Decision No. C01-268

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 00D-583E

IN THE MATTER OF THE PETITION OF PUBLIC SERVICE COMPANY OF COLORADO FOR AN ORDER DECLARING THAT AN IMMEDIATE OVERHEAD UPGRADE TO THE VALMONT-BROOMFIELD 115 KV TRANSMISSION LINE IS REQUIRED.

ORDER GRANTING PETITION

Mailed Date: March 21, 2001
Adopted Date: February 14, 2001

T A B L E O F C O N T E N T S

I. BY THE COMMISSION

A. Statement

1. This matter comes before the Colorado Public Utilities Commission ("Commission") for consideration of a

petition for a declaratory order filed on October 17, 2000 by Public Service Company of Colorado ("PSCo"). In its petition, PSCo requests an order declaring that an immediate overhead upgrade to the Valmont-Broomfield 115 kV transmission line is required, and that the upgrade is a matter of statewide concern.

2. PSCo asserts that it seeks a declaratory order for "the purpose of removing uncertainty as to the manner and timing of construction of this needed upgrade." PSCo claims that the City of Louisville ("Louisville" or "City") has refused to grant it a special review use permit ("SRU") to commence construction on the upgrade of the Valmont-Broomfield transmission line.

3. Now, being duly advised in the premises, the Commission will grant PSCo's petition for declaratory order.

B. Discussion

1. Factual Background

a. In April of 1998, PSCo submitted its annual Rule 18 filing to the Commission. Under the Commission's Rules Regulating the Service of Electric Utilities, 4 *Code of Colorado Regulations* ("CCR") 723-3-18(f), PSCo is required to annually submit a schedule of its proposed new construction or extensions for the next three subsequent calendar years pertaining to generation and transmission facilities. As part of its Rule 18 filing, PSCo listed the upgrade of the Valmont-Broomfield

transmission line. On May 27, 1998, the Commission determined in Decision No. C98-533 that PSCo did not need a certificate of public convenience and necessity ("CPCN") transmission line upgrade, and that the upgrade was necessary in the ordinary course of business.

b. The Valmont-Broomfield transmission line carries power from the Valmont Generating Station in Boulder County into the Denver metro area, linking the Valmont Generating Station with the Cherokee Generating Station near downtown Denver. The portion of the line PSCo desires to upgrade traverses unincorporated Boulder County, Louisville, and the City of Broomfield. Only Louisville has required a land use permit for the project.

c. The areas served by the transmission line[1] have experienced substantial growth recently and this growth-trend is projected to continue into the foreseeable future. To meet the electrical demands of that growth, PSCo contends that the upgrade is required to supply increasing amounts of power over the transmission line. PSCo further contends that the existing line is inadequate to meet the present and future electric needs of the area. The line is currently rated at

[1] PSCo has identified the areas served by the Valmont-Broomfield transmission line as generally following the Colorado State Highway 36 corridor.

135 MVA capacity. The upgrade will raise the line capacity to 247 MVA.

d. To raise the capacity of the line, new conductors and new support structures are required. The new conductors will be substantially larger and heavier than the existing line and, due to the higher capacity of the new line, will sag more than the existing line. PSCo maintains that because of the greater sag and heavier weight of the new conductors, the existing support structures must be replaced with taller and sturdier structures to raise the upgraded line higher from the ground than the current line to maintain minimum safe ground clearances. In order to upgrade that portion of the line traversing Louisville, the City claimed that PSCo was required to obtain a SRU permit.

e. On September 19, 1999, PSCo submitted its application for a SRU permit to the City. Louisville informed PSCo that it had imposed a moratorium on processing new land use permits. As a result, the Louisville City Planning Commission ("Planning Commission") did not consider PSCo's SRU application until April 11, 2000. The Planning Commission subsequently held three public hearings between April 11, 2000 and June 13, 2000.

f. As a result of citizen concerns, Louisville indicated it had an interest in burying the lines, and asked PSCo for estimates of the cost to bury the line, as well as

estimates of the cost to construct the line overhead. PSCo provided cost estimates for burying the line, as well as for three different above-ground configurations. The above-ground configurations included the use of steel monopoles, steel H-frame structures, and wooden H-frame structures. The cost estimate of underground construction that PSCo submitted to Louisville is approximately $10.6 million. Estimates submitted for the three above-ground configurations were $1.3 million for the steel monopoles, $2.0 million for the wood H-frame structures, and $2.4 million for the steel H-frame structures.

g. The testimony of the parties and the evidence submitted shows that PSCo represented to Louisville that it was PSCo's policy that it would not bear the increased costs of burying the line for aesthetic reasons. PSCo offered to bury the line if Louisville paid the difference between the above-ground construction cost and the cost of undergrounding the transmission line.

h. Testimony indicates that in June 2000, the Planning Commission voted to recommend that the City Council deny the SRU permit and further explore the option of undergrounding the transmission line. The City Council held the first public hearing on the application in July 2000. The key issues that emerged from that hearing included burial of the line, the possibility of feasible alternative routes around

