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THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

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IN THE MATTER OF THE PETITION HP14-001
OF TRANSCANADA KEYSTONE PIPELINE,
LP FOR ORDER ACCEPTING CERTIFICATION
OF PERMIT ISSUED IN DOCKET HP09-001
TO CONSTRUCT THE KEYSTONE XL
PIPELINE

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Transcript of Proceedings
March 31, 2015
11:25 a.m.

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BEFORE THE PUBLIC UTILITIES COMMISSION

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

COMMISSION STAFF

John Smith
Kristen Edwards
Greg Rislov
Brian Rounds
Darren Kearney
Joseph Rezac
Eric Paulson
Patrick Steffensen
Brittany Mehlhaff
Katlyn Gustafson

Reported By Cheri McComsey Wittler, RPR, CRR

1 TRANSCRIPT OF PROCEEDINGS, held in the
2 above-entitled matter, at the South Dakota State Capitol
3 Building, Room 413, 500 East Capitol Avenue, Pierre,
4 South Dakota, on the 31st day of March, 2015.

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1 CHAIRMAN NELSON: We are going to begin, I think
2 by agreement, with the Second Addendum item first. And
3 this is in Docket HP14-001, In the Matter of the Petition
4 of TransCanada Keystone Pipeline, LP for Order Accepting
5 Certification of Permit Issued in Docket HP09-001 to
6 Construct the Keystone XL Pipeline.

7 The Second Addendum is dealing with a Motion to
8 Amend the Order Setting a Procedural Schedule from
9 Standing Rock Sioux Tribe. In its Motion the Tribe
10 requested an expedited hearing on the Motion, which we
11 have granted.

12 And so at this point I am going to turn it over
13 to Mr. Capossela to present his arguments on that Motion.

14 MR. CAPOSSELA: Thank you, Mr. Chairman and
15 Commissioners. Peter Capossela for the Standing Rock
16 Sioux Tribe.

17 And thank you for docketing our Motion for this
18 morning's meeting and for permitting me to appear
19 telephonically. And we appreciate also the fact that the
20 relief that has been requested per the Staff memorandum
21 may not be routine for the PUC, that continuing hearing
22 status that has been scheduled is not something that the
23 Commission ordinarily does. So we appreciate your due
24 consideration of our request in light of that.

25 Before I summarize the reasons I think the

1 Motion should be granted and address some of the points
2 that were raised in the response to filings, I would like
3 to do a little bit of housekeeping, as it were.

4 There were two sets of filings by TransCanada
5 yesterday; I think a filing addressing Standing Rock
6 Motion and a filing addressing the Rosebud Sioux Tribe
7 Motion. And I think at least on my end there's a little
8 confusion.

9 An Affidavit of Counsel, Mr. Taylor, was filed
10 along -- (Inaudible).

11 (Discussion off the record)

12 MR. CAPOSSELA: Motion to Amend -- I think all
13 involve sworn allegations regarding the Rosebud Sioux
14 Tribe. And so they may have mixed up their affidavits.
15 But, in any event, to the extent that we're trying to
16 clarify the issues to move forward --

17 CHAIRMAN NELSON: This is Chairman Nelson. I'm
18 going to jump in here, and the answer is yes. We
19 discovered this morning that the attachments were, in
20 fact, jumbled when they were filed yesterday. And my
21 understanding is that our Staff -- they've either been
22 refiled correctly or our Staff has sorted it out, and
23 they are now correct out on the website. So I think that
24 issue has been resolved.

25 MR. CAPOSSELA: Very good. Thank you, sir.

1 As I mentioned, you know, we recognize that the
2 Commission does not ordinarily continue hearings once
3 they've been set. Probably most of the applications that
4 come before the Commission are not projects of this scale
5 and scope. This is a biggie. And so if a little bit of
6 time might be needed, that might be a good thing and not
7 a bad thing to assist the Commission in its
8 consideration.

9 I do want to make a point, though, that
10 continuances before many administrative agencies or
11 courts are not that out of the ordinary. They're fairly
12 routine. They're fairly ordinary requests, and they're
13 routinely granted if there's good cause to do it.

14 And so the relief that we're requesting, even
15 though it may not be a standard thing that a Public
16 Utilities Commission does, it's really not that out of
17 the ordinary. And the Tribe in filing the Motion is not
18 doing anything untoward or for any improper purpose or
19 anything like that.

20 I want to emphasize that point. Because it kind
21 of has been suggested that the Tribe's dragging their
22 feet. And I don't think there's anything in the record
23 that really backs that up.

24 In fact, TransCanada's Amended Motion to exclude
25 many of the Intervenors from testifying at the hearing on

1 the second page lists those Intervenors that TransCanada
2 acknowledges have complied with the discovery rules in
3 South Dakota. And Standing Rock is on that list, and for
4 good reason.

5 We have fully complied with TransCanada's
6 discovery requests. They admit that. And, in fact, the
7 Tribe has produced literally dozens of documents that are
8 exhibits to be introduced at the hearing. TransCanada
9 produced zero documents to the Tribe, with respect to the
10 exhibits it plans on introducing.

11 So the Tribe -- the information flow from the
12 Tribe to TransCanada in discovery has been robust, but it
13 has not been a two-way street. And the reason I mention
14 that is because we're kind of being accused of not
15 following the rules or dragging our feet. And I think we
16 tried very hard to comply with the rules and to share our
17 case in discovery up front with the Petitioner because
18 that's what the rules require.

19 And so there's no untoward or improper
20 motivation underlying the Tribe's Motion. We just need a
21 little bit more time to prepare our case, for the reasons
22 cited in the Motion.

23 Number one, the Tribe is a government that has
24 procurement requirements and needed the time that's been
25 taken to procure expert assistance. And, number two,

1 TransCanada itself has obstructed the Tribe's ability to
2 put its case together by not cooperating in discovery and
3 not reciprocating with the cooperation that the Tribe has
4 shown up to this point.

5 In procuring expert assistance the Tribe did it
6 as quickly as it could under the procurement requirements
7 that apply. If anything, procurement of expert
8 assistance for the hearing was held up by TransCanada's
9 Motion to Define the Scope of Discovery.

10 Because we weren't sure up until the Commission
11 entered its Order on December 17 that we were, in fact,
12 going to be able to address the Findings of Fact and the
13 Amended Conditions in the permit.

14 And so once that got clarified, the Tribe moved
15 ahead expeditiously. What I mean by that is they had to
16 identify money. They had to -- a committee needed to
17 reallocate money. Once that was done, began the
18 competitive bid process.

19 Once that was done, a committee of the Tribal
20 Council had to meet and approve what are the proposals.
21 And after that was done the full Tribal Council was able
22 to act and approve a consultant contract with an expert
23 to assist in a proceeding.

24 So the Tribe went through the steps that are
25 required to hire technical assistance for expert witness

1 testimony and completed that process just almost
2 precisely to the day four months from the granting of its
3 request to intervene and about two and a half months
4 after the Order was entered on the Motion to Define the
5 Scope of the proceeding -- the Scope of Discovery.

6 So when you look at the record, any contention
7 that the Tribe dragged its feet or has in any manner not
8 followed the rules or has tried to cause delay, that's
9 not borne out by the acknowledgments by TransCanada
10 itself in their Amended Motion.

11 I think the Staff memorandum properly identified
12 the standard for the Commission to follow in a request
13 that we've made. And if there's no -- you look up
14 whether continuing a hearing injures the other part. If
15 it causes any injuries to the other part or any prejudice
16 to the other party and, if so, whether that outweighs the
17 benefit to the moving party and whether or not it
18 advances the administration of justice. Keeping in mind
19 that a party that's engaged in undue delay is not
20 entitled to a continuance.

21 And I think here TransCanada's not injured at
22 all. There may be some inconvenience for all of the
23 parties, all of the Intervenors as well as TransCanada
24 and the Staff and the Commission, but I think that
25 inconvenience is outweighed by the benefit to the

1 proceeding by granting what we tried to request in our
2 Motion was 60 days to work out unresolved disputes over
3 discovery and to give one of the Tribes two experts that
4 it's identified time to do some work and prepare for the
5 submittal of expert testimony.

6 The Staff Brief also mentioned that the
7 testimony that the Tribe wants to pursue and that a
8 reasonable amount of postponement of the hearing will
9 enable the Tribe to pursue has to be relevant to the
10 proceeding. And the Tribe identified two experts.

11 And ECONorthwest is an economics and statistical
12 analysis expert firm that are going to look at the
13 Findings of Fact 43 to 45, which relate to the
14 possibility, the prospect of spills in South Dakota.

15 We know a little bit more about release of tar
16 sands than we did in 2009, 2010, and some of the analysis
17 that underlies those findings of fact may be different
18 now, may be different now. And so the testimony that
19 we're seeking the opportunity to present does, in fact,
20 go to the Findings of Fact and Amended Conditions.

21 In their reply document TransCanada rather
22 blithely made the point that why are we asking for more
23 time for ECONorthwest and not for professor
24 Linda Black Elk, kind of suggesting there's something
25 afoul by that. In our Motion we identified the need for

1 more time for ECONorthwest to do its work.

2 Professor Black Elk has a preexisting consulting
3 relationship with the Tribe so the procurement of her
4 assistance in this case was facilitated by that. But by
5 needing a little bit more time to retain ECONorthwest to
6 do some statistical analysis on some spills, the Tribe's
7 not doing anything wrong and was as consciousness as it
8 could be under tribal law.

9 And there was a discussion this morning about
10 the reporting requirements to the Federal Government and
11 the Tribe has Office of Management and Budget Circulars
12 that it has to comply with in procurement in the
13 expenditure of tribal funds. So it's kind of a similar
14 issue there.

15 As I mentioned, these times -- the Tribe's
16 good-faith motion is the kind of thing that
17 administrative agencies and reports approve of routinely.
18 And, in fact, parties routinely stipulate to these things
19 and compromise on these issues.

20 TransCanada has not been willing to compromise
21 on anything really and from the Tribe's standpoint was
22 rather intransigent in discovery. And that's a big part
23 of the reason that the Tribe feels that more time will be
24 helpful in resolving disputed issues in the proceeding.

25 As the Staff advised, also the Commission has

1 discretion whether or not to grant a request to continue
2 the hearing. We're not asking for that much more time
3 intentionally because we understand the value the
4 Commission places on moving along this docket.

5 It comes down to what's the right thing to do.
6 Is TransCanada hurt by putting it off by 60 days or so?
7 How much does the Tribe benefit? How much does the
8 Commission as the fact finder benefit on whether the
9 administration of justice is advanced or not?

10 I think when you look at these factors on
11 balance, it is clearly within the Commission's discretion
12 to grant the Tribe's Motion, and that's what we're
13 asking.

14 And thank you for giving me the opportunity to
15 present that information on behalf of the Tribe.

16 CHAIRMAN NELSON: Thank you. I'm going to open
17 it for Commissioner questions. And I've got one or two
18 to start.

19 There's been some discussion about maybe
20 misunderstanding of what particular deadlines mean. And
21 in your Motion you suggest a close of discovery deadline
22 of May 11. And there was some discussion about not
23 understanding exactly what on -- the orders March 10
24 deadline responses to final discovery served, what all of
25 that really meant.

1 And so I guess my question, when you suggest the
2 date closing of discovery May 11, what do you mean by
3 that, and how would that date be impacted if one of the
4 parties filed a Motion to Compel Discovery on May 10?

5 MR. CAPOSSELA: Well, firstly, because the Tribe
6 did not succeed in coaxing compliance by TransCanada with
7 its discovery requests, the Tribe is hopeful that an
8 outstanding motion will get granted to enable the Tribe
9 to learn more about the project per its discovery
10 requests.

11 And there has to be some -- some additional
12 permissible time period in which to do that. And that's
13 all that we're asking for there is that it be recognized
14 that discovery is ongoing. Because we have these
15 disputes that are outstanding.

16 You know, with respect to making a motion on
17 May 10 to try to set it back further, if the Tribe's
18 Motion is approved, the Tribe certainly would not -- is
19 granted, the Tribe would -- I do not foresee the Tribe
20 going back and requesting more time.

21 CHAIRMAN NELSON: I appreciate that response.
22 And so your suggested May 11 deadline for close of
23 discovery would be with the understanding that any
24 Motions to Compel would have to be enough in advance of
25 that to be adjudicated and responded to; is that

1 correct?

2 MR. CAPOSSELA: That's correct. And that may
3 not be enough time. But we're not trying to hold things
4 up. We're trying to get stuff done.

5 CHAIRMAN NELSON: Additional Commissioner
6 questions.

7 If not, I'm going to turn to TransCanada.

8 MR. TAYLOR: Thank you, Commissioner. William
9 Taylor for TransCanada.

10 Mr. Capossela is a very amiable man with whom
11 we've gotten along very well, had a pleasant conversation
12 with him a month or so ago about discovery issues which
13 we tried to resolve.

14 The inherent problem with resolution of
15 discovery issues with Mr. Capossela is this. And I
16 didn't intend for this to be the motion hearing on
17 discovery issues, but the issue seems to be in front of
18 us.

19 Mr. Capossela made a demand that TransCanada
20 produce every document, every document, that it has with
21 respect to the Keystone XL Pipeline project. We started
22 that conversation out, our meet and confer, by explaining
23 to him that in our office alone we have seven 9-foot
24 shelves that contain the TransCanada KXL materials. And
25 we have no concept of how many truckloads of material

1 there is in Canada and offices in Houston, Kansas,
2 elsewhere.

3 We asked him what is your focus? His response
4 and offer of compromise was instead of supplying all
5 documents, supply a list of all documents, and he would
6 choose which he wanted.

7 Our meet and confer didn't go any further than
8 that. And he has made no Motion to Compel Discovery
9 since that time.

10 The Motion he made is that the Tribe be granted
11 additional time because they were unable to -- it's a
12 little hard to define exactly the reason. Either they
13 were unable to secure an expert in a timely fashion or
14 their expert needs more time to complete their opinion
15 before their prefiled testimony is due.

16 Our response to that is to say this: First of
17 all, this is not a retrial of the 2009, 2010 proceeding.
18 This is a trial of -- the issues presented are can
19 TransCanada certify to this Commission that it can
20 construct the project compliant with the conditions.

21 We have said from the beginning that those
22 issues are narrow and that those are the issues that we
23 intend to try. We filed September 15. There is no
24 surprise as to what we intended to do.

25 In early November we filed a Motion to Define

1 the Scope of the Hearing. The Standing Rock Sioux Tribe
2 had been admitted as a party a month by the time we filed
3 that Motion.

4 The Motion was heard December 17. The time line
5 was established shortly after that. We filed our
6 Interrogatories well in advance of when we were required
7 to. January 6 was the date. I think we filed the 18th
8 or 19th of December, thinking that the parties involved
9 could use as much time from our end as possible.

10 We have complied, to the best of our ability.
11 We have answered over 1,000 Interrogatories and Requests
12 for Production of Documents. Our first cut at objections
13 we refined our objections and narrowed them as tightly as
14 we could, the principal that why have discovery disputes
15 if we can get around them, even though many of the things
16 that were asked for were irrelevant, immaterial, and
17 unrelated, including the production of all documents.

18 Our feeling is is that the Commission set a
19 schedule on December 17. We have done the best we can to
20 comply with that schedule. If Mr. Capossela has further
21 questions that he wants to ask us, we're not going to not
22 take his phone calls because April 2 has come and gone or
23 because March 31 has come and gone.

24 We're perfectly willing to accommodate him in
25 any fashion that's reasonable and responsible under the

1 circumstances, the same with any other party.

2 So we think it's inappropriate for him to assert
3 at this time because of a perception that it was
4 difficult to find an expert that this entire process
5 should be derailed and new dates set.

6 From our perspective, Mr. Moore and I have
7 prefilled testimony ready to file two days from now. We
8 have our witnesses lined up. We have dates scheduled
9 shortly after the 2nd where our witnesses are going to
10 come from around the country and assemble so that we can
11 prepare our testimony and so that we can prepare for our
12 rebuttal testimony that will be filed.

13 We have a second set of dates when witnesses are
14 going to come and assemble for rebuttal purposes. We
15 started making those arrangements in January and
16 February. The time line is very manageable. No reason
17 for us not to proceed.

18 If Mr. Capossela's experts are unable to
19 conclude their preparation by April 2, we should not be
20 penalized for that. And, frankly, although we haven't
21 seen his witnesses' testimony, we have some inkling of
22 what his witness is going to testify to, and there is, in
23 my mind, a significant issue whether or not the testimony
24 that he proposes from this expert is anything more than a
25 retrial of some of the underlying issues in the case.

