

Mark O. Morris (#4636)
Elizabeth M. Brereton (#14950)
SNELL & WILMER L.L.P.
15 West South Temple, Suite 1200
Salt Lake City, UT 84101
Telephone: (801)257-1961
Facsimile: 801-257-1800
Email: mmorris@swlaw.com
lbrereton@swlaw.com

Counsel for VOLT

BEFORE THE UTAH UTILITY FACILITY REVIEW BOARD

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| In the Matter of Rocky Mountain Power's Petition for Review and Midway City's Counter-Petition for Review | Docket No. 20-035-03 |
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VOLT's REPLY IN SUPPORT OF ITS PETITION TO INTERVENE

The VALLEY-WIDE OPPOSITION TO LARGE TRANSMISSION LINES (“VOLT” or “Petitioner”) respectfully submits this Reply in Support of its Petition to Intervene (“Petition”) filed on March 13, 2020. In support of its Petition, VOLT also submits fifty (50) declarations from affected landowners in Midway City who identify VOLT as representing their collective interests in this matter.¹ VOLT respectfully requests that the Utah Utility Facility Review Board (“Board”) grant VOLT’s petition to intervene on behalf of these landowners as required under Utah Code Ann. § 54-14-302(2)(b) and § 63G-4-207. This Reply is submitted in advance of its due date under the Rules, by reason that the hearing on the Petition is tomorrow.

SUMMARY

This Board should grant the Petition. After agreeing to a scheduling order that expressly provides for intervention, Rocky Mountain Power (“RMP”) now objects to the idea of intervention.

¹ Included hereto as Attachment 1.

RMP plans to site and construct a major transmission corridor through the heart of Midway City (“Midway” or “City”) to complete its Jordanelle-Midway transmission project. During the past two years VOLT has regularly and consistently engaged with representatives of Heber Light & Power (“HLP”), the City and RMP on behalf of its members. Neither has ever suggested that VOLT had no voice or standing to do so. VOLT seeks intervention in this proceeding on behalf of its members who are affected property owners entitled to intervention under Utah Code Ann. § 54-14-303(2)(b). VOLT also submits its petition to intervene as an interested party pursuant to Utah Code Ann. § 63G-4-207. VOLT is a party to the conditional use permit (“CUP”) and has been requested to raise approximately \$1.5 million dollars to pay for a portion of the actual excess costs to be paid to RMP.² VOLT is also expected to assume costs of obtaining easements required for RMP’s underground transmission line.³ Pending the outcome of this proceeding, VOLT’s members may find high-voltage transmission lines and steel towers sited on their front lawn. Alternatively, if sited underground, the CUP includes conditions that require VOLT members to convey easements to RMP across their property and to pay for a portion of actual excess costs. Under any interpretation of applicable law, and in the interests of justice, VOLT is entitled to have the benefits accruing to a *participant* in these proceedings, rather than to a mere spectator. VOLT’s intervention on behalf of its members and in its capacity as a private entity responsible for easements and excess costs under conditions in the CUP should allow intervention.

STATEMENT OF ADDITIONAL FACTS

VOLT

VOLT was formed in 2018 by residents and landowners in the Heber Valley who oppose overhead construction of Rocky Mountain Power’s (“RMP’s”) Jordanelle-Midway transmission line.⁴ VOLT identifies approximately eighty-three parcels of private property are sited within the

² Attachment 2, Condition Use Permit issued to RMP and HLP (collectively “RMP”) on December 18, 2018.

³ *Id* at Condition No. 9.

⁴ Attachment 3, Declaration of Bengt Jonsson at ¶ 4.

corridor of RMP's double circuit 138 kV transmission lines.⁵ Based on independent private appraisals, VOLT estimates that obtaining easements from owners that support RMP's 138 kV transmission lines will cost RMP between \$2 and \$3.5 million.⁶

VOLT represents 50 members who own property that is in the path of RMP's proposed transmission path.⁷ RMP has not contacted or attempted to contact these affected landowners to acquire necessary easements for overhead construction of its transmission line.

HLP's Prescriptive Easements

RMP proposes to site its 138 kV transmission lines within existing *prescriptive* easements held by HLP for operation and maintenance of a 12.5 kV-46 kV distribution line between HLP's Heber Plant substation and RMP's Midway substation.

