



**Christopher B. Clark**  
*Assistant General Counsel*

414 Nicollet Mall, 5<sup>th</sup> Floor  
Minneapolis, MN 55401  
Phone: **612.215.4593**  
Fax: 612.215.4544  
Christopher.B.Clark@xcelenergy.com

October 3, 2006

Steve M. Mihalchick  
Bruce H. Johnson  
Office of Administrative Hearings  
100 Washington Avenue South, Suite 1700  
Minneapolis, MN 55401

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*  
PUC Docket No. E6472/M-05-1993  
OAH Docket No. 12-2500-17260-2

Dear ALJs Mihalchick and Johnson:

Enclosed is Xcel Energy's Memorandum of Law in Response to MCGP's Motion for Partial Summary Judgment. We have provided copies of this filing to all parties on the attached service list. If you have any questions regarding this filing, please call me at (612) 215-4593.

Sincerely,

A handwritten signature in cursive script that reads 'Christopher B. Clark'.

CHRISTOPHER B. CLARK  
ASSISTANT GENERAL COUNSEL

Enclosures  
c: Service List

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

PUC Docket No. E6472/M-05-1993  
OAH Docket No. 12-2500-17260-2

**XCEL ENERGY'S MEMORANDUM OF  
LAW IN RESPONSE TO  
MNCOALGASPLANT.COM'S MOTION  
FOR PARTIAL SUMMARY JUDGMENT**

**INTRODUCTION**

Northern States Power Company d/b/a Xcel Energy ("Xcel Energy") submits this Memorandum of Law in Response to mncoalgasplant.com's Motion for Partial Summary Judgment on the Petition of Excelsior Energy Inc. and MEP-I LLC (collectively "Mesaba 1 LLC") for Approval of a 603-MW Power Purchase Agreement (the "Mesaba 1 PPA.").

**ARGUMENT**

**A. West Site**

Mncoalgasplant.com's motion raises a new issue for Summary Judgment. Specifically, mncoalgasplant.com argues that, as a matter of law, the West site proposed for Mesaba 1 LLC's plant is a "Greenfield" site, thus it fails to meet the statutory requirement that an innovative energy project be located "on a site that has substantial real property with adequate infrastructure to support new or expanded development." Minn. Stat. § 216B.1694, subd. 1(3).

Similar to our response to the Xcel Industrial Intervenors' ("XLI") Motion, Xcel Energy believes that consideration of mncoalgasplant.com's Motion at this time could improve the efficiency of the process by helping focus record development. For example, if this Motion were granted, record development would then focus on the East site, rather than attempting to develop appropriate information for both sites. Alternatively, the ALJs could allow continued litigation to develop the factual issues surrounding whether the West site can satisfy the statute. While determination of these issues at this time may make for a more efficient proceeding, Xcel Energy is willing to pursue either path the ALJs believe appropriate.

#### **B. Application of the Innovative Energy Project Statute**

Mncoalgasplant.com also raises the issue of whether Mesaba 1 LLC constitutes an "innovative energy project" as defined in Minn. Stat. § 216B.1694. As noted in mncoalgasplant.com's Motion, this issue has also been raised in the separate siting and routing proceeding associated with Mesaba 1 LLC's proposal (MPUC Docket No. E6472/GS-06-668). As we set forth in response to XLI's Motion, the ALJs could determine that Mesaba 1 LLC's does not satisfy the innovative energy project requirements as a matter of law. Alternatively, the ALJs could allow continued record develop on these issues. Regardless of which approach is taken, it is clearly premature to make any finding that Mesaba 1 LLC and its proposed projects satisfy the statutory requirements in either the PPA or siting and routing proceedings.

#### **CONCLUSION**

Although Xcel Energy is willing to continue litigating the issues raised by mncoalgasplant.com, we believe the ALJs could take this opportunity to narrow the focus of these proceeding and further define the issues to be litigated in the remainder of this proceeding. At this time, the record does not support any conclusion that

Mesaba 1 LLC has established that it is an innovative energy project or that the West site qualifies under that statute.

Dated: October 3, 2006

Respectfully submitted,

Northern States Power Company d/b/a  
Xcel Energy

Michael C. Krikava  
Thomas Erik Bailey  
Bray M. Dohrwardt  
2200 IDS Center  
80 South Eighth Street  
Minneapolis, MN 55402  
(612) 977-8400

By: Christopher B. Clark  
Christopher B. Clark  
Assistant General Counsel  
Xcel Energy Services Inc. on behalf of  
Northern States Power Company  
414 Nicollet Mall – Fifth Floor  
Minneapolis, MN 55401  
(612) 215-4593

Attorneys for  
Northern States Power Company  
d/b/a Xcel Energy

STATE OF MINNESOTA    )  
                                  ) ss.  
COUNTY OF HENNEPIN   )

AFFIDAVIT OF SERVICE  
MPUC Docket No.: E6472/M-05-1993  
OAH Docket No.: 12-2500-17260-2

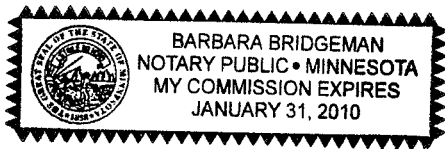
I, Carole Wallace, certify that on the 3<sup>rd</sup> day of October, 2006, copies of Xcel Energy's Memorandum of Law in Response to MCGP's Motion for Partial Summary Judgment in the above referenced matter were hand delivered, emailed and/or mailed by United States first class mail to the attached list of persons.

