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TO: Steve M. Mihalchick, Administrative Law Judge

FROM: Charlotte Neigh, Co-Chair, Citizens Against the Mesaba Project

RE: Comments on Adequacy and Impact – DOE Final EIS for the Mesaba Energy Project
(DOE/EIS-0382); MN PUC Docket # E6472/GS-06-668

FEIS IS FUNDAMENTALLY FLAWED

Numerous instances of failing to adequately address or glossing over serious concerns demonstrate that the Department of Energy (DOE) has produced an EIS designed to support the Mesaba Energy Project (MEP) rather than to honestly assess its impact on people and the natural environment.

The DOE's inherent bias stems from its long-standing commitment to and investment in the Clean Coal Power Initiative (CCPI) and its predecessor, the Clean Coal Technology Demonstration Program. The earlier program funded the Wabash River Plant, the base design of which is supposed to be significantly advanced by the MEP. The DOE has already invested \$22.25 million of CCPI cost-sharing funds in the MEP and would be embarrassed to acknowledge that those funds have been wasted. The DOE has nothing to lose by pretending that the MEP deserves to continue, since the balance of the cost-sharing funds would not be payable until after the MEP is built and operating. This is unlikely, given Excelsior's inability to sell the output.

Instances of bias undermining the reliability of the FEIS include DOE's:

- Erroneous assumption that the U.S. has about 240 years of recoverable coal reserves;
- Glossing over the Army Corps of Engineers (USACE) concerns that the environmentally damaging siting of the MEP is not justified by its purpose;
- False claim that the ConocoPhillips technology "may not be demonstrated elsewhere" if the MEP is canceled;
- Reliance on IRPs of various Minnesota utilities to bolster the alleged but unproven "need";
- Disregarding the 5 million tons/year of CO₂ that would be released from Unit I of the MEP, while acknowledging (despite Excelsior's deceptive touting of its CCS "plan") that carbon capture and sequestration is not "feasible" for the MEP; and
- Assumption that MEP is an Innovative Energy Project, although that issue is pending before the Minnesota Court of Appeals, which might agree with the ALJs rather than the MPUC.

240 YEARS of COAL RESERVES NOT A VALID ASSUMPTION

In the 6/8/09 online Wall Street Journal, Rebecca Smith reported that:

- The federal government's method of calculating coal reserves is flawed;
- The estimate of a 240-year supply may be "wildly overconfident";
- Relatively little of the coal in the ground can be profitably extracted;
- The U.S. Geological Survey has determined that less than 6% of the coal in the biggest beds of Wyoming's Gillette coal field could be mined profitably, even at prices higher than today's;
- **DOE's Energy Information Administration is reassessing its tally in light of this new data.**

In July 2007 Energy Watch Group reported that:

- Quality of data on coal reserves and resources is poor, globally and nationally;
- Proved and recoverable reserves have not been adequately distinguished from inferred/assumed/speculative resources;
- USA passed peak production of high quality Appalachian and Illinois basin coal in 1990;
- Considering that Wyoming subbituminous coal has a lower energy content, USA coal production in terms of energy peaked in 2002.

NEED & PURPOSE: ARMY CORPS OF ENGINEERS/ NEPA/CLEAN WATER ACT

USACE HISTORICAL CONCERNS

(See USACE letters: 12/13/06 to Excelsior Energy; 12/27/06 to DOE's Richard Hargis; 6/5/07 to Richard Hargis)

USACE wanted to merge its reviews under the National Energy Policy Act (NEPA) and the Clean Water Act (CWA) Section 404 with the DOE's EIS to avoid doing a separate NEPA analysis. To this end, throughout 2005 and 2006, USACE's Minnesota staff conferred with staff from DOE, Excelsior Energy, and Short Elliott Hendrickson.

In its 12/13/06 letter to Excelsior Energy, USACE was attempting to avoid deficiencies in the Draft EIS. The letter explained that the CWA Section 404 review process considers: Purpose and Need; Range of Alternatives and Alternatives Carried Forward; Selected Alternative; and Design Phase Impact Minimization. USACE pointed out that:

- The "basic project purpose" is to provide additional base load power generation in Minnesota;
- The "overall project purpose" is to be a commercially-viable IGCC power generator that satisfies projected Minnesota power needs;
- The "need statement" projected 3,000 to 6,000 MW of new base load over the next 15 years, but additional information was needed to demonstrate that claim;
- A justification for why it is not practicable to seek sites outside the TTRA was lacking;
- Construction of a new power plant using innovative technology does not require siting in or near special aquatic sites but the project is proposed "within a specific area of Minnesota particularly rich with aquatic resources" and so the applicant must overcome a presumption that an alternative upland site would be less environmentally damaging.

