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June 25, 2019

VIA ELECTRONIC FILING

Public Service Commission of Utah
Heber M. Wells Building, 4th Floor
160 East 300 South
Salt Lake City, UT 84114

Attention: Gary Widerburg
Commission Secretary

RE: Docket No. 19-035-10 – In the Matter of the Formal Complaint of Community Advocacy for Safety and Public Rights against Rocky Mountain Power

Dear Mr. Widerburg:

Rocky Mountain Power (“Company”) hereby submits for filing its Response to the Notice and Application for Review and Rehearing filed by CASPR, LLC on June 13, 2019, in the above referenced matter. The Company respectfully requests that all formal correspondence and requests for additional information regarding this filing be addressed to the following:

By E-mail (preferred): datareq@pacificorp.com
jana.saba@pacificorp.com

By regular mail: Data Request Response Center
PacifiCorp
825 NE Multnomah, Suite 2000
Portland, OR 97232

Informal inquiries may be directed to Jana Saba at (801) 220-2823.

Sincerely,

Daniel E. Solander
Senior Attorney

Enclosures
Cc: Service List (w/ enclosures)

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Attorneys for Rocky Mountain Power

BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

In the Matter of Community Advocacy for
Safety and Public Rights (CASPR LLC),

Complainant,

vs.

Rocky Mountain Power,

Respondent.

:
:
:
: Docket No. 19-035-10
:
:
:
: **ROCKY MOUNTAIN POWER’S**
: **RESPONSE TO NOTICE AND**
: **APPLICATION FOR REVIEW AND**
: **REHEARING**
:
:

Comes now, Rocky Mountain Power (the “Company”) with its response to Community Advocacy for Safety and Public Rights, LLC’s (“CASPR”) Notice and Application for Review or Rehearing (the “Petition”). In support of its Response, Rocky Mountain Power states as follows:

INTRODUCTION

On June 13, 2019, CASPR filed its Petition with the Public Service Commission of Utah (the “Commission”), requesting that the Commission reconsider its May 10, 2019, Order Dismissing Complaint (the “Order”), and allow CASPR’s complaint to proceed.

The Petition argues that CASPR raised questions regarding safety adherence that are within the Commission’s jurisdiction, separate from the land use questions CASPR admits were raised in the Complaint. CASPR also alleges that the South Jordan Planning Commission “asserted that it

does not have jurisdiction over applicable safety standards for the Upgraded Line and suggested that CASPR commence proceedings with [the Commission] to answer the question”¹ and therefore denial of reconsideration would leave CASPR without a venue to have its safety question answered.

As more fully described below, all of CASPR’s arguments were addressed in the Company’s Answer and Motion to Dismiss and were considered and rejected by the Commission in its May 10, 2019, Order. CASPR presents no new legal arguments or factual evidence in its Petition. Accordingly, it should be dismissed.

ARGUMENT

None of the arguments contained in CASPR’s Petition are new. The South Jordan Planning Commission (“SJPC”) explicitly considered and rejected CASPR’s arguments regarding safety clearances, and the Commission properly concluded these concerns are within the planning commission’s jurisdiction.

CASPR’s argument that it will be deprived of a venue to litigate its safety concerns if the Commission refuses to reconsider its decision is incorrect. The clearance issues were addressed and discussed in the SJPC’s decision on the conditional use permit. As the Company stated in its Answer and Motion to Dismiss:

The Planning Commission made a number of findings of fact, including, but not limited to: (1) RMP provided sufficient and credible evidence that it had easements for the location of the proposed work; (2) the City of South Jordan has not adopted any standards on electromagnetic field (“EMF”) levels or EMF mitigation. There are no state or federal laws or agencies that regulate EMFs; (3) general concerns about transmission lines or the operation and maintenance of power lines by other power companies are not evidence that this proposal will not meet all applicable standards; (4) *RMP provided a letter from a licensed and registered professional engineer who stated that the proposal will meet and/or exceed all industry and PacifiCorp standards and best practices for ensuring public safety,*