Louisville, and whether PSCo would wait two years to upgrade the line while the City explored financing options to bury the line. The City Council discussed whether PSCo could take temporary measures to meet the increased power demand in the area without replacing the existing support structures or replacing the conductors, while the City explored alternative funding avenues. Because Louisville is currently a statutory city, one avenue would allow the City time to form a home rule municipality and arrange for bonds to be issued to pay for undergrounding.

i. PSCo offered in a September 1, 2000 letter to the City, to implement temporary measures for two years, if Louisville agreed to pay the cost of approximately $233,000. Additionally, Louisville would be required to grant the SRU permit as proposed without further proceedings if, at the end of two years, it did not have the financing in place for undergrounding the line. The temporary measures involve a process known as “pole-jacking.” According to PSCo testimony, because increased line sag would occur as a result of additional electricity transmitted through those lines, this process would raise the height of the current poles and add six intermediate structures to maintain safe transmission line heights.

j. Louisville rejected PSCo’s offer for temporary measures in a September 2000 City Council vote. The Council also voted to deny the SRU permit application. PSCo

withdrew its offer of temporary measures because it claimed they could not be feasibly implemented. According to PSCo, it withdrew its offer when it discovered that given the projected load growth in this area, after a two-year period of temporary measures, it would not be feasible for PSCo to take the line out of service during the construction period of the upgrade without dropping electric load in the Louisville area for extended periods. The City Council subsequently reversed the order denying the permit and voted to remand the application back to the Planning Commission to study the issue of alternative routes for the transmission line.

k. At the request of the Planning Commission, PSCo identified seven alternate routes for the transmission line and provided cost estimates for each alternative. However, PSCo's analysis determined that none of the alternatives were feasible. According to PSCo, the study found that the alternate routes were expensive in relation to the proposed upgrade, crossed open space and wetlands (which, according to PSCo, made it doubtful that permits would be granted) and involved the condemnation of several homes.

l. The Planning Commission held additional hearings on December 12, 2000 and January 9, 2001, after which it again recommended that the permit be denied. It also recommended that the City continue to consider burial or

alternate route options. As of the date of the evidentiary hearing, the City Council has not set any further hearings on the application and has not entered a final decision.

2. Declaratory Order

a. On October 17, 2000, PSCo filed a petition for declaratory order under Rule 60 of the Commission's Rules of Practice and Procedure, 4 CCR 723-1. PSCo sought a declaratory order from the Commission to remove uncertainty as to the manner and timing of construction of a needed upgrade to the existing Valmont-Broomfield 115kV transmission line. Specifically, PSCo sought an order declaring that there is an immediate need for the upgrade; that the upgrade should be constructed above-ground; and that the project is a matter of statewide concern.

b. Rule 60(a) of the Commission's Rules of Practice and Procedure provides that the Commission may issue a declaratory order "to terminate a controversy or to remove uncertainty as to the applicability to a petitioner of any statutory provision or Commission rule, regulation or order." Rule 60 further provides that the scope of Rule 57 Colorado Rules of Civil Procedure ("C.R.C.P.") shall apply to Rule 60 proceedings before the Commission. Rule 57(b) C.R.C.P. permits a party affected by a statute or municipal ordinance to obtain a declaration of its rights, status, and other legal relations. Several parties filed interventions in the matter. Louisville,

the City of Boulder, Commission Staff, and the Louisville Power Line Corridor Association ("LPLCA") all filed notices of intervention pursuant to § 40-6-109(1), C.R.S., and Rules 64(a) and (b) of the Commission's rules.

c. On December 5, 2000, Louisville filed a motion to dismiss PSCo's petition for a declaratory order. Louisville asserted that the case involved a land use matter that was currently pending before the City. It further argued that under Colorado law, the City and not the Commission possesses the governmental authority to regulate the land use issues implicated by PSCo's petition. Louisville additionally asserted that PSCo's petition should be dismissed because resolution of the essential dispute was within the exclusive jurisdiction of the City.

d. In its motion to dismiss, Louisville maintained that because the proposed upgrade was the subject of a pending land use application before the City, and because it had land use authority to regulate the character, location, and extent of the proposed upgrade, the City had primary jurisdiction and authority to regulate land use matters within its municipal boundaries.[2] Louisville claimed that PSCo's petition was an attempt to intrude into and impinge upon the

[2] Louisville cited § 31-23-301, C.R.S. *et seq.*, § 31-23-206, C.R.S., and §§ 31-23-209 to 301, C.R.S., as authority for this proposition.

