

RESOLUTION 87-2022

A RESOLUTION APPROVING A PERMIT FOR A USE BY SPECIAL REVIEW (“USR PERMIT”) FOR THE PUBLIC SERVICE COMPANY OF COLORADO DBA AS XCEL ENERGY FOR ELECTRIC TRANSMISSION LINES IN WASHINGTON COUNTY

WHEREAS, Public Service Company of Colorado, dba as Xcel Energy (“Xcel”), submitted applications for permits for a use by special review (“USR”) and an activity of state interest (“1041”);

WHEREAS, Xcel’s applications sought approval for approximately 53 miles of 345-kV transmission lines through Washington County, which are part of Xcel’s Colorado’s Power Pathway Project;

WHEREAS, the Washington County Planning Commission, at its September 19, 2022 public hearing, determined that the applications were incomplete for failing to include the required owner authorizations, and continued the public hearings until November 21, 2022;

WHEREAS, Xcel appealed this decision to the Board of County Commissioners and on November 4, 2022, the Board of County Commissioners overruled the Planning Commission, determining that the applications were complete and even if incomplete the requirement should be waived due to the nature of the application and Xcel’s power of eminent domain;

WHEREAS, the Board of County Commissioners, therefore, remanded the matter to the Planning Commission with instructions to hold a public hearing on the merits of Xcel’s applications on November 21, 2022, and provide a recommendation to the Board of County Commissioners on the USR application and to render a decision on the 1041 application;

WHEREAS, a single consolidated public hearing on both the USR and 1041 applications was held before the Planning Commission on November 21, 2022;

WHEREAS, because the September 19, 2022 hearing of the Planning Commission was properly noticed and at that hearing the Planning Commission continued the hearing to the date certain of November 21, 2022 no additional notice was required;

WHEREAS, on November 21, 2022, the Planning Commission held a duly noticed public hearing on the applications and received testimony and evidence from County staff, the applicant and the public on the application;

WHEREAS, after considering all relevant testimony and evidence, the Planning Commission issued an Order recommending approval of the USR application approving the 1041 application, subject to certain conditions set forth within the written order;

WHEREAS, on December 13, 2022, the Board of County Commissioners held a duly noticed public hearing to consider the recommendation of the Planning Commission that Xcel’s USR application be approved; and

WHEREAS, after considering all relevant testimony and evidence, the Board of County Commissioner desires to approve Xcel's application for a USR permit.

NOW, BE IT ORDERED BY THE PLANNING COMMISSION OF WASHINGTON COUNTY, COLORADO:

1. APPROVAL.

The USR application is hereby approved. This Resolution shall constitute the USR permit (hereinafter referred to as this "Resolution" or the "Permit").

2. CRITERIA.

The following criteria are those considered by the Board of County Commissioners in issuing this Resolution:

A. Use by Special Review

The Project is an industrial use under the County's USR regulations. The USR regulations require that industrial uses be compatible with surrounding uses. See USR Regulations, Policy section and Industrial Uses – Intent section. Applications for USR permits are reviewed to determine whether they have adverse impacts such as traffic congestion, noise, visual and aesthetic impacts which could undermine the integrity of the area in which the proposed activity would be situated and therefore could jeopardize the health, safety and welfare of the existing citizens of Washington County. *Id.*

1. Traffic congestion.
2. Noise.
3. Visual and aesthetic impacts.
4. Compatibility with surrounding uses.

3. FINDINGS OF FACT.

The following findings are made in accordance with the criteria found in the County's USR (specifically relating to industrial uses in the County). As occurred with the final decision and Order of the Planning Commission because the criteria for review of a USR application are encompassed within the criteria for a 1041 Permit, this Resolution addresses the more detailed 1041 Permit criteria and the findings under the 1041 Permit criteria shall constitute findings that meet the more general criteria for the USR application.

For the reasons set forth below, the Washington County Board of County Commissioners finds that the proposed activity does result in adverse impacts such as traffic congestion, noise, visual and aesthetic impacts of a magnitude severe enough to undermine the integrity of the area in which the proposed activity would be situated and therefore the proposed activity does not jeopardize the health, safety and welfare of the existing citizens of Washington County.

