

- BEFORE THE UTAH UTILITY FACILITY REVIEW BOARD -

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In the Matter of Rocky Mountain Power's Petition for Review to the Utah Utility Facility Review Board	<u>DOCKET NO. 16-035-09</u>  <u>ORDER</u>
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ISSUED: June 3, 2016

SYNOPSIS

The Board grants Rocky Mountain Power's petition for review of the denial of a conditional use permit from the Wasatch County Board of Adjustment to construct a 0.26 mile-long segment of a 138 kV transmission line upgrade project located in Wasatch County.

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INTRODUCTION

This matter is before the Utility Facility Review Board (Board) pursuant to a petition for review filed by Rocky Mountain Power (RMP) concerning the denial of a conditional use permit (CUP) by the Wasatch County Board of Adjustment (County). The petition relates to a 74 mile-long double-circuit 138 kV transmission line upgrade project that RMP seeks to construct from Evanston, Wyoming, to Park City, Utah (the Project). On January 21, 2016, the County denied RMP's CUP application to construct a 0.26 mile-long segment of the Project in Wasatch County (facility or Wasatch Segment).<sup>1</sup> This petition stems from that denial.

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<sup>1</sup> See Direct Testimony of Donald T. Watts, Exhibit R (Transcript of Board of Adjustment Hearing, January 21, 2016), filed April 8, 2016.

ISSUE AND STANDARD OF REVIEW

As dictated by the Utility Facility Review Board Act (Act),<sup>2</sup> and as recognized elsewhere in this docket,<sup>3</sup> the single question for the Board is whether the facility “is needed to provide safe, reliable, adequate, and efficient service to the customers of the public utility.”<sup>4</sup> The Board reviews this issue pursuant to the statutory authority set forth in the Act.

BACKGROUND AND PROCEDURAL HISTORY

On February 19, 2016, RMP filed a petition with the Board following the County’s denial of a CUP for construction of the Wasatch Segment.<sup>5</sup> The Board set an initial hearing date to address whether to proceed formally or informally and to set a procedural schedule.<sup>6</sup> On March 23, 2016, the Board convened the initial hearing,<sup>7</sup> at which counsel for RMP and the County appeared.<sup>8</sup> The parties agreed and the Board consented that this matter should be conducted formally, and a schedule was set.<sup>9</sup>

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<sup>2</sup> See Utah Code Ann. §§ 54-14-101 to -308.

<sup>3</sup> See Order Granting Petitioner’s Motion for Reconsideration or Clarification with Respect to the Board’s Decision on Intervenor’s Motion to Intervene at 3, issued April 21, 2016.

<sup>4</sup> 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”).

<sup>5</sup> See Petition for Review, filed February 19, 2016.

<sup>6</sup> See Amended Notice of Filing, Comment Period, and Initial Hearing, issued March 14, 2016.

<sup>7</sup> See *id.* The initial hearing was conducted pursuant to Utah Code Ann. § 54-14-304.

<sup>8</sup> See Hr’g Tr. 4:6-9 March 23, 2016. Counsel for proposed intervenor also attended. See *id.* at 4:10-12. However, because the Board denied proposed intervenor’s petition to intervene, (see 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), and the Board likewise denied a request for stay, (see Hr’g Tr. 15:17-25 and 16:1-8 May 10, 2016), this order does not address proposed intervenor’s positions.

<sup>9</sup> See Scheduling Order, Notices of Hearing on Petition to Intervene, Public Witness Hearing, Hearing, and Deliberation Hearing, issued March 24, 2016. See also Request for Formal Adjudicative Proceeding, filed March 16, 2016; and Request for Formal Proceedings, filed March 17, 2016.

On April 8, 2016, RMP filed a memorandum in support of its petition<sup>10</sup> along with direct testimony.<sup>11</sup> Thereafter, the County filed a memorandum in opposition to RMP's petition for review,<sup>12</sup> and RMP filed a reply memorandum along with rebuttal testimony.<sup>13</sup> The Board conducted an evidentiary hearing on May 10, 2016,<sup>14</sup> at which counsel for RMP and the County appeared<sup>15</sup> and RMP introduced testimony of its witnesses. At the conclusion of the hearing the Board granted RMP's petition.

