

ROCKY MOUNTAIN POWER

VS

MIDWAY CITY

Docket 20-035-03

PUBLIC

HEARING

April 21, 2020

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Public Hearing
April 21, 2020

UTAH UTILITY FACILITY REVIEW BOARD PUBLIC HEARING
DOCKET 20-035-03

ROCKY MOUNTAIN POWER, PETITIONER

VS. MIDWAY CITY, RESPONDENT

Taken on April 21, 2020 * 9:02 a.m.

Volume II of III

Proceedings conducted via teleconference

Day 2 of Hearing

Reported by: Tamra J. Berry, CSR, CCR, RPR

A P P E A R A N C E S

PUBLIC SERVICE COMMISSION:

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JORDAN A. WHITE, BOARD MEMBER

TROY FITZGERALD, BOARD MEMBER

GLENN J. WRIGHT, BOARD MEMBER

ROCKY MOUNTAIN POWER:

BRET REICH

HEIDI GORDON

MIDWAY CITY:

CORBIN B. GORDON

JOSHUA D. JEWKES

VALLEY-WIDE OPPOSITION TO LARGE TRANSMISSION LINES
(V.O.L.T.):

MARK O. MORRIS

ELIZABETH BRERETON

-oOo-

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P R O C E E D I N G S

CHAIRMAN THAD LEVAR: Good morning. We're here for day 2 of the Utility Facility Review Board hearing in the matter of docket 20-035-03, Rocky Mountain Power versus Midway City. We have all board members present and counsel for all parties present.

When we concluded yesterday, we had just completed cross-examination of Mr. Benjamin Clegg. There was some discussion of the copies of the NESC code that he referred to in his answers to certain cross-examination questions. There has been some written communication among all the parties since we concluded yesterday. So at this point I'm going to ask if any party has any further comment or any issue with respect to this issue before we conclude with the testimony of Mr. Clegg.

MR. MORRIS: Your Honor, this is Mr. Morris. I'm just checking e-mails to make sure there's nothing since we received word last night by e-mail that Rocky Mountain was not willing to share a copy of the code that their witness read into the record yesterday, purportedly because of copyright concerns. I've read the copyright notice on the one page that they sent, your Honor, and I want to move

1 to strike Mr. Clegg's testimony that read into the
2 record something that Rocky Mountain is not willing
3 to share with the parties that we had no advanced
4 notice of.

5 And as I read that copyright notice, it
6 expressly permits the code to be made part of a
7 public proceeding, which this is. And this is a
8 pretense by Rocky Mountain to prejudice Midway and
9 V.O.L.T. and get into the record something that
10 they're not willing to allow us to fully explore and
11 read, and this also deprives the board of the same
12 opportunity. And the idea that we have to go online
13 and buy something that they read into the record
14 yesterday is preposterous.

15 So I move that Mr. Clegg's testimony
16 referencing that code be stricken from the record.

17 MR. GORDON: And this is Corbin Gordon --

18 CHAIRMAN THAD LEVAR: Mr. Morris --

19 MR. GORDON: Oh, I'm sorry.

20 CHAIRMAN THAD LEVAR: Yeah, before we move
21 on to any other responses to the motion, I just want
22 to ask Mr. Morris a question or two and see if other
23 board members do. I mean the motion to strike would
24 be, to me, a different scenario if the material had
25 been read into the record as part of Mr. Clegg's

1 direct testimony. It was in response to
2 cross-examination questions. And I'm curious if
3 you're aware of any precedence on point that would
4 prevent a witness from referring to materials outside
5 of the record that haven't been admitted into
6 evidence in response to cross-examination.

7 MR. MORRIS: Under the Rules of Evidence,
8 Mr. Chairman, this is hearsay. We don't know whether
9 he was reading accurately, whether he was
10 paraphrasing. And as it came in, I think we all
11 assumed that we'd be getting a copy of it and that
12 copies could be made part of the record so that there
13 was never any dispute about what the material he was
14 reading from said. And for that reason, I didn't
15 object at the time because it seemed so simple, the
16 proposition that we would be provided with copies of
17 what he had fortuitously laid his hands on and had at
18 his disposal to read to us in response to
19 cross-examination. And so because it is hearsay,
20 because it is unreliable, because it is incomplete,
21 because we are prejudiced because we have had no
22 opportunity to review and read for ourselves the
23 material that he was reading from and because the
24 copyright notice on which they rely to keep it from
25 us and from you as the board expressly permits the

1 publication in a -- by a public body in a public
2 proceeding.

3 MR. THAD LEVAR: One more follow-up
4 question then, Mr. Morris. Would your objection be
5 any different if Mr. Clegg had limited himself to
6 summarizing his view of the NESC codes rather than
7 reading provisions of it into the record?

8 MR. MORRIS: It would be moderated a bit
9 because then the board would be presented with, you
10 know, an opinion by somebody of something else that's
11 written.

12 But given the -- given the reliance that
13 Rocky Mountain is apparently placing on this document
14 and the fact that if it was going to be read in, I
15 mean this is not something they didn't anticipate,
16 Mr. Chairman. They -- he didn't just happen to have
17 it with him. He was armed and ready, sitting with
18 counsel during his examination, with no opportunity
19 to see what or how his counsel was signaling him or
20 opening the pages for him or anything like that. I
21 still think we're just as prejudiced by him having
22 him say, "Oh, by the way, I think NESC says X, Y and
23 Z."

24 If that's all he said, I probably wouldn't
25 think it was important enough to worry about. But

1 when he purported to read it chapter and verse to us
2 without everyone in the room having the ability to
3 see what it was he as looking at and reading from, I
4 think that compounds the problem.

5 CHAIRMAN THAD LEVAR: If any other board
6 members have questions for Mr. Morris at this point,
7 please jump on and let me know.

8 I'm not hearing any questions from board
9 members at this point.

10 Mr. Gordon, you were, I think before I was
11 asking the questions, were trying to interject your
12 position on the motion. Why don't you go ahead and
13 do that now.

14 MR. GORDON: We just wanted to join the
15 motion on the record. So Midway City joins
16 V.O.L.T.'s motion to exclude and strike.

17 CHAIRMAN THAD LEVAR: Thank you.

18 Mr. Reich, do you want to respond to the
19 motion?

20 MR. REICH: Yes, I do. We obviously would
21 oppose that for several reasons, first of all to the
22 one that was pointed out. This was a question that
23 was asked by the parties for an explanation of what
24 our specification was based on. They were given the
25 answer that it was based on the National Electric

1 Safety Code. They're the ones that asked the
2 question. They had -- this is a code that's open to
3 everybody if they pay for it. So they have as much
4 access to it as we do.

5 Mr. Morris is incorrect; we're not trying
6 to hide the ball. There's nothing nefarious about
7 not producing the document. But it expressly states
8 on the copyright provision that public authorities
9 are granted permission to republish it. We're not a
10 public authority.

11 So it's our view that that would be a
12 violation of the copyright provision. It is in
13 response to a question that Midway City asked
14 Mr. Clegg. I think that it's interesting if you put
15 this in perspective, I mean I don't think this
16 proceeding is really about Rocky Mountain Power
17 justifying every specification we have and what code
18 title it's supported by, but that's what we asked and
19 we gave them the answer. So I think this whole line
20 of questioning is outside the scope of the board.
21 But to the extent they've asked for it, we've given
22 it to them.

23 And I think it's more accurate for Mr.
24 Clegg to read it than to summarize it in his
25 testimony because then you don't know if his summary

1 is correct.

2 So it's our position that it was read
3 accurately. The parties can certainly purchase a
4 copy. I'm surprised they have experts -- I'm
5 assuming their experts have copies of the National
6 Electric Safety Code, and they can refer to it.

7 I provided this morning, in response to
8 Midway City's request, the references that he read.
9 So they have every means available that we do to
10 confirm what was read in response to their question.

11 CHAIRMAN THAD LEVAR: Thank you,
12 Mr. Reich.

13 Do any of the board members have any
14 questions for Mr. Reich at this point?

15 Okay. Let me bring this --

16 MR. MORRIS: May I respond, Mr. Chairman?
17 This is Mr. Morris.

18 CHAIRMAN THAD LEVAR: First let me see if
19 any board members have any questions for Mr. Reich.

20 Do any board members have questions for
21 him at this point?

22 MR. JORDAN WHITE: This may be a question
23 for Mr. Reich and/or Mr. Morris. The scope of the
24 questioning, what is the -- what are you -- I guess
25 for Mr. Morris: What would you suggest the strike

1 be? In other words, if the question was "What did
2 you rely on of the NESC code?" do you want that also
3 excluded, or is it just the specific reading into the
4 verbiage from the code?

5 MR. MORRIS: It is just the reading in of
6 the verbiage of the code without the board or us
7 having an opportunity to follow along and to see it
8 in context.

9 MR. JORDAN WHITE: Okay.

10 CHAIRMAN THAD LEVAR: Thank you.

11 Any other questions from the board before
12 we let Mr. Morris give any final thoughts on his
13 motion to strike?

14 Okay, Mr. Morris.

15 MR. MORRIS: If everyone could look at the
16 page that Mr. Reich e-mailed out to the board and to
17 counsel last night in purported support of his
18 withholding this information. He highlighted the
19 language at the bottom, and I'm going to read this
20 verbatim. "Public authorities are granted permission
21 to republish the material herein in laws,
22 regulations, administrative orders, ordinances, or
23 similar documents. No other party may reproduce in
24 any form, in an electronic retrieval system or
25 otherwise, any portion of this document without the

1 prior written permission of the publisher."

2 Now, I submit that Mr. Reich violated this
3 copyright when he e-mailed us a copy of this page
4 because he's reproduced it. Any portion of the
5 document which is a page from the document, and he
6 didn't get written permission from the publisher.
7 And so it's convenient to violate the express terms
8 of this on the one hand but purport to honor it in
9 another. And I submit that the permission for public
10 authorities to republish this material presupposes
11 that the material would have been provided to a
12 public authority. And this is a public proceeding.
13 We're not making money off of this. We're not
14 reproducing it and taking away money that otherwise
15 would be going to the publisher of this material.
16 But in a public proceeding like this, they've
17 expressly authorized it. And if Mr. Reich is
18 permitted to print one page of this and share it with
19 the world, he ought to print the other pages that
20 Mr. Clegg read from yesterday and share those with
21 us.

22 That's all I have. Thank you.

23 CHAIRMAN THAD LEVAR: I'm going to suggest
24 what I think might be a way to deal with this
25 objection or at least to put it off until later into

1 today that I want to run by parties and board
2 members.

3 The Public Service Commission, which
4 provides staffing support to the facility review
5 board, owns a license to the NESC codes because we
6 reference them in our administrative rules. So to
7 cross reference them and incorporate them by
8 reference into our administrative rules, we've had to
9 purchase a license. We could probably have staff
10 members from the PSC check by the lunch break and
11 know after the lunch break if the PSC could provide
12 to parties and into the record the referenced
13 subsections. I don't think we would probably look to
14 enter the entire NESC code. But if it's possible for
15 us to pull out the subsections that were referenced
16 by Mr. Reich in his e-mail early this morning, that's
17 a possibility.

18 So I'm suggesting that is one way forward
19 or at least we can find out by the lunch break. And
20 if that doesn't work out to the resolution of all
21 parties, we can address it after lunch and
22 potentially recall the witness ordeal with the motion
23 to strike.

24 But first let me see if there are thoughts
25 from parties on that pass forward, and then I'll go

1 to board members. So first, Mr. Morris, and then
2 I'll go to Mr. Gordon and Mr. Reich.

3 MR. MORRIS: That sounds like an elegant
4 solution, Mr. Chairman.

5 CHAIRMAN THAD LEVAR: Mr. Gordon?

6 MR. GORDON: The only concern I would have
7 is -- and this goes more to the board so you
8 understand why we would be concerned about this.
9 Rocky Mountain Power has a duty to put on its
10 evidence and prove its case. And one of the core
11 issues that we're talking about here is what the
12 actual excess costs are going to be. And part of
13 that is going to be to justify why they put in their
14 specifications that dual trenches are a requirement
15 under this code. And so if you don't have that code,
16 which has not been submitted to you in any of the
17 direct, it's going to be very difficult for you to
18 determine if that is an actual legitimate
19 specification. And so this really is the crux of
20 really the next witness that's coming up Mr. Darin
21 Myers; we're going to run into this problem again.
22 And I'm hesitant to just say: Yeah, we're going to
23 do something as a work-around because Rocky Mountain
24 Power, in my opinion, at this point is refusing to
25 prove its case. It's really got the responsibility

1 and obligation to come in and demonstrate, and it
2 really hasn't. And so on some levels I'm just going
3 if they don't want to provide this to the board,
4 you're going to be left with no information to make
5 that decision. The record will be blank. And I'm
6 not in opposition to that. And so I don't know that
7 I'm necessarily in favor of trying to work around and
8 allowing them in trying to prove their case for them.

9 So that would be my only concern is if
10 they don't want to put the evidence on, I think it's
11 only fair to say it's not in the record and we'll
12 proceed forward and we'll make argument on that at
13 the end of the trial.

14 CHAIRMAN THAD LEVAR: Thank you, Mr.
15 Gordon.

16 We'll go to Mr. Reich.

17 I'm just going to comment though. I would
18 find those concerns more well-founded if the NESC
19 code had been referenced in Rocky Mountain Power's
20 direct testimony. I'm having a difficult time
21 agreeing with those concerns considering that it was
22 in response to cross-examination questions.

23 But let's go ahead and go to Mr. Reich and
24 then back to the board.

25 MR. REICH: Two comments. We're fine with

1 your suggestion route to have somebody look at that.

2 The second question I have, which maybe
3 goes to the whole issue. Even in Midway City's
4 estimate they have two trenches identified even in
5 their reduced spec, the Volkswagen version of this
6 line. So we're kind of having a difficult time
7 understanding this whole line of questioning even
8 when their own expert provided for two trenches. So
9 this whole line of questioning is interesting. And
10 like I said before I don't think we were not meeting
11 our burden by not explaining every specification we
12 have in his testimony that's going to come up now,
13 and we'll go into more detail on that.

14 MR. THAD LEVAR: Thank you, Mr. Reich.

15 Why don't we go to any board discussions.
16 Are there any questions or comments from board
17 members?

18 MR. GLENN WRIGHT: Yes, I have a comment.
19 In my previous life I had regular access to NFPA-70.
20 I find it incredibly unlikely that the city of Midway
21 doesn't have NFPA-70 because they have people out
22 inspecting buildings and enforcing the electrical
23 code.

24 I look at the legal maneuvering on both
25 sides here is a waste of time for us here this

1 morning. Rocky Mountain Power could have provided
2 this. And orders for -- Midway could have obtained
3 this from Midway. And I think that the chair's
4 proposal is eminently a good idea.

5 CHAIRMAN THAD LEVAR: Any other board
6 comment?

7 MR. JORDAN WHITE: Yeah, I support your
8 proposed solution. And I would assume that the NESC
9 code will probably be discussed in other witnesses'
10 testimony at some point. So it's the underpinning of
11 the design it sounds like. So I don't see how we can
12 ignore it. So I think this is probably the
13 first/best solution to address this concern.

14 MR. DAVID CLARK: This is --

15 MR. THAD LEVAR: Thank you, Mr. White.
16 Mr. Clark?

17 MR. DAVID CLARK: Thank you. I support
18 the solution that you presented to us, but I don't
19 want to imply by doing that that I wouldn't also
20 support the continuing existence in the record of the
21 references yesterday. That's -- that's another
22 unresolved question for me, even if somehow the
23 Public Service Commission is unsuccessful in
24 obtaining the access that we hope for.

25 CHAIRMAN THAD LEVAR: Thank you, Mr.

1 Clark.

2 And just to clarify, I think what I'm
3 proposing is that we don't act on the motion to
4 strike at this point. But when we return in the
5 afternoon when we find out if the Public Service
6 Commission staff were able to provide this, we could
7 deal with the motion to strike if necessary at that
8 point.

9 MR. DAVID CLARK: Yeah, good. That's
10 great. Thank you.

11 CHAIRMAN THAD LEVAR: Any further board
12 comments or questions?

13 At this point I'm presuming that the
14 Public Service Commission legal counsel, Mike Hammer,
15 is listening to this proceeding. If you are, I'm
16 going to ask you to get in touch with Carol Lavell
17 [phonetic], and I've just forwarded to the two of you
18 the specific NESC sections that Mr. Reich e-mailed to
19 parties early this morning. And hopefully we can
20 find out by noon-ish whether those can be extracted
21 from the PSC's license and provided.

22 And with that I think we're ready to move
23 to Rocky Mountain Power's next witness. Does anyone
24 have anything further before we -- before we do so?

25 MR. GORDON: We'd just like to reserve the

1 right to recross Benjamin Clegg depending on the
2 outcome of what we've discussed as far as making this
3 available.

4 CHAIRMAN THAD LEVAR: I'm going to ask if
5 anyone has any objection. I think we have to
6 understand while we're doing this telephonically
7 recalling a witness may take a little time to get the
8 witness back, and we might have to adjust for that.
9 But is there any objection to that request to reserve
10 the right to recall him?

11 I'm not hearing any objection, so we'll
12 move forward with that understanding.

13 I'm going to make a comment of my own
14 observation. This is speaking for myself and not for
15 the other board members, and they may disagree with
16 me. But I'm going to comment that I feel like
17 yesterday we had a high volume of repetitious
18 cross-examination. We're not dealing with a jury
19 here. We're dealing with five board members who have
20 read all the filings and read all of the testimony.
21 So I would encourage parties to try to be less
22 repetitious in their cross-examination today, and
23 that's all I'm going to say on it.

24 At this point Mr. Reich or Mr. Gordon, you
25 may call your next witness.

1 MR. REICH: Rocky Mountain Power calls Mr.
2 Darin Myers.

3 CHAIRMAN THAD LEVAR: Okay. We have an
4 objection to Mr. Myers' testimony, so why don't we
5 start with Midway City. If you want to give us --
6 we've all read your objection, but if you want to
7 give any brief verbal comment on it before we move
8 forward, please do so.

9 MR. JEWKES: Yes, this is Mr. Jewkes.
10 I'll make it very brief if you've read the
11 objections. Mr. Myers is a project manager who works
12 for Rocky Mountain Power. The bids were submitted by
13 third parties. There were 18 that -- 18 contractors
14 that the offer went out to, and only three responded.
15 The problem we have is that the bids are all
16 anonymous. We don't know who any of those
17 contractors are. None of them obviously are
18 witnesses here. The numbers in the bids themselves
19 are quite generalized. Mr. Myers doesn't have any
20 personal knowledge of them, other than he just
21 received them. It was very difficult and impractical
22 for us to be able to challenge them under these
23 circumstances, and we think it's unfair to Midway
24 City and V.O.L.T. as well that these bidders aren't
25 present to testify and lay a foundation for the

1 actual bids.

2 So I think much of the questioning of Mr.
3 Myers will be, "Well, I'm not sure. You'd have to
4 ask the bidders," which we can't do.

5 We submit that his testimony should be
6 stricken.

7 CHAIRMAN THAD LEVAR: I just have one
8 brief question. Are you aware of any precedent from
9 any state wherein a court or an administrative
10 meeting where a public utility was not allowed to put
11 into evidence results of bids without putting the
12 bidders on the stand to provide foundation?

13 MR. JEWKES: Am I aware of an
14 administrative tribunal where they were not allowed
15 to put on the bids because the bidders weren't
16 available?

17 CHAIRMAN THAD LEVAR: Administrative or
18 judicial. But I'm looking for something that's, you
19 know, similar factually dealing with a public utility
20 receiving bids and being required to put the bidders
21 on the stand to present into evidence the results of
22 the bids.

23 MR. JEWKES: I mean I'm aware of the
24 general rules of evidence as you are as well to
25 hearsay and foundation. I'm aware that this board is

1 allowed to receive hearsay evidence. I'm also aware
2 that they can't rely solely on hearsay evidence. And
3 given what Mr. Myers is going to rely upon for
4 talking about these bids, it's all hearsay evidence.
5 He may have some independent knowledge not specific
6 to these bids. I don't have a problem with that.

7 But when he's talking about the specific
8 of these bids, they are hearsay and he doesn't have
9 the proper foundation and knowledge -- sorry. He
10 doesn't have the proper knowledge to lay a foundation
11 for them. So I don't have a specific case in the
12 context of bids, but there are many cases out there
13 where someone tries to introduce documents that were
14 prepared by another person and they don't have enough
15 knowledge to lay a foundation that seems to be
16 hearsay.

17 CHAIRMAN THAD LEVAR: Sorry, one more
18 follow up then. Is it your argument that it's
19 hearsay for Mr. Myers to testify as to the facts of
20 the bids that it received -- that he received? I
21 mean to testify as to these are the bids received,
22 and this is what was in those bids.

23 MR. JEWKES: It is hearsay to testify as
24 to the content of the bids. They're out of court
25 statements and offered for the truth of the matter

1 asserted. That, for example, this bidder bid this
2 amount and the total bid is this amount, and this is
3 what constitutes those bids. These are the various
4 constituent parts and maybe even what we want to know
5 is why. Why were the bids -- why did the bids come
6 in at this amount? Is it a realistic number? What
7 were they based upon? That's one of the primary
8 focuses of this board to see if they're legitimate.
9 There's really no way for us to cross-examine Mr.
10 Myers on that he doesn't have personal knowledge, and
11 the only way he can get that knowledge is looking at
12 an out-of-court statement which is offered for the
13 truth of the matter asserted in the statement.

14 CHAIRMAN THAD LEVAR: Any other board
15 questions for Mr. Jewkes?

16 I'm not hearing any. Mr. Morris, do you
17 want to comment any further on this motion?

18 MR. MORRIS: I'll take a cue not to be
19 repetitive here. The only thing I'd emphasize is we
20 recognize, too, that the board is allowed to receive
21 hearsay. But these matters that Rocky Mountain bears
22 the burden to prove can't come in solely through
23 hearsay. We and the board are all prejudiced because
24 we have no ability to dig into someone claiming it's
25 going to cost them \$28 million to dig a couple of

1 trenches for a mile.

2 Mr. Myers may have solicited the bid and
3 given them his conditions, but as to why they're
4 charging that much, how they arrived at their
5 calculations, all of us are going to be in the dark.
6 And the board could never make a determination as to
7 what an appropriate excess cost could be in these
8 circumstances.

9 CHAIRMAN THAD LEVAR: Thank you,
10 Mr. Morris.

11 Any board questions for Mr. Morris at this
12 point?

13 I'm not hearing any. So I'll go to
14 Mr. Reich.

15 MR. REICH: Thank you, this is Mr. Reich
16 with Rocky Mountain Power.

17 Your Honor, I didn't see any citations to
18 any opinions in either of the written objections that
19 were filed by Midway City or V.O.L.T. They have
20 acknowledged that the presiding officer may not
21 exclude evidence solely because it is hearsay. As
22 you will see when we do the direct of Mr. Myers, that
23 Mr. Myers was an intricate part of preparing the bid
24 specification. He's talked to each of these
25 contractors.

1 I think a lot of their objections go to
2 the weight of the evidence not the admissibility.

3 He's met with the contractors, he's
4 familiar with the bids. He can testify about that.
5 We've provided the written bids as we've received
6 them to these parties. So we have a lot of evidence
7 of what those bids are and what's contained in the
8 bids. So with that we would say that the objection
9 should be denied.

10 CHAIRMAN THAD LEVAR: I have just one
11 follow-up question for you, Mr. Reich. Do you agree
12 that the bids themselves, as discussed by Mr. Myers,
13 do qualify as hearsay? I mean we all understand the
14 board's authority with respect to hearsay, but do you
15 agree that the bids themselves, as Mr. Myers
16 discusses what was received and what was contained in
17 them, is hearsay?

18 MR. REICH: No, I would say they would
19 fall within the business record exception to hearsay.
20 They were received in the ordinary course of our
21 business. We receive bids, you know, in the course
22 of our business at Rocky Mountain Power on a frequent
23 basis. So I think they fall within that exception to
24 the hearsay rule.

25 CHAIRMAN THAD LEVAR: Any other questions

1 from board members for Mr. Reich?

2 I'm not hearing any questions, so I'll go
3 back to Mr. Jewkes, if you have my brief final
4 comments on your objection.

5 MR. JEWKES: Yeah. Just in response to
6 the business record exception, that requires the
7 business records to be your own business records. So
8 for example, Mr. Myers could testify about ordinary
9 records prepared by Rocky Mountain Power as an agent
10 that he didn't personally prepare. But here we're
11 talking about business records prepared by
12 third-parties altogether who are not a party to this
13 case and aren't here to lay a foundation. So that
14 exception doesn't apply.

15 CHAIRMAN THAD LEVAR: Any other questions
16 by board members for Mr. Jewkes?

17 Okay. Any discussion by board members of
18 the objections of Mr. Myers' testimony?

19 I'm not hearing any board discussion. I
20 mean I can tell you my personal view. Maybe I'm not
21 as well-versed in evidence. I'm not convinced that
22 it is hearsay. I'm not convinced it's presented for
23 the truth of the matter in the way that that concept
24 is generally developed in evidence. But putting that
25 aside, the board certainly has the right to consider

1 hearsay while a finding can't be based solely on it.

2 So my inclination is to deny the
3 objection. If any other board members want to weigh
4 in any differently? I don't know if the board -- a
5 board vote -- we can take a board vote. But if I
6 don't hear any objection from board members, we'll
7 move forward that way.

8 Okay. I'm not hearing any other
9 discussions, so the objection is denied.

10 Mr. Reich, if you want to put forward this
11 witness. Do we have the witness on the phone right
12 now?

13 MR. REICH: We do. He is here.

14 CHAIRMAN THAD LEVAR: Mr. Myers, do you
15 swear to tell the truth?

16 THE WITNESS: Yes.

17
18 DARIN MYERS,
19 called as a witness, having been duly sworn, was
20 examined and testified as follows:

21
22 CHAIRMAN THAD LEVAR: Okay, thank you.
23 Mr. Reich.

24
25 ///

DIRECT EXAMINATION

BY MR. REICH:

Q. Mr. Myers, have you reviewed the direct and rebuttal testimony prepared in your name that's been filed in this proceeding?

A. Yes, I have.

Q. And do you have any changes to make to that testimony?

A. No, I don't.

Q. Okay. In addition to the testimony I know we have submitted and produced documents. I'd like to go over some of those documents with you at this time.

The first document is identified as RMP 1 through RMP 54, which I believe is the -- what we referred to as the RFP or the bid document. Are you familiar with this bid document?

A. Yes, I am.

Q. And can you explain to the board a little bit about the process that was used to put this bid document together?

A. Yes. After we received the conditions for the use permit from the city of Midway, we went to work on creating a bid document for building the underground transmission line through the city's

1 boundaries. We took those conditions -- first of
2 all, we used the standard underground transmission
3 template that we use for all projects similar to
4 this. And we took the conditions, the multiple
5 options that the city wanted to be bid out, and we
6 put those into the document. And we, you know, used
7 our standards that we use for every other project and
8 produced that document and sent it out in our normal
9 process as we do for any other project that we're
10 bidding out for construction.

11 **Q. Did you change any of the specifications**
12 **in this RFP from Rocky Mountain Power's general**
13 **specifications?**

14 A. No. We used our standard specifications
15 that we use for every underground transmission
16 project that we build. All that was added or changed
17 was the scope of work with the options that were
18 requested by Midway City.

19 MR. REICH: Okay. I'd move to submit the
20 direct testimony, the rebuttal testimony, and this
21 document RMP 1 through 58 from Mr. Myers -- sorry, 1
22 through 54.

23 CHAIRMAN THAD LEVAR: Sorry, would you
24 repeat that? I was talking over you.

25 MR. REICH: Yeah, I just needed to correct

1 the Bates numbers on that.

2 CHAIRMAN THAD LEVAR: Okay, thank you.

3 Understanding that we still have a
4 continuing objection from both Midway and V.O.L.T. to
5 this testimony, is there anything else that any party
6 wants to say about this motion?

7 I'm not hearing any. The motion is
8 granted. Thank you.

9 Q. (BY MR. REICH) Mr. Myers, will you
10 explain to the board briefly what you did with this
11 RFP, how it was sent out, how many contractors it was
12 sent to?

13 A. Yes. We just followed our standard
14 process. After the bid document was put together,
15 all of the maps and attachments, pricing schedules,
16 and all of the reference materials were put together.
17 We submit that to our procurement group, who then
18 puts it out for a proposal on a system that goes out
19 to all of our qualified contractors that are able to
20 bid on a project. We sent that out. Generally we
21 give them a week or so to take a look at it, go out
22 and visit the location, the site, and, you know
23 prepare any questions they might have on the project.

24 We then held a pre-bid meeting as we do
25 with most all of our projects on site and sat down

1 with the contractors and allowed them to ask
2 questions. They all said that they had looked at the
3 site. They've drove the line route, you know,
4 collected any information or data they had, and we
5 had a pre-bid meeting. There were a few questions
6 asked to qualify a couple of things. And we
7 concluded the pre-bid meeting, and then we gave them
8 the remainder of the time to put their bids together.

9 During the process we had no questions or
10 any clarification/questions submitted to us through
11 our procurement system. There's a very formal
12 process where any bidder that has a clarifying
13 question will send that in, and our procurement group
14 screens that question and they make it available to
15 all the bidders. They send any of those questions
16 then on to me, and I will clarify those questions.
17 They send that back out, and every bidder can see the
18 answers. So it's a very formal process we follow for
19 every bid we do.

20 Anyway that time went by. We didn't have
21 any clarification questions come up. We did have two
22 requests to extend the bidding time frame by two
23 weeks. We granted that so that they could provide
24 the best bids possible. We then at the conclusion of
25 the bidding time frame, the extended time frame,

1 their bids were sent in to our procurement group.
2 They were assembled and then sent to me. And I
3 received all of those and was able to review them
4 internally.

5 We then -- and I passed those on to you,
6 Mr. Reich, who then sent them on to Midway City.

7 **Q. At any time did you meet with any of the**
8 **contractors out on the site?**

9 A. We did have a pre-bid meeting at the Heber
10 Light & Power building, close to the site. All of
11 the contractors that attended that meeting, there
12 were four who attended, and they said that they had
13 driven the line route, they were familiar with it.
14 We talked specifically about a few of the areas that
15 they felt might be concerns for trenching. Heber
16 Light & Power employees were there to help out.
17 They're familiar with that area more so than we are
18 and were able to provide some information that I
19 think helped the bidders clarify their construction
20 process.

21 But, yes, we did meet with them; we did
22 talk with them. They answered questions. They were
23 there on site. They looked at the location in
24 detail.

25 **Q. What are the names of the three companies**

1 **that submitted bids?**

2 A. Wasatch Electric, RES Group, and Summit
3 Line Construction were the three that submitted the
4 bids. We had a fourth who attended who did not
5 submit a bid.

6 **Q. There have been several allegations in**
7 **this proceeding that Rocky Mountain Power somehow**
8 **changed the bids or increased the bids or did**
9 **something to intentionally change those bids. Based**
10 **on your information and your knowledge has Rocky**
11 **Mountain Power done anything to increase these bids**
12 **or change the bids that were submitted by these**
13 **contractors?**

14 A. No, not at all. In the summary of costs
15 that was sent to Midway City, I added a line item for
16 the dip pole structures, which was something that was
17 requested in the conditional use permit. And I did
18 add overhead sur -- well, I won't use overhead in
19 this scenario, but a surcharge that is an internal
20 company Rocky Mountain Power surcharge that's added
21 to all projects. But that was not in the bids
22 themselves; they were separate line items that show
23 our total cost for the project.

24 MR. REICH: And I'd like to move to submit
25 the bids into evidence, and I'm just going to refer

1 to -- I'm going to go back to RMP 1, which starts
2 with the bid specification, up through RMP 121. And
3 then RMP 143 through RMP 148. I'd like to submit
4 those into the record.

5 CHAIRMAN THAD LEVAR: Thank you, we've
6 received the motion. I think this is -- obviously
7 the objection to Mr. Myers' testimony is still
8 outstanding. I think admitting the bids into
9 evidence puts a little bit different twist on the
10 objection. So why don't I ask if any -- if there's
11 any objection to this motion.

12 MR. GORDON: Midway City simply renews its
13 objection based on foundation and hearsay.

14 CHAIRMAN THAD LEVAR: Thank you.

15 Anything else from V.O.L.T.?

16 MR. MORRIS: We join in maintaining the
17 same objection. Putting the bids in is no more
18 helpful. We still can't talk to the people that put
19 them together.

20 CHAIRMAN THAD LEVAR: Okay. Let me go to
21 the board members, if there's any discussion of
22 whether we should address this motion any differently
23 than we did the testimony of Mr. Myers? Discussion
24 or if you have questions for counsel.

25 Okay. I'm not hearing any discussion.

1 And considering that at the very least the board has
2 the ability to consider hearsay, to the extent at
3 which we can rely on it is certainly at issue. But I
4 don't see a legal basis to deny the motion to admit
5 these into the record. So the motion is granted.
6 Thank you.

