BEFORE THE MINNESOTA COURT OF ADMINISTRATIVE HEARINGS
600 NORTH ROBERT STREET
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FOR THE MINNESOTA PUBLIC UTILITIES COMMISSION
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Joseph Sullivan	Vice Chair
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Audrey Partridge	Commissioner
John Tuma	Commissioner

In the Matter of the Petition of the City of Slayton for the Determination of Compensation for City Acquisition of Xcel Energy Electric Service Territory	CAH File No. 25-2500-40870 MPUC Docket No. E-022/PT-7157/ SA-25-129

REPLY BRIEF OF THE MINNESOTA DEPARTMENT OF COMMERCE

March 30, 2026

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INTRODUCTION

The City of Slayton seeks to form a municipal utility and acquire Xcel's electric distribution equipment within the City. The City and Xcel failed to reach agreement regarding the just compensation of the property interest to be transferred and have produced widely disparate compensation analyses. The Minnesota Public Utilities Commission is tasked with determining how much the City must pay Xcel. The Minnesota Department of Commerce offered recommendations for how the Commission should approach the just compensation analysis. Although both the City and Xcel have criticized different aspects of the Department's recommendations, those arguments are unavailing. In addition to appropriately weighing previous Commission decisions related to electric service territory extension cases, the Commission should rely on the Department's recommendations in determining just compensation.

ARGUMENT

Both the City and Xcel produced arguments that alone are neither sufficiently supported by the record nor grounded by thorough evidence-based analyses. The Commission should find the Department's recommendations regarding loss of revenue time horizon, avoided costs, and usage of mill rates as payment reasonable and supported.

I. THE DEPARTMENT'S RECOMMENDATION TO USE A 10-YEAR LOST REVENUE TIME PERIOD SHOULD BE USED TO DETERMINE JUST COMPENSATION.

Both parties allege that the Department has ignored relevant facts and blindly applied past Commission precedent regarding the appropriate time horizon in this case. This mischaracterizes the Department's analysis. Instead the Department carefully reviewed the Commission's Minn. Stat. § 216B.44 orders, and noted that although there were significant differences among cases, a ten-year lost revenue time period best balances the competing interests of real economic loss against risk of speculative forecasts and gives Xcel a reasonable period to adjust its system and customer base to reflect the changes caused by the City's exit.

Minnesota Statute § 216B.45 is silent regarding the appropriate time horizon regarding loss of revenue compensation for the displaced utility. The Department has recommended a ten-year time horizon in this case based on a review of previous Commission orders. In *Rochester*, the Commission agreed with the ALJ's adoption of a ten-year time horizon, reasoning that ten years is a standard planning horizon for electric service providers.[1] And again, in *Grand Rapids*, the Commission found a ten-year time horizon appropriate for a municipal service territory extension case.[2]

The City notes that determining net lost revenue necessitates looking at factors such as population density and economies of scale. The Department agrees. Additionally, the time horizon should accurately reflect the adjustment it would take Xcel to offload Slayton from its system – Slayton argues this would require little adjustment as Xcel delivered "19,614,508 kWh of electrical energy service to retail customers located within the City," in other words "less than one-tenth of one percent of Xcel's total service within Minnesota."[3] Xcel, on the other hand, rejects Slayton's methodology stating it may result in a "$60 million rate impact for other customers when applied to a city with a population of 2,000."[4] This is a speculative claim. The Department agrees with Xcel and the City that case-specific facts should inform the appropriate time horizon that allows

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[1] *See In re Appl. of the City of Rochester for an Adjustment of its Serv. Area Boundaries with People's Coop. Power Ass'n*, Docket No. E-132,299/SA-93-498, ORDER DETERMINING COMPENSATION at 4-6, 9-11 (Nov. 30, 1995) (eDocket No. 162864-A).

