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BEFORE THE UTAH UTILITY FACILITY REVIEW BOARD

ROCKY MOUNTAIN POWER Petitioner vs. MIDWAY CITY Respondent	**RESPONDENT MIDWAY CITY'S (1) RESPONSE TO PETITIONER'S PETITION FOR REVIEW AND (2) COUNTER-PETITION FOR REVIEW** Docket Number 20-035-03

Defendant Midway City, by and through the above counsel and pursuant to Utah Code § 54-14-303, hereby responds to Petitioner Rocky Mountain Power's ("RMP") Petition for Review and asserts its Counter-Petition for Review.

INTRODUCTION AND BACKGROUND

As this Board can surely understand, Midway is a small town in a mountain valley that thrives on tourism and its beautiful and natural setting beneath the mountains. The existence of the massive transmission line and poles seriously threatens that image, and the City and its citizens have the right to explore the best ways to manage the harmful impacts created by RMP's decision to seek joint applicant, but separate, multi-jurisdictional permits without input by Midway. To its credit, RMP has cooperated with Midway, as both have worked for months to find a solution that benefits both parties. Unfortunately, RMP has largely ignored Midway's reasonable requests for information.[1] The conditional use permit ("CUP") that RMP now attacks is the City's good-faith attempt to observe its obligations under applicable law and to its citizenry, while preserving the rural identity of Midway.

This dispute came to a head when RMP submitted an application to Midway for a conditional use permit to construct, together with Heber Light & Power ("HLP"), a double-circuit 46kV and 138kV transmission line (one each for HLP and RMP) through a one-mile stretch of Midway City in a picturesque area of the valley filled with green open space and quiet residential neighborhoods in the shadow of Mount Timpanogos. The line arrives at Midway City after passing through portions of Wasatch County and Heber City, both of whom have also granted CUPs to RMP but for overhead lines. On December 19, 2019, the Midway City Council also approved RMP's application but requiring that the lines be buried upon further condition that RMP provides requested information.

To mitigate the negative visual and health impacts of the transmission lines and their looming, booming poles, the December 18, 2019 decision by the City Council (the "Decision") imposed several conditions on RMP. First and foremost, the Decision finds that burying the line is desired by the citizens of Midway and that an underground line will best mitigate the visual and other harmful impacts of overhead transmission lines. (Decision at 1-2.) Recognizing that burying the line will be more expensive than standard costs, the Decision requires the City to pay

[1] Among those requests is Midway's request for information regarding RMP's claimed deadline of the end of 2020. RMP has been consistent in its refusal to provide that and other information reasonably requested. Midway therefore questions RMP's claim that it's (as opposed to non-party HLP's) 138 KV line through, not to, Midway is needed to provide adequate electric service to customers of a public utility, as opposed to RMP's wholesale sale or transmission of Wyoming "green" power to other utility customers outside of Utah.

for those excess costs, once determined, as required by the Utility Facility Review Board Act (the "Act"): "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." (Decision at 4, bullet 15.) RMP's estimate of burial costs for Wasatch County are not complete. Thus, Midway asked RMP for complete estimates and when not provided, conditioned the permit on RMP's provision of that information.

In order to determine what the actual excess costs are, the Decision requires RMP to secure "three actual competitive construction bids." (*Id*. at 2, bullet 1.) The Decision then describes in detail how Midway will pay for the actual excess costs, including donated funds and a bonding process. (*Id*. at 2-3, bullets 3-4.) The Decision also conditions the CUP on Wasatch County's approval to allow two dip poles, which is of minor concern because the County already approved 110-foot poles for the line in the same area. (*Id*. at 3, bullet 5.) The Decision also requires RMP to price out the use of gas insulted transmission lines, which is a newer technology shown to be cheaper and safer for underground lines. (*Id*. at 2, bullet 2.) The Act, unfortunately, creates a "chicken and egg" situation where commitments to pay depend on information that cannot be ascertained when, as here, the utility refuses to provide the information until payment is made. Midway did not create this situation. But, RMP can resolve it.

Based on these facts, RMP has asked this Board to review and nullify certain portions of the Decision. RMP contends that the Decision is not "final" and does not constitute an "agreement" to pay the excess costs, even though the Decision plainly states that the City is required to pay the actual excess costs once determined and if the burial condition is not waived.

That the Decision includes several conditions does not invalidate it. On the contrary, a CUP by its very nature allows conditions to be placed on a utility that are reasonably related to mitigate adverse impacts as these conditions are.

RMP also argues that the City has forever "waived" its right to require the line to be buried because the City has not already paid for the excess costs, even though the statute does not require payment now, and the actual excess cost is not even known. RMP concludes its Petition by arguing that Midway has "exceeded" its authority in imposing the above conditions but fails to demonstrate the limits of Midway's authority, especially in the context of a CUP that the Act protects under Utah Code § 54-14-305(5) [2]

RMP's Petition should, therefore, be rejected. However, RMP's conduct in response to the Decision raises a separate need for review by this Board. As such, Midway has asserted a Counter-Petition herein on the following related grounds (I) RMP has not demonstrated an ***immediate*** need for this line; (II) RMP has not ascertained the actual costs of rights-of-way, as necessary to arrive at the actual excess cost; (III) RMP is wrongfully refusing to obtain competitive bids and demanding pre-payment from Midway; and (IV) this Board should allocate a substantial portion of the costs to RMP, as the primary purpose of RMP's line is to wholesale power to customers in other jurisdictions. The Board should review these claims, convene a hearing and receive evidence pertaining to the issues raised and grant the relief requested by Midway.

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[2] RMP and HLP have waived any right to challenge Midway's CUP in district court under Utah Code § 10-9a-801(2).

RESPONSE TO THE PETITION

I. The City's Decision is a Final Decision.

RMP expresses doubt about whether the Decision is "final". (Pet. at 6.) Midway hereby affirms that the Decision was a final action on RMP's request for a conditional use permit as of December 17, 2019, when it was passed by the Midway City Council. Because it is a conditional use permit, however, certain conditions must, by definition, be met. Utah Code § 10-9a-103(7) ("'Conditional use' means a land use that, because of its unique characteristics or potential impact on the county, surrounding neighbors, or adjacent land uses, may not be compatible in some areas or may be compatible ***only if certain conditions are required*** that mitigate or eliminate the detrimental impacts.") (emphasis added). That a permit is conditional does not mean it is non-final or otherwise invalid or unenforceable. *Id*. § 10-9a-507(1)(a) (a city may "adopt a land use ordinance that ***includes conditional uses*** and provisions for conditional uses that ***require compliance*** with standards set forth in an applicable ordinance.") (emphasis added). Indeed, the Utility Facility Review Board Act itself expressly recognizes that a city may place conditions on the location of facilities like transmission lines. Utah Code § 54-14-201.

Accordingly, the Decision is final and binding.

II. The City's Decision is a Written Agreement Requiring RMP to Obtain Bids and to Establish the Actual Costs of Burying the Line.

RMP contends that the Decision "may not be an agreement to pay the actual excess costs" and that, therefore, RMP's legal obligations are not triggered. (Pet. at 7-8.) RMP acknowledges that the Decision requires the City to pay the difference between the cost of overhead lines and buried lines. (*Id*. at 8.) Yet, RMP suggests that the Decision may not be a written agreement under Section 303(1)(a) because the City "is not prepared" to pay, or has not already secured funding for, the actual costs. (*Id.*) RMP is placing the cart before the horse in this process.

Part 2 of Utility Facility Review Board Act governs conditions placed by municipalities on the location of transmission lines. It is clear that a city must pay the actual excess cost of the conditional construction.[3] Utah Code § 54-14-201(2). As part of the city's decision-making process, the utility must provide the city with the "estimated standard costs" of the lines and "estimated excess costs". *Id.* § 54-14-202(b)(1). Section 54-14-203 provides that if a city agrees to pay for the excess cost, the city may elect to either accept the estimates provided by the utility or to require the utility to secure bids to determine the "actual excess costs":

> **54-14-203 Actual excess cost.**
> (1) If a local government issues a permit, authorization, approval, exception, or waiver ***based upon its agreement to pay for the actual excess cost*** of a facility, the local government shall within 30 days ***either accept the estimate of excess cost as the actual excess cost of a facility or request the public utility to obtain competitive bids*** for the facility if constructed in accordance with the requirements and conditions of the local government.
> (2) If the local government requests the public utility to obtain competitive bids, ***the public utility shall obtain competitive bids***, and the actual excess cost of the facility shall be the difference between the lowest bid acceptable to the public utility plus the public utility's contract administration and oversight expense and the standard cost of the facility.
> (3) Any dispute regarding specifications, lowest acceptable bid, or administration and oversight expense shall be resolved by the board on an expedited basis.

Id. § 54-14-203 (emphasis added). The Act defines "actual excess cost" as the difference between "the standard cost of a facility" and "the actual cost of the facility, including any right-of-way, as determined in accordance with Section 54-14-203." *Id.* § 54-14-103(1).

[3] Excess costs is defined as "the difference in cost between the standard cost of a facility; and the actual cost of the facility…." *Id.* § 54-14-103(1). The phrase "standard cost" generally refers to the cost of construction pursuant to "the public utility's normal practices." *Id.* § 54-14-103(9).

Together, these statutes establish a precise order and process for paying excess costs resulting from the municipality's conditions on the construction of the transmission lines. First and foremost, the city is only required to pay the "***actual*** excess cost." *Id*. (emphasis added). The City is not obligated to raise and pay for "estimated" costs, although the statute obligates RMP to provide the City estimated costs so it can make an informed decision on whether and how to condition the construction of power lines. *Id*. § 54-14-202(b)(1).

Once the City has granted the application and established conditions, however, the City is no longer required to rely upon mere estimates. Rather, the City has the right to require RMP "to obtain competitive bids" to determine the "actual excess costs"—as defined in the statute—involved in meeting the conditions so that the City can raise the proper amount. *Id*. § 54-14-203(1). Once the City makes that election, RMP ***must*** (i.e., "the public utility shall obtain") secure the competitive bids. *Id*. § 54-14-203(2).

In this case, RMP provided Midway with estimated costs as part of its conditional use permit application in April 2019. (Pet. at 5.) The City considered the information, and on December 17, 2019, issued its Decision granting the permit based on various conditions and finding: "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." (Decision at 4, bullet 15.) In order to determine what those actual costs are, the Decision rejects the "estimates" provided by RMP and requires RMP to secure "three actual competitive construction bids." (*Id*. at 2, bullet 1.) The Decision then describes in detail how Midway will pay for the actual excess costs, including donated funds and a bonding process. (*Id*. at 2-3, bullets 3-4.)

