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February 6, 2018

***VIA ELECTRONIC FILING
AND HAND 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 – Reply in Support of Motion to Strike or Otherwise Limit Testimony**

Dear Ms. Brand and Mr. Petrie,

Attached is Rocky Mountain Power's Reply in Support of Motion to Strike or Otherwise Limit Testimony, replying to the responses of the five landowner/leaseholder intervenors: Southland Royalty Company; Anadarko Land Corporation; BP America; Overland Trail Cattle Company; and Rocky Mountain Sheep Company.

We look forward to presenting the motion at the Commission's open meeting on February 8, 2018.

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

CERTIFICATE OF SERVICE

I hereby certify that on this 6th day of February, 2018, I caused to be served via E-mail and/or overnight delivery, 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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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 REPLY IN SUPPORT OF MOTION TO STRIKE
OR OTHERWISE LIMIT SCOPE OF TESTIMONY**

I. INTRODUCTION

In this docket, PacifiCorp d/b/a Rocky Mountain Power (“Company”) requests conditional certificates of public convenience and necessity (“CPCNs”) 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”). The central inquiry for the CPCNs is whether the Combined Projects are in the *public* interest.¹ Five separate landowners and leaseholders² intervened and filed testimony on the impact of the Transmission Projects on their *private* property, raising issues that have been or will be comprehensively addressed by other agencies, or by the courts.

The Company filed a Motion to Strike or Otherwise Limit Scope of Testimony (“Motion”) requesting that the Commission strike or limit landowner and leaseholder testimony that addresses individual property interests and issues, not the public interest.³ Striking irrelevant testimony both upholds the proper scope of this conditional CPCN proceeding and ensures a fully developed record on the core issue—that is, whether “the present or future public convenience and necessity require or will require” construction of the Combined Projects.⁴

¹ See, e.g., *Laughlin v. State Bd. Of Control*, 21 Wyo. 99, 116 (1912) (holding that, where the public interest is determinative in a decision by a state agency, “[i]mpairment of the value of a private interest or the detrimental effect upon a private interest, are contingencies which cannot be considered”); see also *Gilmore v. Oil & Gas Conservation Comm’n*, 642 P.2d 773, 780 (Wyo. 1982) (“[W]hen that public interest conflicts with the private interest, the public interest has to come first.”) (quoting the Wyoming Oil and Gas Commission’s acting Chairman).

² These landowner and leaseholder intervenors are Rocky Mountain Sheep Company (“RMSC”), Southland Royalty Company (“Southland”), Anadarko Land Corporation (“Anadarko”), Overland Trail Cattle Company (“Overland”), and BP America (“BP”) (collectively, “landholder and leaseholder intervenors”). An additional landowner, Peterson Outfitters, LLC, also filed testimony but has since filed a motion to withdraw its intervention. See \ Peterson Outfitters, LLC Motion to Withdraw as Intervenor (Dec. 14, 2017); see also Order Granting Motion to Withdraw Intervention (Jan. 4, 2018).

³ Rocky Mountain Power’s Motion to Strike or Otherwise Limit Scope of Testimony (Jan. 8, 2018).

⁴ W.S. § 37-2-205(a); see also WYO. R. EVID. 402 (“Evidence which is not relevant is not admissible.”).

In a joint response, Southland, Anadarko, and BP (collectively, “joint respondents”) oppose the Motion.⁵ Overland and RMSC oppose the Motion in separate briefs.⁶ While joint respondents, Overland, and RMSC (collectively, “private property intervenors”) generally acknowledge that their testimony is largely focused on their private interests, they attempt to conflate their private financial concerns with the public interest at large, suggesting that their private interests are uniquely relevant, and that Wyoming’s CPCN statute provides specific authority for consideration of private property impacts in a CPCN proceeding. They are incorrect. A CPCN proceeding’s public interest inquiry is greater than any single private party’s interests, does not and should not duplicate environmental and siting assessments performed by other agencies, and is statutorily precluded from considering private property impacts.

