

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)
Heidi Gordon (#11655)
ROCKY POWER MOUNTAIN
1407 W. North Temple
Salt Lake City, Utah 84116
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.

**MEMORANDUM IN SUPPORT OF
PETITION FOR REVIEW**

Docket No. 16-035-09

INTRODUCTION

On January 21, 2016, the Wasatch County Board of Adjustment denied Rocky Mountain Power's (the "Company") application for a conditional use permit (the "Permit") pertaining to the Railroad-Silver Creek 138 kV transmission line upgrade project, a very small segment of which (five poles) will be located in Wasatch County. The 67-mile long transmission line project, extending from the Railroad substation north of Evanston, Wyoming to the Silver Creek substation located near Park City, Utah is referred to herein as the "Project." The 0.26-mile long segment of the Project located within Wasatch County, which is the subject of the Permit and the Company's Petition for Review, is referred to herein as the "Wasatch Segment." The Project, including the Wasatch Segment, is necessary for the Company to provide safe and reliable power, and to meet the increasing demand on the Company's electric transmission system, in both Wasatch and Summit Counties.

On February 19, 2016, the Company filed a Petition for Review (the "Petition") pursuant to Utah Code Ann. § 54-14-303, based on Wasatch County's denial of the Permit. The Company hereby supplements its Petition with this memorandum, outlining in further detail the basis for the Company's appeal of the County's decision to deny the Permit, and with prefiled testimony of Company witnesses Kenneth M. Shortt, Donald T. Watts and Chad B. Ambrose, which are concurrently filed herewith. By refusing to issue the Permit, Wasatch County has prohibited construction of a facility that is needed to provide safe, reliable, adequate, and efficient service to the Company's customers. The Company requests the Utah Utility Facility Review Board (the "Board") determine that the facility should be constructed and direct the County to issue the Permit in accordance with Utah Code Ann. § 54-14-305.

I. AUTHORITY AND PURPOSE OF THE BOARD

This Board was created to resolve disputes between local governments and public utilities regarding the siting and construction of infrastructure and facilities. *See generally* Utah Code Ann. § 54-14-301, *et seq.* Pursuant to the Utah Facility Review Board Act (the “Act”), a public utility may seek review by this Board if “a local government has prohibited construction of a facility which is needed to provide safe, reliable, adequate, and efficient service to the customers of the public utility.” Utah Code Ann. § 54-14-303(d).

Wasatch County’s land use ordinances require the Company to obtain a conditional use permit prior to constructing the Wasatch Segment. Hence, by denying the Company’s application for a conditional use permit, Wasatch County has prohibited the Company from constructing and operating the Wasatch Segment, a necessary component of the Project.

In adopting the Utility Facility Review Board Act, the legislature left little doubt of this Board’s ability and obligation to require a local government to issue a permit for a utility facility necessary to serve electric customers. Utah Code Ann. § 54-14-306(2) states:

If the Board decides that a facility should be constructed that the local government has prohibited, the local government **shall**, within 60 days following the decision of the Board, issue the permit, authorization, approval, exception, or waiver consistent with the decision of the Board.

(Emphasis added.)

The question now before this Board is simply whether the Wasatch Segment should be constructed to provide safe, reliable, adequate and efficient services to the Company’s customers. If this Board determines that the Project, including the Wasatch Segment, should be constructed, it is required to order Wasatch County to issue all permits, waivers, or approvals necessary for the construction of the Project. *Id.*

As it begins its analysis, this Board should consider the purpose of the statutes establishing this Board's obligations. The legislature realized that there will be instances, as in the present case, when a local government (acting to protect its own local interests) rules in a manner that the local government believes is in the best interest of its local constituents, but which is contrary to the best interests of the public at large. Recognizing that the State's utilities operate to serve citizens across the State, the legislature created this Board to protect the State's citizens from decisions of local governments, promoting solely local interests, that could cause rate increases or reliability and safety problems statewide:

The Legislature finds that the construction of transmission lines and substations . . . is a matter of statewide concern. The construction of these facilities may affect the safety, reliability, adequacy, and efficiency of service to customers in areas within the jurisdiction of more than a single local government. Excess costs imposed by requirements of a local government for the construction of facilities may affect either the rates and charges of the public utility to customers other than customers within the jurisdiction of the local government or the financial viability of the public utility, unless the local government pays for those excess costs.

