

COMMISSIONERS PROCEEDINGS 1

BOARD OF COUNTY COMMISSIONERS

Minutes of Meeting
September 27, 2022

As reflected in posted agenda:

To participate in the Citizen's Comment Period you must connect via Zoom Conferencing Access Information: <https://us02web.zoom.us/j/81511232014> If you cannot connect via Zoom, you may submit written public comment to morgancountybcc@co.morgan.co.us by email by 4 p.m. on Monday September 26, 2022.

To participate in Public Hearings you may connect via Zoom Conferencing Access Information: <https://us02web.zoom.us/j/81511232014> to listen via phone, please dial: 1-312-626-6799, Meeting ID: 815 1123 2014

To watch and/or listen to the meeting but not participate, you may do so by connecting via Zoom Conferencing Access Information: <https://us02web.zoom.us/j/81511232014> or to listen via phone, please dial: 1-312-626-6799, Meeting ID: 815 1123 2014

The Board of Morgan County Commissioners met Tuesday, September 27, 2022 at 9:00 a.m. with Chairman Jon Becker, Commissioner Mark Arndt and Commissioner Gordon Westhoff in attendance. Chairman Becker asked Morgan County Commissioner Gordon Westhoff, to lead the meeting in the Pledge of Allegiance.

PUBLIC HEARING - Continued

Chairman Becker called the hearing to order at 9:02 a.m. in the Assembly Room of the Morgan County Administration Building. Present were, Chairman Jon Becker, Commissioner Mark Arndt, Commissioner Gordon Westhoff and Morgan County Planning and Zoning Administrator Nicole Hay.

Applicant: Public Service of Colorado-Xcel Energy

Supporting documents can be found at:

<https://morgancounty.colorado.gov/xcel-energy-colorados-power-pathway-project>

Description of application:

Concerning Public Service Company of Colorado's 1041 Permit Application for a Major Facility of a Public Utility to construct and operate a transmission line and proposed new substation in a portion of Colorado's Power Pathway located in Morgan County.

Ms. Hay explained that on April 6, 2022, Charlotte Bolduc, Planning Technician and I met with representatives from Xcel Energy, Tetra Tech, and Gilbert F. McNeish Attorney at Law for a preapplication conference regarding the Colorado's Power Pathway Project. After a discussion between the Board and Staff on April 26, 2022, the Board moved to waive the preliminary preapplication for the Xcel Power Pathway. The motion carried 3-0.

On June 30, 2022, Public Service Company of Colorado, a Colorado corporation doing business as Xcel Energy, submitted a 1041 Areas and Activities of State Interest Application for Colorado's Power Pathway. A waiver was also requested from the requirements of Section 3-305(2)(b)(iii) of the Morgan County Zoning Regulations, which requires property title information, due to the significant length and varied character of the corridor. The gathering and ensuring the accuracy of the required information is not readily achievable.

On July 13, 2022, Xcel Energy was sent a letter informing Xcel Energy of the determination of a complete application and the granting of a partial waiver requesting a supplement to the application identifying active irrigation ditches.

A Board of County Commissioners hearing was held on September 14, 2022, where the Board heard from XCEL and the public. The public hearing was continued until September 27, 2022 in order for County Staff and Xcel to discuss and bring back recommendations regarding concerns with wells, pole height, pole alignment with farming activities, and road impacts.

Included below are revised recommended conditions, which include conditions addressing the concerns related to wells, pole height, pole alignment, and road impacts. Each of these concerns has been discussed with Xcel representatives and staff's recommended resolutions are explained below.

Outstanding Concerns

Wells

A member of the public expressed concern that transmission lines, if directly above existing wells or the radius within which existing wells may be redrilled under their permits, would interfere with or prevent work on existing wells or their redrilling. This is because drilling equipment may not be able to be operated under the lines and some companies are unwilling to operate under the lines even if their equipment can be operated. Xcel has responded that there are several solutions to this issue. Xcel can install higher towers so there is more clearance for drilling equipment. This is one reason why Xcel has requested a maximum height of 190 feet. Xcel is also able to make micro adjustments to the alignment of the lines so that they are not above existing wells or the area within which they may redrilled. Xcel is also able to pay for obtaining new well permits and redrilling new wells, when

2 COMMISSIONERS PROCEEDINGS

appropriate. Finally, Xcel would be required to compensate landowners for any interference with wells and their redrilling if no other solution is available. Consequently, Xcel is of the position that no special condition is required to address the well issue.

