

**ROCKY MOUNTAIN POWER**

VS

**MIDWAY CITY**

Docket 20-035-03

**PUBLIC**

**HEARING**

April 22, 2020

**ADVANCED REPORTING SOLUTIONS**

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REPORTING SOLUTIONS  
**ADVANCED**

Public Hearing  
April 22, 2020

UTAH UTILITY FACILITY REVIEW BOARD PUBLIC HEARING  
DOCKET 20-035-03  
ROCKY MOUNTAIN POWER, PETITIONER  
VS. MIDWAY CITY, RESPONDENT  
Taken on April 22, 2020 \* 9:00 a.m.  
Volume III of III  
Proceedings conducted via teleconference  
Day 3 of Hearing  
Reported by: Tamra J. Berry, CSR, CCR, RPR  
A P P E A R A N C E S

1  
2 PUBLIC SERVICE COMMISSION:

3 THAD LEVAR, CHAIRMAN  
4 DAVID R. CLARK, BOARD MEMBER  
5 JORDAN A. WHITE, BOARD MEMBER  
6 TROY FITZGERALD, BOARD MEMBER  
7 GLENN J. WRIGHT, BOARD MEMBER

8  
9 ROCKY MOUNTAIN POWER:

10 BRET REICH  
11 HEIDI GORDON

12 MIDWAY CITY:

13 CORBIN B. GORDON  
14 JOSHUA D. JEWKES

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

17 MARK O. MORRIS  
18 ELIZABETH BRERETON  
19  
20  
21  
22  
23  
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P R O C E E D I N G S

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3 CHAIRMAN THAD LEVAR: This is Thad LeVar.  
4 I'm not sure when I pushed my mute button, so I'll  
5 start over.

6 We are on the record in Utility Facility  
7 Review Board, docket 20-035-03. This is day 3 of the  
8 hearing on the merits, and let me go to the parties  
9 at this point.

10 Do we have attorneys for Rocky Mountain  
11 Power present?

12 MR. REICH: Good morning. This is  
13 Bret Reich with Rocky Mountain Power.

14 MS. GORDON: Heidi Gordon with Fabian  
15 Vancott for Rocky Mountain Power.

16 CHAIRMAN THAD LEVAR: Thank you. And  
17 Midway City?

18 MR. GORDON: Corbin Gordon and Joshua  
19 Jewkes for Midway City.

20 CHAIRMAN THAD LEVAR: Thank you.  
21 And Valley-Wide Opposition to Large  
22 Transmission Lines?

23 MR. MORRIS: Yes, good morning. This is  
24 Mark Morris. Liz Brereton and I are on this morning.

25 CHAIRMAN THAD LEVAR: Okay. What we've

1 scheduled to do this morning is have closing  
2 statements from parties and then board deliberations.  
3 So let's move forward with the closing statements.

4 Let me just ask the parties: Is there any  
5 objection to doing those in the order of Rocky  
6 Mountain Power, then Midway, then V.O.L.T.? Any  
7 concerns with that order?

8 Okay. We'll move forward that way. Board  
9 members, I think we'll allow questions from members  
10 of the board after each opening statement. However,  
11 if you feel like it would help to interrupt to ask a  
12 question, I don't see any reason why that isn't  
13 possible also. But we will stop in between each  
14 closing argument to see if we have questions from  
15 board members. And so we'll go first with Rocky  
16 Mountain Power's closing statement.

17 MR. REICH: Thank you. This is Bret Reich  
18 with Rocky Mountain Power. The Governor of Utah  
19 recently asked Rocky Mountain Power's president to  
20 attend a press conference to assure the citizens and  
21 businesses of Utah that the lights will stay on  
22 during the coronavirus pandemic. Rocky Mountain  
23 Power and Heber Light & Power provide an essential  
24 service to their customers. It is critical to the  
25 welfare, safety, and well-being of our entire

1 community.

2 This service is so essential that Utah  
3 legislature created this board to protect the  
4 integrity of the electric transmission and delivery  
5 system. The integrity of the electric transmission  
6 system must be the paramount concern of this board  
7 and must govern the decision today.

8 The first question this board must address  
9 is whether there is a need for this project. The  
10 record in this proceeding shows this project is  
11 absolutely necessary to retain the statutory  
12 reliability standards in the Heber Valley. Because  
13 there is an immediate need to protect the integrity  
14 of the electric transmission and delivery system in  
15 this state, then the board must ask whether the  
16 project has been impaired by a local government that  
17 would prevent these two utilities from providing  
18 service to its customers in a safe, reliable,  
19 adequate, or efficient manner under section 54-14-201  
20 of the Facility Review Act. The answer is yes.

21 Rocky Mountain Power asks this board to  
22 protect the integrity of the electric transmission  
23 system by finding the overhead construction of this  
24 project must proceed forward immediately as  
25 authorized in the conditional use permit. This can

1 be accomplished in several ways.

2 First, Midway City failed to meet its  
3 self-imposed conditions under the conditional use  
4 permit. The permit requires Rocky Mountain Power to  
5 submit three actual competitive construction bids  
6 prepared by qualified bonded and insured  
7 third-parties.

8 Mr. Darin Myers testified that three bids  
9 meeting those requirements were provided to Midway  
10 City on March 27th of 2020. Those bids were  
11 submitted by reputable, well-known, and reliable  
12 contractors. Those contractors were Wasatch  
13 Electric, RES Group, and Summit Line Construction who  
14 is located in Heber Valley.

15 Although Midway City and V.O.L.T.  
16 complained about the bid amounts, they never disputed  
17 receiving a copy of the bids as required in the  
18 conditional use permit. Nothing in the conditional  
19 use permit or the Facility Review Board Act requires  
20 Midway City to agree with the bid amounts or approve  
21 the contractors. Three bids were requested, and  
22 three bids were received by Midway City.

23 Under the conditional use permit, Midway  
24 City was required to select a route within 15 days of  
25 receiving the bid. It is undisputed that Midway City

1 did not select a route but instead objected to the  
2 bids and continued to delay this process, claiming  
3 the bids are too expensive.

4 Rocky Mountain Power presented testimony  
5 through Mr. Myers that the bids were based on Rocky  
6 Mountain Power's standard specifications, the same  
7 specifications used for other projects. Specifically  
8 Midway City questioned the use of spare conductors in  
9 the bids. Rocky Mountain Power testified that the  
10 use of spare conductors has been a standard  
11 specifications since 2015, five years before these  
12 bids were obtained.

13 This board should not ask Rocky Mountain  
14 Power to compromise its specifications at the request  
15 of a local government, especially when it is Rocky  
16 Mountain Power that will be maintaining, repairing,  
17 and operating the transmission system for several  
18 years to come.

19 Rocky Mountain Power likewise testified  
20 that Rocky Mountain Power's standard specifications  
21 and the National Electric Safety Code require the  
22 circuits or the conductors for RMP and Heber Light &  
23 Power be placed in separate duct banks. Mr. Myers  
24 and Mr. Clegg testified that this is a standard RMP  
25 specification that serves the purpose of protecting



1 the lines from third-party incidents, allowing two  
2 utility companies to safely work around and maintain  
3 the underground lines and increases reliability.

4 This board should not ask Rocky Mountain  
5 Power to compromise our standard specifications  
6 requiring separate duct banks for each utility in  
7 accordance with the NESC.

8 Based on Midway City's failure to select  
9 the route and proceed as required in the conditional  
10 use permit, the board should find that Midway City  
11 has waived its rights under the conditional use  
12 permit to impose the alternate route of  
13 undergrounding the line, and Rocky Mountain Power's  
14 immediately authorized to proceed with the overhead  
15 construction as authorized in the conditional use  
16 permit.

17 This decision would not require the board  
18 determine what constitutes actual excess costs,  
19 standard costs, or timing of payment under the  
20 Facility Review Board Act. An alternate method under  
21 the Facility Review Board Act, the board has several  
22 statutory provisions that authorize it to find Rocky  
23 Mountain Power can and should immediately move  
24 forward with the overhead construction of the  
25 project. None of these statutory provisions likewise

1 require the board to determine standard costs, actual  
2 excess costs, or the time period to pay such costs.

3           For example, Midway City's conditional use  
4 permit requires construction in a manner that will  
5 not permit RMP and HL&P to provide services to its  
6 customers in a safe, reliable, adequate, or efficient  
7 manner in violation of section 52-14-303-1(c). And  
8 why not? Because there's no finality to the permit.  
9 It continues to delay the project and prevents the  
10 critical infrastructure from being installed to  
11 protect the utility customers in the Heber Valley.  
12 Because it asks the companies to continue to delay  
13 addressing statutorily required reliability standards  
14 and requirements.

15           It asks the utilities customers to bear  
16 the risk of rolling blackouts or power outages or  
17 voltage reduction, especially during winter months  
18 when demand is high. RMP's director of transmission  
19 planning testified there will be up to 620 hours of  
20 exposure to the risk of inadequate voltage to  
21 customers in the Heber Valley and Park City areas  
22 until the project is completed. The hours of risk  
23 will increase annually.

24           Midway City's own expert testified there's  
25 a valid basis for completing the construction as soon

1 as possible and testified during cross-examination  
2 that the need has existed for years and should have  
3 been addressed a long time ago.

4 Even Midway City recognizes the urgent  
5 need to address the potential exposure by stating in  
6 the conditional use permit that, quote, the proposed  
7 benefits neighboring areas and the -- excuse me.

8 "The proposed benefits neighboring areas and entire  
9 power grids by providing more connectivity and  
10 redundancy to support better function of the system  
11 as a whole," closed quote.

12 What is the prejudice to Rocky Mountain  
13 Power, HL&P, and their customers if this project is  
14 not allowed to move forward immediately or wait until  
15 a November bond vote and if approved funding in  
16 February 2021? The very real and tangible prejudice  
17 to RMP and HL&P and their customers is they, not  
18 Midway City, are asked to bear the risk of blackouts,  
19 going without power in the very real threat of a  
20 power outage or failure in Parleys or Provo Canyon  
21 caused by a wildfire or the threat of wildfire caused  
22 by high winds and dry climate conditions, avalanche,  
23 or any number of events that could impact the  
24 reliability of the transmission system especially  
25 during winter months when the demand is high.

1 Delaying this project is not acceptable and  
2 compromises the safety, integrity, and reliability of  
3 RMP's transmission system.

4           In another provision under the Facility  
5 Review Board Act, Midway City failed to act on the  
6 application within 60 days in violation of section  
7 54-14-303-1(e). RMP and Midway City -- excuse me.  
8 RMP and Heber Light & Power submitted a joint  
9 application to Midway City on April 22nd of 2019.  
10 Eight months later Midway City issued a conditional  
11 use permit on December 17th, 2020. The 60-day  
12 provision is identified in the statute for a reason.  
13 It means something. It means local governments are  
14 not allowed to delay critical electric infrastructure  
15 while the local government decides whether it has  
16 funds to impose excess costs on the project. Once  
17 again the prejudice by continuing to delay this  
18 process is borne by the utility customers of this  
19 state.

20           Midway City's conditional use permit  
21 purports to impose conditions in Wasatch County that  
22 are in direct conflict with Wasatch County's  
23 conditional use permit in violation of section  
24 54-14-303-1(f) of the Act. Midway City's conditional  
25 use permit requires taking the underground line above

1 ground and locating dip poles in Wasatch County.  
2 This is not authorized under the Wasatch County  
3 permit, and Wasatch County has not agreed to this  
4 condition. Midway City has no authority to impose  
5 conditions on Wasatch County any more than it has any  
6 rights to impose conditions on Colorado or Alaska.

7 Finally, the board is the authority and  
8 has the facts to support the finding that Midway City  
9 waived the right to impose actual excess costs.

10 Under section 54-14-204 it states, "Any requirement  
11 that imposes actual excess costs are waived if they  
12 are not paid within 30 days before the construction  
13 for the date construction of the facility should  
14 commence to avoid a significant risk of impairment of  
15 safe, reliable, and adequate service to its  
16 customers."

17 The act defines commencement of  
18 construction of a facility to include the project  
19 design and ordering of materials necessary to  
20 construct the facility.

21 Midway City has not paid a cent toward  
22 actual excess costs, even assuming for sake of  
23 argument that actual excess costs are difficult to  
24 ascertain with exact certainty, Midway City would  
25 still be required to pay something to meet the

1 statutory 30-day deadline in the statute. To find  
2 otherwise would require the utility to finance the  
3 actual excess cost imposed by the local government.  
4 This directly contradicts the intent and purpose of  
5 the act.

6           Because there's substantial evidence  
7 supporting the statutorily required significant risk  
8 of impairment of safe, reliable, and adequate service  
9 to customers, the 30-day payment period was triggered  
10 as soon as Midway City imposed any condition that  
11 imposes actual excess costs. No payment was or has  
12 been made within 30 days of December 17, 2020 [sic].

13           In fact, Midway City refused to pay the  
14 nominal amount of \$25,000 to put together the request  
15 for proposals and obtain the competitive bids Midway  
16 City required in the conditional use permit. Such  
17 costs clearly qualifies as actual excess costs  
18 because they're clearly not required or necessary to  
19 RMP's proposed overhead route. Failure to pay any of  
20 the actual excess costs waives Midway City's right to  
21 impose those excess costs on RMP.

22           In the alternative, if the board  
23 determines against the great weight of evidence that  
24 the project is not necessary to protect the integrity  
25 of the electric transmission system or the utility

1 customers of the Heber Valley, the board must  
2 determine under the statute the amount of estimated  
3 standard costs, actual excess costs, and the time  
4 period to pay such costs. To determine the standard  
5 costs the act requires the public utility provide the  
6 estimated standard cost of the facility and the  
7 estimated excess cost of the facility.

8 Rocky Mountain Power provided the  
9 estimated excess cost of the underground line which  
10 was rejected by Midway City in the conditional use  
11 permit. Rocky Mountain Power provided the estimated  
12 standard cost of the facility, the proposed overhead  
13 power line, through the testimony of Darin Myers, Ben  
14 Clegg, and Ben LeFevre, its real estate appraiser.

15 Mr. Myers testified the estimated standard  
16 cost of building the overhead line was \$1,886,601.  
17 The statute requires only an estimate of the standard  
18 costs and does not require a binding construction  
19 bid. Mr. Myers testified the standard cost estimate  
20 was obtained by comparing this project to a similar  
21 recently-built project.

22 This methodology is authorized by the act  
23 in the definition of standard cost at section  
24 54-14-103-9(b) where it states, quote, With respect  
25 to transmission lines, standard cost is the cost of

1 any overhead line constructed in accordance with the  
2 public utility's normal practices, closed quote.

3 The question of right-of-way costs is  
4 difficult in this setting to estimate. To determine  
5 the actual right-of-way costs it is true that Rocky  
6 Mountain Power would need to obtain the right-of-way  
7 with individual property owners through negotiated  
8 settlements or condemnation. In contrast to Midway  
9 City's position, the statute does not require the  
10 actual right-of-way costs but rather an estimate.  
11 Several technical legal nuances make estimating the  
12 right-of-way costs difficult.

13 The existing 50-year transmission line  
14 owned by Heber Light & Power was obtained by  
15 prescription and subsequently recorded by HL&P.  
16 V.O.L.T. erroneously decided in their trial  
17 memorandum the width of the HL&P easement is 10 feet  
18 on either side of the centerline.

19 Mr. Norlen at HL&P testified that HL&P  
20 needs at least 20 feet on each side of the centerline  
21 to maintain and operate the easement. Therefore, the  
22 existing easement is at least 40 feet, but a Utah  
23 district court would be required to determine the  
24 actual width of the easement.

25 Rocky Mountain Power submitted evidence



1 during the permit application process, the estimated  
2 right-of-way costs were approximately \$25,000 based  
3 on obtaining 2 to 3 feet of additional right-of-way  
4 where necessary. Rocky Mountain Power's legal  
5 position is that the existing power line right-of-way  
6 can continue to be used as a transmission power line  
7 under the new project.

8 In addition Rocky Mountain Power moved the  
9 proposed overhead lines slightly north on Ward's Lane  
10 to prevent from taking any new right-of-way on the  
11 south side of Ward's Lane. In other words, the  
12 southern boundary of the new power line would be the  
13 southern boundary of the existing HL&P power line.  
14 Therefore there would be no new physical take on the  
15 properties along the southern side of Ward's Lane.  
16 Those properties comprised a majority of properties  
17 appraised by Mr. Webber, the appraiser for Midway  
18 City.

