

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

In the Matter of a Petition by Excelsior Energy, Inc. for Approval of a Power Purchase Agreement Under Minn. Stat. § 216B.1694, Determination of Least Cost Technology, and Establishment of a Clean Energy Technology Minimum Under Minn. Stat. § 216B.1693

ORDER

On January 9, 2007, Excelsior Energy, Inc. (Excelsior), filed a Motion for Leave to Submit Late-Filed Exhibits. On January 10, 2007, the undersigned Administrative Law Judges allowed the other parties until the close of business Friday, January 12, 2007, to file responses to Excelsior's motion. On January 12, 2007, mncoalgasplant.com (MCGP) filed a response to Excelsior's motion along with a motion to exclude certain other materials from the hearing record. On January 16, 2007, Excelsior replied to MCGP's response, and both Excelsior and the Department of Commerce (the Department) responded to MCGP's motion to exclude. Both the motion of Excelsior and the motion of MCGP are now before Administrative Law Judges Steve M. Mihalchick and Bruce H. Johnson for determination.

Based upon the file, record, and proceedings herein, and for the reasons set forth in the accompanying Memorandum,

ORDER

IT IS HEREBY ORDERED, as follows:

(1) Excelsior's Motion for Leave to Submit Late-Filed Exhibits is hereby GRANTED;

(2) MCGP is hereby GRANTED LEAVE to supplement the hearing record with the document entitled "MISO Generation Deliverability Study Method," and any other publicly available MISO documents showing the inputs, assumptions and results for the steps in each of the MISO studies;

(3) MCGP's motion to exclude the January 5, 2007, policy statement of Deputy Commissioner Edward A. Garvey as evidence in the record of this proceeding is GRANTED, with the qualification that the policy statement is

received into the record as an addendum to the Department's initial brief and considered as part of the Department's position and argument; and

(4) MCGP's motion to exclude from the hearing record all written public comment received after December 22, 2006, is GRANTED, with the qualification that such written comment will be forwarded to the Commission separately for such disposition as the Commission considers appropriate.

Dated: January 17, 2007

STEVE M. MIHALCHICK
Administrative Law Judge

BRUCE H. JOHNSON
Assistant Chief Administrative Law Judge

MEMORANDUM

Pursuant to pre-hearing orders and scheduling directive issued by the undersigned ALJs, the hearing record in this matter closed on December 20, 2006, except for the public hearing phase of this proceeding and post hearing briefs and proposed findings. Six public hearings were conducted on December 18-20, 2006, with a deadline for public comment of December 22, 2006. Thereafter, the parties were to file their initial post-hearing briefs and proposed findings on or before January 5, 2007, with reply briefs due on or before January 19, 2006.

On January 9, 2007, Excelsior Energy, Inc., (Excelsior) filed a Motion for Leave to Submit Late-Filed Exhibits. It is seeking to include three items in the hearing record—namely, a January 4, 2007 Interim Report entitled, "System Impact Study for Long-Term Firm Transmission Service," prepared by the Midwest Independent Transmission Operator, Inc. (MISO) and two MISO Deliverability Study Reports for Project G477 and Project G519. As grounds for its motion, Excelsior contended that MISO did not make those documents available to the public until after the record in this proceeding had closed, and that they contain relevant information that will assist the Commission in evaluating Excelsior's Mesaba Project. On January 10, 2007, the ALJs gave other parties until the close of business on Friday, January 12, 2007, to file responses to Excelsior's motion. On January 12, 2007, mncoalgasplant.com (MCGP) filed a response to Excelsior's motion. No other parties responded. In essence, MCGP did not take issue with the grounds and premises underlying Excelsior's motion. Rather, it argued that if those documents were received, the record should also be supplemented to include a document entitled, "MISO

Generation Deliverability Study Method,” and “documents that show inputs, assumptions and results for the 7 steps in each of the studies.” In its reply to MCGP’s response, Excelsior indicated that it did not object to supplement the record with the “MISO Generation Deliverability Study Method,’ and other MISO transmission documents referenced in MCGP’s January 12, 2007, motion.” The ALJs are therefore granting Excelsior’s Motion for Leave to Submit Late-Filed Exhibits and also granting MCGP leave to include in the hearing record the “MISO Generation Deliverability Study Method,” and any other publicly available MISO documents showing the inputs, assumptions and results for the steps in each of the MISO studies. However, nothing in this Order shall be construed as reopening discovery in this proceeding for the purpose of obtaining MISO documents that are not now publicly available.

MCGP has also moved to exclude from the hearing record a policy statement prepared by Deputy Commissioner of Commerce Edward A. Garvey and dated January 5, 2007. By letter dated January 16, 2007, the Department indicated that it would not oppose a ruling that Commissioner Garvey’s policy statement is not part of the record evidence in this case. The policy statement in question accompanied the Department’s initial brief, and the ALJs are therefore accepting that policy statement as an addendum to that initial brief and a further statement of the Department’s position and argument in this matter. It is not evidence and will not be accepted as such.

Finally, MCGP moves to exclude written public comment that was received after the December 22, 2006, deadline. The ALJs consider all untimely written public comment to be outside the record and will not consider it in preparing their report to the Commission. However, it is ultimately for the Commission to determine what public comment to consider. The ALJs will therefore forward all untimely written public comment to the Commission separately and identified as not being part of the hearing record for whatever disposition the Commission considers appropriate.

S.M.M.; B.H.J