

# PIONEERING NEW TRAILS IN UTILITIES REGULATION



## 38<sup>TH</sup> ANNUAL NATIONAL CONFERENCE OF REGULATORY ATTORNEYS

PARK CITY MARRIOTT – PARK CITY, UTAH

JUNE 14-17, 2015

*Approved by Utah State Bar for 17 CLEs, including 2 hours of general ethics and 1 hour of professionalism and civility ethics*

### **SUNDAY, JUNE 14, 2015**

12:00 – 5:30 p.m.	Registration – Main Lobby
3:00 – 4:00 p.m.	NCRA Alumni Association Meeting – Executive Boardroom
4:00 – 5:00 p.m.	Subcommittee on Law Meeting – Executive Boardroom
5:00 – 6:00 p.m.	Subcommittee on ALJ Meeting – Executive Boardroom
6:00 – 8:00 p.m.	Cocktail Reception - Hotel Bar and Patio

**MONDAY, JUNE 15, 2015**

8:00 – 8:30 a.m. Breakfast – Prospector 3-4

8:30 – 8:45 a.m. Introduction to Conference, Welcoming Remarks

Jordan White, President, 2015 NCRA  
Legal Counsel, Public Service Commission of Utah

Invitation to the 39<sup>th</sup> Annual NCRA Conference in Florida  
(location TBA).

Lee Eng Tan, Senior Attorney, Office of General Counsel,  
Florida Public Service Commission

8:45 – 9:45 a.m.

***SESSION I – Refocusing on the Basics: Regulation as if the  
Public Interest Still Mattered***

**Presenter:** Dr. Ken Rose, Independent Consultant and Senior  
Fellow with the Institute of Public Utilities

Utility regulation has seen many reforms in the last couple of decades. Much of this has been driven by technological or public policy changes—and regulation has adapted. Other reforms have been done because of alleged failures of regulation. But “market failures” that have resulted are usually treated with more market mechanisms. An example is how the RTOs have adapted to challenges—developing even more complex market structures. States also have struggled when dealing with market problems under their jurisdiction. Often the problem is a mismatch between expectations and the realities of the industries’ basic underlying economics. How should we develop better understanding of the problems with market performance? What are other possibilities for remedies to rebalance policies in terms of a broader public interest?

*60 minutes*

9:45 – 10:00 a.m. Break

10:00 – 11:30 a.m.

***SESSION II – The Role of States in Implementing PHMSA Pipeline Safety Programs***

**Moderator:** Claudia Earls, Assistant General Counsel,  
NiSource, Division Counsel, NIPSCO

**Panelists:** Annmarie Robertson, Senior Program Manager at  
U.S. Department of Transportation, Pipeline and  
Hazardous Materials Safety Administration

Robert E. Burns, Esq., Independent Consultant;  
Retired, National Regulatory Research Institute at  
The Ohio State University

The Pipeline and Hazardous Material Safety Administration (PHMSA) is part of the United States Department of Transportation. The PHMSA's mission is to protect people and the environment from the risks inherent in transporting gas, hazardous materials, and carbon dioxide by pipeline or other modes of transportation. The goals of the PHMSA are safety, environmental stewardship, reliability, global connectivity, and preparedness and response to reduce the consequences after a pipeline or hazmat failure occurs.

The PHMSA directly administers its pipeline safety program and develops issues and enforces minimum safety regulations for interstate and intrastate pipelines. State agencies, frequently state public service/utility commissions, can voluntarily participate in the pipeline inspection and/or enforcement responsibilities of enforcing the PHMSA pipeline safety regulations. As such, the PHMSA has delegated pipeline safety inspection to numerous States and reimburses those States for a portion of their inspection program expenditures. All such State programs certify to the Secretary of the U.S. Department of Transportation that they will adopt regulations that are at least as stringent as the Federal Pipeline Safety Regulations. Many states have also adopted more stringent safety regulations in one or more areas.

The ability of States to adopt and enforce more stringent regulations can be target state-specific issues. This arrangement allows for, encourages, and relies on state pipeline programs that inherently

possess greater geographic knowledge and local expertise for inspecting and overseeing the safe operation of the majority of the nation's pipeline system. State pipeline safety inspectors have been partially funded by the federal government since the 1968 Pipeline Safety Act. State pipeline safety personnel make up more than 75% of the state and federal inspection workforce. This presentation will provide an overview of the coordination of the role of PHMSA and the State in implementing underground plant protection guidelines as well as identifying areas in which states have had more stringent regulations.

