REPORT OF ACTION
of the
Midway City Council

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

Action: Approved with Conditions

Date of Action: 17 December 2019

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

We accept the staff report.

We accept the following findings:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

AND

b) the required minimum in "donation" fund dollars

AND

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

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

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

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

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

Second: Council Member Van Wagoner seconded the motion.

Discussion: None

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

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

Celeste Johnson, Mayor

Wasatch County
Planning Commission

Report of Action

11 July 2019

ITEM #1 – Heber Light & Power and Rocky Mountain Power request a conditional use permit to rebuild and extend a transmission line and construct a new substation. The transmission line extension portion of this permit application begins on the existing transmission line on Old Highway 40, approximately 2 miles south of the Jordanelle Dam, and extends south 1.6 miles connecting onto the existing transmission line on Highway 40 approximately 0.8 miles south of the Highway 40/32 Interchange. The transmission line extension begins again at approximately 950 North and Highway 40 and runs 1.6 miles west and south, following the planned bypass road corridor, to the intersection of approximately 1200 West and Highway 113. The rebuilt transmission line portion of this permit application follows the existing transmission line on 1200 West, It continues south for approximately 0.25 miles. A new line would then go west along the fence line for approximately 700 feet. The line would then run from a proposed new substation located at 1465 West 650 South on the south side of 650 South. From that point a rebuilt line would run west approximately 2.1 miles ending at Highway 113, then again from the County portion of Wards Lane and 600 West and run 0.5 miles north ending at the Midway Substation located west of the cemetery in Midway City. The structures and poles will range in height from 75-90' with dead end poles ranging in height from 90-110'. *CONTINUED FROM THE JUNE 4th, 2019 MEETING TO THE JULY 11th, 2019 MEETING.*

Commissioner Smith was present as Chair.

STAFF PRESENTATION

The Staff Report to the Planning Commission provides details of the facts of the case and the Staff's analysis, conclusions, and recommendations. Key points addressed in the Staff's presentation to the Planning Commission included the following:

- Doug Smith presented the report with proposed findings and conditions.

CONCERNS RAISED BY PUBLIC

Any comments received prior to completion of the Staff Report are addressed in the Staff Report to the Planning Commission. Key issues raised in written comments received subsequent to the Staff Report or public comment during the public hearing included the following:

- Tracy Taylor stated that she believes the application is substantially different the substation and power lines. Explained that the comments were closed and that the previous notice did not have a specific location. Stated that the contract between RMP and HLP was concerning.
- Richard Doxey with Nymphas Murdock LLC. Thanked the commission for continuing the item. Was pleased with some of the things proposed. Was concerned about being specific on landscaping and height of trees at full growth should be 30-40 ft. Showed previous substation plan. Wanted to move the station to the north. Also concerned about the substation pole heights. Was concerned the size foot print was 8-10 acres in size. Stated that he believes the footprint is much larger. Wants the area to stay residential/agricultural. His ultimate question was what are the mitigating conditions the power company will commit to. Just wants the law followed and the greenery is better than the wall.
- Laren Gurtch. Presented list of questions in December meeting, still not addressed. Concerned about noise from substation, on poles. These questions must be addressed by this commission. Is opening this meeting for public hearing sufficient since it wasn't noticed as open? Was concerned about the length and number of poles,

wetland areas and why isn't this following an established road? Fundamental question he wants answered is why the easements question hasn't been answered. Wants a condition added that the applicant does not have any eminent domain rights. Wants limits put on that protect owners from additional eminent domain rights.

- Herb Burnett lives on 650 South explained that he thinks that the power lines would create noise and have some impact on the community on those lines. Believes there are real impacts both noise and financially. Just wants the commission to know that there are concerns and just doesn't want facts doesn't want things hidden.
- Tracy Taylor spoke again stating that she feels this process is all wrong and that it wasn't noticed properly so people are not here to comment.

