

Minnesota Public Utilities Commission

Staff Briefing Papers

Meeting Date: April 6, 2006 Agenda Item # _____

Company: Excelsior Energy Inc.

Docket No. E-6472/M-05-1993

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.

Issue(s) What procedures should the Commission adopt for making determinations in this matter?
Should the Commission approve the protective agreement proposed by Excelsior?
Should the petition to intervene of Great Northern Power Development be granted?

Staff: Janet F. Gonzalez 651-201-2231
 Susan Mackenzie 651-201-2241

Relevant Documents

[See Next Page]

The attached materials are workpapers of the Commission Staff. They are intended for use by the Public Utilities Commission and are based upon information already in the record unless noted otherwise.

This document can be made available in alternative formats (i.e., large print or audio tape) by calling (651) 201-2202 (voice) or 1-800-627-3529 (TTY relay service).

Relevant Documents

Excelsior Energy Petition	December 27, 2005 (#1)
Excelsior Supplemental Exhibit 1	January 19, 2006 (#9a)
Excelsior Motion to Adopt Protective Order & Agreement	January 19, 2006 (#10)
Great Northern Power Development Petition to Intervene	January 24, 2006 (#11)
Great River Energy Procedural Comments	January 30, 2006 (#12)
Overland Law Office Procedural Comments	January 30, 2006 (#13)
IWLA/ME3/MCEA Procedural Comments	January 30, 2006 (#14)
Big Stone II Co-Owners Procedural Comments	January 30, 2006 (#15)
Excelsior Procedural Comments	January 30, 2006 (#16)
Xcel Energy Procedural Comments	January 30, 2006 (#17)
Department of Commerce Procedural Comments	January 30, 2006 (#18)
Minnesota Power Procedural Comments	January 30, 2006 (#19)
Otter Tail Power Procedural Comments	February 2, 2006 (#21)
Excelsior Objection to Great Northern Power Intervention	February 2, 2006 (#22)
Xcel Update on RDF Payment to Excelsior	February 3, 2006 (#23)
Overland Request on Document Availability	February 9, 2006 (#24)
Great Northern Power Reply to Intervention Objection	February 10, 2006 (#25)
Minnesota Power Petition to Intervene	March 17, 2006 (#32)

Statement of the Issues

- What procedures should the Commission adopt for making determinations in this matter?
- Should the Commission approve the protective agreement proposed by Excelsior?
- Should the petition to intervene of Great Northern Power Development be granted?

2003 Legislation (Minn. Stat. §§216B.1693 and .1694)

Legislation giving special status and consideration to an innovative energy project and a clean energy project was included in Minnesota Laws, 2003 1st Special Session, Chapter 11, and has been codified as Minn. Stat. §216B.1693 and Minn.Stat. §216B.1694. The text of these statutes is provided in Attachment 1 to these briefing papers. A table prepared by staff which compares the two statutes with respect to defining the covered projects, to what benefits the projects are potentially entitled, and the determinations that need to be made by the Commission is Attachment 2 to these briefing papers.

Innovative Energy Project (IEP), Minn. Stat. § 216B.1694

Under the IEP statute, an innovative energy project is defined as an energy-generation facility, or group of facilities which may be located on up to 3 sites:

- that makes use of an innovative generation 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;
- that the project developer or owner certifies is a project capable of offering a long-term supply contract at a hedged, predictable cost; and
- that is designated by the commissioner of the Iron Range Resources and Rehabilitation Board as a project located in the taconite tax relief area on a site that has substantial real property with adequate infrastructure to support new or expanded development and that has received prior financial and other support from the Board.

An innovative energy project is entitled to enter into a contract with Xcel to provide 450 MW of baseload capacity and energy under a long-term contract, subject to the approval of the terms and conditions of the contract by the Commission. The Commission may approve, disapprove, amend, or modify the contract in making its public interest determination, taking into account:

- the project's economic development benefits to the state;
- the use of abundant domestic fuel sources;
- the stability of the price of the output from the project;
- the project's potential to contribute to a transition to hydrogen as a fuel resource; and
- the emission reductions achieved compared to other solid fuel baseload technologies.

