

**MORGAN COUNTY PLANNING COMMISSION  
JUNE 6, 2022 MINUTES**

The Morgan County Planning Commission met on Monday, June 6, 2022, at 7:00 p.m. in the Assembly Room of the Morgan County Administration Building. The meeting was called to order by Chairman Nathan Troudt.

Robert Pennington, Mike Bailey, Nathan Troudt, Pete Mercer, Erik Morhlang and Dave Musgrave were present. Clayton Millar was absent. Austin Flanagan, Morgan County Attorney, Nicole Hay, Planning Director, Cheryl Brindisi Planning Technician and Jenafer Santos Planning Clerk were present.

It is noted that this Planning Commission meeting for June 6, 2022 was held in person with an option to attend remotely through the Zoom platform.

**APPROVAL OF AGENDA:**

It was moved by Mike Bailey and seconded by Robert Pennington to approve the agenda as presented. Motion carried 6-0.

**APPROVAL OF MINUTES:** April 11, 2022.

It was moved by Robert Pennington and seconded by Mike Bailey to approve the April 11, 2022 minutes as presented. Pete Mercer, Erik Morhlang and Dave Musgrave abstained due to last months' absence Motion carried 4-0.

Chairman Nathan Troudt read the hearing process for tonight's meeting.

**OLD BUSINESS:**

No old business.

**NEW BUSINESS:**

Nicole Hay, Planning Administrator, read her file summary as follows:

**1.) BOARD OF COUNTY COMMISSIONERS RECRUITING CITIZENS TO SERVE ON THE PLANNING COMMISSION AND BOARD OF ADJUSTMENT.**

There are currently positions open for Planning Commission and Board of Adjustments. Individuals with interest in serving should submit a letter of interest to the Board of County Commissioners. The Commissioners will then select the new members for the committees to terms that will begin in 2022. Members of the committees will be paid a stipend for attendance at scheduled Planning Commission or Board of Adjustments meetings. Letters of Interest will be accepted until the positions are filled. You may submit your letters of interest to:

bccmorganc@co.morgan.co.us or a letter can be delivered to their office at: 218 W Kiowa, P.O. Box 596~Fort Morgan, CO 80701

There was discussion regarding filling this open PC position. Dave Musgrave mentioned that he will submit a letter to the County Commissioners wishing to be a permanent PC Member. Also, Mike Bailey stated that he is resigning from the PC committee. An effective date has not been provided officially. Nicole mentioned that this will leave the Morgan County Planning Commission short by two members. One fulltime member and one alternate member. It will be advertised in the newspaper as well as the Morgan County webpage that the Planning Commission has two vacancies to fill.

## **2.) AMENDMENTS TO THE MORGAN COUNTY ZONING REGULATIONS:**

Concerning the regulations of wind energy conversion, solar collector, and battery energy storage systems

Nicole Hay, Planning Administrator, read her file summary as follows:

**PLANNING COMMISSION  
WIND ENERGY CONVERSION, SOLAR COLLECTOR, AND BATTERY  
ENERGY STORAGE SYSTEMS REGULATIONS  
AMENDMENT SUMMARY  
June 6, 2022**

On January 4, 2022 the Board of County Commissioners adopted a moratorium on the processing of applications for wind and solar power generation or collection facilities, associated power lines and battery energy storage systems in Morgan County to allow for research to be conducted on the appropriate regulatory means for such facilities.

On May 10, 2022, draft of the regulations was produced and provided to the public, stakeholders and other interested parties for review and comment.

Included in your packets are the May 10<sup>th</sup> draft regulations with a couple of minor corrections, and a copy of the draft regulations including May 16<sup>th</sup> comments made by Duke Energy. Added later to the packets were comments by AES, May 27<sup>th</sup>, comments by NextEra, June 1<sup>st</sup>, comments by COSSA, June 3<sup>rd</sup> and comments by Xcel Energy June 6<sup>th</sup> 2022.