7 Mr. Reich, you can go forward.

8 Q. (BY MR. REICH) One last question, Mr.
9 Myers. In your position as the project manager, is
10 it your understanding that these bids submitted to
11 Rocky Mountain Power are binding bids; that if Rocky
12 Mountain Power were to select one of the bids, that
13 bid would be binding on the contractor?

14 A. Yes, they are.

15 MR. REICH: I have no further questions.

16 CHAIRMAN THAD LEVAR: Okay. Thank you,
17 Mr. Reich.

18 Mr. Gordon, do you have any questions for
19 Mr. Myers on cross-examination?

20 MR. GORDON: Certainly, thank you.

21
22 CROSS-EXAMINATION

23 BY MR. GORDON:

24 Q. Good morning, Mr. Myers. First question,
25 I just want to establish, you're the project manager

1 of this project, correct?

2 A. Yes.

3 Q. And you were intimately involved with
4 giving the specs for the bids, correct?

5 A. No. I don't create the specifications. I
6 use specifications that come from our standards
7 group.

8 Q. So you were not involved in the creation
9 of the length of the line in the bids, correct?

10 A. Yes. The scope of work, I guess just to
11 be clear, yes, we put the scope of work specific to a
12 project. But any standard construction practice or
13 materials used, that type of information is standard
14 and that comes from our standards group. Yeah,
15 anything specific to the project, yes, that was put
16 in the bid by myself and our transmission engineer
17 who worked on the project.

18 Q. So I just want to make sure I know what
19 questions I need to be asking you. So you were
20 involved and responsible for the length of the lines
21 put in the specs of the bid, correct?

22 A. Yes.

23 Q. Okay. And --

24 A. Along with our -- along with our
25 engineering group, yes.

1 Q. Okay. But I just need to know who has
2 final say. If there's a mistake in the length of the
3 line, as the project manager does that fall to you?

4 A. Yes.

5 Q. Okay. On the dual trenches and that
6 requirement, what I'm hearing is you did not create
7 that specification and were not part of that aspect
8 of the specifications; is that correct?

9 A. I guess can you clarify when you say dual
10 trenches, what you mean by that?

11 Q. Oh, I'm sorry. The specifications call
12 for a dual trench to bury this so that Heber Light &
13 Power would have one trench and Rocky Mountain Power
14 would have one trench. That's what the
15 specifications require. Were you involved in
16 creating that specification?

17 A. I guess I don't know of a specification
18 for dual trenches. We specified in the RFP that
19 there would be two duct banks placed, one for Rocky
20 Mountain Power and one for Heber Light & Power.
21 Those could be in the same open trench, but there's
22 two different duct banks to keep those circuits
23 separate.

24 Q. Okay. And were you involved in creating
25 the specs then, so we have the same language, for

1 **those dual duct banks?**

2 A. I guess we say specification. Can you be
3 clear on that? As a scope of work, yes, we needed
4 two duct banks because Rocky Mountain Power and Heber
5 Light & Power were having two specific distinct
6 circuits that need to be independent of each other,
7 thus we needed two duct banks. If we were just
8 building a single circuit, there would be a single
9 duct bank.

10 **Q. And the question is: Is there anything in**
11 **the specifications that require those dual circuits**
12 **to not be in the same duct bank, and where did you**
13 **get that specification from?**

14 A. Yes. We're two different companies, two
15 different providers. And so we put together two --
16 we will have two separate duct banks so that those
17 can operate independent of one another. They could
18 not be in the same duct bank if we needed to do any
19 maintenance or take an outage or something on our
20 circuit, we can't take down Heber Light & Power's
21 circuit at the same timer and vice versa. So they
22 need to be separate and distinct and apart, a
23 distance apart to maintain safe maintainability and
24 operation of those circuits.

25 **Q. And is that based on the National Electric**

1 **Safety Code?**

2 A. I'm not familiar with the National -- all
3 of the National Electric Safety Code, the gigantic
4 book, I don't know it in detail. Like I say I take
5 what our standard group gives us, and that's what we
6 build.

7 Q. So on the specific of the requirement to
8 have dual duct banks, you really didn't create that
9 specification? You weren't responsible for that,
10 correct?

11 A. No. I mean I guess if that's your
12 detailed definition of a specification, it's part of
13 the scope of work to put two duct banks in, yes.

14 Q. Okay. So who was responsible for that?
15 Who was the person that's responsible for that
16 specification?

17 A. Our standards group.

18 Q. Okay.

19 A. Was that not clear when I say who that is?
20 They're employees of Rocky Mountain Power.

21 Q. And as far as just for purposes of today,
22 is anyone from the standards group going to be
23 testifying in this hearing that you're aware of?

24 A. Not that I know of.

25 Q. Okay. So let's move now to the

1 specification. There's a requirement to have an
2 extra conduit installed in both duct banks. Are you
3 familiar with that?

4 A. Yes. An extra conduit and conductor.

5 Q. Okay. And so as far as -- let's take one
6 at a time. The extra conduit, was that your -- did
7 that come from you or were you responsible for that
8 spec?

9 A. Well, that's in our standard
10 specifications from our standards.

11 Q. So that was coming from your standards
12 group as well, correct?

13 A. Yes.

14 Q. Okay. And the requirement to pull a spare
15 line through that conduit, was that your spec or was
16 that your standards group?

17 A. That's our standard all transmission --
18 underground transmission circuits that we build have
19 a spare conduit installed.

20 Q. But that specification comes from your
21 standards group. You're not basing that on your own
22 knowledge or the National Electric Safety Code, that
23 comes to you from the standards group, correct?

24 A. Yes. We used a standard template that
25 we've used for all the other underground transmission

1 lines that we've built in that part.

2 Q. Very good. So then is it fair to say that
3 the specification that you were really responsible
4 for was the length of the line. Everything else I've
5 talked to you about came from the standards group,
6 correct?

7 A. I mean there's other variables in the
8 construction that we -- you know, I mean the length
9 of the line. Probably I mean, yeah, for the most
10 part it's standard specifications on how they build
11 it. All the options were put in there. You know all
12 the general scope of work that are specific to that
13 project, yes, we -- I was responsible for those but
14 not the standard specifications of the company's
15 underground transmission system.

16 Q. Very good, thank you. In your testimony
17 you indicated that the project was designed to meet
18 the National Electric Safety Code. Are you aware of
19 any of the requirements or specifications in the bids
20 that exceed the National Electric Safety Code?

21 A. No, not that I know.

22 Q. Okay. And would that be a better question
23 for the standards group?

24 A. I'm not sure.

25 Q. Okay.

1 A. I couldn't tell you.

2 Q. Okay, fair enough. As far as so you had
3 18 -- you sent this out to 18 bidders. You got three
4 to respond. Is that low? Why so low of a response?

5 A. No, not really. On average most projects
6 that we deal with in the project management office,
7 two to six bidders or so it is generally. Sometimes
8 a few more, sometimes less. I've never seen more
9 than -- I mean on average or general never more than
10 seven or eight total bids.

11 Q. Okay. In your creating the
12 specifications, did you work closely with Heber Light
13 & Power in this process?

14 A. Yes, we did.

15 Q. Okay. And regarding the dual -- the dual
16 duct banks, did they request the dual duct banks or
17 was that just something that came from Rocky Mountain
18 Power?

19 A. It was both. It was both companies
20 together jointly. We needed to talk about how to
21 operate these circuits once they're constructed, how
22 to maintain them. The safety was a big factor of how
23 our -- our, you know, linemen are able to maintain
24 and operate, you know, our own circuit independently
25 and not interfere with the other circuit and be able

1 to maintain a safe distance. So, yeah, it was a
2 joint -- definitely a joint discussion.

3 Q. Okay. And regarding the spare line to be
4 pulled through the conduit, did Heber Light & Power
5 request that their portion of the bid include that
6 spare line as well?

7 A. Yes.

8 Q. Okay. Just a couple of things on that.
9 I'm not going to get into the specifications with
10 you; those are questions for other people. But a
11 couple of things as the project manager. The cost of
12 that extra line appears to raise the cost of the
13 project to bury by approximately 20 to 25 percent,
14 correct?

15 A. Yeah, it does -- it does raise the cost.
16 I'm not sure of the exact percentage you're quoting
17 there. But, yeah, it does add to the cost of the
18 project absolutely.

19 Q. And I think the way I'm calculating that
20 is you would normally run three lines; you're now
21 running an extra line. So it would increase it by
22 approximately a fourth on the project, is that a fair
23 way to analyze that?

24 A. No, huh-uh (negative). I mean you're
25 already out there; you're trenching. You're

1 installing all of the stuff. You're just pulling a
2 fourth -- you know, you're putting a fourth conduit,
3 pulling a conductor and, yes, it adds to it but not
4 to that degree.

5 Q. But it's fair to say it would increase
6 probably the line, the cable costs by a fourth,
7 correct?

8 A. Yes. The cable material itself, yes.

9 Q. Okay, okay. Are you aware of any
10 situation where an extra line is not installed, that
11 just the extra conduit is installed without the extra
12 line?

13 A. Not in an underground transmission
14 situation. We do build into customer locations
15 other -- you know options where a customer asks for
16 that. But just that's our standard that we stick to
17 for all underground transmission.

18 Q. Okay. And that standard once again comes
19 from the standards group, correct?

20 A. Yes.

21 Q. So just briefly on the surcharging, you
22 included in your bid surcharges ranging from 373,679
23 to 858,427, correct?

24 A. Uh-huh (affirmative).

25 Q. And this surcharge would apply to all of

1 those who do general work on project -- on capital
2 projects and companies who are not directly charging
3 to that project but are working on the project in a
4 support role as needed, correct? That was your
5 testimony?

6 A. Yes.

7 Q. Okay. And Rocky Mountain Power does not
8 internally install underground lines, correct?

9 A. Not transmission underground lines.

10 Q. Okay. And in the bids you stated that
11 "This project should be bid as a turn-key project
12 providing all required material, label, and testing,"
13 correct? That was in the bid?

14 A. Correct.

15 Q. Okay. And also in your testimony it says
16 that "Surcharges: If company resources are being
17 used for construction, the full weight of the
18 surcharge applies. If contractor resources are used,
19 then a lesser rate is calculated and applied."
20 Correct?

21 A. Correct.

22 Q. Okay. So in this situation it seems like
23 the only thing Rocky Mountain Power would be doing in
24 regards to the underground section of the line is
25 putting together the bid specs, which you did,

1 perhaps reviewing the plans, and overseeing the
2 contractor who installed the line, correct?

3 A. To a degree we have any number of other
4 employees that help out on projects that don't
5 specifically charge time to that project. And so
6 their additional resource help is what our finance
7 group uses to come up with a surcharge rate.

8 Q. Okay. And from what I understand, that
9 surcharge rate is just a general rate that you apply
10 to all projects without really analyzing them
11 specifically for how much your people are going to be
12 used, correct?

13 A. Yes, definitely it's a corporate
14 governance policy that's used for all projects.

15 Q. Okay. And would you agree that in this
16 situation where you're asking for a turn-key bid,
17 that all required material, label, and testing is
18 going to be provided by a third-party, that maybe
19 that would not be an appropriate way to establish the
20 assessed amounts here?

21 A. No.

22 Q. Okay. Was there any specific analysis
23 done on this project beyond just what your standard
24 corporate policy and numbers are?

25 A. Yes. I actually sent this to our finance

1 group to review it. They came up with the surcharge
2 rate that would be applied. Any project that's over
3 \$10 million total is applied a different rate. So
4 they -- they're the ones that come up with that rate.

5 Q. But I believe based on your testimony,
6 isn't that just a standard rate that they kind of
7 apply to all?

8 A. I --

9 Q. If it's less than 10 million it's 3.82,
10 and if it's over 10 million it's a certain amount
11 that's applied; isn't that correct?

12 A. If it's -- if it's under 10 million, it
13 varies. But, yeah, it's around 7 to 9 percent. If
14 it's over 10 million, finance comes up with their
15 rate.

16 Q. Okay. So based on the lowest amount that
17 you've put in on the surcharges, can you explain to
18 me how Rocky Mountain Power could justify a cost of
19 \$373,679 as a surcharge to what looks like review a
20 few plans and oversee a contractor in this instance?

21 A. I'm not a finance expert, so I'm not sure
22 all of their calculations they use for that. But I
23 see this for projects all the time. Actually, this
24 is on the low end.

25 Q. And so you're not in a position to testify

1 as to how those numbers were arrived at or how
2 they're justified, correct?

3 A. Not fully. My general explanation is, you
4 know, my knowledge of it.

5 Q. Okay. And so those numbers really came
6 from the finance department, correct?

7 A. Yep. But they're very much in line with
8 every project that we do.

9 Q. That's right. But they -- but the finance
10 department would be the better ones to testify as to
11 the creation of those numbers, correct?

12 A. Yes.

13 Q. Okay. Let's see here, let's move now to
14 the overhead costs. In your testimony you indicated
15 that the typical overhead cost to build was 190 to
16 250 per foot. What is the basis of that -- is that
17 just kind of based on your experience, or was that
18 based on bids?

19 A. Just based on experience of past projects.

20 Q. Okay. And I'm correct in stating that
21 Rocky Mountain Power has not submitted any bids
22 establishing the overhead cost of this -- of the
23 Midway portion of the line, correct?

24 A. No. They weren't asked for as part of
25 the --

1 Q. Okay. So there's nothing in the record
2 that establishes what the overhead costs are,
3 correct?

4 A. In my testimony or --

5 Q. Well, there's no bids in the record that
6 establish what the over costs are, correct?

7 A. There's no bids, no. Just what I stated
8 in my testimony.

9 Q. Yeah. And your testimony is based on your
10 experience as well as, I believe you said, there were
11 actual costs of another overhead project that you
12 were involved with, correct?

13 A. Yes. I pulled actual costs from a very
14 similar project that was just completed in March of
15 2019. And that --

16 Q. Okay. But that wasn't --

17 A. -- was --

18 Q. But that wasn't this project. It wasn't
19 specific to Midway's project, correct?

20 MR. REICH: Mr. Gordon, could you let Mr.
21 Myers finish his question? You keep interrupting
22 him. I'm not sure if you can hear him very well, but
23 could you just let him finish his answer first before
24 you ask him another question?

25 MR. GORDON: Certainly I will do so.

1 Absolutely, yeah, not a problem.

2 THE WITNESS: So those were actual costs
3 from an actual project that was completed very
4 similar to this one, and it was overhead
5 construction.

6 Q. (BY MR. GORDON) Okay. But there's not a
7 specific bid. I mean that's just a general estimate
8 of what this one might cost, correct?

9 A. I wouldn't say estimate. The word
10 estimate to me seems fairly high level with a lot of,
11 you know, variance probably to it. This is our
12 actual costs of a project very similar. So not a bid
13 for this specific project, but I would feel
14 comfortable with those costs definitely, better than
15 an estimate in my opinion.

16 Q. Okay, let me see here. Okay. There's
17 some questions regarding the accuracy of the length
18 of the lines, and you've testified that you were
19 responsible for that specific specification that was
20 included in the bids, correct?

21 A. Yes.

22 Q. Okay. And in the measurements, there were
23 three options given. And to aid the board just
24 quickly, the three options in the bids were just
25 within Midway City's boundaries. A second option was

1 to extend the line further east and move the big dip
2 poles off of the main road. And then a third option
3 was to include moving the dip poles to the east and
4 then also extending the line, burying it all the way
5 to the substation on the west. Is that an accurate
6 representation of what these bids represent?

7 A. Yes.

8 Q. Okay. And in each option, you stated
9 option number one, the distance was 6,990 feet.

10 Correct?

11 A. Yes.

12 Q. Okay. And in option 2, 7,400. And in
13 option 3, 8,950, correct?

14 A. Yes.

15 Q. Now, when we look at Google Earth, our
16 measurements come out on option 1 as 5,326, 5,826,
17 and 7,395, which is a difference in each one of those
18 scenarios of right around 1,600 feet. Are you aware
19 of why the discrepancies are -- there's almost a
20 1,600 foot discrepancy in almost every one of these
21 options?

22 A. I don't know how I would know anything
23 about your numbers or how you came up with those.
24 We -- we measure our distance and put that in the
25 specification.

1 Q. Okay. So your testimony is that those
2 measurements are on the ground and that that is the
3 amount of trenching and buried line that the
4 individuals were supposed to bid, correct?

5 A. Well, we followed the exact overhead route
6 proposed and used that to calculate our distances.
7 You need to also factor in that each dip pole is
8 around 100 feet high, and there are four conductors
9 on each dip pole. There are four dip poles, two on
10 each end. One for each circuit, Heber Light & Power
11 and Rocky Mountain Power. That's the extra
12 1,600 feet right there that will not show on Google
13 Earth.

14 Also these are in the bid and in our
15 pricing sheet, we actually have a disclaimer there
16 that tells the contractors that they must verify
17 distances of any cable, any duct work, any conduit,
18 anything that has distances in a bid. There was a
19 disclaimer in our price sheet that that is the sole
20 responsibility of the contractor to verify and to bid
21 what their -- the actual -- their actual costs of,
22 you know, trenching boring, installing cable at that
23 distance. So this is just a standard that we use for
24 every project. We put in distances. We claim that
25 they're not going to be 100 percent accurate maybe,

1 but the contractors will definitely go out there and
2 verify that for sure.

3 Q. Okay.

4 A. I would have -- I would have received --

5 Q. We talked about --

6 A. Can I finish?

7 Q. Sure.

8 A. I would have received questions. I
9 definitely have in the past. That's always a
10 discrepancy question that we receive during a bidding
11 process if a contractor has a question about the
12 distance because that affects their pricing. I
13 didn't receive a single question about any distances.
14 They put together their bids, and they do their own
15 measuring to clarify that.

16 Q. Okay. So let's talk about that 1,600 feet
17 on the termination structures. So that is cable that
18 will go -- that will not be buried, correct?

19 A. Yes. It comes out of the ground, goes up
20 the dip pole, and connects to the overhead line.
21 It's part of the underground system, even though
22 there's a section that comes out of the ground.

23 Q. Right. So -- but based on the
24 measurements that you gave them, it looks like you've
25 included that 1,600 feet as being buried, correct?

1 A. No, that's just the cable. Yes,
2 definitely the distance of the cable. It stops at
3 the dip pole, and there's a riser.

4 Q. Can you show me anywhere where there was a
5 disclaimer saying that they should take 1,600 feet of
6 the length you gave them and remove that from the bid
7 to bury? Is there a disclaimer anywhere that
8 explained that to them?

9 A. No. We say the contractor is solely
10 responsible for determining the price, quantities,
11 and lengths of the construction piece. These
12 contractors know what they're building. They went
13 out there on site, and they bid a competitive bid as
14 to the entire distance from end to end and the cable
15 connecting up the dip poles to connect into the
16 overhead system.

17 Q. Okay.

18 A. And like I said, they don't just go off of
19 our numbers. They verify and they prepare their bid
20 off of their specific details of the project from end
21 to end.

22 Q. Right. And that would be some of the
23 issues that we talked about, right? You're not
24 specifically aware of what each one of these did or
25 how they interpreted that, correct?

1 A. No. They put together their bids and put
2 the best possible bid. Thus the difference I think
3 between an estimate and a bid. An estimate is a high
4 level I'm going to take this much feet and times it
5 by a factor. Where a bid is specific they go out and
6 look at every single detail, add that up, and put it
7 in and it's a binding -- a binding bid. I think
8 that's --

9 Q. So if they bid based on your
10 specifications, then they would have bid to bury an
11 additional 1,600 feet of the cable, correct?

12 A. No, I don't believe that.

13 Q. But you can't say for sure, correct?

14 A. I'm fairly sure of that. They bid these
15 projects all the time, every day.

16 Q. But you cannot testify that you know
17 absolutely that these individuals didn't just take
18 your specifications and bid them based on what you
19 gave them, correct?

20 A. I don't know absolutely. I didn't
21 interrogate that part.

22 Q. Okay. And so let's just look at what the
23 potential impact of that could be. So if they
24 over -- let's just take bidder number 13 and the bid
25 on the 6,990 feet, the shortest -- the option 1. The

1 total bid on that was 12,582,043, correct?

2 A. Can you repeat that again?

3 Q. Sure. Bidder one on -- I'm sorry, bidder
4 13 on option 1 buries 6,990 feet of cable, bid
5 12,582.043? Correct?

6 A. Let me find that on here to verify. You
7 said bidder 13?

8 Q. Yes.

9 A. And you're on the table --

10 Q. It's RMP 101. I apologize. So you can
11 find it faster. I think it's actually given in your
12 testimony as well there is a summary of it.

13 A. Okay. RMP 101.

14 Q. Or if it's easier in your testimony, it's
15 on page 4 at line 15. You gave a summary of the
16 bids.

17 A. Okay.

18 Q. So based on that bid if 1,600 feet was
19 included to be buried that wasn't actually buried,
20 that's approximately 24 percent of the total length
21 of the line in that area, correct?

22 A. Oh, I see what you're saying. But the
23 1,600 feet was not spec'd to be buried.

24 Q. Well, that's -- can you point to anywhere
25 in your bid that says or specifications that say

1 they're not supposed to bid the lengths that you were
2 in charge of?

3 A. In our summary of work -- let's see here.
4 In our summary of work section it says -- number two
5 here, "Cable pulling, 5390 centerline feet per
6 circuit. One circuit total extras four cables
7 including a spare cable. For option 1, 5,800
8 centerline feet per circuit. For option 2, 7,350
9 centerline feet. For option 3, 7,735 centerline feet
10 for Heber Light & Power, and 8,095 centerline feet
11 for Rocky Mountain Power option 4.

12 Q. So it's your testimony then that those are
13 the specs that would remove the 1600-acre -- oh,
14 sorry, not water. 1,600 feet of cable on the dip
15 poles?

16 A. Yes, that's for the trenching distance
17 there, the 59 -- or 5,390. And then the 16 --

18 Q. Okay.

19 A. The 1,600 more is not trenched. It's
20 going up the dip poles.

21 Q. Okay. And can you tell us where you're
22 pulling that from so we have that reference so that
23 we can review that?

24 A. Yeah, it's in the RFP. Let me put it
25 here. It's in the summary of work section 5, number

1 2. Summary of work A, number 2.

2 Q. Okay. I'm just making note of that. Let
3 me see, I'm just glancing down here. Give me just a
4 few moments.

5 MR. MORRIS: Mr. Myers, is there a Bates
6 number? Is there a number on the bottom of the page
7 that you were just looking at? That might help us
8 get to it more quickly.

9 THE WITNESS: Bates number, let's see --
10 hold on, I'm going to the -- where is this? Let me
11 see. Let me find it here; I've got a separate copy.
12 Okay. It's -- sorry for that.

13 MR. GORDON: That's okay. If you find --
14 I'm sorry, were we still waiting on a response to Mr.
15 Morris's question? Did you -- I'm sorry.

16 MR. REICH: Yeah, the version he was
17 looking at wasn't Bates numbered. So we've given him
18 a Bates numbered version he's trying to look at to
19 find the reference that he just referred to. It
20 might be helpful if we take -- can we take a 15- or
21 10-minute break and get him to the right place on
22 that?

23 MR. GORDON: I'm almost done with my
24 questioning, I mean I have no problem -- I think it's
25 page 12; we're just looking for it right now. If we

1 want to just finish up with my questioning or --
2 however the Chair would like to proceed, I'm more
3 than happy.

4 CHAIRMAN THAD LEVAR: You know it's a
5 pretty good time for a break right now anyway. So
6 why don't we take a 10-minute -- a 10- or 12-minute
7 break, come back at 12:30, and then have you finish
8 your cross-examination, Mr. Gordon, at that point.

9 MR. GORDON: That sounds great. Thank
10 you.

11 CHAIRMAN THAD LEVAR: We'll be in recess
12 until 10:30. Thank you.

13 (Break taken from 10:19 to 10:30 a.m.)

14 CHAIRMAN THAD LEVAR: Mr. Gordon, you can
15 continue with your cross-examination.

16
17 CROSS-EXAMINATION (CONTINUED)

18 BY MR. GORDON:

19 Q. Okay. So just a couple of questions here.
20 So can you -- I'm sorry here; I've lost track.

21 Mr. Myers, can you pull up the bidding
22 pricing sheet for contractor 15 on option 1?

23 A. Do you have an Exhibit Number on that?

24 Q. RMP 000111.

25 MS. GORDON: Before we do that -- this is

1 Heidi Gordon -- did you want Darin to testify to the
2 Bates number?

3 MR. GORDON: Oh, yeah. We did need to do
4 that. So he can put that on the record what the
5 Bates number was. If he can put that on the record,
6 that would be helpful. Thank you.

7 THE WITNESS: RMP 000012.

8 MR. GORDON: Very good. Thank you.

9 Q. (BY MR. GORDON) Okay. So now if you can
10 pull up the bid from you bidder 15 from option, and
11 that is RMP 000111.

12 A. Okay.

13 Q. And on your specs, you indicated that
14 there would be 6,990 feet of trenching, correct?

15 A. Correct.

16 Q. Okay. Well --

17 A. They've got trenching in here at
18 6,990 feet. Our specs did not say the trenching was
19 6,990 feet. It said the end to end cable was
20 estimated at 6,990 feet, but again for the contractor
21 to confirm that.

22 Q. So they bid it based on your spec of
23 6,990, correct?

24 A. They put 6,990 in here, yes.

25 Q. And 1,600 feet of that is cable that's not

1 going to be buried, correct?

2 A. In our RFP it's called out that 1,600 feet
3 would not be buried. We did not give a trenching
4 distance though.

5 Q. Okay. Can you now turn to the bidder --
6 which one is this one -- bidder contractor 15, same
7 one, option 1.

8 A. Yes.

9 Q. Isn't it true they bid the full length of
10 the -- the 6,990 trenching as well?

11 A. Where are you at? RMP 119?

12 Q. Yeah, Let me give you the -- it's 119,
13 yes.

14 A. Right. And you're under --

15 Q. It would be under trenching. And they
16 basically just doubled the 6990, correct?

17 A. Yeah, that looks like the number they have
18 in there.

19 Q. Okay. And isn't it correct if you go back
20 to bidder -- let me see which one the first one was.
21 Give me just a moment here; we're trying to find it.
22 Contractor 13, and that's 00099. And this was the
23 low-cost bidder, correct?

24 I'm sorry, strike that last question. I
25 don't think that's accurate.

1 But based on this one, it looks like this
2 is the only bid that actually accurately put the
3 trenching at the 5,329, correct?

4 A. They had 5,329 in there, yes. Accurately,
5 I don't know if -- the trenching is whatever
6 distances they estimated or came up with when they
7 went out on site.

8 Q. Okay. So the question I had before, it
9 appears then that two of the three bids have bid to
10 trench an additional 1,600 feet of line that they
11 should not have bid, correct?

12 A. I wouldn't say that.

13 Q. You wouldn't say that. But their bid
14 includes trenching at those lengths, correct, and
15 that makes up the bid price, correct?

16 A. They -- yeah, they put that distance in
17 the trenching.

18 Q. And do you have any reason to believe that
19 they did not rely on that number to come up with the
20 total amount of what it was going to cost to trench?

21 A. Well, just like I referred to earlier,
22 that's the disclaimer for the contractors to go out
23 and verify the distance.

24 Q. But it would appear then that they did not
25 verify in this situation accurately, correct?

1 A. I couldn't say.

2 Q. Okay. But I believe your testimony prior
3 to was that you were absolutely positive that they
4 went out and did that. But it doesn't look like
5 that's accurate, correct? You're not sure what they
6 did, correct?

7 A. Yeah. They went out and said that they
8 drove the line route and, you know, looked at the
9 construction specs and were preparing their bids off
10 of that.

11 Q. Okay. And based on these numbers, let's
12 just assume that they misunderstood the
13 specification, that means that they've overbid in
14 option 1 approximately 24 percent, correct?

15 A. If -- if they misunderstood that, yes.
16 But like I said, there's always questions if there's
17 a misunderstanding that they will bring up.

18 Q. But they didn't bring those up to you,
19 correct? That was your testimony prior?

20 A. No, we didn't have any questions.

21 Q. Okay. And 24 percent of the total bid
22 price of 12,582,043 is 3,019,690, correct?

23 A. Yes, I guess I'll do the math. But I
24 don't know.

25 MR. GORDON: Okay. I think with that I

1 don't have any additional questions.

2 CHAIRMAN THAD LEVAR: Thank you,
3 Mr. Gordon.

4 Mr. Morris, do you have any
5 cross-examination questions for this witness?

6 MR. MORRIS: I do. Thank you, Mr.
7 Chairman.

8
9 CROSS-EXAMINATION

10 BY MR. MORRIS:

11 Q. Good morning, Mr. Myers. My name is Mark
12 Morris. I represent V.O.L.T. Are you familiar with
13 what that entity is?

14 A. Yeah, at a high level I think.

15 Q. Okay. It's a collection of landowners
16 that own property along the line through Midway.

17 Fifteen of -- well, you said you put the
18 bids out to 18 qualified contractors. What did you
19 mean by qualified?

20 A. We have a list of pre-qualified
21 contractors that we put bids out to for all of our
22 construction projects. They've been through our
23 procurement process, which qualifies them as --
24 there's a number of criteria. Technically qualified
25 to be able to build to our standards. You know

1 there's insurance involved, bonded, financial
2 backing. Those types of things is what the qualified
3 piece would mean.

4 **Q. And the names of the three of the 18 that**
5 **actually put bids in were what again?**

6 A. Wasatch Electric, RES Group, and Summit
7 Line Construction.

8 **Q. And so it sounds like those are**
9 **contractors who don't necessarily themselves have**
10 **trenching expertise but they would sub it out, or do**
11 **you know for those three?**

12 A. I don't know. We have, yeah, like we say,
13 a number of contractors that have their own gear,
14 some don't. Some subcontract, some work with each
15 other. There could be a number of scenarios where
16 sometimes they'll have trenching equipment on a
17 project during a certain time, and other times they
18 won't because it's being used other places. So,
19 yeah, there could be any number of variables during
20 the construction process.

21 **Q. You didn't listen to any of the testimony**
22 **yesterday, did you?**

23 A. No.

24 **Q. Can you tell us who is in the room with**
25 **you as you've been testifying this morning?**

1 A. Yes. Heidi Gordon, Bret Reich, Nicole
2 Kindle [phonetic], and Ben Clegg is -- was in here
3 this morning when I came in.

4 Q. Okay. And Mr. -- there's a Mr. Kendall
5 there?

6 A. Nicole Kindle.

7 Q. Oh, Nicole, I'm sorry. All right.

8 During your testimony has anyone in the
9 room been showing you things or putting papers in
10 front of you?

11 A. No. There's a number of papers here in
12 front of me, yes, but not from anyone else.

13 Q. Okay, thank you. You said there was a
14 similar project done in March of '19. Where was
15 that?

16 A. That was -- Purgatory Flats is what it was
17 called. It's in the Hurricane, St. George area.

18 Q. And how many -- well, what was the linear
19 feet on that?

20 A. I'll have to see if I have that with me.
21 It came out to about -- that was an overhead double
22 circuit line. I will have to -- I'll have to find
23 the feet. I don't have the exact footage with me on
24 it.

25 Q. Okay.

1 A. Oh, let me see here.

2 Q. What's the last underground transmission
3 line you were involved with that had a length of at
4 least a mile?

5 A. I -- from a project manager standpoint,
6 none. I've been involved in our capital investment
7 group. That was a previous role here. Was involved
8 in 2015 from a capital investment standpoint.

9 Q. So you've never been a project manager on
10 an underground line?

11 A. Not -- not a transmission line.

12 Q. Okay. Were you at Rocky Mountain Power
13 back in -- well, let's see. Are you familiar with
14 the underground transmission line that Rocky Mountain
15 built along 39th South that ran from 9th East down to
16 Main Street?

17 A. Oh, yeah. Not intimately. But, yeah,
18 there's a line there that I know of.

19 Q. Do you know who the contractor was that
20 did the trenching on that?

21 A. No, I don't.

22 Q. And the transmission underground line in
23 Draper went from Dimple Dell down to 10th East and
24 turned south, are you familiar with that line?

25 A. Yes.

1 Q. Do you know who the trenching company on
2 that was?

3 A. No.

4 Q. All right. You indicated earlier that a
5 single trench could accommodate two duct banks. Just
6 for the benefit of the reporter, could you spell
7 duct?

8 A. D-u-c-t, Duct.

9 Q. Okay, duct banks. How wide would that
10 have -- would the trench have to be to accommodate
11 the two, do you know?

12 A. On this specific project, about 8 feet.

13 Q. And if there are two trenches, how wide
14 would the two trenches have to be or would each of
15 the trenches have to be, and how far apart would they
16 have to be based on what you --

17 A. Well our standard calls out for 23 inches
18 wide for a duct bank, per duct bank. And we had 4
19 feet between the two on this project so that we could
20 operate and maintain each circuit independently and
21 safely.