The Legislature finds that it is in the public interest to establish the Electrical Facility Review Board to resolve issues regarding the construction and installation of transmission lines and substations by any electrical corporation that is a public utility.

Utah Code Ann. § 54-14-102.

Utah law has long recognized that local perceptions of utility projects cannot drive decisions that impact utility rate payers statewide. If every community were allowed to fully dictate the route or appearance of power lines, the location of substations, the level of mitigation measures, or the methods by which utilities are able to deliver power to their customers, the rates paid by this State's citizens for electricity would dramatically increase, and safety and reliability

would be jeopardized. This Board's obligation to protect the larger public from adverse situations created by local government is the central purpose of the Act.

While the Act leaves to the Board the duty of determining whether the facility should be constructed, the Company recognizes that the Act does not remove all power and discretion from a local government. The Act clarifies that this Board should leave to a local government any decision that does not impact safety, reliability, adequacy or efficiency of electric service. Local governments can impose conditions that do not increase the cost of a utility project, and do not impair the delivery of safe, reliable, adequate and efficient power. *Id.* at § 305(5). Furthermore, the Act also allows local governments to choose to pay the incremental excess costs to modify a project if a local government wants to impose conditions on a proposed facility that are not necessary for the Company's purposes, so long as those conditions do not impact safety, reliability, adequacy and efficiency. *Id.* at § 203(1). Hence, local governments can only restrict a public utility's needed projects if (1) the restrictions do not impact reliability, safety, adequacy or efficiency of the project; or (2) the local government pays for the restrictions if the restrictions impose additional costs, therefore mitigating any impact on efficiency.

II. BACKGROUND ESTABLISHING NEED FOR THE PROJECT AND ITS CONFIGURATION

A. The Company's Duty to Provide Reliable Electrical Service.

The Company is a public electric utility regulated by the Public Service Commission of the state of Utah. By statute, the Company has an affirmative legal duty to "furnish, provide and maintain such service, instrumentalities, equipment and facilities as will promote the safety, health, comfort and convenience of its patrons, employees and the public, and as will be in all respects adequate, efficient, just and reasonable." Utah Code Ann. § 54-3-1.

B. The Need for Additional Reliability and Transmission Capacity.

The Company's need for the Project is based on the increasing demand for electricity in the "Load Area", which includes all or portions of Wasatch and Summit Counties, and the limited capability of the existing transmission system to deliver reliable energy into the Load Area. (*See* Direct Testimony of Kenneth M. Shortt, pp. 3-4). Wasatch and Summit Counties are popular winter tourism destinations that include several world class ski resorts and host large winter events. As a result, the area experiences its peak electrical load during the winter months. Not surprisingly, the Load Area, including Wasatch and Summit Counties, is one of the faster growing areas in Utah, averaging 3.4% load growth annually in recent years and an increase of over 20% in load growth over the past 7 years, with projections showing that strong growth will continue. *Id.* at p. 3. As a regulated public utility, the Company has an obligation to provide for current demand as well as anticipate future growth, having in place sufficient transmission facilities to provide safe, reliable, adequate, and efficient electric transmission service to its retail customers and other users within the Load Area.

In 2007, the Company commenced studies to evaluate the electrical needs in the Load Area. At the time, the Company had approximately 25,000 customers in the combined Wasatch and Summit County area, including the rapidly growing Heber Valley. In addition, the Company provided (and still provides) energy to one of the Utah Associated Municipal Power Systems' customers, Heber Light & Power, which serves many additional customers in the Load Area.¹ The Company's studies found loads exceeding 160 mega-volt-amps require the existing looped transmission system serving the Load Area to be operated as three radial systems. While

¹ Significantly, during the Permit application process, Heber Light & Power Company supported the Project. (*See* Direct Testimony of Donald T. Watts, p. 15).

operating radially at peak loads, under current system configuration the loss of either existing 138 kV line or the Midway 138-46 kV transformer would result in low voltages at best and cascading outages at worst. *Id.* at pp. 4-5. For instance, the winter peak load of 2014-2015 was 207.5 megavolt-amps, over 29% of the threshold where the system within the Load Area must be operated radially. Under these conditions, the system within the Load Area is susceptible to prolonged outages during peak loading, particularly during winter months. Based on the Company's studies commencing in 2007, and actual loading data since the winter of 2007-2008, it was determined the Company must take action to avoid continuing to operate the Load Area as three radial operating areas, and re-establish a reliable power supply for both Wasatch and Summit Counties.

