

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

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Chair
Commissioner
Commissioner
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In the Matter of the Request of Northern States
Power Company d/b/a Xcel Energy for
Approval of Selected Projects for the Second
Funding Cycle of the Renewable Development
Fund

ISSUE DATE: February 23, 2005

DOCKET NO. E-002/M-03-1883

ORDER APPROVING AND DIRECTING
FUND EXPENDITURES, GIVING
GUIDANCE ON THE TREATMENT OF
INNOVATIVE ENERGY PROJECT,
REQUIRING CONSULTATIVE PROCESS,
AND REQUIRING COMPLIANCE FILINGS

PROCEDURAL HISTORY

On August 31, 2004, Northern States Power Company d/b/a Xcel Energy filed a petition under Minn. Stat. § 216C.779, subd. 1 (b) for Commission approval of some \$22,700,000 in proposed expenditures from the Renewable Development Fund, established under that statute. The proposed expenditures were in the form of grants to 25 renewable energy projects:¹ seven power production projects and 18 research and development projects.

The petition attached and incorporated the report of the Renewable Development Fund Board, established by Commission Order in 2001,² which had directed the grant competition and selected the renewable energy projects proposed for funding. The report explained the Board's decision-making process, requested approval to fund the projects the Board had selected, and requested guidance on the Board's future treatment of a rejected project that the Legislature had specifically made eligible for a five-year, \$10,000,000 grant as an "innovative energy project" under Minn. Stat. § 216B.1694, subd. 2 (a) (8).

¹ The pool of projects recommended for funding was later expanded by three, to provide funding for projects that would have been funded initially but for scoring errors. Total proposed expenditures then totaled some \$26,500,000.

² *In the Matter of the Request of Northern States Power Company d/b/a Xcel Energy for Approval of a Development Fund Oversight Process*, Docket No. E-002/M-00-1583, Order Adopting Proposal for Oversight and Operation of Renewable Development Fund (April 20, 2001).

On September 28, 2004, the developer of the innovative energy project, Excelsior Energy Inc., filed an intervention petition and comments or, in the alternative, a formal complaint, challenging the Board's and Xcel's rejection of its grant application.

Two other unsuccessful grant applicants, Technology Matrix Corporation and Koda Power LLC, filed comments on October 18 and December 6 respectively, challenging the rejection of their applications.

On October 5, 2004, the chief authors of the legislation granting the innovative energy project eligibility for a Renewable Development Fund grant, Senator David Tomassoni and Representative Mike Beard, filed a letter supporting Excelsior's challenge.

On October 21, 2004, David Morris, Vice-President of the Institute for Local Self-Reliance, filed a letter analyzing the operation of the Renewable Development Fund, suggesting process improvements, and offering to work with regulators and stakeholders to improve its transparency and performance.

On October 21, 2004, Minnesotans for an Energy-Efficient Economy filed an intervention petition and comments supporting Xcel's petition and the Board's selections.

On December 6, 2004, the Department of Commerce filed comments stating that the project selection process appeared to be consistent with the earlier-issued Request for Proposals and that the final selections were reasonable for the most part. The Department was troubled by the rejection of Excelsior's grant application but stated that the rejection, while potentially erroneous, might not be remediable by the Commission, given statutory language making grants to innovative energy projects "subject to the approval of the entity administering the [Renewable Development] account."³ At hearing, however, the Department stated that it no longer questioned the Commission's authority to require or to make a grant to Excelsior under the innovative energy project statute.

On February 3, 2005, after several additional rounds of comments, Xcel's petition came before the Commission.

FINDINGS AND CONCLUSIONS

I. Factual Background

A. The Renewable Development Fund

Under Minn. Stat. § 116C.779, Xcel must deposit \$16,000,000 in a renewable energy development fund during each year that it operates the Prairie Island nuclear power plant *and* stores nuclear waste in one or more dry casks at the nuclear waste storage facility at that plant. The statute requires that the fund be used only to develop renewable energy sources and that no expenditures be made without approval by Commission Order.

³ Minn. Stat. § 216B.1694, subd. 2 (a) (8).

