CHAPTER 5

SITE SELECTION AND CONSTRUCTION OF MAJOR FACILITIES OF A PUBLIC UTILITY

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**Article 1 General Provisions**

5.101 Designation of Activity of State Interest

1. The following activity of state interest is hereby designated: site selection and construction of major facilities of a public utility. No person may engage in development, including construction, expansion, reoperation, relocation or other significant change in use of such activity wholly or partially within unincorporated El Paso County without first obtaining a permit pursuant to these Regulations.
2. The issuance of a permit for this activity is contingent upon the subsequent approval of the major facility by the Public Utilities Commission, Colorado Department of Public Health and Environment, U.S. Environmental Protection Agency, or other regulatory agencies, where required by appropriate statute or regulation.

5.102 Purpose and Intent

The purpose and intent of these Regulations contained in this Chapter 5 are:

1. To regulate the site selection and construction of major facilities of a public utility to prevent significant deterioration or degradation of existing air and water quality in El Paso County;
2. To avoid or reduce conflicts with the El Paso County Master Plan;
3. To regulate the site selection and construction of major facilities of a public utility to preserve the health and welfare of the citizens of El Paso County; and
4. To avoid or reduce incompatible uses adjacent to County roads and County trails and to avoid unreasonable or burdensome expenditure of public resources by minimizing impacts by public utilities to said County roads and County trails.

5.103 Definitions

For the purpose of this Chapter, the following definitions shall apply:

1. *Appurtenant facilities* means any building, structure or other property which is incidental to, and customarily found in connection with, major facilities of public utilities and are operated and maintained for the benefit or convenience of the occupants, employees, customers or visitors of such major facilities.
2. *County road* means roadways owned and maintained by El Paso County, including the built road surface, bridges, abutments, culverts, and appurtenant supporting facilities and infrastructure.
3. *Major facilities of a public utility* means major transmission lines, minor transmission lines, power plants, substations, major pipelines, minor pipelines, and storage areas of utilities as herein separately defined.
4. *Major pipeline* means a pipeline and appurtenant facilities of twelve (12) inches or more in diameter which creates a hoop stress of twenty (20) percent or more at its specified minimum yield strength, and designed for, or capable of, transporting natural gas, manufactured gas or other petroleum derivatives.
5. *Minor pipeline* means a pipeline and appurtenant facilities of less than twelve (12) inches in diameter which creates a hoop stress of less than twenty (20) percent at its specified minimum yield strength, and designed for, or capable of, transporting natural gas, manufactured gas or other petroleum derivatives.
6. *Major transmission line* means electrical lines and appurtenant facilities which emanate from a power plant or a substation/transmission site and terminate at a substation/transmission site and which are designed to transmit electrical voltage of 69KV or greater.
7. *Minor transmission line* means electrical lines and appurtenant facilities which are designed to transmit electrical voltages of less than 69KV from a substation/transmission site to individual commercial or residential customers.

(8)~~(3)~~ *Pipeline means* and includes major pipelines and minor pipelines.

(9)~~(4)~~ *Power plant* means any of the following:

1. Any fossil fuel, biofuel, or similar electrical energy generating facility or addition thereto with a generating capacity of fifty (50) megawatts or more, and any appurtenant facilities.
2. Any solar or wind electrical energy generating facility or addition thereto with a generating capacity in excess of five hundred (500) kilowatts, and any appurtenant facilities.
3. Any nuclear or hydropower electrical generating facility of five hundred (500) kilowatts or more.

(10) *Protection Zone* means an area within 105 feet of centerline of any existing or planned County road with a current or proposed classification as arterial or expressway or within 45 feet of the centerline of any County road with a current or proposed classification as collector as those classifications are set forth in the El Paso County Major Transportation Corridors Plan or in the El Paso County Engineering Criteria Manual or other completed and/or adopted master plan elements.

(11)~~(5)~~ *Public utilities* mean those utilities as defined by Section 39-4-101 and Section 40-1-103, C.R.S.

(12)~~(7)~~ *Site selection and construction* means and includes the initial site selection and construction of a major facility of a public utility as well as any subsequent relocation, reconstruction or upgrade of such facility.

