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BEFORE THE UTAH UTILITY FACILITY REVIEW BOARD

ROCKY MOUNTAIN POWER Petitioner vs. MIDWAY CITY Respondent	**TRIAL MEMORANDUM OF MIDWAY CITY** Docket Number 20-035-03

Respondent Midway City, by and through its counsel of record, hereby submits this Trial Memorandum outlining the salient points of law and expected evidence that will be presented during the trial of this matter.

FACTUAL AND PROCEDURAL BACKGROUND

Rocky Mountain Power ("RMP") and Heber Light and Power ("HL&P") jointly applied for a conditional use permit ("CUP") to install a dual circuit 46kV and 138kV transmission line (one each for HLP and RMP) through the boundaries of Midway City. The Midway City portion of the line is approximately one mile and is part of a much larger seven-plus-mile project that runs through Wasatch County and Heber City before reaching Midway. On December 19, 2019, the Midway City Council approved the CUP on the condition that the line be buried to mitigate the

negative visual and health impacts of the transmission lines and skyscraping poles. Recognizing that burying the line will be more expensive than standard costs, the CUP requires the City to pay for those excess costs, once determined, as required by the Utility Facility Review Board Act (the "Act"): "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." (CUP at 4, bullet 15.)

The line through Midway City is controversial for several reasons: 1) the proposed route places large metal poles (eight feet in diameter and ninety feet high) through a quiet, residential neighborhood, where most of the poles will be sitting in homeowners' front yards; 2) the decision to do a joint project with dual circuit 138kv lines has increased the size of the poles and structures far beyond the existing line in the area and other 138kv lines just a half mile away; and 3) there is a deep desire among citizens to bury this line through Midway, but the draconian deadlines imposed by the statute do not provide the City time to pursue a bond needed to bury the line.

RMP petitioned this Board for review of the CUP, and Midway counter-petitioned for review of several substantive issues. Many of the original disputes have become moot while RMP proceeded under the CUP. The Board has set this matter for a trial on the merits to begin on April 20, 2020.

ISSUES FOR REVIEW

There are two remaining issues that this Board will be called on to resolve at the trial:

ISSUE NO. 1: Whether the "actual excess costs" of burying the line have been appropriately determined, thus triggering Midway's obligation to pay, where the bids secured by

RMP are grossly inflated and inconsistent with RMP's own data and do not include the actual costs of easements, and where Midway has been unfairly deprived of a right to obtain its own bids because of RMP's monopoly and the draconian deadlines under the statute?[1]

ISSUE NO. 2: Whether it is necessary for RMP to complete construction of the line before the end of 2020, as insisted by RMP, where the potential negative outcomes cited by RMP have existed for years and are very unlikely to occur and where that goal cannot reasonably be met in any event?

SCOPE OF REVIEW BY THIS BOARD

Utah Code § 54-14-305 authorizes this Board to review and decide the above issues. Specifically, Section 305(2)(a), (b)(ii) and (b)(iv) empower this Board to decide whether and when the line should be built and what conditions may be placed on its construction. And, Section 305(2)(b) authorizes the Board to resolve disputes regarding the costs of construction. As explained below, Midway City asks that this Board decide both trial issues in its favor.

SUMMARY OF ARGUMENTS

ISSUE NO. 1: Whether the "actual excess costs" of burying the line have been appropriately determined, thus triggering Midway's obligation to pay, where the bids secured by RMP are grossly inflated and inconsistent with RMP's own data and do not include the actual costs of easements, and where Midway has been unfairly deprived of a right to obtain its own bids because of RMP's monopoly and the draconian deadlines under the statute?

RMP has failed to adequately establish the "actual excess costs" of burying the transmission line.

[1] The City has filed a separate objection raising arguments regarding the deprivation of its due process rights under the Act.

Under the Act and the CUP, to determine the actual excess costs the Board needs to know: a) the actual costs to bury the line; 2) the actual costs of the easements, including severance damages; and 3) the costs to construct the line overhead. As set forth more fully below, RMP has ignored its evidentiary obligations before this Board on two of the three requirements.

