

**OFFICE OF THE BOARD OF COUNTY COMMISSIONERS  
OF BLAINE COUNTY  
SPECIAL MEETING OF THE MAY 2019 SESSION**

**Second Day**

**Monday, May 6, 2019**

Pursuant to Statutory Provisions, the Board of Blaine County Commissioners (BCC) met this day at 9:00 a.m. Present were Chairman Jacob Greenberg, Vice-Chair Angenie McCleary, and Commissioner Dick Fosbury; County Prosecuting Attorney Tim Graves; Blaine County Land Use Administrator Tom Bergin; Land Use County Planner Allison Marks; and Recording Secretary Gary Brower. *Idaho Mountain Express* reporter Mark Dee was present for the morning session.

Chairman Greenberg called the meeting to order at 9:00 a.m.

**PUBLIC COMMENT – None Taken**

**Public Utility Facility Conditional Use Permit Application by Idaho Power Co.** Consideration of two appeals of the Planning & Zoning Commission's approval of a Public Utility Facility Conditional Use Permit Application by Idaho Power Co. to construct, maintain, and operate a 138-kV, overhead and underground, redundant transmission line from the Wood River Substation north of Hailey to the Ketchum Substation located on Sun Valley Rd. in Sun Valley. The transmission line is proposed to run east from the Wood River Substation to Buttercup Rd, then north along the west side of Buttercup Rd., and then north along the east side of Hwy. 75 until it crosses to the west side of Hwy. 75 north of the East Fork traffic light. This proposed line would then continue north along the west side of Hwy. 75 to Hospital Dr. and then along Hospital Dr. and the bike path to an undergrounding transition structure at the intersection of Hwy. 75 and Elkhorn Rd. This transmission line will range from 4' to up to 15' higher than the existing power lines along this route. The line is proposed to run through six different zoning districts before entering the Cities of Sun Valley and Ketchum.

Also Present: Cox VP Marketing Guy Cherp; Resident Kerrin McGill; Larry Wangberg; Attorney Rock Rolling Properties Greg Adams; Kris Dondero; Idaho Power Company Patrick A Harrington; Idaho Power Company Ryan Adelman; Idaho Power Company Sven Bern; Idaho Power Company Manager David Angell; Rich Boznger; Douglas King; Chuck Turner; Resident Jonathan Walker; Lyn Christensen; Len Harlig; Aspen Hollow HOA Representative Allan Patzer; Rhonda Bruce; Gary Almas; DT Henry; Sun Valley Institute Board Member Wendolyn Holland; Jebediah Ute; Cheryl Hymas; Paul Stevenson; Sun Valley Resident Linda Pertel; Hailey Resident Curtis Mays; Ketchum Resident Mary Neivens; and Hailey Resident Jo Heiss.

Land Use County Planner Allison Marks read notice into record.

**McCleary moved, seconded by Fosbury, that today's hearing for the Public Utility Facility Conditional Use Permit Application by Idaho Power open to appeal has been noticed in accordance, appropriately. Motion carried unanimously.**

**Disclosures:**

Vice Chair McCleary has received 10 emails after the public record has closed, and has submitted these to Land Use Department for record keeping but has not responded to any of the emails. She does not intend to give them any consideration in decision making. Other emails will be forwarded as they are received.

Commissioner Fosbury said he was on Planning & Zoning (P&Z) Commission last year and voted on the first application. He recused himself from future decisions in P&Z meetings and missed votes while campaigning for Blaine County Commissioner. He also had several verbal conversations with the public. He will forward emails he received after public record has closed to planning and zoning for record keeping.

Chairman Greenberg has also received emails after public record has closed and responded to inquiries, only to inform that records are closed and that the emails have been forwarded on to Land Use Department for record keeping.

Blaine County Prosecuting Attorney Tim Graves said a prior application for a Conditional Use Permit (CUP) was denied by Planning and Zoning commission and subsequently affirmed by the BCC. Furthermore the BCC participated in mediation with Idaho Power. Regarding sites visits, all of the BCC commissioners live and drive the valley roads where power lines exist. Graves said Commissioner Fosbury was on previous P&Z commission and believes he can make a fair and impartial decision.

BCC affirmed comments by Blaine County Prosecuting Attorney Tim Graves.

