

Midway City Council  
3 December 2019  
Regular Meeting

Rocky Mountain Power /  
Conditional Use Permit for  
Transmission Line



## CITY COUNCIL MEETING STAFF REPORT

**DATE OF MEETING:** December 3, 2019

**NAME OF PROJECT:** Transmission Line Rebuild along 970 South, Stringtown Road, and Wards Lane

**NAME OF APPLICANT:** Rocky Mountain Power and Heber Light and Power

**AGENDA ITEM:** Conditional Use Permit

**LOCATION OF ITEM:** 970 South, Stringtown Road, and Wards Lane

**ZONING DESIGNATION:** R-1-15 & R-1-22

### **ITEM: 5**

Rocky Mountain Power and Heber Light and Power are requesting a Conditional Use Permit to rebuild an existing Heber Light and Power transmission line and install a 138kV line for Rocky Mountain Power that will be located on the Heber Light and Power poles. Heber Light and Power would also have a 46 – 138 KV line on the same pole. The proposal will establish a second transmission interconnection which will strengthen service reliability and increase capacity in Midway and the surrounding area. It also creates a “loop” for RMP increasing their capacity to deliver power to a larger area. The portion in Midway is about one mile in length and will follow the existing transmission line along Wards Lane, Stringtown Road, and 970 South. The proposed poles range in height from 65’-88’ above ground.

### **BACKGROUND:**

This request for a Conditional Use Permit (CUP) by Rocky Mountain Power and Heber Light and Power to rebuild the existing transmission line and install a 138kV line for Rocky Mountain Power that will be located on the Heber Light and Power poles. As part of the proposal, the distribution, and potentially, the communication lines that currently

are located on the transmission line poles will be buried along the route. The proposal will establish a second transmission interconnection which will strengthen service reliability and increase capacity in Midway and the surrounding area. The portion in Midway is about one mile in length and will follow the existing transmission line along Wards Lane, Stringtown Road, and 970 South. The proposed poles range in height from 65'-88' above ground.

The plan is to use many of the existing easements, which include prescriptive easements, through property in the city limits. The prescriptive easements are not wide enough for the proposed transmission lines so additional easements will need to be acquired to accommodate the wider easements necessary for the new lines. The proposed poles will be taller than the existing poles along the route in question and will carry considerably more power than what the current transmission lines carry. Heber Light and Power has stated that the main reason for this proposal is to have a second source of power into the Heber Valley. Another reason for the proposal is to increase power capacity for the Heber Valley that is needed because of development and growth. Rocky Mountain Power is an applicant for the conditional use permit because they would like a transmission to connect their areas of service in Summit County and Utah County. Rocky Mountain Power will pay 80% of the cost of the proposed line which will in turn save Heber Light and Power rate payers the cost that would have been required if Heber Light Power were to fix the aforementioned issues on its own. Heber Light and Power rate payers may see an increase in rates though based on the 20% of the transmission line cost that Heber Light and Power is paying for the transmission lines.

Midway residents are concerned about how this upgraded and larger line will impact them. Staff has received comments that range from aesthetics, health concerns, property value concerns, and lack of additional options.

The City recently adopted a transmission line code on January 15, 2019 to regulate the processing and requirements regarding new transmission lines and the rebuilding of existing transmission lines. This code is Section 16.13.47 in the Midway City Municipal Code (please see attached to this report).

The applicant has submitted the following studies and reports to the City. All studies are all available at the Planning Office and on the City's website.

- Underground Transmission Cost/Feasibility Study
- Transmission Lines and Property Values: Review of the Research
- EMF Electric and Magnetic Fields Associated with the Use of Electric Power
- Powering Our Future: Summit Wasatch Electrical Plan Local Planning Handbook

### **Section 16.13.47 Transmission Line Code Requirements and Comments**

Section 16.13.47 (D)(1) prefers that transmission lines follow routes where transmission lines are currently located. The proposal does follow the current location of transmission lines along 970 South, Stringtown Road, and Wards Lane.

Section 16.13.47 (D)(2) prefers the shortest poles allowed by industry standards though all options should be considered for aesthetics and for harmonizing with the vision of Midway City as described in the General Plan. Generally, taller poles will reduce the number of poles and shorter poles will increase the number poles. The proposal is to replace the existing poles that are 55' – 65' in length (includes the buried portion of the poles) with new poles that are 65'-88' above ground. Wood poles may be taller than metal poles even though the same amount of power are carried by both. Wood poles may be preferred though because currently, there are wood poles along this route and second because they don't feel as industrial as metal poles. The height and number of poles is an item the Planning Commission and City Council can determine.

Section 16.13.47 (D)(3) limits the types of poles that are allowed and focusses on the visual impact of the poles and lines. No galvanized poles, or poles with other reflective material can be used. Pole color and material shall be focused on minimizing the visual impact of the transmission line. The City may consider wood poles or metal poles. If metal poles are used, then the City can determine the color that will minimize the visual impact on the community.

Section 16.13.47 (D)(4) allows the City to impose any reasonable restrictions on the conditional use.

Section 16.13.47 (E) allows the City to require the burial of transmission lines and distribution lines that share a transmission line pole. The applicant has stated that distribution will be buried, and communication lines may be buried in conduit the power companies will install. The cost of burying the distribution lines will be paid for by the Heber Light and Power rate payers. The applicants and City will need to work with the communication line companies to have the communication lines buried. Heber Light and Power has offered to install conduit for the communication companies when the conduit for the distribution lines is installed.

The City may, after consideration of cost, require the transmission lines to be buried. Burying the transmission lines will have a positive visual impact on the community by eliminating all current lines and future transmission lines along this specific route. Financially, the difference in cost of above ground lines and buried lines would need to be paid by the City or some other funding source by private individuals. The amount required would need to be paid within 30 days of when construction begins. The limited time allowed to pay for the difference in cost creates complications that would need to be considered.

The Planning Commission first reviewed this item and held a public hearing on May 14, 2019. The following motion was made that night:

*Motion: Commissioner Streeter: I move that we continue the application for the transmission line rebuild on 970 South, Stringtown Road and Wards Lane as per our ordinance and accept staff reports. The following conditions are that Rocky Mountain Power provide alternative route study, Rocky Mountain Power and Heber Valley Light and Power to provide cost and size of easements, easement locations, clearly marked, above and below ground with the visual aspects, more clarification as to the number of poles, heights and property line locations and talk to the two large land owners.*

*Seconded: Commissioner O'Toole*

*Chairman Kohler: Any discussion on the motion?*

*Commissioner*

*Chairman Kohler: All in favor.*

*Ayes: Commissioners Streeter, Payne, O'Toole, Nicholas, Bouwhuis (Alternates Whitney and McKeon-no vote needed)*

*Nays: None*

*Motion: Passed*

The applicant provided additional information, which is included with this staff report, and has addressed the items listed in the motion which are the following:

- Alternative route study

The City code prefers that transmission lines follow routes where transmission lines are currently located. The proposal does follow the current location of transmission lines along 970 South, Stringtown Road, and Wards Lane.

- Provide cost and size of easements

The applicant has provided a series of 12 maps (please see maps included with this report) that describes the amount of easements that must be obtained for three potential scenarios. The first set is titled "Option A (short spans)" and shows the developer would need to acquire easements beyond the current prescriptive easement to a total of 13,123 sq. ft. The estimated of value of the easement is \$22,594.70 (please see included excel spreadsheet) for this option. The second set is "Option B (long spans)" and shows the developer would need to acquire more easements beyond the current prescriptive easement to a total of 14,952 sq. ft. The estimated of value of the easement is \$25,743.80 for this option. The third set is "Option C (Underground)" and shows the developer would need to acquire more easements beyond the current prescriptive easement to a total of 2,574 sq. ft. The estimated of value of the easement is \$4,431.82 for this option.

- Easement locations

The previously described series of 12 maps identifies the location of the current prescriptive easement and the proposed easements based on the potential three scenarios of short spans, long spans, or underground. As mentioned in the previous point, the number of easements that will need to be acquired above the current prescriptive easement is the following: short spans – 13,123 sq. ft., long spans – 14,952 sq. ft., and underground – 2,574 sq. ft.

- Visual impacts

The applicant has provided some updated photo simulations for a section of the transmission line route (please see included photos). The photos show the area along Wards Lane with poles with short spans and poles with long spans. The short span wood poles are 65' tall above grade and the long span poles are 75' above grade. The applicant has also provided series of photos titled "46 kV-138kV Rights-of-Way with Vegetation" that show different types poles and examples of vegetation that is appropriate in the transmission line easement (please see included photos). Some poles are wood, and some are metal that are painted or finished with different colors. If metal poles are approved, then the City may decide what color of poles will be used.

- Number and height of poles

Two maps have been provided that illustrate two potential scenarios. The first is titled "Typical Span Lengths Proposal" and the second is titled "Reduced Pole Height Proposal". The typical span lengths proposal includes 16 poles that range in height from 70' to 85'. There are six steel poles included and there are ten wood poles. The reduced pole height proposal includes 21 poles that range in height from 65' to 83'. There are six steel poles included and 15 wood poles.

- Property lines

The previously described series of 12 maps identifies the property lines along the route in relation to the prescriptive easement and the potential easements that will be required based on the three different scenarios.