(13)~~(6)~~ *Storage area* means any facility, including appurtenant facilities, designed to store eighty million (80,000,000) cubic feet or more of natural or manufactured gas, or thirty-five thousand (35,000) barrels or more of petroleum derivatives, or any expansion or series of expansions of an existing storage facility to accommodate eighty million (80,000,000) cubic feet or more of natural or manufactured gas, or thirty-five thousand (35,000) barrels or more of petroleum derivatives.

(14)~~(8)~~ *Substation* means any facility designed to provide switching, voltage transmission, or voltage control required for the transmission of electricity at one hundred fifteen (115) kilovolts or more, but does not have as a primary purpose the transformation of voltage to fifty (50) kilovolts or less for distribution purposes.

(15)~~(9)~~ *Transmission line* includes major transmission lines and minor transmission lines.

5.104 Applicability; Prohibitions

1. This Chapter 5 shall apply to the site selection and construction of all major facilities of a public utility wholly or partially within the unincorporated territory of El Paso County.
2. No major transmission line or major pipeline shall be constructed, located, relocated, reconstructed, enlarged or upgraded within the Protection Zone. Outside of the Protection Zone, a permit under this Chapter 5 is required to construct, locate, relocate, reconstruct, enlarge or upgrade any major transmission line and appurtenant facilities and any major pipeline and appurtenant facilities anywhere within the unincorporated area of El Paso County pursuant to the review criteria in 5.202.
3. A Permit is not required under this Chapter for the following activities: repair of storm damage, reframing, pole replacement, re-conductor and maintenance in the normal course of business without increasing the voltage rating of the transmission line, or reconstructing, upgrading or replacing substation equipment inside an existing substation or within an existing substation fence.

(4)~~(5)~~ A permit under this Chapter 5 is not required to construct, locate, relocate, reconstruct, enlarge or upgrade any minor transmission line and appurtenant facilities and any minor pipeline and appurtenant facilities anywhere within the unincorporated area of El Paso County outside of the Protection Zone.

1. Minor transmission lines and appurtenant facilities and minor pipelines and appurtenant facilities may be allowed in the Protection Zone with a permit under this Chapter 5 pursuant to the review criteria in Section 5.204 and the procedures in Section 5.205.
2. Minor transmission lines and appurtenant facilities and minor pipelines and appurtenant facilities may be allowed in the Protection Zone without a permit under this Chapter 5 if one or more of the following exceptions apply:
3. Location in the Protection Zone is necessary in order to cross a County road at or near a perpendicular angle or to provide service to an individual utility customer; or
4. Approval has been granted pursuant to the El Paso County Engineering Criteria Manual at Chapter 4 and Sections 5.3 and 5.5.
5. A county, municipal, rural transportation authority or state public construction, relocation, realignment, or improvement project results in partially or completely overtaking a private easement or a deeded or platted public utility easement located in the Protection Zone and occupied by the minor transmission line or minor pipeline.

(5)~~(6)~~ This Chapter shall not apply to interstate natural gas pipeline facilities regulated preemptorily by the Federal Energy Regulatory Commission (FERC), or its successor, provided the following requirements and procedures are complied with by persons or entities proposing to site and construct the interstate natural gas pipeline facility whenever site selection and construction of such facility will be partly located within El Paso County.

1. Copies of all materials (i.e., environmental impact statement, applications for certification of public convenience and necessity and related materials) filed or to be filed with a federal and/or State regulatory agency shall also be filed with the Director of the El Paso County Development Services Department within five (5) working days after the same are submitted to such federal and/or State regulatory agency; and
2. Written notice of all scheduled public proceedings before the federal and/or State regulatory agency concerning the natural gas pipeline facility shall be given to the Director of the El Paso County Development Services Department not less than forty-five (45) days prior to any scheduled proceeding before any such agency, provided further, however, that if the applicant before such federal or State agency receives less than forty-five (45) days’ notice, it shall give written notice to the Development Services Department Director within five (5) working days after it receives notice of the same.

(6)~~(7)~~ The requirements of these Regulations shall not be deemed to waive the requirements of Section 40-5-101, et seq., C.R.S., if applicable, that a public utility obtain a certificate of public convenience and necessity.

5.105 Review, Notification and Final Action

Notwithstanding Section 2.02 and Article 4 of Chapter 2 of these Regulations, the Director shall notify the applicant of any additional information required to render an application complete within 28 days of initial submittal of the application, and the Director and the Permit Authority, as appropriate, shall take final action on the application within 90 days of the date a complete application is received.

