BEFORE THE MINNESOTA COURT OF ADMINISTRATIVE HEARINGS

600 North Robert Street
Saint Paul, Minnesota 55101

FOR THE MINNESOTA PUBLIC UTILITIES COMMISSION

121 Seventh Place East, Suite 350
Saint Paul, Minnesota 55101-2147

IN THE MATTER OF THE PETITION OF THE CITY OF SLAYTON FOR THE DETERMINATION OF COMPENSATION FOR CITY ACQUISITION OF XCEL ENERGY ELECTRIC SERVICE TERRITORY

CAH Docket No. 22-2500-40870
MPUC Docket No. E-002, PT-7157/SA-25-129

REPLY BRIEF OF NORTHERN STATES POWER COMPANY, D/B/A XCEL ENERGY

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INTRODUCTION

Northern States Power Company, doing business as Xcel Energy, (Xcel Energy or the Company) respectfully submits this Reply Brief.[1]

This is an unusual case. The City of Slayton (the "City" or "Slayton") is proposing for an entire city — of more than 1,200 customers — to exit Xcel Energy's system. This type of change has never been proposed before, and has never been reviewed by the Commission before. While municipal extensions have been evaluated in the past, they have involved small groups of customers and sometimes even undeveloped areas that had no customers.[2] The facts in this record demonstrate that Slayton's proposal will cause the Company to lose revenues, which will have a rate impact on other customers unless properly addressed through the just compensation determination.

The Company's primary objective in this case is to protect its other customers from the impacts of Slayton's decision. That should be the goal of the Commission as well.

To do this, the Company developed a methodology which identifies the revenue impact of Slayton's exit and, as required by Minnesota law, includes the lost revenues in the just compensation amount that Slayton is required to pay. Appropriately calculating the lost revenues should protect the Company's other customers from the revenue impacts of

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[1] In this Reply Brief, the Company responds to arguments raised by the City of Slayton that require a response, and does not address every disputed issue in the record. The Company continues to support the analysis, evidence, and recommendations from its Initial Brief.

[2] Ex. Xcel Energy-206, Peterson Rebuttal at 4:1-6:8.

Slayton's proposal. The Company has committed that it will return any just compensation payments from Slayton as a credit to its other customers.[3]

In contrast, the City seeks only to minimize the cost of its adventure at the price of a rate increase for Xcel Energy's other customers. Despite clear state law requiring the City to pay for loss of revenue when it leaves the system,[4] the City argues that 97.2 percent of the revenues should be excluded from the lost revenue calculation. There is no precedent for that kind of recommendation,[5] and it is not supported by the evidence in the record.

The Administrative Law Judge should recommend, and the Commission should approve, the Company's just compensation calculation, which is supported by substantial evidence, clear explanations, and transparent methodologies. Doing so will result in just compensation that is consistent with the law, and which will protect Xcel Energy's other customers from a rate increased caused by Slayton's decision.

ARGUMENT

I. The Burden of Proof is on Slayton to Prove its Just Compensation Calculation by a Preponderance of the Evidence.

Slayton argues that Xcel Energy bears the burden of proof in this proceeding.[6] For this proposition, Slayton relies on a statute and a line of cases that are not applicable here.

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[3] Ex. Xcel Energy-202, Krug Direct at 7:4-6 ("While the specific details will be developed in the future, the just compensation received from Slayton will be returned to our continuing customers, mitigating cost impacts caused by Slayton's exit.").
[4] Minn. Stat. § 216B.45.
[5] Tr. Evid. Hearing at 30:2-6 (Berg) ("Q: Are you aware of any cases under section 44 or section 45 in which the Commission has decided that only 2.8 percent of revenues should be treated as lost revenues? A: No.").
[6] Initial Brief of the City of Slayton at 14 (Mar. 13, 2026) (Slayton Initial Brief).

Slayton first argues that "it is fundamental to eminent domain cases" that the party claiming compensation carries the burden of proof, and cites to Minn. Stat. § 117.175.[7] The flaw of this argument is immediately apparent, because this is not an eminent domain case. This case is brought under Minn. Stat. § 216B.45. A different statutory provision, Minn. Stat. § 216B.47, provides that "nothing in this chapter may be construed to preclude a municipality from acquiring the property of a public utility by eminent domain proceedings." This provision makes clear that the Legislature did not intend section 216B.45 to be interpreted as an eminent domain action, because eminent domain is a separate process with different rules and procedures.

Even if this were a proceeding under section 216B.47, Minnesota courts have made clear that the rules for eminent domain proceedings under that statute are different than other eminent domain cases. In *City of Moorhead v. Red River Valley Cooperative Power Association*, the Minnesota Supreme Court held that eminent domain proceedings under section 216B.47 do not apply the standard fair market value process, but instead rely on the specific procedures of the Commission process.[8] This contested case is a proceeding before the Commission and the Court of Administrative Hearings, and must follow the rules of such contested case proceedings. Those rules provide that the burden of proof is

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[7] *Id.*

[8] *City of Moorhead v. Red River Valley Coop. Power Ass'n*, 830 N.W.2d 32 (Minn. 2013) (approving the district court's decision to exclude evidence of fair market value, the standard measure under eminent domain proceedings, because Minn. Stat. § 216B.47 established different procedures).

on the party proposing that action must be taken.[9] Slayton is the party proposing to disconnect from Xcel Energy's system.

Slayton suggests that the Commission has previously held that the burden of proof is on the utility to prove just compensation in cases under Section 216B.44, but that argument is unpersuasive for several reasons. First, this is not a case under section 216B.44. Even if the Commission had adopted such a standard in those cases, it could reach a different result here.

Second, Slayton relies on out-of-context dicta from decades-old Commission proceedings to suggest that the Commission has made a formal decision on the burden of proof in just compensation cases, when it did not. In fact, the question of who holds the burden of proof was not extensively litigated in either of the cases cited by Slayton. In *Grand Rapids*, the Commission made a single reference about proof when examining the purchased-power component of avoided costs without citation to any legal authority.[10] Similarly, the underlying Administrative Law Judge's report did not examine, or even mention, burden of proof.[11] Slayton relies on this case as if the Commission thoroughly considered the burden of proof and made a reasoned decision on it, but that is not the case.

Slayton also cites to a Commission order in *Redwood Falls*. The Commission's discussion of burdens, however, concluded only that the utility had to prove the existence

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[9] Minn. R. 1400.7300, subp. 5.
[10] *In the Matter of the Application of the Grand Rapids Public Utilities Comm'n to Extend its Assigned Service Area into the Area Presently Served by Lake Country Power*, Docket No. E-243, 1061/SA-03-896, ORDER DETERMINING COMPENSATION at 18 (Sept. 29, 2005) (*Grand Rapids*).
[11] *See Grand Rapids*, Docket No. E-243, 1061/SA-03-896, FINDINGS OF FACT, CONCLUSIONS, AND RECOMMENDED ORDER (Jan. 3, 2005).

and terms of an agreement it was using to support its arguments.[12] The Commission did not engage in a full analysis of which party held the burden of proof, it merely pointed out that to the extent the utility was relying on the existence of an agreement to make its case the utility needed to produce evidence about what the agreement said. That decision has little bearing on this case.

Neither of the cases cited by Slayton represent a Commission decision about which party carries the overall burden of proof in a case under section 216B.45. In the absence of specific statutory direction, Minnesota Rules provides that in a contested case proceeding the burden of proof is on the party proposing a change.[13] Here, that is Slayton because Slayton is the party proposing to change the status quo by exiting Xcel Energy's system.

Ultimately, though, this case should not turn on the burden of proof. While it is important that the legal standards for the case be understood, the record contains substantial evidence demonstrating that the Company's calculation of just compensation is reasonable while Slayton, in comparison, relies mostly on conclusory statements.

II. If the Company has a Duty to Mitigate, it has Met that Duty.

Slayton argues that the Company has failed to acknowledge its responsibility to try to avoid the lost revenues it will suffer after Slayton leaves, but its arguments are off-base.

