

Kopp: Why go through this before there's any power to move it around

Osteraas: Three issues to raise

Questions in the statute itself

Three key observations

1) Stt. Exempts facilities and not entities, subd. 1 means FACILITY, not an entity

Subd. 2 says Innovative Energy Project, PROJECT, for generation facilities and transmission facilities associated with generation facilities. No entity gets benefit, rather facilities described are the ones exempt from requirements, therefore which entity permits constructs or owns is irrelevant to whether exemption applies

2) Subd. 2 – ask what constitutes “transmission infrastructure associated with facilities” and we know exactly what that is, MISO is the only party with the authority or capacity to determine what is necessary to interconnect to the grid. Appendix A of large generated agreement signed last July, and no party has standing or authority to dispute what transmission is necessary. MISO makes no distinction between associated with project or not associated because MISO's point is to determine what is necessary what is associated, and MISO has already determined that fact. Staff raises whether there is distinction of what is necessary and what is not, and we have an agreement, and under IEP statute, those in the MISO agreement, those are exempt.

3) Final observation, exemption from CoN for transmission is independent stand alone exemption, does not contain any other criteria, none of the other pending proceedings, PPA, Phase II, siting and routing, none have any bearing. That analysis comes directly from the statute, and there is no way to allege other impending criteria.

MISO has established necessary transmission, IEP statute creates statute for certain facilities, and question before you today is simple, and the Commission should grant petition and direct MP to develop transmission necessary for the project.

Why presented separately? MP elected to do the upgrades MISO determined necessary, had they declined, we would have constructed. Under the agreement, we have to come to you and seek confirmation of the exemption. The statute speaks very clearly. October decision of the Commission confirms that, but we have

May 1 of this year is an important date in this proceeding. Interconnection agreement, MP required that May 1, 2008, be included as the date by which the Commission should approve this. Excelsior will have to either spend hundreds of thousands of dollars on CoN finding or tell MP to stop construction. I'm not clear why they're asking for a delay, they know there's the May 1 deadline.

Timing, CoN, independent regulatory exemption, other pending Mesaba dockets are relevant. No facts are in dispute. We've taken your direction of Phase I Order, and we've been discussing this with other prospective customers. It's important that this proceed as rapidly as possible.

Request that they grant our Petition.

Another point, I don't see the Department at the table, and that they agree with our interpretation.

Marya White, MOES: Mr. Osteraas is correct, we agree with Excelsior's reading of CoN statute, and that MISO identified interconnection is what should be subject to the CoN exemption.

David Moeller: MP raises this, before decision in August, we feel this is ambiguous. Staff raises it, what is demarcation between exempt and non-exempt. What exemptions apply. It is this commission that makes that determination as to what applies. MP would support either Commission Option 1 or 2. I feel it is appropriate only if this project is going forward, and if you need additional information from the parties that you take the time to get the information as you have done in other dockets.

Pugh: Can you tell us about the \$150k deposit and if there's any way to get around that if we vote for 1 or 2? (3 gets around it).

Moeller: MP was willing to get into CoN process, and Excelsior can continue to suspend activity and Excelsior would not have to put forward the \$150k deposit. The way the interconnection agreement is worded, it would be necessary

Kopp: if there's a definitive statement that is is not going forward between now and May 1, 150k is not needed?

Moeller: I believe so, I didn't negotiate it, but I believe it.

Kopp: If you 're not going forward with CoN process, then we don't have to do it.

Oster: The agreement says that if we don't get an Order from Commission, we have to post it, and if we suspend, that's not fair to those waiting in queue. we have to get confirmation.

Kopp: You have a choice

Ost: we have a choice

Pugh: How is MISO impacted as to whether it goes through?

Ost: Resolution of other pending proceedings has no impact on interconnection agreement, until you miss the deadlines that are established in the interconnection agreement, the more likely the deadlines may not be met. MISO procedures assume it will be completed

Pugh: What does MISO do about recalculating everybody else behind the project?

Ost: They have to do study work.

