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

#A07-2306

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

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

Petitioners Excelsior Energy, et al. filed a direct appeal (A07-2305) from decisions by the Minnesota Public Utilities Commission. We have concluded that the appeal is premature and not taken from a final agency decision. In the alternative, petitioners request discretionary review of the same decisions.

When considering petitions for discretionary review, this court considers the impact of the ruling on the parties, whether the ruling involves an important legal issue, the procedural posture of the case, whether the ruling is discretionary or questionable, and other factors related to the particular case. *See generally Gordon v. Microsoft Corp.*, 645 N.W.2d 393 (Minn. 2002). Interlocutory review is disfavored. *Id.* at 403. And this court's review of agency decisions is even more constrained than its review of decisions

made by the district courts. See In re Application by Rochester for Adjustment of Service

Area Boundaries, 524 N.W.2d 540, 541-42 (Minn. App. 1994).

The issues identified by petitioners can be reviewed on appeal from a final agency

decision, the issues may benefit from the development of the record during Phase II, and

we conclude that granting interlocutory review would further delay the resolution of

agency proceedings. Accordingly, we deny discretionary review at this time.

IT IS HEREBY ORDERED the petition for discretionary review is denied.

Dated: January 8, 2008

BY THE COURT

Chief Judge