BEFORE THE MINNESOTA COURT OF ADMINISTRATIVE HEARINGS
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FOR THE MINNESOTA PUBLIC UTILITIES COMMISSION
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In the Matter of the Petition of the City of Slayton for the Determination of Compensation for City Acquisition of Xcel Energy Electric Service Territory	MPUC DOCKET NO. E-002, PT-7157/ SA-25-129 CAH DOCKET NO. 25-2500-40870

REPLY BRIEF OF THE CITY OF SLAYTON

March 30, 2026

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I. INTRODUCTION

The ALJ and Commission should reject Xcel's model of damages. It erroneously overextends rate case principles in this just compensation dispute and circumvents the Commission's clear requirement to quickly and efficiently adjust and mitigate its damages.

II. REPLY ARGUMENT

The testimony and evidence strongly support the City's analysis as consistent with Commission precedent, grounded in straightforward logic, and fair to the parties and ratepayers. The City respectfully urges the ALJ and Commission to reject Xcel's inflated compensation demand and adopt the City's analysis in all respects.

A. Xcel Overextends and Misapplies Rate Case Methodologies Out of Context in this Just Compensation Proceeding

Xcel approaches compensation for loss of revenue using a model "based on the Class Cost of Service Study that is used to set rates in a rate case proceeding." [1] Xcel begins the loss of revenue section of its Initial Brief explaining that Xcel "is subject to cost of service ratemaking in Minnesota," and espouses the general principle of rate design intending to match revenue "to the cost of providing service, including a reasonable return." [2] Xcel then conflates this general ratemaking principle with an entitlement to perpetual compensation, to arrive at the unsupported conclusion that loss of $3 million in revenue from Slayton necessarily means that rates will need to increase by $3 million for remaining customers, "unless Slayton's exit reduces the shared costs of the system." [3] While that logic may make sense in the closed universe of a test year in a Class

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[1] Xcel Initial Brief at 44 (citing Peterson Direct at 21 – Table 3).
[2] Xcel Initial Brief at 26.
[3] *Id.* at 26-27.

Cost of Service Study ("CCOSS") study, it does not translate into *actual losses* or damages for net loss of revenue in this just compensation proceeding. In short, Xcel's model reflects a CCOSS analysis where its test year lasts forever and everything is fixed, rather than the dynamic and constantly changing organization and system that exists in reality.

As described further below, Slayton's approach is the only one that meaningfully analyzes the actual uncovered costs Xcel will experience *that are attributable to Slayton's departure*. The evidence shows these costs are related to loss of revenue for the partially underutilized portion of the Slayton substation, and that a five-year compensation period is an appropriate timeframe for payments.

a. Just compensation proceedings are fundamentally different from rate cases.

Although Xcel largely treats this as a rate case, this is a case about just compensation. Just compensation proceedings valuing the involuntary government acquisition of property are grounded in the Minnesota Constitution, Article I, Section 13, and the U.S. Constitution's Fifth Amendment.[4] In this case concerning Slayton's municipal acquisition of property from Xcel as a regulated utility, the case is also governed by Minn. Stat. § 216B.45 and the statutory factors that are required to be considered.[5] This statute clearly defines the scope of the inquiry at hand, requiring that the Commission "shall, by order, ***determine the just compensation*** for the property to be purchased by the municipality." [6]

As further described in Slayton's Initial Brief, the traditional measure of just compensation is that amount of money that will "put a property owner in as good as position pecuniarily as if his property had not been taken." [7] It is the "full and exact equivalent," in money, "for the property

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[4] Minn. Const. art. I, § 13; U.S. Const. amend. V.
[5] Minn. Stat. § 216B.45.
[6] *Id.* (emphasis added).
[7] *City of Moorhead v. Red River Valley Co-op. Power Ass'n*, 830 N.W.2d 32, 37 (Minn. 2013).

taken." [8] In proceedings where only a portion of the property is acquired (a "partial taking" as here), just compensation includes (1) damages for the value of the property actually taken and (2) severance damages to the remaining property resulting from the property actually taken.[9] Clearly, the objective and nature of the of the determination in this case is *markedly* different from the objective and nature of a rate case.

The burden of proof also reflects this difference. Although the government bears the initial burden to show the acquisition is necessary in furtherance of a public use or public purpose,[10] when it comes to the issue of compensation, the property owner as claimant bears the burden of proving damages from the acquisition, as in any civil action.[11] The Minnesota Supreme Court long ago addressed this, stating that the property "owner occupies the position of ordinary plaintiff in an action for the recovery of damages … and upon him rests the burden of proof to establish his damages." [12] Xcel's assertion that Slayton has the burden of proof in this case[13] wrongly conflates the question of whether the taking is permissible with the compensation determination. Tellingly, Xcel cites to no eminent domain case in which the government bears the burden of proof *as to compensation*. In both Minnesota and the federal courts, [14] the burden of proof clearly rests upon the owner to prove its damages. In this case, the ALJ and Commission should hold Xcel to its burden.

[8] *Moorhead Econ. Dev. Auth. v. Anda*, 789 N.W.2d 860, 876 (Minn. 2010) (quotation omitted).
[9] *Cnty. of Hennepin v. Laechelt*, 949 N.W.2d 288, 291 (Minn. 2020).
[10] Minn. Stat. § 117.075; *Itasca Cnty. v. Carpenter*, 602 N.W.2d 887, 889 (Minn. Ct. App. 1999) ("The condemning authority first has the burden of establishing that the taking is necessary."); *see also* pp. 48-50 *infra*.
[11] Minn. Stat. § 117.175, Subd. 1.
[12] *Minneapolis-St. Paul Sanitary Dist. v. Fitzpatrick*, 277 N.W. 394, 395 (Minn. 1937).
[13] Xcel Initial Brief at 14 (citing Minn. R. 1400.7300, Subd. 5).
[14] *U. S. ex rel. & for Use of Tennessee Valley Auth. v. Powelson*, 319 U.S. 266, 273 (1943).

b. Rate case methodology does not transition to automatic just compensation.

In marked contrast to this, rate cases have specific and technical purposes, and the CCOSS is a tool to those ends. Determination of just compensation for acquisition of property is decisively ***not*** one of those purposes. Xcel's rates are governed by Minn. Stat. § 216B.03, which require them to be "just and reasonable" and not unreasonably preferential or discriminatory.[15] In this context, any doubt as to reasonableness is resolved in favor of consumers, presumably against the utility seeking to increase rates.[16] The process for seeking a rate change (typically an increase in rates by the utility), is set out in Minn. Stat. § 216B.16. The Commission is required to consider specific factors, which generally include the need for adequate service, need for revenue sufficient to enable that service, including depreciation, costs of property, a reasonable return on investment, and construction work in progress, among other factors listed in the statute.[17]

In this context, the "burden of proof to show that the rate change is just and reasonable shall be upon the public utility seeking the change." [18] To include costs in the rate base, the utility has the burden to show, not only that it would incur the expense, but that it is "just and reasonable that the ratepayers bear the costs of those expenses." [19] If the utility does not meet that burden, the rates stay the same, unless the Commission fixes them.[20] The Commission has observed a policy prohibiting "single issue ratemaking," which generally refers to setting rates on the basis of one

[15] Minn. Stat. § 216B.03.
[16] *See id.*
[17] Minn. Stat. § 216B.16, Subd. 6.
[18] Minn. Stat. § 216B.16, Subd 4.
[19] *Petition of N. States Power Co.*, 416 N.W.2d 719, 723 (Minn. 1987).
[20] Minn. Stat. § 216B.16, Subd 5.

issue without careful deliberation to ensure just and reasonable rates. [21] The outcome of a rate case approves and fixes the rates over the applicable period.[22]

To determine reasonable rates in this context, the CCOSS is based on a "test year," which is defined as "the 12-month period selected by the utility for the purpose of expressing its need for a change in rates." [23] A test year is an estimate of a normal year, in which the utility looks at costs of service and then uses those costs to determine rates.[24] Under Minnesota's statute allowing multi-year rate plans, a utility can propose a rate plan for each year of the period, which cannot exceed five years.[25] The utility is required to provide a "general description of the utility's major planned investments over the plan period" and the Commission may set reasonable performance measures and incentives, but these measures do not create a binding entitlement to or limitation on revenues or expenditures.[26]

These foundational differences underscore the clear limitation of rate case principles in this just compensation proceeding. Rather than recognizing those differences, Xcel strains rate case logic past its breaking point in an attempt to maximize its damages by, among other things, treating its CCOSS as perpetual – which it obviously is not – and using rate case metrics developed for the state of Minnesota in the rate case context to evaluate loss of revenue from the City. As addressed below, the ALJ and Commission should critically analyze Xcel's loss of revenue model and the assumptions it relies upon, and ultimately reject Xcel's analysis.

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[21] *See, e.g., Shark v. Xcel Energy*, Docket No. E-002/C-03-18871, Order Amending Docket Title and Dismissing Complaint (Oct. 1, 2004) 2004 WL 2663208, at *7 (denying proposal for deferred accounting, because "crediting the deferred amount to ratepayers in the future rate[] case would violate the prohibition against single issue ratemaking.").

[22] Minn. Stat. § 216B.16, Subds. 5, 6, 19.

[23] Minn. R. § 7825.3100, Subp. 17.

[24] *See* Transcript at 128:13–21.

[25] Minn. Stat. § 216B.16, Subd 19.

[26] *See* Minn. Stat. § 216B.16, Subd 19(a).

c. Xcel's rigidly fixed historic view through the CCOSS lens is inapplicable to its dynamic business operations.

Xcel's approach to loss of revenue is based on the premise that Slayton is responsible for a "share" of all system assets and resources, and that Slayton customers must continue to "pay their fair share of the costs" even after they leave the Xcel system.[27] It then walks through each category of costs in its revenue requirement to evaluate whether costs in that category could be avoided. Xcel determined that a cost would be avoided in only two circumstances: if a specific cost demonstrably decreases after Slayton leaves (such as reduced fuel consumption) or if alternative sources of revenue could offset the revenue from Slayton (as with energy/capacity sales on the market).[28] As discussed in more detail below, this avoids any consideration of benefit to Xcel of internal adjustments that can be made to ensure resources stay utilized and productive to the same degree as before Slayton's departure.

Xcel's approach wrongly treats past planning and accounting decisions as inexorably fixed, when the evidence shows its system is dynamic and constantly changing and adapting. For example, Xcel witness Peterson agreed that the load on its system "fluctuates every minute of every hour of every day." [29] Load fluctuations occur due to weather, economic activity and time of day.[30] Ms. Peterson agreed that when those fluctuations occur, the load and energy instantly rebalance across Xcel's entire interconnected system.[31] So when a customer in Slayton turns off a light at the same time someone in Woodbury turns on a light, the load on the system stays the same.[32] Ms. Peterson agreed that when Slayton leaves Xcel's system, the four megawatts currently

[27] Xcel Initial Brief at 36.
[28] *Id.* at 42-43.
[29] Transcript at 133:12-15.
[30] *Id.* at 133:16-19.
[31] *Id.* at 134:5-9.
[32] *Id.* at 129:21-130:16.

serving Slayton will be available to serve other load in Minnesota.[33] And according to Xcel's Integrated Resource Plan (IRP), Xcel does not have abundant capacity, and has planned increases in generation, adding 422 megawatts in 2026, and another 367 megawatts in 2027.[34]

With this type of anticipated statewide growth, there should be little argument that Xcel will be able to use any freed-up capacity gained by not serving Slayton almost immediately. Ms. Peterson conceded this, agreeing that based on Xcel's Minnesota growth projections, growth in year one would exceed four megawatts.[35] Mr. Berg explained how this would allow Xcel to decrease future construction or procurements, and thereby ***avoid*** future costs Xcel would have otherwise experienced.

