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December 17, 2007

Michael C. Krikava
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VIA MESSENGER

Minnesota Court of Appeals
305 Minnesota Judicial Center
25 Rev. Dr. Martin Luther King Jr. Blvd.
St. Paul, MN 55155-6102

**Re: Alternative Petition for Discretionary Review in
In the Matter of the Petition of Excelsior Energy, Inc. et al.
Appellate Court Case No. A072306**

Dear Sir/Madam:

Enclosed for filing in the above-referenced matter are the original and four (4) copies of Northern States Power Company's:

1. NSP's Memorandum (1) Supporting Motion to Discharge Writ of Certiorari and Dismiss Excelsior's Appeal and (2) Opposing Excelsior's Alternative Petition for Discretionary Review; and
2. Affidavit of Michael C. Krikava; and
3. Affidavit of Service.

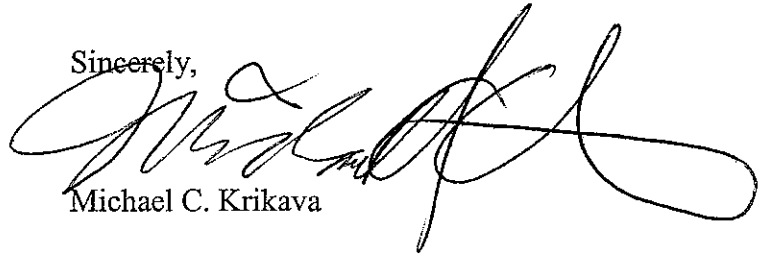
By copy of this letter, this filing is being served on the persons listed on the attached service list.

Please call me with any questions.

BRIGGS AND MORGAN

Minnesota Court of Appeals
December 17, 2007
Page 2

Sincerely,

A large, stylized handwritten signature in black ink, appearing to read 'Michael C. Krikava', written over the typed name.

Michael C. Krikava

MCK/dba
Enclosures

cc: Service List

**STATE OF MINNESOTA
IN COURT OF APPEALS
Court File No.'s A07-2305, A07-2306**

In the Matter of the Petition of Excelsior Energy Inc. and Its Wholly-Owned Subsidiary MEP-I, LLC for Approval of Terms and Conditions for the Sale of Power from Its Innovative Energy Project Using Clean Energy Technology Under Minn. Stat. § 216B.1694 and Determination that the Clean Energy Technology Is or Is Likely to Be a Least – Cost Alternative Under Minn. Stat. § 216B.1693

Excelsior Energy Inc. and MEP-I LLC,

Relators/Petitioners,

vs.

Minnesota Public Utilities Commission,
Northern States Power Company, a
Minnesota corporation,

Respondents.

NSP'S MEMORANDUM

**(A) SUPPORTING MOTION
TO DISCHARGE WRIT OF
CERTIORARI AND DISMISS
EXCELSIOR'S APPEAL**

AND

**(B) OPPOSING EXCELSIOR'S
ALTERNATIVE PETITION FOR
DISCRETIONARY REVIEW**

INTRODUCTION

On December 10, 2007, Excelsior Energy Inc. and MEP-I LLC (collectively, "Excelsior") filed a Petition for Writ of Certiorari and an Alternative Petition for Discretionary Review challenging two interim orders of the Minnesota Public Utilities Commission ("MPUC") in this case. Respondent Northern States Power Company, a Minnesota corporation ("NSP"), hereby (A) moves to discharge the Writ, and (B) opposes discretionary review. Appealing these interim orders is premature. Any appeal by any aggrieved party should be from a final order in the proceedings.

First, the orders Excelsior appeals are, on their face, not final and therefore non-appealable. See *In the Matter of the Application of Great River Energy, Northern States Power Company (d/b/a Xcel Energy) and Others for a Certificate of Need for the CapX 345-kV Transmission Project (CapX Appeal)*, App. Ct. Case No. A07-1550, Order at 2-3 (Sept. 11, 2007)(interim MPUC order on reconsideration not final and not appealable).¹

Second, Excelsior has not justified discretionary review. An interlocutory appeal would result in piecemeal review of issues that are not yet ripe and may become moot. Until the MPUC concludes the contested case, it is unknown whether Excelsior will even be a "person aggrieved" by the decision for purposes of appeal (Minn. Stat. § 14.63), and whether others may also be aggrieved and wish to appeal. All appeals should await the final disposition by the agency so the entire case can be considered once on appeal.

