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BEFORE THE UTAH UTILITY FACILITY REVIEW BOARD

ROCKY MOUNTAIN POWER,

Petitioner,

vs.

TOOELE COUNTY,

Respondent.

PETITION FOR REVIEW

**EXPEDITED TREATMENT
REQUESTED**

INTRODUCTION

On March 30, 2010, the Tooele County Commission (the “County Commission”) denied Rocky Mountain Power’s (the “Company”) application for a conditional use permit (the “Permit”) for the construction and operation of the Mona to Oquirrh Transmission Project (the “Transmission Project” or the “Project”).

The Transmission Project is necessary to meet the increasing demand on the Company’s electric transmission system. The Project will consist of a new 500 kilovolt (“kV”) transmission line from the existing Mona substation, located near the community of Mona, Utah, to a

proposed 500/345/138 kV substation in the southwestern portion of the Tooele Valley (hereinafter referred to as the “Limber substation”). From that point a new 345 kV transmission line will be built to the existing Oquirrh substation in West Jordan. A second 345 kV transmission line will ultimately be built from the Limber substation to the existing Terminal substation near the Salt Lake City International Airport as load growth increases within Tooele County. Tooele County’s denial of the Permit prohibits construction of the Transmission Project, which is required to provide safe, reliable, adequate, and efficient delivery of electricity to the Company’s customers in Tooele County, throughout Utah, and the other states the Company serves.

Pursuant to Utah Code Ann. § 54-14-303, the Company submits this Petition to the Utility Facility Review Board (the “Board”) seeking review of the County’s decision to deny the Permit. The County’s decision to deny the Permit prohibits the construction of electric facilities which are needed to provide safe, reliable, adequate, and efficient service to the Company’s customers.

I. ARGUMENT AND RELIEF SOUGHT

A. Authority and Purpose of this Board.

This Board was created to resolve disputes between local governments and public utilities regarding the siting and construction of infrastructure and facilities. *See generally* Utah Code Ann. § 54-14-301, *et seq.* Pursuant to the Utah Facility Review Board Act, a public utility may seek review by this Board if “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.” Utah Code Ann. § 54-14-303(d).

Tooele County's Land Use Ordinances require the Company to obtain a conditional use permit prior to constructing the Project. Hence, by denying the Company's application for a conditional use permit, Tooele County has prohibited the Company from building the Project. This Board must now act as the arbiter between Tooele County and the Company regarding the siting and construction of the Project.

In adopting the Utility Facility Review Board Act (the "Act"), the legislature left little doubt of this Board's ability and obligation to force a local government to issue a permit. Utah Code Ann. § 54-14-306(2) states:

If the Board decides that a facility should be constructed that the local government has prohibited, the local government **shall**, within 60 days following the decision of the Board, issue the permit, authorization, approval, exception, or waiver consistent with the decision of the Board.

(Emphasis added.)

The question now before this Board is simply whether the Project should be constructed in the alignment sought by the Company in the conditional use permit. If this Board determines that the Project should be constructed, it is required to order Tooele County to issue all permits, waivers, or approvals necessary for the construction of the Project. *Id.*

As it begins its analysis, this Board should consider the purpose of the statutes establishing this Board's obligations. The legislature realized that there may be instances, as in the present case, when a local government acting to protect its own local interests, rules in a manner that the local government believes is in the best interest of its constituents, but which is contrary to the best interests of the public at large. Recognizing that the State's utilities operate to serve citizens across the State, the legislature created this Board to protect the State's citizens

from decisions of local governments that could potentially cause rate increases or reliability and safety problems:

The Legislature finds that the construction of transmission lines and substations . . . is a matter of statewide concern. 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. 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.

The Legislature finds that it is in the public interest to establish the Electrical Facility Review Board to resolve issues regarding the construction and installation of transmission lines and substations by any electrical corporation that is a public utility.

Utah Code Ann. § 54-14-102.

Utah law has long recognized that local benefits cannot drive decisions that impact utility rate payers state-wide. If every community were allowed to dictate the course of power lines, the location of substations, or the methods by which utilities are able to deliver power to their customers, the rates paid by this State's citizens for electricity would greatly increase, and safety and reliability would be severely jeopardized. This Board's obligation to protect the larger public from adverse situations created by local government is the central purpose of the Act.