Yet Xcel's approach to lost revenue analysis does not consider this an avoided cost or otherwise account for this clear benefit to Xcel. In other words, because Xcel uses a closed-universe CCOSS model, intended to evaluate test-year costs during a snapshot in time, future cost reductions are not tracked or ever realized. To cover for this, Xcel simply asserts that "fixed production investments the company has already made are history, and cannot be changed." [36] Ironically, Xcel accuses the City of reliance on "conclusory statements and vague hopes that the Company would be able to find some way to save costs after Slayton leaves," and relies upon Xcel's view that *the City* holds the burden of proof, claiming it hasn't been met.[37]

To the contrary, it is *Xcel* that simply refuses to acknowledge the benefits of not serving Slayton. To the extent that Slayton could be accountable for an amorphous "share" of Xcel's system when evaluating costs, despite none of the assets and resources actually being limited to

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[33] Transcript at 134:10-16.
[34] Berg Rebuttal at 38–39 (citing Xcel's Integrated Resource Plan, Docket No. E002/RP-24-67, Table 3-4).
[35] Transcript at 135:9-12.
[36] Xcel Initial Brief at 51.
[37] *Id.* at 71.

use by Slayton, this "share" should also get the same treatment when evaluating the benefits future cost reductions. Put differently, Xcel agreed that nowhere in its analysis did it identify costs specific to Slayton.[38] Yet Xcel still attributes costs to Slayton, despite this. If a high degree of specificity is necessary, then the ALJ and the Commission should find that Xcel has not proven *any* costs are directly attributable to Slayton and the inquiry can end there.

B. Xcel's Damages Model Ignores, and is Contrary to, both the Facts and Commission's Unequivocal Requirement to "Mitigate" and "Adjust" to the Acquisition and the Facts

Xcel's model of damages flies in the face of clear Commission precedent requiring a utility to "mitigate its damages for loss of [] service rights as quickly and efficiently as possible." [39] As explained in the City's Initial Brief, the purpose of the lost revenue compensation is not to simply perpetuate income,[40] but to "defray expenses previously covered by revenues from the area" to prevent rate increases.[41]

Xcel argues that only few of its costs related to serving Slayton are avoidable, because it says Slayton's "share" of the Company's previous investments are indelibly fixed in history and those historic decisions cannot be changed." [42] This position relies on two key assumptions that are legally and factually wrong.

a. Slayton's alleged "share" of Xcel's system falls apart on inspection.

First, Xcel wrongly contends that Slayton is responsible for a "share" of all of Xcel's previous investments and resources,[43] even when Xcel's investments and resources are not at all specific to Slayton in any way. For example, with respect to generation and production costs, Xcel

[38] Transcript at 120:11-13 (Peterson).
[39] *City of Rochester II*, Order Determining Compensation at 6.
[40] *City of Rochester II*, Order Determining Compensation at 6, 8.
[41] *In re City of Olivia*, Order After Reconsideration at 5.
[42] Xcel Initial Brief at 49–50.
[43] *See, e.g.,* Xcel Initial Brief at 36, 48-49 (discussing "Slayton's $10 share"); Transcript of Evidentiary Hearing (Feb. 5, 2026) ("Transcript") at 109:16-24 (Peterson) (confirming view of revenue as "Slayton's share of cost").

argues that Slayton is "not large enough to impact the size, type, or timing of future generation additions." [44] Xcel acknowledges that its integrated resource planning is based on load across the entire system, and that electricity moves efficiently across its grid to serve the load where it is needed.[45] And Xcel stated that it does not have four megawatts of resources identified for Slayton.[46] Most tellingly, Xcel witness Peterson even conceded in cross examination that "***no where in my analysis did I identify costs specific to Slayton either.***" [47]

The record also establishes that Xcel's resources will continue to be productive, rather than underutilized. In addition to the above, Xcel witness Peterson testified that the four megawatts that is freed up from Slayton will be available to serve other load in Minnesota.[48] More generally, Ms. Peterson concedes:

> Q Part of Xcel's timing process with these is effectively shifting resources across the system all the time to try and stay as efficient and productive as you can, isn't it?
> A Yes.[49]

This same principle also applies to other physical assets and resources that make up the customer component in Xcel's modeling. On cross exam, the example of a bucket truck illustrated this point, and Xcel's flawed view on lost revenue compensation.

> Q So, for example, a bucket truck that is located in Slayton today would factor into ratemaking the same as if that bucket truck were located in Pipestone; right?
> A Yes.[50]
> …
> Q [I]f the bucket truck were in Slayton today and after the transfer the Company were able to relocate that to Pipestone, it would still be fully utilized both before and after the transfer. Under your methodology you'd still treat that bucket truck as a portion of loss to the company; right?

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[44] Xcel Initial Brief at 51.
[45] Transcript at 129:15-131:6 (Peterson).
[46] Transcript at 131:7-10 (Peterson).
[47] Transcript at 120:11-13 (Peterson); *see also, id.* at 133:8-11 ("Q Other than the distribution system in Slayton, there's nothing that's Slayton specific in Xcel's distribution system, is there? A No.").
[48] Transcript at 134:10–16 (Peterson).
[49] Transcript at 131:2-6 (Peterson); *see also id.* at 125:2-8 ("I think we will always want to run and plan our system as efficiently as possible.").
[50] Transcript at 129:10-14 (Peterson).

A I would treat that bucket truck, assuming the bucket truck is in our rates today, Slayton is paying a slice of that. The cost for that bucket truck still exists after Slayton leaves and they should be responsible for a portion of that for 20 years.
Q Regardless of whether or not it's fully utilized before or after the transfer.
A Yes.[51]

Factually, Xcel has not shown any cost burdens *from Slayton* or underutilized assets that would persist after the City leaves, other than the part of the Slayton substation that would be partially underutilized. Thus, the only "share" of costs Xcel has identified related to Slayton is a figment of Xcel's accounting and nothing more. It would be fundamentally inequitable to allow Xcel to assign Slayton a share of Xcel's continued costs after it leaves the system, while Xcel continues to use the resources effectively. The ALJ and Commission should reject the proposition that Slayton is responsible for carrying a continued "share" of Xcel costs for resources that are not specific to Slayton.

The only part of Xcel's system that is Slayton-specific is the distribution system *in Slayton*. Because this is being acquired by the City for the book value of the assets, no costs related to those assets would continue after the purchase is complete.[52] Yet Xcel counts only 0.1% of Slayton customer-contributed distribution costs as avoidable.[53] Xcel rationalizes this extreme conclusion by claiming that "[t]he revenues currently paid by customers in Slayton are not directly related to the distribution system in Slayton. They represent Slayton's share of the shared cost of the statewide distribution system." [54] Xcel then deducts the net book value of the Slayton assets from the statewide distribution costs, resulting in the 0.1% conclusion.[55] In other words, Xcel assigns *all the revenue* from Slayton customers to costs of non-Slayton assets. It then only gives Slayton

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[51] Transcript 141:22–142:10 (Peterson).
[52] Berg Direct at 23, 30-31.
[53] Peterson Surrebuttal, Schedule 1 at 6.
[54] Xcel Initial Brief at 61.
[55] Peterson Rebuttal at 28–29.

credit for the minimal 0.1% of the entire local system that Slayton represents. This supposed attribution of revenue is simply an accounting choice by Xcel. If applied to all customers across the entire system, it would mean that every customer pays for all other customers' distribution assets, but never assets actually related to their own service. Put differently, this method inappropriately treats Slayton customers as shareholders for purposes of downside costs they must pay, but not for purposes of upside cost-savings that would offset those payments.

Accounting this way, Xcel inappropriately minimizes the upside cost savings for not owning the Slayton distribution system. The parties agree that the assets have a net book value of approximately $3.2 million.[56] Assuming straight line depreciation over a 30-year period, that would equate to avoided depreciation costs of approximately $106,666 per year. This number does not even include the other avoided operations and maintenance costs or Xcel's return on investment for those City acquired assets. Again, it bears emphasis that the City tried to analyze costs associated with serving Slayton, "the specific area" being acquired,[57] and was repeatedly told that Xcel did not maintain records in that format, and that the data was not relevant or proportional to the case anyway.[58] Yet, Xcel decides to account a total only a total of $254.54 in avoided distribution costs to Slayton per year.[59]

In sum, Xcel's methodology inappropriately assigns Slayton a share in the costs of everything and the benefit of nothing, while simultaneously making Xcel the sole arbiter of cost avoidance. The ALJ and Commission should reject Xcel's approach as erroneous, unfair, and unsupported by evidence.

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[56] Berg Rebuttal at 2; Peterson Direct at 10.

[57] *In re City of Buffalo*, Order Determining Compensation at 8 (describing Commission's analysis being "to determine as precisely as possible the direct financial impact of losing service rights to the specific area being annexed"); *see also, 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").

[58] *See, e.g.,* Berg Direct, Xcel Responses to Slayton Information Requests No. 43, 47, 51.

[59] Berg Surrebuttal at 25.

b. Evidence and logic amply show that Xcel can adjust its operations to account for the lost territory.

Second, the evidence strongly refutes Xcel's second key assumption that the historic asset-related decisions are immutable and unchangeable. Xcel repeatedly states that it "made investments and planning decisions based on its expectation that it would continue to serve Slayton," [60] and argues that it cannot " 'adjust' its way out of the many investments it has made to provide service." [61] This assumption undergirds Xcel's entire lost revenue model. And as it relates the issue of revenue – this assumption is demonstrably wrong.

The City witnesses Mark Fritsch and David Berg have provided multiple examples of things that Xcel can do to adjust its system to ensure that its resources and assets are utilized to the same extent as before the acquisition. While it is a truism that Xcel cannot "change history" regarding the initial decision to acquire or construct an asset, Xcel ignores the converse truism that it can and certainly must make future business decisions about how and where assets are deployed, and when and whether they are retired or replaced, to make sure its assets and resources are used efficiently.[62]

To recap some of the examples the City provided of adjustments Xcel could make:

- **Employees**: Xcel's has approximately 4,617 employees in Minnesota and, as of November 2025, was advertising for 50 positions in Minnesota. Mr. Berg explained that with such a large workforce, Xcel could adjust its workforce by adjusting hours of part-time employees, moving personnel within the Xcel system,[63] or delaying/deferring new hires.[64]

- **Equipment**: Xcel has an extensive fleet of equipment that can be allocated where needed and moved from areas where not needed, and Xcel can adjust equipment purchases.[65]

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[60] Peterson Direct at 42; *see, e.g.,* Xcel Initial Brief at 36; Peterson Direct at 13, 45; Peterson Rebuttal at 10-11, 15-16, 19; Peterson Surrebuttal at 29-30.
[61] Xcel Initial Brief at 47; *see also,* Peterson Rebuttal at 10.
[62] *See* Transcript at 142:23–24 (Peterson) (agreeing "yes, we will always try to run our company efficiently").
[63] Berg Direct at 44.
[64] *Id.* at 35-36; *see also* Berg Surrebuttal at 9 (explaining that Mr. Berg "never suggested laying off employees").
[65] Berg Direct at 44.

