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Citizens Against the Mesaba Project
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LEGISLATIVE AUDITOR: IRR DID NOT ADEQUATELY OVERSEE EXCELSIOR ENERGY'S USE OF LOAN PROCEEDS

On September 25th the Office of the Legislative Auditor (OLA) released its report regarding $9.5 million in unsecured loans from Iron Range Resources (IRR) to Excelsior Energy for the Mesaba Project, a plan to build a 603 MW coal-gasification power plant on the Iron Range. CAMP is gratified that OLA exercised its authority to investigate concerns raised by CAMP about apparent misuse of these public funds.

OLA concludes that IRR:
- Did not adequately oversee Excelsior Energy's use of loan proceeds to ensure that the company complied with certain loan provisions.
- Did not clearly define prohibited lobbying costs.
- Did not adequately review documentation that Excelsior Energy submitted to support use of loan proceeds.
- Did not set limits or constraints on certain travel costs.
- Had no basis to judge the reasonableness of amounts submitted and paid some costs that exceeded a reasonable use of public funds.

As a result:
- Excelsior was reimbursed $40,161 for some inappropriate, duplicate or unsupported costs.
- Excelsior "used loan funds for some expenses that appear to be related to lobbying activities."

The excessive reimbursements of $40,161 include:
- $15,822 for costs previously reimbursed;
- $3,513 for inappropriate uses of public resources, such as alcohol, lobbying registration and membership fees, flowers, food, golf outing and office party;
- $1,439 for employee payroll taxes; and
- $20,826 for which Excelsior had no or insuffiicent evidence to support the legitimacy, including estimated travel costs.

Regarding lobbying:
- IRR reimbursed Excelsior for $126,480 for payments to a law firm that may have been for lobbying but this can't be determined because IRR subsequently discarded the records.
- IRR failed to consider whether some of Excelsior's personnel whose salaries were reimbursed were actually performing lobbying activities.
- IRR did not increase oversight of the loan after concerns were raised about lobbying.

OLA noted that although in the fall of 2007 IRR requested Excelsior to conduct a comprehensive review of all submitted invoices to verify their eligibility for reimbursement, IRR did not follow up on this request. OLA is recommending that IRR:
- Recover $40,161 from Excelsior;
- Clarify types of lobbying activities ineligible for reimbursement;
- Clarify criteria for mileage and meal reimbursements, and documentation required to support them; and
- Review reimbursements for salaries, legal fees, mileage and meal costs and recover any that did not meet the criteria.

The report is available at: http://www.auditor.leg.state.mn.us/

CAMP'S REACTION

If IRR follows OLA's recommendations about 1) identifying what types of lobbying activities are ineligible for reimbursement and 2) reviewing law firm invoices reimbursed to Excelsior, it might recover large sums. Excelsior has reported $1.12 million in Minnesota lobbying disbursements through 2007. It received IRR reimbursement for hundreds of thousands of dollars for invoices from multiple law firms. It is likely that a close examination of those invoices would reveal that a significant amount was for "public affairs" activities that should be included in any reasonable definition of lobbying. Unfortunately, the copies of the invoices that IRR provided to CAMP were redacted so that the nature of the services was concealed. In the instance cited by OLA where the reimbursement records were discarded, IRR could request Excelsior and the law firm in question to provide copies of the law firm's invoices from that time.

In addition to the inadequate oversight found by OLA, documents obtained by CAMP from IRR reveal that it has repeatedly excused Excelsior from performing as required by the loan agreements. The initial requirement for $4.9 million in matching private money was waived in 2004. In 2007 IRR Commissioner Layman granted two extensions for Excelsior's first interest payment, which is now due at the end of 2008 unless Excelsior obtains either a $100 million equity investment from a third party or a power purchase agreement (PPA).

Despite its efforts since 2001, Excelsior apparently has failed to obtain any private investment beyond the initial $60,000 stock purchase by its two shareholders, Tom Micheletti and Julie Jorgensen. After a long and costly proceeding, the Minnesota Public Utilities Commission (MPUC) denied Excelsior's petition to order Xcel Energy to purchase Mesaba's power, finding it not in the public interest because it is too expensive and risky. Without a PPA the project is financially untenable. Mesaba's final environmental impact statement, essential to obtaining siting, routing, air and water permits, has been significantly delayed, partly due to a faulty site selection process. Without these permits the project cannot be built.

"The only one benefiting from the IRR loans was Excelsior Energy, which leveraged them into another $36 million of taxpayers' money from the Department of Energy and $10 million from the state's Renewable Development Fund", said Dr. Ed Anderson, CAMP Co-Chair. "Excelsior has wasted tens of millions on lobbyists, lawyers, consultants, executive salaries, and expert witnesses for the PPA case it lost at the MPUC and the permitting case that is foundering. Excelsior's principals should not be given more time to pay themselves hundreds of thousands from public dollars for this failed project. IRR should not grant any further extensions for payments owed by Excelsior Energy."

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