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BEFORE THE UTAH UTILITY FACILITY REVIEW BOARD

<p>PACIFICORP, doing business as ROCKY MOUNTAIN POWER,</p> <p>Petitioner</p> <p>vs.</p> <p>MIDWAY CITY,</p> <p>Respondent.</p>	<p>ROCKY MOUNTAIN POWER’S HEARING BRIEF AND REQUEST FOR SUMMARY DISPOSITION</p> <p>Docket No. 20-035-03</p>
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The purpose of the Utah Facility Review Board (“the Board”) is to resolve issues regarding the construction and installation of public utility facilities. This is a statewide concern because excess costs imposed by local governments affect the rates of public utility customers and/or impact the safety, reliability, adequacy and efficiency of service to customers outside the local government jurisdiction.¹ Midway City and VOLT are seeking to impose the excess costs of undergrounding the proposed transmission lines in Midway City on utility customers outside of Midway City. In addition, they are seeking to delay the project, exposing utility customers within and outside of Midway City to significant risk of impairment of safe, reliable, and adequate service.

For the following reasons, the Board should find the conditional use permit issued by Midway City gives Rocky Mountain Power (“RMP”) and Heber Light & Power (HL&P) the

¹ U.C.A. § 15-14-102

authority to immediately construct the transmission lines overhead as proposed in the joint conditional use permit (“CUP”) application submitted to Midway City on April 2, 2019.²

Based on Midway City’s failure to meet the conditions for undergrounding the transmission line as contained in the CUP, Rocky Mountain Power requests the Board issue a summary disposition of this matter. Midway City’s failure to meet the CUP’s requirements makes the scheduled hearing completely unnecessary.

1. **MIDWAY CITY FAILED TO PICK AN OPTION AS REQUIRED BY ITS CONDITIONAL USE PERMIT, FAILED TO SECURE SUFFICIENT FUNDING TO PAY FOR THE PROJECT, FAILED TO SECURE THE REQUIRED IN DONATION FUND DOLLARS, AND FAILED TO OBTAIN A VOTE BY THE WASATCH COUNTY COUNCIL TO APPROVE A LOCATION FOR THE DIP POLES.**

The Midway City CUP (copy attached as Exhibit A) requires RMP to submit “3 actual competitive construction bids, prepared by qualified, bonded, and insured 3rd party entities, in accordance with standard city policy.” Rocky Mountain Power provided the three bids to Midway City on March 26, 2020, as confirmed via email on April 3, 2020³:

I wanted to remind you that Rocky Mountain Power’s obligation to provide the final bids to Midway City was fulfilled on March 26, the date I forwarded the detailed bid information sheets to you. Under the terms of the permit, the City has 15 days from March 26 to meet its obligations under the permit to secure the necessary funding and permissions from Wasatch County, which is April 10. If those obligations are met timely, Midway City may elect one of the four options to construct the project underground, and Rocky Mountain Power will select which contractor it will use for the work. Otherwise, under the express terms of the permit, the project will be constructed as an overhead transmission line.

Therefore, Midway City had until **April 10, 2020** (15 days after the three bids were provided) to select which construction option would meet its “needs in terms of costs and function.”⁴ In addition, the CUP required Midway City to secure sufficient funding to pay for the project, the required minimum “in donation” funds, and a vote by the Wasatch County Council to approve a location for the dip poles that would otherwise be alongside HWY 113 that is acceptable to the Midway City Council. Midway City failed to meet the conditions required in the CUP. Therefore,

² Direct Testimony of Benjamin Clegg, pg. 9, lines 22-24.

³ See Exhibit B, Email from Heidi Gordon to Corbin Gordon.