- **Energy**: Xcel has the options to redirect energy to other customers within its system, reduce the amount of purchased energy, and sell excess energy in the MISO markets or real-time markets.[66]

- **Capacity**: It is undisputed that Xcel's overall system is in a period of anticipated growth,[67] and that Xcel is in the midst of "transforming [its] generation fleet." [68] The data shows that Xcel's planned increase in generation from 2025 to 2026 would result in adding 422 megawatts in 2026, and another 367 megawatts in 2027.[69] Based on this, Mr. Berg concludes that the four megawatts of capacity currently serving Slayton would simply reduce the otherwise planned-for increase in new capacity.[70] Given Xcel's projected shortfall in capacity, Mr. Berg concludes Xcel will certainly make use of the 4 megawatts of freed up capacity from not serving Slayton.[71]

  Additionally, Xcel can sell any excess capacity it may have in the MISO capacity markets.[72] Xcel witness Dr. Sun conceded that capacity prices are currently higher than they have been over the historic averages, and that Xcel accordingly changed the anticipated value of capacity sales in its rate case to reflect an additional $76 million over two years.[73]

Further, testimony from former Xcel employee Mark Fritsch also described Xcel's "powerful adjustment capabilities as a large, publicly traded and vertically integrated IOU." [74] He explained that in his personal work experience ***at Xcel***, he "was responsible for adjusting fixed costs by making cost control measures due to budget impacts from changes in load, actual and projected revenue loss, and negative rate case outcomes. These included staffing, maintenance, operations, and capital project reductions." [75] Mr. Fritch described his history in management roles at both Xcel and the smaller municipal Owatonna Public Utilities (OPU), and explained that when he was CEO/General Manager at OPU he "regarded load losses of 1% or less of [OPU's] total load

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66 Berg Direct at 44; Transcript at 78–79, 89.
67 Berg Direct at 45–46.
68 Berg Rebuttal at 28 and Attach. K at 2 (quoting Xcel witness Amy Liberkowski from Xcel's general rate case)
69 Berg Rebuttal at 38–39 (citing Xcel's Integrated Resource Plan, Docket No. E002/RP-24-67, Table 3-4).
70 Berg Rebuttal at 39; *see also* Berg Direct at 24–27 (discussing the lack of abundant capacity during periods of anticipated growth, as examined in *In re City of Rochester II*, No. SA-93-498, Order After Reconsideration).
71 Berg Direct at 26 (citing Xcel's Integrated Resource Plan, Docket No. E002/RP-24-67, Table 3-4).
72 Berg Direct at 27.
73 Transcript at 183–187.
74 Fritsch Rebuttal at 14; *see also id.* at 12-13.
75 Fritsch Rebuttal at 14.

to allow a number of non-rate increase adjustments that could be made within a short time." [76] Mr. Fritch identified common non-rate increase adjustments, including delays in filling open positions and capital expenditures and reducing expenditures for travel, consulting, and overtime.[77] Importantly, Mr. Fritch testified that when "load growth exceeded [the] loss, OPU's monthly planning and year end forecasts could easily manage load loss within its first year." [78]

Xcel witness Peterson also agreed that Xcel had the capability to make many of these kinds of adjustments. With respect to employees, Ms. Peterson agreed that Xcel could adjust employee hours, start dates, assigned locations, and overtime.[79] Ms. Peterson agreed that equipment like bucket trucks and meters from Slayton could be moved to other communities.[80] She agreed that taking the approximately 900 meters that previously served Slayton, and moving those to other locations for other customers would mean that the company would not have to buy 900 new meters.[81] As previously noted, Ms. Peterson agreed that resource planning for generation capacity is conducted across Xcel's system and that energy travels where it is needed.[82] She also agreed that when Slayton leaves the system, the four megawatts of generation that was serving the city would become available to serve other load.[83]

Ms. Peterson also agreed that resource planning alone did not mean that a project could not be canceled or delayed.[84] When asked about specific examples of changes to previously planned projects, such as the delays in repowering two generators at the Black Dog power plant, or the

[76] Fritsch Rebuttal at 15.
[77] *Id.* at 15.
[78] *Id.* at 15.
[79] Transcript at 145–147.
[80] *Id.* at 141–142, 147–148.
[81] *Id.* at 147:22–25.
[82] *Id.* at 129:15-131:6.
[83] *Id.* at 134:10–16.
[84] *Id.* at 131:11–22.

delays in submittals for the Ten Mile Creek solar project, Ms. Peterson was not aware of those.[85] Similarly, when asked about whether Xcel could adjust planned projects based on business judgments and evaluation of the current realities in effect at the time, she conceded that was not something within her area of expertise to testify on.[86] Xcel witness Dr. Bixuan Sun also agreed that the estimates used for developing resource plans are just estimates, and that inclusion of a project in a resource plan does not guarantee that a project will ultimately be constructed or deployed.[87] Additionally, Dr. Sun agreed that both new generation project timing can change, and that existing resources can be retired months earlier or later due to the Company's business needs at the time.[88]

In sum, the evidence dramatically underscores Mr. Berg's conclusion that Xcel can adequately adjust its operations to mitigate the loss of Slayton's sales, and that Xcel will therefore avoid carrying forward any costs for Slayton, beyond the portion of the Slayton substation that would be underutilized.[89] With Ms. Peterson's concession that she lacks expertise on Xcel's business judgment and ability to adjust its present operations, Mr. Fritsch's first-hand knowledge and experience about Xcel's adjustment capabilities should hold significant weight with the ALJ and Commission.

c. Xcel's financial model suffers from multiple specific and fatal flaws.

Xcel claims that its financial model uses a "reasonable growth rate for three key data points" of 1) rates charged, 2) number of customers in Slayton, and 3) usage per customer.[90] It uses these exaggerated growth claims to achieve a conclusion of $92.5 million in lost revenue over

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[85] Transcript at 131:23–132:11.
[86] *Id.* at 132:12–22.
[87] *Id.* at 179:2-180:1.
[88] *Id.* at 180:2-181:1.
[89] Berg Direct at 23–31.
[90] Xcel Initial Brief at 38-39.

its requested 20-year revenue period.[91] In a small rural city of approximately 2000 residents, this would equate to a payment of $46,250 from every single resident of Slayton. When present valued with Xcel's very low discount rate, and then spread over equalized yearly payments, this allows Xcel to conclude a requested *net loss* of revenue payment in year one ($3.15 M) that *exceeds* yearly *gross* revenues from Slayton.[92]

i. *Xcel's inclusion of predicted yearly increases in its own rates exposes the structural error in Xcel's approach.*

Xcel's lost revenue model includes yearly increases in the rates charged to customers over its requested 20-year compensation period.[93] Xcel's Initial Brief asserts that the City did not dispute the Company's estimate of yearly rate increases, so its estimates must be taken as reasonable.[94] The City does not dispute that Xcel will almost certainly continue to seek rate increases in the future, or seek to quibble with the percentage. That is not the point. Instead, it is *Xcel's use of a positive rate growth factor itself*, rather than the particular number that illustrates the fundamental failing in Xcel's model.

Xcel's Initial Brief repeatedly doubles down on its premise that lost revenue is intended to cover Slayton's "share" of Xcel's investments for past investments in infrastructure, and that these past investments are unaffected by future decisions.[95] This sharp past/future distinction is fundamental to Xcel's entire model.[96] Xcel states, "Because the lost revenue calculation is based

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[91] Xcel Initial Brief at 41-42.

[92] *Compare* Xcel Initial Brief at 92 ($3.15 M yearly lost revenue payments), *with id.* at 26 (approx. $3.0 M gross revenue).

[93] Peterson Surrebuttal, Schedule 1 at 1-5.

[94] Xcel Initial Brief at 41.

[95] *See e.g.,* Xcel Initial Brief at 36 ("These investments were planned and constructed with the expectation that customers in Slayton would pay their fair share of the costs for the entire life of the investments."); *id.* at 50 (arguing future procurement reductions "would not change any of the numbers in the lost revenue requirement because they are based on the current revenue requirement.")

[96] Xcel Initial Brief at 51 ("The fixed production investments the Company has already made are history and cannot be changed.").

on the current revenue requirement, changes to future resources procurements would not have any impact on the lost revenue calculation." [97]

The critical point here is that, if Xcel were consistent with its stated approach, the rate factor would either ***consistently decrease*** as the historic "Slayton-shared" assets are depreciated and retired, or at a very minimum the rate would ***stay flat*** after Slayton left the system and no new "Slayton-shared" assets or resources are constructed or procured. And yet, Xcel increases the rates for Slayton year over year in its model. This means that, by Xcel's own logic, and at the same time contrary to it, Slayton would be paying for a "share" of ***new*** assets and resources that are brought online ***after*** Slayton leaves, and which will never have anything to do with providing service to customers in Slayton.

Once again, Xcel's model charges Slayton with all the conceivable downside costs it can potentially attribute related to service, while simultaneously ignoring all of the upside cost-savings that would be associated with Slayton's departure. In response to this, Xcel's Initial Brief tries to deflect by painting the City as a bad climate actor, seeking to avoid Xcel's future investments in renewable energy in favor of more carbon intensive generation.[98] Xcel utterly misses the point. By Xcel's own logic, Slayton customers should not have to pay for ***any future investments*** Xcel makes ***after Slayton leaves the system*** – renewable or otherwise. The renewable transition simply provides a neat example of this, as Xcel agrees these resources are being built out in the future, and concedes that part of the future rate increases are designed to pay for those.[99] Ms. Peterson conceded this on cross-examination:

> Q …[I]f Slayton stays on the system they'll have to pay for the increases in generation costs related to the renewable transition; right?
> A Yes. Just like all of our other customers will.

[97] Xcel Initial Brief at 33.
[98] *Id.* at 23 (citing Transcript at 140 regarding future increases in generation costs related to renewable transition).
[99] Transcript at 138–140 (Peterson).

Q But if they leave they won't get any credits for the fact that Xcel won't incur additional charges for them; right?
A I suppose that's the case.

In other words, Xcel's justification that it made investments and plans "with the expectation that customers in Slayton would pay their fair share of the costs for the entire life of the investments" [100] is little more than a thematic hook with no consistent application in its actual lost revenue computations. Additionally, to the extent that Xcel planned for Slayton to stay on its system forever,[101] that assumption ignores the fact that municipalities have a statutory right to leave and form a municipal electric utility, pursuant to Minnesota Statutes Sections 216B.45 and .47. Xcel may have a *near* monopoly within its assigned territory, but Xcel's rights are qualified by the right of municipalities to acquire Xcel's assets and service territory. As Slayton has shown, it would not be reasonable to simply assume that cities will never exercise these rights. And certainly Xcel can have *no expectation* that Slayton would continue to pay for a "share" of new resources that are constructed or acquired during the 20 years *after* Slayton leaves Xcel's system.

ii. Xcel's customer and usage growth assumptions are inflated and not based on Slayton data.

Xcel's proffered customer and usage estimates are simply system averages of the type the Commission has repeatedly rejected.[102] Xcel is clear these estimates are taken from Xcel's sales forecasts its rate case, which are developed for the entire state of Minnesota and have little predictive value for the small rural City of Slayton, especially out over a 20 year period.[103] Xcel

[100] Xcel Initial Brief at 36.
[101] *Id.* at 29 (stating "the Company will lose that revenue forever").
[102] *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."); *see also,* Slayton Initial Brief at 8 (collecting cases focusing on examination of the specific area being acquired).
[103] Peterson Direct at 19.

witness Peterson conceded as much when questioned about the growth rates and the discount rate she selected for her financial model:

> Q Do you believe you can successfully predict the markets regarding these three factors out for the next 20 years?
> A I cannot. I believe that the Company has reasonable estimates.[104]

It bears note that the growth estimates in the rate case context are just used to forecast usage for purposes of planning and developing the revenue requirement, and are not meant to precisely predict earnings or value property. In other words, if the growth projections in the rate case are wrong, whether higher or lower, Xcel still gets paid based on actual sales rather than the estimate. It also makes sense to allow conservatively higher growth predictions in this context, to ensure there are adequate resources. These growth estimates do not predict revenue with any reasonable degree of certainty for Minnesota generally, let alone for the community of Slayton.

In contrast, the City has offered evidence of historic population and electricity usage data ***for Slayton***, compared to the rest of the state of Minnesota. These trends show that while the Minnesota population has grown over the last census period (+7.6%), the population has declined in both Murray County (–6.3%) and in the City of Slayton (–6.5%).[105] The City also provided its Land Use Plan from 2016, which further confirms these downward trends as "consistent with the majority of cities and counties in Development Region 8." [106] The Land Use Plan also contains population projections for Murray County which anticipate a similar overall downward trend.[107] The evidence of electric usage in Slayton over the last decade also showed an overall flatline trend, with minimal variation.[108] This evidence shows an obvious divergence between Slayton and the

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[104] Transcript at 169:14–18 (Peterson) (Ms. Peterson did not explain further on what basis she concluded the Company's rate case estimates were "reasonable" in this context.)
[105] Berg Rebuttal at 7–8.
[106] Berg Rebuttal, Attached City IR Response No. 19, at Slayton 0000081 (PDF page 198).
[107] *Id.* at Slayton 0000083–84 (PDF pages 200-201).
[108] Berg Rebuttal at 7, Attached Xcel IR Response No. 81.

rest of Minnesota, which makes logical sense given the booming areas of growth in the Twin Cities metro and Rochester driving the statewide averages up.