An alternate option for long spans has been submitted to the City. This alternate shows some of the poles moved from the prescriptive location to areas that may create a better alignment for the poles along the 970 S corridor. All the changes are relatively minor in nature. The three maps that illustrate this alignment are the last maps included on this packet and two for the maps are titled "Jordanelle - Midway: Planning Commission Requested Alternate Siting 970 South (SR113 – 250 W)

## ANALYSIS:

The comments in italicized represent Planning Staff's comments pertaining to compliance or lack of compliance with the findings. The Planning Commission must make in considering this request. Section 16.26.120 requires specifically the Planning Commission to find that:

1. The proposed use is conditionally permitted within the Land Use Title, and would not impair the integrity and character of the intended purpose of the subject zoning district and complies with all of the applicable provisions of this Code; *planning staff believes that the proposal will have an impact on the properties along the route and on the entire community. There will be a visual impact that will be greater with the new proposal than the existing lines. In one way the impact will be diminished, and this is because of the removal of the distribution and communication lines. This will help the area feel less busy. Some of the other impacts may be on property values and depending on which study is considered, health.*
2. The proposed use is consistent with the General Plan; *the proposed use will create a greater visual presence for the transmission line because of the increased height. The General Plan describes the surrounding zones as an area of relatively large lots in an agricultural setting. The proposed lines will not be in harmony with this description though lines do currently exist along this route and have for several decades.*
3. The approval of the conditional use or special exception permit for the proposed use is in compliance with the requirements of state, federal and Midway City or other local regulations; *the proposal is required to comply with all federal, state and local requirements and staff has not identified any noncompliant issues at this point.*
4. There will be no potential, significant negative effects upon the environmental quality and natural resources that could not be properly mitigated and monitored; *the City may require and environmental impact study for the proposed conditional use per Section 16.13.47 (C)(4). This is a report the City may require if deemed necessary.*
5. The design, location, size, and operating characteristics of the proposed use are compatible with the existing and future land uses with the general area in which the proposed use is to be located and will not create significant noise, traffic, or other conditions or situations that may be objectionable or detrimental to other permitted uses in the vicinity or adverse to the public interest, health, safety, convenience, or welfare to the City; *the proposed use will supply power to the Heber Valley which is important to all residents. The proposal will also provide redundancy to the power supply so if a fire or some other natural disaster disrupts one of the sources of power to the valley there will be another route for power supply. Regarding health, there are studies*

*that argue that transmission lines have a negative impact on the health of those that live nearby and there are studies that argue that there is no negative health impact on surrounding neighbors. The City may want to consult experts regarding this issue.*

6. *The subject site is physically suitable for the type and density/intensity of the proposed use; the proposed location has had transmission lines for decades. It is debatable if increasing the transmission lines will create an intensity that is unsuitable for the subject site. The City may require additional studies, including an environmental impact study, to help answer this question.*
7. *There are adequate provisions for public access, including internal and surrounding traffic flow, water, sanitation, and public utilities, and services to insure that the proposed use would not be detrimental to public health and safety; The debate of the effects of EMF (electromagnetic field) are strong on both sides. However, the proposal will create more access to power and create a redundancy that will benefit the community which should have a positive impact on the community as a whole.*

#### **PLANNING COMMISSION RECOMMENDATION:**

**Motion:** Commissioner Bouwhuis: I make a motion to recommend approval to City Council for Rocky Mountain Power and Heber Light and Power for a Conditional Use Permit to rebuild the existing Heber Light and Power transmission line and install a 138kV line for Rocky Mountain Power that will be located on the Heber Light and Power poles, accept staff findings with the following conditions. That Rocky Mountain Power and Heber Light and Power work with the City Engineer to ensure that the pole placement will be located outside of the right of way and including the widening of 970 South and address the impact of the sight triangles. Recommend the long span option, and before going to City Council have staff compile a narrow look at a local special assessment.

**Seconded:** Commissioner Nicholas

**Kohler:** Any discussion the motion?

**There was none**

**Chairman Kohler:** All in favor.

**Ayes:** Commissioners: Ream, Nicholas, O'Toole, Bouwhuis

**Nays:** Payne

**Inaudible:** Streeter

**Motion: Passed**

## POSSIBLE FINDINGS:

- The proposal is an administrative review and approval
- The proposed use is a conditional use and the city may impose reasonable conditions to mitigate identified issues
- The proposal includes taller poles that will be visible to the residents of Midway, visitors of Midway, and the surrounding residents of Wasatch County
- The distribution and communication lines will be buried to help declutter the current transmission line situation, and reduce the weight being carried by the poles, thus reducing poles in the area
- The proposal will create a second point of power access that will benefit the residents of the valley
- The proposal will allow more power to enter the valley that will benefit the entire community by meeting community needs

## ALTERNATIVE ACTIONS:

1. Approval (conditional). This action can be taken if the City Council finds the application complies with the requirements of the code and any conditions will mitigate identified issues.
  - a. Accept staff report
  - b. List accepted findings
  - c. Place condition(s)
2. Continuance. This action can be taken if the City Council finds that there are unresolved issues.
  - a. Accept staff report
  - b. List accepted findings
  - c. Reasons for continuance
    - i. Unresolved issues that must be addressed
  - d. Date when the item will be heard again
3. Denial. This action can be taken if the City Council finds that the request does not meet the intent of the ordinance.
  - a. Accept staff report
  - b. List accepted findings
  - c. Reasons for denial

## Section 16.13.47 Transmission Lines

A. Transmission Lines are a conditional use in all zones.

B. The purpose of this section is to regulate all electric transmission lines that exceed 55 feet in pole height above grade. It is not the intent of this section to regulate the replacement or maintenance of existing transmission lines that exceed 55 feet in pole height. Existing transmission poles that currently exist within City boundaries, so long as they are replaced with a pole of identical height, diameter, and material, no permit nor approval shall be required. A proposal to alter the height, diameter, or material of existing transmission lines that exceed 55 feet shall require a conditional use permit under this section.

C. Prior to beginning construction on any new or proposed power transmission line that exceeds 55 feet in pole height above grade within any portion of the Midway City boundaries, a power company shall:

1. Apply for and receive approval of a conditional use permit as set forth in this title.

2. In addition to the information required in the application process as set forth in this title, the applicant shall also provide all information, design criteria, and studies deemed necessary by the City Planner, including, but not limited to:

- 1) the cost and pole height of standard transmission poles with height included for distribution lines;
- 2) the cost difference and pole height difference of burying just the distribution lines; 3) the cost difference of burying both the transmission and distribution lines; and
- 4) alternate routes for the transmission line (if not proposed within an existing and historical easement), including cost differential and studies on which route has the least impact on surrounding areas. Any requested studies shall be thorough and may include environmental impact studies, studies to determine costs of different options, and studies to determine the visual and aesthetic impact of the proposed transmission line project. At the City's sole discretion, the City may require outside third-party providers to conduct some or all of the studies, do independent studies, or to review the studies prepared by the applicant and verify the information contained therein. All reasonable costs incurred by third party studies shall be borne by the applicant.

3. Notice requirements shall comply with Section 16 of the Midway City Code and shall include notice to all property owners within 600' of the proposed route of the transmission line.

D. Preferred Conditions on any above ground transmission power lines located within the boundaries of Midway City:

1. Existing Easement Restrictions: New lines shall be preferred in corridors where existing 46kv lines are already in place.

2. Height and Span Restrictions: There shall be a preference for the shortest poles allowed by industry standards, considering the impact a shorter or longer span between poles may have on the view corridor. All options will be considered for aesthetics and for harmonizing with the vision of Midway City

as described in the General Plan.

3. Aesthetic Restrictions: No galvanized poles, or poles with other reflective materials shall be used. Pole color and material shall be focused on minimizing the visual impact of the transmission line. Wood poles will also be considered.

4. Other restrictions as reasonably imposed by the City.

E. City's option to require burial of transmission lines, or distribution lines that share the transmission line pole.

1. It is Midway City's objective to minimize the visual and aesthetic impact of above ground transmission lines within Midway City.

2. Midway City Council shall have the option of requiring transmission power lines approved under this section to be buried within the Midway City limits. Midway City Council shall also have the option of requiring just the distribution lines that commonly share the poles of transmission lines to be buried, if such a requirement would lower the overall height of the transmission poles.

3. As set forth above, to aid Midway City Council in making its determination, Applicant shall be required to submit studies that establish:

- a) the cost and pole height of standard transmission poles with height included for distribution lines;
- b) the cost difference and pole height difference of burying just the distribution lines;
- c) the cost difference of burying both the transmission and distribution lines; and
- d) alternate routes for the transmission line (if not proposed within an existing and historical easement), including cost differential and studies on which route has the least impact on surrounding areas.

4. Prior to making any decision, the City shall carefully review the different costs associated with each option.

5. Any requirements imposed by the City to bury some or all of either the transmission lines or distribution lines shall be subject to then existing law that may require the City to cover some or all of the costs.

6. In making the decision to bury some or all of the transmission or distribution lines, Midway City Council shall be allowed to consider all reasonable information available to it and shall not be limited to just an analysis of cost as the determining factor.



November 19, 2019

Midway City Council  
c/o Michael Henke, Midway City Planner  
75 North 100 West  
Midway, Utah 84049

Via email to  
[mhenke@midwaycityut.org](mailto:mhenke@midwaycityut.org)

Dear City Council Members:

Heber Light & Power (“HL&P”) and Rocky Mountain Power (“RMP”) presented to the City Council on October 15, 2019 in support of the application for a conditional use permit to rebuild approximately one mile of electrical transmission line through Midway. As you recall, the City held the public hearing despite the discovery of some errors in the noticing. Another public hearing has been noticed and is scheduled for November 19. During the October meeting, the Council asked for additional information from HL&P and RMP on the following topics:

1. Width and scope of existing prescriptive easements
2. Risks of transferring HLP’s existing prescriptive easement rights to RMP (loss of control, etc.)
3. Effect of easements / questions about easements as relating to the conditional use permit process
4. More information about how estimated easement costs are calculated
5. Scope of potential severance damages
6. Process for acquiring easements

In the interest of efficient use of the Council’s time, this letter will address each of these matters in turn and then provide some relevant information as to the scope of the Council’s responsibilities when acting as the land use authority on a conditional use permit application.