¹ CASPR’s Notice and Application for Review and Rehearing, p. 3.

including adhering to the 2017 NESC;² and (5) no evidence was presented showing the proposal will not meet all applicable standards, including the NESC.³ (emphasis added)

CASPR's attempt to persuade the SJPC to impose a condition regarding a "safety corridor width" was properly rejected by the SJPC because no such standard exists. The SJPC noted that a requirement of conditional uses is "to mitigate the reasonably anticipated detrimental effects of the proposed use *in accordance with applicable standards.*"⁴ (emphasis added). Line clearances in the NESC are the applicable standard, and the SJPC's decision found that there was no evidence the upgraded line would not meet applicable NESC clearance safety standards.

CASPR's arguments are merely an attempt to get a second bite at the apple in a different venue after its arguments were rejected by the SJPC. The Commission's Order correctly found that these matters were properly before the local governmental planning authority.

On June 14, 2019, the South Jordan City Hearing Officer issued a memorandum decision affirming the SJPC's issuance of the conditional use permit.⁵ The Hearing Officer found:

The placement, construction and operation of power lines in South Jordan City is not contrary to and incompatible with the South Jordan City Ordinances. To the contrary, the South Jordan City Council has exercised their legislative discretion and authority by enacting provisions in the City code which establish that Power and electrical lines are conditional uses. This legislative act specifically provides that such facilities can exist and be operated within the City under the proper review by the Planning Commission during the conditional use review process. Power lines and the related facilities are not contrary to the health, safety and welfare provisions of the City code. The Planning Commission

² A copy of the letter is included as Exhibit A. The NESC embodies the basic standards required for the safe installation, operation, and maintenance of power and communications utility systems. As the definitive safety standard for more than a century, the NESC emphasizes practical guidance for safeguarding workers and the public when in proximity to utility infrastructure and equipment that includes overhead and underground conductors, transformers, circuit breakers and storage batteries. Given its role as a safety code, the NESC underscores the importance of hazard avoidance as the primary means for achieving worker and public safety. In addition to emphasis placed on the need for appropriate protective clothing for workers, the NESC provides guidance and rules for specific situations such as the effective grounding of circuits, and maintaining minimum safe clearances between conductors and the ground or nearby buildings. Utah adopted the NESC in the Utah Administrative Code, Rule 746-310-1(13).

³ South Jordan Planning Commission Written Decision for Rocky Mountain Power's CUP Application, p. 3-5.

⁴ Utah Code § 10-9-507.

⁵ A copy of this decision is attached as Exhibit B.

did not violate any local, state or federal statute or law by granting the conditional use permit.⁶

CASPR has the right to appeal the decision of the South Jordan Hearing Officer to a court of competent jurisdiction within the period prescribed by Utah statutes.

CONCLUSION

The Commission should deny CASPR's Notice and Application for Review and Rehearing. As noted above, the arguments regarding the applicable safety standards were previously rejected by the Commission and the Commission's findings regarding its jurisdictional authority have not been altered by CASPR's Petition. CASPR's Petition should be denied.

DATED this 25th day of June, 2019.

Respectfully submitted,

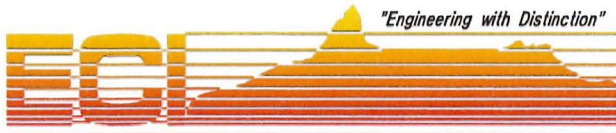


Bret Reich
Daniel E. Solander

Attorneys for Rocky Mountain Power

⁶ Hearing Officer Memorandum Decision, p. 5, ¶ 3.