The three bids it presents in this case are absurdly high by a factor of two to four times, are wildly inconsistent (ranging from $12 million to $28 million) and are contrary to the 2018 estimates of the same work RMP itself relied upon. They cannot be considered "competitive bids" as required by statute, or RMP is proceeding in bad faith. Moreover, RMP has failed to identify any of the bidders or call them as witnesses, effectively precluding the City from challenging the bids on cross-examination. Finally, having provided the bids to Midway only three weeks before trial, RMP has made it impossible for Midway to obtain its own competitive bids.

Even if the bids were legitimate, RMP has failed to include the actual cost of the easements it must acquire in calculating the "actual excess cost." The only evidence offered by RMP is a general appraisal report that, strangely, does not evaluate any of the actual properties that will be impacted. As a result, the artificially round number of $20,000 is nothing more than an estimate that does not reflect what the "actual costs" of the easements will be, and is insufficient to establish what the "actual costs" of the easements are, as required by the statute.

Further, RMP has also failed to include any severance damages, which are part and parcel of the compensation that must be paid to landowners for taking their property and expressly required by the CUP.

As a result, RMP has not established the "actual excess costs" and cannot do so with the evidence it intends to introduce. RMP's bids are faulty so the actual costs to bury cannot be

ascertained, RMP has not obtained the "actual" costs of the easements (through either settled negotiation or condemnation) and did not include any severance damages. As such, the obligations of Midway under either the Act or CUP are not triggered. Until this information is provided, Midway City has no obligation to pay the "actual excess costs". This Board should either adopt Midway's evidence on these points or order RMP to obtain it, however long it may take.

ISSUE NO. 2: **Whether it is necessary for RMP to complete construction of the line before the end of 2020, as insisted by RMP, where the potential negative outcomes cited by RMP have existed for years and are very unlikely to occur and where that goal cannot reasonably be met in any event?**

RMP has failed to demonstrate, based on the evidence in the record, that construction of the line before the end of 2020 is either necessary or even feasible.

RMP supports its position with predictions of rolling blackouts and other catastrophes unless the line is completed by the end of the 2020. While some of these events are a technical possibility, they are very unlikely. Testimony from Midway City's expert establishes that barring a massive natural disaster, most lines can be fixed within hours, if not days, which does not justify the timeline RMP suggests. Moreover, these possibilities have existed for years, and delaying construction to allow Midway City to bond for the costs in November of 2020 will not increase the risks. There is no evidence that RMP's line has experienced blackouts in the past, and there is nothing to suggest it will experience blackouts soon. While the long-term need is recognizable, RMP fails to show that there is an immediate need so extreme that it should foreclose Midway City's opportunity to pass a bond. RMP's claim rings particularly hollow because its own bids establish that the proposed deadline to complete installation by the end of 2020 is unreasonable and not possible—especially now because of COVID-19 delays.

In summary, Midway City asks for two simple things: 1) that the Board establish the "actual excess costs" to bury the line, and that all questions regarding costs be decided in Midway's favor due to RMP's failure to meet its evidentiary burden; and 2) that the Board determine the appropriate commencement date to start the line be in the spring of 2021 so that Midway City has time to bond for the actual excess costs.

ARGUMENT AND AUTHORITIES

I. RMP Has Not Appropriately Shown the Actual Excess Costs of Burying the Line and, Thus, Midway City is Not Yet Obligated to Pay.

Under both the CUP and the Act, RMP's right to commence construction and Midway's obligation to pay are not triggered unless and until the "actual excess costs" of burying the transmission line through the City are determined. Fortunately, the Act defines and outlines the process for arriving at the "actual excess costs".

The "actual excess cost" is defined as the difference between "the standard cost of a facility" and "the actual cost of the facility, including any right-of-way, as determined in accordance with Section 54-14-203." Utah Code § 54-14-103(1). For transmission lines, the "standard cost" is deemed to be above-ground construction. *Id*. § 54-14-103(9)(b). To determine the actual cost of the facility, or building the line underground, however, the Act requires RMP to obtain "competitive bids" and to accept one of them. *Id*. § 54-14-203(2). Importantly, the Act specifically includes in the calculation the actual cost of "any right-of-way", although it does not prescribe a process for calculating that sum. *Id*. § 54-14-103(1).

Thus, the "actual excess cost" triggering action by both parties can be expressed in the following simple equation:

$$\boldsymbol{a - b - c = d}$$

OR

(A) Actual Cost of the Facility (underground based on bids)
− (B) Actual Cost of Easements (based on settlement or condemnation)
− (C) Standard Cost of the Facility (above-ground construction)
= (D) Actual Excess Costs

The problem with RMP's case, as explained more fully below and as will be shown at trial, is that parts A and B of the equation are missing.

