BEFORE THE MINNESOTA COURT OF ADMINISTRATIVE HEARINGS
600 North Robert Street
P.O. Box 64620
St. Paul, MN 55164-0620

FOR THE MINNESOTA PUBLIC UTILITIES COMMISSION
121 Seventh Place East, Suite 350
St. Paul, MN 55101-2147

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Joseph K. Sullivan	Vice-Chair
John Tuma	Commissioner
Hwikwon Ham	Commissioner
Audrey Partridge	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	MPUC DOCKET NO. E-002, PT-7157/SA-25-129 CAH DOCKET NO. 25-2500-40870

INITIAL BRIEF OF THE CITY OF SLAYTON

March 13, 2026

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I. INTRODUCTION

The City of Slayton ("City" or "Slayton") respectfully submits this initial brief in support of its position regarding just compensation for Slayton's acquisition of the electric facilities and service territory within the City, owned by Northern States Power, d/b/a Xcel Energy ("Xcel").

II. FACTUAL BACKGROUND

The City of Slayton, located in Murray County, is home to approximately 2,000 residents.[1] The City is responsible for delivering a wide variety of services to its residents, including but not limited to public safety, library, and water and sewer utilities.[2]

The City initiated this proceeding to acquire Xcel's electric utility service territory within the City pursuant to Minnesota Statutes, Section 216B.45.[3] This petition followed a vote of the residents of Slayton in 2023 to authorize the City to undertake these actions and to form a municipal electric utility.[4] The City's interest in this acquisition was driven by myriad factors, but the City, and its residents, were primarily driven by the desire for local control over their energy utility services.[5]

Xcel is an investor-owned utility providing services in a number of states including Minnesota. Xcel currently has exclusive electric utility service rights within the City of Slayton and some neighboring communities.[6] In addition to serving retail customers within its assigned service territories, Xcel engages in generation and transmission activities.[7]

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[1] Malchow Rebuttal at 3:1–17.
[2] *Id.* at 2:19–25.
[3] MPUC Order dated June 2, 2025, Docket No. E-200, PT-7157/SA-25-129 at 1.
[4] Malchow Rebuttal at 4–5.
[5] Malchow Rebuttal at 8:20–25; Heronimus Rebuttal at 4:16–21.
[6] Marshall Direct at 4:2–3.
[7] *See generally*, Sun Surrebuttal.

According to information provided by Xcel in this proceeding, in 2024 Xcel delivered approximately 19,614,508 kWh of electrical energy service to retail customers located within the City.[8] This load represents less than one-tenth of one percent of Xcel's total service within Minnesota.[9]

To date the parties have been unable to agree as to what constitutes "just compensation" under Minnesota Statutes, Section 216B.45.[10] The statute contemplates that "just compensation" shall be comprised of an analysis of the following criteria:

1. 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.[11]

The City and Xcel generally do agree as to the original cost of the property being acquired by the City, less depreciation.[12] However, the Parties have been unable to agree as to a valuation of the remaining statutory criteria.

III. SUMMARY OF PARTIES' POSITIONS

The basis for the City's request for a contested case is its strong disagreement with Xcel's position on "just compensation" for net lost revenue. The disagreement in both amount and evidentiary support continues and is presented as outlined below. As related to the original cost less depreciation factor, the City generally agrees with Xcel's valuation of the distribution system

[8] Xcel Energy Response to City of Slayton IR No. 81.
[9] Fritsch Surrebuttal at 3:12.
[10] Marshall Direct at 1:24–26.
[11] Minn. Stat. § 216B.45.
[12] Berg Rebuttal at 2:21–22.

assets that the City will acquire, which are presently valued at approximately $3,220,653.[13] In addition to those costs, the City proposes that Xcel be entitled to an ongoing loss of revenue payment of 4.2 mills per kilowatt-hour (kWh) over a five-year transition period.[14] This methodology follows prior Commission decisions which were aimed to ensure that the utility was fully compensated for its lost revenues, while prohibiting any party from obtaining a windfall, and ensuring that the displaced utility was undertaking commercially reasonable efforts to adjust for and mitigate its losses, as discussed in more detail below. Given the small impact on Xcel's sales in Minnesota that the loss of the Slayton load represents, the City believes that this calculation provides Xcel with just compensation for a period of time satisfactory to allow Xcel to adjust its operations with its significant ability to "mitigate" the small loss "quickly and efficiently." [15]

On the other hand, while Xcel agrees that the value of the distribution assets is $3,220,652.56,[16] it has taken a significantly different position on the calculation of the remaining factors. Xcel takes the position on lost revenues that the City should be required to make presently valued lump sum fixed payments over 20 years,[17] based on the notion that Xcel is unable to adjust its system to mitigate the effects of the loss of the Slayton load.[18] Additionally, Xcel has argued that the City should be required to pay Xcel nearly the entire cost of an existing substation for which Xcel will retain full ownership and use following the completion of this process.[19]

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[13] *Id.* The City's understanding is that this value is dated as of Xcel's August 26, 2026, Supplemental Response to City of Slayton Information Request No. 1, and will need to be updated to the date of transfer. Berg Direct at 11.
[14] Berg Direct at 49:6–15.
[15] *Id.* at 48–49.
[16] Peterson Direct at 10:1–26.
[17] *Id*. at 16:1–18.
[18] Peterson Rebuttal at 10:14–20.
[19] Peterson Direct at 43:11–21.

IV. RELEVANT COMMISSION PRECEDENT AND LEGAL STANDARDS

This is the first contested case in the state of Minnesota involving a municipality exercising its rights to acquire assets and service territory from a fully integrated investor-owned utility (IOU) like Xcel, under Minnesota Statutes, Section 216B.45. Accordingly, this case presents a number of unique legal and factual issues for the Commission's review and determination. Although the Parties start with the same statutory factors under Section 216B.45, the testimony shows a wide divergence on interpretation and application of the statutory factors – primarily on the issue of consideration of loss of revenue to the utility. To put this difference in perspective, even after Xcel's concession to the City's testimony that transmission costs are fully avoidable, it still reaches a conclusion regarding damages for loss of revenue that is approximately 80 times higher than that of the City's expert.[20]

To assist the Commission in appropriately framing and evaluating the testimony on these issues, including the loss of revenue consideration. The City begins with a brief overview of past decisions of the Commission and appellate courts, and the relevant law of damages.

A. Statutory Compensation Factors and Relevant Precedent

This contested case requires a determination of "just compensation" for the property to be purchased under Minnesota Statutes, Section 216B.45. In making this determination, the statute requires that the Commission consider four factors:

(1) the original cost of the property [acquired by the City] less depreciation,

(2) loss of revenue to the utility [Xcel],

(3) expenses resulting from integration of facilities, and

[20] *See* Berg Rebuttal at 35 (concluding to 4.2 mills for five years, or approximately $430,525 in anticipated lost revenue payments); Peterson Surrebuttal at 45 (concluding to a lump sum loss of revenue payment of $34,710,977, based on lost revenue period of 20 years).

(4) other appropriate factors.[21]

Notably, the statute only requires that the Commission *consider* each of the four factors in its determination and does not mandate a line-item of compensation for each. Beyond this broad mandate, the statute itself offers no further guidance. As noted above, the primary disputed issue in this case is the amount to be paid, and duration of payment, to Xcel by the City regarding lost revenue from a Slayton distribution area acquisition.

B. Relevance of Sections 216B.44, 216B.45, and 216B.47

While Section 216B.45 has not been interpreted by the Commission, the companion Section 216B.44 regarding the expansion of municipal electric utility service territory has been before the Commission and Administrative Law Judges several times. The language in the two statutes regarding compensation "factors" is nearly identical.[22] At least seven compensation orders have been issued by the Commission under 216B.44.[23]

Further, Section 216B.47 expressly provides that cities may also acquire utility assets and service territory by eminent domain, provided that the damages paid in eminent domain include

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[21] Minn. Stat. § 216B.45.

[22] The two statutes describe essentially the same four factors noted above, with some differences. For example, where Minn. Stat. § 216B.45 describes the Commission's task of "determining just compensation," § 216B.44 describes the Commission's role as determining "appropriate terms for the exchange" or "appropriate value of the property" acquired. With respect to loss of revenue, § 216B.44 has slightly different language, requiring the Commission to consider "loss of revenue to the utility *formerly serving the area*."

