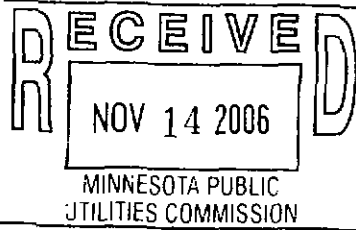


STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS

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November 13, 2006

Individuals on the Attached Service List

**Re: *In the Matter of a Petition by Excelsior Energy, Inc. for Approval of a Power Purchase Agreement Under Minnesota Stat. § 216B.1694, Determination of Least Cost Technology, and Establishment of a Clean Energy Technology Minimum Under Minn. Stat. § 216B.1693; MPUC No. E-6472/M-05-1993; OAH Docket No. 12-2500-17260-2***

Dear Counsel and Parties:

Enclosed herewith and served upon you by mail are the Administrative Law Judges' Order on Motion to Enforce Protective Order in the above matter.

Sincerely,

STEVE M. MIHALCHICK  
Administrative Law Judge

Telephone: 612-349-2544  
steve.mihalchick@state.mn.us

SMM:mo  
Encl.

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**In the Matter of a Petition by Excelsior Energy, Inc., . . .  
Administrative Law Judges' Service List as October 6, 2006**

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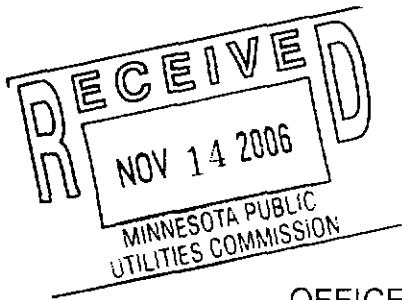
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OAH NO.: 12-2500-17260-2  
PUC DOCKET NO. E-6472/M-05-1993

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS  
FOR THE PUBLIC UTILITIES COMMISSION

In the Matter of a Petition by Excelsior Energy, Inc. for Approval of a Power Purchase Agreement Under Minn. Stat. § 216B.1694, Determination of Least Cost Technology, and Establishment of a Clean Energy Technology Minimum Under Minn. Stat. § 216B.1693

**ORDER  
ON MOTION TO ENFORCE  
PROTECTIVE ORDER**

This contested case proceeding was initiated by the Minnesota Public Utilities Commission (the Commission) by a Notice and Order for Hearing and Order Granting Intervention Petition issued on April 25, 2006. On June 5, 2006, the undersigned Administrative Law Judges issued a Protective Order in this proceeding that governed the dissemination of trade secret information and nonpublic data.

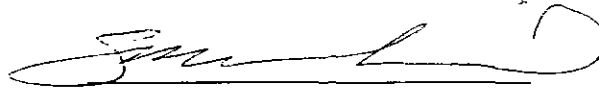
On September 5, 2006, Northern States Power d/b/a Xcel Energy (Xcel Energy or Xcel) filed Xcel Energy's Motion and Memorandum to Enforce Protective Order Concerning Trade Secret Designations. On October 2, 2006, Xcel filed Xcel Energy's Renewed Motion and Memorandum to Enforce Protective Order and Request for In Camera Inspection (Renewed Motion to Enforce). During a hearing on October 5, 2006, Administrative Law Judge Steve M. Mihalchick granted Xcel's request that the undersigned ALJs conduct an in camera review of the documents that Excelsior Energy, Inc., (Excelsior) had designated as trade secret under the Protective Order. By letter dated October 13, 2006, Excelsior responded to Xcel's Renewed Motion to Enforce. The undersigned Administrative Law Judges conducted a hearing on Xcel's Renewed Motion to Enforce on November 2, 2006. A portion of that hearing was closed. This matter is therefore before Administrative Law Judges Steve M. Mihalchick and Bruce H. Johnson for a determination on Xcel's Renewed Motion to Enforce.

Based upon the file, record, and proceedings herein, and for the reasons set forth in the accompanying Memorandum,

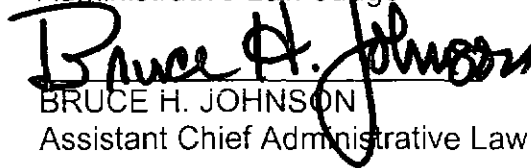
## ORDER

IT IS HEREBY ORDERED, that Xcel Energy's Renewed Motion and Memorandum to Enforce Protective Order and Request for In Camera Inspection is DENIED, subject to the conditions set forth in the Memorandum that follows.

