

1 TRANSCRIPT OF PROCEEDINGS, held in the
2 above-entitled matter, at the South Dakota State
3 Capitol Building, Governor's Conference Room,
4 500 East Capitol Avenue, Pierre, South Dakota, on the
5 20th day of August, 2015.

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1 CHAIRMAN NELSON: HP14-002, In the Matter of the
2 Application of Dakota Access, LLC -- and I'm just
3 reminded we have Cheri, our court reporter, so I must
4 speak slower -- for an Energy Facility Permit to
5 Construct the Dakota Access Pipeline.

6 And the question we're here to deal with today
7 is shall the Commission grant Yankton Sioux Tribe's
8 Motion for Leave to File Out of Time?

9 And with that, I will turn to Ms. Baker.

10 MS. BAKER: Thank you, Mr. Chairman. Jennifer
11 Baker for the Yankton Sioux Tribe.

12 In the interest of the State and the public, the
13 Yankton Sioux Tribe requests that the PUC grant its
14 Motion, in order for the PUC make a more informed
15 decision on this matter. Exclusion of relevant evidence
16 only limits the ability of the Commission to make an
17 informed decision, and in this instance there's no good
18 cause to do so as no prejudice would come to the
19 Applicant.

20 This prefiled testimony was filed one day late
21 by working days of the Commission, as well as working
22 days of the Applicant, we would presume. And so no
23 detriment really has fallen to the Applicant by this one
24 day late filing.

25 In addition, the Applicant notes that -- I'm

1 sorry. Yankton Sioux Tribe notes that the Applicant
2 filed a very late response last night that counsel
3 actually did not receive a copy of, in spite of being
4 added to the notice list. But that opposition raised
5 concerns about relevance of the testimony.

6 And the Yankton Sioux Tribe asserts that any
7 concerns that the Dakota Access has (Inaudible) --

8 (Discussion off the record)

9 MS. BAKER: Any concerns that the Applicant has
10 regarding compliance with discovery should be addressed
11 through a Motion To Compel, not by excluding key
12 testimony.

13 In addition, now is not the time to address
14 relevance of testimony. Discovery has not yet been
15 completed, and relevance of testimony should be properly
16 addressed through Motions in Limine at the appropriate
17 time.

18 In light of the fact that no prejudice would
19 come to the Applicant by the granting of this motion and
20 that the Commission's decision can be most informed by
21 the granting of this motion, Yankton Sioux Tribe,
22 therefore, urges the Commission to grant the motion.

23 Thank you.

24 CHAIRMAN NELSON: Thank you. And, Ms. Semmler,
25 for the Applicant.

1 MS. SEMMLER: Thank you. This is Kara Semmler
2 for Dakota Access, LLC.

3 I have nothing to add beyond what was filed with
4 the Commission and will stand by that filing.

5 CHAIRMAN NELSON: Thank you.

6 Questions from the Commission.

7 Seeing none, is there a motion?

8 Commissioner Hanson.

9 COMMISSIONER HANSON: Mr. Chairman, in Docket
10 HP14-002 I'm going to move to grant Yankton Sioux Tribe's
11 Motion for Leave to File Out of Time. And I'd have some
12 comments.

13 CHAIRMAN NELSON: Discussion on the motion.

14 Commissioner Hanson.

15 COMMISSIONER HANSON: This obviously is a
16 judgment call to a great extent. The Public Utilities
17 Commission has been very liberal from the standpoint of
18 allowing folks to file late, and oftentimes it's been up
19 to a week or so.

20 And although I would like to see folks be
21 punctual, I just can't bring myself to support keeping
22 them out of the -- the information out of the process on
23 the basis of one day late.

24 CHAIRMAN NELSON: Additional discussion.

25 Commissioner Sattgast.

1 COMMISSIONER SATTGAST: I'm kind of torn on
2 that. I agree with Commissioner Hanson that we have been
3 liberal on allowing some late filings. It's a little
4 difficult in the area of when we do set deadlines to be
5 fair with everyone.

6 But I think I will probably support Commissioner
7 Hanson's motion as well, even though I have some
8 reservations because of late filings. I don't think that
9 it will hurt the process by allowing more testimony.

10 CHAIRMAN NELSON: Thank you.

11 Additional discussion.

12 I am going to reluctantly support the motion.

13 We set deadlines so that everyone understands
14 what the process is, when they have to have their work
15 in, and so that everyone is treated fairly. We expect
16 everybody to abide by that.

17 You know, by the same token, I will agree with
18 Ms. Baker. Probably nobody's going to be prejudiced by
19 this, and some of the other issues that were raised in
20 the opposition brief that were filed yesterday, you know,
21 are issues that may well be valid but probably are not
22 ripe for us dealing with in this particular motion.

23 Last thing I would say to everybody that's
24 involved in this docket is the fact that we're granting
25 this today, do not take this as an indication that we're

1 going to start fudging on any other deadlines that may be
2 involved in this docket, at least from my perspective.

3 Additional discussion.

4 Commissioner Hanson.

5 COMMISSIONER HANSON: Mr. Chairman, I appreciate
6 those comments, especially the latter ones. Well, all of
7 your comments.

8 There were some good arguments that were
9 presented by Ms. Semmler, and I appreciate those. Some
10 of them are not ripe at this juncture. But at the same
11 time, we do not want this to be a situation where we have
12 seen in other dockets where people are continually
13 dilatory in presenting their -- their docket information
14 or filings to the Commission. And it can become a real
15 problem.

16 So I agree with you. I think folks that are an
17 hour late or something like that, I'm not going to get
18 too worried about. But folks have a lot of time. You
19 know, it's not like a surprise where they have to do
20 filings.

21 So I think it's time for the Commission to be
22 responsive to our own rules.

23 CHAIRMAN NELSON: Any additional discussion?
24 Seeing none, all those in favor will vote aye; those
25 opposed nay.

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Commissioner Sattgast.

COMMISSIONER SATTGAST: Aye.

CHAIRMAN NELSON: Commissioner Hanson.

COMMISSIONER HANSON: Aye.

CHAIRMAN NELSON: Nelson votes aye.

Motion carries. Motion is granted.

1 STATE OF SOUTH DAKOTA)

2 :SS CERTIFICATE

3 COUNTY OF SULLY)

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5 I, CHERI MCCOMSEY WITTLER, a Registered
6 Professional Reporter, Certified Realtime Reporter and
7 Notary Public in and for the State of South Dakota:

8 DO HEREBY CERTIFY that as the duly-appointed
9 shorthand reporter, I took in shorthand the proceedings
10 had in the above-entitled matter on the 20th day of
11 August, 2015, and that the attached is a true and correct
12 transcription of the proceedings so taken.

13 Dated at Onida, South Dakota this 14th day of
14 September, 2015.

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Cheri McComsey Wittler,
Notary Public and
Registered Professional Reporter
Certified Realtime Reporter

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