FACTUAL BACKGROUND

In December 2005, Excelsior petitioned the MPUC to order NSP to enter into a 603 MW power purchase agreement pursuant to Minn. Stat. § 216B.1694 ("Innovative Energy Project Statute").² Excelsior also sought to compel NSP under Minn. Stat. § 216B.1693 ("Clean Energy Technology Statute") to purchase an additional 600 MW from the second unit of the proposed IGCC plant. August 30 Order at 1- 4.³

¹ Attached as Exhibit 1 to the Affidavit of Michael C. Krikava ("Krikava Aff.").

² The 603 MW of power would come from the first of two integrated gasification combined cycle ("IGCC") coal power generation units Excelsior proposes.

³ "August 30 Order" refers to the MPUC's *Order Resolving Procedural Issues, Disapproving Power Purchase Agreement, Requiring Further Negotiations, and*

The MPUC referred Excelsior's petition to an Administrative Law Judge ("ALJ") for a contested case evidentiary hearing. The contested case portion of the proceeding was bifurcated into two phases to address Excelsior's two statutory claims. On April 12, 2007, the ALJ report in Phase I of the contested case was issued. August 30 Order at 6. The MPUC subsequently adopted, rejected, and modified various determinations of the Phase I report, and ordered Excelsior and NSP to enter negotiations on all Phase I issues in light of those determinations. *Id.* at 23 and 24. The ALJ report in Phase II was issued September 14, 2007, and is still pending MPUC review and a decision.

Excelsior sought reconsideration of the August 30 Order, which the MPUC denied.⁴ November 8 Order at 2.⁵ The MPUC instead ordered periodic updates on the Phase I negotiations, noting it would revisit these issues "[w]hen the Commission takes up the issues in Phase II" *Id.* Thus, no final decision has been made.

ARGUMENT

A. No Final Appealable Order No Has Been Issued.

It is well settled that only agency decisions that are final are appealable by writ of certiorari. Minn. Stat. § 14.63; *In re Application by the City of Rochester for an*

Resolving to Explore the Potential for a Statewide Market for Project Power under Minn. Stat. 216B.1694, subd. 5. The August 30 Order is included with Excelsior's appeal.

⁴ Excelsior sought reconsideration despite the August 30 Order not being a "final order" under the Minnesota Public Utilities Act or the MPUC's Rules. *See* Minn. Stat. § 216B.27, subd. 3 ("Only one rehearing shall be granted . . ."); and Minn. R. 7829.3000, subp. 7 (second petition for reconsideration prohibited).

⁵ "November 8 Order" refers to *Order Denying Petitions for Reconsideration and other Post-Decision Relief and Reconsidering Order on Own Motion to Require Further Filings.* The November 8 Order is included with Excelsior's appeal.

Adjustment of Its Service Area Boundaries with Peoples Coop. Power Ass'n, Inc., 524 N.W.2d 540, 541 (Minn. Ct. App. 1994). An agency decision is final and reviewable “when the agency completes its decision making process and the result of that process directly affects a party.” *In re Investigation into Intra-Lata Equal Access & Presubscription*, 532 N.W.2d 583, 588-89 (Minn. Ct. App. 1995), *rev. denied* (Minn. Aug. 30, 1995). This Court has determined that it “will not review an interim agency order where issues are not fully determined or become entangled in internal agency proceedings which are far from complete.” *Id.* at 589; *accord In re Complaint Regarding the Annexation of a Portion of the Serv. Territory of Peoples Coop. Power Ass'n by the City of Rochester*, 430 N.W.2d 879, 881 (Minn. Ct. App. 1988).