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[12] *In the Matter of the Application of the City of Redwood Falls to Extend its Assigned Service Area into the Area Presently Served by Redwood Elec. Coop.*, Docket No. E-135, 298/SA-05-1274, ORDER DETERMINING COMPENSATION at 10 (June 27, 2007) (*Redwood Falls*).
[13] Minn. R. 1400.7300, subp. 5.

First, Slayton's Initial Brief spends several pages arguing that an indefinite lost revenue time period would be a violation of the duty to mitigate,[14] but that straw man argument is just a distraction. The Company is not proposing an infinite lost revenue time period. The Company is proposing a 20-year lost revenue time period, based on the exact factors that the Commission has previously said should be evaluated – the utility's planning horizon.[15]

Second, assuming for sake of argument that the Company has a legally enforceable duty to mitigate as Slayton suggests, the Company has met its duty. The Company carefully evaluated whether it would be able to avoid costs after Slayton exits the system and identified tens of millions of dollars that it is proposing to exclude from the lost revenue calculation. Customers in Slayton paid approximately $3 million in revenue in 2025.[16] The Company has identified that more than 30 percent of these costs are avoidable, and has excluded them from the lost revenue calculation.[17] Based on this analysis, the Company has agreed that it can mitigate almost $900,000 in lost revenue the first year.[18] Over the 20 year lost revenue time period, this mitigation reduces lost revenues by more than $28

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[14] Slayton Initial Brief at 10-12.
[15] *See In the Matter of the Complaint Regarding the Annexation of a Portion of the Ser. Territory of People's Coop. Power Ass'n by the City of Rochester (North Park Additions)*, Docket No. E-132,299/SA-88-270, ORDER DETERMINING COMPENSATION at 13 (July 11, 1990) (*North Park Additions*) (stating that "ten years is a standard planning horizon for rural electric co-operatives for the construction of basic utility facilities such as substations and major feeders"); *see also In the Matter of the Application of the City of Olivia to Extend its Municipal Elec. Serv. Area into an Area Served by Renville-Sibley Coop. Power Ass'n*, Docket No. E288, 136/SA-85-93, FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER SETTING COMPENSATION FOR SERVICE EXTENSION at 15 (June 27, 1986) (*Olivia*) (establishing the lost revenue time period based in part on the cooperative's use of "a ten year period for planning purposes.").
[16] Ex. Xcel Energy-208, Peterson Surrebuttal, Schedule 1 at 1.
[17] *Id.* Schedule 1 at 6.
[18] *Id.* Schedule 1 at 1.

million.[19] The City has not identified or quantified any additional cost items that can be avoided.[20] If there is a duty to mitigate, the Company has met it.

III. Slayton Ignores Much of the Evidence in the Record.

Slayton's brief dutifully repeats the statements included in the testimony of the City's witnesses, but it does not engage with and actually ignores much of the evidence in the record.

For example, the City ignores much of the Company's analysis regarding lost revenues. As it relates to distribution costs, the Company explained that customers in Slayton currently contribute revenue to system-wide distribution costs, and that this revenue contribution would be lost if Slayton exits the system.[21] Slayton's Initial Brief simply argues that distribution costs are nearly one hundred percent avoidable and does not mention this analysis or respond to it.

Similarly, the Company explained that its power purchase agreements (PPAs), which are part of the variable production cost category, are legally binding contracts under which the Company is obligated to purchase the capacity and energy produced from the contracted generators.[22] During the evidentiary hearing, the City's witness admitted that these were binding contracts that could not be breached.[23] In its Initial Brief, the City

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[19] *Id.*
[20] Tr. Evid. Hearing at 65:18-22 (Berg) ("Q: Can you please point me to where in your testimony you have identified a specific adjustment and a specific dollar amount that you think the Company can adjust? A: I have not relative to the dollar amounts.").
[21] Exs. Xcel Energy-204, Peterson Direct at 23:19-24; Xcel Energy-206, Peterson Rebuttal at 28:13-20.
[22] Ex. Xcel Energy-208, Peterson Surrebuttal at 19:22-20:24.
[23] Tr. Evid. Hearing at 45:7-46:6 (Berg).

simply argues that all production costs are avoidable. The City does not even address the difference between fixed and variable production costs, much less the analysis and evidence in the record regarding PPAs.

Similarly, the Company explained that it does not actually have an employee dedicated to Slayton, that the employee who happens to live in Slayton has responsibilities for other communities in the area, and that even if that person were to retire the position would be filled.[24] Despite these facts, which Slayton did not dispute,[25] Slayton's Initial Brief continues to argue that Slayton's exit would result in lower costs because of this one employee.[26] The City's Initial Brief does not mention any of the testimony or evidence introduced by the Company on this issue, or explain how there could be cost savings when Slayton's understanding about this employee is simply wrong.

Slayton also essentially ignores one of the Company's expert witnesses. Company witness Dr. Bixuan Sun provided extensive testimony and analysis about whether Slayton's exit would allow the Company to obtain additional revenues from the Midcontinent Independent System Operator (MISO) market.[27] Dr. Sun provided a detailed analysis, supported by market data and multiple schedules, and concluded:

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[24] Ex. Xcel Energy-203, Krug Rebuttal at 3:7-19.
[25] Tr. Evid. Hearing at 61:15-62:17 (Berg).
[26] Slayton Initial Brief at 21-22.
[27] Exs. Xcel Energy-210, Sun Direct at 6:14-12:22, Schedule 2; Xcel Energy-211, Sun Direct (Trade Secret) at 6:14-12:22, Schedule 2; Xcel Energy-212, Sun Surrebuttal at 8:23-16:4; Xcel Energy-213, Sun Surrebuttal (Trade Secret) at 8:23-16:4.

> [I]t is unlikely that MISO market revenues will meaningfully offset the loss of revenue from Slayton. Further, even if it is possible that some revenue is generated from the MISO market, the amount will vary significantly every year and it is not possible to predict the amount.[28]

Slayton's Initial Brief continues to argue that the Company will receive additional revenue from the MISO market but ignores all of this analysis and testimony from Dr. Sun.[29] In fact, Slayton's Initial Brief cites to Dr. Sun's testimony only one time, for the unremarkable proposition that the Company is engaged in generation and transmission activities.[30]

Slayton's Initial Brief also fails to address the extensive testimony and analysis regarding the need for engineering studies and the possibility that system upgrades will be needed to maintain a safe and reliable system after Slayton exits. The Company and Slayton each filed testimony about whether engineering studies would be needed and whether those costs should be included in just compensation.[31] Slayton's Initial Brief does not even mention the issue.

It is expected for parties in a contested case to disagree about what the facts are, how they should be interpreted, or how they should be applied to the law. But it is remarkable for a party to ignore the parts of the record that are inconvenient for its position. Slayton cannot wish away the Company's testimony and evidence by pretending it does

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[28] Ex. Xcel Energy-212, Sun Surrebuttal at 15:25-16:2.
[29] Slayton Initial Brief at 21 ("Xcel will be able to immediately use the 4 megawatts that previously served Slayton by . . . selling excess energy or capacity in the MISO markets . . . .").
[30] *See* Slayton Initial Brief at 1, n.7.
[31] Exs. Xcel Energy-204, Peterson Direct at 38; Xcel Energy-206, Peterson Rebuttal at 38-40; Xcel Energy-208, Peterson Surrebuttal at 35; Slayton-116, Mitchell Rebuttal (Redacted) at 12-14; Slayton-113, Mitchell Surrebuttal at 7-10.

not exist, and its failure to engage with or respond to the Company's analysis and evidence is an indication that the facts are not on the City's side.

IV. Slayton's Just Compensation Recommendations are Not Consistent with Minn. Stat. § 216B.45 and are Not Supported by the Record.