### **1. Width and scope of existing prescriptive easements**

The width of HL&P’s prescriptive easement to operate an electrical transmission line is established by scope of HL&P’s use of the easement area over the last twenty years. In Utah, “[i]t has long been the law . . . that the extent of an easement acquired by prescription is measured and limited by the use made during the prescriptive period[,]” which is twenty years.<sup>1</sup> Utah courts have, however, recognized “the common law presumption that parties to an easement anticipate increased future use and reasonable technological improvements.”<sup>2</sup> “Thus, absent express evidence of contrary intent, there is a firmly established background rule that an easement holder may make technological upgrades to its property,

<sup>1</sup> *McBride v. McBride*, 581 P.2d 996, 997 (Utah 1978); *Judd v. Bowen*, 2017 UT App 56, ¶ 10, 397 P.3d 686.

<sup>2</sup> *Stern v. Metropolitan Water Dist. of Salt Lake & Sandy*, 2012 UT 16, ¶ 69, 274 P.3d 935.

so long as they are not unreasonably burdensome of the servient estate” and do not cause “unnecessary injury to the servient owners.”<sup>3</sup> Nevertheless, making improvements to a prescriptive easement does not include the “taking [of] more or different land.”<sup>4</sup>

The width of HL&P’s prescriptive easement is at least 26 feet from the centerline of the line in both directions, or a total easement width of at least 52 feet. This is the *minimum* area required to safely operate a 46 kV transmission line as established by applicable safety codes. HL&P could likely make arguments that the actual scope of the prescriptive easement is wider than 52 feet based on actual historical use; however, HL&P has chosen to take the most conservative possible approach as to the scope of its prescriptive easements.

During the preceding twenty years—and in fact much longer—HL&P has maintained and operated its 46 kV transmission line (known as the South Line) on the entire proposed route of the transmission line that is the subject of this CUP application. The scope of HL&P’s prescriptive easement for the South Line is determined by HL&P’s use of the property under and adjacent to the transmission line. For the purposes of a prescriptive easement, “use” includes such activities as repair, maintenance, inspection, vegetation trimming and accessing the area around the transmission line to perform such activities. In the case of an electrical line, “use” also includes the area within which the utility has the right and obligation (as established by applicable national electric codes, particularly the National Electric Code and the National Electric Safety Code (“Codes”)) to maintain clearances between the line and surrounding structures and vegetation. The Codes provide specific calculations to determine the *minimum* area required to operate a transmission line of a particular voltage and configuration. The 1997 Codes require the same minimum area calculations as the current codes. In other words, the calculation of the minimum easement area required to safely operate the existing 46 kV transmission line has not changed in over twenty years, thus establishing the minimum area of HL&P’s prescriptive easement. This minimum easement width is 26 feet from the centerline of the existing transmission line.

## **2. Risks of transferring HLP’s existing prescriptive easement rights to RMP (loss of control, etc.)**

As part of the construction agreement with RMP, HL&P will transfer its existing prescriptive easement rights to RMP, while retaining the right to operate a transmission line on the poles that will be owned by RMP and located on property on which the right to operate the line exists, whether that right is based on existing prescriptive easements, new express easements, or some combination thereof. The construction agreement is very specific about HLP’s rights to continue to operate its transmission line. The construction agreement was been drafted and reviewed by HL&P’s legal counsel and management and was approved by the HL&P Board.

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<sup>3</sup> *Stern*, 2012 UT at ¶ 69; *Big Cottonwood Tanner Ditch Co. v. Moyle*, 174 P.2d 148, 160 (Utah 1946).

<sup>4</sup> *Harvey v. Hights Bench Irr. Co.*, 318 P.2d 343, 348 (Utah 1957); *see also Stern* 2012 UT at ¶ 69 n.3; and *Valcarce v. Fitzgerald*, 961 P.2d 305, 312-13 (Utah 1998).



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As you may know, HL&P's service area was the subject of a long dispute with RMP that culminated in a combination of litigation all the way to the Utah Supreme Court,<sup>5</sup> new legislation specifically addressing HL&P's unique situation as an interlocal entity electric utility, and a comprehensive settlement agreement between HL&P and RMP. As a result of these actions, HL&P's service territory is extremely secure and HL&P sees no plausible risk of loss of control over its service territory as a result of this project.

RMP will own the poles that support HL&P's electrical wires, which is expected to be a significant benefit to HL&P and its customers as RMP will be responsible for the bulk of the maintenance and expenses relating to this transmission line. HL&P exists to provide efficient, economical, and reliable electrical service to its customers throughout the valley; HL&P does not exist to acquire and maintain capital assets other than those needed to support HL&P's overall purpose. In this case, the opportunity existed to jointly construct a line with RMP that replaces HL&P's deteriorating South Line, avoid placing two separate transmission lines through the valley, and to spend less money to accomplish the same results. As a real-world illustration, a vehicle recently hit one of HL&P's metal poles along Hwy. 40 in Wasatch County and damaged the pole to the extent that it must be replaced at a cost of approximately \$60,000. The owner only carried the required minimum liability insurance, which means HL&P will end up paying a significant portion of the costs of that pole replacement. If this pole had been owned by RMP, RMP would be covering the costs of replacing the pole.

### **3. Effect of easements / questions about easements as relating to the conditional use permit process**

Looking only at the conditional use permit process, the questions of easements and the costs of easements are irrelevant. For the exact same reasons that property owner #1 cannot build a barn on the land belonging to property owner #2, a utility cannot construct a transmission line or any other facility on the property of another without some right to do so. No matter the permitting requirements, or lack of permitting requirements, HL&P and RMP cannot construct this transmission line on private property without the right to do so. That right may be in the form of a prescriptive easement, an express easement, a public right of way, a public utility easement, or by some other manner. Regardless of how that right is established, it is an absolute prerequisite to construction of a facility on property owned by another. The Council could place a condition on the permit that requires the utilities to acquire the necessary property rights prior to construction of the line; however, such a condition is merely a restatement of existing legal reality.

Easement costs do, however, factor into the decision as to whether the City wants to pay to bury the transmission lines. This question is related to the conditional use permit process but is really a separate legal question governed by a different set of statutes. Without delving into the details of the calculation or the obligations of the utilities to construct facilities in the manner desired by the City, the City is able to dictate many aspects of the construction of a particular utility facility so long as the City pays the excess costs associated with doing so. These excess costs are—put very simply—the difference between the costs of the project if constructed according to the utility's normal standards versus the costs of

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<sup>5</sup> *Heber Light & Power Co. v. Utah Public Service Comm'n*, 231 P.3d 1203, (Utah 2010)



constructing the project in the manner requested by the City. Costs of easements or other necessary property rights are part of these costs. Logically, if easement costs are higher for the standard overhead line as compared to the easement costs for a buried line, the difference in costs paid by the City is reduced.

#### **4. More information about how estimated easement costs are calculated**

The statement that easement costs are “calculated” is perhaps a misnomer. As described in the next section, the cost of acquiring an easement that burdens particular land is determined through negotiation or, failing that, by a court based on the evidence of value and damages presented in a litigation proceeding.

RMP has provided estimates of expected easement acquisition costs for various configurations of the proposed line, using an estimated average value of the property in question of \$150,000. The acquisition of an easement, which is not fee ownership of property but rather merely a right to use that property for a particular non-possessory purpose, is logically less than the value of actual fee ownership of the property. A report from independent appraisers has been, or will be, submitted to the Council by RMP. This report concludes that values of property impacted range between \$90,000 and \$420,000 per acre and estimates that additional easement rights would cost between 25 and 75 percent of the underlying land value. Thus, the acquisition of one acre of new easement would likely cost between \$22,500 and \$67,500 for property worth \$90,000 per acre and between \$105,000 and \$315,000 for property worth \$420,000 per acre.

#### **5. Severance damages to affected property owners**

Severance damages are defined as follows by the State Property Right’s Ombudsman:

Severance Damages— Compensation that is due when a parcel loses value because a portion is taken for a public use. Severance damages may be part of the overall compensation due to a property owner, but are only awarded when a portion of a parcel is taken (or “severed”), and the owner retains the remainder of the parcel

Examples of situations in which severance damages would be an issue are the case of a highway bisecting a large agricultural parcel, thus preventing efficient access between the two resulting parcels, or the case of a city taking a small portion of a 5 acre lot in an area zoned to require five acres to construct a house resulting the parcel now being un-developable. In each of these cases, the impact to the property owner is likely greater than merely the per-acre value of the land taken for public use. However, changing certain facts in each situation would likely remove the possibility of severance damages. If the large agricultural parcel was already bisected by an impassable river, the addition of a highway bisecting the parcel in the same manner would likely mean that the property owner is not affected beyond the actual land taken and thus not entitled to severance damages. Likewise, if the 5-acre parcel was already undevelopable because



of existing zoning, the slight reduction in size to less than 5 acres likely does not impact the property owner beyond the land actually taken.

Regarding the transmission line, claims have been made that property owners will be entitled to severance damages and that these damages will amount to several million dollars for property owners in Midway alone. Some property owners may indeed be entitled to severance damages; however, the likelihood that those damages will add up to several million dollars is extraordinarily low.

As an initial matter, the door is only open to severance damages if a portion of the property is actually taken for public use (as described in the definition quoted above and also discussed by Utah courts as explained below). This means that placement of the proposed transmission line (including the required easements or access rights as determined by Codes) fully in existing prescriptive easements, or fully in public rights of way or dedicated public utility easements will absolutely not open the door to severance damages as no property is being taken.

The Utah Supreme Court succinctly stated the law on severance damages in *Admiral Beverage*:

We hold that when a landowner suffers the physical taking of a portion of his land, he is entitled to severance damages amounting to the full loss of market value in his remaining property caused by the taking. However, we reaffirm our prior rule that when a landowner alleges “damages” not connected to an actual physical taking, the landowner may recover only for damage to protectable property rights.