In addition to the increasing demand, the relative location of the Load Area to generation sources makes the incoming transmission to the Load Areas vulnerable to unique outage risks. With its location within the Wasatch Mountain range, energy transmission to the Load Area requires the lines to pass through rugged, remote terrain with increased potential for limited repair access and prolonged outages. Historically, the Company's transmission lines in mountainous or remote locations are more susceptible to outages caused by fire and smoke, high winds, flooding, severe storms, and landslides, as well as human interference or action. *Id.* at 6. Access to these remote areas can also be more difficult, particularly during winter months (coinciding with the peak load periods within the Load Area). The increased susceptibility to outages only increases the need for the Company to have in place increased redundancy, flexibility and capacity in the transmission system servicing the Load Area.

Given the foregoing, in order to reestablish the reliability of the Company's system and avoid customer outages, the Company made the determination that additional transmission capacity within Wasatch and Summit Counties must be developed.

C. The Project Fulfills the Capacity Needs.

The Project, including the Wasatch Segment, is part of a multi-project solution intended to address the increasing demand for additional transmission capacity and create alternative transmission pathways to the Load Area. *Id.* at 7. When constructed, the Project will provide an efficient and reliable supply of transmission capacity to meet existing and increasing future electrical loads, and provide an additional transmission path to the Load Area. Without the additional capacity provided by the Project, the Company will be unable to meet its load service obligations to its customers within the Load Area, including Wasatch and Summit Counties, within the next few years.

To correct the area-wide electrical service issues of decreased reliability, prolonged outage exposure, and the need for increased capacity within Summit and Wasatch Counties, the Company developed a three-phase plan. *Id.* Phase 1, the construction of the Project, will create a third 138 kV transmission pathway into the Load Area. The Project will then be utilized by the Company to support the development of phase 3 of the Company's multi-phase plan for the Load Area.

Phase 1 of the plan, which is the Project, will consist of upgrading the existing 46 kV transmission line running between from the Railroad substation near Evanston, Wyoming to Silver Creek substation near Park City, Utah to a 138 kV line. The upgrade includes a new transmission substation in Croydon, Utah, and adding facilities to the Coalville substation (Coalville, Utah), the Silver Creek substation (Park City, Utah) and the Railroad substation

(Evanston, Wyoming). A 6.5 mile 138/46 kV double-circuit transmission line replacing the existing 46 kV line will be constructed from the Brown's Canyon Tap to the existing Silver Creek substation. *Id.* at 7-8.

As previously noted, the Wasatch Segment is part of Phase 1. The Wasatch Segment enters and exits Wasatch County approximately 1-1/2 miles east of the Silver Creek substation, and crosses only about one quarter of a mile of Wasatch County. That is, even though the Project is needed in large part to support growth in Wasatch County, that County is only impacted by 1/4 mile of the 67 mile line. However, the County wants even that 1/4 mile segment pushed back into Summit County. The Company's proposed alignment within Wasatch County is depicted as "Option 1" of the Permit application. Option 1 is located entirely on lands owned by Promontory Investments, LLC ("Promontory") (*See* Direct Testimony of Chad Ambrose, p. 5), and will utilize the shortest possible monopole configuration to mitigate visual impacts. (*See* Direct Testimony of Donald T. Watts, p. 8). Promontory has granted an easement to the Company for the Wasatch Segment alignment. (*See* Ambrose at p. 7).

Phases 2 is currently under construction and Phase 3 of the Company's plan will be completed following the construction of the Project and Phase 2. When completed, these upgrades will greatly improve reliability for customers in Wasatch and Summit Counties (including Heber Light & Power as a wholesale customer), and provide additional capacity and transmission paths for the future growth and development within Wasatch and Summit Counties, growth that has been acknowledged by Wasatch County in its general plan. Reliable electricity cannot be afforded to the future growth and development identified by Wasatch County without the proposed transmission line improvements, including the Project and the Wasatch Segment.