A. Slayton Relies on Factors Not Permitted by Minn. Stat. § 216B.45.

In its Initial Brief, Slayton suggests that the just compensation amount should be reduced so that the City is treated "equitabl[y]" and that the lost revenue amount is "fair."[32] In particular, the City seems to suggest that the Company's recommendation would be "'so high' as to render the statute 'meaningless' to the City."[33]

The City is not correct.

First, Minn. Stat. § 216B.45 provides a list of factors that the Commission must consider in determining just compensation. These factors are focused on actual dollars,[34] and require Slayton to pay for the value of the property it proposes to take, the Company's integration costs if the transaction takes place, and the loss of revenue Xcel Energy will suffer due to the loss of customers. These values can be calculated based on the evidence in the record, or in the case of integration expense, will be based on actual project costs. Undefined *ex post facto* adjustments, like those suggested by Slayton, are not part of the statutory framework. Applying the statutory factors, as required by the law, will result in an equitable and fair outcome.

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[32] *See* Slayton Initial Brief at 7, 31.
[33] Slayton Initial Brief at 7.
[34] "Original cost of the property less depreciation," "loss of revenue to the utility," and "expenses resulting from integration of facilities." Minn. Stat. § 216B.45.

Second, the Commission has previously considered and rejected this type of argument under the related statute, Minn. Stat. § 216B.44. In *City of Olivia*, the Commission established a just compensation amount.[35] One party filed a petition for reconsideration, arguing that the just compensation amount was too high because the Commission failed to consider the effect of the purchase price on the City's rates or the City's ability to afford the acquisition cost.[36] The Commission rejected that argument, explaining:

> The task set by Minn. Stat. § 216B.44 (1984) for the Commission is to determine a price that fairly reflects the loss to the [utility]. Even though the record contains evidence with respect to rate effects and the City's ability to afford the acquisition, such evidence is not directly pertinent to satisfying the dictates of the relevant statute. Once the price is set, the City is the party which must determine whether it can and will proceed with the acquisition at that price.[37]

The Commission further explained that its earlier order – and specifically the language Slayton relies on for its argument[38] – should not be interpreted to suggest that the just compensation amount could be adjusted based on what would be affordable for the acquiring City:

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[35] *Olivia*, Docket No. E-288, 136/SA-85-93, FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER SETTING COMPENSATION FOR SERVICE EXTENSION (June 27, 1986).
[36] *Olivia*, Docket No. E-288, 136/SA-85-93, ORDER AFTER REHEARING at 9 (Oct. 1, 1986); PETITION FOR REHEARING OF MINNESOTA MUNICIPAL UTILITIES ASSOCIATION AND THE CITY OF BUFFALO (July 9, 1986).
[37] *Olivia*, Docket No. E-288, 136/SA-85-93, ORDER AFTER REHEARING at 9 (Oct. 1, 1986).
[38] *See* Slayton Initial Brief at 7, n.32 and n.33.

> The Commission did state in its Order . . . that it would not set a price which would make it impossible for the City to benefit from the acquisition . . . . However, the Commission never meant to imply that the price should be reduced to a level which would be less than the actual current loss sustained by the [utility] in giving up the area. Such action would have violated Minn. Stat. § 216B.44 (1984).[39]

When faced with this argument in the past, the Commission confirmed that the just compensation amount must be set based on the actual loss sustained by the utility, and not reduced because the City finds that the price is too high.

B. Slayton's Focus on Utilization is the Wrong Framework to Analyze Lost Revenues.

In its Initial Brief, Slayton repeatedly suggests that costs, and the revenues that recover those costs, should be excluded from the lost revenue calculation because Xcel will be able to "fully utilize" the related assets after Slayton exits the system.[40] The City argues that "costs are properly considered avoided where Xcel's assets and resources are able to be reallocated either internally or externally to remain utilized to the same extent as before the City's purchase,"[41] and that the Company should not receive lost revenues from Slayton for situations where it can "move equipment around its system or adjust purchases to ensure its assets and resources remain fully utilized."[42] Under Slayton's theory, its seems that the Company would only receive lost revenues for assets or expenses that are exclusively

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[39] *Olivia*, Docket No. E-288, 136/SA-85-93, ORDER AFTER REHEARING at 10 (Oct. 1, 1986).
[40] Slayton Initial Brief at 16, 19, 20.
[41] *Id.* at 21.
[42] *Id.*

related to Slayton and cannot be used elsewhere.[43] Slayton's theory is not consistent with how previous lost revenue cases have been decided, and does not make sense.

Slayton's theory does not make sense because whether an asset will still be used after Slayton exits the system has no bearing on whether the Company will lose revenue. Xcel Energy is subject to cost-based rate regulation,[44] which means the rates are designed to recover the cost of providing service to customers. As a result, revenues collected for service are related to the cost of providing that service. For example, consider a hypothetical solar farm that costs $100 each year – rates would be designed to produce $100 in revenue to cover the costs of the solar farm. If there were 100 identical customers, each would pay $1 in revenue each year towards the costs of the solar farm.[45] When the Company loses customers, it loses revenue. From this example, if 10 of the 100 customers exited the system, the Company would receive only $90 in revenue for the solar farm, even though the solar farm continues to cost $100.

Slayton argues that, in this hypothetical example, the $10 in lost revenue should be ignored because the Company will be able to "fully utilize" the solar farm after Slayton exits the system. But that has nothing to do with whether the revenues are lost. The $10 in revenue is lost if the solar farm is used to serve other customers, and the $10 is lost if the solar farm is not used to serve other customers – no matter what happens, the Company is out $10.

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[43] Slayton Initial Brief at 16.
[44] Minn. Stat. § 216B.16.
[45] This simplified, hypothetical example assumes that all the customers are identical. Rate design is more complicated when applied to real customers who are in different rate classes with different consumption patterns.

Slayton's theory is actually related to the concept of stranded costs, which is separate and distinct from the lost revenue analysis. The Slayton West Substation (SLW) substation is an example of a stranded cost. The issue with SLW is not whether Slayton should continue to pay its small share of the costs of the SLW substation – the question is whether Slayton should be responsible for the full costs of the substation, because Slayton's actions are making the SLW substation a stranded asset that no longer provides value to the system. Slayton's attempt to transform the lost revenue analysis into a stranded cost analysis is misguided.

Slayton's theory is also inconsistent with Minnesota law and Commission precedent. Specifically, Minn. Stat. § 216B.45 provides that the City must pay just compensation for "loss of revenue to the utility." It does not say anything about utilization, but focuses on revenue – just like the Company's lost revenue calculation.

Further, the Commission has never decided a lost revenue issue based on whether assets will be "utilized." The City suggests, several times, that its theory is consistent with Commission precedent, but never identifies any Commission order reviewing that concept. It does not appear that the Commission discussed the concept of "utilization" in *any* of the cases decided under Minn. Stat. § 216B.44.[46]

[46] The Company reviewed Commission orders from Docket Nos. 85-93 (*Olivia*), 88-270 (*North Park Additions*), 93-498 (*Rochester*), 02-496 (*Celestica*), 03-989 (*Buffalo*), 03-896 (*Grand Rapids*), and 05-1274 (*Redwood Falls*).

In fact, the lost revenue calculation previously used by the Commission for section 216B.44 cases, called the net revenue loss model, is entirely different than Slayton's theory:

> The Commission determines loss of revenue using the 'net revenue loss' method, with the objective of putting the displaced utility in the same position it would have occupied but for the loss of service rights to the area for which compensation is being determined. This formula was developed in the course of a complex service area compensation case in 1990 and has been refined in subsequent cases as new issues have arisen.
>
> The starting point of determining net revenue loss is to determine the gross revenues the utility would have received if it were serving the area. The number of customers and the usage per customer are estimated for each year of the compensation period, which the Commission has set at ten years, to reflect the intermediate planning horizon of most Minnesota utilities. The utility's rates are then applied to these billing determinants to measure the gross revenues the utility would have received.
>
> Then the avoided costs are determined. For example, the utility will not have to purchase the power to be sold within the area, because the municipality will be providing the service. So costs which, like purchased power, can be avoided, are identified and estimated, again for each year of the compensation period.[47]
>
> The third step in determining net revenue loss is to subtract the avoided costs from the gross revenues. The result is the yearly net revenue loss for each year in the ten-year compensation period.
>
> Finally, the yearly net revenue losses are reduced to present value.[48] The present value amount is taken to be the net revenue loss.[49]

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[47] The facts regarding purchased power costs are different in this case, as explained in the Company's Initial Brief, and that purchased power costs should be treated as not avoidable.

