

APPEAL TO THE FRUITA CITY COUNCIL

Appeal from: The City of Fruita Planning Commission (“**Planning Commission**”)

Applicant: Public Service Company of Colorado, a Colorado corporation conducting business as Xcel Energy (“**PSCo**”)

Application: PSCo – 6683 Transmission Line Rebuild Project (“**Project**”)– City of Fruita Conditional Use Permit Application (“**CUP Application**”).

Planning Commission Meeting Date: October 8, 2024

Relief Requested: PSCo respectfully requests that the Fruita City Council (“**City Council**”) should take the following action in response to this appeal: reverse the Planning Commission’s motion confirming staff’s administrative decision “that the portion [of the Project] within CSR zone district as an allowed use be undergrounded in order to be compatible with the Riverfront Park” (the “**Decision**”).

Counsel for PSCo: Sarah Kellner and Makenna Johnson, Davis Graham & Stubbs, 1550 17th St # 500, Denver, CO 80202, sarah.kellner@davisgraham.com and makenna.johnson@davisgraham.com.

BASIS FOR APPEAL

Introduction

This appeal arises out of PSCo’s CUP Application to rebuild its 6683 Transmission Line (“**Line 6683**”), a seventy-year-old transmission line (that currently serves multiple communities in Mesa County, including the City of Fruita (the “**City**” or “**Fruita**”). Line 6683, which has come to its end of useful life, must be rebuilt so that PSCo can continue to provide safe and reliable electricity to these communities.

While the Planning Commission approved the CUP Application (which applied to the areas crossed by the Project within Industrial and Residential zones), it also confirmed City staff’s decision that the portion within Riverfront Park, zoned Community Services and Recreational (“**CSR**”), is an allowed use only if undergrounded in order to be compatible with Riverfront Park. This undergrounding condition suffers from three fatal and consequential flaws for the City. First, it is inconsistent with the City of Fruita Municipal Code (“**Code**”). PSCo’s above ground transmission line is an *allowed use* in the CSR zone district that can co-exist with the many other uses in Riverfront Park.

Second, under longstanding Colorado case law, uses by right cannot be subject to the City’s unfettered discretion to deny them. Local governments cannot condition or deny an allowed use without adequate review standards or criteria. The Fruita Code only provides one criterion when reviewing an allowed use – the compatibility requirement – which is elsewhere defined as the ability to co-exist with other surrounding uses. Denying or conditioning allowed uses subject only

to this compatibility requirement, however, fails to provide the specific review criteria required by Colorado law. Additionally, here, both City staff and the Planning Commission failed to actually apply the Code's compatibility requirement. Line 6683 *can* co-exist with all uses within Riverfront Park. Indeed, above ground transmission lines co-exist with recreational uses like the disk golf course and recreational trails within Riverfront Park all over the state. The Planning Commission did not provide any basis to conclude otherwise and in failing to do so, runs afoul not only of the City's Code but also state zoning law.

Third, even if the Planning Commission's conclusion could survive a proper application of the Code and Colorado law, the consequence of that conclusion is an additional expense to Fruita of between \$9,740,000 to \$11,300,000 to underground Line 6683. The City's decision will be subject to the Colorado Public Utility Commission's review and approval. That state body has, on multiple occasions, rejected local jurisdictions' attempts to require public utilities to underground electric transmission lines when doing so increases the expense of the project. That is because undergrounding transmission lines can cost as much as ten-times the cost of the same facilities above ground. Charged with ensuring PSCo can provide electricity economically to its rate payers statewide, the PUC has concluded that the additional expense associated with undergrounding lines in circumstances like those here should not be borne by PSCo's ratepayers, and instead must be covered by the jurisdiction that requires it. Here, PSCo estimates that it will cost at least an additional \$9.7 million to underground Line 6683 in Riverfront Park. If the City Council upholds the Planning Commission's decision, that cost will have to be borne by the City, or the PUC will reject Fruita's undergrounding condition.

For all these reasons, the City Council should reverse the Planning Commission's decision deeming Line 6683 incompatible within Riverside Park, or alternatively replace the Planning Commission's condition with the following condition consistent with the PUC's prior precedent:

PSCo may install a portion of the transmission line underground along King's View Road or the Emergency Access Road depicted in the Sunset Pointe Development plans, provided that such route alignment and undergrounding is contingent upon the City of Fruita staff: (1) selecting which alternative route as between the two it proposed Line 6683 should follow; (2) acquiring all necessary land rights for said route; and (3) entering into PSCo's Relocation Agreement by no later than 30 days after the date of this decision. If the City has not met these requirements within 30 days of the date of this decision, PSCo shall proceed with overhead installation of the route included in the Application.

Background Facts, Applicable Regulations and Planning Commission Action

I. Background Facts

a. Transmission Line 6683

PSCo is a regulated public utility that serves multiple communities in Mesa County, including Fruita, Grand Junction, DeBeque, and Palisade. Federal and state law require PSCo to provide

safe, reliable, and economical electric service to its customers in these and many other jurisdictions across Colorado.

Line 6683 is a 69 kilovolt (kV) single circuit line that is part of PSCo's overall electric transmission network serving the state. Depicted in red on Figure 1 below, Line 6683 connects the Fruita Substation to the Uintah Substation and was built in 1956 within transmission line corridor easements by PSCo.