D. Wasatch County Has Prevented Construction of the Wasatch Segment.

In addition to other permits and approvals required by state and federal agencies for the Project, the Company is required to obtain a conditional use permit from Wasatch County for the Wasatch Segment. On January 23, 2015, the Company submitted an application for a Conditional Use Permit (the “January 2015 Application”) to allow for the construction of the Wasatch Segment as depicted on the Option 1 plan included in the January 2015 Application. (See Watts Exh. DTW 2). Under the Option 1 Plan, five (5) power poles (monopoles) would be located within Wasatch County, spanning approximately ¼ mile of the County. The Wasatch County Planning Staff (the “Staff”) issued a Planning Commission Staff Report (the “Staff Report”) providing its recommendations and findings on the proposal, which were discussed at a hearing before the Planning Commission on March 12, 2015. (See Watts Exh. DTW 9). The hearing was continued by the County to allow for further discussions among the parties. Thereafter, the Company participated in several meetings with Wasatch County and other parties to present and discuss the need for the Project and the Wasatch Segment, alternative transmission line routes for the Wasatch Segment, and concerns expressed by Wasatch County and the parties. (See Watts pp. 11-13).

Through the course of these meetings, the Company thoroughly substantiated the need for the Project to provide safe, reliable, adequate, and efficient delivery of electricity to the Company’s customers in Wasatch County, as well as Summit County and surrounding areas, a fact that was acknowledged by the County. *Id.* at 22. During the course of the meetings, the Company also provided extensive information outlining proposed mitigation measures and addressing the concerns raised by the parties, including independent reports on the minimal impact of transmission lines on property values, the effects of electromagnetic fields and sound

levels along the Wasatch Segment. During this period, the Company attempted to work closely with the County and the other parties to identify and address the concerns raised regarding the Wasatch Segment, as well as to evaluate and develop appropriate mitigation measures.

On August 13, 2015, the Company appeared before the Wasatch County Planning Commission and requested the hearing be continued to allow for further discussions with the County, to address what the Company believed were inaccuracies in the Staff Report, and to request consideration and input from Wasatch County regarding alternative route alignments. *Id.* at 15-17. Despite the Company's request, the Planning Commission expressed its intent to vote that day on the January 2015 Application, at which point the Company elected to withdraw the application. The application was withdrawn by the Company with the express purpose of seeking additional opportunity to find a mutually agreeable resolution and avoid seeking redress from the Board which the Company views as an appeal of last resort.

On September 4, 2015, the Company filed a new conditional use permit application seeking, again, the approval to construct the Wasatch Segment, as depicted on the Option 1 plan (the "September 2015 Application"). *Id.* at p. 19. As with the January 2015 Application, the proposed route for the Option 1 plan in the September 2015 Application was selected as the Company's preferred route through its normal and customary transmission line siting practices and procedures, after evaluating several alternative alignments, and represented the alignment and design the Company would construct in compliance with local regulations as imposed on similar land uses, and which did not impair the ability of the Company to provide service to its customers in a safe, reliable, adequate and efficient manner. Utah Code Ann. § 54-14-103(9)(b). Therefore, the Option 1 plan constituted the measure for "standard cost" of the required facility.

Utah Code Ann. § 54-14-103(9)(a). The estimated cost of the Option 1 plan for the segment within Wasatch County is Five Hundred Thousand Dollars (\$500,000).

In response to concerns expressed previously by the County and other parties regarding the Option 1 plan, the Company evaluated several alternative alignments and facility configurations for the Wasatch Segment, and outlined three of those alignments in the September 2015 Application for the County's consideration, Option 2 (a lower-profile design that had been added to the January 2015 Application), Option 3 (undergrounding the transmission line within the County), and Option 4 (the Browns Canyon Road option).

The Option 2 Plan, as depicted in Appendix 4 of the September 2015 Application, follows the Option 1 alignment. Option 2 Plan took into consideration comments provided by Staff during the January 2015 Application process and complies with the County's ridgeline regulations, as interpreted by Staff.² Option 2 preserved the initial proposed route, but adjusted the heights and configurations of the proposed pole schematics in order to remain below the ridgeline. While this option remained below the ridgeline it nevertheless imposed a greater base impact on the ground and increased the visual impact against the elevation of the adjacent ridge.