19 Another fatal flaw in Midway City and  
20 V.O.L.T.'s right-of-way analysis as stated in their  
21 trail memorandum is that the new 138 kV transmission  
22 line requires a 60-foot right-of-way. This is simply  
23 not true and is not supported by the evidence before  
24 this board. There is no provision in the National  
25 Electric Safety Code that requires a 60-foot easement

1 for a 138 kV power line. Although it may be a good  
2 practice to obtain a 60-foot easement on new power  
3 line corridors, this is not a new power line  
4 corridor. This power line corridor has existed for  
5 over 50 years. The NESC requires vertical and  
6 horizontal clearances from existing structures. The  
7 right-of-way distance is obtained by complicated  
8 mathematical calculations that considered the  
9 vertical sag of the conductor and the horizontal  
10 movement of the conductor from the wind, the  
11 deflexion of the pole when horizontal wind is  
12 applied, the framing of the pole and the required  
13 NESC clearances that must be maintained. It is not a  
14 60-foot right-of-way width.

15 Another fatal flaw in Midway City's  
16 estimated right-of-way cost is the erroneous  
17 assumptions by Mr. Webber that properties not  
18 touching or experiencing a physical taking by the  
19 proposed power line can obtain severance damages.  
20 It's black letter Utah law that there must be a  
21 physical taking in order for a property to receive  
22 severance damages. Mr. Webber's calculations include  
23 several properties where there is no physical taking.

24 To account for Mr. Webber's incorrect  
25 application of black letter Utah valuation and

1 eminent domain law, Mr. LeFevre took the grossly  
2 exaggerated severance damages used by Mr. Webber and  
3 applied them only to the properties actually touched  
4 by the proposed overhead route. In his rebuttal  
5 testimony Mr. LeFevre testified that using Mr.  
6 Webber's grossly exaggerated severance damages on  
7 just the properties where physical taking occurs,  
8 amounts to between \$691,344 and \$767,712. Although  
9 RMP does not concede this is the proper estimate of  
10 right-of-way costs for the overhead line, RMP  
11 concedes that the best estimate available at this  
12 juncture of the project is most likely between  
13 \$25,000 and \$767,712 depending on the legal status of  
14 the prescriptive easement, whether it can be used as  
15 a 138 kV transmission corridor, the width of the  
16 existing 50-year easement, and the width necessary  
17 for the 138 kV transmission line. All of these  
18 outstanding legal determinations make obtaining an  
19 estimate of the right-of-way costs extremely  
20 difficult at this juncture of the proceeding.

21 Because the Midway City permit rejected  
22 RMP's estimate of excess costs, the Facility Review  
23 Board Act requires RMP in section 54-14-203 to obtain  
24 competitive bids. RMP did so. The act then states  
25 that the actual excess costs of the facility shall be

1 the difference between the lowest bid acceptable to  
2 RMP plus RMP's administration and oversight expense  
3 and the standard costs.

4           The first problem with obtaining the  
5 excess costs imposed by Midway City is the cost to  
6 acquire the right-of-way rights for undergrounding  
7 the line. Although several property owners have made  
8 non-binding overtures to donate the right-of-way free  
9 of costs, none of the property owners have entered  
10 into or offered any binding commitments to provide  
11 the right-of-way free of cost. The legal nuances  
12 with obtaining this right-of-way for the underground  
13 line suffer for many of the same legal nuances of the  
14 above ground line, such as whether the existing  
15 50-year old HP&L easement can be used for the  
16 underground line.

17           However, the unknown expense of the  
18 underground right-of-way cost is tempered by the  
19 true-up provision in Midway City's conditional use  
20 permit. Setting the right-of-way cost aside, using  
21 the lowest cost option to build the project  
22 underground of 12,646,665, less the estimated  
23 standard costs of the facility, which Mr. Myers  
24 testified was \$1,886,601 and the estimated  
25 right-of-way costs of \$500,000 for sake of argument,

1 which totals \$2,386,601. The actual excess costs of  
2 Midway City's choice to underground the line will be  
3 \$10,260,064. Under section 54-14-204 of the act,  
4 this actual excess cost must be paid within 30 days  
5 before commencement of construction, which is defined  
6 as the project design and ordering of materials  
7 necessary to construct the project.

8 Because the testimony supports placing  
9 this project into service immediately, the board  
10 should find that Midway City waives the right to  
11 impose the excess costs of undergrounding the line,  
12 unless it pays the actual excess costs of \$10,260,064  
13 within ten days of signing the final order.

14 The clear and undisputed evidence in this  
15 proceeding is that the project is necessary to  
16 provide safe, reliable, and adequate service to its  
17 customers, and therefore the board should authorize  
18 the project to move forward immediately. That  
19 concludes my comments. Thank you.

20 CHAIRMAN THAD LEVAR: Thank you. Mr.  
21 Reich. I want to ask you a couple questions, and  
22 then I'll go to other board members.

23 My first question is in your view is the  
24 need and timing of the line still a contested issue  
25 for the board to determine considering the issuance

1 of a CUP by Midway City?

2 MR. REICH: I'm not sure I understand your  
3 question. Can you restate it?

4 CHAIRMAN THAD LEVAR: Okay. I'll phrase  
5 it a different way. By issuing a CUP did Midway give  
6 up its or waive its ability to contest the need for  
7 the line?

8 MR. REICH: Yeah, I agree with that  
9 statement. I mean I think in the actual conditional  
10 use permit itself, it states that there's a need for  
11 the line. I mean it's -- I don't think that that  
12 matter is disputed. And I think that issuing the  
13 conditional use permit is evidence of that.

14 CHAIRMAN THAD LEVAR: Okay. I think I  
15 just have one other question at this time before I go  
16 to other board members. You know the Facility Review  
17 Board Act clearly gives the board the authority to  
18 resolve disputes over costs, and Midway has the right  
19 to seek board review of any disputes between Midway  
20 and Rocky Mountain Power over costs. So considering  
21 that that legal right exists, does that by  
22 implication give the board the authority, if it  
23 were -- this is just one person asking, but if the  
24 board were to consider resetting the timelines for  
25 the CUP in saying: As of today, the day we make this

1 board decision, Midway City has 15 days from the date  
2 of the decision to select a route and 30 days from  
3 the date of the decision to pay the excess costs, is  
4 that authority to reset those CUP deadlines inherent  
5 or implicit within our authority to determine costs  
6 or resolve disputes about costs?

7 MR. REICH: Well, I know that the -- the  
8 statute states that the board can address any dispute  
9 regarding specifications to an acceptable bid  
10 administrative and oversight expenses and also can  
11 ask for additional information under the act. So you  
12 know I would -- I would tend to agree that the board  
13 does have authority to -- to set new deadlines. I  
14 think there's actually a provision in the statute --  
15 I'm not sure where it is exactly; I can't find it  
16 right off hand -- where the board can actually issue  
17 a decision, ask for additional information, and put  
18 off a decision for a specific time period. So I do  
19 believe that the board has that authority.

20 CHAIRMAN THAD LEVAR: Okay. Thank you.  
21 Those are the only questions I have at this point.

22 Do other board members have questions for  
23 Mr. Reich at this point?

24 MR. JORDAN WHITE: I think I'm asking  
25 maybe a similar question to what Chair LeVar was

1 asking, which is: If I understand the potential  
2 alternative decisions in front of the board, is one  
3 potential decision to allow the city to -- a certain  
4 amount of time to pay, or I don't know what the legal  
5 function would be whether it's bond-borne, et cetera,  
6 for the actual excess costs. And if they were not  
7 able to meet that deadline, the alternative would be  
8 that Rocky Mountain Power would have the right to  
9 immediately begin construction with the overhead  
10 transmission line. In other words, under the statute  
11 is it your opinion that there's a -- I guess like a  
12 dual decision I guess or a decision in the  
13 alternative?

14 MR. REICH: I think that's the answer that  
15 depends on the finding of this board on whether or  
16 not the requirements or conditions imposed by Midway  
17 City, if -- I'm referring to section 54-14-204 where  
18 there is the timing mechanism about payment. And it  
19 says that "Within 30 days before the date,  
20 construction of facility should commence." And then  
21 I think there's the "in order to avoid a significant  
22 risk of impairment." So I think the board has to  
23 decide. If there's a significant risk of impairment,  
24 then I don't think the board has discretion to change  
25 the deadline. I think that 30 day deadline is



1 statutory.

2 If the board finds there's not a  
3 significant risk of impairment, then I think that  
4 would probably be a different story. But under the  
5 statute it clearly states that upon a finding of a  
6 significant risk of impairment, then payment must be  
7 made within 30 days before the date construction of  
8 the facility should commence.

9 MR. JORDAN WHITE: And if that were the --  
10 if the board were to find that and the city did not  
11 meet that condition and that was the finding, then  
12 would the -- would Rocky Mountain Power automatically  
13 be granted the right to go -- to build the over -- to  
14 proceed with the overhead construction?

15 MR. REICH: Sorry, I didn't mean to  
16 interrupt you.

17 MR. JORDAN WHITE: That's my question, I  
18 guess. Is that if that were the case, if we made  
19 that finding if that were the case and the city did  
20 not satisfy that order, what would be the result of  
21 that? Would it be that it would just automatically  
22 provide Rocky Mountain Power with the right to  
23 proceed with overhead construction?

24 MR. REICH: Yes. The conditional use  
25 permit as written today states that if the

1 underground line is not an option for whatever  
2 reason -- I mean in the conditional use permit it  
3 states that if the conditions aren't met. And I  
4 think the board finding that the condition is not  
5 met, the payment was not made when it was required,  
6 then the conditional use permit, as written today,  
7 states that Rocky Mountain Power will proceed with  
8 the overhead project, and then it contains conditions  
9 that I believe Rocky Mountain Power would continue to  
10 need to meet under the existing conditional use  
11 permit for the overhead lines. So my answer is yes.

12 MR. JORDAN WHITE: Thank you. That's all  
13 the questions I have for now.

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

16 Any other questions from board members?  
17 I'm not hearing any.

18 So I have one follow up that Commissioner  
19 White's question brought to mind. As I asked a  
20 minute ago about your view of the board's authority  
21 if we were to, under our authority to resolve  
22 disputes on cost, reset the CUP deadline, it seems  
23 like, you know, if we made a decision today we could  
24 re -- we could consider resetting Midway's deadline  
25 to choose a route under the CUP from 15 days from

1 today. If the board were also to make a finding with  
2 respect to significant risk and reset the deadline  
3 for Midway City to pay the excess costs, is there a  
4 way that the board could calculate 30 days before the  
5 date of construction -- before the date construction  
6 should commence? Is there a way that we can  
7 calculate now if we wanted to reset that deadline  
8 from the CUP after determining what we consider the  
9 appropriate costs, is there a way we could reset that  
10 30-day deadline since it's not a going forward 30-day  
11 deadline but it's a going backward from commencement  
12 date. I hope my question makes sense.

13 MR. REICH: Yeah, I think to the extent I  
14 understand your question, I think that turns on the  
15 definition of commencement of construction. And in  
16 order to push back a 30-day deadline -- or to set a  
17 30-day deadline from today, the board would have to  
18 find that commencement of construction is not  
19 necessary for 30 days from today's date. So the  
20 project design and ordering materials can wait for  
21 30 days, and then I think that -- I think that then  
22 would comply with the statutory authority granted to  
23 the board.

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

1 Any other questions from board members?

2 Okay. I'm not hearing any questions. So  
3 why don't we go ahead to Midway City for your closing  
4 statements.

5 MR. GORDON: Thank you, Commissioner. I  
6 appreciate the hard work that the board has put in.  
7 Just in the beginning I'd like to say that this has  
8 really been one of the hardest issues that ever come  
9 into Midway City, and there's a tremendous amount of  
10 concern and hours that have been put in to  
11 understanding and addressing these issues. And we  
12 appreciate all the work that the board has done to  
13 get up to speed quickly on this process.

14 Now, in the beginning one of the things I  
15 do want to point out is the actual excess costs are  
16 really the core of everything here because under the  
17 conditional use permit we required them to provide  
18 competitive bids. And our responsibility to pay is  
19 not triggered until we receive the bids so that the  
20 actual excess costs can be determined. I'm going to  
21 walk through today why it's impossible to determine  
22 the actual excess costs, meaning that Rocky Mountain  
23 Power still has not complied with the simple  
24 requirements under our conditional use permit.

25 Now, with that said when I started on

1 Monday, I outlined the items that Midway City  
2 intended on establishing through cross-examination of  
3 Rocky Mountain Power's witnesses. And if you recall  
4 I asked the board to pay attention and to hold me  
5 accountable to the things I said that we would show.  
6 As my closing, I'm going to walk through what I told  
7 you I would prove and what actually came into the  
8 record. As you recall, I told you that this board  
9 has two jobs today. The first one is to determine  
10 what the actual excess costs of going underground  
11 are. And number two, what the appropriate  
12 commencement date should be for Midway City's portion  
13 of the line.

14 In order for this board to determine the  
15 actual excess costs, you need the standard costs, you  
16 need the actual costs to go underground to be  
17 verified by reliable bids, and then you need the  
18 actual costs of the easements. I'm going to address  
19 each one of those in turn.

20 So first I told you that there would be --  
21 that we would be able to show that there's really no  
22 reliable evidence necessary to establish the standard  
23 costs. And the evidence shows as follows: Rocky  
24 Mountain Power has not submitted any bids to  
25 establish the overhead costs. Rocky Mountain Power

1 put on Mr. Myers, the project manager, who testified  
2 similar lines would typically be estimated at about  
3 190 to 250 per foot range. That was not supported by  
4 any form of external documentation or bid. He also  
5 stated that the actual costs of a similar double  
6 circuit overhead 138 kV transmission line project  
7 that was finished in March 2019 came in at 269.90 per  
8 foot. This also was not supported by any  
9 documentation from the other project, was without any  
10 indication how the project was similar, and lacked  
11 any indication of reliability. He acknowledged that  
12 even with his estimates they do not include surcharge  
13 costs or costs of the easements which the definition  
14 of standard costs require. And based on that  
15 information that we have before us, Rocky Mountain  
16 Power is asking you to determine what the above  
17 ground costs should be. It is our position that  
18 there is insufficient evidence on the record  
19 necessary for this board to even remotely determine  
20 what the standard costs to go above ground are, and  
21 that additional information is needed.

22 Under section 54-14-103, it defines that  
23 with respect to a transmission line, standard cost is  
24 the cost of any overhead line constructed in  
25 accordance with the public utility standard

1 practices. Under 202-38 it states, "If the board  
2 finds that the public utility has failed to provide  
3 the standard costs and estimated excess costs in  
4 accordance with the provisions of subsection 1, the  
5 board may request additional information from the  
6 public utility. The public utility then has 30 days  
7 to provide that information. And if they do not,  
8 then this hearing can be postponed until the  
9 information is obtained."

10 Rocky Mountain Power has not provided this  
11 information to Midway City or this board, and as such  
12 the board cannot determine what the standard costs of  
13 the project are. So based on the first prong of your  
14 responsibilities today, you do not have the evidence  
15 or reliable evidence necessary in my opinion to give  
16 you comfort that what you're establishing as standard  
17 costs are based on anything more than just kind of  
18 speculation.

19 Next, regarding the below ground costs, I  
20 stated "Due to serious mistakes in the specifications  
21 given to the three approved contractors who bid to  
22 bury the line, the bids have come in anywhere from 3  
23 million to 5 million high."

24 Let's see on how I did on getting that  
25 into the record. Mr. Myers, who has only been on

1 this project for a year and testified that this was  
2 his first underground -- underground line I think bid  
3 process, openly acknowledged that he did not catch  
4 problems in the bid. He testified and acknowledged  
5 that the measurements in the bids included  
6 approximately 1,600 feet of length that was not  
7 supposed to be trenching. This length was supposed  
8 to be cable only on the dip poles. Mr. Myers  
9 admitted and the actual bids show that two of the  
10 bidders actually bid the additional length at  
11 trenching. The evidence on those bids show the  
12 mistake was made on all of the options by two of the  
13 bidders.

14 To give the board a sense of the scope of  
15 the error, in the shortest option the extra  
16 1,600 feet is 24 percent of the project and creates a  
17 discrepancy of over \$3 million. In a conditional use  
18 permit, Midway City asked for what we thought was a  
19 very simple thing, three competitive and reliable  
20 bids. What it received was one bid to the  
21 specifications issued by Rocky Mountain Power and two  
22 with gross mistakes that overestimate the costs by up  
23 to 24 percent.

