



**FINANCIAL AUDIT DIVISION REPORT**

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**Iron Range Resources Loans  
to Excelsior Energy, Inc.**

**Special Review**

**September 25, 2008**

**Report 08-22**

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FINANCIAL AUDIT DIVISION

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## OFFICE OF THE LEGISLATIVE AUDITOR

State of Minnesota • James Nobles, Legislative Auditor

September 23, 2008

Representative Rick Hansen, Chair  
Legislative Audit Commission

Members of the Legislative Audit Commission

Sandy Layman, Commissioner  
Iron Range Resources

Members of the Iron Range Resources Board

This report presents the results of our special review of allegations concerning loans totaling \$9.5 million provided to Excelsior Energy by the Iron Range Resources (IRR). The loans were for a project to construct a coal gasification and electric power generating facility in the Taconite or Hoyt Lakes area. The loans were approved by the IRR board and Governor Pawlenty.

Our review was conducted by Brad White, CPA, CISA, CFE (Audit Manager), Sonya Johnson, CPA (Director of Investigations), and Jerry Foty (Staff Auditor).

IRR and Excelsior Energy fully cooperated with our review.

*/s/ James R. Nobles*

James R. Nobles  
Legislative Auditor

*/s/ Cecile M. Ferkul*

Cecile M. Ferkul, CPA, CISA  
Deputy Legislative Auditor

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# Report Summary

The Office of the Legislative Auditor investigated a citizen's complaint that Excelsior Energy, Inc., inappropriately used some of the \$9.5 million in loans it obtained from Iron Range Resources (IRR). Excelsior Energy obtained the loans to construct a coal gasification electric power generating facility in the Taconite or Hoyt Lakes area. The loans were approved by the IRR Board and Governor Pawlenty. The complaint alleged that Excelsior Energy used loan funds for costs not allowed by the loan agreement and was reimbursed twice for some costs through the loan and through a federal grant. In addition, the complaint alleged that the IRR commissioner exceeded her authority by changing the loan terms without approval of the IRR Board.

## Objective

Our objective was to address the citizen's complaint by answering the following questions:

- Did IRR adequately oversee the use of loan proceeds provided to Excelsior Energy to ensure that the company complied with the provisions of the loan agreement?
- Did Excelsior Energy obtain duplicate reimbursement of project costs from IRR loan funds and grants from the federal government?
- Did the IRR commissioner act within her authority when changing the initial loan interest payment due date in its loan agreements with Excelsior Energy?

## Conclusions

Iron Range Resources did not adequately oversee Excelsior Energy's use of loan proceeds to ensure that the company complied with certain loan provisions. IRR did not clearly define prohibited lobbying costs, did not adequately review documentation that Excelsior Energy submitted to support use of loan proceeds, and did not set limits or constraints on certain travel costs. As a result, the company used loan funds for some expenses that appear to be related to lobbying activities and was reimbursed \$40,161 for inappropriate, duplicate, or unsupported costs.

The IRR and federal government funding arrangements were appropriate and did not create a duplicate reimbursement of expenses. The second IRR loan allowed and recognized the coordination of third-party federal resources. We found that the Excelsior Energy agreement with the federal Department of Energy required the company to report 100 percent of all project costs, including costs reimbursed

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from IRR loans, and the company was reimbursed for half those costs through the federal grant.

Finally, the IRR commissioner acted within the authority of IRR Board's *Financial Assistance Administration Policy* which requires the development of an action plan when modifying the terms of an agreement. The policy states, "The Commissioner will determine if the Board of Iron Range Resources must be notified of the action plan." We concluded that the policy provided the commissioner with authority to change the initial loan interest payment due date in its loan agreements and discretion about whether to involve the IRR Board in the matter.

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# Iron Range Resources Loans to Excelsior Energy, Inc.