⁴ Midway City CUP, p. 2.

the CUP states that “the applicant may proceed with overhead construction with the following conditions....”⁵

Midway City never choose a construction option and never responded to the email. Midway City confirmed in discovery responses dated April 14, 2020, that they have failed to meet any of the CUP conditions.⁶

Midway City represented that it had “secured” only \$3.5 million from its own sources and \$600,000 from VOLT. Midway City did not provide any evidence of this representation, nor did they provide or tender this funding to Rocky Mountain Power. Even assuming the statement is accurate and the \$4.1 million has been raised by Midway City, the money falls \$6.6 million dollars short of RMP’s lowest bid.⁷ Likewise, Midway City failed to obtain the required approval from Wasatch County by April 10, 2020 to modify Wasatch County’s CUP allowing the dip pole to be located in Wasatch County.⁸ In fact, Wasatch County has refused to modify the Wasatch County CUP until Midway City is able to pay for the actual excess costs of undergrounding the line.⁹

Based on the express conditions in Midway City’s CUP and Midway City’s admitted failure to meet those self-imposed conditions, the Board should issue a summary disposition of this matter and find that RMP and HL&P have the immediate right to build the overhead line as proposed in accordance with the terms of the CUP.

2. MIDWAY CITY FAILED TO MAKE A FINAL DECISION WITHIN 60 DAYS OF ROCKY MOUNTAIN POWER AND HEBER LIGHT & POWER’S APPLICATION FOR A CONDITIONAL USE PERMIT AS REQUIRED BY U.C.A § 54-14-303(1)(e).

RMP and HL&P submitted a joint CUP application to Midway City on April 22, 2019.¹⁰ Midway City failed to make a final decision on the joint application within 60 days of the date of the application as required by Utah Code Annotated §54-14-303(1)(e). Midway City issued a Conditional Use Permit on December 18, 2019, eight months after the application was filed. Even assuming the CUP is “final” despite the numerous conditions that directly delay the actual approval

⁵ CUP p. 4.

⁶ See Exhibit C, Midway City’s Responses to Interrogatories, attached hereto.

⁷ Id. at Midway City’s Response to Interrogatory No. 1.

⁸ Id. at Midway City’s Response to Interrogatory No. 3.

⁹ Id. at Midway City’s Response to Interrogatory No. 4.

¹⁰ Direct Testimony of Benjamin Clegg, pg. 9, lines 22-24.

of the application, the Midway City CUP was issued over six months past the statutory deadline. The hearing in this matter is scheduled to start almost one year to the day the application was filed. Despite RMP's continued patience in working with Midway City, they are now asking this Board to further delay the project and wait until Midway City can obtain the funding to underground the project. This is the very abuse the Utah Facility Review Board Act was intended to prevent. The purpose of the Act is to prevent local government from affecting the safe, reliable, adequate and efficient service to utility customers throughout the affected load area. Because Midway City failed to act within the 60 day statutory deadline, the Board should find RMP and HL&P have the immediate authority to construct the transmission line overhead as identified in the application and approved in the CUP.

3. MIDWAY CITY HAS REQUIRED CONSTRUCTION IN A MANNER THAT WILL NOT PERMIT RMP AND HL&P TO PROVIDE SERVICE TO ITS CUSTOMERS IN A SAFE, RELIABLE, ADEQUATE OR EFFICIENT MANNER

The testimony submitted to the Board clearly and unequivocally supports the need for this project. Under Utah Code Annotated § 54-14-303(1)(c),¹¹ a public utility may seek Board review if the local government has required construction of a facility in a manner that will not permit the utility to provide service to its customers in a safe, reliable, adequate or efficient manner. The Midway City CUP prevents RMP and HL&P from providing service in a safe, reliable, adequate or efficient manner because it has materially delayed construction of the project. Midway City's failure to clearly approve either an overhead or underground option has crippled progress of the project. RMP and HL&P cannot secure right of way, long lead materials and critical engineering design until the method of construction is final. Midway City's failure to approve a final option has caused substantial delays materially impacting the ability to complete the project during this construction season. It is imperative the Board give clear direction so the utilities can start to acquire right of way, order long lead materials and finish designing the project to even meet a 2021 construction season.

Rocky Mountain Power testified the project is necessary for transmission voltage to remain above 90% of nominal voltage, especially when an outage occurs on the Cottonwood-Snyderville

¹¹ There is no requirement in this statutory provision to show "significant risk of impairment" but gives the Utah Facility Review Board authority to intervene when local governments impose requirements that do not permit the utility to provide service to its customers in a safe, reliable, adequate or efficient manner.

