BEFORE THE MINNESOTA COURT OF ADMINISTRATIVE HEARINGS
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FOR THE MINNESOTA PUBLIC UTILITIES COMMISSION
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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	MPUC DOCKET NO. E-002, PT-7157/ SA-25-129 CAH DOCKET NO. 25-2500-40870

CITY OF SLAYTON'S EXCEPTIONS
TO ADMINISTRATIVE LAW JUDGE'S REPORT

May 28, 2026

TABLE OF CONTENTS

I. INTRODUCTION

The City of Slayton respectfully submits these exceptions to the May 8, 2026, Findings of Fact, Conclusions of Law, and Recommendation (the "Report") of Administrative Law Judge Christa L. Moseng (the "ALJ"). As set out further below, the City respectfully requests that the Commission reject the findings, conclusions, and recommendations in the Report excepted to as described herein and adopt an analysis and conclusions consistent with the City's briefing and testimony in this case.

The Report uses a contradictory framework that failed to address key foundational issues in the case, leading to an untenable result with no clear guidelines for the Commission. While the Report does not recommend a clear result on compensation, the framework approach it recommends would provide a significant financial windfall to Xcel, awarding loss of revenue for hypothetical and avoidable losses and expenses/assets that the record shows – and the ALJ found – that Xcel will continue to use and collect revenue for. In attempting to adopt compromise positions between the parties, the Report contradicts itself on fundamental issues such as the burden of proof, the purpose and scope of compensation, and the meaning of avoided costs. The Report ultimately results in a fractured approach that leaves the Commission with more unresolved questions than clear guidance, as required when the Commission refers a dispute to a contested case hearing. The Report also ignores Commission precedent relative to several important loss-of-revenue issues.

In contrast, the City's evidentiary record and analysis is the only approach that meaningfully accounts for Xcel's actual, unmitigated losses while remaining faithful to the Commission's net-loss-of-revenue principles from prior municipal acquisition cases. It appropriately adapts the principles established in those cases to the state's largest investor-owned electric utility and does so even in the absence of cost and expense data specific to service in Slayton. Because Xcel was unable to provide any Slayton-specific expense data, the City's marginal mill-rate analysis, adjusted for Slayton, is the only method supported by the record that applies a consistent methodology to both revenues and expenses. The City's approach is firmly grounded in precedent and the evidentiary record, and it is fair to the parties and their ratepayers. Xcel's approach is not. It lacks Slayton-specific data and is based on analogies to shares of ownership applied to Slayton while largely ignoring Xcel's duty to mitigate.

II. STANDARD OF REVIEW

The Commission is responsible for deciding the case and setting the amount of "just compensation" for the property and service territory at issue.[1] In making this determination, the Commission must "consider" the four statutory factors: 1) the original cost of the property less depreciation, 2) loss of revenue to the utility, 3) expenses resulting from integration of facilities, and 4) other appropriate factors.[2] So long as the Commission's decision is supported by reason and substantial evidence, the Commission owes no particular deference to a report from an administrative law judge.[3]

III. EXCEPTIONS

While the parties generally agree on the first factor – the original cost of the property less depreciation – the agreement ends there. The remaining three factors are still in dispute. Unfortunately, the Report adopted a "framework" approach that fails to resolve the remaining disputed issues to a mathematical analysis, or a consistent, coherent approach to developing a mathematical analysis. Instead, the Report provides broad conceptual recommendations largely

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[1] Minn. Stat. § 216B.45.
[2] *Id.*
[3] Minn. Stat. § 14.62, Subd. 1; *In re Grand Rapids Pub. Utilities Comm'n*, 731 N.W.2d 866, 870 (Minn. Ct. App. 2007).

unmoored from the evidentiary record, leaving the key issues and ultimate calculations completely to the Commission to resolve. In failing to reach the level of specificity needed to provide a mathematical result for compensation, the Report's findings and broad recommendations are internally inconsistent with each other. For the reasons below, the Commission should reject the Report and instead adopt the City's method of analysis.

1. The Report Inappropriately Rejected the City's Straightforward Loss of Revenue Approach Based on a Mill Rate As "Incomplete," and Adopted Xcel's Uncertain and Out of Context Rate Case Methodology Based on Speculative Projections.

One of the core foundational issues the parties disagree on is the approach to evaluating loss of revenue in light of the fact that Xcel apparently does not keep – and did not provide – any Slayton-specific data regarding the costs of providing service to Slayton.[4] Xcel's lead witness Lisa Peterson conceded this in cross examination, stating "***no where [sic] in my analysis did I identify costs specific to Slayton either.***" [5] Thus, ***neither party*** had factual data directly quantifying the costs of providing electric service to Slayton, and Xcel was the only party who reasonably *could* have had such data. [6]

Despite both parties starting from the same premise, the ALJ's Report incorrectly adopted Xcel's rate-case approach to lost revenue and wrongly described the City's approach as incomplete and inconsistent with the law and Commission precedent.[7] This directly conflicts with the ALJ's finding that, "This proceeding under Minn. Stat. § 216B.45 is not a rate setting proceeding." [8] While the ALJ expressed that the Commission should not "stack the deck against" Slayton

[4] Berg Direct at 9, note 7 (citing examples of City attempts to obtain information specific to Slayton-area costs and Xcel's statements that it does not keep such records).
[5] Transcript at 120:11-13 (Peterson).
[6] *See In re City of Grand Rapids*, Order Determining Compensation at 7–8 (stating "every compensation decision is unique based on detailed facts specific to the displaced utility and the service area at issue"); *In re City of Buffalo*, Order Determining Compensation at 8 (describing Commission's analysis being "to determine as precisely as possible the direct financial impact of losing service rights to the specific area being annexed").
[7] Report, Findings of Fact 96 to 100.
[8] Report, Finding of Fact 13.

customers,[9] the adoption of Xcel's methodology does exactly that. By accepting Xcel's basic form of methodology that treats ***all revenue*** as lost unless ***the City*** can show specific avoided costs, in a proceeding where ***no party*** has data that could satisfy that level of specificity – due solely to Xcel's choice of recordkeeping – the ALJ incorrectly and unfairly handicapped the City from any realistic analysis of lost revenue or avoided costs other than Xcel's.

Moreover, Xcel's foundational approach to loss of revenue is based on the proposition that Slayton is responsible for a "share" of all Xcel historic infrastructure and investments across its entire system, and the idea that those investments are "history, and cannot be changed." [10] By accepting Xcel's approach to loss of revenue, the ALJ also silently accepted this incorrect premise and functionally foreclosed any other result. One example, based on Xcel's approach and calculations, is that despite Slayton acquiring 100% of the distribution system in Slayton, Xcel claims it will only avoid one-tenth of one percent of the distribution-related revenues currently contributed by Slayton customers in their retail rates, a figure of approximately $253 per year.[11]

Comparing the parties' proposed methodologies with the Report's recommended compromise illustrates these contradictions and the Report's failing to address the key underlying issues.

A. The City provided ample evidence in the record to support its reasoned alternative framework for analysis using an incremental approach to loss of revenue that avoids speculative pitfalls of Xcel's projections of future sales.

Based on past Commission precedent guiding the "net lost revenue" analysis, and the lack of Slayton-specific cost of service data, the City's expert witness David Berg, P.E., analyzed loss of revenue in a two-step approach. First, he analyzed gross revenue on an incremental basis,

[9] Report, Finding of Fact 13.
[10] Xcel Initial Brief at 51.
[11] Berg Surrebuttal at 25.

evaluating costs and anticipated avoided costs on a per-kWh ("mill rate") basis.[12] Second, Mr. Berg evaluated a recommended compensation period over which the mill rate would be applied to sales in Slayton.[13] Mr. Berg's analysis was intended to put Xcel in the same position financially that it would have occupied but for the loss of service rights to the area being acquired.[14] The final result of Mr. Berg's loss of revenue evaluation is a recommendation to apply a mill rate of 4.2 mills per kWh for a compensation period of five years, applied to all electric sales in Slayton.[15]

i. Developing the mill rate for loss of revenue

As further explained in his testimony, Mr. Berg started his evaluation of gross revenue with the information in Xcel's current rate case filings, using the allocation of Xcel's revenue requirement and a weighted average based on the 2024 class sales mix for Slayton as a proxy for cost-based revenue from Slayton customers.[16] Mr. Berg then evaluated each category of costs to determine whether Xcel would be able to avoid those costs associated with serving Slayton after the transfer.[17] Those costs found ***not avoidable*** – essentially the "stranded costs" – were used to calculate his recommended per-kWh mill rate for the basis of lost revenue.[18]

Mr. Berg's testimony walks through each of the eleven categories in narrative form and explains his opinion as to the avoidability or not as to each category.[19] Additionally, Mr. Berg's