## Agency Overview

The Office of the Legislative Auditor received a citizen's complaint concerning whether Excelsior Energy, Inc., inappropriately used some of the \$9.5 million it obtained through loans from Iron Range Resources (IRR). Excelsior Energy obtained the loans to construct a coal gasification electric power generating facility in the Taconite or Hoyt Lakes area. The loans were approved by the IRR Board and Governor Pawlenty. The complaint alleged that Excelsior Energy used loan funds for costs not allowed by the loan agreement and was reimbursed twice for some costs through the loan and through a federal grant. In addition, the complaint alleged that the IRR commissioner exceeded her authority by changing the loan terms without approval of the IRR Board.

Pursuant to the Legislative Auditor's statutory authority and responsibility,<sup>1</sup> we investigated these allegations. This report conveys the results of our investigation.

As required by *Minnesota Statutes* 2007, 3.975, we are referring this report to the Attorney General. The Attorney General has the responsibility to recover state funds that were used inappropriately.

## Objective and Methodology

Our objective was to answer the following questions:

- Did IRR adequately oversee Excelsior Energy's use of loan proceeds to ensure that the company complied with the provisions of the loan agreement?
- Did Excelsior Energy obtain duplicate reimbursement of project costs from IRR loan funds and grants from the federal government?

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<sup>1</sup> *Minnesota Statutes* 2007, 3.971, subd. 6, says, in part: "The legislative auditor shall see that all provisions of law respecting the appropriate and economic use of public funds are complied with and may, as part of a financial audit or separately, investigate allegations of noncompliance by employees of departments and agencies of the state government."

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- Did the IRR commissioner act within her authority when changing the initial loan interest payment due date in its loan agreements with Excelsior Energy?

To answer these questions, we met with IRR officials and reviewed IRR loan policies, records, correspondence, and accounting data. We further examined documents at Excelsior Energy, including invoices and receipts to support amounts paid. We also reviewed information provided by Excelsior Energy supporting the company's lobbyist expenses filed with the Campaign Finance and Public Disclosure Board.

## Background Information

The Iron Range Resources Board and the Office of the Commissioner of Iron Range Resources (IRR) are created in [Minnesota Statutes](#).<sup>2</sup> Their mission is to strengthen and diversify the economy of the taconite tax relief area on the Iron Range in northeastern Minnesota. The thirteen-member board is composed of five senators, five representatives, and three citizens. Appointed by the Governor, Sandy Layman has served as the commissioner of the agency since 2003. IRR issues grants and loans to for-profit and nonprofit businesses, higher education institutions, and other units of government. Because of the agency's economic development focus to create jobs, they may provide loans and grants to higher risk businesses and projects.

Excelsior Energy is an energy development company. The company is a start-up company whose goal is to license, construct, own, and operate the Mesaba Energy Project, a coal gasification power plant which uses an integrated gasification combined cycle technology. This 'clean coal' technology converts coal into a synthetic gas to create electricity. The company intends to sell the electricity on the wholesale market only and will have no retail customers. The project's goal is to produce fewer emissions than that of a conventional coal burning plant. IRR believes that this project will bring skilled jobs to the area, both to construct the plant and to operate it.

From the start, this was a high-profile project for IRR.

- The loans to Excelsior Energy were among IRR's largest, and using funds on this project significantly reduced the amount of funds available for other types of economic development.
- Excelsior Energy is a start-up company. The company's principals made a personal \$60,000 financial contribution, but the company initially relied

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<sup>2</sup> [Minnesota Statutes](#) 2007, 298.22.

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mainly on the IRR loans for many basic costs it needed to operate, such as office space, desks, and computers.