A. The Bids Submitted to this Board are Neither Competitive Nor Legitimate and, Thus, Do Not Represent The Actual Excess Costs.

RMP must obtain "competitive bids" and select one of the bids before the "actual excess costs" can be determined and before Midway's obligation to pay those costs is triggered. *Id*. § 54-14-203(2). Of this, there is no dispute. The phrase "competitive bids" is not defined in the statute, but the plain meaning and purpose of this process is to arrive at the fair market cost of construction underground—not some inflated figure that renders performance all but impossible. Moreover, as the party to whom discretion is delegated to select the bids, RMP has a duty to act in good faith. *E.g.*, *Res. Mgmt. Co. v. Weston Ranch & Livestock Co.*, 706 P.2d 1028, 1037 (Utah 1985).

In this case, RMP's conduct and its unreasonable bids fail to meet the standard. First, the bids are so outrageously high and so far apart when bidding the same work that it destroys all credibility. The bids range from $12,646,665 to $28,356,571. To give this Board context, in 2018, an estimate was given to ***bury the entire line of 7 miles*** for $32.16 million. Less than two years later, the cost to bury just 1 mile of the line is now, supposedly, more than $28 million. This flies in the face of reason.

John Nelson, a 50-year expert in the industry, has extensively reviewed the bids presented by RMP and, based on the identical specs prepared by RMP, submitted a cost estimate of

approximately $8.1 million dollars per mile to bury the line. This is ***some $4 million lower than even the lowest bid!***

To give the Board a further sense of how inflated RMP's bids are, under Mr. Nelson's analysis, burying the line within Midway's boundaries would cost a total of $6.48 million (for one mile). Compare that against the sums in RMP's three bids: 1) $12.46 million (***92% increase***); 2) $14.08 million (***117% increase***); and 3) $22.36 million (***245% increase***).

Mr. Nelson will testify that one of the primary reasons for the grossly inaccurate sums is that RMP's specifications include several items that are wholly unnecessary and appear to have been included for the purpose of driving up the costs. When these items are removed from the bids, the costs to bury the line drop an additional 25% to $5,040,916.

For example, it is common in the industry to install an empty conduit when burying lines so that an extra cable can be pulled in the future should one of the other cables go down. RMP's bid requires that not just the conduit be installed, but that a cable be pulled through the conduit, which will sit there "just in case". Mr. Nelson will testify that not only is pulling an additional cable overkill, but having an unconnected cable actually increases the risk that it will deteriorate because it will not be energized, and that there is nothing in industry standards that requires this extra cable. The additional cable (one for each of RMP and HL&P) needlessly increases the cost of the estimates.

Mr. Nelson will also testify that the bids are much higher than needed due to the unreasonable requirement that the line be installed by the end of 2020. All of the bidders openly acknowledge that this is impossible. They note that construction of the line will continue well into

the spring of 2021, and it is likely that the exorbitant extra costs were included in their bids due to the unreasonable timeframes imposed on them by RMP.

Further, Mr. Nelson will also testify that the bids are overstated because of ***errors*** in the specifications relating to the length of the lines. In requiring more equipment and material than necessary, these errors have added ***millions of dollars in unnecessary costs***.

Second, RMP's bids are inconsistent with its own data. In 2018, HL&P hired NEI to conduct a cost analysis of constructing the line, comparing underground and overhead construction. That study shows that costs to bury lines are normally ***four to five times*** that of going above ground (see page 2), and the study estimated the cost of overhead lines at $1.4 million and $6.38 million to go below ground (4.5 times the underground cost). Notably, that estimate is striking similar to Mr. Nelson's expert cost estimate. RMP's bids, by contrast, fall well outside this range, to the tune of ***nine to sixteen times***. Indeed, if RMP is to be true to its own prior analysis, then it must boost the overhead construction costs to between $2.8 million and $5.6 million to align with its exaggerated underground bids—absurd sums by any measure.

Third, in addition to the extravagant numbers, the RMP bids are so far apart—varying by $10 million, $12 million and $14 million in the three cost estimate scenarios—that it immediately calls into question the legitimacy of any of the them. A deviation of $14 million, more than the entire lowest bid, is an incredible figure for only three bids and ***one mile*** of work. If one adds in Midway City's cost estimate of $6.48, moreover, the bids from RMP are even more wildly inconsistent, which undermines the credibility of RMP's entire submission to this Board.

