BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

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

SECOND SUPPLEMENTAL VERIFIED APPLICATION

OF

THE CITY OF BOULDER

PROCEEDING NO. 15A-0589E

SEPTEMBER 28, 2016

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The City of Boulder, Colorado (the "City" or "Boulder"), pursuant to §§ 40-5-101(b) and 40-5-105, Colorado Revised Statutes, Commission Rule 4 C.C.R 723-3-3104, and Commission Decision No. C15-1360-I, respectfully submits this Second Supplemental Verified Application (the "2016 Application") to the Colorado Public Utilities Commission (the "PUC" or "Commission") for approval of the transfer of certain assets owned by Public Service Company of Colorado ("PSCo") to the City that are necessary for the operation of a municipal electric utility pursuant to Article XIII of the Boulder Home Rule Charter, and for associated authorizations and relief described in this Verified Application.

I. SUMMARY OF APPLICATION

Boulder is asking the Commission to approve the transfer of distribution assets needed to operate the City's new municipally-owned electric utility. Boulder is not seeking the transfer of generation assets or transmission assets nor is Boulder seeking to acquire assets used exclusively to serve PSCo customers. Further, Boulder is not seeking to serve any customers located outside

Boulder's jurisdictional boundaries (the "City Limits") in unincorporated Boulder County. Rather, Boulder's request includes only the electric distribution facilities and real property interests (the "Property") necessary for the new electric utility to serve its customers located within the City Limits. Some of the Property that is necessary to serve customers within the City is located outside the City Limits and Boulder seeks the Commission's transfer approval for those assets, as well; however, to be clear, these are not facilities or real property interests that PSCo will use to serve PSCo customers who are located outside the City once the two distribution systems are separated. Notably, there are two City-owned properties within the City Limits that the City is proposing that PSCo continue to serve: the facilities at Boulder Reservoir on the northern edge of the City Limits and the Open Space and Mountain Parks Department facilities located at Cherryvale Road and South Boulder Road on the southeastern edge of the City Limits. While Boulder would like to be able to provide electric service to all City-owned properties, the significant cost for the City to provide electric service to those two facilities made doing so infeasible at this time.

The City is not seeking authority to transfer any other assets, including any PSCo generation assets, PSCo transmission assets, PSCo's certificate of public convenience and necessity, goodwill, consulting agreements, brands, advertising, or employees.

Boulder has developed and offers for the Commission's consideration a Separation Plan that will permit the City to provide electric service to its future customers within the City limits with City-owned facilities and PSCo to provide electric service to its customers in the unincorporated county with PSCo-owned facilities (the "Separation Plan"). Boulder requests that the Commission approve the proposed final configuration of the Separation Plan that identifies the construction of new facilities and reconfiguration of existing property interests (real and personal) and facilities that will be necessary for the existing system to ultimately operate as two separate systems.

Boulder initially analyzed several different approaches to separating a future Boulder electric distribution system from the PSCo electric distribution system. These approaches included plans that involved one utility wheeling over the lines of the other utility; that would result in the City not serving all customers within the City; and that would require annexation of all enclaves[1] to bring them into the City Limits. However, in the course of its analysis, Boulder eliminated these plans for engineering, legal and political reasons. Instead, Boulder focused on two distinctly different plans: a plan that would physically separate the two systems, but would require PSCo and the City to provide backup service to each other in case of system failure (the "EB Plan") and a plan that includes no distribution interconnection between the PSCo and Boulder systems (the "NDI Plan"). Boulder engineered both approaches to a planning level of engineering, but as the City reviewed each plan, it determined that in all but one area of the City, the NDI Plan was the superior plan despite having higher costs. Boulder then proceeded to perform reliability tests on that NDI plan. Boulder has fully vetted the NDI Plan for the entire city, as well as the EB Plan in one area of the City where new construction needed to serve just eight PSCo customers would cost over $1,100,000.

Having performed that analysis, Boulder's preferred plan is generally the NDI plan. However, in the one area in which the EB Plan is presented, while either plan is acceptable to Boulder, the City requests that the Commission consider the EB Plan in that area. The Direct Testimony of Thomas A. Ghidossi includes Highly Confidential Attachment TAG-6, the Technical

[1] Enclaves are areas entirely surrounded by land in the city that for a variety of reasons had never been annexed into the city

Volume, which includes a full reliability analysis for the electric distribution system's current configuration for the NDI Plan, and for the EB Plan in one area of the City.

The Separation Plan includes significant new construction. Boulder is proposing that the City be responsible for the implementation and management of the necessary construction and reconfiguration for all facilities under the Separation Plan for facilities that will ultimately be owned by the City. Boulder further proposes that PSCo be responsible for implementing and managing any construction and reconfiguration necessary under the Separation Plan for facilities that will ultimately be owned by PSCo. All construction and reconfiguration would be consistent with the approved Separation Plan and would be done at the City's cost and expense. Boulder proposes that the work be performed by a qualified third-party contractor that is acceptable to PSCo and all construction would be performed in a manner consistent with the National Electrical Safety Code, electric distribution standards and area engineering standards, as well as other applicable industry standards. Before any new facility would be brought online, PSCo would be entitled to inspect the new facilities to verify that they meet all applicable PSCo standards for interconnection.

After this proceeding has concluded and if negotiations between the parties are not fruitful, the City will file a condemnation action in district court to acquire the Property the Commission has approved for transfer. Once the condemnation case has concluded – or a negotiated agreement for the sale of facilities and property has been reached – the City will own the Property and be entitled to provide retail electric distribution service to the electric customers located within the City. However, before the new electric utility is able to function as a separate utility, much construction and reconfiguration will be necessary.

All distribution facilities serving City customers will be integrated with the PSCo system until the two distribution systems are completely separated. In fact, part of the system acquired by the City will initially be used to serve PSCo customers outside the City. Consequently, there will need to be a period of time during which PSCo continues to operate the system to ensure its customers (and the City's customers) continue to receive safe, reliable service during this transition. In order for PSCo to have complete control over the still-connected electric distribution system during the transition, Boulder is further proposing that the City, upon taking title, not take possession of the Property, but instead immediately lease back to PSCo at no cost the very same Property the City just acquired and that PSCo continue to operate the system just as it does today for a Commission-approved fee. This arrangement is necessary because while the City will own the facilities upon their acquisition, for safety and reliability reasons, it is important that only one utility operate the still-connected systems.

To further address concerns regarding the safe and reliable operation of the electric distribution system during the period while the construction and reconfiguration required under the Separation Plan is taking place and before the two systems have been separated (which is anticipated to be a period of two to three years (the "Transition Period")), Boulder is requesting that the Commission approve the key principles of an agreement (the "Transition Period Agreement"), which will form the basis for a future agreement between Boulder and PSCo and/or a Commission order. Boulder makes this request due to the limited jurisdiction of the condemnation court. That jurisdiction is restricted to issues regarding the power and authority to condemn and the just compensation payable for the property interests acquired. The condemnation court's jurisdiction does not extend to matters related to the safe and reliable operation of the system, which falls squarely within the jurisdiction of the Commission.

The key principles of the Transition Period Agreement that Boulder is asking the Commission to approve are found in the City's Request for Relief, located in Section XIII of this Second Supplemental Verified Application. They include 12 key principles that address Property lease terms, use, operation and control of the system, payment for operating the system, service for new customers and responsibility for capital improvements beyond routine maintenance, the limited services Boulder will provide to customers within the City Limits, and how to address minor modifications to the Separation Plan. Boulder requests that the Commission order the Transition Period Agreement be consistent with the key principles approved by the Commission.