- The project uses emerging technology; there are only a few integrated gasification combined cycle plants generating power in the U.S. The technology's main selling point is the ability to use coal to create energy without as much typical "greenhouse" gas pollution as a regular coal burning power plant.
- At the time of the IRR loans, it was understood that Excelsior Energy would have to obtain a great deal more funding from other sources to make the project possible. Much of Excelsior Energy's work in the first years of the project was to market the project and lobby for additional federal and private funding.
- In recognition of the high risk nature of the project and to protect IRR's interest, the loan agreements had high interest rates and requirements to obtain other funding as a condition of obtaining some loan proceeds. In addition, because the loan was convertible to a stock interest in the company, IRR stood to receive significant benefit if the project was successful.
- Some local groups actively opposed the project and its impact on their communities.

In April 2002, the IRR Board approved an unsecured \$1.5 million convertible debenture<sup>3</sup> loan for Excelsior Energy. The 2003 Legislature approved a state law<sup>4</sup> providing regulatory incentives for innovative energy projects. The integrated gasification combined cycle technology qualified as an innovative energy project, and Excelsior Energy was approved to receive \$2 million annually for five years from the renewable development account. In June 2004, the IRR Board approved an additional unsecured \$8 million convertible debenture loan for the company. Because of the high risk nature of the loans, the IRR negotiated a 20 percent interest rate. Excelsior Energy also obtained \$36 million in federal clean energy grant funding from the Department of Energy for the project. The total estimated cost of the project is approximately \$2 billion.

**Table 1** shows the loan payments IRR made to Excelsior Energy. Unlike most loans, which disburse all of the loan proceeds up front, IRR disbursed loan funds to Excelsior Energy as it submitted invoices for project costs it had incurred.

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<sup>3</sup> A convertible debenture allows IRR to convert its loan into Excelsior Energy stock at a future date.

<sup>4</sup> *Minnesota Statutes* 2007, 216B.1694.

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**Table 1**  
**Excelsior Energy Loan Payments and Accrued Interest**

<u>Year Paid</u>	<u>Loan 1</u>	<u>Loan 2</u>
2002	\$ 385,000	\$ 0
2003	115,000	0
2004	1,000,000	194,650
2005	0	3,712,433
2006	0	1,343,892
2007	<u>(4,870)<sup>1</sup></u>	
Subtotal	\$1,495,130	<u>2,749,025</u> \$ 8,000,000
Interest Accrued through June 30, 2008	<u>\$1,357,144<sup>2</sup></u>	<u>\$ 3,651,723</u>
Total Principal and Interest due as of June 30, 2008	<u>\$2,852,274</u>	<u>\$11,651,723</u>

<sup>1</sup> As reported in Finding 1, Excelsior Energy repaid some IRR loan funds that may have been for lobbying purposes.

<sup>2</sup> On two occasions, IRR extended the initial interest payment date that Excelsior Energy had to make on the first loan. As of June 2008, Excelsior Energy's first interest payment is due on December 31, 2008.

Source: Minnesota Accounting and Procurement System and IRR loan records.

The IRR commissioner twice extended the initial interest payment date on the first Excelsior Energy loan. On July 23, 2007, the commissioner extended the first interest payment due date to December 31, 2007. On December 31, 2007, the commissioner again extended the interest due date on the first loan to December 31, 2008. Interest on the second loan is not due until 2009. The IRR Board's *Financial Assistance Administration Policy* requires the development of an action plan when the terms of an agreement are to be modified. The policy provides, "The Commissioner will determine if the Board of Iron Range Resources must be notified of the action plan."

## Conclusions

Iron Range Resources did not adequately oversee Excelsior Energy's use of loan proceeds to ensure that the company complied with certain loan provisions. IRR did not clearly define prohibited lobbying costs, did not adequately review documentation that Excelsior Energy submitted to support use of loan proceeds, and did not set limits or constraints on certain travel costs. As a result, the company used loan funds for some expenses that appear to be related to lobbying activities and was over reimbursed \$40,161 for some inappropriate, duplicate, or unsupported costs.

Excelsior Energy was not reimbursed by the federal government for costs already paid for through the IRR loans. The second IRR loan allowed and recognized the coordination of third-party federal resources. Excelsior Energy was required to report 100 percent of all project costs to the federal Department of Energy in order for it to be reimbursed for half those costs through the federal grant. As a result, the costs Excelsior Energy reported to the federal government were required to include project costs paid through the IRR loans.

