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THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

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IN THE MATTER OF THE APPLICATION
OF MONTANA-DAKOTA UTILITIES CO.
AND OTTER TAIL POWER COMPANY FOR A
PERMIT TO CONSTRUCT THE BIG STONE
SOUTH TO ELLENDALE 345 kV
TRANSMISSION LINE

EL13-028

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Transcript of Recorded Proceedings
August 6, 2014

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BEFORE THE PUBLIC UTILITIES COMMISSION

GARY HANSON, CHAIRMAN
CHRIS NELSON, VICE CHAIRMAN
KRISTIE FIEGEN, COMMISSIONER

COMMISSION STAFF

John Smith
Karen Cremer
Brian Rounds

APPEARANCES

Thomas Welk and Jason Sutton, Applicants
Bob Pesall, Intervener
Randall Schuring, Intervener
Bradley Morehouse, Intervener

Reported By Cheri McComsey Wittler, RPR, CRR

1 TRANSCRIPT OF RECORDED PROCEEDINGS, held in the
2 above-entitled matter, at the South Dakota State Capitol
3 Building, 500 East Capitol Avenue, Pierre, South Dakota,
4 on the 6th day of August, 2014.

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1 I heard him correctly he said that his understanding was
2 that the line had been moved a mile from the Schuring
3 dairy. That wasn't my understanding.

4 Mr. Ford, can you clarify whether there's been a
5 move or not?

6 MR. FORD: There has not been an official move.
7 We have been continuing to look at options for the line
8 in this area. And we do have a potential reroute that
9 would move the line an additional mile from the Schuring
10 farm.

11 However, we don't have any options signed on
12 that reroute. We don't know if we have any landowner --

13 COMMISSIONER NELSON: Okay. And you have not
14 filed anything with us. I was thinking I had missed
15 something, but I have not missed something.

16 MR. FORD: That's correct. No, we have not.

17 COMMISSIONER NELSON: Okay. I just maybe want
18 to raise -- Mr. Chairman, are we at the point of kind of
19 laying our cards on the table as to what concerns we
20 might have or how do you want to proceed?

21 CHAIRMAN HANSON: Absolutely. I think that's
22 appropriate at this juncture.

23 COMMISSIONER NELSON: At this point I've really
24 only got two issues. One is an issue that Mr. Pesall
25 raised in his brief about the enforceability of the

1 soybean mitigation plan.

2 And, Mr. Ford, you'll remember at the hearing I
3 asked about that. I said, you know, this plan doesn't
4 appear to be very detailed to me. And you gave some
5 assurances that there was a reason for that and it would
6 be fleshed out and it would be workable.

7 I don't have any doubt about that, but I think
8 Mr. Pesall makes a very valid argument that as it exists,
9 from our perspective it's probably not enforceable as a
10 matter of law.

11 And so one of the things that I would like to
12 see as a condition, should the permit be issued, would be
13 that a complete soybean nematode mitigation plan be filed
14 with the Commission, one that both the public and the
15 Commission have the ability to evaluate, is the company
16 complying with that detailed plan or not.

17 Is that something that you'd be willing to
18 accept?

19 MR. FORD: What would be the timing on that?

20 COMMISSIONER NELSON: Certainly prior to
21 construction.

22 MR. FORD: Okay. We have no problem there.

23 COMMISSIONER NELSON: Yeah. Because we
24 understand you're going to need to consult with your
25 experts and kind of figure out what's the best way to

1 move forward with this. And, yeah, it would take some
2 time, it would seem to me, to be able to put that
3 together. But I think from our responsibility to the
4 people is to make sure that whatever we've asked of you
5 is actually enforceable.

6 MR. FORD: Sure. Sure. I could add here too
7 that I think it was you, Commissioner Nelson, that asked
8 about whether or not we had talked to the Soybean Council
9 in this matter. And we had not at that time.

10 But we have since spoken with Adam Herges, who
11 is with the Council, and had some conversation with him
12 about the project and what, you know, we're trying to do
13 and what this mitigation effort would look like.