During the Transition Period, Boulder will bill its retail customers for the electric service they receive from the City. In order to create those bills, the City needs certain data regarding those customers. That Customer Data (as defined in the Commission's Rules) is protected by the Commission's Data Privacy Rules. As part of this proceeding, and consistent with the Commission's prior ruling in Decision No. C16-0336-I, which granted a partial waiver of the Data Privacy Rules among other rulings, Boulder requests that the Commission waive certain of its rules to permit Customer Data to be transferred from PSCo to the City.

Finally, for several years now, Boulder has advised the Commission of its desire to form its own electric utility, and has expressly recognized the importance of ensuring PSCo's other ratepayers would not be negatively affected by Boulder's departure. This is particularly true in the area of generation, and the City's power supply. In this Application, Boulder seeks Commission approval of its proposed a Gradual Departure Plan. Initially, Boulder proposes to enter into a wholesale power supply agreement with PSCo to serve all of the City's energy and capacity requirements. Then, over time, Boulder proposes to leave the PSCo system gradually, while simultaneously allowing PSCo to use the PSCo-owned and contracted generation capacity, as it ceases to be used to serve Boulder, to serve PSCo's non-Boulder native load customers' load growth and capacity needs. As contemplated, this simultaneous exchange will take place in a time frame consistent with PSCo's forecasted future resource needs. This approach not only helps ease the transition of Boulder's departure from the PSCo system, but it also helps to protect PSCo's native load customers against the incurrence of unreasonable costs; ensure that PSCo's generation capacity remains used, useful, and of value to its ratepayers; and avoid unfairly shifting Boulder's share of the carrying costs for existing PSCo generation to its non-Boulder native load customers. Boulder's objective in forming a municipal electric utility is greater local control and self-determination over its electric delivery system and supply. This includes the City's goals of democratization, decentralization and decarbonization of its power supply.

This Commission is charged with ensuring the safety and reliability of the electric grid in Colorado and approving only those applications that come before it that are not contrary to the public interest through the review of safety, reliability and service quality issues. For all the reasons provided in this 2016 Application and testimony filed in support, Boulder maintains that the relief requested in the 2016 Application is not contrary to the public interest.

II. BOULDER'S ENERGY STORY

The City of Boulder is located 35 miles northwest of Denver and has a population of just over 100,000 residents. Nestled at the base of the Flatirons, the City has a strong and longstanding commitment to environmental stewardship—to creating a community reflective of its idyllic setting. The City's legacy in conserving its lands stretches back to 1898, when forward-thinking community members voted to purchase and preserve property that is now home to the historic

Colorado Chautauqua. Around the same time, the City first considered forming its own electric utility.

Boulder's legacy is the 65 square miles of City-owned open space that create a buffer between it and other cities, but the community's dedication to sustainability has evolved beyond maintaining diverse ecosystems and creating well-traveled public trails. The community is home to climate scientists, progressive activists, and outdoors enthusiasts, all of whom drove the City to take action related to climate change. Boulder is home to the University of Colorado at Boulder and its more than 30,000 students, faculty and staff, as well as several federal laboratories, including the National Center for Atmospheric Research, National Institute for Standards and Technology, and the National Oceanic and Atmospheric Administration. These institutions contribute to a vibrant local economy, with significant industry clusters in "clean tech," natural and organic foods, and active living and recreation.

In 2006, the Boulder voters approved the Climate Action Plan Tax ("CAP Tax"), the first carbon tax in the nation, which funds energy efficiency programs and initiatives. The CAP Tax is assessed on a customer's electricity consumption and is included on customers' electric bills. Consumption of electricity is the single largest source of GHGs attributable to the Boulder community, making efficient and renewable electricity use the focus of Boulder's climate action efforts. Since 2006, the CAP Tax has been renewed twice by Boulder voters. First, in 2012, and then again in 2015. While the programs funded by the CAP Tax have evolved over time, the underlying mission has remained steadfast: the rapid, global transition off of fossil fuels. Boulder is committed to doing its part to try to keep global warming to less than 1.5 degrees Celsius (C) by the year 2050.

The City's franchise with PSCo expired at the end of 2010 and, in the same year, the City Council adopted Energy Future goals that established the basis for defining and evaluating energy options using community input on values and a vision for clean energy. Not only do the values envision a low-carbon future, but one that connects a vibrant private sector market with individual customers to create a dynamic, clean energy economy.

In 2011, Boulder voters supported a "utility occupation tax" that took the place of the former electric franchise fee, but they also approved putting aside a portion of that funding to study whether the City should form a local electric utility. This was not the first time Boulder considered such an effort. However, while municipal utilities have historically been formed to ensure low rates and high reliability, Boulder's utility would have an additional, new impetus: a clean energy supply delivered through a "utility of the future" that was responsive to local conditions, resilient in the face of natural disasters, and as innovative as a community full of start-ups, scientists, and educators could desire.

The City Council developed, and voters approved, a series of conditions that must be met to determine whether this innovative local utility could be formed. These conditions, which are in the City Charter, are:

- Rates must be equal or less than those offered by PSCo at the time of acquisition.
- The utility must have sufficient revenue to cover operating costs and debt, plus carry a reserve of 25% of the debt payment, referred to as "Debt Service Coverage Ratio."
- Reliability must remain comparable to that being offered by PSCo.
- There must be a plan to increase renewables.
- There must be a plan to decrease greenhouse gas emissions.

Article XIII of the Boulder Home Rule Charter is provided as **Attachment 1** to this Application.

Nearly 100 community volunteers, many with deep subject matter expertise, have helped Boulder explore the creation of a municipal electric utility over the past six years. Moreover, extensive engineering analyses were conducted to understand the age and condition of the system, and to forecast the kinds of investments that must be made to meet the community's objectives. This exploration has shown that a local utility could provide the community with opportunities to decarbonizes its energy source, increase citizen participation in democratic decision-making regarding their use of electricity, and decentralize its energy source through expanded distributed generation.

Having survived the September 2013 flood, Boulder seeks to develop its own resilient electric utility that meets the needs of its citizens. Weather patterns and natural disasters have intensified, largely as a result of climate change. The City intends to operate its utilities in a manner that can adapt to that new reality. A resilient utility will enable the City to both avoid adding to climate change and deal with the effects of the changing climate.

Further, the energy industry is evolving. The City Council voted to pursue acquisition of PSCo's electric utility assets—viewing it as a prudent step toward local self-determination in a quickly changing energy environment.

III. BOULDER'S QUALIFICATIONS

A. Overview of Boulder City Government

Boulder was incorporated on November 4, 1871. It is a Colorado home rule municipality, established pursuant to Article XX of the Colorado Constitution. The Charter of the City of Boulder, Colorado, adopted by a vote of the electorate on October 30, 1917, serves as the source of the City's authority and can only be amended by a vote of the Boulder electorate. Under both the state constitution and the Boulder Home Rule Charter, the City has the authority to, among other things, acquire, maintain, and operate light plants, power plants, and any other public utilities or works local in use and extent. *See* Colorado Constitution, art. XX, §§ 1 and 6, and Boulder Home Rule Charter Section 2(d), provided as **Attachments 2 and 3,** for the full text.

1. City Council

Boulder has a Council-Manager form of government, which has been in continuous operation since January 1918. Under this form of government, the elected City Council sets the policies for the operation of the Boulder government. The administrative responsibility of the City rests with the City Manager, who is appointed by the City Council. The City Council consists of nine members. The Mayor and Mayor Pro Tem are selected by the council members. The current Mayor is Suzanne Jones. The current Mayor Pro Tem is Mary Young. Other council members include, Matt Appelbaum, Aaron Brockett, Jan Burton, Lisa Morzel, Andrew Shoemaker, Sam Weaver and Bob Yates.