Staff does not disagree with the resolutions that Xcel has available to address this issue for landowners. Legally, Xcel may not interfere with landowner wells and their redrilling rights without providing a solution agreeable to the landowner or compensating the landowner for the interference. The Commissioners can accept that the well issue will be resolved by Xcel as set forth above, or the Commissioners may impose a condition governing Xcel's interference with wells. A potential condition would be as follows:

“All transmission lines and related facilities shall be offset from existing wells by a minimum of 50 feet or the legally permissible redrilling radius, whichever is greater, unless Xcel obtains the necessary real property rights permitting Xcel to do otherwise.”

Pole Height

Planning staff had recommended a condition requiring Xcel to obtain advance permission prior to installing a pole in excess of 140 feet out of a concern that the taller poles had greater visual impacts. Xcel's position is that it will likely need to install poles in some locations that exceed the typical 140 feet in height up to 190 feet. This will be necessary in some locations due to topographic considerations, pole spacing (to account for line sag resulting from greater distance between poles), and the need to accommodate farming equipment and well drilling equipment. Because higher poles cost more money, Xcel will not be using them when unnecessary. Xcel does not believe obtaining prior approval from the County Planning Department is necessary and Xcel is of the position that it is an unnecessary burden on both Xcel and the County Planning Department. Rather, Xcel has proposed providing the County Planning Department with notice of the locations where poles in excess of 140 feet will be located along with an explanation of the reason for the increased height.

The Planning Department supports Xcel's proposal. The Planning Department is satisfied that the taller poles will only be installed when necessary to accommodate a reasonable need.

Pole Alignment

During the public hearing, concerns were expressed about the alignment of transmission line poles in relation to existing transmission lines. The concern was that if the Xcel lines paralleled existing transmission lines, but not aligned properly with the existing poles, it could be difficult for farming equipment to maneuver around the poles, rendering the land below them inaccessible for farming.

Xcel has responded that its line will not parallel any existing transmission lines in the County. Rather, it will cross an existing line at approximately 90 degrees. Xcel has represented that it works with landowners on pole alignment and will do so in Morgan County. Xcel has informed staff that it is in Xcel's interest to ensure that farmers are able to maneuver their equipment around the poles as hitting Xcel poles with farm equipment can damage the poles or the equipment and could be hazardous. Moreover, Xcel has informed staff that pole alignment needs and requests of landowners differ depending on a variety of factors. When Xcel acquires the rights to landowner property, it works with landowners on pole alignment and therefore, Xcel has requested that no condition be imposed as it is not necessary and every situation requires a different approach.

Staff does not believe pole alignment will be a significant issue in the County and therefore supports Xcel's request to not impose a condition. However, if the Commissioners believe a condition is necessary, the following is an option:

“PSCo shall use reasonable efforts to minimize the impacts to the use of farming equipment and agricultural operations when selecting pole placements.”

Road Impacts

The Commissioners expressed concern over the impact of construction traffic on County roads. A draft roadway agreement has been prepared and provided to Xcel for its review, which is designed to address these concerns. It is designed to mitigate the damage to County roads, minimize interruptions to the traveling public, and compensate the County for the costs of repairing any damage to the County roads and any increased maintenance costs resulting from the project. In short, it requires Xcel to propose a roadway mitigation plan to limit damage to the roads and address traffic and safety concerns. It requires Xcel to prepare a baseline inventory of the roads to verify their condition prior to Xcel's use. It requires Xcel to repair any damage resulting from Xcel's use. Finally, it requires Xcel to provide financial security to ensure Xcel complies with the terms of the road use agreement.

Staff believes that this will adequately address County roadway issues resulting from the project.