24 At this point it is unclear whether the  
25 low bid is actually accurate or if the other two bids



1 would have come in lower if they had bid the  
2 specifications correctly.

3           And I remind the board that Midway City's  
4 obligations under the conditional use permit to pay  
5 are not triggered until this requirement is met.  
6 Once again, Midway City has not received what it  
7 asked for. And this board has the power under  
8 section 54-14-202-3(a) to require Rocky Mountain  
9 Power to provide this information. And we request  
10 that you exercise this power and require Rocky  
11 Mountain Power to obtain three bids based on accurate  
12 specifications.

13           Next, in my opening I stated: We will  
14 show that Rocky Mountain Power has included several  
15 items in their bids that have no justification from a  
16 safety nor a reliability standpoint. First Rocky  
17 Mountain Power put forth specifications that required  
18 dual trenches to bury and separate the 138 kV line.  
19 There is no safety standard that requires dual  
20 trenches and no justifiable reason to have two  
21 trenches especially where it doubles the cost that  
22 RMP wants Midway and its taxpayers to pay. And Rocky  
23 Mountain Power specs require an extra conduit to be  
24 installed on each circuit. There's nothing in any  
25 industry standard that requires this extra expense,

1 yet it increases the cable cost by one-third.

2           So let's look at the evidence and how I  
3 did on my promise to bring that into the record.  
4 First, Rocky Mountain Power did not present any  
5 witness who was really qualified to testify as to the  
6 necessity under the National Electric Safety Code  
7 that a dual trench is required. In fact, Rocky  
8 Mountain Power did not present any witnesses really  
9 qualified to discuss Rocky Mountain Power's standard  
10 practices under the NESC or its own. Benjamin Clegg  
11 testified he talked to someone the morning of his  
12 testimony and obtained some references in the NESC,  
13 which really established nothing more than the fact  
14 that he did not refer to these specifications prior  
15 to this when acting as the project manager. He  
16 admitted as project manager that he receives this  
17 type of specification and information from the  
18 standards division of the company.

19           Mr. Myers, current project manager,  
20 testified he was in charge of the creation of the  
21 specifications included in the bids, but then stated  
22 he was not -- he does not come up with the company  
23 standard nor the NESC compliance regarding the  
24 specification of the bids and that those come to him  
25 from the standards division of Rocky Mountain Power

1 as well. He acknowledged that the only specification  
2 he actually created was the length of the trenching  
3 but could not testify to safety requirements or  
4 reliability requirements of dual trenches or pulling  
5 an additional dead line through the extra conduit.

6 Jake Barker, the director of transmission  
7 planning and power quality for Rocky Mountain Power,  
8 testified that he was not aware of any NESC standard  
9 that requires dual trenches. Rocky Mountain Power  
10 curiously offered no testimony from its standard  
11 department who actually created these specifications  
12 regarding whether dual trenches are required under  
13 the NESC or whether the extra dead cable was required  
14 under the NESC.

15 Midway City submitted testimony from John  
16 Nelson, an expert in burying transmission lines for  
17 50 years, who stated that nothing in the NESC  
18 standards prohibit two utility companies to share a  
19 trench. He also testified that there was nothing in  
20 the NESC that required the extra cable to be pulled  
21 in the empty conduit. He testified that once the  
22 length errors of the bids are corrected, the dual  
23 trenches are changed to a single trench, and the  
24 additional cable is removed, the cost to bury the  
25 line would be 6.3 million approximately instead of

1 the low bid of 11,187,986.

2 I'd also told you that when we were done  
3 showing all of this evidence, which we did, we kept  
4 our promise to you, that we would ask you to either  
5 adopt our expert's valuations as the underground  
6 costs or require Rocky Mountain Power to provide bids  
7 based on correct specifications and also trim the fat  
8 of luxury items.

9 Specifically, we asked today that Rocky  
10 Mountain Power be made to comply with the conditional  
11 use permit by providing three qualified and  
12 competitive bids that, number one, are based on  
13 correct lengths of trenching in the specifications,  
14 remove the requirements for dual trenches, and remove  
15 the requirement for the additional cable pulled  
16 through the spare circuit. Without this information  
17 there is no way for this board to determine what the  
18 actual costs of burying the line below ground would  
19 be. And so on the second prong it states -- our  
20 argument is you still have insufficient information  
21 needed to make that decision.

22 Next argument regarding the costs of the  
23 easements, I stated: There is nothing in the statute  
24 that suggests the actual costs of the easements can  
25 be determined by estimate. Once they are obtained,

1 the actual estimates of the easements will be  
2 established and can be submitted to the board so that  
3 the actual excess costs can be determined.

4           And I want to highlight here for you,  
5 Commissioners, that this is perhaps the most  
6 important legal determination that you're going to  
7 make in this matter. Section 54-13-103 -- and I'm  
8 just going to pause and pull that up here real  
9 quick -- defines that the actual excess costs means  
10 the difference between the standard cost of a  
11 facility, which we say you do not have sufficient  
12 information on, the actual cost of the facility --  
13 the actual cost of the facility, which is allowed to  
14 be established by competitive bid, and the actual  
15 cost of any necessary rights-of-way, which you do not  
16 have information on.

17           It states that the actual cost of the  
18 facility will be established in accordance with  
19 section 203. Section 203 sets forth Midway City's  
20 right to request the public utility to obtain  
21 competitive bids for the facility if constructed in  
22 accordance with the requirements of the conditions of  
23 the local government. We want you to note that it  
24 does not say competitive bids for the easements but  
25 only the facility. The facility is defined. It

1 says, "Facility means a transmission line, a  
2 substation, a gas pipeline, a tap, a measuring  
3 device, or a treatment device."

4 This definition does not include  
5 easements. While a statute contemplates establishing  
6 the costs of the facility through competitive bids,  
7 it does not extend the same process to obtain actual  
8 costs of easements. For example, it would be  
9 nonsensical to say that you could establish the  
10 actual costs of easements by competitive bid. If the  
11 statute allowed excess cost to be established by  
12 estimate, it would have provided a path to obtain  
13 these estimates, which it clearly does not. All it  
14 says is in order to determine the actual excess  
15 costs, you need to obtain the actual costs of the  
16 facilities which can be obtained by competitive bid  
17 and the actual costs of the easements. The only way  
18 to obtain the actual costs of the easements is either  
19 settle with the landowner or condemn.

20 Based on this, we ask this board to make a  
21 legal finding that under this statute, the actual  
22 easement costs cannot be established by estimate and  
23 request that Rocky Mountain Power provide the actual  
24 easement costs before this board can determine the  
25 actual excess costs. And we ask you to take care in

1 really creating a record there. I think this is one  
2 of the most important legal issues that --  
3 interpretive issues that you've got.

4 If the board does choose to interpret the  
5 statute as allowing easements to be established by  
6 estimate, we'd simply ask you that you give careful  
7 care and put forth your legal reasoning on it.

8 Further, if that is the interpretation the  
9 board chooses, Rocky Mountain Power has failed to  
10 provide any reliable information on what the actual  
11 costs of the easements are. First, there's a  
12 distinct dispute of fact regarding what the actual  
13 width of the existing easement is and how much needs  
14 to be obtained. Measurements were given to Mr.  
15 LeFevre by Rocky Mountain Power, but nobody seems to  
16 know where the measurements came from.

17 Mr. LeFevre testified that his analysis  
18 was specifically not directed at giving actual values  
19 of the easements. He gave a range of 25 percent to  
20 75 percent of the underlying value without applying  
21 that to any of the impacted properties. He used  
22 studies from Salt Lake that he admitted were not  
23 necessarily applicable but were the best he could  
24 get. He did not perform appraisals on any impacted  
25 property and admitted he was not aware the size of

1 the poles were not nominal but a significant  
2 difference. Basically his testimony was rendered  
3 mostly useless due to admitted lack of specificity  
4 and reliability. He himself admitted the board could  
5 not use his work to establish the actual costs of the  
6 easements.

7 This board is left then with either  
8 accepting Mr. Webber's testimony as to the value of  
9 the easements or to require Rocky Mountain Power to  
10 obtain appraisals on each impacted property so that a  
11 better estimate of actual costs can be ascertained.  
12 Of course the problems of establishing the actual  
13 costs of easements through appraisal is highlighted  
14 by the fact that Rocky Mountain Power first proposed  
15 the easements were worth \$27,000. Their expert  
16 testified to a broad range that could be somewhere  
17 between 300 to over -- 300,000 to over a million.  
18 And Mr. Webber testified to 3.4 million. Is it any  
19 wonder that the statute does not allow actual value  
20 to be established this way. Appraisal can be  
21 manipulated to the point of destroying any sense of  
22 reliability, which is why the statute does not allow  
23 it.

24 So in summary, this board has the power to  
25 request information that was supposed to be submitted



1 by Rocky Mountain Power but was not and also has the  
2 power to suspend the hearing until the information is  
3 provided. Once the missing information is provided,  
4 the board has 30 days to issue a decision. And we  
5 ask the board to exercise this power requesting  
6 updated bids and the actual costs of the easements  
7 before reconvening.

8           Next, regarding the appropriate  
9 commencement date, I stated that Midway City wants  
10 the opportunity to bond, which would require the  
11 commencement date to be extended to spring 2021. I  
12 stated: We will show that Rocky Mountain Power's  
13 studies establish there is no immediate risk to its  
14 customers if the line is delayed a few months to  
15 bond. The area is currently served by three  
16 different transmission lines. And RMP's own experts  
17 will establish that the claimed threats of system  
18 failure once analyzed are so remote as to be  
19 non-factors. The evidence will show that neither  
20 Heber Light & Power nor Rocky Mountain Power's system  
21 is currently exceeding acceptable loads and that  
22 neither will do so through the end of 2022.

23           So let's see how we did on getting that  
24 evidence into the record. Mr. Barker stated that  
25 there has not been a situation where Rocky Mountain

1 Power customers have been without power due to a  
2 failure of any of the transmission lines in question  
3 for at least 20 years. He testified that in the past  
4 20 years he is only aware of two major incidents with  
5 the lines, a helicopter crash and a mudslide. But  
6 neither resulted in the loss of power to Rocky  
7 Mountain Power customers. He testified that even in  
8 the case of a significant natural disaster where a  
9 mudslide cut service for 37 hours in Provo Canyon,  
10 none of Rocky Mountain Power's clients went without  
11 power.

12 Jason Norlen testified that in his  
13 23 years with Heber Light & Power, the Provo Canyon  
14 line has only been down a total of two to three days  
15 collectively with the longest of those outages from  
16 six to seven hours. If you take the length of his  
17 time with Heber Light & Power at 23 years, that's  
18 201,400 hours of service that this line has been  
19 working. In that time the line has been out a total  
20 of three days or 36 hours collectively. That is  
21 .00017 percent of the time, which is a real life way  
22 to determine the actual risk of an extended outage on  
23 this line.

24 Now, I want to emphasize that I'm not  
25 saying that a major catastrophe could not occur. But

1 the reality if a major catastrophe does occur like an  
2 earthquake, it is far more likely that all of the  
3 lines involved could go down, meaning that the risk  
4 is no greater and no less if it takes a few extra  
5 months to bury.

6 Jason Norlen testified that the north line  
7 can handle the load while the south line is rebuilt,  
8 which is the plan already. They're already going to  
9 do that. While this is not ideal for Heber Light &  
10 Power, it is willing to accept this risk while the  
11 south line is built. There's no way to avoid it. An  
12 increase of six months does not significantly  
13 increase the risk Heber Light & Power's already  
14 assuming in building the south line. And finally all  
15 of this is an academic exercise in the first place  
16 because Rocky Mountain Power has not obtained any of  
17 the needed easements to commence the line in any of  
18 the jurisdictions the line passes through. There's  
19 seven miles of easements that need to be obtained.  
20 And the conditional use permits in Wasatch County,  
21 Heber, and Midway City all prohibit Rocky Mountain  
22 Power from commencing construction until the  
23 easements are obtained. So the likelihood of this  
24 line even starting in 2020 is low and being finished  
25 in 2020 an outright impossibility.

1 Benjamin Clegg confirmed there's no  
2 possibility the line will be finished by the end of  
3 2020. He also testified that weather conditions  
4 could prolong the installation and push it farther  
5 into the spring of 2021. He stated that none of the  
6 poles have been ordered and none of the easements  
7 have been obtained -- actually, I think he said that  
8 they were working on some of the easements, but that  
9 the vast majority of the easements have not obtained  
10 for any portion of the line. He stated that the  
11 easements normally take up to six months to obtain  
12 and that the poles take anywhere from seven to nine  
13 months once ordered to be received. This means that  
14 the likelihood of even starting this year is zero.  
15 Rocky Mountain Power can't order the poles until they  
16 do soil samples, and they can't do soil samples until  
17 they know where the easements are going to go.

18 So realistically even under Rocky Mountain  
19 Power's best case scenario, easements could be  
20 obtained by October and the poles ordered that would  
21 arrive in a best case scenario in May of 2021. This  
22 means that construction would start on the north end  
23 of the line, some 6.3 miles away, in the spring and  
24 continue to Midway where the line could be buried in  
25 the fall.

1           The evidence shows that this line is going  
2 to be doing well if it's installed by the end of  
3 2021, which means Midway City could and should have  
4 the chance to bond, fund the excess costs, and have  
5 its portion buried without even interfering with  
6 Rocky Mountain Power's critical path. All Midway  
7 City is asking for is a chance to put a bond on the  
8 general election in November. As I stated before  
9 we're really arguing about nothing because the line  
10 is not going to commence until the easements are  
11 obtained.

12           I do want to point out this line has not  
13 been delayed by Midway City. Rocky Mountain Power  
14 has had approval from Wasatch County and Heber City  
15 for almost six months to go overhead but have done  
16 little to nothing to obtain the needed easements to  
17 commence, and this is not Midway City's fault.  
18 Midway City should not be punished for Rocky Mountain  
19 Power's failure. If the reality is Rocky Mountain  
20 Power cannot install this line until the spring of  
21 2021 due its own failure to obtain needed easements,  
22 why should Midway City be punished?

23           In reality we are simply asking to take  
24 advantage of the time frames Rocky Mountain Power's  
25 imposed on itself. Nothing we are asking hurts Rocky

1 Mountain Power or increases its critical path, given  
2 the reality of things they still need to accomplish  
3 in order to proceed.

4           Now, that's the evidence that we  
5 submitted. The more overarching discussion that I  
6 want to have is why this board actually exists. This  
7 board is established under the public service  
8 commission with the emphasis on public. The reason  
9 the public service commission exists is because our  
10 nation doesn't like monopolies. Monopolies are  
11 dangerous, and the only way we allow them to exist is  
12 with public oversight. They're large, powerful, have  
13 tremendous competitive advantages, are profitable  
14 enough to attract the likes of Warren Buffett to buy  
15 them and have the distinct capacity to do things that  
16 can be very damaging to individuals and communities.

17           This board specifically exists to check  
18 the power of the monopoly, to hold the monopoly  
19 accountable under the law, and to assure that the  
20 public generally is not being abused by its actions.  
21 Rocky Mountain Power requested this hearing, yet has  
22 not provided the fundamental evidence this board  
23 needs to determine the actual excess costs. It gives  
24 the board no reliable information on above ground  
25 costs, seriously flawed underground bids that include

1 arguably luxury items that it wants Midway City to  
2 pay for, and provides no reliable evidence as to the  
3 actual costs of the easements.

4           It acts this way and then wonders why  
5 Midway's citizens are upset and feel powerless. In  
6 regards to Midway City's citizens most impacted by  
7 these lines, Rocky Mountain Power has put on  
8 witnesses that state that there is only a nominal  
9 difference between a two-foot diameter and 50-foot  
10 tall pole and the 90-foot tall eight-foot in diameter  
11 metal pole. These types of statements are not  
12 credible and not fair. And if that pole were set in  
13 front of that person's home, you can bet the company  
14 line would suddenly shift dramatically. This is why  
15 this board exists, so that when monopolies that are  
16 clearly driven by the lowest cost and highest profit  
17 margin take offensive and unreasonable positions,  
18 like the easements in this case are only worth  
19 \$27,000 or homeowners who will have gargantuan poles  
20 in their yards are not entitled to severance damages,  
21 that this board can say: Wait a minute here. Wait  
22 just a minute, Mr. Monopoly. If anything, I'm going  
23 to hold you to the highest standard of the law due to  
24 your competitive advantage.

