

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.<sup>1</sup> 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

---

<sup>1</sup> 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.<sup>2</sup> 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.

---

<sup>2</sup> 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).<sup>3</sup>

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.<sup>4</sup> 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

---

<sup>3</sup> 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.

<sup>4</sup> 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).<sup>5</sup>

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

---

<sup>5</sup> 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).<sup>6</sup> In this case, the answer is clearly “yes.”<sup>7</sup>

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

---

<sup>6</sup> 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.

<sup>7</sup> 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*



# Exhibit A

- BEFORE THE UTAH UTILITY FACILITY REVIEW BOARD -

-----  
In the Matter of the Petition for Review )  
between Rocky Mountain Power and Tooele ) DOCKET NO. 10-035-39  
County for Consideration by the Utility )  
Facility Review Board ) ORDER  
)  
-----

SYNOPSIS

The Board, having reviewed the substantial, competent and credible evidence before it, unanimously finds the Company's proposed Transmission Project is needed to provide safe, reliable, adequate and efficient service to its customers. The Board directs the County to issue the conditional use permit within 60 days of this Order.

-----  
ISSUED: June 21, 2010

By The Board:

This matter is before the Utah Utility Facility Review Board (Board) on Rocky Mountain Power's (Company) Petition for Review of Tooele County's (County) denial of the Company's application for a conditional use permit (CUP or Permit).

BACKGROUND

On March 30, 2010 the County denied the Company's application for a CUP for the construction and operation of the Mona to Oquirrh Transmission Project (Transmission Project). The Company contends the Transmission Project is needed to meet the present and future demand on its transmission system so that the Company may provide safe, reliable, adequate and efficient service.

*Description of the Transmission Project in Dispute*

As described generally by the Company, the Transmission Project will consist of a 500 kV single-circuit transmission line between the existing Mona substation near Mona, Utah and a proposed future Limber substation to be located in the southwestern portion of the Tooele Valley. A new 345 kV double-circuit transmission line will be constructed between the Limber substation and the existing Oquirrh substation located in West Jordan. A new 345 kV double-circuit transmission line will also be constructed from the Limber substation to the existing Terminal substation, located in Salt Lake City.” *Direct Testimony of Brandon T. Smith, p.3, ll.23-28.* The Transmission Project is part of the Company’s comprehensive transmission plan, called Energy Gateway, described in more detail below. *Direct Testimony of Darrell T. Gerard, p.5, l.20; see also discussion below.* The Mona to Oquirrh transmission segment is a component of Energy Gateway and comprises three sections, including the Limber to Oquirrh segment that passes through Tooele County. This segment is approximately 31 miles in length. The County’s main reasons for denying the CUP pertain to an approximately three-mile-long portion of this segment in the southern end of the Tooele Valley and along the east bench.

*Denial of the CUP*

The Company is required to obtain various federal, state, and local permits and approvals before construction of the Transmission Project. One such approval is a right-of-way granted by the Bureau of Land Management (BLM) following issuance of its Final Environmental Impact Statement (Final EIS). Another approval is the CUP from the County.

The Company's CUP application adopts the BLM's preferred route through the County. That route, as described by the Company is as follows:

The BLM's preferred route, as adopted by the Company, extends north from the Mona substation approximately 70 miles to the proposed site of the future Limber substation, to be located near the southwest corner of the Tooele Army Depot (the "Mona to Limber Segment"). The second segment of the route extends east from the Limber substation across the southern portion of the Tooele Valley and over the Oquirrh Mountains to the Oquirrh substation in West Jordan, Utah (the "Limber to Oquirrh Segment"). This segment is approximately 31 miles in length.

*Petition for Review, p.12.*

Prior to submitting its CUP application, the Company became aware of concerns expressed by certain Tooele County residents regarding the planned location of the Limber to Oquirrh transmission line. *See Direct Testimony of Brandon Smith, p.23, ll.6-7.* To address these concerns, the Company convened three conflict resolution meetings in August and September 2009. Those meetings included staff and elected officers of the County, Tooele City, Grantsville and other members of the public. The purpose of these groups was to identify other viable alternate routes. *See id at p.23.* As discussed in more detail below, those routes were either opposed by citizens of Grantsville, deemed unacceptable by the BLM, or deemed unacceptable by the Company due to various technical and cost-based constraints. *See id at pp.23-27.* The Company, however, did make adjustments to the proposed route based on input from interested stakeholders. For example, the Company moved the line further south—"away from residences in the foothills south of Tooele City, to minimize visual impacts, to avoid crossing future gravel operations, and to relocate the crossing of the Settlement Canyon Reservoir." *See id at p.27, ll.25-27.*

DOCKET NO. 10-035-39

-4-

On December 10, 2009, the Company submitted its CUP application to the County. On March 3, 2010, the Tooele County Planning Commission denied the Company's CUP application. *See Petition for Review, Exhibit L.* On March 23, 2010, the Company appealed the denial of the CUP Application to the Tooele County Commission. On March 30, 2010, the Tooele County Commission denied that appeal. *Response to Petition for Review, Exhibit B.* The County Commission based its action on the County Planning Commission's findings of insufficient mitigation and failure to meet the burden of proof of showing mitigation in the following areas:

1. Wildlife
2. Disturbance of international smelter site
3. Settlement Canyon Reservoir use
4. Viewsheds including road scars
5. Potential contamination of water sheds and springs
6. Tooele High School's T for safety and visual look
7. Health risks regarding high power lines
8. Loss in property value
9. The EIS is not complete
10. The completion date is uncertain
11. The Record of Decision from BLM is not available
12. The Plan of Development is non-existent

*See Petition for Review, Exhibit L.*

As we explain more fully below, these concerns, except the four with safety implication, are outside the statutory scope of the Board's review.