² The Company contests the County's application of its ridgeline ordinance to the transmission lines within the Wasatch Segment. Wasatch Code § 16.27.22 provides that "[i]t is the intent of this section to protect valuable views of the ridgelines of Wasatch County by providing regulations, which will limit the building of structures that protrude above primary and secondary ridgelines, or will mitigate the appearance of such structures if prevention is not possible." It is the Company's position that the scope of the term "structures" in the context of the ordinance should not be read to include transmission or distribution lines. Certainly, the County has not enforced the ordinance uniformly throughout of the County. Numerous existing power lines, light poles, ski lifts and other "pole structures" throughout the County have been approved and installed without being subjected to the ridgeline restrictions. This includes the Company's Jordanelle – Silver Creek 138 kV line, which was approved in 2004 *after* the County's ridgeline ordinance was enacted. (*See* Watts at p. 8). Accordingly, the Company believes the County's reliance on this ordinance as grounds to deny the Permit is a pretext. The County simply does not want the transmission line in its boundaries. Indeed, moving the line on top of the ridge, increasing ridgeline visual impact, would not violate the Wasatch ordinance as the ridge itself is in Summit County. Hence, pushing the line further into Summit County could actually worsen ridge impact, belying the fact that preserving an unbroken ridgeline is Wasatch's stated motive for denying the permit.

In addition, the Company noted that Option 2 would require a modification to the existing easement of record in order to accommodate the wider base of the proposed pole schematics.

The Option 3 Plan, as depicted on Appendix 5 of the September 2015 Application, provided for undergrounding of the 138 kV facilities through the area of Browns Canyon within Wasatch County. The Option 3 Plan was proposed to address the County's concerns regarding the impacts of the transmission line, but was not preferred by the Company because, in addition to the increased costs, burying the transmission line would have resulted in additional operational and reliability concerns. The underground facilities would replace the overhead facilities located within Wasatch County only. The adjoining overhead facilities located within Summit County would remain above ground and, importantly, would have required two dead-end structures on either end of the undergrounded segment that would be substantially more visible and costly. The estimated cost of the Option 3 plan was Six Million Eight Hundred Thousand Dollars (\$6,800,000).

Option 4, the Browns Canyon Road Option, as depicted in Appendix 6 in the September 2015 Application, provided for a transmission line alignment along Highway 248 and Browns Canyon Road. Similar to the undergrounding alternative, this option was not preferred by the Company. The Browns Canyon Road Option would require the installation of sixteen (16) power poles within the roadway rights-of-way along Highway 248 and Browns Canyon Road as well as the possible acquisition of new easements. The estimated cost of the Browns Canyon Road Option is Three Million Three Hundred and Fifty Thousand Dollars (\$3,350,000), excluding any costs associated with rights-of-way acquisition, which could be significant.

The September 2015 Application requested approval of the Option 1 Plan. However, the Company offered, as an alternative, to construct the Option 2 alternative. The Company also

offered to further explore the Option 3 Plan and the Browns Canyon Road Plan which would also be in compliance with the County's local land use regulations and ordinances, and would fulfill the need for the Project to provide safe, reliable, adequate, and efficient electric transmission service to the Company's customers, with the understanding that the excess costs associated with either of these two alternative facilities over the "standard cost" of the Option 1 or Option 2 Plans would be the responsibility of the County. Utah Code Ann. § 54-14-201(2).³

During the November 12, 2015 hearing, the Planning Commission denied the Company's request for the Permit, purportedly on the basis that there was no way to mitigate the impacts of the Wasatch Segment on neighboring properties.⁴ The Planning Commission dismissed, without evidence or adequate explanation, the reports and information that had been provided by the Company regarding the perceived impacts of the proposed transmission line and the adequacy of the proposed mitigation measures, stating in the motion that the Company should not be permitted to reapply if the Company was going to "come back with the same snake oil." (*See* Watts at p. 21). The Planning Commission also refused to consider any transmission line option that would impose excess costs on the County. On this point, the Planning Commission was evidently of the view that while Option 3 and the Browns Canyon Option may resolve the County's concerns, the options were not available alternatives since they would impose costs on the County that the County was not willing to bear. Driven largely by public opposition to the

³ While the Company was willing to consider the construction of Option 3 and the Browns Canyon Road Option, and put them forward as options for consideration, due to the County's stated refusal to pay "excess costs," the Company no longer considers Option 3 and the Brown's Canyon Road Option as viable alternatives and is no longer pursuing or willing to build these options. The Company has not sought a permit for these options, nor has it sought easements from the underlying landowners within these options. The Company still considers Option 1 its preferred option, but would also construct Option 2.

⁴ And most importantly, without identifying the County's proposed alternative route or location within Wasatch County.

Wasatch Segment, the County concluded that under *no* scenario proposed by the Company could the Project be located within Wasatch County, stating in the motion to deny “that we can’t see a way that [the Wasatch Segment] can be mitigated.” *Id.* Accordingly, the Planning Commission denied the Permit and prohibited the construction of the Wasatch Segment, instructing the Company to pursue alternative alignments entirely outside of the County.

