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

FOR THE MINNESOTA PUBLIC UTILITIES COMMISSION
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| Katie Sieben | Chair |
| 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

**CITY OF SLAYTON'S REPLY TO EXCEPTIONS OF NORTHERN STATES POWER COMPANY, D/B/A XCEL ENERGY TO THE FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION OF THE ADMINISTRATIVE LAW JUDGE**

**June 8, 2026**

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## I. INTRODUCTION

The City disagrees with Xcel's Exceptions to the ALJ's Report on multiple foundational grounds. First, and most fundamentally, Xcel continues to advocate its theory of lost revenue as broadly providing long-term replacement revenue to the Company, as opposed to the City's method of compensation for direct losses that Xcel cannot mitigate by reasonable methods available to it. Second, Xcel continues to reject the use of a mill rate form of compensation, insisting on a lump sum payment, or alternatively, some form of security for future payments beyond the Commission's order. Third, Xcel argues for a broad view of integration expenses, including a variety of undetermined or speculative future costs. Fourth, Xcel argues for an award of 98.8% of the book value of the SLW substation as an "other factor" of compensation, above and beyond loss of revenue, despite the record evidence that Xcel will continue to own and use it. Finally, Xcel again raises its arguments that Slayton's acquisition should be disallowed by the Commission as not in compliance with the statutory provisions regarding municipalization, and without a public purpose. These Xcel positions are unfounded.

The record evidence in this case amply supports the City's methodology as both consistent with Commission precedent and fundamentally fair to the City and Xcel ratepayers. The City's proposal provides Xcel with compensation for its *actual losses* – rather than excessive replacement income Xcel that Xcel seeks. Thus, the City's approach would result in no adverse impact to Xcel ratepayers and reasonably effectuates the City's statutory right to form a municipal utility.

## II. SLAYTON'S REPLY TO XCEL'S EXCEPTIONS

### A. Loss of Revenue

The City disagrees with Xcel's exceptions to the ALJ Report concerning: 1) the overall methodology regarding loss of revenue, 2) the time period for compensation of loss of revenue, and 3) the incorporation of projected growth into the calculations of loss of revenue.

#### 1. The City's Loss of Revenue Methodology Provides the Fairest Outcome for All Parties

Xcel states a general agreement with the ALJ's Report concerning its "overall method" regarding the loss of revenue analysis and the ALJ's positive descriptions of some of Xcel's analysis contained in the Report.[1] Following this, however, Xcel goes on to take exception to the ALJ's recommended approach on numerous key issues, and then providing new and previously undisclosed loss of revenue calculation drawn from the ALJ's approach and its own.[2]

To the extent that Xcel raises any issues regarding the description its loss of revenue as the "only complete analysis," or the ALJ's finding of Xcel's method as "appropriate" and the City of Slayton's not "reasonable," [3] the City has already responded to those characterizations.[4] Essentially, the ALJ's Report adopted the Department of Commerce's general framework approach that attempts to apply the cooperative cases out of context in this case,[5] and used an unworkable burden of proof to incorrectly dismiss the City's cost-avoidance approach as not providing "clear and demonstrable" of direct cost reductions.[6] As previously explained, the City's approach fairly and adequately compensates Xcel for actual losses that it cannot mitigate, is amply supported by the record, and will not cause adverse impacts to remaining Xcel ratepayers.

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[1] Xcel Exceptions at 3.
[2] Xcel Exceptions at 3–7, 14–18, Attachment 1.
[3] Xcel Exceptions at 3 (citing Report at Findings 98-99).
[4] City of Slayton Exceptions at 12–25.
[5] *Id.*
[6] *Id.* at 25–28.

### 2. Xcel's Insistence on a Longer Recovery Period Ignores Factual Realities

In calculating the appropriate time period for lost revenue compensation, Xcel maintains that it should be entitled to a 20-year compensation period based on what it considers to be its "intermediate-term planning horizon." [7] The ALJ rejected this unprecedented approach with a compromise position, stating that "a just recovery period for lost revenues takes into consideration medium-term planning timelines for distribution and generation as a reasonable time period for the utility to mitigate lost revenues." [8] The ALJ settled on past Commissions adoption of a ten-year compensation period, citing the *Rochester II* case in which the Commission soundly rejected the utility's argument for a longer period and stated that it had not been provided with "new or different evidence presented to justify a longer period." [9] City witnesses David Berg and Mark Fritsch have presented new and different facts into this record regarding Xcel's capabilities supporting a shorter lost revenue payment to "quickly and efficiently" adjust to its new circumstances.[10]

Xcel goes on to incorrectly state that "applying these findings and reviewing the facts in the record support a lost revenue time period longer than ten years." [11] The ALJ stated a view that "mitigation of lost revenues is addressed in the time-horizon component" of the statutory analysis, despite not relying on evidence provided by the City on this point in the Findings.[12] As it relates to the ability of the utility to mitigate, the City presented unrefuted evidence from Mark Fritsch which shows that Xcel, unlike the distribution cooperatives involved in earlier 216B.44 cases, can

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[7] Xcel Exceptions at 4.
[8] Report, Finding of Fact 46.
[9] Report, Finding of Fact 44.
[10] *City of Rochester II*, SA-93-498, Nov. 30, 1995 Order Determining Compensation at 8; *see also City of Olivia,* SA-85-93, Oct 1, 1986 Order After Reconsideration at 7-8 (remaining open to evidence in future proceedings that support a "different" payment period).
[11] Xcel Exceptions at 5.
[12] Report, Finding of Fact 97. As further discussed in the City's Exceptions, the duty to mitigate damages goes beyond selection of the compensation period. City of Slayton Exceptions at 15–19 (Exception No. 2).

mitigate the impacts of the loss of Slayton almost immediately.[13] Because of that unique ability to mitigate the impacts of this acquisition, logic would indicate that the appropriate recovery period in this case is shorter, not longer, than past cases which featured 10 year recovery periods.

Xcel also indicates that its applicable planning periods are: (i) 30 and 15 years, respectively for generation and (ii) 10 years for distribution planning with a five-year capital distribution planning timeline.[14] From that, Xcel asserts that at a minimum, its intermediate-term planning period is 15 years.[15] The ALJ found, however, that Xcel's decision to follow a 30-year generation planning period was based on a Wisconsin PSC requirement not applicable in Minnesota.[16] Minnesota requires utilities to submit periodic resource plans to meet service needs of their customer for a 15-year forecast period.[17] Based on that, Xcel's proposed "intermediate term planning period" of 20 years is longer than any legally-required planning period imposed on it by the state of Minnesota.

