



1                   TRANSCRIPT OF PROCEEDINGS, held in the  
2 above-entitled matter, at the South Dakota State Capitol  
3 Building, Room 412, 500 East Capitol Avenue, Pierre,  
4 South Dakota, on the 17th day of July, 2015.

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1           CHAIRMAN NELSON: I will call the ad hoc meeting  
2 of the Public Utilities Commission to order. It's about  
3 1 o'clock on July 17, Room 414 of the Capitol Building.  
4 This is Chairman Chris Nelson. We have on the phone with  
5 us Commissioners Fiegen and Hanson.

6           This is in the matter of Docket HP14-001, In the  
7 Matter of the Petition of TransCanada Keystone Pipeline  
8 for Order Accepting Certification of Permit Issued in  
9 Docket HP09-001 to Construct the Keystone XL Pipeline.

10           I would also make mention we have court reporter  
11 Cheri with us, which means I need to talk slower.

12           We have a singular question to resolve today,  
13 that being shall the Commission grant Keystone's  
14 Protective Motion in Limine regarding Dakota Rural  
15 Action's exhibit list dating July 7, 2015?

16           And, with that, just stress to everybody, if  
17 you're not speaking, please put your phones on mute. We  
18 are getting some background noise that just went away.  
19 That's wonderful.

20           Mr. Taylor, I will turn it to you.

21           MR. TAYLOR: Thank you, Mr. Commissioner.  
22 Please tell me who is present in the room. Is  
23 Commissioner Hanson? Is Commissioner Fiegen there, or  
24 are they on the phone?

25           CHAIRMAN NELSON: Commissioner Fiegen and Hanson

1 are both on the telephone. There is absolutely nobody in  
2 the hearing room except PUC Staff and the court reporter  
3 and myself.

4 MR. TAYLOR: Thank you. Thank you.

5 The genesis of this Motion in Limine is the  
6 Procedural Order that the Commission entered as amended  
7 several times in the course of these proceedings.

8 The Procedural Order required that Motions in  
9 Limine be filed a week ago today, on the 10th of July. A  
10 Motion in Limine, by design, is a construct -- is  
11 constructed to resolve evidentiary questions in advance  
12 of the hearing. In jury cases, to avoid prejudice to the  
13 jury; in court trials, to streamline the evidentiary  
14 production and process.

15 Per your order, a week ago, Tuesday, July 7, the  
16 parties were obligated to file with the Commission their  
17 exhibit and witness lists. On the 7th Dakota Rural  
18 Action filed a witness list and an exhibit list, and in  
19 the exhibit list, they listed 1,073 items. The witness  
20 list is captioned by saying that Dakota Rural Action may,  
21 emphasis on may, may introduce into evidence during the  
22 hearing the following documents.

23 Only seven of the documents on the witness list  
24 had been previously identified or produced by Dakota  
25 Rural Action in response to discovery requests. Per the

1 Commission's Order, in December of 2014 Applicant  
2 Keystone submitted Interrogatories and Requests for  
3 Production of Documents to all of the Intervenors in the  
4 case.

5 Request for Production of Documents No. 1 asks  
6 that the Intervenors identify and produce all exhibits  
7 that they intended to offer into evidence at the hearing  
8 in this matter.

9 On February 6 Dakota Rural Action responded, and  
10 in their response they said, we don't know yet what  
11 documents we will offer in the hearing and produced no  
12 documents.

13 On March 10 Dakota Rural Action supplemented its  
14 response to Document Request No. 1 and produced 10  
15 documents comprising about 500 pages. Of the 10  
16 documents, two were witness resumes. The rest were items  
17 that are either in the public domain or had previously  
18 been produced by Keystone, and one was a transcript of  
19 the prior hearing.

20 We have heard nothing from Dakota Rural Action  
21 by way of discovery responses since that March 10  
22 production. I haven't counted up, but I think there have  
23 been at least six or seven hearings that have been  
24 conducted in the interim, including one extensive hearing  
25 relating to discovery.

1           The Rules of Civil Procedure in South Dakota  
2 deal very directly with discovery responses. And as we  
3 have long since satisfied ourselves, the Rules of Civil  
4 Procedure in South Dakota also apply to this proceeding.

5           SDCL 15-6-26, Subpart E, Sub Subparts 1 and 2  
6 deal directly with supplementing answers and responses to  
7 Requests for Production. The statute requires that a  
8 party litigant seasonably, and from time to time,  
9 supplement its discovery responses as it learns that  
10 there are new items or previously undisclosed items that  
11 it anticipates that it believes are responsive to a  
12 discovery request.

13           There is another statute that applies,  
14 SDCL 15-6-37, and that statute expresses the consequences  
15 for failure to comply with discovery requests. That  
16 statute requires -- excuse me. I just dropped my copy of  
17 the code. That statute requires, first of all, that the  
18 burden of proof rests with the party who failed to  
19 respond seasonably to the discovery requests.

20           The statute requires not only that the burden of  
21 proof is on the person who failed to respond, but that  
22 the party must demonstrate substantial justification for  
23 its failure to timely and seasonably disclose information  
24 required by 15-6-26.

25           So, first of all, 15-6-26(e) (1) and (2)

1 requires that a party respond and seasonally update its  
2 responses, and 15-6-37 provides that the party who fails  
3 to comply must show substantial justification explaining  
4 why they failed to make that disclosure.

5 15-6-37 also provides the penalty for failure to  
6 show a substantial justification. The statute says that  
7 the evidence shall not be permitted to be used at trial  
8 or at any hearing. That is the evidence or information  
9 that is not disclosed.

10 So the statutes are quite concise and quite  
11 clear.

12 As Staff pointed out in its Memorandum, there  
13 are a number of cases that deal with the evaluation of  
14 belatedly or unseasonably produced evidence to determine  
15 whether or not it should be introduced into evidence.

16 But we don't have to go that far in this case.  
17 This circumstance starts and stops with 15-6-26 and  
18 15-6-37.

19 What happened is this: The exhibit list was  
20 filed on the 7th. We looked at it on the morning of the  
21 8th and saw some 1,000-plus documents, many of which are  
22 identified in the exhibit list only by a few words, some  
23 of which we could easily identify, others that we  
24 couldn't identify at all.