Following the Planning Commission’s denial, the Company appealed the decision to the Wasatch County Board of Adjustment. Following a hearing on January 21, 2016, the Board of Adjustment denied approval of the Permit, relying largely on the same mitigation and aesthetic concerns as those offered by the Planning Commission. As with the Planning Commission, the Board of Adjustment made clear that the Company should pursue an alignment outside of the boundaries of Wasatch County.

Through its denial of the Permit application, Wasatch County has prohibited the Company’s ability to construct the Wasatch Segment, a required segment of the Project, which is needed to provide safe, reliable, adequate, and efficient service to its customers.

E. The Company’s Decision to Realign the Transmission Line through Promontory’s Property is in the Best in Interest of its Customers.

Throughout the Permit application process, the County asserted that rather than constructing the Wasatch Segment within Wasatch County, the Company should locate the Project in Summit County within the existing 46 kV transmission line alignment located on Promontory’s property and outside of Wasatch County. In fact, the County’s denial of the Permit was largely based on the County’s preference that the Company utilize the existing 46 kV transmission alignment, which is in Summit County, rather than the route that touches Wasatch County. However, the Company’s decision to utilize a new alignment, which includes the

Wasatch Segment, is consistent with the Company's standard practice and is in the best interest of its customers statewide.

Previously Promontory requested the existing 46 kV transmission line be relocated along the south and east perimeters of Promontory's property. To be clear, both the existing 46 kV alignment and the proposed alignment (including the Wasatch Segment) are entirely on Promontory's property. Promontory was not requesting the transmission line be moved outside of its property. Promontory's request was made for the purpose of promoting the development of its property in accordance with its approved master plan, and made with the understanding that the excess costs resulting from constructing the line in the new alignment would be borne by Promontory. (*See Ambrose* at pp. 4-7). Under the Company's Utah tariff (Utah Rule 12, Section 6), the relocation of the Company's transmission facilities are made in its sole discretion, though the Company has a long history of working with landowners and locating or relocating facilities in locations that respect the landowner's property rights and uses. *Id.* at 5-6. Such was the case with the Promontory property.

Generally, the Company prefers to rebuild transmission lines within existing easements because access has typically been established and property owners have adapted to the line. *Id.* However, in the case of the Promontory property, Promontory contested the sufficiency of the existing centerline easement to accommodate the upgraded, double-circuit line, offered to provide a suitable alternative alignment (with easements) for the upgraded line, and offered to pay the incremental costs to relocate the upgraded transmission line. These factors prompted the Company to consider an alternative alignment. The Company evaluated the proposed alignment through its customary procedure and determined that the location was a suitable alternative, and that the use of the alternative alignment would in no way impair the Company's ability to

provide, safe, reliable, adequate and efficient service to its customers. *Id.* at 6. Significantly, the entire length of the alternative alignment (not just the 0.26-mile long Wasatch Segment) was within Promontory's property, and access was secured by an easement granted by Promontory. As a result, the Company could avoid costs, and the operation and reliability constraints, associated with obtaining a fixed-width easement along the existing 46 kV alignment. The new alignment met all of the criteria for the transmission upgrade, and did not result in incremental costs to the Company's customers. *Id.* at 7. As such, the new alignment along the perimeter of Promontory (including the Wasatch Segment) was incorporated into the Project alignment. Promontory granted an easement to the Company, which was recorded in both Summit and Wasatch Counties.

III. ARGUMENT

Throughout the Permit application proceedings, the County has not questioned the need for the additional transmission capacity provided by the Project. In fact, there appears to be no dispute among any of the parties that participated in the process as to the need for the Project. Rather, Wasatch County denied the Company's Permit application because the County was swayed by comments by the adjacent landowner or simply does not like the alignment proposed by the Company, or any of the alternative routes presented by the Company within the County's boundaries, and wants to force the Company to utilize the existing 46 kV alignment through the middle of Promontory's property (and outside of the County). The Act, however, does not permit the County to dictate the alignment of the Company's transmission lines simply on the basis that the County residents dislike the proposed route, particularly when the objections are based largely on aesthetic concerns. Nor does the Act permit the County to simply reject alignments proposed by the Company without genuinely considering proposed mitigation

