

BEFORE THE UTAH UTILITY FACILITY REVIEW BOARD

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IN RE:	)	Docket No. 16-035-09
ROCKY MOUNTAIN POWER'S	)	
PETITION FOR REVIEW	)	HEARING
	)	
	)	

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May 10, 2016  
9:06 a.m.

Location: Public Service Commission  
160 East 300 South, 4th Floor  
Salt Lake City, UT 84111  
(801) 530-6769  
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1 May 10, 2016

9:06 a.m.

2 P R O C E E D I N G S

3 MR. LEVAR: Good morning. This is the Utah  
4 Utility Facility Review Board, and we are here in Docket  
5 16-035-09, Rocky Mountain Power versus Wasatch County.  
6 This is the evidentiary hearing in this matter. So why  
7 don't we start with appearances. Start with petitioner.

8 MR. MOSCON: Matt Moscon, Heidi Gorman, and  
9 Rich Hall for Rocky Mountain Power.

10 MR. LEVAR: Thank you. Wasatch County.

11 MR. BERG: Tyler Berg, Wasatch County.

12 MR. LEVAR: Okay. Thank you. As a  
13 preliminary matter, we had filed late last week a motion  
14 for stay. It seems to make sense to address that in one  
15 way or the other before we move on with the evidentiary  
16 hearing. Take a few moments. I see that Mr. Reutzel is  
17 here in the audience.

18 I think it probably makes sense from an  
19 economy standpoint just to have -- to ask Mr. Reutzel to  
20 take five minutes or so to hit a couple, a few high  
21 points from his motion to stay. We'll ask Mr. Moscon to  
22 do the same, and Mr. Berg, if you want to weigh in on  
23 it.

24 And then we will move to questions from the  
25 board. I'll ask the board members if they want to do

1 questions after each one, or if you want to just let all  
2 three of them go and then move on to any questions we  
3 have. Why don't we invite Mr. Reutzel to come up to the  
4 lectern if you want to take a few moments on the motion.

5 MR. REUTZEL: Thank you. We filed our motion  
6 for stay. We are asking the board to stay this  
7 proceeding until the appellate court has a chance to  
8 review whether or not we are entitled to intervene. We  
9 have argued extensively over, you know, whether or not  
10 we are entitled to intervene.

11 I understand that the board has decided that  
12 there is no legal right to do that. You know,  
13 respectfully, we disagree. We think the case law and  
14 the statutes are very clear that we are entitled to  
15 intervene. We think we have a legal interest in terms  
16 of the property values and in terms of safety related to  
17 our property.

18 Now, we are not asking the board to decide  
19 those issues. I think I have made that clear several  
20 times. That's not what we are asking the board to do.  
21 But we do believe that the case law is very clear.  
22 Sevier County case made it very clear. We have a legal  
23 interest.

24 The board has ruled that because there is a  
25 right to intervene in connection with cases filed by

1 county government for the property owners affected, that  
2 there is not a right to intervene in this case. Of  
3 course, that provision of the statute doesn't apply to  
4 this case. This case was not filed by the county. So  
5 that mandatory right to intervene is entirely  
6 inapplicable.

7 UAPA provides an intervention right,  
8 conditional intervention right. There's nothing that  
9 the legislature has said to void that intervention right  
10 or to say that that doesn't apply to these proceedings.  
11 And we believe that to be the case here.

12 We think that it will cause irreparable harm  
13 if this board decides -- makes a decision and then it is  
14 determined that we were entitled to participate. And  
15 not just participate in these proceedings, but really to  
16 conduct discovery and to locate the evidence that we  
17 believe would demonstrate that there's not a necessity  
18 for the Wasatch segment.

19 I could hit any additional points. It's all  
20 in my brief. I am certain the board is aware of it, and  
21 I don't want to waste your time reiterating the same  
22 points that we have made, but I would be happy to answer  
23 any questions.

24 MR. LEVAR: Sure. Let me ask the board  
25 members, do any of you have questions you want to ask

1 Mr. Reutzel before we move on to Mr. Moscon?

2 MR. CLARK: I have one. Mr. Reutzel, how do  
3 you reconcile your motion for stay with the statutory  
4 time constraints that the board has to reach its  
5 decision in this matter?

6 MR. REUTZEL: Well, it -- there -- there  
7 appears to be a conflict in the statute cite. I  
8 recognize that. It says the board has to do this within  
9 a certain amount of time. But that, the statute also  
10 gives the board the right to stay this proceeding. And  
11 I think this is a -- this is a unique situation.

12 I think that because the board has the right  
13 to stay these proceedings, that there's nothing in the  
14 statute that says they can't, I think that the board  
15 ought to do that. And while the proceedings are stayed,  
16 that time period ought not be running. That's the way  
17 we would view it, and that's the way we would ask the  
18 appellate court to view it as well.

19 MR. CLARK: Thank you.

20 MR. LEVAR: Any other questions from any board  
21 members? I just have one follow up to Mr. Clark's  
22 questions then. Do you view a distinction between the  
23 legal authority this board may or may not have to stay  
24 these proceedings and to disregard the statutory time  
25 frames versus its authority to stay the effectiveness of

1 any order that's issued within those time frames?

2 MR. REUTZEL: I don't view a distinction. I  
3 think that if this board decides to stay these  
4 proceedings as a result of the appeal that's been filed,  
5 I think that the clear reading of the statute would  
6 require that those time frames are also stayed. So you  
7 would be able to subtract that time out.

8 Now, that would make a hearing have to happen  
9 pretty quickly, shortly after that stay is lifted, but I  
10 think it's appropriate, and I think the statute allows  
11 for a stay before an order is issued. I also believe  
12 that the board has authority to stay a final order if it  
13 does issue a final order. And you know, we would likely  
14 file a motion for that as well.

15 MR. LEVAR: Okay. So to clarify your motion,  
16 your motion right now is to stay the entire proceedings,  
17 not with respect to the effectiveness of any order?

18 MR. REUTZEL: That -- well, with respect --  
19 yes, to stay the entire proceeding.

20 MR. LEVAR: Okay. Thank you. Mr. Moscon.

21 MR. MOSCON: Thank you. I'll begin where the  
22 board was asking questions because one of the points  
23 that you have seen raised in our papers is actually  
24 questioning whether this board has the discretion to  
25 grant the relief requested by Black Rock.

1           And that is because, unlike a typical  
2     administrative law judge or district courts -- and I'll  
3     note that the cases cited by Black Rock dealt with  
4     courts staying proceedings -- this board is operating  
5     under a strict statutory mandate of time frames in which  
6     it needs to do certain things. It does not appear to be  
7     a discretionary rule that says: Use your best efforts  
8     to do this. It says: This is the time frame in which  
9     these things must happen.

10           The chair raised an interesting point, which  
11     is, is there a distinction between staying a final  
12     action versus staying the proceeding where we are now?  
13     And of course, we believe that there is a distinction.  
14     We concede that the statute indicates that once a  
15     decision is reached, if the parties can meet the  
16     threshold, that decision can be stayed.

17           And that makes sense because the appellate  
18     courts don't want to see piecemeal appeals. They don't  
19     want to have this go up in the middle of the proceeding  
20     and then find out in your ruling on the merits it would  
21     have obviated the need or done something differently.

22           So that's not only called out in the board's  
23     enabling act, but it's also in UAPA where under Section  
24     401, it says you can get judicial review of a final  
25     agency action. And then the stay, the procedure was

1     quoted is in 405 right beneath that.

2             So I think that not only does this board  
3     enabling act contemplate that there only be a stay after  
4     a final action, UAPA contemplates that, and case law  
5     contemplates that, rather than a piecemeal approach. So  
6     on the one hand, we don't know that the board actually  
7     has the discretion to grant the relief sought.

8             Moving beyond that, there is something I would  
9     just like to point out in passing. This is why I think  
10    kind of we're two ships passing. When I say we, my  
11    client, the company, and Black Rock. In their papers on  
12    why a stay will not cause substantial harm to interested  
13    parties, Black Rock argues, "The transmission line has  
14    been located on Promontory's property for a hundred  
15    years, so delaying a decision potentially allowing the  
16    line to be relocated does not impose any additional  
17    burden on Promontory."

18            The reason this is significant is because it  
19    shows there's a disconnect about who the aggrieved party  
20    is. The issue is not whether or not Promontory is going  
21    to be aggrieved. The question is whether Rocky Mountain  
22    Power and its customers are going to be harmed if this  
23    matter is stayed.

24            On that point we have unrefuted testimony by  
25    Mr. Shortt that the board will be -- if it does not

1 stay, it will be hearing more detail later today. And I  
2 will highlight that one of the exhibits to the direct  
3 testimony of Don Watts, it's the very last page of  
4 Exhibit 14, was in fact a letter from Heber Light and  
5 Power from last summer that says, and I quote.

6 "Heber Light and Power is, however, concerned  
7 that the public and community leaders do not fully  
8 appreciate that the connections at Silver Creek  
9 substation is critical to Heber Light and Power  
10 Company's operation and will directly benefit the  
11 company's customers."

12 It concludes, "We are deeply worried that the  
13 failure of this project will severely impair our ability  
14 to provide safe, reliable, and uninterrupted electric  
15 service to our customers. For our system to continue to  
16 function effectively, this overhead transmission line  
17 needs to be completed within the next two years."

18 And again, that is dated a year ago. We're  
19 now one year out. The stay requested is an indefinite  
20 stay, just saying stay the entirety proceedings. Let's  
21 go up, see what the Court of Appeals does. And we all  
22 know that appeals can last a very long time, the point  
23 being, the customers of Rocky Mountain Power need this  
24 transmission line and they need it now.

25 The last thing that I would like to point out

1 is, because the cases cited all kind of stem from an  
2 assumption that an appellate court is reviewing the stay  
3 request, one of the initial determinations is, there  
4 must be a finding that the applicant is likely to  
5 succeed on the merits.

6 If an appellate corporate is reviewing that  
7 motion, they may at first blush say, "We haven't seen  
8 the record, but looking at it just on first order, yeah,  
9 we think that this is going to -- you know, this is  
10 going to lose."

11 For this board to do it at this proceeding,  
12 this board would have to say, "Yeah, this is our order  
13 and we stand by it, but at the same time we think we're  
14 likely to lose," which is nonsensical. And the reason I  
15 bring it up is not to be trite, but it shows that  
16 procedurally this is not the time for this to happen.

17 The way this should happen is after the board  
18 is complete with its decision and it -- the matter goes  
19 to the appellate court, then a motion can be made to an  
20 appellate court who then can have that review, follow  
21 the steps that have been outlined under the statute and  
22 the authorities that have been cited by the parties. To  
23 suggest otherwise is nonsensical.

24 So between the statutory time frame, the fact  
25 that none of the UAPA or board act contemplate an

1 interlocutory appeal, the fact that there is definitely  
2 going to be substantial harm to the customer and its --  
3 excuse me, to the company and its customers if there is  
4 an indefinite delay to the proceedings, these all weigh  
5 heavily against a stay and in favor of moving forward  
6 with this proceeding.

7 I know I have spoken quickly, and I have not  
8 touched some of our arguments, but if the board has  
9 questions, I am happy to address them.

10 MR. LEVAR: Okay. Thank you. Any board  
11 members have questions for Mr. Moscon?

12 MR. WHITE: I just have one. Help me  
13 understand. If we were to entertain this motion to  
14 stay, what is the current construction schedule with  
15 respect to this site of the project?

16 MR. MOSCON: I don't know that I can  
17 completely answer that because it is true, this is a  
18 moving project where, for instance, right now in Summit  
19 County there's two boards there. Half of them have --  
20 one of them has granted the permit. The other half,  
21 that's going on.

22 So I don't know that I can completely answer  
23 that question, other than to tell you that the company  
24 is moving with all diligence to gather all the pieces to  
25 start because they know that this is a project that

1 needs to move forward.

2 MR. LEVAR: Thank you. Any further board  
3 questions? Thank you, Mr. Moscon. Mr. Berg, do you  
4 want to weigh in on this issue?

5 MR. BERG: There's nothing Wasatch County has  
6 to offer whether a stay should be granted or not, just  
7 leave it to the discretion of the board.

8 MR. LEVAR: Okay. Thank you. We'll go to  
9 board discussion to the motion to stay. Mr. White?

10 MR. WHITE: Yeah. I guess my -- you know, my  
11 initial concern obviously is just the fact that we have  
12 got a statutory deadline that we are up against, and I  
13 recognize that you are saying that we do have  
14 discretion. But I am not sure if I am willing to  
15 entertain, you know, stepping outside the bounds of  
16 statutory mandate for a deadline.

17 I guess that's my initial thought is that I  
18 can't reconcile the two, I guess, initially. That's my  
19 initial thought, I guess. That's my main hurdle.

20 MR. LEVAR: I'll just add, I agree with  
21 Mr. White. In my view legally we don't have discretion  
22 to stay the deadlines that are in the statute. That's  
23 my personal view. If we got to a point where there was  
24 a stay motion on a final order of this board, we would  
25 still find ourselves in the unusual position that

1 Mr. Moscon just described of having to determine whether  
2 we are so -- have such a lack of confidence in our own  
3 decision to find that it's substantially likely to be  
4 upheld.

5 But I don't think we're to that issue yet. I,  
6 personally don't read the statute as giving us any  
7 discretion on those deadlines. So that's my personal  
8 feeling. Is there any further board discussion or  
9 motions?

10 MR. WILSON: Mr. Chair, I would just indicate  
11 too, I think it would be inconsistent with our past  
12 decision that we just made. I think the decision not to  
13 grant intervention and reconsider intervention was  
14 correct, and I think if we granted a stay, we would  
15 not -- we would be inconsistent in that decision. For  
16 that reason, I move not to grant the stay.

17 MR. LEVAR: Okay. We have a motion to deny  
18 the motion for stay. Any second to the motion or  
19 discussion to the motion?

20 MS. HOLBROOK: I second.

21 MR. LEVAR: Okay. We have a motion and  
22 second. Any further discussion? We have been voting  
23 alphabetically, so I suppose we can continue doing that.  
24 Mr. Clark?

25 MR. CLARK: Yeah. I vote to deny the

1 requested stay.

2 MR. LEVAR: Okay. Thank you. Ms. Holbrook.

3 MS. HOLBROOK: Yes.

4 MR. LEVAR: And I vote yes. Mr. White?

5 MR. WHITE: Yes.

6 MR. LEVAR: Mr. Wilson?

7 MR. WILSON: Yes.

8 MR. LEVAR: Okay. The stay motion is denied.

9 We will move into the evidentiary hearing, and I think,  
10 since we had both testimony and legal briefing, it seems  
11 to make sense to go through the witnesses first and have  
12 a -- you know, oral argument and questions from the  
13 board on the legal briefing. So why don't we start with  
14 witnesses with the petitioner.

15 MR. MOSCON: Okay. Would the board appreciate  
16 or not want any brief introductory remarks; an opening,  
17 so to speak, or would you prefer we just move straight  
18 into calling witnesses?

19 MR. LEVAR: Well, if we are going to have oral  
20 argument after the witnesses, it may not be necessary.  
21 But if you would like to frame some issues, if either of  
22 you would like to take a few minutes for framing issues,  
23 I don't have any objection to that.

24 MR. BERG: Wasatch County would be fine with  
25 just going into the evidentiary portion of it at this

1 point. I feel that that would give us more of an  
2 opportunity, once we have heard the testimony, to better  
3 present our oral arguments on it so...

4 MR. LEVAR: Okay. Would that work to hold any  
5 opening statements?

6 MR. MOSCON: Sure. If it's all right, I'd  
7 like to pass out one thing because I was going to  
8 introduce one group exhibit that I was going to invite  
9 the board to have on hand when they hear some of the  
10 live testimony.

11 If I might approach, I'll indicate that prior  
12 to the beginning of this proceeding, I conferred with  
13 counsel for the county. And we agreed to mark what I am  
14 about to hand out as Rocky Mountain Power supplemental  
15 Exhibit 1, and I'll explain. The pictures that are in  
16 different places, but rather than flipping through 20  
17 binders, if I might approach.

18 (Discussion off the record.)

19 MR. LEVAR: Sure. It a set of three.

20 MR. MOSCON: Yeah. So those are all  
21 duplicates that you can pass down.

22 (Off the record.)

23 MR. MOSCON: Mr. Berg has received a copy as  
24 well. Just to introduce what this is, so that if it's  
25 referred to at any time, the first set of photographs

1    which, by the way, the board may have seen previously in  
2    the reply memorandum that the company filed in  
3    opposition to a stay, these photographs -- and I'll just  
4    use the top one -- are computer -- well, they are actual  
5    photographs. But then they have an insert that shows  
6    the proximity of lines to a structure.

7                   And these are all located in Wasatch County  
8    showing the different, previously approved structures  
9    and their location or proximity to lines. The very last  
10   two pages, these are pictures of what are referred to in  
11   the direct testimony of Mr. Watts as the Mayflower  
12   vantage point. And even though there is two pictures,  
13   if you look at the very last page, it's actually a  
14   subset of the first page, and it's a depiction of towers  
15   as they are viewed in context to ridge lines from  
16   official county vantage points.

17                   The reason I had passed these out now is, one  
18   of the things that the board is going to be asked to  
19   consider is whether, you know, the county has the  
20   ability to protect its ridge lines or safety. And one  
21   of the arguments that, of course, that the board  
22   realizes that we have made is, this argument is  
23   pretextual in a sense, meaning I don't think it's  
24   disingenuous. I believe they really don't want the  
25   line.

1 But what I mean is, in other instances, and  
2 not just one instance, but repeatedly the county has  
3 permitted structures very near to or, excuse me,  
4 transmission lines near to other structures and has  
5 permitted lines that breach ridge line views without the  
6 parade of horrors.

7 When Mr. Watts takes the stand, one of the  
8 things that he will do is to walk the board through the  
9 rendering of the current project, and it's -- because  
10 it's not built, all we have is a computer rendering, and  
11 I thought it might be useful for the board to actually  
12 have, for instance, the very last page where you could  
13 compare what has actually happened in reality to what is  
14 proposed today.

15 So I appreciate you indulging me just for that  
16 minute. I thought having that picture handy may be  
17 useful for that, so without that, unless there's any  
18 other questions, Rocky Mountain Power would call as its  
19 first witness Mr. Kenneth Shortt.

20 MR. LEVAR: Yeah, take a seat here.  
21 Mr. Shortt, do you swear to tell the truth?

22 THE WITNESS: Yes, I do.

23 KENNETH SHORTT,  
24 called as a witness at the instance of the petitioner,  
25 having been first duly sworn, was examined and testified

1 as follows:

2 MR. LEVAR: Okay. Thank you. Mr. Moscon.

3 MR. MOSCON: By the way, if the board will  
4 allow, Mr. Shortt actually stepped off an airplane and  
5 flew in for today's proceeding, so we're going to find  
6 these things for him.

7 MR. LEVAR: If you would make sure your  
8 microphone is on, the green light is on. Okay. Thank  
9 you.

10 DIRECT EXAMINATION

11 BY MR. MOSCON:

12 Q. Good morning, Mr. Shortt. Would you please  
13 state your name and give the spelling of your last name  
14 for the record.

15 A. Kenneth Shortt, S-H-O-R-T-T.

16 Q. Thank you. Mr. Shortt, would you please  
17 provide a very brief summary background of your position  
18 with the company and the job that you do.

19 A. I am the director of field engineering and  
20 area planning for Rocky Mountain Power.

21 Q. Thank you, Mr. Shortt. Did you cause to be  
22 filed in this matter prefiled testimony?

23 A. Yes. I had some direct prefiled testimony.

24 Q. Are you aware of any corrections that would  
25 need to be made to that testimony as you sit here today?

1 A. Yes. There is one correction.

2 Q. Would you please identify for the county and  
3 for the board what that correction would be?

4 A. Yes. On page -- (mumbling.) On page 9, line  
5 8, I stated, "A single circuit line between Jordanelle  
6 and the new Heber Light and Power substation." That is  
7 actually going to be a double circuit line between those  
8 two substations.