138kV transmission line or the Hale-Midway transmission line.¹² If an outage occurred on the Cottonwood-Snyderville 138kV transmission line, the planning models show the voltage reducing to 63% of nominal voltage, causing black outs, partial loss of load and/or equipment damage in Midway City, Heber City, Brighton, Deer Valley, Park City, Kimball Junction, Summit Park, Kamas and Oakley.¹³ Similar results would occur during an outage of the Hale-Midway 138kV transmission line.¹⁴ During the 2020-2021 winter, there is projected be up to 620 hours of exposure to the risk of inadequate voltage to the customers in the Heber Valley and Park City area.¹⁵

Heber Light & Power testified the project is necessary to rebuild the 46kV lines with a 795 ACSR or larger conductor to improve capacity.¹⁶ The upgrade to a larger conductor will allow “‘N-1’ reliability for Heber Power’s transmission line, meaning the system will still function even with the loss of one of the 46kV transmission lines.”¹⁷ In addition, the project will rebuild PacifiCorp’s interconnection with HL&P to improve its capacity and reliability.¹⁸ By 2022 or potentially sooner, the interconnection point will be overloaded during peak load times any time Heber Power’s internal generation is offline. Since this is currently Heber Power’s only connection to the regional electrical grid, the entire Heber Valley would be without power if this interconnection is overloaded or suffers an outage.¹⁹ Based on load growth projections for Heber Power, this interconnection upgrade is absolutely necessary to continue providing power to customers in Heber Valley.²⁰

Even Midway City’s expert Mr. Nelson testified there appears to be a valid basis for completing construction as soon as possible.²¹ Mr. Nelson testified “the line should be completed as soon as practical to improve the system reliability” and agreed that “blackouts could result from the worst-case scenario.”²² He also opined that “a severe outage could take hours or days to locate

¹² Direct Testimony of Jake Barker, pg. 4, lines 10-14 and pg. 6, lines 9-12.

¹³ Id. at pg. 4, lines 24-31, pg. 5 lines 1-4.

¹⁴ Id. at pg. 5, lines 6-12.

¹⁵ Id. at pg. 5, lines 24-29.

¹⁶ Direct Testimony of Craig Michaelis, pg. 5, lines 7-8.

¹⁷ Id. at pg. 5, lines 17-19.

¹⁸ Id. at pg. 5, lines 21-22.

¹⁹ Id. at pg. 5, lines 23-26.

²⁰ Id. at pg. 5, line 30 and pg. 6, lines 1-2.

²¹ Direct Testimony of John Nelson, pg. 5, lines 107-108.

²² Id. at pg. 5, lines 120-121, pg. 6, line 143.

and repair” and that a “major problem like a snow or rockslide could take a crew one or two days or possibly even longer, depending on the event.”²³

This direct testimony by RMP, HL&P and Midway City shows the project should be installed as soon as possible. To the extent the Midway City CUP delays starting the project, including the acquisition of right of way, engineering design and ordering materials, the Board should find that RMP and HL&P have immediate authority to proceed with the overhead line as authorized in the Midway City CUP.

4. MIDWAY CITY WAIVED THE RIGHT TO IMPOSE ACTUAL EXCESS COSTS

Under Utah Code Annotated §54-14-204, any requirement that imposes actual excess costs such as those contained in Midway City’s CUP are waived if Midway City does not pay the actual excess cost within 30 days before the date of construction of the facility to avoid a significant risk of impairment of safe, reliable and adequate service to its customers. Midway City has not paid the actual excess costs. Midway City refused to even pay the minor costs associated with obtaining the underground bids. As stated in paragraph three above, the testimony of RMP, HL&P and Midway City demonstrates there is a significant risk of impairment of safe, reliable and adequate service if this project is not started immediately. As also stated above, the utilities must obtain the necessary right of way for either the aboveground or below ground options. That can take several months, especially if the utilities are not able to negotiate right of way easements with affected property owners. Rocky Mountain Power is not in a position to wait until November or December of 2020 for Midway City to determine if they can raise the money through a bond and still start construction in the spring of 2021. It is imperative a decision is made now regarding the scope of the project and whether it is aboveground or underground.