1. *Agricultural activities shall not be significantly affected in an adverse manner.*

The Washington County Master Plan sets forth important objectives and policies for maintaining agriculture in the County. These include the following: (a) maintaining and enhancing the environmental quality of agricultural areas; (b) preserving the long-term agricultural production of the County; (d) protecting the visual and other perceptual amenities of the County's agricultural areas; (e) preserving high-quality soils available for dry or irrigated farming for long-term cropland uses; and (f) encouraging uses that maintain and support the environmental and amenity value of all agricultural areas.

In reviewing the Project in relation to these objectives and policies, the Board of County Commissioners finds that it will have limited impact on the environmental quality of agricultural areas, long-term agricultural production, or the soils in which the transmission lines are located. Although the bases of the towers will be removed from agricultural use, the remaining areas under the lines and in between the towers can continue to be used for agriculture. There is some risk of run-off and drainage-related concerns. However, Xcel is required to control drainage and restore areas disturbed by construction activity (see Item #2 below).

2. *Appropriate environmental restraints shall be adhered to so as to cause minimum effect upon the existing environment including but not limited to air, water, and wildlife species.*

There will be impacts during construction of the Project, including increased construction equipment impact, noise, and dust. There could be sediment run off from the construction activities into irrigation ditches and other waterways. However, Xcel represents that it will implement best management practices to control sediment and runoff into canals and waterways during construction. Xcel will be regulated by CDPHE and is required to follow state standards to control fugitive construction dust. Once operational, most environmental impacts will be limited.

Xcel has conducted studies on the impact of the Project on avian species in the area and has been engaged with Colorado Parks and Wildlife regarding the routing and related impacts of the transmission lines on birds in the area. Xcel will be required to comply with all applicable federal and state laws regarding impacts on bird life. No federal or state managed conservation areas or federal critical habitat are within one-mile of the transmission line route. However, there is special-status wildlife and avian habitat in the vicinity of the transmission lines and 17 special-status species were identified as potentially being in the pathway of the line. Please see Section 1.3c of the application for more information on this matter.

In its Impacts Evaluation, which is Attachment F to its application, Xcel has provided an analysis of the impacts of the Project on various aspects of the County. Included in this evaluation is information regarding electric and magnetic fields. Xcel will be required to meet the standards set forth in the National Electric Safety Code, which has been adopted by the State of Colorado. The County Planning Department currently has no information that contradicts the representations in Xcel's Impacts Evaluation, which indicate there are no substantial negative environmental impacts.

3. *No significant effect upon the tributary and non-tributary waters of Washington County shall be allowed.*

No permanent source of water is required for the Project. All canals and waterways will be spanned and not interrupted by the Project. Xcel represents that it will implement best management practices to control sediment and runoff into canals and waterways during construction.

4. *Location of a facility shall be reasonably consistent with the Washington County, municipalities, state, and national master plans when in effect, and as stipulated in §30-28-110, C.R.S.*

The most recent version of the Washington County master plan is dated September 16, 2002. As addressed in criterium number 1, above, the Washington County Master Plan sets forth important objectives and policies for maintaining agriculture in the County. These include the following: (a) maintaining and enhancing the environmental quality of agricultural areas; (b) preserving the long-term agricultural production of the County; (b) protecting the visual and other perceptual amenities of the County's agricultural areas; (c) preserving high-quality soils available for dry or irrigated farming for long-term cropland uses; and (d) encouraging uses that maintain and support the environmental and amenity value of all agricultural areas.

As addressed in criterium number 1, above, the Project is reasonably consistent with the Washington County master plan. There are no municipal, state, or national master plans governing the area of the Project in Washington County of which the Board of County Commissioners is aware.

The Project has limited impact on agricultural activities in the County as further addressed in criterium number 1, above.

