

ROCKY MOUNTAIN POWER

VS

MIDWAY CITY

Docket No. 20-035-03

TELEPHONIC

HEARING

May 28, 2020

ADVANCED REPORTING SOLUTIONS

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Telephonic Hearing
May 28, 2020

BEFORE THE UTAH FACILITY BOARD

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ROCKY MOUNTAIN POWER,)
)
 Petitioner,) Docket No. 20-035-03
)
vs.)
)
MIDWAY CITY,)
)
 Respondent.)
)

TELEPHONIC HEARING ON EMERGENCY PETITION

Taken on Thursday, May 28, 2020
at 12:30 P.M.

The Public Service Commission of Utah
160 East 300 South, 4th Floor
Salt Lake City, Utah 84111

Reported by: Kellie Peterson, RPR, CSR

A P P E A R A N C E S

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4 Board Member Troy Fitzgerald
5 Board Member Glenn Wright

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1 May 28, 2020 12:30 P.M.

P R O C E E D I N G S

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3 PRESIDING BOARD MEMBER LEVAR: We will begin
4 the transcript and take appearances.

5 So good morning. My name is Thad LeVar.

6 (Inaudible noise.)

7 PRESIDING BOARD MEMBER LEVAR: And someone
8 has their speaker on, and it's giving feedback from what
9 I'm saying. So if you're not speaking, please try to
10 keep you phone on mute while we are on today.

11 We are here with the Utah Utility Facility
12 Review Board, Docket 20-035-03, Rocky Mountain Power,
13 petitioner, versus Midway City, and we are here to
14 consider a motion filed by Midway City. It's their
15 emergency petition for reconsideration and hearing and
16 stay pending appeal.

17 Four board members have confirmed they're on
18 the call. All four board members have confirmed they're
19 on the call. I'm Thad LeVar. David Clark, Glenn Wright
20 and Troy Fitzgerald are also on this call.

21 So why don't we go to appearances next? The
22 motion today is filed by Midway City, so do we have
23 someone representing Midway City on the call?

24 MR. GORDON: Corbin Gordon and Joshua Jewkes
25 for Midway City.

1 PRESIDING BOARD MEMBER LEVAR: Okay. Thank
2 you.

3 Rocky Mountain Power?

4 MR. REICH: Bret Reich with Rocky Mountain
5 Power.

6 MS. GORDON: Heidi Gordon for Rocky Mountain.

7 PRESIDING BOARD MEMBER LEVAR: Okay. Thank
8 you.

9 Do we have anyone from Valley Wide Opposition
10 to Large Transmissions Line?

11 MR. MORRIS: Yes, Mark Morris is on,
12 representing VOLT.

13 MS. BRERETON: Elizabeth Brereton for VOLT.

14 COURT REPORTER: I'm sorry, could you
15 repeat --

16 PRESIDING BOARD MEMBER LEVAR: Okay. Thank
17 you.

18 COURT REPORTER: Wait, I'm sorry, Thad.
19 Could you repeat that name, please, for VOLT?

20 MS. BRERETON: Elizabeth Brereton.

21 COURT REPORTER: Thank you.

22 PRESIDING BOARD MEMBER LEVAR: Okay. Before
23 we begin and allow parties to start commenting on the
24 motion filed by Midway City, just a few preliminary
25 matters.

1 When we issued the notice of this hearing,
2 you know, once we received Midway's petition and we found
3 available times to notice up and schedule a board
4 hearing, we indicated that we would ask parties to
5 address initially whether the board has jurisdiction to
6 consider the appeal -- to consider the motion, not the
7 appeal, that has been filed with the Court of Appeals.

8 I hope all the board members have received
9 the order from the Court of Appeals that puts that issue
10 to rest. So we have been directed by the Court of
11 Appeals to rule on the motion.

12 So I think -- I think probably the issue of
13 jurisdiction is moot. And considering the things that
14 have happened since we noticed up this hearing, we had
15 also indicated that we would discuss, as a board, our
16 role in the appellate process. But considering that we
17 have been directed by the Court of Appeals to act on the
18 motion first, it seems to me it would be premature,
19 probably, for us to consider that second issue.

20 Considering that we have a motion in front of
21 us that would impact the direction any appeal would go, I
22 think -- I think discussing as a board -- personally, I
23 think discussing as a board what our role might be in the
24 event of an appeal that could or could not happen,
25 depending on the outcome of what we do on the motion, is

1 probably preliminary today. So I'm going to suggest to
2 the board members that we put off discussing what role
3 the board might play in an appeal to another day.

4 Do any board members object to moving forward
5 that way and letting today's hearing focus solely on
6 considering Midway's motion?

7 I will take the silence as concurrent from
8 board members. So I think that will be our sole issue of
9 discussion today, and we will let the parties address the
10 motion. I think since it's Midway's motion, we will let
11 them go first.

12 I will also take the prerogative to address
13 one preliminary matter -- well, it's not really
14 preliminary. It is substantive. And as I reviewed
15 Midway's petition and looked over the records and
16 recalled our deliberation when we issued our order, I
17 will go ahead and express my personal view that on the
18 issue of the surcharge, the capital surcharge for
19 financial costs for managing the project -- and as I
20 reviewed the transcript, particularly the April 21st
21 transcript on page 304 and 305, I will say it appears
22 preliminary to me that we may have made an error on not
23 adjusting the standard cost for the amount of the -- of
24 this surcharge.

25 And I recall that when we were in

1 deliberations, I think I was the one who was
2 misunderstanding the testimony of Mr. Myers here on page
3 304 and 305 of the transcript, and I would be glad -- I'm
4 sure we will discuss this as we move forward, but I just
5 wanted to say that at the outset, that I think -- I think
6 I was the one in deliberations who was misremembering or
7 incorrectly remembering Mr. Myers' testimony, as I've
8 read the motion and gone back in the transcript.

9 It looks like that is one area that we might
10 want to consider as a board revising our order with
11 respect to that surcharge.

12 But with those preliminary statements, do any
13 of the board members have any -- anything they want to
14 say or add before we let Midway briefly speak to their
15 motion?

16 Okay. We will give all of you opportunities
17 to ask questions as we move forward.

18 So we will move to Midway, if you want to
19 just -- we've all read you motion, but if you want to
20 give us any verbal highpoints from it, feel free to go
21 ahead.

22 MR. JEWKES: Thank you, Chairman. This is
23 Joshua Jewkes, and I'll briefly address the motion to
24 stay and for reconsideration.

25 I appreciate your acknowledgment at the

1 beginning. I think we are in agreement that there was an
2 error not including the surcharge. I think it's a pretty
3 simple calculation and something that can be fixed, so I
4 appreciate your willingness to look at that.

5 And everything we submitted to this board was
6 not meant as an attack on any -- any member personally or
7 the job that this board did. We appreciate what the
8 board did, and we know that this is a board that does not
9 meet often, and we know that it entails some personal
10 sacrifice by the board members. We do appreciate that.

11 We were primarily trying to preserve our
12 appellate rights, and as many of you know, during this
13 process, if you don't act quickly, rights can be waived.
14 And there are very serious time limits, and we were just
15 trying to comply with those.

16 Of course, after we received the written
17 order, it took us some time as a city -- it's not
18 something that a decision that can just be made
19 overnight. We had to have a public hearing. We had to
20 have deliberations among the council members, and
21 that -- we weren't able to do that until our regular
22 scheduled time, and that's why the deadlines were so
23 truncated.

24 And we filed this motion, asking for a
25 decision virtually the next day. We understand that

1 there are unusual circumstances. We wouldn't typically
2 do that, but we didn't feel like we had any choice but we
3 do appreciate what the board has done.

4 I think on the issue of the stay, it sounds
5 like the Court of Appeals has resolved that. As I read
6 their order, the stay is temporary. It would be in
7 effect until after this court has finally resolved the
8 motion for reconsideration or treat this primarily as
9 just a motion for reconsideration.

10 It may make sense for the board to enter its
11 own stay, if it feels that's necessary or wise. Perhaps
12 extending the stay a few days beyond whatever written
13 order the board might do on the motion for
14 reconsideration, just to make sure that the parties have
15 an opportunity to review it, potentially seek relief from
16 the Court of Appeals, if necessary.

17 Of course, if our motion for reconsideration
18 is granted, then there may not need to be an appeal, and
19 I think Midway may be in a position -- we would have to
20 speak with them -- to withdraw the appeal, but, of
21 course, that depends on the outcome of this motion.

22 I think our brief was pretty clear on this.
23 We submitted it quickly and then supplemented it with
24 some of the evidence that we had submitted to the Court
25 of Appeals. Hopefully, that evidence made it in the

1 record. I know that we have an obligation to marshal the
2 evidence, and our intent was to do so with all of the
3 evidence attached to our Court of Appeals filing. We ask
4 that the board just look at that to supplement what we
5 filed initially with the board.

6 There's really just four -- four errors that
7 we're referring to. One is the one you've already
8 mentioned and that's fairly simple. Similar to that
9 and -- but more important is what we see -- view as an
10 error in the bids themselves.

11 We -- upon reviewing the transcript, it
12 appears that it's undisputed, and even Rocky Mountain
13 acknowledged that two of the three bidders made pretty
14 substantial errors in calculating or giving their bids,
15 and the reason why they did is they -- they calculated as
16 needed to be buried about 1,600 feet of line that clearly
17 did not need to be buried.

18 Now, it is unclear why that error was made.
19 Mr. Myers did not know why. But two of three bidders
20 made this error, the same error. There may have been
21 some ambiguity in the specifications. Maybe it was a
22 rushed process. We can guess about that. The fact is,
23 those errors were made. I don't think there was any
24 dispute about that.

25 I think, in fact, Chairman Clark, if I

1 remember right -- sorry, Committee Member Clark
2 questioned the witness about this and why the error was
3 made. I'm not sure we got to the bottom of it, but this
4 is a significant error. It amounts to, and Mr. Myers
5 admitted, about 24 percent total increase for each of
6 those bids. And if you look at the numbers, that's
7 significant, especially in relation to the total amount
8 of the bid.

9 If you look at the lowest bid -- take just
10 Option No. 1. That's the shortest route, and that's the
11 one in the CUP that we believe has been elected by the
12 city council. In looking at Option No. 1, the lowest bid
13 was Contractor No. 17, and if you backed out the mistake,
14 which equals 24 percent, minus the overhead cost and
15 minus the contribution that VOLT is going to make, you
16 get down to around 6.3 million.

17 And, you know, the bid is at 12 million, and
18 under -- if that error is allowed to stay on, that means
19 that Midway has to raise north of 9 million to
20 make -- make an agreement to pay that cost and to come up
21 with that money in 120 days. And the difference between
22 9-plus million and 6 million is very significant to a
23 small city like Midway.

24 I know that the board hung its hat on the
25 idea that, "Hey, there's this true-up provision in the

1 CUP." That is true. There is a true-up provision. But
2 the problem is that Midway has to get this money and
3 raise it from his -- from its citizens right now. And a
4 city of that size, the difference between 6 and 9 million
5 is nearly insurmountable and very, very significant. So
6 I don't believe that the true-up provision corrects that
7 error.

8 We would urge the board to take a look at
9 those numbers and focus on accuracy, rather than process,
10 understanding that there is a true-up provision but that
11 it needs to be fair to Midway on the front end, where
12 they need only raise the actual excess cost. And I
13 emphasize that because the statute focuses on actual
14 excess cost.

15 At the beginning of the statute, it talks
16 about estimated cost, and those are the costs that the
17 utility has to provide to the city in the beginning, and
18 the city can either accept those or require more
19 information in support of actual excess cost.

20 So the statute clearly makes a distinction
21 between estimated cost and actual excess cost, and I
22 think that the city is entitled to accurate numbers on
23 the bid, actual excess costs, despite the true-up
24 provision, so they can accurately raise the amount of
25 money that it needs to and have the capability to do

1 that.

2 That is one of the more significant errors.
3 We don't -- again, we don't believe there is a disputed
4 fact on that. There is an error. Mr. Myers testified
5 what the error was, 24 percent, and doing the math, it
6 makes a significant difference, at least on the potential
7 bid that Midway City would be entitled to, or Rocky
8 Mountain would likely accept the lowest bid.

9 Another -- another issue that we have, an
10 error that we've assigned to the board's order, is the
11 question regarding the difference between estimates of
12 easements and actual excess cost. Now, the board relied
13 on estimates because that's all that was presented.

14 Rocky Mountain Power presented the testimony
15 of Mr. Lefevre. He said he was never hired to provide
16 any actual estimate of the value of the easements and
17 that he didn't attempt to do that, and the board seemed
18 to take a hybrid between Mr. Lefevre's work and the
19 expert presented by the city, Mr. Weber, and come up with
20 the -- kind of an in between number of \$691,000 for the
21 easement value. We think the language of the statute as
22 set forth in our brief requires more than just estimates.

23 Now, Midway City urged, during trial, that
24 that might require the actual easements to be acquired,
25 whether by condemnation or judgment or negotiation. We

1 understand it's the board's position that would -- that
2 would impose a significant burden on both the landowners
3 and Rocky Mountain, the utility, in the case. We
4 understand that. That's probably true. We think that's
5 a conundrum created by the statute, even if it is true.
6 We think that the statute needs to be interpreted
7 literally, according to its plain language, and it says,
8 "actual excess cost," and the plain meaning of that term
9 is "something more than estimates."

10 But regardless of whether the board wants to
11 decide that particular issue, we do believe that, in any
12 event, must require something more than what Rocky
13 Mountain Power presented here. There has to be more than
14 just an estimate. What exactly that threshold is, I
15 think it can't be determined, but the evidence in this
16 case does not meet that threshold.

17 And at a very minimum, we think the Rocky
18 Mountain Power has to do a more individualized analysis,
19 such as the city did with Mr. Weber's analysis, and we
20 believe that was an error as well that the board could
21 and should correct.

22 Another error that I wanted to bring the
23 board's attention to, respectfully, is the review of the
24 specifications and the bids. I know this is difficult
25 business. It's tricky. Because on the one hand, the

1 statute is intended to allow this process to go quickly,
2 to allow utilities to build their facilities, provide
3 power to customers. The act also says that it's intended
4 to provide -- to protect the rights of those whose rights
5 are infringed by the construction of these facilities,
6 such as citizens and the city. So there's a middle
7 ground that needs to be reached here

8 And I think it's very clear in the statute,
9 if you read in Section 54-14-305 and in 203, both of them
10 plainly say that the -- that this board has jurisdiction
11 to resolve, quote: any disputes regarding both
12 specifications and bids. And we feel like that language,
13 to have any meaning at all, then there needs to be an
14 overview and a review of that process. The court needs
15 to look -- or the board needs to look closely at that.

16 And in its decision, understandably, the
17 board declined to do so, saying, "We don't want to wade
18 into those issues. We don't want to take a second look
19 at those specifications."

20 But we feel like the board does have
21 jurisdiction to do that, very clearly by the statute, and
22 should do that here, because there was some overwhelming
23 evidence that the standards Rocky Mountain Power used in
24 this case were overly conservative, very costly,
25 unnecessarily so, and could not be justified within any

1 industry standards or the actions of other similarly
2 situated power companies in the industry.

3 And our expert testified that the bids would
4 be reduced significantly by following what would be just
5 industry standards, not Rocky Mountain Power's overly
6 conservative specifications.

7 Now, there was no testimony about exactly why
8 those specifications are the way they were. Mr. Myers
9 did not create them. He simply recited the request for
10 bid and said, "Hey, I was just following what I was told
11 to do. I was just following our standard practice."

12 The board seemed to say, "Well, that's
13 enough. As long as you're following your standard of
14 practice, then everything's okay."

15 And we respectfully suggest that is an error,
16 because the board does have jurisdiction and power to
17 review those specifications, precisely because it should
18 make it fair for the city and its citizens, as well as
19 Rocky Mountain Power.

20 There is a middle road here. Rocky Mountain
21 Power can meet industry standards, have the safety
22 requirements met, build a great project that's going to
23 function for them, and they can do it in a way that is
24 cost effective so the citizens of Midway have the
25 reasonable opportunity to pay for the undergrounding

1 option, should they want to, and the overwhelming
2 evidence is they do want to. But we ask the board to take
3 a second look at that.

4 The same thing applies to the bids that we've
5 already talked about. We do think it was an error not to
6 account for the mistakes in those bids, and it is a
7 material difference. As said, the lowest bid would be
8 significantly lower than it currently is, and that is
9 much less money that Midway City would need to -- would
10 need to raise.