25 While we were in the process of considering how

1 to phrase the Motion for Limine -- in fact, we had begun  
2 drafting a Motion in Limine in response to that filing,  
3 on the evening of June 9 -- or July 9 at about 7:00 in  
4 the evening, Mr. Martinez sent us an e-mail inviting us  
5 to inspect the documents on a website that had been put  
6 up for that purpose.

7 Now, mind you, 7 o'clock in the evening on  
8 July 9, and Motions in Limine are due close of business  
9 the next day, Friday, July 10.

10 The documents, there are 1,073 files mentioned.  
11 Within those files, in a number of instances, there are  
12 multiple documents, some of which are loosely described  
13 in the July 7 exhibit list. For example, communications  
14 between TransCanada and PHMSA. Well, there are a number  
15 of communications included in that single item in the  
16 list. I candidly do not know how many documents,  
17 individual documents, there are in the 1,073 notations  
18 because we have not made an effort to count them up one  
19 at a time, thinking it more important that we address our  
20 efforts to preparing for the trial that's upcoming.

21 Procedurally here's how a Motion in Limine goes:  
22 Keystone made the Motion. Keystone must make -- present  
23 prima facie evidence to support its Motion. The Rules of  
24 Civil Procedure in South Dakota say that absent the  
25 permission of the court of tribunal, motions are heard on

1 affidavits. Emphasize that: Motions are heard on  
2 affidavits.

3 We made a Motion last Friday. We said in that  
4 Motion that we would supplement the Motion this week  
5 after we had had a chance to examine the documents. We  
6 supplemented that Motion yesterday, and we filed an  
7 Affidavit in support of that Motion yesterday. The  
8 Affidavit relates the salient and relevant facts.

9 The salient and relevant facts are that the  
10 documents were produced physically for examination the  
11 first time on July 9, that they were identified as  
12 potential exhibits for the first time on July 7. That is  
13 prima facie evidence to comport with SDCL 15-6-26.

14 Once we have made our prima facie case, which we  
15 did, the burden of proof shifts to Dakota Rural Action to  
16 demonstrate what the statute requires, and that is that  
17 there's substantial justification to fail to disclose the  
18 information.

19 Dakota Rural Action has done nothing by way of  
20 justification. Nothing. Dakota Rural Action filed a  
21 document called Suggestions in Opposition to  
22 TransCanada's Motion. I don't know if it's intended to  
23 be a brief or if it's intended to be an Affidavit. In  
24 any event, it's not an Affidavit because it's not sworn  
25 and not signed under oath, and it affords no explanation

1 for why the December 18 Request for Production of  
2 Documents was not seasonably supplemented in the course  
3 of the long discovery process that's gone on in this  
4 case.

5 So, without going any further, the Commission  
6 should grant our Motion. We made our prima facie case.  
7 Dakota Rural Action's made no response, and that should  
8 resolve the case -- resolve the Motion.

9 Now, bearing in mind that the Commission has  
10 taken a liberal attitude towards evidence and has taken a  
11 liberal attitude towards discovery, there are other  
12 elements that should be considered besides the procedural  
13 approach.

14 Rhetorically I ask this question: On July 9,  
15 18 days in advance of the date set for hearing, is it  
16 fair for a party to offer up 1,073 categories of  
17 documents which it says it may offer into evidence?

18 Of course, the Commission's order directing that  
19 exhibit lists be filed on July 7 doesn't say exhibits  
20 that may be offered. It says exhibits that will be  
21 offered at trial.

22 So we start out with here's 1,073 things for you  
23 to look at, study, grasp, and comprehend, parties to this  
24 case, in the 18 days between the filing and the  
25 commencement of the hearing. And then two days later

1 posts the documents on a website after hours the day  
2 before limine motions are due. And on review of the  
3 website, discovered it is not 1,073 individual documents;  
4 it's many more than that. It's palpably unfair.

5 I would call the Commission's attention to a  
6 statement that Dakota Rural Action made in a brief that  
7 it submitted after TransCanada's April 17 document  
8 production. Asking for a continuance, Dakota Rural  
9 Action said, "The requirement that an enormous amount of  
10 data be reviewed for completeness and substance in time  
11 for trial is unreasonable and impossible."

12 I would note that that statement was made in  
13 response to 18 days' time between Keystone's April 17  
14 production, and the then May 5 scheduled trial date.

15 I typically do not quote Shakespeare in my legal  
16 arguments, but I will, for the benefit of the Commission  
17 today, use a quote that we're all familiar with in  
18 South Dakota; What's good for the goose is good for the  
19 gander.

20 Keystone is prepared for trial. We have been  
21 working diligently to timely meet every obligation that  
22 the Commission has posed on us. When we prepared and  
23 filed our prefiled testimony in April, we submitted  
24 copies of our witnesses' exhibits and laid the foundation  
25 for the admission of those exhibits in our prefiled

1 testimony. And we did the same thing with our rebuttal  
2 testimony.

3 Dakota Rural Action did none of that in its  
4 prefiled testimony, either direct or rebuttal. No  
5 exhibits are identified. For example, in Evan Vokes'  
6 rebuttal testimony, he speaks of things that have  
7 happened, but he doesn't say, as exemplified by Exhibits  
8 A, B, C, D, E, and F as appended hereto, doesn't lay the  
9 foundation for the admission of those exhibits.

10 I don't know if this is a sandbag effort, if  
11 this is an effort to distract from trial preparation, or  
12 if it's an effort to garner yet another continuance.  
13 But, in any event, it's unfair, improper, and a violation  
14 of the Rules of Civil Procedure, a violation in the face  
15 of the orders that you entered with respect to the  
16 administration of this case, and it is totally  
17 inappropriate that at this late hour Dakota Rural Action  
18 be allowed to offer these exhibits into evidence.

19 Now, Dakota Rural Action will say in its  
20 argument, well, many of these documents are Keystone's  
21 documents or TransCanada documents that they are familiar  
22 with and that they know about, so how can it be unfair?

23 Well, the point is not that we may know about  
24 those documents. The point is this: The point is, is  
25 that we began our trial preparation when we got the first

1 response to our Request for Production of Documents.

2 Experienced litigation lawyers know that you ask  
3 questions designed to produce documents and to produce  
4 exhibits so you can begin to frame your case around the  
5 issues. And we began that process in February and March.  
6 And when the prefiled testimony came in, we examined the  
7 prefiled testimony for the purposes of figuring out what  
8 are the issues that we need to try, what are the issues  
9 that we need to be prepared to cross-examine for, and  
10 what are the issues that we need to rebut?