*Admiral Beverage*, 2011 UT 62, ¶ 19, 275 P.3d 208

Accordingly, property owners that suffer an actual taking of a portion of their real property may indeed be able to seek severance damages equal to the reduction in market value of their property due to the taking, or may have their compensation for the taken property reduced if the construction of the public improvement increases the value of the property.<sup>6</sup> However, the Court makes very clear that property owners who do not suffer an actual physical taking are only entitled to compensation for “protectable property rights.”<sup>7</sup> A property adjacent to another parcel subject to a physical taking does not have a

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<sup>6</sup> See Utah Code § 78B-6-511(d), “. . . separately, how much the portion not sought to be condemned, and each estate or interest in it, will be benefitted, if at all, by the construction of the improvement proposed by the plaintiff, provided that if the benefit is equal to the damages assessed under Subsection (1)(b), the owner of the parcel shall be allowed no compensation except the value of the portion taken; but if the benefit is less than the damages assessed, the former shall be deducted from the latter, and the remainder shall be the only damages allowed in addition to the value of the portion taken.”

<sup>7</sup> *Bingham v. Roosevelt City Corp.*, 2010 UT 37, ¶ 19, 235 P.3d 730, 736, (“To enjoy the protections of article I, section 22, an alleged property interest must be more ‘than a unilateral expectation of continued privileges.’ We have declined to find a taking in situations where the plaintiffs failed to prove a ‘vested legally enforceable interest.’ In



protectable property right in the view from that particular property. As such, even though an improvement located on a property acquired through eminent domain may be visible from nearby properties, those nearby properties have no claim to damages as no protectable property rights of those nearby properties were impacted.<sup>8</sup>

In this particular situation, although HL&P and RMP would prefer to negotiate compensation with all property owners, some property could potentially be taken through eminent domain. The owners of those properties could potentially argue for severance damages and, if severance damages are awarded, the acquiring entity would compensate the property owner for those damages. However, no damages are available to properties not subject to a physical taking unless those property owners can prove that they have a protectable property right that was impaired by the construction of the transmission line project.

Also note that the inquiry as to damages of any sort, including severance damages, is fact-based and unique to each situation. In every case, the amount of damages, if any, must be calculated based on the condition prior to the taking as compared to the condition after the taking. Here, the current condition is that of an existing 46 kV transmission line, with distribution and communication facilities also on the poles even closer to the ground, while the condition after the taking will be a slightly larger transmission line of a slightly different configuration approximately half as many wires on the poles. The measure of severance damages would be the difference in value between these two conditions. Any impact on the value of property adjacent to the current transmission line must be assumed to have been considered during prior sales of the property since the transmission line was already in place—meaning current owners of parcels adjacent to the line presumably paid less to acquire their properties due to the presence of the existing lines. In the case of this project, replacement of the old and deteriorating transmission line combined with the undergrounding of distribution and communication facilities may be beneficial to the market value of the properties along this route as the lines are further in the air and thus less noticeable to the adjacent properties.

## 6. Process for acquiring easements

This question is not relevant to the Council’s review of the CUP application. That said, the companies expect that most, and perhaps all, new easements required for this project will be acquired through voluntary, arm’s-length transactions. In general, representatives of RMP and/or HL&P will approach each

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contrast, we have acknowledged the protectable interest one acquires when they have obtained a “completed, consummated right for present or future enjoyment.”); *see also Strawberry Elec.*, 918 P.2d at 878; *Bagford*, 904 P.2d at 1099 (“[T]o create a protectable property interest, a contract must establish rights more substantial than a unilateral expectation of continued privileges.”).

<sup>8</sup> The Utah Supreme Court noted that appraisers must “resort to rank speculation when attempting to exclude the loss of visibility from fair market value.” *Admiral Beverage*, ¶ 41.



affected property owner and begin the process of negotiating the price of the necessary easement rights. Like buying any other piece of property, the eventual price paid for any given easement right is the price that is agreed to between the buyer and the seller—otherwise known as fair market value. In the rare situation where a property owner absolutely refuses to grant a necessary easement or the parties cannot agree on an acceptable price, both RMP and HL&P have the legal rights to use eminent domain to acquire the necessary property rights. To the knowledge of current HL&P employees, HL&P has never needed to resort to eminent domain to acquire the property rights to construct utility facilities.

In the event that property must be acquired by eminent domain, the process for doing so has been established by the Utah Legislature and is discussed in detail on the webpage of the State Property Rights Ombudsman at <https://propertyrights.utah.gov/>. That same webpage discusses easements generally, the determination of proper compensation, conditional use permits, and numerous other land use topics.

#### **7. Scope of City Council Authority Acting as the Land Use Authority.**

Concerning a conditional use permit application, the land use authority is tasked with applying the ordinances as they have been enacted by the legislative body. In the case of a conditional use permit for an electrical transmission line, the City Council is the land use authority for the purposes of decisions on the conditional use permit. This is an administrative role—meaning the Council is only applying the ordinances as are currently in place—and the Council cannot base its decisions on factors not listed in the applicable ordinance. The Utah Land Use Deskbook describes this role (note that while the quote refers to a planning commission acting as a land use authority, the same principles apply to a city council acting as the land use authority):

... the planning commission, when acting as a land use authority, has very little discretion on whether or not to grant or deny a permit. If the landowner's application complies with the ordinances the commission must approve it, and if it does not comply then the planning commission must deny the application. This is regardless of whether or not the planning commission, or the public, thinks that the application is a good or bad idea."

Section 1.1B, Utah Land Use Regulation Deskbook; Utah Land Use Institute (2016)

The same Utah Land Use Deskbook describes the land use authority's discretion as to a conditional use permit application as follows:

If a use is allowed as a conditional use in the zone, it is assumed that the conditional use is desirable but that it may require an extra level of review. The review criteria must be outlined in the local land use code. Denial must be based on some factor unique to the proposed location that renders the potential negative effects of the proposed use in that



location beyond mitigation, where those same potential negative effects could be mitigated elsewhere in the zone.

“Mitigation” means to temper or reduce the negative aspects, not to eliminate them; conditions that mitigate the negative aspects of a conditional use would make those negative aspects less severe or harmful.

The action taken in response to a land use application is legal only if it is supported by substantial evidence in the record. “Substantial evidence” is evidence that is relevant and credible. To be relevant, it must relate to the standards in the ordinance related to the review of applications for conditional uses. To be credible, it must be objective and independent.

Generally, public opinion testimony is inappropriate with respect to a conditional use permit application. Evidence against a conditional use permit application must not be based on public opinion. Public clamor is not evidence. The opinion of expert witnesses qualified to testify in their field of expertise can be substantial evidence if proper information is provided supporting the qualifications of the persons expressing the opinions.

Conditional use permits are always “administrative” decisions. As such, the standard for review on appeal is whether there is substantial evidence in the record to support the decision. A conditional use permits decision is subject to appeal within 30 days. It is not subject to referendum.

Section 5.5, Utah Land Use Regulation Deskbook; Utah Land Use Institute (2016)

An administrative action by a land use authority must be supported by “substantial evidence.” This standard is discussed in detail in *Uintah Mountain RTC, LLC v. Duchesne County* (2005 UT App 565). Public clamor cannot form the substantial evidence necessary to support an administrative land use decision such as granting or denying a conditional use permit. In the event that the land use authority’s decision is appealed, the decision must be shown to have been supported by substantial evidence—meaning not only the amount of evidence in support of the decision but also that the information relied on by the land use authority was of the type that could legally be considered by the land use authority.

In the event of an appeal, the court will review the entire record of the proceedings before the Planning Commission and City Council, which includes all documents submitted and all statements at public meetings. If the record of a proceeding is predominately information that cannot legally be considered by the Council, proving that the decision was supported by substantial evidence is possibly more difficult.



Recall that the City Council has already determined that a transmission line is a permitted use with reasonable conditions that can be applied to mitigate any detrimental effects. The Council—acting as the land use authority—cannot decide that an overhead transmission line is irreconcilable with a certain area in Midway—that is a legislative decision that has already been made by the City Council when it made transmission lines a conditional use throughout all of Midway (with the preference as stated in the ordinance that transmission lines stay within existing corridors). The decision now faced by the Council is purely an administrative one.

Conclusion

Although the ordinance does not mention aesthetic considerations, HL&P and RMP have generally agreed to follow the Council's recommendations as to the type of poles used, the color of the metal poles, and whether the line should be constructed to allow for shorter spans (and therefore shorter distances between poles) or to allow for taller poles with longer spans (and therefore fewer poles overall). Note that the heights of poles are limited on the lower end by applicable safety regulations and on the higher end by cost and engineering considerations. In general, the height difference between the shorter option and the taller option is less than fifteen feet.

We appreciate the Council's consideration of this matter and we look forward to an approval of the application with guidance on pole color and pole height. I am happy to answer any questions about the conditional use permit process or related legal standards; I ask that you direct any communications through your City Attorney.