A number of other "regulatory incentives" apply to the IEP, including:

- being exempted from Certificate of Need (but not exempted from environmental review and permitting);
- being eligible to increase capacity of the associated transmission facilities without additional state review upon notice to the Commission;
- having the power of eminent domain for approved sites and routes;
- qualifying as a "clean energy technology;"
- being considered as a supply alternative to any new or expanded fossil-fuel fired generation facility or to any PPA great than five years from such a facility prior to Commission approval of any such arrangement; and
- being eligible for a grant from the Xcel renewable development fund of \$2 million a year for five years for development and engineering costs..

Clean Energy Technology (CET), Minn. Stat. §216B.1693

Under the CET statute, the definition of a "clean energy technology" is the same as that of an "innovative energy project" under 216B.1694, subd. 1 (1). Clean energy technology is to be supplied by the innovative energy project, unless the Commission finds doing so contrary to the public interest.

Xcel is to supply at least 2% of its retail electric energy from the clean energy technology if the Commission finds that the clean energy technology is, or is likely to be, a least-cost resource, including the costs of ancillary services and other generation and transmission upgrades necessary.

Excelsior Petition

On December 27, 2005, Excelsior Energy, Inc. (Excelsior) submitted its *Petition for Approval of Power Purchase Agreement, Determination that Clean Energy Technology is Likely to be a Least-Cost Resource, and Establishment of the CET Minimum* under Minn. Stat. §§216B.1694 and .1693. The Petition includes a proposed Purchase Power Agreement (PPA) between Excelsior and Xcel and several volumes of information. Excelsior stated that despite intensive negotiations with Xcel since late 2004, they have been unable to agree on terms, and thus no joint PPA filing was possible.

Excelsior is an independent energy development company based in Minnetonka, Minnesota. It is developing the Mesaba Energy Project Unit One and Unit Two through its wholly-owned subsidiaries MEP-1 LLC, and MEP-2 LLC, respectively. Each unit will use an Integrated Gasification Combined Cycle (IGCC) technology, which will use coal and petroleum coke feedstocks in the gasifier. Each generating unit is planned to have an installed capacity of 603 MW, with Unit One in service in 2011 and Unit Two in service in 2013. Excelsior proposes to construct and operate Mesaba One and Two on what is being called the "West Range" site in Iron Range Township; an alternative "East Range" site is located in the City of Hoyt Lakes.

Excelsior is requesting that the Commission make the following determinations in this docket:

- that the PPA proposed by Excelsior with Xcel for 450 MWs from Unit 1 of the Mesaba Project is in the public interest under Minn. Stat. §216B.1694, subd. 2(a) (7);
- that the clean energy technology employed by the Mesaba Project is or is likely to be a least cost baseload resource under Minn. Stat. §216B.1693, and that Xcel is thus compelled to purchase the balance of the output from Unit 1; and
- that the minimum percentage of electric energy to be supplied to Xcel's retail customers from the clean energy technology by 2013 shall be at least 13%, and that it is not contrary to the public interest for Mesaba Units 1 & 2 to supply that energy.

Excelsior requested that the Commission refer this matter to the Office of Administrative Hearings (OAH) for a contested case proceeding, anticipating that parties are likely to raise material fact issues. Excelsior suggested a schedule that would result in a Commission decision by August 31, 2006. Excelsior recommended that the ALJ be asked to conduct public hearings to facilitate input from interested persons and groups who do not wish to become formal parties.

Procedures for Handling this Docket

Background and Arguments

On January 4, 2006, the Commission issued a notice requesting comments on the appropriate process for this case, including whether it should be set for contested case hearing and what the scope of any such hearing should be. On January 18, 2006, the Commission extended the period for filing procedural comments, and asked that any issues surrounding parties' ability to obtain trade secret information still outstanding be addressed.

The following entities filed comments on procedural issues in response to the Commission's notice: Xcel Energy, Excelsior, Department of Commerce, IWLA/ME3/MCEA, Overland Law Office, Minnesota Power, Big Stone II Co-Owners, Great River Energy, and Otter Tail Power.