USACE (continued)

In its 12/27/06 letter to DOE's Richard Hargis, USACE presented many of the same concerns after reviewing an advance copy of the DEIS. In its 6/5/07 letter USACE noted that it was not endorsing Excelsior's conclusions regarding its site selection process, and "have some question as to whether (its) preferred alternative is the least damaging practicable alternative . . .".

APPENDIX F1

Appendix F1 in volume 2 of the FEIS contains the documentation submitted in support of Excelsior's application for a CWA Section 404 permit. The introductory language claims that the information supports: purpose and need; and the screening process used to select its preferred and alternative sites. Information is also offered regarding "Incentives provided by the State and Federal government in support of the Project", which is an obvious attempt to influence USACE's decision with irrelevant and possibly intimidating political considerations.

Overall purpose and need is stated as:

- “1. Confirm the commercial viability of generating electrical power by means of a fuel flexible integrated gasification combined cycle (“IGCC”) technology in a utility-scale application; and
2. Help satisfy Minnesota's need for new and diverse sources of baseload electric power.”

COMMERCIAL VIABILITY OF IGCC TECHNOLOGY IS BEING DEMONSTRATED BY 23 OTHER PROJECTS

The need to confirm the commercial viability of IGCC technology is claimed as a primary justification for the MEP. This ignores the fact, well known to DOE, that other demonstrations of IGCC technology are underway. The National Energy Technology Laboratory (NETL), in a presentation of “DOE's Technology Policy for RD&D of IGCC and CCS” in April 2009, lists six existing IGCC plants and 18 active projects (including MEP).

ACTIVE IGCC PROJECTS

- Duke Energy's 630 MW IGCC facility is under construction in Edwardsport, Indiana and is expected to begin commercial operation in 2012.
- In Kemper County, Mississippi a 600 MW IGCC Project is scheduled to be in service by 2013.
- In Taylorville, Illinois a 600 MW IGCC Project was selected in July 2009 to proceed to the term sheet negotiation phase for a DOE Loan Guarantee (MEP's loan application has not achieved this step) and is scheduled to be in service by 2014.
- The Cash Creek Project in Kentucky is at least 630 MW and is expected to be in service by 2012.

List of Active IGCC Projects (continued)

- **ConocoPhillips is using its own E-Gas technology:** to demonstrate new advancements improving conversion efficiency and economies of scale for CCS at a 683 MW IGCC power plant adjacent to its existing refinery in Sweeny, Texas, **capturing about 85% of the CO₂** from the process stream and **sequestering more than 5 million tons** into a depleted oil or gas field. This project has received DOE funding.

There are twelve other IGCC projects of various sizes, using various fuels and technologies (**including ConocoPhillips**), at various stages of development; **most of them are more advanced than the MEP in ability to capture and sequester CO₂.**

MINNESOTA’S NEED FOR NEW COAL-BASED POWER NOT DEMONSTRATED

Due to the special 2003 enabling legislation, the MEP was exempted from Minnesota’s usual requirement for a Certificate of Need, leaving its proponents free to claim that its output is needed without having to prove it. At page 4 of Appendix F1 is the claimed need “for more than 2,000 MW of new baseload electric generating capacity by the year 2020”. This is “documented in recent utility integrated resource plans (IRPs) filed with the Minnesota Public Utilities Commission (MPUC) and in other regulatory and commercial filings”, such as certificate of need (CON) applications and requests for proposals (RFPs).

Table 1 shows “baseload needs identified in completed IRPs and RFPs”. The probative value of this list is negated by the fact that Excelsior Energy has intervened in all of the recent significant IRP and CON dockets before the MPUC and has failed to convince the ALJs or the Commissioners that Mesaba’s output should be a resource for the various utilities.

The fact that the Nashwauk PUC issued an RFP for 300 MW to supply the proposed Essar iron and steel project, does not prove that such a need cannot be met by existing baseload. The NPUC has reported receiving numerous responses to its RFP and Essar has decided there is no hurry to finalize any supply arrangements because the market is in its favor.

In the strange world of the CCPI, the phasing out of a Minnesota Power coal plant and the conversion of some of Xcel’s coal plants is cited as evidence that the MEP is needed so that more coal can be used. Such tortured logic does not support a finding of need for the MEP.

End of Comments by Charlotte Neigh