ANALYSIS

*The Board's Role and Process*

The Board is governed by the provisions of the Utility Facility Review Board Act (Act), Utah Code §§ 54-14-101 *et seq.* The Board is composed of the three members of the Public Service Commission (PSC), an individual appointed by the governor from the Utah League of Cities and Towns, and an individual appointed by the governor from the Utah Association of Counties. *Utah Code Ann. §54-14-301(2)*. The Legislature established the Board to resolve disputes between local governments and public utilities regarding the location of utility facilities. *See Utah Code. § 54-14-102(2)*. The Legislative findings establishing the Board state:

- (a) The Legislature finds that the construction of facilities by public utilities under this title is a matter of statewide concern.
- (b) 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.
- (c) 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.

*Utah Code. § 54-14-102(1)*. Either a local government or public utility may seek Board review pursuant to the provisions of Utah Code §54-14-303. The Board must convene a hearing within 40 days. The Board must issue a written decision no later than 45 days following the initial hearing. *Utah Code §§ 54-14-305(1)*.

The Board acknowledges the location and construction of major utility facilities involve many stakeholders and entail a diversity of opinions. In an effort to understand more

thoroughly the concerns held by Tooele County residents, the Board chose to hold public witness hearings, although the Act does not require them. The hearings took place on May 11, 2010 at the Deseret Peak Complex in Tooele County. Members of the public, including government officials, made comments. Additionally, the Board received much correspondence commenting on the proposed siting of the Limber to Oquirrh line.

The process of planning and permitting the Transmission Project has been complex and lengthy. It involves evaluating the need for the facility, potential locations, construction feasibility, and engineering requirements. It also involves compliance with a wide array of federal, state, and local laws, rules, and standards. The record shows the Company commenced planning the Transmission Project more than five years ago. *Direct Testimony of Brandon T. Smith, p.4, ll.20-22.* There has also been extensive analysis by the BLM, *see Direct Testimony of Brandon Smith, p.11, ll.1-7.* The BLM identified issues and concerns with the Transmission Project, *Id. at p.12-14,* and conducted a comprehensive analysis of alternative routes and substation sites, including assessing and comparing the impacts each potential route would have, and designating preferred routes. *See id. at p.15, 1-7.*

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 as a result of this hearing [or] in the alternative, order [the Company] to apply for an alternate route." *Response to Petition for Review, p.11.* The Board disagrees. The role of this Board under the governing statute, Utah Code § 54-14-101 et seq., is to determine whether a defined dispute exists and, if so, to resolve it according to the defined

criteria. To this end the Board held evidentiary hearings on May 10 and 12, 2010. 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. It is also a practical impossibility given the complexity of the task of bringing the design of the Transmission Project to this point and the maximum 45 days following the initial hearing afforded the Board to reach its decision.”  
*Utah Code §§ 54-14-305(1).*

*Scope of Board Review*

Utah Code § 54-14-303 defines the actions or disputes between a local government and public utility for which Board review may be sought. Most of these address government-imposed conditions affecting facility construction costs, schedules, and facility corridor boundaries. Because this dispute involves denial of a CUP rather than CUP conditions and associated costs, it derives from Subsection 1(d) of section 303: “(d) 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;”<sup>1</sup> Accordingly, the scope of the Board’s inquiry is to find whether there is substantial, credible, competent evidence, *see Utah Code § 63G-4-403(4)(g)*, the Transmission Project is needed to provide safe, reliable, adequate and efficient utility service. *Utah Code § 54-14-303(1)(d)*.<sup>2</sup>

---

<sup>1</sup> Appendix A to this Order sets forth the other statutory bases for dispute before the Board and a brief explanation of why each does not apply in this case.

<sup>2</sup> In deciding the issues before it, the Board’s determinations of fact, made or implied, must be supported by substantial evidence when viewed in light of the whole record before it. *See Utah Code § 63G-4-403(4)(g)*. The law does not invest the Board with any such arbitrary power to disbelieve or disregard uncontradicted, competent, credible evidence. *See Cf, US West Communications v. Public Serv. Comm’n, 901 P.2d 270 (1995)*.



At the evidentiary hearings, the Company presented the requisite evidence, as we discuss in greater detail below. While ably represented by competent counsel, the County found itself on the horns of a dilemma. If the County suggested an alternative transmission route that resulted in higher costs than the route selected by the Company, the County could be responsible for those additional costs. Because of that dilemma and a lack of resources and expertise, the County did not present opposing siting testimony. In addition, the County's evidence did not contradict the Company's evidence. In fact, the County has stipulated to the need for the Transmission Project. *See Response to Petition for Review, p.1.*

Most of the concerns and criticisms expressed by Tooele County residents and their governmental representatives do not pertain to the utility's need for the facility in order to provide safe, reliable, adequate, and efficient utility service. Rather, they concern the impact about three miles of the proposed transmission line would have on property values, viewshed<sup>3</sup>, and the cultural significance of man-made landmarks (i.e. the "T" on the mountainside) along the southern border of Tooele City. The Board understands the concerns the County and its citizens express regarding these issues. Many of the comments on these topics are thoughtful, clearly stated, and well-intentioned. The time taken to provide them to the Board evinces the depth of feeling with which many in the local citizenry approached this sensitive and complicated subject. However, with few exceptions the County's reasons for denial, like the public comments of

---

<sup>3</sup> A viewshed is an area of the landscape that is visible to the eye from a certain vantage point, i.e. the view.

County residents, address impacts that are not among the factors the Legislature has authorized the Board to consider in resolving this dispute. *See e.g. Utah Code. § 54-14-102.*

This Board, created by the Legislature, has only the authority clearly delegated by the Legislature and must exercise that authority within the parameters and upon the criteria set by the Legislature. “It needs no citation of authorities that where a specific power is conferred by statute upon a tribunal, board, or commission with limited powers, the powers are limited to such as are specifically mentioned.” *Bamberger E. R. Co. v. Public Utils. Comm’n*, 204 P. 314, 320 (Utah 1922); *see also Cf. Hi-Country Estates Homeowners Ass’n v. Bagley and Co.*, 901 P.2d 1017 (Utah 1995) (holding that the Public Service Commission has no “inherent regulatory powers and can only assert those which are expressly granted or clearly implied as necessary to the discharge of the duties and responsibilities imposed upon it . . . [and] any reasonable doubt of the existence of any power must be resolved against the exercise thereof”). 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.

