Boulder City Council Study Session

Boulder's Energy Future

June 3, 2010
7:30 - 9:00 p.m.

1777 Broadway
Municipal Building
City Council Chambers

Submit Written Comments to City Council
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MEMORANDUM

TO: Mayor and Members of City Council

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Kara Mertz, Local Environmental Action Division Manager

DATE: June 3, 2010

SUBJ: Study Session: Boulder's Energy Future

I. PURPOSE

The purpose of this study session is to provide City Council with an update on the Xcel Energy (Xcel) Franchise discussions and to define and discuss options for Council consideration in relation to Boulder's energy future.

II. EXECUTIVE SUMMARY

In 2005, Council identified the following objectives for Boulder's energy future:
- Increased renewable energy,
- Reliability,
- Provision of opportunities for conservation and energy efficiency, and
- Rate stabilization for economic vitality.

The first and third objectives relate directly to Boulder's commitment to reducing its greenhouse gas emissions, a commitment that has been exemplified by voter approval of the country's first carbon tax, adoption of the Kyoto protocol goal for emission reductions by 2012, and a wide range of activities enacted by the city's Climate Action Plan and a variety of citizen initiatives.

The most significant source of Boulder's greenhouse gas emissions is from energy use in buildings due to the majority of the city's electricity coming from coal-fired power plants. As a result, the city has focused considerable time and resources on reducing energy consumption through mandatory and voluntary energy efficiency and demand management programs.

However, those measures alone will not achieve the community's goals; that will require a significant shift in Boulder's energy sources from fossil-based fuels to clean energy.

Xcel Energy distributes electricity to Boulder customers under the framework established by its franchise agreement with the city; an agreement that is subject to voter approval and which is set to expire on August 3, 2010. The agreement is for a 20-year period, with the potential for the city to "opt out" at 10 and 15 years.

On April 13, 2010, staff provided Council with background information regarding the city's energy supply; the outline of a proposal to develop a Clean Energy Plan for the city; and an update regarding negotiations for a new franchise agreement with Xcel Energy. Council asked staff to pursue an extension of the city's existing franchise agreement to allow more time to define a partnership strategy with Xcel to pursue a joint clean energy strategy. Council also requested staff to work on the possible option of an occupational tax that would replace the current franchise fee absent extension of the existing franchise or a new voter-approved franchise.

This study session memo:

- Provides Council with additional **background information** regarding the city's discussions related to a new franchise agreement, including the work previously completed on options for municipalizaiton (*pages 4-5*);
- Provides an **update** on the current status of negotiations with Xcel since the April 13 study session (*pages 5-6*);
- Identifies **key factors** to consider in the evaluation of options (*page 6*); and
- Outlines **options for Council's consideration**, including:
  - Extend the current franchise agreement beyond 2010 (*pages 7-8*)
  - Approve a new franchise agreement for consideration by voters in November 2010 (*pages 9-11*)
  - Explore alternatives to a franchise agreement (*pages 12-20*)

The memo presents four questions for Council consideration, and outlines proposed next steps to provide an opportunity for community discussion and input on the options that are outlined. These include three community open houses and a community survey prior to continuation of Council's discussion on this topic at a follow-up study session on July 13th.

III. QUESTIONS FOR COUNCIL

Four questions have been identified for City Council discussion and direction:

1. *Should city staff continue to pursue an extension of the current Xcel franchise agreement beyond 2010 to provide time to develop a joint Clean Energy Plan that will define a path for rapid decarbonization in a financially viable way?*

2. *Should staff work further with Xcel on language for a revised franchise agreement as well as related "side agreement" text related to Boulder's clean energy future with the*

aim of presenting a new franchise for voter consideration on the ballot this November? Does Council wish to direct staff to negotiate further with Xcel on specific commitments?

3. *Should staff continue to explore alternatives to a franchise agreement for regulating Xcel's operations on public properties and ensuring payment equivalent to that currently collected by the company from city ratepayers, specifically in the form of an occupation or excise tax?*

4. *Should city staff conduct a series of open houses and a community survey to receive feedback and determine public support of the options?*

IV. BACKGROUND

Boulder's relationship with its current energy provider, Xcel, is central to the city's efforts to create a long-term energy strategy that supplies less carbon-intensive energy. However, decisions about the sources for Xcel's energy supply have historically been made at the state level, through legislation and rules set by the Public Utilities Commission (PUC). In contrast, decisions have been made at the local level about the way that Xcel manages its distribution system, which runs through City of Boulder rights of way (ROW).

For several decades, the relationship between the City and Xcel has been governed in part by the terms of successive franchise agreements between the parties. A franchise is an agreement that grants Xcel the right to use streets, alleys, ROWs and other public property for the purpose of providing utility service to the residents and businesses of Boulder in return for a payment of approximately $3.9M to the city's General Fund. This payment is in the form of a "franchise fee" that is passed on to city ratepayers, appearing as a line item on Boulder customers' Xcel bills. The city's current franchise agreement with Xcel will expire on August 3, 2010.

In 1970 and 1990, the city considered municipalizing its electric utility but in both of those years, the city chose to negotiate franchise agreements instead, in part because there was not enough time to consider the full impacts of creating a public power utility. Beginning in 2004, with the end of the current 20-year franchise agreement with Xcel just six years away, City Council decided it would be prudent to once again study whether it made sense to create a municipal electric utility. This study effort and its findings are summarized on pages 17-20 of this memo.

At its March 18, 2008 meeting, council suspended the city's municipalization study and directed staff to focus resources on franchise negotiations and implementation of Xcel's SmartGridCity project. Council saw the potential benefits of a successful *Smart Grid* that would help achieve all of the objectives that were identified as part of the municipalization efforts with a significant reduction in the <u>fiscal</u>, <u>operational</u> and <u>political risks</u>.

The current franchise negotiations began in earnest in 2008. In May 2009, after extensive consultation with the utility, staff outlined several side agreements that address the city's priorities in negotiations with Xcel. These side agreements deal with a number of the renewable energy and energy conservation objectives. The city and Xcel agreed that these side agreements would be negotiated concurrently with the terms of a new franchise agreement, but would not actually be made part of it. One reason for this was that the vehicle of separate side agreements would help insulate Xcel from pressure to address the issues raised by the side agreements in franchise agreements with other cities. It was also mutually understood that many of the side agreements would ultimately have to be approved by the Public Utilities Commission (PUC).

Although staff initially believed that results could be achieved via these side agreements, staff's view of the possibility of success began to change as time went by, becoming considerably less optimistic. Accordingly, on some side agreement issues, staff began to concentrate less on achieving bilateral side agreement understandings with Xcel and more on achieving the same or similar results by taking the initiatives directly to the PUC through its proceedings as well as through various state legislative initiatives. Several of these initiatives have either successfully moved forward or appear likely to move forward in the near future.

A chart outlining specific dates and milestones of the franchise negotiation process since July 2007 has been provided as **Attachment A.**

V. CURRENT STATUS

At an April 13 Study Session on Boulder's Long Term Energy Strategy and the Xcel Franchise, council expressed significant concerns about introducing a standard franchise on the ballot this year. Council agreed that a strong partnership with Xcel would be the most advantageous option for the city to rapidly move toward a cleaner, renewable energy supply, and should create new opportunities for Xcel as well. Council expressed a desire to keep the option of a franchise agreement on the table, but requested staff to negotiate for at least a one-year extension to provide time to develop a mutually agreeable "clean energy strategy." Council further stated that should Xcel not agree to the extension, staff was directed to pursue the steps necessary to put an occupational tax on the ballot in lieu of a franchise agreement in November 2010.

