

**ROCKY MOUNTAIN POWER**

VS

**MIDWAY CITY**

Docket No. 20-035-03

**PUBLIC**

**HEARING**

March 31, 2020

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PUBLIC HEARING DOCKET NO. 20-035-03  
STATE CONTRACT #MA2908  
ROCKY MOUNTAIN POWER, PETITIONER,  
VS. MIDWAY CITY, RESPONDENT  
HEARING ON INTERVENTION REQUEST AND ELECTRONIC MEETINGS  
UTAH UTILITY FACILITY REVIEW BOARD

Taken on March 31, 2020

At 10:00 a.m.

Via teleconference

At ADVANCED REPORTING SOLUTIONS  
159 West Broadway  
Broadway Lofts, Suite 100  
Salt Lake City, Utah 84101

Reported by: Deirdre Rand, RPR, CSR, CCR

A P P E A R A N C E S

Public Service Commission:

THAD LEVAR, CHAIR  
DAVID R. CLARK, BOARD MEMBER  
JORDAN A. WHITE, BOARD MEMBER  
TROY FITZGERALD, BOARD MEMBER  
GLENN J. WRIGHT, BOARD MEMBER

Rocky Mountain Power:  
HEIDI GORDON  
BRET REICH

Midway City:  
CORBIN B. GORDON  
JOSHUA D. JEWKES

Valley-Wide Opposition to  
Large Transmission Lines (V.O.L.T.)  
MARK O. MORRIS  
ELIZABETH BRERETON

-ooOoo-

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P R O C E E D I N G S

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2  
3 CHAIR LEVAR: This is the hearing for the  
4 Utility Facility Review Board scheduled for today, March  
5 31, 2020, in Docket 20-035-03, Rocky Mountain Power  
6 versus Midway City.

7 My name is Thad LeVar. And the other four  
8 board members, David R. Clark, Troy Fitzgerald, Jordan  
9 A. White, and Glenn J. Wright, are all confirmed to be  
10 on the call.

11 We will take appearances from others in just a  
12 moment.

13 We have, in our notices of today's hearing,  
14 identified three issues that we will address today: The  
15 petition to intervene by V.O.L.T.; a rule filing that  
16 the board could publish on electronic meetings, and we  
17 can discuss that further when we get to that point; and  
18 then a decision on the hearing that's currently  
19 scheduled for April 20th, how to conduct that.

20 So I think we'll start first with the  
21 intervention, though, which was the original issue this  
22 hearing was scheduled for.

23 Just a couple of reminders. Please mute your  
24 phone when you're not speaking, unmute it when you need  
25 to start speaking. Identify yourself when you begin

1 speaking so the court reporter can have a transcript  
2 that accurately reflects today's hearing. And please  
3 try to speak slowly, because it is a little more  
4 challenging where the court reporter cannot see each of  
5 us as she is preparing the transcript.

6 So why don't we next go to appearances. Who  
7 do we have on the line for Rocky Mountain Power?

8 MR. REICH: Yeah, good morning. This is Bret  
9 Reich. I'm an attorney with Rocky Mountain Power,  
10 representing Rocky Mountain Power.

11 MS. HEIDI GORDON: This is Heidi Gordon with  
12 Fabian VanCott for Rocky Mountain Power.

13 CHAIR LEVAR: Okay. Thank you.

14 For Midway City -- who do we have on the line  
15 for Midway City?

16 MR. CORBIN GORDON: Corbin Gordon and Joshua  
17 Jewkes.

18 CHAIR LEVAR: Okay. Thank you.

19 And then for Valley-Wide Opposition Large  
20 Transmission Lines.

21 MR. MORRIS: Good morning, Mr. Chairman. My  
22 name is Mark Morris, and with me is Elizabeth Brereton.

23 Liz, if you could just speak up to let us know  
24 you're still on.

25 MS. BRERETON: This is Liz Brereton on behalf

1 of V.O.L.T.

2 CHAIR LEVAR: Okay. Thank you.

3 And then just a reminder. As you speak --  
4 since we have two attorneys for each of the three  
5 participants today, we'll ask that when you speak, you  
6 still identify which one you are and who you're speaking  
7 on behalf of.

8 And it seems to me that since our first issue  
9 today is the petition to intervene by Valley-Wide  
10 Opposition to Large Transmission Lines, we should let  
11 Mr. Morris or Ms. Brereton start.

12 And, you know, we've received your petition.  
13 It's safe to assume all the board members have read your  
14 petition and Rocky Mountain Power's opposition. So you  
15 don't need to repeat everything you've already given to  
16 us in writing, but if you want to take a few minutes and  
17 highlight any issues, and then we'll see if any board  
18 members have any questions for you, and then we'll move  
19 to the other parties.

20 So why don't we start with Mr. Morris or  
21 Ms. Brereton.

22 MR. MORRIS: Thank you very much. This is  
23 Mr. Morris on behalf of V.O.L.T.

24 We also filed last night our reply memorandum  
25 in support --

1 THE REPORTER: I'm having a hard time hearing  
2 you, Mr. Morris. This is the court reporter. Could you  
3 please speak up?

4 MR. MORRIS: Yes, I will. Is that any better?

5 THE REPORTER: That is much better. Thank  
6 you.

7 MR. MORRIS: Okay. Thank you.

8 We also filed a reply memorandum. Candidly,  
9 we were surprised that Rocky Mountain Power opposed our  
10 position, but -- although we had a constricted timeframe  
11 in which to file a reply memorandum, we did that  
12 yesterday.

13 Could I ask if the board members have had a  
14 chance to review what we filed yesterday, the reply  
15 memorandum?

16 CHAIR LEVAR: This is Thad LeVar. I have not  
17 received that reply memorandum. If it was filed late  
18 yesterday, it possibly has not yet been distributed  
19 through our email service list. It's not posted to our  
20 docket, and I haven't received it through our normal  
21 distribution list.

22 So the short answer is, no, we don't have that  
23 in front of us. And I think it's safe to say that other  
24 board members may not, but if any other board member  
25 does have it in front of you, please let us all know.



1 MS. BRERETON: This is Liz Brereton  
2 representing V.O.L.T. I am looking at my email, and --  
3 my assistant received an e-mail this morning stating  
4 that the Commission had received the briefing, but there  
5 was an issue with uploading it through a link that we  
6 had provided, because the file was too large to be sent  
7 via email.

8 MR. MORRIS: So perhaps the best way to  
9 proceed is to at least advise the board that this is --  
10 this was filed -- we did file, and we have served it on  
11 other parties. I presume they received the email and  
12 the means by which to download the information and  
13 view it.

14 The reason it was so large primarily is  
15 because of Rocky Mountain's claim that V.O.L.T. wasn't  
16 authorized or could not act on behalf of affected  
17 landowners here. And so in support of the petition, we  
18 filed 50-something declarations from landowners,  
19 including the 10 or 11 landowners that Rocky Mountain  
20 claims are the only people affected by this line.

21 And so that's the reason for the substantial  
22 nature of the filing, because we were forced by Rocky  
23 Mountain to satisfy their apparent concern that V.O.L.T.  
24 did not represent the interests of affected landowners.

25 I'm happy to proceed with the arguments that

1 we now have responded to on behalf of V.O.L.T. It will  
2 be summarizing our reply memorandum. But I guess I  
3 would ask the board to take our petition for  
4 intervention under advisement until you have had an  
5 opportunity to review the substantial materials we were  
6 forced to file yesterday to respond to the claims that  
7 Rocky Mountain was making in opposition to the petition.

8 CHAIR LEVAR: Okay, this is Thad LeVar. I'll  
9 just jump in.

10 Why don't we go ahead this way. You know, it  
11 looks like the written materials are being distributed  
12 to board members as we speak. Considering our timeframe  
13 in this docket, considering that our hearing is  
14 scheduled to start -- the hearing on the merits -- three  
15 weeks from yesterday on a schedule that probably legally  
16 cannot be adjusted, why don't we go ahead and let you  
17 summarize your arguments for us verbally here, and then  
18 we'll move to questions, then we'll hear from the other  
19 parties, and then we will discuss as a board our path  
20 forward.

21 So why don't you go ahead and give us any  
22 high-level summary you would like to of your arguments.

23 MR. MORRIS: Thank you very much. Yeah, and  
24 this is Mr. Morris on behalf of V.O.L.T.

25 So there are two independent bases,

1     statutorily, by which this board could grant the  
2     petition for intervention. The first is under Section  
3     54-14-303 sub (2)(b), which states that a potentially  
4     affected landowner, as defined in 54-18-102, or affected  
5     entity, as defined in that same section, shall have a  
6     right to intervene as a party in a proceeding.

7             Section -- let's see -- 63G and -- let me get  
8     that in front of me. Section 63G-4-207 also states that  
9     a person not a party may file a signed, written petition  
10    to intervene, and that the presiding officer shall grant  
11    the petition if the presiding officer determines that  
12    the petitioner's legal interest may be substantially  
13    affected by the formal adjudicative proceeding and the  
14    interests of justice and the orderly and prompt conduct  
15    of the adjudicative proceedings will not --

16            THE REPORTER: I'm sorry, you cut out. This  
17    is the court reporter. I'm sorry, could you start  
18    after, "may be substantially affected," and go over that  
19    one more time, please?

20            MR. MORRIS: Yes. I will slow down. I'm  
21    sorry.

22            THE REPORTER: Well, the volume dropped down  
23    and I missed a couple of words, so I just want to make  
24    sure I'm getting it correct.

25            MR. MORRIS: Okay. Thank you.

1           So the phrasing of the statute is "may be  
2 substantially affected by the formal adjudicative  
3 proceeding, and the interests of justice and the orderly  
4 and prompt conduct of the adjudicative proceedings will  
5 not be materially impaired by allowing the  
6 intervention."

7           I submit that V.O.L.T. qualifies under  
8 either -- or actually under both statutory schemes as a  
9 party that the board should permit to intervene and  
10 participate in these proceedings.

11           Historically, V.O.L.T. was formed two years  
12 ago, when the citizens of Midway City and other citizens  
13 in Wasatch County learned that Rocky Mountain Power was  
14 intending to place these towering, high-voltage lines  
15 through the valley, and had entered into this agreement  
16 with Heber Light & Power.

17           V.O.L.T. now -- while it originally  
18 represented many interests across all of Wasatch County,  
19 V.O.L.T. now is more particularly concerned with the  
20 mile or so that is proposed to go through Midway.

21           V.O.L.T. is a collection of citizens who have  
22 concerns about the substantial impact these lines are  
23 going to have on the value of their properties and on  
24 the aesthetic in Midway, and have very kindly offered to  
25 facilitate going underground by doing things such as

1 charging nothing for any additional easement that may go  
2 through their property. They have also come out of  
3 pocket and are in the process of making donations and  
4 collections to assist financially in this effort.

5 V.O.L.T., for years now, not just months, has  
6 been very concerned with the claims that Rocky Mountain  
7 Power has made and is making that it essentially does  
8 not need any new easements in order to construct higher  
9 towers with greater voltage running through these  
10 people's yards, in some cases, literally.

11 And so this collection of people have formed a  
12 nonprofit entity that is a legally recognized, separate  
13 and distinct legal entity, who, in fact, does represent  
14 these landowners and has proceeded to represent them to  
15 the extent that last fall Midway, in granting the  
16 conditional-use permit, put conditions on there that  
17 specifically reference V.O.L.T. and gave V.O.L.T. the  
18 opportunity to acquire more in donations and more in  
19 money to facilitate any added expense that would be  
20 incurred to take these lines underground rather than  
21 overhead, and recognized the fact that these easements  
22 that would be necessary would have no charge and would  
23 not add an additional economic burden.

