

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 Minnesota
Stat. § 216B.1694, Determination of
Least Cost Technology, and
Establishment of a Clean Energy
Technology Minimum Under Minn.
Stat. § 216B.1693

THIRD PREHEARING ORDER

This matter is before Administrative Law Judges Steve M. Mihalchick and Bruce H. Johnson for determination on the terms of the protective order and other issues.

Based on all the files and proceedings herein, the Administrative Law Judges make the following:

ORDER

Protective Order

1. The attached Protective Order is adopted.

Service List

2. A revised service list is attached. Jerome Larsen's email address has been corrected.

Dated: June 5, 2006

STEVE M. MIHALCHICK
Administrative Law Judge

BRUCE H. JOHNSON
Administrative Law Judge

MEMORANDUM

Excelsior Energy and Xcel Energy met to narrow the issues between them in the Protective Order. Their efforts are appreciated. We have adopted Excelsior Energy's position in most instances.

Xcel Energy and GNPD proposed a requirement for initial mid and high level disclosures based upon the "public need." Generally, as much public disclosure as possible is desirable for the conduct of state business, but the legitimate interests of the litigants in their trade secret data must also be recognized. Forcing the initial disclosures and privilege logs adds unnecessary delay. Parties receiving the public versions of Excelsior Energy's documents can move for reclassification or access under the Protective Order or another protective order as appropriate. Parties receiving the non-public versions have similar rights under the Protective Agreement. The proposal is rejected.

Xcel Energy proposed deleting a requirement at the end of Paragraph 2(b) that requires a party that receives information that are marked trade secret, but that it believes is in the public domain, to give notice to the disclosing party prior to using it for other purposes. Giving some type of notice is fair because the disclosing party ought to have some opportunity to verify that claim before its information is disclosed. The language proposed is not unreasonable.

Excelsior Energy's proposal provides different rights to obtain trade secret information to different parties. The Department, Excelsior Energy, and Xcel Energy have high degrees of access. Other utilities and power producers have access, but it is limited to attorneys and consultants and is also limited in that they cannot obtain trade secret information about each other. Other parties have no access unless they show a need for it.

Xcel Energy proposes that all parties be entitled to Excelsior Energy's trade secret information and also proposes a language change regarding what information utilities and power producers may obtain about each other.

Parties that are not a utility or a power producer will usually not need access to the detailed cost and technical data. Sometimes they are not in a position to make helpful comment about it. But they may be. So separate treatment is reasonable. However, the Excelsior Energy language may present too high a hurdle for such a party seeking such data. Therefore, Paragraph 1(c)(F) has been modified to require "a showing that the interest they seek to protect reasonably requires it."

Xcel Energy's proposal defining the type of generating facilities for which trade secret information must be provided appears to be an improvement and is adopted in Paragraph 1(c)(E). Xcel Energy's other editorial changes are adopted.

S. M. M., B. H. J.