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January 8, 2018

***VIA ELECTRONIC FILING
AND OVERNIGHT DELIVERY***

Wyoming Public Service Commission
2515 Warren Avenue, Suite 300
Cheyenne, Wyoming 82003

Attn: Ms. Lori Brand, Hearing Officer
Mr. Chris Petrie, Chief Counsel

Docket No. 20000-520-EA-17
Record No. 14781

**RE: IN THE MATTER OF THE APPLICATION OF ROCKY MOUNTAIN POWER
FOR CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY AND
NONTRADITIONAL RATEMAKING FOR WIND AND TRANSMISSION
FACILITIES – Motion to Strike or Limit Testimony**

Dear Ms. Brand and Mr. Petrie,

Attached is Rocky Mountain Power's Motion to Strike or Limit Testimony, directed at the testimony of the five landowner/leaseholder intervenors: Rocky Mountain Sheep Company; Southland Royalty Company; Anadarko Land Corporation; Overland Trail Cattle Company; and BP America. The Company provided notice of this motion to these intervenors on Friday, January 5, 2018.

Given the upcoming deadlines in this docket, the Company requests that the Commission hear this motion in an expedited manner at the end of January 2018, or in early February 2018. To facilitate this schedule, we propose to limit intervenors' response period to 15 days (instead of 20 days), and limit the Company's reply period to 5 days (instead of 15 days). We communicated this scheduling proposal to the landowner/leaseholder intervenors. While we have not heard from all parties, we understand that Rocky Mountain Sheep Company is unavailable on January 31, 2018, and Overland Trail Cattle Company is unavailable on both January 31 and February 1, 2018. We also understand that Anadarko Land Corporation opposes the request for a shortened response period.

I look forward to your reply. The Company can be available for a conference call on scheduling the motion if that is desired.

Sincerely,

A handwritten signature in blue ink, appearing to read "R. Jeff Richards".

R. Jeff Richards
Vice-President and General Counsel

Enclosure

cc: Service List

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Attorneys for Rocky Mountain Power

BEFORE THE WYOMING PUBLIC SERVICE COMMISSION

IN THE MATTER OF THE APPLICATION OF)	
ROCKY MOUNTAIN POWER FOR)	
CERTIFICATES OF PUBLIC CONVENIENCE)	Docket No. 20000-520-EA-17
AND NECESSITY AND NONTRADITIONAL)	(Record No. 14781)
RATEMAKING FOR WIND AND)	
TRANSMISSION FACILITIES)	

**ROCKY MOUNTAIN POWER’S MOTION TO STRIKE OR OTHERWISE
LIMIT SCOPE OF TESTIMONY**

I. INTRODUCTION

PacifiCorp d/b/a Rocky Mountain Power (“Company”) has requested conditional certificates of public convenience and necessity (“CPCN”) and nontraditional ratemaking

treatment related to the Company’s proposal to construct or procure new wind resources (“Wind Projects”) and to construct the Aeolus-to-Bridger/Anticline line and 230 kV Network Upgrades (“Transmission Projects”) (collectively, “Combined Projects”). Pursuant to Chapter 2, Section 13 of the Wyoming Public Service Commission’s (“Commission”) Rules, the Company respectfully requests the Commission strike or limit the scope of the direct testimony filed by landowners, leaseholders, and others claiming an interest in land—Rocky Mountain Sheep Company (“RMSC”), Southland Royalty Company (“Southland”), Anadarko Land Corporation (“Anadarko”), Overland Trail Cattle Company (“OTTC”), and BP America (“BP”) (collectively, “landholder and leaseholder intervenors”). The Company requests that the Commission strike or limit testimony regarding: (1) the location of the transmission line route and permitting issues that have been, and will continue to be, subject to the jurisdiction of other agency review processes; and (2) individual property impact and valuation issues subject to right-of-way negotiations and, where necessary, possible eminent domain proceedings.

These issues are outside the proper scope of this conditional CPCN proceeding, which must determine whether “the present or future public convenience and necessity require or will require” construction of the Combined Projects.¹ Commission precedent establishes that routing and permitting issues fully addressed by other agencies are not subject to separate litigation in CPCN proceedings,² and that individual property impact and

¹ W.S. § 37-2-205(a).

² *In the Matter of the Application of Black Hills Power Inc. for a Certificate of Public Convenience and Necessity for Wygen III, a 100 MW Coal-Fired Electric Generation Facility to be Located in Gillette, Wyoming*, Memorandum Opinion, Findings and Order Granting Application for a Certificate of Public Convenience and Necessity, Docket No. 20002-69-EA-07, Record No. 11549 at 29-30 (May 13, 2008) (“*In re Black Hills Power*”) (rejecting objections to an application for a CPCN on the basis of claimed environmental impacts that another agency had already explored, and further noting that “the CPCN cannot be denied in this proceeding on such grounds”).

valuation issues fall outside the scope of a CPCN proceeding.³ As noted below, the Company does not object to the testimony of landowner and leaseholder intervenors that addresses issues related to the public interest as a whole.