For these reasons, discussed in more detail below, the Company respectfully requests that the Commission grant the Motion and clarify that this conditional CPCN proceeding does *not* involve either reopening or pre-litigating private permitting, routing, or property valuation concerns. Ensuring that testimony conforms to the scope of this proceeding will allow for a fully developed record on the core public interest issue, while assisting the Commission in promptly resolving the Company’s application. It will also adhere to the Commission’s carefully considered precedent limiting litigation over private property interests in CPCN

⁵ BP America Production Co., Anadarko Land Corp., and Southland Royalty Co.’s Joint Memorandum in Opposition to Rocky Mountain Power’s Motion to Strike or Otherwise Limit Scope of Testimony (Jan. 31, 2018) (“Joint Response”).

⁶ The Overland Trail Cattle Co. LLC’s Response to Rocky Mountain Power’s Motion to Strike or Otherwise Limit Scope of Testimony (Jan. 29, 2018) (“Overland Response”); Rocky Mountain Sheep Company’s Response in Opposition to Rocky Mountain Power’s Motion to Strike or Otherwise Limit Scope of Testimony (Feb. 5, 2018) (“RMSC Response”).

proceedings—a policy that private property intervenors have not provided any persuasive reason to change.

II. ARGUMENT

Joint respondents raise five arguments in opposition to the Motion, with Overland and RMSC joining the third and the fourth: (1) joint respondents are of sufficient importance to Wyoming’s economy that “their interests should figure into the Commission’s calculation of where the public interest lies;”⁷ (2) their individual property valuation concerns may undermine the Company’s financial ability to undertake the Combined Projects;⁸ (3) Wyoming’s CPCN statute provides for consideration of the impacts on private property in conditional CPCN proceedings;⁹ (4) other forms of permitting and environmental review are inadequately protective of private property rights, and thus siting, permitting, and environmental review must be conducted in this conditional CPCN proceeding;¹⁰ and (5) the Motion is premature because supplemental testimony might establish a connection between existing testimony and the purpose of this proceeding.¹¹

None of these arguments recognize the Commission’s unique function in CPCN proceedings to review the interests of the public at large. By urging the Commission to allow litigation of private routing, permitting and valuation issues in the CPCN process, the private

⁷ Joint Response at 18.

⁸ Joint Response at 5-6 (“The Intervenor also seek to highlight additional costs that RMP has failed to account for in its analysis and that ultimately could affect the project’s economic viability.”); *see also id.* at 24 (“[M]itigation for impacts to the mineral estates may dramatically exceed RMP’s budget, and therefore affect other calculations in this Application and perhaps the project’s financial viability.”).

⁹ Joint Response at 5 (“Wyoming law directs that interests of private property owners are of import in CPCN proceedings. *See* WYO. STAT. ANN. §§ 37-2-205(e), (h)(v).”); Overland Response at 6 (“There is no statutory basis, nor any logical reason, to curtail landowners’ right to be heard just because the applicant has chosen to proceed under W.S. § 37-2-205(f) rather than W.S. § 37-2-205(h).”); RMSC Response at 2.

¹⁰ Joint Response at 3-4; Overland Response at 9; RMSC Response at (“[O]ther agencies have not or do not effectively balance all participants’ interests regarding routing concerns or property impacts[.]”).

¹¹ Joint Response at 15-16.

property intervenors seek an outcome that would undermine Wyoming’s statutory scheme for energy development, which assigns distinct and separate functions to the Commission, other agencies, and the courts.

A. The Size and Financial Sway of a Private Property Owner Does Not Grant that Private Party’s Interests Greater Eminence in a Public Interest Evaluation.

