

HISTORY OF EXCELSIOR ENERGY AND IRR FUNDING

- 8/17/01 **INCORPORATED** BY TOM MICHELETTI
TWO DIRECTORS: TM (co-pres & Secy) & **JJ** (co-pres & **CEO**)
STOCK/**\$60,000**@ \$200/share: 200 shares JJ; 100 shares TM
- 11/01 **3rd DIRECTOR** - TOM WEAVER, brother of Gov's Chief of Staff, Charlie
STOCK: 20 shares from JJ and 10 shares from TM
\$100,000/year salary; \$50,000 pmt upon departure
(his shares were back with JJ & TM in 2004; he went to Met Council)
- 12/11/01 **IRR Bd approves loan** (Convertible Debenture) for \$1.5 million
PROJECT SUMMARY: 2000 Mw IGCC & **1000 Mw wind**; **turbines mnfctrd on Range**;
1000 perm f-t jobs for operations at Hoyt Lakes site
- 1/02 **PROMISSORY NOTE**: CO to repay JJ & TM for loans
- '02 Leg Introduced special legislation (failed)
- 1/28/02 Mtg IRRR Bd @ St Capitol; under "other": Motn by Bakk to approve EE not to exceed \$1.5M by
expending carryforward funds from the Bd Acct; apprvd by min 8 mbrs;
- 4/23/02 **\$1.5 MILLION CD AGRMT FINALIZED** (43pp + exhbts)
\$500,000 avlbl; adtl \$500,000 after \$1.7 million or in-kind; adtl \$500,000 after \$3.2M cash/in-kd;
Reimburse invoiced proj **costs as defined in Project Budget**, from 12/11/01;
Project: **2000 Mw IGCC plant**
"Closing" = agrmts to fund min 30% debt & equity;
Interest: 20%/year on outstanding principal; all accrued interest due **4/23/07**
DEFAULT (12) - failure to pay on time: 12.2 - "State **may or shall**, if it desires to declare the
existence of an Event of Default, give written **notice** . . . & if continues unremedied for 30 days,
unless waived, entire unpaid balance of the Debenture and the interest accrued and any other
monetary Obligation, shall become and be immediately due and payable without further notice or
demand;
BASE (10.15) OF OPERATIONS - In TCRA - **violated** until 12/06; 12.5-vltn & upon notice &
failure to cure, Debenture imdtly due and payable;
Term 15 years - all principal and interest due 4/23/17
FINANCIAL STMTS (10.3.1): **qrtrly** unaudited consolidated balance sheet; related combined
operating stmts for qrtr & fiscal year to date & comparison with budget; consolidated stmt of cash
flows; all in reasonable detail & certified by Pres or Trsr of Co;
AUDITS (10.3.2) certification required **annually** - (**violated** '02 & '03);
DEBT (10.3.3): qrtrly & annually current schedules of Indebtedness for Borrowed Money
BUDGETS (10.9): one month prior to fiscal yr, draft of annual plan inc monthly capital & operating
expense budgets, cash flow statements and profit and loss porjections & year-end projected balance
sheets; final draft approved by Bd of Dirs prior to fiscal year; modified as rsbly nec to reflect change;
AMENDED 6/30/04 to allow **payout of adtl \$1M** without matching funds or in-kind services:
"The company was not able to attract equity invesotrs or in-kind contributions."
TOTAL \$1.5 M paid out by Dec. '04;
EXTENSION on interest payment due 4/23/07 to 12/31/07 or later with conditions;

4/25/02 Disbursement request \$250,000; invoices enclosed totalling \$250,000 for work completed;

4/26/02 **Lockridge** ltr to IRR: form of opinion ltr (thinks CDA not fnlzd!); "we rep Ee"

5/3/02 check \$250,000: rmbmnt req thru 3/31/02 \$248,715.57: Science Applications Int'l \$50,000; ICF \$97,944.81; Payroll thru 4/31 \$41,271.52; **Lockridge** legal fees \$30,815.84 (check nos. 1004 & 1024)

11/26/02 Disburse \$135,000

4/8/03 Disburse \$115,00 (totals \$500,000 = limit w/o private fnccg)

'03 Leg Regular session - legislation fails; **Special Session - passes;**

6/03 "Consulting" agrmt with **Sherner** Power Consulting, Lk Nebagamon, WI.