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[12] Berg Direct at 13-15. Mill rate compensation for loss of revenue has long been approved by the commission. *See, e.g.*, *City of Rochester II*, Order Determining Compensation at 9; *In re City of Rochester (Celestica Property)*, Order Determining Compensation at 5, 8 (adopting ALJ recommendation utilizing a mill rate); *In re City of Redwood Falls*, Order Determining Compensation at 4; *City of Grand Rapids*, Order Determining Compensation at 12 ("The distinct advantage of calculating compensation as a mill rate is that it reduces the need for precision in estimating the likely number of new customers.").
[13] Berg Direct at 14-15.
[14] *Id.*
[15] Berg Direct at 37.
[16] Berg Direct at 18. The categories Mr. Berg utilized were the functional categories stated by Xcel witness Christopher Barthol in developing Xcel's total revenue requirement for 2026. *Id.* at 16-19 (citing Christopher Barthol Direct Testimony filed Nov. 1, 2024, in Docket No. E002/GR-24-320).
[17] *Id.*
[18] *Id.*
[19] Berg Direct at 23-31.

mathematical analysis of the categories of Xcel's revenue requirement is reflected in the spreadsheet attached to his Direct Testimony as Attachment C, which shows and explains how he converted the numbers in Xcel's revenue requirement to a per-kWh mill rate basis applicable to Slayton.[20] The results of Mr. Berg's analysis and opinions as to the amount and avoidability on each category are summarized in Table 4 of his Direct Testimony on pages 30-31.

Revenue Requirement Item	Slayton Avoided Cost/kWh	Slayton Non-Avoidable Cost/kWh
Minimum System & Service Drop	Not-Public Data Has Been Excised	
Energy Services		
On Peak Revenue Requirement		
Off Peak Revenue Requirement		
Energy-Related Production		
Capacity-Related Summer Peak Production		
Capacity-Related Winter Peak Production		
Transmission		
Primary Distribution Substation		
Prim Distribution Lines		
Secondary Distribution, Transformers		
Total		

(Table 4) ***Totals may not sum due to rounding**

[20] Berg Direct, Attachment C (spreadsheet with calculations); Berg Direct 18-23 (explaining calculations).

Ultimately, Mr. Berg concludes that all revenue categories are avoidable except for the category related to Primary Distribution Substation, for which he concludes 100% of this category is non-avoidable, based on the removal of Slayton's load from the Slayton West ("SLW") substation.[21] Importantly, Mr. Berg's recommended mill rate represents ***full payment*** for that portion of Slayton's load attributable to Primary Distribution Substation passing through the SLW Substation for the City of Slayton during the compensation period. In other words, Mr. Berg recommends that Xcel receive the same level of compensation for its Primary Distribution Substation during the compensation period as if Slayton stayed on the Xcel system during this time.

As addressed in further exceptions below, Mr. Berg's analysis concluded that all of the other cost categories were avoidable. Some of Mr. Berg's conclusions as to avoidability are based on the fact that he was evaluating losses to Xcel due to the transfer that cannot be mitigated or avoided.[22] Thus, if Mr. Berg determined an asset currently utilized to serve Slayton could be made available to serve elsewhere on Xcel's system, mitigation has occurred and no loss of revenue is warranted.[23] And while Xcel clearly disagrees with the conclusions on the avoidability of some of these categories from City witnesses David Berg and Mark Fritsch, ***Xcel did not dispute*** Mr. Berg's use of the eleven functional categories for this analysis (drawn from Xcel's current rate case), or Mr. Berg's conversion of the total revenue requirement into a marginal mill-rate basis.[24]

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[21] Berg Direct at 31; *see also* Berg Direct at 28-30 (further explaining the substation calculations).
[22] Berg Direct at 23-30, 38 (evaluating cost categories, discussing mitigation).
[23] Berg Rebuttal at 9 (citing *Rochester II*, Order Determining Compensation, at 8).
[24] *See* Peterson Rebuttal at 18:1-12 (explaining that Ms. Peterson focused on broader categories than Mr. Berg because, in her view, "there is not a material difference in the subcategories that make up the larger categories"). Ms. Peterson's Rebuttal suggests that use of a single year of actual sales to set the class sales mix "may" allow weather-based anomalies, but does not point to any such anomalies in the 2024 sales. *See* Peterson Rebuttal at 17.

Thus, the City has clearly developed a record from the data made available from Xcel, using previous Commission-approved measures for evaluating lost revenue, contrary to the Report's Findings 96-100.

ii. Developing the compensation period for loss of revenue

Mr. Berg then considered an appropriate revenue period over which the mill rate would be paid. Mr. Berg evaluated that period within which Xcel would have a "reasonable opportunity" to adjust for the loss and reduce or mitigate any non-avoided costs to zero.[25] As explained further in the City's testimony, briefing, and the following exceptions, Mr. Berg's use of a compensation period commensurate with the period necessary for Xcel to mitigate for its loss is squarely grounded in both Commission precedent and the general law of damages. This was explained in thorough detail in Mr. Berg's Direct Testimony,[26] Rebuttal Testimony,[27] Surrebuttal Testimony,[28] and further addressed in the City's briefing to the ALJ.[29]

Key to the argument relevant to this exception – Mr. Berg's incremental mill-rate approach for the duration of the compensation period fairly and accurately incorporates any growth in either customers or sales that might occur over the compensation period. As the Commission has recognized, use of a mill rate that does not rely on projections, and relies on actual sales, thereby avoiding the "great risk that the sales forecasts … will be wrong." [30] Because Mr. Berg's approach used a mill rate to be applied to actual future sales in Slayton, at or near the time the sales occur,

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[25] Berg Direct at 37-88 (quoting *In re City of Rochester*, No. SA-93-498, Order Determining Compensation and Denying Motion to Dismiss (Nov. 30, 1995), at 8.
[26] Berg Direct at 14, 37-48.
[27] Berg Rebuttal at 3-5, 37-40.
[28] Berg Surrebuttal at 3-4, 8-9, 30-33.
[29] Initial Brief of the City of Slayton at 9-12, 17-25; Reply Brief of the City of Slayton at 22-28.
[30] *In re City of Redwood Falls*, Order Determining Compensation at 4; *see also City of Rochester II*, Order Determining Compensation at 9; *In re City of Rochester (Celestica Property)*, Order Determining Compensation at 7.

there is no need to project and estimate future sales. Thus, by starting and ending his analysis on a mill rate basis, Mr. Berg had no need to foray into risky and uncertain future sales projections.

This contrasts sharply with Xcel's approach, which projects revenues out over a highly speculative 20-year period, as inflated by compounding assumptions on increasing customer growth, increasing sales per customer, and increases in rates. Xcel's sales projections were also based on overall state growth projections for its larger Minnesota system and had no Slayton-specific analysis to differentiate a small rural community from the metro-area dominant nature of Xcel's overall Minnesota projections.

B. Xcel's 20-year class cost of service study approach is fundamentally flawed and rife with speculative assumptions.

Xcel, on the other hand, offered an approach to loss of revenue based on a class cost of service study (CCOSS) modified from rate-case methodology to extend over its recommended 20-year compensation period.[31]

Xcel starts with a projection of annual gross revenue from Slayton customers, based on sales in Slayton and its then-current rates (as of Nov. 1, 2025).[32] It then introduces variables for anticipated growth in new customers, anticipated growth per customer, and anticipated annual rate increases for each year over the 20-year period.[33] Importantly, Xcel's variables regarding growth are based on averages for the entire state of Minnesota, and are not specific to the city of Slayton in any respect.[34] Starting with year one (2026), this results in Xcel's calculation of gross revenue from Slayton of $3,054,023.[35] With Xcel's growth factors compounding on each other, Xcel

[31] Peterson Direct at 19-20.
[32] Peterson Direct at 19-20.
[33] Peterson Direct at 17-20; Peterson Direct, Schedule 3 at 1.
[34] Peterson Direct at 19; *see also* Transcript at 169:14–18 (Peterson conceding she cannot successfully predict the markets for 20 years).
[35] Peterson Direct at 20; Peterson Direct, Schedule 3 at 1.

projects revenue in year 20 (2045) of $7,673,205.[36] Over the 20-year period, this totals a staggering $92.5 Million in projected gross revenue from the small rural city of Slayton.