Xcel suggests that the Commission first resolve the issue of access to data to allow for meaningful comment by the parties and public. Next, the Commission should request legal briefs from interested parties on whether the Excelsior petition provides the information necessary to make determinations under the statutes, how the criteria in Minn. Stat. §§216B.1693 and .1694 should be applied, how these determinations relate to other parts of Chapter 216B, and whether the law allows the PPA to be expanded beyond 450 MW. The Commission would then issue an order providing its assessment of the law to guide the remainder of the proceeding. The final step would be to assess the merits of Excelsior's proposal, which would likely require a contested case, and should also provide for public hearings.

The Department also suggested the Commission follow a staged process. First, the Commission should ask parties to identify any legal or interpretational uncertainties. Next, the Commission should determine the public interest and related criteria upon which it will base its decision. Finally the Commission should apply the criteria to the Excelsior petition. The first step could be

done by the Commission or sent to OAH. The Department suggests referring the development of evaluation criteria to the OAH, which would result in draft criteria for Commission consideration.

The MCEA et al. suggests that the Commission consider splitting the docket into two parts, one for the considerations under the IEP statute, and the other for considerations under the CET statute. The MCEA also suggests that the Commission formally engage the technical staff of the Minnesota Pollution Control Agency (PCA) to assist in record development, especially with respect to alleged environmental benefits.

The Overland Law Office recommends setting this matter for contested case hearing. The Commission should carefully examine all of the criteria and factors set out in the statutes and assure that the record is complete. Ms. Overland contends that the time line suggested by Excelsior is unreasonable.¹

Minnesota Power urged that the Commission consider a host of public interest criteria beyond those in Minn. Stat. §§216B.1693 and .1694 to reflect the broad generation and transmission policy and economic implications that could flow from a decision in this matter. Minnesota Power suggested that the broader issues may be best considered through comment periods or technical conferences to provide guidance prior to contested case hearings.

The Co-Owners of the proposed Big Stone Unit II plant urge the Commission to keep this docket focused as a matter involving two parties, and not transform it into a generic investigation or rulemaking on the costs of an IGCC plant versus the costs of existing or future generating resources. Otter Tail and GRE, both part of the Big Stone Co-owners group, filed separate, similar comments.

Excelsior stated that all issues should be referred to an ALJ and dealt with in one proceeding as soon as possible. Separating and sequencing issues would prolong the proceeding and confuse the record.

Staff Comments

Should the Commission establish a process for developing more information on legal requirements and/or interpretation of the statutes prior to deciding the merits?

The Department and Xcel suggest that there may be issues of statutory application and interpretation that need to be resolved by the Commission prior to deciding the merits of the Excelsior petition.

The Commission is faced with applying two new, complicated statutes that raise difficult issues. In Docket No. E-002/M-03-1883, Xcel's Renewable Development Fund, the Commission

¹Ms. Overland also suggests that the Commission regard this matter as a rate case under 216B.16 so that intervening parties are eligible for intervenor compensation. Staff does not believe that is a viable option.

determined that Excelsior should receive a grant from the fund under Minn. Stat. §216B.1694, subd. 2 (a) (8). That was a very difficult and controversial issue, and it is likely that interpreting and applying these statutes will continue to be difficult. Staff points out some potential issues below.

Minn. Stat. §216B.1694 states that an innovative energy project:

(7) shall be entitled to enter into a contract with a public utility that owns a nuclear generation facility in the state to provide 450 megawatts of baseload capacity and energy under a long-term contract, subject to the approval of the terms and conditions of the contract by the commission. The commission may approve, disapprove, amend, or modify the contract in making its public interest determination, taking into consideration the project's economic development benefits to the state; the use of abundant domestic fuel sources; the stability of the price of the output from the project; the project's potential to contribute to a transition to hydrogen as a fuel resource; and the emission reductions achieved compared to other solid fuel baseload technologies; [Emphasis added.]

The Commission may wish to consider what "shall be entitled to enter into a contract" means in this context. Xcel, the public utility in question, has neither endorsed nor signed this PPA. If the Commission considers the contract to be a clear entitlement, then the focus of the PPA public interest evaluation may be more narrow than if the Commission considers this in the broader context of Chapter 216B. The legislature has exempted an IEP from certificate of need, which could be argued also supports a more narrow focus. Excelsior's petition complicates this issue further by proposing a PPA for more than 450 MW, which brings in the CET statute, which clearly has a different, arguably broader, focus on cost factors.

