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May 12, 2006

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

RE: Notice of Objection to Petition for Intervention of Excelsior Energy Inc.
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.
MPUC Docket No. E-6472/M-05-1993; OAH Docket No. _____.

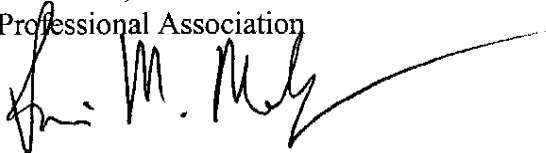
Dear Judge Mihalchick:

Pursuant to Minn. R. 1400.6200, subp. 2, Excelsior Energy Inc. herewith respectfully submits an original and one copy of its Notice of Objection to mncoalgasplant.com's May 6, 2006 Petition for Intervention in the above-referenced proceeding. As discussed in Excelsior's Objection, mncoalgasplant.com has not made the requisite showing to intervene under Minn. R. 1400.6200.

Should you have any questions, please feel free to contact me directly.

Sincerely,

LEONARD, STREET AND DEINARD
Professional Association



BYRON E. STARNS
SCOTT G. HARRIS
BRIAN M. MELOY

Enclosures

cc: Service List

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

<i>In the Matter of a Petition by Excelsior</i>)	
<i>Energy Inc. for Approval of a Power</i>)	Docket No. E-6472/M-05-1993
<i>Purchase Agreement under Minn. Stat.</i>)	
<i>§ 216B.1694, Determination of Least Cost</i>)	
<i>Technology and Establishment of a</i>)	OAH Docket No.: _____
<i>Clean Energy Technology Minimum</i>)	
<i>Under Minn. Stat. §2 16B.1693.</i>)	

**NOTICE OF OBJECTION TO MNCOALGASPLANT.COM'S
PETITION FOR INTERVENTION OF EXCELSIOR ENERGY INC.**

Pursuant to Minnesota Rule 1400.6200, subpart 2, Excelsior Energy Inc. ("Excelsior") respectfully submits its Notice of Objection to mncoalgasplant.com's ("Petitioner") May 6, 2006 Petition for Intervention in the above-referenced proceeding. As discussed below, Petitioner has failed to (1) provide a sufficient legal or factual basis for its intervention, (2) demonstrate a direct stake in the outcome of this proceeding, and (3) show that any alleged interests are not already adequately represented by existing parties to this proceeding, as required by Minnesota Rule 1400.6200. Accordingly, Petitioner's intervention should be denied.

**I.
BACKGROUND**

On December 27, 2005, Excelsior filed a Petition under the Innovative Energy Project statute, Minn. Stat. § 216B.1694 ("IEP Statute"), for purposes of obtaining an order from the Commission determining that Excelsior's proposed power purchase agreement ("PPA"), through which Northern States Power Company d/b/a Xcel Energy ("NSP") would purchase all of the electricity and capacity to be provided from the operation of the Mesaba Energy Project Unit One ("Mesaba Project" or "Project"), is in the public interest.

The Petition was also filed under the Clean Energy Technology statute, Minn. Stat. § 216B.1693 (“CET Statute”), for purposes of obtaining an order of the Minnesota Public Utilities Commission (“Commission”) that (a) the clean energy technology to be employed in the Mesaba Project is or is likely to be a least-cost base load resource and (b) NSP must acquire from the Mesaba Project Units One and Two a Commission established percentage of at least thirteen percent of the electric energy provided to retail customers. On April 25, 2006, the Commission issued a Notice and Order for Hearing referring the matter to the Office of Administrative Hearings for contested case proceedings. On May 6, 2006, Petitioner filed a Petition for Intervention. As discussed below, Petitioner’s request for leave to intervene should be denied.

II. DISCUSSION

Minnesota Rule 1400.6200, subpart 2 provides that an entity seeking to intervene in a contested case proceeding must show how its “legal rights, duties, or privileges may be determined or affected by the contested case” or how it “may be directly affected by the outcome.” In other words, the Petitioner must show it is a legally-recognized person or entity that could incur “injury in fact” to establish standing.¹ In addition, a Petitioner must show that it has an interest that is not “common to the public” and which is not adequately represented by one or more other parties participating in the case.² mncoalgasplant.com’s request for intervention does not satisfy these requisite standards.

¹ To show “injury in fact” a party must allege that her or his interests have been or will imminently be injured by the challenged administrative action. 21 Minn. Prac., Admin. Prac. and Proc. § 12.02.2 (2006). The injured interest must be identifiable. *Weber v. Hvass*, 626 N.W.2d 426 (Minn. Ct. App. 2001) (a litigant has standing when he or she has suffered an actual injury or otherwise has a sufficient stake in a justiciable controversy.) And the petitioner must allege specific concrete facts demonstrating that the proceeding may impact her or him with “particularized injury.” *United States v. Richardson*, 418 U.S. 166, 194 (1974) (plaintiff must allege “some particularized injury that sets him apart from the man on the street.”).

