

**BOULDER CITY COUNCIL MEETING
MUNICIPAL BUILDING, 1777 BROADWAY
Wednesday, July 24, 2013
6 p.m.**

**SPECIAL MEETING
AGENDA**

1. CALL TO ORDER AND ROLL CALL

2. OPEN COMMENT and COUNCIL/STAFF RESPONSE (limited to 45 min.) **Public may address only consent agenda items scheduled at this meeting.** All speakers are limited to three minutes unless otherwise determined by the Mayor.

3. CONSENT AGENDA (to include first reading of ordinances) Vote to be taken on the motion at this time.

1. Introduction, **first reading** and consideration of a motion to order published by title only an **ordinance** following up on Ordinance No. 7898 **making findings regarding the conditions precedent of Charter section 178(a) “Light and Power Utility,”** and setting forth related details

2. Introduction, **first reading** and consideration of a motion to order published by title only an **ordinance authorizing the acquisition of property interests owned by Xcel Energy, Inc d/b/a Public Service Company of Colorado by negotiation and purchase or through the power of eminent domain** and setting forth related details

3. Introduction, **first reading** and consideration of a motion to order published by title only an **ordinance setting the ballot title for an initiated amendment to the Boulder Charter**, and setting forth related details (*this item was continued from the July 23, 2013 meeting*)

4. Introduction, **first reading** and consideration of a motion to order published by title only, **a potential alternative ordinance submitting** to the registered electors of the City of Boulder at the general municipal coordinated election to be held on Tuesday November 5, 2013, **the question of whether to amend the City Charter to address issues presented by the proposed initiated Charter amendment to section 188**

5. DEBRIEF (5 Min.) Opportunity for Council to discuss how the meeting was conducted

6. ADJOURNMENT

This agenda and the meetings can be viewed at www.bouldercolorado.gov / City Council. Meetings are aired live on Municipal Channel 8 and the city's Web site and are re-cablecast at 6 p.m. Wednesdays and 11 a.m. Fridays in the two weeks following a regular council meeting. DVDs may be checked out from the Main Boulder Public Library. Anyone requiring special packet preparation such as Braille, large print, or tape recorded versions may contact the City Clerk's Office at (303) 441-3002, 8 a.m. – 5 p.m. Monday through Friday. ***48 hours notification prior to the meeting or preparation of special materials IS REQUIRED.*** If you need Spanish interpretation or other language-related assistance for this meeting, please call (303) 441-1905 at least three days prior to the meeting. *Si usted necesita interpretación o cualquier otra ayuda con relación al idioma para esta junta, por favor comuníquese al (303) 441-1905 por lo menos 3 días antes de la junta.* Electronic presentations to the city council must be pre-loaded by staff at the time of sign up and will NOT be accepted after 5:30 p.m. at regularly scheduled meetings. Electronic media must come on a prepared USB jump (flash/thumb) drive and no technical support is provided by staff.



**CITY OF BOULDER
CITY COUNCIL AGENDA ITEM**

MEETING DATE: July 24, 2013

AGENDA TITLE: Introduction, first reading and consideration of a motion to order published by title only an ordinance following up on Ordinance No. 7898 making findings regarding the conditions precedent of Charter section 178(a) “Light and Power Utility,” and setting forth related details.

PRESENTERS:

Jane S. Brautigam, City Manager
Tom Carr, City Attorney
Paul J. Fetherston, Deputy City Manager
Bob Eichen, Chief Financial Officer
Kathy Haddock, Senior Assistant City Attorney

EXECUTIVE SUMMARY:

On November 1, 2011, the electorate adopted Article XIII of the Boulder Home Rule Charter. Section 178 of Article XIII provides for the conditions under which the City Council may authorize the creation of a light and power utility, including that certain conditions must be verified by a third-party independent expert. By Ordinance No. 7898 adopted on April 16, 2013, council directed the city manager to retain a third-party expert to provide verification as to whether the materials prepared by staff and presented to council on February 26 and April 16, 2013 demonstrated that the city could form an electric power and light utility that met the conditions of Charter section 178(a). After advertising a Request for Proposals and interviewing applicants and receiving comments from the public as specified in Ordinance No. 7898, the city manager selected PowerServices, Inc. to serve as the third-party independent expert. PowerServices, Inc. will present its findings to the council to verify whether the conditions precedent of section 178(a) can be met.

Ordinance No. 7898 contained council’s preliminary finding that the conditions precedent of Charter section 178(a) have been met. Staff has prepared the attached ordinance for council to consider after hearing the report of PowerServices, Inc. Adoption of this ordinance does not form the electric power and light utility.

STAFF RECOMMENDATION:

Suggested Motion Language:

Staff requests council consideration of this matter and action in the form of the following motion:

Motion to introduce and order published by title only an ordinance following up on Ordinance No. 7898 making findings regarding the conditions precedent of Charter section 178(a) “Light and Power Utility,” and setting forth related details.

COMMUNITY SUSTAINABILITY ASSESSMENTS AND IMPACTS:

- Economic: The discussion of Boulder’s energy future has focused on the economic risks and opportunities associated with near-term energy decisions. In light of projected increases in fossil fuel prices and concerns regarding the long-term availability of these supplies, it is imperative to begin planning for and investing in alternative energy resources to secure Boulder’s economic future.

Boulder’s current economic vitality has benefited from considerable growth of “clean energy” companies in recent years. Continuing to position the city as an innovation hub for clean energy will have important economic benefits. The Charter requires that the municipal utility’s rates not exceed those of Xcel Energy and that a city utility introduce more renewable energy into Boulder’s supply are key to Boulder’s economic future. Verification by a third-party independent expert will provide greater assurance to council and the community that this goal can be met before council authorizes the initial steps toward creating a municipal utility.

- Environmental: The municipal electric utility may provide more opportunities to create and implement alternative energy sources, demand-side management, and energy efficiencies that will help the city meet its carbon reduction goals. The proposed ordinance will help assure that this renewable energy goal is attainable.
- Social: The rising cost of fossil fuels will impact household, business, and institutional budgets, in potentially significant ways. This is especially true for lower-income households. Prudent planning to ensure price stability over time can help to manage and mitigate this impact.

OTHER IMPACTS:

- Fiscal: The budget impacts have been absorbed in the Boulder Energy Future budget through funding provided by the Utility Occupation tax.
- Staff time: No additional staff time is anticipated by the adoption of this ordinance.

BACKGROUND:

At the November 2011 election, voters approved a new article XIII in the Boulder Home Rule Charter. Article XIII includes section 178 through 187. Section 178(a) addresses the creation of a light and power utility as follows:

The city council, at such time as it deems appropriate, subject to the conditions herein, is authorized to establish, by ordinance, a public utility under the authority in the state constitution and the city charter to create light plants, power plants, and any other public utilities or works or ways local in use and extent for the provision of electric power. The city council shall establish a light and power utility only if it can demonstrate, ***with verification by a third-party independent expert***, that the utility can acquire the electrical distribution system in Boulder and charge rates that do not exceed those rates charged by Xcel Energy at the time of acquisition and that such rates will produce revenues sufficient to pay for operating expenses and debt payments, plus an amount equal to twenty-five percent (25%) of the debt payments, and with reliability comparable to Xcel Energy and a plan for reduced greenhouse gas emissions and other pollutants and increased renewable energy

Charter § 178(a)(emphasis added).

By Ordinance No.7898, council made a preliminary determination that the conditions precedent had been met and set forth the procedure by which the city manager should advertise for, select and retain a third-party independent expert to analyze the materials prepared by staff to determine if an independent review verified the conditions precedent had been met. The city manager selected PowerServices, Inc. to perform the review. PowerServices, Inc. has spent extensive time reviewing the materials and asking questions of the staff and consultants that prepared the materials, all under the supervision of the designated Project Manager, Dave Bannon from Finance, and Tammye Burnette, organizational development administrator. Dave or Tammye or both were involved in every communication between PowerServices, Inc. and any other city staff (except the city manager), and no written or verbal communications happened between PowerServices, Inc. and city staff or consultants without a designee of the city manager in attendance. This matter is presented for first reading after the presentation by PowerServices, Inc. of its findings to council on July 23, 2013.

Several people have taken a sentence of the agreement for the third-party independent expert that was part of Ordinance No. 7898 out of context to justify a false statement that

the third-party independent expert was prevented from performing a real review of the Base Materials. The sentence is

“The project does not include the Independent Expert providing an independent review or opinion **of the results of** the Base Materials, or on any of the assumptions of the litigation costs, including determination of fair market value of property to be acquired or stranded costs. The Project Scope is as set forth in the RFP.”