22 Q. So it sounds like you want 4 feet between
23 the duct banks?

24 A. Yes.

25 Q. Okay. I'd like you to look at page 9. Do

1 you have your direct testimony in front of you?

2 A. Yes.

3 Q. On -- go to page 8, if you would.

4 A. I guess I don't have an 8. Mine stops at
5 7 in this book that's printed out.

6 Q. No, I'm sorry. I've got the page wrong.

7 Anyway, I think you stated that having --
8 Mr. Gordon asked you about the extra cable, and we
9 had some testimony yesterday about a dead line going
10 through. Are you familiar with that?

11 A. I wasn't in yesterday, so I'm not.

12 Q. No, I know. Not -- I'm sorry, bad
13 question.

14 Are you familiar with the spec called out
15 to put in a line that is just going to be dead and
16 won't be energized?

17 A. A dead line?

18 MR. REICH: Are you referring to the spare
19 conductor?

20 MR. MORRIS: The conduit that's going to
21 have a line pulled through that won't be energized,
22 and it will just be there for emergencies I guess.

23 THE WITNESS: Yeah. A spare conductor,
24 yes.

25 Q. (BY MR. MORRIS) I don't know the terms of

1 art. Dead line is how I've been thinking of it.

2 Is that -- is there such a dead line every
3 time you install a transmission underground?

4 A. Yes, there is. In our current standards
5 and specifications, any underground circuit we built
6 will have a spare conductor installed in it.

7 Q. If that's the current specification, was
8 there a time when your specification did not call
9 that out?

10 A. Yes.

11 Q. When did that change?

12 A. To my knowledge it was 2015, I believe,
13 when that was updated.

14 Q. Okay. I -- and maybe I'm the only one on
15 the line here that doesn't understand this. But
16 these capital surcharges, I don't want to plow ground
17 we've already gone over, but do you know where that
18 money goes that Rocky Mountain would collect from
19 Midway City, for example, here? They wouldn't go
20 actually into building this line, but would be some
21 sort of surcharge on top?

22 A. Yeah, I mean -- like I said I'm not the
23 finance expert here. But, yeah, it's a surcharge on
24 top of the project costs for the entire project.

25 Q. But you don't know where that money goes

1 **or what it's used for?**

2 A. No. I can't tell you exactly where it
3 goes. It's just an account for internal costs is
4 what I was -- explained by my finance group at a high
5 level. It accounts for all internal costs of all the
6 employees that are working here, whether they're
7 finance, engineering, you know, operations. They all
8 lend some support to projects. And then, you know,
9 maybe not in a direct way on a project to the
10 building of the project. But they'll offer support.
11 Like I asked for finance support on this project;
12 I've asked for engineering support, for standard
13 support. That's what those costs do is recoup that,
14 from what I understand.

15 **Q. Okay, thank you. Do the overhead project**
16 **costs include a surcharge as well?**

17 A. Yeah, all projects do.

18 **Q. All right. In the direct testimony, I**
19 **think you testified that going overhead was going to**
20 **be about \$269 a foot. Do you remember that?**

21 A. Yes.

22 **Q. That doesn't include the cost of**
23 **right-of-way and easement. That's a pure**
24 **construction cost?**

25 A. Yeah, that's pure construction.

1 Q. And does that number -- does that number
2 include the surcharge?

3 A. No. That one -- that one did not. That
4 was just comparison of construction.

5 Q. Rocky Mountain doesn't insist on having
6 spare conductors for overhead facilities, does it?

7 A. No, not installed. We'll have, you know,
8 a spare reel in our operations or service centers to
9 go pull in, a conductor on an outage. But, no, not
10 installed.

11 Q. But the bid on the overhead doesn't
12 include cost for an extra conductor?

13 A. No.

14 Q. Okay. You mentioned the bid meeting. Was
15 that February 10th?

16 A. Yes.

17 Q. Of this year?

18 A. Yes.

19 Q. Okay. So just over a couple of months
20 ago. Jason Norlen from Heber Light & Power was at
21 that meeting, wasn't he?

22 A. Yes, he was.

23 Q. You said four of 18 showed up. You don't
24 know why the fourth person chose not to put in a bid?

25 A. No, I didn't.

1 Q. Was there any discussion in the bid
2 meeting about the reality, if you will, of these
3 bids? I mean -- and by that I mean was there a sense
4 or a mood in there that, look, we just want a number
5 from you but don't get your hopes up about the job
6 being awarded? Something like that?

7 A. No.

8 Q. Do you know, Mr. Myers, why no bidders
9 have been asked to come and testify about their bids
10 in this proceeding?

11 A. No.

12 Q. Did you tell these bidders -- and maybe --
13 if it's in the papers, just tell me and we can look
14 at it ourselves. But did you tell these bidders when
15 they would have to have their work completed?

16 A. We put an in-service date, yeah, in this
17 project like all other projects.

18 Q. And what in-service date did you give
19 them?

20 A. December 31st, 2020.

21 Q. Okay.

22 A. Well, it may have been -- it was the end
23 of this year. It may have been December. I can
24 look. It was the end of this year though.

25 Q. You would agree with me that sometimes if

1 you tell a bidder they have to have a job done by a
2 certain time, the cost may go up because they may
3 need to devote more resources to get it done quickly?
4 You're familiar with that --

5 A. Yes.

6 Q. You're familiar with that dynamic?

7 A. Yes, they will add escalation costs to
8 that project. But on this one they submitted
9 schedules saying they would not be able to meet that
10 date.

11 Q. And so if the in-service date that the --
12 if the in-service date that you had provided to these
13 bidders had been out in 2021 sometime, even as late
14 as the fall of 2021, you would expect their bids to
15 have come in differently, wouldn't you?

16 A. Not necessarily. Like I say, they
17 submitted a schedule that did not meet the end of
18 this year. They put the schedule when they would be
19 able to get this in service, which would have been in
20 2021.

21 Q. The \$12 million bid, what was the date
22 they said they could get it done by?

23 A. I will have to pull that up. I don't have
24 it in my mind. I know it was into 2021.

25 Q. All three of them were into 2021?

1 A. Yes, correct. There wasn't anyone that
2 was able to complete it this year.

3 Q. Did any of them tell you that for a price
4 they could get it done this year?

5 A. No.

6 Q. Mr. Myers, do you have an explanation as
7 to why there is such a difference between the high
8 and the low bids here?

9 A. No, I don't. It's not -- it's not
10 unusual. Like I say, we receive on average two to
11 five, six bids, and they're -- I would say often
12 there's kind of whatever you might want to call it,
13 an outlier, whatever, there's a high bid that a lot
14 of times you just don't pay attention to. Like we
15 said we received two bids that were fairly close. 10
16 or 11 or 12 percent apart, which is very common. And
17 so, no, there usually is a high one. I wasn't
18 surprised.

19 Q. But by more than a factor of 100 percent,
20 that's common?

21 A. Yeah. It's -- I don't know if I'd say
22 common. But, yeah, it does happen for whatever
23 reason. Yeah, we have bids that are -- have a wide
24 range.

25 Q. And so it sounds like you're not the right

1 person to ask why one bidder thought this would be so
2 much more expensive than another one; is that right?

3 A. No. There could be a number of factors
4 involved.

5 Q. None of which you're aware of?

6 MR. REICH: Objection, he's asked and
7 answered that question. He just gave you several
8 reasons why. He answered the question, and then you
9 just said he didn't give you any reasons. So I'm
10 going to object to the question.

11 CHAIRMAN THAD LEVAR: I'm going to sustain
12 that objection.

13 Q. (BY MR. MORRIS) I'm just looking at my
14 notes here. Give me a minute, please.

15 In your overhead costs did you include
16 easement and right-of-way, or was that something
17 separate?

18 A. Yeah, that was separate.

19 Q. Okay. You didn't have anything to do with
20 estimating what it would cost to obtain
21 rights-of-way, easements, or pay severance damages?

22 A. No.

23 MR. MORRIS: Okay. I think that's all I
24 have for you, Mr. Myers. Thank you.

25 THE WITNESS: Thanks.

1 CHAIRMAN THAD LEVAR: Thank you, Mr.
2 Morris.

3 Mr. Reich, do you have any redirect for
4 this witness?

5 MR. REICH: No questions.

6 CHAIRMAN THAD LEVAR: Thank you, Mr.
7 Reich.

8 Do any board members have any questions
9 for Mr. Myers? If you do, just jump in and let me
10 know. If two of you do, I'll jump in and sort this
11 out.

12 MR. TROY FITZGERALD: I have a couple of
13 questions possibly.

14 CHAIRMAN THAD LEVAR: Okay.

15 MR. DAVID CLARK: I have questions.

16 CHAIRMAN THAD LEVAR: Why don't you go
17 ahead -- Mr. Fitzgerald, why don't you go first, and
18 then we'll go to Mr. Clark.

19 MR. TROY FITZGERALD: I think I've got a
20 question for the board first before I ask any
21 questions. And this has troubled me since the
22 beginning since the first hearing on this. I'm just
23 trying to understand the process and what our
24 responsibilities are.

25 In 52-14-305-2(b)(4), we're to resolve a

1 dispute regarding the apportionment of the actual
2 excess costs for the -- between the local government
3 and the public utility.

4 And I mean throughout the proceedings
5 we're hearing about -- I mean Rocky Mountain is a
6 party. But we're hearing that roughly half of the
7 costs are allocated to Heber Light & Power. And I'm
8 just -- am I missing something? Or it seems to me
9 that the issue is between the cost Rocky Mountain is
10 incurring as a result of the conditional use permit
11 that Midway City has put in place, and Heber Light &
12 Power costs should not be a part of this. Can
13 anybody help me with that?

14 CHAIRMAN THAD LEVAR: Mr. Fitzgerald, did
15 you want to direct that question to any of the
16 parties first or the counsel or --

17 MR. TROY FITZGERALD: Well, I mean I guess
18 first I guess if that's our -- I guess I'm asking
19 first from the board. Really does public utility
20 include Heber Light & Power, and are they somehow a
21 party to this? Depending on the answer to that, I'm
22 happy to ask either the parties or the witness.

23 CHAIRMAN THAD LEVAR: I don't know that I
24 have particular insight to add to your question.
25 I'll see if other board members do. But I think it's

1 probably appropriate to see if the counsel for any of
2 the parties want to give any of their views on your
3 question.

4 Do any board members want to make any
5 comments in connection with this question from Mr.
6 Fitzgerald?

7 I'm not hearing any. Why don't I go to
8 Mr. Reich first. Do you have any response to this
9 question? I think it's probably a question for the
10 counsel more than it is for Mr. Myers. So why don't
11 we just go that direction for a few moments.

12 MR. REICH: Yeah, this is Bret Reich with
13 Rocky Mountain Power. I'm not prepared really to
14 address that. I'll be happy to prepare something and
15 submit it to the board. Also we might need to concur
16 and give Heber Light & Power an opportunity to
17 respond to that question also.

18 CHAIRMAN THAD LEVAR: Thank you.

19 Do any of the -- Midway City, do you want
20 to address the question at this point, or would you
21 like to maybe give all of you an opportunity to
22 address it later in the hearing?

23 MR. GORDON: I'll just do an overview,
24 reserving the right to possibly amend.

25 My understanding is there's an agreement

1 between Rocky Mountain Power and Heber Light & Power
2 to split the costs of this line 80 percent to Rocky
3 Mountain Power and 20 percent to Heber Light & Power.

4 Rocky Mountain Power is the only party who
5 has challenged the conditional use permit, and so I
6 think it's in the purview of this board to determine
7 what the above-ground costs are, what the below --
8 going underground with the easements to determine
9 what the actual excess costs are going to be. And
10 then whatever those are ultimately they'll be split
11 80/20 between Rocky Mountain Power and Heber Light &
12 Power. Heber Light & Power has not challenged the
13 conditional use permit. So I think that they're --
14 any rights that they have will be dealt with
15 contractually between Rocky Mountain Power and
16 themselves. So I think that for purposes of what the
17 board is trying to accomplish, there's not really
18 separated out specifically Rocky Mountain Power costs
19 versus Heber Light & Power costs. It's a joint
20 process, and it's unique and a little goofy frankly.

21 But I think that based on what I
22 understand you need to determine what the actual
23 excess costs are of the entire project, and then
24 contractually that will be dealt with between the two
25 parties privately.

1 CHAIRMAN THAD LEVAR: Thank you, Mr.
2 Gordon.

3 Mr. Morris, anything else to add at this
4 point.

5 MR. MORRIS: If that answered Mr.
6 Fitzgerald's question, I wouldn't have anything to
7 add.

8 CHAIRMAN THAD LEVAR: Mr. Fitzgerald, why
9 don't we go back to you. Do you want to do any
10 follow up or --

11 MR. TROY FITZGERALD: I'll ask a couple of
12 questions then while the witness is here, and I'll
13 say that does raise significant questions for me
14 about whether the facility should be constructed and
15 how the costs are allocated.

16 But the witness -- the question for the
17 witnesses are: What is the estimated cost of the
18 bank, duct bank being installed for the benefit of
19 Heber Light & Power?

20 CHAIRMAN THAD LEVAR: Can you repeat that?
21 Sorry.

22 MR. TROY FITZGERALD: Sure. What is the
23 estimated cost of the duct tank being installed for
24 the benefit of Heber Light & Power?

25 THE WITNESS: Compared to these

1 construction bids or total --

2 MR. TROY FITZGERALD: Yes.

3 THE WITNESS: -- it would cost?

4 We haven't figured that at this point yet.

5 MR. TROY FITZGERALD: Okay. Would it be
6 fair to say it's approximately half the total costs?

7 THE WITNESS: I wouldn't want to speculate
8 at this point because that hasn't been, you know,
9 accounted for or broken out yet.

10 MR. TROY FITZGERALD: Okay. So there are
11 two duct banks?

12 THE WITNESS: Correct, yes. Two duct
13 banks, two separate circuits being involved.

14 MR. TROY FITZGERALD: One is for Rocky
15 Mountain Power; is that correct?

16 THE WITNESS: Yes.

17 MR. TROY FITZGERALD: And one is for Heber
18 Light & Power?

19 THE WITNESS: Yes, correct.

20 MR. TROY FITZGERALD: Are there any costs
21 associated with the construction that would only be
22 for Rocky Mountain Power?

23 THE WITNESS: On this section of line,
24 just what would directly be, you know, their circuit,
25 that has to do with their circuit.

1 MR. TROY FITZGERALD: And then finally
2 based upon what you heard there, I mean can you just
3 confirm is there -- well, I'll ask it this way. Is
4 there a contract to divide the costs between Rocky
5 Mountain Power and Heber Light & Power?

6 THE WITNESS: Yes, there is.

7 MR. TROY FITZGERALD: And do you know how
8 those costs are divided in the contract?

9 THE WITNESS: I don't. I don't have the
10 details on that.

11 MR. TROY FITZGERALD: Okay. Thank you.
12 That's all I have, Mr. LeVar.

13 CHAIRMAN THAD LEVAR: Thank you, Mr.
14 Fitzgerald.

15 Mr. Clark, did you have some questions for
16 Mr. Myers?

17 MR. DAVID CLARK: Yes, I do.

18 Mr. Myers, taking you back to the
19 discussion of option 1 and the 6,990 feet of cable in
20 relation to the 5,300-and-some feet that would be
21 in -- underground.

22 THE WITNESS: Right.

23 MR. DAVID CLARK: Is it -- it seems -- I'm
24 going to ask you whether or not it's a reasonable
25 inference that the bidders that specify trenching for

1 6,990 feet misunderstood your specification.

2 THE WITNESS: It's possible. I do -- in
3 our summary of work here, we clarified the extra, you
4 know, 100 feet per phase at each termination
5 structure to try to make that clear.

6 MR. DAVID CLARK: Right. But the bids
7 reflected something different than that. And so I'm
8 wondering did that discrepancy become apparent to you
9 as you reviewed the responses -- or the bids that
10 were -- that came in in response to the request for
11 bidding?

12 THE WITNESS: No, not -- no, it didn't.

13 MR. DAVID CLARK: I guess another way to
14 ask that is: Did you just become aware of that
15 today?

16 THE WITNESS: No, I saw the number in
17 there. And sometimes it's hard to interpret a
18 contractor's bid. They'll put costs in one line item
19 and not in another. If you go through some of these
20 they'll have more in one, some in another. And I
21 don't have an explanation as to why they do that, but
22 we see that often.

23 MR. DAVID CLARK: Well, if you had been
24 reviewing these bids in a different context, a
25 context where this was going to be a contractor

1 providing the work for Rocky Mountain Power but
2 without regard to a conditional use permit and the
3 parameters of that, would you have inquired regarding
4 the discrepancy that you note today between what the
5 bids say about the length of trenching and your
6 specifications?

7 A. No, I don't believe I would have taken a
8 different approach. We -- I was treating this as if
9 this is what we're going to build, and that's kind of
10 the way I pursued this the entire time as an
11 underground transmission line.

12 MR. DAVID CLARK: I have no further
13 questions. Thank you.

14 CHAIRMAN THAD LEVAR: Thank you, Mr.
15 Clark.

16 Do any other board members have questions
17 for Mr. Myers?

18 I'm not hearing any. So thank you for
19 your testimony today, Mr. Myers.

20 Mr. Reich, you can proceed to your next
21 witness.

22 MR. REICH: The next witness would be
23 Jason Norlen.

24 CHAIRMAN THAD LEVAR: Okay. Before we go
25 forward, we again have an objection to this witness.

1 Why don't we go to Mr. Gordon. If you want to give a
2 quick summary of your objections to Jason Norlen.

3 MR. JEWKES: This is Mr. Jewkes. I like
4 making objections, as you can tell. But in this case
5 I think I'm going to withdraw my objection to Mr.
6 Norlen. He's a great guy, and I want to give him an
7 opportunity to testify today.

8 CHAIRMAN THAD LEVAR: Thank you,
9 Mr. Jewkes.

10 Mr. Morris, anything for you to add? You
11 have joined -- you had joined the motion, and you had
12 not independently objected to this witness, but you
13 joined in Midway's motion. Do you have anything to
14 add to the objection at this point?

15 MR. MORRIS: I do not. If Midway is
16 withdrawing its objection, I'll go along with that.
17 Thank you.

18 CHAIRMAN THAD LEVAR: Okay, thank you.

19 Mr. Norlen, are you on the line?

20 THE WITNESS: Yes.

21 CHAIRMAN THAD LEVAR: Do you swear to tell
22 the truth?

23 THE WITNESS: Yes.
24
25

1 JASON NORLEN,
2 called as a witness, having been duly sworn, was
3 examined and testified as follows:

4 CHAIRMAN THAD LEVAR: Thank you.

5 Mr. Reich, you can go ahead.
6

7 DIRECT EXAMINATION

8 BY MR. REICH:

9 Q. Sure. Mr. Norlen, this is Bret Reich at
10 Rocky Mountain Power. We're not in the same room.
11 So have you had the chance to review your direct
12 testimony that has been submitted in this proceeding?

13 A. Yes.

14 Q. And is it an accurate representation of
15 your testimony at this time?

16 A. Yes.

17 Q. Do you have any changes to make?

18 A. No.

19 MR. REICH: We would offer the testimony
20 of -- direct testimony of Jason Norlen.

21 CHAIRMAN THAD LEVAR: If there's any
22 objection to that motion, please indicate it.

23 I'm not hearing any objection, so the
24 motion is granted. Thank you.

25 Go ahead, Mr. Reich.

1 MR. REICH: The next witness will be Craig
2 Michaelis.

3 CHAIRMAN THAD LEVAR: I'm sorry, are you
4 finished with Mr. Norlen, Mr. Reich? Are you
5 finished with any direct questions?

6 MR. REICH: Oh, sorry. Yeah. Sorry about
7 that.

8 CHAIRMAN THAD LEVAR: Okay, thank you.
9 Mr. Gordon or Mr. Jewkes, do you have any questions
10 for Mr. Norlen?

11 MR. GORDON: Yes, I do. Thank you.
12

13 CROSS-EXAMINATION

14 BY MR. GORDON:

15 Q. Morning, Jason. How are you?

16 A. Good, how are you doing?

17 Q. Good, good. Just a couple quick questions
18 here. You worked for Heber Light & Power for over
19 20 years, correct?

20 A. Yes.

21 Q. How many times has Heber Light & Power
22 lost power from the transmission line coming up Provo
23 Canyon?

24 A. Several. I don't have a direct number.
25 Probably at least two or three that are, you know,

1 kind of real outages. And then there's been several
2 bumps beyond that, but...

3 **Q. Okay. And do you recall what caused those**
4 **outages?**

5 A. Yeah, I think there was an avalanche or
6 something that took us off line probably a couple of
7 springs ago. There's been some -- probably some
8 wildlife issues. We don't really get like the exact
9 cause of the outage, unless we really push, you know,
10 our sales guy at Rocky Mountain Power, our customer
11 rep. And sometimes they don't even know. So
12 sometimes we're just left with, you know, just trying
13 to deal with a transmission outage.

14 **Q. Okay. In the last 20 years or during your**
15 **time at Heber Light & Power, how many days combined**
16 **over that time has Heber Light & Power's system been**
17 **down due to a loss of that transmission line?**

18 A. As far as just down I would say, you know,
19 two or three. But there's been several other
20 instances where we've had to supplement that
21 transmission line with various other means, and
22 there's -- there's quite a bit of voltage issues that
23 come in that we have to deal with as an end-use
24 customer.

25 **Q. Okay. But just to clarify over the last**

1 **20 years collectively power has been down maybe a**
2 **couple of days, correct?**

3 A. I wouldn't say in the last 20 years. I
4 would say, you know, a couple of times in the last
5 maybe four to five would be more accurate, I believe.
6 Twenty, I'd have to really go back and look.

7 **Q. All right. What's the longest that you're**
8 **aware of that you've lost power in that transmission**
9 **line?**

10 A. I think -- I think there was a -- you
11 know, I'm guessing that a few years ago we had about
12 a six to seven-hour outage.

13 **Q. And on that one did you -- were you able**
14 **to supplement with sources within your own system --**

15 A. No.

16 **Q. -- to cover the difference?**

17 A. No, we weren't about to. So once the line
18 trips and the generation trips offline, we're not
19 really designed to island. It would take us two or
20 three days to get that to happen.

21 **Q. Okay. Let me just kind of glance through**
22 **my questions here. Based on projections in your own**
23 **company, the north line you currently are not saying**
24 **that it would be overloaded until 2022, correct?**

25 A. Can you restate that?

1 Q. Sure. There was a load study done on your
2 company that's been submitted to us. And based on my
3 review of that, it stated that the north line is not
4 currently exceeding its capacity, correct?

5 A. No. No, the north line -- the north line
6 impacts the system, yes.

7 Q. Okay. And there's not real concern about
8 the north line through the year of 2020, correct?

9 A. Correct, yeah. The north line, it's in
10 good shape.

11 Q. Okay. And you run a looped system,
12 meaning that you can rely on the north line while the
13 south line is being upgraded, correct?

14 A. Yes. In other than a couple of just kind
15 of weak areas where we cannot do that.

16 Q. Okay. But the plan will be that the
17 existing south line, the 46 kV line will be
18 decommissioned during construction, and you'll be
19 relying on the north line, correct?

20 A. Yes.

21 Q. And the north line has the capacity to
22 deal with the system while this is -- while the south
23 line is down, correct?

24 A. Yes.

25 Q. Okay. What is the realistic chance that

1 the load capacity in the north line would be exceeded
2 if the new line is not finished until spring of 2021?

3 A. We don't anticipate the north line load
4 being exceeded within the realm of any of the studies
5 we've done.

6 Q. Okay. So if there were a scenario where
7 Midway City was allowed to bond to bury and the new
8 line was pushed off on the Midway portion until the
9 spring of 2021, you don't foresee a situation where
10 that would harm your system or put people in a
11 scenario where they would not be receiving power,
12 correct?

13 A. I don't know what you're asking me there,
14 Corbin. I mean if a cord gets pulled on the north
15 line during a peak, the south line can't handle our
16 peak. So there would be an outage. I don't know if
17 you want to rephrase or --

18 Q. Let me clarify better and ask that
19 question better.

20 Short of something that causes an outage
21 on the north line, it can handle the load while the
22 south line is being built, correct?

23 A. Yes.

24 Q. Okay. And how many times have you had
25 outages in the north line?

1 A. Not very often. I don't have that
2 information right in front of me. I'm sure we've had
3 a couple operations on that in the last few years.

4 Q. But ever situations that lasted, say,
5 maybe more than an hour where the power was out on
6 the north line?

7 A. Yeah, I don't think there was anything
8 that was beyond like two hours. It would probably
9 just be like some type of an environmental event like
10 an animal, wildlife type event.

11 Q. Okay. So I'm just trying to assess the
12 risk here. Is it safe to say that if the new
13 transmission line is delayed, say five or six months,
14 that statistically the risk is not particularly high
15 that the north line is going to go down in that time,
16 correct?

17 A. Yeah. I -- I mean we'd be relying on the
18 north line, yes.

19 Q. Okay. And that line has been very
20 reliable in the past, correct?

21 A. Yeah, it's a good line.

22 Q. Okay. Let me see here. Were you involved
23 in creating the specifications for the bids that were
24 sent out to bury the line?

25 A. Yes.

1 Q. Okay. I just want to ask you a few things
2 about each one of them. The bids require a dual
3 trench to bury. Were you a part of that?

4 A. Yeah, I -- there's two separate entities.
5 Once we go underground, we've got to remain separate.

6 Q. And is that more for convenience, or is
7 that based on any -- any industry standard that
8 you're aware of?

9 A. As far as I know, without diving into it,
10 you know, we did have this discussion with my
11 engineer as we developed those specs, and it's my
12 understanding that two companies can't share the same
13 duct bank.

14 Q. Okay. And that was based on a discussion
15 with your engineer, correct?

16 A. Yes, uh-huh (affirmative).

17 Q. Okay. There's also a requirement in there
18 where there's going to be an extra conduit installed
19 but also a specification that an extra line will be
20 pulled through that conduit on both circuits, both
21 Rocky Mountain Power and Heber Light & Power. And my
22 question to you is did you request that the extra
23 line be pulled through?

24 A. With my engineers, yes.

25 Q. Okay. And was that based on any safety

1 **requirement that you're aware of?**

2 A. No. It was based on a reliability
3 conversation that we had. It's a long lead time
4 item, that wire. And splicing is a long lead time.
5 And once you go underground it just made sense to us
6 to -- you've got the pullers set up, everything else
7 to get that spare cable in. And if not we've got to
8 buy it anyway and put it on the rate base so we have
9 it available because it's a long lead time item.

10 So, yeah, it was a conscious decision. I
11 think I talked about it with the board, and it went
12 into our spec.

13 MR. GORDON: Okay. Let me just look
14 through if there's anything else I want to ask you.

15 I don't think there's anything I need at
16 this time so I'll finish with the witness. Thank
17 you.

18 CHAIRMAN THAD LEVAR: Thank you, Mr.
19 Gordon.

20 Mr. Morris, do you have any
21 cross-examination for Mr. Norlen?

22 MR. MORRIS: I do. Thank you, Mr.
23 Chairman.

CROSS-EXAMINATION

BY MR. MORRIS:

Q. Mr. Norlen, my name is Mark Morris. I represent V.O.L.T. We met in a meeting up in Heber many months ago. I don't know if you remember me.

A. Yes, I do.

Q. You mentioned in your direct testimony that the existing line is at the end of its useful line. What makes that so?

A. It -- one, it's been outgrown by just growth on the Heber Light & Power distribution system. So that and that -- just a typical reconductor won't work on that line because of the age and the condition of the structures themselves. And so that in itself made me make that comment that it's at the end of its useful life.

Q. Okay. And how old is it?

A. As near as I can tell, it was built in the mid '70s.

Q. So almost 50 years?

A. Yeah.

Q. The line that is proposed to be built and go overhead, how long would you expect that line to be there?

A. You know, I don't know exactly when it

1 would be fully depreciated, but I'm guessing that
2 it's good for 40 or 50 years, just like this one.
3 So...

4 Q. So whatever is put there, the residents
5 living there can expect to see that for a goodly
6 portion of their lifetime; is that fair?

7 A. Yeah. I mean there's a line there now.
8 You know, if that line gets rebuilt, then...

9 Q. In connection with your working with Rocky
10 Mountain, did you ever make any representations to
11 Rocky Mountain about the width of the existing
12 easements that run with your current line there?

13 A. No. I told them that I had a prescriptive
14 easement that allows me to operate -- safely operate
15 a 46 kV line.

16 Q. And so you never gave them dimensions?

17 A. During those initial talks, I don't recall
18 ever talking to them about the dimensions. They're
19 in the utility world, and they know what a
20 prescriptive easement is.

21 Q. Okay, that's fair. I just wanted to make
22 sure you weren't the source of any information that
23 they obtained that would lead them to believe there
24 were, for example, 60- or 57-foot wide easements
25 along the current HLP line. Nothing like that came

1 **from you, correct?**

2 A. No. We have a prescriptive easement to
3 safely operate a 46 kV line. So whatever width that
4 requires, you know, we never really talked about
5 width. I got -- through this process some widths
6 have come up that sound reasonable to me. By the
7 time you get a truck in there to replace a pole or,
8 you know, you have a weather event that blows a line
9 down, it's going to take, you know, 20-plus feet on
10 either side to get in there and get that line fixed.

11 **Q. And to date, Mr. Norlen, I mean you've**
12 **seen the line recently, haven't you?**

13 A. Yeah.

14 **Q. Fair to say, isn't it, that there are**
15 **structures, trees, even a tree house that are less**
16 **than 20 feet away from your lines?**

17 A. Yeah. I'm not considering if --

18 **Q. If a landowner were to testify that**
19 **they've got vegetation growing right up against your**
20 **poles and very close to your lines, less than 5 feet,**
21 **you wouldn't dispute it, would you?**

22 A. No. But if I needed to get in there and
23 remove that in order to safely operate that line,
24 then that prescriptive easement would give us that
25 right.

1 **Q. Have you ever had any discussions with**
2 **anyone at Rocky Mountain Power about going**
3 **underground versus going overhead? I mean do you**
4 **personally have a preference here?**

5 A. No. I want to get the project done;
6 that's what I want to do. I'm -- no, if it ends up
7 going underground, let's do it.

8 **Q. What facilities has Heber Light & Power**
9 **already agreed to bury in connection with the**
10 **Jordanelle and Midway project?**

11 A. We're already burying all the
12 distribution.

13 **Q. All of it?**

14 A. All of it through this section that we're
15 talking about. So we've agreed and the board has
16 agreed to put all under-built distribution and also
17 allow -- also put conduit in the ground to allow for
18 the communications cables to come off the current
19 transmission line as proposed.

20 **Q. And so that expense is already being borne**
21 **by Heber Light & Power to build at least one trench**
22 **through this line?**

23 A. Yes. That's all going to get rate based,
24 yes.

25 **Q. And what size, do you know what size of a**

1 **trench is already going to be dug here?**

2 A. Yeah, it's going to be enough to
3 accommodate that distribution under build. It's
4 going to be different in places. Some of that is
5 three phase, and other sections of it are single
6 phase. So that will just vary as we take that
7 distribution off.

8 Q. What are the dimensions? I'm sorry, I
9 think I probably know less about the tech stuff here
10 than anyone. When you say a single or a triple, what
11 dimensions in feet are you talking about?

12 A. When we -- when we go underground with it?

13 Q. Yeah.

14 A. It will be, you know, probably a 3-foot
15 trench that's, you know, 3 1/2 feet deep. We need to
16 have 3 feet of cover over that, so...

17 Q. Okay. That's helpful. Thank you.

18 Are Heber Light & Power facilities in
19 Midway the only one being buried, or are you going
20 underground along the whole route?

21 A. The facilities committee and the power
22 board determined where we were going to take it
23 underground. And I think in just all of the
24 residential areas, I know in Heber City we're taking
25 everything underground. And then through certain

1 parts of Wasatch County. I think the only place
2 where we stay distribution overhead is from the
3 proposed point of delivery substation to Highway 113
4 in Midway.

5 Q. Okay. Is Heber Light & Power issuing
6 bonds to pay for under grounding relocation?

7 A. Yes. That's been done.

8 Q. Is Heber Light & Power going to own or
9 operate any of the 138 kV transmission lines being
10 buried by Rocky Mountain Power?

11 A. No, we're not going to operate any of
12 their circuit.

13 Q. Okay. The last topic I wanted to go
14 through, you attended, on February 10th, the meeting
15 of bidders for the underground proposal to go through
16 Midway; is that right?

17 A. Yes.

18 Q. And you reported on that meeting to the
19 board at a March 4th meeting. Do you recall that?

20 A. Yeah.

21 Q. Just a month and a half ago?

22 A. Uh-huh (affirmative).

23 Q. Do you remember telling the members of the
24 board in that meeting that a lot of the meeting with
25 the bidders was trying to convince them that it was

1 **worth their time to put in a bid? Correct?**

2 A. Yeah, those questions came up in that bid
3 meeting as to how realistic this project was. And I
4 told them that we had a city that was more than
5 willing to pay for this line to go underground based
6 on a survey that was done.