[48] As described in the Company's Initial Brief, there should be a discount to present value if lost revenues are paid as a lump sum, but not if the lost revenues are paid over time.

[49] *Grand Rapids*, Docket No. No. E-106/SA-03-896, ORDER DETERMINING COMPENSATION (Sept. 29, 2005), *affirmed by In re Grand Rapids Pub. Utils. Comm'n*, 731 N.W.2d 866, 875 (Minn. Ct. App. 2007)).

The Commission directs that the focus should be on which costs can be avoided, and does not mention anything about whether assets are "utilized" after the transaction. That is not part of the net revenue loss analysis.[50]

The Company's lost revenue model follows the net revenue loss method explained by the Commission in the *Grand Rapids* case. The steps identified in the Direct Testimony of Company witness Peterson closely track the steps explained by the Commission, only differing in that the Company included an additional step to determine what the relevant lost revenue time period should be.[51] Slayton's attempt to limit lost revenues to only costs that cannot be "utilized" elsewhere is inconsistent with the law and unreasonable.

C. Communications with Non-Parties, in Other Matters, or for the Purpose of Negotiations are not Credible Evidence of How to Calculate Lost Revenues.

Slayton argues that the Company's lost revenue calculations are not reasonable because of information included in PowerPoint slides used during negotiations before this matter devolved into litigation.

To make the situation clear, in 2019 and 2021, the Company provided information to other parties — not Slayton — about how the Company thought about lost revenues in cases decided under section 216B.44 at that time. The City's consultants in this case —

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[50] The City should be familiar with this explanation of the net revenue loss model, because its witness David Berg was also a witness in the *Grand Rapids* case, where the Commission rejected his recommendation on lost revenue. *Compare Grand Rapids*, Docket No. E-243,106/SA-03-896, Surrebuttal of David Berg at 3 (June 23, 2004) (recommending lost revenues of 17.8 mills for present customers and 0.00 mills for future customers) *with Grand Rapids*, Docket No. E-243,106/SA-03-896, ORDER DETERMINING COMPENSATION at 19 (Sept. 29, 2005) (ordering lost revenues of 30 mills for both present and future customers).

[51] Ex. Xcel Energy-204, Peterson Direct at 12:1-7.

who were not working for Slayton at the time — obtained documents through those discussions, and gave them to Slayton. None of those discussions resulted in litigation.[52] As noted in those documents, previous lost revenue calculations were related to annexations from existing municipal utilities (unlike this case), resulted in mutually agreeable resolutions (unlike this case), and were not a significant issue for Xcel Energy because they involved relatively small numbers of customers and revenues (unlike this case).[53]

In 2025, the Company held negotiations with Slayton regarding this matter. Those discussions involved a document similar to those used in discussions with other parties in the past.[54] At that time, this contested case had not begun and there was hope that this matter could be resolved without litigation. Efforts at resolving the dispute were unsuccessful.

When this matter became contested, the situation changed. Rather than relying on years-old PowerPoint decks, the Company was required to present its lost revenue calculation through sworn testimony. The Company carefully evaluated each part of the lost revenue calculation to make sure that the assumptions, data sets, and methodology were reasonable. For some parts of the calculation, this resulted in changes compared to the documents used in the past, but each of the Company's positions is supported by analysis and evidence in the record of this proceeding. The Company's recommendations

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[52] This is the first case under section 216B.45, and there have been no cases filed under section 216B.44 in the time periods at issue.
[53] *See* Ex. Slayton-115, Fritsch Rebuttal (Redacted), Attachment A (pdf page 23).
[54] *Id.* Attachment C.

must be judged on the contents of this record, not communications to non-parties from years ago or discussions with the City during negotiations.[55]

Further, the fact that the Company has been willing to change its position in this case is not a problem, but an indication that it approached the lost revenue calculation with an open mind. The Company evaluated each of Slayton's recommendations, and where those recommendations were persuasive, the Company changed its position. Some of those changes significantly reduced the lost revenue calculation. Far from being a concern, as Slayton suggests, being open to reasonable arguments supported by evidence demonstrates that the Company's approach is reasonable. Slayton, in contrast, has made no changes to its initial recommendation, and in fact has doubled-down on some of its recommendations despite clear evidence that it is wrong.[56]

Ultimately, documents shared with other parties, in other contexts, or in discussions with Slayton before this litigation should be given little weight. The fact that the Company may have taken different positions in other cases, at different times, with different parties, has no bearing on whether the Company's recommendations in this case are reasonable. The Commission has recognized that settlement discussions related to just compensation is of "dubious relevance and little probative value" because "every compensation decision is unique, based on detailed facts specific to the displaced utility and the service area at

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[55] *See* Minn. R. Evid. 408 (prohibiting the admission of evidence regarding settlement communications to prove liability). While Rule 408 does not perfectly fit in administrative proceedings that do not involve questions of liability, it is a clear indication that courts disfavor reliance on communications related to settlement negotiations.
[56] For example, Slayton continues to argue that there could be a downward adjustment for a "dedicated employee" even though the Company has repeatedly explained that there is no such thing. Slayton Initial Brief at 21-22.

issue."[57] The Commission further explained that reviewing previous settlements was unhelpful because:

> Settlements, by definition, represent compromises between parties. In a settlement neither party receives what they believe they would have received at the end of successful litigation. Parties settle to save time, to save litigation expenses, and to avoid the uncertainties inherent in litigation. Settlements by nature are unreliable indicators of the outcome of litigation. The Commission has a duty to determine appropriate compensation based on substantial evidence in the record; settlement histories and amounts have little to offer in this regard.
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> Further, using settlements as indicators of appropriate litigation outcomes would chill parties' willingness to enter into settlements, which typically provide that the parties reserve the right to assert their original positions in future cases and typically prohibit attempts to introduce settlement inputs and outcomes as evidence in future cases. If settlement provisions or outcomes were to influence Commission decisions on the merits of future cases, parties would lose a great deal of flexibility in negotiating settlement terms; settlement would become much less attractive; and the costs of resolving municipal annexation cases would rise.[58]

Just compensation in this case must be set on the evidence in the record, not based on unrelated discussions with non-parties or settlement discussions with the City. The Company's analysis and evidence stands for itself, and demonstrates that the Company's lost revenue calculation is reasonable and supported by the record.

D. The Company's Lost Revenue Calculation is Calculated Correctly.

In several parts of its Initial Brief, Slayton suggests that the Company's lost revenue model includes errors. The City is wrong in each instance.

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[57] *Grand Rapids*, Docket No. E-243, 106/SA-03-896, ORDER DETERMINING COMPENSATION at 7 (Sept. 29, 2005).
[58] *Id.* at 8.

First, Slayton suggests that the lost revenue calculation includes an error related to the calculation of the avoided distribution costs.[59] That is not correct. In Direct Testimony, the Company identified that most distribution costs were not avoidable but that adjustments were needed to avoid double counting assets that were included in other partes of the just compensation calculation: the Slayton distribution system and the SLW substation.[60] The full book value of these assets is included in just compensation pursuant to other factors, so they need to be removed from the lost revenue calculation.[61] In Rebuttal Testimony, Company witness Peterson corrected this calculation to ensure that both data sets were based on net book value, without depreciation.[62] Correcting this minor error increased the lost revenue lump sum, over the entire 20 year time period, by $55,000.

