

**To:** council@bouldercolorado.gov

**Subject:** Councilman Yates' January newsletter

**Date:** January 13, 2022

To Boulder City Council,

In his January "Boulder Bulletin" newsletter, Councilman Bob Yates summarized the last decade of Boulder's effort to create a municipal utility. He covered a lot of ground.

While we appreciate Mr. Yates' effort, we find a number of facts missing that, if included, would provide a more complete perspective.

We have copied Mr. Yates' newsletter article below and have inserted some of the missing items, indicated by green text and lines above and below the inserted text.

We hope you find this useful.

If you have any questions or concerns, please contact us at the address on this email.

Best regards,

Empower Our Future

---

## Foe to Friend By Bob Yates January 2022

---

*The best way to find out if you can trust somebody is to trust them.*

– Ernest Hemingway

In 2010, after years of haggling with Xcel Energy over the pace of decarbonization of Boulder's electric supply, the city—with the consent of a majority of its voters—let its franchise with Xcel expire. The following year, the voters approved outright war against Xcel, giving city staff the direction and the money to do whatever it took—including litigation—to seize Xcel's electric distribution assets in Boulder, so that the city could operate its own, greener utility. The undertaking was dubbed "municipalization." It would last a decade.

---

For clarity on the legalities, the Colorado State Constitution allows condemnation of an investor-owned utility's assets that are within the home rule city's boundaries.

Also, there already are 28 community-owned electric utilities across Colorado. [For more information about municipal power see: <https://www.coloradopublicpower.org/about>. For a brief history of municipal power in Colorado see: [https://9e6eb822-7c67-440f-bf8d-ada1f08dedfa.filesusr.com/ugd/104ed3\\_bd29e81e37114e46a368a6fc9b54406c.pdf](https://9e6eb822-7c67-440f-bf8d-ada1f08dedfa.filesusr.com/ugd/104ed3_bd29e81e37114e46a368a6fc9b54406c.pdf)]

The city began seriously discussing municipalization in the 2007-2011 period. It was on the council agenda and open for public comment, from opponents and proponents, which helped shape the ballot issues.

This was not war. To the contrary, this was a civil procedure. What actually happened was that the voters approved the terms for the creation of a municipal utility, if it were to be created, and funds to explore the concept.

But, at the same time, the City Manager offered Xcel the opportunity to make Boulder its "laboratory" to experiment with faster ways to decarbonize. Unfortunately, Xcel refused to consider seriously this valuable offer.

Instead, this led to Xcel offering Boulder an opportunity to invest in a very expensive wind farm, which Boulder quite reasonably rejected.

Then followed a series of on-again/off-again negotiations between the City and Xcel, starting around 2013, and continuing for some years, in an attempt to find a mutually acceptable solution to Boulder's desire to have cleaner electric power. In 2014, the citizens voted to grant City Council the power to hold executive (closed door) meetings to discuss negotiation strategy. But Xcel refused to make Boulder any acceptable offers. In fact, the last offer, which Xcel put on the table in 2017, was so one-sided that few in city government or citizenry took it seriously.

[A more complete timeline of the history of Boulder's efforts related to energy and climate change is available at: <https://empowerourfuture.org/boulder-municipalization-a-history/>]

---

Over the course of that decade, the city spent more than \$25 million in legal fees and other expenses on municipalization,

---

Xcel's \$588 million in after-tax profits means that over \$20 million per year leaves Boulder just for their profits — and Xcel has recently proposed a \$343 million (approximately 12%) rate increase. So, Xcel extracts almost as much every year from our community as we spent in the entire 10-year municipalization effort.

---

fighting Xcel in more than a dozen lawsuits in court and before state and federal regulatory agencies. Xcel undoubtedly spent at least the same amount, trying to hang on to the electric network assets it had built in Boulder over the course of a century. When one side would lose a lawsuit, it would invariably appeal to a higher court. Dozens of staff members from each the city and Xcel were deployed to fight the battle, some full time.