Subsequent legislation became more directive and, at least in one case, expanded the purposes of the fund. Minn. Stat. § 216B.1694, subd. 2 required that up to \$6,000,000 of the fund be spent annually on a renewable energy production incentives program administered by the Departments of Commerce and Finance. H.F. 9, 2003, 1st Special Session, Article 2, Section 18 required a one-time, \$10,000,000 grant from the fund to the University of Minnesota, to support basic and applied energy research and demonstration activities. And Minn. Stat. § 216B.1694, subd. 2 (a) (8) made eligible for a five-year, \$10,000,000 engineering and development grant, an “innovative energy project,” defined essentially as a highly efficient, combined-cycle, low-emissions coal plant located in a taconite tax relief area.

The Renewable Development Fund Board was created by Commission Order in 2001, before the purposes of the Fund were expanded.⁴ The Board was authorized to solicit proposals for renewable energy projects, to review project proposals and, subject to a right to require reconsideration on the part of Xcel and subject to final Commission approval, to select projects for funding.⁵

B. The Innovative Energy Project

1. The Statute

Minn. Stat. § 216B.1694 defines, empowers, and promotes the development of an “innovative energy project.” To qualify as an innovative energy project, a project must meet highly specific requirements, set forth below:

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

⁴ *In the Matter of the Request of Northern States Power Company d/b/a Xcel Energy for Approval of a Development Fund Oversight Process*, Docket No. E-002/M-00-1583, Order Adopting Proposal for Oversight and Operation of Renewable Development Fund (April 20, 2001).

⁵ *In the Matter of the Request of Northern States Power Company d/b/a Xcel Energy for Approval of a Renewable Development Fund Oversight Process*, Docket No. E-002/M-00-1583, Order Revising Operational Guidelines and Oversight Procedures and Requiring Further Filings (July 29, 2003).

- (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.

Minn. Stat. § 216B.1694, subd. 1.

Once a project meets this definition, it qualifies for a wide range of benefits under subdivision 2, summarized below:

- (1) Both the generating facility and its transmission infrastructure are exempt from the certificate of need requirements that normally apply to proposed power plants and their transmission facilities.
- (2) Once constructed, the facility may increase the capacity of its associated transmission facilities upon notice to the Commission.
- (3) The owner of the facility is granted the power of eminent domain.
- (4) The facility is classified as “clean energy technology” under Minn. Stat. § 216B.1693, entitling it to supply 2% of Xcel’s Minnesota, retail load upon a Commission finding that it is or is likely to be a least-cost resource.
- (5) The facility must be affirmatively considered as an alternative to any new fossil-fuel-fired generation facility, any expansion of an existing fossil-fuel-fired generation facility, or any contract to purchase generation from a fossil-fuel-fired generation facility for a term exceeding five years.
- (6) The facility must attempt to secure funding from the United States Departments of Energy and Agriculture to conduct a demonstration project on geologic or terrestrial carbon sequestration.
- (7) The facility is entitled to a long-term, 450-megawatt, baseload, purchased- power contract with Xcel, subject to Commission approval.
- (8) The facility is eligible for a five-year, \$10,000,000 grant for engineering and development costs from the Renewable Development Fund.

It is clear that the Legislature saw great promise in this new technology and considered its development a high public policy priority.

2. Excelsior’s Mesaba Project

Excelsior Energy is developing a project that it states meets the statutory definition of an innovative energy project, and no one in this proceeding has contested that claim.

The project is a coal-fueled Integrated Gasification Combined Cycle power plant, called the Mesaba Project, to be constructed near Hoyt Lakes on the Iron Range, beginning in 2006. The

project uses new “clean coal” technology, designed to produce drastically lower emissions than standard coal-fired generation by transforming coal to a gas before combustion. One of the main components of this gas is hydrogen, which could also potentially be used in fuel cells or other newly developed hydrogen applications.

During its first phase, the installation and operation of a 531-megawatt power plant, the project would create some 1,000 construction jobs over the four-year construction period and at least 150 permanent jobs once construction had ended. Excelsior hopes for further job creation as the project expands and as new commercial and industrial applications are devised for the hydrogen and synthetic gas produced at the plant.

The project has been selected from a field of competitors for a grant of \$36,000,000 from the United States Department of Energy under its Clean Coal Power Initiative. It has been awarded \$9,500,000 in loans from the Minnesota Iron Range Resources and Rehabilitation Board. It has been certified to comply with the definitional requirements of Minn. Stat. § 216B.1694, subd. 1 (3) by the Commissioner of the Iron Range Resources and Rehabilitation Board.

