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BEFORE THE UTAH UTILITY FACILITY REVIEW BOARD

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In Re: Rocky Mountain Power's ) Docket 16-035-09  
Petition for Review to the Utah )  
Utility Facility Review Board ) HEARING

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March 28, 2016

9:04 a.m. - 10:25 a.m.

Location: Utah Public Service Commission  
160 East 300 South, Fourth Floor  
Salt Lake City, Utah 84111

Job No: 299628

Reporter: Angela L. Kirk, RPR, CCR

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A P P E A R A N C E S

Board Members:

Chair Thad LeVar  
Beth Holbrook  
David Clark (via telephone)  
Jordan White (via telephone)

For Rocky Mountain Power:

Jeff Richards  
Heidi Gordon  
Matt Moscon (via telephone)

For Wasatch County:

Tyler Berg (via telephone)

For Intervenors:

Jeremy Reutzel  
Ryan Merriman

1 Monday, March 28, 2016; 9:04 a.m.

2 P R O C E E D I N G S

3 CHAIR: Okay. Good morning. We're here with  
4 the Utah Utility Facility Review Board in the matter of  
5 Docket 16-035-09, which is -- I'll just state the name  
6 of the docket. I should have had this in front of me.  
7 It's the petition of Rocky Mountain Power for Review  
8 with the Utah Utility Facility Review Board, and we're  
9 here to consider the intervention motion of Mark 25,  
10 LLC, Black Rock Ridge Master Homeowners Association,  
11 Incorporated, Black Rock Ridge Townhome Owners  
12 Association, Incorporated, and Black Rock Ridge  
13 Condominium Association, Incorporated.

14 Let's just identify who we have in the room  
15 and who we have on the phone. In terms of board  
16 members who are physically present, I'm Thad LeVar, and  
17 I'm present, and we have Beth Holbrook, who is a board  
18 member, who is present.

19 I'm aware that board member David Wilson was  
20 not able to participate, either in person or  
21 telephonically today.

22 So let's go to the phone first. What board  
23 members do we have on the phone?

24 BOARD MEMBER CLARK: This is David Clark.  
25 I'm on the phone. I apologize that a little family

1 emergency has prevented me from being physically  
2 present there today, but I'm here.

3 BOARD MEMBER WHITE: And this is Jordan  
4 White. I'm also on the phone.

5 CHAIR: Okay. And then let's continue with  
6 appearances, then. So we have four board members  
7 present, either physically or on the phone.

8 For the petitioner, the inter -- who are  
9 petitioning for intervention, we'll take an appearance  
10 there.

11 MR. REUTZEL: Jeremy Reutzel on behalf of the  
12 intervenors.

13 MR. MERRIMAN: Ryan Merriman on behalf of the  
14 intervenors.

15 CHAIR: And then for Rocky Mountain Power?

16 MR. RICHARDS: Jeff Richards on behalf of  
17 Rocky Mountain Power.

18 MS. GORDON: Heidi Gordon on behalf of Rocky  
19 Mountain Power.

20 MR. RICHARDS: And on the phone with us we  
21 have Matt Moscon.

22 CHAIR: Okay. And is there anyone else on  
23 the phone?

24 MR. BERG: Yes, Tyler Berg is here from  
25 Wasatch County.

1 CHAIR: Okay. Well, I think we'll just go  
2 into our business, then. We've received the briefings,  
3 both the petition for intervention, the response by  
4 Rocky Mountain Power, and the reply by the intervenors,  
5 which came in Friday about noon.

6 I think before we move into just questions  
7 from the board members, I'll ask, first, the petitioner  
8 if you have any highlights that you want to make  
9 verbally to us before we move into questions?

10 MR. REUTZEL: I think that our position is  
11 fairly well stated in the briefs, and we'll let it sit  
12 with that, but I'm happy to answer any questions.

13 CHAIR: Okay. Do either Mr. Moscon or Mr.  
14 Richards or -- I'm sorry, what...

15 MS. GORDON: Gordon, Heidi Gordon.

16 CHAIR: Heidi Gordon, okay. Anything you  
17 wanted to highlight verbally before we move into  
18 questions?

19 MR. RICHARDS: Nothing here on behalf of  
20 Rocky Mountain Power.

21 CHAIR: Well, I'm going to turn --

22 BOARD MEMBER CLARK: I'm sorry, Chair LeVar?

23 CHAIR: Yes.

24 BOARD MEMBER CLARK: This is Dave Clark.

25 I -- something's happening to the phone. I'm hearing

1 like a clicking noise that -- that is obscuring any  
2 voice. It's like a loud clock ticking or something.

3 BOARD MEMBER WHITE: Yeah, this is Jordan  
4 White, Chair. If folks there would just do what they  
5 can to speak directly into the microphone. I'm having  
6 a real -- real trouble hearing folks who aren't up at  
7 the -- the microphone.

8 CHAIR: Okay. We're not -- we're not hearing  
9 that clicking sound. I guess I would encourage  
10 everyone who is on the phone, when you're not speaking,  
11 to put your phone on mute, and then to unmute your  
12 phone when you have something to say.

13 And also remind -- remind those on the phone,  
14 for the -- for the benefit of the court reporter, to  
15 identify yourself if you start to speak on the phone,  
16 that would help. Hopefully, that improves things.

17 I'll just restate for the -- for those who  
18 are listening that both the petitioner and Rocky  
19 Mountain Power indicated they did not have anything to  
20 clarify verbally before we move into questions from  
21 board members, so -- are you hearing -- are you hearing  
22 us better?

23 BOARD MEMBER CLARK: This is Dave Clark.  
24 Yes, it's better for me.

25 BOARD MEMBER WHITE: Yeah, I could hear fine,

1 thanks. This is Jordan White.

2 CHAIR: Okay. Well, I think we'll move into  
3 questions, then. I have a few, and I'll go ahead and  
4 start, if there's no objection to that, and then open  
5 it up to any questions from any of the board members.

6 It wasn't clear to me -- this is for the  
7 petitioner. It wasn't clear to me if the various home  
8 owner and condo associations that you're representing  
9 in this petition represent most or all of the homes  
10 that are in the -- the homes for which the proposed  
11 corridor will be in the viewshed of those homes. Do  
12 you have a sense of is this most or all or is this a  
13 portion?

14 MR. REUTZEL: This is most or all, and I  
15 think it's all.

16 CHAIR: Okay. Any other -- any comments from  
17 Rocky Mountain Power on that issue?

18 MS. GORDON: I don't know whether he  
19 represents them all or most of them. I don't -- I  
20 don't know what the ownership of the condo association  
21 looks like.

22 CHAIR: Okay. The other question, I was just  
23 wondering if you wouldn't mind addressing briefly how  
24 you see your clients' interests as either aligned or  
25 divergent with the interests of Wasatch County.

1 MR. REUTZEL: Well, Wasatch County doesn't  
2 have -- unlike the Questar case, Wasatch County has no  
3 statutory obligation to protect my clients' interests,  
4 and in fact, their obligations are just as much to  
5 Promontory as they are to -- to my client.

6 And so, you know, Wasatch County has an  
7 interest in seeing that its ordinances are enforced.  
8 My client, obviously, has an interest in protecting its  
9 property values and its legal rights to those  
10 properties. I don't think that's the same interest  
11 that Wasatch County has.

12 And I think -- I haven't talked to Tyler  
13 about this, but I expect that's what he would tell you  
14 as well.

15 CHAIR: Okay. I'll go -- I'll go next to Mr.  
16 Berg. You had indicated in our last hearing that you  
17 weren't going to take a position on this intervention.  
18 If you want to comment on this issue, feel free to do  
19 so. If you don't have anything else to add, that's  
20 your prerogative also.

21 MR. BERG: Okay. At this point, do you want  
22 any comments from Wasatch County, or do you just want  
23 to wait until we get further along?

24 CHAIR: Well, do you have any comments or  
25 thoughts on the intervention that's in front of us



1 right now?

2 MR. BERG: We don't have any objection to the  
3 intervention at all. We feel that it would be a  
4 benefit to the Utility Review Board to be able to have  
5 additional points of view, so we don't have an  
6 objection to it. We definitely feel like it would just  
7 be more of the public being able to weigh in.

8 CHAIR: Okay.

9 MR. MOSCON: Chairman LeVar, you're ready for  
10 us now? Tyler's comment again, that same question, I  
11 can save it until the end or have a point by point,  
12 whichever you prefer.

13 CHAIR: I think it would be good to have  
14 someone from Rocky Mountain Power respond to that issue  
15 of where you see the interests of the intervenors as  
16 either aligned or divergent with the county, since I  
17 think we're at a point now where we're just taking  
18 questions from the board members, so that was a  
19 question I had.