Since the April 13 Study Session, staff has continued to engage in negotiations with Xcel on the "nuts and bolts" language of the franchise agreement. The current working draft of that language was attached with a cover memo for the June 1 council meeting as a "first reading" item to ensure that the option of placing the agreement on the November 2010 ballot remains open for council's consideration. The agreement attached with the June 1 agenda item does not include any of the side agreements (see discussion on pages 9-11 of this memo).

Additionally, staff prepared and presented to Xcel a draft proposal titled "Partnering for Rapid Decarbonization" (**Attachment B**) on April 20, 2010 that elaborated on Council's input at the April 13 session. The proposal included a request to extend the existing franchise agreement for two years while a joint plan for a clean energy future was developed. Xcel subsequently indicated they would not agree to an extension (**Attachment C**), but that the company would be willing to partner with the city on a study similar to the one proposed if the city places a new franchise on the ballot and voters approve it.

Also, since the franchise agreement ends on August 3, 2010, staff submitted a formal letter to Xcel requesting an extension of the franchise agreement until the end of 2010 (**Attachment D**).

At this time, Xcel has not agreed to an extension of the franchise agreement beyond August 3, 2010. As a result, it is prudent for the city to continue to consider all options related to a franchise. The options include:

- Continue to request extension of the current franchise agreement beyond 2010
- Approve a new franchise agreement for consideration by voters in November 2010
- Explore alternative options to a franchise agreement

VI. KEY FACTORS

There are three key factors that Boulder needs to consider in evaluating its options:

- *Revenue.* There are benefits to entering into a franchise agreement with Xcel. Perhaps the greatest benefit is ensuring the continued stream of revenue from the franchise fee (at this time approximately $3.9 million per year, or roughly 4 percent of the city's General Fund revenues) and the 1 percent of electricity revenues dedicated to an undergrounding fund. With a franchise agreement, the city has an independent contractual commitment from Xcel to pay the franchise fee and to contribute to the undergrounding fund. Without a franchise agreement, there is no guarantee of receiving a franchise fee or having the benefit of the undergrounding fund. The tax described below that could be proposed to replace the revenue may provide a viable alternative to these fees. Such a tax would also need to be approved by voters.

- *Time.* The time element can be seen as an advantage or a disadvantage. The state law that authorizes municipalities to enter into franchise agreements also provides that municipalities are not authorized to purchase or condemn public utilities within 20 years after granting the franchise, except at the 10th and 15th anniversaries of the franchise agreement. Colo. Rev. Stat., § 31-15-707(1) (a) (iv). Consequently, if a new franchise agreement is approved, the city would be able to terminate the agreement without approval by Xcel in 2020 or 2025 and, of course, at the expiration of the franchise agreement in 2030. The city has previously requested that Xcel consider a shorter franchise term, but the company has stated it will only consider a 20-year term with the opt-out terms defined under state law.

- *Ability to Decarbonize.* The alternatives to signing a franchise agreement are under discussion because of the community's profound concern that Boulder will not be able to green the energy supply far enough or fast enough if there isn't greater control over energy supply options. Boulder has adopted a climate action goal and is committed to achieving that goal. As outlined in recent conversations with City Council, it is clear that the currently adopted Kyoto goal is only the first step toward making a meaningful contribution to the reduction of greenhouse gas emissions that responds responsibly to the public health and safety impacts of climate change. The effort toward developing a long-term energy strategy for Boulder, described in the April 13 Study Session, is because of this commitment.

VII. OPTIONS FOR COUNCIL CONSIDERATION

There are three primary options to evaluate:

Extend the Current Franchise Agreement Beyond 2010

Following the April 13 study session, staff requested a 2-year extension to the existing franchise agreement on April 20 as part of a partnership proposal. The company indicated in a May 6 letter that it was not prepared to agree to that extension. On May 24, the City Manager formally requested extension of the existing agreement through January 1, 2011 given the current expiration date of August 3, 2010 and the timing of the election for November 2. 2010. If Council chooses, staff can continue to pursue the option of a longer term extension to the existing franchise.

On April 20, city staff developed a draft proposal titled *"Partnering for Rapid Decarbonization"* and presented it to Xcel. The concept of the proposal is a partnership with Xcel to define a clear and executable path to a clean energy future, building on the Smart Grid's implementation as well as the commitment of Boulder residents and businesses to achieving this goal. The Boulder community is committed to defining and traveling that path.

The central focus of the proposed plan is to collaborate on finding a path that achieves decarbonization in a financially viable way. In doing so, the city wishes to engage with Xcel not only as owners of the public rights-of-way on which the company's distribution system is built and operated, but as potential investors in the creation of new energy generation facilities.

The city proposal included a three-step process:

A. **Extend the Franchise Agreement through December 2012**
   This will allow the necessary time to engage in the joint study outlined in point B below.

B. **Engage in a Joint Study and Strategy Development for Rapid Decarbonization**
   The purpose of the study is intended to define the technological, financial and legal options for pursuing a "rapid decarbonization" strategy that builds on: full implementation of the Smart Grid; recent commitments by Xcel in relation to its regional energy mix; recent and current local actions related to demand side management (DSM) and local renewable generation; and additional potential actions that could achieve rapid decarbonization.

   The study's outcomes would inform negotiations related to the franchise as well as potential concurrent agreements that might be made between the city and Xcel (and potentially others) to partner on the development of new energy generation or other projects that could reduce Boulder's carbon emissions. The study and its implementation would serve as a demonstration project for the potential utilization of Smart Grid technologies in overcoming the barriers to rapid decarbonization. The study would be jointly funded. It is expected that the study will take one year from its launch to its conclusion. Preliminary thoughts regarding the study structure and process include:

- **Hire the Best Minds in the Business**
  Together, the city and Xcel would engage the services of a consultant or consultant team that represents the preeminent authorities on new energy technologies, Smart Grid, and decarbonization. We would jointly define the parameters for success and scope of work, and jointly issue the request for proposal (RFP). In addition to a consultant, we would also form an Experts Group that would review the consultant team's work and provide objective evaluation and feedback.

- **Develop an Energy Stakeholders Group**
  The study would be guided and overseen by a city-convened Energy Stakeholders Group representing key Boulder businesses, institutions and citizen organizations. This group would provide a formal feedback mechanism for the study and be the focal point for initial community conversations regarding trade-offs between alternative decarbonization scenarios.

- **Provide Regular Feedback Loops with City Council and the Community**
  The city would also manage the public review and feedback processes, including regular updates to City Council and the community to ensure transparency and to seek input regarding priorities and trade-offs.

C. Define Commitments Based on the Study's Outcomes
The joint study provides the opportunity to develop mutually understood and verified information regarding options for decarbonization and their relative trade-offs. At the conclusion of the study process, Xcel and the city could re-engage in the franchise negotiations as well as potential parallel discussions regarding new forms of partnership related to energy generation. These discussions would conclude in the first half of 2012 to provide the time necessary for ballot approval for November 2012. This could coincide with a community vote on extension of the carbon tax (or variation), depending on the outcome of the decarbonization strategy.

In a May 6 letter to the City Manager, Xcel stated the following:

> *"We are not prepared to agree to this extension. It is not clear how an extension would bring us any closer to a final agreement. However, upon execution of a new franchise, as a result of a successful vote in November 2010, we would be willing to partner with Boulder on a study similar to the one suggested in the April 20th proposal. This commitment will be incorporated into a side agreement."*

Depending on the direction taken by council on the franchise, staff will continue developing the framework for the study, including identification of potential energy experts and stakeholders to participate in the process.