14 He indicated that they -- you know, they're a
15 resource that works with farmers to try to help them get
16 the testing done in their own fields and so forth. So
17 they don't have the expertise in-house.

18 But he did recommend to us that we visit with
19 Emmanuel Byamukama who's with SDSU. He's our SCN expert.
20 He's also an extension pathologist with SDSU. Emmanuel
21 was actually the individual that we had visited with
22 prior to the evidentiary hearing. And we have since had
23 further conversation with him, and presently we are in
24 the process of putting together a scope of work document
25 and ultimately a contract where we will use Emmanuel as

1 our expert to help us develop three things really.

2 He's going to consult initially on the sampling
3 plan itself so that we make sure that we do sampling in a
4 manner that provides the accurate, correct results. So
5 that would be the first step.

6 Then he has offered essentially the college's
7 resources to perform the actual sampling for us on the
8 project. And we're looking at that sampling being done
9 in the fall of 2015. So that's well in advance of
10 construction.

11 Once we have the sampling results, then -- and
12 they're going to be the ones that will also do the
13 analysis of the samples -- he's further agreeing to
14 consult with us on our specific mitigation plan, which
15 then would be based on the results that we see.

16 I think as we talked about at the evidentiary
17 hearing, the reason our plan was vague was because we saw
18 a lot of different options in there for what we may or
19 may not need to do. And depending on how much we see as
20 contaminated or noncontaminated, that's going to affect
21 really how we execute our mitigation.

22 I mean, certainly the simple thing is that you
23 do not bring contaminated soil from a field that has SCN
24 present to a field that does not. That's the simple
25 thing that you can say.

1 And then there's various ways to avoid doing
2 that, which we talked about briefly in terms of what we
3 call a clean crew/dirty crew or potentially cleaning
4 equipment on site and those types of things.

5 So we're still, you know, looking to the good
6 doctor at SDSU to really -- as he is an expert in this
7 area, to help us determine what is the best and
8 presumably then most successful method of mitigation
9 here.

10 But we do believe, and he seems to agree, that
11 that mitigation plan is based on the results that we
12 find, not something that we can necessarily sit down
13 today. Although we could in general terms say, like I
14 said, we'll prevent the spread from contaminated to
15 noncontaminated fields.

16 COMMISSIONER NELSON: Right. I think it's the
17 general terms that we want to avoid. So it sounds to me
18 like we're headed in the same direction, but when you get
19 that that's what I think I'd like to have filed with us
20 so everybody's got access to that.

21 MR. FORD: Absolutely. So that means that that
22 plan would probably be filed in late 2015 is what I would
23 guess at this point.

24 COMMISSIONER NELSON: I'm just going to turn --
25 Mr. Smith, does that sound reasonable?

1 MR. SMITH: Yeah. And is this something that
2 you want -- I mean, do you want a condition in the -- in
3 the order that --

4 COMMISSIONER NELSON: That would be my
5 presumption, yes.

6 MR. SMITH: That makes some level of, I guess,
7 added detail to what the current condition --

8 COMMISSIONER NELSON: Right. And what he's
9 describing, I mean, that's what I think I'm looking for.
10 I mean, we're going the right direction. It's just a
11 matter of formalizing that and making sure that it's on
12 file with us.

13 MR. SMITH: Okay. Yes. I mean, I think I can
14 figure out what that -- you know, assuming that you vote
15 for it that I think I can write something up. Yes, it
16 is, but my head isn't in front of it.

17 Yeah. I think I'll be able to do that based
18 upon what Henry said and what the question was.

19 COMMISSIONER NELSON: Okay. Thank you.

20 Then the only other issue that I've got is the
21 issue that's kind of bubbled up the last couple days by
22 some of the folks who are affected but not Interveners.