*The County’s Improper Denial of the CUP*

In addition to the record developed through evidentiary hearings summarized below, the Board examined the twelve factors the Tooele County Planning Commission specified in denying the requested CUP, as set forth by the County in its Response to the Company’s

Petition for Review. Before addressing the factors specifically, we address the County's repeated contentions that the Company undertook inadequate efforts to mitigate the County's concerns and disregarded the public's concerns regarding various objections, *see e.g. Response to Petition for Review, pp.2,3 (stating that the Company "could not show they had the ability to mitigate the detrimental impacts in the controversial portion of their proposed route", the Company "summarily denied every suggested alternative route", the Company "had determined that there was one, and only one, possible route" and that the Board needs to provide a "critical analysis of the proposed and alternative routes", etc.)*. The evidence presented to the Board does not substantiate the County's claims. From the record and undisputed testimony, we conclude the Company did make significant efforts to address the objections raised by the County, working not only with key stakeholders but also with the BLM, *see e.g. Direct Testimony of Brandon T. Smith, p.11-12, 14, etc.*, supplementing and explaining evidence of mitigation, even adjusting its own preference in order to align its preferred route with that of the BLM. *See e.g. id at p.20, ll.24-31, p.21, ll.2-8, p.21, ll.10-17, etc.* The Company did present competent, credible, and undisputed evidence to the County addressing each of those objections stated by the County.

As explained above, regarding the specific objections listed by the County in denying the CUP, the Board may only consider those relevant to the question of the Company's need for the facility to provide safe, reliable, adequate and efficient service. Therefore, the following objections used as a basis by the County to deny the CUP are not properly considered here:

- Wildlife

- Viewsheds including road scars
- Tooele High School's T for safety and visual look
- Loss in property value

Other factors cited by the Planning Commission are:

- The EIS is not complete
- The completion date is uncertain
- The Record of Decision from BLM is not available
- The Plan of Development is non-existent

These four objections appear to relate to the County's concern that the CUP application might be premature. *Reply to Respondent's Response to Petition for Review, Exhibit 1, p.13*. But given that there are no findings, it is not clear how the County Commission used these objections to deny the CUP. The Company cited to *Ralph L. Wadsworth Construction, Inc. v. West Jordan City*, 2000 UT App 49, ¶ 8, for the proposition that "a municipality's land use decision [concerning the granting or denial of a conditional use permit] is arbitrary and capricious [only] if it is not supported by substantial evidence." (internal citations committed). Assuming those objections do deal with the untimeliness of the CUP application, there is no evidence that they will pose a detriment to the County, its residents, the Company or ratepayers state-wide. Absent any underlying findings, or any additional, contradicting evidence presented by the County at these hearings, the Board cannot find that these objections establish that the Transmission Project is not needed for safe, reliable, adequate, and efficient service.

There remain four objections, each relating to safety:

- Disturbance of international smelter site
- Settlement Canyon Reservoir use
- Potential contamination of water sheds and springs
- Health risks regarding high power lines

Despite the County's contentions that the Company did not adequately address these concerns, the Board finds the Company did address them. First, it addressed the disturbance of the smelter site as requested by the Planning Commission. *See Tooele County Application for Conditional Use Permit-Supplementary Information for Mona-Oquirrh Transmission Corridor Project (International Smelter (Carr-Fork))*. The Company must adhere to standards and regulations of the United States Environmental Protection Agency (EPA) and the Utah Division of Wildlife Resources. The County did not dispute this. The Company represented to the County that it "fully understands that the proposed transmission line alignment passes through the International Smelter Superfund Site located on the east bench of Tooele County. *Id.* It also affirmed to the County that it "is working closely with those responsible for adhering to the Record of Decision and fully recognizes there will be strict requirements for constructing the transmission line in the site. *One of the main objectives for this alignment is to ensure that the proposed alignment will not impact the capped areas and that objective has been met as shown in figure 1.*" *See id (emphasis added)*. The Company further affirmed that there were already requirements set forth by the EPA and Utah Division of Wildlife Resources governing the

construction of the Transmission Project. Specifically, that all excess excavated soils within the site will be moved to a designated on-site repository; structures and access roads will avoid features like wetlands, riparian zones, water courses, hazard substance remediation, etc. The Company also stated that where it performs work on the site, it *must* seek approval from the EPA before commencing work. It also affirmed that any work on contaminated sites must avoid areas like capped areas, treatment or monitoring wells, etc. *See id.* The County does not refute this evidence that the steps the Company will take in constructing the Transmission Project will minimize any impact on the superfund site.

Second, the Company addressed the use of the Settlement Canyon Reservoir in firefighting as requested by the Planning Commission. *See Tooele County Application for Conditional Use Permit-Supplementary Information for Mona-Oquirrh Transmission Corridor Project (Settlement Canyon Reservoir)*. In response to those concerns, the Company “shifted the transmission line alignment near Settlement Canyon Reservoir approximately 400 feet to the south edge of the reservoir . . . .” *See id.* Also, the Company consulted with “two independent helicopter companies who frequently draw water from the reservoirs . . . to evaluate the proposed alignment of the transmission line.” *See id.* They both opined that a “minimum of 2/3 of the reservoir will still be usable to draw water in support of fire fighting activities . . . .” *Id.* The BLM also stated that a campground about 2000 feet south of the proposed transmission line often used by firefighting crews for loading personnel, refueling, and changing aircraft configurations can still be used. But even if not, the area could be relocated. *Id.* The Company also stated that it would comply with all Federal Aviation Administration regulations for marking the power

lines. The County did not dispute any of this evidence nor explain why it was not adequate to address the County's objections.