Finally, the IRR commissioner acted within the authority of the IRR Board's *Financial Assistance Administration Policy*, which requires the development of an action plan when the terms of an agreement are to be modified. The policy states, "The Commissioner will determine if the Board of Iron Range Resources must be notified of the action plan." We concluded that the policy provided the commissioner with authority to change the initial loan interest payment due date in its loan agreements and discretion about whether to involve the IRR Board in the matter.

The following *Finding and Recommendations* section of the report explains IRR's weaknesses related to these loans.

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# Finding and Recommendations

**Iron Range Resources did not adequately oversee Excelsior Energy’s use of loan proceeds to ensure that the company complied with certain loan provisions.**

## Finding 1

IRR staff did not adequately review the specific use of loan proceeds provided to Excelsior Energy on this high-profile project. IRR did not fully define important elements of the loan agreement with Excelsior Energy and did not adequately review Excelsior Energy’s documentation that supported loan fund requests. In addition, after concerns were raised with lobbying, IRR did not resolve questions about certain loan provisions or increase its oversight of the loan.

While we do not question the actions of IRR to support and fund this project, once IRR became involved through the loans, it had a responsibility to ensure that its funds were spent in accordance with the terms of the loan agreement.

The first loan agreement specified that proceeds were to be used “*to locate and construct a 2,000 megawatt IGCC [integrated gasification combined cycle] electrical power generation plant in the TTRA [taconite tax relief area] to include: evaluating potential sites, environmental analysis, engineering, preliminary transmission feasibility analysis and certain project development, consultant, legal, personnel and office expenses directly related to locating and developing the power plant at the TTRA.*” The second loan more generally stated that Excelsior Energy would use the loan proceeds “*to pay or reimburse for Project Costs.*”

Both loan agreements explicitly prohibited the use of loan proceeds for lobbying. However, IRR did not establish a clear understanding of what type of activities it considered to be lobbying.

In obtaining funds through the first loan agreement, Excelsior Energy initially included costs that may have been connected to lobbying. During 2002 and 2003, Excelsior Energy requested reimbursement from loan proceeds for \$126,480 it paid to a law firm. The law firm, with offices in Minneapolis and Washington, DC, identifies “government relations” on its website as a main practice area. IRR reimbursed Excelsior Energy for the costs without questioning the nature of services provided by the law firm. Later, in November 2003, Excelsior Energy submitted to IRR a “final accounting” for the costs supporting the first \$500,000 of the loan. This recap of the costs did not include the payments to the law firm; Excelsior Energy had substituted them with other costs. IRR did not compare the recap to the original loan requests and did not notice the substitution of costs.

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IRR told us that they assumed the recap was a duplicate of the original requests and discarded the original reimbursement records.

In addition, in March 2005, Excelsior Energy requested loan funds for a payment it had made to a vendor for legal services. On the invoice submitted to IRR, the vendor listed “lobbyist registration” as a part of \$4,000 of legal services provided. IRR paid Excelsior Energy for this expense without questioning whether it complied with loan provisions. In September 2007, when a letter to the editor of a local paper questioned some expenses paid to Excelsior Energy that seemed related to lobbying, IRR reviewed invoices Excelsior Energy had previously submitted. Following this review, IRR requested and received repayment from Excelsior Energy for the \$4,000 payment for legal services and \$870 of other costs that invoices indicated may be lobbying related. In addition to obtaining repayment, IRR requested that Excelsior Energy “conduct a comprehensive review of all invoices submitted to Iron Range Resources to determine if there are other circumstances where invoices were submitted that may not be eligible for reimbursement.” IRR did not follow up on the status of this request.