Allowing a narrow class of landholders and leaseholders to use this conditional CPCN proceeding to improve their individual negotiation and valuation positions is contrary to public policy for at least three reasons: (1) the use of the conditional CPCN process to challenge routing and permitting issues would permit re-litigation of the carefully balanced interests achieved by the previous multi-year public environmental review and permitting process—a process that included extensive public outreach among interested landowners, agencies and other parties, and which would be reprised here on a far shorter timeline, with a more limited record, and with fewer participants; (2) the use of the conditional CPCN process to drive up individual property valuation in advance of right-of-way negotiations could decrease the benefits of the Combined Projects for all customers; and (3) re-litigating routing issues or pre-litigating right-of-way issues in this case is judicially inefficient and unfairly burdens the conditional CPCN process. Far from advancing the public interest, such an approach would *harm* the public interest the CPCN process is intended to serve. Thus, the Company requests the Commission strike testimony relating to intervenors’ individual routing or valuation concerns, and limit the scope of landowner and leaseholder testimony to that addressing the public interest as a whole.

II. BACKGROUND

³ See *In the Matter of the Amended Application of Rocky Mountain Power for a CPCN to Construct Approximately 12 Miles of New 230 kV Transmission Line and to Remove Approximately 9 Miles of Existing 230 kV Transmission Line between the Dave Johnston Power Plant and the Casper Substation*, Order Denying Request for Hearing and Petition to Intervene Filed Out of Time, Docket No. 20000-357-EA-09, Record No. 12379 (June 22, 2010) (“*In re Johnston Power Plant*”); see also *In the Matter of the Application of Bresnan Broadband of Wyoming, LLC for a CPCN to Provide Local Exchange Telecommunications Services*, Order Denying Motion to Intervene, Docket No. 70114-19-TA-08, Record No. 11591 (Mar. 31, 2008) (“*In re Bresnan Broadband*”).

On June 30, 2017, the Company filed its application for conditional CPCNs.⁴ Nine parties have since intervened, including consumer and trade representatives, and individual landholders and leaseholders. Organizational intervenors include the following:

- The Office of Consumer Advocate (“OCA”) intervened on July 19, 2017,⁵ and represents the interests of “all classes of utility customers” pursuant to state statute.⁶
- The Wyoming Industrial Energy Consumers (“WIEC”) petitioned to intervene on July 7, 2017, and represents the combined interests of its member industrial consumers such as Anadarko Petroleum Corporation.⁷
- The Interwest Energy Alliance (“IEA”) filed a petition to intervene on August 14, 2017, and represents the combined interests of renewable energy project developers and equipment manufacturers.⁸
- The Northern Laramie Range Alliance (“NLRA”) petitioned to intervene on August 3, 2017, representing the interests of its “more than 900 members,” most of whom are electric customers in the central Wyoming area.⁹

These organizational intervenors were later joined by individual landowner and leaseholder intervenors:¹⁰

⁴ Application of Rocky Mountain Power for Certificates of Public Convenience and Necessity and Nontraditional Ratemaking for Wind and Transmission Facilities, Docket No. 20000-520-EA-17, Record No. 14781 (June 30, 2017). In this proceeding, the Company does *not* request authorization to construct segments of the transmission line before all rights-of-way have been acquired. *Compare* W.S. § 37-2-205(f) (noting that conditional CPCNs do not authorize construction of a transmission line until all rights-of-way for the line have been acquired) *and* W.S. § 37-2-205(h) (providing for authorization to construct in certain circumstances and subject to additional conditions, including private landowner participation).

⁵ OCA Notice of Intervention (Jul. 19, 2017).

⁶ W.S. § 37-2-401.

⁷ WIEC Petition to Intervene at 1 (Jul. 7, 2017).

⁸ IEA Petition to Intervene at 1 (Aug. 14, 2017).

⁹ NLRA Petition to Intervene at 1 (Aug. 3, 2017).

¹⁰ Note, Peterson Outfitters, LLC has filed a motion to withdraw its intervention. *See* Peterson Outfitters, LLC Petition to Intervene (Oct. 23, 2017); *see also* Peterson Outfitters, LLC Motion to Withdraw as Intervenor (Dec. 14, 2017). As a result, this intervenor’s participation and testimony is omitted from this motion.

- RMSC (petition filed on September 1, 2017),¹¹
- Southland (petition filed on October 26, 2017),¹²
- Anadarko (petition filed on October 26, 2017),¹³
- OTCC (petition filed on October 27, 2017),¹⁴ and
- BP (petition filed on November 14, 2017).¹⁵

Each of these private parties sought and were granted intervention on the basis that their individual land or lease rights are affected by the Combined Projects.¹⁶

The landowner and leaseholder intervenors have filed testimony concerning the impact of the Combined Projects on their individual property rights, routing issues, and property valuation concerns, as follows:

- On November 20, 2017, RMSC filed testimony objecting to the transmission line's location as lying "south of the powerline corridor and inside [the intervenor's] pipeline corridor," and argued that electromagnetic fields from the line will cause cattle to stop drinking from nearby watering facilities, resulting in diminished use of the surrounding acreage.¹⁷ RMSC further stated that "a pair of nesting bald eagles" reside near the proposed transmission line and "could be adversely affected."¹⁸ This party's only discussion of the public interest appears on pages 8-12 of the filed testimony, challenging the existence of ratepayer benefits.¹⁹ As a result, the Company does not

¹¹ Rocky Mountain Sheep Co. Petition to Intervene (Sep. 1, 2017).

¹² Southland Royalty Co. Petition to Intervene (Oct. 26, 2017).

¹³ Anadarko Land Corp. Petition to Intervene (Oct. 26, 2017).