Carole Wallace

Subscribed and sworn to before me this  
3<sup>rd</sup> day of October, 2006

Barbara Bridgeman

NOTARY PUBLIC



*In the Matter of a Petition by Excelsior Energy Inc. for Approval  
of a Power Purchase Agreement Under Minn. Stat. § 216B.1694,  
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Clean Energy Technology Minimum Under Minn. Stat.*

*§ 216B.1693*

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Steve M. Mihalchick  
Office of Administrative Hearings  
100 Washington Avenue South, Suite 1700  
Minneapolis, MN 55401

Burl W. Haar  
Minnesota Public Utilities Commission  
Suite 350  
121 East Seventh Place  
St. Paul, MN 55101-2147

Valerie M. Smith  
Assistant Attorney General  
1400 Bremer Tower  
445 Minnesota Street  
St. Paul, MN 55101-2131

William A. Blazar  
Senior Vice President, Government Affairs &  
Business Development  
Minnesota Chamber of Commerce  
400 Robert Street North, Suite 1500  
St. Paul, MN 55101

John E. Drawz  
Fredrikson & Byron, P.A.  
Suite 4000  
200 South Sixth Street  
Minneapolis, MN 55402-1425

Elizabeth Goodpaster  
Minnesota Center for Environmental Advocacy  
26 East Exchange Street, Suite 206  
St. Paul, MN 55101

## Service List

Bruce H. Johnson  
Office of Administrative Hearings  
100 Washington Avenue South, Suite 1700  
Minneapolis, MN 55401

Sharon Ferguson  
Minnesota Department of Commerce  
Suite 500  
85 7<sup>th</sup> Place East  
St. Paul, MN 55101-2198

Julia Anderson  
Minnesota Office of the Attorney General  
1400 Bremer Tower  
445 Minnesota Street  
St. Paul, MN 55101-2131

Bray Dohrwardt  
Briggs and Morgan, P.A.  
2200 IDS Center  
80 South 8<sup>th</sup> Street  
Minneapolis, MN 55402

Mike Franklin  
Manager, Energy, Labor/Mgmt, and Elections Policy  
Minnesota Chamber of Commerce  
400 Robert Street North, Suite 1500  
St. Paul, MN 55101

Peter H. Grills  
W2800 First National Bank Building  
332 Minnesota Street  
St. Paul, MN 55101

Todd J. Guerrero  
Lindquist & Vennum  
4200 IDS Center  
80 South 8th Street  
Minneapolis, MN 55402-2274

Scott G. Harris  
Leonard, Street and Deinard  
150 South Fifth Street, Suite 2300  
Minneapolis, MN 55402

Annette Henkel  
Minnesota Utility Investors  
405 Sibley Street #227  
St. Paul, MN 55101

Chuck Kerr  
Great Northern Power Development, L.P.  
Suite 3600  
601 Jefferson Street  
Houston, TX 77002-7906

Michael C. Krikava  
Briggs and Morgan, P.A.  
2200 IDS Center  
80 South 8th Street  
Minneapolis, MN 55402

Jerry Larsen  
HPC-LLC  
4610 IDS center  
80 South 8th Street  
Minneapolis, MN 55402

Robert S. Lee  
Mackall, Crouse & Moore, PLC  
1400 AT&T Tower  
901 Marquette Avenue  
Minneapolis, MN 55402

Alan C. Lukes  
Great Northern Power Development LP  
1749 Pinto Place  
Bismarck, ND 58503

Brian M. Meloy  
Leonard, Street and Deinard  
150 South Fifth Street, Suite 2300  
Minneapolis, MN 55402

David R. Moeller  
Minnesota Power  
30 West Superior Street  
Duluth, MN 55802-2093

Thomas L. Osteraas  
Excelsior Energy  
Suite 305  
11100 Wayzata Boulevard  
Minnetonka, MN 55305

Carol Overland  
Overland Law Office  
402 Washington Street  
Northfield, MN 55057-2467

Steven J. Quam  
Fredrikson & Byron, P.A.  
Suite 4000  
200 South Sixth Street  
Minneapolis, MN 55402-1425

Mark Rolfes  
Otter Tail Power Company  
215 South Cascade Street  
PO Box 496  
Fergus Falls, MN 56538-0496

Antone J. Rude  
Great Northern Power Development LP  
10127 93rd Street NE  
Monticello, MN 55362

David Sasseville  
Lindquist & Venum  
4200 IDS Center  
80 South 8<sup>th</sup> Street  
Minneapolis, MN 55402-2274