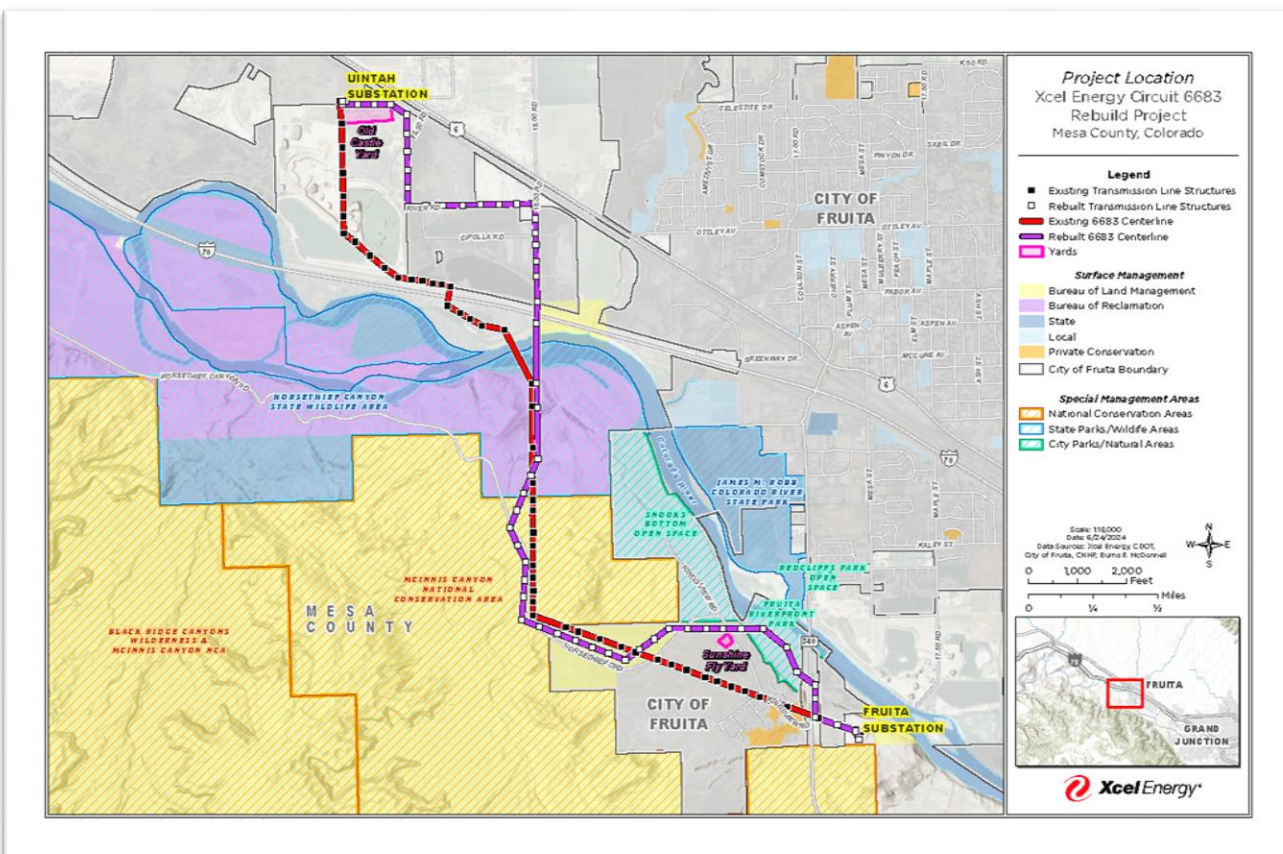
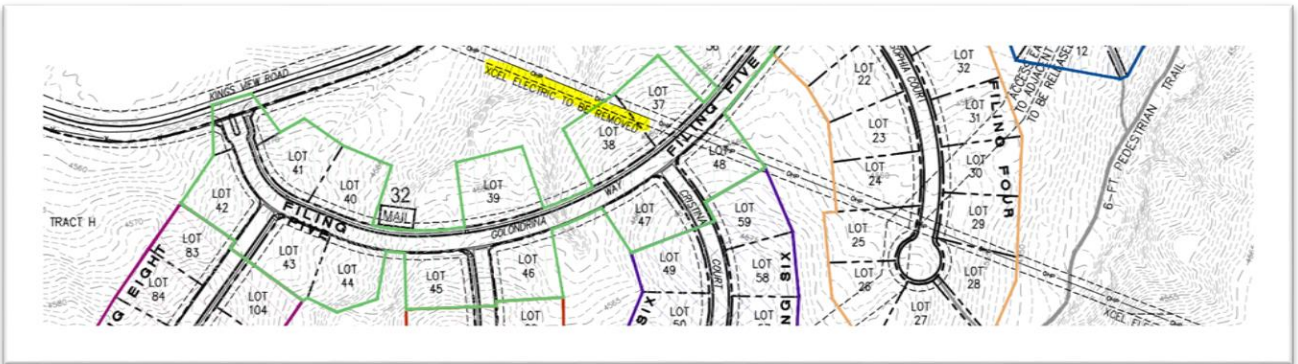
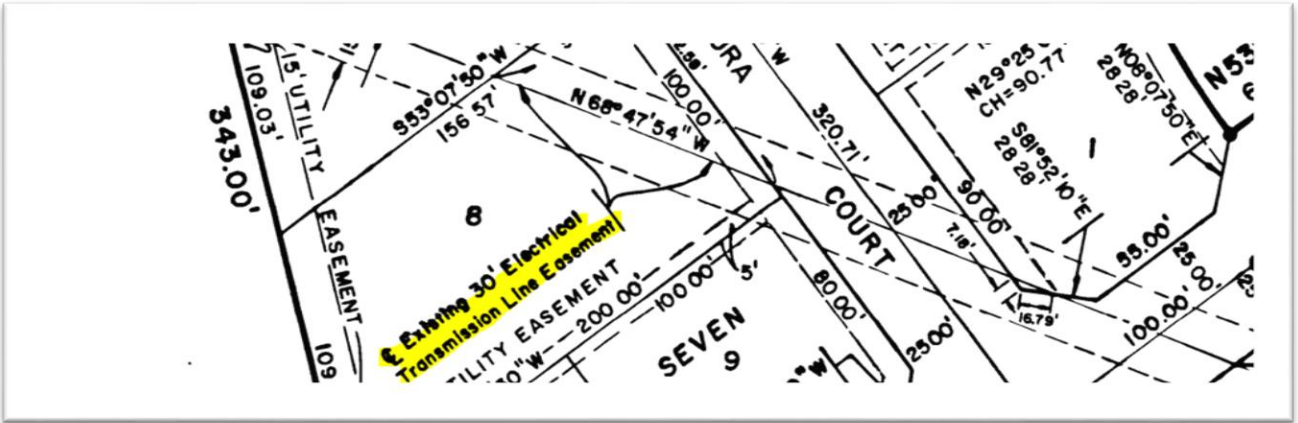