1 I guess we won't know that until we see the
2 testimony. But I can see that there may be at some point
3 in these proceedings some scope of limitation motions on
4 the testimony he proposes to extract from that expert
5 anyway.

6 So I would say that it's inappropriate to
7 continue the Motion. Everybody's lived with the tight
8 time line. Everybody's working as hard as we can under
9 the circumstances. We would like very much to go forward
10 with the schedule as set.

11 Thank you.

12 CHAIRMAN NELSON: Commissioner questions.

13 Thank you.

14 Seeing none, Staff. Ms. Edwards.

15 MS. EDWARDS: Thank you, Mr. Chairman, and
16 certainly thank you to the Commission for allowing this
17 to be held on an expedited basis. We appreciate your
18 time on that.

19 And thank you to every party that filed a
20 Brief. It allows for certainly more meaningful
21 discussion when we have a chance to look at that
22 information ahead of time. And the benefit of going
23 toward the end is I have a lot of notes here so I'm going
24 to go through those slowly.

25 To add to the Memorandum that Staff did file,

1 Staff does disagree with the contention that to not allow
2 a continuation would be a violation of due process. Just
3 looking back at previous dockets, when this does go to
4 hearing it would be about seven and a half months if we
5 continue with the schedule as its established.

6 Even looking at HP09-001, that was filed roughly
7 in the middle of March and heard in the middle of
8 November, which is approximately seven and a half months.
9 And as we've heard several times, the scope of that
10 docket was vastly greater than what we're dealing with
11 here.

12 And in that docket there was an intervention
13 period of 60 days by statute so there was essentially one
14 month less to prepare for that hearing.

15 Also looking at the arguments with regard to the
16 procedural schedule and how tight it is, it appears to
17 Staff that some of those are arguments that could have
18 been raised several months ago possibly in a motion to
19 reconsider the procedural schedule as opposed to two days
20 before prehearing -- or prefiled testimony was due if, in
21 fact, it appeared to be too tight of a deadline or expert
22 witnesses could not have been procured.

23 And with the Motions to Compel being heard on
24 the 14th I guess Staff is somewhat puzzled why these
25 Motions weren't filed earlier, if, in fact, a party felt

1 that TransCanada wasn't providing enough information or
2 being forthcoming enough. It seems more prudent to have
3 filed that Motion on -- if discovery was due on March 10,
4 then maybe 11, 12, somewhere, so it could have been heard
5 much earlier than today and on 10 days' notice.

6 I understand TransCanada also has a Motion to
7 Preclude Testimony to be heard on April 14. And as far
8 as how that affects any prefiled testimony that would be
9 due on the 2nd, I suppose that would be something
10 TransCanada would have to answer to.

11 But my understanding would be is that any
12 information gained from any Order on the 14th, as far as
13 for TransCanada, would not affect their prefiled
14 testimony because in order to -- if it did go in their
15 favor, in order to preclude, testimony wouldn't have an
16 effect on testimony they did file.

17 I don't know for Standing Rock, who also has a
18 Motion pending on April 14 what kind of an effect they
19 would see on -- if prefiled testimony is still due on
20 April 2 and they have a Motion to Compel out there, it
21 seems to me that if they felt that was going to be an
22 issue, they would have filed the motions at the same time
23 to be heard at the same time.

24 However, one suggestion Staff would have is
25 to -- I suppose if a Motion to Compel is granted after

1 prefiled testimony is due, to allow supplemental
2 prefiled testimony, rather than starting a schedule from
3 scratch.

4 Staff does have approximately, I believe, 10
5 witnesses prepared and ready for May 5 through May 8.
6 And we are prepared to go forward with the prefiled
7 testimony on the 2nd. I suppose -- so we do object to
8 moving the hearing date.

9 It would probably be a little easier to work
10 around some of the other dates prior to the hearing if
11 absolutely necessary, to move those around a little. If
12 the Commission does decide to amend the Procedural
13 Schedule, Staff would ask for a deadline for motions to
14 be filed, not just Motions to Compel but all motions to
15 be filed by a certain deadline so we don't end up with
16 late notice hearings and such.

17 Also if the Commission does determine a new
18 hearing date is necessary, we would ask that that hearing
19 date not be established at this meeting, just so we have
20 time to go back and maybe regroup and figure out what
21 works for hearing dates. And possibly we'd even suggest
22 having the Commission order possibly the executive
23 director or General Counsel to issue an order rather than
24 coming back before the Commission, if one of them could
25 find dates that worked for the Commission as opposed to

1 trying to get 42 parties back together.

2 Because I don't think getting 42 parties back
3 together to suggest dates is really going to be all that
4 productive. Even the best of faith to get two people to
5 have a day or a week that works for them isn't going to
6 happen.

7 So with that, Staff would stand by for
8 questions, and that's all that I have at this time.

9 CHAIRMAN NELSON: Questions from the
10 Commission.

11 I'd just make one comment. You hit upon an
12 issue that was of great surprise to me. When you talked
13 about expecting Motions to Compel to be filed on like
14 March 11 or 12 -- and that was my expectation -- and
15 those dates came and went and I didn't see that, and so I
16 was under an assumption that given the tight time frame
17 that all was copacetic out in the world. But apparently
18 not.

19 With that, are there others --

20 COMMISSIONER FIEGEN: I have one question.

21 CHAIRMAN NELSON: Go ahead, Commissioner Fiegen.

22 COMMISSIONER FIEGEN: Ms. Edwards, you made a
23 point that we should maybe add in our Procedural Schedule
24 that all motions should be filed by, but you didn't give
25 a suggestion for a date.

1 Do you have the Procedural Schedule there?

2 MS. EDWARDS: I can in a second here because I
3 have the file up.

4 Thank you. Okay. I have the proposed schedule
5 from Standing Rock as well as, let's see --

6 COMMISSIONER FIEGEN: So if you looked at the
7 Commissioners' Procedural Schedule, what date would you
8 put on all motions to be filed by?

9 MS. EDWARDS: If we went forward as is, I would
10 say -- let's see. There's a Commission meeting what, the
11 end of April at some point?

12 There's one on the 14th.

13 COMMISSIONER FIEGEN: And the next one's not on
14 Thursday.

15 MS. EDWARDS: Yep. There's one on the 30th of
16 April. So I would say 10 days' notice prior to that day
17 to allow any motions to be heard on that date.

18 MR. TAYLOR: That would be April 19. What day
19 of the week is that?

20 COMMISSIONER FIEGEN: That is on a Sunday. So
21 it would need to be the 17th probably. The 19th is on a
22 Sunday.

23 CHAIRMAN NELSON: Commissioner Hanson.

24 COMMISSIONER HANSON: Thank you, Mr. Chairman.
25 This question is also for Kristen. And I fear she's

1 working on something else right now. Go ahead.

2 MS. EDWARDS: I was just making sure there were
3 10 business days for notice between the 30th and --

4 COMMISSIONER HANSON: Just curious. If we were
5 to deny Standing Rock's request, do you -- well, I won't
6 say what my thought is at this juncture, but do you see
7 any way in which we would be prejudicing Standing Rock?

8 MS. EDWARDS: I guess it would really come down
9 to, as Staff put in our memo, whether or not that
10 testimony was admissible.

11 If, in fact, the testimony of their witness is
12 not admissible anyway at the hearing, then under
13 precedent set by the South Dakota Supreme Court it would
14 not suffer prejudice.

15 COMMISSIONER HANSON: Thank you.

16 CHAIRMAN NELSON: Are there others in the
17 hearing room that would like to be heard on this matter?

18 MR. RAPPOLD: Commissioners, my name is
19 Matt Rappold. I represent the Rosebud Sioux Tribe.

20 CHAIRMAN NELSON: Yes. And for those attorneys
21 on the line, we will go to you next. And I guess I would
22 say for the Intervenors, new information only, and I
23 guess indicate whether or not you support the Motion that
24 we're dealing with.

25 MR. RAPPOLD: Thank you, Commissioners. I

1 appreciate the opportunity to be here. Matt Rappold on
2 behalf of the Rosebud Sioux Tribe.

3 I would echo Mr. Capossela's concerns as stated
4 and indicate to the Commission that we support him and
5 his concerns that he's relayed to the Commission this
6 morning.

7 And as you have noted, we have our own Motion
8 pending today. And we will reserve everything else that
9 I would like to bring to the Commission's attention until
10 that is on the calendar.

11 CHAIRMAN NELSON: If I could ask you one
12 question.

13 If we were to approve Standing Rock's Motion
14 does that effectively nullify what you've asked for, make
15 it moot?

16 MR. RAPPOLD: I think it would.

17 Yes. The issue here is fundamental fairness and
18 due process, and a proper time period to meaningfully
19 respond to everything that's taking place, to resolve
20 discovery disputes.

21 You guys get to decide discovery disputes, not
22 us. Not the parties. You're the decision-maker. You're
23 the finder of fact. I've said I feel a certain way about
24 an objection and a question. Someone else has said they
25 feel a certain way about an objection and a question.

1 You guys get to decide that, not us, and we need you to
2 do that.

3 I'll reserve the rest of my time.

4 CHAIRMAN NELSON: I'd remind those that are on
5 the phone, please put your phone on mute when you're not
6 talking. We're getting some background noise.

7 I will go to Intervenors on the telephone line
8 on this Motion. And I'm just going to go down the list
9 that I've got, and if you choose to weigh in, go ahead.

10 Ms. Craven.

11 MS. CRAVEN: Thank you. I did file a Motion to
12 support Standing Rock and the Rosebud Sioux Tribe,
13 Mr. Chairman. You should have that on file so I won't
14 add any additional comments except I do support that very
15 much.

16 CHAIRMAN NELSON: Thank you. Appreciate your
17 brevity.

18 Ms. Hilding.

19 MS. HILDING: Hi. I had to unmute my phone.

20 I too support Standing Rock and Rosebud in their
21 asking for more time.

22 I have two substantive comments here. Somebody
23 objected to the lateness of the Tribe and complaining
24 about the schedule due to their procurement problems with
25 intertribal government.

1 I would point out I don't remember what hearing
2 it was but when we were setting the schedule they spoke
3 up and were very clear about how difficult and all the
4 problems it was going to be to meet these deadlines
5 because they had to go through internal procurement
6 things and they were governments and they had to, you
7 know, go through all of this internal tribal process that
8 was required and the difficulties that would be.

9 So I don't think the issue about the
10 difficulties of the Tribes meeting this schedule due to
11 internal tribal government laws about money is any new
12 issue. I think it was very fully discussed previously at
13 one of the hearings. So I don't think this is a giant
14 surprise for anyone. If you listened at that hearing.

15 Then I appreciate that. I don't mean to
16 deprecate anybody. I appreciate everybody's efforts.

17 Okay. So then I have my own thing that I would
18 like to bring up. And I thought that I had to submit
19 this by April 8 for the hearing on April 14 with
20 TransCanada's trying to preclude certain Intervenors from
21 having evidence or witnesses at the hearing and
22 supporting the Motion to Compel Discovery.

23 It's my intent to raise at that hearing, which
24 is where I thought it belonged, is that TransCanada asked
25 on December 18 that all -- that discovery was limited

1 and -- to define -- let's see. October 30 TransCanada
2 made a Motion to Define the Scope of Discovery under
3 South Dakota Codified Law. And they wanted discovery
4 limited to the 50 Amended Permit Conditions from
5 Exhibit A to the Amended Final Permit and Order dated
6 6-29-2010.

7 And they also wanted limited to their proposed
8 changes of -- to Finding of Fact identified in Exhibit C
9 to Keystone's Petition for Order Accepting
10 Certification.

11 In their 10-30-14 Motion on page 5 they state
12 Each discovery request must be identified by the number
13 and the Amended Permit Condition or Finding to which it
14 is addressed.

15 The PUC agreed to that, that discovery should
16 be limited to not privileged matters relevant to the
17 50 Permit Conditions of the proposed Findings of Fact and
18 the Decision identified in Keystone's Tracking Table of
19 Changes attached to the Petition as Appendix C. And the
20 PUC wrote on page 2 of the December 17, 2014, Order
21 that -- ordered that all parties shall identify by number
22 and letter the specific Condition or Finding of Fact
23 addressed.

24 None -- Bold Nebraska, whatever their name is,
25 included in their -- one of the things they sent you as

1 Appendix H, a copy of their discovery requests they got
2 from TransCanada in December. It's identical to mine
3 except they -- you know, they've changed the name from
4 Hilding to Bold Nebraska.

5 All right. So and from my conversations with
6 people, everybody got the same thing basically. So none
7 of TransCanada's requests for documents or
8 Interrogatories given to me, and I believe others,
9 identifies by number and letter the specific Condition or
10 Finding of Fact addressed by each Interrogatory or
11 document request.

12 I, thus, question the entire discovery request
13 by TransCanada and that TransCanada seems to subscribe
14 to a double standard perhaps and believes the Intervenors
15 and the PUC Staff must comply with the PUC December 17
16 Order about discovery but they themselves are exempt from
17 it. I wonder about that. I do not understand it. I am
18 not a lawyer.

19 But I think that there are problems with
20 TransCanada's discovery requests that was sent out to
21 everybody. It was not consistent with their Order. They
22 also -- in that discovery request in December they gave
23 us a different deadline than the PUC Scheduling Order.
24 And I called up Kristen Edwards, and she straightened
25 that out and got permission for us from TransCanada to

1 respond to discovery on the schedule that you set out
2 rather than on the schedule that they set out.

3 But I think there are arguments that could be --
4 that will be raised on your April 8 deadline and April 14
5 hearing about people not responding to TransCanada's --
6 their discovery requests. I don't think TransCanada's
7 discovery requests were consistent with your Order about
8 how discovery should be conducted.

9 And a lot of people have been engaging in
10 good-faith efforts to answer their discovery even though
11 it is not legal, in my opinion. So, you know, I think
12 there's this huge issue about problems with TransCanada's
13 discovery requests that it sent out to everybody not
14 being consistent with your orders.

15 And that's another problem that needs to be
16 resolved. And, you know, I personally think if
17 TransCanada wants to compel anybody to answer discovery,
18 they need to be given a new option to send out a new
19 discovery request that's consistent with your Order.

20 I mean, so that's it. All right.

21 Thank you.

22 CHAIRMAN NELSON: Bruce Ellison, I didn't ask if
23 you were on the line.

24 Are you with us?

25 MR. ELLISON: I am, sir, but I'm going to defer

1 to Mr. Martinez, if I may, for our initial response.

2 CHAIRMAN NELSON: That was going to be my next
3 question. Let's go down the line.

4 Mr. Blackburn.

5 MR. BLACKBURN: Thank you, Commissioner. I have
6 some brief comments today.

7 First, I would like to note that the
8 Intervenors, a number of them, raised concerns about how
9 the discovery dispute process had worked and whether the
10 schedule had enough time in it back when the schedule was
11 being set. And my understanding is the Commission
12 decided to not provide express time for resolution of
13 discovery disputes.

14 Instead it provided about 23 days, a bit over
15 three weeks, between the end of discovery -- well,
16 actually the deadline of discovery is due in the second
17 round and the submission of prefiled testimony.

18 I think that we all understand the discovery
19 disputes are very common and, further, that they cannot
20 be resolved usually within three weeks. And also at the
21 same time expect for prefiled testimony based on such
22 discovery to be completed in those same three weeks.

23 So I think that the Commission was very
24 optimistic that perhaps there would be no discovery
25 disputes and that the parties will get the information

1 they need from TransCanada and vice versa on March 10,
2 which would give three weeks to prepare prefiled
3 testimony. But I think what happened was that there, in
4 fact, are discovery disputes.

5 Now these discovery disputes could not be
6 confirmed until TransCanada's -- and other parties'
7 responses on March 10, that there would be discovery
8 disputes relative to the second round of discovery. And,
9 in fact, on March 10 then we had information to know that
10 there would be discovery disputes that need to be
11 addressed by the Commission.

12 And some of those discovery disputes are related
13 to jurisdictional issues, and some of them are related to
14 other kinds of matters -- well, only the Commission can
15 decide, that are very much within the Commission's
16 discretion to decide.

17 So now in theory the fastest that anybody could
18 have responded to that -- to determine that there were
19 going to be discovery disputes and reply and let the
20 Commission know would be maybe the second week of March.
21 Instead, the Tribe's filed motions the third week in
22 March. That's not a huge delay. And so it's not an
23 unreasonable amount of time in which they alerted the
24 Commission to this issue.

