D. Matthew Moscon (#6947)
Richard R. Hall (#9856)
STOEL RIVES LLP
201 South Main Street, Suite 1100
Salt Lake City, Utah 84111
Telephone: (801) 328-3131

R. Jeff Richards (#7294)
ROCKY MOUNTAIN POWER
201 South Main Street, Suite 2200
Salt Lake City, Utah 84111
Telephone: (801) 220-4734

Attorneys for Petitioner
Rocky Mountain Power

BEFORE THE UTAH UTILITY FACILITY REVIEW BOARD

ROCKY MOUNTAIN POWER, Petitioner, vs. WASATCH COUNTY, Respondent. MARK 25, LLC; BLACK ROCK RIDGE MASTER HOMEOWNERS ASSOCIATION, INC.; BLACK ROCK RIDGE TOWNHOME OWNERS ASSOCIATION, INC.; BLACK ROCK RIDGE CONDOMINIUM ASSOCIATION, INC., Intervenors.	**OPPOSITION TO PETITION TO INTERVENE** **Docket No. 16-035-09**

Rocky Mountain Power (the "Company") submits this Opposition to the Petition to Intervene brought by Mark 25, LLC ("Mark 25"); Black Rock Ridge Master Homeowners Association, Inc.; Black Rock Ridge Townhome Owners Association, Inc.; and Black Rock Ridge

Condominium Association, Inc. (collectively the "Associations") (Mark 25 and the Associations are together referred to herein as "Black Rock").

I. FACTUAL BACKGROUND

The Company's petition for review before the Utility Facility Review Board (the "Board") under Utah Code Ann. § 54-14-303 appeals Wasatch County's (the "County") denial of the Company's application for a conditional use permit (the "Permit") for the construction and operation of the quarter-mile long section of the 74-mile long Evanston (Railroad)-Silvercreek 138 kV transmission line (the "Project") to be located within Wasatch County. The quarter-mile long section of the Project to be located within Wasatch County, and which is the subject of the appeal before the Board, is referred to herein as the "Wasatch Segment."

The Company's need for the Project is based on the need to increase reliability and capacity to meet the increasing demand for electricity in Wasatch and Summit Counties as well as the state more broadly. The Project, including the Wasatch Segment, is intended to meet this increasing demand for additional transmission capacity and create a reliable, alternative transmission pathway to Wasatch and Summit Counties. Without the Project, Wasatch and Summit Counties will experience more frequent outages of longer duration, and the Company will, in the near future, be unable to meet its load service obligations to its customers within the area.

The Wasatch Segment is proposed to be located wholly on land owned by Promontory Investments LLC ("Promontory").

During the Permit application process, the Company worked to respond to the County's concerns regarding the Wasatch Segment. Several nearby landowners and County residents, including Black Rock, participated in the Permit application process through public comment. The comments from the public mirrored those expressed by the County. Notably, however, a representative from Promontory – the only entity that actually owns property within the Wasatch

Segment corridor – was present at most (if not all) of the public hearings on the Permit, and did not object to the Company's application. In response to the County's concerns and the public comment, the Company committed to implementing various mitigation measures, and proposed alternative alignments and facility configurations that the Company was willing to explore along the Wasatch Segment. The County and those opposing the project were dismissive of the proposed mitigation measures and rejected the Company's preferred alignment, as well as the other proposed alignments offered by the Company for discussion and further exploration. The fact is, the County and those opposing the Wasatch Segment, including Black Rock, simply did not want the Wasatch Segment within the County's boundaries, based primarily on the displeasing aesthetics of visible transmission line towers, and were unwilling to consider any alternative within the area of the Wasatch Segment alignment proposed by the Company. Consistent with this position, the Permit was denied.

The Company appealed the Commission's decision to the Wasatch County Board of Adjustment, which affirmed the denial. At both the Commission level and the Board of Adjustment appeal, Black Rock submitted comments and was heard on its concerns that the Wasatch Segment would have detrimental impacts on Black Rock's development. Throughout the process, Black Rock's objections to the Wasatch Segment mirrored those of the County and other public parties opposing the Wasatch Segment. At no time during the Permit application process did Promontory object or express concern regarding the Company's preferred alignment of the Wasatch Segment.

II. ARGUMENT

Black Rock asserts it may intervene as a matter of right under Utah Code Ann. § 54-14-303(2)(b) of the Utility Facility Review Board Act (the "Act") and also because its interests will be substantially affected pursuant to Utah Code Ann. § 63G-4-207. However, Black Rock is not a qualified intervenor under Utah Code Ann. § 54-14-303(2)(b) since this section of the Code is

not applicable to the review sought in this proceeding. Furthermore, even if this section were applicable (which it is not), Black Rock does not meet the definition of a potentially affected landowner since it does not own land within the Company's proposed corridor for the Wasatch Segment. Further, because Black Rock's concerns mirror those of the County, concerns which will be adequately represented by the County, Black Rock cannot show that it is entitled to intervene under Utah Code Ann. § 63G-4-207. Consistent with the Board's past practice, Black Rock should be permitted to submit comments as part of the proceeding and to address the Board during any public witness day the Board may convene. However, in the interest of promoting prompt and orderly proceedings consistent with the purpose of the Act, Black Rock should not be granted the right to participate as a party in the proceeding, to be able to insist on discovery, file motions, make objections and potentially interfere with any settlement between the real parties in interest-- all as discussed below.