In the second loan agreement, IRR allowed Excelsior Energy to claim certain costs related to regulatory, administrative, and environmental proceedings that are considered lobbying under *Minnesota Statutes* 2007, 10A.01.<sup>5</sup> However, IRR did not clarify what lobbying activities would be prohibited and, thus, ineligible for reimbursement.

Based on our review of documents at IRR and at Excelsior Energy, IRR reimbursed Excelsior Energy for some other costs that may have been related to prohibited lobbying activities, as explained below:

- IRR reimbursed Excelsior Energy for \$7,450 of various estimated travel costs listed on an expense report but did not question the nature of that travel. IRR did not require the company to itemize actual trips or to document the purpose of the trips. Excelsior Energy staff told us the travel costs were for “trips to the Capitol.” IRR did not request sufficient documentation to determine whether these trips were related to prohibited lobbying activities, such as trips to the Capital to influence legislation.
- IRR reimbursed Excelsior Energy about \$253,000 for the salaries of five Excelsior Energy personnel who, at the time of the reimbursement and as of 2008, were registered with the Campaign Finance and Public Disclosure Board as lobbyists. Because these employees were registered lobbyists, it is possible that some of the salary reimbursement was for performing lobbying activities. IRR did not require explanation about the duties of Excelsior Energy personnel as a way to be assured compensation

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<sup>5</sup> *Minnesota Statutes* 2007, 10A.01, broadly defines a lobbyist’s activities as “attempting to influence legislative or administrative action, or the official action of a metropolitan governmental unit by communicating or urging others to communicate with public or local officials.”

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was not for prohibited lobbying purposes. Even when IRR was made aware that these employees were registered as lobbyists by the local paper, they did not pursue matters further. In addition, the language in the second loan agreement makes it harder to judge whether it was inappropriate for IRR to have reimbursed the salaries of registered lobbyists.

- IRR reimbursed Excelsior Energy for payments to another law firm. An employee from that law firm is also a registered lobbyist with the Campaign Finance and Public Disclosure Board. IRR similarly did not question that relationship before it reimbursed Excelsior Energy.

IRR also did not establish guidelines for Excelsior Energy to define what would be reasonable and appropriate for other expenditures that could be reimbursed through the loan. For example, it did not define reimbursement rates for meals or mileage or provide any limitations or constraints on the types of business expenses that would be allowable for the use of public funds. In addition, IRR did not sufficiently review the adequacy of evidence and eligibility of certain project costs it reimbursed to Excelsior Energy.

Our review of IRR and Excelsior Energy records identified \$40,161 IRR reimbursed to Excelsior Energy for some costs that were duplicate payments, inappropriate uses of loan proceeds, or insufficiently documented, as explained below:

- IRR paid \$15,822 for costs that had already been reimbursed to Excelsior Energy. IRR did not sufficiently review the documentation supporting the reimbursement request to recognize the duplicate invoices.
  - IRR reimbursed Excelsior Energy for costs totaling \$3,513 that were inappropriate uses of public resources. The company requested reimbursement for inappropriate costs, including \$154 for alcohol, \$190 for government relations membership fees, \$100 for a lobbyist registration, \$91 for flowers, \$224 for a golf outing, \$200 for delivered food, and \$1,115 for an office party. In addition, IRR inappropriately reimbursed Excelsior Energy \$1,439 when Excelsior Energy inadvertently included employee payroll taxes in its reimbursement request rather than the appropriate employer taxes. A thorough review by IRR of Excelsior Energy's reimbursement requests should have detected and rejected payment for these inappropriate or erroneous items.
  - IRR reimbursed over \$152,000 to Excelsior Energy without maintaining documentation to support the expense. (Most of the missing records resulted from IRR discarding original reimbursement records when Excelsior Energy submitted its final accounting for its use of the first \$500,000 of loan proceeds, as explained earlier in this report.) We
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substantiated the legitimacy of approximately \$132,000 of these payments by directly reviewing invoices and receipts onsite at Excelsior Energy. However, Excelsior Energy did not have sufficient evidence to support the legitimacy of \$20,826. Support for some of these costs consisted of handwritten notes or estimates totaling \$16,020; the other remaining costs of \$4,806 had nothing to support the legitimacy of the claim. This balance includes claims for estimated travel costs previously discussed.

