

CAMP UPDATE:

September 17, 2007

ALJ RE: PHASE II OF PPA – PUC SHOULD DENY EXCELSIOR'S PETITION

On September 14, 2007, an ALJ recommended that the Public Utilities Commission deny Excelsior Energy's request that Xcel Energy be required to purchase 13% of its energy from Mesaba Units 1 and 2 by 2013.

## **BACKGROUND**

Excelsior Energy filed a Petition with the PUC in December 2005 to force Xcel Energy to purchase Mesaba's output pursuant to two statutes passed in 2003. In April 2006 the PUC said it would address three issues:

- 1) Whether to approve the PPA (Minn. Stat. 216B.1694);
- 2) Whether Xcel would be obliged to use Mesaba's output for at least 2% of its energy (Minn. Stat. 216B.1693); and
- 3) Whether at least 13% of Xcel's retail energy should come from Mesaba by 2013.

Decisions on the first two issues were recommended by two Administrative Law Judges in a 4/12/07 report. In its August order the PUC chose not to approve the PPA proposed by Excelsior (see our earlier report for more detail). The PUC did not act on issue #2, although the ALJs had recommended against requiring Xcel to purchase the 2%.

**ISSUE #3 – MUST AT LEAST 13% OF XCEL'S RETAIL ENERGY COME FROM MESABA BY 2013?**

ALJ Bruce H. Johnson's short answer is "NO" because Mesaba's energy is not likely to be a least-cost resource. However, it's not that simple, as evidenced by the fact that the report numbers 39 pages. Find the report by going to:

<https://www.edockets.state.mn.us/EFiling/DocumentSearch.do>

Enter docket no. 05-1993.

The decision will be made by the PUC at a public hearing some time after the parties have had 30 days to file their objections and replies.

## **FINDINGS OF FACT**

The ALJ noted that the PUC had already concluded in its August order regarding the PPA that the power from Mesaba Unit 1 would cost Xcel Energy about 30% more than other comparable sources. He found that in order to require Xcel to purchase 13% of its power from Mesaba, the PUC would have to:

- First find that the Project qualifies for the 2% minimum; and then
- Conclude that it is likely to be the least-cost resource for 13% of Xcel's need; and
- Find that this would not be contrary to the public interest.

The ALJ noted: in Phase 1 the ALJs found that Mesaba was not likely to be a least-cost resource to provide 2% of Xcel's energy; and it is even less likely to be a least-cost resource to supply 13%.

## **CONCLUSIONS OF LAW**

The ALJ concluded that the Mesaba Project and its technology do not satisfy the requirements of Minn. Stat. 216B.1693 because it is not likely to be a least-cost resource and that it would be contrary to the public interest for it to supply 13% of Xcel's retail load starting in 2012.

## **IS THE CLOCK RUNNING OUT?**

A significant finding by the ALJ is that the opportunity to require Xcel to purchase at least 2% of its energy from Mesaba EXPIRES ON JANUARY 1, 2012, and the power won't be available to Xcel until 2014, according to a realistic timetable.

The ALJ notes that: Excelsior Energy disputes this interpretation of the statute; and the PUC may consider the expiration date to be 12/31/13.

## **CAMPers: STAY TUNED**

The PUC's DECISIONS on ISSUES #2 and #3 and could be vital to the survival of the Mesaba Project.

Mesaba's problems could also lead to new attempts for MORE SPECIAL LEGISLATION.

Meanwhile, we still have the PUC's NON-DECISION ON THE PPA – requiring that Xcel continue negotiating with Excelsior and that other utilities consider Mesaba as a source in their upcoming resource plans.

And we're still waiting for the federal Dept. of Energy to release the DRAFT ENVIRONMENTAL IMPACT STATEMENT.

WE'LL BE WATCHING ON ALL FRONTS.