City's land use process. Louisville argued that because the Commission had already determined that no CPCN was required for the proposed upgrade,[3] the Commission had already exercised its jurisdiction and need not do anything else.

e. The City also argued that any action by the Commission was premature. It maintained that to the extent the Commission may have authority to consider matters also within the jurisdiction of the City's land use powers, the Commission should not act until after the City issues a final order regarding the SRU permit. Louisville additionally sought dismissal because PSCo's petition failed to meet the standards for a declaratory order as provided in Commission Rule 60(a).

f. Louisville asserted that the Commission should decline jurisdiction, as there was no concrete controversy between the City and PSCo because the City had not reached a final resolution on the issuance of the land use permit. Therefore, according to the City, the Commission should decline to issue a declaratory order pursuant to Commission Rule 60.

g. The LPLCA filed a response in support of the City's motion to dismiss the petition for a declaratory order filed. Generally, the LPLCA endorsed the City's motion. Commission Staff filed a response in opposition to the City's

[3] Decision No. C98-533 adopted May 27, 1998.

motion to dismiss. Commission Staff asserted that the Commission did have jurisdiction under Article XXV of the Colorado Constitution, as well as under §§ 40-4-101 and 102, C.R.S.

h. The Commission concluded that it did have jurisdiction to issue a declaratory order.

i. On January 17, 2001, the Commission held a public hearing in Louisville to allow citizens to voice their support, opposition, or concerns regarding the proposed upgrade. The public hearing allowed those citizens who would not otherwise participate in the formal hearings, the opportunity to place their opinions on the record. A formal evidentiary hearing on the matter was held on January 18 and 19, 2000. Testimony was heard and evidence entered from all parties including employees of PSCo, LPLCA members, Commission Staff, and the City of Louisville Planning Director. Subsequent to the hearings, the parties filed their closing statements or Statements of Position ("SOPs").

3. Matters of Statewide Concern

a. A critical element in determining Commission authority and jurisdiction in this matter is whether the proposed upgrade is a matter of "statewide concern." The Colorado Supreme Court has repeatedly held that when attempting to resolve any conflict between Commission and local authority

that may arise under Article XXV of the Colorado Constitution, a determination must be made as to whether the matter is of exclusive local concern, mixed state and local concern, or exclusive state concern.

b. In matters of exclusive statewide concern, any municipal charter provisions or ordinances that conflict with state statutes will be superseded by those state statutes. *Woolverton v. City and County of Denver*, 146 Colo. 247, 361 P.2d 982 (1961). In matters involving exclusive local and municipal concern, home-rule charter provisions and ordinances supersede conflicting state statutes. *DeLong v. Denver*, 195 Colo. 27, 576 P.2d 537 (1978); *Vela v. People*, 174 Colo. 465, 484 P.2d 1204 (1971); *Denver v. State*, 788 P.2d 764, 767 (Colo. 1990); *Denver & Rio Grande Western R.R. Co. v. City & County of Denver*, 673 P.2d 354, 358 (Colo. 1983).

c. If a matter is of mixed local and statewide concern, it must be determined whether there is a conflict between the charter provisions or ordinances and the state statute. If there is no conflict, the charter provisions and state statute may coexist. *Greeley Police Union v. City Council*, 191 Colo. 419, 553 P.2d 790 (1976); *Delong v. Denver supra*; *Denver & Rio Grande Western R.R. Co., supra*. If, however, there is a conflict, the statute supersedes the home-rule charter provisions or local ordinances. *Century Electric*

v. Stone, 193 Colo. 181, 564 P.2d (1977); *Denver v. Bossie*, 83 Colo. 329, 266 P. 214 (1928); *DuHamel v. People ex rel. Arvada,* 42 Colo. App. 491, 601 P.2d 639 (1979); *see* generally Klemme, *The Powers of Home Rule Cities in Colorado*, 36 U.Colo.L.Rev. 321 (1964).

d. The Colorado Supreme Court has not established a litmus test that could resolve in every case the issue of whether a particular matter is "local," "state," or "mixed." Instead, the Court has made those determinations on an *ad hoc* basis, taking into consideration the facts of each case. *National Advertising Co. v. Department of Highways*, 751 P.2d 632, 635 (Colo. 1988). However, the Court has considered the relative interests of the state and the home rule municipality in regulating the matter at issue in a particular case.

e. The Court has further held that although other asserted state interests may be relevant in determining whether a state interest justifiably preempts inconsistent local ordinances or home rule provisions, there are several general factors that are useful to consider. *City and County of Denver v. State*, *supra*. These include the need for statewide uniformity of regulation, *see National Advertising*, *supra*; and the impact of the municipal regulation on persons living outside the municipal limits. *Denver & Rio Grande Western R.R., supra*.

f. Also relevant to the determination of "statewide concern," are historical considerations, *i.e.,* whether a particular matter is one traditionally governed by state or by local government. 1 C. Antieau, *Municipal Corporation Law* § 3.40, at 3-115 (1989) cited in *City and County of Denver v. State*, *supra*. Further, "where not only uniformity is necessary, but cooperation among governmental units as well, and where action of state and county officials within the limits of the city is imperative to effectuate adequate protection outside the city, the matter will in all likelihood be considered a state concern." *Antineau*, § 3.40 at pp. 3-119 to 3-120; *City and County of Denver v. State*, *supra*.