Minn. Stat. §216B.1694, subd. 1 defines an innovative energy project and Minn. Stat. §216B.1693 (c) a clean energy technology. The Commission may wish to determine whether the proposed Mesaba project meets those definitions. It is generally understood that the legislation was written for Excelsior, and that the Mesaba project is the only project that could qualify as a practical matter. There may be some concern about whether the West Range location, which is now the preferred site, meets the qualifications; at the time the legislation was passed, the East Range location was generally understood to be the intended site. However, staff would note that Excelsior filed a supplemental Exhibit 1 to its petition on January 19, 2006, that contains a designation from the IRR, and that Xcel filed a letter on February 3, 2006 which contains further information from the IRR about the West Range site.

If the Commission feels that more information is needed on these, or other legal interpretation issues, it could request written comments from parties or ask that the issue be developed further in the proceeding on the merits.

Should the Commission establish a process for developing evaluation criteria?

The Department, Xcel, and Minnesota Power suggest that the Commission develop specific evaluation criteria prior to deciding the merits of Excelsior's petition. Having clear criteria up-

front could aid the parties in developing the record and provide added structure to the process. The Commission will need to consider whether this somewhat theoretical effort would be likely to be worth the time and resources to develop.

The IEP and CET statutes already provide some guidance to the Commission. The Commission also has considerable experience in evaluating PPAs, and has generally given significant weight to the Department's evaluations of the reasonableness of the price of the energy, and degree of ratepayer protection from financial and operational risk inherent in PPAs. It may not be possible to anticipate all the factors that may be important in the instant matter prior to full development of the record.

If the Commission chooses to develop evaluation criteria, then it needs to decide whether to do so through written comments to the Commission, or as the Department suggested, asking an ALJ to work with the parties to develop draft criteria.

Is there additional information and data the Commission needs prior to making a determination on the merits or wishes to have developed as part of the proceeding?

Excelsior has provided several volumes of information that it believes supports its petition and forms the basis for developing the record in this proceeding. If there is additional information that the Commission or parties want up-front, it could be requested at this time, and/or the Commission may want to request that parties develop certain information as part of the record. Of course, parties normally develop issues through discovery and their own testimony and comments during the course of proceedings.

For example, staff notes that there is a rather complex formula for determining the price to be paid for power produced from the Mesaba project. The Commission may want to encourage Excelsior and the Department (and any other interested party, including Xcel) to develop specific price estimates under sets of common assumptions as part of the record in this proceeding.

Should the Commission consider the proposed PPA under Minn. Stat. §216B.1694 separately from decisions under Minn. Stat. §216B.1693?

Excelsior is asking the Commission to make determinations under 2 different statutes, with different requirements and evaluation criteria. [See Attachments 1 and 2 to these briefing papers.] The suggestion by MCEA et al. to make determinations separately, and likely sequentially, under each statute has intuitive appeal and a certain logic. For example, if the Commission were to find it was not possible to develop a PPA for 450 MW that was in the public interest, it would not be necessary to make any determination under the CET statute. Alternatively, the Commission could find that a PPA for 450 MW would be in the public interest under the IEP statute, but find that it was not likely to be least cost under the CET statute.

On the other hand, while the IEP statute refers to the entitlement for a PPA for 450 MW, the PPA proposed by Excelsior is for the total output of Mesaba Unit 1, i.e. 603 MW. Therefore, if the Commission chooses to evaluate the PPA in the form Excelsior has proposed it, the Commission would still need to look at both statutes. If both statutes are being evaluated anyhow, separating

out the CET minimum issues related to Unit 2 would not be particularly efficient. Also, much of the factual information already in the record, and to be developed in the record, will be common to both sets of determinations needed.

Should the evaluation of the proposed PPA, the CET determination, and/or the CET minimum determination be combined with the baseload acquisition process pending in the Xcel Resource Plan, Docket No. E-002/RP-04-1752?