Sincerely,



Adam S. Long  
*General Counsel for Heber Light & Power*

cc: Corbin Gordon, Midway City Attorney  
Celeste Johnson, Midway City Mayor



Parcel	Name	Street	Zoning	Acres	Low	High	Frontage (ft)	Width Increase (ft)	Additional Area (sf)	Additional Area (acres)	Average [(Low + High) / 2]	Average Fee [(Low + High) / 2]	Estimated Easement Cost
00-0020-4611	Day	970 South	R-1-22	1.33	\$275,000	\$325,000	300	3	900	2.07%	\$300,000	50%	\$3,099
00-0020-4256	Dwell	970 South	R-1-22	6	\$115,000	\$140,000	435	2	870	2.00%	\$127,500	50%	\$1,273
00-0020-4255	Price	970 South	R-1-22	6.88	\$115,000	\$140,000	700	3.5	2450	5.62%	\$127,500	50%	\$3,586
00-0020-4254	Medallion	970 South	R-1-22	10.16	\$115,000	\$140,000	1131	3.5	3958.5	9.09%	\$127,500	50%	\$5,793
Common Area	Saddle Creek	970 South	R-1-22	34.35	\$95,000	\$140,000	1125	6	6750	15.50%	\$117,500	50%	\$9,104
00-0020-4250	Bodensteiner	Stringtown	R-1-22	0.5	\$360,000	\$420,000	75	1	75	0.17%	\$390,000	50%	\$336
00-0020-4251	Jonsson	Stringtown	R-1-22	1.89	\$275,000	\$300,000	210	1.5	315	0.72%	\$287,500	50%	\$1,040
00-0020-4249	Almaden	Stringtown	R-1-22	2.6	\$275,000	\$300,000	145	0.5	72.5	0.17%	\$287,500	50%	\$239
00-0020-4247	Twin Creeks	Stringtown	R-1-22	6.81	\$115,000	\$140,000	200	0.5	100	0.23%	\$127,500	50%	\$146
00-0020-4235	Hansen	Stringtown	R-1-22	1.05	\$360,000	\$420,000	210	1	210	0.48%	\$390,000	50%	\$940
Total Estimate												\$25,556	

Short Span

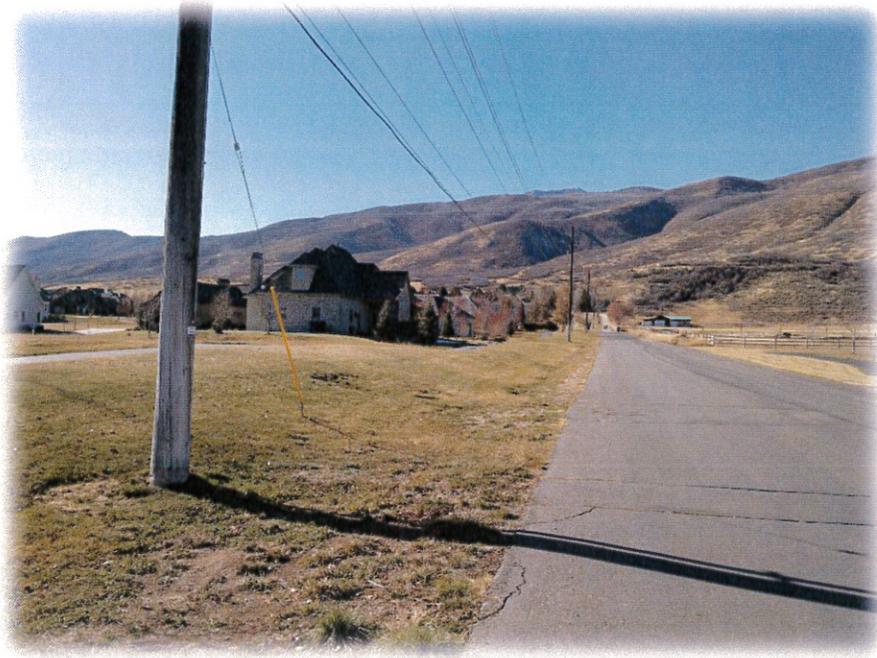
Parcel	Name	Street	Zoning	Acres	Low	High	Frontage (ft)	Width Increase (ft)	Additional Area (sf)	Additional Area (acres)	Average [(Low + High) / 2]	Average Fee [(Low + High) / 2]	Estimated Easement Cost
00-0020-4611	Day	970 South	R-1-22	1.33	\$275,000	\$325,000	300	3.5	1050	2.41%	\$300,000	50%	\$3,616
00-0020-4256	Dwell	970 South	R-1-22	6	\$115,000	\$140,000	435	2.5	1087.5	2.50%	\$127,500	50%	\$1,592
00-0020-4255	Price	970 South	R-1-22	6.88	\$115,000	\$140,000	700	4	2800	6.43%	\$127,500	50%	\$4,098
00-0020-4254	Medallion	970 South	R-1-22	10.16	\$115,000	\$140,000	1131	4	4524	10.39%	\$127,500	50%	\$6,621
Common Area	Saddle Creek	970 South	R-1-22	34.35	\$95,000	\$140,000	1125	6.5	7312.5	16.79%	\$117,500	50%	\$9,862
00-0020-4250	Bodensteiner	Stringtown	R-1-22	0.5	\$360,000	\$420,000	75	1.5	112.5	0.26%	\$390,000	50%	\$504
00-0020-4251	Jonsson	Stringtown	R-1-22	1.89	\$275,000	\$300,000	210	2	420	0.96%	\$287,500	50%	\$1,386
00-0020-4249	Almaden	Stringtown	R-1-22	2.6	\$275,000	\$300,000	145	1	145	0.33%	\$287,500	50%	\$479
00-0020-4247	Twin Creeks	Stringtown	R-1-22	6.81	\$115,000	\$140,000	200	1	200	0.46%	\$127,500	50%	\$293
00-0020-4235	Hansen	Stringtown	R-1-22	1.05	\$360,000	\$420,000	210	1	210	0.48%	\$390,000	50%	\$940
Total Estimate												\$29,389	

Long Span

Parcel	Name	Street	Zoning	Acres	Low	High	Frontage (ft)	Width Increase (ft)	Additional Area (sf)	Additional Area (acres)	Average [(Low + High) / 2]	Average Fee [(Low + High) / 2]	Estimated Easement Cost
00-0020-4611	Day	970 South	R-1-22	1.33	\$275,000	\$325,000	300	3	0	0.00%	\$300,000	50%	\$0
00-0020-4256	Dwell	970 South	R-1-22	6	\$115,000	\$140,000	435	2	0	0.00%	\$127,500	50%	\$0
00-0020-4255	Price	970 South	R-1-22	6.88	\$115,000	\$140,000	700	3.5	264.6	0.61%	\$127,500	50%	\$387
00-0020-4254	Medallion	970 South	R-1-22	10.16	\$115,000	\$140,000	1131	3.5	0	0.00%	\$127,500	50%	\$0
Common Area	Saddle Creek	970 South	R-1-22	34.35	\$95,000	\$140,000	1125	6	813	1.87%	\$117,500	50%	\$1,097
00-0020-4250	Bodensteiner	Stringtown	R-1-22	0.5	\$360,000	\$420,000	75	1	0	0.00%	\$390,000	50%	\$0
00-0020-4251	Jonsson	Stringtown	R-1-22	1.89	\$275,000	\$300,000	210	1.5	64.4	0.15%	\$287,500	50%	\$213
00-0020-4249	Almaden	Stringtown	R-1-22	2.6	\$275,000	\$300,000	145	0.5	0	0.00%	\$287,500	50%	\$0
00-0020-4247	Twin Creeks	Stringtown	R-1-22	6.81	\$115,000	\$140,000	200	1	1298	2.98%	\$127,500	50%	\$1,900
00-0020-4235	Hansen	Stringtown	R-1-22	1.05	\$360,000	\$420,000	210	1	134	0.31%	\$390,000	50%	\$600
Total Estimate												\$4,196	

Underground

## Jordanelle-Midway Transmission Line



### **Location**

970 South, Stringtown Road, Wards Lane  
Midway, Utah

### **Report Date**

November 18, 2019

### **Report 160-2019-1280**

### **Prepared For**

Rocky Mountain Power

### **Prepared By**

Troy Lunt, MAI  
Eric Leonhardt, MAI

Integra Realty Resources  
5107 South 900 East  
Murray, Utah 84117  
801 263-9700

November 18, 2019

Rocky Mountain Power  
1407 West North Temple  
Salt Lake City, Utah 84116

Rocky Mountain Power - Officers, Agents, Representatives

SUBJECT: Jordanelle-Midway Transmission Line

Thank you for allowing our office to provide an opinion of real property value within the project area, and the impact of the project on market value. The project is to upgrade an existing 46 kV transmission line to 138 kV in cooperation with Heber Light and Power.

The project is located in the southwest quadrant of Midway City. The project extends west from Center Street along 970 South to Stringtown Road (400 West), then extends north along Stringtown Road to Wards Lane (865 South), then extends west along Wards Lane to 900 West. The following table shows the parcels impacted by the project.

Impacted Parcel Summary					
Parcel	Name	Street	Coordinate	Zoning	Acres
00-0020-4611	Day	970 South	30 West	R-1-22	1.33
00-0020-4256	Dwell	970 South	300 West	R-1-22	6.00
00-0020-4255	Price	970 South	350 West	R-1-22	6.88
00-0020-4254	Medallion	970 South	350 West	R-1-22	10.16
Common Area	Saddle Creek	970 South	150 West	R-1-22	34.35
00-0020-4248	Jonsson	Stringtown Road	955 South	R-1-22	0.42
00-0020-4250	Bodensteiner	Stringtown Road	923 South	R-1-22	0.50
00-0020-4251	Jonsson	Stringtown Road	945 South	R-1-22	1.47
00-0020-4249	Almaden	Stringtown Road	905 South	R-1-22	2.60
00-0020-4247	Twin Creeks	Stringtown Road	845 South	R-1-22	6.81
00-0008-5949	Burt	Wards Lane	792 West	RA-1-43	5.01

The land use plan is the same as zoning. The 0.42 acre parcel recorded to Jonsson does not meet minimum development standards associated with R-1-22 zoning. For valuation, it is combined with the contiguous 1.47 acre parcel that is also recorded to Jonsson. Saddle Creek Ranch is common area for a planned unit development

### **Analysis of Land Value**

Parcels impacted by the project range from 0.42 acre to 34.35 acres. A good sample of sales are found within Wasatch County from which a credible indicator of value can be extracted for the impacted parcels. Of the 27 sales found, 23 are closed sales, 3 are listed for sell, and 1 is a listing that expired without a sale. The 27 sales selected as value indicators for the impacted parcels are from a pool of 104 listings. Those eliminated from the pool have hillside, forested, or resort locations. Other factors for elimination are distance from the project area and surplus land. The mean discount from the listing price to the purchase price for parcels over 5 acres is 8.9% and for 8.2% for parcels under 5 acres. Listings that sold are given priority except in segments where credible sales are not found.

