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BEFORE THE UTAH UTILITY FACILITY REVIEW BOARD

ROCKY MOUNTAIN POWER,)	
Petitioner,)	RESPONSE TO PETITION
)	FOR REVIEW
v.)	
)	
TOOELE COUNTY,)	
Respondent,)	
)	

Tooele County (hereinafter “County”), by and through its attorneys, L. Douglas Hogan and Scott A. Broadhead, hereby respond to Petitioner Rocky Mountain Power’s (hereinafter “RMP”) Petition for Review as follows:

ARGUMENT

Tooele County stipulates that the Transmission Project is necessary to meet the demands for service in Salt Lake County and, ultimately, Tooele County. However, the County objects to the route chosen by RMP. Tooele County is not required to be the proponent of a particular route, rather it is the Board’s responsibility to resolve disputes related to the siting and construction of high-voltage transmission lines.

I. TOOELE COUNTY DID NOT PROHIBIT CONSTRUCTION OF THE PROJECT.

RMP argues that by denying the conditional use permit (“CUP”) for this route, Tooele County prohibited construction of the Project. This is a mis-characterization of the actions taken by Tooele County. Tooele County has always supported the need for the project and has been an active participant in meetings and discussions with RMP about the project. The denial of RMP’s CUP does not prohibit construction of the project, rather, it prohibits siting of the route in a particular location.

In fact, Tooele County’s objections to the proposed route are isolated to that portion of the route between the Settlement Canyon Reservoir and the entrance to Pass Canyon. See Exhibit A (Map of Proposed Route). Tooele County is supportive of RMP’s route from the proposed limber substation to the South and is particularly appreciative of RMP’s efforts to co-locate this route with Mormon Trail Road. Tooele County believes that RMP could make application for a route which meets all of the Company’s criteria for safety, reliability, adequacy and efficiency as well as the Tooele County’s requirements for a CUP.

Tooele County will issue a CUP for a route, but not for the route currently proposed by RMP. RMP’s proposed route, specifically the controversial section illustrated in Exhibit A, does not satisfy the requirements for the issuance of a CUP under Tooele County ordinance because RMP could not show they had the ability to mitigate the detrimental impacts in the controversial portion of their proposed route. See Exhibit B (P&Z Findings). RMP chose the most offensive route to County residents and then demanded Tooele County permit it or become the proponent of an “alternative route.” RMP has asserted that there really is only one viable route to consider,

Tooele County respectfully disagrees. Tooele County believes that there are multiple routes through Tooele County which are “safe, reliable, adequate, and efficient.” Perhaps most importantly, particularly at this juncture, there are other routes that Tooele County would grant a conditional use permit, however, those routes have not been considered by Tooele County because RMP has not applied for them. Tooele County acknowledges that it lacks the expertise or resources (qualified personnel and/or budget) to credibly advocate for the construction of any particular route before this Board. However, the Utah Facility Review Board Act (the “Act”) provides this Board with the authority, expertise, and resources to evaluate not only RMP’s proposed route but any alternative route the Board deems worthy of consideration. In the alternative, the Board can order RMP to apply for a different route. *See generally* U.C.A. §54-14-302 and 303, *et seq.*

II. TOOELE COUNTY PROPOSED ALTERNATIVE ROUTES

Tooele County did propose several alternative routes. Tooele County, Tooele City and Grantsville City all signed a consensus letter indicating unanimous support for a route through Tooele County. See Exhibit C. The County participated in numerous public and private meetings regarding possible routes. The County made numerous suggestions beyond the consensus route. However, RMP summarily denied every suggested alternate route, just as they did in their petition. See Exhibit D (BDS Testimony—pages 23-27). It became apparent to Tooele County, Tooele City and Grantsville City that RMP had determined that there was one, and only one, possible route.