The Company recognizes that this Act does not remove all power and discretion from a local government. The Act clarifies that this Board should leave to a local government any decision that does not impact safety, reliability, or efficiency. Local governments can impose conditions that do not increase the cost of a utility project, and do not impair the delivery of safe, reliable and efficient power. *See id.* § 305(5). Furthermore, the Act also allows local governments to choose to pay the incremental excess costs to modify a project if a local

government wants to force conditions on a proposed facility that are not necessary for the Company's purposes, so long as those conditions do not impact safety, reliability, and efficiency. *See id.* § 203(1). Hence, local governments can only restrict a public utility's needed projects if (1) the restrictions do not impact reliability, safety, or efficiency of the project; and (2) the local government pays for the restrictions if the restrictions impose additional costs.

B. Tooele County Has Proposed No Specific Alternative Route or Conditions, and Hence, Cannot Restrict the Project.

Applying the statute to the facts of this case, Tooele County has denied the Company's conditional use permit application because the County does not like the route proposed by the Company. That said, the County has never formally identified to the Company a specific, alternative route that the County would approve in lieu of the Company's proposed route, or identified conditions on the Project in response to the Company's proposal. Several alternative routes have been proposed by the communities and key stakeholders (although not officially adopted by the County), each of which have been deemed unacceptable by Tooele City, the Bureau of Land Management (the "BLM"), the Company, or others. The fact is the County has never officially adopted an alternative route in any formal finding or order. In light of this fact, the Company sought approval from the County of the route that the Company deemed, through extensive analysis, was the safest, most reliable, and most efficient. With minor exceptions, this is also the route preferred by the BLM after extensive analysis conducted through the federal permitting process. The County denied its approval of this route.

Chief among the County's concerns with respect to the Company's proposed route is the anticipated views of the transmission line towers. The Act, however, does not permit the County to force the Company to relocate its proposed substation and reroute its transmission lines at

huge expense and vastly decrease the reliability simply on the basis that the County residents dislike the proposed route and object to the transmission line largely for aesthetic reasons. Rather, the question is whether the Project is needed to provide safe, reliable, adequate and efficient service to the customers of the Company. *Id.* § 301(1)(d). Unless Tooele County can first show (1) that it is proposing conditions on the Project that do not impact safety, reliability, or efficiency; and (2) the County agrees to pay in advance of construction all additional excess costs that the Company would face in constructing the facilities in accordance with the County's conditions, then this Board must order Tooele County to issue the requested permit so long as the Company can show that the Project "should be constructed." *Id.* § 306(2).

Tooele County had an obligation to propose conditions to the Project if it was unsatisfied with the Company's proposal. Once the Company proposed its Project to the County, the County had the obligation to establish conditions if it wanted to modify the Project. This requirement for the County is made clear by the Act.

First, both Utah Code Ann. §§ 54-14-103(9)(a) and 201(1) & (2) make clear that the Company is to plan its facility according to "the public utility's normal process." This, in fact, is the definition of "standard cost" in the Act. Thereafter, if the County does not want a facility to be built as it would be under "normal practices," the County can propose conditions that would vary standard practice. Section 201 states that the "*local government may require or condition the construction of a facility*" in a particular fashion—not that the Company must anticipate in advance what the County will adopt, and draft conditions for the County.

Other statutes in the Act also assume that the local government has the obligation of proposing a competing location for a project if location is the objection held by that entity. Utah Code Ann. § 54-14-305(4) states:

If the Board determines that a facility that the local government has prohibited should be constructed, the written decision should specify any general location parameters required to provide safe, reliable, adequate and efficient service to the customers of the public utility.

However, this statute only has meaning if Tooele County had put forward a competing geographic location for the Project. It has not. Hence, this Board is not facing a decision between competing routes or “location parameters.” Rather, it is only facing a decision of whether the Project “should be constructed.” *Id.* § 306(2).

Given the growing demand on the existing transmission system and the siting and system criteria, the Company has concluded that there is now only one corridor within which a route can be built suitable for the Project. Tooele has had, and will have, no competent evidence to establish any other route or substation location that can provide safe, reliable, and efficient electricity to the Company’s customers and allow the Project to be built in time to meet the growing demand on the Company’s transmission system. Therefore, the only “location” for this Board to consider is that put forward by the Company. So long as the Company can show a need for the Project, this Board must order the County to issue the permit to build the Project as now constituted.

II. BACKGROUND ESTABLISHING NEED FOR THE PROJECT AND ITS CONFIGURATION

Having shown that the only legitimate focus for this Board is whether the Project “should be built,” the Company proffers that the following facts, which will be established at the hearing of this matter, prove that the Project must be constructed as now proposed.

