

Midway City Council
17 November 2020
Regular Meeting

970 South Transmission Line /
Conditional Use Permit
Amendment



CITY COUNCIL MEETING STAFF REPORT

DATE OF MEETING: November 12, 2019

NAME OF PROJECT: Amendment to Conditional Use Permit for Transmission Line Rebuild along 970 South, Stringtown Road, and Wards Lane

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

AGENDA ITEM: Conditional Use Permit

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

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

ITEM: 6 & 7

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.

The Primary Terms are as follows:

1. HL&P will build a single circuit 138 Kv line instead of a dual circuit 138 Kv line through Midway.
2. 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 reduced.

3. RMP will withdraw its CUP to build a 138 Kv line through Midway City.
4. RMP agrees it will not reapply to upgrade the new line to a dual circuit 138 Kv 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.
5. The current proposal will cost Midway City nothing.

The salient terms of the agreement are as follows:

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 specifications attached as **Exhibit C**, which show the following:

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 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.
2. Three (3) rust-colored corner poles 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.
3. The Parties agree that HL&P is proposing a pole for pole replacement 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 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. 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 approved by Midway City and will not require any additional approval to proceed.

- 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 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. HL&P also agrees that it will give Midway City written notice (with preliminary drawings) 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. 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 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 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.
- c. Midway City shall:
- i. Dead-End Pole Easement. On or before January 1, 2021 and without cost to HL&P, grant an express easement as set forth in **Exhibit D** to HL&P to install a dead-end pole within the public

works yard of Midway City (the “**Public Works Yard**”), located at 280 East 850 South just east of the fish hatchery.

- ii. Lines Easement. On or before January 1, 2021 and without cost to HL&P, grant an express easement as set forth in **Exhibit E** across the Public Works Yard and along 850 S. to Highway 113 to bury distribution and communications lines (the “**Lines**”) and to connect the Lines to the existing above ground distribution line located on Highway 113.
- iii. 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. 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. Appeal Withdrawal. Upon approval of the Existing CUP Amendment, withdraw the Appellate Case and stipulate to its dismissal with prejudice.
- vi. 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.

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.

ALTERNATIVE ACTIONS:

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

PROPOSED MOTION:

I move that we approved the proposed amendment to the Conditional Use Permit granted on December 17, 2019, to HL&P and RMP, as follows:

1. The prior Conditional User Permit is amended in its entirety, and replaced by the Settlement Agreement, attached as Exhibit B.
2. In approving this Amendment, we accept and adopt the recommendations and findings of staff.