

Midway City Council
1 December 2020
Regular Meeting

Resolution 2020-23 /
Settlement Agreement

SETTLEMENT AGREEMENT

This Settlement Agreement (the “**Agreement**”) is entered into by and between MIDWAY CITY (“**Midway**” or “**Midway City**”), a political subdivision of the State of Utah, HEBER LIGHT & POWER COMPANY (“**HL&P**”), a Utah energy services interlocal entity, and ROCKY MOUNTAIN POWER (“**RMP**”), an ~~un~~unincorporated division of PacifiCorp (collectively the “**Parties**”) as of the date executed by the Parties.

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RECITALS

A. HL&P has requested a new point of delivery from RMP, which is the transmission provider for HL&P, and RMP requires a 138 ~~KV~~kV transmission line connecting the existing Midway Substation located near the intersection of 500 South and 773 West adjacent to the Midway City Cemetery (the “**Midway Substation**”) to the new point of delivery substation to be located at approximately 1465 West 650 South in unincorporated Wasatch County (the “**POD Substation**”) in order to supply the amount of power requested by HL&P and that is necessary to serve expected growth within the HL&P service territory, which includes the entirety of Midway City; and

B. HL&P and RMP received approval of a conditional use permit (the “**Existing CUP**,” attached to this Agreement as **Exhibit A**) to install a dual-circuit 138 ~~KV~~kV electrical transmission line through Midway along 970 South, then along Stringtown Road, and then down Ward’s Lane (“**South Transmission Line**”); and

C. Compliance with Existing CUP has been challenged by both RMP and Midway before the Utah Utility Facility Review Board; and

D. An appeal regarding the decision of the Utility Facility Review Board regarding the Existing CUP (“**Appeal**”) is currently pending before the Utah State Court of Appeals as Case # 20200418-CA (the “**Appellate Case**”); and

E. The Parties agree that it is in their best interests to resolve the various issues among the Parties by entering into this Agreement to allow for ~~the~~HL&P’s construction of a single-circuit 138 ~~KV~~kV electrical transmission line to connect the Midway Substation and the POD Substation; and

F. The Parties agree to the following terms regarding the installation of the transmission line and an amendment to the Existing CUP-, and resolution of the pending appeal before the Utah Court of Appeals.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual promises set forth below, the Parties agree as follows:

1. Incorporation of Recitals. The introductory paragraph and each of the foregoing recitals are hereby incorporated into the terms of this Agreement.

2. Obligations.

a. HL&P shall:

- i. Install Single Circuit Transmission Line. Install or cause to be installed a single circuit 138 ~~KV~~kV transmission line ~~“(the “Single Circuit Transmission Line”)~~ from approximately the Midway City Public Works property, located at 280 East 850 South just east of the fish hatchery, to the Midway substation, located near the intersection of 500 South and 773 West adjacent to the Midway City Cemetery, along approximately the route set forth in **Exhibit B** at HL&P’s sole cost and expense, in any manner preferred by HL&P, and in accordance with the following specifications:
 1. Wooden poles with an approximate diameter of two (2) to three (3) feet and a maximum height from finished grade of 80 feet, ~~carrying~~designed to carry only the single 138 ~~KV~~kV circuit (three separate conductors), lightning protection equipment and two communication lines, and burying underground any electrical distribution lines and providing underground conduit suitable for any existing third-party communication lines. HL&P agrees to install the wooden poles in a fashion that minimizes the total number of poles needed, and agrees that regardless of design, there will not be more wooden poles than currently exists within the easement.
 2. Three (3) rust-colored corner poles composed entirely of metal substantially similar in size to the corner ~~poles~~pole currently in place ~~along U.S. Highway 40 north~~at the northeast corner of the Prestige II Senior Apartments in Heber City (“but with a rust color (each a “Rust Colored Metal Corner PolesPole”), with an approximate diameter of three (3) to four (4) feet at the base of the poles and an approximate height of 80 feet ~~tall from finished grade. HL&P will consider installing wooden corner poles that could be guyed instead of Rust Colored Metal Corner Poles subject to property owner approval.~~
 3. The Parties agree that HL&P is proposing a pole for pole replacement within the Midway City boundaries of the existing line that does not alter its present alignment. As part of the amendment to the ~~conditional use permit~~Existing CUP Midway City ~~is requiring~~may allow alteration of the present alignment along 970 ~~south~~South to accommodate future growth, which may require up to four additional metal angle poles. The angle poles may be composed entirely of metal substantially similar to

~~the corner poles currently in place along U.S. Highway 40 north of Heber City (“Rust Colored Metal Corner Poles”), with an approximate diameter of three (3) to four (4) feet at the base of the poles and an approximate height of 80 feet tall a Rust Colored Metal Corner Poles.~~ The parties agree that the angle poles will be installed with the smallest poles possible needed to meet industry standards. Installation of the angle poles is in conjunction with improvements to 970 South is hereby approved by Midway City and will not require any additional approval to proceed.