Joint respondents acknowledge that their interests do not “represent the public interest[.]”¹² But joint respondents argue that their interests are uniquely relevant to the public interest inquiry because each plays a substantial role in Wyoming’s economy.¹³ Each joint respondent emphasizes its relative eminence as justification for incorporating its private concerns into the Commission’s public interest assessment.¹⁴

This argument mistakenly assumes that a private party’s relative influence transforms a private financial concern into a public issue. Joint respondents offer no basis in Wyoming law for such priority among property interests. Indeed, a public interest analysis is concerned with the scale of possible impacts on the public, not with the scale of the private parties potentially impacted.¹⁵ To the extent that joint respondents attempt to argue that impacts on their private properties will convey some particularly large impact on the public, they have

¹² Joint Response at 19 (emphasis in original).

¹³ Joint Response at 2 (“Individually, and taken as a whole, the Intervenor’s operations play a significant part in the State of Wyoming’s economy and, therefore, form part of the matrix of interests that must be considered in divining the public interest in this proceeding.”).

¹⁴ Joint Response at 16 (“RMP also overlooks BP’s direct testimony that it is the largest leaseholder in the Continental Divide-Creston (CD-C) Project Area in Southwest Wyoming.”); *see also id.* at 18 (“BP has been ranked in the top 13 Wyoming taxpayers by taxable value for mineral production in each of the past five years.”); *id.* at 19 (“Anadarko’s interests in the affected area are no less significant and are no less deserving of consideration as the Commission works to identify the overall public interest.”); *id.* at 17 (“Southland is and will continue to be an integral participant in Wyoming’s economy and its interests would be no less affected than would BP’s or Anadarko’s.”).

¹⁵ *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 at 2 (Mar. 31, 2008) (“*In re Bresnan Broadband*”) (rejecting efforts to raise individual property valuation concerns in a CPCN proceeding).

failed to either present or support such an argument in their testimony.¹⁶ Moreover, joint respondents offer no precedent in which the Commission considered private property impacts to determine the public's interest.

B. The Economic Impacts on an Individual Landowner Do Not Substantively Address the Company's Financial Ability to Develop the Combined Projects.

Joint respondents argue that, because the Company failed to account for “the role of mineral interests,” their private property valuations may be sufficiently large so as to jeopardize the Company's financial wherewithal to pursue the Combined Projects.¹⁷ This argument has at least three major flaws.

First, the claim is untethered to the joint respondents' actual testimony, which did not address the economics of the Combined Projects or the Company's financial wherewithal in any way. Instead, the testimony merely recited claims of private financial impacts, which the joint respondents now seek to transform into a public concern.

Second, as explained in the Company's supplemental rebuttal testimony, the Company's estimated right-of-way acquisition costs include the need to acquire or otherwise provide value for impacted mineral rights where necessary.¹⁸ In some cases, micro-siting

¹⁶ For instance, while the joint respondents state that mineral development is “a significant sector of the State's economy,” the joint respondents testify not to the scale of the state's mineral industry impacted, but to the potential impact on the joint respondents' private mineral estates. Joint Response at 5.

¹⁷ Joint Response at 23 (arguing that, “in ignoring mineral rights in the transmission line's path, [the Company] has vastly underestimated the costs for acquisition of rights-of-way and land for construction”); *see also id.* at 24 (asserting that “any loss of mineral value” to Southland must “directly bear on the financial ability of the Applicant to proceed with its proposal”).

¹⁸ Supplemental Rebuttal Testimony of Roderick D. Fisher on Behalf of Rocky Mountain Power at 4-5 (Jan. 8, 2018) (stating that “the Company's estimated acquisition costs include contingency to address issues like mineral rights valuation that may arise during negotiations”).

adjustments can mitigate any such impacts.¹⁹ There is no factual basis for joint respondents' argument that mineral estates were "ignor[ed]."²⁰

Third, joint respondents fail to recognize that, even if the costs of obtaining rights-of-way materially exceed the Company's forecasts, these costs are not of a magnitude to threaten the Company's financial wherewithal to complete the Combined Projects. If cost increases for rights-of-way reduce the Combined Projects' economic benefits, the Commission will have a full opportunity to review the prudence of these costs in future rate proceedings.