¹⁴ Overland Trail Cattle Co. Petition to Intervene (Oct. 27, 2017).

¹⁵ BP America Petition to Intervene (Nov. 14, 2017).

¹⁶ *See, e.g.*, Southland Royalty Co. Petition to Intervene at 2 (arguing that its "oil and gas development operations will be impacted by the proposed projects").

¹⁷ Testimony of Kristy Thompson on Behalf of Rocky Mountain Sheep Co. at 2-3 (Nov. 20, 2017).

¹⁸ Testimony of Kristy Thompson on Behalf of Rocky Mountain Sheep Co. at 4.

¹⁹ Testimony of Kristy Thompson on Behalf of Rocky Mountain Sheep Co. at 8-9.

contest the admissibility of RMSC's testimony beginning on page 8, line 151, through page 12, line 241.

- On November 20, 2017, BP filed testimony arguing the proposed projects “will adversely affect BP’s future oil and gas operations,” and expressing worry “that BP’s rights may not be adequately protected should [the Company] ultimately initiate condemnation proceedings.”²⁰ BP went on to discuss possible conflicts with “BP’s future operations,”²¹ the presence of sensitive resources on BP’s leaseholds,²² and its belief that granting conditional CPCNs “could encourage [the Company] to initiate condemnation proceedings without considering the impacts to BP’s oil and gas operations.”²³ At no point did this party’s testimony mention or address the public interest.
- On December 15, 2017, Southland filed testimony regarding a range of issues relevant to its property, including “cathodic protection, raptor nest mitigation, sage grouse mitigation credits, road maintenance, siting of towers and transmission lines relative to well sites, tower placement within a section, power sub-stations, and damages.”²⁴ In raising these concerns, Southland acknowledged that the Bureau of Land Management (“BLM”) is responsible for ensuring compliance with endangered species protections and establishing mitigation measures.²⁵ Southland’s testimony further requested specific road maintenance conditions on its property as a condition

²⁰ Testimony of Shannon Martin on Behalf of BP America at 2 (Nov. 20, 2017); *see also id.* at 3 (“Simply put, BP seeks to ensure that the proposed right-of-way would not impede BP’s ability to explore and develop its leasehold interests.”).

²¹ Testimony of Shannon Martin on Behalf of BP America at 5.

²² Testimony of Shannon Martin on Behalf of BP America at 5.

²³ Testimony of Shannon Martin on Behalf of BP America at 7.

²⁴ Testimony of Jonathan Holmes on Behalf of Southland Royalty Co. at 4-5 (Dec. 15, 2017).

²⁵ Testimony of Jonathan Holmes on Behalf of Southland Royalty Co. at 5-6.

of a CPCN,²⁶ and argued that the Company “will need to insure no tower or transmission line is placed within a 500’ buffer” around Southland’s well sites and facilities.²⁷ Finally, Southland’s testimony acknowledged that “the [C]ommission does not set compensation for property utilized by [the Company] for transmission lines,” before proceeding to propose an annual rental fee agreement (including inflation) for access to Southland’s property.²⁸ At no point did this party’s testimony mention or address the public interest.

- On December 18, 2017, Anadarko similarly testified about the impacts of the projects “on Anadarko’s oil and gas prospects,”²⁹ and expressed concern that the proposed projects “combine to create a huge economic impact on Anadarko.”³⁰ Further testimony addressed possible endangered species impacts on Anadarko’s land (while noting that BLM administers such species protection measures)³¹ and disputed the Company’s land acquisition costs.³² Anadarko addressed the public interest only in its discussion of impacts on local jobs and taxes in select sections of the filed testimony.³³ As a result, the Company does not contest the admissibility of Anadarko’s testimony

²⁶ Testimony of Jonathan Holmes on Behalf of Southland Royalty Co. at 7.

²⁷ Testimony of Jonathan Holmes on Behalf of Southland Royalty Co. at 7.

²⁸ Testimony of Jonathan Holmes on Behalf of Southland Royalty Co. at 8-9.

²⁹ Testimony of Lee Shannon on Behalf of Anadarko Land Corp. at 1 (Dec. 18, 2017).

³⁰ Testimony of Susan Aldridge on Behalf of Anadarko Land Corp. at 2 (Dec. 18, 2017); *see also* Testimony of Andrew Wurdack on Behalf of Anadarko Land Corp. at 6 (Dec. 18, 2017) (arguing that “Anadarko’s mineral estate interest will definitely be harmed”).

³¹ Testimony of Susan Aldridge on Behalf of Anadarko Land Corp. at 4-5; *see also id.* at 5 (acknowledging that the Company “is limited in the distance it can relocate the line based on the transmission line right-of-way that was already approved by the BLM in the 2013 Record of Decision” while arguing that “[i]n some cases, [the Company] can and should relocate the transmission line corridor to reduce conflicts with existing and proposed wells and mines”).

³² Testimony of Susan Aldridge on Behalf of Anadarko Land Corp. at 7.

³³ Testimony of Susan Aldridge on Behalf of Anadarko Land Corp. at 3; *see also* Testimony of Andrew Wurdack on Behalf of Anadarko Land Corp. at 12-14.

of Susan Aldridge at 3, lines 8-19, or of Andrew Wurdack from page 12, line 3 through page 14, line 22.