Approve a New Franchise Agreement for Consideration by Voters in November 2010

Approve a new franchise agreement for consideration by voters to renew our community's relationship with Xcel for a 20 year term. Under state law, there are "opt out" opportunities at 10 and 15 years. This would provide for continuation of the Franchise Fee, the Undergrounding (1%) Credit, and would allow for adequate time to create a municipal utility if so desired (other communities that have undertaken this type of effort have spent 8 -12 years preparing and implementing the municipalization process).

If this option is selected, it will be necessary to present the question of a new franchise agreement to the voters at the November 2010 election. To meet this timeline, council must begin the required formal process of franchise ratification in June 2010. The franchise agreement may be removed from the ballot if the side agreements cannot be completed to council's satisfaction before Sept.1, 2010.

At present, Xcel has not formally responded to the request for an extension of the existing franchise through the end of 2010 to allow time for placing a new franchise on the ballot and the subsequent vote in November. The City Manager has requested a response by June 1, 2010 to allow time, if necessary, for staff to prepare for operating without a franchise effective August 4, 2010. The potential redirection of staff resources to prepare for working with Xcel outside of a franchise agreement may make it difficult to move forward on other work program priorities in the near-term, including continued work on a potential new franchise.

Regarding a potential new franchise agreement, it should be noted that such an agreement does not preclude the city from revitalizing its earlier study of municipalization, if that is desired, or from pursuing alternatives short of municipalization like "muni-lite" or community choice aggregation (which would require a change in state law). Moreover, a new franchise agreement does not preclude the city from pursuing other legislative and CPUC-focused efforts that advance Climate Action Plan (CAP) goals.

Current Status of Core Franchise Agreement Negotiations

Since the April 13 study session, staff has continued to work with Xcel, per Council direction, on the language of the core franchise agreement, or what has been referred to as the "nuts and bolts" language defining the company's rights and obligations as a business operating within the public rights of way. That language, in its current working draft form, was attached with the Council's June 1, 2010 packet, as explained on page 8 of this memo.

Current Status of Side Agreement Negotiations

When franchise negotiations began, the city hoped to reach agreement with Xcel on several projects designed to help the city meet its CAP goals. Staff had initially wanted to include these agreements within the franchise agreement itself. However, Xcel has repeatedly advised the city that it is unwilling to include anything in the franchise agreement that goes beyond the scope of what it is willing to do for every other municipality it serves, leaving the city with a "nuts and bolts" franchise agreement (as described above). This unwillingness has been explained by Xcel as being based in part on the "most favored nation" clause in most franchise agreements that entitles a municipality to any benefit received from the company by any other municipality. One way the company has at times "worked around" these most favored nation clauses is by establishing side agreements. Consequently, many of staff's efforts toward reaching the city's CAP goals have been focused on side agreements with Xcel.

In December 2008 city staff outlined several side agreements for negotiation with Xcel. At the time, staff believed, based on discussions with the utility, that success in achieving the objectives of the side agreements, or most of them, was a realistic possibility. However, over the past eight or nine months as negotiations on particular issues have foundered, city staff, with approval from council, has pursued avenues by which the city could advance its CAP goals by other than side agreements with Xcel such as the Colorado Public Utilities Commission (PUC) and the state legislature. A list of the proposed side agreements from December 2008 is provided in the chronology detailed in **Attachment A**.

There were a number of proposed side agreements that Xcel did not agree to pursue, including a renewable energy facility on the Valmont Butte/Valmont Plant Properties, and a bulk or aggregated Windsource purchase. There are, however, a number of side agreements that Xcel has tentatively agreed to. In the event that council would like to pursue approval of a new franchise agreement for consideration by voters, staff recommends finalizing side agreements with Xcel on the following items:

1. **Community Solar Gardens.** This was initially an issue identified for inclusion in the side agreement, but which was pursued instead through the legislative process, with Xcel actively supporting passage of the legislation, which was enacted by the General Assembly during the 2010 session (HB10-1342). This legislation permits Colorado residents to participate in Xcel's Solar*Rewards programs by investing in community solar gardens located on property other than their own. Side agreement language could continue to address this issue, however, by securing Xcel's commitment continue to support implementation before the General Assembly and Public Utilities Commission (the "PUC"), if necessary.

2. **SmartGridCity Implementation.** Xcel and the City have differing but compatible goals related to implementation of the SmartGrid in Boulder. Any side agreement should specify the ways in which the city and Xcel will continue to collaborate on SmartGrid implementation to enhance the deployment and operation of the SmartGrid network in Boulder and to utilize its capabilities in support of community goals for energy conservation.

3. **Customer Usage Data Pilot Program.** This was identified as an important area for collaboration that could be defined in the side agreement, but which was subsequently pursued through a joint filing with the PUC. The purpose is to enable the city to more accurately and specifically measure changes in customer energy usage resulting from CAP program implementation, In addition to the filing already before the PUC, the side agreement could specify the ways in which the city and Xcel would collaborate on data access and management issues, through the data pilot and subsequent efforts.

4. **Energy Efficiency and Demand-Side Management.** Xcel has a number of rebate programs related to energy conservation and energy efficiency improvements. Because participation in these programs is voluntary in many communities, some of the measures that would result in rebates are requirements in Boulder. Recent examples include the recent revisions of the

residential green points program and increased energy efficiency requirements for commercial and industrial buildings. This issue will become more important as the city moves towards to add requirements for energy efficiency in the existing building stock.

Through the side agreement, Xcel would agree to continue providing rebates for city residents and businesses, despite new code changes that mandate energy improvements, and agree to jointly apply to the PUC for approval of this agreement.

5. **Ongoing Assistance for City Projects.** The city has requested Xce1 do some demand side management improvements for worthy causes in Boulder. For example, in Denver, Xce1 has agreed to demand side management improvements for affordable housing projects. This commitment was in the neighborhood of $250,000 annually for the City of Denver. Boulder has asked for something that is equivalent, based on its size relative to Denver. Should Xcel agree to this request, staff will analyze whether they should go to energy related improvements to the city's affordable housing stock or toward other CAP programs. Xce1 has not committed in one direction or the other on this issue.

6. **Clean Energy Plan.** In his letter of May 6, 2010, Xcel’s Regional Vice President stated that the company would agree to partner with the city on development of a clean energy strategy similar to that presented by the City Manager in the April 20, 2010 two-page outline of “Partnering for Rapid Decarbonization.” In that letter, the company’s willingness to partner on the study was linked to placing a new franchise on the November 2010 ballot and its approval by voters. Should a Clean Energy Plan be included as part of a side agreement for approval prior to development of the plan, staff would recommend including specific and enforceable language related to acting on the plan’s recommendations.

7. **Aggregated Purchase of Renewable Energy.** City staff included an aggregated purchase of renewable energy in its list of desired side agreement topics in December 2008. During subsequent discussions with Xcel, the company indicated that it was not interested in pursuing that topic. However, in his letter of May 6, 2010, the company’s Regional Vice President expressed a willingness “to look at ways to accommodate a larger, bulk purchase by the city on behalf of your residents,” subject to PUC approval. If Council desires moving forward with placing the franchise and side agreements on the November 2010 ballot, this may be an idea worth exploring further.

Once again, in the event that council would like to pursue approval of a new franchise agreement for consideration by voters, staff is requesting council feedback on whether the side agreements as outlined above are sufficient, in whole or part, and whether council wishes to direct staff to negotiate further with Xcel on these or other specific commitments.

Explore Alternatives to a Franchise Agreement

Request staff to conduct additional analysis and to prepare ballot language that would provide a viable alternative to a franchise agreement for consideration by voters, such as an occupation, excise or alternative tax. Another option is to allow the franchise agreement to lapse with no corresponding revenue replacement.