9 Q. Is that the only correction that you would  
10 have to your testimony?

11 A. Yes, it is.

12 Q. So other than that exception, if I were to ask  
13 you all of the questions that are set out in your  
14 prefiled testimony, would your answers today be the same  
15 as they are listed or set forth in your testimony?

16 A. Yes, they would.

17 MR. MOSCON: With that the company would move  
18 for the admission of the prefiled testimony of Mr.  
19 Shortt, together with any exhibits attached thereto.

20 MR. LEVAR: Any objection to that motion?

21 MR. BERG: No objection.

22 MR. LEVAR: Okay. It will be so entered.

23 Q. (By Mr. Moscon) Mr. Shortt, have you been  
24 able to prepare a summary of your testimony for the  
25 board?

1 A. Yes, I have.

2 **Q. Would you please share that.**

3 A. Yes. The purpose of my testimony has been to  
4 explain the purpose and need for the transmission line  
5 and associated substation work between the railroad  
6 substation near Evanston, Wyoming, and the Silver Creek  
7 substation near Park City, Utah.

8 Neither the county nor the public have  
9 contended the project is not required. In fact, they  
10 have acknowledged the need for the project to be  
11 completed. However, Rocky Mountain Power takes its  
12 obligation to provide safe, reliable, adequate and  
13 efficient service to its customers seriously. I would  
14 like to summarize how this project supports safe,  
15 reliable, adequate, and efficient service to the  
16 customers in the load area.

17 Safe. The company's construction and design  
18 standards adhere to the National Electric Safety Code, a  
19 code adopted by the State of Utah and 48 other states.  
20 This code is explicitly written to regulate electrical  
21 supply and communication lines and associated equipment.  
22 It sets the standards that will safeguard the public and  
23 the employees.

24 Reliable. As shown in my direct testimony,  
25 the reliability of the transmission system serving the

1 load area continues to decline every year. The system  
2 was operated seven days on a radial configuration in the  
3 2007, 2008 winter. In 2015, 2016 winter, the system was  
4 operated in a radial configuration 98 days or 20 percent  
5 of the year. I would remind the board that when we  
6 operate in a radial configuration, if we lose that line,  
7 we do not have a backup supply to serve those customers  
8 being served by that line.

9 In February 2016 the company needed to perform  
10 or remove the Cottonwood Silver Creek 138 KB line from  
11 service to replace a failing insulator, resulting in a  
12 90 minute outage to over 8,000 customers. This was a  
13 planned outage. The company had time to switch to other  
14 substation -- the company had -- excuse me. The company  
15 had time to switch other substations to alternate  
16 sources.

17 Had this not been identified, and the  
18 insulator had failed without warning, customers served  
19 by the Silver Creek; Kamas, Oakley, Park City -- thank  
20 you -- and Jordanelle substations would also have been  
21 without power, impacting an additional 17,000 customers.  
22 Had this occurred during any of the major events hosted  
23 in the load area during the winter, such as Sundance  
24 Film Festival, the negative Utah exposure would have  
25 been significant.

1           Additionally, the company operates and builds  
2   its bulk electric transmission line, which this line  
3   will be classified as a bulk electric transmission line,  
4   to meet the North American Electric Reliability  
5   Corporation standards. The North American Electric  
6   Reliability Corporation, or NERC, is a not-for-profit  
7   international regulatory authority whose mission is to  
8   assure reliability of the bulk power system in North  
9   America.

10           NERC develops and enforces reliability  
11   standards, annually assesses seasonal and long-term  
12   reliability, monitors the bulk power system through  
13   system awareness, and educates, trains and certifies  
14   industrial personnel.

15           Adequate. The load area's experiencing  
16   approximately a 3.4 percent load growth. It is  
17   imperative the project, in conjunction with the other  
18   two projects identified on my direct testimony, be  
19   completed to accommodate the growth anticipated in the  
20   load area.

21           Efficient. The proposed project is to support  
22   all customers in the load area, including customers in  
23   all of Wasatch and Summit counties and be parts of Utah,  
24   Salt Lake and Morgan counties. This is not a project to  
25   favor one landowner over another landowner or to serve

1 just customers in Summit County. The company has worked  
2 with all landowners along the transmission line route,  
3 and where possible, have adjusted pole placements to  
4 accommodate specific landowner requests without  
5 increasing the cost to the rate payer.

6 The company has an obligation to serve its  
7 customers with safe, reliable, adequate and efficient  
8 energy, and must meet the increasing energy demands of  
9 its customers. Failure to construct the project will  
10 expose the company's customers to unacceptable  
11 reliability risks during significant portions of the  
12 year and eventually result in the customers -- in the  
13 company's ability to serve our customer's growing  
14 electrical demand.

15 MR. MOSCON: Thank you, Mr. Shortt.

16 Mr. Shortt is available for cross-examination.

17 MR. LEVAR: Okay. Thank you. Mr. Berg.

18 MR. BERG: Yes. May I approach the witness?

19 MR. LEVAR: Yes.

20 CROSS-EXAMINATION

21 BY MR. BERG:

22 Q. Handing you two exhibits, these are not from  
23 your prefiled testimony but are from Chad Ambrose's  
24 prefiled testimony relating to the Wasatch segment. Are  
25 you familiar with these at all?

1           A.     I am.

2           Q.     Okay. Now, before we talk about those two  
3 exhibits, I'd like to reference your prefiled testimony.  
4 On page 8, starting on Line 19, you were asked the  
5 question, "Pursuant to Mr. Chad Ambrose's testimony,  
6 Promontory Investments requested the existing line be  
7 routed -- " sorry. "The existing line route be  
8 relocated from its existing location to the southeast  
9 corner of its property. Did the company determine this  
10 relocation request was technically feasible?"

11                     Your answer was yes, and then you just state  
12 through there that you have gone through, and you have  
13 met the National Electrical Code safety requirements.

14                     For the board's reference, I have handed  
15 Mr. Shortt what has previously been filed under Mr. Chad  
16 Ambrose's prefiled testimony, Exhibit 2 and also Exhibit  
17 A. Both of these were also filed with Wasatch County's  
18 memorandum in opposition as Exhibit B. The first one is  
19 a map showing the location of the project. The second  
20 one is kind of a listing. It's entitled Promontory  
21 Development Southwest Wyoming Silver Creek Transmission  
22 Project.

23                     Now, Mr. Shortt, you are referring -- if you  
24 look at this map. You are referring to the line that's  
25 technically feasible is the route in red; is that

1 correct?

2 A. That is correct.

3 Q. And based on your expertise, if the line  
4 were -- the upgraded line were to run on the currently  
5 existing route, the 46 KV line marked in blue, would  
6 that also be technically feasible?

7 A. Yes. The blue line would also be technically  
8 feasible.

9 Q. Okay. Now, if you will turn to the next  
10 document I handed you marked CBA Exhibit 3. If you look  
11 at Route A, that is the existing right of way, which  
12 would be the blue line on the map. What's the pole  
13 count for the blue line?

14 A. Twenty structures.

15 Q. And then the red line on the map would be C2  
16 for the route. What is the pole count for that line?

17 A. Thirty-five structures.

18 Q. As we're before the board today, we're looking  
19 at the requirements of code 54-14-303 Subsection D which  
20 states, "A local government has prohibited construction  
21 of a facility which is needed to provide safe, reliable,  
22 adequate and efficient service to the customers of the  
23 public utility."

24 If you are looking at these two possible  
25 routes, one has 20 poles, one has 15 poles, from purely

1 simply nothing but a safety standpoint, would a  
2 configuration that had 20 poles be safer than a  
3 configuration that had 35 poles?

4 A. Statistically speaking in this case, no.

5 Q. Okay. If we are looking solely at a  
6 reliability, would a route that had 20 poles be more  
7 reliable than a route that had 35 poles?

8 A. I think I know where you are going. I can  
9 answer this in more of an editorial than a yes, no, if  
10 that's okay with you.

11 Q. Well, I just have a couple yes, nos, and then  
12 you can absolutely -- we want all your opinion on it  
13 because you are the expert on it.

14 A. Statistically, a 20 pole structure should be  
15 more reliable than a 35 --

16 Q. Okay.

17 A. -- pole structure. I shouldn't say  
18 statistically. I should say actually. Actually, if you  
19 look at just inches versus inches, yes, it would be more  
20 reliable. Should be more reliable.

21 Q. And why should a 20 pole configuration be more  
22 reliable than a 35 pole?

23 A. There is less facilities to be impacted by  
24 some sort of a disturbance.

25 Q. Okay. Now, if we look at the next requirement

1 of the statute, adequate. Is there a difference between  
2 a 20 pole structure and a 35 pole structure if you are  
3 just looking at if it's adequate?

4 A. From adequacy, no.

5 Q. Okay. What about from efficient? Is there a  
6 difference between a 20 pole structure and a 35 pole  
7 structure if you are look to see if something's  
8 efficient?

9 A. Efficiency, from a technical perspective, they  
10 are the same.

11 Q. Okay. And then if we could turn once again to  
12 your prefiled testimony, we are looking at page 10, Line  
13 13. The question is, "Can the full project benefit be  
14 realized without a conditional use permit to install the  
15 .26 mile line segment in Wasatch County?"

16 Your answer is, "No. The benefit of the  
17 project cannot be realized without completing all parts  
18 of the project. The transmission system supporting the  
19 load area will continue to be operated in a radial  
20 configuration during peak load periods until the project  
21 is placed in service."

22 Now, here you are asked specifically about the  
23 Wasatch segment, which on the map is the segment located  
24 in -- or identified in red. Could the full benefit of  
25 the project be realized if the line were to be built in

1     **the section indicated in blue?**

2             A.     Yes.   The same benefit could be realized.

3     Technically both proposals are acceptable.

4             MR. BERG:   Okay.   No further cross-examination  
5     at this time.

6             MR. LEVAR:   Thank you.   Mr. Moscon, any  
7     redirect?

8             MR. MOSCON:   Yeah.

9                     REDIRECT EXAMINATION

10    BY MR. MOSCON:

11            **Q.     First, Mr. Shortt, when you were being asked a**  
12    **question, you said, "Hey, I have an editorial and could**  
13    **I share that?"   And then you were asked, appropriately,**  
14    **to first focus on the yes or nos.   Could you share with**  
15    **the board the point that you wanted to make about the**  
16    **line of questioning that you just received?**

17            A.     Yes.   Realistically, if we were going to make  
18    the very most reliable line, I would take a point in  
19    Evanston, Wyoming.   I would find my Silver Creek  
20    substation in Wyoming.   I would build a straight line.  
21    I would not put any angles in it.   I would go from Point  
22    A to Point B, and that is my shortest distance.

23                     From reliability perspective, that's less  
24    equipment in the air.   Rocky Mountain Power, and I think  
25    most people realize that that is not always feasible.

1 And so as we build transmission lines, we attempt to use  
2 existing line corridors. We attempt to work with  
3 landowners and to stay somewhere in the range of keeping  
4 a -- still a relatively short distance. But we do have  
5 to add length to lines.

6 So from a statistical perspective, adding a  
7 mile of line or about 15 structures doesn't truly  
8 impact. Now, if we are adding 30, 40, 50 miles of line  
9 to an existing proposed 67 mile line, yes, that would  
10 probably raise some concern from how much more equipment  
11 we are being required to put into the ground to get from  
12 Point A to Point B.

13 In this case the one mile statistically is  
14 insignificant from a reliability standpoint. They are  
15 the same from an adequate standpoint. They are same  
16 from an efficiency standpoint, and they are essentially  
17 the same from a safe standpoint.

18 MR. MOSCON: Thank you. No additional  
19 questions.

20 MR. LEVAR: Thank you. Any recross?

21 MR. BERG: Could I get those maps back? No  
22 additional recross.

23 MR. LEVAR: Thank you. Any questions from the  
24 board members for Mr. Shortt?

25 MR. WILSON: Mr. Shortt, you indicate -- I got

1 the wrong one there. Thank you. Efficiency, I see that  
2 the property owner is required to pay the difference in  
3 the additional length?

4 THE WITNESS: That is correct.

5 MR. WILSON: The maintenance, energy loss, the  
6 property owner won't pay that, will he? Won't that fall  
7 to the customers?

8 THE WITNESS: The energy loss for the  
9 additional mile is borne by the customers.

10 MR. WILSON: How much is that energy loss, and  
11 is there energy loss in the length and in the way it  
12 jogs too? Or is that --

13 THE WITNESS: The direction does not add  
14 anything. I can't give you a specific number for the  
15 energy loss. The direction the line turns and goes and  
16 adds, no, that doesn't change anything if it was a  
17 straight line, if it turned 45 degrees every other  
18 structure. The energy loss is in the additional  
19 conductor length.

20 It's minimal. I can tell you that. I can  
21 tell you that we have never, particularly on a  
22 distribution perspective, we have never been able to  
23 justify a projection, even though we look at it, to do a  
24 project based on saving energy losses. They are -- for  
25 an extra mile in line, it's going to be negligible and

1 maybe a hair above negligible.

2 MR. LEVAR: Anything else? No. Any other  
3 board questions?

4 MR. CLARK: Just a couple of follow-up  
5 questions. When you used the word "efficiency," what,  
6 what is your definition in a general sense?

7 THE WITNESS: My definition of efficiency in a  
8 general sense is, from a technical perspective is, we  
9 are not doing anything too extraordinary, like  
10 additionally miles and miles and miles of length that  
11 the rate payers -- on the rate payers' back.

12 So we look for efficient design. We actually  
13 look for, how can we best serve the customer while  
14 keeping the cost as low as possible and still achieve  
15 our goal of giving that customer the reliable and safe  
16 power that they need.

17 MR. CLARK: Thank you.

18 MR. LEVAR: Do you have anything else?

19 MR. CLARK: No follow-up, no.

20 MR. LEVAR: Any other board questions?

21 MS. HOLBROOK: I have a question. I am just  
22 curious about Heber Power and Light and how they can  
23 kind of play into that. Are they -- are you delivering  
24 power directly to them as well through this line?

25 THE WITNESS: Yes. Heber Light and Power is

1 currently served from our Midway substation. This line,  
2 as well as the other two lines or the other project we  
3 identified, the Midway to Jordanelle project, will serve  
4 that and actually provide a redundant source, a second  
5 source to Heber Light and Power.

6 MS. HOLBROOK: Thank you.

7 MR. LEVAR: Any further board questions? I  
8 have one, Mr. Shortt. And you may not be the one to  
9 answer this, but I will ask you if you are. The last  
10 sentence of your testimony has the phrase "time is of  
11 the essence." And I think you described that concept in  
12 terms of reliability. I am curious if that concept also  
13 applies to costs. Would a delay on this project impact  
14 costs in any way, or is that within your expertise?

15 THE WITNESS: It's really not in my expertise.  
16 I would say that any delay from a legal standpoint, and  
17 this is kind of a personal editorial, would definitely  
18 add from the cost of potentially acquiring new right  
19 easements and legal costs. So there is a cost involved,  
20 but I really don't have a good grasp on what all those  
21 costs would be.

22 MR. LEVAR: Construction costs isn't your  
23 area.

24 THE WITNESS: Well, construction costs. It's  
25 not going to change the construction cost by -- well,

1 other than inflationary cost and what we -- you know,  
 2 but other than that, we are going to build the line. We  
 3 need to build the line, and if we build it today or this  
 4 year or we build it next year or we build it 10 years.  
 5 Well, we won't build it 10 years from now because -- I  
 6 shouldn't say that. That's an editorial. Never mind.

7 MR. LEVAR: Thank you. You have answered my  
 8 question.

9 THE WITNESS: Thank you.

10 MR. LEVAR: Thank you, Mr. Shortt.

11 THE WITNESS: Thank you.

12 MR. LEVAR: Mr. Moscon.

13 MR. MOSCON: Mr. Shortt, thank you. You can  
 14 step down. Thank you very much. The company would call  
 15 as its second witness Mr. Don Watts.

16 MR. LEVAR: Mr. Watts, do you swear to tell  
 17 the truth?

18 THE WITNESS: I do, yes.

19 DONALD T. WATTS,  
 20 called as a witness at the instance of the petitioner,  
 21 having been first duly sworn, was examined and testified  
 22 as follows:

23 MR. LEVAR: Thank you. Mr. Moscon.

24 MR. MOSCON: Thank you.

25 DIRECT EXAMINATION

1 BY MR. MOSCON:

2 Q. Good morning, Mr. Watts. Will you please  
3 state for the board your full name and spelling of your  
4 last name.

5 A. Yes. Donald T. Watts, W-A-T-T-S.

6 Q. Thank you. And could you also please provide  
7 just a very brief background to the board of your  
8 training and what your job is for the company?

9 A. I will. I am a graduate of the University of  
10 Utah with a degree in electrical engineering and a minor  
11 in business. I have been in the electric utility  
12 business for 10 plus years, primarily as an engineer to  
13 start, and then currently as a regional business manager  
14 for the company, which entails working with communities  
15 and customers to meet their needs.

16 MR. LEVAR: If I could jump in a second. If  
17 you wouldn't mind pulling the microphone a little closer  
18 to you just for benefit to those who might be listening  
19 to the stream or in the back of the room. Thanks.

20 MR. MOSCON: Thank you.

21 Q. (By Mr. Moscon) Mr. Watts, did you prepare  
22 testimony to be filed in this matter?

23 A. I did. Yes.

24 Q. Are you aware of any corrections or revisions  
25 that would need to be made to that testimony, as you sit

1     **here today?**

2             A.     I am not.

3             **Q.     If I were to ask you the same questions here**  
4     **today that are set forth in your testimony, would your**  
5     **answers remain the same as they are recorded in that**  
6     **testimony?**

7             A.     Yes, they would be.

8             MR. MOSCON: With that, the company moves for  
9     the admission of the prefiled testimony of Mr. Watts,  
10    together with the exhibits attached thereto.

11            MR. LEVAR: Any objection to that motion?

12            MR. BERG: Well, county -- Wasatch County  
13    actually requests maybe a little clarification before a  
14    ruling is made on the motion. Having reviewed  
15    Mr. Watts's testimony, the majority of it goes to why  
16    the line was denied at the county level by both the  
17    planning commission, as well as the board of adjustment.  
18    And I think he accurately goes through and reflects all  
19    of that. The exhibits to his testimony are a lot and in  
20    great detail.

21            But as I am looking at the statutory  
22    obligation of the board, whenever a local government has  
23    prohibited construction of a facility which is needed to  
24    provide safe, reliable, adequate, efficient service to  
25    the customers of the public utility, then the board's

1 convened. And I think that's where the focus is of this  
2 board.

3 I know in the prior order related to the  
4 Tooele case several years ago, the board indicated that  
5 they couldn't review such things as ridge line or  
6 impacts, you know, visual impacts, different things like  
7 that. And while on the county level, that was exactly  
8 what the planning commission and the board of adjustment  
9 was looking at was the requirement to grant a  
10 conditional use permit and whether or not it violated a  
11 county ordinance related to the ridge line, I don't know  
12 that the board -- if that has -- I don't think that  
13 testimony has any relevance to the hearing as to whether  
14 or not it's needed for safe, reliable, adequate,  
15 efficient service.

16 So it almost seems like an irrelevant  
17 testimony at this point simply because the board's not  
18 going to consider it. So for us to argue about it  
19 doesn't, doesn't make a lot of sense from our  
20 standpoint. I mean, I would love to be able to get up  
21 and kind of go through what happened and why the  
22 planning commission or the board of adjustment ruled the  
23 way they did, but I don't think that has any bearing on  
24 what the board's decision is today.

25 I guess, correct me if I am wrong on that. Is

1 that a correct summary of what -- why we are here today?

2 Well, I don't know that we are in a position  
3 yet to answer that question. But I -- so we have an  
4 objection to the relevance of this testimony. Am I  
5 summarizing correctly?