24 V.O.L.T. joins with Midway in recognizing that  
25 Rocky Mountain has not provided adequate cost

1 information. When Rocky Mountain opposed the petition  
2 to intervene, it was our understanding that Rocky  
3 Mountain had not yet even provided final bids. It had  
4 some initial or preliminary numbers, but that the  
5 requirements that it provide copies of hard bids for  
6 going underground rather than overhead was not met,  
7 because those final bids -- at least as of a week ago  
8 when I spoke with Mr. Gordon, the attorney for Midway,  
9 these bids had not yet been provided by Rocky Mountain.

10 And so V.O.L.T. shares Midway's concerns, and  
11 there is no one better suited than V.O.L.T. to present  
12 evidence at the hearing on -- later this month or later  
13 in April concerning the impact that these lines are  
14 going to have on the individual landowners in Midway  
15 along this corridor.

16 The statutory requirements here are met. The  
17 individuals behind V.O.L.T. are affected landowners.  
18 And the standard set forth in Section 63G that the  
19 interest of justice and the orderly and prompt conduct  
20 of these proceedings will not be materially impaired by  
21 allowing V.O.L.T. to participate.

22 V.O.L.T. is represented by counsel. It's not  
23 going to be a free-for-all. But we expect to be able to  
24 participate in the orderly presentation of evidence in  
25 support of Midway and in opposition to Rocky Mountain's

1 petition, and also to cross-examine and to allow this  
2 board to have all of the evidence fairly aired at the  
3 hearing.

4 So, Liz, is there anything else that we should  
5 do from a high level here before they review the  
6 paperwork we filed yesterday?

7 MS. BRERETON: This is Liz Brereton.

8 No, I think that covers it. V.O.L.T. worked  
9 very hard to collect the 50 petitions from its members  
10 who are also affected landowners, and in your review of  
11 the briefing, I'd ask you to consider -- I'd ask the  
12 Commission to consider those.

13 CHAIR LEVAR: Okay. Thank you. This is Thad  
14 LeVar.

15 I think where we'll go forward now is, I had  
16 one question for V.O.L.T., and then I'll see if other  
17 board members have questions before we go to other  
18 participants.

19 The only question I wanted to ask at this  
20 point is, what's your position on the assertion made by  
21 Rocky Mountain Power that if V.O.L.T. were granted  
22 intervention and if Rocky Mountain Power and Midway were  
23 to come to some kind of a settlement agreement -- and  
24 again, that's a hypothetical, but it's a hypothetical  
25 raised by Rocky Mountain Power in their response to your

1 intervention motion -- what would you view as V.O.L.T.'s  
2 role with respect to any potential settlement or  
3 agreement between Rocky Mountain Power and Midway City?

4 MR. MORRIS: This is Mark Morris on behalf of  
5 V.O.L.T. I believe that V.O.L.T. would ideally need to  
6 be a part of that settlement agreement, because V.O.L.T.  
7 was made a party to the conditional-use permit by Midway  
8 City when it placed conditions on going underground that  
9 included obligations that V.O.L.T. and its respective  
10 members would have to comply with.

11 And so obviously V.O.L.T. is interested in  
12 participating. I don't think V.O.L.T. is interested in  
13 getting into a fight if Rocky Mountain and Midway are  
14 looking to make any sort of side deal to the exclusion  
15 of V.O.L.T. and the interest of its members. Hopefully,  
16 because V.O.L.T. has been speaking to and communicating  
17 with both Rocky Mountain and Midway for years now about  
18 this issue, any settlement discussions should absolutely  
19 include V.O.L.T. members, because it is their property  
20 rights that are going to be affected by whatever is done  
21 here.

22 So that's the ideal. That's V.O.L.T.'s  
23 position. And I think by reason that Midway included  
24 V.O.L.T. in the conditional-use permit, I believe  
25 V.O.L.T. has standing to and ought to be party to



1 whatever settlement agreements might in prospect.

2 CHAIR LEVAR: Thank you.

3 This is Thad LeVar. Let me go to Mr. Clark.

4 Do you have any questions at this point for V.O.L.T.?

5 MR. CLARK: Just one question, and it relates  
6 to the membership of V.O.L.T. I wonder if Counsel could  
7 advise us how many members are within the Midway City  
8 limits and how many are not, and what is his view on the  
9 status of those as affected landowners depending upon  
10 the location of their property with respect to Midway  
11 City's limits?

12 MS. BRERETON: This is Liz Brereton. I'll --  
13 on behalf of V.O.L.T. I'll jump in here, because I  
14 spent yesterday poring through all of the declarations  
15 attached to our reply as Attachment 1.

16 First, based on my brief review of those  
17 declarations, I believe that the 50 members -- or the 50  
18 declarants are residents or property owners in Midway.

19 Beyond that, if you'll look at your brief on  
20 page 11, there's a table included there. That table is  
21 from Rocky Mountain Power's appraisal report, presented  
22 before the Midway City Commission, I believe on  
23 November -- I saw it -- was it 19th, in 2019.

24 Each of those impacted -- there's a list of 11  
25 properties -- 12 properties that say -- they're

1 identified as impacted parcels. And then there is a  
2 list of names. Days, Wells, Price, Medallion, Fellow  
3 Creek, Johnson, Bodenstiener, Almondon, Twin Creeks, and  
4 Burke (phonetic). Each of those property owners have  
5 property in Midway, as noted by the address, and have  
6 also submitted declarations stating that they're an  
7 affected landowner.

8 Rocky Mountain Power has identified these 11  
9 members as affected landowners, and has sited their  
10 property as parcels where they may need to obtain or  
11 expand additional easement rights.

12 So in terms of V.O.L.T.'s representing members  
13 who are actually affected landowners in Midway City,  
14 there arguably shouldn't be a dispute, based on Rocky  
15 Mountain Power's own analysis and V.O.L.T.'s  
16 declarations, that V.O.L.T. represents affected  
17 landowners.

18 MR. CLARK: Chair LeVar, if I could just ask a  
19 follow-up question and be more precise. So is there any  
20 distinction in Counsel's argument or advocacy regarding  
21 those property owners whose property lies within the  
22 easements that are at issue and those which do not?

23 MS. BRERETON: The position of -- the purposes  
24 of this brief, V.O.L.T. has identified these particular  
25 landowners, these ten landowners, as affected landowners

1 that don't seem to be in dispute that they're affected,  
2 and that everyone can agree construction underground or  
3 overhead will impact their property.

4 In a broader sense, V.O.L.T. does represent  
5 additional landowners who are not directly on the line  
6 or who have -- are on the line, but who Rocky Mountain  
7 Power has not identified as an affected landowner, and  
8 there are a number of them.

9 So for purposes of this intervention, V.O.L.T.  
10 is acting on behalf of each of the 15 landowners who are  
11 on and within the transmission corridor. But  
12 specifically, I think all parties can agree that these  
13 ten property owners that V.O.L.T. represents are  
14 affected landowners in Midway.

15 Does that answer the question?

16 MR. CLARK: Thank you, yes.

17 And just for the court reporter, the follow-up  
18 question was made by me, Board Member Clark.

19 And that concludes my questions. Thank you,  
20 Chair LeVar.

21 CHAIR LEVAR: Okay. Thank you.

22 Mr. Fitzgerald, do you have any questions for  
23 V.O.L.T. at this point?

24 MR. FITZGERALD: This is Troy Fitzgerald. I  
25 do have two.

1           If you could just help me connect some dots.  
2 I'd like you to explain how you believe V.O.L.T.  
3 qualifies as an affected entity, and then also on your  
4 63G citation, how V.O.L.T. qualifies under that one as  
5 well.

6           MR. MORRIS: This is Mr. Morris on behalf of  
7 V.O.L.T.

8           I'll begin with the 63G. I'm looking at the  
9 language under subsection 1 of 63G-4-207, which states,  
10 "Any person who is not a party may file a signed,  
11 written petition."

12           And so there is no requirement initially for  
13 anyone to -- that says someone cannot file a petition.

14           Subsection 2 goes on to say, "The presiding  
15 officer shall grant a petition for intervention if the  
16 presiding officer determines that," and the first  
17 requirement is that "the petitioner's legal interests  
18 may be substantially affected" by this proceeding.

19           So, first of all, V.O.L.T. and its members'  
20 legal interests certainly may be substantially affected  
21 by the formal adjudicative proceeding here.

22           The second requirement under subsection 2(b)  
23 is that, "The interests of justice and the orderly and  
24 prompt conduct of the adjudicative proceedings will not  
25 be materially impaired by allowing the intervention."

1           In order words, this puts the burden, I think,  
2 on Rocky Mountain to show that the interests of justice  
3 and that the orderly and prompt conduct of these  
4 proceedings would be materially impaired.

5           I don't think that V.O.L.T. has the obligation  
6 or the burden to prove a negative here. What we are  
7 suggesting is simply the ability to call a couple of  
8 witnesses and participate in the cross-examination of  
9 Rocky Mountain's witnesses.

10           But there is no dispute that V.O.L.T.'s  
11 members' legal interests may be substantially affected  
12 by what goes on in these proceedings. Rocky Mountain,  
13 as my colleague, Ms. Brereton, pointed out, admits and  
14 acknowledges there are at least 10 or 11 of V.O.L.T.  
15 people, members, whose legal interests are going to be  
16 substantially affected by what goes on here, who are  
17 directly on the transmission corridor and whose property  
18 is going to be affected by what goes on here.

19           So we feel that that's how we'll certainly  
20 meet the standards set forth in Section 63G.

21           MR. FITZGERALD: This is Troy Fitzgerald.  
22 Excuse me. This is Troy Fitzgerald again.

23           I probably didn't ask the best question. Does  
24 that 63G-4-207 reference in subsection 1 indicate a  
25 formal adjudicative proceeding with the agency?

1 I'm new to the board. Maybe we are an agency,  
2 maybe we're not. I'm more curious how 63G applies to  
3 these particular proceedings, what ties that section to  
4 what we're doing here.

5 MS. BRERETON: This is Liz Brereton on behalf  
6 of V.O.L.T. I can jump in here and take the first stab.

7 But under the Utah Facility Review Board Act,  
8 the board is empowered under the Administrative  
9 Procedures Act to make rules and conduct proceedings.  
10 So the standard put forward in 64G under the  
11 Administrative Procedures Act does apply to this  
12 context, because it is subject to the APA procedures.

13 MR. MORRIS: If I could append on that,  
14 section 63G applies to a number of different agencies,  
15 including this board.

16 THE REPORTER: I'm sorry, who is speaking?

17 MR. MORRIS: I'm sorry. That was Mr. Morris  
18 on behalf of V.O.L.T.

19 THE REPORTER: Thank you.

20 MR. FITZGERALD: Thank you.

21 And the other question I had was specifically  
22 how V.O.L.T. qualifies as an affected entity under the  
23 Utility Board Act. And this is Troy Fitzgerald.

24 MS. BRERETON: This is Liz Brereton. I can  
25 jump in here again.

1 Under the act, the term "affected entity"  
2 under 54-14-303(2)(b) has cross-references to  
3 improvement districts and local districts formed under  
4 title 17B and 17D. I know under title 54, entity -- or  
5 local governments have the authority to create  
6 improvement districts to finance construction of -- or  
7 underground construction of infrastructure without  
8 having to impose a general tax on the populus. In this  
9 way, the burden is more targeted to affected landowners.

10 V.O.L.T. provides -- in the same position and  
11 serves the same function here. Under condition 3,  
12 V.O.L.T. is required to pay for a portion of excess  
13 costs, and V.O.L.T. has already collected more than  
14 \$500 million toward excess costs, whatever they may be.

15 MR. MORRIS: Excuse me. \$500,000. This is  
16 Mr. Morris.

17 MS. BRERETON: Yes, \$500,000.

18 MR. MORRIS: 500,000. Sorry.

19 MS. BRERETON: Additionally, under the act,  
20 V.O.L.T. is a private entity that is authorized or  
21 required, pursuant to Midway City's conditional-use  
22 permit, to pay for excess costs. And the definition of  
23 "pay" under the act includes payment by the improvement  
24 district referenced in 54-14-303(2)(a), and it also  
25 includes private entities such as V.O.L.T.

