



Minnesota Center for Environmental Advocacy

The legal and scientific voice protecting and defending Minnesota's environment

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August 14, 2006

The Honorable Steve M. Mihalchick
Office of Administrative Hearings
100 Washington Square, Suite 1700
Minneapolis, MN 55401-2138

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. 12-2500-17260-2

Dear Judge Mihalchick:

Enclosed for filing please find the Statement of the Case of Izaak Walton League of America, Fresh Energy, and Minnesota Center for Environmental Advocacy (Public Version), Statement of the Case of Izaak Walton League of America, Fresh Energy, and Minnesota Center for Environmental Advocacy (Nonpublic Version), and Notice of Appearance of Counsel in the above referenced proceeding.

Sincerely,

Kevin Reuther

BEFORE THE MINNESOTA OFFICE OF ADMINISTRATIVE HEARINGS
100 Washington Square, Suite 1700
Minneapolis, Minnesota 55401-2138

FOR THE MINNESOTA PUBLIC UTILITIES COMMISSION
121 Seventh Place East Suite 350
St. Paul, Minnesota 55101-2147

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. 12-2500-17260-2

NOTICE OF APPEARANCE
OF COUNSEL

TO THE ADMINISTRATIVE LAW JUDGE AND PARTIES:

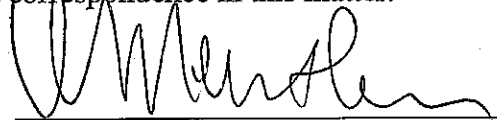
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Please include Mr. Reuther on future pleadings and correspondence in this matter.

DATE: August 14, 2006



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STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE 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, Determination of Least Cost
Technology, and Establishment of a Clean
Energy Technology Minimum Under Minn.
Stat. § 216B.1693**

**MPUC Docket E-6472/M05-1993
OAH Docket 12-2500-17260-2**

**STATEMENT OF THE CASE
OF IZAAK WALTON LEAGUE
OF AMERICA, FRESH
ENERGY AND MINNESOTA
CENTER FOR
ENVIRONMENTAL
ADVOCACY
(PUBLIC VERSION)**

The Izaak Walton League of America – Midwest Office (“IWLA”), Fresh Energy and the Minnesota Center for Environmental Advocacy (“MCEA”), respectfully submit this Statement of the Case pursuant to the August 9, 2006 Prehearing Order.

INTRODUCTION

IWLA, Fresh Energy and MCEA are all non-profit organizations concerned with energy policy and the environment. IWLA, Fresh Energy, and MCEA regularly participate in matters before the Minnesota Public Utilities Commission. IWLA, Fresh Energy, and MCEA have an interest in this matter in particular because it holds both the certainty of devastating environmental consequences resulting from the emission of greenhouse gases as well as theoretical, potential environmental benefits of carbon capture and sequestration.

IWLA, Fresh Energy and MCEA support continued research into technologies that can capture and sequester carbon, but at this time oppose conferring the regulatory

benefits sought by Excelsior because, although the Mesaba Unit I Project (“Project”) employs technologies that may have the *potential* to allow for carbon capture and sequestration, there is no requirement or apparent intent that Excelsior in fact capture and sequester carbon as part of the Project. Because a commitment to capture carbon is absent from the proposed Power Purchase Agreement (“PPA”) and there is no need for the power generated by the Project, the Public Utilities Commission cannot determine at this time that the Project is in the public interest, a requirement of Minnesota Statutes Sections 216B.1693 and 216B.1694, subd. 2(a)(7). Studies on the economic feasibility of carbon capture and sequestration are on-going and Excelsior should wait to seek approval of the Project until it is clear that carbon capture and sequestration is feasible from its proposed site. IWLA, Fresh Energy and MCEA urge the Public Utilities Commission to either disapprove the PPA or amend it to require that the Project capture and sequester carbon by a date certain identified in the PPA. In addition, IWLA, Fresh Energy and MCEA submit that Excelsior has failed to demonstrate that it is or is likely to be a “least cost resource” as required by Minnesota Statutes Section 216B.1693.

