

Date 06/16/23

Docket: E002/M-21-222 & E002/M-19-33

Attn: Andrew Bahn (Dept of Commerce) and the Public Utilities Commissioners

Subj: Reply to Petition for Reconsideration/Amendment

Before I begin, I want to be clear that I am speaking here only on behalf of myself, and no one else.

Aaron Hanson's Petition for Reconsideration indeed offers no new arguments, information, or facts. This is true.

However none of these key arguments or facts have been directly and clearly addressed by any party in this entire docket. Not the department of commerce. Not the Public Utilities Commission. And least of all Xcel Energy.

I am absolutely exhausted with the gaslighting of this process. Being told, again, and again, and again, that my concerns have been addressed when they have only been deflected from, talked around, minimized, and outright ignored. It's sickening, it's dehumanizing, it's mentally and emotionally painful. I do not enjoy this process. I do not enjoy wasting my time repeating myself. I do not enjoy taking part in this quasi-judicial legal theater production which has only managed to demonstrate to me why Kafkaesque is a word in the general lexicon.

Andrew Bahn, or the Public Utilities Commissioners, please show me where our specific legal arguments have been effectively rebutted in the written or spoken record. Please show me.

Show me where it was explained that when Xcel acknowledged pricing renewables at a premium relative to the fuel clause was a violation of state statute, that their own lawyers were actually wrong, and that it's now suddenly okay for them to do that. Where was that explained?

Show me where the department of commerce has responded to our initial supplemental comments on March 20th, or our reply comments on April 7th which raised a new substantive legal concern about the department's initial supplemental comments, or the request for updated decision items on May 3rd, which presented additional reference to the PUC's own logic in its original order which clearly demonstrate that the conditions on which the original merger approval was based have changed. You can't, because the department hasn't responded to any of them, except in this most recent reply once again pretending all has been resolved and we are just intransigent public sticks in the mud.

Aaron and I keep repeating ourselves because no one has given us any clear answers about serious legal concerns that we've raised. Do you know what it feels like to keep asking the same questions over and over and being ignored, and demeaned, and presented fallacy after fallacy in double-speak by Xcel's lawyers and now even the so-called public advocates that are supposed to represent us, the public, treat us as adversaries to the public interest? Why on earth would I want to keep subjecting myself to this? Why would any member of the public? The Public Utilities Commission claims to appreciate our participation, but its actions largely demonstrate the opposite. When humans do that to one another it's called abuse. When governments do it to the public, what should it be called?

The public utilities commission has public in its name, but it has not done anything to accommodate or support actual members of the public in this docket. It seems to fancy itself an impartial referee that sits on the sidelines and will let two concerned citizens get into the ring with a \$35 Billion corporation and call it a fair fight. Have you no power analysis? Have you no shame? Christian Noyce's staff briefing papers offered no direct response to any of our concerns, save to repeatedly suggest that if we actually cared about these issues we should've, would've, could've gotten involved with other dockets, at other times, that we have virtually no way of knowing about without the commission's or the department's assistance. But I suppose it's our fault that we can't be everywhere all at once, and recover from ratepayers an unlimited amount of expenses for PUC advocacy. Better to be the utility than the public before the public utilities commission.

And speaking of assistance, we have asked for help, repeatedly and extensively, and not been able to get any support. It's like Xcel Energy has sucked the very marrow out of every single Minnesotan energy advocate, and even many out of state ones, with their absurd rate case request. Just as they did in 2021 with the IRP when I sought support around my concerns then. Xcel makes more money each year (\$15B) than the entirety of the US environmental movement receives in charitable funding (\$8B). Did you know that?

And for the record, we reached out to Will Nissen before he wrote his initial comments to try to share the compliance data we had organized and our analysis of several key concerns, but we were unable to find a time to meet. He thanked me for what I had shared via email, and encouraged me to file what I had shared, stating, "You all have done some impressive work and the Commission would benefit from your analysis and insights. I would then have a chance to officially respond to your analysis and recommendations in reply comments in the docket." He then suggested we connect after we had both submitted initial comments, to discuss reply comments. Unfortunately, when I reached out on March 21st, he informed me he was leaving the department to join the commission and he wouldn't be handling the docket anymore. He thanked me again and stated, "I think they raised issues I wasn't able to dive into."

Because of Will's unexpected departure, the department never considered our initial comments, nor our reply, nor our letter. The department offered no reply to us at all, until now.

During the agenda meeting, Andrew Bahn in fact joked that Will Nissen was much smarter than him, and now that he works at the Public Utilities Commission it wouldn't make sense for him to take a different position than Will. But again, Will's analysis didn't respond to our analysis, which wasn't in the record for reply yet. If Will is so smart, maybe it would be wise for Andrew to take his advice and officially respond to our analysis in the docket and apologize for demeaning us.

When I found out Will was leaving the department, I reached out to the Office of Attorney General Residential Utilities Division to weigh in on the legal concerns we raised about the his analysis, since the OAG hadn't engaged in the docket since Ian Dobson left the OAG to go work for Xcel. Given how insightful and forward thinking his analysis was, surely someone at the OAG would want to follow up. Peter Scholtz responded to assure me that the Department of Commerce handles this sort of docket and would ensure "that they do not unduly favor participants or nonparticipants." When I shared an excerpt from the department's comment demonstrating a clear rate design preference for subsidizing costs borne by non-participants, and how Will Nissen was leaving the department and would not be offering any further replies, I received no further reply.