g. Even though Louisville attempts to characterize this matter as one of purely local concern, involving only local zoning issues, we find that the issues here involve matters of statewide concern, within the Commission's expertise and authority to determine. Although the upgrade in question lies within the boundaries of Louisville, the transmission line provides power to residents along the Highway 36 corridor, including Louisville, Broomfield, and Northwest Metro Denver. Any local land use ordinance asserted by Louisville to impede the construction of the upgrade would clearly impact citizens outside the City's boundaries.

h. The need for statewide uniformity of regulation is also apparent here. Allowing municipalities to impose piecemeal regulations over public utilities would seriously damage the reliability of utility services the citizens of this state currently take for granted. In *Intermountain R.E.A. v. District Court*, 160 Colo. 128, 134, 414 P.2d 911, 914 (1966), the Court found that utility location and relocation was a statewide matter. The Court held that the statewide component of interest in the regulation of utilities is reflected first in Article XXV of the Colorado Constitution. *Id*. The Court went on to hold that by virtue of Article XXV, the Commission has the power to regulate all facilities, services, and charges, even within home rule cities and home rule towns. This authority includes exclusive jurisdiction over the facilities of a public utility and the location and relocation of those facilities. *Id*. The need for statewide uniformity is apparent here and is a clearly acknowledged principle in Colorado as well as other jurisdictions (*see* Illinois and Pennsylvania citations *infra*).

i. The proposed upgrade also involves several significant safety issues. Unrebutted testimony by PSCo witnesses discussed concerns of overloading the current conductors by increasing the load on the line to meet increased demands. Additional testimony by PSCo witnesses indicated that

without an upgrade to the line, increased electric loads would most likely lead to overloading of the line, which in turn could lead to possible load shedding. This would result in periodic blackouts during peak demand times. Safety and reliability matters such as these are of statewide concern.

j. Finally, § 29-20-108(1), C.R.S., states that "[t]he general assembly finds, determines and declares that the location, construction, and improvement of major electrical and natural gas facilities are *matters of statewide concern* (emphasis added). Section 29-20-108(1)(a), C.R.S., goes on to state that "[a] reliable supply of electric power and natural gas statewide is of vital importance to the health, safety, and welfare of the people of Colorado." The intent of the general assembly clearly is to place the location, construction, and improvement of electrical facilities within the exclusive jurisdiction of the Commission and to remove any doubt as regards the preemption of conflicting local ordinances or charters.

k. Therefore we find that this matter is beyond local concern, expertise, and authority, and is a matter of statewide concern, squarely within the Commission's jurisdiction.

4. Jurisdiction

a. In their SOPs, Louisville and the LPLCA again raise the issue of Commission jurisdiction. They argue that the Commission does not have jurisdiction because this is strictly a local land use issue. On the other hand, PSCo and Staff argue that the Commission does indeed possess jurisdiction by virtue of several state statutes, case law, and the Colorado Constitution. Although Louisville concedes that Article XXV of the Colorado Constitution vests broad powers in the Commission to regulate utilities, it asserts that Article XXV also recognizes certain powers of municipalities, including the authority to exercise reasonable police and licensing powers. According to Louisville, these police and licensing powers include leave to zone and exercise zoning authority. *Wright v. City of Littleton*, 483 P.2d 953, 955 (Colo. 1971); *Glennon Heights, Inc. v. Central Bank & Trust*, 658 P.2d 872, 876 (Colo. 1983).

b. Louisville cites §§ 31-23-206 to 301, C.R.S. *et seq*., for the proposition that the City has the power to create zone districts, enact zoning regulations, regulate buildings and structures, and plan for the placement and location of utilities serving the City. Louisville also indicates that it has the power to review the "character, extent and location" of public utilities under § 31-23-209, C.R.S.

Louisville claims the conflict here is caused by the broad terms used in the City's statutory cites and the Commission's authority cited in PSCo's petition for declaratory relief, more specifically, § 40-4-102, C.R.S.

c. In the City's opinion, the Commission's power to specify the manner in which an improvement is erected does not include the power to specify the precise location of the improvement in a manner contrary to a municipal zoning decision. Rather, Louisville contends that § 40-4-102, C.R.S., is intended to protect utility customers and ratepayers from a facility proposal that is excessive and will result in unwarranted charges. It further contends that the statute is not intended to provide the Commission a preemptive right to dictate to a municipality the precise location and precise manner of construction of a utility improvement.

d. We do not agree with the City's line of reasoning. Louisville reads too much authority into § 31-23-209, C.R.S., and too little into § 40-40-102, C.R.S. Although § 31-23-209, C.R.S., gives the City the power to review the "character, extent and location" of public utilities, this provision does not usurp the power or jurisdiction of the Commission. In *Robinson v. City of Boulder*, 190 Colo. 357, 547 P.2d 228 (1976), the court held that there was nothing in the statute indicating a legislative intent to broaden a city's

authority. According to the court, "[i]n effect, a city is given only an advisory role" in reviewing the character, extent, and location of public utilities.