6 MR. BERG: Yeah. I don't see how it's going  
7 to have a bearing on what the board's going to decide, I  
8 guess. So it just seems like it would spend extra time  
9 when it's not really going to affect the decision of the  
10 board either way.

11 MR. LEVAR: Okay. Thank you. So we have an  
12 objection to the relevance of Mr. Watt's testimony.  
13 Mr. Moscon, do you want to comment on this objection?

14 MR. MOSCON: Sure. And I'll explain why the  
15 testimony of Mr. Watts is put forward, and if the board  
16 believes it's not anything it's interested in, we are  
17 happy to withdraw Mr. Watts.

18 Mr. -- one of the things under the Facility  
19 Review Board Act the company is supposed to do is show  
20 its standard operating cost. Here is the way we would  
21 build it, and then the county can -- and I am  
22 paraphrasing -- change that, but then they have to pay  
23 any incremental costs off of the standard costs.

24 One of the things that Mr. Watts does is  
25 explain how we got to where we are, why we are here and

1 not there, why this is standard procedure for the  
2 company, including the community outreach to try and  
3 resolve things.

4 He also sets forth the mitigation efforts to  
5 try and resolve concerns. So for instance, one of the  
6 stated concerns, as we already know, is proximity of  
7 towers to structures, and he describes how we removed  
8 guy wires or whatever to try and resolve those concerns.  
9 So that is the testimony that's put forward.

10 I think probably, for the board to understand  
11 what I am talking about, if you flipped to Exhibit 12,  
12 Mr. Watts' testimony, here is where Mr. Watts sets forth  
13 kind of the options for the alignment that we are  
14 talking about and describes how the company came to  
15 having this alignment being its preferred choice. It's  
16 standard model, if you will.

17 If there's a stipulation from Wasatch that  
18 this alignment is, you know, is that, is that's the  
19 standard kind of alignment cost, then I suppose I would  
20 say, okay, it may not be needed. But that's the purpose  
21 for which Mr. Watts is presented.

22 MR. LEVAR: Okay. Thank you, Mr. Moscon.  
23 Mr. Berg, anything else that you want to add before we  
24 address this objection?

25 MR. BERG: I don't think there's anything to

1 add. It seems like when the petition for review of the  
2 board came forward, wasn't it simply for Option 1 on  
3 Mr. Watts' testimony? So I don't know that it -- I  
4 mean, initially there were four different options that  
5 were presented, but it seems like when the appeal came  
6 -- or not the appeal, but the request for the review by  
7 the board, Option 1 is the only one before the board,  
8 isn't it?

9 MR. MOSCON: Yes. We agree, Option 1 is the  
10 option that's before the board. And so again, I think  
11 that the evidence that is attached to Mr. Watts'  
12 testimony is the evidence that indicates why Option 1 is  
13 the standard model, if you will, for the utility. So  
14 that's why. So again, that page that I turned to is  
15 Option 1.

16 And the additional exhibits kind of, I think,  
17 explain how the company came to say, the alignment we  
18 have applied for is our standard cost from which any  
19 changes or modifications would be considered an extra  
20 cost.

21 At the conclusion of this proceeding, if I --  
22 under my interpretation of the act, the board will  
23 essentially, if it were to rule in favor of the utility  
24 and find the facility needed, would say facility -- to  
25 the county, county, you shall issue a permit. But we

1 are going to leave to your discretion that you can tell  
2 the company to do different things, so long as the  
3 county is going to pay for any incremental costs or is  
4 going to ensure that we are not, you know, making it any  
5 less reliable, less safe, less efficient.

6 So I think to establish that baseline of what  
7 the base cost would be, the base reliability, the base  
8 efficiency, that's why these exhibits of Mr. Watts are  
9 necessary so that if the county were to make any change,  
10 you would have a baseline to compare it to.

11 MR. LEVAR: Thank you. Anything further,  
12 Mr. Berg?

13 MR. BERG: I would say, with that  
14 clarification, and like I said before, I was simply  
15 seeking maybe even clarification as to the need for  
16 Mr. Watts' testimony. But with that clarification, I  
17 have no objection to entering any testimony related to  
18 those issues so...

19 MR. LEVAR: Okay. So you are withdrawing your  
20 objection?

21 MR. BERG: Yeah.

22 MR. LEVAR: Okay. Then motion will be granted  
23 that Mr. Watts' testimony will be entered. Thank you.

24 MR. MOSCON: Thank you.

25 Q. (By Mr. Moscon) Mr. Watts, do you have a

1     **summary of your testimony that you had prepared that you**  
2     **could share with the board?**

3           A.     I do.

4           **Q.     Would you, please.**

5           A.     For over four and a half years now, I have  
6     been working on this very important project to add  
7     reliability and capacity for the benefit of Rocky  
8     Mountain Power's customers in Wasatch and Summit  
9     counties. I was first assigned to this project in  
10    August 2011, when I began working with Wasatch County to  
11    obtain a conditional use permit for the Wasatch segment,  
12    after the company identified the final siting of the  
13    line.

14                I met with the county's planning and zoning  
15    director to discuss the project and the needed permit  
16    and to determine if the county had any concerns. The  
17    planning director indicated the application was  
18    sufficient, and he did not express any concerns. So I  
19    submitted the application.

20                About two weeks later, due to the overall  
21    project schedule, I withdrew the application and  
22    informed the county that it would be refiled at a later  
23    date. In the fall of 2014, the company was ready to  
24    move the project forward again. Like I did in 2011, I  
25    approached the county to discuss the project and

1 conditional use permit application.

2           This time the county voiced some concern with  
3 its ridge line ordinance. I scheduled follow-up  
4 meetings with the county, as well as the adjacent  
5 property owner, Black Rock and Mark 25 Group, who  
6 indicated they were concerned with the proximity of the  
7 line to their development. To address the concerns and  
8 explore potential options, the company developed some  
9 conceptual alternative alignments.

10           Ultimately, these efforts didn't result in  
11 finding an alternative that satisfied both the county  
12 and the Black Rock group, since their stated interests  
13 were in direct conflict. For every foot of additional  
14 distance that is created between the facilities and the  
15 adjacent landowner, the ridge line is further affected.

16           You have already been referred to my Exhibit  
17 12. If you would turn there as well again to show what  
18 that means. In our Option 1, you see the proposed  
19 transmission line alignment that we -- on the bottom  
20 image. For every foot we move away from that  
21 neighboring development, which is Black Rock where you  
22 see the townhomes that are being constructed, we further  
23 impact and raise a greater concern that the county had  
24 in getting further away from there. So they are in  
25 competition with each other, and so we couldn't satisfy

1 both of their concerns.

2 And we feel that the Option 1 that was  
3 presented was the best option for that because it was --  
4 it allowed for those poles in the corner to be below the  
5 ridge line where it did not have everything above the  
6 ridge line.

7 In addition, Promontory, the land owner on  
8 which the line is sited, preferred our original  
9 alignment as well. I believe it should be noted that  
10 the company disagrees with the county's interpretation  
11 that the ridge line ordinance applies to utility  
12 facilities, as stated in the company's legal memorandum.

13 Also the county has not been consistent in  
14 applying its interpretation of the ridge line ordinance,  
15 as seen in the images that were supplied at the  
16 beginning of the hearing. The last couple images are of  
17 a power line that was permitted in 2004 from the  
18 Mayflower off-ramp, which is one of the county's  
19 approved view points in their ridge line ordinance.

20 That line received a conditional use permit  
21 from the county with no mention of ridge line issues  
22 other than to say that we had to commit to keep the  
23 poles as short as possible. That was the only condition  
24 placed upon the company.

25 Both the 2004 project and this proposed

1 project share the same voltage, share the similar  
2 proximity to adjacent townhome developments, as depicted  
3 in those images that were shared prior to, and have  
4 similar structures extending above the ridge line as  
5 seen from a county-approved viewpoint, and incorporate  
6 similar design elements to mitigate these impacts.

7 In January 2015 the company submitted an  
8 application for a conditional use permit for the Wasatch  
9 segment. Between January '15 and August 2015, the  
10 company attended several meetings with the county and  
11 property owners, including public hearings, to discuss  
12 the concerns and potential mitigation measures. In  
13 response to the -- in response, the company supplied  
14 additional information to supplement the application.

15 The company also developed and submitted an  
16 alternative, lower-profile configuration along the same  
17 route as the Wasatch segment in an attempt to  
18 accommodate the county's interpretation of the ridge  
19 line ordinance.

20 If you turn the page in Exhibit 12, to what we  
21 call our Option 2, that is our lower profile option.  
22 And what that does is, it goes from our single pole  
23 construction, which is our preferred method of  
24 construction for double circuit, and what we do is, we  
25 take the three wires on either side and roll them flat

1 to shorter poles. But it widens the width of our  
2 transmission lines.

3 We use more poles to widen that out, and then  
4 we come back up in the corner in turn and do the same  
5 thing in the next structure. We roll flat, and then  
6 when we are out of the county, we come back up to a  
7 vertical configuration on a single pole. It utilizes  
8 more poles, but it did accommodate the county's concern  
9 regarding their ridge line. It cleaned it up  
10 substantially.

11 The planning commission hearing was held in  
12 August of 2015. Despite the refuting evidence,  
13 mitigation and alternatives offered by the company, the  
14 county continued to express the same concerns, relying  
15 on no studies or evidence, only public clamor. Based on  
16 its deliberations, the company requested the application  
17 be continued to keep working with the parties and  
18 explore alternatives, if any could be identified.

19 The planning commission denied the  
20 continuation, and so the company decided to withdraw its  
21 application at that time. After that meeting, knowing  
22 how important this line is to our customers, the company  
23 was determined to try and find an option that the  
24 parties could support.

25 The first option was to underground the two

1 circuits, and the other option was to site the  
2 transmission line so it generally follows the Brown's  
3 Canyon Road to Highway 248 and then back into its  
4 original alignment. Each of the options had additional  
5 costs that the county would be required to pay if  
6 selected as an option.

7 In September of 2015 the company filed that  
8 new application for a conditional use permit, which  
9 included those two additional options. The application  
10 also included evidence addressing the concerns  
11 previously raised by the county. In November of 2015,  
12 the planning commission heard the application at a  
13 public hearing during which the county raised the same  
14 concerns it had previously raised and dismissed the  
15 data, studies and information the company had submitted.

16 The planning commission denied the  
17 application. The company then appealed to the Board of  
18 Adjustments, and the hearing or the hearing for that was  
19 held in January of 2016. Again, the same concerns were  
20 deliberated. The Board of Adjustments demonstrated  
21 little reliance on the company's evidence that was  
22 submitted, and the Board of Adjustments denied the  
23 appeal.

24 Even in denying the appeal, however, the board  
25 affirmed that the need for the project was not in

1 question stating, "I don't thinking that there is any  
2 argument there that there needs to be upgraded lines  
3 into Heber valley."

4 The company has worked diligently with the  
5 county and tried to identify acceptable solutions.  
6 Despite the company's efforts, the county has denied the  
7 company's conditional use permit. The company and its  
8 customers, including our customers in Wasatch County,  
9 including Heber Light and Power, need this project to  
10 provide safe, reliable, adequate and efficient power and  
11 service. That is why we are here before the board.

12 MR. MOSCON: Thank you. Mr. Watts is  
13 available for cross-examination.

14 MR. LEVAR: Thank you. Mr. Berg.

15 MR. BERG: No cross-examination at this time.

16 MR. LEVAR: Thank you. Any questions from  
17 board members for Mr. Watts? Ms. Holbrook.

18 MS. HOLBROOK: Mr. Watts, I have a question.  
19 So is it a typical business practice for Rocky Mountain  
20 Power to strictly put all of the additional costs for,  
21 say, underground burial lines on to the county where it  
22 resides? Is that the typical situation?

23 THE WITNESS: I believe that's by state  
24 statute or state law.

25 MS. HOLBROOK: Okay. Thank you.

1 MR. LEVAR: Thank you. Any further board  
2 questions? Seeing none, thank you, Mr. Watts.

3 THE WITNESS: Thank you.

4 MR. MOSCON: Thank you, Mr. Watts.

5 MR. LEVAR: Mr. Moscon, I was just wondering,  
6 we are a little early for a break. But I was wondering  
7 if, depending on what you estimated for the length of  
8 Mr. Ambrose's testimony, would it be better to take a  
9 break now than to come after?

10 MR. MOSCON: It's a good question, and we  
11 probably should ask Mr. Berg. His summary, I imagine,  
12 takes three minutes. But I don't know if there's going  
13 to be lengthy cross or no cross from Mr. Berg. Or  
14 excuse me, by Mr. Berg.

15 MR. BERG: I don't anticipate cross would  
16 probably be more than 10 minutes at the most. Of  
17 course, as we get going, it could take longer, and  
18 attorneys always seem to err when they say it's only  
19 going to take five more minutes. I would have no  
20 objection to taking a break now if the board wants to.

21 MR. MOSCON: Whatever the board prefers.

22 MR. LEVAR: Why don't we go ahead then with  
23 Mr. Ambrose and we'll see where we go.

24 MR. MOSCON: Company calls Mr. Chad Ambrose.

25 MR. LEVAR: Mr. Ambrose, do you swear to tell

1 the truth?

2 THE WITNESS: Yes.

3 MR. LEVAR: Thank you.

4 CHAD BURTON AMBROSE,  
5 called as a witness at the instance of the petitioner,  
6 having been first duly sworn, was examined and testified  
7 as follows:

8 DIRECT EXAMINATION

9 BY MR. MOSCON:

10 Q. Good morning, Mr. Ambrose. While you are  
11 unpacking, could you please state and spell your last  
12 name for the record.

13 A. Chad Burton Ambrose, A-M-B-R-O-S-E.

14 Q. Thank you. Would you please provide the board  
15 a very brief background of your training and what your  
16 duties with the company are?

17 A. You bet. I am a regional business manager for  
18 Rocky Mountain Power. I have worked for the company for  
19 almost 14 years. It's going fast, and I work in Summit  
20 County, manage Summit County's relationship.

21 Q. Thank you, Mr. Ambrose. Did you cause to be  
22 filed testimony in this proceeding?

23 A. Yes, I did.

24 Q. Did you file more than one piece of testimony?

25 A. I filed rebuttal as well.

1           Q.    Okay.  Are you aware, as you sit here today,  
2   of -- let's start with your direct testimony.  Are you  
3   aware of any corrections or changes that would need to  
4   be made to your direct testimony?

5           A.    No.

6           Q.    Are you aware of any corrections or changes  
7   that would need to be made to your supplemental  
8   testimony?

9           A.    No.

10          Q.    If I were to ask you all the questions that  
11   are set forth in your prefiled testimony, would your  
12   answers today be the same as they are recorded in both  
13   pieces of testimony?

14          A.    Yes.

15               MR. MOSCON:  With that, the company moves for  
16   the admission of both the direct and rebuttal testimony  
17   of Mr. Ambrose, together with the exhibits attached  
18   thereto.

19               MR. LEVAR:  Thank you.  Mr. Berg, any  
20   objection?

21               MR. BERG:  No objection from Wasatch.

22               MR. LEVAR:  Okay.  Thank you.  They will be  
23   entered.

24               MR. MOSCON:  Thank you.

25          Q.    (By Mr. Moscon)  Mr. Ambrose, have you

1     **prepared a summary of your testimony you could share**  
2     **with the board?**

3           A.     Yes, I have.

4           **Q.     Would you please.**

5           A.     So I'd first like to start, if I can, with a  
6     summary of, really the summary of the outcome. We  
7     ultimately accepted the Wasatch segment because we were  
8     faced with potential condemnation and prolonged  
9     litigation and significant construction delays.

10           Instead of this, we got a fixed-width  
11    easement. Promontory agreed to pay the excess costs,  
12    and the line stayed in the same owner's property. Rate  
13    payers save time. They save money, and ultimately,  
14    because of this decision, will have the reliability they  
15    need more quickly.

16           I'd like to give a little bit of background on  
17    how we got here. We began reaching out to our customers  
18    and property owners in Summit County in May of 2008.  
19    Additionally, we held open houses, several different  
20    open houses in Summit County, to discuss the high level  
21    nature of the project.

22           The company took part in a monumental effort  
23    as well to bring counties and key stakeholders together  
24    to develop plan that would address the growing energy  
25    needs of Summit and Wasatch counties. It resulted in a

1 guidance document called the Summit Wasatch electrical  
2 plan. It was not intended to, nor does it supersede the  
3 company's tariff or siting procedures.

4 This electrical plan treats the section of  
5 line along Brown's Canyon Road in that it was subject to  
6 change. We believe that the treatment in the -- the  
7 Wasatch segment is consistent with the electrical plan.

8 I'd like to talk a little bit about working  
9 with Promontory. Promontory told Rocky Mountain Power  
10 in initial meetings and throughout multiple discussions  
11 that they would not allow the company to upgrade the  
12 existing transmission line in its current alignment due  
13 to their master plan, and that they were willing to work  
14 with the company to develop alternatives and find an  
15 alignment that works ultimately for all of our rate  
16 payers.

17 So why is Rocky Mountain Power here today?  
18 Rocky Mountain Power, as with all transmission projects,  
19 desires to first evaluate upgrading and placement  
20 possible. However, the company understands that it must  
21 do what is in the best interests of its customers.  
22 Therefore, we explored additional options to avoid  
23 litigation and lengthy battles with Promontory.

24 The property owner was willing to absorb the  
25 impacts of the infrastructure on their land, which is

1 significant to note. So here is what we did and what we  
2 have avoided. We looked at several options. The  
3 existing one, as we have talked about today. We also  
4 looked at another alignment in the middle, and another  
5 route which was ultimately chosen that we call today the  
6 Wasatch section.

7 Promontory looks not just at property value,  
8 but at all of the lots that would have been impacted by  
9 the existing alignment. Litigation for the existing  
10 alignment would expose customers to risk, and we want to  
11 avoid this. Getting the project completed promptly and  
12 low cost is what our customers need, and the Wasatch  
13 solution provides that.

14 We considered additional routes. We priced  
15 them, and we came up with a solution that is best for  
16 all of our customers. We evaluated the fact that the  
17 line was going to get moved at a later date by  
18 Promontory. This would disrupt reliability to our  
19 customers in the future. So now was the time to  
20 evaluate it and to do it.

21 We also agreed to a clause in our construction  
22 work agreement to dissolve the agreement with Promontory  
23 if we could not obtain a permit. We are here today, all  
24 of us are here today to obtain that permit. If you deny  
25 us the permit, then the company does not have the

1 ability to adequately protect its customers, as  
2 Promontory contests our ability to locate this double  
3 circuit transmission line in the existing alignment, and  
4 we still have the risk associated with permitting the  
5 line. That risk doesn't go away.

6 We also still have the same risk of winding up  
7 here for a different route all with the same intention,  
8 providing reliable power to our customers, but now at a  
9 significantly greater cost. Each year we delay this  
10 project -- as I understand it, we have a budget of about  
11 16 million dollars between Coalville, where we -- we  
12 have built from Evanston all the way to Coalville. So  
13 from Evanston to Silver Creek, we have a budget of about  
14 16 million dollars.

15 If we continue to defer that, if you look at a  
16 CPI of 3 percent, that's \$480,000 every year that we  
17 will be putting on the backs of our customers through a  
18 delay.

19 Essentially Rocky Mountain Power insulated its  
20 customers from significant risk. It could have fought  
21 with Promontory, exposing our customers to delays,  
22 additional costs, all to end up with an outcome that  
23 remains unknown. Instead, we worked with Promontory,  
24 who provided an uncontested easement, was willing to pay  
25 the incremental costs, and Rocky Mountain Power ended up

1 with the same costs of the existing alignment. Rocky  
2 Mountain Power, we believe, made the right choice.

3 In summary, my direct and rebuttal testimony  
4 demonstrates that the company is considering the  
5 variables and is acting in the best interest of its  
6 customers. While it is obvious that Rocky Mountain  
7 Power is caught between two competitive developers, it  
8 boils down to -- what it boils down to is Rocky Mountain  
9 Power has a need to serve its customers.