PARTIES' POSITIONS

RMP

RMP asserts that the County's refusal to issue a CUP for the Wasatch Segment has prohibited construction of a facility that is needed to provide safe, reliable, adequate, and efficient service to RMP's customers. RMP states the need for the facility is based on the increasing demand for electricity in all or portions of Wasatch County and Summit County load areas and the limited capability of the existing transmission system to deliver energy reliably to those areas.<sup>16</sup> RMP emphasizes that as a regulated public utility, it has an obligation to provide for current electric demand as well as anticipate future growth, and it must have sufficient transmission facilities in place to provide safe, reliable, adequate, and efficient electric transmission service to its customers within the load areas.

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<sup>10</sup> See Memorandum in Support of Petition for Review, filed April 8, 2016.

<sup>11</sup> See Direct Testimony of Kenneth M. Shortt, filed April 8, 2016; Direct Testimony of Chad B. Ambrose, filed April 8, 2016; and Direct Testimony of Donald T. Watts, filed April 8, 2016.

<sup>12</sup> See Memorandum in Opposition to the Petition for Review, filed April 22, 2016.

<sup>13</sup> See Reply to Respondent's Memorandum in Opposition to the Petition for Review, filed May 2, 2016. See also Rebuttal Testimony of Chad B. Ambrose, filed May 2, 2016.

<sup>14</sup> In addition, the Board held a public witness hearing. See Hr'g Tr. May 2, 2016.

<sup>15</sup> Counsel for proposed intervenor also attended. See Hr'g Tr. 5:5 May 10, 2016.

<sup>16</sup> See Direct Testimony of Kenneth M. Shortt at 3-4, filed April 8, 2016.

The Project is part of a multi-facility solution to address the increasing demand for additional transmission capacity and create alternative transmission pathways to the load areas. RMP asserts that without the additional capacity provided by the Project, RMP will be unable to meet its load service obligations to its customers within the load areas in the next few years. Additionally, the current configuration forces RMP to operate the transmission system as three radial systems during peak loading periods, creating an unacceptable level of reliability.<sup>17</sup> RMP notes that no party, including the County, has questioned the need for the additional transmission capacity the facility will provide.

RMP's general preference is to upgrade transmission lines within existing easements. However, in this case, Promontory<sup>18</sup> contested the sufficiency of the existing centerline easement located on its property (granted in 1916) to accommodate the upgraded, double-circuit 138 kV line. Given the prospect of pursuing lengthy and costly litigation to enforce the existing easement rights, in comparison with the fact that Promontory was willing to grant at no cost a fixed-width easement on Promontory's property to construct the Wasatch Segment and to pay the incremental costs associated with the new alignment, RMP concluded that the selection of the Wasatch Segment as the preferred alignment was in the best interests of its ratepayers. RMP testified that it was faced with two options – condemning an additional easement along the current line at significant expense, delay, and uncertain results, or pursuing the Wasatch Segment.

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<sup>17</sup> See Hr'g Tr. 22:24-25 and 23:1-8 May 10, 2016.

<sup>18</sup> Promontory Development, LLC and Promontory Investment, LLC (collectively, Promontory).

RMP asserts it evaluated the proposed alignment of the facility through its customary procedure and determined, in accordance with its standard practice, Promontory's proposed alignment provided a suitable alternative that would not impair RMP's ability to provide, safe, reliable, adequate, and efficient service to its customers. RMP emphasizes that the entire length of the Wasatch Segment is within Promontory's property, and access was secured by a fixed-width easement granted at no cost by Promontory. Therefore, RMP concluded it could avoid potential litigation and acquisition costs associated with obtaining a fixed-width easement along the existing 46 kV alignment. RMP asserts the Wasatch Segment meets all of the criteria for the Project and will not result in incremental costs to its customers.

RMP's application described four options for consideration but sought approval of the Option 1 alignment (Option 1). RMP maintains Option 1 was selected as its preferred design through its normal and customary transmission line siting practices and procedures after evaluating several alternative alignments. Option 1 establishes the "standard cost" of the facility.<sup>19</sup>

RMP requests the Board reverse the County's decision to deny the CUP and direct the County to issue the CUP for construction of the Wasatch Segment, subject to the County's right to impose reasonable conditions that do not impair the delivery of safe, reliable, adequate, and efficient power, and provided that if those conditions increase the cost to construct the facilities over RMP's standard costs, the County is obligated to pay the excess costs.