Tooele County lacks the ability to critically evaluate the reasoning for denial that has been provided by RMP and cannot be expected to understand or even speak the same language when it

comes to RMP's siting criteria. Tooele County is not in the business of siting high-voltage transmission lines which is a vastly different creature than simply reviewing a CUP for a high-voltage transmission line. Tooele County should not be required to make independent engineering studies on alternative routes in order to have them seriously considered by RMP. The financial cost to most, if not all, local jurisdictions would be prohibitive. Tooele County needs the Board to provide critical analysis of the proposed and alternative routes identified by RMP and any routes identified by the public that the Board believes warrant consideration or, in the alternative, require RMP to more fully evaluate routes the Board determines to be viable.

III. TOOELE COUNTY DOES NOT HAVE A DUTY TO BE THE PROPONENT OF ANY PARTICULAR ALTERNATE ROUTE

RMP argues that Tooele County did not choose an alternate route and implies that it was required to do so. The statute does not state that Tooele County is required to choose an alternate route. In addition, the statute does not state that this Board must simply choose between two different routes.

In relation to siting of a project the statutes state as follows:

1. UCA 54-14-305(2)(b)(v) states the Board "shall resolve any dispute regarding the proposed location and siting of a facility. . ."
2. UCA 54-14-305(3) states the Board "**may** designate the facility route for a high voltage transmission line."
3. UCA 54-14-305(4) states the Board "[i]f the board determines that a facility that a local government has prohibited should be constructed, the written decision **shall specify any general location parameters** required to provide safe, reliable, adequate, and efficient service to the customers of the public utility.
4. UCA 54-14-305(4) states the Board "**shall** 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 or that does not involve an estimated excess cost.

5. UCA 54-14-305(6) states the Board “[w]ith respect to local government requirements or conditions that impose an estimated excess cost but do not impair the provision of safe, reliable, and adequate service to the customers of the public utility, the written decision **shall leave each siting issue to the local government** except determination of the estimated excess cost and determination of when the construction of the facility should commence.”

Nothing in these statutes state that Tooele County has a duty to propose a specific route. Nor do they state that this Board must choose a particular route. Beyond suggesting possible alternatives, the Tooele County acknowledges that it lacks the expertise or financial ability to properly site a high-voltage transmission line.

In addition, there is nothing in the Tooele County statutes which permits the Planning Commission to choose a route for which there is no conditional use permit application. See Exhibit E (Tooele County Chapter 7–Conditional Uses). When an application for a conditional use permit is presented to the Tooele County Planning Commission, County ordinance does not provide a legal basis for the Planning Commission to order an “alternate” route be approved nor would RMP agree that the Planning Commission is qualified to site such a route. The Planning Commission was charged with the responsibility to approve (with reasonable mitigation measures) or deny RMP’s CUP, not choose an alternate route. Essentially, the County does not believe that “reasonable mitigation measures” are inclusive of “alternate routes” beyond what has been applied for by RMP and beyond what the public has been given notice.

IV. THE PROPOSED ROUTE SHOULD BE DENIED BY THE BOARD AND SHOULD NOT BE USED TO DETERMINE “STANDARD COSTS” UNDER THE UTAH FACILITY REVIEW BOARD ACT

One of Tooele County’s chief objections to the proposed route is that RMP did not co-locate it with existing utility and transportation corridors. On page 10 of the petition, RMP states that in identifying siting opportunities RMP searches for “locations consisting of, 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 collection of additional linear facilities.”

As the proposed route moves eastward from the proposed Limber substation area to the Oquirrh substation, excepting a brief section along SR-36, it completely avoids all of these possible corridors. There is a major gas pipeline (16" high pressure line) which runs over the Oquirrh Mountains through Middle Canyon and Butterfield Canyon (Tooele side/Salt Lake side) mostly parallel to an existing County road (Tooele County/Salt Lake County). Together, the road and pipeline provide a suitable corridor for co-location. See Exhibit F (Questar Map). The Silcox Canyon route most closely follows this corridor. Interstate 80 is another major corridor which the proposed route avoids. In fact, the I-80 corridor has been designated as a Federal “Section 368 Energy Corridor.” See Exhibit G. If the proposed route ran north from the proposed Limber substation area to Interstate 80 and then eastward eventually going over Pass Canyon, RMP could take advantage of the Federal Energy Corridor and the existing right of way over Pass Canyon. Two variations of this route are identified in RMP’s Petition as the “Grantsville Route–Options 1 & 2.” See Exhibit H. Again these are routes that have been suggested by Tooele County and dismissed by RMP.

