

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

PROCEEDING NO. 15A-0589E

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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.

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**DECISION: (1) FINDING CONDITIONS MET OF DECISION NO. C17-0750; (2) APPROVING DESIGNATION OF ASSETS OUTSIDE SUBSTATIONS FOR TRANSFER; (3) DENYING OUTSTANDING FILINGS AS MOOT; AND (4) CLOSING PROCEEDING**

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Mailed Date: October 28, 2019  
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I. **BY THE COMMISSION**

A. **Statement**

1. By this Decision, we find the City of Boulder (Boulder) has met the conditions that the Commission established in Decision No. C17-0750, issued September 14, 2017, in this Proceeding No. 15A-0589E, to secure final approval of the designation of assets outside substations for potential transfer from Public Service Company of Colorado (Public Service) to Boulder.

2. Through this Decision, we therefore approve the designation of assets outside substations for transfer from Public Service to Boulder identified in: (1) Highly Confidential Exhibit 5A, filed by Boulder on August 30, 2019, corrected by Public Service on September 3, 2019, and as modified in Attachment 1 to Public Service's September 9, 2019, Response to Boulder's August 30, 2019, Notice of Filing of Agreements and Corrected List of Assets; and (2) Confidential Exhibit 5B, filed by Boulder on August 30, 2019. We approve the designation of these assets for transfer to the extent the assets are located outside the substations that Public Service presently uses to serve its retail electric customers in the Boulder area and are the property of Public Service.

3. As we found in Decision No. C19-0805-I, issued September 30, 2019, in this Proceeding, the Commission has already considered and denied a request from Boulder to approve the designation of assets *inside* substations for potential transfer from Public Service to Boulder through condemnation. We affirmed that Decision No. C17-0750 provides that if Boulder and Public Service reach agreement on a transfer to Boulder of assets inside substations,

they will need to file jointly for approval of the transfer of those assets under § 40-5-105, C.R.S., prior to the time when Boulder begins to operate its municipal electric utility (*i.e.*, the Cut-Over Date).<sup>1</sup> We declared that, absent such agreement, Boulder would need to, and would have the right to, build new substations to serve its municipal customers.

4. Having thus found the conditions of Decision No. C17-0750 satisfied and providing in this Decision our final approval of the designation of assets outside substations for transfer, we close this Proceeding No. 15A-0589E. We deny as moot all outstanding filings. As we instructed in Decision No. C17-0750, prior to the Cut-Over Date Boulder and Public Service shall file pursuant to § 40-5-105, C.R.S., a final application in a separate proceeding for Commission approval of the transfer of Public Service's assets to Boulder.

#### **B. Background**

5. On September 14, 2017, the Commission issued Decision No. C17-0750, granting in part and with conditions, and denying in part, the Third Supplemental Verified Application, filed by Boulder on May 12, 2017. Through this application, Boulder sought approval of a proposed separation of Public Service's existing electric distribution system to permit Boulder to provide electric service to its customers within its city limits with Boulder-owned facilities, and Public Service to provide electric service to customers in unincorporated Boulder County. Boulder sought approval of the transfer of Public Service assets inside the substations Public Service currently uses to provide retail electric service to customers within Boulder (identified as Substations A, B, C, D, E, and F) and outside those substations. The Commission conditionally approved the designation of assets *outside* substations for transfer; we denied the request to

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<sup>1</sup> § 40-5-105(1), C.R.S., provides: "The assets of any public utility ... may be sold, assigned, or leased as any other property, but only upon authorization by the commission and upon such terms and conditions as the commission may prescribe[.]"

approve the designation of assets *inside* substations for transfer. We found our decision satisfied the requirements of Boulder District Court Judge LaBuda's 2015 Order<sup>2</sup> by determining, to the extent necessary as of the date of our decision, how Public Service's facilities should be assigned, divided, or jointly used to protect the effectiveness, reliability, and safety of Public Service's electric distribution system.

6. In Decision No. C17-0750, we assigned three conditions to our final designation of assets outside substations for potential transfer from Public Service to Boulder. To secure final approval of the designation of these assets for transfer, we required that Boulder:<sup>3</sup>

- (1) file an agreement reached between Boulder and Public Service that provides Public Service permanent non-exclusive easements and other necessary real property rights for the location of its electric facilities within Boulder's city limits that are necessary for Public Service to provide service to its customers after separation;
- (2) correct the errors and omissions from the list of assets for transfer outside of the substations and resubmit the revised list of assets for final approval; and
- (3) file an agreement between Boulder and Public Service that addresses the payment by Boulder to Public Service of the costs incurred by Public Service to effectuate the separation of the systems.

We ordered these filings be made within 90 days of Decision No. C17-0750 and that Public Service assist, in good faith, Boulder's efforts to satisfy these conditions. Boulder and Public Service later requested several extensions to make these filings. After granting extensions and receiving other pleadings from the parties, we convened a status conference on June 29, 2018, to hear from representatives of Boulder and Public Service on the status of their ongoing negotiations and resolution of the outstanding issues.

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<sup>2</sup> Order Re: Judicial Review of the Colorado Public Utilities Commission Decisions, *City of Boulder v. Pub. Utils. Comm'n*, Case No. 14CV30047 (Boulder District Court, January 14, 2015).

<sup>3</sup> See Decision No. C17-0750 at Ordering ¶ 2 (setting forth conditions for designation of assets for transfer).