HLP's prescriptive easement rights for its distribution system are established under Notices of Easement ("Notices") and affidavits recorded by HLP between 2003 and 2005.⁸ The Notices state that the dimensions of each easement is described by the as-built construction of the existing power line.⁹ Generally, in the absence of specific metes and bounds typically contained in an express easement, the scope of a prescriptive easement is measured and limited by its historic use during the prescriptive period."¹⁰ Based on historic use, and existing distribution facilities currently sited within the easements, the length and path of HLP's prescriptive easements are easily identified. The width of HLP's easement, however, is more difficult to determine.

Generally, absent evidence of visible usage over time, the "width of the easement would be inferred in connection with other facts."¹¹ Previously, courts have looked to Heber City to

⁵ Attachment 4, VOLT Impact Map.

⁶ Attachment 3, Jonsson Declaration at 10.

⁷ Attachment 1, Declarations in Support of VOLT's Motion to Intervene Submitted (51 separate Declarations).

⁸ Attachment 5, includes one such example of Notices disclosed by RMP.

⁹ *Id.*

¹⁰ *Valcarce v. Fitzgerald*, 961 P.2d 305, 312 (Utah 1998).

¹¹ *Lunt v. Lance*, 2008 UT App 192, ¶31, 186 P.3d 978.

determine “standard width” of an easement required for use of the easement.¹² Here, requirements published by HLP impose a 10 foot clearance, measured from the center of the pole, on either side of all power lines.¹³

On August 10, 2018, VOLT sent HLP’s counsel a memo that identified HLP’s prescriptive easements as being 20 ft-wide with 10-ft line clearances on either side of the distribution line. VOLT requested that HLP respond if this assumption was not correct and easements were larger or smaller.¹⁴ VOLT received no response.

VOLT, therefore maintains that at most, the scope of HLP’s prescriptive easements across affected property landowners limited a 20-foot wide right-of-way that tracks with the route of HLP’s existing 46 kV and 12.5 kV lines

RMP’s Conditional Use Permit

On April 10, 2019, RMP and HLP submitted a CUP application to construct the final leg of the Jordanelle-Midway transmission line that is sited through Midway City.¹⁵ In the application, RMP proposed construction of two new 138 kV powerlines, communication lines, 46 kV and 12 kV power lines. Under the terms of its Construction Agreement with HLP, RMP requires easements of at least 55 feet for its these facilities. Transmission lines require a 55-foot wide easement.¹⁶ Despite multiple meetings with VOLT, HLP and City officials during the previous year, however, RMP’s application included no reference to easements that RMP requires for its transmission lines. Even though RMP requires easements that are 55-feet wide, RMP informed the Planning Commission- without citation to any authority -that HLP’s existing easements were wide enough to accommodate RMP’s transmission lines. RMP’s overhead construction cost estimates

¹² *Id.*

¹³ Obtained online at HLP’s website: https://www.heberpower.com/tree_trimming.php.

¹⁴ *Id.*

¹⁵ Attachment 2, RMP CUP

¹⁶ Attachment 6: CONSTRUCTION AGREEMENT FOR THE HEBER-MIDWAY LINE BETWEEN HEBER LIGHT & POWER COMPANY AND ROCKY MOUNTAIN POWER COMPANY, dated April 3, 2017 (hereinafter, “Construction Agreement”) at Exhibit F.

in its application did not include costs related to obtaining new rights-of-way, or costs of widening HLP's existing easements by 25-feet for a stretch running more than a mile.

On May 14, 2019, the Midway City Planning Commission ("Planning Commission") held its first public meeting on the application. At that time, the Planning Commission voted to continue RMP's application because RMP failed to provide construction cost estimates for overhead line construction. The Planning Commission requested that

"...Rocky Mountain Power provide alternative route study, Rocky Mountain Power and Heber Valley Light and Power to provide cost and size of easements, easement locations, clearly marked, above and below ground with the visual aspects, more clarification as to the number of poles, heights and property line locations and talk to the two large land owners..."

On August 13, 2019, VOLT submitted a request to the Planning Commission to defer any determination on RMP's CUP permit.¹⁷ Specially, VOLT requested that RMP provide "standard costs" that include costs of obtaining "any necessary right-of-way" as required under Utah Code § 54-14-103(9).

