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April 17, 2017

VIA ELECTRONIC MAIL

Boulder City Council
Municipal Building
1777 Broadway
Boulder, CO 80302
Email: Council@bouldercolorado.gov

RE: Boulder/Xcel Energy Settlement Opportunities Regarding Boulder's Municipalization Efforts – Answers to Two Follow-Up Questions

Dear Boulder City Council,

Over the last two weeks, numerous questions have surfaced regarding the settlement discussions between the City of Boulder (“City”) and Xcel Energy and the March 30, 2017 final, negotiated proposal submitted to Boulder.

I am writing to remind you of, and clarify, Xcel Energy’s position on two significant questions being discussed in the community.

The first is: If the City Council elects on April 17th or 18th *not* to pause (i.e., temporarily suspend) the current transfer application and separation plan before the Colorado Public Utilities Commission (“CPUC”), will Xcel Energy continue to stand behind the Partnership Settlement proposal?

Our negotiations and conclusions on this question, which were reflected in my March 30, 2017 final proposal to Boulder that was made public, were driven by timing in two key respects. First, we need to redirect significant City and Xcel Energy resources from the CPUC transfer application case to negotiation of the partnership Cooperation Agreement (including discussions around a possible “kick off project”), the Franchise Agreement, and if desired by the City, the negotiated buy-out settlement. Further, we need to request CPUC approval of certain special provisions of the partnership offer, including the new 25 MW Renewable*Connect program for Boulder only, the streamlined CPUC approval process for other Boulder partnership projects, and other provisions as noted in my March 30th letter, *before* the November election in order to assure Boulder voters of the viability of these partnership settlement provisions. If City Council decides to proceed with the CPUC case and this case goes to hearing (on April 26th – May 5th,

with briefing and other disputed filings that follow), it will eliminate our opportunity to bring the key provisions of the partnership to the CPUC in time to get a decision before the November election. We believe this outcome would significantly undermine voters' confidence in the partnership settlement. In addition, if the City is interested in a partnership it is important that both sides stop spending resources on legal disputes and invest in solutions for Boulder and its citizens. Paying lawyers and consultants to litigate is not compatible with a goal of providing solutions. A dual path option does not achieve the objective of furthering the potential of a partnership.

Therefore, we are not willing to extend the partnership settlement option to Boulder if the City Council does not request a temporary suspension of the current CPUC case as contemplated by our settlement negotiations and as documented in our March 30th proposal.

However, if the CPUC issues a decision before April 26th on the dispositive motions to dismiss and directs Boulder to refile its application and plan for separation and transfer of assets, Xcel Energy may be open to considering extending the partnership settlement proposal, provided City Council will agree to a true pause to allow voters to consider the partnership without any other competing measures referred by it, and provided that the City would work aggressively with us to negotiate the Cooperation and Franchise Agreements as well as the joint filing in May with the CPUC described above. We would also seek some level of comfort that there is a path for the partnership to be fairly considered. For avoidance of doubt, if the CPUC were to re-notice the City's March 30 filing and adjust the procedural schedule so that litigation would occur into this summer on the City's new plan filed by it on rebuttal, we would not continue to keep the partnership offer open. Among other reasons, this is because of the tremendous amount of resources that all parties to that docket would have to invest into continued litigation, including both of us, and the vast amount of resources that would be required of the CPUC on two fundamentally competing matters. Our response to the second question below outlines in further detail why we believe failing to press pause and allowing continued litigation will fundamentally undermined the chance for a successful partnership.

The second question we want to respond to is: If the City Council ultimately decides *not* to refer the buyout settlement option to voters as a competing measure, and instead, refers a measure that involves some combination of tax approval and/or revised charter metrics for formation of a municipal utility (e.g., removal of the voter imposed \$214 million acquisition cap) in order to continue litigation to form a municipal utility, will Xcel Energy continue to offer the Partnership Settlement proposal?


Xcel Energy's position on this has not changed. We have always believed that seeking approval of only one measure is cleanest. As you know, we only provided the negotiated buy-out option at the City's request and our ideal position was the partnership settlement only being referred to voters. We agreed to both measures as we also wanted certainty. A future litigation option does not provide any of us a path to working together, either as partners or as parties to a voluntary sale. Instead, Boulder would be asking its voters to approve many more years of litigation. The litigation "pause" would truly be that and the City could continue its efforts after the November election if that was the citizens' desire. As noted above, significant City and company resources will be needed to address the continued "parallel path" that a competing litigation ballot measure

will produce and this will not be constructive to the work needed to achieve a partnership. We believe this dual path will deprive the partnership settlement of any opportunity for success as we will be spending the next several months seeking approval of very disparate recommendations in litigation before the CPUC, and for years after in condemnation court, stranded cost proceedings and any other proceedings that must be presented to the CPUC (e.g., if Boulder needs to revise or refile a third separation plan).

We sincerely hope you will consider pausing the litigation to allow the partnership option, which represents over 15 months of hard work and negotiation by both teams, to be reviewed by voters. There is tremendous opportunity if we are able to work together and create a model that can be adopted by others in Colorado. However, we will respect your decision no matter what it is and are prepared to continue on the litigation path if that is the City Council's desire.

We thought it was important to reiterate our position on the critical questions above before your public meetings this week and are happy to talk with any of you if you have additional questions.

Sincerely,

A handwritten signature in black ink, appearing to read "A. E.", written in a cursive style.