This sentence is at the end of the section of the agreement describing the scope of work and refers to the results of the Base Materials, not their assumptions, inputs or analysis. The only assumptions excluded are those related to litigation including acquisition and stranded costs. Xcel provided both numbers but Xcel refused to provide the assumptions or other basis for those numbers.

The full scope of work is more than two pages of the RFP, which pages are in Attachment B. Ordinance No. 7898 with the RFP and all attachments can be found at https://bouldercolorado.gov/files/Energy/2013/3rd_Party_Review_RFP.pdf Viewing the above statement in context of the expansive description of the review and examination that the third-party independent expert is to perform, clarifies that the quoted statement is not to limit the work or the information to which the expert had access or was to review, but to define the scope of the expert’s work as reviewing the work that made up the Base Materials rather than create a separate model to determine whether the expert would reach the same results. The verification required by Charter Section 178(a) is that the city has demonstrated that it can meet the Charter requirements, not a comparison of the city’s modeling to one performed by a third-party. Representatives of PowerServices, Inc. will be able to answer any questions you may have about the work they performed and the extent of their review of the Base Materials.

ANALYSIS:

While verification by the third-party independent expert could theoretically happen at any time prior to actual formation of the utility, council determined that doing so at this point in the process would provide valuable information to council before taking the next steps in exploring municipalization. Further, as the next step is authorization to acquire the electrical system serving the city, having a third-party independent expert review the staff materials provides council valuable input about the feasibility of municipalization prior to determining if the conditions precedent to formation of the utility have been met.

MATRIX OF OPTIONS:

Staff recommends the proposed motion approving the proposed ordinance after council has selected one of each of the bracketed options in the ordinance. Council may amend or reject the findings of PowerServices, Inc.

ATTACHMENTS:

A- Proposed Ordinance with options bracketed [].

B- Project Scope description from RFP approved by Ordinance No. 7898.

This Page Intentionally Left Blank

ORDINANCE NO. _____

AN ORDINANCE FOLLOWING UP ON ORDINANCE NO. 7898 MAKING FINDINGS REGARDING THE CONDITIONS PRECEDENT OF CITY CHARTER SECTION 178, "LIGHT AND POWER UTILITY;" AND SETTING FORTH RELATED DETAILS.

THE CITY COUNCIL OF THE CITY OF BOULDER, COLORADO FINDS AND

DETERMINES:

- A. In November 2011, the voters of the city of Boulder approved an amendment to the City Charter creating a new article XIII, "Light and Power Utility."
- B. The Charter amendment requires that the City Council make certain findings prior to the creation of a new light and power utility.
- C. In particular, Charter section 178 requires that a light and power utility can be formed only if the city can demonstrate, with verification by a third-party independent expert, that:
 - 1. The utility can acquire the electric distribution system in Boulder and charge rates that do not exceed those charged by Xcel Energy at the time of acquisition;
 - 2. The rates charged by the utility will produce revenues sufficient to pay the operating expenses and debt payments, plus an amount equal to twenty-five percent (25%) of the debt payments;
 - 3. The utility will have reliability comparable to Xcel Energy; and
 - 4. The utility will have a plan for reducing greenhouse gas emissions and other pollutants, and a plan for increasing the use of renewable energy.
- D. On February 26 and April 16, 2013, city staff and consultants presented to the City Council an analysis that demonstrated that various modeled scenarios would meet the conditions precedent to the creation of a light and power utility set forth in section 178(a) of the Charter (the "Base Materials".)
- E. On April 16, 2013, council adopted Ordinance No. 7898 making the preliminary finding that the conditions precedent had been met and directed the city manager to retain a third-party independent expert to review the materials to verify that the conditions in Charter section 178 had been met.

- 1 F. The city manager (i) retained PowerServices, Inc. as the third-party independent expert to
 2 perform an independent review of the council's preliminary determination required by
 Charter section 178(a), and (ii) satisfied all of the requirements of Ordinance No. 7898.
- 3 G. PowerServices, Inc. has the experience, adequate technical training and proficiency to
 4 perform the evaluation; has maintained its independence (in fact and appearance) in all
 5 matters related to the evaluation contemplated by City Charter section 178(a) and
 6 Ordinance No. 7898; has exercised due professional care during the performance of the
 7 evaluation and the preparation of the report; has performed the evaluation diligently; and
 has detailed for the city manager and the City Council any material misleading or omitted
 statements, assumptions, or information encountered in the Base Materials, or discovered
 in the review process.
- 8 H. PowerServices, Inc. has reviewed the Base Materials and verified that the Base Materials
 9 demonstrate that the city [can] [cannot] satisfy the conditions precedent to establishing a
 light and power utility as set forth in Charter section 178(a).

10 **NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE**
 11 **CITY OF BOULDER, COLORADO, THAT: *Council select one of each [] option.***

12 **Section 1.** The City Council [accepts] [rejects] the findings of PowerServices, Inc.
 13 presented on July 23, 2013.

14 **Section 2.** The City Council determines that based on the Base Materials and the
 15 verification by PowerServices, Inc., the conditions precedent to the creation of a light and power
 16 utility in Charter section 178(a) [have been] [have not been] satisfied. Specifically, the council
 makes a determination that, based on established standards and practices of the public power
 industry, the Base Materials demonstrate that:

- 17 A. The utility [can] [cannot] acquire the electrical distribution system in Boulder and
 18 charge rates that do not exceed those rates charged by Xcel Energy at the time of
 acquisition;
- 19 B. The anticipated rates charged by the utility [will] [will not] produce revenues
 20 sufficient to pay for operating expenses and debt payments, plus an amount equal to
 twenty-five percent (25%) of the debt payments;
- 21 C. The acquisition, separation, and operational plan [will] [will not] result in electric
 22 reliability comparable to Xcel Energy; and
- 23 D. The Base Materials [include] [do not include] plans for reducing greenhouse gas
 24 emissions and other pollutants and increasing the use of renewable energy.
- 25

This Page Intentionally Left Blank

PART I: General RFP Information

PROJECT SCOPE

Introduction:

The selected firm(s) will work with the city manager, and City Council if requested by the City, to provide the review and verification required by the Charter. The selected firm(s) will have access to all other City staff and consultants that worked on the Base Material. The proposal should include an outline of a proposed scope of work, specifically addressing all elements necessary to satisfy the following objectives:

- Examine the Base Material to determine whether the inputs used are appropriate to verify that the City can meet the Charter Requirements;
- Examine the Base Material to determine whether it meets industry standards and represents a reasonable manner to evaluate anticipated debt service costs and revenues;
- Review the Base Material to verify that the City can provide reliability comparable to Xcel Energy;
- Review the Base Material to verify that the City can reduce greenhouse gas emissions and other pollutants and increase renewable energy.

Primary Issues of Review

Primary issues to be answered as part of the scope of work will include the review and verification whether the Council Preliminary Determination meets the Charter Requirements. Specifically, the scope of work will include:

- Whether staff's assumptions are reasonable based on established standards and practices of the public power industry;
- Whether staff's assumptions fail to include any components necessary based on established standards and practices of the electric utility industry to answer the Charter Requirements, including the following:
 - Findings that the utility can acquire the electrical distribution system in Boulder and charge rates that do not exceed those rates charged by Xcel Energy at the time of acquisition;
 - Findings that the anticipated rates charged by the utility will produce revenues sufficient to acquire the system, pay for operating expenses and

Exhibit 1 to Ordinance 7898
Proposed RFP

- debt payments, plus an amount equal to twenty-five percent (25%) of the debt payments;
- Findings that the acquisition, separation, and operational plan will result in electric reliability comparable to Xcel Energy ; and
 - Findings that the City's plan for reduced greenhouse gas emissions and other pollutants and increased renewable energy is reasonable;
- Whether, based on established standards and practices of the electric utility industry, the inputs of the Base Material are sufficient to determine whether the utility can meet the Charter Requirements;
 - Whether any significant factors necessary to determine the Charter Requirements are not included in the Base Material;
 - Verify that the utility can meet the Charter Requirements.