10 The line crosses over a property owners's  
11 property. That property owner is willing to keep the  
12 line on their property and pay the incremental costs for  
13 the relocation. There is nothing here that is  
14 inconsistent with our utilities mandate to serve our  
15 customers. That's the conclusion of my summary.

16 MR. MOSCON: Thank you. Mr. Ambrose is  
17 available for cross-examination.

18 MR. LEVAR: Thank you. Mr. Berg.

19 MR. BERG: Okay.

20 CROSS-EXAMINATION

21 BY MR. BERG:

22 Q. Do you already have a copy there of what's  
23 marked in your direct testimony as Exhibit 4? I have a  
24 copy here if you like.

25 A. Yes, I do. Yep, I've got it.

1 Q. Okay. Could you first turn to -- and this  
2 doesn't have a page number on it. There weren't page  
3 numbers on the exhibit. But if you will turn to 2.1,  
4 relocation costs.

5 A. Yes.

6 Q. Okay. Could you read for the board, even just  
7 that first sentence under relocation costs?

8 A. "Promontory agrees to pay the sum of 275,000  
9 for its share of the cost to build the replacement  
10 facilities in the alternative alignment."

11 Q. Okay. So that is their contractual obligation  
12 to pay for the alignment to be moved from its current  
13 alignment; is that correct?

14 A. That's correct.

15 Q. Okay. And if we could go in that same  
16 exhibit -- and you already made reference to this in  
17 summary.

18 A. Uh-huh.

19 Q. But it's under 1.4 B, starting with Rocky  
20 Mountain Power. It's on the third page of that exhibit.  
21 Could you read subsection B for the record?

22 A. Would you like the whole thing?

23 Q. Yeah, just that one paragraph.

24 A. "Rocky Mountain Power has entered into this  
25 agreement without having completed the necessary

1 environmental work and analysis to determine whether  
2 Rocky Mountain Power can obtain permits necessary to  
3 build the relocated facilities within the alternative  
4 alignment. Such environmental and permitting work will  
5 be conducted by Rocky Mountain Power using commercially  
6 reasonable efforts and at its expense prior to  
7 construction.

8 "In the event environmental issues or  
9 restrictions are discovered that preclude the  
10 construction of the relocated facilities within the  
11 alternative alignment, materially increase project  
12 costs, or cause a material delay to the project, Rocky  
13 Mountain Power may at any time, prior to the  
14 commencement of construction, terminate this agreement  
15 by giving notice to Promontory and refunding the initial  
16 payment and final payment, to the extent such payments  
17 may have been already made by Promontory, and returning  
18 the unrecorded transmission line easement to the  
19 Promontory; or if the easement has been recorded,  
20 recording the release of the transmission line easement  
21 provided by Promontory as required in Section 2.1 herein  
22 below."

23 Q. Okay. So as you -- just wanted that for just  
24 for clarification, more than just a brief summary that  
25 you provided. So if the permit is denied, then that

1 does allow Rocky Mountain Power to go back to the  
2 original alignment as it's in the current easement that  
3 it's had since 1916, I believe; is that -- correct?

4 A. Is that a question?

5 Q. -- correct? Yeah. Is that correct? If the  
6 permit was denied -- it was denied at the county level.  
7 Now, if it's not ordered to -- if it's denied here by  
8 the board, then that section of the contract does allow  
9 Rocky Mountain Power to continue using the current  
10 easement that they have.

11 A. What it does for our customers is, it puts  
12 them in a position where, No. 1, their reliability will  
13 be delayed. No. 2, there will be additional costs, as I  
14 have explained. There will be litigation. There will  
15 be condemnation. That will basically be an outcome if  
16 we are denied today.

17 Q. Okay.

18 A. Which we do not see as a path forward.

19 Q. Okay. Could you also turn to your prefiled  
20 testimony, if we look at Exhibit 3 on there.

21 A. Exhibit 3?

22 Q. This is the one entitled Promontory  
23 Development Southwest Wyoming to Silver Creek  
24 transmission project.

25 A. Yep.

1 Q. So here we are looking at Route A, and that  
2 is, as we discussed under Mr. Shortt's testimony, the  
3 blue line indicated on the prior exhibit, Exhibit 2. If  
4 we look at the cost, what is the cost for Rocky Mountain  
5 Power to upgrade in that existing easement?

6 A. 1.39 million.

7 Q. So 1 million, 390,000, somewhere in that  
8 neighborhood?

9 A. (Witness nods.)

10 Q. And now, Promontory requested what is shown on  
11 Exhibit 2 as the red line, and that is Route 2 C,  
12 Promontory boundary 4. What is the cost for that?

13 A. 2.35 million.

14 Q. Okay. Now, you also work -- you said in your  
15 beginning, you have been working on this entire project  
16 bringing it all the way from Wyoming down to the Silver  
17 Creek substation?

18 A. I have only worked in the Summit County  
19 portion.

20 Q. Okay. In the Summit County portion?

21 A. Correct.

22 Q. Thank you for the clarification. And on  
23 December 14th of 2015 you filed an appeal application  
24 with Summit County regarding a portion of the  
25 transmission line from Coalville to Brown's Canyon; is

1     that correct?

2             A.     That is correct.

3             Q.     And I have a copy of this application that you  
4     filed. This application is marked as Exhibit D in  
5     Wasatch County's memorandum. Let me hand this to you.  
6     And you can take a minute to look at that quickly. Is  
7     that an accurate copy of the appeal application?

8             A.     From what I can tell.

9             Q.     Okay.

10            A.     Looking at it here.

11            Q.     And if you will turn to page 4 of the letter  
12     that's attached with that, and this is a letter from  
13     your legal counsel supporting the appeal application,  
14     correct?

15            A.     Correct.

16            Q.     If you would look at the bottom highlighted  
17     portion, the final paragraph about six lines down, and  
18     then continuing on to the next page. This is  
19     discussing -- well, I guess, sorry. First, let -- I am  
20     getting ahead of myself. Let's take a step back.

21                   What was the purpose of this appeal? What's  
22     it an appeal from?

23            A.     How is this relevant when we are talking about  
24     the Wasatch County portion? Sorry. I just have to ask.

25            Q.     Well, I think at this point your legal counsel

1 can ask the questions in clarification. But I just need  
2 you to answer.

3 MR. LEVAR: Are you making an objection,  
4 Mr. Moscon?

5 MR. MOSCON: I was going to say, I know that  
6 this has been put forward. I don't have an objection to  
7 Mr. Ambrose, who said he has represented the company in  
8 Summit County proceedings, from indicating to the board  
9 what the process is.

10 What I anticipate we are about to get to is  
11 what I would be objecting to as asking this witness for  
12 some legal conclusions to ask this witness to interpret  
13 language from lawyers written to another board. And so  
14 I have kind of been on my toes waiting for the question  
15 to come out. So I would object to it then.

16 But as far as just acknowledging that there  
17 was an appeal to Summit County that the company is  
18 involved with, I don't mind if the witness answers just  
19 that question.

20 MR. BERG: And there is not going to be any  
21 request for him to make any type of legal analysis, just  
22 to review some statements that were in the application  
23 for the record.

24 MR. LEVAR: Okay. Why don't we continue  
25 forward with that understanding.

1           **Q.     (By Mr. Berg)   What was the purpose of this**  
2   **appeal?**

3           A.     The purpose of this appeal is related to a  
4   section of our transmission line that was denied Rocky  
5   Mountain Power by the Eastern Summit County planning  
6   commission. That section of line crosses through five  
7   property owners who are agricultural property owners  
8   that have not yet signed fixed-width easements.

9           **Q.     Okay.   And so those property owners were**  
10   **simply saying, we don't want this upgraded power line in**  
11   **the current easement that you have?**

12          A.     That's correct.

13          **Q.     Okay.   And if you could please read on page --**  
14   **beginning on page 4, just those highlighted sentences**  
15   **that was included as part of the appeal application.**

16          A.     Is that where it says nevertheless?

17          **Q.     Yeah, starting at nevertheless.**

18          A.     "Nevertheless, the company does not need  
19   fixed-width easements nor any other kind of consent from  
20   these property owners because the 1916 easements remain  
21   validity and be -- and provide sufficient rights for the  
22   company to rebuild the line -- this line.

23                "When the previous landowners granted these  
24   easements nearly a century ago, they contested expressly  
25   for the alignment to be used as a power transmission

1 line. The ongoing validity of these easements was  
2 confirmed during the application process and is not in  
3 question."

4 Q. Okay. Thank you.

5 MR. BERG: No further questions at this time.

6 MR. LEVAR: Okay. Thank you, Mr. Berg. Any  
7 redirect?

8 REDIRECT EXAMINATION

9 BY MR. MOSCON:

10 Q. Just one quick question to the extent you  
11 know, Mr. Ambrose. You were just asked to read comments  
12 from a letter from lawyers to Summit County talking  
13 about a 1916 easement that it concludes was -- that the  
14 valid of which was confirmed during the application  
15 process.

16 Do you have an understanding whether the  
17 easement that this letter is talking about is the same  
18 easement that is at issue today with the Promontory  
19 property? Is that the same easement?

20 A. Promontory's easement is very clear that it  
21 does not address a 138 double circuit transmission line.

22 MR. MOSCON: Thank you. No further follow-up.

23 MR. LEVAR: Thank you. Any recross?

24 MR. BERG: No, Your Honor.

25 MR. LEVAR: Questions from board members.

1 Mr. White?

2 MR. WHITE: Just one question, Mr. Ambrose.  
3 Something you said earlier piqued my interest. Is it  
4 your understanding that the line on the 46 KV, the  
5 Promontory property, is that yet to be permitted by  
6 Summit County? In other words, would that be required  
7 to actually be permitted through Summit County?

8 THE WITNESS: So -- great question. Through  
9 Summit County we have received a permit from Brown's  
10 Canyon Road all the way to the Summit Wasatch border.

11 MR. LEVAR: Thank you. Any other board member  
12 questions? Mr. Wilson.

13 MR. WILSON: One question. You indicated that  
14 you are saving the rate payers money and you anticipate  
15 litigation costs. Has your legal department indicated  
16 they don't believe you have that easement in Wasatch  
17 County in order to support the increased load line? Was  
18 that a fair statement?

19 THE WITNESS: Can you restate that? I'm  
20 sorry.

21 MR. WILSON: I don't know if I can or not, but  
22 I'll try.

23 THE WITNESS: I'm sorry.

24 MR. WILSON: I am curious as to Rocky Mountain  
25 Power's position on the easement in Wasatch County. Is

1     there an easement for the line or not?

2                 THE WITNESS:   Yes.   We currently have an  
3     easement in Wasatch County that is recorded.

4                 MR. WILSON:   But you say you anticipate  
5     litigation.   Has your legal department advised you that  
6     that would be litigated by Promontory?

7                 THE WITNESS:   We have been advised by  
8     Promontory and our legal department that if we did not  
9     work in essence with them through an independent  
10    evaluation of this new route through Wasatch, that if we  
11    were to strive to fight Promontory for the existing  
12    alignment, that that would be litigated and there would  
13    be condemnation proceedings.

14                MR. WILSON:   For the existing line?

15                THE WITNESS:   For the existing, correct.

16                MR. WILSON:   So your legal department has said  
17    you don't have an easement or you do?   I'm just trying  
18    to clarify that.

19                THE WITNESS:   So for the Wasatch County  
20    portion, we'll call it just the Wasatch section, we do  
21    have an easement that has been recorded for the existing  
22    alignment.   That easement is absolutely in question, and  
23    it would require litigation and condemnation.

24                MR. WILSON:   It's in question?

25                THE WITNESS:   It is.

1 MR. WHITE: Just follow up on that question.

2 So would the condemnation be for the -- what, the  
3 additional voltage or height or distance? In other  
4 words, is there additional fee property or easement you  
5 would need to upgrade it from the current voltage to  
6 138?

7 THE WITNESS: That's correct. We would need  
8 to widen our easement. We would need to widen it to, I  
9 believe it's a 60 foot wide easement. And that  
10 acquisition of property, given the fact that it directly  
11 conflicts with Promontory's master plan, would require  
12 condemnation.

13 MR. WHITE: Is there a current assumed width  
14 based upon the center line easement, or it just where  
15 it's been for a hundred years? In other words, that  
16 hasn't been defined as of yet?

17 THE WITNESS: I am probably not the correct  
18 witness to answer that. Perhaps our legal department  
19 could help with that.

20 MR. LEVAR: If you could provide clarification  
21 on that question, that would be great.

22 MR. MOSCON: Sure. And if this answers both  
23 the questions that Mr. Wilson raised as well as  
24 Mr. White. The company has an easement, a center line  
25 easement, across Promontory's property for a single

1 circuit, 46 KV line. Promontory has taken the position  
2 that that easement is insufficient to host a 138 KV  
3 double circuit line, which has increased width, as well  
4 as it's a double circuit, rather than a single circuit.

5 The company may not agree with Promontory's  
6 position. But nevertheless, that is Promontory's  
7 position. And I -- by the way, noted this is a good  
8 point to clarify for the board. The exhibit that was  
9 referred to which is Exhibit No. 4 to Mr. Ambrose's  
10 testimony which is the construction agreement, I am  
11 nervous that the copy that the board has is actually  
12 missing a page.

13 And so with permission after these  
14 proceedings, we'll submit a corrected copy. And the  
15 reason that's important is the missing page, if you were  
16 to turn to the last page that you do have right above  
17 the signatures, the missing language is this point. The  
18 line that you see says --

19 MR. BERG: I would object to that at this  
20 point until I have seen it, simply because I made a  
21 request for that page, but I didn't ever receive it. So  
22 I would just like to view it before it goes into  
23 evidence before the board.

24 MR. MOSCON: I'm happy -- and I'm sorry. I  
25 didn't realize you didn't get that follow-up copy. What

1 you do see here on, whatever this page number is right  
2 above Section 6 integration, says free to assert any and  
3 all rights, claims, defenses that were otherwise  
4 available to them, notwithstanding entering into this  
5 agreement.

6 That is the place where Promontory says  
7 contractually, "Look, we are not agreeing, company, that  
8 you can put your 138 line here. And so if you don't get  
9 your permit and you go back to square one, that doesn't  
10 mean you get to build your line here. We are still  
11 retaining our argument that the only thing you have an  
12 easement for is a 46 single circuit line, and we still  
13 intend to fight you about whether you can put a double  
14 circuit 138 KV line in."

15 But to clarify another question that was  
16 raised, what Promontory did do is say, "Here we will  
17 give you an easement. If you move your line from here  
18 to there, we will give you an easement, and we will pay  
19 the difference."

20 So you may have heard, Mr. Wilson, some  
21 testimony that sounded confusing about, we do have an  
22 easement. So the company does have an easement for this  
23 Option 1 that we are asking for now, where Promontory  
24 has said, "Yes, if you move your line from here to  
25 there, we will give you a fixed-width easement."

1           And so we are really now talking about the two  
2   easements on their property, and that's probably why  
3   there's been a little lack of clarity about that point.  
4   So there is an easement, as we sit here, for the  
5   proposed Option 1 on Promontory's property, if that  
6   clarifies the question.

7           MR. WILSON: May I? No, I understood that. I  
8   am just wondering what the legal -- he indicated there  
9   would be increased costs. Apparently, the legal may or  
10   may not believe they have the easement for the increased  
11   load line, I'll call it that, rather than state the  
12   numbers. So that was my question. And I don't know who  
13   estimates the litigation cost to enforce that easement  
14   or how that plays into the whole thing here.

15           THE WITNESS: Can I? So in order to secure  
16   that easement or widen that easement for the existing  
17   line that goes right through the southeastern portion of  
18   the Promontory property, in order to secure that or  
19   widen that easement, that's the trigger for the  
20   increased costs, the litigation and the condemnation  
21   that we are talking about. That's the driver of it.

22           So rather than -- rather than dealing with  
23   that, what we have is a property owner that was willing  
24   to provide us a fixed-width easement that does go into  
25   Wasatch County, but it remains on Promontory's property,

1 and they are willing to pay the cost difference in the  
2 upgrade.

3 MR. WILSON: I don't have any other questions.

4 MR. LEVAR: Oh. Were you wanting to ask a  
5 question?

6 MR. CLARK: If I may. And it pertains to your  
7 last statement. You received some questions on  
8 cross-examination about the cost difference, and just in  
9 your words, can you restate for us what, what the total  
10 cost difference is between -- I am going to refer to  
11 CBA-2 -- the blue line and the red line.

12 THE WITNESS: The cost difference between the  
13 blue line and the red line, after having performed a  
14 more detailed cost estimate, as you refer to in that  
15 exhibit, those were high level block estimates, plus or  
16 minus 50 percent. At the end of the day, the cost  
17 difference that we determined with Promontory was the  
18 \$275,000 in the two routes, and they cover -- and they  
19 are willing to cover that cost.

20 MR. CLARK: And that's the total cost  
21 difference in construction?

22 THE WITNESS: Correct.

23 MR. CLARK: Another question, if I may. This  
24 is on a slightly different subject. But if I -- if I  
25 wrote down your words correctly, you used the phrase,

1 "The line was going to get moved at a later date by  
2 Promontory." What did you mean by that? And what was  
3 your set of assumptions around that?

4 THE WITNESS: So as we approached Promontory,  
5 as you refer in my direct testimony, we approached  
6 Promontory like we did with all of the property owners,  
7 where the transmission line would be upgraded. And as  
8 we approached Promontory, it was clear, No. 1 -- they  
9 made it clear that it conflicted with the master plan  
10 and that that line would have to be moved at some point  
11 in order for their master plan to go forward.

12 Now, that relocation would be on the back of  
13 Promontory. Rocky Mountain Power was looking to upgrade  
14 the transmission line. That triggered the opportunity  
15 for Promontory to ask Rocky Mountain Power, "We need  
16 this moved, and we will work with you to provide a low  
17 cost alternative. We will provide you the easements  
18 necessary to do it if you will work with us and  
19 independently evaluate if the transmission line is  
20 reliable that you are looking to relocate and that it  
21 meets your technical specifications, as laid out in Ken  
22 Shortt's testimony, to make this happen." And that's  
23 exactly what we did.

24 MR. WHITE: I hate to ask this question, but  
25 as a follow-up, where would it be relocated to? The

1 Option 1 alignment.

2 THE WITNESS: Yet to be known. Yet to be  
3 known. We didn't necessarily need to go down that road.

4 MR. LEVAR: Did you have follow-ups?

5 MR. CLARK: Well, I'll tell you what I am  
6 thinking about. I am wondering about how to understand  
7 better what the condemnation process would be, how long  
8 it would take, and what its likely costs would be. And  
9 maybe more than -- maybe I am not the only one wondering  
10 that, but I just don't know, Chair LeVar, how to improve  
11 my understanding of that. But that's the question. I  
12 am not sure they are fair questions to put to this  
13 witness. But --

14 MR. LEVAR: Yeah. Is that a question that  
15 would be better for the --

16 MR. CLARK: Counsel maybe?

17 MR. LEVAR: -- oral argument we will have  
18 later?

19 MR. CLARK: I am wondering if our two counsel  
20 can cooperate in producing some kind of perspective on  
21 that.

22 MR. MOSCON: Would the board like that  
23 addressed now or in the oral argument? I am happy to  
24 let each side give our understanding at this point or in  
25 closing, oral argument, whatever the board prefers.

1 MR. LEVAR: Well, let me ask Mr. Clark. Since  
2 we'll probably take a break soon before we start legal  
3 arguments, should we let the two counsel address this  
4 after the break as they give their legal arguments?

5 MR. CLARK: Yeah, I think that's fine. To the  
6 extent that there can be some consistent parameters or  
7 assumptions or -- yeah, that would be helpful.

8 MR. WHITE: Yeah, and I again, as part of  
9 that, I mean, I certainly don't want to diminish any  
10 litigation position. But you know, what is the  
11 potential fair market value of the additional scope of  
12 that, I guess?