Based on the record, the applicable midpoints for the various Xcel periods are:

| **Planning Period** | **Length** | **Midpoint** | **How Often Filed** |
|---|---|---|---|
| IRP (Generation) | 15 years[18] | 7.5 years | Every 2 years[19] |
| IRP "Action Plan" | 5 years[20] | 2.5 years | Every 2 years[21] |
| IDP (Distribution) | 10 years[22] | 5 years | Every 2 years[23] |

13 Fritsch Rebuttal at 14:4–15:2.
14 Xcel Exceptions at 5.
15 *Id*.
16 Report, Findings of Fact 47, 48, and 63.
17 Report, Finding of Fact 48.
18 *Id*.
19 Minn. R. 7843.0300, subp. 2.
20 Report, Findings of Fact 48, 49.
21 Minn. R. 7843.0300, subp. 2.
22 Report, Finding of Fact 50.
23 *Id*.

| | | | |
|---|---|---|---|
| IDP Capital Distribution Planning | 5 years[24] | 2.5 years | Every 2 years[25] |

As demonstrated above, while the planning periods themselves are anywhere between 5 and 15 years, they are necessarily revisited every two years by Xcel, and therefore could be adjusted relatively quickly to respond to the new circumstances of Slayton no longer being part of Xcel's system.

A reasonable "adjustment" period must also take into account factors unique to the displaced utility and its ability to mitigate the impacts of the acquisition, as well as the length of time necessary for the displaced utility to formally modify its planning processes to account for those changes.[26] The record in this case demonstrates that Xcel is uniquely situated, in a way that none of the displaced utilities in Section 216B.44 cases were, to quickly and efficiently mitigate the small impact of Slayton exiting its system.[27] Xcel will continue to fully utilize its generation and other assets after the close on this transaction,[28] making a five-year payment period a just and reasonable outcome for both Xcel and the City.

**3. Xcel's Customer Growth Assumptions are Incorrect and Unreasonably When Applied to Slayton**

The City strongly disagrees with Xcel's exception to the ALJ's recommendation concerning growth projections over the lost revenue compensation period. Xcel attempts to use projected growth to improperly augment its loss of revenue calculations, prior to conversion into

[24] Report, Finding of Fact 51.
[25] Report, Finding of Fact 50.
[26] *Cf. City of Rochester II*, Order Determining Compensation, at 8 (rejecting the cooperative's argument for use of future time periods as resting "on the same assumptions as the claim to perpetual compensation" and restating the co-op's duty to adjust and mitigate its damages within a single 10-year compensation period).
[27] Fritsch Rebuttal, 14:4–15:2.
[28] Transcript at 134:10–136:13 (Peterson acknowledging the four megawatts of generation currently used by Slayton would be available to serve other load, and that anticipated Minnesota growth in year one far exceeds four megawatts).

a mill rate.[29] As explained in the City's Exceptions,[30] and the briefing to the ALJ,[31] Xcel's approach double-credits the same growth, and the Report adopted this to a lesser extent with its "midpoint" recommendation.

By incorporating estimated growth in sales into the financial calculations *before* converting the loss of revenue to a mill rate that is tied to actual sales, Xcel would achieve inflated compensation that factors growth into the analysis twice. Incorporation of Xcel's projected growth estimates results in an increased mill rate.[32] If Xcel were correct and Slayton sales were to increase year over year by the factors in line with Xcel's estimates (which the City disagrees with), Xcel's recommended mill rate (that has already been increased for projected growth in annual sales) would then be applied to the increased annual sales in future years.[33] This overstates the growth impact and overcompensates Xcel.[34]

Conversely, the City's use of a straightforward mill rate, based on a loss of revenue for each kilowatt hour sold as proposed by Mr. Berg, appropriately incorporates any *actual* future growth into the analysis one time. If sales actually increase in the future (whether because of growth in new customers and/or usage per customer), the loss of revenue payment increases in direct correlation to the actual sales. As the Commission has recognized, this use of a mill rate "protects against egregious differences between compensation and actual losses, should future

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[29] Xcel Exceptions at 6–7 (disagreeing with Findings 80, 81, and 83 of the Report) and 17–18 (disagreeing with Findings 160 and 161, and Recommendation 5).
[30] City of Slayton Exceptions at 35–36.
[31] Initial Brief of the City of Slayton at 25–27; Reply Brief of the City of Slayton at 15–20.
[32] *See, e.g.*, Xcel Exceptions, Attachment 1, at 2 (concluding to 133.47 mills for residential customers).
[33] *Id.*
[34] Additionally, Xcel's growth projections are for the state of Minnesota generally, and not Slayton specific in any respect. *See* City of Slayton Exceptions at 9–10; Reply Brief of the City of Slayton at 18–20 (showing Slayton growth generally flat, compared to the broader trend of consistent growth in Minnesota generally).

growth turn out to be dramatically higher or lower than expected." [35] The City's mill rate correctly achieves this.

The City also disagrees with Xcel's increasing of the mill rate for future rate increases.[36] Since Xcel's conceptual premise is that the lost revenue is intended to compensate for Slayton's "share" of past investments, a consistent application of that principle would mean Slayton's share would ***decrease*** as those assets are depreciated and removed from service, or would at least stay flat during the compensation period.[37] Incorporating expected rate increases into the mill rate for loss of revenue would mean Slayton would be contributing toward future assets and investments made after Slayton leaves the system, which runs directly counter to Xcel's stated justification.[38] This further exposes Xcel's faulty logic, since Slayton could not have, and should not be forced to contribute to, a "share" of future investments or assets constructed years ***after*** Slayton leaves the Xcel system.

**B. Use of a Mill Rate is Well-Established Commission Precedent and Fair to Both Parties**

Xcel's Exceptions 1) disagree with the ALJ's Report on the use of a mill rate form of compensation, but then 2) state Xcel's position on how it believes a mill rate should be calculated, if a mill rate is used. [39] On the first point, the use of a mill rate for lost revenue compensation is well supported by Commission precedent recognizing the speculative deficiencies in predicting future sales to estimate the present value lump-sum approach Xcel advocates.[40] On the second point however, Xcel's advocacy of the ALJ's recommended "midpoint" mill rate formula inappropriately inflates the proper mill rate, as the City has argued in its Exceptions.

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[35] *City of Rochester II*, Order Determining Compensation at 9.
[36] Xcel Exceptions, Attachment 1 (incorporating "utility price growth"); Reply Brief of the City of Slayton at 16–18 (further explaining the City's objection to this).
[37] Reply Brief of the City of Slayton at 16–18.
[38] *Id.*
[39] Xcel Exceptions at 14–18.
[40] *City of Rochester II*, Findings of Fact, Conclusions, and Recommended Order at 9.

### 1. Use of a Mill Rate Avoids Risks Inherent in Speculation and Forecasting

Xcel takes exception to the Report's recommendation that net lost revenue be paid by the use of a mill rate rather than Xcel's speculative 20-year lump-sum approach.[41] Xcel attempts to distinguish from past Commission cases adopting the mill rate, argues that its projected growth rates are reasonable, and claims that a commission order to pay is inadequate under the Constitution. The City has already briefed these issues to the ALJ,[42] and will not fully rehash them here.

As the Commission has previously stated, and the ALJ correctly recognized, attempting to reach a lump sum present value creates "great risks" to both parties "that the sales forecasts will be wrong." [43] Despite this, Xcel argues that because the ALJ allegedly approved two of the Company's growth rates, "it is not necessary to make use of a mill rate to address concerns about growth rates." [44] This argument is directly counter to the cross-examination testimony of Lisa Peterson who acknowledged that she could not predict the markets regarding the key factors needed to make an accurate present value calculation.[45] Xcel attempts to distinguish from the past cases, suggesting that Slayton customers' usage is more predictable and therefore less speculative.[46] Xcel's argument glosses over the factual issue that Xcel has never identified any Slayton-specific costs in this matter, and it also disregards the sound public policy of achieving accuracy by tying compensation to actual sales.

