

## ATTACHMENT B

### ARTICLE XIII. LIGHT AND POWER UTILITY

#### **Sec. 178. Creation, purpose and intent.**

(a) The city council, at such time as it deems appropriate, subject to the conditions herein, is authorized to establish, by ordinance, a public utility under the authority in the state constitution and the city charter to create light plants, power plants, and any other public utilities or works or ways local in use and extent for the provision of electric power. The city council shall establish a light and power utility only if it can demonstrate, with verification by a third-party independent expert, that the utility can acquire the electrical distribution system in Boulder and charge rates that do not exceed those rates charged by Xcel Energy at the time of acquisition and that such rates will produce revenues sufficient to pay for operating expenses and debt payments, plus an amount equal to twenty-five percent (25%) of the debt payments, and with reliability comparable to Xcel Energy and a plan for reduced greenhouse gas emissions and other pollutants and increased renewable energy; and

(b) The governing body of the electric utility enterprise shall be the city council. The council may, by ordinance, delegate responsibility to the electric utilities board or the city manager as appropriate.

(c) The people of Boulder seek electric power supplied in a reliable, fiscally sound, and environmentally responsible manner. Therefore, the utility will be operated according to the following guiding principles.

(1) **Reliable Energy:** Community safety, convenience, and prosperity all depend on the reliable delivery of electric power. The utility will deliver reliable electric power. The utility's foremost responsibilities will be to provide electric power that is high quality and dependable, support economic vitality, prevent service outages, and respond promptly to any service outage.

(2) **Fiscal Responsibility:** The cost of electric power is a significant portion of business and household budgets. The utility will operate in a fiscally responsible manner, always being mindful that every expenditure will be reflected in customers' rates and will affect household budgets and business profitability. The utility will, while always honoring its obligations to bondholders, strive to maintain rate parity with any investor-owned utility whose service area would include the City of Boulder.

(3) **Clean Energy:** Climate change and diminishing fossil fuel supplies, combined with the high cost of those fuels, are significant factors leading to the creation of the utility. The utility will strive to reduce reliance on fossil fuels, focus on sustainable alternatives, and seek new opportunities for producing clean energy.

(4) **Ratepayer Equity:** The utility will direct its efforts to promote ratepayer equity in all aspects of its operations. Rates charged by the utility will be designed to create a fair and equitable distribution among all users of the costs, replacement, maintenance, expansion, operations of facilities, energy, and energy conservation programs for the safe and efficient delivery of electric power to city residents and other customers. The utility will consider the effects of its programs, policies, and rates in the development of programs for low-income customers.

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(5) Environmental Stewardship: Preserving and protecting our natural environment goes well beyond producing clean energy. The utility will be a good environmental steward by working to reduce the environmental impact of its operations, including working to reduce the demand for electricity. Energy and power that is produced in an environmentally responsible manner requires that the city balance environmental factors as an integral component of planning, design, construction, and operational decisions.

(6) Enterprise: The city will deliver electric power services by means of an enterprise, as that term is defined by Colorado law. The city further declares its intent that the city's electric utility enterprise be operated and maintained so as to exclude its activities from the application of Article X, Section 20 of the Colorado Constitution. (Added by Ord. No. 7804 (2011), § 2, adopted by electorate on November 1, 2011.)

### **Section 179. Definitions.**

Unless the context specifically indicates otherwise, the following words and phrases shall have the following meanings as used in this article:

(a) "Electric Utility Activity" includes, but is not limited to, the provision of electric power to customers within its service area.

(b) "Electric Utility Enterprise" means the electric utility business now or hereafter owned by the city, which business receives under ten percent (10%) of its annual revenues in grants from all Colorado state and local governments combined and which is authorized to issue its own revenue bonds pursuant to this article or other applicable law.

(c) "Electric Utility Facilities" means all real and personal property utilized by the city in connection with the generation, transmission, provision distribution and conservation of energy, electricity, light and power for the city, now or hereafter owned or operated by the city.