*90 minutes*

11:30 – 12:00 p.m.

***SESSION III – Washington Report***

**Presenter:** James Bradford Ramsay, General Counsel, NARUC

*30 minutes*

12:00 – 1:00 p.m.

Lunch – Patio

1:00 – 2:30 p.m.

***SESSION IV – Regulatory Issues Facing Transportation Network Companies.***

**Moderator:** Cheryl Walker Davis, Director, Office of Special Assistants, Pennsylvania Public Utility Commission

**Panelists:** Krishna Juvvadi, Senior Counsel, Uber Technologies, Inc.

Ray F. Middleman, Shareholder, Malone Middleman, PC

This session will include a discussion of, among other things: the advent of transportation network companies; the impact upon the taxi cab and limousine industries; distinctions between TNCs and traditional regulated motor carriers; the legal framework and legislative activity; the impact on traditional taxi cab and limousine holders of certificates of public convenience; enforcement considerations; insurance considerations; and public interest/safety issues.

*90 minutes*

2:30-3:15 p.m.

*SESSION V – Writing to Persuade*

**Presenter:** Gregory K. Orme, Associate Presiding Judge, Utah Court of Appeals

Drawing on his three decades of writing judicial opinions and reviewing the work of administrative agencies, Judge Gregory K. Orme of the Utah Court of Appeals will offer practical suggestions for improving and enhancing writing skills. His primary focus will be on findings of fact and conclusions of law, with some specific suggestions for maximizing the likelihood of a positive outcome following judicial review.

*45 minutes*

3:15 – 3:30 p.m.

Break

3:30 – 5:00 p.m.

*SESSION VI – Tug-of-War or “Game Over”? The Relationship of Federal and State Jurisdiction in Telecom*

**Moderator:** Lisa R. Youngers, Vice President – Federal Affairs, XO Communications

**Panelists:** Lee Eng Tan, Senior Attorney, Florida Public Service Commission

Henry Walker, Partner, Bradley Arant Boult Cummings

Andy M. Klein, Managing Attorney, Klein Law Group, PLLC

The telecommunications sector has always been governed domestically by Federal and State laws and rules. The 1934 Communications Act gave states authority over intrastate telecommunications. More recently, the 1996 Telecom Act provided for a state role in overseeing the development of local telecommunications marketplace. However, over the last few years, the FCC has been eroding state jurisdiction over telecom carriers.

Even state legislative changes have lessened the state role through deregulation of IP services. This expert panel will examine the history of the state-federal roles in telecom. Many questions will be explored, including, for example, the original 251/252 paradigm, state legislative prohibitions on the governance of VoIP and lessening state commission authority, and recent FCC orders regarding broadband that arguably increase the state role in telecom regulation. Are there lessons to gain from other industries such as energy? Where does this jurisdictional tension leave the future of telecom policy?

*90 minutes*

6:00 p.m.

Conference Banquet—Grub Steak Restaurant

<http://grubsteakrestuarant.com/>

*Google walking directions are on the last page of the agenda.*

**TUESDAY, JUNE 16, 2015**

7:30 – 8:00 a.m. Breakfast – Prospector 3-4

8:00 –9:00 a.m. *SESSION VII – Clean Power Plan Overview*

**Presenters:** Kate Konschnik, Director, Environmental Policy Initiative, Harvard Law School

Ari Peskoe, Energy Fellow, Environmental Policy Initiative, Harvard Law School

In this session, we will review the statutory authority, brief history and timing of the use of Section 111(d) of the Clean Air Act. We will provide an overview of the general architecture of the proposed rule, and discuss the additional policy choices EPA will have to make when it finalizes the Clean Power Plan. EPA left a number of design details undecided in the proposal; moreover, the publication of a Notice of Data Availability on the rule in October 2014 signaled an agency decision to revisit other parts of the plan. We will also present resources and steps states can take now whether they support or oppose the proposal, to maintain viable compliance paths for an eventual requirement to limit GHGs from the power sector.

