

JAN 09 2008

FILED

STATE OF MINNESOTA
IN COURT OF APPEALS

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

#A07-2305

Considered and decided by Toussaint, Chief Judge; Dietzen, Judge; and Worke, Judge.

BASED ON THE FILE, RECORD, AND PROCEEDINGS, AND BECAUSE:

This appeal challenges decisions issued by the Minnesota Public Utilities Commission on August 30, 2007 and November 8, 2007. The MPUC, Northern States Power, and Minnesota Power move to dismiss the appeal. Relators Excelsior Energy, et al. oppose the motion.

The right to appeal to this court by certiorari is more limited than the right to appeal in ordinary civil actions brought in the district courts. *In re Application by Rochester for Adjustment of Service Area Boundaries*, 524 N.W.2d 540 (Minn. App. 1994). The Minnesota Administrative Procedures Act “does not contemplate interlocutory appeals” from agency proceedings. *Id.* at 541-42. We will not review interim agency orders and one of the factors in our analysis is whether an order conclusively determines the issues in one agency docket number. *See In re Investigation*

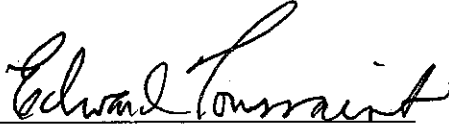
into Intra-LATA Equal Access & Presubscription, 532 N.W.2d 583, 589 (Minn. App. 1995), *review denied* (Minn. Aug. 30, 1995). In this agency docket number, the proceedings were bifurcated. The orders appealed make specific reference to additional proceedings on "Phase II." Although the agency appears to have determined the issues in "Phase I," the agency proceedings on this docket number have not been concluded. Accordingly, the certiorari appeal is premature.

IT IS HEREBY ORDERED:

1. This appeal is dismissed as premature and not taken from a final agency decision.
2. This order shall not preclude a future appeal from a final order, even if the future appeal raises issues that are substantially similar to those raised in this appeal.

Dated: January 8, 2008

BY THE COURT


Chief Judge