5. THE CUP ISSUED BY MIDWAY CITY IS INCONSISTENT WITH THE CUP ISSUED BY WASATCH COUNTY. U.C.A. § 54-14-303(1)(f)

Before obtaining the Midway City CUP, Rocky Mountain Power and HL&P obtained a conditional use permit from Wasatch County. The Wasatch County CUP does not contemplate nor authorize a dip pole or undergrounding any of the transmission line within Wasatch County. The Wasatch County permit does authorize RMP and HL&P to construct an overhead transmission

²³ Id. at pg. 7, lines 177-178, lines 180-182.

line in Wasatch County. The Midway City CUP illegally purported to approve an underground transmission line and dip poles outside of Midway City's limits. Midway City has no jurisdiction over property in unincorporated Wasatch County and therefore the conditions in Midway City's CUP purporting to approve dip poles and underground lines is ipso facto void and illusory and violates Utah Code Annotated §54-14-303(1)(f).

6. IN THE ALTERNATIVE, THE ACTUAL EXCESS COSTS RESULTING FROM MIDWAY CITY'S REQUIREMENT TO UNDERGROUND THE TRANSMISSION LINE SHOULD BE PAID IMMEDIATELY

Allowing local governments to delay utility transmission projects over a year violates the intent of the Utah Facility Review Board Act. There is no question that delay continues to negatively impact RMP's customers and HL&P's customers. If the Board finds that Midway City has not violated its self-imposed requirements in the CUP and the delays caused by Midway City's failure to identify whether the line is approved aboveground or belowground has not impacted RMP's customers or HL&P's customers, then the Board should find that Midway City must tender the actual excess costs immediately. Rocky Mountain Power submitted three "actual competitive construction bids, prepared by qualified, bonded, and insured 3rd party entities" as required in the CUP. Midway City has not submitted any additional bids that meet the requirements of the CUP. The "estimate" provided by Midway City's expert is not an actual competitive construction bid, prepared by a qualified, bonded and insured third party entity as required in the CUP. The "estimate" is merely Mr. Nelson's high level, non-binding estimate of what he thinks the costs should be for a much shorter, reduced specification project. Based on Midway City's failure to provide any evidence that meets the requirements of its own CUP, the Board must accept the bids as submitted by RMP.

Rocky Mountain Power has developed and adheres to strict specifications for all components of its system to operate and maintain it and deliver power in a safe, reliable and efficient manner.²⁴ Rocky Mountain Power used its standard specifications to obtain the three bids as required in the CUP. If the Board makes a determination regarding the actual excess costs, the Board must subtract the estimated cost of building the project overhead of \$1,886,601 from the option selected by Midway City and the contractor selected by RMP using the three construction

²⁴ Rebuttal Testimony of Darrin Myers, pg. 9, lines 9-11.

bids submitted by RMP.²⁵ The actual excess costs must be paid immediately to RMP and HL&P so the parties can start to secure any necessary right of way easements, long lead materials and engineering designs to complete the project. The continued delay of this project significantly impacts the utility customers of RMP and HL&P and should not be supported by the Utah Facility Review Board.

CONCLUSION

For the reasons set forth above, the Board should find the conditional use permit gives RMP and HL&P the authority to immediately construct the transmission lines overhead. In the alternative, the Board should order that the actual excess costs resulting from Midway City's requirement to underground the transmission line should be paid immediately.

DATED this 17th day of April, 2020.

PACIFICORP, D/B/A ROCKY MOUNTAIN POWER

/s/ Bret Reich

Attorneys for Petitioner Rocky Mountain Power

²⁵ See Direct Testimony of Darin Myers, pgs. 6-7, lines 15-20 and 1-8.

CERTIFICATE OF SERVICE

I hereby certify that on this 17th day of April, 2020, a true and correct copy of the foregoing **ROCKY MOUNTAIN POWER'S HEARING BRIEF AND REQUEST FOR SUMMARY DISPOSITION** was served via email on the following:

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/s/ Heidi Gordon

EXHIBIT A TO ROCKY MOUNTAIN POWER'S HEARING BRIEF



REPORT OF ACTION of the Midway City Council

Item: Rocky Mountain Power / Conditional Use Permit for Transmission Line (City Planner – Approximately 2 hours) – Discuss and possibly approve a conditional use permit for Rocky Mountain Power to improve a transmission line along 970 South, Stringtown Road and Wards Lane.