25           If a statute says you have to provide

1 information to a city, you are going to provide it  
2 without question, without argument, and to the  
3 fullest extent required by the law. They are  
4 entitled to it, and you are not -- and you are going  
5 to give it to them. Again I remind you, Mr.  
6 Monopoly, that you have the state sanctioned power to  
7 condemn an individual's property. And if there is a  
8 way these property owners or town wants to bury a  
9 line and to pay to bury it and it can be done in a  
10 way that does not impact your timelines, I'm going to  
11 make sure they get that chance.

12           Now, if this board doesn't say it, no one  
13 will. I have dozens of citizens watching this  
14 proceeding today whose life will change based on the  
15 decision of this board. One path is a long and  
16 bitter battle over condemned easements and above  
17 ground power poles. The other path is to give Midway  
18 City the time to bond and to bury.

19           In the first scenario Rocky Mountain Power  
20 wins at a crushing cost to Midway City and its  
21 impacted citizens. In the second scenario Rocky  
22 Mountain Power loses nothing and Midway City wins,  
23 but we need to look at what they win. All they're  
24 winning is the opportunity to pay millions of dollars  
25 to bury a line. In many ways you would think that it



1 might be a little crazy that a group of citizens or a  
2 city would fight this hard to pay an extreme amount  
3 for something that they could get for free. But  
4 that's how much they care. And if you could look in  
5 their faces, which you would normally be able to do  
6 in this type of scenario, you would see how much they  
7 care about this.

8           The nice thing about our current situation  
9 is that the law is on their side, and the law  
10 requires that this board and Rocky Mountain Power  
11 care as well. All we're asking this board to do is  
12 to enforce the provisions of the code and require  
13 Rocky Mountain Power to provide the appropriate  
14 information so that we can get a straight answer on  
15 what the actual excess costs are so that all of the  
16 other dominoes can fall. Once we know how much we  
17 can begin to move forward to raise the money, bond  
18 for the money, possibly even receive a loan from  
19 Heber Light & Power. We cannot do that until we have  
20 that information, and this board has not been  
21 provided it and neither has Midway City. Based on  
22 that, I would submit.

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

25           I think I have one question for you at

1 this point. What should this board view as the legal  
2 consequence of Midway City not acting on the CUP  
3 application within 60 days?

4 MR. GORDON: Well, I mean I think that  
5 that's a right that Rocky Mountain Power has to  
6 enforce, but they have to challenge it. And so  
7 they -- I mean they basically have waived the  
8 objection. If they wanted to raise that, they could  
9 have raised it a long time ago. They have now raised  
10 it, and we're now here. And we're showing to you  
11 that we can't act on their application without  
12 appropriate information, and they haven't given it to  
13 us. It's never been provided.

14 So either way, I mean they raise the issue  
15 and say you're supposed to do this within 60 days.  
16 Well, we're only supposed to do it if we have the  
17 information, and we can't. So I mean that would be  
18 Midway's position on that.

19 CHAIRMAN THAD LEVAR: Thank you. Just a  
20 follow up then. Is it your position that Rocky  
21 Mountain Power should have raised the issue to this  
22 board as soon as the 60 days expired?

23 MR. GORDON: Yes. I mean, I think that  
24 that's within their right. But they can choose how  
25 long they want to wait to raise it. And so they have

1 now raised it, and we're here arguing it and  
2 addressing it in this hearing. And the evidence  
3 shows the reasons why we didn't are justified because  
4 we don't have the information necessary to act.

5 CHAIRMAN THAD LEVAR: Okay. I'm sorry  
6 that leads me just to one follow up though. Didn't  
7 the terms of the CUP that was ultimately issued by  
8 Midway demonstrate that the CUP had the ability to  
9 request the necessary -- the information necessary to  
10 act? I mean you issued A CUP that said we have to  
11 have three bids. So why couldn't that have been done  
12 within the 60-day deadline? Was there any more  
13 information available to Midway City when the CUP was  
14 issued that wasn't available within the 60-day time  
15 frame?

16 MR. GORDON: I don't think so. Let me  
17 kind of think that through here for a second. My  
18 mind is kind of wandering all over here. I'm sorry.  
19 Can you kind of just -- I'm sorry, I'm trying to do  
20 this in real time. Could you just ask me the  
21 question again so I can make sure I'm answering what  
22 you're actually asking me.

23 CHAIRMAN THAD LEVAR: So it's kind of a  
24 stream of consciousness question that I was trying to  
25 put together on the fly. So I'll try to rephrase it.

1 You said that the delay in acting on the CUP  
2 application was due to a lack of information. But  
3 the CUP that was ultimately issued by Midway simply  
4 called for that information to be provided. So was  
5 there any information that Midway had when it  
6 actually issued the CUP that it didn't have within  
7 the 60-day period that the law required it to act on  
8 the application?

9 MR. GORDON: Yes. I mean clearly there  
10 was information coming in while this was pending  
11 before the city in every hearing. There were  
12 requests to establish easement costs that came in far  
13 beyond the 60-day. There were questions regarding  
14 what the design would be on an underground line.  
15 There were requests made to determine what the length  
16 of the poles would be, how far apart they would be.  
17 All of that came streaming in over time and was far  
18 beyond the 60-day time limit in this situation. So  
19 the answer to your question is, yes, there was  
20 information received all the way through far beyond  
21 the 60-day limit.

22 CHAIRMAN THAD LEVAR: Thank you.

23 You know, I did have one more question  
24 that's unrelated to this. And I apologize if this  
25 question is in the testimony and I just have

1 forgotten where it is. Are you proposing a specific  
2 commencement of construction date? You've said in  
3 your closing statement spring of 2021. If we were to  
4 issue an order, obviously we have to be more specific  
5 than that. Are you proposing a specific date if the  
6 board were to decide to give Midway the opportunity  
7 to put it on a bond election in November? Do you  
8 have something more specific than spring?

9 MR. GORDON: Certainly, yeah. So let me  
10 just explain. The dominoes on that one would be the  
11 bond would be passed in the latter part of November.  
12 We would not be able to fund it until probably  
13 January or into February. So in order for Midway  
14 City to be able to pay the actual excess costs, the  
15 time frame would need to be somewhere along the line  
16 there. And Midway City is just fine. I think there  
17 was a discussion from Commissioner White, if the bond  
18 doesn't pass then the line goes above ground and  
19 there's not going to be any argument there. If the  
20 bond does pass, then we would ask for a commencement  
21 date, probably March 1st would be safe. And once  
22 again we're not asking that the other portion of the  
23 line be held up. Construction can begin on that as  
24 soon as they want. But I think March 1st is a  
25 reasonable and fair estimate of when we think we

1 would have the money.

2 CHAIRMAN THAD LEVAR: Thank you.

3 Okay. I'll go to other board members for  
4 any questions for Midway City.

5 Okay. I'm not hearing any questions from  
6 board members.

7 I'm trying to decide if we should give our  
8 court reporter a break before we move to the  
9 V.O.L.T.'s closing statements. I think we'll go  
10 ahead with your closing statements and maybe take a  
11 break before questions. So if anyone objects to that  
12 speak up now, including Ms. Berry. Otherwise I think  
13 we'll go ahead and go forward with V.O.L.T.'s closing  
14 statements and probably take a break before  
15 questions.

16 Mr. Morris.

17 MR. MORRIS: Thank you very much, Mr.  
18 Chairman. Good morning. May it please the board,  
19 Mr. Chairman, counsel, and board members, my name is  
20 Mark Morris. And it's been my privilege for a long  
21 time now to represent a number of families in Midway  
22 who do have the concerns that Mr. Gordon just  
23 described to you, and they've had them ever since  
24 they first learned of Rocky Mountain's plan to run a  
25 high voltage transmission line through the middle of

1 a rural picturesque valley.

2           Contrary to what Rocky Mountain has  
3 suggested to the board, it is not Rocky Mountain  
4 Power's way or the highway. The scores of families  
5 along this route in Midway have made known their --  
6 not just their desires but their willingness to  
7 backup these concerns and desires with money out of  
8 their own checkbooks in hiring me, in hiring experts,  
9 and in offering up easements and rights-of-way  
10 without charge so that their reasons for coming here  
11 and living in Midway will be maintained.

12           I want to join Mr. Gordon in thanking the  
13 board for granting my clients the ability to  
14 intervene in this matter and to present these  
15 concerns and also test the evidence and challenge the  
16 burden that Rocky Mountain Power had in order to  
17 obtain the relief it seeks in this proceeding.

18           My clients want power too. They don't  
19 want to have their TV turn off in the middle of the  
20 Super Bowl. They don't want to have food in their  
21 fridge spoil because they don't have power.

22           But there has been no showing of any kind  
23 that there is an immediate need. I think it is  
24 undisputed that, you know, upgrades are necessary as  
25 time passes. And I think the evidence is clear that

1 what Rocky Mountain Power is proposing to do here is  
2 not a frivolous thing or an unnecessary thing. But  
3 the idea that it has to be done now or last year or  
4 two years ago is nowhere in evidence. And I won't  
5 repeat all of the evidence that Mr. Gordon cited to  
6 the board showing the lack of an immediate need.

7           There is no prejudice to Rocky Mountain  
8 Power, and I'll allude to this at the conclusion of  
9 my statements here. There's no prejudice to Rocky  
10 Mountain Power or to its rate payers or to anyone in  
11 the Heber Valley if a more thoughtful and considerate  
12 approach to this critical issue is required by this  
13 board. And that's the obligation we feel the board  
14 has here.

15           I want to begin by saying that the relief  
16 V.O.L.T. and its constituent members ask here is  
17 precisely what Mr. Gordon enunciated, that this board  
18 deny Rocky Mountain Power's petition and simply  
19 require Rocky Mountain Power to comply with the  
20 statutes. I don't think Rocky Mountain would argue  
21 that its only obligation is to throw two numbers on  
22 the board and say: You have to accept this now, and  
23 we'll true-up in a couple of years when we know what  
24 the real numbers are. I don't think even Rocky  
25 Mountain would suggest they could come in here with a



1 flimsy estimate on easements when the number is far  
2 greater and say you just have to take it, and you  
3 have to write an enormous check even though at the  
4 conclusion of two years condemnation fights and  
5 litigation with 40 or 50 landowners along this route  
6 might result in them having to write a bigger check  
7 and refund some of the actual excess costs that they  
8 were claiming. That's silly.

9           And we join in Midway's argument that what  
10 is required is not an estimate of \$27,000, that their  
11 own expert testified to you yesterday was nowhere  
12 near what he thought the easement costs could be.  
13 \$27,000 was an insult. And an invitation and it was  
14 a flagrant dare to say: You know, you're going to  
15 have to write an enormous check, an enormous check if  
16 you're going to buck us in our desire to go through  
17 and build this line through your rural picturesque  
18 valley.

19           The essence of the conditional use permit  
20 was to provide Midway with a fair opportunity to make  
21 an informed decision on whether it wanted to pay  
22 excess costs. Even today after two days of evidence,  
23 does anyone know what it's going to cost Rocky  
24 Mountain Power to build a line and go overhead? Does  
25 anyone know what a reasonable and true expense of

1 going underground is going to be in this case? If  
2 the answer to those questions is no and the evidence  
3 says it's no, then Rocky Mountain did not comply with  
4 its obligation under the conditional use permit to  
5 provide Midway and its citizens with a fair  
6 opportunity to know whether they wanted to come out  
7 of pocket and avoid these gigantic poles being  
8 planted through people's neighborhoods here.

9           Where did this -- let me begin with this  
10 idea of the easement. Mr. Reich testified that our  
11 claim that we need a 60-foot easement for 138 kV  
12 lines is unfounded. And yet if the board were to  
13 look at V.O.L.T. Exhibit Number 12 and option B,  
14 Rocky Mountain's own proposal says "There is an  
15 existing 46 kV right-of-way of 27 feet from the  
16 centerline."

17           So Rocky Mountain Power told bidders and  
18 is telling the world there's already a 54-foot-wide  
19 easement. Well, that's what they've said in their  
20 paperwork. But we heard Mr. Reich concede that,  
21 well, maybe it's only 40 feet. That's what Mr.  
22 Norlen thought.

23           But when I asked Mr. Norlen what -- how  
24 many feet he had, he said as much as you need for a  
25 46 kV line. He didn't put a dimension on it.

1                   But looking again at V.O.L.T. Exhibit 12  
2 underneath where they -- Rocky Mountain has  
3 identified what it claims to be the existing easement  
4 width of 27 feet, they say "138 kV right-of-way  
5 29 feet from the centerline."

6                   So Rocky Mountain Power in its own papers  
7 admits it needs at least 58 feet to run these 138 kV  
8 lines. The prescriptive easements that Heber Light &  
9 Power didn't buy, didn't pay for, didn't negotiate,  
10 are by prescription. And the mere fact that Heber  
11 Light & Power filed something in the county  
12 recorder's office that said we have a prescriptive  
13 easement does not give a dimension to that. And I  
14 think Rocky Mountain Power concedes that it could be  
15 an expensive and complicated process to find out what  
16 those easements are.

17                   Well, that's the burden Rocky Mountain  
18 Power has. It's not up to the landowners to come in  
19 and prove what they have to give up. It's up to  
20 Rocky Mountain Power to prove what they have and what  
21 they're going to take.

22                   Now, Mr. Myers, Mr. Michaelis, and Mr.  
23 LeFevre, presented by Rocky Mountain for their  
24 respective propositions, were not the people with  
25 firsthand knowledge of the topics they were

1     testifying on. The board understands we objected to  
2     Rocky Mountain choosing not to bring in the real  
3     bidders, not to bring in someone who had actual  
4     on-the-ground experience talking to the homeowners on  
5     the line and doing inspections there. But rather  
6     people who looked at reports, looked at bids, passed  
7     on them, and said "looks good to me."

8             The board, you did not hear from a single  
9     bidder, from a single work horse on the appraisal  
10    report, anyone that had the firsthand knowledge and  
11    experience that this board was entitled to hear from  
12    and that due process and fairness and justice require  
13    Rocky Mountain to present. Why was Rocky Mountain  
14    unwilling to bring in the real people instead of the  
15    80,000 foot elevation people looking down on the  
16    people on the ground and said "looks good to me."

17            We asked the board to focus on the  
18    evidence, some of which -- well, most of which was  
19    pure hearsay. Review the record, and I want to just  
20    go through these witnesses and identify two or three  
21    things that I think were critical for each of them.

22            Rocky Mountain started with Mr. Barker,  
23    but I want to end with him.

24            Mr. Clegg, he said that there was a,  
25    quote, nominal difference between 46 and 138 kV

1 lines. We submit, if you look at the same picture I  
2 showed him, nominal is not a word that comes to mind  
3 when you look at the difference between the poles'  
4 width dimension and height. Mr. Clegg also took upon  
5 himself the job of being a rebuttal expert to an  
6 appraiser. I don't know if it's -- I don't know what  
7 possessed him candidly to think that in his position  
8 as a former project manager it was his job to examine  
9 Mr. Webber's opinions and try to rebut them. But I  
10 think the board saw that his rebuttal was premised on  
11 things he hadn't even read. The mistakes he thought  
12 he had detected in Mr. Webber's testimony were in  
13 fact acknowledged by Mr. Webber on page 5 of his  
14 direct testimony and made known that he missed that.

15 I respectfully submit Mr. Clegg's  
16 testimony as to the nominal difference between 46 and  
17 138 and to be -- and challenging the opinions of Mr.  
18 Webber, a certified MIA appraiser of many years, who  
19 yesterday told the board about conversations he had  
20 with landowners, with Midway planning, with real  
21 estate agents. The idea that Mr. Clegg felt he could  
22 rebut that hard work and on-the-ground research  
23 simply is incredible.

24 Mr. Myers, well, he provided specs and he  
25 received bids, but this board does not know and will

1 never know without hearing from the bidders  
2 themselves how real or measured the bids were. We  
3 understand from Mr. Norlen that at the February 10th  
4 bid meeting, only four of the 18 invitees bothered to  
5 show up. Why? Well, Mr. Norlen reported to the  
6 board of Heber Light & Power at their May 4th meeting  
7 that he thought the bidders had come in there and  
8 they had concerns like: We're wasting our time. Why  
9 bother doing this when we know Rocky Mountain wants  
10 to go overhead. And one of those four threw in the  
11 towel even then.

