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**BEFORE THE UTAH UTILITY FACILITY REVIEW BOARD**

<p>PACIFICORP, doing business as ROCKY MOUNTAIN POWER,</p> <p style="text-align: center;">Petitioner</p> <p style="text-align: center;">vs.</p> <p>MIDWAY CITY,</p> <p style="text-align: center;">Respondent</p>	<p style="text-align: center;"><b>ROCKY MOUNTAIN POWER'S OPPOSITION TO VOLT'S PETITION TO INTERVENE</b></p> <p style="text-align: center;">Docket No. 20-035-03</p>
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Rocky Mountain Power submits this opposition to the Petition to Intervene filed by a group identified as VOLT.<sup>1</sup> The Petition to Intervene should be denied because VOLT is not an affected landowner, its intervention would frustrate the interests of justice and orderly and prompt conduct of these proceedings, VOLT's interests (to the extent it has any) are aligned with and adequately represented by Midway City, and this Board does not have jurisdiction to hear matters relating to easements and real property rights.

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<sup>1</sup> Rocky Mountain Power believes the entity requesting to intervene is a Utah nonprofit corporation by the name of "VOLT Citizens, Inc."; there are no registered Utah entities known as "Valley-Wide Opposition to Large Transmission Lines" or "V.O.L.T." The prospective intervenor is referred to herein as "VOLT."

**I. VOLT is Not an Affected Landowner.**

Because VOLT, a Utah nonprofit corporation, is not an “affected landowner” entitled to intervene, its petition to intervene should be denied. VOLT seeks to intervene under Utah Code § 54-14-303(2)(b), stating that it “seeks intervention ... on behalf of more than fifty members who are affected owners within the corridor of RMP’s proposed overhead transmission line.” (Pet. to Intervene ¶ 7.)

VOLT itself is clearly not an “affected landowner.”<sup>2</sup> As a nonprofit corporation, VOLT is a separate legal entity from its members. *See* Utah Code Title 16, Chapter 6a (Utah Revised Nonprofit Corporation Act); Reedeker v. Salisbury, 952 P.2d 577, 582 (Utah Ct. App. 1998) (holding that trustees and officers of nonprofit corporation [condominium association] were not personally liable to individual members, and restating “[t]he general rule is that a corporation is an entity separate and distinct from its officers, shareholders and directors”) (internal punctuation and citations omitted).

Even if it’s true that VOLT *members* “include[] local residents and more than fifty” landowners with “property located in the corridor of RMP’s Midway line” (Pet. to Intervene ¶ 2), and it “seeks intervention ... on behalf of more than fifty members” who are property owners “within the corridor of RMP’s proposed overhead transmission line” (id. ¶ 7) and it petitions to intervene “because its members’ legal rights and interests will be substantially affected by this proceeding” (id. ¶ 8), those facts do not give VOLT, the nonprofit corporation, status as an “affected landowner.” As an entity whose very nature shields the identity of its constituent members, the corporation is an especially inappropriate party here. Therefore, VOLT simply has no interest in this matter.

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<sup>2</sup> VOLT does not claim to be an “affected entity” under Utah Code § 54-18-102(1).

Furthermore, under the express provisions of the Utility Facility Review Board Act (the “Act”), neither VOLT nor its members are *or could be* “affected landowners” in this matter. The Act allows that “[a] potentially affected landowner, *as defined in Section 54-18-102* ... shall have a right to intervene as a party in the proceeding.” Utah Code § 54-14-303(2)(b) (emphasis added). Section 54-18-102 is part of the Siting of High Voltage Power Line Act, which establishes a unique approval process for transmission lines of *230 kilovolts and higher*; this Board is empowered to hear disputes regarding proposed corridors for such high-voltage power lines under § 54-14-303(1)(b)(iv) and (v), which is simply not applicable to this 138 kV line project. Section 54-18-102 defines exactly who is an “affected landowner” for purpose of reviewing siting for a 230 kilovolt or higher line. As is often the case when reading statutes, defined terms are embedded within definitions for other defined terms. When the definitions of “affected landowner,”<sup>3</sup> “proposed corridor,”<sup>4</sup> “target study area,”<sup>5</sup> “high voltage power line”<sup>6</sup> and “upgraded high voltage power line”<sup>7</sup> are read together, an “affected landowner” is:

An owner of a property interest, as reflected in the most recent county or city tax records as receiving a property tax notice, whose property is located within the transmission line route within the geographic area for a new electrical high voltage power line with a nominal voltage of 230 kilovolts or more, or an existing transmission line where the voltage is being increased to 230 kilovolts or more, which corridor has been selected by the public utility as the public utility’s proposed alignment for the new or upgraded 230-kilovolt or more electrical power line.

