

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

LeRoy Koppendrayer
David C. Boyd
Marshall Johnson
Phyllis Reha
Thomas Pugh

Chair
Commissioner
Commissioner
Commissioner
Commissioner

In the Matter of a Petition by Excelsior Energy, Inc., and MEP-I LLC for an Order Concerning Transmission Infrastructure Under Minn. Stat. §216B.1694.

PUC Docket: E-6472/M-05-1993

MOTION TO DISMISS EXCELSIOR ENERGY PETITION - TRANSMISSION

Excelsior Energy has Petitioned the Public Utilities Commission requesting:

- 1) Affirmation that the certificate of need exemption granted to the Mesaba Energy Project as an innovative energy project' under Minn. Stat. §216B.1694, subd 2(a)(1) applies to all transmission infrastructure associated with the Project's power generation facilities; and
- 2) Requesting an order on or before March 1, 2008, affirming that all transmission infrastructure necessary to interconnect the Mesaba Project to the bulk power systems exempt from Minnesota's CON requirements, including Network Upgrade infrastructure required by the Midwest Independent Transmission System Operator, Inc. that might be permitted, constructed or owned by Minnesota Power or any other person; and
- 3) Claiming that action is necessary to accurately reflect the requirements of the IEP Statute and to move forward with the development of transmission infrastructure associated with the Mesaba Project in an efficient and timely manner.

mncoalgasplant.com ("MCGP") requests that the Excelsior Petition be dismissed as premature.

The language of Minn. Stat. 216B.1694, Subd. 2(a)(1) states:

Subd. 2. **Regulatory incentives.** (a) An innovative energy project: (1) is exempted from the requirements for a certificate of need under section [216B.243](#), for the generation facilities, and transmission infrastructure associated with the generation facilities, but is subject to all applicable environmental review and permitting procedures of chapter 216E...

While the statute exempts "associated transmission" from Certificate of Need requirements, and MCGP does not contest this statutory exemption, the statute exempts "transmission infrastructure associated with the generation facilities." Logically, where there are no generation facilities, and

where there is no Power Purchase Agreement, there is no project – a Power Purchase Agreement is necessary for the project to go forward -- and where there is no project, there is no transmission infrastructure associated with a project that does not exist. Where a project does not exist, and may never go forward, there is no need “to move forward with the development of transmission infrastructure associated with the Mesaba Project in an efficient and timely manner.” Any development of transmission at this time is premature – transmission permitting dockets and construction progress much more quickly than those for power plants, and there is no reason to push transmission at this time. This Petition is premature and should be dismissed.

Secondly, any discussion of transfer of the exemption under this statute is premature, again, because there is no Power Purchase Agreement and there is no project. It is an issue of concern as to whether the exemption would apply to a third party building transmission for the project, IF it were approved, and whether a third party would have power of eminent domain and exemption from a Certificate of Need, Minnesota Power is correct to raise this issue, but again, this is not the time for that discussion. This Petition is premature and should be dismissed.

Excelsior has raised this issue previously, in its “Petition for Clarification,” and the Commission correctly declined to address it specifically, and on November 8, 2007, declined to modify its Order of August 30, 2007. If and when a Power Purchase Agreement is approved and there is a “Mesaba Energy Project” then Excelsior Energy may bring this Petition to the Commission, but until that time, it is premature and should be dismissed.



Dated: January 2, 2008

Carol A. Overland Lic. No. 254617
Attorney for mncoalgasplant.com
OVERLAND LAW OFFICE
P.O. Box 176
Red Wing, MN 55066
(612) 227-8638
overland@redwing.net
www.legalelectric.org