Boulder conducts its general elections on the first Tuesday in November of odd numbered years. All City elections are administered by the City Clerk.

Nine council members are elected at-large on a non-partisan basis for two- and four-year terms. After each election, council members select one of their members to serve a two-year term as mayor. Every two years (odd-numbered years), five council members are elected to office. The four candidates receiving the most votes serve four-year terms and the candidate with the next highest number of votes serves a two-year term.

City Council appoints and sets salaries for its three direct reports, the City Manager, the City Attorney and the municipal judge.

Council meets regularly on the first and third Tuesday of each month at 6 p.m. in the Council Chambers of the Municipal Building. All City Council meetings are open to the public.

2. City Manager

The City Manager is hired by council to handle the affairs of the City in accordance with the policies set by City Council. The position is structured so all department heads are directly or indirectly (through the Assistant City Manager or Deputy City Manager) responsible to the City Manager. The City Manager is the City's Chief administrative officer. The current City Manager is Jane S. Brautigam. There are separate departments within the City, administered by department heads who are hired by the City Manager. The City's current organization chart is provided as **Attachment 4**.

3. Boards and Commissions

Boulder has 21 boards and commissions. The members of these boards and commissions advise the City Council with regard to a variety of matters including planning, historic preservation, liquor licensing, human relations, environmental matters, the City's libraries, water resources and transportation.

B. <u>Management and Employees</u>

Boulder employs 1487 standard and temporary employees and another 928 seasonal employees. Of those, 687 are members of collective bargaining units. The following unions negotiate contracts on behalf of those collective bargaining units: Boulder Municipal Employees Association, the International Association of Fire Fighters, and the Boulder Police Officers Association.

C. <u>Financial Strength</u>

According to the City's most recent audited financials, total primary government assets (including current and other assets and capital assets) for the City totaled $1.453 billion. Total revenues, excluding transfers and extraordinary items, increased from 2014 to 2015 by $20.1 million, or 6.6%, to $324.4 million. Sales and use tax revenues constituted 49% of the City's General Fund. The assessed valuation for property within the City, which was $2.599 billion in 2014, grew to $3.160 billion in 2015.

The General Fund is the primary operating fund of the City. At the end of 2015, the unrestricted fund balance of the General Fund as $52.1 million, while the total fund balance was $54.6 million. Unrestricted fund balance includes fund balance committed by City Council, assigned by City management, and unassigned fund balance as disclosed in the Governmental Fund Balance Sheet. As a measure of the General Fund's liquidity, it is useful to compare unassigned fund balance to total fund expenditures and transfers out. For 2013, unassigned fund balance of $42.7 million represents 35% of total General Fund expenditures and transfer out of $120.3 million.

As of December 31, 2015, the unrestricted net position of the Water Utility Fund was $27.6 million, the Wastewater Utility Fund was $11.4 million, the Stormwater and Flood Management Fund was $16.7 million, the Downtown Commercial District Fund was $6.7 million, the non-major enterprise funds were $1.0 million. The total increase in net position for the proprietary funds was $27.2 million.

During 2015, the City's general obligation credit ratings were established as Aa1 by Moody's Investors Service and AAA by Standard & Poor's. The primary reasons cited in the past for these high rating levels have been the general strength of the Boulder economy, its distinctiveness from the general Denver metropolitan economy, and the lesser reliance of the City's General Fund on sales taxes when compared with other Colorado municipalities.

IV. DESCRIPTION OF ASSETS TO BE ACQUIRED

The City requests that the Commission allow the City to transfer the Property shown as Boulder's in the Separation Plan.

As set forth in the Separation Plan, the Property may include any of the electric distribution property, plant, and equipment used, in whole or in part, to serve electric customers within the City of Boulder whether located within or outside the City limits, including overhead and underground distribution lines; distribution transformers (pole and pad mount); overhead and underground secondary and service conductors; fiber optic and other communications equipment associated with the distribution system; meters and other equipment; easements and associated property rights for the electric distribution system; and streetlights and traffic signal lights owned by PSCo within the City Limits. The Property may also include electric property, plant, and equipment located in the substations that serve customers within the City including protective equipment on the high voltage side of transformers (including relaying, communications, and control equipment), power transformers, and distribution switchgear. Some of the Property that is necessary to serve customers within the City is located outside the City Limits; however, these are not facilities or real property interests that PSCo will use to serve PSCo customers who are located outside the City once the two distribution systems are fully separated.

The City is not seeking authority to transfer any other assets, including any PSCo generation assets, PSCo transmission assets, PSCo's certificate of public convenience and necessity, goodwill, consulting agreements, brands, advertising, or employees.

V. **<u>THE SEPARATION PLAN</u>**

The City requests that the Commission approve the Separation Plan, which will result in the division of the existing facilities and new construction to enable the City to serve its future customers within the City Limits with City-owned facilities and PSCo to serve its customers outside the City Limits with PSCo-owned facilities. However, there are two City-owned properties within the City Limits that the City is proposing PSCo continue to serve: the facilities at Boulder Reservoir on the northern edge of the City Limits and the Open Space and Mountain Parks Department facilities located at Cherryvale Road and South Boulder Road on the southeastern edge of the City Limits.

Boulder initially analyzed several different approaches to separating a future Boulder electric distribution system from the PSCo electric distribution system. These approaches included: two that involved some sort of wheeling, one in which some customers within the City would continue to be served by PSCo to save construction costs, and one in which the City would negotiate with PSCo to acquire a portion of PSCo's CPCN to enable the new electric utility to serve customers located outside the City Limits. Boulder fairly quickly opted not to pursue these approaches for engineering, legal or political reasons. That left two approaches, which the City refers to as the Emergency Backup plan (the "EB Plan") and the No Distribution Interconnection plan (the "NDI Plan"). The EB Plan would physically separate the two systems, but require PSCo and the City to provide backup service to each other in case of system failure. This plan involves significantly less construction and cost. The NDI Plan includes no distribution interconnection between the PSCo and Boulder systems. Any backup required by either system is provided by that system; there is no connection between the two systems at the distribution level. Neither Plan includes the sharing of facilities beyond poles and the underground grid at substations necessary to ground those facilities. Beyond the grounding grid, the only sharing in substations is of real estate (through easements) within substation fences. The Separation Plan includes no sharing of facilities or even buildings at substations.

Boulder engineered both approaches to a planning level of engineering, but as it reviewed each plan, determined that in all but one area of the City, the NDI Plan was the superior plan despite having higher costs. Boulder then proceeded to perform reliability tests on that plan. Boulder has fully vetted the NDI Plan for the entire city, as well as the EB Plan in one area of the city where new construction needed to serve just eight PSCo customers would cost over $1,100,000. Having performed that analysis, Boulder's preferred plan is generally the NDI Plan. However, in the one area in which the EB Plan is presented, while either Plan is acceptable to Boulder, the City requests that the Commission consider the EB Plan in that area. The Direct Testimony of Thomas A. Ghidossi includes Attachment TAG-6, the "Technical Volume," which includes a full reliability analysis for the electric distribution's current configuration, for the NDI Plan, and for the EB Plan in one area of the City.

Boulder is proposing that the City be responsible for implementing and managing anyconstruction and reconfiguration necessary under the Separation Plan for facilities that will ultimately be owned by the City. Boulder further proposes that PSCo be responsible for implementing and managing any construction and reconfiguration necessary under the Separation Plan for facilities that will ultimately be owned by PSCo. The proposed construction and reconfiguration will be consistent with the approved Separation Plan and will be done at the City's expense.