Figure 1 – Project Location

That corridor has since had significant development built around it, including a residential subdivision that the City approved in the late 70s (King's View Estates) and another one it approved in 2023 (Sunset Pointe). Both subdivisions include approved (and with respect to King's View Estates, developed) lots that overlap the Line 6683 corridor. *See* Figure 2 (Excerpt of King's View Estates Filing No. Two) and Figure 3 (Excerpt of Sunset Pointe Preliminary Plan).¹

¹ The full approved plans for both developments are attached as **Exhibit A**.



b. The Project

Line 6683, now almost seventy-years-old, is coming upon its end of useful life and must be replaced with current materials for PSCo to continue to provide safe, reliable, and economical electricity to Fruita and the communities around it. PSCo therefore began discussions with the jurisdictions impacted by Line 6683 in 2021. This started with the Bureau of Land Management (“**BLM**”) and the Bureau of Reclamation (“**BOR**”) in early 2021 to discuss the portions of the Project crossing federal lands. Then in early 2022, PSCo began discussions with the City of Fruita and its constituents.

Initial discussions with City staff gravitated toward two preliminary route options.² The first would stay within the existing corridor through the King's View Estates and what is now the Sunset Pointe development. The second would relocate the Line 6683 corridor through the King's View Estates to the Riverfront Park adjacent to it (see existing route in red and initial proposed route in yellow):

² PSCo evaluated a total of eight routes in a comprehensive routing study. *See* route alternatives included in PSCo's PowerPoint for the Meeting at pg. 3. For multiple reasons, including physical constraints and safety concerns, the other six routes were deemed infeasible.