[2] *In re Appl. of the Grand Rapids Pub. Utils. Comm'n to Extend its Assigned Serv. Area into the Area Presently Served by Lake Country Power*, Docket No. E-243,106/SA-03-896, ORDER DETERMINING COMPENSATION at 2-4 (Sept. 29, 2005) (eDocket No. 2373348).

[3] Slayton Initial Br. at 2.

[4] Xcel Initial Br. at 27.

Xcel to adjust to the exit of Slayton, including planning horizons, equipment lifespan, Slayton's rural location, and low population density.

The Department does not believe that a ten-year lost revenue time period will be appropriate in every municipal service territory acquisition case going forward. However, after reviewing the arguments put forth by both City and Xcel, the Department was not persuaded that the use of a different lost revenue time period would be appropriate in this case.

II. THE DEPARTMENT'S AVOIDED COSTS POSITION IS REASONABLE AND CONSISTENT WITH PAST COMMISSION DECISIONS.

The City alleges the Department has a contradictory position regarding the burden of proof for avoided costs in this case. This is inaccurate. The Department's avoided cost recommendations put the onus on both parties to clarify which cost categories they expect to be avoidable using evidence-based frameworks that allow for verification.[5]

Xcel argues that only 30 percent of the costs incurred by Slayton exiting Xcel's system would be avoided and the other 70 percent should be treated as lost revenue to be recouped from the City to avoid a rate increase for other customers.[6] The Department recommended that the Commission seek clarity into cost categories and require evidence-based avoided-cost framework. The Department continues to support that recommendation. Fixed costs, such as production plants, may be treated as avoidable if the record evidence conclusively indicates that these costs will decline as a result of Slayton's exit over the ten-year period.[7] The Department acknowledges that Xcel creates and controls much of the information necessary to make this showing and does not presume that this burden falls solely on the City.

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[5] Ex. DOC-301 at 10-11 (Ngo Rebuttal).
[6] Xcel Initial Br. at 27.
[7] *See* Ex. DOC-301 at 10 (Ngo Rebuttal).

In *Grand Rapids*, the Commission was unable to adopt either party's avoided cost figure and instead was required to examine the record as a whole and apply its judgment.[8] In the present case, neither party has a reliable avoided costs framework. Xcel focuses almost exclusively on fuel, which tends to overstate the Company's inability to adjust cost structure.[9] In contrast, the City treats a broad set of production, generation, distribution, and customer-related costs as avoidable, which tends to understate the Company's inability to adjust cost structure.[10] The Department continues to supports its avoided cost recommendations and urges the Commission to review the entire record and apply its judgement to the facts specific to this case.

III. THE COMMISSION CAN USE MILL RATES FOR SOME OR ALL OF THE JUST COMPENSATION ORDERED.

In this case, the Commission must decide which method of payment for just compensation is appropriate. The just compensation payments can take different forms, including mill rate payments and lump-sum payouts.

Xcel has argued that Slayton should pay the just compensation to the company as a lump sum before the transfer of property.[11] Xcel alternatively suggests a scheduled payment plan (possibly on the basis of volumetric rate) is superior to a mill-rate.[12] Xcel asserts that a lump sum payment is required by Minnesota law, as gleaned from the plain language meaning of Minn. Stat. § 216B. 45 and the Minnesota Constitution.[13] This lofty argument should be dismissed for two reasons.

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[8] *In re Appl. of the Grand Rapids Pub. Utils. Comm'n to Extend its Assigned Serv. Area into the Area Presently Served by Lake Country Power*, Docket No. E-243,106/SA-03-896, ORDER DETERMINING COMPENSATION at 39 (Sept. 29, 2005) (eDocket No. 2373348).
[9] Ex. DOC-301 at 10 (Ngo Rebuttal).
[10] *Id*.
[11] Xcel Initial Br. at 87.
[12] Xcel Initial Br. at 90; Ex. DOC-206 at 28-29 (Peterson Direct).
[13] Xcel Initial Br. at 88.