Xcel tries to attack Slayton's no growth conclusion by saying that "it has not introduced any evidence to suggest that historical trends will continue in the future." [109] The City acknowledges the historic evidence is historic, the Land Use Plan is dated, and that growth and usage are uncertain. Yet all projections must include historical data and trends to form the basis for the prediction. To deal with this uncertainly, and as used by the Commission in Section 216B.44 compensation decisions, the City is proposing a mill rate basis for compensation that does not rely on projections, and instead relies on actual sales. Certainly the City has produced evidence that tends to show that Xcel's rosy future of growth in both customers and usage in Slayton is contradicted by recent history.

iii. Xcel's inordinately low discount rate is yet another example of Xcel's overreaching for maximum damages.

Xcel stands on its requested discount rate of 6.51% based on its weighted average cost of capital, used to present value the future lost revenue calculation.[110] It says the City did not "raise any concerns" about this issue in written testimony, suggesting it should be taken as undisputed.[111] The City already addressed this issue in its Initial Brief, explaining the obvious differences between these two metrics and the magnitude of the importance, [112] and the City will not reargue that here. But it is important to note that the City did not set out to prove an alternate discount rate, and has no duty to do so, since the City is not requesting a present value lump sum loss of revenue award, and in fact disagrees with that approach in this case. The City did not need to put in

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[109] Xcel Initial Brief at 40.
[110] *Id.* at 70.
[111] *Id.*
[112] Slayton Initial Brief at 26–27.

testimony of an alternate discount rate to raise valid criticisms of Xcel's selected rate during the evidentiary hearing and in the City's Initial Brief. Especially when the issue relates to fundamental economics with which the ALJ and Commission are readily familiar. The City did not concede the discount rate issue by not trying to prove an alternate rate in testimony and reiterates that Xcel's overreach on this issue is another example that demonstrates the lack of credibility in Xcel's financial model.

iv. The ALJ and Commission should completely reject Xcel's faulty loss of revenue model.

Xcel asserts that its lost revenue model is "clearly explained, transparent," and supported by "experienced, qualified experts." [113] This could not be further from the truth.

Xcel's approach and methodology for evaluating and estimating lost revenue is flawed to the very core. It overextends rate-making principles out of context in this just compensation case, resulting in a model that is structurally incoherent, and uses system average growth assumptions and an out-of-place discount rate to maximize revenue, while ignoring or minimizing any cost savings associated with not serving Slayton.

After being caught in one of the more egregious examples of its overreach with respect to transmission costs, Xcel says that its changed position on transmission being 100% avoidable should be seen as "demonstrating the Company's commitment to careful analysis." [114] The suggestion that the largest electric utility in the upper Midwest did not understand how its own transmission costs are paid – and did not take the time to fully evaluate this issue internally until *after* the City of Slayton found and submitted testimony from one of the preeminent transmission

[113] Xcel Initial Brief at 71.
[114] *Id.* at 70.

experts in the field [115] – should tell the ALJ and Commission volumes about where Xcel's commitment in the case lies.

As in *City of Rochester II*, the ALJ and Commission should reject Xcel's deeply flawed loss of revenue methodology as "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." [116]

C. Xcel's 20-year Compensation Period Breaks from Commission Precedent and Xcel's Past Practice Without Adequate Factual Support

Xcel continues its proposal to double the 10-year lost revenue payment period previously used by the Commission, maintaining that if Slayton exits Xcel's system "the Company will lose that revenue forever." [117] This is inconsistent with Xcel's own recent, publicly disseminated and unqualified position of 10 years in matters of municipal acquisition of Xcel territory,[118] Commission precedent,[119] and is not adequately supported.

In contrast, Slayton witnesses Berg and Fritsch identify multiple adjustments and mitigation steps that Xcel can and does take to plan and adjust to changing utility realities within five years.[120]

a. Xcel's 20-year conclusion is contrary to Commission precedent and facts.

First, in its brief, Xcel chooses to ignore the Commission's strongly worded and unmodified expectation that utilities must "adjust" when their assigned exclusive service territory granted by the Legislature is acquired by municipalities pursuant to statute.[121] As previously cited, the Commission in *Rochester II* soundly rejected the cooperative's attempt to lengthen the 10-year

[115] Transcript at 153 (Peterson.)
[116] *City of Rochester II*, Order After Reconsideration at 7 (emphasis added).
[117] Xcel Initial Brief at 29.
[118] Fritsch Rebuttal Testimony at 9-10, Att. A, B, and C.
[119] *City of Rochester II*, Order Determining Compensation at 8; Order After Reconsideration at 7.
[120] Berg Direct at 26-27, 35-36, 44-46; Berg Rebuttal at 39; Fritsch Rebuttal at 11-15; Transcript at 78-79, 89 (Berg).
[121] Xcel Initial Brief at 21-71 (Lost Revenue).

lost revenue payment based on the "perpetuity" of loss with this multi-faceted displaced utility obligation, 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.***" [122]

The Commission reiterated this position in rejecting the cooperative's motion for reconsideration on this issue, citing in addition the Commission's policy to avoid "speculative" awards based on assumptions too far in the future.[123] No subsequent Commission has modified or qualified this obligation to adjust and mitigate. Further, the *Rochester II* cooperative's arguments justifying the payment period were based on facts decidedly not in the record here – a municipality acquiring high growth, high density and profitable new areas identified by an expanded city (Rochester) municipal utility, and the cooperative's accusation of "cream skimming." [124]

Notably, Xcel does not distinguish *Rochester II* or even cite it in this context. Instead, it rests on its assertion that it loses these revenues are lost "forever" and cites only out of state FERC decisions referring to lengthy planning periods.[125] If any Minnesota electric utility has the experience and capability to "quickly and efficiently" adjust to and mitigate "new service realities" it is Xcel. Slayton is not a growing metro area "cream skimmed" from Xcel's more profitable service areas. It is a small, rural area not close to any larger out-state metro area served by Xcel and subject to proven growth, such as Mankato or St. Cloud.

Xcel's response to the Commission's policy stated in *Rochester II* is, in effect, that Xcel cannot be expected to adjust to the new service realities after Slayton leaves, or mitigate its

[122] *City of Rochester II*, Order Determining Compensation at 6 (emphasis added); Slayton Initial Brief at 11.
[123] *City of Rochester II*, Order After Reconsideration at 7.
[124] *City of Rochester II*, Eicher Surrebuttal at 13–14.
[125] Xcel Initial Brief at 29-30.

damages from the loss of these service rights quickly and efficiently, because it is "forever" harmed.[126] Therefore, Xcel is willing to settle for a 20-year planning period.[127]

Contrary to Xcel's contention,[128] Slayton has provided ample and firsthand experience-based evidence of Xcel and a municipal utility's ability to adjust quickly and efficiently to mitigate "new service realities." Mark Fritsch testified on behalf of Slayton. He has held relevant, managerial positions requiring utility adjustments at both Xcel and Owatonna Public Utilities (gas and electric).[129] He has described the planning periods employed by Xcel, including five-year and annual plans, used for budgeting "system expansions, upgrades for capacity, reliability and power quality." [130] Within those budgets are "age-related replacements and asset renewal and grid modernization." [131] Those additions and subtractions are the stock and trade of public utilities responding to the many variables in providing regulated electricity service such as "changes in load, actual and projected revenue loss, and negative rate case outcomes." [132]

Mr. Fritsch's unrebutted or cross-examined testimony provides first-hand observation and experience ***at Xcel*** in planning and directing measures that allowed Xcel adjustments to changes "within a five-year timeline" and further adjusted "through Xcel's yearly milestones" [133] Mr. Fritsch had similar experience at the Owatonna Municipal Utilities (OPU) and testified to a standard of less than one percent of "total load" loss allowing for these "non-rate" adjustments to mitigate for the loss within a short time frame.[134] The record in this case shows that Slayton

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[126] Xcel Initial Brief at 29.
[127] *Id.* at 29, 37.
[128] *Id.* at 43 (accusing the City of offering "wishful thinking and generalized statements about avoiding some set of identified costs using unexplained methods").
[129] Fritsch Rebuttal at 2-3.
[130] *Id.* at 12-13.
[131] *Id.* at 12.
[132] *Id.* at 14.
[133] *Id.* at 14.
[134] *Id.* at 15.

represents ***less than one tenth of one percent*** of Xcel's Minnesota annual sales[135] —a fractional load loss of ***far less*** than 1%. Mr. Fritsch concluded that a five-year compensation period would be "more than reasonable" to allow Xcel to adjust and mitigate for the loss of Slayton load.[136] Similarly, Mr. Berg testified that the most relevant planning period for the loss Xcel will experience from a Slayton acquisition is Xcel's five-year IDP.[137]

In addition to Xcel's decision not to cross-examine Mr. Fritsch's testimony, Xcel does little to specifically tie its 20-year proposal to the Slayton acquisition. Rather, Xcel's approach is a general discussion of "the time horizon for the Company's planning processes, and the expected life of the investments that make up the costs Slayton's revenues are paying for." [138] It describes the general planning process and repeats the assertion that, "Once projects are constructed, they are in the ground, and their costs will not disappear just because one community exits the system." [139] Xcel can only dispute Slayton's use of the 5-year Action Plan by pointing out that it is part of the 10-year IDP plan,[140] without stating why the five-year period for a Slayton acquisition cannot be used to quickly and efficiently adjust to its new reality of losing a load as small as Slayton's, and with no use of Slayton-specific growth data to project a reasonable expectation of that lost load growing.[141]

Further, Xcel continues to justify its lengthy revenue "adjustment" period by repeated reference to the expected life of the poles, towers and fixtures that will be purchased by Slayton under the statutory formula.[142] If Xcel does not believe that payment of original cost minus

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135 Berg Direct at 45 (showing Slayton' sales in 2024 accounting for 0.071% of Xcel's total Minnesota sales).
136 Fritsch Rebuttal at 15.
137 Berg Direct at 47-48; Berg Rebuttal at 27.
138 Xcel Initial Brief at 29, *et seq.*
139 *Id.* at 33.
140 Xcel Initial Brief at 34-35.
141 *Id.* at 38-39 (using statewide averages from Xcel's current rate case).
142 *Id.* at 34-35.

depreciation for those facilities is sufficient compensation, it should seek amendments to the statutory formula. Useful life periods of facilities that are purchased as a specific element of Section 216B.45 should not be used as argument to lengthen the lost revenue payment period.

b. Xcel's reliance on the two FERC cases erroneously applies pre-MISO logic in a post-MISO generation and transmission world.

Xcel continues to cite two FERC decisions under the Federal Power Act to justify its reference to asset lives and a 20-year compensation period.[143] Xcel argues that these cases "confirm[] that the lost revenue time period should be based on the utility's actual planning horizon." [144] Xcel's cursory analysis of these cases skips straight past two crucial differences.

First, these cases arose during the transitional period *after* open access to transmission was provided by FERC Order 888 in 1996, but *before* competitive market-based open access to generation was established in the early 2000s.[145] The *City of Alma* case was commenced with FERC in January of 1997.[146] The *City of Las Cruces* case was filed with FERC in December of 1996.[147] As Mr. Berg explains in his Rebuttal Testimony, MISO market operations began in April of 2005, and New Mexico did not open the generation market to competition until approximately 2001.[148] Before this, every utility was responsible for its own generation.[149] As Mr. Berg further explained in the Evidentiary Hearing, "That has all changed now because planning for generation is done on a regional basis[.]" [150] For example, Xcel does a regional IRP to fit all its generation

[143] Xcel Initial Brief at 30 (citing *City of Las Cruces, New Mexico v. El Paso Electric Company*, 87 FERC ¶ 61,201 (May 26, 1999); *City of Alma, Michigan*, 96 FERC ¶ 61,163 (July 30, 2001).
[144] Xcel Initial Brief at 30.
[145] *See* Berg Rebuttal at 22–23.
[146] *City of Alma, Michigan,* 96 FERC ¶ 61,712.
[147] *City of Las Cruces, New Mexico*, 87 FERC ¶ 61,745.
[148] Berg Rebuttal at 22 (citing Attachment J, summary of the New Mexico legislation).
[149] Transcript at 88:6–10 (Berg).
[150] *Id.* at 88:11–12 (Berg); *see also id.* at 87:11–89:24 (explaining the market changes in more detail); Transcript at 126:5–17 (Peterson) (agreeing with the intervening market changes).

within the MISO market, and utilities can buy and sell into the markets in real time.[151] Consequently, the concept of stranded generation "isn't even talked about anymore at FERC, because there are markets." [152] Thus, it would be inappropriate to apply the pre-market logic to post-market realities.