11 With that said, we believe the board
12 respectfully should take a second look and reconsider
13 these various issues. We'd like for the order to be
14 corrected. Perhaps there wouldn't need to be an appeal.
15 Perhaps this can be corrected now.

16 And, most importantly, we would like for the
17 order to reflect the actual excess cost that Midway is
18 obligated to pay so that they can raise those costs and
19 make it fair for the citizens and the city.

20 Thank you.

21 PRESIDING BOARD MEMBER LEVAR: Okay. This is
22 Thad LeVar. Thank you, Mr. Jewkes.

23 I will go to board members now. Do any board
24 members have questions for Mr. Jewkes at this point?

25 BOARD MEMBER CLARK: This is Dave Clark. I

1 have a question.

2 PRESIDING BOARD MEMBER LEVAR: Okay. Go
3 ahead.

4 BOARD MEMBER CLARK: Thank you. Are you
5 telling us that the city would use a different process to
6 raise the funds if the amount in question were 6 million
7 rather than 9 million, roughly?

8 MR. JEWKES: Yes, potentially. Right now, we
9 don't have that option, but regardless of that, we
10 believe that the order does need to reflect the actual
11 excess cost, and we believe those to be 6 million.

12 But yes, if that's -- if that's the actual
13 excess cost and it comes out of that calculation, then
14 that puts Midway City in a much better position to raise
15 the money.

16 BOARD MEMBER CLARK: What would be
17 the -- what would be the differences in approach to
18 raising the money?

19 MR. JEWKES: If I understand you correctly,
20 you're asking what would Midway City do differently to
21 raise the money?

22 BOARD MEMBER CLARK: Right.

23 MR. JEWKES: As opposed to bonding?

24 BOARD MEMBER CLARK: Right. In other words,
25 would bonding not be involved if the amount were 6

1 million rather than 9 million?

2 MR. GORDON: This is Corbin Gordon. Let me
3 just jump in on that.

4 No, I think the bonding is still on the
5 table, and something that the city would certainly
6 reserve as its right to pursue. But there's also the
7 possibility of just being able to raise the money
8 straight out. The \$9 million number is just not doable.

9 If we have the actual -- I mean, if you take
10 out the mistakes in the bids and the overly conservative
11 specifications, we are now down into the -- even the \$4
12 million range, and that becomes a very real possibility
13 that the city could potentially pay for a portion of that
14 and raise the money from citizens as well.

15 BOARD MEMBER CLARK: The second question just
16 relates to the 26 percent figure that, I think, Counsel
17 cited with respect to the discussion of bid errors.

18 Do you have a quick reference to the
19 transcript? I think that must be in the transcript,
20 rather than in the pre-filed testimony, and I just wanted
21 to go back to that quickly.

22 Do you have a quick reference?

23 MR. GORDON: Yes, it would be in the
24 transcript. I don't have a reference for you. We were
25 asking Mr. Myers about it. He acknowledged an error and

1 gave his agreement as to the estimate or the amount --

2 BOARD MEMBER CLARK: And I apologize, and I
3 think you said 24 percent, not 26 percent, if my notes
4 are right.

5 MR. GORDON: That's correct, 24.

6 BOARD MEMBER CLARK: But that's -- that's of
7 the total bid as you're representing it to us?

8 MR. JEWKES: Yes, that would add -- if you
9 take the calculations, it was 1,600 feet of extra line
10 that they had put in to be buried and that they think is
11 buried. And that 1,600 feet comes in, as you look at the
12 total length, at approximately 24 percent of the entire
13 project.

14 BOARD MEMBER CLARK: Yes, that's the length.
15 But is the trenching the only cost of the project? I'm
16 just trying to understand the 24 percent number. I'll
17 see if I can find it in the transcript and look through.

18 MR. JEWKES: Certainly. And this is -- I
19 mean, your question is completely relevant and
20 appropriate. We don't know what the bids would be if
21 they were corrected. Right? We are taking it based on
22 the length of the line, which is the best we can do.

23 And that's why in our closing, in the last
24 hearing, we asked that Rocky Mountain Power be required
25 to go and get updated bids that were accurate. And so

1 we're trying to show the board the scope of how big this
2 mistake is, and it's significant.

3 Whether there may be -- it may be less than
4 24 percent or more, we don't have the expertise to know.
5 But that's why we are asking Rocky Mountain Power to go
6 and fix its bids.

7 BOARD MEMBER CLARK: Thank you. Those are
8 all my questions.

9 PRESIDING BOARD MEMBER LEVAR: This is Thad
10 LeVar. Thank you for your questions, Mr. Clark.

11 Mr. Wright or Mr. Fitzgerald, do you have any
12 questions for Midway City at this point?

13 BOARD MEMBER FITZGERALD: This is Troy
14 Fitzgerald. I have a couple.

15 PRESIDING BOARD MEMBER LEVAR: Okay. Go
16 ahead.

17 BOARD MEMBER FITZGERALD: I guess I'm
18 struggling because these are not Rocky Mountain Power's
19 bids. They are bids that are provided to Rocky Mountain
20 Power at the request of Midway City.

21 And so Midway City has asked for the bids as
22 the evidence of what the actual excess costs will be, and
23 it seems to me that those will be what the actual excess
24 costs are. In the real world when this works, you send
25 out your specifications, you get bids, and you decide

1 whether or not you want to move forward with it. It's
2 not Rocky Mountain that fixes those errors.

3 So I'm -- given that Midway is the one that
4 asked for the bids, what are you suggesting that this
5 board should rely on to determine the actual excess cost?

6 MR. GORDON: Well, I think this situation
7 is -- it's a good question, a fair question. I think
8 this situation is slightly different than, quote/unquote,
9 the real world. We're in a different process, where
10 Midway asked for three competitive bids to determine
11 actual excess costs.

12 Fairly, the whole point of that was so Midway
13 could raise the money and be accurate, tell the citizens
14 what it needed to be raised. And Rocky Mountain Power
15 knew, or should have known, that there was a significant
16 error here.

17 And Mr. Myers certainly said, yeah -- he
18 testified under questioning that he's not sure why he
19 didn't realize this, but this is just a simple error
20 that, I think, if the bidders were asked about, they
21 probably would happily -- happily correct it.

22 So what we were asking for is not for the
23 board to necessarily, right now, determine what the
24 actual excess costs are, but we would ask that an
25 order -- that an order be entered requiring Rocky

1 Mountain Power to make the bidders aware of this and ask
2 them to correct the bids so we have three truly
3 competitive bids from which to choose.

4 BOARD MEMBER FITZGERALD: Is Midway City
5 willing to pay for those costs?

6 MR. JEWKES: To get the -- are you saying to
7 get the additional -- to get the updated bids?

8 BOARD MEMBER FITZGERALD: Yes.

9 MR. JEWKES: No, and they are not required to
10 do so under the statute. The statute clearly
11 contemplates that the city can request this information
12 and that Rocky Mountain Power has a duty to provide it.

13 And so, I mean, we're just pointing out, this
14 board has told us we have to pick one of those bids, and
15 the evidence is clear that two of the bids are completely
16 wrong. You cannot rely on them.

17 And so it's our position that Rocky Mountain
18 Power has not fulfilled its obligations under the statute
19 and they need to fulfill it.

20 And in our minds, it's a very simple thing.
21 Send the bids back out to these people, point out that
22 there was a problem, that they made errors, and have them
23 resubmitted bids that are accurate. And then once we
24 receive those, then Midway City can proceed forward and
25 pick from a bid that's valid.

1 But, I mean, we don't feel it's fair that
2 you're saying, "Well, you can pick from something that we
3 all know is wrong."

4 BOARD MEMBER FITZGERALD: I'm trying to
5 follow that a little bit. I know Midway's asked for
6 three bids. You indicated that the statute requires
7 three bids. Can you point that out to me?

8 MR. JEWKES: It doesn't require three bids,
9 but it certainly allows the city to request bids. And as
10 part of our conditional use permit, it doesn't limit what
11 we can do.

12 And so what we did was ask for three
13 competitive bids, which was our right to do, and Rocky
14 Mountain Power did not comply with that.

15 BOARD MEMBER FITZGERALD: Thank you.

16 PRESIDING BOARD MEMBER LEVAR: This is Thad
17 LeVar. Thank you, Mr. Fitzgerald. Did you have any
18 other questions?

19 BOARD MEMBER FITZGERALD: Not at this time.
20 Thank you again.

21 PRESIDING BOARD MEMBER LEVAR: Okay.

22 Mr. Wright, any questions?

23 BOARD MEMBER WRIGHT: Yes. One related
24 question.

25 Which of the bids, Midway, did you think was

1 accurate?

2 MR. JEWKES: I can tell you which -- so there
3 were three contractors, and two of them were wrong on all
4 their bids because they used the wrong length throughout,
5 and that was Contractors 15 and 17. Contractor 13, and,
6 again, I don't know whose these -- we don't know who
7 these -- the actual names are. We just have numbers.
8 Contractor 13 was correct in its calculations. It was
9 not the low bidder.

10 BOARD MEMBER WRIGHT: Okay. One of the bids,
11 I remember, was significantly higher, so I think we can
12 eliminate that one. Would you be satisfied if the
13 remaining -- the remaining bidder that used the wrong
14 numbers just rebid their calculations?

15 MR. JEWKES: I mean, that's an interesting
16 question. I don't -- we don't have the capacity as
17 counsel to say what our city council would do. I mean,
18 basically, the conditional use permit requires three, and
19 so all I can tell you on that is that we would request
20 three.

21 I can certainly go back and approach the city
22 council, but I don't have authority to say, one way or
23 the other, whether they would be willing to alter the
24 conditional use permit at this point.

25 BOARD MEMBER WRIGHT: Well, one was clearly

1 so high you weren't going to pick it, and, you know, of
2 the two that are remaining, one is the right length but
3 is not the low bidder. I would think that if the other
4 bidder corrects their lengths, that would satisfy your
5 client and make it -- and make it replace.

6 MR. JEWKES: Yeah. No, I'm not disagreeing
7 with you, and it may very well. All I'm saying is for
8 purposes of the hearing today, I don't have authority to
9 weigh that.

10 If that's the choice of the board, I don't
11 disagree. The one was so high that it wasn't realistic,
12 and the other, Contractor 17, if you do take out the
13 mistakes, comes in significantly lower than what the low
14 bid currently is.

15 So that's not an unreasonable way to approach
16 this. I just can't, you know, tell you the --

17 BOARD MEMBER WRIGHT: I would also point out,
18 if you look at the bid details, that the one's
19 calculation doesn't affect all of the details of the bid.
20 So your 24 percent error is probably not accurate.

21 MR. JEWKES: And we concede that. That's the
22 whole point. We are not in the business of preparing
23 bids. We did have testimony from our own expert on this,
24 but, you know, these guys need to go in and determine
25 exactly what the difference would be.

1 BOARD MEMBER WRIGHT: Okay. That is all my
2 questions.

3 PRESIDING BOARD MEMBER LEVAR: Thank you,
4 Mr. Wright.

5 This is Thad LeVar. I have a few questions
6 before we move on to -- I think we'll move to VOLT next
7 and then Rocky Mountain Power.

8 On this same issue we've been discussing for
9 a while, considering the competitive nature of bids and
10 the need for keeping things confidential and for bidders
11 knowing that they are bidding against other bidders,
12 considering the public process that's now happened with
13 this board hearing, how would that compromise any bid
14 revisions and corrections, in your view, or could it
15 compromise --

16 MR. JEWKES: I'm not sure I --

17 PRESIDING BOARD MEMBER LEVAR: -- any bid
18 correction?

19 MR. JEWKES: I apologize, I'm not sure I
20 understand the question entirely.

21 Are you asking whether the confidentiality of
22 the bids could be compromised through this process?

23 PRESIDING BOARD MEMBER LEVAR: Well, I'm
24 saying, so we had -- 18 contractors were invited to bid,
25 three bid without knowledge of how any of their

1 competitors were going to bid. And that's the way it's
2 supposed to work. Bidders can't know how their
3 competitors might bid.

4 This public hearing has occurred since then,
5 so if bidders were asked to rebid or to correct their
6 bids, they have a lot of information about the other two
7 bids as a result of this Facility Review Board process.

8 So what's the potential for that compromising
9 any request to revise the bids?

10 MR. JEWKES: I think that's a good question,
11 and what I might suggest is that they only would be asked
12 to revise the specific error that we noted and simply
13 reduce the numbers by the actual length. I don't think
14 the other numbers will need to change or need to be rebid
15 in any way.

16 It's more akin to a mathematical error than
17 anything else, and I think that can be corrected without
18 compromising confidentiality or putting them in a
19 difficult position.

20 PRESIDING BOARD MEMBER LEVAR: Okay. Thank
21 you. That's the only question I have on that issue, but
22 on two other issues, I just had a couple of questions.

23 With respect to the stay, I was just looking
24 at the stay issued by the court, and their language is
25 that, "Our order is temporarily stayed pending resolution

1 of the motion for reconsideration."

2 Now that phrase, "pending resolution," could
3 mean some question of once we issue an order on
4 reconsideration, does that mean the stay is automatically
5 lifted or does it go back to the court? I'm just curious
6 of your view on that because you mentioned that you
7 didn't necessarily have an active request for this board
8 to issue a stay, but you said that you didn't object to
9 that.

10 And so I just would like to nail down the
11 issue of whether we should consider a stay, because one
12 of the -- one of the standard considerations is the
13 substantial likelihood of prevailing on the merits.

14 And, of course, this board would be in an
15 awkward position if we -- you know, depending on how we
16 rule on reconsideration, to also try to rule on the
17 substantial likelihood that we are wrong and will be
18 reversed on appeal, and, therefore, should grant a stay.

19 So I'm raising all that to say, does it make
20 more sense for us to just leave the stay and the date
21 that the stay should expire, following whatever action we
22 take, in the hands of the Court of Appeals?

23 MR. JEWKES: Well, I think -- it is my view
24 that the Court of Appeals -- and, again, we're
25 interpreting language that we're -- the same language

1 we're both reading, and I think it is a little bit
2 ambiguous.

3 But it seems like the intent of the Court of
4 Appeals -- because we've already filed a petition for
5 review and they could have taken this case but elected to
6 grant the stay so that this board would have an
7 opportunity to do the administrative review.

8 And I think your reasonable reading of that
9 is that the stay will be in place until the Court of
10 Appeals has a chance to take a look at what this board
11 does. But I think the Court of Appeals stay covers us in
12 that case. We do have a request for a stay from this
13 board, and I mentioned that although that request may be
14 moot, depending on how you read this language, there
15 could be a gap between when this board issues its order
16 and when the Court of Appeals next gets to hear this.
17 And in this case, we would ask that this stay be entered.

18 So depending on how this board interprets
19 that language, there may be -- it may be necessary to
20 enter its own stay for a certain period of days after its
21 order is issued, or if the board interprets it as I said
22 initially, then there won't be a need.

23 And I think my view is that the Court of
24 Appeals has stated until it can see this issue again, and
25 it may never -- it may become -- it may never need to see

1 the issue again, depending on how this board rules.

2 PRESIDING BOARD MEMBER LEVAR: Okay. Thank
3 you. And I just have one other question on the issue of
4 easement costs.

5 When you were describing your motion, your
6 verbal description, I think, was that we created some
7 kind of hybrid between Mr. Lefevre's and Mr. Weber's
8 easement numbers, as you were talk about estimating
9 easement values.

10 Would you agree that a more correct
11 explanation or description of what we did was that we
12 accepted Mr. Weber's estimates completely but only for
13 the properties that were actually impacted by the line
14 and didn't consider the properties that might lose value
15 but didn't have any actual easements running over them?

16 Would that -- in you view, is that an
17 accurate summary of what our decision was on easement
18 values?

19 MR. JEWKES: Well, I'll be honest that it
20 wasn't entirely clear to me. I went back and read the
21 transcript in the order. I don't think that's an unfair
22 description, and if the board wants to clarify exactly
23 what has happened, I think that would be helpful.

24 I do think there's issues about some of the
25 PUD property that's been taken, that wasn't considered

1 even in that calculation. And I'll let Mr. Morris talk a
2 little bit more about that. He's done some of that work.
3 And reserve any time that I might have in responding to
4 this question to him.

5 PRESIDING BOARD MEMBER LEVAR: Okay. Thank
6 you. That's all the questions I have.

7 And so I think with that, we'll go to
8 Mr. Morris. If you want to give any brief statement of
9 VOLT's position with respect to this motion from Midway
10 City.

11 MR. MORRIS: Thank you very much. And,
12 again, let me express my client's appreciation for being
13 allowed to intervene and to air its views here.

