

SETTLEMENT AGREEMENT

RESOLUTION 2020-23

**SETTLEMENT
PROPOSAL
WITH
HL&P and RMP
FOR
CONDITIONAL USE
PERMIT**

**TRANSMISSION LINE
&
RELATED LITIGATION**



HISTORY

On December 17, 2019, Midway City approved a conditional use permit to install a dual circuit 138 Kv Transmission Line along 970 South, Stringtown Road, and Wards Lane.

The CUP has resulted in litigation before the Utility Facility Review Board, as well as an appeal that is currently pending before the Utah Appellate Court.

In order to settle all existing claims regarding the CUP and the pending appeal, the parties have negotiated a settlement. In order to effectuate the settlement, an amendment to the existing CUP is required.



APPEAL



- FULLY BRIEFED AND PENDING BEFORE APPELLATE COURT
- MAIN ISSUES ARE THE SPECIFICATIONS USED BY RMP
- NOT AN ISSUE OF WHETHER MIDWAY CITY WILL HAVE TO PAY TO BURY THE LINE, BUT HOW MUCH IT WILL HAVE TO PAY
- BEST CASE SCENARIO IS A DECISION IN LATE SPRING THAT REQUIRES MIDWAY TO PAY BETWEEN \$4 AND \$5 MILLION WITHIN 30 DAYS OF THE DECISION
- MIDWAY CITY CHOSE NOT TO PUT A BOND ON THE GENERAL ELECTION FOR 2020 AND HAS NO WAY TO PAY TO BURY



HL&P BOARD ACTION

The HL&P Board has directed the Company to file for a new CUP for a single circuit 138 Kv line.

HL&P has an existing 46 Kv line through Midway City and an existing easement. There application would be to simply upgrade an existing line. There is very little that could be done to restrict this application if filed.

Prior to filing the new application the Parties have engaged in additional negotiation and reached an agreement that is favorable for all involved. The proposal resolves all issues regarding the CUP and the pending litigation.



PRIMARY MOTIVATORS TO SETTLE

HL&P and RMP need to get the 138 Kv interconnect in and are willing to make concessions but **ONLY IF SETTLEMENT IS REACHED BEFORE THE END OF THE YEAR**, which will allow them to proceed to put in the line in the coming year.

A decision on the Appeal is unlikely for at least another six months that may make installing the line in 2021 impossible.

If settlement is not reached by year's end, RMP will proceed with the Appeal, and the likely outcome will be a dual circuit above ground line being installed through Midway.



