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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
April 27, 2015
8:57 a.m.

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BEFORE THE PUBLIC UTILITIES COMMISSION

CHRIS NELSON, CHAIRMAN
KRISTIE FIEGEN, VICE CHAIRMAN (telephonically)
GARY HANSON, COMMISSIONER (telephonically)

COMMISSION STAFF

John Smith
Kristen Edwards
Brian Rounds
Darren Kearney
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, 500 East Capitol Avenue, Pierre, South Dakota,
4 on the 27th day of April, 2015.

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1 CHAIRMAN NELSON: We will call the ad hoc
2 meeting of the South Dakota Public Utilities Commission
3 to order. My name is Chairman Chris Nelson. I have
4 Commissioners Gary Hanson and Kristie Fiegen on the
5 telephone line with us.

6 For everybody's benefit, the hearing room is
7 completely empty except for reporter Bob Mercer and
8 Commission Staff.

9 First of all, obviously this Motion that we're
10 going to deal with this morning was filed fairly late on
11 Friday so we were under the gun to get this dealt with.
12 Literally this morning is the only time that all three
13 Commissioners were available between now and when our
14 regularly scheduled meeting was on Thursday, and that's
15 why we had to push quickly.

16 I did feel that this is something that should be
17 dealt with prior to Thursday if at all possible, and
18 that's why we are meeting first thing Monday morning.
19 And I know some of you were working over the weekend to
20 be ready for this morning.

21 And so with that background comment, we are
22 dealing with HP14-001, In the Matter of the Petition of
23 TransCanada Keystone Pipeline for an Order Accepting
24 Certification of Permit in Docket HP09-001 to Construct
25 the Keystone XL Pipeline.

1 There was a Joint Motion for Continuance and
2 Relief From Scheduling Order filed late on Friday by a
3 number of the parties.

4 Who's going to be the primary presenter for this
5 Motion?

6 Does anybody want to speak for this Motion?

7 MR. RAPPOLD: I filed the Affidavit,
8 Mr. Commissioner, so I could take the lead on it with the
9 remaining counsel in support.

10 CHAIRMAN NELSON: Okay. If you would identify
11 yourself, and then go ahead.

12 MR. RAPPOLD: Matt Rappold on behalf of the
13 Rosebud Sioux Tribe.

14 CHAIRMAN NELSON: Go ahead, Matt.

15 MR. RAPPOLD: Thank you, Commissioners. We
16 certainly appreciate you taking the time to listen to
17 this Motion for Continuance and Relief from the
18 Scheduling Order. I do think it was, as you already
19 mentioned, a late filing on Friday and the Commissioners'
20 scheduling between Friday and your next meeting on
21 Thursday.

22 We're back in front of the Commission again,
23 again basically raising the same substantive due process
24 issue that's before the Commission. We've tried to
25 address this on a number of occasions prior to Friday's

1 filing, including I'll go back to when we were asked to
2 submit our original procedural schedules. A number of
3 the parties did submit schedules, and we asked for a
4 period of time that would allow the Commission, allow all
5 of the parties to engage in a meaningful discovery
6 process.

7 And we're still here today before you with a
8 period of discovery that has not yet been completed. I
9 don't know how many of the other motions that the
10 Commission received at this point, but there were several
11 other motions filed on Friday addressing similar related
12 concerns that we have with the Scheduling Order.

13 Quite frankly, I mean, we've got a hearing
14 scheduled for next week, and discovery isn't complete.
15 Our most recent order from the Commission was an order to
16 compel discovery -- (Inaudible).

17 CHAIRMAN NELSON: Okay. Matt, we've lost you.

18 MR. RAPPOLD: Can you hear me? All the sudden
19 it went to mute. I didn't press anything.

20 CHAIRMAN NELSON: Go ahead.

21 MR. RAPPOLD: On the 14th of April TransCanada
22 was compelled to provide certain parties with discovery.
23 The Rules of Civil Procedure allow for a period of time
24 to make sure that a party when they're compelled has
25 actually compelled -- or has actually complied with the

1 order to compel.

2 We are under the -- we take the position --
3 discovery is not complete in this case yet. And we're
4 taking the position, as we have, that the Commission
5 cannot schedule a trial until the discovery period is
6 actually completed. The Rules of Civil Procedure provide
7 for a mechanism to enforce a party to compel after
8 they've been ordered to compel.

9 There's sanctions. There's other remedies that
10 are available if parties have not complied fully with an
11 Order to Compel under discovery. And in this case, quite
12 frankly, TransCanada hasn't. And they came right out and
13 told us in an Affidavit from their General Counsel that
14 they haven't complied with the Order to Compel and they
15 have no intention of complying.

16 And so we would ask the Commission to reschedule
17 this hearing until such time as discovery has actually
18 been completed, all of the parties have been provided the
19 information that they were ordered to provide by the
20 Commission on April the 17th. And I would yield to my
21 other counsel on this matter for further thought.

22 CHAIRMAN NELSON: Thank you, Mr. Rappold. I'm
23 just going to go down the list.

24 Mr. Capossela.

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

1 At the hearing -- I was actually on the Standing
2 Rock Sioux Tribe Motion for Continuance last month. The
3 Commission established a schedule to move forward with
4 contested discovery motions and then compliance date for
5 those motions.

6 And at that time the Commission admonished the
7 parties be prepared to conduct discovery immediately
8 after April 14 in order to get any discovery that is
9 compelled to the other party by April 17. Everybody was
10 put on notice, and that went both ways. There were
11 Intervenors that were required to respond by April 17.

12 As Mr. Rappold alluded to, there's an Affidavit
13 of Counsel for TransCanada, and in the Affidavit he
14 affirms that "it is not reasonably possible" to do the
15 due diligence in three days' time for discovery.

16 And so I think what happened is TransCanada did
17 not meet the time that was available to it the first
18 couple of weeks in April to be prepared for the prospect
19 of having to produce some of the documents that were
20 requested actually back in January by the Intervenors.

21 Because they didn't use that time, as
22 Mr. Rappold said, discovery is not complete right now.
23 Consequently, it would be a judicious use of the
24 Commission's discretion to give the Intervenors a little
25 bit more time to review the documents that are still

1 forthcoming.

2 You know, a continuance in the scheduling is
3 something that is generally within the discretion of the
4 Commission. Here we have the situation because of
5 discovery and nondiscovery -- you know, the refusal by
6 TransCanada to produce some documents for a long time
7 period in this case, because of that we're in a situation
8 where the parties are still scrambling to uncover the
9 discovery documents that lead from the evidentiary
10 hearing.