14 I represent a lot of individual homeowners
15 along the route here that have come together. And in
16 answer to the earlier question, I think from Mr. Clark,
17 "Is there a different way that the city would pay for
18 this?" I would just remind the board that my client has
19 been able to gather commitments from people to go
20 underground, up to \$700,000 right now, which is one way
21 that Midway is going to be able to, hopefully, put their
22 line underground with that augmented money.

23 We join in Midway's arguments today. I won't
24 repeat them. I just have four points that we would like
25 to make for VOLT that have been partially explored, I

1 think, some of which have been partially explored and
2 discussed today but at least one was not.

3 Those four points are, first, to avoid any
4 ambiguity, we would ask the board to impose a stay as
5 part of its ruling on the motion to reconsider and stay.
6 It would avoid having to go back to the Court of Appeals.

7 As you saw, Midway had to act pretty quickly
8 in order to file a petition with this board and then
9 immediately with the Court of Appeals. We hope that we
10 can avoid any rushed briefing and motion filing. If this
11 board will simply acknowledge that the stay should remain
12 in place rather than raise the idea that it might be
13 incumbent upon a party to go back to the Court of Appeals
14 and get clarification, that would avoid it.

15 The second thing I want to talk about is the
16 fact that this board, on page 7 of its ruling, in
17 Paragraph 15 -- we believe that the board was too
18 differential to Rocky Mountain Power. Just reading the
19 language from paragraph 15 on page 7 of the board's
20 decision, you say that, quote: However, the board
21 concludes that where a utility issues an RFP consistent
22 with the utility's standards, specifications and policies
23 pertaining to live projects, it is not for the board to
24 scrutinize or revise those standards, end quote.

25 That is concerning to my client because,

1 apparently, the board is taking the position that if
2 Rocky Mountain Power does what it has always done, then
3 it's not for you to question it. And we feel we
4 presented evidence to the board that shows Rocky Mountain
5 very consistently undercuts and underestimates the excess
6 cost -- well, I mean, it underestimates its own easement
7 costs for going overhead, thereby increasing the excess
8 costs that would impose a burden upon Midway City.

9 We feel that the record here showed -- and
10 we've already talked about the problems with the bids and
11 the wrong specs, and I won't repeat that here, but we
12 would ask the court to seriously consider whether it's
13 appropriate to just say, "Well, as long as Rocky Mountain
14 shows us -- they haven't done anything different from
15 what it's always done, we're okay with that."

16 Because we did present evidence of, at least,
17 one other example, where the easement costs were
18 projected to be \$70,000, and there was a public
19 settlement of those easement issues in the amount of 1.7
20 million or something like that. I don't remember -- or
21 recall the number exactly.

22 But, and so we ask the board and suggest that
23 the board should scrutinize Rocky Mountain Power, even
24 though it says, "We're just doing what we've always
25 done," when there's evidence of what they have always

1 done is not fair, and what they have always done is
2 consistently designed -- I'm not -- I don't want to
3 impute motive here. I'm not saying it's consistently
4 designed. But for whatever reason, it is -- it has
5 relatively consistently undercut its own easement
6 burdens. The result of which is to augment or increase,
7 in the millions of dollars, the excess cost.

8 The third point I would like to make is that
9 the -- I don't believe the board paid enough attention to
10 the conditional use permit's language that required that
11 the easements be obtained before the commencement of
12 construction.

13 And I think there's a legal issue here that
14 you need to consider because the commencement of
15 construction of a facility has a statutory definition.
16 And while the testimony in the record was that, "Well,
17 we're not going to actually break ground on this thing
18 now until 2021," and so the impression was, "Well, we
19 have until then to actually obtain these easements."

20 The conditional use permit required the
21 easements to be obtained before commencement of
22 construction, and I refer the board to Title 54-14-103,
23 subpar 3, that defines "Commencement of construction of a
24 facility includes the project, design and the ordering of
25 materials necessary to construct the facility."

1 And so we did hear testimony from Rocky
2 Mountain last time, that it needs months and months in
3 advance of actually breaking ground to know what
4 materials to order and to know whether they are going up
5 or they're going underground. And so these easements,
6 under the CUP, need to be obtained prior to all of that,
7 and those costs need to be determined.

8 And so we think that that element of the
9 conditional use permit's requirements was not satisfied
10 and that the board should visit that issue. And Rocky
11 Mountain's failure to actually obtain easements, which
12 leads now to the thing that Mr. Gordon kindly deferred to
13 me, on the easements along the route.

14 We believe that the board's order should be
15 reconsidered because the standard cost only include the
16 city's estimated cost for right-of-ways on 9 out of 32
17 properties.

18 Mr. LeVar, I think you're right, that you did
19 give full difference to Mr. Weber's numbers as to a few
20 of the parcels, but you didn't reject -- or you did
21 reject his testimony that there are more than just 9, 10
22 or 11 parcels that are affected hereby. And I think the
23 board needs to reconsider this because there are more
24 than 9 or 11 properties that are going to require -- that
25 an easement is going to affect.

1 In other words, that the route -- and this is
2 a map that, I think, we provided in the record, that
3 shows many more parcels being affected, not just because
4 necessarily there's going to be a pole planted on them
5 but because I don't think there was any dispute that the
6 overhead lines here would require an easement of 60 feet.
7 And that 60-foot wide easement is going to affect more
8 parcels than merely those that are necessarily getting
9 poles planted on them or lie along the route here.

10 And so -- let me check my notes here. The
11 board should have found, we feel, that Mr. Weber's
12 easement cost estimate include all properties, quote: on
13 which Rocky Mountain acquires an easement not to
14 neighboring properties that remain unencumbered.

15 The map -- the parcels that we identified and
16 that the map shows as being lined within the easement
17 that Rocky Mountain is going to need to go overhead are
18 property identified as Parcel Nos. 76, 75, 19, 9, 10, 11,
19 12, 13, 14, 15, 69, 64, 63, 62, 57, 56, 55, 51, 49, 47,
20 45, 39 and 40. And those include properties within a
21 planned unit development that is adjacent to the route of
22 this.

23 So we feel the board's order should apply to
24 all properties that are both physically encumbered but
25 also lie within that 60-foot wide easement along Rocky

1 Mountain's transmission lines have.

2 Is that all four of my -- I think those are
3 all four of the points I wanted to make today. The stay,
4 the language of the CUP on when commencement of
5 construction starts, the undue difference to Rocky
6 Mountain standards, and then the board's limiting the
7 financial impact to only 9 or 10 or 11. I can't remember
8 which of those three numbers it was, but that the
9 easement -- that the width of this easement affects more
10 than just 10 or 11 properties.

11 With that, I -- again, we're grateful for
12 your time and consideration, and we would ask you to
13 reconsider your ruling with those things in mind. And
14 give Rocky Mountain an opportunity to get bids that are
15 accurate and also set a number for the excess costs that
16 is truly reflective of the easement cost Rocky Mountain
17 is going to have to incur if it does go overhead.

18 Thank you.

19 PRESIDING BOARD MEMBER LEVAR: Thank you,
20 Mr. Morris. This is Thad LeVar. I have just one
21 question for you, and then I'll go to the other board
22 members.

23 On your second point, when you were
24 discussing our deference to Rocky Mountain's bid
25 specifications, it seemed to me, unless I was

1 misunderstanding you, that the examples you were using
2 were examples related to easement values rather than bid
3 specifications.

4 And as I was looking at our board's order, it
5 seems like we rejected wholesale Rocky Mountain Power's
6 easement estimates, but with respect to bid
7 specifications, which, again, seems to me a separate
8 issue, the evidence we had in front of us -- I would
9 summarize as we had some evidence that there
10 might -- that there are ways to construct this project
11 with less expensive bid specifications.

12 But I wouldn't describe the bid specification
13 evidence as being as overwhelming as the easement
14 evidence, in terms of the likelihoods that they were
15 building it to specifications that were unnecessary. I
16 think that -- I think the evidence on the bid
17 specifications was a lot closer, at least that's how I
18 would describe it.

19 So with that description, Mr. Morris, do you
20 want to respond to that issue any further?

21 MR. MORRIS: Yes. And thank you for pointing
22 that out. I didn't mean to conflate the two. You're
23 right, that in terms of the deference the board gave, the
24 language I read from the page 7 of the order did refer to
25 specifications.

1 And I think that the error in them, that
2 Mr. Corbin and Mr. Jewkes saw -- or Mr. Gordon and
3 Mr. Jewkes already went through, points to that. And
4 believe me, VOLT is grateful for the consideration, that
5 the board did give to at least 9 or 10 of the properties
6 in elevating the easement costs.

7 So you're right, I may have mistakenly
8 conflated the two issues into one, and I didn't mean to.

9 PRESIDING BOARD MEMBER LEVAR: Thank you.
10 That's all the questions I have.

11 Do any other board members have questions for
12 Mr. Morris?

13 BOARD MEMBER FITZGERALD: This is Troy --

14 BOARD MEMBER CLARK: This is Dave Clark.

15 BOARD MEMBER FITZGERALD: Go ahead, Mr.
16 Clark.

17 BOARD MEMBER CLARK: I was simply saying, I
18 do not have any.

19 PRESIDING BOARD MEMBER LEVAR: Okay. Thank
20 you, Mr. Clark.

21 Mr. Fitzgerald, we will go to you.

22 BOARD MEMBER FITZGERALD: Thank you.

23 I'm getting a little confused on your
24 argument with easements and impacted parcels. Can you
25 remind me what the width of the easement is anticipated

1 to be for both aboveground and below-ground installation?

2 MR. MORRIS: The aboveground easement width,
3 I believe, is between 58 and 60 feet, but those are the
4 numbers I recall from the record. The underground
5 easement, I don't know that there's a good record of
6 that, other than the fact that my clients have made a
7 record of their commitments to -- in exchange for going
8 underground, they are willing to forego any severance and
9 impact damages from the line going underground, that
10 that's how important they feel this is.

11 And we're prepared to facilitate, in
12 connection with going underground, releases and waivers
13 from the people along the route that would obviate any
14 financial impact from easements.

15 If Liz -- if you're on it, just as -- maybe
16 as an academic matter, for going underground, is the
17 width of the easement more or less?

18 MS. BRERETON: From what I recall, generally
19 speaking from underground easements, surface structures
20 are not allowed, I think, with a 10 foot -- between 10
21 and 15 feet, maybe, for transmission, if it's
22 underground.

23 BOARD MEMBER FITZGERALD: Okay. I'm trying
24 to understand, and I think some of your statements kind
25 of confirm that, that -- I'm trying to just understand

1 the argument where if you choose to go underground,
2 certainly, Rocky Mountain will have to have the necessary
3 easements for that.

4 But I think it's fair to assume, since there
5 is an existing aboveground pole that would go away, the
6 property values would increase along the route, even
7 though there are costs associated with obtaining the
8 easement. So I'm trying to understand what your argument
9 is with regard to more parcels being affected in an
10 underground scenario.

11 And it just seems to me your argument relates
12 to if Rocky Mountain comes in and put in the aboveground
13 line, there are impacts, but that's not really what we're
14 talking about. We're talking about the difference in
15 cost between the two solutions.

16 MR. MORRIS: I'm sorry for any confusion.
17 The point of my argument was that in the board's
18 decision, you allocated, I think, \$691,000 as the cost of
19 easements that should be included in going overhead.

20 VOLT thinks the number should be much higher
21 because by going overhead -- and so we really
22 didn't -- we weren't talking at all about going
23 underground, and the cost of underground easements and
24 the width are not something we focused on, I don't think,
25 in the hearing or today.

1 The point is that the board should reconsider
2 limiting the cost of overhead easements just to the
3 \$691,000 for the 9 or 10 properties that were discussed,
4 but to, rather, take into account the fact that a 60-foot
5 wide easement would have to follow the route of going
6 overhead and would impact more than just those
7 properties.

8 And, thus, the cost of overhead is higher
9 and, consequently, the cost to Midway should be lower, in
10 terms of the excess cost it would have to pay to go
11 underground.

12 Did that help?

13 BOARD MEMBER FITZGERALD: Yes, that helps a
14 little bit. Then the question becomes: On the 60-foot
15 easement you are talking about on the other parcels, are
16 they actually touched by the easement or just impacted
17 visually?

18 MS. BRERETON: This is Liz Brereton. I'm
19 sorry, I got cut off -- or my phone cut out.

20 MR. MORRIS: Go ahead, Liz.

21 MS. BRERETON: Oh, okay. I think -- so in
22 the order, the Commission found that Rocky Mountain Power
23 should include costs of rights-of-way across properties
24 that are actually encumbered, and the encumbrance would
25 be, you know, the easement and the easement is between 60

1 and 58 feet.

2 Well, in this case, PacifiCorp identified the
3 9 properties as we discussed, but along the route, there
4 are at least 23 properties that will have poles and wires
5 that are part of Rocky Mountain Power's transmission
6 lines physically sited on their property within an
7 easement. And then there are additional properties that
8 fall within that 60-foot span that are encumbered based
9 on the 54- to 60-foot easement.

10 So the contention is that based on the
11 holding of the order, at the minimum, reconsideration is
12 due because there are additional properties sited right
13 on the line that are encumbered and on which
14 rights-of-way will be required, in addition to -- in
15 addition to properties that are within that easement's
16 span.

17 BOARD MEMBER FITZGERALD: Thank you.

18 MR. MORRIS: Thank you, Liz.

19 MS. BRERETON: Thank you.

20 BOARD MEMBER FITZGERALD: I have no further
21 questions.

22 PRESIDING BOARD MEMBER LEVAR: Okay. This is
23 Thad LeVar. Thank you, Mr. Fitzgerald.

24 Mr. Wright, any questions from you?

25 BOARD MEMBER WRIGHT: No questions of VOLT.

1 PRESIDING BOARD MEMBER LEVAR: Okay. I think
2 it probably would be an appropriate time to take a short
3 break and then move on to Rocky Mountain Power to discuss
4 the motion.

5 So why don't we go into recess for ten
6 minutes? And then we will reconvene and move to Rocky
7 Mountain Power.

8 (Whereupon, a break was taken.)

9 PRESIDING BOARD MEMBER LEVAR: We are back
10 with the Utah Utility Facility Review Board. And at this
11 point, we will move to Rocky Mountain Power to discuss
12 Midway's motion.

13 MR. REICH: Thank you. This is Bret Reich
14 with Rocky Mountain Power.

15 The motion filed by Midway City really raises
16 no new argument. It simply repackages the same arguments
17 that were made during the hearing. So let me address
18 those as they have been presented today.

19 First, the board's May 7, 2020 order found,
20 in paragraph 21, "Construction should commence by
21 November 18, 2020, to avoid a significant risk of
22 impairment to safe, reliable and adequate service."

23 And the board's order would be in direct
24 conflict with this finding and put the customers of Rocky
25 Mountain Power and Heber Light & Power of significant

1 risk of impaired electric service. The board found
2 credible and uncontroverted, compelling evidence in
3 paragraph 9 and 10, detailing the significant risk to
4 service and reliability and how the project will
5 alleviate such risk.

6 Nothing in Midway City's motion for
7 reconsideration or VOLT's comments addresses this
8 uncontroverted evidence of the need for the project. So
9 nothing we've heard today addressed that there isn't a
10 need or that, you know, really, we should discontinue to
11 delay this project. And in any type of stay from the
12 board would serve to do that and increase that
13 significant risk.

14 So with that, let me get down to the merits
15 that were brought up. Well, and let me just kind of
16 start from the bigger picture. First of all, as was
17 mentioned by the board, nobody's talked about irreparable
18 harm or likelihood of success on the merits. And I think
19 the reason for that is because there is no irreparable
20 harm from this order.

21 There is an existing power line that has been
22 there for over 50 years. That's what really this project
23 is about. This project is about modifying an existing
24 power line, not putting in a new power line. There's no
25 irreparable harm by modifying an existing power line.

1 Any type of damages that are claimed can be
2 compensated by money. There's no, like -- there's been
3 no even discussion about the likelihood of success on the
4 merits. Therefore, I think a stay would be totally
5 inappropriate in this -- in this instance.

6 Now, Midway City has brought up the issue of
7 that mere estimate of easements are not sufficient and
8 that they have -- there has to be something, although
9 they haven't been able to really quantify what that is.
10 I think they've backed off the position that we actually
11 had to obtain these easements or condemn easements for
12 the purposes of determining excess cost.

13 They cite, in their moving papers, the
14 statute at 54-14-1031 that is the definition of actual
15 excess costs. And it simply says it means "The
16 difference in cost between the standard cost of a
17 facility and, B, the actual cost of the facility,
18 including any necessary right-of-way."

