

- BEFORE THE UTILITY FACILITY REVIEW BOARD -

<p>ROCKY MOUNTAIN POWER, Petitioner</p> <p>vs.</p> <p>MIDWAY CITY, Respondent</p>	<p><u>DOCKET NO. 20-035-03</u></p> <p><u>ORDER ON PETITION FOR RECONSIDERATION AND STAY PENDING APPEAL</u></p>
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ISSUED: June 9, 2020

As Utah Code Ann. § 54-14-305 requires, the Utility Facility Review Board (“Board”) issued a written order on May 7, 2020 (“Order”), establishing the Actual Excess Costs<sup>1</sup> that Midway City (the “City”) must pay to require Rocky Mountain Power (RMP) to bury the Midway Segment<sup>2</sup> and determining the date by which construction must commence to avoid a significant risk of impairment to safe, reliable, and adequate utility service.

On May 21, 2020, the City filed an Emergency Petition for Reconsideration/Rehearing and Stay Pending Appeal of the Order (“Petition”). The Board conducted a telephonic hearing to consider the Petition on May 28, 2020.

At the May 28 hearing, having heard argument from the parties and subsequently deliberated on the record, the Board granted the Petition in part and denied it in part. The Board memorializes its findings and conclusions, which revise the Order as follows:

- (1) For purposes of calculating the Actual Excess Costs the City must pay to proceed with underground construction of the Midway Segment, RMP shall revise its

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<sup>1</sup> The Board uses “Actual Excess Costs” in the same manner as it did in the Order, *i.e.* pursuant to Utah Code Ann. § 54-14-203.

<sup>2</sup> The Board uses “Midway Segment” as it is defined in the Order at 1.

Standard Costs<sup>3</sup> to include the standard management surcharge of 7.5 percent that it imposes on similar construction projects.<sup>4</sup>

- (2) The Board finds the specifications RMP developed to solicit bids, at the City's request, to bury the Midway Segment were reasonable for the purpose of obtaining competitive bids under Utah Code Ann. § 54-14-203.<sup>5</sup>
- (3) Having found that RMP solicited competitive bids using reasonable, standard specifications in compliance with statutory requirements and that RMP received three responsive bids, the Board concludes it is not for the Board to dissect the individual contractors' bids to resolve the City's concerns about their responsiveness. The Board certainly has no authority to require the contractors to revise their bids nor does the law contemplate that the Board require RMP to attempt to negotiate revisions to bids based on the City's disagreement with them.
- (4) Having observed the law requires the Board to expeditiously adjudicate disputes to ensure they do not unnecessarily delay completion of essential projects<sup>6</sup> and having

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<sup>3</sup> The Board uses "Standard Costs" in the same manner as it did in the Order, *i.e.* pursuant to Utah Code Ann. §§ 54-14-202 and 203.

<sup>4</sup> This revision is in addition to the revision the Board ordered RMP to make concerning right-of-way costs in the Order. (Order at 10, ¶ 1.)

<sup>5</sup> The Board's Order found and emphasized that RMP employed its standard specifications and practices in designing the requirements it used to solicit bids. (*See* Order at 7, ¶¶ 15-16.) To the extent any ambiguity existed, the Board clarifies it does not assume the specifications were reasonable simply because they were consistent with RMP's standard practices. Rather, the Board finds substantial evidence demonstrates RMP's specifications were reasonable for the purpose of obtaining competitive bids to bury the Midway Segment independent of and in addition to their being consistent with RMP's standard requirements.

<sup>6</sup> *See* Order at 6 & n.16.

found that construction of the project at issue must commence by November 18, 2020 to avoid significant risk to the public's enjoyment of safe, reliable, and adequate utility service,<sup>7</sup> the Board declines to grant an administrative stay.<sup>8</sup>

(5) The Board affirms the Order and each of its findings, conclusions, and directives except as expressly stated herein.

DATED at Salt Lake City, Utah, June 9, 2020.

/s/ Thad LeVar, Chair

/s/ David R. Clark, Board Member

/s/ Glenn Wright, Board Member

/s/ Troy Fitzgerald, Board Member

Attest:

/s/ Gary L. Widerburg  
PSC Secretary  
DW#314192

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<sup>7</sup> *Id.* at 8-9.

<sup>8</sup> The Board understands the Utah Court of Appeals has already granted a temporary stay to the City pending the Board's resolution of the Petition and respectfully defers to the Court of Appeals as to the duration of its temporary stay and whether a stay pending final disposition is merited under Utah Code Ann. § 63G-4-405.

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Notice of Opportunity for Judicial Review

Judicial review of the Board's final agency action may be obtained by filing a Petition for Review with the Utah Supreme Court within 30 days after final agency action. Any Petition for Review must comply with the requirements of Utah Code Ann. §§ 63G-4-401, 63G-4-403, and the Utah Rules of Appellate Procedure.

CERTIFICATE OF SERVICE

I CERTIFY that on June 9, 2020, a true and correct copy of the foregoing was delivered upon the following as indicated below:

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