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Unproven Company with Ties to Corporate Failures Slated to Receive $800 Million Loan Guarantee in Energy Bill

Excelsior Energy Project Exemplifies Giveaways to Polluting Corporations
Public Citizen Urges Congress to Reject Special Interest Legislation

A company formed just two years ago by lobbyists and executives with ties to a company that filed for bankruptcy after amassing $9.2 billion in debt and was fined $25 million for energy market manipulation arranged to get language inserted into the pending energy bill—without a vote in either the House or Senate—that will provide the company, Excelsior Energy, with $800 million in federal loan guarantees to build a polluting coal gasification power plant in Minnesota.

The huge loan guarantee commits U.S. taxpayers to a risky investment in a merchant power industry that is currently experiencing severe volatility and a wave of bankruptcies. The *Wall Street Journal* recently reported that the U.S. merchant power plant sector has lost $25 billion of the $90 billion invested since 2000[1]—an unacceptably high failure rate. A legal dispute between Excelsior Energy and a large Minnesota utility has arisen about whether or not a recent state law actually guarantees that there will be a market for the power, providing even more uncertainty to the plant. If the Excelsior Energy project follows the odds and goes into default, it will be Wall Street investment banks—not workers or any other entity in the Minnesota economy—that will benefit from the $800 million loan guarantee.

Furthermore, the federal loan guarantee requires Excelsior Energy to meet no concrete job creation goals or standards. Excelsior Energy executives have thus far only provided verbal assurances that 600 jobs will be created. In fact, one of the Excelsior executives told the *Minneapolis Star-Tribune* that Excelsior has "no specific obligation" to provide a certain number of jobs.[2] In an era of $400 billion annual budget deficits, U.S. taxpayers should not invest in a business that won't even guarantee that taxpayer support will lead to the creation of 600 permanent well-paying jobs.

An independent analysis of typical job creation figures associated with similar coal integrated gasification combined cycle power plants estimates that a 1,000 megawatt plant would employ roughly 300 full-time employees[3]—half of what Excelsior Energy executives claim will result from their 1,000 megawatt plant.

The subsidy proposed for Excelsior Energy is just one example of the rampant special favors that populate the energy bill, providing additional fodder for Congress to reject the legislation. Importantly, while most of the special interest provisions in the energy bill benefit entire corporate energy sectors (oil companies,

[1] Rebecca Smith, "Utilities May Have Bottomed Out," October 23, 2003.
[2] Steve Alexander and Susan E. Peterson, "Many Questions Surround Range Coal-Gas Plant," October 14, 2003.
[3] John Thompson with the Clean Air Task Force, Carbondale, IL. www.catf.us

the nuclear industry, etc), the $800 million loan guarantee stands out because it benefits only a single company. Dozens of fossil fuel power plants are built all over the country without federal assistance. Congress should not be picking winners behind closed doors by selecting a single company to be the recipient of an $800 million federal loan without the benefit of any open competition or bidding process. But even if one were to assume that such federal assistance is good policy, one must question the corporate backgrounds of the executives associated with Excelsior Energy. While none of the executives has been implicated in any scandal, they have been involved in a company fined $25 million for manipulation of California's energy market.

This marks the second year in a row that the energy conference committee has, under questionable circumstances, inserted language without a vote providing special treatment to a single company. Last year, congressional energy conferees made an abortive effort to exempt Kansas-based Westar Energy from crucial Securities and Exchange Commission oversight. Internal Westar memos described a plan for the company to "get a seat at the table" by contributing nearly $60,000 to key conferees and their congressional allies. The language benefiting Westar was removed only when other serious allegations of wrongdoing by Westar officials surfaced. Westar's CEO has since been convicted of bank fraud, and several other top executives are under federal investigation.[4]

Considering the appearance of a cash-for-access deal in the Westar Energy scandal, one would think that energy bill conferees would have bent over backwards this year to ensure that sweetheart deals were not bestowed upon companies and/or individuals. But by providing such generous corporate welfare to Excelsior Energy, the Republicans running the energy bill conference committee run the risk of creating yet another scandal. This backroom Excelsior Energy deal provides just one more reason why Public Citizen urges the defeat of this special-interest-laden energy bill.