From this, RMP suggests that this may not be an actual "agreement" to pay. It is not clear what the basis for this contention is. The Decision plainly states that the City must pay for the actual excess costs if RMP fulfills the conditions, which include securing competitive bids. The statute does not define the term "agreement." Black's Law Dictionary defines "agreement" more broadly than a contract, as a simple manifestation of assent. *Black's Law Dictionary* (11th ed. 2019). The City has clearly manifested its assent to pay for the actual costs, once they are determined.

It is also well established under Utah law that agreements or contracts may be, and often are, subject to conditions precedent. *Mind & Motion Utah Inv., LLC v. Celtic Bank Corp.*, 2016 UT 6, ¶ 20, 367 P.3d 994. Although a party's performance under the contract may not be due until the condition is fulfilled, the parties may still have a valid and binding agreement. *Id*. ("A condition is 'an event, not certain to occur, which must occur ... before performance under a contract becomes due.' ") (quoting *McArthur v. State Farm Mut. Auto. Ins. Co.*, 2012 UT 22, ¶ 28, 274 P.3d 981). That the agreement to pay here includes conditions precedent is neither unusual nor fatal to the validity of the agreement.

RMP also suggests that Midway has not "agreed" to pay for the actual excess costs because the City has not yet secured the funding. (Pet. at 8.) Nothing in the Act, however, requires a municipality to have secured funding of the excess costs prior to granting a conditional use permit. In fact, the opposite is true. As explained above, Sections 201-203 evidence a statutory scheme where a city bases its decision on "estimated excess costs" and then has the right to ascertain "actual excess costs" so that it can finalize funding. As this body is no doubt aware, a municipality is constrained in its ability to raise public funds and has a fiduciary duty as a steward over those funds. The City is not free to throw a dart against the wall and bond for whatever amount it happens to fall upon. RMP's contention that funding must be secured first is inconsistent with the language of the controlling statutes and prudent municipal management.

Finally, this issue is not trivial. The "actual excess cost" must be calculated by the difference between the standard cost and the actual cost, as conditioned, and must be both supported by competitive bids. Utah Code §§ 54-14-103(1), 203. The "standard cost" is defined as "the cost of any overhead line constructed in accordance with the public utility's normal practices" but specifically includes the cost of "any necessary right-of-way." *Id*. § 54-14-103(9). Thus, RMP's standard cost to build an overhead line must include the cost to condemn and acquire easements and payment of severance damages. *Utah Dept. of Transp. v. Admiral Beverage Corp.*, 2011 UT 62, ¶ 19, 275 P.3d 208 ("[W]hen a landowner suffers the physical taking of a portion of his land, he is entitled to severance damages amounting to the full loss of market value in his remaining property caused by the taking."). Although only a mile long, the proposed path of the line through Midway lies squarely on the front lawn of numerous landowners. These parcels are valuable, and there are likely to be substantial diminution in value and damages to be paid.

If the line is constructed overhead, then RMP must pay these amounts. If, on the other hand, the line is constructed underground, then there will be no severance damages. Moreover, many of the affected landowners have agreed to donate the easements but ***only*** if the line is buried. (Decision at 3, bullet 9.) As such, it is not possible to calculate the "actual excess cost" unless the actual costs of the easements and severance damages is known.[4] And, that evidence must be supported by competitive bids.

Accordingly, Midway has agreed to pay the actual excess cost, and RMP's must provide bids and substantiated numbers, including the cost of easements and severance damages, to ascertain the actual excess cost. RMP's request for a contrary finding should be rejected.

III. The City Has Not Waived Its Right to Impose Conditions on RMP Requiring the Line to be Buried.

Citing Section 204, RMP next argues that the City has forever "waived" its right to require RMP to bury part of the line in connection with the conditional use permit. RMP's contention rests on a misapprehension of the statute and is without merit.

Section 204 provides that a municipality waives its conditions if it fails to pay the "actual excess cost" at least thirty days before construction begins:

> **54-14-204 Requirements or conditions on facility considered waived if local government does not pay for actual excess cost 30 days before construction.** Any requirement or condition in any permit, authorization, approval, exception, or waiver of a local government for a facility that imposes an actual excess cost shall be considered waived if the local government does not pay the public utility for the ***actual excess cost***, ***except any actual excess costs specified in Subsection 54-14-201(2)(a) or (2)(b)***, within 30 days before the date construction of the facility should commence ***in order to avoid a significant risk of impairment of safe, reliable, and adequate service*** to customers of the public utility.

Utah Code § 54-14-204 (emphasis added). Because the term "construction" includes designing of the facility and ordering of materials, RMP contends that Midway should have already paid for the excess costs. (Pet. at 9.) This presumes, of course, that RMP has already begun the design and ordering phases for the underground line, which does not appear to be the case.

[4] The purported estimates of the cost of easements and severance damages supplied by RMP prior to the hearing are believed to be unrealistic and far too low.

RMP's position is incorrect for several reasons. First, Section 204 expressly excepts from its scope "actual excess costs" as specified in Section 201, which relate to excess costs caused by conditions imposed by a municipality. Those are exactly the excess costs at issue here. Thus, this statute does not apply on its face.

Second, the "actual excess costs" have not even been determined yet. As explained above, Section 203 allows the City to require RMP to secure competitive bids in order to ascertain the "actual excess costs". Utah Code § 54-14-203. As of now, the City has only received estimated costs, and RMP has not provided any competitive bids. Thus, the actual costs are unknown. By definition, a party cannot be deemed to have intentionally waived a right due its failure to pay an amount that is not known. *Mounteer Enters., Inc. v. Homeowners Ass'n for the Colony at White Pine Canyon*, 2018 UT 23, ¶17, 422 P.3d 809 (waiver involves an intentional relinquishment of a known right).

Third, RMP has, again, taken this process out of order in its haste to push forward. The statutory scheme set out in the Act evidences an orderly procedure that involves obtaining bids first and then beginning construction. RMP is not free to rush construction in order to force the City into an unreasonable waiver of its rights. It is also unknown, and quite doubtful, how RMP could genuinely begin the construction process without getting a single bid on the work. When asked about its timeline for construction RMP has refused to respond. Its refusal leads to the conclusion that RMP is withholding information that could damage its position. At a minimum, Midway should be provided the opportunity to conduct discovery to obtain that and other information proportional to the relief RMP requests.

Fourth, even if RMP had followed the appropriate procedures, RMP has given the City no notice that construction was to begin. At a very minimum, due process requires the City to have actual notice of the date by which it may waive its rights. *Salt Lake City Corp. v. Jordan River Restoration Network*, 2012 UT 84, ¶ 50, 299 P.3d 990 (minimum due process requires actual notice and procedural fairness). RMP cannot fairly claim that it secretly began construction at some prior unknown time, resulting in a waiver of the City's statutory rights. Waiver does not occur by surprise.

Fifth, an involuntary conclusion of waiver of municipal rights will only occur "in order to avoid a significant risk of impairment of safe, reliable, and adequate service." Utah Code § 54-14-204. RMP has failed to show that Midway has caused "a significant risk" that safe, reliable, and adequate service will be impaired. In other words, RMP has not shown, and cannot show, that unless the Project is finished immediately (i.e., before the end of 2020, as planned) power service will be interrupted. Indeed, the most recent information provided by HL&P, which relies on RMP's power for service in Midway and the Heber Valley, is that interruption of power is likely years away. (EXHIBIT A.)

Indeed, it should be recognized that in fact the "Project" is actually two projects: HL&P's upgrade and RMP's through-county transmission line. The only commonality between them is hanging the wires on the same poles. This Board is asked to focus on only RMP's portion of the Project moving power from Wyoming to somewhere beyond Wasatch County, and perhaps Utah, to wholesale customers in locations RMP refuses to disclose. For that reason, in its Counter-Petition, the City requests that the Board exercise its power to impose the costs of

RMP's buried line on RMP, a for-profit entity that is apparently engaged in a transaction that will not provide power to residents of Wasatch County.

Accordingly, Midway has not waived its right to condition the Project on burying part of the line underground.

IV. The City Has Not Exceeded its Authority.

Lastly, RMP argues that Midway has imposed conditions that "exceed" its authority in three ways, none of which has merit.

First, RMP contends that Midway exceeded its authority in requiring that Wasatch County allow dip poles to be constructed on County property. (Pet. at 10.) The Decision requires RMP to seek the County to "approve a change in the plan for construction of the portion of the line that is within the County" to allow the removal of the dip poles away from Midway's main southern entry corridor. (Decision at 3, bullet 5.) Dip poles are large terminal poles used to transition overhead lines to underground cable. They typically measure 110 feet high and must be used to bury the line within Midway City. And, here, because of the dual nature of the Project, two dip poles are required. Because, however, the line transitions from the County to the City at a major entry corridor, the dip poles must be constructed away from that corridor on property within the County.

RMP provides no authority explaining why this condition exceeds the authority of the City. The City's discretion to impose conditions in response to a conditional use permit is governed by statute. As the land use authority, the City may impose conditions meant "to mitigate the reasonably anticipated detrimental effects of the proposed use in accordance with applicable standards." Utah Code § 10-9a-507(2)(a). The conditions will be upheld if supported by substantial evidence in the record, and they "reasonably relate to mitigating the anticipated detrimental effects of the proposed use." *Id*. § 17-27a-506(2)(b); *see also id*. § 17-27a-801(3) (land use regulation will be upheld unless arbitrary and capricious).

There can be little doubt that constructing the line underground, which necessitates dip poles, is reasonably related to mitigating detrimental effects of the transmission line, particularly visual impacts. Moreover, as the Decision states, if this condition is not fulfilled, then RMP may simply build the line overhead as planned, unless the condition is waived by the City. (Decision at 4.)

The County has already approved 110-foot high poles for corner and end poles without specific locations, (Cnty. Rpt. at 24), so using a 110' dip pole as an end pole within the County would not require a new or amended permit. Instead, as the Decision states, the County could administratively approve a change in the plan for construction of the portion of the line that is within the County to allow the dip poles. (Decision at 3, bullet 5.) Midway would be responsible to arrange this change, and the County has already indicated it is willing to cooperate with Midway on this matter. Additionally, the property where the dip poles would be placed lies within Midway's annexation area of the County, and, therefore, the City has a vested interest in the future of this property. In short, none of this exceeds the conditional use authority of Midway.

