

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

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

MPUC Docket: E/6472/M-05-1993

OAH Docket: 12-2500-17260-2

**MCGP RESPONSE TO EXCELSIOR'S MOTION TO QUASH**

**I. THE STATUTE REQUIRES EXAMINATION OF THE COST OF ANCILLARY FACILITIES AND ECONOMIC DEVELOPMENT BENEFITS.**

Excelsior rhetorically states that at issue is a "least-cost analysis" and that:

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...

Much as Excelsior may wish otherwise, that analysis is but a small part of statutory factors:

**216B.1694, Subd. 2 INNOVATIVE ENERGY PROJECT.**

(3) that is designated by the commissioner of the iron range resources and rehabilitation board as a project that is located in the taconite tax relief area on a site that has substantial real property with adequate infrastructure to support new or expanded development and that has received prior financial and other support from the board.

(7) shall be entitled to enter into a contract with a public utility that owns a nuclear generation facility in the state to provide 450 megawatts of baseload capacity and energy under a long-term contract, subject to the approval of the terms and conditions of the contract by the commission. 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;

**216B.1693 CLEAN ENERGY TECHNOLOGY.**

a) 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.

Minn. Stat. §216B.1693(a)(emphasis added). What are ancillary services? Excelsior's definition of "Associated Facilities" in its permit application is instructive:

The term "Associated Facilities" means the buildings, equipment, and other physical structures that are necessary to operate the Station and includes, without limitation: the

equipment identified in Sections 1.6.5, 1.6.6, and 1.6.7; fuel tanks; roads' rail track' process water supply and wastewater discharge pipelines, pumps, pump houses, metering equipment, valves and force mains; water intake structures (floating or permanent); wastewater discharge structures; flood control systems; and security systems.

Mesaba Energy Project, Environmental Supplement, p. 1-3, para. 1.2.3. In this same Excelsior document, site specific requirements include:

Rail Loop Access, High Voltage Electrical Switchyard and Interconnection to HVTLs, Raw Water Intake Structure and Pump House, Raw Water Pipeline, Raw Water Treatment, Cooling Tower Blowdown, Potable Water System, Sanitary Waste System, Natural Gas Supply Pipeline and Metering Station, Treated Wastewater Forwarding System, Wastewater Pipeline and Outfall Structure, Storm Water Collection and Detention, Plant Access Road, and Feedstock Suppliers, Locations and Transportation/Distribution Methods.

Id., Table of Contents, 1.11.1, p. iii. Under "Infrastructure Requirements" on the next page:

Electric Transmission, Natural Gas Pipeline, Transportation (rail and road), Process Water Supply, Process Wastewater Discharges, Domestic Wastewater Treatment Alternatives, Potable Water Supply.

Id., Table of Contents, 1.12, p. iv. Cost of ancillary services must be considered under the statute.

Under the statute, the Commission must consider economic development benefits, and economic development benefits cannot be calculated without examination of benefits and costs to determine the net economic development impact. Minn. Stat. §216B.1694, Subd. 2. Excelsior chose a site that, contrary to the statute, has NO infrastructure. While the statute requires "adequate infrastructure to support new or expanded development," the West site has no infrastructure whatsoever, and local governmental units and the state are taking on the costs of this infrastructure – a material and substantial cost of this "economic development." Excelsior painstakingly lays out the detailed plans for all this infrastructure in its joint site permit application, yet argues this cost information should not be turned over to MCGP, and without citation argues that cost of ancillary infrastructure taken on by local governments should not be considered in this docket. The statute says otherwise.

## **II. EXCELSIOR CAN'T QUASH A SUBPOENA OF A SEPARATE ENTITY, OR QUASH A SUBPOENA THAT HAS YET TO BE SERVED!**

In Excelsior's rush to quash release of public information from a governmental unit to MCGP, information that must be considered under the statutory parameters for this proceeding, Excelsior goes

beyond APA procedural rules. Excelsior's motion is to quash MCGP's subpoenas for the County of Itasca, City of Nashwauk, and City of Taconite. The rules do not give Excelsior this option – only “any person served with a subpoena” may object, and only after service:

Subp. 3. **Objection to subpoena.** Any person served with a subpoena who has an objection to it may file an objection with the judge. The objection shall be filed promptly, and in any event at or before the time specified in the subpoena for compliance. The judge shall cancel or modify the subpoena if it is unreasonable or oppressive, taking into account the issues or amounts in controversy, the costs or other burdens of compliance when compared with the value of the testimony or evidence sought for the presentation of a party's case, and whether or not there are alternative methods of obtaining the desired testimony or evidence. Modification may include requiring the party requesting the subpoena to pay reasonable costs of producing documents, books, papers, or other tangible things.

Excelsior has not been served with a subpoena, and Excelsior is not “any person served.” Excelsior has no legal authority or legal basis to file this motion to quash.

### III. INVITATION TO QUASH IS IMPROPER AND CONTRARY TO LAW

Excelsior states that on June 28<sup>th</sup> it was invited by “the Court to submit a motion to quash.” A motion to quash by a party other than the one subpoenaed is contrary to the rules. Minn. R. 1400.5500. More importantly, if there was such an invitation, any such invitation must have been in a communication between “the Court” and Excelsior to which MCGP was not privy. More information is needed, but on its face, as reported by Excelsior, this appears to be prohibited ex parte contact, and a perhaps basis for disqualification. Minn. R. 1400.6400.

Excelsior has no legal basis for its motion. It must be denied. The subpoenas must issue.

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