The sample range is from 0.39 acre to 46.21 acres as shown on the following page.

Indicators of Land Value				
County Parcel	Zoning	Status	Acre	Price/Acre
00-0021-3014	R-1-15	Sold	0.39	\$897,436
00-0021-3018	R-1-15	Sold	0.40	\$937,500
00-0021-3020	R-1-15	Sold	0.45	\$817,778
00-0021-2606	R-1-22	Sold	0.50	\$357,000
00-0021-2608	R-1-22	Sold	0.50	\$360,000
00-0021-2607	R-1-22	Sold	0.50	\$380,000
00-0021-2604	R-1-22	Sold	0.50	\$410,000
00-0020-4742	R-1-15	Sold	0.50	\$464,000
00-0020-4761	R-1-15	Sold	0.50	\$590,000
00-0021-2605	R-1-22	Sold	0.72	\$319,444
00-0020-4608	R-1-22	Sold	1.00	\$199,900
00-0020-4766	R-1-15	Sold	1.02	\$375,000
00-0020-3366	RA-1-43	Sold	3.00	\$266,667
00-0021-2600	RA-5	Sold	5.01	\$81,836
00-0021-2602	RA-5	Sold	5.02	\$85,657
00-0020-7641	RA-1	Sold	6.81	\$48,458
00-0021-4256	RA-1	Sold	7.02	\$105,413
00-0020-2533	RA-1	Sold	7.40	\$94,595
00-0020-4254	R-1-22	Sold	10.16	\$115,650
00-0020-6764	R-1-15	Sold	11.44	\$163,899
00-0020-2515	R-2 8KSF	Sold	13.38	\$186,846
00-0021-4371	RA-1	Sold	14.03	\$85,531
00-0020-6922	RA-1	Sold	14.62	\$58,140
00-0020-7240	R-1	Expired	16.28	\$153,501
00-0006-3797	RA-1-43	Active	35.38	\$189,000
00-0000-8693	RA-1-43	Active	42.23	\$56,829
00-0020-4290	RA-1-43	Active	46.21	\$97,382

All sales occurred over the past two years. Price per acre is the unit of comparison. The sales may be multiple parcels that include the parcel shown.

Many factors, both transactional and physical, influence value. The most influential factors on land value in the project area are size, zoning, and location. All but one of the impacted parcels is zoned and planned for residential use on minimum half-acre lots. The impacted parcel along Wards Lane is zoned for residential use on minimum one acre lots.

The following table shows the expected value range of the impacted parcels based on market activity and the most influential factors on value.

Impacted Parcel Summary					Range	
Parcel	Name	Street	Zoning	Acres	Low	High
00-0020-4611	Day	970 South	R-1-22	1.33	\$275,000	\$325,000
00-0020-4256	Dwell	970 South	R-1-22	6.00	\$115,000	\$140,000
00-0020-4255	Price	970 South	R-1-22	6.88		
00-0020-4254	Medallion	970 South	R-1-22	10.16	\$95,000	\$140,000
Common Area	Saddle Creek	970 South	R-1-22	34.35		
00-0020-4250	Bodensteiner	Stringtown	R-1-22	0.50	\$360,000	\$420,000
00-0020-4251	Jonsson	Stringtown	R-1-22	1.89	\$275,000	\$300,000
00-0020-4249	Almaden	Stringtown	R-1-22	2.60	\$115,000	\$140,000
00-0020-4247	Twin Creeks	Stringtown	R-1-22	6.81		
00-0008-5949	Burt	Wards	RA-1-43	5.01	\$105,000	\$120,000

### Project Impact Analysis

The study of transmission line impact on real property value is vast. Historic studies show the impact to be 10% or less on real property value. We participated in a study of about 350,000 properties in Salt Lake County from 2001 to 2014 spanning 128,000 transactions and 450 variables. The study found: 1) homes within 165 feet of a 138 kV line show a 5.1% decrease in value; 2) homes within 165 feet of a 46 kV line have no measurable decrease but show a decrease of 2.5% beyond 660 feet. The study appears to support a diminution in value of about 5% for a change in transmission from a 46 kV to 138 kV based on the variance in the indicated property value impact for line types.

However, the study does not include as analytical variants either associated easement width or road type on which the various properties fronted. The fact that neither of these variants was isolated undermines the reliability of studies value indication for comparative purposes, particularly given the relative nominal indicated value impacts for either line type. General market observations indicate that variances between the value impacts in the study for the two line types would reasonably be ascribable to the added width associated with 138kV lines and the fact that such lines, and the properties so encumbered, are more frequently located along major arterials. Location on heavily traveled roadways has been shown to adversely impact residential values. Consequently, while the study indicates a value impact variance between 46 kV and 138 kV lines, that variance is more reasonably ascribable to other variances, and not the relatively modest increase pole height/crossarm width. General market indications do not support a value impact between 46 kV and 138 kV lines beyond the impact from the added encumbrance width.

On this point, the project area includes four contiguous lots within the Eldons Place Subdivision identified as County Parcels 00-0021-2604, 2606, 2607, and 2608. The four parcels have the same zoning and size. Only Parcel 00-0021-2604 fronts a 46 kV line. Recognizing various elements that determine value, there is no indication that fronting the transmission line has any diminution on real property value.

Over 20 years of experience of appraising the impact of transmission lines on real property has identified noteworthy observations. Studies recognize that the leading cause of diminution associated with transmission lines is the visual impact on view. This is most obvious when the transmission line is first constructed but recedes into the background over time – especially when the transmission line is along a road where public utilities are common and expected. This phenomenon is not limited to transmission lines. Trees along a familiar road, traffic noise, offensive smells, neighborhood culinary water taste, faded colors. All these have little notice until there is a change. Because of this phenomenon, appraisers seldom make a deduction for existing powerlines and utilities when valuing real property in general. However, when acquiring right of way for a new transmission line or public utility the argument of minimal impact is not well received by impacted property owners.

National Electrical Safety Code (NESC) adopted by Utah State sets minimum clearance requirements for power lines. The increase in voltage transmission from 46 kV to 138 kV will require a greater width by code evoking an increase in clearance from the utility. The increase for this project is 0.8 feet to 9.1 feet based on Option B (long spans). The mean is 3.8 feet and the median is 3.4 feet. The increase will be along road frontage where building is prohibited by ordinance or is impractical. However, there is a loss of property rights such as quiet enjoyment.

## Conclusions

After analysis of the subject market, review of relevant transmission line studies, and appraisal experience, compensation of 25% to 75% of the underlying land value is indicated for that portion of the impacted properties within the expanded easement area. There is no indication of severance damages to land outside the expanded easement area. The underlying land value varies from \$95,000 per acre to \$420,000 per acre.

Thank you for this assignment. Your input is welcome.

A handwritten signature in black ink, appearing to read "Troy Lunt".

Troy Lunt, MAI

A handwritten signature in blue ink, appearing to read "Eric Leonhardt".

Eric Leonhardt, MAI



970 South – East Looking West



970 South – East Looking East



970 South – West Looking West



970 South – West Looking East



Stringtown Road Looking North



Stringtown Road Looking South



Wards Lane Looking West



Wards Lane Looking East

L.L.P.  
LAW OFFICES

Gateway Tower West  
15 West South Temple  
Suite 1200  
Salt Lake City, Utah 84101-1547  
801.257.1900  
www.swlaw.com

Mark O. Morris  
(801) 257-1904  
mmorris@swlaw.com

August 13, 2019

**VIA FACSIMILE 435.654.4120, 888.822.8796**

**VIA E-MAIL**

Midway City Planning Commission  
c/o Corbin Gordon, City Attorney  
Midway, Utah 84049

Re: VOLT Request for Continuance on Heber Light & Power's Application for  
Conditional Use Permit

Dear Corbin:

I write on behalf of my client, the Valley-wide Opposition to Large Transmission Lines ("VOLT") to request that the Midway City Planning Commission ("Planning Commission") continue its review of the application for a condition use permit ("CUP") submitted by Rocky Mountain Power ("RMP") and Heber Light and Power ("HLP") to permit additional factual input and public comment. VOLT requests that Planning Commission withhold any recommendation to the Midway City Council until the Planning Commission holds a public meeting for the purpose of obtaining information requested by the Commission on May 14, 2019, and to identify proposed conditions to be included in the CUP.

Midway City Ordinance Section 16.13.47(D)3 requires that a CUP applicant provide costs of proposed line construction. To that end, on May 14, 2019, this Commission moved to continue RMP's CUP application and requested that RMP "provide cost and size easements..."<sup>1</sup> It appears to us that RMP has failed to provide such information. Costs cited by Planning Commission Staff only include a dollar amount for obtaining additional square footage to expand the width of existing easements. The Planning Commission Staff report indicates these costs will be between \$22,594 and \$25,743.80. But you and the City must be aware that these estimates do not include all easement costs.