APPLICANT RESPONSE

Key points addressed in the applicant's presentation to the Planning Commission included the following:

- Harold Wilson and Benjamin Clegg presented for Rocky mountain power. Mr. Clegg explained that they are planning on one wood and one smaller metal pole at the 113 crossing. Nicole XXX the transmission engineer for Rocky Mountain Power explained that they could try to make the crossing poles equidistant as possible from the roadway. Cited the current plan and had an exhibit that showed the current plans. Showed they were 100 feet or so away. She stated they could commit to 75' from the fence line at that crossing on the north and south.
- Went through a presentation that clarified the substation issues and requirements. Explained what zone they were in and that they were a conditional use. Stated that they are under the coverage numbers and they are at 14.5% and the requirement is 20%. Explained the acreage coverage for each part of the property.
- Commissioner Jewkes asked what the plans for the house are on the property. Applicant stated they haven't yet decided. May split off the house property later. Remainder would still comply with coverage requirements.
- Applicant stated they are complying with the intent of the landscaping code though they don't believe it applies to them. They created a landscape plan which they prevented. Looked at the berm and landscaping option as well as a concrete wall option. Clarified it is in one or the other.
- Went over state statute on conditional uses. Stated they met all county conditional use requirements as well as state requirements. Stated they met county code. Stated that they believe they have mitigated all the issues on the site as far as required.
- Commissioner Jewkes asked about the heights of the equipment in the substation. Wanted them to clarify their position that the power poles that are dead ends are poles and not structures or buildings.
- Commissioner Hendricks asked about the siting on the substation and that the bypass and Heber City are on the East. Harold explained that they will try to go the East as much as they can.
- With questions from commissioner Jewkes addressed how they searched for a site for the substation. Harold explained how they were really pursuing other properties but couldn't find a location until this owner was willing to sell. Didn't think it was fair to characterize the effort that way.
- Applicant stated they didn't believe there were any health requirements.
- Commissioner Zuercher asked if the non-spectral wire was being used near the Labrum dealership Applicant stated that it was.

PLANNING COMMISSION DISCUSSION

Key points discussed by the Planning Commission included the following:

- Commissioner Hendricks wanted to clarify some of the findings and conditions. What does condition 4 mean and how can they be specific on materials and setbacks. Clarified that he will be asking about that in the applicant presentation. Asked about finding number 4 and applicant will need to find that. Finding 8 about fencing. Clarified the berm will still have a safety/security fence. Asked about the centering on the lot.
- Commissioner Jewkes asked about the coverage and height requirements and if the staff was comfortable with those. Doug Smith clarified that we believe they do meet some, but the applicant will need to explain how they meet that.

- Chairman Smith asked Jon Woodard about the State Facilities Review Board and how that works. Jon explained how that board works and that any result we get through here would be better than going that route.
- Commissioner Jewkes has some questions. Asked about the letter sent to the County Attorney and if that was responded to. Jon was not sure what Scott did about this. Commissioner Jewkes wanted to know about Tracy Taylor's other concerns. Jon stated that the application could change as it has without a new application, also stated that a specific address is not required for noticing. Adam Long General Council for Heber Light and Power stated that HL&P are not in the business of owning easements or property, they're in the business of delivering power. The arrangement benefits HL&P and RMP.
- Commissioner Hendricks stated that the contract issues aren't in our purview. Commissioner Jewkes agreed with that.
- Commissioner Jewkes had questions about how high the poles were in the substation. Applicant stated that they would be 65'.
- Commissioner Hendricks outlined how the process has worked well so far and people have had many opportunities to comment.
- Commissioner Jewkes explained that we just need to reasonable mitigate the issues.
- The commission discussed possible conditions and how they could clarify and make them better.

MOTION - Lines portion (1a)

Commissioner Jewkes made a motion to approve the Conditional Use Report with all the findings and conditions with the following exceptions:

The fewest number of poles be used with heights at the higher end of the range.

The crossing at 113 use wood poles unless a metal one is required with 75' setbacks from the fenceline along the road

Commissioner Zuercher seconded the motion.

VOTE (5 TO 0)

Michael Smith	**AYE**	NAY	ABSTAIN	Mark Hendricks	**AYE**	NAY	ABSTAIN
Charles Zuercher	**AYE**	NAY	ABSTAIN	Joshua Jewkes	**AYE**	NAY	ABSTAIN
Kimberly Cook	**AYE**	NAY	ABSTAIN				

MOTION - Substation Portion

Commissioner Jewkes made a motion to approve the substation with the findings and conditions in the report with the following exceptions:

Trees at planting must be 6' and 35' at maturity unless it interferes with operation and safety of the station.

Efforts should be made to move the station to the north and locate it properly. The setback to the South should be at least 100'.

Commissioner Hendricks seconded the motion.