In summary, just as Commission precedent precludes direct litigation of private property valuation issues in CPCN proceedings, it should also preclude indirect litigation of these issues based on post-hoc, unsupported claims to a broader public significance.

C. Wyoming's CPCN Statute Confines Consideration of Private Property Impacts to Requests for Authorization to Construct Before Rights-of-Way are Completely Acquired.

The private property intervenors argue that Wyoming's CPCN statute mandates consideration of private property impacts in this proceeding.²¹ This assertion is based on a misreading of the statute, which clearly limits consideration of private property interests to applications for segmented construction approvals.²² The Company is seeking a CPCN for the entire 140-mile, Aeolus-to-Anticline 500 kV transmission line, conditioned on obtaining

¹⁹ See Supplemental Responses to Anadarko's DR, Set 1, Q #4-6.

²⁰ Joint Response at 23.

²¹ Joint Response at 5 ("Wyoming law directs that interests of private property owners are of import in CPCN proceedings. See WYO. STAT. ANN. §§ 37-2-205(e), (h)(v)."); Overland Response at 6 ("There is no statutory basis, nor any logical reason, to curtail landowners' right to be heard just because the applicant has chosen to proceed under W.S. § 37-2-205(f) rather than W.S. § 37-2-205(h)."); RMSC Response at 2 (citing W.S. § 37-2-205(h)(v), describing the approval for segmented authorization to construct, and W.S. § 16-3-107(j), setting forth the standard for participation in contested cases).

²² Compare W.S. § 37-2-205(f) (noting that conditional CPCNs do not authorize construction of a transmission line until all right-of-way for the line has been acquired) and W.S. § 37-2-205(h) (providing private landowner participation when a utility requests permission to construct a line segment where not all of the line's rights-of-way have been obtained).

all rights-of-way before construction. In other words, the Company does not intend to begin construction of any segment until it obtains all of the required rights of way. The provisions of the CPCN statute allowing construction of segments of a transmission line before receipts of all rights-of-way, including W.S. § 37-2-205(h), are therefore not needed in the Company’s case and are inapplicable.

W.S. § 37-2-205 provides for alternative types of Commission review depending on the approval sought.²³ Under subsection (f), CPCN applicants are precluded from seeking construction of a project until all rights-of-way along the line have been obtained—requiring issuance of conditional CPCNs.²⁴ Conditional CPCNs under subsection (f), as requested here, require public interest findings, and do not provide authorization to construct.

In 2009, the legislature adopted subsection (h), which provides for segmented construction of a transmission line, even where a utility does not have rights-of-way to the entire line.²⁵ This option was made subject to a number of new conditions, including satisfying the requirements of subsection (f), providing notice to property owners, and granting “private property owners . . . an opportunity to be heard . . . concerning the location of the segment or the impact of any future extension of the transmission line.”²⁶ Subsection (h) is not applicable here.

²³ See, e.g., *In the Matter of the Application of Black Hills Power, Inc. for a Certificate of Public Convenience and Necessity for a 230 kV Electric Transmission Line of Approximately 69 Miles in Length, Between the Pumpkin Buttes and Windstar Substations Located in Campbell and Converse Counties, Wyoming*, Docket No. 20002-74-EA-09, Record No. 12275 at 3 (Mar. 8, 2010) (“*In re Pumpkin Buttes Line*”) (noting that additional notice requirements are required where a utility requests authorization to construct a segment of a transmission line where “some necessary rights-of-way had not yet been obtained” on other portions of the line).

²⁴ W.S. § 37-2-205(f).

²⁵ See WYO. SESSION LAWS OF 2009, ch. 202, § 1.

²⁶ W.S. § 37-2-205(h)(i)-(v).

