

SOUTH JORDAN CITY PLANNING COMMISSION REPORT

Meeting Date: 3-12-2019

Application: ROCKY MOUNTAIN POWER
SOUTH JORDAN TO DRAPER LINE UPGRADE
CONDITIONAL USE PERMIT

File No.: PLCUP201800742
Applicant: Rocky Mountain Power/Lisa Romney

Submitted By: Greg Schindler, City Planner

Staff Recommendation (Motion Ready):

Approve with Conditions file no. PLCUP201800742 as submitted.

I. CONDITIONAL USE REVIEW:

A use is conditional because it may have unique characteristics that detrimentally affect the zone and therefore are not compatible with other uses in the zone, but could be compatible if certain conditions are required that mitigate the detrimental effect.

To impose a condition, the detrimental effect must be identified and be based on substantial evidence, not simply a suspicion or unfounded concern. Any condition must be the least restrictive method to mitigate the detrimental effect.

II. BACKGROUND:¹

Rocky Mountain Power (RMP) filed a Conditional Use Permit (CUP) application proposing to upgrade an existing power line (transmission line) from 46 kV to 138 kV and to upgrade 29 pole structures (generally referred to as “proposed work” or “proposal”).² The location of the proposal will run from the South Jordan substation located at 10735 South Redwood Road to the Draper substation located at approximately 500 West 12300 South.³ The proposal will follow the same path as the existing lines, generally through and adjacent to the rear, side and sometimes front property lines of lots and parcels.⁴ RMP submitted all the recorded easements that show that it has rights to perform the proposed work at the proposed location. This transmission line has already been upgraded from 46 kV to 138 kV north and south of the area designated on the current CUP application.

¹ All support documents that have been received by staff regarding this application, can be viewed on the South Jordan City website at <http://www.sjc.utah.gov/planning-zoning/rmp-south-jordan-to-draper-line-upgrade/>

² See website documents “RMP-Application” and “138 kV Structure.”

³ See website document “Project Fact Sheet.”

⁴ See website documents “Easement Maps-Stamped by Surveyor” and “Structure Scoping Sheet.”

III. DETRIMENTAL EFFECTS (as raised by the residents or identified by staff):⁵

A. *Easements:*

The residents are concerned that the RMP easements are insufficient and/or invalid for RMP to do the proposed work.⁶ Some residents requested mediation from the Office of the Property Rights (Ombudsman) to resolve the easement issue, which was accepted by the Ombudsman.⁷ To date, the outcome of the mediation has yet to be determined.

RMP responded to the residents' concerns by stating that it does have sufficient easements to do the proposed work.⁸ Nonetheless, it is RMP's position that the easement dispute is a dispute between RMP and the residents, not the City. According to RMP, it is outside the scope of the Planning Commission to consider the easement issue. Likewise, RMP believes that the Planning Commission may not condition the CUP on the easement issue.

B. *Electromagnetic Fields:*

The residents are concerned that the proposed work will produce more electrometric fields (EMFs) than the current transmission line. Based on the resident's research, the residents believe that the increase in EMFs will increase health related issues (mainly cancer).⁹

RMP contends that there is not any scientific studies that prove negative health impacts caused by EMFs.¹⁰ RMP submitted documents from the National Cancer Institute (NCI) and the National Institute of Environmental Health Sciences (NIEHS). The NCI studies have stated that no mechanism has been identified by which EMFs, such as power lines, computers, radios or televisions, could cause cancer.¹¹ The NIEHS also states that there is no definitive connection between cancer rates and EMFs.¹² Nonetheless, RMP plans to use "no-cost" measures to reduce EMFs through alternative arrangements and phasing.¹³

C. *Safety and Design:*

The residents are concerned with 'other' safety aspects of the proposed work, including clearances, structure strength, foundation design, power line fires, and stray voltage.¹⁴

RMP provided a letter from Vernon Black, P.E., a registered professional engineer certifying the design of the project meets and/or exceeds all industry and PacifiCorp standards and best practices

⁵ The residents have discussed their concerns during Planning Commission meetings, City Council meeting, City Council work sessions, and individually with elected officials and staff. All comments were uploaded at the website listed above. However, the residents may raise additional concerns at the CUP hearing.

⁶ See generally website documents regarding "Citizen Comment."

⁷ See website document "Official Mediation Letter & Application."

⁸ See website document "Response Letter."

⁹ See generally website document "Citizen Comment"

¹⁰ See website document "Clearance Requirements and EMF Mitigation."

¹¹ See website document "EMF National Cancer Society."

¹² See website document "EMF National Institute of Environmental Health Sciences."

¹³ *Id.*

¹⁴ See website document from Lyman Moulton.

for ensuring public safety.¹⁵ The letter also stated that project design also included adherence to the 2017 National Electrical Safety Code (NESC).¹⁶ RMP also provided information regarding stray voltage.¹⁷ The document references several sources including the Institute of Electrical and Electronics Engineers (IEEE), the U.S. Department of Agriculture (USDA) and the Public Service Commission of Wisconsin. The key statement included in the RMP document states: “Stray voltage is not related to power system faults, and is generally not considered hazardous.”

