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Attorneys for Intervenors

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.

**INTERVENORS' STATEMENT OF
DISCOVERY ISSUES**

**(RE: INTERVENORS' FIRST SET OF
DISCOVERY REQUESTS TO
PETITIONER ROCKY MOUNTAIN
POWER)**

Docket No. 16-035-09

RELIEF SOUGHT AND GROUNDS FOR RELIEF

Intervenors, through counsel and pursuant to rule 37 of the Utah Rules of Civil Procedure, submit this Statement of Discovery Issues to compel responses from Rocky Mountain Power ("**RMP**") to Intervenors' discovery requests. On March 31, 2016, Intervenors served RMP discovery requests regarding whether RMP's proposed location for the upgraded transmission line is necessary under Utah Code section 54-14-301(1)(d). RMP responded on April 7, 2016, refusing to provide any documents or answers to Intervenors' written interrogatories and requests

for admissions. RMP maintains that the discovery sought was overbroad, irrelevant, and unnecessary in light of the written testimony RMP intends to file on April 8. *See* RMP's Disq. Resp., attached hereto as Exhibit 1. RMP has also asserted that discovery is unnecessary and improper in this proceeding.

Discovery is, however, clearly proper under the governing statutes and the Board's scheduling order. After RMP filed its Petition for Review in this matter, both Wasatch County and RMP requested that the Board conduct a formal adjudicative proceeding as allowed by Utah Code section 54-14-303(2)(a). In particular, RMP stated that "[d]ue to the complicated nature of the issues involved in this matter, [RMP] believes that the Board and the parties involved will benefit from the processes afforded by Utah Code Ann. § 63G-4-205 & 206." *See* RMP's Req. Formal Adj. Proceeding, (Mar. 16, 2016). Those processes include provisions expressly allowing discovery:

In formal adjudicative proceedings, the agency may, by rule, prescribe means of discovery adequate to permit the parties to obtain all relevant information necessary to support their claims or defenses. If the agency does not enact rules under this section, the parties may conduct discovery according to the Utah Rules of Civil Procedure.

Utah Code Ann. § 63G-4-205(1) (emphasis added).

In a scheduling order entered March 24, 2016, the Board agreed "that this matter should be conducted as a formal adjudicative proceeding." *See* Scheduling Order, at 1. And it further ordered the parties to "respond to requests for data or discovery within 5 business days of receipt." *Id.* at 5. Accordingly, the Board has ordered the parties to conduct discovery under the Utah Rules of Civil Procedure while imposing a shorter time frame for responses given the expedited nature of this proceeding.

Not only is discovery proper in this proceeding, but Intervenor's requests are relevant and not overbroad. The narrow question presented to the Board is whether RMP's proposed location for the upgraded transmission line is "needed to provide safe, reliable, adequate, and efficient service to" RMP's customers. *See* Utah Code Ann. § 54-14-303(1)(d). Intervenor's position is that RMP has every right to build the upgraded transmission line on the easement it has owned for a century (and where the current transmission line is located) in Summit County. For that reason, the proposed relocation of the transmission line is not "needed to provide safe, reliable, adequate, and efficient service." *See id.* Intervenor also intend to demonstrate that the relocated route that RMP has proposed is less safe, reliable, and efficient than RMP's existing route. To make this showing, Intervenor need to conduct discovery.

Intervenor accordingly requested (1) copies of the easements RMP owns for the current transmission line and the proposed upgraded transmission line; (2) documents RMP has submitted to other municipalities or counties regarding the proposed transmission line; (3) copies of studies and analyses of the relative costs, safety, and efficiency of service associated with constructing the upgraded transmission line where the line currently lies or the new location near Intervenor's property; and (4) correspondence with landowners within the proposed corridor for the upgraded transmission line regarding the scope of RMP's easement. *See* Intervenor's Discovery Requests, attached hereto as Exhibit 2. Intervenor also propounded written interrogatories and requests for admission seeking the same information or the identity of individuals who possess that information. *See id.*

These requests are relevant and not overbroad. Complete responses will allow Intervenor to ascertain whether there is any reason why the upgraded transmission line cannot

be constructed along the same easement RMP has used for the past 100 years. Indeed, intervenors believe complete responses to these requests will show that RMP has taken the position before other counties and in correspondence with Promontory Investments, LLC, that the easement it now utilizes for the transmission line is perfectly suitable for the construction of an upgraded line. The requests are therefore not overbroad, and they are directly relevant to the question of whether the proposed relocation of the transmission line is actually “needed” for RMP to provide safe, reliable, adequate, and efficient service to its customers. *See* Utah Code Ann. § 54-14-303(1)(d).

RMP also refused to answer the requests “on grounds that Intervenors should not be allowed to propound discovery if they are not ultimately allowed to intervene as a party opponent.” *See* Ex. 1, RMP’s Disc. Resp., at 4–13. This is not a proper objection. Pursuant to this Board’s order entered April 1, 2016, Intervenors are parties to this proceeding, and absent further action by this Board to disturb its prior order, RMP has an obligation to comply with discovery requests under UAPA, the Utah Rules of Civil Procedure, and this Board’s scheduling order.

CERTIFICATION OF GOOD FAITH ATTEMPTS TO CONFER

Intervenors hereby certify that they have, through their counsel, attempted in good faith to resolve this discovery dispute. Intervenors’ counsel has spoken with RMP’s counsel over the phone and corresponded via email in a good faith attempt to resolve this discovery dispute.

PROPORTIONALITY UNDER RULE 26(b)(2)

Intervenors’ request is proportional taking into account the nature of this proceeding. The Board’s decision could have irreversible impacts on the value, marketability, and future

development of Intervenor's property. And given the expedited time frame imposed by statute, it is imperative that parties have access to relevant evidence quickly in order to have sufficient time to prepare their case-in-chief. Further, the information regarding the suitability of RMP's original easement for construction of the upgraded line is the pivotal issue in this proceeding, and resolving that issue hinges largely on information in RMP's exclusive possession. Thus, any burden on RMP in responding to the requests is outweighed by the benefit such information will have in supporting Intervenor's position in this proceeding.

RMP claims the requests are not proportional in light of the written direct testimony each party is required to submit. While the written materials will allow Intervenor access to documents supporting RMP's position, RMP has no obligation to submit material or testimony from witnesses that is unfavorable to its position. The very purpose of discovery is to "permit[] parties to find witnesses, documents, and other evidentiary materials that are harmful, rather than helpful, to the opponent's case." *See* Utah R. Civ. P. 26(c) Advisory Committee Notes. The requests are therefore proportional, notwithstanding the written testimony RMP will submit.

DATED this 8th day of April 2016.

BENNETT TUELLER JOHNSON & DEERE

/s/ Jeremy C. Reutzel
Jeremy C. Reutzel
Ryan M. Merriman
Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I CERTIFY that on April 8, 2016, a true and correct copy of the foregoing document was served upon the following as indicated below:

By Electronic-Mail:

Beth Holbrook (bholbrookinc@gmail.com)
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/s/ Eliza Bower