Xcel's reply was the only response to our analysis, and it sought only to minimize the importance of determining final program pricing and convince the PUC that everything new we had to say was actually old news, when in fact, most of it was very much new. The 2021 reply they referred the commission to not only didn't respond to our new concerns, but it also failed to respond to the most substantive concerns I had raised at the time, picking at the edges of lesser points and repeatedly suggesting everything has already been settled.

In that 2021 reply what Xcel primarily did claim was to have "reached out to Mr. Butts directly in order to resolve his concerns" and instead what happened was that I received an initially passive aggressive phone call from their program manager, Jacklyn Webb, who seemed to have been instructed to reach out to resolve my concerns. As I raised my concerns, she repeatedly told me that she could not respond to any of my questions pertaining to the docket, and eventually she accused me of lying in my comment about reaching out and receiving no response, when she prides herself on responding to every customer email she receives. After agreeing to end the increasingly hostile call, I forwarded her the string of three emails I had sent her in October and November of 2020 that went without reply. She then apologized, admitting she now remembered marking my first attempt at reaching out as spam, and believed the company's spam filter did the rest from there. This outreach did not resolve any of my concerns, it in fact heightened them and left me feeling personally attacked and intimidated. Jacklyn, according to LinkedIn, appears to have left Xcel Energy after nearly 16 years with the company, just months after our final email interaction. Why I can't say, but it seemed to me like her managers had put her between a rock and a hard place. Having escaped a toxic corporate environment myself, I can sympathize if that was the case.

Xcel Energy also claimed at the time to have my address to send my refund check to, but this was also false, because they sent the refund check as well as their PUC comments to my mother's condo, an address that I have never lived at. Despite Xcel's unprofessionalism, I have tried to maintain a degree of civility and de-personalization in these dockets since I've seen how their lawyers will use any opportunity to carefully undermine the credibility or motive of those who dare challenge them.

Ultimately, Xcel's reply comments in 2021 simply couldn't have addressed the very first and most substantive of our legal claims in our newest comments, because Xcel hadn't yet stated their intention to adjust the neutrality adjustment to price the program at a "premium" until their December 2022 proposal. Their new reply not only didn't address their own hypocrisy, but was designed to deflect away as much attention as possible – from them, back onto us.

The PUC staff briefing papers repeated the false claim that Xcel had reached out to me directly and resolved my concerns, and now the Department of Commerce seems to have also been duped into the same false assumption. In what little analysis was offered by Christian Noyce, all the decision items designed to reflect our concerns were immediately recommended against, not because of issues with their merit, but on procedural grounds. That we should've gotten involved in other dockets in the past, or dockets we have no way of knowing about, or that we should wait a year and a half for a compliance report so we can rerun the same analyses and make the same points that are being summarily ignored today. These absurd procedural expectations of the public and the antiquated nature of the eDockets system were specifically called out in the Office of the Legislative Auditor's report about barriers to public participation in PUC processes that Aaron refers to in his petition. Reading that report is the closest thing to feeling heard or seen I've experienced in this process.

The commission adopted Will Nissen's initial comment as the order, offering no additional comments or responses of its own, even though it did not respond to any of our concerns. The PUC did not even choose to offer an explanation for why there is no need to revisit their conditional approval of the Windsource merger, when one of the core assumptions it was built on, that the new month-to-month rate would be equal to or less than the current Windsource program tariff rate, is demonstrably false. It's false not just based on what an accurate update of Windsource's price would be, it's false based on Windsource's grossly overstated tariff. Since the PUC expressed a clear reluctance to discontinue Windsource in 2019, why does a perfectly non-disruptive decision-option to delay the dissolution of Windsource to ensure it's still in the public interest, merit no discussion?

And as far as I can tell not a single word was written or spoken with regard to the update of MN statute 216B.1691 by SF4/HF7 and how that should alter the commission's considerations in this docket either.

Unless all of our concerns have been addressed behind closed doors, or behind redactions and trade secret protections without our awareness, then we offer no new analysis because this process has completely failed to address the concerns we've already presented it with. As Aaron requests at the end of his petition: "At the very least, the Public Utilities Commission should provide the public a detailed accounting of its own deliberation."

Despite all of this, the commission and the department want to tell us that they really appreciate all the valuable analysis we've added to the docket? That you "read the record closely," and take to heart our concerns? I've invested hundreds of hours of my time on nights and weekends, and disrupted the normal flow of my work, and lost sleep at night and not only were no changes made, but I never received a single clear explanation for what our analysis has gotten wrong.

I went to school for public policy. I believe deeply in democracy. I am a community organizer, and have built a non-profit hand-in-hand with dozens of other volunteers over the course of years because my years in the scouting program gave me a fire for cheerful service that I feel in my bones. I'm all out of cheer though. This process has been appalling to me and I am ashamed that this is the best system our government has come up with to regulate utilities for public benefit. Do better. You have turned me completely away from participation in these processes in the future. Another win for Xcel's lawyers I suppose. They got paid to subvert the public interest. And they got the public to pay for it too.

What no one seems to want to admit is that upholding the laws as they're written and pricing the renewable energy program correctly at a discount creates an existential crisis for Xcel's existing fuel-based system. But Xcel's fuel-based system has created an existential crisis for all life on the planet. And we in the Midwest were breathing it in last week. I had my first daytime asthma attack in years. We share the same air. Please do the right thing. Uphold the law. Protect the public.

With clarity of values,
Andrew Butts

*"If you are neutral in situations of injustice, you have chosen the side of the oppressor.
If an elephant has its foot on the tail of a mouse and you say that you are neutral,
the mouse will not appreciate your neutrality."*

-Archbishop Desmond Tutu