1 MR. MORRIS: And so -- this is Mr. Morris on  
2 behalf of V.O.L.T. again.

3 If you look at the statutory definitions under  
4 section 54-18-102, subsection 1 provides for an affected  
5 entity; subsection 2 defines an affected landowner as an  
6 owner of a property interest, as reflected in the most  
7 city or county tax records whose property is located  
8 within a proposed corridor.

9 That's how V.O.L.T. and its members fit within  
10 the definition.

11 MR. FITZGERALD: This is Troy Fitzgerald.  
12 Thank you. No further questions.

13 CHAIR LEVAR: Thank you, Mr. Fitzgerald.

14 Mr. White, do you have any questions for  
15 V.O.L.T. at this point?

16 MR. WHITE: Yeah, thank you, Chair. This is  
17 Board Member White.

18 One question I had -- and I appreciate the --  
19 you pointing out the -- this is to Ms. Brereton -- the  
20 list of the property owners. It sounds like it's  
21 undisputed that there's at least 11 or so folks who  
22 actually have parcels that are within the corridor, or  
23 they're going to have either a part of the right-of-way  
24 or part of the facilities will get on their parcel.

25 Can you give me a little bit of color and



1 describe the interests of the other members of V.O.L.T.?  
2 Are these members of the community or what -- help me  
3 understand what their interest is beyond those specific  
4 parcel owners there.

5 MR. MORRIS: This is Mr. Morris on behalf of  
6 V.O.L.T.

7 Mr. White, in addition to the 10 or 11 that  
8 Rocky Mountain at least acknowledges are directly on the  
9 corridor -- and as I indicated earlier, the original  
10 members of V.O.L.T. were all throughout Wasatch County.  
11 The process has now been distilled down to this one-mile  
12 stretch through Midway, and the members of V.O.L.T. now  
13 who are most particularly affected and interested in  
14 this -- pardon me -- are -- in addition to the 10 or 11,  
15 are an additional 40 or so whose declarations we filed  
16 whose properties may not lie within the corridor, but  
17 they are immediately adjacent to it, and whose property  
18 values are, nevertheless, going to be affected by having  
19 these enormous proposed towers and lines running through  
20 their neighborhood.

21 And so the 50 whose declarations we filed are  
22 right along the corridor, either on it or adjacent to  
23 it, and not miles away.

24 MR. WHITE: So this is --

25 MS. BRERETON: This is Liz Brereton.

1 MR. WHITE: Go ahead. This is Board Member  
2 White.

3 MS. BRERETON: Additionally, the 50 members  
4 have also been -- from what I understand, contributed to  
5 the money that V.O.L.T. has already collected, the  
6 \$500,000, that will go toward funding any excess costs  
7 of underground construction.

8 MR. WHITE: Okay.

9 This is Board Member White. So just to follow  
10 up with Mr. Morris's explanation. That's helpful. So  
11 these -- we'll call them the noncorridor owners or  
12 however you want to describe them. But their claim of  
13 interest is more of a potential diminution of property  
14 based upon view shed or something of that -- is that  
15 their claim of affected interest?

16 MR. MORRIS: It's more than view shed. They  
17 have retained the services of an appraiser that I  
18 believe V.O.L.T. -- Midway and V.O.L.T. have identified  
19 as a potential witness in the case, Mr. Jerry Webber,  
20 who has opined that property values, not just for the 10  
21 or 11, but for all of these people who V.O.L.T.  
22 represents, are going to be substantially impacted by  
23 these proposed overhead lines.

24 MR. WHITE: Thank you.

25 One final question. This has been helpful.

1 I think in your initial opening statement, Mr. Morris,  
2 you were discussing -- or maybe it was Ms. Brereton who  
3 indicated there was a, you know, dispute about whether  
4 Rocky Mountain Power had a legal right to upgrade their  
5 facility based upon their existing easement versus the  
6 need to acquire new easement.

7 Is it the intent of V.O.L.T., or their hopes  
8 or request, that the board adjudicate those legal rights  
9 or the ability to upgrade that versus the existing  
10 easement? Is that what would be the hope or scope of  
11 the proceeding if the board were to grant intervention  
12 of V.O.L.T.?

13 MR. MORRIS: The --

14 MR. WHITE: Let me just clarify it. Oh, sorry  
15 you go ahead.

16 MR. MORRIS: No, no, I'd appreciate some  
17 clarification. I don't want to start answering a  
18 question you didn't ask.

19 This is Mr. Morris.

20 MR. WHITE: Yeah, this is Mr. White now.

21 I guess to put a finer point on it, is it the  
22 request or the intent of V.O.L.T. to have the board  
23 adjudicate the specific legal question of whether or not  
24 Rocky Mountain Power has the legal right under their  
25 existing easement to construct or perform, etc., their

1 upgrade for the project, or is it beyond that? Or is  
2 that an additional factor that you hope to resolve in  
3 this -- with the board?

4 MR. MORRIS: This is Mr. Morris on behalf of  
5 V.O.L.T.

6 I believe the question for the board at the  
7 hearing later in April is whether to grant Rocky  
8 Mountain's petition over the objections of Midway City,  
9 and also V.O.L.T. I don't believe that the board is  
10 going to be in a position -- and I could be wrong on  
11 this, but I don't think the board will be in a position  
12 legally or procedurally to adjudicate the existence or  
13 not of easements.

14 V.O.L.T.'s position all along has been that  
15 the existing 48 kV line going through this corridor is  
16 there by reason of prescriptive easement that landowners  
17 haven't signed, but have essentially come into existence  
18 to allow for the existence of the line. But those  
19 easements are limited by law only to accommodate that  
20 line with those poles that exist now. There are no  
21 easements that would currently allow for that.

22 And I believe it will be part of our proof and  
23 part of Midway's proof at the hearing to show that Rocky  
24 Mountain has failed to adequately account for the cost  
25 of going overhead, because Rocky Mountain has not

1 properly shown that it already has rights to go through  
2 here that have been paid for and compensated the  
3 landowners for.

4 But I don't anticipate that the board is going  
5 to be making any dollar decisions, only that -- I think  
6 the relief that Midway is asking and that V.O.L.T. joins  
7 in asking for here, is that Rocky Mountain has failed to  
8 provide enough information and enough accurate  
9 information in order to proceed with the overhead lines  
10 it has proposed.

11 MR. WHITE: That's helpful. I appreciate it.

12 That's all the questions I have, Chair LeVar.

13 CHAIR LEVAR: Okay. This is Thad LeVar.

14 Thank you, Mr. White.

15 Mr. Wright, do you have any questions at this  
16 point?

17 MR. WRIGHT: No further questions.

18 CHAIR LEVAR: Okay. Thank you.

19 I think at this point we'll go to Midway City.  
20 Mr. Gordon and Mr. Jewkes, do you have any position --  
21 you haven't filed anything with us, but do you have a  
22 position on V.O.L.T.'s petition to intervene?

23 MR. CORBIN GORDON: We do not object to it.

24 We actually think it would be helpful to have them  
25 there. I'd just remind the board that these are

1 citizens of Midway City. They're the ones that are most  
2 impacted by the line. We feel strongly they should have  
3 a voice in this process.

4 In reviewing what it is that they're  
5 proposing, I mean, one of the issues is the easements,  
6 and we have listed one of their experts as one of ours  
7 as well, and we think that it would be a good thing to  
8 have the parties that are most impacted at the table.

9 So we have no problem with having their  
10 intervention granted and participating.

11 THE REPORTER: This is the court reporter.  
12 Was that Mr. Gordon?

13 MR. CORBIN GORDON: Yes. I'm sorry it was  
14 Mr. Gordon.

15 THE REPORTER: Thank you.

16 CHAIR LEVAR: Okay, this is Thad LeVar. If  
17 any board members have any questions for Midway City,  
18 please jump on and indicate whether you do. If you  
19 don't have any questions, you can just stay silent for a  
20 few seconds.

21 Okay, I'm not hearing any questions from board  
22 members for Midway City, so why don't we go ahead to  
23 Rocky Mountain Power. If -- either Mr. Reich or  
24 Ms. Gordon, if you want to summarize your position.  
25 Again, we've all read your opposition motion, so if you

1 want to just summarize any high points, and then we can  
2 move to any questions from board members. Thank you.

3 MR. REICH: Thank you. This is Mr. Reich, and  
4 I'll start.

5 Just a couple of points of clarification. We  
6 filed our opposition on March 23rd. I know that  
7 V.O.L.T. has represented that it was a surprise to them,  
8 but that was over a week ago. So I just wanted to point  
9 that out.

10 Mr. Morris also referred to this as a  
11 high-voltage line. High voltage is defined in the  
12 High-Voltage Power Line Act as anything at 230 kilovolts  
13 or greater. This line is not 230 kilovolts; it's 138  
14 kilovolts. So just wanted to clarify that for the  
15 record.

16 He also represented that V.O.L.T. was a party  
17 to a conditional-use permit, and certainly Rocky  
18 Mountain Power would object to that classification.  
19 V.O.L.T. was mentioned in the conditional-use permit,  
20 but they were not a party to that proceeding. That  
21 proceeding was between -- was a request by Rocky  
22 Mountain Power with Midway City, and we don't think that  
23 mentioning V.O.L.T. in the conditional-use permit makes  
24 them a party to that proceeding, although they  
25 definitely participated in that proceeding, their

1 attorneys were present in many of the hearings, and they  
2 actually stood up and presented before Midway City.

3 So now I'll just kind of briefly summarize our  
4 position. I think the fatal flaw of the intervention --  
5 I know V.O.L.T. has relied on the Administrative  
6 Procedure Act, specifically Section 63G-4-207. And that  
7 statute requires, in addition to a statement of facts  
8 demonstrating a petitioner's legal right -- Section  
9 (1)(d) of that section says, "a statement of the relief  
10 that the petitioner seeks from the agency."

11 And I think this goes to the very point that  
12 some of the board members asked V.O.L.T. that they  
13 didn't respond to. In fact, in their petition, in  
14 paragraph nine it says, "V.O.L.T. supports the City's  
15 counterpetition, but has not fully determined specific  
16 positions it will take or the relief it will seek."

17 So I think the fatal flaw in their position is  
18 they don't identify the relief they're requesting, and  
19 the statute specifically requires them to provide a  
20 statement to the board identifying what the relief is  
21 that they are seeking. So I think that's a fatal flaw.

22 In addition, as we outlined in our brief, the  
23 Facility Review Board Act, the reference to potentially  
24 affected landowners is defined in Section 54-18-102,  
25 which is the high-voltage siting act. That act applies



1 to, as we already said, high-voltage transmission lines,  
2 not this type of proceeding that is between a  
3 governmental agency, Midway City in this case, and Rocky  
4 Mountain Power, where we're seeking a conditional-use  
5 permit.

6 So those are kind of the -- a summary of our  
7 statements. I also know that in the reply brief that  
8 they filed late last night -- I think it was around 8:30  
9 or 9:00 -- they cited the Sierra Club's holding, and I  
10 think the reliance is misplaced on that case. That case  
11 looks at standing to bring suit. It talks about the  
12 traditional standing test, the alternative test.

13 In fact, the Utah Supreme Court said in that  
14 case, "Utah standing law operates as a gatekeeper to the  
15 courthouse, allowing in only those cases that are fit  
16 for judicial resolution."

17 This is not a judicial case, so I don't think  
18 that their reliance on Sierra Club applies to this.

19 And then finally, I know there's a Questar  
20 case, and we cited this in our brief, that went over  
21 five factors that the board should look at. So in  
22 addition to their fatal flaw of not identifying what the  
23 remedy is they're seeking, the five factors that the  
24 supreme court has outlined is -- one is timeliness. We  
25 have no dispute that their motion to intervene is

1 timely. But on the next four factors, we think they  
2 weigh heavily in rejecting their application to  
3 intervene.