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<sup>19</sup> See Memorandum in Support of Petition for Review at 11-12, filed April 8, 2016.

County

The County argues RMP's petition should be denied because the Board does not have jurisdiction under Section 54-14-303 of the Act, which states: "A local government or public utility may seek review by the 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."<sup>20</sup> The County maintains the Wasatch Segment is not needed for RMP to provide safe, reliable, adequate, and efficient service to its customers, thus the Board does not have jurisdiction over the petition.

In support of its argument, the County states the Board's jurisdiction over the current petition is determined by the plain language of the statute. The County asserts the word "needed" is not specifically defined by the legislature in Section 54-14-103, thus a plain language definition controls its interpretation. The County argues that the Board should interpret the word "needed" as "impossible to do without."<sup>21</sup> The County maintains that before the Board can exercise jurisdiction over the petition it must be impossible for RMP to upgrade the Project and provide safe, reliable, adequate, and efficient service to its customers without the Wasatch Segment. The County asserts it is possible for RMP to upgrade the Project without the Wasatch Segment and, therefore, the Board does not have jurisdiction over this petition.

The County further contends the Wasatch Segment is not needed because RMP's construction agreement with Promontory allows RMP to terminate the agreement if RMP cannot

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<sup>20</sup> See Wasatch County's Memorandum in Opposition to the Petition for Review at 2-3, filed April 22, 2016.

<sup>21</sup> *Id.* at 3.

obtain the necessary permits to build the relocated facilities within the alternate alignment.<sup>22</sup> The County also asserts the Board does not have jurisdiction over the petition because the Wasatch Segment is not needed to complete the facility but is simply the preferred choice of a developer. The County argues Promontory's preference as to a route does not make it impossible for RMP to use a different route if the necessary permits are denied on the preferred route; thus, the Wasatch Segment is not needed.

The County points out that five alternatives were considered for the portion of the facility crossing Promontory's property. The County notes that according to Exhibit CBA-3 in the Direct Testimony of Chad B. Ambrose, construction within the existing right-of-way located on Promontory's property would result in the lowest construction cost.

The County also claims the Wasatch Segment is not needed since RMP has acknowledged that the single pole easements recorded by RMP in 1916 for the Evanston-Silver Creek transmission line are sufficient to build the upgraded 138 kV transmission line.<sup>23</sup> According to the County, the Wasatch Segment is contrary to RMP's Summit-Wasatch Electrical local planning handbook dated September 2010, and the facility should be kept in the 1916 easement.

Regarding efficiency, the County points to the five alternatives that were considered for the portion of the Project crossing Promontory's property, and notes that RMP's preferred route and also the least expensive route would keep the Project in the existing right-of-way with the

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<sup>22</sup> See Testimony of Chad B. Ambrose, Exhibit CBA-4, filed April 8, 2016.

<sup>23</sup> See Wasatch County's Memorandum in Opposition to the Petition for Review, Exhibit D at 4-5, filed April 22, 2016.

lowest construction cost. Additionally, the County focused at hearing on the number of additional poles required for the Wasatch Segment arguing, at least indirectly, that the Wasatch Segment is less efficient than the original centerline easement in Summit County.<sup>24</sup>

FINDINGS OF FACT AND CONCLUSIONS OF LAW

As we expressed elsewhere in this docket,<sup>25</sup> this Board exists solely to resolve specified types of disputes between two classes of parties: local governments and public utilities.<sup>26</sup> This dispute arises under Utah Code Ann. § 54-14-303(1)(d) because the County denied RMP's request for a CUP to construct the Wasatch Segment, a quarter-mile long section of a 74 mile-long 138 kV transmission line upgrade project.<sup>27</sup> The Wasatch Segment is proposed to be located entirely on land owned by Promontory, which does not object to the construction and operation of the facility on its property.<sup>28</sup>

The Act allows a public utility to seek review by the 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."<sup>29</sup> The hearing testimony presented two factual disputes: I) whether the Wasatch Segment is "needed" because it can be constructed

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<sup>24</sup> See also Request for Formal Proceedings at 1, filed March 17, 2016 ("The current easement allows for [RMP] to provide safe, reliable, adequate, efficient service to its customers in Summit and Wasatch Counties."); Memorandum in Opposition to the Petition for Review at 8, filed April 22, 2016 ("It is possible for RMP to . . . provide safe, reliable, adequate, and efficient service to its customer[s] without the Wasatch [S]egment.").

