

**STATE OF MINNESOTA
BEFORE THE 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 Minnesota Stat. §
216B.1694, Determination of Least Cost
Technology, and Establishment of a Clean
Energy Technology Minimum Under Minn.
Stat. § 216B.1693

Docket No. E-6472/M-05-1993
OAH Docket No. 12-2500-17260-2

**XCEL INDUSTRIAL
INTERVENORS' STATEMENT
OF THE CASE**

Gerdau Ameristeel US Inc., and Marathon Petroleum Company LLC (collectively "Xcel Industrial Intervenors or XLI")¹ respectfully submits this Statement of the Case pursuant to the Sixth Prehearing Order dated August 8, 2006.

I. INTRODUCTION

Subject to the review and approval of the Minnesota Public Utilities Commission (the "Commission"), Minnesota law requires the sale and use of energy produced via technology utilizing coal as the primary fuel in an efficient combined-cycle configuration resulting in reduced emissions compared to those of traditional technologies. The sale must be for 450 megawatts, two-percent of which must be provided to retail customers. The Commission's review must focus on cost and the public interest. Here, Excelsior Energy, Inc. ("Excelsior") petitioned for approval of a purchase power agreement ("PPA") between it and Northern States Power Company d/b/a Xcel Energy ("Xcel") for power created by Excelsior's integrated gasification combined cycle ("IGCC") technology. But the PPA is for the sale of power well in excess of the 450 megawatts allowed under Minnesota law. Furthermore, Excelsior has failed to

¹ XLI's petition to intervene was granted in the Fourth Prehearing Order, dated June 13, 2006.

even offer evidence demonstrating that its IGCC technology is a low-cost alternative. The central issue in this case is whether the PPA must be approved. More specifically, XLI asserts the following issues must be resolved:

1. Is Excelsior entitled to demand a PPA for an amount in excess of 450 megawatts?
2. Has Excelsior demonstrated that its IGCC technology is, or is likely to be, a least cost alternative?

II. APPLICABLE LAW

Despite Excelsior's attempts to apply the clean energy technology statute ("CET") and the innovative energy project ("IEP") separately (and thereby require Xcel to purchase 603 MW of power), the CET and IEP statutes overlap and should be read and applied together. For example, the definition of clean energy technology is exactly the same as the first portion of the definition of innovative energy project. MINN. STAT. §§ 216B.1693(c) and 216B.1694 subd. 1(1).²

Furthermore, all innovative energy projects qualify as a clean energy technology, MINN. STAT. § 216B.1694 subd. 2(4), and only power produced by clean energy technology qualifying as an innovative energy project can be sold to retail customers. MINN. STAT. § 216B.1693 (b).

Finally, any power produced for a utility under the IEP statute, or supplied by the utility to a retail consumer under either the CET statute, cannot be contrary to the public interest. MINN. STAT. §§ 216B.1693(b) and 216B.1694 subd. 2(7).

This overlap allows the two statutes to effectively govern the production, and ultimate supply to retail consumers, of energy utilizing coal in an efficient, combined-cycle configuration. Applying the statutes and utilizing their plain and clear terms requires analysis of the following

² (defining the clean energy technology and innovative energy project as one involving use of 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.")

questions:

1. Is the power produced via technology utilizing coal as the primary fuel in an efficient combined-cycle configuration resulting in reduced emissions (the “Project”) compared to those of traditional technologies?³
2. If so, has the owner of the Project certified its capability of offering a long-term energy supply contract at a hedged and predictable cost?⁴
3. If so, has the Project been designated by the Commissioner of the Iron Range Resources and Rehabilitation Board (the “Board”) as receiving support from the Board for its location and infrastructure to support new development?⁵
4. If so, is the Project actually or likely to be a least cost resource for power generation?⁶
5. If so, then a utility owning a nuclear generation facility in Minnesota must supply two-percent of the total energy supplied to retail customers from technology utilized by the Project, unless contrary to the public interest.⁷ Public interest factors to consider include the following:⁸
 - a. The Project’s economic development benefits to Minnesota;
 - b. The Project’s use of abundant domestic fuel sources;
 - c. The stability of the price of the output from the Project;
 - d. The Project’s potential to contribute to a transition to hydrogen as a fuel

³ MINN. STAT. §§ 216B.1693(c), 216B.1694 subd. 1(1).

⁴ Because any power supplied under the CET statute must be from an innovative energy project, the definition of an innovative energy project in the IEP statute must be met. MINN. STAT. §§ 216B.1693(b), 216B.1694 subd. 1(2).

⁵ MINN. STAT. §§ 216B.1693(b), 216B.1694 subd. 1(3).

⁶ Innovative energy projects qualify as clean energy technology and are therefore subject to the least cost requirement in the CET statute if the energy produced will ultimately be supplied to retail consumers. MINN. STAT. §§ 216B.1693(a), 216B.1694 subd. 2(4).

