needed" under section 54-14-303(1)(d), RMP's siting decision is based on considerations completely foreign to its statutory mandate, and it is therefore arbitrary and capricious.

II. This Board's decision in the Tooele County case is inapposite.

RMP suggests that the Board already determined in the *RMP v. Tooele County* case from 2010 that alternative routes are not relevant to the question of whether the line is "needed" under section 303(1)(d). But in that case, the Board simply rejected Tooele County's invitation to "conduct [its] own analysis of all alternative routes identified . . . and any other route that the Board believes to warrant consideration." *See* Order at 11, attached hereto as Exhibit A. Notably, in making such a request, Tooele County had not proposed *any* alternative routes for the proposed transmission line, nor was there an existing easement and one-hundred-year old route upon which RMP could have constructed the proposed transmission line at issue. *See id.* 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. And further, RMP's own internal documents demonstrate that the historic location of the line is perfectly suitable and preferable to the proposed location in Wasatch County.

For that reason, unlike the circumstances in the *Tooele County* matter, 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 "practical impossibility." *See* Ex. A, 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, as noted above, 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). Because the upgraded line can be constructed along the historic location of the line without adversely affecting RMP's ability to provide safe, reliable, adequate, and efficient service, there is no basis to overturn Wasatch County's decision to enforce its own local ordinances.

In sum, RMP acknowledges that the County can determine the location of the line or require other mitigation measures if it is willing to pay for any increased cost. But, at the same time, RMP argues Wasatch County cannot require RMP to construct the line in the most efficient and safe route (the 100 year old route) even though it is less expensive and does not involve additional cost. In essence, RMP is asking this Board to sanction Promontory paying its way out of Wasatch County's land use authority. This is a dangerous precedent to set and is certainly not

what the legislature intended. The legislature intended to provide this Board with authority to allow "needed" utility construction—not to shield private developers from a County's land use authority if they can pay enough money. This Board should not allow RMP to ignore the most efficient, safe, and reliable route. The reality is there is an alternate route that is demonstrably superior to the route RMP has chosen. RMP does not and cannot dispute that, so they simply try to avoid the issue by arguing that the alternate route is beyond this Board's authority to consider. But that argument has no basis in the operative terms of the Act or the undisputed facts in this proceeding.

CONCLUSION

Under the ordinary meaning of the terms employed in the Act, this Board may override a local government's land use regulations if doing so would allow the construction of a facility that is "needed" to provide safe, reliable, efficient, and adequate service. Here, RMP has admitted that it can provide such service if the line is constructed at its historical location or if it is relocated to the Wasatch Segment. By definition, RMP has failed to demonstrate the kind of necessity that allows the Board to override local land use regulations. Blackrock accordingly requests that the Board honor Wasatch County's decision and deny RMP's petition for review.

DATED this 9th day of May 2016.

BENNETT TUELLER JOHNSON & DEERE

/s/ Jeremy C. Reutzel
Jeremy C. Reutzel
Ryan M. Merriman
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EXHIBIT A

- 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]

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[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.