7. On October 26, 2018, Boulder and Public Service filed a Joint Notice of Filing of Permanent Easement Agreement, Cost Agreements, and Corrected List of Assets Outside Substations and Boulder's Report Regarding the Commencement of Condemnation Proceedings. This included four exhibits: Exhibit 1, Permanent Easement Agreement; Exhibit 2, Interim Cost Agreement; Exhibit 4, Cost Agreement; and Exhibit 5A, Asset List with Corrections, and Exhibit 5B, Real Property Interests. Boulder and Public Service stated they were also negotiating an agreement to govern how to operate in a shared easement that includes electric distribution facilities acquired by Boulder and facilities retained by Public Service to provide gas distribution and gas or electric transmission service. Boulder and Public Service requested that we extend the date to file this agreement and delay the 30-day period for parties to request a hearing until this additional agreement was filed.

8. On November 16, 2018, Boulder filed a Motion for Final Approval of Designation of Assets Outside Substations for Transfer. Boulder stated the motion was unopposed by Public Service. Boulder requested the Commission issue an order finally approving the designation of assets outside substations for transfer.

9. Also on November 16, 2018, Boulder and Public Service filed a Motion for Modification of Certain Provisions of Paragraphs 155 and 156 of Decision No. C17-0750, with Exhibit 6, Easement Sharing Agreement. Boulder and Public Service explained that identifying all the real property interests associated with the assets Boulder seeks to acquire, and all the real property interests in which gas or transmission facilities are located with electric facilities, had proven more time consuming than anticipated. As a result, they requested the Commission accept the Easement Sharing Agreement in lieu of completing, in this Proceeding, these requirements from Decision No. C17-0750. Boulder and Public Service stated this agreement will protect

Public Service's ability to provide gas distribution and gas or electric transmission service, and not shift costs to Public Service's customers, while also allowing Boulder to utilize the easements and other property interests associated with the electric distribution facilities that Boulder acquires.<sup>4</sup>

10. On December 17, 2018, IBM, Corp. (IBM), Staff of the Public Utilities Commission (Staff), and Tri-State Generation and Transmission Association, Inc. (Tri-State) filed responses to these exhibits and requested a status conference and hearing. IBM urged a hearing was needed to determine if Boulder planned to take any assets that directly impact IBM's facility. Staff urged the Commission to hold a status conference to discuss Ordinance 8302, recently passed by the Boulder City Council, and the transfer of substation assets. Tri-State responded it did not know whether Boulder's planned acquisition of substation assets would adversely affect its equipment. Tri-State requested the Commission hold a status conference to establish procedures to clarify the status of these substation assets.

11. On January 4, 2019, Boulder filed a Response to Requests for Hearing and Status Conference. Boulder clarified the assets designated for transfer outside substations included all of Public Service's facilities and property rights used to serve IBM. Boulder stated it was open to a status conference to discuss the issues raised in the parties' responses to its filings, but opposed a hearing as inconsistent with the process established in Decision No. C17-0750. Boulder requested the Commission find no further proceedings be required other than a separate application for transfer of the Public Service assets prior to the Cut-Over Date.

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<sup>4</sup> Boulder and Public Service Motion for Modification of Certain Provisions of Paragraphs 155 and 156 of Decision No. C17-0750 at ¶¶ 11-12 (November 16, 2018).

12. On January 10, 2019, Boulder filed a Notice of Filing of Affidavits in Response to IBM's Hearing Request. Boulder provided affidavits by two engineering witnesses attesting the property interests requested for transfer relating to facilities serving IBM were access and equipment easements within Public Service's existing easements within Substation F.

13. On January 15, 2019, a pre-hearing conference was held by an Administrative Law Judge (ALJ), pursuant to ¶ 163 of Decision No. C17-0750. Through Decision No. R19-0075-I, issued January 18, 2019, the ALJ scheduled an evidentiary hearing for February 25 and 26, 2019.

14. On January 18, 2019, Public Service filed a Notice of Withdrawal from the Joint Motion for Modification of Commission Decision C17-0750; Notice of the Company's Objections to the List of Assets; Or in the Alternative, Motion for Leave to File Out of Time Objections to the Asset List and Request for Hearing. Public Service contended the list of assets comprising Exhibits 5A and 5B was not yet accurate and complete.

15. On January 25, 2019, Public Service filed a Petition for Declaratory Orders with Regard to the Portion of Commission Decision C17-0750 Concerning Public Service Assets (Real and Personal) Inside Substations (Petition for Declaratory Orders). Public Service requested the Commission issue an order stating Boulder may not proceed to condemn assets inside substations unless and until Boulder and Public Service reach an agreement on the transfer and an application is filed with, and granted by, the Commission.

16. IBM, Staff, and Tri-State filed responses supporting the Commission accepting and ruling on the Petition for Declaratory Orders. On January 29, 2019, IBM filed a Notice of Support and Joinder of Relief Sought in Petition for Declaratory Order. IBM supported the Petition for Declaratory Orders and the contention that Decision No. C17-0750 ordered Public

Service to retain the substation assets unless and until it and Boulder reach an agreement. On January 29, 2019, Staff filed a Notice Concerning Public Service Company's Petition for Declaratory Order. Staff agreed Boulder and Public Service differently interpreted our decision and a declaratory order was appropriate. On January 30, 2019, Tri-State filed a Notice Regarding Public Service Company's Petition for Declaratory Orders. Tri-State supported the Petition for Declaratory Orders as it relates to the process for identifying and acquiring substation assets.