- On December 18, 2017, OTCC argued that the projects could “interfere” with the landowner’s “ownership and financial interests,” and that the Commission should therefore condition approval in order to ensure the projects do not cause “an unnecessarily large footprint on [the company’s] land.”³⁴ OTCC based the entirety of its public interest analysis on the possible public benefits of its own prospective development projects, which it described as possibly jeopardized by the issuance of CPCNs.³⁵ As a result, the Company does not contest the admissibility of OTCC’s testimony on pages 1-7 (providing background on OTCC’s proposed projects), or on pages 11-12 (describing these projects’ proposed public benefits).

On December 18, 2017, the Company filed rebuttal testimony to RMSC’s and BP’s direct testimony.³⁶ In its testimony, the Company objected that intervening landowners and leaseholders appeared to be expanding the scope of this proceeding, noting that “the CPCN process is not well suited to address individual landowner siting concerns because the scope of the Commission’s review is necessarily broader, considering the benefits to all electric customers.”³⁷

The Company testified that stakeholders have already participated in a multi-year federal Environmental Impact Statement (“EIS”) process conducted by BLM, during which the transmission line was sited and individual landowner concerns were addressed.³⁸ This

³⁴ Testimony of Gary Miller on Behalf of the Overland Trail Cattle Company, LLC at 10-13 (Dec. 18, 2017).

³⁵ Testimony of Gary Miller on Behalf of the Overland Trail Cattle Company, LLC at 4-12 (describing OTCC’s prospective projects and anticipated public benefits).

³⁶ Rocky Mountain Power’s Rebuttal Testimony (Dec. 18, 2017) (“Rebuttal Testimony of Roderick D. Fisher”).

³⁷ Rebuttal Testimony of Roderick D. Fisher at 15-16.

³⁸ Rebuttal Testimony of Roderick D. Fisher at 2.

comprehensive review process effectively balanced all participants' interests, while maintaining some degree of flexibility for micro-siting the transmission lines on individual private lands.³⁹ Because BLM's decision rested on the balancing of interests achieved by routing the proposed projects along an "authorized route," substantial changes would require the Company to obtain a new permit, with the concomitant performance of a new and lengthy National Environmental Policy Act ("NEPA") process.⁴⁰ Additional detailed routing concerns will also be fully addressed by the Wyoming Industrial Siting Council ("ISC") in future proceedings, which will provide further public notice and hold public hearings.⁴¹

Now that all intervening landowners and leaseholders have filed direct testimony, the Company brings this motion to strike or otherwise limit the scope of testimony in this proceeding to reflect the public interest inquiry mandated by statute.⁴² The Company is filing this motion concurrently with the Company's supplemental rebuttal testimony to the direct testimony of Southland, Anadarko, and OTCC.

The Commission's previous discussion of intervenor participation has focused on whether the applicant's interests are sufficiently affected to permit intervention, not on the substance or scope of that intervenor's participation.⁴³ As a result, the proper scope of

³⁹ Rebuttal Testimony of Roderick D. Fisher at 15.

⁴⁰ Rebuttal Testimony of Roderick D. Fisher at 11 (describing BLM's Record of Decision specifying an "authorized route"); *see also Nevada Power Co. v. Watt*, 711 F.2d 913, 928 n.13 (10th Cir. 1983) (remarking that "utilities' concern over EIS costs is not an insignificant one").

⁴¹ Rebuttal Testimony of Roderick D. Fisher at 12 (further noting that the Company anticipates submitting an application to the ISC in July 2018).

⁴² W.S. § 37-2-205 (setting forth the public interest test for CPCN approval).

⁴³ For instance, at public hearing to address BP's petition to intervene, counsel for BP argued that "this is the place we decide whether this is the right corridor for this transmission line." Oral Argument, Open Meeting on December 7, 2017. This assertion would appear to substantially broaden the scope of this proceeding to address siting concerns already resolved by BLM, (and subject to further analysis by the ISC). *See* Rebuttal Testimony of Roderick D. Fisher at 3-11 (describing the BLM siting and review process); *see also Northern Laramie Range Found. v. Converse Co. Bd. of Co. Comm'rs*, 2012 WY 158, ¶¶ 66-67, 290 P.3d 1063, 1083-85 (Wyo. 2012) (describing the detailed siting analysis necessary to receive an ISC permit). However, BP's application specifically represented that its participation would not materially broaden the scope of this proceeding. BP America Production Co.'s Reply in Support of Petition for and Notice of Intervention at 2 (Nov. 28, 2017) ("BP's

landowners' and leaseholders' testimony in this proceeding remains an open issue before the Commission, and should be limited in conformance with the statutory scope of a conditional CPCN proceeding.

III. ARGUMENT

A. **The Scope of This Conditional CPCN Proceeding is Properly Limited to an Evaluation of the Public Interest and Should Not Address Individual Routing and Valuation Concerns.**

The “basic and overriding standard” for evaluating a CPCN application “is the public interest,” as distinct from private or personal interests.⁴⁴ The public interest is broadly defined as “[t]he general welfare *of the public* that warrants recognition and protection.”⁴⁵ While the Commission concluded that landholders and leaseholders are proper intervenors in this proceeding because their individual interests are affected, it does not follow that intervenors may expand the scope of this case by raising their individual routing or property valuation concerns.⁴⁶ While other forums have addressed, and will continue to address, individual private property issues, the public interest is “paramount” in evaluating CPCN applications.⁴⁷

intervention in this matter does not expand the scope of issues before the Commission.”); *see also* Anadarko’s Petition to Intervene at 4 (Oct. 26, 2017) (“Anadarko’s intervention would not unduly burden any party *or broaden the issues to be considered.*”) (emphasis added). And the Commission appeared to accept BP’s representation for purposes of its ruling. Order Granting BP America Production Co.’s Petition for and Notice of Intervention at 3 (Jan. 4, 2018) (reasoning that “the intervention would not delay the case because BP America submitted pre-filed testimony by the scheduled deadline” and further noting that BP’s intervention “would not . . . expand the issues”). Thus, in evaluating BP’s petition to intervene, the Commission appeared to consider only whether leaseholders’ interests are sufficient to warrant intervention, and did not specifically address whether individual intervenors’ permitting and siting issues are within the scope of this CPCN proceeding.