20 MR. MOSCON: Sure.

21 CHAIR: And after that question, we'll move  
22 to -- we'll move to other board member questions.

23 MR. MOSCON: And if I might -- I appreciate  
24 it -- I think that the response that the board heard  
25 from Black Rock which is the way that they're divergent

1 from Wasatch County is that they, meaning Black Rock  
2 and their constituents, are concerned about their  
3 property values really kind of cuts down to why Rocky  
4 Mountain Power overall has concern with the proposed  
5 intervention.

6 As far as this board is concerned and the  
7 issue about whether the permit for this proposed  
8 alignment goes forward, Wasatch County and the proposed  
9 intervenor's position are the same. They have both  
10 stated a position that they do not want the alignment  
11 where it's been proposed, where the permit application  
12 placed it, and so as far as this proceeding goes and  
13 what's before the board, their interests are aligned.

14 And as put forth in Rocky Mountain Power's  
15 paper, that's one of the things that the board needs to  
16 consider in adjudicating whether to grant an  
17 intervention, because the question is, is there going  
18 to be a voice missing or are we going to have  
19 duplication of efforts. And I think here clearly we're  
20 going to be having a duplication of efforts that say we  
21 don't want or we don't think it's necessary to have  
22 aligned here.

23 What our concern is, though, to respond to  
24 the points made by Mr. -- or by Black Rock, are that we  
25 do not think that this is the forum to address concerns

1 about property value. That is not what the enabling  
2 act of the Facility Review Board Act contemplates.  
3 That is a civil matter and not before this board.

4 So we think that not only are those issues  
5 that are proper before this board aligned between  
6 Wasatch County and the proposed intervenors, to the  
7 extent there is any divergence of interest, those  
8 differences are not something that are at issue before  
9 the board today, and that would be a separate forum, a  
10 separate matter.

11 And if you have additional questions, I'm  
12 happy to go on to how or why that is. I don't want to  
13 steal the mic, but I just want to make that point in  
14 responding.

15 CHAIR: Well, if you wanted to elaborate for  
16 a moment on where you see the distinction between the  
17 issues that this board in your -- in your opinion  
18 should be considering and the issues that involve the  
19 intervenors, I think a little more elaboration on that  
20 might help.

21 MR. MOSCON: Sure. In the act that now -- in  
22 the enabling act, it indicates that this board has been  
23 convened to settle disputes between a utility and a  
24 local government about whether a proposed facility  
25 should or should not be constructed or whether any

1 mitigating factors should be put into place, and  
2 whether the extra costs for the mitigation should be  
3 born by the local government that is acquiring them or  
4 the utility.

5           And so before the board -- this board is not  
6 itself a deciding board. It's not expected that its  
7 board members have utility engineering to decide  
8 whether a certain tower should be built here or here,  
9 or now is needed or not needed. As -- there's a large  
10 body of jurisprudence from the Utah Supreme Court and  
11 the Public Service Commission saying we don't make  
12 decisions for the utility about where to put things.  
13 However, what the utility chooses to do may have an  
14 application in terms of costs that it's required to  
15 pay.

16           In front of the board, the question is should  
17 the permit be issued, kind of a yes or no question,  
18 and/or should there be a requirement that mitigating  
19 factors be put in place where the facility has been put  
20 forward by a utility? And if so, who should bear the  
21 costs of those mitigating factors?

22           The interests for those questions between  
23 Wasatch and Black Rock are aligned, because both are  
24 telling the board the answer should be no, it should  
25 not be permitted. We don't want it here. We want it

1 somewhere else in Summit County. And so there is no  
2 divergence of interest as to that particular issue.

3 To the extent that Wasatch County put forward  
4 in its papers, which haven't been filed yet, any  
5 mitigation that it wants to have undertaken, then the  
6 question would be between the county and the utility as  
7 to who has to pay for those mitigation factors. Again,  
8 there's no one saying that Black Rock would be paying  
9 for it, or they're not, you know, a party of interest  
10 in that discussion.

11 But as far as Black Rock saying we're fearful  
12 for our property values, that's not one of the things  
13 that the enabling act really talks about, is whether or  
14 not neighboring property owners are fearful of losing  
15 interest in their property. That's not one of the  
16 indicia set forth in the enabling act.

17 BOARD MEMBER WHITE: This is Jordan White.  
18 Can I ask a clarifying question?

19 MR. MOSCON: Yes.

20 BOARD MEMBER WHITE: With respect to what's  
21 actually before the board in terms of the application  
22 or, I guess, request submitted by Rocky Mountain Power,  
23 is there even at this point a question of alternate  
24 alignments or additional cost, et cetera?

25 My understanding from the -- from the current

1 case is it's simply just a question of a denial of the  
2 actual permit by the Board of Adjustment. Is there  
3 even an issue at this juncture of additional costs, et  
4 cetera, or is it just -- I guess what I'm trying to say  
5 here is, my view is that it's a very narrow focus of  
6 the board at this point, which is, at this point, our  
7 question was submitted under 54-14-303(d), which is,  
8 you know, a review if a local government has prohibited  
9 construction of a facility which is needed to provide  
10 safe, reliable, adequate, efficient service to the  
11 customers of a public utility.

12 So I guess I'm asking you, are we even  
13 adjudicating -- or are there other options on the  
14 table, or is it just a yes or no, like you said?

15 MR. MOSCON: I'll assume that I'm asked that  
16 question directly. And I don't mean to go over Wasatch  
17 County or Black Rock.

18 My understanding, Mr. White, is you're  
19 correct. What happened in this particular matter, the  
20 language I was describing is just what the board hears  
21 as a whole. So typically in this case, Rocky Mountain  
22 Power gave four options to Wasatch County prior to its  
23 petition being filed with this board.

24 The county indicated to the applicant, or  
25 Rocky Mountain Power, that a couple of those options,

1 which we call three and four, were just nonstarters to  
2 begin with. Options one and two follow the same  
3 alignment. The permit application that ultimately went  
4 to the county was for this alignment. That's the only  
5 alignment that's -- an application for a permit was  
6 ever sought or filed.

7           And you're correct, the county simply said  
8 you can't mitigate it. We're just denying it. And so  
9 they did not propose to put in place mitigation  
10 factors, and so they just -- so the question, as it got  
11 teed up, was just yes or no and there is nothing else.

12           I guess what I don't know, and I don't mean  
13 to punt on this, is could the county during this  
14 proceeding before the board say well, now that we are  
15 where we are, if you're going to put it there, we want  
16 you to do this. We want you to paint the towers green  
17 to match the trees, or something like that, you know,  
18 could they come up with something like that now?

19           I guess I don't know the answer to that  
20 question. I think they probably could say that to the  
21 board at some point. But you're correct that the way  
22 that this case has proceeded it's really just a yes or  
23 a no, should it go in the alignment where the permit  
24 was sought?

25           BOARD MEMBER WHITE: Thanks. That's helpful.

1 CHAIR: Any other comment from other parties  
2 on Mr. White's question?

3 MR. REUTZEL: I don't have any comments on  
4 Mr. White's question, but I do have some comments on  
5 the divergent interests between the county and  
6 intervenors, if that's something that I could address  
7 now.

8 CHAIR: Yeah. Yeah, feel free to take  
9 another moment or two.

10 MR. REUTZEL: Okay. So, I'd like to point  
11 out that Wasatch County and the intervenors, in front  
12 of the county proceedings, they took separate legal  
13 positions, interpreted the statutes differently, and  
14 provided separate legal arguments. And I think that  
15 will probably continue through this process as well.

16 I'd also like to point out that the idea that  
17 this board is only here to address issues between the  
18 county and the utility is incorrect. We have an  
19 intervention statute that describes the factors that  
20 you need to consider to determine whether or not  
21 someone should intervene. That intervention statute is  
22 clearly applicable to this case. And so you can't just  
23 cut that statute out and say no, we're only here to  
24 decide issues between the county and utility. We have  
25 an intervention statute that allows for intervention,



1 and so we ought to be talking about those factors.

2 And one of those factors is whether or not  
3 there's divergent interests between separate parties.  
4 But that's not the only factor. That's only one of a  
5 number of factors.

6 And the only case where that was found  
7 relevant is the Questar case. And in that case they  
8 found that was important there because the intervenors  
9 were represented by an agency that also had a statutory  
10 obligation to represent their interest.

11 Wasatch County has no statutory obligation to  
12 represent our interest, and certainly not our interest  
13 over Promontory's interest.

14 And we're not just talking here about our  
15 interest in property values, though that's -- that's an  
16 important interest. We're also talking about the costs  
17 that are going to be associated with us preparing  
18 litigation, the changes to our development plans, our  
19 interest in seeing that ordinances are enforced.