25 But now we're faced with a situation where the

1 Commission still must decide the discovery disputes in
2 part because, as Staff has said, the decision on the --
3 the Commission's decision on the discovery disputes will
4 determine whether some of this evidence is even admitted
5 by the Commission.

6 And it's simply not fair for the Intervenors to
7 put a lot of effort into preparing testimony and the
8 expense of doing so and then at the last minute perhaps
9 during the hearing decide that it is not admissible.

10 The Commission really needs to let the
11 Intervenors know if their proposed testimony is
12 admissible. And the only way you can do that is by
13 resolving these discovery disputes either for or against
14 the relevance and admissibility of the testimony, the
15 evidence that's necessary for that testimony.

16 So, anyway, with that -- so there has not been
17 significant delay. This issue was foreseeable.
18 Unfortunately, the Commission decided not to include a
19 discovery dispute period, resolution period.

20 And, finally, I'd say at the end of my -- of
21 Bold Nebraska's response in support of the Tribe's
22 Motions to Amend the Schedule, I have four different --
23 or five different stages of discovery disputed out,
24 resolution.

25 They are a time for hearing Motions to Compel.

1 And that's really for the Commission to decide how much
2 time they want to prepare for that. It can be quite an
3 intense process. A time for compliance with that Motion
4 to Compel. Meaning, if the Commission does agree that
5 parties have to provide additional information, how much
6 time do they have to respond to that?

7 Then there has to be a time once information's
8 received following a Motion to Compel, the amount of
9 preparation -- there needs to be a time for analysis and
10 preparation of testimony and the identification of
11 exhibits.

12 And then, finally, technically we're all
13 required to supplement our discovery responses so there
14 needs to be some time after this for the Intervenors to
15 say what additional information they have so that
16 TransCanada can receive that information before the
17 trial.

18 And those are just the standard stages of
19 resolution of discovery disputes and how that affects
20 subsequent hearings.

21 So thank you for hearing us today, and we look
22 forward to resolving these disputes as amiably as
23 possible.

24 Thank you.

25 CHAIRMAN NELSON: Thank you.

1 Mr. Martinez for Dakota Rural Action.

2 MR. MARTINEZ: Thank you, Mr. Commissioner.

3 I won't go ahead and replot a lot of the same
4 ground that has already been, I think, amply or ably
5 addressed by both Mr. Capossela and Mr. Blackburn.

6 I think, though, that this issue was really
7 foreseeable. And if the Commission will recall last
8 December when we had the hearing in Pierre that took up
9 the issue of the Scheduling Order, I addressed some
10 comments to the Commission at that time that any time you
11 engage in an adversarial process with a large
12 multinational corporation such as TransCanada -- I think
13 they've got like a 30 billion market cap as of today's
14 stock price -- you're going to wind up with major
15 discovery disputes.

16 I don't think I've ever seen any case where that
17 hasn't occurred. And this has played out, I think,
18 exactly as I feared it would at that time and as I think
19 I indicated to the Commission that it probably would.

20 So, consequently, I think it is entirely
21 reasonable to go ahead and amend the Scheduling Order to
22 permit the additional time to resolve these issues. And,
23 I think, you know, you have to look at why is that the
24 case.

25 First, I think it goes to this notion of

1 fundamental fairness. There's been already presentations
2 made, I think by Mr. Capossela, who has indicated, you
3 know, the difficulties encountered by the Standing Rock
4 Tribe in terms of trying to get to this point. And not
5 through any fault of the Tribes but through the
6 procedures and processes that they have to go through
7 that are imposed by the Federal Government. That puts
8 things, you know, into an entirely different light.

9 The second issue is one that's been hinted at
10 here previously, and that is prejudice. Who is really
11 prejudiced here?

12 I think, you know, that Mr. Taylor has given --
13 I think done a masterful job of creating the illusion
14 that we really have a level playing field here.

15 We really don't. What we have is is we have a
16 small group of individual Intervenors, small
17 organizations, and tribal organizations that are really
18 against a -- like I said, a 30 billion dollar cap company
19 that has had -- I think I read an article they spent
20 10 million dollars alone just in lobbying expenses on
21 this, compared to the trouble DRA has had with coming up
22 with 10 grand just to hire an expert witness. That is
23 not a level playing field.

24 So when you look at, you know, this no motion of
25 prejudice in any potential delay in the proceedings, one

1 thing that comes to mind is a statement that Mr. Taylor
2 made back in December during the hearing that we had
3 before you. And he said one of the reasons that there
4 was such a big rush was so that TransCanada could get
5 this summer's construction schedule. In fact, I think
6 that was one of his primary arguments.

7 The reality is is that construction isn't going
8 to start this summer. President Obama still has not made
9 any decision with regard to permitting for the pipeline.
10 You have litigation going on in Nebraska over
11 TransCanada's efforts to exercise condemnation and
12 eminent domain and essentially take away people's
13 property for their private economic interests. That
14 litigation is going to be going on probably for at least
15 another year, if not two years. So I just don't see what
16 the rush is here.

17 And I think, you know, that the Commission and
18 you as Commissioners owe it to the residents of
19 South Dakota to allow as much time as all the parties in
20 this case need to fully, exhaustively, and thoroughly
21 examine all of the issues in this case that are in play
22 to be able to ultimately make the right decision. And at
23 the end of the day to be able to tell the people of
24 South Dakota that you've engaged in an exhaustive
25 process, it was a fair process, everyone had a right to

1 be heard, and all of the issues were examined.

2 So on that basis Dakota Rural Action would
3 support the Motion that's been filed by the Standing Rock
4 Sioux Tribe.

5 CHAIRMAN NELSON: Thank you, sir.

6 Ms. Real Bird.

7 MS. REALBIRD: Yes, Mr. Chairman and members of
8 the Commission. Thank you for inviting our input.

9 The Yankton Sioux Tribe supports Standing Rock's
10 Motion. Later it will also support Rosebud's Motion.

11 And I can't emphasize this point enough that
12 when we were discussing the Procedural Schedule at one
13 of the earlier Commission meetings we sort of glossed
14 over, you know, what's going to happen with discovery
15 disputes.

16 Many of the parties have them. Many of the
17 nonrepresented parties have them. You know, there's a
18 few motions pending before the Commission that hints and
19 elaborates on those disputes. And so now we're at a
20 crossroads where, you know, the process demands due
21 process. It demands access to justice. It demands input
22 so that the Commission can make the most informed
23 decision it can for the people of the state.

24 And at this point we do support the Motion. We
25 also like the suggestions mentioned earlier to set a

1 Motion to Compel deadline, to set a hearing on those
2 Motions, provide some time for compliance, and then
3 analysis of whatever -- whatever is provided upon --
4 whatever is compelled. And then pick up the schedule
5 there.

6 And I just have to reiterate my colleagues'
7 point that the due process as far as the Yankton
8 standpoint requires that. You know, we don't want to get
9 to the end of the process and there be several arguments
10 raised, you know, perhaps an appeal that there wasn't
11 this due process provided.

12 And so weighing the prejudice to the movants
13 here that have been expressed well in their written
14 Motion as well as orally as well as the other input that
15 we've heard, we feel it's tips -- the balance tips in
16 favor of granting the Motion for Standing Rock. So
17 Yankton Sioux Tribe supports Standing Rock's Motion.

18 Thank you.

19 CHAIRMAN NELSON: Thank you. Mr. Clark.

20 MR. CLARK: Thank you, Mr. Chairman.

21 I don't want to repeat what everybody else said
22 here so I'll try and keep it brief. It's the position of
23 the Cheyenne River Sioux Tribe that we support the
24 Standing Rock Sioux Tribe Motion before you.

25 And I guess I would only add one other thing. I

1 think listening to the Staff and listening to Keystone,
2 there was sort of an implication that Standing Rock's
3 argument here has been sort of sprung on them last
4 minute.

5 And I would just like to highlight that in
6 December when we had the hearing on the Motion to Limit
7 of the Scope of Discovery and to create the Scheduling
8 Order that Mr. Capossela brought this very specific issue
9 up at that time.

10 So it's not new. It was brought up, you know,
11 right then at the beginning when the scheduling was
12 coming up that he talked about this process being slow
13 for the Standing Rock Sioux Tribe and that they were
14 going to need time for this.

15 So I would just like to highlight that and again
16 Cheyenne River Sioux Tribe supports the Motion.

17 CHAIRMAN NELSON: Thank you.

18 Normally, we'd go to Mr. Capossela for rebuttal,
19 but it almost seems like maybe Mr. Taylor needs an
20 opportunity before I close it out.

21 MR. TAYLOR: Thank you, Commissioner.

22 There are a lot of things to talk about. There
23 is mention of time to complete discovery and Motions to
24 Compel.

25 I would point out that only four -- only four of

1 the Intervenors ever bothered to call us, ever bothered
2 to write to us and ask to have a meet and confer. And we
3 have complied with all of those, save one, and that's
4 Mr. Blackburn for Dakota Rural Action [sic].

5 We received his request for meet and confer
6 Thursday. Four days ago.

7 CHAIRMAN NELSON: Excuse me. If I could just
8 interrupt.

9 Mr. Blackburn, my understanding is is
10 representing Bold Nebraska.

11 MR. TAYLOR: I'm sorry. Bold. I'm sorry.
12 Forgive my mistake.

13 CHAIRMAN NELSON: Thank you.

14 MR. TAYLOR: We got his meet and request four
15 days ago, and I responded within an hour after I received
16 it and said we'll take that up next week. That's this
17 week.

18 We also received all the other Motions and
19 prepared our briefs and got ready for this hearing today
20 in the span of three hours.

21 And, by the way, did we screw that up? Or did
22 your Staff -- the filings --

23 CHAIRMAN NELSON: You don't want me to put the
24 answer to that on the record, sir.

25 MR. TAYLOR: All right. Fine. If we screwed it

1 up, we screwed it up. I'm glad I got it straightened
2 out.

3 The upshot of it is Mr. Blackburn asks us on the
4 26th of March for a meet and confer. We had a meet and
5 confer with Mr. Martinez sometime in February. We met
6 and conferred with Mr. Capossela in February. We met and
7 conferred with Mr. Rappold in early March. Mr. Rappold,
8 our meet and confer with him went very well.

9 We told him what we thought was wrong with his
10 questions that he posed to us and those which we chose to
11 stand on. He rephrased a number of his questions and
12 resubmitted them to us, and we're in the process of
13 getting him answers for those.

14 So it isn't like nobody had the opportunity.
15 What it is like is nobody took the opportunity. We're
16 very available and did our absolute dead level best to
17 accommodate everyone who asked us to expand on any
18 answers.

19 You know, woven through the comments of all the
20 people that spoke today is that this is a retrial of the
21 2009 proceeding, and it is not. This is a certification.
22 They speak -- all of the persons who spoke today, they
23 talk about platitudes, fairness, justice, evenhandedness,
24 and so forth. No one has explained how they are
25 prejudiced by the schedule.

1 Well, the fact is no one is prejudiced by the
2 schedule. Everyone knew the schedule in December. And
3 no one has made a convincing argument yet today that they
4 are somehow prejudiced by the schedule that we're
5 proceeding under.

6 So we continue to think we should go forward.
7 If you want to have an omnibus hearing, set an omnibus
8 hearing date. That's fine. That's not a problem.

9 I think all of our Motions are in, save
10 something that may be generated by prefiled testimony.
11 If you want to set an omnibus hearing date so that it
12 lines up with the 30th of April, that's fine. We can
13 make that, accomplish that.

14 But to otherwise change the schedule based on
15 the platitude that justice is not being done, justice has
16 to be supported by some demonstration of how the parties
17 are prejudiced.

18 So on that note, I would say we stand on our
19 position. Let's leave it where it is. If you want to
20 set a hearing date for an omnibus hearing, we'll make it
21 work.

22 CHAIRMAN NELSON: Thank you. Appreciate those
23 comments.

24 Mr. Capossela, I'm going to give you the last
25 word before I go to Commissioner questions. And if you

1 could keep it fairly brief. Thank you.

2 MR. CAPOSSELA: Thank you, Mr. Chairman.

3 Standing Rock Sioux Tribe is prejudiced if this
4 Motion is not granted because expert testimony may not be
5 able to get put in the record. And the Tribe as an
6 Intervenor should have that right.

7 With respect to the delay in the filing of the
8 Motion, we did not -- we felt that it was not appropriate
9 to file the Motion prior to March 10, in light of the
10 Procedural Schedule and to give TransCanada that time to
11 comply with the Tribe's discovery request.

12 And we did try to work through their objections
13 in a timely way. And we also did offer, as Mr. Taylor
14 explained, what we had hoped was a substantive compromise
15 on the discovery request that they characterized as
16 overly broad. We did try to narrow it down, but then
17 they objected to that discovery request once we tried to
18 narrow it down.

19 As Mr. Blackburn mentioned, it probably would
20 have been helpful if we could have gotten our motions in
21 the following week after March 10. And instead we got it
22 in the following week. So we got -- you know, we were a
23 week and a half, which I don't think is unreasonable.

24 And, in fact, the Standing Rock Sioux Tribe has
25 been invited to testify before the House Appropriations

1 Committee on March 23, and I was asked to accompany for
2 that. So I was in D.C. immediately after the March 10
3 time line, and, in fact, I filed the documents while I
4 was on the road in Washington, D.C.

5 And so the suggestion that our Motion is
6 untimely or that we dragged it out unnecessarily, at
7 least from my standpoint as counsel who filed the
8 documents, it couldn't be more wrong. We really tried to
9 do it as timely as possible to move this along.

10 Yes. We could have filed a motion back in
11 January for reconsideration of the Procedural Schedule.
12 But instead we did our darnedest to move fast and try to
13 comply with it. And I don't -- I don't think the good
14 deed of hustling to comply with the Procedural Schedule
15 and coming up short in no small part because TransCanada
16 did not comply with the discovery rules, arguably, but
17 our efforts to comply with the Procedural Schedule should
18 not be held against us in the decision on the Motion to
19 Amend the Schedule.

20 We have moved fast. We've provided dozens of
21 subjective documents in discovery, retained expert
22 witness. They just couldn't get the job done because of
23 the compressed schedule. TransCanada asked for the
24 expressed schedule and then dragged its feet in discovery
25 and denying the Motion would have the effect of rewarding

1 that conduct.

2 Conversely, it's not a platitude to give the
3 Tribe the time to put on its case. We've identified
4 Findings of Fact that our experts' testimony will relate
5 to. It will be relevant to the recertification of
6 whether the project continues to comply with the Findings
7 and Conditions.

8 We understand what the scope of the proceeding
9 is, and we're moving ahead as expeditiously as possible.
10 And we filed the current motions as expeditiously as
11 possible, but we couldn't really file them before
12 March 10.

13 So we are trying to do everything that's
14 required to fully participate as an Intervenor under the
15 rubric of the current Procedural Schedule, but we feel
16 that we just need a little bit more time for the reasons
17 that we've identified.

18 And we don't think our request is unreasonable.
19 And I would continue to challenge any contentions that
20 the way the Tribe has conducted itself in filing the
21 Motion is unreasonable either.

22 We're here in good faith, and we appreciate your
23 consideration accordingly.

24 CHAIRMAN NELSON: Thank you.

25 Questions from Commissioners.

1 Hearing no questions, is there a motion on
2 Standing Rock Sioux Tribe's Motion to Amend the Order
3 setting a Procedural Schedule?

4 Commissioner Hanson.

5 COMMISSIONER HANSON: For the purposes of
6 discussion and opportunity to air our own thoughts, I'm
7 going to move that the Commission deny Standing Rock
8 Sioux Tribe's Motion to Amend the Procedural Schedule.

9 CHAIRMAN NELSON: Discussion on the Motion.

10 COMMISSIONER HANSON: Mr. Chairman, there's a
11 lot of issues that have been brought up in this
12 pertaining to changing the PUC's Procedural Schedule, and
13 in order to change the schedule there has to be some
14 exceptionally good reasons to do so.

15 Because we have certainly a number of
16 Intervenors. We have the PUC Staff, and we have the
17 Applicant. And what we have to be careful of, obviously,
18 is that we do not prejudice any of those members in
19 changing the Procedural Schedule.

20 And in looking at the two arenas, one, I don't
21 believe that any parties would be prejudiced if we leave
22 it the way it is. And I think that perhaps there's a
23 prejudicial atmosphere developed against the Applicant if
24 we do so.

