

- BEFORE THE UTILITY FACILITY REVIEW BOARD -

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

DOCKET NO. 16-035-09  
ORDER CONFIRMING BENCH  
RULING

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ISSUED: July 29, 2016

INTRODUCTION

On June 3, 2016, the Utility Facility Review Board (Board) issued a final agency action in this docket (Order). The Order requires Wasatch County to issue a conditional use permit to Rocky Mountain Power (RMP) to construct a 0.26 mile-long segment of a 138 kV transmission line upgrade project located in Wasatch County (Project). Wasatch County filed a Notice of Appeal with the Utah Court of Appeals, pursuant to U.C.A. § 54-14-308, and a Motion to Stay Order (Motion) with the Board, pursuant to U.C.A. §§ 54-14-307 and 63G-4-405.

On July 14, 2016, the Board convened to hear oral argument and deliberate on the Motion. At the conclusion of the hearing, the Board voted unanimously to deny the Motion. This order confirms the Board's ruling.

DISCUSSION

**Issue and Standard of Review**

Wasatch County asks the Board to enter a stay pending judicial review of its appeal pursuant to U.C.A. § 63G-4-405(1), which states: "Unless precluded by another statute, the agency may grant a stay of its order or other temporary remedy during the pendency of judicial review, according to the agency's rules." Wasatch County acknowledges the Board has not promulgated agency rules governing the issuance of a stay, but urges the Board to consider its

Motion before pursuing a stay with the appellate court.<sup>1</sup> We review the Motion for good cause pursuant to our discretionary decision making authority. In doing so, we recognize that a stay must ordinarily be sought from the agency or court below before the appellate court will hear the issue.<sup>2</sup>

**Parties' Positions**

Wasatch County only offers one reason for a stay – because an appeal is pending.<sup>3</sup>

RMP opposes the County's Motion mainly for two reasons – reliability threats and economic effects. To support its argument RMP submitted two declarations. The declaration of Mr. Shortt explains that under the current system configuration, when the load area reaches its peak loading period, a loss of one transformer results in low voltages and outages.<sup>4</sup> To mitigate this reliability risk during peak loading, RMP is forced to operate the system in the load area as three radial systems, with each system having one power source.<sup>5</sup> Under this radial configuration, an outage on a transmission line or a loss of the source of power on any one radial line would result in an outage for a large number of customers. RMP estimates that an outage on the radial system in Park City could affect 14,000 to 27,000 customers and last up to several

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<sup>1</sup> To this end, U.C.A. § 63G-4-405(2) states: "Parties shall petition the agency for a stay or other temporary remedies unless extraordinary circumstances require immediate judicial intervention."

<sup>2</sup> See U.C.A. § 63G-4-401 (requiring exhaustion of administrative remedies before seeking judicial review of a final agency action). See also U.C.A. § 63G-4-405(2) (requiring party to petition administrative agency for a stay before seeking a stay on appeal); Utah R. App. P. 8(a) ("Stay must ordinarily be sought in the first instance").

<sup>3</sup> See Motion to Stay Order of June 3, 2016, filed June 29, 2016. See also Hr'g Tr. 7:9-11, 21 (July 14, 2016) ("[Wasatch County is] simply saying the standard for a stay is [to] allow the Court of Appeals to look at this. ...I ... conclude at that.").

<sup>4</sup> See Declaration of Kenneth M. Shortt in Support of Rocky Mountain Power's Memorandum in Opposition to Wasatch County's Motion to Stay Order of June 3, 2016 at 2, ¶ 3, filed July 13, 2016.

<sup>5</sup> See *id.*

days.<sup>6</sup> Extended outages could have severe health and safety impacts affecting customers in the load area.<sup>7</sup> Completing the Project will provide an additional power source in the area and will eliminate the need to operate the system radially, greatly reducing the frequency and duration of outages.<sup>8</sup> As further support, RMP cites to a letter from Heber Light & Power supporting the “improvements to reliability” through completion of the Project:

Heber Light & Power is very concerned that [RMP’s] system lacks sufficient capacity.... [T]he Silver Creek Substation is critical to Heber Light & Power Company’s operations and will directly benefit the Company’s customers. First, this connection coupled with the proposed 138kV line serving the Heber Valley will eliminate voltage fluctuations that have plagued the system during peak loads by increasing the capacity of ...[RMP] lines feeding the Heber Valley. Second, this connection and related line serving the Heber Valley from the north will solve [Heber Light & Power’s] precarious reliance on the single 138kV line in Provo Canyon. Finally, it will allow [Heber Light & Power] to construct a second point of interconnect to [RMP’s] transmission system providing needed redundancy for [Heber Light & Power’s] Midway Substation and facilitating vital system maintenance.<sup>9</sup>

RMP also argues that granting a stay would have far-reaching adverse economic consequences potentially affecting RMP’s customers statewide. The declaration of Mr. Clegg estimates that a one-year delay in construction of the Project will add approximately \$924,000 to the costs of completing the Project when inflation and cost of capital related costs are considered.<sup>10</sup>

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<sup>6</sup> See *id.* at 3, ¶ 6.

<sup>7</sup> See *id.* at 3, ¶ 8.

<sup>8</sup> See *id.* at 2, ¶ 3.

<sup>9</sup> Letter from Heber Light & Power at 1, attached to Rocky Mountain Power’s Memorandum in Opposition to Wasatch County’s Motion to Stay Order of June 3, 2016, filed July 13, 2016.

<sup>10</sup> See Declaration of Benjamin Clegg in Support of Rocky Mountain Power’s Memorandum in Opposition to Wasatch County’s Motion to Stay Order of June 3, 2016 at 2, filed July 13, 2016.

**Findings and Conclusions**

The fact that an appeal is pending is inadequate to support a stay.<sup>11</sup> Further, the Board's order granting RMP's petition was based at least in part on the need to promptly improve the reliability of RMP's system in the area served by the Project. As we previously recognized, "RMP has an obligation to serve its customers with safe, reliable, adequate, and efficient service, along with meeting the increasing energy demands of its customers. *Failure to construct the Project will expose customers to unacceptable reliability risk during certain times of the year, inhibiting RMP's capacity to serve the growing energy demand of its customers.*"<sup>12</sup> The evidence RMP presented in response to the Motion further reinforces the need for completion of the Project without further delay. Thus, as we recognized in our prior order, "[t]he uncontested testimony from RMP is that '[t]he company and its customers, including . . . customers in Wasatch County . . . need this project to provide safe, reliable, adequate and efficient power and service.'"<sup>13</sup>

**ORDER**

For the reasons explained above, we deny Wasatch County's motion to stay.

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<sup>11</sup> See generally U.C.A. § 54-14-307(1) ("[A] petition for judicial review does not stay or suspend the effectiveness of a written decision of the board."). Cf. *Chevez v. Williams*, 1999 UT 86, ¶ 47, 993 P.2d 191 (stating rule under the Utah Rules of Civil Procedure that "[t]here is no automatic stay . . . upon the filing of a notice of appeal.").

<sup>12</sup> Order at 9-10 (emphasis added), issued June 3, 2016.

<sup>13</sup> *Id.* at 10.

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DATED at Salt Lake City, Utah, July 29, 2016.

/s/ Thad LeVar, Chair

/s/ David R. Clark, Board Member

/s/ Beth Holbrook, Board Member

/s/ Jordan A. White, Board Member

Attest:

/s/ Gary L. Widerburg  
Board Secretary

DW#287331

CERTIFICATE OF SERVICE

I CERTIFY that on July 29, 2016, a true and correct copy of the foregoing was served upon the following as indicated below:

By U.S. Mail:

Scott H. Sweat  
Wasatch County Attorney  
Tyler J. Berg  
Wasatch County Deputy Attorney  
Wasatch County  
805 West 100 South  
Heber City, UT 84032

D. Matthew Moscon  
Richard R. Hall  
Stoel Rives LLP  
201 South Main Street, Suite 1100  
Salt Lake City, UT 84111

R. Jeff Richards  
Heidi Gordon  
Rocky Mountain Power  
1407 W North Temple, Suite 320  
Salt Lake City, UT 84116

By Electronic-Mail:

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

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

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

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

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

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

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

By Hand-Delivery:

Division of Public Utilities  
160 East 300 South, 4th Floor  
Salt Lake City, Utah 84111

Office of Consumer Services  
160 East 300 South, 2nd Floor  
Salt Lake City, Utah 84111

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Administrative Assistant