Clark: We're a minor player, one of the few dockets with Excelsior. Staff briefing paper set up the issue correctly. Although commission an act today and decide fact finding MISO has set, we think there are existing legal issues, and fact issues such as whether it is necessary if it does not go forward. Is that wise if Phase I or Phase II doesn't proceed, and other factual issues related to timing. Regardless there are other opportunities coming before you soon, and if you wanted to delay this issue until Phase I or Phase II.

Ost: Excelsior pays for everything in the interconnection agreement, and MP isn't spending money that isn't ours. Interconnection only covers Unit I. There seems to be presumption in the room, that until the other dockets are resolved, that it's not necessary, and we are in discussions with other parties, and there are many other entities concerned about meeting baseload needs with nothing but gas and wind. There are a lot of load serving entities concerned with how we'll serve. This particular issue before us today has nothing to do with the other dockets.

Pugh: How does location affect it?

Ost: No impact.

Pugh: If not by May 1, that would kick in the \$150k, and the agreement says it could also be the Court, and MP intends to appeal the decision

Ost: That may well be the case. We thought that May 1 would be enough time, and we are where we are, it is April 10. All we can ask is that the Commission act today.

Pugh: Relation to interconnection to next docket item. You folks can build this plant anyway. Is that why this issue comes to the fore, and the agreements don't matter. You have a right to build a plant regardless.

Ost:

MOI: I don't see in the statute where it applies.

Ost: Statute is clear

MOI: NO

Ost: The only commission is that the project be designated as an Innovative Energy Project, and the commission has made that determination.

Kopp: If you were spending my money, I would ask why you want to build transmission, and I would say hold it. Tell me why you want to spend my money to transmit power you don't have.

Ost: I don't understand your question.

Kopp: It's simple. Why build powerline where there's no plant.

Ost. We will know by the time that we close whether there will be a power plant

Kopp: But you're choosing to spend \$150k.

Ost: No, we're only spending it unless it's not confirmed. We only spend that if

Reha: So what you're looking for is a declaratory judgment to say that the transmission facilities are exempt under the IEP, wouldn't it also trigger your ability to begin the environmental report, so isn't that almost putting the cart before the horse, because you don't know whether that plant will be approved, we haven't looked at Phase II yet and there were issues with Phase I as you know, and it seems like that might be an extra bootstrap to approve a project where it may not be prudent to approve it, and I interpret that statute the way you do, but we may.

Ost: All of these proceedings are subject to the environmental review and siting, but all of those are in jeopardy pending resolution of this issue. We're asking for confirmation of what's been stated by the legislature, and that doesn't bootstrap the Commission in any way, and it would allow us to move forward in the siting and routing process. The first question in the siting and routing is whether the CoN has been issued.

Reha: wants MP's response.

MP: Your premise is correct, we can build in time of the facility is approved. Time is at least 4-5 years, it would be a route permit and we can get it done in that period. Our issue is that landowners along the route might say a CoN is necessary, and clarification is in order.

Reha: Mertis, lack of clarity on transmission:

MP: Staff pointed out, what does associated facilities mean? To Blackberry, or transmission beyond the initial point of interconnection, lines out of Boswell that are needed for network upgrades, and ambiguity, can another entity receive a benefit of something that Excelsior sought and received from this commission.

Reha: take it a step further, and assume that we agree with Excelsior that associated transmission infrastructure is exempt, what would be the next step in this process?

MP: Up to Excelsior to do the routing process, have MP do the due diligence and all the work that goes into that, under interconnection agreement.

Reha: Ambiguity would have to be litigated, or to proceeding to clarify that?

MP: Would come up in routing proceeding or landowner challenge. One of the other is eminent domain, and MP or Excelsior responsibility for eminent domain, question whether exemption lies or not.

Ost: It's associated with generation facilities, only one party in the country has the authority

Kopp: I don't believe that plant will be built. I believe there is going to be cleaner ways to use coal. That plant on that site won't ever be built. Why would I in good conscious ever do anything to hold out hope for that process, why would I ever do that?

Ost: There are significant players in the industry that disagree. Shortlisted for federal loan guarantees.