² Minnesota Rule 1400.6200, subpart 3 provides that an intervention will be rejected if the “judge finds that the petitioner’s interest is adequately represented by one or more parties participating in the case.” *See also*, Minn. R. 7829.0800, subp. 2 (noting that a Petitioner must establish that “the outcome of the proceeding will bind or affect the

Initially, while Petitioner avers that mncoalgasplant.com is an “informal association of landowners and residents” that may be impacted by the Mesaba Project, no landowner or resident is identified in the Petition. Petitioner is apparently a website, not an identifiable individual or legally-recognized entity capable of being harmed or obtaining standing as a party in any administrative or judicial proceeding, including this one. Therefore, no party with particularized interests has been identified by mncoalgasplant.com or its “members.” What is clear, however, is that to the extent Petitioner could identify a colorable interest related to the Mesaba Project, its interest relates to issues associated with the potential impact the siting of the Mesaba Plant may have on landowners. Petitioner’s request for intervention largely cites its purported landowner members’ proximity to the preferred site of the Mesaba Project and their concerns relating to the exercise of eminent domain authority and alleged “physical intrusion.”³ These issues may arise in relevant permitting proceedings,⁴ but under no circumstances are they within the narrow scope of this proceeding.⁵

The focus of the present case is whether the PPA filed by Excelsior between the Mesaba Project and NSP should be approved and whether the Mesaba Project is or is likely to be a least-cost base load resource. As the Commission specifically recognized in its April 25, 2006 Notice and Order for Hearing, the hearing is to be “tightly focused” only on those issues raised in Excelsior’s

person with respect to an interest peculiar to that person, as distinguished from an interest common to the public or other ratepayers in general.”).

³ Petition at pp. 2 and 3.

⁴ Minn. Stat. § 216B.1694, subd. 2 (a)(1) illustrates that issues related to siting and routing will be addressed in the permitting phase. That statute notes that the Project “is subject to all applicable environmental review and permitting procedures of sections 116C.51 to 116C.69.” The Commission has opened and reserved a docket to address permitting issues: Docket No.: E6472/TR-05-1277. Of course, Petitioner would also be required to satisfy the relevant standard for intervention in those proceedings.

⁵ The public interest criteria under which the PPA will be evaluated does not implicate Petitioner’s alleged interests. Under the controlling statute, “the commission may approve, disapprove, amend, or modify the contract in making its public interest determination, taking into consideration the project’s economic development benefits to the state; the use of abundant domestic fuel sources; the stability of the price of the output from the project; the project’s potential to contribute to a transition to hydrogen as a fuel resource; and the emission reductions achieved compared to other solid fuel baseload technologies.” See Minn. Stat. § 216B.1694, subd. 2(a)(7).

Petition.⁶ While Petitioner offers general statements related to its interests in the cost calculations for the Mesaba Project generally and in ensuring “that the review of the statutory criteria considers the full range of costs and benefits,”⁷ Petitioner does not have any greater interest than the common public – an interest already represented by the Minnesota Department of Commerce (“Department”).

The Department is the advocate for the public in energy matters before the Commission and the Office of Administrative Hearings and is charged with ensuring “reliable, affordable and environmentally sound energy supplies are available to Minnesota’s customers.”⁸ As such, Petitioner’s common interests related to the “costs of the project” or the application of the public interest standard are ably represented by the Department. Despite Petitioner’s claims otherwise, it does not have any unique interests respecting these issues.

Moreover, before permitting Petitioner to intervene, the rights of the existing parties to the proceeding and the need to protect the original parties from undue delay and cost to them must be considered.⁹ Accordingly, an important consideration is (1) whether the original parties are adequately protecting the interests sought to be protected by Petitioner, and (2) whether Petitioner seeks to introduce new issues into this proceeding. It is apparent from Petitioner’s Petition that (1) to the extent it has an identifiable interest, its interest is adequately protected by the Department, and (2) it seeks to unreasonably expand the narrow scope of these proceedings to issues that may be

⁶ *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*, Docket No. E-6472/M-05-1993, NOTICE AND ORDER FOR HEARING (April 25, 2006).

⁷ Petition at p. 3. Any suggestion that mncoalgasplant.com should be allowed to intervene on the basis that it would ensure that Minnesota statutes are adhered to should be rejected outright.

⁸ <http://www.state.mn.us/portal/mn/jsp/content.do?subchannel=536881736&programid=536884849&sc3=null&sc2=null&id=-536881351&agency=Commerce>

⁹ 21 Minn. Prac., Admin. Prac. & Proc. § 9.16.4 (2006) (“The focus of a decision regarding intervention should be on the protection of the original parties from a drastic change in direction of the administrative proceedings and against undue delay and cost to them.”).

more appropriately addressed in the permitting proceedings or through participation in other processes. This proceeding should not be used as a forum to advance Petitioner's public policy positions related to landowner rights.

In the present case, public hearings afford an adequate opportunity for the general public to voice their concerns in an appropriate forum. Further, as Petitioner notes, it has been "participating at the local and legislative level" and a denial of its intervention in this case would not preclude those continuing efforts.¹⁰ Finally, nothing in Petitioner's Petition suggests that any interest it has cannot be met by its participation as a non-party, provided it is determined that such participation is appropriate and would not jeopardize the efficient administration of this proceeding.¹¹

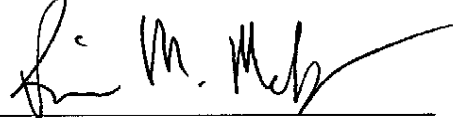
III. CONCLUSION

WHEREFORE, Excelsior respectfully requests that mncoalgasplant.com's Petition for Intervention be denied.

Dated: May 12, 2006

Respectfully submitted,

EXCELSIOR ENERGY INC.



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¹⁰ Petition at p. 3.

¹¹ See *In the Matter of Xcel Energy's Application to the Minnesota Environmental Quality Board for a Route Permit for a 345 kV Transmission Line from the Split Rock Substation to Lakefield Junction Substation and a 115 kV Transmission Line from Nobles County Substation to Chanarambie Substation and the Nobles County Substation*, OAH Docket No. 6-2901-16384-2, ORDER DENYING INTERVENTION (March 16, 2005) (the "Petition failed to demonstrate that PIN (or its members) had any interest in the proceeding that could not be met by its participation as a non-party.")

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