23 Mr. Chairman, how do you want to handle that?
24 Are you going to take testimony from those folks?

25 CHAIRMAN HANSON: I was -- I don't know that we

1 MR. SMITH: Is your mic. on there, Bob?

2 CHAIRMAN HANSON: She tricked you.

3 You had said in your remarks that there were
4 some statements that were not refuted by -- regarding
5 farms and development and such that were not refuted and
6 that they are still, in essence, bones of contention that
7 need to be resolved in order for us to arrive at a
8 conclusion.

9 I'm wondering if you could -- in reading all
10 material I'm not aware of what those might be.

11 MR. PESALL: The point I was trying to make with
12 respect to that is we had three farmers come in and
13 testify to the Commission that they believed, using
14 various language, using this line if it was permitted to
15 be built, would unduly interfere with their ability and
16 would cause them severe economic harm.

17 There were no farmers or anybody else really
18 qualified to talk about how farming works that came in
19 and testified on behalf of the Applicants. So when I say
20 there was unrefuted testimony that's what I'm referring
21 to.

22 CHAIRMAN HANSON: Okay. Thank you. Are there
23 other questions by the Commissioners of Mr. Pesall?

24 MR. PESALL: I guess since I have the mic. if I
25 can offer just a couple of comments.

1 First of all, I have some legal concern with the
2 prospect of authorizing the Applicants to come up with a
3 plan after the permit is granted. I don't know if that's
4 appropriate delegation.

5 So as much as we're on the record, I would raise
6 that objection. I don't think that's the right way to go
7 about it. I think the right way to go about it is to use
8 the Commission's authority to deny on specific grounds
9 and then allow them to reapply.

10 Beyond that, the Commission is looking at what
11 has been done in the past. I try to avoid ever coming
12 out to Pierre without invoking the founding fathers at
13 least once. Thomas Paine was famed for having said long
14 history if not thinking a thing wrong gives it the
15 superficial appearance of being right.

16 I would encourage the Commission to stick with
17 the evidence that we've got this time around and, of
18 course, ask that you deny the permit.

19 CHAIRMAN HANSON: Thank you.

20 Any further questions by the Commission?

21 Hearing none, there will be time for comment.

22 Is there a Motion at this time?

23 COMMISSIONER FIEGEN: Do you mind if I just make
24 one quick comment?

25 CHAIRMAN HANSON: Absolutely.

1 everywhere. And I appreciate the challenges of making
2 certain that we keep it down to a minimum.

3 But I still -- my concerns are strongly going to
4 be piercing -- looking at the construction process itself
5 which is part of the SCN. And I'm just not 100 percent
6 there ready to support this. It's not to say that in two
7 weeks I won't be, but I just need to have a little more
8 time to look at that.

9 Perhaps that's the time you need to look at
10 the concerns you have. So I'm interested in your
11 thoughts.

12 COMMISSIONER NELSON: I think I've pretty well
13 resolved everything in my mind and could probably vote
14 through most or all of this today. Although it probably
15 would be prudent to work with Mr. Smith to word the
16 condition properly, especially if you've maybe got some
17 concerns so we know exactly what I'm asking for and what
18 I'm asking you all to vote for.

19 CHAIRMAN HANSON: Correct.

20 COMMISSIONER NELSON: But two weeks. I don't
21 know if we've got two weeks, Mr. Smith.

22 MR. SMITH: I mean, the day the Order by law has
23 to be out by is the 22nd.

24 CHAIRMAN HANSON: All right.

25 MR. SMITH: So if you want to defer taking

1 action until a later date, we need to look for a date. I
2 would appreciate it if we can get a date as soon as
3 possible, like a week, to give me at least two weeks
4 after that then to fashion an order.

5 What's that?

6 CHAIRMAN HANSON: That means in two days --

7 MR. SMITH: I mean, like next week. If there's
8 a date available next week.

9 CHAIRMAN HANSON: If you're saying the 22nd and
10 two weeks --

11 MR. SMITH: I've got to have it out by the --

12 CHAIRMAN HANSON: Today's the 6th. And the
13 22nd. That's two days from now that we would have to
14 have --

15 MR. SMITH: Well, I don't absolutely need a full
16 two weeks, but it would be nice to have at least one full
17 working week. I'll put it that way. Because it's some
18 work to write up one of these orders.