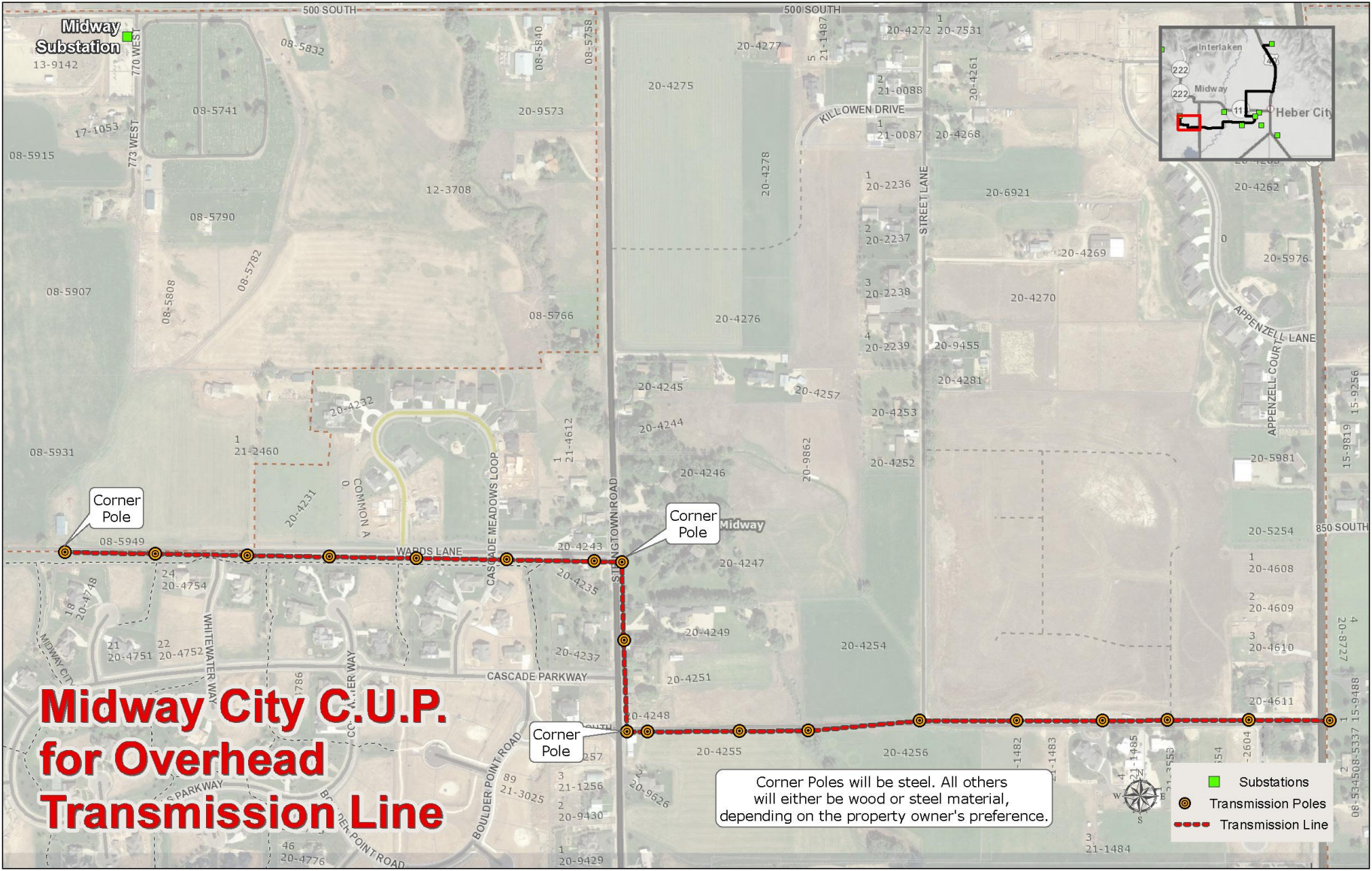
PRIMARY TERMS – HL&P

HL&P will build a **single circuit** 138 Kv line instead of a dual circuit 138 Kv line through Midway. The single circuit line will reduce the size of the infrastructure considerably: corner poles will be smaller, wood poles will be smaller, and overall impact on the neighborhood will be dramatically reduced.

The line will be built along the existing easement. There will be three metal corner poles that will be no larger than 3 to 4 feet in diameter and approximately 80 feet tall.

All wooden poles will range from 2 to 3 feet in diameter and will not exceed 80 feet from finished grade.

There will be two metal tangent poles on angles along 970 South that will be 2 to 4 feet in diameter and will not exceed 80 feet from finished grade.



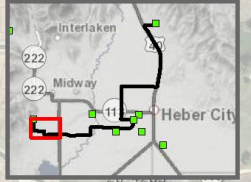
Midway City C.U.P. for Overhead Transmission Line

Corner Pole

Corner Pole

Corner Pole

Corner Poles will be steel. All others will either be wood or steel material, depending on the property owner's preference.



- Substations
- Transmission Poles
- - - Transmission Line



PRIMARY TERMS – MIDWAY CITY

Midway City agrees to amend the existing CUP in accordance with the terms of the Settlement Agreement.

Midway City Council approved to have higher poles and fewer poles in the CUP, and this same approach will be followed. The end result will be a reduction in the number of poles, burial of existing transmission lines along the route, and moving the remaining lines higher up and out of the site line.

Midway City will withdraw its current appeal pending before the Appellate Court and Utility Facility Review Board.

PRIMARY TERMS - RMP

RMP will withdraw its CUP to build a 138 Kv line through Midway City.

RMP will not apply to add an additional 138 Kv line for a minimum of 10 years and agrees to give Midway City notice in writing 18 months in advance of filing an application to upgrade the line, giving the City plenty of time to bond to bury if needed.

RMP will withdraw its pending appeal before the Utility Facility Review Board.

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 unincorporated division of PacifiCorp (collectively the “**Parties**”) as of the date executed by the Parties.

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 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 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 HL&P’s construction of a single-circuit 138 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 Utility Facility Review Board and 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.

Obligations.

a. HL&P shall:

i. Install Single Circuit Transmission Line. Install or cause to be installed a single circuit 138 KV transmission line (“**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, designed to carry only the single 138 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 that currently exist within the easement.
2. Three (3) rust-colored corner poles composed entirely of metal substantially similar in size to the corner pole currently in place at the northeast corner of the Prestige II Senior Apartments in Heber City but with a rust color (“**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.
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 Midway City is requiring alteration of the present alignment along 970 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 Prestige II Senior Apartments 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

- 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. 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 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 ten (10) years after execution of this Agreement. The parties specifically Agree that reconductoring or other modifications to the Single Circuit Transmission Line that do not increase the number of lines, 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. RMP also agrees that it will give Midway City written notice (with preliminary drawings) 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.
- 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 D 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 Circuited Transmission Line except as explicitly set forth herein.
6. Mutual Release of Claims. The Parties hereby releases 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.

NEXT STEPS

- Approve the Amendment of the Existing CUP (tonight)
- Obtain approval of the Settlement Agreement from the HL&P board (tomorrow night)
- Get signatures from all parties.
- Withdraw all pending litigation.





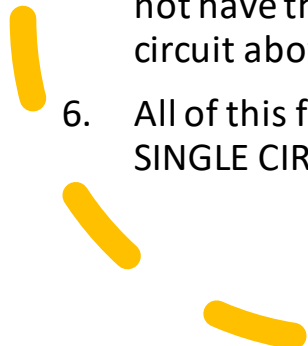
BUT NOW CAN'T WE JUST BURY
THE SINGLE CIRCUIT? THE COSTS
WOULD ONLY BE HALF!



ANSWER: NO

WHY?


1. RMP and HL&P have an approved CUP to install an above ground Dual Circuit 138 Kv transmission line through Midway City. THIS IS ALREADY APPROVED.
2. The only fight in the appeal is how much Midway City will have to pay to bury the line.
3. HL&P and RMP are only willing to amend their current CUP in exchange for withdrawal of the appeal so they can proceed immediately to design and order the poles to install in the spring.
4. Time is Midway City's only bargaining chip. Neither HL&P nor RMP are willing to consider the settlement unless it allows them to proceed immediately. They are unwilling to even discuss burying.
5. Without the Settlement, RMP will see the appeal through, and we already know Midway City does not have the money to bury, so all it accomplishes is delaying the inevitable installation of the dual circuit above ground line.
6. All of this further ignores the fact that MIDWAY CITY DOES NOT HAVE THE MONEY TO BURY EVEN A SINGLE CIRCUIT – so discussions of burying are moot.