Fourth, this bid evidence is made even worse because Midway City has no practical or fair method to challenge it. None of the bidding contractors is identified by RMP, and RMP has—no

doubt purposely—declined to call any bidder as a witness at trial. Instead, RMP offers up an in-house employee (Darin Meyers) to testify to what the bids say, which is useless.[2] We can all read the bids. What the Board needs to know is whether these bids actually reflect market costs and how much these bids were increased due to RMP's unreasonable specifications and time pressures, which information, due to RMP's failure to identify or call these bidders, will not be available.

The bids submitted by RMP are essentially worthless without those who actually prepared the bids available to answer questions. And, it is patently unfair for RMP to present bids prepared by others and ask the Board to rely on them, when Midway City did not have an opportunity to cross-examine the witnesses.

The prejudice caused by the missing witnesses is compounded by the fact that Midway City has found it impossible to obtain an independent third-party bid. The bids were only provided to Midway on March 26, 2020—a mere three weeks before trial. RMP is a legal monopoly in this state. It issued the bid specs to eighteen "approved" contractors, and only three replied. Midway has been told by contractors who are licensed in Utah that they will not submit a bid because they rely on RMP for their livelihood. This forced Midway to look to out-of-state contractors, but these companies are not licensed in the state of Utah and have been unwilling to prepare a bid on a project they suspect they have no chance of securing.

This problem could have been solved with time, but given the fact that Midway received RMP's bids a mere three weeks before the hearing, and also given the unfair deadlines imposed by the Act, Midway City has no capacity to get a reliable third-party bid before the hearing. This

[2] As stated in its objections to witness testimony, filed separately, Midway objects to introduction of the bids at trial and to the RMP employee testifying regarding them for lack of foundation. Utah R. Evidence 602 ("A witness may testify to a matter only if evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter.").

is patently unfair, and Midway City has separately filed objection to a violation of its due process rights under the statute.

With that said, given RMP's submission of legally defective bids and its inability to lay a foundation for the bids, the only actual and admissible evidence this Board will have available is the cost estimate of Mr. Nelson, establishing that the cost to bury the line is $6.3 million per mile once the extra cable is removed from the specifications, which Midway City asks the Board to adopt as the "actual cost" to bury the line.

B. Even if the Bids Were Legitimate, RMP has Not Included the Actual Costs of Easements to Determine the Actual Excess Costs.

There is no dispute that the Act requires RMP to include the actual cost of "any right-of-way" in establishing the "actual excess costs" of the underground line. Utah Code § 54-14-103(1). The CUP requires the same thing. (CUP at 4, bullet 15.) There is also no dispute that running the lines through homeowners' yards will require easements. Unlike the actual construction costs, where competitive bids (as opposed to estimates) are required, the statute does not explain how "actual" easement costs are to be determined. As such, the plain meaning of those words—"the actual cost … of any right-of-way"—must be used. *E.g.*, *Garfield Cnty. v. United States*, 2017 UT 41, ¶ 15, 424 P.3d 46 (the plain meaning of statutory language must be used to interpret a statute). The phrase "actual cost" in ordinary parlance means more than conjecture or even a mere estimate. It must be a precise calculation of the market costs of acquiring the easements.

This RMP has not done. It includes a round $20,000.00 number for cost of all easements and supports it in the record with a general appraisal report that is not specific to any property or landowner in Midway. This is the same information RMP provided with its "estimate" of the standard cost. And, as was the case with the bids, the persons who actually prepared the appraisal

report are not even listed as witnesses.[3] By contrast, the City has presented an industry expert, Gerry Webber, who has done an extensive and particularized analysis of the ***actual properties*** affected by the line. His well-supported conclusion is that the total costs of the easements is likely to be more than $2 million.

Even if the appraisal were not defective, it is insufficient under the Act. In this regard, the statute—in which Midway City assumes RMP was heavily involved in influencing and drafting—creates a conundrum. The Board must determine the "actual cost" of the line and the "actual cost" of the easements. The actual cost of the underground line is established by verified bids. Yet, the only way to determine, beyond a mere estimate, what the "actual cost" of the easements are is to either negotiate them with the property owner or condemn them; there is no other way allowed by the statute.