4. The Parties acknowledge that there may be a need for metal poles around the fish hatchery and going into the Midway substation, and that this agreement is not designed to dictate design methods outside of the City limits of Midway, except for assuring that the dead end pole will be placed on the Midway Public Works Yard. the agreement that HL&P will use reasonable efforts to install a pole substantially similar to a Rust Colored Metal Corner Pole between Highway 113 and the fish hatchery.
5. HL&P agrees that it will bury all existing electrical distribution lines along 970 South, and on both sides of Stringtown Road and Ward’s Lane within current Midway City limits.
6. HL&P will install conduit along 970 South and on one side of Stringtown Road and Ward’s line. In placing conduit for communication lines, HL&P agrees to coordinate with Midway City, as it coordinates with the communication companies, to assure the conduit is located in a size and location reasonably sufficient to meet the communication company needs. The parties acknowledge that HL&P is not able to prevent the communication companies from attaching to its poles under applicable laws and regulations and nothing in this Agreement should be construed to require HL&P to prevent such lawful activity.
7. HL&P shall obtain all necessary easements needed to install the Single Circuit Transmission Line prior to commencement of construction.
- 4.8. The Parties acknowledge that there will be fiber installed on the top of the poles but there will be no underhanging communication lines on the Single Circuit Transmission Line during the initial construction and operation, except as may be required by applicable law or regulation. Underhanging

communication lines shall be defined as any lines that would be hung below the lowest strand of the 138 kV line.

- ii. Restriction on Additional Transmission Line CUP. HL&P agrees it will not submit a conditional use permit to Midway City for either an additional transmission line along the same route as the Single Circuit Transmission Line ~~(or within a half mile to the north or south of the Single Circuit Transmission Line)~~, or along the existing 500 South HL&P transmission line corridor within the Midway City limits as existing as of the date of this Agreement, or a conditional use permit that would increase the diameter, height or number of power poles on the Single Circuit Transmission Line for a period of 10 years after execution of this agreement.- For 25 years after execution of this Agreement, HL&P also agrees that it will give Midway City written notice (with preliminary drawings and a good faith estimate to build the line above ground and also to bury) of its intent to file a conditional use permit to alter, upgrade or add to the existing Single Circuit Transmission Line 18 months in advance of formal application, so that Midway City will have the time and opportunity to pass a bond to potentially bury the line.

1. The preceding Subsection 2.a.ii. shall not apply to the Single Circuit Transmission Line or to any other electrical infrastructure owned or used by HL&P if the need for new or modified electrical infrastructure is caused by an action or decision by Midway City, including but not limited to approvals of new subdivisions, public road expansions or realignments, development approvals, and issuance of building permits.
2. The preceding Subsection 2.a.ii. shall not apply to any infrastructure or activity by HL&P that does not require a conditional use permit under the ordinance of Midway City in effect at that time.

- iii. HL&P agrees to submit the Existing CUP with Midway City to be amended in accordance with the terms set forth above.

b. RMP shall:

- i. Amendment of Existing CUP: RMP agrees to support the proposed amendment to the Existing CUP, as set forth above.
- ii. CUP Withdrawal. RMP agrees that it will withdraw its name from the Existing CUP, but shall only be obligated to do so if the proposed amendment to the Existing CUP as contemplated by this Agreement is approved by the Midway City Council. The parties agree that the approval of the amendment to the Existing CUP and the withdrawal of

RMP from the Existing CUP will occur simultaneously, without the need for additional action by or approval from RMP.

- iii. Restriction on Additional Transmission Line CUP. For 10 years after execution of this Agreement RMP agrees it will not submit a conditional use permit application to Midway City for either an additional transmission line along the same route as the Single Circuit Transmission Line or along the existing 500 South HL&P transmission line corridor within the Midway City limits as existing as of the date of this Agreement, or a conditional use permit that would increase the number of conductors, or the diameter, height, or number of power poles on the Single Circuit Transmission Line ~~for a period of ten (10) years after execution of this Agreement.~~ The ~~parties~~Parties specifically ~~Agree~~agree that reconductoring or other modifications to the Single Circuit Transmission Line that do not increase the number of conductors, or alter the overall height, overall diameter, or number of poles for the Single Circuit Transmission Line do not require a conditional use permit and do not fall within the restriction described in this Subsection iii.
- iv. Notice Prior to Application for Future CUP. For 25 years after execution of this Agreement, RMP also agrees that it will give Midway City written notice (with preliminary drawings and a good faith estimate to build the line above ground and also to bury it) of its intent to file a future application for a conditional use permit to alter, upgrade, or add to the existing Single Circuit Transmission Line to be built under this agreement at least 18 months in advance of formal application, so that Midway City will have the time and opportunity to pass a bond to potentially bury the line. This requirement shall only be waived if a conditional use permit is necessary to meet an urgent and immediate need as provided in the North American Electric Reliability Corporation ~~standard~~ or other applicable industry standard, and in such a case, RMP will provide notice to Midway City as soon as possible in the process.
- v. Dismissal of Pending Appeal and Utah Facility Review Board. Upon execution of this Settlement Agreement by all parties, RMP shall withdraw its appeal before the Utah Court of Appeals and stipulate to its dismissal with prejudice and submit a notice to the Utah Facility Review Board that the matter has been settled.

