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August 14, 2006

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

VIA EMAIL AND UNITED STATES MAIL

Re: *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 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 is an original and 1 copy of Manitoba Hydro's Statement of the Case regarding the above-referenced matter. Also enclosed is our Affidavit of Service.

Please feel free to contact me if you have any questions.

Very truly yours,

WINTHROP & WEINSTINE, P.A.



Eric F. Swanson

Enclosures

Cc: Service List

2894736v1

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

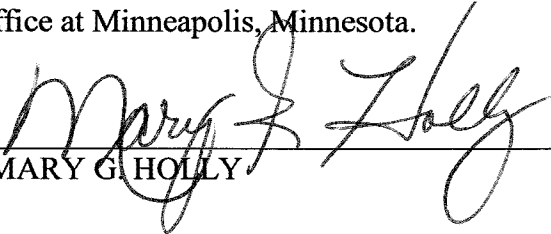
MPUC Docket No. E-6472/M-05-1993
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In the Matter of a Petition by Excelsior
Energy, Inc. for Approval of a Power
Purchase Agreement Under Minn. Stat.
§ 216B.1694 and Determination of Least
Cost Technology and Establishment of a
Clean Energy Technology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

AFFIDAVIT OF SERVICE

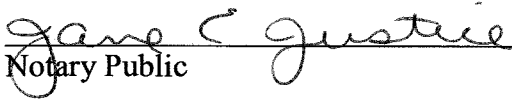
STATE OF MINNESOTA)
) ss.
COUNTY OF HENNEPIN)

Mary G. Holly, of the City of Lake Elmo, County of Washington, the State of Minnesota,
being first duly sworn, deposes and says that on the 14th day of August, 2006, she served the
attached **Statement of the Case** to all said persons on the attached Service List, true and correct
copies thereof, by email and/or by depositing the same enclosed in an envelope, postage prepaid
in the United States Mail in the post office at Minneapolis, Minnesota.

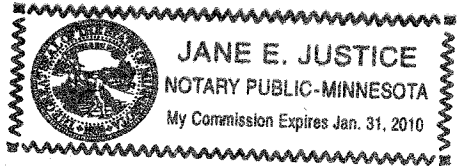


MARY G. HOLLY

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



Notary Public



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(08/08/06)

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STATEMENT OF THE CASE

Manitoba Hydro respectfully files this Statement of the Case pursuant to the Sixth Prehearing Order, dated August 9, 2006.

The purpose of this proceeding is to determine whether the Minnesota Public Utilities Commission (“Commission”) should “approve, disapprove, amend, or modify” the power purchase agreement (“PPA”) with Xcel Energy sought by Excelsior Energy. *Minn. Stat. § 216B.1694, subd. 2 (7)*. The Commission will make that decision by determining whether or not the PPA is in the public interest. *Id.* However, in this case the Commission must make that determination without the benefit of the PPA being presented at the conclusion of a competitive bidding process, targeted to an identified need of the purchasing utility and designed to consider and balance the relevant public interest factors. This lack of a competitive process tied to

identified need makes the Commission's decision more challenging and places added burden on Excelsior Energy to build a record supporting its position.¹

The Commission's public interest charge is a broad one and cannot be confined to a few narrow issues. For a significant new potential source of power such as the Excelsior Energy project, this public interest determination will necessarily include a myriad of factors. While Manitoba Hydro focuses its comments here on two discrete issues, any issue reasonably bearing on the Commission's public interest determination must be considered in this proceeding and these comments are in no way meant to suggest a limitation on the issues properly before the Commission. Thus, the Administrative Law Judges ("ALJs") should not at this time give cramped reading to the Commission's identified issues in its referral to the Office of Administrative Hearings. Rather, the ALJs should give broad reading to those issues and Manitoba Hydro fully anticipates that other parties will identify a host of issues properly before the Commission in this proceeding.

In this proceeding, Excelsior Energy asks for approval of a PPA with Xcel Energy "for the full 603 MW of output" from its proposed project. *See Excelsior Energy Statement of the Case, June 19, 2006, p. 20.* Excelsior has further indicated its intent to begin delivering power under the PPA beginning in 2011. Of course, the Commission does not make its decision on whether such a PPA is in the public interest in a vacuum. Xcel Energy ratepayers will ultimately utilize the power delivered pursuant to any PPA approved by the Commission and bear the costs associated with such a PPA. Thus, Manitoba Hydro respectfully submits that a central issue in this proceeding is how the PPA sought by Excelsior Energy can be in the public interest in light of the Commission's recent ruling in Xcel's Resource Plan proceeding. *MPUC Docket No. E-002/RP-04-1752.* In that docket, the Commission noted that several suppliers, including

¹ As the party seeking approval of the PPA by the Commission, Excelsior Energy bears the burden of proof. *Minn. R. 1400.7300, subp. 5.*

Excelsior Energy, have indicated interest in supplying baseload power to Xcel. However, the Commission also determined that, at this point, Xcel should only “move toward developing 375 MW of baseload capacity, with an online target date of 2015.” *Id.*, *Order Approving Resource Plan as Modified, June 28, 2006, p. 8* (emphasis added). With this level of need, it appears a daunting task for Excelsior Energy to demonstrate the public interest behind compelling the purchase of up to 600 MW beginning in 2011.²

In addition, the Commission will need to fully examine and consider the impact of the Excelsior Energy project and its associated facilities and infrastructure on the reliability of the overall electric energy system in the state. For example, Excelsior Energy requires new transmission facilities to be able to actually deliver its power to the Xcel system pursuant to the PPA. Excelsior Energy needs to clearly explain what those facilities entail. In particular, Excelsior Energy will need to provide sufficient information for the Commission to determine the benefits *and* costs associated with these facilities, including the impact of these facilities, if any, on transmission constraints in the state and region.

Manitoba Hydro appreciates the opportunity to comment on two of the many critical issues to be debated in this proceeding.

Dated: 8-14-06

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² This task seems even more daunting when one recognizes that the statute relied on by Excelsior Energy only refers to a possible 450 MW contract. *Minn. Stat. §216B.1694, subd. 2 (7)*.