

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

In the Matter of a Joint LEPGP Site Permit,
HVTL Route Permit and Pipeline (Partial
Exemption) Route Permit Application for
the Mesaba Energy Project

FIRST PREHEARING ORDER

A prehearing conference was held September 26, 2006, in the Commission's large hearing room before Administrative Law Judges Steve M. Mihalchick and Bruce H. Johnson. The following persons noted their appearance:

Byron E. Starns and Matthew B. Seltzer, Leonard, Street and Deinard, 150 South Fifth Street, Suite 2300, Minneapolis, MN 55402, appeared on behalf of Excelsior Energy, Inc. (Excelsior Energy). Also appearing was Robert Evans, Vice-President Environmental Affairs, Excelsior Energy, Inc., 1100 Wayzata Boulevard, Minnetonka, MN 55305.

Christopher B. Clark, Assistant General Counsel, Xcel Energy, 414 Nicollet Mall, Fifth Floor, Minneapolis, MN 55401, and Thomas Erik Bailey, Briggs and Morgan, P.A., 2200 I.D.S. Center, 80 South 8th Street, Minneapolis, MN 55402, appeared on behalf of Xcel Energy.

Karen Finstad Hammel, Assistant Attorney General, 445 Minnesota Street, Suite 1400, St. Paul, MN 55101, appeared on behalf of the Department of Commerce (the DOC).

Kevin Reuther, Attorney at Law, Minnesota Center for Environmental Advocacy, 26 East Exchange Street, Suite 206, St. Paul, MN 55101, appeared on behalf of the Minnesota Center for Environmental Advocacy.

Carol Overland, Overland Law Office, 402 Washington St., Northfield, MN 55057-2467, appeared on behalf of minncoalgasplant.com (MCGP).

Robert Cupit, Senior Facility Planner, Minnesota Public Utilities Commission, 121 East Seventh Place, Suite 350, St. Paul, MN 55101-2147, named as Commission's Representative in this matter, appeared on behalf of the Public Utilities Commission (the Commission or PUC).

Based on the discussions during the prehearing conference, the submissions of the parties and interested persons, and upon all of the files, the Administrative Law Judge makes the following:

ORDER

Parties and Intervention

1. The only party to this matter named by the Commission in its Notice of Hearing was Excelsior Energy.

2. Petitions to Intervene as parties were filed Northern States Power Company d/b/a/ Xcel Energy and Minnesota Power on September 25, 2006. No objections have been received and they are admitted as parties.

3. Any person desiring to become a formal party must file a Petition to Intervene by February 12, 2007. Any person petitioning to intervene after that date may be restricted as to the scope of their participation. Any existing party that wishes to object must file an objection within seven days of service of the petition. Petitions to Intervene should comply with Minn. R. 1400.6200.

4. Any person who desires to be placed on the service list as a non-party participant must file a request with the Administrative Law Judges by February 12, 2007.

5. Members of the public need not become formal parties to participate in the hearings. Members of the public may offer either oral or written testimony, may offer exhibits for inclusion in the record and may question the parties' witnesses as set forth below.

Procedure

6. The Administrative Procedure Act;¹ the public hearing procedures for designation of sites and routes set forth in Minn. Stat. § 116C.57; the Siting Rules of the PUC and DOC (formerly EQB rules);² and the Siting and Routing Rules of the Office of Administrative Hearings;³ shall govern the conduct of the hearings in these matters. Provisions of these rules may be modified as necessary to accommodate recent statutory changes and to accomplish the statutory purposes.

7. As suggested by Excelsior Energy, and for the greatest convenience of the public, the two-stage hearing procedure permitted by Minn. R. 1405.1500, subp. 2, will be used. In Stage One, the prefiled direct testimony of each party's witnesses shall be admitted and those witnesses shall be cross-examined by the other parties. If time allows, limited questioning by other interested persons may be allowed. In Stage Two, other interested persons may present testimony and may question the witnesses who offered testimony during Stage One. Interested persons offering testimony may be questioned by other persons at the hearing.

¹ Minn. Stat. §§ 14.57 – 14.62.

² Minn. R. 4405.0200 – 4400.8000.

³ Minn. R. 1405.0200 – 1405.2700.

8. In the following schedule, the hearing is tentatively set for various dates in April. More precise dates will be set in the future.

9. The parties' witnesses are required to attend only the Stage One sessions at which they testify. However, all such witnesses are required to attend all Stage Two sessions and be available for public questioning, unless an exemption is obtained from the ALJs under Minn. R. 1405.2000 prior to the publication of the notice of hearing.