Assumptions to be Relied Upon

Information which will be provided by the City and may be assumed as correct by the selected firm:

- Amounts provided for the cost to acquire the electrical system serving the City of Boulder (The City will provide a range. The City is not requesting that the selected firm(s) perform separate legal analysis of the amounts provided by the City to acquire property).
- Amounts provided for any stranded costs that may be due from the City to Xcel Energy under FERC Rule 888 (The City will provide a range. The City is not requesting that the selected firm(s) perform separate legal or factual analysis of the amounts for which the City may be liable for stranded costs).

Detailed Scope of Work

Detailed scope of work to be developed should include:

- The work to be performed to verify that the Council Preliminary Determination meets the Charter Requirements as described in the Primary Issues of Review section of this RFP;
- Information necessary from City staff and consultants, with approximate time and work needed from City staff and consultants, to verify that the Council Preliminary Determination meets the Charter Requirements;
- A presentation to the City Council, including any audio or visual aids, reporting the findings and conclusion of the third party verification process;
- A written report. A suggested form of the written report is attached; and

- Any recommendations related to additional information, analysis or study that may be necessary to complete tasks associated with the Primary Issues of Review in this RFP.

Follow-Up Verification

In the event that the City makes material changes to the Base Material to examine other opportunities, incorporates newly discovered information, or desires a follow-up review as the project progresses, it may request a follow-up review by the selected firm(s).

BASE PROPOSAL

The proposal shall contain and will be evaluated on the following sections:

1. A cover letter describing the following:
 - A. The firm and the individuals on the proposed project team, including relevant email addresses and telephone numbers;
 - B. The project contact person, including complete contact information; and
 - C. Brief background qualifications and experience, specific to this project, for the principal individuals who will work on this project.
2. A description of how the firm would implement the Detailed Scope of Work and Follow-Up Verification above in narrative form describing factors and information the firm wishes to offer for consideration, including the following:
 - A. The procedures to perform the independent verification, make the presentation to City Council, and finalize a written report;
 - B. The anticipated time necessary of City staff and consultants to obtain the information necessary for the verification by the selected firm;
 - C. Proposed schedule for performing Detailed Scope of Work, including meetings with City staff and consultants to prepare to present to the city manager by July 16, 2013 in accordance with timeline below;
 - D. Proposed form of presentation to the City Council on July 23 and August 6, 2013;
 - E. Proposed form of written report to the extent it varies from Suggested Form of Report;
 - F. Detailed discussion of the municipal utility work the firm has done related to the factors in the scope described above, including

This Page Intentionally Left Blank



**CITY OF BOULDER
CITY COUNCIL AGENDA ITEM**

MEETING DATE: July 24, 2013

AGENDA TITLE: Introduction, first reading and consideration of a motion to order published by title only an ordinance authorizing the acquisition of property interests owned by Xcel Energy, Inc d/b/a Public Service Company of Colorado by negotiation and purchase or through the power of eminent domain and setting forth related details.

PRESENTER/S

Jane S. Brautigam, City Manager

Tom Carr, City Attorney

Paul J. Fetherston, Deputy City Manager

Heather Bailey, Executive Director of Energy Strategy and Electric Utility Development

Bob Eiche, Chief Financial Officer,

Kathy Haddock, Senior Assistant City Attorney

Sandra Llanes, Assistant City Attorney

Kara Mertz, Environmental Action Project Manager

EXECUTIVE SUMMARY:

Attachment A is an ordinance that would authorize staff and consultants to begin the acquisition process of the property interests and equipment within the proposed service area boundary of a new city electric utility. This authorization includes filing an action in eminent domain if good faith negotiations are not successful. If council adopts the ordinance, staff would send a Notice of Intent to Acquire to Xcel as required by Colorado law and direct appraisers to prepare written reports of their appraisals of the various property interests. Consultants would begin negotiations with Xcel that meet the applicable requirements for good faith negotiations which are a prerequisite to a condemnation action. It is anticipated that this process would take several months. Therefore, if negotiations fail, the earliest staff anticipates that a condemnation action would be filed is in January, 2014.

The property that the ordinance authorizes for acquisition includes the electric utility facilities, as defined in the City Charter, that are necessary to meet the goals and standards expressed in Article XIII of the Charter, and that staff and consultants have inventoried, as such inventories may be amended in the future, to meet the intent described herein and in the ordinance (the “Property Interests and Assets”). This memo describes (i) the public purpose being served by acquiring the Property Interests and Assets, (ii) the necessity of the Property Interests and Assets for that purpose, (iii) the ways that the city has tried to minimize or eliminate negative impact on Xcel by the acquisition, and (iv) the ways the acquisition provides benefits to Xcel and other ratepayers.

1. Identification of the Property to be Acquired.

The city has a good idea related to the property interests that it will need to acquire to start an electric utility. The definition of Property Interests and Assets described in the attached ordinance includes all of the property interests and inventory of Xcel that serve the service area and necessary for the new utility. The inventories include the property interests that have been identified in the city’s investigations. For example, the city has done an inventory of all property interests of Xcel from recorded documents, physical observation, and publicly-filed records.

The city made a good faith effort to discover all of necessary interests. However, there is a chance that Xcel has not recorded all of its interests or included its entire inventory in its publicly filed records. To date, Xcel has refused to provide the records required under the franchise agreement that would close any potential gaps in our knowledge of its equipment and property. The condemnation law addresses this reality by allowing liberal amendment of a petition in condemnation as the court process proceeds. As the litigation moves on, through the discovery process, the city may learn of additional assets that it will need to acquire. If we are able to acquire the assets by negotiation, this will not be an issue.

2. Condemnation Authority under the State Constitution and the Ability to Serve Customers Outside the City Limits.

The constitution is clear that the city can condemn all of the Xcel property serving the city whether that property is inside or outside the city boundaries. If the district court in an eminent domain action agrees that the right to serve customers is a property interest, the city may be able to condemn that right.

The city is participating in a PUC docket related to Xcel’s right to serve customers outside the city limits, even if exercising that right requires Xcel to build duplicate facilities. The city is exploring the possibility of Xcel continuing to serve the out-of-city customers on the system if the city acquires the facilities that extend beyond city boundaries. There are a variety of regulatory and ratemaking approaches that may make this possible, including the use of transmission or distribution tariffs.

STAFF RECOMMENDATION

Suggested Motion Language:

Staff requests council consideration of this matter and action in the form of the following motion:

Motion to introduce, read, pass on first reading and adopt Ordinance _____, as presented in Attachment A, authorizing the acquisition of property interests owned by Xcel Energy, Inc. d/b/a Public Service Company of Colorado by negotiation and purchase or through the power of eminent domain.

IMPACTS:

- Fiscal - The purchase price and related costs for purchasing the property interests would be paid by the utility created by the City Council pursuant to Charter Section 178, by bonds issued by the new utility. The staff and consultant costs for acquisition would be paid from the Utility Occupation tax approved by the voters in November, 2011.
- Staff time - No additional staff time is anticipated if the city is able to negotiate a purchase price with Xcel; however, finalizing such a purchase would involve a significant amount of time of the City Attorney's Office. If negotiations are not successful and condemnation is necessary, even with outside counsel primarily responsible for the condemnation, it is anticipated that condemnation would require several FTE's in the City Attorney's Office and the Energy Future Office throughout 2014 and first quarter 2015.

BOARD AND COMMISSION FEEDBACK:

As more particularly described in the Study Session Memo for the July 23, 2013 study session, there have been several working groups that have vetted the proposed separation boundary, particularly its effect on reliability, and recommend it as the service area to be acquired by the city.

BACKGROUND:

The reasons for the city considering forming its own electric utility and acquiring the electrical system serving the city have been publicly discussed by the City Council for years. Historical materials detailing the city's efforts can be found at <https://bouldercolorado.gov/energy-future/energy-future>, which are incorporated herein by reference. In November 2011, the voters approved an occupation tax to pay the costs of exploring the formation of an electric utility. In 2012, the city retained several engineers and attorneys and other consultants to evaluate the feasibility of municipalization and determine what property of Xcel Energy, the current electricity provider, would be required for the city to operate its own electric utility. The

recommended service area of the new utility is attached to the ordinance (**Attachment A**). **Attachment B** describes the recommended service area in more detail.

In creating the area depicted as the recommended service area, the city's engineers analyzed the existing electrical system serving the city and determined the technically optimal location of separation and interconnection of the existing utility system. The engineers investigated the interconnection points in the field as well as the extent of existing feeders to determine each point of interconnection and draw the boundary at the end of existing feeders. Several independent engineers and working groups created by the city have reviewed the work of the city consultants and agreed that the city's proposed separation boundary provides the best boundary for the city to acquire the assets while maintaining the reliability and long-term viability of the city's new electric facility and for the system that Xcel Energy will continue to operate serving other ratepayers. The city's decades-old policy of acquiring land for open space and limiting development around the boundaries of the city has created a technically and geographically isolatable electric system.

