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*Attorneys for Petitioner Rocky Mountain Power*

**BEFORE THE UTAH UTILITY FACILITY REVIEW BOARD**

ROCKY MOUNTAIN POWER,  Petitioner,  vs.  MIDWAY CITY,  Respondent.	<b>PETITION FOR REVIEW</b>    Docket No. _____
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Rocky Mountain Power files this Petition for Review pursuant to the Utility Facility Review Board Act, Utah Code Title 54, Chapter 14 (the “Act”), specifically Utah Code § 54-14-303. However, as further set forth herein, Rocky Mountain Power specifically requests that no initial hearing be scheduled by the Board until requested in a separate filing, as the parties continue to work together to allow the Project to be built and resolve the issues described herein.<sup>1</sup>

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<sup>1</sup> Rocky Mountain Power acknowledges that Utah Code § 54-14-304 requires an initial hearing to be scheduled within fifty (50) days of filing this Petition. As indicated below, within thirty (30) days of this filing, Rocky Mountain Power will file: (a) a written request for an initial hearing; or (b) a motion that the initial hearing be scheduled beyond the 50-day statutory limit; or (c) a written dismissal of this Petition.

## **INTRODUCTION**

On December 18, 2019, the Midway City Council voted on and unanimously approved a lengthy motion<sup>2</sup> (the “Decision,” a copy of which is attached hereto as *Exhibit A*<sup>3</sup>) addressing an application for a conditional use permit (the “Application”) filed by Rocky Mountain Power and Heber Light & Power (“HLP”)<sup>4</sup> (jointly referred to as the “Applicants”), for the Applicants’ joint construction and operation of a new double-circuit 46kV and 138kV transmission line project commonly referred to as the Jordanelle-Midway transmission line, to be located in Midway City, Heber City, and parts of unincorporated Wasatch County, Utah (the “Project”). The approximately one-mile segment of the Project to be located in Midway City (the “City”), which is the subject of this Petition, is referred to herein as the “Midway Segment.”

## **BACKGROUND**

Rocky Mountain Power and Heber Light & Power have been working on this Project, both separately and jointly, for a number of years. HLP, as the retail electric service provider, provides electric service directly to the residents and businesses within the incorporated limits of Heber City, Midway City and Charleston Town, Utah. Rocky Mountain Power is the wholesale provider of electrical service to HLP through HLP’s membership in the Utah Associated Municipal Power

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<sup>2</sup> The minutes of the December 18, 2019, meeting were formally approved by the Midway City Council at its meeting on January 7, 2020. However, the Midway City Attorney clarified that the City considered the Decision to be the final decision of the City on the Application when it was issued.

<sup>3</sup> For ease of reference, Exhibit A has been notated by counsel for Rocky Mountain Power, with bullet points comprising the “findings” numbered A-G on page 1 and H-J on page 4; and the bullet points constituting the features of what Rocky Mountain Power believes the City Council intended to be the conditional use permit and its conditions numbered 1-29 throughout.

<sup>4</sup> Heber Light & Power is an interlocal entity formed by Heber City, Midway City and Charleston Town to provide retail electric service to customers within those municipalities; each of those member entities, including Midway City, has a seat on HLP’s Board of Directors. HLP is not a “public utility” under the Utah Code (*see* § 54-2-1(22)), and is not a party to this action.

Systems (UAMPS), and is the certificated retail provider for the unincorporated portions of Wasatch County, Utah. Due to explosive growth within Wasatch County, the Project is urgently needed to provide safe, reliable, adequate and efficient service to both companies' customers. This Project will allow the transmission system in the region to be operated in a looped configuration if any one of the regional transmission lines goes out of service, thereby reducing the risk of widespread, prolonged, outages. In addition, this Project will provide a second point of transmission interconnection to HLP, allowing it to provide needed redundancy and capacity to benefit its customers. Without this Project, an outage on any one of the existing regional transmission facilities could result in an array of negative system outcomes depending on the transmission line, location, and time of year. These outcomes could include outages lasting days or weeks to thousands of customers of both companies. The constantly increasing load in the region only exacerbates the scale of the potential impacts without this Project completed. The Project is currently scheduled for completion by the end of 2020; however, that timeline is in jeopardy as elaborated in this Petition.

HLP owns and operates a 46kV transmission line generally known as its "south line" that generally follows the proposed route for the Midway Segment. HLP identified the south line as being in need of replacement, and rather than construct two separate transmission lines in the Heber Valley to meet each company's needs, the companies decided to join together to build a single transmission line to be jointly constructed, owned and operated by them – thereby significantly decreasing the impact on the Heber Valley. The Project will rebuild HLP's existing 46kV "south line" (initially to be operated at 46kV, which will be increased to 138kV as HLP's needs dictate) and add a second 138kV line to be owned by Rocky Mountain Power.

Midway City was aware of the Project for many years before the Application was actually filed, by virtue of its seat on the HLP Board of Directors, as well as community outreach done by Rocky Mountain Power and at least one local news article. In particular, the Applicants met with then-Mayor Colleen Bonner, Midway City Planner Michael Henke and others on June 13, 2017, and were told by the City representatives that no permit was required to construct the Midway Segment under the then-existing city ordinances.

During this time period, Applicants filed an application for a conditional use permit with Wasatch County, for those portions of the Project that will be located within the unincorporated areas of Wasatch County. Midway City was made aware of the Wasatch County application and was informationally provided copies of the same documentation that was included in the Wasatch County application. Pursuant to a request from Wasatch County, the Applicants obtained a third-party estimate of costs to build the transmission line underground rather than overhead; that estimate covered the entire Project, including the Midway Segment. After multiple public meetings, much discussion, and considerable efforts between the Applicants and Wasatch County, the County ultimately granted a conditional use permit for an overhead transmission line on July 11, 2019.<sup>5</sup> A copy of the Wasatch County Conditional Use Permit is attached hereto as ***Exhibit B***.