**Article 2 Permit Application and Procedure**

5.201 Application Submission Requirements

In addition to the materials listed at Section 2.303, all applications to locate or construct a major facility of a public utility shall be accompanied by the following information, in the number required by the Director:

1. Vicinity map showing the proposed site and the surrounding area. The Project area to be shown shall be defined as follows:
2. If a power plant is proposed, the area within fifty (50) miles radius from the site;
3. If new transmission lines or pipelines are proposed, provide a map showing all existing transmission lines and pipelines for a distance of two (2) miles radius beyond any reasonable alternative studied.
4. For upgrades of existing transmission lines or gas pipelines, a map showing all existing transmission lines and pipelines within one (1) mile on either side of the proposed alignment.
5. For all other major facilities of a public utility, the area within ten (10) miles radius of the site if another major facility is proposed.
6. Type of facility - specify where applicable:
7. The voltages and lengths of transmission lines.
8. Type of poles used, with graphic depictions.
9. Power source and generating capacity.
10. The functions and sizes of substations.
11. The diameters and lengths of pipelines.
12. The capacities of the storage tanks and types of petroleum derivative to be stored.
13. Corridor locations and dimensions.
14. Service area.
15. Resource area (e.g., source of power being generated or transmitted, source of petroleum derivative being transported).
16. Projected development schedule.
17. Specify timetable for planning (e.g., federal permits, other State permits, local zoning, etc.).
18. Estimate beginning and completion of construction and beginning of operation of facility.
19. Hazards and emergency procedures:
20. Describe hazards, if any, of fire, explosion and other dangers to the health, safety and welfare of employees and the general public.
21. Describe hazards, if any, of environmental damage and contamination due to solid waste, hazardous waste, petroleum products, hazardous, toxic, and explosive substances or materials used at, or activities taking place at, the proposed facility.
22. Describe emergency procedures to be used in the event of fire, explosion or other event which may endanger the public health, safety and welfare.
23. The applicant shall supply an analysis of non-structural alternatives to the Project, such as conservation of energy use, no development or management (different scheduling, conservation programs, facility design, land trades etc.), if applicable.
24. The applicant shall supply an analysis of structural alternatives to the Project, such as alternate locations and routes, alternative types of facilities, use of existing rights-of-way, and joint use of rights-of-way with other utilities and upgrading of existing facilities.
25. Detailed description of the need for the proposed development or activity, including but not limited to:
26. The present population of the area to be served and the total population to be served when the project is operating at full capacity.
27. The predominant type of users or communities to be served by the proposal.
28. The percentage of the design capacity at which the current system is now operating.
29. If the proposal is for construction of a new facility and the capacity of that facility exceeds a ten-year projected increase in demand, a detailed explanation of the excess service capacity and the cost of the excess capacity.
30. The relationship of the proposal to the applicant's long-range planning and capital improvement programs.
31. A description of the user needs and user patterns to be fulfilled by the proposed Project.
32. A description of the relationship of the Project to other existing and planned utility facilities of a similar nature, other communication or energy generation and transmission facilities, local government capital improvement programs and special district expansion programs.
33. Environmental impact analysis.
34. Land use:
    * 1. Specify how the proposed development will utilize existing easements or rights-of-way for any associated distribution or collector networks.
35. Information regarding other utility facilities:
36. A map showing each existing major facility of a public utility within the County of the type proposed for development.
37. The design capacity of each such facility, the excess capacity of each such facility and the percentage of capacity at which each such facility operates.
38. Whether present facilities can be upgraded to adequately accommodate a ten-year projected increase in demand for services to be offered by the proposed project.
39. Applicants seeking a permit for the site selection and construction of a power plant shall submit, in addition to those requirements set forth above, a map locating and describing resource areas to be utilized as sources of energy.
40. Applicants seeking a permit for the site selection and construction of transmission lines or substations shall submit the following additional documents and information:
41. Computer modeled electromagnetic field measurement within the proposed transmission line easement for that portion of the transmission line between substations or transition sites; and
42. Measures taken to comply with the concept of prudent avoidance with respect to planning, siting, construction and operation of transmission lines, which may be those steps taken to comply with CCR 723-3 Section 3206(9)(b) or similar authority, for projects where other similar authority is applicable.
43. Cost estimates to relocate transmission line(s) or pipeline(s) if it becomes necessary to relocate the same, including cost estimates to acquire additional easement(s) if necessary.
44. Cost estimates to relocate transmission line(s) or pipeline(s) if it becomes necessary to relocate the same in the future, and what costs are projected to be borne by the applicant or other parties.
45. Information addressing impact of the proposed project on adjacent properties.
46. Information describing the relationship of the proposed facilities to the County’s long-range and capital maintenance improvement programs.
47. Information and map or depiction addressing adequacy of the proposed project to account for or to accommodate terrain changes.