12           There's no need -- Mr. Myers said that he  
13 doesn't think there's a need for two trenches. You  
14 just need two duct banks in one trench.

15           Mr. Michaelis said that the north line is  
16 a beautiful reliable line. He's not worried about  
17 anything going wrong there, and that 2020 is not an  
18 emergency situation. As Mr. Gordon mentioned, 2020  
19 is in the rearview at this point. It's not going to  
20 be finished this year, and there are no red flags or  
21 flares going up about a dire emergency of people  
22 being out of power.

23           Going on with Mr. Norlen. As I mentioned  
24 the bidders came in skeptical. He testified that the  
25 line that this -- that this line that is proposed to

1 be built can be expected to be there for 50 years or  
2 more. And I think that's an important thing for this  
3 board to keep in mind. The decision it makes now  
4 isn't going to determine what happens in 2020 or in  
5 2021 but what this valley is going to look like for  
6 the next 50 years. That's -- that's consequential  
7 and important. And he testified that he never told  
8 Rocky Mountain Power that there was an existing  
9 54-foot easement, as Rocky Mountain Power has  
10 described and as Rocky Mountain Power has told its  
11 experts to rely upon in going forward.

12           Mr. LeFevre I thought was a good sport.  
13 In terms of -- in spite of his minimal -- well, he  
14 readily acknowledged his minimal involvement, his  
15 putting maybe ten hours into a project that he said  
16 his own worker bees had devoted many, many hours to.  
17 But when cross-examined about whether he thought,  
18 really thought it was a modest increase from a 46 kV  
19 line to 138 kV line, I think we all heard him. I  
20 would have liked to have seen him chuckle and  
21 suggest: Well, maybe modest isn't the right word to  
22 describe the difference between those poles. And he  
23 too had no idea who had provided him with the  
24 assumption that there is a 54-foot existing  
25 prescriptive easement on this line.

1           Mr. Nelson was interesting, I thought,  
2 because he literally was thinking outside the box.  
3 He presented testimony and a different approach to  
4 how to lay a line underground. And he testified it  
5 was in the \$6 million range, not 12, not 18, and  
6 not -- certainly not \$28 million. It was credible.  
7 He was cross-examined on the point. And there was no  
8 evidence to suggest that his estimate was any  
9 different from what a bid would come in at.

10           Mr. Webber did a detailed investigation  
11 with homeowners, real estate agents, Midway planning.  
12 His estimate of an additional \$3.4 million being  
13 needed to compensate these people for the taking of  
14 their property for an adequate easement, an easement  
15 with a metric that Rocky Mountain itself has  
16 suggested it needs, and to compensate the people for  
17 the loss in the value of their land, which even  
18 Mr. LeFevre agreed would be -- I think his  
19 characterization was an after-impact value.

20           Two people you didn't hear from but whose  
21 testimony is in the record. Ron Lowrey, Rocky  
22 Mountain chose not to cross-examine him on his  
23 testimony. But he suffered a loss of over \$100,000  
24 in the sale of his land because the people buying  
25 heard about the threat of this line and were not



1 willing to pay fair market value. Mr. Lowrey also  
2 said he would have been happy to give up an easement  
3 for the price of a clear sight line and not having  
4 these poles and lines running through his property  
5 and neighborhood.

6 Bengt Jonsson gave detailed direct  
7 testimony in writing, and I asked the court to review  
8 it -- or the board to review it again. Mr. Jonsson  
9 has devoted hundreds of hours of research that is  
10 easily inferable from what you read in his testimony.  
11 He represented and represents 53 members of V.O.L.T.,  
12 who have come out of pocket with cash donations,  
13 payment for lawyers, and surrendering easements on  
14 their properties.

15 He showed too that's undisputed, and Mr.  
16 Norlen admitted this, HL&P has not maintained these  
17 prescriptive easements in any meaningful way. Mr.  
18 Norlen said: Well, if we have to get in and do some  
19 work, we may have to chop some branches down. But  
20 there are trees and tree houses in the photographs  
21 that are in the record that show that what exists now  
22 is nowhere near 20 feet on either side of centerline,  
23 and it's not even 10 feet in many instances.

24 Mr. Reich, in his closing, indicated that  
25 there's no evidence that all of these people are

1 willing to give up their easements in favor of an  
2 underground line. Well, we have Mr. Lowrey and Mr.  
3 Jonsson indicating that is a fact. But, you know,  
4 Rocky Mountain Power if it had chosen to speak with a  
5 single landowner in all of this process, it would  
6 know the truth of those statements. It's not the  
7 obligation of these people to come in and deliver  
8 signed papers at this point saying: I'm going to  
9 give this up if you'll do the right thing, Rocky  
10 Mountain Power. Rocky Mountain Power can go knock on  
11 a door or make a phone call and hear it for  
12 themselves.

13 Finally Mr. Barker, who was their first  
14 witness. There's only one thing that he said that I  
15 thought was -- that really caught my ear. And that  
16 is Rocky Mountain Power is agnostic about going  
17 underground or going overhead. Well, let's take Mr.  
18 Barker at his word that Rocky Mountain Power is  
19 agnostic. But the numbers that the board has heard  
20 today -- and candidly, I don't think the record would  
21 support the board making hard findings on values  
22 today. But the math on the numbers that have been  
23 presented to the board are such that if Mr. Webber's  
24 testimony turns out to be true and if Rocky  
25 Mountain's overhead estimate of 1.8 million is true,

1 that puts the cost of going overhead closer to \$5  
2 million. And if the underground cost is  
3 \$6.8 million, as Mr. Nelson testified, then you're  
4 only looking at a delta there of a million 8, which  
5 is a far cry from the \$10 million Rocky Mountain  
6 claims it is entitled to get a check for and deposit  
7 into its bank in order to proceed with what the  
8 evidence should tell this board is inefficient and  
9 unproven in terms of reliable, actual efficient cost  
10 method of going underground.

11 To be agnostic you cannot underestimate  
12 the overhead line costs by saying that easements and  
13 rights-of-way will come in at \$27,000, and then say,  
14 well, we'll true it up after we've built this line  
15 that is going to mar your valley for 50 years. Just  
16 as you can't start with a \$70,000 estimate and end up  
17 later agreeing that what you've claimed was worth  
18 \$70,000 was actually worth \$2.5 million in the SITLA  
19 example I provided to the board.

20 I'd like to think that Rocky Mountain  
21 Power isn't -- isn't intentionally being underhanded  
22 with this. I understand they have a profit motive.  
23 I understand that they fly the banner of trying to  
24 save their ratepayers money.

25 But Rocky Mountain had a burden to come in

1 and persuade and establish to this board that the  
2 numbers it provided in connection with the  
3 conditional use permit were reliable and reasonable.  
4 They did neither. You cannot overstate the excess  
5 costs by having a bidder's meeting just a couple of  
6 months ago and tell them that they have to be done  
7 this year. All of those bidders said we're not -- we  
8 can't do it this year. The board cannot believe that  
9 a \$28 million bid to bury a mile-long line is a bid  
10 that Midway City was obligated to take seriously and  
11 consider in whether to write a check for the excess  
12 costs.

13           So what my clients ask the board to do is  
14 require real evaluations of what the right-of-way and  
15 easement costs will be. Let's invite bidders and  
16 give them time and a real expectation of going  
17 underground. Let's invite Midway and V.O.L.T. to  
18 help in the process by writing checks and giving up  
19 property rights to protect a beautiful environment,  
20 one that is increasingly being inhabited by families  
21 moving into homes, rather than just have barren  
22 fields affected by this.

23           And lastly, let's not make a mistake that  
24 the people in the good city of Midway will regret for  
25 at least the next 50 years. We respectfully request

1 that the board deny the petition and put Rocky  
2 Mountain Power to the work it was obligated to do  
3 long ago and give Midway a real choice with real  
4 numbers and reliable numbers that it can make a  
5 decision and its citizens can make a decision on to  
6 determine what this valley is going to look like for  
7 the next 50 years.

8 Thank you for your time.

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

11 I think we'll take a 15-minute break at  
12 this point and then return for any final board  
13 questions and then board deliberation and discussion.  
14 So we'll be in recess for 15 minutes. Thank you.

15 (Break taken from 10:34 to 10:50 a.m.)

16 CHAIRMAN THAD LEVAR: At this point I  
17 think we'll go to any board member questions for Mr.  
18 Morris based on his closing arguments. If any board  
19 member has any questions for Mr. Morris, please jump  
20 in and indicate your questions.

21 MR. GLENN WRIGHT: Mr. Morris, you've  
22 indicated in the past that V.O.L.T. has raised a fair  
23 amount of money. How much could you come up with in  
24 cash if the decision was to go forward fairly soon?

25 MR. MORRIS: My understanding, based on

1 Mr. Bengt's [sic] testimony is we're at about  
2 \$650,000 at present.

3 MR. GLENN WRIGHT: Thank you.

4 MR. MORRIS: Mr. Jonsson. It's Bengt  
5 Jonsson. I think I said Mr. Bengt, I apologize.

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

8 Any other questions from board members for  
9 Mr. Morris?

10 MR. DAVID CLARK: Are you going to permit  
11 us to question other counsel in relation to arguments  
12 that have been raised? In other words, is there  
13 going to be a point in time when we can address  
14 questions to any of the counsel who have argued?

15 CHAIRMAN THAD LEVAR: I think probably now  
16 is the time for that.

17 MR. DAVID CLARK: So if you'll permit me  
18 to do that, I have a couple of questions for Mr.  
19 Reich.

20 CHAIRMAN THAD LEVAR: Okay, go ahead. Mr.  
21 Reich, are you on the line?

22 MR. REICH: I am.

23 MR. DAVID CLARK: My first question  
24 relates to Midway City's argument requiring the  
25 responsibility under the statute of the utility to

1 present the actual costs of easements and what -- I'm  
2 interested in what you think -- if you have anything  
3 more to say to us on what that responsibility means.  
4 And I'd specifically like you to address the  
5 arguments of Midway City's counsel on what Midway  
6 City's interpretation is.

7 MR. REICH: Sure, I'd be happy to do that.  
8 Thank you. So if you look in the definition sections  
9 of the statute in 54-14-103-9(a), it defines standard  
10 cost. And the definition of standard cost says it  
11 means "the estimated cost of the facility, including  
12 any necessary right-of-way if constructed in  
13 accordance with" -- and then it identifies some  
14 different requirements.

15 So it's our position -- and I think if you  
16 carry out kind of the natural conclusion of what  
17 Midway City is asking, I think it would support  
18 this -- it's our conclusion that it's the estimated  
19 cost, not an actual cost. I do agree with Midway  
20 City the only way to determine an actual cost, and I  
21 believe they even said even an appraisal is not an  
22 actual cost, is to actually go out and buy the  
23 rights-of-way. So what they're asking is basically  
24 for Rocky Mountain Power to go out and buy  
25 rights-of-way on a project that may never be built.

1 So they're saying in order to decide the excess  
2 costs, Rocky Mountain Power, you have to go out and  
3 pay thousands, hundreds of thousands, whatever the  
4 amount is in dollars and obtain an actual  
5 right-of-way. Then come back to us, and the city  
6 will then use that information to decide whether we  
7 should go overhead or go underground. The problem  
8 with that is then the overhead right-of-way easements  
9 that we've required aren't necessarily going to be  
10 available for our underground line. I mean the route  
11 could be different; the terms are different.

12 So I think that to require a utility to  
13 actually go out and buy right-of-way easements is  
14 not, first of all, required by the statute and in  
15 practice makes no sense.

16 MR. DAVID CLARK: One additional question  
17 for you. Counsel for Midway referred to the evidence  
18 received related to -- and I think it's option 1 that  
19 calls for 6,990 feet of cable and 5,300 feet of  
20 trenching I think is the record at least as I recall  
21 Mr. Myers' testimony. And he also -- at least I  
22 concluded from his testimony that it appeared that  
23 two of the three bidders had misinterpreted that or  
24 at least their bids suggested that they were bidding  
25 on the basis of 6,690 feet of trenching. Do you know



1 which of the contractors who bid on option 1 bid the  
2 intended specification of 5,300 feet of trenching?

3 MR. REICH: So you're looking for the name  
4 of the contractor? Is that what you're asking?

5 MR. DAVID CLARK: Well, contractor A, B,  
6 or C using the nomenclature from Mr. Myers'  
7 testimony, the chart in his direct testimony. That's  
8 what I'd like to know is if it was contractor A, B,  
9 or C, if you know.

10 MR. REICH: Yeah, we believe it's  
11 contractor A.

12 MR. DAVID CLARK: Thank you.

13 MR. REICH: You bet.

14 CHAIRMAN THAD LEVAR: This is --

15 MR. GLENN WRIGHT: This is Glenn Wright, I  
16 had --

17 CHAIRMAN THAD LEVAR: Mr. Wright, go  
18 ahead.

19 MR. GLENN WRIGHT: Yes. I have a  
20 follow-up question on Mr. Clark's initial inquiry to  
21 Rocky Mountain Power. Could you not go out and  
22 obtain agreements for easements without paying for  
23 them at this point?

24 MR. REICH: You know, certainly you could  
25 go out and buy an option to purchase easements. That

1 I guess is what your question is, yeah, you -- that  
2 would be an option for a utility to go out and  
3 actually purchase options, which would give you a  
4 right at some point in the future to purchase the  
5 easement.

6 MR. GLENN WRIGHT: Well, I'm saying could  
7 you not enter into agreement with landowners saying:  
8 If we need your easement, we will pay you this  
9 amount?

10 MR. REICH: Well, I think it would --  
11 there would need to be probably a -- I doubt a  
12 property owner would be willing to do that without  
13 some type of compensation. They would need some type  
14 of incentive to enter into that type of an agreement.  
15 So I think --

16 MR. GLENN WRIGHT: Okay.

17 MR. REICH: -- you know, to say if we make  
18 it contingent --

19 MR. GLENN WRIGHT: I can live with that  
20 answer. Thank you.

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

23 Any additional questions from board  
24 members?

25 I'm not hearing any questions, so I think

1 we'll move into board deliberation at this point.  
2 The counsel for parties are welcome to stay on the  
3 bridge line while we do this. We may have questions  
4 for them. Although I'll just note this portion is  
5 deliberation, so we'd ask counsel from the parties  
6 not to -- not to jump into the deliberation  
7 discussions unless we ask a question.

8           And with that I'll open it up to board  
9 members. Does any board member want to start the  
10 deliberation process or have any thoughts? I  
11 certainly have some of my own, but I'll open this  
12 discussion up to the board members at this point.  
13 Please identify yourself when you begin speaking for  
14 the transcript.

15           MR. GLENN WRIGHT: This is Glenn Wright,  
16 I'll start with some of my opinions if we're ready.  
17 I look at this process as we have about four  
18 questions to answer. First is the need for this  
19 construction project and how immediate is the need,  
20 the construction costs, the right-of-way costs, and  
21 then the timing of -- the amount of -- the amount to  
22 be charged to Midway and V.O.L.T. and the timing of  
23 that payment.

24           In terms of the need, I agree with Rocky  
25 Mountain Power that this is a need. I base a lot of

1 my argument or my opinion on the Public Safety Power  
2 Shut Off Program that was briefed to Summit and  
3 Wasatch County elected official last year and  
4 testimony from both Mr. Norlen and one of the Rocky  
5 Mountain engineers indicating that the Snyderville  
6 Cottonwood line would be vulnerable to this  
7 particular shut off. Going through more than the  
8 number of wildfire seasons than are necessary I think  
9 is a needless risk.

10 In terms of costs, I think Rocky Mountain  
11 Power has absolute, you know, responsibility to set  
12 their own construction criteria. And from my past  
13 work as a safety engineer in the insurance industry,  
14 I fully support their conservative construction  
15 policies in terms of the trenching and the extra  
16 conductor that's connected.

17 In terms of right-of-way costs I am all --  
18 I think we're all aware that there's a lot of  
19 unknowns there. And I would suggest that we figure  
20 out what the actual costs of the right-of-way  
21 easements will be before we set a definite number to  
22 be paid. But I think we could set an initial number  
23 that is at the high end of the right-of-way costs and  
24 true that up. And by that I mean I would suggest  
25 Rocky Mountain Power immediately start getting

1 agreements for the right-of-way, and that the  
2 commencement date of construction would be when they  
3 have all of their easements and at that time payment  
4 would be due.

5 So that's my conclusions at this point.

6 CHAIRMAN THAD LEVAR: Thank you, Mr.  
7 Wright. Any other board members want to interject  
8 any thoughts or comments?