In January 2018, the Midway City Council met and discussed the City's desire to create an ordinance related to permitting transmission lines. This Project was specifically identified as the impetus for adopting an ordinance. In that City Council meeting, Midway City requested that the Applicants not file any type of land use application, pending the City drafting and approving a new process for permitting transmission lines; in the spirit of cooperation, the Applicants acquiesced

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<sup>5</sup> A conditional use permit was also obtained from Heber City on August 27, 2019, for construction of an overhead transmission line.



to this request. The Applicants waited while various drafts for a new ordinance were written, revised, discussed, and finally adopted by the City in January 2019. The Applicants then filed their application for a conditional use permit for the Midway Segment of the overhead transmission line Project on April 10, 2019. The Application included a copy of the third-party cost estimate for underground construction that had been obtained at Wasatch County's request.

The Midway City Planning Commission conducted public hearings and meetings on the application on May 14 and August 13, 2019. At the meeting on August 13, the Planning Commission voted to recommend the application for approval to the Midway City Council (the "City Council"). The City Council held public hearings and meetings on the application on October 15, November 19, and December 18, 2019.

At the public hearings, the City heard testimony from members of the public, much of which related to constructing the line underground rather than overhead; the City also reviewed documentation provided by the Applicants and other interested parties, and directed staff to obtain a public-opinion poll (conducted by a third party) to determine the desires of Midway residents on constructing the Project overhead or underground. Ultimately, the City Council issued the Decision by unanimous oral vote at the December 18, 2019, meeting. A substantial portion of the Decision relates to payment of excess costs that will be incurred if the Midway Segment is constructed underground.

Due to the amount of time that has passed since the Applicants first engaged with the City about the Project, the Applicants' construction timeline has been significantly compressed. In order to continue providing safe, reliable, adequate and efficient service to its customers, including HLP, Rocky Mountain Power must complete construction of the Project before the end of 2020. Considering the amount of time still needed to conduct surveys and studies, design and engineer

the Project, and procure the materials needed, it is doubtful the Project can be completed timely unless Rocky Mountain Power and Midway City are able to reach a mutually satisfactory agreement as to payment of excess costs as soon as possible.

The Applicants have been working with the City to effectuate what Applicants believe to be the intent of the Decision. Nevertheless, some aspects of the Decision either now violate Utah law, or may violate it with the passage of time. Although the Utility Facility Review Board Act does not contain a specific deadline to file an appeal, Utah Code § 10-9a-801 relating to conditional use permits requires that “[a]ny person adversely affected by a final decision made in exercise of or in violation of the provisions of this chapter may file a petition for review of the decision *with the district court within 30 days* after the decision is final” (emphasis added). Rocky Mountain Power therefore files this Petition to protect its rights under Utah law.

#### **GROUND FOR REVIEW AND RELIEF REQUESTED**

Rocky Mountain Power respectfully requests that the Board review the Decision on the following bases:

- 1. It is Unclear from the Language of the Decision Whether the City Has Made a Final Decision on the Application and Granted a Permit for the Midway Segment.**

The Decision is ambiguous as to whether it constitutes a final decision on the Application and a conditional use permit for the Midway Segment. Specifically, the Decision states as follows: “Midway City *intends* that the lines will be buried with the following conditions....” (Decision p. 2, bullet point no. 1; emphasis added.) Furthermore, the Decision requires that the Midway City attorney “conduct a thorough review of this motion and the related requirements, with the intent of ensuring the city is acting in good faith and following all applicable laws regarding use of City funds and the issuance of a CUP.” (Decision p. 3, bullet point no. 7.) This language does not

connote finality, and Rocky Mountain Power has not received any confirmation as to whether the city attorney ever completed his review.

There are a number of other provisions of the Decision that have been left open for further deliberation or decision, which is inconsistent with the nature of a final decision. See bullet point no. 5 (relating to moving the overhead-to-underground “dip” poles to “a location that is acceptable to the City Council” outside of Midway City), bullet point no. 6 (requiring the Applicants to submit further plans and simulations for landscaping, for later approval by the City Council), and the payment of excess costs as more fully discussed in Sections 2 and 3 below. If the Decision does *not* constitute a final conditional use permit, then the City continues to be in violation of Utah Code § 54-14-303(e) for failing to make a final decision on the Application within 60 days of the date the Application was filed.<sup>6</sup>

Rocky Mountain Power believes the intent of the City Council was to issue a conditional use permit, with conditions imposed on construction of the Project (depending on whether it is ultimately constructed as an overhead line or an underground line), but due to the noncommittal language and inconsistent provisions in the Decision, Rocky Mountain Power requests that the Board determine whether the Decision is a final decision on the Application under Utah law and whether it constitutes a conditional use permit for the Midway Segment.

**2. The City May Not Have Entered into a Written Agreement to Pay the Actual Excess Costs.**

The Decision may not be a written agreement to pay the actual excess costs as required by Utah Code § 54-14-303(1)(a), which allows a public utility to seek Board review if “a local

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<sup>6</sup> The City technically violated this statutory requirement even if the Decision is a final permit; the Application was filed on April 10, 2019, but the motion and vote that constitute the Decision were not made until December 17, 2019 – over 250 days later.

government has imposed requirements on the construction of a facility that result in estimated excess costs without entering into an agreement with the public utility to pay for the actual excess cost.” The Decision includes conflicting language on this point.