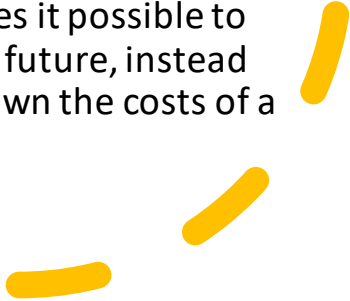


ARE WE JUST KICKING THE
CAN DOWN THE ROAD?

OPTION 1 CONTINUE APPEAL

- By not putting a bond on the ballot for 2020 there is no conceivable way for Midway City to pay to bury the line
 - This means that even if Midway City got everything it wanted out of the appeal, it would still be faced with the challenge of paying \$4 to \$6 million to bury the line at some point in 2021, **which it cannot do!**
 - **So option 1 of continuing the appeal leaves Midway with an assurance that the dual circuit 138 Kv line will be installed through the City in the near future.**
- 

OPTION 2: SETTLE

- The settlement assures:
 - A single circuit will go through Midway which will minimize the impact of the line.
 - The poles used will be only marginally larger than the existing poles, and the transmission lines will be buried.
 - There will not be even the possibility of a second circuit for at least a decade.
 - If a second circuit is proposed we have negotiated **18 MONTH WRITTEN NOTICE** to give the City plenty of time to bond.
 - Do not overlook that the current statute allows RMP to file for a CUP any time and the City has 60 DAYS to approve it and pay to bury.
 - Also remember that the Settlement makes it possible to bury just one circuit at some point in the future, instead of two circuits today, which would cut down the costs of a potential bond, making it easier to pass.
- 

HOW REALISTIC IS THE POSSIBILITY OF RMP NEEDING TO UPGRADE THIS LINE IN THE NEAR OR DISTANT FUTURE?

RMP's primary concern is to get the 138 Kv loop, which it will accomplish with this agreement.

RMP does not have anything on its 10 year facility plan for anything other than a 138 Kv line through our valley.

The driving force behind upgrade is load growth in Heber Valley.

HL&P indicates that with the 138 Kv interconnect, the need for a second circuit will be remote at best and may never be needed.

HOW REALISTIC IS THE POSSIBILITY OF RMP NEEDING TO UPGRADE THIS LINE IN THE NEAR OR DISTANT FUTURE?

HL&P is currently running at 46 Kv, and in some instances bumps up against the limit of this system.

As part of this upgrade HL&P is installing a new substation that will be able to deliver up to 90 megawatts of power. This is enough power to double the current population in the valley.

Even doubling the current population would not require a second circuit 138 Kv line. At 80 megawatts of delivery, HL&P will upgrade its own system to 138Kv and will be able to deliver 100 to 115 megawatts. All of this will be done BEFORE there will be the need to ever upgrade the 138 Kv to a double circuit.

The valley would need to almost triple in size for a second 138 Kv circuit to become an absolute need. Projections for this kind of growth, if ever, is many decades away.



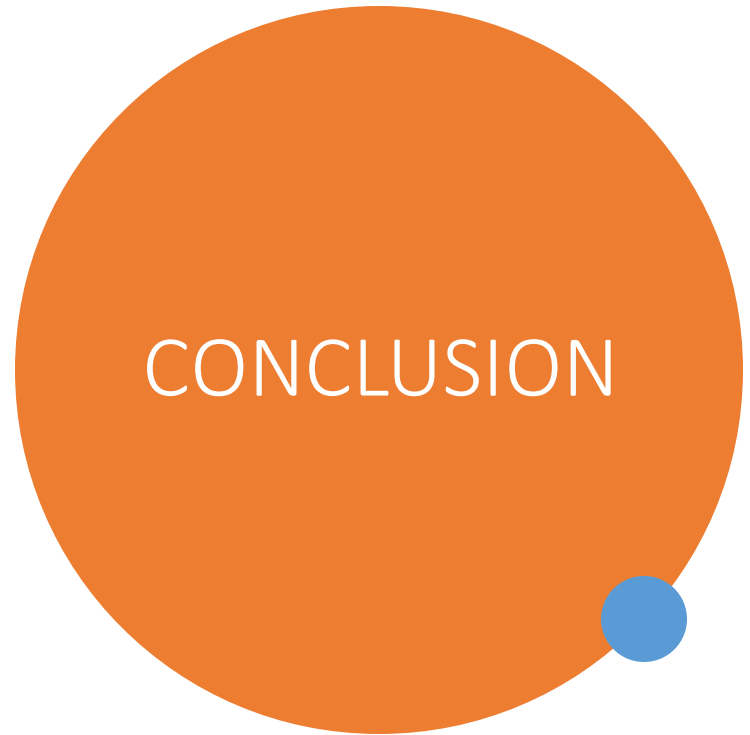
IF YOU GIVE ME THE CHOICE BETWEEN:

KNOWING AN ABOVE GROUND DUAL CIRCUIT WILL
BE INSTALLED BY THE END OF 2022 THAT WILL
NEVER GO AWAY

vs.

