

DISTRICT COURT, BOULDER COUNTY, COLORADO

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Boulder County Justice Center
1777 6th Street
Boulder, Colorado 80302

Petitioner:

THE CITY OF BOULDER, a Colorado Home Rule City,

v.

Respondents:

PUBLIC SERVICE COMPANY OF COLORADO, a Colorado Corporation, d/b/a XCEL ENERGY, U.S. Bank National Association; and PAUL WEISSMANN, in his official capacity as Treasurer of Boulder County.

▲ COURT USE ONLY ▲

Case No. 2019CV

Division:

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PETITION IN CONDEMNATION

The City of Boulder, Petitioner (“City” or “Petitioner” or “Boulder”), by and through its attorneys, alleges as follows:

GENERAL ALLEGATIONS

1. The City is a home rule city of the State of Colorado organized and existing under a home rule charter pursuant to the Colorado Constitution, Article XX.

2. The City’s authority to maintain this proceeding is set forth in Article XX, sections 1 and 6 of the Colorado Constitution, in Article 1, sections 2(b) and (d) and Article XIII, section 180(a) of the Home Rule Charter of the City of Boulder, and C.R.S. § 38-5-105.

3. The City has the power to construct, condemn, purchase, acquire, add to, maintain, conduct, and operate public utilities or works or ways, in whole or in part within or without its territorial limits and everything required therefore pursuant to the Colorado Constitution, Article XX, sections 1 and 6.

4. Colorado Constitution, Article XV, section 8 states: “The right of eminent domain shall never be abridged nor so construed as to prevent the general assembly from taking the property and franchises of incorporated companies and subjecting them to public use, the same as the property of individuals” Article XX states, in part, that home rule cities:

. . . shall have the power, within or without its territorial limits, to construct, condemn and purchase, purchase, acquire, lease, add to, maintain, conduct, and operate water works, light plants, power plants, transportation systems, heating plants, and any other public utilities or works or ways local in use and extent, in whole or in part, and everything required therefore, for the use of said city and county and the inhabitants thereof, and any such systems, plants, or works or ways, or any contracts in relation or connection with either, that may exist and which said city and county may desire to purchase, in whole or in part, the same or any part thereof may be purchased by said city and county which may enforce such purchase by proceedings at law as in taking land for public use by right of eminent domain, . . . (emphasis added).

5. The property to be acquired is comprised of existing electric distribution facilities from connection to the electric transmission grid operated by Respondent Public Service Company of Colorado d/b/a Xcel Energy and its parent holding company, Xcel Energy, Inc., (“Xcel”) extending to customer meters within the City and the property interests necessary to operate those facilities as more specifically described below (the “Property”).

6. The project for which the Property is being acquired is to separate the existing electrical distribution system serving customers in the vicinity of the City into two separate distribution systems from the substation to the customer meter, one serving only customers

within the City (the “Boulder System”) and the other serving customers of Xcel (the “Xcel System”), by reconfiguration of the existing equipment and the addition of new facilities so that each system can be operated independently of the other in order to distribute electricity to the respective retail customers of the City and Xcel, as more particularly described below (the “Project”).

7. The City has complied with all conditions precedent for the exercise of its condemnation powers in this case.

8. This proceeding is brought pursuant to the procedural provisions of C.R.S. § 38-1-101, *et seq.*, as amended.

9. Petitioner is informed and believes that Public Service Company of Colorado and its parent holding company, Xcel, as its interests may appear with respect to the Property (collectively, “Xcel” or the “Respondent”), own the Property.

10. Respondent U.S. Bank National Association (formerly First Trust of New York, National Association), a national banking association, as successor trustee to Morgan Guaranty Trust Company of New York under the Indenture, dated as of October 1, 1993, and recorded with the Boulder County Clerk and Recorder on October 13, 1993 at Reception No. 01347991 as supplemented by Supplement Nos. 1 through 30 (the “Indenture”). The Indenture encumbers lands and interests of Xcel used in its electric utility business which may include some or all of the Property. The Indenture encumbers lands and interests of Xcel used in its electric utility business “except land and interests in land which have been specifically released from such Lien” which may include some or all of the Property.