Under the City's proposal, all construction associated with the Separation Plan will be done by a qualified third-party contractor ("Contractor"). The Contractor will be selected by the City, but must be acceptable to PSCo. All construction will be done by the Contractor consistent with the Commission's approved Separation Plan and the National Electrical Safety Code, electric distribution standards, area engineering standards, and other industry standards, as applicable. If the Contractor is unavailable to construct other facilities related to new customers or other maintenance on the system, Boulder proposes that another contractor that is acceptable to both Boulder and PSCo take on that construction. Before any new facilities are brought on-line during the Transition Period, PSCo will be entitled to inspect the new facilities to verify they meet all applicable PSCo interconnection standards.

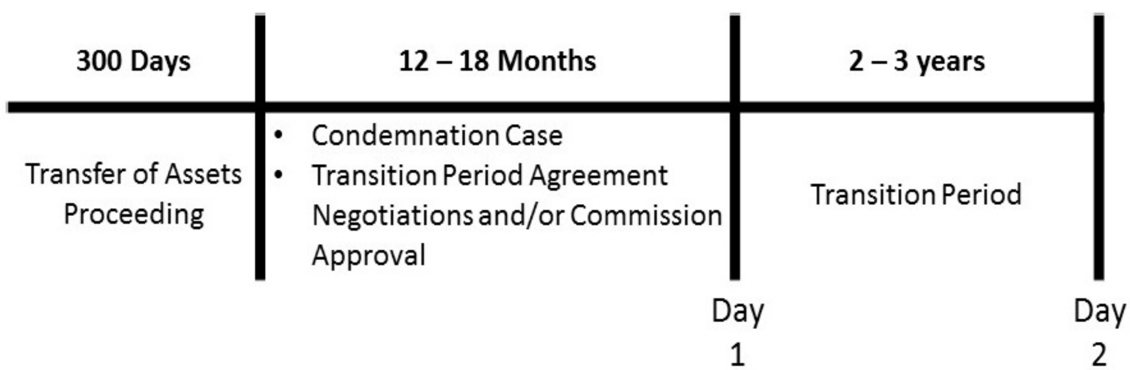
The Separation Plan has been developed such that PSCo's network following separation can be operated to serve PSCo's customers in an effective, reliable, and safe manner. Specifically, the Separation Plan, if implemented as proposed, is intended to result in a PSCo network to serve out-of-City customers that (a) is as safe to operate as PSCo's current network and (b) will maintain, if not increase, reliability as compared to PSCo's current network. Further, the Separation Plan is designed such that the resulting PSCo network will have a similar or fewer miles of distribution lines needed to serve PSCo's out-of-City customers such that there will be no material change in PSCo's operations and maintenance costs associated with the lines needed to serve those customers.

The Separation Plan as presented has been developed to a "planning" level of engineering consistent with the level of engineering commonly used for executive-level decision making. Once the Separation Plan is approved by the Commission, the engineers will proceed to design-level engineering plans and field work to create the package of designs and instructions that will be used to implement the Separation Plan. Boulder is proposing that the design-level engineering plans be developed by the City in cooperation with PSCo. Those plans will be consistent with Separation Plan approved by the Commission and, prior to construction, those plans will be approved by both PSCo and the City.

VI. THE TRANSITION PERIOD AGREEMENT

Given the degree of construction necessary to separate the electric distribution systems, Boulder anticipates that the actual separation could take upwards of three years to complete.[2] Figure 1, below, is a timeline that depicts the three periods that precede the City's operation of the new electric distribution system.

FIGURE 1



The first period is the current Transfer of Assets proceeding before the Commission, which is presumed to take 300 days after the Application is deemed complete. The second period is the condemnation case before the Boulder District Court, which will take place unless the parties are

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[2] That work will begin after the City acquires the Property since it would be imprudent to begin construction only to find that the award exceeded the $214 million limit on acquisition costs imposed by the Boulder Home Rule Charter.

able to reach agreement on the City's acquisition of the electric distribution assets. That case may take 12 to 18 months. During that time, the Transition Period Agreement would be negotiated and/or approved by the Commission. The third period begins on Day One, the day the City pays for and takes title to the assets, and ends on Day Two, the day the Separation Plan construction is complete and the new electric utility begins operating the City's electric distribution system. The City refers to the time between Day One and Day Two as the "Transition Period."

During the Transition Period, the City will own certain facilities and bill its customers, but those facilities will continue to be integrated with PSCo facilities while the Separation Plan construction is completed. In fact, part of the system acquired by the City will initially be used to serve PSCo customers outside the City Limits. To ensure the safety and reliability of the system, Boulder is proposing that PSCo lease the transferred facilities from the City at no cost to PSCo and continue to operate the system – under an agreement and for a reasonable fee, all of which would be approved by the Commission – until the separation has been completed and the two distribution systems are completely separated. This proposed "sale and lease back" arrangement is the keystone of the plan for the Transition Period. The sale and lease back arrangement would be memorialized in writing and would be quite explicit as to the control PSCo would exercise and the access the City would have to the Property in order to perform the Separation Plan construction.

The sale and lease back provision is necessary for several reasons. First, in order for Boulder to go to the bond market to fund the approximately $53 million in separation costs, as well as the cost to acquire the assets approved for transfer by the Commission, it must both own the facilities and property and have the right to collect revenue from customers. Second, because the two systems are so integrated at this time, until the Property is separated from the PSCo system, PSCo would have to use City-owned facilities to serve PSCo's customers. This arrangement, however, would violate the Commission's December 2015 Decision in which the Commission stated that it would not require PSCo to wheel power over City-owned facilities. Finally, the jurisdiction of the condemnation court is limited. The court's jurisdiction is restricted to issues regarding the power and authority to condemn and the just compensation payable for the property interests acquired. It does not extend to matters related to the safe and reliable operation of the system.

The proposed sale/lease-back arrangement addresses these issues. There will, of course, be additional issues that will need to be addressed during the Transition Period, such as the amendment of the Separation Plan as property is annexed into the City or on the ground conditions prove to be different from what is anticipated at this time. To address these and other issues during the Transition Period, Boulder requests that the Commission approve certain key principles that would act as a guide for the full development of a "Transition Period Agreement." The Transition Period Agreement will facilitate a smooth, seamless and transparent transition for all customers, whether they will be customers of Boulder or remain customers of PSCo.

Boulder will develop the Transition Period Agreement based on the 12 key principles the City is asking the Commission to approve in this proceeding and will present that agreement to PSCo. Ideally, the City and PSCo will work together to address the various situations that might arise during the Transition Period and incorporate those elements into the Transition Period Agreement. Any agreement would be submitted to the Commission for its approval. However, if Boulder and PSCo fail to reach agreement, Boulder would submit the Transition Period Agreement to the Commission for its approval as a compliance filing. Boulder requests that the Commission order that the Transition Period Agreement provide for the following:

(1) The Transition Period Agreement will be in effect from the time Boulder acquires the Property until the Separation Plan is fully implemented.

(2) The City will lease the Property to PSCo at no cost to PSCo.

(3) PSCo will have the right and obligation to reasonably use, control, operate, and maintain the Property consistent with good engineering practices, in a non-discriminatory manner and with the same quality of service currently provided to Boulder customers pursuant to the terms of the Transition Period Agreement to provide service to both PSCo's and Boulder's customers.

(4) The City will pay PSCo a reasonable rate for controlling, operating, and maintaining the Property during the Transition Period.