17. On February 1, 2019, Staff filed a Response to Public Service's January 18, 2019, Notices and Alternative Motion and Request for Hearing. Staff urged the Commission to allow Public Service to present at the upcoming hearing before the ALJ, the evidence it had of any incompleteness or inaccuracy of the list of assets.

18. On February 1, 2019, Boulder and Public Service filed with the Commission a Joint Unopposed Motion to Stay Commission Action on Pending Matters for Two Weeks. Boulder and Public Service stated this would allow them to focus on negotiating the remaining disputed issues. They filed concurrently with the ALJ, a Joint Unopposed Motion to Modify Interim Decision R19-0075-I and to Toll Proceeding for Two Weeks, requesting no motions, responses, or discovery proceed for the hearing while the Proceeding was stayed.

19. On February 4, 2019, by Decision No. R19-0136-I, the ALJ granted the request to toll the procedural schedule in the matters before the ALJ and extend the hearing dates.

20. On February 8, 2019, by Decision No. C19-0151-I, the Commission stayed the Proceeding until further order. In addition, the Commission directed Boulder to file any court filings or documents exchanged with Public Service regarding commencement of condemnation proceedings. The Commission also directed Boulder to confer with the parties and file a proposal



for resolving the outstanding issues and pleadings in the Proceeding. The Commission also rescinded its referral of matters to the ALJ.

21. On February 14, 2019, Boulder filed a Notice of Filing Documents Pursuant to Commission Decision No. C19-0151-I. Boulder stated it had not yet filed a petition in condemnation. Boulder provided a copy of Ordinance 8302, which it explained authorized acquisition of assets owned by Public Service necessary for the Boulder electric system and allowed use of eminent domain if good faith negotiations failed. Boulder also provided a Notice of Intent to Acquire that it sent to Public Service on January 31, 2019.

22. On June 12, 2019, Boulder filed a Combined Response in Opposition to: (1) Petition for Declaratory Orders; and (2) Notice of PSCo's Withdrawal from the Joint Motion for Modification; Objections to the List of Assets; or In the Alternative, Motion for Leave to File Out of Time Objections; and Request for Oral Argument. Boulder challenged Public Service's Petition for Declaratory Orders first as an untimely application for rehearing, reargument, or reconsideration under § 40-6-114, C.R.S. Substantively, Boulder argued Decision No. C17-0750 defers the designation of assets inside substations to the load interconnection process, where Boulder and Public Service had reached agreement on all material issues. Boulder argued there was no need for a new application before the Commission. Boulder also challenged Public Service's January 18, 2019, Notice of Withdrawal and Objections from the parties' previous joint filing of exhibits. Boulder stated there was no real remaining issue with the list of facilities inside substations and a revised version of Exhibit 5B was expected from Public Service, which should resolve any remaining issues. Boulder requested oral argument to present these arguments.

23. Also on June 12, 2019, Boulder filed a Notice Regarding Proposed Process to Address and Resolve Outstanding Issues. In this filing, Boulder proposed a process for resolving issues related to Exhibits 5A and 5B and real property interests inside substations.

24. On June 19, 2019, Public Service filed a Response to the City of Boulder's Notice of Proposed Procedures and to the Combined Response in Opposition Filed June 12. Public Service responded that Boulder's proposed process would not resolve all the outstanding issues. Public Service requests the Commission grant its January 18, 2019, Notice of Withdrawal and Objections and order that, once revised Exhibits 5A and 5B are filed, parties be given 30 days to review and respond. It also asked the Commission to address the Petition for Declaratory Orders.

25. On June 19, 2019, IBM filed a Response to the City of Boulder's Combined Response in Opposition and Request the Commission Continue to Hear this Matter *En Banc*. IBM reiterated its support for the Petition for Declaratory Orders. In addition, IBM stated it had concerns with Boulder's proposed process, particularly that parties had not yet seen finalized versions of Exhibits 5A and 5B, the Facilities Studies, or the co-location, operations, and maintenance agreements for substations.

26. On June 19, 2019, Staff filed a Response to Boulder's Notice. Staff proposed the Commission allow Boulder's suggested process to move ahead, and, while awaiting responsive filings from the parties to Boulder's recent filings, take up the Petition for Declaratory Orders.

27. On June 28, 2019, Boulder filed a Notice of the Filing of the June 28, 2019 Corrected List of Facilities Outside Substations (Exhibit 5A); Notice Regarding Status of List of Property Interests Outside Substations (Exhibit 5B); and Notice Regarding the Filing of Condemnation Case. Boulder requested the Commission accept this Exhibit 5A and, given the

forthcoming unopposed filing of Exhibit 5B, deem the conditions of Decision No. C17-0750 met.

28. On August 2, 2019, Boulder filed a Notice of Filing the August 2, 2019 Corrected List of Property Interests Outside Substations (Exhibit 5B), and a new version of Exhibit 5B. Boulder stated this Exhibit 5B is both over and under-inclusive, as many of the listed property interests include more than the assets to be transferred, and the list will likely change with the field work part of the detailed design phase. Boulder requested the Commission accept this filing as completing Boulder's compliance with the conditions in Decision No. C17-0750.

29. On August 12, 2019, Public Service filed a Notice Regarding Boulder Filings of June 28<sup>th</sup> and August 2<sup>nd</sup>. Public Service stated it objected to Boulder's statements that Exhibits 5A and 5B were in final form and ready for Commission review.