*60 minutes*

9:00 –10:00 a.m. *SESSION VIII – Constitutional Limits to State Electricity Regulation*

**Presenters:** Ari Peskoe, Energy Fellow, Environmental Policy Initiative, Harvard Law School

Kate Konschnik, Director, Environmental Policy Initiative, Harvard Law School

In this session, we will discuss recent controversies surrounding the constitutionality of state electricity policies. Since 2008, more than twenty lawsuits have been filed in federal and state courts and before PUCs on the grounds that a state policy violates the federal Constitution’s dormant Commerce Clause or Supremacy Clause. In the electricity context, the Supremacy Clause challenges argue that the Federal Power Act preempts state action. We will review some of these cases, including a couple that challenged PUC orders, and

note their geographic distribution, themes, and outcomes. We will also suggest how states can design policies to avoid these constitutional issues, and apply those recommendations to 111(d) planning.

*60 minutes*

10:00 – 10:10 a.m.

Break

10:10 a.m. – 11:30 a.m.

***SESSION IX – EIM: Prospects for Market Expansion and Customer Benefits in the West***

**Moderator:** Sarah E. Edmonds, Vice President and General Counsel, PacifiCorp Transmission

**Panelists:** Don Fuller, Director of Strategic Alliances, California Independent System Operator

Josh Jacobs, Director Load Serving Operations, Puget Sound Energy

Lauren Rosenblatt, Senior Counsel, NV Energy

The Energy Imbalance Market (EIM) administered by the California ISO commenced operation in November 2014 with PacifiCorp as its first participant. With the ISO EIM currently fully operational across 6 states, the costs and benefits of EIM can now be viewed from a real operational perspective and will continue to grow. NV Energy has announced its intent to enter the EIM and is on track for implementation in October 2015. Other utilities in the west such as Puget Sound Energy and Arizona Public Service have also taken definitive steps to enter the EIM. The panel will discuss how the EIM works, the process, benefits and challenges associated with implementation, efforts to form an independent governance structure, and a look at the future growth trajectory of EIM, including PacifiCorp’s recent announcement that it plans to study the benefits of full integration into the ISO.

*80 minutes*

11:30 –12:15 p.m.

***SESSION X – What Every New Regulatory Lawyer Should Know; It's Not Just Regulatory Law***

**Presenters:** Henry Walker, Partner, Bradley Arant Boult Cummings

Christopher C. Kempley, Attorney Advisor, Office of General Counsel, Federal Energy Regulatory Commission

Susan Miller, Clean Energy Attorney, Earthjustice

Diane Munns, Senior Director, Smart Power Collaboration, Environmental Defense Fund

Four, former general counsels of state utility commissions will lead a candid discussion of why being a staff attorney at a state commission is a uniquely challenging job and not about what you learned in law school. Henry Walker, Chris Kempley, Susan Miller and Diane Munns (Tennessee, Arizona, Maryland and Iowa) will talk about dealing with utility lobbyists, legislators, commissioners, news reporters and even general counsels. This free-ranging discussion is intended to involve the audience in considering why legal issues at a utility commission are often influenced by non-legal considerations and how a staff attorney can learn to identify and deflect them—or turn them into assets. We will emphasize the importance of identifying your client (it's not always who you think), learning the political landscape, and building your own network or friends and allies, both inside and outside the commission to help you get things done and, more importantly, to advise you on those hard decisions that every staff attorney, sooner or later, will face.

*45 minutes*

12:15 p.m.

Box Lunch – Prospector 3-4

12:15-5:00 p.m.

Breakout Sessions: Park City Historic Walking Tour (Meet at Park City Museum 2:00 p.m. See walking/transit instructions at end of agenda). Additional ideas for excursions for you to do on your own will be provided.

**WEDNESDAY, JUNE 17, 2015**

7:30 – 8:00 a.m. Breakfast – Prospector 3-4

8:00 – 10:00 a.m. *SESSION XI – Sam Seedy Wasn't Thinking (An Ethics Saga)*

**Presenters:** Eve Moran, Former Administrative Law Judge,  
Illinois Commerce Commission

Linda Smith, Professor of Law and Clinical  
Program Director, S.J. Quinney College of Law,  
University of Utah

Sam Seedy grew up in a small Midwestern town wanting to be Perry Mason. He was well on his way (having graduated first in his law school class). Charmed by the bright lights and its fast pace of city life, Sam moved to Nirvana City and began to build a law practice. For years, clients flocked to this likable and competent lawyer. But, it all began to change after Sam lost his copy of the Rules of Professional Conduct.