25 It's challenging because there are so many

1 different parties that -- not just the parties that I
2 mentioned, but there are also all of those parties that
3 would participate from a standpoint of giving testimony
4 from expert witnesses. So there's a great deal of
5 scheduling that has to take place.

6 And one of the comments is what is the rush
7 here? Obviously, there's been no rush. There's been
8 plenty of time. There's been ample time.

9 This is a rehearing of an issue. It's not the
10 original hearing. And it's following a schedule similar
11 to the -- to the original hearing, which was much more
12 complicated and involved than this one.

13 There is, however, a responsibility to be
14 punctual and to be realistic and to participate and not
15 to be intransigent in that process. When someone says
16 that they went to D.C. and that created a challenge, we
17 all have -- we all have challenges. And making a
18 decision to go to D.C. was a decision. It was not a
19 forced trip. Obviously, it was a decision that had to be
20 made. And we all have -- each one of us have different
21 types of challenges.

22 Standing Rock applied for party status. And so
23 to come later and say, gosh, now we had to have these
24 meetings and go through all of these processes, the fact
25 is if you apply for party status, you should recognize

1 that there's going to be some costs involved. You
2 shouldn't have to --

3 After the process is completed then to say that,
4 well, now we have to get together and decide whether we
5 were really serious about it, we've got to look at
6 funding, we have to look at who we're going to hire, we
7 have to go through all of these processes, yes, you may
8 have to do some of that after the Order from the
9 Commission, but the fact is you should have done a lot of
10 that prior to the decision.

11 Obama's dilatoriness was brought up as one of
12 the reasons for us to not be in a rush. And certainly we
13 are not in any way need to be obligated to what he does
14 or does not do. And Nebraska's issues were brought up.
15 They are not our issues. This is the South Dakota PUC.
16 We work diligently towards our time lines.

17 The price cap of TransCanada was brought up a
18 number of times. That is just a -- has nothing to do
19 with this process. It's a matter of giving everyone a
20 fair opportunity to present their information to the
21 Public Utilities Commission so that we can make a
22 decision.

23 And choosing not to participate or being
24 dilatory in presenting that does, in fact, make the
25 entire process more challenging for all of us. And

1 everyone needs to be punctual in this process, and that
2 is why we set up these procedures.

3 And this -- I just do not see any reason why it
4 should be changed at this time.

5 CHAIRMAN NELSON: Additional discussion.

6 Commissioner Fiegen.

7 COMMISSIONER FIEGEN: Thank you, Mr. Chairman.

8 I will be supporting Commissioner Hanson's
9 Motion today.

10 When we allowed the Intervenors, we really
11 talked about having an open process, and we wanted to
12 make sure that everybody is heard. And so we allowed a
13 lot of Intervenors to make sure that they were heard. We
14 made it inclusive.

15 We even talked to our Staff, Ms. Edwards, and to
16 make sure that she worked and educated the Intervenors.
17 And I just saw things in meeting notices that she has
18 been working with people to make sure everybody is
19 included, they understand the procedures and the
20 policies, and all of that. She's really worked hard at
21 that, and I'm really proud of her.

22 I do appreciate on November I believe it was
23 13th our General Counsel John Smith worked with all of
24 you to try to develop a Procedural Schedule, and that
25 didn't work out. And I read the 85 pages that were typed

1 to figure out kind of what was going on and what was
2 happening. And then several people submitted procedural
3 ideas to the Commission.

4 If my memory is right, the Staff wanted the
5 hearing to be in March, and when the Commission heard
6 from the Intervenors we did move that back. And we were
7 looking at April, and some of the Intervenors actually
8 wanted April. And then Commissioner Nelson moved it back
9 to May.

10 And so we listened to the Intervenors during the
11 Procedural Schedule in December. And I believe
12 Ms. Edwards has really worked with the Intervenors to
13 make sure that they understood the schedule and
14 understood all the policies.

15 So I will supporting the Motion.

16 CHAIRMAN NELSON: Additional discussion.

17 I'm going to support the Motion also.

18 There's been some reference to the fact that
19 there was no time built into the schedule for Motions to
20 Compel. And, frankly, that's the issue that's the
21 biggest one to me. There was time built in.

22 I mean, everybody knew that this was going to be
23 a schedule that was going to move along very quickly, and
24 that's why, as I indicated to Ms. Edwards, I was
25 surprised when March 11 and March 12 and March 13 came

1 and there were no Motions to Compel. Because that was
2 the time that it needed to have been done, given the fast
3 pace of this schedule.

4 It wasn't. It was done two weeks later in the
5 case when it was done. And so there certainly was some
6 delay there.

7 I am committed to making sure this thing gets
8 done right. And if I had any indication that this
9 schedule wasn't going to allow us to get it done right,
10 I'd support something different.

11 But the fact of the matter is we had opportunity
12 immediately following March 10 to file those Motions to
13 Compel, and we didn't see them. And so, therefore, I
14 think we have ample reason to move forward with this
15 schedule as is.

16 Additional discussion on the Motion.

17 Seeing none, all those in favor of the Motion to
18 Deny Standing Rock Sioux Tribe's Motion to Amend the
19 Procedural Order will say aye. Those opposed, nay.

20 Commissioner Hanson.

21 COMMISSIONER HANSON: Aye.

22 CHAIRMAN NELSON: Commissioner Fiegen.

23 COMMISSIONER FIEGEN: Fiegen votes aye.

24 CHAIRMAN NELSON: Nelson votes aye.

25 The Motion carries. The Motion is then denied.

1 That will then bring us to the next Motion we're
2 going to deal with, and this is Rosebud Sioux Tribe's
3 Motion to Amend the Procedural Schedule.

4 And if I'm understanding it correct, it kind of
5 differs from the one we just dealt with in that you
6 didn't propose a different schedule. Is that correct?

7 And, with that, we'll turn to Rosebud and let
8 them explain their motion. And, obviously, if we can
9 keep things as briefly as possible, that will be great.

10 Thank you.

11 MR. RAPPOLD: Thank you, Commissioners.
12 Previously I introduced myself. Matt Rappold on behalf
13 of the Rosebud Sioux Tribe.

14 On February 20, 2015, through Interrogatories
15 the Rosebud Sioux Tribe requested TransCanada to provide
16 us access to all of their answers to each of the parties'
17 discovery requests. My request was made on February 20,
18 2015. I believe that their Affidavit -- Mr. Taylor had
19 submitted my Interrogatories to the Commission.

20 It's my understanding that Interrogatories in
21 discovery is not supposed to be filed with the
22 Commission. Just for the record.

23 I asked for a way to access all of their answers
24 to all of the parties' Interrogatories and Requests for
25 Production of Documents, including yours. The response

1 that I received, which is also submitted into the record,
2 Mr. Taylor's Affidavit is that we will provide a way to
3 provide you with those answers. February 20.

4 Today is March 31. Yesterday afternoon at
5 1:35 Mountain Time I received 34 documents from
6 TransCanada's attorneys. Not them personally.
7 Assistants. I received 34 documents yesterday, three
8 days before our testimony is due.

9 Our testimony and everyone's testimony is based
10 on, in part at least, information that we receive from
11 TransCanada through the discovery process. How in the
12 world is it reasonable for me to properly review,
13 respond, formulate objections, submit them to you, by the
14 day after tomorrow?

15 I also asked for additional information to the
16 Request for Production of Documents related to safety
17 records and other pipeline leaks on all of TransCanada's
18 operations in the United States and Canada forever.

19 In our discussion, our meet and confer, which at
20 this point I think is still ongoing between the Rosebud
21 Sioux Tribe and TransCanada, I asked them for safety
22 reports submitted to any jurisdiction, any agency that
23 may have jurisdiction over pipeline operations.

24 They responded, and they said it's not relevant,
25 it's not likely to lead to admissible information or

1 evidence, and all of that stuff is outside of the
2 jurisdiction of the PUC.

3 I said in our letter back, which has been made a
4 part of the record, I said compliance with laws is
5 relevant. Your ability to comply with other laws is
6 relevant. The requested information is likely to lead to
7 admissible evidence, and it's not unduly burdensome or
8 overly broad because of all of their safety records are
9 records that a business would normally keep in the
10 ordinary course of business. They keep safety records.

11 As a matter of fact, if there's a break in a
12 line in South Dakota, they're required to give you any
13 number of documents related to safety books, finances,
14 et cetera, and et cetera. I'm not going to reiterate
15 your Administrative Rules for you as they relate to
16 pipeline safety and investigations.

17 So I agreed to narrow it down, even though I
18 don't think it's unduly burdensome for them to produce
19 all of that information. I said we'll go to crude oil
20 pipelines since 2005. And they said we'll think about
21 it. Documented my meet and confer with them, e-mailed it
22 to them. The response I got was I haven't looked at it
23 yet. I haven't done it yet.

24 They didn't submit any of our e-mail
25 communications to you guys in their Affidavit, by the

1 way. They didn't tell you that yesterday afternoon at
2 1:35 they sent me 34 documents in response to our
3 Interrogatories. They didn't tell you that.

4 They said just about an hour ago we've complied
5 to the best of our ability. And I submit to you that
6 they haven't. They have not complied to the best of
7 their ability.

8 So back to the other Interrogatories. Safety
9 records. They sent me a ream of paper, electronic
10 format, obviously, and everything's numbered Keystone
11 page number through page number. They said that the
12 information was provided in spreadsheets contained in
13 the first response to my Request for Production of
14 Documents.

15 I looked through it. I had it printed out. I
16 looked through it page by page. I looked through it on
17 my computer. I couldn't find it, the page numbers that
18 were identified.

19 So we talked about that on the 13th of March.
20 And they said, well, I'm pretty sure we sent it to you.
21 And I said, well, I'm pretty sure you didn't but I'll go
22 back again and I'll take another look to see if it's
23 there.

24 I got another e-mail yesterday. I won't make
25 you guess what that was. It was the information that

1 should have been provided in the first documents that
2 they produced. Page numbers that I asked for, five pages
3 of spreadsheets, the document spills that I asked for.
4 Yesterday. Three days before I have to meaningfully
5 review and respond, formulate objections to this
6 Commission.

7 I don't think that that's complying to the best
8 of their ability. I just don't. As an administrative
9 agency you have the responsibility under the law to take
10 a hard look at the matter before you. And that requires
11 a discovery period that allows parties to properly
12 exchange information, resolve disputes amongst
13 themselves, which we're trying to do. And I'm not
14 sitting here telling you that we're not because we are.

15 The e-mail that came along with the spreadsheet
16 report, again, it wasn't directly from Mr. Taylor. It
17 was from an assistant in his office, I'm assuming. And
18 it says, I apologize I didn't send this to you earlier.
19 That's prejudicial.

20 We've asked for relevant information that's
21 helpful to the fact finder to make a decision on the
22 issue that's before this body. Can they certify that the
23 conditions upon which the permit were granted continue to
24 exist to this day?

25 We even differ on what that means. And we've

1 went through that, and we're at the process where we're
2 at now. But we differ on that.

3 Ultimately you're going to tell us what that
4 statute means for this proceeding.

5 We've asked for elevation profiles because that
6 information's directly relevant to safety and worst-case
7 scenario for discharges in our second round of discovery.
8 They haven't provided it.

9 We've sent them a follow-up letter concerning
10 our second round of discovery and got the response on
11 March 25 at 2:12 p.m. which is six minutes after I sent
12 it, and it says, Matt, thanks for your latest letter. I
13 have yet to respond to your letter from last Wednesday
14 regarding the scope of our meet and confer. I was just
15 preparing to do that when your latest letter arrived.
16 I'll complete my comments on the meet and confer letter
17 and then move to your latest. Bill Taylor. That's the
18 response I got.

19 Well, I haven't received a response to my first
20 letter. I'm in good faith. I'm trying to resolve this.
21 I'm trying to work it out. I have given in to some of
22 the things that they've said, you know, we object to.
23 I've amended some of my questions. I have.

24 And then I get the response to my Motion to
25 change the schedule a little bit because we don't have

1 enough time, we don't have a meaningful time to respond,
2 review, and formulate testimony, formulate our case.
3 There's just not enough -- there is not enough time.

4 So I asked to amend the schedule to allow us
5 time. And the response I get is, well, you should have
6 filed a Motion to Compel. How does that make sense?

7 Had they told me we're done talking about
8 discovery disputes, then yeah. Maybe I would have. I
9 would have filed a Motion to Compel, no doubt. I didn't
10 think we were done yet.

11 They gave me absolutely no indication that they
12 were done talking to the Rosebud Sioux Tribe about
13 concerns we both have with discovery. No indication
14 whatsoever.

15 As a matter of fact, when they sought their
16 Motions to Compel and eliminate certain -- probably about
17 half of the Intervenors from the proceedings, they didn't
18 include the Rosebud Sioux Tribe in that Motion. They
19 made a footnote, said we're talking to them about things.
20 That's in there.

21 They could have -- they could have put the
22 Rosebud Sioux Tribe at the top of that page on that
23 caption, but they didn't. And then their response is,
24 well, you should have filed a Motion to Compel against
25 us. Well, how do the rules allow me to do that?

1 So I got their response. I figured our
2 negotiations were over. We're on to moving to compel and
3 all of that stuff and asking for hearings and asking for
4 rulings on their objections and ours. Because, by the
5 way, we objected to their initial discovery requests
6 dated December 18, the day after this hearing that did
7 not reference one Finding of Fact or Conclusions of Law
8 in conformance of your Order. We objected to that at
9 the initial discovery deadline when first responses were
10 due.

11 Do you think they moved to have a hearing on
12 that question as to whether or not they complied with
13 what they asked to you do? No.

14 Not a word came up until I got a letter from
15 them that said you better do what we tell you to do
16 basically -- and I'm paraphrasing -- this is our
17 interpretation of how the rules work. You haven't
18 complied. If you don't, we're going to take it to the
19 Commission, and we're going to ask for sanctions.

20 I didn't hear another word about sanctions. I
21 didn't hear another word about it. Until we talked on
22 the phone on the 13th, discussed it a little and I
23 maintained my objection and I gave them some more
24 information. Even though I don't think I legally have
25 to. But I did.

1 I disclosed who my experts were going to be. I
2 disclosed my fact witnesses. I maintained additional
3 objections regarding some other information that they
4 requested.

5 So we're here in good faith. We're trying to
6 work this out. But as you can see, hopefully, the
7 schedule just does not allow for sufficient time to do
8 that. Especially when you consider the fact that they
9 sent me 34 documents yesterday. When I asked for it on
10 February 20. It's March 30th.

11 In the 2009 Docket the Commission amended the
12 Scheduling Order to reflect additional time for the
13 filing of prefiled testimony. Isn't something that's
14 unheard of.

15 I waited approximately five times longer to get
16 information from TransCanada than your schedule allows me
17 to respond to. Discovery is a process that we engage in
18 to share information that allows us to present our case
19 and allows them to present their case too. And probably
20 most importantly it allows you to have access to all the
21 information that's necessary for you to take a hard look
22 at what's before you and make a decision. That's why
23 discovery is important. That's why it's important that
24 the process complies with fundamental notions of due
25 process and fair play.

1 I can't possibly see how it could be interpreted
2 as being fair when they sent me 34 documents that I asked
3 for in February and I have to submit my testimony the day
4 after tomorrow. How is that fair?

5 Now we haven't asked for a continuance, as Staff
6 has responded -- as the Staff has said we did. I didn't
7 ask for a continuance. I haven't asked for anything.
8 The result of what we're asking for may be that the
9 hearing is continued. That may be a result. But that
10 isn't what I asked for. I asked for a meaningful time
11 period to review discovery and formulate testimony based
12 on that evidence.

13 I think it's pretty simple myself. I'm not -- I
14 don't see how a court could require testimony to be filed
15 in a court case before discovery is finished. I just
16 don't see how that works. How are we going to file our
17 testimony if discovery hasn't been decided?

18 You guys get to decide on objections. You guys
19 get to decide if something that is under the complete and
20 exclusive jurisdiction of the Pipeline Hazardous Safety
21 Materials Administration, if that piece of information is
22 relevant to what's before us today.

23 It doesn't matter that you don't have
24 jurisdiction to enforce anything that may or may not
25 happen in Nebraska or in Canada, for that matter. That

1 doesn't matter. But what is relevant is their history of
2 compliance or noncompliance for your purposes. That's
3 what's relevant.