<sup>25</sup> See 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.

<sup>26</sup> See Utah Code Ann. § 54-14-303.

<sup>27</sup> See Petition for Review at 1, filed February 19, 2016.

<sup>28</sup> See Opposition to Petition to Intervene at 6, filed March 21, 2016.

<sup>29</sup> Utah Code Ann. § 54-14-303(1)(d).



elsewhere, and II) whether the Wasatch Segment meets the definition of “efficient” within the meaning of the Act. We address each issue below.

I. The Wasatch Segment is “Needed.”

On the issue of whether the Wasatch Segment is needed, the County argues that “needed” means “impossible to do without.” Because another easement exists, the County argues that an alternate route should be precluded.<sup>30</sup> In contrast, RMP argues that the County’s definition is too restrictive and cases examining the need for facilities in the condemnation context should inform our consideration of the need for the Wasatch Segment.

A. *The “plain meaning” of “need”:*

As stated at the outset, the Act requires us to determine whether “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>31</sup> The Act, however, does not define the word “needed.”<sup>32</sup> Thus, we first look to its plain meaning. *See Prows v. Utah Labor Comm’n*, 2014 UT App 196, ¶ 9, 333 P.3d 1261. The word “needed” when used as an adjective means to “[r]equire (something) because it is essential or very important.”<sup>33</sup>

RMP has an obligation to serve its customers with safe, reliable, adequate, and efficient service, along with meeting the increasing energy demands of its customers. Failure to construct the Project will expose customers to unacceptable reliability risk during certain times of the year,

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<sup>30</sup> See Hr’g Tr. 118:6-25 and 119:1-4 May 10, 2016.

<sup>31</sup> Utah Code Ann. § 54-14-303(1)(d) (emphasis added).

<sup>32</sup> See *id.* § 54-14-103.

<sup>33</sup> Oxford Dictionary (Oxford Univ. Press) (2016), available at: [http://www.oxforddictionaries.com/us/definition/american\\_english/need](http://www.oxforddictionaries.com/us/definition/american_english/need) (last visited May 13, 2016). An example sentence using the word “needed” includes: “*Your support is urgently needed to ensure the success of this worthy endeavor.*” *Id.* (follow hyperlink; then click on “More example sentences” under first definition).

inhibiting RMP's capacity to serve the growing energy demand of its customers.<sup>34</sup> The uncontested testimony from RMP is that "[t]he company and its customers, including . . . customers in Wasatch County . . . need this project to provide safe, reliable, adequate and efficient power and service."<sup>35</sup> Therefore, we find the Project, including the Wasatch Segment, is essential or very important; thus, it is needed.

Further, when viewing the testimony in context of the Act's definition of a "facility" which includes "a transmission line,"<sup>36</sup> we believe the Act's reference to "needed" refers to whether the physical infrastructure (i.e., the transmission line) is needed, and not the particular location of the facility (i.e., Summit County vs. Wasatch County). Thus, whether the facility could be constructed elsewhere, without more, is not controlling.

*B. The issue of need as addressed in condemnation cases is persuasive because it is closely analogous to the question before the Board:*

In the condemnation setting, a public utility may take property if, among other factors, "the taking is necessary for the use." Utah Code Ann. § 78B-6-504(1)(b). RMP argues that cases decided in the condemnation context should be instructive here because "these cases demonstrate that a utility has discretion in siting its facilities, and the utility can meet the 'necessity' test even if other possible locations for the facilities exist."<sup>37</sup> For example, in *Postal Tel. Cable Co. of Utah v. Oregon S.L.R. Co.*, 23 Utah 474, 484, 65 P. 735, 739 (Utah 1901), the Utah Supreme Court held:

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<sup>34</sup> See Hr'g Tr. 25:6-14 May 10, 2016.

<sup>35</sup> Hr'g Tr. 49:7-11 May 10, 2016.

<sup>36</sup> Utah Code Ann. § 54-14-103(5)(a).

<sup>37</sup> Reply to Respondent's Memorandum in Opposition to the Petition for Review at 6, filed May 2, 2016.