7/2/03 "Consulting" Agreement with **Browers** Consulting, Duluth: not to exceed \$20,000 inc. direct and at-risk comp; amts redacted, payable at closing or sale;

8/11/03 Confidentiality Agrmt w IRR (anticipating adtl \$8 M request)

2/04 EE **requests amendment** of CDA to max \$7 M; needs immediate **cash infusion;**

2/15/04 Renee **SASS** ltr re: terms "for working with you on the project" (capacity unclear); no direct comp payable until equity partner; at-risk comp hrly rate, total on monthly invoice; Success Comp hrly rate, payable at Fncl Close or sale; when equity Pr - Direct Comp hrly rate; success comp; "Targeted available hours" 10/wk, 40/month; keep open option to convert Success and/or At-Risk comp to equity position;
UNREDACTED COPY: at-risk \$200/hr; Success Comp \$100/hr; p2 **redacts** amts after eqty Pr

4/15/04 **REQUEST 2nd CD FOR \$8M** by EE
Meeting-Agrmt 5/11/04: \$4M on invoices and \$4M matching dollars (DOE & RDF OK);
Negotiations until Dec '04 Execution:
6/11/04 Energy **Liaison** Group wants \$2M on invoices & \$6M **matched** with **\$4M cash;**
6/29/04 add rqrmt for key person life ins for JJ ("**Tom is not insurable**").
6/30/04 Bd approves adtl \$8M for 530 Mw IGCC plant (1st phase of 2000);
\$2M on invoices & **\$6M requires 3rd party cash of \$4M (ratio 1.5:1)** & invoices;
6/30/04 agrmt: count uncollected federal dollars as received when awarded for matching;
9/1/04 IRR Atty noted no mechanism to **pay off Agency upon sale/abandonment/relocatr;**
9/17/04 new language: default if T & J sold control of Co or Co sold project-alws st to call note;
9/22/04 TM: **deal breaker** - broke off negotiations;
Status: \$1,065,493.85 disbursed; EE in **technical DEFAULT** - base of operations in TTRA;

5/5/04 **LOCKRIDGE** ltr: terms & cdtns of "continued legislative and legal representation" - SEPARATE PARAGRAPHS FOR **GOVERNMENTAL RELATIONS CONTRACTS & LEGAL WORK**; "will defer payment of the **current balance of the 2003 governmental relations contract** (i.e., **\$50,000**) until June 30, 2004. (then multipliers & in no event pd later than 6/30/07). "The state and federal government relations contract for **2004 will be \$40,000. . . . for 2005 will be \$125,000. . . .** For **legal work** LGN will bill . . . **hourly rates . . .**". SIGNED BY JJ 5/8/04

See 5/6/04 ltr re deferring fees (est \$2 million);

Lockridge firm expects to do PUC work & agrees to defer fees (est \$2 million);

LSD starts work in 9/04; Lockridge bills **\$81,000** to TM in Dec '04 for **work done bet 8/03 & 8/04** (see ltr of agrmt re: legal & pub aftrs work); **Reimbursed by IRR for LOBBYING?**

5/6/04 Ltr/Req for **disbursement** remaining funds from \$1.5M CDA; claims existing **deferral** agreements totalling **\$5.95M** & adtl potential dfrls & cntrbutns **\$99.25M**; **Dvlopmt Budget**: 12 mos ending 6/30/05-\$12M; through PPA Process (12 mos)-\$9.5 M; PPA-Fncl Close (12 mos)-\$22.7M=\$32.2M through Fncl Close; Fees Due at Fncl Close: (blank) \$14M; (blank) \$9M; IRRRB \$1.5M = \$24.5M TOTAL.