AN ABOVE GROUND SINGLE CIRCUIT WITH THE
CHANCE A SECOND CIRCUIT MAY NEVER BE
NEEDED, AND IF IT WERE, ADDITIONAL TIME AND
THE MUCH EASIER TASK OF BONDING TO BURY IT

I'LL TAKE THE SECOND OPTION EVERY TIME!



CONCLUSION

IT'S NOT KICKING IT DOWN THE ROAD IF THE ONLY OTHER OPTION IS LOSING FOREVER THE CHANCE TO STOP THE DUAL CIRCUIT FROM COMING THROUGH MIDWAY CITY ABOVE GROUND.

IT'S WINNING TODAY **AND** PRESERVING THE CHANCE TO WIN AGAIN IN THE FUTURE.

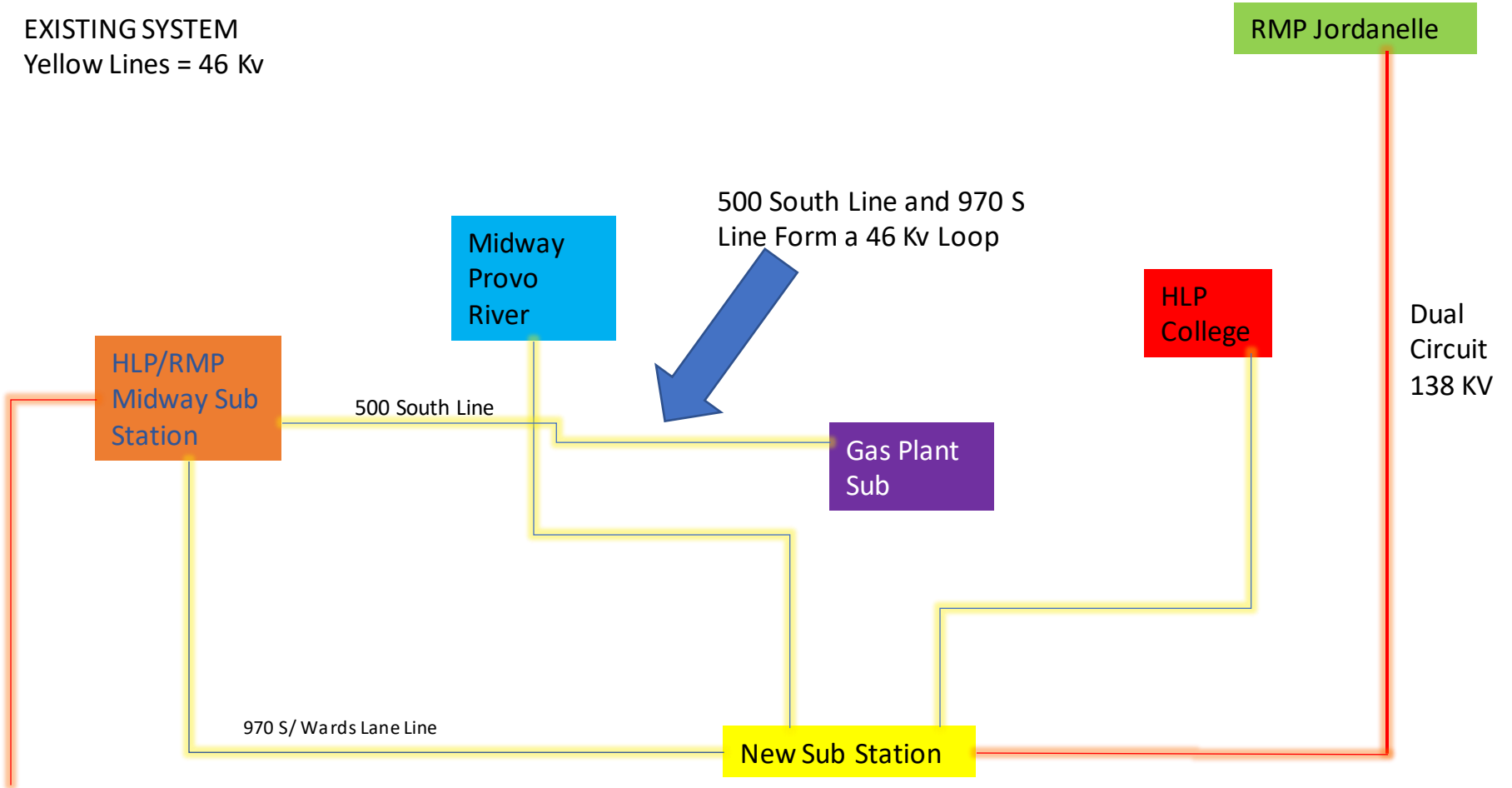


Possible Findings

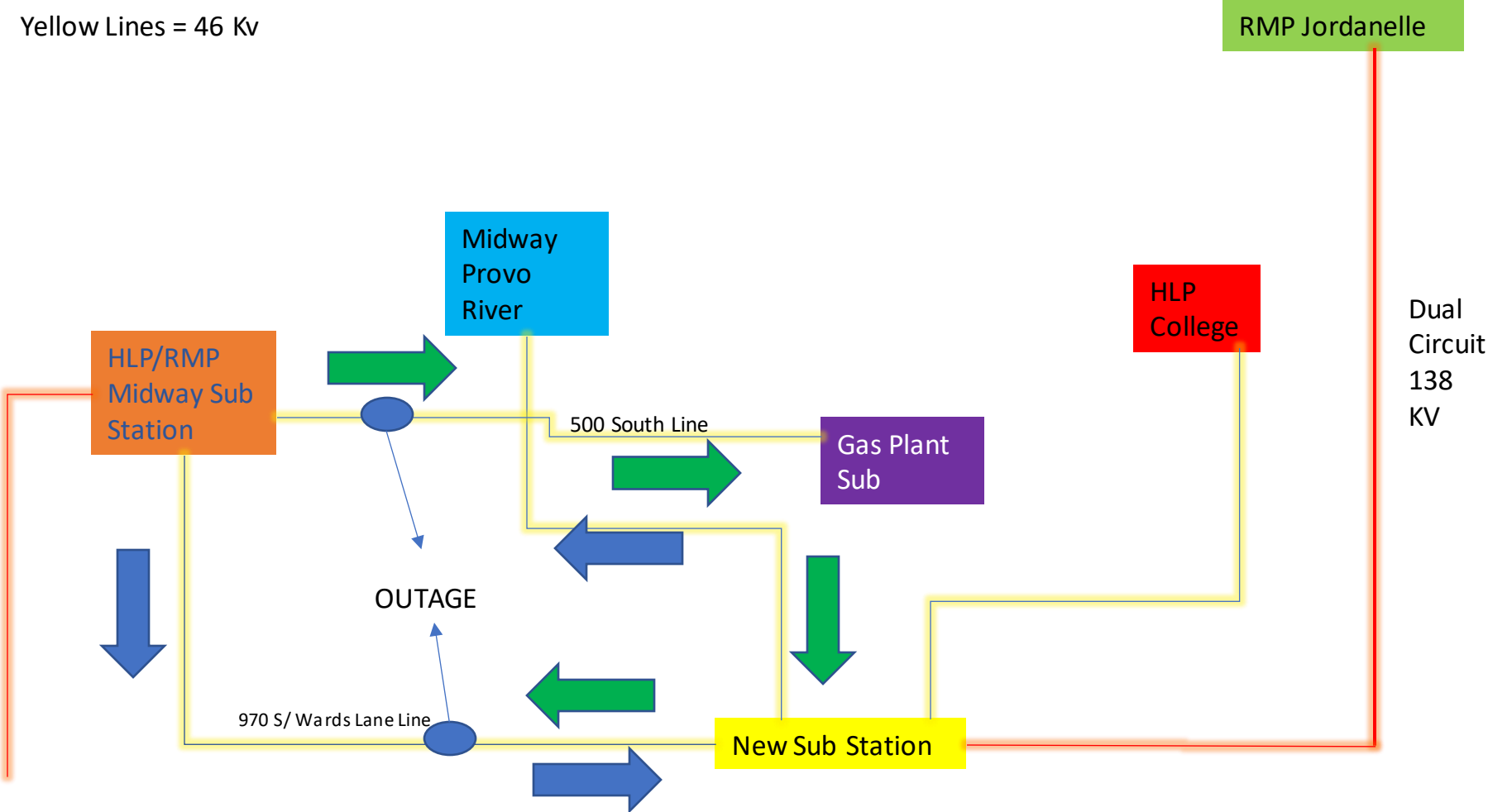
- The proposed amendment is discretionary and should only be approved if it reduces the impact of the Transmission Line on Midway City and its residents.
- The proposal reduces the size and number of poles initially approved in the Conditional Use Permit, thus reducing the impact of the transmission line on both the neighborhood it runs through and Midway City citizens generally.
- The distribution 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.
- The proposal provides Midway City with sufficient notice to possibly bond to bury a future line if one is ever proposed.
- Midway City Council chose not to put a bond up for election in 2020 and presently has no capacity to pay to bury the dual circuit line approved under the terms of the original CUP.
- The proposed amendment is a reasonable way to resolve pending litigation regarding the CUP and saves the City from additional attorney's fees defending the appeal currently pending before the Appellate Court.

