LEONARD
STREET
AND
DEINARD

150 SOUTH FIFTH STREET SUITE 2300
MINNEAPOLIS, MINNESOTA 55402
612-335-1500 MAIN
612-335-1657 FAX

MATTHEW B. SELTZER
612-335-7116 DIRECT
MATTHEW.SELTZER@LEONARD.COM

October 13, 2006

VIA E-MAIL & U.S. MAIL

The Honorable Steve M. Mihalchick
Office of Administrative Hearings
Suite 1700
100 Washington Square
Minneapolis, MN 55401

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***
OAH Docket No. 12-2500-17512-2; MPUC Docket No. E-6472/GS-06-668

Dear Judge Mihalchick:

This is submitted on behalf of Excelsior Energy Inc. ("Excelsior") in response to the October 6, 2006 letter from the Minnesota Center for Environmental Advocacy ("MCEA").

MCEA argues that the final Environmental Impact Statement ("EIS") must be completed prior to the contested case hearing on the siting and routing permits. Excelsior is compelled to take difference with the MCEA position. Delaying the start of the hearing as proposed by MCEA would make it impossible to comply with the statutory mandate for the Public Utilities Commission ("PUC") to make a final decision on the permit within one year after acceptance of the application. *See* Minn. Stat. § 116C.57, subd. 7.

The final EIS will not be available until June 1, 2007, and the one-year deadline for the final PUC decision will be on July 28, 2007. Excelsior has consented to an extension for the final PUC decision until September 6, 2007, but not later. It is essential that the contested case hearing commence on April 2, 2006 as proposed by Excelsior if the September 6, 2007 deadline is to be met.

As emphasized in Excelsior's previous letter dated October 6, 2006 and the letter submitted on behalf of the Department of Commerce ("DOC") of the same date, it is sufficient under the applicable administrative rules if the draft EIS is prepared prior to the commencement of the hearing. Minnesota Rule 4400.1700, subpart 8 requires only that draft EIS be completed prior to the hearing.

MCEA is correct that the innovative energy project ("IEP") statute states that an IEP is "subject to all applicable environment review." *See* Minn. Stat. § 216B.1694, subd. 2(1). However, the IEP statute also makes it clear that the environmental review is to be conducted under the "procedures of sections 116C.51 to 116C.69." *See id.* It is further provided in Minn. Stat. § 116C.57, subd. 2c that the DOC shall prepare an EIS for the project and that "no other state environmental review document shall be required." Contrary to MCEA's position, the applicable environmental review is defined, in this case, by the rules for the Power Plant Siting Act in Minn. R. ch. 4400, *not* Minn. R. ch. 4410. Indeed, Minn. R. 4400.1700, subp. 12 provides as follows:

> The requirements of chapter 4410 do not apply to the preparation or consideration of an environmental impact statement for a large electric power generating plant or high voltage transmission line except as provided in this chapter.

MCEA quotes Minn. R. 4410.7050 for the proposition that the EIS must be completed before the PUC can hold any hearing. However, MCEA has omitted crucial language in the quotation from Minn. R. 4410.7050 that appears in its letter. What this rule provides, in fact, is that the environmental document must be completed before the PUC can hold any public hearing or render a final decision "*on an application for a certificate of need or for a certification of a HVTL*" (emphasis added). As MCEA itself admits, this project is exempt from a certificate need. *See* Minn. Stat. § 216B.1694, subd. 2(1).

MCEA maintains that the EIS is best understood as proceeding under Minn. R. 4410.7060, subp. 2. Again, MCEA has cited a rule from the wrong chapter. Moreover, this rule, by its very language, applies to a proceeding for a certificate of need before the PUC. *See id.* The present proceeding is for a site and routing permit, not a certificate of need.

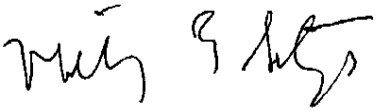
Under the schedule proposed at the September 26, 2006 prehearing conference and our letter of October 6, 2006 the final EIS will be available for entry into the record of the contested case hearing and will be provided to the PUC and other agencies before final decision on any permit. As noted by the DOC in its October 6, 2006 letter, the draft EIS will have been available to the public for a substantial period of time and the parties will have had a chance to review public comments on the draft EIS prior to the contested case hearing. The only element of the final EIS that will be unavailable for the hearing will be DOC's responses to the public comments. Responses to public comment are to be incorporated into, or attached to, the final EIS and are not subject to hearing under either Minn. R. ch. 4400 or Minn. R. ch. 4410 processes. *See* Minn. R. 4400.1700, subp. 9; Minn. R. 4410.2700. Furthermore, under the proposed schedule, the parties will receive the DOC final comments and have an opportunity to submit briefs to the Administrative Law Judge ("ALJ") on the adequacy of the final EIS before the ALJ makes his recommendation.

MCEA insists that the proposed schedule is not contemplated by the rules. On the contrary, it is MCEA's proposal that is inconsistent with the rules and would unjustifiably introduce new delays in the process.

Thank you very much.