RMP’s proposed route is “fait accompli” to the entire project. If the Board does not deny the proposed route, that is exactly what RMP will build. Of all the routes that RMP has considered, RMP has applied for the route that is (1) the least expensive to construct and (2) provided the fastest track to the Utah Facility Review Board. Tooele County agrees that, of all the routes included in RMP’s Petition, the proposed route is the least expensive to construct. If

the Board orders that this route provides an acceptable means of establishing “standard cost” under the Act, then, even if the Board agrees with Tooele County that there are other viable alternative routes, the imposition of “excess costs” associated with any other route will be beyond Tooele County’s ability to pay. The Act provides that if Tooele County cannot pay “excess costs,” RMP can commence construction of the route which established the “standard cost.” *See Generally* U.C.A. §54-14-204. For all of the same reasons that Tooele County has denied the CUP for this route, the Board should deny this route and order that it be prohibited from use as the basis for determining “standard costs” under the Act.

V. THE PROJECT’S CURRENT ROUTE IS NOT IN THE BEST INTEREST OF THE PUBLIC

RMP in outlining the purpose of this Board states that matters come before this Board “when a local government acting to protect its own local interest, rules in a manner that the local government believes is in the best interest of its constituents, but which is contrary to 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 the decisions of local governments that could potentially cause rate increases or reliability and safety problems.”

RMP implies that it acts on behalf of the “public at large” and that County’s decision is contrary to that of the “public at large.” The only “public” that has expressed an opinion in this matter are Tooele County residents who are adamantly opposed to the proposed route. There have been at least three public meetings concerning the proposed route and at each meeting the public has strongly opposed the route. The interest of the “public at large” are not limited to potential rate increases and efficiency. The “public at large” is also concerned about installing facilities which promote the safety and health of the public as well as promote the comfort and

convenience of RMP patrons, employees and the public. Cost and time-line, although important, do not automatically trump these other considerations.

VI. RMP HAS A DUTY TO PROMOTE THE SAFETY, HEALTH, COMFORT AND CONVENIENCE OF ITS PATRONS, EMPLOYEES AND THE PUBLIC

As stated in RMP's petition "[b]y statute, the RMP has an affirmative 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.' UCA 54-3-1." However, in formulating the Project, RMP has emphasized the word "efficient" and deemphasized the rest of their duties, including the duties to "promote the safety, health, comfort and convenience of its patrons, employees and the public."

On March 3, 2010, the Tooele County Planning Commission denied RMP's application for a conditional use permit. This decision was appealed to the Tooele County Commission which affirmed the denial on March 30, 2010. In its decision, the Tooele County Planning Commission cited the following factors in denying the conditional use permit, several of which relate to the safety of the public and RMP's customers:

[W]ildlife, disturbance of international smelter site, Settlement Canyon Reservoir use, view sheds including road scars, potential contamination of water sheds and springs, Tooele High School's T for safety and visual look, health risks regarding high power lines, loss in property value, the EIS is not complete, the completion date is uncertain, the record of decision from BLM is not available, and the Plan of Development is non-existent. The Planning Commission further found the following:

1. The draft EIS concludes that overall the line as proposed would result in moderate-to-high long-term impacts on visual resources in the Oquirrh Mountains, the establishment of a new utility corridor for approximately 60 percent of the transmission line route, and the crossing of residential and recreation areas. It further concludes that significant long-term impacts are anticipated in areas of high scenic quality;