(5) PSCo will have the right to use the Property without interference from the City except as provided in the Transition Period Agreement. In particular, the City shall not interfere with PSCo's operations except to inspect the Property, monitor the Property's performance, and shadow PSCo employees working on the Property. During the Transition Period, only those functions that do not interfere with PSCo's control, operation, and maintenance of the system will be performed by Boulder.

(6) As the entity controlling, operating, and maintaining the Property during the Transition Period, PSCo will be responsible for addressing any service quality or safety issues that may arise. PSCo and the City will establish a mechanism for the City to promptly notify PSCo of any service quality or safety issues reported to the City. PSCo and the City will also establish a mechanism for PSCo to notify the City of the status of any outages and associated repair efforts so that the City may communicate that information to its customers.

(7) Upon the acquisition of the Property, the City will bill its customers and be the point of contact for its customers for all matters.

(8) After the Commission approves the transfer of the Property, the City and PSCo shall cooperate to develop a mechanism to update information customer billing data, customer records, other customer information, asset and maintenance records of all equipment included within the Property and other information about the system currently servicing customers within the City on a regular basis until the date the Property is acquired.

(9) The Contractor implementing the Separation Plan, or another third-party contractor acceptable to PSCo and the City, will be responsible for constructing any facilities necessary to serve new customers located in the City during the Transition Period at the City's expense. PSCo would be responsible for constructing any facilities necessary to serve new customers located outside the City at PSCo's expense.

(10) If, during the Transition Period, PSCo or the City determines that capital improvements beyond routine maintenance are necessary to provide safe or reliable service to customers in the City or outside the City, designated PSCo and City representatives shall meet to attempt to reach agreement on the necessity of the improvements, the manner in which the improvements should be constructed, and whether the improvements should go with the City's system or PSCo's system after the Separation Plan is completed.

(11) All construction by the Contractor on behalf of the City associated with new customers or capital improvements will be done consistent with the Commission's approved Separation Plan and in accordance with the National Electrical Safety

Code, electric distribution standards, area engineering standards and other industry standards, as applicable.

(12) During the Transition Period, any disputes arising between PSCo and the City regarding compliance with orders from this proceeding, or implementation of the Separation Plan or Transition Period Agreement, shall be submitted first to a mediator for resolution, but if resolution is not possible, then within this proceeding to a designated Administrative Law Judge for resolution on an expedited basis.

VII. LIMITED WAIVER OF COMMISSION DATA PRIVACY RULES

During the Transition Period, Boulder will bill its retail customers for the electric service they receive from the City and provide all aspects of customers service. In order to create those bills, the City needs certain data regarding those customers. That Customer Data (as defined in the Commission's Rules) is protected by the Commission's Data Privacy Rules. As part of this proceeding, and consistent with the Commission's prior ruling in Decision No. C16-0336-I, which granted a partial waiver of the Data Privacy Rules among other rulings, Boulder requests that the Commission waive certain of its Data Privacy Rules, 4 C.C.R. 723-3, Rules 3026 *et seq.*, to permit the transfer of customer data from PSCo to Boulder to allow Boulder to bill its customers upon the transfer of the Property. Boulder's new electric utility will provide the same safeguards for this information that are required of PSCo and the City is willing to enter into a non-disclosure agreement to that effect, if required by the Commission. It is important to note that the personally identifiable information of municipal utility customers is provided protection under the Colorado Open Records Act, § 24-72-204, C.R.S.

VIII. GRADUAL DEPARTURE PLAN

Boulder has developed a plan for acquiring power as a municipal electric utility that is in the public interest and could benefit both PSCo and its ratepayers outside of Boulder financially and environmentally.

Boulder proposes to depart from the PSCo system in a gradual manner. Its "Gradual Departure Plan" is designed to not only minimize any burden on PSCo's customers, but to potentially benefit PSCo and its customers. Specifically, Boulder plans to reduce its demand on the PSCo generation system over time, and pursuant to a negotiated wholesale power supply agreement with PSCo for a designated period of time, would continue to purchase power from PSCo. Then, over time, as Boulder leaves the PSCo system gradually, it willl simultaneously allow PSCo to use the PSCo-owned and contracted generation capacity, as it ceases to be used to serve Boulder, to serve PSCo's non-Boulder native load customers' load growth and capacity needs. As contemplated, this simultaneous exchange will take place in a time frame consistent with PSCo's forecasted future resource needs. This approach not only helps ease the transition of Boulder's departure from the PSCo system, but it also helps to protect PSCo's native load customers against the incurrence of unreasonable costs; ensure that PSCo's generation capacity remains used, useful, and of value to its ratepayers; and avoid unfairly shifting Boulder's share of the carrying costs for existing PSCo generation to its non-Boulder native load customers. If this plan is approved by the Commission, Boulder would remain a wholesale customer of PSCo until such time and to the extent forecasted increases in PSCo's native load, or projected resource needs related to power purchase agreements that are terminating, require PSCo to acquire or invest in additional generation sources.

According to PSCo's 2016 resource projections, submitted in connection with its 2016 Electric Resource Plan, PSCo does not anticipate needing any additional capacity to meet its project resource need until 2022. In that year, PSCo's resource need will grow by a modest 284 MWs to a more significant 615 MW in 2023. In 2022, Boulder's retail peak demand is estimated to be 262 MW. Boulder proposes a mechanism to determine when and to what extent the City may depart from the PSCo system as PSCo's need for additional capacity is forecast to increase over time. Boulder's proposed mechanism relies on forecasts that are as accurate as possible, while providing both PSCo and the City with information about how much capacity each utility needs to acquire to serve their respective customers' resource needs and sufficient lead time for both utilities to acquire any needed capacity at costs and under terms that are reasonable.

Boulder is requesting an order from the Commission that makes the following specific findings with respect to Boulder's Gradual Departure Plan and power supply arrangement, and for purposes of informing anticipated decisions on stranded costs:

> As a result of Boulder's implementation of its Gradual Departure Plan, and in order to protect PSCo's native load customers against the incurrence of unreasonable costs; ensure that PSCo's generation capacity remains used, useful, and of value to its ratepayers; and avoid unfairly shifting Boulder's share of the carrying costs for existing PSCo generation to its non-Boulder native load customers; find it:
>
>> (a) appropriate for PSCo to use the PSCo-owned and contracted generation capacity, as it ceases to be used to serve Boulder, to serve PSCo's non-Boulder native load customers' load growth and capacity needs; and
>>
>> (b) appropriate and consistent with C.R.S. §§ 40-3-101 *et seq*. for PSCo to be provided the opportunity to recover, in rates charged to its non-Boulder native load customers, the fixed costs associated with the PSCo-owned and contracted generation capacity, as it ceases to be used to serve Boulder and is instead used to serve load growth and capacity needs of PSCo's non-Boulder native load.
>
> These findings are appropriate given that Boulder will procure its power supply needs as part of its Gradual Departure Plan and will pay for its energy and capacity needs in accord with the Gradual Departure Plan through wholesale rates. In addition, these findings may be used (if necessary) to inform subsequent regulatory determinations, including whether the City's new electric utility has given or will

give rise to "stranded costs" potentially recoverable by PSCo from Boulder under 18 C.F.R. § 35.26(c)(1)(vii) and (2).

IX. INFORMATION REQUIRED BY RULE 3104

(I) The information required in rules 3002(b) and 3002(c), as pertinent to each party to the transaction.

Please see the information provided below.

(II) A statement showing accounting entries, under the Uniform System of Accounts, including any plant acquisition adjustment, gain, or loss proposed on the books by each party before and after the transaction which is the subject of the application.