5/17/04 **Consulting** Agrmt Robert S. **Evans II**, VP Environmental Affairs efct 5/21/04, duties outlined in Atchmt, subject to general supervision and pursuant to orders, advice and direction of Co, and such other duties as are customarily performed by such position in similar businesses, and such other unrelated services and duties as may be assigned; Phantom Stock **2%**, and options; milestone payments annually (at-risk); may become **employee** and get benefits;

6/04 EE agrmt with ConocoPhilips
EE applies to IRR to **AMEND** first CDA to eliminate requirement of \$4.9 M investment

6/15/04 EE applies to **DOE \$150M CCPI**

6/30/04 IRR Bd approves **ADDITIONAL \$8M CD**
IRR Bd **AMENDS** first CDA to allow access to \$1M w/o matching \$4.9M

7/2/04 Disburse \$384,791 (from \$1M)

8/27/04 Disburse \$186,494.52

8/31/04 **AUDITED FNCLS '01, '02, '03, 6/04** (+ 3-mo stmts 9/30/04)
6/04: acnts pyble \$440,949; **notes payable to T & J \$262,082**; **accrued wages T & J \$1,587,500**;
acnts payable deferred - consultants & CSFB: 04-\$632,433; '03-\$122,750;
Phantom Stock: **3 consultants (WHO?)**

\$77,284; 2% eqty (200 shares=\$500,000) based on \$25M-100,000 shares

Milestone: 3 consultants \$100,000/yr payable when \$15M funding (**7/1/04 4th consultant same**)
(WHERE IS THIS REPORTED ON FINANCIALS?)

- 9/1/04 **Osteraas** Memo re: "Terms of **Employment**" Joining our senior mgmt team as VP & General Counsel; general terms: forego a current salary until adequate funding; cash benefits under phantom equity units 2% stock and adtl 2% of total stock value above an agreed price; detailed terms to be worked out consistent with comp for other VPs; adtnly add a current cash component once funding permits to be consistent with cash comp of other VPs; "and to explore adding health care and potentially other benefits when the Company is in a position to do so."
- 9/14/04 **SCHULTE ASSCTES** Proposal for **Consulting** Asstnce; "as part of the project **team** SA will provide consulting services including: preprtn of tech, mrktg & comunctn docs (PPA, regltry filings, tstmny, **legislative bills**, responses to data requests, oprtg & cnstrctn agrmts, "brochures, articles for publication, and other collateral supporting marketing of the proposed project to multiple and diverse audiences"; strategic consulting - poss alternatives for project alliances, approaches, regulatory, utilitiy, interevener or intervener challenges, and other matters related to the project"; Relationships - contacts with multiple investor-owned and cooperative utiltities and other consulting resources; Presentations; **Resume of experience and expertise**, as part of project **team**, useful in "**demonstrating to investors and others that EE and the Mesaba Project are "real", and Excelsior has the resources and firepower to get the job done.**"
Assumptions: aggressive time frame, a year or more, up to full time daily; work performed @ own offices or **EE's offices, providing work space, prsl computer and printing/copying eqpmt, phone and fax and internet**; "this consulting engagement shall be for a period of two years, with each year's compensation (blank) per year cash, paid monthly (*invoices show \$12,500/month*); Phantom Stock; **reasonable amts of time off for sick days and vacation**; SA will have ongoing consulting engagements with other clients, not to exceed 20% of time, and EE receives priority. (*billed (redacted) \$12,500: '04 three mos, '05 Jan-Aug = \$137,500*)
- 10/1/04 **SEH MASTER AGRMT** (*legitimate description of Indpdnt Contractor*); srvces & comp defined by Task Order;
- 10/14/04 EE announces 1) expands "**TEAM**" by adding **Schulte VP of Regulatory Afrs & Marketing, & Osteraas** to Ruzinski, Evans, Wadley & Sass; and 2) **NEW OFFICE** in Minnetonka Announce **\$36M from DOE/CCPI**
- 10/25/04 Prfsl Srvces Agrmt **R.W. Beck, Inc. (Herbert M. Kosstrin**, Principal and Sr Dir); signed by Ruzynski as VP Dvlpmt for EE; Task No. 1: rvw prelim process Design Package by ConocoPhillips and "identify items which have the potential to enhance the financial viability of the proposed project"; Task 2: Assist in Structuring the Project: dvlp strategy selecting EPC contractor; and "work with the Client to identify items that will allow the Project to meet the potential expectations of the lending community in financing and IGCC Project." Not to exceed \$25,000. (*Kosstrin is primary person on invoices; his expertise is marketing and financing, "risks and rewards" of IGCC, etc.; invoices described as "engineering" but doubtful*)
- 10/29/04 "**Consulting**" agreement (*dfrnt form looks legitimate*) with **MILKOVICH** "services rqstd by written Task Release"; "Nature of Relationship" spells out "independent contractor"; pmt per task release; one-time deferred pmt; monthly bills; min pmt in 2004; Announce **3/11/05**. Milkovich added to "**Development Team**" VP Technical Srvces & Fuels,