This Court has settled the question of the non-appealability of interim MPUC orders, including “reconsideration” of interim orders. *Krikava Aff.*, Ex. 1, *CapX Appeal*, Order at 2-3 (reconsideration order was interlocutory and not final or appealable). The Court recognized that the issues sought to be raised would be preserved for review at the end of the agency proceeding. *Id.*; *accord In the Matter of the Petition of Northern States Power Company for Review of Its 1999 All Source Request for Proposals (“All Source Matter”)*, App. Ct. Case No. C5-01-915, Order at 2 (July 3, 2001).⁶

As with the MPUC orders challenged in *All Source Matter* and *CapX Appeal*, the MPUC’s August 30 Order and November 8 Order do not constitute final orders from which Relators can appeal. It is clear that the agency’s decision-making process with

⁶ Attached as Exhibit 2 to *Krikava Aff.*

respect to Excelsior's petition is not complete. The MPUC has ordered subsequent proceedings on the issues in this case, including further negotiations and the requirement to report back to the agency for further proceedings on those negotiations. Obviously those negotiations could moot the issues raised here and will have an impact on the MPUC's final disposition of the case. The MPUC also explicitly recognized that Phase II of this proceeding has not been completed. Until that occurs, material portions of the case are not finally addressed, precluding any complete and meaningful appellate review.

Because the MPUC Orders are not final, other parties disagreeing with the MPUC's decisions may have waited to seek reconsideration at the end of the proceeding as provided by the MPUC's rules and statute.⁷ Minn. R. 7829.3000 (second reconsideration not entertained); Minn. Stat. § 216B.27, subp. 3 (only one rehearing allowed). The Court should decline to review this case until the final agency order at the conclusion of the case, and then address all appellate issues simultaneously.

B. Discretionary Review is Not Appropriate

Excelsior claims that discretionary review is warranted because it "has fundamental due process rights that will be adversely affected if it cannot pursue an appeal of the Orders at issue." It further claims the issues it presents are of "sufficient

⁷ It is not surprising other parties did not seek reconsideration of the August 30 Order. No party can maintain it has been "aggrieved" (Minn. Stat. § 14.63) by a MPUC order when the interim remains subject to revision at any time until it becomes final. Minn. Stat. § 216B.25 (MPUC may alter or amend any order). In fact, the MPUC already modified the August 30 Order using its authority under Minn. Stat. § 216B.25, thereby further recognizing the interim nature of the Order. Until the MPUC issues its final decision at the conclusion of the case, no party has been aggrieved; no appeal is proper.

importance to merit discretionary consideration by this Court,” namely, “constitutional separation of powers issues and important and urgent issues of state energy policy.” Request at 5-6. These assertions should be rejected.

(1) *Applicable Standards*

“Discretionary review will be granted ‘in the interest of justice,’ when a petitioner establishes compelling reasons for immediate review of a nonappealable order.” *In re Rice Lake Auto, Inc.*, 430 N.W.2d 881, 883 (Minn. Ct. App. 1988)(citing Minn. R. Civ. App. P. 105.01). The Minnesota Supreme Court has noted that the availability of discretionary review under Rule 105.01 is for “that rare case in which there is compelling reason for immediate appeal.” *Emme v. C.O.M.B., Inc.*, 418 N.W.2d 176, 179 (Minn. 1988)(emphasis added).

The types of compelling reasons justifying immediate review include: 1) the review would likely lead to reversal obviating the need for further proceedings below; 2) the review involves significant legal issues having an impact beyond the particulars of the case; 3) the review will settle a troublesome and vexing question of pre-trial or trial procedure of pressing concern to all litigants; and 4) the review involves a significant constitutional problem. See Magnuson & Herr, *Minnesota Practice, Appellate Rules Annotated* § 105.4 at 297 (3d ed. 1996).

Discretionary review is not granted where “the issues presented are limited to th[e] case, and appellate review would not settle difficult questions of general application.” *Clark v. Monnens*, 436 N.W.2d 830, 831 (Minn. Ct. App. 1989). Nor is an interlocutory appeal appropriate when denial would (i) not prejudice the party seeking review, and (ii)

promote judicial economy by addressing issues in a single appeal following termination of the proceedings. *See, e.g., Kokesh v. Hopkins*, 238 N.W.2d 882, 884 (Minn. 1976).

