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April 3, 2007

The Honorable Steve M. Mihalchick  
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RE: In the Matter of a Petition by Excelsior Energy, Inc. for Approval of a Power Purchase Agreement Under Minnesota Stat. 216B.1694, Determination of Least Cost Technology And Establishment of a Clean Energy Technology Minimum Under Minn. Stat. 216B.1693; MPUC Docket No. E6472/M-05-1993; OAH Docket No. 12-2500-17260-2

Dear Judge Mihalchick:

Enclosed for filing in the above referenced docket, please find the Public version of the Direct Testimony of Eilon Amit filed on behalf of the Minnesota Department of Commerce.

The Department is also filing a copy of this document electronically. Also enclosed is an affidavit of service.

Very truly yours,

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**E6472/M-05-1993**

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FOR THE MINNESOTA PUBLIC UTILITIES COMMISSION  
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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

Docket No. E6472/M-05-1993

**DIRECT TESTIMONY OF EILON AMIT**

**ON BEHALF**

**OF THE MINNESOTA DEPARTMENT OF COMMERCE**

**PHASE 2**

**April 3, 2006**

**PUBLIC DOCUMENT**

DIRECT TESTIMONY OF EILON AMIT  
EXCELSIOR ENERGY, INC.

DOCKET NO. E6472/M-05-1993

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1 **I. BACKGROUND AND PURPOSE**

2 **Q. Please state your name.**

3 A. My name is Dr. Eilon Amit.

4  
5 **Q. By whom are you employed?**

6 A. I am employed as a Public Utilities Rate Analyst by the Energy Division of the  
7 Minnesota Department of Commerce (Department or DOC), 85 7<sup>th</sup> Place East, Suite 500,  
8 St. Paul, Minnesota 55101.

9  
10 **Q. Are you the same Eilon Amit that previously testified in this docket?**

11 A. Yes, I am.

12  
13 **Q. Dr. Amit, would you please provide a brief procedural history that will provide**  
14 **background for this proceeding?**

15 A. On April 25, 2006, the Minnesota Public Utilities Commission (Commission) issued a  
16 Notice and Order for Hearing and Order Granting Intervention Petition. In this Order,  
17 the Commission stated that the issues to be addressed are whether the Commission  
18 should:

- 19 (1) approve, disapprove, amend, or modify the terms and conditions of a  
20 proposed power purchase agreement that Excelsior has submitted to  
21 Xcel Energy under Minn. Stat. §216B.1694;  
22  
23 (2) determine that the coal-fueled Integrated Gasification Combined  
24 Cycle (IGCC) power plant that Excelsior plans to construct in  
25 northern Minnesota is, or is likely to be, a least cost resource,  
26 obligating Xcel to use the plant's generation for at least two percent  
27 of the energy supplied to its retail customers, under Minn. Stat.  
28 §216B.1693; and

1 (3) determine that, under the terms of Minn. Stat. §216B.1693, at least  
2 13% of the energy supplied to Xcel's retail customers should come  
3 from the IGCC plant by 2013.  
4

5 On June 2, 2006, the Administrative Law Judge (ALJ) ordered that the proceeding be  
6 bifurcated into two phases: Phase 1 must address Mesaba Project Unit I and the first two  
7 primary issues, and Phase 2 must address the third primary issue in order to address all of  
8 the statutory provisions to which Mesaba Project Unit I applies.  
9

10 **Q. What procedural steps have occurred regarding Phase 1?**

11 A. The Company, the Department and other Parties have filed Direct, Rebuttal and  
12 Surrebuttal testimonies in Phase 1. The Company, the Department and other Parties have  
13 also filed their Brief and Reply Brief in Phase 1. The Report of the ALJ in Phase 1 has  
14 not yet been filed, thus, there has not yet been an opportunity to analyze the proposed  
15 findings or file exceptions thereon, and, of course, the Commission has not yet had an  
16 opportunity to decide the issues in Phase 1. Meanwhile, the process of Phase 2 has  
17 begun, even though the lack of a decision on Phase 1 makes any discussion of Phase 2  
18 difficult.  
19

20 **Q. Has Excelsior filed any new factual information on Phase 2?**

21 A. No, Excelsior has not filed any new factual information on Mesaba Energy Project Unit  
22 II; however, they have discussed the question of statutory compliance.