Action: Approved with Conditions

Date of Action: 17 December 2019

Motion: Council Member Simonsen moved that Midway City hereby approves, with the following conditions, the CUP for proposed construction of new transmission lines to carry power coming through Midway from roughly the direction of Heber City and ending at the substation near the Cemetery off 500 S. Furthermore,

We accept the staff report.

We accept the following findings:

- A • The proposal is an administrative review.
- B • The proposed use is a conditional use, and the city may impose reasonable conditions to mitigate identified negative impacts.
- C • The proposal will create a second point of power access that will benefit residents of the entire valley.
- D • The proposal will allow more power to enter the valley that will benefit the entire valley and meet present and future community needs.
- E • The proposal benefits neighboring areas and the entire power grid by providing more connectivity and redundancy to support better function of the system as a whole.
- F • It is known that strong EMF signals (electromagnetic fields) are emitted by all energized conductors, including underground and overhead power lines. These fields can induce a current in other disconnected nearby conductors and therefore can have negative effects on some electronic devices. Of particular concern to the city are devices that are used for personal health purposes, such as cochlear implants. Whereas the city is aware of residents within the service area that rely on such devices it is of concern to the city to mitigate any potential negative impacts related to these devices. It has come to the attention of the city that there is a technology (GIL) that could help mitigate this impact, and the city desires this to be considered as well as any other applicable technologies of which we may be unaware.
- G • The Midway City General Plan contains many statements that establish objectives related to the preservation of open space, our rural atmosphere, and the beauty of our entry corridors. Our general plan also encourages our local economy to embrace and support our assets as a “resort” city. By definition and extension, careful management of these

assets is a key factor in securing our city's financial future and our sales tax base. We find that overhead power lines raise concerns related to these items that require us to carefully consider how to mitigate visual impacts related to this proposal.

Whereas the city has conducted an independent randomized poll that has found approximately 70% of respondents are in favor of burying these power lines within the city limits, the preferred method of construction is underground. Midway City intends that the lines will be buried with the following conditions:

- 1 • *Recognizing that the city is required by law to pay the difference between the cost of overhead lines and the cost of underground lines (in State Code referred to as "excess costs"), and also recognizing that the City Council has a fiduciary duty to manage financial interests of the citizens appropriately, and with reference to Utah State Code 54-14-203, we do not accept the estimated costs provided by the applicant as sufficient information upon which to base funding decisions. Furthermore, we require the applicant to provide 3 actual competitive construction bids, prepared by qualified, bonded, and insured 3rd party entities, in accordance with standard city policy, to establish the actual cost of this construction. These bids must be submitted to Midway City no later than Feb 15, 2020. Failure to deliver these bids on time will cause the city to be unable to fulfill its fiduciary duty to the citizens of Midway by no fault of its own. To be clear: If these bids are not submitted by the applicant, it does not cause the construction to revert to overhead. It is the obligation of the applicant to provide this information in a timely manner and therefore the reasonable remedy for lateness of this information is to adjust any other deadlines by an amount equal to the lateness of this information.*
- 2 • *The bids provided by the applicant will include the base cost of burying the line from Center Street to the end of Wards lane, using current standard materials and practices. The costs of the dip poles at each end must be itemized. In addition, the bids must include the following itemized additional options:*
 - *Continuing underground from Wards Lane to the substation (Additional end of line cost) and*
 - *upgrading components (IE "rack", etc) inside the substation to accommodate raising the underground line (Substation Option 1)*
 - *placing dip poles immediately outside the substation to raise the line outside the substation (Substation Option 2)*
 - *Going underground immediately west of the Fish Hatchery, at least 350' or greater from Center Street/ HWY 113 (Additional Entry Cost)*
 - *An itemized option to use GIL (Gas Insulated Lines) as the transmission line conductor that will be buried. (Alternative Conductor Option)*

Using the cost information the bids will provide, Midway City will then choose the options that meet our needs in terms of cost and function.