VOLT disputes easement cost estimates provided by RMP included in the Planning Commission Staff Report. Utah law requires that RMP and HLP provide "just compensation" to landowners subject to the expanded easement. Utah Code Ann. §78B-6-511(1)(b) requires that just compensation includes severance damages. Meaning, "If the property sought to be condemned constitutes only a part of a larger parcel, the damages which will accrue to the portion not sought

<sup>1</sup> Midway City Planning Commission Staff Report, August 13, 2019, at page 3

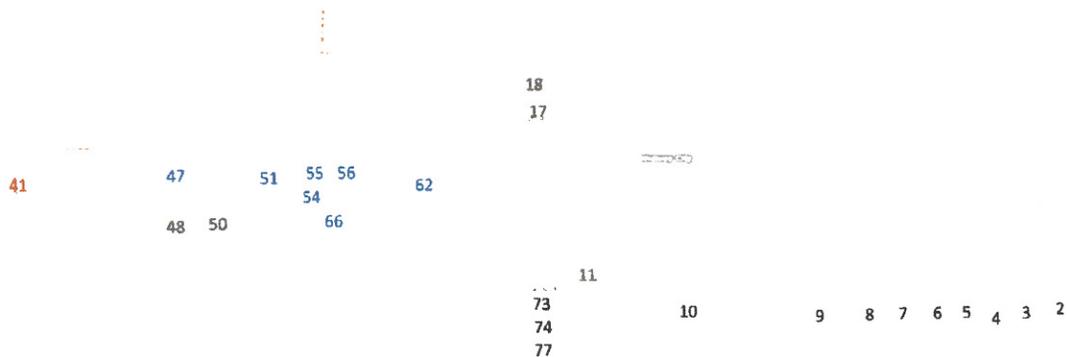
DENVER  
LAS VEGAS  
LOS ANGELES  
LOS CABOS  
ORANGE COUNTY  
PHOENIX  
RENO  
SALT LAKE CITY  
TUCSON

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to be condemned by reason of its severance from the portion sought to be condemned and the construction of the improvement in the manner proposed by the plaintiff.”

Generally, the court will assess severance damages, by measuring the market value of the property before the taking, and the market value of the property after the taking.<sup>2</sup> Market value is based on the property’s actual value as of the date of the service of summons.<sup>3</sup> “Market value” may “consider ever willing buyer and a willing seller would c ining the market value of the after the taking.”<sup>4</sup> Courts have construed be equal to the amount “a purchaser willing to buy but to do so, pay and what would a seller willing to sell but not required to do so, ask.”<sup>5</sup> al taking results in severance damages by affecting the remainder of the property, “the cardinal and well-recognized rule as to the measure of damages to property not actually taken but affected by condemnation is the difference in market value of the property before and after the taking.”<sup>6</sup>

VOLT engaged an appraiser to objectively determine the amount of severance damages that would be due to owners of property bordering the transmission line’s proposed route. This is a significant undertaking, as there are over 70 properties that have to be taken into account.



<sup>2</sup> *State v. Noble*, 305 P.2d 495, 497 (1957).

<sup>3</sup> Utah Code Ann. §78B-6-512(1).

<sup>4</sup> Utah Code Ann. §78B-6-511(2)(a).

<sup>5</sup> *Noble*, 305 P.2d at 497.

<sup>6</sup> *Salt Lake County Cottonwood Sanitary District v. Toone*, 357 P.2d 486, 488 (Utah 1960)



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Preliminary estimates indicate that beyond the cost of obtaining additional property to expand existing easement, RMP and HLP would be required to pay property owners multiple millions of dollars for lost property value outside the easement area. Estimates for lost property values VOLT obtained, based on realtor estimates, indicate severance damages in the range of mid-seven figures. Those appraisals continue, and we are concerned that RMP and HLP have not done the sort of due diligence to estimate these costs that the City Council expected of them.

There is no doubt that the CUP poses significant impacts to property values throughout the valley. The "Planning Commission Meeting Staff Report," attached as "Exhibit 1," states that "the proposal will have an impact on the properties along the route and on the entire community."<sup>7</sup> Further, Planning Commission Staff determined that "the proposed lines will not be in harmony," with General Plan's agricultural land use description for this area."<sup>8</sup> VOLT requests that the Planning Commission continue its review of RMP's application and consider additional data that VOLT will provide demonstrating significant impacts to property values throughout Midway. VOLT is prepared to provide part of that data now, but additional appraisals are still in the works.

Midway City Land Use Ordinance Section 16.26.12(C)(3) provides, "[t]he Planning Commission may recommend, and the City Council may impose, conditions on the requested use which are additional to any conditions which are specifically listed in conjunction all conditional uses or special exception prescribed within this Ordinance." VOLT also requests that the Commission seek public input and additional information in determining what conditions should be included in the CUP to mitigate impacts to property values and land use decisions.

Very truly yours,

Cc: Adam Long, Esq. via email  
VOLT, via email  
MOM:mkm

Enclosure

<sup>7</sup> Planning Commission Staff Report Analysis No. 1 (page 5-6)

<sup>8</sup> *Id.*

Mayor of Midway City  
Midway City Planner  
Midway City Council

Thursday, November 14, 2019

Dear City Officials,

As you know, VOLT (Valley Wide Opposition to Large Transmission Lines) was started as a nonprofit in early 2018 by citizens in opposition to a then-little-known project called the Jordan Elle-Midway Transmission Line Project. This project was being built by Rocky Mountain Power (RMP) and Heber Light and Power (HLP). The plan was to rebuild a small locally owned powerline into a large Regional Transmission Line. Recently, both Wasatch County and Heber City, which have minimal residential impact, have approved the line as currently proposed – Above ground, and through the middle of the beautiful Heber Valley. Currently, VOLT is focused on supporting Midway City and its residents. As the Jordanelle-Midway Transmission Line Project's name implies, Midway is particularly affected by this project.

Volt has had many influences upon this project over the last 2 years. In addition to bringing this issue to the forefront of public discussion, our efforts have led to the rethinking and rerouting of parts of this line. One item in particular - the under-build Distribution portion of this line, will now be buried. This is good.

But there is still bad. Midway takes the full brunt of this above ground project. The only way for all parties to win, is to BURY THE TRANSMISSION LINE IN MIDWAY. Midway city has recently adopted a code text amendment that allows the city to bury transmission lines if they elect to – at the residents' cost. A citywide survey will soon be conducted by both phone and mail to see how the residents wish to proceed. Considering the recent Open Space Bond, we expect Midway residents will want to bury this line.

Some will say burying is too expensive. We say the alternative to Midway is much costlier.

As a rural resort town dependent on tourism dollars, this project will blast taller, wider, and exponentially more powerful Transmission Lines through view sheds, recreational areas, and more importantly, through established neighborhoods and those that are currently being built or planned to be built soon. This Regional Transmission Line will come within 30ft of some homes and rooms where children sleep. The Midway that Utahans voted as Utah's best small town, will now be compelled to give up things we hold most valuable. However, THIS ISSUE DISSAPPEARS, IF WE BURY THE LINE.

Some will say that this project is for us and our growth. This is a less-than-half-truth. Yes, we will get a second point of interconnect in exchange for the line, but we will become an electrical

Highway for regions beyond our borders. Further to this point, through the Midway section, we will ONLY receive the same amount of electricity that we currently receive, so when we say it for our growth, please consider this point. However, THIS ISSUE DISSAPPEARS, IF WE BURY THE LINE.

Some will say that they are using historical routes. This would be true for a small local 46kv powerline for HLP. But HLP will be required to convey or give up those assets and prescriptive easements to another entity – RMP, therefore expanding the original intent and nature of their original purpose and unduly burdening the owners of those properties where the current lines lie. Where there was one city-owned utility company, there will now be another private-for-profit utility. In the future, three or four? However, THIS ISSUE DISSAPPEARS, IF WE BURY THE LINE.

Some will say burying is too expensive. Midway residents know the alternative is much costlier.

CONSTRUCTION COSTS. We should challenge the construction estimates to bury the line. We need true costs, including bids from multiple contractors to be included and presented before the City Council. This is what the CUP application requires. It is the only way to for a City Council to make a proper and informed decision. Now that they will be burying distribution lines, is there an economy to be applied to burying the transmission line? Anything less than these and other details from the applicants would imply that they do not want the line to be buried as it would create a precedence for other cities to push back on their plans by portraying inflated costs to scare challengers to give up and acquiesce to their demands. We need partners that respect us and our values. I believe that these utility companies can do this.

EASEMENT COSTS. RMP and HLP state that they already have easements with widths required of a 21<sup>st</sup> century dual circuit 138KV Transmission line. THIS IS NOT TRUE. Our Attorneys have continuously asked for RMP and HLP to provide evidence of this claim – but has gone unanswered. FACT: There are no recorded easements for the current local line which was built in the mid 1970's with smaller requirements. They are prescriptive in nature, and would encompass the line as it currently stands, not bigger, not wider, not more powerful and not for an additional utility company. The easements will need to be enlarged and will cost money which needs to be considered. RMP is interested in one thing - the bottom line. They are pros at this craft. Mayor Celeste Johnson at the last City Council point blank asked HLP and RMP to answer this question quickly and accurately. We are still waiting.

TOTAL TRUE COSTS AND OFFSETS. VOLT has engaged appraisers and attorneys to demonstrate the additional financial impacts to homes and properties along the line in addition to expanded easements. These are citizens of our city. These are those that we need to protect. We have worked to collectively join these owners to FORGO damages which will be entitled to them per Utah Law (Utah Code § 78B-6-511 (1)(b)) and use them to counter and offset the cost of burying the line in Midway. The report, shows damages over 2.5 million dollars. Their collective voice is represented in the ongoing report that will be delivered to the city today with this letter.

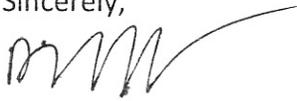
SOMETHINGS ARE WORTH PROTECTING. Midway is a natural gem – one of kind. Midway will not be more of a gem with these lines. Although we will still have our wonderful neighbors and friends, our surroundings that add to that wonder will begin to be tarnished and decimated.

Once what makes Midway special is gone, it's gone - forever.

We trust that you will hold HLP and RMP to full requirements of the CUP, and will look to know and follow the will of the citizens of Midway to bury this Regional Transmission Line. This can be a win-win for everyone.

It's the right way for Midway.

Sincerely,

A handwritten signature in black ink, appearing to be 'B Jonsson', with a long, sweeping flourish extending to the right.

B Jonsson  
VOLT president

Dear Midway City Council Members:

Members of the Midway public have expressed the following concerns that we would like to have addressed as part of the Heber Light and Power (HLP) and Rocky Mountain Power (RMP) conditional use permit (CUP) process prior to any approval of such CUP by our city. I am writing on behalf of these many concerned citizens. We implore you to consider how you would feel if such a project was coming through or right near to your property.