Second, RMP contends that Midway exceeded its authority in requiring RMP to obtain three competitive bids for the work. (Pet. at 11.) This objection is unfounded. The Act states that "[i]If the local government requests the public utility to obtain competitive ***bids***, the public utility shall obtain competitive ***bids***…." Utah Code § 54-14-203(2). Notably, the statute speaks in terms of "bids" plural. Thus, RMP is required, at a minimum, to obtain at least two competitive bids.

Moreover, the reason the City required three competitive bids is to align with the requirements of the Midway City Code, which requires three bids during the procurement process. Midway City Code § 4.02.010. It cannot be credibly argued that requiring three bids, as opposed to two, is an abuse of authority.

Third, RMP argues that Midway exceeded its authority in requiring RMP to include in its bids the cost of using gas insulated transmissions lines ("GIL"). (Pet. at 11.) GIL is a new technology that has been shown to be safe and reliable, to reduce electromagnetic radiation and interference with neighbors and to reduce costs. *See generally* https://new.siemens.com/global/en/products/energy/high-voltage/power-transmission-lines/gas-insulated-lines.html (last visited Feb. 18, 2020) ("Gas-insulated transmission lines (GIL) are the safe and flexible alternative to overhead lines and take up much less space while providing the same power transmission."). RMP's speculation about "potentially dangerous gases" is unfounded, as this technology has been proven in the field. (*Id.*) If anything, RMP should be eager to evaluate this technology, as it promises to reduce costs. Midway did not exceed its conditional use authority in requiring RMP to include the use of GIL technology in its bids as one alternative.

Accordingly, Midway has not exceeded its authority in placing conditions on RMP to mitigate the detrimental impacts of the transmission lines, and RMP's request to strike these conditions should be denied.

COUNTER-PETITION FOR REVIEW

Having responded to RMP's Petition, Midway hereby asserts this Counter-Petition and requests that the Board take the following actions:

I. RMP Must Demonstrate an Immediate Need for The New Line.

RMP repeatedly alleges in its Petition that the new line is "urgently needed" and that the failure to act now "could result in an array of negative system outcomes", including "outages lasting days or weeks…." (Pet. at 3.) Thus, RMP also represents that, "[I]n 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." (*Id*. at 5.)

This showing by RMP is critical because RMP's authority to construct power facilities like the transmission line hinges on the need to provide safe, reliable, adequate and efficient service to customers. Utah Code § 54-14-102(1)(b). Moreover, the authority of a municipality to condition the construction of facilities is curtailed primarily by "the ability of the public utility to provide safe, reliable, adequate and efficient service to its customers." Id. § 54-14-201(1).

Although RMP has made much hay about its ***immediate*** need for this line, both in its briefing to this Boards and in repeated public statements, RMP has not actually demonstrated this immediate need. In fact, as explained above, recent information released by HLP shows that there are no immediate risks of system outages. (EXHIBIT A.)

To be sure, Midway recognizes that this project is important for the future needs of the valley and wishes to support the supply of adequate power to customers. Midway also wants to be a reliable partner with RMP in RMP's efforts to serve the citizens of the City. But, RMP insists that the line must be constructed ***now***—over the objections and rights of the City and its citizens—and that RMP has no time to bother with things like competitive bids or employing the best available technology.

Midway requests that this Board review RMP's claim that the transmission line must be built before the end of 2020 in order to continue to provide safe, reliable, adequate and efficient service to customers. Midway also requests that the Board review RMP's assertions of negative system outcomes, require evidence thereof, and grant Midway sufficient time to complete the orderly process set out in the Act.

II. RMP Must Ascertain the Actual Costs of Rights-of-Way.

As explained above, the "actual excess cost" is the difference between the standard cost and the actual cost of the facility and must specifically include the cost of any necessary right-of-way, supported by competitive bids. Utah Code §§ 54-14-103(1), 103(9), 203. The estimates RMP has provided regarding the cost of easements and severance damages are grossly inaccurate (too low). Because, however, the actual excess cost cannot be determined without knowing the true standard cost, RMP should be compelled accurate figures or bids of the easements and severance damages.

III. RMP is Wrongfully Refusing to Obtain Competitive Bids and Demanding Pre-Payment from Midway.

As explained above, the Act establishes an orderly process that a utility and municipality must follow in siting facilities and imposing conditions on the construction of the facilities. In particular, the Act requires RMP to secured competitive bids so that the "actual excess costs" can be accurately determined, and the City can pay those funds. Utah Code § 54-14-203. Unfortunately, RMP has turned this process on its head.

After agreeing to pay the excess costs for burying the line, the City's Decision asked RMP to obtain competitive bids. (Decision at 2, bullet 1.) Having done so, RMP is obligated to secure the bids. Utah Code § 54-14-203(2) ("If the local government requests the public utility to obtain competitive ***bids***, the public utility shall obtain competitive ***bids***…."). RMP has refused, however, to obtain the bids unless Midway first pays RMP $25,000.00 to cover the cost of obtaining the bids and unless Midway signs a written bid contract with RMP. (EXHIBIT B.) Of course, RMP's unfounded demands are only delaying the process that RMP claims must be sped up.

Putting aside the issue of delay, nothing in the Act or other law supports RMP's demand. On the contrary, the Act makes crystal clear that once the City agrees to pay, as it did in the Decision, RMP ***must*** proceed and secure the bids. *Id*. § 54-14-203(2). There is no mention of payment up front, a deposit or an additional written contract, and the legislature presumably would have included such language if it were required. Moreover, allowing RMP to condition its compliance with Section 203 on pre-payment from the City would disrupt the process outlined in the Act and sanction what amounts to legal blackmail.

RMP's demand is also inconsistent with the plain language of the Act. The Act requires the City to only pay "actual excess cost." *Id*. § 54-14-201(2). Actual excess costs are defined carefully in the statute and must be arrived at using competitive bids. *Id*. § § 54-14-203(2) ("[T]he actual excess cost of the facility shall be the difference between the lowest bid acceptable to the public utility plus the public utility's contract administration and oversight expense and the standard cost of the facility."). If bids have not been secured, as is the case here, then the actual excess cost has not determined, and Midway cannot be compelled to pay it. The statute cannot reasonably be read to require Midway to pay a sum that is yet unknown.

Accordingly, the Board should compel RMP to promptly secure the bids and should strike RMP's demands for a deposit and a written bid contract.

IV. The Board Should Allocate a Substantial Portion of the Costs to RMP.

While a municipality is required to pay for actual excess costs, the Act provides that in circumstances where the costs can be recovered by the utility, the power is serving multiple jurisdictions or other equitable factors, the utility should bear a portion of the excess costs. Section 201 provides:

> (2) the local government pays for the actual excess cost resulting from the requirements or conditions, ***except***:
> (a) any actual excess costs that the public utility collects from its customers pursuant to an order, rule, or regulation of the commission; or
> (b) any portion of the actual excess costs that the board requires to be borne by the public utility.

Utah Code § 54-14-201(2)(b). Similarly, Section 303 provides:

> A local government or public utility may seek review by the board, if: …
>
> (g) a facility is proposed to be located within a local government jurisdiction to serve customers exclusively outside the jurisdiction of the local government and there is a dispute regarding the apportionment of the actual excess cost of the facility between the local government and the public utility.

Id. § 54-14-303(1)(g).

> (2) The written decision [of the Board] shall: …
> (b) resolve any dispute regarding: …
> (iv) apportionment of the actual excess cost of the facility between the local government and 'the public utility under Subsection 54-14-303(1)(g);

Id. § 54-14-305(2)(b)(iv).

Although discovery will be necessary on this issue, it appears that the primary purpose for RMP's transmission line is to wheel power to wholesale customers in other jurisdictions, not for the benefit of Midway and its citizens. The wholesale side of RMP's business, which it has refused to disclose, is not regulated by the PSC. However, if a substantial purpose of the overhead line is to facilitate the wholesale power in other jurisdictions, the Board has the authority—and should—apportion some or all of the excess cost to RMP, rather than place the entire burden on Midway.

CONCLUSION

For the foregoing reasons, this Court should deny RMP's Petition for Review and grant Midway's Counter-Petition for Review.

DATED this 21st day of February 2020.

/s/ Corbin B. Gordon
Corbin B. Gordon
Counsel for Respondent
Midway City

CERTIFICATE OF SERVICE

I hereby certify that on the 21st day of February 2020, I filed a copy of the above-captioned document with the Clerk of Public Service Commission via email system, which delivered an electronic copy to the following:

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EXHIBIT A

HEBER LIGHT & POWER INTEGRATED RESOURCE PLAN

2021-2025 with long-term projections

JANUARY 20, 2020

HEBER LIGHT & POWER
ENERGY RESOURCE DEPARTMENT
31 S. 100 W. Heber City, Utah 84032

Contents

Introduction

Heber Light & Power conducts an extensive planning process for integrating resources that includes working with our Board of Directors, stake holders, and consultants to define our energy future. Together we have developed a plan that addresses our current portfolio strengths and weaknesses and identifies the need to rebalance and diversify our energy resource mix. This document defines our objectives, characterizes our planning environment along with external factors that could impact our decision making, and provides a plan that will help us transition into an emissions-conscious future while meeting our cost, risk, and reliability objectives.

Plan Objective

THE COMPANY'S MISSION IS TO PROVIDE ITS CUSTOMERS WITH SAFE, RELIABLE ENERGY, IN AN OPEN, RESPONSIBLE AND ENVIRONMENTALLY SOUND MANNER WHILE UNDERTAKING A COMMITMENT TO THE VALUES OF INTEGRITY, INNOVATION, ACCOUNTABILITY AND COMMUNITY SERVICE, AND TO PROMOTE AN INTERNAL CULTURE THAT FOSTERS SAFETY, LOYALTY AND CREATIVITY AS WELL AS MAINTAINING A HIGHLY SKILLED, MOTIVATED WORKFORCE.

HL&P Mission Statement

The objectives of this plan are designed to support our company mission.