As part of the pending Xcel resource plan proceeding, Docket No. E-002/RP-04-1752, Xcel proposed a competitive negotiations process for choosing new baseload resources. Other parties made alternative proposals and suggestions. In October 2005, the Commission met to discuss Xcel's baseload acquisition process, and asked that the Department and other parties to further develop their concepts for a contested case process for resource selection. In that docket, Xcel and the Department appear to contemplate that the Excelsior PPA and related determinations could, and should, be made as part of that process. Excelsior would object to making the determinations as part of the resource plan selection process, arguing that the IEP and CET statutes give a clear path and preference of an IGCC project in Northeastern Minnesota.

Using the Xcel baseload selection process would allow the Commission to make the "least cost or likely to be least cost" determination under the CET statute by comparing to actual proposed projects and alternatives. If the Commission believes that the IEP and CET statutes allow such a procedure, the Commission should seriously consider this approach.

What is the effect of this proceeding on resource decisions for utilities other than Xcel?

Under Minn. Stat. §216B.1694, subd. 5, an innovative energy project:

(5) shall, prior to the approval by the commission of any arrangement to build or expand a fossil-fuel-fired generation facility, or to enter into an agreement to purchase capacity or energy from such a facility for a term exceeding five years, be considered as a supply option for the generation facility, and the commission shall ensure such consideration and take any action with respect to such supply proposal that it deems to be in the best interest of ratepayers;

This section of the statute applies to any supply proposal under the Commission's jurisdiction, not only proposals with respect to Xcel. The Big Stone Co-owners, GRE, OTP, and MP are all asking the Commission ensure that any determinations made in this proceeding apply only to the relationship between Xcel and Mesaba, are not determinations under 216B.1694 (5), and thus are not applicable to other utilities or applicants.

Staff does not believe that the Commission's decisions in this docket will, or can, constitute some sort of generic determination under 216B.1694 (5). The petition filed by Mesaba did not ask that any determinations be made under that section of the statute in this proceeding. More importantly, it would not be appropriate to make such a determination in this proceeding even if such a request had been made. To make determinations as to whether the the Mesaba Project is a superior supply option for capacity or energy purchases or generation facilities that may be

proposed by other utilities or other applicants, the Commission will need to consider the specific circumstances of each party and the specific terms of any PPA or Certificate of Need application in the context of each specific proceeding.

It is logical to assume that information developed in this proceeding may be considered by parties to be relevant to other proceedings relating to resource choices of other entities, particularly information about the Mesaba project itself. However, any information would have to be brought into the record of any other specific proceeding by the party who wished to use the information (or by the Commission). The Commission determinations in this proceeding likely will be cited by parties in other proceedings if the determinations support their position. These circumstances are no different than in any other situation where there may be related issues in multiple dockets.

Protective Order and Confidentiality Agreement

Background and Arguments

On January 19, 2006, Excelsior filed a Motion to Adopt Protective Order and Confidentiality Agreement, in order to expedite disclosure of trade secret information on what it termed fair and reasonable terms to appropriate parties. Excelsior stated that the proposed protective order was similar in most respects to those adopted in other contested matters, but pointed out four areas of difference:

- Only those granted party status could have access to trade secret information;
- A public utility or other entity intending to construct a generating facility that could service customers in Minnesota would need to agree to internal business separation conditions, including prohibiting anyone who has seen the data from participating in any way the entity's own generation proposals or from sharing the data with anyone who will be so involved;
- Does not require disclosure of trade secret information to which a third party member of the EPC Consortium² objects (such as the Fluor Report); and
- Persons signing the Agreement agree to submit to the jurisdiction of the Ramsey County District Court in addition to the OAH.

Excelsior argues that the "business separation" limitation is necessary to ensure that a requesting party does not benefit from the information in its business operations and/or advantage them competitively vis-a-vis Excelsior.

In its January 30, 2006 comments, Xcel contends that the proposed protective order and confidentiality agreement unduly limits access to information, and it is unclear why much of Excelsior's information is designated trade secret. Xcel argues that the entire PPA should be

²The EPC Consortium is made up of Fluor Enterprises, Inc., Siemens Power Generation, Inc. and ConocoPhillips Company, who would manage the design, engineering, and construction of the project.

public, and that more justification is needed before deciding whether certain other information is truly trade secret. Since Excelsior is contending that Xcel must take the output from the Mesaba project as a matter of law, it is inconsistent to argue that utilities and other potential generators are competitors to Excelsior. Xcel also argues for a more limited separation policy than that proposed by Excelsior.