Slayton argues that the Company applied this adjustment incorrectly.[63] It is not entirely clear what Slayton thinks was done wrong, and Slayton's argument seems to be based on a misunderstanding about the Company's lost revenue model. On page 6 of the Company's lost revenue calculation, the Company identifies the avoided distribution costs of 0.1 percent, along with the other avoidable costs, and calculates a total avoided cost percentage of 30.72 percent.[64] The 30.72 percent figure is the critical number from this step of the lost revenue model, as the overall avoided percentage is the figure used to calculate the lost revenue on the other five pages of the schedule. There is no error in this

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[59] Slayton Initial Brief at 29.
[60] Ex. Xcel Energy-204, Peterson Direct at 23.
[61] *Id*.
[62] Ex. Xcel Energy-206, Peterson Rebuttal at 29:6-14.
[63] *See* Slayton Initial Brief at 29.
[64] Ex. Xcel Energy-208, Peterson Surrebuttal, Schedule 1 at 6.

calculation, and certainly no error that would suggest a miscalculation of more than $6 million as suggested by the City. It appears that the City's argument is based on confusion of how the lost revenue model works.

Second, Slayton also makes another baseless argument about double-counting related to the SLW substation.[65] Slayton argues that the Company's proposal to remove the value of SLW from the lost revenue calculation is "obvious manipulation" done to drive to "maximum damage calculations", but Slayton is wrong.[66] As explained above, the Company removed the book value of SLW from the lost revenue calculation to make sure it was *not* double counted. Taking SLW out of the calculation did not result in a major change, because SLW is only a small part of the statewide distribution system, but it was still an important step to ensure the validity of the lost revenue calculation. Slayton obviously disagrees about whether the net book value of SLW should be included in just compensation because it is a stranded asset, an issue described thoroughly in the Company's Initial Brief,[67] that issue has no bearing on the lost revenue calculation.

Third, Slayton suggests that the use of growth rates for customers and use-per-customer is somehow a fatal flaw in the lost revenue model.[68] But the calculation of growth for customers and use-per-customer is a core part of the net revenue loss model that has been repeatedly approved by the Commission. In the *Grand Rapids* case, where the net revenue loss method is most clearly described, the Commission explained: "The starting

[65] Slayton Initial Brief at 34.
[66] *Id.* at 34-35.
[67] Xcel Energy Initial Brief at 84-87.
[68] Slayton Initial Brief at 26-27.

point for determining net revenue loss is to determine the gross revenues the utility would have received if it were serving the area. *The number of customers and the usage per customer are estimated for each year of the compensation period* . . . ."[69] While Slayton disagrees with it, the Company's proposal to calculate customers and use-per-customer using the same assumptions from the forecast in the pending rate case is reasonable, and is not some fatal flaw in the methodology. It is also the only proposal on the record. While the City finds fault in the Company's assumptions, the City has not identified any alternative customer count or use-per-customer calculation that it would find reasonable. Commission precedent requires the calculation of customer counts and use-per-customer for each year of the lost revenue calculation, and there is only one recommendation on the record in this case.

Slayton's arguments about the calculation and methodology of the lost revenue model are not supported by the record.

E. Lost Revenues Will Not be Offset by Sales Growth.

Slayton suggests that given the scale of Xcel Energy's operations, the lost revenues from Slayton will be offset by new sales from other customers.[70] The City argues that one new large customer could represent the addition of much more load than the loss of Slayton. That is irrelevant. Minnesota law requires the City to pay just compensation for "loss of

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[69] *Grand Rapids*, Docket No. E-106/SA-03-896, ORDER DETERMINING COMPENSATION at 3 (Sept. 29, 2005), *affirmed by In re Grand Rapids Pub. Utils. Comm'n*, 731 N.W.2d 866, 875 (Minn. App. 2007)).
[70] Slayton Initial Brief at 23.

revenue" to the utility, not loss of revenue offset by totally unrelated sales growth from other customers.

As explained by Company witness Peterson, the City's analysis is off-base:

> To provide a simple example, consider a scenario involving $10 in revenue from new sales growth plus $3 in existing revenue from Slayton. [The City] is arguing that the $3 in lost revenue does not matter because there is $10 in new revenue from other customers. Yet the correct analysis is to compare the $10 in revenue without Slayton to the $13 in revenue with Slayton. Existing customers would unambiguously be better off with the $13 in revenue than the $10. In other words, the new revenue from sales growth does not change the fact that there is lost revenue from Slayton.[71]

This analysis is consistent with the Commission's description of the net revenue loss method, described above. The steps explained by the Commission in the *Grand Rapids* case does not include any provision for offsetting revenue because of unrelated new revenue streams.[72] The only things that should be treated as offsets for lost revenue are actual costs that can be avoided because of Slayton's exit, or new revenue streams that are caused by Slayton's exit. Slayton's focus on sales growth for other customers is a red herring.

F. The Lost Revenue Discount Rate is Appropriately Based on the Company's Weighted Average Cost of Capital.

Slayton argues that the discount rate applied to the Company's lost revenue calculation is inappropriate. Where a discount rate was used in the lost revenue calculation, the Company set the discount rate at the Company's currently authorized weighted average

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[71] Ex. Xcel Energy-206, Peterson Rebuttal at 15:14-21.
[72] *Grand Rapids*, Docket No. E-106/SA-03-896, ORDER DETERMINING COMPENSATION (Sept. 29, 2005) *affirmed by In re Grand Rapids Pub. Utils. Comm'n*, 731 N.W.2d 866, 875 (Minn. Ct. App. 2007)).

cost of capital (WACC).[73] Slayton disputes this rate, but its analysis is flawed for several reasons.

First, Slayton does not suggest any alternative discount rate and made no attempt to introduce evidence of an alternative discount rate that would be more appropriate. The Company clearly identified the discount rate in the lost revenue calculation in its direct testimony. The City did not provide any Rebuttal Testimony referring to the discount rate or raise any concerns about it.[74] Even assuming the City were correct, which it is not, the City has not identified an alternative discount rate that should be used or explained how one would be calculated.

Further, according to the Department, "[t]he WACC is the usual discount rate used in Commission proceedings."[75] For example, the Company uses a blended WACC when discounting costs in its IRPs.[76] The Commission also has rules formally adopting the use of the WACC as the discount rate for certain types of utility analysis.[77] The WACC represents the return that the Company could earn by investing in utility infrastructure. Its use here is not unusual or surprising, and is reasonable.

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[73] Ex. Xcel Energy-204, Peterson Direct at 27:23-28:7.

[74] *See* Exs. Slayton-105, Berg Rebuttal; Slayton-109, Heronimus Rebuttal; Slayton-110, Malchow Rebuttal; Slayton-115, Fritsch Rebuttal (Redacted) and Slayton-116, Mitchell Rebuttal (Redacted) none of which mention the discount rate or weighted average cost of capital.

[75] *In the Matter of Otter Tail Power Company's Petition for Proposed Energy Storage System Pilot at the University of Minnesota Morris*, Docket No. E-017/M-25-325, Order at PDF Page 8 (March 10, 2026). The Commission's Order explicitly adopted the Comments filed by the Department.

[76] *In the Matter of Xcel Energy's 2024-2040 Upper Midwest Integrated Resource Plan*, Docket No. E002/RP-24-67, Petition, Appendix F at 1 (Feb. 1, 2024). The WACC is blended because the Upper Midwest system includes multiple states that have established different WACCs.

[77] Minn. R. 7835.0600, subp. 5(B) (requiring the use of the incremental cost of capital for the discount rate in calculating net annual avoided capacity cost).

Finally, the City does not appear to recognize that the application of a discount rate depends on the manner of just compensation recovery ordered by the Commission. If the Commission orders the payment of a lump sum for lost revenues, the Company agrees that a discount rate should be used to convert the value of future lost revenues into today's dollars. If lost revenues are paid over time, a discount rate should not be used because there would be no time difference between the lost revenues and recovery of the payment. In other words, if lost revenues are paid over time as Slayton recommends, the discount rate is not included in the calculation at all and its argument serves no purpose.