7 **Q. And there was some hesitancy in the**
8 **contractors that you sensed?**

9 A. Initially, yeah. You know, I thought that
10 when they came in they asked pertinent questions. I
11 would have asked the same questions.

12 **Q. Did you ever have any conversations with**
13 **any bidders that decided not to put a bid in for any**
14 **reason? I mean anyone who received the RFP but who**
15 **chose not to put a bid in?**

16 A. No, huh-uh (negative).

17 **Q. All right.**

18 MR. MORRIS: I think that's all I have for
19 you. Thank you, Mr. Norlen.

20 THE WITNESS: Thank you.

21 CHAIRMAN THAD LEVAR: Thank you, Mr.
22 Morris.

23 Mr. Reich, any redirect for Mr. Norlen?

24 MR. REICH: Yeah, just two questions.

REDIRECT EXAMINATION

BY MR. REICH:

Q. Mr. Norlen, are there any questions that you've been asked that you haven't been able to give a full answer to that you would like to clarify?

A. No.

Q. Okay. And then my other question is Mr. Morris asked you about how long this line has been in question, and you said approximately 50 years. He also asked about some trees and things that have grown into the line. I understand you've worked for Heber Light & Power for 23 years. How is the development around the line changed over the years?

A. By quite a bit. So when I first started working here, the line was mostly through fields. And since that time there's been some development on Ward's Lane and also down on the other portion of the line. There on Stringtown Road, the houses to the east have been there for a long time.

MR. REICH: I have no further questions.

CHAIRMAN THAD LEVAR: Thank you, Mr. Reich.

MR. MORRIS: I --

CHAIRMAN THAD LEVAR: Mr. Morris?

1 MR. MORRIS: Yes.

2 CHAIRMAN THAD LEVAR: Let me first ask Mr.
3 Gordon if he --

4 Mr. Gordon, do you have any questions
5 based on that redirect?

6 MR. GORDON: Just one to clarify.

7 CHAIRMAN THAD LEVAR: Before you go
8 forward. Mr. Morris, am I understanding that you
9 also do have some recross?

10 MR. MORRIS: I do. Thank you, Mr.
11 Chairman.

12 CHAIRMAN THAD LEVAR: Why don't we go to
13 Mr. Gordon first, and then we'll go to Mr. Morris.

14

15 RECROSS-EXAMINATION

16 BY MR. GORDON:

17 Q. Just one question. Heber Light & Power
18 isn't challenging the conditional use permit,
19 correct?

20 A. No. No, we'd just like to get some
21 finality to it so we can keep the project moving.

22 MR. GORDON: That's all I -- that's
23 everything I have.

24 CHAIRMAN THAD LEVAR: Thank you, Mr.
25 Gordon.

1 Mr. Morris.

2 MR. MORRIS: Thank you.

3
4 RECROSS-EXAMINATION

5 BY MR. MORRIS:

6 Q. Mr. Norlen, in response to Mr. Reich's
7 question, you mentioned that there's been a lot more
8 development over the years near this line. By that
9 do you mean there are more residential properties and
10 families that are living closer to this line than
11 there were previously?

12 A. Yeah. There's quite a few homes that have
13 sprung up over there in that Ward's Lane area. So,
14 you know, that developer could have buried that line
15 at that time too and chose not to. He got a bid.

16 MR. MORRIS: Mr. Chairman, I would just
17 move to strike the last part of that answer. It
18 wasn't responsive, and I don't know where it came
19 from. I don't want to go down a whole new path about
20 decisions developers made or bids that were made.

21 CHAIRMAN THAD LEVAR: Mr. Reich, do you
22 want to respond to the motion to strike?

23 MR. REICH: Yeah. I think it was
24 responsive to his question, so we would oppose that
25 motion to strike.

1 CHAIRMAN THAD LEVAR: I think I'm inclined
2 to agree that it was within the scope of the question
3 asked. So I'm not inclined to strike.

4 If any board members feel differently,
5 please feel free to interject. But at this point,
6 that's my ruling.

7 MR. MORRIS: I'd like an opportunity to
8 follow up, Mr. Chairman.

9 CHAIRMAN THAD LEVAR: Yes.

10 **Q. (BY MR. MORRIS) Mr. Norlen, you said that**
11 **the developer had an opportunity to bury the line.**
12 **What line are you referring to?**

13 A. The section of the line there by Ward
14 Lane. When that subdivision went in years ago, we
15 put together a quote back in that time for that
16 developer to bury that 46 kV line, and he or that
17 company decided not to bury that 46 kV down that
18 lane.

19 **Q. The developer would have had to have**
20 **shelled out more money to bury the line, wouldn't he**
21 **or she?**

22 A. Yeah. Yes, yes.

23 **Q. So they elected not to spend the money to**
24 **bury it?**

25 A. Yes.

1 MR. MORRIS: All right. That's all I
2 have. Thanks.

3 CHAIRMAN THAD LEVAR: Thank you, Mr.
4 Morris.

5 Do any board members have questions for
6 Mr. Norlen?

7 MR. GLENN WRIGHT: Yes. I have a
8 question.

9 CHAIRMAN THAD LEVAR: Okay. Why don't you
10 go ahead.

11 MR. GLENN WRIGHT: Mr. Norlen, have you
12 been briefed by Rocky Mountain Power on the public
13 safety power shutoff plan?

14 THE WITNESS: Yeah. The wildfire plan?

15 MR. GLENN WRIGHT: Yes. Yep, the one on
16 wildfire.

17 THE WITNESS: Yes.

18 MR. GLENN WRIGHT: Would you tell me how
19 that would affect the Heber Light & Power operations.

20 THE WITNESS: Yeah, it's one of the real
21 motivations of this since that came out is that's
22 clearly in their zone that they've identified as a
23 line that could be de-energized if weather conditions
24 are right as well as the lines coming off Parleys
25 Canyon. So they've given us notice that if weather

1 conditions are right, there could be extended outages
2 on those lines.

3 MR. GLENN WRIGHT: Okay. And since this
4 is a summer event are you comfortable with multiple
5 summers going by before this line gets built?

6 THE WITNESS: No.

7 MR. GLENN WRIGHT: Okay. One more
8 question. Has Midway approached Heber Light & Power
9 and do you have the ability to do a revenue
10 anticipation bond for Midway customers?

11 THE WITNESS: There was discussion in a
12 board meeting about that. I think the question still
13 lies as to what exactly that dollar amount ask is
14 going to be for the board. I mean I'm -- that's kind
15 of how I understood that discussion going at the
16 board level.

17 MR. GLENN WRIGHT: Okay. And if that
18 decision was made by the board, how fast could that
19 be executed?

20 THE WITNESS: Oh, it would -- you know, it
21 would probably take three to four months to probably
22 get that bonding done. Maybe a little bit less than
23 that. But I'd say three to four months.

24 MR. GLENN WRIGHT: Thank you. That's all
25 my questions.

1 CHAIRMAN THAD LEVAR: Thank you,
2 Mr. Wright.

3 Do any other board members have questions
4 for Mr. Norlen?

5 MR. TROY FITZGERALD: I have a few.

6 CHAIRMAN THAD LEVAR: Okay. Go ahead.
7 Thank you.

8 MR. TROY FITZGERALD: Thank you.

9 Mr. Norlen, can you explain the cost
10 sharing arrangement you have on this project with
11 Rocky Mountain Power?

12 THE WITNESS: Yeah. We have a
13 construction agreement with Rocky Mountain Power to
14 build a dual circuit overhead line. So -- and under
15 that agreement, they pay 80 -- on just typical 138 on
16 one side, 46 kV on the other side. It's paid
17 80 percent Rocky Mountain Power, 20 percent Heber
18 Light & Power. And then if there's any type of
19 betterment, meaning need to upgrade poles for
20 distribution underbuild or things like that, then
21 Heber Light & Power pays for that betterment.

22 MR. TROY FITZGERALD: Would that
23 arrangement change if the decision is made to take
24 the line underground?

25 THE WITNESS: It could. The construction

1 agreement is for an overhead power line.

2 MR. TROY FITZGERALD: And just so I
3 understand, you were talking about taking your
4 distribution underground. If the 138 kV line is
5 installed underground, will the distribution lines be
6 in a separate trench or in the same duct bank that's
7 being constructed?

8 THE WITNESS: I -- we would have to work
9 with that -- with that. We've got RFPs out right
10 now, so it would be a different contractor. So I'm
11 guessing that, you know, we'd have to -- we'd have to
12 correlate that. I don't -- I don't see them being in
13 the same trench just because, you know, I don't want
14 my distribution line necessarily right next to my
15 transmission line when it's in the ground.

16 MR. TROY FITZGERALD: And then I think my
17 last question is whether it's above ground or
18 underground on your transmission lines, I'm
19 understanding there are two circuits being built. Is
20 there ever a time Rocky Mountain Power would be using
21 or operating your circuit?

22 THE WITNESS: No.

23 MR. TROY FITZGERALD: And vice versa, I
24 guess, you would never use or operate Rocky
25 Mountain's circuit?

1 THE WITNESS: No. They're two completely
2 different company-owned circuits. So they would not
3 have any control of mine, and I would not have any
4 control of theirs.

5 MR. TROY FITZGERALD: Thank you.

6 CHAIRMAN THAD LEVAR: Thank you, Mr.
7 Fitzgerald.

8 Mr. Clark or Mr. White, any questions for
9 this witness?

10 MR. JORDAN WHITE: I have no questions.

11 CHAIRMAN THAD LEVAR: Okay, thank you.
12 I'm not hearing any from you, Dave Clark?

13 MR. DAVID CLARK: No questions.

14 CHAIRMAN THAD LEVAR: Thank you. I don't
15 either.

16 Thank you for your testimony, Mr. Norlen.

17 THE WITNESS: Okay, thanks.

18 CHAIRMAN THAD LEVAR: And I think we'll
19 take a break before the next witness, but let me
20 cover a couple of housekeeping issues before we do
21 that.

22 Just to let everyone know, I'm not aware
23 of any time constraints on board members today. We
24 do have one tomorrow. We need to finish by 3:00 p.m.
25 tomorrow for one board member's commitment. So just

1 so you know, plan for that tomorrow. But I'm not
2 aware of any today, so I think we'll plan to go
3 through the full afternoon today.

4 And then just to circle back, based on the
5 board discussion I think it was the intention of the
6 board that I provide to the parties the section to
7 the NESC code. I have that in front of me, and I can
8 scan it during the break and e-mail it to the
9 parties. I would probably just respond to the e-mail
10 string that started last night with Mr. Reich.

11 But I'm going to confirm my intentions
12 that I intend to scan and send out sections 320 and
13 352. Those were the two that were referenced in the
14 e-mail. So that's my intention during the lunch
15 break is to scan and e-mail sections 320 and 352.
16 And then if there are any other motions with respect
17 to that as we move forward, we'll deal with those as
18 we go.

19 With that I think we're ready to take a
20 break. Does anyone else have anything they'd like us
21 to address before we take a recess?

22 MR. MORRIS: This is Mr. Morris, Mr.
23 Chairman. For scheduling purposes because we've got
24 witnesses that need to get on a phone, can I inquire
25 about how much time Rocky Mountain anticipates for

1 its remaining witnesses, who it's going to call next?
2 And then I'd like to know from Midway what they think
3 their timing is on their witnesses.

4 CHAIRMAN THAD LEVAR: Before I turn to
5 them, we have two remaining witnesses for Rocky
6 Mountain Power. I think the time that they will take
7 depends a lot more on cross-examination than on
8 anything from Rocky Mountain Power. But with that,
9 Mr. Reich, do you have any additional insights? And
10 we have objections to both witnesses to deal with as
11 well.

12 MR. REICH: I agree with what you said.

13 MR. MORRIS: So who is next? Is it
14 Mr. LeFevre or --

15 MR. REICH: No, we were going to call
16 Mr. Michaelis next and then Ben LeFevre after him.

17 MR. MORRIS: Okay. And then once we're
18 done with Mr. LeFevre, who does Midway -- I mean it
19 sounds like we're going to get to someone else today.

20 CHAIRMAN THAD LEVAR: Yeah. So you're
21 asking Mr. Gordon or Mr. Jewkes who they intend to
22 call first? Is that your question, Mr. Morris?

23 MR. MORRIS: Yes, thank you.

24 MR. GORDON: At this point we would love
25 to call John Nelson, our expert.

1 CHAIRMAN THAD LEVAR: Okay. Mr. Morris,
2 is that enough for this for now?

3 MR. MORRIS: If we think that will get us
4 through the day today, yes. I just --

5 CHAIRMAN THAD LEVAR: Well, I'm not
6 certain. We might get farther than that. But I
7 don't know if -- Mr. Gordon, do you know who you
8 would call second, or does that depend on anything
9 that might happen between now and then?

10 MR. GORDON: Well, yeah. I mean I don't
11 foresee us getting to our expert. If we've got two
12 more plus our expert, I think that's going to fill
13 the day. So I would not foresee us calling any other
14 witnesses today. I think that will fill it.

15 MR. MORRIS: Okay, that helps. Thank you.

16 CHAIRMAN THAD LEVAR: Okay. With that I
17 think we'll recess until 1:00 p.m. Thank you. We're
18 in recess.

19 (Break taken from 11:53 to 1:00 p.m.)

20 CHAIRMAN THAD LEVAR: Rocky Mountain Power
21 had indicated their next witness was Mr. Michaelis,
22 and we have an objection to that witness from Midway
23 City. So why don't we go to Mr. Jewkes and Mr.
24 Gordon if they want to address their objection to the
25 witness.

1 MR. JEWKES: We withdraw that objection.

2 CHAIRMAN THAD LEVAR: Thank you.

3 Mr. Morris, you had joined the objection.

4 Do you have anything to add at this point?

5 MR. MORRIS: I do not.

6 CHAIRMAN THAD LEVAR: Thank you. Mr.

7 Reich, is Mr. Michaelis on the line?

8 MR. REICH: I believe so. He is not with

9 us here. So Mr. Michaelis, are you out there?

10 THE WITNESS: Yes, I'm on the line.

11 CHAIRMAN THAD LEVAR: Mr. Michaelis, do

12 you swear to tell the truth?

13 THE WITNESS: Yes.

14

15 CRAIG MICHAELIS,

16 called as a witness, having been duly sworn, was

17 examined and testified as follows:

18

19 CHAIRMAN THAD LEVAR: Okay. Mr. Reich, go

20 ahead.

21

22 DIRECT EXAMINATION

23 BY MR. REICH:

24 Q. Is it Michaelis or Michaelis?

25 A. Michaelis.

1 Q. Okay. Have you had an opportunity to
2 review your direct testimony that has been prepared
3 and submitted in this proceeding?

4 A. Yes.

5 Q. And is it an accurate reflection of your
6 testimony?

7 A. Yes.

8 Q. Do you have any changes that you need to
9 make at this time?

10 A. No.

11 MR. REICH: Okay. I'd move to submit the
12 testimony of Mr. Michaelis.

13 CHAIRMAN THAD LEVAR: If any party objects
14 to the motion, please indicate your objection.

15 I'm not hearing any objection, so the
16 motion is granted. Thank you.

17 MR. REICH: I have no further questions
18 from Rocky Mountain Power.

19 CHAIRMAN THAD LEVAR: Thank you, Mr.
20 Reich.

21 Mr. Gordon or Mr. Jewkes, do you have any
22 questions for Mr. Michaelis?

23 MR. GORDON: Yes, just a few.
24
25

CROSS-EXAMINATION

BY MR. GORDON:

Q. Mr. Michaelis, number one, you're an electrical engineer, correct?

A. Yes.

Q. And you performed a load study for the Heber Light & Power system that you've attached to your testimony, correct?

A. Max Fillinham [phonetic] actually performed the study. I supported him and reviewed his results.

Q. I see. Fair enough. The analysis was solely on Heber Light & Power's testimony, correct?

A. Yes.

Q. On page 7 of the report it states that "The ability of PacifiCorp to be able to provide power to Heber Light & Power during peak loads of outage conditions was not studied." Correct?

A. Correct.

Q. Okay. In your analysis of Heber Light & Power's system, you analyzed the system in both 2018 and in the future in 2022, correct?

A. Yes.

Q. In one of those scenarios you analyzed what would happen to the system in 2018 if the south

1 line were lost, correct?

2 A. Yes.

3 Q. And your 2018 conclusion if the south line
4 was lost is, quote, there are no issues running this
5 outage, correct?

6 A. Correct.

7 Q. So that means that the north line has the
8 capacity to operate the system while the south line
9 is down, correct?

10 A. Correct.

11 Q. And your conclusion regarding the loss of
12 south line in 2022 was the same, namely, there are no
13 issues running this outage, correct?

14 A. With the north line carrying the load,
15 correct.

16 Q. So based on your report, the new line, the
17 replacement line in the south could be installed in
18 2020, 2021, or even 2022 without creating risk of
19 overloading the north line, correct?

20 A. In respect to the north line, correct.

21 Q. Okay. So in theory the bulk of the new
22 transmission line could be built in 2020 or 2021 with
23 the small portion of the Midway line buried in the
24 spring of 2022 without overloading the north line,
25 correct?

1 MR. REICH: Just for clarification, when
2 you say the transmission line, could you clarify what
3 transmission line you're talking about?

4 Q. (BY MR. GORDON) I'm sorry. The
5 replacement line, the south line that is the focus of
6 this proceeding, the dual circuit 138 kV line.

7 A. The 46 kV line.

8 Q. Yeah, the south line is currently a 46 kV
9 line, correct?

10 A. Yes, correct.

11 Q. Okay. And based on your testimony that
12 line could be decommissioned and remain out of
13 commission and the north line could carry the load
14 through the year 2020, 2021 or 2022, correct?

15 A. But you would not have any backup to the
16 north line.

17 Q. That's not what I asked you. I just said
18 that --

19 A. But you are correct, yes.

20 Q. Okay. Okay. Very good. And in your
21 analysis, you are not in a position to state anything
22 about anything regarding Rocky Mountain Power's
23 system or any impacts or capacity of Rocky Mountain
24 Power's system, correct?

25 A. Correct.

1 MR. GORDON: No further questions.

2 CHAIRMAN THAD LEVAR: Thank you, Mr.
3 Gordon.

4 Mr. Morris, do you have any questions for
5 Mr. Michaelis?

6 MR. MORRIS: I do not. Thank you.

7 CHAIRMAN THAD LEVAR: Thank you.

8 Mr. Reich, any redirect?

9 MR. REICH: No, we have no further
10 questions.

11 CHAIRMAN THAD LEVAR: Thank you. If any
12 board members have any questions for Mr. Michaelis,
13 please indicate that you do.

14 I'm not hearing any questions. So, Mr.
15 Michaelis, thank you for --

16 MR. DAVID CLARK: Sorry, this is Dave
17 Clark. I have a question.

18 Mr. Michaelis, you mentioned that the
19 line, the north line would operate but without backup
20 in your last response, if I heard that correctly.
21 And is that a normal operating condition for a
22 transmission line?

23 THE WITNESS: No. You would want to have
24 a backup source in case you had an issue with the
25 north line.

1 MR. DAVID CLARK: That concludes my
2 questions. Thank you.

3 CHAIRMAN THAD LEVAR: Thank you, Mr.
4 Clark.

5 Any other -- do any other board members
6 have any questions for Mr. Michaelis?

7 I'm not hearing any, and I don't. So
8 thank you for your testimony today, Mr. Michaelis.

9 THE WITNESS: All right. Thanks.

10 CHAIRMAN THAD LEVAR: Mr. Reich, your last
11 witness is Mr. LeFevre. Am I pronouncing that right?

12 MR. REICH: I believe it's Mr. LeFevre.

13 And we do have one -- one issue. He's
14 about 15 minutes out. So I apologize for that. We
15 didn't expect that last witness to go so quickly. So
16 I don't know if we want to -- if Mr. Nelson is ready,
17 but Mr. LeFevre is probably not going to be here for
18 about 15 minutes.

19 CHAIRMAN THAD LEVAR: Before we make a
20 decision on that, why don't we deal with the
21 objection to his testimony.

22 Let me go to Mr. Gordon or Mr. Jewkes
23 first. Do you want to give any verbal summary of
24 your objection?

25 MR. GORDON: Certainly. And this is Mr.

1 Gordon. Mr. Jewkes will be taking care of that. I
2 do have one housekeeping item after this that I would
3 like to bring to the commission's attention.

4 CHAIRMAN THAD LEVAR: Okay. We'll come
5 back to that after we deal with the objection.

6 So Mr. Jewkes.

7 MR. JEWKES: So our objection to Mr.
8 LeFevre's testimony, he's offered as an expert.
9 We're not objecting to his credentials. He may well
10 be a certified appraiser. It's more of an issue of
11 reliability in the application with the law to his
12 conclusions. We believe that his opinions lack
13 foundation. They're obviously based on hearsay, and
14 we don't think that they meet the requirements of
15 Utah Rule of Evidence 702.

16 For those board members who don't know
17 what that is, that is a rule that governs the
18 admission of expert testimony as opposed to
19 percipient fact witness testimony. And there are
20 certain requirements that the opinions have to be
21 reliable. They have to reliably apply to facts to
22 what's going on, and they have to be generally
23 accepted in the relevant scientific community.

24 And normally in a court, in this case this
25 board, would have the gatekeeping function of

1 determining whether the expert testimony should be
2 heard depending upon its reliability. One of the
3 major issues we have is Mr. LeFevre relies on an
4 appraisal report. That's really the only evidence he
5 has for any of his opinions. And he admits in his
6 testimony on direct that he was not really involved
7 in the preparation of the report. He said, quote,
8 minimally involved. It was created by other people.
9 Those witnesses are not available and not here.
10 They're the ones who have personal knowledge about
11 what underlines the report, what was done and the
12 formulations and calculations and different things
13 like that. So that's a significant problem, and we
14 think it makes Mr. LeFevre's testimony inadmissible.

15 And we cited some case law in there that
16 the board may want to look at. But also there's a
17 lack of specificity. I mean there's general
18 conclusions in the report. There were no actual
19 properties examined. So none of these guys went
20 out -- the people who actually prepared the report,
21 much less Mr. LeFevre -- went out and looked at the
22 properties we're discussing. These were just based
23 on general real estate principles. To be frank it's
24 not really clear what they were based on. It was
25 based upon unknown sales, unknown owners, very very

1 general stuff. We just believe, your Honor, that
2 this indicates a real lack of reliability here, and
3 that this board has a duty to examine that and to
4 reject it in its gatekeeping role. Thank you.

5 CHAIRMAN THAD LEVAR: Thank you, Mr.
6 Jewkes.

7 Do any board members have any questions
8 for Mr. Jewkes at this point?

9 I'm not hearing any questions for from
10 board members. I just want to ask, Mr. Jewkes, to
11 what extent are these issues that could be developed
12 through cross-examination versus an action by the
13 board to simply exclude the testimony?

14 MR. JEWKES: Well, that's a very good
15 question. Sometimes the line between something
16 needed to be excluded or going to the weight of the
17 credibility of the report can be blurred. But we
18 think that in this case there is so much
19 unreliability that it's not appropriate to even hear
20 the testimony based upon this report that has no
21 foundation; it's hearsay. And it appears to lack any
22 independent basis.

23 So in some cases I think it's fair for us
24 to ask Mr. LeFevre, well, you didn't prepare this,
25 did you, you don't know what really happened. I mean

1 that would go to the weight of his testimony. But
2 there's also a point where there's minimum standards
3 of reliability, and we've articulated those in our
4 brief. And we just believe Mr. LeFevre's opinions
5 don't reach that minimum standard.

6 CHAIRMAN THAD LEVAR: Thank you, Mr.
7 Jewkes.

8 Mr. Morris, do you have anything you'd
9 like to add to this objection? You joined it, and
10 you also had your own independent objection before
11 Midway City filed theirs. If you have anything to
12 add, please go ahead.

13 MR. MORRIS: I think Mr. Jewkes has
14 summarized it well. Our main concern is Mr. LeFevre
15 acknowledges expressly that he had minimal
16 involvement in the report. And it's the report that
17 is the essence of what Rocky Mountain is proffering
18 here. And so again the board and the parties are
19 prejudiced because we do not have an opportunity to
20 cross-examine the people who did put the report
21 together, as to their methods. And because of his
22 acknowledged minimal involvement in the report, yes,
23 in answer to your last question, Mr. Chairman, you
24 know, we -- I would expect all of us are going to
25 bring this out in cross-examination. But when the

1 witness has admitted to his own lack of foundation
2 and lack of involvement, it seems like a waste of the
3 board's time to go through the process of having all
4 of that pointed out in cross-examination.

5 Thank you.

6 CHAIRMAN THAD LEVAR: Thank you, Mr.
7 Morris.

8 Do any board members have any questions
9 for Mr. Morris at this point?

10 I'm not hearing any questions. So, Mr.
11 Reich, do you want to respond to the objection?

12 MR. REICH: Sure. So as stated in the
13 testimony that both counsel just referred to, he did
14 state that he was minimally involved in the
15 preparation of the report. He did also say that was
16 completed primarily by Eric Leinhart [phonetic] and
17 Troy Lunt, who are his two associates who work in his
18 office. The next sentence says "I've read the
19 report, discussed it with both Mr. Leonard and Mr.
20 Lunt, and I agree with the findings."

21 In addition to that Mr. LeFevre signed the
22 report. It's prepared by him. His name is
23 identified by him on the first page of the report.

24 Those things are all important because in
25 Rule 702, which talks about the testimony of experts

1 that Mr. Jewkes referred to, the board does serve the
2 gatekeeping function here to determine "if expert
3 testimony is reliable based upon sufficient facts or
4 data and have been reliably applied to the facts."

5 If you look at Rule 702(c) it says, "The
6 threshold showing required by paragraph B is
7 satisfied if the underlying principles and message,
8 including the sufficiency of facts or data, and the
9 manner of their application to the facts of the case
10 are generally accepted by the relevant expert
11 community."

12 So the idea that a real estate appraiser
13 would use somebody in his office to assist in the
14 report or to go out and look at properties is
15 generally accepted in the expert community of real
16 estate appraisers; it's a standard occurrence.

17 If you look at Rule 703 that talks about
18 the basis of an expert's opinion testimony, it says
19 "An expert may base an opinion on fact or data in the
20 case that the expert has been made aware of or
21 personally observed. If experts in the particular
22 field would reasonably rely on those kinds of factors
23 or data in forming an opinion on a subject, they do
24 not need to be admissible for the opinion."

25 So I mean Mr. LeFevre is going to be here.

1 He's still not here. He's going to be open to
2 cross-examination. So we think that it meets the
3 requirement that this is reliable. He did assist in
4 the preparation. He talked to his partners and is
5 familiar with the report and is prepared to respond
6 to any cross-examination questions. Therefore, I
7 think it is admissible under the Rules of Evidence.

8 CHAIRMAN THAD LEVAR: Thank you, Mr.
9 Reich. Do any board members have any questions for
10 Mr. Reich at this point?

11 I'm not hearing any questions. So I'll
12 give Mr. Jewkes and Mr. Morris an opportunity if they
13 want to make any final statements before the board
14 considers this.

15 Mr. Jewkes, why don't you go first.

16 MR. JEWKES: Okay. This is Mr. Jewkes.
17 Just very quickly, I understand Mr. Reich's position
18 here. I do think that it's not standard in the
19 industry to have someone else prepare the entire
20 report and then the expert who is supposed to testify
21 and was retained for that purpose to come in at the
22 end and say, "Okay, I've read your report and I agree
23 with it," and not done any of the underlying
24 analysis.

25 I do agree it's common to have associates

1 in an office help prepare a report. But in this case
2 it looks like, according to his testimony, that he
3 wasn't involved in the actual preparation. After it
4 was done he discussed it and said, "Hey, it looks
5 good."

6 Well, I think that's one of the major
7 problems. I also just caution the court clearly --
8 or this board, clearly, you can rely upon hearsay.
9 You can admit it. You don't have to, but you can.
10 But you can't solely rely upon it. And in this case
11 it is hearsay, and it is the only evidence before
12 this board of the cost of the easement. I know it's
13 not actual costs as it should be, but it's some
14 estimate of the cost, and it's the only evidence. So
15 in relying upon this, I think the board is in
16 jeopardy of relying solely upon hearsay.

17 CHAIRMAN THAD LEVAR: Thank you, Mr.
18 Jewkes.

19 Mr. Morris, anything further?

20 MR. MORRIS: No, I agree. I don't have
21 anything to add.

22 CHAIRMAN THAD LEVAR: Does have any board
23 member have any comment or further discussion before
24 we get a ruling on this?

25 I mean I'll just state my inclination is

1 to deny the objection. I would like to hear the
2 cross-examination of this witness, and I would like
3 to hear his response to some of the issues that are
4 raised as we consider what weight we give to his
5 evidence. I don't think it benefits our fact-finding
6 if we exclude ourselves from the opportunity to hear
7 his answers to those cross-examination questions. So
8 I'm inclined to deny the objection, unless I hear any
9 other board members who want to propose a contrary
10 route.

11 I'm not hearing anything, so the objection
12 is denied.

13 Mr. Reich, is he ready to be sworn in, or
14 do we still have a few minutes until he's available?

15 MR. REICH: Yeah, he has not arrived yet.
16 I apologize for that.

17 CHAIRMAN THAD LEVAR: Why don't we take a
18 ten-minute recess then and just return at 1:30.

19 MR. GORDON: Actually, Commissioner --

20 CHAIRMAN THAD LEVAR: Oh, I'm sorry, Mr.
21 Gordon. Why don't you go ahead with your issue.

22 MR. GORDON: Yeah, this should be very
23 brief.

24 The first one, just a discussion on
25 exhibits. It's my understanding that the parties

1 have stipulated that all of the exhibits that they
2 have submitted to the court are deemed admitted,
3 unless specifically objected to. I want to clarify
4 that so that we don't have -- we don't go through a
5 long process of trying to admit all of those. That's
6 my understanding. I wanted to ask the other counsel
7 on that and make that part of the record so that
8 everybody is clear on what it is that has happened
9 with the exhibits.

10 MR. REICH: That is not my understanding.
11 I don't recall agreeing that all the exhibits
12 submitted -- for example, I understand Midway City
13 just provided some demonstrative exhibits that we
14 have not seen and haven't had a chance to look at to
15 determine if they have any relevance or what they
16 are. So I don't recall that we all agreed that
17 everything submitted would be automatically admitted
18 into evidence.

19 CHAIRMAN THAD LEVAR: Mr. Morris?

20 MR. MORRIS: Well, it was my hope too that
21 we wouldn't have to go through a laborious
22 time-consuming process of laying foundation and doing
23 all of that. In my review of the exhibits, they all
24 appear to -- I mean nothing appears to be fabricated
25 or false. And I suspect given the board's prior

1 rulings on admission of evidence, that all of this is
2 going to have some bearing, and it's going to be a
3 matter of weight. So I'm willing to stipulate to the
4 admission of everything that's been submitted by all
5 the parties so far with the exception of the
6 objections we've already lodged as to witnesses that
7 haven't been the real people on the ground for lack
8 of foundation.

9 MR. GORDON: Can I just give one thought
10 on that, Commissioner?

11 CHAIRMAN THAD LEVAR: This is Mr. Reich?

12 MR. GORDON: No, this is Mr. Gordon.

13 CHAIRMAN THAD LEVAR: Oh, Mr. Gordon.
14 Yes, go ahead.

15 MR. GORDON: And I guess this would be in
16 response to Mr. Reich. I mean based on my
17 understanding there -- there would be problems if we
18 don't proceed that way with some of the evidence that
19 you've purported to rely on because I don't believe
20 you've laid the foundation necessary to have many of
21 the things that your experts have relied on admitted
22 in the record. So I just want to clarify where we
23 are here and what's happened because I think in
24 fairness that was my understanding. I'm not
25 objecting to you having your witnesses testify to

1 those things that were attached to their testimony,
2 but I don't think that the appropriate foundation was
3 laid if that's the way that we're going to do this.

4 CHAIRMAN THAD LEVAR: Do any board members
5 have any questions for any of the attorneys at this
6 point?

7 MR. DAVID CLARK: I just want to make sure
8 we're not talking past each other. Because I -- I
9 understood the initial proposal to refer to exhibits
10 and evidence as to which a specific objection is not
11 lodged. And I didn't hear that qualification in Mr.
12 Reich's statements. So I just want to make sure that
13 we're both -- that all the parties are talking about
14 the same issue.

15 CHAIRMAN THAD LEVAR: Do any of the -- let
16 me go to Mr. Reich first. Well, probably Mr. Gordon
17 first. Do you have any comment on Mr. Clark's
18 clarification or question?