In their January 30, 2006 comments, MCEA et al. stated that the Commission would assist the parties by adopting a protective order and confidentiality agreement, but that the Commission should first evaluate each of Excelsior's claims for trade secret designation. MCEA notes that there are no other projects than Mesaba that can compete as an IEP or CET, such that the typical competitive reasons for trade secret status may not apply here.

Staff Comments

The extent to which data should be considered trade secret in this docket is particularly problematic. The Commission is being asked to make very significant determinations about the costs and benefits of the Mesaba project. In order to create a meaningful record, parties need access to relevant data and information. It is likely that such issues will arise not only with respect to the Mesaba project, but also with any other specific proposal with which it may be compared in making the least-cost determination.

If the Commission sends this docket to the OAH for contested case hearing, it would be appropriate to allow the ALJ to resolve the issues surrounding the protective order and confidentiality agreement. Even if the Commission decides to request additional written information before considering referral to OAH, it could still refer the limited matter of the protective order and confidentiality agreement to OAH for resolution. Another alternative would be for the Commission to designate a lead Commissioner under Minn. Stat. §216A.03, subd. 9, to develop the record and make recommendations to the full Commission on issues related to the protective agreement.

The Commission may wish to ask for an update at the hearing from Excelsior and other parties on whether there has been progress on reaching consensus on data access issues.

Great Northern Power Development Petition to Intervene

Background and Arguments

On January 24, 2006, Great Northern Power Development, L.P. (GNPD) petitioned to intervene in this matter. On February 2, 2006, Excelsior submitted its objection to the intervention. On February 10, 2006, GNPD replied to the objection.

Under Minn. Rules, Part 7829.0800, subp. 2, a petition to intervene must allege the grounds for intervention and must be granted upon a showing that:

the person is specifically considered by statute to be interested in the particular type of matter at issue; the person is specifically declared by statute to be an

interested party; or the outcome of the proceeding will bind or affect the person with respect to an interest peculiar to that person, as distinguished from an interest common to the public or other ratepayers in general, or the person's interests are not adequately represented by one or more other parties participating in the case.

In its intervention petition, GNPD stated that it controls in excess of 20 billion tons of coal reserves in Montana and North Dakota, and is a "Tier One" proposer to Xcel in the baseload resource selection process pending in the Xcel resource plan docket, E-002/RP-04-1752. The outcome of this docket will affect GNPD's interest peculiar to it as distinguished from interests of the general public, and cannot be adequately represented by any other participating party.

In its objection, Excelsior argued that GNPD failed to demonstrate how the outcome of this proceeding would bind or affect it, or how its interests are not adequately represented by other parties. Excelsior claimed that this docket does not bind or affect any potential supplier to Xcel, and any interest GNPD might have as a potential supplier is adequately represented by Xcel.

In its reply, GNPD argued that it is not reasonable to expect Xcel to represent the interests of competing baseload projects like GNPD. The docket presents new, complex issues with far-reaching consequences for ratepayers and all projects who are competing for Xcel's next baseload addition.

No other party has commented on this issue.

Staff Comments

Staff believes that GNPD has made the necessary showing under Minn. Rules, Part 7829.0800, subp. 2, and that the petition to intervene should be granted. Excelsior is asking the Commission to make a determination under Minn. Stat. §216B.1693 that the Mesaba project is, or is likely to be, least cost, and that a CET minimum of 13% be set.³ In making those determinations, the Commission will need to examine the costs of other potential projects to supply that generation. Those potential suppliers would clearly be affected by the outcome of this proceeding. It is not reasonable to expect that Xcel would represent the interests of GNPD, or any other potential supplier, to the same degree and with the same depth of knowledge as GNPD itself.