11. Respondent Paul Weissmann as Treasurer of Boulder County is joined as a Respondent pursuant to C.R.S. § 39-3-134.

12. Insofar as it is known to the Petitioner, upon its exercise of due diligence, there are no other persons or entities who may claim any right, title, or interest in or to the Property.

13. Petitioner is informed and believes this action does not affect the property of any persons in a guardianship or conservatorship.

14. The Property is located in the County of Boulder, Colorado, which is the county in which this action is brought.

15. Venue is proper in Boulder County District Court.

16. All Property, including property interests, facilities and equipment sought in this proceeding are subject to acquisition by the Petitioner and necessary for the Project.

17. The Property is being acquired for a public purpose and in furtherance of a public use: establishing, erecting, maintaining and operating a municipal light and power utility for the use of the City and its inhabitants. The public purpose is further defined as the Project below.

18. Petitioner has negotiated in good faith with Xcel in an attempt to acquire the Property but has been unable to reach a mutual agreement. The just compensation to be paid for the Property cannot be agreed upon and further negotiations would be futile.

19. Petitioner has the constitutional power of condemnation over property in which Xcel has an interest inside and outside of substations.

THE PROPERTY

20. The facilities portion of the Property consist of over 100,000 pieces of equipment such as 13.2 kilovolt (“kV”) (and lower voltage rated) electrical lines, transformers, meters, customer service drops, towers, poles, braces, anchors, crossarms, cables, conduits, conductor, switching stations, high tension apparatus, control and protective equipment, customer meters, streetlights, appurtenances and related fixtures.

21. The Property is part of a working system that changes on a regular basis as customers relocate and construction occurs. The Exhibits made a part of this filing are a snapshot in time of that dynamic system provided by Xcel to the City as part of the Colorado Public Utilities Commission proceedings in Proceeding No. 15A-0589E (the “PUC Proceedings”). Boulder will use the provisions of C.R.S. § 38-1-104 to amend the Petition to reflect any changes made necessary by further proceedings, changes made in the normal course of business and any other Project requirements.

22. The City has identified all of the facilities and the property interests in Excel spreadsheets and PDF diagrams, and the location of all of the facilities within the property interests in Geographic Information System (GIS) format. The spreadsheets and the mapping in GIS format have been provided to Xcel. Printing the spreadsheet for the facilities would require over 1500 pages of legal-size paper.

23. Certain information related to the facilities and property interests and the precise location constitutes critical electric infrastructure information subject to restrictions on disclosure established under the authority of state or federal law (e.g. C.R.S. § 24-33.5-1602, or 42 U.S.C. § 5195c(e)) (referred to as “CEII”).

24. Because the spreadsheets, diagrams, and mapping in GIS format are CEII, the City will file a Motion for Protective Order so that upon issuance of a Protective Order they can be provided to the court and other Respondents maintaining the confidential nature of that information.

25. There are two spreadsheets and one GIS map itemizing portions of the Property with summaries of each attached as public exhibits:

- A. **Exhibit 1** is the spreadsheet listing the distribution facilities that are not substation assets (the “Facilities Spreadsheet”) to be acquired. Public Exhibit 1 attached hereto shows the summary of the assets on the Facilities Spreadsheet and provides the location of the spreadsheet that contains 1597 pages identifying the facilities individually.
- B. **Exhibit 2** is the list of documents that describe properties that may include facilities on the Facilities Spreadsheet (the “Property Spreadsheet”) to be acquired. Exhibit 2 is in three parts: Part 1 contains the recorded property interests identified by Xcel and the City through January 2019; Part 2 contains the recorded property interests identified by Xcel and the City and compiled after January 2019; Part 3 contains the unrecorded property interests provided by Xcel. Public Exhibit 2 attached hereto shows the format of each part of the Property Spreadsheet. Confidential Exhibit 2 is the same format, with all of the properties itemized with recording and location information. Exhibit 2, Part 1 contains 968 recorded documents, Exhibit 2, Part 2 contains 140 recorded documents; and Part 3 contains 20 unrecorded documents provided by Xcel.
- C. **Confidential Exhibit 3** (“GIS Map”) is the mapping, in GIS format, that includes all of the facilities described on Exhibit 1 and Confidential Exhibit 2 and streetlights and appurtenances.

