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BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

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| LeRoy Koppendrayer | Chair |
| Marshall Johnson | Commissioner |
| Ken Nickolai | Commissioner |
| Thomas Pugh | Commissioner |
| Phyllis A. Reha | Commissioner |

JUL 28 2006

In the Matter of the Combined Application for a Site Permit, a Transmission Line Route Permit and a Natural Gas Pipeline Routing Permit for the Mesaba Energy Project

ISSUE DATE: July 28, 2006

DOCKET NO. E-6472/GS-06-668

ORDER ACCEPTING JOINT APPLICATION FOR FILING AND AUTHORIZING PUBLIC ADVISOR, ADVISORY TASK FORCE, AND ELECTRONIC DISSEMINATION OF PROPOSAL, AS MODIFIED

## PROCEDURAL HISTORY

On June 19, 2006, Excelsior Energy, Inc. (Excelsior) filed a Joint Permit Application for a large electric power generating plant (LEPGP), a high voltage transmission line (HVTL) and a natural gas pipeline, all of which would be located on the Iron Range in northern Minnesota (collectively, the Mesaba Energy Project).

On June 26, 2006, the Minnesota Department of Commerce Energy Facility Permitting Staff (the Department-EFP) filed comments.

Between June 27 and July 4, 2006, the Commission received requests that the Commission appoint a Citizens Advisory Task Force from Carol Overland, Shelene Johnson, Erin Jordahl-Redin, Ronald P. Gustafson, John Nauerth, III, Kurt Christopherson, Earl Orf, Brad Jones, Charlotte Neigh, Linda I. Castagneri, Bob and Lee Ann Norgard, Andrew David, Jane Latimer, Harold E. Dziuk, Christopher Childs, Darrell and Dee White, Julie Risser, Linda Hanson, David and Carmen Griggs, Douglas and Barbara Veit, Thomas Nelson and Sanna Pederson, and Ross Hammond.

On June 29, 2006, Carol Overland, individually and as an attorney for mncoalgasplant.com, a citizens group, filed a petition requesting that a Citizens Advisory Task Force be established.

The Commission met on July 6, 2006 to consider this matter.

## FINDINGS AND CONCLUSIONS

### I. Excelsior's Filing

Excelsior filed a Joint Permit Application for a LEPGP site permit, a HVTL routing permit, and a pipeline (partial exemption) routing permit.

Excelsior is proposing to construct and operate a coal-fueled Integrated Gasification Combined Cycle (IGCC) power plant. The proposed power plant is to be constructed in two phases, each phase being capable to produce approximately 606 MW (net) of baseload power.

### II. Summary of Decisions in This Order

In this Order, the Commission decides four preliminary procedural issues. First, the Commission decides that Excelsior's Joint Permit Application for the Mesaba Energy Project meets the filing requirements and will accept it for consideration on the merits. Second, the Commission authorizes and defines the general composition of an advisory task force pursuant to Minn. Stat. § 116C.59, subd. 1. Third, the Commission authorizes the Department to select a public advisor for the docket. Fourth, the Commission authorizes Excelsior to submit electronic copies in lieu of paper copies to the affected landowners along the proposed pipeline route.

### III. The Department-EFP Recommendations

The Department recommended that the Commission find that the Application is complete and accept the Joint Permit Application submitted by Excelsior Energy for the Mesaba Energy project.

The Department also recommended that the Commission authorize the Department to name a public advisor for the project, authorize the establishment of a local unit of government working group, and authorize the Department to develop and implement a proposed structure and charge for the working group.

Finally, the Department recommended that the Commission authorize Excelsior to disseminate electronic copies of the Joint Permit Application to affected landowners of the proposed pipeline route, in lieu of paper copies, with the understanding that paper copies will be provided to any landowner that request them.

At the hearing, the Department distributed a suggested structure for a citizens advisory task force. In the event that the Commission should opt to create such a task force in lieu of the Department's initial recommendation to form a local unit of government working group, the Department proposed to solicit eight members from six governmental units and include four citizens, two from Itasca County and two from St. Louis County, for a total of no more than 12 members.

## IV. Petition for Citizen Advisory Task Force

A citizens group, mncoalgasplant.com, filed a petition requesting that the Commission establish a Citizens Advisory Task Force for this matter pursuant to Minn. Rues, Part 1400.1600, subp. 2. The petitioner argued that a Citizens Advisory Task Force is the best way to engage the community, solicit and receive meaningful review and input, and involve stakeholders in the plant, transmission and pipeline siting process.

## V. Commission Analysis and Action

### A. Filing Approval

The filing requirements for Excelsior's Joint Permit Application are set forth in Minn. Rules, Parts 4400.1150 and 4400.3150 and Minn. Rules, Parts 4415.0115 to 4415.0170. These requirements include, but are not limited to, site and route descriptions and the potential impacts on the environment, the economy, health and human resources, and natural resources.

The Department's EFP staff reviewed the filing and concluded that the Application is complete. The Department recommended that the Commission accept the Application with the understanding that if additional information is requested by the Department EFP staff these requests will be addressed promptly. The Applicant has indicated that they will comply with requests for additional information from the Commission, the Department, or other interested persons.

Based on the Department's recommendation and its own review, the Commission finds that the Application is substantially complete and will accept it for filing. This acceptance allows the Applicant and the Department's EFP staff to initiate the further permitting requirements of Minn. Rules, Chapter 4400 and 4415..

