

Testimony of Doug Benevento  
On Behalf of Xcel Energy  
Before the House Resources Subcommittee on Water, Power, and Oceans  
On the Electric Reliability and Forest Protection Act  
May 20, 2015

**Summary of Testimony**

Xcel Energy is testifying in support of the principles outlined in the Electric Reliability and Forest Protection Act and to recommend to the Subcommittee an additional approach that will help to protect our public lands and utility infrastructure.

Xcel Energy has electric and gas infrastructure in remote areas of public lands throughout our service territory in Colorado. In a time of constrained budgets and a focus on the wildland urban interface (“WUI”) federal land managers have not been able to fully prioritize management off the right-of-way (“ROW”) in these more remote areas. While we understand the focus on the WUI we are concerned that a fire in a more remote area could result in damage to our infrastructure.

In Colorado there are areas off our ROW and adjacent to electric transmission structures where we and the Forest Service believe selective clearing would reduce the risk to our infrastructure in the event of a passing wildfire.

We have proposed to our federal partners that we would be willing to perform off ROW work either on a cost-share basis, or at our own expense. Performing the work with existing contracted resources would require an additional Special Use Permit (“SUP”), which would include unacceptable liability provisions.

The existing liability standard for work on our ROW is strict liability up to one million dollars in damages. After that first one million dollars is reached there is a new standard for any additional damages.

Because this off ROW work is proactive, voluntary and would assist in the management of public lands we believe that there should be a different liability

standard for work performed off the ROW if that work is done at the direction and with the approval of the relevant federal land manager.

We respectfully suggest that the subcommittee examine whether a public-private partnership could be incentivized if the standard of liability for a private entity performing work off its ROW were gross negligence instead of strict liability or comparative liability.

## **Introduction**

Chairman Fleming, Ranking Member Huffman, members of the Subcommittee.

Thank you for holding this hearing and providing the opportunity to comment on the draft legislation.

My name is Doug Benevento and I'm here representing Xcel Energy, a vertically integrated investor-owned gas and electric utility that provides service to just under three and a half millions electric customers and just under two million gas customers in 8 states; Minnesota, Colorado, Texas, New Mexico, Wisconsin, North Dakota, South Dakota, and Wisconsin.

Throughout its service territory Xcel Energy has nearly 19,000 miles of transmission lines. Included in that number are several hundred miles of high voltage transmission facilities in Colorado on land managed by the federal government.

In order to ensure reliability for our customers we are committed to using the most progressive technology available to reduce the risk of damage or destruction to our infrastructure from wildfire.

Along with spending millions of dollars to reduce wildfire risk on public lands in Colorado we have also:

- Deployed remote sensing technology including Light Detection and Ranging (LiDAR) and high resolution imagery from a helicopter which enables Xcel Energy to surgically identify hazard trees and areas around transmission

structures that are high risk for wildfire damage due to fuel load on the ground and forest densities off the ROW that need to be thinned.

- Leveraged the output from remote sensing combined with geospatial risk analysis which has identified approximately 1,600 transmission structures that we've identified as "high risk" for damage should a wildfire pass through these structure sites. Approximately 450 of these high risk structures are located on federal lands. At this time, there is no plan from the US Forest Service to address over 100 of these high risk structures.

Xcel Energy is also committed to ensuring electric service reliability for its customers by working with our federal partners to reduce the risk from fires to our infrastructure on public land. To this end, Xcel Energy and the US Forest Service entered into a memorandum of understanding, allowing us to pay the USFS to perform necessary off ROW wildfire protection work adjacent to high and medium risk transmission structures.

### **Electric Reliability and Forest Protection Act**

We believe that passage of legislation like the Electric Reliability and Forest Protection Act could help both us and federal land managers ("FLM") protect utility infrastructure.

In particular, we believe that the legislation appropriately gives discretion to utilities to respond to emergency conditions. We also believe that the unified vegetation management plan, facility inspection plan, and operation and maintenance plan will be useful planning documents for both utilities and federal land managers.

If the unified management plan is designed properly, approved in a timely manner and implemented correctly it would provide guidance to utilities on how to proceed with work on or adjacent to existing ROW. Additionally it will provide certainty to the utilities and a useful management tool for the FLM.

We understand that this legislation is just beginning its journey through the legislative process. However, as it progresses we hope that this subcommittee and your colleagues on both sides of Capitol Hill continue to focus on the issue of

balancing the important oversight role played by the federal land managers with our equally important job of ensuring reliability for our customers.

### **Liability for off ROW Work**

Today I want to raise an additional issue not addressed in the Bill that we hope the Committee will consider. While this is an important issue for Xcel Energy, we think it is applicable to other utilities as they consider the need to perform work off existing ROW.

Our concern pertains to off-ROW vegetation management that is occasionally necessary to protect transmission lines from wildfire threats originating outside of the ROW.

Our concern focuses on dense forests adjacent to our transmission structures that can pose an enormous threat to our facilities survivability from a passing wildfire.

We are under no obligation to manage vegetation off of our ROW. It is the responsibility of the federal land management agency to manage it to protect our facilities. However, lack of resources and a focus on the WUI areas by federal land managers has led to a decline in management in more remote areas where we have important infrastructure.

We routinely manage our ROW and could easily turn our attention to these small (~1/4 acre per structure), but highly critical off-ROW work areas.

There is no debate on whether this work should and can be done in a fashion that minimizes impacts to the surrounding environment, wildlife and the surrounding ecosystem. In fact, it can also help develop pollinator habitat.

While, Xcel Energy is willing to contribute field crew and financial resources to these off-ROW management efforts, we are concerned that if we do so we take on unrestricted liability.

That is a standard we are not willing to expose our Company and ratepayers to in order to perform work that is not our responsibility. Xcel Energy is hopeful Congress will consider legislation clarifying that a utility doing off-ROW vegetation

management work pursuant to an agency-approved vegetation plan may do so without the fear of a taking on strict or comparative liability. In these cases we believe a gross negligence standard with a potential cap on our overall liability is an appropriate approach for our voluntary efforts to solve these wildfire threats. In addition to or as an alternative we believe a cap on liability could also address our concerns.

We believe what we're proposing can be successful at both improving the health of public lands and protecting our infrastructure if we can agree on the following principles:

- All work must be timely reviewed and approved by the relevant FLM before it is undertaken;
- There can be no commercial value from the management activity to the utility; and
- The liability standard for performing such work should be gross negligence and/or capped at a set amount.

We are open to discussing other principles and would certainly welcome the input of the Departments of Agriculture and Interior on such a proposal. We want to be clear about our goal, improving the ability of our infrastructure to survive a wildfire in the remote areas where it is located. We are not seeking a larger opening in the management of public land that could lead to larger applications of this language.

What we are suggesting is not unique. In many parts of the country under state law, private landowners are encouraged to engage in prescribed fire activity to reduce hazardous fuel conditions. When performing this work, if the fire were to spread, actions would be measured by a gross negligence standard.

In other situations, fire fighters from adjacent districts are urged to be good neighbors and help suppress fires with the assurance that they will be held harmless.

Similarly here, utilities cannot risk partnering with the Forest Service on off-ROW fuel reduction activities without accompanying protections. We are not asking for a complete waiver of liability but the standard should be one of gross negligence

Xcel Energy would welcome a dialogue with Committee staff and the agencies in the coming weeks to see how best this partnership could be expanded and the necessary protections could be incorporated.