4 First, the increased time and expense. I  
5 think as is evident today, to allow them to intervene --  
6 I mean, they filed 50 affidavits. I think that is --  
7 shows exactly how this proceeding will be significantly  
8 increased with the complexity.

9 I know they filed several nonbinding letters  
10 of intent that basically say these property owners are  
11 not going to charge for an underground easement, but the  
12 letters say -- in the letters themselves, it doesn't  
13 impose any legal, binding obligation on the property  
14 owners.

15 So I think that there's a lot of flaws in  
16 their filings, there's a lot of statements that don't  
17 have any -- there's no binding impact.

18 Number three, they participated in the  
19 administrative proceedings before Midway City. Their  
20 attorneys were present. They were open with who they  
21 represented. That got up and participated in those  
22 proceedings.

23 Number four is probably the biggest factor.  
24 Another party adequately represents their interest.  
25 Midway City adequately represents these property owners'

1 interest, specifically, the 10 property owners that own  
2 the 11 properties that are within the easement  
3 boundaries of the project. Midway City has -- you know,  
4 they're -- it's very clear they're attempting to get the  
5 excess costs adequately defined. So we believe that  
6 those property owners are already represented through  
7 Midway City's efforts.

8 And finally, number five is whether the  
9 complications can be minimized by the agency of the  
10 board, and we think that the way to do that is to deny  
11 their request.

12 So with that, I don't know if you have any  
13 questions for Rocky Mountain Power.

14 Or Heidi, if you want to add anything.

15 CHAIR LEVAR: This is Thad LeVar. Ms. Gordon,  
16 did you want to add anything before we go to questions?

17 MS. HEIDI GORDON: No, thank you. We're happy  
18 to answer questions.

19 CHAIR LEVAR: Again, this is Thad LeVar. I  
20 think I'd like to throw out one question and then move  
21 on to the other board members.

22 As I read your interpretation of the Facility  
23 Review Board's automatic intervention provision that  
24 cross-references definitions from Chapter 18, I just  
25 want to make sure I understand your position as it would

1 carry through to its conclusion.

2 Is it your position that if an individual  
3 landowner, for example, from the list of 11 that  
4 V.O.L.T. has provided -- if one of those individual  
5 landowners filed for intervention under Section  
6 54-14-303, subsection (2), without organizing like they  
7 have with the organization of V.O.L.T., but if they just  
8 filed on their own behalf, that they would not have a  
9 right to intervention under the statute because the line  
10 is under 220 kV?

11 MS. HEIDI GORDON: That is the way the statute  
12 is written. It specifically refers to Section 54 --

13 Excuse me. This is Heidi Gordon for Rocky  
14 Mountain.

15 It specifically refers to Section 54-18-102,  
16 the entire section there, which is the definitions of  
17 the Siting of High-Voltage Power Line Act.

18 So because it refers to the entire Section 102  
19 and not just subparagraph (2) that specifically defines  
20 affected landowner, we need to read all of these  
21 definitions together in order to ascertain what is meant  
22 by affected landowner.

23 It gets kind of confusing as you drill down,  
24 because the definition for affected landowner contains a  
25 lot of defined terms embedded in this. And that's why

1 in our memorandum we provided that sort of amalgamation,  
2 I guess, of the different defined terms in 102, is  
3 because they all need to be read together.

4 Specifically, under (2)(b) it says affected entity is  
5 defined as Section 102, and you can't refer to 102 and  
6 just refer to subparagraph (2), the definition for an  
7 affected landowner, without reading the rest of the  
8 definitions that also help define that defined term.

9 So, yes, that is our conclusion from reading  
10 this 102, is that an affected landowner -- it has to be  
11 within a corridor for a 230 kV line or higher.

12 CHAIR LEVAR: Okay. This is Thad LeVar. Just  
13 one more follow-up.

14 I mean, when you look at the context of the  
15 two chapters -- when you look at the context of Chapter  
16 14 and the context of Chapter 18, doesn't that make the  
17 interpretation a little bit counter-logical? Where  
18 Chapter 18, everything in that chapter is limited to  
19 lines over 230; where Chapter 14 is cross-referencing  
20 one definition, but nothing else in Chapter 14 related  
21 to interventions or proceedings is limited to anything  
22 under 230 volts, does it -- is it logical that Chapter  
23 14 would have made the distinction -- the voltage  
24 distinction just for intervention and not for anything  
25 else?

1 MS. HEIDI GORDON: So this is Heidi Gordon  
2 again.

3 So if you look at 54-14-303, subpart  
4 (1)(b)(iv), this is one of the reasons for which a party  
5 may seek review by the board, and it's talking about the  
6 geographic boundaries of a proposed corridor under the  
7 Siting of High-Voltage Power Line Act.

8 So it actually does refer back to that act.  
9 So that's why (2)(b) makes sense, is because under the  
10 scenario where the review is sought for siting a  
11 high-voltage power line under 54-18, an affected  
12 landowner under that section can intervene.

13 The reason this makes sense is because -- it's  
14 for the same reasons that Mr. Reich was talking about  
15 just a minute ago. There is a certain level of  
16 participation that's appropriate for citizens and  
17 affected parties in the conditional-use process, and  
18 that's as, you know, commenters but not as actual  
19 parties to the permit.

20 It doesn't make sense to say that every  
21 person -- every member of the public who stands up to  
22 make public comment in a meeting before the -- you know,  
23 Midway City Council, for example, automatically becomes  
24 a party to that permit process. The correct parties are  
25 the applicant and the governmental entity that's hearing

1 the application.

2 So just because they participated below --  
3 well, they participated appropriately below by being  
4 public commenters, that does not give them standing as a  
5 party to that permit.

6 The same is true when reviewing that permit;  
7 they were not parties below, and that's appropriate.  
8 And so they shouldn't be parties here, except in the  
9 case where we're talking about special siting provisions  
10 under the high-voltage siting act.

11 CHAIR LEVAR: Thank you.

12 This is Thad LeVar again. I just have one  
13 follow-up, then, to that answer, if you don't mind. I'm  
14 understanding your position -- and tell me if I'm  
15 misunderstanding it. But I'm understanding what you're  
16 saying is that when you look at 54-14-303 and you look  
17 at the intervention section in subsection (2)(b), that  
18 the only situation that that would be relevant and that  
19 would grant an intervention right, according to your  
20 argument, is in a case under subsection (1)(b)(iv). Is  
21 that your argument?

22 MS. HEIDI GORDON: Yes, that's correct.

23 CHAIR LEVAR: Okay. Thank you. That's all  
24 the questions I have.

25 Mr. Clark, do you have any questions for Rocky

1 Mountain Power?

2 MR. CLARK: No questions. Thank you very  
3 much.

4 CHAIR LEVAR: Thank you.

5 Mr. Fitzgerald, do you have any questions?

6 MR. FITZGERALD: This is Troy Fitzgerald. I  
7 guess I'll ask the opposite of the one I asked before,  
8 which is, Rocky Mountain, why then does 63G-4-207 not  
9 apply in these proceedings?

10 MR. REICH: For the reason that we mentioned  
11 earlier, that they -- we're saying that it applies. We  
12 agree that it applies, so -- but we're saying that the  
13 --- V.O.L.T. failed to meet the requirement in section  
14 (1)(d), where they had to identify the relief that  
15 they're seeking from the board.

16 MR. FITZGERALD: This is Troy Fitzgerald.  
17 Thank you. No further questions.

18 CHAIR LEVAR: Thank you.

19 Mr. White, do you have any questions?

20 MR. WHITE: Yeah. Thank you, Chair LeVar.

21 Let me come at the question I asked -- this  
22 is, again, Jordan White, board member -- come at the  
23 question I asked Mr. Morris earlier, but maybe a little  
24 different angle.

25 I'm trying to wrap my head around what the



1 adjudicated purpose of the board would be with respect  
2 to the easements and Rocky Mountain Power's rights. So  
3 I guess my question to Rocky Mountain Power, either  
4 Ms. Gordon or Mr. Reich, is, at what point -- if there  
5 was a disagreement with the property owners regarding  
6 the scope of the easement and the rights to build the  
7 project on it, who would adjudicate that?

8           Would that be under condemnation at district  
9 court? Who is -- I'm just trying to figure out what our  
10 lane is versus a potential district court discussion  
11 about legal rights of easements and valuations and all  
12 that kind of issues. Give me your opinion on that.

13           MS. HEIDI GORDON: This is Heidi Gordon.  
14 Yeah, I agree with what is, I think, behind your  
15 question, is you're struggling with, what -- does the  
16 board have the right to adjudicate versus what is  
17 properly before a court.

18           And I think the answer is pretty clear. This  
19 board does not have authority to decide the scope of the  
20 easements and what the appraised value of any land that  
21 is needed for -- additional land is needed for this  
22 upgrade project. That would properly proceed before --  
23 well, I guess I would just say, first of all, for the  
24 easement rights, the first thing to do is negotiate with  
25 the property owners. But after that, if there's still a

1 remaining dispute, that's something they could have  
2 brought before the district court. And that's a typical  
3 eminent domain case, is where those would be heard.

4 MR. WHITE: Let me ask you this. If -- this  
5 is -- again, this is Jordan White, board member. If --  
6 and again, going back to Mr. Reich's argument that they  
7 didn't argue a particularity of their -- or specify  
8 their interests in resolution from the board.

9 Going back to 63G, kind of, again, looking  
10 more at kind of the -- not the -- under the facility  
11 intervention -- facility board's intervention --  
12 statutory right intervention, but more of a broad, I  
13 guess, concept under 63G, what other types of -- from  
14 a procedural standpoint, what might we be able to  
15 resolve or address with respect to the V.O.L.T. members  
16 if it were not for -- or if we were not able to  
17 specifically address the question of legal rights of  
18 property owners?

19 MS. HEIDI GORDON: This is Heidi Gordon. I  
20 think nothing -- nothing that's unique to V.O.L.T., at  
21 any rate. I think there's an active dispute that needs  
22 to be resolved with regard to the cost between Rocky  
23 Mountain Power and Midway City, but as to V.O.L.T. or  
24 its individual membership, there is nothing that this  
25 board has jurisdiction to hear.

1 MR. WHITE: This is Jordan White again. Would  
2 it matter if -- I mean, if you look at the -- you know,  
3 the provisions of the facility board statute, it allows  
4 some type of scope modification, etc., from the  
5 presiding officer.

6 Does it matter, in Rocky Mountain Power's  
7 mind -- (background noise) -- I hope someone's okay  
8 there. Does it matter in Rocky Mountain Power's mind  
9 that -- if -- for example, if the membership is limited  
10 to only those 11 or so parcel owners that are actually  
11 affected specifically? Does that make a difference at  
12 all in our evaluation?

13 In other words, if you were able to separate  
14 out those 11 property owners from the remainder of the  
15 V.O.L.T. members, does that matter at all to our  
16 evaluation of the petition to bring an intervention?

17 MS. HEIDI GORDON: Sorry, I forgot to take it  
18 off of mute there. This is Heidi Gordon.

19 To the extent those 10 or 11 properties have  
20 interest that's different from the other members of  
21 V.O.L.T., those interests are still aligned with the  
22 interests of Midway City, which is, you know, regarding  
23 ascertaining what the actual costs are and the payment  
24 of those costs.

25 MR. WHITE: Thank you.

1 Chair LeVar, that's all the questions I have.  
2 Thank you.

3 CHAIR LEVAR: Okay. Thank you, Commissioner  
4 White.

5 Let me just remind everyone who's listening  
6 that if you're not speaking to please keep your phone on  
7 mute. That will significantly help our audio and will  
8 help the court reporter keep an accurate transcript.

9 Mr. Wright, do you have any questions for  
10 Rocky Mountain Power at this point?

11 MR. WRIGHT: Just one question. As a  
12 nonlawyer on this board, I'd like an opinion from Rocky  
13 Mountain Power. Even if you are somewhat right in  
14 saying that V.O.L.T. doesn't have direct ability to be  
15 adjudicated by this board, is it your opinion that they  
16 should not have any ability to give opinions about the  
17 issues that directly affect the property owners that  
18 they represent?