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[41] Xcel Exceptions at 14–17, citing Report Finding 147. Xcel appears to abandon its previous alternative of "levelized payments" and does not advocate for that in its Exceptions.
[42] Initial Brief of the City of Slayton at 13–14 (mill rate for future revenue and constitutional aspect); Reply Brief of the City of Slayton at 29–30 (mill rate); *see also* Berg Direct at 14-15 (explaining his approach and past uses of mill rate compensation).
[43] *In re City of Redwood Falls*, Order Determining Compensation at 4; Report, Finding of Fact 154 (quoting same language).
[44] Xcel Exceptions at 15.
[45] Transcript at 169:14–18 (Peterson).
[46] *See* Xcel Exceptions at 15.

Finally, Xcel's argument that a mill rate does not adequately "secure" its compensation as required by the Minnesota Constitution is patently wrong. As explained in the City's Initial Brief, Minnesota has long recognized that a court order to pay compensation is adequate security for an acquisition.[47] If the novel rule Xcel advocated were correct and the City were required to post a bond "acceptable to Xcel" in some amount beyond the actual costs of the facilities that the City will pay for, Minnesota's general eminent domain quick-take statute (Minn. Stat. 117.042), which does not require this, would have been declared unconstitutional long ago.[48] Xcel's challenges to the use of a mill rate in this case for loss of revenue payments are counter to established law and sound public policy.

**2. The Commission Should Reject Xcel's Proposed Method of Calculating the Mill Rate that Vastly Overstates Its Compensable Unavoided Costs.**

Conceding that its lump-sum approach may not be adopted, Xcel finds "acceptable" the ALJ's recommendation that the mill rate be "based upon sales forecasted at the midpoint of the lost-revenue time horizon." [49] Xcel then provides in Attachment 1 of its Exceptions, mill rate calculations on its compensation position in this proceeding, extrapolated from the ALJ's recommendations, applied over a 10-year period.

Notably, Xcel's Attachment 1 calculation of mill rates for lost revenue is the ***first time*** in this contested case that Xcel has identified mill rates for future lost revenue compensation. Only now in Attachment 1 does Xcel reflect the mill rate result of its asserted damages (unavoided costs) by individual classes of customers: Residential, Non-Demand Commercial, Demand, and Street

[47] *Hous. & Redevelopment Auth. of City of St. Paul v. Greenman*, 96 N.W.2d 673, 683 (Minn. 1959) (holding that "compensation need not be paid or even finally determined in advance of the taking").
[48] The ALJ also correctly noted that future income is not "property" under Minn. Stat. § 216B.45. Report, Finding 148. Additionally, the U.S. Supreme Court long ago rejected Fifth Amendment challenges to income taxes that attempted similar constitutional arguments. *See, e.g., Brushaber v. Union Pac. R. Co.*, 240 U.S. 1, 25 (1916).
[49] Xcel Exceptions at 17–18 (citing Report, Recommendation 5).

Lighting, and as averaged among the classes into 116.79 mills.[50] Xcel's Attachment 1 also provides its percentage estimates of claimed avoidable and not avoidable costs by customer class using the 2025 Class Cost of Service Study ("CCOSS") it developed for this case, based on its categories of the revenue requirement: Variable Production, Fixed Production, Transmission, and Total Distribution.[51]

Xcel's Attachment 1 is very revealing in comparing Xcel's position with both a) past Commission precedent on lost revenue and b) the material distinctions between Xcel's argued positions on avoidable cost in this contested case and Xcel's recent past representations to Minnesota Municipal Utility Association ("MMUA") representatives. These marked distinctions are found in the Xcel PowerPoint presentations as testified to and introduced into the record by City witness Mark Fritsch.[52]

### 3. Xcel's Proposed Mill Rates in this Case are Orders of Magnitude Higher than any Previous Commission Award.

As now-established Commission precedent in compensation orders, the five most recent Section 216B.44 compensation decisions involving municipal utilities and cooperatives used mill rates, not lump sums, for future lost revenue payments. The mill rate totals in those cases stand in sharp contrast to Xcel's requested mill rate here. Xcel's proposed 116.79 mills for lost Slayton revenue payment over 10 years is 389% higher than the ***highest*** mill rate awarded the cooperative in previous Commission lost future revenue compensation decisions. Xcel's mill rates applied to the recommended Report for each customer class in Slayton result in a combined average total

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[50] Xcel Exceptions, Attachment 1 at 1–6.
[51] *Id.* at 6.
[52] *See* Fritsch Rebuttal at 19-38 (Attachment A, the May 6, 2019 Presentation, with 2018 data); *id* at 39–44 (Attachment B, April 2021 Presentation, with 2019 data); *id.* at 45–64 (Attachment C, 2025 Presentation, shown as an update to the 2019 Presentation, with new Slides 7–12 updated March 2025). The somewhat confusing dates and pagination on these Attachments is further explained in Mr. Fritsch's Rebuttal Testimony, pages 4–6, and footnotes 4, 6, and 8. For clarity, the City cites will refer simply to the PDF page of the full document that is Slayton Exhibit 115, the Rebuttal Testimony of Mark Fritsch and Attachments (Redacted).

mill rate of 116.79 mills per kWh.[53] The five most recent Commission compensation decisions awarded mill rates from 11 mills to 30 mills.[54] These were not negotiated mill rates, but rather awarded rates in disputes requiring final orders for compensation.

As explained in the City's previous briefing and Exceptions, Xcel has never tied its lost revenue analysis to any facts specific to Slayton,[55] and therefore has not justified such an extreme upward departure from past Commission Orders.

**4. Xcel's Avoided Cost Analysis in this Case Deviates Dramatically from Past Public Positions on Treatment of Lost Revenue in Municipal Acquisition Proceedings.**

In this case, Xcel advocates for avoidable cost totals resulting from Slayton distribution acquisition of only a fraction of the avoidable costs Xcel consistently recognized in its PowerPoints presented to MMUA from 2019, 2021, and March of 2025, introduced into evidence by Mark Fritsch in this case.[56] These Xcel presentations to MMUA attended by Mr. Fritsch referenced the same avoidable cost categories used by Xcel in this case.[57] As identified in the PowerPoints, Xcel's avoidable cost numbers were based on its then-latest rate cases.[58] As Ms. Peterson acknowledged in her Rebuttal Testimony, Mr. Berg's analysis broke some of the broader categories into "subcategories" of what Ms. Peterson and Xcel used, but in her view "there is not a material difference in the subcategories that make up the larger categories." [59] Thus, it is important to note

