

CAMP UPDATE:
September 27, 2007
Nobody Likes PPA Order

CAMPers weren't the only ones who had problems with the PUC's 8/30/07 order regarding Excelsior Energy's petition to require Xcel Energy to purchase Mesaba's output under a long-term power purchase agreement (PPA). The parties had until September 19th to file a petition for rehearing. This is a mandatory step before a party may appeal a PUC decision to the courts. Petitions were filed by Minnesota Power, Xcel Energy, and Excelsior Energy.

The documents are summarized below. They can be found at:

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

Enter Docket No. 05-1993.

MINNESOTA POWER

MP has requested a rehearing and reconsideration of the determination that the Mesaba Project is an Innovative Energy Project (IEP). This was the PUC's crucial finding (reversing the ALJs) that entitles Mesaba to "substantial and extraordinary" incentives in the 2003 statute, such as exemption from certificate of need, eminent domain powers, \$10 million from the Renewable Development Fund, and more.

MP reasserts that Mesaba does not meet the standards required in the legislation because it:

- Does not deliver significant emission reductions compared to traditional technologies; and
- Is not capable of offering a long-term supply contract at a hedged, predictable cost.

MP also argues that the PUC should not have relied on its 2/23/05 order approving \$10 million in RDF funding for Mesaba, but should have reviewed the statutory definition of an IEP and the evidence that shows Mesaba does not qualify.

The issue of whether Mesaba qualifies as an IEP is fundamental and of great interest to CAMPers. If MP pursues this issue to the court of appeals, it will be trying to show that this finding by the PUC is not supported by substantial evidence in view of the entire record as

submitted. MP's case should be helped by the fact that the ALJs made extensive findings contrary to the PUC's opinion.

XCEL ENERGY

Xcel filed a Request for Clarification or Modification, seeking more guidance from the PUC regarding its requirement that Xcel and Excelsior continue negotiating a PPA. Xcel offers a non-exclusive list of issues "that may prove to be significant challenges":

- Relationship of timing of the PPA to Xcel's need;
- Carbon capture and sequestration;
- Impact on Xcel's financial health;
- Pricing certainty and operational risks; and
- Whether other utilities should participate in the negotiations.

Could Xcel's "respectful request" be a diplomatic way of warning the PUC that this is not doable?

EXCELSIOR ENERGY

Not surprisingly, Excelsior's filing was the lengthiest and contained the most requests and issues. Apparently they still have enough money for extensive legal services.

EXCELSIOR ENERGY'S REQUEST FOR APPOINTMENT OF AN INDEPENDENT EXPERT EVALUATION FIRM, REQUEST FOR CORRECTION AND CLARIFICATION OF THE AUGUST 30, 2007 COMMISSION ORDER, PROTECTIVE PETITION FOR RECONSIDERATION AND REHEARING OF THE AUGUST 30, 2007 COMMISSION ORDER, AND REQUEST FOR DEFERRAL OF DECISION ON THE MERITS

1. Appointment of independent third-party expert evaluation firm to work with Xcel and EE to identify and present to the Commission the optimal terms and conditions for the PPA (who pays?)
2. Correct four typographical errors that give wrong numbers for statutory citations.
3. Reconsider and rehear specific issues:
 - The PUC exceeded its authority by considering need and other public interest factors;

- The PUC applied an erroneous "least cost" standard;
- Evidence in the record does not support the PUC's:
- Findings on comparative costs;
- Findings on cost certainty;
- Findings on carbon dioxide; and
- Determinations that PPA not in the public interest.

Aside from these minor points, EE liked the order just fine.

4. EE suggests that perhaps the PUC's 8/30/07 order was interim rather than final, and if so, the PUC should defer any rehearing and reconsideration until after the independent evaluation process is complete and the PUC determines statewide need and allocation of the project's output. EE notes that this could potentially limit any possible appeals in the meantime.

CAMPers should note that this could be an attempt to keep the Mesaba Project in limbo and alive long enough to try to come up with some more public subsidies and legislated benefits. Wonder how MP feels about having its right to appeal delayed? We'll find out soon because the parties' replies are due within a few days.

PUC ACTION

Minn. Rule 7829.3000 provides that the PUC shall decide these petitions with or without a hearing or oral argument.

Minn. Stat. 216B.27 provides that:

- The PUC has sixty days to decide whether to grant a rehearing or the application is deemed denied;
- If the PUC determines that the original order was unlawful or unreasonable, it can change it; and
- No order of the PUC shall become effective while an application for a rehearing or a rehearing is pending.

If the PUC uses up the entire 60 days, it could be months before we know whether the PPA order will be appealed to the courts. Meanwhile, it looks like the 8/30/07 order is ineffective. Does this mean Xcel doesn't have to negotiate with Excelsior until this is resolved?

OTHER INTERESTING STATEMENTS

Recently discovered e-mail by Janet Gonzalez, Energy Unit Manager at the PUC:

"This is one of the most controversial cases the Commission has had to deal with in a number of years."

It's reassuring to know it's not just our opinion.

CONOCO PHILLIPS' SPIN ON THE PUC'S DENIAL OF THE PPA

See Conoco Phillips' 8/3/07 report on all of its gasification projects at:

<http://www.gasification.org/Docs/News/2007/COALGEN/ConocoPhillips%20COALGEN%2007.pdf>

The report includes the PUC's determination that the Mesaba PPA is "not in the public interest" and then explains Mesaba's problems:

"Mesaba Energy Project Status – What happened?"

Nationally:

- Capital cost escalation
- Drive for Coal Plants to capture carbon NOW

Locally:

- Xcel has reduced its load forecast to 325 MW and proposed wind and hydro to fill need.
- Strong local opposition – NIMBY groups masquerading and fundraising as environmentalists.
- State may have retreated from position of supporting economic development for Iron Range Area".

Now environmentalists are the good guys? But what are those NIMBY groups really up to behind their masks?

CAMPers could take pride in such recognition by Conoco Phillips, but it appears that we are being used in its campaign to portray failure of the Mesaba Project as separate and unrelated to its wonderful and promising gasification technology.