- Providing reliable service is the foundation of what we do. A diverse portfolio with redundancy in resources and transmission is the key to reliability.
- Managing costs ensures that we provide affordable service and stable rates to our customers.
- Providing energy in an environmentally responsible manner is important to our community. Developing a sustainable portfolio requires us to seek innovative means of reducing load requirements and incorporating emissions free resources.
- We work to mitigate risk by maintaining a diverse portfolio and a flexible plan that can be adapted to fit a changing environment.

To meet these objectives, we will seek innovative solutions, maintain flexibility as new technologies and opportunities emerge in the energy sector, and build a diverse energy resource portfolio in order to provide reliable cost-conscious service to the community we serve.

Planning Approach

Load studies, engineering studies, customer surveys, and discussions with our BOD helped us create a snapshot of the planning environment and identify how external and internal influences may impact the plan going forward.

Load Studies

Understanding our system load profile and our forecast provides the basis of our planning environment. In 2018, Utility Financial Solutions(UFS) completed the Heber Light & Power(HL&P) Electric Load and Energy Forecast (Heberpower.com, 2020). UFS developed an econometric model to fit historical usage patterns with consideration to future population growth projections and additional independent variables that impact energy loads and demand. To facilitate the study, HL&P provided ten years of historical hourly kilowatt-hour usage and kilowatt demand data broken out by city and circuit, ten years of historical hourly weather data, a ten-year forecast of energy efficiency kilowatt-hour savings, and a distributed generation energy forecast. UFS used demographic data from Woods and Pool and the University of Utah for predicted population growth and changes over the next twenty plus years.

In addition to studying energy and demand requirements, Intermountain Consumer Professional Engineers, Inc. (ICPE) completed a 46 kV Load Flow Study in June 2018 and a 12.47 kV Load Flow Study in March 2019 (Heberpower.com, 2020). These load flow studies help us understand how energy flows through our system and what needs to be done to ensure reliable and redundant transmission and distribution of energy to our customers. For these studies, we provided ICPE with ten years of 15-minute interval load data by circuit, and fifteen-minute interval data for on-system generation including the Jordanelle Hydro-electric generation, the three run-of-the-river hydro-electric generators, and the natural gas power plant generation data. These studies also considered load data by city and the 12.47 kV Load Flow Study utilized the growth by city projections provided in the UFS Electric Load and Energy Forecast.

Stakeholder Input

Gathering stakeholder input included planning discussions with our BOD where topics related to energy resource planning were covered. In 2019, workshops with UFS and the BOD were held to discuss rate design and its impact on customer energy usage and distributed generation. Energy resource presentations and discussions are a regular part of board meetings and provide opportunity for the BOD to learn about resource options and provide related feedback to staff. Our customers were also given the opportunity to participate in the planning process through an energy resource survey and an Open House held during the October 2019 Public Power Week. The following table provides the dates of important discussions and events related to resource planning and the IRP process, occurring during 2018 and 2019.

Table 1 IRP Planning Activities

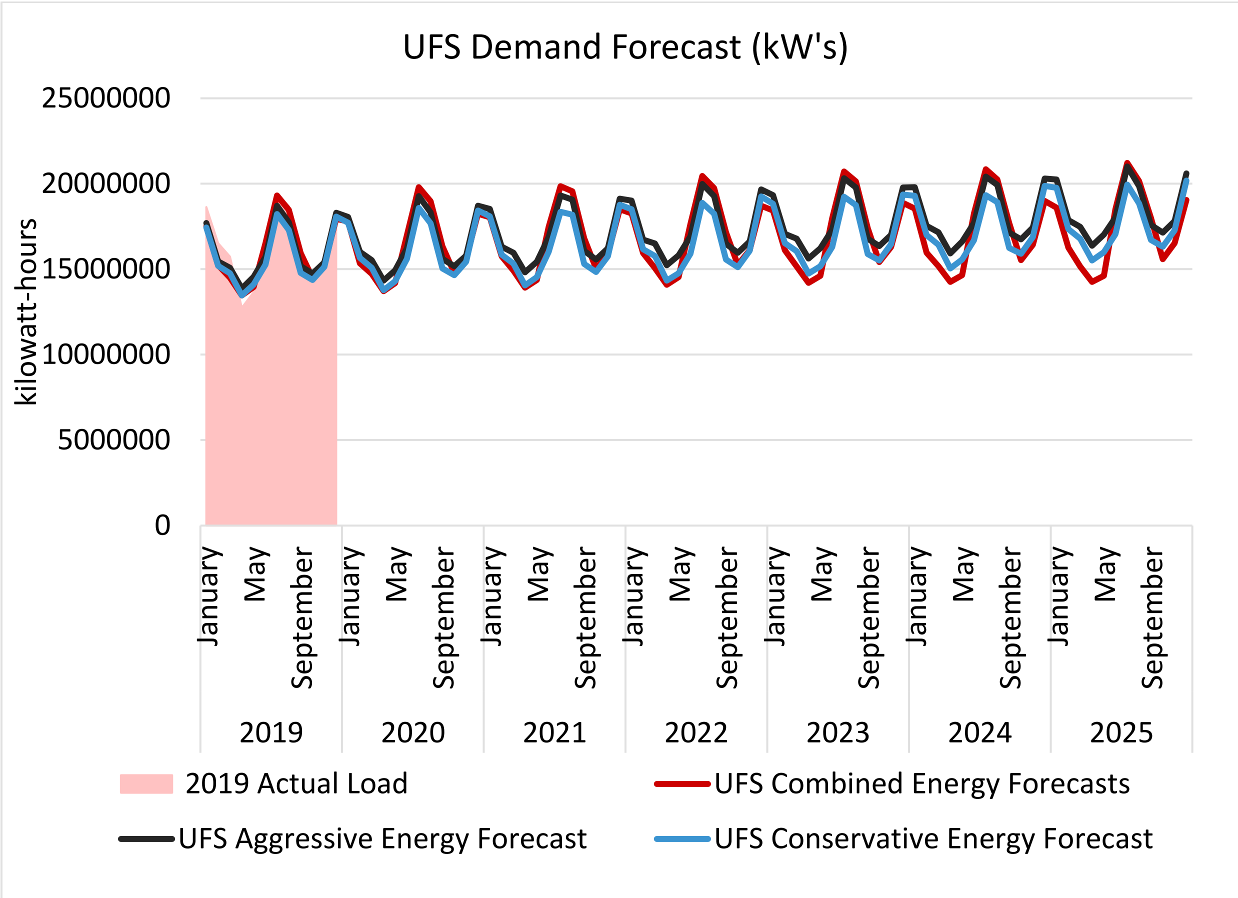
Integrated Resource Plan BOD Workshops & Discussions	
April 18, 2018	Review of Econometric Modeling and Load Forecast Study with BOD
May 31, 2018	Review of Overhead/Underground Engineering Study with BOD
July 18, 2018	Wholesale Energy Portfolio and Risk Management Review with BOD
August 6, 2018	Carbon Free Power Project Work Session/ Public Hearing
August 22, 2019	Review of Patua Power Purchase Agreement
February 27, 2019	Introduction to Integrated Resource Planning
April 2019	Company Newsletter IRP News
March 27, 2019	IRP Goals
April 1, 2019	UFS Rate Design Option Discussion / Workshop
May 29, 2019	Review of rate action
June 26, 2019	Review of energy resource evaluation criteria
July 31, 2019	Discussion of resources & rates: Carbon Free Power Project, rate design, Red Mesa Solar Project
August 28, 2019	Discussion of IRP Customer Survey
August 29, 2019	IRP Survey Opens
October 10, 2019	Resource Open House & Power Plant Tour

Planning Environment Defined

Load & Resource

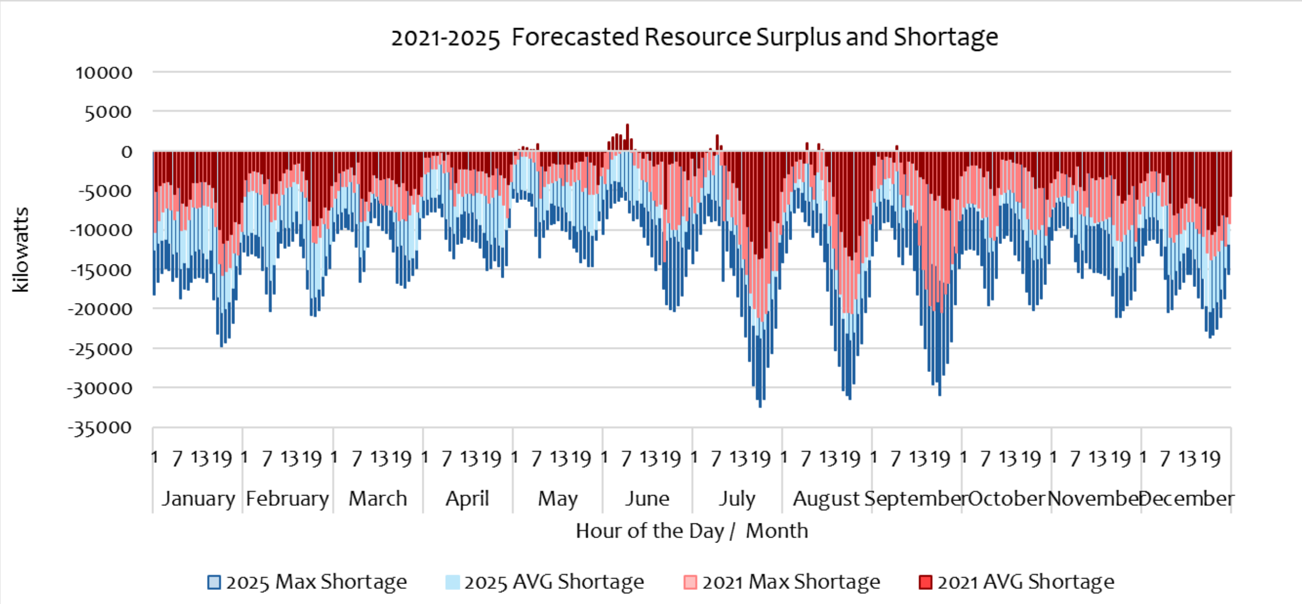
The UFS load study forecasted demand growing at an average rate of 2.1 percent each year over the next five years and energy sales growing 1.9 percent each year over the next twenty years. Since the completion of the study, we have seen load growth vary due to the seasonality of building and weather patterns. We expect to continue to see growth spurts and above and below average weather patterns which will cause actual growth to deviate from the UFS forecast to some extent. To plan for these deviations from the forecast, we track housing and commercial developments to project when they will connect to the system, unusual events such as annexations and large developments are also considered in near-term forecasting, along with weather forecasts.