20 And they've said that they've limited their  
21 application to only two of the options. I read their  
22 application they've got more than two options, so I  
23 wasn't -- maybe I wasn't a part to the proceedings  
24 where the county said the other options are  
25 nonstarters, but the application that's being appealed

1 is one that has more than two options, and one of those  
2 options runs right across our -- my clients' property.

3 And so they can say now that they're not  
4 pursuing that option, but that was in the application,  
5 and that -- that's the application that's being  
6 appealed.

7 MS. GORDON: If I could clarify on the  
8 application itself. The way the application was filed  
9 was for the company's preferred alignment. Option two  
10 was very similar in that it followed the same alignment  
11 but had different design and engineering.

12 Options three and four were presented very  
13 quickly in the application as options that the company  
14 would explore if directed by the county. But we were  
15 not directed by the county to explore those. We did  
16 not apply for a permit regarding either option three or  
17 four. They were presented as part of our overall  
18 packet for further exploration.

19 If the county is interested in those, we  
20 would have further pursued them, but they would have  
21 required an amendment to the application, because they  
22 were significantly different than the option that  
23 was -- for which a permit was sought.

24 CHAIR: Okay, thank you. I'll ask if there  
25 are further board member questions before we move into

1 board deliberation, either Ms. Holbrook or to those --  
2 the other two on the phone, do you have further  
3 questions for any of the parties?

4 I guess, Mr. White, do you have any further  
5 questions?

6 BOARD MEMBER WHITE: No, not at this time.  
7 Thank you, Chair.

8 CHAIR: Mr. Clark, do you have any further  
9 questions?

10 BOARD MEMBER CLARK: No, no further  
11 questions.

12 CHAIR: Ms. Holbrook?

13 BOARD MEMBER HOLBROOK: No, I do not.

14 CHAIR: Okay. I think, then, we're ready to  
15 move into board deliberations. Again, this is an open  
16 meeting.

17 BOARD MEMBER CLARK: Chair LeVar, this is  
18 Dave Clark.

19 CHAIR: Yes.

20 BOARD MEMBER CLARK: Sorry. I -- again, I've  
21 got a lot of background noise and I'm having difficulty  
22 hearing what you're saying. I could hear the speakers  
23 just fine, but now something's changed.

24 CHAIR: I'll try to move a little closer to  
25 the microphone. Does that help?

1 BOARD MEMBER CLARK: That helps a great deal.

2 Thank you.

3 CHAIR: I don't like the sound of my voice  
4 amplified, but I guess I'll live with that.

5 We'll move to board deliberations now. We'll  
6 start discussing the application. This is a public  
7 meeting. Everyone in the room is welcome to stay.  
8 You're also not going to offend any of us if you decide  
9 not to, but I don't anticipate any of you will take us  
10 up on that offer. So --

11 MR. MOSCON: Chairman LeVar, and I apologize  
12 if -- I probably was hearing the same static that  
13 Commissioner Clark referenced. I don't know if you've  
14 already asked on our side if there's anything further.  
15 Can I respond to just one point that was made by Black  
16 Rock before the deliberations?

17 CHAIR: Sure. Let me just ask, is that Mr.  
18 Moscon or Mr. Berg speaking now?

19 MR. MOSCON: This is Mr. Moscon.

20 CHAIR: Certainly. If you had -- if you want  
21 to add one or two more points before we move to  
22 deliberations, go ahead.

23 MR. MOSCON: Just one thing. The thing that  
24 highlights to me why this intervention is improper, or  
25 really why this is not the forum for the concerns

1 raised by Black Rock is, in the response that was just  
2 made, Black Rock said we take issue with Rocky Mountain  
3 Power's position that the only costs at play are  
4 whether it's Wasatch County or Rocky Mountain Power  
5 that has to pay for any mitigation or to do anything  
6 different.

7           But we also have our costs to consider and  
8 what's it going to do to us. And that point highlights  
9 to me, and I think should not be lost by the board,  
10 that the type of arguments that Black Rock wants to  
11 make about we as property owners, not on the property  
12 where these facilities are going to go but nearby, that  
13 we think we're going to have some devaluation or we may  
14 do things differently or we may have cost mitigation  
15 and somebody should have to pay those costs.

16           But that is not the type of dispute that the  
17 Facility Review Board was created to review. Those are  
18 civil matters that if they believe that they're  
19 aggrieved, and that they believe they have a legal  
20 interest, that they should address elsewhere.

21           But that statement, I think, really kind of  
22 capsulates my concern, because if every property owner  
23 who thought that by being by a facility or being in the  
24 view of a facility, and if I devalue my property,  
25 therefore I have to have a say in where that facility

1 is sited, then I believe the board is on a slippery  
2 slope from which it can never recover and it converts  
3 the Facility Review Board that had a very clear  
4 statutory mandate into something that now becomes an  
5 arbiter of every potential lost cost or increased cost  
6 or devaluation from any kind of utility facility,  
7 whether it's a power line or a water pump or a gas  
8 compression station or anything else.

9 So I just wanted to respond to that point.  
10 Thanks for giving me another 30 seconds.

11 CHAIR: Okay, thank you. And Mr. Reutzel was  
12 also indicating he wants to make a few more comments.  
13 And, you know, at some point we'll have to cut off the  
14 back -- you know, back and forth, but I think a little  
15 more response from you would still be appropriate.

16 MR. REUTZEL: Thank you. We're not  
17 indicating that the board should somehow order Rocky  
18 Mountain Power to pay our mitigation costs or some sort  
19 of remedy to us. We simply have a legal interest in  
20 this, and that interest makes us have an incentive to  
21 make sure that the appropriate legal analysis and  
22 appropriate laws are followed in this case.

23 And we're not like every other property  
24 owner. We're the property owner that they want to  
25 parallel this transmission line right across. And, you

1 know, we're talking about hundreds of property owners  
2 that we represent. This isn't, you know, someone miles  
3 away that's got a problem with this transmission line.  
4 This is someone that's going to be directly impacted by  
5 this transmission line.

6 And, you know, much like the court -- supreme  
7 court said in the Millard case, you know, we're an  
8 association that represents a number of people, and by  
9 doing that, we're relieving a lot of the burden of  
10 having a lot of people involved, and we think it's an  
11 appropriate thing.

12 And the intervention statute very clearly  
13 says that if we have a legal interest and it won't harm  
14 the proceedings and it's in the interest of justice, we  
15 should be allowed to intervene, and that's what we're  
16 asking for. And that's all I have.

17 CHAIR: Okay, thank you. I think we're ready  
18 to move toward deliberation, then. Before we do that,  
19 Mr. Berg, did you have anything else that you wanted to  
20 add as a final thought from Wasatch County? You've  
21 made the position --

22 MR. BERG: No. This is Mr. Berg. I don't  
23 have anything else on the issue at this point.

24 CHAIR: Okay. If all the people on the phone  
25 can hear me, I'll ask if there are any board members

1 who want to lead off the deliberation discussion  
2 process.

3 MR. BERG: I'm sorry, there's terrible  
4 background noise. I can't hear anything.

5 CHAIR: Mr. Berg, I think your phone probably  
6 got unmuted when you commented and we're having some  
7 noise from it. If you could mute it back, I think that  
8 would help.

9 MR. BERG: I muted it back and there was a  
10 lot of background noise.

11 BOARD MEMBER CLARK: Yeah. This is Dave  
12 Clark. I was having the same struggle and -- but was  
13 talking into a mute phone, trying to describe it. So,  
14 I think, Chair LeVar, if you just stay very close to  
15 the mic, that really helps.

16 CHAIR: Okay. I'll do that now. I think  
17 we're to the point of board deliberations, so I'll  
18 invite any of the board members who feel inclined to  
19 start off the discussion to do so.

20 BOARD MEMBER WHITE: This is Jordan White. I  
21 guess maybe I'll start. And I apologize, it may be  
22 easier to -- there is a little background noise, so let  
23 me know if I -- you have difficulty hearing.

24 But I guess my initial thought is, I am  
25 sympathetic to Black Rock's concerns. I mean,



1 certainly, you know, having, you know, lines and signs,  
2 et cetera, close to their property, you know,  
3 potentially could implicate property values, et cetera.

4 I guess my concern, though, is that, again, I  
5 see our -- the board's focus pretty narrow here. The  
6 question being presented is pretty clear under the  
7 statute.

8 And in terms of potential devaluation or  
9 viewshed or implication of other property rights, I  
10 guess I'm just concerned about opening the door to that  
11 to go beyond the scope of what we've been asked to  
12 consider, which is, again, you know, under that  
13 54-14-303(d) is whether, you know, the government here  
14 in Wasatch County prohibited construction of a facility  
15 which is needed to provide safe, reliable, adequate,  
16 efficient service, et cetera. So I guess that's my  
17 concern.