Kopp: That may be, if they see this as a way to solve the problem. What they see is wrong. It's not by the coal mine and it's not by the power demand. To put it in this particular spot, it makes no sense. This plant was a good idea as a way of burning/using coal, at this point at this point in time this plant is a bad idea, and I'm not going to do anything to encourage it, not going to encourage transmission, not spending any money on building this plant.

Ost: Why take any action that might assure it won't be built? Why jeopardize their vision and their ability to pursue

Kopp: Because I would be acting on what I think is a bad idea, you're not going to build it here.

Ost:

Kopp: I went to all the meetings on clean coal and coal gasification, and I think coal gasification is a good idea, and think it will be part of what we will do in the future. This plant in this location won't be part of that. If I've gotten there ahead of time, I'm not going to act on what's not going to be done.

Ost: This is where the legislature told us it would be.

Kopp: It wasn't the legislature, this location wasn't discussed.

Ost: I wasn't there at the time...

MOI: I was there, and it was Excelsior

Kopp: Motion

Pugh: I'll try #3, that the statute is clear, that it provides for an exemption, it isn't entity specific and that MP is contemplated by the legislation. The legislation has marked this project as important for Minnesota's energy future. If we don't act, the agreement between the parties seems to say MP has to prepare CoN, an expense less than legislature expect. I think a ruling on Option 3 would be consistent with legislative intent, I don't know that this project will come... I was also moved by the testimony of Dept. of Commerce, for those

Kopp: Motion, all in favor? (Ayes all along)

Reha: I don't want to be responsible for squelching this deal until we've heard all the testimony, and I wasn't prepared to do that, and when we dealt with it before, I wanted to maintain designation as an IEP, and our job is to attempt in the best way to implement them. I thought it was putting the cart before the horse, and why open up a can of worms right now, it is still a real iffy circumstance if this will ever get off the ground, the cost, there's no PPA, I don't know if there ever will be one. But if my vote to not do what the statute recognizes and put it off is going to further hinder the project, I don't want to be responsible for that either, I was on the fence. I would appreciate more deliberation before we vote.

Kopp: I was not, the Commission did not see, Excelsior going forth saying we need the power. At that time, it was myself who brought it up, we're not going to make Xcel ratepayers pay for it by themselves when they don't want to buy it, we don't need it, and I'm not going to force it. Anyone generating power, do you need it and can you buy this power. Nobody has come forward to say we need this power, can afford it, and it would fit in our generation portfolio. I can't imagine you'd find any IPP who could find capital for a project that no one needs.

Ost: This is a narrow issue before you today, and we have been seeking other customers, and if people think gas and wind is cheaper than what we're proposing, we're going to have to take a hard look at it.

Reha: take more time as to why you feel if we delay because we don't need to make it because the generation project is a long ways away, how is that going to prevent your project from going forward.

Ost: has to do with performance under the agreement, allowed three years suspension, and we're getting further behind.

Reha: We could certainly take this up at another time, but I agree with Pugh that the statute is clear (reads statute). I think statute is pretty clear. The question is whether we even need to decide that now and whether we can put that off for another day. Phase II is coming before us, why give the green light for anything that may not make it, you're pretty sure it won't make it, but I really don't want to, through a procedural issue, put so many roadblocks forward, where they haven't had an opportunity to have this resolved. I don't want to, on technical procedural issue, that this project doesn't get off the ground. Will vote with Mr. Pugh.

MOI: Request for clarification/ID of vote. Janet said staff wasn't clear either.

Kopp: Boyd and Chair voted NO, Reha, O'Brien and Pugh voted yes.

Number 9: Request from Excelsior for indefinite stay, staff wasn't sure that it should be even brought before the Commission, others commented, and staff brought it to Commission.

Ost: no comments really,

Clark: When Excelsior filed, asked for contested case, asked to bifurcate proceeding into Phase I and Phase II, we completed full record on each phase, and we believe it's appropriate to come before commission. We believe there are a lot of dockets before the

Moi: We've been in this for years, and there was a lot of push on part of Excelsior to hurry, to not delay, and now they're just looking for delay of the inevitable, not fair to leave us twisting in the wind.

Kopp: Motion is in order

Reha: Move Option 2

Kopp: Motion 5-0