[23] *In the Matter of the Application of the City of Olivia to Extend its Municipal Electric Service Area into an Area Served by Sibley Cooperative Power Association*, MPUC Docket No. E-288, 136/SA-85-93; *In the Matter of the Complaint Regarding the Annexation of a Portion of the Service Territory of People's Cooperative Power Association by the City of Rochester (North Park Additions)*, MPUC Docket No. E-132, 299/SA-88-270, Order Determining Compensation (July 11, 1990); *In the Matter of the Application by the City of Rochester for an Adjustment of Its Service Area Boundaries With People's Cooperative Power Association, Inc.*, MPUC Docket No. E-299, 132/SA-93-498 ("*City of Rochester II")*, Order Determining Compensation and Denying Motion to Dismiss (Nov. 30, 1995); *In the Matter of the Petition by the City of Rocester for Approval of an Adjustment of its Service Territory Boundaries with People's Cooperative Services, Inc. (Celestica Property)*, MPUC Docket No. E-132, 299/SA-02-496, Order Determining Compensation (June 19, 2003); *In the Matter of the Application of the City of Buffalo to Extend Its Assigned Service Area into the Area Presently Assigned to Wright-Hennepin Cooperative Electric Association*, MPUC Docket No. E-221, 148/SA-03-989, Order Determining Compensation and Requiring Compliance Filing (Apr. 1, 2005); *In the Matter of the Application of the Grand Rapids Public Utilities Commission to Extend Its Assigned Service Area into the Area Presently Served by Lake Country Power*, MPUC Docket No. E-

consideration of the same four factors to be considered in 216B.44 and 216B.45, including "loss of revenue to the utility." [24] Two Minnesota cities with municipal electric utilities have employed Section 216B.47 for such acquisition.[25]

These utility valuation cases have a nuanced relationship with traditional "just compensation" typically based on fair market value. For example, in the more recent *City of Moorhead* condemnation case, the Supreme Court relied on general principles of "just compensation" applicable in eminent domain in explaining that the meaning of "just compensation" requires a condemning authority to "put a property owner in as good as position pecuniarily as if his property had not been taken." [26] The Court explained that while condemnation awards are "usually based on the fair market value of the property," the standard is just compensation, on which the courts "can be fluid in the standards they apply to determine just compensation when fairness so requires." [27] Thus, in that case, the Court found that "fair market value" standards could not be applied in a way that was contrary to the enumerated statutory factors; requiring that the cost of facilities be evaluated by determination of original cost less depreciation (as specified by statute), rather than the replacement costs that would have allegedly been considered under a "fair market value" analysis.[28] Importantly though, the Court was careful to note that it was not definitively ruling out use of traditional fair market value principles, and

243, 106/SA-03-896, Order Determining Compensation (Sept. 29, 2005); *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*, MPUC Docket No. E-135, 298/SA-05-1274, Order Determining Compensation (June 27, 2007).

[24] Minn. Stat. § 216B.47.

[25] *City of Moorhead v. Red River Valley Co-op. Power Ass'n*, 811 N.W.2d 151, 153 (Minn. Ct. App. 2012), aff'd, 830 N.W.2d 32 (Minn. 2013); *City of Rochester v. People's Co-op. Power Ass'n, Inc.*, 483 N.W.2d 477, 481 (Minn. 1992) (describing the two different tracks as "parallel, yet alternative, procedures by which an expanding municipality is able to acquire facilities and service area rights of another utility").

[26] *City of Moorhead*, 830 N.W.2d at 37 (internal quotation omitted).

[27] *Id.*

[28] *Id.* at 38.

recognized that such principles might be applied within the statutory framework, or in other ways that were not incompatible with the statutory factors.[29]

C. The City of Olivia Case and Subsequent Commission Compensation Decisions Guide Loss of Revenue and Evidentiary Standards

Given the similarity in the statutes, the Commission's approach on lost revenue determinations under Section 216B.44 is highly relevant to this first Section 216B.45 case. The Commission's first disputed compensation proceeding requiring a final order was *City of Olivia* in 1985.[30] The *City of Olivia* Commission set forth policy considerations relevant to the factors that have not been reversed or criticized by subsequent Commissions wrestling with proper lost revenue compensation.

In evaluating what later Commissions developed into a "net lost revenue" analysis of loss of revenue price,[31] the *City of Olivia* Commission explained that the statutory analysis "requires, to the extent possible, equitable treatment of [both] buyer and seller." [32] The acquisition price should leave the displaced utility "no worse off than it would have been" without the acquisition, but not "so high" as to render the statute "meaningless" to the city.[33] Subsequent Commission

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[29] *Id.* at 38–39. Similarly, both the Court of Appeals and the Commission have separately noted that alternative forms of analysis (such as the gross-revenue multiplier) could serve as a reasonableness check on value. *In re Grand Rapids Pub. Utilities Comm'n*, 731 N.W.2d 866, 872 (Minn. Ct. App. 2007) (affirming decision not to adopt a gross-revenue multiplier formula, but noting that such alternative-revenue formulas may be appropriate as a "reasonableness check"); *In re City of Olivia*, No. SA-85-93, Order Setting Compensation at 17.

[30] *In re City of Olivia*, No. SA-85-93.

[31] *In re City of Rochester*, No. SA-93-498 ("*City of Rochester II")*, Order Determining Compensation and Denying Motion to Dismiss (Nov. 30, 1995) at 5.

[32] *In re City of Olivia*, No. SA-85-93, Order Determining Compensation at 13.

[33] *Id.*; *but see, In re City of Olivia*, No. SA-85-93, Order After Rehearing (Oct. 1, 1986) at 10 (explaining that the statement was not meant to suggest the price should be reduced below the actual utility net revenue loss, as that would violate the statute).

decisions have also found it "clear that the statute does not intend to provide a windfall to displaced utilities" [34] *or* to an acquiring city.[35]

Importantly, the Commission has consistently required an examination of the specific area under consideration, based on the "unique characteristics" of the case.[36] This focus on the facts specific to the area acquired – rather than system averages – has been a foundational approach *repeatedly* emphasized by the Commission.[37] Additionally, the *City of Olivia* Commission, anticipating the eventuality of municipal acquisition of IOU property, stated that cooperative and IOUs should "be treated as equally as possible" while acknowledging that the "differences between the two types of utilities…are hard to ignore." [38]

In awarding lost revenue, the *City of Olivia* Commission also analyzed remaining "cost" to the utility resulting from the acquisition and therefore falling to the remaining utility customers to pay for the "continuing expenses." [39] This approach later evolved into the "net lost revenue" formula employed by subsequent Section 216B.44 Commissions in their final compensation

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[34] *In re City of Rochester (North Park Additions)*, Order Determining Compensation (July 11, 1990) at 10.

[35] *In re Redwood Falls*, Order Determining Compensation (June 27, 2007) at 11 (reversed in part by *In re City of Redwood Falls*, 756 N.W.2d 133 (Minn. Ct. App. 2008) (finding the Commission erred by ordering the city to compensate the cooperative for five years of lost revenue based only on an oral agreement to serve a customer in another service territory, where the statute required written agreements)).

[36] *See, e.g. In re City of Olivia*, Order Setting Compensation at 13 (taking into consideration that the annexed area "is a valuable part of the Cooperative's service area because it is efficient to serve" and concluding that "the acquisition price set by the Commission should be consistent with these facts."). *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" and listing cost varying factors including "population density" "system capacity" and "load" among others).

[37] *Id.; See also, City of Rochester II*, Order Determining Compensation at 5 (evaluating "loss from serving rights to the area" being transferred); *In re City of Rochester (North Park Additions)*, Order Determining Compensation at 13 (loss of revenue determined by "the cost of serving the specified customers (in this case, customers residing in the North Park Additions)"); *In re City of Buffalo*, Order Determining Compensation at 8 ("The Commission conducts a factual analysis…to determine as precisely as possible the direct financial impact of losing service rights to the specific area being annexed.").

[38] *In re City of Olivia,* Order Setting Compensation at 12.

[39] *Id.* at 13–14.

orders.[40] Determining the proper net lost revenue recognized contributing factors like the higher or lower density and economies of scale found in the acquired area,[41] the various costs of service that can be avoided or markets available to the "displaced" utility to sell excess capacity or otherwise mitigate the loss, and the utility's ability to "adjust" and mitigate the loss, discussed below.[42]

D. Lost Revenue Payment Period

Both Section 216B.44 and 216B.45 are silent on the length of payment period to which the displaced utility is entitled payment from the City.[43] Again, as the first Commission to take up the issue of lost revenue compensation, the ten-year payment period was established in the *City of Olivia* case.[44] The lost revenue payment period was tied primarily to a ten-year cooperative utility planning period that was agreed to between the city and the cooperative and provided a compromise between two extreme positions asserted by the Minnesota Municipal Utilities Association (MMUA) and the cooperative. MMUA argued for no lost revenue period, later modifying it to three years, and the cooperative argued for payments in perpetuity.[45] The Commission, in reaching the ten-year conclusion, opined that based on the cooperative's ten-year planning period, that should allow sufficient time for the cooperative to meaningfully mitigate the impacts of the loss of service and to adjust its operations to reflect the new realities.

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[40] *See, e.g., In re Redwood Falls*, Order Determining Compensation at 4; *In re City of Grand Rapids*, Order Determining Compensation at 3; *In re City of Rochester (Celestica Property)*, Order Determining Compensation at 3; *City of Rochester II*, Order Determining Compensation at 5.

[41] *City of Grand Rapids*, Order Determining Compensation at 10 (Commission noting that serving areas with higher population densities "is normally less expensive than serving far-flung, geographically isolated customers…").

[42] *In re City of Olivia*, Order Setting Compensation at 15; *see also, City of Rochester II*, No. SA-93-498, Order Determining Compensation at 8.

[43] Minn. Stat. §§ 216B.44 and 216B.45.

[44] *In re City of Olivia*, Order Determining Compensation at 15–16.

[45] *Id.*, Order After Reconsideration at 5–7.

Despite adopting ten year period, the *City of Olivia* Commission was clear that it was adopting it "for this case" and stated that it was open to a different lost revenue compensation period in future cases.[46] None of the subsequent Section 216B.44 cases has produced another payment period.[47] Although arguments have been made for a shorter period,[48] or a longer period,[49] other Section 216B.44 cases failed to bring a strong record to the Commission supporting alternative payment periods due to party agreement on ten years.[50]

E. Duty to "Adjust" and "Mitigate" Effects of Acquisition

In the *City of Olivia* case, the Commission framed the payment period for lost revenue as an "adjustment" period.[51] That articulation has stood and was later strengthened in *City of Rochester II*.[52] The lost revenue payment period is intended to be "a period sufficiently long to allow the Cooperative to adjust its operations to the loss" of the service area acquired. [53] Stated differently, "[t]he [lost revenue] award is intended to defray expenses previously covered by revenues from the area" to prevent rate increases to remaining customers.[54]

No subsequent Section 216B.44 Commission decision has rejected or qualified the Commission's *City of Rochester II* determination, which soundly and twice rejected a

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[46] *Id.*, Order Determining Compensation at 15; *see also, City of Olivia*, Order After Reconsideration at 8 (explaining the price established by Commission reflects "consideration of the extensive record of circumstances peculiar to this case and a balancing of the two parties involved in the transaction").