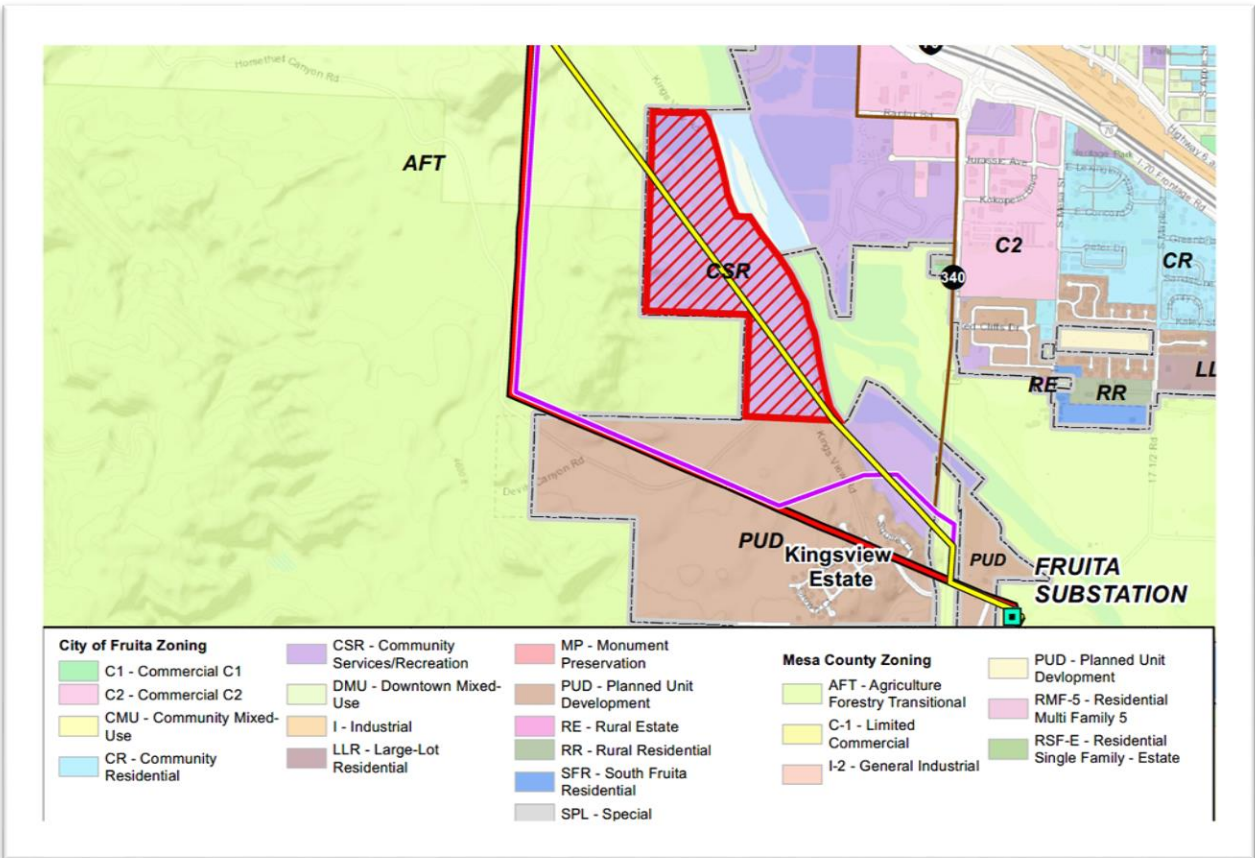


Figure 4 – Proposed Routes

The City, however, expressed concern about the portion of the yellow route above that crossed an existing conservation easement (depicted with red hatching). Accordingly, PSCo presented a third route (depicted in pink above), that circumvented King's View Estates by going through Riverfront Park but returned to the existing corridor just north of that existing development. City staff, however (perhaps with knowledge of the upcoming Sunset Pointe development), requested that the rebuild rejoin the existing corridor further to the north.

After these initial meetings with the City, which took place through May of 2022, PSCo worked with the City Parks Department to refine the possible route through Riverfront Park, primarily to address and ensure Line 6683 could co-exist with existing utilities, the disc golf course, and trees in and around the Park.

At the same time PSCo was meeting with City staff, it was also engaging with the Fruita community. In February 2022, PSCo sent 1,500 letters to residents within 2,500 feet of eight (8) route options for the Project, one of which was the route through Riverfront Park discussed with the City (the "**Project Notice**"). The Project Notice included information about Line 6683, the Project, and an upcoming open house for community members to ask questions of, and give comments to, PSCo representatives.

On February 16, 2022, PSCo held its first in person public meeting at the Fruita Community Center. Its representatives presented the project’s routing study results and requested feedback about all the route options. Most of those comments were from residents of King’s View Estates who expressed their priority was to move Line 6683 outside of its existing corridor.

PSCo provided similar notices in March 2022 for a virtual open house that it hosted on March 21, 2022, and a second in-person meeting in July of 2022. After these meetings, it was clear that the great weight of the public preferred for PSCo to relocate Line 6683 outside of the King’s View Estates area, so PSCo worked with the City to conduct geotechnical work in the Riverfront Park area and began going through the process for BLM approval of the route across neighboring BLM land.

By October of 2023, PSCo was able to identify existing utilities within and surrounding Riverfront Park and met with Fruita to discuss a slight modification to the proposed route to avoid an existing natural gas line there. Then, in September of 2024, the City informed PSCo about the recently approved Sunset Pointe development, which development approvals assumed that PSCo would reconstruct Line 6683 outside of its existing corridor and relocate it to the Riverview Park route. See **Exhibit A**, Sunset Point Preliminary Plans.

c. PSCo’s Application

After additional consultation with City staff, PSCo was able to submit its final application on July 5, 2024, seeking a Conditional Use Permit (“CUP”)³ for the portion of the Project located within the City’s Industrial and Residential zone districts. For the portion of the Project within Riverview Park, however, no CUP was necessary because that property is zoned CSR, and both “transmission lines (above ground)” and “transmission lines (underground)” are “allowed uses” within that zone district.

On July 27, 2024, PSCo received referral comments on the Project’s Application. Those comments suggested that PSCo should underground the portion of the Project located within Riverfront Park. PSCo requested a meeting with City staff to discuss the City’s request to underground that portion of Line 6683, which meeting occurred on August 6, 2024. At that meeting, PSCo informed City staff that consistent with prior orders from the Colorado Public Utilities Commission, it could not underground Line 6683 unless the City of Fruita agreed to pay for the additional expense associated with such undergrounding (see discussion below at Section III). City staff asked for PSCo’s estimates of those additional costs, and the parties agreed to meet later, requiring a continuance of the first Planning Commission meeting on the Project.

On October 3, 2024, PSCo met with City staff again and provided estimates for the marginal additional expense to underground Line 6683 within two different routes proposed by the City. See attached **Exhibits B and C**. That additional cost ranges from \$9,740,000 to \$11,300,000 and dwarfs the overall anticipated cost of the Project by ten-fold. Following its meeting with City staff,

³ PSCo’s Application is available at <https://www.fruita.org/media/68256>, pages 38-102, and incorporated herein.

PSCo also provided Fruita with its standard cost sharing agreement for undergrounding transmission lines like Line 6683.

II. Applicable Code Provisions

Under the Code, a Conditional Use Permit is necessary for a “use which, because of its unique or varying characteristics, cannot be properly classified as an allowed use in a particular zone district.” Code Section 17.57. In the case of this Project, a CUP was necessary to review those portions of the Project where PSCo was relocating its existing corridor within Residential and Industrial zone districts. No CUP is necessary for this Project, however, for the relocated portion within Riverfront Park. The Park is zoned CSR, and above ground transmission lines are an “allowed use” for that zoning. Code 17.05.090; *see also* October 8, 2024 Planning Commission Meeting Audio Recording (“**Audio Recording**”),⁴ incorporated herein, at 24:16-24:35, and October 8, 2024 Planning Commission Meeting Minutes (“**Minutes**”), incorporated herein, at pg. 4. Under Fruita’s Code, however, “allowed uses” are nevertheless subject to review for “compatibility.” Code Section 17.05.080(E).