Dated: November 13, 2006



STEVE M. MIHALCHICK  
Administrative Law Judge



BRUCE H. JOHNSON  
Assistant Chief Administrative Law Judge

## MEMORANDUM

The Protective Order issued on June 5, 2006, placed restrictions on the dissemination and use of trade secret or nonpublic data. In general, the Minnesota Department of Commerce (the Department), Excelsior, Xcel, and any other utility and power producing parties were entitled to obtain and receive trade secret information and nonpublic information, subject to certain restrictions and conditions contained in the Protective Order. Non-utility or non-power producing parties were only entitled to receive access to trade secret information upon a showing that the interest they were seeking to protect reasonably required it. The Protective Order essentially provided that the parties were prohibited from releasing trade secret information and nonpublic information to others or members of the general public.

In its Motion to Enforce, Xcel challenged four categories of documents that Excelsior has designated as containing trade secret information: (1) portions of Excelsior's proposed Power Purchase Agreement (PPA), more specifically portions of Article 8, entitled "Payment Calculation," and Section 5.5, entitled "Fuel Arrangements"; (2) portions of Excelsior's December 23, 2005, Petition for Approval of the PPA; (3) Excelsior's Department of Energy Applications and most of its 2006 Section 48A Tax Credit Application; and (4) Excelsior's Credit Suisse First Boston (CSFB) and Pace Global Energy (Pace) Documents.

In its response to Xcel's motion and at the hearing on November 2, 2006, Excelsior represented that it reclassified as public most of what it had previously classified as its trade secret information. What remains in dispute are primarily certain items of information within the documents that Xcel seeks to reclassify as public, as well as some entire documents.

Excelsior argues first that the following items of information within documents relating to this proceeding should remain trade secret information are: (1) its target EPC contract price; (2) the base capacity charge that is derived from the target EPC price; (3) its estimate of fixed operation and maintenance (O&M) costs; and (4) its estimate of variable operation and maintenance costs. Excelsior argues that those four items of information meet criteria for trade secret. Its primary reason for maintaining the trade secret status of those items of information is that making that information public would prejudice Excelsior's negotiations with vendors by giving them insights into what Excelsior expects to pay for its EPC contract and O&M costs, thereby potentially increasing those costs to the detriment not only of Excelsior but to public rate payers. First of all, that information has been made available to parties and persons who are covered by and who have agreed to the terms of the Protective Order. In other words, the information is available to most parties for purposes of conducting the hearing; it is simply not available to the general public. Xcel's main argument for making those items of information public is to give its customers detailed insight into how much they might expect to pay for power produced by Excelsior. The ALJs conclude that the ultimate responsibility for protecting the public's interest, including the interests of Xcel's customers, resides with the Commission, which will have access to the trade secret information at issue, as well as the views of parties and witnesses in this proceeding, about those items of information. The ALJs conclude that Xcel's Motion to Enforce should be denied as it relates to Excelsior's target EPC contract price, the base capacity charge that is derived from the target EPC price and Excelsior's estimate of fixed and variable O&M costs, and that this matter shall proceed with those items of information redacted from the public version of the hearing record.

Xcel's second argument is that the Fluor reports, which are attached as Exhibit F to Volume I of Excelsior's Petition, should also be reclassified as public. Excelsior's objection to that request is that that report contains proprietary, third-party trade secret information belonging to Fluor, which Fluor furnished to Excelsior under a confidentiality agreement that required Excelsior to treat the reports as trade secret information. The Protective Order clearly provides for treating that kind of information as trade secret information. At the hearing, however, Excelsior represented that Fluor has made available a public version of its report that redacts only that information which Fluor considers essential to protect. The ALJs therefore conclude that Xcel's Motion to Enforce should be denied as it relates to the Fluor reports, with the understanding that Excelsior will make the public versions of the Fluor reports available for inclusion in the public hearing record.

Xcel's third argument is that Excelsior's DOE applications and its 2006 Section 48A Tax Credit Application should be redesignated as public information because the Department of Energy has made much of that information public. In response, Excelsior argues that that information is protected by third-party confidentiality agreements, as well as by federal law. The ALJs conclude that it is not within their jurisdiction to determine which information protected by federal law may be made public. That information, to the extent that it has been tendered by Excelsior shall remain trade secret and nonpublic information within

the meaning of the Protective Order. However, parties may treat as public information whatever information they may have obtained as public information directly from the Department of Energy.

Finally, Xcel argues that Excelsior's Credit Suisse First Boston (CSFB) and Pace Global Energy (Pace) Documents should be made public. During the course of a closed hearing on February 2, 2006, Excelsior agreed that those documents would remain trade secret information but would be made available to everyone who has signed the Protective Order and who has agreed to be subject to it, except for three numbers that appear in those documents. Excelsior agreed to make those three numbers available to Xcel, the Department, to the ALJs, and to the Commission and its staff. In accordance with that understanding, that part of Xcel's Motion to Enforce is also denied.

**S.M.M.; B.H.J**