As the Minnesota Supreme Court has stated:

The thrust of the rules governing the appellate process is that appeals should not be brought or considered piecemeal. The purpose of the policy is not only to conserve judicial resources but to expedite trial proceedings. Pretrial appeals may cause disruption, delay, and expense for litigants; they also burden appellate courts by requiring immediate consideration of issues which may become moot or irrelevant by the end of trial. Finally, requiring complete disposition of the case prior to appeal protects the strong interest in allowing trial judges to supervise pretrial and trial procedures without undue interference.

Emme, 418 N.W.2d at 179 (citations omitted; emphasis added).

(2) *Standards Not Satisfied*

First, Excelsior makes no claim this case involves significant legal issues having an impact beyond these parties, or involving vexing questions of procedure of pressing concern to all litigants. The issues are not procedural, and are confined to this case and these parties. This tacit admission weighs heavily against granting interlocutory review.

Second, Excelsior's claims about important constitutional issues misconstrues the Court's standards. These claims boil down to dissatisfaction with the agency's decisions to date, which falls far short of justifying accelerated review.

The supposed due process claim fails altogether to identify what process Excelsior was due and was denied. *Id.* at 5-6. Such a showing is necessary to make out a due process claim. *Carillo v. Fabian*, 701 N.W.2d 763, 768 (Minn. 2005)(due process claim requires identifying interest deprived and procedure denied). All Excelsior objects to is the outcome, not the process. *See Humenansky v. Minnesota Bd. of Medical Examiners*,

525 N.W.2d 559, 565 (Minn. Ct. App. 1994)(due process analysis focuses on process, not outcome), *rev. denied* (Minn. Feb. 14, 1995). Excelsior fails to identify any process issue at all, let alone one that warrants granting discretionary review.⁸

Third, Excelsior claims that “[a]ffirming the Commission’s decisions in this case would mean the Commission, and not the Legislature, has the supreme and final authority to decide energy policy issues previously decided by the Legislature, a result that would violate the separation of powers provisions of Article III of the Minnesota Constitution.” Petition at 4. But the issue here is not whether the Court should affirm the MPUC’s orders, but rather whether the Court must review those issues now before the Orders are appealable. Excelsior fails to identify any reason why review should occur now.

This issue is very similar to the arguments rejected by this Court in the *CapX Appeal*. See *Krikava Aff.*, Ex. 1. In that case, the appellant argued that it needed immediate review to address a particular “important” question of statutory construction. The claim was that the MPUC got the statute wrong and that unless the Court intervened immediately, the incorrect interpretation would flow through the whole proceeding. This Court rejected that argument out of hand, finding that all legal and factual issues could be addressed at the end of the case. The same analysis should apply here. Excelsior has the right to seek an appeal of all issues at the end of the case, just as in the *CapX Appeal*.

⁸ Nor do any of the seven issues in Excelsior’s petition identify a due process issue. Petition at 4-5. This is because Excelsior was afforded ample due process. The record in this proceeding to date is voluminous, including more than 70 witnesses, thousands of pages of written testimony, hundreds of exhibits, and hundreds of pages of briefs.

Fourth, Excelsior has not actually raised any “separation of powers” issues as it claims. The Legislature directed the MPUC to conduct the proceeding it is currently engaged in. The enabling statute explicitly authorizes the MPUC to assess whether a proposed Innovative Energy Project is in the public interest and to “approve, disapprove, amend, or modify the contract in making its public interest determination.” Minn. Stat. § 216B.1694, subd. 2(a)(7). Because of this authorization, no claim can be made that the Commission’s public interest determination violates the separation of powers between the legislative and executive branches. *Askildson v. Cmm'r of Pub. Safety*, 403 N.W.2d 674, 677 (Minn. Ct. App. 1987)(legislative delegation to agency proper if statute provides reasonably clear guidance so law can be executed by its terms rather than according agency’s whim or caprice), *rev. denied* (Minn. May 28, 1987).⁹