5.202 Review Criteria ‑ General

A permit to conduct site selection and construction of a major facility of a public utility shall be approved if the Permit Authority, or in the case of an Administratively Approved Permit, the Director, finds the application complies with the following criteria in this Section and Section 5.203 and 5.204. If the Permit Authority finds the application does not comply, the application shall be denied or may be approved with conditions.

1. All reasonable alternatives to the proposed action, including use of existing rights-of-way and joint use of rights-of-way wherever uses are compatible, have been adequately assessed and the proposed action represents the best interests of the people of this County and presents the best utilization of resources in the impact area.
2. A satisfactory program to mitigate and minimize adverse impacts has been presented.
3. Transmission lines and pipelines shall be located so as to discourage traffic congestion, incompatible uses, and expansion of the demand for government services beyond the reasonable capacity of the community or region, and to avoid unreasonable or burdensome expenditure of public resources.
4. Major facilities of a public utility shall be administered so as to minimize disruption of the service provided by the utility and preserve desirable existing community patterns.

5.203 Review Criteria – Major Transmission Lines and Major Pipelines

In addition to the criteria at 5.202, major transmission lines and major pipelines must comply with the following review criteria:

1. The nature and proposed location of the major transmission line or major pipeline within the County and the need to locate the same within the County support the permit.
2. The effect, if any, the proposed location may have on existing and planned County roads.
3. The existing developed conditions in the area to be served by the proposed major transmission line or major pipeline support the permit.
4. The anticipated future development in the area to be served by the proposed major transmission line or major pipeline supports the permit.

5.204 Review Criteria – Minor Transmission Lines and Minor Pipelines within the Protection Zone

Minor transmission lines and minor pipelines may be permitted within the Protection Zone under the following conditions, applied by the County on a case-by-case basis, and in consideration of the degree to which, in the reasonable discretion of the Permit Authority, or in the case of an Administratively Approved Permit, the Director, the following conditions are relevant and if so, are met in the individual case:

1. Nature and proposed location of the minor transmission line or minor pipeline within the Protection Zone and the need to locate the same within the Protection Zone support the permit.
2. Location of the proposed facility is warranted based on the location of existing County road.
3. Existing developed conditions in the area served by the County road support the permit.
4. Anticipated future development in the area served by the County road supports the permit.
5. Existence of current utility facilities in the desired location and the capacity of each utility facility.
6. Projected width, at buildout, of the County road in proximity to the minor transmission line or minor pipeline.
7. Necessity for preservation of the full width of the Protection Zone at this location.
8. Projected cost of relocation if it becomes necessary to relocate the minor transmission line or minor pipeline, including projected cost to acquire additional easement(s) if necessary.
9. Degree to which any costs of future location or relocation of the minor transmission line or minor pipeline will be borne by the applicant or other parties.
10. Presence or absence of any recorded utility easement(s).
11. Impact of the proposed project on adjacent properties.
12. Location and nature of development to be served by the project.
13. Phasing plans, if any, for the project and/or the development to be served.
14. Relationship of the proposed facilities to the County’s long-range and capital maintenance improvement programs.
15. Relative cost impacts to the applicant and to the County of maintaining the location, or of relocating, the minor transmission line or minor pipeline within or outside the Protection Zone.
16. Safety issues presented by the proposed project and whether mitigation measures adequately address those issues.
17. Adequacy of the proposed project to account for or to accommodate terrain changes.

5.205 Review Procedure for Minor Transmission Lines and Minor Pipelines in the Protection Zone

1. Applications for minor transmission lines and minor pipelines in the Protection Zone shall follow the procedure in 5.201, provided however; all applications shall initially be evaluated to determine whether they may be considered for administrative approval under 2.202.
2. Prior to review, the applicant shall meet with the Director and the County Engineer to explore alternatives for approval of the project, in consideration of the criteria in 5.204, including the potential for permitting the project in the Protection Zone in each particular case.