Exhibit A



ELECTRICAL CONSULTANTS, INC

SALT LAKE OFFICE: 660 West 700 South • Woods Cross, UT 84087 • Phone: (801) 292-9954 • Fax: (801) 292-9177

December 21, 2018

RE: South Jordan to Draper Transmission Line Project – Safety & Design Requirements

To Whom It May Concern:

Electrical Consultants, Inc. (ECI) has been hired by PacifiCorp to perform the transmission line design engineering for the South Jordan to Draper project, for which I am the designated Engineer of Record. I can certify that the design of this project will meet and/or exceed all industry and PacifiCorp standards and best practices for ensuring public safety. This includes adhering to the 2017 National Electrical Safety Code (NESC). Specific areas in which safety is incorporated into the design include, but are not limited to:

- Clearances – horizontal, vertical and radial
- Structure strength design
- Foundation design
- Material specifications

Please let me know if there are any specific questions or concerns that ECI can assist with.

Regards,

Vernon Black, P.E.
Vernon.Black@ecisl.com
801-292-9954



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Exhibit B

Before the Appeal Authority of
South Jordan City
In re: Application for a Conditional Use Permit
Hearing Officer: H. Craig Hall

MEMORANDUM DECISION

Nature of the Appeal

This is an appeal by CASPR, A Utah Limited Liability Company, (“CASPR”) and Camie Hodlmair, (collectively referred to as “Appellants”), from a decision of the South Jordan Planning Commission (“Planning Commission”) granting Rocky Mountain Power’s (“RMP”) a Conditional Use Permit for the installation of a 138 kV power line within a residential zone submitted on March 24, 2019.

The hearing was held on June 5, 2019 at 1:00 p.m. pursuant to notice and stipulation of the parties. The following parties were present and represented by counsel:

CASPR—Appellant	Represented by Brett W. Hastings
Camie Hodlmair—Appellant	Represented by Brett W. Hastings
Rocky Mountain Power	Represented by Bret. W. Reich
City of South Jordan—Appellee	Represented by Todd Sheeran

Each party had the opportunity to submit briefs or memoranda supporting/opposing the decision of the Planning Commission. Respective counsel had the opportunity to orally present their respective arguments opposing and supporting the decision. The appeal hearing was recessed at approximately 3:15 p.m. M.D.T.

Factual Setting

On August 8, 2018, RMP submitted an application for a conditional use permit to upgrade the existing 46 kV power lines to 138 kV and to also repair or replace approximately 29 pole structures.

This matter was heard before the Planning Commission on March 12, 2019. A formal public hearing was held. During the public hearing many residents, property owners and organizations presented information, written and oral, regarding RMP’s Conditional Use Application. Prior to and during the public hearing, the respective parties presented many documents, studies and other information to the Planning Commission. Those documents were received as part of the record of the proceedings.¹ After the public hearing, the Planning Commission identified two detrimental effects that it decided could be substantially mitigated with one condition.

¹ The record consists of the audio recording of the Planning Commission, the approved written minutes, documents, studies, engineering documents, portions of the NESC all of which are contained within the 376 pages of information. This information was presented to the Planning Commission prior to and during the public hearing. The written decision of the Planning Commission is also part of the record.

On March 26, 2019, the Planning Commission issued their written decision. Appellants filed a timely appeal on April 5, 2019.

Scope of Review and Burden of Proof

Section 10-9a-707 of the Utah Code sets forth the scope of review authority for the hearing officer. It states as follows:

- (3) If the scope of factual matters is on the record, the appeal authority shall determine whether the record on appeal includes substantial evidence for each essential finding of fact; or
- (4) The appeal authority shall:
 - (a) determine the correctness of the land use authority's interpretation and application of the plain meaning of the land use regulations; and
 - (b) interpret and apply a land use regulation to favor a land use application unless the land use regulation plainly restricts the land use application.