There is little doubt that the Mesaba project meets the statutory definition of an innovative energy project.

3. The Board’s/Xcel’s Treatment of Excelsior’s Application

As explained above, the Renewable Development Fund Board effectively exercises Xcel’s project selection role. The Board “provides a final selection recommendation, which shall be deemed to be conclusive and result in selection by Xcel unless Xcel requests reconsideration by the Board” within 14 days.⁶ Xcel did not request reconsideration of any Board recommendation and submitted its full slate of projects to the Commission for funding.

The Board explained that it considered Excelsior eligible for the \$10,000,000, five-year grant described in Minn. Stat. § 216B.1694 and that it evaluated its application using the same criteria it applied to the approximately 200 other grant applications submitted.

Projects were first scored by an independent expert using identical categories with identical weighted mathematical values and an identical range of possible scores. Scoring categories were comprehensive, were specifically designed to evaluate renewable energy projects, and ranged from technical soundness to emission levels to work team competence.

The role of the independent evaluator ended once all projects had been scored. At that point the Board examined all applications and applied its professional judgment to select the winning projects; the evaluator’s score was a key factor but was not determinative. The Board also weighed the uniqueness of each project, the need for diversity in projects funded, and other public interest factors.

⁶ *In the Matter of the Request of Northern States Power Company d/b/a Xcel Energy for Approval of a Renewable Development Fund Oversight Process*, Docket No. E-002/M-00-1583, Order Revising Operational Guidelines and Oversight Procedures and Requiring Further Filings (July 29, 2003) at 6.

The Board did ultimately select the top-scoring projects in all technology groups except “other,” the category in which Excelsior was the sole competitor, and bio-fuel energy production. Once the top-ranking projects were selected, however, the Board passed over several higher-ranking projects in favor of projects offering more novel applications, more replicability, more educational potential, and – always a core value to the Board – a more diversified renewable energy portfolio.

In response to discovery served by the Department of Commerce, the Board explained that Excelsior’s score, 147, was not high enough for it to be given further consideration.⁷ (The lowest-ranking power production project that was selected for funding scored a 217.)⁸ The project was therefore rejected on the basis of its score alone and did not receive the individual, professional evaluation accorded other projects with scores below the first tier but high enough to merit further consideration.

The main reason for Excelsior’s low score was the application’s lack of technical detail, which Excelsior stated was due to its reluctance to disclose trade-secret, technical information to Xcel, a competitor in the electrical generation business.

Still, as the Board explained in its initial report, “The RDF Board saw no compelling reason to deviate or make a special exception in its administration of the RDF for the Mesaba Energy Project proposal submitted by Excelsior Energy in this second funding cycle.”⁹

The Board also requested Commission guidance on its future treatment of innovative projects.

II. The Issues and Positions of the Parties

The issues in this case are whether to approve the expenditures from the Renewable Development Fund proposed by Xcel and the Board; whether to alter their project selections in response to the challenges brought by Excelsior, Technology Matrix Corporation, or Koda Power LLC; and whether to modify the Fund’s operational and oversight guidelines in response to the comments of the Institute for Local Self-Reliance.

Xcel and the Board urge the Commission to approve the project selections and proposed expenditures as submitted, emphasizing that they followed the selection process established in earlier Commission Orders. They express a willingness to work with the Institute and other stakeholders in an ongoing effort to increase the effectiveness of the Fund. And they seek Commission guidance on the future treatment of innovative energy projects.

Minnesotans for an Energy Efficient Economy supports the Board/Xcel’s selections and the process by which they were made.

⁷ Comments of Department of Commerce, filed December 7, 2004.

⁸ Comments of Department of Commerce, filed December 7, 2004, p. 7.

⁹ Evaluation and Selection Report, August 31, 2004, page 12.

Excelsior argues that the statute entitles it to a five-year, \$10,000,000 grant upon its demonstrating that it meets the statutory definition of an “innovative energy project.” In the alternative, it argues that the grant selection process was unsound, biased, and potentially infected by conflict of interest and that a fair and reasonable process would have awarded it the grant. It asks the Commission to require Xcel to make the grant.

Technology Matrix and Koda argue that their projects were passed over in favor of projects with lower numerical rankings, that their projects were more meritorious, that Xcel/the Board failed to provide adequate explanations of the reasons their projects were not funded, and that Xcel/the Board improperly failed to honor the 60/40 ratio of power-production projects to research and development projects set by Commission Order.