19 MR. REICH: We're not sure we understand your  
20 question. Could you clarify that?

21 MR. WRIGHT: I'll try. You seem to be arguing  
22 that the board has no right to adjudicate anything that  
23 V.O.L.T. is asking -- is petitioning about. But my  
24 question is, they're clearly affected property owners  
25 under -- in a right-of-way. Is it your opinion that

1 they have absolutely no right to give their opinion on  
2 issues before the board at this time?

3 MS. HEIDI GORDON: This is Heidi Gordon. So I  
4 guess I'm a little bit hung up over the question of  
5 whether they have a right to give an opinion on this.  
6 Rocky Mountain Power doesn't dispute --

7 I'm sorry, I think -- is there someone who  
8 needs to put their thing on mute? I'm sorry, I'm  
9 getting a little bit of feedback or something.

10 CHAIR LEVAR: This is Thad LeVar. I'll  
11 interrupt you and jump in. Yeah, there is someone who  
12 needs to put their phone on mute. There's background  
13 noise, and I can't tell if it's a child or some other --  
14 a television set, but it's making it pretty difficult to  
15 continue with the background noise that we're hearing.

16 I know we have a lot of people who are  
17 listening who aren't -- okay, it seems to be gone at  
18 this point, so I will stop interrupting and let you get  
19 back to answering his question.

20 MS. HEIDI GORDON: Okay. Thanks. This is  
21 Heidi Gordon again.

22 So to the extent that these property owners  
23 have the transmission lines physically affecting and  
24 crossing their property, they have property rights that  
25 they can defend in a court of law, if necessary.

1 Rocky Mountain Power doesn't dispute that in  
2 the kind of colloquial sense they are affected by this  
3 transmission line, but there's a difference between  
4 whether they're affected by the transmission line and  
5 whether they're entitled to have, first of all,  
6 negotiations with Rocky Mountain Power about what  
7 expanded easements might look like and how much they  
8 might be compensated for those, versus the question of  
9 whether they are an affected landowner as defined in the  
10 statute.

11 And so that's the difference. Rocky Mountain  
12 Power believes that they have legally protectable  
13 interest in the property that they own that entitles  
14 them to discussions with Rocky Mountain Power about the  
15 extent and scope of that use and the extent and scope of  
16 payment that may be due to them as the result of this  
17 project.

18 That is not something we dispute. But the  
19 question really has to do with whether they're an  
20 affected landowner under the statute, and it's our  
21 position that they do not meet the define term "affected  
22 landowner" under 54-18-102.

23 CHAIR LEVAR: This is Thad LeVar. I'm sorry,  
24 Mr. Wright, to interrupt your questioning, but the noise  
25 that we're hearing on the line has come back, and it

1 sounds like a crying baby or something similar to that.  
2 And I'm just asking everyone if you're not participating  
3 in the hearing, please put it on mute. I know we have a  
4 lot of people listening. I apologize that our streaming  
5 wasn't up this morning, and I know that's part of the  
6 problem. But if you're listening and you have  
7 background noise, it's making it very different for us  
8 to conduct this hearing.

9 We might have to just get off the line and  
10 have everybody re-call in if it continues. And it's  
11 still there, so whoever is having the noise has not put  
12 their phone on mute yet.

13 MR. WRIGHT: So this is Glenn Wright. Let me  
14 at least say I have no further questions.

15 CHAIR LEVAR: Okay. Well, let me say this.  
16 It's probably time for the board to begin discussing  
17 this issue. At some point in the next little while, we  
18 need to give our court reporter a break, just because,  
19 you know, every hour and a half or so, we need to give  
20 the court reporter a break. I realize that's a little  
21 awkward with a telephonic hearing, but I still think we  
22 need to do that.

23 Is there any objection, then, right now to  
24 taking a ten-minute break and reconvening? I think most  
25 people could just keep their phones on mute during that

1 time or call back in.

2 Do any board members object to taking a short  
3 break and then moving to board discussion of the  
4 intervention?

5 MR. WHITE: Chair LeVar, this is Jordan White.  
6 No objection here. What time would you like us to  
7 reconvene for the break?

8 CHAIR LEVAR: Since we're all telephonic, let  
9 me ask the court reporter, Ms. Rand, is a five-minute  
10 break adequate for you at this point?

11 THE REPORTER: Yes, that would be great.

12 CHAIR LEVAR: If anyone objects to that, go  
13 ahead and speak up.

14 Okay, why don't we just go on to a brief  
15 recess for five minutes, and then we'll move to board  
16 discussion of the motion. So just five minutes from now  
17 we'll restart. Thank you.

18 THE REPORTER: Thank you.

19 (Whereupon a short recess was taken.)

20 CHAIR LEVAR: Okay. We will be back on the  
21 record now.

22 Mr. Clark, do you have a question to address  
23 to the board or one of the parties -- or participants?

24 MR. CLARK: It's a question for counsel for  
25 V.O.L.T. And I apologize if this is already clear in



1 their papers, but it would be helpful to me if they  
2 would specifically address the argument being presented  
3 by Rocky Mountain Power that they failed to qualify for  
4 intervention under the UAPA framework because they have  
5 failed to identify any relief that they seek from the  
6 board.

7 MR. MORRIS: Thank you, Mr. Clark. This is  
8 Mark Morris on behalf of V.O.L.T. I was actually going  
9 to ask for two minutes to reply in support of our  
10 petition to the arguments that Rocky Mountain made.

11 That is the primary argument they appear to be  
12 making, and I would draw the board's attention to  
13 paragraph six in our petition, which shows -- or which  
14 relates to Midway City submitting its counterpetition  
15 requesting that the board ascertain actual costs of  
16 rights-of-way. That is a relief that Midway City has  
17 asked for.

18 Now, in paragraph nine, as Mr. Reich  
19 indicated, V.O.L.T. supports the city's counterpetition.  
20 And so V.O.L.T. seeks that relief, that it ascertain  
21 actual costs of rights-of-way.

22 V.O.L.T. -- and we can argue about whether it  
23 can or can't do this, but V.O.L.T. went on to say it  
24 reserves the right to present evidence, etc., and hasn't  
25 determined maybe all the relief it wants, but we're

1 happy to limit the relief to the relief that we did  
2 expressly set forth in our petition. It's the same  
3 relief that Midway City's counterpetition is seeking  
4 here.

5 The only other issue that Rocky Mountain  
6 raised that I just wanted to respond to in two sentences  
7 is their fear that V.O.L.T. is going to make this a  
8 circus somehow. I'm happy to stipulate now that we  
9 would only call, at most, an additional two witnesses in  
10 addition to witnesses that Rocky Mountain Power and  
11 Midway have already identified.

12 And so hopefully that answers your question,  
13 Mr. Clark, on the relief, that we did spell out  
14 expressly we join Midway in the relief that it seeks.

15 MR. CLARK: Thank you, Chair LeVar. This is  
16 Dave Clark. I don't have anything further.

17 CHAIR LEVAR: Okay. Thank you.

18 I think at this point we can move to just  
19 discussion among the board members. We need to make a  
20 decision, well, first, whether to act today on this  
21 intervention motion. V.O.L.T. filed something with us  
22 late yesterday, and they indicated earlier in their  
23 presentation that they might have a preference that we  
24 take it under advisement.

25 Logistically, you know, we don't have any

1 board meetings scheduled between today and the beginning  
2 of the hearing on April 20th. So we can discuss whether  
3 we feel it's ready for action today or whether we feel  
4 more time for advisement -- I have some thoughts on  
5 that, but I want to open it up to the board members  
6 first if they want to express any thoughts or discussion  
7 about the pending intervention motion we have in front  
8 of us.

9 So if anyone wants to speak to the other board  
10 members, please let me know that you would like to do  
11 that at this point.

12 MR. WHITE: Chair LeVar, this is Jordan White.  
13 I'm happy to start off discussions, if that's okay.

14 I guess what I would say is -- kind of cutting  
15 to the chase here, I would vote to grant intervention,  
16 and let me articulate the reasons why.

17 I don't believe that V.O.L.T. meets the  
18 requirements for intervention under the 54-14-303(2)(b)  
19 section. I think that's a very specific  
20 intervention-of-rights statute. I don't they think they  
21 qualify for that, but I do believe that under the  
22 broader threshold under UAPA, they do meet that.

23 I think that Mr. Morris has sufficiently  
24 addressed the question or I guess the issue of what  
25 their -- what relief they seek under the board's

1 jurisdiction.

2 I would say that with respect to whether we  
3 should take this under advisement, I don't -- I  
4 think that -- at least from my perspective, I think that  
5 having the ability to review that this morning, at least  
6 with respect to the specific property owners that have  
7 been identified who will actually be affected was  
8 helpful for me.

9 With all that being said, I do think that, as  
10 a board, we should reserve the rights under the facility  
11 siting act to address the scope or modify the  
12 intervention, if necessary. I think that, you know,  
13 I'll take Mr. Morris for his word, you know, that this  
14 will be conducted, you know, in a way that will be  
15 precise with respect to the interests that V.O.L.T.  
16 specifies and we will not have a circus. We certainly  
17 have a very tight timeline that's not negotiable, at  
18 least from my perspective.

19 But I would say that with respect to -- we  
20 should reserve the right to discuss, at some point, if  
21 necessary, the need to potentially level the scope of  
22 actual interveners through -- in the membership of  
23 V.O.L.T. I believe that question is unanswered at this  
24 point. I don't know if we need to address that today,  
25 but that may be something that we need to address, if

1 necessary.

2 I also think that, you know, based upon some  
3 of the questions and answers at least that I've had this  
4 morning, that I think we will also need to reserve the  
5 right to limit relevant scope in terms of the  
6 intervening parties with respect to what we, as a board,  
7 do and do not have a right to adjudicate.

8 Again, that's still a little bit fuzzy in my  
9 mind. There's a little bit of a chicken-and-the-egg we  
10 may have to address at some point.

11 But I guess, circling back, I think all that  
12 being said, I would vote to grant V.O.L.T.'s  
13 intervention under the UAPA provision.

14 That's all I have. Thank you.

15 CHAIR LEVAR: Okay, this is Thad LeVar. Thank  
16 you, Mr. White.

17 Does any other board member want to provide  
18 comments or discussion at this point?

19 MR. WRIGHT: This is Glenn Wright. I agree  
20 with the previous statement. I would vote to approve  
21 intervention.

22 MR. FITZGERALD: This is Troy Fitzgerald.  
23 Mr. White's statement I think was helpful for me as  
24 well. If we're limiting the scope of the intervention  
25 to the relief sought in the counterpetition of Midway, I

1 would be comfortable allowing the intervention as well.

2 MR. CLARK: And this is David Clark, and I  
3 also vote to allow the intervention under the UAPA  
4 criteria and with the clarification that both counsel  
5 has offered with respect to the relief sought, and limit  
6 it to that.

7 And I want to echo what Mr. White said  
8 regarding -- because I feel similarly, that the -- I  
9 haven't seen anything to this point that persuades me  
10 that we have any relief available to us with respect to  
11 the time constraints that the statute places us under to  
12 act. So we're going to have to -- I'm going to be  
13 mindful of that as we consider the scope of testimony  
14 and the issues that we consider when we get to the  
15 merits hearing in just a few weeks.

16 Thank you.

17 CHAIR LEVAR: Thank you, Mr. Clark.

18 And this is Thad LeVar. Let me just comment  
19 before we move to a board vote, but I think we're pretty  
20 close to a board vote, I think I agree with everything  
21 Mr. White said, with one exception. I, personally,  
22 believe that we have at least 11 members of V.O.L.T. who  
23 qualify for automatic intervention under 54-14-303. And  
24 if that's not the prevailing view of the board, I'm also  
25 happy to join a vote to grant intervention under UAPA

1 rather than under the Facility Review Board. But in my  
2 view, the 11 members of V.O.L.T. appear to qualify for  
3 automatic intervention, and I don't think they defeat  
4 that by joining together in an organization that also  
5 includes other members who don't have that automatic  
6 intervention right. I think as a matter of policy, we  
7 would want to encourage the affected landowners who have  
8 that intervention right to join together, rather than  
9 discouraging it.