Second, the FERC cases only allow for recovery of a "***stranded cost***" that is "***legitimate, prudent, and verifiable***." [153] Xcel has not even attempted to meet this standard – and in fact has disavowed it.[154] The City of Slayton is the only party that has used a "stranded cost" approach to the evaluation of net lost revenue in this case.[155] Conversely, Xcel's narrow definition of cost avoidance only considers a cost avoidable if Xcel either "identified ***a specific cost that would be shed*** or an ***alternative revenue stream related to a specific cost***." [156] As Ms. Peterson made clear on cross-examination, Xcel's analysis does not include ***any*** consideration of whether an asset remains fully utilized after the transfer.[157] This comes nowhere near the kind of proof needed to show a cost is stranded under the FERC rubric, which is not applicable to this situation in any

[151] Transcript at 89:3–18 (Berg).
[152] Transcript at 87:25–88:2 (Berg).
[153] 18 C.F.R. § 35.26(b)(1) and (5); *City of Alma, Michigan,* 96 FERC ¶ 61,711; *City of Las Cruces, New Mexico*, 87 FERC ¶ 61,745. Both cases open by stating: "In Order No. 888, the Commission permitted public utilities and transmitting utilities to seek recover of legitimate, prudent and verifiable stranded costs associated with providing open access transmission and transmission services under Section 2*ll* of the Federal Power Act (FPA)." *Id.*
[154] Transcript at 142:5–10 (Peterson) ("The cost for that bucket truck still exists after Slayton leaves and they should be responsible for apportion of that for 20 years. Q. [by Weir] Regardless of whether or not it's fully utilized before or after the transfer? A. [by Peterson] Yes.").
[155] *See, e.g.,* Berg Direct at 18 ("Any costs that are not avoided following the acquisition, essentially 'stranded costs,' would be used to calculate a per kWk 'mill rate' for the basis of a net loss of revenue payment to Xcel."); id at 30–31 ("cost categories are separated into avoided costs and non-avoidable costs (stranded costs)"); Berg Rebuttal at 15 (further explaining the importance of the stranded cost analysis related to transmission).
[156] Transcript at 115:12–16; *see also* Xcel Initial Brief at 47 (erroneously citing Minn. Stat. § 216B.45 as the basis for this constricted view of avoided costs that appears nowhere in the statute).
[157] Transcript at 142:5–10.

case.[158] The Commission should firmly reject Xcel's resort to inapplicable and out of context FERC cases to justify lengthy revenue periods.[159]

In summary, Xcel is simply wrong when it claims that Slayton has not shown that Xcel can and should adjust and mitigate for any losses within five years of a Slayton acquisition.[160] Rather, it is Xcel that has not shown why it cannot adjust within five years, and needs 20 years to account for a loss of less than one tenth of one percent of its system load, without raising rates to its remaining customers.

D. Xcel's Present Valued Lump Sum Payment from a 20-Year Compensation Period Disregards Commission-approved Use of Mill Rates and Sound Policy Against Speculative Awards.

Xcel continues to propose the use of a lump sum net lost revenue amount present valued from its 20-year period of proposed Slayton payment, [161] rather than the Commission's accepted and employed mill rate applied to actual future sales. With its 20-year period and projected lump sum approach, Xcel's proposal contradicts both Commission policy of avoiding erroneous fixed projections to the detriment of one party or the other,[162] and basing a compensation award on "speculative" amounts.[163]

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[158] 18 C.F.R. § 35.26.

[159] Additionally, the two FERC cases themselves also uniformly warn that they are "limited to the particular facts and circumstances" of the unique case and are "not intended to have generic application" in future decisions. Berg Rebuttal at 22–23 (quoting identical language in both cases).

[160] Xcel Initial Brief at 27.

[161] Xcel Initial Brief at 71.

[162] *In re City of Redwood Falls*, Order Determining Compensation at 4 ("Because of the uncertainty of future events, payment of a large sum at the beginning of a compensation period subjects both the existing utility and the municipality to great risk that the sales forecasts (indeed, the forecasts of customer locations) will be wrong. This risk is mitigated, to a great extent, by converting the lump sum into a per-kilowatt-hour rate and paying compensation at this rate over the compensation period."); *see also City of Rochester II*, Order Determining Compensation at 9; In re City of Rochester (Celestica Property), Order Determining Compensation at 7.

[163] *City of Rochester II*, Order After Reconsideration at 3, 7.

The Commission has previously explained that a "mill rate is an effective way to tie compensation for future growth to actual growth, without sacrificing finality and certainty." [164] The Commission has followed this policy in subsequent cases under Section 216B.44.[165]

Xcel's use of a lump sum present value formula for a 20-year period without providing a clear counter to the greater accuracy of mill rate exhibits a disregard for PUC precedent in favor of a means of calculating a high and fixed damage amount that is undeniably speculative, and devoid of even Slayton-specific growth projections.

Indeed, Xcel's own witnesses are far from confident in the validity of their predictions. Ms. Peterson was asked on cross-examination about the accuracy of the predictions in her lost revenue model regarding key inputs of customer growth, usage growth, and the discount rate, and conceded that she could not "successfully predict the markets regarding these three factors out for the next 20 years." [166] Although she stated a belief that "the Company has reasonable estimates[,]" she was not able to answer basic questions about how the discount rate she utilized (6.51%) relates to other common indices such as Xcel's rate of return on equity (currently 9.25%) or the Dow Jones Industrial Average (approximate 10.5% yearly increase between 2015 and 2025).[167] Both Ms. Peterson and Xcel's other witness Dr. Bixuan Sun testified to the unpredictability in the markets for capacity.[168] Xcel's two primary financial witnesses who developed the financial model Xcel relies upon concede that the key underlying markets are not predictable for the duration of

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[164] *City of Rochester II*, Order Determining Compensation at 9.

[165] *See., e.g., In re City of Rochester (Celestica Property)*, Order Determining Compensation at 5, 8 (adopting ALJ recommendation utilizing a mill rate); *In re City of Redwood Falls*, Order Determining Compensation at 4; *City of Grand Rapids* Order Determining Compensation at 12 ("The distinct advantage of calculating compensation as a mill rate is that it reduces the need for precision in estimating the likely number of new customers."); *City of Buffalo* Order Determining Compensation at 11.

[166] Transcript at 169:14-18.

[167] *Id.* at 167:13-168:23.

[168] *Id.* at 140:18-22 (Peterson); *id.* at 187:4-188:25.

their model, rendering it too speculative and unreliable to use *at all*, let alone to reach a present value lump sum.

The ALJ and Commission should reject Xcel's demand for a present value lump sum award for loss of revenue and follow the Commission's previous use of a mill rate – based on sales per kilowatt hour.

E. The ALJ and Commission Should Give Little Weight to Xcel's Arguments Regarding Mr. Berg's Consideration of Density/Profitability and Capacity Sales.

Xcel spends significant time attacking Mr. Berg's discussion of Slayton's comparative density and profitability,[169] and the precise values of capacity sales.[170] The ALJ and Commission should reject these arguments and may properly consider Mr. Berg's information on these issues.

a. The discussed density and employee adjustments are a valid point of reference, that were not adopted into Mr. Berg's final conclusion, but that the ALJ and Commission can properly consider.

The first of Xcel's arguments concerns Mr. Berg's consideration of potential adjustments to loss of revenue analysis regarding Slayton's comparatively low density of load per mile of distribution line, and the cost of having a partially dedicated employee for the Slayton area.[171] With respect to the density adjustment, Xcel asserts that Xcel does not consider distribution expenses on a per mile of line basis for its decision-making, so the measurement must hold no value.[172] Despite Xcel's contention, Mr. Berg explains that, in his experience, utilities do consider this.[173] And it is not just Mr. Berg that has considered density as a relevant factor in valuation of

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[169] Xcel Initial Brief at 67-69.
[170] *Id.* at 52-56.
[171] *Id.* at 65-69.
[172] *Id.* at 67.
[173] Berg Surrebuttal at 29 ("In my experience, utilities routinely refer to distribution costs base on $/mile for both construction and maintenance.").

service territory, but the Commission itself considered this in both the *Olivia* and *Grand Rapids* cases.[174]

Xcel then attacks Mr. Berg's mathematics in the potential adjustment as having "many calculation errors." [175] Essentially, Xcel takes issue with the numbers Mr. Berg used to reach the 15% density adjustment, arguing Mr. Berg did not account for differences in lines being aerial or underground, primary or secondary, or one versus three phase.[176]

The ALJ and Commission should note that Xcel does not keep records of rate of return in areas, like Slayton, that have lower than average customer density when compared to its substantial Twin Cities metropolitan area of service. Thus, no Slayton specific information was available to Mr. Berg when he sought it.[177] Mr. Berg employed data available to him on a well-accepted premise that lower customer densities yield lower utility profitability. Mr. Berg also did not adopt the density adjustment in his final conclusion. The density comparison does show that at least by one metric, Slayton is a lower density community as compared to Xcel's overall system average, again underscoring that Xcel's use of system averages to evaluate loss of revenue are inaccurate and should not be adopted. The density consideration suggests that, by at least one metric, the costs of serving Slayton may be higher than average, and therefore a higher-than-average benefit to Xcel in not serving Slayton.[178]

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[174] In re City of Olivia, Order Setting Compensation at 13 (considering 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 specifically including "population density" and "load" among others).

[175] Xcel Initial Brief at 68-69.

[176] *Id.* Note that considering three-phase line as triple the length of one phase line would actually result in an even *lower* density than the 15% lower density calculation Mr. Berg reached.

[177] *See., e.g.,* Berg Direct at 9, note 7.

[178] Berg Direct at 32-34; Berg Surrebuttal at 29-30.

The potential adjustment for an employee in Slayton follows similar suit. Xcel says the employee is not "dedicated" to Slayton and only happens to live there.[179] Xcel also says that if the employee did retire, Xcel would determine to rehire the position, so it is not an avoided cost in any case.[180] The City already addressed the potential adjustment of employee territory/hours as a valid adjustment that Xcel should be making to mitigate any impacts of Slayton's departure, and will not repeat that here.[181] With both of these issues regarding the lower density and increased employee, Mr. Berg discussed the issues, laid out potential considerations for the ALJ and Commission, and ultimately did not adopt the adjustments. But Mr. Berg's consideration of the well-established correlation between customer density and profitability is valid, and Xcel's opposition to it created by Xcel's own lack of specific Slayton data.

b. Capacity sales on the markets is just *one way* that Xcel can avoid costs related to generation assets.