The city will continue to pursue its energy objectives through a variety of means; only one of those is the franchise negotiating process. The franchise negotiating process has provided a good opportunity to clarify energy-related objectives with Xcel. City staff continues—both within and outside of the franchise process—to pursue strategies that are consistent with the community's energy goals. Boulder has been consistent in communicating and pursuing its objectives in the Xcel negotiations and the many other arenas in which we engage with Xcel, state policy makers and the PUC.

The energy needs of our community (and of all communities) are different than they were in the past. For that reason, the kind of franchise agreement that this community now needs is significantly different than it once was. In some sense, that makes franchise negotiations more difficult, but it also makes them more important.

In full consideration of the negotiation process, it is important to understand the implications should the city not have a franchise agreement. There are four ways the city could find itself without a franchise agreement with Xcel:

1. Xcel does not extend the existing franchise agreement beyond August 3, 2010;
2. Council chooses not to place the franchise agreement on the November 2010 ballot;
3. Council chooses to place the franchise agreement on the November 2010 ballot, but the measure fails; or
4. Council chooses to allow the current franchise agreement to lapse.

For the purpose of good stewardship and to prepare for the possibility of the City not having a franchise agreement with Xcel, staff has identified the following alternative options for consideration:

1. Approve an occupation or excise tax for consideration by voters that would impose a tax on Xcel in lieu of a franchise fee;
2. Approve an alternative tax that would be paid by Boulder power customers;
3. Allow the franchise agreement with Xcel to lapse with no corresponding revenue replacement.

Evaluation of Implications

There are, as one might expect, implications to not having a franchise agreement. Fortunately, under Colorado law, with or without a franchise agreement with the city, Xcel has both the right and the obligation to continue to provide natural gas and electricity service to customers in Boulder. The primary benefit to the city of having a franchise agreement is that it provides the certainty of a contractual right to collect the 3 percent franchise fee in exchange for Xcel's use of area streets. This fee is collected from Xcel customers by Xcel and flows to the city's General

Fund. A franchise agreement provides similar certainty with respect to the collection from the utility of undergrounding fees. However, there are other components of the franchise that will need to be addressed should we proceed with no agreement. These include but are not limited to other impacts to city operations and projects, along with alternative options to a clean energy future.

Without a franchise agreement, city officials would need to explore other ways of raising nearly $4 million in revenue, including the possibility of an occupational use tax or an alternative type of tax. Staff members in the City Attorney's Office and the Finance Department have been researching how these types of taxes would be structured. Like a franchise agreement itself, any new tax proposals would have to be brought to voters during the Nov. 2 election.

Staff has been analyzing what steps the city might have to take if the franchise is not placed on the ballot by City Council or if the voters should not approve the ballot measure seeking their approval of the franchise. There are a variety of issues and impacts that need to be considered should the city pursue an alternative to continuing the franchise agreement with Xcel Energy. While staff is continuing to evaluate the full range of risks and benefits of proceeding without a franchise, there are four specific areas on which staff has focused:

1. **Financial issues;**
2. **Regulatory context;**
3. **Anticipated impacts on city operations and projects; and**
4. **A clean energy strategy.**

1. Financial Issues

Franchise Fee
When a municipality requires a public utility to have a franchise in order to use the municipality's public rights-of-way, the franchise agreement usually requires the utility to pay a franchise fee, normally measured as a percentage of the utility's revenues from business within the municipality. The city's present franchise fee is currently 3 percent of all revenues. In Colorado, courts have ruled that franchise fees are not taxes, but rather are the price paid to rent use of public rights-of-way. See *Bruce* v. *City of Colorado Springs* 131 P.3d 1187, 1192 (Colo. App. 2005).

Without the certain contractual right to the franchise fee provided by the franchise agreement, the city would have to devise alternative means of raising the General Fund revenues currently provided through the franchise fee and used for General Fund purposes.

Alternatives to a Franchise Fee
Without a franchise agreement, city officials would need to explore other ways of raising nearly $4 million in revenue, including the possibility of an occupational use tax or an alternative type of tax that would have to be brought to voters during the Nov. 2 election.

Occupation Tax on Xcel In Lieu of a Franchise Fee
Recognizing the concern about losing the franchise income during a time of fiscal uncertainty, an alternative tax could be imposed on the utility. This could take the form of an "occupation tax" that would essentially charge the utility for the use of Boulder's public rights-of-way, similar in intent to the franchise fee. Boulder voters have previously approved a similar concept, and the city of Westminster has a similar provision in place (although it's not currently being used). In addition to putting the franchise before voters, council may consider putting an occupation tax provision (or variation) on the ballot as well. If the franchise agreement failed, or for some other reason the franchise agreement were to become void, this alternative tax provision would ensure continuation of Xcel's payment for use of the public rights-of-way (a payment that is "passed through" from utility rate payers to the city by Xcel).

Alternative Tax In Lieu of a Franchise Fee
This option would explore an alternative tax that would be paid by Boulder power customers (the exact mechanism to be defined) at an equivalent rate to what they already pay via the franchise fee, but by-passing Xcel entirely as the collector of that tax.

Both of these ideas, or variations of them, are undergoing further research and analysis. Certainly, any new revenue collection measure—whether a license fee or a tax—must first be examined for consistency with the state constitution, Colorado statutes, and relevant case law on fees and taxes. Either measure would need to be drafted to take effect at the time the city found itself unable to collect the Xcel franchise fee. If voters opted to renew the Xcel franchise, the new tax could be enacted at the same time, but kept in reserve until such time as, for example, the city opted out of the new franchise, or such time as the franchise fee, for whatever reasons, became unavailable.

Allow the Franchise Agreement to Lapse with No Corresponding Revenue Replacement
The City may choose to allow the franchise agreement to lapse and/or the tax measure(s) noted above might not be approved by the voters or the franchise agreement, if approved for the ballot, may fail. These scenarios would result in a decrease of approximately $4M in General Fund revenue. Staff is aware of this issue and is working on a budgetary contingency plan.

Undergrounding Fund - Fund Balance and Future Revenues
The undergrounding fund is not a separate, dedicated fund. It is an account, wholly owned and controlled by Xcel, which is used to pay for undergrounding of Xcel distribution lines upon the request of the city. Without a franchise agreement, any money currently in the fund remains with Xcel and no additional funds accrue. Undergrounding fund revenues are part of the "cost of doing business" for Xcel and are allocated to all Xcel ratepayers, not just city residents and businesses. The franchise fee, on the other hand, is passed through to only city residents and businesses pursuant to state law because that money goes into the city's General Fund without any restrictions being placed upon it.

There are currently two undergrounding projects in construction by Xcel Energy using undergrounding credits as the funding source. When both projects are completed this summer, it is anticipated that there will be a remaining balance in the undergrounding credit of approximately $400,000 to $600,000. This credit balance would be lost if the city does not enter into another franchise agreement with Xcel Energy.

Without a replacement franchise agreement, the city would no longer receive additional accruals of undergrounding credits to be used for future undergrounding credits. In the existing franchise agreement as well as the draft replacement agreement, the amount of the annual accrual is equivalent to one percent (1%) of the previous year's electric revenues from customers in the city, which currently results in an annual accrual of approximately $1,000,000. Unless electric revenues in Boulder fluctuate significantly in the future, the credit accrual under a replacement franchise agreement should continue to increase at a very modest rate from approximately $1,000,000 per year in 2011.

2. Regulatory Context

The Colorado Constitution gives the Public Utilities Commission ("PUC") the power to regulate public utilities in the state. The same article recognizes a municipality's right to grant franchises. In its regulatory capacity, the PUC adopts regulations consistent with the Public Utilities Law (Title 40 of the Colorado Revised Statutes) and approves tariffs that public utilities, like Xcel, submit to it. Municipalities, of course, grant franchises and enter into franchise agreements with utilities, the terms and conditions of which control the utility's use of the public streets and other areas.