11 That really places the Intervenors in a
12 extremely difficult burden, and I think for that reason
13 it would be a very judicious use of the discretion that
14 the Commission has to grant that Motion.

15 Thank you for letting me be heard.

16 CHAIRMAN NELSON: Thank you.

17 I'm going to see -- Bruce Ellison, have you
18 joined us yet?

19 MR. ELLISON: Yes, sir. I have.

20 CHAIRMAN NELSON: Go ahead. It's your turn.

21 MR. ELLISON: Thank you, sir.

22 On behalf Dakota Rural Action, we'd join the
23 arguments of Matt and Peter. We're very concerned about
24 the outstanding discovery requests that have not yet been
25 fulfilled. And I must say, in all candor, I have been

1 trying to not only prepare for confrontation of
2 TransCanada and the PUC Staff witnesses, but it's almost
3 been impossible to get completely through, in any kind of
4 a real review, the thousands of pages of documents we
5 have, the charts and maps and whatnot and really trying
6 to make some sense of them.

7 And, you know, I guess on behalf of Dakota Rural
8 Action we certainly would join the Motion to Join the
9 Motion. We just need more time.

10 If the Commission -- and I know it is -- is
11 concerned about true fact-finding based upon all of the
12 reasonably available evidence, there is simply not enough
13 time to have the discovery process completed and the
14 review of what has been disclosed by -- it is a
15 monumental task.

16 And what the PUC will be hearing otherwise is
17 just scattered quick efforts at trying to utilize these
18 documents.

19 And so we would urge that some time we allow for
20 us to prepare TransCanada to complete its discovery
21 obligations and for us to review those additional
22 materials and then to properly prepare for the hearing.

23 Thank you.

24 CHAIRMAN NELSON: Thank you.

25 Thomasina Real Bird for Yankton Sioux Tribe,

1 have you joined us?

2 MS. REAL BIRD: Yes, Mr. Chairman.

3 CHAIRMAN NELSON: It's your turn.

4 MS. REAL BIRD: Thank you, Mr. Chairman and
5 members of the Commission. Thank you for taking the time
6 to hear this the motion today. We certainly appreciate
7 it.

8 The Yankton Sioux Tribe joins in the Motion and
9 arguments already presented for the reasons already
10 stated.

11 In addition, we have four outstanding Requests
12 for Production that we are owed from TransCanada. Now
13 one of them we've agreed that TransCanada can produce to
14 us I believe it was the first day of the hearing when
15 it's currently scheduled to start. That's our Request
16 for Production Discovery 7 and 8, which are nearly
17 identical.

18 But TransCanada asked for additional time on
19 that for some identification of rebuttal exhibits, and
20 we've agreed to that. And so we're, you know, in good
21 faith working with them.

22 However, there were three that were deficient
23 that details to TransCanada our Request for Production
24 No. 2, 3, and 4. And those we notified TransCanada on
25 April 23 of the deficiencies.

1 We also have those arguments contained in
2 separate motions that are currently pending before the
3 Commission. All three motions are really related to some
4 degree because Yankton also has some concerns with the
5 scope of the Protective Order, and that hasn't -- the
6 restrictions in there haven't allowed us to meaningfully
7 review everything produced from TransCanada to date with
8 our co-counsel. And we've received clarification on that
9 as well as with our clients and with our fact witnesses.

10 And so the restriction with the missing Request
11 for Production as well as the scope of the Protective
12 Order have really, I guess, tied our hands to some
13 degree. We're not able to access all the documents.

14 And then relatedly, which TransCanada did
15 produce on the 17th, the parties that received the
16 production were provided passwords to a secure and an
17 unsecure -- it's a secure FTP site. One was for
18 confidential, and one was for nonconfidential.

19 And Yankton in particular had really extreme
20 problems accessing the FTP site due to our firm's
21 security restrictions. And so we did work with
22 TransCanada to get those resolved. They were responsive
23 through their IT folks.

24 However, that resulted in a significant delay.
25 I think Yankton got full access sometime mid last week.

1 And so really, you know, all the documents produced I
2 would just like to echo what was already stated. It's
3 not sufficient time. And there are still ongoing --
4 discovery disputes that are currently pending. And so to
5 go forward with the hearing at this time Yankton feels it
6 would violate our due process and the due process rights
7 of other parties.

8 And I think TransCanada did cite in a -- a case
9 in their Brief that said other relevant factors,
10 including prejudice to the opposing party, whether the
11 continuance motion was motivated by procrastination, bad
12 planning, dilatory tactics, prejudice caused to the
13 moving party by denial of the continuance and prior
14 continuances or delays.

15 And so we're really talking about prejudice
16 caused to the moving parties here by denial of the
17 continuances. And there have been no prior continuances
18 or delays as to the hearing itself. There have been, you
19 know, recently a slight continuance for one deadline and
20 a couple of deadline continuances for one of their
21 parties.

22 But we're really talking about the due process
23 concerns because of the discovery, the ongoing discovery,
24 I guess, disputes or conversations that are still
25 happening amongst the parties.

1 And so Yankton Sioux Tribe joins in the Motion,
2 and we urge the Commission to grant the Motion today.

3 CHAIRMAN NELSON: Thank you. I am next going to
4 go to Kimberly Craven with Indigenous Environmental
5 Network.

6 Ms. Craven, you filed a separate Motion to Join.
7 It was filed very, very late and so it's not been noticed
8 for this hearing and I'm not sure even if it was, what it
9 would have accomplished beyond our dealing with the issue
10 at hand.

11 But, Ms. Craven, if you'd address that and then
12 anything that you'd like to on the Motion at hand.

13 MS. CRAVEN: Thank you, Mr. Chairman.

14 We were inadvertently -- Indigenous
15 Environmental Network was inadvertently left out of the
16 Joint Motion that was filed on Friday. We had every
17 intention of joining along with our colleagues and the
18 parties to show that we support them in their efforts to
19 have full and complete discovery to protect the due
20 process rights of the people of South Dakota.

21 This is a very -- this is a really important --
22 as you know, really important issue that we're
23 considering here, and I would just urge the Commissioners
24 to protect the due process rights of the people of
25 South Dakota in order to protect the land and the

1 resources that are so important to them and the essential
2 health and welfare of the people.

3 So that's all I'd like to say this morning.
4 Thank you for this opportunity to speak to the Motion.
5 But I do support everything my colleagues have said so
6 far and join in their arguments.

7 CHAIRMAN NELSON: Thank you. And I appreciate
8 that clarification. At this point I'm just going to go
9 down the line of the other Intervenors who are on the
10 phone, and if you have anything to add, you can.

