

**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:

REPLY TO EXCELSIOR OBJECTION TO PETITION FOR INTERVENTION

mncoalgasplant.com is indeed an informal organization of landowners and residents in the immediate vicinity of Excelsior's "preferred" west site for its Mesaba coal gasification plant near Taconite, Minnesota. Members of mncoalgasplant.com will be directly affected by the outcome of this proceeding – as much as Intervenor GNPD which, if this PPA goes forward, may or may not be able to contract with Xcel. Under Minn. R. 1400.6200, subp. 1, mncoalgasplant.com has met the criteria for intervention as a full party, with all the rights of a party, in the above-captioned proceeding.

Excelsior Energy has objected to mncoalgasplant.com's intervention because "no landowner or resident is identified in the Petition." Members will be present at the Prehearing Conference, but that's immaterial -- identification of members is not a prerequisite for Intervention.

Siting no authority, Excelsior also seeks to relegate mncoalgasplant.com to participation in the siting docket only, but that notion is contrary to the public participation mandates of the PUC and the rules of intervention. Minn. R. 1400.6200. mncoalgasplant.com has narrowly and appropriately addressed the specific issues at hand. The purpose of the Intervention rule is to allow worthy Petitioners to broaden perspectives and inform the record -- the crux of this docket is the Public Interest Determination, particularly given the public nature of the grants, loans and other funding; cost and price; definitions of material terms; and other issues that mncoalgasplant.com has raised. As the rules provide:

The judge shall allow intervention upon a proper showing pursuant to subpart 1 unless the judge finds that the petitioner's interest is adequately represented by one or more parties participating in the case.

Minn. R. 1400.62, Subp. 3 (emphasis added).

Excelsior claims that the Petitioners' interests are already represented by the Minnesota Department of Commerce¹ – how absurd – Petitioner's interests are decidedly not commercial interests. There is no intervening party that represents Petitioner's interests – not Xcel, and not GNPD.

Excelsior claims that mncoalgasplant.com is seeking “a forum to advance Petitioner's public policy positions related to landowner rights,” but the Petition says otherwise. mncoalgasplant.com's Petition appropriately addresses the narrow issues before the Commission regarding the Power Purchase Agreement from the perspective of landowners who bear the direct burdens of this proposal and will be directly affected if this project proceeds:

mncoalgasplant.com seeks Intervention for the purpose of addressing the statutory PPA provisions and necessary cost calculations from a perspective not taken by any other party because of the direct impact of this proposed gasification plant and ancillary services and transmission. In addition, the function of the “3 Party Covenant” financing model used for this project is to shift the cost, risk and burden of a private for-profit enterprise onto the public, and if this is done, mncoalgasplant.com members will bear a disproportionate share of that burden. See Initial Filings, supra fn. 1. This PPA docket is a critical undertaking of first impression at the PUC, and as said by staff, “[t]he Commission is faced with applying two new, complicated statutes that raise difficult issues.” Staff Briefing Papers, p. 4, April 6, 2006. mncoalgasplant.com requests Intervention to address the application of these laws, the formation of issues to be raised in that process, evaluation of economic development benefits provided by the project, project costs incurred by entities other than Excelsior, and a very close scrutiny of characterization of the costs of this project.

Excelsior seeks to limit Intervention to siting issues, but that is contrary to the very purpose of Intervention – to allow parties with an interest to participate. This PPA entails a price and Public Interest Determination, determination of whether Mesaba is, or is likely to be, a least cost resource; whether Excelsior has met the statutory requirements to be considered under Minn. Stat. §§216B.1694 and 216B.1693, and the fundamental definitions of the material terms and phrases of these statutes. It is not

¹ Excelsior conflates “interest” in various topics in the proceeding and the “interests” of mncoalgasplant.com. Objection to Intervention, p. 4, l. 1-4.

that far removed from a Certificate of Need. The outcome of this proceeding has a direct impact on Petitioners' interests as those most affected by Mesaba, as direct as that of GNPD.

Excelsior seeks to limit Petitioner to participation as a non-party, but participation as a non-party is not sufficient. Excelsior cites a non-precedential administrative denial of Intervention to argue limiting Petitioner to non-party participation, but picked an example that instead demonstrates what happens to those that are not full Intervenors – they are shut out of the proceeding. *In the Matter of Xcel Energy's Application to the Minnesota Environmental Quality Board*², was a case where PIN, an Intervenor in the Certificate of Need case, was assured opportunity and ability to participate in the EQB siting technical hearing and then was denied that participation at the hearing. PIN was prevented from participating in a meaningful or effective way.³ See Attachment A, Order Granting Intervention, March 15, 2002, OAH Docket 15-2500-14699-2; PUC Docket E-002/CN-01-1958 (Certificate of Need); Attachment B, Petition for Intervention (EQB Siting) immediately upon denial of participation. "Participation as a non-party" does not provide any assurance of participation, and is insufficient to protect the Petitioner's interests.

mncoalgasplant.com requests Intervenor status as a full party with all the rights of a party in the above-captioned Excelsior Power Purchase Agreement proceeding.

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² *In the Matter of Xcel Energy's Application to the Minnesota Environmental Quality Board for a Route Permit for a 345kV Transmission Line from the Split Rock Substation to Lakefield Junction Substation and a 115kV 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).* Two parties had petitioned for Intervention after the Intervention deadline, the Petitions were granted, but the parties were not present at the hearing – there was no intervenor present, no intervenor participating, no duplication of interests, no discussion of certain crucial issues, and no participation by any but the applicant utilities and those supporting the utility. PIN tried to reasonably participate in this vacuum, but was unreasonably restricted, leaving no option but to immediately, at the hearing, submit a Petition for Intervention, which was then denied as "untimely."