c. Midway City shall:

- i. ~~Dead-End Pole~~Lines Easement. On or before January 1, 2021 and without cost to HL&P, grant an express easement as set forth in **Exhibit C** ~~to HL&P to install a dead end pole within~~across the ~~public works yard of Midway City (the “Public Works Yard”)~~, located at 280 East

850 South just east of the fish hatchery. ~~to run the Single Circuit Transmission Line.~~

~~ii. Lines Easement. On or before January 1, 2021 and without cost to HL&P, grant an express easement as set forth in **Exhibit D** across the Public Works Yard and along 850 S. to Highway 113 to route distribution and communications lines (the “**Lines**”) and to connect the Lines to the existing above ground distribution line located on Highway 113.~~

~~iii.ii.~~ Other Easements. On or before January 1, 2021 and without cost to HL&P, grant to HL&P other easements as reasonably necessary for construction and operation of the Single Circuit Transmission Line over any real property owned by Midway.

~~iv.iii.~~ Existing CUP Amendment. On or before January 1, 2021, obtain the Midway City Council’s consideration and approval of the amendment to the Existing CUP in accordance with the terms set forth in this Agreement (“**Existing CUP Amendment**”). The Parties acknowledge that the granting of a new conditional use permit reflecting the same terms as the Existing CUP Amendment would also be acceptable; provided, however, that such new conditional use permit must likewise be granted on or before January 1, 2021.

~~v.iv.~~ Appeal Withdrawal. Upon approval of the Existing CUP Amendment, withdraw the Appellate Case and stipulate to its dismissal with prejudice.

~~vi.v.~~ Cooperation with Wasatch County. Support HL&P in any request, application, or similar action to Wasatch County or any other governmental entity reasonably necessary to construct the Single Circuit Transmission Line.

3. Representations and Warranties.

a. Midway City represents and warrants that:

i. Midway City, including management and staff, will support the construction of the Single Circuit Transmission Line and will take all actions reasonably necessary to enable the construction of the Single Circuit Transmission Line.

ii. Midway City, including management and staff, will ~~support~~accept the existence and use of HL&P’s existing prescriptive easement rights for the construction and operation of the Single Circuit Transmission Line.

4. Third-party Infrastructure. Midway City agrees and acknowledges that HL&P's obligation as to communication lines and other infrastructure owned or operated by third-parties in the vicinity of the Single Circuit Transmission Line is limited to the installation of underground conduit along the route of the Single Circuit Transmission Line in accordance with standard HL&P practices and that HL&P has no ability to install, or cause to be installed, such third-party infrastructure within the underground conduit.

5. Operation of Single Circuit Transmission Line. The Parties agree and acknowledge that this Agreement places no restrictions on the construction, ownership, or operation of the Single ~~Circuited~~Circuit Transmission Line except as explicitly set forth herein.

6. Mutual Release of Claims. The Parties hereby ~~releases~~release and forever discharge and hold harmless one another from any and all actions, causes of action, demands, damages, costs, expenses, attorney fees, or claims of every kind and description ("**Released Claims**"), existing as of, or arising prior to, the date hereof, including, without limitation, those Released Claims arising out of, or based on, acts, omissions, matters, or occurrences relating to the Appeal. Notwithstanding the foregoing, the Parties acknowledge and agree that Released Claims will not include any claim that arises out of a breach of this Agreement.

7. After Discovered Facts. Each Party acknowledges that such Party may hereafter discover facts different from or in addition to those which it now knows or believes to be true with respect to the Released Claims and each agrees that this Agreement shall be and remain effective in all respects notwithstanding such different or additional facts or the discovery thereof, unless in the event of material misrepresentations.

8. Authority. Each Party, by signing below, warrants that the Party has the authority necessary to enter into the Agreement and that the person signing this Agreement on behalf of each Party is authorized to do so.

9. Legal Review. By signing below, each Party acknowledges that it had the opportunity to review this Agreement with independent legal counsel, if so desired.