The second issue Xcel spends significant time on is the predicted value of capacity sales, which Xcel tries to prove is of minimal value amid uncertain markets. [182] But capacity sales is just ***one way*** that Xcel can avoid any stranded generation costs. As noted above, the City concludes that Xcel can avoid costs primarily by reallocating energy and capacity to new customers, and thereby avoiding costs associated with future generation. As more fully developed in the City's Initial Brief, even assuming a conservative statewide growth estimate for the first year alone, the resources currently used to provide capacity and energy to Slayton customers would be fully utilized within ***weeks*** of Slayton's departure.[183] To the extent that there is ***any*** additional capacity or energy that exists during that time, that isn't immediately utilized elsewhere internally on Xcel's

[179] Xcel Initial Brief at 66.
[180] *Id.* Again highlighting Xcel's position that avoided costs do not exist for internal relocation of resources.
[181] *See supra,* at 12-14 (describing employee and workforce adjustments).
[182] Xcel Initial Brief at 51-56.
[183] Slayton Initial Brief at 21-24.

system, capacity or energy could be sold on the markets. Evaluating these three potential means of adjusting to mitigate for the loss of Slayton, Mr. Berg correctly concluded that all production related costs were avoidable.[184]

Attempting to calculate the precise value of capacity to a fine decimal point over a twenty-year period is not a relevant consideration that the ALJ and Commission need to engage in. Dr. Sun correctly notes the recent surge in the value of capacity tracks with increased demand and limited supply.[185] She agrees that capacity has significantly increased in value recently, as shown in Xcel's adjustments in its rate case.[186] As a second or third-order cost avoidance measure, capacity sales would only be taken *after* reallocating capacity internally to new customers or purchasing less capacity and energy on the market. The fact remains that Xcel has multiple options to fully avoid any costs associated with production that would have been carried from Slayton after the City's departure.

F. The Commission Should Deny Xcel's Request to Recover Any Integration Costs Which it has Not Proven as part of this Record.

Both Xcel and the Department recommend an approach to the recovery of certain integration expenses by adopting an "open checkbook" methodology, although to varying degrees. Xcel lists five broad categories of costs it generally would like to track and recover, including: (i) meter integration costs, (ii) continued service integration expenses, (iii) customer distributed energy resources integration expenses, (iv) engineering studies and system upgrade integration expenses, and (v) MN DIP impact integration expenses.[187] The Department, on the other hand, recommends that Xcel simply be authorized to recover "expenses [ ] it can show [ ] are directly

[184] Berg Direct at 24-26.
[185] Transcript at 187:4-20.
[186] *Id.* at 185:10-186:2.
[187] Xcel Initial Brief at 72–83.

attributable to the transfer, reasonably estimated, and not already accounted for in a different component of the four-pronged just compensation framework."[188]

The City would strongly urge the Commission to limit Xcel's recovery on these categories to only those costs that Xcel has clearly established through evidentiary support as part of this proceeding, rather than permitting Xcel to continue adding costs as it desires. Alternatively, if the Commission does allow Xcel to track and recover any additional integration expenses, the City would request that Commission establish clear guidelines for which costs may and may not be considered, along with safeguards to ensure that Xcel is making decisions in a manner that will not harm the City, and disallow and costs which do not appear to be reasonable and prudent.

As a general matter, the Commission's Order directing this matter to a contested case directed the Parties to "develop a full record, addressing, at a minimum, the just compensation for the property to be purchased by Slayton considering the [ ] expenses resulting from integration of facilities." [189] Xcel is the party in this proceeding seeking just compensation generally, and just compensation related to integration expenses specifically, yet Xcel has offered no specific evidence into the record to establish what those costs might be, or how likely it is that they will be incurred. Instead of offering evidence into the record, which would have afforded the City the ability to cross-examine Xcel's witnesses on these cost estimates, Xcel simply asks the Commission to allow it to track and recover these costs later, presumably through ongoing compliance filings related thereto. This approach is a direct violation of the Commission's Order directing the Parties, including Xcel, to fully develop the record as part of this proceeding, and Xcel should not be able to recover any more in compensation than it has proven it is due.

[188] DOC Initial Brief at 8–9.
[189] 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 2–3.

In some cases Xcel states that it "cannot accurately guess the cost of this work because the Company has never completed a project like this before" with respect to the meter removal.[190] In other places, such as ongoing integration costs, Xcel provides a preliminary estimate of $15,000, but notes that its actual costs may be higher and seeks to reserve the opportunity to increase that figure later.[191] Finally, in other scenarios, such as it relates to Xcel's desire to conduct outreach and dispute resolution with regard to the CSG programs, and Xcel's assertion that engineering studies may be needed, Xcel provides no objective criteria and makes no attempt to provide a reasonable estimate of these costs into the record.[192]

While it may be true that Xcel has never conducted this *exact* type of project before, surely Xcel has completed work related to installing customer meters, perhaps even at a similar scale, such as when a new residential housing development is built within its service territory. Similarly, while it may be true that Xcel has never conducted outreach to customers about the potential impacts of a service area transfer as it relates to CSG contracts, Xcel has certainly conducted customer outreach in the past. Finally, while Xcel may never have conducted engineering studies to analyze the impact of the transfer of less than one tenth of one percent of its load to a municipal utility, it surely has conducted similar engineering studies as part of its ongoing utility operations. All of these provide examples of areas where Xcel *could have* provided reasonable estimates that would have benefitted from the contested case process, but Xcel, relying on the "information asymmetry" that the Department rightfully points out, did not.[193] Rather than put these estimates into the record and note that they were simply estimates, and allow the City, Department, and ALJ an opportunity to review them, Xcel sought to cloak them in secrecy with the goal of adding these

[190] Xcel Initial Brief at 73.
[191] *Id.* at 75-76.
[192] *Id*. at 76–82.
[193] DOC Initial Brief at 3.

costs at a later date without the benefit for the contested case process, and with far less scrutiny. Xcel's failure to work to "develop a full record" on these alleged integration costs should bar it from tracking and recovering any expenses which it has not established by evidence presented in this proceeding.

If the Commission is inclined to allow Xcel to track and recover any additional integration expenses that have not been clearly established in this record, the City would respectfully request that it do so cautiously and limit any additional costs to only those costs which can be shown are absolutely necessary, and which were incurred using the most economical means possible.

Xcel states that the removal and return of existing meters on Slayton customers' buildings will not affect Xcel because they "already own[] the meters."[194] While that may be true, those meters represent approximately 900 meters that Xcel *will not have* to buy to serve other customers, and by redeploying those meters to serve other customers, Xcel can avoid any cost associated with buying more meters. As indicated in the City's Initial Brief, the City will commit to coordinate removal of the existing Xcel meters at the City's cost as part of the installation of the City's meters, as this will help alleviate the impacts on the customer of this swap.[195] Because of this, Xcel's integration expenses related to meters should be zero.

Xcel also continues its push to seek recovery of costs it incurs related to CSG-related issues[196] despite the Department's strong, and correct, analysis that Xcel is not a party to those Agreements and no integration costs should be included based on those relationships.[197] The fact of the matter is that upon transfer of the utilities to the City pursuant to this proceeding, the City will be responsible for working with these customers to address any impacts that the transfer may

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[194] *Id*. at 74–75.
[195] Slayton Initial Brief at 32–33.
[196] Xcel Initial Brief at 76–78.
[197] DOC Initial Brief at 9–10.

have created. Because of that, the Commission's just compensation calculation should reject Xcel's request to include these speculative and indirect cost categories.

Xcel also goes on to discuss the need for engineering studies which may or may not be necessary due to Slayton's exit from their system.[198] On this point, Xcel indicates that there may be two broad categories of applicable costs: MISO Affected System Study ("AFS") costs, and internal Xcel engineering studies required by their own business practices.[199] The City's expert, Mark Mitchell, opined that the proposed changes to Xcel's system would not trigger the need for a MISO AFS,[200] and while Xcel takes issue with Mr. Mitchell's conclusion, which is based on his four decades of experience as a seasoned utility employee and executive, they provided no expert testimony of their own on this point, despite having ample opportunity to do so.

Similarly, Xcel points to their own "internal transmission study" process as an additional cost the City should bear.[201] The City does not dispute the fact that Xcel may desire to conduct various studies following Slayton's exit from the system, but the City should not be financially responsible for Xcel's intellectual exploration. As with the other so-called "integration expenses" it outlines, Xcel has similarly failed to take the time to present concrete evidence of what these costs might entail, or reasonable estimates of what they might be, despite being the party with the best access to the information to make those presentations. Surely if these studies are based on Xcel's own internal policies and procedures, they are the types of things that Xcel is experienced in conducting, and would have been able to provide at least a reasonable cost estimate to be included in the just compensation analysis before the Commission. Xcel did not do so. Because of

[198] Xcel Initial Brief at 79–83.
[199] *Id*. at 80.
[200] Mitchell Rebuttal at 12:12–13:16.
[201] Xcel Initial Brief at 80–81.

that, the Commission's just compensation calculation should reject Xcel's request to include these speculative and indirect cost categories.

The last category Xcel seeks to track and recover expenses for is related to the Minnesota Distribution Energy Resources Interconnection Process (MN DIP).[202] As noted by the Department in its Surrebuttal testimony, these costs are not costs to be incurred by Xcel and are unrelated to this proceeding generally,[203] and as such, should not be tracked and recovered by Xcel as part of this proceeding.

Contrary to the areas where Xcel did not provide any evidence or estimates, it did provide a reasonable estimate of what it calls "continued service integration expenses" which it anticipates incurring as part of this transaction. Preliminary estimates of those costs are $15,000, and the City in its Initial Brief agreed that those costs appear reasonable for the work described and should be included in the just compensation calculation.[204]

For the Department's part, while it recommends that Xcel should be authorized to recover "expenses [ ] it can show [ ] are directly attributable to the transfer, reasonably estimated, and not already accounted for in a different component of the four-pronged just compensation framework," [205] the record is virtually devoid of any costs "reasonably estimated" due solely to the action or inaction of Xcel. Because of this, and applying the Department's own recommendation, the Commission should reject all but Xcel's $15,000 estimate for "continued service integration expenses" as part of its just compensation analysis. To the extent that these costs are allowed to be tracked and actual costs are recovered, the City would also respectfully

[202] *Id*. at 83.
[203] Tiegland Surrebuttal at 11:6–9.
[204] Slayton Initial Brief at 43.
[205] Department of Commerce ("DOC") Initial Brief at 8–9.

request that the Commission's order limit these "continued service integration expenses" to those things specifically called out by Xcel in this record.[206]

G. The Department's Middle-Ground Approach Declines to Consider Key Elements That Just Compensation Require

a. The City Agrees with the Department and Xcel on the Current Property Value Calculation

As stated in the Department's Initial Brief, the Parties generally agree on the Current Property Value calculation.[207] The City further agrees with the Department's recommendation that Xcel be required to update the figures to reflect any additional depreciation or other cost impacts based on the timing of the transfer.[208]

b. The Department's Lost Revenue Analysis Misses Key Factual Differences that Precedent Urges the Commission to Consider

i. Compensation Period

The City continues to disagree with the Department's summary adoption of the ten-year compensation period. In support if its ten-year recommendation, the Department states "[a] ten-year time horizon is *reasonable* because it balances the need to compensate for real economic loss against the risk of speculative forecasts, while giving Xcel a *reasonable* period to adjust its system to changes brought on by the property transfer." [209] The Department also asserts that the City's five-year recommendation is "unreasonable" but provides no argument or analysis as to why it believes a five-year period is unreasonable, other than it is "shorter than the historical benchmark." [210]

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[206] Xcel Initial Brief at 75–76.
[207] DOC Initial Brief at 4.
[208] *Id*.
[209] *Id*. at 5.
[210] *Id*. at 6.