Other Petitions to Intervene

Under Minn. Rules, Part 7829.0800, subp. 4, an objection to intervention must be filed within 10 days of service of the petition. Under subp. 5, if there is no objection to intervention and the petition is not denied or suspended within 15 days of filing, the petition to intervene must be

³If the Commission were to determine that Excelsior has an unqualified right to a 450 MW PPA with Xcel under Minn. Stat. §216B.1694 and if this docket were to be limited to the "narrow" issue of how to structure that 450 MW PPA, then the objections of Excelsior to the intervention of GNPD might arguably have some merit.

considered granted, unless the matter is referred to the OAH for contested case proceedings before the expiration of the 15-day period.

As part of its January 30, 2006 comments, Xcel asked the Commission to grant it party status. Since no objections were filed, it has not been suspended, and the 15-day period is passed, Xcel's petition is considered granted under the rule.

On March 17, 2006, Minnesota Power filed a petition to intervene. MP stated that in light of Excelsior's proposal in its Motion for a protective order that one must have party status to receive trade secret information, and in light of additional comments that have been filed in the docket, MP is now requesting party status. As of March 29, 2006, no objections to the petition have been received, and the 10-day period for objections has passed. By the date of the Commission meeting on this matter, the 15-day period will have passed, and the MP petition would be considered granted under the rule.

Commission Decision Options

I. Excelsior Petition Procedures

- A. Request written comments on some or all of the issues below. Delegate to the Executive Secretary the authority to issue a notice(s) framing the issues, to establish and vary timelines, and to establish specific procedures.
 - 1. Whether the Mesaba Project qualifies as an Innovative Energy Project under Minn. Stat. § 216B.1694 and as a Clean Energy Technology under Minn. Stat. §216B.1693;
 - 2. How to interpret the "shall be entitled to enter into a contract" language of Minn. Stat. § 216B.1694;
 - 3. What criteria the Commission should use for making its public interest determination under Minn. Stat. §216B.1694 and its CET determinations under Minn. Stat. § 216B.1693;
 - 4. Other issues for which the Commission determines more information is needed.
- B. Refer the development of evaluation criteria to the OAH.
- C. Refer the Excelsior Petition to the OAH for contested case hearing.
 - 1. The Commission could provide additional guidance to the ALJ on timelines for decision or other procedural matters.
 - 2. The Commission could ask the parties to develop specific issues, such as power prices under the PPA under various assumptions.
- D. Incorporate the Excelsior Petition into the Xcel baseload acquisition process in E-002/RP-04-1752.

II. Protective Agreement

- A. Refer the issues related to the protective agreement to the Office of Administrative Hearings.
- B. Appoint a lead Commissioner under 216A.03, subd. 9, to develop the record and make recommendations to the full Commission on issues related to the protective agreement.

III. Great Northern Power Development Petition to Intervene

- A. Grant the Petition to Intervene.
- B. Deny the Petition to Intervene.

ATTACHMENT 1

216B.1694 Innovative energy project.

Subdivision 1. **Definition.** For the purposes of this section, the term "innovative energy project" means a proposed energy-generation facility or group of facilities which may be located on up to three sites:

- (1) that makes use of an innovative generation 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;
- (2) that the project developer or owner certifies is a project capable of offering a long-term supply contract at a hedged, predictable cost; and
- (3) that is designated by the commissioner of the Iron Range Resources and Rehabilitation Board as a project that is located in the taconite tax relief area on a site that has substantial real property with adequate infrastructure to support new or expanded development and that has received prior financial and other support from the board.

Subd. 2. **Regulatory incentives.** (a) An innovative energy project:

- (1) is exempted from the requirements for a certificate of need under section 216B.243, for the generation facilities, and transmission infrastructure associated with the generation facilities, but is subject to all applicable environmental review and permitting procedures of sections 116C.51 to 116C.69;
- (2) once permitted and constructed, is eligible to increase the capacity of the associated transmission facilities without additional state review upon filing notice with the commission;
- (3) has the power of eminent domain, which shall be limited to the sites and routes approved by the Environmental Quality Board for the project facilities. The project shall be considered a utility as defined in section 116C.52, subdivision 10, for the limited purpose of section 116C.63. The project shall report any intent to exercise eminent domain authority to the board;
- (4) shall qualify as a "clean energy technology" as defined in section 216B.1693;
- (5) shall, prior to the approval by the commission of any arrangement to build or expand a fossil-fuel-fired generation facility, or to enter into an agreement to purchase capacity or energy from such a facility for a term exceeding five years, be considered as a supply option for the generation facility, and the commission shall ensure such consideration and take any action with respect to such supply proposal that it deems to be in the best interest of ratepayers;
- (6) shall make a good faith effort to secure funding from the United States Department of Energy and the United States Department of Agriculture to conduct a demonstration project at the facility for either geologic or terrestrial carbon sequestration projects to achieve reductions in facility emissions or carbon dioxide;