Fifth and finally, Excelsior’s request for immediate appellate review conflicts with the Court’s policy that appeals should not be brought or considered piecemeal. The August 30 and November 8 Orders obligate the parties to undertake negotiations. This could render the appeal issues moot or irrelevant. *See Emme*, 418 N.W.2d at 179. The appeal is also inconsistent with judicial economy because any decision by this Court on Phase I issues would not obviate the need for further proceedings by the MPUC on Phase I (negotiations and subsequent filings) as well as all proceedings in Phase II. *Id.* Finally, this attempted appeal interferes with the strong interest the Court has in allowing the

⁹ In the event the MPUC’s public interest determination is legally erroneous, there still is no separation of power issue exists because that determination is unquestionably subject to judicial review. *See Holmberg v Holmberg*, 588 N.W.2d 720, 725 (Minn. 1999).

MPUC to manage its quasi-judicial proceedings without undue influence from a reviewing court. *Id.* Until the MPUC finally resolves all issues it cannot even be said that Excelsior has been “aggrieved” by the MPUC’s orders for purposes of appeal. The MPUC could change its orders under Minn. Stat. § 216B.25, or the outcome of Phase II could change the parties who may appeal and the issues appealed.

CONCLUSION

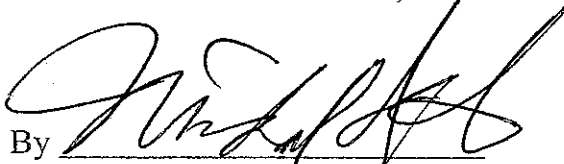
In the end, Excelsior has failed to demonstrate why this Court should grant immediate review of the issues it has identified in its Petition. NSP requests this Court discharge the Writ, reject discretionary review, and dismiss Excelsior’s appeal.

Dated: December 17, 2007

BRIGGS AND MORGAN, P.A.

Of Counsel:

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By 

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(612) 977-8400

**ATTORNEYS FOR NORTHERN STATES
POWER COMPANY, A MINNESOTA
CORPORATION**

STATE OF MINNESOTA
IN COURT OF APPEALS

In the Matter of the Petition of Excelsior Energy Inc. and Its Wholly-Owned Subsidiary MEP-I, LLC for Approval of Terms and Conditions for the Sale of Power from Its Innovative Energy Project Using Clean Energy Technology Under Minn. Stat. § 216B.1694 and Determination that the Clean Energy Technology Is or Is Likely to Be a Least-Cost Alternative Under Minn. Stat. § 216B. 1693

Excelsior Energy Inc. and MEP-I LLC,

Relators,

vs.

Minnesota Public Utilities Commission,
Northern States Power Company, a Minnesota corporation,

Respondents.

**AFFIDAVIT OF
MICHAEL C. KRIKAVA
IN SUPPORT OF**

**(1) DISCHARGE OF WRIT OF
CERTIORARI AND DISMISSAL OF
EXCELSIOR'S APPEAL**

AND

**(2) DENIAL OF EXCELSIOR'S
ALTERNATIVE PETITION FOR
DISCRETIONARY REVIEW**

MPUC Docket No. E6472/M-05-1993

App. Ct. Case Nos. A072305, A072306

STATE OF MINNESOTA)
) SS.
COUNTY OF HENNEPIN)

Michael C. Krikava, under oath, states:

1. I represent Northern States Power Company, a Minnesota corporation (“NSP”), in the above-captioned matter. I make this affidavit in support of NSP’s (1) Motion to Discharge Writ of Certiorari and Dismiss Excelsior’s Appeal and (2) Response Opposing Excelsior’s Alternative Petition for Discretionary Review.

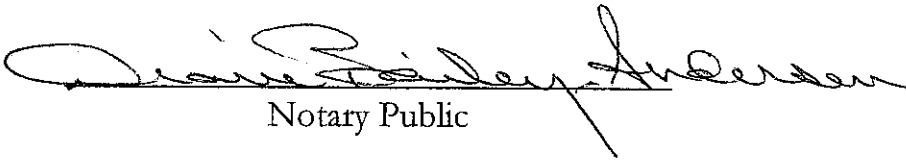
2. Attached as Exhibit 1 is this Court’s Sept. 11, 2007 Order in *In the Matter of the Application of Great River Energy, Northern States Power Company (d/b/a Xcel Energy) and Others for a Certificate of Need for the CapX 345-kV Transmission Project*, App. Ct. Case No. A07-1550.

