

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

In the Matter of the Petition of Excelsior Energy Inc. and Its Wholly-Owned Subsidiary MEP-I, LLC For Approval of Terms and Conditions For The Sale of Power From Its Innovative Energy Project Using Clean Energy Technology Under Minn. Stat. § 216B.1694 and a Determination That the Clean Energy Technology Is Or Is Likely To Be a Least-Cost Alternative Under Minn. Stat. § 216B.1693

OAH Docket No.12-2500-17260-2
MPUC Docket No. E-6472/M-05-1993

**EXCELSIOR ENERGY INC.'S
COMMENTS AND MOTION TO
QUASH MNCOALGASPLANT.COM'S
REQUESTED SUBPOENAS TO
COUNTY OF ITASCA, CITY OF
NASHWAUK AND CITY OF TACONITE**

INTRODUCTION

Pursuant to the Administrative Law Judge's invitation for comments of June 21, 2006 and the Court's invitation to submit a motion to quash of June 28, 2006, Excelsior Energy Inc. hereby moves to quash Mncoalgasplant.com's requested Subpoenas to the County of Itasca, City of Nashwauk and City of Taconite. Excelsior does so on the grounds that the Initial Document Requests contained in these Subpoenas constitute overly broad, unduly burdensome inquiries upon non-parties, which inquiries are unrelated to the issues in this matter and are not likely to lead to the discovery of any relevant information.

ARGUMENT

According to the established procedure of the Minnesota Public Utilities Commission, proper least-cost analysis focuses on costs that are actually incurred by a utility on behalf of its ratepayers. Ms. Overland's subpoenas and document requests are erroneously predicated on the assertion that the Commission's "least-cost" analysis should take into account infrastructure costs that municipalities and local governments elect to assume.

Under the rubric, "Information and Document Requests regarding analysis of costs of ancillary services as required by Minn. Stat. § 216B.1693(a)," Ms. Overland has served upon these local governments some 53 Document Requests, a number of which include numerous subparts.¹ The Requests seek voluminous information arguably related in varying degrees to these local governments' possible contributions to the development of infrastructure relating to the Mesaba Project, including rail and roads, natural gas pipelines, and transmission lines. Ms. Overland's

¹ It should also be noted that in Mncoalgasplant.com's First and Second Information Requests to Excelsior, Ms. Overland has served some 250 and 180 inquiries, respectively, counting subparts. Many of the inquiries in her Second Requests are duplicates of those in her First Requests, and numerous Requests to Excelsior repeat or encompass the Requests she wishes to make to the local governments in the Subpoenas.

Information Requests inquire about state and federal funding available to cover these infrastructure costs, as well as available county funding, including bonding and grants. The inquiries also pursue the identities of land owners of parcels where easements might be necessary and delve into conflict-of-interest policies, nepotism policies, and supposed payment or compensation agreements between Excelsior and the local governments or government officials “to facilitate this infrastructure development.”

Meanwhile, Minn. Stat. § 216B.1693(a), on which these myriad inquiries all are allegedly based, reads as follows:

If the commission finds that a clean energy technology is or is likely to be a least-cost resource, including the costs of ancillary services and other generation and transmission upgrades necessary, the utility that owns a nuclear generating facility shall supply at least two percent of the electric energy provided to retail customers from clean energy technology.

(Emphasis added.)

This “least-cost resource” language of the Clean Energy Technology Statute cannot reasonably be read to refer to the cost of the technology to the federal or state governments, or to counties or cities which voluntarily choose to participate in the provision of infrastructure related to a project using the technology. Rather, Excelsior respectfully suggests that the only appropriate reading of this “least-cost resource” language refers to its cost to the subject utility, Xcel, and its ratepayers. Thus, the condition imposed by Section 1693(a) is whether the Mesaba Project’s IGCC technology is or is likely to be for Xcel and its ratepayers a least-cost resource, including the costs of ancillary services and other generation and transmission upgrades necessary. If the answer proves to be yes, then the statute obliges Xcel to supply at least two percent of the electric energy provided to its retail customers from the Mesaba Project.


Under these circumstances, the information Ms. Overland seeks from the local governments has absolutely no relevance to this proceeding. The only pertinent question is which if any of the subject infrastructure costs will be, or even may be, ultimately included in the proposed PPA between Excelsior and Xcel. The three local governments subject to Ms. Overland’s proposed subpoenas cannot and do not know which, if any, of these costs might ultimately appear in the PPA and might thereby be borne by Xcel and its ratepayers. Accordingly, Ms. Overland seeks to impose huge discovery burdens upon these three non-parties in an effort to obtain information which has absolutely no bearing on whether the Mesaba Project’s technology is likely to be a least-cost resource for Xcel. Ms. Overland cannot seriously contend that any grants, bondings or guaranties by the federal or state governments in favor of the Mesaba Project should be counted as additional costs, for purposes of determining whether this technology is likely to constitute a least-cost resource. Similarly, any contributions by the subject local governments related to the Mesaba Project cannot be deemed “costs” under Section 1693(a) and will shed absolutely no light on the determination of whether this technology is likely to be a least-cost resource for Xcel.

We also note that many of Ms. Overland's inquiries appear to be focused on issues which will be properly addressed in the siting and environmental impact statement proceedings respecting this Project, which are separate from this docket matter.

CONCLUSION

For all of these reasons, the proposed Subpoenas constitute overly broad, unduly burdensome inquiries upon non-parties, which are impertinent and are not likely to lead to the discovery of any relevant information. Accordingly, Excelsior respectfully requests that the proposed Subpoenas be quashed.

Dated: June 28, 2006.



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