26. All of the facilities, equipment and property interests identified in Exhibit 1 and Confidential Exhibit 2 have been approved for transfer by the Colorado Public Utilities Commission by Decision No. C19-0874, dated October 28, 2019 in the PUC Proceeding.

27. The Property sought for acquisition in this proceeding includes:

- A. All of the facilities, equipment and property interests identified on Exhibit 1 and Confidential Exhibit 2;
- B. All appurtenances to the facilities identified which include items such as customer meters, manholes, services and secondaries, vaults, guys, and fiber optic and communication facilities;
- C. All streetlights within the City;
- D. Facilities that are not used or useful, such as SmartGrid equipment, or that are obsolete, but that could interfere with the Boulder System if they were abandoned or retired in place;
- E. Any other distribution facilities and associated appurtenances and property interests that are used or useful for customers inside the City and were not

included in the information provided by Xcel, which information is described below; and

F. Agreements between Xcel and third parties which are necessary to operate the Property or for third party use of the Property, such as pole attachment agreements.

28. Confidential Exhibits 2 and 3 have been provided to Xcel.

29. Confidential Exhibits 2 and 3 will be provided to the Court and other Respondents under a protective order.

30. Exhibit 1 (Facilities Spreadsheet) and Confidential Exhibit 3 (GIS Map) were created from information in a model of the existing distribution facilities serving Boulder customers provided by Xcel in 2016 and updated in 2018.

31. Exhibit 1 contains the portion of the list of facilities that was approved for transfer by the Colorado Public Utilities Commission (the "PUC") in Decision No. C19-0874.

32. Confidential Exhibit 2 (Property Spreadsheet) contains some of the documents that were included on a spreadsheet that was prepared by Xcel as part of the PUC Proceeding.

33. Xcel is thoroughly familiar with the location of the Property as it has constructed, operated, and maintained the facilities for many years.

34. Any Property that is physically located with facilities Xcel will retain in the same easement is subject to the Easement Sharing Agreement between Xcel the City dated November 16, 2018 (attached as **Exhibit 4**).

35. The Property does not include:

A. Accounts receivable, claims, credits, demands and judgments, customer deposits, permits, licenses or franchises, patents, patent licenses, applications, or other patent rights, trade name, trademarks, copyrights, logos, manuals, proprietary software, best practices studies, chooses in action and other intangibles, including, without limitation computer software;

B. Any motor vehicles, movable equipment, or rolling stock;

C. Any facilities or real property interests that are not included in Xcel's system of plant accounts maintained in accordance with the *Uniform System of Accounts Prescribed for Public Utilities and Licensees Subject to the Provisions of the Federal Power Act* (18 C.F.R. Part 101) (the "Uniform System of Accounts") at its original cost (as the term "original cost" is defined in Uniform System of Accounts Definition No. 23) less accumulated

depreciation (as the term “depreciation” is defined in Uniform System of Accounts Definition No. 12);

- D. Going concern value of assets;
- E. Transmission or generation facilities for electricity;
- F. Distribution or transmission facilities for natural gas;
- G. Any facilities necessary for Xcel to retain after completion of the Project to serve its customers;
- H. Any new facilities, equipment or systems planned by Xcel but not used or useful in providing electric distribution service to Boulder customers on or before the date of valuation; or
- I. Any deposits Xcel may have received from customers or any agreements with customers.

THE PROJECT

36. The plan for the reconfiguration of existing equipment and installation of new equipment to create the Boulder System and the Xcel System is referred to as the “Separation Plan” and is part of the Project

37. The Project includes:

- A. Acquisition of the Property, completion of the Separation Plan, the work necessary to transfer customers to the Boulder System or the Xcel System (the “Cut-Over Plan”), and other work necessary as contemplated in the Agreement for Payment of Costs dated October 24, 2018, as amended (the “Cost Agreement”); and
- B. Installation of meters, and associated disconnection switches, protective devices and communications systems inside and outside of the substations to interface with each other and Xcel’s System in accordance with the Separation Plan; and
- C. Interconnection of the Boulder System facilities to the transmission system as provided in Xcel’s Open Access Transmission Tariff and in accordance with applicable law and requirements of the Federal Energy Regulatory Commission; and
- D. The True-Up Costs, Cut-Over Work and all other work that is performed at Boulder’s expense as provided in the Cost Agreement; and

- E. Maintaining Xcel’s ability to distribute power to Xcel facilities and customers as they exist after completion of the Project as part of a safe, effective and reliable system.