On the one hand, according to bullet point no. 1, the City “[r]ecogniz[es] that the city is required by law to pay the difference between the cost of overhead lines and the cost of underground lines....” (Decision p. 2.) Further, bullet point no. 16 states that “[t]he City will pay the difference between the standard cost ... and the actual cost of the buried line.” (Decision p. 4.) However, it’s clear from the Decision that the funding to pay the excess costs has not been secured; see, for example, bullet point no. 3 (“in order to proceed with underground construction a minimum of 1.5 Million US dollars in ‘donation’ funds must be presented to the city [by a citizens’ group known as VOLT]”); bullet point no. 4 (“Midway City must secure sufficient funds to cover the cost of construction. If financing is needed then the board of HLP must approve the issuance of bonds sufficient to cover the remaining final cost of construction....”); and bullet point no. 9 (indicating that the value of any easements donated by private citizens “will be subtracted from the underground cost the City will pay.”). (Decision pp. 2-3.) Pursuant to the Decision, if funding is not secured (including the minimum \$1.5 million in donated funds) and other requirements are not met by March 1, 2020, then the facility may be as an overhead line. (Decision p. 4.)

These conflicting features of the Decision paint the picture of a city that recognizes its obligation to pay excess costs, but is not prepared – and has not expressly agreed in writing – to actually pay those costs as required by Utah law. Rocky Mountain Power therefore requests that the Board determine whether the City has entered into a written agreement to pay the excess costs, and if the City has entered into such an agreement, the specific terms of that agreement. If the City has not done so, then Rocky Mountain Power requests that the Board order the City to enter into

an unambiguous agreement to pay the actual excess costs, as required by Utah law, if the Midway Segment is constructed underground.

**3. The City Waived its Right to Impose the Condition that the Project be Constructed Underground because the Excess Costs Have Not Been Paid.**

Under Utah law, a local government can impose conditions that increase project costs if the governmental entity agrees to pay the excess costs, and actually pays those costs, “within 30 days before the date construction of the facility should commence in order to avoid significant risk of impairment of safe, reliable, and adequate service to customers of the public utility.” Utah Code § 54-14-204. For purposes of the Facility Review Board Act, “‘commencement of construction of a facility’ includes the project design and the ordering of materials necessary to construct the facility.” Utah Code § 54-14-103(3).

The City acknowledges the need for the Project, including the Midway Segment: “The proposal will create a second point of power access that will benefit residents of the entire valley” (Decision p. 1, bullet point no. C); “The proposal will allow more power to enter the valley that will benefit the entire valley and meet present and future community needs” (Decision p. 1, bullet point no. D); and “The proposal benefits neighboring areas and the entire power grid by providing more connectivity and redundancy to support better function of the system as a whole” (Decision p. 1, bullet point no. E).

Nevertheless, due to the permitting delays discussed above, project design and procurement of materials is already dangerously behind schedule. The City failed to meet the requirement that the excess costs be paid within 30 days before that work should have started. The City has verbally agreed to pay excess study, design, engineering and materials costs for Rocky Mountain Power to simultaneously design both the overhead and underground options, but as discussed in Section 2 above, the City may not have entered into a written agreement to pay those costs – and it certainly

has not actually *paid* them – and there is a limit to the amount of work that can or prudently should be done before it must be decided whether the Project will be built overhead or underground.

Because the City has not paid the excess costs “within 30 days before the date construction of the facility should commence” on this much-needed Project, it has forfeited its right to impose any conditions that result in those excess costs – specifically, that the Midway Segment be constructed underground. If the parties are unable to reach an acceptable solution for construction of the line underground, Rocky Mountain Power requests a determination by the Board that the Project, including Midway Segment, may be constructed overhead.

#### **4. The City Has Imposed Conditions that Exceed its Authority.**

The Decision contains conditions that exceed the scope of the City Council’s authority.

First, the Decision includes the following requirement:

The Wasatch County Land Use Authority must approve a change in the plan for construction of the portion of the line that is within County jurisdiction and under the existing county CUP that will allow the dip poles (as needed for transition from overhead to underground) near HWY 113 to be moved to a location that is acceptable to the City Council. As guidance for this process, at this time the [City] Council envisions a location near the Fish Hatchery, but we are open to discussion of the best alternatives that will achieve our goals of mitigating visual impacts near to our entry corridor.

Decision p. 3, bullet point no. 5. Requiring that Wasatch County revise an already-issued permit grossly exceeds the scope of Midway City’s authority, and additionally gives rise to cause for review under Utah Code § 54-14-303(1)(f), which provides that the Board can hear a dispute where “a facility is located or proposed to be located in more than one local government jurisdiction,” but “the decisions of the local governments regarding the facility are inconsistent.” Rocky Mountain Power requests that the Board determine this condition to be illegal, and to strike the condition from the conditional use permit.

Secondly, the Decision requires the Applicants to obtain “3 actual competitive construction bids, prepared by qualified, bonded, and insured 3rd party entities” for construction of the line by March 1, 2020. (Decision p. 2, bullet point no. 1; *see also* Decision p. 2, bullet point no. 2 and Decision p. 4.) Although Utah Code § 54-14-203(1) does allow the City to request competitive bids, it only says that the city may “request the public utility to obtain competitive bids for the facility if constructed in accordance with the requirements and conditions of the local government,” but it does not allow the City to specifically require that Rocky Mountain Power obtain *three* bids. This is of concern because of the small number of extra-high voltage cable manufacturers and contractors from which to obtain competitive bids, and whether these manufacturers and contractors would respond at all to a request on such a compressed timeline; Rocky Mountain Power simply may not be able to obtain enough bids to satisfy this requirement. Rocky Mountain Power therefore respectfully requests that this requirement be revised to comply with Utah law.

