

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

**FIRST PREHEARING ORDER**

A prehearing conference was held May 15, 2006, at 9:30 a.m. in the Commission's large hearing room before Administrative Law Judges Steve M. Mihalchick and Bruce H. Johnson. The following persons noted their appearance:

Thomas Osteraas, Excelsior Energy, 11100 Wayzata Boulevard, Suite 350, Minnetonka, MN 55305, and Byron E. Starns and Scott G. Harris, Leonard, Street and Deinard, 150 South Fifth Street, Suite 2300, Minneapolis, MN 55402, appeared on behalf of Excelsior Energy, Inc. (Excelsior Energy).

Christopher B. Clark, Assistant General Counsel, 414 Nicollet Mall, Suite 2900, Minneapolis, MN 55401, and Michael Krikava, Briggs and Morgan, P.A., 2200 I.D.S. Center, 80 South 8th Street, Minneapolis, MN 55402, appeared on behalf of Northern States Power Company d/b/a Xcel Energy (Xcel Energy).

Julia Anderson, Assistant Attorney General, 445 Minnesota Street, Suite 1400, St. Paul, MN 55101, appeared on behalf of the Department of Commerce (the Department).

David R. Moeller, Minnesota Power, 30 West Superior Street, Duluth, MN 55802, appeared on behalf of Minnesota Power.

John E. Drawz, Fredrikson & Byron, P.A., Suite 4000, 200 South Sixth Street, Minneapolis, MN 55402-1425, appeared on behalf of Great Northern Power Development, LLP (Great Northern).

Carol Overland, Overland Law Office, 402 Washington St., Northfield, MN 55057-2467, appeared on behalf of minncoalgasplant.com (MCGP).

Elizabeth I. Goodpaster, Attorney at Law, Minnesota Center for Environmental Advocacy, 26 East Exchange Street, Suite 206, St. Paul, MN 55101, appeared on behalf of the Minnesota Center for Environmental Advocacy, Izaak Walton League of America—Midwest Office, Wind on the Wires, and Minnesotans for an Energy Efficient Economy (the Environmental Organizations).

Todd J. Guerrero, Lindquist & Vennum, 4200 IDS Center, 80 South 8th Street, Minneapolis, MN 55402-2274, appeared on behalf of the Big Stone II Partners.

Janet Gonzales, Attorney, Minnesota Public Utilities Commission, Suite 350, 121 East Seventh Place, St. Paul,, MN 55101-2147, appeared on behalf of the Public Utilities Commission (the Commission or MPUC).

Based on the discussions during the prehearing conference, and upon all of the files, the Administrative Law Judge makes the following:

## **ORDER**

### **Parties and Intervention**

1. The parties to this matter named by the Commission in its Notice and Order for Hearing and Order Granting Intervention Petition are Excelsior Energy, Xcel Energy, the Department, Minnesota Power, and Great Northern.

2. A Petition to Intervene as a party was filed by MCGP on May 7, 2006. It was objected to by Excelsior Energy. The Petition was granted.

3. A Petition to Intervene as a party was filed by the Minnesota Chamber of Commerce on May 1, 2006. It was denied because it made no showing of a unique interest. The Chamber shall be listed as a non-party participant. The Chamber subsequently notified the Administrative Law Judge that it may file a Petition to Intervene with additional information.

4. The Environmental Organizations filed a notice of appearance and stated that they wished at this point to be listed as non-party participants, but may file a Petition to Intervene in the future. They shall be listed as non-party participants.

5. Big Stone II Partners shall be listed as a non-party participant.

6. Any person desiring to become a formal party must file a Petition to Intervene by June 5, 2006. Any person petitioning to intervene after that date may be restricted as to the scope of their participation. Any existing party that wishes to object must file an objection within seven days of service of the petition. Petitions to Intervene should comply with Minn. R. 1400.6200.

7. Members of the public need not become formal parties to participate in the hearing. Members of the public may offer either oral or written testimony, and they may offer exhibits for inclusion in the record. At least one hearing primarily for receiving public comment will be held. Any person who desires to be placed on the service list as a non-party participant must file a request with the Administrative Law Judges.

### **Additional Filings on Scheduling and Protective Order**

8. Parties and non-party participants may file additional proposals and argument on scheduling and related issues no later than May 22, 2005. Parties may file additional proposals and argument on a Protective Order by that same date.

