



Memo

Date: 18 December 2019
To:
Cc:
From: Brad Wilson, City Recorder
RE: Conditional Use Permit for Transmission Line / Motion

Please note that the following motion is awaiting formal approval and is in draft or unapproved form.

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

We accept the staff report.

We accept the following findings:

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

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

- *Recognizing that the city is required by law to pay the difference between the cost of overhead lines and the cost of underground lines (in State Code referred to as “excess costs”), and also recognizing that the City Council has a fiduciary duty to manage financial interests of the citizens appropriately, and with reference to Utah State Code 54-14-203, we do not accept the estimated costs provided by the applicant as sufficient information upon which to base funding decisions. Furthermore, we require the applicant to provide 3 actual competitive construction bids, prepared by qualified, bonded, and insured 3rd party entities, in accordance with standard city policy, to establish the actual cost of this construction. These bids must be submitted to Midway City no later than Feb 15, 2020. Failure to deliver these bids on time will cause the city*

to be unable to fulfill its fiduciary duty to the citizens of Midway by no fault of its own. To be clear: If these bids are not submitted by the applicant, it does not cause the construction to revert to overhead. It is the obligation of the applicant to provide this information in a timely manner and therefore the reasonable remedy for lateness of this information is to adjust any other deadlines by an amount equal to the lateness of this information.

- The bids provided by the applicant will include the **base cost** of burying the line from Center Street to the end of Wards lane, using current standard materials and practices. The **costs of the dip poles at each end** must be itemized. In addition, the bids must include the following itemized additional options:
 - Continuing underground from Wards Lane to the substation (**Additional end of line cost**) and
 - upgrading components (IE “rack”, etc) inside the substation to accommodate raising the underground line (**Substation Option 1**)
 - placing dip poles immediately outside the substation to raise the line outside the substation (**Substation Option 2**)
 - Going underground immediately west of the Fish Hatchery, at least 350’ or greater from Center Street/ HWY 113 (**Additional Entry Cost**)
 - An itemized option to use GIL (Gas Insulated Lines) as the transmission line conductor that will be buried. (**Alternative Conductor Option**)

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

- Whereas private citizens (represented by the organization known as VOLT) have recognized an underground transmission line project that must be paid by citizens presents a significant financial burden on the citizens of Midway, and have stated they want to help mitigate this burden, and whereas the City Council is significantly concerned about the citizen impact of the full cost of underground construction, the city hereby requires that in order to proceed with underground construction a minimum of 1.5 Million US dollars in “donation” funds must be presented to the city in the form of contractual authorization to use these funds for the purpose of the burial of transmission lines, from an escrow bank account serviced by a qualified escrow service. If VOLT is able to raise more than \$1.5M and the underground project costs exceed \$1.5M, the City is delighted to accept more help from VOLT. If the final cost of the construction is less than \$1.5M, any excess donations will be retained by the donating entity (IE “VOLT”). It is up to VOLT to return the amount to the rightful owners. We officially express our deep gratitude to the VOLT organization for their hard work and dedication in the service of our town in potentially making actual private funds available.
- Midway City must secure sufficient funds to cover the cost of construction. If financing is needed then the board of HLP must approve the issuance of bonds sufficient to cover the remaining final cost of construction, as determined by the bids, and after adjusting for the “base” cost of overhead and any other adjustments. Midway City will also work with the HLP board to determine the best mechanism for the bonds to be repaid (IE per-meter charge, per Kwh charge, etc), considering also that the bond issuer may have requirements. Furthermore Midway City Council may, at its discretion, enter into a contract with HL&P that establishes that these funds are to be used by the City to pay for the underground construction costs related to the new construction in Midway, including costs related to any small portions that extend slightly but contiguously out of city limits as part of completing this project.
- The appropriate Wasatch County Land Use Authority must approve a change in the plan for construction of the portion of the line that is within County jurisdiction and under the

existing county CUP that will allow the dip poles (as needed for transition from overhead to underground) near HWY 113 to be moved to a location that is acceptable to the City Council. As guidance for this process, at this time the Council envisions a location near the Fish Hatchery, but we are open to discussion of the best alternatives that will achieve our goals of mitigating visual impacts near to our entry corridor.