measures or offering alternative alignments. Indeed, these are some of the primary obstacles that the Act was designed to overcome: rejection of infrastructure needed by the State based on the tastes of a few and the refusal of a local government to identify acceptable conditions for construction or alternative alignments. Given these facts, the only question to resolve is whether the Project, including the Wasatch Segment, is needed to provide safe, reliable, adequate and efficient service to the customers of the Company. *See* Utah Code Ann. § 301(1)(d). On this point, there is no dispute. The electric system within Wasatch and Summit Counties requires the additional reliability and capacity that will be provided by the Project and, therefore, the Board must order Wasatch County to issue the Permit for the Wasatch Segment in order to allow the Company to proceed with the construction of the Project. *Id.* § 306(2).⁵

The Act makes clear that the Company is to plan its facility according to “the public utility’s normal process,” taking into account the Company’s obligation to provide safe, reliable adequate and efficient service to its customers (see *Id.* at § 103(9)(a)). This is the process utilized by the Company to identify the Wasatch Segment. Thereafter, if the County does not want a facility to be built as it would be under “normal practices,” the County can propose conditions that would vary standard practice. Utah Code Ann. § 54-14-201 states that the “*local government may* require or condition the construction of a facility” in a particular fashion—not

⁵ In this Board’s previous order in the matter of Rocky Mountain Power v. Tooele County (June 21, 2010) (Exhibit A), this Board previously held that the issues Wasatch and Blackrock focus on (viewshed and property values) are irrelevant to the Board’s determination:

Therefore, the Board cannot consider such issues as property values, viewshed, and the cultural significance of man-made landmarks, as it makes a decision, as important as those issues might be to the County or local citizens. Rather, the scope of Board authority is to determine if a local government has prohibited construction of a facility needed to provide safe, reliable, adequate, and efficient services to utility customers, and if so, that it should be constructed.

(Order at p. 9.)

that the Company must anticipate in advance what the County will adopt, and draft conditions for the County.

While the Company selected the Wasatch Segment through its “normal process,” the County has refused to identify to the Company another route within the County’s boundaries that it would approve as an alternative to the Company’s proposed alignments. Nor has the County identified any conditions or mitigation measures with regards to the Company’s Option 1 or Option 2 routes that would satisfy the County’s mitigation concerns. Rather, the County has simply rejected the Company’s proposals entirely, stating that “there appears to be no chance to mitigate the [County’s] objections.” (See Direct Testimony of Donald T. Watts, pg. 18). Yet Wasatch County had an obligation to propose conditions on the Project if it was unsatisfied with the Company’s proposal, or in the alternative, identify an alternate alignment that it would approve. This requirement on the County is made clear by the Act. Other provisions of the Act also assume that the local government has the obligation of proposing conditions or alternative alignments if the local government opposes the facility as proposed. Utah Code Ann. § 54-14-305(2)(a) states that the Board’s written decision shall:

Specify whether the facility should be constructed and, if so, whether any requirements or conditions imposed by the local government may not be imposed because they impair the ability of the local government to provide safe, reliable, and adequate service to its customers . . .

This portion of the statute only has meaning if Wasatch County had put forward conditions on the Wasatch Segment or a competing geographic location for the Project within the County. It has not. The only alternative the County has proposed is the existing 46 kV alignment in Summit County, which the County has no authority over, and which the Company has already elected not to use through the Company’s “normal process.” The simple fact is the

County wants the Company to construct the transmission line in Summit County, and will not approve any route within Wasatch County, regardless of the alignment or mitigation measures. While the County wants to enjoy the benefits the Project will bring, it does not want to shoulder any of the burden.

Hence, this Board is not facing a decision between competing routes or “location parameters.” Nor is it considering the nature of mitigation requirements or “excess costs.” Rather, it is only facing a decision of whether the Project “should be constructed.” *Id.* § 306(2).⁶ In this case, the answer is clearly “yes.”⁷

Given the growing demands on the existing transmission system and the siting and system criteria, the Company has concluded, through its normal planning process and in consideration of its customers statewide, that the most suitable route for the Wasatch Segment is the Option 1 alignment. The Company is willing to construct either the Option 1 or Option 2 facility configuration within this alignment. Wasatch County has had, and will have, no

⁶ The Company can speculate that the reason for Wasatch County’s failure to identify how it would allow the Company to “mitigate” the Project is, (1) the County didn’t want to incur extra costs by making the desired mitigation steps “the County’s proposal,” or (2) there really is not any meaningful mitigation that is needed and the County simply doesn’t want to see these transmission lines in its boundaries for aesthetic reasons. But the County’s motivation is irreverent. In either instance the County cannot be allowed to stop a needed Project simply by denying the Permit and without giving the Company a reasonable opportunity to obtain the Permit to construct a needed facility.

