



**CITY OF BOULDER
OFFICE OF THE CITY MANAGER**

January 6, 2014

NOTICE OF INTENT TO ACQUIRE

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

David Eves
Chief Operating Officer
Public Service Company of Colorado d/b/a Xcel Energy
1800 Larimer St., Suite 1100
Denver, CO. 80202

**Re: City of Boulder, Colorado – Property Acquisition for City Municipal Electric Utility Purposes Including Property Interests, and Equipment
Notice of Intent to Acquire Property of Xcel Energy**

OWNER: Public Service Co. of Colorado d/b/a Xcel Energy (Xcel)

DESCRIPTION: Equipment and property interests for electrical facilities from high side of 230 kV transformers to customers, and equipment and property interests for 115kV electrical transmission lines, substations, and facilities from substations to customers and property interests for facilities serving the City of Boulder within the Acquisition Area, as more particularly described below.

Dear Mr. Eves:

This letter is to inform you that the City of Boulder, Colorado, a home rule city, (“the City”) intends to acquire the interest of Public Service Company of Colorado, d/b/a Xcel Energy (“Xcel”) in the equipment which has been or is being used for provision of electricity, including transmission and distribution, and located within the Acquisition Area depicted on the map that is attachment A-1 of Ordinance No. 7918, the interests in property owned by Xcel that are necessary to serve and operate such equipment, and the 115 kV transmission loop depicted on attachment A-2 of Ordinance No. 7918 and the portion of interests in real property owned by Xcel that are necessary to serve and operate the transmission loop for municipal electric utility purposes. The City’s intent is more particularly described in Ordinance No. 7918 adopted by the City of Boulder on August 20, 2013, a copy of which is enclosed. Although the City has not received from Xcel the information required by Section 14.2 of the Franchise Agreement that Xcel has a continuing duty to provide to the City, the City has proceeded in good faith to identify the property necessary based on the information available to it. Following is a description of the property the City intends to acquire.

Substations

The equipment and property interests to be acquired and the equipment that will not be acquired at each substation are depicted on Exhibit A-1 to Ordinance No. 7918. The white boxes with an S show the four substations that Boulder will acquire in total, including land - Sunshine, Boulder Canyon Hydro, NCAR, and Boulder Terminal Substations (Boulder already owns a portion of the Boulder Canyon Hydro Substation). The yellow boxes depict the locations where Boulder will acquire the 115kV line terminals including two bays in the Eldorado Substation and five bays in the Valmont Switchyard, as well as access to operate and maintain those facilities. At those locations, the land would remain owned by Xcel, as would the balance of equipment that Boulder is not acquiring. The green boxes at Leggett, Niwot and Gunbarrel Substations depict the locations where the city will acquire Xcel's 230/13.2kV transformers (including high side protection and low-side switchgear), and an easement for operating and maintaining those facilities. At those locations, the land would remain owned by Xcel, as would the balance of equipment that Boulder is not acquiring. Boulder is not acquiring the maintenance facility west of the Valmont substation or the Valmont power plant.

Interconnections

The four interconnection points where the city will wheel power to Xcel over the distribution system at 13.2kV as a Distribution Service Provider under FERC are:

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

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

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

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

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

The city's acquisition will include installing interconnection equipment generally consisting of meters, disconnect switches, protective devices and communications systems to interface with Xcel's system. At the locations where the city would serve as a Distribution Service Provider, FERC would regulate the city's operation of the transformers and interconnection feeders to require the city to maintain quality of service to the feeders that Xcel will still own or operate. This maintains the reserve capacity Xcel currently has on those transformers. At the locations where the city would take service at the high side of the 230kV transformers, Xcel will maintain the 230kV bus and connections to the 230kV transmission system. The city will acquire the switchgear, transformer and high side protection.

Miscellaneous Property

Boulder is not acquiring the maintenance facility owned by Xcel west of the Valmont substation and power plant. The City's acquisition includes the few streetlights within the Acquisition Area owned by Xcel and all of the equipment owned by Xcel installed for SmartGrid City including meters, cable, conduit, and communications facilities. The acquisition will include, any other property interests, and appurtenances of Xcel's related to providing electric services within the Acquisition Area or the 115 kV transmission loop. The city's acquisition does not include any generation facilities.

City Findings

The City has found and determined the acquisition serves a public need and necessity and constitutes a public use. A review of public records indicates that Xcel or its subsidiaries owns a property interest in said property identified. The City has determined that the acquisition is necessary for the project described in Ordinance No. 7918, is used and useful in connection with rendering electric service to properties within or owned by the City and adjoining areas, and is in keeping with the public health, safety and welfare of the City.

Xcel Appraisal

Pursuant to Colorado Revised Statute §38-1-121, as amended (copy enclosed), you are entitled to obtain one appraisal from an appraiser of your choosing who is registered, licensed or certified by the Colorado Board of Real Estate Appraisers. In the event more than one person has an interest in the Property and such persons cannot agree on an appraisal to be submitted to the City, the City only needs to pay for one appraisal. The City will pay the reasonable costs for the appraisal provided the appraisal is made using sound, fair and recognized appraisal practices consistent with law and is submitted to the City along with the appraiser's invoice within 90 days from your receipt of this Notice.