(d) "Grant" means any direct cash subsidy or other direct contribution of money from the state or any local government in Colorado which is not required to be repaid. "Grant" does not include:

(1) any indirect benefit conferred upon the electric utility enterprise from the state or any local government in Colorado;

(2) any revenues resulting from rates, fees, assessments, or other charges imposed by the electric utility enterprise for the provision of goods or services by such enterprise; or

(3) any federal funds, regardless of whether such federal funds pass through the state or any local government in Colorado prior to receipt by the electric utility enterprise. (Added by Ord. No. 7804 (2011), § 2, adopted by electorate on November 1, 2011.)

### **Section 180. Powers of the electric utility enterprise.**

In addition to any of the powers it may have by virtue of any of the applicable provisions of state law, this Charter, and the Code, the electric utility enterprise shall have the power under this

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article:

(a) to acquire by gift, purchase, lease, or exercise of the right of eminent domain, to construct, to reconstruct, to improve, to better and to extend electric utility facilities, wholly within or wholly without or partially within and partially without the territorial boundaries of the city, and to acquire in the name of the city by gift, purchase, or the exercise of the right of eminent domain lands, easements, and rights in land in connection therewith;

(b) to operate and maintain electric utility facilities for its or the city's own use and for the use of public and private consumers and users within and without the territorial boundaries of the city;

(c) to accept federal funds under any federal law in force to aid in financing the cost of engineering, architectural, environmental, or economic investigations or studies, surveys, designs, plans, working drawings, specifications, procedures, or other action preliminary to the construction, operation or remediation of electric utility facilities;

(d) to accept federal funds under any federal law in force for the construction, operation or remediation of electric utility facilities;

(e) to prescribe, revise, and collect in advance or otherwise, from any consumer served by a electric utility activity, rates, fees, and charges or any combination thereof for the services furnished by, or the direct or indirect connection with, the electric utility facilities; and in anticipation of the collection of revenues of such electric utility facilities, to issue revenue bonds to finance in whole or in part the cost of acquisition, construction, reconstruction, improvement, betterment, or extension of the electric utility facilities; and to issue temporary bonds until permanent bonds and any coupons appertaining thereto have been printed and exchanged for the temporary bonds;

(f) to pledge to the punctual payment of said bonds and interest thereon all or any part of the revenues of the electric utility facilities;

(g) to make all contracts, execute all instruments, and do all things necessary or convenient in the exercise of the powers granted in this section or elsewhere in state law, the Charter, or the Code, or in the performance of its covenants or duties, or in order to secure the payment of its bonds if no encumbrance, mortgage, or other pledge of property, excluding any pledged revenues, of the electric utility enterprise or city is recreated thereby, and if no property, other than money, of the electric utility enterprise or city is liable to be forfeited or taken in payment of said bonds, and if no debt on the credit of the electric utility enterprise or city is thereby incurred in any manner for any purpose;

(h) to issue refunding bonds pursuant to this article or other applicable law to refund, pay, or discharge all or any part of its outstanding revenue bonds issued under this article or under any other law, including any interest thereon in arrears or about to become due, or for the purpose of reducing interest costs, effecting a change in any particular year or years in the principal and interest payable thereon or effecting other economies, or modifying or eliminating restrictive contractual limitations appertaining to the issuance of additional bonds or to any electric utility

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facilities; and

(i) to begin operations of the municipal utility at such time as the city council may by ordinance provide. (Added by Ord. No. 7804 (2011), § 2, adopted by electorate on November 1, 2011.)

### **Section 181. Revenue bonds.**

(a) In accordance with and through the provisions of this section, the electric utility enterprise, through its governing body, is authorized to issue bonds or other obligations payable solely from the revenues derived or to be derived from the functions, services, benefits or facilities of such enterprise or from any other available funds of such enterprise. Such bonds or other obligations shall be authorized by ordinance, adopted by the governing body of the electric utility enterprise in the same manner as other ordinances of the city. Such bonds or other obligations may be issued without voter approval, notwithstanding the provisions of Section 2(d) of the charter, provided that, during the fiscal year of the city preceding the year in which the bonds or other obligations are authorized, the electric utility enterprise received under ten percent (10%) of its annual revenue in grants or, during the current fiscal year of the city, it is reasonably anticipated that such enterprise will receive under ten percent (10%) of its revenue in grants.