The Proposal: Securing $800 Million Without a Vote

In September, the two Republican congressmen in charge of the energy bill conference committee, New Mexico Senator Pete Domenici and Louisiana Representative W.J. "Billy" Tauzin, unilaterally inserted language into the energy bill at the behest of Minnesota's GOP Senator Norm Coleman to provide $800 million in federal loan guarantees to one company, Excelsior Energy. The $800 million loan guarantee is apparently designed to help secure Senator Coleman's vote in favor of the energy bill.[5] The federal assistance to Excelsior Energy was included in neither the House nor Senate versions of the energy bill, adding to the growing list of provisions that a handful of Republican conferees have inserted to appease special interests.

Excelsior Energy's coal gasification plant utilizes new technologies that reduce many of the harmful pollutants typically emitted by conventional coal-fired power plants. But the plant will only reduce carbon dioxide emissions by 10% compared to a conventional coal-fired power plant.[6] Since carbon dioxide is the primary source of global warming emissions, the loan guarantee will ensure that substantial federal assistance will be provided to a company that will become one of the largest emitters of greenhouse gasses in Minnesota.

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[4] www.citizen.org/cmep/energy_enviro_nuclear/electricity/energybill/westar

[5] Rob Hotakainen, "Energy Bill May Aid Range," *Minneapolis Star-Tribune*, September 29, 2003.

[6] Jay A. Ratafia-Brown, Lynn M. Manfredo, Jeff W. Hoffmann, Massood Ramezan, Gary J. Stiegel, "An Environmental Assessment of IGCC Power Systems." Presented at the Nineteenth Annual Pittsburgh Coal Conference, September 23-27, 2002, www.netl.doe.gov/coalpower/gasification/pubs/pdf/18.pdf

Excelsior's Clean Coal Execs Have Ties to Dirty Practices in California

Excelsior Energy was formed in August 2001 by individuals with direct ties to subsidiaries of Minnesota-based Xcel. One of those subsidiaries, NRG (along with NRG's own subsidiaries and business partners), has been fined $25 million for abusive practices during the California energy crisis. NRG also filed for Chapter 11 bankruptcy in May 2003, citing $9.2 billion in debt.[7]

Excelsior's main partners are the husband/wife team of Julie A. Jorgensen and Thomas A. Micheletti. Thomas H. Weaver—brother of Minnesota GOP Governor Tim Pawlenty's former chief of staff, Charlie Weaver—was an Excelsior Energy employee until January 2003.[8] Prior to their involvement with Excelsior, Micheletti and Weaver held executive lobbying positions with Xcel subsidiary Northern States Power.

But it is Jorgensen's involvement in a now-bankrupt Xcel subsidiary that raises the greatest concerns about the fitness of Excelsior to receive such large federal government assistance. Jorgensen was a top executive for much of the 1990s at Xcel subsidiary NRG. Some news accounts report that Jorgensen left NRG in 1997, before the company made major investment and other decisions that contributed to the company's $9.2 billion bankruptcy. This is incorrect, as Jorgensen not only was a top NRG executive through October 1998, but NRG owned 47.5% of CogenAmerica—the company Jorgensen left NRG to head in October 1998—through December 1999. In addition, NRG CEO David H. Peterson was chairman of CogenAmerica's board of directors.[9]

In December 1999, another company that has been fined millions of dollars for manipulation of California's energy markets, Calpine, bought 80% of Jorgensen's CogenAmerica, leaving NRG with the remaining 20%. Jorgensen left CogenAmerica after Calpine finalized the acquisition in December 1999.

When Calpine acquired Jorgensen's CogenAmerica, Calpine paid $25 per share of all outstanding CogenAmerica stock.[10] Assuming that, as CEO and President, Jorgensen had valuable stock holdings, Calpine's acquisition would have provided a lucrative financial benefit for Jorgensen.

Jorgensen may have parlayed her earnings from Xcel subsidiaries and Calpine into the seed capital that has formed the foundation of Excelsior Energy. It would therefore be prudent to require Jorgensen and her husband Thomas Micheletti to reveal their past and current financial compensation and financial interests in Xcel and its subsidiaries. Federal loan guarantees should not be provided to a company that may have been partially, indirectly financed by questionable business practices.

Jorgensen started out as NRG's Counsel in January 1993, and rose in the ranks to become an NRG Vice President and Senior Counsel by October 1998. In October 1998, Jorgensen was appointed by CogenAmerica's board of directors to serve as CogenAmerica's interim president and CEO. NRG had acquired 47.6% of CogenAmerica in April 1996, with the balance owned by public shareholders. In May 1999, Jorgensen was named permanent president and CEO.