4 And, again, you're the finders of fact. You get
5 to rule on the objections. I don't get to tell you how
6 they're going to be ruled on and then demand that
7 everybody else follows what I say. That's not how this
8 works, but yet that's what's taking place.

9 Just a little bit more -- I don't want to take
10 up too much of everyone's time, but these other issues
11 aren't going to be addressed until April 14. Who can
12 testify, who can't testify, who can continue as a party,
13 who's going to be compelled to file discovery. They're
14 not going to be addressed until the 14th of April. The
15 testimony's due on Thursday.

16 We're just asking you to move a couple of things
17 around. That's it. That's it. Give us time to resolve
18 our problems. If we can't resolve them, we'll be back
19 here.

20 And in our discussions with Mr. Taylor we both
21 agreed that we're probably not going to resolve
22 everything so we'll be back. We need meaningful time to
23 do that, and so does everyone else.

24 CHAIRMAN NELSON: Thank you. I've got a couple
25 of questions, and maybe the fellow Commissioners do

1 also.

2 Are there any changes to the existing schedule
3 that you could recommend to perhaps accommodate what
4 you've asked for but maintain the hearing the first week
5 of May?

6 MR. RAPPOLD: The experts that we're working
7 with have asked for 18 days to be able to -- 18 days once
8 discovery is complete to file testimony. And when I say
9 discovery is complete, I mean all objections resolved and
10 everything provided. So I'd have to probably -- see if
11 my calendar works here. Today's the 31st.

12 If you tell myself and Mr. Taylor a date certain
13 to figure out discovery, formulate and narrow down your
14 issues and bring it here for a ruling within a week, I
15 think we could get that done. Then we'd have to ask for
16 an expedited hearing and resolve that.

17 I don't know that it's possible, to answer your
18 question as honestly as I can. I don't know that it's
19 possible to do that.

20 CHAIRMAN NELSON: Thank you. And I do
21 appreciate your candor in that and your willingness to
22 look at the question.

23 And I'll be very honest with you. Here's where
24 I'm really hung up on this. And I've said it before.
25 But when March 10 came and went and you went through the

1 litany of all the failures you believe you are suffering
2 by the company, when March 10 came and went why were you
3 not in front of us on March 11 telling us about that?

4 MR. RAPPOLD: Because I -- there's documented
5 letters in the Affidavit that Mr. Taylor submitted.
6 Prior to that we were in good-faith discussions under the
7 Rules of Civil Procedure to resolve our discovery
8 disputes.

9 I don't believe under the rules that I can say
10 I'm in good-faith discussions on one hand and ask for a
11 Motion to Compel on the other hand at the same time. I
12 can't do it.

13 CHAIRMAN NELSON: And I get that. And I'll tell
14 you what. We appreciate when parties -- I mean, we've
15 said it time and time again. We appreciate when parties
16 can work out their issues outside of this room.

17 But given again the time frame that was laid out
18 in December, it just seems to me that if that stuff
19 wasn't worked out by the 10th of March, that March 11
20 would have been the time to bring it to us. And I don't
21 mean to be argumentative, but that's what I'm struggling
22 with.

23 MR. RAPPOLD: But the nature of discovery is
24 it's supplemental. It's ongoing. I asked for something
25 in February, February 20. I got it yesterday. It's an

1 ongoing discovery process. I got it yesterday. 34
2 documents.

3 They could have sent it sooner than that. I
4 think Bold Nebraska even asked for it in their First Set
5 of Interrogatories. I asked for it in my second. They
6 knew that everybody was going to want that -- that at
7 least two parties were going to want that information.

8 This isn't their first rodeo. This isn't the
9 first time they've been in front of a regulatory board to
10 build a pipeline. They're very familiar with the
11 process, and they're very familiar with the things that
12 Commissions and parties ask them.

13 CHAIRMAN NELSON: Thank you.

14 Additional questions?

15 Commissioner Hanson.

16 COMMISSIONER HANSON: I don't know that I have a
17 question as much as a statement.

18 I'm conflicted as well. And I appreciate your
19 stating that up front at this juncture because I actually
20 started looking at the calendar. I felt that Matt
21 made -- excuse me. Mr. Rappold made some very strong
22 arguments here, and I am concerned with the potential of
23 him having been prejudiced here. I started working out
24 some calendar dates and then listened to what he had to
25 say.

1 So I'd just say that TransCanada has their work
2 cut out for them on responding to what Mr. Rappold
3 presented to us.

4 CHAIRMAN NELSON: Well, if that doesn't set it
5 up, I don't know what does.

6 Mr. Taylor, you're up.

7 MR. RAPPOLD: I think that's my cue to
8 relinquish the table.

9 MR. TAYLOR: Well, thank you, Commissioners.
10 You've probably heard me say before there are two sides
11 to every story.

12 Let's get the dates straightened out. Yes.
13 Mr. Rappold made some requests in Interrogatories on
14 February 20. What he didn't tell you is is that we
15 objected to those. We had a meet and confer very
16 amiable. I remember it quite clearly. I was sitting at
17 my kitchen table talking to him on the telephone and
18 taking careful notes.

19 One of his questions -- one of his
20 Interrogatories we objected to was he wanted all safety
21 records for all pipelines maintained, operated, owned,
22 et cetera by TransCanada in the United States and Canada.
23 We pointed out to him, and I don't think he knew it up to
24 that point, that TransCanada operates 33,000 miles of
25 pipelines in the United States alone and has operated

1 pipelines in the United States for more than a half
2 century.

3 And I said to him your request for all of those
4 documents, particularly given the fact that most of those
5 pipelines are gas pipelines, has no relevance to the
6 matter at issue.

7 Mr. Rappold's a very amiable man. He agreed
8 with that, and he said he would narrow that request. He
9 did. He narrowed that request to all oil pipelines in
10 the United States and Canada. And we gave him that
11 information.

12 Now that was March 13 that we had that
13 discussion. March 16 that he renewed his request in
14 writing. He sent me a letter on the 16th, and I was
15 traveling on the 16th. I didn't see it until the 17th or
16 maybe the 18th. I've forgotten.

17 In this hour and a half meet and confer we had
18 with him we basically told him no on all but either three
19 or four questions that we were not changing our position,
20 that our position was those questions that he posed were
21 either not relevant, they were vague, they were overly
22 broad, they didn't fit the issues in this case, and that
23 remained our position. And he confirmed that in a letter
24 that he wrote to us. And he asked for four things.
25 Maybe it was three things.

1 One is the safety records for oil pipelines in
2 the United States and Canada, which we supplied it
3 yesterday. And he asked for -- he talks about the number
4 of documents. What we did was in the thousand some
5 Interrogatories and Requests for Production we answered
6 we put together all of the documents in one set, and we
7 numbered them, Bates stamped them from one through
8 whatever the final number is in the thousands.

9 And he asked us, he said -- no. I'll back up.

10 We Bates stamped them 1 through whatever the
11 final number was, and if Bold Nebraska asked us a
12 question that was relevant to pages 13 through 15, we
13 said see pages 13 through 15, so forth.

14 He asked us for a couple of pages, a handful of
15 pages, that apparently we did not send to him in our
16 initial round of Interrogatories. Asked for those on the
17 16th. Confirmed it -- or on the 13th in our meet and
18 confer. We said we'll look and see. We're pretty sure
19 they're there. We looked and saw, and we sent him --
20 maybe they're duplicate copies. I don't know.
21 Yesterday.

22 Yes. I did write to him, respond to his e-mail.
23 He e-mailed me on March 25, sent me a long letter,
24 several pages long, about our second round of
25 Interrogatory Answers. And I e-mailed him right back and

1 said we'll get on that. And I said candidly I still owe
2 you answers from the previous Wednesday when I read his
3 letter.

4 Within hours or -- we got the Motion that we're
5 hearing today. And within a short while after that, got
6 your Order that we were to prepare for this Motion today,
7 and we sort of focused on that. We didn't focus on his
8 letter of the 25th in the interim.

9 Now maybe, you know, in a perfect world if I
10 could see the future, I would have reversed that and I
11 would have sent him the things that I sent him yesterday
12 on Thursday and I would have filed your -- the Briefs in
13 response to your Motion this morning. But I didn't do
14 that. I did it the other way around.

15 All due respect to Mr. Rappold, we told him
16 whenever the -- whatever the date was that we had to
17 respond to his February 20 second round of discovery we
18 were not answering those questions. We made those
19 objections.

20 And when he asked for a meet and confer we gave
21 him a meet and confer as quickly as we could. And it was
22 a very thorough and complete meet and confer. Nobody's
23 trying to hide the ball from anybody.

24 CHAIRMAN NELSON: Can I interject at this point?
25 When was that request made for that meet and confer? It

1 ultimately happened on March 13; correct?

2 MR. TAYLOR: I think it was a Thursday, wasn't
3 it?

4 MR. RAPPOLD: I think it was the week prior.

5 MR. TAYLOR: Yeah. Probably.

6 CHAIRMAN NELSON: Thank you.

7 MR. TAYLOR: I just don't know. I don't have
8 that information in front of me. I know that we were --
9 I think the meet and confer came in right after the
10 Answers to second round of discovery were due.

11 And those were due the 6th of March; is that
12 right?

13 MR. MOORE: The 10th. March 10th.

14 MR. TAYLOR: Well, anyway, a couple of days
15 after that. And I guess there's no reason to say it on
16 the record. Mr. Moore was on vacation when the request
17 for the meet and confer came in, and so we waited until
18 he returned from vacation and then held the meet and
19 confer, I think, the next day.

20 I was at Big Yellow Lake, Minnesota and I took
21 the file with me and I spread it out on my kitchen table
22 and that's where we held the meet and confer.

23 Any other questions?

24 CHAIRMAN NELSON: Go ahead. Introduce yourself,
25 please.

1 MR. MOORE: Thank you. James Moore on behalf of
2 TransCanada. I just want to clarify one point.

3 When Mr. Rappold talks about a request for 34
4 documents that he just got from us yesterday what I
5 understand that he's referring to is a request that was
6 made in his second round of discovery, which would have
7 been served and the Answers to which were due on
8 March 10.

9 The request was for a copy of all the discovery
10 answers that TransCanada had provided to everyone else.
11 And some of the Intervenors had made that request in
12 their first round of discovery. And the way we
13 accommodated that request is by providing, by separate
14 e-mail, electronic access to all of that information
15 because it's very substantial.

16 In the responses to the second round of
17 requests, in response to that particular request we said
18 we will provide you with that information. Apparently, I
19 didn't tell my assistant that we needed to provide that
20 link to Mr. Rappold's office.

21 The first time I was aware that it had not been
22 provided to him was when he filed his Motion with the
23 PUC. It did not come up in the meet and confer. If he
24 had called me on March 11 and said, hey, you forgot to
25 send this link, I didn't get it, we would have provided

1 it at that point.

2 And that is my error, but that explains my
3 delay.

4 MR. TAYLOR: Our link was to a repository to
5 where all the information was readily accessible.

6 MR. MOORE: And we provided that same
7 information to Staff, I think, with respect to both the
8 first and second round.

9 So it was an oversight with respect to the
10 Tribe. And had it been followed up on more quickly, it
11 would have been provided more quickly.

12 CHAIRMAN NELSON: Thank you.

13 Questions from the Commission?

14 If not, here's what I'm going to do. For Staff
15 and for the Intervenors that are on the line you
16 obviously have an opportunity to speak. I would ask that
17 it be very brief and that it be new information and that
18 it be very, very much on the point of the motion.

19 We're not resolving discovery disputes today,
20 even though that's what we spent most of our time talking
21 about.

22 I'll go first to Ms. Edwards.

23 MS. EDWARDS: Thank you. Kristen Edwards for
24 Staff.

25 Staff takes no position on this motion. At the

1 risk of being off point, it was mentioned Commission
2 discovery. That would be Commission Staff discovery.

3 And just so everybody knows, the Commission has
4 neither access to nor knowledge of any of that discovery.
5 It's on a secured file. The Commissioners and the
6 advisors do not get to see what we have.

7 CHAIRMAN NELSON: Thank you.

8 Ms. Craven.

9 MS. CRAVEN: Thank you, Mr. Chairman and other
10 members of the Commission.

11 I just wanted to say I've been looking through
12 the docket and at the proposed schedules that were posted
13 by the Staff and TransCanada, and neither of those made
14 mention of setting a time line for resolving disputes
15 regarding discovery.

16 I think this is an issue that's been overlooked,
17 somehow fell through the cracks. And I think really in
18 the interest of fairness and transparency and due process
19 that Rosebud's Motion for additional time for discovery
20 should be granted, as well as the other parties who are
21 concerned about their discovery issues with TransCanada
22 as well.

23 I think we need to do this right. This is an
24 important issue for the State of South Dakota, for the
25 people and the environment, and taking a little bit more

1 time will be helpful to flesh out all of those issues.

2 This is a really important issue for the
3 environment and for the welfare of the people of
4 South Dakota, and we urge you all to support and vote in
5 favor of this Motion.

6 Thank you.

7 CHAIRMAN NELSON: Thank you.

8 Ms. Hilding.

9 MS. HILDING: Sorry. I had to unmute my phone.

10 I support the Rosebud Sioux Tribe's request for
11 additional time. I would ask that you question Standing
12 Rock Sioux Tribe to see what their problems are with
13 getting their witness that they had to see what -- how a
14 time thing might help them there.

15 I think that I support additional time instead
16 of the April 2 deadline. And there's some other
17 deadlines out there that Kristen Edwards has a deadline
18 for witness lists and exhibits lists and that if you're
19 extending the April 2 deadline, you need to look at her
20 deadline for witness lists and exhibits also. But I
21 support additional time beyond April 2.

22 Thank you.

23 CHAIRMAN NELSON: Thank you.

24 Mr. Blackburn.

25 MR. BLACKBURN: Thank you, Mr. Chair. A couple

1 of things.

2 First, Mr. Chair, you've discussed the fact that
3 if Motions to Compel have been filed on March 11, saying
4 there would have been time to resolve this without having
5 to reschedule the hearing.

6 And I discussed this in the response that I
7 filed in support of the Rosebud Sioux Tribe's Motion,
8 whether that was, in fact, possible to do. And if one
9 looks at all the steps that have to be completed after a
10 Motion to Compel is filed, then it simply was not
11 possible to do everything that had to be done between
12 March 10 and April 2.

13 If you look at the requirement that you would
14 have to, you know, hear the Motion, write an Order that
15 would be -- there would have been multiple decisions for
16 the Commission to make and write about, that there would
17 have been time for compliance by TransCanada to write
18 additional information, in that there would have been
19 follow-on time for analysis and preparation for
20 testimony, and then follow-on supplementation of
21 discovery responses, that simply is not possible to do
22 before April 2. It's not possible.

23 So the -- so that's one point. This schedule
24 simply wasn't reasonable from the get-go.

25 The second thing is about the meet and confers.

1 And what I'd like to say about that is that TransCanada
2 also has an obligation to meet and confer, and they are
3 free to contact us as well.

4 The letter that TransCanada sent to us that they
5 claim is a meet and confer simply said what their
6 position on the schedule was and threatened us with
7 sanctions if we didn't comply with their position on
8 that. They did not offer to call or to have a call.
9 They did not discuss any objections that we had made, and
10 they -- the letter simply does not include a meet and
11 confer.

12 In terms of meet and confers, generally speaking
13 the goal is, of course, to go into that with good faith
14 and to try to work it out. But we understand that as
15 attorneys that not all discovery disputes can be resolved
16 through meet and confers. Especially when there are
17 issues of jurisdictional questions or relevance. Those
18 kinds of things need to be decided by the jurisdiction,
19 by the decision maker, by the Commission itself.

20 And here quite a number of TransCanada's
21 objections are based on questions that only the
22 Commission can decide. So in terms of meet and confers,
23 sometimes we understand as lawyers that they work and,
24 you know, there's different things that can be resolved,
25 you know, scope of information and the way it's presented

1 and other sorts of practical matters. And you can hash
2 that out on typical discovery questions.

3 Other times you understand that meet and confers
4 are not likely to resolve fundamental disagreements
5 about, for example, what the law means or relevance in a
6 proceeding. So here my judgment was that it was
7 unlikely -- meet and confers were unlikely to resolve
8 things to the point where we wouldn't need to do Motions
9 to Compel.

10 And given that there are Motions to Compel, like
11 I said, there simply wasn't time. Even if we had done
12 all of that stuff by March 11, there simply wasn't time
13 to get all of that done and you would have had to end up
14 rescheduling the hearing, even if we had done that.