The following amendments are proposed to the Zoning Regulations:

Section 1.      Addition of solar collector facilities to the list of uses-by-right as accessory uses in the following zone districts and subsections:

Estate Residential Zone (ER) – §3-210  
Rural Residential Zone (RR) – §3-230  
Rural Community Residential Zone (RCR) – §3-250  
Moderate Density Residential Zone (MDR) – §3-270  
High Density Residential Zone (HDR) – §3-295  
Commercial Zone (C) – §3-315.5

Mobile Home Zone (MH) – §3-380

This change would allow property owners to install roof-mounted solar panels or small arrays on their property where such uses would be compatible with the residential natures of these zones. These are not intended to be utility scale solar farms. These uses will be subject to the regulations for accessory ground-mounted solar collectors and accessory building mounted solar collectors found in the resolution.

Section 2. Addition of building-mounted wind energy facilities (WEFs) to the list of uses-by-right as accessory uses in the following zone districts:

Agriculture Production Zone (A) – §3-170 for both parcels larger than 20 acres and parcels 20 acres or smaller

Agriculture/Agri-Business Zone (AB) – §3-190

Estate Residential Zone (ER) – §3-210

Rural Residential Zone (RR) – §3-230

Rural Community Residential Zone (RCR) – §3-250

Moderate Density Residential Zone (MDR) – §3-270

High Density Residential Zone (HDR) – §3-295

Commercial Zone (C) – §3-315.5

Light Industrial Zone (LI) – §3-335.5

Heavy Industrial (HI) – §3-355.5

Mobile Home Zone (MH) – §3-380

This change would allow property owners to install building-mounted WEF where such uses would be compatible with the residential natures of these zones. These are not intended to be utility scale wind farms. These uses will be subject to the regulations for accessory building mounted WEF found in the resolution.

Section 3. Addition of solar collector facilities (20 acres or less) to the list of conditional uses, as primary use and accessory use in the following zone districts:

Agriculture Production Zone (A) – §3-175 for both parcels 20 acres or smaller

Agriculture/Agri-Business Zone (AB) – §3-195

Light Industrial Zone (LI) – §3-340

Heavy Industrial (HI) – §3-360

This change would allow property owners to install roof-mounted solar panels or small arrays on their property where such conditional uses would be compatible with these zones. These are not intended to be utility scale solar farms. These uses will be subject to the regulations for ground-mounted solar collectors and building mounted solar collectors found in the resolution.

Section 4. Addition of solar collector facilities (more than 20 acres), ground-mounted wind energy facilities (WEFs) and battery energy storage systems (BESS) to the list of special uses, as a primary use and accessory uses in the following zone districts:

Agriculture Production Zone (A) – §3-180  
Agriculture/Agri-Business Zone (AB) – §3-200  
Light Industrial Zone (LI) – §3-345  
Heavy Industrial (HI) – §3-365

This change would allow property owners to install a utility scale solar farm, wind farm and/or battery storage system. These uses will be subject to the regulations for ground-mounted solar collectors, battery energy storage systems and ground mounted WEFs found in the resolution.

Section 5. New subsections shall be added to the supplementary Regulations in Chapter 4 of the Morgan County Zoning Regulations

Solar Collector Facility Regulations:

4-810 Applicability  
4-815 Definitions  
4-820 Submittal Requirements  
4-825 Solar Collector Facility Standards  
4-830 Review Criteria and Process  
4-835 Decommissioning Requirements for Solar Collector Facilities  
4-840 Ownership changes  
4-845 Approval Time Frame and Abandonment

Battery Energy Storage System (BESS)

4-850 Definitions  
4-855 Submittal Requirements  
4-860 Battery Energy Storage System (BESS) Standards  
4-865 Review Criteria and Process  
4-870 Decommissioning Requirements for BESS  
4-875 Ownership Changes  
4-880 Approval Time Frame and Abandonment

Wind Energy Facility Regulations

4-885 Applicability  
4-890 Definitions  
4-895 Submittal Requirements  
4-900 WEF Standards  
4-905 Review Criteria and Process  
4-910 Decommissioning Requirements for BESS  
4-915 Ownership Changes  
4-920 Approval Time Frame and Abandonment

The amendments as proposed will address wind and solar power collections or generation facilities and BESS in a manner that protects the public health, safety and welfare while at the same time allow for the development of important alternative sources of energy.