(b) The terms, conditions, and details of said bonds, or other obligations, and the procedures related thereto shall be set forth in the ordinance authorizing said bonds or other obligations and said bonds, or other obligations may be sold in accordance with the provisions of the charter. Each bond, note, or other obligation issued under this section shall recite in substance that said bond, note, or other obligation, including the interest thereon, is payable from the revenues and other available funds of the electric utility enterprise pledged for the payment thereof. Notwithstanding any other provision of law to the contrary, such bonds, or other obligations may be issued to mature at such times as are authorized by the charter, shall bear interest at such rates, and shall be sold at or above the principal amount thereof, all as shall be determined by the governing body of the electric utility enterprise. Notwithstanding anything in this section to the contrary, in the case of short-term notes or other obligations maturing not later than one year after the date of issuance thereof, the governing body of the electric utility enterprise may authorize enterprise officials to fix principal amounts, maturity dates, interest rates, and purchase prices of any particular issue of such short-term notes or obligations, subject to such limitations as to maximum term, maximum principal amount outstanding, and maximum net effective interest rates as the governing body of the electric utility enterprise shall prescribe. Refunding bonds of the electric utility enterprise shall be issued as provided in Part 1 of Article 56 of Title 11, C.R.S. The powers provided in this section to issue bonds, or other obligations are in addition and supplemental to, and not in substitution for, the powers conferred by any other law, and the powers provided in this section shall not modify, limit, or affect the powers conferred by any other law either directly or indirectly. Bonds, notes, or other obligations may be issued pursuant to this section without regard to the provisions of any other law. Insofar as the provisions of this section are inconsistent with the provisions of any other law, the provisions of this section shall control with regard to any bonds lawfully issued pursuant to this section.

(c) Any pledge of revenue or other funds of the electric utility enterprise shall be subject to any limitation on future pledges thereof contained in any ordinance of the governing body of the

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electric utility enterprise or of the city authorizing the issuance of any outstanding bonds or other obligations of the electric utility enterprise or the city payable from the same source or sources. Bonds or other obligations, separately issued by the city and the electric utility enterprise, but secured by the same revenues or other funds shall be treated as having the same obligor and as being payable in whole or in part from the same source or sources. (Added by Ord. No. 7804 (2011), § 2, adopted by electorate on November 1, 2011.)

### **Sec. 182. Utility service standards.**

(a) **Customer Benefit:** The utility shall conduct its business and affairs for the benefit of its customers and the city.

(b) **Cost Effective Service:** The utility will provide the electric power requirements of the customers within the service areas in a reliable, cost-effective, and environmentally responsible manner.

(c) **Energy, Energy Efficiency and Renewable Energy:** The utility will engage in business activities related to the provision of electric power services, which may include but are not limited to investment in conventional electric generation, generation using renewable resources, energy efficiency measures, demand side management, and associated communication systems.

(d) **Rates:** The council will by ordinance fix, establish, maintain, and provide for the collection of such rates, classes of rates, fees, or charges for electric service and other utility services furnished by the city. The council will consider the following factors when setting utility rates:

(1) The utility will produce revenues at least sufficient to pay the cost of operation and maintenance of said utilities in good repair and working order; to pay the principal of and interest on all bonds of the city payable from the revenues of the utility;

(2) The utility will provide and maintain an adequate fund for replacement of depreciated or obsolescent property, and for the extension, improvement, enlargement, and betterment of the utility; to pay the interest on, and the principal of, any bonds issued by the city to extend or improve the utilities;

(3) The utility will consider electricity rates of surrounding and similarly situated communities and use best efforts to set competitive utility rates; and

(4) The council will fix rates for which electric service will be furnished for all purposes, and rates shall be as low as good service will permit, consistent with the guiding principles set forth in section 178 (c)(1) – (6).