---

Xcel did NOT build these “network assets...over the course of a century.” They were built by Public Service Company of Colorado. Xcel didn't even exist until around 1999 when it was created as a holding company that bought up eight regulated utilities in various states as a money-making venture.

Here is some of the legal work by the City that impeded efforts to pursue municipalization:

- 1) 2011 - City Charter rules to allow the city to create the legal structure for a municipal utility prior to putting it into operation were improperly written and never revised despite input from knowledgeable, concerned stakeholders;
- 2) 2014 – 2019 - City legal efforts to expedite condemnation of the distribution system were premature and diverted extensive city legal and financial resources;
- 3) The final terms of the distribution settlement were extremely poorly written and did not allow for those Charter amendments necessary if Boulder were to try to municipalize in the future. These conditions left everyone, including those who in the future might advocate for the creation of a “muni”, in a very difficult position.

All of this was done with the blessing of a majority of Boulder voters, who were consulted through ballot measures in 2010, 2011, 2013, 2014, and 2017, repeatedly approving the war against Xcel—and the funding of that fight—although often by the narrowest of electoral margins.

---

Again, “War against Xcel” is overstated. Proponents of municipalization acknowledged the advances that Xcel did make, but advocated municipalization because Xcel was simply not moving quickly enough toward clean energy.

---

Municipalization was Boulder’s Civil War. Over the decade of the 2010s, slightly more than half of the electorate felt that the fight and the money were worth it, to achieve the city’s climate goals. However, a significant minority in the community was opposed to municipalization. While many of them believed in climate action, they felt that having the city take over Xcel’s distribution network would not be an effective way to address climate change.

---

“Civil War?” Really? See “war” comment, above.

---

Finally, like fighters in a boxing match, bloodied but unbowed going into late rounds, the litigants took a step back in 2020 and asked each other whether continued war was in anybody’s best interest. Although eventually one party would probably claim victory, both would lose. And the planet continued to warm.

---

The planet continues to warm in part due to Xcel's electric utility decisions.

Even though the effects of coal burning on climate change had been known for decades, in 2006 Xcel initiated construction of a huge 750-megawatt coal fired power plant called Comanche 3 near Pueblo. (Xcel owns 2/3 of it.) The plant ended up costing somewhere around \$1.2 billion dollars.

And even with all that money spent, Comanche 3 operates only sporadically and unreliably. Because it cannot be counted on, it is basically useless to back up solar and wind. Yet Xcel wants us to keep paying off their bad investment (and at their high rate of return), not just for the time it will keep running, now likely to end before 2040, but until every dollar Xcel invested in it is paid off, currently scheduled to be 2069 or thereabouts.

In the face of growing evidence and impacts of climate change, and as Comanche 3 was being put into operation, Xcel convinced the Legislature to pass the 2010 so-called “Clean Air Clean Jobs Act” (CACJA). This allowed Xcel to shut down a few other coal plants early (on average, around 4.5 years before their planned decommissioning dates) but we customers were forced to keep paying for these plants even though they were already decommissioned.

In exchange, Xcel was allowed to run two of their other coal plants for multiple decades into the future. And the language of the bill made this decision basically unchallengeable legally.

The CACJ Act cost Xcel nothing, but cost us ratepayers a bundle, and didn’t significantly reduce the overall amount of carbon ultimately going into the atmosphere.

The Marshall fire underscores how important greenhouse gas emissions reductions are and how slow Xcel has been to move.

So, staff members from the city and Xcel sat down together in the spring and summer of 2020 and started working on a peace treaty. Like the end of all long wars, it took people on each side a while to start to trust each other. Settlement negotiations require vulnerability. You have to be honest and you have to acknowledge your weaknesses. You have to listen to your adversary. A successful negotiation requires that parties set aside their positions, and genuinely examine each other's interests.

---

A noteworthy aspect of that negotiation process is that the voters were not given the option of simply ending the municipalization effort without signing a 20-year franchise with Xcel.

So the voters were left with an uncomfortable choice: Neither option was the one that might have made the most sense. That option was eliminated prior to the vote.