11 Mr. Harter.

12 MR. HARTER: Yes, Mr. Chairman.

13 I guess I would just like to join the Motion on
14 the arguments that have made. And then when the schedule
15 was set we had discussion on the fact of the time frame
16 of this being an extremely busy time for the farmers and
17 ranchers, and which for me having this the first of May
18 is a real burden.

19 So I just would like to join with the Motion and
20 ask that you guys would forward this proceeding out of
21 the busiest time of the year for a lot of farmers and
22 ranchers so the people of South Dakota can join in this
23 process more freely.

24 Thank you.

25 CHAIRMAN NELSON: Thanks, John.

1 Nancy Hilding. Not hearing Nancy. Diane [sic]
2 Steskal.

3 MS. STESKAL: Excuse me. Can you hear me?

4 CHAIRMAN NELSON: Is this Nancy or Diane?

5 MS. STESKAL: Diana.

6 CHAIRMAN NELSON: Diana, go ahead.

7 MS. STESKAL: I just want to say as an
8 individual Intervenor that I support the Motion. And I
9 am just an individual, and when I received my discovery
10 request there was so much that it took me forever to get
11 through it. And some of it didn't even pertain to what I
12 had asked for. So I'm supporting this Motion.

13 Thank you.

14 CHAIRMAN NELSON: Thank you.

15 MS. HILDING: This is Nancy.

16 CHAIRMAN NELSON: Go ahead, Nancy.

17 MS. HILDING: I was messing around with all of
18 these mute things trying to figure it out. I didn't
19 write it down, but I would like to join with their Motion
20 for Continuance and Relief from the Scheduling Order of
21 Dakota Rural Action, et cetera.

22 And I would clarify here if you get down to
23 their end where they're saying what they want, it's that
24 they want a continuance of hearing and relief from the
25 Notice of the Scheduling Order. So I assume that that

1 means that prefiled rebuttal testimony is not due on
2 whatever day it's due for everybody.

3 And I think it's today, but I don't understand
4 it. Maybe some people have special days. And so that
5 the prefiled testimony and the evidence and exhibit
6 lists -- I mean, the witness and exhibit list is also
7 extended into the future.

8 And I would like to join with whoever said that
9 this is all a very busy time. It's a very busy time for
10 me also. And I would -- me, I was substantially
11 hardshipped by the fact that I didn't realize that I
12 couldn't enter evidence without testimony. I never
13 understood that.

14 So -- so I'm just joining with everybody. Okay?
15 So thanks. Thank you very much.

16 CHAIRMAN NELSON: Thank you.

17 Paul Blackburn.

18 MR. BLACKBURN: Thank you, Mr. Chairman.

19 CHAIRMAN NELSON: Just a moment, Paul. Just a
20 moment.

21 Commissioner Hanson, are you still with us?

22 Okay, folks. We're absent a Commissioner or two
23 on the phone. I'm not sure what happened.

24 Commissioner Fiegen, are you with us?

25 Okay. We're just going to be at ease until we

1 can find our missing Commissioners.

2 (Discussion off the record)

3 MR. BLACKBURN: The Motion for Continuance is
4 based on a number of very practical concerns related to
5 review of the very large amount of material provided by
6 TransCanada on April 17. This material includes both
7 confidential and nonconfidential information, and that's
8 important regarding understanding how it's processed and
9 who can review it and how it's reviewed.

10 The confidential data bears repeating. The
11 confidential data consists of 2,508 files and contains
12 222 folders and consists of three 25 gigabytes of data.
13 And the nonconfidential data consists of 3,706 files
14 containing 419 folders, and it's 6.84 gigabytes of data.

15 Due to the limited time, the Intervenors have
16 not counted the total number of pages, but likely this is
17 in the at least tens of thousands of pages of material,
18 and much of it is technical and highly specialized.

19 The March 31 Order left the parties just five
20 business days to review, respond, and assess the adequacy
21 of over 6,000 files prior to the date of filing rebuttal
22 testimony, which is today. And I have to say the
23 Intervenors have made a remarkable good-faith effort to
24 access and secure TransCanada's 11th hour discovery
25 disclosure so that it may be sufficiently and materially

1 accessed by all Intervenors.

2 But even its effort has had the effect of
3 further reducing the already incredibly limited time
4 provided by TransCanada for review and use of this
5 voluminous discovery material.

6 This reasonable and good faith and remarkably
7 fast administrative effort simply required time. At best
8 the delivery date ordered by the Commission for this
9 discovery response provided the Intervenors and attorneys
10 and expert just 10 days in which to identify exhibits
11 contained in this response and 17 days in which they can
12 analyze this information for completeness and substance
13 and integrate it into the cases, including via expert and
14 fact witness testimony and preparation for
15 cross-examination.

16 But as noted, the Commission's Protective Order
17 restricts the access of certain Intervenors as well as
18 experts to this material, thereby reducing the effective
19 time we have for review. And in particular the way the
20 Protective Order is written it sounds like only those
21 parties that requested the material expressly were
22 allowed to see the confidential material.

23 We need some clarity on that. Otherwise, we
24 risk violating the protective order.

25 The continued Application of the current

1 schedule violates all the parties' due process rights in
2 that it denies the parties' the opportunity to
3 participate meaningfully in the case and imposes
4 unrealistic, unreasonable, and arbitrary and capricious
5 deadlines, especially given the already complexity of the
6 discoverable information already produced, along with the
7 information that Keystone produced on April 17, 2015.

8 So the parties really have worked incredibly
9 hard to try to get access to this material and review it.
10 But it's asking simply what cannot be done, to have all
11 of these 6,000 files to review and analyze and used for
12 the Commission's benefit by the time of the evidentiary
13 hearing.

14 So, therefore, given this -- you know, the
15 practical concerns here, the Motion to Continue must be
16 granted. Otherwise, simply we won't complete discovery.
17 We won't have a reasonable and fair time to review the
18 discoverable material before the evidentiary hearing.

19 Thank you.

20 CHAIRMAN NELSON: Thank you.

21 Dallas Goldtooth.

22 Not hearing anything from Dallas. So I am going
23 to go to Commission Staff.

24 Ms. Edwards.

25 MS. EDWARDS: Thank you. Kristen Edwards for

1 Staff.

2 Staff didn't file anything in response to this
3 particular Motion. However, we did file a response to a
4 similar Motion filed by Standing Rock a few weeks back.
5 We would stand by our legal arguments in that -- in our
6 Brief in that we would urge the Commission to rely on the
7 factors laid out in Meadowland Apartments v. Schumacher,
8 which are whether the resulting delay would result in
9 prejudice to the opposing party, the motivation for the
10 Motion, any prejudice to the moving party if the Motion's
11 denied, and whether there have been any prior
12 continuances.