A. The Company’s Duty to Provide Reliable Electrical Service.

The Company is a public electric utility regulated by the Public Service Commission of the state of Utah. By statute, the Company has an affirmative legal 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, and as will be in all respects adequate, efficient, just and reasonable.” Utah Code Ann. § 54-3-1.

B. The Need for Additional Transmission Capacity.

The Company’s need for the Project is based on the increasing demand for electricity in Utah and the other states the Company serves. The Company’s obligation as a publicly regulated electric utility is to provide safe, reliable, adequate, and efficient electric transmission service to its retail customers and other users of the transmission system. Demand for electrical power within Utah is increasing at an approximate rate of 200 to 250 megawatts annually due to rapid growth and development, along with increasing per capita energy demands. It should come as no surprise that the bulk of this growing demand comes from the heavily populated portion of northern Utah encompassing all or portions of Salt Lake, Tooele, Utah, Davis, Weber, Cache, and Box Elder Counties (the “Critical Load Area”). While Utah’s largest electric load center is located in northern Utah, almost all of the electricity used to serve this load is generated at power plants in central and southern Utah and Wyoming. As a result, the bulk of electricity used within the Critical Load Area must be transmitted from the south via extra high voltage (“EHV”)¹ transmission lines running north through the Mona substation in Juab County.

As northern Utah’s electrical usage has grown, particularly within the Critical Load Area, the excess capacity of existing transmission lines from the Mona substation has been exhausted. The system is fully subscribed for firm transmission service and is operating at or near its full capability. Sufficient capacity to serve projected customer energy demand within the Critical Load Area, including Tooele County, no longer exists. No increase in capacity after 2011 can be

¹ “EHV” means transmission lines of 345 kV or higher.

made available to the residents of Utah without the addition of new EHV transmission lines. In fact, transmission studies and analysis show that the existing capacity of the transmission system from the Mona substation north into the Critical Load Area will have to be reduced in proportion to any future increase in customer demand in order to maintain system reliability and maintain compliance with performance standards. In short, the future electrical demand of the Critical Load Area will soon exceed the capability of existing EHV transmission lines, and without the additional capacity through a new EHV transmission corridor, the Company will be unable to ensure an adequate and reliable electric supply to its customers.

In order to maintain the reliability of the Company's system and avoid customer outages, additional transmission capacity between the Mona substation and the Critical Load Area must be developed. However, the new transmission lines cannot be constructed within the existing transmission corridors. A new EHV transmission corridor must be developed.

C. The Project Fulfills the Capacity Needs.

The Project is intended to meet the increasing demand for additional transmission capacity, and provide an alternative transmission pathway between the Mona substation and the Critical Load Area. The Project is also part of the Company's long-range Energy Gateway transmission expansion program which will increase the capacity and reliability of the Company's larger transmission system within Utah and throughout the western United States. When constructed, the Project will provide an efficient and reliable supply of transmission capacity to meet existing and future electrical loads. Without the additional capacity provided by the Project, the Company will, in the near future, be unable to meet its load service obligations to its customers within the Critical Load Area.

D. The Project Feasibility Study.

Once the Company identified the need for additional capacity to the Critical Load Area and established the general siting and system criteria for the Project, as described in Mr. Darrell Gerrard's testimony filed concurrently herewith, the Company initiated the siting and permitting process for Project. This process commenced in 2005 with a Feasibility Study, performed by an environmental consultant, to assess the ability to permit and develop the potential transmission line routes. The study evaluated a wide range of alternative transmission corridors and substation sites for the location of new 345 kV and 500 kV transmission lines and two future substations with interconnections from the existing Mona, Oquirrh, and Terminal substations. The process to define potential transmission corridors followed standard industry practices in siting and permitting transmission facilities and included several steps, including data collection, development of opportunities and constraints, and identification of potential route alternatives. In order to identify potential locations for transmission line corridors and substation siting areas, information gathered during the data inventory was used to determine environmental, engineering, and agency/public constraints and opportunities within the identified Feasibility Study area. For purposes of the Feasibility Study, siting opportunities for a new 345 kV or 500 kV transmission line generally included locations consisting of, or in proximity to, existing or future linear facilities, previously disturbed corridors, or corridors designated for future use as utility corridors. Generally, these included transportation corridors (highways and major roads), existing utility corridors, pipelines, and railroads that potentially allow for collocation of additional linear facilities. Once a wide range of alternative sites was developed, each of the potential 500 kV and 345 kV transmission corridors and substation siting areas were evaluated and compared based on environmental resource factors, community land use planning

information, engineering and system reliability requirements, and public and agency considerations.