2. The east bench, south of Tooele City, is a critical view-shed for the entire Tooele Valley and has been acquired at great expense. The line will be in the immediate foreground and immediate view of the most pristine and heavily recreationally used areas in the County;
3. Butterfield Canyon route shown in the Draft EIS ranks as number one, but has been opposed by Kennecott;
4. Rocky Mountain Power's communications with the Bureau of Land Management indicate that additional transmission capacity is required to service the south part of the Salt Lake Valley and surrounding communities, including the Tooele Valley. They further stated that the largest area of concern is the impact of Kennecott Land development, specifically the Daybreak development. As Kennecott Land development is creating much of the need they should be tasked with assisting to provide transmission corridor on land under their control away from existing residential development;
5. The construction of new access roads would increase OHV use and traffic in areas where access was previously limited or non-existent and represent a permanent impact visually;
6. The Draft EIS indicates that there are long-term significant impacts associated with crossing the Carr Fork Wildlife Management Area and the International Smelting and Refining superfund site. A final determination from the EPA regarding construction with the superfund site has not been rendered;
7. The possibility of a Class2B carcinogen represents an impact to residential development in close proximity and overall health, safety and welfare of the community. Additional health risks remain in question;
8. Air quality impacts have not been addressed by the conditional use permit;
9. No evidence of resolution of impacts to Tooele City's springs, watershed, and source protection zones;
10. The presence of high winds and geologic faults along the Oquirrh Mountains represent an on going threat to construction, operation and maintenance of the line and public safety;
11. Impact to the Settlement Canyon Reservoir for aerial fire fighting remains unresolved and unmitigated; and
12. Information within the draft EIS is in error and should be corrected with the Final EIS.

RMP falsely claims in the petition that the conditional use was denied for mere aesthetic reasons. The conditional use permit was denied because the County Planning Commission determined, and the County Commission agreed, that RMP was unable to mitigate the detrimental impacts of the proposed route. Most of these findings relate to the safety, health, comfort and convenience of the public. Again, the Board should deny this route and order that it not be allowed to be the basis for determining “standard costs” under the Act.

VII. THE RELIEF REQUESTED BY RMP, EVEN IF GRANTED BY THE BOARD, WILL NOT ENSURE THE VIABILITY OF THIS ROUTE

RMP has stated that “there can be no meaningful dispute regarding...the location of the transmission lines and substation at issue.” (RMP Petition page 15) First, RMP has not submitted an application for a substation at this point although the approval of a route will likely be determinative of where the substation is ultimately located. Second, even if a permit were granted, there are complications with this route that may prevent its construction.

The controversial portion of the route applied for by RMP goes through the Carr Fork Wildlife Management Area and the International Smelting and Refining superfund site. The Draft EIS indicates that there are long-term significant impacts associated with crossing the Carr Fork Wildlife Management Area and the International Smelting and Refining superfund site. A final determination from the EPA regarding construction within the superfund site has not been rendered. The EPA may not allow RMP to construct the route as currently aligned even if a permit were granted by Tooele County.

Again, the controversial portion of the route goes through property owned by Tooele City. This property was acquired by Tooele City at great expense to provide protection to the City’s watershed and culinary water system as well as to preserve “open space” and “viewshed.” Tooele City has indicated that it will adamantly oppose any attempt by RMP to acquire right of

way across this property because it has already been dedicated to a “public purpose.” See Exhibit I (Letter from Tooele City to UFRB). Even if a permit were issued by Tooele County to RMP for this route, there is no guarantee that the Court considering this condemnation proceeding would make the determination that RMP’s public purpose trumps Tooele City’s present use of the property. In fact, it would seem likely that if a Court found the uses to be mutually exclusive, Tooele City would likely prevail because the power line can be moved and the “watershed/viewshed” cannot.

CONCLUSION

For the reason stated above, Tooele County requests that the Facility Review Board take the following actions:

1. Issue an order affirming Tooele County’s denial of RMP’s proposed route.
2. Issue an order prohibiting the use of the proposed route as a basis for establishing “standard costs” under the Act.
3. Conduct its own analysis of all alternative routes identified in RMP’s petition and any other route that the Board believes to warrant consideration as a result of this hearing. In the alternative, order RMP to apply for an alternate route.
4. Identify all routes that the Board believes to be viable routes.
5. Issue an appropriate order directing Tooele County to approve a route that the Board has determined to be viable based upon all relevant criteria.

Dated this ___ day of April, 2010.

L. Douglas Hogan
Scott A. Broadhead
Tooele County Attorney

CERTIFICATE OF SERVICE

I hereby certify that on this 22 day of April 2010 I caused to be sent by hand delivery a true and correct copy of the foregoing Response to Petition for Review, to the following:

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