30. On August 14, 2019, the Commission issued Decision No. C19-0686-I, lifting the stay in this Proceeding and ordering a status conference at which representatives of Boulder, Public Service, IBM, and Staff were to appear and answer questions regarding the outstanding issues and pleadings. The Commission asked parties to pre-file written responses to questions on the status. The Commission held the status conference as scheduled on August 21, 2019, and discussed with parties when final versions of the filings required by Decision No. C17-0750 were expected and what final review period parties to the Proceeding would need.

31. On August 28, 2019, the Commission issued Decision No. C19-0716-I, requiring Boulder to make the filings required by Decision No. C17-0750 by August 30, 2019, and establishing a ten-day period for parties to review and respond to these filings. In addition, the Commission accepted Public Service's Petition for Declaratory Orders for decision.

32. On August 30, 2019, Boulder filed a Notice of Filing of Final Permanent Easement Agreement, Cost Agreements, Easement Sharing Agreement, and Corrected List of Assets Outside Substations Pursuant to Decision No. C19-0716-I (Notice of Filing of Agreements). The Notice of Filing of Agreements included five exhibits:

- Exhibit 1. Agreement Concerning Permanent, Non-Exclusive Easements and Other Necessary Real Property Rights  
(*Permanent Easement Agreement*)
- Exhibit 2. Interim Agreement for Payment of Certain Municipalization Costs  
(*Interim Cost Agreement*)
- Exhibit 4. Agreement for Payment of Costs  
(*Cost Agreement*)
- Exhibit 5. Corrected List of Assets  
(*Highly Confidential Exhibit 5A, List of Assets*)  
(*Confidential Exhibit 5B, Real Property Interests*)
- Exhibit 6. Easement Sharing Agreement

33. On September 3, 2019, Public Service filed a Notice of Corrected Highly Confidential Exhibit 5A, along with a corrected version of this exhibit. Public Service states the corrected version removes headers that it and Boulder had intended to replace prior to Boulder making its August 30, 2019, filing.

34. On September 9, 2019, Public Service filed a Response to the City of Boulder's August 30, 2019, Notice of Filing of Agreements and Corrected List of Assets. Public Service stated it has no objection to Exhibits 1, 2, 4, and 6, but does have objections to Exhibits 5A and 5B. With respect to Exhibit 5A, Public Service stated four pages of this exhibit involve Substation F assets, which remain in dispute and, as to all other substations, a section of the exhibit includes underground primary feeder assets, which also remain in dispute. With respect to Exhibit 5B, Public Service stated it does not object to this exhibit subject to the caveat that

nothing in Exhibit 5B, Exhibit 6 (the Easement Sharing Agreement), or statements by Public Service constitute agreement by Public Service that its remaining system and operations will not be damaged within the meaning of condemnation law. Public Service indicated it does not request a hearing on these filings.

35. On September 9, 2019, IBM filed a Response to Filings Submitted Pursuant to Decision No. C19-0716-I. IBM responded that it continues to object to inclusion on Exhibit 5A of facilities directly used to serve IBM associated with Substation F.

36. On September 10, 2019, Boulder filed a Statement of No Opposition to Public Service's and IBM's requests that certain items be removed from Exhibit 5A. Boulder stated it has no opposition to the changes shown in Attachment 1 to Public Service's September 9, 2019, Response to Boulder's August 30, 2019, Notice of Filing of Agreements, and would file a revised version of Exhibit 5A, if the Commission directed.

37. On September 30, 2019, through Decision No. C19-0805-I, the Commission granted in part, and denied in part, Public Service's Petition for Declaratory Orders. The Commission issued a declaratory order stating:

Decision No. C17-0750 provides that Boulder may not commence condemnation proceedings to acquire any Public Service assets inside substations (real or personal) unless and until Boulder and Public Service reach mutual agreement on a transfer of assets inside existing Public Service substations.<sup>5</sup>

The Commission denied Public Service's request to further declare that an application for approval of designation of assets inside substations was required. The Commission found it had already considered and denied a request from Boulder to approve the designation of assets inside substations for potential transfer from Public Service to Boulder through condemnation. The

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<sup>5</sup> Decision No. C19-0805-I at ¶ 29 and Ordering ¶ 2.

Commission declared that Decision No. C17-0750 provides two remaining paths for Boulder with respect to assets inside substations: either Boulder and Public Service reach agreement on a transfer of some or all of the assets inside Public Service's substations, through the transmission load interconnection and Network Integration Transmission Service processes and related negotiations, or Boulder will need to, and have the right to, build its own substations to serve its municipal customers.

38. On October 10, 2019, the Commission deliberated at a Commissioners' Deliberations Meeting and considered whether the filings made by Boulder on August 30, 2019, satisfy the three conditions in Decision No. C17-0750 to secure final approval of the designation of assets outside substation for potential transfer from Public Service to Boulder for Boulder's planned new municipal electric utility. The Commission determined these conditions were met and that it would approve the designation of assets outside substations for transfer, resulting in this Decision.

### **C. Discussion and Findings**

39. Although there have been numerous filings in this Proceeding, we focus in this Decision on the recent filings by Boulder on August 30, 2019, in order to determine whether these filings satisfy the conditions of Decision No. C17-0750 to secure final approval of the designation of assets outside substations for transfer. We review below each condition in Decision No. C17-0750, the filings made by Boulder on August 30, 2019, and parties' responses.

#### **1. Condition 1 of Decision No. C17-0750**

File an agreement reached between Boulder and Public Service that provides Public Service permanent non-exclusive easements and other necessary real property rights for the location of its electric facilities within Boulder's city limits that are necessary for Public Service to provide service to its customers after separation.