13 Beyond that, we weren't a party to the discovery
14 motions. I believe at this time Staff has all the
15 information it needs, and we've been able to comply with
16 every deadline set by the Commission.

17 We do have witnesses compared to come next week
18 and testify so we are prepared to go forward. However,
19 we don't take a position, and if the Commission does
20 choose to grant this Motion, we will, as we have done
21 since September, work diligently to comply with every
22 deadline the Commission sets.

23 Thank you.

24 CHAIRMAN NELSON: Thank you.

25 My understanding is Dallas Goldtooth is now back

1 on the line.

2 Dallas, go ahead.

3 MR. GOLDTOOTH: Thank you, Commissioner. This
4 is Dallas Goldtooth.

5 I think a lot of folks have really laid out some
6 really solid reasoning for asking for a Motion of
7 Continuance, and I really want to back that up and
8 support those wholeheartedly.

9 So I'd like to join, verbally join, the Motion
10 for Continuance for all the different well laid out
11 reasons by the other parties.

12 CHAIRMAN NELSON: Thank you.

13 Bill Taylor, it is now your turn.

14 MR. TAYLOR: Thank you, Commissioner. We just
15 got a note that there are some issues with our telephones
16 this morning.

17 Can you hear me okay?

18 CHAIRMAN NELSON: We can hear you very well.

19 MR. TAYLOR: Thank you very much.

20 I would like to start with this observation. We
21 have heard from some of the Intervenors arguments on
22 Motions that are not set for hearing this morning.

23 The issues that Ms. Real Bird raises are not
24 part of this Motion. The issues that Mr. Capossela
25 raised with respect to the scope of discovery responses

1 are not part of this Motion.

2 This is a Motion for Continuance based on the
3 general status of the case, not based on individual
4 discovery issues. And so we will limit our comments to
5 the Motion as filed and noticed.

6 Having said that, Keystone filed its first
7 objections to discovery in this case in January. No
8 Motions to Compel Discovery were made until March 25, and
9 then only one was made. The rest of the Motions to
10 Compel were filed April 7 in expectation of a hearing
11 seven days later.

12 The hearing was conducted on April 14. The
13 Commission was very liberal in allowing and compelling
14 further discovery. By prearrangement, the Commission had
15 said we had three days to accomplish that. Keystone
16 accomplished it. We were ready. We had internet sites
17 set up on the afternoon of March 17 and had deposited the
18 information in those internet sites.

19 So the Commission knows exactly what we did on
20 April 17, I'll tell you. We posted -- Keystone posted
21 documents that we believed to be responsive to the
22 Commission's Motion to Compel on FTP sites. Two sites.
23 One containing confidential documents, the other
24 containing nonconfidential documents.

25 Before the close of business on Friday

1 afternoon, the 17th, we issued access codes and passwords
2 to each of the lawyers who was entitled to see that
3 information.

4 We arranged to have IT assistance available
5 through the weekend. In fact, Mr. Ellison made use of
6 the IT resources I think in the afternoon of Friday the
7 17th. Ms. Real Bird made use of the IT resources on
8 Saturday the 18th. And on Monday following our
9 production we conducted a round robin telephone
10 conversation among the interested parties.

11 Mr. Martinez raised issue that there might be
12 security questions with the FTP site. Our IT Staff moved
13 all of the documents to a new site called Hightail that
14 had better access and better security. We told everybody
15 that in the telephone conversation on Monday, and we
16 supplied new passwords and new information to get into
17 the Hightail site either that day or the next and
18 continued to maintain the FTP site for those persons who
19 wanted to get into those.

20 We have done everything that we possibly could
21 to make this as easy as possible for the Intervenors,
22 including agreeing to an extension of one week for filing
23 witness lists and document lists.

24 In addition to that, after there was discussion
25 in the telephone conversation last Monday about the

1 volume of documents and confidentiality issues, we
2 invited Mr. Martinez and Capossela to narrow the scope of
3 their discovery requests if they wanted.

4 Both recognized in those conversations that "all
5 documents, requests, and those discovery requests" and
6 said they would consider narrowing their request. We
7 have heard nothing from them since, other than the
8 motions that were filed on Friday.

9 This Motion really appears to -- the principal
10 complaint appears to be that the Intervenors got what
11 they asked for. What they asked for was an extensive and
12 broad-based request for documents, and we produced those
13 documents in a timely fashion.

14 The only thing that we did not produce is there
15 was a request that all communication with all
16 governmental agencies between Keystone and all
17 governmental agencies be produced. We've de-vined that
18 that would require an e-mail search of more than 1,000
19 persons plus e-mail searches of enumerable contractors
20 who worked on the project, and we concluded that that
21 could not reasonably be accomplished in the time frames
22 allowed and filed an Affidavit to that end.

23 So everybody knew exactly what the time line
24 would be. Everybody knew going into the hearing on
25 April 14 that if expansive discovery requests were

1 granted and enforced, that there would be a large
2 production of documents. The Commission granted those
3 broad-based discovery requests, and we produced the
4 documents.

5 We acted in good faith with respect to
6 confidential documents. There is a framework that
7 identifies documents in relation to Discovery Requests
8 and Request for Production of Documents that was posted
9 and served with the Discovery Request.

10 So what we conclude is this: The Commission set
11 a schedule. Everybody knew what the schedule was. The
12 Intervenors waited until March 25 and April 7 to make
13 document production requests one week before the hearing.
14 The Commission granted those discovery requests, and we
15 had three days to produce them and told everybody ahead
16 of time we would have three days to produce. We
17 produced.

18 We did it in a meaningful manner that allowed
19 access. We provided IT support. We provided -- moved
20 the materials when requested by one of the Intervenors.
21 We have fulfilled our obligations completely and fully.

22 Final point: This is not a retrial of the 2009
23 Permit Application. This is a limited scope hearing,
24 limited to the scope of can Keystone comply with the
25 conditions the Commission imposed on it in 2009? The

1 scope of discovery is far, far broader than the scope of
2 the hearing.

3 And we have complied with all discovery requests
4 fully and completely, and there is no reason, logical or
5 otherwise, to extend the date of the hearing. We've
6 fulfilled our obligations, and we'd ask the Commission to
7 stand on the date of the hearing.

8 Thank you.

9 CHAIRMAN NELSON: Thank you, Mr. Taylor.

10 Mr. Rappold, I'm going to give you an
11 opportunity for brief rebuttal before we go
12 to Commissioner questions.

13 MR. ELLISON: This is Bruce Ellison. I'd also
14 like a request for brief rebuttal, which is a Joint
15 Motion.

16 MR. RAPPOLD: Thank you, Commissioners. Just a
17 few things real quick.

18 Mr. Taylor makes the assertion that the scope of
19 discovery is broader than the scope of the hearing.
20 Well, he's correct in that assertion because that's what
21 the Rules of Civil Procedure provide. All relevant
22 evidence. It doesn't have to be necessary admissible
23 evidence but evidence that may be relevant to lead to the
24 discovery of admissible evidence.

