

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO**

PROCEEDING NO. 15A-0589E

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**IN THE MATTER OF THE APPLICATION OF THE CITY OF BOULDER,  
COLORADO FOR APPROVAL OF THE PROPOSED TRANSFER OF ASSETS FROM  
PUBLIC SERVICE COMPANY OF COLORADO TO THE CITY AND ASSOCIATED  
AUTHORIZATIONS AND RELIEF**

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**CITY OF BOULDER’S MOTION FOR LEAVE TO SUPPLEMENT APPLICATION  
AND FOR A 60-DAY DISCOVERY PERIOD**

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The City of Boulder, Colorado (the “City” or “Boulder”), pursuant to Commission Rules 1309 and 1400, 4 CCR 723-1, respectfully submits this Motion for leave to supplement the verified application the City filed with the Colorado Public Utilities Commission (the “PUC” or “Commission”) on July 8, 2015, for the approval of the transfer of certain assets owned by Public Service Company of Colorado (“PSCo”) to the City and associated authorizations and relief (the “Application”). Based on Boulder’s understanding of concerns raised by intervenors in this proceeding, particularly concerns raised by PUC Staff, Boulder wishes to supplement its Application to provide the Commission with potential alternatives to the plan Boulder presented in the Application. Boulder proposes to first supplement the Application with the concurrently-filed Initial Supplement. After conducting discovery to obtain the information necessary to more fully flesh out and analyze potential alternatives, Boulder commits to filing a Second Supplement. The Second Supplement would include detail concerning those alternatives that meet the service quality, safety and reliability standards included in the Application, as well as the City’s Home Rule Charter and the City’s energy future goals. Finally, Boulder requests that the Commission find that the Application, as revised by the Initial Supplement, is complete. As support for its Motion, the City states as follows:

### **Rule 1400(a) Duty to Confer**

Commission Rule 1400(a) imposes on counsel submitting a motion a duty to confer with all parties regarding the motion. Boulder has advised all parties of its intention to file this Motion for leave to supplement its Application and for a 60-Day Discovery Period. Based on those conferences, the City is authorized to state that Staff is not opposed to Boulder supplementing its application with the Initial Supplement or a Second Supplement (prayers for relief (1) and (4)), does not support the Commission finding that the Application is complete upon the filing of the Initial Supplement (prayer for relief (2)), and will address deeming the application complete and Boulder's request for a 60-day discovery period (prayers for relief (2) and (3)) in its response to the Motion. The University of Colorado stated that it takes no position on the motion and the initial supplement until the it has had time for a more comprehensive review of the prospective filing and reserves the right to take a position on the motion and initial supplement once they have been filed and the University has completed an analysis of the motion and initial supplement in their entirety. The Office of Consumer Counsel, the Boulder Chamber of Commerce, CF&I/Climax, and Tri-State Generation and Transmission take no position on the Motion. Counsel for IBM was unable to reach in-house counsel for their client due to the Yom Kippur holiday and was unable to confirm IBM's position on the Motion prior to the City's filing its Motion. Public Service Company of Colorado ("PSCo") and Leave BoCo Out oppose the Motion.

### **Motion for Leave to Supplement Verified Application**

In the Application, Boulder presented for the Commission's consideration and approval Boulder's proposal for separating the PSCo electric facilities between the Boulder electric utility and the balance of the PSCo system at the technically optimal points to (i) maintain reliability for

the City utility, as well as the PSCo system; (ii) serve all customers in the City; and (iii) meet the requirements of the City Charter that the City’s electric power be supplied in a reliable, fiscally sound, and environmentally responsible manner (the “Plan”). The Plan is based on the information that Boulder has available to it, prior to the City’s ability to conduct discovery in this proceeding related to the formation and/or operation of a municipal electric distribution system in the City.<sup>1</sup>

The Plan includes Boulder’s taking ownership of distribution feeders that cross enclaves within Boulder (i.e., pockets of land that have not been incorporated into the City) and weave back and forth across the jagged municipal boundaries at the City’s perimeter. However, to enable PSCo’s continued ability to serve its customers located outside the City’s boundaries, Boulder proposed that PSCo “wheel” electricity across Boulder’s distribution facilities to serve those PSCo customers located in the Acquisition Area, but outside the City’s jurisdictional limits (“PSCo Customers in the Acquisition Area”).

The City also proposed a distribution wheeling arrangement to the Points of Interconnection (those nine points at which the City’s system would be connected to the PSCo system) that would be governed by a tariff that meets the reciprocity requirement under PSCo’s FERC-approved Open Access Transmission Tariff.

Boulder proposed that the distribution wheeling tariff for both these arrangements be approved by the Commission in a future proceeding.

Boulder did not intend to limit the right of the City, other parties, or the Commission to propose alternatives to the Plan. As Boulder explained in its Reply to Staff’s Response to the PSCo motion to dismiss, the City recognizes that “there are a host of alternative arrangements

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<sup>1</sup> This information came primarily from two proceedings before the Commission: Proceeding No. 11A-1001E, Application for SMARTGRIDCITY Cost Recovery and Proceeding No. 11A-869E, 2011 PSCo Electric Resource Plan.

that may be offered by intervenors for the Commission's consideration during the course of the proceeding."<sup>2</sup> These alternatives may include, without limitation:

- The City wheeling power to its in-City customers over PSCo's lines where feeders pass outside the City's boundaries before reaching those customers;
- The utility with the majority of customers on an individual feeder line owning that feeder and allowing the other utility to wheel power over that feeder to serve its customers;
- Modification to the location and number of points of separation of the City's and PSCo's systems;
- The construction of additional facilities to address specific customer locations;
- An interim plan incorporating distribution wheeling by both the city and PSCo to allow for an orderly transition and separation;
- Other options that become apparent in the course of the proceeding that may be in the public interest and supported by the evidence;
- Some combination of the above.