15 So I just wanted to say that it is -- meet and
16 confers is a requirement of the rules. It doesn't always
17 resolve things, and often one can tell that it's not
18 going to resolve things ahead of time.

19 So, you know, I'm still very happy to talk to
20 TransCanada about what our requests are. By waiting
21 until we've heard what other parties were going to
22 present testimony on, Bold Nebraska has narrowed down its
23 issues that it would like to present testimony on through
24 very specific and small things. Not small things.
25 Important things, but a small set of issues. And,

1 therefore, we also have a very discrete set of discovery
2 questions and disputes with TransCanada.

3 If we had pushed our discovery conversations and
4 done exhaustive meet and confer way back in, say,
5 February, it wouldn't have made any difference because
6 we'd still be in the same position today, not having --
7 ultimately, it's the second round of discovery that we're
8 in dispute about.

9 So it's -- we're happy to continue to discuss
10 this with them. We doubt that it will resolve anything.
11 We think that it will have to go to a Motion to Compel.
12 That will take time. Even if we had done that as of
13 March 11, it still wouldn't be possible to get that
14 resolved, get information back, analyze that information,
15 and prepare testimony with a little over three weeks. It
16 simply wasn't reasonable.

17 So we support the Rosebud Sioux Tribe's Motion
18 for an amendment to the schedule. We think it's
19 reasonable. We think it's -- there's not an excessive
20 burden on TransCanada, especially because the litigation
21 in Nebraska means they're not going to start construction
22 on the pipeline for probably at least a year. And maybe
23 longer.

24 So we're concerned and worried about -- or
25 concerned and aware of the Commission's own time, the

1 Commission Staff's time, and we respect those
2 commitments. We think here that if the Commission had
3 set up a schedule appropriately back last fall, that we
4 wouldn't be in this situation.

5 So we would ask that the Commission rectify
6 that mistake from then and allow the process to go
7 forward fully and allow the citizens to participate in a
8 meaningful way.

9 Thank you for hearing me today.

10 CHAIRMAN NELSON: Thank you.

11 (A short recess is taken)

12 CHAIRMAN NELSON: Hopefully we've still got
13 everybody with us on the phone.

14 We're going to go to Mr. Capossela.

15 MR. CAPOSSELA: Thank you, Mr. Chairman.

16 Briefly, I think the admission of counsel that
17 the information for the link for the documents that had
18 been requested in the time frame for response to that
19 request had expired and it was negotiated through, plus
20 that information -- there was some oversight in the
21 information that was due to be produced in discovery was
22 not produced, I think that should be dispositive, that
23 the Rosebud Sioux Tribe should not be penalized because
24 of that oversight on the part of TransCanada.

25 I also think it's important to emphasize, as it's

1 already been done, the Rosebud Tribe's Motion was timely.
2 It's not unreasonable for the Tribe to have filed a
3 Motion a week and a half, two weeks after the deadline.
4 And I don't think that that should be a consideration
5 against granting the Tribe's Motion.

6 Thank you.

7 CHAIRMAN NELSON: Thank you, sir.

8 Mr. Martinez.

9 MR. MARTINEZ: Thank you, Mr. Chairman.

10 I think what we have is a real mismatch here
11 between what the Commission believes is a reasonable
12 schedule in terms of getting discovery complete and
13 actually being able to have sufficient evidence out there
14 for a meaningful hearing versus what the procedural rules
15 or the Rules of Civil Procedure actually call for.

16 When you look at, you know, cases of this nature
17 that are as intensive as this, that involve as many
18 witnesses, as many experts, if we were -- you know, if
19 we were in a Circuit or District Court, a case like
20 this could easily run a couple of years. That's not
21 unusual.

22 And, you know, there's been a prior allusion to
23 the fact that, well, the original docket only lasted just
24 a little in excess of seven months. Well, that may have
25 been the case, but I don't think there were nearly as

1 many Intervenors, nearly as many objections or issues in
2 play as have been raised in these proceedings.

3 And because of that, I think the reasonable
4 conclusion here is is that we probably need some kind of
5 a reset. Particularly, you know, as it goes towards
6 resolving the discovery disputes and getting discovery
7 complete.

8 You know, on that basis I think the Motion that
9 Mr. Rappold has made on behalf of the Rosebud Sioux Tribe
10 is, I think, very well taken. I think he is spot on that
11 the time lines as they are set up right now just simply
12 do not work.

13 And on that basis Dakota Rural Action would go
14 ahead and support, I think very strongly, the Rosebud
15 Sioux Tribe's Motion.

16 CHAIRMAN NELSON: Thank you, sir.

17 Ms. Real Bird.

18 MS. REALBIRD: Yes, Mr. Chairman and members of
19 the Commission.

20 The Yankton Sioux Tribe strongly supports
21 Rosebud Sioux Tribe's Motion for the persuasive arguments
22 articulated by Mr. Rappold.

23 In addition, I do want to address a comment that
24 I've heard a few times during the consideration of the
25 pending Motion, and that's the Commission's or maybe one

1 Commissioner's expectation that the parties filed Motions
2 to Compel on March 11 or maybe March 12.

3 The Procedural Schedule said that the responses
4 to discovery were due on March 10. And I believe a
5 couple of parties in their second round attempted to
6 address the objections made by TransCanada maybe wording
7 differences or otherwise. And so on March 10 when the
8 responses to those discovery requests were due the party
9 making the request then had to go through whatever was
10 provided, make the determination whether it was going to
11 seek -- seek to receive the responses that it originally
12 sought, and perhaps advance to a Motion to Compel.

13 And the codified law requires us to meet and
14 confer first, and that process cannot happen. I would
15 say it's virtually impossible for it to have happened
16 within a day or two. But I did just want to address that
17 comment that I heard.

18 You know, it was sort of an expected deadline
19 that parties would file these Motions to Compel the day
20 or the day after response deadlines were due -- or
21 responses were due.

22 There was no date for Motions to Compel. There
23 still is no date and no deadline for Motions to Compel.
24 And so we have a number of parties who, you know, were
25 unaware they were under any deadline for a Motion to

1 Compel, including many of the unrepresented parties who
2 are now being, you know, targeted by the Applicant.

3 But I just want to make that point. It's
4 unreasonable for the Commission to expect a deadline yet
5 not to have included it as an actual written deadline in
6 the Procedural Schedule. And that's the only point I'd
7 make in addition to the strong arguments made by Rappold
8 and the other responsive parties today.

9 Thank you.

10 CHAIRMAN NELSON: Thank you. I've got a
11 question to follow up on.

12 You indicate that the law requires a meet and
13 confer after the deadline has passed for discovery
14 response.

15 What statute is that?

16 MS. REALBIRD: If you'll give me a second, I can
17 find it.

18 CHAIRMAN NELSON: Yeah. Absolutely.

19 Here's what we'll do. I'm going to go to
20 Mr. Clark, and then I'll come back around to you for that
21 response.

22 Mr. Clark.

23 MR. CLARK: Thank you, Mr. Chairman.

24 Honestly, I don't know what I can add to the
25 excellent well reasoned arguments that have already been

1 made by the other counsel so I will just very quickly say
2 that the Cheyenne River Sioux Tribe strongly supports the
3 Rosebud Sioux Tribe's Motion.

4 CHAIRMAN NELSON: That didn't buy you much time,
5 Ms. Real Bird.

6 MS. REALBIRD: Yeah.

7 Travis, we should have planned that a little
8 better.

9 CHAIRMAN NELSON: I'll give you a little bit
10 more time.

11 We'll go to -- I think we're going to go to
12 Mr. -- go ahead.

13 MS. REALBIRD: I might have it. It's Codified
14 Law 15-6-23. It requires a party to show good cause for
15 the issuance of a protective order. And I know this
16 isn't a protective order, but it does require movants for
17 these discovery-based motions to certify that they had in
18 good faith conferred or attempted to confer with the
19 other affected parties to -- in an effort to resolve the
20 dispute without going to the court or here to the PUC.

21 So I believe it's 15-6-26C. And, you know, some
22 of these codified laws were brought up in the earlier
23 discussions regarding the Applicant's Motion to Define
24 the Scope of Discovery. And, you know, those
25 requirements for the good-faith conferral or attempts

1 were mentioned in the briefing there. That's what I'd
2 point to.

3 If I do find something -- I'm on the spot with
4 finding that, but if I find something more responsive,
5 I'll be sure to supplement on the record.

6 MS. EDWARDS: Can I interject -- I believe the
7 one she might be referring to is 15-6-37A, Subpart 2.

8 CHAIRMAN NELSON: I am pulling that up.
9 Thank you. I think that is the applicable
10 statute.

11 MS. REALBIRD: Thank you, Ms. Edwards. I just
12 didn't have that at my fingertips. So I thank you.

13 CHAIRMAN NELSON: With that, Mr. Taylor.

14 MR. TAYLOR: Thank you, Commissioner.

15 There's a couple of points I want to make.
16 First of all, Mr. Rappold and others raised the issue of
17 TransCanada's Interrogatories and document requests not
18 identifying a condition in the list of conditions.

19 Our Interrogatories and document production
20 requests, as you will see at some point, I'm sure, were
21 contention Interrogatories. Ours were what are your
22 contentions? What do you contend? What are you going
23 to -- what case are you going to make? Who are you going
24 to call as witnesses?

25 It's impossible to tie those to a condition in

1 the permit.

2 In our meet and confer with Mr. Rappold, who on
3 the 13th of March, who had not at that point answered his
4 Interrogatories, we had that discussion.

5 I remember exactly what I said to him. I said,
6 Matt, you're going to lose that one when he raised that
7 point. And he agreed and answered his Interrogatories.

8 Second point. With respect to this link to
9 everybody else's Interrogatories that Matt asked for that
10 we did not get to him until yesterday -- or last week,
11 whenever it was -- in the interim between February 20
12 when he first asked for that link and today we had an
13 hour and a half meet and confer with him.

14 He wrote us two long letters. He knows my
15 e-mail address because, as he pointed out, I responded to
16 him on the 25th of the month within five minutes. A
17 phone call, we would have corrected that. An e-mail to
18 us saying send us the link, we would have corrected that.
19 Very simple matter.

20 We have tried -- and I don't say this lightly,
21 and I don't say it in a self-aggrandizing manner. We
22 have tried to accommodate everyone in every way in this
23 process for the very reason that we did not want to have
24 a string of motion hearings that involved fighting over
25 matters that were not of great significance to the

1 Commission.

2 The plain facts are I can't even begin to
3 estimate what the percentage of Interrogatories that were
4 posed to us we could have legitimately and genuinely
5 objected to on form, format, content, and target. But we
6 chose not to. Instead, we answered a vast majority of
7 those Interrogatories.

8 We are here acting in good faith. We have acted
9 in good faith in every respect in this process.

10 Mr. Rappold makes a dramatic argument, but it is
11 not an argument that is necessarily supported by the
12 facts. We have communicated with him in the best way
13 that we possibly can. And I think we are certainly well
14 within our bounds saying that he has --

15 I think we're ready to go. The schedule is
16 intact. We can meet it. Discovery discussions are not
17 over with. If he wants to ask for more material -- well,
18 he did. The 25th he sent us a long letter, 6, 7 pages.
19 We're going to respond to that. We're going to react to
20 that. We're not going to tell him the door's closed to
21 discuss those things.

22 Same is true with Mr. Blackburn. We got his
23 meet and confer letter on Thursday, the same day that we
24 got all of these motions. We're going to respond to
25 that, and we're going to talk to him about it. Hope we

1 can iron these knots out.

2 There's no purpose for us to get in an airplane
3 and come to Pierre on whatever day of the week this is,
4 Tuesday mornings, to have hearings that are unnecessary.
5 And we intend to abide by that.

6 Thank you.

7 CHAIRMAN NELSON: Thank you.

8 Mr. Rappold, we'll give you the last word.

9 MR. RAPPOLD: Thank you.

10 (Discussion off the record)

11 MR. RAPPOLD: Mr. Taylor has indicated that
12 there are some matters of great significance and
13 importance before this Commission, and I agree entirely
14 with that statement.

15 What I disagree with is whose job it is to
16 determine what those matters are and how important they
17 are. TransCanada wants everyone to believe, including
18 yourselves, that it's their job to decide what's
19 important and what's not important. And I submit to you
20 it's your job to decide what's important and what's not
21 important.

22 Creating a schedule and a process that comports
23 with due process, fundamental fairness, things that have
24 been a part of our nation's jurisprudence since it
25 started, due process, fundamental fairness, and

1 opportunity to be heard, an opportunity to respond, an
2 opportunity to look at the other side's evidence, an
3 opportunity to do all of those things in a meaningful
4 way. Not within 23 days.

5 As others have stated even if we had filed a
6 Motion to Compel on the 11th, which is impossible, in my
7 opinion, it wouldn't have been resolved before Thursday,
8 April 2. And I think you all would agree with that.

9 There's no way that it would all have been
10 resolved, that the additional information would have been
11 provided, assuming that, you know, we prevailed on at
12 least some of our Motions to Compel, and review that
13 information, turn it into testimony, submit it to
14 everybody. It's not possible.

15 Due process requires -- constitutional due
16 process considerations do not dictate how you establish
17 your rules, but it addresses how you apply those rules
18 once they've been established. Once they've been
19 adopted.

20 That due process, the process, is it fair?
21 That's a matter of great significance and importance to
22 this Commission, I believe. And it's a matter that's
23 important to my client. It's a matter that's important
24 to all the other Intervenors in this case. And it's a
25 matter that's important to the citizens of the State of

1 South Dakota.

2 I heard earlier this morning when I got here --
3 shortly after I got here that -- it was a previous
4 hearing -- or a docket, rather, protection of our natural
5 resources and conservation of our natural resources is
6 important. I believe that was Commissioner Hanson who
7 had said that in the furnace discussion.

8 This is about a lot more than some furnaces.
9 It's about a lot more than that. Agencies are permitted
10 and granted through law great deference to their
11 decisions. And we would ask you to look at this with an
12 open mind, with an understanding of what due process and
13 the law requires in these types of situations.

14 One more thing: It's been said a lot of times
15 that we're trying to retry the case. No. Just because
16 you say something over and over again doesn't make it
17 true. I'm not trying to retry the original Permit
18 Application from 2009.

19 The law is clear. If you get one of these
20 permits -- and I'm going to paraphrase. If you get one
21 of these permits and you haven't started building within
22 four years, you have to certify that the conditions upon
23 which it got the permit are still the same. That's the
24 law.

25 We're dealing with an Appendix C that has

1 30 proposes changes to the Findings of Fact. I believe
2 it's called Tracking The Table of Changes, Appendix C,
3 which was filed by TransCanada in their Application.

4 We've got the Findings of Fact and Conclusions
5 of Law, which probably consists of close to 100
6 Conditions. Or Findings, rather. And then we've got the
7 Amended Permit Conditions, which there's at least 50, and
8 I believe if you count the subparts, it's probably closer
9 to 100.

10 So we're not trying to retry anything. They
11 have the burden to establish that the conditions upon
12 which they received the permit are the same today as they
13 were on June 29, 2010.

14 We would ask you to amend the Procedural
15 Schedule to allow for a meaningful time to resolve our
16 discovery disputes, come to you for resolution that's
17 needed. And I've already said this, and it's probably
18 going to be needed. And there are some of those that are
19 already on the schedule for the 14th. Those aren't ours,
20 but they're on your schedule, nonetheless.

21 We'd ask for a schedule that allows for a
22 meaningful opportunity to fully participate, receive
23 evidence, prepare a meaningful case, and then go to
24 trial.

25 Thank you.

1 CHAIRMAN NELSON: Thank you.

2 Questions from the Commission for any of the
3 attorneys that have addressed us?

4 Commissioner Hanson.

5 COMMISSIONER HANSON: This is for Mr. Rappold.

6 I think Mr. -- I always want to mispronounce his
7 last name.

8 Mr. Capossela probably articulated most
9 succinctly of what you -- what your position is when he
10 made his statement a few minutes ago. And I think that
11 this is a very unique situation with Rosebud, that XL,
12 TransCanada, stated that there was a slip from the
13 standpoint of providing a URL to you so that you could
14 access information. And on that basis I personally
15 believe that you need to have additional time.

16 I think this is, as I say, unique to the Rosebud
17 situation because it was Rosebud that did not have that
18 opportunity and certainly does not seem like a duration
19 long enough to respond.

20 So my question to you, in looking at the present
21 schedule and your statement that if you had a week, I
22 believe it was that you stated, if we simply changed the
23 prefiled direct testimony file and serve date from
24 April 2 to April 10, that's an eight-day increase, it
25 still provides for 13-day difference to filing rebuttal

1 testimony.