25 The scope of discovery is very broad, and the

1 rules require that it is broader than the scope of the
2 hearing as they have framed the issues.

3 I would also point you to something that's very
4 concerning to me. The only thing that we didn't produce
5 was the e-mails of over 1,000 people that we would have
6 to check. And then the statement that we've complied
7 with the rule in good faith.

8 Well, I would suggest to the Commission that
9 simply telling that you say we're not going to do
10 something through the Affidavit of Mr. White is not
11 complying with the Order in good faith. Had TransCanada
12 come back to the Commission and said we'd like an
13 extension because we can't reasonably search these
14 records of over 1,000 people within three days, we'd like
15 an extension to do that, I would think that would be more
16 in good faith rather than just telling us that we're not
17 going to do something.

18 They were ordered to do something. They don't
19 get to say, well, I'm sorry, we can't reasonably
20 accomplish that within three days. No. That's not good
21 faith, Commissioners. It's just not. And I think you
22 can see that.

23 Additionally, one other statement regarding good
24 faith and the designation of confidential information and
25 objections to discovery. We asked for lists of high

1 consequence areas. So did some of the other parties.

2 The request initially was objected to on the
3 grounds that the information was confidential. At the
4 hearing that we had on the 14th you recall seeing an
5 e-mail from someone within the Pipeline Mapping System
6 that says this information is confidential and you can
7 give some of it out and you can't give some of it out.

8 Well, I would draw your attention to the
9 Commission's Staff request back in the 2009 Docket,
10 "Please describe each of the high consequence areas that
11 have the potential to be affected by the pipeline." And
12 Keystone's response was a chart with one, two, three,
13 four, five, six, seven, eight, nine, 10, 11, 12
14 designated high consequence areas in the 2009 Docket in
15 response to Staff's data request.

16 How come if it was confidential now, it wasn't
17 confidential then? The argument wasn't raised at that
18 point. And the information was provided without any sort
19 of dispute about whether the information should be
20 provided or not.

21 Additionally, one of the documents that was
22 produced in the discovery recently produced by
23 TransCanada pursuant to the Order to Compel them was a
24 list of high consequence areas designated by TransCanada
25 as confidential.

1 I take issue with that. I don't think that
2 that's good faith. It doesn't sound like good faith to
3 me, and I would hope that the Commission doesn't think
4 that that sounds like good faith to them.

5 Yield to the other colleagues on supporting the
6 Motion to Continue.

7 CHAIRMAN NELSON: Bruce, just a moment. I need
8 to ask a follow-up question of Mr. Rappold.

9 You mentioned an Affidavit from Mr. White, and I
10 think Mr. Taylor mentioned that also. Does the
11 Commission have that?

12 MR. RAPPOLD: I did not file that Affidavit with
13 this filing. I believe, however, that that Affidavit was
14 filed in another Motion that Mr. Taylor indicated was not
15 on the Docket today. So I don't recall seeing that
16 posted to your website at this point yet. But it would
17 seem that that's not an issue.

18 I mean, it's not in dispute, and Mr. Taylor
19 agrees that General Counsel said this.

20 CHAIRMAN NELSON: Okay. Thank you.

21 Mr. Taylor, has that Affidavit been filed with
22 us?

23 MR. TAYLOR: No, it has not. It's attached to
24 Capossela's Motion, and Capossela's Motion is not set for
25 hearing, which underscores the point that I made in the

1 beginning any issues related to the scope of our
2 discovery are not up for discussion at this point despite
3 the fact that each one of the Intervenors argued that
4 point in the beginning of this proceeding.

5 CHAIRMAN NELSON: I understand. Thank you. And
6 I appreciate --

7 MR. RAPPOLD: A brief response,
8 Mr. Commissioner.

9 CHAIRMAN NELSON: No. Matt. Matt, I'm going to
10 go to Mr. Ellison.

11 MR. RAPPOLD: Sure.

12 MR. ELLISON: Thank you, Mr. Chairman. A couple
13 of comments.

14 Mr. Taylor is correct that I did contact
15 TransCanada I believe it was Friday the 17th late in the
16 day because we started getting stuff late in the
17 afternoon of that last workday of the week because I was
18 having problems getting access.

19 I will put on the record at this point that
20 working eight to 10 hours a day Saturday and Sunday
21 probably about five hours on Friday evening, I was just
22 able to -- because the server was so slow not getting to
23 look at -- to read the documents, but it took all of that
24 time.

25 It took until Monday morning the 20th just to

1 have a sense of what it is that had been provided.
2 That's a far cry from having a time to digest and analyze
3 tens of thousands of pages.

4 And it's interesting that Mr. Taylor argues that
5 everybody knew that if expansive discovery was provided,
6 that there would be limited time to review it.

7 It's as though we make a proper Discovery
8 Request, we make a Motion to Compel, which is granted by
9 the Commission, that the items are arguably relevant to
10 issues that we are raising and now Mr. Taylor is
11 suggesting that because we asked for things that we felt
12 we were entitled to, that somehow we -- it doesn't matter
13 whether we're prejudiced by the amount of time we have to
14 review it.

15 And that just doesn't make any sense from a due
16 process standpoint. And it completely goes against the
17 South Dakota Rules of Discovery, which are to be
18 liberally interpreted and applied. And so I'm a little
19 confused by TransCanada's argument. There's simply not
20 enough time to do that.

21 Now Mr. Taylor also then throws in the question
22 that he asserts that this is not a 2009 -- this is not a
23 retrial of the 2009 Application. However, it was -- if I
24 recall correctly, it was TransCanada and I believe the
25 Commission that stated that what is ripe for review

1 during these proceedings are matters related to the
2 Findings of Fact and to the Amended Condition.

3 This was the basis for our Discovery Request,
4 the Motion to Compel, the granting of the Motion to
5 Compel.

6 So with all due respect to TransCanada, we
7 are -- and I appreciate that with their huge Staff
8 they're all ready. I am one person. I have not been
9 able to read all of the documents yet. I will not be
10 able to by next Monday and also do what I can to even do
11 a rudimentary preparation for cross-examination.

12 So I just wanted to mention these points because
13 if the Commission -- and I know that it is -- is really
14 interested in truth and fact finding here with all of the
15 parties having a reasonable time to get properly prepared
16 in the face of tens of thousands of pages of documents
17 disclosed and assuming I had to say a little over a week
18 ago, it's just not possible.