E. The Federal Review Process.

Upon completion of the Feasibility Study in November 2006, it was determined that almost all of the potential corridors crossed BLM lands at some point, particularly in Tooele and Juab Counties, and, therefore, a BLM right-of-way grant would be required, along with the corresponding federal review and approval process.

The Company's right of way application was submitted to the BLM in January 2007, at which point the BLM was designated as the lead agency in the National Environmental Policy Act ("NEPA") process. After reviewing the scope of the Project, the BLM determined that granting a right-of-way for constructing, operating, and maintaining the proposed transmission lines and associated facilities would be a major federal action and would require an Environmental Impact Statement ("EIS") in compliance with the requirements of NEPA. As part of the Draft EIS process, the BLM conducted a comprehensive environmental analysis of all the alternative routes and substation sites. This analysis process consisted of several steps including: (1) data inventory, (2) impact assessment and mitigation planning, (3) screening and comparison, (4) identification of the alternative routes, and (5) selection of the BLM's preferred alternative. The alternative routes and substation sites were assessed to identify the potential effects (initial impacts) on the environment that would result from the construction, operation, and maintenance of the Project alternatives.

More than 450 miles of alternative routes were studied and analyzed by the BLM and the Company as part of the Project. These alternatives were inventoried and assessed to determine the environmental resources present and to identify potential impacts. To facilitate screening and

comparison of routes, the Project area was divided into two segments: the southern area (Mona to Limber) and the northern area (Limber to Oquirrh and Terminal).

The Draft EIS, which was released on May 15, 2009, identified the Company's proposed route and BLM's preferred route. These two routes consisted of the same alignment throughout most of the Project, except in a few areas as described in Mr. Brandon Smith's testimony filed concurrently herewith. The Company's conditional use permit application to Tooele County adopted the BLM's preferred route. 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. A map of the proposed route is provided with Mr. Smith's testimony.

General comments on the Draft EIS from the public and communities acknowledged and supported the need for a new transmission line, as well as portions of the proposed alignment of the Project. However, the feedback received was negative toward the location of the Limber to Oquirrh Segment to be located in the southern part of the Tooele Valley and along the foothills south and east of Tooele City. Those in opposition suggested that the Limber to Oquirrh Segment be constructed in some other, unspecified location.

F. Consideration of Alternative Routes between Limber and Oquirrh Substations.

The response to the public opposition to the Limber to Oquirrh Segment, the Company worked with representatives from several communities and key stakeholders, including Tooele

County and Tooele City, to evaluate alternative sites. Those involved in these meetings proposed alternative routes, all of which were analyzed and explored by the Company for general environmental issues, constructability, reliability, safety, impact to permitting and NEPA schedule, and cost. As outlined in detail in Mr. Smith's testimony, Tooele City opposed all of the proposed routes with alignments running through the city boundaries. Following further analysis of the remaining routes (those routes not passing through Tooele City), the Company deemed those routes unacceptable due to a number of factors, including construction limitations, environmental impacts, decreased reliability, and increased construction and maintenance costs.

Following the analysis of the alternative routes, the Company determined, consistent with the BLM's Draft EIS findings, that the proposed alignment of the Limber to Oquirrh Segment along the southern part of the Tooele Valley was the only workable alignment. All of the other alternatives evaluated by the Company would impair the Company's ability to provide safe, reliable, adequate, and efficient service to its customers in Tooele County and throughout the State.

G. Tooele County Needs the Project.

In addition to providing additional capacity to the entire Critical Load Area (in which Tooele is included), the Project is critical to the long-term electric service to Tooele County. Currently energy supplies for Tooele County are provided by three existing 138 kV transmission lines extending from the Oquirrh and Terminal substations, as shown in Mr. Gerrard's testimony. Tooele County has historically benefited and prospered based on electric supply from these existing substations located in the Salt Lake Valley, and from the electric transmission system interconnected thereto. The County has made it clear to the Company that it anticipates further growth, and is actively pursuing new, large industry to locate within the County. In short, the

County's demand for electricity is growing, but the Company's ability to meet that growing demand is nearly exhausted. When completed in 2013, the first phase of the Project will add additional capacity to the existing 138 kV feeds serving the Tooele Valley. In the future, the Limber substation and the 500 kV transmission line from the Mona substation will provide new long term load service capacity and increased reliability to Tooele County.

H. Tooele County Has Prevented Construction of the Transmission Project.

Among the permits and approvals required from the state and federal agencies, the Company was required to obtain conditional use permit approvals from the cities of South Jordan and West Jordan, along with approvals from Utah County and Tooele County. The Company has obtained all of these conditional use approvals, with exception of the approval from Tooele County.