⁴⁴ *In re Black Hills Power* at 25.

⁴⁵ *State ex rel. W. Park Hosp. Dist. v. Skoric*, 2014 WY 41, ¶ 15, 321 P.3d 334, 340 (Wyo. 2014) (quoting Black’s Law Dictionary 1350 (9th ed. 2009)) (emphasis added).

⁴⁶ *See, e.g.*, Order Granting BP America Production Co.’s Petition for and Notice of Intervention at 3 (Jan. 4, 2018) (noting that BP “may be impacted” by the proceeding).

⁴⁷ *Sinclair Oil Corp. v. Wyo. Pub. Service Comm’n*, 2003 WY 22, ¶ 9, 63 P.3d 887, 893 (Wyo. 2003) (describing the standard for evaluating public convenience and necessity, and noting that the Commission “is required to give paramount consideration to the public interest in exercising its statutory powers”).

To the extent the intervenors' participation rests on issues outside the scope of a conditional CPCN, such participation is inappropriate.⁴⁸

By contrast, if the Company were seeking authorization to construct a segment of the transmission line before acquiring all rights-of-way (i.e., an *unconditional* CPCN), Wyoming state law would specifically provide for participation of private property owners “concerning the location of the [transmission] segment or the impact of any future extension of the transmission line.”⁴⁹ A conditional CPCN proceeding has no such provision, and thus no such participation is authorized. Indeed, if discussion of private property impacts were permitted in conditional CPCN proceedings, the legislature would have had no need to specifically provide for the consideration of private impacts in unconditional CPCN proceedings.⁵⁰

In this conditional CPCN proceeding, intervening landowners and leaseholders raise two broad categories of issues that have been—or will be—thoroughly examined by other agencies: (1) permitting and routing concerns addressed by BLM during the NEPA review process, which will be further reviewed in detail by the ISC, and (2) individual property valuation concerns that will be addressed during right-of-way negotiations and possibly eminent domain proceedings. The Commission has previously limited intervenor participation in CPCNs to exclude such issues.⁵¹

⁴⁸ *In re Bresnan Broadband* at 2 (noting that the representative for Bresnan “acknowledged that [the local telecom company] has an interest in the application” before denying the application to intervene as outside the statutory scope of the CPCN proceeding).

⁴⁹ W.S. § 37-2-205(h).

⁵⁰ *De Herrera v. Herrera*, 565 P.2d 479, 483 (Wyo. 1977) (“When the legislature amends a statute, it must be presumed that some change in the existing law was intended; it is not reasonable that the legislature would enact a law to declare what is already the law.”).

⁵¹ See *In re Johnston Power Plant* at 2 (rejecting an intervention application as raising issues outside the scope of a CPCN proceeding); see also *In re Bresnan Broadband* (rejecting efforts to raise individual property valuation concerns in a CPCN proceeding); see also *In re Black Hills Power* at 9 (concluding that issues raised by an intervenor were adequately addressed by other proceedings provided by law).

1. Intervenor Testimony Concerning Project Routing and Permitting Issues Fall Outside the Scope of This Proceeding Because Such Issues Were Part of BLM’s NEPA Review Process and Will be Reviewed by the ISC.

The Commission has recognized that issues properly delegated to the consideration of other agencies fall outside the scope of a CPCN proceeding. For instance, in 2008, the Commission explicitly refused to re-litigate issues in a CPCN proceeding concerning the development of Wygen III (a coal-fired power plant), where those issues had been addressed in another administrative agency proceeding.⁵² The Commission rejected objections from the Powder River Basin Resource Council based on claimed environmental concerns, reasoning that such issues had “been adequately addressed as required by law through the many permitting stages including the EPA, DEQ, and the Industrial Siting Council.”⁵³ Given the multi-agency review process addressing detailed environmental concerns, the Commission found that the CPCN “cannot be denied on such grounds.”⁵⁴

Similarly, in another 2008 CPCN decision, the Commission granted Rocky Mountain Power’s request for a CPCN in connection with the Company’s development of the High Plains Wind Project and associated transmission line.⁵⁵ In that proceeding, the Company noted that compliance with state-mandated species protections “would be addressed in the Industrial Siting Council proceeding.”⁵⁶ Apparently acknowledging this collaborative review process, the Commission did not impose detailed species protections requirements in its CPCN.⁵⁷ By

⁵² *In re Black Hills Power* at 29-30.

⁵³ *In re Black Hills Power* at 29-30.

⁵⁴ *In re Black Hills Power* at 29-30.