The Planning Commission held a public meeting that same day. Planning Commission staff presented their report on the application ("Staff Report").¹⁸ The Staff Report includes RMP's estimated costs expanding a handful of HLP's existing easements. Although the HLP-RMP construction agreement requires 55-foot wide easements for RMP's 138 kV double-circuit lines, RMP's estimates assumed HLP's existing prescriptive easements (20-foot wide) were sufficient. RMP reported that overhead construction would require RMP to expand HLP's existing easements at certain points to include an additional 14,942 sq. ft. to 13,123 sq. ft.¹⁹ RMP too conveniently estimated that the total cost of acquiring this additional square footage would cost between \$22,594

¹⁷ Attachment 7, Letter from Mark Morris, Snell & Wilmer, on behalf of VOLT, to Corbin Gordon, Midway City Attorney, dated August 13, 2019.

¹⁸ Attachment 8, Planning Commission Meeting Staff Report (August 13, 2019).

¹⁹ *Id.* at page 11.

to\$ 25,743.²⁰

VOLT objected to RMP's assumptions and standard cost estimates. VOLT issued three letters to Midway City requesting that the City address this 35-foot shortfall in easement width.²¹ VOLT also commissioned its own independent appraiser to appraise property before and then after RMP overhead transmission lines were constructed. The appraisals assumed that RMP would be required to expand the width of HLP's existing 20-ft wide easements by 35 feet.

Additional public meetings were held by the City Council on October 15 and November December 18, 2019. At the meeting held on November 19, 2019, RMP gave a presentation before the City Council, summarizing its stranded costs and estimated excess cost calculation. That presentation included a new appraisal report commissioned by RMP to evaluate costs of acquiring expanded easements.²² RMP's report identified only eleven (11) properties titled to ten (10) property owners that are impacted RMP's proposed 138 kV transmission lines.²³

On December 17, 2019, the City issued RMP's CUP subject to twenty-nine (29) conditions. In its written decision, the City Council stated that **"we do not accept the estimated costs provided by the applicant as sufficient."**²⁴ The first two conditions prescribe the City's requirement that RMP provide revised estimated costs including revised construction costs based on three competitive bids. Importantly, the CUP requires that VOLT take specific action in order for RMP to meet a number of CUP conditions. "The City is relying on representations made by the VOLT group that they can raise a substantial amount of money to help pay for an underground

²⁰ *Id.*

²¹ Attachment 9, Letter from Mark Morris, Snell & Wilmer, on behalf of VOLT to Corbin Gordon, Midway City Attorney, dated October 15, 2019; Attachment 10, Letter from Mark Morris, Snell & Wilmer, on behalf of VOLT to Corbin Gordon, Midway City Attorney, dated November 13, 2019; Attachment 11, Letter from Mark Morris, Snell & Wilmer, on behalf of VOLT to Corbin Gordon, Midway City Attorney, dated November 19, 2019.

²² Attachment 12, RMP Appraisal Report.

²³ *Id.* at page 1.

²⁴ Attachment 2, RMP CUP at Condition No. 1.

project.”²⁵ To that end, the third CUP condition requires VOLT to collect and contribute at least \$1.5M in private donations to pay for a portion of estimated excess costs:

Condition 3: Whereas private citizens (represented by the organization known as VOLT) have recognized an underground transmission line project that must be paid by the citizens presents a significant financial burden on the citizens of Midway, and have stated they want to help mitigate this burden and whereas the City Council is significantly concerned about the citizen impact of the full cost of underground construction, the City hereby required that in order to proceed with underground construction a minimum of 1.5 million US dollars in “donation” funds must be presented to the city in the form of contractual authorization to use these funds for the purpose of the burial of transmission lines, from an escrow bank account serviced by a qualified escrow service. If VOLT is able to raise more than \$1.5M and the underground project costs exceed \$1.5M, the City is delighted to accept more help from VOLT. If the final cost of the construction is less than \$1,5 M any excess donations will be retained by the donating entity (IE “VOLT”). It is up to VOLT to return the amount to the rightful owners. We officially express our deep gratitude to the VOLT organization for their hard work and dedication in the service of our town in potentially making actual private funds available.”

If underground construction proceeds, the CUP also requires VOLT to assume responsibility for easement costs. Specifically, CUP Condition 9 provides that:

Condition 9: “Whereas many private citizens have expressed in written form submitted by VOLT that they would donate the value of their easements to reduce the cost burden born by the City, these amounts will be subtracted from the underground cost the City will pay.”

