

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

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

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

ISSUE DATE: September 15, 2006

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

NOTICE OF HEARING

PROCEDURAL HISTORY

On June 19, 2006, Excelsior Energy, Inc. (Excelsior) filed a Joint Permit Application for a large electric power generating plant (LEPGP)¹, 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).

The Commission met on July 6, 2006, to consider acceptance of the application and other procedural matters under the Power Plant Siting Act, Minn. Stat. § 116C.51-.69 and associated Minn. Rules, Chapter 4400, as well as pipeline routing provisions of Minn. Stat. § 116I and associated Minn. Rules, Chapter 4415.

On July 28, 2006 the Commission issued an ORDER ACCEPTING JOINT APPLICATION FOR FILING AND AUTHORIZING PUBLIC ADVISOR, ADVISORY TASK FORCE, AND ELECTRONIC DISSEMINATION OF PROPOSAL, AS MODIFIED.

The Commission met on August 17, 2006 to consider whether to refer the matter to the Office of Administrative Hearings (OAH) for a contested case proceeding.

On August 30, 2006, the Commission issued its ORDER REFERRING RATES INQUIRY TO OFFICE OF ADMINISTRATIVE HEARINGS and hereby issues the NOTICE OF HEARING.

¹ The LEPGP in question is a 1,200-Megawatt, coal-fueled Integrated Gasification Combined Cycle (IGCC) power plant.

FINDINGS AND CONCLUSIONS

I. Jurisdiction

The Commission has jurisdiction over Excelsior's joint petition for 1) a large electric power generating plant (LEPGP), 2) a high voltage transmission line (HVTL), and 3) a natural gas pipeline as follows. The Commission has jurisdiction over

- 1) the Company's application for a site permit for the large electric power generating plant (LEPGP) portion of the Mesaba Energy Project under Minn. Stat. § 116C.57, subd. 1;
- 2) the Company's application for a route permit for the high voltage transmission line (HVTL) portion of the Mesaba Project under Minn. Stat. § 116C.57, subd. 2; and
- 3) Excelsior's application for a route permit for the natural gas pipeline portion of the Mesaba Energy Project under Minn. Stat. § 116I.015.²

II. Referral to the Office of Administrative Hearings

The Commission finds that it cannot resolve all issues raised by the petition on the basis of the record before it; those issues turn on specific facts that may be best developed in formal evidentiary hearings. The Commission will therefore refer the matter to the Office of Administrative Hearings for contested case proceedings.

The Administrative Law Judges assigned to this matter will conduct hearings as described in this Notice and submit a Report to the Commission.³ Following receipt of the Administrative Law Judges' report, the Commission will proceed to make its final decision in accordance with Minn. Stat. Chapters 14 and 116C.⁴

² Prior to recently enacted energy legislation, the Commission had the responsibility and authority to issue certificates of need and the Environmental Quality Board (EQB) had the responsibility and authority to issue site or route permits. In 2005, the Minnesota Legislature transferred the EQB's siting and routing authority to the Commission and encouraged a certain level of combining of the two processes. See S.F. 1368 - 84th Legislative Session, Article 3, Section 17 and Minn. Stat. § 216B.243, subd. 4.

³ Minn. Rules, Part 1405.2400.

⁴ Minn. Rules, Part 1405.2500. See also Minn. Rules, Part 4400.1900.

III. Administrative Law Judges

The Administrative Law Judges assigned to this case are Steve M. Mihalchick (612-349-2544) and Bruce Johnson (612-341-7607). Their address is as follows: Office of Administrative Hearings, Suite 1700, 100 Washington Square, Minneapolis, Minnesota 55401-2138.

IV. Hearings

A. Prehearing Conference

A prehearing conference will be held in this case on Tuesday, September 26, 2006, at 2:00 p.m. in the Large Hearing Room at the offices of Minnesota Public Utilities Commission, 121 7th Place East, Suite 350, St. Paul, Minnesota 55101.