Nicole Hay  
Planning and Zoning Administrator

### **DISCUSSION:**

The PC Commission was asked by Chairman Nathan Troutt for comments. None were given by them at this time. Public Comment was then opened.

### **PUBLIC COMMENT OPEN:**

**Nathan Kiser, representing NEXTERA**, commented on how he appreciates the new proposed regulations and asked further questions and statements as follows in regards to:

**Improvements:** distance from scenic highway – would like to request there is a clause or waiver for panels to be put in within that ¼ mile of a scenic highway.

**Fire Mitigation Plan:** Requesting a language change to exclude identification of a water source to fire mitigation plan to prevent fire. Enter language that states maybe a Fire Mitigation Plan demonstrating adequate fire prevention measures be included in the application on page 12.

**-Robert Pennington** asked if they teach the fire departments to train them and knowledge them on the fire procedures if it were to happen?

**NEXTERA-** stated that they do meet with the local Fire Departments on almost an annual basis to offer training on fire mitigation for the Solar Panel sites.

**Solar underground collection** – Would like to add some more clarification about certain above ground wiring that is acceptable. See page 20 Section M. 2<sup>nd</sup> sentence about Technical Engineering, NEXTERA would like this to be part of the clause.

**-Pete Mercer** asked if our other statements covered that for the wiring on top of ground?

**-Morgan County's Attorney** stated that we will clarify this in the new regulations.

**Separation distance:** Wetlands are jurisdictional from the US ARMY CORE OF ENGINEERS. We would like to change that to say within 500 feet of wildlife and wetland as delineated by the US ARMY CORE OF ENGINEERS.

**-Nathan Trout** asked if it was the panels or the actual stand?

**NEXTERA-** stated that it was the panels.

**-Morgan County's Attorney** asked if there were different restrictions for jurisdictions?

**Chris Haas with Engineering Consultants** stated that the State manages restrictions for jurisdictions and they are working on definitions.

**-Morgan County Attorney** stated that the US ARMY CORE OF ENGINEERS jurisdiction is narrower than what Colorado considers a wetland.

**-Robert Pennington** asked, "Just to clarify, the ARMY CORE OF ENGINEERS looks at

an established wetland?”

**-Morgan County Attorney** states, “Correct” to Robert Pennington’s statement.

**Decommissioning bonds:** NEXTERA feels that the curing cost associated with the decommissioning bonds are fairly extensive if you look at it over the course of a 35-40-year project. NEXTERA asks that the County would consider that the first bond to be paid at commissioning of facility once it becomes operational and then maybe the second 50% of that bond be posted at year number 10 or 15 at the life of the project?

**-Robert Pennington** asked what a decommissioning bond is? Can someone explain this further?

**NEXTERA-** A Decommissioning Bond is usually the bond that we post as a company that earmarks the funds to be able to remove the site if the Solar Company were to go out of business or not fulfill their obligations. Those funds are able to be drawn upon to be able to decommission the site. Generally, another operator, or the Bank, purchases the facility and would then be obligated to continue the decommission bond.

**-Robert Pennington** asks “And this is to protect the County and the landowner or who does it protect?”

**Morgan County’s Attorney** stated that we would have access to the funds to be able to clean things up on the dime of the bond that the developer posted and not the county’s dime if something happened.

**-Morgan County Attorney** stated that it protects the County and this is why so many other Counties require this now and why I recommend that Morgan County does it as well from a legal perspective. If you look at plugged and abandoned wells there is no decommissioning required so we have all of these millions of dollars of necessary remediation but no one is willing to foot the bill. That is not true in a lot of other places that planned ahead and got bonds for those wells and so we are just trying to plan ahead and ensure that there will be an end to these sorts of technologies when eventually there is an expiration to their life. We want to make sure that the funds are in place and that the County is not on the hook to pay for it when that time comes.

**NEXTERA-** states “And posting these bonds is a widely done practice.”

**-Morgan County Attorney** states “Yes that is correct.”

**-Pete Mercer** asked where did the 5 years come from originally?

**-Morgan County Attorney** stated that there is no perfect way to do a decommissioning bond. We tried to strike a middle ground with the language with the 50% at the commencement of the construction and at the 50% at year 5 assuming you have made income at that time. But there is wiggle room. There is no perfect way to do it. We just try to strike a middle ground.