In order to manage the electric distribution system and future local generation that will be serving the city, the engineers also recommend that the city acquire the 115kV transmission loop serving the city. The loop can be acquired without negatively impacting the service provided by Xcel; in fact acquisition of the loop benefits Xcel in several ways, including that the city will be able to focus greater resources on maintaining and upgrading these facilities and reduces Xcel's exposure for this aged equipment or balancing resources within the city.

ANALYSIS:

In addition to the analysis that defined the boundary, engineers, other consultants and city staff analyzed particular equipment and substations in more detail. Following is a summary of some of those considerations.

Smart Grid: While Xcel may have spent a lot of money installing SmartGrid, in acquiring the system, it is the city's obligation to pay just compensation which has been defined as fair market value, not the cost to install. As found by several customers using SmartGrid, the Public Utilities Commission and Xcel itself, there is not a lot of value to the SmartGrid equipment that was installed. The equipment that Xcel put in does not communicate with the customer as anticipated, but only communicates with the energy provider. The manufacturer of the equipment no longer produces the equipment and there is no technical or computer support for the equipment installed. Therefore it is obsolete. Because Xcel removed the old meters to install the SmartGrid meters that only function in limited fashion using an obsolete system, the city will either have to acquire the meters for use only as analog meters (requiring individual readings) or immediately install separate meters in order to do basic metering of the electricity used by each household. Much of the obsolete SmartGrid equipment located on the distribution system will need to be removed to prevent potential failures/outages rather than be left to deteriorate on the pole. Therefore, the recommendation is to acquire all of the

components of SmartGrid, even though it has many more negative impacts than assistance for the new utility. Not acquiring them, and allowing Xcel to leave the SmartGrid components in place to deteriorate negatively affects future reliability of the city's system.

Streetlights and Signal Lights: Xcel argues that it owns all of the streetlights and signal lights in the city, however, it has provided no proof of ownership. The city and the Colorado Department of Transportation have an agreement for all signal lights on state highways (including Broadway, Arapahoe, Canyon, Foothills Parkway, US36, and the diagonal) based on CDOT's claim of ownership of the lights and the city doing minor repairs and CDOT performing major repairs. For developments since the 1980s, developers have had to pay for the streetlights and signal lights related to their developments. Therefore, despite Xcel's claim of ownership, the city believes the actual number of streetlights owned by Xcel is a small percentage of those in the city.

Distribution System: The distribution system the city will acquire is generally from the high-side of the 115kV and 230kV transformers to the low-side of the meters serving each customer. The distribution system includes all overhead and underground distribution lines, distribution transformers, protection and sectionalizing equipment, voltage regulating equipment, secondary and services, customer meters, and communications systems.

Transmission System: The transmission system includes the 115kV transmission line segments of the loop between Valmont Switchyard, Boulder Terminal Substation, Sunshine Substation, Boulder Canyon Hydro Substation, NCAR Substation, Eldorado Substation, and back to Valmont Switchyard. The transmission system includes overhead and underground conductors, towers, poles, communications equipment, and line termination bays at substations.

Substations: The separation and interconnection plan anticipates that the city will acquire the following:

- Sunshine, Boulder Canyon Hydro, NCAR, and Boulder Terminal Substations: land and all of the equipment.
- Leggett, Niwot, and Gunbarrel¹ Substations: only the Xcel 230kV transformers, high side protection, and distribution switchgear, as well as access easements to operate and maintain that equipment. The city anticipates constructing a separate small building to control and monitor the city's equipment at all three substations so that access to Xcel's existing buildings by the city is not required for co-location at those substations.
- Valmont Switchyard and Eldorado Substation: line termination bays and spare bays to serve the 115kV transmission loop, as well as access easements to operate and maintain that equipment. Again, the city anticipates construction of separate small buildings at each location to control and monitor the city's facilities.

¹ As a customer of the city, IBM would continue to receive service at transmission voltage from the Gunbarrel substation.

Timing: The attached ordinance authorizes the filing of a condemnation action after January 1, 2014. There had been some concern expressed that approving a condemnation ordinance when negotiations had not started was premature. However, to make clear that the negotiations are with the intent of acquiring the property interests, it is important that the authorization for filing the condemnation be granted. If negotiations are going well, rather than having failed, the ordinance does not require that a condemnation action be filed on January 1, 2014, or on any particular date. The two prerequisites to actually filing a condemnation action are (1) that good faith negotiations have occurred but not been successful, and (2) that it is after January 1, 2014.

ATTACHMENTS

- A – Condemnation ordinance with map of proposed service area
- B – Description of updated proposed service area

ORDINANCE NO. _____

AN ORDINANCE AUTHORIZING THE ACQUISITION OF PROPERTY INTERESTS OWNED BY XCEL ENERGY, INC. D/B/A PUBLIC SERVICE COMPANY OF COLORADO BY NEGOTIATION AND PURCHASE OR THROUGH THE POWER OF EMINENT DOMAIN AND SETTING FORTH RELATED DETAILS.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BOULDER, COLORADO, THAT:

Section 1. The City Council of the City of Boulder, Colorado finds and determines:

A. The City of Boulder is a home rule municipality of the State of Colorado.

B. The city and its utility enterprises are empowered pursuant to the Colorado Constitution, Article XX, §§ 1 and 6, and the city’s Home Rule Charter, including without limitation Article I, § 2(b) and (d) and Article XIII, § 180(a) to exercise the power of eminent domain, in the manner provided by Article 1 of Title 38, Colorado Revised Statutes, to acquire electric utility facilities and other interests associated therewith.

C. The franchise agreement between the city and Xcel Energy provided for the city’s right to condemn Xcel’s property interests and Xcel’s obligation to provide its records regarding such interests.

D. On November 1, 2011, the people of the city approved Ballot Question No. 2C authorizing the city to establish, acquire, erect, maintain, and operate a municipal light and power utility (the “Project”).

E. Article XIII was added to the city’s Home Rule Charter pursuant to approved Ballot Question No. 2C to provide for utility service standards, the creation of an electric utility governed by the City Council, an electric utilities board, and the general powers and limitations of the utility. Article XIII provides, among other things, that the electric utility has the power to acquire electric facilities and other property interests through purchase or through the power of eminent domain to effectuate the purpose of Ballot Question 2C.

F. The city has determined that the service territory should be as shown on Exhibit A attached hereto, and as more particularly described in the

1 agenda memoranda dated July 23 and August 6 provided to the City Council with
2 this ordinance (the “Memoranda”). The service territory was designed to be the
3 technically optimum place of separation to maintain reliability on both sides of
4 the separation to serve properties within and owned by the city, avoid duplication
5 of distribution and transmission equipment, minimize operational and
6 maintenance conflicts, establish the service area boundaries along property
7 boundaries, and define the primary areas in which the utility will acquire property
8 interests to implement Article XIII of the charter.

6 G. Article XIII of the charter provides for the electric utility to
7 acquire, provide, and operate electric utility facilities that meet the goals and
8 standards expressed in Article XIII and the city staff and consultants have created
9 a preliminary inventory of the real property interests and equipment necessary to
10 be acquired to serve the proposed service territory as described in the
11 Memoranda, which inventories, as they may be amended in the future, are
12 incorporated herein by reference (the “Property Interests and Assets”).

11 H. The Project fulfills the goals of the city to reduce greenhouse gas
12 emissions and other pollutants and increase the use of renewable energy, and is a
13 public purpose under the law of Colorado and as approved by the voters of the
14 city.

14 I. The acquisition of the Property Interests and Assets is necessary
15 for the Project, is for a public purpose and in furtherance of public uses.

15 J. There is a public, local, and municipal need and necessity for the
16 city to obtain possession of and to acquire the Property for the Project, which will
17 benefit the public health, welfare and safety.

18 K. The city has complied and is complying with all conditions
19 precedent to the acquisition of the distribution and transmission systems as
20 described herein and set forth in the Colorado Revised Statutes and the City
21 Charter.

21 Section 2. The City Council authorizes the city manager to negotiate for the acquisition
22 of the Property Interests and Assets or any parts thereof, as they may be adjusted to construct the
23 Project.