11 And in the period between the April 2 filing of  
12 direct testimony, and the June 26 filing of rebuttal  
13 testimony, we took all of those issues into account that  
14 were revealed by the prefiled direct testimony, and we  
15 built our case, prepared it, identified our witnesses,  
16 figured out what exhibits we needed, figured out how  
17 we're going to present our case, how we're going to  
18 challenge other people's exhibits, and how the case fits  
19 together.

20 And it is palpably unfair and absolutely in the  
21 face of your Procedural Order, to come in two days after  
22 exhibit list deadline and produce a pile of documents,  
23 whether they are TransCanada documents, whether they are  
24 documents secured from PHMSA, or whether they are  
25 photographs that Ms. Sibson took, that by the way, not

1 only have we, TransCanada or the Staff, never seen them,  
2 Mr. Martinez told me on the telephone on Tuesday or  
3 Wednesday, whenever I talked to him, that there was one,  
4 a videotape, that he hasn't even seen yet. The Evan  
5 Vokes body of documents, some 60 or 70 numbers in the  
6 list, we don't know what those are.

7 Mr. Martinez dismissively says in his  
8 suggestions filed with the Commission that they are  
9 primarily TransCanada documents or another set are  
10 photographs that Mr. Vokes either took or gathered.  
11 We've never seen those before. We don't know what the  
12 foundation of those photographs is.

13 And I should explain what I mean by foundation.  
14 When you try a lawsuit, before you can offer an exhibit  
15 into evidence, you must lay the foundation for that  
16 exhibit. For example, a photograph. You must say the  
17 date on which it was taken. You must say where it was  
18 taken. If it isn't clear and evident from the photograph  
19 itself, a witness must testify as to what the photograph  
20 visualizes or represents. And then the witness must say  
21 that this is a fair and accurate appraisal of the view  
22 that's rendered in the photograph. Fundamental, basic  
23 foundation.

24 There is no foundation in the prefilled testimony  
25 for the vast majority of these exhibits.

1           Okay. So what that means, it means we have to  
2 decide what your prefiled testimony rule stands for. We,  
3 Keystone, interprets your prefiled testimony rule to  
4 stand for that we must submit question and answers  
5 soliloquies, and the question and answer soliloquies must  
6 include the foundation for exhibits, and that when our  
7 witnesses take the stand, they adopt their prefiled  
8 testimony, and then they are submitted for  
9 cross-examination.

10           It doesn't mean that at some point in time some  
11 witness, perhaps identified, perhaps not identified as  
12 yet by Dakota Rural Action, will get up on the stand and  
13 lay the foundation for each one of these 1,073 files, the  
14 foundation that is fundamental to its admission.

15           This is a blatant abuse of the rules. And  
16 Dakota Rural Action's attitude towards it is dismissive.  
17 Not dismissive of Keystone; dismissive of this  
18 Commission's authority, dismissive of the order that this  
19 Commission has entered and amended on several times to  
20 govern the procedure and management of this case.

21           And to allow the admission of these documents,  
22 to even allow the consideration of the admission of these  
23 documents prejudices not only Keystone, but the other  
24 parties to the case; the Staff, the Intervenors.

25           I've said before that I've practiced law for 43

1 years and six months in South Dakota. I've tried  
2 hundreds of administrative law proceedings. I don't know  
3 how many court cases I've tried. I have no idea. In my  
4 career this is one of the most blatant, in-your-face  
5 violations of the discovery standards followed by a  
6 document called suggestions in opposition that is  
7 dismissive and is, frankly, rude, under the  
8 circumstances. It's entirely inappropriate that we have  
9 to go any further in the discussion of these documents.

10 The limine Motion should be granted, an order  
11 should be entered, and DRA should be told too little, too  
12 late. Follow the Rules of Civil Procedure, follow the  
13 Commission's order next time.

14 Thank you.

15 CHAIRMAN NELSON: Thank you, Mr. Taylor.

16 Mr. Martinez, your turn.

17 I'm not hearing Mr. Martinez. Who is going to  
18 handle this for DRA? Martinez or Ellison?

19 MR. ELLISON: This is Bruce Ellison.  
20 Mr. Martinez is -- there must have been a phone  
21 interruption. I'm sure he will be right back on.

22 MR. MARTINEZ: Hello?

23 CHAIRMAN NELSON: Mr. Martinez?

24 MR. MARTINEZ: Can you hear me?

25 CHAIRMAN NELSON: Yes, I can hear you now.

1 You're on.

2 MR. MARTINEZ: Oh, thanks. The wires must have  
3 gotten crossed.

4 You know, that was a very interesting soliloquy  
5 that we just heard from Mr. Taylor that, frankly, was  
6 very high on the rhetoric and really not that solid on  
7 the law, and really not grounded in reality.

8 You know, it's great that Mr. Taylor's been  
9 practicing law for, you know, 40-some years. You know,  
10 Mr. Ellison's been practicing quite a while too, so have  
11 I. I haven't been practicing for 40-some years, but 25's  
12 been long enough.

13 You know, it is -- what I'm finding about  
14 TransCanada's Motion to try to keep all of our exhibits  
15 out is that it's a continuation of the game plan that  
16 TransCanada has had since we had that hearing back in  
17 December where they went out of their way, and with you  
18 as the Commissioners kind of going along with that, to  
19 try to limit in every possible way the matters that could  
20 be discussed in these proceedings and anything that would  
21 come in front of the Commission for consideration.

22 So, honestly, I'm not really surprised that  
23 TransCanada's filed its Motion in Limine, but I think  
24 it's wrong on a number of counts.

25 First, even though Mr. Taylor and the Commission

1 Staff is following his lead and filed a brief in support  
2 of TransCanada's Motion, they have not really pointed  
3 out, and there is not really any law that has been cited,  
4 that directly supports the positions that they are  
5 advocating.

6 When you look at what the rules say, it simply  
7 says that we've got to seasonably produce them. Well,  
8 what does seasonably mean?

9 The reality is virtually any litigation that you  
10 encounter is that parties are up until, and sometimes, in  
11 fact, even the day before trial, making decisions about  
12 what exhibits will come in, what exhibits they will want  
13 to present.

14 Now, in an ideal world, we would have plenty of  
15 time. In a typical case of this size, heck, we'd have a  
16 year, two years to go through and just complete the  
17 discovery process.