Finally, the Decision requires that the bids include “[a]n itemized option to use GIL (Gas Insulated Lines) as the transmission line conductor that will be buried. (Alternative Conductor Option).” Decision p. 2, bullet point 2(c). The GIL technology would be expensive to maintain, and presents environmental concerns due to the need to use potentially dangerous gases that are regulated by the United States Environmental Protection Agency. As such, this requirement would impair Rocky Mountain Power’s obligation to provide safe, reliable and adequate service to its customers, in violation of Utah Code § 54-14-201(1). Rocky Mountain Power therefore requests that this requirement be stricken.

### **REQUEST REGARDING INITIAL HEARING**

As stated above, Rocky Mountain Power files this Petition to preserve its rights in the event the parties are unable to reach an acceptable resolution of the issues described herein. Therefore, Rocky Mountain Power respectfully requests that this Board forbear on scheduling the hearing required by Utah Code § 54-14-304 until specifically requested in writing by one or more of the parties within thirty (30) days of this filing. Alternatively, within thirty (30) days of this filing, Rocky Mountain Power will file a motion that the initial hearing be scheduled beyond the 50-day statutory limit or a written dismissal of this Petition.

RESPECTFULLY SUBMITTED this 15th day of January, 2020.

FABIAN VANCOTT

/s/ Heidi K. Gordon

Attorneys for Petitioner Rocky Mountain Power



## **CERTIFICATE OF SERVICE**

I hereby certify that on this 15th day of January, 2020, a true and correct copy of the foregoing PETITION FOR REVIEW was served via email and mailed via first-class mail to the following:

Corbin B. Gordon  
Midway City Attorney  
322 E. Gateway Drive, Suite 201  
Heber City, UT 84032  
Email: [cgordon@gordonlawgroup.utah.com](mailto:cgordon@gordonlawgroup.utah.com)

Scott Sweat  
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805 West 100 South  
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and was mailed via first-class mail to the following:

Utah Attorney General  
Heber M. Wells Building  
160 East 300 South, Suite 500  
Salt Lake City, Utah 84111

Division of Public Utilities  
Heber M. Wells Building  
160 East 300 South, 4th Floor  
Salt Lake City, Utah 84111

Office of Consumer Services  
Heber M. Wells Building  
160 East 300 South, 2nd Floor  
Salt Lake City, Utah 84111

/s/ Heidi K. Gordon

**EXHIBIT A**

**Copy of the Midway City Decision**



## REPORT OF ACTION of the Midway City Council

**Item: Rocky Mountain Power / Conditional Use Permit for Transmission Line** (City Planner – Approximately 2 hours) – Discuss and possibly approve a conditional use permit for Rocky Mountain Power to improve a transmission line along 970 South, Stringtown Road and Wards Lane.

**Action:** Approved with Conditions

**Date of Action:** 17 December 2019

**Motion:** Council Member Simonsen moved that Midway City hereby approves, with the following conditions, the CUP for proposed construction of new transmission lines to carry power coming through Midway from roughly the direction of Heber City and ending at the substation near the Cemetery off 500 S. Furthermore,

We accept the staff report.

We accept the following findings:

- A • The proposal is an administrative review.
- B • The proposed use is a conditional use, and the city may impose reasonable conditions to mitigate identified negative impacts.
- C • The proposal will create a second point of power access that will benefit residents of the entire valley.
- D • The proposal will allow more power to enter the valley that will benefit the entire valley and meet present and future community needs.
- E • The proposal benefits neighboring areas and the entire power grid by providing more connectivity and redundancy to support better function of the system as a whole.
- F • It is known that strong EMF signals (electromagnetic fields) are emitted by all energized conductors, including underground and overhead power lines. These fields can induce a current in other disconnected nearby conductors and therefore can have negative effects on some electronic devices. Of particular concern to the city are devices that are used for personal health purposes, such as cochlear implants. Whereas the city is aware of residents within the service area that rely on such devices it is of concern to the city to mitigate any potential negative impacts related to these devices. It has come to the attention of the city that there is a technology (GIL) that could help mitigate this impact, and the city desires this to be considered as well as any other applicable technologies of which we may be unaware.
- G • The Midway City General Plan contains many statements that establish objectives related to the preservation of open space, our rural atmosphere, and the beauty of our entry corridors. Our general plan also encourages our local economy to embrace and support our assets as a “resort” city. By definition and extension, careful management of these

assets is a key factor in securing our city's financial future and our sales tax base. We find that overhead power lines raise concerns related to these items that require us to carefully consider how to mitigate visual impacts related to this proposal.