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[53] Xcel Exceptions, Attachment 1, at 6.
[54] See, *City of Rochester II,* SA-93-498, Nov. 30, 1995 Order Determining Compensation, at 11 (11.0 mills); *City of Rochester, Celestica*, SA-02-496, Jun 19, 2003 Order Determining Compensation at 7-8 (13.7 mills); *City of Buffalo,* SA-03-989, Apr. 1, 2005 Order Determining Compensation at 11 (17.9 mills); *City of Grand Rapids*, SA-03-896, Sep. 29, 2005 Order Determining Compensation, at 19 (30 mills); and *City of Redwood Falls*, SA-05-1274, Jun 27,2007 Order Determining Compensation at 14 (29.7 mills)
[55] City of Slayton Exceptions at 3–5; Transcript at 120:11–13 (Peterson) (testifying "no where [sic] in my analysis did I identify costs specific to Slayton").
[56] Fritsch Rebuttal at 19-64.
[57] Fritsch Rebuttal at 28 (Attachment A, 2018/2019 Presentation Slide 10); *id.* at 42 (Attachment B, 2021 Presentation Slide 4); and *id.* at 54 (Attachment C, 2025 Presentation Slide 10).
[58] Fritsch Rebuttal at 27 (Attachment A, 2018/2019 Presentation Slide 9, referencing rate case No. E002/GR-15-826); *id.* at 41 (Attachment B, 2021 Presentation Slide 3, same case); and *id.* at 53 (Attachment C, 2025 Presentation Slide 9, referencing rate case No. E002/GR-21-630).
[59] Peterson Rebuttal at 18:1–12.

that the categories of avoidable or not-avoidable costs in Xcel's analysis here, Xcel's previous analysis reflected in the PowerPoints, and Mr. Berg's analysis all similarly: 1) drew from the revenue requirement in Xcel's most recent rate case, and 2) used the same functional categories.

The differences in Xcel's claimed avoidable and unavoidable costs between this case and the PowerPoints are significant. For example, with respect to residential customers, Xcel now claims that only 29.67% of its costs are avoidable.[60] However, based on the avoidable cost data stated in the March 2025 PowerPoint, it was over double that percentage, with Xcel stating that 75.84% of its costs were avoidable.[61] The same is true for demand customers. In this case, Xcel claims that only 31.57% of costs are avoidable.[62] Yet in the March 2025 PowerPoint, Xcel's stated in its avoided cost slide that for commercial and industrial Demand Billed customers, 71.02% of its costs were avoided.[63]

This is the case across the board. All of the avoided costs by customer class and in total Xcel claims in this case (shown in Attachment 1 page 6) are far less than those stated in the multiple PowerPoint presentation charts showing avoidable costs by class and cumulatively.[64] Looking at total avoided costs across all customer classes, Xcel claims in this case that only 30.72% of costs are avoidable.[65] This contrasts sharply with Xcel's 2025 report of 73.38% of total costs as avoidable,[66] Indeed, that total maintained consistency with Xcel's 2021 report of 74.80% of total

[60] Excel Exceptions, Attachment 1, at 6.
[61] Fritsch Rebuttal at 55 (2025 Presentation, Slide 11).
[62] Xcel Exceptions, Attachment 1, at 6 (although the subheading for Demand customers was omitted, the percentage of 31.57% avoidable matches with the proportion of avoidable costs for Demand customers on page 4).
[63] Fritsch Rebuttal at 55 (2025 Presentation, Slide 11).
[64] Fritsch Rebuttal at 55 (2025 Slide 11); *id.* at 43 (2021 Slide 5); *id* at 29 (2019 Slide 11).
[65] Excel Exceptions, Attachment 1, at 6 (the "MN" column).
[66] Fritsch Rebuttal at 55 (2025 Slide 11).

costs as avoidable,[67] and Xcel's 2019 report of 74.82% of total costs as avoidable, using its GR-15-826 cost data.[68]

It is also noteworthy that Xcel's PowerPoint slides provide no disclaimers. Nothing suggests that the avoidable costs depicted in the PowerPoints are merely hypothetical or unrelated to actual avoided costs incurred or projected to be incurred. For materials that have been shared with municipalities through MMUA to Mark Fritsch and others, any calculation that risked misleading cities in matters of municipal acquisition would presumably include such a disclaimer.

Further, Xcel witness Lisa Peterson has admitted that the avoided costs for Slayton are not based on Slayton specific data because Xcel does not keep such data.[69] Indeed, a serious challenge for the City in invoking its statutory right under 216B.45, and contrary to clear Commission preference, Xcel's cost evidence in this case is decidedly devoid of Slayton-specific data because according to Xcel, they do not maintain that date, despite Minn. Stat. 216B.45 being in place for more than 50 years.[70] Thus, the avoided and unavoided costs represented by Xcel in these PowerPoints is based on the same system average Minnesota service territory data that Xcel has used in this case.

These examples reflect the dramatic differences between Xcel's positions in this case (claiming a total of 30.72% avoided costs and requesting compensation of 116.79 mills per kilowatt-hour sold), Xcel's past statements in the PowerPoints (approximately 74% avoided costs), and the Commission's past compensation decisions (awarding between 11 and 30 mills). These position swings, based on no Slayton-specific evidence, illustrates why the Commission should

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[67] Fritsch Rebuttal at 43 (2021 Slide 5).
[68] Fritsch Rebuttal at 29 (2019 Slide 11).
[69] Transcript at 120:11-13 (Peterson)
[70] *See* Initial Brief of the City of Slayton at 8 and notes 36 to 38, citing Commission cases calling for acquired area data for analysis of accurate compensation totals.

decline to adopt either Xcel's proposed mill rates in this case or the ALJ's recommendation that largely incorporates Xcel's methodology.

As described further below, and also explained in the City's Exceptions and briefing, the Commission should instead adopt the straightforward mill rate framework proposed by Mr. Berg based on substantial record evidence that fairly applies the mill rate approach to evaluate compensation for loss of revenue and avoided costs.

### C. Xcel's Claims of Unavoided Costs Materially Deviate from its Past Positions on Treatment of these Costs in a Manner the Significantly Inflates Xcel's Proposed Compensation in this Proceeding.

Drilling down to each of the functional categories of costs and their avoidability, and comparing the parties' positions, again demonstrates significant inconsistencies between Xcel's positions in this case and its previous PowerPoint positions. Xcel's claims of lost revenue in this case are based on the proportions of cost avoidability stated in the Surrebuttal Testimony of Lisa Peterson, and again utilized in Xcel's Exceptions, Attachment 1.[71] These are summarized below:

#### 1. Xcel's Position on Avoidability as Part of this Proceeding

| Revenue Requirement Category | Percentage Avoidable |
|---|---|
| Total Customer | 27.1% |
| Variable Production | 37.3% |
| Fixed Production | 0.0% |
| Transmission | 100.0% |
| Total Distribution | 0.1% |
| **Total Costs** | **30.72%** |

Presented below are excerpts from the previous presentations made by Xcel regarding lost revenue for territory acquisition cases, from the Rebuttal Testimony of Mark Fritsch. For each

[71] Peterson Surrebuttal, Schedule 1 (LRP-3) at 6; Excel Exceptions, Attachment 1, at 6.

presentation, Xcel presented its evaluation of which costs are avoided and what the total avoided costs were based on its cost assumptions in its recent rate case.