2 I don't know if there would need to be an
3 adjustment there, but it would seem that we could fit
4 that in on that date.

5 Would that work for you?

6 MR. RAPPOLD: Would that give us sufficient time
7 to resolve all of our discovery disputes? See, part of
8 the issue here, part of the problem here is discovery is
9 bifurcated. It's into two segments.

10 COMMISSIONER HANSON: Correct.

11 MR. RAPPOLD: I've said my concerns to
12 Mr. Taylor about the first ones. Waiting to hear back.
13 We've sent our second concerns to him. Obviously, he's
14 acknowledged receipt of. We haven't even talked about
15 those yet.

16 COMMISSIONER HANSON: I believe, though, your
17 earlier testimony you stated that if you had another
18 seven days, and this would give you another eight days.
19 I'm just curious if I heard you accurately.

20 MR. RAPPOLD: I can't speak for Mr. Taylor, but
21 I think if we had a week from today to either resolve our
22 discovery disputes amongst ourselves, and if not that,
23 present them to you for resolution, that would give us
24 time to resolve those issues.

25 We would clearly know how we're moving forward,

1 what's going to be admissible, what's not, as far as --
2 well, not even admissible at that point but
3 discoverable.

4 I think that will give us time to resolve those
5 issues. And then the -- we've disclosed to Mr. Taylor
6 that we are working with some experts from the Goodman
7 Group, and they've indicated to me that they would -- at
8 the top scale they'd like 18 days to file testimony
9 following close of discovery. At the bottom they'd go
10 for 14. So I'd ask you for 18 days from the resolution
11 of discovery.

12 I don't know if that was an answer to your
13 question or not.

14 COMMISSIONER HANSON: It does. And I appreciate
15 you fleshing it out with your answer.

16 Thank you.

17 Thank you, Mr. Chairman. That's the only
18 question I have.

19 CHAIRMAN NELSON: Additional questions of any of
20 our presenters?

21 I'm going to go to Ms. Edwards. And since this
22 question is probably not a fair one for you, I'll give
23 you the option of passing on answering it.

24 The point that Ms. Real Bird made that you
25 assisted her with of the statute that does, in fact,

1 require some good-faith effort to resolve discovery
2 before a Motion to Compel is filed that in my mind maybe
3 does throw a wrench in this process.

4 Do you care to weigh in on that? Does this
5 create a problem for us or not?

6 MS. EDWARDS: I can certainly try to weigh in on
7 that. And Kristen Edwards for Staff.

8 This issue didn't come up for Staff personally.
9 We didn't -- I don't foresee any Motions to Compel coming
10 from Staff. But in several of other dockets, I mean, we
11 send out every year hundreds and hundreds and hundreds of
12 data requests.

13 So, I mean, we've not had a Motion to Compel
14 from Staff since I've been here anyway, but it's not
15 uncommon for us not to get the answer that we're looking
16 for.

17 And typically what happens is we have good
18 enough working relationships with the companies that we
19 do work with and with the Intervenors that we're able to
20 call them up right away and say this isn't -- either you
21 didn't understand the question, can I rephrase it for
22 you, and we resolve those issues very, very quickly.
23 E-mails within, you know, the day, phone calls, usually
24 informally resolve those issues.

25 So I guess the question becomes to what extent

1 do people expect to confer. And I think in a board room,
2 you know, several weeks down the road a formal meeting
3 isn't really what the statute is getting at. I think it
4 is sufficient to make that phone call as Staff typically
5 does and just hash out the issues on an informal basis
6 right there. And especially when you're under a time
7 crunch.

8 Which we oftentimes have data requests that come
9 in the day before a settlement conference, and we have to
10 get right on that and call the company right then and
11 there.

12 So I don't know if that helps or not.

13 CHAIRMAN NELSON: It does.

14 Any additional questions?

15 Seeing none, are there -- is there a motion?

16 Commissioner Hanson.

17 COMMISSIONER HANSON: Perhaps not a motion at
18 this juncture. I'd like to have some discussion to
19 figure out whether or not if we move the April 2 deadline
20 to April 10 if there's support for that.

21 Obviously, by making a motion I'd find that out,
22 but I'm curious from Staff whether April 10 to -- April 2
23 to April 10 works out and whether you feel that April 23
24 could be left as is from your perspective at least. Then
25 I'd make a motion.

1 MS. EDWARDS: I don't know if Staff will have
2 rebuttal testimony. We'd have to look at what's received
3 for prefiled testimony. But I predict that the majority
4 of rebuttal testimony typically in cases like this comes
5 from the company. So I don't think -- I don't foresee it
6 presenting a hardship on Staff.

7 COMMISSIONER HANSON: If you saw from your
8 experience with Intervenors and Applicants, if we were
9 to -- I've been debating moving the April -- or making a
10 motion to move -- presumptuous of me to move April 23 a
11 few days later.

12 Does that create too much of a compression on
13 that evidentiary hearing, from your experience?

14 Mr. Chairman, I just didn't want to go through a
15 motion and then add 14 different amendments to it trying
16 to come up with the right date.

17 CHAIRMAN NELSON: That's fair. I do have a
18 telegraph from my left that there may be a motion ready
19 to go here if we want to go that route.

20 COMMISSIONER HANSON: All right. First I want
21 to find out what's happening over here.

22 MS. EDWARDS: Sounds like we could make it work.

23 COMMISSIONER HANSON: If you add a few days to
24 April 23?

25 MS. EDWARDS: Yes.

1 COMMISSIONER HANSON: All right.

2 Counsel, Mr. Smith, do you have --

3 COMMISSIONER FIEGEN: The 24th is a Friday.

4 COMMISSIONER HANSON: I had played with the
5 27th, giving a weekend, but I think that might -- that
6 doesn't --

7 This is how sausage is made.

8 The 27th is a Monday. It gives folks that
9 weekend to work with. I had originally been looking at
10 that. However, is that in anyone's experience too much
11 time, too little time? No one has a concern?

12 Mr. Taylor has --

13 MR. TAYLOR: You're talking about --

14 MR. ELLISON: Mr. Chairman, this is
15 Bruce Ellison for Dakota Rural Action.

16 May I just raise a point that I don't think is
17 being considered with regard to the scheduling as this
18 discussion continues?

19 And that is that unless there's a preconception
20 that none of the Motions to Compel that have been filed
21 or will be filed timely before the hearing on the 14th of
22 April are going to be granted.

23 Because if any parts of them are granted, then
24 the question becomes how long will it take TransCanada to
25 comply? And then the issue becomes whether there's been

1 compliance. And assuming it takes a week or more for
2 them to comply, we have to only then get those materials,
3 turn them over to our witnesses or experts and then --
4 for their consideration as part of their testimony.

5 And I just -- as I said, unless there's a
6 predetermination that Motions to Compel are going to be
7 systematically denied, then we have to allow for some
8 process for discovery to be complied with, whatever the
9 board orders.

10 And I thank you. I didn't mean to interrupt. I
11 just thought that --

12 CHAIRMAN NELSON: No. This is Chairman Nelson.
13 That's a very fair point. That's in the back of my mind,
14 and I was just waiting to see how that was going to be
15 addressed.

16 So, Chairman Hanson, continue.

17 COMMISSIONER HANSON: Yes. Mr. Ellison, we're
18 trying to work somewhat in a perfect world. We recognize
19 there are challenges to that. That's why I was looking
20 at April 27 instead of April 23. However, I recognize
21 there may very well be additional we'll call them hurdles
22 along the way.

23 But I'm going to work with those dates. And if
24 there are challenges, then we're going to have to
25 approach those later on. And trying right now not to

1 move the evidentiary hearing because of the challenges
2 that are created with doing that. However, I recognize
3 that we may get to April 26 or 7 or 8th and recognize we
4 have to.

5 So, Mr. Chairman, at this time I would make a --

6 COMMISSIONER FIEGEN: Can anybody else be part
7 of this discussion before a motion is made? Is that
8 okay?

9 Because this is new. We now get to discuss
10 before a motion is made. I like that. There's a
11 change.

12 CHAIRMAN NELSON: This may be the last time that
13 happens.

14 COMMISSIONER FIEGEN: Yeah. Because the
15 Chairman last year wouldn't let me do that when I asked
16 to do that. That's why I was laughing.

17 Two questions. In your motion, Commissioner
18 Hanson, also we need to maybe look at what Staff talked
19 about is maybe a April 16 of all motions filed to the
20 Commission. And then also I believe Staff talked about
21 supplemental -- I don't know exactly how you worded that,
22 Ms. Edwards, but supplemental information will be taken
23 by the Commission -- I don't know exactly.

24 So, anyway, I just want to make sure that we
25 include some of that stuff in the Motion when

1 Commissioner Hanson does that.

2 CHAIRMAN NELSON: Commissioner Hanson.

3 COMMISSIONER HANSON: Thank you.

4 And I'll -- I just wanted to make adjustments to
5 the original Order. However, I'm sure I will be amenable
6 after I make that Motion to those additions and
7 clarifications that you wish to make as a Motion to
8 Amend.

9 I will move -- and forgive me for making
10 comments prior to making my motion -- that the Commission
11 grant Rosebud Tribe's Motion to Amend the Procedural
12 Schedule by amending the April 2 date to be April 10,
13 2015, and that the prefiled rebuttal testimony filed and
14 served date of April 23 be changed to April 27.

15 That's my motion, and I look forward to a Motion
16 to Amend.

17 CHAIRMAN NELSON: Discussion on the Motion.

18 I guess the question that I would raise, I mean,
19 that may help us but it leaves the elephant in the room
20 unanswered in that do we need a deadline for Motions to
21 Compel and then a time frame for dealing with those?

22 Do you have a thought on how to address that?

23 COMMISSIONER HANSON: I was looking forward to
24 Commissioner Fiegen making a Motion to Amend that.
25 However, if you wish to do that, that's fine.

1 CHAIRMAN NELSON: No. It was just an honest
2 question on my part. I don't have an answer.

3 MR. TAYLOR: Commissioner Nelson.

4 CHAIRMAN NELSON: Yes.

5 MR. TAYLOR: Does your Motion apply only to the
6 Rosebud Sioux, or does it apply in general to all
7 Intervenors?

8 COMMISSIONER HANSON: It's going to probably
9 have to be done for everyone. I'm going to ask
10 counsel -- even though this is a very unique situation
11 for Rosebud, I think that I need to refer to my counsel.

12 MR. SMITH: Right. And it is.

13 But the other thing is we have hanging out there
14 and I don't -- I can't totally forget that, is the impact
15 of action on the Motions to Compel and some later
16 returned information.

17 But I just think also just in terms of us as a
18 Commission managing the process it's just so much easier
19 if we have dates that are --

20 COMMISSIONER HANSON: Consistent.

21 MR. SMITH: -- consistent. Really. I think it
22 is.

23 COMMISSIONER HANSON: Thank you.

24 MR. SMITH: It doesn't give certain parties then
25 an advantage with additional time relative to some

1 things.

2 And one other point, again, I think probably
3 before this discussion's over we're going to talk about a
4 motion deadline or something like that maybe.

5 And one other thought I had, and it's just a
6 thought so I don't want to advocate it, is that perhaps
7 in the second round of -- because the Motions to Compel
8 aren't going to be heard until the 14th, and so we're
9 going to have later -- we're going to have information
10 show up, assuming some of those might be granted,
11 potentially after that, that we open the door on the
12 rebuttal to allow that date also to be used for what
13 truthfully would be something like original testimony
14 that at least is allowed to address whatever comes
15 forward as a result of action on those Motions to
16 Compel.

17 And it's just a thought, so that people have at
18 least a shot at prefiled testimony related to such
19 information.

20 MR. TAYLOR: Can I be heard?

21 CHAIRMAN NELSON: Certainly.

22 MR. TAYLOR: The problem it presents for us is
23 this: There are a number of Intervenors who have not
24 answered their Interrogatories or their requests for --
25 for our discovery requests on the same grounds that

1 Mr. Rappold made.

2 And the first time we're going to know what it
3 is they intend to offer by way of evidence is receipt of
4 their direct -- their prefiled direct testimony. So
5 we've been operating on this premise that we have this
6 date of the 14th.

7 We made our Motion some time ago that if you
8 didn't answer the Interrogatories, we want you to be
9 excluded.

10 Our intention was April 2 they prefiled their
11 testimony. We look at their testimony. If it's not
12 troublesome to us, if it's something that we can manage,
13 then we would not proceed with the Motion to exclude
14 their testimony.

15 But if you move this April 2 date to April 10,
16 then we have -- I don't know what day of the week
17 April 10 is.

18 MR. SMITH: It's a Friday.

19 COMMISSIONER HANSON: Friday.

20 MR. TAYLOR: A Friday. We have until the
21 following Tuesday to figure out whether or not we even
22 want to object to any further testimony on those.

23 And we've thought this -- had long discussions
24 on how we were going to approach this process and
25 thought, okay, April 2 works. If you want to give

1 Mr. Rappold some extra days, that doesn't bother me. If
2 you want to give everybody some extra days, that really
3 troubles me. Because of the way the schedule plays out.

4 CHAIRMAN NELSON: Thank you. And, Mr. Rappold,
5 I'm going to come back to you before we're done with
6 this.

7 I'm going to move to amend by adding three more
8 dates. That all Motions to Compel must be filed by
9 April 7, that the existing motions on file that are
10 scheduled to be heard on the 14th will, in fact, be heard
11 then along with any Motions to Compel.

12 And I understand that's a very short turn around
13 between the 7th and the 14th. But if we're going to keep
14 our existing hearing date, that's what needs to happen.
15 And that should any of those Motions to Compel be
16 granted, that the information needs to be provided by the
17 requesting party by the 17th.

18 And I would include Mr. Smith's suggestion that
19 if there is any new information that's provided through
20 those Motions to Compel, that that would be allowed to be
21 included in rebuttal testimony.

22 MR. TAYLOR: Would you do the schedule again?

23 CHAIRMAN NELSON: Certainly. In addition to
24 Commissioner Hanson's Motion that the prefiled direct
25 testimony be filed and served on April 10 and that

1 rebuttal testimony be filed and served on the 27th, the
2 three dates that I would add is a deadline for Motions to
3 Compel on April 7, that all of these motions, including
4 the ones that are already scheduled for the 14th, plus
5 any Motions to Compel would be heard on the 14th. So
6 bring your lunch. And that if any of those Motions to
7 Compel are granted, and it goes both ways, that that
8 information needs to be turned over by the 17th.

9 And so that means that the parties kind of need
10 to be prepared to comply if any of those motions are
11 granted.

12 And before I -- I know this is awkward, but
13 before I conclude my -- no. I'm just going to leave it
14 at that.

15 Commissioner Fiegen.

16 COMMISSIONER FIEGEN: I have one more question
17 on your amendment to Commissioner Hanson's.

18 So do you also have like all motions dealing
19 with this docket have to be done by a certain date?

20 CHAIRMAN NELSON: I don't. And the reason I
21 didn't put that in there is I know Ms. Edwards has got
22 another motion that we're going to deal with when we wrap
23 this up. And I thought we could maybe deal with it at
24 that point unless we want to wrap that all in here.

25 Okay. That's what's on the table. I do want to

1 hear from both of these two, the two directly affected
2 parties and Staff.

3 So go ahead, Mr. Rappold.

4 MR. RAPPOLD: Thank you, Commissioner Nelson.

5 The only concern really with the April 10
6 proposed new date is it would pretty much still be
7 requiring the testimony be submitted prior to resolving
8 discovery problems and issues. And I think that could
9 end up coming back to be a problem or a concern down the
10 road.

11 Testimony's going to be based on complete
12 discovery. And so while I appreciate the willingness to
13 look at this and talking about new dates and whatnot, I
14 think you still have to move those dates around. The
15 discovery should be resolved prior to filing testimony.
16 And I think if you do it that way, it puts everything in
17 the right line as far as it needs to be for running this
18 out on an orderly fashion.

19 CHAIRMAN NELSON: The only way I can see that
20 happening is if we dispense with two rounds of direct
21 filed testimony and rebuttal testimony. Just do away
22 with two rounds. And I'm not sure that we want to do
23 that.

24 MR. RAPPOLD: If testimony is required to be
25 filed on April 10, will the Commission specifically allow

1 for testimony to be supplemented based on discovery
2 resolution issues?