(e) **Budget and Appropriations:** The council, by ordinance, will approve the budget and appropriations as required by Charter Art. VI.

(f) **Accounting Standards:** All revenues and expenditures of the city's electric system will be considered revenues and expenditures of the utility and shall be audited and accounted for in a

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manner that is consistent with charter § 127.

(g) No Free Service: No free energy or power shall be given to any person, firm, corporation, or institution whatsoever.

(h) Payments in Lieu of Taxes and for Services Rendered – City: The utility may only transfer funds for another governmental purpose within the city if:

(1) a service is provided to the utility by another department within the city; or

(2) in lieu of tax or franchise fee payments that a similarly situated private utility would have been required to pay taxes to the city. The maximum payment in lieu of taxes shall be limited by an estimated amount of property, sales or use tax, and a payment in lieu of a franchise fee not to exceed four percent of annual revenues.

(i) Payments in Lieu of Taxes and for Services Rendered – Other Governmental Entities: The utility shall annually transfer funds to the Boulder Valley School District in an amount the city council determines will approximate property taxes that a private utility would have paid to the School District on property owned by the electric utility enterprise. The utility may transfer funds to other governmental entities in lieu of property taxes that would have been paid if a similarly situated private utility would have been required to pay property taxes to the other governmental entity or for up to the value of a service rendered.

(j) Preferences Prohibited: The utility shall not make or grant any preference or advantage to any corporation or person or subject any corporation or person to any prejudice or disadvantage as to rates, charges, service, or facilities, or in any other respect.

(k) Advantages Prohibited: The utility shall not establish or maintain any unreasonable differences or undue preferences as to rates, charges, service, facilities, or any respect as between any class of services. The utility may create a fund to provide assistance to low-income customers for energy efficiency or generation improvements or utility bill payments. When considering whether to approve such a fund, and give a preference or advantage to low-income utility customers, the utility shall take into account the potential impact of and cost-shifting to, utility customers other than the low-income utility customers. (Added by Ord. No. 7804 (2011), § 2, adopted by electorate on November 1, 2011.)

### **Sec. 183. Creation of an electric utilities department and general powers.**

(a) Electric Utilities Department: There shall be an electric utilities department, which shall be responsible for all planning, generation, transmission, and distribution of energy, electricity and power for the city, and such other responsibilities as the city council or city manager may assign.

(b) General Powers:

The electric utilities department shall have the authority to:

(1) Generate and deliver energy and exercise all the powers of the city including those granted by the Constitution and by the law of the state of Colorado and by the charter in regard to

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purchasing, condemning and purchasing, acquiring, constructing, leasing, extending and adding to, maintaining, conducting, and operating an electric utilities system for all uses and purposes, and everything necessary, pertaining or incidental thereto, including authority to dispose of real or personal property not useful for or required in the electric utilities operation.

(2) Purchase, generate, transmit, distribute, and sell electric energy.

(3) Make and execute contracts, take and give instruments of conveyance, and do all other things necessary or incidental to the powers granted in this charter.

(4) Carry out the operations, supervision, and regulation of the utility related to the lawful operation of the utility as directed by the city council.

(5) Make recommendations to the electric utilities board or the city council on matters required by the city charter.

(6) Enter into contracts and agreements with any public or private corporation or any individual, both inside and outside the boundaries of the city and state:

(A) for the joint use of property belonging either to the city or to the other contracting party or jointly to both parties; and

(B) for the joint acquisition of real and personal property, rights and franchises, and the joint financing, construction, and operation of plants, buildings, transmission lines, and other facilities. (Added by Ord. No. 7804 (2011), § 2, adopted by electorate on November 1, 2011.)