19 CHAIRMAN HANSON: Absolutely.

20 MR. SMITH: Although, I don't think this will be
21 on the Keystone level, but it takes a little while.

22 CHAIRMAN HANSON: I don't need that long of a
23 period of time to go through what I have.

24 But I'm interested in hearing what the other
25 Commissioners have to say. If you're ready, you're

1 ready.

2 COMMISSIONER NELSON: I would be, but I'll
3 certainly defer.

4 CHAIRMAN HANSON: Okay.

5 COMMISSIONER FIEGEN: And, Mr. Chairman, you
6 know that you have always been gracious to all of us when
7 we need more time to study. And so I would certainly be
8 willing to do that.

9 I am certainly willing to vote today. My
10 conditions that I'm proposing aren't perfectly written,
11 but I know our General Counsel could help me with those.
12 But I would be very happy to defer and wait until you're
13 ready because you have always been gracious to us.

14 CHAIRMAN HANSON: Well, it makes sense if you
15 have any conditions you wish to propose at this time,
16 that they should at least be laid out on the table and
17 discussed at this juncture.

18 MR. SMITH: Or, you know, if you're going to
19 defer taking action, if you want, I can -- you know, that
20 will -- I can work on helping you draft language so
21 that -- for whatever it is you want to do.

22 COMMISSIONER FIEGEN: The one condition will be
23 the dairy farm on the serious injury for economic
24 conditions. So that will be one of my conditions that I
25 kind of have written down. But sure you can help me

1 wordsmith that.

2 And then the scans on being able to audit the
3 findings or present the findings to the Commission
4 confidentially and attach that or make an amendment to
5 Commissioner Nelson's final plan submitted to the
6 Commission.

7 MR. SMITH: Okay.

8 Well, maybe if you want to defer taking action
9 today, what -- maybe you should discuss what days are
10 available and when we could get back together again.

11 CHAIRMAN HANSON: Yeah. I don't have a calendar
12 that tells me that.

13 MR. SMITH: Well, then maybe we can't do that
14 right now then. Okay.

15 CHAIRMAN HANSON: We'll have Staff do that with
16 the idea that they put it together for within the next --
17 well, as soon as possible. This week even, if possible.

18 COMMISSIONER FIEGEN: Mr. Chairman.

19 CHAIRMAN HANSON: Yes.

20 COMMISSIONER FIEGEN: Also could we let the
21 parties and the Interveners know that it is certainly
22 okay to participate by phone. Because I would guess many
23 of the Commissioners have other scheduled events or
24 conflicts so we will probably be participating by phone.

25 So just so you know, when we come back,

1 everybody doesn't have to fly back or drive back or
2 whatever. That's my opinion as a single Commissioner,
3 just so you know.

4 CHAIRMAN HANSON: Absolutely. Absolutely. Good
5 point.

6 Anything further on this -- on this item on the
7 agenda at this time?

8 Seeing none --

9 COMMISSIONER FIEGEN: So, Mr. Chairman, do we go
10 into recess, or do we post another date for an ad hoc?

11 CHAIRMAN HANSON: We'd have to post a date for
12 an ad hoc.

13 MR. SMITH: Yeah. And we'll have to notice
14 that.

15 COMMISSIONER FIEGEN: Okay.

16 MR. SMITH: So once we can take a look at the
17 calendar and determine what's open, we'll have to
18 schedule something and then we'll have to, you know, give
19 notice to everyone who's a party to the case.

20 COMMISSIONER FIEGEN: Thank you. And thank you
21 to all the people who attended the hearing today. We
22 certainly appreciate your attendance.

23 CHAIRMAN HANSON: Okay. With the understanding
24 we're setting up an ad hoc on this, is there any further
25 discussion on this item?