18 So it's not that I don't recognize those  
19 potential issues, but again, those, to me -- affected  
20 property rights or potential litigation concerning  
21 that, to me may be outside the scope of what our  
22 statutory task is. That's -- those are my -- I guess  
23 my initial thoughts. And I'll mute it now.

24 BOARD MEMBER HOLBROOK: Mr. Chair?

25 CHAIR: Yes.

1 BOARD MEMBER HOLBROOK: I apologize. Mr.  
2 Chair, that was my question too as to the scope. And  
3 how I'm viewing the statute, I don't -- I don't know if  
4 property rights could be something that could be  
5 calculated in this -- at this stage in this process.  
6 So I'd like further background on that, if there is  
7 anything else. Thanks.

8 CHAIR: So you're asking a question from --

9 BOARD MEMBER HOLBROOK: From you.

10 CHAIR: From me?

11 BOARD MEMBER HOLBROOK: Uh-huh.

12 CHAIR: Okay. Well, I mean, my thoughts are,  
13 I don't know that we know yet how the testimony will  
14 progress in terms of what remedies or options will  
15 be -- will be available to this board. We've heard  
16 some discussion about it could -- it's arguably simply  
17 a yes or no from the board, but not having seen how the  
18 testimony will progress, I don't know that -- from my  
19 perspective, I don't know that we have enough in front  
20 of us to really know how that will look by the time of  
21 the hearing.

22 Do any of the other board members have  
23 thoughts on that question from Ms. Holbrook? Mr. Clark  
24 or Mr. White? Or other -- or other comments or  
25 thoughts?

1 BOARD MEMBER WHITE: Well, one question, I  
2 guess -- oh, sorry. You go, Mr. Clark.

3 BOARD MEMBER CLARK: Oh, thank you. I didn't  
4 have a direct response, but I do have -- maybe it's an  
5 indirect response. My -- my reading of the statute  
6 that governs the purpose and processes of the board is  
7 what controls my thinking about this, and I am of the  
8 view that we do have a set of issues in front of us  
9 that is -- that is constrained by the language of the  
10 statute, and it contains an intervention process, and I  
11 really look to that process to guide my thinking about  
12 whether to grant intervention or not.

13 And I think that, you know, the discussions  
14 about 63G are interesting, but I read them in the  
15 context of the specific intervention process that --  
16 that our governing statute describes.

17 And so that's just, I suppose, a long way of  
18 saying that I feel like our -- our responsibility and  
19 duty is to -- is to -- is to confine our deliberations  
20 to the specific issues that the legislature in -- in  
21 passing the statute presents to us, and that -- my --  
22 that reading leads me to conclude that -- that  
23 intervention should not be granted in this instance  
24 and -- to the requesting party. Although Black Rock  
25 may have many other interests to pursue, I don't think

1 that the issues that have been described are our issues  
2 to adjudicate.

3 CHAIR: This is -- this is Thad LeVar.

4 BOARD MEMBER WHITE: This is Jordan White.  
5 Maybe if I could take you back to one point that Mr.  
6 Clark mentioned, which is I'd also take a look at the  
7 two factors I think are at play here, which is a  
8 specific one within, again, the board statute. And it  
9 seems to me like when that was initially brought, the  
10 right of the intervention argument by Black Rock, it  
11 was -- it seemed to me that, first of all, this was not  
12 implicating a high-voltage line act.

13 And so, I guess, looking at that, where you  
14 have a specific right of intervention which wasn't  
15 applicable within our -- within the board's statute, to  
16 me, the substance of that -- of that intervention  
17 statute seems to trump the more general intervention  
18 rights under the 63G.

19 CHAIR: And this is --

20 BOARD MEMBER WHITE: And it seems to me that  
21 if the legislature had wanted to be that specific with  
22 respect to, again, the high-voltage line and that  
23 reference to that to the actual property owners, it  
24 seems to me that they would have done a further step to  
25 address maybe potential particulates or adjacent land

1 owners or viewshed implications, et cetera. But,  
2 again, they didn't do that.

3 There's the county that denied the  
4 application and the utility, which is the -- which is,  
5 again, the entity that's trying to build the facility.  
6 So, to me, the issues that are ancillary to that,  
7 again, not that they're not important issues, but  
8 they're beyond the scope of what this board is asked to  
9 do.

10 So I guess I would -- you know, I guess I'm  
11 open to other discussion from Ms. Holbrook and Chair  
12 LeVar, but at this juncture I'm not seeing -- to me,  
13 it's essentially duplicative and potentially -- a  
14 potential to confuse the issues to -- to allow the  
15 intervention of Black Rock.

16 With that being said, my understanding is  
17 that there is -- they certainly have the opportunity --  
18 they have the opportunity to participate in public  
19 witness hearings, et cetera, but it's, again, the  
20 actual intervention of the parties I'm having, I guess,  
21 a struggle with. I'll go ahead and mute now.

22 CHAIR: Okay. Well, this is Thad LeVar. I'd  
23 like to just kind of lay out how I'm seeing the legal  
24 issue. As I look at the Facility Review Board statute,  
25 we have one issue that's specifically addressed with

1 respect to intervention and it's not applicable here,  
2 so, to me, the statute says in this situation, a  
3 potentially affected land owner has a right to  
4 intervene, period. That's not the situation we have.

5 I'm having trouble seeing the facility board  
6 statute silence as to any other intervention situation  
7 as saying anything else except that we would fall back  
8 to the general UAPA -- Administrative Procedures Act,  
9 UAPA, provisions.

10 So, legally, I think that's -- we probably  
11 have to get our arms around that legal question of what  
12 statute applies. My instinct, at least, the way I'm  
13 looking at the statute, because -- because I see the  
14 facility board statute as silent to this situation, I  
15 think our governing statute is the two-part test from  
16 the Administrative Procedures Act for intervention.  
17 But I've heard different positions from two of the  
18 board members, so maybe we're just seeing it  
19 differently, or maybe we need to discuss this a little  
20 bit more.

21 Any other -- any other thoughts? Is my --  
22 are my comments coming across on the phone, to those  
23 on -- to those on the phone?

24 MR. MOSCON: Yeah, they are, Chair LeVar.  
25 Let me just explore something with the board for a

1 moment. You know, if -- again, if you were going to  
2 take the fallback position of the more general  
3 intervention, my understanding -- and I don't have the  
4 statute in front of me, but my understanding is that  
5 the board does have the authority to limit intervention  
6 and to tailor that, I guess, to exclude what we would  
7 perceive as potential extraneous issues beyond our  
8 scope.

9           So, for example, if we were to entertain  
10 intervention under that, I guess I would propose that  
11 if we were to go that road, we would -- we would want  
12 to limit, you know, discovery or testimony or issues  
13 that go, again, to potential devaluation or property  
14 rights, or what have you, because, to me, again,  
15 that's -- they're important issues, I recognize that,  
16 they're just not, in my view, important to the board's  
17 tasks, I guess.

18           So I guess what I'm going to be proposing is  
19 a potential middle road. But I'll open it up to  
20 discussion of the board.

21           CHAIR: This is Thad LeVar. I'll jump in a  
22 little bit too. I mean, as I look at the standard from  
23 the Administrative Procedures Act, and then the Supreme  
24 Court case that interprets that, we have a standard of  
25 whether a legal interest will be substantially

1 affected, and then will anything materially impair the  
2 proceeding?

3 I mean, I -- we have a schedule, we've set a  
4 schedule for the docket. I think every -- everybody  
5 who's participating knows that that schedule is not  
6 movable, so there's not -- there's not much chance for  
7 a motion or any kind of filing that can cause us to  
8 move the hearing date, since -- since we're -- since  
9 we're pretty strictly constrained by statute.

10 So the question is, is there any -- to me, is  
11 there any other way that Black Rock's intervention  
12 could materially impair the orderly and prompt conduct  
13 of this -- of this case, considering that, you know, we  
14 have a motion deadline, we have pretty much a general  
15 understanding that any motions filed probably aren't  
16 going to be able to be ruled on until the hearing date.  
17 We have a hearing date that's pretty much set.

18 So that's how I'm seeing the global issue of  
19 could there be any material impairment to the orderly  
20 conduct of this proceeding. But if there's thoughts  
21 that there need to be other -- if we're going to  
22 consider granting intervention, if there's thoughts for  
23 other limitations that would need to be in place, I  
24 guess we could -- we could discuss that.

25 I guess that concludes my comments right now,



1 if there's other -- other thoughts from Mr. Clark, Mr.  
2 White, or Ms. Holbrook.