Further, under Code Section 17.07.040(B)(4), when multiple review processes are required for the same project, the project as a whole will be treated as one and subject to the stricter land use process. Here, that required Planning Commission review of both the CUP and staff’s application of the Code to the Project for that portion of it within the CSR zone district. Audio Recording at 21:26-21:49; Minutes at pg. 4.

a. *The Planning Commission Meeting*

At the Planning Commission’s Meeting, City staff recommended approval of the CUP, but took the position that under the Code, the Project, as planned, was not compatible with the CSR zone district unless PSCo undergrounded that portion of Line 6683 located within Riverview Park.

After hearing from City staff, PSCo, and City constituents, Commissioner McGuire moved to (1) approve the CUP (which applied to that portion of PSCo’s relocation located within the City’s Industrial and Residential zone districts) with the condition that all review agency comments are met; and (2) confirm staff’s administrative decision that the portion of the Project within the CSR zone district must be undergrounded to be compatible and considered an allowed use. Minutes at pg. 25-26. Commissioner McGuire’s motion passed 4-1. *Id.* at pg. 26.

The City Council Should Reverse the Planning Commission’s Decision

I. ***City staff’s conclusion that undergrounding is necessary to make the facilities “compatible” with Fruita’s CSR zone district is unsupported, contrary to fact, and inconsistent with the Code.***

⁴ The audio recording of the Planning Commission Meeting held on October 8, 2024 can be found at <https://www.youtube.com/watch?v=dr3JPdVM0BE>.

As applicable to this appeal, PSCo's Project relocates its existing transmission line corridor (depicted in red below) away from the King's View Estates and Sunset Pointe developments and across a portion of Riverview Park (depicted in pink below). PSCo proposed this preferred route in response to comments it received from the community during its open houses relating to the Project, which overwhelmingly supported moving Line 6683 away from the middle of those developments.

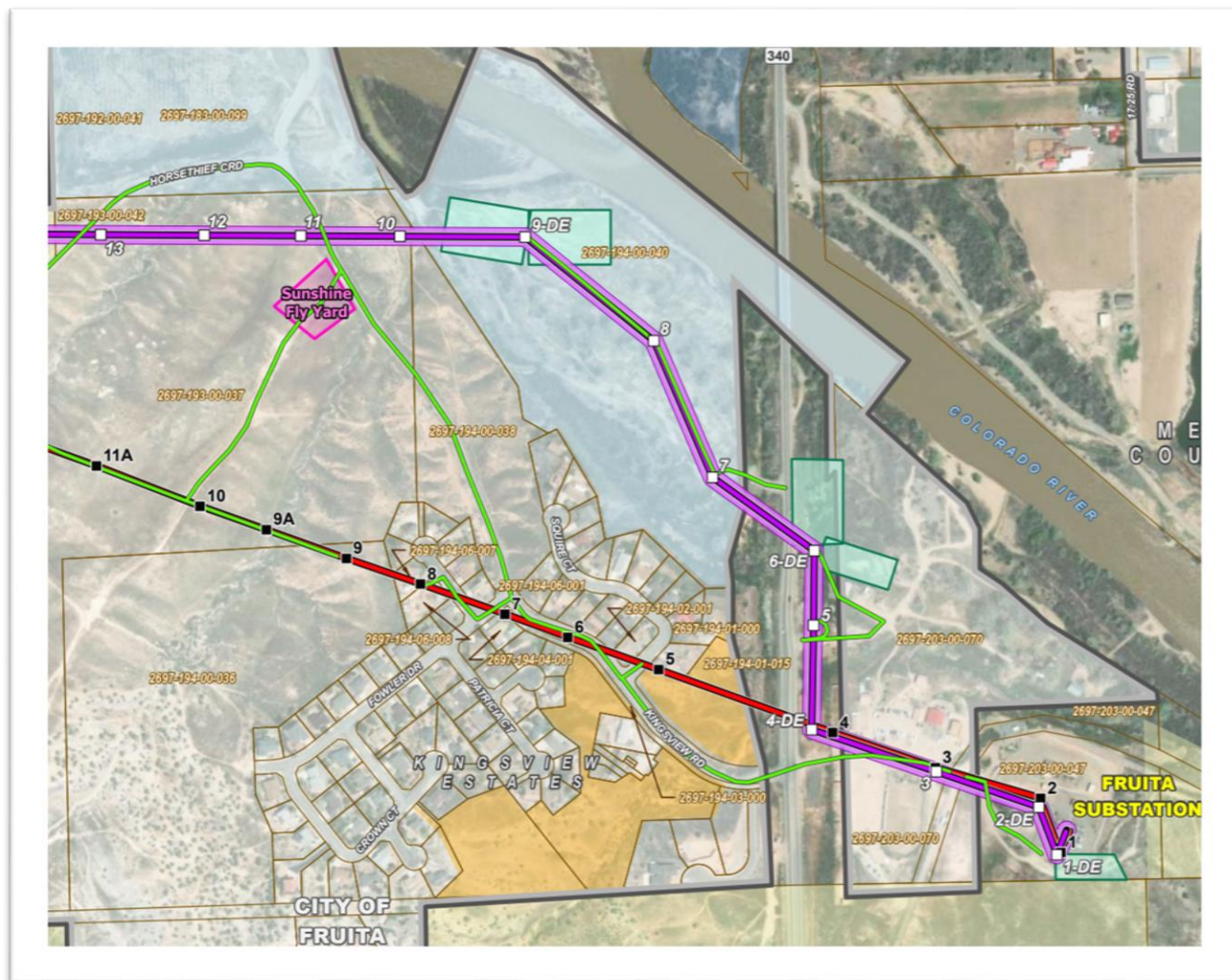


Figure 5 – Current Proposed Route with Numbered Structures⁵

As depicted above, the portion of the Project located within the CSR zone district will include three poles (identified above as Poles 7, 8, and 9-DE), all of which have been strategically placed after consultation with the Grand Valley Disk Golf Club to avoid conflict with the frisbee golf course located there.