40. In Decision No. C17-0750, we found, after separation of the electric distribution systems, Public Service will require access to rights of way and other property rights within Boulder city limits in order to access facilities necessary for Public Service to continue to serve its customers.<sup>6</sup> We therefore required, as a first condition to secure final approval of the designation of assets outside substations for transfer, that Boulder file an agreement with Public Service providing permanent non-exclusive easements and other necessary real property rights for the location of Public Service's electric facilities within Boulder city limits as necessary for Public Service to serve its customers. We found this type of agreement was essential to preserve Public Service's ability to serve its customers after separation of the systems.

**a. Exhibit 1, Permanent Easement Agreement**

41. On August 30, 2019, Boulder filed Exhibit 1, Permanent Easement Agreement. In its Notice of Filing of Agreements, Boulder states that through this agreement it agrees to grant to Public Service (after voter approval, but prior to the commencement of construction) a permanent, non-exclusive easement for Public Service's use of facilities in Boulder that will serve out-of-city customers after separation. Boulder states this easement will give Public Service broad rights to construct, install, operate, repair, remove, replace, reconstruct, alter, relocate, patrol, inspect, improve, enlarge, and maintain facilities. Boulder states the agreement provides Public Service will not bear the expense of relocation but will cooperate, provided specific conditions are satisfied. The agreement contains several exhibits including a map of the legal boundaries of Boulder city limits; a form of the easement agreement to be granted to Public Service; a preliminary map and location descriptions of the proposed general locations of the easement areas (the parties agree a revised map and written descriptions will be substituted once

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<sup>6</sup> Decision No. C17-0750 at ¶¶ 149-151.

detailed design drawings are complete); and a form of temporary construction easement to be granted to Public Service, if requested.

42. No party filed objections to this Exhibit 1.

43. We find Exhibit 1, Permanent Easement Agreement, filed by Boulder on August 30, 2019, satisfies the first condition of Decision No. C17-0750.

## **2. Condition 2 of Decision No. C17-0750**

Correct the errors and omissions from the list of assets for transfer outside of the substations and resubmit the revised list of assets for final approval.

44. In Decision No. C17-0750, we found Boulder's list of assets for potential transfer was incomplete and contained errors.<sup>7</sup> We therefore required, as a second condition to secure final approval of the designation of assets outside substations for transfer, that Boulder file a revised list of assets for final approval. We allowed that smaller, associated distribution system assets could be identified by description rather than itemization.

### **b. Exhibit 5A, List of Assets**

45. On August 30, 2019, Boulder filed Highly Confidential Exhibit 5A, List of Assets. This exhibit is a 3,497-page list of assets for transfer outside of Public Service's substations, including poles, underground transformers, overhead transformers, and primary circuits. Public Service, on September 3, 2019, filed a Notice of Corrected Highly Confidential Exhibit 5A. Public Service states this corrected version removes headers that it and Boulder had intended to replace prior to Boulder's August 30, 2019, filing.

46. In its Notice of Filing of Agreements, Boulder explains Exhibit 5A includes identification of poles, underground transformers, overhead transformers, and primary circuits.

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<sup>7</sup> Decision No. C17-0750 at ¶¶ 152-156.



Boulder states that ancillary assets and appurtenances outside of the substations are listed by description (type). Those ancillary assets include customer meters, manholes, service lines, secondaries, vaults, fiber optic and communication facilities, riser wires, anchor guys, pole braces, and span guys. Boulder states the assets to be transferred also include streetlights within city limits. Boulder states it and Public Service have reached agreement on this exhibit, except for facilities colored in red.

47. In its Response to Boulder's Notice of Filing of Agreements, Public Service objects to the inclusion of assets involving Substation F and underground primary feeder assets. Public Service identifies these assets as: (1) the assets that originate inside Substation F and make the connection between the substation and the IBM-owned distribution system (*i.e.*, two short underground feeder lines, two primary meters, and the IBM customer premise information and associated premise IDs); and (2) the portion of the substation exit feeders for Substations A, B, C, D, and E located inside those substations. Attachment 1 to Public Service's Response identifies the specific assets that it requests be removed from Exhibit 5A.

48. In its Response to Boulder's Notice of Filing of Agreements, IBM also objects to the inclusion of certain items on Exhibit 5A. IBM objects to inclusion of "IBM Facilities," which IBM states include two exit feeders that interconnect Substation F and IBM's distribution system, two primary meters used for IBM service, and five "Lot Centroid" and premises ID numbers related to IBM service. IBM requests the Commission order the exclusion of "IBM Facilities" based on the finding that they are substation assets.

49. Boulder filed a Statement of No Opposition to these filings, stating it does not oppose removing the items contested by Public Service and IBM. Boulder offered to make a compliance filing amending Exhibit 5A to remove these items, if so directed.

50. We will grant the unopposed requests by Public Service and IBM to modify Exhibit 5A, as shown in Attachment 1 to Public Service's Response to Boulder's Notice of Filings of Agreements. We find no need for Boulder to file another final version of Exhibit 5A with these specified modifications.