23 Section 3. Should negotiations for the acquisition of the Property fail, the City Council
24 authorizes the city manager to acquire the Property Interests and Assets, or any parts thereof, by
25 the exercise of the power of eminent domain, and further authorizes the city attorney to initiate
condemnation proceedings to acquire the Property Interests and Assets; provided however, a
Petition in Condemnation shall not be filed with the Boulder District Court before January 1,

2014. The city and its designees may from time to time amend the property described to add or delete real property or equipment to adequately reflect the intent of this ordinance.

Section 4. This ordinance is necessary to protect the public health, safety, and welfare of the residents of the city and covers matters of local concern.

Section 5. The City Council deems it appropriate that this ordinance be published by title only and orders that copies of this ordinance be made available in the office of the city clerk for public inspection and acquisition.

INTRODUCED, READ ON FIRST READING, AND ORDERED PUBLISHED BY TITLE ONLY this 24th day of July, 2013.

Mayor

Attest:

City Clerk

READ ON SECOND READING, PASSED, ADOPTED, AND ORDERED PUBLISHED BY TITLE ONLY this ___ day of _____ 2013.

Mayor

Attest:

City Clerk

This Page Intentionally Left Blank

ATTACHMENT B
To Agenda Memo of July 24, 2013
Authorizing Condemnation for New Electric Utility

To: Members of City Council

From: Jane S. Brautigam, City Manager
Paul J. Fetherston, Deputy City Manager
Tom Carr, City Attorney
Heather Bailey, Executive Director of Energy Strategy and Electric Utility Development
Kathy Haddock, Senior Assistant City Attorney
David Driskell, Executive Director of Community Planning and Sustainability
Kara Mertz, Local Environmental Action Project Manager
Maureen Rait, Executive Director of Public Works
Robert Harberg, Principal Engineer, Public Works - Utilities

Date: July 23, 2013

Subject: Updated Proposed Service Area for Municipalization

EXECUTIVE SUMMARY

The materials presented for the work session on February 26, 2013 regarding exploration of municipalization included a preliminary boundary of the service territory if the city were to municipalize. This memo updates those maps, depicting the area within which the city would acquire the electrical assets serving customers if the city proceeds to municipalization. The city has modeled that it would serve the customers within the boundaries of this service area, even outside the city limits; however, the final determination of whether or not the city would serve each of those customers has not been made. Ownership of the facilities may be different than the entity providing the end service to the customer.

The direction given to the city's consulting engineer, Exponential Engineering Company, to define the recommended service area was:

1. Serve all properties within the municipal boundaries;
2. Serve city properties with electric needs, where feasible; and
3. Separate the systems at the technically optimum location to maintain reliability for the new electric utility as well as the Xcel system.

The boundaries of the February 26 map were not specific because at that time the engineers had not yet: 1) field-verified facilities and equipment on the ground at each of the potential interconnection points between the proposed Boulder system and the remaining Xcel system, or 2) investigated the portions of the system at the potential service area boundaries.

Attachment B-1 shows the recommended boundary, mapped after the engineers completed their field verification of the equipment and completed other analyses. While the area within the

recommended boundary is larger than the area shown on February 26, the change in size is primarily due to including properties which the city owns or has a conservation easement over and drawing the boundaries along property lines. The change in service area does not add customers or load beyond the February 26th area but clarifies that certain customers would be included based on information determined during the field analysis. There are fewer than ten additional customers clarified to be in the service area in Attachment A than on the area shown February 26.

Much of Boulder is served by a 115kV transmission loop that is depicted as the black line on **Attachment B-2**. Staff recommends that the acquisition for municipalization include this loop. Acquiring the transmission loop will allow the city direct access to the hydro power from the Boulder Hydroelectric Plant and allow the city to better manage the flow and distribution of electricity throughout much of the grid serving Boulder. The transmission loop recommended for acquisition does not include the 230kV transmission lines that run along the east side of the city through the Valmont Switchyard and the Leggett, Niwot and Gunbarrel substations.

BACKGROUND

Because Boulder is surrounded by Open Space and Mountain Parks, the electrical system developed and has been operated in a way that is technically and geographically isolated from surrounding areas. The open space has also created areas around the periphery of the city that will have little or no development of additional electric load in the future. Boulder's development philosophy has concentrated development, and therefore the loads for electric service, in clearly identified areas. Distribution of electricity to the city is via six substations (Boulder Terminal, Leggett, Niwot, Gunbarrel, Sunshine, and NCAR) connected to either a 115kV transmission loop or 230kV transmission lines. While three of the substations have feeders serving areas outside the city limits (Leggett, Niwot and Boulder Terminal), all six substations primarily serve the city.

Exponential Engineering Company, with peer review by Warren Wendling, P.E., and Schneider Electric, applied the city's direction and developed the following criteria in defining the recommended service area:

- Serve all customers within the municipal boundaries;
- Serve city properties with electric needs where feasible;
- Define interconnection points at the municipal system boundaries and at the technically optimum locations to maintain or enhance quality of service, redundancy and capacity;
- Maintain the primary geographic areas that are presently served by the substations;
- Serve contiguous geographic areas;
- Utilize existing points of interconnection with other external substations as currently operated by Xcel;
- Maintain the ability to cross-feed between substations and to use substation capacity to maintain reliable service to customers;
- Establish logical service area boundaries utilizing existing parcel area boundaries;
- Minimize operational and maintenance conflicts;
- Eliminate the need for duplicate facilities.

Description of Attachment B-1 – Proposed service area map.

The area that was outlined in the preliminary service area map for February 26, 2013 is shown as the black scalloped line. The solid purple line that is outside the scalloped area encompasses additional property that is primarily city-owned and served by one of the six substations. That solid purple line is the proposed service area boundary for the municipal utility and follows existing property lines. The boundaries of the service areas of other utilities are shown in the shaded areas on the north, east and west sides of the map. The north coral-colored area shows a portion of the boundaries of the Poudre Valley Rural Electric Association (PVREA) Service Area, the orange shaded area to the west of the city is the United Power–Mountain Service Area, and the light orange area on the east side is the United Power-Plains Service Area. The gray area shows the city boundaries, and the dark and light green areas show city owned property interests. Each of the substations is labeled.

Based on field research and additional technical analysis since February 26, the proposed service area boundary was modified. Generally the modifications are:

- To the south to follow parcel lines to include city owned open space properties with no distribution facilities.
- In the southeast corner, the city-owned properties not included in the service area are because the few improvements in that area are served from Xcel’s Eldorado distribution substation.
- On the northeast side of the map to include city-owned open space properties that have city facilities on the property including one city water tank and one of the city’s primary emergency communications facilities. Those properties are served from the Niwot Substation; field investigation clarified that the feeder running along Lookout Road to the east that feeds the city properties also serves two other customers and then ends.

Description of Attachment B-2 – Transmission loop diagram

The purple boundary line depicts the recommended service boundary and the gray shading shows the city municipal boundaries. The 115kV loop serving the city that staff recommends be included in the city’s acquisition is depicted in black and connects through the Valmont Switchyard, to Boulder Terminal Substation, Sunshine Substation, Boulder Canyon Hydro Substation, NCAR Substation, Eldorado Substation, and back to Valmont Switchyard.

The blue lines show the 115kV lines that the city would not acquire that run through the Eldorado Substation and the Valmont Switchyard; and that connects Boulder Canyon Hydroelectric Substation to Xcel Boulder Canyon Substation. The 230kV transmission lines, which the city would also not acquire, are shown in red running north and south on the east side of the city connected through the Gunbarrel, Niwot and Leggett Substations and Valmont Switchyard.

The white boxes with an S at the Sunshine, Boulder Canyon Hydro, NCAR, and Boulder Terminal Substations show the four substations that Boulder would own (Boulder already owns a portion of the Boulder Canyon Hydro Substation). The yellow boxes depict where Boulder would acquire 115kV line terminals including two bays in the Eldorado Substation and five bays in the Valmont Switchyard; as well as access to operate and maintain those facilities. At those locations, the land would remain owned by Xcel, as would the balance of equipment that Boulder is not acquiring. The green boxes at Leggett, Niwot and Gunbarrel Substations depict the locations where the city would acquire Xcel’s 230/13.2kV transformers (including high side

protection and low-side switchgear), and an easement for operating and maintaining those facilities. At those locations, the land would remain owned by Xcel, as would the balance of equipment that Boulder is not acquiring.