Blaine County Prosecuting Attorney Tim Graves outlined the timing and structure of the meeting.

### **Appellants Presentation**

Also Present: Representing South Valley Residents Fritz Haemmerle; Rock Rolling Properties, LLC and Rock Rolling Properties #2, LLC Attorney Gregory M Adams; Appellant Representative Attorney Representative Fritz Haemmerle presented appeal to BCC. Topics of conversation included:

- Appellants representation of about 35 South Valley Residents;
- lack of notice for workshops and mediation meetings;
- graphical presentation of areas of proposed overhead power lines along proposed route;
- conflict with size and design of proposed power lines;
- definition of scenic corridor along HWY 75 in Blaine County Comprehensive Plan;
- Blaine County Comprehensive Plan would need to be ignored to complete project;
- comparison of court cases from other Idaho counties using their comprehensive plans to protect against power companies;
- several standards of the project were compared to the Blaine County Comprehensive Plan and Blaine County Ordinances and were not found to be compliant in the Blaine County P&Z board meeting findings;
- deciding where to underground power lines creates a disparity of Blaine County residents on whether there is equal application to preserve the scenic corridor depending on pole locations;
- Public Utilities Commission's (PUC) and Conditional Use Permit (CUP) are in conflict with Local Land Use and Planning Act (LLUPA) for not allowing governmental agencies opportunity to appear before their commission in the event of conflicts with local land use regulations;
- and suggestion of denying the PUC application or granting the PUC application with the condition of burying the lines.

Rock Rolling Properties, LLC and Rock Rolling Properties #2, LLC Attorney Greg Adams presented appeal to BCC. Topics of conversation included:

- affirmation of previous comments from Appellant Fritz Haemmerle presentation regarding standards not being met in the comprehensive plan in application of CUP;
- request of BCC to reverse the PUC order;
- lack of meaningful opportunity for Blaine County to appear in front of PUC;
- PUC order does not mention CUP or discuss Blaine County Comprehensive Plan;
- Certificate of Public Convenience and Necessity (CPCN) still requires local permits and provides Blaine County opportunity to review and approve CUP's;
- CUP application says it is not seeking to avoid or thwart any county permitting process;
- and requested BCC to deny the application or place the entire power line underground.

In response to BCC question, Appellant Representative Fritz Haemmerle said he still believes an incorrect decision was made in regards to compliance with Blaine County Comprehensive Plan after the PUC decision and P&Z response.

### **Idaho Power Response**

Idaho Power Attorney Patrick Harrington presented response to BCC. Topics of conversation included:

- support of Blaine County P&Z decision and evaluation;
- requested BCC to uphold Blaine County P&Z decision;
- Idaho Power is authorized to construct power line under CPCN for option TP1;
- Idaho Power worked with Blaine County P&Z on every segment of power line route;
- use of qualifying language used in Blaine County Comprehensive Report;
- mention of Idaho Statute regarding duty of public utilities is to provide adequate and reliable service to the people at a reasonable cost;
- the critical need of new power line to provide redundancy and reliability due to aging of current power line;
- and CPCN order, affirms there is a service necessity, and gives Idaho Power the authority to construct power line.

In response to question from BCC on whether there was ever intent in the process to underground the whole line, Idaho Power Attorney Patrick Harrington said the opportunity for undergrounding is always available. Idaho power is an above ground utility company, but is open to all options for undergrounding when third party funding is provided.

In response to question from BCC on whether local ordinances and comprehensive plans are taken into consideration during the CNCN's and CUP's, Idaho Power Attorney Patrick Harrington said local jurisdictions can make whatever decisions they like as long as they do not conflict with the PUC. The PUC has said that the rest of its customer rate base should not bear the expense for special burials for specific areas even when requested by local entities.

BCC discussed with Idaho Power various funding opportunities and options for burial of the power line.

In response to question from BCC on whether Blaine County had opportunity to participate in the power line permitting process, Idaho Power said notification requirements were mailed to all the entities in the project area as well as a public hearing held in the City of Ketchum.