3 BOARD MEMBER CLARK: This is Dave Clark. I  
4 am going to confess that my thoughts about this matter  
5 have been -- have been at least partially influenced by  
6 where does this lead in other cases that the board  
7 could have in the future? In other words, the slippery  
8 slope reference that someone made earlier is what I've  
9 been thinking about and where -- where we would and how  
10 we would draw a line if we -- if -- in some future case  
11 if Black Rock participates as a party in this case.  
12 And that's what -- that's what, you know, is sort of  
13 constraining my -- my thinking. Maybe I'm being too  
14 influenced by that.

15 CHAIR: Ms. Holbrook?

16 BOARD MEMBER HOLBROOK: Mr. Chair, my -- one  
17 of my concerns is that there -- again, it's possibly  
18 the slippery slope scenario, but I also do -- I am  
19 concerned that if intervention were granted today that  
20 there would be a possibility for maybe not direct  
21 values of the properties being affected either  
22 adversely or otherwise, but also is this -- are we then  
23 going to be pulling in a lot of extraneous intervention  
24 requests in the future? Again, very similar to  
25 Commissioner Clark's response.

1 CHAIR: This is Thad LeVar, and I -- and  
2 maybe I'm becoming the outlier on this issue and it --  
3 you know, if we just get to a decision point, we'll be  
4 there. As I thought about that specific issue before I  
5 came in this morning, that led to one of the first  
6 questions I asked of the -- of the petitioners.

7 Personally, I see a distinction or an ability  
8 to draw a line between allowing individual home owners,  
9 or even individual HOA's, if there were a situation  
10 involving multiple HOA's, but I see that as different  
11 from a situation where we have one petitioner who is  
12 collectively representing what at least appears -- and  
13 there doesn't seem to be any reason not to -- not to  
14 think that they represent the lion's share of the  
15 affected home owners as one -- as one petitioner.

16 So I -- I'm personally less concerned about  
17 the slippery slope argument, because I see this as a  
18 narrow fact situation. But perhaps I'm seeing this  
19 differently from the other three board members.

20 So I don't know if we -- I don't know if  
21 we're to a point of continuing discussion, or if any of  
22 the board members intend to make a motion, the motion  
23 would be appropriate at any -- at any point in the  
24 discussion, but continued discussion would also  
25 certainly be appropriate.

1 BOARD MEMBER CLARK: So -- Chair LeVar, this  
2 is Dave Clark. So you're thinking that the factual --  
3 the context of this case, where the property owners  
4 are -- all of the affected ones are basically coming to  
5 the board as one party with a unified position, is it  
6 those kind of facts that are influencing you to feel  
7 that we have a setting here that would be distinct from  
8 other -- other cases going forward --

9 CHAIR: If that's your question --

10 BOARD MEMBER CLARK: -- where we might --  
11 where we might have a variety of property owners not --  
12 whose land is not directly -- it's not part of the  
13 corridor, it's not -- it's not directly crossed by the  
14 facility, but -- but they feel affected by it and want  
15 relief from the board?

16 CHAIR: I think short answer to your question  
17 to me is yes, that's influencing me also, as I look at  
18 the standard from the Administrative Procedures Act and  
19 the -- and the Supreme Court interpretation of that  
20 standard, that, along with those facts, are leaning me  
21 in that direction.

22 It looks like Ms. Holbrook was wanting to  
23 interject.

24 BOARD MEMBER HOLBROOK: Thank you, Mr. Chair.  
25 I did have a -- I do somewhat understand where I think

1 you -- your -- a little bit of your position was, and  
2 I -- I do understand the fact that they are directly --  
3 theoretically directly impacted by this process, as  
4 opposed to being simply somewhere along the sidelines  
5 of -- and not directly or -- connected to it.

6 My question -- and I don't know if this is  
7 the scope for which to put this in, but Rocky Mountain  
8 Power indicated that options three and four were the  
9 ones that actually directly connected Black Rock to  
10 this intervention in the first place.

11 And would there be -- if the options that are  
12 actually being discussed, if those options one and two  
13 are the ones that are simply going to be considered,  
14 and three and four are not, then if something happens  
15 to impact Black Rock down the road, i.e. with a three  
16 or four or some other modification -- or some other  
17 application, I should say -- then that would -- I can  
18 see where that could be applicable to what the  
19 discussion is today. That's not a question.

20 CHAIR: Okay.

21 BOARD MEMBER HOLBROOK: That really wasn't a  
22 question, just a statement of fact, and that's the way  
23 that I'm looking at that.

24 BOARD MEMBER WHITE: This is Jordan White  
25 again. Again, I guess, to me -- and maybe I haven't

1 seen much through my office of a view of this, but I  
2 just -- I'm not sure what the issue is whether --  
3 beyond -- is beyond whether it's necessary -- a  
4 necessary facility.

5           So, to me -- and again, it's just a -- it's  
6 kind of a yes or no question. So on all of the --  
7 again, these are important issues, and certainly to  
8 Black Rock, but, you know, in terms of efficient  
9 process and kind of the scope of our work here, I'm  
10 just not sure if -- unless, you know -- and maybe --  
11 I'm not sure I heard this or not, whether or not that  
12 would be testimony or evidence, et cetera, on actual  
13 necessity, because to me that's -- the way it was  
14 brought to the board, it wasn't a condition, it wasn't  
15 the county said well, yes, you can do it, but it has to  
16 be this or that, the extra costs, et cetera. It was  
17 just a no.

18           And so, to me, the way the petition was  
19 postured was pretty narrow, in my mind. And so, you  
20 know, if the board does want to go in that direction  
21 and kind of, I guess, take a more broad view of that  
22 general intervention statute, again, my -- I guess my  
23 caution is, if we do go that direction, that my  
24 preference would be to -- again, to limit, you know,  
25 exploring issues beyond what we've been tasked to do.

1           So I -- Chair LeVar, so I don't know if -- at  
2 this point if it's -- I mean, and I don't want to hold  
3 a discussion. I don't know if -- I don't -- if it's --  
4 I'll leave it to you to, I guess, entertain a motion to  
5 that.

6           BOARD MEMBER CLARK: Well, just before we get  
7 to the motion state -- Dave Clark again -- from my  
8 perspective, if we feel like we could write conditions  
9 related to the intervention that would confine -- and  
10 I'm not really so concerned about Black Rock's  
11 participation, I'm concerned about precedent -- but  
12 that would confine Black Rock's participation in this  
13 case to the -- to the -- I'll use the word narrow or  
14 limited set of issues that are presented to us in the  
15 confines of our -- of our statutory responsibilities as  
16 a board.

17           If we can -- we can -- we could craft the  
18 inter -- something granting intervention that way, then  
19 I -- my concerns would be largely alleviated, certainly  
20 ameliorated, so I want -- I wanted to make that known.

21           CHAIR: Well -- and this is -- this is Thad  
22 LeVar -- to that comment too. I mean, I think that's  
23 an important point. It's important to recognize that  
24 this proceeding is not going to expand beyond the scope  
25 of what the Facility Review Board statute allows us to

1 do.

2           However, I'm having difficulty even looking  
3 at the narrow options that we have in front of us in  
4 that statute getting to a conclusion that a decision,  
5 even under that narrow scope, doesn't substantially  
6 affect the legal interest of the -- of the petitioners.

7           I -- I'm still viewing there -- there's some  
8 substantial effect on the petitioners based on what  
9 decisions we might or might not make out of this. And  
10 I'm having trouble getting myself to see the -- to see  
11 that legal issue any other way.

12           But I agree that if -- if we are going to  
13 consider granting intervention it needs to be clear  
14 that that doesn't modify the scope of the proceeding or  
15 the scope of the issues that we have in front of us.

16           Ms. Holbrook?

17           BOARD MEMBER HOLBROOK: Mr. Chair, was that a  
18 motion or was that a statement?

19           CHAIR: It was not a -- no, we're still in  
20 discussion stage. I haven't made a motion, although a  
21 motion from any board member at any point would be  
22 appropriate. Well --

23           BOARD MEMBER WHITE: This is --

24           CHAIR: Oh.

25           BOARD MEMBER WHITE: This is Jordan White. I

1 guess a follow-up to the legal interest or interest in  
2 this proceeding. I just want to say that I'm not --  
3 from my point of view, it's not that Black Rock doesn't  
4 have an interest. It's what we have jurisdiction over,  
5 which interest. In other words, are we -- if we're  
6 going to adjudicate this proceeding, they may have an  
7 interest that's not -- that's not an interest that we  
8 can adjudicate, so to me that's why, I guess, it falls  
9 to that on that general UAPA factor.

10 It really -- with respect to their opening a  
11 complaint, which is a potential devaluation or  
12 diminishment of their property, that seems like it's  
13 outside the scope of what we could adjudicate, or also,  
14 again, that's a legal interest that they may be outside  
15 of something that can be dealt with in this proceeding.