If you obtain such an appraisal and submit a copy to the City along with the invoice for payment, the City will in turn provide a copy of its appraisal to you.

Acquisition Negotiations

It is the intent of the City of Boulder to engage in good faith negotiations with you in an attempt to resolve this acquisition on a voluntary basis. This letter constitutes the City's Notice of Intent to Acquire the above referenced property interests. As you are aware the City has the authority to acquire property and equipment by the exercise of eminent domain, if necessary.

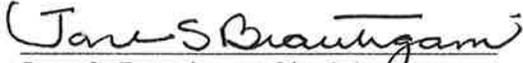
Page 4
David Eves
January 6, 2014

Because of the complexity of the acquisition and the numerous components to the property description, it is the intention of the City to have more than one negotiator meet with Xcel representative(s) to discuss the acquisition. We request that you identify the person or persons from Xcel who would be available to meet with City negotiators to discuss this matter.

Please call me at 303.441.3090 with questions or concerns. Thank you for your consideration in this matter.

Sincerely,

CITY OF BOULDER


Jane S. Brautigam, City Manager

Enclosures

- 1) City of Boulder Ordinance No 7918
- 2) CRS § 38-1-121

cc: Paula M. Connelly, Managing Attorney, Legal Services
Jack Sperber, Esq.; Faegre Baker Daniels
Donald M. Ostrander, Esq., and Robert R. Duncan, Esq., Duncan, Ostrander & Dingess
Kathy Haddock, Esq., City of Boulder

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

ORDINANCE NO. 7918

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

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

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

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

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

C. The franchise agreement between the city and Public Service Company of Colorado d/b/a Xcel Energy ("Xcel") provided for the city's right to condemn Xcel's property interests and Xcel's obligation to provide its records regarding such interests.

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

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

1 F. The city has determined that the acquisition area within which
2 electric facilities and other property interests should be acquired is as shown on
3 the maps attached hereto as Exhibit A-1 and Exhibit A-2, dated July 5, 2013, and
4 marked Acquisition Area Distribution System and Acquisition Area 115kV
5 Transmission Loop (the "Acquisition Area") and is more particularly described in
6 the agenda memoranda dated July 23 and August 6 provided to the City Council
7 with this ordinance (the "Memoranda"). The Acquisition Area was designed to
8 be the technically optimum place of separation to maintain reliability on both
9 sides of the separation to serve properties within and owned by the city, avoid
10 duplication of distribution and transmission equipment, minimize operational and
11 maintenance conflicts, establish the Acquisition Area boundaries along property
12 boundaries, and define the primary areas in which the utility will acquire property
13 interests to implement Article XIII of the charter.

14 G. Article XIII of the charter provides for the electric utility to
15 acquire, provide, and operate electric utility facilities that meet the goals and
16 standards expressed in Article XIII and the city staff and consultants have created
17 a preliminary inventory of the real property interests and equipment necessary to
18 be acquired in the Acquisition Area as described in the Memoranda, which
19 inventories, as they may be amended in the future, are incorporated herein by
20 reference (the "Property Interests and Assets").

21 H. The Property Interests and Assets are used and useful in
22 connection with the rendering of electric utility service for the Project and
23 constitute a complete economic unit for the purpose of separation from Xcel.

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

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

K. There is a public, local, and municipal need and necessity for the
city to obtain possession of and to acquire the Property Interests and Assets for
the Project, which will benefit the public health, welfare and safety.

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

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

4 Section 3. Should negotiations for the acquisition of the Property Interests and Assets
5 fail, the City Council authorizes the city manager to acquire the Property Interests and Assets, or
6 any parts thereof, by the exercise of the power of eminent domain, and further authorizes the city
7 attorney to initiate condemnation proceedings to acquire the Property Interests and Assets;
8 provided however, a Petition in Condemnation shall not be filed with the Boulder District Court
9 before January 1, 2014. The city and its designees may from time to time amend the property
10 described in Property Interests and Assets to add or delete real property or equipment to
11 adequately reflect the intent of this ordinance.

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

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

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

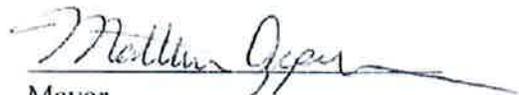
19
20
21
22
23
24
25

Mayor

Attest:


City Clerk

26 READ ON SECOND READING, AMENDED, AND ORDERED PUBLISHED BY
27 TITLE ONLY this 6th day of August 2013.


Mayor

Attest:


City Clerk

1 READ ON THIRD READING, PASSED, ADOPTED, AND ORDERED PUBLISHED
2 BY TITLE ONLY this 20th day of August 2013.

3 
4 Mayor

5 Attest:
6 
7 City Clerk

8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

FOCUS™ Terms Search Within Original Results (1 - 1)

Advanced...