(7) shall be entitled to enter into a contract with a public utility that owns a nuclear generation facility in the state to provide 450 megawatts of baseload capacity and energy under a long-term contract, subject to the approval of the terms and conditions of the contract by the commission. The commission may approve, disapprove, amend, or modify the contract in making its public interest determination, taking into consideration the project's economic development benefits to the state; the use of abundant domestic fuel sources; the stability of the price of the output from the project; the project's potential to contribute to a transition to hydrogen as a fuel resource; and the emission reductions achieved compared to other solid fuel baseload technologies; and

(8) shall be eligible for a grant from the renewable development account, subject to the approval of the entity administering that account, of \$2,000,000 a year for five years for development and engineering costs, including those costs related to mercury-removal technology; thermal efficiency optimization and emission minimization; environmental impact statement preparation and licensing; development of hydrogen production capabilities; and fuel cell development and utilization.

(b) This subdivision does not apply to nor affect a proposal to add utility-owned resources that is pending on May 29, 2003, before the Public Utilities Commission or to competitive bid solicitations to provide capacity or energy that is scheduled to be on line by December 31, 2006.

HIST: 1Sp2003 c 11 art 4 s 1

216B.1693 Clean energy technology.

(a) If the commission finds that a clean energy technology is or is likely to be a least-cost resource, including the costs of ancillary services and other generation and transmission upgrades necessary, the utility that owns a nuclear generating facility shall supply at least two percent of the electric energy provided to retail customers from clean energy technology.

(b) Electric energy required by this section shall be supplied by the innovative energy project defined in section 216B.1694, subdivision 1, unless the commission finds doing so contrary to the public interest.

(c) For purposes of this section, "clean energy technology" means 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.

(d) This section expires January 1, 2012.

HIST: 1Sp2003 c 11 art 2 s 4

ATTACHMENT 2

<i>Innovative Energy Project, §216B.1694</i>	<i>Clean Energy Technology, §216B.1693</i>
Definition:	
<p>An energy generation facility:</p> <ul style="list-style-type: none"> -utilizing coal as a primary fuel -in a highly efficient combined-cycle configuration -with significantly reduced SO₂, NO_x, particulates, and mercury emissions from those of traditional technologies. <p>Which the project developer:</p> <ul style="list-style-type: none"> -certifies is capable of offering a long-term supply contract at a hedged, predictable cost <p>Which the Commissioner of IRRB designates:</p> <ul style="list-style-type: none"> -is located in the taconite tax relief area, -on a site with substantial real property with adequate infrastructure to support the development, and -has received prior financial support from IRRB. 	<p>A technology:</p> <ul style="list-style-type: none"> -utilizing coal as a primary fuel -in highly efficient combined-cycle configuration -with significantly reduced SO₂, NO_x, particulates, and mercury emissions from those of traditional technologies. <p>-Is the IEP, unless Commission finds contrary to public interest.</p>
Potential Entitlement:	
<p>The IEP is entitled to enter into a long-term contract with Xcel to provide 450 MW of baseload capacity and energy.</p>	<p>Xcel must provide at least 2% of its retail electric energy from the CET.</p>
Commission Determinations:	
<p>Whether to approve, disapprove, amend, or modify the contract in making its public interest determination, taking into account:</p> <ul style="list-style-type: none"> -the project's economic development benefits to the state; -the use of abundant domestic fuel sources; -the stability of the price of the output; -the project's potential to contribute to a transition to hydrogen as a fuel resource; -the emission reductions achieved compared to other solid fuel baseload technologies. 	<p>Whether the CET is, or is likely to be, a least-cost resource, including the costs of ancillary services and other generation and transmission upgrades.</p>