Whereas the city has conducted an independent randomized poll that has found approximately 70% of respondents are in favor of burying these power lines within the city limits, the preferred method of construction is underground. Midway City intends that the lines will be buried with the following conditions:

- 1 • *Recognizing that the city is required by law to pay the difference between the cost of overhead lines and the cost of underground lines (in State Code referred to as "excess costs"), and also recognizing that the City Council has a fiduciary duty to manage financial interests of the citizens appropriately, and with reference to Utah State Code 54-14-203, we do not accept the estimated costs provided by the applicant as sufficient information upon which to base funding decisions. Furthermore, we require the applicant to provide 3 actual competitive construction bids, prepared by qualified, bonded, and insured 3<sup>rd</sup> party entities, in accordance with standard city policy, to establish the actual cost of this construction. These bids must be submitted to Midway City no later than Feb 15, 2020. Failure to deliver these bids on time will cause the city to be unable to fulfill its fiduciary duty to the citizens of Midway by no fault of its own. To be clear: If these bids are not submitted by the applicant, it does not cause the construction to revert to overhead. It is the obligation of the applicant to provide this information in a timely manner and therefore the reasonable remedy for lateness of this information is to adjust any other deadlines by an amount equal to the lateness of this information.*
- 2 • *The bids provided by the applicant will include the base cost of burying the line from Center Street to the end of Wards lane, using current standard materials and practices. The costs of the dip poles at each end must be itemized. In addition, the bids must include the following itemized additional options:*
  - *Continuing underground from Wards Lane to the substation (Additional end of line cost) and*
    - *upgrading components (IE "rack", etc) inside the substation to accommodate raising the underground line (Substation Option 1)*
    - *placing dip poles immediately outside the substation to raise the line outside the substation (Substation Option 2)*
  - *Going underground immediately west of the Fish Hatchery, at least 350' or greater from Center Street/ HWY 113 (Additional Entry Cost)*
  - *An itemized option to use GIL (Gas Insulated Lines) as the transmission line conductor that will be buried. (Alternative Conductor Option)*

*Using the cost information the bids will provide, Midway City will then choose the options that meet our needs in terms of cost and function.*

- 3 • *Whereas private citizens (represented by the organization known as VOLT) have recognized an underground transmission line project that must be paid by citizens presents a significant financial burden on the citizens of Midway, and have stated they want to help mitigate this burden, and whereas the City Council is significantly concerned about the citizen impact of the full cost of underground construction, the city hereby requires that in order to proceed with underground construction a minimum of 1.5 Million US dollars in "donation" funds must be presented to the city in the form of contractual authorization to use these funds for the purpose of the burial of transmission lines, from an escrow bank account serviced by a qualified escrow service. If VOLT is able to raise more than \$1.5M and the underground project costs exceed \$1.5M, the City*

is delighted to accept more help from VOLT. If the final cost of the construction is less than \$1.5M, any excess donations will be retained by the donating entity (IE "VOLT"). It is up to VOLT to return the amount to the rightful owners. We officially express our deep gratitude to the VOLT organization for their hard work and dedication in the service of our town in potentially making actual private funds available.

- 4 • Midway City must secure sufficient funds to cover the cost of construction. If financing is needed then the board of HLP must approve the issuance of bonds sufficient to cover the remaining final cost of construction, as determined by the bids, and after adjusting for the "base" cost of overhead and any other adjustments. Midway City will also work with the HLP board to determine the best mechanism for the bonds to be repaid (IE per-meter charge, per Kwh charge, etc), considering also that the bond issuer may have requirements. Furthermore Midway City Council may, at its discretion, enter into a contract with HL&P that establishes that these funds are to be used by the City to pay for the underground construction costs related to the new construction in Midway, including costs related to any small portions that extend slightly but contiguously out of city limits as part of completing this project.
- 5 • The appropriate Wasatch County Land Use Authority must approve a change in the plan for construction of the portion of the line that is within County jurisdiction and under the existing county CUP that will allow the dip poles (as needed for transition from overhead to underground) near HWY 113 to be moved to a location that is acceptable to the City Council. As guidance for this process, at this time the Council envisions a location near the Fish Hatchery, but we are open to discussion of the best alternatives that will achieve our goals of mitigating visual impacts near to our entry corridor.
- 6 • Prior to construction, the applicant will submit "visual mitigation" landscaping plans and simulations, that show a reasonable use of vegetation following national standards to mitigate the visual impact of any large diameter (> 24" at ground level) dip poles that are used. The intent is to obscure the base of the poles as much as possible with vegetation, while following accepted industry overhead line construction standards and accommodating safety and access requirements.
- 7 • The Midway City attorney will conduct a thorough review of this motion and the related requirements, with the intent of ensuring the city is acting in good faith and following all applicable laws regarding use of City funds and the issuance of a CUP.
- 8 • As applicable to underground construction, the route followed will be the Alternate Route "B", allowing for possible future full width construction of 970 S should that ever come to pass.
- 9 • Whereas many private citizens have expressed in written form submitted by VOLT that they would donate the value of their easements to reduce the cost burden borne by the City, these amounts will be subtracted from the underground cost the City will pay.
- 10 • All distribution lines along the route shall also be buried at the cost of HL&P.
- 11 • HL&P shall install at its own cost conduit sufficient to allow communication lines to also be placed underground.
- 12 • The applicant will obtain all necessary property rights and easements prior to the commencement of construction.
- 13 • The applicant shall contact all property owners whose properties are directly affected by changes to the line(s) prior to beginning construction.
- 14 • In the event a final determination is made by a court with jurisdiction that any existing property rights are not sufficient for the project, the applicant will acquire legally sufficient property rights for the project, which may include negotiated agreements with the property owners or the use of eminent domain. As a part of this process and in

*accordance with Utah law, the applicant will pay compensation for the properties either as negotiated with the property owner or determined by the court.*

- 15 • *Once construction is finished on the underground line, the actual costs will be trued-up and either the applicant shall refund the over-payment to the City, or the City shall pay the difference to the applicant.*
- 16 • *The City will pay the difference between the standard cost (which includes engineering cost, the cost to install the line, all easement costs, all severance damages that RMP would have been required to pay had the line gone above ground) and the actual cost of the buried line.*

With regard to an underground project, we add the following additional findings:

- H • *Midway City conducted an independent randomized poll and it was reported that 70.1% of respondents expressed willingness to bear the cost burden of burying the line.*
- I • *The City is relying on representations made by property owners along the line route that they will donate the amounts paid for easements and severance damages to the City in order to reduce the cost of burying the lines.*
- J • *The City is relying on representations made by the "VOLT" group that they can raise a substantial amount of money to help pay for an underground project.*

If the **applicant has met all of the city's request's** given in this motion in a timely manner, but the city has not been able to secure ALL of the following 3 items:

*a) sufficient funding to pay for the project either through private donations or a vote by the HLP board to approve a sufficient issuance of bonds to make up the difference, and reasonable assurance that related bond funds will be obtainable and usable by the City for this purpose*

*AND*

*b) the required minimum in "donation" fund dollars*

*AND*

*c) a vote by the Wasatch County Council to approve a location for the dip poles that would otherwise be alongside HWY 113 that is acceptable to the Midway City Council*

... by March 1, 2020, then the applicant may proceed with overhead construction with the following conditions:

- 17 • *The route followed will be the "Alternate Route B", allowing for possible future full width construction of 970 S should that ever come to pass.*
- 18 • *All distribution lines along the route shall also be buried at the cost of HL&P.*
- 19 • *HL&P shall install at its own cost conduit sufficient to allow communication lines to also be placed underground.*
- 20 • *The applicant will obtain all necessary property rights and easements prior to the commencement of construction.*
- 21 • *The applicant shall contact all property owners whose properties are directly affected by changes to the line(s) prior to beginning construction.*
- 22 • *In the event a final determination is made by a court with jurisdiction that any existing property rights are not sufficient for the project, the applicant will acquire legally*

sufficient property rights for the project, which may include negotiated agreements with the property owners or the use of eminent domain. As a part of this process and in accordance with Utah law, the applicant will pay compensation for the properties either as negotiated with the property owner or determined by the court.

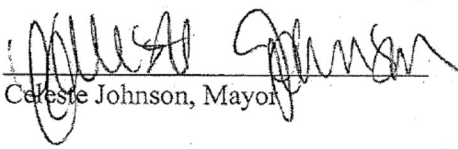
- 23 • The applicant will use the taller poles, with fewer poles and longer spans.
- 24 • The applicant will use the minimum possible diameter of poles in all locations. The applicant will use wood tangent poles wherever possible, and the applicant will work with property owners and the city in considering guyed structures versus large diameter structures as a possible construction method at "corners". The Midway City Council will ultimately decide which option is best, while complying with all applicable laws and construction standards.
- 25 • Where metal poles are used, the applicant will use the self weathering rust colored steel poles.
- 26 • Prior to construction, the applicant will submit "visual mitigation" simulations, that show a reasonable use of vegetation following national standards to mitigate the visual impact of any large diameter (> 24" at ground level) poles that are used. The intent is to obscure the base of the poles as much as possible with vegetation, while following accepted industry overhead line construction standards and accommodating safety and access requirements.
- 27 • While following national construction standards, in order to mitigate the possible negative affects of EMF on personal health electronic devices that may be used by nearby residents (such as unwanted noises caused in cochlear implants for example) the applicant will make a reasonable attempt at minimizing EMF emissions near overhead lines as measured on the ground underneath the line by using the most current available technologies for such purpose.
- 28 • The transmission lines used shall be non-specular or low-reflective so as to reduce visual impact.
- 29 • In general the applicant shall mitigate the visual impacts of the construction to the maximum extent possible while following all relevant safety and construction standards.

**Second:** Council Member Van Wagoner seconded the motion.

**Discussion:** None

**Vote:** The motion was approved with the Council voting as follows:

Council Member Drury	Aye
Council Member Orme	Aye
Council Member Probst	Aye
Council Member Simonsen	Aye
Council Member Van Wagoner	Aye

  
Celeste Johnson, Mayor

**EXHIBIT B**

**Copy of Wasatch County Conditional Use Permit**



Wasatch County  
Planning Commission  
**Report of Action**  
11 July 2019

**ITEM #1** – Heber Light & Power and Rocky Mountain Power request a conditional use permit to rebuild and extend a transmission line and construct a new substation. The transmission line extension portion of this permit application begins on the existing transmission line on Old Highway 40, approximately 2 miles south of the Jordanelle Dam, and extends south 1.6 miles connecting onto the existing transmission line on Highway 40 approximately 0.8 miles south of the Highway 40/32 Interchange. The transmission line extension begins again at approximately 950 North and Highway 40 and runs 1.6 miles west and south, following the planned bypass road corridor, to the intersection of approximately 1200 West and Highway 113. The rebuilt transmission line portion of this permit application follows the existing transmission line on 1200 West. It continues south for approximately 0.25 miles. A new line would then go west along the fence line for approximately 700 feet. The line would then run from a proposed new substation located at 1465 West 650 South on the south side of 650 South. From that point a rebuilt line would run west approximately 2.1 miles ending at Highway 113, then again from the County portion of Wards Lane and 600 West and run 0.5 miles north ending at the Midway Substation located west of the cemetery in Midway City. The structures and poles will range in height from 75-90' with dead end poles ranging in height from 90-110'. *CONTINUED FROM THE JUNE 4<sup>th</sup>, 2019 MEETING TO THE JULY 11<sup>th</sup>, 2019 MEETING.*

*Commissioner Smith was present as Chair.*

**STAFF PRESENTATION**

The Staff Report to the Planning Commission provides details of the facts of the case and the Staff's analysis, conclusions, and recommendations. Key points addressed in the Staff's presentation to the Planning Commission included the following:

- Doug Smith presented the report with proposed findings and conditions.