Third, the Company also raised the potential contamination of the watershed and springs. The County apparently is concerned that the well or spring flow would decrease due to vibrations produced by construction activities. *See Tooele County Application for Conditional Use Permit-Supplementary Information for Mona-Oquirrh Transmission Corridor Project (Wells/Springs)*. The Company opined that some were concerned that the vibrations would disturb soils locally and/or compact soils through which the water passes. The Company opined that since most of the aquifers are so deep, the construction would have little impact, if any. It stated it worked, during the EIS process, with information from the United States Geological Survey (USGS) and Utah Division of Water Rights to identify potentially affected known wells and springs. It then represented that it would comply with "all laws and regulations . . . with respect to uses within each zone of protections for drinking water sources." *Id.* The County did not present any evidence that the Company did not adequately consider the County's concerns. Nor did it present any evidence that the Company would not abide by its representations in the CUP application.

Finally, the County expressed concerns about health risks regarding high-voltage power lines. There are two main concerns. First the possibility that the exposure to electromagnetic fields (EMF) produced by the Transmission Project can increase risks of childhood leukemia, adult cancer and neurodegenerative diseases. *See Tooele County Application for Conditional Use Permit-Supplementary Information (for Mona-Oquirrh Transmission*

*Corridor Project (EMF), Attachment, Letter from Dr. William H. Bailey, Ph.D, and see Final EIS, Page H-128.* (Dr. William Bailey, is an independent EMF expert. The Company contracted him to provide an independent analysis on EMF and cancer. The Company provided his written response to the claims raised by Dr. Webber, to Tooele County). Second, there were also concerns regarding the possibility that the EMF would pose risks to children with pacemakers. *See Transcript of Hearing, p.317, ll.22-15, p.318-319.* Regarding the first, the County relied on statements by a resident of the County, Dr. James Webber, who cited to information given to him by a Dr. David Carpenter. Dr. Webber stated that Dr. Carpenter was a nationally recognized expert on EMF who had published some information on the supposed correlation between EMF and cancer. Dr. Carpenter, as cited by Dr. Webber, contends there is “strong” and “significant” evidence that exposure to EMF levels greater than 4 milligauss (mG) is associated with childhood leukemia, adult cancer, and neurodegenerative diseases. Dr. Carpenter suggested that long-term residential exposures above 4mG should be avoided when routing power lines.

Dr. Bailey, an independent expert on EMF, responded to these assertions stating they are “strikingly different from the conclusions and recommendations of the scientific agencies that have reviewed the same body of research” and listed a line of those scientific agencies, who used studies that were “systematically reviewed and weighted to provide balanced assessment of the evidence in support of an adverse effect.” Dr. Bailey noted that although the agencies “found consistent evidence of a weak statistical association between childhood leukemia and magnetic field exposure greater than 3-4 mG, they have agreed that the evidence is too limited to conclude that there is a causal relationship . . . “ *See Letter from Dr. William H. Bailey, p.2.* Dr. Bailey



then criticized the method by which Dr. Carpenter supported his opinion, e.g. selecting outdated studies, failure to consider study limitations that affect the studies, misunderstanding of animal model systems, etc. *Id.* In any case, however, Dr. Bailey opined that because the Company had:

determined that the closest home to the proposed route for the Mona-Oquirrh line is approximately 960 feet from the right of way, the proposed line would contribute virtually no magnetic field exposure to the surrounding homes. Furthermore, no schools, child care facilities, or other locations where children may congregate are located near the proposed route.

*Id.* Therefore, assuming, *arguendo*, that Dr. Carpenter's contentions regarding the relationship between EMF and cancer and other diseases are valid, his opinions are inapplicable because of the distance of the lines from homes and other buildings. (At 960 feet, the exposure would "contribute virtually no magnetic field exposure to the surrounding homes". *See Letter from Dr. William H. Bailey, p.4*). The County ignored this evidence in denying the CUP.

The County also voiced the concerns of a father that the EMF would interfere with his daughter's pacemaker, possibly causing her death. *See Transcript of Hearing, p.317, ll.22-15, p.318-319*. The father claimed his concerns were ignored by both the BLM and the Company. Upon cross-examination, the Company's witness, Brandon Smith, contended that they had not been ignored. He stated that the Company contacted the manufacturer of the pacemaker, who provided the Company with the minimum requirements as far as impact on the pacemakers from EMF. And after reviewing that data it was determined that the EMF level, even directly underneath the line would not affect operation of the pacemaker. *Id. at ll.12-18*.

The EIS shows the BLM also reviewed concerns about the impact EMF would have on the pacemaker, and evaluated the expected electric and magnetic field levels at the edge of the proposed right of way for the Transmission Project. The BLM reviewed evidence from the pacemaker manufacturer and stated that “the minimum threshold level for interference is 1 Gauss for magnetic fields and 6kV/m for electric fields. *The maximum levels of EMF even underneath the conductors of the double-circuit 345-kV line section would be less than these levels.*” *Final EIS, Volume I, p.4-89-90 (emphasis added)*. The County did not dispute this evidence at the hearing. *See e.g. Transcript, p.319, ll.1-9*. Therefore, the evidence demonstrates the EMF associated with the facility do not pose a safety risk.

*The Transmission Project is Needed to Provide, Adequate, Reliable and Efficient Service*

The evidence shows the project is consistent with the provision of safe utility service. The Board now examines if the Company established the Transmission Project is also needed to provide, adequate, reliable, and efficient service. *Utah Code Ann. §54-14-303(1)(d)*.

As a public utility, the Company has a 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, as will be in all respects adequate, efficient, just and reasonable.” *Utah Code Ann. § 54-3-1*. The Company testifies the Transmission Project must be constructed in the immediate future to ensure the Company’s continuing ability to meet these electric service standards.