The law in Colorado is clear that the PUC has an exclusive right to control rates and charges. In other words, the city has no say at all in how much Xcel can charge per kilowatt hour or for maintenance work. However, the relationship between regulations in the tariff and the franchise agreement and even the City Code is far less clear. Neither statutes nor case law address this issue directly. In a recent PUC docket in which this issue was argued, the Commission noted this lack of guidance in Colorado law, considered a few sources outside the state, and finally determined it did not need to decide that issue because it based its decision on Xcel's failure to prove that it needed the regulation it was requesting.

Consequently, when the city argues for a particular position before the PUC, it stands in a situation similar to a plaintiff in a lawsuit. In other words, the outcome is uncertain. In fact, because the PUC considers not only the law, but also public policy considerations for the entire state (including such stakeholders as low-income residents, business, industry, employers, energy providers, ranchers and so on) the outcome is even more uncertain.

An additional consideration within the regulatory arena of not having a franchise relationship with Xcel is the impact that lack of direct relationship may have on our ability to work with Xcel. The city has been regularly engaged in both legislative and PUC matters when issues important to city goals, especially environmental goals, were involved. The past year has seen the city involved in several pieces of legislation (solar gardens, coal conversion) and multiple PUC dockets (electric rate increase, SmartGridCity ("SGC") Certificate of Public Convenience and Necessity, SGC Pricing Pilot, smart grid investigatory docket, rulemaking for solar gardens, Commission review of coal conversion plan due in August 2010), each of which affect the city's ability to meet its Climate Action Plan goals. In several of these situations, city staff has worked with Xcel to reach agreements regarding legislation or pilot projects. As part of a recent settlement agreement between Xcel, the Governor's Energy Office and the city, which was approved by the PUC in mid-May, city staff is currently working with Xcel to determine how best to inform the public of environmental signals[1] that may help decrease carbon-based energy use. And as part of the outcome of the electric rate increase case, the city will be working with Xcel and other municipalities to develop an energy-only rate for street lighting, which will allow the city greater control over its energy use and maintenance costs.

3. Anticipated Impacts on Operations & Projects

There are a variety of steps the city might have to take to fill any gaps left in how we work with Xcel if the franchise is not placed on the ballot by City Council or if the voters should not approve the ballot measure seeking their approval of the franchise. These items, which are currently included in the franchise agreement or the street lighting agreement, would need to be addressed through other means. Some have associated cost to the city for implementation.[2]

- A requirement that Xcel coordinate its activities in city streets, and to meet twice per year to exchange short- and long-term work plans to coordinate construction activities in order to manage impacts. It also requires Xcel to restore streets, property, rights-of-way, etc., when Xcel completes its work.

- A requirement that Xcel pay to relocate its facilities if such relocation is required by a public project. It also details the timing of responsibilities related to such relocation, and that all facilities installed to serve new development shall be underground.

- Provisions which state that the city does not have to advance funds for the installation of lines to new city facilities, and that Xcel is required to perform adjustments to their facilities, including raising or lowering manhole covers, to accommodate street maintenance, repair and paving operations, at no cost.

- Granting the right to use Xcel electric distribution poles and street lighting and traffic signal lighting poles for police, fire, emergency, public safety or traffic control purposes, or for any other purpose consistent with the police powers. Currently the city is only using a few of these poles for fiber optic cable telecommunications purposes. If the franchise were discontinued, the city would need to pay Xcel a per pole charge for this use.

- A requirement that Xcel continue to work with U.S. Fish and Wildlife Service to develop and implement avian protection plans. Also, each year, Xcel is required by the franchise agreement to provide the city with a written report describing its progress in carbon reduction and other environmental efforts.

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[1] "Environmental signals" refers to the degree to which consumers change their behavior based on time of use data that indicates the greenhouse gas intensity of the grid power during a particular period.

[2] Some of these items may already be covered by city ordinances, the design and construction standards, or right-of-way permits.

- A requirement that Xcel maintain and continuously develop contracting and community outreach programs that enhance opportunities for and increase the participation of minority- and women-owned business enterprises.

If so directed by Council, and/or if Xcel Energy indicates that it will not agree to an extension of the existing franchise through the end of 2010, thereby allowing the franchise to lapse effective August 4, 2010, city staff will work to develop an implementation plan that addresses the above-listed issues through existing city code and operational procedures. Where necessary, new code language, ordinances or procedures will be prepared and, as necessary, presented to Council for consideration and adoption. Given that the city regulates other utilities in the rights of way outside a franchise agreement, many of these issues are already addressed. However, more detailed analysis is needed to ensure that all issues are appropriately addressed.

4. A Clean Energy Strategy

The franchise agreement with Xcel does not govern where Boulder's electricity comes from or the carbon intensity of that power. As mentioned previously, the city's negotiating team has used the franchise discussions with Xcel to create and influence more clean energy options for Boulder and the region. Staff believes that renewing the franchise does not necessarily preclude the city from revitalizing its earlier study of municipalization (described below) or from pursuing alternatives short of municipalization like "muni-lite" or community choice aggregation (which would require a change in state law). Moreover, renewing the franchise does not preclude the city from pursuing other legislative and PUC-focused efforts that advance CAP goals. However, renewal of the franchise may extend the timeframe for implementation of municipalization or "muni-lite" strategies, or pose other obstacles.

Investigating Municipalization

In 2005, the city embarked on a two-track evaluation to test the viability of creating a public power utility while also maintaining flexibility to enter into a franchise agreement. The city wanted to be able to freely choose whichever alternative was deemed to be in the city's best interests: direct municipal control through city ownership, or indirect city influence through agreements with Xcel Energy. At that time, council requested "exit ramps," opportunities along the road to municipalization, if it determined it wanted to stop the process. Council requested this to maximize its ability to make real choices independent of any momentum that might exist, since continuation could have long-term political and economic implications for the community.

In 2005, council identified the following objectives for both the municipalization efforts and the franchise negotiations:

- Increased renewable energy,
- Reliability,
- Provision of opportunities for conservation and energy efficiency, and
- Rate stabilization for economic vitality.

Within each of these broad objectives, staff had identified, with input from Council and a City Manager-appointed Municipalization Task Force, priority program areas to focus on when moving through the municipalization analysis and the franchise negotiations. These priority programs carry through today, as the central themes of the franchise negotiations with Xcel.

During the 2005 budget process, council appropriated $100,000 to conduct a Phase I feasibility study designed to begin a high level analysis, identifying any significant obstacles that would preclude the city from moving forward with its investigation into creating a municipal utility. This study, conducted by the engineering consulting firm, R.W. Beck, concluded: “There is a reasonable expectation that the city could acquire the Xcel distribution system” without any rate increases. This result was based on a “top-down” cash flow analysis that modeled the projected utility revenues, operation and maintenance expenses, capital requirements and reserve levels. The model calculated any remaining cash available after these obligations had been met to determine whether the city could afford the debt service that would be associated with system acquisition. This remaining available cash was compared to an educated guess of the range of values that might be attributed to Xcel’s distribution system. This model was utilized because the city and its consultants did not have access to any real data on the distribution system inventory (i.e., the number, age and condition of the poles, wires, and substations that would be acquired through the municipalization).