⁵⁵ *In the Matter of the Application of Rocky Mountain Power for a Certificate of Public Convenience and Necessity to Construct the New 99 MW High Plains Wind Project*, Docket No. 20000-329-EA-08, Record No. 11765 (Sep. 17, 2008) (“*In re High Plains Wind Project*”).

⁵⁶ *In re High Plains Wind Project* at 8.

⁵⁷ *In re High Plains Wind Project* at 15 (noting generally that “Rocky Mountain should familiarize itself with [the governor’s Executive Order establishing sage grouse protected areas] and ensure that the Executive Order is carefully observed”).

comparison, where no other agency has conducted detailed transmission siting analysis, the Commission has addressed this issue in its CPCN review.⁵⁸

Here, permitting and routing concerns have already been extensively reviewed by BLM in the NEPA review process.⁵⁹ The NEPA review process requires the lead agency to “rigorously explore and objectively evaluate all reasonable alternatives” in order “to ensure that each agency decision maker has before him . . . all possible approaches to a particular project.”⁶⁰ NEPA also mandates state and federal coordination of environmental review and urges against redundancy.⁶¹ In carrying out these mandates, BLM has already thoroughly addressed permitting and environmental concerns along the approved route, provided for extensive public participation and comment, and established necessary mitigation measures.⁶² BLM further provided numerous inroads for stakeholder engagement, including the opportunity for interested parties to file written comments and raise relevant issues at public meetings.⁶³ These comments and issues were addressed in BLM’s Draft and Final EIS, and

⁵⁸ *Vandehel Developers v. Public Serv. Comm’n*, 790 P.2d 1282, 1284-86 (Wyo. 1990) (holding that a county board determination to underground a transmission line was not binding on the Commission, where the Commission found that undergrounding the line would multiply the cost of the project 7.9 times); *see id.* at 1296 (concluding that “if each county were to pronounce its own regulation and control over electric wires, pipe line and oil lines, the conveyors of power and fuel could become so twisted and knotted as to affect adversely the welfare of the entire state.”) (quoting *County of Chester v. Pa. Elec. Co.*, 420 Pa. 422, 426 (1966)).

⁵⁹ *See* Rebuttal Testimony of Roderick D. Fisher at 3-11 (describing the BLM review process).

⁶⁰ *All Indian Pueblo Council v. United States*, 975 F.2d 1437, 1444 (10th Cir. 1992) (quoting 40 C.F.R. 1502.14(a) (1986) and *Calvert Cliffs’ Coordinating Comm., Inc. v. United States Atomic Energy Comm’n*, 449 F.2d 1109, 1114 (D.C. Cir. 1971)) (emphasis omitted).

⁶¹ *See Utahns v. United States Dep’t of Transp.*, 305 F.3d 1152, 1174 (10th Cir. 2003) *as revised on reh’g* (concluding that federal and local agencies properly collaborated in developing an EIS); *see also id.* (citing with approval *Laguna Greenbelt, Inc. v. United States Dep’t of Transp.*, 42 F.3d 517, 524 n.6 (9th Cir. 1994) (rejecting arguments for duplicative environmental analysis and noting that “NEPA mandates state and federal coordination of environmental review.”); *see also* 40 C.F.R. 1506.4 (“Any environmental document in compliance with NEPA may be combined with any other agency document to reduce duplication and paperwork.”)).

⁶² *See* Rebuttal Testimony of Roderick D. Fisher at 3-11 (detailing BLM’s consideration of permitting requirements, transmission siting, and mitigation measures).

⁶³ *See* Rebuttal Testimony of Roderick D. Fisher at 5-7 (describing the public engagement and participation opportunities provided during the BLM review process).

again when BLM approved its preferred transmission line route, rejecting alternatives.⁶⁴ Critically, the EIS balanced the rights and interests of all participants, as well as cultural resources, wetlands, special status species, water resources, agricultural resources, and related mitigation measures.⁶⁵ Repeating this detailed review would be “a wasteful duplication of effort.”⁶⁶

Thus, to the extent that landowner and leaseholder intervenors in this docket seek to reopen issues already thoroughly explored by BLM, the Commission’s precedent and sound public policy forecloses reopening the detailed determinations made by another agency.⁶⁷ Allowing a narrow subset of landowners and leaseholders to rework the comprehensive public balance established by BLM would be to privilege the interests of these few over the interests of the public—undermining rather than advancing a CPCN proceeding’s central purpose.

Moreover, additional routing concerns may yet be raised by landowners and leaseholders before the ISC, which is the state agency with broad authority to review and condition the routing decisions of energy development projects.⁶⁸ Such conditions can effectively provide for mitigations or modifications at a granular level—quite apart from the broader question of whether the project as a whole, as proposed in a CPCN application, is in the public interest.⁶⁹

⁶⁴ Rebuttal Testimony of Roderick D. Fisher at 8-10 (describing the process by which BLM reviewed alternative routes and selected the route authorized by BLM’s published Record of Decision).

⁶⁵ See Direct Testimony of Rick A. Vail on Behalf of Rocky Mountain Power at 30-31 (describing BLM’s Record of Decision).

⁶⁶ *Sierra Club v. United States Army Corps of Engineers*, 701 F.2d 1011, 1039 (2d Cir. 1983) (noting that both “common sense” and policy considerations suggest that duplication should be avoided).

⁶⁷ *In re Black Hills Power* at 29-30 (refusing to reopen issues “adequately addressed as required by law through the [other] many permitting stages”).