19 Well, if you look at the definition of
20 standard of cost, the standard cost of a facility, over
21 in Section 9(a), it says, "The standard cost means the
22 estimated cost of a facility, including any necessary
23 rights-of-way."

24 So the very act uses the term "estimated,"
25 when it's referring to the necessary rights-of-way that

1 would be required for the aboveground facility. That's
2 what was done and that's what was -- that's what was
3 presented during the hearing.

4 And I'll refer you to Benjamin Clegg's
5 rebuttal testimony at page 2 in line 25. The question
6 was: Are there any properties in Midway City that are
7 directly affected by the proposed overhead transmission
8 line that will require additional easement width?

9 The answer was: Yes, within Midway City,
10 there's a total of 10 parcels which would need an
11 additional 2 to 3 feet of easement restrictions to the
12 underlying properties.

13 And then Mr. Clegg identified where those
14 properties are. Also, there's an attachment to his
15 exhibit.

16 That information was used by Rocky Mountain
17 Power's appraiser, Mr. Lefevre, who, in his rebuttal
18 testimony on page 3, in line -- on line -- starting on
19 line 16, says, "So using Mr. Clegg's summary of which
20 properties would be directly impacted by an overhead
21 transmission line and Mr. Weber's property valuation,
22 with the understanding that you have not done an
23 independent appraisal of these properties yourself, what
24 do you calculate to be the value of the additional
25 easement that would need to be required by Rocky Mountain

1 Power for the transmission lines to be constructed
2 overhead?"

3 And his answer was, "Between \$691,344 and
4 \$767,712."

5 So there's adequate evidence in the record to
6 support the board's findings that the best estimate of
7 right-of-way for the overhead transmission line was the
8 number of \$691,344.

9 Unlike VOLT's position, there is no
10 requirement in the National Electric Safety code that
11 Rocky Mountain Power obtain a 60-foot wide easement for
12 this modification. As we discussed in the hearing, we
13 have an existing prescriptive right, an easement, so
14 there is some question of whether or not that easement
15 needs to be expanded. And in certain situations, we
16 think that it does, and that was the testimony of
17 Mr. Clegg and of Mr. Lefevre.

18 So I think there's more than adequate
19 information in the records to support the board's
20 finding.

21 With respect to the management fee, if you
22 look at Utah Code 54-14-203, Section 2, the statute says
23 that "If the local government request the public utility
24 to obtain competitive bids," which it did, "the public
25 utility shall obtain competitive bids, and the actual

1 excess cost of the facility shall be the difference
2 between the lowest bid acceptable to the public utility,
3 plus the public utility's contract administration and
4 oversight expense and the standard cost of the facility."

5 So depending on how one reads that provision,
6 the overhead costs or the management fee may or may not
7 be included in the standard cost, not -- it's not
8 included in the definition of standard cost. But I
9 believe there was testimony during the hearing that if
10 the board finds that that is, that it was -- 7.5 percent
11 is the correct number for that.

12 Then with respect to specifications, Midway
13 City is claiming Rocky Mountain Power is using overly
14 conservative specifications. I think there was ample
15 testimony, and the board correctly found, that RMP used
16 its standard specification to obtain the three bids.
17 Rocky Mountain Power didn't increase or add any
18 additional specifications. It's the same specifications
19 that we have been using.

20 There was also testimony that the
21 specifications are based on a National Electric Safety
22 code. Rocky Mountain Power is in the business of
23 transmitting electric power. We have been doing it for
24 over 100 years. And so we use these specifications to
25 protect the integrity of our system and our customers,

1 and I think the board correctly found that it would not
2 require Rocky Mountain Power to compromise those
3 specifications for this project. And I think there's
4 great policy reasons to support that.

5 Now with respect to the bids, I think
6 Mr. Myers' testimony has been grossly misquoted and
7 misstated. Mr. Myers testified that it's standard
8 practice to receive bids from contractors that are
9 different. There's a standard provision in Rocky
10 Mountain Power's specification. It says that the
11 contractors are not to rely on certain quantities, that
12 they need to confirm those quantities for themselves.

13 So despite the representation that these bids
14 contain errors or that they've been -- you know, they're
15 founded upon incorrect mathematical equations, we don't
16 know that. That is speculation by Midway City.

17 And I think the fact that probably supports
18 that more than anything is if you look at Contractor 13,
19 who used the, quote: correct linear feet for trenching,
20 their bid was just slightly more than Contractor 17, who,
21 quote: used the incorrect amount of linear feet. So the
22 Contractor 13 came in at 12.5 million and Contractor 17
23 came in at 11.1 million. So there's not a material
24 difference, significant difference, between those two
25 bids.

1 I also think that the 24 percent increase is
2 a gross misrepresentation by Midway City. There is no
3 testimony by Mr. Myers that these bids were 24 percent
4 over or it would -- or it would impact the bids by that
5 amount. I mean, the difference in trenching, even
6 assuming that that was an incorrect amount, would be
7 1,600 feet of just trenching. You still have the
8 conductor that has to go up to the dip poles.

9 I think Midway City is making a
10 miscalculation, apparently, of also trying to
11 conduct -- or subtract conductor from the bid when
12 they -- when they can't do that. You still have to have
13 the conductor that goes up to the dip poles to take the
14 power lines overhead.

15 So I think they are grossly misrepresenting
16 to the board the impact of what they see as an error,
17 when, in fact, Mr. Myers testified that contractors often
18 put numbers in different categories. Sometimes the
19 contractors don't even identify how many feet they're
20 going to be trenching or their mode and demode costs are
21 all different.

22 So I think it puts this board in a very
23 precarious situation to try and say that, "Well,
24 this -- this is an error in this bid because it is not
25 the same as the second or the third bid."

1 I mean, Mr. Myers testified and Rocky
2 Mountain Power is in the business of receiving bids, that
3 this is a standard practice that we see. These bids were
4 competitively bid, and, therefore, they meet the
5 requirements of the statute and the conditional use
6 permit.

7 So I don't think that Midway City has
8 presented any new evidence or any new arguments regarding
9 the bids. I think it's the same thing that we heard in
10 the hearings.

11 Also with respect to VOLT's argument that the
12 conditional use permit somehow incorporates the statute
13 Utah Facility Review Board has is, perhaps, a new
14 argument, but I don't see anywhere in the conditional use
15 permit where the term "commencement of construction"
16 incorporates the definition of the act, the act's
17 definition of commencement of construction.

18 I also am confused by the argument that VOLT
19 is making, if they are making the argument, that we need
20 to go out -- we, meaning Rocky Mountain Power, needs to
21 go out and purchase these right-of-way easements now,
22 then I think that's an absurd position, as we still don't
23 know the routes that this project is supposed to take,
24 whether it's overhead. And if it's underground, is it
25 Option 1, 2 or 3?

1 So with that, I'll see if the board members
2 have any questions for Rocky Mountain Power.

3 PRESIDING BOARD MEMBER LEVAR: Okay. This is
4 Thad LeVar. I'll open it up to any questions from board
5 members.

6 BOARD MEMBER FITZGERALD: This is Troy
7 Fitzgerald. I have one.

8 PRESIDING BOARD MEMBER LEVAR: Go ahead.

9 BOARD MEMBER FITZGERALD: Can you point to
10 any law administrative rule or evidence we have on the
11 record regarding the handling of bids of Rocky Mountain
12 Power, just as an example? I mean, I'm much more
13 familiar with the city side and our obligation to take
14 the lowest responsible bidder.

15 I'm just wondering if there's anything we've
16 heard or you can point to in the law that dictates how
17 you handle those situations.

18 MR. REICH: Yeah, I'm not aware of any law
19 that would require us to take the lowest bidder.
20 Certainly, there's a significant factor that we consider.
21 I mean, I guess the one thing that certainly drives a lot
22 of our decisions, we take into -- other factors as far as
23 safety records go and reliability and insurance
24 requirements. And to -- also into the price
25 consideration, you know.

1 We just, certainly, have to be able to
2 present to our regulators, the Public Service Commission,
3 to justify when we have given an award or entered into a
4 contract.

5 So that would -- that would come into a
6 regulatory analysis, if there's not a -- if we haven't
7 taken the lowest bid on a project, then we certainly
8 would need to, perhaps, identify the reason for that and
9 justify why we didn't take the lowest bid.

10 BOARD MEMBER FITZGERALD: Okay. That's
11 helpful. Thank you.

12 PRESIDING BOARD MEMBER LEVAR: Thank you, Mr.
13 Fitzgerald.

14 Any other board questions? Mr. Clark or
15 Mr. Wright?

16 BOARD MEMBER CLARK: This is Dave Clark. I
17 don't have any questions.

18 BOARD MEMBER WRIGHT: Glenn Wright, nothing
19 from me.

20 PRESIDING BOARD MEMBER LEVAR: Okay. Thank
21 you.

22 Okay. This is Thad LeVar. I just want to
23 ask one, and I don't want to spend too much time on this
24 issue, Mr. Reich. But on the management surcharge, you
25 seem to -- you pointed to a provision of statute that

1 indicated that the actual excess cost should include any
2 administration and oversight expense.

3 As I went and reviewed the testimony of
4 Mr. Myers -- and you may not have the transcript in front
5 of you, but I was particularly looking at page 304 and
6 305 of the April 21st transcription. It seems pretty
7 clear that he stated in his testimony that the standard
8 costs would also include that surcharge, but that it was
9 not included in the cost that they calculated.

10 Am I misreading that -- those two pages of
11 the transcript in any way, in your view?

12 MR. REICH: I recall that he did testify that
13 it did not included administration -- contract
14 administration and oversight, the standard costs that was
15 presented during the hearing.

16 PRESIDING BOARD MEMBER LEVAR: Okay. Just
17 one follow-up then. But it seems to me that he also
18 testified -- he was asked: Okay. Thank you. Do the
19 overhead project costs include a surcharge as well?

20 And he said, "Yeah, all projects do," and
21 later, he said they were included. So the overhead would
22 carry the same cost, but they weren't calculated into the
23 cost.

24 Am I reading that testimony correctly?

25 MR. REICH: I'm not -- I'm not really

1 understanding. I mean, I don't think that the statute
2 here clearly requires that those costs be included in the
3 standard cost of the facility. And whether -- I'm not
4 really understanding your question with respect to
5 what -- if Mr. Myers testified about, you know, those
6 costs being included in other projects.

7 I mean, I think the answer to that is yes,
8 they are included in other projects. So I'm not sure if
9 I -- if that answers your question.

10 PRESIDING BOARD MEMBER LEVAR: Sure. No, I
11 appreciate your response. That's the only question I
12 have. So thank you. And I think I think that concludes
13 the board's questions then.

14 Since this is Midway City's motion, I think
15 it would be appropriate to see if they want to add any
16 final thoughts before we move to board deliberation.

17 Mr. Gordan or Mr. Jewkes?

18 MR. GORDON: Only one. In regards to the
19 discussion on the bids, I just think it's important that
20 we would point out that I don't believe that Rocky
21 Mountain Power would even accept these bids if they were
22 the ones paying. Knowing that there was just simple
23 errors in them, they would insist that they get bids that
24 are accurate. And so it's not an unreasonable thing to
25 just simply say, "Get us accurate bids."

1 Regarding irreparable harm, we did brief
2 this, but I do want to point out that we have an example
3 of how this played out the last time, when Wasatch County
4 appealed a decision of the board and why it's important
5 here and why the stay is important.

6 Wasatch County saw the stay was denied, went
7 to the Appellate Court and, ultimately, won on their
8 appeal but felt compelled to issue a conditional use
9 permit based on this board's ruling.

10 And so even though they won on appeal, they
11 didn't have the opportunity -- it was withdrawn because
12 the line had already been built. And that's the problem
13 that we've got. Once the line goes in, it's irreparable.
14 You can't take it back out.

15 And so we are simply asking this board to be
16 aware of that, and to grant us a true opportunity here to
17 be able to bury the line.

18 So regarding the irreparable component of
19 that, the last -- the last one that went up establishes
20 just exactly how irreparable this would be if we're not
21 able to obtain the stay.

22 We do appreciate -- you have been very
23 generous with your time today, gentlemen, and we do
24 appreciate the hard work that you are doing on this. And
25 I think based on that, we will submit.

1 PRESIDING BOARD MEMBER LEVAR: Thank you,
2 Mr. Gordon.

3 This is Thad LeVar. Do any board members
4 have any final questions for Mr. Gordon?

5 I'm not hearing any, so we will move to board
6 deliberations.

7 Do any board members want to discuss any of
8 these issues or proposed board action?

9 I will go ahead. This is Thad LeVar. I will
10 jump in first, and I would propose or make a motion that
11 the board reconsider its decision on the management
12 surcharge and require that amount to be included in the
13 standard costs, for the reasons that I've already
14 discussed today.

15 Is there any discussion at that issue?

16 BOARD MEMBER CLARK: Chair LeVar, this is
17 Dave Clark. I'm terribly sorry, but my phone dropped the
18 call just as counsel for Midway was referring to the, I
19 think, Wasatch County case and the fact that the line had
20 been built and the appeal was rendered moot by that
21 construction.

22 So I'm really sorry, but I don't know what
23 has transpired since that point.

24 PRESIDING BOARD MEMBER LEVAR: Okay. This is
25 Thad LeVar. Not much, but I'll go to Mr. Gordon.

1 Do you want to repeat -- considering what you
2 just heard from Mr. Clark, do you have anything you want
3 to repeat from your final statement? I think what he
4 described was pretty close to the end.

5 MR. GORDON: Yes, exactly. You were right
6 there at the end. The point I was making is that that's
7 the aspect of this that is irreparable.

8 So I don't think there was anything else that
9 I said once your call dropped. Unless there's any
10 questions, I will submit.

11 BOARD MEMBER CLARK: Thank you. I don't have
12 any and I apologize.

13 PRESIDING BOARD MEMBER LEVAR: Okay. You
14 don't have any questions for Mr. Gordon at this point,
15 Mr. Clark?

16 BOARD MEMBER CLARK: Correct.

17 PRESIDING BOARD MEMBER LEVAR: Okay. Then
18 the other thing I had done was asked board members if
19 there was any discussion or proposed action and asked for
20 a pause. I made a motion that we -- just on one narrow
21 issue, that we reconsider the administrative surcharge
22 and require that amount to be applied to the standard
23 costs.

24 And I open that up for discussion or action
25 on that specific issue before I go to the others.

1 BOARD MEMBER CLARK: This is Dave Clark. And
2 Chair LeVar, so would that be the 7.5 percent multiplied
3 by the standard cost that's currently in the order?

4 PRESIDING BOARD MEMBER LEVAR: That would be
5 my understanding. And, again, I'll just explain that
6 before this hearing, as I reviewed the transcript, it
7 seemed to me that the testimony from Rocky Mountain Power
8 was that that cost would have applied to the overhead
9 line and that it was not included in the calculations of
10 the standard cost. I think those two points were clear
11 in the transcripts.

12 BOARD MEMBER CLARK: Again, this is Dave
13 Clark. I support reconsideration of that one item.

14 PRESIDING BOARD MEMBER LEVAR: And this
15 motion does not -- is not as to the exclusion of any
16 other item. My motion is to -- simply to deal with this
17 item and then move on to the others.

18 BOARD MEMBER FITZGERALD: This is Troy
19 Fitzgerald. My recollection of the evidence was a little
20 different. I think -- I think there was discussion about
21 management costs and whether projects were done
22 internally or externally and how that functioned.

23 But I don't think our existing order has an
24 error in it with regard to this specifically, but I have
25 no objection and would be in favor of your motion.

1 PRESIDING BOARD MEMBER LEVAR: Okay. Thank
2 you. Any further discussion?

3 Mr. Wright, did you want to add anything on
4 this?

5 BOARD MEMBER WRIGHT: Nothing to add.

6 PRESIDING BOARD MEMBER LEVAR: Okay. So I
7 think I'll restate the motion this way, considering Mr.
8 Fitzgerald's comments: that the motion would be that
9 we -- in our order on reconsideration, that we revise our
10 order to require the inclusion of that administrative
11 management surcharge as part of the standard costs.

12 With that -- with that restatement of the
13 motion, I think we will go ahead and go to vote.

14 Mr. Clark?

15 BOARD MEMBER CLARK: I vote yes.

16 PRESIDING BOARD MEMBER LEVAR: Mr.
17 Fitzgerald?

18 BOARD MEMBER FITZGERALD: Could I have a
19 point of clarification on that? It goes back to
20 Mr. Clark's statement, which is just that those excess
21 costs are 7.5 percent of the stated standard costs in the
22 order.