Revised Recommended Conditions

The following revised conditions are recommended if the 1041 Areas and Activities of State Interest Application for Colorado's Power Pathway transmission lines and substation (Canal Crossing Substation) is approved:

1. Prior to beginning construction on each parcel, all necessary land use, environmental, and construction permits, approvals and authorizations for that work will be obtained as required and may include, but are not limited to, land use permits, right-of-way (ROW) permits, road use agreements, access permits, oversize/overweight permits, grading permits, and stormwater permits.
2. Any equipment additions at the Pawnee substation which are included in the Power Pathway project are not approved as part of this 1041 permit. Xcel is required to obtain any applicable land use approval for any

COMMISSIONERS PROCEEDINGS 3

equipment additions at the Pawnee substation.

3. No poles shall exceed a height of 190 feet. Xcel shall notify the County Planning Administrator of the location for poles that exceed 190 feet in height with an explanation of the reason for the excess height.
4. The Canal Crossing Substation shall be enclosed by a security fence at least 10 feet tall and be secured at all times.
5. Prior the commencement of construction in Morgan County, Xcel will enter into a road use agreement for the use of any public road during construction which shall include the following:
 - a. A map showing which County roads will be used during construction.
 - b. A pre-construction baseline survey inventory of County roads to be used during construction to document their pre-construction condition, obtained by and paid for by the applicant.
 - c. A mitigation plan to address traffic congestion, control, and potential impacts to County roads to be used during construction. The mitigation plan shall also include any dust mitigation activities.
 - d. A requirement that the applicant return any County roads to their pre-construction baseline condition.
 - e. A requirement to post financial security in an amount not less than one hundred fifteen percent (115%) of the estimated cost to complete all road restoration, in the form of an irrevocable letter of credit or cash escrow. Cost estimates shall be provided by a licensed Colorado engineer. Upon preliminary acceptance of the restored public road, the County shall release all but fifteen percent (15%) of total actual costs of restoration of the public roads, so long as Xcel is not in default of any provision of the public improvements agreement. The County shall inspect the restored roads and Xcel shall pay to the County the cost incurred by the County in conducting such inspections. These costs shall be due and payable upon demand of the County. Xcel shall be responsible for correcting or properly completing the restoration.
 - f. The residual fifteen percent (15%) retained by the County shall act as security for Xcel's guarantee that the restoration remains free of defect during a two-year warranty period. Xcel may at any time during the preliminary acceptance or warranty period offer to provide a substitute or supplemental form of financial security to that security as originally posted with and/or retained by the County. The County may accept substitute or supplemental forms of security in its sole discretion.
6. Prior to commencement of construction on any parcel, Xcel must obtain all necessary permissions from landowners to use private roads or develop access roads on any private property. No private access roads, new or currently in use, shall become public rights of way unless approved and accepted by the Board of County Commissioners.
7. The County will require temporary use permits for all temporary construction areas, any staging or laydown areas, or other temporary areas for construction activities ("Temporary Areas"). Xcel is required to obtain a temporary use permits for all Temporary Areas prior to placing any equipment, materials or any other items associated with the Pathway Project in the temporary construction area. To obtain a temporary use permit, at a minimum, Xcel must provide a map showing the Temporary Area by size (acreage and perimeter), a list of materials and equipment to be stored on the Temporary Areas, activities within the area (e.g., grading, storage, etc.), the length of time the temporary construction or staging or laydown areas will be in use and in the case of concrete batch plants, a copy of the APEN issued by the Colorado Department of Public Health and Environment. Temporary use permits issued for Temporary Areas may not be issued for a period longer than one year. There is no limit on the number renewals for the temporary use permits; however, Xcel must notify the County at least thirty (30) days prior to the end of a permit of its intent to renew. It shall be a condition of every temporary use permit issued under this provision that all equipment and materials must be removed from the Temporary Areas and the area returned to a condition similar to its condition prior to construction, in accordance with paragraph 10 below. No permanent structures may remain in the Temporary Areas unless approved by the County pursuant to the applicable Morgan County Zoning Regulations.
8. The temporary use permit previously granted to Xcel at the northeast corner of County Road F and County Road 18 and due to expire shall become part of this 1041 permit and subject to the provision in paragraph 7 above.