The Department is disappointed that the Excelsior project was not selected; the agency considers the project highly promising for the future of the state and is committed to working with Excelsior and other stakeholders to bring it to fruition. At the same time, the agency believes that the project selection process was fair and reasonable. It cautions against impeaching the project selection process and suggests that the Commission has the authority to make a grant to Excelsior outside that process due to the unique nature of Excelsior’s grant eligibility.

The Institute for Local Self-Reliance urges the Commission to adopt performance measures for the Renewable Development Fund, to make the grant-making process more transparent, to work to concentrate the Fund’s economic benefits within the state, and to make the data coming out of funded projects more widely and readily available. The Institute also questions several individual grant-making decisions by the Board/Xcel.

III. Summary of Commission Action

The Commission finds that the project selection process was fundamentally fair and reasonable, professional, and consistent with applicable Commission Orders; its results will stand except in regard to Excelsior’s innovative energy project. The Commission will require Xcel to make the grant contemplated by Minn. Stat. § 216B.1694 to Excelsior, finding that the Board and Xcel misread that statute and its underlying intent.

Finally, the Commission will require Xcel and the Board to work with the Institute for Local Self-Reliance, the Department, and Commission staff to develop options for discussion and dialogue on the need for Fund performance measures and greater public access to information on and from funded projects.

These actions will be explained in turn.

IV. Selection Process Affirmed as Fundamentally Sound

The Commission has examined the projects selected for funding and the process by which they were selected and concludes that the grant-making process was fundamentally fair and reasonable, professional, and consistent with the Commission Orders that established it.

Technology Matrix and Koda Power have challenged the Board/Xcel’s deviation from the 60/40 energy-production/research-development ratio, as well as the Board’s decision to fund projects that were scored lower than theirs by the independent evaluator. The Commission concurs with the Board and Xcel that these decisions were grounded in the sound professional judgment of the Board and should be affirmed.

The 60/40 funding ratio between power-production projects and research-development projects adopted in the July 2003 Order was adopted with the understanding that it might require revision. That is why the Order termed the ratio “target allocations” and provided that “the Board may deviate from these target allocations if warranted, and if supported.”¹⁰

The Board/Xcel explained that it felt compelled to deviate from the 60/40 target because meeting the target would have required it to do one of two things: (1) fund several high-scoring, wind-energy-production projects that duplicated either already-funded projects or projects already in the marketplace; or (2) fund several energy-production projects that were not duplicative but that scored significantly lower and offered fewer social benefits than several projects in the research and development category.

The Board chose instead to deviate from the target allocations and fund the higher-scoring, more promising, research and development projects. The Commission concurs that this situation warranted and supported deviating from the target allocations.

Further, the Commission does not doubt that Technology Matrix and Koda submitted worthy projects, as did essentially all 200 of the grant applicants. The Commission cannot and will not, however, second-guess the professional judgment of the Board in evaluating individual renewable projects and determining which mix of those projects is most likely to move Minnesota forward. Evaluating individual projects and determining the best mix of projects and technologies requires careful, time-consuming study; detailed, collegial discussion; and thoughtful, collective decision-making.

The Board was established to perform these functions. It is made up of people qualified to perform them, and all evidence points to the conclusion that they performed them conscientiously. There is no evidence of process or integrity failure, and the Commission will therefore not substitute its judgment for the Board’s on these fact-intensive issues.

As discussed in detail below, however, the Commission will set aside the Board/Xcel’s decision not to fund the innovative energy project during this funding cycle. Unlike the decisions discussed above, that decision was grounded in legal and policy analysis, with the Board itself uncertain which direction to take. The Board requested policy guidance from the Commission for the next funding cycle; the Commission will instead provide that guidance now and add the innovative energy project to the list of those to be funded in this cycle.

Finally, the Commission will require the Board and Xcel to meet with Technology Matrix, Koda, and any other project applicant who wishes to discuss the project selection criteria applied during this funding cycle in greater detail.