The permit also includes conditions that require RMP to obtain necessary rights of way (Conditions 9 and 20); to contact landowners who are “directly affected” by construction (Conditions 13 and 21); and to acquire easements through negotiated agreements or eminent domain (Conditions 14 and 22).

²⁵ *Id.* at Condition No. 3.

On January 15, 2020, RMP submitted its Petition of Review, wrongly claiming that it provided standard costs and estimated excess costs required under § 54-14-202. Midway City filed its Counter-Petition for review alleging that RMP failed to provide these cost estimates under the statute.

VOLT's Reply to RMP's Opposition

The dispute before this Board stems from RMP's failure to provide cost estimates pursuant to Utah Code § 54-14-202(b)(1). "Standard costs" are defined to mean the "estimated cost of a facility, including any *necessary rights-of-way*." Utah Code § 54-14-103(9)(a). "Estimated excess costs," is the "material difference in estimated cost between the costs of a facility, including any *necessary right-of-way*, if constructed in accordance with the requirements of a local government and the standard cost of the facility." *Id.* at § 54-14-103(4). RMP's opposition to VOLT's Petition is meritless. RMP is required to provide costs of obtaining rights-of-way that standard and excess cost estimates required under § 54-14-202. VOLT is entitled to intervention before the Board to ensure that necessary rights-of-way are identified and that costs of obtaining them are accounted for.

VOLT seeks redress from this Board to ensure that RMP identifies all rights-of-way and that RMP includes these rights-of-way in standard cost estimates. VOLT estimates that necessary rights-of-way for overhead construction will cost RMP more than \$2.5 million. See VOLT Report prepared by Jerry Webber.²⁶

VOLT intervention is critical to this proceeding. Midway City "relied on representations of VOLT" in crafting conditions requiring RMP to provide accurate cost estimates. Moreover, conditions under the CUP require that VOLT assume responsibility for a portion of excess costs and easement costs. The outcome of this proceeding will determine what necessary rights-of-way RMP is required to obtain (for overhead and underground construction). The Board will also

²⁶ Attachment 13, Summary of Report prepared by Jerry Webber.

determine the cost of obtaining these easements. Here, VOLT seeks intervention in this matter on behalf of its membership, including members who are “potentially affected landowners” with a right to intervene under § 54-14-303(2)(b). VOLT also seeks intervention as a party that will “pay” excess costs on behalf of Midway City pursuant to § 54-14-103(8) and Utah Code § 63G-4-207; and on behalf of its members who are affected landowner pursuant under § 54-14-303.

A. The Board should consider RMP’s Opposition as Improper and Untimely.

On February 25, 2020, the Board held an initial hearing required under Utah Code Ann. § 54-14-304 and discussed specific deadlines to be included in its forthcoming scheduling order. Utah Admin. Code R746-1-501(3)(a) provides that “on request from a party or on the presiding officer's own initiative, the presiding officer may include in a scheduling order, deadlines for filing a petition for intervention.” The Board set an intervention deadline in its order. All parties agreed that a deadline should be set. On February 27, 2020, the Board issued its Scheduling Order setting the “deadline for intervention” in this matter as Friday, March 13, 2020. In reliance upon and pursuant to that order, VOLT filed its Petition to Intervene on Friday, March 13, 2020.

On March 23, 2020, RMP filed its opposition to VOLT’s Petition nearly four weeks after requesting that the Board provide for intervention at the initial hearing. Despite its specific request to establish an intervention window, RMP now claims intervention, in and of itself, is not permitted under § 54-14-303(2)(b) because RMP’s 138 kV double circuit transmission line is not a “high-voltage 230 kV powerline.” VOLT disputes RMP’s claim for the reasons put forward in this brief. But, as an initial matter, VOLT asks that the Board consider RMP’s opposition as untimely and improper. RMP’s objections to the Board allowing for intervention in its scheduling are more appropriately addressed in a Motion to Amend the Board’s Scheduling Order.