10. Notice. Any notice required or permitted to be given to a Party pursuant to the provisions of this Agreement shall be in writing and shall be effective upon the earlier of: (i) personal delivery, or (ii) three (3) business days after deposit in the United States mail by certified mail, postage prepaid, and properly addressed to the Party to be notified at the address set forth below or at such other address as such Party may designate by ten (10) days advance written notice to either Party hereto:

<p>If to HLP:</p> <p>Heber Light & Power Attn: General Manager 31 South 100 West Heber City, UT 84032</p> <p><u>With a copy to:</u> Heber Light & Power Attn: General Counsel 31 South 100 West Heber City, UT 84032</p>	<p>If to RMP:</p> <p>PACIFICORP 1407 W. North Temple Ste.320 Salt Lake City, UT –84116</p>	<p>If to Midway City:</p> <p>Director Planning Department Midway City P.O. Box 277 Midway, Utah 84049</p> <p><u>With a copy to:</u> Corbin B. Gordon Midway City Attorney 322 E Gateway Drive, Suite 201 Heber City, UT 84032</p>
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11. No Representations. The Parties acknowledge that, except as expressly stated in this Agreement, no Party (nor any of their agents, employees, attorneys, or representatives) has made any statement or representation to any other Party regarding any fact relied on by any other Party in entering into this Agreement. Each Party specifically acknowledges that such Party has not relied on any statement, representation, or promise of any other Party, or of any of its agents, employees, attorneys, or representatives, in executing this Agreement, except as expressly set forth herein. In addition, each Party acknowledges that such Party is under no duress or undue influence and that each executes this Agreement as an act of such Party's own voluntary will.

12. Binding Agreement. This Agreement shall be binding on and inure to the benefit of the Parties hereto and their heirs, personal representatives, successors, and assigns. By executing this Agreement, however, the Parties do not intend to bestow any benefit on any non-party to this Agreement.

13. Entire Understanding. This Agreement sets forth the entire understanding of the Parties as to the matters set forth herein and cannot be altered or otherwise amended except pursuant to an instrument in writing signed by each of the Parties hereto.

14. Time is of the Essence. The Parties understand and agree that time is of the essence in completing their respective obligations set forth in this Agreement.

15. Multiple Counterparts. This Agreement may be executed in any number of counterparts, whether by facsimile, scan and e-mail, or otherwise, and each of which when so executed and delivered, shall be deemed an original; and all such counterparts together shall constitute one and the same instrument.

16. Effective Date. This Agreement shall be effective as of the date on which this Agreement has been signed by all Parties.

[Remainder of this page intentionally left blank; signature page(s) follow]

Executed this _____ day of _____, 2020.

Midway City

By: - _____
- Celeste Johnson, Mayor

Executed this _____ day of _____, 2020.

Rocky Mountain Power

By: - _____
- ~~Brett~~Bret Reich
- ~~Its~~VP and Chief Litigation Counsel

Executed this _____ day of _____, 2020.

Heber Light & Power Company

By: - _____
- Jason Norlen, General Manager

EXHIBIT A

Existing CUP

EXHIBIT B

Route Map

EXHIBIT C

Form of easement for Midway Public Works

~~EXHIBIT D~~

~~Form of easement for underground infrastructure~~

Return to:
Heber Light and Power
Bart Miller/Harold Dudley
31 S. 100 W.
Heber City, Utah 84032

Parcel(s) #: 00-0008-5303 (Easement 34)

RIGHT OF WAY EASEMENT

WHEREAS, **MIDWAY CITY**, a municipal corporation (“**Grantor**”), is the owner of certain real property located in Wasatch County, State of Utah, which is more particularly described in **Exhibit “A”** attached hereto and incorporated herein (“Grantor’s Property”); and

WHEREAS, Heber Light & Power, an interlocal entity organized under the provisions of the Utah Interlocal Cooperation Act, Utah Code Ann. §§ 11-13-101, et seq. (“HLP”), holds a prescriptive easement across Grantor’s Property to construct, operate, maintain, repair and replace an electric power line and communications lines; and

WHEREAS, HLP desires to rebuild the existing power line, and has joined with Rocky Mountain Power, an unincorporated division of PacifiCorp, an Oregon corporation (“RMP”), to construct a double-circuit power line in generally the same location as the existing power line (“Power Line”); and

WHEREAS, the parties desire that Grantor grant this Easement to accommodate the Power Line.

NOW, THEREFORE, for value received, Grantor hereby grants to HLP and RMP, jointly and severally, and their successors and assigns (“Grantees”), an easement and right of way for the Power Line construction, reconstruction, operation, maintenance, repair, replacement, enlargement, protection, and removal of electric power lines and communication lines and all necessary or desirable accessories and appurtenances thereto, including without limitation: supporting towers, poles, props, guys, anchors, wires, fibers, cables, and other conductors and conduits therefore on, over, or under the surface of the easement. The location of the easement is more particularly described as follows and more particularly described and/or shown on **Exhibit “B”** attached hereto and incorporated herein.