Pursuant to Minn. Rules, Part 1405.1100, the purpose of the prehearing conference is to simplify the issues to be determined, to obtain stipulations to foundation for testimony or exhibits, to discuss schedules for hearings and other procedural events, and to resolve other matters that may be necessary or appropriate. Potential interveners, and other interested persons, should attend the prehearing conference.

The Administrative Law Judges may require the parties to file a prehearing statement prior to the prehearing conference which shall contain such items as the Administrative Law Judge deems necessary to promote a useful prehearing conference. A prehearing conference shall be an informal proceeding conducted expeditiously by the Administrative Law Judge. Agreements on the simplification of issues, amendments, stipulations, or other matters may be entered on the record or may be made the subject of an order by the Administrative Law Judge.

B. Public Hearing/Contested Case Hearing

A public hearing following the contested case format prescribed by Minnesota statutes⁵ and rules⁶ will be held in this matter. The hearing will include cross-examination by parties, questioning by interested persons, and direct testimony or comments from the public. Conduct of the hearing is addressed more fully below in Section V (Procedural Outline), below.

The date, place, and time of the public hearing cannot be determined at this time. Pursuant to Minn. Rules, Parts 4400.1800 and 1400.1350, subp. 3,H the public hearing/contested case hearing is to held **after** the Department has prepared a draft Environmental Impact Statement (EIS) on this proposed project pursuant to Minn. Rules, Part 4400.1700. At this time the completion date for the draft EIS it is not determinable with enough certainty to warrant issuing notice of a fixed date for the public hearing.

⁵ Minn. Stat. Chapter 14.

⁶ Minn. Rules, Chapter 1405.

Accordingly, since this Order is transferring jurisdiction over this matter to the Office of Administrative Hearings for purposes of conducting the contested case proceeding, the date, time, and place of the public hearing or hearings will be determined by the Administrative Law Judge assigned to this matter by the Office of Administrative Hearings in light of the developing circumstances of this matter and will be duly noticed as required by applicable statute and rule.⁷

V. Public Participation

A. Right to Counsel and to Present Evidence

In these proceedings, parties may be represented by legal counsel, or by a person of their choice, or they may represent themselves. They have the right to present evidence, conduct cross-examination, and make written and oral argument. Under Minn. Rules, Part 1405.1300, they may obtain subpoenas to compel the attendance of witnesses and the production of documents.

Parties should bring to the hearing all documents, records, and witnesses necessary to support their positions.

B. Public Adviser

The Commission has authorized the Department to name a public adviser for the project. The public adviser is someone who is available to answer questions from the public about the permitting process. In this role, the public adviser may not act as an advocate on behalf of any person. The Department has named Deborah Pile, Manager of the Department's Energy Facilities Permitting Unit, to serve as the Public Adviser for this project. Her address is Minnesota Department of Commerce, 85 - 7th Place East, Suite 500, St Paul, MN 55101-2198 and her phone number is 651-297-2375.

C. Commission's Representative; Advice Regarding Procedures

The Commission's representative in this matter is Robert Cupit, Senior Facility Planner, Minnesota Public Utilities Commission, 121-7th Place East, Suite 350, St. Paul, Minnesota 55101-2147, (651) 201-2255.

The member of the Attorney General's staff who may be contacted for advice on matters dealing with Commission procedures is Lisa A. Crum, Assistant Attorney General, 1100 NCL Tower, 445 Minnesota Street, St. Paul, Minnesota 55101, (651) 297-5945.

D. Availability of Materials

⁷ Minn. Rules, Part 4400.1800 (Contested Case Hearing), subd. 1 and Minn. Stat. § 116C.57 (Public Hearing), subd. 2d.

Interested persons may review all materials, including all prefiled testimony, at the Minnesota Department of Commerce, 85 - 7th Place East, Suite 500, St. Paul, MN 55101-2198 as soon as they have been filed. To arrange a viewing of these materials, interested persons may contact the Public Adviser, Deborah Pile, at the Minnesota Department of Commerce or by phone at 651-297-2375.

E. Parties, Persons, and Intervention

Currently, the only party to this case is the Applicant, Excelsior.⁸ The name and address of the person designated to receive all notices on behalf of the Applicant is Bob Evans, Vice-President, Environmental Affairs, 1100 Wayzata Boulevard, Minnetonka, MN 55305.