23 Is that -- is that your understanding of the
24 motion?

25 PRESIDING BOARD MEMBER LEVAR: That -- yes,

1 I'm sorry, I didn't state that in my restatement of the
2 motion, but yes, the 7.5 percent.

3 BOARD MEMBER FITZGERALD: I vote yes then.

4 PRESIDING BOARD MEMBER LEVAR: Okay. I vote
5 yes.

6 Mr. Wright?

7 BOARD MEMBER WRIGHT: I vote yes.

8 PRESIDING BOARD MEMBER LEVAR: Okay. So we
9 have, I think, put that issue behind us. So I think the
10 issues we still have remaining in front of us are the
11 stay, bid specifications and alligations regarding bid
12 errors.

13 I will open it up to any board member who
14 wants to discuss or propose an action on any of those.

15 BOARD MEMBER CLARK: This is Dave Clark.

16 MR. WRIGHT: This is Glenn --

17 MR. CLARK: Go ahead, Mr. Wright.

18 BOARD MEMBER WRIGHT: Yes. I think on the
19 bid errors, I think the testimony is indicating to us
20 that, actually, the low bidder also had what Midway
21 alleges is a bid error. Could we require them to go out
22 and change their bid? I think Chair LeVar made a good
23 point. It's not likely they're going to do so, so I
24 think that particular issue is really a nonissue.

25 BOARD MEMBER CLARK: This is Dave Clark.

1 Just on that specific issue, I would add to that, that I
2 continue to believe that it's not our role and we should
3 not accept the role, if we can help it, of examining the
4 bids -- going behind the bids and examining whether they
5 were faulty in any way or trying to get into the bidder's
6 heads about what they were trying to accomplish and how
7 they viewed the project and what they would do in
8 relation to the specifications that were presented to
9 them.

10 The city asked for bids. The bids were
11 received. We have evidence that Rocky Mountain Power
12 used its standard processes and practices in the bidding
13 process, including encouraging, I think, maybe even
14 requiring.

15 But I believe the testimony was that the
16 bidders actually did go to the site, examine it, take
17 what measurements they needed to, and they were
18 instructed to rely on their own -- as the bidder's own
19 work in fashioning their bids, which, again, is Rocky
20 Mountain Power's standard process.

21 And I feel assured that those processes
22 operated in their regular way in this case, and I do not
23 think we should question the outcome beyond that which we
24 have already done in this record.

25 So I'm supportive of what -- of the

1 conclusion Mr. Wright's expressed.

2 BOARD MEMBER FITZGERALD: This is
3 Mr. Fitzgerald --

4 PRESIDING BOARD MEMBER LEVAR: Is there any
5 other board discussion?

6 Go ahead, Mr. Fitzgerald.

7 BOARD MEMBER FITZGERALD: Yeah, this is Troy
8 Fitzgerald.

9 Again, I'll just echo Mr. Clark's statement
10 there. I think the evidence before us is that it was a
11 fair bid process that was requested, and the bids were
12 received and you have bidders to choose from.

13 PRESIDING BOARD MEMBER LEVAR: Okay. Thank
14 you, Mr. Fitzgerald.

15 This is Thad LeVar. I'm also in agreement
16 with what's been said.

17 I'm going to suggest one more addition to our
18 order, though, as we issue an order on reconsideration,
19 and I agree with everything that has been said. But
20 also, as I read paragraph 15 and 16 of our order, we
21 stated that, "It is not for this board to scrutinize or
22 revise the standards that led to the bid specifications."

23 Now, to me, that's a separate issue from any
24 potential errors by bidders, and I agree with everything
25 that's been said with that, but I would like to include,

1 in addition to that statement, a finding that there was
2 substantial evidence before this board that the
3 specifications that Rocky Mountain Power used were not
4 only the standard practice but were also reasonable.

5 I mean, we had -- we had evidence that there
6 are potential options for doing this in, potentially,
7 less expensive ways, but I think we had quite a bit of
8 evidence that showed there was -- there was, at least, an
9 evidentiary basis and a basis in reasonableness for how
10 the specs for the RFP were written before it was issued.

11 And I would propose that we add to our order
12 on reconsideration a finding that the specifications were
13 reasonable and were consistent with Rocky Mountain
14 Power's standard practices. So that's my only
15 suggestion, in addition to the suggestion by Mr. Clark
16 and Mr. Fitzgerald.

17 BOARD MEMBER WRIGHT: This is Glenn Wright.
18 I agree with that statement.

19 BOARD MEMBER CLARK: And this is David Clark,
20 and I also agree with the statement. I think the -- I do
21 not agree with any inference that we accepted the
22 specifications at their face value. There was a lot of
23 record evidence about the reasoning and the
24 reasonableness supporting the standard specifications.
25 And I think it would be a serious mistake for this board

1 to start to promote deviations from standard
2 specifications and limited situations, particularly given
3 that our overall charge comes to us because of the
4 legislative finding that construction of these kinds of
5 facilities are a matter of statewide concern, and I think
6 we would abandon that concern if we -- if we began to
7 have the localized perspective that we're being asked to
8 adopt by Midway City.

9 BOARD MEMBER FITZGERALD: And this is Troy
10 Fitzgerald. I agree with Chair LeVar's statement.

11 PRESIDING BOARD MEMBER LEVAR: Should we vote
12 on a motion to direct the PSC attorneys to draft the
13 motion for reconsideration consistent with our discussion
14 of these issues for the past few minutes? And then I
15 think move on to the issue of the stay.

16 But should we take a vote on bid
17 specification and alleged bid errors?

18 BOARD MEMBER CLARK: This is Dave Clark. I
19 just have one question regarding the conversation that
20 preceded Chair LeVar's comment about the specifications.

21 Do we have enough in the order about
22 our -- about the reasonableness of the bid process? Or,
23 at least, by reasonable, I mean reasonable and in
24 conformance with Rocky Mountain Power's standard
25 practices, which we find to be reasonable. Is that

1 adequately present in the order?

2 And I'm just asking that because I'm scanning
3 for it.

4 PRESIDING BOARD MEMBER LEVAR: And this is
5 Thad LeVar. I think the purpose of my suggestion was
6 that I think that could be expanded in the order, and I
7 think if we direct our staff to draft our reconsideration
8 order consistent with our discussions we've had, that
9 would include some additional findings that you've just
10 described.

11 BOARD MEMBER FITZGERALD: With that thought
12 in mind then, I would -- this is Troy Fitzgerald, I would
13 suggest that also indicate that bids were requested from
14 Midway City as well, that that be clear in there.

15 PRESIDING BOARD MEMBER LEVAR: Thank you. I
16 appreciate that clarification. I think that -- I
17 personally think that's a good addition also.

18 Should we take a vote on asking our staff to
19 draft it consistent with this discussion then?

20 BOARD MEMBER CLARK: Yeah, this is Dave
21 Clark. I'm going to move that we -- I'm going to move
22 that we do that, that we amplify the order consistent
23 with the prior discussion.

24 BOARD MEMBER WRIGHT: Second.

25 PRESIDING BOARD MEMBER LEVAR: Okay. Was

1 that Mr. Wright who seconded it?

2 BOARD MEMBER WRIGHT: Yes, that was me, Glenn
3 Wright, second.

4 PRESIDING BOARD MEMBER LEVAR: Okay.
5 Mr. Clark?

6 BOARD MEMBER CLARK: Yes.

7 PRESIDING BOARD MEMBER LEVAR: You vote yes,
8 Mr. Fitzgerald?

9 BOARD MEMBER FITZGERALD: Yes.

10 PRESIDING BOARD MEMBER LEVAR: And I vote
11 yes.

12 Mr. Wright?

13 BOARD MEMBER WRIGHT: Yes.

14 PRESIDING BOARD MEMBER LEVAR: Okay. So that
15 motion passes.

16 I had previously said the only remaining
17 issue was the stay, but I think we also should discuss
18 easements.

19 Does any -- does any board member want to
20 discuss whether we should reconsider our decision on
21 easement values for the standard costs?

22 BOARD MEMBER CLARK: This is Dave Clark. I
23 do not. I think we reached the right conclusion. I
24 think it's appropriately explained in the order.

25 BOARD MEMBER WRIGHT: This is Glenn Wright, I

1 agree.

2 BOARD MEMBER FITZGERALD: Troy Fitzgerald, I
3 agree and I think it was generous.

4 PRESIDING BOARD MEMBER LEVAR: Thad LeVar, I
5 also agree.

6 I don't know if any -- well, why don't
7 we -- I'm going to suggest that we take a motion to
8 not -- to decline to modify this in our reconsideration
9 order. And I'll go ahead and make that motion, if anyone
10 wants to second it.

11 BOARD MEMBER CLARK: Dave Clark, I second.

12 PRESIDING BOARD MEMBER LEVAR: Okay.

13 Mr. Clark, how do you vote?

14 BOARD MEMBER CLARK: Yes.

15 PRESIDING BOARD MEMBER LEVAR: Mr.
16 Fitzgerald?

17 BOARD MEMBER FITZGERALD: Yes.

18 PRESIDING BOARD MEMBER LEVAR: I vote yes.
19 Mr. Wright?

20 BOARD MEMBER WRIGHT: Yes.

21 PRESIDING BOARD MEMBER LEVAR: Okay. Do any
22 board members see any issues that we should address,
23 other than the stay at this point? I think we've covered
24 everything we need to cover, other than whether we're
25 going to issue a stay.

1 Any discussion to that, to the stay?

2 BOARD MEMBER CLARK: This is Dave Clark. I
3 do not believe or support -- I do not believe a stay is
4 appropriate. I do not support it.

5 PRESIDING BOARD MEMBER LEVAR: Okay. Thank
6 you for that.

7 I will just add, I agree with that, and I
8 will add a couple of points -- well, let me let me open
9 it up to Mr. Wright or Mr. Fitzgerald first, if you want
10 to add anything to that.

11 BOARD MEMBER WRIGHT: This is Glenn Wright.
12 I have nothing to add. I agree with that.

13 PRESIDING BOARD MEMBER LEVAR: Okay. Thank
14 you, Mr. Wright.

15 Mr. Fitzgerald?

16 BOARD MEMBER FITZGERALD: Yes, I don't think
17 a stay is necessary. But in looking at some of the
18 paperwork that was filed, I'm just curious if there was a
19 misunderstanding. I understood that Midway would have
20 time to pay up to, if I recall right, 30 days before the
21 start date. It was really just a decision whether they
22 wanted to or not but it needed to be made quickly.

23 And with that understanding, I don't think a
24 stay is necessary either.

25 PRESIDING BOARD MEMBER LEVAR: Okay. Thank

1 you. And this is Thad LeVar. I don't have any basis to
2 disagree with your characterization of the deadlines.

3 To me, there's two reasons why we should not,
4 as a board, issue a stay. No. 1, there's the unique
5 standard that applies in asking us to stay our own order
6 requires some -- some degree of finding that -- of a
7 substantial likelihood on the merits, which would require
8 us as a board to, ultimately, find that our order is
9 likely to be reversed on appeal, which I don't think any
10 of us would be making these decisions if we thought that.

11 And it's also kind of moot because the Court
12 of Appeals has already issued a stay, and I think it's in
13 that court's hands to interpret its own language of when
14 that stay expires. And I think we only muddle things up
15 if we try to issue an administrative stay on top of a
16 court stay that is already in effect.

17 So that -- those are the reasons why I also
18 agree with Mr. Clark's suggestion.

19 So if anyone wants to phrase that in a form
20 of a motion --

21 BOARD MEMBER CLARK: This is Dave Clark. I
22 move that we decline to issue the requested stay.

23 BOARD MEMBER WRIGHT: Glenn Wright, I second
24 that motion.

25 PRESIDING BOARD MEMBER LEVAR: Thank you.

1 Okay. Mr. Clark, how do you vote?

2 BOARD MEMBER CLARK: Dave Clark, I vote yes.

3 PRESIDING BOARD MEMBER LEVAR: And Mr.

4 Fitzgerald?

5 BOARD MEMBER FITZGERALD: I vote yes.

6 PRESIDING BOARD MEMBER LEVAR: I vote yes.

7 And Mr. Wright?

8 BOARD MEMBER WRIGHT: Yes.

9 PRESIDING BOARD MEMBER LEVAR: Okay. Thank
10 you.

11 Is any board member aware of any other
12 business we need to address before we adjourn?

13 BOARD MEMBER FITZGERALD: Just quickly, Troy
14 Fitzgerald here, and I don't even know whether this is
15 the right forum or how it should work, but just being
16 involved in a number of these situations over the years,
17 this continues to be a situation to me that seems ripe
18 for a settlement, that if, truly, Midway wants to pay for
19 the line and Rocky Mountain is willing to accommodate
20 that, there should be a way to come to a fair increase in
21 costs and get this thing done.

22 But that is not our prerogative to do. I
23 think we've ruled the way we should and could, based upon
24 the evidence in front of us. But this is a needed line.
25 All parties agree. And if you want to see that in and

1 service continue properly, this should be resolved.

2 PRESIDING BOARD MEMBER LEVAR: This is Thad
3 LeVar. Thank you. That's a valuable insight and
4 suggestion to the parties. I appreciate you making that.

5 Anything else from any board members before
6 we adjourn?

7 Okay. With that final acknowledgment from
8 Mr. Fitzgerald, we are adjourned. Thank you all for your
9 participation in the hearing today.

10 (The hearing was concluded at 2:20 P.M.)

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REPORTER'S CERTIFICATE

State of Utah)
)
County of Salt Lake)

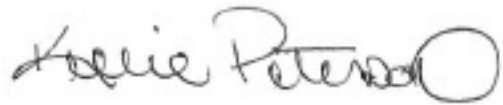
I hereby certify that the witnesses in the foregoing hearing were duly sworn to testify to the truth, the whole truth, and nothing but the truth in the within-entitled cause;

That said hearing was taken at the time and place herein named;

That the testimony of said witnesses were reported by me in stenotype and thereafter transcribed into typewritten form.

I further certify that I am not of kin or otherwise associated with any of the parties of said cause of action and that I am not interested in the events thereof.

IN WITNESS WHEREOF, I set my hand this 9th day of May, 2020.



