

Jeremy C. Reutzel (10692)
BENNETT TUELLER JOHNSON & DEERE
3165 East Millrock Drive, Suite 500
Salt Lake City, Utah 84121-5027
Telephone: (801) 438-2000
Facsimile: (801) 438-2050
Email: jreutzel@btjd.com

Attorney for Intervenors

BEFORE THE UTAH UTILITY FACILITY REVIEW BOARD

<p>ROCKY MOUNTAIN POWER, Petitioner, vs. WASATCH COUNTY, Respondent.</p>	<p>PETITION TO INTERVENE and REQUEST FOR FORMAL ADJUDICATIVE PROCEEDINGS Docket No. 16-035-09</p>
<p>MARK 25, LLC; BLACK ROCK RIDGE MASTER HOMEOWNERS ASSOCIATION, INC.; BLACK ROCK RIDGE TOWNHOME OWNERS ASSOCIATION, INC.; BLACK ROCK RIDGE CONDOMINIUM ASSOCIATION, INC., Intervenors.</p>	

Intervenors Mark 25, LLC (“*Mark*”); Black Rock Ridge Master Homeowners Association, Inc. (“*Master Association*”); Black Rock Ridge Townhome Owners Association, Inc. (“*Townhome Association*”); and Black Rock Ridge Condominium Association, Inc. (“*Condo Association*”), by and through counsel of record, seek to intervene in the above-captioned matter and request a formal adjudicative proceeding. (The Master Association,

Townhome Association, and Condo Association are collectively referred to as the “*Associations*” herein.)

FACTS

The parties and their interests in this proceeding

Mark is an owner and developer of a residential development in Wasatch County commonly known as Black Rock Ridge. The Associations own common areas and open space and represent the interests of more than 200 condominium and townhome owners in Black Rock Ridge. Rocky Mountain Power (“*RMP*”) is a regulated public utility that is seeking to move its existing and operating transmission line from Summit County into Wasatch County (over prominent ridgelines viewable from Highway 248 between Park City and Kamas) and near and through Black Rock Ridge.

RMP’s application to move its transmission line

On March 12, 2015, the Wasatch County Planning Commission (the “*Commission*”) held a hearing to consider RMP’s application for a conditional use permit to move and upgrade its existing and operating transmission line. This was the first of several hearings. During the March 12th hearing, the Commission instructed RMP to work with the affected landowners to address concerns and then continued the hearing until May 14, 2015. When May 14, 2015, arrived, RMP had yet to make any effort to consult with or discuss the application with Mark or the Associations—the landowners that will suffer the most harm if the application is granted. RMP then requested and received a continuation of the May 14 hearing.

Some months later, RMP revised its application for a conditional use permit and the Commission held another hearing. RMP withdrew its application during the hearing when it became clear that the Commission was likely to deny it. Shortly thereafter, RMP filed its third iteration of

the application. This time the application sought the same approval as the previous applications, but also provided additional alternatives, including running the transmission line directly through Black Rock Ridge and paralleling Browns Canyon Road and Highway 248. The Commission determined the best, safest, and most efficient route is the route that RMP has had for nearly a century—the same route it is currently operating its transmission line on—and denied RMP’s application.

RMP appealed the Commission’s decision to the Wasatch County Board of Adjustments. On January 21, 2016, the Board of Adjustments heard the appeal and affirmed the Commission. The Board of Adjustments, like the Commission, was unconvinced that any good reason existed to move the transmission line.

The issues and information needed to decide this matter

RMP’s Petition fails to clearly address the issue before this Board. This proceeding is not about RMP’s ability to construct facilities needed to provide safe, reliable, adequate and efficient electric service to its customers. Rather, the issue here is whether RMP should be allowed to move a transmission line from a route that has existed for nearly a century, into Wasatch County and next to or through an existing residential development, all in violation of Wasatch County’s ordinances and over Wasatch County Fire Marshall’s safety objections. The only reason RMP provided to Wasatch County for moving the transmission line is to satisfy the pecuniary interests of a developer in Summit County. That developer wants to move the transmission line and RMP allegedly agreed to accommodate its request at the expense of Wasatch County, the Associations, and Mark without consulting with any of them or seeking to comply with Wasatch County’s ordinances. There is no reason RMP cannot continue to operate and even upgrade its transmission line on its existing route and easements. RMP has never claimed otherwise in any hearing before Wasatch County’s Commission or the Board of Adjustments. Rather, RMP’s sole reason for seeking to impose the