EXISTING SYSTEM

Yellow Lines = 46 Kv



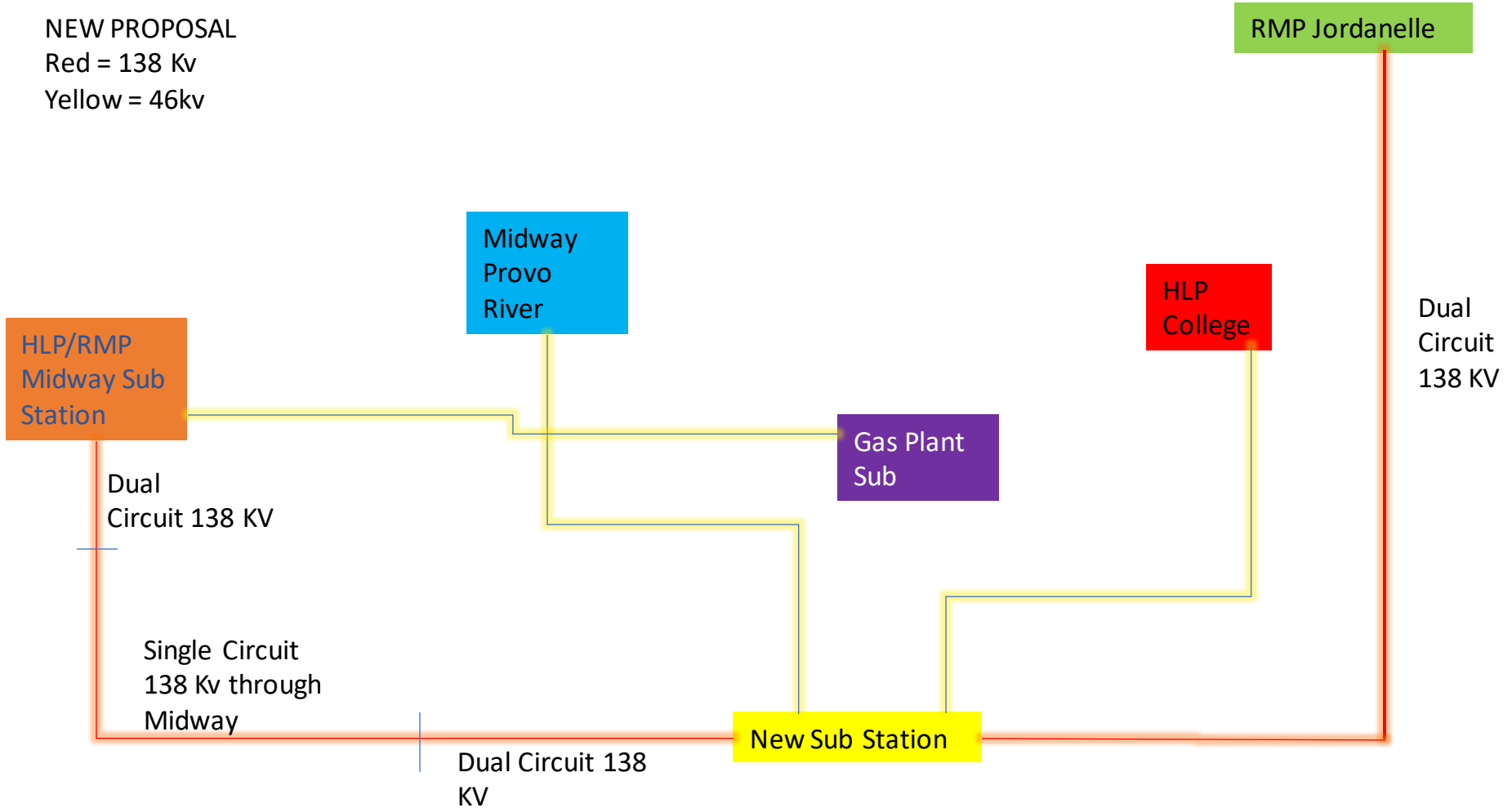
Yellow Lines = 46 Kv



NEW PROPOSAL

Red = 138 Kv

Yellow = 46kv

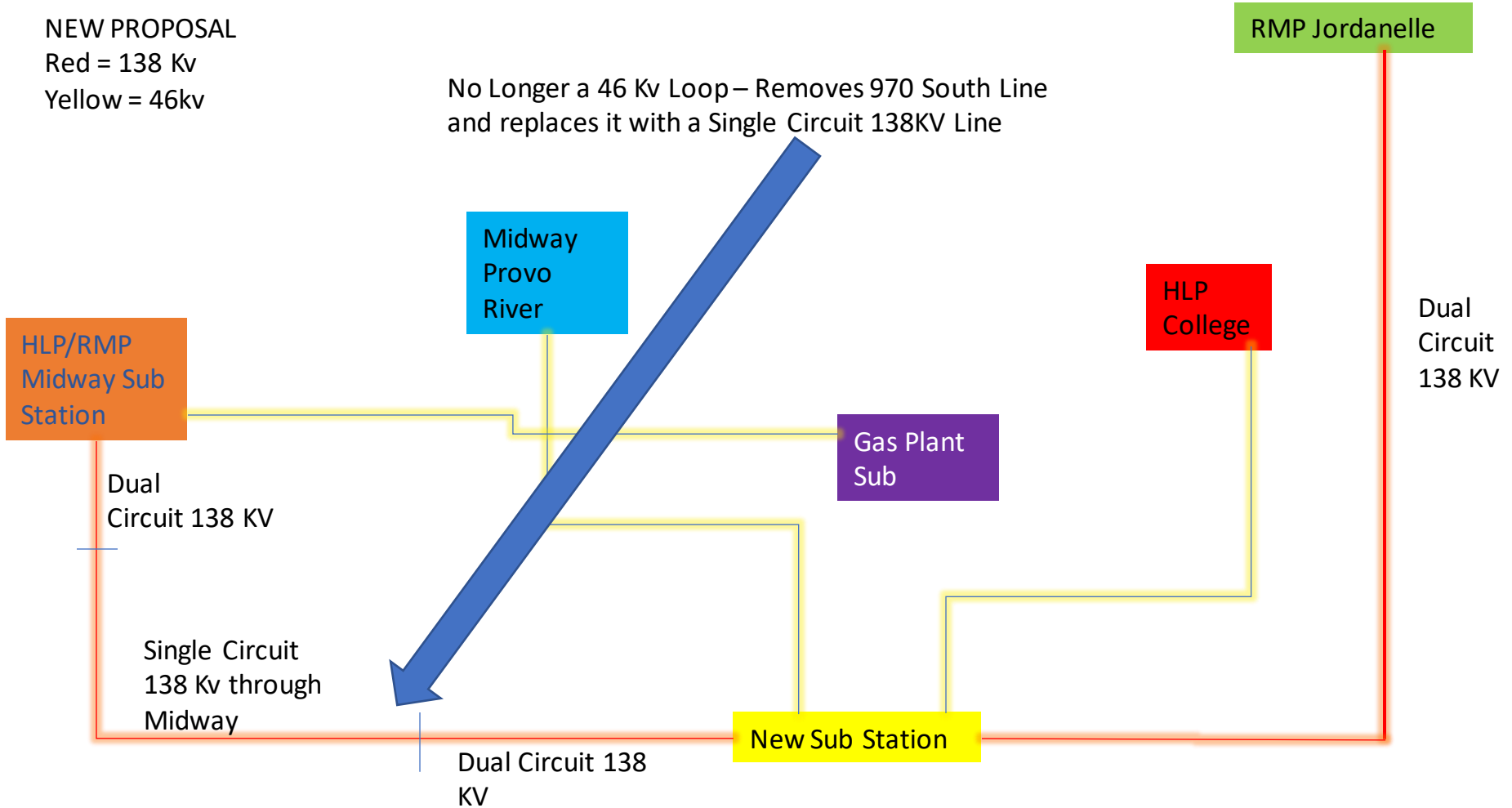


NEW PROPOSAL

Red = 138 Kv

Yellow = 46kv