Figure 1 UFS Demand Forecast



The goal of energy resource procurement is to meet the hourly energy and peak demand requirements of our system while controlling cost. To do this effectively, resource forecasts and load patterns are modeled using the current energy resource portfolio and load forecast as a starting point. First, we identify expected hourly shortages so we can determine how to fill them. Below is a chart with the hourly shortages for the next five years.

Figure 2 2021-2025 Resource Surplus and Shortage



The future planning environment will dictate which resources will retire, be subject to carbon tax, or be in high demand, but today there are contracts and generation facilities in place that make up our current power supply. Small run-of-the-river hydropower was the first resource available to HL&P customers in 1909. Small hydro continues to be one of the company's most reliable and affordable resources, but much has changed since Heber City, and the cities of Midway and Charleston founded HL&P. Today, geothermal, solar, natural gas, coal, and large hydro are also part of the portfolio. The Heber Light & Power Energy Resources table below summarizes the energy resources that are now in the portfolio, as well as what is planned.

Table 2 HL&P Energy Resource Portfolio

Heber Light and Power Energy Resources						
Project	Location	Total Project Capacity	Capacity Available to Heber	Fuel	Heber Percent Ownership	History
Federal Hydro Power	Colorado River/Upper Basin States	10395 MW	Seasonal Contract Rate of Delivery (9.45 MW Winter/ 7 MW Summer)	Federal Hydro and Other	None	Agreement as of March 27, 2007. Renews in 2025.
Hunter	Hunter, UT	1320 MW	PPA 6.0334% of UAMPS	Coal	None	Agreement as of June 1, 1981. Ends

			share (3.783 MW)			upon plant retirement.
IPP	Delta, UT	1800 MW	0.627% (1 MW)	Coal	None	Agreement as of December 1, 1980. Retrofit to Nat Gas in 2025.
Pleasant Valley Wind	Uinta County Wyoming	144 MW	0.02% (.726MW)	Wind	None	Agreement active 2004 - 2029
Horse Butte Wind	Bonneville County Idaho	57.6 MW	1.76% of total plant capacity	Wind	None	Plant operation commenced August 15, 2012.
Heber Owned Nat Gas Gen	Wasatch County	13 MW	100%	Natural Gas	100%	Plant in service since 1986
Jordanelle	Wasatch County	13 MW	1/3 plant generation (0-4.3MW)	Run of River Hydro	None	Plant in service since 2008
Heber Light & Power Hydros	Wasatch County	4.1 MW	100% (0-4MW)	Run of Stream Hydro	100%	Plants in service since 1982 L.C. 1942 S.C. Est.
Patua Geothermal/Solar	Nevada	25 MW Geothermal 10 MW Solar	0-12 MW	Binary Geothermal Solar PV	None	Geothermal Plant Commissioned in 2013 Solar commissioned in 2017 Heber PPA active Nov 2018 - November 2033
Market Power Purchases	Market Contract	Varies	3 MW HLH/ 3 MW Flat/ Seasonal Shaped Varies	Misc.	None	April 2017- March 2022/ Seasonal Shaped as Needed
CFPP	Idaho	720 MW	10 MW	Small Modular Nuclear Reactor	None	Currently in planning stage
Red Mesa Tapaha Solar Project	Navajo Nation	66 MW	7.5758% entitlement share (5 MW)	Solar	None	Scheduled Commercial Operation ~June 1, 2022 - 25-year delivery term

The peak demand forecast below shows historical and projected system coincident peaks. We project exceeding the UFS peak and energy forecast over the next seven years then coming back in line with the UFS forecast in 2028. Our forecast deviates from the UFS forecast because our growth projections for our service territory are higher than the area population forecasts used by UFS.

Table 3 UFS and HL&P Coincident Peak Projections

UFS and HL&P Coincident Peak Projections							
Year	**Historical Peak**	**Year**	**Historical Peak**	UFS Peak Projection	**HL&P Projection**	**Year**	**UFS/HL&P Peak Projection**
2007	29,558	**2018**	42,503	40,244		**2029**	49,737
2008	29,102	**2019**	43,207	41,188		**2030**	51,511
2009	29,111	**2020**		42,169	44,071	**2031**	52,634
2010	30,909	**2021**		42,642	44,864	**2032**	53,141
2011	29,693	**2022**		43,864	45,446	**2033**	54,369
2012	31,725	**2023**		45,132	46,264	**2034**	55,944
2013	35,205	**2024**		45,565	46,708	**2035**	57,354
2014	35,863	**2025**		45,420	47,175	**2036**	58,437
2015	36,713	**2026**		46,191	47,647	**2037**	60,646
2016	38,781	**2027**		47,208	48,124	**2038**	61,074
2017	39,776	**2028**		48,829	48,845	**2039**	62,609
						2040	63,198

External Influences on the Planning Environment

Many factors external to our planning environment could impact our system demand, energy requirements, and system configuration. New homes and business continue to be built at a rapid rate in our service territory, increasing our customer base and changing our load profile . Legislation on the federal and local level also impact our resource portfolio. Increasing renewables could change how we operate and how much generation we keep in reserves. Electrification trends could substantially change our load profile and energy requirements. Electric vehicle car charging could increase our evening and off-peak loads. As we add customer-owned distributed generation on the system we will see a significant decrease in day-time loads and an increase in peak loads. Pilot rates and time of use rates could also change our load profile and the types of resources that we need. All these factors trigger a change in planning.

Wholesale Power Markets, Transmission, and Risk

The most concerning of all external factors are those that affect the cost of power and reliable transmission. To understand the need for flexibility, we need to understand our wholesale power markets, transmission rights, load balancing requirements, and the environmental regulations that we face.

As a member of Utah Associated Municipal Power Systems (UAMPS), we participate in the Pool Project which is an hourly resource clearinghouse for member energy surplus, reserves, and transmission rights. As a Joint Action Agency, UAMPS provides wholesale electric-energy services to its members. Through this UAMPS service, we have access to the regional wholesale power market and the UAMPS member power pool.

We operate in the Western Interconnection's Bulk Electric System which is regulated by the Western Electricity Coordinating Council (WECC). WECC operates under a Federal Regulatory Commission (FERC) agreement with the North American Electric Reliability Corporation (NERC). WECC exists to mitigate risks to the reliability and security of the Western Interconnection's Bulk Power System (Wecc.org, 2020). We receive transmission from PacifiCorp/Rocky Mountain Power, as does UAMPS. PacifiCorp's 2019 IRP includes an analysis of regional power reliability as it applies to our region(71). As a PacifiCorp customer, our transmission needs are included in their regional planning efforts and we work with them to ensure that our interconnect(s) are adequate for our needs going forward.

FERC requires that Investor Owned Utilities (IOUs) participate in local and sub-regional transmission planning to identify transmission project needs and the associated costs, benefits, and risks. To utilize regional transmission systems the Energy Imbalance Market (EIM) was established by the California Independent System Operator and PacifiCorp for real-time balancing of supply and demand. Currently, HL&P is subject to the EIM as it applies to the total UAMPS member's real-time energy balancing and because PacifiCorp is HL&P's transmission provider, HL&P may be subject to the EIM as it applies to only HL&P's node, in the future. As a participant in the EIM, we are required to balance our utility load in real-time with the help of the UAMPS member power pool. We are subject to pay our share of the UAMPS energy imbalance charges. To mitigate EIM risk, we operate a real-time power trading desk and our natural gas power plants.

We have additional access to the wholesale power market through the Western Replacement Power (WRP) piece of the Federal Hydro-Power Salt Lake Area Integrated Projects contracts administered by the Western Area Power Administration (WAPA). The contract allows for a small amount of market power to be purchased each month to replace federal hydro power generation that is less than the total Contracted Rate of Delivery (CROD) available to HL&P. In October 2019, WAPA announced that it intends to join the Southwest Power Pool (SPP) Western Energy Imbalance Service (WEIS). Currently, the consequences of being subject to multiple EIM is unknown. We will continue to monitor the changes and subsequent effects on power availability, scheduling constraints, and cost.

If an EIM operates as designed, there will be some benefits to participation as we gain access to resources dispersed throughout the grid. Economic efficiencies become available which in turn reduce pressure on the company to maintain its own costly generation reserves and renewable resources.

In addition to the EIM charges, we face the risk of increases to transmission charges. We pay transmission and scheduling charges to UAMPS for delivered energy. UAMPS has a Transmission Service and Operating Agreement (TSOA) with PacifiCorp that provides a form of network transmission service to UAMPS that is regulated by FERC. As with all rates and fees, there is always the risk that they will go up. Furthermore, any energy that is wheeled to HL&P outside of the UAMPS/PacifiCorp TSOA is subject to a much higher transmission rate.

Aside from transmission and scheduling rates, fluctuations in future wholesale market power prices can significantly impact rate stability and power costs for our customers. Market power prices can and will fluctuate from hour to hour with the influx of intermittent renewable resources, Renewable Portfolio Standards (RPS) putting pressure on utilities to further increase renewables, and the retirement of coal plants

Portfolio Cost Modeling

The PacifiCorp IRP uses econometric modeling techniques for forecasting which include variables such as natural gas pricing, electricity market prices for Mid-C, COB, Four Corners, and Palo Verde, the Official Forward Price Curve (OFPC), loads for regions including Utah, hydro generation, and short-term volatility. It is not the intent of the HL&P IRP to delve into econometric modeling for price forecasting, instead we rely on the work of large utilities that participate in the same EIM, specifically the price models from PacifiCorp's most recent IRP. Chapter Seven of the PacifiCorp 2019 IRP includes a detailed explanation of their modeling and statistical analysis of pricing and resource mix (Pacificorp.com, 2020, pp. 171). In the PacifiCorp IRP, electricity price forecasts range from $21.64/MWh to $99.34/MWh during the 20-year study period (Pacificorp.com, 2020, pp. 186).

In addition to considering the PacifiCorp electricity price forecast for this IRP, the Simulated Annual Western Natural Gas Market Prices are also considered useful. In this forecast natural gas prices range from $1.85/MMBtu to $7.65/MMBtu over the long-term 20-year period (Pacificorp.com, 2020, pp. 187). Our cost models utilize the pricing reflected in the PacifiCorp IRP, as well as UAMPS budgetary numbers for the short-term cost.