19 So I would urge that this matter be continued
20 for a reasonable material of time, substantial period of
21 time. Thank you.

22 No prejudice to the parties, by the way.
23 Because TransCanada is so far from having even submitted
24 permits to appropriate agencies let alone gotten rulings
25 on them to start construction. I just don't understand

1 the prejudice argument.

2 And Mr. Taylor being an experienced civil
3 practitioner knows that it is not unusual at all when
4 huge discovery matters arise in complicated civil cases
5 that there may be multiple continuances to allow for all
6 parties to get ready so, in fact, there can be, in fact,
7 a true trial.

8 Thank you.

9 CHAIRMAN NELSON: Thank you.

10 We are going to go to Commissioner questions.

11 Commissioner Hanson, do you have any questions?

12 COMMISSIONER HANSON: I just have one,
13 Mr. Chairman, and that is of Staff.

14 Ms. Edwards, we have a number of dockets before
15 us, and you have a lot of things on your plate right now.
16 How are you doing as far as -- since we can't have the
17 opportunity to chat outside the hearing, I'd like to hear
18 from you.

19 I did listen very carefully to your remarks.
20 They seemed a bit nuanced. You weren't taking a strong
21 position. But I'm wondering how you're doing from the
22 standpoint of being able to keep up with all of this.

23 MS. EDWARDS: It's taken a lot of hours, and
24 it's taken a lot of time, you know, beyond regular
25 working hours like any trial would. And I guess that's

1 something I was prepared for when I entered this
2 profession was putting in a lot of extra hours, a lot of
3 nights and weekends, and I am ready to go for Monday if
4 the Commission so desires.

5 COMMISSIONER HANSON: Okay. That's very
6 interesting. I appreciate your comments.

7 Thank you, Mr. Chairman.

8 CHAIRMAN NELSON: Thank you.

9 Commissioner Fiegen, any questions?

10 COMMISSIONER FIEGEN: Chairman Nelson, are you
11 there?

12 CHAIRMAN NELSON: Yes. Go ahead.

13 COMMISSIONER FIEGEN: The last speaker, was that
14 Mr. Ellison?

15 CHAIRMAN NELSON: Yes.

16 COMMISSIONER FIEGEN: Okay. I have a question.
17 You relayed information about multi-continuances that
18 happened.

19 Are you expecting that, or if the Commission
20 would grant a continuance, are you going to continue to
21 ask for multi-continuances or -- please clarify that
22 information.

23 MR. ELLISON: All right. And thank you. I
24 wasn't suggesting --

25 COMMISSIONER FIEGEN: I'm going to put you on

1 mute so just like one second while I put you on mute.

2 MR. ELLISON: Okay. I am not suggesting that
3 there will be requests for multiple continuances. I was
4 just simply pointing out that in complex civil litigation
5 such matters of continuances are not unusual.

6 We are requesting our first serious Motion for a
7 Continuance. If the Commission were to give us a couple
8 of months at least, I can't see how there would be a
9 reasonable basis for a Motion to Continue. A couple
10 months would allow us to -- especially those of us
11 without staff and even some with limited staff to really
12 get through all of these documents that have been
13 disclosed and to be able to make meaningful presentations
14 of the evidence.

15 I mean, one of the concerns that I have is that
16 right now in terms of designating exhibits I need to
17 virtually designate every single document that has been
18 disclosed by TransCanada because I haven't been able to
19 get through them and probably will not even cursory be
20 able to read them by next Monday. That's a concern to
21 me.

22 I don't want to dump tens of thousands of pages
23 of documents of which maybe 10 percent may actually be
24 relevant. But that's just part of the reality that is
25 faced when we don't have a reasonable amount of time to

1 go through all of these documents.

2 And I would guess that Mr. Taylor didn't start
3 on Friday evening of the 17th and -- or maybe even the
4 week before and, in fact, read each word of each one of
5 these documents. It's just plain impossible. You figure
6 a minute a page on the average with tens of thousands of
7 pages of documents, and you do the math. It just doesn't
8 work out.

9 So respectfully, ma'am, I would anticipate if we
10 were to get a couple of months on behalf of at least DRA,
11 we would be ready to go. And the only thing I would
12 mention about a couple of months is I have a federal jury
13 trial on July 7, which is definitely going. So other
14 than that week or time afterwards, I just don't
15 envision --

16 But this is not an unusual occurrence. That's
17 what I'm just trying to suggest. And all we're asking
18 for is we want our day in court. We want to -- and we
19 value the Commission's time. We don't want to just waste
20 it by just doing massive document dumps and just trying
21 to scramble to ask reasonable questions on
22 cross-examination and not overpresenting our case on our
23 case in chief just simply because we didn't have time to
24 really sort through everything in a manner that proper
25 preparation required.

1 Thank you.

2 COMMISSIONER FIEGEN: Thank you.

3 CHAIRMAN NELSON: This is Chairman Nelson. I
4 have, I think, just one question. And I'm going to go to
5 Mr. Ellison with the question. I could go to probably
6 any of the attorneys on the Motion, but I'm going to --
7 I'm going to go with Bruce.

8 Here's the thing that troubles me the most. You
9 know, Mr. Taylor's made an argument that they filed their
10 objections in January to the discovery requests, and yet
11 it took over two months before we had any Motions to
12 Compel. And those were, in my mind, two wasted months in
13 which all of the things that you've just talked about
14 could have been dealt with to keep us on schedule.

15 So tell me why you all didn't respond promptly
16 in January to deal with this instead of waiting until
17 late March.

18 MR. ELLISON: Well, doing the best that I can to
19 try and explain that is is that we're all very busy. I'm
20 a sole practitioner. I have no staff. Doing the best
21 that we can. There were Motion deadlines that were set,
22 and we tried to get in our requests before that.

23 In hindsight perhaps it should have been a
24 little bit earlier, but that's not from lack of -- you
25 know, basically have idle time that was just then used

1 for other things.

2 We're in the situation now with the normal
3 discovery process these things do just take time as one
4 tries to fit in what work has to be done on any given
5 case that we're working on.

6 We are simply at this point right now. We have
7 made the Motions to Compel. It was not an effort to just
8 create this kind of a situation. It was just simply
9 trying to take care of everything that one needs to take
10 care of in a practice, and this is how it fell out.

11 We have been asking for a long time for a lot of
12 time to properly prepare for this case, and now that we
13 have gotten all of these documents we need some
14 additional time. And that's simply the posture that
15 we're in right now, and trying to review these documents
16 the best we can there is just not enough time to properly
17 do that.