A series of fictional skits will show us how Sam fell into a number of ethical blunders that incurred the displeasure of the courts, state commissions and disciplinary agency, alienated his clients and sorely disappointed his friends and colleagues. It seems certain, however, that with the assistance of a distinguished ethics expert, and by tapping into the power of thinking, Sam will come to a happy ending.

*120 minutes*

10:00 – 11:00 a.m.

***SESSION XII – Interrupt Unconscious Bias: Pause Before You Act***

**Presenters:** Deloras D. Jones, PhD, NiSource Manager,  
Inclusion and Diversity

Eve Moran, Former Administrative Law Judge,  
Illinois Commerce Commission

Snap...just that quickly a decision is made based on the attitudes and assumptions we hold. Can appearance, language, economic status, race, gender or sexual orientation impact your approach or the outcome of a case? Unconscious bias influences our perceptions of others and creeps into our daily decision making. Many lawyers know little of hidden bias and thus cannot counter its harmful effects. We will define unconscious bias, illustrate how it occurs and provide actions to help "pause" hidden bias.

*60 minutes*

11:00 a.m. – 11:10 a.m.

Break

11:10 a.m. – 12:15 p.m.

***SESSION XIII – Water—Good to the Last Drop***

**Moderator:** Cheryl Walker Davis, Director, Office of Special  
Assistants, Pennsylvania Public Utility Commission

**Panelists:** Susan Simms Marsh, Corporate Counsel, American  
Water Company

Representative from California Public Utilities  
Commission, *invited*

This session will address the legal and regulatory import of current and emerging issues of significance, including but not limited to: the Water Energy Nexus – The California Drought and its Impact on Energy Production; the EPA’s Clean Water Rule – Redefining the Waters of the United States; Customer Education and Notification – The Use of Social Media in the Water Industry; Cybersecurity and Best Practices.

*65 minutes*

12:15 – 1:15 p.m.

Lunch – Patio

1:15 – 2:45 p.m.

***SESSION XIV – Regulatory Attorney 101: Legislative Bill Drafting***

**Presenters:** Gladys M. Brown, Chairman, Pennsylvania Public Utility Commission

John R. Evans, Pennsylvania Small Business Advocate

This session will provide an overview of the legislative process, and how an actual public utility issue results in a bill that becomes law; the role of the PUC in this process; pertinent considerations in the actual drafting process; the significance of documents that are created during the process (amended versions of the bill; committee reports; Senate and House Journals of debates and comments; the final version, after the bill becomes law; and the preamble or other information regarding legislative intent).

*90 minutes*

2:45 – 4:00 p.m.

***SESSION XV – Ensuring Equitable Access to Clean Energy***

**Moderator:** Susan Miller, Clean Energy Attorney, Earthjustice

**Panelist:** Karl R. Rábago, Executive Director, Pace Energy and Climate Center

Electric utility restructuring in the 1990s promised broad access to a wide range of innovative and affordable electric service and technology options. Today, most utilities still retain a monopoly at least at the distribution edge of the system and are using that monopoly to limit consumer choice. Many utilities are increasing fixed charges, reducing clean energy service options, proposing charges on clean energy options, and trying to eliminate or curtail net metering. The new energy economy and how we design, structure, implement, and evaluate it has significant equity implications. Currently, people who are most impacted by polluting electricity producing industries and practices have the least influence over who is making decisions and what decisions

are made regarding these polluting industries and practices. The time has come to complete the process of sector transformation. As we build the new energy economy, it must be built on principles and practices of energy democracy that prioritize significantly increasing energy efficiency and savings, as well as production of energy through clean energy. This session will analyze the current energy landscape, discuss recommendations on how we can advance an equity based energy platform going forward, and offer examples of promising practices where communities, utilities, and organizations are already making strides in advancing energy democracy.

**Panelist:** Jacqueline Patterson, NAACP Director  
Environmental and Climate Justice Program

The new energy economy and how we design, structure, implement, and evaluate it has significant equity implications. Currently, people who are most impacted by polluting electricity producing industries and practices have the least influence over who is making decisions and what decisions are made regarding these polluting industries and practices. Low-income communities across the board pay a high proportion of their income on energy. Elderly persons pay the highest proportion of their often fixed incomes on energy than any other age group. African Americans pay the highest proportion of their incomes on energy than any other racial group. An estimated 68% of African Americans live within 30 miles of a coal fired power plant. Low-income communities are more likely to live next to coal plants and suffer the ill health effects to exposure and also more likely to have electricity shut offs thereby depriving them of essential services and too often resulting in dangerous circumstances through alternative heating efforts, for example. Many indigenous communities, for example, in Arizona and New Mexico, are similarly situated adjacent to polluting coal plants, oil refineries, etc., but are also most likely not to have electricity. As we build the new energy economy, it must be built on principles and practices of energy democracy that prioritize significantly increasing energy efficiency and savings, as well as production of energy through clean energy while at the same time cultivating leadership and ownership and jobs in low-income communities and communities of color. This presentation will share an equity analysis of the