19 MR. GORDON: I agree with him. That was
20 my proposal is that unless -- I'm not trying to give
21 carte blanche to all parties to bring in whatever
22 they want and there's no foundation to it. But what
23 I'm proposing is we can all assume that anything
24 submitted by any party will be part of the record
25 unless objected to, which I think is a very good way

1 to proceed. And I think his understanding of that is
2 correct.

3 CHAIRMAN THAD LEVAR: Mr. Reich, does that
4 impact your objection to the motion?

5 MR. REICH: I guess the part that's
6 ambiguous or confusing to me is that when you say
7 "submitted," are we talking about right now during
8 this proceeding? Because I believe that during
9 our -- during the testimony of our witnesses we've
10 asked to submit the documents that they've relied on,
11 or are you talking about documents that are filed
12 with the commission? For example, I understand that
13 Midway City recently -- I mean over lunch filed some
14 exhibits that we haven't had the chance to look at.
15 So are they saying that those are automatically
16 admitted? Then that's my concern if there's a
17 document we haven't had a chance to look at or see.
18 I'm not trying to say -- certainly I understand that
19 most of the documents are coming in. I'm not
20 accusing anybody of anything false. But I just want
21 to be able to make sure I have the right to look at
22 something before it gets admitted into evidence.
23 That was my point.

24 MR. GORDON: Absolutely. Absolutely. So
25 let me clarify, yeah.

1 So we had just overlooked a few things on
2 our expert. We have submitted those, fully would say
3 that you have the right to object to those and say we
4 want an opportunity to review those.

5 So I'm not proposing to take away your
6 right to object to something. I'm just saying rather
7 than going through the formalities of having
8 everything submitted, we can assume if it's been
9 submitted and it's part of the record unless you
10 object.

11 CHAIRMAN THAD LEVAR: Okay. Do any other
12 board members have any questions for the parties on
13 this issue?

14 Board discussion? Any comments from board
15 members?

16 I'm not hearing any comments, and it does
17 seem like this is probably the most efficient path
18 forward that still preserves every party's right to
19 object to any exhibit. So unless I hear anything
20 different from the board members, my intention is to
21 grant the request by Mr. Gordon to treat all filed
22 exhibits as entered into evidence unless objected to.

23 I'm not hearing anything else from board
24 members, so that request is granted.

25 Thank you, Mr. Gordon.

1 Mr. Reich, are we ready for your witness
2 now?

3 MR. REICH: We have managed to take enough
4 time that he is now here.

5 CHAIRMAN THAD LEVAR: Okay, thank you.

6 Mr. LeFevre, do you swear to tell the
7 truth?

8 THE WITNESS: I do.

9
10 BENJAMIN LEFEVRE,
11 called as a witness, having been duly sworn, was
12 examined and testified as follows:

13
14 CHAIRMAN THAD LEVAR: Thank you.

15 Mr. Reich, go ahead.

16
17 DIRECT EXAMINATION

18 BY MR. REICH:

19 Q. Mr. LeFevre, have you reviewed the direct
20 testimony and the rebuttal testimony that has been
21 prepared in this proceeding and submitted in your
22 name?

23 A. Yes, I have.

24 Q. And do you have any -- is it an accurate
25 reflection of your testimony at this time?

1 A. It is, yes.

2 **Q. Do you have any changes to make?**

3 A. No.

4 MR. REICH: I would move to submit the
5 direct testimony and the rebuttal testimony of Mr.
6 LeFevre at this time.

7 CHAIRMAN THAD LEVAR: Thank you.
8 Recognizing the ongoing objections of both Midway
9 City and V.O.L.T. to Mr. LeFevre's testimony, are
10 there any additional objections to the motion to
11 enter his testimony into the record at this point?

12 I'm not hearing any, so the motion is
13 granted. Thank you.

14 MR. REICH: We have no further questions.

15 CHAIRMAN THAD LEVAR: Thank you, Mr.
16 Reich.

17 Mr. Gordon or Mr. Jewkes, do you have any
18 questions for Mr. LeFevre?

19 MR. GORDON: Yes. Mr. Gordon will conduct
20 the cross-examination.

21
22 CROSS-EXAMINATION

23 BY MR. GORDON:

24 **Q. Good afternoon, Mr. LeFevre. Thank you**
25 **for joining us.**

1 A. Good afternoon. Mr. Gordon, is that
2 correct?

3 Q. Gordon, yes. Thank you.

4 A. Perfect, thank you.

5 Q. So just an overview here. You were
6 minimally involved in the preparation of the report,
7 correct?

8 A. Yes, that's correct.

9 Q. You reviewed it with Eric Leinhart and
10 Troy Lunt, correct?

11 A. That's correct, yes.

12 Q. Okay. In your report you did not identify
13 values for each one of the impacted properties,
14 correct?

15 A. Correct, yes.

16 Q. You took an overview of sales of similar
17 properties in the area, and based on this analysis
18 you came up with a range of value for the impacted
19 properties, correct?

20 A. Correct.

21 Q. A more accurate value could have been
22 obtained if an appraisal of each impacted property
23 was done, correct?

24 A. I haven't done an appraisal of each
25 impacted property, so it's hard to comment as to the

1 accuracy versus the range we provided. A more robust
2 appraisal could have been completed.

3 Q. Okay. And do you feel if you had done an
4 appraisal on each property, it would have been more
5 accurate?

6 A. Again difficult to comment to value
7 accuracy since I haven't done that appraisal.

8 Q. Okay. And you indicated in your report
9 that a property by property analysis of the impacted
10 properties was, I believe, quote, outside the scope
11 of the work, correct?

12 A. Correct.

13 Q. Okay. And in your report you state that,
14 "The scope of this assignment is somewhat unique in
15 that we do not estimate market value for a specific
16 property or properties." Correct?

17 A. Correct.

18 Q. So the study gives a range of value of
19 what the easement costs might be, correct?

20 A. Yes, based on land values.

21 Q. Okay. You have no information on what the
22 actual costs of the easements would be, correct?

23 A. Correct.

24 Q. The only way to establish what the actual
25 costs would be is if Rocky Mountain Power reaches a

1 settlement with an impacted property owner or
2 condemns a property owner, correct?

3 A. Correct, yes. Appraisals are always
4 estimates, yes.

5 Q. Okay. And to your knowledge none of the
6 easements have been obtained at this time, correct?

7 A. To my knowledge that's correct.

8 Q. Okay. On page 3 of your report you
9 indicate that your conclusions were based on
10 interviews with buyers of easements. Who did you
11 talk to?

12 A. Specifically for this assignment I didn't
13 reach out again to anyone. We over many years have
14 interviewed acquisition agents at many -- many of the
15 groups that procure these types of easements, Rocky
16 Mountain Power, Questar, you know, that's a lengthy
17 list. In addition I've done work a number of times
18 for different subdivision builders and home builders
19 as they acquire these easements in their subdivision
20 development.

21 Q. But on this specific report did you talk
22 to any of them?

23 A. No. Not for this specific report again,
24 no.

25 Q. Okay. You relied on 2006 sales and

1 **listings in the Midway area, correct?**

2 A. Correct.

3 **Q. None of the properties you looked at had**
4 **homes on them, correct?**

5 A. Correct. We were looking at land only.

6 **Q. Yeah. So you were trying to establish the**
7 **value of raw land in your analysis, correct?**

8 A. Of land. That word "raw" means different
9 things to different people. I would say land that
10 didn't have significant vertical improvement, maybe
11 that's a better classification.

12 **Q. Thank you for that clarification.**

13 **So many of the impacted properties either**
14 **already have homes built or will have homes built on**
15 **them, correct?**

16 A. Possibly. We'd have to, you know, look at
17 each of those impacted properties individually. As I
18 mentioned, I've not look looked at each of them
19 individually to form separate appraisals.

20 **Q. Okay. So you're not aware of how many of**
21 **the impacted properties actually have homes on them?**

22 A. I'm aware of homes. Maybe the better way
23 I should put that is I'm not aware of how many of
24 those homes might be impacted.

25 **Q. Now, are you saying based on your analysis**

1 **that existing homes should not be taken into account**
2 **when considering the value of the easement?**

3 A. No, not at all. I'm saying that the value
4 -- well, you know, maybe that's a better question as
5 to by value of the easement do you just mean the
6 easement to be acquired? If that's the case then,
7 yes, the home would not come into question in terms
8 of the easement over the land area to be acquired.
9 Value of the home or the impact to those improvements
10 may come into question in terms of an after value,
11 but it would not be a part of an easement to be
12 acquired over land.

13 Q. So it's your testimony then that an
14 easement coming across a property with an existing
15 home, the appropriate professional way to establish
16 the value is simply to take a measurement of the
17 width of the easement and take -- and do nothing to
18 take into account the impact that will have on the
19 existing home; is that your testimony?

20 A. Maybe -- what do you mean by value of the
21 easement? I mean we kind of get into the --
22 obviously in eminent domain valuation or valuation
23 under the threat of eminent domain, which is the
24 typical -- you know the way I would describe this
25 type of typical analysis. You're going to analyze

1 the property in the before condition. And then under
2 the state rule you would analyze the part to be
3 acquired and determine the value of that part to be
4 acquired.

5 In this case if only an easement is to be
6 acquired, the improvements do not come into question
7 for that value of the acquisition. The improvements
8 would only come into question for the value of the
9 larger parcel in the after condition.

10 Q. Okay. So just once again, your analysis
11 is that you would looked at simple ground value
12 measurements of ground and did not take into account
13 any value or diminished value on existing homes that
14 this easement might impact, correct?

15 A. That's correct.

16 Q. Okay. Now, in your analysis, you include
17 a range of values that go from 25 percent to
18 75 percent of the underlying land value, correct?

19 A. For the value of the easement, yes, as a
20 percentage of fee.

21 Q. Okay. And while you did a range of
22 values, your report does not opine on what the actual
23 percentage of value should be for each of the
24 impacted properties, correct?

25 A. Correct.

1 Q. So for example on page 15 of your report
2 on the first parcel listed, which ends in 4611, the
3 value of the easement could be anywhere from 68,750
4 to 243,750, correct?

5 A. That's on a price per acre basis. So it
6 wouldn't -- depending on the footage of the easement,
7 but on a price per acre basis.

8 Q. Yes, and I believe -- so it would range
9 from 25 percent to 75 percent, right?

10 A. Yes.

11 Q. Okay. Now, there are any number of things
12 that could affect the actual value of the easement
13 that is unique to this property, correct?

14 A. Correct.

15 Q. And that's including impact on existing
16 structures, destruction of existing landscaping,
17 driveways, et cetera, correct?

18 A. No, no. Again the existing structures
19 would not go into the value of the easement over the
20 land. That only comes into -- into impact in the
21 appraisal in the value of the larger parcel in the
22 after condition.

23 Q. Okay. So you're saying that the value
24 would not be altered in any way if there's existing
25 structures in the way or existing landscape or

1 driveways that have to be removed?

2 A. The value of the easement, no. You know
3 again in this type of valuation, you identify the
4 larger parcel, estimate the value in the before
5 condition of that larger parcel, estimate value of
6 the part to be acquired. In this case the parts
7 we're discussing would be an easement over land only.
8 So that easement value would be just the value of the
9 easement over the land. And then the value in the
10 after condition of the larger -- remaining larger
11 parcel is estimated, that would be where any impact
12 to the improvements would come into play.

13 Q. I see. Do you think that the property
14 owner would agree with your assessment that all we're
15 talking about here is just square footage of property
16 and no impact on their property?

17 MR. REICH: Objection to the extent it
18 calls for this witness to testify what the property
19 owners are going to say or believe.

20 CHAIRMAN THAD LEVAR: Mr. Gordon, did you
21 want to respond to the objection?

22 MR. GORDON: Yes. Let me withdraw that
23 and ask a different question.

24 Q. (BY MR. GORDON) In your experience as an
25 appraiser in this area, is it safe to say that it's

1 common that property owners do not look at easements
2 in this limited way?

3 MR. REICH: Objection, vague to what
4 property owners believe.

5 CHAIRMAN THAD LEVAR: I think you can ask
6 the question a little more specifically if you want
7 to try one more rephrasing.

8 MR. GORDON: All right. Let me try one
9 more time.

10 Q. (BY MR. GORDON) Mr. LeFevre, in your
11 experience in dealing with property owners who are
12 having these easements acquired, is it common for
13 them to expect more compensation and to have the
14 impact on their property including the existing
15 structures and things taken into account when
16 establishing a value?

17 MR. REICH: Same objection. I mean I
18 don't think Mr. LeFevre can testify what the property
19 owners' expectations are.

20 MR. GORDON: I'm asking is what his --
21 what his general experience has been.

22 MR. REICH: On what the property owners'
23 expectations are?

24 MR. GORDON: Yes.

25 CHAIRMAN THAD LEVAR: I think -- I think

1 I'm just going to clarify that. I think I'm hearing
2 the question as asking him what his experience with
3 what property owners have communicated to him on this
4 issue. Is it fair to phrase the question that way,
5 Mr. Gordon?

6 MR. GORDON: Yes, that's -- yeah.

7 CHAIRMAN THAD LEVAR: Why don't we put the
8 question to him that way.

9 Mr. LeFevre?

10 THE WITNESS: You know, what I find
11 generally with property owners is a lot of
12 variability, as you can guess. Most of the time I
13 find myself explaining to them the procedures for
14 eminent domain valuation, how easement values are
15 calculated. For the most part the property owners I
16 deal with have never been through a situation where
17 part of their land was been acquired for, you know,
18 be it power lines or road widening, whatever. And
19 they don't really understand the process. I end up
20 spending a lot of time walking through it.

21 Q. (BY MR. GORDON) Okay. Let's move
22 forward. I think we're where we need to be.

23 Regardless of what your experience has
24 been, in this situation you did not do that type of
25 detailed analysis on each of the impacted properties,

1 correct?

2 A. Correct.

3 Q. You were told not to do that type of
4 detailed analysis, correct?

5 A. Correct.

6 Q. And in doing your analysis, you did not
7 actually visit the impacted properties, correct?

8 A. Correct.

9 Q. You primarily used Google Earth or some
10 other form of program to make measurements, correct?

11 A. I don't believe we made any measurements.
12 Those were provided by project managers for their
13 estimates of how much square footage was going to go
14 into these easements. Appraisers don't typically
15 estimate the size of the easements.

16 Q. Okay. And let me clarify that. So you
17 received the width of the easements that you were to
18 do an appraisal on from Rocky Mountain Power,
19 correct?

20 A. Yes.

21 Q. Okay. But now let me go back. You
22 primarily did use Google Earth to look at the pathway
23 of these easements, correct?

24 A. Correct.

25 Q. Okay. And so there could be aspects of

1 each one of these impacted properties that you do not
2 have information on which could alter the value of
3 the underlying easement, correct?

4 A. Correct. There could always be
5 possibilities there, sure. Yeah. I would expect it
6 to find it within the range that we discussed.

7 Q. Okay. Isn't it true that that's why you
8 gave just such a large range of value on each
9 property, from 25 percent to 75 percent, correct?

10 A. Correct.

11 Q. Because there's a lot of unknowns based
12 on -- that your appraisal relies on, correct?

13 A. Correct.

14 Q. Let's see here. Now, as you went through,
15 none of the properties included in your report have
16 transmission lines on them or are going to have
17 transmission lines on them, correct?

18 A. I believe that they're all going to have
19 those easements; that's my understanding. What do
20 you mean by transmission lines on them? Like the
21 lines themselves going over the property, over the
22 homes? What do you mean there?

23 Q. As I looked at your report, the 26 that
24 you referred to none of them have transmission lines
25 on them, and they're not in the pathway of this line,

1 correct?

2 A. Oh, my apologies. I thought you meant the
3 properties that were included in the appraisal there.
4 That is my understanding, correct.

5 Q. Okay. Let's see here. On page 12 of your
6 report you cite to historic studies that showed
7 transmission line impacts on real property and that
8 they only impact the value 10 percent or less,
9 correct?

10 A. Correct.

11 Q. And the study you cite was not included in
12 your report, correct?

13 A. Correct.

14 Q. And the study, based on your testimony,
15 analyzed properties solely in Salt Lake County,
16 correct?

17 A. That specific study, yes. As far as
18 historic studies, there's been many. But, yeah, that
19 study that's discussed there with the 350,000
20 properties.

21 Q. Okay. And Salt Lake County is a highly
22 urbanized area, and in fact it is the most dense
23 county in the state, correct?

24 A. I would guess most dense. I'm not
25 certain. Urbanized, parts.

1 Q. Okay. In your professional opinion would
2 you use comps or comparables in Salt Lake Valley to
3 establish the values of homes or land in Heber?

4 A. No.

5 Q. Why wouldn't you?

6 A. We try to get as close as possible to the
7 area you're appraising with land sales that you're
8 looking at as comparables.

9 Q. Okay. So why would a study in Salt Lake
10 County be relevant to a transmission line in Midway?

11 A. You know whenever you're looking at comps,
12 be they sales comps or -- you know, I mean
13 comparables there -- be they sales comparables or
14 comparables for something like easement value or
15 impact from a power line let's say, ideally you're
16 looking for those comparables or those studies as
17 close to the property as possible.

18 However, in many cases especially in a
19 smaller town area like Midway or Heber, you don't
20 have access to something like transmission line
21 studies. They haven't been completed. So you're
22 forced to look at percentage differences from other
23 locations. It's a generally common practice some of
24 the transmission studies that are looked at have been
25 from all over the nation in some cases. They're

1 looked at to analyze those impacts.

2 Q. And wouldn't that suggest then that you
3 acknowledge the report that you're relying on is not
4 a perfect fit to the situation of Midway, correct?

5 A. Not a perfect fit, no.

6 Q. And that it draws into question the
7 applicability of that study to Midway, correct?

8 A. Applicability, I think that's a relative
9 term. You know, if you're going to look for studies
10 and you're going to have to rely upon a study in
11 something like an appraisal, given that there are no
12 studies that I'm aware of within Heber and Midway,
13 one is forced to look at studies from outside of that
14 area.

15 Q. Okay. Is that the only way you can
16 establish the value is through studies, or are there
17 other ways that could have been used, i.e. specific
18 appraisal on these properties that was not done?

19 A. As you noted, specific appraisals don't
20 really establish the value, just the estimates of
21 value. There's a lot of different ways we come up
22 with estimates of what those impacts might be.
23 Studies is one. Attempting to look at properties on
24 a paired sales analysis, very similar properties
25 where there's just have one or two things that are

1 different, depending upon whatever you're trying to
2 adjust for.

3 Q. Okay. You state that "General market
4 values do not support a value impact between 46 kV
5 lines and 138 kV lines due to the, quote, relatively
6 modest increase in pole height/cross arm width."

7 Correct?

8 A. Correct.

9 Q. And that's from that study down in Salt
10 Lake, correct?

11 A. Correct.

12 Q. And do you know if that study analyzed a
13 single circuit 138 kV line?

14 A. I do not know, no.

15 Q. Okay.

16 A. Not off the top of my head.

17 Q. Okay. Did you take into account what
18 we're talking about is a double circuit 138 kV line,
19 which increases the pole size in height over the
20 existing 46 kV line in some instances by 30 to
21 40 feet and 8 to 10 times the size in diameter?

22 A. I did not specifically account for that,
23 no.

24 Q. Okay. Did you do any analysis on what
25 size the existing poles are on the impacted

1 properties and what size they will be once the
2 transmission line is upgraded?

3 A. No.

4 Q. Okay. So the report you rely on to
5 establish value impact is based on assumptions from
6 Salt Lake County that you really didn't analyze,
7 correct?

8 A. I'd say incorrect. Again back to what I
9 previously noted when you're doing an appraisal of
10 any type, an appraiser is tasked with estimating that
11 value. If there's not a study available in the
12 specific market area, an appraiser can't simply say
13 "I'm sorry there was no study available; we can't
14 give a number." They'll look for the best
15 information available and try to utilize it in the
16 best manner available.

17 Q. Okay. Do you have any studies that look
18 at the impact on rural property values when pole
19 sizes are increased in both size and height
20 dramatically?

21 A. I've not seen studies that get that
22 specific, no.

23 Q. Okay. In your mind what is a relatively
24 modest increase to pole height/cross arm width?

25 A. Again I've not seen studies or data that

1 would allow me to be that specific. That's a -- it's
2 probably a better question for engineers.

3 Q. Okay. But your study states specifically
4 that you relied on that the whole basis of this is
5 that there isn't a significant or relatively
6 modest -- that there's only a relatively modest
7 increase. And so if that's not correct, then the
8 study you're relying on really wouldn't be
9 applicable, correct?

10 A. The study looked at 138 kV and 46 kV
11 lines. Obviously, as you've noted, there can be
12 differences in the height, the layouts of those
13 lines, how the -- how the actual power lines
14 themselves are attached, span widths, all of those
15 things. The level of specificity in this or any
16 other study that I've seen would not allow us to say,
17 you know, here's the specific difference where this
18 is 2 feet taller or 2 feet shorter or anything along
19 those lines.

20 Q. Okay. So let me ask a specific question
21 here to give us context. I want to -- I want to
22 consider the property that's located at the
23 intersection of Spring Town Road at Cascade Parkway,
24 which is the Jonsson property. This property will
25 have a corner pole placed on it that is approximately

1 90 feet high and 8 feet in diameter, and it will be
2 replacing a pole that's approximately 2 feet in
3 diameter and 50 feet tall. In your opinion is that a
4 relatively modest increase in pole height and cross
5 arm width?

6 A. Well, I'm sure as everybody knows that
7 sounds like a pretty good sized increase.

8 Q. Thank you. And you didn't take that into
9 account when establishing your values, correct?

10 A. As we've discussed, we didn't establish
11 any specific values for specific properties. We
12 looked at ranges of that land only.

13 Q. Okay. And in your professional opinion
14 now knowing the size of that pole, how much do you
15 think that would affect the value of that home and
16 how much would it be decreased due to the existence
17 of that corner pole?

18 A. Oh, I'd have to -- I'd have to spend a lot
19 more work than just this moment right here to come up
20 with a value. We spend a fair amount of time on the
21 appraisals.

22 Q. But do you agree it would diminish the
23 value of that home?

24 A. I've not done that appraisal. I can't
25 opine to value on an appraisal I haven't done.

1 Q. Okay. So once again you really can't
2 testify to what the actual -- the actual costs or
3 actual values of these easements are, correct?

4 A. Not on a property to property specific
5 basis, no.

6 Q. Okay. Now, in your analysis you
7 determined that none of the impacted properties would
8 qualify for severance damages, correct?

9 A. Yes. On a macroscale that's our opinion.

10 Q. Okay. What legal research did you do to
11 arrive at the conclusion that severance damages
12 aren't applicable?

13 A. Oh, none. As an appraiser I consider
14 severance damages to be the difference between what
15 the market value of the larger parcel in the after
16 condition, after accounting for the take, less the
17 actual concluded market value in the after condition
18 would be. That's, from appraisal terminology, it's a
19 mathematical question based on the appraisal.

20 Q. I see. So when you're saying in the legal
21 world severance damages has a specific meaning, your
22 testimony is you didn't look at what the actual legal
23 meaning of severance damages is, and so you're not --
24 you can't opine as to whether legally these
25 properties would be entitled to severance damages,

1 correct?

2 A. Well, I would never offer a legal opinion,
3 correct.

4 Q. Okay. So based on your testimony to the
5 board, the easement costs could range anywhere from
6 382,500 all the way up to 1,556,250, correct?

7 A. Where are those numbers coming from?

8 Q. I believe I pulled those from your
9 analysis of the per acre in your report and then just
10 extrapolated those that we take 25 percent of the
11 total and then all the way up to 75 percent of the
12 total.

13 A. I don't believe that we know a measurement
14 of each individual easement on each individual
15 property. I do not believe that was in my report
16 anywhere. We've concluded those values -- those
17 ranges of values just on a price per acre basis.
18 Looking at each of those individually and trying to
19 apply the square footage on each of them, I don't
20 believe that's information that we looked at.

21 Q. So what have you given to the board then?
22 Is there -- there's no range of value that you feel
23 comfortable recommending to the board?

24 A. Our scope of work in this assignment was
25 to look at likely ranges of land values to estimate

1 easement impacts to those land values. Again those
2 percentages of fee so that that could be used as an
3 estimate by the client in determining what those
4 likely costs would be for acquiring the easement.

5 **Q. Okay. So your analysis really cannot be**
6 **used by this board to determine what the actual costs**
7 **of these easements are, correct?**

8 A. I don't believe we're looking at -- I
9 don't believe I was given specific sizes for specific
10 properties. And again we haven't concluded any
11 specific properties. So, no, this would not be the
12 final number by any means.

13 **Q. Okay, very good. Last question. Rocky**
14 **Mountain Power has provided Midway City with an**
15 **estimate that the easements would only cost**
16 **approximately \$27,000 total. In your opinion that**
17 **estimate is dramatically low, correct?**

18 A. I can't have an opinion on an estimate
19 someone else provided. I've not given that number
20 myself and can't opine to it.

21 **Q. Well, but -- and so are you saying you**
22 **can't even give what you think the minimum value of**
23 **these easements would be?**

24 A. I can say that I believe those easements
25 would fall between 25 and 75 percent of fee value,

1 depending on the specific impact to a specific
2 property.

3 MR. GORDON: That's all I need to know.
4 Thank you. No further questions.

5 CHAIRMAN THAD LEVAR: Thank you, Mr.
6 Gordon.

7 Mr. Morris, do you have any questions for
8 Mr. LeFevre?

9 MR. MORRIS: I do. Thank you.

10
11 CROSS-EXAMINATION

12 BY MR. MORRIS:

13 Q. Mr. LeFevre, you mentioned you had done
14 work for Rocky Mountain Power, and also you may have
15 dated yourself. I don't know if you said Mountain
16 Fuel or --

17 A. Yeah, I think I said Questar, didn't I?
18 Oh, my goodness.

19 Q. Well, that would date you as well, at
20 least based on the last gas bill I got.

21 A. It's kind of like the way I still call it
22 the Delta Center, right? It's always going to be the
23 Delta Center.

24 Q. Well, I'm with you there too.

25 By the way, my name is Mark Morris. I

1 represent a group of citizens that formed an entity
2 that goes by the acronym of V.O.L.T. Have you heard
3 of that before?

4 A. Yes. Just during these -- during some of
5 the information I've received as part of these
6 proceedings.

7 Q. Okay. So back to my original question.
8 You've mentioned you've done some work for Rocky
9 Mountain Power and also now Dominion. What
10 percentage of work that you do is for utilities
11 versus homeowners?

12 MR. REICH: I'm going to object to the
13 question. I don't think he said he's done work for
14 Rocky Mountain Power and Dominion. I think he said
15 he had interviewed or talked to representatives from
16 those companies about acquiring these type of
17 easements. So I just want to clarify that.

18 MR. MORRIS: If I got it wrong, please
19 clarify for me, Mr. LeFevre.

20 THE WITNESS: Sorry, so what's your
21 question? Whether I've done work for these entities?

22 Q. (BY MR. MORRIS) Have you done work for
23 Rocky Mountain Power before?

24 A. Yes.

25 Q. Have you done work for Dominion and its

1 predecessor entities?

2 A. You know, I don't think I have. I know
3 some of the other appraisers in our office have.

4 Q. So your firm has done work for Rocky
5 Mountain, right?

6 A. Yes.

7 Q. And your firm has done work for gas
8 utilities?

9 A. Yes.

10 Q. And my question is what percentage of the
11 work that your firm does is for I'll just
12 characterize them as institutional clients like
13 utilities versus homeowners?

14 A. You know, good question. I don't know if
15 I know a percentage off the top of my head. I do
16 know we don't discriminate between the -- let's say
17 the large condemning authorities versus homeowners.
18 If I get a call for an appraisal, I'm happy to do it.
19 I've done a lot of work for both condemning
20 authorities and homeowners or property owners.

21 Q. Okay. During the course of your testimony
22 when Mr. Gordon was asking you questions, you
23 indicated -- and I don't want to get repetitive
24 here -- but generally you indicated that you had a
25 scope that you were given, right? Rocky Mountain

1 Power gave you a scope of work for you to do?

2 A. Correct.

3 Q. Okay. And part of that scope was -- well,
4 you know, again I think this ground may have been
5 plowed.

6 A. I love that saying, by the way.

7 Q. Well, an appraiser should like that.

8 So we know that you were not asked to come
9 up with any severance damages or opine whether any
10 would be coming. You know, I was intrigued though
11 early on you were testifying about, you know, what
12 easements are worth. But you did not go on to
13 discuss, you know, impact on the after remaining
14 property. Was that earlier testimony another way of
15 describing severance? I just want to make sure you
16 were talking about the same thing or if it's two
17 different things.

18 A. Yes. In appraisal terminology, damages,
19 you know, and including severance damages are
20 analyzed based on that value of the remainder in the
21 after condition, after the acquisition, whatever that
22 might be. Let's say a property acquisition on a
23 partial road widening or an easement, whatever that
24 might be.

25 Q. Okay. And you indicated in your testimony

1 that you had minimal involvement in the report. What
2 does that mean in hours? Before you signed your name
3 to the report, how many hours did you put into it?

4 A. I'm probably in the range of about ten
5 hours. Most of the work was done by Eric Leinhart
6 and Troy Lunt.

7 Q. And do you know how many hours they put
8 in?

9 A. I do not. I know it was substantial. I
10 remember Eric talking about spending quite a bit of
11 time on it, and Troy as well. I didn't see -- I
12 didn't see how many specific hours they had.

13 Q. Okay. You also characterized the report.
14 I'm just looking at the first page of your testimony
15 where it was from a cursory study. Do you see that?

16 A. Yeah.

17 Q. I'm looking at the first page of your
18 testimony. It's line 28 -- 27 and 28 you say, "We
19 have concluded a range of value based on a cursory
20 study of land sales and listings in the area."

21 What did you mean by cursory?

22 A. I think -- I think that in -- what's the
23 best descriptive word? Hey, everybody is always
24 guessing at that. As we've well noted here, we
25 looked only at land values in the area. We concluded

1 ranges of value. We did not look at specific
2 properties, specific impacts. So you know, is
3 cursory the right word for that? I thought so.

4 Q. Okay.

5 A. I think the description we've given is
6 probably a better description even with a little more
7 detail.

8 Q. I'll accept your characterization of what
9 you performed.

10 Now, for purposes of your work you did
11 make an assumption about the width of the existing
12 easements for the existing line; is that right?

13 A. We had that based on the information
14 provided by Rocky Mountain Power and their estimates
15 of how much would need to be acquired. So it's not
16 an estimate that I made. But, yeah, it's a good
17 question for engineers there. So we utilized that
18 figure.

19 Q. And so I'm looking at the second page of
20 your direct testimony on line 5 -- lines 4 and 5.
21 You say, quote, it is understood that the additional
22 area needed would be 1.5 feet from centerline, which
23 is just an increase from an existing -- from 27 feet
24 from centerline to 28.5 feet from centerline. Do you
25 see that language?

1 A. I do, yes. And do you know what, you've
2 pointed out a spot where I probably should have been
3 a little more specific. 1.5 feet from centerline
4 makes it sounds like it's only coming off a foot and
5 a half. The intent there is to say an increase of
6 1.5 feet, you know, as we've clarified following from
7 27 feet to 28 and a half for instance or then the
8 additional option of 2 feet from 27 to 29.

9 **Q. And that's how I took it. But my request**
10 **for you is who told you it was 27 feet on either side**
11 **of the centerline of the existing line?**

12 A. We were given that from Rocky Mountain
13 Power on their estimates of what needed to be
14 acquired.

15 **Q. But just to be clear, you weren't told**
16 **27 feet would -- needed to be acquired. You were**
17 **told a foot and a half would need to be acquired,**
18 **right?**

19 A. Yes.

20 **Q. Okay.**

21 A. An additional foot and a half, yes.

22 **Q. Right. And you don't know who on your**
23 **team got that number from Rocky Mountain?**

24 A. I don't know exactly the name of who that
25 came from. I know Ben Clegg was involved in some of

1 that information.

2 Yeah, that was -- I mean that was the
3 number. I'd have to go back through and look at
4 notes to see exactly who said it.

5 Q. Okay. Now, if I were to show you a bunch
6 of pictures of the existing line, that's not
7 something you'd be familiar with, correct?

8 A. I have seen pictures of the existing line.
9 So, yeah, I mean possibly.

10 Q. Okay. So you haven't visited the line
11 personally, but you have been shown pictures of the
12 existing line?

13 A. Yes. Yes. I have not visited personally.

14 Q. Did those pictures reveal to you that
15 people were maintaining a 54-foot wide easement on
16 either -- around the existing line?

17 A. Oh, I -- you know from an appraiser
18 standpoint, I don't get into the questions of who
19 might be maintaining which easements. I can't think
20 of an assignment that we've had -- that I've had as
21 an appraiser where I've been given the task of
22 estimating the easement. That's well outside of my
23 expertise; that's for the attorneys and the
24 engineers.

