



October 22, 2021

Scott Fitzwilliams, Forest Supervisor
White River National Forest
900 Grand Avenue
Glenwood Springs, CO 81601

Re: Holy Cross Energy Avon-to-Gilman 115-kV Transmission Line project

Dear Mr. Fitzwilliams,

Thank you for this opportunity to provide comments on the Avon-to-Gilman electric transmission line (the “project”) Environmental Assessment (“EA”), proposed by Holy Cross Energy (“HCE”). We also appreciate the United States Forest Service (“USFS”) White River National Forest’s (“WRNF”) Holy Cross Ranger District’s (“HCRD”) efforts to bring the Town of Minturn (the “Town”) early into discussions as a Cooperating Agency.¹ While the project, located almost entirely within or directly adjacent to Minturn’s corporate limits, is being proposed to increase electrical service reliability for several communities in eastern Eagle County, it will generate a number of environmental effects that accrue almost entirely to the Town and its residents. USFS needs to better evaluate these impacts and possible mitigation through additional alternatives analysis. We believe that this project could potentially cause significant impacts to our community, as further outlined below.

As a home rule municipality, the Town represents and promotes the interests of its residents, and is responsible for the health, safety, and welfare of the community. The Town is a close-knit community that treasures its natural resource amenities. The Town is fortunate to be surrounded by abundant public lands and waters, which provide scenic, recreational, and environmental benefits for its residents and visitors alike. Recently, however, communities like ours are increasingly aware of and concerned about the fire risk that such a location entails and are working to mitigate such threats to populated areas.

The Town has the power, under the Local Government Land Use Control Enabling Act to plan for and regulate the use of land within the town. This includes protecting lands from activities which could endanger wildlife habitat, regulating development in hazardous areas, regulating based on the impacts on the community and surrounding areas, ensuring that the environment is protected, and that orderly use of the land can be consistent with constitutional rights.² Additionally, local governments are authorized to identify, designate, and regulate proposals of state interest within their jurisdiction, commonly referred to as “1041 powers.” These powers are applicable in areas that have a significant impact on natural resources of statewide importance (such as wildlife or the Eagle River), and around areas that have key facilities such as interchanges,

¹ 40 CFR § 1501.6.

² C.R.S. § 29-20-101, *et seq.*

mass transit facilities, and other public utilities (such as around Dowd Junction).³ As a co-regulator of this project, the Town has an important perspective on the status of landowner authorizations and additional regulatory approvals.

The Town's scoping comment letter of April 1, 2020 raised concerns regarding the following overarching issues:

1. Protection of the aesthetic values relative to Minturn's mountain and river corridors.
2. The issues related to the Dowd Junction/Minturn Gateway area including impacts to recreation, wildlife, future development, transportation, and access.
3. Concerns over the proximity of the project to the shooting range just south of town and resulting fire hazards and other management challenges.

The project as depicted in EA Appendix A Right of Way Map Book, has been altered to address some of these concerns, as noted in EA Sec. 2.2.1. Most notably the applicant has addressed the Town's third scoping concern relating to the underground/above-ground transition within close proximity to the unregulated USFS shooting range. The second Scoping issue relating to impacts to Dowd Junction has seen some improvement with a different configuration between poles number 26 through 33, crossing the USFS Holy Cross Ranger District Office that the Town sees as potential future development parcel. Because this realignment occurred to avoid impacts to the nearby inventoried roadless area, it remained unclear whether that proposed alignment might still impact the redevelopment potential. Fortunately, at the October 4, 2021 public open house meeting, Town Manager Michelle Metteer secured a commitment from HCE's David Blakely that another alignment tracking along the I-70 exit ramp and avoiding the USFS parcel altogether is feasible.⁴ We appreciate this commitment being incorporated into the revised alignment. As further detailed below, the Town remains concerned with the aesthetic and recreational resource impacts of the line's overhead construction, more generally, in addition to significant concerns with wildfire risks associated with overhead transmission lines.

Additional Alternatives Analysis is Required

Considering the significant risks and concerns outlined in this and other comment letters, the USFS should analyze a fully underground alternative (or undergrounded to the maximum extent technically feasible).

"It's too expensive not to [bury power lines]. Lives are on the line."⁵ Patricia Poppe, the new CEO of California's Pacific Gas & Electric ("PG&E") utility earlier this year ordered the company to bury 10,000 miles of existing transmission and distribution lines to mitigate wildfire risk. Even before the recent massive forest fires in recent years, nationally, a 2012 industry study

³ C.R.S. § 24-65.1-101, *et seq.*

⁴ We have learned of additional commitments made by HCE at the open house, including reconfiguring the alignment currently proposed to run through the Minturn Towne Homes at the intersection of Minturn Rd., Taylor Ave., and Railroad Ave. We look forward to seeing these commitments reflected in supplemental documentation.