current energy landscape, recommendations of how we can advance an equity-based energy platform going forward, and examples of promising practices where communities, utilities, and organizations are already making strides in advancing energy democracy.

**Panelist:** Rebecca Harsh Knox, EEI Director of Retail Energy Policy

As the nation's interest in renewable energy grows, assuring that everyone has access to clean energy at affordable prices is becoming increasingly important. Both solar and wind are an important and growing segment of our nation's fuel mix and will play an even more important role in the future. While wind energy increased significantly over the past decade, solar power is currently the fastest growing renewable energy resource. Additions of new solar capacity have grown at an average rate of 82 percent per year from 2010-2014. In 2013 and 2014, solar power added more new capacity to the U.S. power system than wind.

To meet the growing desire for renewable energy, utilities are responding by offering customers a number of options including: large-scale wind and solar; community solar projects and community partnerships; and residential rooftop solar. Utilities are also offering financing, green power programs, and other options to customers.

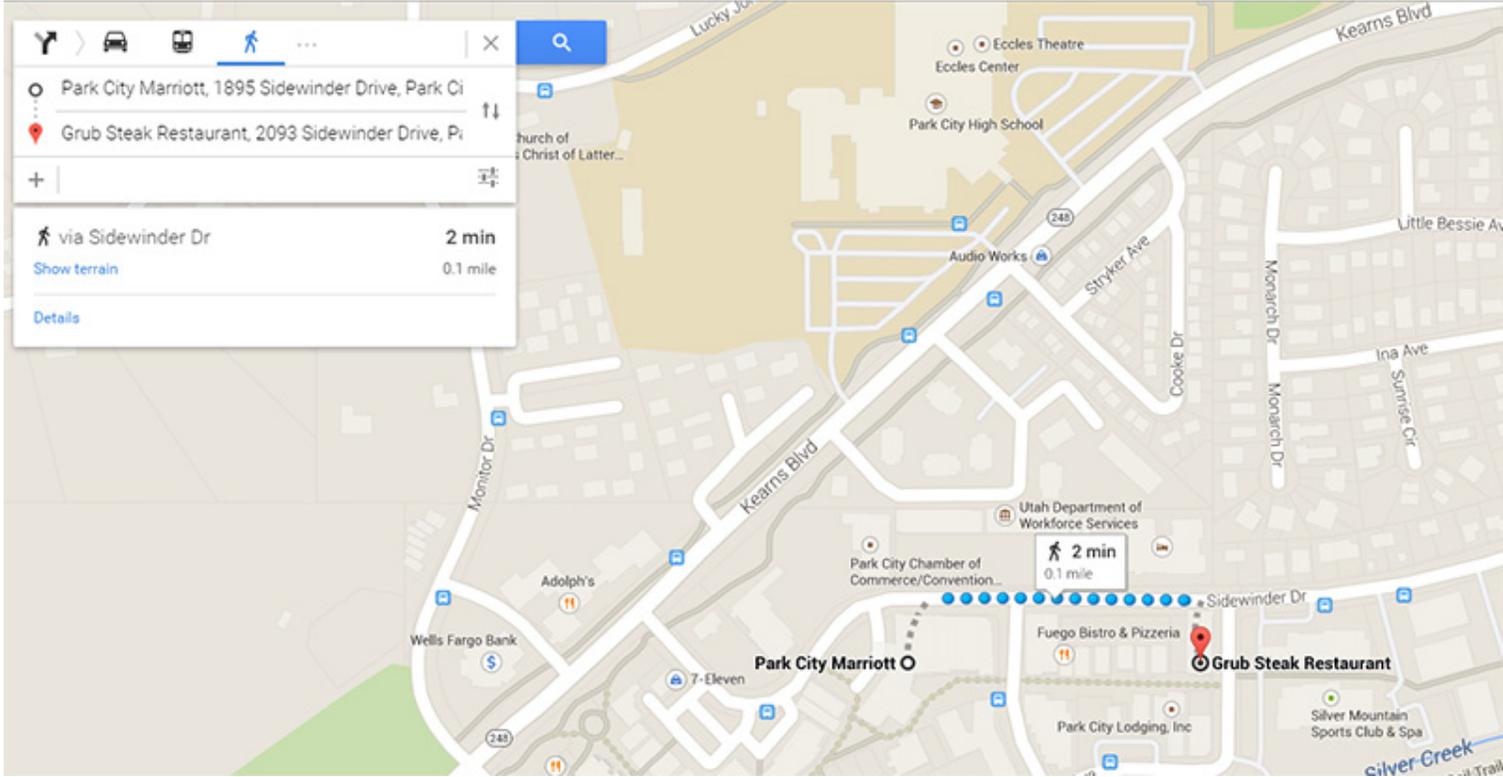
This discussion will focus on some specific examples of utility solar energy projects – large scale, community, and rooftop – and demonstrate how these projects make renewable energy available to all customers while keeping electricity safe, reliable, increasingly clean, and affordable to all customers.

