

**STATE OF MINNESOTA
BEFORE THE
MINNESOTA PUBLIC UTILITIES COMMISSION**

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**Chair
Commissioner
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In the Matter of the Petition of Excelsior Energy Inc. and Its Wholly-Owned Subsidiary MEP-I LLC For Approval of Terms and Conditions For The Sale of Power From Its Innovative Energy Project Using Clean Energy Technology Under Minn. Stat. § 216B.1694, For a Determination That the Clean Energy Technology Is Or Is Likely To Be a Least Cost Alternative Under Minn. Stat. § 216B.1693 and To Establish the Clean Energy Minimum Under Minn. Stat. § 216B.1693

MPUC Docket No.: _____

**PETITION FOR APPROVAL OF
POWER PURCHASE AGREEMENT,
DETERMINATION THAT
CLEAN ENERGY TECHNOLOGY
IS OR IS LIKELY TO BE A
LEAST-COST RESOURCE,
AND ESTABLISHMENT OF
THE CET MINIMUM**

Excelsior Energy Inc. and its wholly-owned subsidiary MEP-I LLC (jointly “Excelsior”) for their petition state as follows:

INTRODUCTION

1. This Petition is filed under the Innovative Energy Project statute, Minn. Stat. § 216B.1694 (“IEP Statute”), for purposes of obtaining an order of the Minnesota Public Utilities Commission (“Commission”) determining that Excelsior’s proposed power purchase agreement (“Mesaba One PPA” or “PPA”),¹ through which Northern States Power Company d/b/a Xcel Energy (“NSP”) would purchase all of the electricity and capacity to be provided from the operation of the Mesaba Energy Project Unit One (“Mesaba Project” or “Project”), is in the

¹ The Mesaba One PPA is at Section V of the Mesaba Energy Project Report attached hereto as Appendix A.

public interest. Although the Mesaba Energy Project is the larger innovative energy project referenced in the IEP Statute that will include multiple units on each of three sites, for ease of reference throughout this Petition the “Mesaba Project” or the “Project” will be deemed to refer to Unit One only or the larger multi-unit project, as the context requires. This Petition is also filed under the Clean Energy Technology statute, Minn. Stat. § 216B.1693 (“CET Statute”), for purposes of obtaining an order of the Commission that (a) the clean energy technology to be employed in the Mesaba Project is or is likely to be a least-cost base load resource and (b) NSP must acquire a Commission established percentage of at least thirteen percent of the electric energy provided to retail customers from the Mesaba Project Units One and Two.²

2. Excelsior anticipates that issues of material fact may be raised by Intervenors. Because proceedings on this Petition are likely to involve contested material facts, and because time is of the essence in the resolution of the issues raised herein, Excelsior requests the Commission to refer this matter to the Office of Administrative Hearings for an expedited contested case hearing pursuant to Minn. R. 7829.1000. Contested case hearing procedures will allow the record in this case to be fully developed and will provide a vehicle for meaningful participation by interested parties.

STATUTORY AUTHORITY FOR PETITION

3. This Petition is filed pursuant to Minn. Stat. §§ 216A.05, subd. 5, 216B.1694, subd. 2(a)(7) 216B.1693(a), and Minn. R. § 7829.1300.

4. Minn. Stat. § 216B.1694, subd. 2(a)(7) (from the IEP Statute) provides:

Regulatory incentives. (a) An innovative energy project:

* * *

² Mesaba Project Unit Two will be owned by MEP-II LLC.

(7) shall be entitled to enter into a contract with a public utility that owns a nuclear generation facility in the state to provide 450 megawatts of base load capacity and energy under a long-term contract, subject to the approval of the terms and conditions of the contract by the Commission. The Commission may approve, disapprove, amend, or modify the contract in making its public interest determination, taking into consideration the project's economic development benefits to the state; the use of abundant domestic fuel sources; the stability of the price of the output from the project; the project's potential to contribute to a transition to hydrogen as a fuel resource; and the emission reductions achieved compared to other solid fuel base load technologies;

5. Minn. Stat. § 216B.1693(a) and (b) (from the CET Statute) provide:

(a) If the Commission finds that a clean energy technology is or is likely to be a least-cost resource, including the costs of ancillary services and other generation and transmission upgrades necessary, the utility that owns a nuclear generating facility shall supply at least two percent of the electric energy provided to retail customers from clean energy technology.