18 If you'll recall back in December when we had  
19 the initial discussions about a Scheduling Order, I  
20 expressed a lot of concerns about the timing of this and  
21 the fact that it was on such an incredibly compressed  
22 schedule, not the lengthy schedule that Mr. Taylor seems  
23 to -- is referred to.

24 Well, that's what happens when you shorten the  
25 discovery process in the way that we have now. The

1 reality is, when, in response to our discovery, DRA's  
2 discovery requests, we had to file a Motion to Compel  
3 production of documents because TransCanada refused to  
4 provide information that we were seeking.

5 Now, I have to thank each of you as  
6 Commissioners for going ahead and granting the Motion to  
7 Compel Discovery, which then in mid to late April  
8 respond -- you know, resulted in TransCanada literally  
9 producing something like 68 gigabytes worth of data, and  
10 thousands and thousands of files for us to review. The  
11 result of that is it takes time to track through all  
12 of that.

13 And quite literally, we as DRA did not make a  
14 decision or had not even decided until the time we had  
15 filed our exhibit list which exhibits out of those  
16 thousands and thousands of documents, and others that we  
17 were able to obtain from other sources, that we were  
18 wanting to go ahead and use as exhibits.

19 Is that unusual? That's not unusual.  
20 Mr. Taylor seems to think that it is a tremendous breach  
21 of the Rules of Civil Procedure, but it's not. And, you  
22 know, I honestly don't think he's got anything to  
23 complain about here.

24 Now, when you look at what we have on our  
25 exhibit list, the vast majority of these documents were

1 ones that TransCanada produced to us as a result of our  
2 discovery requests. I think, frankly, Mr. Taylor's  
3 missing the point here. The point is it is mind boggling  
4 for a party, any party, including TransCanada, to not  
5 even have it cross their minds the documents that we  
6 request from them are potentially going to be used as  
7 exhibits?

8           They know what they produced to us. They  
9 produced a lot of documents. We narrowed that down. We  
10 decided which of those documents they produced that we  
11 were going to use as exhibits. For them to suddenly  
12 claim foul, oh, my gosh, you can't use documents that we  
13 gave to you, is just -- it boggles the mind. I've never  
14 heard of that in any case that I've ever been involved  
15 in.

16           Parties expect that when you produce documents  
17 in response to discovery, that guess what? Those are  
18 going to be used as exhibits.

19           Mr. Taylor's other main point was that, you  
20 know, hey, we've not presented any kind of foundation for  
21 any of these exhibits. Once again, he's putting the cart  
22 before the horse. That's what you do at trial. When you  
23 put a witness on the stand at trial and you present an  
24 exhibit, you lay your foundation as part of that process.  
25 That's why you have a trial.

1           Now, what Mr. Taylor is suggesting is that, oh,  
2 you have to lay the foundation in all of the prefiled  
3 testimony. If that is indeed true, then why on earth  
4 even bother to have a hearing? Why even bother to have a  
5 trial? Because if everything is going to be presented --  
6 or is required to be presented in terms of laying your  
7 foundation on paper weeks or even months before you  
8 actually get to a hearing, there's no point of even  
9 having a hearing.

10           And so, you know, looking at it in that context,  
11 I think Mr. Taylor's and TransCanada's arguments are way,  
12 way off base.

13           Now let's look at the reality here in terms of  
14 the documents that we've put out. And in the filing we  
15 made our suggestions in opposition to TransCanada's  
16 Motion. We laid out the very categories of documents  
17 that are here. Publicly available information, including  
18 supplemental Environmental Impact Statement and prefiled  
19 testimony in these proceedings and in the Commission's  
20 prior Docket from the '09 case.

21           All of that is out there. A lot of that is  
22 produced with input from TransCanada. For them to claim  
23 that they're prejudiced by that just -- it's frankly mind  
24 boggling.

25           Other exhibits, 4 through 26, those were

1 documents that TransCanada gave us in response to our  
2 initial discovery requests. For them to claim that they  
3 are prejudiced because they thought that -- you know,  
4 they didn't know whether or not we might use those as an  
5 exhibit, it's flat out disingenuous.

6           Then we take a look at the rest of it. We've  
7 got the Commission Staff responses to our discovery  
8 requests. Publicly available documents. For instance,  
9 one of the exhibits we have is TransCanada's presentation  
10 to investors that they made at their most recent annual  
11 corporate meeting. How are they prejudiced by a document  
12 that they themselves produced?

13           Other publicly available documents were there.  
14 We asked for -- and this is an interesting side line, but  
15 one of the things that we asked for in our discovery  
16 requests were communications between TransCanada and  
17 regulators such as PHMSA. Well, you know what? They  
18 didn't produce it.

19           You, as the Commission, ordered them to produce  
20 that, and instead of producing it, what did they do?  
21 They simply said, no, we're not going to do it, and they  
22 filed a number of affidavits from Mr. White and other  
23 TransCanada Staff saying, you know what, we think it's  
24 too burdensome because it's going to take a lot of time  
25 to go through our e-mail servers.

1           Well, we obtained that information, and those  
2           communications between TransCanada Staff and federal  
3           regulators on our own, those are documents,  
4           communications that TransCanada has in its possession.  
5           For them to suddenly claim now that, oh, my gosh, you  
6           shouldn't be able to use that in a hearing is just -- I  
7           mean, it's beyond absurd.

8           The same thing with the documents that we  
9           obtained via an open records request via the South Dakota  
10          Department of Environment and Natural Resources. You  
11          take a look at those documents, they're all either  
12          documents that TransCanada produced themselves or  
13          communications between DENR Staff and TransCanada. All  
14          information that is in TransCanada's possession.

15          I haven't a clue how they can claim that they  
16          were prejudiced by us essentially offering up their own  
17          documents.

18          The same thing goes for the documents that were  
19          produced to us -- or we obtained through Evan Vokes, the  
20          whistleblower, who was talking about TransCanada -- the  
21          problems that he encountered there when he was working as  
22          an engineer. Once again, that is stuff that we asked for  
23          in discovery, communications regarding compliance with  
24          federal laws and with the pipeline safety issues. They  
25          didn't produce it. We obtained it a different way.

1           There is no way that TransCanada is prejudiced  
2 now by the fact that we are offering up documents that  
3 they produced, they generated from their own folks.