The burden of proof that the Planning Commission erred in its decision rests upon the Appellant proving that the land use authority erred.²

Stipulations of the Parties

Prior to counsel presenting their respective arguments, the following matters were agreed upon and stipulated to by the parties:

1. Since the filing of the appeal on April 5, 2019, representatives of the South Jordan City Attorney's Office have had no "third party" discussions by phone, in-person, or otherwise with the Hearing Officer.
2. All parties stipulated that the Hearing Officer, H. Craig Hall, could preside over the hearing and render a decision without objection.
3. The record consists of RMP's Conditional Use Application with related documents, exhibits, and the Planning Commission's decision. The written record is comprised 376 pages. Audio recordings of the Commission Hearing of March 12, 2019 are also considered part of the record.

Issues on Appeal

Appellants identified four (4) issues on appeal in their Initial Statement on Appeal dated 26th day of April, 2019. Those issues were:

1. Whether the Planning Commission erred by asserting that it is outside of the Planning Commission's scope evidence related to alternative routes/option for the proposed use.

² See Utah Code 10-9a-705 and South Jordan Code of Ordinances Section 17.16.020.

2. Whether the Planning Commission erred asserting that RMP's internal safety and easement standards are inapplicable to the CUP at issue.
3. Whether the Planning Commission erred by failing to impose a reasonable condition to mitigate safety issues despite substantial evidence that the proposed use will violate applicable safety standards.
4. Whether the Planning Commission erred by failing to impose a reasonable condition to ensure that the proposed use will not render the affected property incompatible for use consistent with residential zoning.

However, in the Appellants' Brief filed on May 10, 2019, those issues were modified and reduced in number. The revised issues listed by the Appellants are as follows:

1. South Jordan Planning Commission erred by asserting that RMP's internal safety standards and best practices are inapplicable to the proposed use and final decision.
2. South Jordan Planning Commission erred by failing to impose a reasonable condition to mitigate health and safety concerns despite substantial evidence that the proposed use will violate applicable safety standards and best practices.
3. South Jordan Planning Commission erred by granting the Conditional Use Permit despite the fact that the proposed use in contrary to, and incompatible with, the South Jordan City, (sic) Utah City Code.

The Hearing Officer, for purposes of this decision, will only consider the three later identified issues. It is found that Appellants waived or abandoned the previously identified issues.

Decision of the South Jordan Planning Commission

The decision of the Planning Commission is as follows:

"Based on the information and evidence submitted by RMP, the residents, and the City staff, the Planning Commission unanimously approves [the Conditional Use Permit] with the following condition:

In the event that a final determination is made by a court of competent jurisdiction that the easements are not sufficient for RMP to perform its proposed work, RMP shall acquire legally sufficient easements for the proposed work. "Acquire" may include, among other things, RMP statutory rights to obtain such easements through the use of eminent domain or through negotiated agreements with property owners. As part of the condemnation process and in accordance with Utah law, RMP shall pay just compensation for the properties that a court determines are devalued."

Decision of the Hearing Officer

The Hearing Officer has reviewed all of the record including exhibits, audio recording, and minutes of the planning meeting. Each of the parties articulated their positions on the

record. These positions are well documented. There is substantial and sufficient evidence in the record to support multiple findings if the Planning Commission so elected. However, it did not. It is the responsibility of the Hearing Officer to only review the finding adopted by the Planning Commission. In fact, the Planning Commission specifically stated that “[i]f an issue was raised on the record but not disclosed” in its decision, it is intentionally omitted. The Planning Commission found two detrimental effects that required some “mitigation.” However, it only imposed one condition as stated above to mitigate these effects. Appellants argue that “all conditional uses” must impose mitigating conditions. The Hearing Officer does not believe that that is the law as set forth in Utah Statutes,³ case law, and even advisory opinions of the Utah Private Property Ombudsman.

I shall address each one of the three issues on appeal individually.

1. Issue No. 1. Whether the Planning Commission erred by asserting that RMP’s internal safety standards and best practices are inapplicable to the proposed use and final decision.

