

- BEFORE THE UTAH UTILITY FACILITY REVIEW BOARD -

In the Matter of Rocky Mountain Power's
Petition for Review to the Utah Utility
Facility Review Board

DOCKET NO. 16-035-09

ORDER GRANTING PETITIONER'S
MOTION FOR RECONSIDERATION
OR CLARIFICATION WITH
RESPECT TO THE BOARD'S
DECISION ON INTERVENOR'S
MOTION TO INTERVENE

ISSUED: April 21, 2016

BACKGROUND

1. On March 28, 2016, the Utah Utility Facility Review Board (Board) issued a bench ruling granting Mark 25, LLC, Black Rock Ridge Master Homeowners Association, Inc., Black Rock Ridge Townhome Owners Association, Inc., and Black Rock Ridge Condominium Association, Inc. (collectively, Black Rock) intervenor status in this docket.¹ The Board later memorialized its ruling in an order on April 1, 2016.²

2. On March 30, 2016, Rocky Mountain Power (RMP) filed a motion for reconsideration or clarification concerning the Board's decision to grant Black Rock intervenor status (RMP's Motion for Reconsideration).³

3. On April 4, 2016, Promontory Development, LLC and Promontory Investment, LLC (collectively, Promontory) filed a petition to intervene, which was conditioned upon the

¹ See Transcript of Hearing, March 28, 2016, available at:
<http://www.psc.utah.gov/utilities/electric/elecindx/2016/1603509indx.html>.

² See Order Confirming Bench Ruling Granting Black Rock's Intervention, issued April 1, 2016, available at:
<http://www.psc.utah.gov/utilities/electric/elecindx/2016/1603509indx.html>.

³ See Petitioner's Motion for Reconsideration or Clarification with Respect to the Board's Decision on Intervenors' Motion to Intervene, filed March 30, 2016.

Board allowing other parties (i.e., Black Rock) to intervene in this docket (Provisional Motion to Intervene).⁴

4. On April 8, 2016, Black Rock filed an opposition to RMP's Motion for Reconsideration.⁵

5. On April 11, 2016, RMP filed a motion for protective order concerning discovery requested by Black Rock (RMP's Motion for Protective Order),⁶ and Black Rock filed a statement of its discovery issues.⁷

6. On April 11, 2016, Promontory joined RMP's Motion for Protective Order.⁸

7. On April 13, 2016, Black Rock filed an opposition to RMP's Motion for Protective Order.⁹

8. On April 14, 2016, the Board held a hearing to address and deliberate on RMP's Motion for Reconsideration.¹⁰

⁴ See Promontory Development, LLC and Promontory Investments, LLC's Conditional Petition to Intervene and Request for Adjudicative Proceedings, filed April 4, 2016.

⁵ See Opposition to Petitioner's Motion for Reconsideration or Clarification with Respect to the Board's Decision on Intervenor's Motion to Intervene, filed April 8, 2016.

⁶ See Motion for Protective Order Pertaining to Discovery Propounded by Black Rock Intervention Group, filed April 11, 2016.

⁷ See Intervenors' Statement of Discovery Issues (Re: Intervenors' First Set of Discovery Requests to Petitioner Rocky Mountain Power), filed April 11, 2016.

⁸ See Promontory Development, LLC's and Promontory Investments, LLC's Joinder in Motion for Protective Order Pertaining to Discovery Propounded by Black Rock Intervention Group, filed April 11, 2016.

⁹ See Memorandum in Opposition to Motion for Protective Order Pertaining to Discovery Propounded by Black Rock Intervention Group, filed April 13, 2016.

¹⁰ See Second Amended Notice of Hearing to Address and Deliberate on Rocky Mountain Power's Motion for Reconsideration or Clarification, issued April 12, 2016, available at:

<http://www.psc.utah.gov/utilities/electric/elecindx/2016/documents/2733171603509sanohtaadormpmfroc.pdf>.

9. Counsel for RMP, Promontory, and Black Rock argued their respective positions at the hearing and responded to questions from the Board. Counsel for Wasatch County stated that it did not object to intervention by either Black Rock or Promontory.

10. The Board then deliberated and voted to grant RMP's Motion for Reconsideration and deny Black Rock intervenor status.¹¹ After the Board voted, Promontory withdrew its Provisional Motion to Intervene.

11. This written order memorializes the Board's decision.

ORDER

We note at the outset of this order that we have scheduled a public witness hearing on May 2, 2016, in Wasatch County, at which the Board will receive testimony and comments from the public regarding the proposed facility.¹² Nothing in this order diminishes Black Rock's opportunity to present its positions on the facility in that forum.¹³ At issue here is whether Black Rock may intervene as a party to this proceeding with the attendant rights to discovery, cross-examination and the presentation of evidence.

Under the Utility Facility Review Board Act (Act),¹⁴ this Board exists solely to resolve specified types of disputes between two classes of parties: local governments and public utilities.¹⁵ This dispute arises under Utah Code Ann. § 54-14-303(1)(d) because a local government (namely, Wasatch County) has denied RMP's request for a conditional use permit to

¹¹ Four board members voted in favor, one board member voted against.

¹² See Amended Notice of Public Witness Hearing, issued April 13, 2016.

¹³ See *id.* See also Utah Code Ann. § 54-14-103(5)(a) (defining "facility" as "a transmission line" among other things).