While the Board may hear evidence from appraisers and this evidence may be helpful in some may, it cannot establish the "actual cost" of the easement, as required by the statute. There is no way to obtain this evidence without requiring RMP to either buy the easements or proceed to condemn the needed easements and to get a judgment establishing these costs. In fact, under Section 54-14-202, if the Board determines that RMP has not provided adequate information, it has the right to request the information from RMP, and to suspend the issuance of its decision "for 30 days after the day on which the public utility provides the information requested …".

Finally, RMP's submission to this Board of actual excess costs is deficient because it does not include severance damages resulting from the easements RMP must obtain. The CUP

[3] Midway has filed a separate objection to this report and the related testimony of Mr. LeFevre as lacking foundation and insufficient under Rule 702.

expressly requires severance damages to be included in the actual costs. (CUP at 4, bullet 15.) It is also clear under Utah law that a landowner is entitled to adequate compensation when a quasi-government actor physically takes or occupies the owner's property, as would be the case here. *Am. W. Bank Members, L.C. v. State*, 2014 UT 49, ¶ 32, 342 P.3d 224. When only a portion (as opposed to the whole) of the property is taken, the compensation includes, in addition to the value of the portion taken, diminution in the value of the remaining portion of the landowner's property. *Utah Dep't of Transp. v. Target Corp.*, 2018 UT App 24, ¶ 15, 414 P.3d 1080. This value is known as "severance damages."

While RMP's $20,000 figure may include some value for the actual easements taken, it plainly does not include severance damages to be paid to landowners, which could be substantial here. Because severance damages are part of the compensation owed to a landowner whose property is partially taken, RMP ***must*** include those payments in its calculation of the "actual cost" of the easements. *Target Corp.*, 2018 UT App 24, ¶ 15. RMP has failed to do so here and, as such, it has not established the "actual excess costs" as required by the Act and CUP.

Midway City asks that the Board either (a) require RMP to adjust the specifications and obtain more accurate bids and to secure the actual costs of the easements, including severance damages, or (b) adopt Mr. Nelson's estimate as the cost to bury the line and Mr. Webber's report in establishing easement and severance costs needed to establish the "actual excess costs" that Midway is required to pay.

II. It Is Not Necessary or Even Possible to Finish the Line Now, and Delaying Construction to Allow Midway City to Bond for the Costs Will Not Impair RMP's Ability to Provide Safe, Reliable and Adequate Service to its Customers.

As explained above, Midway's obligations to pay for "actual excess costs" is not triggered because RMP has not established those costs. There is also no legitimate reason for the Board to accept RMP's dire predictions of disaster and force Midway into an unfair position of not being able to pay for the costs.

By law, RMP's authority to construct the transmission line—and Midway's ability to condition it—hinge on whether the line is necessary to provide safe, reliable, adequate and efficient service to customers. Utah Code §§ 54-14-102(1)(b), 201(1). RMP insists that the new line is "urgently needed" and that the failure to act now "could result in an array of negative system outcomes", including "outages lasting days or weeks…." (Pet. at 3.) RMP also represents that, "[I]n order to continue providing safe, reliable, adequate and efficient service to its customers, including HLP, Rocky Mountain Power must complete construction of the Project before the end of 2020." (*Id*. at 5.)

While RMP makes this claim, there is little in the record to support it. RMP's own experts do not say this. And, Midway City's expert John Nelson has analyzed RMP's systems and will testify that the potential for "rolling black-outs" is statistically possible but almost non-existent, and that delaying the line for nine months to allow Midway City to bond to bury the line will not have the system outcomes claimed.[4] In fact, the evidence shows that the weaknesses in RMP's

[4] Under the Local Government Bonding Act, Midway City cannot pass a general obligation bond until November of 2020, which, in turn, would likely delay the commencement of construction of the Midway portion of the line until the spring of 2021. Utah Code § 11-14-201. Having failed to establish the "actual excess costs", RMP has the burden of demonstrating that this suggested delay will "impair its ability to provide safe, reliable and adequate service to its customers", which it cannot do. *Id*. § 54-14-102(1)(b).

system have existed for years and that there will be no appreciable increase in that risk during the next year.

RMP bears the burden to prove that failure to finish the line by the end of 2020 will "impair its ability to provide safe, reliable and adequate service" to its customers. RMP's claim fails for numerous reasons.

