



Minnesota Center for Environmental Advocacy

The legal and scientific voice protecting and defending Minnesota's environment

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VIA ELECTRONIC MAIL

October 6, 2006

Steve M. Mihalchick.
Bruce H. Johnson
Office of Administrative Hearings
100 Washington Ave. S., Suite 1700
Minneapolis, MN 55401

**RE: EIS for Joint LEPGP Site, HVTL Route and Pipeline Route Permits
for the Mesaba Energy Project; Docket No. E-6472/GS-06-668**

Dear Judges Mihalchick and Johnson:

I write in response to your request for letter briefs on the timing of the final EIS and contested case hearings in the siting/routing docket for the proposed Mesaba Project. MCEA takes the position that the final EIS must be completed and available for use in the contested case hearings on the siting and routing permits.

To begin, the IEP statute, while exempting innovative energy projects from obtaining a certificate of need, explicitly states that such projects are "subject to all applicable environmental review." Minn. Stat. § 216B.1694. The Legislature clearly did not wish to give a pass to Excelsior on thorough review of the environmental consequences of its proposal.¹ This suggests that information developed in the EIS must be available and used to inform decisions in this docket.

Minnesota Rule 4410.7050 addresses the issue of when in the public hearing process the EIS must be completed. It provides that

[t]he environmental report, or environmental assessment or EIS, prepared pursuant to part 4410.7060, must be completed and copies provided to the Public Utilities Commission before the PUC can hold any public hearing or render a final decision . . . However, the PUC can commence the public hearing process by conducting prehearing matters.

¹ MCEA maintains its objection to the scope of the proposed EIS. The Department of Commerce inexplicably has refused to include the alternatives analysis required by Minn. R. 4410.7035, including the no-build alternative.

In the absence of any more specific rule or legislative guidance with regard to environmental review for a facility seeking to qualify as an innovative energy project, the EIS is best understood as proceeding under Minn. R. 4410.7060, subp. 2. That Rule applies to siting/routing matters that have been filed prior to completion of the environmental report required in a certificate of need proceeding. *Id.* Here, the Mesaba Project is proceeding to permitting without a certificate of need and without the concomitant environmental report. Thus, 4410.7060 most closely approximates the circumstances of this proceeding and the EIS "must be completed and copies provided to the PUC before . . . any public hearing..." Minn. R. 4410.7050.

The schedule proposed at the September 26, 2006 hearing in this matter clearly is not contemplated by the rules. Nor would such a schedule truly allow for the substance of a thoroughly developed environmental impact statement to be fully used and considered in the siting/routing proceedings. As stated in Minnesota's Environmental Policy Act, "[t]o ensure its use in the decision making process, the environmental impact statement shall be prepared as early as practical in the formulation of an action." Minn. Stat. § 116D.04, subd. 2a.

Thank you for the opportunity to comment on this matter.

Sincerely,



Kevin Reuther
Staff Attorney

cc: Service List