[47] *But see, In re City of Redwood Falls*, Order Determining Compensation at 11 (Ordering a five-year payment period, overruled by Court of Appeals, *see* footnote 35, *supra*.).

[48] *See, e.g., In re City of Rochester (North Park)*, Order Determining Compensation at 13 (Two to three years).

[49] *City of Rochester II*, Order Determining Compensation at 6, 8; *Id.*, Order After Reconsideration at 2 (noting "People's claimed compensation should run forever") and at 7 (duty to mitigate and policy of prohibiting awards in speculative amounts).

[50] *See, e.g., In re City of Buffalo,* Order Determining Compensation at 4 (noting neither party excepted to the ten-year compensation period recommended by the ALJ).

[51] *In re City of Olivia*, Order Setting Compensation at 8, 15.

[52] *City of Rochester II*, Order Determining Compensation at 8; *id.*, Order After Reconsideration at 7.

[53] *In re City of Olivia*, Order Setting Compensation at 15.

[54] *Id.*, Order After Reconsideration at 5.

cooperative's renewed "perpetuity" payment argument.[55] As a result, no displaced utility has sought a payment period longer than ten years, until this case with Xcel's proposed 20-year payment period. In *City of Rochester II*, the cooperative's expert argued for a revenue loss payment period based on a claimed "infinite" timeline of revenue loss when a city acquires the cooperative service territory.[56] In relevant contrast to the facts of the Slayton-Xcel case, the cooperative's testimony focused on its allegations that the city was "cream skimming," by acquiring higher density and more profitable areas with the greatest growth potential.[57] The cooperative's testimony and argument was premised on the loss of its ability to acquire better economies of scale and growth in potential service areas to support its less dense, higher service cost rural service territory.[58] For those reasons, the cooperative in *City of Rochester II* sought to make the factual case that ten years was an insufficient adjustment period for the city payment of lost revenue.[59]

The ALJ rejected the cooperative's argument, as did the Commission, stating:

> ***The co-op is expected to adjust to new service realities and to mitigate its damages for loss of these service rights as quickly and efficiently as possible.*** A single ten-year compensation period provides reasonable opportunity to do this. [60]

The cooperative then challenged the Commission's denial in a motion for reconsideration. The cooperative's argument was again rejected by the Commission, which stated bluntly: "***An***

[55] *City of Rochester II*, Order Determining Compensation at 6, 8; *id.*, Order After Reconsideration at 2 and 7.
[56] *City of Rochester II*, Eicher Surrebuttal at 13–14.
[57] *Id.*; *see also, id.* at 14–23.
[58] *Id.*, Other commission decisions have acknowledged relative density of the acquisition area as a relevant factor. *See, e.g., City of Olivia*, Order Setting Compensation at 13; *City of Grand Rapids*, Final Order at 10 (Commission noting that serving areas with higher population densities "is normally less expensive than serving far-flung, geographically isolated customers…").
[59] *City of Rochester II*, Order Determining Compensation at 6 ("People's claimed compensation should run forever, because co-op revenues would always be lower than they would have been if the co-op were still serving the transferred areas.").
[60] *Id.* at 8 (emphasis added).

infinite time frame is inconsistent with the nature of service area rights, a utility's duty to adjust to new realities, and the determination of non-speculative compensation awards." [61]

The duty to mitigate damages – also known as the doctrine of avoidable consequences – is a foundational legal principle that applies across nearly every area of law, with only minor exceptions.[62] This includes property,[63] contracts,[64] torts,[65] and employment.[66] Most relevant here, the doctrine applies in Minnesota eminent domain cases.[67] In the case of *State by Lord v. Pahl*, the Minnesota Supreme Court stated unambiguously, "[W]e are of the opinion that the rule of avoidable consequences is applicable to the owner in a condemnation proceeding." [68] An owner of property "must use reasonable diligence to minimize [its] damages … and the extent of the duty imposed by the rule depends on the facts of each case." [69]

Thus, the Commission's requirement for utilities to adjust and mitigate damages in Section 216B.44 is in full accord with the general law of damages and principles of just compensation in eminent domain.

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[61] *City of Rochester II*, Order After Reconsideration at 7 (emphasis added).

[62] 27 Minn. Prac., Products Liability Law § 7.5 (2025-2026 ed.) (collecting cases).

[63] *See, e.g., Bass v. Equity Residential Holdings, LLC*, 849 N.W.2d 87, 92 (Minn. Ct. App. 2014) (collecting cases, and stating: "Generally, the party alleging a loss because of a tort or breach of contract has a duty to mitigate damages."); Restatement (Fourth) of Property § 10.3 Tentative Draft No 6 (2025) ("The duty to mitigate damages is mandatory in all residential leases … [and] implied in all other leases.").

[64] *Bemidji Sales Barn, Inc. v. Chatfield*, 312 Minn. 11, 17, 250 N.W.2d 185, 189 (1977) ("[T]he amount of damages recoverable is limited to the extent that [the claimant] acted reasonably to prevent his own loss."); Restatement (Second) of Contracts § 350 (1981) ("[D]amages are not recoverable for loss that the injured party could have avoided without undue risk, burden or humiliation.").

[65] 4A Minn. Prac., CIVJIG 92.15 (6th ed.) ("(Claimant)'s damages for harm to *(his)(her)* property must not include any loss that *(claimant)* could have prevented by reasonable care."); *Mullen v. Otter Tail Power Co.*, 153 N.W. 746, 748 (Minn. 1915) ("It was plainly the duty of plaintiff to do all he could to make his loss as small as possible.").

[66] *Feges v. Perkins Restaurants, Inc.*, 483 N.W.2d 701, 710 (Minn. 1992) ("[P]laintiff's duty to mitigate damages limits front-pay awards to those cases where the plaintiff has been unable to find comparable employment after termination."); Restatement of Employment Law § 9.01 (2015) ("[O]f course the employee cannot recover for losses that actually are avoided, most commonly by accepting alternative employment.").

[67] *State by Lord v. Pahl*, 95 N.W.2d 85 (Minn. 1959).

[68] *Id.* at 91.

[69] *Id.*

F. Use of Mill Rates is Established Practice for Future Revenue Payments

In determining appropriate payment for future lost revenue, the Commission has developed the sound policy of using a per-kilowatt-hour "mill rate" as a basis for compensation rather than lump sum awards.[70] The Commission has recognized that attempting to reach a present value lump-sum involves estimates which creates "great risks" to both parties "that the sales forecasts … will be wrong." [71] Accordingly, "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 difference between compensation and actual losses, should future growth turn out to be dramatically higher or lower than expected." [72] The Commission has regularly utilized a mill rate in Section 216B.44 decisions in compensation for lost revenue.[73]

Such awards are also consistent with constitutional principles, which require that just compensation be paid *or secured*.[74] The Minnesota Supreme Court has agreed with the general view that, in the absence of a specific constitutional (or statutory) requirement, "compensation need not be paid or even finally determined in advance of the taking, where reasonable, certain, and adequate provision is made at the time of the appropriation to ascertain and secure the compensation to be paid to the owner." [75] Under Commission precedent, a lump sum payment is made for the portion of the award regarding the present value of the utility facilities immediately transferred, and only the future lost revenue payments will be made based on the mill rate and

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[70] *City of Rochester II*, Order Determining Compensation at 8–9.
[71] *In re City of Redwood Falls*, Order Determining Compensation at 4.
[72] *City of Rochester II*, Order Determining Compensation at 9.
[73] Supra, notes 70 to 71; *see also, In re City of Rochester (Celestica Property)*, Order Determining Compensation at 5; *In re City of Redwood Falls*, Order Determining Compensation at 4.
[74] Minn. Const. Art. 1, § 13.
[75] *Hous. & Redevelopment Auth. of City of St. Paul v. Greenman*, 96 N.W.2d 673, 683 (Minn. 1959).

future sales. Thus, the loss of revenue payment is secured for future just compensation payments, consistent with the constitutional requirements.

G. The Burden of Proof is on Xcel to Prove Its Claimed Damages

It is fundamental to eminent domain cases and other civil proceedings that the party alleging damages and claiming compensation carries the burden of proof on those claims. Minnesota's eminent domain statute expressly provides that in trial proceedings, "[t]he owners shall go forward with the evidence and have the burden of proof as in any other civil action[.]" [76] The same is true in federal eminent domain cases.[77] The Commission has applied this principle in cases under Section 216B.44, acknowledging that the cooperative carries the burden of proof to show damages. [78] The Commission should continue to rigorously apply the burden of proof to Xcel's claims for damages.

V. ARGUMENT

The testimony and evidence strongly support the City's analysis as consistent with the applicable precedent, grounded in straightforward logic, and fair to the parties and ratepayers. The City respectfully urges the Commission to adopt the City's analysis in all respects, and set compensation for the facilities and service area at issue consistent with the recommendation of David Berg, in the following amounts:

a. Original Cost of Facilities Less Depreciation	$3,220,652.56 (adjusted to date of transfer)
b. Loss of Revenue	4.2 Mills per kWh sold in the City of Slayton for a period of five years

[76] Minn. Stat. § 117.175; *see also 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.").

[77] *United States ex rel. TVA v. Powelson*, 319 U.S. 266, 273 (1943) ("The burden of establishing the value of the lands sought to be condemned was on respondent.").