B. VOLT's Status as a Nonprofit Corporation does not Preclude it from Intervening on Behalf of its Members.

RMP claims that VOLT cannot intervene because it is a separate legal entity from its members. In support of this claim, RMP vaguely references “Utah Code Title 16, Chapter 6a (Utah Revised Nonprofit Corporation Act),” and the decision in *Reedeker v. Salisbury*, in which the court held that trustees of a condo association were not personally liable for condo owners’ claims against the association.²⁷ By reason of VOLT’s long involvement and its express obligations under the CUP, VOLT is entitled to intervene on behalf of its members. *Reedeker* has no application to the facts of this case. Further, VOLT is not aware of, and RMP does not cite to, any relevant caselaw or provision under the Utah Nonprofit Corporation Act, that bars VOLT from intervening because it is a merely a nonprofit corporation. RMP is well aware that the Commission regularly grants petitions to intervene filed by associations, including nonprofits.²⁸

VOLT is permitted to intervene under applicable law as an association representing its members. An association, such as a nonprofit corporation, has standing to intervene “if its individual members have standing and the participation of individual members is not indispensable to the resolution of the case.”²⁹ There is no threshold number of members that an association must have as a prerequisite to standing.³⁰

As matter of law, VOLT has standing to intervene if two or more of its members have standing to intervene in the instant proceeding. In this case, VOLT represents more than fifty affected landowners who have submitted declarations designating VOLT as the association that represents their interests in this matter.³¹ Most of these properties have existing HLP distribution lines sited within HLP’s prescriptive easement. The facilities proposed by RMP, however, are

²⁷ 952 P.2d 577, 582 (Utah Ct. App. 1998).

²⁸ For example, nonprofit corporations including Sierra Club, Utah Energy Users Association, and Utah Clean Energy are regular intervenors in Commission proceedings.

²⁹ *Utah Chapter of the Sierra Club, v. Utah Air Quality Board*, 148 P.3d 960, 2006 UT 74, 206

³⁰ *Id.* at ¶ 34.

³¹ Attachment 1.

larger and include multiple power and communications line in addition to RMP’s 138 kV double circuit.³²

RMP provided the City with its own appraisal report that identified eleven (11) properties that will be impacted by overhead transmission lines.³³ These properties are owned by ten (10) individuals. RMP states that it will require new easements on these properties to accommodate its BES facilities. RMP also identified these properties as needing property value once its transmission line is constructed.

| Impacted Parcel Summary | | | | | |
|-------------------------|--------------|-----------------|------------|---------|-------|
| Parcel | Name | Street | Coordinate | Zoning | Acres |
| 00-0020-4611 | Day | 970 South | 30 West | R-1-22 | 1.33 |
| 00-0020-4256 | Dwell | 970 South | 300 West | R-1-22 | 6.00 |
| 00-0020-4255 | Price | 970 South | 350 West | R-1-22 | 6.88 |
| 00-0020-4254 | Medallion | 970 South | 350 West | R-1-22 | 10.16 |
| Common Area | Saddle Creek | 970 South | 150 West | R-1-22 | 34.35 |
| 00-0020-4248 | Jonsson | Stringtown Road | 955 South | R-1-22 | 0.42 |
| 00-0020-4250 | Bodensteiner | Stringtown Road | 923 South | R-1-22 | 0.50 |
| 00-0020-4251 | Jonsson | Stringtown Road | 945 South | R-1-22 | 1.47 |
| 00-0020-4249 | Almaden | Stringtown Road | 905 South | R-1-22 | 2.60 |
| 00-0020-4247 | Twin Creeks | Stringtown Road | 845 South | R-1-22 | 6.81 |
| 00-0008-5949 | Burt | Wards Lane | 792 West | RA-1-43 | 5.01 |

Each of these property owners is a member of VOLT. Further, each of these property owners has provided a declaration that states VOLT represents their interests as affected landowners in this matter.³⁴ As noted above, VOLT submits fifty (50) declarations prepared by VOLT members, including declarations from landowners identified by RMP Jonsson, Day, Dwell, Price, Medallion, Saddle Creek, Almaden, Bodensteiner, Twin Creeks, and Burt.³⁵

³² Attachment 13, VOLT Photo of RMP Facilities.

³³ Attachment 12, RMP Appraisal at page 2.

³⁴ Attachment 1.

³⁵ *Id.*

Even under RMP's constrained standards, VOLT represents at least ten affected property owners impacted by RMP's transmission line construction. RMP must seek additional easements on property owned by each of these VOLT members. While VOLT contends that there are over eighty affected properties that are impacted by RMP's line, VOLT agrees that these ten VOLT members are affected landowners. There should be no dispute that VOLT is an association that may intervene on behalf of these landowners with property interests at stake in this matter.