To these gross revenue projections, Xcel then subtracts what it contends are avoidable costs based on five functional categories, rather than the 11 sub-categories used by Mr. Berg.[37] As explained further below, Xcel uses a narrow definition of avoided costs that finds costs are avoidable only where: "Slayton's exit will directly result in any reduced costs, or whether Slayton's exit will result in a new revenue stream to offset the loss of revenue from Slayton customers." [38] Based on this definition, Xcel concedes only minimal avoided costs related to the categories of variable production (fuel), customer costs, and distribution.[39] Xcel initially asserted in both direct and rebuttal testimony that transmission costs would not be avoidable,[40] but reversed this position in response to the testimony of City Witness Mark Mitchell, conceding that transmission costs are fully avoidable.[41] Xcel argues that all "fixed" production costs are not avoidable, since they relate to the costs of generation resources that have already been constructed and cannot be avoided.[42] This results in Xcel's final request for continuation of approximately 69.5% of its gross revenues for a period of 20 years after Slayton leaves Xcel's system.[43]

Xcel then requests that this revenue be paid in a lump sum payment of $34.7 Million.[44] Alternatively, Xcel suggests that this could be paid in the form of levelized payments of

[36] Peterson Direct, Schedule 3 at 1.
[37] Peterson Direct at 20-21. *See also*, Peterson Rebuttal at 18 (explaining that Ms. Peterson focused "on the broader categories … because there is not a material difference in the subcategories that make up the larger categories").
[38] Peterson Rebuttal at 19-20.
[39] Peterson Surrebuttal, Schedule 1 at 6.
[40] Peterson Direct at 25; Peterson Rebuttal at 25-26.
[41] Peterson Surrebuttal at 44.
[42] Peterson Direct at 24.
[43] Peterson Surrebuttal, Schedule 1, at 1. For example, for 2026, Xcel alleges lost revenue of $2,122,701, based on anticipated gross revenues of $3,054,023, equating to a percentage of 69.5% lost revenue. *Id.*
[44] Peterson Surrebuttal at 45.

approximately $3.1 Million per year for 20 years, a sum that exceeds *gross* revenue from Slayton in year one of its model.[45]

As more fully explained in the City's briefing to the ALJ, Xcel is wrongly applying rate-case methodology in this just compensation case.[46] Xcel's fundamental theory of compensation for loss of revenue relies on the premise that Slayton is responsible for a "share" of Xcel's entire system, and that Slayton must continue to support this "share" of Xcel's historic investments for 20 years after Slayton exists the system, because those investments cannot be changed. In other words, Xcel contends that Slayton is responsible for supporting a share of each and every asset, employee, and piece of equipment on the entire Xcel system, regardless of whether or not that asset has anything to do with providing service to Slayton. At the same time, Xcel (and the ALJ's Report) only consider an expense "avoided" and non-compensable if there will be a demonstrable reduction in costs or new revenue stream created when ***Slayton*** leaves the system.

But critically, ***Xcel has never identified any costs or assets specific to serving the City of Slayton***, other than the distribution system in Slayton that the City is acquiring. This means that the generation assets, employees, equipment, and other costs that Xcel contends the City is supporting that have nothing to do with Slayton could never possibly be avoided under the methodology that Xcel suggests and the Report adopts. While Ms. Peterson states that "we will adjust our future planning to account for the loss of Slayton customers," [47] this is belied by the fact Xcel's requested compensation for fixed production does not decrease as the assets Slayton is allegedly paying for are retired from service over the subsequent two decades.[48]

[45] Peterson Surrebuttal, Schedule 1, at 1.
[46] Reply Brief of the City of Slayton, at 1-15.
[47] Peterson Direct at 24:16-17.
[48] Peterson Surrebuttal, Schedule 1, at 6.

It also bears emphasis that the lack of any Slayton-specific data provided in this case is a choice that was unilaterally made by Xcel. Minnesota Statute Section 26B.45 was adopted by the Legislature in 1974, and so for the past 52 years Xcel, along with every other utility in the state, has been aware of the option of municipalities to purchase the utility's property. This municipal purchase option is one of the few exceptions built into the grant of otherwise exclusive service rights in favor of utilities. Despite this, Xcel has apparently declined to create or keep any useful records that could possibly assist in an area-specific evaluation for such a sale, which would help support the required statutory analysis. Xcel's decision should not penalize the City for invoking its statutory right to engage in this acquisition, and adoption of the Report and Xcel's analysis will do just that.

C. The Department of Commerce's general framework approach attempts to apply the cooperative cases out of context in this case with Xcel, a large vertically integrated investor-owned utility.

The Department did not provide any specific recommendation on the *amount* of just compensation for loss of revenue, but instead provided general comments on the statutory framework, noted differences in the parties' approaches, and attempted to provide information "on how similar issues have been treated in prior Commission decisions." [49] Cuong Ngo, the Department's main witness on the approach to compensation for loss of revenue made a generalized recommendation of a 10-year compensation period and a narrow "fact-based" approach to determining avoided costs.[50] He also suggested that most "fixed" costs "such as most production plants, transmission, backbone, general plant and shared administrative overhead are not immediately avoidable and should not be treated as avoidable unless ***the City*** can show that

[49] Ngo Rebuttal at 3:13–16.
[50] Ngo Rebuttal at 9-10, 13-16.

these costs will actually decline as a result." [51] But Mr. Ngo conceded on cross-examination that his recommendations on the payment period and loss of revenue approach were not specifically based on any unique aspects of this proceeding, but were more or less a recitation of the findings from prior Commission decisions related to cooperatives.[52]

The Department's testimony from Mr. Ngo included no meaningful analysis of the multiple differences between Xcel as a large vertically integrated investor-owned utility and the smaller and predominantly rural electric distribution cooperatives at issue in the past Commission cases.

D. The ALJ's Report adopted portions of each of the above three positions, resulting in an ambiguous and contradictory recommendation that would provide a windfall to Xcel.

The Report attempted to mediate a middle-ground compromise between the three positions described above. The Report accepts many of the City's foundational conceptual arguments and criticisms of Xcel,[53] but then largely fails to apply these concepts, and instead tracks with the Department's ambiguous view of lost revenue for a period of 10-years,[54] incorrectly accepting Xcel's lost revenue model as the only "complete" analysis in the record.[55] The Report wrongly states that, "Xcel's avoided cost analysis is the only complete analysis in the record supported by evidence and conducted in a matter consistent with the application of the lost revenue calculation

[51] Ngo Rebuttal at 10:8–21.
[52] *See* Transcript 196:3–8 (Ngo).
[53] *See, e.g.,* Report, Finding of Fact 13 ("This proceeding … is not a rate setting proceeding."); Finding of Fact 34 ("Sales in Slayton represent less than one-tenth of one percent of Xcel's overall sales in Minnesota."); Finding of Fact 57 (appropriately recognizing this this case "involves a vertically integrated utility that provides distribution, generation, and transmission services" and that this is "distinguishable from prior section 216B.44 cases which involved cooperative utilities which provided distribution service."); and Finding of Fact 26 ("A utility has a duty to adjust to changed circumstances and mitigate revenue losses as a result of the sale." (citing *Rochester II*)).
[54] *See, e.g.*, Report, Findings of Fact52, 88, 95-96 (recommending the ambiguous but allegedly "fact-specific" framework advocated by the Department); Findings of Fact 65-68, 98 (adopting the 10-year compensation period).
[55] Report, Finding of Fact 99.

formula that the parties agree should be the basis for the Commission's analysis." [56] Findings 98-100 adopt and apply the lost revenue methodology advocated by Xcel and the Department.

As summarized above, and further explained in the City's testimony and briefing, the City provided *ample* evidence in the record supporting its alternative loss of revenue analysis. Mr. Berg's straightforward use of a mill-rate methodology converted the revenue requirement categories into marginal mill-rate figures right at the outset, and therefore did not need to include projected estimations of future customer growth or usage. Since the mill rate is applied to actual electric sales in Slayton over the compensation period and paid on an ongoing basis at or near to the time of the sales, no such projections are necessary. As described by the Commission in past cases, this straightforward and transparent method of using a mill rate for loss of revenue is a fair and accurate method for paying loss of revenue compensation that avoids the "great risk" that sales forecasts will be wrong.[57]

Conversely, Xcel's speculative projections of future revenue over each of the 20 years of its requested compensation period simply introduced more variables subject to manipulation in order to increase its ultimate compensation request. Again, the numbers Xcel used for these growth variables were simply system averages predicted for the entire state of Minnesota for *generation planning purposes*, having nothing to do with the City of Slayton. Moreover, Ms. Peterson herself conceded that she could not accurately predict these values for 20 years.[58] Xcel's additional calculations of speculative year-over-year revenue increases add little more than further uncertainty to its analysis. Nothing about Xcel's analysis was more "complete" than the City's.

[56] Report, Finding of Fact 99.
[57] *In re City of Redwood Falls*, Order Determining Compensation at 4; see also, *see also City of Rochester II*, Order Determining Compensation at 9; *In re City of Rochester (Celestica Property)*, Order Determining Compensation at 7.
[58] Transcript at 169:14–18 (Peterson).