G. The SLW Substation will Be a Stranded Asset.

In its Initial Brief, Slayton argues that the net book value of the SLW substation should not be included in just compensation because the Company will continue to own it.[78] That is not the right analysis for this issue.

Right now, SLW is a useful asset, and it is reasonable for Xcel Energy's retail customers to pay for it, because SLW is needed to provide service to customers living in Slayton.[79] If Slayton exits the system, the Company will continue to own SLW but it will become a stranded asset because it will serve only a small handful of retail customers.[80] In short, the Company will continue to own SLW, but it will not be a useful asset in the way it was designed to be. The only reason for the loss of value and purpose in SLW is Slayton's decision to leave. The fact that the Company will continue to own the substation is actually

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[78] Slayton Initial Brief at 34.
[79] Ex. Xcel Energy-204, Peterson Direct at 41:23-43:21.
[80] *Id.*

the reason why it should be included in just compensation – neither the Company or its continuing customers should be saddled with costs for a substation that is turning into a stranded asset.

Slayton admits that SLW is a stranded asset,[81] but does not treat it appropriately in the just compensation calculation. Instead, the City calculates the portion of SLW-related costs that are paid by Slayton customers, and treats that as lost revenue.[82] In other words, even though SLW is being stranded because of Slayton's action, the City proposes to treat it the same as all of the Company's other assets which are not being stranded. That is not reasonable. Slayton is causing SLW to turn into a stranded asset, and as a result the Company is not just losing revenues. An asset which the Company invested in will experience significantly reduced value because of Slayton. The proper remedy is to include the proportional share of SLW's net book value in the just compensation, because that is the reduction in value that the Company will experience because of Slayton's decision to exit the system.

H. A Mill Rate or Scheduled Payment for Lost Revenues is not "Secured".

The Minnesota Constitution provides that the government may not take property unless just compensation is "first paid or secured."[83] In its Initial Brief, the City argues that

[81] Ex. Slayton-103, Berg Direct at 28:9-16.
[82] *Id.*
[83] Minn. Constitution, Article 1, Section 13.

a Commission order requiring the payment of lost revenue using a mill rate would be "secured", satisfying this Constitutional requirement. The City is wrong.

The Minnesota Supreme Court has explained that the government must be "vigilant in enforcing the just compensation requirement."[84] A government action to take private property "must give the property owner a 'full and exact equivalent' for the property taken."[85] That "equivalent" is determined "at the time of the taking contemporaneously paid in money."[86] The Court has described the security required in absence of a payment as, for example, "a sum to be fixed by the court" that is "deposit[ed]" "to secure compensation."[87]

A Commission order does not "secure" a future payment from Slayton to Xcel Energy. Slayton has not proposed an escrow payment, any collateral, or any other financial tool by which its obligation to make future payments could be secured. It is not clear whether a Commission Order would give the Company a legal right of action against Slayton, if the City does not pay as required.[88] If Slayton chooses not to pay, or does not have the capability to do so, the Commission might be able to pursue the City for violations of its orders but it is unclear that the Company would have any remedy – because the just compensation would not be secured. As such, Slayton's argument that the proposed mill rate would be secured is not consistent with the law.

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[84] *Moorhead Economic Development Authority v. Anda*, 789 N.W.2d 860, 876 (Minn. 2010).
[85] *Id.* (citations omitted).
[86] *Id.* (citations omitted).
[87] *Housing and Redevelopment Authority of City of St. Paul v. Greenman*, 96 N.W.2d 673, 683 (Minn. 1959).
[88] *See* Minn. Stat. §§ 216B.54-.61. Only the Attorney General's Office has the authority to seek penalty for violation of Commission orders.

V. Slayton's Witnesses Lack Credibility.

Slayton also suggests that the Company's witnesses and analysis are not credible.[89] In particular, the City raises concerns about the credibility of Company witness Lisa Peterson.[90] While the parties obviously disagree about how to calculate lost revenues, the City's attack on Ms. Peterson's credibility is completely baseless.

Company witness Peterson is an experienced specialist in the field with deep knowledge of utility ratemaking and the utility business. Ms. Peterson has been employed by the Company for more than 35 years in a variety of highly specialized roles. Ms. Peterson has a degree in electrical engineering from the University of Minnesota, and was initially employed by the Company as an engineer. In 1998, Ms. Peterson became an analyst in the resource planning unit. In 2005, Ms. Peterson was promoted to a pricing analyst. In 2017, Ms. Peterson became a manager in the regulatory pricing and analysis team and in 2022 was promoted to Director of the same team.[91] Ms. Peterson has testified in multiple proceedings for the Company and holds significant responsibilities to manage a team across multiple jurisdictions. Slayton has identified absolutely no basis that would justify "totally reject[ing]" her analysis as the City suggests.[92]

The Company's other witness on lost revenue calculations is also eminently qualified. Dr. Bixuan Sun has been an expert with the Company for more than 5 years, and

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[89] Slayton Initial Brief at 16-17 ("The Commission should reject Xcel's testimony as not credible . . . ."), 29, 30
[90] *Id.* at 30 ("[T]he Commission should find Xcel witness Peterson to be not credible and should totally reject Xcel's lost revenue model.").
[91] Ex. Xcel Energy-204, Peterson Direct at Schedule 1.
[92] Slayton Initial Brief at 30. Further, to the extent that the City had any justification to attack the qualifications of Company witness Peterson, those arguments were waived when they were not raised by January 30, 2026 as required by the First Prehearing Order. First Prehearing Order para. 29.

is currently the Director of Resource Planning and Bidding with extensive responsibilities for selecting the Company's generation fleet.[93] Dr. Sun has a Ph.D. in applied economics from the University of Minnesota and has published multiple academic papers on utility issues and related topics.[94] Any suggestion that Dr. Sun lacks credibility is outrageous.

To the extent there are any issues about the credibility of witnesses in this matter, the concern lies with Slayton's witnesses. Slayton's primary witness on just compensation, and particularly on lost revenue, is David Berg. While Mr. Berg has provided testimony about lost revenue to the Commission in several previous cases under Minn. Stat. § 216B.44, the Commission has never adopted his lost revenues recommendation and has repeatedly questioned his methodology:

- In *Rochester*, Berg recommended that no just compensation was due for future customers.[95] The Commission ordered 11.0 mills for future customers.[96] In doing so, the Commission rejected Berg's stance that no compensation was due for future customers,[97] noting that this was a claim "the Commission consistently rejected."[98]

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[93] Ex. Xcel Energy-210, Sun Direct at Schedule 1.

[94] *Id.*

[95] *See In the Matter of the Application by the City of Rochester for an Adjustment of its Service Area Boundaries with People's Cooperative Power Association, Inc.*, Docket No. E-299, 132/93-498, Berg Surrebuttal at 16:9-20, 19:9-20 (Dec. 2, 1994) (testifying that People's Cooperative did not have adequate facilities in place to serve future customers); *see also* Initial Brief of the City of Rochester at 11 (Feb. 21, 1995) (arguing "[n]o compensation is owed for People's 'loss of revenue' resulting from the City's acquisition of future customers").

[96] *In the Matter of the Application by the City of Rochester for an Adjustment of its Service Area Boundaries with People's Coop. Power Ass'n, Inc.*, Docket No. E-299, 132/SA-93-498, COMMISSION ORDER DETERMINING COMPENSATION AND DENYING MOTION TO DISMISS at 11 (Nov. 30, 1995) (*Rochester*).

[97] *Rochester*, Docket No. E-299, 132/SA-93-498, COMMISSION ORDER DETERMINING COMPENSATION AND DENYING MOTION TO DISMISS at 10 ("The Commission rejects the argument that bare ground acquisitions are non-compensable and rejects the argument that People's' facilities and capacity in this case fall short of that necessary to entitle it to compensation.").