4           I won't go into all of the confidential  
5 documents. Those were all in a category that TransCanada  
6 produced to us back on April 17 in that mass document  
7 dump that we got once again sort of the very last minute.  
8 But we went through all of those. Took time to do that,  
9 and we've identified of those which ones we plan to use.  
10 That should not be a surprise to TransCanada.

11           The only documents that TransCanada has any  
12 potential argument to say, hey, we weren't aware of or  
13 didn't know of ahead of time were the photographs that we  
14 have produced by -- that Mr. Vokes gave to us, and then  
15 also photographs taken by Sue Sibson.

16           Once again, we as DRA, we didn't know which of  
17 those we wanted to use. We didn't know what photographs  
18 we wanted to use until we assembled our exhibit list.

19           Once we assembled the exhibit list, we made  
20 those documents available. Those photographs are  
21 available. There are not a whole lot. There are maybe  
22 10 or so in each category.

23           And then the final document which Mr. Taylor  
24 alluded to was a video that the Sibsons have produced.  
25 And the reason we haven't produced that yet is we just

1 got it yesterday. And it is a video that the Sibsons  
2 obtained -- or had made for them with a drone pilot, and  
3 a drone took a camera up and flew over the easement and  
4 the right-of-way where TransCanada had constructed the  
5 pipeline.

6 And, frankly, it's video that ought to be put on  
7 South Dakota public television so everybody can see what  
8 TransCanada's doing to landowners' property. It's -- you  
9 know, it was pretty grim. But we're going to circulate  
10 the video links to that, and that's going to be part of  
11 our supplemental discovery which we're going to be  
12 providing here before the end of the day.

13 That may be the only thing that they have to  
14 complain about, but, honestly, I don't see how they're  
15 going to be prejudiced by that.

16 They've known from day one when we responded to  
17 and provided them, you know, with prewritten testimony  
18 from Sue Sibson that that information was going to be out  
19 there, that she had complaints about how TransCanada  
20 handled the reclamation of her property after they dug up  
21 her ground to put a pipeline in.

22 They've known this was coming all along. It's  
23 not a huge volume of material to go through. It's maybe  
24 a two-minute video they can watch. It's not going to  
25 take them very long to take a look at the photographs.

1 Those are the only things, frankly, that they may claim  
2 they're surprised by. But, honestly, is that burdensome  
3 to look at a few photographs, to watch a two-minute  
4 video?

5 I see no way on earth that TransCanada is  
6 prejudiced in any way by our document production. They  
7 have had all of these documents that they produced to us.  
8 I'm sure they had their associates go through every  
9 single one of them, not only Mr. Taylor's firm, but  
10 probably TransCanada's in-house counsel as well.

11 My guess is is they probably have all of this  
12 stuff indexed, all of this stuff reviewed. They know  
13 what's there. And that's why I think I am so shocked by  
14 the fact that TransCanada is now seeking to exclude all  
15 of this information that you as a Commission ought to see  
16 during the course of the hearing. They've had it all.  
17 There is absolutely no way they are prejudiced.

18 Now in terms of trial prep -- and, of course,  
19 Mr. Taylor basically said, well, one of the reasons that  
20 we're prejudiced is, you know, we have to prepare for  
21 trial, and so we need to know what we're going to do to  
22 prepare for trial.

23 Well, they have had a clear indication of the  
24 direction that not just DRA, but every single party in  
25 this case is going, from the moment that we filed

1 discovery requests. They know what we were asking about.

2 So, frankly, they should know that that's what  
3 they had to prepare for. If they didn't prepare for  
4 that, not my fault. Not DRA's fault. It's their own  
5 negligence if they didn't do that. They sure as heck  
6 know what we were going to ask about and what categories  
7 of subject matter that we were going to inquire to --  
8 inquiring to. All of that has been on the table for  
9 months.

10 So if they didn't prepare for that, that is  
11 TransCanada's problem, not Dakota Rural Action's.  
12 They've had a clue -- they've had a clue from the start.

13 So, you know, when I look at this decision here  
14 that you've got to make, it's pretty simple. You as a  
15 Commission and the role of any tribunal is one of  
16 fact-finding. You need to take a look at what facts  
17 parties are willing to put on the table in order to make  
18 a full and informed and a fair decision about the subject  
19 matter at hand. What TransCanada's obviously trying to  
20 do here is to try to play procedural games to keep as  
21 much information out of the public record as possible.

22 Now, Mr. Taylor spent a lot of time talking  
23 about what's fair and what's not. Frankly, I think that  
24 would be grossly unfair and grossly prejudicial to not  
25 just DRA, but to the other intervening parties as well,

1 and, frankly, to the public to not allow these documents  
2 to be presented as evidence.

3 And, you know, at this point that's all I've got  
4 to say about it. I think you ought to deny Keystone's  
5 Motion.

6 CHAIRMAN NELSON: Thank you, Mr. Martinez.

7 Staff has submitted a brief. I'm going to let  
8 that stand on its own. I view this as an issue between  
9 Keystone and DRA. I don't see a need for any of the  
10 other attorneys to weigh in unless Commissioners have  
11 questions of them.

12 Mr. Taylor, I will give you a brief moment for  
13 rebuttal.

14 MR. TAYLOR: Thank you.

15 We have rules, and rules are the Rules of Civil  
16 Procedure, and we're bound to follow those rules in  
17 litigation, and the reason why we have the Rules of Civil  
18 Procedure that we must follow is because they are the  
19 foundation for fairness in any trial.

20 In this particular proceeding, not only do the  
21 Rules of Civil Procedure apply, but your procedural  
22 orders apply. Your procedural orders say we must file  
23 prefiled testimony. So we all file prefiled testimony.  
24 We don't take depositions in these cases because there's  
25 prefiled testimony that is supposed to reveal the

1 elements of the case that each parties' going to make.  
2 And in conjunction with the prefiled testimony are the  
3 exhibits.

4 You said that prefiled testimony should be in  
5 with the exhibits that support it April 4 -- April 2. A  
6 long time ago. April 2. And the rebuttal by 6-26.

7 You didn't say that a party gets to sit back and  
8 produce a pile of documents well after all deadlines have  
9 passed and then say, well, those documents are no  
10 surprise because they're documents -- many of them are  
11 documents that were produced by TransCanada that are  
12 TransCanada -- TransCanada knows about them. That's not  
13 the point.