¹⁴ See Utah Code Ann. § 54-14-101 *et seq.*

¹⁵ See, generally, *id.* § 54-14-303.

construct and operate a quarter-mile long section of a 74-mile long 138 kilovolt transmission line.¹⁶ The single question for the Board, as dictated by the Act, is whether the proposed facility “is needed to provide safe, reliable, adequate, and efficient service to the customers of the public utility.”¹⁷ The section of the facility in question is located entirely on land owned by Promontory Investments, LLC, which does not object to the construction and operation of the facility on its property.¹⁸ Black Rock owns land near the land on which RMP seeks to locate the section in question.¹⁹

Although the Act empowers the Board to address only disputes between local governments and public utilities, the Act affords a right to intervene as a party in the proceeding to “[a] potentially affected landowner, as defined in Section 54-18-102.”²⁰ Section 54-18-102 defines an “affected landowner” as “an owner of a property interest . . . whose property is located within a proposed corridor.”²¹ We find that Black Rock does not meet the definition of an “affected landowner” under the Act, because its property is not located within the proposed transmission corridor. Therefore, we conclude Black Rock does not have a right to intervene in this docket. Moreover, given the explicit limitations on the Board’s authority, we conclude that

¹⁶ See Petition for Review at 1, filed February 19, 2016.

¹⁷ Utah Code Ann. § 54-14-303(1)(d). See also *id.* § 54-14-102(1)(b) (legislative finding concerning “safety, reliability, adequacy, and efficiency of service to customers in areas within the jurisdiction of more than a single local government”).

¹⁸ See Opposition to Petition to Intervene at 6, filed March 21, 2016; Promontory Development, LLC and Promontory Investments, LLC’s Conditional Petition to Intervene and Request for Adjudicative Proceedings at 3, filed April 4, 2016; and Affidavit of Cody Nunley, filed March 21, 2016.

¹⁹ See Affidavit of Cody Nunley at Exhibits 1 and 2, filed March 21, 2016.

²⁰ Utah Code Ann. § 54-14-303(2)(b).

²¹ *Id.* § 54-18-102(2).

the Act does not contemplate the existence of any additional right to intervene. Rather, it provides the exclusive right.

Black Rock relies on the broader intervention provision of the Utah Administrative Procedures Act²² and asserts the proposed facility: “will obstruct ridge-line views, violate county ordinances, create noise and safety issues, and harm the marketability, value, and future development of [Black Rock’s] property.”²³

As already noted, the Act confines this Board’s authority in this matter to review of whether the proposed facility “is needed to provide safe, reliable, adequate, and efficient service” to RMP’s customers.²⁴ It also requires the Board to issue a final written decision within a maximum of 125 days from the date review is initiated.²⁵ Given these statutory constraints, we do not believe the Act allows the Board to confer “party” status where the interests asserted relate essentially to the value and use of property outside of the proposed corridor. This conclusion is consistent with the Board’s order in the most recent prior proceeding before it, in which we stated:

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*

²² *See id.* § 63G-4-207(2).

²³ Opposition to Petitioner’s Motion for Reconsideration or Clarification with Respect to the Board’s Decision on Intervenors’ Motion to Intervene at 8 (footnote omitted), filed April 8, 2016.

²⁴ *See infra* at 3-4 and n.17.

²⁵ *See* Utah Code Ann. § 54-14-304(1) (requiring “initial hearing within 50 days after the date review is initiated”). *See also id.* § 54-14-305(1) (requiring “a written decision . . . not later than 75 days following the initial hearing”).

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.²⁶

Consistent with that reasoning, and for the reasons enumerated above, it would serve no purpose to recognize the property value, viewshed and related impacts Black Rock asserts as sufficient to justify intervention and then to ignore those impacts, as we are required to do, in resolving the dispute before us. Indeed, doing so would be contrary to the orderly and prompt conduct of these proceedings.²⁷

Accordingly, based on the arguments of RMP and Promontory, summarized above, the Board grants RMP's Motion for Reconsideration and denies Black Rock intervention.

²⁶ Order at 9, issued June 21, 2010 (In the Matter of the Petition for Review between Rocky Mountain Power and Tooele County for Consideration by the Utility Facility Review Board; Docket No. 10-035-39), available at: <http://www.psc.utah.gov/utilities/electric/elecindx/2010/1003539indx.html>.

²⁷ See Utah Code Ann. § 63G-4-207(2)(b). Similarly, it would be contrary to the orderly and prompt conduct of Board proceedings for any public interest in the enforcement of local ordinances and the safe operation of proposed facilities to be represented by individuals in addition to the local government.

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DATED at Salt Lake City, Utah, April 21, 2016.

Thad LeVar, Chair Nay

/s/ David R. Clark, Board Member Yea

/s/ Beth Holbrook, Board Member Yea

/s/ David Wilson, Board Member Yea

/s/ Jordan A. White, Board Member Yea

Attest:

/s/ Gary L. Widerburg
Board Secretary
dw#275402

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Notice of Opportunity for Agency Review

Pursuant to Utah Code Ann. § 63G-4-302, a party may seek agency review of this order by filing a request for review with the Board within 20 days after the issuance of the order. If the Board fails to grant a request for review within 20 days after the filing of a request, the request is deemed denied. Pursuant to Utah Code Ann. § 54-14-308, judicial review of the Board's final agency action may be obtained by filing a Petition for Review with the Utah Court of Appeals. Any Petition for Review must comply with the requirements of Utah Code Ann. §§ 63G-4-401, 63G-4-403, and the Utah Rules of Appellate Procedure.

CERTIFICATE OF SERVICE

I CERTIFY that on April 21, 2016, a true and correct copy of the foregoing was served upon the following as indicated below:

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