Description of Interconnections

The city plan includes installing interconnection equipment generally consisting of meters, disconnect switches, protective devices and communications systems to interface with Xcel's system. At the locations where the city would serve as a distribution service provider, FERC would regulate the city's operation of the transformers and interconnection feeders to require the city to maintain quality of service to the feeders that Xcel will still own or operate. This regulation is, in part, to make sure that the reserve capacity Xcel currently has on those transformers is not reduced by the acquisition of the transformers by the city. At the locations where the city would take service at the high side of the 230kV transformers, Xcel would maintain the 230kV bus and connections to the 230kV transmission system. The city would own the switchgear and transformer. That interconnection is also regulated by FERC.

The four interconnection points where the city would wheel power to Xcel over the distribution system at 13.2kV as a distribution service provider under FERC are:

1. US 36 going north from the service territory boundary
2. Along Mineral Road east of the Diagonal (119) feeding north to the town of Niwot
3. Linden Avenue west
4. Lee Hill Road west

The five points where the city would interconnect with Xcel for mutual aid and support as a Distribution Service Provider under FERC are:

1. 75th Street south of Valmont Road
2. Arapahoe Avenue east of 63rd Street
3. Baseline Road west of 75th Street
4. South Boulder Road east of South Cherryvale Road
5. South Broadway Road south of Gillaspie Drive

The six interconnection points where the City would interface to the Xcel transmission network and be classified as a Transmission Service Provider under FERC are as follows:

1. The 115kV bus at Valmont Switchyard – transmission interconnection
2. The 115kV bus at Eldorado Substation – transmission interconnection
3. The 115kV bus at Boulder Canyon Hydro Substation – transmission interconnection to connect to Xcel's Boulder Canyon Distribution Substation
4. The 230kV bus at Leggett Substation – transformer interconnection
5. The 230kV bus at Niwot Substation – transformer interconnection
6. The 230kV bus at Gunbarrel Substation – transformer interconnection

ANALYSIS

In determining the technically optimal location to define the service territory, the engineers analyzed the existing facilities serving Boulder, including the substations, transmission circuits, the current location of interconnections to feeders originating outside of the service boundaries, feeders inside service area boundaries, and service lines. The separation concept and service boundary have been created to provide benefits to the city and to Xcel and to allow for orderly, reliable, operable, and maintainable interconnections with Xcel to maintain quality of service

matching or exceeding the present system on both sides of the separation. Acquisition of the 115kV transmission loop allows the city to focus greater resources on this portion of the system and reduces Xcel's exposure for this aged equipment.

The delineation of this area does not depict that electric lines will be severed at the boundary, but shows: 1) Where interconnections currently exist as Xcel operates the system, 2) Where interconnections may be relocated several yards to meet the boundary conditions, and/or 3) Where interconnections will be added to maintain service and reliability to the city utility and to Xcel customers outside of the city.

The engineers recommend including the 115kV transmission loop to provide integrated transmission capacity alongside the traditional distribution network which will allow Boulder's local utility to better manage the flow of electricity throughout the service area. The use of transmission facilities reduces electricity line losses associated with moving electric power from the source of generation to the point of delivery. The 115kV transmission loop allows for multiple points of delivery to the distribution system and provides redundancy both within the loop (failure of one segment does not take a substation out of the system) and outside the loop since it is connected to Xcel's transmission system in two locations. Owning and operating the 115kV transmission loop will improve reliability for Boulder's customers by minimizing the outages associated with the distribution system and decreasing the amount of time that it would take to restore power to those that are affected by an outage. It also allows upgrades to specific substations or additions to serve new load without the entire system having to be upgraded or changed.

In addition, it is critical for a local utility to own and control internal transmission capacity to manage local generation, distributed generation, energy storage and management of demand response programs. The loop can be acquired without negatively impacting the service provided by Xcel, and in fact acquisition of the loop benefits to Xcel in several ways, including that the city will be able to focus greater resources on maintaining and upgrading these facilities and reduces Xcel's exposure for this aged equipment or balancing resources within the city.

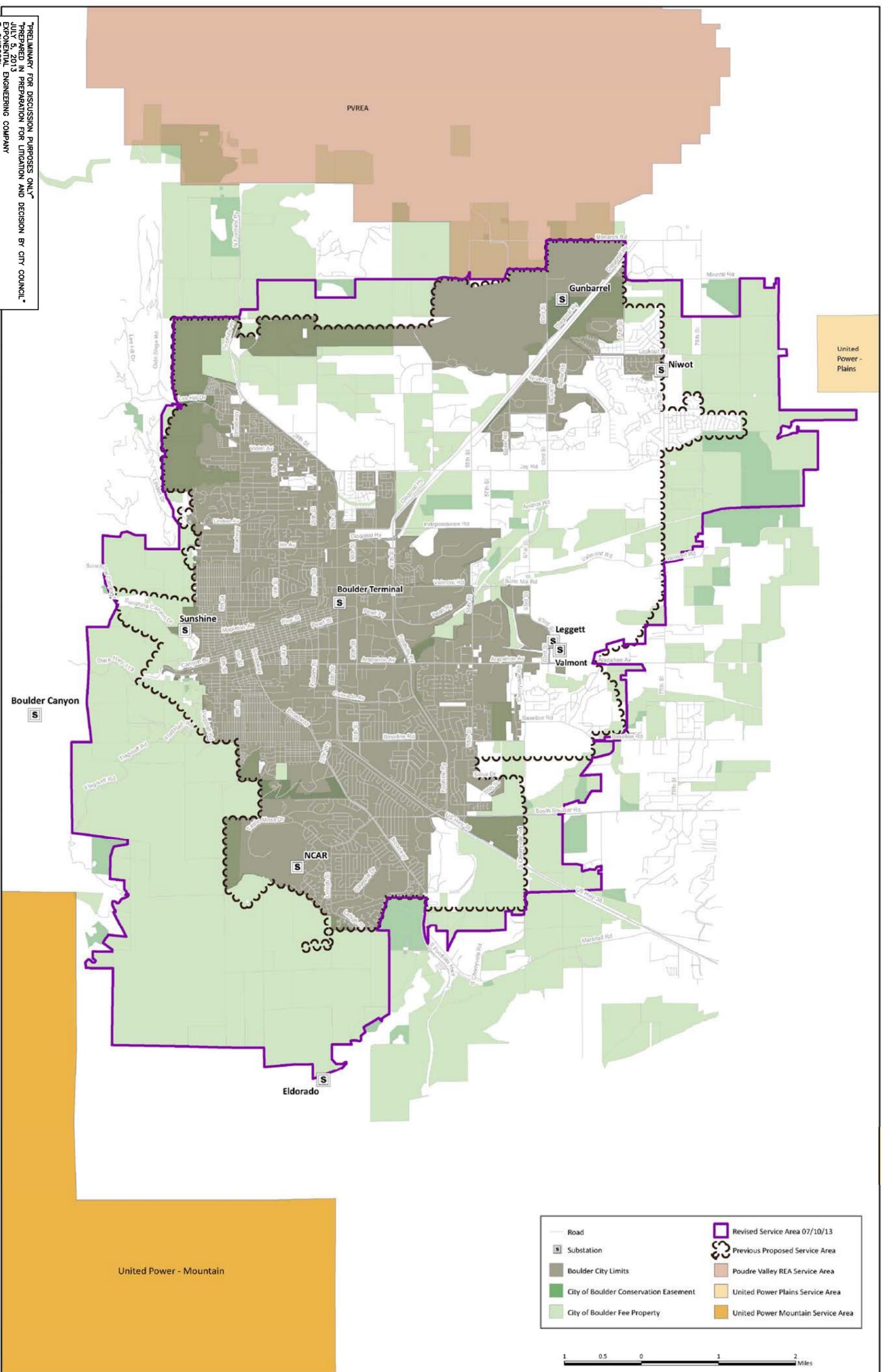
The allocation of property and customers depicted on the new service area maps are as follows:

Recommended Service Territory	Inside City Municipal Boundaries	Outside City Municipal Boundaries
Land Area owned in fee or conservation easements by City of Boulder (not including street rights of way)	4,512 Acres	17,242 Acres (67 percent of out-of-city service area)
Land Area in BVCP Area II	0	3,190 Acres
Land Area in BVCP Area III	0	22,273 Acres
Percent of Residential Customers	90%	<10%
Percent of Commercial or Industrial Customers	>99%	<1%
Estimated Percent of Electric Load	97%	3%

ATTACHMENT B-1 - Map of proposed Service Area

ATTACHMENT B-2 - Map of 115kV transmission loop to be acquired

"PRELIMINARY FOR DISCUSSION PURPOSES ONLY"
 JULY 5, 2013
 EXPONENTIAL ENGINEERING COMPANY
 T. GHIOSSI
 C. RICHMOND
 A. GARDNER



DIST S 2
 Drawing No.