3. Attached as Exhibit 2 is this Court's July 3, 2001 Order in In the Matter of the Petition of Northern States Power Company for Review of Its 1999 All Source Request for Proposals, App. Ct. Case No. C5-01-915.



Michael C. Krikava

Subscribed and sworn to before me
this 17th day of December 2007.



Notary Public

2118373v1



SEP 11 2007

STATE OF MINNESOTA

FILED

IN COURT OF APPEALS

In the Matter of the Application of Great
River Energy, Northern States Power
Company (d/b/a Xcel Energy) and Others
for a Certificate of Need for the
CapX 345-kV Transmission Project.

ORDER

A07-1550

Considered and decided by Toussaint, Chief Judge; Lansing, Judge; and Klaphake,
Judge.

**BASED ON THE FILE, RECORD, AND PROCEEDINGS, AND FOR THE
FOLLOWING REASONS:**

This certiorari appeal was filed on August 13, 2007. Relators North American Water Office and the Institute for Local Self Reliance seek review of a June 4, 2007 order issued by the Minnesota Public Utilities Commission (MPUC) and an August 2, 2007 order denying relators' motion for reconsideration. The June 4 order authorizes Great River Energy (GRE) and Northern States Power Company, d/b/a Xcel Energy (Xcel), to file a certificate of need application for the proposed construction of certain transmission facilities. The June 4 order grants Xcel's request for an exemption from certain filing requirements for the certificate of need application, and allows Xcel to provide substitute information.

EXHIBIT 1

The MPUC filed a statement of the case arguing that the appeal is premature because the June 4 order only decided preliminary procedural issues related to the filing of a certificate of need application and is not final. Xcel filed a motion to dismiss the appeal as premature. This court questioned the finality of the June 4 order. Relators filed a response opposing dismissal and the parties have filed jurisdiction memoranda.

Any party to a contested case before the MPUC may appeal from the decision and order of the commission in accordance with chapter 14. Minn. Stat. § 216.25 (2006). Under the Administrative Procedure Act (APA), any person aggrieved by a “final” decision in a contested case is entitled to judicial review by serving and filing a petition for a writ of certiorari. Minn. Stat. § 14.63 (2006).

An agency action is final and reviewable when the agency completes its decision-making process and the result of that process directly affects a party. *In re Intra-Lata Equal Access & Presubscription*, 532 N.W.2d 583, 588 (Minn. App. 1995), *review denied* (Minn. June 6, 1995). Relators argue that the June 4 order is immediately appealable as a final determination of relators’ right to information during the certificate of need application process with no further review available.

The June 4 order specifies that the MPUC’s exemption decision does not preclude any person from recommending, or the MPUC from requiring, the submission of additional information before the MPUC rules on whether the certificate of need application is substantially complete. Because the June 4 order allows for the submission

of additional information, the order does not determine the scope of the information that the MPUC will consider in ruling on the certificate of need.

Certiorari ordinarily is available only when the order from which the appeal is taken is a final determination of the parties' rights, rather than an interlocutory or intermediate order. *In re Application by City of Rochester for Adjustment of Serv. Area Boundaries With Peoples Coop. Power Ass'n*, 524 N.W.2d 540, 541 (Minn. App. 1994). Because the June 4 order is an interlocutory order that does not conclude the contested case on the planned certificate of need, the order is not immediately appealable under the APA. If necessary, relators may obtain review of the June 4 order in a proper appeal after conclusion of the contested case proceedings on the certificate of need application.

IT IS HEREBY ORDERED:

1. This appeal is dismissed as premature.
2. The writ of certiorari is discharged.

Dated: September 11, 2007

BY THE COURT



Chief Judge

STATE OF MINNESOTA
IN COURT OF APPEALS

OFFICE OF
APPELLATE COURTS

JUL 05 2001

FILED

In the Matter of the Petition of
Northern States Power Company
for Review of its 1999 All Source
Request for Proposals.