As part of the 2006 budget, council approved use of an additional $150,000 to fund a Phase II feasibility study that included legal, financial, engineering and administrative study components. The Phase II work was based on more precise data from Xcel regarding the inventory of assets that would need to be acquired if a municipal utility were formed; therefore, the analysis was a “bottom-up” approach that began by surveying the assets and determining a range of valuation for them. In addition, RW Beck refined its estimate of the cost to sever Boulder’s distribution system from the rest of Xcel Energy’s distribution system, as well as its estimates of costs to purchase power on the open market and/or to build new power generating capacity.
RW Beck’s preliminary results indicated a large range of costs for creation of a municipal utility in Boulder. Significant additional research would be required to critique and refine these results. The range of possible costs, as reported by RW Beck, represented variations in:

- Wholesale power supply (determined by projected spot power supply market prices, availability and/or the costs for Boulder to build its own power generating resources);
- Valuation of assets (determined by a condemnation judge); and
- Stranded costs (determined by a Federal Energy Regulatory Commission judge).

Best-case and worst-case scenarios are shown in the following table. The assumptions include utility start-up in 2011. The range of costs is shown for a fifteen year period under a municipal utility scenario.

All numbers in thousands	**Best case-2011**	**Best case-2025**	**Worst case-2011**	**Worst case-2025**
Operation and Maintenance	$18,092	$27,669	$18,092 (no change)	$27,669 (no change)
Power Supply	$80,444	$146,940	$119,680	$182,830
Annual debt service on acquisition	$9,520	$9,520	$14,160	$14,160
Annual debt service on stranded costs	$0	$0	$4,778	$4,778
Total operating costs	**$108,056**	**$184,129**	**$156,710**	**$229,437**
Average city revenue requirement (average rate)	$91.20/MWh	$152.78/MWh	$132.27/MWh	$190.38/MWh
Xcel projected average rate	$95.64/MWh	$186.74/MWh	$95.64/MWh (no change)	$186.74/MWh (no change)

The previous chart shows that, according to RW Beck, the average electricity rate a Boulder municipal utility would need to charge in 2011 to cover all its operating costs would be $91.20 per megawatt-hour (/MWh) in a best-case scenario. When the assumptions regarding power supply costs, acquisition costs and stranded investment costs[3] were changed, the worst-case scenario could result in Boulder electric utility rates in 2011 needing to be as high as $132.27/MWh. In 2007, these rates were compared to Xcel's projected average rate for 2011 of $95.64/MWh.[4]

[3] Stranded costs: Under a municipal acquisition, the city could be required to compensate Xcel Energy for the reduced value of any remaining (or stranded) Xcel assets that result from the acquisition. FERC has defined the costs associated with stranded investment as the difference between the revenue that a utility could have expected to recover, less the market value of the energy released by the departing customer, all times the length of time the utility could have reasonably expected to continue to serve the customer. Ultimately, a final determination of the costs associated with stranded investment would be made by a FERC judge. If the FERC judge determined that the length of time that Xcel Energy could have expected to serve Boulder's customers is zero years after 2010, then the determination could result in an assessment of zero stranded investment. The worst case scenario approximates a 15 year stranded investment term.

[4] In comparison to these projected rates, Xcel's current electricity rate is $46 per MWh for tier 1 rates (0.5 MWh) and $90 per MWh for tier 2 rates. The tiered rate structure did not exist at the time the 2007 study was completed.

Although the best case scenario modeled by RW Beck seems to indicate that Boulder's ratepayers could see savings on their electric bill of $4.44 per MWh, the worst case scenario revealed the potential for a $36.63/MWh increase as compared with projected 2011 Xcel rates. The variability in this range of costs was due in large part to factors outside of the city's control (i.e., power supply market prices, power supply availability and somewhat unprecedented legal rulings). This rendered the risk somewhat unquantifiable; therefore, the city assumed the worst case scenario in its analysis.

Community Choice Aggregation, or "Muni-Lite"

There are options short of municipalization that could give Boulder greater control over its energy future and ability to implement its decarbonization objectives. Boulder community members have spoken publicly of options, often referred to as "community choice aggregation" (CCA) and "municipalization lite." The essence of each is creating the legal capability for the city to make direct purchases for its citizens of electric power from renewable sources that the city chooses. Both pre-suppose significant changes in state law that are likely to be opposed by Xcel and other utilities and interests. These were discussed in some detail in the April 13 Study Session memo.

Despite the likely opposition, effecting fundamental changes in state law to allow Boulder to achieve energy independence is in the realm of possibility, and the city may choose to devote resources to this effort. The legislative effort will most likely be a multi-year endeavor, but also less expensive, complex, and time-consuming than municipalization.

Accordingly, if the city believes there is merit in pursuing a CCA strategy and wishes to devote time and resources to further study its feasibility, pursuit of this strategy may still be compatible with entering into a new franchise and utilizing the "off ramp" after 10 years.

VII. NEXT STEPS

Community Outreach and Consideration of a Community Survey

The City of Boulder wishes to preserve all of its options for the November ballot. The options under consideration include: an extension of the existing franchise agreement to provide additional time to define a Clean Energy Plan in collaboration with Xcel; a new franchise agreement between the city and Xcel for voter consideration; or no franchise agreement with the possible adoption of an occupation tax.

Boulder's energy future is an important issue to the community and the options under consideration are somewhat complex. It is important to engage the community in this dialogue. The following two outreach and community input opportunities are achievable within the short timeframe needed to inform Council's discussion and decision on the options before it:

- **Public Open Houses on Boulder's Energy Future.** Staff proposes three public meetings designed as open houses located throughout the community to provide information and receive feedback on these options. These open houses would be scheduled and conducted in concert with the proposed community survey effort described below.

- **Community Survey on Boulder's Energy Future.** Staff recommends that the city consider a community survey to help determine how each option might be drafted and to determine public support of the options.

  Staff considered two potential community survey approaches to gather public input and community preferences: a city-managed Survey Monkey tool and a third-party telephone survey. Either method would involve a 15- to 20-question survey and would require a minimum of 400 responses to be statistically valid in order to inform council decisions.

  An online Survey Monkey poll is a less expensive option than an outside polling firm. However, staff does not believe this would be a statistically valid tool for a community-wide survey method. The city has used online survey tools to solicit community input on issues ranging from medical marijuana to building code regulations. Past online surveys yielded 100 to 1,000 survey participants. While such results have helped inform staff on community support and direction, responses were less than 1 percent of the city population and may have reflected the opinions of specifically interested individuals on a given subject. Given the impact of a franchise or an occupation tax on every member of the Boulder community, staff recommends against an online survey for this topic.

  A public polling firm could provide a statistically valid survey within the limited time frame available to assess community input and preference to draft appropriate ballot language for the Nov. 2 election. Initial estimates from three Boulder-area polling firms range between $12,000 to $25,000, depending on selected sample size and survey responses. All three firms contacted indicated a minimum of 400 responses are needed.

  If council wishes to conduct a community survey, staff recommends contracting with a firm no later than June 15, 2010.

Key Process Dates
As this process continues, it is important to note that key dates must be met to place items on the Nov. 2 ballot. Staff has identified August 17 as the final date Council must approve any items for the ballot. In order to meet this requirement some items will be introduced throughout the summer to allow Council ample time to fully consider the issues. For example, should Council direct staff to pursue ballot language for an occupational tax, it is proposed to be scheduled for first reading on July 6. Additionally, it is anticipated another study session may be warranted to update Council on community outreach efforts, any further discussions with Xcel, and further analysis on alternatives to a franchise agreement. This is tentatively scheduled for July 13.