38. Pursuant to Decision No. C17-0750 in the PUC Proceedings, the City is not paying for the Property and the property is not being transferred to the City, (a) unless the voters of the City authorize the construction portion of the Project at an election referred to as the Go/No-Go Vote in the Cost Agreement; and (b) until the Cut-Over Date as defined in the Cost Agreement.

39. As part of the Project, and in accordance with the System Impact Study Report for the six substations presently serving Boulder, provided by Xcel to Boulder on October 31, 2018 and a second report on the alternative location provided on December 19, 2018, and the Facilities Study Reports dated August 16, 2019, (collectively the “Interconnection Report”), the substations to be reconfigured and constructed as part of the Separation Plan include:

- A. Adjacent to the existing Sunshine substation, on property owned by the City, the City will construct a new substation to serve its customers. It will be connected to the transmission system outside of the existing substation fence.
- B. At the Boulder Terminal Substation, Boulder will connect its distribution to facilities and pay for new buswork and metering for the Xcel transmission facilities. At the Leggett Substation, Boulder will construct a new substation to the north of the existing substation. The new Boulder Leggett Substation will be connected to the transmission system outside the substation fence.
- C. At the NCAR Substation, Boulder distribution facilities will be connected to transmission and Boulder will pay for new buswork and metering for the Xcel transmission facilities and a new electrical equipment enclosure for Xcel.
- D. At the Gunbarrel Substation, Boulder will connect its distribution equipment.
- E. At the new substation at the City’s Wastewater Treatment Plant, Boulder will construct a new substation to serve its customers and Xcel will construct a new interconnection substation at Boulder’s expense.
- F. Future acquisition of substation facilities and property in accordance with applicable law and/or such new substations as may be necessary in the vicinity of the existing Boulder Terminal and Gunbarrel substations.

40. The Project does not include any electric generation or transmission facilities, or any natural gas transmission or distribution facilities, or property interests necessary for such facilities.

41. After completion of the Project, none of the City's distribution facilities will be co-located with Xcel distribution facilities in any of the substations.

42. In paragraph 114 of the 2017 PUC Decision defined in Paragraph 59 of this Petition, the PUC concluded that "Public Service will be able to continue to provide safe, reliable and effective service post separation in accordance with good utility practice and industry standards in the design, construction, and operation of its system" if Boulder complies with the conditions of the 2017 PUC Decision.

43. Pursuant to the terms of the Cost Agreement as defined in this Petition, all of the work to accomplish the Project is being paid for by the City.

44. The Separation Plan is designed to maintain or exceed the existing safety, effectiveness and reliability of the of the Xcel System after implementation of the Project.

BOULDER ELECTIONS AND PAST PETITION IN CONDEMNATION

45. On November 1, 2011, voters in the City approved Ballot Question 2C, which adopted a new Chapter XIII to the Boulder Home Rule Charter providing for the City to operate its own electric utility under specified circumstances, including acquiring existing assets from the Respondent. The process for the change of the retail distribution provider from an investor-owned utility such as Xcel, to a municipality is often referred to as "Municipalization."

46. On November 7, 2017, voters in the City approved Ballot Question 2O by 82.77% to 17.23% to change the charter to allow the voters to determine whether to proceed after knowing costs of municipalization.

47. On August 20, 2013 Ordinance 7918 was adopted by the Boulder City Council, which authorizes the City to exercise its power of eminent domain in this case. Ordinance 7918 can be found at <https://documents.bouldercolorado.gov/weblink8/0/doc/123436/Page1.aspx>.

48. On July 17, 2014, the City filed a Petition in Condemnation for acquisition of property from the Respondent for the City Utility in Civil Action No. 2014CV30890.

49. On August 12, 2014, Respondent filed a Motion to Dismiss.

50. On February 13, 2015, the Court granted the Motion to Dismiss relying on its ruling in Case No. 2014CV30047 that the PUC had to decide how the facilities would be divided, assigned and jointly used to protect the utility system's effectiveness, reliability, and safety.