No Longer a 46 Kv Loop – Removes 970 South Line and replaces it with a Single Circuit 138KV Line

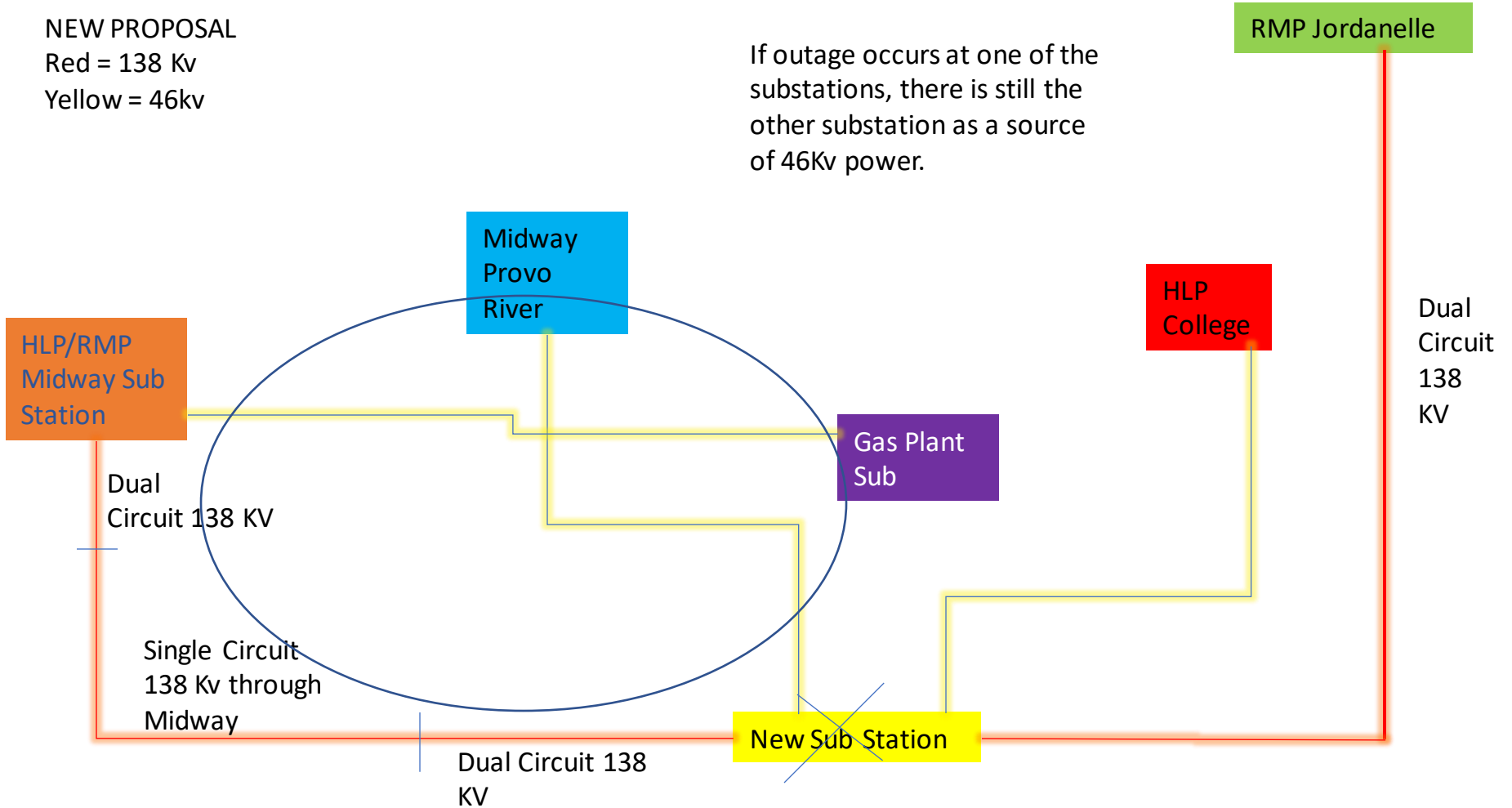


NEW PROPOSAL

Red = 138 Kv

Yellow = 46kv

If outage occurs at one of the substations, there is still the other substation as a source of 46Kv power.