16 So, anyway, that's my final comment. And I  
17 don't know if it's -- again, I'll leave it to you,  
18 Chair LeVar, for your thoughts of whether it's time to  
19 entertain a motion.

20 CHAIR: Any other board members want to  
21 discuss anything further before we move into potential  
22 motions? Am I speaking close enough to the microphone?

23 BOARD MEMBER CLARK: This is Dave Clark.

24 I've got a question, and it's for -- its for you, Chair  
25 LeVar. So, would you again take us through your legal



1 analysis of the relationship between the specific  
2 intervention criteria that are addressed in the statute  
3 and that petitioner addresses in its papers, and then  
4 the Administrative Procedures Act process and its  
5 applicability to us and sort of the relationships of  
6 those two statutory authorities?

7 CHAIR: Certainly. I'd be happy to walk  
8 through my view of it. And, again, we may have --  
9 obviously, there's differing views in the room and on  
10 the phone. But my view of our legal standard is, as I  
11 look -- as I look at the Facility Review Board statute  
12 in 54-14-303-2(b), it has very specific language that  
13 says if a specific circumstance is met in an action  
14 filed by a local government seeking a modification, the  
15 local government shall do the following, and any  
16 potential affected land owner has a statutory right to  
17 intervention.

18 So, as I'm seeing it, if we were in that  
19 situation, under the Facility Review Board statute, the  
20 intervention question would be decided. I don't see  
21 the Facility Review Board statute speaking to  
22 intervention in any other way or any other situation.

23 And I don't think it's been -- anyone has  
24 made the argument that there's other language under  
25 this statute that would -- that would govern this

1 situation. So my -- my personal thinking, legally, is  
2 that -- that takes us to the Administrative Procedures  
3 Act, which has a two-part standard that says the  
4 petitioner's legal interest may be substantially  
5 affected by the proceeding and the interest of justice  
6 and orderly and prompt conduct of the proceeding will  
7 not be materially impaired by allowing the  
8 intervention.

9 And, of course, we have a Utah Supreme Court  
10 case that establishes a five-part test to further  
11 evaluate that two-part test, since, you know, two parts  
12 are never good enough for a court. You have to add a  
13 few more.

14 But that's my short answer to your question,  
15 Mr. Clark. That's how I see the relationship between  
16 the two.

17 BOARD MEMBER CLARK: Yes. Thank you. And so  
18 the Millard case that was cited in papers, the Millard  
19 County case, is that -- is that sort of what's guiding  
20 your thinking about how we apply, then, the  
21 Administrative Procedures Act criteria?

22 CHAIR: You're asking me, Mr. Clark?

23 BOARD MEMBER CLARK: Yeah. I apologize, I'm  
24 putting you on the spot, but...

25 CHAIR: No, that's fine. I --

1 BOARD MEMBER CLARK: And maybe -- pardon me  
2 for one moment. Maybe there's a time when we need to  
3 look back to the counsel in front of us from --  
4 representing the various entities, but I would like to  
5 hear your thoughts on that, if you don't mind sharing  
6 them.

7 CHAIR: Well, my thoughts are that if -- if  
8 my assumption is correct that the absence of any  
9 language in the Facility Review Board statute dealing  
10 with this specific intervention situation bumps us back  
11 to the general Administrative Procedures Act standard,  
12 then yes, that Millard County case is the Supreme  
13 Court's interpretation of that -- of that standard from  
14 the Administrative Procedures Act. And it's a five-  
15 part test that if -- for reference, it's listed near  
16 the bottom of page 5 of the petitioner's final reply  
17 that came in on Friday, the five --

18 BOARD MEMBER CLARK: Right.

19 CHAIR: -- the five factors. And I --  
20 personally, I think those five factors govern our  
21 decision today. And to me, four, number four, is the  
22 one that's most in dispute.

23 BOARD MEMBER CLARK: Well, this is -- this is  
24 Dave Clark. And to help us along, then, perhaps I'm  
25 going to move that we grant intervention and -- as a

1 way to hear the other board members' views now.

2 Obviously, mine have changed a bit, given the dialogue,  
3 but that's my motion, Mr. Chair.

4 CHAIR: Okay. Any discussion to the motion?

5 BOARD MEMBER WHITE: Was there -- was there  
6 any further thoughts? Just to clarify, Chair LeVar,  
7 were you thinking that it's too early in the proceeding  
8 to -- you don't want to foreclose any potential issues,  
9 but you don't want to limit the potential scope of  
10 intervention? Is that -- I just want to make sure that  
11 I was clear on your position on that.

12 CHAIR: Well, I guess one option could be if  
13 we're going to consider this motion -- and I'm  
14 personally inclined to favor the motion. I also would  
15 support language in our order that says this  
16 intervention does not expand the scope of the  
17 proceeding or the scope of the issues under the  
18 Facility Review Board Act that we're -- that we're  
19 considering.

20 To me, that -- that kind of a general  
21 statement would be appropriate at this point. I  
22 don't -- I don't see how we could -- how we have enough  
23 in front of us to go any more specific than that,  
24 but -- but if someone else sees a path forward, I'm  
25 happy to consider other options.

1 BOARD MEMBER CLARK: I'm sorry, Chair LeVar,  
2 I think -- I think I heard most of it. Did you  
3 conclude what you were saying? I wasn't -- you kind of  
4 trailed off a bit and I wasn't sure if you...

5 CHAIR: I'm sorry, I backed away from the  
6 microphone. I have an aversion to staying this close  
7 to the microphone.

8 BOARD MEMBER CLARK: All right.

9 CHAIR: I'll summarize what I think I just  
10 said. Personally, I think we're at a point now where  
11 we could -- if we were -- if we were crafting an  
12 intervention order, we could say this intervention does  
13 not expand the scope of the proceeding or the scope of  
14 the issues that we'll have in front of us.

15 I personally don't see a path forward to  
16 being more specific than that, but if someone -- I'd be  
17 happy to consider a path forward first, if -- you know,  
18 assuming that we're considering acting on this motion,  
19 if there's a way to be more specific than what I just  
20 described, we ought to -- we ought to consider that.

21 BOARD MEMBER CLARK: Was it appropriate that  
22 the term -- the term in question -- I know that we're  
23 just in a board, but I would like to hear also from,  
24 potentially, Black Rock's counsel to understand  
25 specifically what issue that they would -- would

1 propose addressing in this.

2 In other words, if they were to discuss the  
3 scope of their involvement in this proceeding, that  
4 would help me maybe to understand that, because, again,  
5 I don't -- what I'm concerned about is getting into,  
6 you know, extended arguments and extended testimony, et  
7 cetera, on, again, issues of, you know, whether EMS or  
8 devaluation, diminution, et cetera.

9 To me, again, it's about -- again, not that  
10 those aren't important, but, to me, it's the limited  
11 scope of the necessity of this facility.

12 So I -- is it appropriate, Chair, to -- to  
13 turn that question over to -- back to counsel for Black  
14 Rock before we make a final deliberation -- or final  
15 vote, I guess?

16 CHAIR: They're all still in the room. Any  
17 objection from any of the board members to inviting  
18 comment?

19 But I think -- I think we should also invite  
20 comment from Rocky Mountain Power also. But let me  
21 ask, is there any objection to board -- from board  
22 members to doing so at this process?

23 BOARD MEMBER HOLBROOK: No.

24 BOARD MEMBER CLARK: No objection. This is  
25 Dave Clark.

1 BOARD MEMBER WHITE: I have no objection,  
2 Jordan White.

3 CHAIR: Okay. Well, I think we'll, then, ask  
4 Mr. Reutzel if you wanted to comment on this, and then  
5 we'll go to either Mr. Moscon, Mr. Richards, or Ms.  
6 Gordon, whichever one of you -- if you have a -- if you  
7 want to comment on this again. You don't have to.

8 Mr. Reutzel.

9 MR. REUTZEL: Thank you. I think Mr. White's  
10 point is a fair one, and I want to make it clear we're  
11 not here asking this board to decide whether it impacts  
12 our property values or we're entitled to some remedy.  
13 That certainly is not this board's role.

14 This board's role is to apply the statutes in  
15 front of it. And we're here because the application of  
16 that statute may affect us and, you know, if it does  
17 affect us, we may have some other remedy somewhere  
18 else.

19 But all we're asking this board to do is  
20 apply the law that's applicable to it, and we want to  
21 argue that and the facts. We're not here to present  
22 all of our grievances.