THE 2014 BOULDER APPEAL OF 2013 PUC DECISION

51. On January 28, 2014, the Boulder District Court in Case No. 2014CV030047 granted Boulder's Writ of Certiorari to review PUC Decision C13-1530 Decision Issuing Declaratory Orders dated October 29, 2013 and 13-1550 Decision Denying Boulder's Application of Rehearing, Re-argument, or Reconsideration dated December 18, 2013 in PUC Proceeding No. 13D-0498E (the "PUC 2013 Decision").

52. On January 14, 2015, the District Court affirmed the PUC 2013 Decision (the "2015 District Court Decision"), finding:

- A. The PUC action only *delays* [emphasis in original] Boulder's constitutional right to eminent domain, a delay that would necessarily occur at some point in time prior to finalizing the utility municipalization to provide PUC its constitutional right to investigate and determine how the facilities should be assigned, divided, or jointly used to protect the system's effectiveness, reliability, and safety, as well as any other matters affecting the public interest. 2015 District Court Decision at 8.
- B. Boulder has a constitutional right to condemn facilities in unincorporated Boulder County for its city utility municipalization, but it does not have a constitutional right to usurp the PUC's constitutional right to regulate facilities and services that serve utility customers in unincorporated Boulder County. 2015 District Court Decision at 11.

53. In the 2015 District Court Decision, Judge LaBuda ruled:

- A. Therefore, it is necessary and appropriate for the PUC to determine how facilities should be assigned, divided, or jointly used to protect the system's effectiveness, reliability, and safety. Such a determination must be made prior to the City's condemnation of property for utility municipalization. 2015 District Court Decision at 12.
- B. This finding does not abrogate the City's constitutional right to eminent domain, but rather just delays the City's constitutional right, a delay that would necessarily occur at some point in the process. *Id.* Pg. 12.

54. The 2015 District Court Decision is limited to circumstances where the City intends to serve customers outside its boundaries:

In assessing the operation of utilities outside the boundaries of a municipal, "the PUC must . . . be allowed the power to resolve jurisdictional disputes between municipalities and private utilities companies over who is to serve areas outside municipal boundaries" quoting *Loveland v. Pub. Utils, Comm'n*, 580 P.2d 381, 385 (Colo. 1978) . . . what matters is the fact that

Boulder seeks to include non-resident customers in its service area. Service to non-resident customers thus invokes PUC jurisdiction and regulation. 2015 District Court Decision at 7.

2015 PUC PROCEEDINGS

55. On July 7, 2015, the City filed an Application for Approval of the Proposed Transfer of Assets in the PUC Proceedings. The plan for separation of assets for this First Application was virtually the same as the plan considered as part of the 2015 District Court Decision, including serving customers outside the City boundaries.

56. On December 30, 2015, in Decision No. C15-1360-I the PUC dismissed the portion of the Application that provided for transfer of assets that served Xcel customers exclusively and granted the City's request to file a supplemental application.

57. On September 28, 2016, the City filed its Second Application that eliminated its request for transfer of facilities that serve Xcel customers outside the boundaries of the City, and proposed, (a) for the City and Xcel to provide back-up service to the other or to have no interconnection at the distribution level of either system; (b) for a Transition Period during which time construction would occur to separate the existing system into two systems and the City would own the facilities it acquired and bill its customers, and Xcel would retain its facilities and bill its customers; and (c) a Gradual Departure Plan allowing Boulder to buy power from Xcel until the native load needed more generation.

58. On May 12, 2017, the City filed its Third Application which eliminated the Gradual Departure Plan and provided for four phases for division of the existing system into two systems so that the PUC retained oversight and approval of the separation construction, the transfer of service from the existing system to the Boulder System, and Boulder's reimbursement of Xcel's prudently incurred costs on separation construction.

THE 2017 PUC DECISION

59. On September 14, 2017, the PUC issued Decision No. C17-0750 Granting, in Part and with Conditions, and Denying, in Part, Third Supplemental Verified Application in Proceeding 15A-0589E, a copy of which is attached as **Exhibit 5** (the "2017 PUC Decision").