“THOSE WHO DO NOT LEARN FROM HISTORY ARE DOOMED TO REPEAT IT”

Thank you Mayor,

During my tenure serving on the Planning Commission and this year on the City Council I have always been concerned about ameliorating the negative impacts a proposed use would have on an adjacent property owner especially when it is a residence. I've always tried to put myself into THEIR shoes as to how I would feel if I were THEM in our deliberations.

If I was to summarize or reduce my primary concerns into one single issue from the get go it would be the completely unmitigated negative impacts some residents will have to bear by having 3 to 4 ft. diameter / 80 ft. tall metal corner poles placed in some cases within 30 ft. of the front their residence; i.e. a select few who have to bear the full negative brunt of a City / Valley wide benefit.

The approval of this proposed settlement agreement will unfortunately for the most part close the chapter or opportunity to improve upon the past decision-making process and the direction of this initial joint HL&P/RMP powerline proposal. It's quite unfortunate how this entire process has unfolded within our valley over the last 4 years. As the saying goes “Those who do not learn from history are doomed to repeat it”, therefore I believe it is incumbent upon us to a) not only acknowledge how we could have done better but also b) to make sure that any past mistakes are not repeated again in the future.

So how can we do better in the future?

1. INVOLVE ALL JURISDICTIONS BENEFITING FROM A PROPOSAL - This was never about just our Valley alone in terms of growth needs and a 2nd point of interconnect, but was also a solution for a much broader regional need, more specifically for the benefit of the growth demands of Park City. Simply put, Park City said no and our Valley officials at that time were too eager to accommodate RMP seemingly focusing on reducing their projected costs by 75% without seeing the bigger picture of what was taking place. Park City should have been required to be involved in this regional solution. Any similar proposal in the future must, IMO also involve these other benefiting additional jurisdictions to be part of the solution.

2. A VALLEY WIDE PROPOSAL SHOULD REQUIRE COMPLETE COORDINATION BETWEEN ALL IMPACTED JURISDICTIONS - The bifurcating of the entitlement process dealing with each jurisdiction completely independently and separately as well as entitling and building just a section along hwy 40 (I call that getting the foot in the door) before pursuing the balance of entitlements thru these jurisdictions reminded me of how in CA Caltrans (the UDOT equivalent for CA) took a proposed freeway link from Del Mar to Escondido and broke it into 3 separate sections and 3 separate applications and treated them as if they were each independent of each other in order to circumvent environmental impact laws. I pointed out this observation to the 1st Wasatch County Planning Commission hearing for their CUP and suggested that our Valley as a whole would be better served if the CUP process were to include complete coordination and concurrent deliberations before the 3 affected jurisdictions. Unfortunately, this suggestion was neither considered nor implemented. Entitlement proceedings of any similar proposal in the future crossing multiple jurisdictions must be completely coordinated and conducted concurrently by such jurisdictions. This needs to happen not only for the actual CUP's but even more importantly prior to any HL&P Board approval of the initial proposal and agreement with RMP.
3. CHANGE THE 30-DAY FUNDING REQUIREMENT FOR EXCESS COSTS- The existing state law requiring that the excess costs due to any impositions by a jurisdiction, such as burying vs. above ground powerlines, be paid to the utility company within 30 days of commencement of construction (which I understand this term actually means the commencement of the design phase) is completely unworkable and unrealistic if a municipality desires to secure such funds from say a voter bond measure. This law needs to be changed so that municipalities have ample and realistic time to secure such funds thru a voter bond measure, should a municipality desire to pursue such. Additionally, in the interest of being able to estimate a realistic bond measure amount, somehow, we need a process that will enable us to get realistic bids vs. grossly inflated bids or else we will right back to having unanswered questions and lack certainty in order to have a CC to vote for a voter bond measure (how that could be achieved I don't have a simple answer for it at the moment but I'd more than happy to discuss further).
4. PROPER NOTICING BY HL&P AND PROPER DISCLOSURES BY SELLERS AND AGENTS – Too many property owners were unaware of any joint HL&P/RMP powerline proposal and the joint agreement being approved by the HL&P Board. Other property owners purchased their properties without any disclosures being provided whatsoever about the HL&P/RMP powerline proposal. Proper noticing

should be provided by HL&P to any affected property owner within a certain distance of their proposed powerline upgrade not just for a CUP but way prior by the HL&P Board prior to their approval. This should be done by mail; no different than an applicant seeking approval of a subdivision. It's completely unrealistic to have a property owner having to rely on checking the HL&P's website each week to see if his property could be potentially negatively affected. Additionally, disclosures should be required of both property sellers as well as of real estate agents/brokers for any potential proposals.

5. HL&P AMEND ITS LOWEST COST OPTION MANDATE TO REFLECT THE VALUES AND PLAN FOR OUR VALLEY – We would never allow a Developer submitting an application for a new subdivision, an office building or a restaurant to build at the very lowest cost option available but rather we require them to meet certain standards in support of our zoning codes and more importantly our General Plan and Vision for our community. HL&P must revise its mandate to reflect the values and plan for our Valley. We should not continue on the path of becoming another Orem. Heber Valley is a special place and we should preserve that uniqueness and not destroy it as we grow.

Mayor, I'm more than happy to discuss and pursue these further with anyone on the council including Steve who represents us on the HL&P Board, as well as with HL&P staff, their Board and the County and Heber City Councils but it would be a real travesty if these changes weren't pursued and adopted for the future.

Thank you Mayor.