First, RMP's claim to rolling blackouts is based on a long list of what "could happen" or what "may happen" without addressing the likelihood that it will happen.

Second, Midway City's expert testifies that while limited outages are statistically possible, they are highly unlikely, and even if one of the lines went down, it would most likely be fixed within hours, and not the powerless Armageddon of days and weeks.

Third, RMP has allowed its system to function for almost a decade far below industry standards. RMP's line has had the possibility of losing one of its sources for this entire time. There have been no rolling blackouts and no loss of power during this time, suggesting that there is little risk to RMP's system if construction on the line is not finished until 2021.

Fourth, RMP offers no testimony as to the likelihood of losing one of its sources, or how long the line would be down if it did. It suggests chaos "could ensue" if the line does not go in by the end of 2020, without any evidence that waiting a year will "impair its ability to provide reliable service to its customers." There is no testimony from RMP stating there will actually be blackouts or damage to its system if the line was not complete until 2021.

Fifth, RMP's own expert on this issue, Jake Barker, admits that if one of the transmission lines goes down, RMP could switch to alternative sources and restore "all but 42 megawatts of customer load which would raise voltages above planning standards."

Sixth, Midway's expert Mr. Nelson will testify that nothing material has changed on the line during the past five years, and that the best predictor of the future is the past. Given that this line has not experienced "rolling black-outs" in the past, he will testify the likelihood of that happening between now and the end of 2021 is highly unlikely.

Seventh, RMP's bids establish that finishing the line by the end of 2020 is an impossibility. Even the most optimistic bids set deadlines well into March of next year, and that does not appear to take into account the additional month and a half delay that this hearing will cause. The reality is that the line is not going to be finished by the end of 2020, which means RMP is harmed in no way by allowing Midway City to delay its portion in order to bond.

Eighth, Given the fact that the line will not be finished by 2020, it seems RMP could begin construction on the north end in the summer and fall of 2020 and allow Midway City to pass a bond in November. By the time RMP is ready to install the Midway section (which would be February of 2021) Midway City would be able to pass a bond and fund the excess costs.

Finally, Midway City imposed the condition on RMP that it cannot begin construction of any portion of the line within Midway City without first obtaining the necessary easements for the same. This line places poles in the front yards of numerous people, and it is clear there will be a bitter battle regarding the value of the easements and the severance damages caused by the line. RMP has offered no evidence that would establish there is even a remote chance it will be able to install the line in 2020 given the legal proceedings required to obtain the easements necessary to build the line.

It cannot be emphasized enough that this transmission line is a permanent fixture that, once installed, is unlikely to ever go away. It will impact this neighborhood and Midway City for

decades and even centuries. Asking for an additional nine months to bond so that the line can be buried is not unreasonable given the long lifespan of the line. This is frankly why this Board has been created—to push the pause button on a utility's desire to proceed without consideration for the long-term impact on the affected community.

Where RMP cannot demonstrate it will be harmed by the delay, this board should grant Midway City's request. In fact, it is assumed the line will start from the north, some 6 miles away, and won't even make it to the Midway City boundary until the spring of 2021, which means Midway City's request is unlikely to even interfere with RMP's critical path.

All of this firmly establishes that RMP has failed to demonstrate that waiting a year to install the line will impair its ability to "provide safe, reliable, and adequate service to its customers". This Board has the power to determine that delaying the Midway City portion of the line to 2021 will not impair RMP's ability to provide reliable service to its customers, and to make a finding that the appropriate commencement date of the Midway City portion of the line is spring of 2021.

CONCLUSION

Because of the foregoing, Midway City asks that the Board either (a) require RMP to adjust the specifications and obtain more accurate bids and to secure the actual costs of the easements, including severance damages; or (b) adopt Mr. Nelson's estimate as the cost to bury the line and Mr. Webber's report to establish the costs of the easements so that the Board can calculate the "actual excess costs" that Midway is required to pay; and in either case (c) establish the commencement date of the Midway City portion of the line be no earlier than March 1, 2021.

DATED this 17th day of April 2020.

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

CERTIFICATE OF SERVICE

I hereby certify that on the 17th day of April 2020, I filed a copy of the above-captioned document with the Clerk of the Court via the Court's electronic filing system, which delivered an electronic copy to the following:

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