60. The 2017 PUC Decision approved the designation of assets for transfer outside of substations subject to Boulder satisfying three conditions, (1) an agreement providing Xcel with permanent property rights for any distribution facilities it retains within the City boundaries to serve Xcel customers; (2) a corrected list of facilities and list of property interests for those facilities; and (3) an agreement for Boulder to pay all costs incurred by Xcel in the separation of the systems.

61. On October 26, 2018, the City and Xcel submitted a Joint Filing to the PUC in order to satisfy the conditions of the 2017 PUC Decision including, the Interim Agreement for Payment of Costs, the Agreement for Payment of Costs (collectively included in the definition of Cost

Agreement), the Easement Sharing Agreement, and the Permanent Easement Agreement, all four agreements between Xcel and the City, and corrected lists of assets (Exhibit 5A for facilities and Exhibit 5B for property interests) (the “2018 Joint Filing”).

62. Xcel filed a Notice of Withdrawal from the list of assets portion of the 2018 Joint Filing, in part because the City had authorized acquisition of Xcel’s facilities.

63. Subsequent to filing of its Notice of Withdrawal, Xcel has agreed that the list of facilities made part of the Joint Filing as Exhibit 5A is accurate.

64. As recognized by the PUC in the 2017 PUC Decision, the City does not intend to acquire all of the properties in Exhibit 5B, but only portions thereof that include facilities on Exhibit 5A.

65. The 2017 PUC Decision was adopted by the PUC to “satisf[y] the requirements stemming from the Boulder District Court.”¹

66. The 2017 PUC Decision recognized that the PUC does not have jurisdiction when the municipality operates to serve customers solely within its boundaries:

It was clear to the judge that the Commission does not have jurisdiction to exercise its authority under article XXV when a municipal operates a utility solely within its boundaries under article XX. Paragraph 96 of Decision.

67. After completion of the Project, the Property defined herein will not serve any customers outside of the City boundaries; it will only serve customers within the City boundaries.

2019 CONDEMNATION PETITION AND PUC DECISION

68. On June 28, 2019, after conducting good faith negotiations with Xcel that did not result in agreement on the just compensation to be paid for the assets, the City filed a Petition in Condemnation for acquisition of property from Xcel in Civil Action No. 2019CV30637.

69. On August 5, 2019 Respondent Xcel filed a Motion to Dismiss.

70. On September 4, 2019, the Court granted the Motion to Dismiss relying on the reasoning in Xcel’s Motion to Dismiss that the PUC Proceedings had not been completed.

71. On October 28, 2019, the PUC determined that the conditions of the 2017 PUC Decision had been satisfied, the approval requested for transfer of assets was granted without condition, and the PUC Proceeding was dismissed. The decision is attached as **Exhibit 6**.

¹ References to Order Re: Judicial Review of the Colorado Public Utilities Commission Decision, *City of Boulder v. Pub. Utils. Comm’n*, Case No. 14CV30047 (Boulder Dist. Ct., January 14, 2015) will hereinafter be referred to as the “Boulder District Court Decision.”

THE FERC-REGULATED OATT PROCESS

72. The 2017 PUC Decision provided (at Paragraphs 128-130) that the separation of facilities at substations would be accomplished as provided for in a transmission load interconnection process to be initiated by an application by Boulder under Xcel's Open Access Transmission Tariff (the "OATT") approved by the FERC.

73. The City submitted its Load to Transmission Interconnection System Impact Study ("SIS") Request to Xcel pursuant to its OATT on January 9, 2018. Xcel thereafter completed the System Impact Studies requested by the City and delivered to the City a report (the "SIS Report") outlining its conclusions concerning the conditions and configurations under which Xcel could connect the electric demand to be served by the Boulder System to the electric transmission grid operated by Xcel.

74. The City accepted Xcel's configuration proposals in the SIS Report for substations at Sunshine, Boulder Terminal, Leggett, NCAR, Gunbarrel and the Wastewater Treatment Plant.

75. The SIS Report contemplates that the City would (a) acquire all of the distribution facilities in the Boulder Terminal and NCAR Substations; (b) acquire Xcel's distribution facilities at the Gunbarrel Substation (Boulder Terminal, NCAR and Gunbarrel Substations shall be referred to as the "Boulder Distribution Substations"); and (c) build three new substations; one adjacent to the Sunshine and Leggett Substations, and the third on property owned by the City (to be referred to as the "New Boulder Substations"). Collectively both the Xcel and City portions of the Boulder Distribution Substations and the New Boulder Substations shall be referred to as the "Substations."