A. Black Rock Cannot Intervene As A Matter Of Right.

1. Utah Code Ann. § 54-14-303(2) does not apply to these proceedings.

Black Rock argues it has the right to intervene based on Utah Code Ann. § 54-14-303(2)(b) of the "Act," which gives a "potentially affected landowner, as defined in Section 54-18-102," the right to intervene. However, because the Company, instead of the County, has sought review by the Board under Utah Code Ann. § 54-14-303(1)(d), Section 303(2) is not applicable in this case.

Utah Code Ann. § 54-14-303(2) provides:

> (a) If an action is filed by a local government pursuant to Subsection (1)(b)(iv) or (v) seeking a modification to a target study area or a proposed corridor, the local government shall provide written notice of the action to any potentially affected landowner, as defined in Section 54-18-102, or affected entity, as defined in Section 54-18-102.
>
> (b) 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.

Reading Section 303(2) as a whole, it only grants certain landowners the right to intervene in two specific circumstances, and only if a local government has filed the action.

First, Section 303(2) only applies in actions filed with the Board by a local government. In this case, the appeal was filed by the Company, not the County. *See* Utah Code Ann. §§ 54-2-1(19), 54-14-103(7). Furthermore, Section 303(2) only applies to actions brought "pursuant to Subsection 1(b)(iv) or (v)." Here, the Company seeks review only pursuant to Section 303(1)(d). Pet. for Review at 2. To be clear, an affected party's right to intervene only arises in actions filed by the local governmental entity, and only for actions arising under "Subsection (1)(b)(iv) or (v)." That is not the case here.

Section 303(2)(a) and (b) must be read together as a whole. Doing so makes clear that the only landowners that are entitled to intervene under the Act are those who may be affected (as defined in the Act) by proceedings *brought by the local government* seeking modification to a target study area or proposed corridor. Such a limited right to intervention conforms with the Board's purpose, which is to resolve disputes between just two parties: "local governments and public utilities." Simply stated, the Board was not created to adjudicate the grievances of private parties. Thus, Section 303(2)(b) does not give Black Rock the right to intervene, since that section is completely inapplicable to these proceedings.

2. Even if Utah Code Ann. § 54-14-303(b)(2) is applicable, Black Rock is not a "potentially affected landowner."

Even assuming, however, that Section 303(b)(2) should be read as a standalone provision that gives affected property owners a right to intervene in actions such as this one, Black Rock does not own property located within the transmission line route, and therefore does not qualify as a "potentially affected landowner" as defined in the Act. As noted above, Section 303(2)(b) only applies to potentially affected landowners as defined by Section 54-18-102. Utah Code Ann. §

54-18-102(2) defines an affected landowner as "an owner of a property interest, as reflected in the most recent county or city tax records as receiving property tax notice, whose property is located within a proposed corridor." (Emphasis added). Black Rock does not own any property interests whatsoever within the proposed corridor.

Black Rock's assertion that "their property and their members' property is within the proposed corridor" of the transmission line is simply not accurate. Pet. to Intervene at 4. As shown in the exhibits appended to the Affidavit of Cody Nunely, collectively attached as **Exhibit A**, neither Mark 25 nor the Associations are the record owners of any property located within the Wasatch Segment, which is the route applied for by the Company. The fact is that the transmission line corridor proposed by the Company and for which a permit was sought (and denied) is not located within Black Rock's property and, therefore, Black Rock does not qualify as an affected landowner as defined by Section 54-18-102[1].

In sum, Black Rock's reliance on Utah Code Ann. § 54-14-303(b) is misplaced, as it does not give Black Rock authority to intervene in this proceeding as a matter of right.

B. Black Rock Cannot Show Intervention Is Proper Under Utah Code Ann. § 63G-4-207.

Additionally, Black Rock's assertion that its legal interests will be substantially affected is incorrect, and alone does not warrant intervention. Utah Code Ann. § 63G-4-207(2) provides that a person shall be allowed to intervene if: (1) "the petitioner's legal interests may be substantially affected by the formal adjudicative proceedings;" and (2) "the interests of justice and the orderly and prompt conduct of the adjudicative proceedings will not be materially impaired by allowing

[1] As described in Mr. Nunley's Affidavit, the Company did propose several options to Wasatch County that RMP would consider building, one of which ("Option 4") intersects with Black Rock's (Mark 25's) property. However, that option was rejected by the County and accordingly the Company never applied for a permit to cross Black Rock's property. The permit denial that is at issue in this proceeding only applies to property owned by Promontory, who does not oppose the location.

the intervention." (Emphasis added). Black Rock's interests in this proceeding closely align with the interests represented by the County, and the County will adequately represent Black Rock's interests, as well as other local landowners' interests, in this proceeding. Therefore, granting intervention to Black Rock is unnecessary and improper.