Other persons⁹ who wish to be granted permission by the Administrative Law Judges to intervene in this matter, must do so pursuant to Minn. Rules, Part 1405.0900. Subpart 1 of that rule prescribes the timing and contents of a petition to intervene. Subpart 2 prescribes the timing and content of any objection to the petition and Subpart 3 sets forth the standards for granting, denying, or requiring consolidation of similar petitions.

The hearing process established under Minn. Rules, Chapter 1405 is designed to facilitate public participation, and persons need not intervene as parties to participate. All public participants have significant procedural rights, including, but not limited to, the right to be present throughout the proceeding, to offer direct testimony in oral or written form, to question all persons who testify, and to submit comments to the Administrative Law Judge and the Commission.

Persons who intervene and are granted party status have additional rights and responsibilities, including, but not limited to, the right to object to another's petition for intervention within seven days of service of the petition, the rights to submit direct testimony and conduct cross-examination of other parties' witnesses in the first stage of any two-stage hearing conducted by the Administrative Law Judge pursuant to Minn. Rules, Part 1405.1500, subp. 2, and the responsibilities to submit pre-filed testimony, comply with discovery requests, produce witnesses, file briefs, and serve all documents on all other parties.

The description of rights in this section is summary in nature, as required by Minn. Rules,

⁸ Minn. Rules, Part 1405.0200, subp. 3 defines "party" as the applicant, persons proposing routes or sites which the board orders to be considered pursuant to Minnesota Statutes, chapter 116C and rules adopted thereunder, and persons granted permission to intervene pursuant to part 1405.0900. State agencies, participating department staff, and citizen committees appointed by the Commission must intervene to attain party status.

⁹ Minn. Rules, Part 1405.0200, subp. 4 defines "person" as an individual, partnership, joint venture, private or public corporation, association or society, firm, public service company, cooperative, political subdivision, municipal corporation, governmental unit or agency, public utility district, or any other entity, public or private, however organized.

Part 1405.0500, subp. 1, I, and is not intended to be comprehensive. Review Chapter 1405 to identify the scope of rights and authority to act given “persons” or restricted to “parties” under the various provisions of that Chapter.

VI. Issues to be Addressed

The Mesaba Energy Project has been exempted by statute from the Certificate of Need requirements, but does require siting permits for the proposed plant, transmission line, and pipeline.

The proposed generating plant (LEPG) and associated transmission (HVTL) are subject to a contested case proceeding. In general, the issues referred for contested case proceedings, therefore, are whether the Commission should approve, disapprove, or approve with conditions Excelsior’s request for a site permit for the generating plant (LEPG) and its request for a route permit for the transmission line (HVTL). Parties shall specifically and thoroughly address the requirements of Minn. Stat. §§ 116C.51 to 116C.69 and Minn. Rules, Chapter 4400.

The parties shall address the above issues in the course of contested case proceedings. They may also raise and address other issues relevant to those two requests.

VII. Procedural Outline

A. Hearing Procedure: Controlling Statutes and Rules

Public hearings conducted pursuant to the contested case procedures of Minn. Stat. Chapter 14 are required for the proposed LEPL and HVTL under Minn. Stat. § 116C.57, subd. 2d. The pipeline route component of the project does not require a contested case proceeding, though by inclusion in the joint filing, it will follow the procedural treatment required for the plant and transmission lines.

Accordingly, the public hearings in this matter will be conducted in accordance with the Administrative Procedure Act, Minn. Stat. §§ 14.57-14.62 and Minn. Rules, Parts 1405.0200 to 1405.2800. Regarding any issue on which Chapter 1405 is silent, the provisions of Minn. Rules, Parts 1400.5100 to 1400.8400 regarding contested cases shall apply and, to the extent that they are not superseded by those rules, the Commission’s Rules of Practice and Procedure, Minn. Rules, Parts 7829.0100 to 7829.3200.

Hearings may be recessed and reset by the Administrative Law Judge pursuant to Minn. Rules, Parts 1405.1400 to 1405.2300.