(b) Electric energy required by this section shall be supplied by the innovative energy project defined in section 216B.1694, subdivision 1, unless the Commission finds doing so contrary to the public interest.

PARTIES

6. Excelsior Energy is an independent energy development company based in Minnetonka, Minnesota, which will license, construct, own and operate, through MEP-I, Unit One of the Mesaba Project, a coal-fueled Integrated Gasification Combined Cycle (“IGCC”) power plant located in northeastern Minnesota with an initial capacity installation of 603 MW (net). Excelsior plans to sell the output of the plant under a long-term contract to NSP approved by the Commission pursuant to 216B.1694, subd. 2(a)(7) and Minn. Stat. §§ 216B.1693(a). Unit One of the Mesaba Project is scheduled to be in service in 2011. Unit Two of the Mesaba Project is scheduled to be in service in 2013 and have a net capacity of 603 MW.

7. NSP is an investor-owned utility engaged primarily in the business of generating, transmitting and distributing electrical power and energy in the states of Minnesota, Wisconsin,

North Dakota and South Dakota. NSP is a public utility subject to the Commission's jurisdiction as defined by Minn. Stat. § 216B.02, subd. 4 and owns two nuclear generating facilities in Minnesota. The IEP Statute empowers the Commission to approve, disapprove, amend or modify a PPA that it finds in the public interest for the provision of 450 MW of base load capacity and energy to NSP, as an owner of a nuclear generating facility in the state. In addition, the CET Statute mandates NSP to supply "at least two percent of the electric energy provided to retail customers from clean energy technology," if the Commission "finds that a clean energy technology is or is likely to be a least-cost resource" Minn. Stat. § 216B.1693(a). NSP must supply such energy from "the innovative energy project defined in 216B.1694, subdivision 1," unless doing so is contrary to the public interest. Minn. Stat. § 216B.1693(b). Thus, NSP must purchase 450 MW of base load electrical capacity and energy generated by Unit One of the Mesaba Project if the Commission approves the Mesaba One PPA under the IEP Statute, and all of Unit One's base load electrical capacity and energy if the Commission also finds that the Mesaba Project is or is likely to be a least-cost resource under the CET Statute.

8. Since late 2004, Excelsior has been in discussions with NSP regarding the terms and conditions for a PPA for the output of Unit One of the Mesaba Project. In addition, during 2005, Excelsior met with a number of key stakeholders to discuss its Mesaba Project. Despite the efforts on the part of NSP and Excelsior to negotiate the terms and conditions for the PPA, the parties are not able to jointly petition for approval of the PPA. Because the IEP Statute uses language that an innovative energy project is "entitled to enter into a contract," it is clear that the Legislature envisioned the possibility that NSP might not support approval of the PPA. Excelsior files this Petition to ensure that the purpose of the IEP and CET Statutes is realized for the benefit of NSP's ratepayers and the people of Minnesota.

ORGANIZATION OF THE FILING

9. Attached to this Petition as Appendix A, and incorporated herein by reference, is the Mesaba Energy Project Report (“Report”) which provides factual and analytical support for the three findings requested. First, Excelsior requests approval of the Mesaba One PPA, included at Section V of the Report, as part of the Commission’s determination that the PPA is “in the public interest.” Second, Excelsior requests that the Commission find that the advanced clean coal technology utilized in the Project is or is likely to be a least-cost source of base load power and that it is not contrary to the public interest to have the Mesaba Project supply such base load power. Finally, Excelsior requests that the Commission establish under the CET Statute the appropriate minimum percentage of its electric energy supplied to retail customers that NSP must provide from a Clean Energy Technology by 2013.

10. The Report contains the information establishing and supporting the Commission’s determination that the Mesaba One PPA should be approved because it is in the public interest under the IEP Statute, Minn. Stat, § 216B.1694, subd. 2(a)(7).

11. The Report also contains the information establishing and supporting (a) the Commission’s determination that the clean coal technology to be employed by the Mesaba Project is or is likely to be a “least-cost” base load resource compelling NSP to “supply at least two percent of the electric energy provided to retail customers from [that] clean energy technology” under the CET Statute and that it is not contrary to the public interest that the Mesaba Project supply such energy to NSP and (b) the Commission’s establishment of an appropriate minimum percentage of NSP’s electric energy supplied to retail customers that NSP must provide from a Clean Energy Technology.

12. Finally, Appendix B to this Petition contains the procedural filing information for the Petition required by the applicable rules.