**CONCERNS RAISED BY PUBLIC**

Any comments received prior to completion of the Staff Report are addressed in the Staff Report to the Planning Commission. Key issues raised in written comments received subsequent to the Staff Report or public comment during the public hearing included the following:

- Tracy Taylor stated that she believes the application is substantially different the substation and power lines. Explained that the comments were closed and that the previous notice did not have a specific location. Stated that the contract between RMP and HLP was concerning.
- Richard Doxey with Nymphas Murdock LLC. Thanked the commission for continuing the item. Was pleased with some of the things proposed. Was concerned about being specific on landscaping and height of trees at full growth should be 30-40 ft. Showed previous substation plan. Wanted to move the station to the north. Also concerned about the substation pole heights. Was concerned the size foot print was 8-10 acres in size. Stated that he believes the footprint is much larger. Wants the area to stay residential/agricultural. His ultimate question was what are the mitigating conditions the power company will commit to. Just wants the law followed and the greenery is better than the wall.
- Laren Gurtch. Presented list of questions in December meeting, still not addressed. Concerned about noise from substation, on poles. These questions must be addressed by this commission. Is opening this meeting for public hearing sufficient since it wasn't noticed as open? Was concerned about the length and number of poles,

wetland areas and why isn't this following an established road? Fundamental question he wants answered is why the easements question hasn't been answered. Wants a condition added that the applicant does not have any eminent domain rights. Wants limits put on that protect owners from additional eminent domain rights.

- Herb Burnett lives on 650 South explained that he thinks that the power lines would create noise and have some impact on the community on those lines. Believes there are real impacts both noise and financially. Just wants the commission to know that there are concerns and just doesn't want facts doesn't want things hidden.
- Tracy Taylor spoke again stating that she feels this process is all wrong and that it wasn't noticed properly so people are not here to comment.

#### **APPLICANT RESPONSE**

Key points addressed in the applicant's presentation to the Planning Commission included the following:

- Harold Wilson and Benjamin Clegg presented for Rocky mountain power. Mr. Clegg explained that they are planning on one wood and one smaller metal pole at the 113 crossing. Nicole XXX the transmission engineer for Rocky Mountain Power explained that they could try to make the crossing poles equidistant as possible from the roadway. Cited the current plan and had an exhibit that showed the current plans. Showed they were 100 feet or so away. She stated they could commit to 75' from the fence line at that crossing on the north and south.
- Went through a presentation that clarified the substation issues and requirements. Explained what zone they were in and that they were a conditional use. Stated that they are under the coverage numbers and they are at 14.5% and the requirement is 20%. Explained the acreage coverage for each part of the property.
- Commissioner Jewkes asked what the plans for the house are on the property. Applicant stated they haven't yet decided. May split off the house property later. Remainder would still comply with coverage requirements.
- Applicant stated they are complying with the intent of the landscaping code though they don't believe it applies to them. They created a landscape plan which they prevented. Looked at the berm and landscaping option as well as a concrete wall option. Clarified it is in one or the other.
- Went over state statute on conditional uses. Stated they met all county conditional use requirements as well as state requirements. Stated they met county code. Stated that they believe they have mitigated all the issues on the site as far as required.
- Commissioner Jewkes asked about the heights of the equipment in the substation. Wanted them to clarify their position that the power poles that are dead ends are poles and not structures or buildings.
- Commissioner Hendricks asked about the siting on the substation and that the bypass and Heber City are on the East. Harold explained that they will try to go the East as much as they can.
- With questions from commissioner Jewkes addressed how they searched for a site for the substation. Harold explained how they were really pursuing other properties but couldn't find a location until this owner was willing to sell. Didn't think it was fair to characterize the effort that way.
- Applicant stated they didn't believe there were any health requirements.
- Commissioner Zuercher asked if the non-spectral wire was being used near the Labrum dealership Applicant stated that it was.

#### **PLANNING COMMISSION DISCUSSION**

Key points discussed by the Planning Commission included the following:

- Commissioner Hendricks wanted to clarify some of the findings and conditions. What does condition 4 mean and how can they be specific on materials and setbacks. Clarified that he will be asking about that in the applicant presentation. Asked about finding number 4 and applicant will need to find that. Finding 8 about fencing. Clarified the berm will still have a safety/security fence. Asked about the centering on the lot.
- Commissioner Jewkes asked about the coverage and height requirements and if the staff was comfortable with those. Doug Smith clarified that we believe they do meet some, but the applicant will need to explain how they meet that.

- Chairman Smith asked Jon Woodard about the State Facilities Review Board and how that works. Jon explained how that board works and that any result we get through here would be better than going that route.
- Commissioner Jewkes has some questions. Asked about the letter sent to the County Attorney and if that was responded to. Jon was not sure what Scott did about this. Commissioner Jewkes wanted to know about Tracy Taylor's other concerns. Jon stated that the application could change as it has without a new application, also stated that a specific address is not required for noticing. Adam Long General Council for Heber Light and Power stated that HL&P are not in the business of owning easements or property, they're in the business of delivering power. The arrangement benefits HL&P and RMP.
- Commissioner Hendricks stated that the contract issues aren't in our purview. Commissioner Jewkes agreed with that.
- Commissioner Jewkes had questions about how high the poles were in the substation. Applicant stated that they would be 65'.
- Commissioner Hendricks outlined how the process has worked well so far and people have had many opportunities to comment.
- Commissioner Jewkes explained that we just need to reasonable mitigate the issues.
- The commission discussed possible conditions and how they could clarify and make them better.