The purpose of the CSR zone district is:

⁵ Also attached as **Exhibit D**.

to provide public and private recreational land, facilities, schools, fire stations, libraries, fairgrounds and other public and quasi-public lands and buildings. The zone includes open space areas, which are set aside to prevent environmental damage to sensitive areas and to limit development in areas that are unsuitable for development due to flooding or geologic hazards. The CSR zone may be applied to parks, outdoor recreation facilities, open space corridors, environmental areas, trails, recreational facilities, and similar areas. The CSR zone helps implement the open space, trails and parks policies of the City's Master Plan.

Code Section 17.03.080(A).

Despite being an allowed use, the Planning Commission concluded that Line 6683, as proposed, is not “compatible” with the other uses in its vicinity. *See* Minutes at pg. 25. But in so concluding, the Planning Commission failed to apply the Code’s compatibility standard, which requires only that the proposed use and the uses within its vicinity can “co-exist.” Applying the correct standard, Line 6683 as proposed (above ground) is not only compatible with the uses within Riverview Park, but also less impactful to the existing uses within that Park than the Planning Commission’s proposed underground transmission line.

As defined by the Code, “compatibility” exists:

when a proposed land use can *coexist* with other existing uses in the vicinity without one (1) use having a disproportionate or severe impact on the other use(s).

Code Section 17.05.080(C)(1) (emphasis supplied). Neither the City staff nor the Planning Commission made any specific findings indicating Line 6683 cannot coexist with the uses found in Riverfront Park. Those uses are:

- A frisbee disk golf course
- A 20’-wide emergency access road to accommodate over 120 new homes in the Sunset Pointe development.
- Utility corridors that include an existing natural gas pipeline line.
- Public recreational trails for hiking and biking.

Communities across Colorado are rife with above ground transmission lines that “coexist” with all these uses. Indeed, these uses are so compatible with transmission line corridors that Colorado’s state legislature passed a bill in 2022 *encouraging* the co-location of recreational parks and trails *within* transmission line corridors. House Bill 22-1104, attached as **Exhibit E**. PSCo has included with this appeal several examples of its transmission lines through parks, recreational open space, and hiking and biking trails. *See* **Exhibit F**.

Specific to Line 6683, PSCo has worked with the City Parks and Recreation Director to microsite the poles within Riverview Park to avoid impacts on the emergency access road, recreation trails

and disc golf course, and to minimize tree removal. See Figures 6 and 7 below depicting the initial route through Riverfront Park and the revised route with the Sunset Pointe development plans overlay. PSCo also plans to use weathered steel monopoles that will blend with the surrounding area and reduce the overall number of poles required within the Park. Far from creating a “disproportionate” or “severe” impact to the uses around it, the Project can most certainly “coexist” with those uses.



Figure 6 – Initial Proposed Route Through Riverfront Park



Figure 7 – Revised Route to Accommodate Road and Disc Course

Without any facts to support a finding that the Project will have a disproportionate or severe impact on the uses already within the Riverfront Park, City staff and the Planning Commission instead summarily concluded that the Project installed above ground would “harm” the “preservation of the natural environment and recreation,” requiring Line 6683 to be installed underground. *See, e.g.,* Minutes at pgs. 5, 25; Planning and Development Department Staff Report pg. 6, 10. This conclusion, which is insufficient to deem Line 6683 “incompatible” under the Code, is also incorrect on multiple fronts.

First, underground transmission infrastructure requires significantly more ground disturbance than above ground poles. That is because underground transmission lines require extensive excavation and installation of large duct banks and vaults as depicted below:



Crews work on an underground duct bank extending from a typical 8'x8'x24' vault

Figure 8 – Typical Underground Transmission Vault and Duct Bank

Second, the Planning Commission's condition – specifically that Line 6683 must be undergrounded between structures 7 and 9-DE – will require PSCo to add two transition structures to the Project on either side of Riverside Park – specifically at pole locations 7 and 10.⁶ See Figure 5, above. These structures, like their name implies, are required to transition the line from overhead to underground, and are generally much larger and more invasive visually than standard transmission line poles:

⁶ While Planning Commission's motion was to confirm "staff's administrative decision that the portion [of the Project] within CSR Zone District as an allowed use be undergrounded in order to be compatible with the Riverfront Park," PSCo must place its transition structure at pole location 7 because Structures 4-DE, 5, and 6-DE are located outside of the City of Fruita, within unincorporated Mesa County, and subject to that County's jurisdiction.



Figure 9 - Sample Transition Structure for 69 kV for Transmission Line

Finally, underground transmission lines have an expected life expectancy of 40 to 60 years, compared to overhead transmission lines which have a life expectancy of 60 to 70 years. This is contrary to Planning Commission Member Mulder's misimpression that underground lines are "there for eternity, so there will be no destruction in the future...." Minutes at pg. 18. To the contrary, underground transmission lines require rebuilds and maintenance like any other transmission facility.