[98] *Rochester*, Docket No. E-299, 132/SA-93-498, COMMISSION ORDER DETERMINING COMPENSATION AND DENYING MOTION TO DISMISS at 9-10 (Nov. 30, 1995) (citing *North Park Additions*, Docket No. E-132, 299/SA-88-270, ORDER DETERMINING COMPENSATION (July 11, 1990), *affirmed by In re Annexation of a Portion of the Serv. Territory of People's Coop. Power Ass'n*, 470 N.W.2d 525 (Minn. App. 1991), *pet. for rev. denied* (Minn. July 24, 1991); *In the Matter of the Complaint by Kandiyohi Coop. Elec. Power Ass'n*, 455 N.W.2d 102 (Minn. App. 1990)) (observing that the displaced utility "do not have to show that they have in place the facilities and capacity to serve the area for the

- In *Celestica*, Berg recommended lost revenues of 6.5 mills for the single large customer at issue in this proceeding.[99] The Commission ordered a compensation payment of 13.7 mills.[100] The Commission rejected Berg's recommendation to use an average method to calculate avoided purchase power expense and avoided distribution and maintenance expense,[101] and ordered the use of an incremental analysis, as recommended by the cooperative.[102]

- In *City of Buffalo*, Berg recommended lost revenues of 11.2 mills for present customers for a period of 2 years and 0.00 mills for future customers.[103] The Commission ordered the rate proposed by the cooperative for lost revenues of 17.9 mills/kWh for present customers for a period of 10 years, and 28 mills per kWh for new customers for a period of 10 years.[104] The Department of Commerce specifically criticized Berg[105] for making arguments that were "clearly inconsistent with established Commission precedent" regarding the definition of receiving service and whether a utility is serving an area[106] and the Commission agreed.[107] The Commission also declined to use the averaging approach

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entire compensation period" and noting that this claim has been rejected in previous Commission orders which have been upheld twice by the Minnesota Court of Appeals), *affirmed and reversed in part* ORDER AFTER RECONSIDERATION (Apr. 24, 1996), *affirmed by In re the Application by the City of Rochester for an Adjustment of its Serv. Area Boundaries with People's Coop. Power Ass'n, Inc.,* 556 N.W.2d 611 (Minn. Ct. App. 1996), *pet. for rev. denied* (Minn. Feb. 26, 1997)).

[99] *In the Matter of the Petition by the City of Rochester for Approval of an Adjustment of its Serv. Territory Boundaries with People's Coop. Servs., Inc. (Celestica Property)*, Docket No. E-132,299/SA-02-496, Berg Surrebuttal at 4:6-8 (Dec. 23, 2002) (*Celestica*).

[100] *Celestica*, Docket No. E-132,299/SA-02-496, ORDER DETERMINING COMPENSATION (June 19, 2003).

[101] *Celestica*, Docket No. E-132,299/SA-02-496, Berg Rebuttal at 4:7-6:4 (Dec. 11, 2002).

[102] *Celestica*, Docket No. E-132,299/SA-02-496, ORDER DETERMINING COMPENSATION at 7 (June 19, 2003) ("The Commission agrees with the ALJ that it is reasonable, in calculating avoided purchase power expense and avoided distribution and maintenance expense, to use an incremental analysis, as it has in the past."); *see also Celestica*, Docket No. E-132,299/SA-02-496, FINDINGS OF FACT, CONCLUSIONS, AND RECOMMENDATION at ¶¶ 34-37 (Mar. 31, 2003).

[103] *In the Matter of the Application of the City Buffalo to Extend its Assigned Serv. Area into the Area Presently Assigned to Wright-Hennepin Coop. Elec. Ass'n*, Docket No. E-221,148/SA-03-989, Berg Surrebuttal at 4:7-33 (May 14, 2004).

[104] *In the Matter of the Application of the City Buffalo to Extend its Assigned Serv. Area into the Area Presently Assigned to Wright-Hennepin Coop. Elec. Ass'n*, Docket No. E-221,148/SA-03-989, ORDER DETERMINING COMPENSATION AND REQUIRING COMPLIANCE FILING at 10-11 (Apr. 1, 2005); ORDER DETERMINING COMPLIANCE ISSUES at Order Point 2 (Feb. 6, 2007) (*Buffalo*).

[105] *See Buffalo,* Docket No. E-221,148/SA-03-989, Berg Direct at 28-32 (Apr. 4, 2004).

[106] *Buffalo*, Docket No. E-221,148/SA-03-989, Response Brief of the Minnesota Department of Commerce at 24 (Sept. 9, 2024); *see also Buffalo*, Docket No. E-221,148/SA-03-989, ORDER DETERMINING COMPENSATION AND REQUIRING COMPLIANCE FILING at 4 (Apr. 1, 2005).

[107] *Buffalo*, Docket No. E-221,148/SA-03-989, ORDER DETERMINING COMPENSATION AND REQUIRING COMPLIANCE FILING at 5-7 (Apr. 1, 2005) ("The Commission finds that the City and the Administrative Law Judge misread established precedent in finding that the seven annexed areas were receiving electric service from the Cooperative but that the Cooperative must still pass a multi-factor test to qualify for full compensation.").

advocated by Berg[108] to calculate the value of avoided system improvements, finding that the incremental approach that the Commission it has "consistently taken in previous cases yield[ed] a more accurate measure of damages".[109]

- In *Grand Rapids*, Berg recommended lost revenues of 17.8 mills for present customers and 0.00 mills for future customers.[110] The Commission ordered lost revenues of 30 mills for both present and future customers.[111] The Department of Commerce again specifically criticized Berg for making arguments that were "clearly inconsistent with established Commission precedent",[112] and the Commission agreed.[113] The Commission also criticized Berg's analysis regarding margins, finding that his analysis provided "no indication of the reasonableness or unreasonableness of either party's proposed compensation award."[114]

- In *Redwood Falls*, Berg recommended lost revenues of 14.4 mills for present customers, 0.0 mills for city wastewater treatment ponds, and 14.4 mills for future customers.[115] The Commission ordered lost revenues of 29.7 mills for present customers for a period of 10 years, 29.7 for the wastewater treatment ponds for a period of 5 years,[116] and 32.9 mills for future customers for a period of 10 years.[117] In reaching this conclusion, the Commission rejected Berg's methodology for the calculation of the Power Cost Adjustment.[118]

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[108] *Id.* at 8 (describing Berg's proposal on behalf of the city as "departing from established practice and calculating avoided costs on a more theoretical basis - averaging and allocating system-wide costs - instead of trying to determine the direct, incremental, financial impact that losing service rights to this area will have on [the displaced utility], given its specific operational requirements and the configuration of its system.").
[109] *Id.* at 5, 8-9.
[110] *Grand Rapids*, Docket No. E-243,106/SA-03-896, Berg Surrebuttal at 3 (June 24, 2004).
[111] *Grand Rapids*, Docket No. E-243,106/SA-03-896, ORDER DETERMINING COMPENSATION at 19 (Sept. 29, 2005).
[112] *Grand Rapids*, Docket No. E-243,106/SA-03-896, Response Brief of the Department of Commerce at 21 (Nov. 19, 2004); *see also* ORDER DETERMINING COMPENSATION at 4 (Sept. 29, 2005).
[113] *Grand Rapids*, Docket No. E-243,106/SA-03-896, ORDER DETERMINING COMPENSATION at 11-12 (Sept. 29, 2005).
[114] *Grand Rapids*, Docket No. E-243,106/SA-03-896, ORDER DETERMINING COMPENSATION at 7 (Sept. 29, 2005); *see also Grand Rapids*, Docket No. E-243,106/SA-03-896, Berg Rebuttal at 32:16-33:6 (June 22, 2004) (arguing that the cooperative's loss of revenue calculations were unreasonable based on a margin comparison).
[115] *Redwood Falls*, Docket No. E-135, 298/SA-05-1274, Berg Surrebuttal at 3 (Sept. 11, 2006).
[116] *Redwood Falls*, Docket No. E-135, 298/SA-05-1274, ORDER DETERMINING COMPENSATION at 14 (June 27, 2007).
[117] *Redwood Falls*, Docket No. E-135, 298/SA-05-1274, ORDER CORRECTING MILL RATE AND DENYING RECONSIDERATION AS TO ALL OTHER ISSUES at Order Point 1 (Sept. 14, 2007).
[118] *Redwood Falls*, Docket No. E-135, 298/SA-05-1274, ORDER DETERMINING COMPENSATION at 11-13 (June 27, 2007).