- 3 • *Whereas private citizens (represented by the organization known as VOLT) have recognized an underground transmission line project that must be paid by citizens presents a significant financial burden on the citizens of Midway, and have stated they want to help mitigate this burden, and whereas the City Council is significantly concerned about the citizen impact of the full cost of underground construction, the city hereby requires that in order to proceed with underground construction a minimum of 1.5 Million US dollars in "donation" funds must be presented to the city in the form of contractual authorization to use these funds for the purpose of the burial of transmission lines, from an escrow bank account serviced by a qualified escrow service. If VOLT is able to raise more than \$1.5M and the underground project costs exceed \$1.5M, the City*

is delighted to accept more help from VOLT. If the final cost of the construction is less than \$1.5M, any excess donations will be retained by the donating entity (IE "VOLT"). It is up to VOLT to return the amount to the rightful owners. We officially express our deep gratitude to the VOLT organization for their hard work and dedication in the service of our town in potentially making actual private funds available.

- 4 • Midway City must secure sufficient funds to cover the cost of construction. If financing is needed then the board of HLP must approve the issuance of bonds sufficient to cover the remaining final cost of construction, as determined by the bids, and after adjusting for the "base" cost of overhead and any other adjustments. Midway City will also work with the HLP board to determine the best mechanism for the bonds to be repaid (IE per-meter charge, per Kwh charge, etc), considering also that the bond issuer may have requirements. Furthermore Midway City Council may, at its discretion, enter into a contract with HL&P that establishes that these funds are to be used by the City to pay for the underground construction costs related to the new construction in Midway, including costs related to any small portions that extend slightly but contiguously out of city limits as part of completing this project.
- 5 • The appropriate Wasatch County Land Use Authority must approve a change in the plan for construction of the portion of the line that is within County jurisdiction and under the existing county CUP that will allow the dip poles (as needed for transition from overhead to underground) near HWY 113 to be moved to a location that is acceptable to the City Council. As guidance for this process, at this time the Council envisions a location near the Fish Hatchery, but we are open to discussion of the best alternatives that will achieve our goals of mitigating visual impacts near to our entry corridor.
- 6 • Prior to construction, the applicant will submit "visual mitigation" landscaping plans and simulations, that show a reasonable use of vegetation following national standards to mitigate the visual impact of any large diameter (> 24" at ground level) dip poles that are used. The intent is to obscure the base of the poles as much as possible with vegetation, while following accepted industry overhead line construction standards and accommodating safety and access requirements.
- 7 • The Midway City attorney will conduct a thorough review of this motion and the related requirements, with the intent of ensuring the city is acting in good faith and following all applicable laws regarding use of City funds and the issuance of a CUP.
- 8 • As applicable to underground construction, the route followed will be the Alternate Route "B", allowing for possible future full width construction of 970 S should that ever come to pass.
- 9 • Whereas many private citizens have expressed in written form submitted by VOLT that they would donate the value of their easements to reduce the cost burden borne by the City, these amounts will be subtracted from the underground cost the City will pay.
- 10 • All distribution lines along the route shall also be buried at the cost of HL&P.
- 11 • HL&P shall install at its own cost conduit sufficient to allow communication lines to also be placed underground.
- 12 • The applicant will obtain all necessary property rights and easements prior to the commencement of construction.
- 13 • The applicant shall contact all property owners whose properties are directly affected by changes to the line(s) prior to beginning construction.
- 14 • In the event a final determination is made by a court with jurisdiction that any existing property rights are not sufficient for the project, the applicant will acquire legally sufficient property rights for the project, which may include negotiated agreements with the property owners or the use of eminent domain. As a part of this process and in

accordance with Utah law, the applicant will pay compensation for the properties either as negotiated with the property owner or determined by the court.

- 15 • Once construction is finished on the underground line, the actual costs will be trued-up and either the applicant shall refund the over-payment to the City, or the City shall pay the difference to the applicant.
- 16 • The City will pay the difference between the standard cost (which includes engineering cost, the cost to install the line, all easement costs, all severance damages that RMP would have been required to pay had the line gone above ground) and the actual cost of the buried line.

With regard to an underground project, we add the following additional findings:

- H • Midway City conducted an independent randomized poll and it was reported that 70.1% of respondents expressed willingness to bear the cost burden of burying the line.
- I • The City is relying on representations made by property owners along the line route that they will donate the amounts paid for easements and severance damages to the City in order to reduce the cost of burying the lines.
- J • The City is relying on representations made by the "VOLT" group that they can raise a substantial amount of money to help pay for an underground project.