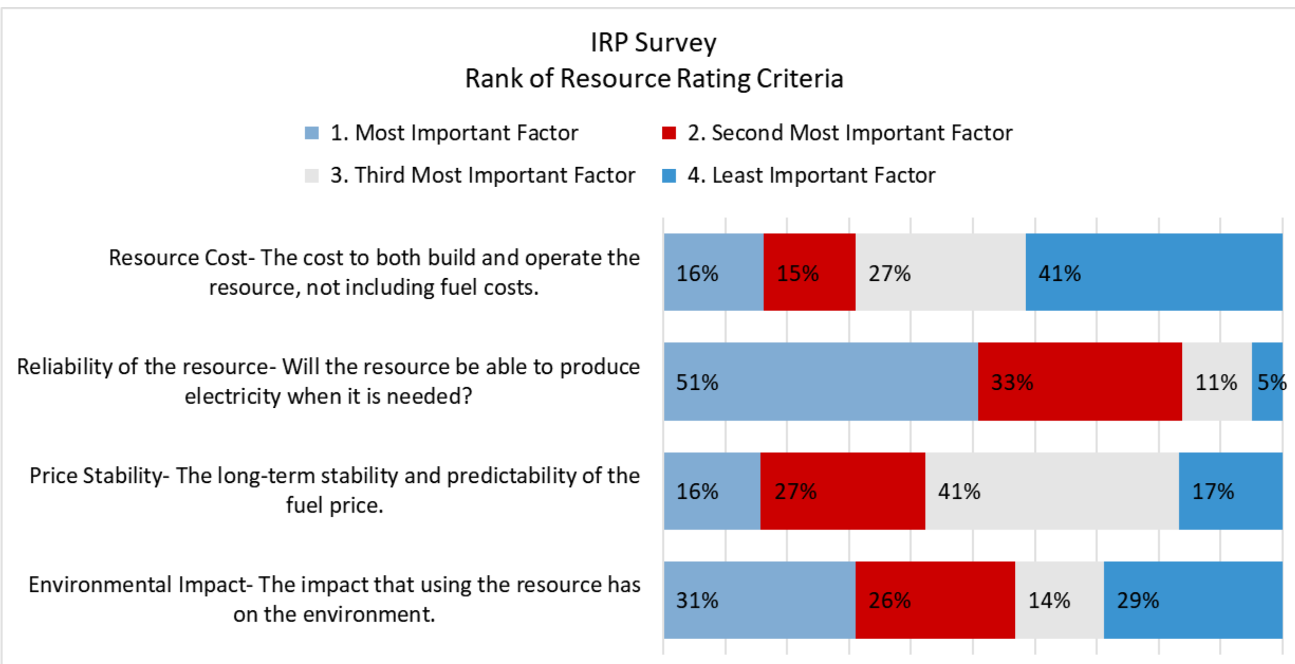
While market electric prices and natural gas prices are constantly fluctuating, the possibility of a carbon tax could further raise power prices. Keeping CO_2 emissions to a minimum in the HL&P portfolio will help to mitigate this risk. Other mitigation measures cannot be weighed until the timing of CO_2 reduction rules and regulations are known. Avoiding ownership in new carbon-based projects that are not eligible for carbon capture technologies should be avoided to reduce risk.

Preferred Plan Evaluation Criteria

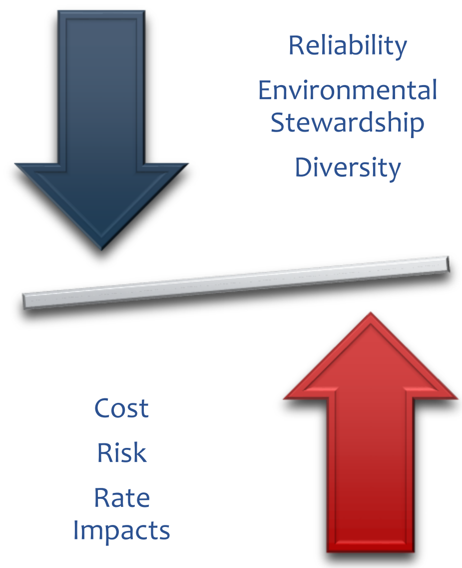
Throughout the planning process, we have explored how we can supply energy requirements in accordance with the priorities and goals of our customers and owner cities, and with our goal to strive to always provide transmission reliability, affordable energy, and best-fit resource options in an environmentally friendly manner.

Our HL&P IRP Customer Survey was completed by two percent of our customer base. The survey results show that customers are interested in integrated resource planning. They want to see coal phased out of the portfolio, and our residential customers consider reliability to be the first most important factor to consider when evaluating a resource while our commercial customers consider cost to be the first most important factor. Overall, our customers are interested in emissions-free resources, and incorporating demand-side management tools and emerging technologies into the portfolio.

Figure 3 HL&P IRP Survey Results on Resource Evaluation for All Customers



It can be difficult to strike a balance between our cost, risk, environmental and operational objectives as we see that meeting one objective can mean sacrificing our desire to meet another. For example, choosing only emissions free resources could meet our environmental objectives if we are willing to sacrifice our desire to provide rate stability and reliability. In determining how to strike a balance without sacrificing our ideals, we have developed a scorecard that can be used to evaluate resources as we need to add to our portfolio in the future. Adding a new resource typically involves years of study and analysis. The scorecard is just one tool that can be used to ensure that all objectives for our portfolio are given consideration as we analyze resource options.



The scorecard criteria help us evaluate the negative impact a resource could have on meeting portfolio objectives. Cost and risk, environmental stewardship, fit to load, and transmission reliability are scored based on having zero impact to a high impact on each of the criteria. Additional considerations will be made for individual resources based on unique circumstances like contract terms, ownership, and life cycle. Resource with a higher impact score will either be slated for retirement from the portfolio or be considered as "place-holders" to fill shortages over the near-term until better fit lower impact resources can be secured.

Table 4 Energy Resource Evaluation Scorecard

Resource Impact on Portfolio Objectives

Impact	Transmission Reliability	Environmental Stewardship	Best fit & Diversity	Cost	Score- Negative impact on meeting portfolio objectives
High Impact (3)	Is there loss of load risk? Does this resource account for a large percentage of demand?	This resource is not eligible for carbon capture and is a carbon-based resource.	This resource has an assigned retirement / expiration date? Is the project life less than ten years?	Will this likely cause rates to increase? Is there a risk of unknown costs being added to the cost of energy?	

Medium Impact (2)	Is loss of load risk minimal?	Is this resource carbon free and if not is it eligible for carbon capture technology?	Is it intermittent or scheduled for the benefit of outside entities?	Are transmission losses/costs higher than other portfolio resources? Does this resource cost more than other portfolio resources?	
Low Impact (1)	Does this resource have a transmission path that is within the UAMPS network?	This resource is carbon free.	Does unit availability typically match load requirements?	Is it in line with other portfolio costs? Can risk be managed through futures hedging/ planning?	
No Impact (0)	Is this resource on system and/or dispatchable?	This resource is adding additional carbon free kWhs to the portfolio (i.e. not replacing another carbon-free resource)	Is it dispatchable to some extent or provide a needed load profile?	Does it minimize portfolio cost and/ or risk?	
Resource					
Horse butte Wind	1	0	2	2	5
Jordanelle	0	0	0	1	1
Hunter	1	3	3	0	7
Patua- Geothermal/Solar	1	0	1	0	2
Red Mesa Solar	1	0	1	0	2
Nat Gas Gen	0	2	0	1	3

Planning Horizon

Planning horizon for this IRP follows the Western Area Power Administration (WAPA) IRP requirement for our Federal hydropower contracts. WAPA requires that we submit yearly IRP reports and five-year IRP updates. The State of Utah does not currently require public power utilities to submit IRPs to the state. This IRP covers the required five-year plan horizon as well as a 10- and 20-year planning horizon, although in less detail. This plan shall be updated every five years according to the WAPA update requirements.

Our Energy Future

Carbon Conscious

The five-year planning horizon for this IRP begins a transition to a portfolio that is substantially carbon-free. Emissions reduction requirements and carbon taxes are very likely to be part of our future and keeping a carbon-based portfolio increases the company's risk of paying high energy prices. It is imperative that we transition away from carbon-based resources to prepare for inevitable changes to our planning environment. The transition away from carbon may take ten to twenty years, but by paving the way with prudent decision making we help to smooth the transition. Maintaining diversity in the portfolio and adding carbon-free resources when, and only when, it makes sense will help us do that.

Energy Efficient

Our Energy Efficiency Program is an important part of our portfolio, as well. Energy that we can avoid using is always our lowest cost option. When our customers invest in energy efficient appliances, load controls, and efficient cooling systems it helps reduce the company's load and demand. In 2019, we updated our energy efficiency program to be more flexible to incent options with the highest return on investment. As different areas in energy efficiency meet saturation levels, we will continue to update our program to ensure that we are incenting options with the highest return for all our customers.

As administrators of our own energy efficiency program, we have staff dedicated to helping our customers reduce their energy consumption levels. This includes new customers that are building homes and businesses in our service territory. Many cities are starting to adopt green building codes and as part of our efforts we would like to be a resource for our owner cities and to Wasatch County when they choose to explore green building codes. It is our hope that our community will look to us for assistance and expertise in helping them reduce their carbon footprints and manage their energy usage.

Customer Owned Generation

Our customer survey showed our community wants renewable resources and our customers continue to make substantial investments in generating their own renewable energy. We offer a Net Metering Program and Policy that supports our customers by providing a one for one kilowatt credit for their generation. This policy is currently subsidized by all our customers and will slowly be corrected with rate design changes over time. Currently, we have close to 1.5 megawatts of installed roof-top solar capacity on our system. Based on our last engineering study looking at distributed generation, we could allow almost 5.5 megawatts of distributed generation in total on our system, with different circuits having different limits. Thirty percent of that is installed, and if installations continue at the same rate as we have seen over the last six years we will be saturated before 2035. As we add solar installations, our load profile shows reduced day-time loads and increased ramp rates on peak.