Kellie Peterson, RPR

	18 27:24 45:21	
<hr/> \$ <hr/>	19 37:18	<hr/> 5 <hr/>
\$4 19:11		50 46:22
\$691,000 13:20 42:18 43:3	<hr/> 2 <hr/>	51 37:19
\$691,344 49:3,8	2 48:5,11 49:22 53:25	54- 44:9
\$70,000 34:18	20-035-03 3:12	54-14-103 35:22
\$700,000 32:20	2020 3:1 45:19,21	54-14-1031 47:14
\$767,712 49:4	2021 35:18	54-14-203 49:22
\$9 19:8	203 15:9	54-14-305 15:9
<hr/> 1 <hr/>	21 45:20	55 37:19
1 11:10,12 53:25	21st 6:20 56:6	56 37:19
1,600 10:16 20:9,11 52:7	23 44:4	57 37:19
1.7 34:19	24 11:5,14 13:5 20:3,5, 12,16 21:4 26:20 52:1,3	58 41:3 44:1
10 36:21 37:18 38:7,10 40:5 41:20 43:3 46:3 48:10	25 48:5	<hr/> 6 <hr/>
100 50:24	26 19:16 20:3	6 11:22 12:4 18:6,11,25
11 36:22,24 37:18 38:7, 10	28 3:1	6.3 11:16
11.1 51:23	<hr/> 3 <hr/>	60 37:6 41:3 43:25
12 11:17 37:19	3 35:23 48:11,18 53:25	60-foot 37:7,25 43:4,14 44:8,9 49:11
12.5 51:22	304 6:21 7:3 56:5	62 37:19
120 11:21	305 6:21 7:3 56:6	63 37:19
12:30 3:1	32 36:16	64 37:19
13 25:5,8 37:19 51:18,22	39 37:20	69 37:19
14 37:19	<hr/> 4 <hr/>	<hr/> 7 <hr/>
15 25:5 33:17,19 37:19 41:21 65:20	40 37:20	7 33:16,19 39:24 45:19
16 48:19 65:20	45 37:20	7.5 50:10 61:2 62:21 63:2
17 11:13 25:5 26:12 51:20,22	47 37:19	75 37:18
	49 37:19	76 37:18

<hr/> 9 <hr/>	act's 53:16	affects 38:9
9 11:19 12:4 18:7 19:1 36:16,21,24 37:18 38:7 40:5 43:3 44:3 46:3	action 29:21 59:8 60:19, 24 63:14	agree 31:10 65:19,24 66:18,20,21 67:10
9(a) 47:21	actions 16:1	agreement 8:1 11:20 20:1 65:15
9-plus 11:22	active 29:7	ahead 6:17 7:21 18:3 21:16 40:15 43:20 54:8 59:9 62:13 63:17 65:6
<hr/> A <hr/>	actual 12:12,13,19,21,23 13:12,16,24 14:8 17:17 18:10,12 19:9 21:22,23 22:5,11,24 25:7 28:13 31:15 47:14,17 49:25 56:1	air 32:13
abandon 67:6	add 7:14 20:8 50:17 57:15 62:3,5 64:1 66:11	akin 28:16
aboveground 41:1,2 42:5,12 48:1	addition 44:14,15 65:17 66:1,15 68:17	alleged 67:17
absurd 53:22	additional 23:7 44:7,12 48:8,11,24 50:18 68:9	alleges 63:21
academic 41:16	address 5:5 6:9,12 7:23 45:17	alleviate 46:5
accept 12:18 13:8 57:21 64:3	addressed 46:9	alligations 63:11
acceptable 50:2	addresses 46:7	allocated 42:18
accepted 31:12 66:21	adequate 45:22 49:5,18	allowed 11:18 32:13 41:20
accomplish 64:6	adequately 68:1	alter 25:23
account 17:6 43:4	adjacent 37:21	ambiguity 10:21 33:4
accuracy 12:9	adjusting 6:23	ambiguous 30:2
accurate 12:22 20:25 22:13 23:23 25:1 26:20 31:17 38:15 57:24,25	administration 50:3 56:2,13,14	amount 6:23 11:7 12:24 18:6,25 20:1 34:19 51:21 52:5,6 59:12 60:22
accurately 12:24	administrative 30:7 54:10 60:21 62:10	amounts 11:4
acknowledge 33:11	admitted 11:5	ample 50:14
acknowledged 10:13 19:25	adopt 67:8	amplify 68:22
acknowledgment 7:25	advance 36:3	analysis 14:18,19 55:6
acquired 13:24	affect 26:19 36:25 37:7	answers 57:9
acquires 37:13	affected 36:22 37:3 42:9 48:7	anticipated 40:25
act 5:17 8:13 15:3 33:7 47:24 53:16		apologize 20:2 27:19 60:12
		apparently 34:1 52:10
		appeal 3:16 5:6,7,21,24 6:3 9:18,20 17:14 29:18

58:8,10 59:20	attack 8:6	22 65:11,22 67:16,17,22
appealed 58:4	attempt 13:17	bidder 25:9,13 26:3,4 54:14,19 63:20
Appeals 5:7,9,11,17 9:5, 16,25 10:3 29:22,24 30:4,10,11,16,24 33:6,9, 13	attention 14:23 35:9	bidder's 64:5,18
appearances 3:4,21	attorneys 67:12	bidders 10:13,19 22:20 23:1 27:10,11 28:2,5 64:16 65:12,24
appears 6:21 10:12	augment 35:6	bidding 27:11 64:12
appellate 5:16 8:12 58:7	augmented 32:22	bids 10:10,14 11:6 14:24 15:12 16:3 17:4,6 19:10 20:20,25 21:6,19,21,25 22:4,10 23:2,3,7,14,15, 21,23 24:6,7,8,9,13,25 25:4,10 26:23 27:9,22 28:6,7,9 34:10 38:14 49:24,25 50:16 51:5,8, 13,25 52:3,4 53:2,3,9 54:11 57:19,21,23,25 64:4,10,19 65:11 68:13
applied 60:22 61:8	authority 25:22 26:8	big 21:1
applies 17:4	automatically 29:4	bigger 46:16
apply 37:23	avoid 33:3,6,10,14 45:21	bit 24:5 30:1 32:2 43:14 66:7
appraisal 48:23	award 55:3	board 3:3,7,12,17,18 4:1, 7,16,22 5:3,5,8,15,22,23 6:2,3,4,8 7:10,13 8:5,7,8, 10 9:3,10,13 10:4,5 11:24 12:8 13:12,17 14:10,20 15:10,15,17,20 16:12,16 17:2,11,21,23, 25 18:2,4,16,22,24 19:15 20:2,6,14 21:1,7,9,13,15, 17 22:5,23 23:4,8,14 24:4,15,16,19,21,23 25:10,25 26:10,17 27:1, 3,13,17,23 28:7,20 29:7, 14 30:6,10,13,15,18,21 31:1,2,22 32:5,18 33:4,8, 11,16,17,20,23 34:1,4, 22,23 35:9,22 36:10,23
appraiser 48:17	aware 23:1 54:18 58:16	
appreciation 32:12	awkward 29:15	
approach 18:17 25:21 26:15		
appropriately 69:24	<hr/> B <hr/>	
approximately 20:12	back 7:8 19:21 23:21 25:21 29:5 31:20 33:6,13 45:9 58:14 62:19	
April 6:20 56:6	backed 11:13 47:10	
area 7:9	based 20:21 44:8,10 50:21 58:9,25	
argument 40:24 42:1,8, 11,17 45:16 53:11,14,18, 19	basically 25:18	
arguments 32:23 45:16 53:8	basis 66:9	
aspect 60:7	began 67:6	
assigned 13:10	begin 3:3 4:23	
assume 42:4	beginning 8:1 12:15,17	
assuming 52:6	below-ground 41:1	
assured 64:21	Benjamin 48:4	
attached 10:3	bid 11:8,9,12,17 12:23 13:7,8 16:10 17:7 19:17 20:7 23:25 26:14,18,19 27:13,17,24,25 28:1,3 38:24 39:2,6,11,12,16 50:2 51:20 52:11,24,25 53:4 55:7,9 63:11,19,21,	
attachment 48:14		

37:11 38:19,21 39:23
40:5,9,11,13,14,15,17,
19,22 41:23 43:1,13
44:17,20,22,25 45:1,9,10
46:1,12,17 50:10,15 51:1
52:16,22 53:13 54:1,3,4,
6,8,9 55:10,12,14,16,18,
20 56:16 57:10,16 58:4,
15 59:1,3,5,7,8,11,16,24
60:11,13,16,17,18 61:1,
4,12,14,18 62:1,5,6,15,
16,18,25 63:3,4,7,8,13,
15,18,25 65:2,4,5,7,13,
21 66:2,17,19,25 67:9,
11,18 68:4,11,15,20,24,
25 69:2,4,6,7,9,10,13,14,
19,22,25

board's 13:10 14:1,23
33:19 36:14 37:23 38:6
39:4 42:17 45:19,23
49:6,19 57:13 58:9

bonding 18:23,25 19:4

bottom 11:3

break 35:17 45:3,8

breaking 36:3

Brereton 4:13,20 41:18
43:18,21 44:19

Bret 4:4 45:13

briefing 33:10

briefly 7:14,23

bring 14:22

brought 46:15 47:6

build 15:2 16:22

building 39:15

built 58:12 59:20

burden 14:2 34:8

burdens 35:6

buried 10:16,17 20:10,11

bury 58:17

business 14:25 26:22
50:22 53:2

C

calculate 48:24

calculated 10:15 56:9,22

calculating 10:14

calculation 8:3 18:13
26:19 32:1

calculations 20:9 25:8,
14 61:9

call 3:18,19,20,23 59:18
60:9

capability 12:25

capacity 25:16

capital 6:18

carry 56:22

case 14:3,16 15:24 30:5,
12,17 44:2 59:19 64:22

categories 52:18

Chair 59:16 61:2 63:22
67:10,20

Chairman 7:22 10:25

chance 30:10

change 28:14 63:22

charge 67:3

check 37:10

choice 9:2 26:10

choose 23:3 42:1 65:12

circumstances 9:1

cite 47:13

cited 19:17

citizens 12:3 15:6 16:18,
24 17:19 19:14 22:13

city 3:13,14,22,23,25
4:24 8:17 11:12,23 12:4,
17,18,22 13:7,19,23
14:19 15:6 16:18 17:9,19
18:5,14,20 19:5,13
21:12,20,21 23:4,11,24
24:9 25:17,21 32:10,17
34:8 45:15 47:6 48:6,9
50:13 51:16 52:2,9 53:7
54:13 64:10 67:8 68:14

city's 36:16 46:6 57:14

claimed 47:1

claiming 50:13

clarification 33:14 62:19
68:16

clarify 31:22

Clark 3:19 10:25 11:1
17:25 18:4,16,22,24
19:15 20:2,6,14 21:7,10
32:16 40:14,16,17,20
55:14,16 59:16,17 60:2,
11,15,16 61:1,12,13
62:14,15 63:15,17,25
66:15,19 67:18 68:20,21
69:5,6,22

Clark's 62:20 65:9

clear 9:22 15:8 23:15
31:20 56:7 61:10 68:14

Clegg 48:13 49:17

Clegg's 48:4,19

client 26:5 32:18 33:25

client's 32:12

clients 41:6

close 60:4

closely 15:15	conclusion 65:1 69:23	construction 15:5 35:12, 15,22,23 38:5 45:20 53:15,17 59:21 67:4
closer 39:17	concurrent 6:7	contemplates 23:11
closing 20:23	condemn 47:11	contention 44:10
code 49:10,22 50:22	condemnation 13:25	continue 64:2
commence 45:20	conditional 24:10 25:18, 24 35:10,20 36:9 53:5, 12,14 58:8	contract 50:3 55:4 56:13
commencement 35:11, 14,21,23 38:4 53:15,17	conduct 52:11	Contractor 11:13 25:5,8 26:12 51:18,20,22
comment 67:20	conductor 52:8,11,13	contractors 25:3,5 27:24 51:8,11 52:17,19
commenting 4:23	confidential 27:10	contribution 11:15
comments 46:7 62:8	confidentiality 27:21 28:18	conundrum 14:5
Commission 43:22 55:2	confirm 41:25 51:12	conversation 67:19
commitments 32:19 41:7	confirmed 3:17,18	Corbin 3:24 19:2 40:2
Committee 11:1	conflate 39:22	correct 14:21 20:5 22:21 23:2 25:8 28:5 31:10 50:11 51:19 60:16
companies 16:2	conflated 40:8	corrected 17:14,15 20:21 28:17
compelled 58:8	conflict 45:24	correction 27:18
compelling 46:2	conformance 67:24	corrections 27:14
compensated 47:2	confused 40:23 53:18	correctly 18:19 50:15 51:1 56:24
competitive 22:10 23:3 24:13 27:9 49:24,25	confusion 42:16	corrects 12:6 26:4
competitively 53:4	connection 41:12	cost 6:23 11:14,20 12:12, 14,16,19,21 13:12 14:8 16:24 17:17 18:11,13 20:15 22:5 34:6 35:7 36:15,16 37:12 38:16 42:15,18,23 43:2,8,9,10 47:12,16,17,20,21,22 50:1,4,7,8 56:1,9,22,23 57:3 61:3,8,10
competitors 28:1,3	conservative 15:24 16:6 19:10 50:14	costly 15:24
completely 20:19 23:15 31:12	consideration 38:12 40:4 54:25	costs 6:19 12:16,23
comply 8:15 24:14	considerations 29:12	
component 58:18	considered 31:25	
compromise 27:13,15 51:2	consistent 33:21 66:13 67:13 68:8,19,22	
compromised 27:22	consistently 34:5 35:2,3, 5	
compromising 28:8,18	construct 35:25 39:10	
concede 26:21	constructed 49:1	
concern 67:5,6		
concludes 33:21 57:12		

17:18 21:22,24 22:11,24
23:5 31:4 34:7,8,17 36:7
38:15 40:6 42:7 43:23
47:15 50:6 52:20 56:8,
14,19 57:2,6 59:13 60:23
61:21 62:11,21 69:21

council 8:20 11:12
25:17,22

counsel 19:16 25:17
59:18

County 58:3,6 59:19

couple 21:14 28:22

court 4:14,18,21 5:7,9,
10,17 9:5,7,16,24 10:3
15:14 28:24 29:5,22,24
30:3,9,11,16,23 33:6,9,
13 34:12 58:7

covers 30:11

create 16:9

created 14:5 31:6

credible 46:2

CUP 11:11 12:1 36:6
38:4

curious 29:5

customers 15:3 45:24
50:25

cut 43:19

D

damages 41:9 47:1

date 29:20

Dave 17:25 40:14 55:16
59:17 61:1,12 63:15,25
67:18 68:20 69:22

David 3:19 66:19

day 6:3 8:25

days 9:12 11:21 30:20

deadlines 8:22

deal 61:16

decide 14:11 21:25

decision 8:18,25 15:16
31:17 33:20 42:18 58:4
59:11 69:20

decisions 54:22

declined 15:17

deference 38:24 39:23

deferred 36:12

defines 35:23

definition 35:15 47:14,19
50:8 53:16,17

delay 46:11

deliberation 6:16 57:16

deliberations 7:1,6 8:20
59:6

demote 52:20

denied 58:6

depending 5:25 29:15
30:14,18 31:1 50:5

depends 9:21

describe 39:12,18

describing 31:5

description 31:6,11,22
39:19

design 35:24

designed 35:2,4

detailing 46:3

details 26:18,19

determine 22:5,10,23

26:24

determined 14:15 36:7

determining 47:12

development 37:21

deviations 67:1

dictates 54:16

difference 11:21 12:4
13:6,11 17:7 26:25 36:19
38:5 42:14 47:16 50:1
51:24 52:5

differences 18:17

differential 33:18

differently 18:20

difficult 14:24 28:19

dip 52:8,13

direct 45:23 67:12 68:7

directed 5:10,17

direction 5:21

directly 48:7,20

disagree 26:11

disagreeing 26:6

discontinue 46:10

discuss 5:15 7:4 45:3,11
59:7 63:14 69:17,20

discussed 33:2 43:3
44:3 49:12 59:14

discussing 5:22,23 6:2
27:8 38:24

discussion 6:9 19:17
47:3 57:19 59:15 60:19,
24 61:20 62:2 65:5 67:13
68:19,23

discussions 68:8

dispute 10:24 37:5

disputed 13:3

disputes 15:11

distinction 12:20

doable 19:8

Docket 3:12

dollars 35:7

draft 67:12 68:7,19

drives 54:21

dropped 59:17 60:9

due 44:12

duty 23:12

E

earlier 32:16

easement 13:21 31:4,8,
9,17 34:6,17,19 35:5
36:25 37:6,7,12,13,16,25
38:9,16 39:2,6,13 40:6,
25 41:2,5,17 42:8 43:5,
15,16,25 44:7,9 48:8,11,
25 49:11,13,14 69:21

easement's 44:15

easements 13:12,16,24
31:15 35:11,19,21 36:5,
11,13 40:24 41:14,19
42:3,19,23 43:2 47:7,11
53:21 69:18

echo 65:9

effect 9:7

effective 16:24

elected 11:11 30:5

electric 46:1 49:10
50:21,23

element 36:8

elevating 40:6

eliminate 25:12

Elizabeth 4:13,20

emergency 3:15

emphasize 12:13

encouraging 64:13

encumbered 37:24 43:24
44:8,13

encumbrance 43:24

end 12:11 33:24 60:4,6

entails 8:9

enter 9:10 30:20

entered 22:25 30:17 55:3

entire 20:12

entitled 12:22 13:7

equals 11:14

equations 51:15

error 6:22 8:2 10:10,18,
20 11:2,4,18 12:7 13:4,5,
10 14:20,22 16:15 17:5
19:25 22:16,19 26:20
28:12,16 40:1 52:16,24
61:24 63:21

errors 10:6,14,23 13:2
19:17 22:2 23:22 51:14
57:23 63:12,19 65:24
67:17

establishes 58:19

estimate 13:16 14:14
20:1 37:12 47:7 49:6

estimated 12:16,21
36:16 47:22,24

estimates 13:11,13,22
14:9 31:12 39:6

estimating 31:8

event 5:24 14:12

everything's 16:14

evidence 9:24,25 10:2,3
14:15 15:23 17:2 21:22
23:15 34:4,16,25 39:8,9,
13,14,16 46:2,8 49:5
53:8 54:10 61:19 64:11
65:10 66:2,5,8,23

evidentiary 66:9

examine 64:16

examining 64:3,4

examples 39:1,2

excess 12:12,14,19,21,
23 13:12 14:8 17:17
18:11,13 21:22,23 22:5,
11,24 34:5,7 35:7 38:15
43:10 47:12,15 50:1 56:1
62:20

exchange 41:7

exclusion 61:15

exhibit 48:15

existing 42:5 46:21,23,
25 49:13 61:23

expanded 49:15 68:6

expense 50:4 56:2

expensive 39:11 66:7

expert 13:19 16:3 26:23

expertise 21:4

expire 29:21

explain 61:5

explained 69:24

explanation 31:11

explored 32:25 33:1

express 6:17 32:12
expressed 65:1
extending 9:12
externally 61:22
extra 20:9

F

face 66:22
facilitate 41:11
facilities 15:2,5 67:5
facility 3:11 28:7 35:15,
24,25 45:10 47:17,20,22
48:1 50:1,4 53:13 57:3
fact 10:22,25 13:4 33:16
41:6 43:4 51:17 52:17
59:19
factor 54:20
factors 54:22
failure 36:11
fair 12:11 16:18 17:19
22:7 24:1 35:1 42:4
65:11
fairly 10:8 22:12
fall 44:8
familiar 54:13
fashioning 64:19
faulty 64:5
favor 61:25
fee 49:21 50:6
feedback 3:8
feel 7:20 9:2 15:12,20
24:1 34:3,9 37:11,23
41:10 64:21

feels 9:11
feet 10:16 20:9,11 37:6
41:3,21 44:1 48:11
51:19,21 52:7,19
felt 58:8
figure 19:16
file 33:8
filed 3:14,22 4:24 5:7
8:24 10:5 30:4 45:15
filing 10:3 33:10
final 57:16 59:4 60:3
finally 9:7
financial 6:19 38:7 41:14
find 20:17 67:25
finding 45:24 49:20 66:1,
12 67:4
findings 49:6 68:9
finds 50:10
Fitzgerald 3:20 21:11,13,
14,17 23:4,8 24:4,15,17,
19 40:13,15,21,22 41:23
43:13 44:17,20,23 54:6,
7,9 55:10,13 61:18,19
62:17,18 63:3 65:2,3,6,7,
8,14 66:16 67:9,10
68:11,12 69:8,9
Fitzgerald's 62:8
fix 21:6
fixed 8:3
fixes 22:2
focus 6:5 12:9
focused 42:24
focuses 12:13
follow 24:5 43:5

follow-up 56:17
foot 41:20
forego 41:8
forward 6:4 7:4,17 22:1
23:24
found 5:2 37:11 43:22
45:19 46:1 50:15 51:1
founded 51:15
free 7:20
front 5:20 12:11 39:8
56:4 63:10
fulfill 23:19
fulfilled 23:18
full 36:19
function 16:23
functioned 61:22
funds 18:6