4 COMMISSIONERS PROCEEDINGS

9. Prior to use of any helicopters in connection with the initial construction of the Power Pathway project, Xcel shall provide at least thirty (30) days' written notice to the County Planning Administrator of the location of the helicopter fly yard and dates and hours of helicopter use. Xcel shall comply with all FAA requirements, including but not limited to, notice of evacuation to residences.
10. Within one year from completion of construction of the project, all Temporary Areas and transmission lines rights of way, not needed for Xcel's on-going operations in Morgan County or not used for crop production, shall be reclaimed and/or reseeded as soon as practicable, unless the County Planning Administrator grants an extension for demonstrated good cause.
11. Construction occurring within ¼ quarter mile of any residence shall not commence earlier than 7 a.m.
12. Xcel shall prevent the existence of any nuisances by way of its construction activities. All trash, litter, construction waste and any potentially hazardous materials shall be disposed of properly off-site. If the County determines that a nuisance exists and the nuisance is not abated or an abatement plan is not submitted to the satisfaction of the County after notice to Xcel and an opportunity for abatement, the County may, upon thirty (30) days' notice under this Agreement, draw upon the Performance Guarantee to pay the cost and expenses of abating the nuisance. The decision to draw on the Performance Guarantee shall be within the sole discretion of the County.
13. Xcel shall comply with all applicable law and regulations related to safety and emergency management during construction and on-going operations.
14. A drainage plan for the substation must be submitted for County review prior to the commencement of construction of the substation.
15. Xcel shall be responsible for the payment of all costs and fees incurred by the County associated with this Permit. The County shall invoice Xcel for costs and fees and payment will be due by Xcel within thirty (30) days of the date of the invoice. Failure to pay may result in enforcement actions by the County.

Potential Additional Conditions

16. All transmission lines and related facilities shall be offset from existing wells by a minimum of 50 feet or the legally permissible redrilling radius, whichever is greater, unless Xcel obtains the necessary real property rights permitting Xcel to do otherwise.
17. PSCo shall use reasonable efforts to minimize the impacts to the use of farming equipment and agricultural operations when selecting pole placements.

Commissioner Arndt asked Ms. Hay about the development of new road access and if driveway permits would be needed.

Ms. Hay stated that she believed so.

County Attorney, Kathryn Sellars explained that the road use agreement Jeff Parker made a few changes and it has been provided to Xcel.

Commissioner Arndt asked Ms. Sellars about the 10 foot fence that Xcel proposed. Ms. Sellars stated that it fits the County regulations.

Commissioner Arndt asked about the need for specific haul routes for the construction to minimize impact.

At this time, Chairman Becker asked the applicant if there is anything they would like to add to the application.

Rita Ruderman, stated most items were covered by Director Hay. She stated that Xcel was mistaken about their lines not paralleling other power lines. She stated that they were working with the existing landowner to correct the issue.

She stated that the previous concern about well placement from a landowner that the proposed lines do not cross the individual's property. She continued on to state that in their previous experience, wells are taken on a case by case basis. They will work to minimize the impact of the wells and work with the landowners. They will continue to work with landowners to mitigate their concerns and that the proposed fifty-foot setback was not necessary.

She stated that Xcel was amenable to the pole heights, haul routes, and alignment of pole placement on citizen's property. They will give the notice to the Morgan County Planning Department when they are going to use 190 foot poles as well as the reason. They have received the road agreement and will work with the County on their concerns.

Ms. Ruderman stated that she understood the concern and that when it's feasible they will work with landowners and are invested with these relationships with landowners and will work with them and that they need the flexibility to work with landowners.

COMMISSIONERS PROCEEDINGS 5

Commissioner Westhoff stated that he appreciates Xcel working with landowners.

Commissioner Arndt asked the board if they were satisfied with the promise of “reasonable concerns” by Xcel. He stated his concern about changes in staff and the changing of standards in the future that may have an effect on landowners.

Ms. Ruderman stated that she hopes that the language that exists would provide some peace of mind that they will work with the individual landowners on what exactly they will need.

Ms. Sellars stated that the existing proposal would take into account the landowners arrangements with Xcel or Xcel shall work with the fifty foot limit or legal limit, whichever is greater.

Ms. Ruderman stated that an issue is only for wells and doesn’t state water wells separately and had additional proposed language regarding the separation of the wells for more precise meaning.

Josh Peterson Transmission Line Engineer for Xcel explained the OSHA standards for transmission lines is fifteen feet from the center of the transmission pole, and then twenty feet from that is a zone that is unable to worked in. He then showed the commissioners a drawing explaining what he is suggesting. There was a discussion about the proper measurements to meet the OSHA requirements and the county’s concerns.