The Planning Commission is not authorized to impose, regulate, inspect or otherwise deal with safety standards and best practices. Their purpose is to review and grant or deny applications that come before them for planning purposes in accordance with the procedures and standards set forth in applicable South Jordan City ordinances and provisions. The Hearing Officer finds that safety issues were discussed extensively as the record demonstrates. However, I do not find that the failure to impose safety conditions, best practices, or standards in the approval of a conditional use permit violates any ordinance, procedure, or state or federal law. Construction issues and safety concerns are best left to the various inspection agencies during the construction process after all appropriate property rights have been obtained. The exclusion of safety concerns from the granting of the conditional use permit was proper.

2. Issue No. 2. Whether the Planning Commission erred by failing to impose a reasonable condition to mitigate health and safety concerns despite substantial evidence that the proposed use will violate applicable safety standards and best practices.

As stated before, the presence of “substantial evidence” does not require the decision body to adopt the issue supported by that evidence. The Hearing Officer cannot and will not substitute his judgment for that of the Planning Commission where, in his opinion, the record contains other substantial evidence supporting the Commission’s conclusion or non-conclusion. The failure to adopt or impose a reasonable condition regarding health and safety was not error.

3. Issue No. 3. Whether the Planning Commission erred by granting the Conditional Use Permit despite the fact that the proposed use is contrary to, and incompatible with, the South Jordan City Code.

³ Utah Code Sec 10-9a-507 uses the terms “may” “if”, etc. and not “shall”, “must,” etc.

The placement, construction, and operation of power lines in South Jordan City is not contrary to and incompatible with the South Jordan City Ordinances. To the contrary, the South Jordan City Council has exercised their legislative discretion and authority by enacting provisions in the City code which establish that "Power and electrical lines" are conditional uses. This legislative act specifically provides that such facilities can exist and be operated within the City under the proper review by the Planning Commission during the conditional use review process. Power lines and the related facilities are not contrary to the health, safety and welfare provisions of the City code. The Planning Commission did not violate any local, state, or federal statute or law by granting the conditional use permit.

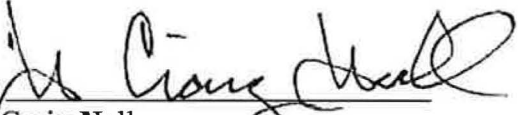
Order of the Hearing Officer

Based on the foregoing, the appeal of Appellants is denied. The Conditional Use Permit issued by the Planning Commission on April 26, 2019 is sustained. No additional supplemental decision will be issued.

Appeal Rights

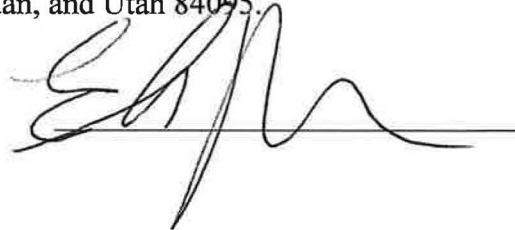
This decision may be appealed to a court of competent jurisdiction within the period prescribed by Utah State statutes.

Dated this 14th day of June 2019.

By 
H. Craig Mall
South Jordan Hearing Officer
Bennett Tueller Johnson & Deere
3165 East Millrock Drive, Suite 500
Salt Lake City, Utah 84121

Mailing Certificate

I hereby certify that a true and correct copy of the foregoing Memorandum Decision was mailed, U.S Mail, postage prepaid to Rocky Mountain Power through its counsel Bret W. Reich, 1407 W. North Temple, Suite 320, Salt Lake City, Utah 84116, CASPR, LLC, 11309 Green Grass, South Jordan, Utah 84095, and Camie Hodlmair, 11309 Green Grass, South Jordan, Utah 84095 on the 14th day of June 2019 and hand delivered to the City Recorder of South Jordan City, 1600 West Town Center Drive, South Jordan, and Utah 84095.



CERTIFICATE OF SERVICE

Docket No. 19-035-10

I hereby certify that on June 25, 2019, a true and correct copy of the foregoing was served by electronic mail to the following:

Community Advocacy for Safety and Public Rights casprllc138no@gmail.com

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Katie Savarin
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