

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE PUBLIC UTILITIES COMMISSION

In the Matter of a Petition by Excelsior Energy, Inc. for Approval of a Power Purchase Agreement Under Minnesota Stat. § 216B.1694, Determination of Least Cost Technology, and Establishment of a Clean Energy Technology Minimum Under Minn. Stat. § 216B.1693

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

This matter is before Administrative Law Judges Steve M. Mihalchick and Bruce H. Johnson on the motion of Excelsior Energy, Inc., dated June 28, 2006, to quash the subpoenas requested by mncoalgasplant.com and issued to the County of Itasca, the City of Nashwauk, and the City of Taconite for production of documents.

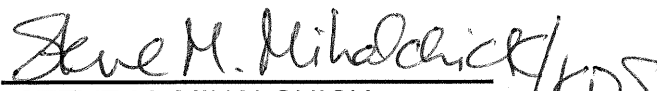
Carol A. Overland, Overland Law Office, 402 Washington Street South, Northfield, MN 55057, represents mncoalgasplant.com (MCGP). Scott G. Harris, Leonard, Street and Deinard, P.A., 150 South Fifth Street, Suite 2300, Minneapolis, MN 55402, represents Excelsior Energy Inc.


Based on all the files and proceedings herein, the Administrative Law Judges make the following:

**ORDER**

The motion of Excelsior Energy, Inc. to quash the subpoenas requested by mncoalgasplant.com and issued to the County of Itasca, the City of Nashwauk, and the City of Taconite for production of documents is DENIED for the reasons stated in the Memorandum below.

Dated: June 30, 2006

  
STEVE M. MIHALCHICK  
Administrative Law Judge

  
BRUCE H. JOHNSON  
Assistant Chief Administrative Law Judge

## MEMORANDUM

On June 19, 2006, MCGP requested subpoenas and proposed to propound interrogatories and requests for production of documents to Itasca County and the cities of Nashwauk and Taconite. Because Itasca County and the cities of Nashwauk and Taconite are not parties to this proceeding, the Administrative Law Judges informed MCGP that, under the Rules of Civil Procedure, MCGP could not serve interrogatories upon these political subdivisions. ALJ Mihalchick invited comments from the parties on this issue. MCGP revised its request on June 22, 2006, and resubmitted requests for subpoenas that required the production of documents only. That resolved the interrogatories issue, so the ALJs granted the three subpoena requests on June 27, 2006.

Interrogatories and requests for production of documents are discovery procedures to which objections can be raised, normally by the party served refusing to comply and the requesting party then bringing a motion to compel.<sup>1</sup> It appears to be Excelsior's position that it should be able to object to the discovery requests in question, regardless of the form in which they are cast. On June 28, 2006, Excelsior filed a motion to quash the subpoenas in question. MCGP responded to Excelsior's motion later on the same day.

Excelsior has cited two bases for its motion to quash. First, it argues that under its interpretation of applicable statutes, the information contained in the documents that MCGP is seeking from the county and the cities is irrelevant and not needed for the proper presentation of MCGP's case.<sup>4</sup> On the other hand, MCGP contends that under its differing interpretation of applicable statutes, the information is relevant and necessary for the proper presentation of its case. Interpretation of the applicable statutes is a question of law that goes to the merits, and those issues have not yet been addressed or adjudicated in this proceeding. Before the merits are joined, parties are entitled to argue and develop their respective theories of the case, including differing interpretations of applicable statutes and whatever consequences they believe will flow from their various interpretations. MCGP's interpretation of the applicable legislation is a possible interpretation. Accordingly, MCGP is entitled to conduct discovery that is reasonably calculated to support its theory of the case.

Excelsior also argues that responding to the MCGP's subpoenas will be unduly burdensome for the county and cities. However, since Excelsior is not the object of the subpoenas, it lacks standing to argue the burdens of the objects of the subpoenas. For these reasons, Excelsior's motion to quash is denied.

**S. M. M.**  
**B. H. J.**

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<sup>1</sup> Minn. R. 1400.6700, subp. 2.

<sup>4</sup> *Id.*