25 Q. I understand that. But you know

1 approximately what 27 feet -- what 27 linear feet
2 looks like, correct?

3 A. Uh-huh (affirmative). Correct.

4 Q. I just -- I revert to football fields. I
5 mean it's almost 10 yards.

6 A. Sure, sure. We all know what 10 yards
7 looks like, absolutely.

8 Q. So it's just a yard short of 10 yards.
9 But you aren't in a position to tell us whether the
10 photographic evidence you looked at the lines
11 supported or contradicted anyone's claim that there
12 was a 27 foot from centerline easement running along
13 the existing line; is that right?

14 A. Yeah. I'd say I'm not in a position to
15 say anything about the easement based on that. I of
16 course see a lot of easements and many of them look
17 very different. You know I think what you're asking
18 is does it look like there was a cleared path around
19 it in that basis. And, yeah, I mean those
20 easements -- I can't comment as to the easement
21 really. It's not something I would have been looking
22 for or, yeah, would even look to comment about.

23 Q. Let me just bring up the parcel of
24 Mr. Jonsson that Mr. Gordon asked you about that's
25 going to have a -- I think you conceded it was going

1 to be more than a modest increase in the size of the
2 pole in his yard. Do you recall that testimony?

3 A. Yeah, yeah. It sounds like -- sounds like
4 bigger numbers there definitely.

5 Q. If Mr. Jonsson had hired you to assess
6 what Rocky Mountain Power should pay him for an
7 easement going through his yard, what process would
8 you undertake?

9 A. So for -- for any easement acquisition,
10 property acquisition, the process is fairly
11 consistent. Initially we identify the larger parcel.
12 Quite often it's the parcel owned by the property
13 owner. Then we look at the value in the before
14 condition of that property. We would then estimate
15 the value of the part to be acquired, whether that be
16 an actual acquisition of land, whether it be an
17 acquisition of an easement, whatever that might be.
18 And then we would look at the value in the after
19 condition of the remainder to assess -- to assess
20 differences there for damages.

21 Q. Okay. So it sounds to me like there are
22 two elements. One would be the number of feet that
23 would be required to be added to the easement would
24 be the first calculation; is that right?

25 A. Yes. Yep, I always call that the

1 acquisition, the part or the right that's actually
2 going to be acquired.

3 Q. Okay. And so whether it's a foot and a
4 half or 20 feet from the centerline, it's an
5 additional width that you would need. That's how you
6 refer to that, the acquisition?

7 A. Yes, uh-huh (affirmative).

8 Q. And then to arrive at a dollar figure,
9 what do you do with the number of square foot that
10 math brings to you?

11 A. Yeah, we'd use that value in the value of
12 the land in the before condition and apply that
13 valuation to the number of square feet. You know if
14 it's a full acquisition of property, that would just
15 be done on a fee basis. If it's an easement, we'd
16 determine what portion of fee would be the applicable
17 amount to -- to deduct there as a portion of fee
18 value for the easement.

19 Q. Okay. And for diminution of value,
20 severance damages or after impact, however you've
21 referred to it here, what would the process you would
22 undertake for that be?

23 A. So we'd then look at the property in the
24 after condition, you know, with those improvements,
25 the new improvements, the new acquisition or whatever

1 the project is, with that project done and in place.
2 We'd estimate the value of the property in that after
3 condition. And then the difference between what the
4 value in the before condition, less the part
5 acquired, and the value in the after condition would
6 be calculated as damages.

7 Q. Okay.

8 A. If -- you know, if there's a negative
9 difference obviously. If there's a positive, that
10 would be calculated as a special benefit. You know
11 I'm sure everybody is familiar with those terms.

12 Q. And you would agree with me that there is
13 at least the potential for someone's property to lose
14 value even if it's not directly underneath these
15 lines with the change that comes?

16 A. Potential, yes.

17 Q. Okay. Let's see, Mr. Gordon did a pretty
18 good job of gutting a lot of my questions here. So
19 I'm going through it, and I'm crossing out the things
20 we've already covered.

21 A. You always want to go first, Mr. Morris,
22 that way you don't have to change your plan.

23 Q. Well, I'm going to have to have a chat
24 with Mr. LeVar about that.

25 You know there was a line that caught my

1 eye in your testimony that you indicated that
2 overhead lines won't impact the, quote, functional
3 utility, end quote, of parcels in its path.

4 Do you recall that opinion?

5 A. Yes.

6 Q. I just want to make sure I understand what
7 you're saying there. That overhead lines -- when you
8 say "functional utility," I assume if it's a home, I
9 mean people can still pull up in their car, go and
10 watch TV, eat dinner, go to bed, and the home can
11 still function as a home, right?

12 A. Yes. We were looking at specifically
13 land. So, you know, the conclusion there in our
14 report is based again on land and land value ranges.
15 But you've got the right idea there. The land would
16 still remain, in all likelihood you know generally
17 for a power line or something across the frontage,
18 the land still remains functional for all of those
19 uses that it could have been put to before.

20 Q. But a change in function -- but the
21 absence of a change in functional utility does not
22 translate into no change in value; is that correct?

23 A. Correct.

24 Q. Okay. Have you read Ron Lowrey's direct
25 testimony that he submitted in this proceeding?

1 A. Ron Lowrey. Yes. One of the two property
2 owners, the V.O.L.T. members; is that correct?

3 Q. Yes. Did you read his account of having
4 to reduce the sales price of his home because the
5 buyer was concerned about these overhead lines coming
6 in?

7 A. Yes. I recall him saying that he had a
8 price that they were wanting to ask, and they reduced
9 that in order to sell it. Is that correct?

10 Q. Yes. That wasn't surprising to you, was
11 it, as an appraiser that a buyer of a home would
12 offer less because of the threat of overhead lines
13 coming into the area?

14 A. Yeah, you know, it's -- sure, yeah. A lot
15 of reasons buyers offer less. His opinion appeared
16 to be that that was the reason, yeah. Definitely
17 there are people that would offer less. And I think
18 buyers offer less for a variety of reasons.

19 Q. On the occasions, Mr. LeFevre, when you
20 have given an opinion to let's say a condemning
21 authority like a power company or a gas line --

22 A. Uh-huh (affirmative).

23 Q. -- and the homeowner challenges your
24 opinion --

25 A. Uh-huh (affirmative).

1 Q. -- has there ever been an occasion when
2 your estimate resulted in -- or that the conclusion,
3 whether it was by an agreement and a settlement that
4 was reached or a judge or a jury decided if the
5 condemnation case went all the way through that your
6 estimate was woefully low?

7 MR. REICH: I'm going to object to the
8 basis of this questioning. What's the relevance of
9 this on this proceeding? It seems like it's
10 repetitive, and we're just dragging this out.

11 MR. MORRIS: Well, I don't think anyone
12 has asked this -- I'm sorry, Chairman.

13 CHAIRMAN THAD LEVAR: No, I was just going
14 to go to you, Mr. Morris. Go ahead.

15 MR. MORRIS: I don't think anyone has
16 asked that question yet. So I don't think it's
17 repetitive.

18 MR. REICH: My first objection was that
19 it's not relevant to this proceeding.

20 MR. MORRIS: Okay. As to relevance, Mr.
21 Chairman, Mr. -- or Rocky Mountain has suggested that
22 the standard cost for the overhead lines it's
23 proposing includes an easement valuation of 27,000
24 approximate dollars. Our contention is that that is
25 woefully low. And since they have put on Mr. LeFevre

1 to apparently support that contention and say the
2 impact is relatively small, I think I'm entitled to
3 cross-examine him on that issue.

4 MR. REICH: Mr. LeFevre has not testified
5 that the amount is \$27,000. So I think that's
6 where I don't understand the question for this
7 witness.

8 CHAIRMAN THAD LEVAR: I think at this
9 point I'm going to overrule the objection and kind of
10 see where this goes. I'm going to give a little
11 latitude. Especially considering the objections to
12 the witness, I think it's appropriate to give some
13 space to develop this a little bit further.

14 MR. MORRIS: Thank you, Mr. Chairman.

15 Q. (BY MR. MORRIS) Do you remember my
16 question?

17 A. I do, yeah. You know, the word
18 "woefully," it's obviously a big word there --

19 Q. I'm sorry, that might have been
20 pejorative.

21 Let's go on percentages. In your
22 experience given a number that you have initially
23 come up with for a condemnation proceeding on behalf
24 of a condemning authority, what's the most drastic
25 end result in terms of a percentage increase over

1 your original number that either a settlement or a
2 judicial determination has resulted in it?

3 A. You know I couldn't give a specific number
4 without really going back and looking. I can tell
5 you that there have been plenty of times in my career
6 where I was the high of the appraisers and plenty of
7 times where I was the low of the appraisers.
8 Definitely there's going to be some differing
9 opinions among appraisers.

10 Q. Of course among appraisers that's going to
11 be true. But in terms of the ultimate result, not a
12 difference of opinion but the hard fact at the end of
13 the process that the condemning authority has to
14 write a check for an amount that is some percentage
15 greater than the one you originally thought they
16 would have to write. Does that clarify the question?

17 A. Yes. Thank you for that clarification.
18 You know my answer would be almost the
19 same. There have been many times where it turns out
20 I was below where it ended up and many times it turns
21 out I was above where it ended up.

22 Q. And Mr. Gordon has stolen a lot of my
23 thunder here. I'm just trying to avoid replowing old
24 ground again. Give me a minute.

25 A. Of course.

1 Q. Did anyone at Rocky Mountain tell you why
2 they didn't want you to speak with anyone along -- I
3 mean real property owners here?

4 A. The discussion that we had with Rocky
5 Mountain was that they were trying to come up with
6 some estimates of what it was going to cost them to
7 acquire right-of-way and then needed a reasonable
8 idea of some rough value ranges for that.

9 Q. Okay. Let me have you turn to an exhibit.
10 It's V.O.L.T. Number 7. If I could get Mr. Reich to
11 show that to you.

12 A. It looks like they're looking for a book
13 right now to pass over to me.

14 MR. REICH: Which exhibit did he say?

15 THE WITNESS: Number 7, is that correct,
16 Mr. Morris?

17 Q. (BY MR. MORRIS) Yeah, V.O.L.T. 7.

18 A. Yes. I've got it here.

19 Q. This is from your report actually. It's
20 from your direct testimony. Do you recognize this
21 summary?

22 A. Yes.

23 Q. This identifies 12 impacted properties
24 that were evaluated in some fashion. But can you
25 tell us why did you identify these 12 properties as

1 **being impacted?**

2 A. These were the 12 that Rocky Mountain said
3 would be impacted by the increase in the easement
4 width as my memory serves.

5 **Q. I see. So this isn't really your**
6 **conclusion. This is Rocky Mountain's conclusion?**

7 A. No. Yeah, as I've mentioned as an
8 appraiser, we don't generally -- well, never, never
9 can I think of have I made those estimates as to
10 which properties would be impacted by an easement,
11 things like that. That's something that a client
12 comes to us and says, "You know here's the easement
13 we want to put through, and we need some value
14 estimates."

15 MR. MORRIS: That answers my question on
16 that. I don't think I have any other questions for
17 you, Mr. LeFevre. Thank you very much for your time.

18 THE WITNESS: Thank you.

19 CHAIRMAN THAD LEVAR: Thank you, Mr.
20 Morris.

21 I think we'll go ahead and take a
22 ten-minute break before we go back to any redirect
23 from Mr. Reich. So we'll recess for ten minutes. I
24 will -- before we go, to Mr. Gordon, you had
25 indicated that you might only want to call one

1 witness this afternoon. So I'm going to request that
2 you be prepared to call more than one, depending on
3 how much progress we make. I would hate to get an
4 hour or so down the line and have to stop early
5 because we don't have witnesses available. So let's
6 make sure we're prepared to go forward in case the
7 opportunity presents itself.

8 MR. GORDON: That's not a problem. We'll
9 prepare our witnesses.

10 CHAIRMAN THAD LEVAR: Okay. Why don't we
11 recess for ten minutes, and then we will go to Mr.
12 Reich's if he has any redirect for Mr. LeFevre.
13 Thank you.

14 (Break taken from 2:24 to 2:35 p.m.)

15 CHAIRMAN THAD LEVAR: I will go back to
16 Mr. Reich to see if you have any redirect questions
17 for Mr. LeFevre.

18 MR. REICH: I do.

19
20 REDIRECT EXAMINATION

21 BY MR. REICH:

22 Q. Mr. LeFevre, you were asked in the
23 cross-examination about functional utility. Let me
24 refer you to your direct testimony on page 4. It
25 looks like line 25 where you state that -- the

1 sentence is "This is primarily due to the fact that
2 the functional utility of the parcel is not
3 materially impacted."

4 Would you elaborate what you mean by that?

5 A. Yes, you know many aspects of value
6 obviously. One of the things that we look at quite
7 often is what the potential use and potential utility
8 of a property is. That's what I mean by functional
9 utility. If that is unchanged, that's going to be
10 one of the indicators that we would look at to see if
11 there's likely going to be a change in value.

12 Q. Okay. Thank you. I also had a -- I know
13 you were given several hypotheticals, and I just
14 wanted to change the hypothetical slightly and ask
15 you a question. If you had a property where there's
16 no physical taking, for example if the property does
17 not touch the easement, are you aware of any
18 circumstances based on your experienced as a
19 certified real estate appraiser that would allow the
20 property to receive severance damages?

21 A. I'm not, no.

22 MR. REICH: No more questions.

23 CHAIRMAN THAD LEVAR: Thank you, Mr.
24 Reich.

25 Mr. Gordon, do you have any follow-up

1 questions for Mr. LeFevre based upon that redirect?

2 MR. GORDON: I do not.

3 CHAIRMAN THAD LEVAR: Mr. Morris?

4 MR. MORRIS: I just have a couple.

5
6 RECROSS-EXAMINATION

7 BY MR. MORRIS:

8 Q. Again if you haven't left that page, page
9 4 of your testimony, lines 24 and 25. You say, "The
10 market does not generally recognize the decrease in
11 land value of the larger parcel due to a similar
12 utility easement along the property perimeter."

13 Do you see that?

14 A. I do, yes.

15 Q. Did someone from Rocky Mountain tell you
16 that the easement was going to be similar if the
17 overhead line that is planned here is installed in
18 fact?

19 A. No.

20 Q. Okay. And then the second question you
21 were asked about whether someone who doesn't have
22 property actually on the line being entitled to
23 severance damages. You're not an attorney, are you?

24 A. I am not, no.

25 Q. And so it would be a legal question as to

1 whether someone were entitled to severance damages
2 who had a property that wasn't immediately on the
3 utility line, wouldn't it?

4 MR. REICH: I'm going to object to that
5 question. The question I asked was if he's aware of
6 any circumstances as an appraiser. It wasn't whether
7 or not it was a legal conclusion.

8 CHAIRMAN THAD LEVAR: And I'm going to
9 agree with the characterization of Mr. Reich's
10 question; that's how I remember it as well.

11 Mr. Morris, do you want to rephrase your
12 question or rephrase your characterization of the
13 earlier question?

14 MR. MORRIS: Yeah, let me -- and I
15 appreciate the clarification. I remembered it
16 differently.

17 Q. (BY MR. MORRIS) But if the question was,
18 Mr. LeFevre, you're just -- in your experience as an
19 appraiser, you don't have any experience or any
20 history or knowledge of someone who had property near
21 a line but not on it getting severance damages;
22 that's your testimony, you're not aware of someone?

23 A. I would clarify that I'm not aware of
24 anyone getting damages or severance damages where
25 there wasn't an acquisition to their property.

1 Q. I see, okay. And so if someone who was
2 next to the line but didn't have an acquisition but
3 was very close to the line were to hire you as an
4 appraiser and say, "I think I've suffered severance
5 damages because of the easement expanding and these
6 poles coming in and ruining the aesthetic of my
7 neighborhood, for example, or because of a fear of
8 greater electromagnetic radiation coming from the
9 lines," or something like that, would you tell that
10 person they're out of luck and you really can't help
11 them or would you --

12 A. I actually have in many cases, yes. I get
13 it more often with road widenings. Someone will call
14 and say that, you know, the road behind us is getting
15 widened; we're going to be damaged. I've told a lot
16 of property owners that they should get a legal
17 opinion. That it's my understanding they wouldn't be
18 entitled to any compensation, but again that they
19 should get a legal opinion.

20 Q. And if they get a legal opinion, you're
21 happy to go and assess the impact on value?

22 A. Yeah. As an appraiser, I estimate value.
23 And then if -- yeah, I mean if there's a legal
24 opinion that somebody thinks that's the case, I'm
25 happy to give a value estimate. But like I said,

1 I've had a number of those calls, and I usually point
2 them to go look for a legal opinion because I tell
3 them I don't think I can help them.

4 **Q. So in your experience there actually could**
5 **be a diminution in value. You just don't know if**
6 **they're entitled to be paid anything for that**
7 **diminution?**

8 A. Oh, yeah, there's a lot of things that can
9 cause changes in value. And, yeah, that's exactly
10 the advice I give people is before hiring an
11 appraiser and paying a bunch of money, they may want
12 to make sure that's something that they could
13 actually get.

14 **Q. I understand. Thank you very much --**

15 A. Thank you.

16 **Q. -- for that.**

17 CHAIRMAN THAD LEVAR: Thank you, Mr.
18 Morris.

19 Do any board members have any questions
20 for Mr. LeFevre?

21 I'm not hearing any questions from board
22 members, and I don't have any. So thank you for your
23 testimony today, Mr. LeFevre.

24 THE WITNESS: Thank you all.

25 CHAIRMAN THAD LEVAR: Mr. Reich, anything

1 else from you at this point?

2 MR. REICH: No.

3 CHAIRMAN THAD LEVAR: Okay. We will go
4 then to Midway City. Mr. Gordon or Mr. Jewkes, you
5 can call your first witness.

6 MR. JEWKES: Yes, this is Mr. Jewkes.
7 We're going to call Mr. John Nelson as our first
8 witness. Now, we were a little unsure of the exact
9 time he would be called. Let me ask if he's there on
10 the line. We asked him to call in.

11 John, are you there?

12 THE WITNESS: Yes, I am.

13 MR. JEWKES: There you go.

14 THE WITNESS: Are you able to hear me?

15 MR. JEWKES: Yes, we can hear you.

16 THE WITNESS: Okay, good.

17 CHAIRMAN THAD LEVAR: Thank you. Mr.
18 Nelson, this is Thad LeVar. I'm conducting the
19 hearing. Do you swear to tell the truth?

20 THE WITNESS: Yes, I do.

21
22 JOHN NELSON,
23 called as a witness, having been duly sworn, was
24 examined and testified as follows:
25

1 CHAIRMAN THAD LEVAR: Okay, thank you.
2 Mr. Gordon.

3 MR. JEWKES: So this is Mr. Jewkes that
4 will be conducting the examination for the record.
5 And I'm sort of 0 for 10 today with all of my
6 objections, so I'm hoping I can redeem myself a
7 little bit. It feels like we need a little levity
8 here, right.

9
10 DIRECT EXAMINATION
11 BY MR. JEWKES:

12 Q. Mr. Nelson, we appreciate you being here.
13 Where are you physically located?

14 A. I'm located in Evergreen, Colorado.

15 Q. So currently you're not in our office.
16 You're calling in over the phone from your office in
17 Colorado?

18 A. That is correct.

19 Q. Have you listened to any of the testimony
20 that's been presented during this --

21 A. Just about the last three to four minutes.
22 I called in, and I listened for about three or four
23 minutes.

24 Q. Now, have you had an opportunity to review
25 the direct -- the written direct testimony that's

1 been submitted to this board in your name?

2 A. Yes, I have.

3 Q. And is that true and correct and say what
4 you want it to say?

5 A. Yes, it is.

6 MR. JEWKES: We'd move that it just be
7 submitted to the board as Mr. Nelson's direct
8 testimony?

9 CHAIRMAN THAD LEVAR: If any party objects
10 to that motion, please indicate your objection.

11 I'm not hearing any objection, and the
12 motion is granted.

13 Q. (BY MR. JEWKES) Now, I don't want to
14 spend much time on that written direct testimony.
15 I've got to tell you, throughout this hearing I've
16 had some trouble keeping up with all the technical
17 words. So I just wanted to ask you, Mr. Nelson, for
18 some simple explanation of some of the terms we're
19 talking about. And I know that you've prepared just
20 a couple of slides. If you wouldn't mind pulling
21 those up.

22 And for the board, these are just
23 demonstrative exhibits that we sent around. They are
24 not offered as evidence. They will just be used as
25 an explanation of some of the concepts that Mr.

1 **Nelson is speaking of.**

2 A. I've got those in front of me.

3 MR. JEWKES: If I could ask for
4 permission -- you know, if this were a trial I would
5 ask for permission to publish it to the jury. But
6 I'm asking for permission to publish it to the board
7 members, I suppose, and if there's any objection.

8 CHAIRMAN THAD LEVAR: Sure. Are any board
9 members having trouble getting the images in front of
10 you? Do you all have them? If you're having
11 trouble, indicate it. If I don't hear anything, I'll
12 assume we all have it.

13 Okay. It sounds like it's in front of all
14 of us. Go ahead, Mr. Jewkes.

15 Q. (BY MR. JEWKES) Well, if you turn to the
16 second one of those slides, the overground to
17 underground transition. There's been a lot of talk
18 about certain types of poles and cables. What is
19 this a picture of?

20 A. This is a photograph that I took off of
21 Google, and it's not representative of what you'd see
22 in the Midway project. However, you know, the
23 voltage is a little bit higher there. So what I was
24 trying to show primarily to Joseph and to Corbin was
25 what an overhead to an underground termination

1 structure might look like. So as you see on this
2 structure, you've got on the cross arms that are
3 about, you know, halfway up the pole or
4 three-quarters of the way up the pole, you have three
5 phase conductors coming in, and then they're dropping
6 down to termination fixtures and lightning arresters.
7 And then that's the transition from overhead to
8 underground. And on the lower cross arm, the dark
9 figures are the termination -- terminations, and the
10 thinner fixtures off to the side of the outer ones
11 are the lightning arresters. So that's just a rough
12 indication of what it takes to go from overhead to
13 underground, as would be the case in Midway.

14 **Q. And based on your experience is it**
15 **something similar to this that would have to exist in**
16 **Midway should this be brought underground?**

17 A. Something very similar to that.

18 **Q. Now, if you look at the next picture, it**
19 **looks like you've got something comparing cables.**
20 **Can you tell us what this is?**

21 A. What I was wanting to show here was that
22 we're looking at an overhead power line. It's coming
23 in from Jordanelle to Midway substation. And for
24 everybody's information, the type of conductor that
25 we'd be looking at is that depicted on the right.

1 And in this case I was trying to represent a 795 ACSR
2 conductor. Which the ACSR is an aluminum conductor
3 with steel reinforcement. If you look at the
4 conductor, you'll see in the center a little darker
5 braids, and that's the steel reinforcement. And the
6 aluminum is on the outside of that. And that
7 particular conductor would be strung, you know,
8 between poles. And in this particular case it's
9 created somewhere around 900 amps under standard
10 conditions.

11 What I was trying to show is the
12 difference between what an overhead conductor looks
13 like compared to that of an underground conductor.
14 Whereas the overhead conductor is using air as a
15 dielectric or the insulation, it's a very good
16 insulator. When we place a conductor in a duct or a
17 direct bury we have to actually put a solid
18 dielectric covering around it. The conductor that
19 we're looking at in this particular case is 1250 MCM,
20 which is 1250 thousand circular mils, and it's copper
21 instead of aluminum. The copper has very better
22 conductivity. That's what you're seeing in the
23 center of that conductor. And we're able to use
24 actually a smaller copper conductor because the
25 conductivity versus that of an aluminum conductor.

1 On the outside of that you'll see a shield
2 around the copper conductor. And then the white
3 portion in this particular case is what we call cross
4 length polyethylene insulation. It's XLPE, which is
5 the abbreviation for that. And that's a very good
6 dielectric, especially for high voltage power lines
7 like this or power cables like this.

8 There's another insulator in the industry,
9 which is EPR which is ethylene propylene rubber. And
10 there's always a controversy from one manufacturer to
11 another which is better. But they're very good
12 insulators for the underground cable.

13 Then on the outside of that we're going to
14 have a what we call a semi con layer. And then if
15 you see that metal that's going around it, it's a
16 combination of a shield. And I believe in the case
17 with Rocky Mountain Power, they're using an aluminum
18 sheath around it, which is pretty much impervious to
19 moisture. It keeps the moisture out of the
20 conductor. And then the black on the outside is the
21 final jacket that can be used in all four for the
22 conductor.

23 **Q. Well, let me stop you there and suggest**
24 **that we not go into so much detail.**

25 **A. Okay --**

1 Q. I think the main --

2 A. -- sorry.

3 Q. -- thing we wanted to illustrate here --
4 that's fine. Certainly you know your stuff. But
5 there's a difference between the overhead cables and
6 the underground cables; is that right?

7 A. Exactly.

8 Q. And when you say conductor that's the
9 actual energized cable; is that right?

10 A. That is correct.

11 Q. So going to the next page just very
12 briefly, this is -- can you tell us what this is?

13 A. What I was representing here on the left
14 is a double circuit single trench where two circuits
15 such as, you know, the Heber Light & Power and the
16 Rocky Mountain Power circuits could be placed in one
17 trench. The benefit of this is a single trench
18 versus what's being specified here is a double
19 circuit with two separate trenches and with material
20 in between the two.

21 Q. And the duct work is the bottom part with
22 the circles in it?

23 A. Yes. The ducts and the large circuits
24 that you're seeing here are basically six-inch
25 plastic conduits, and each one of those conduits is a

1 duct.

2 **Q. Turning to the next page, it looks like**
3 **it's a construction of one of these ducts; is that**
4 **right?**

5 A. What we're looking at on the next page is
6 that these ducts will be going from the termination
7 pole to some point that we need to make either a
8 splice or use it for pulling the cable. So these are
9 actually underground vaults, and this is typically
10 what you would see in an application like the one in
11 Midway.

12 **Q. Where would you see this, would you**
13 **suspect in Midway, should this be built?**

14 A. There is going to be depending on the
15 length of the cable pull, these will be along the
16 route. The first one, if we start at the east end of
17 the option A, which starts at South Center Street,
18 there would most likely be one in that location to
19 allow the transition from the underground cable going
20 up to the terminating structure.

21 Then approximately anywhere from maybe
22 1,200 to 2,000 feet there would be another one where
23 the cable could be pulled in. And because you can
24 only get a certain amount of length on a reel, a
25 splice would have to be made and that would be a good

1 location for the splice. So it would be along the
2 roads between the two locations.

3 **Q. Turning to the next page, is that a splice**
4 **that would exist inside one of these vaults?**

5 A. Yes. I was trying to represent what it
6 would look like inside the vault. And one of the
7 purposes for the vault would be to have a splice like
8 this. Yes, that's correct.

9 **Q. Let me ask you this, Mr. Nelson, at a very**
10 **high level can you just tell us what you believe a**
11 **reasonable estimate of the actual cost of this line**
12 **is going to be?**

13 A. From a very high level, I'm going to have
14 to go into a little bit of description here because I
15 was provided the bids that were elicited by Rocky
16 Mountain Power identified as bidders 13, 15, and 17.
17 And what I did at that particular time is I did just
18 kind of a quick cost comparison just looking at their
19 items in the bids. And I didn't feel comfortable
20 with that because I do a lot of engineering cost
21 estimates. And I used a different spreadsheet, and I
22 came up with a number of roughly \$8.1 million per
23 mile using the Rocky Mountain Power specifications.

24 **Q. Is it your testimony that even those**
25 **specifications are too conservative?**

1 A. I believe the specifications are quite
2 conservative. And, you know, we could actually look
3 at less conservative specifications, yes.

4 **Q. Would less conservative specifications be**
5 **permitted by industry standards?**

6 A. Yes, they would. In fact, I did a -- what
7 I considered a reduced specification cost estimate
8 for the same distance. I've mentioned \$8.1 million
9 per mile for the Rocky Mountain Power specifications,
10 which calls for four conductors per circuit instead
11 of three. And I did a less conservative
12 specification cost estimate with three conductors and
13 came in about \$6.3 million.

14 **Q. Do you know why Rocky Mountain Power has**
15 **included these issues that you consider to be**
16 **conservative in their specifications?**

17 MR. REICH: Objection, calls for
18 speculation. He can't testify why Rocky Mountain
19 Power included things in their specification. It
20 calls for speculation, lack of foundation.

21 CHAIRMAN THAD LEVAR: Okay. Mr. Jewkes,
22 do you want to respond to the objection?

23 MR. JEWKES: Briefly. I believe that
24 based on this person's expertise, having reviewed
25 many, many specifications, he can testify why things

1 exist and for what purpose.

2 MR. REICH: I agree with that, but I don't
3 see how he could testify why Rocky Mountain Power
4 included certain things in their specifications. And
5 I believe that was the question, unless I
6 misunderstood it.

7 CHAIRMAN THAD LEVAR: Certainly. So I
8 think what -- I'm going to allow the question to go
9 forward on this basis that if the witness could
10 answer why specifications like those included by
11 Rocky Mountain Power would be included by a utility.
12 Mr. Jewkes, is that a fair restatement of your
13 question?

14 MR. JEWKES: It is. Thank you.

15 THE WITNESS: So go ahead and respond?

16 CHAIRMAN THAD LEVAR: Yes. Mr. Nelson, if
17 you would go ahead and respond to it that way.

18 THE WITNESS: Sure. Utilities have
19 different philosophies, you know, for reliability.
20 And it would appear to me that Rocky Mountain Power
21 felt that the reliability was such that they needed a
22 spare fourth conductor in the duct bank in case
23 anything happened with the cables. It's not a real
24 common practice, but it is a practice that could take
25 place and allows Rocky Mountain Power to restore

1 power quicker than if there were only three
2 conductors and a failure were to take place. So it
3 would improve the response time and the down time for
4 a failed conductor, for a failed circuit.

5 Q. (BY MR. JEWKES) What's the alternative to
6 doing that?

7 A. The alternative would be to basically rely
8 on the three conductors rather than four. Now, one
9 of the things we need to realize on an underground
10 circuit like this is that perhaps 90, 95 percent or
11 more of the failures do not occur in the cable. They
12 actually occur on the terminations or the splices.
13 And so with a high degree of probability if there
14 were a failure or a problem with that cable, it's
15 going to occur on a splice or a terminator where
16 those could be repaired, replaced, you know, within
17 maybe a day or two. You know there's a time frame
18 that's going to be involved there.

19 With the four conductors instead of having
20 that additional time, they would have to test the
21 cable with either three conductors, or four
22 conductors, determine where the problem is. But with
23 the fourth conductor, they could come up on the
24 terminating structure and just reconnect the fourth
25 conductor to where the third conductor that had

1 failed was located. So it would be much quicker to
2 restore power with four conductors than with three.
3 But then the probability of a cable failure is
4 remote, but they do happen.

5 **Q. There have been witnesses for Rocky**
6 **Mountain Power that have testified today, and you**
7 **weren't present. I'll represent to you that they**
8 **said that the reason they need that fourth conductor**
9 **is because of the lead times involved in getting a**
10 **new cable. Is there some way to remedy that concern**
11 **without putting in a fourth conductor now?**

12 **A.** I'm not familiar with all of the
13 underground systems that Rocky Mountain Power has.
14 But just taking this one by itself, I would recommend
15 using three conductors and having a spare reel, which
16 is going to be about 1,800 to 2,000 feet of cable
17 basically in the warehouse in case a cable were to
18 fail.

19 I would also put in inventory anywhere
20 from two to four splices and one to two terminations
21 and be able to repair the cable with that equipment
22 that's on hand. Relying on a manufacturer to furnish
23 this cable is very iffy because they may not have any
24 in stock. They may have to manufacture it. If they
25 have to manufacture it, it could be a special run.

1 It could be a costly run, and it could delay the
2 repair of the failure.

3 Q. Let me ask you this a different way. Are
4 there any governing industry standards that require a
5 fourth conductor to be used?

6 A. Not that I'm aware of.

7 Q. Give me just a moment. Let's talk a
8 little bit about the dual trench design. Is it your
9 recollection that the Rocky Mountain specs call for
10 this?

11 A. Yes. The Rocky Mountain specs called for
12 this. And both my cost estimates involved dual
13 trenches, dual duct banks, two separate duct banks.

14 Q. How does that impact the cost of this
15 project?

16 A. There would be a cost savings by going to
17 a single trench. It would be easier for the
18 construction, possibly fewer materials such as
19 concrete backfill, the thermally enhanced concrete
20 backfill. It would be less costly to go with a
21 single trench. But since Rocky Mountain Power had
22 two separate trenches in there, that's what my cost
23 estimates were based on.