Commissioner Becker asked how many wells were actually being crossed by the proposed project.

Ms. Ruderman stated that there were three so far.

Commissioner Westhoff asked if someone is wanting to drill a well would they have to contact Xcel when the proposed lines were nearby.

Ms. Ruderman stated that standard procedure is to have Xcel patrolmen there to make sure that safety rules are followed when work is being performed closer than the proposed fifty feet.

Commissioner Arndt further elaborated on his concerns about the proposed distance from the power lines.

Chairman Becker then opened the public comment period.

Chairman Becker asked if there was anyone in the audience present wished to make public comment in favor of the application.

Dan Danford of Ft. Morgan explained that he has spoken with Xcel and that he’s satisfied with their proposals. He did state that his concerns about the reclamation in sandy areas takes longer than the proposed one year and asked how long would Xcel work with restoring the property back to the original state.

Chairman Becker asked if there was anyone on online who wished to make public comment in favor of the application, noting no public comment online in favor.

Chairman Becker asked if there was anyone in the audience who wished to make public comment in opposition of the application, noting no public comment opposed.

Chairman Becker asked if there was anyone online who wished to make public comment in opposition of the application, noting no public comment online opposed.

At this time, Chairman Becker moved into discussion and decision.

Chairman Becker asked Xcel to comment on the previous comment from Mr. Danford.

Ms. Ruderman stated that within the existing proposal that they will work with property owners to reclaim the property to its previous quality. She stated that this negotiation takes place during the easement agreement process.

Ms. Sellers stated that the proposed condition for the road reclamation would come before the commissioners once it was negotiated between the parties. This would involve notice of roads that would be used and the mitigation that would be used as well as what maintenance that would be performed by Xcel to bring conditions to the previous condition. This would be Xcel’s duty, not Morgan County’s.

Commissioner Arndt asked about condition ten and stated that it was vague.

Ms. Sellers stated that it was flexible and is difficult to be more specific with the variety of issues that may present themselves and that it was necessary to keep open communication between the County and Xcel.

Chairman Becker stated the general agreement between the parties except for the issue of wells. He also stated that more research is needed as well as that to remember that the landowners can negotiate with Xcel and that they simply are trying to find a starting point for that negotiation.

Commissioner Arndt stated that he is still concerned about the well mitigation distance.

6 COMMISSIONERS PROCEEDINGS

Ms. Sellers stated that the distance of the well can be researched and that the public hearing portion can be closed. She also suggested that the center pole was an easier way to measure the distance than the outside of the lines. She also further explained that the county reclamation is the last resort after the waste water agreements and agreements with the landowners.

Chairman Becker asked Mr. Peterson to elaborate on the distance and what happens if someone needs to be closer.

Mr. Peterson stated that they would provide a patrolman to make sure that the landowner, etc. is working safely and within OSHA limits.

Ms Ruderman stated that there would potentially a small charge for the landowner for this service.

Julie Stencel, Council for Xcel stated that all of the concerns the County has would be negotiated and obtained through the easements and land rights that they would have purchased from the lienholders. She stated that the easement is at least seventy feet on either side of the poles (or 150 feet for the total easement) and that the negotiation would be outside of that easement.

Commissioner Arndt asked Director Hay about the pole height. She stated that they are approved up to 190 feet without receiving prior approval.

Commissioner Arndt moved that the meeting be continued until October 4th and to approve the proposal and staff should provide a resolution concerning and that the county attorney should provide further well guidance and that a road maintenance agreement be part of the resolution. He further moved to close public comment. Commissioner Westhoff seconded the motion. The motion passed 3-0.

Being no further business the meeting was then adjourned at 10:27 a.m.

Respectfully Submitted,

Kevin Strauch
Clerk to the Board

(Minutes ratified October 4, 2022)

**THE BOARD OF COUNTY COMMISSIONERS
MORGAN COUNTY, COLORADO**

s/Jon J. Becker
Jon J. Becker, Chairman

s/Gordon H. Westhoff
Gordon Westhoff, Commissioner

s/Mark A. Arndt
Mark A. Arndt, Commissioner

(SEAL)
ATTEST:
s/ Kevin Strauch
Kevin Strauch