It is not a question whether there is other land to be had that is equally available, but the question is whether the land sought is needed for the construction of the public work. The necessity is shown to exist when it appears that it is necessary to take the land by condemnation proceedings in order to effectuate the purposes of the corporation. The respondent has the right to determine when and where its telegraph line shall be built. It may be said to be a general rule that, unless a corporation exercising the power of eminent domain acts in bad faith or is guilty of oppression, its discretion in the selection of land will not be interfered with.

(Emphasis added and citations omitted). This rule was again recognized in *Williams v. Hyrum Gibbons & Sons*, 602 P.2d 684, 688 (Utah 1979). There, the Court explained that “[n]ecessity does not signify impossibility of constructing the improvement for which the power has been granted without taking the land in question; it merely requires the land be reasonably suitable and useful for the improvement.” *Id.* at 687 (citation omitted). Further, the same principle is applied in other jurisdictions. *See id.* at 687-88 (discussing Montana and Alaska cases). The cases above recognize that absent “bad faith, fraud, caprice, or arbitrariness[.]” a utility may exercise its discretion in selecting a particular property for condemnation. *Id.* at 688.

It would be incongruous to interpret “need” in the utility facility context differently than in the condemnation context because in either context the choice of route is a matter of discretion for the utility that has the expertise in making various judgments required in siting its facilities. It should not matter whether the underlying property owner opposed the facility as in the condemnation context, or cooperated with the public utility in siting the facility as occurred here. Condemnation cases are closely analogous to the matter pending before the Board because they address similar factual scenarios where a public utility is making a siting determination based on need, property interests, and policy issues that are similar in both cases. Further, the County does

not allege that RMP, in exercising its discretion, acted in bad faith, fraud, caprice, or arbitrariness.<sup>38</sup> Thus, as it pertains to this matter pending before the Board, we find the judicial decisions referenced above persuasive in addressing the issue of need for the facilities at issue here.

Moreover, we find that since the Act itself defines a “facility” as “a transmission line”;<sup>39</sup> a “facility” is the *physical infrastructure* (i.e., the transmission line) and the question of need pertains to this infrastructure and not to its *location*, so long as the location is consistent with the provision of safe, reliable, adequate, and efficient service. In other words, if the selected route satisfies the need for safe, reliable, adequate, and efficient service, the Board is bound to direct its construction. Accordingly, we turn now to the County’s assertion that the Wasatch Segment is not an efficient way to address the demonstrated need for greater transmission capability.

II. The Wasatch Segment is “Efficient” within the Meaning of the Act.

The Act requires the Board to determine whether the County “has prohibited construction of a facility which is needed to provide . . . *efficient* service to the customers of the public utility.”<sup>40</sup> The proposed facility (i.e., the Wasatch Segment) is designed to serve all customers in the load areas.<sup>41</sup> This is not an agreement to favor one landowner over another landowner or to serve just those customers in Summit County;<sup>42</sup> rather, RMP has worked with all landowners

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<sup>38</sup> See, e.g., Hr’g Tr. 117:14-15 May 10, 2016 (County counsel responding to Chair LeVar’s question on whether RMP’s choice of the Wasatch Segment over the original route is arbitrary and capricious, stating “[d]oes that meet the standard [of] arbitrary and capricious? I don’t know that it . . . does.”).

<sup>39</sup> Utah Code Ann. § 54-14-103(5)(a).

<sup>40</sup> Utah Code Ann. § 54-14-303(1)(d) (emphasis added).

<sup>41</sup> See Hr’g Tr. 24:21-24 May 10, 2016 (“The proposed project is to support all customers in the load area[s], including customers in all of Wasatch and Summit counties and . . . parts of Utah, Salt Lake and Morgan counties.”).

<sup>42</sup> See *id.* at 24:24-25.

along the transmission line route and,<sup>43</sup> where possible, has adjusted pole placement to accommodate specific landowner requests without increasing costs to ratepayers, consistent with its customary practices.<sup>44</sup>

Likewise, as supported by RMP on cross-examination, the Wasatch Segment route on Promontory's property is "the same" from a technical perspective when compared to the existing right-of-way on Promontory's property.<sup>45</sup> Using a mile as an estimate, RMP testified that adding an additional mile of transmission line (i.e., approximately 15 additional poles) does not impact efficiency.<sup>46</sup>

While we appreciate that constructing this transmission facility on something closely resembling a straight line from Evanston, Wyoming – where the line begins – to Park City, Utah – where the line ends may be preferable from a best design perspective, we also recognize that such straight line alignments are not always feasible for a variety of reasons.<sup>47</sup> Here, RMP worked with Promontory to keep the line on its property and Promontory agreed to pay the incremental cost to move it, and these matters are within RMP's discretion to negotiate as a public utility.<sup>48</sup>

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<sup>43</sup> *See id.* at 25:1-2.