The Company operates approximately 15,800 miles of transmission lines across the western states, interconnecting with more than 80 generation plants and 15 adjacent control areas. It owns or has an interest in generation resources with over 12,000 megawatts of system peak capacity. These resources are directly interconnected to its transmission system and provide service to its electric retail and wholesale customers. *Direct Testimony of Darrell T. Gerrard, p. 5.*

The Company asserts that a failure of its transmission system would have far reaching effects not only on Utah customers but also on the electrical system throughout the West. *Id.* To strengthen its system, the Company has undertaken to implement the comprehensive transmission plan, previously identified as Energy Gateway, comprised of eight inter-related and interdependent segments. It will add about 2,000 miles of new transmission lines to the PacifiCorp system over the next ten to twelve years. Energy Gateway will improve transmission system reliability, reduce transmission system constraints and improve the flow of electricity to customers. *Id.*

The Company's FERC-approved Open Access Transmission Tariff (OATT) establishes planning requirements and contractual obligations the Company must meet in order to provide safe, reliable, adequate and efficient transmission service. The planning process includes assessing the future load and resource requirements for all network customers. The Company notes retail loads constitute the bulk of its transmission network customer needs, including those in Utah. The OATT also requires it to provide firm transmission service over the system so that designated resources can be delivered to designated loads. The Energy Gateway, including the

Transmission Project, is the Company's plan to continue to meet these OATT requirements. *Id. at ¶. 9-10.*

The Company testifies it identified the need for the Energy Gateway and, in particular, the Transmission Project through integrated resource planning. The Transmission Project is part of PacifiCorp's 2008 Integrated Resource Plan (IRP). As characterized by the Company, the IRP process is a resource portfolio and risk analysis framework. It is used to specify prudent future actions the Company must take to continue to provide reliable and efficient service to its customers. The IRP strikes a balance between cost and risk over the planning horizon, and considers environmental issues and energy policies in the states PacifiCorp's system serves. *Id. at pp.10.* The Company points out it developed the 2008 IRP through a collaborative process with participation of regulatory staff, advocacy groups, and other interested parties. The Company also refers to numerous other regional transmission studies, identifying transmission constraints Energy Gateway has been designed to rectify.

National and regional reliability standards also drive the Company's need for and design of the Transmission Project. These include the North American Electric Reliability Corporation (NERC) Standards for Bulk Electric Systems, which are federal law, and the Western Electricity Coordinating Council (WECC) regional standards and criteria. *Id. at p. 14.* These standards dictate the minimum levels of transmission system reliability, redundancy, and performance required for the Energy Gateway to interconnect to the larger western grid. These standards address both normal system operations, and generation and transmission plant outages,

including planning for simultaneous outages of two or more lines due to a common mode of failure, e.g., a wildfire.

The Company contends these criteria require it to plan for the simultaneous outage of circuits on common structures or located within a span length of each other. Such a plan requires redundancy to withstand an outage involving multiple lines located on common or nearby towers. The Company states it has designed Energy Gateway to comply with these NERC and WECC reliability standards through adequate redundancy achieved using multiple transmission lines located in wide, geographically diverse corridors. *See Id. at ¶. 16-20.*

Gateway Central is one of the eight Energy Gateway segments. The Transmission Project is a component of this segment and, as characterized by the Company, is an essential component of the overall Energy Gateway plan. Of the eight Energy Gateway segments, Gateway Central is being completed first to provide, what the Company characterizes as, “urgent” and “necessary” capacity and reliability improvements for Utah. *Id. at p. 7.* The Company asserts its existing transmission system is nearing its designed capacity to deliver energy to the largest load center in the state, i.e. the Critical Load Area. This Area includes all or portions of Salt Lake, Tooele, Utah, Davis, Weber, Cache, and Box Elder Counties.

Energy demand in the Critical Load Area is served largely by Company power plants located to the south in Carbon, Juab, and Emery Counties or by other facilities in the Desert Southwest. Energy generated in these locations must be transported on existing transmission lines to the Critical Load Area. The Company’s municipal and other customers rely

on these same lines to transport energy to meet their load growth needs in the northern part of the state. The existing lines are now fully subscribed. The Company expects they will be operating at or near design capacities in the near future. The Company predicts without the Transmission Project and related Gateway Central transmission projects, by 2013 it will not be able to serve its existing customers in the Critical load Area and specifically Tooele County. *Id. at p. 27.* It likewise will not be able to comply with its FERC tariff and with NERC reliability standards, nor with its transmission contract obligations .

The Company states it has designed the Transmission Project to create adequate and necessary new transmission capacity northbound and southbound between the Company's power plants in Utah and other sources of energy in the Four Corners Region and the Desert Southwest. The Company believes this new capacity will enable it to continue to ensure a safe, reliable, adequate and efficient supply of electricity to its customers in Tooele County and the rest of the Critical Load Area. This new capacity will position the Company's system to integrate new generation resources from central and southern Utah. It will also enable the Company to meet its obligations to municipal and other energy transmission customers and to continue to meet reliability standards. Moreover, the Transmission Project, according to the Company, was designed to maximize transmission system reliability, while minimizing transmission line length in order to minimize construction costs and community impacts. *See id. at pp.3-4.*

The Company also maintains the need for the Transmission Project is critical in Tooele County. The County's energy requirements are currently supplied by three 138 kV transmission lines, extending from the Oquirrh and Terminal Substations. The capacity on these

lines has been exhausted by the County's load growth. By 2013, the Company anticipates it will not be able to provide reliable service via the existing lines, let alone serve projected future economic development. The undisputed evidence shows the Transmission Project and related Energy Gateway components will enable the Company to continue to provide safe, reliable, adequate and efficient service to the County. Moreover, the record also shows any further delay in obtaining the CUP will jeopardize the company's ability to do so. *Id. at p. 26-27.*

*The Final EIS*

An important piece of evidence before the Board, in considering the County's denial of the CUP, is the result of the study and analysis of the BLM Final EIS. *Final Environmental Impact Statement for the Mona to Oquirrh Transmission Corridor Project and Proposed Pony Express Resources Management Plan and Amendment, Volume I and II of II.*

When the Company identified the need for the Transmission Project, it later commenced a feasibility study, in 2005, to "assess the ability to permit and construct the conceptual Project." *Direct Testimony of Brandon T. Smith, p.4, ll.20-21.* Part of the function of the feasibility study was identifying alternative corridors for the transmission lines and future substations. *Id. at p.5, ll.2-3.* When the Company completed the feasibility study, it found that almost all of the potential corridors crossed BLM lands, especially in Tooele County. To get a right-of-way from the BLM, it submitted a right-of-way application to begin the federal review and approval process. It submitted the application to the BLM in January 2007. The BLM served as the lead agency for the National Environmental Policy Act (NEPA) review process. The BLM

determined that the granting of the application would require an EIS to comply with NEPA.

