

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

In the Matter of a Petition by Excelsior Energy, Inc.
for Approval of a Power Purchase Agreement under
Minn. Stat. §216B.1694, and Determination of Least
Cost Technology and Establishment of a Clean Energy
Minimum Under Minn. Stat. §216B.1693.

MPUC Docket: E/6472/M-05-1993

OAH Docket: 12-2500-17260-2

MCGP INITIAL BRIEF – PHASE 2

I. INTRODUCTION

mncoalgasplant.com (hereinafter “MCGP”) submits this Initial Brief, and also adopts the Brief of Minnesota Power as if fully related here.

mncoalgasplant.com notes for the record that the Public Hearings, listed in the 6th Prehearing Order, date “to be determined,” have not been held. Applicant was charged with scheduling in Order Point 3 of that Prehearing Order. mncoalgasplant.com has raised this issue informally, with no substantive response.

Phase 2 addresses whether Excelsior’s Mesaba project shall provide any percentage of Xcel’s retail customer load, and if it is to provide a percentage, to determine what percentage should be provided, be it the statutory 2% minimum or 13% as Excelsior has requested, or some percentage in between. To qualify for any percentage, Excelsior must meet the statutory criteria:

216B.1693 CLEAN ENERGY TECHNOLOGY.

(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.

(c) For purposes of this section, "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.

Minn. Stat. §216B.1693.

The Mesaba Project does not meet any of the criteria of the Clean Energy Technology statute and therefore is not entitled to provide any energy to Xcel's retail customers.

II. EXCELSIOR'S MESABA PROJECT IS NOT A CLEAN ENERGY TECHNOLOGY

The Phase 1 and Phase 2 records demonstrate that the Mesaba Project is not a Clean Energy Technology. The ALJs' Recommendation of Denial of the Phase I PPA specifically found that the Mesaba Project is not "Clean Energy Technology" under Minn. Stat. §216B.1693:

193. As found in Findings Nos. 33 to 75 and 97, the Project does not, in comparison to traditional coal technologies, significantly reduce emissions of two of the four pollutants required to be significantly reduced by Minn. Stat. §216B.1693(c). Therefore, the Project and the technology it uses do not meet the requirements of Stat. §216B.1693(c) to be considered a "Clean Energy Technology."

A. EXCELSIOR'S MESABA PROJECT IS NOT A LEAST COST RESOURCE

The record shows that Excelsior's Mesaba Project is not a least cost resource, and the ALJs Recommendation of Denial found that the Mesaba Project is not a least cost resource.

196. As found above beginning at Finding No. 179, the costs of the PPA for either proposed site are much higher than the costs for comparable alternatives. Therefore, the project and its technology are not a least-cost resource within the meaning of Minn. Stat. §216B.1693(a).

Excelsior's Mesaba Project is not a Clean Energy Technology under Minn. Stat. §216B.1693(a).

B. EXCELSIOR'S MESABA PROJECT IS NOT AN INNOVATIVE ENERGY PROJECT AND IS NOT IN THE PUBLIC INTEREST.

An Innovative Energy Project is one that uses coal as its primary fuel. The record demonstrates and the ALJ Recommendation of Denial of the Phase I PPA specifically found that the Mesaba Project is not an Innovative Energy Project because coal is not identified as the primary fuel:

35. If the Project consistently used a 50% or greater petroleum coke blend over any particular period, **it would not be using coal as its primary fuel during that period because petroleum coke is not coal.** It is not derived from coal as is “coke.” It is derived from petroleum. **The PPA, as currently drafted, places no express limitation on Excelsior Energy’s ability to feed other non-coal “solid fuels” into the gasifiers.**

38. Based on the foregoing, **there is no assurance in the Final PPA that the Project will primarily use coal as a fuel as required by Minn. Stat. §216B.1694, subd. 1(1), even when it is operating on solid fuel being gasified into syngas and then burning the syngas in the combustion turbines.**

Further, the record demonstrates and the ALJ Recommendation of Denial of the Phase I PPA specifically found that the Mesaba Project is not in the public interest.

197. Based on its analysis and the entire record, the Department concluded that the PPA as proposed is not likely to be a least-cost resource and **is not in the best interests of the public as required by Minn. Stat. §216B.1693. The Department is correct.**

In their Conclusions of Law, the ALJs’ Recommendation held:

The Project does not satisfy the first prong of the definition of an Innovative Energy Project under Minn. Stat. §216B.1694, subd. 1(1), because the Final PPA does not assure that coal will be used as the primary fuel and because it has not been established that the Project significantly reduces all of the statutorily identified emissions in comparison to traditional technologies.

Excelsior’s Mesaba Project is not a Clean Energy Technology under Minn. Stat. §216B.1693(b).

C. EXCELSIOR’S MESABA PROJECT DOES NOT UTILIZE COAL AS ITS PRIMARY FUEL AND DOES NOT SIGNIFICANTLY REDUCE POLLUTANTS

The Phase 1 and Phase 2 records demonstrate and the ALJs’ Recommendation of Denial of the Phase I PPA specifically found that the Mesaba Project is not “Clean Energy Technology” under Minn. Stat. §216B.1693(c). As above, and in the record and ALJs’ Recommendation of Denial of the Phase I PPA, the Mesaba Project does not necessarily use coal as its primary fuel.

Second, the Mesaba Project does not significantly reduce emissions:

193. As found in Findings Nos. 33 to 75 and 97, the Project does not, in comparison to traditional coal technologies, significantly reduce emissions of two of the four pollutants required to be significantly reduced by Minn. Stat.

§216B.1693(c). Therefore, the Project and the technology it uses do not meet the requirements of Stat. §216B.1693(c) to be considered a “Clean Energy Technology.”

Excelsior’s Mesaba Project is not a Clean Energy Technology under Minn. Stat. §216B.1693(c).

III. CONCLUSION – MESABA DOES NOT MEET THE STATUTORY CRITERIA

The Mesaba Project does not meet any of the criteria of the Clean Energy Technology statute, Minn. Stat. §216B.1693(a), (b), or (c), and is not entitled to provide any energy to Xcel’s retail customers.

Dated: June 22, 2007


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