C. VOLT is Entitled to Intervene on Behalf of its Affected Landowners Pursuant to Utah Code Sec. 54-14-303(2)(b).

VOLT's petition to intervene is brought on behalf its members who are "potentially affected landowners" as defined under the Utah Facility Review Board Act ("Act").³⁶ "The Act affords a right to intervene as a party in certain proceedings to '[a] potentially affected landowner.'"³⁷ Looking to the plain language of the Act, the Commission reads Utah Code Section 54-14-303(2)(b) to define "a potentially affected landowner" as "an owner of a property interest whose property is located within a proposed corridor."³⁸ Commission, Order at 5 (In the Matter of Rocky Mountain Power's Petition for Review to the Utah Utility Facility Review Board; Docket No. 16-035-09).

RMP, however, argues that the Commission cannot look to the plain language of the statute, or the Commission's previous orders on the definition of an "affected landowner" referenced in § 54-14-303(2)(b). Instead, RMP offers up its own definition of an "affected landowner" with the right to intervene under § 54-14-303(2)(b). It argued that the definition of an "affected landowner" must be read with to include "defined terms [that] are embedded within definitions for other defined terms." Once unpacked, RMP claims that a "potentially affected

³⁶ See Utah Code § 54-14-303(2)(b).

³⁷ Commission, Order at 5 (In the Matter of Rocky Mountain Power's Petition for Review to the Utah Utility Facility Review Board; Docket No. 16-035-09).

³⁸ *Id.*

landowner” in § 54-14-303(2)(b) refers to a landowner with a right to intervene must be read to include four additional defined terms that are embedded within other definitions.³⁹ RMP claims that an “affected landowner” referred to in § 54-14-303(2)(b) should be deciphered to mean a landowner with property interests in a 230 kV transmission line corridor. RMP then goes a step farther to argue that this definition limits the Boards jurisdiction to 230 kV lines that go through the approval process required under Utah’s High Voltage Power Line Act.

RMP’s longhand for an “affected landowner” belies the plain language of the Act and applicable statutes. “When interpreting a statute, we look first to the plain and ordinary meaning of its terms.”⁴⁰ “We presume that the expression of one term should be interpreted as the exclusion of another, and we seek to give effect to omissions in statutory language by presuming all omissions to be purposeful.”⁴¹ Looking to the plain language of Utah Code § 54-14-303(2)(b) and § 54-18-102(2), the legislature does not restrict “potentially affected landowners” to a subset of landowners whose property is impacted by 230 kV transmission lines. The plain language of the § 54-14-303(2)(b) reads:

A potentially affected landowner, as defined in Section 54-18-102, or affected entity, as defined in Section 54-18-102, shall have a right to intervene as a party in the proceeding.

Section 54-18-102(2) provides that:

“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.”

The Commission reads these two statutes, when read together, to define “potentially affected landowner” “as ‘an owner of property interest...whose property is located within a proposed corridor.’” Order at 4. Neither the statute nor the Commission construed the definition of a

³⁹ Utah Code Ann. §§ 54-18-102 at Subsections 9 (“proposed corridor”), 12 (“target study area”), 4 (“high voltage power line”), 13 (“upgraded high voltage power line”).

⁴⁰ *Anadarko Petroleum Corp. v Utah State Tax Comm’n*, 2015 UT 25, ¶ 11, 345 P.3d 648.

⁴¹ *Id.* ¶ 13.

“potentially affected landowner” as a limit to intervention or to jurisdiction over disputes brought under subsection 303 to 230kV + power lines

More than fifty of VOLT’s members are “potentially affected landowners.” VOLT represents real property owners whose *yards* are in the transmission line’s path. VOLT represents every landowner identified by RMP as having property that is impacted and on which RMP must expand or obtain easements for its facilities. Based on information provided by VOLT, RMP’s admissions, and more than 51 declarations from affected landowners, VOLT clearly meets the requirements for intervention on behalf of its “potentially affected landowners” pursuant to Utah Code Ann. § 54-14-302(2)(b).

D. VOLT’s may Intervene as an Entity with Legal Interests at Stake in this proceeding, and as a party subject to certain conditions imposed under the CUP.