**2. Xcel's Position in its Previous PowerPoint Presentations**

**<u>Xcel's Positions in its March 2025 Presentation</u>**[72]

Avoided Costs vs. Costs Not Avoided

| | Is Cost Avoided? | |
|---|---|---|
| **Cost Function** | **Yes** | **No** |
| **Fixed Production: Capacity Related** | | **X** |
| **Fixed Production: Energy Related** | | **X** |
| **Variable Production Costs (Fuel etc.)** | **X** | |
| **Transmission** | **X** | |
| **Distribution Substations** | | **X** |
| **Primary Distribution Lines** | **X** | |
| **Secondary Distribution Lines** | **X** | |
| **Customer-Related Costs** | **X** | |

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[72] Fritsch Rebuttal at 54 (Attach. C, 2025 Presentation, Slide 10).

**<u>Xcel's Positions in its April 2021 Presentation</u>**[73]

## Avoided Costs Vs Costs Not Avoided

Xcel Energy

| | Is Cost Avoided? | |
|---|---|---|
| **Cost Function** | **Yes** | **No** |
| **Fixed Production: Capacity Related** | | **X** |
| **Fixed Production: Energy Related** | **X** | |
| **Variable Production Costs (Fuel etc.)** | **X** | |
| **Transmission** | | **X** |
| **Distribution Substations** | | **X** |
| **Primary Distribution Lines** | **X** | |
| **Secondary Distribution Lines** | **X** | |
| **Customer-Related Costs** | **X** | |

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**<u>Xcel's Positions in its May 6, 2019 Presentation (with data from April 2018)</u>**[74]

## Avoided Costs vs. Costs Not Avoided

Xcel Energy

| | Is Cost Avoided? | |
|---|---|---|
| **Cost Function** | **Yes** | **No** |
| **Fixed Production: Capacity Related** | | **X** |
| **Fixed Production: Energy Related** | **X** | |
| **Variable Production Costs (Fuel etc.)** | **X** | |
| **Transmission** | | **X** |
| **Distribution Substations** | | **X** |
| **Primary Distribution Lines** | **X** | |
| **Secondary Distribution Lines** | **X** | |
| **Customer-Related Costs** | **X** | |

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[73] Fritsch Rebuttal at 42 (Attach. B, 2021 Presentation, Slide 4).
[74] Fritsch Rebuttal at 28 (Attach. A, 2019 Presentation, Slide 10). Mr. Fritsch attended and received this presentation in May of 2019, but some of the slides contained in it are dated from and appear to incorporate Xcel's data from April of 2018. *See* Fritsch Rebuttal at 4–5.

### 3. City Witness Berg's Position on Avoidability as Part of this Proceeding[75]

Xcel's positions above can be compared with those of City Witness David Berg, as originally reported in his direct testimony and included on page 6 of the City's Exceptions.

| **Revenue Requirement Item** | **Slayton Avoided Cost/kWh** | **Slayton Non-Avoidable Cost/kWh** |
|---|---|---|
| Minimum System & Service Drop | $0.0053 | - |
| Energy Services | 0.0050 | - |
| On Peak Revenue Requirement | 0.0312 | - |
| Off Peak Revenue Requirement | 0.0315 | - |
| Energy-Related Production | 0.0146 | - |
| Capacity-Related Summer Peak Production | 0.0147 | - |
| Capacity-Related Winter Peak Production | 0.0046 | - |
| Transmission | 0.0193 | - |
| Primary Distribution Substation | - | 0.0042 |
| Prim Distribution Lines | 0.0162 | - |
| Secondary Distribution, Transformers | 0.0068 | - |
| **Total** | $0.1493 | 0.0042 |

As shown, Mr. Berg concludes that most cost categories are 100% avoidable, with the exception of the Primary Distribution Substation. To evaluate the reasonableness of each approach, it is helpful to compare Xcel's various positions with those of the City.

[75] Berg Direct at 30–31, Table 4.

#### 4. Detailed Comparison of the Parties Positions on Avoidability of Costs

##### (i) Prior Xcel Positions Agreed with Mr. Berg's Treatment of Distribution Costs as Fully Avoidable

Throughout Xcel's PowerPoint presentations, Xcel uniformly classified costs related to Primary Distribution Lines and Secondary Distribution Lines as ***completely avoidable***, and Distribution Substations as ***not avoidable***. In this case, Xcel now claims Slayton distribution costs are only avoidable to ***one-tenth of one percent***,[76] even though the City is acquiring 100% of the Slayton distribution system. Xcel's justification for this is essentially a novel revenue pooling approach, asserting that 99.9% of the distribution costs contributed by Slayton customers are actually utilized for other non-Slayton Xcel distribution facilities.[77] Additionally, Xcel has moved the substation category of distribution in this case into the "Other Appropriate Factors" portion of compensation and based on Ms. Peterson's testimony, Xcel views the substation as 1.2% avoidable.[78]

Mr. Berg concluded that Distribution costs were 100% avoidable, except for the Primary Distribution Substation costs, which he concluded was not avoidable and recommended compensation as part of the loss of revenue analysis. Thus, Mr. Berg's positions on distribution cost avoidability essentially mirror the past position of Xcel as stated in the PowerPoints.

##### (ii) Prior Xcel Positions Agreed with Mr. Berg's Treatment of Customer-Related Costs as Fully Avoidable

Xcel's PowerPoint presentations consistently classified Customer-Related costs as fully avoidable. This is the same conclusion Mr. Berg arrived at in this case. The outlier in this category

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[76] Xcel Exceptions, Attachment 1, at 6.
[77] Peterson Rebuttal at 28–29 (acknowledging removal of costs of the Slayton distribution from distribution revenue analysis); *see also* Berg Surrebuttal at 24–28 (explaining the errors in Ms. Peterson's analysis).
[78] Peterson Direct 43:11–21.

is Xcel's current position in this case which claims that only 27.1% of Customer-Related costs are avoidable. Notably, Xcel did not support that percentage with any concrete calculations showing how it reached that conclusion.[79]

**(iii) Prior Xcel Positions Agreed with Mr. Berg's Treatment of Transmission Costs as Fully Avoidable**

Xcel's multiple changes of position on this issue are especially notable. In both 2019 and 2021, Xcel took the position that Transmission costs were not avoidable. It then changed that position in March of 2025, with Xcel and Company Witness Peterson both acknowledging Transmission as avoidable.[80] In this case, only months later, Ms. Peterson filed Direct Testimony and Rebuttal Testimony claiming Transmission costs were not avoidable.[81] Then when confronted with the testimony of City Witness Mark Mitchell, Xcel again changed its position to acknowledge Transmission costs as fully avoidable through MISO.[82]

Mr. Berg has consistently classified Transmission as a fully avoidable cost.

**(iv) Prior Xcel Positions Agreed with Mr. Berg's Treatment of Variable Production Costs as Fully Avoidable**

All three of Xcel's presentations classified "Variable Production Costs (fuel, etc.)" as 100% avoidable. This is the same conclusion reached by Mr. Berg, although he described these costs with the subcategories of "On Peak Revenue Requirement" and "Off Peak Revenue Requirement," noting that these categories also include energy purchases through PPAs and in the market that would not need to continue for Slayton after it exits Xcel's system.[83]

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[79] Transcript at 170:5-16 (Peterson).
[80] Fritsch Rebuttal at 6.
[81] Peterson Direct at 25; Peterson Rebuttal at 25–26.
[82] Peterson Surrebuttal at 44.
[83] Berg Direct at 24.