76. The SIS Report included a list and location of the existing equipment that would become part of the Boulder System. The SIS Report also identified the location of new Boulder equipment in both existing and new substations and the demarcation location between Boulder and Xcel. Finally, the SIS Report identified where the Boulder distribution system would interconnect with the Xcel transmission system.

77. The property interests and assets described on the Substation Asset list were derived from the SIS Report.

78. Pursuant to application by the City, effective May 7, 2019, the City and Xcel entered into a Facilities Study and Detailed Engineering Design Agreement that provides for the next phase of the OATT process (the "Facilities Study Agreement") and the engineering design for the City and Xcel construction reconfiguring the existing facilities for both the Xcel and City systems, and the new facilities for both the Xcel and City Systems.

79. After acceptance of the draft studies by Boulder, the Facilities Studies were completed on August 16, 2018 (the "Facility Report").

80. There were no changes to the general arrangement diagrams or the one-line diagrams in the Facility Report from the SIS Report.

81. There are no other requirements in the OATT before Boulder requests network integration service after this proceeding is completed.

82. The SIS Agreements were filed with the FERC in Docket Nos. ER 18-1502-000 and ER 19-141-000 and the Facilities Study Agreement was filed with the FERC in Docket No. ER 19-1784-000. All were accepted by the FERC for filing under § 205 of the Federal Power Act.

THE ACQUISITION PROCESS

83. On December 4, 2018, the Boulder City Council adopted Ordinance 8302 that authorized acquisition of the Property, including by condemnation, if necessary. The ordinance is attached as **Exhibit 7**.

84. By Ordinance 8302, the City determined there is a need and necessity and that it is in the public's best interest for the City to acquire the Property.

85. On November 20, 2019, the City sent its Notice of Intent to Acquire and Final Offer to Xcel and has met with representatives of Xcel to determine a purchase price for the Property.

86. Xcel has said that it cannot respond to the Final Offer and has engaged in conduct intended only to delay negotiations rather than move to resolution.

87. Good faith negotiations have failed and further negotiation at this time would be futile.

88. The 2017 PUC Decision prohibits the transfer of the Property until the Cut-Over Date to require Xcel to maintain and operate the Property until the Boulder System and the Xcel System can operate independently.

89. The Cost Agreement defines how changes in the Property and appreciation or depreciation of the Property between (a) the determination in this proceeding of the just compensation before the Go/No-Go Vote, and (b) the Cut-Over Date (the "Construction Period").

90. Except as provided in the Cost Agreement, no further adjustments to the just compensation are to be made as a result of circumstances during the Construction Period.

NO DAMAGES

91. After Petitioner's completion of the Project, Xcel's electric distribution system will be safe, effective and reliable.

92. As a result of the Project, Xcel will suffer no damages to its electric distribution system.

93. As a result of the Project, the Xcel electric distribution system is specifically benefitted.

REQUESTS FOR RELIEF

WHEREFORE, Petitioner requests this court enter Orders as follows:

1. That if ownership or interests in the Property are not correctly set forth herein, then the Respondents be required to set forth by Answer the extent of their respective interests and the names and addresses of any other interested persons or entities and the nature and extent of their interest.

2. That the just compensation to be paid for the acquisition of the Property be determined in the manner provided by law.

3. That the Petitioner have judgment condemning the Property and that a Rule and Order be entered conveying the Property to the Petitioner upon Petitioner's payment of just compensation as determined by the Court.

4. That the Respondent be ordered to make and prosecute, in a timely and expeditious manner, in cooperation with the Petitioner, such regulatory filings before regulatory tribunals charged with supervising the public's interest with respect to the involuntary transfer of utility assets as may be necessary and appropriate to effectuate the transfer of ownership of the Property from the Respondent to the Petitioner.

5. Any additional relief as may be deemed just and proper.

Respectfully submitted this 19th day of December 2019.

BOULDER CITY ATTORNEY'S OFFICE

By: /s/ Kathleen E. Haddock
Thomas A. Carr, City Attorney
Kathleen E. Haddock, Senior Counsel

ATTORNEYS FOR PETITIONER

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