An easement 0 to 24.2 feet in width, being that portion of Grantor’s land lying south of and adjoining the following-described line:

Beginning at a point on Grantor's West boundary that is located NORTH 1287.9 feet and WEST 1295.4 feet from the Southeast Corner of the Southwest Quarter of Section 2, Township 4 South, Range 4 East, Salt Lake Base & Meridian; running thence South 76°23'02" East 98.4 feet to Grantor's South boundary.

Containing 0.03 of an acre, and being in the SE ¼ of the SW ¼ of said Section 2.

Assessor Parcel No. 00-0008-5303

Together with the right of access to the right of way from adjacent lands of Grantor for all activities in connection with the purposes for which this easement has been granted; and together with the present and (without payment therefor) the future right to keep the right of way clear of all brush, trees, timber, structures, buildings and other hazards which might endanger Grantees' facilities or impede Grantees' activities.

At no time shall Grantor place, use or permit any equipment or material of any kind that exceeds twelve (12) feet in height, light any fires, place or store any flammable materials (other than agricultural crops), on or within the boundaries of the right of way. Subject to the foregoing limitations, the surface of the right of way may be used for agricultural crops, sidewalks, open space, and other purposes determined by Grantees as not inconsistent with the purposes for which this easement has been granted.

The rights and obligations of the parties hereto shall be binding upon and shall benefit their respective heirs, successors and assigns. All or any part of this easement and a Grantee's rights hereunder may be apportioned and/or assigned by either Grantee to the other Grantee without notice to or consent from Grantor.

To the fullest extent permitted by law, each of the parties hereto waives any right it may have to a trial by jury in respect of litigation directly or indirectly arising out of, under, or in connection with this agreement. **Each party further waives any right to consolidate any action in which a jury trial has been waived with any other action in which a jury trial cannot be or has not been waived.**

Dated this _____ day of _____, 20__.

GRANTOR:

Midway City

By: _____

Celeste Johnson, Mayor

STATE OF _____)

_____ §

County of _____)

On this _____ day of _____, 20____, before me, the undersigned Notary Public in and for said State, personally appeared Celeste Johnson, known or identified to me to be the person whose name is subscribed as Mayor of Midway City and acknowledged to me that she executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

(Notary Signature)

NOTARY PUBLIC FOR UTAH

Residing at: _____ (city, state)

My Commission Expires: _____

EXHIBIT "A"

Grantor's Property

BEGINNING at a point which is South 21.86 chains and North 89°12' West 5.66 chains and South 26°31' West 0.50 chains and West 9.50 chains and North 7 chains from the Northeast corner of the Southwest Quarter of Section 2, Township 4 South, Range 4 East, Salt Lake Base and Meridian, and running thence South 435.6 feet; thence West 300 feet; thence North 435.6 feet; thence West 63 feet; thence North 53 feet; thence East 223 feet; thence South 33 feet; thence East 140 feet to the point of beginning.

EXCEPTING FROM THE ABOVE DESCRIBED TRACT THE FOLLOWING:

BEGINNING at a point which is South 21.96 chains and North 89°12' West 5.66 chains and South 26°31' West .50 chains and West 9.50 chains and North 7 chains from the Northeast corner of the Southwest Quarter of Section 2, Township 4 South, Range 4 East, Salt Lake Base and Meridian, and running thence South 50 feet; thence West 150 feet; thence North 50 feet; thence East 150 feet to the point of beginning.

Assessor's Parcel No. 00-0008-5303

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B. HL&P and RMP received approval of a conditional use permit (the “**Existing CUP**,” attached to this Agreement as **Exhibit A**) to install a dual-circuit 138 kV electrical transmission line through Midway along 970 South, then along Stringtown Road, and then down Ward’s Lane (“**South Transmission Line**”); and

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- ii. Restriction on Additional Transmission Line CUP. HL&P agrees it will not submit a conditional use permit to Midway City for either an additional transmission line along the same route as the Single Circuit Transmission Line or along the existing 500 South HL&P transmission line corridor within the Midway City limits as existing as of the date of this Agreement, or a conditional use permit that would increase the

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 - iii. Restriction on Additional Transmission Line CUP. For 10 years after execution of this Agreement RMP agrees it will not submit a conditional use permit application to Midway City for either an additional transmission line along the same route as the Single Circuit Transmission Line or along the existing 500 South HL&P transmission line corridor within the Midway City limits as existing as of the date of this Agreement, or a conditional use permit that would increase the number of conductors, or the diameter, height, or number of power poles

on the Single Circuit Transmission Line. The Parties specifically agree that reconductoring or other modifications to the Single Circuit Transmission Line that do not increase the number of conductors, or alter the overall height, overall diameter, or number of poles for the Single Circuit Transmission Line do not require a conditional use permit and do not fall within the restriction described in this Subsection iii.