9 And I'm happy at this point to lay out my  
10 current thought process for where we are. As I look  
11 at the various issues in front of us, I think the  
12 need for the line isn't -- isn't much in dispute,  
13 simply how quick it has to be up and the time frame  
14 for it.

15 Starting with the costs, I'll give my  
16 view. As I've listened to the evidence on all the  
17 different sides, in my view Rocky Mountain Power has  
18 made its case that its bids were conducted according  
19 to its standard procedures. I don't read anything in  
20 this statute that says this board needs to evaluate  
21 whether there's any potential way those bid specs  
22 could have been done in a less expensive way. At the  
23 Public Service Commission we're often evaluating  
24 whether costs are just and reasonable. But in this  
25 case all of the evidence points me to a finding that

1 Rocky Mountain Power conducted these bids in  
2 accordance with its standard practices for this type  
3 of a project. And the fact that other expert  
4 witnesses proposed alternate ways that it could have  
5 been done doesn't -- doesn't take me anywhere away  
6 from that conclusion.

7           With respect to the easements, you know,  
8 the statute says that there -- that Rocky Mountain  
9 Power should provide -- well, this board is supposed  
10 to find the estimated value of any necessary  
11 rights-of-way. And an estimated value of  
12 right-of-way is never going to be an easy concept. I  
13 mean trying to determine rights-of-way and easement  
14 values with any kind of specificity before they're  
15 ever negotiated and litigated, if necessary, is  
16 simply impossible. Rocky Mountain Power made an  
17 estimate based on its standard practices of  
18 estimates. We have some evidence that those  
19 estimates are low, some reasonable estimates -- some  
20 reasonable evidence that those estimates might be  
21 low.

22           However, the biggest problem with the  
23 evidence, particularly the witness provided by Midway  
24 City, is that that witness used values of properties  
25 that don't actually have easements or takings

1 involved with them. And in my view those are  
2 completely irrelevant to the issue we have at hand  
3 here. Rights-of-way costs do not include severance  
4 damages -- in my view, simply do not include  
5 severance damages to properties that don't have  
6 easements that go through them. So to me that makes  
7 that counterevidence completely unreliable.

8           And so on the easement issue, basically my  
9 view is what we have Midway City and V.O.L.T. asking  
10 us to do is they're asking us to increase the cost of  
11 Rocky Mountain Power's estimate for the self -- for  
12 the overhead build, above-line build based on what  
13 they view is the delta between what easements would  
14 cost to build the ground above line and what  
15 easements would cost to build them underground. And  
16 I don't think we have enough evidence to clearly  
17 establish a delta on that. And I'm -- I think Midway  
18 City recognized this when they drafted the CUP in a  
19 way that requires for a true-up of actual -- of  
20 actual easement costs.

21           I don't think it's reasonable for this  
22 board and I don't think it's required by the statute  
23 when it says "estimate necessary rights-of-way" to  
24 determine a dollar value of this is the difference  
25 between what easements would cost for an above-ground

1 line versus a below-ground line. I think that's what  
2 we're being asked to do by some parties. I don't  
3 think it's reasonable, and I don't think it's  
4 required by the statute. And I think we have a  
5 reasonable easement number that will be trued-up  
6 pursuant to the CUP.

7           So I'm comfortable with that. My -- my  
8 feeling is that Rocky Mountain Power's estimate of  
9 the above-ground cost was done also according with  
10 its standard practice to estimate those costs based  
11 on a self-build option that it's done in a similar  
12 process previously to me is reasonable evidence of  
13 the self-build cost. The bids are reasonable  
14 evidence of the underground cost.

15           In Public Service Commission proceedings  
16 we evaluate bids on a regular basis, and I'm not  
17 aware of any instance where bidders have been  
18 required to provide testimony on how they developed  
19 their bids. The fact that the bids were received  
20 speaks for itself on the bids, and they're  
21 established simply to show the bids were sent, not  
22 necessarily the truthfulness or the process that went  
23 behind those bids.

24           And finally my thoughts with respect to a  
25 commencement date, I think Rocky Mountain Power's



1 testimony that it can't be completed in 2020 is --  
2 leads me to where I would probably be in favor of a  
3 finding that the March 1st date proposed by Midway  
4 City for construction commencement probably isn't  
5 that far off from when Rocky Mountain Power actually  
6 could get this line going. I think giving Midway  
7 City a chance to have a bond election probably seems  
8 reasonable.

9           So all that being said, where I'm leaning  
10 right now would be an order that would give Midway  
11 City 15 days from the date of the order to choose the  
12 route, pursuant to the CUP, and then establish a  
13 March 1st commencement date; 30 days before that is  
14 when Midway City would be required to provide payment  
15 to Rocky Mountain Power.

16           So those are my thoughts at this point.  
17 I'm not saying I couldn't be convinced otherwise if  
18 other board members have different views or different  
19 perspectives on it.

20           MR. TROY FITZGERALD: Chairman LeVar,  
21 could you clarify your last couple of statements  
22 there about your dates? I was confused about the  
23 March thinking.

24           CHAIRMAN THAD LEVAR: Well, my view is if  
25 we issue an order saying that we're affirming Rocky

1 Mountain Power's costs based on the bids, I think we  
2 should re-trigger Midway's right to have 15 days  
3 under the CUP to choose its preferred route.

4 But then the second deadline is they're  
5 required to pay the excess costs 30 days before the  
6 construction commencement date. So we would need to  
7 set a construction commencement date. Midway City  
8 has suggested March 1st. That would give them a  
9 chance to bond -- to put a bond on the election  
10 ballot in November.

11 You know, obviously Rocky Mountain Power  
12 opposes waiting that long. To me the testimony of  
13 when this line could be completed reasonably leads me  
14 to think the March 1st construction commencement date  
15 is probably reasonable considering the risk in the  
16 area. There's some risk of outages if it's delayed  
17 to that point, but the risk has existed for some  
18 time. And you know as we look at -- I'm trying to  
19 remember the statutory phrase. I had it in front of  
20 me during the closing statement, but I don't have it  
21 in front of me. Oh, here it is. You know, Midway  
22 City, if we -- if we determine that the costs -- make  
23 a determination on the costs, Midway is required for  
24 54-14.204 "Within 30 days before the date the  
25 construction of the facility should commence in order

1 to avoid a significant risk of impairment to the  
2 safe, reliable, and adequate service to customers of  
3 the public utility."

4 I think under that standard we have  
5 evidence on risk of impairment for safe, reliable and  
6 adequate service. To me the March 1st date proposed  
7 by Midway City reasonably addresses that risk of  
8 impairment to safe, reliable, and adequate service to  
9 customers of the public utility. And considering  
10 their desire to seek a bond from voters of Midway  
11 City, I am not opposed to that.

12 But I do think if we issue an order Midway  
13 City's obligation to choose a preferred route from  
14 the bid should -- should run 15 days from the date of  
15 the order.

16 Does that answer your question, Mr.  
17 Fitzgerald, at least on my thought process?

18 MR. TROY FITZGERALD: Yes, that's helpful.  
19 But again for clarity that's March 1st, 2021,  
20 correct?

21 CHAIRMAN THAD LEVAR: Oh, I'm sorry. Yes,  
22 that's what I meant, 2021.

23 MR. TROY FITZGERALD: I think your answer  
24 made that clear. And my confusion came because of  
25 the March 1st, 2020 date found in the conditional use

1 permit. I guess since I'm speaking, maybe I'll toss  
2 my thoughts out. Similar in some ways, different in  
3 others. I think the need for the project has been  
4 established. And through the closing arguments my  
5 mind was taken more to the conditional use permit  
6 issued by the city. The city laid out its  
7 requirements with great specificity. Rocky Mountain  
8 Power's obligation was to provide bids. They did  
9 that. The date in the conditional use permit that  
10 those should have been submitted was February 15th.  
11 The evidence indicates they didn't come in until  
12 March 27th. So for me, I don't have any problem  
13 extending the dates as stated in the conditional use  
14 permit. I think that's about 41 days. In fact the  
15 conditional use permit says if Rocky Mountain Power  
16 is late on their submission, that the timelines  
17 should all be delayed.

18 To me that indicates that Midway City  
19 would have until May 7th to complete their portions  
20 of the CUP requirements. Otherwise in accordance  
21 again with the conditional use permit, if they,  
22 Midway City, have not completed their requirements,  
23 then the line becomes an overhead line.

24 To me with regard to the easement costs, I  
25 think the proposal of Mr. LeVar is not a bad one. I

1 agree that we can't determine the actual costs of the  
2 easements. There is testimony out there that there's  
3 significant overlap in the estimated costs of  
4 easements for overhead and underground. So I think  
5 it's reasonable to conclude that the standard cost  
6 and the excess costs would be increased by a similar  
7 or like amount. Meaning the difference between the  
8 two would be the same regardless of the end cost of  
9 those. So I'd suggest that as a conclusion to this.

10 I think there's some evidence that the  
11 underground easements would be cheaper, and if we  
12 wanted to allow for that in some fashion we could.  
13 So those are my thoughts right now.

14 MR. JORDAN WHITE: Can I, Chair LeVar,  
15 have your permission to ask Mr. Reich a question? I  
16 just wanted to follow up on the thoughts of  
17 Mr. Fitzgerald with regard to Rocky Mountain Power  
18 complying with their obligation to provide the bid in  
19 a timely fashion under the conditional use permit.

20 CHAIRMAN THAD LEVAR: Mr. Reich, are you  
21 still on the line?

22 MR. JORDAN WHITE: Yes.

23 CHAIRMAN THAD LEVAR: Okay. Go ahead, Mr.  
24 White.

25 MR. JORDAN WHITE: Yes. Can you hear me?

1 MR. REICH: Yes, I'm still on the line.

2 MR. JORDAN WHITE: Oh, I'm sorry. I  
3 thought you said Mr. White. You were saying Mr.  
4 Reich.

5 I question, I guess I was hoping you could  
6 respond, I wasn't aware there -- or it wasn't my  
7 understanding that the Rocky Mountain Power  
8 essentially missed the deadline to provide the  
9 qualified bids under the conditional use permit. Is  
10 that -- can you help me understand that or clarify  
11 that?

12 MR. REICH: Yes. And I agree in the  
13 conditional use permit it says if the bids are not  
14 submitted by that date, there's a day-for-day flip.  
15 I guess where my disagreement comes, I don't think  
16 it's May 7th; I think it's April 10th is the  
17 day-for-day flip. So I think the deadline then  
18 changed to April 10th for Midway City to then pick a  
19 route.

20 MR. JORDAN WHITE: That was my  
21 understanding as well. I'm happy to --

22 MR. TROY FITZGERALD: This is Troy  
23 Fitzgerald.

24 Sorry. Yeah, I think that's a reasonable  
25 interpretation as well that they would have two weeks

1 after the submission time.

2 CHAIRMAN THAD LEVAR: Who was that that  
3 just spoke?

4 MR. TROY FITZGERALD: This is Troy  
5 Fitzgerald again.

6 CHAIRMAN THAD LEVAR: Okay, thank you.

7 MR. JORDAN WHITE: I guess along the lines  
8 of what Mr. Fitzgerald said, in terms of I'm already  
9 speaking I guess I'll get to my initial thoughts too.  
10 First of all I want to say I agree, you know, Midway  
11 City is a gorgeous city, and I understand people  
12 don't like power lines. But I also know that  
13 reliable electrical services is an integral part of  
14 the fabric of modern life. And the testimony we've  
15 heard over the past couple of days and presented on  
16 in terms of the, you know, pre-filed written  
17 testimony is undisputed there's a clear need for the  
18 project to provide safe, reliable power.

19 And I recognize there's been discussion  
20 about the continuing probabilities with respect to  
21 risk and reliability of whether it will occur in that  
22 type of prognostication, I guess. But the fact is  
23 that every day without the project presents a risk to  
24 customers.

25 You know, in reading through the history

1 of the case and the development, it appears that, you  
2 know, Rocky Mountain Power has worked with the city  
3 over the past couple years, several years. I guess  
4 since '17 as far as I can see as far as the initial  
5 project development, and they openly did receive a  
6 conditional use permit in 2019. When I look at that  
7 conditional use permit, it seems pretty clear that --  
8 I'm just going to pull up the conditional use permit  
9 here just so I can make sure I'm reading it clearly,  
10 I guess. But under that conditional use permit  
11 there's a phrase in there where or I guess some  
12 verbiage that essentially says -- I'm scrolling down  
13 on the computer.

14 But if applicant has met all of the city's  
15 requests given in this motion and in a timely manner  
16 but the city has not met or has not been able to  
17 secure all of the items -- and I won't go through all  
18 of those, but you can read it yourself on page 4 of  
19 the conditional use permit -- that by March 1st,  
20 2020, the applicant may proceed with the overhead  
21 construction with the following conditions, and goes  
22 on with the conditions.

23 I recognize that that date is flipped to  
24 the extent that, you know, there's a day for day  
25 change about that. But I just -- I go to that plain



1 reading and, you know, with respect to the -- again  
2 the need has been established. They provide  
3 qualified bids under their specifications. I  
4 recognize, you know, after hearing the testimony of  
5 Mr. Nelson that there are differing specifications or  
6 internal engineering specs for building transmission  
7 lines. But I've heard nothing to suggest that Rocky  
8 Mountain Power was in any way doing anything untoward  
9 or incorrect in terms of their specifications in  
10 setting their specifications.

11 In terms of the right-of-way costs, again  
12 I recognize I think that's a good point, you know,  
13 made by Mr. Wright that potentially they could secure  
14 options, but I don't know how they would ever be able  
15 to come up with an actual cost because there's so  
16 many variables that can go into it. They can only  
17 estimate at this point without either litigating or  
18 actually having a signed contract, et cetera. So I  
19 just don't know how they'd ever achieve that.

20 I guess openly I'm willing to kind of --  
21 you know I'm intrigued by some concept of this  
22 looking at a potential ability to pass the bond, but  
23 that gives me concern. Again, we're already -- from  
24 the evidence I've heard thus far, there's been a need  
25 for some time. That need doesn't go away. Every day

1 that that project does not proceed, it pushes that  
2 date, you know, further beyond. And so I'm -- and in  
3 understanding that elections and bonds, bond  
4 elections especially there's no guarantees. I guess  
5 I'm a bit concerned about kicking that can down the  
6 road for yet another year. So I guess what I would  
7 say, you know, cutting to the chase here, if I were  
8 to vote right now I would vote to allow Rocky  
9 Mountain Power to proceed with immediate construction  
10 of the overhead design for the reason that they have  
11 satisfied the conditions under the conditional use  
12 permit and that that permit is expressed.

13           And so that's kind of where I'm at right  
14 now is that again I -- I recognize they're not  
15 popular. It's a beautiful area. But it's such an  
16 important part of the need for reliable electrical  
17 service, the society is so great that that is  
18 ultimately why I believe the statute is written the  
19 way it was is to -- ultimately the buck has got to  
20 stop somewhere in terms of having to build a power  
21 line to maintain reliability, and I think this is the  
22 obligation of the board. So I'll stop talking there  
23 and allow some other board members to speak.

24           CHAIRMAN THAD LEVAR: Thank you, Mr.  
25 White. This is Thad LeVar. I'd like to just

1 interject one thought to what you've said. The one  
2 issue I'm struggling with with what you've proposed  
3 is if we strictly hold to the deadlines of the CUP  
4 and rule that: Okay, Midway didn't choose an option  
5 within 15 days of receiving the bids, therefore Rocky  
6 Mountain Power may go forward on the overhead lines,  
7 are we basically making Midway City's right to come  
8 to this board to dispute those bids and dispute those  
9 costs, which they have a right to do, are we  
10 rendering that right meaningless?

11 Because if we say: Well, we're sticking  
12 to the deadlines of the CUP, that doesn't give Midway  
13 any opportunity to come to this board to make their  
14 arguments that the costs weren't estimated actual  
15 reasonable costs. That's my concern with that  
16 direction.