joining six: Ruzinski, Evans, Sass, Osteraas, Schulte (VP Mrktg & Regltry Afrs); Wadley. Milkovich left spring (?) '07.

- 11/4/04 Loan ofcr needs prmsn to disburse funds because "they are in technical ";
- 11/16/04 Mtg/Ngtns \$8M CDA
- 11/17/04 Disbursement \$330,555
- 11/18/04 "**Consulting Agrmt**" **CETERIS (RUZINSKI)** "engages and hires as **VP-Developmt** effectv 6/1/04 subject to the general **supervision** and pursuant to the **orders, advice and direction** of the Company"; p2 "**employment relationship**"; Phantom Stock 2% equity; monthly direct compensation "draw" to reduce value of at-risk compensation account . . . ; milestone payments (blank) amount annually;
p.3 "At some point, **Consultant may become an employee** of the Company and . . . may begin to participate in all medical, dental and disability insurance, 401(k), pension, personal leave, car allowance and other Consultant benefit plans and programs which may be made available from time to time to employees at Consultant's level";
- 12/9/04 Disburse \$106,327.75 = **END OF \$1.5 MILLION** IN 1ST CDA
- 12/8/04 **\$8M CDA EXECUTED** 46 pp
+ **Exhibits:** A. Articles of Inc;
B. Disclosure Stmt: Co has **deferred annual salaries** of TM & JJ until adequate 3rd party funding (other than IRR) is available; **Promissory note** by TM & JJ to the Co (?); CDA \$1.5M
C. List of Shareholders - JJ 200 @ \$200; TM 100 @ \$200; D. Form of Ee cnfdntly agrmt;
E. Form of **Directors' Wrnty Agrmt** - Each Dir shall **indemnify** purchaser from loss arising from violation of this Agreement or any material breach of warranty or representation;
F. Form of Shareholders Ag; G. Form of Lgl Cnsl Opinion (Osteraas); H. Cnflcts of Interest
I. Project Cost Budget - Dvlpmt Budget '04-'06: \$49,951,000; J. Lmtd Owner Undertaking;
§8.1.3 President's Certificate; §8.1.11 Written consent of shrholders; 8.1.13 Certification of < 40 Ees;
§8.1.14 Bd Resolution;
Audited financials for Excelsior Energy, interim financials as of 9/30/04; and list of outstanding liabilities as of closing date: **contingent obligations to mgmt team** - Sass/Strategic Finance; Wadley; Evans; Ruzynski/Ceteris; Osteraas.
Vendor Balance \$409,242.94 (inc. Latham Watkins \$89,000; LSD \$54,122; **Lockridge** \$57,186; SEH \$61,650)
- 12/23/04 disbursement \$194,650.26
- 1/13/05 disbursement \$102,170.15
- 2/11/05 disbursement \$229,938.10
- 3/11/05 disbursement \$309,500.58