[78] *In re City of Grand Rapids*, Order Determining Compensation at 18; *In re City of Redwood Falls*, Order Determining Compensation at 10.

c. Costs of Integration	$15,000.00
d. Other Factors	None

A. Original Costs of Facilities Less Depreciation

The parties agree that the original cost of facilities less depreciation – or “net book value” of the facilities at issue was calculated as $3,220,652.56 as of August 26, 2025. This number was based on Xcel’s identification of its facilities, and the costs and depreciation calculations which have been reviewed by the City’s experts.[79]

Agreement notwithstanding, both parties have acknowledged that this calculation reflects a cost at a specific point in time, and that the proposed transfer of property may not happen for some time. As such, the Parties request that the Commission provide an opportunity for each party to review the final cost figures which will be calculated at the time of transfer of the facilities using the methodology provided in the testimony.[80] Additionally, to the extent that Xcel deploys any additional equipment or other investment which it would expect to be included in these costs, the City would ask the Commission to only allow reasonably prudent expenditures to be incorporated into the original cost less depreciation category. This approach was also endorsed by the Department of Commerce in its rebuttal testimony.[81]

B. Loss of Revenue is No More than 4.2 Mills for a Period of Five Years

Compensation for loss of revenue should be set at no more than Mr. Berg’s recommendation of 4.2 mills for a period of five years. This equates to a total of approximately $430,525, based on consistent annual sales to Slayton customers of 20,501,184 kWh per year for

[79] Berg Direct at 11.
[80] Peterson Direct at 11:6–17; Berg Rebuttal at 3:16–19.
[81] Ngo Rebuttal at 6–7.

five years.[82] The testimony of Mr. Berg, the City's other witnesses, and Xcel itself, clearly show that Xcel will continue to ***fully utilize*** all of its assets and resources following the transfer, with the lone exception of the Slayton substation that would be partially underutilized after Slayton exits Xcel's system. Accordingly, Mr. Berg correctly found all of Xcel's other expenses involved with serving Slayton to be fully avoided – except for part of the Slayton substation. [83]

Consistent with past Commission decisions, Mr. Berg's recommendation would compensate Xcel only for those assets or resources that are underutilized following the transfer. Whether analyzed based on the incremental portion Xcel's revenue requirement related to Primary Distribution Substations,[84] or as a percentage of the book value of the Slayton Substation itself,[85] Mr. Berg's and Mr. Fritsch's recommendations fairly compensate Xcel for any underutilization of the Slayton Substation for a five-year period of adjustment that corresponds to a common and relevant five-year distribution planning period used by Xcel.[86]

Conversely, Xcel argues for lost revenue using an adjusted gross revenue approach for an inherently speculative period of 20 years to reach a conclusion of $34.7 Million in lost revenue.[87] This figure does not even include the Slayton substation, which Xcel states as a separate line item of damages, claiming it is 98.8% devalued by the transfer.[88] Simply put, Xcel's approach is an obvious attempt to inflate potential revenues, minimize or ignore any aspect of the transition that could generate cost savings which lead to credits for Slayton, and improperly shift the burden of proof to Slayton to prove avoided costs. The Commission should reject Xcel's testimony as not

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[82] Berg Rebuttal at 35 (based on Xcel's reported annual sales).
[83] Berg Direct at 23–31 (lost revenue analysis); *Id.* at 28–30 (Slayton Substation analysis).
[84] Berg Direct at 28, Attachment C at 2 (rows 25–35) (explaining how he initially reached this conclusion).
[85] Berg Rebuttal at 35.
[86] Berg Direct at 47–48.
[87] Peterson Surrebuttal at 45.
[88] Peterson Direct at 43.

credible or persuasive and adopt the analysis of City witnesses David Berg, Mark Fritsch, and Mark Mitchell in full.

a. Mr. Berg's Loss of Revenue Analysis Tracks with Precedent and Fairly Compensates Xcel for Revenue Losses During a Reasonable Five-Year Adjustment Period.

The City's primary expert witness in this case was David Berg, a professional electrical engineer with more than 40 years of experience in the field of utility rates and financial analysis.[89] Mr. Berg's experience includes participation in hundreds of rate design studies, as well as utility contract negotiations, engineering reports for the financing of energy projects, expert testimony in administrative and court proceedings, territory acquisitions, and 20 years as an instructor teaching an electric cost of service and rate design course for utility professionals.[90] Mr. Berg was retained by the City of Slayton to provide his analysis, opinion, and testimony regarding the amount of "just compensation" that would be payable to Xcel as a result of the City's intended acquisition of Xcel's assets and service territory in the City of Slayton.[91]

The City's other two expert witnesses were Mark Fritsch and Mark Mitchell, who testified in rebuttal and surrebuttal. Mr. Fritsch is a utility consultant who previously served as Chief Executive Officer of Owatonna Public Utilities (OPU), after working for Xcel for 23 years in a variety of management roles. Mr. Fritch testified about his experience adjusting utility operations to account for changes in load and other factors, the time frames for these adjustments, and about his past discussions of cost avoidability with Xcel personnel. Mr. Mitchell is also a former electric utility manager, having most recently served as Director of Operations and Chief Operating Officer of Southern Minnesota Municipal Power Agency (SMMPA). Mr. Mitchell's 42-year career in the

[89] Berg Direct at 2.
[90] *Id.* at 2–3.
[91] *Id.* at 4.

electric utility industry included managing SMMPA's planning and operations of generation and transmission and SMPA interactions with the Midcontinent Independent System Operator (MISO) and other utilities. Mr. Mitchell's primary area of testimony involved explaining Xcel's continued transmission cost reimbursements through MISO being unaffected by Slayton's acquisition. He also disputed Xcel's allegations regarding potential future issues regarding system instability, upgrades, and the need for additional engineering studies related to transmission – none of which he concluded would be necessary.

Recognizing this as the first contested case involving a municipality acquiring assets and territory from an investor-owned utility (IOU) under Section 216B.45, Mr. Berg began his direct testimony by explaining his understanding of the past cases under Section 216B.44 and identifying guiding principles, as well as areas in which this case differs from past acquisitions.[92] The primary area of difference that Mr. Berg highlighted relating to compensation is the fact that past cases dealt with electric distribution cooperatives that typically buy wholesale power and at a fixed rate, sell that energy to member-customers at retail as a non-profit entity, and operate in more rural areas with lower customer densities and growth potential.[93] In contrast, Slayton's acquisition is from Xcel - a large vertically-integrated IOU with numerous assets across multiple states, a wide variety of service areas in denser urban and suburban areas, significant participation in the wholesale energy and capacity markets, and an ownership structure that demands profit creation for shareholders.[94] Mr. Berg found these factors to be relevant to the ability of Xcel to respond and adjust its operations and mitigate for the loss of Slayton customers in a way that a cooperative

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[92] *Id.* at 5–10.
[93] *Id.* at 7–8.
[94] *Id.*

would not be able to.[95] He also noted the important differences between the comparatively lower density and growth potential in Slayton itself, as opposed to Xcel's broader system averages.[96]

In light of these principles, Mr. Berg proceeded to consider the loss of revenue to Xcel that would occur due to Slayton's municipalization. He conducted this analysis in two major steps, first calculating an incremental rate of anticipated loss on a mill rate basis per-kWh, and then evaluating an appropriate lost-revenue payment period over which the rate would apply.[97]

b. 4.2 Mills is an appropriate rate, considering Xcel's ability to adjust its operation to fully utilize its assets and avoid losses.

Mr. Berg began by evaluating gross revenue for sales in Slayton, based on the information in Xcel's current rate-case filings, using its allocated revenue requirement as a proxy for cost-based revenue.[98] Notably, Xcel does not account for costs of service or net revenue specific to Slayton.[99] Thus, Mr. Berg's analysis on an incremental (kWh) basis makes use of the available data in the case while adhering to the concept of "direct net revenue loss" previously used by the Commission.[100]

To do this, Mr. Berg went through each of the major cost categories in Xcel's requested 2026 revenue requirement and evaluated whether Xcel would be able to avoid the costs associated with sales in Slayton following the acquisition.[101] Those costs that were found ***not*** avoidable – essentially the "stranded costs" – were used to calculate a per-kWh mill rate for the basis of lost revenue.[102]

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[95] *Id.* at 6–7.
[96] *Id.* at 8–10.
[97] *Id.* at 13–15.
[98] *Id.*
[99] *Id.* at 9, note 7 (citing examples of City attempts to obtain information specific to Slayton costs, or even the broader area, and Xcel's statements that it does not keep such records).
[100] *Id.* at 14.
[101] *Id.* at 18.
[102] *Id.*

As is detailed in the testimony, Mr. Berg determined that all categories of costs would be completely avoidable by Xcel, except for a portion of "Primary Distribution Substation" related costs.[103] Mr. Berg explained that, because the City would be transitioning its load and demand requirements to a different substation operated by a different provider, Xcel would have unused capacity within its Slayton substation that would represent a stranded cost for Xcel.[104] Mr. Berg calculated an incremental value of 4.2 mills/kWh by evaluating Xcel's revenue requirements related to Primary Distribution Substations and based upon the loss of Slayton's particular load characteristics.[105]

As further explained in Mr. Berg's Rebuttal Testimony, the anticipated payments for this, over his five-year recommended compensation period, would total approximately $430,525 in lost revenue compensation for the substation.[106] Checking this result for reasonableness from a different perspective, Mr. Berg also considered the reported book value of the Slayton substation was $1,145,319, and that Slayton's load of 4 megawatts comprises 28.6% of the substation's total capacity of 14 mega volt-amperes.[107] Multiplying the book value of $1,145,319 by 28.6% results in $327,561.[108] Thus, Mr. Berg's recommended compensation of 4.2 mills for five years would reimburse Xcel for 100% of the Slayton allocated cost of the substation that would be underutilized, plus an estimated $102,964 for other substation related expenses such as operations and maintenance.[109]