**c. Exhibit 5B, Real Property Interests**

51. In Decision No. C17-0750, we also required that the updated list of assets include real property interests associated with the assets Boulder seeks to acquire (*e.g.*, property rights outside of the Boulder rights of way).<sup>8</sup> We found it necessary for Public Service to understand which property rights it risks losing in order to be assured that it would retain the ability to provide safe, reliable, and effective service. We noted Public Service should work with Boulder to identify any real property in which gas or transmission facilities are located with electric facilities and assist Boulder in identifying unrecorded claims associated with the facilities that would be owned by Boulder and the instances where Public Service's gas facilities or transmission facilities share an easement with the electric distribution facilities, including the portion Public Service must retain to provide gas or transmission services.

52. On August 30, 2019, Boulder filed Confidential Exhibit 5B, Real Property Interests. This exhibit comprises spreadsheets, identified as Parts One through Part Five, showing, as Boulder explains in its Notice of Filing of Agreements, the parties' efforts to identify the real property interests Public Service may hold that are associated with its electric distribution system that may become part of Boulder's distribution system.

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<sup>8</sup> Decision No. C17-0750 at ¶¶ 155-156.

53. In its Response to Boulder's Notice of Filing of Agreements, Public Service explains Exhibit 5B, as initially filed on October 26, 2018, consisted of two parts: Boulder's list of recorded documents and Public Service's list of unrecorded (and in some cases recorded) documents. Public Service explains the exhibit now consists of five parts: Boulder's original list, as revised; Public Service's original list, as revised; additional recorded easements; easements in a "City Easement" layer provided by Boulder; and service lines to customer premises and other real property interests identified by Public Service.

54. Public Service states it believes a reasonable methodology was used to identify the real property interests and associated Boulder and Public Service facilities for the exhibit and that, subject to the limitations of this methodology, the exhibit is accurate and complete. Public Service explains identification of real property in which gas or transmission facilities are located with electric facilities, and the instances where Public Service's gas facilities or transmission facilities share an easement with the electric distribution facilities, was done by electronic query using Public Service's Geographical Information System (GIS) system, shapefiles (digitized legal descriptions), the separation plan GIS layer provided by Boulder identifying the facilities outside substations to be acquired by Boulder and the facilities to be retained by Public Service, Public Service's GIS data for its gas distribution and transmission facilities, and Boulder County Assessor's office property records.

**d. Exhibit 6, Easement Sharing Agreement**

55. On August 30, 2019, Boulder filed Exhibit 6, Easement Sharing Agreement. In its Notice of Filing of Agreements, Boulder explains this agreement addresses how the two utilities will operate in a shared easement that includes both electric distribution facilities acquired by

Boulder and other facilities that Public Service will retain in order to provide gas distribution and gas or electric transmission service (and any electric distribution assets Public Service retains).

56. In November 2018, when the parties first filed this agreement, they requested modification of ¶¶ 155-156 of Decision No. C17-0750 to specify the parties do not need to complete, in this Proceeding, identification of all the easements and other property interests associated with the assets Boulder seeks to acquire. The parties explained they negotiated the Easement Sharing Agreement after finding that identifying all these rights would be more complex and time consuming than anticipated. They represented that their negotiated agreement would protect Public Service's ability to provide safe, reliable, and effective distribution and transmission service to its customers after separation and not shift costs to Public Service customers, while also allowing Boulder to use the easements and other real property interests associated with the electric distribution facilities it acquires.<sup>9</sup>

57. In its August 30, 2019 Notice of Filing Agreements, Boulder again states the parties agree the Easement Sharing Agreement "will protect PSCo's ability to provide gas or transmission services and not shift costs to gas and transmission customers, while also allowing Boulder to utilize the easements for the existing electric distribution facilities it acquires, it is not necessary to identify the portions of each easement PSCo must retain."<sup>10</sup>

58. In its Response to Boulder's Notice of Filing of Agreements, Public Service states the Easement Sharing Agreement is intended to address operations in those easements and other real property interests, not in public rights of way, in which Boulder and Public Service both

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<sup>9</sup> Boulder and Public Service Motion for Modification of Certain Provisions of Paragraphs 155 and 156 of Decision No. C17-0750 at ¶¶ 11-12 (November 16, 2018).

<sup>10</sup> Boulder Notice of Filing of Final Permanent Easement Agreement, Cost Agreements, Easement Sharing Agreement and Corrected List of Assets Outside Substations Pursuant to Decision No. C19-0716-I at ¶ 30 (August 30, 2019).

have, or may have, facilities after separation and the Cut-Over Date. Public Service states it supports the statement it made when the agreement was first filed, that the agreement will protect Public Service's ability to provide gas distribution, gas and electric transmission services, within and outside Boulder, and electric distribution outside of Boulder, and not shift costs to its customers, while allowing Boulder to use the easements and other property interests associated with the distribution facilities that it acquires.<sup>11</sup> Public Service requests, however, the Commission include, in any decision, language like ¶ 258 of Decision No. C17-0750, which stated: "Nothing in this Decision shall be used by either party in any condemnation proceeding as a finding or opinion of the Commission as to whether or not there are damages to any remainder interest of Public Service in the assets."

59. We find good cause to find that Exhibit 6, Easement Sharing Agreement, satisfies the requirements of ¶¶ 155-156 of Decision No. C17-0750; provided, however, we rely on the parties' repeated representations that this agreement is an appropriate substitute for identifying each real property right in this Proceeding. Notably, we rely on the parties' assurance that this agreement will protect Public Service's ability to provide safe, reliable, and effective distribution and transmission service to its customers after separation and not shift costs to Public Service customers, while also allowing Boulder to use the easements and other real property interests associated with the electric distribution facilities it acquires.