IWLA, Fresh Energy, and MCEA intend to focus on the issues raised in this Statement, but reserve the right to submit affirmative and rebuttal testimony on these and other issues as they are identified.

ARGUMENT

I. THE PROJECT, AS PROPOSED, IS NOT IN THE PUBLIC INTEREST.

The Project proposed by Excelsior does not meet the Legislature’s requirement that it be in the public interest. The Project is entitled to a contract with Xcel only if the Commission determines that the Project and contract are in the public interest. Minn.

Stat. §§ 216B.1693(b), 216B.1694, subd. 2(a)(7). The Project as proposed does not satisfy this requirement because it will produce substantial and unnecessary global warming pollutants, clearly contrary to the interests not just of every Minnesotan but every person and living thing on the planet.

A. It Is Not In The Public Interest To Require Xcel To Purchase Unnecessary Power From A Facility That Will Produce Global Warming Pollution.

Excelsior's proposal seeks to obtain the regulatory benefits of the Clean Energy Technology ("CET") and Innovative Energy Project ("IEP") statutes by burning coal to produce 600 megawatts of so-called "baseload" power that is not needed by Xcel Energy. It is not in the public interest for the Commission to approve a PPA requiring Xcel to purchase power in excess of what it needs, particularly not where the power is generated from coal, a primary source of greenhouse gases that are causing global climate change. Indeed, it is plainly contrary to the public interest—and reckless—to allow a new source of carbon emissions unless absolutely necessary.

The Legislature explicitly required that the Commission ensure that a project is in the "public interest" before conferring the significant regulatory benefits of the CET and IEP statutes. Minn. Stat. §§ 216B.1693(b) and 216B.1694, subd. 2(a)(7). The regulatory benefits Excelsior seeks include a contract with Xcel, exemption from certificate-of-need requirements, the power of eminent domain, and the right to increase capacity without further state review. Minn. Stat. § 216B.1694, subd. 2. Such significant benefits should only be conferred if the proposal is clearly in the public interest.

Significantly, the exemption from certificate-of-need requirements is a benefit conferred on a project only if it satisfies the public interest threshold. The exemption

does not make the necessity of the power Excelsior seeks to provide irrelevant to this initial public interest determination.

The Project will produce upwards of five million tons of greenhouse gases per year. IWLA, Fresh Energy, and MCEA's evidence will reinforce the indisputable conclusion that greenhouse gases are causing significant changes in climate that in turn pose an extreme threat to human and animal life on the planet. Evidence will show that, absent capture and sequestration of these emissions or an enforceable agreement requiring carbon off-set through retirement of other emission sources, the Project will be contributing to the global climate change problem.

Excelsior proposes to generate 600 megawatts of power that is not needed at this time. The Xcel Resource Plan approved by the Commission in its order dated July 28, 2006, shows that Xcel first experiences a need for "baseload" power in 2015, in an amount of 375 megawatts. Xcel's 2015 need can likely be met by continued purchase of power from Manitoba Hydro, a renewable energy source with few greenhouse emissions.

It is not in the public interest to add annually five million tons of greenhouse gases (as well as the other polluting emissions and discharges from this Project) when there is no current need for the power the Project will generate. Excelsior cannot satisfy the public interest threshold that entitles it to the regulatory benefits of the CET and IEP statutes.

Absent an enforceable agreement to capture and sequester carbon, or a requirement that Xcel off-set new emissions by retiring older coal-burning facilities, the public does not benefit from the Project. Indeed, the public suffers the consequences of added greenhouse gases in an era when it is clear that continuing to add carbon dioxide to

the atmosphere will have devastating consequences. The Project, as proposed at this time, is contrary to the public interest.

B. It Is Premature For Any Finding That The Project Is In The Public Interest.

Excelsior's application to the Commission is premature because too little is known about the feasibility and cost of carbon sequestration, particularly given the location of the proposed facility. Because there is no demonstrated need for the power generated by the facility, the only possible public interest benefit from the Project is its potential to use, evaluate, and improve carbon capture and sequestration technologies. There is no basis, however, to conclude that this potential public interest is served by the Project.