If the applicant has met all of the city's request's given in this motion in a timely manner, but the city has not been able to secure ALL of the following 3 items:

a) sufficient funding to pay for the project either through private donations or a vote by the HLP board to approve a sufficient issuance of bonds to make up the difference, and reasonable assurance that related bond funds will be obtainable and usable by the City for this purpose

AND

b) the required minimum in "donation" fund dollars

AND

c) a vote by the Wasatch County Council to approve a location for the dip poles that would otherwise be alongside HWY 113 that is acceptable to the Midway City Council

... by March 1, 2020, then the applicant may proceed with overhead construction with the following conditions:

- 17 • The route followed will be the "Alternate Route B", allowing for possible future full width construction of 970 S should that ever come to pass.
- 18 • All distribution lines along the route shall also be buried at the cost of HL&P.
- 19 • HL&P shall install at its own cost conduit sufficient to allow communication lines to also be placed underground.
- 20 • The applicant will obtain all necessary property rights and easements prior to the commencement of construction.
- 21 • The applicant shall contact all property owners whose properties are directly affected by changes to the line(s) prior to beginning construction.
- 22 • In the event a final determination is made by a court with jurisdiction that any existing property rights are not sufficient for the project, the applicant will acquire legally

sufficient property rights for the project, which may include negotiated agreements with the property owners or the use of eminent domain. As a part of this process and in accordance with Utah law, the applicant will pay compensation for the properties either as negotiated with the property owner or determined by the court.

- 23 • The applicant will use the taller poles, with fewer poles and longer spans.
- 24 • The applicant will use the minimum possible diameter of poles in all locations. The applicant will use wood tangent poles wherever possible, and the applicant will work with property owners and the city in considering guyed structures versus large diameter structures as a possible construction method at "corners". The Midway City Council will ultimately decide which option is best, while complying with all applicable laws and construction standards.
- 25 • Where metal poles are used, the applicant will use the self weathering rust colored steel poles.
- 26 • Prior to construction, the applicant will submit "visual mitigation" simulations, that show a reasonable use of vegetation following national standards to mitigate the visual impact of any large diameter (> 24" at ground level) poles that are used. The intent is to obscure the base of the poles as much as possible with vegetation, while following accepted industry overhead line construction standards and accommodating safety and access requirements.
- 27 • While following national construction standards, in order to mitigate the possible negative affects of EMF on personal health electronic devices that may be used by nearby residents (such as unwanted noises caused in cochlear implants for example) the applicant will make a reasonable attempt at minimizing EMF emissions near overhead lines as measured on the ground underneath the line by using the most current available technologies for such purpose.
- 28 • The transmission lines used shall be non-specular or low-reflective so as to reduce visual impact.
- 29 • In general the applicant shall mitigate the visual impacts of the construction to the maximum extent possible while following all relevant safety and construction standards.

Second: Council Member Van Wagoner seconded the motion.

Discussion: None

Vote: The motion was approved with the Council voting as follows:

Council Member Drury	Aye
Council Member Orme	Aye
Council Member Probst	Aye
Council Member Simonsen	Aye
Council Member Van Wagoner	Aye

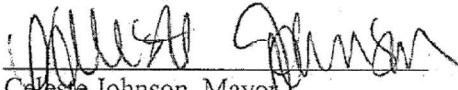

Celeste Johnson, Mayor

EXHIBIT B TO ROCKY MOUNTAIN POWER’S HEARING BRIEF

Heidi Gordon

From: Heidi Gordon
Sent: Friday, April 3, 2020 4:28 PM
To: Corbin Gordon
Cc: 'Reich, Bret'; 'mmorris@swlaw.com'; 'Adam Long'
Subject: CUP deadlines

Hi Corbin:

I wanted to remind you that Rocky Mountain Power's obligation to provide the final bids to Midway City was complete on March 26, the date I forwarded the detailed bid information sheets to you. Under the terms of the permit issued by the Midway City Council, the City has 15 days from March 26 to meet its obligations to secure the necessary permissions from Wasatch County and funding, which is April 10. If those obligations are met timely, Midway City may elect one of the four options to construct the project underground, and Rocky Mountain Power will select which contractor it will use for the work. Otherwise, under the express terms of the permit, the project will be constructed as an overhead transmission line.