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[7] "FERC Approves NRG Transfer to Creditors," *Natural Gas Week*, October 10, 2003.

[8] Hank Shaw and Rachel E. Stassen-Berger, "Power plant gets new scrutiny," *St. Paul Pioneer Press*, October 12, 2003.

[9] Cogeneration Corporation of America Schedule 14a filing on April 20, 1999 with the Securities and Exchange Commission, www.sec.gov/Archives/edgar/data/795185/0001047469-99-015577.txt

[10] NRG 10-k filed with the Securities and Exchange Commission on March 30, 2000, http://www.sec.gov/Archives/edgar/data/1013871/0000950124-00-001813-index.html

NRG, its subsidiaries and business partners have been fined $25 million for manipulating the California energy market. Jorgensen was CEO and President of CogenAmerica, a NRG subsidiary, from October 1998 through December 1999. Thomas Micheletti worked at Xcel-subsidiary Northern States Power until at least November 1999. Jorgensen's tenure at Xcel subsidiaries was during periods in which government officials blame NRG, its subsidiaries and business partners for manipulating energy markets.

In 1999, NRG and Dynegy (a subsidiary of ChevronTexaco) jointly formed West Coast Power. NRG controls 50% of this joint venture. In May 1999, West Coast Power began purchasing power plants in California with a combined capacity of 3,000 megawatts for $475 million. Groups like Public Citizen warned at the time that these new, unregulated power plant owners had the capability to manipulate the state's energy market. From 1999-2002, West Coast Power posted a cumulative after-tax profit of $635 million, giving the company a 135% return on its investment.[11] During that time, NRG owned between 20% and 47.5% of CogenAmerica.

Investigations by state authorities conclude that some of these profits are traced to price-gouging:

- In March 2002, California's Attorney General filed a lawsuit against NRG, Xcel and West Coast Power for numerous violations of California's Unfair Competition Act. The civil complaints filed in San Francisco Superior Court against these and three other power companies seek more than $150 million in penalties, restitution and disgorgement of all profits the companies earned as a result of their illegal conduct. The lawsuit alleges that the abusive practices began in June 1998, when Jorgensen was still affiliated with NRG. The lawsuit also seeks court-ordered protections against future misconduct.[12]

- In July 2002, the California Independent System Operator fined a joint venture between NRG and Dynegy, Electric Clearinghouse, $25 million for failing to make reserve power plant capacity available when ordered to do so from June 1999 through April 2002.[13]

Excelsior Employs Army of Lobbyists and Provides Cash to Key Politicians

One explanation of how a company like Excelsior Energy—with no track record and ties to energy companies with fraudulent practices—has secured such a sweetheart deal from Congress is the money it has provided to key lawmakers and its army of lobbyists.

Since January 2002, the principals of Excelsior Energy have given over $15,000 to candidates for Congress. Nearly two-thirds (over $9,500) have gone to Republicans, with the vast majority of that amount (over $7,000) going to Minnesota GOP Senator Norm Coleman. Only one politician outside Minnesota received money: Alabama GOP Senator Richard Shelby, who received $1,000 each from Jorgensen and Micheletti on May 21, 2003.[14] While some may argue that $15,000 is not a large sum of money, it is important to note that Westar Energy sought to secure its "seat at the table" during last year's energy conference committee with only $60,000.

[11] NRG 10-k filed with the Securities and Exchange Commission on April 1, 2002, www.sec.gov/Archives/edgar/data/1013871/000095013702001952/c67146ex99-1.txt
[12] http://caag.state.ca.us/newsalerts/2002/02-019dynygy.pdf
[13] July 3, 2002 *Market Notice*: "Ancillary Services Payments Rescinded Due To Generator Unavailability." Obtained by email from Gregg Fishman, CA ISO, GFishman@caiso.com.
[14] Center for Responsive Politics data compiled by Public Citizen, www.opensecrets.org

Excelsior Energy employs a minimum of 13 lobbyists from two firms, with at least two of those lobbyists operating in Washington, DC. Excelsior's lobbyists together have contributed an additional $44,000 to federal candidates since January 2002.

Two DC-based lobbyists for Lockridge Grindal Nauen, Dennis McGrann and Amy M. Johnson, were registered lobbyists on behalf of Excelsior Energy in 2002, where they lobbied the House, the Senate and the Department of Energy on "energy legislation and clean coal technologies."[15] In 2003, Amy Johnson was replaced by Jennifer Sweeney.