PROCEDURE

13. Due to time constraints related to financing and construction of the Mesaba Project, the time deadlines for certain substantial Federal incentives which will benefit NSP's ratepayers and the State of Minnesota, and the likelihood that NSP and other interested parties may raise issues of material fact regarding determinations required by the IEP and the CET Statutes, Excelsior requests that the Commission refer this matter to the Office of Administrative Hearings for appointment of an administrative law judge to hear this matter as a contested case proceeding as soon as possible.

14. Because of the time constraints affecting this proceeding, Excelsior requests that this Commission expeditiously issue an order:

(a) requiring NSP to answer this Petition within 20 days of the service thereof;

(b) requiring all parties or potential intervenors to comment on this Petition by January 16, 2006;

(c) requiring that the Administrative Law Judge recommend findings of fact and conclusions of law on the following specific issues:

(1) Whether the Mesaba Project is an IEP;

(2) Whether the Mesaba One PPA for 450 MW is in the public interest taking into consideration the five factors set forth in the IEP Statute;

(3) Whether MEP-I LLC is entitled to enter into the Mesaba One PPA;

(4) Whether it would be prudent and in the best interest of NSP's ratepayers for NSP to enter into the Mesaba One PPA;

(5) Whether, if NSP enters into the Mesaba One PPA within 30 days of the Commission's Order, NSP should be allowed to recover from ratepayers all costs paid under the Mesaba One PPA provided that NSP prudently administers the Mesaba One PPA;

(6) Whether the IGCC technology of the Mesaba Project is a clean energy technology and is or is likely to be a least cost resource under the CET Statute;

(7) Whether, because the Mesaba Project is or is likely to be a least cost resource under the CET Statute, NSP shall supply at least two percent of its electric energy to retail customer from a clean energy technology, including another 153 MW from the Mesaba Project Unit One under the Mesaba One PPA;

(8) Whether the minimum percentage of NSP's electric energy supplied to retail customers that NSP must provide from IGCC as the Clean Energy Technology by 2013 (the "Clean Energy Technology Minimum") is at least thirteen percent (an amount sufficient to include the entire output of Unit Two of the Mesaba Project); and

(9) Whether it would be contrary to the public interest to supply the first incremental portion of the Clean Energy Technology Minimum from Units One and Two of the Mesaba Project;

(d) establishing a prehearing conference for, and deadline for intervention of, February 15, 2006;

(e) authorizing the parties to commence discovery through the service of information requests to be responded to within ten calendar days of service, provided that parties have entered an appropriate confidentiality agreement;

(f) establishing a deadline for the ALJ's recommendation of July 1, 2006; and

(g) establishing a deadline for decision by the Commission of August 31, 2006.

THE MESABA PROJECT IS AN INNOVATIVE ENERGY PROJECT

15. The IEP Statute sets forth three specific requirements that an energy-generation facility must meet in order to qualify as an IEP. The Mesaba Project: (1) makes use of an innovative generation technology that utilizes coal as a primary fuel, has a highly efficient combined-cycle configuration, and significantly reduces sulfur dioxide, nitrogen oxide, particulate, and mercury emissions in comparison with traditional technologies; (2) has a project developer that certifies that the Mesaba Project is capable of offering a long-term supply contract at a hedged, predictable cost; and (3) has been designated by the Commissioner of the Iron Range Resources and Rehabilitation Board (the "IRR") as a project that is located in the taconite tax relief area on a site that has substantial real property with adequate infrastructure to support new or expanded development, and it has received prior financial and other support from the Board.

16. Furthermore, on February 23, 2005, the Commission itself determined that "[t]here is little doubt that the Mesaba project meets the statutory definition of an innovative energy project."³ The Commission's order granting \$10 million in funding from the Renewable

³ In the Matter of the Request of Northern States Power Company d/b/a Xcel Energy for Approval of Selected Projects for the Second Funding Cycle of the Renewable Development Fund, ORDER APPROVING AND DIRECTING FUND EXPENDITURES, GIVING GUIDANCE ON THE TREATMENT OF THE INNOVATIVE ENERGY PROJECT, REQUIRING

Development Funds (“RDF”) was predicated on the Commission’s conclusion that Mesaba is an IEP.

NSP IS A PUBLIC UTILITY THAT OWNS A NUCLEAR GENERATION FACILITY IN THE STATE

17. NSP, doing business as Xcel Energy, is a public utility in Minnesota, and it owns at least one nuclear generating facility in the State: a 553 MW plant in Monticello since 1971,⁴ and two units totaling 1,076 MW near Red Wing since 1973 and 1974, respectively.