Findings 98-100 of the report incorrectly found this analysis to be complete and agreed - and wrongly recommended this flawed approach to the Commission.[59]

Tellingly, the approach recommended by the Report does not even reach a conclusion on the amount of lost revenue that it recommends should be compensated.[60] But the framework it suggests improperly stacks the deck against the City by giving Xcel the benefit of assumed gross revenues while requiring the impossible task of the City to provide concrete showings of cost reductions "directly" and "clearly" linked to Slayton's exit[61] in this case where ***not even Xcel*** has identified any "costs specific to Slayton" in providing service.[62] For example, although Xcel concedes percentage-based portions of its costs as "avoidable" for obvious things like fuel, the percentages of avoidable costs it concedes are based on aggregate percentages of categorical system averages,[63] meaning the data Xcel provides is no more "directly" or "clearly" linked to Slayton than any of the City's data in this case. The Commission should reject the Report's unhelpful and internally contradictory framework approach to lost revenue which would improperly penalize the City for Xcel's inability to provide Slayton-specific data and would further provide an impermissible windfall to Xcel.[64]

2. The Report Incorrectly Dismissed the City's Avoided Cost Approach as a Novel "Utilization" Analysis and Claimed it was Inconsistent with Commission Precedent

The Report also mischaracterized and improperly discredited the City's approach to avoided costs which incorporated the principle of adjustment and mitigation of damages that has

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[59] While the ALJ correctly rejected Xcel's 20-year loss of revenue period, the Report tacitly accepts Xcel's underlying methodology of inflated future revenue projections.
[60] Report, Recommendation 2.
[61] *Id.*
[62] Transcript at 120:11-13 (Peterson). Notably, although Xcel concedes portions
[63] Peterson Direct at 21:16-18 ("Fuel makes up approximately 36.4 percent of the variable production category, so the Company has treated 36.4 percent of the category as avoidable for the lost revenue calculation.").
[64] *In re City of Rochester (North Park Additions)*, Order Determining Compensation (July 11, 1990) at 10 (holding it "clear that the statute does not intend to provide a windfall to displaced utilities").

been previously applied by the Commission. The City's expert Mr. Berg repeatedly explained this core concept of avoidability throughout his testimony based on Commission precedent going back to the *Olivia* case,[65] and the City's briefing to the ALJ also fully developed the precedent grounding this in both Commission decisions and the general law of damages.[66] On the general principle, the Report agreed with the City that, "A utility has a duty to adjust to changed circumstances and mitigate revenue losses as a result of the sale." [67]

But the Report again failed to carry this principle through into its analysis, wrongly adopting Xcel's narrow view of avoidability in Findings 95 through 97, and dismissing the City's avoided cost methodology as inconsistent with the law and Commission precedent in Finding 96.[68] The Report further erroneously stated in Finding 97 that the avoided cost component of lost revenue includes only those costs "necessarily avoided as a direct consequence" of Slayton's departure, not including future possible mitigation, and confusingly stating that "Mitigation of lost revenue is addressed in the time-horizon component." [69] This conflicts with both the general law of damages regarding avoidable consequences,[70] and the strong Commission mandate for the utility to "mitigate its damages for loss of [] service rights as quickly and efficiently as possible." [71]

Mitigation clearly goes far beyond consideration of the time-period and the limited concept stated in the Report, which finds that avoided costs come only from direct consequence, not

[65] *See, e.g.*, Berg Direct at 40-46 (discussing comparative density and avoidability and drawing from the *Olivia* case); Berg Rebuttal at 9, 19 (discussing mitigation, drawing from *Rochester II* case); Berg Surrebuttal at 6-8 (explaining his methodology and calculations as consistent with Commission precedent and contrasting with Xcel's methodology).
[66] Initial Brief of the City of Slayton at 9-12, 17-25; Reply Brief of the City of Slayton at 22-28.
[67] Report, Finding of Fact 31 and note 39 (citing *Rochester II*, Order After Reconsideration at 7).
[68] The Report's Finding 96 is adopted word for word from Xcel's proposed finding 160.
[69] Report, Finding of Fact 97.
[70] *State by Lord v. Pahl*, 95 N.W.2d 85 (Minn. 1959) (deciding "that the rule of avoidable consequences is applicable to the owner in a condemnation proceeding").
[71] *City of Rochester II*, Order Determining Compensation at 6.

through mitigation.[72] For example, the Report's concept of avoidability does not seem to include any offsetting credit to the City for future sales of power or capacity stemming from Slayton's alleged "share" of resources, whether those are internal sales to other Xcel customers or external sales on the markets. Under the framework of the Report, this means that Xcel could permissibly double recover revenue both from Slayton (through the loss-of-revenue payment) and from the new customers without making any additional investment. While it is obvious to see why Xcel might favor this approach, this approach would not be fair under Commission precedent in loss-of-revenue cases. And critically, courts have ***repeatedly*** recognized that a party is not entitled to damages that it could reasonably avoid.[73] Contrary to Finding 97 in the Report, mitigation is an ongoing duty of the damaged party and is clearly relevant to avoided costs in Section 216B.44 and 216B.45 net revenue loss analysis.

Further, utilization goes to the core of the concept of loss of revenue. Importantly, Xcel previously agreed with the City's foundational argument on this concept in the context of the avoidability of fixed production – energy related costs, treating them as avoidable during periods of increasing sales. Former Xcel Employee and City Witness Mark Fritsch testified regarding Xcel's past positions on cost avoidability in municipal boundary adjustments and the Xcel-created PowerPoint presentations given to him when conducting transactions on behalf of members of the Minnesota Municipal Utilities Association (MMUA).[74] As described by Mr. Fritsch, Xcel consistently acknowledged that fixed production – energy related costs were avoidable, as stated

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[72] Nowhere is such a limiting definition of mitigation found in Commission precedent under Minn. Stat. § 216B.44. Within the adjustment period, a utility is required to mitigate its losses. *Rochester II,* Order Determining Compensation at 8.

[73] *See, e.g.*, Civ Jig 91.47. In the context of an employment contract, the jury instructions state: "A person has a duty to act reasonably to (prevent) (reduce) his or her loss of earnings. He or she is limited to those damages that he or she would have experienced if he or she had acted reasonably (in finding new employment). *Id.* (citing *Feges v. Perkins Restaurants, Inc.*, 483 N.W.2d 701, 709 (Minn. 1992)).

[74] Fritsch Rebuttal (Exhibit 115) at 4-6 and Attachment A (2019 PowerPoint), Attachment B (2021 PowerPoint), and Attachment C (March 2025 PowerPoint Update).

in the 2019 and 2021 presentations.[75] Mr. Fritsch agreed with Xcel's position on this issue during these times, reflecting a mutual understanding that fixed production – energy related costs would be avoidable when the excess capacity was coupled with sales growth.[76] This category was only changed to non-avoidable in 2025 due to Xcel's previous forecast of flat to declining electric sales.[77] But as Mr. Fritsch described, and all the witness in this case appear to agree, this forecast has again changed and Xcel is now "on the cusp of a new area that may see substantial load growth, including from new facilities such as data centers and similar facilities." [78] Thus, these costs related to fixed production should properly be categorized as avoidable.

The logic behind this is straightforward and involves intuitive economics. If a business's various factories can produce a maximum of 1,000 widgets per year, but the business only has demand to sell 800 widgets, a loss in sales of 4 widgets would reduce the business' bottom line by the marginal profit it would have earned on those four widgets. The fact that 100 new customers might be added during this time does not affect the impact of the loss, since the business could feasibly have sold 904 widgets. However, if that same business is only able to produce 1,000 widgets in an environment with demand for 1,500 widgets, a loss in sales of 4 widgets has no impact, since the business could only produce and sell 1,000 widgets anyway.

The Commission has previously agreed with the logic of the second scenario in the *City of Rochester II* case.[79] In that case, People's Cooperative made arguments for lost revenue strikingly similar to those Xcel makes here, arguing that fixed production costs would be spread over fewer

[75] Fritsch Rebuttal (Exhibit 115) at 9; Attach. A at Slide 10 (showing fixed production – energy related costs as avoidable); Attach. B at Slide 4 (same).
[76] Fritsch Rebuttal at 9. For similar reasons, Mr. Fritsch also opined that fixed production – capacity related costs would also be avoidable when the capacity market had positive value due to sales growth. *Id.*
[77] Fritsch Rebuttal at 11.
[78] Fritsch Rebuttal at 11 (quoting the Direct Testimony of Xcel Witness Amy Liberkowski in Xcel's Rate Case (Docket No. GR-24-320).
[79] *Rochester II*, Order After Reconsideration at 3-4.

customers after the acquisition, resulting in rate increases for remaining customers.[80] The Commission rejected this argument, based on the fact that the cooperative's wholesale supplier (Dairyland Power Cooperative) did ***not*** have abundant capacity, and that it would have to add generation capacity to serve its customers over the next ten years.[81] Based on this, the Commission concluded that:

> "Losing the projected load from the areas at issue no longer means, then, that Dairyland is losing an opportunity to spread sunk costs over more kilowatt hours of sales. Those kilowatt hours can be sold elsewhere. Dairyland will not have to raise rates to member co-ops to recover fixed costs. People's will not face increased wholesale rates as a result of losing the transferred areas. Therefore, no compensation for increased wholesale rates is required." [82]

The current case is highly similar, with the forecasted increase in demand on Xcel's broader system vastly exceeding the small loss of Slayton customers, and almost immediately replacing any loss in sales. Xcel concedes that it is in the process of constructing new generation assets to meet increasing demand. As more fully developed in Mr. Berg's Direct Testimony and the City's Initial Brief, estimates of increased demand on Xcel's Minnesota system of 2% per year, averaged over the year, mean that increased Minnesota demand would eclipse the sales from Slayton within ***12.8 days***. [83] Just as in *Rochester II*, the power that would have gone to Slayton "can be sold elsewhere" and so no compensation for production-related costs is required.[84]

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[80] *Id.* at 4-5.
[81] *Id.*
[82] *Id.* at 5
[83] Berg Direct at 45-46; City's Initial Brief at 22-24.
[84] *Rochester II*, Order After Reconsideration at 5.