13 I mean, are we talking about, you know,  
14 severance of loss. I mean, what are we -- again, if  
15 that's confidential or is going to somehow be a  
16 sensitive issue in terms of litigation posture, I don't  
17 know if that's appropriate. But I am just kind of  
18 adding on to the same thoughts that Mr. Clark had, I  
19 guess.

20 THE WITNESS: We did do a severance analysis  
21 on the property that would be impacted, the existing  
22 line route versus the boundary route, and perhaps, Matt,  
23 you can talk about that at a break.

24 MR. MOSCON: We do have some of that  
25 information that we can share wherever the board wants.

1 MR. LEVAR: Okay. We could have that  
2 proffered during the legal argument portion.

3 MR. CLARK: Thanks. That concludes my  
4 questions.

5 MR. LEVAR: Okay. I have one brief question  
6 for Mr. Ambrose, and I apologize if you have answered  
7 this already in your testimony or your exhibits. But in  
8 your summary I thought I heard you give an estimate of  
9 around \$480,000 a year of costs for each year the  
10 project is delayed. Was that just based on average  
11 inflation to construction costs, or was there something  
12 else in there?

13 THE WITNESS: Correct. Yeah. The 16 million  
14 dollars, and it's not found in my testimony. As I  
15 understand it -- while I am just the regional business  
16 guy, not the project manager, but as I understand it, we  
17 have a budget of about 16 million to finish from  
18 Coalville to Silver Creek. And every year that you  
19 defer, we defer that construction and delay it, it's  
20 about 3 percent, if you assume a 3 percent CPI. So 480  
21 thousand, then you compound it each year.

22 MR. LEVAR: Thank you.

23 THE WITNESS: You bet.

24 MR. LEVAR: Any further board questions of  
25 Mr. Ambrose? Okay. Thank you, Mr. Ambrose.

1 THE WITNESS: Thank you.

2 MR. LEVAR: Then why don't we take --

3 MR. MOSCON: Before we have him step down --

4 MR. LEVAR: Sorry.

5 MR. MOSCON: I wonder one of the things that  
6 I'll -- to answer one of questions, there's probably a  
7 factual thing that rather than me proffering, I probably  
8 could just have a witness answer if the board will  
9 indulge me just ask one question.

10 MR. LEVAR: Go ahead.

11 CONTINUED REDIRECT EXAMINATION

12 BY MR. MOSCON:

13 Q. Mr. Ambrose, because this is an issue of  
14 concern to the board, do you know, has the company done  
15 any analysis or have third parties analyzed what the  
16 potential condemnation costs would be on the property to  
17 be condemned if the company had to go along what has  
18 been referred to as the blue line?

19 A. Let me go back to the blue line.

20 Q. It's the existing 46 KV alignment.

21 A. Yep. So what we have done, and that was the  
22 study I was referring to. We have a -- the LECG Group  
23 performed a severance analysis that in essence evaluated  
24 what the dollar value would be for the property on the  
25 existing, we'll call it the blue line, and then on the

1 reroute, which is the Wasatch segment, the red line.

2 And yes. They did do that. They do not go  
3 into, as the best of my understanding, to actual  
4 condemnation. But they look at property value impact.

5 **Q. Do you know what that number is that LECG told**  
6 **the company?**

7 A. I have it in my notes. The existing right of  
8 way value -- just make sure I get this right. So the  
9 Rocky Mountain Power. Let's see. The existing right of  
10 way value was 225,000. The alternative right of way  
11 value, according to the analysis was 390,000.

12 So in essence, what they do is, they look  
13 at -- they say there was 60 lots that would be impacted  
14 by the existing line. Is that the blue line? I think  
15 it is. Yeah, the blue line. There would be 60 lots  
16 impacted at \$250,000 a lot, times in essence a 10  
17 percent diminution of property value, equals a \$1.5  
18 million impact. So it would be a \$1.5 million impact to  
19 Promontory if we were to go after that.

20 MS. HOLBROOK: Mr. Chair, can I ask a quick  
21 question? Mr. Ambrose, really quickly, what year was  
22 that performed?

23 THE WITNESS: I'm glad you asked because the  
24 values would be very different today. This was  
25 performed in February 26, 2010.

1 MS. HOLBROOK: 2010?

2 THE WITNESS: 2010, yeah. Property values of  
3 today in Promontory are significantly higher than that  
4 now.

5 MS. HOLBROOK: Thank you.

6 MR. LEVAR: Okay. Thank you. Mr. Berg, do  
7 you have any cross with respect to those questions that  
8 Mr. Moscon just asked him?

9 MR. BERG: Nothing at this time. No.

10 MR. LEVAR: Okay. Why don't we -- since  
11 there's some discussion that needs to happen during the  
12 break, why don't we take a little longer than normal  
13 break. Why don't we just reconvene at 11 o'clock for  
14 legal argument. Thank you.

15 (Recess from 10:42 a.m. to 11:03 a.m.)

16 MR. LEVAR: Okay. We're back on the record.

17 MR. CLARK: Chair LeVar, before you get too  
18 far into the next part of our proceeding, I've got a  
19 question that I want to present or a request really.

20 My understanding of the cost differential  
21 between the -- again I'll go to the blue line and the  
22 red line, or the existing easement and the easement that  
23 Promontory has more recently granted, the alternate  
24 route. My understanding of the cost differences there  
25 is that Promontory's going to absorb them.

1 But I -- I am a little confused on that  
2 subject right now, and I am wondering if we could hear  
3 from the witness, the company's witness who is best able  
4 to address that for us, if that's -- I am -- well, I'll  
5 leave that to counsel. But that's an issue I need some  
6 more information on if the chair is willing to indulge  
7 that taking of a little more evidence in that area.

8 MR. MOSCON: And I am happy, if it helps, to  
9 just, I think, indicate what our undisputed facts on the  
10 topic from the agreement, and then if there's questions  
11 or you want to recall the witnesses, we're happy to do  
12 that. So here is my response to that. And we'll leave  
13 to Mr. Berg if he thinks I have overstated anything.

14 The company has an agreement with Promontory  
15 in which Promontory said, "I would like this line  
16 moved." And the company's witnesses have indicated this  
17 is consistent with their tariff. This isn't just unique  
18 to this case, where this would apply to the distribution  
19 in your back yard if you had one.

20 If you want a line moved on your property and  
21 moving it will not impact the reliability, safety,  
22 adequacy of the company's infrastructure, they will  
23 allow generally any landowner to dictate and say, "Move  
24 this line from my land here to here," but that landowner  
25 has to pay to do that.

1                   And so the -- what's been marked as -- or what  
2   was Exhibit 4 that we looked at, which was that  
3   construction agreement, that's where the company looked  
4   and said, "Okay, Promontory. There is now a 46 CV line  
5   running through your property here."

6                   And in the discussions about upgrading that to  
7   a larger line, Promontory said, "Look, we don't think  
8   you can build your bigger line here, but we don't want  
9   to fight. If you will agree to move it over here, still  
10   on our property, we will do two things. No. 1, we will  
11   give you a fixed-width easement that's as wide as you  
12   need for the 138 double circuit line, and in addition,  
13   we'll pay that incremental cost."

14                  So we had the testimony about how many extra  
15   poles. It's 15 extra poles, or how many more feet of  
16   conductor going across. And that was the number that  
17   was approximately \$275,000.

18                  The company looked at it and said, "Okay. The  
19   amount that it's going to cost extra to build the line  
20   over there on your property, because we have a few more  
21   poles, is approximately that. So if you pay us that,  
22   then we will go ahead and move the line over there  
23   because you kind of made our rate payers whole. You  
24   have paid for the extra poles and the extra feet of  
25   conductor. And you know, so here is our agreement and

1 here is when you are going to pay it."

2 So that was that cost. That number is  
3 different than some numbers that you may have heard  
4 where the company said, not having this conversation  
5 with Promontory, but internally, "Okay. We have  
6 somebody that doesn't want to cooperate potentially, or  
7 at least they are saying that they won't cooperate  
8 there. Let's huddle and decide how much could our rate  
9 payers or us be exposed to if we said, we think we can  
10 go where our line is now and you say we can't. And so  
11 if we get into a condemnation proceeding, what could  
12 that possibly cost us."

13 Now, keep in mind the company is still  
14 going -- if that were to happen, would argue and say,  
15 "Hey, we think we can go here, and we don't think we  
16 have to pay you anything," but there's a risk. And so  
17 that was the analysis that Mr. Ambrose testified to, and  
18 I think he ended up at approximately 1.5 million on just  
19 the severance damage, much less any of the actual taking  
20 of those lots or the golf course land across the  
21 Promontory piece.

22 That is when the company made the decision to  
23 say, "Okay. If we cooperate with them, like our tariff  
24 instructs us to do, we will get the benefit of a  
25 fixed-width easement. It won't cost our customers any

1 more to build the line, and we will avoid the risk of a  
2 potential adverse ruling in a condemnation proceeding."  
3 Which, by the way, that proceeding is going to have  
4 legal expenses and expert fees and take time.

5 So I don't know if that is what you were  
6 asking about, Mr. Clark, but those were the numbers, and  
7 that's where they are found is in that exhibit in the  
8 testimony.

9 MR. CLARK: That's really helpful, Mr. Moscon,  
10 and then -- and it's 80 percent of what I am trying to  
11 get straight. And then if we look at Exhibit CBA3.

12 MR. BERG: And I had kind of the same question  
13 along this line. If I -- let me know if this is what  
14 you are asking here. Under Route A, the cost is  
15 1,390,000. Under Route 2C, it's 2,350,000. The  
16 difference between those two would be 960,000.

17 And they are saying plus or minus 50 percent.  
18 So that would take you to about 470,000. Yet their  
19 contract is only for 275,000. So what happened to the  
20 other 200,000? Was that just a huge -- is that what you  
21 are getting at, I guess?

22 MR. CLARK: Well, I would have phrased it a  
23 little differently, but I'd like to understand exactly  
24 how those numbers relate to the explanation that  
25 Mr. Moscon has just given.

1 MR. MOSCON: I don't know that the CBA-3 that  
2 you are looking at, which I'm guessing was a very rough  
3 estimate put together some years ago, corresponds with  
4 what the cost turned into at the -- you know, fast  
5 forward several years when the contract was actually  
6 signed. So I am happy, because I recognize I am now  
7 going beyond what you actually heard. So if you want  
8 to -- you tell me if you want me to put someone on the  
9 stand.

10 My understanding is that when we actually got  
11 down to going down that path and figuring out what  
12 actual costs were, and you are mitigating this cost here  
13 and that cost there, but you are adding this one there,  
14 that that's where the number kind of came from and  
15 arose. But so that was the cost that the company felt,  
16 if they paid that incremental cost, that essentially  
17 made the rate payers kind of whole or even but --

18 MR. CLARK: From my perspective, if there is a  
19 witness that can put those, the Route A, Route C2  
20 numbers, put that differential sort of in context with  
21 the \$275,000 differential that you described, that's --  
22 that would be helpful.

23 MR. MOSCON: I think the closest we've got  
24 here is Mr. Ambrose, so let's see how far he can get us.

25 MR. CLARK: Okay.

1 MR. MOSCON: If the board would like, we can  
2 recall Mr. Ambrose.

3 MR. LEVAR: Yes. Why don't we do that. You  
4 are still under oath.

5 THE WITNESS: I'll do my best.

6 CHAD BURTON AMBROSE,  
7 Recalled as a witness at the instance of the petitioner,  
8 having been previously duly sworn, was examined and  
9 testified as follows:

10 FURTHER EXAMINATION

11 BY MR. MOSCON:

12 Q. So Mr. Ambrose, if you could turn in your  
13 binder to your copy of Exhibit CBA-3, and I believe you  
14 heard the discussion. And the question is, if you can  
15 explain for the board -- maybe I'll just phrase it this  
16 way.

17 How did the company come up with the number  
18 that it did to say, Promontory, you need to -- this is  
19 the dollar amount you need to pay us if we are going to  
20 agree to reroute the line?

21 A. I'll do my best. The negotiations with  
22 Promontory were significant. There were multiple  
23 meetings that occurred with Promontory, and the  
24 objective of CBA-3, as you see there, is to demonstrate  
25 that the company looked at multiple options. It didn't

1 just look at the boundary route. It didn't just look at  
2 the existing alignment. It looked at multiple options.

3 And through that process, as you can imagine,  
4 when we work with our customers and as we work with our  
5 property owners, specifically those that are requesting  
6 that the line be relocated, which it happens, we will go  
7 through different options. We will perform block  
8 estimates to get a general idea of what those costs  
9 would look like.

10 So the version that you see, CBA-3, was an  
11 early version in the negotiations with Promontory that  
12 allowed us to get an idea of what those costs were. And  
13 you are exactly right. The delta between the blue line  
14 and the red line is by far more than \$275,000.

15 We subsequently performed greater or tighter  
16 cost estimates on the project, as we realized that  
17 Promontory was in fact, No. 1, willing to provide the  
18 easements for Rocky Mountain Power. And they did that,  
19 and that is part of their cost. That is part of their  
20 cost. There was a credit given to them for the existing  
21 versus the new, but that incremental cost was theirs to  
22 bear to provide the easement in addition to the  
23 incremental costs for the project.

24 As we got close to December of 2010 when this  
25 agreement was signed, which I believe was the date, we

1 looked at our existing alignment. It remained at 1.3  
2 million, and I've got a sheet here. I can make copies  
3 and give them to you. But the boundary route, which is  
4 the other colored line, in essence settled down to about  
5 1.66 million dollars. So the delta there was about  
6 \$320,000.

7               So as we got closer on the negotiation, we  
8 refined our estimate. We put the boots on the ground.  
9 We counted poles and we did all the schematics. We  
10 surveyed, and we were able to come much closer to what  
11 the real project cost would look like. As we look at  
12 the value of the easements, as we look at that \$320,000  
13 delta, we settled at the 275,000.

14              Now, we believe that as a company it makes our  
15 customers whole. We are foregoing the potential costs  
16 of one and a half million dollars of trying to secure  
17 that additional easement along the existing right of  
18 way. We believe that through that negotiation, through  
19 that independent process of evaluating the reroute, that  
20 we are saving our customers significant money through  
21 doing this. Does that help?

22              MR. CLARK: Thanks. I appreciate the  
23 elaboration. It does help me.

24              MR. LEVAR: While we have you on the stand,  
25 Mr. Ambrose, any other board members with further

1 clarifications or questions?

2 MR. WHITE: I just want to make -- sorry,  
3 Chair. Just so I am clear, I am not sure I phrased this  
4 question earlier. Sorry about that. There is a current  
5 permit that would allow a 138 KV double circuit line on  
6 the existing 46. In other words, is there a permit from  
7 Summit County for the blue line from 138?

8 THE WITNESS: Great clarification. Let me  
9 grab the blue line here.

10 MR. WHITE: And the reason I guess partially  
11 why I am asking that is, I am just kind of playing  
12 through the scenarios. If Summit County were to say,  
13 no, you can't have a conditional use permit and then you  
14 go to -- and if Wasatch County says no, I guess I am  
15 just trying to think of, what's the plan C?

16 THE WITNESS: Let me clarify that. I am glad  
17 you brought up that because we don't want you to think  
18 that we have a conditional use permit for the blue line.  
19 So we have a conditional use permit that was given to  
20 Rocky Mountain Power a couple months ago by the Eastern  
21 Summit County planning commission for the red line. So  
22 the portion of the red line that is in Summit County,  
23 that is what we have permitted. We are in essence in an  
24 island with Wasatch County that is not permitted.

25 MR. WHITE: So going back to the, yeah, so

1 going back to -- if the board were to, I guess, deny  
2 your request and you were back to -- I don't know if you  
3 want to call it plan A or plan B at this point, and you  
4 were forced to go on the blue line for 138 double  
5 circuit, in addition to the condemnation and the  
6 litigation, etc., would you still be in a position where  
7 you were asking for some type of conditional right or  
8 permit from Summit County for that?

9 THE WITNESS: That is correct. Yes, we would.  
10 That's what I mean by, that's that enhanced permitting  
11 risk.

12 MR. WHITE: And if they say no and Wasatch  
13 County says no, what is your plan C?

14 THE WITNESS: It's really difficult, really  
15 difficult question to answer. I think our plan would  
16 be, in order to get the line in, it's -- as we have  
17 addressed, it's significant cost. No. 1, we would have  
18 to condemn at Promontory, and we would have to reapply,  
19 and that reapplication would be a year delay with Summit  
20 County, would be an additional year delay.

21 MR. WHITE: I appreciate the clarification.

22 THE WITNESS: Thank you.

23 MR. LEVAR: Anything else from board members?

24 MR. BERG: Chairman, on this issue, Wasatch  
25 County has concern that in our discovery requests we had

1 requested correspondence between Rocky Mountain Power  
2 and Promontory in coming up with the negotiation or  
3 coming up with the agreement. We were simply told,  
4 "Well, this is beyond the scope. You will get what you  
5 get with our prefiled testimony."

6 We received information with prefiled  
7 testimony. Upon reviewing that, an informal additional  
8 discovery request was made. Some of that was granted.  
9 One of the items requested was the missing page from the  
10 construction relocation agreement, which now they are  
11 referring to saying that there is condemnation.

12 Until today, this is the first time Wasatch  
13 County has ever heard that there would be condemnation  
14 proceedings on the blue line. We have never heard that,  
15 so now we are getting information that there's possible  
16 condemnation proceedings. And we have never heard that  
17 before.

18 I am not prepared to really address that or  
19 even look at that or look at -- I have not looked at  
20 Rocky Mountain Power's ability to do condemnation  
21 proceedings, what that would require. If we had  
22 received that information, then I would have been  
23 prepared on that. But unfortunately, I am not simply  
24 because of that.

25 In addition, I think we have been talking

1 about the blue line and what the requirements are. I  
2 think maybe it was misstated in the prior testimony, and  
3 maybe simply Promontory is saying that we think you only  
4 get 100 -- 46 K volt, KV line. You want to upgrade it.  
5 Your easement doesn't allow for that.

6 But I think that -- and I guess maybe this  
7 would be a question for Mr. Ambrose. That's why I  
8 wanted to bring it up. In Wasatch County's memorandum  
9 in opposition, Exhibit A, we did provide a copy of that  
10 Promontory easement. And nowhere, anywhere in there  
11 represents that it's a 46 KV line, which I think was  
12 represented.

13 I don't know if that was a simply a  
14 misstatement on that and that was Rocky Mountain -- not  
15 Rocky Mountain, Promontory's opinion on it. I guess  
16 maybe for clarification.

17 THE WITNESS: Happy to clarify. So Promontory  
18 is very clear that the existing easement does not treat  
19 a double circuit 138, 46 KV on the other side. The  
20 easement does in fact not say that. It does in fact not  
21 say that that easement grants Rocky Mountain Power the  
22 right to expand with a 138 double circuit. It does not  
23 do that.

24 That is Promontory's interpretation, and that  
25 is where they hold their ground on the fact that if we

1     were to go and secure an improved or fixed-width  
2     easement to be able to accommodate the 138, 46 K, that  
3     that would be the contention, and the line would need  
4     condemnation.

5             MR. BERG: But that's not necessarily Rocky  
6     Mountain Power's view of what that current easement is.

7             THE WITNESS: I am going to defer to my legal  
8     on that, because Matt, I believe you had a clarification  
9     you wanted to make. Is that correct?

10            MR. MOSCON: Well, again, I think this is the  
11     same thing. As far as legal conclusions, this is --  
12     this witness is not in a position to do that. We've  
13     already, I think, indicated the company's position that  
14     Promontory indicated that would be their fight.

15            And I was prepared -- the reason I hadn't  
16     brought it up earlier is, I was prepared, as requested  
17     earlier, in my closing remarks to identify under what  
18     circumstances and why it would be in a condemnation  
19     litigation. So I plan on addressing that rather than  
20     having our witness address it.

21            MR. BERG: And I am fine with the witness not  
22     addressing it. I guess Wasatch County's motion is  
23     simply that we strike any reference to condemnation  
24     proceedings. We've had absolutely no notice that that  
25     would even be a requirement at this point. And in fact

1 that specific page, the second to the last page of that  
2 contract, was not there. We made a request for that,  
3 and we were told that it would be forthcoming. And we  
4 never received it.