The City is unable to provide this information until the negotiated acquisition terms are known or the condemnation action in Boulder District Court has been completed.

(III) Copies of any agreement for merger, sales agreement, or contract of sale pertinent to the transaction which is the subject of the application.

There is no contract for sale of assets between the City and PSCo.

(IV) Facts showing that the transaction which is the subject of the application is not contrary to the public interest.

Please see Section X. below, as well as the Testimony and Attachments of the witnesses filed on behalf of the City in support of this Application.

(V) An evaluation of the benefits and detriments to the customers of each party and to all other persons who will be affected by the transaction which is the subject of the application.

Please see the Testimony and Attachments of the witnesses filed on behalf of the City in support of this Application.

(VI) A comparison of the kinds and costs of service rendered before and after the transaction which is the subject of the application.

Please see the Testimony and Attachments of the witnesses filed on behalf of the City in support of this Application.

(c) An application to transfer a certificate of public convenience and necessity, an application to transfer assets subject to the jurisdiction of the Commission, or an application to transfer or obtain control of the utility may be made by joint or separate application of the transferor and the transferee.

The City is not seeking to serve customers outside its jurisdictional boundaries. Upon the completion of the City's acquisition of the assets proposed for transfer, PSCo and/or the City will file an application to amend the PSCo service territory to exclude service within Boulder, with the exception of two City-owned properties: the facilities at Boulder Reservoir on the northern edge of the City Limits and the Open Space and Mountain Parks Department facilities located at Cherryvale Road and South Boulder Road on the southeastern edge of the City Limits.

(d) When control of a utility is transferred to another entity, or the utility's name is changed, the utility which will afterwards operate under the certificate of public convenience and necessity shall file with the Commission a tariff adoption notice, shall post the tariff adoption notice in a prominent public place in each local office and principal place of business of the utility, and shall have the tariff adoption notice available for public inspection at each local office and principal place of business. Adoption notice forms are available from the Commission. The tariff adoption notice shall contain all of the following information:

(I) The name, phone number, and complete address of the adopting utility.

(II) The name of the previous utility.

(III) The number of the tariff adopted and the description or title of the tariff adopted.

(IV) The number of the tariff after adoption and the description or title of the tariff after adoption. Code of Colorado Regulations 25

Because control of a utility is not being transferred to another entity, this provision is not applicable.

(V) Unless otherwise requested by the applying utility in its application, a statement that the adopting utility is adopting as its own all rates, rules, terms, conditions, agreements, concurrences, instruments, and all other provisions that have been filed or adopted by the previous utility.

This provision is not applicable to the City since it is not an adopting utility.

X. INFORMATION REQUIRED BY RULE 3002(B)

(b) In addition to the requirements of specific rules, all applications shall include, in the following order and specifically identified, the following information, either in the application or in appropriately identified attached exhibits:

(I) Name and Address of Applying Utility

Boulder Light & Power
1777 Broadway
Boulder, CO 80302

(II) Name under which the applying utility is, or will be, providing service in Colorado.

Boulder Light & Power

(III) The name, address, telephone number, facsimile number and email address of the applying utility's representative to whom all inquiries concerning the application should be made.

Heather Bailey, Executive Director,

Energy Strategy and Electric Utility Development
1101 Arapahoe Avenue
Boulder, CO 80302
303.441.1923 (phone)
baileyh@bouldercolorado.gov

(IV) *A statement that the applying utility agrees to answer all questions propounded by the Commission or its Staff concerning the application.*

Please see the statement in response to (VII), below.

(V) *A statement that the applying utility shall permit the Commission or any member of its Staff to inspect the applying utility's books and records as part of the investigation into the application.*

Please see the statement in response to (VII), below.

(VI) *A statement that the applying utility understands that, if any portion of the application is found to be false or to contain material misrepresentations, any authorities granted pursuant to the application may be revoked upon Commission order.*

Please see the statement in response to (VII), below.

(VII) *In lieu of the separate statements required by subparagraphs (b)(IV) through (VI) of this rule, a utility may include a statement that it has read, and agrees to abide by, the provisions of subparagraphs (b)(IV) through (VI) of this rule.*

Boulder has read and agrees to abide by the provisions of subparagraphs (b)(IV) through (VI) of Commission Rule 3002.

(VIII) *A statement describing the applying utility's existing operations and general service area in Colorado.*

Boulder does not currently operate an electric utility within the state of Colorado. Boulder's proposed service area is coterminous with its jurisdictional boundaries.

(IX) *For applications listed in subparagraphs (a)(I), (II), (III), (V), and (VI) of this rule, a copy of the applying utility's or parent company's and consolidated subsidiaries' most recent audited balance sheet, income statement, statement of retained earnings, and statement of cash flows so long as they provide Colorado specific financial information.*

The titles of government financial statements differ from the financial statements of private entities. The following chart explains these differences:

Financial Statement Titles

Type of Statement	**Type of Fund**	**Name of Statement**
Balance Sheet	Government-Wide	Statement of Net Position
	Governmental Funds	Balance Sheet
	Proprietary Funds	Statement of Net Position
Income Statement	Government-Wide	Statement of Activities
	Governmental Funds	Statement of Revenues, Expenditures and Changes in Fund Balance
	Proprietary Funds	Statement of Revenues, Expenses and Changes in Fund Net Position
Statement of Retained Earnings		*NA – see above "Income Statements"
Statement of Cash Flows	Government-Wide	**NA
	Governmental Funds	**NA
	Proprietary Funds	Statement of Cash Flows

*NA – Governmental entities do not have retained earnings. The fund equity is referred to as fund balance for Governmental Funds and Net Position for Proprietary Funds. The statement of changes in these financial statement elements are accounted for in the preceding "income statements."

**NA – In accordance with GAAP, governmental funds do not prepare a cash flows statement nor is a government wide cash flow statement prepared. Proprietary Funds do prepare a Statement of Cash Flows as required by GAAP.

With this Application, Boulder is providing the following documents:

Statement of Net Position; Statement of Activities; Net (Expense) Revenue and Changes in Net Assets; Balance Sheet, Governmental Funds; Statement of Revenues, Expenditures and Changes in Fund Balances, Governmental Funds; Statement of Net Position, Proprietary Funds; Statement of Revenues, Expenses and Changes in Fund Net Position, Proprietary Funds; Statement of Cash Flows, Proprietary Funds. These documents are provided in a consolidated fashion as **Attachment 5**. They are excerpted from the City's Comprehensive Annual Financial Report for the fiscal year ended December 31, 2015, which is attached to the Direct Testimony of Boulder Witness Robert W. Eichem as Attachment RWE-11.

(X) *A statement indicating the town or city, and any alternative town or city, in which the applying utility prefers any hearings be held.*

Boulder prefers that hearings are held in either the Commission's hearing room in Denver, Colorado, or in Boulder, Colorado.

(XI) *Acknowledgment that, by signing the application, the applying utility understands that:*

(A) The filing of the application does not by itself constitute approval of theapplication.

(B) If the application is granted, the applying utility shall not commence the requested action until the applying utility complies with applicable Commission rules and any conditions established by Commission order granting the application.

(C) If a hearing is held, the applying utility must present evidence at the hearing to establish its qualifications to undertake, and its right to undertake, the requested action.

(D) In lieu of the statements contained in subparagraphs (b)(XI)(A) through (C) of this rule, an applying utility may include a statement that it has read, and agrees to abide by, the provisions of subparagraphs (b)(XI)(A) through (C) of this rule.

Please see the attestation at the conclusion of this application.