Excelsior participates in the Plains CO₂ Reduction Partnership ("PCORP"), a stakeholder and research partnership designed to identify sequestration opportunities and assess the economic feasibility of carbon sequestration. PCORP is currently in its second phase of assessing the economics of carbon sequestration and is scheduled to issue its report in October 2009. This feasibility assessment should be completed and its findings applied to Excelsior's proposal before any public interest determination is made. Indeed, Excelsior has not and can not yet satisfy the requirement of the statute that it seek "funding . . . to conduct a demonstration project . . . for carbon sequestration" because preliminary assessment and feasibility work has not been completed to show that a demonstration project is viable at the proposed site. Minn. Stat. § 216B.1694, subd. 2(a)(6). Moreover, there is no need or reason to rush through a decision on this important matter with long-term public consequences. *See* Minn. Stat. § 216B.1693(d) (section does not expire until 2012).

While IWLA, Fresh Energy and MCEA support the development of innovative technologies to curb emission of greenhouse gases and other pollutants, this Project is premature.

C. The Project Does Not Promise Better Emission Reductions Achieved As Compared To Other Solid Fuel Baseload Technologies.

Excelsior fails to demonstrate that the Project has benefits based on emission reductions achieved as compared to other solid fuel baseload technologies. Emission reductions achieved is one of the five non-exclusive factors the Commission may take into consideration in making its public interest determination. Minn. Stat. § 216B.1694, subd. 2(a)(7). Consideration of the factor does not weigh in favor of the Project for at least two reasons.

First, with regard to carbon dioxide emission reductions, the Project, as proposed, offers no benefits in CO₂ emission reductions over a conventional coal-burning power plant. The statute specifically refers to reductions “achieved,” not “achievable.” The fact that IGCC technology is more compatible with carbon capture than a conventional facility is irrelevant unless carbon capture is actually implemented. As set out above, CO₂ emission reduction is a paramount consideration given the looming crisis of global climate change.

Second, with regard to the criteria pollutants (SO₂, NO_x, PM, VOC) and mercury, Excelsior has not shown the benefits of the Project over other solid fuel baseload technologies. In drawing comparisons to its IGCC plant, Excelsior has limited its analysis to conventional supercritical pulverized coal facilities. Other solid fuel baseload technologies, including biomass and combined heat and power (“CHP”) co-generation plants, must be analyzed. While Excelsior projects an emissions profile that is preferable

to existing coal-burning power plants, it does not compare the Project to biomass facilities or evaluate the per unit emissions of co-generating facilities which may have an equal or better emissions profile.

D. The Price Of Power Coming From The Project Will Not Be Stable.

Excelsior fails to show that the Project offers the benefit of price stability. The IEP statute directs the Commission to consider “the stability of the price of the output from the project” in making its public interest determination. Minn. Stat. § 216B.1694, subd. 2(a)(7). Because the proposed Project will incur future costs related to regulation of carbon and mercury emissions as well as haze in Class 1 areas, the price of output from the Project over time is likely to be volatile.

Despite acknowledging the significant likelihood of carbon regulations, Excelsior has not taken the costs of such regulations into account in its analysis supporting the claim that the price of energy from its facility will be stable. Future carbon dioxide emissions regulations are likely to add significant costs to high-emitting sources such as the Project; if Excelsior committed to avoid these emissions through carbon capture and storage, the costs of those technological fixes also impact the price of the Project’s output. Mercury regulations resulting from the Minnesota TMDL required by the Clean Water Act, as well as stricter air emission limits implementing the Clean Air Act’s mandate to prevent impairment of visibility in Class 1 areas such as the Boundary Waters, will likewise impact the price of the Project’s output.

Excelsior, in its Report, concludes that coal-fueled generation has “very stable pricing due to the fact that the fuel costs . . . make up a minimal proportion of the cost of generation” and states that the “PPA locks in stable capacity prices by contract. . .”

(Section 1, p. 21) However, these statements ignore the fact that **[TRADE SECRET MATERIAL BEGINS**

[TRADE SECRET MATERIAL ENDS] thus,

any increased costs of regulations will be passed on to ratepayers regardless of the capacity price, which Excelsior describes as “locked in” and “stable.”