In addition to agricultural uses, the County's Master Plan establishes long-term objectives for industrial uses, which are (a) to encourage industrial development and redevelopment which meets market demand and contributes to the county's employment and tax base; (b) to support industrial development which maximizes accessibility to regional transportation systems, compatibility with adjacent land uses, and applicability of energy conservation measures; and (c) to mitigate any negative environmental impacts resulting from the interface of industrial uses, other land uses, and the natural features of an area. There may be some small increase in economic activity at local businesses as constructions crews are in the area working on the Project, but the crews are relatively small and therefore, the impact will likely be small and temporary. However, the Project will provide opportunities for connecting power generation facilities to the electrical grid that would otherwise be unavailable. This would include solar and wind facilities, which provide a renewable source of energy and can be economically beneficial to owners of land on which such projects are sited. That said, these types of power generation facilities have their own drawbacks, including impacts on agricultural activities, wildlife, and noise and visual concerns. The impact of the project on transportation systems is not expected to be significant other than potential public road impacts (increased traffic and potential heavy vehicle damage), which can be addressed via a condition requiring Xcel to enter into a road use agreement (see Recommended

Condition No. 5, below). The environmental impacts are addressed in criteria numbers 2 and 3, above.

The County's Master Plan includes a number of policies related to industrial uses, including: (a) Appropriate industry should be encouraged to locate in Washington County; (b) Industrial land uses should be located near major transportation facilities such as airports, railroads, freeways, and major arterial streets; (c) Industrial land uses shall be located and adequately buffered to minimize impacts resulting from the interface of industrial uses, adjacent land uses, and the natural features of an area; and (d) Industrial developers should be strongly encouraged to interact during the site planning process with existing residents or neighborhood associations in the immediate vicinity of proposed industrial developments. The Master Plan encourages non-polluting industry that provides good employment opportunities. The Project is designed to aid in the State's transition to clean energy. However, its job creation will be minimal. Xcel has sited the project to be near existing roads. The transmission lines do not substantially interfere with agricultural activity, but they are visually unappealing and do interfere with the open vistas and natural features of the area, including open skies unimpeded by man-made industrial objects. Xcel has engaged in significant interaction with the public, including three virtual meetings in June of 2021 and two more in October 2021. Xcel's efforts to publicize the project have been substantial. Publicity and attendance figures are shown in Section 3.4.3 of Xcel's Routing and Siting Study included with Xcel's application as Exhibit C.

5. *The socio-economic environment of Washington County shall be protected and enhanced.*

Some relatively minor temporary economic benefits are expected as the construction crew works on the Project. However, because the crew is relatively small (25 workers are anticipate) and the construction will be temporary, the direct economic benefits are not anticipated to be substantial. However, the installation of the transmission lines will provide additional opportunity for power generation projects to connect to Xcel's system. Landowners may benefit by contracting for the use of their land for solar and wind generation projects that would otherwise not occur. These generation projects will come with benefits and drawbacks. New jobs will be available and construction crews will use local businesses. However, wind and solar projects have additional impacts on the area, including use of agricultural land, and noise, visual, and wildlife impacts.

6. *All alternative locations shall have been presented and assessed such that the best interest of the people are represented and the best utilization of all affected resources is accomplished.*

Xcel has provided a Routing and Siting Study as Exhibit C to its application. Xcel undertook substantial efforts to engage with the public. Please see Section 3.4.3 of the Routing and Siting Study for more information. Section 3.5 of the Routing and Siting address how Xcel has considered a variety of factors in selecting the route of the transmission lines and the route has been modified to address these factors.

7. *No non-mitigated adverse impact upon community and government services shall be allowed.*

There is no anticipated non-mitigated adverse impact on community and government services, other than the potential impact on County roadways, the potential for construction-related pollution of irrigation ditches, canals, and waterways, and unremediated land subsequent to construction activity. These concerns could be mitigated with agreements between the County and Xcel requiring Xcel to return any damaged County roadways to their condition prior to Xcel-caused damage and requiring Xcel to fully remediate land, including irrigation ditches, damaged by its construction activities.

8. *A satisfactory program (including any necessary "front monies") to mitigate and minimize adverse impacts has been presented.*

Please see analysis of Section 7, above. Xcel's obligations to remediate damage to roadways, irrigation ditches, and agricultural land could be addressed in an agreement, which would require Xcel to provide reasonable security to ensure Xcel complies with its obligations.

9. *No adverse effect upon any existing water right.*

No water rights will be impacted by the Project.

10. *All buried facilities shall be buried in a manner as to not interfere with existing and continuing land use. Such depth shall not be less than thirty-six (36) inches and a suitable program of surface stabilization shall be employed*

There will be no buried facilities other than foundations for the poles.