(XII) An attestation which is made under penalty of perjury; which is signed by an officer, a partner, an owner, an employee of, an agent for, or an attorney for the applying utility, as appropriate, who is authorized to act on behalf of the applying utility; and which states that the contents of the application are true, accurate, and correct. The application shall contain the title and the complete address of the affiant.

Please see the attestation at the conclusion of this application.

(c) In addition to the requirements of specific rules, all applications shall include the information listed in subparagraphs (a)(I) through (V) of rule 1310. Applying utilities may either include the information in the application itself, or incorporate the information by reference to the miscellaneous docket created under rule 1310.

1310. Information Regarding Regulated Entities.

(a) A regulated entity may maintain information regarding the regulated entity in an administrative proceeding created for that purpose. A regulated entity may incorporate by reference, in any application, petition, or motion, the information maintained in such an administrative proceeding, provided that the regulated entity also attests that the most current information is on file. In the application, petition, or motion, the regulated entity shall state the date the incorporated information was last filed with the Commission. If a regulated entity chooses to maintain information in an administrative proceeding, the following information may be filed:

(I) a copy of the regulated entity's applicable organizational documents (e.g., Articles of Incorporation, Partnership Agreements, Articles of Organization);

(II) if the regulated entity is not organized in Colorado, a current copy of the certificate issued by the Colorado Secretary of State authorizing the regulated entity to transact business in Colorado;

(III) the name, business address, and title of each officer, director, and partner;

(IV) the names and addresses of affiliated companies that conduct business with the regulated entity; and

(V) the name and address of the regulated entity's Colorado agent for service of process.

(b) If the information regarding the regulated entity changes, the regulated entity shall make a subsequent filing within a reasonable time to update the information previously filed.

Boulder is a Colorado home rule municipality that intends to operate a municipal electric utility. Neither home rule cities nor municipal electric utilities are regulated entities pursuant to Title 40 of the Colorado Revised Statutes.

XI. BOULDER'S PROPOSALS ARE NOT CONTRARY TO THE PUBLIC INTEREST

Boulder is requesting that the Commission approve the transfer of the assets and associated property interests identified in Highly Confidential Attachment TAG-7 (as may be supplemented or modified as additional information becomes available to the City in this proceeding), provided in support of this Application and the method proposed by the City to separate the City's facilities from PSCo's in such a way as to allow continuity of safe and reliable service. Boulder has created a Separation Plan that it believes will permit both the Boulder system and the PSCo system to be operated with the same or greater level of safety, reliability and service quality that customers presently enjoy. As such, Boulder's request for the transfer of assets and its Separation Plan are not contrary to the public interest. If the City's approach is adopted, PSCo customers throughout the state will be unharmed by the approval of Boulder's proposed transfer of assets. This approach is not contrary to the public interest.

Boulder is requesting that the Commission approve 12 key principles that will form the basis of a Transition Period Agreement that will permit a seamless transition for both Boulder and PSCo customers. Certainly, the more seamless and transparent the transition can be for customers, the better. In this regard, Boulder's plan is not contrary to the public interest.

During the Transition Period, the City will need to acquire from PSCo certain customer data that will permit the City's new electric utility to bill its retail customers and provide other customer services as soon as the Property is paid for and acquired by the City. To facilitate the work required to have a billing system in place, the City is requesting that the Commission waive certain of its Data Privacy Rules to allow PSCo to provide that needed information to Boulder.

The requested limited waiver is not contrary to the public interest as the customer information of municipal utilities is provided protection under the Colorado Open Records Act.

Finally, in keeping with the proposals Boulder has been making during Commission proceedings for several years, in the Gradual Departure Plan Boulder is proposing that it gradually reduce the energy and capacity it takes from PSCo, linking that reduction to increases in PSCo's native load elsewhere on its system and PSCo's need for additional resources. By forming a new electric utility and being responsible for meeting its own energy and capacity needs, Boulder will be mitigating the need for PSCo to acquire new sources of energy and capacity to serve its non-City native load customers as well. The City's proposed gradual departure from the PSCo system is designed to protect PSCo's native load customers against the incurrence of unreasonable costs; ensure that PSCo's generation capacity remains used, useful, and of value to its ratepayers; and avoid unfairly shifting Boulder's share of the carrying costs for existing PSCo generation to its non-Boulder native load customers. As such, the City's proposal will have a minimal, and potentially beneficial, impact on PSCo's non-Boulder native load customers and will be in the public interest.

XII. CONCLUSION

It has become increasingly clear that the existing energy system is undergoing a historic transition. Various innovations and challenges have begun to shift the local and global energy landscape, including the expanding use of distributed generation, the increasing frequency of extreme weather events, and emerging clean technologies that have the potential to remake our energy system. Efficiency, conservation, and local generation have begun to undercut utility revenue and rooftop solar is eroding electricity demand right at the source.

Harnessing innovation and addressing Boulder's challenges requires a flexible approach and an understanding that success takes time. Here in Boulder, and around the globe, there is a rapidly growing discussion about the "utility of the future" and the role of end-users. This energy system transformation has been guiding Boulder's activities, including the role its electric utility plays in our climate commitment and drive to design a more resilient energy system.

This means that the utility of the future cannot look like the utility of the past or present, but must take a new form to remain relevant in a democratized system. For example, the present regulatory system was designed with the assumption that customer energy usage is inelastic and that the most efficient system is one that is almost entirely dependent on large, central station power plants. Today, that is no longer the case. While central power plants and the transmission network are and will remain the vital backbone of our electric system, technology has significantly advanced and prices of distributed solutions are rapidly declining, enabling greater control and ownership opportunities for customers and communities. The energy utility of the next century will implement strategies to:

- Improve energy affordability;
- Provide a more resilient and flexible power grid;
- Give customers more control over their energy use;
- Significantly reduce energy consumption through efficiency and conservation;
- Significantly reduce emissions through a switch from fossil fuels to renewable energy;
- Increase grid efficiency via a two-way networked smart system that uses demand response, local generation and other local resources;

- Increase grid flexibility to integrate large quantities of variable (distributed and utility--scale) renewable energy; and,
- Facilitate a coordinated energy plan that delivers electricity, heat, water, communication, land-use, and transportation systems.

Under today's regulations, not all of these can be pursued at a local level. For example, if a group of customers wanted to be served by a local generation resource, like a backup generator and be connected via a micro grid, to ensure a higher level of reliability while minimizing cost, it would be prohibited under current regulation unless owned by the utility.

In contrast to these regulatory restrictions, many utilities, regulators, communities and even customers across the United States are beginning to adapt to the new energy paradigm. Boulder's efforts have illustrated that in addition to providing reliable and affordable electricity to its customers, the utility of the future must be just one part of an energy system that is innovative, sustainable, and reliable. This evolution will take into account advances in energy technology and market changes, and will allow communities and individual customers a higher level of engagement and choice. Under a local electric utility, this might include more flexible options for customers to sell and receive power.

XIII. HEARING, VERIFICATION, AND REQUEST FOR RELIEF

At the hearing in this matter, Boulder will present competent evidence to demonstrate that the relief requested is not contrary to the public interest and to justify granting this Application.

This 2016 Application is verified by the attached affidavit of Heather Bailey, Executive Director of Energy Strategy and Electric Utility Development for the City of Boulder.

Therefore, Boulder requests that the Commission issue an Order granting this Application; approving the transfer of ownership and control of the identified utility assets from PSCo to Boulder; approving the Separation Plan; approving the 12 key principles of the Transition Period Agreement; approving the Gradual Departure Plan; granting a limited waiver of certain of the Commission's Data Privacy Rules; and granting such other relief as may be necessary to accomplish this asset transfer, as detailed herein.

