RESOLUTION NO. P&D 20-037

THE BOARD OF COUNTY COMMISSIONERS OF PUEBLO COUNTY, COLORADO

A RESOLUTION BY THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF PUEBLO SITTING AS THE PERMIT AUTHORITY REPEALING RESOLUTION NO. 20-263 AND GRANTING BLACK HILL ENERGY 1041 PERMIT NO. 2019-003 WITH CONDITIONS FOR SITE SELECTION AND CONSTRUCTION OF A MAJOR FACILITY OF A PUBLIC UTILITY FOR THE CAÑON WEST RELIABILITY PROJECT

WHEREAS, on or about September 19, 2019, Black Hills Energy (BHE) by and through its representatives submitted a completed application to the Pueblo County Department of Planning and Development, for a permit to engage in activities subject to Title 17, LAND USE, Division II. Areas and Activities of State and Local Interest, Chapter 17.168 *Site Selection and Construction of Major Facilities of Public Utilities* of the Pueblo County Code, commonly referred to as a "1041 Permit", for construction and operation of a 115-kilovolt electric transmission line and associated facilities in unincorporated Pueblo County; and

WHEREAS, on October 15, 2020, pursuant to Resolution No. 20-280, the Pueblo County Board of County Commissioners voted to reconsider Conditions No. 6 and 7 of Black Hills Energy 1041 Permit No. 2019-003; and

WHEREAS, Black Hills Energy, as the Permit Applicant and interested citizens who previously appeared in opposition to the Permit Application were given an opportunity to submit written comments for the Board's reconsideration; and

WHEREAS, the Board reviewed and considered all of the written comments and decided to eliminate Conditions No. 6 and 7 of Black Hills Energy 1041 Permit No. 2019-003 and decided to repeal Resolution No. 20-263 and to restate in this Resolution its approval of Black Hill Energy 1041 Permit No. 2019-003 with the final conditions of approval; and

WHEREAS, the Pueblo Board of County Commissioners are the Permit Authority authorized by H.B. 1041 (1974), as amended, to regulate areas and activities of State and local interest; and

WHEREAS, the proposed transmission line would start in Pueblo West and traverse toward Cañon City. The proposed Cañon West Reliability Project will occupy a 125-foot wide right-of-way, crossing about 16.9 miles of land in Pueblo County on lands in the A-1, Agricultural; S-1, Public Use; and I-2, Light Industrial Zone Districts; and

WHEREAS, the applicant, Black Hills Energy, submitted an application requesting approval of a permit to construct said electric transmission line within the following described lands within unincorporated Pueblo County attached to this Resolution as EXHIBIT "A"; and

WHEREAS, the description of the project, a history of the purpose and need for the project, a description of the affected environment, and an analysis of the environmental consequences are discussed in detail in the staff report, permit application, and supporting exhibits, and are made an exhibit to the public hearing file; and

WHEREAS, the construction and operation of the Cañon West Reliability Project will cause impacts in Pueblo County; and

WHEREAS, notice as required by the Pueblo County Code of all hearings are complete and properly published. Hearings were held on November 26, 2019, December 2, 2019, January 9, 2020, July 9, 2020, August 13, 2020, and September 10, 2020. A record was made of all hearings. The Board of County Commissioners sitting as the Permit Authority has received oral evidence in the form of testimony and informational statements, and written evidence in the form of letters, statements, comments, recommendations, reports, studies, and other documentation from the Applicant, County staff, and members of the general public; and

WHEREAS, the evidence was considered based upon the probative value placed thereon by the Permit Authority, and the findings and resolution herein are based upon the record as a whole. References to exhibits and testimony herein are related to the record of proceedings before the Permit Authority. Such references are for convenience only, are not intended to be all inclusive, and do not necessarily include all portions of the record upon which the findings are based; and

WHEREAS, the Board of County Commissioners finds that all administrative procedures and requirements as set forth in Title 17, LAND USE, Division II. Areas and Activities of State and Local Interest, Chapter 17.168 *Site Selection and Construction of Major Facilities of Public Utilities* of the Pueblo County Code have been fulfilled.