Approved By:

Jane S. Brautigam

Jane S. Brautigam,
City Manager

Attachments

A: Franchise Negotiation Process Milestones
B: "Partnering for Rapid Decarbonization"
C: May 6 Letter from Xcel
D: May 24 Letter Requesting Extension

Franchise Negotiation Process Milestones

Date/milestone	Status & Description
July 13, 2007	Negotiations between the City and Xcel begin. While this first meeting was not substantive, it officially started the franchise negotiation process. At this point, the city was still pursuing the dual track of Xcel franchise versus municipalization.
March 18, 2008	In light of the results of the RW Beck Municipalization Study, and with the opportunity presented by Xcel to partner on the SmartGrid project, staff recommended suspending the municipalization study and focusing on the franchise negotiations and Smart Grid to achieve goals.
October 28, 2008	Council Study Session on Smart Grid, presented jointly by city staff, city consultant and Xcel Energy.
December 12, 2008	Staff developed overarching principles and goals for franchise negotiations and specific proposals (side agreements) for each. These were presented to Xcel and included: **Fuel switching** These are projects or purchases that that would not have come about absent the franchise negotiations. They include: • Create a large renewable energy project outside of Boulder that replaced a significant portion of Boulder's electricity load • Partner with the City to develop a renewable energy project at Valmont Butte, utilizing City and Xcel property to effectively reduce the coal use at Valmont Station • Retain city ownership of 100% of the city's hydroelectricity RECs • Create a new aggregated Windsource purchase in which the City would agree to some agreed upon bulk purchase of Windsource in return for a discounted price for residential and commercial subscribers. **Energy conservation and local distributed generation** • Full Deployment of *Smart Grid* technology • Support on Solar Gardens Legislation **Climate Action Plan efficiency and cost-effectiveness** These are steps that Xcel can take that will help Boulder implement CAP related initiatives. • Removing the "Free-rider" issue related to demand side management (DSM) incentives and rebates paid to Boulder's Xcel customers • Enhanced access to customer usage data

May 18, 2009	Full negotiation teams meet to discuss Xcel's position on each of the goal areas listed above. Xcel agreed to continue discussions on the following strategies: renewable project at Valmont, support of Solar Garden legislation, WindSource aggregation, DSM free-ridership data access and street-lighting. The city begins tracking the negotiating schedule and term sheets for each strategy area.
June 4, 2009	Update to City Council on the status of the negotiations. Given the lack of progress, Council was informed that it would not be feasible to submit a proposed Franchise Agreement for voter approval for the November 2009 election. Therefore, the current goal at the time was to take steps to maintain the benefits to the city of the current agreement through next year, thereby allowing time for negotiations to be concluded and for the matter to be submitted for public vote in November of 2010.
September 3, 2009	Xcel refined their position to agree to the following strategies: Support of Solar garden Legislation, DSM free-ridership and street-lighting. (However, Xcel later discontinued negotiations on the street lighting agreement, citing the electric rate increase pending before the CPUC. Those negotiations have only recommenced in the past month.) All others are effectively concluded, with no path to agreement. As part of PUC Docket No. 09I-593EG, City staff met *ex parte* with CPUC Commissioners to discuss access to data. The Commission suggested a data sharing pilot between the city and Xcel. Xcel agrees to resurrect data sharing through potential pilot.
October 13, 2009	City files Cross Answer testimonies requesting that the CPUC require Xcel file and obtain a Certificate of Public Convenience and Necessity for SmartGrid City.
April 2, 2010	<u>Decarbonization Tech Team Meeting</u> Boulder City Manager and staff introduce the proposed recommendation for the April 13 Study Session. The recommendation was to place the franchise renewal on the November ballot. The Tech Team is not supportive of this strategy, and began meeting with City Council members prior to the April 13 Study Session.
April 13, 2010	<u>Boulder Council Study Session</u> The purpose of the Study Session was to discuss specific supply side issues as they relate to Boulder's energy and Climate Action Plan, and to outline the rationale for developing a long term Clean Energy Strategy. During the discussion, Council was asked to provide input on the status of the negotiations, proposed timeline and potential outcomes.

	City Council expressed opposition to placing a standard franchise on the ballot absent a clear plan for partnership with Xcel related to rapid decarbonization, and expressed doubts about whether an agreeable strategy could be developed in the weeks remaining prior to the deadline for a decision. Council directed staff to request an extension to the existing franchise to afford more time for development of a mutually agreeable plan. Should Xcel not agree to the extension, Council requested staff to explore the steps necessary to put an occupational tax on the ballot in lieu of a franchise fee in November 2010.
April 20, 2010	City staff met with Xcel (PSCo) President and key staff to present a draft proposal on rapid decarbonization and related request for a 2-year extension to the existing franchise agreement.
April 19-30, 2010	Xcel staff request one-on-one meetings with City Council members. Xcel is requested to make their presentation public, and is given time to address council at the May 4 meeting.
May 4, 2010	Xcel staff addressed City Council at public meeting. They described the benefits associated with a franchise agreement, and encouraged City Council to support placing the franchise agreement on the November ballot. Xcel staff stated that the company would not “get in the way” of the city placing an occupation tax or similar measure on the ballot. During the question/answer period, Council requested that Xcel provide a formal response to the City Manager’s decarbonization proposal.
May 6, 2010	Xcel staff presented their response to the city’s extension and study proposal, indicating that they are not prepared to agree to an extension of the franchise agreement for the purpose of completing a study. Rather, they stated that they will be willing to participate in the study upon execution of a new franchise agreement. In the letter they indicated they were willing to work with the city to accommodate a large bulk purchase of renewable energy through their Windsource program. Xcel’s written response to the City Manager was shared with the Council and community.
May 2010	The City’s negotiating team continued to meet throughout the month on the details of the “standard” or “nuts and bolts” franchise agreement related to how the company operates on public properties. Discussion of the “side agreements” pertaining to accelerated pursuit of clean energy options has been stalled during this period.

Partnering for Rapid Decarbonization

Draft Proposal / April 20, 2010

Contact: Jane Brautigam, Boulder City Manager; (303) 441-4020; BrautigamJ@bouldercolorado.gov

Background

Boulder residents have committed themselves to decarbonizing their energy future. They have voted to tax themselves to fund efforts toward that goal; they have the highest rate of WindSource subscriptions and solar rewards installations of any other municipality; they have helped write and lobby for state legislative changes; and they have supported a wide range of demand side management programs, including the city's award-winning GreenPoints program, the ClimateSmart loan program and the soon-to-launch Two Techs and a Truck program.

The City of Boulder and Xcel Energy have a unique partnership, and a history of working together to advance a shared agenda for a clean energy future. This partnership has resulted in many significant outcomes, the most notable being development of the country's first citywide "smart grid" local distribution network.

Xcel and the city are now engaged in negotiations to renew the company's franchise as the sole provider of energy services to Boulder residents and businesses. Because that agreement will establish the foundation for Boulder's energy future over the coming 10- to 20-year period, it is the subject of considerable public interest. On April 13, the Boulder City Council voiced profound concerns about the franchise negotiations. Council members want a clear understanding of how the city will partner with Xcel to achieve its carbon reduction goals. They do not want to take an agreement to the voters until the path to a clean energy future is clearly defined. Defining that path is one of their highest priorities, if not *the* highest priority.

Proposal

The City of Boulder seeks to partner with Xcel Energy to define a clear path to a clean energy future, building on the smart grid's implementation as well as the commitment of Boulder residents and businesses to achieving this goal. The Boulder community is committed to defining and traveling that path.

The city recognizes that Xcel is in the energy business, and needs to protect both the near-term and long-term financial interests of its investors. The city also recognizes that Xcel needs to make full use of its investment in smart grid, and that it needs to chart a course to corporate success in a rapidly changing energy environment. The central focus of the proposed study is to collaborate on finding a path that achieves decarbonization in a financially viable way. In doing so, the city wishes to engage with Xcel not only as owners of the public rights-of-way on which the company's distribution system is built and operated, but as potential investors in the creation of new energy generation facilities.

The city proposes a three-step process for moving forward:

1 **Extend the Franchise Agreement through December 2012**
This will allow the necessary time to engage in the joint study outlined in point 2 below.

