

copy to Land Use

BEFORE THE BOARD OF COUNTY COMMISSIONERS
BLAINE COUNTY, STATE OF IDAHO

REGARDING THE APPEAL OF:)
)
A Decision of the Blaine County) DECISION ON APPEAL
Planning and Zoning Commission)
Approving Idaho Power Company's)
Application for a Conditional Use Permit)

THIS MATTER came before the Blaine County Board of County Commissioners ("the Board") upon an appeal by Appellants, Rock Rolling Properties, LLC, Rock Rolling Properties #2, LLC, and South Valley Residents (collectively, "The Appellants"), challenging a decision of the Blaine County Planning and Zoning Commission ("Commission") approving an application for a conditional use permit filed by Idaho Power Company ("IPC") to construct an overhead transmission line. An appeal hearing was held before the Board on May 6, 2019, and argument was heard from the Appellants, represented by Fritz Haemmerle, Esq. and Gregory Adams, Esq., and IPC, represented by David Angell and Pat Harrington, Esq. Following deliberation, the Board voted to affirm the Commission's decision with the modification that the proposed transmission line be undergrounded. This Decision memorializes the Board's decision on the appeal.

For many years, IPC and local leaders have discussed IPC's plans for a redundant transmission line to provide electric service to northern Blaine County, including the cities of Sun Valley and Ketchum. In 2014, IPC filed an application for a conditional use permit to construct, maintain, and operate a 138-kv redundant, electric, transmission line from the Wood River substation north of Hailey to the Ketchum/Sun Valley substation,

approximately twelve miles to the north (“the first application”). The first application proposed to replace an existing distribution line along the route with a new, larger, transmission line that would replace and increase the height of existing pole structures throughout the proposed line as well as constructing new pole structures. The proposed transmission line would be located adjacent to residential areas, along and across Highway 75 within the Scenic Highway Overlay District, through the area of McHanville and St. Luke’s Wood River Hospital, and along the Wood River Trails bike path in several areas before going underground as it moves north at the intersection of Highway 75 and Elkhorn Road.

Due to its considerable impacts on residential, recreational, and scenic areas, the first application was denied by the Commission on March 2, 2017. Specifically, the Commission determined that the proposed transmission line was not in accordance with the Comprehensive Plan, was not harmonious with the character of the area, was hazardous and disturbing to neighboring uses, would create excessive requirements at public cost, and would damage natural and scenic areas of major importance. The Board affirmed the Commission’s denial of IPC’s conditional use permit on September 12, 2017.

While the first application was pending before Blaine County, IPC sought a Certificate of Public Convenience and Necessity (“CPCN”) from the Idaho Public Utilities Commission (“IPUC”), seeking a determination that the proposed transmission line was necessary in this location. Because there were active zoning applications pending before it, Blaine County did not participate in the IPUC proceedings. The IPUC approved the CPCN on September 15, 2017, three days after the Board’s appeal decision on the first application. In granting the CPCN, the IPUC determined that there was a need for a

redundant transmission line to serve the Ketchum and Sun Valley areas and approved the general location of the line that was proposed in the first application. The IPUC's decision also "encourage[s] all interested parties to continue to work together on these issues, as there may still be opportunities to find areas of common interest and common ground, notwithstanding the outcome of this proceeding."

Following the denial of the first application and the IPUC's issuance of the CPCN, IPC filed a new conditional permit application for the redundant transmission line on November 20, 2017 ("the second application"), which was very similar to the original application. IPC later requested mediation with the County pursuant to Idaho Code Section 67-6510, and two mediation sessions were held between representatives of IPC, the Commission, and the Board on June 1, 2018 and September 6, 2018. At these mediation sessions, the participants discussed possible funding sources for undergrounding all of, or a portion of, the transmission line, as well as various design changes that could alleviate the line's negative impacts.

The Commission held four public hearings on the second application on November 13, 2018, November 15, 2018, November 27, 2018 and December 6, 2018. At the hearings, the Commission considered the second application against its prior denial and its standards of evaluation, while also taking into account issuance of the CPCN, possible state preemption, and funding considerations in the event undergrounding of the line was pursued. These competing considerations led the Commission to weigh the application flexibly in order to accommodate a range of funding and site design alternatives. The Commission conditionally approved the second application on January 15, 2019, finding that the proposal conditionally met the standards of evaluation. In setting forth its

conditions of approval, the Commission adopted a “priorities” approach, which prioritized certain conditions that, in the eyes of the Commission, would satisfy the standards of evaluation, provided that funding could be secured to pay for the improvements. The first priority, as determined by the Commission, “is to underground the line, both transmission and distribution, from the Wood River Substation to the Elkhorn light where it would link with the underground infrastructure headed North through Ketchum.” If funding was not available to accomplish this condition, then further priorities such as siting adjustments, pole design, and other mitigation were spelled out that would alleviate the various negative impacts of the transmission line. The Appellants appealed the Commission’s decision.

In denying the first application, the Commission made negative findings on several standards of evaluation, which the Board subsequently affirmed. Specifically, these negative findings related to the following standards of evaluation:

- (1) Blaine County Code Section 9-25-3(A)(2) (not in accordance with the general and/or specific objectives of the comprehensive plan);
- (2) Blaine County Code Section 9-25-3(A)(3) (will not be harmonious and appropriate with character of the general vicinity);
- (3) Blaine County Code Section 9-25-3(A)(4) (will be hazardous or disturbing to existing or future neighboring uses);
- (4) Blaine County Code Section 9-25-3(A)(9) (will result in the destruction, loss or damage of a natural, scenic or historic feature of major importance).