17 But if you have any thoughts on that, Mr.  
18 White or other board members, I'd be happy to hear  
19 them.

20 MR. JORDAN WHITE: Yeah, that's a very  
21 fair point. I guess -- I guess part of my rationale  
22 behind that frankly is the fact that, you know, I saw  
23 the discovery responses with respect to the bid  
24 submissions and the note from Rocky Mountain Power's  
25 counsel with no reply to that. No question of or

1 request or criticism or otherwise of those bids. And  
2 I guess that partially informs my decision that -- I  
3 guess the short answer to your question is, yes, I  
4 think that at a certain point if -- if a party goes  
5 before a public body like a city council and  
6 essentially the conditional use permit amounts to  
7 essentially a contract between the petitioner and the  
8 city and one party upholds their obligation and the  
9 other party doesn't, I'm not sure where that leaves  
10 you. So I guess ultimately what I'm saying is, yes,  
11 the city has waived their rights under that  
12 conditional use permit.

13 MR. TROY FITZGERALD: I'd suggest that  
14 they be given the amount of time they've bargained  
15 for in the CUP they drafted. Give them a couple  
16 weeks to finish and/or make their solutions known  
17 under the CUP. And if they can move forward, they  
18 can. Then the board will have established that the  
19 excess costs are and will have resolved that dispute  
20 and the actual costs. So the board has done what  
21 it's done, and then Midway City can make its  
22 decisions.

23 I would note that in their conditional use  
24 permit, there was zero mention of a bond election.  
25 The city has a number of funding mechanisms available

1 to it that don't require a general obligation bond.  
2 They can use any of those, including the one that  
3 they suggested directly in the conditional use  
4 permit, which is going to Heber Light & Power.

5 MR. JORDAN WHITE: Mr. Fitzgerald, just so  
6 I understand the timing of what you're suggesting, it  
7 sounds like it's a bit of a tweak on what Mr. LeVar  
8 was suggesting. You're suggesting that -- help me  
9 understand a little bit more about what that would  
10 look like.

11 MR. TROY FITZGERALD: Sure. I would just  
12 say that they would have -- I can't remember if it's  
13 14 or 15 days, but 14 or 15 days from the issuance of  
14 the written order for Midway City to complete what  
15 they've done or what they need to do under the  
16 conditional use permit. If they meet -- if they're  
17 unable to then secure the three things they've  
18 indicated they need to do in the conditional use  
19 permit, then the overhead line could begin moving  
20 forward at that time, two weeks after the issuance of  
21 the written order from this board.

22 MR. JORDAN WHITE: That seems fair to me.

23 CHAIRMAN THAD LEVAR: I'd like to ask  
24 Mr. Fitzgerald for a little bit more clarification on  
25 your proposal. There's -- you know the CUP requires

1 Midway City to choose a route within 15 days. And  
2 you know I agree we could set that based on our  
3 order. I think we still need to set a construction  
4 commencement date for safety and reliability that  
5 would trigger 30 days in advance of that date, Midway  
6 City's obligation to actually pay those costs. So  
7 are you -- does your view of the CUP give us a path  
8 to setting that date in a way that once they choose  
9 the route, within 15 days of that order they also  
10 have a deadline to pay those costs 30 days before a  
11 construction commencement date?

12 MR. TROY FITZGERALD: Maybe we're crossing  
13 a few things. Again this is Troy Fitzgerald. In the  
14 conditional use permit, as I see it, Rocky Mountain  
15 was to submit their bids by February 15th, and then  
16 by March 1st, 2020 the applicant may proceed with  
17 overhead construction with the following conditions,  
18 unless Midway City had been able to secure, again the  
19 CUP language, three items, which was sufficient  
20 funding to pay and a minimum donation -- a minimum in  
21 donation fund dollars and Wasatch County Council  
22 approval of something. To me they set their own  
23 deadline on when that would be. I don't remember  
24 seeing anything else in there about when the payment  
25 would actually have been being made. So I guess I'm

1 just looking to honor the permit that was issued  
2 saying they would have that period of time between 15  
3 of February and March 1, however many days that is to  
4 do those things, which I assume include payment.  
5 Although I don't know that that's clear.

6 CHAIRMAN THAD LEVAR: I'm in complete  
7 agreement that our order should clarify that within  
8 15 days out of the order all of those CUP obligations  
9 should be satisfied. To me the obligation to pay,  
10 which I think isn't clarified in the CUP, comes from  
11 statute. And it's the Facility Review Board Act that  
12 says the payment has to be made 30 days before  
13 commencement of construction. So the CUP requires  
14 the funding to be secured within 15 days. So then  
15 when would we need -- you know, but I think this  
16 board probably still needs to give a date for  
17 construction commencement for safety and reliability  
18 that would trigger that statutory obligation of  
19 payment.

20 MR. GLENN WRIGHT: I have a suggestion on  
21 that. I suggest that at the same time Midway picks a  
22 route and the cost of that route, they also get a  
23 commitment from the Heber Light & Power, where they  
24 have a board seat, for the necessary funding probably  
25 through a revenue in anticipation bond for the rate

1 payers in Midway. And in terms of the payment date,  
2 I think we need to be a little flexible and figure in  
3 and get some feedback on how long it would take to  
4 execute that bond. And if for any reason the bond  
5 was not executed within the date that we can set,  
6 then overhead construction starts.

7 CHAIRMAN THAD LEVAR: I'm sorry to keep  
8 interjecting, but that makes sense to me. And I just  
9 wanted to point out one light that just came on to me  
10 from when Mr. Fitzgerald was reading the CUP  
11 commitment.

12 Since the CUP requires the funding to be  
13 secured within 15 days, I think that precludes our  
14 option of delaying this for a November bond vote. I  
15 think that -- I hadn't made that connection before I  
16 made the suggestion. But I think I agree that the  
17 CUP text itself doesn't allow us to say they're not  
18 going to secure the funding until November. So I  
19 think I no longer support that option based on the  
20 language of the CUP.

21 MR. TROY FITZGERALD: I'm okay giving a  
22 reasonable time to secure that funding as well. If  
23 we triggered it two weeks after for choosing a route  
24 from the date of our written order and then 60, 90,  
25 120 days whatever seems reasonable for bonding



1 discussions to happen, then you would have all the  
2 dates necessary that the parties on both sides could  
3 rely upon.

4 MR. JORDAN WHITE: And I'll probably rely  
5 on Mr. Fitzgerald just because this is his area of  
6 practice. And maybe this is a right that you  
7 mentioned with other sources of funding. I'm  
8 assuming that the question of whether or not they  
9 could get an election, you know, completed in  
10 November for a 15 day time period is a moot question,  
11 but what other options would be -- obviously that's  
12 not necessarily with our purview. But what are some  
13 potential options other than seeking, you know, a  
14 bond through an election in November within the two  
15 weeks for a municipality?

16 MR. TROY FITZGERALD: I don't know  
17 Midway's circumstances or financial situation enough  
18 to really comment on that. There are bonding options  
19 that simply require the city council action and not a  
20 general election. I think I fully understand why  
21 they're interested in that because of what revenue  
22 sources they would like to use to pay that money  
23 back.

24 I would just say the only evidence we have  
25 in front of us right now is that the city council

1 considered that and passed a conditional use permit  
2 indicating what their funding source would be, and it  
3 was not a general election. And even in the evidence  
4 that came before us now, I think we have indications  
5 that that's Midway's desire at this point. But we  
6 don't -- I mean the council could have passed the  
7 necessary language indicating they're moving forward  
8 with an election this fall. There's no evidence of  
9 that. There's no evidence of anything other than  
10 oral statements of counsel that that's their intent,  
11 at least that I can recall.

12 MR. JORDAN WHITE: Thank you, that's very  
13 helpful.

14 MR. GLENN WRIGHT: I think if I remember  
15 there was some discussion during the year, CUP  
16 discussion, that Heber Light & Power was a possible  
17 source for funding, you know, through a late-based  
18 bond for the ratepayers in Midway.

19 But at any rate, I agree with Mr.  
20 Fitzgerald that Midway needs to come up with the  
21 solution in the next two weeks.

22 MR. DAVID CLARK: Let me present some of  
23 my thinking now as well, since I'm the only one who  
24 hasn't yet.

25 I would not favor a conclusion that the --

1 that Midway City has forfeited its right to pursue  
2 underground construction. And yet I do conclude that  
3 the need for the facility exists. I see it as a  
4 continuum of pressure that's been building and will  
5 continue to build that at some point becomes  
6 untenable. Our reaching conclusions that would  
7 accommodate a construction beginning in the spring of  
8 2021 seem reasonable to me. So I was attracted to it  
9 and found my thinking to be consistent with what  
10 Chair LeVar expressed regarding a March 1st  
11 construction date commencement. I think we need --  
12 whatever we do needs to provide some assurance that  
13 Rocky Mountain Power will have the certainty of  
14 outcome that it needs to begin to build by that -- by  
15 that time.

16 I -- regarding the standard specifications  
17 and construction standards evidence, I feel strongly  
18 that our roles should not be to re-examine the  
19 existing standards. And I feel there's been adequate  
20 evidence that -- ample evidence really that Rocky  
21 Mountain Power pursued its standard processes in both  
22 the design and the bidding of the underground  
23 project, and I think the evidence of the bid  
24 information is also adequate for us. And I wouldn't  
25 contemplate us ever requiring that the bidders

1 actually present the information that underlies their  
2 bids to us. So I feel we've got adequate evidence on  
3 the bids, adequate evidence of what the actual costs  
4 will be.

5           With one -- and then regarding the  
6 standard costs, one thing I'm considering is adding  
7 to the costs of overhead construction, the \$691,344,  
8 that to me is somewhat convincing evidence of what  
9 the -- what the right-of-way costs are likely to be.  
10 And that number comes from both witness Webber and  
11 witness LeFevre, and it's particularly specified in  
12 witness LeFevre's rebuttal testimony. And so that  
13 would be one thing that I would ask my fellow board  
14 members to consider as we determine what -- what the  
15 excess costs will be that we find in this matter. So  
16 those are my thoughts at this stage.

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

19           I'd like to ask you just one clarification  
20 question, if you don't mind. Is that okay with you?

21           MR. DAVID CLARK: Yeah, sure.

22           CHAIRMAN THAD LEVAR: So does your final  
23 statement on easement values -- and I know where  
24 you're getting that number from -- are you saying  
25 that you're convinced and ready to make a finding

1 that that easement costs would not apply to the  
2 underground project? I mean we have some verbal  
3 representations of donations of easements. Is that  
4 evidence sufficient to you to say that we think that  
5 cost should apply to the overhead project but not to  
6 the underground project?

7 MR. DAVID CLARK: Well, I guess that's the  
8 question I'm raising. I -- I'd be inclined to make  
9 that judgment and to -- for the purpose of  
10 determining what the excess cost is to accord that  
11 representation that's been made to us, the benefit of  
12 the doubt for lack of a better phrase.

13 MR. GLENN WRIGHT: This is Glenn Wright  
14 --

15 CHAIRMAN THAD LEVAR: This is --

16 MR. GLENN WRIGHT: Go ahead.

17 CHAIRMAN THAD LEVAR: No, go ahead, Mr.  
18 Wright.

19 MR. GLENN WRIGHT: Yeah, I think I agree  
20 with that analysis. And in any case if they go  
21 underground and incur additional right-of-way costs,  
22 that would be in the true-up.

23 CHAIRMAN THAD LEVAR: Thank you. That's  
24 the point -- I was going to make the same point, Mr.  
25 Wright, so thank you. The true-up does give us some

1 wiggle room on easement values.

2 MR. DAVID CLARK: So that's why I feel  
3 like in fairness I would give the benefit of the  
4 representations that have been made to us to the --  
5 to the city at the outset at least.

6 CHAIRMAN THAD LEVAR: We're using the  
7 six -- oh, go ahead, Mr. Clark -- I mean Mr. White.

8 MR. JORDAN WHITE: Oh, I apologize. Just  
9 a question for clarification. So you're suggesting  
10 that if we give them the benefit of the doubt, that  
11 you would reduce the delta between the actual and  
12 excess costs by the \$600,000? In other words the  
13 ultimate -- you know, whether it's through however  
14 they receive the funding, it would just be reduced by  
15 that amount, and then it would be trued-up at a later  
16 time? Is that what you're suggesting is the 600,000  
17 plus?

18 MR. DAVID CLARK: Right, that's -- I'm  
19 assuming the true-up would allow any final  
20 adjustments up or down to be made. I would give the  
21 benefit of the evidence that we've received on --  
22 from Mr. Webber with respect only to the properties  
23 that are actually impacted physically by the  
24 construction. I think there were nine. And so I  
25 would give that benefit in our initial assessment of

1 excess costs to the city. And I'm asking we consider  
2 that at least.

3 CHAIRMAN THAD LEVAR: You're suggesting  
4 the 691,000 number?

5 MR. DAVID CLARK: Correct. There are two  
6 numbers in Mr. LeFevre's testimony, and I think we  
7 received evidence that one of the properties was  
8 duplicated in the analysis. And so I'm -- the number  
9 of 691,344 is the one that I think is most  
10 applicable.

11 CHAIRMAN THAD LEVAR: Well, it seems like  
12 we were approaching board consensus on most issues.  
13 It's not clear yet if we have board consensus on that  
14 easement issue. Mr. Wright kind of indicated some  
15 thoughts on that, and I think I would not have any  
16 opposition to including that in our order, that  
17 estimate of right-of-way costs.

18 But are there any thoughts from other  
19 board members on that easement issue or where our  
20 discussion has been generally?

21 MR. DAVID CLARK: Could I just add one  
22 other thing. I also wanted to express on that  
23 question of easements that I do not think that the  
24 statute requires, nor would there be any reasonable  
25 way for us to require Rocky Mountain Power to present

1 the actual costs or to identify the actual cost of  
2 the rights-of-way at this -- at this juncture. And I  
3 simply wanted to state that for the record.

4 MR. JORDAN WHITE: With respect to Chair  
5 LeVar's question, in light of the fact there's a  
6 true-up option, I don't have an issue with the  
7 easement adjustment suggested by Mr. Clark.

8 MR. TROY FITZGERALD: I have a similar  
9 thought process there. I'd be fine including that.

10 CHAIRMAN THAD LEVAR: Okay. I think we're  
11 approaching a board consensus. I'm not entirely  
12 clear we have a consensus on a construction date that  
13 would trigger the payment 30 days in advance. The  
14 discussion of the CUP language has led me to believe  
15 I don't think that is as crucial as we thought since  
16 the CUP -- if the CUP requirements are not met  
17 within, I think as we're discussing, 15 days after  
18 the issuance of our order, Rocky Mountain Power would  
19 have the right to move ahead with building the line  
20 above ground.

21 But in the event that the CUP conditions  
22 are all met within 15 days after our order, I think  
23 we still need to set what's the construction  
24 commencement date that would trigger the payment  
25 requirement under the statute 30 days in advance of



1 that date. So we've had some discussion of March 1st  
2 and some discussion of whether that should be sooner.

3 Do any board members want to bore down on  
4 that issue any farther?

5 MR. JORDAN WHITE: Just to be clear, are  
6 you suggesting because maybe this is -- that that  
7 date would be March 1st of 2021? I'm assuming that's  
8 what you had in mind. In other words, they would  
9 have to -- the city would have to provide -- help me  
10 understand that. I guess what my real question is  
11 under what you're suggesting, when would the  
12 construction commence of the project?

13 CHAIRMAN THAD LEVAR: Well, if we were to  
14 use a March 1, 2021 number, that would be the  
15 construction commencement number -- date, and Midway  
16 City would be required to pay the excess costs to  
17 Rocky Mountain Power 30 days before that date.

18 Now, I think this issue was less  
19 significant than I was originally thinking because I  
20 was not remembering that the CUP required funding to  
21 be secured. So if the CUP requires the funding to be  
22 secured within 15 days after the costs are presented,  
23 which we're going to be doing in our order, you know,  
24 on one hand I don't think the construction  
25 commencement date is as crucial.

1           On the other hand I'm not sure a March 1,  
2 2021, date prejudices much because Midway City is  
3 still going to have to secure the funding. So maybe  
4 it doesn't make sense because I don't know if a bond  
5 election is even possible considering that CUP  
6 language that says the funding has to be secured.

7           So I guess I'm saying I don't know -- I'm  
8 not sure I know what I want to do with this  
9 construction commencement date. I'm -- I'm in a  
10 cloud on it.

11           MR. JORDAN WHITE: I'm speaking a  
12 little -- I'm thinking out loud here for a second.  
13 So essentially what we're talking about or what we're  
14 proposing or kind of circling around a potential  
15 motion here is that we would allow the city to secure  
16 funding, you know, by date certain, say, you know,  
17 15 days from the date of issuance of the order, et  
18 cetera. But your -- but your question is in  
19 conjunction with that, do we need to set a date for  
20 commencement of construction. I don't know if it --  
21 you know potentially as a -- we could provide a  
22 no-later date that it was somewhere around after that  
23 two weeks date.