### **Appellants Rebuttal**

Appellant Representative Attorney Representative Fritz Haemmerle presented rebuttal to Idaho Power Response. Topics of conversation included:

- dissatisfaction with the PUC application process;
- mention that power line is a business decision by Idaho Power;
- PUC order never states that it preempts decisions Blaine County will make;
- a mention of first hearing that the location of undergrounding is still on the table;
- concerns with visual impacts of above ground lines;
- a recommendation that the BCC deny the application or approve with the condition to underground entire power line;
- and mention of a petition with 1800 signatures recommending Idaho Power underground the proposed power line.

Rock Rolling Properties, LLC and Rock Rolling Properties #2, LLC Attorney Greg Adams presented rebuttal to Idaho Power. Topics of conversation included:

- a decision by PUC to issue CUP for TP1 power line route was made without all the contextual information and needs for Blaine County residents;
- and disputes that PUC order preempts BCC authority.

Blaine County Attorney Tim Graves talked on several subjects to the BCC. Topics of his conversation included:

- his role is advisory;
- in reference to comments made in first BCC meeting on this topic, that for the purposes of streamlining the meeting and informing the public, the question of a need for a power line by the PUC has been answered;
- the general location of the line was also answered with the exception of undergrounding and microsite options;
- advised the BCC that preemption by PUC was a possibility depending on the outcome and conflicts between BCC and the P&Z process;
- Graves recommendation that approving project be with conditions;
- that until BCC has made determination on the zoning questions, there is no conflict with the PUC;
- BCC should treat preemption as a potential threat;
- procedurally, there could be potential litigation with decisions made by the BCC;
- recommendation to BCC to take facts of the PUC application and P&Z determination then evaluate their decision to the Blaine County standards, and determine if the appropriate decision was made;
- and recommended that questions of funding and preemption should be ignored at this time.

When asked by BCC about the meaning of equal protection by micro-siting power line, Appellant Representative Attorney Representative Fritz Haemmerle said that burial of lines in some locations, but not others, is discrimination.

BCC and staff discussed procedural protocol about funding burial of power lines along with the timing and legal ramifications of decisions made today.

Idaho Power Attorney Patrick Harrington commented that the BCC should not reject application, but approve with conditions that Blaine County may find applicable.

Rock Rolling Properties, LLC and Rock Rolling Properties #2, LLC Attorney Greg Adams commented that there may be cheaper funding for burial options through a program by Idaho Energy Guard.

### **Deliberation**

Commissioner Fosbury discussed several topics including:

- using Blaine County Comprehensive Plan as a guide;
- discussed micro-siting underground portions of the power line;
- that the priority of Blaine County to bury power lines and mandatory burial in new subdivisions;
- there is a need to explore various funding options for undergrounding;
- Fosbury would like evidential support of property valuation changes;
- and is in favor of power line burial along the proposed route.

Chairman Greenberg discussed several topics including:

- merits of appellant claims;
- P&Z findings and their standards of evaluation;
- that undergrounding is not in conflict with the PUC decision;
- his concerns with generational impacts of above ground power lines;

- the long and short term economic impacts of undergrounding power lines;
- preservation of aesthetic scenic value of the community;
- a community focus on alternate forms of energy;
- disputes the high cost of undergrounding and recommendation of third party project cost review;
- and is in favor of undergrounding power line along the proposed scenic corridor.

Vice-Chair McCleary discussed several topics including:

- several standards of P&Z findings that were not met;
- the merits of appellant claims;
- impacts of above ground power lines on the character of the scenic highway;
- potential hazards and health risks associated with above ground power lines;
- economics impacts on the community;
- indicated cost should not be the deciding factor;
- and is in favor of burial of the power line for the proposed route.

BCC discussed with staff the procedures and methods on how to proceed. Tim Graves said no motion is necessary and that he has sufficient guidance to draft language for written response for BCC, based on the their shared values, which can come back to the BCC for their approval.

**McCleary moved, seconded by Fosbury, to continue this hearing to a date uncertain and to direct legal counsel and staff to create a written decision for this board to consider. Discussion: None. Motion carried unanimously.**

**ADJOURN**

**At the hour of 2:46 p.m., with no more business before them, the County Commissioners adjourned.**

Attest: \_\_\_\_\_ Approved \_\_\_\_\_  
 JoLynn Drage County Clerk Jacob Greenberg Chairman