23 CHAIR: Mr. Richard -- Mr. Richards?

24 MR. RICHARDS: Yeah, and I'm going to turn it  
25 over to Matt. I just wanted to make one thing clear,

1    though.  The biggest concern that I have here is if you  
2    grant intervention to someone who has -- that may have  
3    an affected interest or they may believe they're being  
4    affected by the power line.  The distinction is a  
5    legally affected interest.

6                   And keep in mind they don't own property  
7    where the line crosses.  They are adjacent to it.  But  
8    if you open up intervention in this matter, it's  
9    difficult for me to see how you could prevent anyone  
10   anywhere who sees the line that may have an aversion to  
11   it or not want it to go there, that you would be able  
12   to not grant them intervention status either.

13                   And I think it's really opaque.  The slippery  
14   slope, I think, is a real issue, and it does open it  
15   up.

16                   So then I'd like Matt to -- Mr. Moscon to  
17   comment.

18                   CHAIR:  Was Ms. Gordon looking to make a  
19   comment also?

20                   MR. MOSCON:  Sure.  Thank you.  For the  
21   board, just to be brief, I'm going to start with the  
22   premise, Commissioner LeVar, that your interpretation  
23   is correct that we go straight to the 63G analysis.  
24   I'm not sure of that, but I want to just assume for  
25   this that it does.



1           The reason I think that there is still a  
2           distinction that I haven't heard made in the  
3           discussion -- actually, I heard, I think, Mr. White  
4           making this. Maybe he was just saying it in a  
5           different way -- is just because someone thinks that a  
6           project or an action is going to do something to them,  
7           may have an opinion about it, and they have beliefs and  
8           they have desires, that does not give them a right  
9           under general UAPA law to intervene.

10           To intervene under general UAPA standards,  
11           you have to have a "legal interest" that is going to be  
12           substantially affected. So that begs the question what  
13           legal interest does Black Rock have? Do they have a  
14           legal interest to never have a utility facility next  
15           door to them, not on their property, but on property by  
16           them? Is that a legal interest that they have that is  
17           going to be taken away by this?

18           I apologize that we didn't put this in any of  
19           our papers, but again, when we filed our opposition,  
20           the proposed intervention was based on the Facility  
21           Review Board statute saying that the corridor ran over  
22           their land, and we addressed that, but they since  
23           conceded it does not.

24           But the Utah Supreme Court, in various  
25           condemnation cases, has been presented with a similar

1 thing where people have said hey, wait a minute. By  
2 putting that highway, that, you know, whatever by my  
3 property, it's going to impact my legal interest.

4 And the Utah Supreme Court has said you know  
5 what? There's no way that you could then end that  
6 slippery slope, because, you know, where do you draw  
7 the line and say well, you're an HOA versus an  
8 individual, though you're right next door versus two  
9 houses away? We don't have a legal mechanism to do  
10 this, so we're going to limit our analysis to parcels  
11 actually impaired or encumbered by the thing at  
12 question.

13 And so I think looking at that here, you say  
14 what legal interest does Black Rock have, number one,  
15 and then number two, is not already represented by  
16 another voice?

17 So if it is correct that the board is saying  
18 well, how can we limit them to keep them within the  
19 scope? If you -- if you do that, if the board is to  
20 say well, you know, limit them to only this kind of yes  
21 or no thing they have, that the -- that he county is  
22 then on the same pages that they are, then general UAPA  
23 standard says you don't get to intervene, because  
24 whatever interest you have is already represented by  
25 another party. In this case, it's Wasatch County.

1           So my concern is that the board opens up the  
2 floodgates in future proceedings, because it won't be  
3 able to draw a clear, distinct line, when the distinct  
4 line that should be there for it is that Black Rock  
5 does not have a legal interest that is going to be  
6 taken away or divested by any order of this board, and  
7 any legal interest that it believes it does have, it  
8 could and should raise in a different forum.

9           And I don't think you could take an order and  
10 carve to sufficiently say we're going to let them in,  
11 but we're still only talking about yes or no, because  
12 then you do kind of duplicate their efforts with the  
13 county and you open the floodgates for other  
14 proceedings or anybody else that says they have opinion  
15 on it.

16           Anyway, I don't want to duplicate myself, but  
17 that's just a distinction I think should be focused on.  
18 It's a legal interest.

19           MS. GORDON: I'd like to add, just quickly,  
20 that to the extent that Black Rock and the association  
21 has something to say in this proceeding, we have  
22 designated a public witness hearing. So the question  
23 is whether they should be a party to the action with a  
24 separate legal interest that they need to protect by  
25 being a party to the action or whether they, as a

1 member of the public who's not directly touched by the  
2 corridor, have something that they feel like they have  
3 to add.

4           And there is a method for them to do that,  
5 and that's the public involvement, the hearing that's  
6 been set for the public to come and express ways that  
7 they may be affected by this power line, even though  
8 their interests may not rise to the level of a legal  
9 interest that requires them to be a party to the  
10 action.

11           CHAIR: This is Thad LeVar. I'd like to ask  
12 one clarifying question of Mr. Moscon, if I could. And  
13 you may not have this in front of you, but you  
14 referenced a line of condemnation cases that have  
15 addressed intervention issues from home owners. And  
16 obviously we don't have those cases briefed. We don't  
17 have them in front of us.

18           I assume those cases are under Rules of Civil  
19 Procedure intervention standards rather than  
20 Administrative Procedures Act intervention standards.  
21 Do you have the ability to comment on the difference  
22 between those two standards at all, Mr. Moscon?

23           MR. MOSCON: Sure. And again, I apologize,  
24 because the -- an argument changed, that the reply, we  
25 hadn't supplied those.

1           You are correct that those cases are not UAPA  
2 cases. Those line of cases simply address what happens  
3 when we have people that are going to -- that live next  
4 door to the highway transmission line, a reservoir, of  
5 whatever, a public -- you know, a publicly needed  
6 thing, and they claim that they now have a legally --  
7 or that they have interest or are being affected. And  
8 how and where would you cross and draw the line?

9           And those lines of cases have said because we  
10 never could draw a clear line, because we never could  
11 carve an order out that effectively allows you in but  
12 to not argue something different than the land owner  
13 itself and/or the condemning party, that what we're  
14 going to say is, in these kinds of cases, we're going  
15 to let the condemning authority and the directly  
16 impacted land owner themselves work it out, because  
17 otherwise you don't have a legal interest that is  
18 really being taken away. You didn't have a legal  
19 interest to, you know, not have to see a power pole or  
20 something. That's not a legal interest that you ever  
21 had, so it's not being taken away.

22           It's true you were able to enjoy that view  
23 without a power pole or a water pump for a while, but  
24 that wasn't a legal right that you had, you know, as a  
25 vest -- something vested to you.

1           And so I was using by analogy those cases to  
2 simply say here, when you're looking at UAPA and you're  
3 looking at the standards under that statute, you have  
4 to make a distinction between an interest, meaning I  
5 have an opinion, I sure hope this doesn't happen, and a  
6 legal interest, meaning you have a vested right that  
7 you could sell at a show in the action or you could,  
8 you know, do something with that is being deprived or  
9 taken away from you.

10           And we have not heard Black Rock ever explain  
11 what that legal interest is that they're being deprived  
12 of that is in the context of what the Facility Review  
13 Board can address, because their perceived property  
14 valuation claim is not something that this board under  
15 its jurisdiction would address.

16           And so if it is limited to simply yes or no  
17 should a facility be built, yes or no, they also don't  
18 have a divergent view or opinion from the county or  
19 have a legal standing, really, to make that argument.  
20 So I don't know if that answers your question, but  
21 that's the context in which I was using those  
22 condemnation cases.

23           CHAIR: Thank you. So I think we're back to  
24 board discussion on a pending motion.

25           BOARD MEMBER CLARK: This is Dave Clark. So,

1 I wonder, in light of Mr. Moscon's comments, if we  
2 ought to give Mr. Reutzel an opportunity to -- and  
3 I'm -- I'd be interested in this -- as succinctly as  
4 you can, to state what legal interest his client has in  
5 the proceedings before us, or to state why we should  
6 not confine our reasoning to the identification of a  
7 legal interest.

8 CHAIR: I personally would appreciate that  
9 additional clarification. Any board members that  
10 oppose -- oppose that?

11 BOARD MEMBER WHITE: I'm also in favor. This  
12 is Jordan White.

13 CHAIR: Okay. And --

14 BOARD MEMBER HOLBROOK: I'm in favor of that  
15 also. Thank you.

16 CHAIR: Okay, Mr. Reutzel.

17 MR. REUTZEL: My clients have a legal  
18 interest, obviously, in their property, and they also  
19 have a legal interest in protecting the value of their  
20 property and seeing that the ordinances and the laws  
21 that are applicable to their property are enforced,  
22 namely my client buys a piece of property, expecting  
23 that Wasatch County's ridge line ordinances will be  
24 enforced, and expecting that Wasatch County's  
25 conditional use permit ordinances will be enforced,

1 expecting that the utility company will not be able to  
2 just pick and choose winners and move utility lines  
3 based off of agreement that they -- that are not  
4 disclosed.