The second application that is subject to this appeal is very similar to the first application, in general location, pole height, spacing, and line placement. The Commission wrestled with its prior findings on the first application during its deliberations on the second application and also considered competing factors such as issuance of the

CPCN, possible preemption by the IPUC¹, and the extent to which funding could be secured to pay for all or parts of the transmission line. These competing factors weighed against viewing the second application in a vacuum and a straight denial, as urged by the Appellants, because doing so would close the door on “opportunities to find areas of common interest and common ground” as encouraged by the CPCN. Instead, the Commission adopted a priority-based approach that allowed it to conditionally approve the second application depending upon the available funding. This, in turn, provided the Board with a menu of options to consider as it waded through various funding alternatives.

The Board appreciates the diligence and creativity used by the Commission in its consideration of the second application. The Commission’s prioritization approach reflects challenging circumstances that are outside of the Commission’s reach and could affect the scope of the proposed conditional use. Nevertheless, the Commission’s review, and likewise the Board’s review on appeal, is limited to considering the facts presented against the applicable standards of evaluation. Within the constraints of this review, a menu-based approach involving multiple funding-based scenarios as flexible conditions of approval are unlikely to withstand legal scrutiny. Funding issues, preemption, and the need for a redundant transmission line are simply not zoning considerations.

Having previously affirmed the denial of the first application, the Board is similarly challenged with making positive findings on the applicable standards of evaluation for an

¹ IPC has argued that the issuance of the CPCN is evidence of an intent to preempt the County’s zoning laws pursuant to Idaho Code Section 67-6528. The Board disagrees for several reasons. First, the CPCN lacks any language declaring an intent to preempt the County’s zoning, and includes language that encourages cooperation between the County and IPC. Second, no conflict exists between the Commission’s decision and the CPCN, as the Commission conditionally approved IPC’s application. Third, the County has not been given a meaningful opportunity to appear before the IPUC to discuss any conflict between the CPCN and the County’s zoning as required by Idaho Code Section 67-6528. This lack of an opportunity to appear is largely due to IPC’s insistence on seeking a CPCN while the County simultaneously considered IPC’s conditional use permit.

above-ground transmission line for the second application. Some modifications have been made to alleviate visual and aesthetic impacts, but the overall disturbance caused by an overhead transmission line bisecting the Wood River Valley from Hailey to Ketchum remains significant. This disturbance will severely impact residential areas, the Scenic Highway Overlay District, the bike path, public facilities, and the travelling public along the Sawtooth Scenic By-Way along Highway 75.

It is within that review that the Board must find that the only condition of approval that would allow it to make positive findings at this time is to underground the entire line from the Wood River Substation to the traffic light at the intersection of Elkhorn Road and Highway 75. Undergrounding the redundant transmission line allows for positive findings on compliance with the Comprehensive Plan, impacts on neighboring uses, potential hazards and disturbances, and permanent damage to areas of vital scenic importance. While imposing such a condition will require difficult discussions on the funding alternatives, the Board believes that these funding discussions should be fully exhausted before any consideration of an overhead transmission line in this area. Depending upon the results of these funding processes, further consideration and deliberation may be necessary to “continue to work together on these issues, as there may still be opportunities to find areas of common interest and common ground.” Accordingly, the Board affirms the Commission's decision with the modification that it require as a condition of approval that the entire transmission line be undergrounded from the Wood River Substation north to the City of Ketchum.

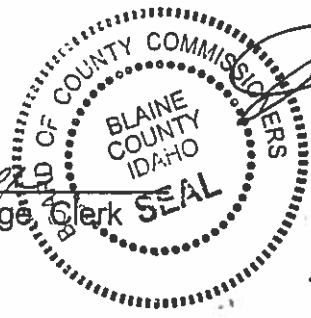
The parties are advised of the right to appeal this decision to the District Court pursuant to Idaho Code Section 67-6521, as applicable, by filing a judicial review action within twenty-eight (28) days of the date of this decision.

DATED this 4th day of June, 2019.

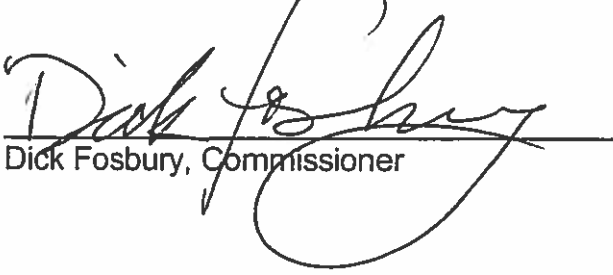
BLAINE COUNTY BOARD OF COMMISSIONERS


Jacob Greenberg, Chairman

Attest: 
JoLynn Drage, Clerk




Angenie McCleary, Commissioner


Dick Fosbury, Commissioner

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on the 5th day of June, 2019 I caused to be served a true copy of the within and foregoing document upon the persons named by depositing the same in the U.S. Mail, postage pre-paid, addressed as follows:

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