V. The Innovative Energy Project Must Be Funded

As discussed above, the Commission is convinced of the fundamental reasonableness, professionalism, and integrity of the project selection process used by the Board and Xcel. The

¹⁰ *In the Matter of the Request of Northern States Power Company d/b/a Xcel Energy for Approval of a Renewable Development Fund Oversight Process*, Docket No. E-002/M-00-1583, Order Revising Operational Guidelines and Oversight Procedures and Requiring Further Filings (July 29, 2003) at 7.

Commission is equally convinced, however, that the Board and Xcel have misread the meaning and purpose of Minn. Stat. § 216B.1694 and that the Commission would be remiss to approve a final Renewable Development Fund project portfolio that did not include the innovative energy project being developed by Excelsior.

The statutory language regarding Excelsior’s grant eligibility reads as follows:

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

.....
(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.

The Board/Xcel read the words “shall be eligible” to mean “may compete on the same terms as other grant applicants.” Excelsior reads the words “shall be eligible” to mean “shall be entitled to.”

The word “eligible” carries both meanings, both in everyday speech and statutory usage. The *American Heritage College Dictionary*, 3rd edition, defines the word as meaning “qualified or entitled to be chosen,” (emphasis added). *Black’s Law Dictionary* defines the word without the connotation of entitlement,¹¹ but Minnesota statutes sometimes use the word to mean entitled, as when they establish eligibility requirements for unemployment benefits or Medical Assistance.¹²

The Minnesota Constitution, however, appears to draw a distinction between entitlement and eligibility in its use of the word: “Every person who by the provisions of this article is *entitled* to vote at any election and is 21 years of age is *eligible* for any office elective by the people”¹³ (italics added).

In short, the words “shall be eligible for” are ambiguous. The parties’ persistent focus on their precise definition is off the mark, however, because, when the statute is read as a whole, there is nothing ambiguous about its support for the innovative energy project or about its intention to marshal regulatory incentives and other public resources to ensure that the project goes forward. See the list of project incentives on pages 4 and 5, which range from the power of eminent domain to exemption from certificate of need requirements to preferential consideration in future purchased power transactions.

¹¹ “Fit an proper to be chosen; qualified to be elected. Capable of serving, legally qualified to serve. Capable of being chosen, as a candidate for office. Also, qualified and capable of holding office.” *Black’s Law Dictionary*, 6th edition.

¹² Minn. Stat. § 268.085; Minn. Stat. § 256B.057.

¹³ Minnesota Constitution, Article VII, Section 6.

The Legislature was obviously deeply serious about funding the innovative energy project through the Renewable Development Fund. It did not simply state that the innovative energy project could compete for a grant from the Fund. Instead, it made the project eligible for a grant, specified the precise amount of the grant, set a timetable for distribution of the grant, and listed highly specific purposes – such as mercury removal technology, Environmental Impact Statement preparation, and fuel cell development – for which the grant could be used. The statute cannot reasonably be read as merely permitting the innovative energy project to compete for a grant on the same terms as traditional renewable energy grant applicants.

The real issue for the Board and Xcel, then, was not how Excelsior's grant proposal fared against traditional renewable energy project proposals, using traditional renewable energy performance measures; it was whether unforeseen, intervening events had made it necessary to countermand the Legislature's provisional finding that the project should be funded.

And the real issue for the Commission is whether, consistent with its duty to protect the public interest and advance the purposes of the Public Utilities Act, it can approve a portfolio of Renewable Development Fund projects that does not include the innovative energy project. The Commission concludes that it cannot.

It seems reasonably clear that the Mesaba Project has the potential to contribute to Minnesota's ongoing efforts to develop cleaner and more efficient energy supplies, to move toward increased use of hydrogen for both energy and transportation needs,¹⁴ and to promote energy sources that benefit local communities and economies. It is clear that state and federal policymakers have concluded that this potential is present, have made nurturing it a public policy priority, and have invested public resources to that end.

And, at least in this developmental stage in the life of the project, it is clear that this conclusion is not without factual basis. The independent evaluator retained to evaluate grant applicants gave the Mesaba project the highest possible scores in critical categories, including Quality of Work Approach, Appropriate Budget Level, Financing Plan, Job Creation, and Tax or Other Fiscal or Economic Benefits.¹⁵ And the relatively low total score that prevented the project's selection presents no reasonable cause for concern, for three reasons.

First, the low score was due entirely to Excelsior's submission of sparse technical data, which resulted from its understandable reluctance to share sensitive, technical information with competitor Xcel. It was not due to identified technical defects in the technology Excelsior plans to deploy.