Importantly, Mr. Berg considered a cost to be avoidable, and therefore non-compensable, if Xcel would be able to adjust its system to avoid and mitigate a loss. Foundational to this analysis

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[103] *Id*. at 23–31.
[104] *Id*. at 28.
[105] *Id*. at 28–29, and Attachment C at 2 (line 35 for "Prim Dist Subs").
[106] Berg Rebuttal at 35.
[107] *Id*.
[108] *Id*.
[109] *Id*.

is the concept that, as a large vertically integrated utility, Xcel has many opportunities to adjust its system and avoid losses, both internally and externally.[110] For example, Mr. Berg treated costs related to employees as avoidable, noting that employees currently serving Slayton could be reassigned to an area of need by Xcel, and that Xcel can easily adjust its workforce during currently open hiring or by adjusting hours of part time employees.[111] Similarly, Xcel has opportunities to move equipment around its system or adjust purchases to ensure its assets and resources remain fully utilized.[112] And perhaps most importantly, with respect to its generation resources, Xcel will be able to immediately use the 4 megawatts that previously served Slayton by selling it to other customers within its remaining service territory, selling excess energy or capacity in the MISO markets, or reducing purchased energy.[113] This analysis and testimony is strongly supported by the rebuttal testimony of Mr. Fritsch, based on his experience adjusting for load changes as General Manager at OPU and within Xcel itself.[114]

Based on this straightforward principle, the Commission should agree that costs are properly considered avoided where Xcel's assets and resources are able to be reallocated either internally or externally to remain utilized to the same extent as before the City's purchase. Where Xcel is able to effectively reallocate a resource from Slayton to continue serving other customers, it has efficiently adjusted its system and experiences no compensable loss of revenue from that resource.

Mr. Berg also considered the potential that the comparative lower density in Slayton and the resulting higher costs of providing service there (including an essentially dedicated employee),

[110] Berg Direct at 44 (contrasting the more limited adjustment capabilities of smaller rural electric coops).
[111] *Id.*
[112] *Id.*
[113] *Id.*; *see also,* Berg Direct at 24–27 (evaluating production related demand costs); Transcript of Evidentiary Hearing (Feb. 5, 2026) ("Transcript") at 129–131 (Peterson) (confirms that Xcel is effectively shifting energy and resources across its system constantly to try and stay as efficient and productive as it can).
[114] Fritsch Rebuttal at 14-15.

could actually result in a net ***negative*** loss of revenue.[115] This impact of density and economies of scale on service cost and profitability is well-accepted by the Commission in analyzing loss to the specific service area acquired.[116] Using available data in light of Xcel's lack of such analysis specific to Slayton, Mr. Berg reviewed the data in terms of dollars earned over miles of Slayton's distribution line. He calculated that the load density of Slayton is approximately 15% below Xcel's overall system average.[117] This means that the net cost per kWh of owning and maintaining the lines in Slayton would be higher on a per kWh basis, and resulting in a higher costs savings to Xcel from ***not*** serving Slayton.[118] When combined with the other additional cost savings of no longer maintaining a (largely) dedicated employee in Slayton, because of its remote location, this would result in an additional savings to Xcel.[119] Combining these two factors of Slayton's lower density and higher employee expenses, this analysis suggests that the costs to Xcel of serving Slayton could be higher than the total revenue it receives from Slayton – meaning Xcel would experience a net financial benefit by not serving Slayton.[120] While Mr. Berg did not adopt this approach in his final analysis, it underscores the reasonableness of his final conclusion of 4.2 mills for five years.

c. Five years is a reasonable adjustment period for loss of compensation, corresponding to Xcel's distribution planning period.

The five-year compensation period recommended by Mr. Berg and Mr. Fritsch is well supported by the record in this case. As thoroughly explained in Mr. Berg's Direct Testimony, the

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[115] Berg Direct at 32–37.
[116] *In re City of Grand Rapids*, Order Determining Compensation at 7–8.
[117] *Id.* at 33.
[118] *Id.* at 34 (primary distribution costs increase from $0.0162/kWh to $0.0191/kWh, a change of $0.0029/kWh or 2.9 mills).
[119] *Id.* at 35 (assuming an annual salary and benefits of $110,000, this results in savings per kWh of $0.00561 or 5.6 mills).
[120] *Id.* at 37.

ten-year lost revenue compensation conclusions in the previous cooperative cases under Section 216B.44 reflected the business structure and operational realities of electric distribution cooperatives.[121] Those decisions were based on factors such as the coops' relatively smaller size, their lack of generation capacity and procurement of power through longer-term power purchase agreements (PPAs), and the ten-year planning period that all factor in a coop's ability to adjust to the loss of service area.[122]

Xcel, on the other hand, is markedly different from rural electric coops both in terms of business structure and overall scale of operations.[123] As Mr. Berg points out, sales in Slayton represent less than one-tenth of one percent of Xcel's overall sales in Minnesota.[124] Given Xcel's anticipated average growth of approximately 2% per year, and multiple planned generation projects needed to meet the increased demand, the sales lost in Slayton will be replaced by new growth within ***weeks*** rather than years.[125] Stated differently, the addition of a single 50 MW data center would equal the annual energy of 20 Slayton-sized energy loads.[126] Xcel is also in the process of transforming its generation fleet to meet increased demand forecasts and its "carbon-free by 2040" goals.[127] Specifically with respect to the Slayton substation, Xcel's disclosures include 15 megawatts of distributed energy resources that are in queue for the Slayton substation.[128]

As further evidence of Xcel's ability to adjust its operations based on changed circumstances, Xcel reduced its requested revenue requirement increase in its current rate case by

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[121] Berg Direct at 38–44.
[122] *Id*.
[123] *Id*. at 7–9 (comparing coops to IOUs); *Id*. at 44–46 (comparing Xcel to cooperatives).
[124] *Id*. at 45.
[125] *Id*. at 45–46 (calculating that it would take approximately 12.8 days of 2% growth on Xcel's Minnesota system to replace the sales lost from Slayton).
[126] *Id*. at 46.
[127] Berg Rebuttal at 28–29; *See also*, Attachment K at 2 (Liberkowski letter).
[128] Berg Direct at 29.

$144.9 million (or 3.2%) in less than a year.[129] It is entirely reasonable to conclude that, in the midst of Xcel's transformation, Xcel can efficiently adjust for the very small impact that the loss of Slayton represents to its overall system within five years or less.[130] The Commission's consistent measure for the adjustment period necessary has been the amount of time giving the utility a reasonable opportunity to "quickly and efficiently" adjust to its "new realities" of service.[131]

Moreover, the five-year compensation period coincides with the five-year capital plan in Xcel's Integrated Distribution Plan (IDP).[132] This document represents Xcel's plans for its distribution system used to deliver power to most customers, and where system adjustments are made to account for customer needs, similar to the ten-year plan for cooperatives.[133] Although this is a five-year plan, Xcel files its IDP every other year.[134] City witness and former Xcel employee, Mark Fritsch, who worked with this specific planning document in the utility operations adjustment context, explained that the five-year capital plan includes system expansions, upgrades for capacity, and age-related replacements and asset renewal – including discretionary projects that can be delayed or canceled – giving "Xcel a great tool when cost reductions are needed because of load loss[.]"[135]

Mr. Fritsch also explained that, during his experience at Xcel, he was responsible for adjusting fixed costs and implementing cost control measures "due to budget impacts from changes in load [and] actual and projected revenue loss[.]" [136] Mr. Fritsch described changes in "staffing, maintenance, operations, and capital project reductions" that he personally supervised, taken

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[129] *See* Berg Surrebuttal at 10–12.
[130] Berg Rebuttal at 29.
[131] *See supra*, notes 60 and 61.
[132] Berg Direct at 47–48.
[133] *Id*.
[134] Fritsch Rebuttal at 12–13.
[135] *Id*.
[136] *Id*. at 14.

within a five-year timeline and adjusted through Xcel's yearly milestones.[137] Mr. Fritsch also testified that as CEO and General Manager of Owatonna Public Utilities (OPU), he regarded a load loss of 1% or less of their total load to allow a number of adjustments that could be made within a short time that did not involve rate adjustments.[138] These potential adjustments included delaying or reducing costs, delaying filling open positions, delaying other capital expenditures, and reducing other costs such as travel, consulting, and overtime.[139] Importantly, Mr. Fritsch also explained that if load growth exceeded the loss, OPU's monthly and yearly forecast could "easily manage load loss within its first year." [140] Mr. Fritsch further stated that OPU had that capacity to adjust and mitigate for load loss with only 13,000 meters as compared to Xcel's 740,000 meters in Minnesota.[141] Mr. Fritsch agreed with Mr. Berg's recommended five-year lost revenue payment period as "more than reasonable time for Xcel to adjust and to mitigate the loss of the Slayton load[.]" [142] In summary, the testimony amply supports Mr. Berg's and Mr. Fritsch's recommendation of a loss of revenue payment of no more than 4.2 mills for a period of five years.

C. Xcel's Loss of Revenue Projection Significantly Overvalues Its Claimed Losses and Should be Rejected.

In contrast, Xcel uses a deeply flawed model to suggest that Slayton must continue to pay for its "share" of Xcel's system for 20 years after Slayton leaves the system.[143] In other words, Xcel argues that it will take 20 years to adjust for the loss of less than one-tenth of one percent of its Minnesota sales. Essentially, Xcel's approach would allow it to continue collecting the majority of its revenue from Slayton for 20 years, while providing no service in Slayton, and while Xcel

[137] *Id.*
[138] *Id.* at 15.
[139] *Id.*
[140] *Id.*
[141] *Id.*
[142] *Id.*
[143] Peterson Direct at 16–17.

continues to use the freed-up resources that will be created by Slayton's departure elsewhere in its system.[144] Moreover, Xcel never identifies ***any*** specific costs that are directly attributable to Slayton that it will continue to bear or resources that will be underutilized – other than the part of the substation that Slayton will no longer use. The Commission should reject Xcel's lost revenue arguments.