II. EXCELSIOR HAS NOT DEMONSTRATED THAT THE PROJECT IS, OR IS LIKELY TO BE, A “LEAST COST RESOURCE.”

Excelsior has failed to provide any evidence that the Project is or is likely to be a “least cost resource.” Xcel has an obligation to supply power from the Project only if the Commission determines that the proposed IGCC project “is or is likely to be a least-cost resource, including the costs of ancillary services and other generation and transmission upgrades necessary...” Minn. Stat. § 216B.1693(a). Excelsior, without basis, limited its “least cost resource” analysis to a comparison between IGCC technology and a conventional supercritical pulverized coal plant and failed to analyze the costs of other available technologies.

Nothing in the plain language of the statute suggests that the Commission’s “least-cost resource” review should be limited to a comparison with coal-burning sources of electricity. Nor is there any indication in the statute that the least-cost determination be limited to comparisons with other baseload sources. (If Xcel has no need for baseload, as indicated above, there is particularly no basis for this limitation in the comparison.) Instead, the language and structure of the statute contemplate that the Commission evaluate IGCC technology against all sources to ensure that the public benefits conferred

by the statute are in fact going to an investment that is or is likely to be a least-cost resource.

Ensuring that the record supports a “least cost resource” finding in this instance is particularly important because of the absence of any competitive bidding process for this third-party supplied power. The Legislature has entrusted to the Commission the duty of protecting ratepayers by ensuring that the Project is or is likely to be a least-cost resource. While the statute expresses legislative intent to prod development of IGCC technologies, it does not foresee a give-away to the first project proposers at the public’s expense.

IWLA, Fresh Energy and MCEA submit that without cost analyses of other alternative resources, such as wind, solar, biomass, co-generation, and energy efficiency, there can be no substantial justification for a least-cost resource finding. Such cost analysis should take into account the “significant likelihood” noted by Excelsior (Mesaba Energy Report, Section II, p. 9) that regulations on carbon emissions will increase the costs of coal-burning fuel sources, including the proposed Project. It likewise must account for the added expense of mercury emissions as a result of Minnesota’s mercury TMDL and the likelihood of emissions costs associated with Class 1 visibility regulations.

CONCLUSION

In sum, IWLA, Fresh Energy, and MCEA submit that the Excelsior project, at this early date and as proposed, is not in the public interest. The main benefit the Project has to offer is its “potential” to capture and sequester carbon; but even this potential is questionable given that no feasibility assessment for carbon sequestration from this facility has been completed. It is contrary to the public interest to approve a coal-burning

facility when the pollution generated will have significant, detrimental impacts on the environment and when the output from the facility is not needed. In addition, Excelsior has not provided a sufficient analysis showing that the Project is or is likely to be a least cost alternative.

Respectfully Submitted,



Dated: August 14, 2006

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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

**MPUC Docket No. E-6472/M05-1993
OAH Docket No.12-2500-17260-2**


Coraelsie F. Kester, being duly sworn, says that on the 14th day of August, 2006, she delivered via U.S. Mail the following:

Statement of the Case of Izaak Walton League of America, Fresh Energy and Minnesota Center for Environmental Advocacy (Public Version)

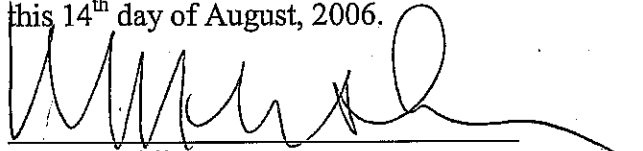
Notice of Appearance of Counsel

on the following persons, in this action, by e-mailing to them and mailing to them a copy thereof, enclosed in an envelope, postage prepaid, and by depositing the same in the post office at St. Paul, Minnesota, directed to said persons at the last known mailing address of said persons:

All Persons on the Attached Service List


Coraelsie F. Kester

Subscribed and sworn to before me
this 14th day of August, 2006.


Notary Public



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