

Regulators set 'path forward' for Boulder, but will deny much of electric utility plan

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The Public Utilities Commission deliberated Wednesday in Boulder's electric utility case, and stopped just shy of outright denying the city's application to acquire Xcel Energy assets in the interest of operating a separate, city-run electric utility.

In a four-hour proceeding that followed a [nine-day trial earlier this summer](#), the three-member commission instead decided to give a conditional and only partial approval to Boulder's list of proposed assets to be transferred.

But the commission declined to approve the city's separation plan, which laid out the "how" behind the desired divorce: Who does the detailed design drawings? Who conducts the engineering work behind the separation, including construction of new infrastructure? And who pays for it all?

No official decision was made Wednesday following deliberation. That will come via a written order, expected at some point before Sept. 13.

The deliberation gave a strong indication, though, that the commission is prepared to leave options open for Boulder, albeit under a set of circumstances very different from and more expensive — for the city, that is — than what was proposed in the application.

"We've given them a path forward," Commissioner Frances Koncilija said. "I think the discussion that (Boulder) heard on the bench should lead them to conclude that they came very close to having the commission deny this application, because it was vague, it was ambiguous, there were many things not covered.

"But we also know that they in good faith put this together," she said of the city proposal. "We want this to succeed and we think we've given you an opportunity to succeed if the voters in Boulder continue to fund this."

As for funding, the City Council has communicated an intent to place on the ballot this November an extension of the tax that pays for the municipalization effort. The tax has, to this point, given the city about \$2 million annually for staffing and legal fees related to the project, but the extension would request much more money than voters have previously approved: [staff expects to need \\$16.5 million over the next three years](#).

That money would simply pay for Boulder to keep the effort going. The costs of actually municipalizing [will be much steeper](#) — particularly if the city follows the path the commission charted on Wednesday.

Engineering work needed to do detail system design is expected to cost up to \$4 million. Separating the current Xcel system in Boulder from the one the city would operate could cost about \$100 million. And condemning Xcel's assets could end up costing Boulder above the \$214 million ceiling voters have approved, though the final cost associated with condemnation would be decided in court.

The commission said in its deliberation that Xcel should not be responsible for completing the construction and reconfiguration work needed to separate the systems. They ruled that Boulder and Xcel should be accountable for the facilities that will serve their respective customers, but that the city should pay for work on both systems.

The commission also rejected Boulder's request that it require co-location of certain facilities, and did not support the city's proposal for joint use of power poles. Those details are outside the commission's jurisdiction, the three regulators agreed, before saying that they wouldn't be comfortable with commanding the sharing of infrastructure even if were within their purview.

"We do not have jurisdiction to turn (Xcel) into a contractor or a designer or a construction firm," Commissioner Wendy Moser said, regarding Boulder's request that Xcel design, construct and finance the separation.

Added Koncilija: "If we did this, we expose (Xcel) to such huge potential liability. They, in my opinion, would become almost a guarantor and subject to all sorts of litigation. I thought this was one of the requests from Boulder that was overreaching."

For the commission, the least controversial aspect of the city's application — its third with this commission, and the first that was actually accepted for trial — proved to be the proposed asset list.

But even that won only semi-approval; the commission approved a list of assets for transfer that does not include any substations.

And the approved list came with three conditions, including one that requires the filing of an agreement between Boulder and Xcel that addresses repayment by the city as the company accrues separation costs for those assets.

If and when Boulder can return to the commission to show that it has satisfied the conditions, the asset list, minus substations, could win final approval, and the city could take it to condemnation court.

Toward the end of Wednesday's proceedings, Moser made note of the fact that Boulder has indicated to constituents that it would like to wait to see how much condemnation would cost before deciding whether to proceed with the effort. It's a decision that staff termed the "go/no-go" point.

"I really think it doesn't help Boulder to wait two years to make a go/no-go decision," Moser said. "They're really kind of all in, or they're not. If they're going to pull out, they should probably pull out now."

Boulder can also mark a victory regarding where IBM, the tech giant that has a campus in northeast Boulder, stands in this case. [The company has cast doubt](#) on whether the city could adequately provide it service, and requested to be kept out of the theoretical service area of a municipal utility.

The commission felt there was insufficient evidence to determine that Boulder is unable or unwilling to serve IBM, and so it denied the company's request, but not without throwing in some critical comments.

"For Boulder to take the position that IBM can't really complain until there is a disaster is just incredible to me," Koncilija said. "I don't understand why Boulder would want to play Russian roulette with this customer."

Over and over on Wednesday, the commissioners mentioned that even though they represent a major hurdle Boulder needs to clear to realize its utility goals, their interpretation of their own jurisdiction leaves them with only a limited ability to sign off on a number of details in the city proposal.

"There's much of this plan where we're not judging the quality," Chairman Jeff Ackermann said, but rather declining to weigh in. He added later, of the case in general, "All the parties are walking through something that is uncharted, unprecedented. ... We are trying to do our best to bring forward a decision that helps Boulder move forward in its next step."
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