### **Procedure**

9. The rules of the Office of Administrative Hearings govern the conduct of the hearing. To the extent that they are not superseded by the Contested Case Rules, the Commission's Rules of Practice and Procedure, Minn. R. 7829.0100 to 7829.3200, shall also apply.

### **Filing of Documents**

10. Prefiled testimony and exhibits may be in any reasonable format that is understandable, logically organized, and capable of being cited by page and line number, paragraph number, or similar identifier.

11. All documents filed, including prefiled testimony, but excluding information requests and responses, shall be filed as follows:

a. Prior to the issuance of the Report of the Administrative Law Judges, the original document shall be delivered or mailed to:

Administrative Law Judge Steve M. Mihalchick  
Office of Administrative Hearings  
100 Washington Square, Suite 1700  
Minneapolis, Minnesota 55401-2138

b. After the Administrative Law Judges' Report is issued, the parties shall file the original of all documents with the Executive Secretary of the Commission.

12. Copies of all public documents shall be served on the persons listed on the attached service list, in the number indicated. Trade Secret and otherwise nonpublic documents shall be served upon persons in accordance with the Protective Order to be issued. Electronic copies of public documents shall also be sent by email to persons whose email addresses are listed on the service list. The list will be revised as necessary by the Office of Administrative

Hearings. Service shall be made according to the most current service list provided to the parties by the Office of Administrative Hearings.

13. Pursuant to Minn. R. 1400.5100, subp. 9, and Minn. R. 7829.0400, subp. 1, the effective date of filing shall be the date the document is mailed by U.S. Mail or emailed to the Administrative Law Judges or delivered to the Executive Secretary of the Commission. Filings by email to the Administrative Law Judges shall be sent to [steve.mihalchick@state.mn.us](mailto:steve.mihalchick@state.mn.us) and [bruce.johnson@state.mn.us](mailto:bruce.johnson@state.mn.us), followed by a hard copy.

14. Proof of service shall be filed with each filed document or within three business days thereafter.

15. Trade Secret and other nonpublic data shall be transmitted by US Mail or courier, not by e-mail. Trade Secret and other nonpublic data filed with the Administrative Law Judge or Commission shall be prepared and marked in accordance with the Commission's September 1, 1999, Revised Procedures for Handling Trade Secret and Privileged Data. That document is available at [www.puc.state.mn.us/docs/tradsecret.pdf](http://www.puc.state.mn.us/docs/tradsecret.pdf).

## **Discovery**

16. Discovery shall be in accordance with Minn. R. 1400.6700 - 1400.6900 or by motion to the Administrative Law Judge. Discovery as to costs and prices related to the electricity to be produced by Excelsior Energy's Mesaba Energy Project may commence immediately, except that Excelsior Energy may withhold responding until a Protective Order is issued. Other discovery may commence upon a date to be set in a subsequent scheduling order.

17. Information Requests shall normally be made by e-mail to the person from whom the information is sought and a copy shall be e-mailed to all parties. Information Requests containing references to other documents shall be sufficiently detailed to inform the other parties of the nature of the request. Information Requests and responses shall not be sent to the Administrative Law Judges. The party responding to the Information Request shall provide the information requested within ten business days after receipt of the request. There shall be a continuing obligation to update and supplement information responses. The information need not be supplied as a matter of course to other parties unless specifically requested by a party. Information Requests received after 4:00 p.m. on business days or on weekends or State holidays shall be considered to be received on the following business day, except that any U.S. Mail received during business hours shall be considered to be received on the same day.

18. In the event the information cannot be supplied within the required time, the responding party shall notify the requesting party as soon as reasonably possible in advance of the deadline of the reasons for not being able to supply

the information and to work out a schedule of compliance with the requesting party. All disputes concerning the reasonableness of discovery requests and the timing and sufficiency of responses shall be resolved by an Administrative Law Judge upon motion of a party. Notice of such a motion should be made by email if possible and may be heard by telephone conference among the Administrative Law Judge and affected parties.

19. Parties asked to provide information they deem confidential or nonpublic may invoke the protections allowed in the Protective Order to be issued.

**Other Procedures**

20. Scheduling, the Protective Order, and other matters will be addressed in subsequent orders.

Dated: May 16, 2006

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STEVE M. MIHALCHICK  
Administrative Law Judge

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BRUCE H. JOHNSON  
Administrative Law Judge