G

gap 30:15
gather 32:19
gave 20:1 39:23
generally 41:18
generous 58:23
gentlemen 58:23
give 7:16,20 32:8 36:19
38:14 40:5
giving 3:8 10:14
glad 7:3
Glenn 3:19 55:18 63:16
66:17 69:2,25
good 3:5 22:7 28:10 41:5
63:22 68:17

Gordan 57:17
Gordon 3:24 4:6 19:2,23
20:5 22:6 36:12 40:2
57:18 59:2,4,25 60:5,14
government 49:23
grant 29:18 30:6 58:16
granted 9:18
grateful 38:11 40:4
great 16:22 51:4
gross 52:2
grossly 51:6 52:15
ground 15:7 35:17 36:3
guess 10:22 21:17 54:21
guys 26:24

H

hand 14:25
handle 54:17
handling 54:11
hands 29:22
happen 5:24
happened 5:14 27:12
31:23
happily 22:21
hard 58:24
harm 46:18,20,25 58:1
hat 11:24
heads 64:6
hear 30:16 36:1
heard 46:9 53:9 54:16
60:2
hearing 3:15 5:1,4,14 6:5
8:19 20:24 26:8 27:13

28:4 42:25 45:17 48:3
49:12 50:9 56:15 59:5
61:6
hearings 53:10
Heber 45:25
Heidi 4:6
helpful 31:23 55:11
helps 43:13
Hey 11:25 16:10
high 26:1,11
higher 25:11 42:20 43:8
highpoints 7:20
hired 13:15
holding 44:11
homeowners 32:14

honest 31:19
hope 5:8 33:9
hung 11:24
hybrid 13:18 31:7

I

idea 11:25 33:12
identified 37:15,18 44:2
48:13
identify 52:19 55:8
immediately 33:9
impact 5:21 38:7 41:9,14
43:6 52:4,16
impacted 31:13 40:24
43:16 48:20
impacts 42:13
impaired 46:1

impairment 45:22
important 10:9 41:10
57:19 58:4,5
importantly 17:16
impose 14:2 33:4 34:8
impression 35:18
impute 35:3
inappropriate 47:5
inaudible 3:6
include 36:15 37:12,20
43:23 56:1,8,19 65:25
68:9
included 42:19 50:7,8
56:9,13,21 57:2,6,8
59:12 61:9
includes 35:24
including 8:2 47:18,22
64:13
inclusion 62:10
incorporates 53:12,16
incorrect 51:15,21 52:6
incorrectly 7:7
increase 11:5 35:6 42:6
46:12 50:17 52:1
increasing 34:7
incumbent 33:13
incur 38:17
independent 48:23
indicating 63:19
individual 32:14
individualized 14:18
industry 16:1,2,5,21
inference 66:21

information 12:19 23:11 28:6 48:16 49:19	40:8 59:8 63:10 67:14	15:12 28:24 29:25 30:14, 19 33:19 35:10 38:4 39:24
infringed 15:5	item 61:13,16,17	
initially 5:5 10:5 30:22	<hr/> J <hr/>	Large 4:10
insist 57:23	Jewkes 3:24 7:22,23 17:22,24 18:8,19,23 20:8,18 23:6,9 24:8 25:2, 15 26:6,21 27:16,19 28:10 29:23 31:19 40:2,3 57:17	law 54:10,16,18
installation 41:1		leads 36:12
instance 47:5		leave 29:20
instructed 64:18		led 65:22
insurance 54:23	job 8:7	Lefevre 13:15 48:17 49:17
insurmountable 12:5	join 32:23	Lefevre's 13:18 31:7
integrity 50:25	Joshua 3:24 7:23	legal 35:13
intended 15:1,3	judgment 13:25	legislative 67:4
intent 10:2 30:3	jump 19:3 59:10	length 20:12,14,22 25:4 26:2 28:13
interesting 25:15	jurisdiction 5:5,13 15:10, 21 16:16	lengths 26:4
internally 61:22	justified 15:25	letting 6:5
interpreted 14:6	justify 55:3,9	Levar 3:3,5,7,19 4:1,7, 16,22 17:21,22 18:2 21:9,10,15 24:16,17,21 27:3,5,17,23 28:20 31:2 32:5 36:18 38:19,20 40:9,19 44:22,23 45:1,9 54:3,4,8 55:12,20,22 56:16 57:10 59:1,3,9,16, 24,25 60:13,17 61:2,4,14 62:1,6,16,25 63:4,8,22 65:4,13,15 67:11 68:4,5, 15,25 69:4,7,10,14
interpreting 29:25	<hr/> K <hr/>	Levar's 67:10,20
interprets 30:18,21	keeping 27:10	lie 37:9,25
intervene 32:13	kind 13:20 31:7 41:24 46:15	lifted 29:5
invited 27:24	kindly 36:12	Light 45:25
involved 18:25	kinds 67:4	likelihood 29:13,17 46:18 47:3
irreparable 46:17,19,25 58:1,13,18,20 60:7	knew 22:15	likelihoods 39:14
issue 5:9,12,19 6:8,18 9:4 13:9 14:11 27:8 28:21 29:3,8,11 30:24 31:1,3 35:13 36:10 39:8, 20 47:6 55:24 58:8 59:15 60:21,25 63:9,24 64:1 65:18,23 67:15 69:17	knowing 27:11 57:22	
issued 5:1 6:16 28:24 30:21 66:10	knowledge 27:25	
issues 15:18 17:13 28:22 30:15 31:24 33:21 34:19	<hr/> L <hr/>	
	landowners 14:2	
	language 13:21 14:7	

limit 24:10
limited 67:2
limiting 38:6 43:2
limits 8:14
linear 51:19,21
lined 37:16
lines 37:6 38:1 44:6 49:1
52:14
literally 14:7
live 33:23
Liz 41:15 43:18,20 44:18
local 49:23
localized 67:7
long 16:13 34:13
looked 6:15
lose 31:14
lot 28:6 32:14 39:17
54:21 66:22
low 25:9 26:3,13 63:20
lower 17:8 26:13 43:9
lowest 11:9,12 13:8 17:7
50:2 54:14,19 55:7,9

M

made 6:22 8:18 9:25
10:13,18,20,23 11:3
23:22 41:6 45:17 60:20
63:22
make 9:10,14 11:15,20
16:18 17:19 23:1 26:5
29:19 32:25 35:8 38:3
59:10
makes 12:20 13:6

making 52:9 53:19 60:6
management 49:21 50:6
55:24 59:11 61:21 62:11
managing 6:19
map 37:2,15,16
Mark 4:11
marshal 10:1
material 17:7 51:23
materials 35:25 36:4
math 13:5
mathematical 28:16
51:15
matter 6:13 41:16 67:5
matters 4:25
meaning 14:8 15:13
53:20
means 11:18 47:15,21
meant 8:6
measurements 64:17
meet 8:9 14:16 16:21
53:4
member 3:3,7 4:1,7,16,
22 8:6 11:1 17:21,25
18:2,4,16,22,24 19:15
20:2,6,14 21:7,9,13,15,
17 23:4,8 24:4,15,16,19,
21,23 25:10,25 26:17
27:1,3,17,23 28:20 31:2
32:5 38:19 40:9,13,14,
15,17,19,22 41:23 43:13
44:17,20,22,25 45:1,9
54:3,6,8,9 55:10,12,16,
18,20 56:16 57:10 59:1,
16,24 60:11,13,16,17
61:1,4,12,14,18 62:1,5,6,
15,16,18,25 63:3,4,7,8,
13,15,18,25 65:2,4,7,13

66:17,19 67:9,11,18
68:4,11,15,20,24,25
69:2,4,6,7,9,10,13,14,19,
22,25
members 3:17,18 5:8
6:2,4,8 7:13 8:10,20
17:23,24 38:22 40:11
54:1,5 59:3,7 60:18
mentioned 10:8 29:6
30:13 46:17
mere 47:7
merits 29:13 46:14,18
47:4
met 16:22
middle 15:6 16:20
Midway 3:13,14,22,23,25
4:24 7:14,18 9:19 11:19,
23 12:2,11 13:7,23 16:24
17:9,17 18:14,20 21:12,
20,21 22:3,10,12 23:4,24
24:25 32:9,21 33:7 34:8
43:9 45:15 46:6 47:6
48:6,9 50:12 51:16 52:2,
9 53:7 57:14 59:18 63:20
67:8 68:14
Midway's 5:2 6:6,10,15
24:5 32:23 45:12
million 11:16,17,19,22
12:4 18:6,7,11 19:1,8,12
34:20 51:22,23
millions 35:7
mind 38:13 68:12
minds 23:20
minimum 14:17 44:11
minus 11:14,15
minutes 45:6 67:14
miscalculation 52:10

misquoted 51:6
misreading 56:10
misremembering 7:6
misrepresentation 52:2
misrepresenting 52:15
misstated 51:7
mistake 11:13 21:2 66:25
mistakenly 40:7
mistakes 17:6 19:10
26:13
misunderstanding 7:2
39:1
mode 52:20
modification 49:12
modifying 46:23,25
money 11:21 12:2,25
17:9 18:15,18,21 19:7,14
22:13 32:22 47:2
months 36:2
moot 5:13 30:14 59:20
morning 3:5
Morris 4:11 32:1,8,11
38:20 39:19,21 40:12
41:2 42:16 43:20 44:18
motion 3:14,22 4:24 5:6,
11,18,20,25 6:6,10 7:8,
15,19,23 8:24 9:8,9,13,
17,21 29:1 31:5 32:9
33:5,10 45:4,12,15 46:6
57:14 59:10 60:20 61:15,
16,25 62:7,8,13,24 63:2
67:12,13 69:15
motive 35:3
Mountain 3:12 4:3,4,6
10:12 13:8,14 14:3,13,18
15:23 16:5,19,20 20:24

21:5,18,19 22:2,14 23:1,
12,17 24:14 27:7 33:18
34:2,4,13,23 36:2 37:13,
17 38:6,14,16 39:5 42:2,
12 43:22 44:5 45:3,7,11,
14,25 48:16,25 49:11
50:13,17,22 51:2,10
53:2,20 54:2,11 57:21
61:7 64:11,20 66:3,13
67:24
Mountain's 36:11 38:1,
24
move 7:4,17,18 22:1 27:6
45:3,6,11 57:16 59:5
61:17 67:15 68:21
moving 6:4 47:13
multiplied 61:2
mute 3:10
Myers 7:2 10:19 11:4
13:4 16:8 19:25 22:17
51:7 52:3,17 53:1 56:4
57:5
Myers' 7:7 51:6

N

nail 29:10
names 25:7
narrow 60:20
National 49:10 50:21
nature 27:9
necessarily 22:23 29:7
37:4,8
needed 10:16 22:14
64:17
negotiation 13:25
neighboring 37:14

nobody's 46:17
noise 3:6
nonissue 63:24
north 11:19
Nos 37:18
noted 28:12
notes 20:3 37:10
notice 5:1,3
noticed 5:14
November 45:21
number 13:20 19:8 20:16
34:21 38:15 42:20 49:8
50:11
numbers 11:6 12:9,22
25:7,14 28:13,14 31:8
36:19 38:8 41:4 52:18

O

object 6:4 29:8
objection 61:25
obligated 17:18
obligation 10:1 54:13
obligations 23:18
obtain 35:19 36:11 47:11
49:11,24,25 50:16 58:21
obtained 35:11,21 36:6
obtaining 42:7
obviate 41:13
occurred 28:4
one's 26:18
open 54:4 60:24 63:13
operated 64:22

opportunities 7:16
opportunity 9:15 16:25
30:7 38:14 58:11,16
opposed 18:23
Opposition 4:9
option 11:10,12 17:1
18:9 53:25
options 66:6
order 5:9 6:16 7:10 8:17
9:6,13 13:10 17:13,17
18:10 22:25 28:25 29:3
30:15,21 31:21 33:8
36:4,14 37:23 39:4,24
43:22 44:11 45:19,23
46:20 61:3,23 62:9,10,22
65:18,20 66:11 67:21
68:1,6,8,22 69:24
ordering 35:24
outcome 5:25 9:21 64:23
outset 7:5
overhead 11:14 34:7
37:6,17 38:17 42:19,21
43:2,6,8 48:7,20 49:2,7
50:6 52:14 53:24 56:19,
21 61:8
overly 15:24 16:5 19:10
50:13
overnight 8:19
oversight 50:4 56:2,14
overview 15:14
overwhelming 15:22
17:1 39:13

P

P.M. 3:1

Pacificorp 44:2
pages 56:10
paid 35:9
papers 47:13
paragraph 33:17,19
45:20 46:3 65:20
Parcel 37:18
parcels 36:20,22 37:3,8,
15 40:24 42:9 43:15
48:10
part 24:10 33:5 44:5
62:11
partially 32:25 33:1
parties 4:23 5:4 6:9 9:14
party 33:13
passes 69:15
past 67:14
pause 60:20
pay 11:20 16:25 17:18
19:13 23:5 32:17 43:10
paying 57:22
pending 3:16 28:25 29:2
people 23:21 32:19
41:13
percent 11:5,14 13:5
19:16 20:3,12,16 21:4
26:20 50:10 52:1,3 61:2
62:21 63:2
period 30:20
permit 24:10 25:18,24
35:20 53:6,12,15 58:9
permit's 35:10 36:9
personal 6:17 8:9
personally 5:22 8:6

68:17
perspective 67:7
pertaining 33:23
petition 3:15 5:2 6:15
30:4 33:8
petitioner 3:13
phone 3:10 43:19 59:17
phrase 29:2
physically 37:24 44:6
pick 23:14,25 24:2 26:1
picture 46:16
place 30:9 33:12
plain 14:7,8
plainly 15:10
planned 37:21
planted 37:4,9
play 6:3
played 58:3
point 17:24 21:12 22:12
23:21 24:7 25:24 26:17,
22 35:8 38:23 42:17 43:1
45:11 54:9,16 57:20 58:2
59:23 60:6,14 62:19
63:23
pointed 55:25
pointing 23:13 39:21
points 32:24 33:3 38:3
40:3 61:10
pole 37:4 42:5
poles 37:9 44:4 52:8,13
policies 33:22
policy 51:4
portion 19:13

position 9:19 14:1 18:14
23:17 28:19 29:15 32:9
34:1 47:10 49:9 53:22

possibility 19:7,12

potential 13:6 28:8 65:24
66:6

potentially 9:15 18:8
19:13 66:6

power 3:12 4:3,5 13:14
14:13,18 15:3,23 16:2,
16,19,21 20:24 21:5,20
22:14 23:1,12,18 24:14
27:7 33:18 34:2,23 43:22
45:3,7,11,14,25 46:21,
24,25 49:1,11 50:13,17,
22,23 51:2 52:14 53:2,20
54:2,12 57:21 61:7 64:11
66:3