60. We find Exhibits 5A and 5B, together with Exhibit 6, satisfy the second condition of Decision No. C17-0750. We will therefore approve the designation of assets outside substations for potential transfer from Public Service to Boulder identified in: (1) Highly

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<sup>11</sup> Public Service Response to Boulder's August 30, 2019, Notice of Filing of Agreements and Corrected List of Assets at ¶ 25 (September 9, 2019).

Confidential Exhibit 5A, filed by Boulder on August 30, 2019, corrected by Public Service on September 3, 2019, and as modified in Attachment 1 to Public Service's September 9, 2019, Response to Boulder's August 30, 2019, Notice of Filing of Agreements and Corrected List of Assets; and (2) Confidential Exhibit 5B, filed by Boulder on August 30, 2019. We approve the designation of these assets for transfer to the extent the assets are located outside the substations that Public Service presently uses to serve its retail electric customers in the Boulder area and are the property of Public Service.

### **3. Condition 3 of Decision No. C17-0750**

File an agreement between Boulder and Public Service that addresses the payment by Boulder to Public Service of the costs incurred by Public Service to effectuate the separation of the systems.

61. In Decision No. C17-0750, as a third condition to secure final approval of the designation of assets outside substations for transfer, we required Boulder to file agreement(s) with Public Service that address payment by Boulder of costs incurred by Public Service to separate the systems.<sup>12</sup> We required these agreements address reimbursement of costs incurred by Public Service as it assisted Boulder to comply with the conditions of Decision No. C17-1075, and costs associated with development of scope of work documents and detailed design drawings and specifications, and new construction and reconfiguration costs incurred by Public Service to separate the systems. We further required, because Boulder could decide not to go forward with municipalization after separation activities had begun, the agreements address how Public Service would recover costs to restore the systems to a single system. We also required the agreements address responsibilities for repair and replacement of facilities while Public Service is still providing service to customers in Boulder, how failures and damages will be addressed

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<sup>12</sup> Decision No. C17-0750 at ¶¶ 157-161.

after the date value is established in condemnation, and other “true up” at the Cut-Over Date not addressed in condemnation.

**e. Exhibit 2, Interim Cost Agreement; Exhibit 4, Cost Agreement**

62. On August 30, 2019, Boulder filed Exhibit 2, Interim Cost Agreement; and Exhibit 4, Cost Agreement.

63. In its Notice of Filing of Agreements, Boulder explains the Interim Cost Agreement allowed preliminary work and activities to proceed related to the three conditions in Decision No. C17-0750. Boulder explains that Public Service has submitted invoices, which Boulder has paid, for work associated with negotiating the required agreements as well as preparing scopes of work and identifying the facilities and property interests for the list of assets.

64. Boulder states the Cost Agreement covers costs incurred before and after Boulder’s final decision whether to move forward with municipalization. Boulder explains this agreement addresses Boulder’s responsibilities including costs related to: (1) Pre- and Post-Go/No Go Decision work; (2) service prior to the Cut-Over Date; (3) regulatory proceedings; (4) litigation involving third-party contracts, enforcement of security provisions, and attorney’s fees to enforce the agreement; and (5) restoration if Boulder abandons municipalization. Boulder states the parties have agreed to cooperate in good faith to effectuate separation without unnecessary delay or costs. They agree to confer every 30 days to provide information on progress, coordinate, and discuss additional matters. The agreement provides that estimates for separation and cut-over work will be provided by May 1, 2020, or if not available, Public Service will provide Boulder the information it has available and provide its estimate as soon as available. Boulder states Article IV provides for security to protect Public Service and its ratepayers against non-payment by Boulder.

65. No party filed a response objecting to either of these exhibits.

66. We find Exhibit 2, Interim Cost Agreement; and Exhibit 4, Cost Agreement, satisfy the third condition of Decision No. C17-0750.

67. As previously discussed in Decision No. C17-0750, these agreements are not jurisdictional to the Commission and the Commission will not have authority to resolve disputes arising from compliance with the agreements.<sup>13</sup>

68. Also as discussed in Decision No. C17-0750, Public Service will be required to account for the costs it incurs associated with Boulder's municipalization efforts for purpose of review in future rate cases by the Commission. Staff and other parties to those future proceedings will have opportunity to review the costs and the Commission will make at that time any decisions on what costs may or may not be included in Public Service's revenue requirement.<sup>14</sup>

#### **D. Conclusion**

69. We find through Boulder's August 30, 2019, Notice of Filing of Agreements, Exhibits 1, 2, 4, 6, Highly Confidential Exhibit 5A, and Confidential Exhibit 5B, Boulder has met the conditions in Decision No. C17-0750 to secure final approval of the designation of assets outside substations for potential transfer from Public Service to Boulder for Boulder's planned new municipal electric utility. We therefore approve the designation of assets for transfer from Public Service to Boulder identified in Exhibits 5A and 5B to the extent the assets are located outside of substations and are the property of Public Service. With these final determinations, we close this Proceeding. Consistent with our findings in this Decision, all outstanding filings in this Proceeding filed prior to August 30, 2019, are denied as moot.

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<sup>13</sup> See Decision No. C17-0750 at ¶¶ 161, 215-219 (discussing dispute resolution).

<sup>14</sup> See Decision No. C17-0750 at ¶ 254 (discussing establishing rates in future rate proceedings).



70. Prior to the Cut-Over Date, Boulder and Public Service shall file, pursuant to § 40-5-105, C.R.S., an application in a separate proceeding for final Commission approval of the transfer of Public Service's assets to Boulder.