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<sup>3</sup> “‘Affected landowner’ means an owner of a property interest, as reflected in the most recent county or city tax records as receiving a property tax notice, whose property is located within a proposed corridor.” Utah Code § 54-18-102(2).

<sup>4</sup> “‘Proposed corridor’ means the transmission line route within a target study area selected by the public utility as the public utility’s proposed alignment for a high voltage power line.” *Id.* subsection (9).

<sup>5</sup> “‘Target study area’ means the geographic area for a new high voltage transmission line or an upgraded high voltage power line as proposed by a public utility.” *Id.* subsection (12).

<sup>6</sup> “‘High voltage power line’ means: (a) an electrical high voltage power line with a nominal voltage of 230 kilovolts or more; and (b) an upgraded high voltage power line.” *Id.* subsection (4).

<sup>7</sup> “‘Upgraded high voltage power line’ means increasing the voltage of an existing transmission line to 230 kilovolts or more.” *Id.* subsection (13).

This definition clearly excludes VOLT, since it is a separate legal entity that is not “an owner of a property interest, as reflected in the most recent county or city tax records as receiving a property tax notice....” (*Id.* subsection (2).) And since this project is not a “high voltage power line” of 230 kilovolts or higher within a “target study area” under the Siting of High Voltage Power Line Act, the unidentified individual members of VOLT, even if they do own property that is physically crossed by this 138-kV transmission line, are not “affected landowners” with a right to intervene under § 54-14-303(2)(b).

Finally, VOLT’s claim that its members consist of “more than fifty” landowners “with property located in the corridor of RMP’s Midway line,” (Pet. to Intervene ¶ 2) can only be true if property owners *outside* Midway City are counted, since the transmission line physically crosses fewer than one dozen private properties within Midway City itself. The interests of parties outside Midway City are not relevant to the Board’s review of a conditional use permit granted *by Midway City* (and the excess costs stemming from the conditions placed on the permit).

Since neither VOLT nor its members are “affected landowners” under the Act, the petition to intervene must be denied.

## **II. The Interests of Justice and Orderly and Prompt Conduct of the Proceedings Would be Materially Impaired by VOLT’s Intervention.**

Additionally, VOLT does not have the right to intervene under Utah Code § 63G-4-207 and Rule 746-200-7 of the Utah Administrative Rules, as it asserts. Section 63G-4-207(2) provides that a person shall be allowed to intervene if: (1) “the petitioner’s legal interests may be substantially affected by the formal adjudicative proceedings” and (2) “the interests of justice and the orderly and prompt conduct of the adjudicative proceedings will not be materially impaired by allowing the intervention.” As discussed above, since VOLT is a separate legal

entity, it is not an appropriate intervenor because it does not have any legal interests whatsoever that will be substantially affected by this proceeding.

Furthermore, the interests of justice would be frustrated if VOLT were permitted to intervene. In In re Questar Gas, 2007 UT 79, ¶¶33-35, 175 P.3d 545, the Utah Supreme Court further illuminated this factor, laying out five considerations: (1) timeliness, (2) increased time and expense, (3) participation in prior administrative hearings, (4) whether another party adequately represents the intervenor's interest, and (5) whether any complications can be minimized by the agency. VOLT fails all but one – the timeliness of their motion – of these tests.

Increased Time and Expense. Allowing this intervention will certainly increase the time and expense required to address the only germane issue – the excess costs imposed by Midway City's permit conditions. In fact, VOLT's Petition to Intervene itself reveals that including VOLT as a party will unduly increase the time and expense of this matter. VOLT states that it "has not fully determined specific positions it will take or the relief it will seek" and it "reserves the right to present briefing, testimony and evidence, examine witnesses and otherwise participate in this docket based upon pleadings, testimony, exhibits and evidence presented by any party to this proceeding." (Pet. to Intervene ¶ 9.) If VOLT does not yet know, at this late date in the proceedings, what positions it will take or relief it will seek, allowing it to intervene will undoubtedly complicate this proceeding. The Board has an expedited schedule it must follow to resolve disputes brought under the Act – the final hearing on the merits is less than one month away. By VOLT's own contention, its interests are based on the interests of its "more than fifty" unidentified members. This forum is not the right place to adjudicate the interests of "more than fifty" individuals, who haven't even decided what they're asking for, under expedited deadlines. Allowing this intervention will only unnecessarily bog down the proceedings.