Heidi

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EXHIBIT C TO ROCKY MOUNTAIN POWER'S HEARING BRIEF

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BEFORE THE UTAH UTILITY FACILITY REVIEW BOARD

ROCKY MOUNTAIN POWER Petitioner	RESPONDENT MIDWAY CITY'S OBJECTIONS AND RESPONSES TO PETITIONER'S INTERROGATORIES
vs.	
MIDWAY CITY Respondent	Docket Number 20-035-03

Respondent Midway City, by and through the above counsel, hereby objects and responds to Petitioner Rocky Mountain Power's Interrogatories. Midway reserves the right to alter or amend these responses as required by further investigation or discovery.

The identification by Midway of a document is not a representation that such document is in its possession, custody, or control. Nor are Midway's responses to these discovery requests admissions that any testimony, information, document, or other tangible thing disclosed is relevant, proportional or admissible in this action. In addition, Midway expressly reserves the right to object to any testimony, information, document, or other tangible thing on the basis of (i) relevance, proportionality and admissibility; (ii) any applicable privilege or immunity; and (iii) any other valid objection under applicable state, federal, or local rules.

Subject to and without waiver of the foregoing, Midway objects and responds to Petitioner's Interrogatories, as follows:

OBJECTIONS AND RESPONSES TO INTERROGATORIES

INTERROGATORY NO. 1: What is the total amount of funding Midway City (or any third party on Midway City's behalf) has secured for excess costs for underground construction of the project?

RESPONSE: Midway also objects to this interrogatory on the grounds that it assumes facts not in evidence and is misleading and unfair because the actual excess costs have not been determined. Subject to and without waiving the foregoing objection, Midway responds that it has secured \$3,500,000 from its own resources and \$600,000.00 from intervenor VOLT. Midway further responds that it may secure additional funding from other sources after the actual excess costs, as defined by Utah Code § 54-14-203(2), are determined. Midway reserves the right to supplement and/or amend its responses hereto should additional or different information become available.

INTERROGATORY NO. 2: Describe all efforts Midway City has made to obtain funding for excess costs for underground construction of the project.

RESPONSE: Midway objects to this interrogatory on the grounds that it seeks information protected by the attorney-client privilege. Midway also objects to this interrogatory on the grounds that it assumes facts not in evidence and is misleading and unfair because the actual excess costs have not been determined.

Subject to and without waiving the foregoing objection, Midway responds that it currently has a request pending before the Heber Light & Power Board to receive a loan to provide funding until such time as the actual excess costs are ascertained and Midway is able to bond for the amount needed to pay for the excess costs. The Board has taken no action on the

request. Midway has also met with bond counsel and is exploring the steps necessary to put a bond on the general election in November. Midway has, through its council members, examined its budget and tapped into its own resources. Finally, Midway continues to work with intervenor VOLT to privately raise additional funds to pay for actual excess costs.

Midway reserves the right to supplement and/or amend its responses hereto should additional or different information become available.

INTERROGATORY NO. 3: Has Midway City obtained the necessary approvals from Wasatch County to modify RMP/HLP's conditional use permit from Wasatch County to allow the power line facilities in Wasatch County to be modified so the transmission line could be constructed underground within Midway City?

RESPONSE: No. Midway reserves the right to supplement and/or amend its responses hereto should additional or different information become available.

INTERROGATORY NO. 4: Describe all efforts Midway City has made to obtain the necessary approvals from Wasatch County.

RESPONSE: Midway objects to this interrogatory on the grounds that it seeks information protected by the attorney-client privilege. Subject to and without waiving the foregoing objection, Midway responds that it has met and communicated with the County on several occasions regarding the referenced approvals. The County has informed Midway that the County will not move forward with the approvals until the actual excess costs are determined and Midway is able to pay those costs.

DATED this 14th day of April 2020.

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

CERTIFICATE OF SERVICE

I hereby certify that on the 14th day of April 2020, I filed a copy of the above-captioned document with the Clerk of Public Service Commission via email system, which delivered an electronic copy to the following:

Counsel for Rocky Mountain Power
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/s/ Corbin B. Gordon
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