⁵ Associated Press, *PG&E Will Bury 10,000 Miles of Power Lines So They Don't Spark Wildfires*, July 21, 2021.

estimated one-fourth of new power lines are buried. While the PG&E mitigation project is estimated to cost between \$15 and \$30 billion (\$1.5 to \$3 million per mile), undergrounding transmission lines has become much less expensive in recent years due to innovations in materials, trenching, and boring.⁶

One purpose of a scoping period in NEPA, and included in the USFS Notice of Proposed Action, is to “request for identification of potential alternatives.” 40 C.F.R. 1501.9(d)(7). USFS received dozens of scoping comments, including from the largest landowner impacted by the project, Battle Mountain Entites, requesting undergrounding of all or a significant portion of the HCE transmission line. Yet, USFS has failed to consider and analyze what to many in the public and the utility industry believe, to be an entirely reasonable alternative. USFS NEPA guidance requires that the range of alternatives include “all reasonable alternatives to the proposed action”. “Alternatives not considered in detail may include, but are not limited to, those that fail to meet the purpose and need, are technologically infeasible or illegal, or would result in unreasonable environmental harm.” WO 1909.15. Furthermore, case law requires that the agency “to give full and meaningful consideration to all reasonable alternatives.” *N. Idaho Cmty. Action Network v. United States DOT*, 545 F.3d 1147, 1153. “The existence of a viable but unexamined alternative renders an [EA] inadequate.” *Western Watersheds Project v. Abbey*, 719 F.3d 1035, 1050 (9th Cir. 2013); *quoting Westlands Water Dist. v. United States DOI*, 376 F.3d 853, 868 (9th Cir. 2004) (brackets in original); *see also Davis v. Mineta*, 302 F.3d 1104, 1122 (10th Cir. 2002).

Contrary to the above authority and requests by the public for study during scoping, USFS did not even consider and eliminate from detailed study, a fully or partially underground alternative, when in fact such an alternative should be studied in detail, because “[f]easible alternatives should be considered in detail. *Western Watersheds Project*, 719 F.3d at 1052. An underground alternative meets the stated purpose and need, appears to be technologically feasible considering the PG&E project, does not appear to be illegal, and would not seem to result in unreasonable environmental harm when compared with the preferred alternative. But, we do not know whether or not USFS considers the alternative reasonable or feasible because USFS did not even make that threshold determination or discuss such a possibility at all. Cost may be a limiting factor in the feasibility of an alternative, as permitted under CEQ NEPA Guidance.⁷ However, as noted USFS did not even make a finding regarding economic feasibility of such an alternative.

As such, the EA is deficient in considering a range of reasonable alternatives and violates longstanding NEPA regulations and case law.

Wildfire Hazard

Attached to this comment letter is a report authored by Anchor Point Group, Inc., updating its fire analysis from the 2011 Eagle County Wildfire Action Plan with new advanced modeling. The Town commissioned this report due to the dated and inconsistent wildfire analysis contained in the draft EA. Of note, the EA seems to cherry-picks the “moderate” fire risk from ERFPD’s

⁶ Aragon, Greg and Rubin, Debra, Engineering News-Record, *Calif. Utility Giant Will Bury 10,000 Miles of High Fire-Risk Power Lines*, July 27, 2021.

⁷ Forty Most Asked Questions Concerning CEQ's National Environmental Policy Act Regulations, 46 Fed. Reg. 18026 (March 23, 1981), as amended (1986).

2019 Community Wildfire Protection Plan (“CWPP”), while failing to disclose the 2011 CWPP “high” risk rating. Such arbitrary ratings seem to downplay the true risk, that the Anchor Point report confirms: “Nearly 100% of the structures in and around Minturn are highly vulnerable to wildfire.” The Anchor Point helpfully provides fire behavior analysis were a fire to ignite at points underneath the project. The probability analysis does not include the transmission line, as proposed, but perhaps USFS should require a more detailed probability analysis of likely ignition points.

Geologic Hazards

In its purpose and need statement, the USFS declares that the existing transmission network “is at risk of failure or extended outages resulting from natural events such as wildfires, avalanches, and landslides...” Yet, when evaluating the risk to the new proposed transmission line, the EA is dismissive about the likelihood of any natural events impacting the infrastructure. Geologic hazards pose a particularly significant risk to powerlines, which in turn can ignite fires when damaged in this manner. While the EA briefly discusses the known Battle Mountain landslide, it dismisses risk to the transmission line because it is located mostly in the valley and along existing disturbance. This analysis fails to evaluate the historic path of the Battle Mountain landslide and truly disclose what risk it may pose to the line.