1 **Q. Has your position changed from Phase 1 to Phase 2?**

2 A. No. The Department has not seen anything to change its position on the first two issues  
3 indicated above.

4  
5 **Q. Then what is the purpose of your testimony in Phase 2?**

6 A. The purpose of my testimony in Phase 2 is to analyze the third issue identified by both  
7 the Commission and the ALJ from a legal and factual perspective and respond to the  
8 testimony of Excelsior Energy's Witness Thomas L. Osteraas filed on March 6, 2007.

9  
10 **Q. Please state this issue.**

11 A. The issue to be addressed in my testimony is whether the Commission should determine  
12 that, under the terms of Minn. Stat. §216B.1693, at least 13 percent of the energy  
13 supplied to Xcel's retail customers should come from the IGCC plant by 2013.

14  
15 **II. RELEVANT STATUTE, COMMISSION DIRECTIVES AND ALJ DIRECTIVES**

16 **Q. As you stated before, Minn. Stat. §216B.1694 is addressed by the first two issues in**  
17 **Phase 1. Dr. Amit, is this statutory provision also addressed by the third issue in**  
18 **Phase 2?**

19  
20 A. No. The relevant statute for addressing the third issue in Phase 2 is Minn. Stat.  
21 §216B.1693. Minn. Stat. §216B.1694 is only relevant to the first two issues of the three  
22 PUC issues.

1 **III. PURCHASING 13 PERCENT IGCC ENERGY AND MINN. STAT. §216B.1693**

2 **Q. Dr. Amit, please list the features of Minn. Stat. §216B.1693 that relate to the 13**  
3 **percent energy provision.**

4 A. Parts (a) and (b) of Minn. Stat. §216B.1693 are related to the minimum energy  
5 requirement. They state:

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

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

16  
17 Part (a) requires the Mesaba facility to be, or likely to be, a least-cost resource, and part

18 (b) requires that the provision of at least 2 percent of Xcel's retail load must not be  
19 contrary to the public interest.

20  
21 **Q. Dr. Amit, does the minimum 13 percent energy requirement appear anywhere in**  
22 **Minn. Stat. §216B.1693?**

23 A. No, it does not. The only "percentage" in this statutory provision is 2 percent.

24  
25 **Q. Dr. Amit, does the 2 percent energy provision cited in Minn. Stat. §216B.1693**  
26 **require that Xcel procure additional energy from Mesaba above the amount**  
27 **included in Excelsior's proposed PPA as filed?**

28 A. After consultation with my Attorney on this legal question, the Department's  
29 interpretation of the law is that, if the Commission approves Excelsior's Mesaba Unit I

1 PPA as filed, there does not appear to be any further legal requirement that Xcel purchase  
2 any additional energy from Mesaba Unit I under the statutes. .  
3

4 **Q. Dr. Amit, please explain your reasoning for this position.**

5 A. Excelsior Energy (Excelsior) proposes to build a 603 MW integrated gasification  
6 combined cycle (IGCC) plant, named the Mesaba Unit I. If the Commission approves  
7 Excelsior's requested 603 MW Power Purchase Agreement (PPA), then the remaining  
8 153 MW over the 450MW stated in statutes would be sufficient to meet the minimum 2  
9 percent energy requirement stated in Minn. Stat. §216B.1693 (provided that Mesaba I is  
10 a least-cost resource and is not contrary to the public interest). Thus, all of the statutory  
11 provisions would be fulfilled for Mesaba Unit I.  
12

13 **Q. Does your analyses, in essence, prevent Mesaba II from being built?**

14 A. Not at all. Excelsior is free to build whatever project it wishes. However, the provisions  
15 of Minn. Stat. §216B.1963-.1694 regarding the purchase of the power would not apply.  
16

17 **Q. Dr. Amit, please summarize your conclusions.**

18 A. Based on discussions with Counsel and its analysis of Minn. Stat. §216B.1693, and the  
19 Commission and ALJ Orders (April 25, 2006 and June 2, 2006 Orders, respectively), the  
20 Department concludes that:

- 21 1. The terms of Minn. Stat. §216B.1693, do not entitle Excelsior to sell to Xcel  
22 at least 13 percent of Xcel's retail energy load.