### **Sec. 184. Functions of the electric utilities director.**

Under the direction, supervision, and control of the city manager, there shall be a director of the electric utilities department who shall be qualified by special training and experience in the field of electric utilities and municipal engineering. The director shall be the regular technical and policy advisor of the electric utilities board and shall have administrative direction of the electric utilities department. The director may be designated as the secretary of the electric utilities board and authorized to perform other necessary functions. (Added by Ord. No. 7804 (2011), § 2, adopted by electorate on November 1, 2011.)

### **Sec. 185. Creation of the electric utilities board.**

(a) Board Created: There shall be an electric utilities board consisting of nine members not all of the same gender. The members of the board shall not hold any other office in the city, and shall serve without pay.

(b) Board Qualifications: Board members shall be selected from the registered electors of the city or from the owners or employees of a business or governmental entity that is a customer of the electric utility, provided, however, that a majority of the board shall be registered electors of the city. Board members shall be well known for their ability, probity, public spirit, and particular

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fitness to serve on the electric utilities board. At least three board members shall be owners or employees of a business or governmental entity that is a customer of the electric utility.

(c) Board Appointments: The city council shall appoint members of the board.

(d) Terms of Office: The term of each member shall be five years; provided, however, that in appointing the original members of the board, the city council and city manager shall continue the terms of the current members or shall stagger the initial terms so that at least one board member's term expires in each year.

(e) Removal: The city council may remove any board member for cause.

(f) Vacancies: In the event that a board member's term ends by resignation, vacation of seat or removal from service on the board, the board member shall be replaced by the city council.

(g) Creation of Electric Utilities Board: The electric utilities board shall be created at the time of the creation of the electric utility enterprise. Until such time as the board is created, the city council shall be responsible for fulfilling the responsibilities of the electric utilities board. (Added by Ord. No. 7804 (2011), § 2, adopted by electorate on November 1, 2011.)

### **Sec. 186. Organization and procedure of the board.**

(a) Chair and Secretary: The board shall choose a chair and a secretary from among its members. The director of electric utilities may be designated as secretary by the board.

(b) Regular and Special Meetings: The board shall have regular meetings once a month. Special meetings may be called at any time by the city manager, the chair, or four members of the board upon the giving of at least 24 hours notice of said special meeting to the board members.

(c) Quorum: Five members of the board shall constitute a quorum. An affirmative vote of a majority of the members present shall be necessary to authorize any action by the board, except as otherwise expressly provided herein.

(d) Record of Meetings: The board shall keep minutes and records of its meetings, recommendations, and decisions.

(e) Rules of Order: Except as otherwise expressly provided herein, the board shall have power to make rules for the conduct of its business. (Added by Ord. No. 7804 (2011), § 2, adopted by electorate on November 1, 2011.)

### **Sec. 187. Functions of the board.**

The electric utilities board shall not perform any administrative functions unless expressly provided in this charter. The duties and functions of the electric utilities board shall be:

(a) Advice. To advise the city council on policy matters pertaining to the municipal electric and utility systems, including without limitation such policies as the board determines are necessary

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or prudent to carry out its fiduciary duties and the requirement of the charter.

(b) Sounding Board. To act as a sounding board to the city council, city manager, and the electric utility director for the purpose of identifying the ratepayers' service delivery expectations.

(c) Rulemaking. To adopt rules and regulations with respect to any matter within its jurisdiction as it may be permitted by the council.

(d) Meeting Rules. To adopt bylaws governing its meeting and agenda procedures and other pertinent matters.

(e) Budget and Appropriations. To review and make recommendations to the city council on the city manager's proposed budget and appropriation as it relates to the utility.

(f) Revenue Bonds. To review and make recommendations to the city council concerning the issuance of revenue bonds or other obligations payable from revenues of the electric utilities enterprise.

(g) Other Recommendations. To review and make recommendations on any other matter relating to the electric utilities program, and may request and obtain from the electric utilities department and the city manager information relating thereto.

(h) Other Duties. To perform such other duties and functions and have such other powers as may be provided by ordinance. (Added by Ord. No. 7804 (2011), § 2, adopted by electorate on November 1, 2011.)