To calculate gross revenues, Xcel uses *averages* for its Minnesota system to project significant growth in Slayton for the next 20 years, despite actual numbers from Slayton showing decreases in both population and electric sales numbers.[145] Xcel then calculates avoided costs extremely narrowly, only counting costs as avoided where Xcel can identify a specific reduced cost or a new revenue stream.[146] Xcel then erroneously uses its weighted average cost of capital (6.51%) as a discount rate, to bring 20 years of projected revenues to a present value. Above and beyond its mischaracterization of costs as not avoidable, Xcel's selection of the most favorable growth and discount rates *significantly* overvalues its projected loss of revenue when compounded over a 20-year period.

Xcel's loss of revenue model also curiously assumes Slayton will experience growth rates consistent with the State of Minnesota each year for the next 20 years.[147] For residential customers that make up the majority of Slayton, this includes new customer growth of 0.7% and use per customer growth of 2.4% a year.[148] The selection of these two numbers compound on each other each year to increase sales projections in Slayton by a total of 84.8% over the 20-year period.[149]

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[144] Transcript 146–148 (Peterson).
[145] Berg Rebuttal at 6–8; *see supra*, note 37 (collecting decisions emphasizing analysis of specific area).
[146] Peterson Rebuttal at 19–20.
[147] Peterson Direct at 18–19.
[148] *Id*.
[149] Peterson Direct, Schedule 3 at 2. Xcel's Residential Customer projections for 2045 show growth factors of 1.607 for existing customer sales and 1.158 for customer additions, for a total increase of 1.848 over baseline (1.607 x 1.150 = 1.848).

These growth projections are sharply contradicted by historical population trends and electric usage data from Slayton. While the population of Minnesota grew 7.6% between 2010 and 2020, the population of Murray County (where Slayton is located) fell 6.3%.[150] Population in the City of Slayton itself fell 6.5% during this same period, from 2153 people in 2010, to 2013 people in 2020.[151] Similarly, electric sales in Slayton fell a total of 5.4% between 2015 and 2024. The evidence does not support positive growth projections for Slayton.

Similarly, Xcel selects a discount rate of 6.51% to reduce the future lost revenue payments to present value, based on its weighted average cost of capital.[152] Xcel's weighted average cost of capital – a low interest rate it enjoys as a large stable utility – is not consistent with the average market returns, which is the purpose of a discount rate in adjusting for the time value of money. In contrast, Xcel's authorized rate of return on equity in Minnesota is currently 9.25%.[153] Further, Ms. Peterson testified that she was not even aware of average market returns such as the Dow Jones Industrial Average over the past decade and therefore was unable to compare that benchmark data with Xcel's selected discount rate.[154]

Compounded on each other over 20 years, these seemingly small differences combine to hugely inflate Xcel's total lost revenue.[155] Further, Ms. Peterson concedes that she is not able to successfully predict the market on these three key metrics for the next 20 years, undercutting her unsupported belief that "the Company has reasonable estimates." [156] In summary, Xcel's lost revenue model suffers from obvious and critical flaws that seriously impact its validity.

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150 Berg Rebuttal at 7.
151 Berg Rebuttal at 7-8.
152 Peterson Direct at 28.
153 Transcript at 167 (Peterson).
154 *Id.* at 168.
155 If recalculated with a zero-growth assumption and discount rate of 10.3% (Xcel's currently requested ROE in its pending rate case), these changes reduce the lump sum by approximately 40%.
156 Transcript at 169 (Peterson).

As another particularly egregious example of Xcel's self-serving analysis and conclusions, Xcel requested $5.3 million for lost revenue costs associated with transmission in both its direct testimony,[157] and its rebuttal testimony.[158] After receiving the rebuttal testimony of City witness Mark Mitchell authoritatively explaining transmission reimbursement through the MISO system, Xcel reversed itself and conceded transmission costs as fully avoidable in surrebuttal.[159] Further fatal to its credibility, Xcel acknowledged that *Xcel itself* (through its transmission personnel) was in possession of the information regarding transmission cost avoidability all along.[160] Further, Xcel itself even acknowledged the avoidability of transmission costs in a presentation by Xcel Witness Lisa Peterson, attended by Mr. Fritsch in March of 2025.[161] Yet it took the exact opposite position in this case only months later. If the City of Slayton had not retained Mark Mitchell to explain Xcel's transmission reimbursement, Xcel would have undoubtedly not admitted the fact that it will fully avoid all transmission related costs through MISO. Such an outcome would have resulted in Xcel's double recovery in that category – from Slayton and MISO.

Similarly, Xcel's presentations to the Minnesota Municipal Utility Association (MMUA) attended by Mr. Fritsch for the purpose of discussing municipal boundary adjustments also show Xcel also changed positions on the avoidability of fixed production - energy related costs. Xcel had previously recognized these costs as avoidable in 2019 and 2021 presentations.[162] Xcel then changed that position in 2025, stating these costs as *not* avoidable.[163] As Mr. Fritsch explained, Xcel justified this 2025 position fixed production – energy is avoidable by citing an alleged forecast of flat to declining electric sales, but this also conflicts with Xcel's statements in its current

[157] Peterson Direct at 25.
[158] Peterson Rebuttal at 25–26.
[159] Peterson Surrebuttal at 44.
[160] Transcript at 153–154.
[161] Fritsch Rebuttal at 6, and Attachment C (March 2025 Update, Slide 10).
[162] Fritsch Rebuttal at 6, Attachment A (2018 PowerPoint) at slide 10, and Attachment B (2021 PowerPoint) at slide 10.
[163] Fritsch Rebuttal at 6, Attachment C (March 2025 Update) at slide 10.

rate case about being on the cusp of a "new era that may see substantial load growth, from new facilities such as data centers and similar facilities." [164] Finally, all three of Xcel's presentations to MMUA used a uniform ten-year net lost revenue payment period – never mentioning the 20-year period it requests in this case.[165]

Xcel's testimony in this case also shows other errors that demonstrate a lack of credibility in its analysis. For example, Ms. Peterson's Rebuttal Testimony contains a recalculated analysis regarding distribution costs.[166] While Ms. Peterson states her opinion that 0.1% of Xcel's distribution revenue requirement is avoidable, she appears to apply that small percentage only to costs for Slayton, rather than Xcel's full distribution system, resulting in avoidable distribution costs of not serving Slayton of only $254.54 per year.[167] Despite Slayton acquiring all the distribution assets within the City. When applied over 20 years, Mr. Berg estimates this overstates Xcel's damages calculation by approximately $6.45 million (not reduced to present value).[168]

Xcel also did not provide the foundation underlying portions of its opinion. With respect to customer costs, for example, Xcel states that these costs are 27.1% avoidable.[169] Yet Xcel offers no explanation of how this proportion was calculated, other than stating it believes service drops and meters are avoidable costs.[170] When asked about this in the evidentiary hearing, Ms. Peterson stated that it was based on a class cost of service study, which she agreed was not referenced in testimony.[171]

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[164] Fritsch Rebuttal at 11 (quoting MPUC Docket No. GR-24-320, Liberkowski Direct at 4).
[165] Fritsch Rebuttal at 9–10.
[166] *See* Berg Surrebuttal at 24–27.
[167] *Id.* at 25.
[168] *Id*. at 27 (explaining $322,948 – $254 = $322,694 per year for 20 years, equating to $6.45 million before present value).
[169] Peterson Direct at 6, Schedule 3; Peterson Rebuttal at 6, Schedule 4.
[170] *See* Peterson Direct at 22.
[171] Transcript at 170 (Peterson).

In conjunction with Xcel's deeply flawed growth and discount rates in its financial model, the Commission should find Xcel witness Peterson to be not credible and should totally reject Xcel's lost revenue model.

D. Fairness to the Parties and Ratepayers Supports Mr. Berg's Analysis.

Mr. Berg's approach protects ratepayers both in and outside the City of Slayton. As explained in detail above, Mr. Berg's approach to loss of revenue compensation is designed, consistent with past MPUC cases, to compensate Xcel for any truly stranded assets or actual losses for a reasonable adjustment period. This ensures Xcel is fully compensated for actual losses and avoids the need to shift costs to other ratepayers. It also protects the residents of Slayton from paying 20 years of speculative revenue projections to a utility that will no longer serve them. This balance reflects the core principle articulated in the *City of Olivia* and other Commission cases: compensation must leave the displaced utility no worse off than it would have been without the acquisition, while also not creating a windfall.[172]

Xcel's testimony repeatedly states that its model is designed to protect its remaining customers from rate increases due to Slayton's purchase. But despite this statement, Xcel fails to tie its compensation analysis to any actual stranded assets or identifiable cost burdens that would cause rate increases – with the lone exception of the underutilized portion of Slayton substation that Mr. Berg's analysis recognizes and fully accounts for. Rather, Xcel's entire model is predicated on the concept that Slayton customers own a "share" of the Xcel system, and that they must continue to pay for that share, regardless of whether they take service or not.[173] But Xcel customers are not shareholders. And while the analysis of spreading system-wide costs over a

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[172] *In re City of Olivia*, No. SA-85-93, Order Determining Compensation at 13.
[173] *See, e.g.,* Peterson Rebuttal at 6, 10.

system-wide revenue requirement is an appropriate methodology for ratemaking, this is not a rate case. Applying this methodology as Xcel does here improperly treats costs as "fixed" forever[174] – ignoring the obvious business operational realities and adjustment capabilities that that follow. Stated differently, Xcel treats this as a rate case in which its test year lasts forever, during which it is unable to make even simple business adjustments to account for loss of less than one-tenth of one-percent of its Minnesota sales.[175] This approach ignores the fundamental fact that Xcel is constantly adjusting its system to utilize resources efficiently and productively,[176] and that its shareholders expect Xcel to run its system as efficiently as possible.[177] Xcel fails to demonstrate that its requested lost revenue compensation of $34,710,977 is necessary to protect its remaining customers from rate increases.