e. We also disagree with the City that § 40-4-102, C.R.S., is merely intended to protect utility customers and ratepayers from a facility proposal that is excessive and will result in unwarranted charges. The Legislature used broad language, thus intending to grant the Commission extensive and broad regulatory powers. This statute provides authority to the Commission to issue an order regarding the safety, reliability, and adequacy of a utility's equipment and facilities, including the time and manner any improvements or changes shall be made to a utility's structures and facilities, as well as the location of the facilities.

f. In its SOP, PSCo cites several statutes in addition to §§ 40-4-101 and 40-4-102, C.R.S., that it contends provide the Commission with the power to enter a declaratory order. Section 40-3-101(2), C.R.S., requires every public utility to furnish, provide and maintain such service, instrumentalities, equipment and facilities as shall promote the safety, health, comfort and convenience of the public ... Section 40-3-102, C.R.S., empowers the Commission to do all things, whether or not specifically designated in Articles 1 through 7 of Title 40, "which are necessary or convenient in the

exercise of its power" to "supervise and regulate every public utility in this state." PSCo asserts, and we concur that these statutes "specifically address the Commission's authority over public utility safety, adequacy and reliability."

g. PSCo further asserts that Colorado courts have upheld the Commission's ability to make rulings concerning public utility projects, notwithstanding a local government's contrary actions. In *City of Craig v. Public Utilities Commission*, 656 P.2d 1313 (Colo. 1983), the Commission ordered the closure of two railroad crossings against the wishes of *Craig*. *Craig* attempted to override the Commission's decision, arguing that its municipal powers under Colorado law pre-empted the Commission's jurisdiction. The Court held that "the regulation of public utilities in the interest of public safety and convenience is a matter of statewide concern." 656 P.2d at 1316. The Court further held:

> While Craig also has a legitimate interest in the safety of its railroad crossings, the existence of a demonstrable local interest does not endow a home-rule city with preemptive authority. Century Electric Service v. Stone, 193 Colo. 181, 564 P.2d 953 (1977). The concomitant state interest in regulation is predominant. *Id*.

Louisville, however, argues that this holding does not translate into Commission authority preemptively to determine issues related to this upgrade. It contends that issues such as the

precise location of the upgrade, pole types, and similar matters are within the City's land use authority.

h. PSCo cites *Mountain View Elec. Ass'n. v. Public Util. Com'n.*, 686 P.2d 1336 (Colo. 1984) where the Court upheld a Commission order that required a utility line relocated or buried because of its proximity to an airport, despite a county planning commission's earlier approval of an above-ground location. *Mountain View* argued that under § 30-28-110(1), C.R.S., county governmental authority overrode the Commission's authority to oversee the safety of the line. The Colorado Supreme Court held that § 30-28-110(1), C.R.S., was not to be construed as a limitation on the authority of the Commission. Although the section provides a method for a county to oversee its master plan, the Supreme Court held that "it does not override the PUC's statutory duty and authority to oversee the safety of utility operations throughout the state." The Supreme Court further held that "[c]ounty planning commissions do not have the authority or expertise to evaluate the safety of utility operations, and the approval by the (county) commission of the location of an electrical line should not preclude a PUC determination relative to public safety."

i. By contrast, Louisville argues that this case does not discuss the interplay between the municipal and Commission authorities set forth in Article XXV and is not a

basis for concluding that municipal zoning matters, such as those cited *supra*, are within a sphere of concurrent jurisdiction shared by the Commission and the local municipality.

j. PSCo cites *Douglas County Bd. of Com'rs. v. Public Utilities Com'n.*, 866 P.2d 919 (Colo. 1994), where the Colorado Supreme Court upheld the Commission's determination that PSCo should be allowed to upgrade a transmission line despite the *Board of County Commissioners'* denial of an application for zoning approval. Subsequent to the denial by the County, PSCo filed an application with the Commission pursuant to § 30-28-127, C.R.S., which expressly authorizes the Commission to order reasonable utility improvements notwithstanding the fact that they conflict with a county master plan. Although the Board denied the application, the Commission found that the upgrade was reasonable and necessary to meet future load requirements. The Court held that "the PUC has the knowledge and expertise to determine when, and under what circumstances, an upgrade is reasonable – and is constitutionally authorized to make such determinations." *Id*. at 927. According to PSCo, although in this case the Commission was acting pursuant to § 30-38-127, C.R.S., which specifically authorizes the Commission to find a utility facility project reasonable even if it conflicts with a county's master plan, the

Colorado Supreme Court "upheld the 'constitutional primacy' of the Commission's jurisdiction over transmission lines when a conflict arises with a local government's exercise of its land use powers."