On December 10, 2009, the Company submitted the application for the Permit to Tooele County, requesting approval for the construction of the Project. On March 30, 2010, the County Commission denied the Company's application for the Permit.

In its findings, Tooele County acknowledged the need for the Project, but opposed the proposed Limber to Oquirrh Segment along the south and east sides of Tooele City. In denying the conditional use permit, the County made clear its preference that the Company abandon its proposed Limber to Oquirrh Segment, and pursue an alternative route through the Tooele Valley. That alternative route was never articulated. At no time has the County provided to the Company for its consideration a route alignment that the County has indicated that it would deem acceptable. In addition, as outlined in Mr. Smith's testimony, all of alternative routes considered during the community work group meetings were either (1) opposed by the communities, and/or (2) were deemed unacceptable by the Company due to decreased Project

reliability, safety, efficiency, and resulting in significantly higher Project construction and maintenance costs. Through its denial of the Permit application, the County has left the Company with no options. The County's denial has prohibited the Company's ability to construct the Transmission Project, which is needed to provide safe, reliable, adequate, and efficient service to its customers.

III. CONCLUSION AND PRAYER FOR RELIEF

There can be no meaningful dispute about the need of the Company to construct a new transmission line and substation in Tooele County. Tooele County has been receiving electricity from substations in Salt Lake County that are now taxed to their capacity limits. There is no competent evidence to contradict the vast amount of data the Company put before the County or will put before this Board.

Similarly, there can be no meaningful dispute regarding the need for the Project or the location of the transmission lines and substation at issue. Tooele County has simply stated that it would have approved a route "somewhere else," but has never put on any evidence indicating where else a line could run without impacting reliability, safety, efficiency or costs. Rather, the testimony of Mr. Smith is that all other potential routes that were identified during the detailed study history of this Project were each opposed by the communities, or eliminated for various engineering, reliability, permitting, or viability flaws. Indeed, the testimony before this Board will be that the Company was willing to consider, and did consider, several routes for the Project. The route proposed by the Company is now the only route that will satisfy all statutory requirements of reliability, safety, adequacy, and efficiency. This Project is the last link in a very costly and important project necessary to transmit electricity across the Company's entire grid, as well as Tooele County. Tooele County cannot be allowed to jeopardize such a vitally important

project based purely upon local preference to not view transmission towers, and without even proposing any alternative routes that it would permit.

IV. REQUEST FOR EXPEDITED TREATMENT

The Company requests that this Board expedite this action given the critical nature of the dispute, and suggests the following schedule:

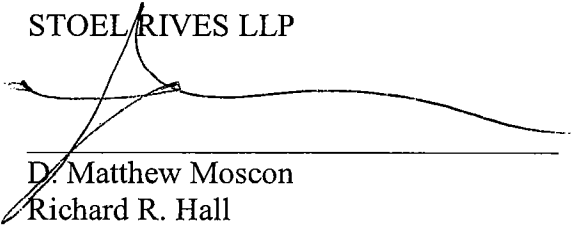
1. Initial Hearing—within 10 days of the filing of this Petition;
2. Opposing Brief of Respondent (if any)—within 10 days of date of filing this Petition; and
3. Final Hearing—to conclude by May 7, 2010.

V. ADDITIONAL MATERIALS

This Petition is filed concurrently with the Testimony of Darrell Gerrard and Brandon Smith, which is incorporated into this Petition by this reference.

DATED this 7th day of April, 2010.

STOEL RIVES LLP

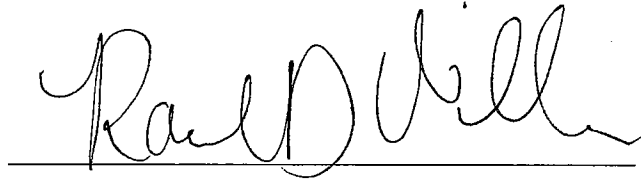


D. Matthew Moscon
Richard R. Hall
Attorneys for Petitioner
Rocky Mountain Power

CERTIFICATE OF SERVICE

I hereby certify that on this 4th day of April, 2010, I caused to be sent by hand delivery a true and correct copy of the foregoing **PETITION FOR REVIEW**, to the following:

Doug Hogan
Tooele County Attorney
Gordon R. Hall Courthouse
74 So. 100 E., Suite #26
Tooele, UT 84074



Handwritten signature of Randall D. Hill, written in cursive and underlined.