24           Well, hold on, let me think here for a  
25 second. Because if they were to secure the funding,

1 what would that mean? It's almost like we need a  
2 condition subsequent based upon -- well, there's two  
3 different routes here. If the funding is not secured  
4 by, you know, the 15 days after the order is issued,  
5 the construction date will be -- the commencement  
6 date will be that date, the date of the failure of  
7 the conditions.

8 If they do secure the funding, that's the  
9 question I think we need to focus on. If they were  
10 to be able, within the 15 days of issuance of the  
11 order, to secure the funding, do we need to provide a  
12 date for commencement of construction under that  
13 scenario?

14 CHAIRMAN THAD LEVAR: I agree with that.  
15 And I think Mr. Fitzgerald near the discussion of  
16 this issue earlier on deliberation suggested 60, 90,  
17 or 120 days after that 15-day expiration period. Am  
18 I remembering your suggestion correctly, Mr.  
19 Fitzgerald?

20 MR. TROY FITZGERALD: Again looking at the  
21 conditional use permit, Midway would be seeking Heber  
22 Light & Power board approving issuance of bonds. I  
23 think they would need time to do that, and that's  
24 going to take I think a minimum of 90 days. You're  
25 suggesting from the statute that they need to tender

1 that payment 30 days before the commencement date.  
2 So if we were to give them reasonable opportunity to  
3 complete what they were anticipating back in  
4 December, I do think they would need a minimum of  
5 120 days from the date, the commencement date you're  
6 calling it, so that they could tender 30 days before  
7 that. That's an extremely tight timeline though for  
8 obtaining bond funding in any circumstance, and I  
9 think we've heard from counsel saying the same thing.  
10 If you pass a bond election in November, to get the  
11 actual funding by January or February is very, very  
12 tight. And we're in very interesting times where I  
13 would say the bond markets are not functioning at top  
14 speed.

15           So with all of that out loud thinking,  
16 maybe what I would suggest is 180 days for the  
17 commencement time from now or we could pick that  
18 date. But that should give the parties enough time  
19 to do everything they've contemplated in here of  
20 actually tendering the money. But Rocky Mountain  
21 Power could proceed in 15 days knowing which  
22 direction that's happening, and Midway would have  
23 their opportunity to determine which direction they  
24 want to go as well.

25           CHAIRMAN THAD LEVAR: Thank you, Mr.

1 Fitzgerald.

2           Listening to your reasoning, I'm  
3 comfortable with 180 days. Were you suggesting  
4 180 days from the date of the order or 180 days from  
5 the expiration of the 15 days after the order? I'm  
6 fine with either.

7           MR. TROY FITZGERALD: To keep it  
8 consistent I would say 15 days after the date of the  
9 written order.

10           CHAIRMAN THAD LEVAR: And then 180 days  
11 after that?

12           MR. TROY FITZGERALD: Correct.

13           CHAIRMAN THAD LEVAR: I could support  
14 that.

15           MR. JORDAN WHITE: I could support that  
16 too.

17           Ultimately just to piggyback on what Mr.  
18 Fitzgerald said, I think ultimately having some  
19 certainty is probably what's critical at this point,  
20 whether it's under or above ground, just knowing  
21 something in a reasonable manner. So I would support  
22 that.

23           MR. GLENN WRIGHT: I support that also.

24           MR. DAVID CLARK: I agree.

25           CHAIRMAN THAD LEVAR: Well let me ask the

1 board this: Do we have enough clarity of discussion  
2 that we could ask a motion asking the Public Service  
3 Commission staff to draft an order consistent with  
4 this discussion, or do we need to outline our  
5 decisions a little more specifically to direct that  
6 order drafting?

7 I'm sure if our attorney were on the line  
8 he would beg us to give a little more specificity to  
9 our motions.

10 MR. REICH: One clarification from Rocky  
11 Mountain Power, do you mean by commencement of  
12 construction actually shovels in the ground, or are  
13 we talking about securing right-of-way and  
14 engineering as defined in the statute?

15 CHAIRMAN THAD LEVAR: I think we would be  
16 using the term as is defined in the statute, and we  
17 would not be defining it any further but giving a  
18 date attached to that statutory term.

19 MR. REICH: Then the concern of Rocky  
20 Mountain Power is if the money is not tendered for  
21 180 days, we cannot start engineering, we cannot  
22 start ordering materials or obtaining right-of-way  
23 until the money is tendered.

24 CHAIRMAN THAD LEVAR: Right. And the  
25 statute requires the money to be tendered 30 days

1 before that construction commencement date. I think  
2 that's also a statutory issue that we can't modify.

3 MR. MORRIS: Mr. LeVar, I had a question  
4 on the true-up.

5 CHAIRMAN THAD LEVAR: I guess -- I guess  
6 we're starting to entertain questions from parties.  
7 Although, you know, I don't want to turn this back  
8 into more closing statements. So this is -- I think  
9 the board is close to making a motion and coming to a  
10 decision and directing an order. But if there are  
11 some limited questions from parties, since we've  
12 already had some from Rocky Mountain Power we need to  
13 continue allowing it. But there needs to be some  
14 reasonable limit on how far we go there. So, Mr.  
15 Morris, go ahead.

16 MR. MORRIS: Please let me know if I go  
17 too far. It's just a simple question. It seems that  
18 the board is inclined to proceed with an  
19 understanding that there will be a true-up at some  
20 point. And I just want to make sure I understand  
21 that the true-up would benefit all -- either party.  
22 It could go up or down. And that, for example, if  
23 the actual -- if the easement costs of going overhead  
24 turn out to be more than what the board believes they  
25 are today, that that would correspondingly reduce the

1 amount of money Midway would ultimately be  
2 responsible to pay to go underground. Was that  
3 clear?

4 CHAIRMAN THAD LEVAR: Well, I think as a  
5 practical matter if the line is ultimately  
6 constructed overhead, then Midway is not paying  
7 anything to Rocky Mountain Power and all of this  
8 becomes moot.

9 MR. MORRIS: Yes.

10 CHAIRMAN THAD LEVAR: I think our board  
11 discussion is we're going to make as we determine  
12 what we consider the costs of 691,344 difference  
13 between that's the amount we're estimating the  
14 easements for the overhead -- the overhead line would  
15 cost. We're assuming -- we're giving the benefit of  
16 the doubt that these easements costs are not going to  
17 be imposed on the undergrounding of the line. And if  
18 it's undergrounded and if Midway pays for the  
19 undergrounding, then there's a true-up if that  
20 assumption becomes incorrect as the process moves  
21 forward.

22 But going the other direction, if it's  
23 overhead personally I don't see how the true-up  
24 applies because in that scenario Midway is not paying  
25 Rocky Mountain Power anything.



1 MR. MORRIS: No, that's exactly my  
2 understanding. I'm not concerned about going  
3 overhead. That will just roll out the way it will.  
4 But if it goes underground and the board determines  
5 preliminary at least that there's a \$691,000 delta on  
6 actual cost, but in other words would Midway have an  
7 opportunity to show that the board came in light on  
8 that and show that if it had gone overhead the cost  
9 would have been "X" and if it were more than the 691,  
10 would that allow for a reduction in the amount that  
11 Midway ultimately has to pay?

12 CHAIRMAN THAD LEVAR: You know, you're  
13 asking the board a question. I'm happy to let other  
14 members weigh in. I think the board would certainly  
15 have the ability to hear any disputes between the  
16 parties if it proceeded to that party and there was a  
17 dispute over the easement values, that issue could be  
18 brought to the board if it's not able to be resolved  
19 between the parties.

20 But --

21 MR. MORRIS: Okay.

22 CHAIRMAN THAD LEVAR: -- I'm not sure we  
23 would in our order at this point anticipate any of  
24 that dispute resolution down the road.

25 But if other board members see it

1 differently, please weigh in.

2 MR. JORDAN WHITE: Maybe I misunderstood  
3 the question. But I guess to me it's just a simple  
4 that he would reduce the estimated excess costs, in  
5 other words the delta. So I guess I'm just trying to  
6 wrap my head around, Mr. Morris, when you're looking  
7 for this to be resolved. To me it's just the amount  
8 of money that would have to be raised openly if it  
9 was off. That's what it would be trued-up down the  
10 road with the final construction costs, et cetera. I  
11 guess I'm just trying to understand what you're  
12 suggesting at this point of how that would look.

13 MR. MORRIS: So what I would be interested  
14 in seeing in the order is an opportunity for Midway  
15 down the road to show that \$691 [sic] was not enough  
16 of a delta to offset the difference between the two  
17 numbers. And as long as the order doesn't preclude  
18 Midway from having that opportunity, I guess I don't  
19 mind. And Rocky Mountain would have a corresponding  
20 right, I suppose, to suggest that it shouldn't have  
21 been that much, the 691. Fair is fair. But I would  
22 hope that a true-up would be available to both  
23 parties to move the number up or down depending on  
24 what that ultimate easement number should be.

25 MR. REICH: This is Bret Reich with Rocky

1 Mountain Power. If I can respond to that.

2           The 691,344 is the estimated standard cost  
3 for the right-of-way on the overhead line is what I  
4 think the board discussion has been. And the  
5 discussion was to fix that cost, the 691,344, as the  
6 estimated standard cost of the overhead line. I  
7 think there's a little bit of confusion about the  
8 true-up. The true-up would only come into play if  
9 the line goes below ground. And even if there were a  
10 true-up, that \$691,000 would never be trued up. I  
11 mean you're saying that's going to be a fixed cost.  
12 You're accepting that as the estimated cost of  
13 right-of-way. So that number is going to go into the  
14 construction costs of 1.8 million for a combined of  
15 2.5 million. That's going to be the estimated  
16 standard cost of building the project overhead. So  
17 if we go ahead and go to the underground line, if  
18 Midway City raises the money, if they get approval  
19 from Wasatch County, and they pay the money in  
20 whatever timeframe the board submits, then the  
21 true-up provision would be on the amount that they  
22 pay and the amount the project actually ends up.

23           And that fixed right-of-way cost of  
24 691,344 would be set. It wouldn't be subject to any  
25 kind of alteration. At least that's what I heard the

1 board say, and that's what I thought they intended.

2 MR. MORRIS: And my -- my concern about  
3 that is I'd be concerned that this board would fix an  
4 estimate. I mean the board could just as easily fix  
5 it at 27,000 or 8 million. But it ought to be  
6 subject to a true-up at some point and not that --  
7 that an estimate not be fixed today. That would be  
8 my request.

9 CHAIRMAN THAD LEVAR: Okay, thank you. I  
10 think we've heard the parties' positions on this. It  
11 doesn't change -- take me very far from where I was.  
12 And I think I can't see it any differently from the  
13 way Mr. Reich described. If we set the standard  
14 cost, including that 691,000, and then if the line is  
15 built above ground -- I'm sorry, underground, if it's  
16 undergrounded, then we would true-up the actual  
17 easement costs. But if it's built underground, I  
18 can't envision any scenario where the estimate of  
19 what it would have cost to get easements above ground  
20 could ever be in dispute at that point. I mean I --  
21 I think that's a hypothetical that I can't imagine.  
22 You know, if the line is built underground, there  
23 will never be actual evidence of what the easements  
24 would have been to build it above ground. So I think  
25 we're talking in impossible hypotheticals, at least

1 in my view.

2 Let's come back to the board. Are we  
3 ready for a board motion?

4 MR. DAVID CLARK: Let me just say that I  
5 did not intend the identification of the right-of-way  
6 component of actual costs to be fluid. I intended it  
7 to be fixed. And the way you've described, Chair  
8 LeVar and Mr. Wright, the true-up to work is what I  
9 envisioned in my proposal.

10 CHAIRMAN THAD LEVAR: Thank you, Mr.  
11 Clark. That's helpful.

12 If any board members see that differently,  
13 please speak up.

14 MR. GORDON: Commissioner LeVar, just one  
15 short clarification. Is there going to be a  
16 surcharge included in the above-ground costs?

17 CHAIRMAN THAD LEVAR: We have not had any  
18 board member advocate for that at this point. I'll  
19 state to the board, my view is that the surcharge was  
20 established by evidence that that's Rocky Mountain  
21 Power's costs for managing their bid process and  
22 bidding it out. And I think we have evidence from  
23 their witness that those costs don't apply to a  
24 self-build above ground. That's my view. If any  
25 other board members see it differently, that's also

1 an appropriate item for discussion.

2 MR. JORDAN WHITE: I'm just assuming, but  
3 again maybe I'm mistaken here, but the overhead costs  
4 are part of whatever construction costs of Rocky  
5 Mountain Power. That's their standard -- part of  
6 their standard construction costs. I guess I just  
7 don't understand if you're wondering whether they're  
8 going to extract that from the bid. I don't -- that  
9 doesn't make sense to me. There will be an overhead  
10 cost as part of the construction costs, but maybe I'm  
11 misunderstanding that question.

12 CHAIRMAN THAD LEVAR: Well, Mr. White,  
13 maybe I can clarify. I think Mr. Gordon was asking  
14 about there was a -- I think it was in the  
15 neighborhood of 275-ish -- I don't have the dollar in  
16 front of me -- surcharge that Rocky Mountain Power  
17 was putting on the cost of the bids, adding onto the  
18 bids for their cost of managing the bids, and they  
19 did not include similar costs in the standard costs  
20 for the overhead lines that they would not be bidding  
21 out that they would be doing it themselves.

22 Mr. Gordon, am I referring to the same  
23 thing you're referring to?

24 MR. GORDON: Yes. And my understanding  
25 was they would still have those costs if they were

1 going above ground. So I'm just asking if that's  
2 something that the board wants to consider including  
3 in the above ground costs.

4 CHAIRMAN THAD LEVAR: Mr. White, does that  
5 clarify anything for you?

6 MR. JORDAN WHITE: Yeah, thanks for the  
7 clarification. So, yeah, I stand by where your  
8 position was, Chair LeVar.

9 CHAIRMAN THAD LEVAR: Any further board  
10 discussion of that issue?

11 Any other board discussion generally or a  
12 motion from any board member?

13 You know, I'll go ahead and make a motion  
14 that the board direct the staff of the Public Service  
15 Commission to draft an order to be issued no later  
16 than May 8th consistent with the board discussion  
17 today. Any discussion or second to that motion?

18 MR. DAVID CLARK: This is Dave Clark --

19 MR. GLENN WRIGHT: Glenn Wright, second.

20 CHAIRMAN THAD LEVAR: So we had Mr. Clark  
21 and Mr. Wright speaking at the same time. Why don't  
22 we go to Mr. Wright first.

23 MR. GLENN WRIGHT: I will second that.  
24 This is Glenn Wright.

25 CHAIRMAN THAD LEVAR: Okay, thank you.

1 Mr. Clark?

2 MR. DAVID CLARK: I vote yes.

3 CHAIRMAN THAD LEVAR: Okay. Any further  
4 discussion before we continue with voting on the  
5 motion?

6 I'm not hearing any discussions, so Mr.  
7 Clark voted yes.

8 Mr. Fitzgerald?

9 MR. TROY FITZGERALD: I vote yes.

10 CHAIRMAN THAD LEVAR: I vote yes. This is  
11 Thad LeVar.

12 Mr. White?

13 MR. JORDAN WHITE: I vote yes.

14 CHAIRMAN THAD LEVAR: Thank you.

15 Mr. Wright?

16 MR. GLENN WRIGHT: Yes.

17 CHAIRMAN THAD LEVAR: Okay. Do any board  
18 members have any issues that we need to address  
19 before we adjourn?

20 I'm not hearing any. I just want to say  
21 to all participants, thank you for your participation  
22 in this difficult hearing. The issues weren't  
23 simple, and the circumstances of doing this  
24 telephonically gave all of us some challenges. I  
25 appreciate everyone's help in doing this. I think



1 everyone has been as accommodating to the realities  
2 that we were facing with the timing of this hearing.  
3 Thank you for everyone and their participation. I  
4 want to say thank you to the court reporter who was  
5 very helpful and the Public Service Commission staff  
6 who made sure we got this streamed and available to  
7 you to the public. And thank you to the board  
8 members, particularly those who were not associated  
9 with the Public Service Commission who are donating  
10 your time from very busy lives to do this. With  
11 that, we're adjourned.

12 (Concluded at 12:08 p.m.)

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