Black's law dictionary defines "reasonable" as "fair, proper, or moderate *under the circumstances."* As evidenced by the Department's Initial Brief, and as identified during Mr. Ngo's response on cross examination, the Department has not conducted any independent analysis of the facts in this record which support the use of the ten-year compensation period *in this proceeding*.[211] Put another way, the Department has not undertaken any review of the circumstances of this acquisition in reaching its recommendation of a ten-year compensation period. Instead, the Department simply relies on the past the adoption of the ten-year compensation period and treats it as a blanket rule to apply in every compensation case, regardless of any factors which may suggest a shorter or longer period to be fair *under the circumstances*. This approach also ignores explicit Commission precedent which states that "every compensation decision is unique based on detailed facts specific to the displaced utility and the service area at issue." [212]

The City continues to assert that a five-year compensation period is just and reasonable under these circumstances due to Xcel's size and ability to operate its system efficiently, and the relative size of the impact of load represented by the loss of Slayton. The City's experts, Mr. Berg and Mr. Fritsch, highlighted several reasons why Xcel's loss of less than one-tenth of one percent of its overall sales in Minnesota is markedly different than prior cooperative cases.[213] Xcel also incorrectly focuses on potential PPA impacts as one area where they cannot avoid costs.[214] While the City concedes that to the extent Xcel is a party to fixed contracts requiring it to offtake a certain amount of energy, that is but a small piece of Xcel's operation as a large vertically integrated utility with significant generation assets of its own.[215] Further, as the City has laid out in its prior

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[211] *Id*. at 5–6; Ngo Cross at 196:3–14.
[212] *In re City of Grand Rapids*, Order Determining Compensation at 7–8.
[213] Slayton Initial Brief at 22–24.
[214] Xcel Initial Brief at 58–59.
[215] Although it seems exceedingly unlikely that *all* of Xcel's PPAs would require it to offtake a certain amount of energy *for the next twenty years*. And again, Xcel declined to provide meaningful information about its PPAs in response to the City's information request. *See* Berg Direct, Attached Xcel Response to Slayton IR No. 43.

testimony and materials, Xcel has significant ability to modify its *future actions* to adjust to the changed circumstances of Slayton's departure from the system.[216] Xcel has simply provided no factual or logical reason that its needs ten, and certainly not 20, years to adjust to this very minor change.

In this case, the City's proposal to require Slayton customers to continue compensating Xcel for a period of five years, which time would allow Xcel to take prudent steps to adjust its system to reflect its new reality, is just and reasonable under the circumstances.

ii. Future Growth

The City generally agrees with the Department's position that the just compensation analysis should account for future customer growth.[217] In fact, the City's position that a mill rate be used is inherently just and reasonable because it relies on actual sales, and therefore necessarily captures any future load growth in the Slayton area adequately compensates Xcel commensurate with that load growth over the full compensation period.

iii. The Department Correctly Adopts Precedent By Approving Use of a Mill Rate

The City agrees with the Department's recommendation that the Commission adopt a per-kWh mill rate applied to actual kWh delivered to Slayton customers within the acquired areas for the compensation period.[218] As noted in the City's testimony and Initial Brief, the City believes that just compensation equates to 4.2 mills per kWh for a period of 5 years.[219]

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[216] Slayton Initial Brief at 24–25; *see also* Fritsch Rebuttal at 12–15.
[217] DOC Initial Brief at 6.
[218] *Id*. at 8.
[219] Slayton Initial Brief at 43.

iv. The Department Does Not Provide Any New Analysis of Avoided Costs

The Department does not provide any further guidance or clarification on its view of avoided costs, other than to suggest that the Commission may elect to further investigate these costs categories.[220] For the reasons laid out more fully herein and in the City's Initial Brief, the City maintains its position that all of the costs, except for a portion of costs related to the Slayton substation, can be fully avoided by Xcel.

c. SLW as Other Appropriate Factor.

The City also generally agrees with the Department's conclusion related to the "other appropriate factor" prong of the statutory analysis. The Department urges the ALJ and Commission to require Xcel to analyze how an allegedly stranded asset will be used after the transfer, limit any recovery to the stranded portion of the asset, and "ensure [the] stranded asset recovery amount is not already embedded in other just compensation calculations."[221] As more fully analyzed in the City's Initial Brief, the City's position is that Xcel is obviously manipulating averages and revenue categorization to maximize its potential lump sum payment.[222] This results in Xcel's attempt to burden Slayton with 98.8% of the book value of an asset that Xcel will continue to use for remaining customers and interconnection needs. On this point, the City continues to urge the ALJ and Commission to adopt Mr. Berg's analysis which incorporates any loss associated with the SLW substation into the loss of revenue prong, and find that decline to award any additional compensation to Xcel as an "other appropriate factor" as is fully laid out in the City's Initial Brief.[223]

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[220] *Id*. at 7.
[221] DOC Initial Brief, at 11.
[222] Slayton Initial Brief at 34–35.
[223] *Id*. at 34–35.

H. The City's Analysis Does Not Harm Xcel Ratepayers – While Xcel's Method Would Force the City to Insure Against Xcel's Irresponsible Business Judgments.

Xcel argues that a lump sum award of $39.2 million – including $34.7 million in lost revenue payments – is both reasonable and "necessary to protect Xcel Energy's other customers from the rate impacts of Slayton's decision." [224] For a city of approximately 1,232 customers[225] this would equate to an average payment of approximately $31,832 per customer, [226] or an effective doubling of Slayton's rates under Xcel's proposed levelized payment plan. Xcel cites no case in Minnesota that has determined a loss of revenue payment even close to this. And despite Xcel's thematic emphasis on protecting its customers from rate increases, it does not actually show that any rate increases would be likely.

Crucially, Xcel concedes that it has never identified costs specific to Slayton.[227] Xcel witness Peterson admitted that the load on Xcel's system fluctuates constantly, but when asked whether a loss of four megawatts would be distinguishable from ordinary fluctuations, Ms. Peterson stated that she did not know enough about load fluctuations to answer the question.[228] Ms. Peterson also did not identify a single instance of a customer the size of Slayton leaving that caused rates to increase.[229] The closest she could come to this was saying that it would "generally put upward pressure on rates" and repeating the rate-case rationale about spreading the same costs over fewer sales.[230] This is the crux of Xcel's entire model, and it cannot identify a single case of it ever taking place in reality, outside of its inapplicable and incorrect CCOSS analysis developed

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224 Xcel Initial Brief at 92.
225 Peterson Surrebuttal, Schedule 1 at 1-4 (lighting customers not included).
226 Xcel's total recommended lump sum compensation of $39,217,984 / 1,232 customers = $31,832 per customer.
227 Transcript at 120:11-13 (Peterson) ("I can't tell you – no where in my analysis did I identify costs specific to Slayton either.")
228 Transcript at 133:12-25.
229 *Id.* at 149:7-12.
230 *Id.* at 149:2-6.

for this case, where the test year lasts forever.[231] Much like the idea of Slayton's "fair share," Xcel's alleged protection of its customers is little more than a thematic device without any consistent application in this case.

Similarly, Xcel states that it has allegedly "committed that any just compensation it receives from Slayton will be credited to other customers." [232] In other words, Xcel proposes that Slayton should act as an insurer for Xcel's other ratepayers against Xcel's unreasonable refusal to adjust to the load loss and mitigate any losses. If Xcel refuses to move a bucket truck out of Slayton so that it sits idle, does not reallocate the duties of employees who used to serve Slayton so that they become unproductive, or declines to adjust any one of its many generation projects by a matter of days or weeks (if that is even needed) so that it is not productive, those choices fall squarely on Xcel – not the City of Slayton. It is not fair to the residents of Slayton, and is not provided for in Minn. Stat. § 216.B.45, to require the City to bear the costs of imprudent business judgments.

Moreover, if Xcel's lost revenue analysis were correct – which it is not – it would result in residents of Slayton effectively paying double rates for 20 years, and even continuing to carry future Xcel rate increases decades after the City exits the system. This would obviously not be financially feasible for any municipality and would virtually preclude municipalities from ever exercising their statutory rights under Minn. Stat. § 216B.45 and .47. In short, Xcel proposes an interpretation of just compensation that would render the statute meaningless.

Ultimately, Xcel's loss of revenue analysis is totally disconnected from proof of any actual and tangible losses that require compensation – beyond the portion of the Slayton substation that will be underutilized. Conversely, the analysis of City witnesses Berg and Fritsch correctly focuses

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[231] Minnesota Administrative Rules for rate cases define the test year as "the 12-month period selected by the company…" Minn. R. 7825.3100, Subp. 17.

[232] Xcel Initial Brief at 1.

on this single partially-stranded asset of the substation and a reasonable mitigation period associated with it as a distribution asset. Put differently, the City's analysis protects ratepayers from rate impacts, insofar as Xcel engages in prudent business practices and observes the requirement to take reasonable steps to adjust its system to account for the loss quickly and efficiently. The ALJ and Commission should find no harm will come to Xcel's remaining ratepayers based on the City's analysis and proposed award.

I. The ALJ and Commission Should Reject Xcel's Public Purpose Challenge and "Pretext" Arguments

Xcel argues at length that the Commission should disallow the City's acquisition as unlawful for not satisfying public purpose threshold because Xcel claims it is a "pretext" for expanding the service territory of Nobles Cooperative Electric (Nobles).[233] This argument fails procedurally, legally, and factually.

a. The Commission Has Already Addressed *and Approved* the City's Compliance with the Statutory Prerequisites for Purchase.

Xcel's argument is procedurally improper, as the Commission already addressed this issue in its initial Order for Hearing.[234] Specifically, the Commission found "Slayton has complied with the statutory prerequisites to purchase Xcel's property." [235] The Commission referred the matter to the Administrative Law Judge "to develop the record and provide a report with recommendations on the petition for the determination of compensation." [236] The City's ability to proceed with the purchase was not identified as a disputed issue.

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[233] Xcel Initial Brief at 17-23.
[234] *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, ("Order for Hearing") at 2.
[235] *Id.* at 2.
[236] *Id.* at 5.

Xcel's initial Comments, filed on April 7, 2025, unambiguously stated that "Xcel does not procedurally challenge the City's initiation of a proceeding before the Commission pursuant to Minn. Stat. § 216B.45." [237] At that time, Xcel correctly recognized that the reason for a municipality's decision to form a municipal utility is "generally irrelevant" and that "the only issue in this proceeding is the determination of just compensation due to Xcel Energy for the taking of its property." [238] Notably, Xcel was long aware of Nobles' involvement in the City's municipalization efforts, and in fact sat beside Nobles in three public community meetings on the subject.[239] Xcel had the opportunity to address any "other issues or concerns" related to the matter.[240] Instead of raising any question regarding public purpose, Xcel used the opportunity to try and advocate for limiting consideration for "loss of revenue to Xcel Energy under [a] ten-year compensation period." [241]

As decided law of the case, the Commission should decline to readdress its prior decision on this issue. "The 'law of the case' doctrine commonly applies to issues decided in earlier stages of the same case." [242] The doctrine provides that, "when a court decides upon a rule of law, that decision should continue to govern the same issues in subsequent stages of the same case." [243] Here, Xcel was invited to identify any other issues it believed were disputed, did not raise a public

[237] *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*, Xcel Energy's Comments, filed April 7, 2025, ("Xcel Initial Comments") at 2.
[238] *Id.* at 2-3. Notably, the statute does not require any consideration into the municipality's motive. Minn. Stat. 216B.45 and .47. This reflects a legislative determination that establishing a municipal utility is, itself, a public purpose.
[239] Malchow Rebuttal at 9; Marshall Direct at 5-6 (describing public meetings with Nobles in 2023-24).
[240] *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 Comment Period, March 6, 2025, at 1.
[241] Xcel Initial Comments at 7.
[242] *Matter of Welfare of M.D.O.*, 462 N.W.2d 370, 375 (Minn. 1990).
[243] *State v. Miller*, 849 N.W.2d 94, 98 (Minn. Ct. App. 2014).

purpose challenge, and in fact stipulated to Slayton's compliance with the statutory prerequisites for the acquisition.[244]

Additionally, declining to revisit this decision is also consistent with broader eminent domain procedure in Minnesota, which requires objections regarding public purpose, public use, necessity, or the scope of a petition to be made *prior* to the matter of damages being referred for determination.[245] It is also consistent with the rules applicable in contested case hearings, which allow informal disposition of "any contested case or any issue therein by stipulation, agreed settlement, or consent order at any point in the proceedings."[246]

All parties previously agreed – and the Commission previously found – that Slayton satisfied the statutory prerequisites for purchase of Xcel's property.[247] The Commission should decline to revisit this issue.

b. If the Commission Does Revisit the Issue of Public Purpose, It Should Reject Xcel's Aspersions and Reaffirm Slayton's Purchase Amply Satisfies the Requirement of Either Public Use or Public Purpose.