Conversely, Mr. Berg's analysis appropriately protects Xcel's remaining customers from costs related to the single identifiable partially-stranded asset – the Slayton substation. Mr. Berg's loss of revenue analysis fully replaces 100% of revenue from Slayton that would be allocated to the substation for a period of five years, which corresponds to one of Xcel's primary distribution planning periods. Taken over the five-year period, this provides a level of expected compensation that correlates to 37.5% of the book value of the substation, when Slayton's load on the substation corresponds to only 28.6% of the substation's capacity.[178] This result is fair to both parties and amply protects the remaining ratepayers from any risk of harm attributable to Slayton's exit from the system.

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[174] Peterson Rebuttal at 23.
[175] *Id.* at 10 (arguing, "The Company made these investments with the expectation that Slayton would continue to be part of its system, and cannot "adjust" its way out of the investments it has already made.").
[176] Transcript at 131 (Peterson).
[177] Transcript at 125 (Peterson).
[178] Berg Rebuttal at 35.

E. Costs of Integration

The City does not dispute that Xcel may incur limited, incremental integration costs directly attributable to the acquisition. However, the Commission has consistently required that such costs be specific, documented, and not duplicative of amounts already recovered elsewhere. Based on the evidence, Xcel should be awarded no more than $15,000 for costs of integration of facilities. This incudes costs related to continued service area integration, but excludes estimated costs of meter removal where the City is willing to perform the work, and excludes a list of *potential* costs that Xcel attempts to hold open at City expense.

In direct testimony, Xcel identified an estimated cost of $15,000 related to continued service integration, which involves removing six spans of overhead feeder from a double-deck circuit.[179] The City witness Mr. Berg opined that Xcel's estimate for this work did not appear unreasonable.[180]

Beyond that expense, the City disagrees with Xcel's claimed integration costs. For example, Xcel also claims an estimated cost of $140,000 is necessary to remove its meters and reservice them.[181] But as Mr. Berg recognizes, the City will be installing different meters to serve its customers, and that it would be possible for the City to perform the meter change-out concurrently with the installation of the new City meters, which could be done at no cost to Xcel.[182] In surrebuttal, Xcel recognized the potential savings of the City doing the work and committed to coordinating with the City to complete the work at the lowest reasonable cost.[183] Because the City is willing to perform the meter removal at City cost, Xcel is not entitled to compensation in relation

[179] Peterson Direct at 34.
[180] Berg Rebuttal at 30.
[181] Peterson Direct at 33–34.
[182] Berg Rebuttal at 29–30.
[183] Peterson Surrebuttal at 31–32.

to the meters. Moreover, Xcel is not entitled to compensation for time taken to "reservice" meters in new locations, as placing meters into service for new or existing customers is work that Xcel would need to do regardless of where the meters came from. The Commission should decline to award Xcel compensation related to the removal and reservicing of meters, where the City is committed to performing the meter removal and delivering the meters to Xcel.

Lastly, in direct testimony, Xcel suggested it is entitled to open-ended and undefined compensation from Slayton related to a list of *potential* issues it speculates could arise from the City's acquisition. This includes potential disputes or litigation between Xcel, customers, and developers of community solar gardens (CSGs).[184] Xcel also requested undefined compensation related to distributed energy resources (DERs) it "may incur" related to Slayton customers, including potential engineering studies, upgrades, or other DER-related credits and programs.[185] But Xcel provides no concrete basis to conclude these fears will actually come to pass, no estimates of the costs that could result, and no explanation of how such potential future costs would relate to Xcel's obligations that may have nothing to do with the City's acquisition. For example, costs related to potential litigation with CSG developers are not something that should be shifted to Slayton in this proceeding in advance of those claims even arising. The City's purchase of assets and service territory does not require the City to indemnify Xcel or act as a general guarantor for any future act or claim that might be traced back to the City's acquisition in some way.[186] Such claims, and any allocation of attorneys' fees they may include, should stand on their own merit without being prejudged in this proceeding. Xcel has not carried its burden of proof on these speculative claims for potential damages, and the Commission should decline to award Xcel

[184] Peterson Direct at 35–37.
[185] *Id*. at 38–40.
[186] In statutory terms, nothing in Minn. Stat. § 216B. 45 (or Chapter 216B) provides jurisdiction to impose an indemnity requirement on the City in favor of Xcel in this proceeding.

compensation, or to allow placeholders for open-ended and unlimited items of future potential compensation in this proceeding.[187]

F. No Other Factors Warrant Compensation Here

The Commission should firmly reject Xcel's attempt to obtain 98.8% severance damages to the Slayton substation as an "other appropriate factor" of compensation. As explained above, Mr. Berg addressed the underutilized portion of the Slayton substation that would be expected in his analysis of loss of revenue. This approach is consistent with past Commission cases, addressing the loss of revenue associated with underutilized (or "stranded") assets via the loss of revenue compensation.[188]

Conversely, Xcel included compensation related to the Slayton substation as an "other appropriate factor" and argued that it should be compensated for 98.8% of the net book value of the substation, equating to total damages of $1,131,354, in addition to Xcel's loss of revenue compensation.[189] This means that Slayton would pay for almost the full value of the substation while Xcel would continue to own and utilize it.[190] Attempting to address the obvious double-counting problem that results from Xcel including this under "other appropriate factors" while it also forms part of Xcel's rate base it used for loss of revenue calculation, Xcel removes the value of the substation from its overall system costs used as a basis for the loss of revenue calculation.[191] This obvious manipulation of averages results in Slayton residents receiving only a tiny credit against the broader system distribution costs Xcel used in its lost revenue calculation (while those assets continue to be fully utilized), and additionally saddling Slayton residents with 98.8% of the

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[187] Moreover, City Witness Mark Mitchell explains why no additional engineering studies or upgrades would need to be performed. *See* Mitchell Rebuttal at 12–13; Mitchell Surrebuttal at 7–10.
[188] *See In re City of Olivia*, Order Setting Compensation at 13 (loss of revenue intended to cover continued expenses).
[189] Peterson Direct at 43.
[190] *See* Berg Rebuttal at 33–35 (explaining the substation's continued use for interconnecting current and planned CSG projects, which also require substation capacity).
[191] Peterson Direct at 23; Peterson Surrebuttal at 43.

single asset that will be partially underutilized. The Commission should reject this obvious attempt to categorize costs based on maximum damage calculations, rather than a fair evaluation of the actual losses that result from the underutilization.

Mr. Berg's loss of revenue calculation for the Slayton substation is appropriately based on the loss of the actual load that is attributable to Slayton. As Mr. Berg persuasively explains, by Xcel's logic, the 14 MVA capacity of the Slayton substation, as compared to Slayton's 4 MW load, means the substation was 71% stranded the day it went into service.[192] The Commission should adopt Mr. Berg's analysis regarding the Slayton substation in loss of revenue, and decline to award any additional compensation as an "other appropriate factor."

G. Issues Not Relevant in This Case

Xcel has also raised additional arguments in its direct testimony related to the City's (i) motives or intentions in seeking to form a municipal electric utility, and (ii) the City's preparedness to own and operate a municipal electric utility. Xcel also provided testimony related to its historical quality of service, despite none of those being factors expressly provided in Minn. Stat. 216B.45 or being within the scope of the Commission's Order dated June 2, 2025 (the "Order"), directing this matter to the CAH for a contested case proceeding. While the City believes these issues are outside the scope of this proceeding, Xcel has raised them in its direct testimony to which the City responded in rebuttal. Because of this, the City feels compelled to briefly address these arguments here to the extent that the Commission is moved to consider them within the "other appropriate factor" prong of its analysis.

The Commission should decline to consider Xcel's suggestions that the City is unprepared to operate a utility, or that it is wrongfully seeking to expand the service territory of Nobles

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[192] Berg Rebuttal at 33–34.

Cooperative Electric. As an initial matter, both Xcel and the Department "agreed that Slayton followed the statutory prerequisites to initiate the acquisition of Xcel's facilities." [193] The scope of this proceeding was also determined by Commission order dated June 2, 2025 (the "Order for Hearing"). As described in the Order for Hearing, the issues raised by the City's petition and referred to the ALJ involve the determination of just compensation under Section 216B.45.[194] The City's ability to proceed with the purchase was not identified as a disputed issue.

As noted above, the City provided rebuttal testimony responding to Xcel's arguments regarding both its motives and intentions in establishing a municipal electric utility.[195] Further, the City provided rebuttal testimony regarding its preparedness to establish and operate a municipal electric utility that would be owned by the City of Slayton, not Nobles, and accountable to Slayton ratepayers through the City Council.[196]

In addition to the City's rebuttal testimony, it is worth pointing out that Xcel's testimony, while attempting to establish its prior service as adequate, further proves the issues which have been publicly documented in the past regarding frequent outages and delayed response to them. Xcel has entered into the record, via the Direct Testimony of John Marshall,[197] Xcel's outage history in Slayton over the last ten years through reliability standard metrics known as SAIDI,[198] SAIFI,[199] and CAIDI.[200]

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[193] *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*, Notice of and Order for Hearing, June 2, 2025 at 2.
[194] *Id.* at 1-2.
[195] Malchow Direct at 4–11; Heronimus Direct at 3–5.
[196] *Id.*
[197] Marshall Direct at 7–8.
[198] "System average interruption duration index."
[199] "System average interruption frequency index."
[200] "Customer average interruption duration index."