<sup>44</sup> *See id.* at 25:3-5.

<sup>45</sup> *See id.* at 29:9-10.

<sup>46</sup> *See id.* at 31:6-8 ("[F]rom a statistical perspective, adding a mile of line or about 15 structures doesn't truly impact.") and 15-16 ("[T]hey are the same from an efficiency standpoint.").

<sup>47</sup> *See id.* at 30:23-25.

<sup>48</sup> *See* Rocky Mountain Power Electric Service Regulation No. 12 (Line Extensions), Section 6 (Relocations and Conversions of Facilities) (providing that "the Company will . . . relocate distribution voltage facilities[.] If existing easements are insufficient for the new facilities, the Applicant or Customer is responsible for obtaining new easements. . . . [T]ransmission voltage facilities will be relocated at the discretion of the Company"), available at: [https://www.rockymountainpower.net/content/dam/rocky\\_mountain\\_power/doc/About\\_Us/Rates\\_and\\_Regulation/Utah/Approved\\_Tariffs/Rules/Line\\_Extensions.pdf](https://www.rockymountainpower.net/content/dam/rocky_mountain_power/doc/About_Us/Rates_and_Regulation/Utah/Approved_Tariffs/Rules/Line_Extensions.pdf).

While the Wasatch Segment may result in additional vegetation management cost and minimal additional energy losses due to the greater line length, we find RMP pursued the Wasatch Segment to avoid costly and lengthy litigation with Promontory over the existing route (because Promontory claims that terms of the current easement foreclose placing the Project there and that the existing easement for a single-circuit 46 kV line would not accommodate the wider width required for the upgraded, double-circuit 138 kV line. In light of Promontory's dispute regarding RMP's right to upgrade the line based on the 1916 centerline easement and the potential need to condemn additional property for the upgrade, RMP testified that the additional width of easement necessary to accomplish a double-circuit 138 kV line (from the existing single-circuit 46 kV line) would involve the actual cost to condemn the additional width needed along the existing easement and severance damages to the adjacent properties.<sup>49</sup> Given Promontory's request to move the line and agreement to bear the associated costs, RMP was justified in deciding to pursue that option. RMP worked with Promontory, who agreed to pay \$275,000 in incremental costs<sup>50</sup> to relocate the line and provided a fixed width easement at no additional cost to accommodate the upgraded line.<sup>51</sup>

RMP does not have a CUP from Summit County to upgrade the 46 kV line in the original route. Thus, if the Board were to deny RMP's request and RMP were forced to move forward

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<sup>49</sup> See Hr'g Tr. 77:22-23 May 10, 2016 (testifying to "severance analysis" performed by the LECG Group). See also *id.* at 78:15-19 (testifying to LECG Group's process of determining that "[t]here would be 60 lots impacted at \$250,000 a lot, times . . . 10 percent diminution of property value, equals . . . \$1.5 million impact"). According to RMP, values were calculated as of 2010. See Hr'g Tr. at 78:23-25 (testifying that "the values would be very different today. This [analysis] was performed in . . . 2010"). See also *id.* at 79:2-4 (testifying that "[p]roperty values of today in Promontory are significantly higher . . . now").

<sup>50</sup> See *id.* at 59:8-10. See also *id.* at 87:7-13.