Again, Xcel's position in this case is the outlier in this category, as Xcel now claims that only 37.3% of Variable Production costs are avoidable. As with its conclusion on customer costs, Xcel did not provide detailed calculations showing how it arrived at that particular percentage of claimed avoided costs.[84]

**(v) Xcel's Prior Treatment of Fixed Production Costs Agree in Part with Mr. Berg's Conclusion that some Fixed Production Costs are Fully Avoidable**

The Fixed Production category of costs is one of the largest disputed components of the loss of revenue compensation. To summarize, Xcel claims in this case that Fixed Production costs are ***not avoidable***.[85] Mr. Berg reaches the opposite conclusion, stating that fixed production costs are ***fully avoidable***.[86]

The previous Xcel PowerPoint presentations break Fixed Production costs into two categories: "Fixed Production: Energy" and "Fixed Production: Capacity."

***a. Fixed Production: Energy Costs***

Xcel's 2019 and 2021 presentations classify the category of "Fixed Production: Energy Related" costs as ***fully avoidable***. In its 2025 presentation, Xcel shifted Fixed Production: Energy costs to unavoidable. Mr. Fritsch explained that the change was due to Xcel's 2024 forecast of flat to declining sales.[87] As Mr. Fritsch explained, Xcel had consistently acknowledged Fixed Production: Energy costs as avoidable when electric sales are increasing, recognizing growth reduces the loss of revenue amount.[88] It was only when sales were flat or decreasing that Xcel had

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[84] Transcript at 170:17–171:5 (Peterson)
[85] Xcel Exceptions, Attachment 1, at 6.
[86] Berg Direct at 24 (explaining what Xcel calls "Fixed Production" includes the three subcategories Mr. Berg used of "Energy-Related Production," "Capacity-Related Summer Peak Production," and "Capacity-Related Winter Peak Production").
[87] Fritsch Rebuttal at 11; Fritsch Surrebuttal at 4.
[88] Fritsch Surrebuttal at 4.

not reduced the loss of revenue amount for these costs.[89] So when Xcel saw sales projections declining in 2024, it shifted these costs to unavoidable.[90]

Moving forward to today and this case, Xcel's current period of anticipated growth is undisputed, with multiple witnesses acknowledging Xcel's rate case testimony anticipating "substantial load growth, including from new facilities such as data centers and similar facilities." [91] Acknowledging this growth principle for both energy and capacity, and recognizing that both energy and capacity have positive values in the market, Mr. Berg classified Fixed Production costs as fully avoidable.[92] As both Mr. Berg and the City have elaborated fully in the previous testimony and briefing, Xcel will fully utilize any generation assets that previously served Slayton within the first year after Slayton exits the Xcel system.[93]

***b. Fixed Production: Capacity Costs***

Xcel has consistently claimed that Fixed Production: Capacity costs are not avoidable, in all of its PowerPoint presentations and in its testimony in this case. Xcel advocates a view that the loss of Slayton will leave Xcel with 4 MW of power generation capacity that will be stranded virtually forever, but at least for 20 years, and there is no way that Xcel can utilize that capacity that previously served Slayton going forward.

As noted above, Mr. Berg concludes that these Fixed Production costs are fully avoided because Xcel will continue to fully use its generation capacity to serve its growing customer base and can sell any excess capacity that may exist (if any) on the markets. The following facts strongly

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[89] *Id.*
[90] *Id.*
[91] Fritsch Rebuttal at 11 (quoting Docket No. GR-24-320, Liberkowski Dir. Test. at 4); *see also* Transcript at 136:1–11 (Peterson stating "it is likely that significant load growth like the addition of data center customers will require the addition of generation assets"); Berg Direct at 46–47 (comparing Slayton sales to potential data center demands).
[92] Berg Direct at 24–27; Berg Rebuttal at 9–10, 15–16, 19–21, 37–39; Berg Surrebuttal at 4, 12–19.
[93] Initial Brief of the City of Slayton at 21–24.

support Mr. Berg's conclusion that the 4 MW of capacity currently serving Slayton can be utilized elsewhere and is therefore fully avoided.

- Xcel is a utility with 10,000 MW of capacity.[94] Slayton represents 4 one-hundredths of one percent of that capacity.
- Xcel's position is in direct conflict with the Commission precedent in City of Rochester, No. SA-93-498.[95]
- Xcel has announced the retirement of Sherburne County Unit 1 in 2026 (765 MW of capacity).[96]
- Xcel's current IRP shows a capacity deficit in 2027 of 1,999 MW.[97]
- MISO capacity markets have increased by 3000% from 2023-2025.[98]
- Based on Xcel's system growth projections, it would replace Slayton's load in 12.8 days.[99]
- Per Xcel's February 2024 IRP, they have 1,700 MW of power purchase agreements expiring between 2025 and 2028.[100]

### 5. Summary of the Parties' Positions

For comparison purposes, the parties' positions in this case are summarized into the chart on the following page, showing both the categorical and total avoided costs.

[94] Berg Surrebuttal at 13.
[95] Berg Direct at 24–26.
[96] *See* Berg Rebuttal, Attach. N, at 30 (Halama Rebuttal Testimony referring to the retirement of Sherco Unit 1).
[97] Berg Direct at 26.
[98] *Id.*
[99] Berg Direct at 46.
[100] Xcel IRP, Docket No. E002/RP-24-27, Chapter 1, at page 3.

| Revenue Requirement Category | Berg Percentage Avoidable | Xcel May 2019 Percentage Avoidable | Xcel April 2021 Percentage Avoidable | Xcel March 2025 Percentage Avoidable | Peterson Percentage Avoidable |
|---|---|---|---|---|---|
| Total Customer | 100.0% | 100.0% | 100.0% | 100.0% | 27.1% |
| Variable Production | 100.0% | 100.0% | 100.0% | 100.0% | 37.3% |
| Fixed Production Capacity | 100.0% | 0.0% | 0.0% | 0.0% | 0.0% |
| Fixed Production Energy | 100.0% | 100.0% | 100.0% | 0.0% | 0.0% |
| Transmission | 100.0% | 0.0% | 0.0% | 100.0% | 100.0% |
| Substation | 0.0% | 0.0% | 0.0% | 0.0% | 0.0% |
| Total Distribution | 100.0% | 100.0% | 100.0% | 100.0% | 0.1% |
| Total Costs | 97.26% | 74.82% | 74.80% | 73.38% | 30.72% |

This illustrates that many of Mr. Berg's conclusions in this case are actually in accord with Xcel's earlier PowerPoint presentations. This chart further illustrates Xcel's changes in position on the treatment of these costs over time, and how such changes would grossly increase the compensation due to Xcel as part of this proceeding. Transmission is no longer contested, and on the two categories of Fixed Production, Mr. Berg and Mr. Fritsch provide strong evidence that Fixed Production costs should be considered avoidable. If the Commission agrees with Mr. Berg on those categories, the only remaining category of costs that is ***not avoided*** is the Distribution Substation costs, which is the basis for Mr. Berg's mill rate of 4.2 mills for his recommended compensation period of five years.

Thus, a close evaluation of the evidence concerning avoided costs shows that Xcel's positions in this case are the ones that are novel and unsupported by the evidence. Conversely, the record strongly supports Mr. Berg's conclusion of 4.2 mills as a fair result supported by substantial evidence.

