

ATTACHMENT 7

August 13, 2019

VIA FACSIMILE 435.654.4120, 888.822.8796

VIA E-MAIL

Midway City Planning Commission
c/o Corbin Gordon, City Attorney
Midway, Utah 84049

Re: VOLT Request for Continuance on Heber Light & Power's Application for
Conditional Use Permit

Dear Corbin:

I write on behalf of my client, the Valley-wide Opposition to Large Transmission Lines ("VOLT") to request that the Midway City Planning Commission ("Planning Commission") continue its review of the application for a condition use permit ("CUP") submitted by Rocky Mountain Power ("RMP") and Heber Light and Power ("HLP") to permit additional factual input and public comment. VOLT requests that Planning Commission withhold any recommendation to the Midway City Council until the Planning Commission holds a public meeting for the purpose of obtaining information requested by the Commission on May 14, 2019, and to identify proposed conditions to be included in the CUP.

Midway City Ordinance Section 16.13.47(D)3 requires that a CUP applicant provide costs of proposed line construction. To that end, on May 14, 2019, this Commission moved to continue RMP's CUP application and requested that RMP "provide cost and size easements..."¹ It appears to us that RMP has failed to provide such information. Costs cited by Planning Commission Staff only include a dollar amount for obtaining additional square footage to expand the width of existing easements. The Planning Commission Staff report indicates these costs will be between \$22,594 and \$25,743.80. But you and the City must be aware that these estimates do not include all easement costs.

VOLT disputes easement cost estimates provided by RMP included in the Planning Commission Staff Report. Utah law requires that RMP and HLP provide "just compensation" to landowners subject to the expanded easement. Utah Code Ann. §78B-6-511(1)(b) requires that just compensation includes severance damages. Meaning, "If the property sought to be condemned constitutes only a part of a larger parcel, the damages which will accrue to the portion not sought

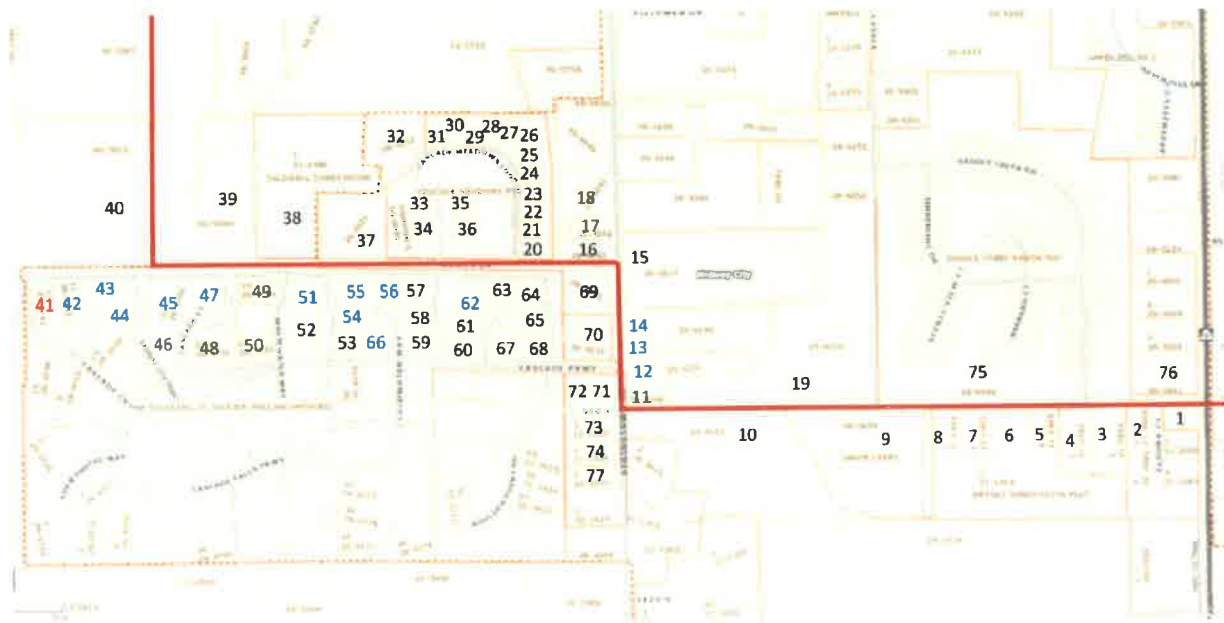
¹ Midway City Planning Commission Staff Report, August 13, 2019, at page 3.

Midway City Planning Commission
August 13, 2019
Page 2

to be condemned by reason of its severance from the portion sought to be condemned and the construction of the improvement in the manner proposed by the plaintiff.”

Generally, the court will assess severance damages, by measuring the market value of the property before the taking, and the market value of the property after the taking.² Market value is based on the property’s actual value as of the date of the service of summons.³ “Market value” may “consider everything a willing buyer and a willing seller would consider in determining the market value of the property after the taking.”⁴ Courts have construed “market value” to be equal to the amount “a purchaser willing to buy but not required to do so, pay and what would a seller willing to sell but not required to do so, ask.”⁵ Where partial taking results in severance damages by affecting the remainder of the property, “the cardinal and well-recognized rule as to the measure of damages to property not actually taken but affected by condemnation is the difference in market value of the property before and after the taking.”⁶

VOLT engaged an appraiser to objectively determine the amount of severance damages that would be due to owners of property bordering the transmission line’s proposed route. This is a significant undertaking, as there are over 70 properties that have to be taken into account.



² *State v. Noble*, 305 P.2d 495, 497 (1957).

³ Utah Code Ann. §78B-6-512(1).

⁴ Utah Code Ann. §78B-6-511(2)(a).

⁵ *Noble*, 305 P.2d at 497.

⁶ *Salt Lake County Cottonwood Sanitary District v. Toone*, 357 P.2d 486, 488 (Utah 1960).

Midway City Planning Commission
August 13, 2019
Page 3

Preliminary estimates indicate that beyond the cost of obtaining additional property to expand existing easement, RMP and HLP would be required to pay property owners multiple millions of dollars for lost property value outside the easement area. Estimates for lost property values VOLT obtained, based on realtor estimates, indicate severance damages in the range of mid-seven figures. Those appraisals continue, and we are concerned that RMP and HLP have not done the sort of due diligence to estimate these costs that the City Council expected of them.

There is no doubt that the CUP poses significant impacts to property values throughout the valley. The "Planning Commission Meeting Staff Report," attached as "Exhibit 1," states that "the proposal will have an impact on the properties along the route and on the entire community."⁷ Further, Planning Commission Staff determined that "the proposed lines will not be in harmony," with General Plan's agricultural land use description for this area."⁸ VOLT requests that the Planning Commission continue its review of RMP's application and consider additional data that VOLT will provide demonstrating significant impacts to property values throughout Midway. VOLT is prepared to provide part of that data now, but additional appraisals are still in the works.

Midway City Land Use Ordinance Section 16.26.12(C)(3) provides, "[t]he Planning Commission may recommend, and the City Council may impose, conditions on the requested use which are additional to any conditions which are specifically listed in conjunction all conditional uses or special exception prescribed within this Ordinance." VOLT also requests that the Commission seek public input and additional information in determining what conditions should be included in the CUP to mitigate impacts to property values and land use decisions.

Very truly yours,

Snell & Wilmer



Mark Q. Morris

Cc: Adam Long, Esq. via email
VOLT, via email
MOM:mkm

Enclosure

⁷ Planning Commission Staff Report Analysis No. 1 (page 5-6)

⁸ *Id.*