3 CHAIRMAN NELSON: Yes. That was part of my
4 amendment. Yes.

5 MR. RAPPOLD: Okay. Thank you.

6 CHAIRMAN NELSON: Go ahead. I'm going to go to
7 Ms. Edwards, and then we'll come back to Mr. Taylor.

8 MS. EDWARDS: Thank you.

9 Staff has no objection to the Procedural
10 Schedule that you laid out.

11 CHAIRMAN NELSON: Do you want to address
12 Commissioner Fiegen's question? Do we need to put a
13 deadline in here for --

14 MS. EDWARDS: I guess the only other motions
15 that I could see that might be beneficial to hear before
16 the morning of the hearing would be maybe if there's a
17 Motion in Limine to preclude certain testimony, I could
18 certainly see that coming up, and that could take all
19 day. Maybe not something we want to do the day of the
20 hearing so --

21 CHAIRMAN NELSON: Would that be something that
22 we would know by the 30th of April?

23 MS. EDWARDS: I would think so.

24 CHAIRMAN NELSON: Then I would add that as part
25 of my amendment that that deadline for any motion along

1 that line would be -- well, we'd have to -- I'm sorry. I
2 asked the wrong question.

3 April 30 is when we've got a meeting scheduled,
4 but when would we know? We wouldn't know that until
5 after the 17th.

6 MS. EDWARDS: I guess it's possible, Mr. Rounds
7 pointed out, that there would be additional supplemental
8 testimony that somebody might want to file a Motion to
9 Preclude filed on that 27th deadline.

10 I don't know how we want to address that, if we
11 could still hear that on the 30th.

12 CHAIRMAN NELSON: I don't know how you could get
13 a response in time.

14 MS. EDWARDS: Or if those would be considered
15 unique situations and we'd hear those the morning of the
16 hearing.

17 CHAIRMAN NELSON: That might be the case. Yeah.
18 Thank you for walking that through with us.

19 Mr. Taylor.

20 MR. TAYLOR: We'll do whatever you tell us to
21 do. I would say this, that if you leave April 2 as the
22 prefiled deadline for everybody except Mr. Rappold, it's
23 going to solve about two-thirds of the motions to be
24 heard on the 14th. At least I think that's going to be
25 the case.

1 I suspect that many of the people who did not
2 respond to our Interrogatories also will not file
3 prefiled testimony. And if that's the case, that will
4 resolve those people.

5 If you wait until April 10, the problem it
6 presents for us is for those people who didn't respond to
7 Interrogatories but do file prefiled testimony, then
8 we've got to figure out whether we want to continue with
9 our objection or not, which requires that we speak with
10 the TransCanada team that backs us up.

11 I mean, God knows I wish James and I made all of
12 these decisions, but we don't.

13 So give Matt his time, leave everybody else
14 ready for April 2. They must all be ready now because
15 the only person who's made a complaint is Mr. Capossela.
16 No one else has made a complaint about making it on
17 April 2. And then put these intervening points in. And
18 we'll figure out how to live with them.

19 CHAIRMAN NELSON: Thank you. I appreciate your
20 thoughts.

21 MS. HILDING: This is Nancy Hilding. Can I say
22 something?

23 CHAIRMAN NELSON: Certainly.

24 MS. HILDING: I believe Standing Rock Sioux
25 Tribe has also objected to the schedule because they --

1 their economic experts were not hired by the Tribe until
2 too late so I --

3 CHAIRMAN NELSON: And we dealt with their issue
4 earlier today.

5 MS. HILDING: You denied their suggested
6 schedule. But he just said, the man from TransCanada,
7 nobody. But Rosebud has specific objections, and I'm
8 saying that Standing Rock, I heard objections from them
9 specifically to the schedule.

10 CHAIRMAN NELSON: Thank you.

11 MR. CAPOSSELA: Mr. Chairman, this is
12 Peter Capossela. Can I interject briefly?

13 CHAIRMAN NELSON: Certainly.

14 MR. CAPOSSELA: Many Intervenors have
15 outstanding complaints or issues with TransCanada.
16 That's why a Motion to Compel deadline is being
17 considered and implemented in the first instance.

18 And so if -- so many people are in the same
19 situation as Rosebud or a similar situation as Rosebud,
20 and a modest amount of relief from the time frames for
21 the submittal of the prefiled direct testimony should
22 apply across the board because of that fact.

23 CHAIRMAN NELSON: Thank you.

24 MR. CAPOSSELA: You're welcome. Thank you.

25 MR. TAYLOR: Except nobody else made a motion

1 except him.

2 MR. CAPOSSELA: The time frame did not expire
3 for those motions.

4 MR. TAYLOR: He made a motion to defer --

5 CHAIRMAN NELSON: Thank you. Thank you both.

6 We have a Motion to Amend on the table.

7 Additional discussion on the Motion to Amend.

8 Commissioner Hanson.

9 COMMISSIONER HANSON: Thank you, Mr. Chairman.

10 I'm thinking that this should only apply to
11 Rosebud. It does confuse the entire process if it
12 changes from that standpoint because they do have a very
13 unique situation. And we have made the decision earlier
14 pertaining to Standing Rock, and the point is made that
15 the others did not make an objection to it. It just
16 makes sense that we not confuse the situation any further
17 with this Motion.

18 CHAIRMAN NELSON: Okay. Here's what I'd like to
19 do since that's not -- if we could vote on my amendment,
20 and then you can follow with an amendment to that point,
21 does that work?

22 COMMISSIONER HANSON: Yep.

23 CHAIRMAN NELSON: Additional discussion on the
24 amendment to set the dates of the 7th, 14th, and 17th,
25 and Mr. Smith's suggestion that the 27th would also

1 include the ability to include original information that
2 has come about through any Motions to Compel that are
3 granted.

4 Additional discussion.

5 Seeing none, all those in favor of the amendment
6 will vote aye. Those opposed, nay.

7 Commissioner Hanson.

8 COMMISSIONER HANSON: Aye.

9 CHAIRMAN NELSON: Commissioner Fiegen.

10 COMMISSIONER FIEGEN: Fiegen votes aye.

11 CHAIRMAN NELSON: Nelson votes aye.

12 The amendment passes.

13 Are there any further amendments?

14 Commissioner Hanson.

15 COMMISSIONER HANSON: Thank you, Mr. Chairman.

16 Yes. I believe that this should apply only to
17 the Rosebud Sioux Tribe, and, therefore, I would make the
18 Motion that -- I will move to amend my own Motion by
19 stating that this be applicable to Rosebud Sioux Tribe
20 only.

21 CHAIRMAN NELSON: And just to clarify, and what
22 you intend to mean is the prefiled direct testimony file
23 and serve deadline for all parties will remain April 2
24 except for the Rosebud Sioux Tribe, which will then be
25 April 10; is that correct?

1 COMMISSIONER HANSON: Thank you for that
2 clarification. Yes.

3 CHAIRMAN NELSON: Certainly.
4 Discussion on the Motion to Amend.
5 Commissioner Fiegen.

6 COMMISSIONER FIEGEN: So how about rebuttal
7 testimony? That will all be the 27th?

8 CHAIRMAN NELSON: That's my understanding the
9 way the Motion is read. Yes.

10 COMMISSIONER HANSON: Correct.

11 COMMISSIONER FIEGEN: Thank you.

12 CHAIRMAN NELSON: Additional discussion on the
13 amendment?

14 Seeing none.

15 MR. TAYLOR: I know it's out of order.

16 CHAIRMAN NELSON: It's fine because we want to
17 make sure we've got this right.

18 Go ahead, Mr. Taylor.

19 MR. TAYLOR: Moving everybody else's -- as
20 Ms. Edwards said, there probably won't be a lot of
21 rebuttal except from us. We've got our time line all set
22 up to have our people come and review the direct
23 testimony so we can figure out what our rebuttal's going
24 to be and get it put together.

25 Could we leave that the same?

1 CHAIRMAN NELSON: I think that's what the
2 amendment is. The amendment leaves the prefiled direct
3 testimony deadline as April 2 except for Rosebud, and we
4 will grant them an extension to the 10th.

5 MR. TAYLOR: And everybody else's rebuttal.

6 CHAIRMAN NELSON: And everybody's rebuttal is
7 due on the 27th.

8 MR. TAYLOR: Is that what's in the current
9 calendar, the 27th?

10 CHAIRMAN NELSON: No. The current calendar's
11 the 23rd.

12 Thank you.

13 MR. TAYLOR: My colleague says it's okay, and I
14 take his orders.

15 MS. HILDING: This is Nancy Hilding. Can I make
16 another comment?

17 CHAIRMAN NELSON: Certainly.

18 MS. HILDING: This is argumentative. I think
19 that when you denied -- Standing Rock's asked for more
20 time. They had an extensive schedule that changed the --
21 with specific deadlines that changed the May hearing
22 thing, deadline, so you rejected their Motion with their
23 specific dates, that you don't also give Standing Rock
24 who has complained about their internal difficulties with
25 hiring people due to their internal processes, that by

1 denying their specific schedule you -- that had, you
2 know, a whole mass of dates in there does not mean you
3 can't add them to Rosebud's addition. Okay.

4 And also when TransCanada's talking about the
5 people who did not respond to their Interrogatories and
6 they're waiting until the -- April 2 to see whether they
7 say anything or not, well, there are people who did
8 respond to his Interrogatories that he doesn't have to
9 wait until April 2.

10 So if he's going to be splitting out the people
11 that did not respond from the people who did respond so
12 there's a bunch of people there who are not on his list
13 of 17 or whatever people that he wants to exclude. So
14 when he's saying he can't do that for the people, he's
15 clueless about, well, a lot of people did.

16 So then you should extend the April 10 deadline
17 to Rosebud, Standing Rock, and all the people that
18 TransCanada's not complaining about. That they don't
19 have to wait until April 2 to see what they're up to.

20 So, you know, TransCanada's saying that all the
21 44, whatever Intervenors didn't play correctly, have to
22 wait until April 2 is not true. There's different
23 classes of people with respect to TransCanada. So I
24 think that penalizing everybody who may have complied
25 with things because some didn't is not correct.

1 CHAIRMAN NELSON: Commissioner Hanson.

2 COMMISSIONER HANSON: Thank you, Mr. Chairman.

3 When I made the Motion for Standing Rock I made
4 a number of statements and we had a discussion and we
5 received testimony that was different, a different
6 situation than we have with Rosebud.

7 And Standing Rock gave different reasons why
8 they were requesting additional time.

9 During the Rosebud discussion not only was there
10 a different reason given and a very valid one, but
11 Keystone acquiesced to that discussion by Mr. Rappold,
12 that statement and position, and so we have an entirely
13 different situation between Standing Rock and Rosebud.
14 And that's why I believe this Motion is appropriate to be
15 just for Rosebud.

16 CHAIRMAN NELSON: Additional discussion on the
17 amendment from Commissioners?

18 Hearing none, all of those in favor of the
19 amendment which leaves the existing date for prefiled
20 direct testimony filed and served of April 2, except for
21 Rosebud in which case the date will be April 10 -- all
22 those in favor will vote aye. Those opposed, nay.

23 Commissioner Hanson.

24 COMMISSIONER HANSON: Aye.

25 CHAIRMAN NELSON: Commissioner Fiegen.

1 COMMISSIONER FIEGEN: Fiegen votes aye.

2 CHAIRMAN NELSON: Nelson votes aye.

3 The motion is passed.

4 That brings us to the main Motion which lays out
5 the entire rest of the schedule.

6 Discussion on the Motion?

7 Commissioner Fiegen.

8 COMMISSIONER FIEGEN: I just want to thank
9 everybody for working with us today. We covered a lot of
10 ground today, and I certainly appreciate Rosebud coming
11 in front of us and bringing us information that we were
12 unaware of.

13 We have wanted to be very inclusive, and we have
14 done that. We wanted to do it right, and we want to make
15 sure that we have all the information we need for the
16 hearing.

17 So thank you for all your hard work.

18 CHAIRMAN NELSON: I would echo that. I would
19 say not only to Mr. Rappold but the other attorneys that
20 are on the line, I appreciate your participation today.

21 I appreciate your being relatively brief in your
22 comments to try to help move this along. And I believe
23 that we've really accommodated what we need to. We've
24 kept things on track, but we've given time where time is
25 necessary in order for all of this to come together

1 appropriately.

2 Commissioner Hanson.

3 COMMISSIONER HANSON: Mr. Chairman, thank you.

4 I think the key element here for -- certainly
5 from what I've observed of my fellow Commissioners and
6 myself at least is we want to be completely fair to all
7 of the parties and make certain that everyone has the
8 same opportunities here. And if they sleep on their
9 opportunity, then that should not be a challenge for
10 another party.

11 And I do agree that the attorneys -- not only
12 the attorneys but all the persons who have participated
13 in this in filing information have really provided
14 some -- some extraordinary arguments and made it very
15 challenging to make certain that we have the right
16 decision here.

17 CHAIRMAN NELSON: Thank you.

18 Other discussion on the motion?

19 Hearing none, all those in favor will vote aye.
20 Those opposed, nay.

21 Commissioner Hanson.

22 COMMISSIONER HANSON: Aye.

23 CHAIRMAN NELSON: Commissioner Fiegen.

24 COMMISSIONER FIEGEN: Fiegen votes aye.

25 CHAIRMAN NELSON: Nelson votes aye. The motion

1 carries.

2 That then brings us to the Motion that was
3 brought to us by Staff.

4 MR. RAPPOLD: Thank you, Commissioners.

5 CHAIRMAN NELSON: Thank you.

6 The Procedural Schedule included deadline for
7 parties to file witness lists and exhibit lists.

8 So at this point I'm going to turn to Staff and
9 ask the question is this still needed and, if so, what do
10 you recommend?

11 MS. EDWARDS: Thank you. Kristen Edwards for
12 Staff.

13 Staff does believe that the witness and exhibit
14 list is still necessary. We would still recommend the
15 April 21 deadline but would definitely be amenable to
16 anything else the Commission would see fit as a different
17 deadline.

18 CHAIRMAN NELSON: Given the fact that we've
19 extended rebuttal testimony to the 27th, does that have
20 any impact? Or the 21st should still work?

21 MS. EDWARDS: That still works for Staff.

22 CHAIRMAN NELSON: Mr. Taylor, Mr. Moore?

23 MR. MOORE: James Moore.

24 We're fine with that, Commissioner. The
25 rebuttal deadline previously was April 23, and we had

1 agreed to a deadline of April 21 so it still works.

2 CHAIRMAN NELSON: Thank you.

3 Any of the Intervenors on the line wish to weigh
4 in?

5 They all went to lunch.

6 Okay. With that, questions from the Commission?

7 Is there a motion?

8 Commissioner Fiegen.

9 COMMISSIONER FIEGEN: Mr. Chairman, in HP14-001
10 move that the Commission grant an amended procedure to
11 include the deadline of parties to file witness lists and
12 exhibit lists and include the deadline date of April 21
13 at 5:00 p.m., 2015.

14 CHAIRMAN NELSON: Discussion on the motion.

15 Hearing none, all those in favor will vote aye.
16 Those opposed, nay.

17 Commissioner Hanson.

18 COMMISSIONER HANSON: Aye.

19 CHAIRMAN NELSON: Commissioner Fiegen.

20 COMMISSIONER FIEGEN: Fiegen votes aye.

21 CHAIRMAN NELSON: Nelson votes aye.

22 The motion carries.

23 Is there anything else for the good of the
24 order?

25 If not, we will have our next regularly

1 scheduled meeting on April 14, and it may be a doozy.

2 COMMISSIONER FIEGEN: Ms. Edwards, do we have
3 everything on the Procedural Schedule like all the
4 motions and all of that correct? I mean, on what you
5 suggested?

6 MS. EDWARDS: I believe so, yes. I really hope
7 so. I think so, Commissioner.

8 COMMISSIONER FIEGEN: Okay. Because I know you
9 had an all inclusive motions are due. You were talking
10 about that. I just wanted to make sure that we adhered
11 to your request.

12 MS. EDWARDS: Yes. Thank you.

13 (The meeting is concluded at 2:41 p.m.)
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STATE OF SOUTH DAKOTA)

COUNTY OF SULLY)

:SS

CERTIFICATE

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

DO HEREBY CERTIFY that as the duly-appointed shorthand reporter, I took in shorthand the proceedings had in the above-entitled matter on the 31st day of March, 2015, and that the attached is a true and correct transcription of the proceedings so taken.

Dated at Onida, South Dakota this 17th day of April, 2015.

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

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