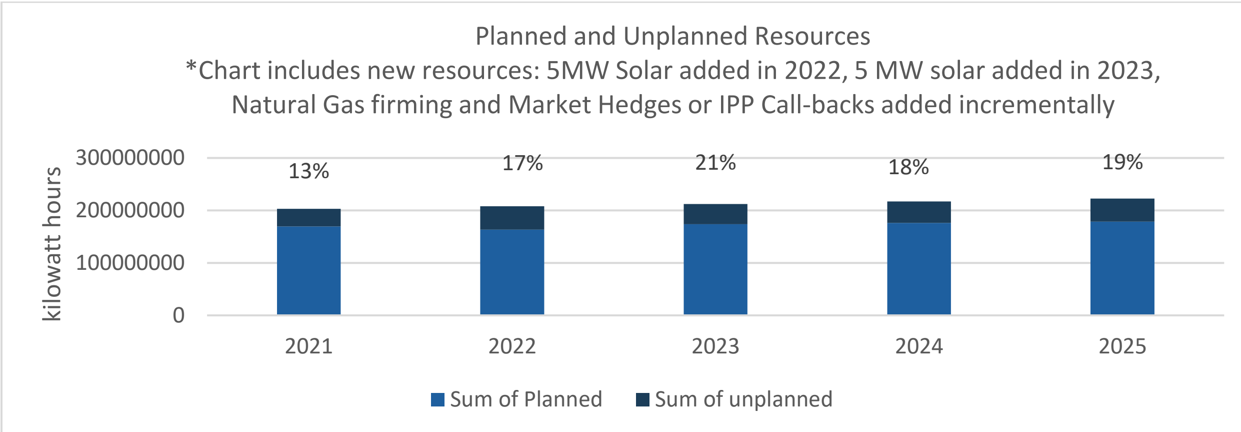
Five Year Plan

In the five-year planning horizon, a significant market power hedge expires in 2022. To replace part of this hedge, we have signed a power purchase agreement to add five megawatts from the Red Mesa Solar Project coming online in 2022. In addition to the Red Mesa Solar Power Purchase Agreement, this plan calls for the addition of five more megawatts of solar to be added in 2023. The solar energy will be firmed with our natural gas power plants. Natural gas will also be used to bridge the gap that will remain between load and resources.

Our natural gas power plants operate under a minor source emissions Approval Order from the Department of Environmental Quality Division of Air Quality. We are not a major source of pollutants and operate well under our limits for CO and NOx, making our plants a carbon-conscious option for firming renewables. During the five-year planning period, we may have the option of adding additional natural gas capacity to our natural gas fleet to allow for more renewable firming capacity and peak shaving.

Additionally, we may need to include a resource that can serve as a placeholder so that carbon-free resources can be added down the road. This will likely be a short-term market power hedge or a seasonal call-back of Intermountain Power Plant capacity. This additional power will likely be needed to comply with the company's risk management policy to stay planned within 20% of expected load. The recommended additions to the portfolio reduce hourly shortages to manageable levels and allow shortages to be managed with hourly market and natural gas. The gap between what is planned and what is needed will grow as load grows, but with the plan in place we keep risk at a manageable level.

Figure 4 2021-2025 Preferred Portfolio

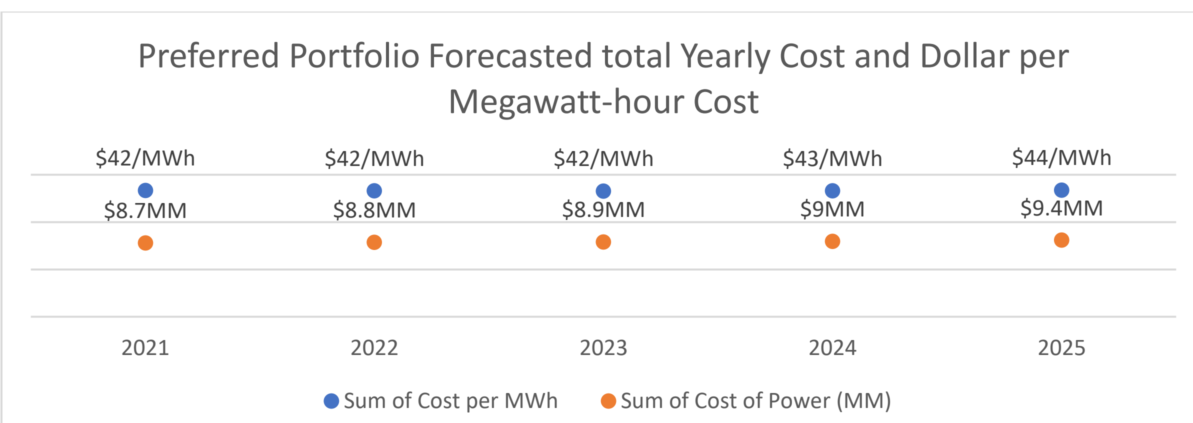


Cost of Wholesale Power

This preferred portfolio results in an average cost per megawatt hour that remains in line with historical pricing at $42/MWh, in the projected scenario. The total cost of wholesale power rises each year due to our expected load growth which increases the amount of higher cost resources that we need in the portfolio. By blending solar in with the higher cost resources, we maintain our overall low cost per megawatt hour. Our preferred portfolio model factors in unexpected weather events, price swings, and other normal market conditions.

To understand the worst-case scenario, we also modeled using unexpected aggressive market pricing scenarios combined with larger than expected load growth. This could bring the overall dollar per megawatt-hour cost up to $49/MWh. The preferred portfolio includes locking in resources with fixed pricing to lower the risk of market exposure. We add solar which is intermittent, but not to the extent that we cannot back it up with natural gas generation. This also helps us avoid the negative impact of renewable generation intermittency.

Figure 5 2021-2025 Projected Wholesale Power Cost



Circumstances that could have the greatest impact on cost would be any combination of the following: losing a significant amount of our local run-of-the-river and stream hydro generation, higher than expected load growth, a low water year, poor solar generation year, loss of multiple natural gas units and/or an extreme weather pattern. Each of these events alone would not significantly impact our portfolio cost, but several of these events occurring at the same time could cause an increase in the cost per megawatt hour. This type of scenario is unlikely and would trigger a temporary power cost adjustment. Keeping a diverse portfolio and spreading risk across many different generating units makes this kind of worst-case scenario highly unlikely.

Long-term Planning

Considering the long-term, we understand that portfolio additions and placeholders made in the near-term will impact our ability to significantly reduce carbon down the road. It is important that we avoid locking in carbon-based projects and power purchase agreements so that in the 2026 to 2030 time-frame we will be in a position to add more carbon-free resources to the portfolio.

We are working with UAMPS to develop a baseload option known as the Carbon Free Power Project(CFPP). It is in the planning stages, and involves building a small modular nuclear reactor facility that would add ten megawatts of carbon-free power to HL&P's portfolio, when and if it is developed. While our long-term plan includes the CFPP, we understand that there is risk and we continue to persue other alternatives. The energy sector is working diligently develop new technology that will allow the industry to move towards a carbon-free future and we remain open to the possibilites. Battery storage, solar, wind, geothermal, hydrogen, and carbon-capture will be improved and emerging technologies will continue to be vetted as we continue into this decade.

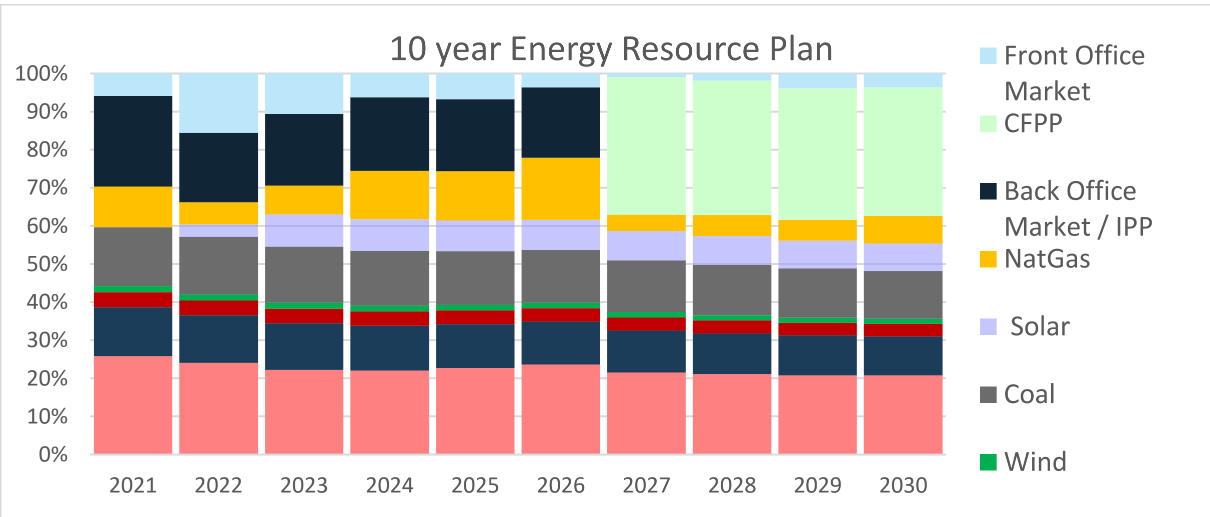
In addition to new technology, rate design can be used as a demand side mangement tool. Time of use rates can provide an incentive for customers to curb energy usage at peak times and demand charges used to pass on actual capacity costs to customers that help create the demand on our system. There are a number of ways to use rates as a demand-side management tool, and through pilot rates and periodic rate studies we will explore the best way to use this tool to manage demand and energy consumption.

In the charts below, we can see how carbon-free resources can replace place-holder resources in our porfolio in the long-term. If the CFPP is built, it will fill the shortage that we have filled with place-holder type resources. Adding this resource will increase the renewables in our portfolio above 70 percent by 2030 and it is not projected to have a significant impact on our dollar per megawatt-hour cost. According to the U.S. Energy Information Agency (EIA) 2019 Energy Outlook, higher natural gas prices in a Low Oil and

Gas Resource and Technology scenario could result in an aditional gigawatt of unplanned nuclear power plant capacity being built over then next thirty years (Eia.gov, 2020, pp. 106).

By 2030, our preferred portfolio includes next generation nuclear combined with solar, geothermal, hydro, wind, natural gas, existing coal resource, with hourly market power purchases included for load balancing. We also expect that by 2030, our portfolio will include battery storage for firming renewables and providing voltage support to our system as we see distributed generation maximized on all circuits.

