



**Blue Horizon Energy LLC**  
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**April 4, 2023**

Minnesota Public Utilities Commission  
121 Seventh Place East, Suite 350  
St. Paul, MN 55105

**Blue Horizon Energy Petition for Rehearing, Amendment, Vacation, Reconsideration or  
Reargument, Docket E-002/M-22-170: *“Xcel Energy’s petition for approval of a resiliency  
service program and associated tariff language”***

Blue Horizon Energy is filing this Petition for Rehearing, Amendment, Vacation, Reconsideration, or Reargument pursuant to Minnesota Rule 7829.3000 because we are aggrieved and directly affected by the Commission’s March 15, 2023, Order (the “Order”) approving Xcel’s Resiliency Program (the “Program”). As explained in more detail below, we are gravely concerned about the potential for irreconcilable abuse of monopoly power within the Program because we have directly experienced the severe anti-competitive impact of similar programs in other markets.

Background on Blue Horizon Energy

Blue Horizon Energy was founded in 2009. We have served over 800 customers across Minnesota and many others across the country. Our business focuses almost exclusively on commercial and industrial energy consumers, for whom we design, construct, and operate solar energy and battery storage systems. We are proud to employ over 40 dedicated individuals from our Minnetonka, MN headquarters. Minnesota has been our home market and we have been fortunate to experience significant growth in our business here as our state’s focus on sustainability deepens and clean energy adoption continues to accelerate.

Concerns Regarding the Order and Program

Our principal concerns with the Order and the Program it approved are straightforward. First, it is impossible to compete with Xcel’s monopoly power. This leaves the Program ripe for Xcel’s anti-competitive abuse (even if unintentional). Second, the Program as-designed has no clear guardrails to address monopoly power concerns, no clear dispute resolution process to identify and resolve potential monopoly power abuses, and no process to define rules in either critical area. This creates no path for clear accountability to be defined and enforced upon Xcel. Third, the Program is, fundamentally, an unnecessary intrusion by a monopoly utility into the

existing behind-the-meter market. This is a market which today is vibrantly competitive, with dozens of service providers and dozens more product offerings (in technical and financial terms) which can provide the same or better services as Xcel purports to propose.

#### Experience in other markets

We have directly experienced the potential for anti-competitive abuse of a similar program with Alliant Energy in Iowa. Throughout 2022, our development team was discussing a multi-site solar and battery storage project with a school district in North-East Iowa. We spent many months cultivating this relationship, working with the district to define priorities, and evaluating the characteristics of the site (including coordination with adjacent properties).

Then, in August 2022, we scheduled a meeting with Alliant to discuss interconnection methodologies and evaluate rate structures. The purpose of this meeting was expressly to review the proposed projects developed by our team in collaboration with the district. Unfortunately, at the meeting Alliant brought not only their interconnection and engineering coordinators, but also the salespeople handling their “customer sited solar” programs (generally equivalent to the proposed Xcel Program). They then spent the entire meeting attempting to sell the district on Alliant’s programs, rather than providing the requested logistical and engineering feedback on our thoroughly developed projects. Ultimately, Alliant stole the customer we had spent many months building a relationship with – a customer who had never approached the utility about their programs beyond our development work.

No matter how skilled a private developer may be, we cannot compete with a multi-billion-dollar monopoly utility when they decide to steal our customers, and we are gravely concerned that Xcel’s market power will come to bear in a similar fashion here in Minnesota.

#### Recommendations

Our core recommendation would be for the Commission to vacate its Order and rescind its approval for this Program, in keeping with the dozens of states that have denied similar programs. However, if the Commission feels that the Program must proceed in some fashion, we recommend the following conditions:

- 1) The Program should be a limited pilot defined to a specific limited universe of Xcel customers, ideally the “dozen or so” they have identified previously in this docket.
- 2) Xcel should be prohibited from promoting or otherwise selling these services to any of its customers who are already engaged in discussions with private developers regarding solutions or projects similar to those provided by the Program.
- 3) Xcel should be required to document a specific plan of controls and limitations that will ensure (a) no non-public customer or grid data is available to the Xcel teams selling or implementing the Program, (b) projects originated through the Program are not given any priority, whether through interconnection, engineering, or otherwise, above projects

pursued by private developers outside of the Program, and (c) any other limitations developed through public comment in the rehearing process. This plan should be required to be submitted for public comment, PUC review, and PUC approval in this docket before the Program can be promoted to customers or implemented. This plan should then be annually reviewed, with the opportunity for public comment, so that future issues that arise may be addressed and the plan modified to avoid future conflicts.

- 4) Xcel should be required to document a specific dispute resolution process, such that if a private developer feels Xcel has violated the spirit of the Program or the limits placed upon it, that developer can have an efficient and effective means of preventing harm to their business as a result of Xcel's actions. This dispute resolution process should be conducted under the oversight of the Commission or another similar public agency.

In short, if this Program is to proceed, there is much work yet to be done to ensure appropriate, thoroughly-vetted limitations are in place to protect competition and consumers. The Program, as it stands today, is simply not ready for safe or reasonable implementation. This work deserves a full and robust public process to ensure all stakeholders are represented, requiring an in-depth reconsideration of the Commission's position.

Closing: We are not alone

In closing, we would like to highlight that the concerns outlined in this letter are not unique to our organization. We have heard similar concerns from over a dozen other organizations, ranging from private developers to equipment distributors to contractors, who are deeply concerned about this issue. Many have chosen not to publicly petition for fear that their organizations will be retaliated against or their projects within Xcel's territory will be jeopardized.

We hope that if the Commission takes the lead on vacating this Order or reopening this issue for further public consideration, others will feel empowered to come to the table for the discussion so that Minnesota's behind-the-meter solar + storage market can continue to grow.

Thank you for your consideration of this petition.

Sincerely,

A handwritten signature in black ink, appearing to read 'Griffin Dooling', written over a circular stamp or seal.

Griffin Dooling  
CEO, Blue Horizon Energy LLC