For the reasons put forward above, VOLT has the right to intervene on behalf of “affected landowners” under Section 54-14-303(2)(b). Even if the Board were to determine that VOLT does not have a right of intervention under that statute, the Board should grant its Petition to Intervene under Utah Code Ann. Sec. 63G-4-207(2).

Intervention under Utah Code Ann. § 63G-4-207 requires that VOLT first demonstrate its members’ “legal rights and interests are be substantially affected by the formal adjudicative proceeding.” Second, VOLT must show that the interests of justice and orderly and prompt conduct of the adjudicative proceedings will not be materially impaired by VOLT’s intervention. VOLT’s intervention satisfies both these requirements.

1. VOLT’s interests are substantially impacted by the Board’s Written Decision on Petitions for Review submitted by RMP and Midway City.

VOLT’s legal interests will be substantially affected by the outcome of this proceeding. RMP plans to construct overhead 138 kV double-circuit transmission lines on and through property

owned by VOLT members. The outcome of this proceeding determines (1) the size of HLP's existing easements on these members' property; (2) any additional easements RMP must obtain to accommodate its transmission facilities; and (3) RMP's standard construction and estimated excess costs including costs of obtaining easements from affected property owners.

But beyond its members property interests, VOLT is entitled to intervene in this matter because it is a private entity that Midway City has identified as obligated to pay excess costs pursuant to § 54-14-103(8)(c). Although the Act identifies "local government" paying actual excess costs, § 54-14-103(8)(c) provides that payment may be made by "a private entity other than the public utility pursuant to a regulation of decision of the local government." In this case, Midway City's CUP includes two explicit conditions under which VOLT is responsible for making payment pursuant to § 54-14-103(8)(c). Condition No. 3 that states in relevant part:

"the City hereby required that in order to proceed with underground construction a minimum of 1.5 million US dollars in "donation" funds must be presented to the city in the form of contractual authorization to use these funds for the purpose of the burial of transmission lines, from an escrow bank account serviced by a qualified escrow service.

VOLT has raised more than \$600,000 in private donations and is well on its way to raising the \$1.5 million to pay a portion of excess costs under Condition 3.

On November 14, 2019, VOLT submitted fourteen (14) Letters of Intent for Grant of Easement for Underground Electric Transmission Facilities on behalf of members who are also affected landowners.⁴² acting in reliance on VOLT's representations, Midway City included Condition No. 9 that requires:

"Whereas many private citizens have expressed in written form submitted by VOLT that they would donate the value of their easements to reduce the cost burden born by the City, these amounts will be subtracted from the underground cost the City will pay."

⁴² Attachment 14, VOLT Letters of Intent.

VOLT as a legal entity has made commitments on behalf of its members that require payment and the conveyance of necessary rights-of-way. Midway City's decision to include these commitments as conditions that must be satisfied for underground construction positions VOLT as a party to the CUP and a necessary intervenor in this proceeding. VOLT's obligations to raise \$1.5 million and to arrange for easement conveyances are prerequisites for RMP construction under Condition Nos. 3 and 9. In the event that this Board determines that Midway's CUP conditions are not enforceable, VOLT will be required to reimburse over \$500,000 to members who have made private donations. As a party included in the CUP, and as an entity paying excess costs pursuant to § 54-14-103(8), VOLT has demonstrated it has legal interests at stake.

2. VOLT's Intervention will not Materially Impair the Orderly and Prompt Conduct of the Proceeding.

As described above, VOLT submitted a timely Petition to Intervene by March 13, 2020, the deadline established under Board's scheduling order. RMP's references to caselaw wherein intervention was denied because it would impair orderly and prompt conduct of the proceeding all involve *untimely* petitions. The facts presented by *In re Questar gas*, show that the petitioners, Roger Ball and Claire Geddes submitted their petition to intervene more than a year after the proceeding began.⁴³ By that time, parties to the proceeding had completed a lengthy discovery process. Briefing and written testimony had been filed months before the petition was submitted. Parties to the proceeding had reached a tentative settlement agreement. Based on these facts, the court upheld the Commission Order denying intervention to Ball and Geddes. The Commission held that "it is not appropriate to be granted such a tardy intervention that would eviscerate the work already done and subject all parties, the regulatory process, the State's and customers' to the vagaries of the odyssey foreshadowed in intervention."⁴⁴

⁴³ 2007 UT 79, 175 P.3d 545.

⁴⁴ *Id.* at ¶ 20.