Finally, IRR did not include any criteria in its loan agreements to limit and control certain travel-related costs. Typically, a public entity includes in its grant or loan agreements cost constraints to control and limit the travel-related amounts. We noted the following concerns:

- IRR reimbursed Excelsior Energy for estimated mileage and did not require evidence to support a point-to-point mileage measurement. In some instances, IRR paid the company for estimated weekly mileage rather than requiring a determination of specific trip miles and dates. In addition to reimbursing the company for mileage, IRR also reimbursed for gasoline costs. Typically, a mileage reimbursement rate includes the cost of gasoline, routine maintenance, and wear-and-tear on the vehicle.
- IRR reimbursed Excelsior Energy for meal costs without establishing under what circumstances it would pay for meals or setting any limits on the amount of reimbursement. For example, one reimbursement claim included meals ranging from \$16 to \$83, and another claim included a dinner for \$374. IRR did not set a maximum reimbursement amount or require Excelsior Energy to provide evidence of a business purpose for the meal and document the participants that were present.

By not defining what constituted lobbying expenses, not having evidence supporting all project costs, and not setting conditions and limits on certain travel-related costs, IRR had no basis to judge the reasonableness of amounts submitted by Excelsior Energy and paid some costs that exceeded a reasonable use of public funds.

#### *Recommendations*

- *IRR should recover \$40,161 of loan proceeds used to fund duplicate, unallowable, and undocumented costs paid to Excelsior Energy.*
- *IRR should clarify:*
  - *the types of lobbying activities it considers ineligible for reimbursement to Excelsior Energy under the loan agreements; and*

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- *its criteria for allowable mileage and meal reimbursements. The criteria should address the type of documentation Excelsior Energy should have to support the costs and the limits of appropriate reimbursement, considering the public nature of the loan funds.*
  
  - *Once it clarifies unreimbursable lobbying activities and criteria for mileage and meal reimbursements, IRR should review the salaries, legal fees, mileage, and meal costs questioned in this report and recover any costs reimbursed to Excelsior Energy that did not meet the criteria.*
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September 23, 2008

Mr. James Nobles  
Legislative Auditor  
Room 140, Centennial Building  
658 Cedar Street  
St. Paul, MN 55155-1603

Dear Mr. Nobles:

Thank you for the opportunity to respond to the findings and recommendations of your special review of the loans totaling \$9.5 million to Excelsior Energy. We appreciate the thoroughness and professionalism with which your staff conducted the evaluation.

Iron Range Resources is pleased that two of the three allegations in the complaint were found to be without merit. The agency will take immediate action to address the findings and recommendations pertaining to the third allegation.

Iron Range Resources is committed to maintaining the public's trust and confidence as our agency fulfills its mission of diversifying and expanding the economy of northeast Minnesota.

Below is our agency's response to the specific audit finding and recommendations.

### **Audit Finding 1**

Iron Range Resources did not adequately oversee Excelsior Energy's use of loan proceeds to ensure that the company complied with certain loan provisions.

### **Agency Response**

Iron Range Resources concurs with your finding that the agency could have better overseen its loans to Excelsior Energy. The agency has taken the steps outlined below to address oversight issues raised on the two loans. In addition, the agency will apply the lessons learned from this project to its future loan administration practices.

### **Audit Recommendation**

Iron Range Resources should recover \$40,161 of loan proceeds used to fund duplicate, unallowable, and undocumented costs paid to Excelsior Energy.



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### **Agency Response**

Iron Range Resources will request repayment of the \$40,161. However, it should be noted that many of the expenses in question are reasonable and customary in private commerce. As a private borrower, Excelsior Energy is not subject to the same rules as public employees for entertainment, meals and other expense reimbursements.