18 MR. CAPOSSELA: Mr. Chairman, this is
19 Peter Capossela. Might I address your question also?

20 CHAIRMAN NELSON: Certainly. Thank you.

21 MR. CAPOSSELA: Thank you for the opportunity.

22 There was a reference to the first Motion to
23 Compel that was filed which was Standing Rock Sioux
24 Tribe's Motion to Compel on March 25. And that was two
25 weeks after the close of discovery.

1 I think routinely in discovery the parties try
2 to work out disputes prior to the conclusion of
3 discovery. And the Standing Rock Tribe did that. I
4 mean, there were consultations with counsel shortly after
5 the February 6 deadline for the first round of discovery.

6 And so the efforts to get what the Tribe
7 believed was compliance with its discovery requests dates
8 back to February. And there were discussions between
9 counsel back in February. But it would have been
10 premature to have filed anything prior to March 10. Or
11 at the very least it's fair to provide that time to the
12 party that received the discovery request to comply. I
13 mean, that was kind of the drop dead date for discovery.

14 So I don't think it would have been timely to
15 have filed anything with respect to Motions to Compel
16 prior to March 10. And what we tried to do at Standing
17 Rock to keep things moving along as best we could was
18 Standing Rock was the first Motion to Compel on March 25.

19 And so I think that when you look at that I
20 don't believe filing a Motion to Compel on March 25 in
21 order to go give TransCanada time to March 10 to do what
22 the Tribe had requested -- I don't think that is any
23 unreasonable delay. I think that is -- we were as
24 conscientious as we could have been. We filed the Motion
25 to Compel as promptly after March 10 as we reasonably

1 could have. At the very least filing on March 25 a
2 Motion to Compel Discovery that was due on March 10 is
3 not dilatory, at the very least.

4 We didn't drag our feet, and we didn't wait that
5 long. It does take a little bit of time to draft the
6 Motion. As well as to do the consultations with counsel
7 to avoid having to file the Motion in the first place.

8 And there are a lot of issues even today
9 outstanding. Yes, many documents and many pages of
10 technical documents have been uploaded on the sites, but
11 the sites are not that easy to operate. And so people
12 are trying to access the documents but also, frankly, the
13 discovery was incomplete. And there are documents that
14 are referenced in the Staff's prefiled testimony
15 describing documents that were technical documents
16 relating to ground water, soils, geologic resources,
17 paleontological resources, that were not produced but
18 that are described in the Staff's prefiled testimony as
19 having been given to TransCanada by DENR as TransCanada
20 was doing its planning.

21 My point is that even though a lot of material
22 was uploaded and that puts a burden on the Intervenors to
23 review that material, arguably it's also not complete.
24 And I think that's another important reason that would
25 kind of justify what the Intervenors believe is the right

1 thing to do in granting the Motion.

2 But the contention by counsel that they fully
3 complied is -- can be argued. That's --

4 CHAIRMAN NELSON: Mr. Capossela, you're going
5 beyond my question. I appreciate the answer that you've
6 given and, Mr. Ellison, I appreciate your answer, but I
7 think you've dealt with that and I don't want you to go
8 beyond that.

9 MR. CAPOSSELA: Okay. Thank you, sir.

10 CHAIRMAN NELSON: Yep. Thank you.

11 Kristie or Gary, any follow-up questions?

12 COMMISSIONER HANSON: No, Commissioner. Thank
13 you.

14 CHAIRMAN NELSON: If not, motions.

15 I'm hearing silence. Are there any motions?

16 COMMISSIONER HANSON: Mr. Chairman, I'm
17 accustomed to chatting a little bit prior to a Motion. I
18 guess I can make a Motion, but at the same time I --
19 well, I lied -- I'll make the Motion, and then I'll have
20 discussion.

21 CHAIRMAN NELSON: That would be appropriate.
22 Thank you.

23 COMMISSIONER HANSON: Mr. Chairman, I move that
24 the Commission continue the hearing to the date of
25 July 27 through the 31st and grant the motions by the

1 Intervenor.

2 CHAIRMAN NELSON: Discussion on the Motion.

3 COMMISSIONER HANSON: Mr. Chairman, I -- this is
4 a very difficult Motion for me to make because I do very
5 much agree with Mr. Taylor that this is not a retrial,
6 that the scope of discovery is -- has gone beyond the
7 scope of the hearing. I believe it's far beyond the
8 scope of the hearing. And I'm concerned that the PUC is
9 flirting with prejudicing XL.

10 There's been plenty of time to engage in
11 meaningful discovery process. I disagree with Mr. --
12 well, I'm concerned with remarks made that -- by, for
13 instance, Mr. Capossela that being two weeks late to
14 compel is not being dilatory. I think it is dilatory.

15 The discussion that -- you know, single
16 proprietorship and has other things to do, that's --
17 that's not -- that's just not part of the process here.
18 If a person takes on a case, they are expected to
19 participate in the case, and it's not up to everyone else
20 to delay their -- the process because they're having
21 challenges.

22 And I do believe it's improper to place this
23 solely on the shoulders of XL. A two-month delay that --
24 Chairman Nelson, that you referred to troubles me,
25 greatly.

1 I know it sounds like I'm arguing against my
2 Motion, but I do stand by my Motion. I think that the
3 problem was created to a great extent by the Intervenors
4 moving to compel discovery of large volumes of
5 information rather than specific information.

6 Again, this is a -- not a -- this is not a
7 retrial. It's a plain and simple look at the process
8 that took place previously, what were the conditions that
9 the PUC placed upon XL, look at the particulars in each
10 one, and ask for discovery based upon that.

11 It's troubling that entities would demand very
12 large volumes of information and then complain that they
13 received very large volumes of information. But it is
14 what it is, and the Commission has granted those rather
15 than limiting them to specific information.

16 I will not support further delays based upon
17 parties' dilatoriness, especially of their own making. I
18 move on the July 27 through the 31st as a hard and fixed
19 number and will not tolerate any further delays at all.

20 The parties have had ample time. I think the
21 Intervenors slept on their rights to an extent towards
22 the beginning of this process. That is one reason as we
23 saw that in the PUC that I pressed for a compressed
24 period over the past month that we worked towards the May
25 dates for the hearing. Because I wanted the parties

1 to -- to work to get things done rather than waiting
2 until the last minute as I hear that they did early on in
3 this process.

4 And, Mr. Chairman, that concludes my remarks.

5 CHAIRMAN NELSON: Additional discussion.

6 COMMISSIONER FIEGEN: Mr. Chairman.

7 CHAIRMAN NELSON: Go ahead.

8 COMMISSIONER FIEGEN: Move to amend the Motion
9 to July 27 to July 30 and further amend that the Staff
10 set procedural time lines on items of Motions to Compel,
11 witness lists and evidence documents and rebuttal due,
12 and rebuttal should be due with that date that gives the
13 Commission over a month to read rebuttal.