10 But, again, that viewpoint doesn't prevent me  
11 from supporting the motion as described by Commissioner  
12 White to grant intervention under the more general UAPA  
13 provision. And I agree with everything that's been said  
14 on limiting the scope.

15 For example, if we -- you know, if we grant  
16 intervention today and any discovery disputes arise,  
17 with the hearing scheduled to start three weeks from  
18 yesterday, there's probably very little opportunity for  
19 this board to reconvene and address any discovery  
20 disputes or any other matters. But once the hearing  
21 begins, we certainly will have in mind to make sure the  
22 scope is kept relevant to our statutory right.

23 So does anyone else on the board feel like we  
24 need more discussion, or is someone ready to make a  
25 motion for board action?

1 MR. CLARK: This is David Clark. I --

2 MR. WHITE: This is --

3 Go ahead.

4 CHAIR LEVAR: Sorry, we have two -- okay, go  
5 ahead.

6 MR. CLARK: I yield to Mr. White.

7 CHAIR LEVAR: Mr. Clark, why don't you go  
8 ahead.

9 MR. CLARK: Okay. I move that we approve the  
10 intervention petition of V.O.L.T.

11 CHAIR LEVAR: Any second?

12 MR. WHITE: This is Jordan White. I second  
13 the motion.

14 CHAIR LEVAR: Okay, let me just go through the  
15 board members.

16 Mr. Clark, how do you vote on the motion?

17 MR. CLARK: I vote yes. I vote in favor.

18 CHAIR LEVAR: Mr. Fitzgerald?

19 MR. FITZGERALD: Yes.

20 CHAIR LEVAR: Mr. White?

21 MR. WHITE: Yes, I vote in favor of  
22 intervention for V.O.L.T.

23 CHAIR LEVAR: Mr. Wright?

24 MR. WRIGHT: Yes.

25 CHAIR LEVAR: And I vote yes. So that motion



1 passes.

2 I'm going to make a second motion that we --  
3 since under this statute the Public Service Commission  
4 provides staffing to the board, I'm going to make a  
5 motion that we direct the attorney for the Public  
6 Service Commission to draft an intervention order  
7 consistent with our discussion today.

8 Would anyone be willing to second that motion?

9 MR. WHITE: This is Jordan White. I'll second  
10 the motion.

11 CHAIR LEVAR: And Mr. Clark, how do you vote  
12 on that motion?

13 MR. CLARK: I vote in favor.

14 CHAIR LEVAR: Mr. Fitzgerald?

15 MR. FITZGERALD: I vote yes.

16 CHAIR LEVAR: Mr. White?

17 MR. WHITE: I vote in favor.

18 CHAIR LEVAR: Mr. Wright?

19 MR. WRIGHT: Yes.

20 CHAIR LEVAR: And I vote yes.

21 Let me ask the board members, is there  
22 anything else we need to do before we move on to the  
23 other two items that we noticed up for this hearing  
24 today?

25 MR. WHITE: Chair LeVar, this is Jordan White.

1 I just want to be clear -- potentially this is a  
2 clarification for you or the participants. There's  
3 nothing further we need to do with the respect to the  
4 filed reply today? In other words, that -- we  
5 sufficiently have considered that and made our decision,  
6 so we don't need to have further advisement or  
7 discussion on that, right? Correct?

8 CHAIR LEVAR: This is Thad LeVar. You're  
9 addressing the schedule -- like the remaining schedule  
10 from the scheduling order?

11 MR. WHITE: No, I was referring to the reply  
12 memorandum filed and the certification filed by V.O.L.T.  
13 last evening.

14 CHAIR LEVAR: I would presume that even  
15 though V.O.L.T. asked us to take it under deliberation,  
16 that they have no objection to the action we've taken  
17 today. Let me just ask counsel for V.O.L.T. to confirm  
18 that to us.

19 MR. MORRIS: I'm sorry, what was the question?  
20 Confirming...

21 CHAIR LEVAR: Well, at the beginning of the  
22 hearing you said, "We hope you'll take this under  
23 advisement since we just filed something late  
24 yesterday." But I assume, considering the board action,  
25 that that's not any longer your position?

1 MR. MORRIS: I will withdraw that request.  
2 This is Mr. Morris on behalf of V.O.L.T.

3 CHAIR LEVAR: Does that address your question,  
4 Mr. White?

5 MR. WHITE: Yes. Thank you.

6 MR. REICH: Chairman, I have a question. This  
7 is Bret Reich with Rocky Mountain Power.

8 CHAIR LEVAR: Yes.

9 MR. REICH: I was not clear on the vote. I  
10 didn't hear if -- there were some members that talked  
11 about limiting the intervention to paragraph six of the  
12 petition, and I just wanted a clarification. Is that  
13 included in the order or not?

14 CHAIR LEVAR: That's a good clarification  
15 question that I agree was not crystal clear in the  
16 motion. If any board member wants to address that or  
17 propose a motion that would direct the drafting of our  
18 intervention order, feel free to speak up.

19 MR. WHITE: Chair LeVar, this is Jordan White.  
20 I would -- I guess -- I don't know if we can amend or  
21 just clarify the motion to vote to include the specific  
22 grant of relief as clarified by Mr. Morris in his  
23 response to Board Member Clark's question. And I do  
24 believe that should be part of the order drafted by the  
25 board's attorney. And I also think we should include,

1 you know, some flexibility in terms of addressing  
2 additional scope questions sua sponte going forward with  
3 respect to some of the items that we articulated earlier  
4 about the actual legal rights that we have to  
5 adjudicate.

6 CHAIR LEVAR: Okay. So let me just see if I'm  
7 restating your motion correctly. Your motion is that as  
8 we direct the PSC attorney to draft this order on  
9 intervention, the intervention should be limited to the  
10 paragraph six as the -- in terms of the scope of  
11 intervention, and that the board retains the right to  
12 address relevant and scope issues as this proceeding  
13 moves forward.

14 Am I restating your objection correctly or am  
15 I summarizing it wrong?

16 MR. WHITE: No, that's perfectly --

17 CHAIR LEVAR: Not objection. Not objection.  
18 Motion. Sorry.

19 MR. WHITE: No, that restates it perfectly.  
20 This is Jordan White.

21 MR. MORRIS: This is Mr. Morris. May I  
22 respond to that request?

23 CHAIR LEVAR: Yes.

24 MR. MORRIS: To be clear, V.O.L.T. joins in  
25 all of the relief that Midway City is seeking. We

1 wouldn't ask any relief other than what Midway is  
2 seeking. Paragraph six of our petition specifies  
3 ascertaining actual costs of rights-of-way, but if  
4 Midway has asked for any other relief, V.O.L.T. doesn't  
5 seek to expand on that. But I don't know that it would  
6 be appropriate to limit V.O.L.T. solely to that  
7 particular relief.

8           So I -- my, I guess, request for an amendment,  
9 if that's what it is, would be that V.O.L.T. is granted  
10 leave to intervene, but could not seek any relief that  
11 Midway did not seek by way of its counterpetition.

12           CHAIR LEVAR: This is Thad LeVar. Let me --  
13 just to clarify what you're saying, I mean, I think what  
14 this boils down to is -- you know, since there's not  
15 much discovery time left in this proceeding, I feel what  
16 we're really boiling down to is witnesses you'll  
17 present at the hearing and issues that you might  
18 cross-examine on.

19           So -- and I'll tell you my -- personally, I'm  
20 probably not inclined at this point of the intervention  
21 to limit you in terms of cross-examination, but if we  
22 could get some clarity on what you intend to do in terms  
23 of calling your own witness. I think you addressed this  
24 earlier, but if you could just address that briefly for  
25 us, Mr. Morris.

1 MR. MORRIS: I'm happy to. This is Mr. Morris  
2 again for V.O.L.T.

3 In addition to witnesses that other parties  
4 are calling, I think I would agree to limit V.O.L.T. to  
5 only two other witnesses. One witness would be one of  
6 the ten that is identified by Rocky Mountain and  
7 acknowledged by Rocky Mountain as being an affected  
8 landowner.

9 And then I would want to call just one of the  
10 many 40 or so others that Rocky Mountain does not  
11 believe are affected landowners, but that we would want  
12 to present evidence on that issue to show Rocky  
13 Mountain's failure to include the effect on landowners  
14 other than the ten that they've identified.

15 So I'm happy to limit our witness pool, if you  
16 will, to only two additional witnesses, with those  
17 characteristics.

18 CHAIR LEVAR: I'll jump in. This is Thad  
19 LeVar.

20 I mean, I know we have a pending motion before  
21 us. My -- personally, I would view the appropriate way  
22 to limit the -- to limit this intervention right now  
23 would be to do so as described by Mr. Morris. I think  
24 if we grant an intervention order that limits their new  
25 witnesses to those that he's described, I'm not sure

1 it's necessary at this point to limit their  
2 cross-examine options. That's something that I think  
3 might be more appropriate to deal with during the  
4 hearing, but that's just my view.

5 Mr. White, do you want to address your pending  
6 motion in light of what we've heard from Mr. Morris?  
7 Or any other board members who want to discuss the  
8 issue.

9 MR. WHITE: Yes, thank you, Chairman LeVar.  
10 This is Jordan White.

11 I think that sounds reasonable. I think it  
12 would be difficult to make relevance calls without  
13 actually doing a specific cross-examination or  
14 objections in advance. So I think the way that it was  
15 articulated by Mr. Morris sounds reasonable to me.

16 I think the concern, you know, really from my  
17 perspective initially was really, again, based upon our  
18 limited scope of jurisdiction and what we have a right  
19 to adjudicate and the very limited timeframe we have to  
20 do that in. My concern was, again, to getting -- going  
21 far afield on issues that we have no right to be  
22 adjudicating would be inefficient.

23 And so I think from a relevance standpoint --  
24 and you, as the presiding officer, ultimately can make  
25 that call on a case-by-case basis if there are relevance

1 objections at the time of that hearing later in April.

2 CHAIR LEVAR: So is it accurate to say,  
3 Mr. White, that we have a pending motion from you before  
4 the board to limit the intervention in terms of  
5 witnesses that V.O.L.T. will call to the two witnesses  
6 they've described in the hearing today?

7 MR. WHITE: Yes, that's correct. And with the  
8 caveat that there may be -- again, depending on how  
9 things go, if there's any potential evidentiary or  
10 discovery disputes, etc., that the board reserves the  
11 right to again address the scope of that, if necessary,  
12 based upon our limited jurisdiction.

13 CHAIR LEVAR: Okay. Thank you.

14 Does any other board member want to discuss or  
15 second the motion?

16 MR. CLARK: Chair LeVar, this is Dave Clark.  
17 I've got a question. My understand of the heart of the  
18 motion was that we're expressing a limitation on the  
19 intervention that we're authorizing to be confined to  
20 the relief that Midway City has requested in its  
21 petition. And -- is that not the core of what we're  
22 addressing? Are we addressing something else?

23 CHAIR LEVAR: I agree that's how Mr. White  
24 originally phrased his motion. I'm not sure if that's  
25 the motion that's -- as modified in front of us. I



1 mean, I -- that was the original issue raised.  
2 Personally, I think, at this point of the proceeding,  
3 three weeks before the hearing, it -- we accomplish what  
4 we need with the limitation on new witnesses --  
5 additional witnesses, but if there's interest in  
6 expanding the motion to be more general, that's what's  
7 in front of us, I suppose.

8 Mr. White, do you want to comment on  
9 Mr. Clark's question?

10 MR. WHITE: Yeah. Well, let me ask a  
11 clarifying question, then, Mr. Clark. Are you  
12 supporting the clarification discussed by Mr. Morris, in  
13 other words, that rather than just paragraph six, that  
14 ultimately they would be limited to the issues addressed  
15 by Midway in their motion?