**-Pete Mercer** If ownership is changed, is the new owner on the hook for the bond?

**-Morgan County Attorney** We have a clause for this.

**NEXTERA** “These are the only items that I had and I will be happy to answer any questions that anyone has.”

**-Nathan Troudt** asked what the lifespan is on projects?

**-Morgan County Attorney** Answered about 25 years for contract but equipment can be 25-35 years.

**-Pete Mercer** stated, “You mentioned about screening panels from a scenic highway. What keeps that from glaring on the highway? What is the screening process?”

**NEXTERA** stated there is an anti-glare built into the panels. There is not a significant amount of glare. Solar panels are lower like 8 to 10 feet high and easy to screen. Natural

topography can be used.

**-Robert Pennington** asked questions for Nicole and the Attorney. What the definition of a scenic highway was and if we have any?

**-Morgan County's Attorney** said that it is a federally defined and federally regulated term and they are mapped out.

**-Nicole Hay** "I believe highway 52 may be one. We have a few I believe"

## **CONCLUSION OF NEXTERA COMMENTS**

**-Nathan Troudt** asked if there were any further comments on the Regulations?

## **CONTINUED PUBLIC COMMENTS**

**Marta Lasch, representing NATIONAL GRID RENEWABLES via ZOOM Platform** – County has done a wonderful job that protects the people and County with its ordinance that is flexible. NEXTERA has addressed all of the notes that she wished to speak on.

**Isaac, representing DUKE ENERGY via ZOOM Platform** – Reiterated what NEXTERA and NATIONAL GRID have stated previously. DUKE ENERGY appreciates the ordinance and it makes sense. He has a few more items to discuss. Recommendations, comments and confirmation as they have submitted via the Planning Commission packet section proposed Amended Regulations concerning Wind, Solar and Battery Energy Storage Systems.

**Submittal requirements, A4 & B:** Location of all structures and dimensions for each solar panel. Said it was dependent on each panel, and could change. Early in the process to go into that much detail. He asked what they would mean as far as dimensions for each solar panel? Confirm level of detail in section B. Is a basic schematic acceptable?

**-Morgan County's Attorney** stated that it could be an aesthetic restraint but could not be necessary. Drawing (Wanted to confirm the level of detail)

**-Morgan County Attorney** says its More conceptual and will be clarified.

### **Decommissioning plan, Section D**

**DUKE ENERGY**-When they get submitted, Duke Energy believes that it can be accomplished but along that timeline it needs to be a higher level of a plan than other counties reference.

**-Morgan County Attorney** -It can be clarified.

**Mineral rights holders, Section F:** Always try to engage them but sometimes are unresponsive or unidentified. Proposed a "Good faith" general outreach can be sufficient.

**-Morgan County Attorney** –It can be clarified.

**Water/Wind erosion:** Proposed a little further down the line for the first time permit.

**Road agreement, Section K2:** Confirm that the County would be doing the baseline survey and we would be reimbursing the cost to the County.

**-Morgan County Attorney:** It will be clarified.

**Collector Lines Underground Wiring:** Would like more clarification or adjustment of language.

**Heights, 4-825 Section D #6:** Some systems are above 30 feet high when utilizing racking. Wanted to bring that to the panels attention to add extra item in for (certain height exceptions) in

AG Protection of Ag Lands.

**Protection of Agricultural Lands, 4-825 Section D #13** What sort of adverse impact would this be referencing? What adverse impacts on agricultural land? Was there something in mind when this particular section was written?

**-Morgan County Attorney** said to attend next County Commissioner meeting to possibly get an example of this suggested language.

**DUKE ENERGY**-Seconded the comment about glare from NEXTERA Energy. Proposed coordinating how to minimize glare. DUKE ENERGY can provide some recommendations on language in this area.

**Decommissioning Requirements 4-835 Section A #1** Certain repowering processes may take longer than 12 months and the system may be off line but it wouldn't make sense to decommission it. Recommending a provision to account for that.

**Length of Decommissioning** happening within 6 months may be too short to accomplish removal of all equipment such as seasonality. Recommending increasing this to 270 days or 9 months to provide a little more flexibility with these scenarios.