THE PUBLIC INTEREST IS SERVED BY THE MESABA ONE PPA

18. As presented in greater detail in Section I of the Report, the Commission should approve the Mesaba One PPA, as proposed, because when taking into consideration the five factors set forth in the IEP Statute, it is in the public interest. In addition, the Report provides overwhelming evidence of the numerous other public interest benefits of the Mesaba Project, including various provisions of the PPA that maximize the benefits to NSP and its ratepayers.

THE PROJECT PROVIDES ECONOMIC DEVELOPMENT BENEFITS TO THE STATE

19. As Section I(A) of the Report demonstrates, the Project will provide significant economic development benefits to the State by creating jobs, stimulating the local economy to support construction and permanent workers at the Project, attracting businesses that can use syngas produced by the Project, promoting research and development of hydrogen based technologies such as fuel cells and stabilizing energy prices to benefit businesses statewide.

CONSULTATIVE PROCESS, AND REQUIRING COMPLIANCE FILINGS, Docket M-03-1883, Feb. 23, 2005, *available at* <http://www.puc.state.mn.us/docs/orders/05-0011.pdf>.

⁴ Xcel Energy Website, About Energy and Rates: Power Generation, *available at* http://www.xcelenergy.com/XLWEB/CDA/0,3080,1-1-1_1875_4797_4014-3625-5_538_969-0,00.html.

THE PROJECT USES ABUNDANT FUEL SOURCES

20. As Section I(B) of the Report discusses in greater detail, the Project will use coal, our Nation's most abundant fuel resource, to produce synthesis gas that is cleaned and combusted to produce power.

THE STABILITY OF THE PRICE OF THE OUTPUT FROM THE PROJECT

21. Excelsior Energy Inc., the owner and developer of the Mesaba Project, certifies that the Mesaba Project is capable of offering a long-term supply contract at a hedged, predictable cost. In addition, as Section I(C) of the Report establishes, the price of the Mesaba Project's output will be stable. Stability will result from the Project's reliance on coal as a principal fuel source (thereby reducing reliance on natural gas for the production of electricity), its fuel flexibility (through the ability to utilize various types of coal and petroleum coke and in maintenance periods, natural gas) which increases the Project's availability, and its environmental attributes that act as a hedge to future changes in environmental laws affecting power plants.

THE PROJECT'S POTENTIAL TO CONTRIBUTE TO A TRANSITION TO HYDROGEN AS A FUEL RESOURCE

22. Section I(D) of the Report explains that the Project's ability to produce hydrogen from coal or petroleum coke can serve as a necessary source of hydrogen and support research and development for transitioning to a hydrogen-based economy. In addition, the Project is part of an identified technological effort that will result in hydrogen turbines as part of the DOE's Clean Coal Power Initiative toward FutureGen, a coal fired IGCC power plant with near zero environmental emissions.

**THE EMISSION REDUCTIONS ACHIEVED COMPARED TO
OTHER SOLID FUEL BASELOAD TECHNOLOGIES**

23. Section I(E) of the Report presents overwhelming evidence that the Project will achieve approximately 60% emission reductions compared to state-of-the-art supercritical pulverized coal facilities, and that emission reductions achieved compared to existing Minnesota coal facilities will be dramatically better. In addition, the Report discusses the flexibility of the Project to capture CO₂ that traditional solid fuel base load technologies do not offer. Finally, as noted above, the Project's base load deployment of IGCC is also a key part of the U.S. Department of Energy's roadmap to reach FutureGen, which would have near zero environmental emissions.

**THE MESABA PROJECT HAS MANY MORE ATTRIBUTES THAT ESTABLISH
THAT THE PPA IS IN THE PUBLIC INTEREST**

24. Sections II through VII of the Report demonstrate that the Mesaba Project has many additional attributes that confirm that the Mesaba PPA is in the public interest. For instance, Sections II and III show that the Clean Energy Technology is or is likely to be a least cost base load resource for NSP and that the Project is in fact least cost on a direct cost comparison basis with conventional coal combustion technologies. Sections IV through VI show that the Project can start providing benefits in 2011, protect ratepayers from development risk, and benefit ratepayers through Federal incentives. Section VII provides concrete examples and substantial evidence of the ever-growing national consensus that IGCC is a critical component of our Nation's energy security future. The Mesaba Project will once again maintain Minnesota's standing as a national leader on energy planning and environmental stewardship.