Participation in Prior Administrative Hearings. The only true parties to a conditional use application are the applicant and the local government; however, non-party citizens had ample opportunity to participate in the proceedings before Midway City. VOLT participated appropriately in those prior administrative proceedings. The public meetings were packed with citizens who were given the opportunity to speak with regard to the proposed Project; VOLT's attorneys appeared and commented in more than one of those meetings. With robust opportunity to already have its opinions heard – and in fact, addressed, by the provisions of the Decision that request bids for the underground options and provide potential funding mechanisms – the citizens have no need nor right to intervene in this proceeding.

Whether Another Party Adequately Represents the Intervenor's Interest. VOLT's interest in this case, if any, are exactly the same as the City's interests. As explained in In re Questar Gas Co., 2007 UT 79 at ¶ 35, when considering whether the interests of justice will be impaired by an intervention under the Administrative Procedures Act, the Board must consider whether VOLT's interests will be adequately represented by another party in the proceedings. VOLT states that the “interests of justice, providing a robust and fully informed record, and the orderly and prompt conduct of this proceeding” will be “greatly enhanced” by allowing it to intervene. What VOLT does not explain is *how* the interests of justice will be “greatly enhanced” by allowing intervention by a separate corporate entity that hasn't even decided what arguments it wants to make yet, and reportedly represents “more than fifty” property owners, some of which, by logical deduction, must lie outside Midway City and the area directly affected by the transmission line.

Throughout the application process, the concerns and objections raised by VOLT, on behalf of its members, and other members of the public mirrored the concerns and objections

raised by the City. In fact, the Decision was largely based on comments it received from local residents and the public opinion survey the City conducted. Allowing VOLT (whose interests are derivative of the interests reportedly held by its individual members, and align with and are adequately represented by the City) to participate in a proceeding designed by statute to resolve disputes between the local government and the public utility would result in duplicate efforts, and duplicate arguments by “differing” parties.

Consider also the ramification if VOLT contends that its interests are different than the City’s: if the City and Rocky Mountain Power decided to settle their dispute, could they do so without VOLT’s consent if it were a party to this proceeding? If VOLT’s consent and participation was not needed as a party during the conditional use permit application process—other than as a member of the public who, of course, is able to make comments—than how can it argue that *this proceeding* cannot proceed without its direct involvement as a party? Logically it cannot. If VOLT is allowed to participate as a party, every resident of Midway City, Heber City and Wasatch County who claims their property will suffer would also be allowed to participate as parties. The Board should reject any such vast precedent.

Since VOLT has no separate interests, and any interests of VOLT’s *members* are exactly the same as the interests represented by the City, the City will adequately represent them in this proceeding. Therefore, granting intervention to VOLT is unnecessary and improper.

Whether any Complications Can be Minimized by the Agency. Denying the intervention will actually minimize any complications, since this proceeding is not conducive to vetting VOLT’s as-yet-unascertained positions and requested relief.

Because VOLT, a nonprofit corporation separate and distinct from its members, has no legal interests at issue in this matter, and Midway City more than adequately represents the interests of its citizens, intervention by VOLT should be denied.

**III. This Board Does Not Have Jurisdiction to Hear Real Property Matters.**

Finally, VOLT's petition to intervene contains assertions relating to easements along the route of the power line. (Pet. to Intervene ¶¶ 3, 4 and 5.) These matters are not properly before the Board, which is organized to hear disputes between a public utility and a governmental entity relating to construction of utility infrastructure facilities. Therefore, those statements are immaterial and beyond the scope of this Board's review.

**CONCLUSION**

For the reasons set forth above, VOLT's Petition to Intervene should be denied.

DATED this 23rd day of March, 2020.

FABIAN VANCOTT

/s/ Heidi K. Gordon

Attorneys for Petitioner Rocky Mountain Power



**CERTIFICATE OF SERVICE**

I hereby certify that on this 23rd day of March, 2020, a true and correct copy of the foregoing ROCKY MOUNTAIN POWER’S OPPOSITION TO VOLT’S PETITION TO INTERVENE was served as follows:

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*/s/ Heidi K. Gordon*

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