B. Hearing Procedures - Availability

Copies of these rules and statutes may be purchased from the Print Communications Division of the Department of Administration, 660 Olive Street, St. Paul, Minnesota 55155; (651) 297-3000. These rules and statutes also appear on the State of Minnesota's website at www.revisor.leg.state.mn.us.

The Office of Administrative Hearings conducts contested case proceedings in accordance with the Minnesota Rules of Professional Conduct and the Professionalism Aspirations adopted by the Minnesota State Bar Association.

C. Accommodations for Disabilities; Interpreter Services

At the request of any individual, this agency will make accommodations to ensure that the hearing in this case is accessible. The agency will appoint a qualified interpreter if necessary. Persons must promptly notify the Administrative Law Judge if an interpreter is needed.

VIII. Time Constraints

The Commission is required to make a final decision on a route permit application within one year after the Commission's decision that an application is complete.¹⁰ The Commission's Order finding the Applicants' application complete was issued July 28, 2006. The rule authorizes the Commission to extend this time limit for up to three months for good cause or upon agreement of the Applicants.

The Commission asks the Office of Administrative Hearings to conduct contested case proceedings in light of these time constraints and requests that the Administrative Law Judge submit his final report within eight months of the Commission's July 28, 2006 Order finding the Applicant's Route Permit Application complete.

IX. Application of Ethics in Government Act

The lobbying provisions of the Ethics in Government Act, Minn. Stat. §§ 10A.01 *et seq.*, apply to powerline routing cases, among others. Persons appearing in this proceeding may be subject to registration, reporting, and other requirements set forth in that Act. All persons appearing in this case are urged to refer to the Act and to contact the Campaign Finance and Public Disclosure Board, telephone number (651) 296-5148, with any questions.

X. Ex Parte Communications

Restrictions on *ex parte* communications with Commissioners and reporting requirements regarding such communications with Commission staff apply to this proceeding from the date of this Order. Those restrictions and reporting requirements are set forth at Minn. Rules, Parts 7845.7300-7845.7400, which all parties are urged to consult.

¹⁰ Minn. Stat. § 116C.57, subd. 7 and Minn. Rules, Part 4400.1900.

ORDER

1. The Commission hereby refers this case to the Office of Administrative Hearings for contested case proceedings, as set forth above.
2. A prehearing conference shall be held on Tuesday, September 26, 2006, at 9:00 a.m. in the Small Hearing Room at the offices of Minnesota Public Utilities Commission, 121 7th Place East, Suite 350, St. Paul, Minnesota 55101.
3. The date, time, and place of the public hearing will be set by the Administrative Law Judge and duly noticed in due course.
4. All hearings, including the prehearing conference, may be recessed and reset by the Administrative Law Judge pursuant to Minn. Rules, Part 1405.1400 to 1405.2300.
5. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar
Executive Secretary

(S E A L)

This document can be made available in alternative formats (i.e., large print or audio tape) by calling (651) 201-2202 (voice) or 1-800-627-3529 (MN relay service).

BEFORE THE MINNESOTA OFFICE OF ADMINISTRATIVE HEARINGS
100 Washington Square, Suite 1700
Minneapolis, Minnesota 55401-2138

FOR THE MINNESOTA PUBLIC UTILITIES COMMISSION
121 Seventh Place East Suite 350
St. Paul, Minnesota 55101-2147

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
OAH Docket No.

NOTICE OF APPEARANCE

Name, Address and Telephone Number of Administrative Law Judges: Steve M. Mihalchick, (612-349-2544) and Bruce Johnson (612-341-7607); Office of Administrative Hearings, Suite, 1700, 100 Washington Square, Minneapolis, Minnesota 55401.

TO THE ADMINISTRATIVE LAW JUDGES:

You are advised that the party named below will appear at the above hearing.

NAME OF PARTY:

ADDRESS:

TELEPHONE NUMBER:

PARTY'S ATTORNEY OR OTHER REPRESENTATIVE:

OFFICE ADDRESS:

TELEPHONE NUMBER:

SIGNATURE OF PARTY OR ATTORNEY: _____

DATE: _____