NOW, THEREFORE, BE IT RESOLVED that Resolution No. 20-263 as previously approved and adopted by the Pueblo Board of County Commissioners on October 1, 2020 is hereby revoked and repealed; and

BE IT FURTHER RESOLVED that the Pueblo Board of County Commissioners as the Permit Authority does hereby approve 1041 Permit No. 2019-003 to Construct a Major Facility of a Public Utility within the County of Pueblo per the Pueblo County Code, Title 17, LAND USE, Division II. Areas and Activities of State and Local Interest, Chapter 17.168 *Site Selection and Construction of Major Facilities of Public Utilities*, and Section 17.168.040 Guidelines finding that a preponderance of evidence establishes the following Section 17.168.040, Guidelines, finding that a preponderance of evidence establishes the following:

A. The health, safety, and welfare of the citizens of this jurisdiction will be protected and served;

B. When an adverse impact is expected to occur, reasonable modifications and programs and other reasonable mitigating actions will be implemented and maintained to minimize the degree of adversity of the impact;

C. Other feasible alternatives to the proposed facility have been assessed, and the proposed facility represents the best interest of the people of this jurisdiction and the best utilization of resources in this jurisdiction;

D. There exists a need, or a reasonably foreseeable need, for the facility as proposed;

E. Adequate resources (e.g., schools, water and air, roads, labor) exist, or will exist, for the construction and efficient operation of the facility; and

F. The facility does not conflict with this jurisdiction's adopted Comprehensive Plan, or a Comprehensive Plan in the required statutory process of adoption, and all feasible actions have been taken to avoid conflict with other adopted plans of this jurisdiction, region, State, and nation.

BE IT FURTHER RESOLVED the Pueblo Board of County Commissioners' approval of said Permit is contingent on the following conditions:

1. This permit shall not constitute an exemption from zoning, health, building permits, or other applicable regulations. Issuance of this permit is subject to approval by any regulatory agency where required by regulation or statute.

2. The Cañon West Reliability Project construction and activity shall be according to the plans and information in the materials submitted by the Applicant for 1041 Permit No. 2019-003, attached to the November 20, 2019 staff memorandum to the Board of County Commissioners as Exhibit 1. The Applicant's description of Construction Activities, Operations and Maintenance Activities for the Project within the application materials, including but not limited to Permit area, safety, dust and erosion control, re-vegetation and reclamation, measures to protect wildlife, environmental and other impacts, and other required permits, shall be strictly adhered to. Noncompliance may result in the Department of Planning and Development scheduling a Show Cause Hearing before the Permit Authority to review the Permit approval.

3. The Permit shall be approved for the areas within the Applicant's submitted legal descriptions and maps, noting minor changes could be taken under consideration through the submission of an amendment with substantial changes requiring the submission of a new 1041 permit for review and consideration. The Department of Planning and Development shall review and approve site plans, drawn to scale, depicting specific locations of all components, equipment, facilities and structures, prior to the Applicant receiving approval for a building permit to begin construction.

4. The Applicant shall provide to the Department of Planning and Development copies of all subsequent permit approvals by other regulatory agencies within sixty (60) days of said permit approvals being received by applicant.

5. On or before December 8, 2021, the Applicant shall submit a report to the Department of Planning and Development, detailing the overall status and viability of the Project. The report shall address compliance with each of the approved Conditions of Approval for 1041 Permit No. 2019-003. The Department of Planning and Development may request subsequent, similar reports regarding the Project status.

6. The Applicant shall submit design and construction plans to Pueblo County prior to any disturbance of the permit area and thereafter for any such further disturbances during the life of the project. The initial plans shall include measurements of existing topography and physical features, including but not limited to: slopes, soil or geologic conditions, areas within the designated floodplain, significant clusters of trees and shrubs, native grasses and other flora, water courses, and the associated riparian areas, wetlands, rock outcroppings, and open spaces establishing a baseline of existing conditions. Prior to any disturbance of the permit area during the life of the project, Applicant shall submit to Pueblo County detailed plans for mitigation of any impact to flora, fauna, or floodplain due to construction, operation, or maintenance activities by the Applicant. The mitigation plans shall be designed and implemented by the Applicant to protect and restore disturbed areas to as close to the existing conditions as is reasonably possible in a timely manner. If Pueblo County requires the assistance of experts to review the mitigation plans, the reasonable fees of such experts shall be paid by the Applicant.

OTHER AGENCY CONDITIONS:

7. The Applicant is required to apply for an access permit from every County Road and an excavation permit for the crossing of County rights-of-way with the Pueblo County Department of Engineering and Public Works and comply with the conditions of those permits.

8. The Applicant shall comply with the requirements of the Pueblo West Metropolitan District's Public Works Department relative to the submission of a Stormwater Management Plan (SWMP) and Right-of-Way Use Permit and any conditions of those permits.

9. The Applicant shall address the requests from the Nature Conservancy District relative to providing more acknowledgement of the presence of the easement(s) and their purpose to protect populations of rare plants, the mapping, monitoring and controlling of invasive species (weeds) and consultation for future seed mixtures during reclamation.

RESOLUTION NO. P&D 20-037 (CONT.)

PASSED AND ADOPTED this 8th day of December 2020, in Pueblo County, Colorado.