Drawn	AG
Designed	DMS
Checked	TAG
Approved	TAG
Scale:	NTS
	11x17
	22x34
Date Created	7-5-13
Proj. No.	BUDR-1201
Reference	

Exponential Engineering Company
 328 Alpark Drive
 Fort Collins, Colorado 80504
 Phone: (970) 237-0848
 Fax: (970) 237-0887

**CITY OF BOULDER
 PRIVILEGED AND CONFIDENTIAL
 PRELIMINARY DISTRIBUTION SYS
 SEPARATION CONCEPT 2**

No	Revisions	Date	By



**CITY OF BOULDER
CITY COUNCIL AGENDA ITEM**

MEETING DATE: JULY 24, 2013

AGENDA TITLE: Introduction, first reading and consideration of a motion to order published by title only, a potential alternative ordinance submitting to the registered electors of the City of Boulder at the general municipal coordinated election to be held on Tuesday November 5, 2013, the question of whether to amend the City Charter to address issues presented by the proposed initiated Charter amendment to section 188.

PRESENTERS

Jane S. Brautigam, City Manager
Thomas A. Carr, City Attorney
Paul Fetherston, Deputy City Manager
David J. Gehr, Deputy City Attorney
Heather Bailey, Executive Director, Energy Strategy and Electric Utility Development
Robert Eiche, Chief Financial Officer
Kathleen E. Haddock, Senior Assistant City Attorney
Deborah S. Kalish, Senior Assistant City Attorney

EXECUTIVE SUMMARY

A group of citizens, with support from Xcel Energy, have proposed a ballot measure to amend the City Charter to include a new section 188. This proposed Charter amendment purports to limit the debt to be incurred by a new municipal electric utility. In fact, the proposed Charter amendment includes a series of measures that would make it difficult, if not impossible, to create or operate a municipal electric utility. The purpose of this agenda item is to provide council with a potential alternative ballot measure for consideration. The fundamental idea is that the voters should be presented with an honest choice and not a ballot measure that purports to do one thing while actually doing another.

STAFF RECOMMENDATION

Suggested Motion Language:

Staff requests council consideration of this matter and action in the form of the following motion:

Motion to introduce and order published by title only an ordinance to place on the November 5, 2103 a ballot measure relating to municipalization.

COMMUNITY SUSTAINABILITY ASSESSMENTS AND IMPACTS

- Economic – A municipal utility should have a positive economic impact on our community. The utility will provide employment and wide range of opportunities to promote and support business in Boulder.
- Environmental – Climate change and increasing green house gases are probably our society's number one environmental challenge. The largest contributor in greenhouse gases in Boulder are the facilities used to produce electricity.
- Social – The social impacts of climate change are well-documented.

OTHER IMPACTS

- Fiscal – There are no budget impacts from any of the proposed ordinances.
- Staff time – Staff time required is part of the staff's work plan.

BOARD AND COMMISSION FEEDBACK

Not Applicable.

BACKGROUND

A citizens' group has proposed a Charter amendment adding a new section. The proposed language is as follows:

Shall Article XIII of the Charter of the City of Boulder be amended by the addition of the following section:

Section 188. Limitations on debt.

(a) Before the electric utility enterprise issues any debt, voters must approve the amount of the utility's debt limit and the total cost of debt repayment that the utility will incur, both to be stated in dollars in any ballot question; and

(b) The utility's service area shall not extend to areas outside the city limits unless registered electors in those areas are permitted to vote in these debt limit and repayment cost elections: and

(c) Such elections shall be held on the dates of general municipal elections; and

(d) Any brokerage fees for managing any sale of bonds or other indebtedness shall be limited to one percent of proceeds?

ANALYSIS

It appears that these provisions were drafted carefully to appear reasonable, while at the same time making it difficult, if not impossible, to form a municipal electric utility. What follows is a brief analysis of the potential impacts of each subsection:

Subsection (a) imposes a requirement for voter approval of “any debt.” It is noteworthy that this is a more stringent requirement than that imposed by the Taxpayer’s Bill of Rights.¹ Under TABOR an “enterprise” is defined as “a government owned business authorized to issue its own revenue bonds and receiving under 10% of annual revenue in grants from all Colorado state and local governments combined.” Enterprises are exempt from TABOR’s requirements for voter approval of debt. Under the proposed amendment the proposed municipal utility would be required to have voter approval of all debt. This means, for example, that the utility would be unable to issue debt in response to an emergency.

Subsection (b) purports to limit the new utility’s service area. It could make the utility nearly impossible to create. Xcel Energy did not design its system to conform to city boundaries, but at locations that made sense considering anticipated load growth and its location. Engineers have designed a service area that creates a system that is safe and reliable and causes a minimum of disruption to either Xcel or the city. To recreate the boundary at the current city limits would require construction of numerous new facilities and erection of additional meters and interconnections at hundreds of points around and within the city. That work would decrease the reliability to both sides of the separation and increase the capital costs and O&M costs for both the city and Xcel over the life of the facilities.

Under the proposed amendment, the only way that the new utility could serve outside the city boundaries would be to hold an election outside of the city or require annexation of all properties within the proposed service area or construct an expensive system with reduced reliability. The city has no authority to conduct an election outside its boundaries. Non-residents do not have the authority to vote in city elections. Allowing for such an election would most likely require a change in state law. The city does have the authority to annex most, if not all, of the proposed service by law and agreements with property owners. However, the City Council has determined that it does not want to

¹ Article X, Section 20 of Colorado Constitution.

invoke its annexation authority as part of municipalization. Thus, in the guise of a debt limit, the proposal would effectively eliminate the most reliable and cost-effective separation plan at the expense of the city and other ratepayers.

Subsection (c) requires that all debt approval occur only at general municipal elections. Under the Charter, a general municipal election is held every two years in odd numbered years. After identifying a need, the new utility would not be able to issue debt until the next general municipal election. No such limit exists on any other decision of the electorate. Thus, if the city suffered a severe flood in December 2015 and the utility needed funds to rebuild portions of the system, it would not be able to put debt before the voters until November 2017.

Subsection (d) would limit brokerage fees to one percent of the proceeds of a debt issue. The proposed amendment does not define “brokerage fees.” Since it is clear that fees paid to brokers are unlikely to ever approach one percent of the proceeds of debt issue, this provision adds nothing but uncertainty, which is can make it difficult to participate in the bond market.

The purported purpose of the petition is to allow a vote on debt. Staff has proposed an alternative ordinance that accomplishes that intent. Charter section 53 provides as follows:

If two or more measures adopted or approved at the same election conflict in any of their provisions, they shall go into effect in respect to such of their provisions as are not in conflict and the one receiving the highest affirmative vote shall prevail insofar as their provisions conflict.

The alternative measure is intended to address the concerns raised in the amendment while eliminating the challenges presented by the perhaps intentional drafting of the initiated amendment. The proposed ordinance therefore conflicts directly with the initiated measure.²

The proposed ordinance is as follows:

Section 3 would add new subsections (j) and (k) to Charter section 180. These subsections would allow the utility to place ballot measures on any election ballot and to serve out-of-city customers. This addresses the issue about allowing votes on debt of the utility by city voters and for construction of a reliable, cost effective utility without harming ratepayers outside the service area and without requiring the city to exercise its annexation authority. Section 3 conflicts with subsections 188(b) and (c) in the initiated measure.

² The initiated measure includes all of the proposed changes in a single new section 188 entitled “Limitations on Debt.” The proposed ordinance places the changes in the appropriate sections of article XIII of the charter according to subject matter.

Section 4 would amend Charter section 182 to prohibit preferences or rate differentials between customers of the utility based on their location inside or outside of the city boundaries. Section 4 addresses the issues raised in and conflicts with subsection 188(b) in the initiated measure.

Section 5 would amend Charter section 185 to allow out of city customers to serve on the electric utility board. It specifies that regardless of the basis on which a member was appointed, each member of the advisory board represents the utility as a whole and not a particular customer class or location. Section 5 conflicts with subsection 188(b) of the initiated measure.