As to the supposed benefits of the franchise agreement, it was repeated multiple times during the campaign that this franchise was “a path to achieve Boulder’s goal of 100% renewables by 2030” or words to that effect. But there is NOTHING in these almost 100 pages of agreements that provides concrete enforceable commitments to anything like that.

[For more information about what the proponents for signing an agreement with Xcel said in 2020, please see: <https://empowerourfuture.org/fact-checking-bob-yates/>]

The only “carrot” that Boulder really got was the money for undergrounding for the 10 years we were trying to work out a just, safe, and clean energy future.

Note that all Colorado Xcel customers pay for undergrounding, but only the franchised cities receive it. Thus, in paying our Xcel bills we were forced to continue to pay the fee for undergrounding other cities. This is grossly unfair, but the PUC has never seen fit to deal with this inequitable treatment of areas not under franchise (such as county lands and cities without franchises).

---

So, here we are, a year after that municipalization settlement was approved by the voters. The settlement terms were lengthy and required a partnership and ongoing commitments by each party. How are we doing? Are we still allies one year into this new relationship?

“Our goal always has been to decarbonize our energy system as quickly as possible,” says Jonathan Koehn, Interim Director of Climate Initiatives for the city of Boulder. “There have been multiple ways to get there, but all involved our electricity provider, Xcel Energy. Creating our own locally-owned electric utility through municipalization was just one of many pathways. Another was finding a way to design a new form of partnership with Xcel aimed at unlocking innovative strategies that could be scaled to other communities.”

Jonathan says that Boulder was clear from the beginning that the status quo was not a viable option. “We believe that message helped Xcel challenge themselves to better meet the needs of communities like ours,” he says. Xcel’s trajectory and the state landscape have changed significantly since 2010. Over the course of the 2010s, Xcel voluntarily agreed to reduce its dependence on fossil fuels, and Colorado law began mandating it. By 2020, a majority of Boulder voters were ready to change direction and partner with Xcel to achieve the community’s climate goals. Says Jonathan, “The partnership creates new, transformative actions and, importantly, those actions are transferrable, so that Xcel can offer the innovations to other cities they serve.”

The city's report on the first year of the new Boulder-Xcel partnership was recently released, detailing early actions that the two parties have taken to address climate change. It's a surprisingly long list of accomplishments given that the partnership is barely a year old, and includes:

- The city assisting Xcel in achieving its commitment to reduce its statewide greenhouse gas emissions (from 2005 levels) by 52 percent before the end of this year, and by 80 percent by the end of this decade.

---

This is what the City was going to do in any case. So there is no franchise benefit here.

---

- The parties working collaboratively to modernize Xcel's distribution grid, both to increase reliability and to help Boulder achieve its own goal of 100 percent renewable energy by 2030.

---

But nothing new is going on here. And the real issue is that Xcel will keep burning coal well past 2030, and for long as we're on their system, we're contributing to those emissions.

---

- Undergrounding electric lines on North Broadway as the first of dozens of city undergrounding projects over the coming years.

---

Xcel will almost certainly ask the PUC to put any extra undergrounding in their rate base, so it gets paid for by all ratepayers and not Xcel's stockholders.

---

- Partnering with State Senator Steve Fenberg to pass state legislation to increase the limit on how much rooftop solar can be deployed on a building in Colorado, from 120 percent of the building's usage to 200 percent, allowing more sharing of renewable electricity generation in a community.

---

Credit for finally fixing this legislation to provide a modest expansion of the rooftop solar rule goes to Boulder's Legislative team and the Colorado Legislature, not to Xcel. In fact, Xcel originally created the problem by pushing to limit rooftop solar systems to 120% of the building's consumption. So, in effect, we're helping to fix a problem that Xcel created.

---

In addition to working together in partnership with Xcel, the city has weighed in on Xcel's quadrennial Energy Resource Plan filed last spring with the Colorado Public Utilities Commission. Every four years, Xcel is required to lay out its plans and economics for serving its electricity customers around the state. This time, one of the big issues was the retirement of Xcel's remaining coal-fired generation plants, particularly the large coal facility near Pueblo known as Comanche 3.