Robert H. Schulte  
Schulte Associates, LLC  
9072 Palmetto Drive  
Eden Prairie, MN 55347

Mollie M. Smith, Esq.  
Fredrikson & Byron, P.A.  
200 South Sixth Street, Ste 4000  
Minneapolis, MN 55402-1425

Byron E. Starns  
Leonard, Street and Deinard  
150 South Fifth Street, Suite 2300  
Minneapolis, MN 55402

Eric F. Swanson  
Winthrop & Weinstine, P.A.  
225 South Sixth Street, Suite 3500  
Minneapolis, MN 55402

Nico Kieves  
Excelsior Energy Inc.  
11100 Wayzata Boulevard, Suite 305  
Minnetonka, MN 55305

Richard A. Voss  
Vice President – Power Development  
Great Northern Power Development LP  
1022 East Divide Avenue, Suite E  
Bismarck, ND 58501

Kathleen L. Winters  
Assistant Attorney General  
Suite 900 Bremer Tower  
445 Minnesota Street  
St. Paul, MN 55101-2127

David M. Aafedt  
Winthrop & Weinstine, P.A.  
225 South Sixth Street, Suite 3500  
Minneapolis, MN 55402

SaGonna Thompson  
Xcel Energy  
414 Nicollet Mall, 7<sup>th</sup> Floor  
Minneapolis, MN 55401-1993

Christopher B. Clark  
Xcel Energy  
414 Nicollet Mall, 5th Floor  
Minneapolis, MN 55401-1993



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*§ 216B.1693*

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## E-mail Service List

### Parties

[Steve.Mihalchick@state.mn.us](mailto:Steve.Mihalchick@state.mn.us)  
[Bruce.Johnson@state.mn.us](mailto:Bruce.Johnson@state.mn.us)  
[Susan.mackenzie@state.mn.us](mailto:Susan.mackenzie@state.mn.us)  
[Janet.gonzalez@state.mn.us](mailto:Janet.gonzalez@state.mn.us)  
[maria.lindstrom@state.mn.us](mailto:maria.lindstrom@state.mn.us)  
[julia.anderson@state.mn.us](mailto:julia.anderson@state.mn.us)  
[christopher.b.clark@xcelenergy.com](mailto:christopher.b.clark@xcelenergy.com)  
[tomosteraas@excelsiorenergy.com](mailto:tomosteraas@excelsiorenergy.com)  
[sharon.ferguson@state.mn.us](mailto:sharon.ferguson@state.mn.us)  
[squam@fedlaw.com](mailto:squam@fedlaw.com)  
[msmith@fredlaw.com](mailto:msmith@fredlaw.com)  
[jdrawz@fredlaw.com](mailto:jdrawz@fredlaw.com)  
[dmoeller@allete.com](mailto:dmoeller@allete.com)  
[overland@redwing.net](mailto:overland@redwing.net)  
[christophergreenman@excelsiorenergy.com](mailto:christophergreenman@excelsiorenergy.com)  
[byron.starns@leonard.com](mailto:byron.starns@leonard.com)  
[brian.meloy@leonard.com](mailto:brian.meloy@leonard.com)  
[scott.harris@leonard.com](mailto:scott.harris@leonard.com)  
[teresa.j.kowles@xcelenergy.com](mailto:teresa.j.kowles@xcelenergy.com)  
[Jennifer.sanner@xcelenergy.com](mailto:Jennifer.sanner@xcelenergy.com)  
[mkrikava@briggs.com](mailto:mkrikava@briggs.com)  
[valerie.smith@state.mn.us](mailto:valerie.smith@state.mn.us)  
[bblazar@mnchamber.com](mailto:bblazar@mnchamber.com)  
[dsasseville@lindquist.com](mailto:dsasseville@lindquist.com)  
[tguerrero@lindquist.com](mailto:tguerrero@lindquist.com)  
[rsl@mcmlaw.com](mailto:rsl@mcmlaw.com)  
[eswanson@winthrop.com](mailto:eswanson@winthrop.com)  
[bgoodpaster@mncenter.org](mailto:bgoodpaster@mncenter.org)  
[mrolfes@otpc.com](mailto:mrolfes@otpc.com)  
[apm@mcmlaw.com](mailto:apm@mcmlaw.com)  
[bdohrwardt@briggs.com](mailto:bdohrwardt@briggs.com)

### Non-party Participants

[daafedt@winthrop.com](mailto:daafedt@winthrop.com)  
[ahenkel@mutilityinvestors.org](mailto:ahenkel@mutilityinvestors.org)  
[Jerome.larsen@hpc-llc.com](mailto:Jerome.larsen@hpc-llc.com)  
[rhs@schulteassociates.com](mailto:rhs@schulteassociates.com)  
[pete.grills@grillslegal.com](mailto:pete.grills@grillslegal.com)  
[sclemmer@uscsusa.org](mailto:sclemmer@uscsusa.org)  
[jshaddix@janetshaddix.com](mailto:jshaddix@janetshaddix.com)  
[Kathleen.winters@state.mn.us](mailto:Kathleen.winters@state.mn.us)