minnesota power
AN ALLETE COMPANY

David J. McMillan, Executive Vice President
Fax 218-720-2508 / Cell 218-590-4287 / E-mail dmcmillan@allete.com

July 30, 2007

VIA E-FILING, E-MAIL AND
U.S. MAIL
Dr. Burl W. Haar
Executive Secretary
Minnesota Public Utilities Commission
121 7th Place East, Suite 350
St. Paul, MN 55101-2147

Re: 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
MPUC Docket No.: E6472/M-05-1993
OAH Docket No.: 12-2500-17260-2

Dear Dr. Haar:

Minnesota Power is responding to the letter dated July 27, 2007 sent to Chairman Koppendrayer and the other commissioners by Edward A. Garvey, the Deputy Commissioner – Energy & Telecommunications for the Minnesota Department of Commerce concerning the Excelsior Energy Petition filed under MPUC Docket No E6472/M-05-1993. Minnesota Power strongly objects to the Department of Commerce ("Department") stepping outside of its statutory role to protect retail ratepayers in the state with an action that could serve to confuse the Commission on its role in this Docket. The Department is also once again stepping outside of the procedural framework established within this Docket, to override procedural and statutory rights of the other parties to these proceedings.

While the Department's role in regulatory proceedings is almost always focused on analyzing and advocating for its position on behalf of ratepayers in accordance with statutes, rules, and filed factual information, the Department's July 27, 2007 letter is the third time in this proceeding that the Department has sought to supplement the record in promoting its political views in support of Excelsior's Mesaba Project. The Department typically does not extend itself so repeatedly in favor of a petitioner, regardless of the facts in the case which here include even the Department's own negative economic analysis of the Mesaba Project. Furthermore, the July 27th letter is the second time the

Department has ignored the framework established by the Commission and the Administrative Law Judges for managing this proceeding. By issuing its most recent letter just prior to the Commission proceeding this week, all other parties are limited in their ability to respond to the substance and weight of the Department's position. As a state agency, the Department should be especially cognizant of its regulatory role and the weight of its position relative to that of other parties. The Department's disregard for procedural framework and the impact of its actions in this proceeding seriously undermine the Commission process. Such action should not be accepted by the Commission without consequence.

Unfortunately, the Department's dual positions in this proceeding have served to obscure the weight that the Commission should normally give the Department in considering its economic analysis. The Department has attempted to walk a fine line in this proceeding between political expediency and the normal economic and energy policy analysis that the Department has historically provided in Commission proceedings. Regrettably, the Department has sown confusion around its valuable factual submissions. Throughout this proceeding, the Department has attempted to pursue its political objectives of supporting the Mesaba Project alongside its traditional economic and energy policy analysis that has simultaneously, not to mention ironically, identified that the Mesaba Project is not in the public interest. In weaving back and forth between political objectives and facts in its July 27th letter, the Department now asks that the Commission ignore statutory language that is inconvenient to the Department's agenda. As a result, the Department establishes a striking and negative precedent for future filings before the Commission that will undermine the State's energy laws and proceedings in the face of political pressure.

The inconsistency in the Department's position and its disregard of Commission rules and energy law are highlighted by the July 27 letter. The Department continually refers to the Mesaba Project as an "innovative energy project". The Commission is well aware that the Administrative Law Judge recommendations have found that the Mesaba Project does not qualify as an innovative energy project; to refer to the project as an IEP appears to be an effort by the Department to override the ALJs' determinations, and is an effort to confuse the Commission as to the established record. The language of the July 27 letter invites the Commission to essentially abdicate its role as the decision-maker in this proceeding and instead substitute the Department's political will.

The Department's July 27 letter appears to be another avenue for Excelsior to advocate for its project outside of the established process in communicating with the Commission as a quasi-judicial regulatory body. At the bottom of page 2 of the letter, the Department identifies that the Mesaba Project will fulfill five benefits under the applicable Minnesota statutes. In each case, the bullets identified as "enumerated benefits" are merely repetition of arguments raised by Excelsior in providing its exceptions to the ALJ report. The "five enumerated benefits" do not fully discuss or disclose the five factors that the Commission needs to weigh when addressing whether or

not the Mesaba Project is in the public interest. While the five "benefits" have been cited by Excelsior, they have not been proven, accepted or weighed with their corresponding negatives by an impartial fact finder. That is the job of the Commission, and not the Department.

Minnesota Power urges the Commission to closely question the Department as to the purpose of the July 27 letter, as well as the other extra-procedural filings the Department has repeatedly made in this Docket.

- Why does the Department continually refer to the Mesaba Project as an innovative energy project when the ALJ report plainly found that the Excelsior facility did not meet the statutory criteria?

- Of the concerns raised in the Department's January 5, 2007 letter to the Administrative Law Judge, which elements has Excelsior modified to the Department's satisfaction and which specific elements has Excelsior not met?

- For the "five enumerated benefits" identified at the bottom of page 2 of the July 27 letter, can the Department provide to the Commission for each element the positive and negative effects the Department took into account in order to arrive at a positive finding for each of the five statements?

Finally, the Department should explain whether it is undertaking a shift in its analysis of filings before the Commission and will pay less attention to the statutory requirements and factual bases of filings and instead focus on perceived or potential public impact of such filings.

Minnesota Power appreciates the opportunity to respond to the Department's letter.

Sincerely,

/s/ David J. McMillan

David J. McMillan

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