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BEFORE THE UTAH UTILITY FACILITY REVIEW BOARD

<p>ROCKY MOUNTAIN POWER, Petitioner, vs. WASATCH COUNTY, Respondent.</p> <hr/> <p>MARK 25, LLC; <i>et al.</i>, Intervenors.</p> <hr/> <p>PROMONTORY DEVELOPMENT, LLC and PROMONTORY INVESTMENTS, LLC Intervenors.</p>	<p>PROMONTORY DEVELOPMENT, LLC’S AND PROMONTORY INVESTMENTS, LLC’S JOINDER IN MOTION FOR PROTECTIVE ORDER PERTAINING TO DISCOVERY PROPOUNDED BY BLACK ROCK INTERVENTION GROUP</p> <hr/> <p>Docket No. 16-035-09</p>
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Promontory Development, LLC and Promontory Investments, LLC (collectively “Promontory”), pursuant to Utah Administrative Rule R746-100-8(C)(3), respectfully joins in the motion of Rocky Mountain Power to obtain relief from the unnecessary, irrelevant, overly-

burdensome, and in this case harassing discovery the four separate entities constituting Black Rock Intervention Group (“Black Rock”) seek.¹

I. SUMMARY

As a result of Black Rock’s intervention, the number of parties now seeking some kind of relief in this matter has grown from two to eight. As Rocky Mountain Power predicted in opposing Black Rock’s intervention, Black Rock has taken a mile from the inch this Board gave it. Although the easement Rocky Mountain seeks here comes in no physical contact with Black Rock’s property, Black Rock has taken the small license this Board gave it and translated it into a virtual jihad. The Board need not, and frankly should not consider this Joinder or Rocky Mountain’s Motion for Protective Order if it merely grants Rocky Mountain Power’s motion to reconsider and denies Black Rock’s intervention at the April 14, 2016 hearing. That ends this immediate dispute, and permits Rocky Mountain to proceed before the Board with Wasatch County on the clean and simple merits of its Petition. Otherwise, this Board will be faced with a host of discovery, scheduling and procedural issues that will divert the Board’s attention from the narrow issues here, prolong and complicate these proceedings, and increase the expense for all.

II. PROCEDURAL FACTS

Since the Board permitted Black Rock to intervene and limited its involvement to issues in “this” proceeding, Black Rock has issued a subpoena, a notice of deposition, interrogatories, requests for admission, and document production requests. In other words, Black Rock concedes that any evidence it currently possesses to make the points it claims is *not* enough to support its

¹ As of today, Promontory is not aware that its registered agent for service has been served with the Subpoena directed jointly (and inappropriately) to two distinct entities, appearing as the first 8 pages of Exhibit A to Rocky Mountain’s Motion. Promontory’s counsel received a copy of the subpoena by email. This joinder is filed in anticipation of one or both of the Promontory entities ultimately being properly served with a separate subpoena.

position. Instead, the evidence that Black Rock hopes to present to the Board in support of its intervention purportedly lies, literally, across the street. As to Promontory, Black Rock's subpoena seeks "any" agreements between it and Rocky Mountain affecting property in both Wasatch and Summit Counties, all emails and correspondence regarding any easements and transmission lines, and all communications with Summit County related to the easement. Rocky Mountain Motion, Exhibit A, p. 2. And there is no limitation as to time. At present, with this Joinder, this Board has the following to consider as a result of permitting Black Rock a limited intervention:

- Promontory's Conditional Motion to Intervene;
- Rocky Mountain's Motion for Reconsideration;
- Black Rock's Opposition to Motion for Reconsideration;
- Black Rock's Statement of Discovery Issues;
- Rocky Mountain's Motion for Protective Order; and
- Promontory's Joinder in Motion for Protective Order.

Black Rock's tail is trying to wag the dog here.

Promontory has conditionally sought to intervene not only to protect its own more germane interests here, but also to fairly place the insubstantial circumstances and knowing conduct of Black Rock under scrutiny if this Board permits the expansive scope of issues Black Rock seeks. The overbreadth and impermissible scope of Black Rock's desired discovery is set forth in Rocky Mountain's Motion, pp. 6-11, incorporated herein. If this Board permits that expansive scope, fairness will require as well that Rocky Mountain and Promontory be permitted the use of subpoenas, interrogatories, admissions, document production requests, and depositions. That means, also, that each of the four Black Rock entities will be subject to that

discovery, since they each purport to have independent and unique circumstances bearing on the narrow issues here. This Board's giving a full and fair consideration to Rocky Mountain's Petition does not require any of this.

III. ARGUMENT

Promontory incorporates herein all of the arguments set forth in Rocky Mountain's Motion for Protective Order. Rocky Mountain has fairly articulated many reasons for granting rehearing, denying intervention to all third parties, and denying Black Rock's Statement of Discovery Issues. Promontory had no desire to intervene until Black Rock kicked this off. Apart from Rocky Mountain's points, however, and unique to Promontory is the fact that it has standing not only as a conditional intervenor here, but also now because even as a third party to this proceeding Black Rock threatened it with depositions and issued a subpoena purportedly requiring Promontory to unearth records and electronic files going back to land acquisitions that predated and led to the creation of Promontory's development. Finally it is Promontory's, and not Black Rock's property upon which these easements lie. Black Rock's rabid overreaching cannot have been within the contemplation of the Board when it cautiously allowed Black Rock to intervene.

If that was the Board's intent, however, then allowing Black Rock license to launch a fishing expedition will of necessity afford Promontory and Rocky Mountain the same expensive and unnecessary privileges. The Board will have to craft an articulated standard outlining what is fair game for discovery in this proceeding, modify the current scheduling order to accommodate all discovery from the eight entities now before the Board, and brace itself for a record potentially constituted of thousands of pages of documents, and testimony from scores of

witnesses. Again, this cannot have been within the Board's contemplation in trusting Black Rock to stick to the issues. And now, it certainly should not be.

IV. CONCLUSION

Promontory acknowledges the Board's desire to be liberal in permitting interested parties to participate in this process. Had Black Rock stuck to the narrow script afforded it, and had Black Rock been in possession of any relevant evidence, then the proceedings could likely have gone forward without more ado. Black Rock's abuse of the Board's discretionary privilege now, however, disqualifies it from further participation, and adds to the many good reasons why the Board should grant Rocky Mountain's Motion to Reconsider. Failing that, however, the Board should nevertheless grant Promontory's and Rocky Mountain's motions for a protective order against Black Rock's abusive discovery, limit Black Rock's evidence to matters already within its knowledge, and allow Promontory to present its own evidence as well.

DATED this 11th day of April, 2016.

SNELL & WILMER, LLP

(original signed by Mark O. Morris)

Mark O. Morris

Wade R. Budge

Jordan Lee

Attorneys for Promontory Intervenors

CERTIFICATE OF SERVICE

I hereby certify that on the 11th day of April, 2016, a true and correct copy of
**PROMONTORY DEVELOPMENT, LLC AND PROMONTORY INVESTMENTS,
LLC'S JOINDER IN MOTION FOR PROTECTIVE ORDER PERTAINING TO
DISCOVERY PROPOUNDED BY BLACK ROCK INTERVENTION GROUP** was served
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