71. We reiterate that neither Decision No. C17-0750 nor this Decision shall be used by either party as a preliminary approval of the transfer of assets.<sup>15</sup> Final approval of the transfer of assets under § 40-5-105, C.R.S., will be accomplished, as necessary, in a separate proceeding by a joint filing of an application for approval of the transfer of assets from Public Service to Boulder. Likewise, nothing in Decision No. C17-0750 or this Decision shall be used by either party in any condemnation proceeding as a finding or opinion of the Commission as to whether there are damages to any remainder interest of Public Service in the assets.<sup>16</sup>

## **II. ORDER**

### **A. The Commission Orders That:**

1. Consistent with the discussion above, the City of Boulder (Boulder) has met the conditions established by the Commission in Decision No. C17-0750, issued September 14, 2017, in this Proceeding No. 15A-0589E, to secure final approval of the designation of assets outside substations for potential transfer from Public Service Company of Colorado (Public Service) to Boulder.

2. The request of Public Service to modify Highly Confidential Exhibit 5A, as shown in Attachment 1 to Public Service's September 9, 2019, Response to Boulder's August 30, 2019, Notice of Filing of Agreements and Corrected List of Assets, is granted.

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<sup>15</sup> Decision No. C17-0750 at ¶¶ 164, 258.

<sup>16</sup> Decision No. C17-0750 at ¶ 258.

3. We approve the designation of assets outside substations for transfer from Public Service to Boulder identified in: (1) Highly Confidential Exhibit 5A, filed by Boulder on August 30, 2019, corrected by Public Service on September 3, 2019, and as modified in Attachment 1 to Public Service's September 9, 2019, Response to Boulder's August 30, 2019, Notice of Filing of Agreements and Corrected List of Assets; and (2) Confidential Exhibit 5B, filed by Boulder on August 30, 2019. We approve the designation of these assets for transfer to the extent the assets are located outside the substations that Public Service presently uses to serve its retail electric customers in the Boulder area and are the property of Public Service.

4. Proceeding No. 15A-0589E is now closed.

5. All outstanding filings in this Proceeding, filed prior to August 30, 2019, are denied as moot. These filings are as follows:

Joint Notice of Filing of Permanent Easement Agreement, Cost Agreements, and Corrected List of Assets Outside Substations and Boulder's Report Regarding the Commencement of Condemnation Proceedings, filed by Boulder and Public Service on October 26, 2018

Motion for Final Approval of Designation of Assets Outside Substations for Transfer, filed by Boulder on November 16, 2018

Motion for Modification of Certain Provisions of Paragraphs 155 and 156 of Decision No. C17-0750, filed by Boulder and Public Service on November 16, 2018

Response, Request for Hearing, Request for Clarification, and Request for Status Conference, filed by IBM, Corp. (IBM) on December 17, 2018

Request for Hearing, filed by Staff of the Public Utilities Commission (Staff) on December 17, 2018

Response, Request for Clarification, and Request for Status Conference, filed by Tri-State Generation and Transmission Association, Inc. on December 17, 2018

Response to Requests for Hearing and Status Conference, filed by Boulder on January 4, 2019

Notice of Withdrawal from Joint Motion for Modification of Commission Decision C17-0750; Notice of Company's Objections to the List of Assets; Or In the Alternative, Motion for Leave to File Out of Time Objections to the Asset List and Request for Hearing, filed by Public Service on January 18, 2019

Response to Public Service’s Notices and Alternative Motion and Request for Hearing, filed by Staff on February 1, 2019

Combined Response in Opposition to: (1) Petition for Declaratory Orders; and (2) Notice of PSCo’s Withdrawal from the Joint Motion for Modification; Objections to the List of Assets; or In the Alternative, Motion for Leave to File Out of Time Objections; and Request for Oral Argument, filed by Boulder on June 12, 2019

Notice Regarding Proposed Process to Address and Resolve Outstanding Issues, filed by Boulder on June 12, 2019

Response to Boulder’s Notice of Proposed Procedures and to the Combined Response in Opposition Filed June 12, filed by Public Service on June 19, 2019

Response to Boulder’s Combined Response in Opposition and Request the Commission Continue to Hear this Matter *En Banc*, filed by IBM on June 19, 2019

Response to Boulder’s Notice, filed by Staff on June 19, 2019

Notice of the Filing of the June 28, 2019 Corrected List of Facilities Outside Substations (Exhibit 5A); Notice Regarding Status of List of Property Interests Outside Substations (Exhibit 5B); and Notice Regarding the Filing of Condemnation Case, filed by Boulder on June 28, 2019

Notice of Filing the August 2, 2019 Corrected List of Property Interests Outside Substations (Exhibit 5B), filed by Boulder on August 2, 2019

Notice Regarding Boulder Filings of June 28<sup>th</sup> and August 2<sup>nd</sup>, filed by Public Service on August 12, 2019

6. The 20-day time period provided by § 40-6-114, C.R.S., to file an application for rehearing, reargument, or reconsideration shall begin on the first day after the effective date of this Decision.

7. This Decision is effective upon its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' DELIBERATIONS MEETING  
October 10, 2019.**

(S E A L)



ATTEST: A TRUE COPY

A handwritten signature in cursive script that reads "Doug Dean".

Doug Dean,  
Director

THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF COLORADO

JEFFREY P. ACKERMANN

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FRANCES A. KONCILJA

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JOHN GAVAN

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Commissioners