16 MR. CLARK: Yeah, I guess what I'm really  
17 saying is that's what -- that's what I would favor doing  
18 at this stage, is just simply do -- permit their -- or  
19 authorize their intervention, and limit their  
20 intervention to seeking relief that Midway City seeks in  
21 its petition. And any efforts beyond that would be  
22 outside of -- or beyond the intervention that we're  
23 authorizing here. That -- to me, that seems like the  
24 cleanest way to avoid getting into evidentiary questions  
25 now, but -- you know, I guess I can be persuaded

1 otherwise.

2 MR. WHITE: Chair LeVar, this is Jordan White.  
3 I'm happy to take that as a substitute. That's  
4 articulated clean enough for me; I'm happy to take that  
5 as a substitute. If you want to put up Mr. Clark's  
6 clarifications about that, that seems reasonable and  
7 clear to me.

8 CHAIR LEVAR: Okay. Any discussion or second  
9 to the motion as refined by Mr. Clark?

10 MR. FITZGERALD: This is Troy Fitzgerald.  
11 I'll second Mr. Clark's motion.

12 CHAIR LEVAR: Any discussion before we vote?  
13 Okay. Let me go first to Mr. Clark. How do  
14 you vote?

15 MR. CLARK: I vote yes.

16 CHAIR LEVAR: Mr. Fitzgerald?

17 MR. FITZGERALD: Yes.

18 CHAIR LEVAR: Mr. White?

19 MR. WHITE: Yes.

20 CHAIR LEVAR: Mr. Wright?

21 MR. WRIGHT: Yes.

22 CHAIR LEVAR: And I vote yes. So that motion  
23 passes.

24 Anything else from board members before we  
25 move on to the other issues on our agenda today?

1           In the second notice, board members were  
2 provided with a draft administrative rule. And as was  
3 explained, I think, in that notice, we're currently  
4 holding electronic meetings pursuant to an executive  
5 order issued by Governor Herbert recently, but this  
6 board does not have an administrative rule addressing  
7 electronic meetings. And the governor's executive order  
8 recommended that any board or commission that doesn't  
9 currently have a rule in place implement on as soon as  
10 possible. Plus, the electronic meeting provisions in  
11 the Open and Public Meetings Act do require us to have a  
12 rule in place, which this board has not done in the  
13 past.

14           The rule that was distributed is basically the  
15 same language that is in the electronic meetings rule  
16 for the Public Service Commission. And so I sent that  
17 out as a starting point. If the board approves that  
18 rule language, it could be published in the state  
19 bulletin, and then the board could have a future  
20 decision to make whether to make it effective following  
21 that public comment period after the state bulletin  
22 publication. That timeline should accommodate having a  
23 rule in place by the time the governor's executive order  
24 expires or is rescinded, hopefully.

25           So is there any discussion to that rule

1 language that was distributed in the notice?

2 MR. CLARK: This is Dave Clark --

3 MR. WHITE: Chair LeVar, this is Jordan --

4 You go ahead, Mr. Clark.

5 MR. CLARK: Thanks. Sorry. I note how  
6 awkward this is for all of us.

7 But I want to thank the Chair for his personal  
8 initiative in providing and, I presume, drafting the  
9 rule -- or the proposed rule, and I move that we adopt  
10 it. And I also recognize that the board meets very  
11 rarely and does not have much opportunity to consider  
12 rulemaking.

13 But I move that we approve the rule as  
14 proposed.

15 MR. WHITE: This is Jordan White. I second  
16 Mr. Clark's motion.

17 CHAIR LEVAR: Any discussion before we vote?

18 MR. FITZGERALD: This is Troy Fitzgerald.  
19 This could easily come after the vote. I'm in favor of  
20 the rule as proposed.

21 And as somebody that's rapidly doing far more  
22 electronic meetings than I care to admit to, in sitting  
23 through this one, I'd just like to suggest that we  
24 consider, if we're going to be in the same setting in  
25 April, that we do an electronic format that includes

1 video. I think the rule can stay as it is, but it's  
2 just a suggestion moving forward.

3 CHAIR LEVAR: And this is Thad LeVar. I mean,  
4 the rule as drafted doesn't define audio versus audio  
5 and visual. I was assuming we would discuss that issue  
6 as we discussed the specific hearing.

7 So you don't have any objection to the rule  
8 language as proposed, but you want to discuss that issue  
9 as we consider our April 20th hearing; is that correct?

10 MR. FITZGERALD: This is Troy Fitzgerald.  
11 That is correct.

12 CHAIR LEVAR: Any other discussion?

13 So this is Thad LeVar. Just to clarify,  
14 Mr. Clark, your motion is for this board to approve the  
15 rule, but what that means is approving it for  
16 publication in the state bulletin, and then it will be  
17 published for a public comment period, and this board  
18 will still have to take action to approve it once that  
19 public comment period is concluded.

20 So we have a -- is that an accurate summary of  
21 your motion, Mr. Clark?

22 MR. CLARK: Yes, thanks, Chair LeVar. That's  
23 much more attendant to the legal niceties involved here.  
24 Yeah. Thank you.

25 CHAIR LEVAR: And so we have that motion and a

1 second. So I'll just go down the line for a vote.

2 Mr. Clark, how do you vote on the motion?

3 MR. CLARK: I vote yea.

4 CHAIR LEVAR: Mr. Fitzgerald?

5 MR. FITZGERALD: Yes.

6 CHAIR LEVAR: Mr. White?

7 MR. WHITE: Yes.

8 CHAIR LEVAR: Mr. Wright?

9 MR. WRIGHT: Yes.

10 CHAIR LEVAR: And I vote yes. So that motion  
11 passes.

12 And so let's move to the final issue, then,  
13 that Mr. Fitzgerald already started alluding to. You  
14 know, we have a hearing scheduled to start April 20th.  
15 And in terms of our statutory timeframe, that's not  
16 much -- you know, that's pretty close to the end of the  
17 60 days that we're required to start the hearing under  
18 the statute.

19 I think it's also safe to say that an  
20 in-person hearing on April 20th is not an option for any  
21 of us, not on the table.

22 So why don't I go to parties, if they want to  
23 comment on this issue first before we come to discussion  
24 on the board. But I will give a little bit of -- well,  
25 as think I'm thinking about it, why don't we discuss it

1 as a board first and then go to parties.

2 I just want to give my own perspective that we  
3 have done a lot of telephonic meetings here at the  
4 Public Service Commission. We haven't used and tested  
5 video conferencing technology in hearings, and my worry  
6 is that without beta testing and without, you know, an  
7 established format and procedure -- I know that there  
8 are some things that are more difficult with audio only,  
9 but I fear that if we try to add videoconferencing for  
10 this long of an evidentiary hearing, that we introduce  
11 more complications than we solve. That's my worry, that  
12 it might create more problems than it eliminates.

13 But why don't we discuss that among the board  
14 and then get comments from participants in the hearing  
15 on this issue.

16 Does any board member want -- Mr. Fitzgerald,  
17 do you want to jump in and -- it sounds like you've  
18 got -- had some experience with technology recently for  
19 official meetings. So...

20 MR. FITZGERALD: This is Troy Fitzgerald. I'm  
21 happy to do whatever the board is most comfortable with.  
22 Our first city council meeting in electronic format is  
23 tomorrow night, so I might change my tune quickly by  
24 tomorrow night. But as we've done it at the staff  
25 level, the platform is -- the various platforms, and

1 we're using multiple actually, are relatively easy to  
2 use and allow you to see each other. We are playing  
3 today with the ability to mute others that are watching  
4 in and so forth.

5 So it's certainly a format that works and is  
6 stable and is viable. But if you're more comfortable  
7 with audio, it's worked acceptably today.

8 MR. WHITE: Chair LeVar, this is Jordan  
9 White --

10 MR. WRIGHT: This is Glenn --

11 MR. WHITE: You go ahead, Mr. Wright.

12 MR. WRIGHT: Yeah, I -- unfortunately, over  
13 the last two weeks, being on a county council that  
14 passed the -- you know, we had, I think, the first  
15 closing orders in the state, I've been on a -- both a  
16 telephonic and a video meeting almost every day for the  
17 last 14 days. I think video meeting -- we have, in  
18 Summit County, used the Zoom product, and it works  
19 pretty well. And the advantage it gives to the  
20 presenters is they can share screens and show us -- if  
21 they have visual and graphical presentations that they  
22 would like us to consider, it puts us all on the same  
23 page.

24 It will require someone who really knows how  
25 to set up Zoom and make it work. But like I say, I've



1 been involved in these Zoom meetings probably 11 of the  
2 last 14 days, and they work pretty well once you get  
3 into it.

4 MR. WHITE: Chair LeVar, this is Jordan White.  
5 What I would suggest is -- I've certainly seen video  
6 proceedings handled with some success, but what I would  
7 maybe suggest that -- based upon some of the recent  
8 fails I've seen conducting meetings videoconference,  
9 maybe potentially we would just have some flexibility  
10 that we will endeavor to explore that in that timeframe.

11 But ultimately, because we have the current  
12 situation with the virus and staffing and the governor's  
13 order, whether we have time or not to actually test that  
14 and prove up on that, we certainly could endeavor to do  
15 that. But I know that the Commission uses its own  
16 staff, and whether we have the capability technically or  
17 even staffing-wise to accomplish that by then, may be an  
18 open question.

19 So I guess what I would say is that we'll  
20 endeavor to do that -- or suggest that we endeavor to do  
21 that, but whether we can do that successfully or not, we  
22 maybe will just kind of reserve that right until some  
23 point.

24 CHAIR LEVAR: This is Thad LeVar. Let me just  
25 jump in on that comment, too. I mean, we do -- the

1 limitations we're operating under here at the Public  
2 Service Commission which provides the staffing and the  
3 office support for this board is as you described; we're  
4 mostly teleworking right now. Opportunities to beta  
5 test, at least in a hearing format -- in an evidentiary  
6 format with a court reporter, where we're also going to  
7 try to stream it for -- there are people who won't be  
8 participants in the hearing but will want to watch it,  
9 and we can stream audio through YouTube, even though  
10 we're not doing that today.

11 We also have issues with -- any technology we  
12 use has to be approved by the State Department of  
13 Technology Services, and I don't know what platforms  
14 they have approved for use on the state equipment.

15 So I'm nervous about trying something new in  
16 context of this evidentiary hearing, where our focus, I  
17 think -- I hate to have our focus distracted by trying a  
18 technology that we haven't tested and debugged here.

19 I realize that if there's exhibits and  
20 visuals, that they would have to be emailed to everyone  
21 in advance of the hearing, and we'd have -- it would be  
22 a little bit more cumbersome that way.

23 But that's my personal worries about it. But  
24 I'm not -- I'm not completely opposed to trying  
25 something, but I'm a little nervous about it.

1           Should we hear from the -- those who will be  
2 participating in the hearing at this point, and see if  
3 that enlightens our discussion any further?

4           Attorneys for Rocky Mountain Power, do you  
5 want to comment on this general issue of the format for  
6 the hearing that's currently scheduled for April 20th?

7           MR. REICH: Yeah, we are supportive of either  
8 audio or visual, and we'd be fine with either one.

9           CHAIR LEVAR: Okay. Thank you.

10          Anyone from Midway City? Do you have a  
11 position on this issue we're discussing?

12          MR. CORBIN GORDON: This is Corbin. We're  
13 probably fine either way. I was assuming it was going  
14 to be by video, but if we can't put that together  
15 between now and then, then we'll just have to do it in  
16 the way that is available. So whatever you want to do,  
17 we'll deal with it.