Section 6 would add a new section 188. Subsection (a) would impose a debt limit of the principal amount necessary for acquisition and capital costs incurred during the first six months of operation. Staff has not yet proposed a numerical limit. This should be addressed in the context of the updated modeling to be presented at the July 23 study session. Subsection (a) also makes clear that any additional debt issued would be issued in conformance with the Charter and other applicable laws. Subsection (b) would limit brokerage fees and other costs associated with debt issuance to commercially reasonable amounts paid by similarly situated utilities.

Section 6 conflicts with subsections 188(a) and (d) of the proposed measure.

Attachment: Proposed Ordinance

This Page Intentionally Left Blank

ORDINANCE NO. ____

AN ORDINANCE SUBMITTING TO THE QUALIFIED ELECTORS OF THE CITY OF BOULDER AT THE GENERAL MUNICIPAL COORDINATED ELECTION TO BE HELD ON TUESDAY, NOVEMBER 5, 2013, THE QUESTION OF AMENDING SECTION 185 OF THE CITY CHARTER TO ALLOW NON-RESIDENT CUSTOMERS TO BE REPRESENTED ON THE UTILITY ADVISORY BOARD; ADDING A NEW SECTION 188 OF THE CITY CHARTER RELATING TO THE LIMITATIONS ON DEBT; LIMITATIONS ON SERVICE AREA; SUPERCEDING ANY OTHER MEASURES TO ADD SECTION 188; SETTING FORTH THE BALLOT TITLE; AND SPECIFYING THE FORM OF THE BALLOT AND OTHER ELECTION PROCEDURES AND SETTING FORTH RELATED DETAILS.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BOULDER, COLORADO:

Section 1. A general municipal coordinated election will be held in the City of Boulder, County of Boulder and State of Colorado, on Tuesday, November 5, 2013.

Section 2. At that election, there shall be submitted to the electors of the City of Boulder entitled by law to vote the question of making the following amendments to the City Charter.

Section 3. Add new subsections 180(j) and 180(k) as follows, which the City Council finds conflict directly with the ballot measure as set forth in Ordinance No. ____ , in particular, the proposed subsections 188(b) and 188(c):

Sec. 180. Powers of the electric utility enterprise.

...

(j) Any ballot measure related to the light and power utility, including without limitation measures related to debt, may be placed on a ballot at any election,

1 including without limitation a special election, a general municipal election or a
 2 special municipal election. To the extent that customers served outside of the city
 3 limits wish to participate in such elections, they may annex to the city to the
 4 extent permitted by law.

5 (k) The light and power utility's service area may include customers outside of
 6 the city to the extent that such a service area shall assist with the provision of a
 7 safe and reliable system for service to the utility's customers.

8 **Section 4.** Amend Charter section 182 as follows, which the City Council finds
 9 conflicts directly with the ballot measure as set forth in Ordinance No. ____, in particular,
 10 the proposed section 188(b):

11 **Sec. 182. Utility service standards.**

12 ...

13 (j) Preferences Prohibited: The utility shall not make or grant any preference or
 14 advantage to any corporation or person or subject any corporation or person to
 15 any prejudice or disadvantage as to rates, charges, service, or facilities, or in any
 16 other respect including without limitation whether the customer is inside or
 17 outside the city limits.

18 (k) Advantages Prohibited: The utility shall not establish or maintain any
 19 unreasonable differences or undue preferences as to rates, charges, service,
 20 facilities, or any respect as between any class of services including without
 21 limitation whether the customer is inside or outside the city limits. The utility may
 22 create a fund to provide assistance to low-income customers for energy efficiency
 23 or generation improvements or utility bill payments. When considering whether to
 24 approve such a fund, and give a preference or advantage to low-income utility
 25 customers, the utility shall take into account the potential impact of and cost-
 shifting to, utility customers other than the low-income utility customers.

26 **Section 5.** Amend section 185 as follows, which the City Council finds conflicts
 27 directly with the ballot measure as set forth in Ordinance Number ____, in particular, the
 28 proposed section 188(b):

29 **Sec. 185. Creation of the electric utilities board**

30 (b) Board qualifications: Board members shall be selected from the
 registered electors of the city or if not so qualified, be a customer of the electric

1 utility or from the owners or employees of a business or governmental entity that
 2 is a customer of the electric utility, provided, however, that a majority of the
 3 board shall be registered electors of the city. Board members shall be well known
 4 for their ability, probity, public spirit, and particular fitness to serve on the electric
 5 utilities board. At least three board members shall be owners or employees of a
 6 business or governmental entity that is a customer of the electric utility. The duty
 of each member shall be to represent the entire utility without discrimination
 between customer class or location without regard to the location or class of
 customer of the member.

6 **Section 6.** Add a new section 188 as follows, which the City Council finds
 7 conflicts directly with the ballot measure as set forth in Ordinance Number ____, in
 8 particular, the proposed sections 188(a), (b) and (d):

10 **Sec. 188. Limitations on Debt**

11 (a) The city is authorized to form, purchase, or otherwise acquire a light and
 12 power utility if the principal amount of the initial purchase price and capital costs
 13 projected to be incurred during the first six months after acquisition do not exceed
 [\$ add limit of principal amount of initial bond issue]. Thereafter, all debt shall
 only be issued in compliance the charter and other applicable laws.

14 (b) The light and power utility shall limit brokerage fees and other costs related
 15 to debt issuance to no more than commercially reasonable amounts paid by
 similarly situated utilities.

17 **Section 7.** The official ballot shall contain the following ballot title, which shall also be
 18 the designation and submission clause for the measure:

Ballot Question No. ____

Debt Limitation for Municipal Electrical Utility

Shall sections 180, 182 and 185 of the Boulder Home Rule Charter be amended; and a new section 188 be added, both pursuant to Ordinance No. ____; superseding any other ballot measure adopting a new section 188, to provide that no debt may be issued to finance a total cost of acquisition in excess of \$____ million; limiting the utility's service area to an area supporting safe and reliable service to its customers; providing for elections at special or general elections and limiting brokerage fees or other costs of debt issuance to the amount paid by other similarly situated utilities; and requiring that out of city customers be represented on the utility advisory board?

For the Measure ____ Against the Measure ____

Section 8. This ballot measure is intended to conflict with all of the provision of Ordinance No. ____ [add ord. no. from the §188 amendment]. Under Charter section 53, if this measure receives the highest number of affirmative prevailing votes, this measure shall prevail over Ordinance No. ____ [add ord. no. from the §188 amendment].

Section 9. If a majority of all the votes cast at the election on the measure submitted are for the measure, the measure shall be deemed to have passed and the Charter shall be amended as provided in this ordinance. If this ballot measure is approved by the voters, the Charter shall be so amended, and the City Council may adopt any necessary amendments to the Boulder Revised Code to implement this change.

Section 10. The election shall be conducted under the provisions of the Colorado Constitution, the Charter and ordinances of the City, the Boulder Revised Code, 1981, and this ordinance.

1 **Section 11.** The officers of the City are authorized to take all action necessary or
2 appropriate to effectuate the provisions of this ordinance and to contract with the county clerk to
3 conduct the election for the City.

4
5 **Section 12.** If any section, paragraph, clause, or provision of this ordinance shall for any
6 reason be held to be invalid or unenforceable, such decision shall not affect any of the remaining
7 provisions of this ordinance.

8 **Section 13.** This ordinance is necessary to protect the public health, safety, and welfare
9 of the residents of the City, and covers matters of local concern.

10
11 **Section 14.** The City Council deems it appropriate that this ordinance be published by
12 title only and orders that copies of this ordinance be made available in the office of the city clerk
13 for public inspection and acquisition.

14
15 INTRODUCED, READ ON FIRST READING, AND ORDERED PUBLISHED BY
16 TITLE ONLY this 24th day of July, 2013.

17
18 _____
19 Mayor

19 Attest:

20
21 _____
22 City Clerk

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

READ ON SECOND READING, PASSED, ADOPTED AND ORDERED PUBLISHED

BY TITLE ONLY this __day of _____, 2013.

Mayor

Attest:

City Clerk

INTRODUCED, READ ON FIRST READING, AND ORDERED PUBLISHED BY

TITLE ONLY this 24 day of July, 2013.

Mayor

Attest:

City Clerk

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

READ ON SECOND READING, PASSED, ADOPTED, AND ORDERED
PUBLISHED BY TITLE ONLY this ____ day of _____, 20__.

Mayor

Attest:

City Clerk

This Page Intentionally Left Blank