### B. Authorization of Public Advisor

Upon acceptance of an application for a site or route permit, the Commission is to designate one staff person to act as the public advisor on the project, for the sole purpose of assisting and advising those affected and interested citizens on how to effectively participate in site or route proceedings.[1] The public advisor will be available to answer questions from the public about the permitting process. The public advisor does not give legal advice or other advice that may affect the legal rights of the person being advised, and does not act as an advocate on behalf of any person.[2]

The Commission will authorize the Department to identify a staff person to act as the public advisor in this matter.

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[1] Minn. Stat. § 116C.59, subd. 3

[2] Minn. Rules, Part 4400.1450.

### C. Advisory Task Force Authorized

The Commission has the authority to appoint an advisory task force pursuant to Minn. Stat. § 116C.59, subd. 1. The duration of the "advisory task force" as that term is used in Minn. Stat. 116C.59, subd. 1 is relatively short, being limited by a recent statutory amendment to expire when the Department decides what alternative sites or routes will be included in its environmental impact statement (the Department's EIS Scoping Decision).

The Department advised against authorizing a advisory task force in this case. The Department argued that public awareness of the project was already high, the legislature has shortened the length of time an advisory task force may exist, and the public has had and will have numerous opportunities to participate in and have input into the process. The Department suggested instead that the Commission direct the Department to establish a working group of affected local units of government to provide input on local impacts and possible mitigation measures not only during the period before the Department issues its Environmental Impact Statement (EIS) Scoping Decision (the maximum duration of the statutorily defined "advisory task force"), but also throughout the preparation of the EIS. The Department acknowledged that it could work with local government officials to secure their input and participation in the project with or without the Commission's formal authorization of such a work group.

Several citizens wrote letters encouraging the Commission to establish a "citizens advisory task force," arguing for the most part that a citizens advisory task force is the best means to engage the community, solicit and receive meaningful review and input, and involve community stakeholders in the plant, transmission and pipeline siting process.

At the hearing, the Department recommended that if the Commission decided to establish an advisory task force, it should limit membership to 12: eight government officials and four citizens, two from Itasca County and two from St. Louis County.[3] The Department also recommended that the Commission define the task force's charge as assisting Department EFP staff in determining 1) whether local site- or route-specific information presented within the Joint Permit Application is inaccurate or missing information; and 2) what site- or route-specific impacts and issues of local concern could be assessed in the EIS. In addition, the Department recommended that if the Task Force reached consensus, it should express a preference for either the preferred or alternative site contained within the Joint Permit Application.

The Commission recognizes that the statutorily defined "advisory task force" currently at issue is limited in scope and duration, as noted by the Department, and is to have at least one representative from each of the following: regional development commissions, counties and municipal corporations and one town board member from each county in which a site or route is

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[3] Itasca County and St. Louis County are the counties in which the proposed sites are located.

proposed to be located.[4] At the same time, there is no reason to have such a heavy concentration of local government officials as the Department has proposed (8 of 12). The Commission believes that a more appropriate balance can be achieved by expanding the size of the advisory task force to 15: eight government officials and seven representatives of other stakeholders including environmental and non-governmental community groups.

Further, to put the role of the time-limited and scope-limited "advisory task force" authorized in this Order into perspective, the Commission notes that "broad spectrum citizen participation" is a principle of operation for this entire proceeding and the form of public participation in this proceeding is not necessarily limited to public hearings and advisory task forces.[5]

### D. Electronic Copies Authorized in Lieu of Paper Copies.

The Joint Permit Application includes applications for a large electric power generating plant (LEPGP), a high voltage transmission line (HVTL) and a natural gas pipeline. With respect to the pipeline portion of the project, Excelsior is requesting a pipeline routing permit. The rule governing Excelsior's request for a pipeline routing permit, Minn. Rules, Part 4415.0035, subp. 2, Item C, requires the Company to provide a "copy" of the application to "to the chair or chief executive of any regional development commission, county, incorporated municipality, organized town, and to affected landowners."

In lieu of providing all those parties with a paper copy of the entire Application, Excelsior has proposed to send them an electronic copy of the Application on a CD by first class mail and to give a paper copy of the Application to any landowner who requests one. The Commission will approve the Company's proposal, provided that a notice mailed to landowners along with the CD explains the option to receive a paper copy and is reviewed and approved by Commission staff prior to issuance.

## ORDER

1. The Commission hereby accepts for filing the Joint Permit Application submitted by Excelsior Energy for the Mesaba Energy project, including the request for a large electric power generating plant (LEPGP), a high voltage transmission line (HVTL) and a natural gas pipeline.

2. The Commission clarifies that this Order accepting the Joint Permit Application for filing marks the start date for the one year process and allows the Department's Energy Facility Permitting Staff and the Applicants to initiate the actions required by Minnesota Rules 4400.1035 to 4400.1900 and Minnesota Rule Chapter 4415, including providing project descriptions to landowners, publishing notice of information meetings, and initiating the scoping and environmental impact statement (EIS) process required under the rules.

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[4] 116C.59, subd. 1.

[5] See 116C.59, subd. 2.

3. The Department is authorized to name a public advisor for the project.

4. The Commission authorizes the establishment of a citizen advisory task force composed of 15 members, seven of whom should be private citizens, i.e., representatives of environmental groups and other stakeholders who are not government officials. The Commission further authorizes Department staff to implement this composition of the task force, together with the charge and expiration date as stated by the Department at the hearing.

5. The Commission approves the dissemination of electronic copies (compact discs/CDs) of the Joint Permit Application to affected landowners of the proposed pipeline route, in lieu of paper copies, provided that the Company will provide paper copies to any landowner that requests them and that the Applicant will submit for Commission Staff review and approval a cover letter that shall accompany the CDs.

6. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar
Executive Secretary

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