Thank you very much for your attention to this time sensitive matter.

Best regards,

Heather Whitney [Hwhitney\\_90403@yahoo.com](mailto:Hwhitney_90403@yahoo.com)

### **Provide Proper Public Notice**

1. There are at least several property owners who are within the footage range requiring notice that have not been provided notice of the hearing tonight. Examples can be provided.
2. The lack of notice was verified by Michael Henke of Midway Planning.
3. Proper notice needs to be given by and is the responsibility of the applicants.
4. Another public hearing with proper notice will need to be held.

### **Present Comprehensive, Accurate Facts to the Public**

1. All salient issues should be brought up, not just that there are fewer poles. The new poles are significantly larger in height, diameter, and voltage, as detailed in the following points.
2. The voltage carried on the poles increases from 46 kv (HLP) to 276 kv (138 kv HLP and new 138 kv RMP lines), an increase of 6 times the current voltage even on a linear basis.
3. Regarding height, there is a very significant increase. The current poles range from 55 feet to 65 feet, with about 8 feet of that height located underground. This leaves the height above ground ranging from about 47 – 57 feet tall, as I understand it. Given that the under the Typical Span proposal that most of the poles are 75 – 80 feet tall above the ground, this is an increase ranging from approximately 32 – 70% in height.
4. Regarding the diameter, my understanding is that maximum diameter of the existing poles does not exceed 24 inches. While the new wood poles would be similar, the 6 “dead end poles” will be 5 – 6 feet (about 60 – 72 inches) in diameter, quite similar to the new larger poles along Highway 40. This is an increase of approximately of 2 ½ – 3 times the current diameter.
5. Regarding voltage, the current historic lines carry 46 kv with prescriptive easements owned by our locally owned HLP. Under the HLP – RMP proposal, the power poles will now carry 276 kv with the upgraded 138 kv lines for HLP (needed for our valley) and

another 138 kv for RMP to largely support Utah and Summit counties and beyond. The power line easements become the property of RMP. This increase in voltage is exponential, but even linearly, it is an increase of at least 6 times the amount of voltage due to the addition of RMP power lines onto these poles.

### **Educating the Public: Loss of HLP Power Line Easements and Non-historic Addition of RMP Lines**

1. Most people do not understand the full picture, dynamics, and what is at stake here. If they did, and if we educate them, with help from volunteers on a committee spearheaded by the Mayor and other leadership, we could get more honest feedback from residents. Without a proper survey being conducted on this important issue, the community may be taken very much by surprise when the new poles just start coming into Midway.
2. Given the very real possible alternative that if RMP was not allowed to go on the HLP southern line poles that RMP would come separately through a more northern part of Midway, such as River Road, for its transmission lines; the southern line and properties in that section are carrying a large burden on behalf of Midway in general in order to consolidate the lines. By doing this, the southern line is protecting a major view corridor for Midway.
3. Midway generates significant revenues from the resort aspect of its community, and therefore this is a significant benefit to a city such as Midway (arguably as opposed to other cities that are more suburban or commercial in nature).
4. This alternative was threatened by RMP once RMP was invited into this valley by HLP several years ago in a deal that HLP entered into several years ago. The Midway public should be educated on this so that they understand how the city could have been impacted if the south line did not adsorb the burden of the brand new RMP lines.
5. The RMP lines that are being requested by HLP and RMP to be added to the southern line largely service Utah and Summit counties, including Park City, and beyond). The historic easements along the southern line are for HLP lines and not for RMP lines.
6. HLP is owned by the cities of Heber, Midway, and Charleston. It is an inter-local public utility. This provides many privileges and local control to our community given its structure. RMP is owned by Berkshire Hathaway, a huge and extremely profitable company, which is not answerable to our community.
7. Unfortunately, another hugely important downside to the deal with RMP is that HLP hands over ownership of its power line property easements to RMP along the upgraded lines, which arguably decreases or eliminates our community's control over the lines and what happens with the power lines.
8. The City Council and other leadership can help determine the information to communicate to the city, as well as the survey content. A full picture should be provided to residents.

### **Consult with a Specialized Utility Industry Attorney**

1. It is critically urgent to consult with a well-regarded attorney that specializes in the utility industry, as opposed to primarily only consulting with a more general attorney. This is a very specialized area of law. One idea is for the city of Midway to consult with the same attorneys that are working with Park City on the RMP power lines there.
2. Park City did not want the RMP lines coming through their community and were effectively able to stop this from happening. Can we not piggy-back off of their work, or at least consider their approach for our own city?
3. In addition, a utility attorney could give Midway guidance regarding how the HLP Board and Audit Committee should be operating, what their duties are, and what information HLP management should be providing to the Board and Audit Committee and how frequently. These attorneys could help set up good working procedures for the Board and Management, etc.
4. We also need to determine that the attorney that has been providing legal advice to Midway City does not have a conflict of interest in advising on this CUP.
5. We should give substantial consideration to using the full extent of the authority that we have explicitly provided for in this code language in Section 16.13.47 of our Land Use Code with such an important decision to be made that impacts so many people in Midway.

#### **Create a Midway Power Committee and Conduct Survey**

1. We would like to request the creation of an ad-hoc (or permanent) Power Committee for Midway (like the City has the Trails and Traffic committees). This committee could help prepare and execute a power line survey.
2. With the alternative being that RMP could possibly come right down River Road or the like and impede the beauty of other major view corridors and the city's resort nature and revenue sources, it is arguably of great concern to hundreds, if not thousands, of people who live in this town.
3. Many members of the public have been in contact with me and are inquiring about the status of performing a survey to better assess how the Midway community feels about financing putting the power lines underground in Midway if such lines have to come through our city. It is their understanding, and I have heard mention of this before at the Midway city level as well, that Midway had planned to conduct such a survey.
4. A project of this magnitude and potential impact on the entire city really needs the leadership of the Mayor, City Council, and Planning Commission. The group starting and running the survey should not have the perception of being run by a special interest group. Can you please commission the organization of a committee to pursue creation and execution of a survey? Can we do the type of surveying that is being done for the Midway trail system?
5. There are members of the Midway public who would be happy to help facilitate the survey and volunteer to make it happen. It would seem of extreme importance to assess the will of the city's constituents and to give them the information to make informed responses.

### **Provide Potential Financing Scenarios for the Public to Consider**

1. If the Midway public was to better understand this situation -- that the alternative was possibly to have 2 transmission lines cutting through the city, it seems likely that many residents would want to help fund putting the lines underground given this significant extra burden being put on the southern line, in order to protect the entire community and its resort nature and beauty and its most significant revenue source.
2. By the southern line taking on the significant load of the RMP lines in addition to the historic HLP power lines in that area, view corridors and natural beauty are protected throughout the city, not just in the southern portion.
3. The Midway public needs to be educated about this and it would be an important series of points to lay out as part of a survey.
4. Not everyone will be in favor of paying to put the power lines underground, just as they weren't all in favor of bonding for open space. However, enough may care that we can share the burden of preserving Midway's beauty, protect the wellbeing of its residents and visitors, and minimize the various impacts of the upgraded power lines.

### **Assess HLP Board and Audit Committee Fiduciary Duties and Proper Execution of Such Duties**

1. The way that we ended up in this situation starting several years ago needs to be examined. Furthermore, the same issues continue with the HLP Board and management today, due to a majority of the HLP Board not providing the oversight, review, and direction that a board in its fiduciary duty should be providing, along with the HLP Audit Committee.
2. Budgets are not properly provided with sufficient or relevant information, financial controls are inadequate, and capital expenditures and discretionary spending are not reviewed or justified properly. Accordingly, strategic decisions cannot be properly assessed and evaluated by the Board and its committees. As a result, HLP management will continue to push for further rate increases and key decisions cannot be properly examined.
3. There is no way that the HLP Board or Audit Committee can perform its duties fully given the information they are receiving from HLP Management. The Board is also not requiring this information before making significant monetary decisions which greatly affect the public and rates. The full costs of this deal were not considered. Rates are just one aspect of the impacts of this deal.

## Michael Henke

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**From:** Heather Whitney <hwhitney\_90403@yahoo.com>  
**Sent:** Monday, November 18, 2019 9:16 AM  
**To:** Michael Henke; Ken Van Wagoner; Lisa Christen; Bob Probst; Jeff Drury; JC Simonsen  
**Cc:** Celeste Johnson; Christopher Whitney (US - Tax)  
**Subject:** Letter to Midway City Council -- Review of Transmission Power Line Survey Wording Prior to Issuance

Dear Michael,

Can you please ensure that the City Council Members have this letter in time for tomorrow evening's Midway City Council Meeting?

Thank you.

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Dear City Council Members,

It is very important that the wording of the Midway phone and mail power line survey accurately convey what is at stake to Midway's future and the true nature of the project if these lines are not buried. This is not just a rebuild of an existing power line, but the addition of new and exponentially more powerful lines, where the additional power is largely for the benefit of communities outside of Midway.

While it is important to mention the additional monthly utility charge estimates, it is also important to note that community groups are working to raise funds to lower these overall costs and to assist those who may have difficulty affording the additional charges. As we do not have concrete numbers for the costs and costs could be less or even substantially less, we should carefully consider how we present the cost options in the survey in order to see what amount citizens might be willing to bear. This information could also be used for citizen groups to know the amount of money that needs to be contributed.

To this end, I think a small working group of Midway citizens should review the text of the mail and phone survey before it is issued to ensure that the survey accurately conveys the nature of the project, the long term impact of overhead power lines on the rural, resort and residential character of Midway, as well as citizen group efforts to mitigate the costs of burying the lines and to support those who may have difficulty affording the additional monthly charges.

Thank you,

Chris Whitney

745 Dutch Valley Drive  
Midway, UT

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