#### **MOTION - Lines portion (1a)**

Commissioner Jewkes made a motion to approve the Conditional Use Report with all the findings and conditions with the following exceptions:

The fewest number of poles be used with heights at the higher end of the range.

The crossing at 113 use wood poles unless a metal one is required with 75' setbacks from the fenceline along the road

Commissioner Zuercher seconded the motion.

#### **VOTE ( 5 TO 0 )**

Michael Smith	<b>AYE</b>	NAY	ABSTAIN	Mark Hendricks	<b>AYE</b>	NAY	ABSTAIN
Charles Zuercher	<b>AYE</b>	NAY	ABSTAIN	Joshua Jewkes	<b>AYE</b>	NAY	ABSTAIN
Kimberly Cook	<b>AYE</b>	NAY	ABSTAIN				

#### **MOTION - Substation Portion**

Commissioner Jewkes made a motion to approve the substation with the findings and conditions in the report with the following exceptions:

Trees at planting must be 6' and 35' at maturity unless it interferes with operation and safety of the station.

Efforts should be made to move the station to the north and locate it properly. The setback to the South should be at least 100'.

Commissioner Hendricks seconded the motion.

#### **VOTE ( 5 TO 0 )**

Michael Smith	<b>AYE</b>	NAY	ABSTAIN	Mark Hendricks	<b>AYE</b>	NAY	ABSTAIN
Charles Zuercher	<b>AYE</b>	NAY	ABSTAIN	Joshua Jewkes	<b>AYE</b>	NAY	ABSTAIN
Kimberly Cook	<b>AYE</b>	NAY	ABSTAIN				

#### **FINDINGS / BASIS OF PLANNING COMMISSION DETERMINATION**

Additional Report of Action for item previously continued after a public hearing or other discussion: 06/04/2019

The motion includes facts of the case, analysis, conclusions and recommendations outlined in the Staff Report, with any changes noted; Planning Commission determination is generally consistent with the Staff analysis and determination.

1. 16.07.03 of the Wasatch County code lists electric substations as a conditional use.
2. The land use authority shall approve Conditional uses if reasonable conditions to mitigate negative effects can be imposed.
3. The planning Commission is the land use authority for conditional uses.
4. The applicant has demonstrated to the commission that the proposal complies with Section 16.23.07 of the current Wasatch County Code related to Conditional Uses and the impacts have been substantially mitigated by the specific conditions listed.
5. The proposal complies with Wasatch Code Chapter 16.07 (RA-5).
6. The proposal complies with Wasatch Code 16.07.09 requiring the height of structures to not exceed 35' above natural grade, noting that the conditional use of power poles over 49 feet in 16.07.03 is a specific provision of code for power poles heights that governs over the general limitation on the height of dwellings and structures, and which interpretation is in accordance with how the county has approved power poles throughout the county.
7. The proposal complies with Wasatch Code 16.07.12 requiring buildings and structures to not cover more than 20% of the area of the lot or parcel of land.
8. The landscape plan presented, if approved by the commission, provides a mixture of evergreen and deciduous trees that, along with the minimum 5' berm, will provide the necessary screening to mitigate the detrimental effects of the ground mounted equipment.
9. There are no known zoning violations on the property at this time.

#### **CONDITIONS**

##### **Power Lines:**

1. The planning commission should consider which of the following is more appropriate:
  - a. The applicant should keep the heights of the power poles as low as possible. This may require a higher number of poles in order to keep the power lines at minimum required heights.

**OR**

  - b. The applicant should install the fewest number of poles possible. This may require heights at the high end of the requested range in more places, but would result in an overall lower number of poles. The applicant would still not go higher than necessary to meet safety and code requirements.
2. The applicant demonstrates that the proposal can satisfy the necessary findings outlined in 16.23.07 and with mitigating conditions be an acceptable use.
3. Distribution lines through the more noticeable parts of the system must be buried. A clear commitment by the applicant for specific areas and lengths should be determined.
4. Demonstration and clear understanding of the Highway 113 crossing at Southfield road with particular attention to setbacks from the highway for poles and consideration of wood poles and not large metal terminus poles.
5. All poles through straight portions should be wood with corner poles being rusted steel.
6. The maximum height limit for power poles is 110' on corner and end poles and 90' on all other poles.
7. The lines used should be non-spectral or low-reflective lines so as to reduce visual impact.
8. All Horizontal bars including distribution lines, where used, shall be rusted and not galvanized.
9. In all areas where two lines exist, Rocky Mountain Power and Heber Light & Power shall co-locate lines.

##### **Substation:**

1. The landscape plan must specify the mixture of deciduous and evergreen trees with species and sizes placed strategically to buffer the more impactful areas of the sub-station.
2. The landscape plan approved should have, at a minimum, 110 trees and sizes as per code section 16.21.10 which requires trees to be 2" caliper and 6' in height at time of planting.
3. The berming shall be a minimum of 5' in height as shown on the plans or as determined by the planning commission.
4. Any expansion of the use would require submittal of another conditional use application.
5. Any lighting installed on the substation property will need to be dark sky compliant with full cut-off.
6. Coverage of the site shall be in compliance with 16.07.12 including expansions.
7. Consideration of having the substation setbacks equal distances from the south, east and west property lines.

8. All Landscaping must be maintained in perpetuity.
9. Landscaping must be installed at the time of the construction of the substation.



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Wasatch County Planning Commission - Chairman

The Staff Report is a part of the record of the decision of this item. Where findings of the Planning Commission differ from findings of Staff, those will be noted in this Report of Action. Official action of the Planning Commission on this item is subject to the approved minutes.