11. *No pollution which exceeds that allowed by State and Federal environmental laws will be allowed.*

Xcel will be required to comply with all state and federal environmental laws. The only sources of pollution would emanate from construction activities, but that is expected to be limited. There could be sediment run off from the construction activities into irrigation ditches and other waterways. However, Xcel represents that it will implement best management practices to control sediment and runoff into canals and waterways during construction. Xcel will obtain a permit from CDPHE if necessary. Xcel will be regulated by CDPHE and is required to follow state standards to control fugitive construction dust. Once operational, most environmental impacts will be limited. Some of these potential impacts could be addressed via an agreement with reasonable security to ensure that Xcel.

4. CONDITIONS.

The approval of the use by special review is conditioned upon the following:

1. Prior to commencement of construction of each parcel of the Project in Washington County, Xcel shall provide proof to the satisfaction of the County Administrator that Xcel has obtained the property rights for each parcel necessary to construct on such parcel as part of the entire portion of the Project that is located in Washington County.

2. Prior to beginning construction on each parcel, all necessary land use, environmental, and construction permits, approvals and authorizations for that work must 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.
3. No poles shall exceed a height of 190 feet. Any poles that exceed this height require prior approval from the County, upon a showing by Xcel that such height is necessary. Such additional height may be approved by the County Administrator upon application and request from Xcel. The County Administrator may request any additional information necessary to determine whether approval should be granted.
4. Prior the commencement of construction in Washington County, Xcel shall 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 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 improvement's 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 defects 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.

5. Prior the 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.
6. Prior the commencement of construction in Washington County, Xcel must execute an agreement with the County agreeing to not create nuisances, to reclaim all land, public and private and to restore any ditches, canals, or waterways disturbed by its Project activities. The agreement shall require Xcel to document the condition of all land in the segment's right-of-way prior to commencement of construction, the condition immediately after completion of construction activities, and the condition upon completion of remediation. The agreement shall include a requirement to post financial security in an amount not less than one hundred fifteen percent (115%) of the estimated cost to reclaim all disturbed land plus an amount deemed reasonable by the County to remediate any nuisances and to restore damages to ditches, canals and waterways in the form of an irrevocable letter of credit or cash escrow (the "Performance Guarantee"). Cost estimates for the land reclamation, including the remediation of nuisances and damages to ditches, canals and waterways shall be provided by a qualified expert in land reclamation. The letter of credit or cash escrow shall be maintained until completion of the remediation, approval by the County, and issuance by the County of a written acknowledgement of satisfactory reclamation, at which time the security may be released. Xcel shall be responsible for correcting or properly completing all land reclamation.
7. Prior to use of any helicopters in connection with the initial construction of the Power Pathway Project in Washington County, Xcel shall provide at least thirty (30) days' written notice to the County 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.
8. Construction occurring within $\frac{1}{4}$ quarter mile of any residence shall not commence earlier than 7 a.m. and shall cease at sunset.
9. Xcel shall comply with all applicable laws and regulations related to safety and emergency management during construction and on-going operations.
10. The centerline of the right-of-way shall be no closer than 375 feet from a habitable residence in existence at the time of this permit without authorization from the owner of the residence.

5. GENERAL PROVISIONS.

1. This approval is conditioned on compliance with all information and representations contained in the application and presented by the Xcel, which are incorporated into this Permit.

2. Xcel shall comply and ensure compliance by its contractors and agents with all requirements, conditions and design standards set forth herein. Noncompliance shall be grounds for revocation of this Permit.

3. If any section, paragraph, clause, or provision of this resolution shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause, or provision shall not affect any of the remaining provisions of this resolution.

4. This resolution shall be in full force and effect upon its passage and approval.

APPROVED this 13th day of December 2022.

BOARD OF COUNTY COMMISSIONERS
OF WASHINGTON COUNTY, COLORADO

K R Vance
Kent Vance, Chairman

Tony Wells
Tony Wells, Commissioner

Lea Ann Laybourn
Lea Ann Laybourn, Commissioner



Merya Lambert
Annie Kuntz Clerk and Recorder, Deputy
Merya Lambert