Join CO2 Reduction Partnership

Milkovich added to "**Development Team**" VP Technical Srvces & Fuels, joining six: Ruzinski, Evans, Sass, Osteraas, Schulte (VP Mrktg & Regltry Afrs); Wadley
(signed consulting agrmt 10/29/04 - ??became employee in March '05?) (left in early 2007)

4/12/05 disbursement \$411,933
5/12/05 disbursement \$441,319.37

6/8/05 **Larke L. Huntley** retainer agreement \$1400 (10 hrs) directed to TM (our tel conversation) and signed by Osteraas;

6/14/05 disbursement \$614,649.63
6/22/05 disbursement \$117,355.60

RGGS site in Itasca County

DOE \$21M for PCOR CCS study (EERC @ UND)

7/14/05 disbursement 153,273.19
8/16/05 disbursement \$950,806.73

Announce Itasca County as preferred site

9/13/05 disbursement \$381,489.67
11/05 Labovitz Economic Impact Study

Interest in Motorplex site

12/05 File PPA Petition at PUC (contact Pat M)

2/9/06 disbursement \$1,131,024.73 (**lots of late payments**)

6/5/06 disbursement \$58,098.55
6/14/06 disbursement \$154,768.48 (**last disbursement-total \$5,250,975.04**; \$2.749M left in pot; “**not funded due to credit limitation**” in ‘04 CDA (\$3.72?) (DOE \$ started flowing then, also)

6/21/06 Rcvd **FIRST DOE PAYMENT**; don’t forecast any IRR draws for at least one year per Sass; **1st Req** f Advance or Reimbursement to **DOE: 12/1/04-3/31/06**; accrual basis; Employer Identification No. 20-4688195; all in (a) Definition and Developr (precedes cnstrctn & oprtn); **\$12,143,460** total prog outlays; non-fed share and fed share each **\$6,071,729**.

7/06 File JOINT PERMIT APPLICATION @ PUC (contact Kris Sundberg or Lynn Nelson @ (612)
Carol’s data request

8/06 Add Dick **Stone- Sr VP Development and Engineering** (Wadley gone?)

12/11/06 OPEN **COLERAINE OFFICE**; IN DEFAULT of CDA - warned in ‘04;

2/17/07 TM e-mail to Hart: re: **Tomassoni & amending** our agreements -“**evergreen revolver**” concept (a term credit facility funded out of a line of credit in the amt of the initial loan; interest charged monthly on loan acct & paid with an adtl loan); Motorplex site; **coal-to-liquids**

- 3/07 EE announces CONOCOPHILLIPS AGRMT on design package
- 3/5/07 Ltr TM/Cmsnr Layman, cc **Tomassoni**: Rqstg **AMENDMENT** to **EXTEND** first interest payment; inc. interest calculations: \$952,376.63 due 3/1/07; total acumultd: \$2,607,650.85; see: 7/23/07 ltr by Cmsnr
- 4/12/07 ALJs REPORT & RECOMMENDATIONS
- 4/26/07 Layman denies EE'S rqsted modification to due date for interest payment
- 5/4/07 EE e-mails re: **DEFAULT NOTICE** coming (Tomassoni heads off?)
- 7/07 HOYT LAKES OPTION ACQUIRED (contact Renee Sass)
TRANSMISSION AGREEMENTS (contact Renee Sass)
- 7/23/07 Letter from Cmsnr Layman, granting **extension** on first interest payment to **12/31/07** from 4/23/07; **see** packet of exchanges between 1/2/07 & 7/23/07; TM wanted **addl \$5M match** if gets DOE \$ to develop **CCS** plan;
- 8/07 PUC DENIES PPA (no contact on press relse)
- 9/23/07 ? Mandy's LTE re: Osteraas expenses to attend Bakk event

Reimbursement (after Mandy's LTE)