⁷ MINN. STAT. § 216B.1693(a).

source; and

- e. The emission reductions achieved compared to other solid fuel baseload technologies.
6. If not contrary to the public interest, the Commission has the authority to approve, disapprove, amend or modify a proposal for the Project to provide 450 MW of baseload capacity and energy under contract to a public utility owning a nuclear generation facility in Minnesota to ensure the public utility meets the above two-percent supply requirement.⁹

These questions are directly from the plain meaning of the language set forth in the CET and IEP statutes. The plain meaning of the language in these statutes governs their application, and should not be disregarded. MINN. STAT. § 645.16. This mandated application of the plain meaning of the terms utilized in the CET and IEP statutes requires a denial of Excelsior's petition to approve the 603 MW PPA.

III. XLI'S POSITION ON THE PRIMARY ISSUES

A. Excelsior Cannot Require Xcel To Purchase 603 MW Of Power Produced By Its IGCC Technology.

Before addressing any of the alleged facts at issue, the ALJ should find that Excelsior cannot require Xcel to purchase 603 MW of power produced by its IGCC technology. As set forth in detail above, certain utilities are required to utilize clean energy technology, provided such technology is or is likely to be a least cost resource, to supply at least two-percent of the electric energy supplied to retail customers. MINN. STAT. § 216B.1693(a). The innovative energy project utilizing a clean energy technology, in turn, is entitled to sell 450 MW of power to

⁸ MINN. STAT. § 216B.1694 subd. 2(7).

⁹ MINN. STAT. §§ 216B.1693(a), 216B.1694 subd. 2(7).

the utility, provided that such a sale is not contrary to the public interest. MINN. STAT. § 216B.1694 subd. 2(7). In short, the IEP and CET statutes were drafted to entitle an innovative energy project to sell power to a utility that must supply a given percentage of retail customers with energy provided from the innovative energy project. Nowhere in the IEP and CET statutes is there entitlement for an innovative energy project to sell anything in excess of 450 MW of power. Whether the PPA, which requires Xcel to purchase 603 MW, is therefore in violation of state law is an issue ripe for summary judgment and should be addressed as soon as possible. It is XLI's position that the PPA should be limited to the sale and purchase of 450 MW of power.

B. Excelsior Has Not And Cannot Demonstrated That Its IGCC Technology Is, Or Is Likely To Be A Least Cost Resource.

Assuming that the PPA is limited to the sale and purchase of 450 MW of power, Excelsior hasn't offered any evidence that such a sale would be utilizing a least cost resource. As stated in Excelsior's response to Xcel's information request no. 21, "Excelsior has not prepared terms and conditions for a 450 MW power sale." Furthermore, in that same response, Excelsior admits that the "cost per megawatt hour would be higher if it is limited to 450 MW." XLI avers that these facts, as well as others, indicate that a 450 MW power sale utilizing Excelsior's technology will not be a least cost resource.

Even assuming that state law does not prohibit Excelsior from attempting to require Xcel to purchase 603 MW of power under the PPA, Excelsior cannot demonstrate that its technology is, or is likely to be a least cost resource. As an IGCC plant, the price of the output necessarily depends on the costs of the input. But Excelsior has not entered into any contracts for the inputs at this time and won't for a couple of years. Indeed, in their response to Xcel's information request nos. 85 and 117, Excelsior states that it "does not anticipate negotiating any specific

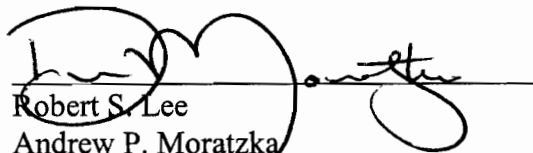
binding fuel arrangements until approximately 2009-10.” The price of coal may or may not remain the same over the course of the next few years. Furthermore, given the past radical fluctuation of natural gas prices (which may be necessary to utilize) it is impossible to predict where natural gas prices will be at in the future. Based on these facts, as well as others, XLI believes Excelsior cannot prove that Excelsior’s IGCC is a least cost resource.

IV. CONCLUSION

The PPA, if approved, can only be approved for the purchase of 450 MW according to Minnesota state law. Regardless, Excelsior has not provided information sufficient to establish that its IGCC project is, or is likely to be a least cost resource. For these reasons, XLI is entitled as a matter of law to the Commission’s denial of the PPA, or at a minimum, tabled until such time as Excelsior is able to offer evidence that its IGCC will be a least cost resource.

Respectfully submitted,

MACKALL, CROUNSE & MOORE, PLC

A handwritten signature in black ink, appearing to read "Robert S. Lee", is written over a horizontal line. The signature is stylized and cursive.

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