- 1           2. Under the terms of Minn. Stat. §216B.1693, Excelsior would be entitled to  
2           sell to Xcel at least 2 percent of Xcel’s retail energy load only if Mesaba I is  
3           a least-cost resource and the sale is not contrary to the public interest. The  
4           13 percent position advocated by Excelsior is not found in this or any other  
5           statute.
- 6           3. If the Commission approves Excelsior’s requested 603 MW PPA as filed  
7           under Minn. Stat. §216B.1694, then the remaining 153 MW of Mesaba I  
8           over the 450MW level cited in statute would provide sufficient power to  
9           meet the 2 percent minimum energy requirements under Minn. Stat.  
10          §216B.1693.
- 11          4. If the Commission disapproves the 603 MW PPA as filed, then Mesaba I  
12          would not be in the public interest and therefore would not meet the public  
13          interest requirement in Minn. Stat. §216B.1693.
- 14          5. Regardless of the outcome of Phase 1, Mesaba II and the 13 percent  
15          minimum energy requirement are neither related to nor covered by Minn.  
16          Stat. §216B.1693. Therefore, Phase 2 of this proceeding is not required  
17          under Minnesota law. However, that does not preclude Excelsior from  
18          building Mesaba II.

19  
20 **IV. THE 2 PERCENT MINIMUM ENERGY REQUIREMENT AND MINN. STAT.**  
21 **§216B.1693.**

22 **Q. Dr. Amit, please discuss the 2 percent minimum energy requirement under the**  
23 **terms of Minn. Stat. §216B.1693.**

1 A. Under Minn. Stat. §216B.1693, Excelsior is entitled to sell to Xcel at least 2 percent of  
2 Xcel's retail energy load, if certain conditions are met. The main conditions that must be  
3 met are:

- 4 1. Excelsior's plant must be a clean energy technology;
- 5 2. Excelsior's plant is or is likely to be least cost; and
- 6 3. The sale of at least 2 percent may not be contrary to the public interest.

7  
8 **Q. Dr. Amit, please discuss conditions 1 through 3.**

9 A. Below is the Department's analysis of these conditions.

10  
11 *CLEAN ENERGY TECHNOLOGY*

12 **Q. Dr. Amit, what does clean energy technology mean?**

13 A. Part (c) of Minn. Stat. §216B.1693 defines "Clean Energy Technology" as:

14 For purposes of this section, "clean energy technology" means a  
15 technology utilizing coal as a primary fuel in a highly efficient  
16 combined-cycle configuration with significantly reduced sulfur  
17 dioxide, nitrogen oxide, particulate, and mercury emissions from  
18 those of traditional technologies.  
19

20 **Q. Dr. Amit, does Mesaba I meet the definition of "Clean Energy Technology?"**

21 A. In Phase 1 of this proceeding, based on the information provided by Excelsior, the  
22 Department concluded that Mesaba I appears to meet the definition of "Clean energy  
23 Technology." (DOC Exhibit 3000, p. 6, Amit Direct Testimony).

1 *LEAST-COST RESOURCE*

2 **Q. Dr. Amit, is Mesaba I a least-cost resource?**

3 A. Per my comparative cost analysis in my testimony in Phase 1, no, it is not.

4  
5 **Q. Please explain.**

6 A. In Phase 1 of these proceedings, the Department compared the costs of the Mesaba I  
7 proposed facility to the costs of other potential coal plant resources. Based on its  
8 comparisons, the Department concluded that Mesaba I is not a least-cost resource. The  
9 Department performed cost comparisons of alternative coal plants in Phase 1 (DOC  
10 Exhibit 3010, Amit Direct Testimony, Non-Public, DOC Exhibit 3017, Amit Rebuttal  
11 Testimony, Non-Public and DOC Exhibit 3023, Amit Surrebuttal Testimony, Non-  
12 Public). The results of these comparisons are summarized in Table 3 on page 24 of the  
13 Department's Reply Brief. This table is reproduced below.

14 **Table 1: Cost Comparison Including Emission and Transmission Costs**

<u>Alternative</u>	<u>Levelized Price (\$/MWh)</u>
Excelsior Energy	
West Site	\$95.70
East Site	\$104.57
West Site (450 MW)	\$120.53
East Site (450 MW)	\$130.42
Big Stone II	\$75.76
Comanche 3	[TRADE SECRET DATA HAS BEEN EXCISED]
Sherco 4	\$75.33

15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26 It is clear from Table 1 that the Mesaba I options are not least-cost resources. The lowest  
27 cost of the Mesaba proposals (West Site 603 MW) is 26.31 percent higher than the cost  
28 of the highest cost alternative resources (Big Stone II).