24 Q. There was a Mr. Clegg that testified
25 earlier, and he said that the National Electric

1 **Safety Code or certain provisions of it require two**
2 **separate trenches or duct banks. What is your**
3 **opinion on that?**

4 A. I disagree with that.

5 **Q. Why?**

6 A. If you look at the National Electrical
7 Safety Code, it basically is a design code for
8 putting in overhead/underground lines, substations
9 and so forth. And there is verbiage in there talking
10 about when you can have let's say joint CUES
11 equipment and when you can't have it. I've found no
12 area that prevents you from having a joint duct bank.
13 The only caveat I would say there is that utilities
14 that are putting in a let's say a common duct bank
15 would have to be in agreement doing so.

16 To give you an example of what we've done
17 on the Rocky Mountain cost estimate and the design, I
18 have considered two separate duct banks, one for
19 Heber Light & Power and one for Rocky Mountain Power.
20 And rather than having a common manhole or vault,
21 I've installed separate vaults. That way the cables
22 when they are exposed to a worker, Rocky Mountain
23 Power would have theirs, Heber Light & Power would
24 have theirs. If we wanted to and, you know, if both
25 Heber Light & Power and Rocky Mountain Power agreed

1 to it, they could put it into a common trench, and
2 then when they get to the manholes they could
3 actually expand the conduits out into the separate
4 manholes. But this would have to be an agreement
5 between Rocky Mountain Power and Heber Light & Power.
6 It could be done. I feel it's within the compliance
7 of the code. But if one or the other or both do not
8 want it, then that's why I stayed with the two
9 individual duct banks.

10 **Q. It sounds to me like your estimate also**
11 **includes two separate duct banks. What -- what specs**
12 **did you alter from the Rocky Mountain specs to lower**
13 **your estimate?**

14 **A.** The primary cost savings was within the
15 three and the four conductors. Because you're
16 reducing the amount of cable, the number of splices,
17 the terminations, the labor and so forth. My lower
18 cost estimate still had the fourth conduit such that
19 if a cable were to fail and rather than pull out a
20 cable all you'd have to do is install the fourth
21 cable as a replacement cable. But again recall that
22 that's a very low probability issue.

23 If there's a problem in this underground
24 power system/cable system, like I said well over
25 90 percent of the probability is it's going to be in

1 one of the splices which is going to be in the
2 manhole or in one of the terminators up on the
3 termination structures. So it's very unlikely that
4 you're going to have to re-pull the cable.

5 Hello, are you still there?

6 **Q. Yeah, sorry, I had it on mute.**

7 **Is there a safety reliability for needing**
8 **dual trenches or requiring them?**

9 A. I don't believe there's a safety or a
10 reliability issue. It's a coordinated issue. If you
11 look at the present overhead power line, Rocky
12 Mountain Power is sharing a structure with Heber
13 Light & Power, you know. So here's the situation
14 where they're basically using, you know, the same
15 poles for joint use.

16 **Q. So more of a convenience --**

17 A. There's some technical issues that could
18 be brought up that, you know, would favor the dual
19 trenches and the single trench. So I have no
20 objections to going with the single trenches or
21 the -- the dual trenches or the single trench. But
22 since Rocky Mountain Power had specified that, I felt
23 that both parties would probably want it in the
24 separate ducts, and that's why I left it like that.

25 **Q. Would you have preferred to have gotten a**

1 **verified bid rather than a cost estimate?**

2 A. I always like to have verified bids. But
3 in the short time frame I had, I didn't have time to
4 do that. In fact, I actually did try to get one from
5 a contractor that I've worked with, but that
6 contractor was not licensed in the State of Utah and
7 was not also an acceptable bidder for Rocky Mountain
8 Power at this time.

9 Q. There was some testimony earlier from Mr.
10 Myers, and I know you weren't here, about some errors
11 in the length calculations by the bidders, two of the
12 three bidders that is. Did you also discover these
13 errors when looking at the bids?

14 A. Right, I discovered those several days
15 back. Because when I took the measurements using
16 Google Earth -- because we have this coronavirus I
17 wasn't able to go out to the site -- the distances I
18 was measuring were consistently shorter than those
19 that were in the specification. And so you know my
20 calculation showed that the actual distance for
21 option A was about 5,300, 5,400 feet.

22 When I looked at the Rocky Mountain Power
23 specifications, that same option 1 was listed at
24 6,990 feet.

25 Option 2 involved about another 400 feet

1 to the west of South Center Street, which would take
2 my numbers up to like 57, 5,800 feet where Rocky
3 Mountain Power's is up to 7,400.

4 And then option 3 went from south Ward's
5 Lane up to the substations of another 1,700 feet.
6 And all of the numbers were consistently high by
7 about 15 to 1,600 feet.

8 So I still did my estimate based on what I
9 saw on Google Earth, and I did compare that with
10 Rocky Mountain Power's and found that they were
11 pretty much consistently 1,400 to 1,600 longer than
12 what I anticipated.

13 And I should also mention that if I look
14 at bid -- bidder 17, which on option 1 was a little
15 over 11.1 million, and if I were to correct that for
16 the distance, the shorter distance, that bid and my
17 bid are very close to the same. And my cost estimate
18 is very close to the same as bidder 17.

19 **Q. As a practical matter how significant are**
20 **these erroneous distances?**

21 A. They're only significant because when we
22 look at the cost per foot -- and I don't have an
23 exact number, so I'm giving an approximation -- I
24 think the underground cable came in at somewhere like
25 maybe 15 to 1,600 feet. And if we look at that over

1 the 1,600 feet, it amounts to about two -- a
2 \$2.5 million difference. And again those are
3 approximations. I don't have the exact numbers in
4 front of me. I'd have to go back into my file and
5 check, but in the range of a little over \$2 million.

6 **Q. Are there any other projects, recent**
7 **projects that you've worked on that lend credence to**
8 **your cost estimates in this case?**

9 A. I've worked on a number over my career,
10 but one of our -- one of the contractors we use a lot
11 is Interstate Electric. And they did a project up in
12 Teton Village, which was a double circuit 115 kV
13 line. So it's very comparable to this double circuit
14 138 kV line that we're talking about in Midway. That
15 particular project also included the same size of
16 conductor that would be used at Midway, the 1250 MCM
17 copper conductor. That was a little bit longer
18 project. It was, I think, close to two and a half
19 miles. Very similar to it, concrete duct bank. They
20 placed everything in the same trench. They did not
21 have separate trenches, so there was a difference
22 there. But that was a project I looked at fairly
23 recently, and that was a 2017 project.

24 **Q. Did those -- did your findings in that**
25 **project influence your cost estimates in this case?**

1 A. I actually looked at that. And when I
2 looked at the cost. Because Interstate Electric on
3 their website actually has a summary of that project
4 with a number of photographs. And they did that
5 project for \$7.2 million including terminating
6 structures on one end and going into a substation on
7 the earth end. And that equated to about 2.8,
8 \$2.9 million per mile. So my cost estimates based on
9 the Rocky Mountain Power specification, you know,
10 were much higher than that.

11 **Q. Just so that I understand, your cost**
12 **estimates for this case you've given are**
13 **significantly higher than what was actually used in**
14 **the Teton Village case?**

15 A. That is correct. So I feel and I felt at
16 the time that I put those numbers together that I did
17 a very conservative cost estimate, which I try to do.
18 You know, I try to come up with a cost estimate
19 that's going to match the installed costs or maybe
20 be, you know, slightly higher. I don't like to
21 underestimate a project. So I felt my numbers were
22 relatively conservative.

23 **Q. In your opinion what is the lowest amount**
24 **that would have to be paid to complete this**
25 **underground project in Midway in a safe and reliable**

1 **manner consistent with industry standards?**

2 A. I would utilize my less conservative cost
3 estimate, about \$6.3 per mile. I think that that
4 would be reasonable, safe, and reliable.

5 MR. JEWKES: Okay. Thank you, Mr. Nelson.
6 I don't have any further questions.

7 CHAIRMAN THAD LEVAR: Thank you,
8 Mr. Jewkes.

9 Mr. Morris, do you have any questions for
10 Mr. Nelson?

11 MR. MORRIS: I do not. Thank you.

12 CHAIRMAN THAD LEVAR: Thank you.

13 Mr. Reich?

14 MR. REICH: Yeah, I have a few follow-up
15 questions, Mr. Nelson.

16
17 CROSS-EXAMINATION

18 BY MR. REICH:

19 Q. **Hi, this is Bret Reich with Rocky Mountain**
20 **Power.**

21 A. Good afternoon, Bret.

22 Q. **Good afternoon. I appreciate you taking**
23 **the time to be here. I have a couple follow-up**
24 **questions about your testimony, and I want to get a**
25 **little bit of a better understanding of your**

1 background.

2 Have you ever actually constructed an
3 underground pipeline, like been a project manager out
4 in the field?

5 A. I've worked on projects, underground
6 projects since about 1975. My original project as
7 protection engineer on 115 kV oil-filled cable for
8 the Public Service Company of Colorado. I have done
9 construction observation on a underground --

10 Q. Let me stop you right there. Was that
11 underground -- are these underground projects that
12 you were actually out in the field on?

13 A. Yes. These were all underground.

14 Q. Okay.

15 A. The most recent one I worked on was in --
16 I think it was Corpus Christi, Texas on an LNG plant
17 where they were installing a 230 kV underground
18 cable. I was not involved with the design of that,
19 but I was observing the cable pulling and the
20 terminations on the in-coming depth insulated
21 substation.

22 Q. Thank you. So let me get back to your
23 testimony regarding the likelihood of a failure on an
24 underground line. You said it's well over 90 percent
25 that a failure is going to occur at the splice, I

1 **believe?**

2 A. Yes. My comment on that was that if you
3 look at the actual cables, especially with
4 transmission line cables like that and even
5 distribution cables, the integrity of the cable is
6 very good. Over my career of over 50 years, I've
7 seen very few cable failures. Most of the ones I've
8 seen have happened on the splices or terminations.

9 Q. And so did your -- so does that
10 calculation include dig-ins too from like, for
11 example, third-party dig-ins?

12 A. I would -- yeah, I would exclude that.
13 These are basically just failures without a dig-in,
14 that's correct.

15 Q. Okay. So your 90 percent doesn't include
16 any third-party incidents. Would it surprise you to
17 hear that Rocky Mountain Power had two dig-ins to
18 underground transmission lines in 2018?

19 A. With a similar type of construction as we
20 have here under these specifications?

21 Q. It wasn't with construction. It was an
22 existing underground line that was contained in a
23 vault.

24 A. Yeah, that would surprise me. Because if
25 you look at the specifications, we're talking about

1 roughly a 2-foot square of concrete, red concrete.
2 And then on top of that there was going to be floor
3 dye set of thermal -- enhanced thermal concrete. So
4 to dig into that cable, unless it's a direct buried
5 cable, would really surprise me.

6 **Q. But sometimes directional drillers don't**
7 **stop for cement involved, so...**

8 A. Okay. You mentioned -- that's different.
9 I understand that one, directional boring. You know.
10 I see that happening.

11 **Q. So if you don't have a spare conductor in**
12 **an underground line and you have a third-party that**
13 **digs into your line, for example a directional drill,**
14 **what do you think the impact of that can be if you**
15 **don't have a spare conductor and it takes, you know,**
16 **several months to have that line repaired?**

17 A. Okay. My -- my observation or opinion on
18 that would be that, let's say that we have the
19 incident take place that we have a directional borer
20 bore into the cable. My recommendation would be if I
21 had only three conductors, I would have a spare reel.
22 With the spare reel what I would anticipate is it
23 would take approximately one day, at least one day
24 for Rocky Mountain Power to go out, assess the cable,
25 isolate it, and locate where the fault is. They can

1 do that with, you know, the test equipment that they
2 had available.

3 At that same time, assuming again -- you
4 know, if we're talking about having to order the
5 cable, we're talking perhaps months to get new cable
6 in. But assuming we have a reel, I would anticipate
7 that they should be able to expedite a contractor to
8 get out there within maybe two days.

9 **Q. And what if the contractor is not**
10 **available?**

11 A. It's amazing how somewhere across the
12 country you can almost always get a contractor.

13 **Q. And based on your experience how many**
14 **contractors in the country are capable of coming in**
15 **and pulling out a damaged underground conductor and**
16 **pulling through a new conductor?**

17 A. Okay. There are going to be a lot across
18 the country. The thing is you're not going to have
19 to pull out the conductor at that time. You have a
20 spare fourth conduit. So it's a matter of pulling
21 the conduit -- or the cable into the conduit. And
22 then, you know, that can be pulled; you can get your
23 equipment set up on both ends. The time consuming
24 part is if this is between two splices, you're going
25 to have to, you know, splice in the cables. That's

1 time consuming, and that could take two or three days
2 per splice. Again I would try to have two teams
3 working on that so that I wouldn't be doing one
4 splice and then the other.

5 So I think we're talking maybe five to
6 seven days on -- on ending up to repair that damaged
7 cable and put it back into service.

8 On the other hand with the termination --

9 Q. That's assuming the contractor is
10 available, correct? Assuming that there's a
11 contractor in the United States that's available and
12 can be there and can mobilize -- you understand what
13 type of equipment is required to pull these types of
14 conductors through the conduit?

15 A. Well, I understand what you're saying.

16 Q. And are these -- I mean is this small
17 equipment? It's extremely large equipment; isn't
18 that correct?

19 A. Oh, it's going to be large equipment.
20 That's correct. And it's going to take field people
21 to do the splices and the terminations.

22 Q. You also mentioned that you base a lot of
23 your estimates on a project that was done in Lower
24 Valley I believe up in Wyoming -- or by Lower Valley;
25 is that correct?

1 A. That's not totally correct. I looked at
2 those costs, and I based mine on strictly what I felt
3 the project would involve looking at the
4 specifications, coming up with cable costs and so
5 forth. So --

6 **Q. Did that project --**

7 A. -- you mentioned earlier -- go ahead.

8 **Q. Sorry, go ahead. I didn't mean to**
9 **interrupt.**

10 A. That project up there was slightly
11 different and quite a bit less expensive than the
12 cost estimate that I did for the Midway project.

13 **Q. Are you aware if that project involved two**
14 **utility companies?**

15 A. I do not believe it involved two utility
16 companies.

17 **Q. And are you aware if that project also**
18 **involved any underground utilities?**

19 A. Oh, yes, it did. It involved underground
20 utilities. It involved boring underneath I think a
21 highway. It was a fairly complex project.

22 **Q. Excuse me, that was a bad question.**

23 **Are you aware that there were other**
24 **existing underground utilities already in place that**
25 **they had to avoid or go around?**

1 A. Yes, there were. Now when you say
2 utilities, I'm considering water, gas, pipelines,
3 sewer pipelines and so forth being utilities. Are
4 you just required -- just mentioning electrical
5 utilities.

6 Q. And was this lower valley project through
7 any residential areas?

8 A. I don't know the amount of the residential
9 areas. I can't say offhand. I don't know that.

10 Q. Okay. Let me just ask you a couple of
11 questions about your direct testimony that I'm a
12 little bit confused on.

13 A. Sure.

14 Q. It says in your direct testimony where
15 you're talking about the need to do this project, it
16 seems like there's several places in your testimony
17 where you state that this project should be completed
18 as soon as possible. If you'll look at page 5, lines
19 107 and 108. You say "With the information provided
20 by RMP, there appears to be a valid reason for
21 completing the construction as soon as possible."

22 Is that correct?

23 A. That is correct.

24 Q. Is that your testimony today?

25 A. Yes, it is.

1 Now, if you look further at that
2 testimony, the load studies that were performed by
3 Rocky Mountain Power were showing a single
4 contingency, such as the Cottonwood line going out of
5 service, the failed line going out of service and the
6 voltages dropping down to the 63 to 73 percent range.
7 When we do studies, system planning studies in the
8 utilities, we normally try to look at the N minus one
9 contingency. In other words, you know, one source,
10 one generator, one line, whatever is out of service
11 except for a radial system, we try to maintain
12 90 percent voltage or above. So by having load
13 studies that were showing down at 73 percent,
14 63 percent, that tells me that Rocky Mountain Power
15 should have been installing a line like this, you
16 know, years ago. So this is definitely a needed
17 line. I concur with that.

18 The question that came up that I was asked
19 was: Is it necessary to be done by the end of 2020?
20 It would be nice to be done by 2020. It would have
21 been nice to be done by 2019, '18, '17, probably back
22 to 2015. But, you know, a few months, six months or
23 whatever is probably not going to make that much
24 difference from the problems we -- you know that are
25 existing right now. Do you follow what I'm saying?

1 Q. Sure, I do. What's your understanding of
2 why it wasn't completed sooner?

3 A. I do not know.

4 Q. Okay. Then I had some question on the
5 distance that you talked about as far as the
6 conductor goes on the proposed underground line. It
7 says that you show a -- somewhat of a disparity of
8 approximately 1,600 feet in the distance identified
9 in the request for proposals.

10 Did you account for the amount of
11 conductor that is required to come up out of the
12 ground up to the dip poles in your calculations?

13 A. If you look at the specifications -- well,
14 first of all to answer your question, I did it on a
15 per mile basis. So if I needed to add another
16 100 feet or whatever, I would be doing that on my per
17 mile basis.

18 But in looking at the diagrams that were
19 provided by Rocky Mountain Power for options 1, 2,
20 and 3, I'd measured those distances on Google Earth.
21 I went back to the specifications, and they talk
22 about an additional 100 feet that are required at
23 each end. And so with a total of eight conductors
24 on -- going up on let's say the west end, eight
25 conductors going up on the east end, that totals

1 1,600 feet.

2 However, the actual circuit distance only
3 goes up by 200 feet. So there's a 1,400-foot
4 discrepancy there. So in my opinion looking at the
5 specifications and also looking at the bids, it looks
6 like bidder number 13, he used like 5,329 feet for
7 their cost estimate. Where bidders 15 and 17 I could
8 see they were using 6,990 for option 1. And so
9 that's where I see the discrepancy coming in with
10 what's in the specification versus what the actual
11 length would be.

12 **Q. And is it a standard practice to use**
13 **Google Earth to measure distances to bid projects?**

14 A. To do a cost estimate, yes, it is.

15 **Q. What's the difference between a cost**
16 **estimate and a bid?**

17 A. Well, the bid is, you know, being provided
18 by a contractor and it's basically a determination
19 that the contractor can put the project in for that
20 amount of money. My cost estimate I try to look at
21 the same thing the contractor does. I try to put in
22 some contingencies and so forth so that I meet what
23 the acceptable bid is. So I would be fairly
24 comfortable going out and, you know, working with a
25 contractor and doing it for the cost that I came up.

1 That's how comfortable I am with my cost estimate.

2 MR. REICH: I have no other questions.
3 Thank you for your time.

4 THE WITNESS: Thank you.

5 CHAIRMAN THAD LEVAR: Thank you, Mr.
6 Reich.

7 Mr. Jewkes, any redirect?

8 MR. JEWKES: Just very briefly.

9
10 REDIRECT EXAMINATION

11 BY MR. JEWKES:

12 Q. There was some discussion about the
13 potential for a third-party dig disrupting the
14 systems that are going to be built underground in
15 Midway. In order for that to happen, did I
16 understand that they'd have to bore through 2 feet of
17 concrete?

18 A. It was actually a 2-square-foot window of
19 concrete. They'd probably have to bore through
20 roughly 3 inches or a little bit more than 3 inches.

21 Q. How likely is that in your opinion based
22 on your experience?

23 A. I have not run into that myself. But it
24 sounds like Rocky Mountain Power mentioned they had
25 two similar incidents last year. So I can't give you

1 a very good answer for that.

2 Q. You don't know --

3 A. One -- one thing we should mention is that
4 let's assume that we did have such a condition, that
5 somebody was doing some boring there and they went
6 into that particular circuit. You realize that what
7 we're doing with the new Rocky Mountain Power 138 kV
8 system is we're putting in a full contingency or full
9 plan where we can lose one, one circuit. So if we
10 had a situation that we lost the Cottonwood line, the
11 railroad line, the Hale line or this line, you know,
12 that's our minus one. So the system could still
13 operate even though there is an outage with the cable
14 or with any one of those other overhead power lines.

15 MR. JEWKES: Thank you. That's all I
16 have.

17 CHAIRMAN THAD LEVAR: Thank you,
18 Mr. Jewkes.

19 Anything further from you, Mr. Morris?

20 MR. MORRIS: No. Thank you.

21 CHAIRMAN THAD LEVAR: Mr. Reich, did those
22 questions lead to any recross?

23 MR. REICH: No further questions. Thanks.

24 CHAIRMAN THAD LEVAR: Okay. Thank you.

25 Do any board members have questions for

1 this witness?

2 I'm not hearing any --

3 MR. JORDAN WHITE: Yeah, Chair LeVar.

4 CHAIRMAN THAD LEVAR: Yeah. Go ahead, Mr.
5 White.

6 MR. JORDAN WHITE: Just a couple
7 questions. This is very helpful, Mr. Nelson. Just
8 so -- tell me if I mischaracterize your testimony.
9 But if I heard you correctly, you're not necessarily
10 challenging whether the estimates or the design I
11 guess specifications of the line are incorrect. It's
12 more that there's -- in your professional opinion,
13 there's other ways of doing it that would be
14 different or less expensive. Am I misstating that?

15 THE WITNESS: Yes, sir. That is correct.

16 MR. JORDAN WHITE: In your experience of
17 working with the utilities for example that fail, did
18 they -- in your experience is it common or is it out
19 of the ordinary to have different internal design
20 specifications of how power lines are built?

21 THE WITNESS: I think if you go across the
22 United States, you're going to find a lot of
23 variations with specifications. Some people look at
24 very conservative specifications like the Rocky
25 Mountain Power specifications.

1 There's another extreme that we're seeing
2 with the wind farms. You know the wind farms are
3 trying to come in with very economical projects. And
4 what they're actually doing is they're utilizing a
5 direct buried system. And there are a lot of
6 advantages to the direct buried where they put the
7 three conductors in the ground and put a backfill
8 over those, pull up maybe a foot or two, put in a
9 layer of concrete for protection. And it's a very
10 economical system to put in. The ampacity on the
11 cables are greater. So there's a wide variation of
12 extremes on specifications from direct buried up to
13 systems similar to what Rocky Mountain Power has.

14 MR. JORDAN WHITE: Okay, thank you. The
15 last question I had is just with respect to -- I
16 can't remember the line of questioning, which
17 attorney was asking you. But it was -- I think it
18 was with respect to need. I want to make sure I
19 understand what you said. I think you responded that
20 there wasn't a question in your mind that there was a
21 need. It was just a question of whether -- whether
22 it could be prolonged. In other words there was a
23 reliability issue indeed for the project. It was
24 just -- well, explain a little bit more about that.
25 You said there was a need but that it could wait

1 longer or --

2 A. Yes, sir. There are two areas that you
3 may be directing at. Number one is if there were a
4 failure of the underground cable, my recommendation
5 would be that Rocky Mountain Power have a spare reel.
6 And that spare reel would probably be about \$100,000
7 of inventory, so there's a cost associated with that.
8 The alternative is they would have to buy that cable.
9 And you know if it's not in stock or it may not be in
10 stock, it could end up being, let's say, 90 days out
11 or maybe even longer before they could get the cable
12 replaced. So that's an issue there.

13 The other issue is if there is an outage
14 on that line, right now any outage on the Cottonwood
15 to Snyderville, the railroad coming down into the
16 Park City area or the Hale line coming in would cause
17 an overload on the system and low voltage. So by
18 putting this line in, the end -- they're back up to
19 the full end contingency. If they've got all of
20 their system together, they could lose any one of
21 those sources including this Midway underground line
22 or the line itself and still be able to maintain
23 voltage 90 percent or above according to what I
24 understand with the load full studies. Does that
25 answer your question?

1 MR. JORDAN WHITE: Well, I think it does.
2 But at one point I thought you said -- and maybe I
3 misheard you -- that over all the general impetus for
4 this project is -- you're not questioning that. In
5 other words, there is a need. It's just a question
6 of whether or not the time --

7 THE WITNESS: Oh, yeah. Definitely there
8 is a need. The timing is the question. The need has
9 been there for years in an opinion. So it needs to
10 be installed.

11 MR. JORDAN WHITE: Okay. That's all the
12 questions I have. Thank you very much.

13 THE WITNESS: Sure.

14 CHAIRMAN THAD LEVAR: Thank you,
15 Mr. White.

16 Do any other board members have questions
17 for Mr. Nelson?

18 I'm not hearing any questions. So thank
19 you for your testimony today, Mr. Nelson.

20 THE WITNESS: Sure. You're welcome.
21 Thank you.

22 CHAIRMAN THAD LEVAR: I think what we'll
23 do is we'll take one more ten-minute break right now,
24 and then we'll come back and let Midway City call
25 their next witness.

1 So why don't we go into recess for
2 approximately ten minutes. Thank you.

3 (Break taken from 3:35 to 3:45 p.m.)

4 CHAIRMAN THAD LEVAR: We're back on the
5 record. And at this point we will go to Midway City
6 for your next witness.

7 MR. JEWKES: Thank you, Chairman. We
8 intend to call Mr. Jerry Webber as our next question.
9 And I'm not sure if he's on the line yet. Are you
10 there Jerry?

11 THE WITNESS: I'm on the line.

12 MR. JEWKES: There we go, like magic. I
13 love it. Thank you.

14 Thank you for being here, Mr. Webber. My
15 name is Joshua Jewkes, and I'm the attorney for
16 Midway City in this case. I appreciate you taking
17 time out of your day to visit with us.

18 THE WITNESS: Okay.

19 CHAIRMAN THAD LEVAR: Mr. Jewkes, I'll go
20 ahead and swear him in.

21 Mr. Webber, do you swear to tell the
22 truth?

23 THE WITNESS: Yes.

1 JERRY WEBBER,
2 called as a witness, having been duly sworn, was
3 examined and testified as follows:
4

5 CHAIRMAN THAD LEVAR: Thank you. Go
6 ahead, Mr. Jewkes.
7

8 DIRECT EXAMINATION

9 BY MR. JEWKES:

10 Q. Have you had an opportunity to look at the
11 direct written testimony that's been submitted on
12 your behalf in this case?

13 A. I have.

14 Q. Does it accurately reflect and completely
15 reflect your testimony in this case?

16 A. Yes.

17 MR. JEWKES: I'll move to submit
18 Mr. Webber's testimony into evidence as his direct
19 testimony in this case.

20 CHAIRMAN THAD LEVAR: If any party objects
21 to that motion, please indicate your objection.

22 I'm not hearing any objection, so the
23 motion is granted. Go ahead.

24 Q. (BY MR. JEWKES) Mr. Webber, I just have
25 one or two quick questions for you. In your look at

1 **the value of these easements, did you do individual**
2 **property appraisal?**

3 A. Yes. I did the individual property
4 appraisal, and my scope of work was really to --
5 because the location and width of the proposed
6 easement was unknown, was to estimate the impact of
7 the power corridor to the property value if the power
8 corridor were to be installed.

9 **Q. Did you come to a -- what you determined**
10 **to be a value of the impact that you're referring to?**

11 A. Yes, I did for each individual property.
12 I think there were 51 properties that I did
13 appraisals on, and I did each individual property.

14 **Q. Do you recall the aggregate value?**

15 A. The total, according to the spreadsheet,
16 which included one property that was a duplication --
17 I think it was property number 84 which was a
18 duplication, which I pointed out in my direct
19 testimony -- that the impact was about 3,445,162.

20 **Q. And that number reflects the total**
21 **aggregate impacts of the easements across all of the**
22 **properties; is that right?**

23 A. Yes, it does.

24 MR. JEWKES: All right. I think that's
25 all the questions I have. I know some of the other

1 attorneys may have questions for you.

2 CHAIRMAN THAD LEVAR: Thank you.

3 Mr. Morris, do you have any questions for
4 Mr. Weber?

5 MR. MORRIS: I do. Thank you.

6
7 CROSS-EXAMINATION

8 BY MR. MORRIS:

9 Q. Mr. Webber, please tell the board what was
10 your scope. We know that you performed appraisals on
11 these individual properties, but what were you
12 comparing to come up with the numbers that you did?

13 A. Well, I appraised properties as though the
14 power line corridor was not installed and then
15 estimated the damages to each individual property
16 based upon each individual property's proximity to
17 that power corridor.

18 Q. And when you say power corridor, are you
19 speaking of the proposed overhead corridor coming in?

20 A. Yes.

21 Q. Okay. You're aware that there's an
22 existing power corridor there now?

23 A. Yes. Yes, I am.

24 Q. Okay. And so you didn't assume there was
25 no power corridor at all for your before valuation?

1 A. No. I assumed the before valuation with
2 whatever easements and power corridor was impacting
3 those properties prior to the installation of this
4 proposed 138 kilovolt power corridor.

5 Q. Okay. So in looking at your report
6 there's a picture. It looks like it's one of the
7 last pages there. It's an impact map. Do you see
8 that? It might be the last page on your report.

9 A. Yes.

10 Q. I'll give everyone a minute to get there
11 if they're looking at their own exhibits.

12 Now, you didn't prepare this impact
13 report, did you?

14 A. No, I did not. That map I did not
15 prepare.

16 Q. Okay. Now does the map accurately
17 describe with the blue numbers the properties that
18 you did individualized appraisals for?

19 A. Yes, it does with the exception of what
20 they've referred to as property 41. They've got that
21 in red. I did do an appraisal on that, which I
22 amended in my testimony to reflect the fact that that
23 property should have been included with the
24 summaries. And property 32 I did not do an appraisal
25 on.

1 And then the duplication, which was --
2 they refer to as property number 10, is a
3 duplication. And they have it listed as property
4 number 10 and also as property number 84. So that
5 was the duplication which I pointed out in my
6 testimony which I submitted.

7 **Q. Okay, thank you. I noticed that, for**
8 **example, property 31, which is up -- on Cascade**
9 **Meadows Loop. Do you see that?**

10 A. Yes.

11 **Q. Could you tell the board why you believe**
12 **that property has suffered -- would suffer a loss in**
13 **value if the proposed double circuit line is**
14 **installed by Rocky Mountain?**

15 A. Well, that property kind of sits up on a
16 little bit of a hill. Its view shed is to the south
17 and to the southeast, which would be directly into
18 where that power corridor as it extends easterly --
19 or I'm sorry, westerly along Ward's Lane would have
20 extended or would be proposed to be extended.

21 **Q. Okay. And is it your understanding that**
22 **this corridor is going to run across the street from**
23 **Ward's Lane from that subdivision?**

24 A. Yes, yes.

25 **Q. Okay. And for developments that are HOAs**

1 **and have common areas, did you encounter those in**
2 **your work?**

3 A. I did. The majority of the homes -- the
4 majority of the homes and the vacant lots that I
5 appraised were in Cascade Springs -- or Soldier
6 Hollow at Cascade Springs. Or, I'm sorry. The
7 subdivision is at -- I'm looking at -- there's so
8 many subdivisions up there named -- The Cascades at
9 Soldier Hollow were the majority of the lots.

10 Q. Okay. Looking at this map there's some
11 big red circles that are called out as 7-foot
12 diameter, 85 to 150 foot steel poles, and I see three
13 of them there. Do you see that?

14 A. Yes.

15 Q. Did you understand that these were not the
16 only poles that were going to be installed?

17 A. Yes. Those are the poles that would
18 represent the corner poles and would -- and most
19 likely -- the most likely scenario would be the
20 largest of the poles because they would have the
21 tension based upon being in the corners where the
22 power line either takes a northerly turn or a
23 westerly turn.

24 Q. Okay. You concluded that there will be a
25 negative impact, and you've put a dollar figure into

1 **it. Tell the board what the basis for your**
2 **calculation was. Well, let me preface that with a**
3 **better question, a little more background.**

4 **Did you arrive at a general percentage of**
5 **loss in value that would be occasioned by**
6 **installation of this double circuit?**

7 A. Yes, I did.

8 **Q. And what is that?**

9 A. Well, depending upon proximity to the
10 double circuit corridor and structures, anywhere from
11 two and a half to 10 percent, depending on proximity
12 to the proposed power corridor installation.

13 **Q. And the properties that are going to get**
14 **these 7-foot diameter steel poles, is the impact**
15 **greater than those?**

16 A. I would think it would be. But of course
17 at the time we didn't know where those poles were to
18 be located. I assumed that the larger poles would be
19 in the locations as noted on that impact map, that
20 those would be the large poles, similar to the pole
21 included in that photograph on that impact map pole.
22 That pole is actually at about 400 North and
23 Highway 40, on the east side of Highway 40 just on
24 the north end of Heber City. That's where that pole
25 is located.

1 **Q. Thank you. For properties -- or for homes**
2 **that are within a HOA but do not necessarily abut the**
3 **proposed power corridor, explain to the board how the**
4 **impact -- how the value of those homes is impacted.**

5 A. Well, it would depend upon their
6 proximity. Those homes that are near the power
7 corridor, numbers -- Cascade Springs is numbers 68,
8 60 -- about 68 through 41 and then includes parcel
9 78, 79, 80, 81, 82, 83. Those are part of the
10 Cascade Springs at Soldier Hollow PUD. That project
11 includes common area trails, common area landscape
12 areas, and also some common area water features. So
13 each property in that project has an undivided
14 interest in those common areas.