k. However, Louisville argues that the statute, which was the focus of this case, on its face does not apply to municipalities, and it is neither the basis for PSCo's petition, nor the standard under which the petition should be evaluated. Louisville further argues, that although *Douglas County* cites Article XXV in a footnote, the case does not construe the municipal authority set forth in Article XXV, or the interplay between that municipal authority and the Commission's authority set forth in the same constitutional provision. Therefore, according to Louisville, the *Douglas County* case is not instructive on the jurisdictional issues raised by PSCo's petition.

l. *Craig*, *Mountain View,* and *Douglas County*, though not dispositive, are instructive to the matter at hand. The Colorado Supreme Court has defined the jurisdiction and authority of the Commission as to these types of matters. The Court has determined that the Commission has the knowledge and expertise to determine when and under what circumstances a utility upgrade is reasonable and necessary, and that the Commission is constitutionally authorized to make this

determination. The existence of a demonstrable local interest does not endow a home rule much less a statutory city with preemptive authority over this Commission power.

m. In *Mountain View*, the Court held that a county planning commission did not possess the authority or expertise to evaluate the safety of utility operations. Therefore, the statute that allowed a county planning commission to approve the placement of public utilities was not to be construed as a limitation on the authority of the Commission. According to the Court, such a statute does not override the Commission's statutory duty and authority to oversee the safety of utility operations throughout the state. The Commission, then, is the authority that possesses the expertise and knowledge to evaluate the safety of public utility facilities throughout the state, whether or not they are located within the boundaries of a municipality.

n. We also find persuasive language from other jurisdictions that holds that the state utility commission has preemptive power regarding transmission line upgrades. In *Duquesne Light Co. v. Upper St. Clair Tp. et al.,* 377 Pa. 323, 105 A.2d 287 (Penn. 1954), the Court held that a township's power to zone with respect to buildings of a public utility company did not give such townships implied power to regulate

public utilities by zoning ordinance with respect to the uses and structures other than buildings.

o. In *Commonwealth Edison Co. v. City of Warrenville,* 288 Ill. App. 3d 373, 680 N.E.2d 465 (Ill. App. 1997), an electric utility brought an action against the city, seeking to enjoin the city from using its zoning power to halt a transmission line construction project for which the Illinois Commerce Commission had granted the utility a CPCN. The appellate court held that the state's Public Utilities Act preempted the city's zoning ordinance to the extent it interfered with the utility's transmission line construction project for which the commission had granted the CPCN. The appellate court further held that the state's Public Utility Act preempted enforcement of ordinances adopted by local governmental home rule units and non-home rule units that regulate or effectively regulate public utilities when the subject matter involves construction projects intended to facilitate transmission of electric service for which the Commission had issued a CPCN.

p. It is apparent that it is a generally accepted principle that transmission line upgrades and construction are matters of statewide concern, and a state's utility commission possesses the authority and expertise to determine the need and placement of utility upgrades within the

state. It is equally clear that when a statute or local ordinance is in conflict with the utility commission's jurisdiction and authority regarding a transmission line upgrade, the commission's authority and jurisdiction will override the conflicting statute or ordinance. Applying the holdings in the above-cited cases to the matter at hand, we find that the Commission possesses the authority and jurisdiction to issue the declaratory order sought by PSCo.

C. Merits of the Petition

PSCo has petitioned the Commission for a declaratory order that the proposed Valmont-Broomfield transmission line upgrade is needed now, that the upgrade should be constructed above-ground, and that it is a matter of statewide concern. Having determined that we possess the jurisdiction to issue such an order, we now address the merits of PSCo's petition.

1. Timing of Upgrade

a. PSCo asserts that the proposed upgrade of the Valmont-Broomfield double circuit 115 kV transmission line is needed now. The Valmont-Broomfield transmission line provides power to Louisville, Broomfield, temporary Interlocken, Semper, and Federal Heights substations. Peak customer loads of 334 MW on August 8, 2000 and 336.8 MW on August 9, 2000 were served by these five substations. A load forecast prepared by PSCo indicates that these substations will serve a peak customer

load of 368 MW in the summer of 2001. PSCo witness Fulton testified that failure to complete the upgrade before the summer of 2001 may result in customer outages ranging from 15 MW to 119 MW if a segment of the line is out of service during peak conditions.

b. Both circuits of the Valmont-Broomfield 115 kV transmission line must be taken out of service during construction of the upgrade for safety purposes. When both circuits are taken out of service, power will come from PSCo's Cherokee power plant to supply the loads served by Louisville, Broomfield, temporary Interlocken, Semper, and Federal Heights substations. PSCo claims that there is a window of opportunity before May 2001 when the Broomfield-Cherokee 115 kV transmission line has adequate capacity to meet the loads served by all five substations and allow for completion of construction of the upgrade without customer outages during construction. If the window of opportunity closes, customer outages will occur during construction.