1 **Q. Dr. Amit, do you have additional information regarding whether any of the**  
2 **considered Excelsior Energy alternatives is a least-cost resource?**

3 A. Yes, I do. On November 1, 2006, Xcel Energy (Xcel) filed with the Commission a CN-  
4 like proposal for 375 MW of hydro power in combination with 380 MW of wind  
5 resources (Docket No. E002/CN-06-1518). This proposal filed by Xcel is in compliance  
6 with the Commission's May 31, 2006 Order *Establishing Resource Acquisition Process,*  
7 *Establishing Bidding Process Under Minn. Stat. §216B2422, subd. 5 and Requiring*  
8 *Compliance Filing.*

9  
10 **Q. Please provide additional background for Xcel's hydro/wind Xcel proposal.**

11 A. In Xcel's 2004 Resource Plan (Docket No. E002/RP-04-1752), both the Department and  
12 Xcel identified a need for 375 MW of base load resources starting in 2015. On July 28,  
13 2006 the Commission issued an Order *Approving Resource Plan as Modified, Finding*  
14 *Compliance with Renewable Energy Objects Statute, and Setting Filing Requirements.*  
15 Ordering Paragraph no. 10 of the above Commission Order requires Xcel to file on or  
16 before November 1, 2006 a Certificate of Need application for 375 MW of base load  
17 resources. On November 1, 2006, Xcel filed the required CN petition proposing 375  
18 MW from Manitoba Hydro and 380 MW of Wind. The proposed Manitoba Hydro  
19 contract is for the period 2015 through 2024.

20  
21 **Q. What are the proposed prices of Xcel's Proposal?**

22 A. The average price over the period 2015 through 2024 is [**TRADE SECRET DATA**  
23 **HAS BEEN EXCISED**]. (The prices are provided

1 in Excelsior Exhibit No. 1269, Xcel's Response to Excelsior information request no.  
2 134.) This average price is significantly lower than the average price of \$110.39/MWh,  
3 which is the average price of the lowest cost of Excelsior Energy's proposals (603 MW  
4 West Site Mesaba I plant). (The price of \$95.70 in Table 1 is the levelized price, which  
5 is different from the average price shown above.)  
6

7 **Q. Dr. Amit, are there other proposals in Xcel's CN-like docket (E002/CN-06-1518)?**

8 A. Yes. Westmoreland Power Company (Westmoreland) filed an alternative proposal on  
9 December 14, 2006. Westmoreland's proposal includes a 500 MW Subcritical  
10 Circulating Fluidized Bed (CFB) coal plant, to be operational in 2015 and 380 MW of  
11 Wind. The details of the proposal are provided in Westmoreland's December 14, 2006  
12 filing for the Commission. Over the period 2015 through 2025, the average proposed  
13 price for Westmoreland's coal and wind plants combined is [TRADE SECRET DATA  
14 HAS BEEN EXCISED] and the average price for  
15 the coal plant only is [TRADE SECRET DATA HAS BEEN EXCISED].

16 These proposed prices are significantly lower than the  
17 average price of \$110.39 for the lowest cost Mesaba I proposal.  
18

19 **Q. Dr. Amit, please summarize your conclusion regarding the least-cost resource**  
20 **requirement in Minn. Stat. §216B.1693.**

21 A. Based on the Department's analysis of the information provided in Phase 1 of the  
22 Mesaba proceeding and based on the proposed prices in Xcel's E002/CN-06-1518, the  
23 Department concludes that Mesaba I is not, and is not likely to be, a least-cost resource.

1     *THE PUBLIC INTEREST ISSUE*

2     **Q. Dr. Amit, please remind the Court again what Minn. Stat. §216B.1693 provides**  
3         **regarding the public interest issue.**

4     A. Under Minn. Stat. §216B.1693, if Mesaba I is a clean energy technology and a least-cost  
5         resource, then unless it is contrary to the public interest, Excelsior is entitled to sell to  
6         Xcel an amount equivalent to at least 2 percent of Xcel's retail load.

7  
8     **Q. Dr. Amit, is Mesaba I in the public interest?**

9     A. In its analysis in Phase I of these proceedings the Department concluded that the  
10        Excelsior proposed PPA is not a least-cost resource and the PPA terms, as presented do  
11        not sufficiently protect Xcel's ratepayers from the PPA's financial and operational risks.  
12        Moreover, the record evidence provided in the Mesaba I proceeding did not provide  
13        benefits strong enough to overcome the two substantial ratepayer and public deterrents  
14        (not least cost and unprotected risk). The Department also concluded earlier in this  
15        testimony that Mesaba is not a least-cost option, the cost of the 2 percent minimum  
16        required energy to be provided from Mesaba I is too high. It is unclear what would be  
17        the proposed terms under which Excelsior would propose to sell to Xcel at least 2 percent  
18        of Xcel's retail energy load. However, since Mesaba I is not a least-cost resource and  
19        assuming that the proposed terms for the 2 percent sale would be similar to the terms of  
20        the 450 MW PPA proposed by Excelsior, the Department concludes that Excelsior's sale  
21        of at least 2 percent of Xcel's retail energy to Xcel is likely to be contrary to the public  
22        interest.