Originally scheduled to operate until 2070, Xcel has been under pressure from Boulder and other cities and environmental groups to decommission Comanche 3 sooner, in order to reduce carbon emissions. Xcel has seemed amenable to early decommissioning, but has struggled with how to replace the electricity generation capacity in a reliable way.

A few weeks ago, in collaboration with Boulder and others, Xcel announced that it would decommission the Comanche 3 plant no later than the end of 2034. Perhaps more importantly, Xcel agreed that the use of the coal

plant would ramp down over time, running at no more than 60 percent capacity by 2025, 50 percent capacity by 2027, and one-third capacity by 2029.

---

Shutting Comanche 3 down in 2034 is better than letting it run until 2069.

But again, according to Xcel's plan, we customers will be paying off Comanche 3 until Xcel gets back every dime it invested in this plant, plus Xcel's exorbitant rate of return on equity.

The PUC should require Xcel to take on a significant amount of financial responsibility for this plant, given that Xcel pushed for its construction in the face of climate change.

Or, if the PUC does not require Xcel to assume financial responsibility, then the PUC should acknowledge the reality that Xcel has no financial risk and should stop forcing customers to pay Xcel returns on all their invested equity as if they did have risk.

Investor-owned utilities like Xcel are monopolies. They have very little risk. Their returns should be much lower - closer what cities pay on their (low-risk) municipal bonds. That would save Coloradans huge amounts of money every year.

Please remember that in 2018 Boulder had an indicative bid to buy 100% renewable energy for the municipal utility at 2/3 of Xcel's *wholesale* cost. If we could have just run that electricity through Xcel's lines, we would have achieved our goal of 100% clean energy quickly and for far less than what Xcel is forcing us to pay for their dirtier energy.

We're now also paying Xcel for its two new wind farms that were seriously overpriced because there was no competitive bidding process. The Rush Creek farm came in at around 50% over bid prices, and the more recent one, Cheyenne Ridge, at about 25% over bid prices.

---

While acknowledging that Xcel's coal plant retirement schedule does not achieve everything that city staff had hoped for, Jonathan observes, "This is an important and significant step towards rapid carbon reduction. The ramp down that Xcel agreed to leads to earlier emissions reductions and is way better than running the plant full bore until right before some cutoff date. Importantly, it lays the groundwork for even further reductions."

Locally, the new Boulder-Xcel partnership has already produced visible results around town. As part of the 2020 municipalization settlement, Xcel committed to spend \$33 million to underground electric network wires in Boulder (half to be spent by 2025), increasing safety and reliability. The first of those projects has already started on North Broadway, and several more are planned over the coming years. "Seeing actual projects is really important," Jonathan says. "We want to make good on our promise to the community that things from the settlement will actually happen."

The municipalization settlement included the right of the city to purchase from Xcel the streetlights in Boulder, most of which are owned by the utility. Jonathan observes that, in addition to saving the city electricity costs through the conversion of the streetlights to LED, owning the lights would allow Boulder more control over things our community cares about, like preserving dark skies and reducing impacts on wildlife. While the terms of any purchase of the streetlights won't be brought to city council until later this year—and the city may ultimately decide not to pursue it—the conversations are at least occurring and are encouraging. Says Jonathan, "We have considered buying the streetlights from Xcel for a long time, but over the last decade we have had a strained relationship. Now, we can have open conversations and we can do deeper analysis. We now have a willing partner."

---

Boulder customers have suffered both in terms of bills and fossil emissions because Xcel did not change to LED streetlights years ago.

The City has been trying to get Xcel to replace — or let the city replace — the old streetlight bulbs with more efficient ones since Spense Havlick started on council – some 40 years ago.

