

Rocky Mountain Power Litigation Recap

SITLA Board of Trustees

May 15, 2014

Why Did the Dispute Happen?

- RMP Mona-Oquirrh 500kv line was very controversial in Tooele County due to siting impacts.
- RMP deliberately chose to impact SITLA to avoid an influential private landowner.
- SITLA was preparing protest to Utility Siting Review Board based on impact to our future development; easy alternative routes for RMP.
- Under political pressure, SITLA agreed to not appeal, but we would not pull any punches on valuation.

Why the Large Difference in Appraisals?

- In two words: severance damages
- The reduction in value in the remainder parcel due to the impacts of the proposed facility – reduced marketability for future development.
- Severance damages are an accepted part of Utah eminent domain law – *Admiral Beverage v. UDOT*
- RMP's appraisers will always state that no transmission line of any size will ever have any value impact on surrounding land, hence their \$70,000 appraisal.

Difference in Appraisals, II

- SITLA asked its appraiser to carefully review effect on value based on a potential future development plan.
- The appraiser found diminution of market value caused by the transmission line of \$4,465,000 over 5,978 acres.
- The large size of the property magnified the effect of severance damages.
- Important to note that the appraiser's finding of severance damages was not dependent on near-term development of the St. John Block.
- In my experience, a gap of this size is not unusual in similar circumstances in eminent domain litigation.

Why Did SITLA Choose the Board Adjudication Route?

- In a Board adjudication, SITLA's administrative finding of value is given deference – may only be reversed if there is a violation of law, policy or rules.
- Burden of proof is on the protesting party.
- Appeal is on the record to the Supreme Court – Board decision is given deference.
- In contrast, in eminent domain, the condemnee has the burden of proving its claim of fair market value.

Why Did the Case Settle?

- SITLA had better expert witness roster, plus retention of serious outside counsel, creating perception of risk to RMP.
- RMP also had higher risk from adverse Supreme Court case than SITLA; would still face Tooele jury.
- SITLA risk factors included Board uncertainty about adjudications; high cost of experts and outside counsel; risk of adverse Supreme Court decision.

Settlement Terms

- \$2,500,000 cash payment by RMP.
- Agreement on terms to avoid future disputes of this nature – seek multiple appraisals, mediation of appraisal instructions by neutral party.
- Eliminate traps for the unwary in existing and future easements – eliminate termination clauses based on failure to pay administrative fee; relocation clauses.
- Allow RMP to obtain future easements on a perpetual basis for payment of a surcharge on the easement schedule.

Lessons Learned

- There was a failure of internal communication between development and legal groups. Disagreement on valuation issues was not communicated effectively internally.
- Need for better Board training on adjudications. Action item is to provide adjudication roadmap/rules at the outset of each adjudication.
- Board time limitations may be a problem even if a hearing officer is appointed.
- SITLA does not have internal resources for large-scale, discovery-based litigation with large corporations; jury trials – will incur significant costs for outside counsel.