Undergrounding Line 6683 within Riverfront Park – as the Planning Commission has required – would therefore result in a much larger impact to the natural environment and existing uses than the three monopoles and overhead lines proposed in PSCo's Application.

City staff's and Planning Commission's conclusion that constructing Line 6683 underground is necessary to make PSCo's proposed use "compatible" with the other uses within Riverfront Park is unsupported, contrary to fact, and inconsistent with the Code.

II. *The Planning Commission's application of its compatibility provision is contrary to Colorado law regarding zoning.*

The Planning Commission's failure to apply the Code when deeming the overhead line "incompatible" in Riverfront Park runs afoul of Colorado law. It has long been the case in Colorado

that zoning regulations “must possess sufficiently specific standards to protect against arbitrary state action, put landowners on notice that such factors are considered in development approval, ensure that the [local jurisdiction’s] responses over time will be rational and consistent, and enable courts to conduct meaningful judicial review.” *Quaker Court Ltd. Liab. Co. v. Bd. of Cty. Comm’rs*, 109 P.3d 1027, 1032-33 (Colo. App. 2004). Specific to uses by right, “a home rule city’s zoning code cannot grant it the power to review and deny a permitted use unless the zoning code provides adequate review standards or criteria to do so.” *City of Colo. Springs v. Securcare Self Storage, Inc.*, 10 P.3d 1244, 1251 (Colo. 2000) (interpreting *Sherman v. City of Colorado Springs Planning Commission*, 680 P.2d 1302 (Colo. App. 1983) (*Sherman I*)). Said another way, once a use is deemed a “use by right,” a municipality does not have unfettered discretion to deny it.

Here, the Planning Commission failed to consider or apply the Code’s standard for “compatibility,” namely the ability for the 6683 above ground line to co-exist with the *uses* already existing in Riverfront Park. And rather than address the *specific* Project at hand, at least one Planning Commission member complained broadly that above ground transmission lines are incompatible – as a whole – with the City. *See, e.g.*, Minutes at pg. 19; *see also* Audio Recording at 2:21:20-2:21:48 (expressing desire to amend Code to prohibit above ground transmission lines in all parks).

While the Planning Commission may not like the fact that above ground transmission lines are an approved use in CSR zoning, as a matter of policy, the City has broadly allowed above ground transmission lines within that zone district. Absent a specific conflict with *this* Project and the particular uses within Riverfront Park, under the Code’s standards, the City cannot disallow PSCo’s proposed use here.

III. *The Planning Commission’s Condition to Underground Line 6683 Will Only Be Enforceable if the City Is Willing to Pay for that Undergrounding.*

Even if the Planning Commission had appropriately followed the Code and Colorado law, its condition to underground the Line 6683 within Riverfront Park is either unenforceable as a matter of state law or will require the City to pay for that undergrounding.

PSCo is a regulated Public Utility under C.R.S. § 40-1-103(1)(a). One body that regulates PSCo’s activities is the Colorado Public Utilities Commission (“PUC”), which is a state entity made up of commissioners appointed by the Governor who are charged with “all power to regulate the facilities, service and rates and charges” of public utilities. Colo. Const. Art. XXV; *see Mountain States Tel. & Tel. Co. v. Pub. Utils. Com.*, 576 P.2d 544, 547 (Colo. 1978) (“It can therefore be said that the PUC in the area of utility regulation, including rate making, has broadly based authority to do whatever it deems necessary or convenient to accomplish the legislative functions delegated to it.”).

While local jurisdictions like Fruita have certain authority to make decisions about the location of utility projects within their boundaries, C.R.S. §§ 29-20-101 et seq., the bounds of that authority is limited by the PUC because the provision of safe, reliable, and economical service is a matter of statewide concern. *See* C.R.S. § 29-20-108. Accordingly, under longstanding preemption law, the City cannot act in ways that conflict with or materially impede these important state interests.

City of Longmont Colo. v. Colo. Oil & Gas Ass’n, 2016 CO 29, ¶¶ 35, 37 (State interests and laws preempt local regulation in multiple ways, such as “when a state statute ‘impliedly evinces a legislative intent to completely occupy a given field by reason of a dominant state interest’” and “when the effectuation of a local interest would materially impede or destroy a state interest.”). To ensure that does not occur, the state legislature has granted the PUC authority under C.R.S. §§ 29-20-108(5) and 40-4-102 to reverse requirements and conditions imposed by local jurisdictions, like Fruita, that “will unreasonably impair the ability of [a] public utility or power authority to provide safe, reliable, and economical service to the public....”

As PSCo explained to the City prior to the Meeting, the PUC has relied upon these statutory provisions to conclude – on multiple occasions – that local jurisdictions cannot require public utilities to underground transmission facilities if such undergrounding is more costly than installing the same facilities above ground. *See In re Application of Tri-State Generation and Transmission Association, Inc. and San Miguel County, Colorado*, Decision Nos. C04-0093 (2004 Colo. PUC LEXIS 75) and C05-0627 (2005 Colo. PUC LEXIS 569); Docket No. 03A-192E (the “Telluride Case”); *In re Application of Tri-State Generation and Transmission Association, Inc., Adams County, and Commerce City, Colorado*, Decision Nos. C08-1182 (2008 Colo. PUC LEXIS 1049), C09-0183 (2009 Colo. PUC LEXIS 161) and C09-0383 (2009 Colo. PUC LEXIS 364); Docket No. 07A-265E (the “Adams County and Commerce City Case”).