<sup>51</sup> See *id.* at 86:17-23.

with the original line for a double-circuit 138 kV line, in addition to the condemnation and litigation costs, RMP would still need to receive CUP approval from Summit County. And if Summit County were to deny the CUP, RMP would likely be back before the Board and possibly need to pursue condemnation action at additional cost and delay. Further, RMP estimates a cost of \$480,000 for each year the Project is delayed.<sup>52</sup>

Moreover, where Promontory agreed to pay relocation expenses to move the line, RMP's tariff gives it discretion to relocate transmission voltage facilities as it has done here.<sup>53</sup> RMP indicates it could move forward with condemnation proceedings but the cost and duration of that action are uncertain. Further, RMP's standard practice for transmission lines is to move a facility when a property owner agrees to pay necessary additional costs and provide an easement elsewhere, which allows RMP to avoid the potential cost, duration, and risk of litigation when all other factors (e.g., safety, reliability, and adequacy) are assured. We find it reasonable that RMP utilized its standard practice for a transmission line siting in this instance. As supported by RMP's testimony, the alternate route is designed to serve its customers without increasing costs to ratepayers.

Most importantly, as demonstrated by RMP, the facility is needed now, and postponing could cause reliability issues for customers within the state. Thus, coming before the Board to resolve this issue is the reasonably efficient solution when faced with other, more costly and time-consuming alternatives.

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<sup>52</sup> See *id.* at 56:12-14 and 15-18. See also *id.* at 76:13-21.

<sup>53</sup> See *supra* n.48.

ORDER

Based on the foregoing, the Board issues the following order:

1. The transmission facility (i.e., the Wasatch Segment), including the route proposed (i.e., Option 1) in the conditional use permit application to Wasatch County, is needed by Rocky Mountain Power to provide safe, reliable, adequate, and efficient service to its customers;
2. The transmission facility should be constructed;
3. Wasatch County's denial of the conditional use permit in effect prohibited the construction of this needed transmission facility;
4. Wasatch County shall issue, within 60 days after issuance of this order, a conditional use permit for the facility to be located in the transmission corridor specified in the permit application; and
5. Wasatch County shall issue any other permits, authorizations, approvals, exceptions or waivers necessary for construction of the transmission facility consistent with this order and with the Utility Facility Review Board Act.



DOCKET NO. 16-035-09

- 17 -

DATED at Salt Lake City, Utah, June 3, 2016.

/s/ Thad LeVar, Chair

/s/ David R. Clark, Board Member

/s/ Beth Holbrook, Board Member

/s/ Jordan A. White, Board Member

/s/ David Wilson, Board Member

Attest:

/s/ Gary L. Widerburg

Board Secretary

DW#277172

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 June 3, 2016, a true and correct copy of the foregoing was served upon the following as indicated below:

By Electronic-Mail:

Beth Holbrook ([bholbrookinc@gmail.com](mailto:bholbrookinc@gmail.com))  
Utah League of Cities and Towns

David Wilson ([dwilson@co.weber.ut.us](mailto:dwilson@co.weber.ut.us))  
Utah Association of Counties

Data Request Response Center ([datarequest@pacificorp.com](mailto:datarequest@pacificorp.com))  
PacifiCorp

Robert C. Lively ([bob.lively@pacificorp.com](mailto:bob.lively@pacificorp.com))  
Heidi Gordon ([heidi.gordon@pacificorp.com](mailto:heidi.gordon@pacificorp.com))  
R. Jeff Richards ([robert.richards@pacificorp.com](mailto:robert.richards@pacificorp.com))  
Yvonne Hogle ([yvonne.hogle@pacificorp.com](mailto:yvonne.hogle@pacificorp.com))  
Daniel Solander ([daniel.solander@pacificorp.com](mailto:daniel.solander@pacificorp.com))  
Rocky Mountain Power

D. Matthew Moscon ([matt.moscon@stoel.com](mailto:matt.moscon@stoel.com))  
Richard R. Hall ([richard.hall@stoel.com](mailto:richard.hall@stoel.com))  
Stoel Rives LLP

Scott Sweat ([ssweat@wasatch.utah.gov](mailto:ssweat@wasatch.utah.gov))  
Tyler Berg ([tberg@wasatch.utah.gov](mailto:tberg@wasatch.utah.gov))  
Wasatch County

Patricia Schmid ([pschmid@utah.gov](mailto:pschmid@utah.gov))  
Justin Jetter ([jjetter@utah.gov](mailto:jjetter@utah.gov))  
Rex Olsen ([rolsen@utah.gov](mailto:rolsen@utah.gov))  
Robert Moore ([rmoore@utah.gov](mailto:rmoore@utah.gov))  
Assistant Utah Attorneys General

DOCKET NO. 16-035-09

- 19 -

By Hand-Delivery:

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

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Administrative Assistant