2 **Engage in a Joint Study and Strategy Development for Rapid Decarbonization**
The purpose of the study will be to define the technological, financial and legal options for pursuing a "rapid decarbonization" strategy that builds on: full implementation of the smart grid; recent commitments by Xcel in relation to its regional energy mix; recent and current local

actions related to DSM and local renewable generation; and additional potential actions that could achieve rapid decarbonization. The study's outcomes would inform negotiations related to the franchise as well as potential concurrent agreements that might be made between the city and Xcel (and potentially others) to partner on the development of new energy generation or other projects that could reduce Boulder's carbon emissions. The study and its implementation would serve as a demonstration project for the potential utilization of smart grid technologies in overcoming the barriers to rapid decarbonization.

The study would be jointly funded. We expect the study will take one year from its launch to its conclusion. Preliminary thoughts regarding the study structure and process include:

- ***Hire the Best Minds in the Business***
  Together, the city and Xcel would engage the services of a consultant or consultant team that represents the preeminent authorities on new energy technologies, smart grid, and decarbonization. We would jointly define the parameters for success and scope of work, and jointly issue the RFP. In addition to a consultant, we would also form an Experts Group that would review the consultant team's work and provide objective evaluation and feedback.

- ***Develop an Energy Stakeholders Group***
  In addition to the consultant analysis and experts group, the city would convene an Energy Stakeholders Group representing key Boulder businesses, institutions and citizen organizations. This group would provide a formal feedback mechanism for the study and be the focal point for initial conversations regarding trade-offs between alternative decarbonization scenarios.

- ***Provide Regular Feedback Loops with City Council and the Community***
  The city would also manage the public review and feedback processes, including regular updates to City Council and the community to ensure transparency and to seek input regarding priorities and trade-offs.

3 Define Commitments Based on the Study's Outcomes

The joint study provides the opportunity to develop mutually understood and verified information regarding options for decarbonization and their relative trade-offs. At the conclusion of the study process, Xcel and the city would re-engage in the franchise negotiations as well as potential parallel discussions regarding new forms of partnership related to energy generation. These discussions would conclude in the first half of 2012 to provide the time necessary for ballot approval for November 2012. This could coincide with a community vote on extension of the carbon tax, depending on the outcome of the decarbonization strategy.

The City of Boulder is committed to continuing a constructive relationship with Xcel that results in achievement of shared goals. But it is also committed to pursuing a rapid decarbonization strategy. The challenges of climate change call for new partnerships and creative, innovative, well-informed strategies. The city believes that the proposal presented here provides a positive path forward that could be rewarding for the company while resulting in significant carbon reductions.

Xcel Energy®
RESPONSIBLE BY NATURE™

Jay Herrmann
Regional Vice President
Customer and Community Service

1225 17th Street, Suite 1200
Denver, CO 80202

May 6, 2010

Ms. Jane Brautigam
City Manager
City of Boulder
P.O. Box 791
Boulder, CO 80306

Dear Ms. Brautigam:

Please accept this letter as a formal response to your proposal of April 20, 2010. We had hoped and expected the joint efforts of our teams over the last year to negotiate a new franchise agreement would result in a successful conclusion in 2010. Xcel Energy addressed Boulder's priorities identified a year ago by city staff as the key elements to an agreement on a new franchise.

The city's priorities were detailed and challenging. They required complex and often time-consuming evaluations on the part of our company. We worked through each proposal, came to a position on each one, and communicated them to you and your team this year on February 9.

We have made significant progress in discussions and/or actions to address most of the city's expressed priorities, including Valmont, customer data, energy efficiency rebates, renewable energy, undergrounding and relocation, Solar Gardens and SmartGridCity.

Based on the amount of time, effort and resources already committed to the city's list of priorities and the target date of May 21 to complete negotiations, we were surprised by a new and substantive request only four weeks prior to the negotiation deadline. It asked that we agree to a 28-month franchise extension from the current expiration date and to agree to co-fund a study that could offer no surety of a positive outcome for the franchise negotiation.

We are not prepared to agree to this extension. It is not clear how an extension would bring us any closer to a final agreement. However, upon execution of a new franchise, as a result of a successful vote in November, 2010, we would be willing to partner with Boulder on a study similar to the one suggested in the April 20th proposal. This commitment will be incorporated into a side agreement..

There is a fundamental difference of opinion about the scope of the franchise agreement. As we have discussed, the franchise serves a purely administrative function to set the terms and conditions for placement of our facilities in public rights of way. This agreement cannot legally be the vehicle for choosing the composition of our power supply serving only our customers residing in Boulder.

The construction and purchase of electricity generation in our state are regulated by the Colorado Public Utilities Commission (PUC), not at the local municipal level. Extending the franchise by two years would not change that jurisdictional reality.

If the city wishes to influence the composition of our electric generation portfolio, it has the opportunity to do so in two important ways: 1) by participating in the PUC proceedings for that purpose, and 2) Windsource. The city already has a program for decarbonizing the energy used by residents and businesses through Windsource, one of the nation's leading customer choice programs for green energy. We have offered to work closely with the city to further promote this Green-e certified product to our Boulder customers, the majority of whom do not participate.

We also have offered to look at ways to accommodate a larger, bulk purchase by the city on behalf of your residents. Windsource delivers renewable energy produced in our region and would allow Boulder to immediately achieve its energy supply environmental goals. We cannot bypass PUC regulations by entering into an agreement with Boulder, or with any other community, for the delivery of alternative sources of energy as part of franchise negotiations.

We will continue our advocacy efforts at the state level to support clean energy initiatives for all of Colorado that go far beyond the results we could achieve through programs designed for any single community. Be assured we will continue to serve our customers in Boulder and provide safe, reliable and reasonably priced energy. It is our preference to do this under the governance of a new franchise agreement so the city can continue to receive the many operational and financial benefits a franchise agreement provides. However, it is the City's choice to enter into a new franchise agreement or not.

There is little to be gained in expending additional time and effort to finalize the franchise agreement, the related street lighting agreement and side letter if the city council is not interested in placing the franchise on the ballot this fall. If a majority of city council members expresses support for a move toward the November election, we will continue to work tirelessly with your staff to reach agreement by the deadline. If, however, a majority of members do not support the ballot election, we recommend ending all negotiations at this time.

Sincerely,

cc: City Council Members

CITY OF BOULDER
OFFICE OF THE CITY MANAGER

May 24, 2010

Mr. Jay Herrmann, Regional Vice President **VIA EMAIL:** jay.herrmann@xcelenergy.com
Xcel Energy
1225 17th Street
Denver, CO 80202

Re: Extension of Franchise between Xcel Energy and the City of Boulder

Dear Jay,

On behalf of the city of Boulder, I am writing to request the extension of our franchise agreement with Xcel Energy through the end of the 2010 calendar year.

As you know, our existing long-term agreement related to your company's operations in the city's public rights of way expires on August 3, 2010. Given our ongoing efforts to develop the framework for a new agreement, and in light of the fact that the date for approving ballot language for voter consideration in the November election falls after the current agreement's expiration date, it would benefit both Xcel Energy and the city of Boulder to align the end-date of the current agreement with the potential start-date of a new agreement on January 1, 2011.

Without certainty that the current franchise agreement will extend through the end of the year, city staff will need to devote considerable effort in the coming weeks and months to prepare for "life without a franchise" in relation to Xcel Energy's operation in Boulder. For this reason, I need to know your decision regarding the extension of the agreement by June 1, 2010, so I can direct our staff resources and work effort accordingly.

Please let me know if I can provide additional information regarding this request. I would greatly appreciate your prompt attention to this matter,

Sincerely,

Jane S. Brautigam

Jane S. Brautigam
City Manger
City of Boulder

Cc. Boulder City Council

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