Very truly yours,

LEONARD, STREET AND DEINARD
Professional Association



BYRON E. STARNS
MATTHEW B. SELTZER

cc: Service List

OAH Docket No. 12-2500-17512-2
MPUC Docket No. E-6472/GS-06-668

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE PUBLIC UTILITIES COMMISSION

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

AFFIDAVIT OF SERVICE

STATE OF MINNESOTA)
) ss.
COUNTY OF HENNEPIN)

Susan A. Hartinger, being first duly sworn, upon oath deposes and states that on October 13, 2006, she served **EXCELSIOR ENERGY'S LETTER TO JUDGE MIHALCHICK IN RESPONSE TO MCEA'S LETTER REGARDING EXCELSIOR'S ENERGY'S PROPOSED SCHEDULE** by mailing true and correct copies thereof, enclosed in an envelope, postage prepaid, and by depositing same in the U.S. Mail at Minneapolis, Minnesota upon those persons on the attached Service List:

Copies were also sent via e-mail to those persons listed as receiving e-mail service.

SUSAN A. HARTINGER

Subscribed and sworn to before me
on October 13, 2006.

Arlene Zamora
Notary Public

ARLENE ZAMORA
NOTARY PUBLIC MINNESOTA
My Commission Expires Jan. 31, 2010

3557710.1

SERVICE LIST

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

The Honorable Steve M. Mihalchick (Original)
OFFICE OF ADMINISTRATIVE HEARINGS
Suite 1700
100 Washington Square
Minneapolis, MN 55401-2138

The Honorable Bruce H. Johnson (1)
OFFICE OF ADMINISTRATIVE HEARINGS
Suite 1700
100 Washington Square
Minneapolis, MN 55401-2138

Burl W. Haar (15)
MINNESOTA PUBLIC UTILITIES COMMISSION
121 East Seventh Place, Suite 350
St. Paul, MN 55101-2147

Sharon Ferguson (4)
MINNESOTA DEPARTMENT OF COMMERCE
85 7th Place East
Suite 500
St. Paul, MN 55101-2198

Michael C. Krikava
BRIGGS AND MORGAN, P.A.
2200 IDS Center
80 South Eighth Street
Minneapolis, MN 55402

Christopher Clark
XCEL ENERGY, INC.
414 Nicollet Mall - 5th Floor
Minneapolis, MN 55401

Thomas L. Osteraas, Esq.
EXCELSIOR ENERGY INC.
11100 Wayzata Boulevard, Suite 305
Minnetonka, MN 55305

Bob Evans
EXCELSIOR ENERGY INC.
11100 Wayzata Boulevard, Suite 305
Minnetonka, MN 55305

Byron E. Starns
LEONARD, STREET AND DEINARD
150 South 5th Street, Suite 2300
Minneapolis, MN 55402

Matthew B. Seltzer
LEONARD, STREET AND DEINARD
150 South 5th Street, Suite 2300
Minneapolis, MN 55402

Carol Overland
OVERLAND LAW OFFICE
P.O. Box 176
Red Wing, MN 55402

Kevin Reuther, Esq.
MINNESOTA CENTER FOR
ENVIRONMENTAL ADVOCACY
26 East Exchange Street, Suite 206
St. Paul, MN 55101

Christopher Greenman, Esq.
EXCELSIOR ENERGY INC.
11100 Wayzata Boulevard, Suite 305
Minnetonka, MN 55305

Karen Finstad Hammel
MINNESOTA ATTORNEY GENERAL'S OFFICE
1400 Bremer Tower
445 Minnesota Street
St. Paul, MN 55101-2131

David R. Moeller
MINNESOTA POWER
30 West Superior Street
Duluth, MN 55802-2093

William Storm
MINNESOTA DEPARTMENT OF COMMERCE
85 - 7th Street East
Suite 500
St. Paul, MN 55101-2198

Curtis C. Nelson
MINNESOTA ATTORNEY GENERAL'S OFFICE
900 Bremer Tower
445 Minnesota Street
St. Paul, MN 55101-2127

Kathleen Winters
MINNESOTA ATTORNEY GENERAL'S OFFICE
900 Bremer Tower
445 Minnesota Street
St. Paul, MN 55101-2131

Julia Anderson
MINNESOTA ATTORNEY GENERAL'S OFFICE
1400 Bremer Tower
445 Minnesota Street
St. Paul, MN 55101-2131

John E. Drawz
Fredrikson & Byron, P.A.
200 South Sixth St., Suite 4000
Minneapolis, MN 55402-1425

Antone J. Rude
Great Northern Power Development LP
10127 93rd Street N.E.
Monticello, MN 55362

Bill Pacoe
PASCOE ENERGY CONSULTING, LLC
104 Country Club Lane
Butte, MT 59701

Ross Hammond
FRESH ENERGY
2716 West River Parkway
Minneapolis, MN 55406

Ronald Gustafson
808 Berry Street, Apt. 406
St. Paul, MN 55114

E-Mail Addresses

bill.storm@state.mn.us
bobevans@excelsiorenergy.com
bruce.johnson@state.mn.us
burl.haar@state.mn.us
byron.starns@leonard.com
christopher.b.clark@xcelenergy.com
christophergreenman@excelsiorenergy.com
curt.nelson@state.mn.us
dmoeller@allete.com
kathleen.winters@state.mn.us
kreuther@mncenter.org
maria.lindstrom@state.mn.us
matthew.seltzer@leonard.com
mkrikava@briggs.com
overland@redwing.net
sharon.ferguson@state.mn.us
steve.mihalchick@state.mn.us
tomosteraas@excelsiorenergy.com
tbailey@briggs.com
bdohrwardt@briggs.com
julia.anderson@state.mn.us