WHEREFORE, Boulder respectfully requests that the Commissionenter an Order granting this Application and providing the following specific relief:

(A) Allow the City to acquire any of the electric distribution property, plant, and equipment designated as Boulder's as set forth in the application and supporting testimony (the "Property").

(B) Approve a final configuration of the Property that identifies the construction of new facilities and reconfiguration of existing property interests (real and personal) and facilities that will be necessary for the existing system to ultimately operate as two separate systems, one owned by PSCo and serving PSCo customers and the other owned by the City and serving City customers (the "Separation Plan") and find that the resulting network following the separation of the systems during the Transition Period will work as well or better than the current system.

(C) Approve the 12 key principles of the Transition Period Agreement, including:

(1) The Transition Period Agreement will be in effect from the time Boulder acquires the Property until the Separation Plan is fully implemented.

(2) The City will lease the Property to PSCo at no cost to PSCo.

(3) PSCo will have the right and obligation to reasonably use, control, operate, and maintain the Property consistent with good engineering practices, in a non-discriminatory manner and with the same quality of service currently provided to Boulder customers pursuant to the terms of the Transition Period Agreement to provide service to both PSCo's and Boulder's customers.

(4) The City will pay PSCo a reasonable rate for controlling, operating, and maintaining the Property during the Transition Period.

(5) PSCo will have the right to use the Property without interference from the City except as provided in the Transition Period Agreement. In particular, the City shall not interfere with PSCo's operations except to inspect the Property, monitor the Property's performance, and shadow PSCo employees working on the Property. During the Transition Period, only those functions that do not interfere with PSCo's control, operation, and maintenance of the system will be performed by Boulder.

(6) As the entity controlling, operating, and maintaining the Property during the Transition Period, PSCo will be responsible for addressing any service quality or safety issues that may arise. PSCo and the City will establish a mechanism for the City to promptly notify PSCo of any service quality or safety issues reported to the City. PSCo and the City will also establish a mechanism for PSCo to notify the City of the status of any outages and associated repair efforts so that the City may communicate that information to its customers.

(7) Upon the acquisition of the Property, the City will bill its customers and be the point of contact for its customers for all matters.

(8) After the Commission approves the transfer of the Property, the City and PSCo shall cooperate to develop a mechanism to update information customer billing data, customer records, other customer information, asset and maintenance records of all equipment included within the Property and other information about the system currently servicing customers within the City on a regular basis until the date the Property is acquired.

(9) The Contractor implementing the Separation Plan, or another third-party contractor acceptable to PSCo and the City, will be responsible for constructing any facilities necessary to serve new customers located in the City during the Transition Period at the City's expense. PSCo would be responsible for constructing any facilities necessary to serve new customers located outside the City at PSCo's expense.

(10) If, during the Transition Period, PSCo or the City determines that capital improvements beyond routine maintenance are necessary to provide safe or reliable service to customers in the City or outside the City, designated PSCo and City representatives shall meet to attempt to reach agreement on the necessity of the improvements, the manner in which the improvements should be constructed, and whether the improvements should go with the City's system or PSCo's system after the Separation Plan is completed.

(11) All construction by the Contractor on behalf of the City associated with new customers or capital improvements will be done consistent with the Commission's approved Separation Plan and in accordance with the National Electrical Safety Code, electric distribution standards, area engineering standards and other industry standards, as applicable.

(12) During the Transition Period, any disputes arising between PSCo and the City regarding compliance with orders from this proceeding, or implementation of the Separation Plan or Transition Period Agreement, shall be submitted first to a mediator for resolution, but if resolution is not possible, then within this proceeding to a designated Administrative Law Judge for resolution on an expedited basis.

(D) Waive certain Data Privacy Rules, 4 C.C.R. 723-3, Rules 3026 *et seq*., to permit the transfer of customer data to Boulder to allow the new electric utility to bill its customers upon the transfer of the Property.

(E) As a result of Boulder's operation and implementation of its Gradual Departure Plan, and in order to protect PSCo's native load customers against the incurrence of unreasonable costs; ensure that PSCo's generation capacity remains used, useful, and of value to its ratepayers; and avoid unfairly shifting Boulder's share of the carrying costs for existing PSCo generation to its non-Boulder native load customers; find it:

(1) appropriate for PSCo to use the PSCo-owned and contracted generation capacity, as it ceases to be used to serve Boulder, to serve PSCo's non-Boulder native load customers' load growth and capacity needs; and

(2) appropriate and consistent with C.R.S. §§ 40-3-101 *et seq*. for PSCo to be provided the opportunity to recover, in rates charged to its non-Boulder native load customers, the fixed costs associated with the PSCo-owned and contracted generation capacity, as it ceases to be used to serve Boulder and is instead used to serve load growth and capacity needs of PSCo's non-Boulder native load.

The findings requested in this subpart (E) are appropriate given that Boulder will procure its power supply needs as part of its Gradual Departure Plan and will pay for its energy and capacity needs in accord with the Gradual Departure Plan through wholesale rates. In addition, the findings requested in this subpart (E) may be used (if necessary) to inform subsequent regulatory determinations, including whether the formation and operation of Boulder's new electric utility has given or will give rise to "stranded costs" potentially recoverable by PSCo from Boulder under 18 C.F.R. § 35.26(c)(1)(vii) and (2).

DATED this 28th day of September 2016.

Respectfully submitted,

CITY OF BOULDER

/s/ Debra S. Kalish
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ATTORNEYS FOR THE CITY OF BOULDER

ATTESTATIONS

I, Heather Bailey, as Executive Director for Energy Strategy and Electric Utility Development, having read subparagraphs (b)(XI)(A) through (C) of Commission Rule 3002, do hereby represent that the City of Boulder agrees to abide by the provisions of subparagraphs (b)(XI)(A) through (C) of that rule.

I, Heather Bailey, as the Executive Director for Energy Strategy and Electric Utility Development for the City of Boulder, and under penalty of perjury, attest that I am authorized to act on behalf of the City of Boulder and do hereby state that the contents of this Application are true, accurate, and correct to the best of my knowledge.

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

* * * * *

IN THE MATTER OF THE APPLICATION OF THE CITY OF BOULDER, COLORADO FOR APPROVAL OF THE PROPOSED TRANSFER OF ASSETS FROM PUBLIC SERVICE COMPANY OF COLORADO AND ASSOCIATED AUTHORIZATIONS AND RELIEF	))))))))	**PROCEEDING NO 15A-0589-E**

VERIFICATION

I, Heather Bailey, being duly sworn, do hereby depose and state that I am the Executive Director of Energy Services and Electric Utility Development for the City of Boulder, Colorado, the Applicant in the foregoing Application; that I am an authorized agent for the City of Boulder, Colorado for the purposes set forth in this Application; that I have read the foregoing Application; and that the facts set forth therein are true and correct to the best of my knowledge, information and belief.

Heather Bailey, Executive Director,
Energy Services and Electric Utility
Development
1101 Arapahoe Avenue
Boulder, CO 80302

STATE OF COLORADO)
)ss.
COUNTY OF BOULDER)

SUBSCRIBED AND SWORN to before me this 28th day of September 2016 by Heather Bailey as Executive Director of Energy Services and Electric Utility Development for the City of Boulder, Colorado.

Witness my hand and official seal.
My commission expires: 10-10-2020

MARY WALLACE
Notary Public
State of Colorado
Notary ID # 20044023780
My Commission Expires 10-10-2020

Notary Public