14 The point is -- and it's not a procedural game.  
15 It's the law. The point is that you follow the Rules of  
16 Civil Procedure. You follow the orders that the Court  
17 enters. You don't get to say, oh, I didn't make up my  
18 mind until the day before my exhibit list had to be  
19 filed, so, therefore, I couldn't answer an Interrogatory  
20 that was propounded in December that said tell us what  
21 you intend to offer as exhibits.

22 The world of fairness and law and justice does  
23 not work that way. You answer Interrogatories when the  
24 answers need to be made. You produce documents when the  
25 documents need to be produced.

1           The statutes say that you must seasonably  
2 supplement that production when you become aware of  
3 documents. Doesn't say seasonably produce it when you  
4 make up your mind you're going to introduce it.

5           And we, the Applicant, are entitled to rely on  
6 the rules of procedure and rely on your orders and to  
7 prepare our case accordingly. And to allow this last  
8 minute pile on of documents is just absolutely in the  
9 face of everything this case is about.

10           The plain facts are, in Public Utilities  
11 Commission proceedings, by order of the Commission,  
12 prefiled testimony is used, and the reason why is to  
13 shorten discovery, to define the issues, and to prepare  
14 for an orderly hearing.

15           And if you ignore the requirements of prefiled  
16 testimony and ignore the requirements of the Rules of  
17 Civil Procedure and the procedure orders, that defeats  
18 the purpose of all of this. Trial by ambush. That's  
19 what this is all about. Let's wait until after the  
20 deadlines and then unload all of these documents and  
21 ambush them with this stuff.

22           It's unfair. Unfair. It does not comport to  
23 the rules. And you can't allow them to do this.

24           I'd urge you to enter an order -- oh, first I've  
25 got to talk about -- I've got to talk about one other

1 thing.

2 Mr. Martinez made a great deal of discussion  
3 about the April 17 hearing. And, you know, he wrote the  
4 discovery requests, the discovery request that said, "All  
5 documents on a given subject." You have to be careful  
6 what you ask for.

7 So we produced all documents in a monumental  
8 effort. And for him to then say, well, it took us some  
9 time to sort through them, read them and understand them  
10 so we could then decide what exhibits we were going to  
11 offer, well, you've got to be careful what you ask for.

12 We gave him what he asked for. Now we are  
13 entitled to have your orders enforced. And it's just  
14 plain unfair to do it any other way, and we'd request  
15 that you enter the Order with the relief we've asked for.

16 Thank you.

17 CHAIRMAN NELSON: Thank you, Mr. Taylor.  
18 Questions from the Commission? I'm going to go to  
19 Commissioner Fiegen. Any questions?

20 COMMISSIONER FIEGEN: Just briefly for Dakota  
21 Rural Action.

22 Do you have the exhibit numbers of the March 10  
23 discovery that you gave to Keystone on those 10  
24 documents? There are 10 documents. Do you have those  
25 exhibit numbers quickly, or not necessarily?

1 MR. MARTINEZ: Oh, I can't put my finger on  
2 those right now.

3 COMMISSIONER FIEGEN: Okay.

4 MR. MARTINEZ: I'd have to take a look and see  
5 which ones you were talking about.

6 COMMISSIONER FIEGEN: Not a problem. Thank you.  
7 That was my question.

8 No other questions.

9 CHAIRMAN NELSON: Thank you. Commissioner  
10 Hanson.

11 COMMISSIONER HANSON: No questions. Thank you,  
12 Mr. Chairman.

13 CHAIRMAN NELSON: Thank you.

14 I do have a question or two, and I'm going to go  
15 to Mr. Taylor.

16 I just want to make sure that I'm understanding.  
17 When you filed your July 16 reply and on pages 2 and 3  
18 you've got a segment that's entitled the documents and  
19 you've laid out certain segments of documents. In the  
20 first paragraph you talk about documents 67 through 128.  
21 And then the second paragraph.

22 Does what you have referenced in these sections,  
23 is this really the substance of your concern? I mean,  
24 obviously your Motion is much broader than this, but do  
25 these really capture your target of concern?

1 MR. TAYLOR: Just a second. I'm trying to get  
2 on the same page as you.

3 All right. I see where you are.

4 Actually, no. The way that this list came about  
5 is I called Mr. Martinez to talk to him about the  
6 document production. I think that was Tuesday. Our  
7 conversation -- Mr. Martinez is a very amiable man to  
8 talk to, but the substance of our conversation evolved to  
9 a discussion of the categories of exhibits. And this is  
10 a summary of the notes that I took from that  
11 conversation, which that evening I began to cast into  
12 this brief, not knowing that he would file the list of  
13 documents and categories that he called out in his  
14 suggestions.

15 So I tried to group them together in groups that  
16 sort of made sense. And I suppose you could say that in  
17 a descending hierarchy of importance they're -- it's  
18 probably a descending hierarchy of importance.

19 I do know which 10 documents they produced. I  
20 just can't find those. In answer to Commissioner  
21 Fiegen's question, I can find that for you in a minute.

22 CHAIRMAN NELSON: Commissioner Fiegen, do you  
23 want us to wait for that?

24 COMMISSIONER FIEGEN: The only other question --  
25 I have one more question, Mr. Chairman.

1           CHAIRMAN NELSON: Go ahead.

2           COMMISSIONER FIEGEN: On Exhibits 1 through 28,  
3 some of those look like documents that you may have seen  
4 already through those 10 documents. Is 1 through 28  
5 still -- I guess I want Keystone's opinion on Exhibits 1  
6 through 28.

7           MR. TAYLOR: Oh. 1 through 28 --

8           COMMISSIONER FIEGEN: Just wait. I'm going to  
9 put you on speaker phone. So just give me two seconds.  
10          Okay.

11          MR. TAYLOR: 1, obviously, is the final  
12 supplemental EIS. You know, that's going to go in either  
13 from us or from them or from somebody.

14          The prefiled testimony from the HP07 proceeding,  
15 that's the testimony from the base Keystone Pipeline PUC  
16 hearing. Now -- yeah. I'm familiar with that. How  
17 relevant that is to the issues that are in front of this  
18 Commission and how material they are to the decision you  
19 have to make is a whole separate question.

20          No. 3 is the prefiled testimony from the current  
21 Docket. Well, the prefiled testimony from the current  
22 Docket is presumably going to make its way into evidence  
23 in the time-honored style anyway. The witness is going  
24 to get up and say, yeah, this is my prefiled testimony.  
25 I'm under oath. I adopt that as my testimony. So I

1 don't know how that really works as an exhibit.