BLM began its “scoping period” with publication of the Notice of Intent (NOI) to prepare the EIS on October 16, 2007. *Id. at p.11.*

The intent of the scoping was to formally solicit comments from federal, state, and local agencies and the public early in the preparation of the EIS, identify significant issues and concerns for analysis in the EIS, and review the potential alternative corridors and substation siting areas of the Project.

*Id. at p.11, ll.13-16.* The BLM invited various state and local agencies to participate in this process as Cooperating Agencies, and specifically invited the County to participate in the process but the County declined. The BLM used a variety of avenues to identify the range or “scope” of issues:

Activities associated with the scoping included (1) agency, interagency, and stakeholder meetings; (2) three public scoping meetings; (3) newsletter mailings, media releases, and legal notices to inform the public of the Project, EIS preparation, and public scoping meetings; and (4) establishing a Project website . . . and posting Project information to the BLM Environmental Notification Bulletin Board. In general, comments from both the public and agencies were related to Project need, benefits, and impacts on environmental resources.

*Final EIS, p. S-11.* As part of the BLM’s review, the BLM scoping process identified key affected resources to be addressed during the EIS and environmental studies. *Final EIS, Page S-11.* Those affected resources were:

- Air resources
- Earth resources
- Water resources



- Biological resources
- Wildland Fire Ecology and management
- Cultural Resources
- Paleontological Resources
- Visual Resources
- Land Use and Recreation Resources
- Hazardous Materials
- Electric and Magnetic Fields
- Noise
- Socioeconomics and Environmental Justice
- Cumulative Effects

*See e.g. id. at ¶. S-3-S-10.*

The Final EIS contained fourteen transmission line route alternatives divided into three sections: 1) from the Mona substation to the proposed Limber substation; 2) from the proposed Limber substation to the existing Oquirrh substation; and 3) from the proposed Limber substation to the existing Terminal substation. After thorough analysis, BLM identified its “Preferred Alternative” and its “Environmentally Preferred Alternative” for the Transmission Project. The Company proposes this same route as its best option to provide safe, reliable, adequate and efficient service. *See Reply to Respondent’s Response to Petition for Review, p.2.*

*The Company Considered Alternative Routes*

The County also contends the Company made no efforts to evaluate alternative routes. Again, however, the Board does not find support for this contention in the evidence before it. In its effort to provide safe, reliable, adequate and efficient service by means of the Transmission Project, the Company analyzed more than 450 miles of alternative transmission routes during the planning phase. These routes were assessed to determine environmental resources present and potential impacts. The alternatives were systematically screened and prioritized using environmental and engineering criteria. The Company testifies it further refined its proposed Transmission Project route following the BLM's issuance of its Draft EIS.

Following notice to the public of the availability of the Draft EIS, the Company became aware of negative feedback concerning that portion of the Transmission Project route along the southern part of the Tooele Valley and the east bench. The Company states it held three conflict resolution meetings in August and September 2009. Key stakeholders raised four alternative routes: 1) the Railroad Routes, 2) the Army Depot Routes, 3) the Silcox Canyon Route, and 4) the Grantsville Route (Options 1 and 2). For a variety of reasons summarized below, none of these routes garnered universal support among stakeholders, the BLM and the Company. *See Direct Testimony of Brandon D. Smith, ¶. 23-27.*

Although the Company's preliminary review found the Railroad and Army Depot routes feasible, the Company contends they are not acceptable to Tooele City because they cross

Tooele City limits. The Army Depot Route also is not acceptable to Grantsville due to proximity to residential developments.

The Silcox Canyon Route, according to Company testimony, is not acceptable to the BLM or the Company. The Company views the line as more expensive to construct and maintain, requiring more extensive access roads, larger structures, and more advanced equipment. The Company asserts the Route is also unacceptable to BLM due to increased environmental impacts. Since there was or is no offer from the County to pay any excess costs, the Board does not find this is a viable alternative.

The Grantsville Route options generally involve relocating the Limber Substation and the Limber-to-Terminal and Limber-to-Oquirrh lines north of Tooele City. The Company finds these options unacceptable for several reasons implicating reliability and efficiency. The Company testifies the options would increase the overall length of the transmission lines by 17 miles (Option 1) and 25.75 miles (Option 2). Due to corrosive and unstable soil conditions, both options would require larger transmission structure foundations. In comparison to the Company's and BLM's preferred route, the Company estimates the resultant increased costs for Option 1 are up to \$9.1 million. The increased costs for Option 2 are estimated at up to \$35.4 million. Again, since there was or is no offer from the County to pay any excess costs, the Board does not find this is a viable alternative.

These extra costs do not take into account higher costs associated with construction of the re-located Limber Substation. The Company estimates engineering and

construction adjustments necessitated by the aforementioned soil conditions would increase substation construction costs by about \$43 million.

Additionally, both Grantsville options would require the Limber-Oquirrh and future Limber-Terminal double-circuit 345 kV lines to be constructed in close proximity (a minimum 1000 foot separation) for extended distances, i.e., 8-10 miles (Option 1) and 15-17 miles (Option 2). Consequently, these designs, fail to meet the Company's siting and system criteria, and engineering/design factors.