Second, the project's selection for funding by a panel of technical experts at the United States Department of Energy allays any concern that the project might suffer from some fundamental technical defect or might face challenges beyond those normally faced by demonstration projects employing emerging technologies.

¹⁴ Minn. Stat. § 216B.013.

¹⁵ See Department of Commerce Comments of December 7, 2004 and Renewable Development Board's Comments of October 21, 2004.

And third, the explicit purpose of the grant authorized by Minn. Stat. § 216B.1694, subd. 2 (a) (8) is to assist with development and engineering costs. This indicates that the Legislature did not *expect* the technical details of the project to be resolved at the time the grant was made, but that the purpose of the grant was to facilitate their resolution.

In short, the Commission is convinced that the Legislature expected this grant to be made, subject to final verification that the Mesaba Project remained viable, promising, and in compliance with the statutory criteria. These conditions appear to be met.

For all these reasons, the Commission cannot approve a proposed slate of Renewable Development Fund grantees that does not include Excelsior's innovative energy project. The Commission will therefore direct Xcel to make the grant contemplated by the innovative energy statute, after final verification of compliance with the statutory criteria by an Excelsior compliance filing.

VI. Future Directions Set

Developing criteria and procedures to select and fund projects that represent an annual ratepayer investment of \$16,000,000 is a complex and iterative process. The Commission and all stakeholders, including Xcel and the Board, are committed to examining the events and results of each funding cycle and applying the knowledge gained to improving performance in the next funding cycle.

The Institute for Local Self-Reliance is an organization with recognized expertise in energy issues and in the economic impact on local economies of different energy policies and energy resources. The Institute urges the Commission to adopt performance measures for the Fund, to make the grant-making process more transparent, to work to concentrate the Fund's economic benefits within the state, and to make the data coming out of funded projects more widely and readily available.

The Commission shares these goals and will direct Xcel and the Board to work with the Institute, the Department, and Commission staff to develop options for discussion and dialogue.

The Commission will so order.

ORDER

1. Xcel Energy shall include in the grants awarded during this funding cycle, a grant in the amount of \$10,000,000, payable in the amount of \$2,000,000 each year for five years, to Excelsior Energy under Minn. Stat. § 216B.1694, subd. 2 (a) (8), subject to the following conditions:
 - (a) Commission receipt of evidence that Excelsior Energy is an operating entity;
 - (b) Commission receipt of evidence that Excelsior Energy has specified a technology intended for the innovative energy project;
 - (c) Commission receipt of evidence that Excelsior Energy has obtained grant/loan approval from the United States Department of Energy, including copies of all technical review documents relating to that grant/loan approval; and

- (d) Commission receipt of evidence that Excelsior Energy continues to meet the criteria set forth in Minn. Stat. § 216B.1694, subd. 1.
2. The filing by Excelsior required in paragraph 1 shall be deemed approved unless the Executive Secretary notifies Excelsior to the contrary within 30 days of the date the filing is complete.
 3. Within 30 days of the date of this Order, Xcel Energy shall file, as a compliance filing, a grant contract with Excelsior Energy for the innovative energy project, which shall include terms such as a work statement, task deliverables, schedules, budget, project payment milestones, and other terms reflecting the statutory requirement that payments be made for development and engineering costs, as those terms are defined in an illustrative manner in Minn. Stat. § 216B.1694, subd. 2 (a) (8).
 4. Grant payments to the innovative energy project shall be made only upon presentation of invoices for engineering and design work completed for the project.
 5. With the addition of the Excelsior project, the final selection of projects for the second cycle of Renewable Development Fund funding as recommended by the Board in the supplemental report filed November 18, 2004, and the associated RDF payments, are hereby approved.
 6. Xcel Energy and the Renewable Development Fund Board shall work with the Institute for Local Self-Reliance, the Department of Commerce, and Commission staff to develop options for discussion and dialogue on the need for Fund performance measures and public access to Renewable Development Fund study results, as described by the Institute for Local Self-Reliance in its comments.
 7. Within 30 days of the date of this Order, Xcel Energy and the Renewable Development Fund Board shall host a post-bid meeting for interested bidders to discuss the Second Funding Cycle evaluation criteria. Any information provided by the Board at these meetings should be at no cost to the bidder.
 8. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar
Executive Secretary

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