



July 12, 2012

Via E-Filing

Dr. Burl Haar
Minnesota Public Utilities Commission
121 Seventh Place East, Suite 350
St. Paul, Minnesota 55101

Re: *In the Matter of a Joint LEPGP Site Permit, HVTL Route Permit and Pipeline (Partial Exemption) Route Permit Application for the Mesaba Energy Project*
MPUC Docket No. E-6472/GS-06-668
Innovative Energy Project Statute
Minn. Stat. 216B.1694 Subd. 3

Dear Dr. Haar:

Excelsior Energy, Inc. ("Excelsior") submits these reply comments in response to comments submitted by Mncoalgasplant.com ("MCGP.com") and the Sierra Club North Star Chapter ("Sierra Club"). In short, neither commenter raises any legally relevant objections, instead seeking to introduce new legal requirements for the Mesaba Project, in contravention of express requirements of Minnesota law.

Minn. Stat. §216B.1694, Subd. 3 (hereafter, "the statute") requires that "site and route permits for an innovative energy project must also be deemed valid for a plant meeting the requirements of paragraph (a)." The requirements of that paragraph are that the plant be "[a] natural gas-fired plant located on one site designated as an innovative energy project site." Paragraph (b) further specifies that the permits be deemed valid "[f]ollowing issuance of a final state or federal environmental impact statement."

As evidenced by the information supplied recently by Excelsior to the Minnesota Public Utilities Commission ("Commission") and by previous filings in this docket,¹ the plant in question is "a natural gas-fired plant located on one site designated as an innovative energy project site...following issuance of a final state environmental impact statement." No commenter has suggested that the plant does not meet these requirements.

Therefore, the permits "must be deemed valid" by operation of Minnesota law. Excelsior has been working to satisfy the request of the Minnesota Pollution Control Agency that the Commission confirm that Minnesota law directs that such permits are to be "deemed valid." A Commission finding is not a requirement of the statute. The permits "must be deemed valid" by operation of Minnesota law. Excelsior nonetheless is seeking this confirmation from the

¹ See Minnesota Public Utilities Commission's March 12, 2010 Order and Minnesota Office of Administrative Hearing's "Findings of Fact, Conclusion, and Recommendation" issued December 28, 2009, which confirm issuance and adequacy of the final environmental impact statement and designation of the innovative energy project site.

Commission as requested, and has supplied the additional factual information requested by the Department of Commerce to all parties.

The statute does not contemplate that the Commission impose or entertain any conditions on the operation of the statute.

MCGP.com proposes its own list of various conditions that it believes should be imposed by the Commission. MCGP.com proposes that Excelsior should be required to (i) submit an amended application for review, (ii) demonstrate that a coal gasification island can be added, (iii) provide a power purchase agreement for review, (iv) provide cost-related information to the Minnesota Public Utilities Commission, and (v) obtain a federal Record of Decision by the U.S. Department of Energy. None of these conditions are contained in the statute or allowed to be introduced under the clear directive provided by the statute.²

Similarly, the Sierra Club suggests that the Commission require a demonstration of need and that the Commission should consider renewable energy or energy efficiency as part of this proceeding. Again, these conditions would be contrary to the express terms of the statute.³

In conclusion, no comments contest the fact that the requirements under Minn. Stat. §216B.1694, Subd. 3 are met. Therefore, Excelsior requests that the Commission confirm that, under Minnesota law i) the Site and Route permits issued March 12, 2010 for the Mesaba Energy Project are deemed valid for a natural gas-fired plant located at the same site, and ii) that no additional environmental review is required under applicable State rules.

Sincerely,



Thomas A. Micheletti
Co-President and Co-CEO
Excelsior Energy Inc.

cc: Service List

² Even if it could be argued that the federal environmental impact statement is not final because a federal Record of Decision has not been issued, the use of the word "or" in Section 216B.1694, Subd. 3(b) indicates that either a final state or a final federal environmental impact statement is sufficient. Therefore, since a final state environmental impact statement has been issued, the requirement of the statute has been satisfied in any event.

³ The project is granted an exemption from certificate of need under Minnesota law, which is not the subject of this proceeding. Minn. Stat. §216B.1694, Subd. 3(a) grants the regulatory incentives under Subd. 2, clauses (1) to (3) to a natural gas-fired plant. Specifically, clause (1) is an exemption from the requirements of a certificate of need. Consideration of renewable energy or energy efficiency are also requirements of a certificate of need and therefore need not be considered due to the exemption provided by Minn. Stat. §216B.1694, Subd. 3(a).

**STATE OF MINNESOTA
PUBLIC UTILITIES COMMISSION**

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CERTIFICATE OF SERVICE

Susan A. Hartinger certifies that on July 12, 2012 she served true and correct copies of **EXCELSIOR ENERGY'S REPLY COMMENTS** upon the parties on the attached Service List by eFiling and/or U.S. Mail as indicated on the official service list for this docket.

/s/ Susan A. Hartinger

SUSAN A. HARTINGER

SERVICE LIST

In the Matter of a Joint LEPGP Site Permit, HVTL Route Permit and Pipeline (Partial Exemption) Route Permit Application for the Mesaba Energy Project

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