⁷ Similarly, in the Board’s June 21, 2010 decision in the matter of Rocky Mountain Power v. Tooele County, the Board noted that its role was not to analyze possible routes that were not proposed by the Company but that the County or an intervenor would prefer. The Board Stated:

The County contends the Board’s role is to “conduct its own analysis of all alternative routes identified in [the Company]’s petition and any other route that the Board believes to warrant consideration . . . [and] order [the Company] to apply for an alternate route.” . . . The Board disagrees . . . In effect, the County seeks a de novo review of possible routes through its borders. The Board finds this to be inconsistent with the statutory description of Board duties.

(Exhibit A, Order at pp. 6-7, emphasis added.) Accordingly, Wasatch’s argument that the Board should base its decision on an assumption that a different corridor in Summit County is preferable should be ignored. The Board’s focus is solely on whether the facility needs to be constructed. *Id.*

competent evidence to establish that the Project is not necessary, or that any other route or facility configuration that can provide safe, reliable, and efficient electricity to the Company's customers and allow the Project to be built at less cost and in time to meet the growing demand on the Company's transmission system. Therefore, the only "location" for this Board to consider is the Wasatch Segment alignment put forward by the Company. So long as the Company can show a need for the Project, this Board must order the County to issue the permit to build the Project, including the five poles within the Wasatch Segment, as now constituted.

IV. CONCLUSION AND PRAYER FOR RELIEF

There can be no meaningful dispute about the need for the Company to construct the Project in order to provide safe, reliable, adequate, and efficient service to its customers in Summit and Wasatch Counties. Wasatch County is now receiving electricity from the existing transmission system that is now taxed to its limits. However, despite the need for the Project, including the Wasatch Segment, Wasatch County has denied the Permit, directing the Company to locate the Wasatch Segment somewhere else outside of the County. This Project is a vital link in a very important project necessary to transmit electricity to the residents of Wasatch and Summit Counties. Wasatch County cannot be allowed to jeopardize such a vitally important project based purely upon local preference to not view transmission lines, and without even proposing any alternative routes or configurations that it would permit.

Under Utah Code Ann. § 54-14-303(d), Wasatch County has prohibited the Company from constructing Project when it denied the Company's conditional use permit application for the Wasatch Segment, impairing the Company's ability to complete the Project and provide safe, reliable, adequate, and efficient service to its customers in Summit and Wasatch Counties, and throughout the Load Area. Utah Code Ann. § 54-14-303(d). Accordingly, Wasatch County's

decision to deny the Permit should be reversed, that the Board should direct the County to issue the Permit for construction of the Wasatch Segment.

V. ADDITIONAL MATERIALS

This Memorandum is filed concurrently with the Direct Testimony of Donald T. Watts, Chad B. Ambrose and Kenneth M. Shortt, all of which is incorporated into this Memorandum by this reference.

DATED this 8th day April, 2016.

STOEL RIVES LLP

/s/ D. Matthew Moscon _____

D. Matthew Moscon
Richard R. Hall
Attorneys for Petitioner
Rocky Mountain Power

CERTIFICATE OF SERVICE

I hereby certify that on the 8th day of April, 2016, a true and correct copy of Petitioner's

MEMORANDUM IN SUPPORT OF PETITION FOR REVIEW was served on the following and via electronic mail and hand delivery.

Beth Holbrook
Utah League of Cities and Towns
50 South 600 East, Suite 150
Salt Lake City, Utah 84102

Jeremy C. Reutzel
Bennett Tueller Johnson & Deere
3165 East Millrock Drive, Suite 500
Salt Lake City, Utah 84121

Heidi Gordon
R. Jeff Richards
Rocky Mountain Power
1407 W North Temple
Salt Lake City, Utah 84116

Scott Sweat
Tyler Berg
Wasatch County Attorney's Office
805 W 100 South
Heber City, Utah 84032

Patricia Schmid
Justin Jetter
Rex Olsen
Robert Moore
Assistant Utah Attorneys General
500 Heber M. Wells Building
160 East 300 South
Salt Lake City, Utah 84111

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