⁶⁸ *Northern Laramie*, ¶ 77 (noting that the ISC may “condition permits in order to protect Wyoming’s environment and the social and economic fabric of the communities”).

⁶⁹ *Northern Laramie*, ¶ 90 (stating that it “was appropriate for the ISC to allow evaluations of different affected areas for individual interests”).

2. Intervenor Testimony Concerning Individual Property Valuation Issues Falls Outside the Scope of This Conditional CPCN Proceeding Because Such Issues Will be Addressed by Right-of-Way Negotiations.

Detailed analyses of impacts on individual properties and valuation are the proper subject of the right-of-way negotiation process and, if necessary, eminent domain proceedings,⁷⁰ and should not be pre-litigated in this docket. This is especially true because, under a conditional CPCN, a utility may not commence construction until it has obtained the necessary rights-of-way and returned to the Commission for an unconditional CPCN.⁷¹ In this way, the Commission retains jurisdiction over the right-of-way process to ensure that it ultimately produces an overall result that is consistent with the public interest.⁷² It is thus premature and contrary to Wyoming's approach to energy facility development to hear individual landowner and leaseholder issues in this conditional CPCN process.

The Commission has previously found that individual property valuations are not the appropriate subjects of a CPCN proceeding. For instance, in a 2010 order involving the Company's application for a CPCN to construct a transmission line from the Dave Johnston Power Plant, the Commission reviewed and rejected a landowner's application to intervene, where the applicant contended that a CPCN would foreclose any future effective challenge to an eminent domain action.⁷³ The application asked the Commission to consider two factors under Wyoming's eminent domain statutes:⁷⁴ (1) whether the project was planned or located

⁷⁰ *In re Johnston Power Plant* at 2 (distinguishing the inquiry appropriate for a CPCN proceeding as opposed to an eminent domain action).

⁷¹ *See* Rebuttal Testimony of Rick A. Vail on Behalf of Rocky Mountain Power at 23-24 (explaining conditional CPCN process).

⁷² In addition, the Commission may review the prudence of the utility's actual investment costs, including the final right-of-way costs, in a subsequent rate proceeding. *In the Matter of the Application of Rocky Mountain Power for Approval of a Certificate of Public Convenience and Necessity to Construct Selective Catalytic Reduction Systems on Jim Bridger Units 3 and 4 Located Near Point of Rocks, Wyoming*, Memorandum Opinion, Docket No. 20000-418-EA-12, Record No. 13314 at 16-17 (May 29, 2013) (describing the agency's power to later review the prudence of decisions related to the issuance of a CPCN).

⁷³ *In re Johnston Power Plant* at 1-2.

⁷⁴ W.S. § 1-26-504(a)(ii) and (iii).

in the manner most compatible with the greatest public good and the least private injury, and (2) whether the property sought to be acquired was necessary for the project.⁷⁵ The Commission denied the intervention, stating that it did not have authority to make decisions within the ambit of the eminent domain statutes. As the Commission explained,

Wyoming statutes clearly show that eminent domain actions lie in the district courts and not with the Commission. The Commission is a statutorily created administrative agency having only the powers given to it under Wyoming law; to find any support for the [petitioner's] argument would require us to find that we are a court of general jurisdiction -- which we are not.⁷⁶

Thus, the Commission properly declined to expand the scope of a CPCN case to include detailed property valuation factors, implicitly acknowledging that such considerations were instead suited to an eminent domain proceeding.⁷⁷

Here, each of the landowner and leaseholder intervenors express concern that the proposed projects will result in some diminution of value to their individual properties. To the extent that the proposed projects may result in damages to individual property values, such a fact-intensive inquiry is precisely the scope of right-of-way negotiations and eminent domain proceedings.⁷⁸ Once the Company has obtained the necessary rights-of-way, it will still need to return to the Commission for an unconditional CPCN, and to seek rate recovery. The Commission will be able to review right-of-way costs once they are final, and ensure that the Combined Projects remain in the public interest.⁷⁹

⁷⁵ *In re Johnston Power Plant* at 2.

⁷⁶ *In re Johnston Power Plant* at 2.

⁷⁷ *In re Johnston Power Plant* at 2.

⁷⁸ W.S. § 1-26-704 (detailing the method for ascertaining fair market value).

⁷⁹ See Supplemental Rebuttal Testimony of Roderick D. Fisher at 2-3 (Jan. 8, 2018) (describing the process of obtaining rights-of-way and subsequent Commission review).

A conditional CPCN is a prerequisite to bringing any action in eminent domain.⁸⁰ It would be circular to argue that detailed damages calculations for individual landowners and leaseholders are necessary for an evaluation of public convenience and necessity, where a determination of public convenience and necessity is a prerequisite to determining the proper valuation of any property damages in an eminent domain proceeding. Thus, testimony detailing individual landowners' or leaseholders' property damages is plainly outside the scope of a CPCN proceeding's public interest inquiry.

B. Other Commission Proceedings Applying a Public Interest Standard Similarly Preclude Consideration of Private Concerns.