*75 minutes*

4:00

*Closing Remarks – Jordan White, 2015 NCRA President*

# Grub Steak Restaurant



# Transit Map to Park City Museum (PC Walking Tour)

The screenshot displays a Google Maps interface with transit directions. The browser address bar shows the URL: <https://www.google.com/maps/dir/Park+City+Marriott,+1895+Sidewinder+Drive,+Park+City,+UT+84060/Park+City+Museum,+528+Main+Street>. The transit directions panel on the left provides the following details:

- Transit directions** (21 min total)
- 1:06 PM - 1:27 PM**
- 1:06 PM** from Park City Marriott Bus Stop
- Free** (2 min walking to stop)
- 1:06 PM** **Park City Marriott**  
1895 Sidewinder Drive, Park City, UT 84060
- 1:06 PM** **Park City Marriott Bus Stop**
- 1** towards Main St. and Deer Valley via Park City Mtn. Resort  
19 min (28 stops) · Stop ID: 156020
- 1:25 PM** **Park City Old Town Transit Center**
- Walk**  
About 2 min, 0.1 mi
- 1:27 PM** **Park City Museum**  
528 Main Street, Park City, UT 84060

Additional information in the panel includes:

- Cost:** Free
- Tickets and information:** Park City Transit · 1 435 615-5301
- These directions are for planning purposes only. You may find that construction projects, traffic, weather, or other events may cause conditions to differ from the map results, and you should plan your route accordingly. You must obey all signs or notices regarding your route.

The map on the right shows a red route starting at Park City Marriott, going to the Park City Marriott Bus Stop, then following a transit line (indicated by a red line with a bus icon) through Park City Old Town Transit Center to Park City Museum. The map includes labels for various streets, schools (Treasure Mountain Junior High School, Park City High School), and the Park City Ice Arena and Sports Complex. A yellow line represents the I-76 highway. The bottom right of the map shows a scale of 2000 feet and a 'Sign in' button.

# Walking Map to Park City Museum (PC Walking Tour)

<https://www.google.com/maps/dir/Park+City+Marriott,+1895+Sidewinder+Drive,+Park+City,+UT+84060/Park+City+Museum,+528+Main+Street>

Apps Full Screen Calc... HealthEquity Lo... Color Combinat... Customer - Login Other bookmarks

**Walking directions**

via Main St **38 min**  
Show terrain 1.7 miles

Use caution - may involve errors or sections not suited for walking

**Park City Marriott**  
1895 Sidewinder Drive, Park City, UT 84060

- ↑ Head west on Sidewinder Dr toward Prospector Square Walkway  
0.2 mi
- ↶ Turn left toward Bonanza Dr  
0.1 mi
- ↶ Turn left onto Bonanza Dr  
0.2 mi
- ↶ Turn left onto Historic Union Pacific Rail Trail  
69 ft
- ↷ Turn right  
233 ft
- Take the pedestrian tunnel  
0.8 mi
- ↷ Turn right toward Main St  
236 ft
- ↶ Turn left toward Main St  
20 ft
- ↷ Turn right onto Main St  
Destination will be on the left  
0.3 mi

**Park City Museum**  
528 Main Street, Park City, UT 84060

Map data ©2015 Google Terms Privacy Report a problem 1000 ft