First, mill-rate payments are not inconsistent with the Minnesota Constitution. Minnesota Constitution Article 1, Section 13 provides: "Private property shall not be taken [. . .] for public use without just compensation therefor, first paid or secured." Given that the constitution only requires that compensation be *secured*, the Minnesota legislature has routinely authorized the use of installment payments since at least the 1970s.[14] And the Minnesota Supreme Court has likewise recognized that just compensation does not need to be paid prior to a taking (property transfer) or even fully determined.[15]As a result, Xcel's claim that the constitution unambiguously requires a lump sum payment before the transfer is deeply flawed.[16]

Second, consistent with the Minnesota Constitution and other eminent domain proceedings, the Commission has regularly employed mill-rate payments to ensure just compensation in municipal service territory extension cases without issue. Section 216B.45 does not mandate the time or method of payment from municipality to utility. In previous Commission 216B.44 matters, the chosen method of payment has been mill-rate payments, lump-sum payments, or a combination of the two.[17]

For instance, a portion of the just compensation may be paid before or at the time of the transfer as a lump sum while the rest of the payment is secured in a payment schedule or a mill rate. Indeed, the Commission has cautioned against large lump-sum payments at the beginning of

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[14] *See, e.g.,* Minn. Stat. §§ 117.231, subd. 1; 216I.121, subd. 3

[15] *Hous. & Redevelopment Auth. of City of St. Paul v. Greenman*, 96 N.W.2d 674, 683 (Minn. 1959).

[16] Xcel Initial Br. at 88.

[17] *See In re Appl. of the City of Rochester for an Adjustment of its Serv. Area Boundaries with People's Coop. Power Ass'n*, Docket No. E-132,299/SA-93-498, ORDER DETERMINING COMPENSATION at 4-6, 9-11 (Nov. 30, 1995) (eDocket No. 162864-A); *In re Appl. of the Grand Rapids Pub. Utils. Comm'n to Extend its Assigned Serv. Area into the Area Presently Served by Lake Country Power*, Docket No. E-243,106/SA-03-896, ORDER DETERMINING COMPENSATION at 19 (Sept. 29, 2005) (eDocket No. 2373348).

a compensation period, noting that the "uncertainty of future events subjects both the utility and municipality to great risk that the sales forecast will be wrong."[18] The Commission went on to state that this risk is mitigated when the lump sum is converted to a per-kilowatt-hour rate.[19] In a calculation such as lost utility revenue, future forecasting has the potential of being inaccurate. A mill rate payment method does a better job of accounting for error in estimating relevant factors including customer growth and energy usage.[20] Xcel's main argument against the usage of mill-rate payments is purported uncertainty regarding future energy consumption for both the Company and the City.[21] As the City states, Xcel's figure regarding loss of revenue damages "is approximately 80 times higher than that of the City's expert." The uncertainty brought up by the Company and the vast disparity in lost revenue figures highlighted by the City may be best minimized by a mill-rate payment as it accounts for actual energy consumption over the relevant time horizon.

In sum, the Commission should explore the use of mill rate payments for some or all components of just compensation in this proceeding.

CONCLUSION

For the reasons stated above, Xcel and Slayton just compensation analyses are inadequate when examined on their own. As explained in the Department's initial brief, the Commission

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[18] *In the Matter of the Application of the City of Redwood Falls to Extend its Assigned Service Area into the Area Presently Served by Redwood Electric Cooperative,* Docket No. E-135,298/SA-05-1274, ORDER DETERMINING COMPENSATION at 4, (June 27, 2007) (eDocket No. 4453763).

[19] *Id.*

[20] Rochester Order at 8 ("A mill rate is an effective way to tie compensation for future growth to actual growth, without sacrificing finality and certainty. It protects against egregious differences between compensation and actual losses, should future growth turn out to be dramatically higher or lower than expected. For all these reasons, the Commission will adopt the combination lump sum/mill rate award calculated by the ALJ.").

[21] Xcel Initial Br. at 90-91.

should rely on the Department's analysis, which provides the most complete and objective framework for determining just compensation.

Dated: March 30, 2026

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