



September 19, 2018

Mr. Mark Gebhart
Project Manager
El Paso County
2880 International Circle
Colorado Springs, CO 80910-6107

Re: 9/20/18 – MVEA Comment to El Paso County Re Proposed Revisions to Chapter 5 Utility Siting Regulations

Dear Mr. Gebhart:

My name is Jim Herron, and I am the CEO for Mountain View Electric Association (“Mountain View”). Mountain View is a rural electric cooperative serving more than 53,000 electric meters spread across eight counties. Mountain View is the primary retail electric service provider in unincorporated El Paso County.

Thank you for providing Mountain View with the opportunity to submit a public comment regarding the proposed “AASI-Revisions to Chapter 5, Site Selection and Construction of Major Facilities of a Public Utility.” As the largest provider of retail electric services in unincorporated El Paso County, both the County’s existing land use regulations and these proposed amendments are of critical importance to Mountain View’s continued ability to provide cost-effective and reliable service to our members and to continue to support growth within the County.

Mountain View is strenuously opposed to the proposed revisions to Chapter 5.

As you may be aware, Mountain View has long maintained that Chapter 5 of Appendix B to the El Paso County Land Development Code (“Chapter 5”) may not be lawfully applied to Mountain View’s construction, repair, and/or replacement of lower voltage electric distribution lines. More specifically, such lower voltage electric distribution lines do not constitute the “major facilities of a public utility” and are therefore not subject to the County’s 1041 powers under state law. The lower voltage distribution lines constructed and maintained by Mountain View are plainly distinguishable from higher voltage electric transmission lines, which are clearly defined under applicable state law as “major facilities of a public utility.”

This Association is an equal opportunity provider and employer.

This issue first came to a head last year when El Paso County staff informally took the position that El Paso County intended to begin interpreting the existing regulations under Chapter 5 as applicable to all electric lines, including Mountain View's low voltage electric distribution lines. Through counsel, in writing, and on no less than four separate occasions, Mountain View has consistently rejected the applicability of the existing Chapter 5 to its ability to construct, repair, rebuild, or replace electric distribution lines. In response, the County has taken the position that it does possess such authority under its so-called "1041 powers," but to date, the County has not taken any action to enforce the existing Chapter 5 against Mountain View's construction and/or improvement of electric distribution lines. Most recently, Assistant County Attorney Cole Emmons informed Mountain View that the County was preparing revisions to Chapter 5 that might resolve this longstanding dispute.

Unfortunately, the proposed revisions to Chapter 5 will not resolve this longstanding dispute. In fact, it appears that the proposed revisions would exacerbate this issue by expressly stating that the siting of Mountain View's new and/or improved electric distribution lines are subject to regulation by the County in a manner that violates state law. Moreover, the proposed waiver process would bury Mountain View in red tape and provide the County with near limitless discretion to prohibit Mountain View from constructing or improving electric distribution lines that are needed to support the continued growth and prosperity of El Paso County businesses and residents.

Mountain View again states its position that the County has no authority to regulate the siting of electric distribution lines as these improvements are not the "major facilities of a public utility." The proposed revisions to Chapter 5 will not resolve the parties' dispute and would instead convert the County's informal position (which it has declined to act upon to date) into an explicit overreach in violation of state law.

As Mountain View has previously explained, even if the County's application of Chapter 5 to electric distribution lines is ultimately found to be lawful, such a finding would open a Pandora's box of inverse condemnation claims. Mountain View holds countless vested utility easements within unincorporated El Paso County, which provide Mountain View with unfettered authority to construct, operate, and maintain electric lines within the so-called "Protection Zone." If the County seeks to interfere with these vested property rights under either the existing Chapter 5 or the proposed revisions to Chapter 5, Mountain View would be entitled to just compensation for the taking of such vested property rights through the County's ex post facto legislative action.

Separate and apart from these legal issues, Mountain View is also opposed to the proposed revisions to Chapter 5 on public policy grounds. Specifically, if the revisions are enacted (and subsequently found to be lawful), they will exponentially increase Mountain View's planning and administrative costs. For example, to obtain a waiver for the siting of a proposed distribution line under the proposed regulations, Mountain View would be required to submit information regarding seventeen separate conditions for approval, including numerous economic forecasts and studies that would require Mountain View to hire additional personnel and/or incur significant outside consulting

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costs. Moreover, the proposed revisions drastically expand the "Protection Zone" as it currently exists under Chapter 5 to also apply to countless roads that have a current or proposed classification as collector streets. All of these changes would increase Mountain View's operating costs and would almost certainly require Mountain View to pass these costs onto its members through increased rates.

Ultimately, if the revisions to Chapter 5 are approved (and found to be lawful), Mountain View would likely have no choice but to require that future developments provide for vested utility easements outside the "Protection Zone." This would drastically reduce the developable area within the County and create substantial uncertainty with regard to numerous developments that are already in the works. With respect to Mountain View's existing vested utility easements, Mountain View will be forced to seek just compensation from the County for the vested property rights that the County would inversely condemn through the adoption of the proposed revisions to Chapter 5.

Mountain View remains committed to working with the County in good faith. However, the interests of Mountain View's customers will always be paramount, and Mountain View cannot ignore an unlawful restriction on its ability to serve its members and a blatant infringement of its vested property rights.

If you have any questions or would like to discuss, Mountain View would be interested in further dialogue regarding these and other issues. Mountain View would like direct notification of any Commissioners' meeting where the proposed amendments would be considered.

Sincerely,

A handwritten signature in black ink that reads "Jim Herron". The signature is written in a cursive style with a large, looped initial "J".

Jim Herron
Chief Executive Officer
Mountain View Electric Association, Inc.