3. The Report Completely Failed to Address, Much Less Explain Its Rationale, On Key Issues Critical To the Commission's Decision.

Three of the largest categories of disputed costs at issue in the case are the costs related to: 1) generation/production, 2) distribution, and 3) substation costs. The Report failed to meaningfully address these three key issues.

A. Generation/Production cost avoidance was not addressed or explained.

First, the Report offered no analysis of cost attribution or avoidance with respect to generation/production costs. The only references to generation in the Report involved reciting the parties' statements on various planning periods relating to generation/production while selecting the Report's recommended 10-year compensation period for loss of revenue.[85] The overarching issue of whether generation/production costs are avoidable by sales to other customers or on the market received ***no treatment*** in the Report. By Xcel's mathematics, generation/production costs make up ***nearly 70%*** of its total revenue requirement.[86] By Mr. Berg's analysis, the five subcategories related to generation/production alone add up to a mill rate of 96.6 mills per kWh.[87]

The Report provided no clear recommendation on this important issue, let alone any reasoned analysis to support it. The Report did not even mention Xcel's changed position on fixed production-energy costs (and distribution costs other than substations and customer costs) as discussed by Mark Fritsch and set out in the previous Xcel PowerPoints.[88] The Report offered no analysis regarding the *Rochester II* discussion of generation capacity and the Commission's

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[85] Report, Findings of Fact 36, 41-42, 47, 57, 60, 62, and 65 mentioning generation all relate only to selection of the 10-year compensation period.

[86] *See* Peterson Surrebuttal Schedule 1, page 6 (Adding fixed and variable production costs totals 2,586,150 out of a total revenue requirement of 3,713,015, equating to 69.6% of the total revenue requirement.)

[87] *See* Berg Direct at 30-31 (Table 4). Adding the categories for On Peak Revenue Requirement, Off Peak Revenue Requirement, Energy Related Production, Capacity-Related Summer Peak Production and Capacity-Related Winter Peak Production results in a total of $0.0966 or 96.6 mills per kWh.

[88] The most recent Xcel PowerPoint from March of 2025 shows avoided cost percentages for residential customers of 75.84%. Fritsch Rebuttal, Attachment C, Slide 11 (page 55 of the PDF).

rejection of the argument that People's/Dairyland that is nearly identical to Xcel's argument in this case. The only discussion of generation/production beyond selecting the compensation period was a mere mention of it while reciting Xcel's concession that "a portion of variable production costs, distribution costs, and customer costs are avoidable." [89]

B. Distribution cost avoidance was similarly not addressed.

Second, the Report also failed to address the costs related to distribution for avoidability. By Mr. Berg's analysis, these subcategories of costs add up to 27.2 mills per kWh.[90] Mr. Berg's Surrebuttal Testimony explained in full detail the clear conflict in Xcel's avoidability position with respect to distribution, where Xcel only conceded one-tenth of one percent of distribution costs as avoidable, despite the City of Slayton acquiring 100% of the distribution assets within the City.[91] As Mr. Berg explains, Xcel's model only acknowledges an avoidable distribution cost of not serving Slayton a pittance of $253.54 per year.[92] And if backed out into the total Xcel revenue requirement for its entire system, Xcel's numbers appear to underrepresent the total revenue requirement related to distribution by nearly 1,000 times.[93]

Despite significant testimony and briefing on these issues from both parties, the Report again only mentions the cost avoidance of distribution assets in passing when noting Xcel's general acknowledgement that a portion of distribution costs are avoidable.[94] Outside of discussion of distribution planning periods related to selection of the Report's recommended ten-year compensation period, no analysis is conducted or explanation given as to cost avoidability of distribution related expenses or the conflict between Xcel's current position and its position in the

[89] Report, Finding of Fact 93.
[90] *See* Berg Direct at 30-31 (Table 4). Adding the categories for Primary Distribution Substation, Primary Distribution Lines, and Secondary Distribution, Transformers results in a total of $0.0272 or 27.2 mills per kWh.
[91] Berg Surrebuttal at 22-28.
[92] Berg Surrebuttal at 25.
[93] Berg Surrebuttal at 27.
[94] Report, Finding of Fact 93.

previous PowerPoints acknowledging the avoidability of all distribution costs other than substations.[95] The Report again provided no clear recommendation on this issue as it bears on loss of revenue, or explanation of how the loss of revenue relates to substation costs (such as those acknowledged as unavoidable lost revenue by Mr. Berg).

C. The Report fails to provide a cogent analysis of substation-related costs, and the general framework it suggests does not assist with resolving the key disputed issues regarding the SLW substation.

Third, the Report fails to make a clear recommendation on Xcel's substation-related claim under either the lost revenue prong or the "other appropriate factors" prong of the statute, where Xcel requests 98.8% of the net book value of the SLW substation be awarded as additional compensation beyond the loss of revenue related to substations. While Findings 118-137 discuss the parties' differing positions on the SLW substation, the Report again adopts the Department's unhelpful framework approach, contradicting itself in the process.

The Report appears to agree with the City on the basic foundational approach stated in Finding 134, stating:

> "Slayton customers' ordinary responsibility for [the] SLW substation is embedded in the 'lost revenue' component of the just-compensation calculation. … Just as with any other Xcel asset that Slayton will no longer use, Slayton customers' ordinary total responsibility for the SLW substation is accounted for in the revenues that they would have paid to Xcel." [96]

The clear implication of this Finding is that, since loss of revenue compensation accounts for the City's "ordinary total responsibility" related to the SLW substation, no additional compensation would be warranted beyond loss of revenue. But rather than conclude there, the report continues, with Finding 137 recommending the Commission "should require Xcel to analyze how the SLW [substation] will be used after the transfer" and "further determine" that the

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[95] Fritsch Rebuttal, Attachment C (2025 PowerPoint) Slide 10 (page 54 of the larger PDF document).
[96] Report, Finding of Fact 134.

stranded portion of the substation be paid as an "other appropriate factor." [97] The Report provides no further explanation of how these two areas of potential compensation may overlap or how a fair analysis would avoid the likelihood of double recovery for an asset that Xcel requests 98.8% of its net book value while still owning and utilizing it for other non-Slayton customers. These contradictory and unhelpful findings create more questions than answers for the Commission to address.[98]

Moreover, Mr. Berg already conducted the analysis on what portion of the SLW substation would be stranded (aka underutilized), as part of his loss of revenue calculation, and concluded that a mill rate of 4.2 mills for a period of five years would be fair compensation. This analysis is fully laid out in Mr. Berg's Direct Testimony, in which he explains:

- Slayton's 2024 peak load of 4.3 MW is only a small portion of the SLW substation's overall capacity of 14 MVA;
- Xcel also uses the SLW substation for DER interconnection, with 3.7 MWs of DER connected to the substation at the time of Xcel's response to the Information Requests; and
- Xcel also has 15 MWs of future DER projects in the queue for the SLW substation. [99]

Mr. Berg's Rebuttal Testimony further addresses the use of the SLW substation and the amount of compensation he recommends for it.[100] Mr. Berg explains that, given the existing peak load on the SLW substation related to Slayton (4.3 MW) is only 28.6% of the total substation capacity (14 MVA), this means that, by Xcel's logic, the SLW substation was 71% stranded the day it went into service.[101] Further, Mr. Berg explains that his recommended loss of revenue compensation related to the substation, when applied over the five year compensation period he

[97] Report, Finding of Fact 137.
[98] Additionally, the Report's recommendation to further study the future use of the SLW substation in Finding 137 directly contradicts with the statement in Finding 96 wrongly stating that "No commission proceeding discusses the concept of utilization."
[99] Berg Direct at 28-30
[100] Berg Rebuttal at 32-35.
[101] *Id.* at 33-34.

recommends, will result in payment to Xcel of approximately $430,525 in total substation compensation.[102] For comparison, Mr. Berg looks at the net book value of the SLW substation at $1,145,319 multiplied by the 28.6% of total substation capacity used by Slayton, resulting in a figure of $327,561 in Slayton-allocated substation cost. This means that Mr. Berg's recommended compensation of $430,525 equates to 100% of the Slayton allocated cost of the SLW substation ($327,561), plus an additional $102,964 for other substation-related expenses such as operations and maintenance expenses.[103]