- 9/27/07 1) IRR Staff prepares **talking points** for Cmsnr to defend funding MEP
- 2) **Loan Officer Hart e-mail** to Cmsnr & Deputy w cc to Matt Sjoberg re:
 A) **procedure** for reimbursement requests: request certified by co officer as eligible for pmt; each invoice reviewed for accuracy & determination expense eligible for reimbursement; invoices reqrg more detail are not paid until adequate information is received. Invoices for expenses determined to be ineligible are excluded from payment.
 B) CDA inc standard lnge re state **audits**: Per M.S. 16C.05, Subd 5 (1998), books, records, documents and accounting procedures and practices of the Co relevant to this Agrmt shall be subject to examination by the State and the State of Minneosta's **Legislative Auditor** . . .for a min of 6 years following termination or earlier cancellation of this Agreement."
 C) "Excelsior has had **annual audits** every year since the project began." (**FALSE** see 2002 & 03;)
 D) dictionary definition of "**lobby**";
 E) DCA § prohibiting using IRR funds for lobbying;
 F) Poss talking point: this project has received closer scrutiny than smaller projects and the little valid criticism lends credence to Excelsior's management of the project.
- 3) Hart e-mails questions to Osteraas. See 10/2 for answers.
- 9/28/07 Osteraas to IRR for meeting.

- 10/1/07 Loan Officer Hart e-mail to Matt Sjoberg:
Mike Larson and I reviewed each invoice; first \$500,000 supprtd by \$514,283.14 invoices; all other rqsts under \$1.5M agrmt supprtd by invoices equal to or in excess of amt rqstd; Has rqsted clarification of \$869.58 from Osteraas.
Re: \$8M: Invoices totaling \$10,749,024.96 support disbursals; identified two invoices totaling \$4,277.30 that I have asked tom Osteraas to clarify.”
Summary: “We have invoices of \$12,263,308.10 supporting our \$9,500,000 investment.”
- 10/2/07 Osteraas answers Hart’s Qs: EE had other legitimate expenses not funded, so should not have to **refund** for **lobbyist** claims; **Altec** registration as lobbyist to appear in front of PUC, \$4000 was for drafting PUC filing; URS = environmental engnrng consultant; MN Gvmt Rltns Cncl = trade assn for **lobbyists** & gvmt rltns experts; **LSD** is lead outside law firm for all legal and regulatory activities re: PPA& enviro, plant siting and other permit filings with state gvmt agencies.
CETERIS = RUZYNSKI’S consulting company “that assisted in the early development of the project, primarily with modeling and other early-stage development activities. Bill later joined Excelsior as a full time **employee**.” (**WHEN?** Ruzinski’s invoices \$10,000/month from 9/04 to 10/05, with declining balance in at-risk acct; he was a mbr of the “team” before 10/04; his “consultg agrmt” is dd 6/29/04, efctv 6/1/04, signed 11/18/04)
- 10/5/07 Ltr Hart/Osteraas - re invoices not eligible for reimbursement: 1/23/03 \$150 mbrshp MN Gvrmtl Rltns Cncl; five instances in ‘03 totalling \$455.24 lunches & expenses reltd to lobbyists; 3/7/05 invoice listing lobbyist registration as part of a \$4,000 item - Altec Energy Systems (*this probably was OK & should not have been refunded*); 8/15/05 \$264.34 expenses to attend a political event (*Bakk*); “ask company conduct comprehensive review to determine if other instances invoices submitted not eligible for reimbursement”;
- 10/11/07 Ltr Osteraas/Hart trnsmtg \$4,869.58 “although we believe items are eligible for reimbursment and **even though Excelsior has submitted approximately \$2.7 million dollars of other permitted expenses that Iron Range Resources did not fund due to the credit limit under the Debenture Agreements . . .**”
- 10/07 FEDERAL LOAN GUARANTEE FINALIST
- 11/07 PUC UPHOLDS PPA ORDER (contact K. Micheletti)
- 12/10/07 FILE WITH COURT OF APPEALS (no press release)
- 12/13/07 IRR Bd Mtg: Cmsnr gives summary of ‘07 activity; Anzelc questions failure to mention extension on interest payment by EE; Cmsnr flustered, says he’s right something needs to happen and will require decision by Board;