VOTE (5 TO 0)

Michael Smith	**AYE**	NAY	ABSTAIN	Mark Hendricks	**AYE**	NAY	ABSTAIN
Charles Zuercher	**AYE**	NAY	ABSTAIN	Joshua Jewkes	**AYE**	NAY	ABSTAIN
Kimberly Cook	**AYE**	NAY	ABSTAIN				

FINDINGS / BASIS OF PLANNING COMMISSION DETERMINATION

Additional Report of Action for item previously continued after a public hearing or other discussion: 06/04/2019

The motion includes facts of the case, analysis, conclusions and recommendations outlined in the Staff Report, with any changes noted: Planning Commission determination is generally consistent with the Staff analysis and determination.

1. 16.07.03 of the Wasatch County code lists electric substations as a conditional use.
2. The land use authority shall approve Conditional uses if reasonable conditions to mitigate negative effects can be imposed.
3. The planning Commission is the land use authority for conditional uses.
4. The applicant has demonstrated to the commission that the proposal complies with Section 16.23.07 of the current Wasatch County Code related to Conditional Uses and the impacts have been substantially mitigated by the specific conditions listed.
5. The proposal complies with Wasatch Code Chapter 16.07 (RA-5).
6. The proposal complies with Wasatch Code 16.07.09 requiring the height of structures to not exceed 35' above natural grade, noting that the conditional use of power poles over 49 feet in 16.07.03 is a specific provision of code for power poles heights that governs over the general limitation on the height of dwellings and structures, and which interpretation is in accordance with how the county has approved power poles throughout the county.
7. The proposal complies with Wasatch Code 16.07.12 requiring buildings and structures to not cover more than 20% of the area of the lot or parcel of land.
8. The landscape plan presented, if approved by the commission, provides a mixture of evergreen and deciduous trees that, along with the minimum 5' berm, will provide the necessary screening to mitigate the detrimental effects of the ground mounted equipment.
9. There are no known zoning violations on the property at this time.

CONDITIONS

Power Lines:

1. The planning commission should consider which of the following is more appropriate:
   a. The applicant should keep the heights of the power poles as low as possible. This may require a higher number of poles in order to keep the power lines at minimum required heights.

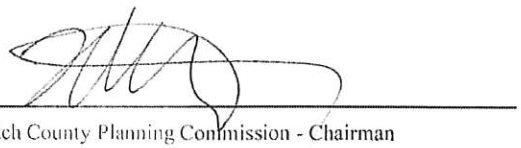
   OR

   b. The applicant should install the fewest number of poles possible. This may require heights at the high end of the requested range in more places, but would result in an overall lower number of poles. The applicant would still not go higher than necessary to meet safety and code requirements.
2. The applicant demonstrates that the proposal can satisfy the necessary findings outlined in 16.23.07 and with mitigating conditions be an acceptable use.
3. Distribution lines through the more noticeable parts of the system must be buried. A clear commitment by the applicant for specific areas and lengths should be determined.
4. Demonstration and clear understanding of the Highway 113 crossing at Southfield road with particular attention to setbacks from the highway for poles and consideration of wood poles and not large metal terminus poles.
5. All poles through straight portions should be wood with corner poles being rusted steel.
6. The maximum height limit for power poles is 110' on corner and end poles and 90' on all other poles.
7. The lines used should be non-spectral or low-reflective lines so as to reduce visual impact.
8. All Horizontal bars including distribution lines, where used, shall be rusted and not galvanized.
9. In all areas where two lines exist, Rocky Mountain Power and Heber Light & Power shall co-locate lines.

Substation:

1. The landscape plan must specify the mixture of deciduous and evergreen trees with species and sizes placed strategically to buffer the more impactful areas of the sub-station.
2. ~~The landscape plan approved should have, at a minimum, 110 trees and sizes as per code section 16.21.10~~ which requires trees to be 2" caliper and 6' in height at time of planting.
3. The berming shall be a minimum of 5' in height as shown on the plans or as determined by the planning commission.
4. Any expansion of the use would require submittal of another conditional use application.
5. Any lighting installed on the substation property will need to be dark sky compliant with full cut-off.
6. Coverage of the site shall be in compliance with 16.07.12 including expansions.
7. Consideration of having the substation setbacks equal distances from the south, east and west property lines.

8. All Landscaping must be maintained in perpetuity.
9. Landscaping must be installed at the time of the construction of the substation.



Wasatch County Planning Commission - Chairman

The Staff Report is a part of the record of the decision of this item. Where findings of the Planning Commission differ from findings of Staff, those will be noted in this Report of Action. Official action of the Planning Commission on this item is subject to the approved minutes.