

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

**ORDER ON SECOND SET OF  
MOTIONS TO EXTEND HEARINGS  
AND COMMENT PERIOD**

This matter is before Administrative Law Judge Steve M. Mihalchick on the March 17, 2008, joint motion of mncoalgasplant.com and Public Energy – Mesaba (MGCP - PEM) to reopen the record and the hearing to examine recent comments by the U.S. Army Corps of Engineers (the Corps or COE) and the Environmental Protection Agency (EPA) on the Draft EIS. Responses to the motion were submitted by the Department of Commerce (Department), Excelsior Energy, and MCGP-PEM.

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).

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

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

Based upon the record, and for reasons set forth in the accompanying Memorandum, the Administrative Law Judge makes the following:

**ORDER**

**IT IS HEREBY ORDERED** that:

1. The Motion of MCGP – PEM to reopen the record and hearing is **DENIED**.
2. This Order does not limit the right or any party or other person to submit comments to the Administrative Law Judge on the “adequacy” of the Final EIS or its “impact” upon the issues in this matter, which were set forth in Paragraph 2 of the Order on Motions to Extend Hearing and Comment Period as follows:
  - a. Excelsior Energy, the only party in this matter, and any other person, agency, or organization, may submit comments to the Administrative Law Judge that address the “adequacy” of the Final EIS under Minn. R. 7849.5300, subp. 10, as well as comments that address the impact of any

provision in the Final EIS upon issues to be determined by the Administrative Law Judge and the Public Utilities Commission in this matter.

b. Such comments on the “adequacy” of the Final EIS or its “impact” upon the issues in this matter shall be filed with the Administrative Law Judge within ten business days after filing of the Final EIS.

3. MCGP – PEM’s request that its motion be certified to the Commission is **DENIED**.

Dated: April 17, 2008

/s/ Steve M. Mihalchick

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STEVE M. MIHALCHICK  
Administrative Law Judge

### MEMORANDUM

Neither MCGP nor PEM are formal parties to this matter, but their joint request is being considered because it involves a matter of significant to interest to certain members of the public affected by the Mesaba Project.

This motion seeks substantially the same relief as MCGP sought in its motion of February 21, 2008, and which was granted to a limited extent. That was done to allow the public to comment on changes that may be made in the Final EIS, particularly as a result of recent changes by Excelsior Energy that may affect the Final EIS. MCGP – PEM now point to concerns in the recent comments by the Corps and EPA that may affect the Final EIS. There were, indeed, some significant negative comments. But the process is ongoing, and not under review here.

The Administrative Law Judge finds no need to again extend the schedule to allow more time for responses to the comments of the Corps and the EPA, or whatever other comments the EIS writers may receive. Ten days after filing of the Final EIS is still sufficient time to prepare and file such comments with the Administrative Law Judge.

There is no reason to believe that Final EIS will not identify and respond to the comments of the Corps and EPA, and other timely substantive comments received on the Draft EIS, as required by Minn. R. 7849.5300, subp. 9, and by federal requirements. It is apparent that the federal agencies, and state agencies as well, are continuing their discussions with Excelsior Energy and may file additional comments on the EIS. Excelsior Energy will likely do so as well. It is also apparent that the completion date of the EIS process cannot be predicted with accuracy. That is why the Order on Motions to Extend Hearing and Comment Period called the filing date of the Final EIS

“anticipated” and set future anticipated dates based upon whatever the filing date turned out to be.

The issues presented here are neither difficult nor novel. They do not present a controlling question of law. There is no need that they be certified to the Commission, particularly at this late stage of the proceedings.<sup>1</sup>

S. M. M.

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<sup>1</sup> See Minn. R. 1405.2200.



## MINNESOTA OFFICE OF ADMINISTRATIVE HEARINGS

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April 17, 2008

To All Individuals on the 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; MPUC Docket No. E-6472/GS-06-668; OAH Docket No. 12-2500-17512-2***

Dear Parties:

The document listed below has been filed with the E-Docket system and served as specified on the attached service list.

Order on Second Set of Motions to Extend Hearings and Comment Period

Sincerely,

/s/ Steve M. Mihalchick

STEVE M. MIHALCHICK  
Administrative Law Judge

Telephone: 651-361-7844  
steve.mihalchick@state.mn.us

SMM:mo  
Encl.

ALJ's SERVICE LIST 2/27/08

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

Serve one copy of the document or item, unless otherwise indicated, on the following persons. If you E-File a document on the PUC E-Filing system, persons with the E-File notation (**EF**) below need not be served a paper copy, unless otherwise indicated.

The Honorable Steve M. Mihalchick  
Office Of Administrative Hearings  
PO Box 64620  
St. Paul, MN 55164-0620  
(**EF** plus 1 paper copy)

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In addition to E-filing or paper service, electronic copies should also be e-mailed to the following persons:

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**CERTIFICATE OF SERVICE**

<b>Case Title: <i>In the Matter of a Joint LEPGP Site Permit, HVTL Route Permit and Pipeline (Partial Exemption) Route Permit Application for the Mesaba Energy Project</i></b>	<b>OAH Docket No. 12-2500-17512-2 MPUC Docket No. E-6472/GS-06-668</b>
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Mary Osborn certifies that on the 17th day of April, 2008, she served a true and correct copy of the **Order on Second Set of Motions to Extend Hearings and Comment Period**; by electronic mail (and as indicated on the Service List) to the following individuals:

All Individuals on the Official Service List	