5 If I had received it, I would be prepared to  
6 address that issue today. But because we didn't receive  
7 it, Wasatch County requests that any reference to  
8 additional cost for a condemnation proceeding or any  
9 consideration for that not be allowed today.

10 MR. LEVAR: Okay. I'll just restate what I  
11 see is the motion. We have a motion to strike  
12 Mr. Ambrose's references to condemnation issues. I'll  
13 go to Mr. Moscon. This is an unusual issue though,  
14 because the testimony came in response to board  
15 questions, I think, rather than part of his prefiled  
16 testimony. So I'll let you -- what your thoughts on the  
17 motion.

18 MR. MOSCON: Sure. And I guess I am a little  
19 confused by the confusion. A couple of points. No. 1,  
20 there was a point about, we have never received a  
21 missing page. It is true that, as indicated, we  
22 indicated, trying to be helpful to the county, that they  
23 were welcome to just ask us if they wanted information.  
24 Didn't have to file a thing, and we would just get it to  
25 them.

1           In that context, there was a request for this  
2 document, the contract. It was sent over. Mr. Berg  
3 indicated there was a missing page. We said,  
4 "Absolutely, you can get it. Here, we will send it over  
5 to you." And until we arrived today, I didn't realize  
6 they never had it. There was never any motion to, you  
7 know, compel or any other notice that said, "Hey, we  
8 still don't have this missing page."

9           And while we were here, live in the hearing  
10 room when I pointed it out was the first time I realized  
11 that this page was missing. As indicated, Mr. Berg  
12 earlier, we have already sent for a runner to get the  
13 missing page to provide. And on cue, we now have them  
14 that we can provide to all parties because there's not  
15 been any kind of attempt to hide that one page that  
16 reserves --

17           (Inaudible and court reporter asked for  
18 clarification.)

19           MR. MOSCON: I can't even remember what I was  
20 saying. I'm saying, there's been no attempt to keep  
21 this information from the county. But more germane to  
22 the objection made on condemnation, the thing that I am,  
23 I guess, more puzzled by is, that has most definitely  
24 been brought up, not only prior to this board  
25 proceeding.

1 But it -- I mean, I am looking right here in  
2 Mr. Ambrose's prefiled testimony, which has already been  
3 admitted, where -- this is on page 8, lines 5 down where  
4 he is talking about, given the prospect of pursuing  
5 lengthy and costly litigation to enforce the existing  
6 easement rights, as well as the fact that Promontory is  
7 willing to grant fixed-width easements along Wasatch  
8 segment, so on and so forth.

9 So I think the company has been telling the  
10 story that one of the reasons why it did what it did is  
11 because it knew it was going to be in litigation. If it  
12 didn't. Now, it's true he didn't use the phrase  
13 "condemnation." But he said, we knew we were going to  
14 have to be in litigation with them.

15 Furthermore, in our -- in our legal terms, in  
16 our memorandum, we pointed out in our initial memo and  
17 in our reply memo -- I am now looking at page 9 where we  
18 talked about the fact that Promontory has contested the  
19 sufficiency of the existing center line easement. That  
20 was in our very first filing that we had with the  
21 company, or excuse me, with the board when it started.  
22 And we were referred to it again in our reply.

23 So our first memo on page 16 and our reply  
24 memo on page 9, so our very first and our very last  
25 filing with the board, we have taken the position that

1 one of the reasons we are here, one of the reasons we  
2 have done this, is the company was put in a position  
3 where it would be risking the outcome of litigation with  
4 Promontory, which could expose its customers to  
5 significant costs and time delays.

6 And as Mr. -- Board Member White has pointed  
7 out, and then what happens if Summit County doesn't want  
8 an upgraded line there? They won't permit it because  
9 they have an angry land owner, and we are right back  
10 here. So to say that there's a motion to strike the  
11 word "condemnation," I would oppose and say, this has  
12 been on the table from the very first filing.

13 MR. LEVAR: Thank you, Mr. Moscon. Mr. Berg,  
14 do you have anything further you want to say on your  
15 motion?

16 MR. BERG: Nothing further at this point. I  
17 just -- we didn't have anything. I guess, one of the  
18 big things is that additional page, and it might be  
19 irrelevant. I mean, the document, that page might not  
20 have any bearing. I still haven't until right now --

21 THE WITNESS: Can we read that page?

22 MR. BERG: I'd rather not read it in until I  
23 have had a chance to review it.

24 THE WITNESS: Okay.

25 MR. LEVAR: I think this motion to strike is

1 probably appropriate for me to take to the board, to the  
2 membership of the board, and then I guess my --  
3 following that, not knowing how we are going to deal  
4 with that motion, we probably need to ask Mr. Berg if  
5 you want time to look at this missing page before we  
6 move into the legal argument portion of the hearing.

7           So I'll set that question to the side, aside,  
8 but I'll come back to the board if there's any  
9 discussion or questions for the board regarding  
10 Mr. Berg's motion to strike portions of Mr. Ambrose's  
11 testimony this morning. Are there any questions from  
12 board members regarding the motion or comments or  
13 discussion from board members? I think this is probably  
14 a motion that's appropriate for the entire board to act  
15 on.

16           MR. CLARK: I'd just like a minute or two to  
17 look at the new page that we have just been given, and  
18 if somebody would identify what it -- describe it for  
19 the record, I think that would be helpful.

20           MR. MOSCON: Sure, and I'll note that in  
21 giving deference to the county, I recognize what  
22 happened is, earlier I had moved to be allowed to  
23 substitute the document that you were just handed in  
24 place of the exhibit. If you would turn in this  
25 document to, oh, approximately three or four pages from

1 the back, there is a signature block, right above  
2 Section 6, integration.

3 That page we had before, and if you turn right  
4 before it, the page that had -- starts 5.8 and ends in  
5 5.12, that was the missing page. And the operative  
6 language that we have been talking about is that 5.12  
7 where we had half of it, but we didn't have all of it.

8 And that's the thing that says that if this  
9 doesn't happen, if the company doesn't get its permit  
10 and, you know, to build a line at the new location, what  
11 you refer to as the red line, then in that event, either  
12 party or both parties is free to assert any and all  
13 rights, claims and defenses that were otherwise  
14 available to them, notwithstanding entering into this  
15 agreement.

16 And that's where I was saying, meaning that's  
17 where Promontory had said, if this doesn't go forward,  
18 we get all of our claims and defenses that -- about  
19 whether or not you are free to build your 138 double  
20 circuit line where you currently have a 46 KV single  
21 circuit line, and so that is the document.

22 So I realize -- I apologize, Chairman, I know  
23 you have a couple of competing motions. I had moved to  
24 substitute this to be the complete exhibit in place of  
25 what is currently attached to the doc -- to the record,

1 and then we still have the county's motion to strike all  
2 reference to condemnation. So I'll let you proceed in  
3 whatever order you think makes sense.

4 MR. LEVAR: I think we should deal with the  
5 motion to strike first.

6 MR. BERG: And I think at this point, having  
7 just reviewed this minutes ago, I had no idea what was  
8 on the page. I had no idea what the information was,  
9 and so I didn't know if what he was testifying had any  
10 relevance to it or not or if he was testifying about  
11 something that I had -- I had no idea. And so that was  
12 the basis for the motion to strike.

13 The remedies and the termination are typical  
14 portion of really almost any legal agreement between  
15 parties such as this, where they are saying, "Hey, even  
16 if, for whatever reason, one of us gets to terminate, no  
17 one loses any of their prior arguments that they had  
18 before." And I don't know that, having read it, that  
19 it's sufficient for a motion to strike.

20 And I think it's been noted that it was just  
21 concerning that we started making reference to documents  
22 that I know I had requested, hadn't received through  
23 whatever error. I am not saying there was any fault or  
24 attempt by Rocky Mountain Power to hide the ball or do  
25 anything like that. I am not suggesting that

1    whatsoever. It was simply, I had no idea what the page  
2    said. So I would withdraw the motion to strike at this  
3    point, having reviewed that.

4               MR. LEVAR: Okay. Thank you. So then we have  
5    a motion to enter into evidence this version of the  
6    agreement with the missing page. Any objection to that  
7    motion?

8               MR. BERG: No, your Honor. And I keep  
9    referring to you as your Honor. That's old habit. I  
10   apologize, Chairman.

11              MR. LEVAR: Sure. Whatever you want.  
12   Whatever you want to call me is fine.

13              MR. BERG: It will all be good, I promise  
14   that.

15              MR. LEVAR: That will be entered into  
16   evidence, so thank you. So I think we're finished with  
17   Mr. Ambrose on the stand, I think, unless -- I'll look  
18   at the board members. Anything else further for him?  
19   Okay. Thank you, Mr. Ambrose.

20              THE WITNESS: Thank you.

21              MR. LEVAR: And I think we are ready to move  
22   on to legal arguments. Probably make sense to go with  
23   petitioner first and then with the county, and I think  
24   we'll just let you take a reasonable amount of time. We  
25   have the briefs. If you want to take some time to

1 highlights briefs and just kind of move into board  
2 questions, if any board members want to jump in with  
3 questions, I think do this as a panel is probably  
4 the most efficient way to move forward.

5 So we'll go to you, Mr. Moscon. Oh,  
6 Mr. Clark.

7 MR. CLARK: Pardon me. I apologize for being  
8 tedious about this, but we still have then the  
9 expectation that we will hear something about what the  
10 nature, cost, duration of the potential contention  
11 between Promontory and the company would have been or,  
12 you know, the cause of action, whatever that would have  
13 amounted to. Is that still in your planning?

14 MR. MOSCON: Sure, and I'll indicate that  
15 during the break Mr. Berg and I conferred because we  
16 recognized there was kind of a request to make a  
17 joint --

18 MR. CLARK: Something.

19 MR. MOSCON: -- agreed-upon thing, and maybe  
20 I'll just state this, if this answers your question.  
21 And if Mr. Berg wants to agree or disagree. There is,  
22 just so we're clear -- no condemnation action has been  
23 filed or brought by the company. The company made its  
24 decision in part recognizing that it may be in a  
25 position where it is in condemnation if it went forward.

1 Now, one of the things that's already been  
2 highlighted, the actual easement, which it's probably in  
3 various places, but because I have it here as Exhibit A  
4 to the county's memorandum in opposition. It speaks in  
5 terms of a single line of towers. And we know as a  
6 matter of undisputed fact that this had been  
7 historically a 46 KV line.

8 Promontory had taken the position that this  
9 type of easement, which is not a fixed-width easement;  
10 it does not specify the actual use -- is limited to the  
11 historic use, meaning if you have been using it -- this  
12 is what you have been using this easement. And because  
13 it doesn't call out a wider 138, nor does it call out  
14 double circuit, that if you are going to build a bigger,  
15 wider tower here, you are expanding the easement, and  
16 you cannot do that.

17 The company, I should tell you, does not  
18 necessarily agree with that. And the company, just so  
19 we're clear, is not here saying to the board, "Hey, we  
20 can't put a 138 KV line where there used to be a 46 KV  
21 line." But what the company is telling the board is,  
22 this landowner was not going to give the company  
23 permission to put the 138 double circuit line where the  
24 company had the 46 KV line.

25 So they would say, "You are not welcome to

1 bring your bull dozers or tractors or equipment here,  
2 and we will fight you, and we will see you in court."  
3 At which point the company had to weigh two things.

4 The company had to say, they are willing to  
5 give us a fixed-width easement for the new upgraded  
6 line, still on their property, not moving it to someone  
7 else's property. And they are willing to pay whatever  
8 the incremental cost is to, you know, add towers and  
9 poles if we cooperate with them.

10 Moreover, our tariff tells us that we should,  
11 as a standard practice, cooperate with property owners  
12 and move fixtures on their property if they are willing  
13 to pay incremental costs. On the other hand, let's --  
14 if they -- if we don't do that and we go to a legal  
15 battle, we may win. We may convince a court that you  
16 are not -- you don't have to condemn, that you can build  
17 a 138 KV line here.

18 But the company has to concede this very old  
19 easement is less than crystal clear, and there is risk  
20 there. There is risk of, what are the costs of that  
21 litigation? What is the duration of that litigation?  
22 And how much money would the company's customers be  
23 exposed to if that litigation went against it and a  
24 court said, "Sorry, company. We looked at your old  
25 easement, but we do think you are expanding the historic

1 use. We don't think you had permission to do that. You  
2 are going to pay for the extra width that you have  
3 taken, including severance damage."

4 And that's the testimony you heard from  
5 Mr. Ambrose about that, I think that number was  
6 approximately \$1.5 million just on the severance piece,  
7 to Board Member Holbrook's point, in 2010 values,  
8 compared to them cooperatively giving them an easement  
9 sufficient for this line.

10 Based on that, it was the company's standard  
11 practice -- this is not just an unusual thing here for  
12 Promontory. This is standard practice to say, if we  
13 have a property owner who is going to give us, without  
14 fighting, use of their property for our facility, and  
15 they are going to pay any incremental costs to put it  
16 where on their property they want, rather than where the  
17 straight line as the crow flies kind of would be, and we  
18 avoid the costs of litigation, the time of litigation,  
19 and the potential risk of litigation, that is absolutely  
20 what we will do every time, so long as it doesn't, you  
21 know, make the line less safe or reliable.

22 And so that's the process the company went  
23 through. To answer your question, I don't know that  
24 either Wasatch County or the company could give you an  
25 exact number of what it would cost, how long it would

1 take because it hasn't been filed. But what I can tell  
2 you is, those are essentially the arguments that would  
3 be made and the risks that the company and its customers  
4 would be exposed to is that the -- that Promontory would  
5 be fighting them saying, you don't have a sufficient  
6 easement for this project. We are going to fight it and  
7 say that you can't have it.

8 And we get back to the need point. One of the  
9 arguments that I anticipate we are going to hear from  
10 the county, because it's in their papers, is, you don't  
11 need this. The need isn't satisfied because you can put  
12 it somewhere else. Keep in mind, that is the same thing  
13 a utility has to show to condemn. To condemn property,  
14 a utility has to show we need property.

15 All Wasatch has to do is show up and say,  
16 "Hey, they don't need this alignment because they will  
17 give them that property over there. They don't need --  
18 they can't condemn this. They don't need it because I  
19 am giving them property right over there."

20 So the company gets put in this box where it's  
21 got the county, Wasatch County, saying, "You don't need  
22 this permit because we like the line better over there  
23 where you have it." And then it has that property owner  
24 saying, "I am going to fight you, and I am going to give  
25 you property over here. And if you try and condemn, I

1 can say always say, you don't need to condemn because I  
2 am going to give you property over there."

3 It has the risk that Board Member White  
4 pointed out where here we have a very angry property  
5 owner, Black Rock, that has gone to the county and said,  
6 "We can't have this. We can't have this." And the  
7 county, understandably, has tried to protect the  
8 interests of its constituents. That is completely  
9 reasonable.

10 It's also completely reasonable to expect that  
11 same process could play out in Summit County, as Board  
12 Member White was reflecting on when he was talking to  
13 Mr. Ambrose, that says: If we don't do this and we put  
14 you back at square one, is there any certainty that this  
15 same board won't be reconvened in a year because Summit  
16 County won't give you a permit to build a 138 KV line  
17 right here where the blue line is, as you call it, where  
18 the 46 KV line is. And the answer to that is, you are  
19 right. There is no assurance. That could happen.

20 So that is essentially the process that  
21 brought the company to where we are now where they  
22 found, we have a willing property owner who is going to  
23 give us the easement that we need.

24 The company understands that Wasatch County  
25 doesn't like this line. The reality is, this is a 67

1 plus mile line, and only one quarter of a mile of it is  
2 in Wasatch County. They and Heber Power and Light are  
3 one of the main beneficiaries of this line, but only .26  
4 of a mile will actually cut across the corner of the  
5 county. And yet, that is not something that the county  
6 is willing at this point to agree to. And hence, we are  
7 here litigating the case that we are.

8 I am kind of meandering past your question  
9 into my closing, so I don't know, Chair, if you want me  
10 to keep going or stop. It seems like --

11 MR. CLARK: No, I think you are well into your  
12 argument, and you have addressed my issue, and so I  
13 appreciate it.

14 MR. MOSCON: I will -- I suppose I'll just  
15 even make it more brief. Because I -- by the way, the  
16 company appreciates the time and preparedness of the  
17 board because -- and it's a little unusual because as we  
18 proceeded today and we have had so many motions on  
19 discovery, what's germane, what's relevant, who should  
20 or shouldn't be a party.

21 So I kind of feel like the board's heard my  
22 arguments at least three or four times more than you  
23 would like to hear them. So I won't try and belabor it  
24 too much. I honestly think the single best recitation  
25 of what the issue is before the board actually comes

1 from, whoever I give credit to, that wrote the most  
2 recent order of the board on the Black Rock intervention  
3 issue.

4 The board says this. "The single question for  
5 the board, as dictated by the act, is whether the  
6 proposed facility is needed to provide safe, reliable,  
7 adequate and efficient service to the customers of the  
8 public utility."

9 That is the single question that we are here  
10 for today. That has been unrefuted all along. The  
11 testimony of Mr. Shortt is unrefuted that the company  
12 needs this upgrade. This is unrefuted by anyone.

13 The testimony of Mr. Watts and of Mr. Ambrose  
14 is unrefuted that standard procedure, standard practice  
15 for the utility in this set of circumstances where you  
16 have competing interests of counties, property owners,  
17 different counties, different property owners, is to do  
18 what the company did in this circumstance, which is to  
19 work with the property owner who is going to be bearing  
20 the burden of this infrastructure on their property,  
21 have them pay the incremental cost, and to locate it on  
22 the property where they will grant an easement to avoid  
23 the risk to the customers of the company of potentially  
24 an extremely much more expensive segment for this line  
25 and huge delay.

1           One of the problems the company faces, of  
2   course, is delay. How long does an appeal last? How  
3   long does a trial last on whether the company can  
4   forcibly condemn or not? The company doesn't know that,  
5   but what it does know is that this facility is needed  
6   now for its customers.

7           And when it has a willing property owner,  
8   where it won't have to litigate, and it knows, in the  
9   worst case scenario we'll have to go to the board, but  
10   we know that that board has a very truncated and  
11   abbreviated schedule. That is the fastest, i.e., most  
12   efficient thing to do in the parlance of the statute on  
13   behalf of the customers of the company, which is exactly  
14   why the company is here.

15           I won't belabor, but I'll highlight for the  
16   board the -- in our reply memorandum the numerous cases  
17   that we have cited that have said to -- these have been  
18   Supreme Courts of Utah and other states. This issue has  
19   come up repeatedly where someone says -- and it may be  
20   in a condemnation proceeding. You don't need this here  
21   because you can put it there, and people on both sides  
22   of the aisle want to push back.

23           Mr. Watts pointed out the fact that the  
24   farther away from Black Rock the lines go up the hill,  
25   the more the ridge line is breached that the county

1 doesn't like. And the farther down they come off the  
2 hill to get away from the ridge line, the closer they  
3 are to the buildings or the structures of Black Rock.

4 And you can't ever get to a place where you  
5 allow everybody to say, "Well, you can't put it here  
6 because I think you can put it there." Ultimately what  
7 the cases tell this board, what the Utah Supreme Court  
8 has said with respect to utilities, is that the utility,  
9 the one that has the engineers, the one that owns and  
10 operates the system, needs to use its reasonable efforts  
11 to identify a suitable location.

12 And unless they have completely abused their  
13 discretion, that choice, that selection will not be  
14 disturbed by the courts. Because it's their -- they are  
15 the ones running it. We are not in a position of siting  
16 infrastructure. When I say we, judges, board members,  
17 what have you, tribunals. That's not what we do for our  
18 daily jobs. That is what the power company does.

19 So unless there's evidence that there has been  
20 a complete abuse of discretion, the company's selection  
21 for a location of a facility, that discretion is going  
22 to stay with the company.