Xcel's attempt to defeat Slayton's acquisition based on an alleged lack of public use or public purpose completely misapprehends both the law and the relevant facts. Despite the undisputed facts showing that Slayton will own and control the facilities being acquired, Xcel contends that the involvement of Nobles Cooperative Electric ("Nobles") as Slayton's proposed contractor for initial O & M and billing services renders the acquisition unlawful for lack of public

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[244] Xcel Initial Comments at 2 ("Xcel Energy does not procedurally challenge the City's initiation of a proceeding before ethe Commission pursuant to Minn. Stat. § 216B.45.").

[245] Minn. Stat. § 117.055, Subd. 2(b)(1) (notice of an ordinary condemnation petition must state that "a party wishing to challenge the public use or public purpose, necessity, or authority for a taking must appear at the court hearing and state the objection or must appeal within 60 days of a court order"); *State by Comm'r of Transportation v. Elbert*, 942 N.W.2d 182, 191 (Minn. 2020) ("If a property owner believes [additional rights are] impeded, the owner must object to the petition before the trial court submits the damages question to the commissioners."); *State by Mondale v. McAndrews*, 175 N.W.2d 492, 493 (Minn. 1970) (failure to raise objection to scope of petition operates as waiver).

[246] Minn. R. 1400.5900.

[247] Order for Hearing at 1-2.

purpose.[248] To be clear, Xcel's argument is the equivalent of saying that the City may not lawfully acquire street right-of-way by eminent domain where it intends to have contractors rather than City forces construct the street and perform maintenance. The Commission should reject this clear absurdity. The only apparent "pretext" here is Xcel's alleged justification for engaging is some irrelevant character attacks on the City and its proposed contractor.[249]

c. Legal Background on Public Use and Public Purpose.

Both the Minnesota State Constitution Article 1, Section 13, and the United States Constitution Fifth Amendment Takings Clause similarly require that exercise of the power of eminent domain must be in furtherance of a public use.[250] Although the courts have historically used the words "public use" interchangeably with the words "public purpose," they can describe slightly different scenarios – both of which justify the power of eminent domain under the constitution.[251] For example, early cases described "public use" somewhat more narrowly, as "any use of anything which will satisfy a reasonable public demand for public facilities for travel or for transmission of intelligence or commodities." [252] Subsequent cases have construed "public use" more broadly and recognized repeatedly that "even though a public entity, using its eminent domain power, turns over parcels to a private entity for use by that private entity, the condemnation will, nevertheless be constitutional if a *public purpose* is furthered by such a transfer of land." [253]

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[248] Xcel Initial Brief at 17-23.

[249] Note also that the City has signed no contracts and undertaken no commitments with Nobles, as only a city council may do. *Plymouth Foam Prods., Inc. v. City of Becker, Minn.*, 120 F.3d 153, 156 (8th Cir. 1997) ("Under Minnesota law a municipality may enter into a contract only if authorized by its city council.").

[250] Minn. Const. art. I, § 13; U.S. Const. amend. V.

[251] *City of Duluth v. State*, 390 N.W.2d 757, 763 (Minn. 1986); *Visina v. Freeman*, 89 N.W.2d 635, 645 (Minn. 1958).

[252] *Mueller v. Supervisors of Town of Courtland*, 117 Minn. 290, 295, 135 N.W. 996, 998 (Minn. 1912) (sustaining a cartway taking against a public use challenge)

[253] *City of Duluth*, 390 N.W.2d at 763 (emphasis added) (affirming city condemnation of lands for construction of a paper mill, based on economic benefits as the public purpose); *see also*, *Hous. & Redevelopment Auth. in & for the City of Richfield v. Walser Auto Sales, Inc.*, 630 N.W.2d 662, 669 (Minn. Ct. App. 2001), *aff'd sub nom. Hous. & Redevelopment Auth. ex rel. City of Richfield v. Walser Auto Sales, Inc.*, 641 N.W.2d 885 (Minn. 2002) (affirming condemnation of property for blight mitigation and redevelopment); *Kelo v. City of New London, Conn.*, 545 U.S. 469, 484 (2005) (affirming condemnation for economic development purposes).

Ironically, the only case that Xcel cites in support of its argument *against* public use is the U.S. Supreme Court Case of *Kelo v. City of New London, Connecticut*, in which the Court found it "clear that a State may transfer property from one private party to another [using eminent domain] if future 'use by the public' is the purpose of the taking." [254] On the other hand, "purely private takings" or those that were "under the mere pretext of a public purpose" would not satisfy the public use requirement and would therefore be void.[255] Thus, the Supreme Court determined that, because the City of New London had an economic development plan that was "carefully considered" and did not evidence an illegitimate purpose, the condemnation "unquestionably" satisfied the public purpose requirement.[256]

Even prior to *Kelo*, the Minnesota Court of Appeals addressed a case where the condemning authority had an agreement with another entity to manage the asset proposed for construction in the project, and found that relationship did not defeat public use. [257] In *City of Duluth, St. Louis County v. Alexander*, the city condemned private property for the construction of a public parking ramp that would be managed by and leased to the Duluth-Fond du Lac Economic Development Commission.[258] The court of appeals upheld the public use finding, noting that such cases have "been reviewed extensively" by the courts, and that in comparison to the prior leading Minnesota case of *City of Duluth v. State*, "the public use is even stronger." [259]

Moreover, the determinations of the condemning authority on both public purpose and necessity are legislative decisions which must be given deference and may be overturned only

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[254] *Kelo v. City of New London, Conn.*, 545 U.S. 469, 484 (2005).
[255] *Id.* at 477-78.
[256] *Id.* at 484.
[257] *City of Duluth, St. Louis Cnty. v. Alexander*, 404 N.W.2d 24, 26 (Minn. Ct. App. 1987).
[258] *Id.* at 25-26. Notably, the appellant in that case also argued the condemnation furthered unlawful activity (gaming), not unlike Xcel's argument here that the City is attempting to circumvent Minnesota law creating the assigned service territory regime and the state policy renewable energy. *See* Xcel Initial Brief at 22-23.
[259] *City of Duluth, St. Louis Cnty.*, 404 N.W.2d at 26 (citing *City of Duluth v. State*, 390 N.W.2d 757 (Minn. 1986)).

when manifestly arbitrary or unreasonable.[260] The scope of review is "very narrow." [261] The Supreme Court has repeatedly directed that "great weight" must be given to the condemnor's determination, and that a court is "precluded from substituting its own judgment." [262] The scope of review is so limited that a court should overturn the condemnor's decision only if it is "arbitrary, unreasonable, or capricious, or the evidence against the necessity or public use is overwhelming." [263] "If there is some evidence in the record that the taking serves a public purpose, there is nothing left for the court to decide." [264]

d. Xcel's Objections Do Not Rise Anywhere Near the Level Needed to Impugn Public Use or Public Purpose.

The City's testimony clearly establishes that the City will both *own* and *control* the future Slayton municipal electric utility, for use by members of the public within the City of Slayton.[265] As Mr. Malchow states, "Slayton absolutely intends to own and operate a municipal utility." [266] If the agreements with Nobles are finalized, Nobles would act as third-party contractor providing services and wholesale energy to the City municipal electric utility as a utility-to-utility service arrangement.[267] The City would remain fully in control, and "fully responsible for all electric service and fully accountable to Slayton's customers." [268] In other words, the City will set rates, not Nobles. Slayton City Councilmember Blake Heronimous also succinctly addressed this:

[260] *Lundell v. Cooperative Power Association*, 707 N.W.2d 376, 381 (Minn. 2006).
[261] *State ex rel. Com'r of Transp. v. Kettleson*, 801 N.W.2d 160, 165 (Minn. 2011).
[262] *City of Duluth v. State*, 390 N.W.2d 757, 764 (Minn. 1986) (quoting *Housing and Redevelopment Authority v. Minneapolis Metropolitan Co.*, 104 N.W.2d 864 (Minn. 1960)).
[263] *Minneapolis Metro. Co.,* 104 N.W.2d at 875.
[264] *Matter of Condemnation by MCDA v. Opus Northwest, L.L.C.*, 582 N.W.2d 596, 599 (Minn. 1998).
[265] Malchow Rebuttal at 4–11; Heronimus Rebuttal at 3–5.
[266] Malchow Rebuttal at 4.
[267] *Id.* at 6.
[268] *Id.* at 8.

> Q. Does the City intend to sell the electric system to Nobles?
>
> A. No. One primary purpose of municipalization is local control. The City Council would be accountable to Slayton residents and businesses for rates and services. Any operations contractor would answer to the City, not the other way around.[269]

This ownership, control, and use of the facilities by the *City of Slayton* unquestionably satisfies the "public use" requirement without any further inquiry. Unlike *Kelo* and the other economic development takings, there is *no evidence* in the record that the City has any plans to turn over ownership or control of the facilities it is acquiring in this proceeding to Nobles. Nobles would not expand its exclusive service territory, and Slayton-owned facilities would not form part of Nobles' customer base. Thus, Xcel's "pretext" argument does not even come into play.

The fact that the City's venture in forming a municipal electric utility has received some encouragement and preliminary assistance from Nobles does not change the public purpose analysis. First, Nobles is headquartered in the City of Slayton and has a protected First Amendment right, as any constituent does, to express opinions and support for potential City policies and matters of public concern. Statements of a third-party like Nobles made to City staff in this context cannot be imputed to the City. Frankly, it is unsurprising that the leadership of an electric cooperative would share general philosophical support for public ownership and control of utility assets. Secondly, nothing in the emails even remotely suggests the kind of "pretextual" conspiracy for a purely private benefit that Xcel argues. Discussing the issuance of the City bond and whether Nobles could potentially hold it also does not defeat public purpose. As Mr. Malchow describes, the City's future bond offering will go through a public process, and is a financing mechanism that will not transfer ownership to Nobles or any other investor(s) who purchase the bond(s).[270]

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[269] Heronimous Rebuttal at 3.
[270] *See* Malchow Rebuttal at 7-8.

Taking all the information as a whole, the communications from Nobles to the City show little more than a Slayton community member expressing its support for the City's municipalization efforts and a willingness to assist the effort in a contractual and above-board manner. There is virtually no response from Mr. Malchow to these emails, and certainly nothing from either party that would suggest the Slayton municipalization is pretextual for a purely private benefit. Xcel's additional mudslinging, alleging that the City wishes to avoid compliance with carbon-free energy goals makes little sense, seeing as Nobles receives power from Great River Energy, which has committed to reaching a goal of reducing emissions of carbon dioxide relative to 2005 levels by more than 90% by 2031, and which the Commission has found its IRP "demonstrates compliance with state emissions goals." [271]

Xcel's misguided "pretext" argument applies only to those cases such as *Kelo*, where the property being acquired is planned be transferred to another private entity. That is not the case here, and the Commission should reject Xcel's public purpose challenge. As the Minnesota Court of Appeals has correctly determined, such cases have been "extensively" examined by the courts and the public use and public purpose here is far more clear than economic development cases.

Finally, accepting Xcel's argument against public purpose would result in clear absurdities. First, state and local government construction projects would completely grind to a halt if public purpose somehow required governments – especially small cities and townships – to use their own labor forces to perform work constructing and maintaining public infrastructure such as roads, streets, transit, and utilities. State and local governments in Minnesota own and control

[271] *In the Matter of Great River Energy's 2023-2037 Integrated Resource Plan*, Docket No. ET-2/RP-22-75, Order Accepting 2023-2037 Resource Plan and Setting Future Filing Requirements, June 11, 2024, at 2 (stating 90% reduction goal), and 18 (finding demonstrated compliance with state emission goals).

approximately 140,000 miles of streets and highways.[272] A system that requires governmental entities to secure and maintain internal labor forces necessary for the work (rather than contractors), and to do so *before the project is even fully approved* as Xcel advocates here, would be totally unworkable.[273]

The Commission should reject Xcel's public purpose challenge as procedurally improper, legally deficient, and factually unsupported.

III. 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.

[272] Minnesota Department of Transportation, Statewide Multimodal Transportation Plan (SMTP) 2022-41, Chapter 2, available at: https://minnesotago.org/final-plans/smtp-final-plan-2022/chapter-2.

[273] Xcel's proposed rule would also apply to Xcel in its exercise of condemnation power, and one questions whether Xcel could meet its own test.

Respectfully submitted,

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