Regarding SAIDI, Xcel states that Slayton's SAIDI has been lower than the respective rating for "Minnesota and the Southeast Work Center or [sic] for eight of the last ten years." [201] However, Table 1 provided in the testimony does not support that.[202] Similarly, in the years where Slayton's SAIDI was higher, indicating a longer duration of outage, those differences were stark. For instance, in 2020 Slayton's SAIDI was approximately 60% higher than Minnesota, and in 2024 that number was almost 40% higher.[203]

Xcel's data regarding SAIFI tells a similar story. While there are certainly some years where Slayton appears to have received average system reliability scores, during those years where customers experienced more interruptions, the difference was quite significant. For instance, in 2020 Slayton customers experienced approximately 60% more outages than Minnesota customers as a whole, and almost 65% more than customers in the Southeast Work Center.[204] In 2024, those figures were approximately 55% and 60% respectively.[205]

Finally, Xcel's CAIDI numbers repeat the same trend, showing that durations in Slayton were significantly more impactful than elsewhere on Xcel's system. For instance, in 2016, the duration for an outage in Slayton was approximately 77% longer than an outage for customers across the Minnesota average.[206] In 2022, that number was approximately 57%.[207]

It is true that there is data in these tables that shows that, during certain periods, Slayton customers received service on par with other customers. However, the data also shows that when

[201] *Id*. at 9:18–19.
[202] *Id*. at 9, Table 1. In years 2015, 2018, 2020, 2022, and 2024 Slayton appears to have had the highest SAIDI of the information provided.
[203] *Id*.
[204] *Id*. at 10, Table 2.
[205] *Id*.
[206] *Id*. at 11, Table 3.
[207] *Id*.

Slayton customers experienced reliability issues, those issues were significantly worse than others under the outage measurements.

As for Xcel's assertion that Slayton's decision to leave its system is somehow an attempt by Nobles Cooperative to expand its service territory, there are simply no facts in the record which support that conclusion. As stated earlier, Xcel has previously agreed that Slayton followed all necessary statutory steps in order to initiate the process under Minn. Stat. 216B.45.[208] Further, as provided in the City's rebuttal testimony, it is prudent for the City, who is starting an electric utility, to contract initially with a willing and local electric utility that is able to help the City establish operations and train a future City electric utility workforce.[209]

H. Commentary on Department's Testimony

The Department of Commerce filed both rebuttal and surrebuttal testimony in this case, with each filing focusing on different things. In the Department's rebuttal testimony, the Department did not propose specific findings as it relates to the just compensation calculation, but instead "describe[d] the statutory framework, summarize[d] key differences in the Parties' approaches, and provide[d] information on how similar issues have been treated in prior Commission decisions." [210]

i. Department's Rebuttal Testimony

1. Loss of Revenue Position

In analyzing the Parties' positions related to the time horizon for loss of revenue, the Department concludes that applying "a ten-year horizon [ ] aligns this case with long-standing

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[208] *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*, Notice of and Order for Hearing, June 2, 2025, at 2.
[209] Malchow Rebuttal at 5:3–15.
[210] Ngo Rebuttal at 3:13–16.

Commission practice, balances the need to compensate real economic loss against the risk of speculative forecasts, and gives Xcel a reasonable period to adjust its system and customer base to reflect the changes caused to the City." [211] However, on cross examination, the Department's witness acknowledged that this finding was not based on any unique aspects of this proceeding, but instead was simply based on the use of ten years in other prior Commission decisions.[212] This conclusion ignores the very real differences between IOUs and distribution cooperatives. It also ignores prior Commission precedent which requires that each compensation decision should be determined based on the unique facts of the parties involved.[213]

2. Future Customers

The Department takes the position that any compensation for future customers should be included in the calculation of just compensation.[214] The City more or less agrees with this position, and points out that future customer growth would be captured by adopting the Commission's precedent of applying a mill rate payment over a period of time. By doing so, Xcel will receive payment from the City for actual energy sold during the compensation period, which will necessarily incorporate any growth in sales, however unlikely they may be.

3. Avoided Costs Position

On this point, the Department cites to prior Commission precedent to conclude that only certain costs which the utility will "actually shed" should be included as avoided costs. In its list of costs which are properly considered avoidable, the Department provides the following:

- Fuel and purchased-power costs that vary directly with Slayton's load;

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[211] *Id*. at 8:7–10.
[212] Transcript 196:3–8 (Ngo).
[213] *In re City of Grand Rapids*, Order Determining Compensation at 7–8 ("every compensation decision is unique based on detailed facts specific to the displaced utility and the service area at issue.").
[214] Ngo Rebuttal at 8:12–16.

- Clearly variable O&M expenses that can be shown to decrease when Slayton leaves (for example, certain distribution line maintenance or meter-reading costs); and
- Any demonstrable reductions in customer service or billing costs attributable to the loss of Slayton's accounts.[215]

Notably, however, the Department does not provide a clear recommendation related to these costs, and instead suggests that both parties have missed the mark.[216]

The Department goes on to provide that "fixed costs, such as most production plants, transmission, backbone, general plant and shared administrative overhead are not immediately avoided and should not be treated as avoided *unless the City* can show that these costs will actually decline as a result" (emphasis added) of the City leaving Xcel's service territory.[217] This is despite the Department acknowledging that Xcel is the party seeking compensation in this proceeding.[218] As discussed elsewhere in this Brief, it is a foundational fact of nearly every area of American law that the party seeking damages shall be required to carry the burden of proving those damages to a reasonable degree of certainty. The Department's position is not just a renunciation of that long-held tradition, but it would also put the City in the difficult position of needing to prove Xcel's costs are avoidable, where Xcel creates and controls nearly all of the information necessary to make this kind of concrete showing. As Xcel has indicated in its filings in this proceeding, it does not track its information about its costs for specific areas.[219]

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[215] Ngo Rebuttal at 9–10.
[216] *Id*. at 10:8–21.
[217] *Id*. at 10: 3–6.
[218] Transcript at 197:18–21 (Ngo).
[219] *See, e.g.*, Xcel Response to City Information Request (IR) No. 40 (stating an analysis of return on investment for particular parts of Xcel's system does not exist and would require a special study); IR No. 43 (stating Xcel conducts resource planning system wide, not to serve specific communities); IR No. 47 (stating Xcel does not keep track of costs related to maintenance, repair, or service work performed from a particular service center); and IR No. 51 (stating Xcel does not track work orders performed within the City of Slayton).

Given the Department's lack of any clear recommendation, and its contradictory position that the City should be required to carry the burden of proof to disprove Xcel's damages, the City would respectfully request that the Commission give little weight to the Department's analysis of this criteria.

4. Loss-of-revenue payment structure

The Department's position on payment structure largely follows the City's own recommendation, except that it continues to rely on its presumption that a ten-year compensation period is required based on precedent.[220] That notwithstanding, the City agrees that the use of a mill rate "aligns with the Commission's Section 216B.44 practice, tying compensation to actual load" and "reduces the risk of over- or under-compensation if actual growth differs from forecast" numbers.[221]

5. Integration Expenses

The City generally agrees with the Department's position that Xcel should be compensated for "incremental, Slayton-specific integration expenses" provided that Xcel can accurately show that such costs were incurred *because* of Slayton's decision to exit the system.[222] The City also agrees that care must be taken to ensure that these costs are not double-counted in the loss-of-revenue calculations.[223] But as described above, when applying these principles to the facts of this case, the City experts have found Xcel is entitled to no more than $15,000 in integration costs.

6. Other Appropriate Factors

While the Department points out the existence of a dispute as to the Slayton West substation and whether it should constitute an "other appropriate factor," it does not provide any

[220] Ngo Rebuttal at 11:10–13.
[221] *Id.* at 11:15–17.
[222] *Id.* at 12:7–11.
[223] *Id.* at 12:9–10.

meaningful guidance or recommendation on how that question should be decided.[224] The City's position remains that Xcel should not receive separate damages to this under the "other factors" and outside of the loss of revenue calculation as addressed by Mr. Berg.

ii. Department's Surrebuttal Testimony

The Department also offered surrebuttal testimony which was primarily focused on statements made in Xcel's direct and rebuttal testimony regarding the impact of this proceeding on certain community solar garden subscriptions.[225] In short, the Department provided the following recommendations in response to Xcel's rebuttal testimony:

- That costs incurred by CSG operators to notify Slayton-area CSG subscribers of their ineligibility to continue participating in the CSG program should ***not*** be included as an integration expense;[226]
- That Slayton should ***not*** be required to provide compensation for disputes involving possible cancellations of CSG contracts, including attorneys' fees;[227] and
- That Slayton should ***not*** be responsible for bearing costs related to DER in the interconnection queue which may be affected by Slayton's decision to exit the system.[228]

The City agrees with the Department's surrebuttal on these points for the reasons explained by Mr. Teigland explains. These costs are speculative and may never come to pass. Xcel is not entitled to shift unknown future costs to Slayton, simply because it can identify some remote nexus to Slayton's purchase.

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[224] Ngo Rebuttal at 13:19–21.
[225] Teigland Surrebuttal at 2:13−14.
[226] *Id.* at 6:15–17.
[227] *Id*. at 13:4–6.
[228] *Id.* at 13:7–9.

VI. CONCLUSION

In sum, the City respectfully requests that the Commission adopt just compensation conclusions consistent with the analysis of City witnesses David Berg, Mark Fritsch, and Mark Mitchell, 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

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

Respectfully submitted,

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