Furthermore, the EA fails to evaluate additional known landslide paths on the north end of the line, including the Dowds #1 landslide and the Meadow Mountain landslide. Colorado Geologic Survey’s referral comment⁸ on the recent development proposal on UPRR property known as Minturn North revealed significant concerns about development in the northern end of that proposal, in close proximity to the overhead to underground transition point. This is a geologically active area with rockfall, avalanche, and landslide risks, as noted in the EA. However, USFS fails to seriously map and analyze the risks these hazards pose to the project and secondarily how those hazards may increase larger cumulative impact threat of wildfire. In addition to further analysis, USFS should consider protective mitigation measures to ensure the infrastructure’s resiliency, including requiring undergrounding additional segments in hazard zones.

Property Owner Authorizations

Significant work with affected landowners remains before construction of the transmission line can commence. USFS’s unfounded statement in its withdrawn FONSI that work may commence as early as Spring 2022 betrays the uncertain nature of the project at this time. As far as we are aware, HCE has not contacted any other landowners within the Town or project area aside from USFS regarding voluntary acquisitions or intentions to condemn necessary property interests. This includes the Town⁹, the Battle Mountain Developer Entities, and Union Pacific Railroad. Negotiations with property owners, as demonstrated by the commitment made to avoid Minturn Towne Homes, may substantially alter the proposed alignment, possibly resulting in

⁸ Letter from Amy Crandall, Colorado Geologic Survey to Madison Harris, Town of Minturn, dated January 29, 2021. https://www.minturn.org/sites/g/files/vyhlf3486/f/uploads/cgs_letter_ea-21-0008_1_minturn_north_pud.pdf

⁹ The Town did hold a preapplication with HCE regarding an application under Minturn Municipal Code Sec. 16-25-10 et seq, as well as general meetings regarding the project. However, the Town has not been approached in as a property owner of several parcels slated for construction.

additional use on USFS property and required supplemental documentation for this EA. It is also concerning that Table 1 does not disclose how much Town owned land is traversed by the transmission line, which should not be categorized as “Private”.

Aerial development restrictions

The Town continues to have significant interest in any aerial development limitations that the project, once complete, would impose on future development, particularly in the Dowd Junction area. The Town’s longer-term interests for the Minturn Gateway include responsible commercial development, mass transit facilities, and recreational public access to Meadow Mountain. The Town has been in negotiations with the White River National Forest about the development of the Dowd Junction parcel for several years prior to this project. The intent of such development is to contribute to the Town by providing new commercial services for residents and visitors, additional sales tax revenue, and further employment and residential opportunities within the Town. Potential socioeconomic impacts to the Town’s sustainable growth opportunities must be included in the USFS analysis. The EA did not substantively analyze if or how the proposed realignment might impact future development. However, as noted above, we are pleased to have received a commitment from HCE to realign so as to avoid the parcel almost entirely.

Aesthetic and Recreational Impacts

The Town remains concerned about impacts to aesthetic and recreational resources so integral to its identity. The Town’s 2019 community survey indicates that scenery is important to residents, ranking as the third highest attribute (65%). While we appreciate the proposed undergrounding of segments through most of the developed areas of Town, project impacts will harm the natural, mountainous setting, diminish property values, and the overall scenic values of the town. Likewise, many recreational amenities lie on the outskirts of Town and will be directly impacted by impaired aesthetic qualities of the overhead transmission lines.

These concerns acutely apply to Dowd Junction. The project would site lines above U.S. Highway 24, adjacent to the interchange with Interstate 70 and U.S. Highway 6. These lines, strung high above the area also known as the Minturn Gateway, will have a negative visual impact that is harmful to the community. This popular recreation area on Meadow Mountain hosts the new Everkrisp trail, which will now expose residents and visitors alike seeking a natural experience, to the significant linear impacts of a transmission line. Likewise, project locations south of Town will have negative visual impacts on residents in “South Town” whose views open up toward Battle Mountain, as well as visitors transiting into and out of town from the Holy Cross Wilderness area and other destinations along U.S. Highway 24 Top of the Rockies Scenic and Historic Byway.

As noted above, HCE has not discussed necessary property acquisitions with the Town, including any property interests in the parcel that hosts the Minturn Bike Park. This extremely popular recreational amenity is the result of collaboration between the Town and Vail Valley Mountain Trails Alliance, and may require temporary closure or possible relocation of certain improvements under the proposed alignment. And while we very much appreciate the southern underground transition moving to avoid the Two Elk shooting range, the very popular Two Elk Creek trailhead remains impacted by the overhead lines and even closer to the transition.

Conclusion

Thank you again for this opportunity to comment on the EA. As outlined above, the project will create significant impacts that accrue almost entirely to the Town of Minturn, with little direct benefit. An essential way to mitigate these impacts and risks would be requiring additional undergrounding of the transmission line. Failing to analyze such an alternative is unacceptable and should be remedied in supplemental documentation and additional opportunities for the public to comment on that alternative. We do appreciate the improvements and commitments that have been made over the past year and a half, and look forward to seeing additional changes to address these concerns.

Sincerely,



Earle Bidez, Mayor