c. The LPLCA contests any immediate need for PSCo's proposed upgrade. It believes, at most, that the existing transmission line might not be capable of serving peak load during the summer of 2001. The LPLCA acknowledges a peak load of 171 MW was served on August 8, 2000 by Louisville, temporary Interlocken, and Broomfield substations. The LPLCA

refers to the load forecast prepared by PSCo which projects these three substations will serve peak loads of 184 MW in 2001, 168 MW in 2002, and 176 MW in 2003, and points out the proposed removal of the load served by the temporary Interlocken substation decreases the load served by the Valmont-Broomfield 115 kV transmission line in 2002. According to the LPLCA, there are temporary measures which could be used to make the existing transmission line capable of serving the 2001 peak load to allow additional time to explore alternatives to PSCo's proposed project, including underground construction.

d. Louisville also contests the immediate need to upgrade the existing transmission line. To lessen any immediate need for the upgrade, Louisville relies on testimony of PSCo and Staff that under certain circumstances the transmission line has a 10 percent extra margin above the 135 MVA rated capacity of each circuit. Louisville asserts that the summer 2001 peak demand is a spike situation that is alleviated when the load on the temporary Interlocken substation is no longer served by the line. Louisville believes that the temporary measure of uprating the thermal capacity of the line is feasible and could be completed to meet the summer 2001 requirements permitting more time to explore undergrounding of and alternatives to the proposed upgrade.

e. The LPLCA and Louisville would prefer the upgrade be constructed underground, but acknowledge that Louisville would have to pay for the additional cost for underground construction. Louisville currently does not have funds or the ability to raise funds to pay for the additional cost. Louisville estimates at least two years would be required to become a home rule municipality and to subsequently put a bond issue to pay for undergrounding to a vote before it would have the ability to raise funds.

f. Feasible alternate routes for overhead construction have yet to be fully identified. The LPLCA and Louisville would also like additional time to explore possible alternate routes.

g. Staff supports an immediate need to increase the capacity of the Valmont-Broomfield line by summer 2001. Staff witness Fischhaber testified that PSCo's projected loads are not overstated and do not create an artificial need for the upgrade. Staff concludes that the peak load could not be served in the summer of 2001 if a segment of the Valmont-Broomfield transmission line goes out of service. Staff witness Mitchell testified that the existing line could be viewed as having 10 percent more capacity than its rated 135 MVA. However, Mr. Mitchell stated that this would not lessen the immediacy of the need for an upgrade.

h. Staff does not support the use of temporary measures in lieu of the upgrade. Staff holds the opinion that the temporary measure to increase capacity by increasing the heights of certain poles would be feasible for summer 2001. Mr. Mitchell would not recommend implementation of this temporary measure because it would not provide enough additional capacity to prevent customer outages if a segment of the line is out of service. Staff further contends that underground construction or construction on an alternate route is not viable because neither option could be completed by the summer of 2001.

i. PSCo has indicated that it opposes temporary measures. From a system planning perspective, temporary measures leave the system at risk of customer outages. From a construction and operational perspective, any delay allowed for by temporary measures would necessitate imposing customer outages during construction of the upgrade. However, PSCo had indicated a willingness to construct the line underground provided Louisville pays for the additional cost consistent with PSCo's past practices. PSCo opposes delaying the upgrade to allow Louisville time to raise funds to pay for the additional cost of undergrounding.

j. The Commission concludes that construction of the upgrade of the existing Valmont-Broomfield 115 kV transmission line should proceed immediately. No party refuted

that an actual peak load of 337 MW was served by the line in August 2000. The demand for additional electricity continues to increase in the area served by the transmission line. Power flow studies that model the electric system for the summer of 2001 indicate that the transmission line will not be capable of serving peak load during the single contigency ("N-1") condition of a segment of the line being out of service. The use of single contigency planning criteria by PSCo in this case is consistent with planning criteria used in the past and has been accepted by this Commission.

k. A comparison of the loads modeled for 2001 to the peak loads served in 2000 suggests to us that the reliability of the line was marginal in 2000. Because the transmission line was able to serve peak load in August 2000 does not mean the transmission line is reliable, especially if required to handle additional loads.

l. As testified to by PSCo, removal of the load served by the temporary Interlocken substation will decrease the load on the transmission line. However, this does not eliminate the need for the upgrade to be completed prior to peak load of 2001. The loads projected to be served by Louisville and Broomfield substations of 168 MW in 2002 and 176 MW in 2003 are comparable to the 2000 actual load of 171 MW served by Louisville, Broomfield, and temporary Interlocken substations.