View

1 of 1

Book Browse

View Tutorial

C.R.S. 38-1-121 (Copy w/ Cite)

Pages: 3

C.R.S. 38-1-121

COLORADO REVISED STATUTES

*** This document reflects changes current through all laws passed at the First Regular Session of the Sixty-Ninth General Assembly of the State of Colorado (2013) ***

TITLE 38. PROPERTY - REAL AND PERSONAL
EMINENT DOMAIN
ARTICLE 1. PROCEEDINGS
PART 1. PROCEEDINGS - REQUIREMENTS AND LIMITATIONS - DETERMINATION OF JUST
COMPENSATION

C.R.S. 38-1-121 (2013)

38-1-121. Appraisals - negotiations

(1) As soon as a condemning authority determines that it intends to acquire an interest in property, it shall give notice of such intent, together with a description of the property interest to be acquired, to anyone having an interest of record in the property involved. If the property has an estimated value of five thousand dollars or more, such notice shall advise that the condemning authority shall pay the reasonable costs of an appraisal pursuant to subsection (2) of this section. Such notice, however, need not be given to any of such persons who cannot be found by the condemning authority upon the exercise of due diligence. Upon receipt of such notice, such persons may employ an appraiser of their choosing to appraise the property interest to be acquired. Such appraisal shall be made using sound, fair, and recognized appraisal practices which are consistent with law. The value of the land or property actually taken shall be the fair market value thereof. Within ninety days of the date of such notice, such persons may submit to the condemning authority a copy of such appraisal. The condemning authority immediately upon receipt thereof shall submit to such persons copies of its appraisals. If the property interest is being acquired in relation to a federal aid project, then the appraisals submitted by the condemning authority shall be those which have been approved by it pursuant to applicable statutes and regulations, if such approval is required. All of these appraisals may be used by the parties to negotiate in good faith for the acquisition of the property interest, but neither the condemning authority nor such persons shall be bound by such appraisals.

(2) If an appraisal is submitted to the condemning authority in accordance with the provisions of subsection (1) of this section, the condemning authority shall pay the reasonable costs of such appraisal. If more than one person is interested in the property sought to be acquired and such persons cannot agree on an appraisal to be submitted under subsection (1) of this section, the condemning authority shall be relieved of any obligation herein imposed upon it to pay for such appraisals as may be submitted to it pursuant to this section.

(3) Nothing in this section shall be construed as in any way limiting the obligation of the condemning authority to negotiate in good faith for the acquisition of any property interest sought prior to instituting eminent domain proceedings or as in any way limiting the discovery rights of parties to eminent domain proceedings.

(4) Nothing in this section shall prevent the condemning authority from complying with federal and state requirements to qualify the authority for federal aid grants.

(5) Nothing in this section shall be construed to limit the right of the condemning agency to institute eminent domain proceedings or to obtain immediate possession of property as permitted by law; except that an eminent domain proceeding may not proceed to trial on the issue of valuation until the ninety-day period provided in subsection (1) of this section has expired or the owner's appraisal has been submitted to the condemning authority, whichever is sooner.

(6) If the parties involved in the negotiations fail to reach agreement on the fair market value of the property being acquired, the condemning authority, prior to proceeding to trial on the issue of valuation, shall furnish all owners of record a written final offer.

HISTORY: Source: L. 75: Entire section added, p. 1405, § 1, effective July 18. L. 78: (1) and (5) amended, p. 274, § 100, effective May 23. L. 85: (1) amended and (6) added, p. 1194, § 5, effective June 6.

ANNOTATION

Statute designed to facilitate negotiations and settlement. This statute, which is not mandatory, contemplates and is designed to facilitate negotiations and settlement between parties involved in condemnation proceedings. *City of Colo. Springs v. Berl*, 658 P.2d 280 (Colo. App. 1982).

This section does not apply to the award of costs pursuant to C.R.C.P. 54(d). *City of Colo. Springs v. Berl*, 658 P.2d 280 (Colo. App. 1982).

When costs of appraisals are litigation expenses. If the owner chooses not to submit appraisals prior to trial, but does so as evidence during trial, the costs of the appraisals of real property are correctly viewed as expenses necessarily incurred by reason of the litigation. *City of Colo. Springs v. Berl*, 658 P.2d 280 (Colo. App. 1982).

Amount offered by county not dispositive of lack of good faith attempt to negotiate where efforts by county were thwarted by lack of response from the landowners. *Bd. of County Comm'rs v. Blosser*, 844 P.2d 1237 (Colo. App. 1992).

Property interests contemplated by subsection (3) are limited to recorded interests. *City & County of Denver v. Eat Out, Inc.*, 75 P.3d 1141 (Colo. App. 2003).

View

1 of 1

Book Browse

C.R.S. 38-1-121 (Copy w/ Cite)

Pages: 3



About LexisNexis | Privacy Policy | Terms & Conditions | Contact Us
Copyright © 2014 LexisNexis, a division of Reed Elsevier Inc. All rights reserved.