Slayton witness Berg has personally provided testimony in multiple prior just compensation cases, and the Commission has never adopted his lost revenues recommendation. In multiple instances the Department or the Commission specifically explained that his analysis was wrong. That is not the track record of a credible witness.

Slayton witness Mitchell also provided testimony. Most of it is no longer relevant, as the Company has agreed that transmission costs should be treated as avoidable. Witness Mitchell's remaining testimony is about his opinion, from an "engineering perspective",[119] that the Company should not conduct any engineering studies if Slayton exits the system. However, as demonstrated during the evidentiary hearing, Slayton witness Mitchell is not a licensed engineer in Minnesota.[120] In fact, he has never been a registered engineer in Minnesota,[121] and his registration in Colorado lapsed more than 25 years ago.[122] Even if he were a registered engineer, Slayton witness Mitchell admitted during the evidentiary hearing that he had not done any actual engineering analysis to back up his opinion.[123]

Slayton witnesses Malchow and Heronimus provided testimony that is not relevant to the calculation of just compensation or lost revenues.[124] Slayton witness Fritsch's

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[119] *See, e.g.,* Slayton-116, Mitchell Rebuttal (Redacted) at 13 ("ruling out" the possibility of system stability issues "from an engineering perspective").
[120] Tr. Evid. Hearing at 17:3-5 (Mitchell) ("Q: Mr. Mitchell, are you a licensed professional engineer in the state of Minnesota? A. No, I'm not. Q: Have you ever been a licensed professional engineer in the state of Minnesota? A: No.").
[121] *Id.*
[122] Tr. Evid. Hearing at 17 (Mitchell) ("Q: I see from your CV that you used to be a registered professional engineer in Colorado, but that license is not active; is that correct? A: Correct. . . . Q: And when did the license go inactive. A: I don't have an exact date, but it would have been approximately 1990, '95. . . . Q: So just to be clear, your license is not active now and it hasn't been active for a long time. A: Correct.").
[123] Tr. Evid. Hearing at 18:3-10 (Mitchell) ("Q. You testified that system stability issues would be virtually impossible from an engineering perspective. But you didn't include any engineering studies or reports in your testimony, right, Mr. Mitchell? A. That's correct. Q: In fact, you didn't even do such a study; correct? A. Correct.").
[124] Exs. Slayton-109, Heronimus Rebuttal; Slayton-110, Malchow Rebuttal; Slayton-111, Malchow Surrebuttal.

testimony is related almost entirely to PowerPoint presentations which, as discussed earlier, also are not reliable evidence.[125]

To the extent credibility is at issue in this proceeding, it weighs heavily in favor of the Company. There is no basis to reject any of the Company's analysis on the grounds of credibility and, in fact, when evaluating credibility more weight should be given to the Company's experts.

VI. Arguments about Eligibility Under Minn. Stat. § 216B.45 are Not Waived.

The City suggests that the Company should be prohibited from raising its concerns that Slayton's proposed acquisition is not consistent with Minn. Stat. § 216B.45. The City is wrong.

First, the City suggests that the Company previously agreed that it had met the prerequisites of the statute, which is simply untrue. The City's Initial Brief states "[a]s an initial matter, both Xcel and the Department 'agreed that Slayton followed the statutory prerequisites to initiate the acquisition of Xcel's facilities.'"[126] For this proposition, the City cites to the Commission's Notice of and Order for Hearing.[127] But the Notice of and Order for Hearing does not say that Xcel Energy made any such admission. The Notice of and Order for Hearing states, "[t]he Department agreed that Slayton followed the statutory prerequisites," and makes no mention at all of any admission by Xcel Energy.[128]

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[125] Ex. Slayton-115, Fritsch Rebuttal (Redacted).
[126] Slayton Initial Brief at 36.
[127] *Id.*
[128] NOTICE OF AND ORDER FOR HEARING at 2 (June 2, 2025).

Selectively quoting the Commission's Order to suggest that the Company waived its right to raise an argument in this proceeding is improper.

The Company's initial comments did state that "Xcel Energy does not procedurally challenge the City's initiation of a proceeding," but that statement was strictly limited to "initiation of a proceeding" and was directly tied to the Company's recommendation to begin a contested case proceeding.[129] The point of this contested case proceeding is to resolve disputes about the City's proposal to take the Company's property and customers. The Company did not dispute Slayton's request to initiate the proceeding, but the Company does dispute whether the law requires the Company to submit to the taking of its property in this scenario. There is no obligation on the Company to identify every potentially disputed issue before the contested case even starts and before the Company has the right to discovery.[130] The extent of the City's engagement with Nobles was not clear until the Company engaged in discovery. This contested case proceeding is the Company's opportunity to dispute whether the City's proposal is consistent with the law and the Company should not be deprived of that opportunity. Further, the question of whether the City meets the requirements to force the Company to sell its property is similar to a question

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[129] Ex. Xcel Energy-200, Xcel Energy Initial Comments at 2.

[130] In fact, OAH rules explicitly permit changes in scope once a contested case proceeding starts. Minn. R. 1400.5600, subp. 5 (permitting amendment to the notice of and order for hearing). The Company does not believe that an amendment to the Notice of and Order for Hearing is required, but to the extent one is required the Company requests approval of such amendment from the ALJ.

of subject matter jurisdiction, and it is well established that questions of subject matter jurisdiction cannot be waived.[131]

To the extent that the City is arguing it was not aware that the Company might raise these concerns or that it is somehow unfair to do so in briefing, that suggestion would be baseless. The Company introduced its concerns and the facts supporting its argument in the Direct Testimony of Company witness Al Krug filed on November 21, 2025.[132] The City was on notice that the Company was evaluating the issue even earlier, as the information requests attached to Company witness Krug's testimony were issued on September 3, 2025 and October 21, 2025.[133] Following Direct Testimony, the City had almost two months to respond in its Rebuttal Testimony and did so.[134] The Company did not make its legal argument during the testimony process because the purpose of testimony is introduce factual and analytical evidence through expert witnesses. The Company raised its legal argument at the appropriate time – in legal briefing. The City will have the opportunity to provide its response to the legal argument in its Reply Brief. That the issue has arisen is not a surprise and the City has a full and fair opportunity to respond.

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[131] "[D]efects in subject matter jurisdiction may be raised 'at any time' and cannot be waived or forfeited by a party." *Rued v. Commissioner of Human Services*, 13 N.W.3d 42, 46 (Minn. 2024) (quoting *Seehus v. Bor-Son Constr., Inc.*, 783 N.W.2d 144, 147 (Minn. 2010)).
[132] Ex. Xcel Energy-202, Krug Direct.
[133] *See, e.g., id.* at Schedules 5, 7, and 8.
[134] In fact, the City provided information that corrected some misunderstandings about the transmission line which the City plans to receive service after the transaction. Ex. Slayton-111, Malchow Surrebuttal. Having reviewed that testimony, the Company did not include arguments related to the transmission line in final presentation of arguments to the ALJ.

CONCLUSION

For the foregoing reasons and the reasons stated in the Company's Initial Brief, the Company respectfully requests that the Administrative Law Judge recommend, and the Commission determine, that Slayton's proposed acquisition is not consistent with the requirements of Minn. Stat. § 216B.45. If Slayton's proposed acquisition is found to be consistent with legal requirements, the Company respectfully requests that the Administrative Law Judge recommend, and the Commission determine, that just compensation should be established as recommended by the Company.

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COZEN O'CONNOR

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