The old streetlights use more energy; and selling energy, not saving it, is Xcel's business. Also, Boulder customers have every reason to expect that Xcel will want to overcharge Boulder in the LED transfer, rather than selling the lights at whatever Xcel still has invested in them. Just as Xcel wanted millions more for the distribution system than they still had in it, it's reasonable to expect the same for any offer from them to sell the streetlights.

---

The enthusiasm over working collaboratively with a former adversary that was once only met in court is shared by Xcel Energy. Hollie Velasquez-Horvath is Xcel's Regional Vice President for State Affairs and Community Relations and is Jonathan's counterpart in advancing the new Boulder-Xcel partnership. Hollie and Jonathan have a standing hour-long call each week, and they facilitate three separate teams of people who help implement the new partnership's vision: A group of Boulder residents and business representatives on a Community Advisory Panel that challenge the partners to dream big; a technical Project Oversight Team that checks the reality of those dreams; and an Executive Team that includes Xcel's Colorado president and Boulder's city manager, who ensure that everyone is engaging positively and constructively.

---

According to reports from Advisory Panel members, basically nothing has happened.

---

"It's so nice to have Boulder as a partner," says Hollie. "The city helps us think through what our company can do for climate action that will benefit our customers everywhere. The city's proposals have been realistic, but they have also pushed us. To have a partner like the city of Boulder opens up our opportunities to scale across our whole service territory."

Jonathan and Hollie say that shifting from being bitter adversaries to working together as partners was not as hard as they thought it might be. "It has been an easier transition than you might expect, because our community and staff team have been steadfast in our climate goals," Jonathan says. "But we are experiencing a level of trust that we haven't seen before. It shows a level of commitment that I was surprised by." Hollie agrees: "We went from a transactional relationship to a partnership. It actually doesn't feel weird. We brainstorm together. We trust each other. We share good news and bad news. We ask each other, 'How can I help?'"

While we are already realizing rewards from the nascent partnership, Jonathan emphasizes that the city will continue to hold Xcel accountable for its share of climate action. "Xcel knows that we intend to keep pushing hard. They know that the city can end the partnership and the franchise if we're not seeing real progress in achieving our objectives." Hollie acknowledges the pressure and welcomes it. "The city is always pushing. That keeps us on our toes, so that we can serve the community to their level of expectation, at times exceeding that."

Regardless of whether you thought that municipalization was a good idea or a bad idea, it seems that the new Boulder-Xcel partnership has a lot of potential. We have a lot of work to do to achieve Boulder's climate goals and, more importantly, to do it in ways that can be emulated and copied by cities everywhere.

Observes Jonathan, “As the dire warnings from climate science grow all the more severe, the demands from the community to take action have become louder. The climate doesn’t care about politics. We need to do whatever we need to do to address climate change. Our approach needs to be courageous, visionary and collaborative.”

Hollie concurs, saying that she believes that the new partnership is the best way to achieve this: “I’m so glad we’re here. The relationship between Boulder and Xcel feels like it always should have.”

---

We would like to be optimistic and believe that this will all pan out and we will make some real progress. But real progress is up to Xcel’s good will, since the agreements do not require Xcel to do much of any consequence and Boulder has no enforcement powers other than appealing to the PUC or proceeding with exiting the franchise. And exiting the franchise, though legally allowed, will not happen unless the city council really wants to do it, and makes it clear to the citizens that city council can be trusted to follow through on all the fixes required to address the legal and other problems that have been left hanging.

**Bottom line:** If Xcel really wants to help Boulder achieve its climate goals, Xcel could stop burning coal before 2030 and transition from fossil gas (“natural” gas) backup to expanded demand-side management plus storage and expanded “time of renewables” renewable energy.

---

The mission of **Empower Our Future** is to work towards 100% renewable electricity by 2030 in an electrical system that is more democratic, decentralized, competitive and equitable than is currently provided by Xcel’s monopoly in Colorado. We also support other efforts to reduce greenhouse gas emissions. Our primary focus is on Boulder, but we work at the local, state and national levels and collaborate with and assist other communities as appropriate. [empowerourfuture.org](http://empowerourfuture.org)