Therefore, our belief that the reliability was marginal in 2000 implies that reliability would be marginal in 2002 and 2003 if the upgrade were not completed. Also, in order for the load served by the temporary Interlocken substation to be removed from the line, facilities must be constructed and there is no guarantee that this will happen before summer 2002.

m. Louisville and the LPLCA propose we order PSCo to implement temporary measures to allow additional time to explore funding of underground construction and alternate routes. We deny this request. First, we are not certain that voters would be in favor of funding underground construction. Second, a feasible alternate route has not been identified. Therefore, further exploration of alternate routes would detract from our decision that construction needs to proceed immediately. Finally, there is not enough evidence to conclude that the temporary measures identified in PSCo's testimony are feasible, could be completed before summer 2001, or would eliminate customer outages during construction if the upgrade were delayed. We will not require PSCo to employ temporary measures.

2. Type of Construction

a. PSCo has specifically requested that the Commission make a finding that corten-finish steel monopole structures be used in the upgrade because the company placed

this type of structures on order in October, 2000 to ensure that an upgrade could be completed by summer 2001.

b. Historically, the Commission has not made specific determinations on the type of structures for transmission lines. Those details are left to the discretion of the utility. We shall not decide on such details in this case either. We have already decided that the upgrade is needed immediately. The record reflects that the only option which can be completed by the summer of 2001 is PSCo's proposal to remove the existing structures and conductors and replace them with new structures and conductors. We find no evidence that indicates constructing underground or constructing overhead on an alternate route could proceed immediately. We now order PSCo to construct the upgrade immediately, with whatever means and materials that are available to the company to allow completion of the upgrade of the Valmont-Broomfield 115 kV transmission line prior to the summer of 2001. In the event that it is not possible for construction to be completed prior to the summer of 2001, we direct PSCo to complete the construction as soon after as practicable without compromising the safety of those constructing the upgrade. We expect PSCo to minimize customer outages that may be necessary, if any, to complete the construction.

3. Requested Conditions

a. The LPLCA would like the Commission to enter into a governmental partnership with Louisville to arrive at a collaborative solution to this matter. Given our decision that the upgrade should proceed immediately, we decline to pursue such a governmental partnership.

b. Louisville requests that any Commission order granting relief as requested by PSCo should include mitigation and monitoring of noise and electromagnetic fields. The unrebutted record shows that both noise and electromagnetic fields are projected to decrease when the upgrade is completed. While Louisville questions PSCo's information, Louisville has not presented any evidence establishing that noise and electromagnetic fields will not decrease. Further, Louisville has not presented any specifics on how monitoring might be conducted and what the mitigation measures might be. We conclude that properties in the vicinity of the transmission line corridor will be no worse off. However, should those citizens residing adjacent to the power line corridor disagree, civil proceedings can be initiated. We shall not require mitigation and monitoring of noise and electromagnetic fields as part of our order.

c. Louisville also requests implementation of demand-side reduction and mitigation programs. PSCo has offered

demand-side reduction programs on a non-discriminatory basis to all qualifying customers throughout its service territory for some time. Those programs have been and are available to PSCo customers in the Louisville area. Additionally, there is nothing which would preclude Louisville from encouraging its citizens to reduce demand. Therefore, we reject Louisville's request.

4. Matter of Statewide Concern

a. Finally, PSCo has requested a Commission declaration that the upgrade is a matter of statewide concern. Consistent with our discussion, *supra,* regarding Commission jurisdiction, we find that the proposed upgrade is a matter of statewide concern. As we stated previously, the issues implicated here, including the safety and reliability of the transmission line; that the matter affects citizens beyond the borders of Louisville; and the historical considerations that these matters are traditionally governed by the State place this issue squarely within the realm of a matter of statewide concern. Colorado case law, supporting case law from outside jurisdictions, and statutory law support our finding that this is a matter of statewide concern.

b. The parties in this case filed their pleadings in an attempt to resolve issues regarding the upgrade of the Valmont-Broomfield transmission line. Because of the

unique circumstances presented here, the Commission has accepted this petition in order to act as the arbiter of last resort. The increased demands for electric power have placed an obvious strain on electrical facilities throughout the state and especially on the transmission line in question; therefore, in our view, resolution of this matter is imperative. However, in the future we strongly encourage all parties to resolve such differences among themselves, as the Commission is averse to resolving siting matters that may be better left to the parties.

c. The Commission grants PSCo's petition for declaratory order.

II. ORDER

A. The Commission Orders That:

1. The petition of Public Service Company of Colorado is hereby granted.

2. The proposed upgrade to the Valmont-Broomfield 115kV transmission line is needed immediately.

3. The proposed upgrade should be constructed with materials currently available to Public Service Company of Colorado so as not to further delay construction.

4. The upgrade of the Valmont-Broomfield transmission line is a matter of statewide concern.

5. The 20-day period provided for in § 40-6-114, C.R.S., within which to file applications for rehearing, reargument, or reconsideration begins on the first day following the effective date of this Order.

6. This Order is effective upon its Mailed Date.

B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
February 14, 2001

(S E A L)

ATTEST: A TRUE COPY

Bruce N. Smith
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

RAYMOND L. GIFFORD

ROBERT J. HIX

POLLY PAGE

Commissioners

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