Under this precedent, Fruita cannot require PSCo to underground any portion of Line 6683 *unless* (1) doing so would be equal to or less expensive than PSCo’s above ground options; or (2) Fruita pays for the difference between the underground and overhead installation costs.

A. The PUC Decisions

As discussed above, the primary purpose of the PUC is to ensure that the Colorado public *as a whole* receives safe, reliable, and economical electric service. For regulated public utilities like PSCo, that charge includes preventing local jurisdictions from taking actions on land use applications that undermine those goals.

In the Telluride Case, Tri-State sought review under C.R.S. § 29-20-108(5) of San Miguel County’s approval of a Public Utilities Structures Special Use Permit with certain conditions, including a condition requiring Tri-State to place portions of the transmission line underground. Decision No. C04-0093 at *1. Under C.R.S. § 29-20-108(5)(d), the PUC must “balance the local government interest with the statewide interest in the location, construction, or improvement of major electrical or natural gas facilities.” That includes taking into consideration “the impact that the local government action would have on the customers of the public utility or power authority who reside within and without the boundaries of the jurisdiction of the local government.” C.R.S. § 29-20-108(5)(d)(VI).

Under these parameters, the PUC pointed out that undergrounding the line “would require ratepayers outside the region --indeed outside the state--to pay added costs for facilities that do not directly (or even indirectly) benefit them.” *Id.* at **29-30. The PUC also noted that any underground benefits “(e.g., eliminating visual impacts of an overhead line) accrue mainly (if not entirely) to the local region, and not to Tri-State customers outside that region.” *Id.* At *30.

After balancing the State's interests against San Miguel County's local interest, the PUC deemed it unfair for ratepayers across the state to pay increased costs associated with a mainly or entirely local benefit. Notably, were it any other way, every local jurisdiction in the state could impose such added costs, increasing the cost of electricity statewide ten-fold. The PUC therefore granted Tri-State's application, reversed San Miguel County's requirement to underground the transmission line, and required Tri-State to install the transmission line underground *only* where the total cost estimate for underground installation would be the same or lower than the total cost estimate for overhead installation. It also provided an option for San Miguel County to pay for the cost differential if it entered into an agreement to do so by a date certain. Decision No. C04-0093, 2004 Colo. PUC LEXIS 75 at **45-49. The PUC reaffirmed Decision No. C04-0093 in Decision No. C05-0627.

The PUC was asked to address the underground issue again in the Adams County and Commerce City Case. There, the PUC reversed Adams County's and Commerce City's underground condition altogether based on Adams County's and Commerce City's lack of willingness to pay for the incremental costs associated with underground construction. Decision No. C08-1182, 2008 Colo. PUC LEXIS 1049, at **4, 10-13, 16-19; Decision No. C09-0183, 2009 Colo. PUC LEXIS 161 at *9; Decision No. C09-0383, 2009 Colo. PUC LEXIS 364 at *7.

B. The City of Fruita cannot require PSCo to construct the Line underground without covering the associated costs.

Requiring PSCo to construct the Line underground would impair PSCo's ability to provide safe, reliable, and economical service to the public. In the Telluride Case, Tri-State needed to replace the line to ensure adequate capacity for future growth in the service area and because the line was 50 years old and nearing the end of its useful life. *See* Decision No. C04-0093 at **11, 22. Here, PSCo must similarly rebuild Line 6683 because there is anticipated growth in the service area, including the Sunset Pointe development, and Line 6683 is almost 70 years old, nearing the end of its useful life.

Further, as was the situation in the Telluride Case, undergrounding the Line 6683 within Riverview Park – whether in its current route or an alternative route – will cost considerably more than installing the Line above ground. Underground and above ground lines are not interchangeable—they differ from each other in many respects. Notably, on average, underground construction costs 10-15 times more than installing the same facilities above ground. This extremely disparate cost is primarily due to unique underground technical requirements and materials, additional construction processes and complications, the need for transition structures, and costs to avoid other underground facilities.

Specific to this Project, it will cost an estimated \$9,740,000 to \$11,300,000 to install the Project underground within the Riverfront Park along the two routes proposed by the City. This additional cost cannot be borne by PSCo's customers statewide, particularly in light of the limited impact the above ground structures will have on the Park.

In light of above ground transmission lines being an approved use within Riverfront Park under Fruita's Code, the limited impact that line will have on the Park, and the larger impact the underground line will have within the Park, there is no basis to require undergrounding here. But if the City does require such undergrounding, it must cover the costs of doing so.

Conclusion

For all of the reasons set forth above, the City Council should reverse the Planning Commission's Decision requiring PSCo to underground the Line 6683 to be deemed compatible with the uses in Riverfront Park.

If the City Council still desires to underground the transmission line within Riverfront Park and is willing to pay for the additional marginal cost of doing so, PSCo suggests that in order to comply with the PUC's previous orders, it impose the following condition:

PSCo may install a portion of the transmission line underground along King's View Road or the Emergency Access Road depicted in the Sunset Pointe Development plans, provided that such route alignment and undergrounding is contingent upon the City of Fruita staff: (1) selecting which alternative route as between the two it proposed the Line 6683 should follow; (2) acquiring all necessary land rights for said route; and (3) entering into PSCo's Relocation Agreement by no later than 30 days after the date of this decision. If the City has not met these requirements within 30 days of the date of this decision, PSCo shall proceed with overhead installation of the route included in the Application.