



CITY OF BOULDER
STUDY SESSION

TO: Members of City Council

FROM: Tom Carr, City Attorney

DATE: May 10, 2016

SUBJECT: Municipalization Update

PURPOSE:

This study session will provide an update on the progress of the city's efforts to create a municipal electric utility.

INTRODUCTION:

City staff is in the process of preparing a supplemental application seeking approval to transfer assets from Xcel to the city. Staff anticipates that the supplemental application will be ready for filing this summer. Staff has worked diligently to prepare an application that will meet the Public Utilities Commission's criteria for a complete application while at the same time addressing issues of safety, reliability and financial viability. Finalization of the application will not be possible until staff receives information from Xcel. Xcel has promised to produce this information no later than May 18. In the interim, staff engineers have worked with available information to design a separation plan. Once staff has all of the necessary information, staff can develop a supplemental application that will meet the PUC's criteria.

DISCUSSION:

PUC Proceedings

On July 7, 2015, the city filed with the PUC an application for approval of transfer of assets. The city's application was designed to provide the most technically optimal separation from Xcel Energy designed to serve all Boulder customers with the information the city had at the time. The application included an acquisition area

bounded by the city's open space buffer and therefore included facilities used to serve electric customers outside of the city. The city's plan did not include providing retail service to those customers, but under the city's proposed plan, Xcel would have had to use lines owned by the city to provide electricity to those customers.

On August 5, 2015, Xcel moved to dismiss the city's application as non-compliant with the PUC's prior decisions. Xcel's objection was, among other things, the PUC could not order it to use city facilities, and that the city could not acquire customers outside of the city unless Xcel was unwilling or unable to serve those customers. The city moved for leave to supplement the application to provide alternatives that did not require Xcel to use city facilities to serve Xcel customers. The city also sought a pre-filing discovery period to allow the city to obtain the information necessary to prepare a more detailed application. On December 30, 2015, the PUC issued a decision granting the city's motion to supplement and for discovery. The PUC also granted in part and denied in part Xcel's motion to dismiss.

City staff immediately began negotiations with the other parties, including Xcel, to obtain consent to a discovery plan. The negotiations were challenging because of the number of parties and the diversity of interests, but ultimately resulted in an agreement among all of the parties. The negotiations also allowed the city to better understand and address some of the concerns raised by the various parties. Xcel agreed to prepare and provide to the city information necessary for the city to prepare a separation plan. The information Xcel will provide includes a computer model of electric facilities serving areas in and around the city. Xcel agreed to provide this information within thirty days after the PUC approved the discovery plan. On March 17, 2016, the city filed an unopposed motion seeking PUC approval of the discovery plan. On April 18, 2016, the PUC issued an order approving the discovery plan. Xcel has promised to provide city staff with the model and other data no later than May 18, 2016.

In the interim, city staff has been working to prepare the supplemental application. Based on the guidance provided by the PUC, the key to the supplemental application will be preparing a plan to allow Xcel to use its facilities to serve out of city customers, including customers within enclaves and along the fringe of the city, while the municipal utility uses its facilities to serve customers within the city limits. Applying this criteria, city engineers and contractors will develop a detailed plan to address the PUC's concerns, and result in a system that is safe, reliable, and financially viable.

At first, this seemed like a daunting task, but not necessarily insurmountable. The city's irregular boundaries, mountain backdrop, open space and enclaves presented a myriad of challenges to developing a plan that meets the city's objectives. The city engineers will use the information received from Xcel to develop various alternative plans for separation and test those plans based on the Xcel model. These plans will include options for the PUC, including a city preferred option. In developing these plans, city staff is working with the following criteria:

- Maintain or improve the safety, reliability and operation of the systems

- To the extent possible, serve all customers within the current city boundary
- No additional poles, when possible
- Undergrounding of new facilities when possible
- Any facility crossing open space will be underground – no new poles on open space

The information provided by Xcel and that will be produced by the city is protected from public disclosure under the federal Patriot Act. The discovery plan provides for treatment of the model and any work product from the model as highly confidential information. Thus, many key details of the city’s supplemental application also will be confidential. City staff is also working with Xcel and other parties to develop a public version of the application to provide additional transparency to the process.

After engineers complete the analysis, staff’s plan is for council to evaluate the financial viability of each option. Staff is developing a cash flow model that can test the ongoing financial viability of a city-owned utility using updated assumptions including the likely costs associated with a more complex separation plan than was originally contemplated. Staff will run the model and bring the results to council for consideration of whether the plan remains financially viable based on the existing Charter requirement. The current plan is to bring this report to council either immediately before or immediately after council’s summer break.

NEXT STEPS:

Transition

Staff is working to update a transition plan to accommodate the new design of the system. Staff anticipates that the new transition plan would be filed for PUC consideration after the current transfer of assets case is completed and would run concurrently with the condemnation litigation. Once the condemnation process and the transition plan proceeding are complete, implementation of the transition plan could begin. Full implementation of the transition plan cannot be complete until any new construction is finished.

While there may be the need for new infrastructure associated with separation, the potential for a significantly smaller acquisition area should reduce the overall cost. Staff anticipates that the transition costs will be financed and included in the rates. Once the PUC approves a separation plan, city staff will have a better idea of the total transition cost and timeline. Staff will also develop a funding plan for council consideration to fund those costs.

Off-Ramps

Throughout the process of developing the supplemental application, staff continues to evaluate the proposal against three metrics: operational feasibility, financial viability and environmental responsibility. If the proposal cannot maintain service reliability, produce rates competitive with Xcel's at the time of acquisition or reduce greenhouse gas emissions in accordance with the charter, staff will recommend that council discontinue the effort to create a municipal electric utility. At this time, the options considered for inclusion in the supplemental application indicates that these metrics will be met.