The evidence shows the alternatives advanced by communities and stakeholders to that portion of the Transmission Project to which the County objects were carefully evaluated. No alternative was identified that was acceptable to all parties. The Board notes the Company's objections are grounded in concern for the efficiency and reliability of its service. Clearly, millions dollars of additional costs and incremental miles of added transmission lines would adversely affect service efficiency. Moreover, the close proximity of the lines for 8 to 17 miles under the Grantsville options would contravene design criteria necessary to minimize the transmission system's vulnerability to common-mode outages. These are criteria established by the Company to comply with mandates from national and regional entities tasked with assuring the security of the transmission grid. They cannot be ignored by the Company or the Board. Additionally as noted above, BLM also reviewed a wide variety of possible routes and locations, including assessing public comments received during the multi-year review process. After thorough analysis performed in accordance with the NEPA permitting process, BLM identified its "Preferred Alternative" route and its "Environmentally Preferred Alternative" for the

Transmission Project. The Company proposes this same route as its best option to provide safe, reliable, adequate and efficient service.

*Summary of Findings and Conclusions*

The Board finds there is substantial evidence to conclude the Company established the Transmission Project is needed to provide safe, reliable, adequate, and efficient service to its customers. That evidence is credible, competent evidence that is not controverted by the County. Without the increased transmission capacity the Transmission Project and related project components will create, by 2013 the Company will face an unacceptable risk of failure to provide its customers safe, reliable, adequate and efficient service. The Board also recognizes the key role the Transmission Project is intended to play in strengthening PacifiCorp's entire transmission system in order to comply with its FERC OATT, and important regional and national reliability standards and directives. The Board views these standards as fundamental to adequate and reliable service.

The need for the Transmission Project is also directly supported by PacifiCorp's IRP studies. These studies balance the costs and risks of potential Company actions to address energy load growth and other issues affecting the adequacy of utility service over an extended planning horizon. Each IRP report is produced in a collaborative environment involving participation of PSC staff, regulatory groups and other interested parties. The 2008 IRP includes the Transmission Project as necessary in carrying out the preferred resource portfolio.

In particular, the undisputed evidence establishes the need for the Transmission Project to enable continuing adequate and reliable service to the Critical Load Area, including Tooele County. Existing transmission facilities within and to this area are at or near full capacity. They must be augmented or reliability will be jeopardized. The evidence demonstrates the Transmission Project will play an integral role in providing the new transmission capacity the Company needs to provide safe, reliable, adequate and efficient service.

As the Company testified, the FERC has also examined the Mona-to-Oquirrh transmission segment as well as the entire Energy Gateway and finds (with the exception of one segment not relevant to the Board's decision) the plan will ensure reliability and reduce transmission congestion. The FERC also finds Energy Gateway will for the first time establish a backbone of 500 kV transmission lines in PacifiCorp's Wyoming, Idaho and Utah regions. The benefits of this backbone as characterized by the FERC include: "a platform for integrating and coordinating future regional and sub-regional electric transmission projects being considered in the Pacific Northwest and the Intermountain West, connecting existing and potential generation to loads in an efficient manner, thus reducing the cost of delivered power." *Direct Testimony of Darrell T. Gerrard, p. 13, citing FERC Docket No. EL08-75-000, Order on Petition for Declaratory Order, issued October 21, 2008, p.14.*

ORDER

Based on the foregoing, the Board:

- A. Finds the Transmission Project and the Company's proposed route as specified in the CUP application (denied by the County on March 30, 2010), is needed for the

Company to provide safe, reliable, adequate, and efficient service to its customers state-wide;

- B. Finds the Transmission Project should be constructed;
- C. Finds the County prohibited the construction of the Transmission Project by denying the CUP;
- D. Directs the County to issue the CUP for the Transmission Project to be located within the Company's proposed transmission corridor, within 60 days after issuance of this Order, and to issue any other permits, authorizations, approvals, exceptions, or waivers necessary for construction of the Transmission Project, consistent with the decision of this Board;

*Reconsideration and Appeal*

Within 20 days after the date this order is issued, pursuant to Utah Code §63G-4-302(1)(a), a party may file a written request for reconsideration with the Board, stating the specific grounds upon which relief is requested. Requests for reconsideration shall be filed with the Board and one copy shall be mailed to each party by the party making the request. If the Board does not issue an order granting or denying the request within 20 days after the filing of the request, it is deemed denied. The filing of a request for reconsideration is not a prerequisite to judicial review. Judicial review of the Board's final agency action may be obtained by filing a petition for review with the Court of Appeals. Any petition for review must comply with the requirements of Utah Code §§63G-4-401 and 63G-4-403 and with the Utah Rules of Appellate Procedure.

DOCKET NO. 10-035-39

-31-

DATED at Salt Lake City, Utah this 21<sup>st</sup> day of June, 2010.

BY THE BOARD:

/s/ Ted Boyer

Chairman, Utah Public Service Commission

/s/ Ric Campbell

Commissioner, Utah Public Service Commission

/s/ Ron Allen

Commissioner, Utah Public Service Commission

/s/ Hon. Joe Johnson,

Mayor, Bountiful City

/s/ Monette Hurtado, Esq.