O R D E R

C5-01-915

Considered and decided by Toussaint, Chief Judge, Harten, Judge, and
Randall, Judge.

BASED ON THE FILE, RECORD, AND PROCEEDINGS, AND FOR THE
FOLLOWING REASONS:

This certiorari appeal was filed May 29, 2001. Relator Campaign to Respect
Energy and Environment seeks review of a February 7, 2001, order by the
Minnesota Public Utilities Commission (MPUC) rejecting requests for further
investigation of a bid by respondent Manitoba Hydro in a competitive bidding
process initiated by respondent Northern States Power Company (NSP). Relator
also seeks review of the MPUC's April 27, 2001, decision denying relator's petition
for a rehearing. This court questioned whether the February 7 and April 27 orders
are final and appealable. The parties submitted memoranda.

Any party to a proceeding before the MPUC or any other person, aggrieved
by a decision and order and directly affected by it, may appeal from the decision
and order of the MPUC in accordance with chapter 14. Minn. Stat. § 216B.52,

Exhibit 2


subd. 1 (2000). A certiorari appeal may be taken from "a final decision in a contested case." Minn. Stat. § 14.63 (2000). Agency action is final and reviewable when the agency completes its decision-making process and the result of that process directly affects a party. *In re Investigation Into Intra-LATA Equal Access & Presubscription*, 532 N.W.2d 583, 588 (Minn. App. 1995), review denied (Minn. Aug. 30, 1995).

The February 7 and April 27 orders are not final and appealable because the MPUC has not completed its decision-making process. The final step of the competitive bidding process, which requires MPUC approval of any final contract between NSP and Manitoba Hydro, has not occurred. This court will not review an interim agency order where the issues have not been fully determined. *Id.* at 589.

IT IS HEREBY ORDERED the writ of certiorari is discharged and this appeal is dismissed.

Dated: July 3, 2001

BY THE COURT



Chief Judge

AW/dr

AFFIDAVIT OF SERVICE BY MAIL

STATE OF MINNESOTA)
) ss.
COUNTY OF HENNEPIN)

Appellate Court Case No. A072306

Diane Bailey-Andersen, being first duly sworn, deposes and states that on the 17th day of December, 2007, she served the attached


1. NSP's Memorandum (1) Supporting Motion to Discharge Writ of Certiorari and Dismiss Excelsior's Appeal and (2) Opposing Excelsior's Alternative Petition for Discretionary Review; and
2. Affidavit of Michael C.

upon:

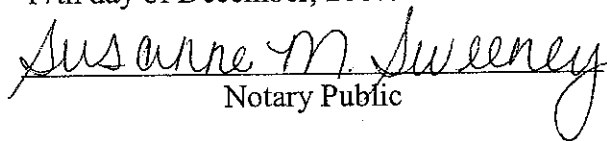
SEE ATTACHED SERVICE LIST

(which is the last known address of said attorney) by depositing a true and correct copy thereof in the United States mail, postage prepaid.




Diane Bailey-Andersen

Subscribed and sworn to before me this
17th day of December, 2007.


Notary Public

SERVICE LIST VIA PERSONAL SERVICE AND U.S. MAIL

**IN THE MATTER OF THE PETITION OF EXCELSIOR ENERGY INC. AND ITS WHOLLY-OWNED
SUBSIDIARY MEP-1, LLC FOR APPROVAL OF TERMS AND CONDITIONS FOR THE SALE OF POWER
FROM ITS INNOVATIVE ENERGY PROJECT USING CLEAN ENERGY TECHNOLOGY UNDER MINN.
STAT. § 216B.1694 AND A DETERMINATION THAT THE CLEAN ENERGY TECHNOLOGY IS OR IS
LIKELY TO BE A LEAST-COST ALTERNATIVE UNDER MINN. STAT. § 216B.1693**

**MPUC DOCKET NO. E-6472/M-05-1993
OAH DOCKET NO. 12-2500-17260-2
APPELLATE COURT CASE NO. A072306**

Commission and Administrative Law Judges

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