**6. Xcel Should Be Prohibited from Recovering Speculative and Unproven Integration Costs.**

In its Exceptions, Xcel maintains that it should be entitled to several categories of expenses related to integration of facilities as a result of Slayton's exit from the system.[101] As discussed in the City's Reply Brief,[102] and summarized below, the record is complete on these issues. Xcel has not met its burden of proof despite being in sole possession of the evidence necessary to prove its claims.

**(i) Xcel Failed to Provide Evidence of any Engineering Costs which it would Reasonably and Prudently Incur as Part of this Proceeding.**

Xcel asserts that out of all of the integration expenses it seeks, "the most important type of integration expenses are the costs of engineering studies and identified system upgrades needed to maintain a safe and reliable system" after Slayton leaves its system.[103] Yet, despite Xcel's indication of the importance of this information, Xcel has failed to further identify what costs might be included in this category as part of this proceeding. Xcel stated that "the Company explained in its testimony that it did not intend to move forward with the engineering studies before knowing that Slayton intends to move forward."[104] This approach not only shirks Xcel's general legal obligation to prove its damages, but it also ignores the Commission's Order directing this matter to a contested case proceeding to build "a fuller record and briefing, which the ALJ could

[101] Xcel Exceptions at 8–10.
[102] Reply Brief of the City of Slayton at 33–39.
[103] Xcel Exceptions at 8.
[104] *Id*. at 9 (citing Peterson Surrebuttal at 10–11).

review and weigh the statutory factors as tailored to the facts of this case to render a well-reasoned report." [105]

The "Commission expect[ed] the parties [to] thoroughly develop a full record, addressing, at a minimum, the just compensation for the property to be purchased by Slayton" applying the statutory factors.[106] The requirements for the parties was clear: identify and quantify the just compensation components at issue in this case. Engineering costs have been a matter of disagreement both in terms of their inclusion in the calculation of just compensation, and as to what specific costs Xcel alleges are to be incurred relative to Slayton's departure. Xcel has failed to provide objective evidence of such costs as part of the evidentiary record in this proceeding. Allowing Xcel to include those costs after the fact, while not having properly developed the record as part of the contested case proceeding, would deprive the City of its opportunity to analyze and respond to such costs, and would be unjust.

Xcel also states that it cannot possibly know the impact of Slayton leaving the system because "the Company has never before experienced the loss of an entire city from its system at one time." [107] As the record shows, Slayton comprises less than one-tenth of one percent of Xcel's load.[108] The record also has unrefuted evidence from Mark Fritsch, a former Xcel energy management-level employee, who has direct knowledge and experience working on adjusting Xcel's systems to account for deviations from forecasts.[109] Xcel's position that it cannot possibly know the impacts of Slayton's decision to exit the system lacks credibility. Mr. Fritsch's first-hand experience at Xcel in "adjusting" to changes and Xcel's vast capabilities in mitigating unforeseen

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[105] Notice of and Order for Hearing, Docket No. E-002, PT-7157/SA-25-129, dated June 2, 2025, at 2–3.
[106] *Id*.
[107] Xcel Exceptions at 9.
[108] Report, Finding of Fact 34; Berg Direct at 38–44.
[109] Fritsch Rebuttal at 14–15.

events and unexpected Commission decisions demonstrates that Xcel is well prepared for the loss of a four megawatt load.

The Commission should decline to award Xcel compensation for unproven future engineering studies that are not supported by the record.

**(ii) Xcel's Inclusion of Alleged DER-Related Costs are Unsupported by the Record and Speculative.**

Xcel also seeks to include in just compensation costs it contends may be related to Slayton's decision to exit the system related to the distributed energy resources ("DER") queue and the Minnesota Distributed Energy Resources Interconnection Process ("DIP"), which is the document that governs the interconnection process for DER.[110] Similar to the engineering studies above, Xcel has produced no specific factual evidence as part of the evidentiary record related to these alleged costs, other than Xcel's general statements that Slayton's departure "could impact" DERs.[111]

As stated by Xcel, as part of the DIP review process, "when system upgrades are required by an interconnection application … the upgrade costs must be paid by the developer." [112] Xcel should not be entitled to payment for economic losses that it claims would be suffered by a third party who is not a party to this proceeding. Allowing Xcel any recovery on this point would be to award Xcel for a loss that it did not incur. The Commission should decline Xcel's request to include these costs for two reasons.

First, there is no evidence in this record that supports Xcel's allegation that Slayton's departure from the system will necessarily lead to any financial impacts to either existing DERs or to those in the queue. Asking the Commission for guidance on what amounts to an advisory

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[110] Teigland Surrebuttal 7:9–8:3.
[111] Xcel Exceptions at 10.
[112] *Id*. at 10; Peterson Rebuttal at 40:24–25

opinion is not appropriate within the statutory confines of the just compensation analysis, and the Commission should decline to opine about that as part of this proceeding.

Second, DERs which are in the queue have no entitlement to the status quo, and the sequential nature of the study process adequately takes into account changed circumstances when determining network upgrade needs.[113] As Mr. Teigland opined, it would be prudent for Xcel and the developer of the first-in-queue project to place that project on hold until the question of Slayton's municipalization is resolved." [114] This is another example of an opportunity for potential mitigation of any impacts of Slayton's departure from the system. Regardless, Xcel has produced no evidence of these alleged costs as part of the evidentiary record, and the ALJ correctly found that they should be disallowed from inclusion in the just compensation analysis.[115] The Commission should continue to decline Xcel's requests.

**(iii) Xcel Is not Entitled to Customer-Related Costs Following the Acquisition by Slayton.**

Lastly, Xcel's seeks cost recovery for uncertain expenses related to Xcel's unproven need to "expend resources to assist" customers who are currently participating in DER programs.[116] As further outlined in the City's legal briefs and testimony, the City continues to reject this premise for two reasons.

First, the purpose of the City's action in this proceeding is to bring local control to electric utility operations and end its relationship with Xcel.[117] Upon closing of the transaction, any commitment that Xcel had to the residents of Slayton will end, and the City will be responsible for taking over as the exclusive provider of electrical energy within its municipal boundaries. Beyond

[113] Teigland Surrebuttal at 12:15–17.
[114] *Id*. at 12:17–19.
[115] Report, Finding of Fact 117.
[116] Xcel Exceptions at 11–12.
[117] Malchow Direct at 8:3–25; Heronimus Rebuttal at 3:9–15.

speculative concerns about costs it "may" incur related to DER programs, Xcel has not identified any specific anticipated cost or explained a rationale that would properly make such a cost the responsibility of the City.[118] As explained in the City's briefing, any such future disputes or claims should properly stand on their own merit and prejudgment in this proceeding is not appropriate.[119]

Second, any alleged resources that Xcel may be required to expend in this manner would reasonably be de minimis at best. So long as the residents of Slayton remain customers of Xcel, then part of Xcel's mandate to provide electrical service to them includes the obligation to provide basic customer service. The City is confident that it can educate its resident customers of the pending changes such that any impact on Xcel should be even smaller than it notes.