23 Those cases have been unrefuted. The only  
24 argument again is whether it is quote, unquote, needed.  
25 I believe the board has heard repeatedly why the company

1 felt it needed to work cooperatively with Promontory to  
2 get this easement, to get this process finished to  
3 provide the power to the load area. Unless the board  
4 has other questions, I feel like you have probably heard  
5 enough of my argument.

6 MR. LEVAR: I have one question, Mr. Moscon.  
7 With this line of condemnation cases, these cases apply  
8 not just to political subdivisions with elected  
9 officials, but they apply to Rocky Mountain Power and  
10 other utilities, right? Am I correct in that  
11 assumption?

12 MR. MOSCON: If I understand your question,  
13 yeah. If this case law that we have cited in our brief,  
14 that applies to utilities?

15 MR. LEVAR: Yes.

16 MR. MOSCON: Yes.

17 MR. LEVAR: Okay. Thank you. Other questions  
18 from board members for Mr. Moscon? No. Okay. Thank  
19 you. Mr. Berg.

20 MR. BERG: And I know the board, again, has  
21 already read our memorandum in opposition. They know  
22 Wasatch County's position on this. As you look at the  
23 requirements of the statute, which Mr. Moscon has  
24 already reviewed, the subsection D of 54-14-303 says, "A  
25 local government has prohibited construction of a

1 facility which is needed to provide safe, reliable,  
2 adequate and efficient service to its -- to the  
3 customers of the public utility."

4 I don't think there's any question that  
5 Wasatch County had prohibited this. And I know it's not  
6 in the purview of the board to go into the details as to  
7 ridge line violations or conditional use permits or  
8 anything like that. But needless to say, it has been  
9 prohibited.

10 And as Mr. Moscon indicated, where the power  
11 line crosses over the ridge line and there is the ridge  
12 line ordinance, where it comes within a certain location  
13 of Black Rock Ridge's community, which is already there,  
14 is already built; there are already homes existing;  
15 there are already individuals living there, as the  
16 county looked at that, there was no way that they could  
17 grant the required conditional use permit.

18 But those issues aren't before the board  
19 today. What's before the board is simply what we have  
20 been talking about is, if this is needed to provide  
21 safe, reliable, adequate, efficient service.

22 As we heard from Mr. Shortt on  
23 cross-examination, in looking at the red line and the  
24 blue line on that exhibit, 20 poles versus 15 poles is  
25 safer, as well as it's more reliable statistically. And

1 I think that's important for the board to consider, when  
2 they look at it, that they are adding additional poles,  
3 that it doesn't increase the efficiency. It doesn't  
4 make it more adequate.

5 He said that those two things were really  
6 essentially the same with those poles. So they are not  
7 getting the benefit of added efficiency or more adequate  
8 line. But they are getting -- even if it -- he says  
9 statistically, the risk that it's not as safe as well,  
10 as it's not as reliable.

11 And even in his prefiled testimony, he talks  
12 about technically, the line could go on the Wasatch  
13 County segment or technically it's feasible. But it's  
14 also technically just as feasible from his standpoint to  
15 keep at the blue line. So we're looking at the red line  
16 versus the blue line here.

17 And the county is not trying to say that this  
18 is a situation where, if Rocky Mountain Power had come  
19 saying, "Hey, we need this conditional use permit,  
20 simply" -- well, even in fact as they refer to the line  
21 going down the Mayflower issue. That wasn't something  
22 where it was -- we have an existing easement. We have  
23 had it for over a hundred years, and we feel that we  
24 could still keep the line there, even if the property  
25 owner is contesting it.

1           This was a completely different scenario where  
2   they said, "Hey, we need this," and Wasatch County  
3   acknowledged, okay, we need this power. The homes in my  
4   understanding of when that line was put in, those homes  
5   built up to the line. That wasn't something where the  
6   line was put in right in the back of someone's back  
7   yard. But someone made the conscious decision in those  
8   exhibits that were introduced there at the beginning as  
9   supplemental exhibits, made the decision, I am fine with  
10   moving my home that close. This is where I want to be.  
11   I am fine with that power line.

12           This is a different situation where they are  
13   asking for a conditional use permit that goes right next  
14   to someone's home that's already there, when Promontory,  
15   even if they have a master plan to do something, there  
16   are no homes there. There is nothing there. There is  
17   raw land there.

18           And is the board supposed to look at property  
19   values? No. You are supposed to look and decide  
20   whether it's reliable, safe, adequate and efficient.  
21   And I think in this situation where they already have an  
22   existing easement, that even based on Mr. Shortt's  
23   testimony, it would be safer, even if it's a minor  
24   degree safer. It would be more reliable, even if it's  
25   just a minor degree more reliable.

1           The county asks that the board deny the  
2 petition and not issue a conditional use permit at this  
3 time.

4           So I'm sorry. One further thing I just wanted  
5 to clarify, and I think we had already talked about  
6 this. Mr. Moscon talked about this. I apologize. It  
7 seems like I am repeating. And I don't know if you had  
8 actually read just the language we have in Exhibit A of  
9 our reply, or our memorandum in opposition.

10           But looking at the easement that they have,  
11 there is no reference whatsoever whether it's a 46 or a  
12 138 or anything. It simply says there in that first  
13 paragraph down on the 4th line starting, "The right to  
14 erect, operate, and maintain electric power transmission  
15 and telephone circuits and appurtenances attached to a  
16 single line of towers."

17           And I think we have heard that Rocky Mountain  
18 Power said that their position is they could keep it  
19 there, but it's Promontory saying, "No, we're fighting  
20 it." Promontory is the one saying, "No, we don't think  
21 that it should be there." And I am not trying to -- I  
22 hope I am not misstating Rocky Mountain Power's  
23 position, but they feel like that easement is there.

24           Even in the appeal that Mr. Ambrose read that  
25 small portion of, indicates as well that Rocky Mountain

1 Power feels that that easement is sufficient, a single  
2 pole easement is sufficient to upgrade from a 46 volt  
3 line to 138 volt line.

4 And Wasatch County based on that, based on the  
5 fact that it would be safer, even if it's a minor  
6 degree, according to Mr. Shortt, as well as more  
7 reliable, that the fact that Rocky Mountain Power can  
8 use that existing easement on Promontory's property, it  
9 takes away the need. It takes away the need to the  
10 Wasatch County segment. Any questions from the board?

11 MR. LEVAR: I have one question for you,  
12 Mr. Berg. Reading your legal brief, I think it's clear  
13 what your position is on the line of condemnation cases.  
14 You have made your argument why the court cases that  
15 define the term "needed" in the condemnation case should  
16 not apply to this statute.

17 What I want to clarify is, if we were to go  
18 the other way, and if this board were to adopt the case  
19 law defining needed in the condemnation context and  
20 apply it to the terms in this act, is it your position  
21 that under that case law, there -- that Rocky Mountain  
22 Power's choice of the red line over the blue line is  
23 arbitrary and capricious?

24 MR. BERG: Well, I think at this point,  
25 looking at whether or not it's arbitrary and capricious,

1 I guess it comes down to the fact that it's an agreement  
2 from one landowner and how that affects the other  
3 landowners. You are looking at Promontory as an  
4 investor, and they want to do it for their benefit. And  
5 is that going to be allowed to be a detriment to the  
6 other adjoining landowners?

7 They are wanting to increase the value of  
8 their property, and in doing so they are wanting to  
9 decrease the value of -- or not wanting to. It's a -- I  
10 am not saying that they are trying to do that, but it  
11 has the potential of that effect on the current  
12 landowners next to them, especially Black Rock Ridge, of  
13 decreasing the value of those properties.

14 And does that meet the standard arbitrary and  
15 capricious? I don't know that it -- that that does. I  
16 haven't looked directly into that to look at it.  
17 Wasatch County's position is that when you look at the  
18 statute, if something's not defined in the statute, then  
19 we need to go by the plain definition of the word. And  
20 that's the position of the county that this line is not  
21 needed as of that requirement.

22 MR. LEVAR: Okay. Thank you. That's the only  
23 question I have. I'll go to other board members.

24 Mr. White.

25 MR. WHITE: Just getting to your legal

1 argument, it seems to be like the, kind of the crux of  
2 -- you know, a lot of what we are thinking about here.  
3 But help me understand. Tell me if I am  
4 mischaracterizing, is that the county's position that it  
5 agreed -- it needed to provide, you know, X, Y, Z, blah  
6 blah. Are you reading that, that when the statute uses  
7 the word construction of a facility, that it really  
8 intended to say, would be impossible to do without?

9 In other words, I mean without -- is that your  
10 view that a particular location, not just the  
11 construction of the facility, but the construction of a  
12 facility in a particular location would be impossible to  
13 do without? Is that -- help me understand if that's  
14 what the county position is.

15 MR. BERG: I think that's what the county is  
16 looking at is because there's already the existing  
17 agreement across Promontory's property, because it's a  
18 single line easement, doesn't say anything about the  
19 width of the pole. Doesn't say anything about the  
20 voltage of the line, whether it's a 46 or a 138, that  
21 because that's there, the Wasatch County segment is  
22 really just -- it's a convenience for the landowner and  
23 so it's not needed.

24 It's not needed to Rocky Mountain Power to  
25 provide the safe, reliable, adequate and efficient

1 service because they already have what they need to be  
2 able to do that. If the Wasatch County segment is not  
3 granted a conditional use permit by this board, then  
4 Rocky Mountain Power can still complete the line.

5 MR. WHITE: Thanks.

6 MR. LEVAR: Is that all your questions?

7 MR. WHITE: That's it.

8 MR. LEVAR: Any other board questions? No.  
9 Okay. Well, thank you. I think it's probably  
10 appropriate to break and return for a deliberation  
11 meeting of the board. I think it's probably safe to say  
12 that questions of counsel might be helpful during the  
13 deliberation session.

14 I am going to go to the board and see if  
15 there's any need to have the witnesses present for  
16 deliberation, if anyone sees any need to have -- to  
17 recall fact witnesses while we're deliberating. I'll  
18 put that question to other board members.

19 MR. WILSON: I don't think I would have any  
20 questions.

21 MS. HOLBROOK: I don't know that we would need  
22 that, given that Rocky Mountain Power has already  
23 offered to -- any upgraded information would be  
24 considered financial. Would that be correct? From the  
25 witnesses. And I don't see a need to do that so...

1 MR. LEVAR: Okay.

2 MR. MOSCON: Yeah, Chair, I don't see a need  
3 to have the witnesses here. I mean, if they are here,  
4 fine. But to me counsel is probably sufficient.

5 MR. CLARK: I have already demonstrated a lack  
6 of my own understanding of when I'll need witnesses or  
7 not. But I think I am generally in agreement that any  
8 questions I would have would best be directed to counsel  
9 at this point.

10 MR. LEVAR: Okay. Anything else from the  
11 parties then before we break and reconvene for  
12 deliberation?

13 MR. MOSCON: I just wanted to make one point  
14 because I feel like, after hearing Mr. Berg explain  
15 something in your dialogue with him, I may have  
16 misunderstood a question that you had asked me, so I  
17 wanted to clarify one thing. It goes to the point about  
18 whether the term "need" as it is used in the  
19 condemnation jurisprudence of this state, how applicable  
20 that is to this situation. And I wanted to just make  
21 this point.

22 It cannot be the law of Utah, nor would it, I  
23 argue, it be good policy that the company gets more  
24 deference and is allowed to simply show that location  
25 will do, it's suitable, it's not arbitrary, if the

1 company forcibly takes things. But if the company  
2 cooperates with property owners, as it's required to do  
3 under its tariff, and negotiates location with them,  
4 that there is then a higher standard of need that they  
5 would have to show to get the line approved because they  
6 are not in a condemnation proceeding.

7 I would simply say, that would make no sense  
8 and would be bad policy. It should be flipped where the  
9 policy should be to in fact encourage what the company  
10 did here, which is to negotiate. So I stand by my  
11 answer that, yes, need as defined in jurisprudence  
12 should -- that same should apply here.

13 But I don't know that I actually -- so it's  
14 the same, yes. But the background I gave it was off  
15 base, and I apologize for that.

16 MR. LEVAR: Let me clarify my question and see  
17 if you want to say any more. The reason for my  
18 question, we received a public comment statement  
19 yesterday afternoon that made the argument that because  
20 the condemnation cases apply to elected officials and  
21 political subdivisions, it shouldn't be applied to this  
22 situation.

23 And so I just wanted to clarify whether the  
24 condemnation cases applied to utilities also, and I  
25 think you have answered that question. And I don't know

1 if that -- that public comment was received late  
2 yesterday. I assume it's been posted to the website,  
3 and obviously, it's a public comment, not part of the  
4 record. But that was the basis for my question.

5 And so I think, having said that, I think you  
6 have answered the question I had. But if you wanted to  
7 comment any further.

8 MR. MOSCON: No. I was going to say, I hadn't  
9 seen whatever comment you were referring to. I know  
10 there was just apparently one filed this morning that I  
11 haven't seen or read. So I don't know if it that's the  
12 one that you are referring to. But if the question's  
13 answered, I'll leave it at that.

14 MR. LEVAR: And I am looking on the website,  
15 and it looks like that comment is not yet posted, but  
16 I'll make sure it's posted to the website during the  
17 break. It was just a public comment that was provided  
18 to the board yesterday afternoon. So but thank you. I  
19 think you have answered my question.

20 Anything further from parties before the break  
21 and reconvene at one o'clock for deliberation?

22 MR. BERG: Nothing from Wasatch County.

23 MR. LEVAR: Thank you. We'll reconvene for  
24 deliberation hearing at one o'clock.

25 (Lunch recess from 12:01 p.m. to 1:04 p.m.)

1 MR. LEVAR: Okay. We're back on the record.  
2 And I should have given a little more explanation before  
3 we broke before deliberation of why we took a break  
4 instead of just continuing right in deliberation.

5 I forgot to mention that when we issued the  
6 notice of hearings in this docket, we said that  
7 deliberation hearing would begin immediately following  
8 the hearing. However, we also have to put it on the  
9 public notice website, and we took our best conservative  
10 guess of what the earliest we might start deliberating  
11 for our public notice website, and we put one o'clock  
12 p.m. there. So I should have given that explanation  
13 before we broke instead of just continuing on.

14 But with that, we are into the deliberation  
15 portion of this hearing. And so that just begins with  
16 board discussions. There may be questions for the  
17 counsel, for the parties. But I will open the hearing  
18 for deliberation discussions. While we all shuffle  
19 uncomfortably hoping somebody else talks first. Go  
20 ahead.

21 MR. CLARK: Far be it from me, Mr. Chairman.

22 MR. LEVAR: Go ahead.

23 MR. CLARK: Well, fools rush in, and I guess  
24 I'm going to rush in. I just, maybe to start the  
25 discussion, I'll give my colleagues here a sense of what

1 I am thinking about at least.

2 And I don't think that the board, the board's  
3 consideration should be one of examining the question or  
4 the issue from the perspective of, it's not needed here  
5 because it can go over there. I don't think that's what  
6 the -- what need means in the statute. It's not -- I  
7 think it would place the board in an untenable position  
8 if we concluded that.

9 To me really the central question has become,  
10 is the company's plan, Rocky Mountain Power's plan  
11 and -- a reasonably efficient way to meet the  
12 demonstrated need. And my tentative conclusion, at  
13 least, is that it is.

14 I certainly think it's unquestioned that it's  
15 needed for reliability, that it's a safe approach, that  
16 it's adequate, but the question of efficiency has been  
17 one that I have mulled over at some length.

18 And based on the situation that the company  
19 was in with respect to Promontory and the existing  
20 easement and the issues there that it faced and  
21 Promontory's willingness to provide another easement on  
22 Promontory's property, I think it was a reasonable thing  
23 for the utility in this instance to address those  
24 uncertainties and risks in the way that it did.

25 So my inclination, at least as we begin our

1     deliberation, would be to -- would be to direct that the  
2     facility be constructed as it's been proposed.

3             MR. LEVAR: I'll just briefly say, I think I  
4     am getting to the same place by a slightly different  
5     path, but to the same place. My analysis would be based  
6     on whether the choice of the route was arbitrary,  
7     capricious.

8             In my view legally I find that the analogy of  
9     the condemnation cases to be pretty strong here. It's  
10    very similar statutory language, same policy issues.  
11    The courts have had lots of opportunities to evaluate  
12    what's the right way to look at choices like this, the  
13    exact same kind of choices we're dealing with here.

14            And I think it makes a lot of sense for  
15    purposes of defining the term "needed" to apply that  
16    case law from the condemnation cases, which leads me to  
17    the legal question of, was the decision to choose the  
18    red line arbitrary and capricious. And I don't think we  
19    have a record that supports an arbitrary and capricious  
20    finding.

21            And I also think that's supported by the  
22    statutory definition of facility. To me that's -- was  
23    very significant as I was looking at the legal issues  
24    involved in the case. So that's how I am viewing it at  
25    this point. Subject to further discussion.

1 MR. WHITE: I guess from a general policy  
2 perspective, I agree with some of the points that were  
3 made, actually Black Rock's most recently filed public  
4 comments. I am not in love with the idea of Rocky  
5 Mountain Power being forced to choose between litigants  
6 and for that choice to ultimately drive route design.  
7 But based on what I have heard on the record and  
8 testimony, it appears that customers need the line and  
9 it has to go somewhere.

10 And the company appears, as mentioned by these  
11 other board members, they appear to have made a reasoned  
12 decision based upon the known risks at the time. But  
13 ultimately I am not here to make policy. I am just  
14 trying to apply the mandates that we have been given as  
15 a board under the statute.

16 And I'll just read it again, the language,  
17 that under Utah code 54-14-303, sub D, which essentially  
18 says, "The task of the board is to determine if a local  
19 governments has prohibited construction of a facility  
20 which is needed to provide safe, reliable, adequate and  
21 efficient service for the customers of the public  
22 utility."

23 I haven't heard testimony refuting that. I  
24 guess the testimony I have heard, and by testimony it's  
25 more legal argument, is this notion that, again, as I

1 alluded to earlier in a question to Mr. Berg, is,  
2 essentially reading further into that language this  
3 concept of construction of a facility is really about  
4 precise location. And it would be impossible to do it  
5 without that precise location.

6 And I don't believe based upon, you know, my  
7 reading of the statute, I don't think legislators  
8 intended to add that additional concept into that  
9 language. Because in reality, with enough money and the  
10 type of creative engineering you would need, there  
11 really -- there's almost no location -- there's almost  
12 no location for a transmission line that would be  
13 absolutely necessary. I can't conceive of a  
14 possibility. I'm sure if you thought long enough, you  
15 could.

16 But to me that would ultimately put this board  
17 into a box where you would get ping-ponged back and  
18 forth between local government entities trying to  
19 articulate why that precise location was not  
20 particular -- or absolutely necessary to a project. And  
21 I think it's for that reason the legislature had that  
22 language and did not expand beyond that. If they wanted  
23 to, I guess, I suppose they could have.

24 But ultimately what this board provides in my  
25 opinion is a safety valve for local governments who are

1 put in a position where they have to abide and listen to  
2 the preferences of their local residents. Whereas, this  
3 board is removed from that, and again, we are looking at  
4 the simple question of what is -- is a project needed  
5 for -- to provide electric service to customers.

6 And again, I just -- I haven't heard testimony  
7 that opposes that. So I get where Wasatch County is  
8 coming from. They have got their own residents to deal  
9 with, and I recognize that. But I guess, again, if I  
10 were to -- if I were to vote right now, I guess what I  
11 would say is, I would vote to, you know, grant Rocky  
12 Mountain Power's request because of those reasons,  
13 because of the strict legal interpretation and the fact  
14 that I don't see that this project is not needed.

15 It's got to go somewhere. Again, I alluded to  
16 this with the hypothetical earlier, that one concern I  
17 would have is that if we were to take this logic that  
18 Wasatch County provides for us to ultimate conclusion,  
19 we could easily be back in the same situation with  
20 Summit County saying the same thing if it hasn't been  
21 permitted yet.