While Boulder maintains that the Application is complete as filed and compliant with the Commission's Decisions issued in Proceeding No. 13D-0498E, to ameliorate Staff's and PSCo's respective concerns about the completeness of the Application, Boulder requests leave of the Commission to supplement the Application to incorporate these potential alternatives.<sup>3</sup> Boulder further requests that the Commission find that the Application, as amended by the Initial Supplement, is complete.<sup>4</sup> If Boulder's requests are approved by the Commission, the City will conduct discovery of PSCo that would enable the City to flesh out and analyze potential alternatives to the Plan. Of course, the City's ability to meaningfully assess these alternatives and present options for the Commission's consideration depends on PSCo's cooperation in the

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<sup>2</sup> City of Boulder's Reply to Staff's Response, pages 2-3.

<sup>3</sup> See Supplement to Verified Application filed concurrently with this Request.

<sup>4</sup> A finding of completeness will allow the City to conduct discovery of PSCo and permit the holding of a pre-hearing conference at which a schedule that incorporates the proposed initial discovery and analysis period, along with all testimony, hearing, statement of position and decision dates.

discovery process. Upon completing its analysis, the City will file a Second Supplement to the Application that includes more detail regarding alternatives that are not contrary to the public interest; are based on well-established utility engineering practices, applicable industry standards and the applicable service quality, reliability and safety standards; and meet the City's Charter and energy future goals.<sup>5</sup> Of course, any such detailed supplement will require some substantial engineering work to provide sufficient grounds for the Commission's review. How much time is necessary will depend in large part on how forthcoming PSCo is in discovery.

This is an unusual case in that the bulk of the information needed evaluate Boulder's Plan - and to develop alternatives to the Plan - is in possession of an intervenor rather than in the possession of the applicant. Boulder understands that there may be alternative approaches to the suggested 60-day discovery period that will provide Boulder and other parties with this necessary information and may be open to those alternatives. Boulder's primary interest in suggesting the 60-day discovery period is in obtaining the information it needs to develop and analyze alternatives to the Plan prior to being subject to discovery request from other parties.

Boulder submits that no party will be prejudiced by the supplement to the Application, and that the Commission's notice satisfactorily encompasses that provided in the Application and the Initial Supplement, consistent with Rule 1206 of the Commission's Rules of Practice and Procedure. Nothing in the City's Initial Supplement, filed concurrently with this Motion, expands the scope of the City's presentation of its Plan for what it believes to be technically best, safest, most reliable and most cost-effective approach for transferring PSCo's assets to Boulder and establishing interconnection points.

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<sup>5</sup> Boulder anticipates that no Answer Testimony would be due prior to the Second Supplement being filed.

### **Request for a 60-Day Discovery and Alternatives Analysis Period**

In order to develop and meaningfully consider alternatives to the distribution wheeling arrangement presented in the Application, Boulder requires a significant amount of data from PSCo. As a result, and given the concerns about the completeness of Boulder's Application, Boulder requests the opportunity to conduct discovery over a 60-day period (or such other alternative approach as the Commission may find is preferable) and to then undertake additional engineering review and alternatives analysis. Specifically, and at a minimum, Boulder needs data from PSCo regarding:

- The typical operation and configuration of the electric system inside the Acquisition Area boundary, as well as affected distribution facilities outside the Acquisition Area;
- Customer load data within the Acquisition Area;
- Power systems analysis models for the substations and feeders within the Acquisition Area, as well as information regarding feeder connections outside the Acquisition Area.
- Accurate information about facilities that serve customers both in the city and outside of the city.

To facilitate the expeditious filing of the Second Supplement to the Application, Boulder requests that it alone conduct discovery only of PSCo during this 60-day period, at the conclusion of which Boulder would be prepared to develop a Second Supplement that presents more detail regarding various alternatives to its Plan. In its consideration of alternatives, Boulder would welcome other intervenors, including Staff and PSCo, to join it in more fully developing alternatives to present in the Second Supplement to its Application.

WHEREFORE, Boulder respectfully requests an Order from the Commission (1) granting Boulder leave to supplement its Application with the Initial Supplement filed concurrently with this Request; (2) finding the Application, as amended by the Initial Supplement, to be complete; (3) permitting the City alone to conduct discovery of PSCo

following the effective date of the Order granting this Motion for a 60-day period<sup>6</sup> (or such other alternative approach as the Commission may find is preferable); and (4) permitting Boulder to file a Second Supplement to its Application that includes detailed alternatives to the Plan for the Commission's consideration.

Respectfully submitted this 23rd day of September 2015.

**CITY OF BOULDER**

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**ATTORNEYS FOR THE CITY OF BOULDER**

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<sup>6</sup> Or such longer period as may be determined by the Commission.

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO**  
**DOCKET NO. 15A-0589E**

**CERTIFICATE OF SERVICE**

I hereby certify that on this 23rd day of September 2015, the foregoing **CITY OF BOULDER'S MOTION FOR LEAVE TO SUPPLEMENT APPLICATION AND FOR A 60-DAY DISCOVERY PERIOD**, along with **INITIAL SUPPLEMENT TO VERIFIED APPLICATION OF THE CITY OF BOULDER, COLORADO**, was electronically filed at the Colorado Public Utilities Commission through the Commission's e-filing system, and thereby to be served electronically and automatically on any persons for whom such automatic electronic filing is provided by the Commission's e-filing system in this proceeding on this date.

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\*\* DENOTES PERSONS ELIGIBLE TO RECEIVE CONFIDENTIAL PROPRIETARY INFORMATION PURSUANT TO THE COMMISSION'S RULES ON CONFIDENTIALITY, 4 CCR 723-1100-1102