**7. Xcel's Treatment of the SLW Substation Would Lead to an Unfair and Unjust Result By Charging the City Nearly 100% of the Cost of an Asset Xcel will Continue to Own and Utilize.**

Xcel takes exception to Finding 137, requesting Xcel analyze how the SLW substation will be used after the transfer.[120] Although the parties have very different views on the approach to analysis of compensation regarding the SLW substation and the ultimate result, the City and Xcel both believe there is sufficient evidence in the record for the Commission to make this determination.[121]

Ultimately, the City maintains that Mr. Berg's analysis of the SLW substation - as part of the loss of revenue analysis - correctly compensates Xcel for the loss of load on the substation (28.6% of the overall substation capacity) *due to Slayton's exit*.[122] Mr. Berg's recommendation of 4.2 mills for five years would provide approximately $430,525 in compensation related to the SLW

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[118] Xcel Exceptions at 11.
[119] Initial Brief of the City of Slayton at 33–34.
[120] Xcel Exceptions at 12–14.
[121] City of Slayton Exceptions at 23–24; Xcel Exceptions at 12.
[122] City of Slayton Exceptions at 23–24; Berg Rebuttal at 32–35.

substation, assuming sales in Slayton remain flat.[123] Compared to the estimated book value of the substation of $1,131,575,[124] Mr. Berg's recommendation equates to approximately 38% of its book value. Stated differently, Mr. Berg's recommendation compensates Xcel for the full amount of revenue that Xcel would have received from Slayton for the Primary Distribution Substation part of Xcel's revenue requirement, plus an additional $102,964 for other expenses related to the substation. Considering Slayton customers' peak load on the SLW substation is only 28.6% of its overall capacity, due to Xcel's decision to oversize the substation, the Commission should agree with Mr. Berg and the City that this result is fair.

Conversely, Xcel advocates for payment of 98.8% of the substation's net book value – a total of approximately $1,117,996 – as an "other factor" in addition to the loss of revenue compensation. This is despite the fact that Xcel will continue to own and use the substation. Moreover, the record reflects that the substation is necessary for Xcel's interconnection needs having nothing to do with the City of Slayton.[125] Xcel's damages calculation is based on the premise that Slayton customers make of 98.8% of the *customer load* currently being used at the substation; whereas the City's compensation is based on the City's percentage of Slayton's peak use of the substation's capacity. Xcel does not explain why using a percentage of customer load makes sense in this context, considering the use of the substation for DER interconnection, and the fact that Slayton never asked for the additional substation capacity Xcel is now requesting payment for. Including Xcel's requested substation compensation as an other factor would only provide a significant financial windfall to Xcel.

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[123] Berg Rebuttal at 35.
[124] Xcel Exceptions at 13.
[125] Berg Rebuttal at 32–35 ("Xcel made the decision to size the SLW capacity as it did. Slayton did not request the 14 MVA capacity to serve its 4 MW load.").

Additionally, Xcel justifies the obvious addition beyond the loss of revenue by excluding the SLW substation from loss of revenue calculation.[126] If true, that would mean Slayton customers would not be contributing anything to the cost of the SLW substation via their rates, which is obviously not supported by the record.[127] The Commission should reject Xcel's attempt to recharacterize the revenue associated with Primary Distribution Substations as an additional "other factor" to obtain nearly full compensation for an asset that Xcel will continue to own and use.

**D. Xcel Has Waived its Right to Object to the City's Proper and Lawful Use of Minnesota Statutes, Section 216B.45.**

Without evidence of any improper City actions in the form of signed contracts or council resolutions, Xcel continues to speculate that Slayton intends to form a municipal utility "in anything other than name only." [128] On this issue, the Report appropriately recommends dismissal of this version of a "public purpose" challenge by waiver.[129] In its Reply brief to the ALJ, discussing the law and referencing City of Slayton witnesses Josh Malchow, City Administrator, and Blake Heronimus, City Council member, the City has comprehensively addressed Xcel's unsupported and untimely "public purpose" arguments.[130] In addition, the City notes that the law of eminent in Minnesota recognizes that such public purpose challenges must be made at the very beginning of court proceedings. [131] Moreover, Minnesota law is clear that a condemning authority has broad legislative discretion in determining when to acquire property via court processes.[132]

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[126] Xcel Exceptions at 13; Peterson Surrebuttal at 11:10–24
[127] Initial Brief of the City of Slayton at 34–35; Berg Rebuttal at 33–35.
[128] Xcel Exceptions at 18.
[129] Report Findings of Fact 164–169.
[130] Reply Brief of the City of Slayton at 45–53.
[131] Minn. Stat. § 115.055 requires "a party wishing to challenge the public use or public purpose, necessity, or authority for a taking must appear at the [initial] court hearing and state the objection or must appeal within 60 days of a court order."
[132] *See, e.g., Lundell v. Coop. Power Ass'n*, 707 N.W.2d 376, 382 (Minn. 2006) (upholding coops decision to condemn property for a communications tower rather than renegotiate a lease, and objecting a challenge to public purpose or necessity); *City of Duluth v. State*, 390 N.W.2d 757, 764 (Minn. 1986) (restating the "great weight" given to the condemning authority's determination of public purpose, reviewable only where actions are "manifestly arbitrary or unreasonable").

Xcel has no more evidence of improper City motive now than Xcel had in 2023 and 2024 when Xcel representatives sat next to Nobles representatives in public information meetings about the City's interest in municipalizing. Yet, Xcel failed to timely raise its claim of a public purpose challenge, and in fact stated to the Commission in its initial Comments dated April 7, 2025, that "Xcel does not procedurally challenge the City's initiation of a proceeding before the Commission pursuant to Minn. Stat. § 216B.45." [133] Following this, the Commission entered its Order for Hearing, stating that "Slayton has complied with the statutory prerequisites to purchase Xcel's property" and which did not identify public purpose as a dispute issue.[134] Xcel did not appeal this ruling, and only raises the alleged public purpose challenge after significant resources have been expended in the case.

As the Report properly observes, supported by Minnesota law, Xcel has waived its opportunity to bring a timely objection to the City's motives in this matter, even if it had valid evidence.

## III. CONCLUSION

The Commission should reject the arguments set forth in Xcel's Exceptions to the ALJ's Report. As described above and further elaborated in the City's Exceptions, briefing to the ALJ, and the testimony of its witnesses, the record evidence amply supports the City's methodology with respect to just compensation and the lost revenue determination that forms the main disputed issue in this case. The City's method appropriately acknowledges Xcel's obligation and ability to efficiently adjust its operations to mitigate damages from the acquisition, as firmly grounded in past Commission precent and the general law of damages. Conversely, Xcel's novel method that

[133] Xcel Energy's Initial Comments, filed April 7, 2025, at 2.
[134] Notice of and Order for Hearing, filed June 2, 2025, at 2.

attempts to replicate long-term replacement income is out of step with Commission precedent and even Xcel's own recent past analysis.

Accordingly, the Commission should decline Xcel's requested modifications and the ALJ's Report that wrongly adopts much of the flawed analysis of Xcel and the out of place framework approach of the Department of Commerce. The Commission should adopt the City's analysis as set forth in its prior briefing and incorporated into the City's proposed findings and conclusions.

Respectfully submitted,

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