- iv. Notice Prior to Application for Future CUP. For 25 years after execution of this Agreement, RMP also agrees that it will give Midway City written notice (with preliminary drawings and a good faith estimate to build the line above ground and also to bury it) of its intent to file a future application for a conditional use permit to alter, upgrade, or add to the existing Single Circuit Transmission Line to be built under this agreement at least 18 months in advance of formal application, so that Midway City will have the time and opportunity to pass a bond to potentially bury the line. This requirement shall only be waived if a conditional use permit is necessary to meet an urgent and immediate need as provided in the North American Electric Reliability Corporation or other applicable industry standard, and in such a case, RMP will provide notice to Midway City as soon as possible in the process.
 - v. Dismissal of Pending Appeal and Utah Facility Review Board. Upon execution of this Settlement Agreement by all parties, RMP shall withdraw its appeal before the Utah Court of Appeals and stipulate to its dismissal with prejudice and submit a notice to the Utah Facility Review Board that the matter has been settled.
- c. Midway City shall:
- i. Lines Easement. On or before January 1, 2021 and without cost to HL&P, grant an express easement as set forth in **Exhibit C** across the Public Works Yard located at 280 East 850 South just east of the fish hatchery to run the Single Circuit Transmission Line.
 - ii. Other Easements. On or before January 1, 2021 and without cost to HL&P, grant to HL&P other easements as reasonably necessary for construction and operation of the Single Circuit Transmission Line over any real property owned by Midway.
 - iii. Existing CUP Amendment. On or before January 1, 2021, obtain the Midway City Council's consideration and approval of the amendment to the Existing CUP in accordance with the terms set forth in this Agreement ("**Existing CUP Amendment**"). The Parties acknowledge that the granting of a new conditional use permit reflecting the same terms as the Existing CUP Amendment would also be acceptable;

provided, however, that such new conditional use permit must likewise be granted on or before January 1, 2021.

- iv. Appeal Withdrawal. Upon approval of the Existing CUP Amendment, withdraw the Appellate Case and stipulate to its dismissal with prejudice.
- v. Cooperation with Wasatch County. Support HL&P in any request, application, or similar action to Wasatch County or any other governmental entity reasonably necessary to construct the Single Circuit Transmission Line.

3. Representations and Warranties.

a. Midway City represents and warrants that:

- i. Midway City, including management and staff, will support the construction of the Single Circuit Transmission Line and will take all actions reasonably necessary to enable the construction of the Single Circuit Transmission Line.
- ii. Midway City, including management and staff, will accept the existence and use of HL&P's existing prescriptive easement rights for the construction and operation of the Single Circuit Transmission Line.

4. Third-party Infrastructure. Midway City agrees and acknowledges that HL&P's obligation as to communication lines and other infrastructure owned or operated by third-parties in the vicinity of the Single Circuit Transmission Line is limited to the installation of underground conduit along the route of the Single Circuit Transmission Line in accordance with standard HL&P practices and that HL&P has no ability to install, or cause to be installed, such third-party infrastructure within the underground conduit.

5. Operation of Single Circuit Transmission Line. The Parties agree and acknowledge that this Agreement places no restrictions on the construction, ownership, or operation of the Single Circuit Transmission Line except as explicitly set forth herein.

6. Mutual Release of Claims. The Parties hereby release and forever discharge and hold harmless one another from any and all actions, causes of action, demands, damages, costs, expenses, attorney fees, or claims of every kind and description ("**Released Claims**"), existing as of, or arising prior to, the date hereof, including, without limitation, those Released Claims arising out of, or based on, acts, omissions, matters, or occurrences relating to the Appeal. Notwithstanding the foregoing, the Parties acknowledge and agree that Released Claims will not include any claim that arises out of a breach of this Agreement.

7. After Discovered Facts. Each Party acknowledges that such Party may hereafter discover facts different from or in addition to those which it now knows or believes to be true with respect to the Released Claims and each agrees that this Agreement shall be and remain effective

in all respects notwithstanding such different or additional facts or the discovery thereof, unless in the event of material misrepresentations.

8. Authority. Each Party, by signing below, warrants that the Party has the authority necessary to enter into the Agreement and that the person signing this Agreement on behalf of each Party is authorized to do so.

9. Legal Review. By signing below, each Party acknowledges that it had the opportunity to review this Agreement with independent legal counsel, if so desired.