Excelsior Missed the Great Coal Power Taxpayer Giveaway . . .

Excelsior's special treatment behind closed doors raises the question: why didn't the company apply for existing federal subsidies for coal power technology? In March 2002, the U.S. Department of Energy's Clean Coal Power Initiative announced that companies developing new coal technologies could apply for grants totaling $2 billion. But Excelsior Energy was not one of the 36 companies submitting a bid by August 2002.[16] The media must ask why Excelsior Energy did not apply for this open bidding process, and instead opted for a backdoor attempt to secure loan guarantees without any public scrutiny?

. . . And Should Already Be Full on State Pork

Since Excelsior Energy is positioned to potentially secure millions of dollars in public subsidies from various Minnesota government entities, there is no need for additional burdens to federal taxpayers. In an incredible display of successful lobbying, Excelsior Energy already has secured scores of tax breaks and various government incentives potentially worth tens of millions of dollars.

Excelsior Energy has already received $500,000 from the Iron Range Resources and Rehabilitation Agency, a Minnesota state agency. Excelsior Energy will qualify for an additional $1 million from the IRRRA if the company secures $4.9 million in private capital.[17]

Excelsior may also be eligible for $10 million over the next five years from the state's renewable development account. On top of that, Excelsior may get tens of millions more in tax breaks from the "Job Opportunity Building Zone" program passed by the legislature in 2003. Businesses qualifying for a JOB zone won't pay taxes on—among other things—sales, corporate income, equipment purchases and property improvements. This could result in $30 million in tax savings on equipment for the Excelsior Energy project alone.[18]

As if this state pork weren't enough, a recent Minnesota law exempts Excelsior from many regulatory requirements, including the certificate of need that is required for all generation and transmission projects planned for the state. And the law provides Excelsior the power of eminent domain to acquire land for the plant and transmission lines, giving the green light to build a 210-mile transmission line from the proposed plant to a substation at the northern edge of the Twin Cities. But a big dispute has arisen over language in the law that states that Excelsior "shall be entitled to enter into a contract with" Xcel. Excelsior claims that the "shall be entitled" language requires Xcel to purchase 450 megawatts of power

[15] http://sopr.senate.gov/
[16] www.fossil.energy.gov/programs/powersystems/cleancoal/
[17] Notes from the meeting of the Iron Range Resources & Rehabilitation Board, December 11, 2001, www.irrrb.org
[18] David Hanners and Mike Hughlett, "Question of Power on Iron Range," *St. Paul Pioneer Press*, October 5, 2003.

from Excelsior indefinitely.[19] But Xcel counters that the language does not require the utility to purchase the energy from Excelsior.

This is a very important issue to be resolved. Since Congress is proposing to extend Excelsior Energy an $800 million loan guarantee, the company's ability to sell its power will be a determining factor in whether Excelsior will be able to cover that loan. If it turns out that the law does not compel Xcel to purchase power from Excelsior, there is a strong chance that Excelsior will not be able to sell enough power in the skimpy Minnesota market to pay back the loans guaranteed by federal taxpayers.

Because Excelsior is exempt from the state's certificate of need requirement, the company is not required to demonstrate that the electricity from the power plant will actually be needed by Minnesotans. Excelsior Energy executive Micheletti believes the state will need an additional 3,000 to 6,000 megawatts of generating capacity in the next six to 15 years.[20] But Minnesota state officials argue that only about 2,000 additional megawatts over the next 10 years are needed—and 1,000 megawatts already are in the approval process or being built.[21]

As a result, the $800 million federal loan guarantee supports a highly speculative project. Without the detailed certificate of need, U.S. taxpayers are not assured that they will ever get their money back. Considering Jorgensen's financial and personal ties to NRG—a company that was forced to declare bankruptcy after incurring $9.2 billion in debts partly due to fiascos in the power speculation business—the federal government should not support this project.

In the end, the controversy surrounding the public subsidies for the power plant is largely the result of the closed-door process by which these subsidies have been proposed. Public Citizen demands that Congress reject this special interest bill.

[19] HF 9, signed by GOP Governor Tim Pawlenty on May 29, 2003, www.leg.state.mn.us
[20] "IRRRB approves initial funds for power plant at Hoyt Lakes," *Associated Press*, December 11, 2001.
[21] "Minnesota Energy Planning Report 2001," Minnesota Department of Commerce, January 2002, pages 27-29, www.commerce.state.mn.us