18          CHAIR LEVAR: And attorneys for V.O.L.T.?

19          MR. MORRIS: Excuse me. This is Mr. Morris  
20 for V.O.L.T. We're happy to proceed any way that the  
21 board decides to go. I -- personally, I share the  
22 Chair's concern about having -- being the guinea pig for  
23 this hearing for a video system that hasn't been beta  
24 tested, as you say. If that's the way the board goes,  
25 we'll certainly do that. My firm's IT department is

1 pretty good about arranging things so that would work  
2 for us.

3 One suggestion I might make, though, if --  
4 whether we do video or not, I think binders with tabbed  
5 exhibits that everyone shares before the hearing would  
6 be an orderly way to proceed. That Rocky Mountain, as  
7 the petitioner, would propose a set of exhibits and send  
8 binders around, at least to the parties. And then we  
9 could determine if there were any objections.

10 And then the respondents, Midway and V.O.L.T.,  
11 could propose their own exhibits. And then once the  
12 parties have agreed on what they all want to show, then  
13 the board could receive those binders, and then we're  
14 all on the same page when we refer to Exhibit 15 or  
15 tab L or something like that.

16 CHAIR LEVAR: Yeah, this is Thad LeVar. I'll  
17 comment on that, too. I mean, we have generally been  
18 moving -- at least -- again, I'm speaking for the Public  
19 Service Commission, since this board doesn't meet that  
20 often. We've been moving towards electronic filings,  
21 and currently, all the filings that we're receiving in  
22 this board are electronic only.

23 We're also likely not to have a specific  
24 anchor location. So, for example, all five board  
25 members are likely to be at five different locations

1 when we hold this hearing.

2 So there are some logistical challenges, but I  
3 wonder if your concerns would be addressed if simply the  
4 electronic documents are electronically tabbed and  
5 organized well enough that we can know where we're  
6 referring to as we move forward.

7 I'm just thinking of some logistical  
8 challenges of getting binders together and getting them  
9 to all five of us at five different locations.

10 But let me --

11 MR. MORRIS: Well --

12 CHAIR LEVAR: -- come back to the board at  
13 this point, I think, just to discuss this hearing  
14 generally among board members. Any additional thoughts?

15 MR. CORBIN GORDON: This is Corbin. Can I  
16 make one other -- just raise one other concern,  
17 Mr. Chair?

18 CHAIR LEVAR: Yes. Yes, you may.

19 MR. CORBIN GORDON: Thank you.

20 So the only other question I have as far as  
21 putting it -- doing it the way that we've done it today,  
22 I think there was probably someone, I'm guessing from  
23 the public, who has every right to listen in to this,  
24 that may not have the technology that we have as far as  
25 mute buttons on our phones. And so we need to think

1 that through as well.

2 It's distracting to have -- you know, we're  
3 all at home, we've got kids running around. But I want  
4 to make sure that the public has every opportunity to  
5 listen in, but without doing it in a way that makes it  
6 difficult to proceed.

7 So I don't know how we address that, but I'd  
8 just raise that as a concern. My guess was that's  
9 probably what was happening today when we had that  
10 background noise.

11 CHAIR LEVAR: And this is Thad LeVar. Let me  
12 clarify this, too. In whatever electronic format we  
13 hold this hearing, I think our intention would be to  
14 also stream it onto YouTube so that a participant could  
15 listen to the proceedings without being on the telephone  
16 line. That's what we intended to do today --

17 MR. REICH: Okay.

18 CHAIR LEVAR: -- and a staffing issue  
19 prevented us from doing that today.

20 But I think what I've learned from today's  
21 hearing is that we simply will have to do what we have  
22 to do. That if we hold it telephonically on the 20th,  
23 that we'll need to make sure that that audio is  
24 live-streamed onto YouTube so that interested residents  
25 can listen on YouTube without having to call in and be

1 on the conference line.

2 MR. REICH: That would solve that. That's  
3 great. Thank you.

4 CHAIR LEVAR: Any other thoughts --

5 MR. WHITE: This is Jordan White.

6 CHAIR LEVAR: Go ahead.

7 MR. WHITE: Yeah, this is Jordan White. So  
8 just to clarify, I guess, the discourse between you and  
9 Mr. Morris. The idea would be that we would just handle  
10 exhibits as we do in typical fashion with commission  
11 proceedings, and that is, the parties would file those  
12 and indicate them appropriately, and they would be  
13 available on our website.

14 So they could say, for example, you know,  
15 V.O.L.T., you know, Exhibit, you know, X, whatever,  
16 appendices, whatever, so we could just easily navigate  
17 that.

18 Is that what you're thinking, is that the  
19 parties would each file their own separate exhibits,  
20 etc., that we could easily view on the Commission's  
21 website or pull up on the Commission's website?

22 CHAIR LEVAR: This is Thad LeVar. Yes. I  
23 mean, I think I was expressing concern that I'm not sure  
24 logistically binders is the best option for us, but I  
25 think -- considering Mr. Morris's comments, I would

1 encourage parties to organize your filings as well as  
2 you can, so that when we're having this electronic  
3 hearing when we're not all in the same room, it will be  
4 as simple and direct as possible for us to identify  
5 what's being referred to.

6 And if you intend to use hearing exhibits, it  
7 would be ideal if they were attached to the testimony in  
8 the filings, but at the very least they would need to be  
9 distributed to parties electronically prior to the  
10 hearing beginning.

11 Those are my thoughts, but if -- you know, if  
12 there's other thoughts or other board members are seeing  
13 it differently, please jump in.

14 MR. WHITE: That makes sense to me. This is  
15 Jordan White.

16 CHAIR LEVAR: Well, I'm not hearing any  
17 further discussion. I'm not sure if this is an issue  
18 that needs a board motion. Although, if it's going to  
19 be an electronic meeting, it probably would be good to  
20 have a board motion on how we're going to proceed.

21 If anyone is inclined to make a motion, feel  
22 free to do so.

23 MR. WHITE: That -- Chair LeVar, this is  
24 Jordan White. I guess the motion -- let me try to make  
25 this clear. The motion would be that the -- for the



1 board to conduct the hearing either telephonically or  
2 via videoconference on the designated date; the board  
3 will endeavor to pursue video options, but understand  
4 that there is limited staffing and technological issues  
5 that may prevent us from doing so; and that parties  
6 would hopefully file exhibits along with their testimony  
7 that have not been at least filed in time for the  
8 hearing, so to the extent possible, the board members  
9 can refer to those easily and reference those as marked  
10 and described.

11 CHAIR LEVAR: Let me comment on that motion a  
12 little bit. I'm feeling like I'm kind of the biggest  
13 downer in the room on trying to do video technology. I  
14 worry about a motion that still leaves open the  
15 expectation that we're going to try to work that out.

16 As I think about both our internal challenges  
17 and then coordinating that technology with Rocky  
18 Mountain Power's legal department and two other law --  
19 three other law firms, I'm just --

20 MR. WHITE: Chair LeVar --

21 CHAIR LEVAR: -- I'm having trouble seeing  
22 that as a reasonable goal between now and April 20th,  
23 at least to -- but maybe I'm just being overly  
24 pessimistic, and if I am, I'm happy to do my -- make my  
25 best efforts to work out those logistical issues between

1 now and the 20th.

2 MR. WHITE: Chair LeVar, this is Jordan White.  
3 I'm happy to amend it or substitute it just to take out  
4 the videoconference, understanding that the -- really,  
5 in light of the current circumstances and the governor's  
6 order and the order of Salt Lake City and Salt Lake  
7 County regarding essential folks being in the office, I  
8 think that it would probably be a very heavy lift, if  
9 not impossible, to accomplish that by that time. So I'm  
10 happy to still leave that to a telephonic hearing for  
11 that date.

12 CHAIR LEVAR: Mr. Fitzgerald or Mr. Wright,  
13 how are you feeling about this issue at this point?

14 MR. WRIGHT: This is Wright. I can live with  
15 telephonic. I understand the limitations of never  
16 having used a videoconferencing, and you will need  
17 somebody at a base location to really, you know,  
18 organize the electronic conference. And if you don't  
19 have anybody on the Commission -- on your staff to do  
20 that, it's going to be difficult.

21 I will say there -- you know, the state  
22 government certainly has that ability. I've been on at  
23 least one Zoom call with the governor and lieutenant  
24 governor each in the last couple weeks. So it does  
25 exist within the state infrastructure, but if you're not

1 comfortable with accessing that and if you don't have  
2 somebody really good on staff to manage it, then we're  
3 probably best to go telephonic.

4 MR. FITZGERALD: This is Troy Fitzgerald.  
5 I'll echo those comments of Mr. Wright.

6 CHAIR LEVAR: Okay. Any second or further  
7 discussion to Mr. White's motion?

8 MR. WRIGHT: This is Wright. I'll second the  
9 motion.

10 CHAIR LEVAR: Okay. Mr. Clark, how do you  
11 vote on the motion?

12 MR. CLARK: Yes.

13 CHAIR LEVAR: Mr. Fitzgerald?

14 MR. FITZGERALD: Yes.

15 CHAIR LEVAR: Mr. White?

16 MR. WHITE: Yes.

17 CHAIR LEVAR: Mr. Wright?

18 MR. WRIGHT: Yes.

19 CHAIR LEVAR: And I vote yes.

20 And I think that concludes our business today,  
21 unless anyone is aware of anything further that we need  
22 to discuss.

23 MR. WRIGHT: I have one possible request.

24 This is Glenn Wright again.

25 We've been having video Summit County Council

1 emergency meetings pretty much every day at 4 o'clock.  
2 I think we're going to start weeding them out so we  
3 don't have them every day. But if we can possibly have  
4 the option to stop at 4 o'clock if I need to, can that  
5 be part of our scheduling?

6 CHAIR LEVAR: This is Thad LeVar. I'm  
7 certainly willing to be mindful of that as we go  
8 forward. We have four days scheduled for this hearing.  
9 I think that should accommodate that need as you know  
10 closer to then what specific days that might be an  
11 issue on.

12 Does anyone else, either board member or  
13 party, have a desire to comment on that?

14 MR. CORBIN GORDON: Midway City has no  
15 objection.

16 MR. MORRIS: No objection from V.O.L.T.

17 MR. REICH: No objection from Rocky Mountain  
18 Power.

19 CHAIR LEVAR: Okay. I don't think we need a  
20 board motion on that issue, but we'll just be mindful of  
21 that, and as we get -- begin the hearings, we'll just  
22 talk to you about what the specific needs are that week.

23 MR. WRIGHT: I will -- I'll most certainly  
24 know the schedule by the preceding Friday.

25 CHAIR LEVAR: Okay. Thank you.

1 MR. FITZGERALD: Mr. LeVar, this is Troy  
2 Fitzgerald. I just -- I have similar concerns. I mean,  
3 at the current time, the pandemic is likely to be  
4 peaking there, and in the real world, I'm trying to keep  
5 a city functioning.

6 And so just -- it's, again, not a board motion  
7 or -- necessarily, or anything, but just simply a  
8 comment. And not to lessen the importance of this to  
9 the parties. Again, I'm involved in a city that does  
10 public power; I know how important this is to citizens  
11 and how important it is to Rocky Mountain. I know how  
12 essential it is to keep power running.

13 But anything we can do to streamline through  
14 effective briefing and reduction of testimony would be  
15 helpful.

16 CHAIR LEVAR: Thank you, Mr. Fitzgerald. I'm  
17 going to restate what you said in a little different  
18 way, too.

19 I think it's worth everybody recognizing that  
20 of the five members of this board, three of us this is  
21 our day job, and two of us this isn't their day job, and  
22 their day job is certainly more impacted by the pandemic  
23 going on right now than normal operations.

24 So I think we need to be mindful of that as we  
25 prepare for this hearing and as we move forward. I

1 appreciate you making that clarification. I hope my  
2 restating of it is acceptable to you.

3 MR. FITZGERALD: It absolutely is. Thank you.

4 CHAIR LEVAR: Any other comments from anyone  
5 before we adjourn?

6 Okay, we are adjourned. Thank you.

7 (Hearing adjourned at 12:09 p.m.)

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