15 And the largest -- the big part of the
16 common areas would be along the north boundary of the
17 Cascades at Soldier Hollow as it abuts Ward's Lane.

18 **Q. And so just because a home isn't**
19 **necessarily on the line, the value of its interest in**
20 **a common area that is on the line is affected?**

21 A. Well, yes. And it's also the impact to
22 that home from being in close proximity to that power
23 corridor.

24 **Q. Do you have -- well, let's see, you gave**
25 **us a big summary of your trial testimony, so we won't**

1 go through all of that.

2 MR. MORRIS: I think that's all the
3 questions that I have for you, Mr. Webber. Thank you
4 for your time.

5 THE WITNESS: Okay, thank you.

6 CHAIRMAN THAD LEVAR: Thank you,
7 Mr. Morris.

8 Mr. Reich, do you have any questions for
9 Mr. Webber?

10 MR. REICH: I do have a couple follow-up
11 questions.

12
13 CROSS-EXAMINATION

14 BY MR. REICH:

15 Q. Hello, Mr. Webber. This is Bret Reich
16 with Rocky Mountain Power. How are you today?

17 A. Good.

18 Q. Good. Thanks for joining us. On your
19 direct testimony on page 4, on line 82 in response to
20 the question about do you have an opinion regarding
21 severance damages to the property, your answer
22 says -- are you there, or do you want me to give you
23 a minute?

24 A. Let me find it. You're on line 82.

25 Q. 82, correct, of page 4.

1 A. Yes.

2 Q. You say, "I concluded that proximity to
3 the proposed above ground or overhead power lines
4 impacted these properties."

5 My question is how did you make that
6 determination?

7 A. Well, I did it in two methods. I did what
8 we call a qualitative analysis where I discussed the
9 potential power corridor with various real estate
10 agents, participants in the marketplace,
11 buyers/sellers, mostly agents and brokers and
12 discussed the possibility of the power corridor not
13 being there and what the impact they felt the
14 installation of that large power corridor would have
15 on the adjoining properties or the properties in
16 close proximity.

17 Q. So --

18 A. That summary is included within the body
19 of each of the individual reports. That was the
20 qualitative method.

21 Q. And let me just ask you a question about
22 that before you talk about the second step. When you
23 say you asked them questions about how it would
24 affect the property or -- I'm not trying to misstate.
25 If I misstate, please correct me. You're saying

1 without the new line in place. I guess I don't
2 understand that. So you're asking them how would
3 their homes be impacted without the new line in
4 place? I don't understand that.

5 A. No. What was their perception of the
6 impact on the value of their property.

7 Q. Of the impact --

8 A. Yes, on the impact of their property as a
9 result of the power line installation.

10 Q. Okay, got it. And which specific
11 individuals or property owners did you talk to?

12 A. I talked to many property owners, and I
13 talked to -- I talked to most of the property owners
14 of the homes I appraised within Cascade Springs for
15 the Cascades at Soldier Hollow for each individual
16 properties as I was conducting the appraisal. I also
17 discussed it with many real estate agents that are
18 active in the market in Midway/Heber City to give a
19 feeling as to their perception of the impact of the
20 power corridor installation to property values in the
21 area.

22 Q. And have you found in your practice as a
23 real estate appraiser that property owners are a good
24 indication of how the value of their home is going to
25 be impacted by developments in the area?

1 A. No. No, because I think they might have a
2 vested interest in the outcome. But I do consider
3 it. They're obviously market participants.
4 They're -- they are familiar with their own property,
5 and they're familiar with the reasons they bought
6 that particular property. So --

7 **Q. Okay.**

8 A. -- they certainly should have some input
9 into what impact might be from some external
10 influence. So I discussed it with them. I think
11 real estate agents generally are a little bit more
12 objective because they represent buyers and sellers
13 in the marketplace. They try to be objective in
14 their practice of real estate in representing buyers
15 and sellers and hear feedback from those buyers and
16 sellers.

17 Some agents reported that they had -- they
18 were told by some specific buyers that they would not
19 buy a property in close proximity to a high voltage
20 transmission power line. So they didn't even bother
21 showing them to them. So they felt that those
22 particular individuals adversely reacted to proximity
23 to high voltage power transmission lines.

24 **Q. And do you consider the existing 46 kV a**
25 **high voltage transmission line?**

1 A. It's moderate, medium. It's medium.
2 It's certainly not the capacity of the 138 kV that's
3 to be installed.

4 Q. Okay. So then you said it was a two-step
5 process. So first you talked to the homeowners, and
6 then to some real estate agents. And then what was
7 the second step?

8 A. That was the qualitative analysis. So I
9 got the feedback from those individuals. And then I
10 went out and I compared home. And I had a pretty
11 good -- what I referred to as a pair of sale in that
12 the property at -- on White Water Lane, which I was
13 in the process of appraising, had just gone under
14 contract. And the seller reported to me that when
15 the new buyers found out about the possibility of a
16 power corridor being installed immediately north of
17 that home, they withdrew their offer. He then
18 renegotiated with an additional buyer and felt that
19 he had taken a discount. I appraised that particular
20 home for -- oh, I'd have to look at my notes, but I
21 think it was a million -- let me tell you what that
22 one was.

23 One of the confusing things on this is the
24 properties, as identified on the impact summary, are
25 numbered by the numbering system that the preparer of

1 that document came up with. But the -- it's on White
2 Water Lane, property 51. I appraised that property
3 without the easement, without the possibility of the
4 proximity to the power corridor at a million sixty.
5 It actually sold for -- let's see, it sold for about
6 \$950,000, which represents about 10 percent decline
7 in value.

8 Since that time there has been two other
9 paired sales within the confines of Cascades at
10 Soldier Hollow. The property that's located a little
11 bit further away from the power corridor at 920 Cold
12 Water, which is property 66, I appraised for a
13 \$1,100,000.

14 That property ultimately sold for
15 \$1,035,000, which is a decline of just over 5
16 percent, about 5.4 -- 5.40 percent decline in value.
17 From what I appraised it absent the power corridor
18 and what it sold for with the possibility of the
19 power corridor was a discount of about 5.4 percent.
20 I estimated that decline in that property to be about
21 5 percent when I did that because it was not under
22 contract or sold at the time I appraised it. It was
23 listed for sale.

24 Another property, which has since sold in
25 the Cascades at Soldier Hollow is the property at 908

1 Cascade Court. At the time I appraised that
2 property -- that one is identified as property 45 on
3 the map exhibit. That property was listed for sale
4 when I appraised it for two million two --
5 \$2,250,000. I appraised it under the assumption that
6 the power corridor did not exist and the threat of
7 the installation of the power corridor did not exist,
8 I appraised that property for \$2 million at the time,
9 which was in as I recall May of last year.

10 That property ultimately sold for
11 \$1,765,000, which is a decline of about 11.75 percent
12 below what I appraised it for.

13 **Q. And when did that property sell?**

14 A. That property sold in August of 2019. I
15 appraised it I think in May or June of 2019.

16 **Q. And what did you attribute the 11 percent**
17 **decrease to?**

18 A. Well, I didn't attribute the 11 percent
19 decrease. I estimated the diminution in value from
20 the proximity to the power corridor to be 10 percent.
21 That property actually sold for 11.75 percent less
22 than I appraised it for. So the impact was more
23 severe in that case than I had estimated.

24 So I have three what I call quantitative
25 analyses of sales that have sold within proximity to

1 that particular power corridor.

2 Q. Yeah. Let me just clarify on your -- on
3 your statements that you do an appraisal, I mean this
4 power line has not been built, correct?

5 A. That's correct.

6 Q. So you say you do an appraisal. Like, for
7 example, on the last one you said you did an
8 appraisal of 2.2 million. And --

9 A. Actually --

10 Q. Excuse me?

11 A. I appraised it for 2 million.

12 Q. 2 million.

13 A. At the time I appraised it, the property
14 was listed at 2.2.

15 Q. You appraised it for 2 million. And then
16 you say you do that -- I think your words are without
17 taking into consideration the power line; is that
18 correct?

19 A. Yes. Without taking into consideration
20 the threat of the installation of the power corridor.
21 I'm appraising the property as though it exists and
22 there is no threat of installation of the power
23 corridor. I appraised that property for 2 million.

24 Q. And so when it sold, and there's a
25 decrease -- you said a decrease by 11 percent, are

1 you attributing that to the threat of a power line or
2 is there some other factor, or are you not offering
3 an opinion on that?

4 A. Well, I'm not offering an opinion as to
5 why it sold for less, other than the fact when I
6 appraised that property for 2 million without the
7 power corridor or the threat of the power corridor
8 and it ultimately sold for a million 765, that that's
9 a decline. The only thing that I can -- that I can
10 determine as to why that happened was that the
11 buyers -- the sellers in the marketplace became aware
12 of the installation or the potential installation of
13 the power corridor immediately north of that site.

14 Q. But I mean you would agree with me that
15 the threat of a power line existed on May of 2019,
16 correct?

17 A. It did.

18 Q. So looking at the map that Mr. Morris
19 referred to that's part of your testimony, it
20 identifies several properties in blue. And those say
21 "appraisal received;" is that correct?

22 A. Yes, yeah. Those would -- yes, that was
23 prepared. I don't know who prepared that, if it was
24 someone with V.O.L.T.

25 Q. Okay. So this is attached to your

1 testimony, so that's why I wanted to ask you about
2 it. So are the blue numbers, are those the
3 appraisals that you conducted?

4 A. Yes.

5 Q. And how did you decide --

6 A. With -- with the exception of property 32,
7 which I did not appraise, property 41 I did appraise,
8 and property 68 I did appraise.

9 Q. Okay. And my question is how did you
10 decide which properties you were going to do
11 appraisals on? Were you given an assignment to do
12 specific properties?

13 A. No. I requested -- I requested telephone
14 numbers and contact information from my contacts with
15 V.O.L.T. to the property owners. Whether they -- and
16 in most cases they happened to be owner occupants.
17 And I would call those owner occupants, explain what
18 I was doing, request a time to inspect their
19 property. In some cases some of those property
20 owners refused access to the property. For whatever
21 reason, they had chosen not to allow me in. So I
22 appraised those properties from the exterior based
23 upon Wasatch County records, which confirms the
24 bedroom count, square footage, those kind of things
25 by making exterior inspections.

1 **Q. So there are some property appraisals that**
2 **you did on residences that they did not give you the**
3 **authority to do the appraisal on?**

4 **A. They would not allow me inside, that's**
5 **correct. And those properties are clearly identified**
6 **in the summaries of the appraisal that were**
7 **submitted, but I did not inspect the interior.**

8 **Q. Okay. And so that explains why you did**
9 **the 51 appraisal that you did do. So for example why**
10 **didn't you appraise the property identified as 37 or**
11 **34?**

12 **A. 37 and 38 is owned by the same person, and**
13 **I had talked to him and was -- that property is**
14 **primarily vacant land. There is a smaller home up in**
15 **the north corner of property 38, and so I just**
16 **didn't -- I just didn't get an inspection of the**
17 **interior of that property so I never completed an**
18 **appraisal on it. I had spoken to him. At the time I**
19 **think he was up at his ranch in Wyoming, and his wife**
20 **didn't want to let me in until he got back. And that**
21 **was going to be later on in the fall of 2019, so I**
22 **just never did it.**

23 **Q. So I'm still a little confused, and maybe**
24 **I'm asking a bad question. So how did you select**
25 **these 51? Are these the 51 you just decided on your**

1 **own, hey, I'm going to do appraisals for these 51**
2 **properties?**

3 A. Yes. After I'd done the research and done
4 the qualitative and quantitative analysis, I felt
5 that the properties that were located in -- not in
6 close proximity to the power corridor, probably had
7 no impact as a result of the installation of the
8 proposed power corridor. So I was more concerned
9 with those properties in closer proximity, proximity
10 of anywhere from 20, 30 feet in some cases to as much
11 as maybe 200 feet in some cases. So that's why these
12 properties are kind of along that power corridor
13 area.

14 Many of the homes in Cascade Meadows PUD,
15 were under construction at the time I was doing these
16 appraisals, so I just didn't do those appraisals.
17 They were under construction at that time.

18 **Q. So did you receive an assignment from**
19 **anyone to appraise these 51 properties?**

20 A. No, I was requested to appraise all of
21 them if I could. Unfortunately, I was not allowed
22 access to many of the properties. We couldn't get
23 contact information for some of the property owners.
24 So I just didn't complete them all.

25 **Q. So is it your understanding -- and I know**

1 you didn't -- it sounds like you did not complete
2 this exhibit. There's a picture of a pole here. Is
3 it your understanding that that's the type of pole
4 that's going to be placed in these three --

5 A. That's the pole -- yeah, that's the pole
6 that I actually looked at. It's on the north end of
7 Heber City right there on Highway 40.

8 Q. Okay. And is it -- is it your
9 understanding that the poles are going to be on this
10 map, the three poles that you've identified are going
11 to be similar poles to that pole?

12 A. That's what I was told, yes. I don't
13 know.

14 Q. Who told you that?

15 A. I think the people at V.O.L.T. I think
16 Jonsson and some of the people at the planning and
17 zoning department at Midway City.

18 Q. And would it change your analysis at all
19 if I told you that that pole is not the pole that's
20 going to be used in those three places? The pole in
21 the picture here has distribution lines on it, and
22 the proposed power -- the proposed project does not
23 have distribution lines.

24 A. No. No, I was told -- I was told by
25 Midway City early on in the process that whatever

1 poles would be installed would be installed only with
2 the high voltage power lines. Distribution lines
3 would be elsewhere or be relocated below ground.

4 Q. And you understand the pole that's on this
5 picture shows distribution lines on it?

6 A. Yes, it does.

7 Q. So is that an accurate representation of
8 the poles?

9 A. No. No, not truly. But it shows -- it
10 has distribution lines on it. But I was told that's
11 the similar metal pole structures that would -- that
12 were to be installed on the corridor locations. I'm
13 not certain what would have been installed in between
14 the corner locations.

15 Q. Okay. And with respect to the poles I
16 think you were asked by Mr. Morris about, you know,
17 if there were a pole in front of somebody's property
18 if that would impact the value of the property. Are
19 you aware that a project has been designed as
20 requested by Midway City by moving the poles to the
21 property boundary lines so they're not directly
22 located in front of any of the residential
23 properties?

24 A. No. No, I wasn't told that.

25 Q. And would that change your opinion at all

1 **if that was your understanding?**

2 A. No. Because at the time I started on this
3 project we had -- I had no idea, nobody had any idea
4 where the poles would be, what size the poles would
5 be. We were -- I was basing my analysis on what
6 would be typical construction for 138 kV line in the
7 area in terms of required right-of-way width and in
8 terms of pole spacings and elevations of lines.

9 Q. Also if you were told that the number of
10 poles is actually being reduced in this area in
11 comparison to the existing power line, would that
12 change your analysis at all?

13 A. No.

14 Q. Why not?

15 A. Because I think the existing poles are
16 anywhere from 40 to 50 feet in height, and the
17 proposed lines would have been anywhere from 100 to
18 110 feet in height. I think they'd be much more
19 invasive, much more impactful to the views, view
20 sheds.

21 Q. And what's the basis of your opinion that
22 the new poles are going to be 100 to 120 feet in
23 height?

24 A. Well, that's -- it's based upon my
25 research as to the required pole size and elevations

1 for that size of a line based upon construction
2 standards that I research myself. And I also
3 discussed it with Midway City planners and people on
4 Midway City Planning and Zoning, and they all felt
5 that those were going to be anywhere from 90 to
6 120 feet in elevation.

7 Q. And if you were told that, you know,
8 pursuant to the route and the poles that were
9 selected by Midway City if this project goes forward
10 overhead that most of the poles are going to be
11 75 feet in height, would that change your opinion?

12 A. It might. But I think you've got to look
13 at the pole spacing and where those poles are really
14 going to be located.

15 Q. Okay. And then my last question has to do
16 more with -- and I believe you -- I just need a
17 better understanding of this. It looks like some of
18 the properties you provided an appraisal for are not
19 touched by the proposed or the existing power line
20 easement. Is that correct?

21 A. Yes.

22 Q. And what's the basis then of your analysis
23 that would include some type of damages for
24 properties where there would be no physical taking?

25 A. That the views and the proximity to the

1 poles would impact the value of those properties.

2 **Q. And what's the basis for finding that**
3 **there's proximity damages?**

4 A. You know, I found -- I found no evidence
5 that high voltage -- or high voltage transmission
6 lines present a health hazard. But unfortunately
7 many people you discuss power lines and
8 electromagnetic fields with feel that they do. And
9 that seems to be their objection. I don't -- I've
10 never found any empirical evidence that it exists.
11 But it --

12 **Q. We would agree with you on that. Sorry, I**
13 **didn't mean to interrupt you, but I couldn't resist.**

14 A. There's no empirical evidence that it
15 exists, but it does exist in the minds of the buyers
16 and the sellers in the marketplace.

17 **Q. And so your basis for including proximity**
18 **damages is there are homeowners that have a concern**
19 **for electromagnetic fields?**

20 A. I don't know if they have concerns with
21 electromagnetic fields, but they resist buying
22 properties in close proximity to high voltage
23 transmission lines. I think one of the most
24 concerning things expressed by most agents and most
25 property owners in the area is the elimination of

1 some of the views that those power poles and power
2 lines possess.

3 Q. And so is it your understanding as a
4 certified appraiser that if a property owner is
5 not -- if there's no physical taking for a property
6 owner, they can still receive severance damages if
7 their views are impacted by some type of improvement
8 that is not located on their property?

9 A. That's a legal question. I don't know.

10 Q. Well, I didn't ask you the law about it.
11 I asked about based on your experience as an
12 appraiser and based upon the rules and what you use
13 to appraise properties if it's your understanding
14 that that is -- that gives a person the opportunity
15 to receive severance damages?

16 A. Well, you know, I've been involved in
17 cases where traffic noise, where aviation easements
18 have impacted property values, and, you know, the
19 market recognizes that there is proximity damage.

20 MR. REICH: Thank you, Mr. Webber, I have
21 no other questions.

22 CHAIRMAN THAD LEVAR: Thank you,
23 Mr. Reich.

24 I'm sorry, I can't remember if it was Mr.
25 Gordon or Mr. Jewkes who had done the original

1 questioning of this witness. But whichever it was,
2 do you have any redirect?

3 MR. GORDON: It was actually Mr. Jewkes.
4 I don't believe we do.

5 Mr. Jewkes, do we have any other --

6 MR. JEWKES: No, your Honor. No further
7 questions.

8 CHAIRMAN THAD LEVAR: Okay, thank you. Do
9 any board members have any questions for Mr. Webber?

10 MR. MORRIS: Mr. Chairman, I just have one
11 question. It's Mr. Morris.

12 CHAIRMAN THAD LEVAR: Okay, go ahead.
13

14 RECROSS-EXAMINATION

15 BY MR. MORRIS:

16 Q. Mr. Webber, if you had had more time -- I
17 mean you did a lot of appraisal here. If you had had
18 more time, would you have finished more of these on
19 the map than you did?

20 MR. REICH: Objection, calls for
21 speculation.

22 CHAIRMAN THAD LEVAR: I'm going to
23 overrule the objection and allow him to answer the
24 question.

25 THE WITNESS: Yes. One of the

1 difficulties was just arranging times when the
2 homeowners could meet me at their properties when I
3 could actually inspect the interiors and trying to
4 coordinate that.

5 MR. MORRIS: Thank you very much. I have
6 nothing else.

7 CHAIRMAN THAD LEVAR: Thank you. Do any
8 board members have any questions for Mr. Webber?

9 MR. DAVID CLARK: I've got a question.
10 Mr. Webber, is there anything with respect
11 to property numbers 1 through 8, and I would include
12 in that 76, that is a consistent reason for those
13 appraisals not yet being completed?

14 THE WITNESS: I just never got to them.
15 One of those -- a couple of those properties are some
16 vacant lots. I think 6 has some vacant land with it.
17 So, no, I just never got to them.

18 Property seventy --

19 MR. DAVID CLARK: Thank you very much.
20 Go ahead, please.

21 THE WITNESS: Property 75 is a planned
22 unit development, which has a total of about
23 58 units. And at the time I did that appraisal, the
24 owner was in the process of amending the plat to be I
25 think 38 PUD lots versus a clustered development as

1 it was approved. So they were in the process of
2 getting that modified. So that property, as it shows
3 on the map, is a little bit different than what the
4 property owner was in the process of amending the
5 plat to look like.

6 MR. DAVID CLARK: That's all or my only
7 question. Thank you.

8 CHAIRMAN THAD LEVAR: Thank you, Mr.
9 Clark.

10 Do any other board members have any
11 questions for Mr. Webber?

12 I'm not hearing any questions, and I don't
13 have any.

14 So thank you for your testimony today,
15 Mr. Webber.

16 THE WITNESS: Thank you.

17 CHAIRMAN THAD LEVAR: And now we'll go
18 back to Midway City. If you would like to call your
19 next witness.

20 THE WITNESS: Thank you. I'll just hang
21 up. Thanks.

22 MR. JEWKES: Thanks.

23 CHAIRMAN THAD LEVAR: Okay. Mr. Gordon or
24 Mr. Jewkes?

25 You might be on mute. We're not hearing

1 anyone from Midway City. Mr. Gordon or Mr. Jewkes,
2 if you're speaking you must be on mute. We're not
3 hearing anything.

4 MR. JEWKES: I'm sorry, we had to redial.
5 My bad.

6 CHAIRMAN THAD LEVAR: Oh, I'm sorry.

7 MR. JEWKES: No, we have no further
8 witnesses to call from our case.

9 CHAIRMAN THAD LEVAR: Oh, you're not going
10 to call Mr. Wilson or Mr. Henke.

11 MR. JEWKES: No, we're not.

12 CHAIRMAN THAD LEVAR: Okay. Do you have
13 anything further then?

14 MR. JEWKES: We do not.

15 CHAIRMAN THAD LEVAR: Okay. I'll go to
16 Mr. Morris then. Would you like to call your first
17 witness?

18 MR. MORRIS: Mr. Chairman, I had inquired
19 of the other parties whether they had any interest in
20 cross-examining my two witnesses, Mr. Jonsson and Mr.
21 Lowrey, and I think counsel for Rocky Mountain
22 indicated that they didn't at the time but they would
23 let me know. They haven't let me know. I don't have
24 either of my witnesses available right now. We've
25 moved today a lot quicker, as you know, than we did

1 yesterday.

2 And so number one, I don't know if anyone
3 wants to cross-examine my witnesses. And number two,
4 even if they did, I did not have them ready today.
5 All of this was a lot faster today than I thought.

6 CHAIRMAN THAD LEVAR: Okay. Well, thank
7 you, Mr. Morris. Why don't I talk to the parties
8 then about the remainder of some of the issues we
9 have in front of us.

10 I just want to let the board know once we
11 conclude the presentation of evidence, then we still
12 need to deliberate as a board in a public hearing
13 during part of the time that we've set aside to do
14 that. So we need to have deliberation, and as a
15 board we need to probably decide whether we want the
16 attorneys on call to answer questions while we're
17 deliberating, whether or not we do that. So that's
18 just an issue I want to make sure all the board
19 members are aware of that we will need to do in
20 connection with this.

21 Our statutory due date for issuing an
22 order appears to be May 8th, which is two weeks from
23 Friday. So that doesn't give the Public Service
24 Commission staff very long to draft an order once
25 this board deliberates and makes a decision.

1 And the other thing I wanted to ask them
2 before we adjourn today is whether parties have an
3 interest in closing statements.

4 So let me just go first to Mr. Reich and
5 then to Mr. Gordon and Mr. Jewkes and Mr. Morris,
6 whether you have an interest in closing statements
7 before the board deliberates.

8 MR. REICH: We would be happy to do that
9 if the board thinks it would be helpful. If not we
10 would be just as happy submitting a written final
11 statement or brief on the issues that have been
12 discussed. I'd be happy to do that also.

13 CHAIRMAN THAD LEVAR: So you're expressing
14 a willingness to do either but not necessarily moving
15 to do either or asking to do either; is that right?

16 MR. REICH: Yeah, if I could do my
17 preference, I would do the second and just submit
18 written submission.

19 CHAIRMAN THAD LEVAR: Okay. Well, let me
20 ask this, considering that the board probably is
21 going to need to deliberate and make a decision
22 during the time we have scheduled for this hearing
23 this week, is a written brief feasible? I mean if
24 we're going to deliberate tomorrow or Thursday, I
25 don't think -- because I think that's the time frame

1 we need to do it to get someone drafting our order,
2 obviously it's not possible to get written briefs in
3 our hands and read before that, correct?

4 MR. REICH: Well, we could do it by
5 tomorrow at noon or something. But we'd be happy to
6 do an oral concluding statement also.

7 CHAIRMAN THAD LEVAR: Okay. And maybe I
8 should get this issue out there and we can wrap this
9 conversation up tomorrow morning, but I just wanted
10 to get the thought initially.

11 Mr. Gordon or Mr. Jewkes, do you have
12 thoughts on this issue?

13 Sorry. If you're there, we're not hearing
14 you again. I don't know if we've lost you again, Mr.
15 Gordon and Mr. Jewkes.

16 Let me just jump to Mr. Morris. Do you
17 have thoughts on closing statements or written
18 statements?

19 MR. MORRIS: Because I think it would be
20 less expensive and time consuming for my client if we
21 just did an oral summation, you know, 10 to
22 15 minutes is all I think I would need rather than
23 put together a big closing written thing.

24 CHAIRMAN THAD LEVAR: Okay. Thank you,
25 Mr. Morris.

1 Mr. Gordon or Mr. Jewkes?

2 MR. GORDON: Yes, I apologize. We've had
3 a little too much caffeine here. We keep hitting the
4 wrong button. So we would like to do an oral
5 presentation as well. Same estimation, probably ten
6 minutes, maybe longest 15. It would be much easier
7 for us to do that rather than to submit something in
8 writing. So we would ask for that privilege.

9 CHAIRMAN THAD LEVAR: Okay. Well, let me
10 propose this then. If any board member objects to
11 this, please let me know. But it seems like we
12 should ask the parties to be prepared for some kind
13 of verbal closing statement probably mid or late
14 morning tomorrow after we finish the remaining two
15 witnesses.

16 Is there any objection from board members
17 or parties to that?

18 And then the board will decide if we need
19 a break before we have a deliberation portion of this
20 hearing.

21 If anybody has any concerns with that path
22 forward, please indicate it.

23 MR. DAVID CLARK: I support the path
24 forward, but I'm -- I'm not certain that we've
25 resolved whether the two V.O.L.T. witnesses need to

1 appear at all. And if they don't, then we could just
2 start with the arguments would be my -- my thought.

3 CHAIRMAN THAD LEVAR: Okay. From Mr.
4 Morris's comments it seemed like that wasn't
5 something we could resolve this afternoon.

6 Can that be resolved this afternoon, or is
7 that something we're going to have to put on hold
8 until tomorrow morning?

9 MR. MORRIS: It's a function of whether
10 Rocky Mountain or Midway want to cross-examine either
11 of my witnesses.

12 CHAIRMAN THAD LEVAR: Are either of those
13 parties ready to indicate now whether they have
14 cross-examination for Mr. Jonsson or Mr. Lowrey?

15 MR. GORDON: Midway City has no intention
16 of cross-examining either witness.

17 CHAIRMAN THAD LEVAR: Mr. Reich?

18 MR. REICH: We similarly have no
19 questions. I'm assuming you're still going to
20 proffer and present their testimony. But we have no
21 cross-examination questions for either witness.

22 MR. MORRIS: Based on that, Mr. Chairman,
23 I would proffer the direct testimony of both Mr.
24 Jonsson and Mr. Lowrey together with any exhibits
25 attached to them.

1 CHAIRMAN THAD LEVAR: Okay. If there's
2 any objection to that motion, please indicate your
3 objection.

4 I'm not hearing any objections, so the
5 motion is granted.

6 So it looks like, as Mr. Clark indicated,
7 we could probably start with closing statements at
8 9:00 a.m. tomorrow. I think probably roughly
9 15 minutes apiece. Does that seem to be what
10 everybody was indicating? Is there any objection if
11 we ask them to be roughly that length?

12 MR. REICH: No objection from Rocky
13 Mountain Power.

14 MR. GORDON: No objection from Midway
15 City.

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

17 CHAIRMAN THAD LEVAR: Okay. We'll move
18 forward that way. We'll hear closing arguments first
19 thing. And then I'll ask board members should we
20 move directly into deliberation as soon as closing
21 arguments are concluded? Is there any objection to
22 that, doing that in the morning?

23 MR. GLENN WRIGHT: I have no objection to
24 that, but I do have a question. I've found Lowrey's
25 testimony that I can reread tonight, but I don't have

1 immediate -- I can't exactly find Jonsson's. If that
2 could be retransmitted to me, I would appreciate
3 that.

4 CHAIRMAN THAD LEVAR: I will e-mail that
5 to you as soon as we conclude today.

6 MR. GLENN WRIGHT: Okay. Good. Then I'm
7 good as fast as possible.

8 MR. MORRIS: Mr. Chairman, there's one
9 thing I'd like to bring up before the record closes.

10 CHAIRMAN THAD LEVAR: This is Mr. Morris?

11 MR. MORRIS: Yes, I'm sorry.

12 CHAIRMAN THAD LEVAR: Yeah, go ahead.

13 MR. MORRIS: Thank you.

14 First of all I want to thank the board
15 again for allowing my client to intervene and
16 participate in the proceedings. Before the record
17 formally closes, I wanted to ask the board to take
18 judicial notice of something that I don't think made
19 it into our exhibits, and again it was a function of
20 trying to have everyone working from home. You'll
21 note that the first two V.O.L.T. exhibits are
22 pleadings from a case that Rocky Mountain Power filed
23 some years ago concerning a transmission line over
24 SITLA land where they -- where Rocky Mountain posited
25 that there would only be \$70,000 in easement costs

1 and severance damages. And I did want to get into
2 the record the very public final result of that
3 dispute in terms of the amount of money Rocky
4 Mountain ultimately had to pay in connection with
5 that. I've got a Salt Lake Tribune newspaper article
6 from I think the following day. It's May 17th, I
7 think, of 2014. I don't think it's in dispute. I
8 don't think there's any argument that this is what
9 occurred. But I do want the record to at least
10 contain that fact, and I think that the dollar amount
11 was \$2.5 million as reported in the newspaper.

12 CHAIRMAN THAD LEVAR: Okay. Just to
13 clarify, are you making a motion to get -- I see
14 those first two exhibits you're referring to. Are
15 you making a motion to get the Salt Lake Tribune
16 article also in the record? Because I don't see that
17 currently with the V.O.L.T. exhibits. Is that an
18 additional document you would like to provide to the
19 board?

20 MR. MORRIS: Yes, it is. It was my intent
21 to have both of those opening pleadings and then a
22 concluding pleading, but I don't think the court file
23 reflects the settlement amount. But it did -- it was
24 a public settlement involving SITLA, and the Trib the
25 next day just reported the settlement. And I guess

1 I'd prefer to have something on paper in the record
2 showing that what started at a \$70,000 approximation
3 turned into 2.5 million.

4 CHAIRMAN THAD LEVAR: Okay. And you have
5 that article ready to provide to the board based on
6 the results of this motion; is that correct?

7 MR. MORRIS: Yes, I could e-mail it
8 shortly.

9 CHAIRMAN THAD LEVAR: Okay. Is there any
10 objection from any other party to this request or
11 motion?

12 MR. REICH: This is Bret Reich. Rocky
13 Mountain Power objects. These pleadings are
14 completely irrelevant to this proceeding. They have
15 no bearing, no probative evidence that is contained
16 in these. Mr. Morris has already misstated that
17 there was an order for Rocky Mountain Power to pay
18 when it was a settlement agreement. So for all of
19 those reasons, we'd object to this.

20 CHAIRMAN THAD LEVAR: I think my
21 inclination for the same reasons we let in the
22 testimony for the valuations in Tooele, I think there
23 is some value and I think we could take
24 administrative notice of this and give it the
25 appropriate weight and context of the evidence that

1 we're evaluating. So unless there's any objection
2 from other board members, I think I intend to grant
3 the motion and allow it to be provided to the board
4 members and possibly discussed in your closing
5 arguments tomorrow.

6 And I'm not hearing any objection from
7 board members, so that will be the ruling on the
8 request.

9 Any other matters to deal with before we
10 recess today?

11 MR. GLENN WRIGHT: I did find the Jonsson
12 deposition. So I'm good. I don't need any more
13 information.

14 CHAIRMAN THAD LEVAR: Thank you,
15 Mr. Wright.

16 With that we'll plan to have closing
17 statements at 9:00 a.m. tomorrow and move directly
18 from that into the deliberation session with the
19 board members. We're in recess until 9:00 a.m.
20 tomorrow. Thank you.

21 (Concluded at 4:44 p.m.)
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