**Add an additional provision about restoration** to say or as agreed with the landowner.

**Comment on Net of Salvage Value on the Decommissioning Bond** is commonly seen as a clause for the recycling of the steel and glass and such, that value can be deducted from the overall amount that needs to get posted. We typically see that updated every 5 years or so. Where a 3<sup>rd</sup> party engineer would make the estimate on what the salvage value of the materials is and then you would take the overall decommissioning costs, less out the salvageable material and then post the bond for whatever amount that was left over.

**General comment** – provide insight to the Interconnection Queue so when we apply for hooking up to the grid on these projects. Sometimes the projects get put into the Interconnection Queues and it could take longer than 12 months compared to how long the permit would be valid. DUKE ENERGY suggests possibly adding a clause allowing for leniency or adjustment should Interconnection delays happen. **Referring to paragraph just above 4-850.**

## **CONCLUSION OF DUKE ENERGY COMMENTS**

**-Nathan Troudt** asked Karol Kopetsky, IT Specialist, if there were any more online participants?

There were none.

## **CONTINUED PUBLIC COMMENTS**

**Rita Ruderman with XCEL ENERGY** – Introduction of herself and her position with XCEL ENERGY. She is appearing tonight on behalf of XCEL ENERGY to place their comments on the record and ask Morgan County to consider some minor modifications to the proposed regulations. Rita stated, “As drafted, Excel Energy does not feel the intent of the proposed regulations was to include the transmission facilities built, owned and operated by public utilities such as ourselves. Instead we believe that the regulations aim is to govern transmission facilities that are an Accessory use to Wind Energy Collection Systems and Solar Powered Production Facilities that are built, owned and operated by independent power producers. We believe that it



is important that these regulations make the distinction between transmission facilities of a public utility versus transmission facilities proposed by an independent power producer. We would like the County to consider the revisions to the proposed regulations as presented via email today and included in your packet this evening that would specifically exclude Electric Transmission Facilities built, owned and operated by public utilities from being subject to these proposed regulations. We believe our suggested revisions will provide clarity to both the County and XCEL ENERGY for future projects. That concludes my remarks and I am happy to take any questions.”

**-Morgan County Attorney** asked if it was transmission lines to be excluded but regulations should not be included with public facilities? They would need to see the 1041 regulations. For major facilities they could apply for a permit using 1041. 1041 Regulations are broad. They are a way for the County to get a say in large projects. The Regulations act more as a review and comment then a review and decision. That’s not actually true in the code but that is how they operate and practice. Approval criteria based regulations. To clarify, XCEL ENERGY is asking that Public Utilities be excluded from these proposed regulations?

**XCEL ENERGY-Yes**

**-Robert Pennington** If XCEL wanted to develop a Solar Facility they wouldn’t go through these regulations?

**XCEL ENERGY-** If XCEL ENERGY wanted to build a facility they would refer to the 1041 regulations for general approval criteria that is set forth for a Public Utility to meet.

**-Chairman, Nathan Troudt,** asked for any further comments in favor or against the proposed regulations?

None at this time in the audience nor online.

#### **PUBLIC COMMENT CLOSED:**

#### **PLANNING COMMISSION CONTINUED COMMENT:**

**Chairman, Nathan Troudt,** asked for any further comment from the Commissioners?

**-Dave Musgrave** asked how is the grass cleaned up around the solar panels? How does the fire barrier come into place? The grass could catch fire with the dry climate that we have been having and Morgan county has had several wildfires recently. Suggested a plan in place to keep the grass mowed down to prevent wildfires from spreading rapidly.

**-NEXTERA** stated that they enforce weed control and weed management plans that handle that. NEXTERA has an operational maintenance crew that will make sure the vegetation is taken care of multiple times per week such as mow, remove tumbleweeds off of fence, etc.

**-Morgan County Attorney** stated that we do have a requirement for maintenance and we can add vegetative maintenance into the Regulations.

**-Robert Pennington** asked if there was anyone in the audience that represents wind towers?

**NEXTERA** states that they do both.

**-Nicole Hay** stated that most comments she received in the Planning and Zoning Department were geared more towards the Solar side of things.