Although this is an obviously substantial amount of compensation recommended by Mr. Berg, the Report adopted a suggested finding from Xcel characterizing the City's recommended substation compensation as "only a tiny fraction of its value." [104] Additionally, the Report adopts Xcel's confusing language in a proposed finding attempting to characterize the City's position on the SLW substation as an inconsistent "retreat" from the City's previous position.[105] This criticism is untrue and unwarranted. Mr. Berg and the City have acknowledged from the beginning that a portion of the SLW substation would be "underutilized" or "stranded" following the transfer, and that forms the basis for the City's recommended compensation for loss of revenue.[106] Mr. Berg explained from the outset that his analysis of loss of revenue considered "[a]ny costs that are not avoided following the acquisition, essentially 'stranded costs,' would be utilized to calculate a per kWh 'mill rate' for the basis of a net loss of revenue payment to Xcel." [107] That analysis has not changed, although as explained above, the City opposes ***additional compensation*** for the

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[102] Berg Rebuttal at 35 (assuming sales remain flat in Slayton over the compensation period).
[103] Berg Rebuttal at 35.
[104] *Compare* Report, Finding of Fact 126; *with* Xcel's Proposed Findings and Conclusions, Finding 318. The actual mathematics show that compensation of $430,525 is approximately 37.6% of the substation's net book value of $1,145,319.
[105] *Id.*
[106] Berg Direct at 28 ("Xcel will have capacity within the substation that Slayton will no longer utilize. As such, this represents a stranded cost for Xcel which cannot be completely avoided.").
[107] Berg Direct at 18.

substation as an "other factor" in addition to the loss of revenue. In other words, the City's method would compensate Xcel for the portion of the substation that is underutilized or stranded ***because of the City's exit from the system***, but would not penalize the City with payment for the additional 71% of substation capacity that has nothing to do with the City's acquisition.

In any event, the Report failed to adequately address these three key disputed issues, as well as other specific avoided-costs analysis, instead leaving it to the Commission to make these determinations. As described above, the City's form of analysis presents a fair and reasoned alternative framework that was supported by evidence, and that can be used by the Commission to arrive at a recommended mill rate form of compensation.

4. The ALJ Erred as a Matter of Law by Creating a Novel and Unworkable "Dual Burden of Proof" Framework That Shifts the Burden of Proving Damages Away from the Incumbent Utility, and Misinterprets Minn. R. 1400.7300, Subp. 5.

The City's briefing on the burden of proof cited well-established case law placing the burden to prove damages squarely on the proponent of damages. This fundamental principle that a claimant must prove its damages permeates both the general law of damages and eminent domain,[108] as well as Commission precedent under Section 216B.44 acknowledging that the cooperative carries the burden of proof to show its damages.[109]

The Report sharply departed from this well settled law in Findings 7, 8, and 10, stating that "each party" proposing compensation at a certain amount "or using a certain method has the burden to establish by a preponderance of the evidence that its proposal is just." [110] Additionally, with respect to proof of avoided costs, the Report in Findings 95 and 100 recite an evidentiary standard

[108] *See, e.g.*, Minn. Stat. 117.175 ("The owners shall go forward with the evidence and have the burden of proof as in any other civil action[.]"); *Minneapolis-St. Paul Sanitary Dist. v. Fitzpatrick*, 277 N.W. 394, 403 (Minn. 1937) ([T]he landowner occupies the position of plaintiff and, … like any other action for recovery of damages, he who claims such has the burden of proving them.").
[109] *In re City of Grand Rapids*, Order Determining Compensation at 18; *In re City of Redwood Falls*, Order Determining Compensation at 10.
[110] Report, Findings of Fact 7, 8, and 9.

of "clear and demonstrable" evidence, something more akin to clear and convincing evidence rather than a preponderance of evidence.[111] The ALJ's finding that the City bears an independent, affirmative burden of proof to establish the validity of its lost revenue "proposal" conflates a party's procedural burden to initiate a proceeding with a claimant's substantive burden to prove its own damages.

While Slayton is the petitioner that triggered this valuation as part of the process outlined in Minnesota Statute Section 216B.45, the specific "fact at issue" being adjudicated as part of this contested case proceeding is the appropriate calculation of "just compensation" as required under the law. In seeking an award for "loss of revenue," Xcel is the proponent of the action that is the subject of this contested case proceeding – specifically, a Commission mandate requiring Slayton ratepayers to pay tens of millions of dollars in loss of revenue payment, and so Xcel should carry the burden of proving those purported losses. Indeed, the logic and structure of Section 216B.45 results in the city, not the utility, commencing the action. If a city and utility serving a territory cannot agree on just compensation to the utility, the utility has no reason to file a petition to the Commission. It simply keeps serving its customers. Under bedrock principles of Minnesota law, the risk of non-persuasion regarding the existence and amount of an economic injury rests exclusively on the party asserting the injury.

The ALJ's "competing proposals" framing creates a problematic legal fiction. Slayton's expert testimony did not constitute an independent financial "proposal" that Slayton was required to prove; rather, it provided a factual, evidence-based demonstration that Slayton's exit from the Xcel system would result in a minimal impact to Xcel's financial wellbeing. Once Slayton introduced evidence impeaching the baseline foundation of Xcel's calculations, the burden of

[111] Report, Findings of Fact 95 and 100.

proof shifted back to Xcel to rehabilitate its figures. Because Xcel failed to provide verifiable, granular data regarding its actual, localized avoided costs, it failed to meet its enduring burden of persuasion. The ALJ's "down the middle" approach would effectively penalize Slayton for Xcel's failure of to meet its burden of proof.

The risk of the Commission adopting the ALJ's approach is most obviously reflected in the treatment of transmission costs. The City's position began, and has remained, that transmission costs were fully avoidable and therefore should not be included in the calculation of just compensation.[112] On the other hand, Xcel originally included $5.3 million of transmission costs in its original calculations.[113] Notably, it was only after the City hired an expert witness, Mark Mitchell, who unequivocably refuted the inclusion of these costs did Xcel admit its original calculations were wrong and made the appropriate adjustments.[114] While Xcel asserts that it was persuaded by the City's arguments,[115] it is clear from the record that Mr. Mitchell's intricate understanding of the MISO markets was critical in getting Xcel to revisit these amounts. It is also noteworthy that Mr. Mitchell simply expanded on what Mr. Berg had said in his direct testimony – "as a transmission owner, Xcel will still receive full reimbursement of its transmission expenses from MISO." [116] Had the City not hired Mr. Mitchell, it stands to reason that Xcel would have continued to demand inclusion of those costs in the analysis, and the City may have been responsible for paying those costs that Xcel had not admitted *are* avoided. All of that is despite the fact that Xcel, as the largest and one of the most sophisticated investor-owned utilities in Minnesota, who employees teams of employees whose functions relate specifically to

[112] Berg Direct, 27:20–28:8.
[113] Peterson Direct, 43:23–45:15; Peterson Surrebuttal, 23:20–24:20.
[114] Peterson Surrebuttal, 23:20–24:20.
[115] *Id.*; *see also* Xcel Reply Brief, at 18.
[116] Berg Direct, 28:5–6.

understanding these processes and policies, was allegedly unable to arrive at this conclusion on its own, despite Ms. Peterson's statement that her change in position was based entirely on her "consult[ation] with transmission personnel at the Company." [117] Instead, it was incumbent upon the City to educate Xcel as to a fact it had every reason to know and incorporate on its own.

Furthermore, the ALJ's dual-burden standard creates a structural impossibility for the City due this severe "information asymmetry." [118] Xcel exclusively owns, controls, and manipulates the utility system data necessary to calculate its loss of revenue, including marginal avoided costs. Forcing a municipality to prove a specific counter-model on a field where the incumbent utility holds all the data strips Minn. Stat. § 216B.45 of any meaningful utility, and it would serve to render the statute practically unworkable for municipalities in Minnesota, approximately 88% of which have fewer than 10,000 residents. For these reasons, the Commission should reject the novel burden-shifting framework in the ALJ's Report and clarify that a utility claiming a loss of revenue must prove that loss with reasonable certainty.

5. The ALJ Improperly Weighed The Evidence, Failing to Credit the Unrebutted Testimony from Mark Fritsch on Avoidability, and Overlooking Xcel's Significant Credibility Issues.