While the Commission has only limited precedent concerning the proper scope of intervenor testimony in CPCN cases, in other proceedings where interested parties are permitted to intervene because their private interests are affected, this participation may not expand the scope of the case to include individual customer complaints.⁸¹ For instance, in a 2002 rate case decision, private parties sought leave to intervene on the basis that PacifiCorp had failed to enter into a qualifying facility contract in violation of the Public Utility Regulatory Policies Act, and that this failure “was indicative of imprudent purchasing policies that needlessly increased the price paid for electricity by Wyoming consumers.”⁸² The Commission denied the application, noting that the alleged contracting dispute “would exist whether or not the rate case existed,” and suggested that the applicant’s intentions were inappropriately self-interested: “Although it is unstated, if it were [the applicant’s] intention

⁸⁰ W.S. § 1-26-504(a) (requiring that public convenience and necessity be established before exercising eminent domain).

⁸¹ See, e.g., *In the Matter of the Application of PacifiCorp for Authority to Increase its Retail Elec. Utility Service Rates in Wyoming*, Order, Docket No. 20000-ER-02-184, Record No. 7475 (Mar. 6, 2003) (“*PacifiCorp 2002 Rate Case*”).

⁸² *PacifiCorp 2002 Rate Case* at 9.

to have the Commission create an avoided cost rate for large power producers, that would greatly expand the scope of the case.”⁸³

Similarly, where individual customers in a 2016 case sought to advance their own interests in receiving favorable tariff treatment, the Commission firmly rejected the argument as “motivated by individual gain without regard for the public interest”—a position contrary to the goal of advancing the interests of all electric customers.⁸⁴ Thus, the Commission has consistently accepted intervenor participation in dockets implicating broad consumer or public interests only where the intervenor’s contributions address public—not private or personal—concerns. Indeed, such a conclusion is an inevitable product of the public interest inquiry central to a CPCN proceeding: allowing individual landowners or leaseholders to use this proceeding to improve their own positions, at the expense of other landowners or leaseholders and the Company’s customers, would undermine rather than advance the public interest.

C. The Non-CPCN Issues Raised by the Landowners and Leaseholders Improperly Broaden and Burden This CPCN Proceeding.

The prompt and orderly resolution of this conditional CPCN filing will be hindered unless the Commission limits intervenor participation to the public interest issues directly germane to this proceeding. As both BP and Anadarko have expressly recognized, intervenor participation should not materially broaden the scope of this proceeding or burden the Commission or other party.⁸⁵

⁸³ *In the Matter of the Application of PacifiCorp for Authority to Increase its Retail Elec. Utility Service Rates in Wyoming*, Order on Pending Motions and Requests, Docket No. 20000-ER-02-184, Record No. 7475 at 6-7 (Dec. 16, 2002).

⁸⁴ *In the Matter of the Application of Cheyenne Light, Fuel and Power Co. for Authority to Establish a Large Power Contract Service Tariff*, Docket No. 20003-146-ET-15, Record No. 14242 at 10 (July 28, 2016).

⁸⁵ BP America Production Co.’s Reply in Support of Petition for and Notice of Intervention at 2 (Nov. 28, 2017) (“BP’s intervention in this matter does not expand the scope of issues before the Commission.”); *see also*

There are now nine witnesses testifying on the behalf of the five landowner and leaseholder intervenors in this case. In comparison, there are only six witnesses testifying on behalf of the other four intervenors in this case (OCA, WIEC, IEA and NLRA), and six witnesses for the Company. If individual landowners and leaseholders are allowed to litigate their private issues in this conditional CPCN proceeding, it will be difficult for the Commission to fully develop the record on the core public interest issue and to promptly resolve the Company's application.

IV. CONCLUSION

The CPCN process is confined to an evaluation of the public interest, and does not involve either reopening or pre-litigating private permitting, routing, or property valuation concerns. Commission precedent, public policy, and judicial efficiency all support precluding the landowner and leaseholder intervenors from raising private concerns that have been or will be fully and properly addressed by other agency proceedings. Here, routing and permitting issues have already been fully addressed by BLM, and additional granular siting analysis will be performed by the ISC.

Entertaining individual landowner and leaseholder issues in the conditional CPCN process is both premature and contrary to Wyoming's statutory approach to energy facility development. After issuance of conditional CPCNs, individual property valuation concerns will be addressed during right-of-way negotiations and, if necessary as a last resort, eminent domain proceedings. The Commission's role is then to review the overall results of the right-of-way process to ensure that it ultimately produces a result that is consistent with the public interest before issuing a final CPCN and allowing cost recovery.

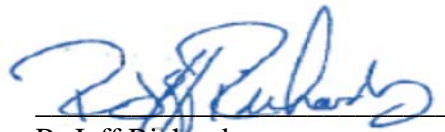
Anadarko's Petition to Intervene at 4 (Oct. 26, 2017) ("Anadarko's intervention would not unduly burden any party or broaden the issues to be considered.") (emphasis added).

As a result, the Commission should grant the Company's motion to strike testimony relating to individual intervenors' routing and valuation concerns, or otherwise limit the scope of testimony to that addressing the public interest as a whole.

DATED this 8th day of January 2018.

Respectfully Submitted,

ROCKY MOUNTAIN POWER



R. Jeff Richards
Vice-President and General Counsel

CERTIFICATE OF SERVICE

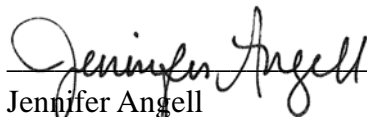
I hereby certify that on this 8th day of January, 2018, I caused to be served via E-mail a true and correct copy of the foregoing document to the following:

**Docket No. 20000-520-EA-17
(Record No. 14781)**

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