Deputy County Attorney, Weber County

Attest:

/s/ Julie Orchard

Secretary, Utah Public Service Commission



APPENDIX A

*Actions or Disputes for Which Board Review May be Sought*

1. A local government or public utility may seek review by the board, if:
  - (a) a local government has imposed requirements on the construction of a facility that result in estimated excess costs without entering into an agreement with the public utility to pay for the actual excess cost, except any actual excess costs specified in *Subsection 54-14-201(2)(a)* or *(2)(b)*, at least 30 days before the date construction of the facility should commence in order to avoid significant risk of impairment of safe, reliable, efficient, and adequate service to customers of the public utility;
  - (b) there is a dispute regarding:
    - (i) the estimated excess cost or standard cost of a facility;
    - (ii) when construction of a facility should commence in order to avoid significant risk of impairment of safe, reliable, and adequate service to customers of the public utility;
    - (iii) whether the public utility has sought a permit, authorization, approval, exception, or waiver with respect to a facility sufficiently in advance of the date construction should commence, based upon reasonably foreseeable conditions, to allow the local government reasonable time to pay for any estimated excess cost;
    - (iv) the geographic boundaries of a proposed corridor as set forth in a notice submitted by a public utility to a local government pursuant to the provisions of *Subsection 54-18-301(1)(a)*, provided the action is filed by the local government before the public utility files an application for a land use permit as set forth in *Subsection 54-18-304(1)(a)*; or
    - (v) a modification proposed by a local government to a utility's proposed corridor that is identified in the public utility's notice of intent required pursuant to *Subsection 54-18-301(3)*;
  - (c) a local government has required construction of a facility in a manner that will not permit the utility to provide service to its customers in a safe, reliable, adequate, or efficient manner;

(d) 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;

(e) a local government has not made a final decision on the public utility's application for a permit, authorization, approval, exception, or waiver with respect to a facility within 60 days of the date the public utility applied to the local government for the permit, authorization, approval, exception, or waiver;

(f) a facility is located or proposed to be located in more than one local government jurisdiction and the decisions of the local governments regarding the facility are inconsistent; or

(g) a facility is proposed to be located within a local government jurisdiction to serve customers exclusively outside the jurisdiction of the local government and there is a dispute regarding the apportionment of the actual excess cost of the facility between the local government and the public utility.

Part 1(a) is not applicable. Here the County has not imposed any affirmative requirements for the construction of the Transmission Project. The County has simply refused to grant the CUP for a facility whose need, safety, reliability, adequacy, and efficiency is not disputed by substantial, credible, competent evidence.

Part 1(b)(i) is not applicable as there is no dispute regarding the estimated excess costs. The County did not put forth any reliable evidence of estimated excess costs for the Transmission Project.

Part 1(b)(ii) is not applicable as there is no dispute regarding when the construction of the Transmission Project should commence. Neither party raised that issue.

Part 1(b)(iii) is not applicable as there is no dispute regarding whether the Company has sought a permit, authorization, approval, exception, or waiver with respect to a

facility sufficiently in advance of the date construction should commence. There is no dispute concerning whether the Company sought required County actions sufficiently in advance.

Part 1(b)(iv) is not applicable as the County did not file this action before the Company filed its application for the CUP, as mandated in this sub-section.

Part 1(b)(v) is not applicable here as the County did not propose any specific alternative to the route proposed by the Company in its CUP application. Though there might have been other communities and stakeholders that during the course of the CUP application process proposed other generalized suggestions and routes, the County did not put forth any evidence of a specific route alternative to that identified by the Company. The County frankly admitted that “it lacks the expertise or resources (qualified personnel and/or budget) to credibly advocate for the construction of any particular route before the Board.” *Response to Petition for Review*, p.3. The County did later say that “proposed several alternative routes” along with Tooele City and Grantsville City and all signed a “letter indicating unanimous support for a route through Tooele County. See Exhibit 3” *Id.* However, the Exhibit 3 referred to by the County makes general recommendations only. As noted by the Company,

The County alleges in its Response that it “did propose several alternative routes.” . . . This statement is not accurate, as the County has at no time identified to the Company an alternative alignment that the County would approve. In support of its statement referenced above, the County refers to the “consensus letter” sent to the BLM on September 21, 2009, and attached as Exhibit C to the Response (the “Consensus Letter”). With respect to the Limber to Oquirrh Segment, the letter reads:

We propose the Limber to Oquirrh transmission line be routed to minimize impact to Tooele Valley’s residents. This proposal concurs with Tooele City Mayor, Tooele City Council and The Citizens

Committee of Tooele as well as the Tooele County Commission who are opposed to RMP's proposed routes through or south or east of Tooele City and have been designated by the same officials and citizens as unacceptable having the greatest amount of negative impact on the greatest amount of citizens. We propose these routes be eliminated for those reasons and because they are no longer practical considering the northern location for the Limber substation.

The above-referenced sentences set forth in their entirety the "several alternative routes" proposed by the County in the Consensus Letter. In review, the County (along with other parties) proposed (1) "the Limber to Oquirrh transmission line be routed to minimize impact on Tooele Valley's residents," and (2) the Limber to Oquirrh Segment be eliminated "because they are no longer practical considering the northern location for the Limber Substation." . . . . Furthermore, the parties most impacted by the changes suggested in the "Consensus Letter," Grantsville City and the Grantsville City Concerned Citizen's Group, did not sign the letter, putting in serious doubt what level of "consensus" was actually achieved.

*Reply to Respondent's Response to Petition for Review, p.6-7 (internal citations omitted).*

At the hearing, the County did not propose any alternative route other than the one proposed by the Company as submitted in the CUP application. Absent any reliable evidence of a specific alternative to the route proposed by the Company in its CUP application, this sub-section cannot apply.

Part 1(c) is not applicable because the County has not required the Company to construct the Transmission Project in a manner that will not permit the Company to provide safe, reliable adequate and efficient service. Although there are generalized recommendations for siting and construction referenced by the County, there is no evidence that it has placed specific technical requirements on the construction of the Limber to Oquirrh transmission line running through Tooele County.

DOCKET NO. 10-035-39

-36-

Part 1(d) is applicable and is addressed in the body of the Order.

Part 1(e) is not applicable because the County did make a final decision on the Transmission Project, denying the CUP.

Part 1(f) is not applicable because that sub-section deals with inconsistent decisions of local governments regarding siting of the facility. Here the County is the only local government involved.

Part 1(g) is not applicable because the facility is will not be serving customers exclusively without the County, but will be serving customers inside and without Tooele County.