1 **V. CONCLUSIONS**

2 Based on its discussions with Counsel, and its review and analyses of Excelsior  
3 testimonies in Phase 1 and Phase 2 of these proceedings the Department concludes that:

- 4 1. There is no provision in law that entitles Excelsior Energy to sell to Xcel at  
5 least 13 percent of Xcel’s retail energy load.
- 6 2. Excelsior Energy’s Mesaba I plant is not, and is not likely to be, a least-cost  
7 resource. This is the first reason why, based on the terms of Minn. Stat.  
8 §216B.1693, Excelsior Energy is not entitled to sell to Xcel at least 2  
9 percent of Xcel’s retail energy load.
- 10 3. Due to financial and operational risks that would be placed on ratepayers,  
11 Excelsior Energy’s Mesaba I Plant is likely to be contrary to the public  
12 interest. This is the second reason why, based on the terms of Minn. Stat.  
13 §216B.1693, Excelsior energy is not entitled to sell to Xcel at least 2  
14 percent of Xcel’s retail energy load.

15 The Department notes that the Commission will make the final determination on these  
16 matters for Phase 1 when the case is brought before them for discussion.

17  
18 **VI. RESPONSE TO THE TESTIMONY OF EXCELSIOR’S WITNESS MR.**  
19 **THOMAS L. OSTERAAS**

20 **Q. Dr. Amit, did the Company’s witness, Mr. Osteraas, state the purpose of his**  
21 **testimony?**

1 A. Yes. Mr. Osteraas states that the purpose of his testimony is to address the issues in  
2 Phase 2 of these proceedings as determined by the ALJ in his Second Prehearing Order  
3 dated June 2, 2006.

4  
5 **Q. Does Mr. Osteraas identify these issues in his testimony?**

6 A. Yes. He states that the primary issue to be addressed in Phase 2 of this case is the  
7 Commission third primary issue:

8 Determine that, under the terms of Minn. Stat. §216B1693, at  
9 least 13% of the energy supplied to Xcel's retail customers  
10 should come from the IGCC by 2013.  
11

12 **Q. Do you agree with Mr. Osteraas regarding the primary issue to be addressed in this  
13 proceeding?**

14 A. Yes, I do.  
15

16 **Q. Dr. Amit, does Mr. Osteraas' testimony address this primary issue?**

17 A. Mr. Osteraas' testimony only addresses the primary issue indirectly by stating that:

18 Excelsior incorporates by reference all of the Phase 1 record for  
19 use in Phase 2 of this proceeding.  
20

21 **Q. Does Mr. Osteraas provide any further factual or other information to supplement  
22 the record for Mesaba Phase 2?**

23 A. No.

1 **Q. Dr. Amit, since Mr. Osteraas does not directly testify on the primary issue of Phase 2,**  
2 **could you please summarize his testimony?**

3 A. It appears that the main scope of Mr. Osteraas' testimony is to define Excelsior's view of  
4 what Xcel's future load addition expansion path should be. According to Mr. Osteraas,  
5 Xcel should use at least 36 percent of IGCC resources to meet its customer's needs by  
6 the year 2027.

7  
8 **Q. Dr. Amit, please comment on the main scope of Mr. Osteraas' testimony.**

9 A. The appropriate process to determine Xcel's future load expansion is the Biannual  
10 Integrated Resource Plan (IRP) (for example, the foresighted Docket No. E002/RP-04-  
11 1752) which identifies the size, type and timing for needed resources, followed by  
12 certificate of need proceedings to scope out the best resources to meet those identified  
13 needs. Mr. Osteraas' testimony regarding Xcel's future energy and capacity needs may  
14 be relevant to Xcel's future IRP docket, but the focus of this proceeding is on the cost  
15 and terms of the Mesaba project.

16  
17 **Q. As such, has Excelsior or any Party provided any new information in the Mesaba II**  
18 **record that persuades you to revise your conclusions previously discussed herein?**

19 A. No.

20  
21 **Q. Dr. Amit, does that complete your testimony?**

22 A. Yes, it does.