D. *Property Values:*

The residents are concerned that (1) the proposed work will decrease their property values and/or (2) prohibit new buyers from purchasing their properties because lenders will not lend on properties adjacent to the increased voltage line.¹⁸

RMP responded to the residents’ first concern by submitting a letter from Troy Lunt of Integra Realty Resource, wherein Mr. Lunt provided his opinion that the upgrade in the line from 46 kV to 138 kV, would have “no impact or very nominal impact” on the value of the homes proximate to the line.¹⁹ Mr. Lunt based his opinion on a study he and two co-authors undertook where they analyzed 350,000 homes and 100,000 sales in Salt Lake County that occurred between 2001 and 2014. The Study itself does state that homes “within 50 meters of these lines [138kV]see a 5.1% decrease in value....”²⁰ Further there is a decrease of 2.9 % to a home located 50 to 100 meters.”²¹ Finally that there is no decrease in value to a home within 50 to 100 meters of the 46 kV line but that there is a 2.5% decrease in value for a home located 50 to 100 meters from a 46 kV line.²²

RMP has not responded to the residents’ second concern but this concern was only recently submitted to RMP. It is anticipated that RMP will address this concern at the CUP hearing.

E. *Other Issues - Alternative Routes and Non-Compliance with RMP’s Guidelines:*

The residents have requested that the City demand the “alternative routes” or “scorecards” that RMP considered before submitting their CUP application.²³ The residents are also concerned that RMP has not followed its own policies and guidelines.²⁴

RMP has not formally responded to the City’s request on behalf of the residents, but has informally stated that RMP did not conduct an “alternative route study” and is compliant with applicable policies and guidelines.

¹⁵ See website document “Line Safety and Design Requirements;” see also website document “Horizontal and Vertical Clearance for Wires.”

¹⁶ *Id.*; see also website document “Clearance Requirements and EMF Mitigation.”

¹⁷ See website document “Stray Voltage Explanation.”

¹⁸ See website document from Paula Gordon, Kish North, Dave Kowallis, and Camie Hodlmair.

¹⁹ See website document “Real Estate Impact Letter.”

²⁰ See website document “Real Estate Impact Letter. P 213 under “Results Summary”

²¹ See website document “Real Estate Impact Letter. P 213 under “Results Summary”

²² See website document “Real Estate Impact Letter. P 213 under “Results Summary”

²³ See website documents “02-05-2019 Citizen Comment Jana Fullmer,” “CC 12-04-2018 Citizen Comment Chris Nelson,” and “CC 12-04-2018 Citizen Comment Rynda Clyde.”

²⁴ See website document “PC 10-09-2018 Citizen Comment Jana Fullmer Attachment C.”

STAFF FINDINGS, CONCLUSIONS & RECOMMENDATIONS:

Findings:

- *Easements.* After thorough review, staff agrees that the Planning Commission may not determine the validity of the recorded easements. However, as with any person or entity proposing to do work in the City, the City needs assurances that the person or entity has legal authority to do that work. This case is no different. Even though RMP submitted all the recorded easement documents with an associated location map, the residents have raised concerns that the easements are not sufficient for RMP to perform its proposed work. To resolve this concern, the residents requested that the Ombudsman resolve the easement dispute. Because there is a pending dispute with a body that has statutory authority to address and opine on such disputes (recognizing that the Ombudsman decision is not binding), the pending easement dispute does not give the City assurance that RMP has the proper easements to do its proposed work. Accordingly, if the Planning Commission approves the CUP, staff recommends that the Planning Commission attached the following condition to mitigate the anticipated detrimental effect:

Before RMP commences its proposed work, this conditional use permit is conditioned on:

1. *The Ombudsman finding that the easements are legally sufficient to do the proposed work; or*
 2. *RMP acquiring easements that are legally sufficient to do the proposed work. "Acquiring" may include, among other things, RMP's statutory right of condemnation or through negotiated agreements with the property owners.*
- *EMFs.* Even though both parties have submitted some form of documentation that states their position on the EMF issue, neither party has submitted expert testimony validates their statements. The evidence submitted seems to conflict or is inconclusive. Additionally, there is no federal or state agency that regulates EMFs. Based on the lack of regulation, it is unlikely that EMF may be a detrimental effect that could be upheld in court.
 - *Safety and Design.* Staff recommends the Planning Commission weigh the evidence presented.
 - *Property Values.* Staff recommends that if a devaluation of property is shown to be a valid anticipated detrimental effect, staff proposes the following condition be attached to mitigate that detrimental effect:

Before RMP commences its proposed work, this permit is conditioned on RMP completing appropriate property value analysis and mitigation.

- *Other Issues - Alternative Routes and Non-Compliance with RMP's Guidelines.* The alternative route issue is not an issue that the Planning Commission can consider because it is a legislative issue.

Conclusion:

Based on the application materials and the findings listed above, if substantial evidence is presented at the hearing, the proposal may have at least two reasonably anticipated detrimental effects: (1) sufficient easement scope; and (2) decreased property values. Notwithstanding, any condition imposed must be the least restrictive method to mitigate the detrimental effect.

Recommendation:

Staff recommends that the Planning Commission take comments at the public hearing and approve (with the conditions stated herein and other necessary conditions) the Conditional Use Permit Application File No. PLCUP201800742 for the installation of an upgraded 138 kV power line and associated replacement power line support structures between the South Jordan power substation located at 10735 South Redwood Road and the Draper power substation located at approximately 500 West 12300 South, unless during the hearing, facts are presented that contradict these findings or new facts are presented, either of which would warrant further investigation by staff.

ALTERNATIVES:

- Deny the Conditional Use Permit.
- Modify the conditions for approval.
- Schedule the decision for a later date not to exceed the allowed timeframe.

SUPPORT MATERIALS:

- Location Map
- Easement Location Maps