Schedule

The following schedule is adopted:

Date	Event
January 15, 2007	Excelsior's prefiled direct testimony
January 15, 2007 to start of hearing	Discovery
February 2, 2007	Draft Environmental Impact Statement ("EIS") available
February 12, 2007	Deadline for petitions to intervene and requesting non-party participant status
February 27-28, 2007	Joint Department of Commerce and Department of Energy public meetings on draft EIS
March 1, 2007	Other parties' prefiled direct testimony
March 1, 2007	Deadline for dispositive and other significant motions (7 days to reply)
March 15, 2007	Prefiled rebuttal testimony by all parties (no new issues)
March 19, 2007	Deadline for written public comments on draft EIS to Department of Commerce and Department of Energy
April 2-6, 2007	Stage One sessions in St. Paul, Taconite, and/or Hoyt Lakes
April 9-11, 2007	If necessary, additional Stage One sessions in St. Paul, Taconite, and/or Hoyt Lakes

April 20-24, 2007	If necessary, additional Stage One sessions in St. Paul, Taconite, and/or Hoyt Lakes
April 25-26, 2007	Stage Two sessions in Taconite and/or Hoyt Lakes
April 27, 2007	If necessary, additional Stage Two sessions in Taconite and/or Hoyt Lakes
May 15, 2007	Deadline for written public comments to ALJ for inclusion in record of contested case (comments must be postmarked or emailed by this date)
June 1, 2007	Final EIS
June 8, 2007	Initial briefs of parties and proposed findings (may address adequacy of EIS)
June 22, 2007	Reply briefs of parties
July 22, 2007	ALJ report and recommendation to PUC
August 20, 2007	Exceptions
September 6, 2007	Final PUC decision
October 6, 2007	State Register publication

Filing of Documents

10. Prefiled testimony and exhibits may be in any reasonable format that is understandable, logically organized, and capable of being cited by page and line number, paragraph number, or similar identifier.

11. Persons capable of doing so should E-file electronic versions of their documents on the E-File system of the Public Utilities Commission, the Department of Commerce, and the Office of Administrative Hearings (the E-File system). Such E-filing also constitutes service upon persons who have agreed to accept e-filed documents in this docket.

12. All documents filed, including prefiled testimony, but excluding information requests and responses, shall be filed as follows:

a. The original document shall be filed using the E-file system wherever feasible. Otherwise, the original document shall be filed by delivery or mail to:

The Honorable Steve M. Mihalchick
Office of Administrative Hearings
100 Washington Square, Suite 1700
Minneapolis, Minnesota 55401-2138

b. Regardless of the method of filing the original, courtesy copies shall be mailed and emailed to the Administrative Law Judges.

c. After the Administrative Law Judges' Report is issued, the parties shall file the original of all documents with the Executive Secretary of the Commission, in the manner provided for by the Commission.

13. Copies of all documents shall be served on the persons listed on the attached service list, in the number indicated. E-filing is sufficient service on those persons so indicated on the official service list. Persons willing to accept E-filing as service should notify the Administrative Law Judge. The list will be revised as necessary by the Office of Administrative Hearings. Service shall be made according to the most current service list provided to the parties by the Office of Administrative Hearings.

14. The effective date of filing shall be the date the document is E-filed, mailed by U.S. Mail, or delivered to the Administrative Law Judges or Executive Secretary of the Commission.

15. Proof of service shall be filed with each filed document or within three business days thereafter. Parties using the E-filing system must retain the unique document identifier as proof of service through that system.

16. If nonpublic data is filed with the Administrative Law Judge or Commission, it shall be prepared and marked in accordance with the Commission's September 1, 1999, Revised Procedures for Handling Trade Secret and Privileged Data. Those procedures may be viewed at www.puc.state.mn.us/docs/tradsecret.pdf.

Discovery

17. Other than Information Requests between parties, discovery may only be conducted upon motion to the Administrative Law Judges.⁴

18. Discovery between parties shall be by Information Request and response. Information Requests shall normally be made by mail (or e-mail where available) to the party from whom the information is sought and a copy shall be mailed (or e-mailed) to all parties. Information Requests containing references to other documents shall be sufficiently detailed to inform the other parties of the nature of the request. Information Requests and responses shall not be sent to the Administrative Law Judge or the Court Reporter. The party responding to the Information Request shall provide the

⁴ Minn. Rules 1400.0200 – 1400.2700 do not provide for discovery, except that Administrative Law Judges are authorized by Minn. R. 1400.0400, subp. 3, to rule on motions for discovery.

information requested within ten business days after receipt of the request. There shall be a continuing obligation to update and supplement information responses. The information need not be supplied as a matter of course to other parties unless specifically requested by a party. Information Requests received after 4:00 p.m. on business days or on weekends or State holidays shall be considered to be received on the following business day, except that any U.S. Mail received during business hours shall be considered to be received on the same day.