By adopting conditions on top of those for subsection (f), subsection (h) plainly created a type of Commission approval discrete from the conditional approval process of subsection (f). Reading subsection (h) as applying to the entirety of W.S. § 37-2-205 misconstrues the plain language of the statute for four reasons.

First, subsection (h) repeatedly refers to the fact that it addresses segmented construction approvals.²⁷ Second, the subsection explicitly cabins consideration of private property impacts to those caused by “any future extension of the transmission line.”²⁸ Thus, the legislature’s expansion of the scope of the Commission’s consideration was narrowly tailored to the need required, and did not purport to otherwise revise the CPCN approval process.²⁹ Third, by specifically authorizing consideration of private property impacts in this narrow context, the legislature implicitly precluded consideration of such impacts in other contexts.³⁰ And finally, if consideration of private property impacts were already authorized under the more general public interest inquiry, then the explicit grant of permission in subsection (h)(v) would have been unnecessary.³¹

Wyoming’s CPCN statute provides for consideration of the *public* interest when a utility seeks a conditional CPCN. And it provides for narrow consideration of private property

²⁷ W.S. § 37-2-205(h)(ii) (referring to rights-of-way obtained “within the authorized segment”); *see also* W.S. § 37-2-205(h)(iii) (describing the permissible size of the authorized segment).

²⁸ W.S. § 37-2-205(h)(v).

²⁹ *See* H.B. 288 (2009), bill summary, available at <http://legisweb.state.wy.us/2009/Summaries/HB0288.htm> (describing the proposed amendment adopting subsection (h)).

³⁰ *State v. Bd. of Comm’rs of Platte Cty.*, 26 Wyo. 75, 80, 177 P. 130, 131–32 (1919) (explaining that the principle *expressio unius est exclusio alterius* means that “whenever a statute limits a thing to be done in a particular form, it necessarily includes in itself a negative, viz. that the thing shall not be done otherwise”); *see also Transamerica Mortg. Advisors, Inc. (“TAMA”) v. Lewis*, 444 U.S. 11, 20 (1979) (“When a statute limits a thing to be done in a particular mode, it includes the negative of any other mode.”) (quoting *Botany Mills v. United States*, 278 U.S. 282, 289 (1929)).

³¹ *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.”).

impacts when a utility seeks segmented authorization to construct. It does not provide for general consideration of private property impacts during any CPCN proceeding—let alone in a conditional CPCN proceeding, where no authorization to construct is yet sought. Wyoming law clearly envisions a more general scope to the Commission’s inquiry, consistent with a broad public interest purpose.³²

D. Property-Specific Environmental and Siting Concerns Were Part of BLM’s NEPA Review and Will be Reviewed by the ISC and Other Agencies.

Joint respondents and RMSC argue that they must be permitted to raise their private property concerns because their issues were not fully addressed by the Environmental Impact Statement (“EIS”) process, conducted by the Bureau of Land Management (“BLM”).³³ Joint respondents state that the EIS “specifically disclaimed any intent to analyze siting issues on private surface” and “expressly excluded consideration of the wind projects[.]”³⁴

Joint respondents and RMSC are correct that the EIS considered the environmental and siting impacts of the Transmission Projects, not the Wind Projects.³⁵ The Motion referred to the EIS environmental and permitting process because, with one minor exception,³⁶ the

³² RMSC also argues that Wyoming’s eminent domain statute, W.S. § 1-26-504, provides for consideration of private impacts in a CPCN proceeding. RMSC Response at 7. But the Commission has specifically declined to apply W.S. § 1-26-504 to CPCN proceedings, explaining that it does not have authority to make decisions within the ambit of the eminent domain statutes. *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 at 2 (June 22, 2010) (“*In re Johnston Power Plant*”).

³³ Joint Response at 3-4; RMSC Response at 3-4.

³⁴ Joint Response at 3; *see also* RMSC at 4 (“BLM’s environmental review focused exclusively on concerns impacting federal lands, rather than state and private lands.”).