10. Notice. Any notice required or permitted to be given to a Party pursuant to the provisions of this Agreement shall be in writing and shall be effective upon the earlier of: (i) personal delivery, or (ii) three (3) business days after deposit in the United States mail by certified mail, postage prepaid, and properly addressed to the Party to be notified at the address set forth below or at such other address as such Party may designate by ten (10) days advance written notice to either Party hereto:

<p>If to HLP:</p> <p>Heber Light & Power Attn: General Manager 31 South 100 West Heber City, UT 84032</p> <p><u>With a copy to:</u> Heber Light & Power Attn: General Counsel 31 South 100 West Heber City, UT 84032</p>	<p>If to RMP:</p> <p>PACIFICORP 1407 W. North Temple Ste.320 Salt Lake City, UT 84116</p>	<p>If to Midway City:</p> <p>Director Planning Department Midway City P.O. Box 277 Midway, Utah 84049</p> <p><u>With a copy to:</u> Corbin B. Gordon Midway City Attorney 322 E Gateway Drive, Suite 201 Heber City, UT 84032</p>
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11. No Representations. The Parties acknowledge that, except as expressly stated in this Agreement, no Party (nor any of their agents, employees, attorneys, or representatives) has made any statement or representation to any other Party regarding any fact relied on by any other Party in entering into this Agreement. Each Party specifically acknowledges that such Party has not relied on any statement, representation, or promise of any other Party, or of any of its agents, employees, attorneys, or representatives, in executing this Agreement, except as expressly set forth herein. In addition, each Party acknowledges that such Party is under no duress or undue influence and that each executes this Agreement as an act of such Party's own voluntary will.

12. Binding Agreement. This Agreement shall be binding on and inure to the benefit of the Parties hereto and their heirs, personal representatives, successors, and assigns. By executing

this Agreement, however, the Parties do not intend to bestow any benefit on any non-party to this Agreement.

13. Entire Understanding. This Agreement sets forth the entire understanding of the Parties as to the matters set forth herein and cannot be altered or otherwise amended except pursuant to an instrument in writing signed by each of the Parties hereto.

14. Time is of the Essence. The Parties understand and agree that time is of the essence in completing their respective obligations set forth in this Agreement.

15. Multiple Counterparts. This Agreement may be executed in any number of counterparts, whether by facsimile, scan and e-mail, or otherwise, and each of which when so executed and delivered, shall be deemed an original; and all such counterparts together shall constitute one and the same instrument.

16. Effective Date. This Agreement shall be effective as of the date on which this Agreement has been signed by all Parties.

[Remainder of this page intentionally left blank; signature page(s) follow]

Executed this _____ day of _____, 2020.

Midway City

By: _____
Celeste Johnson, Mayor

Executed this _____ day of _____, 2020.

Rocky Mountain Power

By: _____
Bret Reich, VP and Chief Litigation Counsel

Executed this _____ day of _____, 2020.

Heber Light & Power Company

By: _____
Jason Norlen, General Manager

EXHIBIT A

Existing CUP



REPORT OF ACTION of the Midway City Council

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

Action: Approved with Conditions

Date of Action: 17 December 2019

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

We accept the staff report.

We accept the following findings:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

AND

b) the required minimum in "donation" fund dollars

AND

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

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

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

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

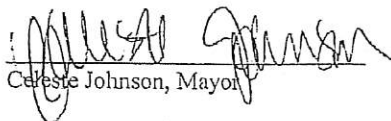
- The applicant will use the taller poles, with fewer poles and longer spans.
- The applicant will use the minimum possible diameter of poles in all locations. The applicant will use wood tangent poles wherever possible, and the applicant will work with property owners and the city in considering guyed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

Second: Council Member Van Wagoner seconded the motion.

Discussion: None

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

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


Celeste Johnson, Mayor

Wasatch County
Planning Commission
Report of Action
11 July 2019

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

Commissioner Smith was present as Chair.

STAFF PRESENTATION

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

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

CONCERNS RAISED BY PUBLIC

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

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

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

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

APPLICANT RESPONSE

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

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

PLANNING COMMISSION DISCUSSION

Key points discussed by the Planning Commission included the following:

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

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

MOTION - Lines portion (1a)

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

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

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

Commissioner Zuercher seconded the motion.

VOTE (5 TO 0)

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

MOTION - Substation Portion

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

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

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

Commissioner Hendricks seconded the motion.

VOTE (5 TO 0)

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

FINDINGS / BASIS OF PLANNING COMMISSION DETERMINATION

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

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

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

CONDITIONS

Power Lines:

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

Substation:

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

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



Wasatch County Planning Commission - Chairman

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

EXHIBIT B

Route Map

EXHIBIT C

Form of easement for Midway Public Works

Return to:
Heber Light and Power
Bart Miller/Harold Dudley
31 S. 100 W.
Heber City, Utah 84032

Parcel(s) #: 00-0008-5303 (Easement 34)

RIGHT OF WAY EASEMENT

WHEREAS, **MIDWAY CITY**, a municipal corporation (“**Grantor**”), is the owner of certain real property located in Wasatch County, State of Utah, which is more particularly described in **Exhibit “A”** attached hereto and incorporated herein (“Grantor’s Property”); and