19. In the event the information cannot be supplied within the required time, the responding party shall notify the requesting party as soon as reasonably possible in advance of the deadline of the reasons for not being able to supply the information and to work out a schedule of compliance with the requesting party.

20. Parties asked to provide information they deem confidential or nonpublic may require the requesting party to comply with the terms of a reasonable protective agreement or the Minnesota Government Data Practices Act. A protective order may be obtained on application to the Administrative Law Judge.

21. Given the extensive discovery in Docket No. E-6472/M-05-1993 concerning some related issues, it would appear that discovery in this matter should be more limited and less burdensome. Disputes concerning the reasonableness of discovery requests and the timing and sufficiency of responses shall be resolved by the Administrative Law Judge upon motion of a party. Notice of such a motion should be made by email if possible and may be heard by telephone conference among the Administrative Law Judge and affected parties.

Offering of Prefiled Testimony and Order of Testimony

22. At the hearing, prefiled testimony and exhibits shall be offered and received as hearing exhibits and exhibit numbers shall be assigned at that time. In the case of E-filed documents, the sponsoring party will provide the unique E-file system designation of the document in lieu of a paper version. Prefiled testimony that is amended in total or that is not offered into the record shall be considered withdrawn and the sponsoring witness may not be cross-examined concerning the withdrawn testimony. Except for cause shown, all substantive revisions or corrections to any prefiled testimony shall be filed with the Administrative Law Judge and served on the parties no later than three days before the evidentiary hearing starts. E-filing shall be used where possible.

23. Except for good cause shown, any new affirmative matter that is not offered in reply to another party's direct or rebuttal evidence shall not be offered in rebuttal or surrebuttal testimony and exhibits.

24. Unless the parties agree otherwise, the order of testimony and questioning in the Stage One sessions of the hearing shall be: Excelsior Energy, Intervenors in order of intervention, and the Department.

Examination of Witnesses during Stage One

25. Witnesses shall be allowed five minutes to summarize their prefiled testimony. Additional time may be allowed if necessary or a witness to respond to new issues raised by other parties, if no response was previously allowed.

26. Parties shall examine and cross-examine witnesses through their attorneys, if they are represented by counsel. Any party not represented by counsel may examine and cross-examine witnesses through any one representative chosen by the party. If time permits, interested persons may examine witnesses during Stage One sessions.

27. Except for good cause shown, objections by any party relating to the qualifications of a witness or the admissibility of any portion of a witness's prefiled testimony shall be considered waived unless the objecting party files and serves an objection prior to commencement of the evidentiary hearing. If an objection is made by a party, the party shall be permitted to lay further foundation for the objection through cross-examination of the witness. Any prefiled testimony that is not objected to shall be admitted during the evidentiary hearings without the necessity of laying foundation for the testimony.

Dated: January 19, 2007

/s/ Steve M. Mihalchick
STEVE M. MIHALCHICK
Administrative Law Judge

/s/ Bruce H. Johnson
BRUCE H. JOHNSON
Administrative Law Judge



STATE OF MINNESOTA
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January 19, 2007

All Individuals on Attached Service List

Re: *In the Matter of a Joint LEPGP Site Permit, HVTL Route Permit and Pipeline (Partial Exemption) Route Permit Application for the Mesaba Energy Project, OAH Docket No. 12-2500-17512-2 MPUC Docket No. E-6472/GS-06-668*

Enclosed herewith and served upon you by mail is the Administrative Law Judges' First Prehearing Order in the above-entitled matter.

Sincerely,

STEVE M. MIHALCHICK
Administrative Law Judge

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

SMM:mo
Encl.
cc: Docket Coordinator

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Administrative Law Division & Administrative Services
Facsimile: (612) 349-2665

Workers' Compensation Hearings Division
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ALJ's SERVICE LIST 1/19/07

Re: In the Matter of a Joint LEPGP Site Permit, HVTL Route Permit and Pipeline (Partial Exemption) Route Permit Application for the Mesaba Energy Project

Persons with the E-File notation (EF) can be served electronically using the PUC E-Filing system. Any document not E-filed must be served by mail or courier (with additional copies as noted).

The Honorable Steve M. Mihalchick
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