transmission line on Wasatch County, the Associations, Mark, and other affected parties is for the purpose of accommodating a single developer's request, which developer presumably acquired its property with the transmission line already constructed and operating on it. RMP alleges that an agreement with this developer requires it to move the transmission line, but to date, RMP has been unwilling to reveal this agreement.

LEGAL AUTHORITIES

A. Mark and the Association are Interested and Affected Parties Entitled to Intervene.

“A potentially affected landowner, as defined in Section 54-18-102, or affected entity, as defined in Section 54-18-102, shall have a right to intervene as a party in the proceeding.” Utah Code § 54-14-303(2)(b). Here, the Associations are both affected landowners and affected entities because (1) their property and their members' property is within the proposed corridor of RMP's proposed transmission line, and (2) the proposed transmission line will require the Associations to significantly modify their services and facilities to mitigate and protect against the transmission line. Mark is an affected landowner because Mark's property is within the proposed corridor. If RMP is successful in relocating the transmission line, the Associations and Mark will be substantially impacted. For example, depending on the specific route, Mark may have to redesign Black Rock Ridge and build mitigating improvements. The Association will also be forced to take mitigating actions and safety measures. Moreover, there can be little question that relocating the transmission line will obstruct views, decrease property values, and interfere with Mark's ability to market Black Rock Ridge. These are the very reasons the developer RMP allegedly has an agreement with has requested that RMP relocate the transmission line.

Utah Code section 63G-4-207 and R746-100-7 provide an additional basis for intervention. Any person may intervene in formal adjudicative proceedings if that person's "legal interests may be substantially affected by the formal adjudicative proceeding." Utah Code § 63G-4-207. Here, Mark's and the Associations' legal interests in their real property and in the protection offered by the enforcement of Wasatch County's code will be affected if RMP is allowed to relocate its transmission line in violation of Wasatch County's ridgeline and other zoning ordinances.

The Associations and Mark stand to lose both economic and legal interests if RMP is allowed to relocate its transmission line. For this reason, they should be allowed to intervene in this matter.

B. This Matter Should be Formal.

The *Notices of Filing, Comment Period, and Initial Hearing* issued by the Commission allows "interested parties" to submit comments "on the issue of whether this matter should be conducted formally or informally." Mark and the Association are interested parties, as explained above, and they request that this matter be conducted formally. Typically, discovery and intervention is prohibited in informal proceedings. Utah Code § 63G-4-203. But discovery and intervention are both necessary in this case.

First, as explained above, Mark and the Associations are impacted by RMP's proposed relocated transmission line. In the interest of due process and justice, Mark and the Association should be allowed to intervene in this matter, and a formal proceeding is necessary to allow them to intervene. It is Mark's and the Associations' property values, views, property rights, legal rights, and safety that stand to be diminished.

Second, discovery is necessary to ensure complete and accurate information is presented in this matter. RMP is seeking to relocate a transmission line based on its alleged contractual relationship with a developer. But RMP has not revealed the details of its agreement and its relationship with this developer to Wasatch County. In essence, RMP seeks to relocate a transmission line from a route that has existed for nearly a century while ignoring Wasatch County and its ordinances, Fire Marshall, and residents. RMP's justification for the relocation is its alleged relationship with a private developer. RMP, a public utility, should be subject to discovery probing its relationship with this developer and its other justifications for burdening Wasatch County and its resident with the relocated transmission line.

REQUEST FOR RELIEF

Mark and the Associations petition the Board to allow them to intervene in the above-captioned action, to conduct this matter as a formal adjudicative proceeding, and to deny RMP's Petition to relocate its transmission line.

DATED the 14th day of March 2016.

BENNETT TUELLER JOHNSON & DEERE

/s/ Jeremy C. Reutzel _____
Jeremy C. Reutzel
Attorneys for Plaintiff