Power's 16:5 21:18 39:5
44:5 48:17 51:10 64:20
66:14 67:24

practice 16:11,14 51:8
53:3 66:4

practices 64:12 66:14
67:25

pre-filed 19:20

precarious 52:23

preceded 67:20

precisely 16:17

preliminary 4:24 6:1,13,
14,22 7:12

premature 5:18

prepared 41:11

preparing 26:22

prerogative 6:12

prescriptive 49:13

present 34:16 55:2 68:1

presented 13:13,14,19
14:13 34:4 45:18 48:3
53:8 56:15 64:8

preserve 8:11

PRESIDING 3:3,7 4:1,7,
16,22 17:21 18:2 21:9,15
24:16,21 27:3,17,23
28:20 31:2 32:5 38:19
40:9,19 44:22 45:1,9
54:3,8 55:12,20 56:16
57:10 59:1,24 60:13,17
61:4,14 62:1,6,16,25
63:4,8 65:4,13 67:11
68:4,15,25 69:4,7,10,14

pretty 8:2 9:22 10:13
33:7 56:6 60:4

prevailing 29:13

previously 69:16

price 54:24

primarily 8:11 9:8

prior 36:6 68:23

problem 12:2 23:22
58:12

problems 34:10

proceed 23:24

process 5:16 8:13 10:22
12:9 15:1,14 18:5 22:9
27:12,22 28:7 64:13,20
65:11 67:22

processes 64:12,21

project 6:19 16:22 20:13,
15 35:24 39:10 46:4,8,
11,22,23 51:3 53:23 55:7
56:19 64:7

projected 34:18

projects 33:23 56:20
57:6,8 61:21

promote 67:1

properties 31:13,14
36:17,24 37:12,14,20,24
38:10 40:5 43:3,7,23
44:3,4,7,12,15 48:6,12,
14,20,23

property 31:25 37:18
42:6 44:6 48:21

propose 59:10 63:14
66:11

proposed 48:7 59:8
60:19

protect 15:4 50:25

provide 12:17 13:15
15:2,4 23:12

provided 21:19 37:2

provision 11:25 12:1,6,
10,24 50:5 51:9 55:25

PSC 67:12

public 8:19 27:12 28:4
34:18 49:23,24 50:2,3
55:2

PUD 31:25

purchase 53:21

purpose 68:5

purposes 26:8 47:12

pursue 19:6

put 6:2 20:10 32:21
42:12 45:24 52:18 63:9

puts 5:9 18:14 52:22

putting 28:18 46:24

Q		
	30:14 31:20 39:24 65:20	reconsidered 36:15
	reading 30:1,8 33:18 56:24	reconvene 45:6
quantify 47:9	reads 50:5	record 10:1 34:9 35:16 37:2 41:4,5,7 49:5 54:11 64:24 66:23
quantities 51:11,12	real 19:12 21:24 22:9	records 6:15 49:19 54:23
question 13:11 18:1,6 19:15 20:19 22:7 24:24 25:16 27:20 28:10,21 29:3 31:3 32:4,16 34:3 38:21 43:14 48:5 49:14 57:4,9,11 64:23 67:19	realistic 26:11	reduce 28:13
questioned 11:2	realize 22:19	reduced 16:4
questioning 22:18	reason 10:15 35:4 46:19 55:8	refer 35:22 39:24 48:4
questions 7:17 17:24 21:8,10,12 24:18,22 27:2,5 28:22 32:6 40:10, 11 44:21,24,25 54:2,4 55:14,17 57:13 59:4 60:10,14	reasonable 16:25 30:8 66:4,13 67:23,25	reference 19:18,22,24
quick 19:18,22	reasonableness 66:9,24 67:22	referring 10:7 47:25 59:18
quickly 8:13 9:23 15:1 19:21 33:7	reasoning 66:23	reflect 17:17 18:10
quote 15:11 33:20,24 37:12 51:19,21	reasons 51:4 59:13	reflective 38:16
quote/unquote 22:8	rebid 25:14 28:5,14	regard 42:9 61:24
	rebuttal 48:5,17	regular 8:21 64:22
	recall 6:25 34:21 41:4,18 56:12	regulators 55:2
	recalled 6:16	regulatory 55:6
	receive 23:24 51:8	Reich 4:4 45:13 54:18 55:24 56:12,25
	received 5:2,8 8:16 64:11 65:12	reject 36:20,21
	receiving 53:2	rejected 39:5
	recess 45:5	related 24:23 39:2
raise 11:19 12:3,12,24 17:10,18 18:6,14,21 19:7,14 22:13 33:12	recited 16:9	relates 19:16 42:11
raised 22:14	recollection 61:19	relation 11:7 64:8
raises 45:15	reconsider 17:12 33:5 36:23 38:13 43:1 59:11 60:21 69:20	releases 41:12
raising 18:18 29:19	reconsideration 3:15 7:24 9:8,9,14,17 29:1,4, 16 44:11 46:7 61:13 62:9 65:18 66:12 67:13 68:7	relevant 20:19
range 19:12		reliability 46:4 54:23
reached 15:7 69:23		reliable 45:22
read 7:8,19 9:5 15:9		relied 13:12
		relief 9:15
		rely 22:5 23:16 51:11 64:18

remain 33:11 37:14
remaining 25:13 26:2
63:10 69:16
remember 11:1 25:11
34:20 38:7
remembering 7:7
remind 32:18 40:25
rendered 59:20
repackages 45:16
repeat 4:15,19 32:24
34:11 60:1,3
replace 26:5
REPORTER 4:14,18,21
represent 32:14
representation 51:13
representing 3:23 4:12
20:7
request 16:9 21:20 23:11
24:9 25:19 28:9 29:7
30:12,13 49:23
requested 65:11 68:13
require 12:18 13:24
14:12 24:8 36:24 37:6
48:8 51:2 54:19 59:12
60:22 62:10 63:21
required 20:24 23:9
35:10,20 44:14 48:1,25
requirement 49:10
requirements 16:22 36:9
53:5 54:24
requires 13:22 24:6
25:18 57:2
requiring 22:25 64:14
reserve 19:6 32:3

resolution 28:25 29:2
resolve 15:11
resolved 9:5,7
respect 7:11 19:17 28:23
32:9 39:6 49:21 50:12
51:5 53:11 57:4
respectfully 14:23 16:15
17:12
respond 39:20
responding 32:3
response 57:11
responsible 54:14
rest 5:10
restate 62:7
restatement 62:12 63:1
restrictions 48:11
resubmitted 23:23
result 28:7 35:6
reversed 29:18
review 3:12 9:15 14:23
15:14 16:17 28:7 30:5,7
45:10 53:13
reviewed 6:14,20 56:3
61:6
reviewing 10:11
revise 28:9,12 33:24 62:9
65:22
revising 7:10
revisions 27:14
RFP 33:21 66:10
right-of-way 47:18 49:7
53:21
right-of-ways 36:16

rights 8:12,13 15:4
rights-of-way 43:23
44:14 47:23,25
risk 45:21 46:1,3,5,13
RMP 50:15
road 16:20
Rocky 3:12 4:3,4,6 10:12
13:7,14 14:3,12,17 15:23
16:5,19,20 20:24 21:5,
18,19 22:2,14,25 23:12,
17 24:13 27:7 33:18
34:2,4,13,23 36:1,10
37:13,17,25 38:5,14,16,
24 39:5 42:2,12 43:22
44:5 45:3,6,11,14,24
48:16,25 49:11 50:13,17,
22 51:2,9 53:1,20 54:2,
11 57:20 61:7 64:11,19
66:3,13 67:24

role 5:16,23 6:2 64:2,3
roughly 18:7
route 11:10 32:15 36:13
37:1,9,21 41:13 42:6
43:5 44:3
routes 53:23
rule 5:11 29:16 54:10
rules 31:1
ruling 33:5,16 38:13 58:9
running 31:15
rushed 10:22 33:10

S

sacrifice 8:10
safe 45:22
safety 16:21 49:10 50:21
54:23

satisfied 25:12 36:9	silence 6:7	63:11 64:8 65:22 66:3, 12,22,24 67:2,20
satisfy 26:4	Similar 10:8	
scanning 68:2	similarly 16:1	specs 34:11 66:10
scenario 42:10	simple 8:3 10:8 22:19 23:20 57:22	speculation 51:16
schedule 5:3	simply 16:9 28:12 33:11 40:17 45:16 47:15 57:25 58:15 61:16	spend 55:23
scheduled 8:22	site 64:16	staff 68:7,18
scope 21:1	sited 44:6,12	standard 6:23 16:11,13 29:12 36:15 47:16,20,21 50:4,7,8,16 51:7,9 53:3 56:7,14 57:3 59:13 60:22 61:3,10 62:11,21 64:12, 20 66:4,14,24 67:1,24 69:21
scrutinize 33:24 34:23 65:21	situated 16:2	standards 15:23 16:1,5, 21 33:22,24 38:6 65:22
seconded 69:1	situation 22:6,8 52:23	start 4:23 46:16 67:1
Section 15:9 47:21 49:22	situations 49:15 54:17 67:2	starting 48:18
seek 9:15	size 12:4	starts 38:5
send 21:24 23:21	slightly 22:8 51:20	state 63:1
sense 9:10 29:20	small 11:23	stated 30:24 56:7 62:21 65:21
separate 39:7 65:23	sole 6:8	statement 32:8 60:3 62:20 65:9 66:1,18,20 67:10
serve 46:12	solely 6:5	statements 7:12 41:24
service 45:22 46:1,4 55:2	solutions 42:15	statewide 67:5
set 13:22 38:15	sounds 9:4	statute 12:13,15,20 13:21 14:5,6 15:1,8,21 23:10,18 24:6 47:14 49:22 53:5,12 55:25 57:1
settlement 34:19	span 44:8,16	statutory 35:15
severance 41:8	speak 7:14 9:20	stay 3:16 7:24 9:4,6,11, 12 11:18 28:23,24 29:4, 8,11,18,20,21 30:6,9,11, 12,17,20 33:4,5,11 38:3 46:11 47:4 58:5,6,21 63:11 67:15 69:17
short 45:2	speaker 3:8	
shortest 11:10	speaking 3:9 41:19	
show 21:1	specific 28:12 60:25 64:1	
showed 34:9 66:8	specifically 61:24	
shows 34:4,14 37:3,16	specification 39:12 50:16 51:10 67:17	
side 54:13	specifications 10:21 14:24 15:12,19 16:6,8,17 19:11 21:25 33:22 38:25 39:3,7,11,15,17,25 50:12,14,18,21,24 51:3	
significant 11:4,7,22 12:5 13:2,6 14:2 21:2 22:15 45:21,25 46:3,13 51:24 54:20		
significantly 16:4 17:8 25:11 26:13		

stayed 28:25

straight 19:8

structures 41:19

struggling 21:18

submit 58:25 60:10

submitted 8:5 9:23,24

subpar 35:23

substantial 10:14 29:13,
17 66:2

substantive 6:14

subtract 52:11

success 46:18 47:3

sufficient 47:7

suggest 6:1 16:15 28:11
34:22 65:17 68:13

suggesting 22:4

suggestion 66:15 68:5

summarize 39:9

summary 31:17 48:19

supplement 10:4

supplemented 9:23

support 12:19 49:6,19
51:4 61:13

supporting 66:24

supportive 64:25

supports 51:17

supposed 28:2 53:23

surcharge 6:18,24 7:11
8:2 55:24 56:8,19 59:12
60:21 62:11

surface 41:19

system 50:25

T

table 19:5

taking 20:21 34:1

talk 31:8 32:1 33:15

talked 17:5 34:10 46:17

talking 42:14,22 43:15

talks 12:15

telling 18:5

temporarily 28:25

temporary 9:6

ten 45:5

term 14:8 47:24 53:15

terms 39:14,23 43:10

terribly 59:17

testified 13:4 16:3 22:18
51:7 52:17 53:1 56:18
57:5

testify 56:12

testimony 7:2,7 13:14
16:7 19:20 26:23 35:16
36:1,21 48:5,18 49:16
50:9,15,20 51:6 52:3
56:3,7,24 61:7 63:19
64:15

Thad 3:5,19 4:18 17:22
21:9 24:16 27:5 38:20
44:23 54:4 55:22 59:3,9,
25 65:15 68:5

thing 17:4 23:20 33:15
35:17 36:12 53:9 54:21
57:24 60:18

things 5:13 27:10 38:13

thinks 42:20

thought 68:11

thoughts 57:16

threshold 14:14,16

time 8:14,17,22 24:19
32:3 36:2 38:12 45:2
55:23 58:3,23

times 5:3

Title 35:22

today 3:10,22 6:1,9 26:8
32:23 33:2 38:3 42:25
45:18 46:9 58:23 59:14

today's 6:5

told 16:10 23:14

total 11:5,7 20:7,12
48:10

totally 47:4

touched 43:16

transcript 3:4 6:20,21
7:3,8 10:11 19:19,24
20:17 31:21 56:4,11 61:6

transcription 56:6

transcripts 61:11

transmission 38:1 41:21
44:5 48:7,21 49:1,7

Transmissions 4:10

transmitting 50:23

transpired 59:23

treat 9:8

trenching 20:15 51:19
52:5,7,20

trial 13:23

tricky 14:25

Troy 3:20 21:13 40:13
54:6 61:18 65:7 67:9

68:12	unnecessarily 15:25	27:6 32:25 40:4 42:20 44:25 53:18
true 12:1 14:4,5 58:16	unnecessary 39:15	VOLT's 32:9 46:7 49:9 53:11
true-up 11:25 12:1,6,10, 23	unreasonable 26:15 57:24	vote 62:13,15 63:3,4,7 67:11,16 68:18 69:7,10
truncated 8:23	unusual 9:1	
type 46:11 47:1	updated 20:25 23:7	
typically 9:1	urge 12:8	
	urged 13:23	
<hr/> U <hr/>	Utah 3:11 45:10 49:22 53:13	<hr/> W <hr/>
ultimately 58:7	utilities 15:2	wade 15:17
unclear 10:18	utility 3:11 12:17 14:3 33:21 45:10 49:23,25 50:2	Wait 4:18
uncontroverted 46:2,8	utility's 33:22 50:3	waived 8:13
undercut 35:5		waivers 41:12
undercuts 34:5		wanted 7:5 14:22 19:20 38:3
underestimates 34:5,6	<hr/> V <hr/>	Wasatch 58:3,6 59:19
underground 32:20,22 36:5 41:4,8,9,12,16,19, 22 42:1,10,23 43:11 53:24	valid 23:25	ways 39:10 66:7
undergrounding 16:25	Valley 4:9	Weber 13:19
underlying 48:12	valuation 48:21	Weber's 14:19 31:7,12 36:19 37:11 48:21
understand 8:25 14:1,4 18:19 20:16 27:20 41:24, 25 42:8	values 31:9,18 39:2 42:6 69:21	weigh 26:9
understandably 15:16	verbal 7:20 31:6	wholesale 39:5
understanding 12:10 48:22 57:1,4 61:5 62:23	versus 3:13	wide 4:9 37:7,25 43:5 49:11
undisputed 10:12	view 6:17 10:9 27:14 29:6,23 30:23 31:16 56:11	width 38:9 40:25 41:2,17 42:24 48:8
undue 38:5	viewed 64:7	willingness 8:4
unencumbered 37:14	views 32:13	wires 44:4
unfair 31:21	virtually 8:25	wise 9:11
unit 37:21	visit 36:10	withdraw 9:20
Unlike 49:9	visually 43:17	withdrawn 58:11
	VOLT 4:12,13,19 11:15	won 58:7,10
		wondering 54:15
		words 18:24 37:1

work 13:18 28:2 32:2
58:24 64:19

works 21:24

world 21:24 22:9

Wright 3:19 21:11 24:22,
23 25:10,25 26:17 27:1,4
44:24,25 55:15,18 62:3,5
63:6,7,16,17,18 66:17
68:24 69:1,2,3,12,13,25

Wright's 65:1

written 8:16 9:12 66:10

wrong 23:16 24:3 25:3,4,
13 29:17 34:11

Y

years 46:22 50:24