2 4, TransCanada's responses to DRA's first  
3 Interrogatories. It's hard to understand what the  
4 purpose of that is by way of --

5 MR. MARTINEZ: I can tell you what the purpose  
6 of that is. We constantly use Interrogatories --

7 CHAIRMAN NELSON: Go ahead, Mr. Taylor.

8 MR. TAYLOR: Number 5, TransCanada's  
9 supplemental responses. Number 6, TransCanada's  
10 supplemental responses. I suppose there may be some  
11 relevancy to some answers. They may be used for  
12 cross-examination. There are a lot of ways that that can  
13 come into play.

14 Then you start with Exhibit 7, the cap oil  
15 forecast. And I think through -- 7 through 26 are  
16 documents that we produced in some of our initial  
17 discovery responses. So maybe those are duplicated in 4,  
18 and maybe they're duplicated in 5 and 6. I don't know.  
19 It's just a matter of lining them all up.

20 So that takes us through 26.

21 27 and 28, Commissioner, are the Staff's  
22 Interrogatory responses.

23 And I think that was your question, wasn't it?  
24 1 through 28?

25 COMMISSIONER FIEGEN: Correct.

1 MR. TAYLOR: Now do we know about those? Yeah,  
2 we know about those. Have we seen them? Sure. We've  
3 seen them. Are they a surprise to us that they exist?  
4 No, they're not a surprise to us that they exist. Some  
5 of them are documents we've produced.

6 But the point is there's no answer to our  
7 inquiry from December 18 that says, tell us what  
8 documents you're going to use at the trial. Simple  
9 matter for them to tell us this.

10 And, you know, frankly, 1 through 28, if you  
11 ruled that those were admissible, despite their belated  
12 filing, that's not going to cause us a great deal of  
13 heartburn.

14 CHAIRMAN NELSON: Any additional Commissioner  
15 questions?

16 Hearing none, is there a Motion?

17 COMMISSIONER HANSON: Mr. Chairman, I generally  
18 like to discuss things a little bit prior to having  
19 motions, but I know that you like to go the opposite  
20 direction. And I'm fine with either one, but --

21 CHAIRMAN NELSON: Well, in this case, I mean,  
22 Commissioner Hanson, I could maybe take a stab at a  
23 Motion, but I'd be comfortable with hearing your  
24 commentary before I'd try to put something together. So  
25 go ahead.

1           COMMISSIONER HANSON: I appreciate that. Thank  
2 you.

3           I'm a bit conflicted, as I mentioned. Most  
4 persons would be in this type of a situation. This is,  
5 in all of my years, an extraordinary situation from the  
6 standpoint of the amount of exhibits that were presented  
7 at I will say a -- a very late date.

8           And I'm conflicted from the standpoint that I  
9 want to make certain that our decision is based on the  
10 merits of the case and that all parties are able to  
11 present all of the exhibits and information that truly  
12 need to be presented for us to make that decision.

13           At the same time, I don't want to see one party  
14 unfairly -- well, I'll call it a trial by avalanche as  
15 opposed to a trial by ambush. It almost seems to be both  
16 in this situation. So I'm struggling with a situation  
17 where I think some of these items certainly should be  
18 included, and some of them not included. And that's  
19 where I'm coming from at the present time.

20           Thank you, Mr. Chairman.

21           CHAIRMAN NELSON: Thank you.

22           Any other general comments before we try to do a  
23 Motion?

24           In that case, to try to get the ball rolling  
25 here, I will move that we grant a Motion in Limine but

1 only as it relates to -- and just for everybody's  
2 convenience, I am working off of the document that I  
3 referenced. This would be Keystone's July 16 reply,  
4 pages 2 and 3.

5 As it relates to numbers 67 through 128, 397  
6 through 409, 1058 through 1062, 1063 through 1,073, 29  
7 through 37, 39 through 65, and number 67.

8 Discussion on the Motion.

9 I guess I would echo Commissioner Hanson's  
10 comments. And in trying to pick through this, even  
11 though Mr. Taylor said that, you know, these are not the  
12 sum total of his concern, as I was comparing the complete  
13 list of categories that DRA had submitted and comparing  
14 it with what we found here on pages 2 and 3 of this  
15 response, I became convinced that these, in fact,  
16 probably are the categories of documents that either were  
17 never turned over, or even if they were publicly  
18 available, Keystone would have had no way of knowing that  
19 these were going to become exhibits. That was never  
20 disclosed.

21 Now, is it possible there are some other  
22 documents that contain that same description? Possibly.  
23 But I think at this point this is what I'm willing to  
24 enunciate in a Motion and willing to grant.

25 Additional discussion on the Motion.

1           COMMISSIONER HANSON: Mr. Chairman.

2           I was just requesting that you would -- I'm  
3 working from several computer screens at the present  
4 time, and I'd appreciate it if -- I wasn't quite on to  
5 the -- I have my notes in front of me too, but I would  
6 appreciate it if you'd restate your Motion so I could  
7 check and make sure I have it correct.

8           CHAIRMAN NELSON: Absolutely. And what I'm  
9 going to do, if you look at the July 16 Keystone reply to  
10 Dakota Rural Action brief, resisting the protective  
11 limine Motion, if you turn to page 2, there's a section  
12 entitled the documents. And in that section are all of  
13 the numbered items that I have referred to.

14          COMMISSIONER HANSON: Thank you.

15          CHAIRMAN NELSON: Do you want me to read through  
16 those again, or are you finding them?

17          COMMISSIONER HANSON: No. I have them. And  
18 your Motion is to exclude those?

19          CHAIRMAN NELSON: It would be to exclude those,  
20 yes.

21          COMMISSIONER HANSON: Thank you. Thank you,  
22 Mr. Chairman.

23          CHAIRMAN NELSON: Commissioner Fiegen.

24          COMMISSIONER FIEGEN: I'm trying to quickly  
25 figure out which items are still in. Because I think

1 we're leaving quite a few in that TransCanada may not  
2 have known that it was going to be submitted. So give me  
3 just another two minutes to look through this quick.

4 CHAIRMAN NELSON: Absolutely. Let's take as  
5 much time as we need because I understand how tricky this  
6 is when we start picking through, you know, 1,100  
7 different numbers. So take the time you need.