-**Nathan Mercer** asked about long term prospects of Solar and Wind in Morgan County in 5 to 10 years?

-**NEXTERA** stated that it depends but Morgan County has good viable resources and it depends on what kind of power the utility companies are looking to buy. Trifecta with all three resources of energy on the same facility.

-**Robert Pennington** asked how big the Battery Storage Units are?

-**NEXTERA** stated that the Battery Storage Facility is made up of Conex containers. These are shipping containers with HVAC systems inside of them. A typical facility can have up to 100 of those depending on the size of the facility. Can fit the batteries on a small footprint of 15 acres or so.

-**Robert Pennington** asked Nicole Hay or the Morgan County Attorney, from page 18 4-900, Section A 2 for the height permit requirements. We are allowing them to go 5 feet higher and he would like to know why?

-**Morgan County Attorney** stated that Building Mounted Energy Systems are fairly small. If you built out your home already to the maximum permitted height and you want to capture some wind, this gives people a window to have these types of additions.

-**Robert Pennington** asked if they have to meet the current National Electrical Codes? We don't always adopt the latest regulations. Do we need to adopt the latest regulations or keep the current regulations that Morgan County has?

-**Morgan County Attorney** We will clarify that we need to adopt the latest standards to meet NESC.

-**Nathan Troudt** asked if we have more time for decisions?

-**Morgan County Attorney** stated that we can only continue to next week as Morgan County has the moratorium that expires July 4<sup>th</sup>, 2022 if we want to see this new version of regulations. We can come back next week on June 13<sup>th</sup>, 2022 with a revised version of the regulations and make a decision then.

-**Robert Pennington** asked about the decommissioning bond. What percentage is the bond from the cost of the project?

-**NEXTERA** stated they were not sure of approximate percentage numbers do to each project having various significant costs and varying factors. Still the way it is written 50% would still be posted at the beginning of things.

-**Pete Mercer** asked what is the lifespan based on? The batteries? The facilities?

-**NEXTERA** stated that it depends on the equipment but the batteries typically last 25 years. If nothing was touched, it goes approximately 25 years. If you switch out panels then you can possibly get another 25-35 years.

-**Pete Mercer** Do they hold up to hail?

-**NEXTERA** stated yes they do.

-**Chairman Nathan Troudt** We are looking at potentially tabling this tonight.

-**Eric Morhlang** stated that he would like to see included that what wetlands Morgan County has be protected. Suggests their also needs to be a regulation in this that talks about water runoff and not running your water on another person's property.

-**Robert Pennington** asked do we need to add language pertaining to extending out the decommissioning time to 18 months?

**-Mike Bailey** suggested a more defined timeframe of routine cleanup and maintenance be addressed. Would also like to see enforcement engaged on these measures.

**-Robert Pennington** specific dimensions of each solar panel on initial application probably doesn't need to be so strict as shown in 4-820 #4.

**-Morgan County Attorney** We will look into clarifying and redrafting these new policies. We will take into consideration all of the new information and input that we have received during tonight's meeting. A red line draft and a clean draft will be provided to the Planning Commissioners before next Monday's meeting so they can see what has changed.

**-Nathan Troudt** are there any further comments. Would anyone like to make a motion to postpone this meeting until next Monday June 13<sup>th</sup>, 2022 at 7:00 P.M.?

#### **MOTION:**

A motion was moved by Erik Mohrlang and seconded by Pete Mercer to table **WIND ENERGY CONVERSION, SOLAR COLLECTOR, AND BATTERY ENERGY STORAGE SYSTEMS REGULATIONS AMENDMENTS** until the next Planning Commission Hearing to be held on June 13<sup>th</sup>, 2022 at 7:00 P.M.

Motion carried 6 in favor and 0 opposed. 1 member, Clayton Miller, was absent. Motion tabled to be heard by the Board of Planning Commissioners on June 13, 2022 at 7:00 P.M.

Motion to end the meeting was made by Pete Mercer and seconded by Eric Morhlang. Motion carried 6-0.

#### **ADJOURN:**

Meeting was adjourned by Nathan Troudt @8:35 P.M.

Respectfully Submitted,  
Cheryl Brindisi, Planning Technician