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BEFORE THE UTAH UTILITY FACILITY REVIEW BOARD

ROCKY MOUNTAIN POWER,

Petitioner,

vs.

WASATCH COUNTY,

Respondent,

MARK 25, LLC; *et al.*,

Intervenors,

PROMONTORY DEVELOPMENT, LLC
and PROMONTORY INVESTMENTS, LLC

Intervenors.

**PROMONTORY DEVELOPMENT, LLC
AND PROMONTORY INVESTMENTS,
LLC’S CONDITIONAL PETITION TO
INTERVENE AND REQUEST FOR
ADJUDICATIVE PROCEEDINGS**

Docket No. 16-035-09

Intervenors Promontory Development, LLC and Promontory Investment, LLC
(collectively, “Promontory”), respectfully and conditionally seek to intervene in the above-
captioned matter if the Board permits the intervention of any parties.

SUMMARY

The Board has apparently granted a motion of Mark 25, LLC, Black Rock Ridge Master Homeowners Association, Inc., Black Rock Ridge Townhome Owners Association, Inc., and Black Rock Ridge Condominium Association, Inc. (collectively, the “Provisional Intervenors”), to intervene in this matter. Promontory understands that Rocky Mountain Power (“RMP”) has asked the Board to reconsider that decision, and set April 14, 2016 as the date to finally determine the propriety of intervention. Promontory agrees with RMP that the intervention of the Provisional Intervenors is improper. If, however, the Board’s original determination is upheld, and the Board believes that participation in these proceedings even by neighboring landowners and interested parties should be allowed, then granting Promontory’s Motion to intervene is both necessary and appropriate. Promontory’s interests are manifestly more germane to this matter than those of the Provisional Intervenors.

BACKGROUND

RMP has owned a 46kv power line that crosses a portion of Promontory’s property by right of an easement (“old easement”). Promontory has, since 2007, had 250 residential and resort homes, plus a championship golf course and clubhouse facilities specifically approved in its SPA Master Plan for locations surrounding the old easement. Promontory has extended grading of its primary roadway and has also extended water and natural gas infrastructure into the area of the old easement to support the future development master planned for that area. Actual platting of the lots, once master planned, is merely an administrative function under Promontory’s Development Agreement.

In late 2009, RMP informed Promontory of its need to upgrade its existing 46kv power line to a 138kv line to meet demand in Park City. If this upgraded line were built within the old

easement, it would require a substantial expansion of the existing corridor within Promontory's development, with a substantial and negative impact upon Promontory's now almost nine year old development plan. It would also have given rise to substantial severance damages ultimately costing rate payers millions of dollars. Following extensive discussions and negotiations, Promontory and RMP agreed that it made sense for all concerned that Promontory provide an alternative route to RMP, and thus Promontory and RMP came to an agreement whereby Promontory provided a larger tract of ground for a new easement to RMP that would accommodate the larger voltage lines in a more suitable location.

RMP is currently in the process of seeking approval to upgrade its lines within the new easement, entirely within Promontory's, and *not within any property owned by* the Provisional Intervenors. The Provisional Intervenors now claim that some perceived effects on their property in the general vicinity, as a result of the utility easement on Promontory's property, are great enough to justify their intervention in this matter. They are not. Promontory's interests are obviously implicated here, because it is ultimately Promontory's real property interests that will be directly affected by the outcome of this matter. The interests of the Provisional Intervenors are merely speculative at best, and no intervention by them is proper or necessary.

LEGAL DISCUSSION

Intervention by the Provisional Intervenors is not appropriate. Pursuant to Utah Code 63G-4-207(2), "[t]he presiding officer shall grant a petition for intervention if...(a) the petitioner's legal interests may be substantially affected by the formal adjudicative proceeding; and (b) the interests of justice and the orderly and prompt conduct of the adjudicative proceedings will not be impaired by allowing the intervention." U.C.A. § 63G-4-702. The interests of the Provisional Intervenors do not satisfy these criteria, and the Board should both

grant RMP's motion to reconsider, and ultimately deny the petition to intervene. To the extent this Board believes any intervention is appropriate, however, then with respect to Promontory both statutory criteria are clearly met and this Board should grant this Petition.

First, Promontory's legal interests will be substantially affected by the outcome of this proceeding. RMP seeks to upgrade its utility lines, which rely on an easement on Promontory's property. Whether RMP receives permission to upgrade will have a direct effect on the value and enjoyment of Promontory's property. As such, Promontory's interests are directly implicated in this proceeding. Furthermore, by any standard, Promontory's interest, as owner of the property in question in this matter, is far greater than that of the Provisional Intervenors.

Second, the interests of justice fall squarely in favor of permitting Promontory to intervene. Although Promontory disagrees with the Provisional Intervenors that the existence and location of the historical easement, the negotiations and decision leading up to the agreement between RMP and Promontory regarding the new easement, and any perceived effects on the Provisional Intervenors' property are relevant to this action, if the Board intends to consider those issues, Promontory should, in all fairness, have an opportunity to present its position as well. Furthermore, the Provisional Intervenors were permitted to intervene only very recently. As such, Promontory's intervention would not impair the orderly and prompt conduct of the proceedings.

CONCLUSION

The Board should grant RMP's motion to reconsider and deny the Provisional Intervenors' motion to intervene. In that event, Promontory withdraws this Petition. If, however, the intervention of any petitioners is justified in this matter, the Board should allow Promontory also to intervene in this matter so that it may protect its direct interests with respect

to the real property underlying the adjudication, and to allow for a full and fair consideration of all points of view here. In that event, Promontory also requests that the Board issue a new schedule to account for the additional parties.

DATED this 4th day of April, 2016.

SNELL & WILMER L.L.P.

(original signed by Mark O. Morris)

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