

May 12, 2006

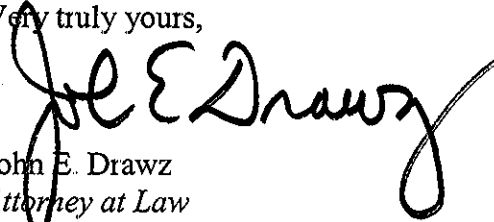
The Honorable Steve M. Mihalchick
Office of Administrative Hearings
Suite 1700
100 Washington Square
Minneapolis, MN 55401

Re: *In the matter of a Petition by Excelsior Energy Inc. for Approval of a Power Purchase Agreement under Minn. Stat. §216B.1694, Determination of Least Cost Technology, and Establishment of a Clean Energy Technology Minimum Under Minn. Stat §216B.1693.*
MPUC Docket No. E-6472/M-05-1993; OAH Docket No. _____.

Dear Judge Mihalchick:

GNPD respectfully submits an original and one copy of its suggested Statement of Issues for consideration at the May 15, 2006, prehearing conference on the referenced matter. Service of the enclosure by e-mail and U.S. mail has been made on those listed on the attached service list. An Affidavit of Service is enclosed.

Very truly yours,



John E. Drawz
Attorney at Law
Direct Dial: 612.492.7074
Email: jdrawz@fredlaw.com

JED:jlb
Encls
cc: Service List

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Attorneys & Advisors
main 612.492.7000
fax 612.492.7077
www.fredlaw.com

Fredrikson & Byron, P.A.
200 South Sixth Street, Suite 4000
Minneapolis, Minnesota
55402-1425

**BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE MINNESOTA PUBLIC UTILITIES COMMISSION**

**LeRoy Koppendraye
Marshall Johnson
Ken Nickolai
Thomas Pugh
Phyllis Reha**

**Chair
Commissioner
Commissioner
Commissioner
Commissioner**

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. E6472/M-05-1993
OAH Docket No.**

**GNPD'S PROPOSED
STATEMENT OF ISSUES**

STATEMENT OF ISSUES

1. Should the Commission approve, disapprove, amend, or modify the terms and conditions of a proposed power purchase agreement that Excelsior has submitted to Xcel Energy (Minn. Stats. Sec. 216B.1694)? [Commission's 04/25/06 Order at 4]
2. Does a preponderance of the evidence demonstrate that the coal-fueled Integrated Gasification Combined Cycle ("IGCC") power plant that Excelsior proposes to construct in northern Minnesota is, or is likely to be, a least-cost resource? If so, would that obligate Xcel to use the plant's generation for at least two percent of the energy supplied to its retail customers (Minn. Stats. Sec. 216B.1693)? [Id.]
3. Should the Commission determine that, under the terms of Minn. Stats. Sec. 216B.1694, at least 13% of the energy supplied to Xcel's retail customers should come from the IGCC plant by the year 2013? [Id.]

4. What are the contract prices to Xcel from the proposed IGCC plant likely to be under different scenarios and assumptions? [Id.]

5. Are those contract prices reasonable? Are those contract prices in the public interest? [Id.; 216B.1694(a)(7)]

6. What are the environmental costs and benefits of Excelsior's proposed IGCC plant?

7. How should the issue of proprietary data be resolved?

a. How much separation should there be between Excelsior and Xcel with regard to the sharing of proprietary data?

b. How much of Excelsior's proprietary data must be disclosed to the public, particularly with regard to overall costs of its proposal, in order for the Commission to make a determination of public interest?

c. Are Excelsior's trade secret designations proper?

d. Should Excelsior be considered a "competitive market participant" in need of the protection of trade secret status for purposes of its Petition?

e. Should public utilities be considered competitors of Excelsior for purposes of this Petition?

f. Should the Commission require Excelsior to abide by the Commission's general policies regarding trade secret designation?

g. Does Excelsior's proposed Protective Order and Confidentiality Agreement unduly limit access to information in this proceeding?

h. Should the proposed Protective Order and Confidentiality Agreement be modified prior to approval?

8. Does the instant docket apply to only Excelsior's rights vis a vis Xcel? Should Excelsior's rights and the role of an Innovative Energy Project with regard to any other entity (e.g., Great River Energy, Big Stone II) be determined in a separate proceeding?

9. Do Minn. Stats. Secs. 216B.1693(a) and 216B.1694, subd. 2(a)(7), apply only to Xcel, and not to an entity such as Great River Energy?

10. Is the Mesaba Project's IGCC plant a "least-cost resource" with statewide application? [216B.1693(a)]

11. What Minnesota statutes and rules are applicable to the Petition?

12. What requirements for the Petition are set forth in the applicable statutes and rules?

a. How should the statutory sections cited in Excelsior's proposal be considered in relation the chapter 216B as a whole?

b. Does the law allow Excelsior to expand a proposed PPA above 450 MW?