THE BOARD OF COUNTY COMMISSIONERS
OF PUEBLO COUNTY, COLORADO:

By: _____
Garrison M. Ortiz, Chairman

ATTEST:

By: _____
Gilbert Ortiz, County Clerk

EXHIBIT "A"
(2 pages total)

Assessor's Tax Parcel Number	Legal Description
505015002	LOT 4 BLK 8 TR 254 PUEBLO WEST
505015007	LOT 3 BLK 8 TR 254 PUEBLO WEST
508099254	PARCELS A THRU P TR 254 PUEBLO WEST
601016008	PARCEL E SUBDIVISION EXEMPTION #88-6 (CONTG 329.7A M/L) LESS POR IN SWD#1729390 TO PARKVIEW MEDICAL CENTER INC LESS POR BY QCD#1968584 TO PUEBLO COUNTY (RD) FORMERLY #06-010-16-007
9600000133	ALL IN 19-66: S2 SEC 2 THRU 5 EX S2 SW4 SEC 4; SEC 6 EX NE4 + W2 LOT 4; ALL OF SEC 7 THRU 11; W2 SEC 12; SW4 SEC 13; ALL OF SEC 14 THRU 23 EX NE4 SW4 SEC 15 + SW4 SEC 22; ALL SEC 27 THRU 30; ALL OF SEC 31 THRU 33 N OF HWY 50 + ALL OF SEC 34 THRU 36 LESS POR SOLD #338954, LESS POR SOLD #1107773 ALSO ALL THAT POR 100.00 FT ROW FORMERLY COLORADO KANSAS RR IN SEC 6, 7, 28 + 35 IN 19-66 BY DEED #1456635 ALSO THAT POR OF VAC BOOTH GULCH RD IN SEC 6 ADJ (#1815734) LESS NE4 NE4 SEC 11 + LESS SE4 SE4 SEC 12 FORMERLY #96-0
9700000147	ALL IN 19-67: NE4, S2 SEC 1; ALL SEC 7 THRU 17 EX SW4 SEC 15; E2, E2 W2 SEC 18; 2 SEC 19; ALL SEC 20 THRU 28 EX NW4 SEC 22; E2 NE4, NW4 LYING N HWY 50 SEC 29; NE4 LYING N HWY 50 SEC 30; SW4 NE4, W2 SE4, SE4 SE4 SEC 32; ALL SEC 33 THRU 35 ALSO IN THE N2 OF 36-19-67 DESC AS: NE4 BEG AT A PT WHICH IS 1179.70 FT E OF N4 COR OF SD SEC 36 RUNNING TH E 1438.62 FT TO NE COR OF SD SEC 36 TH S ALG E LN THEREOF 2260.75 FT M/L TO N LN OF R/W OF HWY 50 TH N 76 DEG 45 MIN 2 376.00 FT TO A PT TH S 13 DEG 15 MIN W 100.00 FT TO
508099251	PARCELS A THRU MM TR 251 PUEBLO WEST
9529099238	PARCELS A THRU I TR 238 PUEBLO WEST
9529000001	ALL 29-19-65 LESS TR IN PUEBLO WEST 59.72A
506010002	LOT 11 BLK 1 TR 258 PUEBLO WEST
9533099233	PARCELS A THRU N TR 233 PUEBLO WEST
506099242	PARCELS A THRU N TR 242 PUEBLO WEST

Assessor's Tax Parcel Number	Owners	Address			
505015002	BLACK HILLS ENERGY	105 S Victoria Ave,	PUEBLO	CO	81003-0000
505015007	PUEBLO WEST METRO DISTRICT	PO BOX 7005	PUEBLO WEST	CO	81007-0005
508099254	PUEBLO WEST METRO DISTRICT	PO BOX 7005	PUEBLO WEST	CO	81007-0005
601016008	PUEBLO WEST METRO DISTRICT	PO BOX 7005	PUEBLO WEST	CO	81007-0005
9600000133	WALKER GARY R + GEORGIA A	7170 TURKEY CREEK RANCH RD	PUEBLO	CO	81007-1282
9700000147	WALKER GARY R + GEORGIA A	7170 TURKEY CREEK RANCH RD	PUEBLO	CO	81007-1282
508099251	PUEBLO WEST METRO DISTRICT	PO BOX 7005	PUEBLO WEST	CO	81007-0005
9529099238	PUEBLO WEST METRO DISTRICT	PO BOX 7005	PUEBLO WEST	CO	81007-0005
9529000001	PUEBLO WEST METRO DISTRICT	PO BOX 7005	PUEBLO WEST	CO	81007-0005
506010002	PUEBLO WEST METRO DISTRICT	PO BOX 7005	PUEBLO WEST	CO	81007-0005
9533099233	PUEBLO WEST METRO DISTRICT	PO BOX 7005	PUEBLO WEST	CO	81007-0005
506099242	PUEBLO WEST METRO DISTRICT	PO BOX 7005	PUEBLO WEST	CO	81007-0005