5 My client has a legal interest in protecting  
6 its property. And I don't think -- the cases that Mr.  
7 Moscon has talked about are under a different standard,  
8 and I don't think we're talking about a legal interest  
9 in whether or not there's a property right that my  
10 client can deed.

11 When we talk about administrative  
12 proceedings, we're talking about a zone of interest,  
13 and here the zone of interest is the effect on the  
14 value and the rights, my client's property rights, and  
15 there is a legal interest.

16 I'd also like to point out that, you know,  
17 the Millard County case addresses this very clearly and  
18 says this slippery slope argument is not an argument  
19 that is a -- should be considered by the board, and the  
20 board actually has an obligation under statute to  
21 devise procedures to minimize burdens, without  
22 undermining the intervention statute.

23 To rule as they're asking would totally  
24 nullify the intervention statute. Nobody other than  
25 the county and the utility could participate in these



1 proceedings, and that's not what the intervention  
2 statute envisions or the Millard County case.

3 And we did, in our initial moving papers --  
4 although we did concede that it was not an appropriate  
5 grounds for intervention under the Section 54, we also  
6 mentioned the section we're talking about today, and so  
7 that's been out there from the very beginning.

8 CHAIR: Okay, thank you. I think we're back  
9 to board discussion of a pending motion.

10 Ms. Holbrook?

11 BOARD MEMBER HOLBROOK: Mr. Chair, thank you.  
12 I -- I do understand kind of both sides where you're  
13 presenting that scenario. And the challenge, I think,  
14 is from the perspective of looking at long-term future  
15 growth.

16 When you presented your argument, Mr.  
17 Reutzel, about that they do have a legal interest based  
18 on they had an expectation that, say, ridge line  
19 ordinances, et cetera, would be applicable, there are  
20 always changes that happen down the road, and they --  
21 having sat on several commissions in a similar nature,  
22 it is -- we do set policy and procedures based on the  
23 fact that there is that opportunity, here's the  
24 guidelines and here's everything, but things do change.

25 Having said that, I do look at the -- the --

1 I do look at it as to how can we include some of what  
2 you're saying and -- and using that as some value of  
3 having an intervention at this stage so that it doesn't  
4 come -- become costly down the road for either entity,  
5 and that's kind of where I'm struggling with a little  
6 bit, or that's where I'm trying to get that value add  
7 to that, so...

8 I do -- I do want to make sure that this  
9 proceeds in a timely fashion. And my one comment would  
10 be to that, if we did allow to do intervention, that we  
11 stipulate something along the lines or we include in  
12 this in some fashion that property values are not --  
13 are not included and incorporated in any way. Thank  
14 you.

15 CHAIR: Well, this is Thad LeVar, and I --  
16 and I appreciate all the comments we've had from the  
17 parties, and I -- to me, this is both a legal and a  
18 factual difficult -- difficult issue.

19 I think I'm still inclined to support the  
20 motion that's pending on the table, with -- with  
21 clarifying language, simply from the fact that I -- I  
22 see the UAPA language on intervention and the Supreme  
23 Court's interpretation of it as intending a broader  
24 intervention option than generally is available under  
25 the Rules of Civil Procedure.

1                   And while it's a closed case and while I have  
2 some concern about the slippery slope, I think the fact  
3 that we have an association that's representing most,  
4 if not all, of the -- of the property owners who are at  
5 least alleging a legal interest -- and again, a  
6 decision on intervention doesn't modify what we have in  
7 front of us substantively in this case and what  
8 decisions and what options we do and don't have, but  
9 that's where -- that's where I'm leaning on this  
10 motion.

11                   If there's any desire for further -- further  
12 discussion before we vote on the pending motion from  
13 anyone else.

14                   Okay. Someone just unmuted their phone and  
15 we have some background noise. I don't know if that's  
16 one of the two of you who need to be participating.

17                   BOARD MEMBER WHITE: Sorry, that's me.

18                   CHAIR: Okay.

19                   BOARD MEMBER HOLBROOK: Mr. Chair, may I ask,  
20 Commissioner Clark, could you please restate your  
21 motion, for my benefit? Thank you.

22                   BOARD MEMBER CLARK: Sure. I -- and if I  
23 could just make a preliminary comment too. You know, I  
24 think this is a closed question. It's a challenging  
25 question, I think, legally and factually. And yet my

1 inclination is to err on the side of hearing more  
2 rather than less, or having more participation rather  
3 than less, that's a better way to say it.

4 So my motion is that we grant intervention.  
5 And I'll amend it or amplify it by saying that I think  
6 the order should, in a careful way, outline the limits  
7 of the board's authority and express an intention to  
8 constrain and confine the participation of parties to  
9 the issues that are -- are within our statutory  
10 responsibilities and authorities as they're presented  
11 by the facts in this case.

12 CHAIR: Any more discussion to the motion?

13 BOARD MEMBER WHITE: I apologize, Chair  
14 LeVar, but what were you saying?

15 CHAIR: Oh, I asked if there's any further  
16 discussion to the motion.

17 BOARD MEMBER WHITE: My final comment, again,  
18 is, I think it probably is -- is probably right for a  
19 vote now. It's just that, again, I don't -- I have  
20 full, you know, faith that Black Rock would abide by  
21 the policy.

22 My -- my concern, again, is just based upon  
23 precedent, I think that the -- the road that we may be  
24 going down. But that's kind of, I mean, I guess my  
25 final comment on that.

1                   And I apologize, Chair LeVar, was there -- is  
2 there -- did you submit it to a vote? I'm only hearing  
3 about 50 percent there.

4                   CHAIR: Okay. I'll lean in closer to my  
5 microphone. I think it's appropriate to take it to a  
6 vote now. I think what I'll do is just go  
7 alphabetically to each board member, in alphabetical order.

8                   Mr. Clark?

9                   BOARD MEMBER CLARK: Yes, I guess I --  
10 technically, does it need a second?

11                  CHAIR: Oh, I suppose that wouldn't hurt. I  
12 don't -- I don't know the answer to whether that's  
13 legally necessary, but I don't think it harms anything  
14 if anyone wants to second the motion, if we have  
15 anybody who -- who's willing to do that.

16                  And I don't know if as the chair -- I'm not  
17 as familiar with Robert's Rules of Order as I could  
18 be -- if a second -- if a second is required, whether  
19 it's appropriate to come from the chair, I'm willing to  
20 second it, unless any other board member is interested  
21 in doing so.

22                  Okay. Well, I'll second the motion, and hope  
23 I haven't violated any procedure by doing so.

24                  MR. MOSCON: I'm sorry, Chair LeVar, I missed  
25 what you just said.

1 CHAIR: I'll second the motion. And then I  
2 think we'll go to a vote. And if you -- if you desire  
3 to say anything with respect to your vote, feel free to  
4 do so. Not -- not necessary. And I think I'll just go  
5 in alphabetical order with the board members.

6 Mr. Clark?

7 BOARD MEMBER CLARK: I vote aye.

8 CHAIR: Ms. Holbrook?

9 BOARD MEMBER HOLBROOK: I vote -- I vote aye.

10 CHAIR: I vote aye.

11 Mr. White?

12 BOARD MEMBER WHITE: I vote nay.

13 CHAIR: Okay. The motion passes.

14 Intervention is granted, and there will be a written  
15 order in due course that will be issued. I don't know  
16 that I can commit to a time frame in which a written  
17 intervention order will be issued, but -- but the  
18 motion passes.

19 Is there any other business -- I'll go to the  
20 board members. Any other business that we need to  
21 address this morning before we adjourn, that any of you  
22 are aware of?

23 I'm not hearing any, so we are adjourned.

24 Thank you.

25 (The hearing concluded at 10:25 a.m.)

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C E R T I F I C A T E

STATE OF UTAH                     )  
  :ss  
COUNTY OF SALT LAKE         )

I, Angela L. Kirk, a Registered Professional Reporter, Certified Court Reporter, and Notary Public in and for the State of Utah, do hereby certify:

That the foregoing hearing was taken on March 28th, 2016.

That the proceedings were reported by me in stenotype, and thereafter transcribed by computer, and that a full, true, and correct transcription of said testimony so taken is set forth in the foregoing pages;

I further certify that I am not of kin or otherwise associated with any of the parties to said cause of action, and that I am not interested in the event thereof.

WITNESS MY HAND and official seal at Salt Lake City, Utah, this 1st day of April, 2016.



Angie L. Kirk, RPR, CCR  
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