8 COMMISSIONER HANSON: Mr. Chairman.

9 CHAIRMAN NELSON: Commissioner Hanson.

10 COMMISSIONER HANSON: May I suggest that from  
11 the standpoint -- I'm looking at that as well because I  
12 was concerned it might not include some that I thought it  
13 would. However, I think attempting to arrive at one that  
14 includes everything may be a bit of a challenge because  
15 some of us are going to support -- I'm anticipating some  
16 of us may support some that others do not. And if we can  
17 get a collection at this juncture that we all support,  
18 then this would not necessarily be the final Motion  
19 today. We can go on to other items if Commissioner  
20 Fiegen wishes to include some of those. But I certainly  
21 want her to have enough time to look that over as well.

22 Thank you, Mr. Chairman.

23 COMMISSIONER FIEGEN: As I'm looking through  
24 this, Mr. Chairman, you didn't include Exhibits 129  
25 through 396; correct?

1           CHAIRMAN NELSON: Okay. Commissioner Fiegen,  
2 just hang on a second. I'm having a side bar  
3 conversation here, so just hang tight.

4           Okay. Commissioner Fiegen, go ahead.

5           COMMISSIONER FIEGEN: Exhibits 129 through 396,  
6 you did not include those?

7           CHAIRMAN NELSON: That is correct.

8           COMMISSIONER FIEGEN: May I ask Staff a  
9 question?

10          CHAIRMAN NELSON: Yes.

11          COMMISSIONER FIEGEN: Staff, in Exhibits 129  
12 through 396, those are documents it appears to me that  
13 TransCanada has given but did not know, it appears to me  
14 that this would be part of the exhibits. They have not  
15 really had time to go through all of these documents.

16                 Do you believe it's fair for the Applicant, or  
17 do they have time in a timely manner, to go through all  
18 of those exhibits because they did not know that they  
19 would be submitted as exhibits?

20          MS. EDWARDS: This is Kristen Edwards for Staff.  
21 I'm going to bring up the exhibits quick and see if I can  
22 look at them.

23          MR. ELLISON: This is Bruce Ellison on behalf of  
24 DRA. I object to the question being posed to what Staff  
25 counsel thinks is appropriate in this particular matter.

1 And I also want to point out that under U.S. Court of  
2 Appeals Eighth Circuit ruling, we can use any of these  
3 documents without notice during cross-examination.

4 CHAIRMAN NELSON: Your objection is overruled.  
5 Any Commissioner has a right to ask a question of any of  
6 the lawyers involved in this proceeding.

7 MS. EDWARDS: This is Kristen Edwards for Staff  
8 again. Which numbers were you asking about?

9 COMMISSIONER FIEGEN: 129 -- Exhibits 129  
10 through 396.

11 And actually it goes also for 410 through 1057.  
12 So those are kind of the same type of exhibits, it  
13 appears to me, the same type of documents that  
14 TransCanada has produced but didn't realize they were  
15 going to be exhibits.

16 MS. EDWARDS: These documents, a lot of them  
17 appear to be about design and maps.

18 I guess in my opinion the prejudice would be  
19 less. The files are smaller and would take less time to  
20 look at. So the risk of prejudice might be a little  
21 less, you know, with maps.

22 COMMISSIONER FIEGEN: Thank you.

23 CHAIRMAN NELSON: Additional discussion on the  
24 Motion.

25 Seeing no discussion, all of those in favor of

1 the Motion will say aye. Those opposed, nay.

2 Commissioner Hanson.

3 COMMISSIONER HANSON: Aye.

4 CHAIRMAN NELSON: Commissioner Fiegen.

5 COMMISSIONER FIEGEN: Fiegen votes aye.

6 CHAIRMAN NELSON: Nelson votes aye. The Motion  
7 carries.

8 That, I believe, concludes our business for  
9 today.

10 I just want to make maybe an overarching  
11 comment.

12 Obviously on Tuesday we're all going to spend a  
13 lot of time together and the following couple of weeks a  
14 lot of time together. A lot of what I heard today from  
15 both sides were probably frustration with the other  
16 side's attorney and an attempt to discredit the other  
17 side's attorney.

18 And I guess I get that, and I would probably be  
19 feeling the same way if I were in your all's shoes. I  
20 think it's more productive for all of us, and certainly  
21 more productive for the Commission, if as we move forward  
22 if we keep our arguments focused on the issue at hand as  
23 opposed to the other attorneys.

24 With that, Commissioners, anything else for  
25 today?

1 If not, is there a Motion?

2 MR. TAYLOR: Commissioner.

3 CHAIRMAN NELSON: Yes, Mr. Taylor.

4 MR. TAYLOR: Just as a point of clarification,  
5 would you run through your notes again and list off the  
6 document numbers that you intend to include in the order?

7 CHAIRMAN NELSON: Yes. And, again, these are  
8 coming straight off of your page number 2.

9 MR. TAYLOR: Yes.

10 CHAIRMAN NELSON: 67 through 128, 397 through  
11 409, 1058 through 1062, 1063 through 1,073, 29 through  
12 37, 39 through 65, and number 67.

13 MR. TAYLOR: Okay. I thought that you had  
14 missed number 37.

15 CHAIRMAN NELSON: I grouped it. Yeah. I  
16 grouped it. Thank you for that clarification.

17 Is there a Motion? Commissioner Fiegen or  
18 Commissioner Hanson, is there a Motion to adjourn?

19 COMMISSIONER HANSON: I apologize. I was on  
20 mute when I made the Motion. I move to adjourn.

21 CHAIRMAN NELSON: Thank you. All of those in  
22 favor will vote aye. Those opposed, nay.

23 Commissioner Hanson.

24 COMMISSIONER HANSON: Aye.

25 CHAIRMAN NELSON: Commissioner Fiegen.

1 Commissioner Fiegen, we're not hearing you.

2 Commissioner Fiegen apparently is passing.

3 Commissioner Nelson votes aye.

4 We are adjourned.

5 (The proceeding is adjourned at 2:15 p.m.)

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1 STATE OF SOUTH DAKOTA)

2 :SS

CERTIFICATE

3 COUNTY OF SULLY )

4

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 17th day of  
11 July, 2015, and that the attached is a true and correct  
12 transcription of the proceedings so taken.

13 Dated at Onida, South Dakota this 4th day of  
14 September, 2015.

15

16

17

18

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

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