Figure 6 2021-2030 Preferred Energy Resource Mix



Conclusion

Our energy plan prepares the path to the future. Through the IRP planning process, we have learned the importance of flexibility as we plan for the near-term and the long-term. Maintaining a diverse portfolio allows us to be flexible as the planning environment evolves. Spreading our portfolio across multiple generating shafts reduces our overall risk by ensuring that our portfolio isn't too dependent on any one resource. Remaining open to new technology allows us to incorporate the best fit resources that help us meet the goals of our community. Most importantly, this plan ensures that we can continue to provide the reliable electric service that has powered our strong community since 1909.

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EXHIBIT B

Request #:10070993

AGREEMENT FOR UNDERGROUND TRANSMISSION ESTIMATES AND BID EVENT WORK BETWEEN ROCKY MOUNTAIN POWER AND MIDWAY CITY

This AGREEMENT FOR UNDERGROUND TRANSMISSION ESTIMATES AND BID EVENT WORK ("Agreement"), is entered into by and between PacifiCorp, an Oregon corporation doing business in Utah as Rocky Mountain Power ("Rocky Mountain Power"), and Midway City ("Requestor"), a municipal corporation of the State of Utah. Rocky Mountain Power and Requestor are each sometimes referred to herein as a "Party" or collectively as the "Parties."

WHEREAS, Rocky Mountain Power, in conjunction with Heber Light & Power, filed an application for a conditional use permit to construct overhead transmission facilities within Midway City, commonly called the Jordanelle to Midway Transmission Line project; and

WHEREAS, the Midway City Council, by unanimous vote at its public meeting on December 16, 2019, formally requested that Rocky Mountain Power perform certain work in connection with exploring whether the transmission facilities could be constructed below grade, and the costs therefor; and

WHEREAS, Requestor has requested that Rocky Mountain Power provide facilities bids for the cost to place the transmission facilities below grade;

WHEREAS, Requestor has further requested that Rocky Mountain Power provide general permitting support to Midway City staff in its attempt to obtain approvals for certain facilities to be constructed outside of Midway City's jurisdiction in association with the underground transmission facilities, specifically the facilities that would need to be constructed within the jurisdiction of Wasatch County;

WHEREAS, Rocky Mountain Power will incur certain costs in supporting these requests, which costs are the responsibility of Requestor pursuant to Utah statutes;

WHEREAS, this Agreement relates only to the provision of this scope and does not bind either Party with respect to performing any work to construct the transmission facilities; and

WHEREAS, the Parties intend that this Agreement more specifically address their responsibilities to one another in this regard.

NOW, THEREFORE, the Parties hereto agree as follows:

SECTION 1: DEFINITIONS

"Completion Date" means the date upon which Rocky Mountain Power has tendered to Requestor copies of the Facilities Bids.

"Facilities Bids" means the bids that Rocky Mountain Power will acquire from one or more third parties, to place the transmission line facilities below grade as requested by the Requestor. In the event the Parties elect to go forward with construction of the transmission line facilities below grade, Requestor will be responsible for the cost of such work to the extent such costs exceed the amount of the standard costs had the facilities been constructed above grade, in accordance with Utah law and pursuant to a separate written agreement.

"Project Costs" means all reasonable costs, charges, and expenses incurred by Rocky Mountain Power in preparing, developing and obtaining the Facilities Bids and providing support for Requestor in seeking approvals from Wasatch County for certain facilities to be constructed outside Midway City's jurisdiction, including all of Rocky Mountain Power's reasonable internal and external costs, overheads, expenses, and cost of supplies, and any other amounts owed to Rocky Mountain Power under the terms of this Agreement.

SECTION 2: PURPOSE; COMPLETION; TERM

2.1 Preparatory Activities. This Agreement provides for preparatory activities. Upon execution of this Agreement Rocky Mountain Power shall perform engineering and design work and procurement bidding activities in order to prepare the documents and specifications reasonably necessary to obtain the Facilities Bids. Rocky Mountain Power shall not be obligated to perform construction work, nor acquire any easements from land owners along the construction route under this Agreement. Upon completion of its obligations hereunder, Rocky Mountain Power shall tender to Requestor copies of the Facilities Bids.

2.2 Scope of the Facilities Bids. Rocky Mountain Power will use commercially reasonable efforts to develop supporting documents reasonably necessary to obtain the Facilities Bids in accordance with the Scope of Work attached hereto as Appendix A, and by this reference made a part hereof. Rocky Mountain Power, in its reasonable discretion, may at any time alter the Scope of Work to reflect the engineering requirements of the project. Rocky Mountain Power is preparing the bid documents based a reasonable analysis of known conditions; the Parties acknowledge and agree that the actual cost of the underground facilities, in the event this work is undertaken, may differ from the Facilities Bids. Furthermore, given potential cost escalation, the Facilities Bids are only valid for ninety (90) days after the bid date, in accordance with industry standards.

Rocky Mountain Power will provide general permitting support to Requestor in its attempts to obtain approval from Wasatch County to construct within Wasatch County's jurisdiction certain facilities related to and necessary for construction of below-grade transmission line facilities within Midway City.

2.3 Estimated Time of Completion. Rocky Mountain Power shall use commercially reasonable efforts to obtain the Facilities Bids and supply copies to Requestor on or before February 28, 2020. Rocky Mountain Power shall not be liable for delays in completing these activities.

2.4 Term of Agreement. This Agreement shall be effective upon the date executed by both Parties, and shall remain in effect through the Completion Date, unless terminated earlier pursuant to Section 3.3. In any case, this Agreement shall continue in effect until each Party has satisfied its obligations to the other, including without limitation any payment obligations.

SECTION 3: COST OF SERVICES

3.1 Estimated Costs. Rocky Mountain Power Estimates that the total costs to obtain the Facilities Bids and support the additional permitting activities within Wasatch County will be approximately $25,000 (the "Estimated Costs"). In the event that actual costs to complete Rocky Mountain Power's work under this Agreement exceed the Estimated Costs, Rocky Mountain Power shall request written approval from Requestor to proceed with additional work, and Requestor shall be responsible for the cost of all additional work performed. Requestor shall pay Rocky Mountain Power for all costs incurred, pursuant to the terms of this Agreement. Final costs under this Agreement will be trued up to actual costs at completion of the project with a final billing or refund provided to Requestor.

3.2 Prepayment. Requestor shall tender payment in the amount of the Estimated Costs set forth in Section 3.1 upon executing this Agreement, and Rocky Mountain Power's obligation to proceed with developing and obtaining the Facilities Bids shall be contingent upon receipt of such payment. In the event Rocky Mountain Power determines that actual costs under this Agreement may exceed the Estimated Costs, Rocky Mountain Power may require an additional prepayment to cover the estimated cost of additional work. After the Completion Date, Rocky Mountain Power shall refund the amount of any prepayments in excess of actual total costs.

3.3 Right to Stop Work. Requestor reserves the right, upon seven (7) days advance written notice to Rocky Mountain Power, to require Rocky Mountain Power at any time to stop all work by Rocky Mountain Power pursuant to this Agreement. Issuance of such stop-work order shall terminate this Agreement, subject to the provisions of Section 2.4. Upon issuance of such stop-work order Requestor shall pay upon demand, without deduction, offset, or allowance, all costs Rocky Mountain Power (a) has incurred prior to the stoppage of work, and (b) reasonably incurs in winding up work, including, without limitation, the costs incurred in connection with the cancellation of any third-party contracts. In the event Requestor issues a stop-work order pursuant to this Section 3.3, Rocky Mountain Power may proceed to construct the transmission line facilities overhead, and Requestor shall be deemed to have given final approval for such overhead construction.

SECTION 4: LIMITATIONS ON LIABILITY

Under no circumstances shall either Party be liable the other Party for any lost or prospective profits or any other special, punitive, exemplary, consequential, incidental or indirect losses or damages (in tort, contract or otherwise) under or in respect of this Agreement or for any failure of performance related hereto howsoever caused, whether or not arising from sole, joint or concurrent negligence; and without affecting any other limitations of this Agreement, each Party's liability to each other shall in every event be limited to the payment or refund of amounts due hereunder. Requestor shall indemnify, defend, and hold harmless Rocky Mountain Power with respect to any claim that relies in any way on the Facilities Bids.

SECTION 5: FORCE MAJEURE

Neither Party shall be subject to any liability or damages for failure to perform their respective obligations hereunder to the extent that such failure shall be due to causes beyond the control of the Party claiming force majeure protection, including but not limited to the following: (a) the operation and effect of any rules, regulations and orders promulgated by any commission, municipality, or governmental agency of the United States, or subdivision thereof; (b) restraining order, injunction or similar decree of any court; (c) war; (d) flood; (e) earthquake; (f) act of God; (g) sabotage; or (h) strikes or boycotts. The Party claiming Force Majeure under this provision shall make every reasonable attempt to remedy the cause thereof as diligently and expeditiously as possible. Provided, the obligation to pay amounts due shall not be excused by events of Force Majeure.

SECTION 6: NOTICE

Any notice required to be given hereunder shall be deemed to have been given when it is sent, with postage prepaid, by registered or certified mail, return receipt requested, to the Parties hereto at their respective addresses as follows:

To Requestor:

Midway City

To Rocky Mountain Power:

Rocky Mountain Power
Attention: Darin Myers
1407 West North Temple, Suite 220
Salt Lake City, Utah 84116

SECTION 7: INTEGRATION

This Agreement replaces and supersedes in the entirety all prior agreements among the Parties related to the same subject matter.

SECTION 8: JURY WAIVER

To the fullest extent permitted by law, each of the Parties hereto waives any right it may have to a trial by jury in respect of litigation directly or indirectly arising out of, under or in connection with this Agreement. Each Party further waives any right to consolidate any action in which a jury trial has been waived with any other action in which a jury trial cannot be or has not been waived.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their duly authorized officers as of the date first herein written.

REQUESTOR	**ROCKY MOUNTAIN POWER**
By: ______________________________	**By:** ______________________________
Name: ___________________________	**Name:** ___________________________
Title: ____________________________	**Title:** ____________________________

APPENDIX A

DESCRIPTION OF WORK

Rocky Mountain Power will provide full cost bids for engineering, materials, and construction of the proposed double-circuit 138 kV transmission line to be built underground through Midway City and adjacent areas of unincorporated Wasatch County as requested by Midway City Council.

Rocky Mountain Power will provide general permitting support to Midway City staff in their attempt to obtain approvals from Wasatch County for certain facilities to be constructed within unincorporated Wasatch County.