(1) How should the public interest, ratepayer interest standards, and other factors, be applied to the Petition?

(2) How will the Commission determine whether the least-cost requirement of Minn. Stats. Sec. 216B.1693 is satisfied?

13. Does the Petition meet the applicable statutory requirements? Does the Petition provide the information necessary to make the required findings under the applicable law? Does the Petition provide the information necessary to determine whether the application meets the applicable statutory requirements?

14. Do any terms in the applicable statutory provisions need to be clarified? [DOC]

15. How should the following statutory terms and phrases be defined?

a. "shall be entitled to enter into a contract" [216B.1694(a)(7)]

b. "highly efficient" [216B.1693(c)]

c. "significantly reduced" [216B.1693(c)]

d. "traditional technologies" [Id.]

e. "project developer or owner certifies" [216B.1694, subd. 1(a)]

f. "capable of offering" [Id.]

g. "hedged" [Id.]

- h. “predictable” [Id.]
- i. “cost” of delivered energy [fuel availability and cost, short- and long-term?]
- j. “on a site that has substantial real property with adequate infrastructure to support new or expanded development” [216B.1694, subd. 1(3)]
- k. “that has received prior financial and other support” [Id.]
- l. “shall be considered as a supply option”
- m. “shall be entitled to enter into a contract” [216B.1694(a)(7)]
- n. “450 megawatts” [Id.]
- o. “economic development benefits to the state” [Id.]
- p. “use of abundant domestic fuel sources” [Id.] [fuel availability and cost]
- q. “stability of the price of the output” [Id.]
- r. “project’s potential to contribute to a transition to hydrogen as a fuel resource” [Id.]
- s. “emission reductions achieved” [Id.]
- t. “including the costs of ancillary services and other generation and transmission upgrades necessary” [216B.1693(a)] [What are those costs? How will they be determined?]
- u. “shall supply at least two percent” [Id.]
- v. “is or is likely to be a least-cost resource” [Id.] [Staff Briefing Papers at 10: “[T]he Commission will need to examine the costs of other potential projects to supply that generation. Those potential suppliers would clearly be affected by the outcome of this proceeding.”]

16. What are the public interest criteria that the Commission must use to make its public interest determination? [216B.1694(a)(7)]

17. What are the long-term implications of any new base load supply assets?

18. Should the Commission approve the PPA?

19. Is the Mesaba Project a “clean energy technology” that is or is likely to be a “least-cost resource”? [216B.1693] [What is Excelsior’s plan for CO₂ disposition and what are the costs of that disposition?]

20. Is the Mesaba Project as proposed the same project that was described when Secs. 216B.1693 and .1694 were enacted? If not, what consequences follow, e.g., does the West Range location meet the statutory requirements?

21. Does the evidence support a Commission decision to impose on NSP’s ratepayers the cost of funding the technology risks associated with Excelsior’s demonstration plant?

22. [Issues from DOE’s 10/05/05 Notice of Intent to Prepare an EIS at 3: operational availability, capital costs and financing, operating costs, feedstock flexibility, and environmental performance].

23. [Excelsior Energy’s list of issues, from its Petition at 6-8:]

- a. Whether the Mesaba Project is an IEP.
- b. 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.
- c. Whether MEP-I LLC is entitled to enter into the Mesaba One PPA.
- d. Whether it would be prudent and in the best interest of NSP’s ratepayers for NSP to enter into the Mesaba One PPA.
- e. 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.
- f. 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.

- g. Whether, if 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.
- h. Whether the minimum percentage of NSP's electric energy supplied to retail customers that NSP might 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
- i. 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.

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In the Matter of the Petition of Excelsior Energy

Party and Agency Representatives: all correspondence, motions, prefiled testimony, and discovery (one copy, unless otherwise noted):

Dr. Burl W. Haar
Minnesota Public
Utilities Commission
Metro Square Building
121 7th Place East, Suite 350
St. Paul, MN 55101-2147
(15 copies)

Sharon Ferguson
Docket Coordinator
MN Department of Commerce
85 7th Place East, Suite 500
St. Paul, MN 55101-2198
(4 copies)

Steve M. Mihalchick
Administrative Law Judge
100 Washington Square
Suite 1700
Minneapolis, MN 55401-2138
(Original only – no discovery)

Julia Anderson, Esq.
Office of the Attorney General
1400 Bremer Tower
445 Minnesota Street
St. Paul, MN 55101-2131

Curt Nelson
OAG-RUD
900 Bremer Tower
445 Minnesota Street
St. Paul, MN 55101-2130

Christopher Anderson, Esq
Minnesota Power
30 West Superior Street
Duluth, MN 55802-2093