Throughout the application process, the concerns and objections raised by Black Rock and other members of the public mirrored the concerns and objections asserted by the County. Indeed, as one would expect, the County's objections have been largely based on the comments it received from its local residents and landowners near the Wasatch Segment, including Black Rock. Given the County's position, Black Rock's involvement in the proceeding before the Board is unnecessary, as the interests asserted by Black Rock are in line with the interests of other surrounding landowners, and the same interests represented by the County. Allowing Black Rock (or any other landowner), whose interests align with and are adequately represented by the County, to participate in a proceeding designed by statute to resolve disputes between the local government and the public utility is an unnecessary impairment on the proceedings. The result would be duplicate efforts, and duplicate arguments by "differing" parties. Again, as stated directly in this Board's empowering statute, this Board was create to address grievances between local governments and utilities, not between utilities and neighboring land developers.

As explained in *In re Questar Gas Co.*, 2007 UT 79, ¶ 35, 175 P.3d 545, when considering whether the interests of justice will be impaired by an intervention under the Administrative Procedures Act, the Board must consider whether Black Rock's interests will be adequately represented by another party in the proceedings. In this case, Black Rock's interests will be adequately represented by the County because their interests are aligned: both the County and Black Rock seek to prevent the Company from constructing and operating the transmission line

along the Wasatch Segment. *See Skypark Airport Ass'n, LLC v. Jensen*, 2001 UT App 230, ¶ 5, 262 P.3d 432 (discussing adequate representation in relation to Utah R. Civ. P. 24). The County and Black Rock even have the same motive: of primary importance to both the County and Black Rock are the effects of a diminished aesthetic appeal. Pet. to Intervene at 4. Because there are no diverging interests between the County and Black Rock, the County will more than adequately represent Black Rock's interests. By allowing a private party to enter the proceedings when its interests are adequately protected, the promptness of the proceedings will be substantially impaired. Consider also the ramification if Black Rock contends that its interests are different than the County's: if the County and the Company decided to settle their disputes based on a compromised alignment, could they do so without Black Rock's consent if it is a party to this proceeding? If Black Rock's consent and participation was not needed as a party during the Company's Permit application process (other than as a member of the public who, of course, is able to make comments) than how can it argue that *this proceeding* cannot proceed without its direct involvement as a party? Logically it cannot. If Black Rock is allowed to participate as a party, every resident of Wasatch County who claims their property will suffer, lose value, or have viewshed impaired would also be allowed to participate as parties. The Board should reject any such precedent. If Black Rock's Petition is premised on its belief that the permit to cross its property in "Option 4" was applied for, as described in Mr. Nunley's affidavit, that belief is incorrect and does not give rise to Black Rock's need to be a party in this proceeding.

III. CONCLUSION

Black Rock has failed to prove that it has a right, or should be allowed, to intervene under Utah Code Ann. §§ 54-14-303(2)(v) or 63G-4-207. Black Rock's concerns and interests, along with the interests of other parties within Wasatch County opposing the Wasatch Segment, are adequately represented by the County. In order to promote prompt and orderly proceedings

consistent with the purpose of the Act, the Board should deny Black Rock's request. Nevertheless, the Company does not object to Black Rock providing comment through any public comment process the Board may convene.

Based on the foregoing, the Company respectfully requests that Black Rock's Petition to Intervene be denied.

DATED: March 21, 2016.

STOEL RIVES LLP

/s/ D. Matthew Moscon
D. Matthew Moscon
Richard R. Hall

Attorneys for Petitioner

CERTIFICATE OF SERVICE

I hereby certify that on this 21st day of March, 2016, a true and correct copy of the foregoing **OPPOSITION TO PETITION TO INTERVENE** was served upon the following as indicated below:

By Electronic-Mail:

Beth Holbrook (bholbrookinc@gmail.com)
Utah League of Cities and Towns

Data Request Response Center (datarequest@pacificorp.com)
PacifiCorp

Heidi Gordon (heidi.gordon@pacificorp.com)
Rocky Mountain Power

Scott Sweat (ssweat@wasatch.utah.gov)
Tyler Berg (tberg@wasatch.utah.gov)
Wasatch County

Patricia Schmid (pschmid@utah.gov)
Justin Jetter (jjetter@utah.gov)
Rex Olsen (rolsen@utah.gov)
Robert Moore (rmoore@utah.gov)
Assistant Utah Attorneys General

Jeremy C. Reutzel (jreutzel@btjd.com)
Bennett Tueller Johnson & Deere
Attorneys for Mark 25 LLC and Black Rock Ridge Entities

By U.S. Mail:

Division of Public Utilities
160 East 300 South, 4th Floor
Salt Lake City, Utah 84111

Office of Consumer Services
160 East 300 South, 2nd Floor
Salt Lake City, Utah 84111

/s/ D. Matthew Moscon