CET IS OR IS LIKELY TO BE A LEAST COST RESOURCE

25. The CET Statute provides that “‘clean energy technology’ means a technology utilizing coal as a primary fuel in a highly efficient combined-cycle configuration with significantly reduced sulfur dioxide, nitrogen oxide, particulate, and mercury emissions from those of traditional technologies.” Clean energy technology is, therefore, IGCC. As noted in Paragraph 15 of this Petition, the Mesaba Project qualifies as an IEP in part because by using IGCC it “makes use of an innovative generation technology utilizing coal as a primary fuel in a highly efficient combined-cycle configuration with significantly reduced sulfur dioxide, nitrogen oxide, particulate, and mercury emissions from those of traditional technologies.” In short, because the Mesaba Project is an IEP, it necessarily uses CET.

26. Under the CET Statute, the utility that owns a nuclear generating facility shall supply from IGCC a minimum of at least two percent of its retail energy needs, subject to a finding by the Commission that IGCC is or is likely to be a least-cost resource. Under the CET Statute, the energy shall be supplied by an IEP unless the Commission finds that it is contrary to the public interest. As noted in Paragraphs 15-17 of this Petition, the Mesaba Energy Project is an IEP that uses IGCC, and NSP is a public utility that owns a nuclear generating facility. Although the CET Statute only requires that IGCC “is likely to be a least-cost resource,” which is established in Section II of the Report, Section III of the Report establishes that the Mesaba Project is the least-cost resource for NSP. In addition, as noted in Paragraphs 18-24 of this Petition, the Mesaba Project serves the public interest. Therefore, a sale of its capacity and energy to NSP under the Mesaba One PPA is not contrary to the public interest.

THE CLEAN ENERGY TECHNOLOGY MINIMUM SHOULD BE AT LEAST 13%

27. Section II of the Report confirms that over the past fifteen years NSP's generation resource mix has changed dramatically from one dominated by stable coal-fired generation to one that is increasingly natural gas reliant, exposing NSP's ratepayers to the volatility associated with natural gas prices. Recognizing that new coal-fueled generation must be added back to NSP's generation mix to meet the significant forecasted load growth over the coming decade, the CET Statute provides a necessary tool for the Commission to ensure that new coal additions will be constructed in a timely fashion, and that such facilities will be the most environmentally prudent coal additions possible. Section II of the Report provides the evidence and analysis needed to support setting the Clean Energy Technology Minimum at 13% or higher, thereby ensuring that Clean Energy Technology in the form of Units One and Two of the Mesaba Project, will be deployed to meet NSP's growing demand.

CONCLUSION

28. WHEREFORE, Excelsior respectfully requests the Commission to enter orders:

- (a) establishing the procedural schedule and specific items for hearing set forth in Paragraph 14 above;
- (b) setting a deadline of July 1, 2006 for receipt of the proposed order of the administrative law judge assigned to this matter;
- (c) prescribing the form and extent of notice to be given for the proposed hearings;
- (d) after hearing, approving, amending or modifying the terms and conditions of a Power Purchase Agreement between NSP and MEP-I LLC for 450 MW and determining, by August 31, 2006, that said Agreement is in the public interest under Minn. Stat. § 216B.1694,

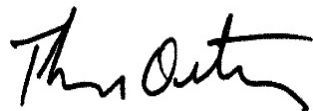
subd. 2(a)(7), that MEP-I LLC is entitled to enter into said Agreement, that it would be prudent and in the best interest of NSP's ratepayers for NSP to enter into said Agreement, and that if NSP enters into said Agreement within 30 days of the Commission's Order, NSP shall be allowed to recover from ratepayers all costs paid under said Agreement provided that NSP prudently administers said Agreement;

(e) after hearing, determining that IGCC as the Clean Energy Technology is or is likely to be a least-cost resource from which NSP is required to supply at least two percent of its retail energy under Minn. Stat. § 216B.1693(a), including the 153MW of output from Mesaba One beyond the 450MW referenced in the IEP Statute;

(f) after hearing, setting the Clean Energy Technology Minimum that NSP must provide from Clean Energy Technology by 2013 at 13% or higher, and determining that it would not be contrary to the public interest to supply the first incremental portion of the Clean Energy Technology Minimum from the Mesaba Project Units One and Two; and

(g) for such other and further relief as the Commission deems just and appropriate.

Dated: December 23, 2005



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