The City's witnesses included Mark Fritsch, a former Xcel employee and previous CEO and General Manager of Owatonna Public Utilities (OPU).[119] With decades of experience managing electric utility operations, many of which were within Xcel itself, Mr. Fritsch testified in both Rebuttal and Surrebuttal about the many and various operational and planning adjustments that could be made in response to a loss of load (or other revenue) to mitigate the losses and avoid rate increases to existing customers.[120] These non-rate adjustments included staffing, maintenance,

[117] Peterson Surrebuttal, 23:22–24.
[118] Department of Commerce Initial Brief, at 3.
[119] Fritsch Rebuttal at 2-3 (summary of experience), and 17-18 (Resume).
[120] Fritsch Rebuttal at 3-4, 14-15; Fritsch Surrebuttal at 3.

operations, and capital project reductions, as well as delays in filling open positions and capital expenditures, reductions in travel, overtime, and contract/consulting expenditures.[121] Mr. Fritsch testified that even at the much smaller OPU, a loss of 1% or less of load could be easily be managed within the first year if load growth exceeded the loss.[122] Notably, Mr. Fritsch was the ***only witness*** with first-hand experience making these kinds of operational adjustments to account for losses of load or revenue.

Mr. Fritsch also provided testimony about Xcel's previous acknowledgement of avoided costs, contrary to what it has requested in this matter. As noted above, Mr. Fritsch testified to Xcel's previous agreement that costs related to "fixed production – energy" were viewed as avoidable during times of increasing sales.[123] Mr. Fritsch explained that "Xcel has consistently reduced their loss revenue amount (fixed production – energy), when electric sales are increasing, until Xcel saw sales projections declining in 2024." [124] Mr. Fritsch also provided evidence that Xcel – via Lisa Peterson – had previously acknowledged transmission costs as avoidable as recently as March 21, 2025,[125] less than a year before Ms. Peterson's Direct Testimony and Rebuttal Testimony in this case claiming transmission costs are ***not*** avoidable.[126] As noted above, Xcel and Ms. Peterson only reversed this position on transmission avoidability in surrebuttal, after being confronted with the definitive testimony of City witness Mark Mitchel explaining the MISO transmission reimbursement system.

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[121] Fritsch Rebuttal at 14-15
[122] Fritsch Rebuttal at 15.
[123] Fritsch Rebuttal at 3-6, Attachments A, B, and C (Xcel PowerPoints); Fritsch Surrebuttal at 4.
[124] Fritsch Surrebuttal at 4.
[125] Fritsch Rebuttal at 6, 11.
[126] Peterson Direct (filed Nov. 21, 2025) at 25; Peterson Rebuttal (filed January 9, 2026) at 25-26. Even after receiving Mr. Berg's Direct Testimony explaining the MISO reimbursement scheme that Ms. Peterson herself apparently acknowledged in March of 2025, Ms. Peterson continued to dismiss Mr. Berg's testimony in this case as "conclusory statements," stating that "Berg has not provided sufficient analysis or explanations to support his argument that transmission costs are avoidable."

The ALJ's Report did not even mention Mr. Fritsch's testimony in the body of the Report. Nor did the ALJ make any credibility findings related to Xcel's conflicted positions on transmission or fixed production – energy. Instead, the Report overlooks the fact that the largest-investor-owned electric utility in the state claims it either did not know how its own transmission payment worked or did not bother to investigate that issue further before requesting millions of dollars in compensation on that issue, instead relying on the City of Slayton to educate it on its own payment systems.

Similarly, Mr. Fritsch testified about the planning periods he worked within at Xcel and how those bore on the business operations he supervised.[127] Again, Mr. Fritsch was the only witness to discuss first-hand business operations conducted within and using the various planning periods at Xcel. Xcel's witness on planning periods, Dr. Bixuan Sun, testified about the development of and basis for various planning documents, but had no experience in the business operations that make decisions based on those plans.[128] Dr. Sun also conceded that incorporation of a project in a plan does not mean that it will actually be constructed and deployed.[129] Dr. Sun further agreed that incorporation in a planning document does not foreclose business judgments changing the timing for retirement of existing generation assets or the launch of new generation assets into service sooner or later based on business need at the time.[130] Thus, the testimony from Xcel only referenced planning periods and documents in the abstract, with little to no description of how those planning periods and documents bear on the ultimate business decisions that would drive revenue and avoidability.

[127] Fritsch Rebuttal at 11-15.
[128] Transcript at 178:23-179:1 (Sun).
[129] Transcript at 179-180 (Sun).
[130] Transcript at 179-181 (Sun).

The Report addressed ***none*** of these important credibility issues and judgments, and seems to have overly credited both Xcel's framework and the Department's generalized compromise position without reconciling the fundamental differences in each of the approaches. Thus, to reach a reasoned analysis and determination of the issues in this matter, the Commission is left with the task of reviewing the testimony and briefing from the parties and reaching its own conclusion as to the credibility of the witnesses and their testimony. In doing so, the City respectfully requests that the Commission give appropriate weight to the unrebutted testimony of Mr. Fritsch and specifically find that Xcel's financial modeling in this matter is not credible and that it should be given little weight.

6. The Report Incorrectly Adopted the Department's Suggested 10-Year Compensation Period for Loss of Revenue, Overemphasizing Planning Periods, and Failing to Recognize the Facts Supporting a Shorter Period For Xcel as a Large Vertically-Integrated IOU.

With respect to the compensation period for loss of revenue, the Report's consideration of the time period for loss of revenue again expresses general agreement with the City's core arguments that the "utility has a duty to adjust to changed circumstances and mitigate revenue losses as a result of the sale." [131] The Report also agrees that Xcel's sales "in Slayton represent less than one-tenth of one percent of Xcel's overall sales in Minnesota." [132] The Report further agrees with the City that Xcel's structure as a "vertically integrated utility that provides distribution, generation, and transmission service" makes it "distinguishable from prior section 216B.44 cases which involved cooperative utilities which provided distribution service." [133] The Report also correctly recognized that the cooperatives in past cases "are subject to different regulations, operational consideration, and are considerably smaller—in service territory and

[131] Report, Finding of Fact 31 (citing *Rochester II*, Order After Reconsideration at 7).
[132] Report, Finding of Fact 34.
[133] Report, Finding of Fact 57.

financially—than Xcel."[134] But the Report ultimately departs from these agreements and proceeds to adopt the Department's proposed 10-year time frame and suggested analysis, describing the Department's compromise position the "most reasonable."[135]

This departure from City's fact-based analysis of Xcel and it's adjustment capabilities relative to the particular service territory at issue in Slayton is especially striking, given the Department's witness testifying on the loss of revenue analysis was abundantly clear that his suggestion of the 10-year period was not based on any unique facts of this case, but was a simple recitation of the standards applicable in the prior Commission decisions from the cooperative cases.[136] When Mr. Ngo was asked in cross examination about the basis for his conclusion recommending the 10-year compensation period, his testimony was unequivocal:

> Q …In reaching that conclusion you didn't base that on any particular aspects or details of the two parties in this case, it was just an adoption of prior Commission precedent; correct?
>
> **A Right.**[137]

Thus, the Department's suggested use of the 10-year period from the cooperative cases under Section 216B.44 completely ignores the facts of this case. It also glosses over the Commission's prior statements that the 10-year period adopted in the *Olivia* case was a case-specific one and that the Commission would be open to a different lost revenue period in future cases.[138] By adopting the Department's analysis, the Report erroneously applies the 10-year compensation period from the cooperative cases to a fact pattern that it recognizes differs markedly from the previous cases.

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[134] *Id.*
[135] Report, Findings of Fact 30-68; Finding of Fact 67 (stating the ALJ's belief "the Department's recommended 10-year time horizon is the most reasonable and best supported by the record").
[136] Transcript 196:3–8 (Ngo).
[137] *Id.*
[138] *In re City of Olivia*, Order Determining Compensation at 15; *City of Olivia*, Order After Reconsideration at 8 (explaining the Commission's conclusions as based on the "circumstances peculiar to this case").

In reaching its conclusion, the Report discusses and largely appears to rely on the various planning periods referenced by the parties and their relation to the previous cooperative cases.[139] The Report describes the various planning periods, ranging from the five-year plans for distribution capital expenditure planning, to the 30-year generation planning, and the 10-year integrated distribution plan (IDP) which is required to be adjusted every two years.[140] The Report focuses on the most important planning periods being the "medium-term planning timelines," [141] and characterizes the 10-year distribution plan as a "long-term timeline." [142]

Ultimately, the Report offers a conflicted and confusing rationale for its final conclusion as to the 10-year period. On one hand, the Report states that, "The Commission should approach the lost revenue calculation through a fact-specific analysis and not by applying a prior decision or historical factor that is not derived from the evidence in this record." [143] On the other hand, the Report concludes that the "Department's recommended 10-year time horizon is the most reasonable and best supported by the record." [144] Thus, the ALJ reaches this conclusion in stark contradiction to the Department's witness who agreed that his use of recommended 10-year compensation period was "not based on any particular aspects or details of the two parties in this case," and was instead "just an adoption of prior Commission precedent." [145] The Commission should reject the Report's recommendation on the 10-year compensation period for loss of revenue which overemphasizes planning periods and fails to the facts supporting a shorter period, based on

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[139] *See, e.g.*, Finding 32 (characterizing the City's referenced 5-year planning periods largely addressing distribution); Finding 36 (describing Xcel's referenced planning periods generation, transmission, and distribution); and Findings 37-39 (describing the Department's positions on the planning periods).
[140] Report, Findings of Fact 47-51.
[141] Report, Findings of Fact 46, 59,
[142] Report, Finding of Fact 61.
[143] Report, Finding of Fact 52.
[144] Report, Finding of Fact 67.
[145] Transcript 196:3–8 (Ngo).