- Prior to construction, the applicant will submit “visual mitigation” landscaping plans and simulations, that show a reasonable use of vegetation following national standards to mitigate the visual impact of any large diameter (> 24” at ground level) dip poles that are used. The intent is to obscure the base of the poles as much as possible with vegetation, while following accepted industry overhead line construction standards and accommodating safety and access requirements.
- The Midway City attorney will conduct a thorough review of this motion and the related requirements, with the intent of ensuring the city is acting in good faith and following all applicable laws regarding use of City funds and the issuance of a CUP.
- As applicable to underground construction, the route followed will be the Alternate Route “B”, allowing for possible future full width construction of 970 S should that ever come to pass.
- Whereas many private citizens have expressed in written form submitted by VOLT that they would donate the value of their easements to reduce the cost burden borne by the City, these amounts will be subtracted from the underground cost the City will pay.
- All distribution lines along the route shall also be buried at the cost of HL&P.
- HL&P shall install at its own cost conduit sufficient to allow communication lines to also be placed underground.
- The applicant will obtain all necessary property rights and easements prior to the commencement of construction.
- The applicant shall contact all property owners whose properties are directly affected by changes to the line(s) prior to beginning construction.
- In the event a final determination is made by a court with jurisdiction that any existing property rights are not sufficient for the project, the applicant will acquire legally sufficient property rights for the project, which may include negotiated agreements with the property owners or the use of eminent domain. As a part of this process and in accordance with Utah law, the applicant will pay compensation for the properties either as negotiated with the property owner or determined by the court.
- Once construction is finished on the underground line, the actual costs will be trued-up and either the applicant shall refund the over-payment to the City, or the City shall pay the difference to the applicant.
- The City will pay the difference between the standard cost (which includes engineering cost, the cost to install the line, all easement costs, all severance damages that RMP would have been required to pay had the line gone above ground) and the actual cost of the buried line.

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

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

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

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

AND

b) the required minimum in "donation" fund dollars

AND

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

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

- The route followed will be the "Alternate Route B", allowing for possible future full width construction of 970 S should that ever come to pass.
- *All distribution lines along the route shall also be buried at the cost of HL&P.*
- *HL&P shall install at its own cost conduit sufficient to allow communication lines to also be placed underground.*
- The applicant will obtain all necessary property rights and easements prior to the commencement of construction.
- The applicant shall contact all property owners whose properties are directly affected by changes to the line(s) prior to beginning construction.
- In the event a final determination is made by a court with jurisdiction that any existing property rights are not sufficient for the project, the applicant will acquire legally sufficient property rights for the project, which may include negotiated agreements with the property owners or the use of eminent domain. As a part of this process and in accordance with Utah law, the applicant will pay compensation for the properties either as negotiated with the property owner or determined by the court.
- The applicant will use the taller poles, with fewer poles and longer spans.
- The applicant will use the minimum possible diameter of poles in all locations. The applicant will use wood tangent poles wherever possible, and the applicant will work with property owners and the city in considering guyed structures versus large diameter structures as a possible construction method at "corners". The Midway City Council will ultimately decide which option is best, while complying with all applicable laws and construction standards.
- Where metal poles are used, the applicant will use the self weathering rust colored steel poles.
- Prior to construction, the applicant will submit "visual mitigation" simulations, that show a reasonable use of vegetation following national standards to mitigate the visual impact of any large diameter (> 24" at ground level) poles that are used. The intent is to obscure the base of the poles as much as possible with vegetation, while following accepted

industry overhead line construction standards and accommodating safety and access requirements.

- While following national construction standards, in order to mitigate the possible negative affects of EMF on personal health electronic devices that may be used by nearby residents (such as unwanted noises caused in cochlear implants for example) the applicant will make a reasonable attempt at minimizing EMF emissions near overhead lines as measured on the ground underneath the line by using the most current available technologies for such purpose.
- The transmission lines used shall be non-specular or low-reflective so as to reduce visual impact.
- In general the applicant shall mitigate the visual impacts of the construction to the maximum extent possible while following all relevant safety and construction standards.

Second: Council Member Van Wagoner seconded the motion.

Discussion: None

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

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