

AGENDA
MORGAN COUNTY BOARD OF COUNTY COMMISSIONERS
ASSEMBLY ROOM, ADMINISTRATION BUILDING
231 ENSIGN STREET, FORT MORGAN, CO 80701
TUESDAY, SEPTEMBER 27, 2022

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

9:00 A.M.

A. WELCOME – CALL TO ORDER

PLEDGE OF ALLEGIANCE

ROLL CALL:

Commissioner Becker
Commissioner Westhoff
Commissioner Arndt

B. PUBLIC HEARING - Continued

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.

Open for Public Comment

Close for Public Comment

Discussion and Decision

C. ADJOURNMENT

*Any meeting or event scheduled to be held at the Commissioners' Offices (218 West Kiowa Avenue, Fort Morgan, CO) will be relocated to a site with handicapped access upon request. For special assistance for the Morgan County Board of Commissioners meeting, please notify us at least 48 hours before the scheduled agenda item. Please call (970)542-3500, extension 1410, to request accommodations for any of the two locations.

Prepared By: Karla Powell, Administrative Services Manager
Agenda Posted On Thursday September 22, 2022 @ 4:00 P.M.



MORGAN COUNTY BOARD OF COMMISSIONERS
FILE SUMMARY
September 21, 2022
September 27, 2022(meeting date)
XCEL ENERGY
COLORADO'S POWER PATHWAY

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 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 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 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.
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.

Nicole Hay
Morgan County Planning Administrator