Xcel's large vertically-integrated structure and the small low-density service area at issue in Slayton.

As set out more thoroughly in the City's testimony and briefing, the City's two witnesses addressing the compensation period, David Berg and Mark Fritsch, explain in detail the potential adjustments that Xcel can make to its system to adjust for the loss of Slayton, and mitigate any damages that may result (with the exception of the portion of the SLW substation). With the only truly underutilized (or "stranded") asset identified in the case ***by any party*** resulting from the sale being the modest portion of the SLW substation that Slayton previously used, a five-year compensation period is more than reasonable. The calculations from Mr. Berg summarized above show that Xcel would receive compensation for its loss over a five-year period totaling approximately $430,525 in substation compensation – or approximately 37.5% of the total book value of the SLW substation $1,145,319.[146] Again, the record establishes that peak load associated with Slayton customers of 4.3 MW is only 28.6% of the total substation capacity of 14 MVA.[147] Thus, under the City's recommended rate of 4.2 mills for a period of five years, Xcel would receive 37.5% of the total book value of the SLW substation while Slayton only used a peak of 28.6% of its capacity. Doubling this period to 10 years would double the recommended compensation to $861,050 over the period (assuming sales in Slayton remain flat). That would equate to approximately 75.2% of the substation's current book value, as compared to Slayton's use of 28.6% of its capacity. This example clearly demonstrates that the five-year period is soundly grounded in the record and fair to both parties.

The ultimate question for the Commission is reaching a total amount of "just compensation" to be paid in consideration for loss of revenue. It bears emphasis that Mr. Fritsch

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[146] *See supra* at Exception 3.C; Berg Rebuttal at 35.
[147] Berg Rebuttal at 33-34.

provided unrebutted testimony that, even at the much smaller OPU, losses of less than 1% of total load could be easily managed within the first year (without rate increases) when they were offset by increased sales.[148] Combined with the testimony of both Mr. Berg and Mr. Fritsch regarding the overall adjustment capabilities of Xcel and its resources that can be reallocated across its system to remain fully utilized and employed, the Commission should conclude that a five-year compensation period for loss of revenue is "more than reasonable time for Xcel to adjust to and mitigate for the loss" of Slayton.[149]

7. While the Report Correctly Approved Use of a Mill Rate Form of Compensation, the Suggested Calculation Mistakenly Increases the Rate for Anticipated Increased Usage.

The Report rightly approved of setting compensation for loss of revenue in the form of a per-kWh mill rate to be applied to Slayton customers' future usage, finding this practice well in accord with Commission precedent. [150] However, the Report errs in its recommended approach to ***calculating*** a mill rate, stating that "In lieu of reducing the amount to present value, the mill rate should be calculated based upon revenue forecasted for the midpoint of the lost-revenue time horizon."

This "midpoint" approach to the mill rate that neither party advocated for misapprehends both the workings of a mill rate and the purpose of the present value. Again, it bears repetition that use of a mill rate accounts for and incorporates future growth in sales, because it is applied to actual future sales. If Sales in Slayton stay flat during the compensation period at approximately 20.5 million kWh per year, the loss of revenue payments would stay consistent throughout the period. If Slayton sales were to increase to 22 million kWh in a given year, Xcel would receive a

[148] Fritsch Rebuttal at 15.
[149] Fritsch Rebuttal at 15 (agreeing with Mr. Berg's five-year recommendation).
[150] Report, Findings of Fact 147, 150, and 152 (citing *Rochester II*, Findings of Fact, Conclusions, and Recommended Order at 9; *City of Redwood Falls*, Order Determining Compensation at 3-4).

loss of revenue payment for that year based on the actual sales of 22 million kWh. Increasing the mill rate to account for Xcel's anticipated growth would work a double-count of the growth. It would be the equivalent of paying a higher ***rate*** of reimbursement of driving mileage to a driver who anticipates driving ***more miles*** over a coming period. Because the rate itself accommodates the increase, this is not necessary.

Additionally, there is no need to bring future payments back to present value when they are paid at or near the time of the sales. The whole point of reducing a future income stream of regular installments to a single present-value lump sum is to account for the time value of money. The future income is reduced to present value by a discount rate based on typical market indices.[151] But where the future income stream is simply paid out over time, there is no need to bring it to present value or apply any discount rate. The payments to Xcel for loss of revenue are made at or near the time of the actual sales to Slayton customers, and so the adjustment for time is unnecessary.

The ALJ's Report mistakenly proposed adjustment to the mill rate apparently for Xcel's projected growth and the present value calculation, where neither was necessary. The Commission should disregard the Report's recommended approach to setting a mill rate and may properly use a straightforward mill rate as proposed by Mr. Berg and the City.

8. The Report Errs in Apparently Allowing Xcel to Submit Further Future Integration Expenses That it Has Not Proven.

The Report provides a recommendation "that the Commission include as just-compensation integration expenses the actual expense amounts incurred for Xcel's continued service integration and meter integration" but again fails to provide any meaningful calculation of

[151] *See* the City of Slayton's Initial Brief at 26-27 for more information on the correct selection and appropriate use of a discount rate.

what those costs are or should be based on the evidentiary record.[152] Instead, the Report suggests that the Commission ought to make those judgments, despite the fact that the Commission's Order for a contested case clearly directed the CAH to "review and weigh the statutory factors as tailored to the facts of this case to render a well-reasoned report."[153]

Xcel argued that it should be entitled to include in just compensation its integration expenses related to (i) CSG program eligibility, (ii) current CSG subscribers, and (iii) DER related to the interconnection queue because of potential impact on CSG projects (collectively, the "CSG Costs"). Xcel also sought approximately $140,000 in "meter integration expenses."[154] The Parties agree that Xcel should be entitled to $15,000 in continued service integration expenses, and that amount is included in the City's just compensation calculations.[155]

The Report correctly points out, and adopts the Department's framework, regarding the denial of the CSG Costs. All of these costs are highly speculative and Xcel has not reasonably estimated any of them as part of the evidentiary record in this proceeding.[156] Further, to allow Xcel to include these speculative impacts would serve to further exacerbate the inclusion of costs in just compensation which Xcel failed to prove as part of the contested case proceeding.

The Report further goes on to state that the Commission should allow Xcel to recover "actual expense amounts incurred [by] Xcel [for its] continued service integration and meter integration." [157] This approach appears to inappropriately leave the door open for Xcel to attempt to add additional cost recovery masked as integration expenses with significantly less supervision, presumably through a compliance filling process. As noted above, Xcel's initial position on one

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[152] Report, Finding of Fact 116.
[153] Commission Order, June 2, 2025, at 2.
[154] Report, Findings of Fact 104, 112.
[155] Report, Finding of Fact 107.
[156] Report, Finding of Fact 117.
[157] Report, Finding of Fact 116.

aspect of this case – transmission costs – would have resulted in an approximately $5 million penalty to the City had its expert witness not "consulted with" appropriate staff within Xcel, which was only done after the City raised the issue several times.[158] Because of this, and the fact the record in this case is closed, Xcel should not be permitted to include as just compensation any additional costs except those that it has proven by a preponderance of the evidence as part of the evidentiary record. To allow this method where a party can add additional costs after the evidentiary hearing is both prejudicial to the City, because the City will not have a meaningful opportunity to review and object to those costs, but it also ignores the basic premise of the Commission's Order for a contested case, where the Court of Administrative Hearings was directed to fully analyze the record and make specific recommendations for the Commission's review.[159]

The City respectfully requests that the Commission reject the Report's Finding that invites Xcel to include additional costs in its integration expenses, except for the $15,000 continued integration expense that the City has agreed Xcel has proven in this proceeding.

IV. CONCLUSION

In sum, the City respectfully requests that the Commission adopt just compensation conclusions consistent with City's analysis in the following amounts:

Original Cost of Facilities Less Depreciation	$3,220,652.56 (adjusted to date of transfer)
Loss of Revenue	4.2 Mills per kWh sold for five years
Costs of Integration	$15,000.00
Other Factors	None

[158] *See supra,* pages 27-29.
[159] *Supra* note 153.

These amounts are supported by the record evidence and are demonstrably fair to both parties and their present and future ratepayers.

Respectfully submitted,

Dated: May 28, 2026 **KENNEDY & GRAVEN, CHARTERED**

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