### **Audit Recommendation**

Iron Range Resources should clarify the types of lobbying activities it considers ineligible for reimbursement to Excelsior Energy under the loan agreements.

### **Iron Range Resources Response**

Iron Range Resources concurs with your finding that its loan agreements could have been more definitive in clarifying what constitutes “lobbying.” The Attorney General’s Office provided extensive counsel to the agency in its administration of the Excelsior Energy project, including negotiation of the loans, preparation of the loan documents, amendments to the loans, issues related to data practices and eligible expenses. The agency will work with the Attorney General’s Office to ensure that future loan agreements more clearly define what expenses are eligible for reimbursement and what expenses are ineligible for reimbursement.

Given the lack of a definition in Minnesota Statutes for lobbying, Iron Range Resources and Excelsior Energy came to the mutual understanding that for the purposes of administering the loan agreements, lobbying would be defined as the attempt to influence state legislation or pursue other state funding and such expenses would be ineligible for reimbursement.

The loan agreements clearly state that work on site and route proceedings with the Minnesota Public Utilities Commission and permitting activities (which are required to build a power plant) as well as all federal activities were eligible expenses. The agency understood that an individual must register as a lobbyist to perform some of those duties and expected that Excelsior would have several registered lobbyists working on these activities. The agency also anticipated that Excelsior would seek reimbursement of those project costs.

### **Audit Recommendation**

Iron Range Resources should clarify its criteria for allowable mileage and meal reimbursements. The criteria should address the type of documentation Excelsior Energy should have to support the costs and the limits of appropriate reimbursement, considering the public nature of the loan funds.

### **Iron Range Resources Response**

Iron Range Resources concurs with your finding that the loan agreements could have been more definitive as to the criteria for mileage and meal reimbursements. The agency will work with the Attorney General’s Office to ensure that future loan agreements more clearly define the criteria under which such expenses are eligible for reimbursement and ineligible for reimbursement.

Excelsior was reimbursed for mileage at standard IRS rates, as is the standard practice of the agency, although the agency could have clarified its reimbursement expectations in its loan agreements. Similarly, meal expense reimbursements could have been clarified, although such reimbursement may vary due to the nature of the business being conducted. For example, in this case, a distinction could have been drawn between everyday travel of Excelsior employees and other special meal reimbursements that were requested.

### **Audit Recommendation**

Once it clarifies unreimbursable lobbying activities and criteria for mileage and meal reimbursements, Iron Range Resources should review the salaries, legal fees, mileage, and meal costs questioned in this report and recover any costs reimbursed to Excelsior Energy that did not meet the criteria.

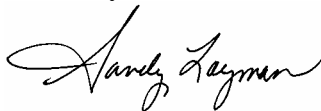
### **Iron Range Resources Response**

The audit report notes that in October of 2007, Iron Range Resources requested and received repayment from Excelsior for \$4,870 in questionable expenses. At that time, the agency asked Excelsior “to conduct a comprehensive review of all invoices submitted to Iron Range Resources to determine if there are other circumstances where invoices were submitted that may not be eligible for reimbursement.”

As previously noted in our response, Iron Range Resources concurs with your finding that the agency should request an additional repayment of the \$40,161 in loan proceeds used to fund duplicate, unallowable or undocumented costs, and the agency intends to do so expeditiously following the public release of the audit. Iron Range Resources also will require Excelsior to submit its completed review of “other circumstances where invoices were submitted that may not be eligible for reimbursement.” Iron Range Resources then will review Excelsior’s supplemental report, determine whether the agency concurs with the company’s report and ensure that any additional ineligible expenses are promptly refunded to the agency.

I have assigned Matt Sjoberg to ensure that the above actions are completed by October 31, 2008. Thank you again for the opportunity to respond to your review of this matter.

Sincerely,



Sandy Layman  
Commissioner