These are not the facts presented by VOLT's petition. VOLT timely submitted its Petition to intervene on Friday, March 13, 2020, within the timeframe requested by RMP and prescribed under the Board's Scheduling Order. Parties are still engaged in discovery. The deadline for written testimony to be submitted by Midway City and VOLT has not yet passed. VOLT has engaged an expert to testify on its behalf and VOLT is positioned to immediately engage as a party in the proceeding without risk of causing, let alone requesting a delay.

E. The Board Should Allow VOLT to Intervene in the Interests of Justice.

VOLT is the only party positioned to represent its own interests in this matter. Midway City's interest in this proceeding is to defend City Council's decision to impose conditions under the CUP. Midway City is not acting on behalf of VOLT members and "affected property owners" whose yards lie in the way of RMP's gigantic towers, and who have contributed money and have agreed to convey necessary easements pursuant to the CUP. With this Reply, VOLT is submitting a number of documents that demonstrate VOLT is the only party that can speak to specific costs of necessary rights-of-way. VOLT has engaged an expert to provide a report to the City and this Board that examines costs of overhead construction in terms of compensating property owners for expanded or new easements for RMP. VOLT will submit testimony challenging RMP's assumptions underlying excess and stranded costs estimates. VOLT will make this expert available to RMP for Cross-examination.

In sum, VOLT is also the only party that can speak to impacts of RMP's facilities on property owned by affected landowners. VOLT is obligated under the CUP to make payment and convey easements to RMP for underground transmission line siting. VOLT certainly meets the requirements providing for intervention under § 54-14-303(2)(b) and § 63G-4-207.

II. CONCLUSION

In the interests of fairness and justice, and certainly as expressly allowed by statute, This Board should grant VOLT's Petition to Intervene. RMP's opposition ignores the reality that VOLT's interests are directly impacted by this proceeding. Any procedural concerns are not grounds to deny VOLT's intervention. Simply stated, the Board should grant VOLT's Petition so that VOLT and its members' interests are protected.

FOR ALL OF THE FOREGOING REASONS, VOLT respectfully requests that the Commission issue its order granting the Petition.

Dated this 30th day of March, 2020.

SNELL AND WILMER L.L.P.

/s/ Mark O. Morris

Mark O. Morris, Esq.

Elizabeth M. Brereton, Esq.

Counsel for VOLT

CERTIFICATE OF SERVICE

I CERTIFY that on March 30th, 2020, a true and correct copy of the foregoing was delivered upon the following as indicated below:

By Electronic-Mail:

Troy Fitzgerald, Board Member (tfitzgerald@springville.org)
Representing the Utah League of Cities and Towns

Glenn Wright, Board Member (gwright@summitcounty.org)
Representing the Utah Association of Counties

Heidi K. Gordon (hgordon@fabianvancott.com)
Fabian VanCott
Bret Reich (bret.reich@pacificorp.com)
Rocky Mountain Power
Attorneys for Rocky Mountain Power

Corbin B. Gordon (cgordon@gordonlawgrouputah.com)
Joshua D. Jewkes (jjewkes@gordonlawgrouputah.com)
Gordon Law Group, P.C.
322 E. Gateway Drive, Suite 201
Heber City, UT 84032
Attorney for Midway City

Scott Sweat
Jon Woodward
Wasatch County Attorney's Office
805 West 100 South
Heber City UT 84032
attorney@wasatch.utah.gov

Adam S. Long (along@shutah.law)
Smith Harvitgsen
257 East 200 South, Suite 500
Salt Lake City, Utah 84111
Attorney for Heber Light & Power

Patricia Schmid (pschmid@agutah.gov)
Justin Jetter (jjetter@agutah.gov)
Robert Moore (rmoore@agutah.gov)
Victor Copeland (vcopeland@agutah.gov)
Assistant Utah Attorneys General
Heber M. Wells Building
160 East 300 South, Suite 500
Salt Lake City, Utah 84111

Madison Galt (mgalt@utah.gov)
Division of Public Utilities
Heber M. Wells Building
160 East 300 South, 2nd Floor
Salt Lake City, UT 84111

Cheryl Murray (cmurray@utah.gov)
Office of Consumer Services
Heber M. Wells Building
160 East 300 South, 2nd Floor
Salt Lake City, UT 84111

/s/ Mark O. Morris