WHEREAS, Heber Light & Power, an interlocal entity organized under the provisions of the Utah Interlocal Cooperation Act, Utah Code Ann. §§ 11-13-101, et seq. (“HLP”), holds a prescriptive easement across Grantor’s Property to construct, operate, maintain, repair and replace an electric power line and communications lines; and

WHEREAS, HLP desires to rebuild the existing power line, and has joined with Rocky Mountain Power, an unincorporated division of PacifiCorp, an Oregon corporation (“RMP”), to construct a double-circuit power line in generally the same location as the existing power line (“Power Line”); and

WHEREAS, the parties desire that Grantor grant this Easement to accommodate the Power Line.

NOW, THEREFORE, for value received, Grantor hereby grants to HLP and RMP, jointly and severally, and their successors and assigns (“Grantees”), an easement and right of way for the Power Line construction, reconstruction, operation, maintenance, repair, replacement, enlargement, protection, and removal of electric power lines and communication lines and all necessary or desirable accessories and appurtenances thereto, including without limitation: supporting towers, poles, props, guys, anchors, wires, fibers, cables, and other conductors and conduits therefore on, over, or under the surface of the easement. The location of the easement is more particularly described as follows and more particularly described and/or shown on **Exhibit “B”** attached hereto and incorporated herein.

An easement 0 to 24.2 feet in width, being that portion of Grantor’s land lying south of and adjoining the following-described line:

Beginning at a point on Grantor's West boundary that is located NORTH 1287.9 feet and WEST 1295.4 feet from the Southeast Corner of the Southwest Quarter of Section 2, Township 4 South, Range 4 East, Salt Lake Base & Meridian; running thence South 76°23'02" East 98.4 feet to Grantor's South boundary.

Containing 0.03 of an acre, and being in the SE ¼ of the SW ¼ of said Section 2.

Assessor Parcel No. 00-0008-5303

Together with the right of access to the right of way from adjacent lands of Grantor for all activities in connection with the purposes for which this easement has been granted; and together with the present and (without payment therefor) the future right to keep the right of way clear of all brush, trees, timber, structures, buildings and other hazards which might endanger Grantees' facilities or impede Grantees' activities.

At no time shall Grantor place, use or permit any equipment or material of any kind that exceeds twelve (12) feet in height, light any fires, place or store any flammable materials (other than agricultural crops), on or within the boundaries of the right of way. Subject to the foregoing limitations, the surface of the right of way may be used for agricultural crops, sidewalks, open space, and other purposes determined by Grantees as not inconsistent with the purposes for which this easement has been granted.

The rights and obligations of the parties hereto shall be binding upon and shall benefit their respective heirs, successors and assigns. All or any part of this easement and a Grantee's rights hereunder may be apportioned and/or assigned by either Grantee to the other Grantee without notice to or consent from Grantor.

To the fullest extent permitted by law, each of the parties hereto waives any right it may have to a trial by jury in respect of litigation directly or indirectly arising out of, under, or in connection with this agreement. **Each party further waives any right to consolidate any action in which a jury trial has been waived with any other action in which a jury trial cannot be or has not been waived.**

Dated this _____ day of _____, 20__.

GRANTOR:

Midway City

By: _____
Celeste Johnson, Mayor

STATE OF _____) §
County of _____)

On this ____ day of _____, 20____, before me, the undersigned Notary Public in and for said State, personally appeared Celeste Johnson, known or identified to me to be the person whose name is subscribed as Mayor of Midway City and acknowledged to me that she executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

(Notary Signature)

NOTARY PUBLIC FOR UTAH

Residing at: _____ (city, state)

My Commission Expires: _____

EXHIBIT "A"

Grantor's Property

BEGINNING at a point which is South 21.86 chains and North 89°12' West 5.66 chains and South 26°31' West 0.50 chains and West 9.50 chains and North 7 chains from the Northeast corner of the Southwest Quarter of Section 2, Township 4 South, Range 4 East, Salt Lake Base and Meridian, and running thence South 435.6 feet; thence West 300 feet; thence North 435.6 feet; thence West 63 feet; thence North 53 feet; thence East 223 feet; thence South 33 feet; thence East 140 feet to the point of beginning.

EXCEPTING FROM THE ABOVE DESCRIBED TRACT THE FOLLOWING:

BEGINNING at a point which is South 21.96 chains and North 89°12' West 5.66 chains and South 26°31' West .50 chains and West 9.50 chains and North 7 chains from the Northeast corner of the Southwest Quarter of Section 2, Township 4 South, Range 4 East, Salt Lake Base and Meridian, and running thence South 50 feet; thence West 150 feet; thence North 50 feet; thence East 150 feet to the point of beginning.

Assessor's Parcel No. 00-0008-5303