22 And so ultimately, the buck's got to the stop  
23 somewhere. And to me, that's why I would ultimately  
24 vote to grant the permit, or grant the request. Sorry  
25 about that.

1 MR. LEVAR: Ms. Holbrook?

2 MS. HOLBROOK: Thank you. So as a  
3 representative of the Utah League of Cities and Towns on  
4 this board, my perspective is slightly different. I do  
5 understand inherently what the planning commissions, the  
6 planning commissioners, and the county is looking at in  
7 terms of what can they do to make sure that they are  
8 representative of all of their residents and getting  
9 them basically the best deal that they can.

10 And I also recognize that with growth and  
11 everything else, that we have to have reliable service,  
12 and we have to be able to make it in the most cost  
13 effective fashion.

14 And my perspective is that I see this as, an  
15 entity went to Rocky Mountain Power and said, "Here is  
16 what we want." And it's still on their property. And  
17 ultimately, they are bearing the costs for any of that.  
18 And as I see that, to me that is probably the most  
19 effective means of getting reliable, efficient service  
20 to the residents.

21 As we all know, that there's going to be  
22 continued growth this area, and as far as infrastructure  
23 investment, which I sat on a planning commission for  
24 seven years, and I understand that we have to be able to  
25 provide our residents with the things that they require.

1           We do a lot of things differently now. We run  
2   our businesses out of our homes. We do a lot of  
3   different things, and so from that perspective, in  
4   addition to what other board members have already  
5   stated, I believe that I would be in a position of  
6   granting the request.

7           MR. WILSON: I could say ditto, but I want to  
8   explain. I am the representative from the UAC, the Utah  
9   Association of Counties, so Mr. Berg may not talk to me  
10   if he sees me at a conference in the future.

11           But I have likened this in my own mind to try  
12   and decide facilities within a county, whether it be a  
13   jail, a solid waste facility or anything. Nobody is  
14   happy. We all are familiar with the term, NIMBY  
15   project. Not in my back yard.

16           I have been persuaded. I started out, as I  
17   initially read things, that I would not be prone to  
18   grant Rocky Mountain Power's request. But I always back  
19   up and say, what is the big picture here? And is this a  
20   common sense approach?

21           Having gone through condemnation proceedings  
22   in my capacity in the county before and threatening  
23   those, I recognize there is a real cost if they were to  
24   push them there, whether they won or not. That cost  
25   would be borne by rate payers in the end, and indeed,

1 Promontory may be successful in arguing that that's an  
2 expanded route.

3 I have worked with Utah Power, Rocky Mountain  
4 Power now, on relocating lines when we expand roads and  
5 such, and it's always difficult. But they have been  
6 conducive to trying to work with local governments and  
7 property owners in attempting to do that when the  
8 property owner's willing to pay the cost.

9 I think Wasatch County's definition of needed  
10 may be too narrow. I think everyone would agree, and I  
11 think there was something in one of the planning  
12 commissions or the board of adjustment where it was  
13 acknowledged that an upgrade is needed.

14 And Wasatch County would like to interpret  
15 that as associated with a particular route. I  
16 understand those arguments. Nevertheless, in my  
17 opinion, the project is needed for service. All of us  
18 hate it when our electrical service is interrupted.

19 And Mr. Berg, Wasatch County acknowledged they  
20 have denied it or prohibited the thing from going  
21 forward, so it throws it into this board's court. And I  
22 am the neophyte here. But in the end, to me the common  
23 sense approach in looking at the criteria the  
24 legislature has set forth, and I think that could be  
25 enhanced and helpful if this board meets again. I know

1 they haven't met very frequently. But I think some  
2 improvements in definitions could be helpful.

3 Nevertheless, if I were to vote now, I would  
4 vote to grant Rocky Mountain Power's request. That's  
5 all I have, Mr. Chair.

6 MR. LEVAR: Okay. Any further discussion or  
7 motions?

8 MS. HOLBROOK: Mr. Chair, I have a question.

9 MR. LEVAR: Sure.

10 MS. HOLBROOK: In this proceeding, because we  
11 can only discuss this in a public setting, I just had a  
12 question in terms of logistics. From a practical  
13 perspective, we are just simply either granting or not,  
14 and we are not making any issues on options or locations  
15 or anything else. Is that correct? Is my understanding  
16 correct?

17 MR. LEVAR: You are asking -- my take on that  
18 question is, if we -- if we grant Rocky Mountain Power's  
19 petition to this board, what that does is, it still  
20 allows -- under the statute still allows Wasatch County  
21 to impose reasonable -- I can't remember -- reasonable  
22 conditions that the county would have to pay for.

23 So it would -- it would establish, I think,  
24 Option 1 as the standard cost, as the baseline, and then  
25 any conditions from Wasatch County would be borne by the

1 county in terms of costs. That's my personal read, if  
2 you are asking me. So its arguable that all we need, if  
3 this board is going to grant Rocky Mountain's petition,  
4 all we would need is a vote from this board saying: We  
5 grant the petition.

6 I think we would direct then -- have a motion  
7 directing the Public Service Commission staff who have  
8 been assisting this board to craft a written order based  
9 on the record consistent with those, with that decision.

10 MS. HOLBROOK: Thank you.

11 MR. LEVAR: That's my personal take. Other  
12 thoughts from board members, though, since this is a new  
13 procedure to all of us?

14 MR. CLARK: I would just say, we don't have  
15 any conditions from Wasatch County that have been  
16 presented. I don't think any were imposed in the  
17 proceedings at the county, and so I think our simple  
18 question is whether or not the facility should be  
19 constructed.

20 And I move that we answer that question  
21 with -- in the affirmative. And when I say facility,  
22 and just for ease of defining what I am referring to, I  
23 am going to refer back to Exhibit CBA-2 and the red line  
24 that is identified as the proposed 138 KV line.

25 And so again, I move that that be our finding

1 that the facility be constructed, and I suppose  
2 corollary to that is that Wasatch County issue the  
3 permits necessary to allow the construction to go  
4 forward because of the need for the facility.

5 MR. LEVAR: Okay. We have a motion.  
6 Discussion to the motion and in terms of discussion of  
7 the motion, I'll say I -- my reading of the statute is,  
8 that motion is sufficient, and the statute takes care of  
9 everything that flows from that finding. But if other  
10 board members see that differently.

11 MR. WHITE: I guess just further discussion to  
12 add a potential amendment. I just want to make sure we  
13 give the county the most discretion that we can  
14 possible. So I guess what I would say to amend that is,  
15 the motion would be, ordering the facility be  
16 constructed somewhere in the general location and  
17 consistent with the design parameters described in  
18 Option 1 through 4.

19 So in other words, you know, I -- from my  
20 perspective I want to allow the county some discretion  
21 to still go back, as long as that -- the cost does not  
22 exceed the standard cost. And if they wanted to go in  
23 that direction, they could have the flexibility to do  
24 that, as long as they were willing to, pursuant to the  
25 statute, carry that cost.

1           And so to me I think we would need to  
2 particularly describe what the -- I guess the standard  
3 cost would be. And to me the standard cost is Option 1,  
4 and so that would be a part of my motion. And I guess  
5 the -- this may be a question for the company. And  
6 maybe for Mr. Berg also in terms of timing.

7           Is that something that needs to be described  
8 with respect to -- so in other words, I am just thinking  
9 out loud here for a second. But if we say, you have the  
10 discretion, somewhere in that general vicinity among  
11 those options, as long as you go -- if you don't go  
12 beyond the cost of Option 1. And if you do so, those  
13 costs, pursuant to the statute, are the county's, and  
14 furthermore -- I guess that would be the motion.

15           But I guess the question remains out there is,  
16 does the statute -- I'll turn to the lawyers. Does the  
17 statute need to -- the board to describe the timing of  
18 that, or is that something that is, again, completely  
19 discretionary with the county or the permitting body or  
20 what have you?

21           MR. BERG: I think all of that is covered in  
22 the statute as to what would happen. And I know, of  
23 course, Rocky Mountain Power can fill in any of this.  
24 In their application, I think the costs were already  
25 laid out for the four options. Options 1 and 2 both had

1 no cost to the county. Option 3 and Option 4 both had  
2 high costs.

3 I know the county wouldn't consider either of  
4 those options, as well as I believe there would be a lot  
5 of extra easements that would be required to be obtained  
6 for the Brown's Canyon option that ran along the road  
7 line. So I don't think Option 3 or 4 would be a  
8 possibility. But my understanding is, Option 1 or 2  
9 would be agreeable to Rocky Mountain Power. I don't  
10 know that there would be any change in cost there.

11 I do know from the Board of Adjustments  
12 hearing, I believe Rocky Mountain Power indicated they  
13 would have to get additional easements to create Option  
14 2. So I don't know what those additional costs might  
15 be.

16 MR. MOSCON: Sure, and I appreciate the  
17 opportunity to clarify. It is correct that the company  
18 discussed and proposed all these variations in the -- at  
19 the county level as far as workable, feasible options.  
20 It ultimately applied only for what is Option 1.

21 Option 2 is something that the company did say  
22 we, as a company, would not ask for any additional  
23 costs, meaning if the towers, the lattice structure  
24 towers, cost more than the single pole towers, that is  
25 not anything they would seek from the county.

1           However, as pointed out by Mr. Berg or by the  
2 county, the company does not have easements in hand for  
3 anything other than Option 1. And so if, for instance,  
4 if it went back to the board -- or to the county and the  
5 order was simply, you put it anywhere you want in the  
6 county, and you have to pay for any costs that are above  
7 and beyond Option 1, and they drew a line on some  
8 private party's property.

9           I am not sure how -- I mean, then the company  
10 would be in the position of having to go and try and get  
11 easements from that party who may or may not cooperate  
12 or who then may ask for more money. And then the  
13 company is going to turn around and say to the county,  
14 "Here is how much they want. Is that priced too high or  
15 too low?"

16           So I absolutely understand, Board Member  
17 White, how you are saying, let's give the county  
18 flexibility. And I do agree that it leaves to the  
19 county the ability to put conditions on and pay for  
20 incremental costs.

21           I am just simply saying from a practical  
22 workability kind of thing, if the county were to attempt  
23 to go to a different location or alignment other than  
24 Option 1, we would have that problem of, what does the  
25 landowner say.

1           Yeah. So what I am being pointed out, is  
2   Option 2 is in the same location, but it requires  
3   additional width essentially. Because instead of single  
4   poles, it goes to the wider lattice that are shorter but  
5   wider. You don't run them across. This way. So that's  
6   the problem we have with Option 2.

7           MR. WHITE: Based upon that, maybe it sounds  
8   like we're back to the motion proposed by Mr. Clark, I  
9   guess. If that's going to create extra complication,  
10   then maybe that's not the right route.

11          MR. LEVAR: I will note that the statute does  
12   say, if the board determines a facility local government  
13   has prohibited to be constructed, the rate provision  
14   shall specify, shall specify any general location  
15   parameters required to provided safe, reliable.

16          So if there are any -- if the board determines  
17   that any location parameters are necessary, the board  
18   shall specify them. So that's the situation we are in.  
19   Further discussions to the motion or amendments to the  
20   motion?

21          MR. WHITE: It sounds like we need to describe  
22   that Option 1, because that's the only one that actually  
23   has the right easements in place and is ready to --  
24   that's the location for the design.

25          MS. HOLBROOK: Mr. Chair, question. So this

1 might be for Rocky Mountain Power. My question would be  
2 to Option 1 in terms of the way that it already is  
3 established. In terms of any additional cost, that same  
4 infrastructure in terms of the contract with Promontory  
5 and anything else still would be applicable. So there  
6 wouldn't be any costs incurred by the county because of  
7 the time frame differences that have already gone on.  
8 Is that correct?

9 MR. MOSCON: That is my understanding. And  
10 what my understanding of the statutory provisions that  
11 both the chair and Board Member White have pointed  
12 out -- this is a pure hypothetical. But if the county  
13 said, "Fine, we are going to let you build it in the  
14 Option 1 alignment. But just to have it blend in, we  
15 want you to paint all of the poles brown and all of the  
16 cross arms green or, you know, whatever, because that's  
17 going to be visually -- you know, it's going to look  
18 better."

19 Then they could condition the permit on that,  
20 and then the company would say, "Okay. That doesn't  
21 impact safety, reliability, whatever. Here is how much  
22 it cost to do that, and you will bear that cost."

23 So I do think that even if you say, this is  
24 the location and this is the option, the county still  
25 can condition it, if they want, as long as they are

1 going to pay the cost to do it.

2 But I agree with what was said by the chair  
3 that specifying the parameter is important here because  
4 it's not -- and if they were to put it in a different  
5 location where the board doesn't have an easement, then  
6 the efficiency need about getting this going and in  
7 order to have the reliability is going to be lost  
8 because we're going to be starting over, going back to  
9 that landowner, those landowners.

10 MR. CLARK: So would it be more precise if I  
11 revised the motion to refer to the location specified in  
12 the conditional use permit that was presented to and  
13 denied by Wasatch County? Is that helpful rather than  
14 referring to CBA-2? Because that's what I am intending  
15 to do is to have the outcome be that the county issues  
16 the conditional use permit that was sought.

17 MR. MOSCON: Sure. And I am happy to also  
18 hear Mr. Berg on this. I think that if the board  
19 specified that the county shall issue the permit as  
20 applied for, subject to their being allowed to impose  
21 any conditions that don't impact safety, reliability,  
22 efficiency, or increase costs without bearing those  
23 costs, that that works.

24 The reason being is, ultimately the company  
25 only applied for one permit, which is the location for

1 Option 1. So if the -- if the order essentially were to  
2 grant the permit applied for, that would answer, I  
3 think, all the questions about where, what kind of  
4 poles, how wide, etc.

5 MS. HOLBROOK: Mr. Chairman, one question. So  
6 and my apologies. So I just am -- maybe I had a  
7 planning commissioner hat on for too long. But if there  
8 are any zoning changes or any other things that would  
9 be -- that have already occurred subsequent to the  
10 original request, would that not still be in place  
11 though? I guess that's my one question.

12 MR. MOSCON: And maybe I am not understanding  
13 exactly. But the ruling of the -- if the board were to  
14 grant the company's request, it orders the county to  
15 issue all permits, meaning if it's a construction  
16 permit, a variance from the zoning thing or whatever.  
17 So if there's in the interim been any new zoning passed  
18 or whatever, the order essentially says, per the  
19 statute, that the county or local government is required  
20 to issue all permits or variances or whatever that are  
21 necessary.

22 So I think that if zoning has changed or  
23 whatever else, they would kind of say, that includes  
24 grandfathering them to your new zoning one, two, three,  
25 or what have you. That's my understanding, if that

1     answers your question.

2                   MS. HOLBROOK: It does somewhat answer the  
3     question. I have just a quick question for you,  
4     Mr. Berg, in terms of -- so basically what -- if I  
5     understand it correctly, you will just be in essence --  
6     the date that the original application was submitted  
7     would be whatever that request would require. Is  
8     that -- is that correct?

9                   MR. BERG: Yeah. That would be my  
10    understanding. And there was the initial application  
11    that was withdrawn, but then when they applied for that  
12    again, there was no change in any of the laws or  
13    anything from that, from August, when it was removed  
14    until it was reapplied for again. And so I don't see  
15    any problems with that.

16                  MS. HOLBROOK: Thank you.

17                  MR. MOSCON: And I'll note, if this helps  
18    anybody who is actually drafting an order, if the board  
19    were to go along with this. Exhibit 14 to the direct  
20    testimony of Don Watts, so ETW 14, is the actual  
21    application for conditional use permit that identifies  
22    the specific corridor. So if that helps anybody figure  
23    out how to articulate what we are talking about, there  
24    is an Exhibit 14 that has that language in it.

25                  MR. LEVAR: Mr. Clark, do you want to restate

1 your motion or do you want to revise it, or do you have  
2 another motion?

3 MR. CLARK: Yes. So my motion is that the  
4 board find that the transmission project in question,  
5 including the route proposed and as specified in the  
6 conditional use permit presented to Wasatch County, is  
7 needed by the utility to provide safe, reliable,  
8 adequate, and efficient service to its customers; that  
9 we also find that the project should be constructed;  
10 that we find that the county's denial of the conditional  
11 use permit in effect prohibited the construction of this  
12 needed transmission project; and that we direct the  
13 county to issue the conditional use permit for the  
14 project to be located in the transmission corridor  
15 specified in the permit; and that the permit be issued  
16 within 60 days after the issuance of the order.

17 And I think that's the statutory time frame.  
18 And that the county also issue any other permits,  
19 authorizations, approvals, exceptions or waivers  
20 necessary for construction of the project consistent  
21 with our order.

22 MR. LEVAR: Would you object to one amendment  
23 to your motion to also add additionally a motion to ask  
24 the Public Service Commission staff who have been  
25 assisting this board to draft any additional findings

1 and conclusions -- findings of fact, conclusions of law

2 based on the record consistent with that decision?

3 Would that be -- would you be amenable to that

4 amendment?

5 MR. CLARK: That's a -- I accept the

6 amendment.

7 MR. LEVAR: Okay. So we have a motion in

8 front of us that I am not going to restate, but we have

9 it on the transcript. Ms. Reif, were you wanting to

10 make a comment?

11 COURT REPORTER: And give me your name on the

12 record.

13 MS. REIF: Melanie Reif, I am legal counsel to

14 the board. Chair LeVar and board members, I just want

15 to be absolutely clear regarding the motion that's

16 pending so there's not any misunderstanding as to what

17 happened below at the Wasatch County Board of Adjustment

18 and what the conclusion of that hearing was.

19 There were four options before the board, and

20 the board made findings on all of those denying the

21 application after considering each option. So I just

22 want to make the record very clear so there's no

23 confusion going forward as to what will be the result of

24 this hearing, inasmuch as Option 1 is the option that

25 seems to be reflected in the proposed finding.

1 MR. LEVAR: Thank you.

2 MS. REIF: Thank you.

3 MR. LEVAR: Any further discussion or second  
4 to the motion?

5 MS. HOLBROOK: Mr. Chair, I'll second that.

6 MR. LEVAR: Are we ready to call for a vote?  
7 Okay. I'll continue to go in alphabetical order.  
8 Mr. Clark.

9 MR. CLARK: I vote yes.

10 MR. LEVAR: Ms. Holbrook.

11 MS. HOLBROOK: Yes.

12 MR. LEVAR: I vote yes. Mr. White.

13 MR. WHITE: Yes.

14 MR. LEVAR: Mr. Wilson.

15 MR. WILSON: Yes.

16 MR. LEVAR: Motion passes five to zero. I  
17 will open up to any board member or any party in the  
18 room whether anyone feels there's any further business  
19 this board needs to address before we adjourn this  
20 hearing and move onto the drafting of an order in this  
21 matter. I am not seeing any indication of anything  
22 further. So we are adjourned.

23

24 (The hearing concluded at 1:38 p.m.)

25

1 C E R T I F I C A T E

2 STATE OF UTAH )

3 COUNTY OF SALT LAKE )

4 THIS IS TO CERTIFY that the foregoing proceedings  
5 were taken before me, Teri Hansen Cronenwett, Certified  
6 Realtime Reporter, Registered Merit Reporter and Notary  
7 Public in and for the State of Utah.

8 That the proceedings were reported by me in  
9 Stenotype, and thereafter transcribed by computer under  
10 my supervision, and that a full, true, and correct  
11 transcription is set forth in the foregoing pages,  
12 numbered 3 through 145 inclusive.

13 I further certify that I am not of kin or otherwise  
14 associated with any of the parties to said cause of  
15 action, and that I am not interested in the event  
16 thereof.

17 WITNESS MY HAND and official seal at Salt Lake  
18 City, Utah, this 12th day of May, 2016.

19  
20   
21 Teri Hansen Cronenwett, CRR, RMR  
License No. 91-109812-7801

22 My commission expires:  
23 January 19, 2019  
24  
25

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