³⁵ The wind projects are not located on federal land and, in part for that reason, are not subject to the National Environmental Policy Act (“NEPA”).

³⁶ Only Anadarko’s testimony mentions the wind projects themselves, stating simply that “Anadarko’s mineral estate interests will definitely be harmed by the presence of wind turbines.” Testimony of Andrew Wurdack on Behalf of Anadarko Land Corp. at 6 (Dec. 18, 2017). Even were this unsubstantiated claim of private economic impact relevant to a public interest inquiry—which it is not—site-specific impact analysis for energy projects will be undertaken by ISC, which will provide further public notice and hold public hearings.

landowner and leaseholder testimony addressed the Transmission Projects—not the Wind Projects.³⁷ But to the extent that joint respondents suggest that environmental and permitting analysis has not been conducted for the Wind Projects, they are mistaken. On the contrary, highly detailed analyses of the Wind Projects’ impacts have been performed and remain underway, in collaboration with both state and federal agencies including Wyoming Game and Fish Department and the U.S. Fish and Wildlife Service.³⁸ Duplication of this analysis in a conditional CPCN proceeding would be both inefficient and counter to the Commission’s precedent.³⁹

Regardless of the scope of environmental review already conducted, joint respondents continue to overlook the proper forum for raising their property-specific siting concerns—the Wyoming Industrial Siting Council (“ISC”). The ISC is tasked with addressing property-specific siting issues for energy and transmission projects.⁴⁰ Only RMSC asserts that the ISC’s review is also inadequate—reasoning that, because the Commission’s findings in this

³⁷ Testimony of Holmes on Behalf of Southland at 2 (describing Southland’s interest in property “over which [the Company] proposes to run transmission lines”); see Anadarko Land Corp’s Petition for and Notice of Intervention at 2-4 (describing the impacts of the proposed transmission line but making no mention of possible impacts of the proposed wind projects); see Direct Testimony of Shannon Martin on Behalf of BP America Production Co. at 2 (“BP is concerned that RMP’s proposed transmission projects will adversely affect BP’s future oil and gas operations in Wyoming.”).

³⁸ See Supplemental Direct Testimony of Chad A. Teply on Behalf of Rocky Mountain Power at 14-20 (Jan. 11, 2018) (describing the ongoing environmental review and permitting process for the wind projects).

³⁹ 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 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 9 (May 13, 2008) (“*In re Black Hills Power*”) (concluding that issues raised by an intervenor were adequately addressed by other proceedings provided by law).

⁴⁰ *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).

proceeding are binding on the ISC under W.S. § 35-12-110, the Commission must conduct a detailed evaluation of all private impacts.⁴¹

RMSC's argument fails in three respects. First, it fails to recognize that the Commission's findings are limited to the scope of the Commission's jurisdiction;⁴² thus, the Commission's *public interest* finding is binding—not any consideration of private impacts.⁴³ Second, were the Commission properly tasked with considering private impacts, as RMSC claims, then the ISC's siting function would be entirely displaced. And third, W.S. § 35-12-110, by preventing one agency from relitigating other agency findings, clearly seeks to avoid the sort of duplication that the property owner intervenors here attempt to advance.⁴⁴ The Commission's precedent and sound public policy forecloses such redundancy—as fully explained in the Motion.⁴⁵

Notably, the joint respondents fail to substantively challenge the essential point that the Commission's public interest review in a CPCN proceeding performs a distinct function from the permitting and siting analysis delegated to other agencies.⁴⁶ Nor do the respondents

⁴¹ RMSC Response at 6 (“Clearly, if the [Commission] is to inform the ISC of impacts regarding a proposed facility, it must have the authority to hear and address those considerations during CPCN proceedings.”).

⁴² W.S. § 35-12-110(c).

⁴³ W.S. § 35-12-110(c).