Bill Blazar
Sr. Vice President, Government
Affairs & Business
Development
MN Chamber of Commerce
400 Robert St. North, Suite 1500
St. Paul, MN 55101

Michael J. Bradley, Esq.
Moss & Barnett
4800 Wells Fargo Center
90 South Seventh Street
Minneapolis, MN 55402-4129

Jeff Burgess, P. E
Lignite Energy Council
1015 E Owens Avenue
Bismarck, ND 58501

Christopher Clark, Esq.
Assistant General Counsel
Xcel Energy
800 Nicollet Mall, Suite 2900
Minneapolis, MN 55402-2023

John E Drawz, Esq
Fredrikson & Byron, P.A.
200 South Sixth Street
Suite 4000
Minneapolis, MN 55402-1425

Mike Franklin
Manager, Energy, Labor/Mgmt,
and Elections Policy
MN Chamber of Commerce
400 Robert St. North, Suite 1500
St. Paul, MN 55101

Bruce Gerhardson, Esq
Otter Tail Corporation
P.O. Box 496
215 South Cascade Street
Fergus Falls, MN 56538-0496

Elizabeth Goodpaster, Esq
Minnesota Center For
Environmental Advocacy
26 East Exchange Street
Suite 206
St. Paul, MN 55101

Peter H. Grills, Esq.
O'Neill Grills & O'Neill PLLP
W1750 First Nat'l Bank Bldg
332 Minnesota Street
St. Paul, MN 55101

Annette Henkel
Minnesota Utility Investors
405 Sibley Street, #227
St. Paul, MN 55101

Chuck Kerr, President
Great Northern Power
Development, L.P.
601 Jefferson Street, #3600
Houston, TX 77002-7906

Jerry Larsen
HPC-LLC
4610 IDS Center
80 South Eighth Street
Minneapolis, MN 55402

David R. Moeller, Esq.
Minnesota Power
30 West Superior Street
Duluth, MN 55802-2093

Thomas L. Osteraas, Esq.
Christopher C Greenman, Esq
Excelsior Energy Inc.
Crescent Ridge Corp. Center
11100 Wayzata Blvd, Suite 350
Minnetonka, MN 55305

Carol Overland, Esq.
Overland Law Office
402 Washington Street
Northfield, MN 55057-2467

Judy Poferl
Director, Regulatory Admin.
Xcel Energy
414 Nicollet Mall, 5th Floor
Minneapolis, MN 55401

Steven J. Quam, Esq.
Fredrikson & Byron, P.A.
200 South Sixth Street
Suite 4000
Minneapolis, MN 55402-1425

Antone J. Rude
10127 93rd Street N.E.
Monticello, MN 55362

David Sasseville, Esq.
Lindquist & Vennum, PLLP
4200 IDS Center
80 South Eighth Street
Minneapolis, MN 55402-2274

Robert H. Schulte
Schulte Associates LLC
9072 Palmetto Drive
Eden Prairie, MN 55347

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Party and Agency Representatives: all correspondence, motions, prefiled testimony, and discovery (one copy, unless otherwise noted):

Mollie M. Smith, Esq.
Fredrikson & Byron, P A
200 South Sixth Street
Suite 4000
Minneapolis, MN 55402-1425

Byron E. Starns, Esq
Scott G. Harris, Esq
Brian M. Meloy, Esq.
Leonard Street & Deinard, P.A
150 South Fifth Street
Suite 2300
Minneapolis, MN 55402

SaGonna Thompson
Xcel Energy
5th Floor
414 Nicollet Mall
Minneapolis, MN 55401-1993

Rich Voss
1022 E. Divide Ave., Suite E
Bismarck, ND 58501

Email Service List:

burl haar@state.mn.us
sharon.ferguson@state.mn.us
steve.mihalchick@state.mn.us
julia.anderson@state.mn.us
curt.nelson@state.mn.us
canderson@allete.com
bblazar@mnchamber.com
bradley.m@moss-barnett.com
jeffburgess@lignite.com
christopher.b.clark@xcelenergy.com
jdrawz@fredlaw.com
mfranklin@mnchamber.com
bgerhardson@ottertail.com
bgoodpaster@mncenter.org
pete.grills@grillslegal.com
mui@mnutilityinvestors.org
ckerr@quintanaminerals.com

jerry.larsen@hpc-llc.com
dmoeller@allete.com
tomosteraas@excelsiorenergy.com
christophergreenman@excelsiorenergy.com
overland@redwing.net
judy.m.pofel@xcelenergy.com
squam@fredlaw.com
trude99@aol.com
dsasseville@lindquist.com
rhs@schulteassociates.com
msmith@fredlaw.com
byron.starns@leonard.com
scott.harris@leonard.com
brian.meloy@leonard.com
sagonna.thompson@xcelenergy.com
rvoss@gr-northern.com