⁴⁴ Notably, RMSC's argument appears to be motivated by the mistaken belief that RMSC will not be able to join the ISC proceeding as a party. *See* RMSC Response at 6 (stating that “[l]andowners such as RMSC may only make a ‘limited appearance.’”). On the contrary, because the transmission facilities are subject to ISC permitting, affected landowners such as RMSC may intervene as parties to that proceeding. *See* W.S. § 35-12-111(a)(iii); *see also* Wyoming Dept. of Environmental Quality, Notice of Jurisdiction – Permit Required (Nov. 29, 2017) (noting that the transmission lines will require a permit from the ISC). Thus, to the extent that RMSC is concerned that the ISC will fail to fully consider landowner impacts, such concern is misplaced.

⁴⁵ Motion to Strike at 10-18 (explaining that issues fully addressed by other agencies are not subject to redundant review in CPCN proceedings); *see also In re Black Hills Power* at 29-30 (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”).

⁴⁶ The joint respondents' objection to the cases cited by the Company are based on irrelevant factual distinctions. For instance, the fact that *In re Bresnan Broadband* “dealt with a telecommunications statute” is inconsequential, as the same Commission applied the same public-interest standard to determine if a CPCN was warranted, and what the scope of the Commission's consideration should therefore be. Joint Response at 23 n.10.

offer any authorities to suggest that a conditional CPCN proceeding should provide a full rehearing of private impacts on private properties. Plainly, such a course would be both prohibitively inefficient—duplicating analysis that has, to this point, taken years—but would simultaneously disregard the sensible division of labor among federal and state agencies, and the courts.

Overland similarly overlooks the relevance of other agency and court review processes, claiming that exclusion of testimony concerning private property impacts would “deny it due process.”⁴⁷ Detailed analyses of individual property impacts are not required for a conditional CPCN, as such issues are addressed, when necessary, through eminent domain proceedings.⁴⁸ Overland’s contention would appear to require the full panoply of due process protections *twice*.

E. The Motion Was Not Premature Merely Because Joint Respondents Might in the Future Establish a Connection Between Their Filed Testimony and This Proceeding.

Finally, joint respondents argue that the Motion is premature because it was filed “before [the joint respondents] had fully elucidated their interests in this proceeding and how those interests fit within the broader matrix of the public interest.”⁴⁹ This argument appears to concede that joint respondents’ filed testimony fails to address the public interest, while asking for additional opportunity to clarify “how [the respondents’] interests should figure into the overall calculation of the public interest.”⁵⁰ To be clear, the Company does not oppose admission of testimony from landowners and leaseholders that is pertinent to the CPCN’s

⁴⁷ Overland Response at 9.

⁴⁸ *In re Johnston Power Plant* at 2 (distinguishing the inquiry appropriate for a CPCN proceeding as opposed to an eminent domain action).

⁴⁹ Joint Response at 15.

⁵⁰ Joint Response at 16.

public interest inquiry.⁵¹ But joint respondents' claim that *future* testimony will relate to the public interest merely emphasizes that the extant testimony lacks such a relationship. As a result, the Commission should strike it or otherwise limit its admission.

III. CONCLUSION

Landowners' and leaseholders' intervention was granted on the condition that intervenor participation not broaden the scope of the proceeding—which is the public interest of the Combined Projects. 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.

As a result, the Company respectfully requests that the Commission grant the Company's Motion relating to individual intervenors' routing and valuation concerns, or otherwise limit the scope of current and future testimony to that addressing the public interest as a whole.

DATED this 6th day of February, 2018.

Respectfully Submitted,

ROCKY MOUNTAIN POWER



R. Jeff Richards
Vice-President and General Counsel

⁵¹ For this reason, the Company has not objected to landowner and leaseholder testimony concerning the public interest. *See* Motion to Strike at 8 (not objecting to the admissibility of Overland's testimony concerning the public benefits that might be impacted by the Combined Projects).