14 CHAIRMAN NELSON: So my understanding --

15 COMMISSIONER FIEGEN: I certainly agree with
16 Commissioner Hanson and his statements. I do, though,
17 very much appreciate the Intervenors in how hard they've
18 worked, the energy that they've put in. And it is truly
19 an important issue to South Dakota, just like Kimberly
20 stated.

21 I also appreciate TransCanada on how hard they
22 have worked in complying and trying to cooperatively work
23 with the Intervenors. I continue to suggest that
24 Intervenors work directly with TransCanada when they have
25 issues like they have and TransCanada has responded

1 quickly to Intervenor when Intervenor have asked for
2 support, and I continue to ask for that in the upcoming
3 months.

4 So I will be supporting close to Commissioner
5 Hanson's Motion with the amendment because we currently
6 have a four-day hearing schedule, and this would allow
7 another four-day hearing.

8 CHAIRMAN NELSON: Commissioner Fiegen, let me
9 clarify. Was that a Motion to Amend?

10 COMMISSIONER FIEGEN: Correct. The beginning
11 statement was a Motion to Amend. Correct.

12 CHAIRMAN NELSON: Would you like Staff to kind
13 of fill out your Motion with some of those additional
14 dates at this point?

15 COMMISSIONER FIEGEN: They can do it now, or
16 they can submit that to us at a Commission meeting. I
17 want to make sure that all Motions to Compel and
18 everybody has their discovery quickly. I want to make
19 sure that they have additional time for witness lists.

20 Are you still there?

21 CHAIRMAN NELSON: Yeah. I am. And Staff has
22 just indicated that they'd like a little bit more time,
23 and so perhaps we can deal with that at our meeting on
24 Thursday.

25 COMMISSIONER FIEGEN: And I would assume that we

1 could hopefully get all rebuttal by the middle of June so
2 it gives us plenty of time to read the documents and the
3 prefiled information we need to read.

4 CHAIRMAN NELSON: Additional discussion on the
5 Motion to Amend.

6 COMMISSIONER HANSON: Mr. Chairman, I support
7 the Motion to Amend. It was my intent that those
8 ancillary dates would be worked out in the process and I
9 appreciate Commissioner Fiegen bringing that up and I --
10 it's fine with me if we have this as a four-day as
11 opposed to a five-day.

12 MR. TAYLOR: Commissioner Nelson, Bill Taylor.
13 Can I ask a question?

14 CHAIRMAN NELSON: Certainly.

15 MR. TAYLOR: Is it -- did I understand the
16 July 30 would be the day that the hearing would start? A
17 Thursday?

18 CHAIRMAN NELSON: No. It would be a Motion to
19 Amend -- the original Motion would be the 27th through
20 the 31st. And the Motion to Amend is to drop the 31st,
21 and so it would be the 27th through the 30th.

22 MR. TAYLOR: Thank you.

23 CHAIRMAN NELSON: I'm going to -- I appreciate
24 the Motion to Amend. I'm going to oppose it only because
25 at this point -- and, again, I've said it 100 times and

1 I'll say it again. This is a very limited question that
2 we're going to be dealing with. But I'm not convinced
3 that four days is going to get us there.

4 I would prefer to see a five-day schedule, but,
5 frankly, I'm not convinced that that's going to be enough
6 and we might not need to go into the following week. So
7 for that reason I'm going to oppose the Motion to Amend.

8 Further discussion on the Motion to Amend.

9 Hearing none --

10 COMMISSIONER HANSON: Mr. Chairman.

11 CHAIRMAN NELSON: Go ahead.

12 COMMISSIONER HANSON: I'm fine with either way
13 on the date from the 27th to the 31st, the 27th to the
14 30th. I would look to Commissioner Fiegen if that
15 portion of her Motion to Amend -- I'm not sure what other
16 part of her Motion would be excluded, but it's always
17 safe to have the extra day available.

18 I believe she makes the point that we have four
19 days presently, and it would make sense to have -- it
20 makes sense both ways so I have no problem going to the
21 31st. So I'm just looking to Commissioner Fiegen to see
22 if she'd be interested in having it the 27th through the
23 31st just to make certain we have that extra time so that
24 Commissioner Nelson could support the Motion.

25 COMMISSIONER FIEGEN: Sure. Commissioners are

1 always able to read the testimony if they're unable to
2 attend on a day. So I can certainly read it and -- I
3 might not be able to be there on Friday, but if I'm not,
4 then I can certainly read it and that's part of what we
5 do as Commissioners.

6 COMMISSIONER HANSON: I see the reason why the
7 31st now. Thank you, Commissioner Fiegen.

8 Thank you, Commissioner Chairman.

9 MR. TAYLOR: Commissioner Nelson, Bill Taylor
10 again. May we be heard on this issue?

11 CHAIRMAN NELSON: Yes. Briefly.

12 MR. TAYLOR: We just have to tell you we have
13 20 nonrefundable hotel rooms that we have to pay for next
14 week. We have airline ticketing for probably 15 or 20
15 people, all prepaid tickets from people coming across the
16 continent. I have no idea what scheduling alternatives
17 are like with respect to the July dates.

18 The last time around we had months to get
19 everybody's schedules aligned. I can see that we may be
20 compelled to submit an application for terms and costs as
21 part of this discovery -- part of this continuance
22 Motion, for what that's worth.

23 And, frankly, I -- I have a -- the week of the
24 27th is very difficult, July 27, very difficult for me.
25 It's not insurmountable, but it's very difficult.

1 Mr. Moore the same. And I have no idea about the rest of
2 our witnesses or Mr. White, anybody else's schedules.

3 CHAIRMAN NELSON: Thank you.

4 Further discussion on the Motion to Amend which
5 would amend the Motion to state that it would be the 27th
6 through the 30th and that Staff would provide us with
7 some of those intervening deadlines.

8 Hearing no further discussion on the Motion --
9 go ahead.

10 COMMISSIONER FIEGEN: Okay. I can vote on the
11 Motion to Amend. That's fine.

12 MR. TAYLOR: Commissioner Nelson, let me ask one
13 more question. Bill Taylor.

14 CHAIRMAN NELSON: Certainly.

15 MR. TAYLOR: Is it possible that if the
16 Commission is going to defer the dates, that we wait
17 until Thursday at your next regularly scheduled meeting
18 to discuss the date that the hearing would be conducted
19 on so we can at least talk to our people?

20 CHAIRMAN NELSON: That -- and this is simply
21 part of the discussion here. I would have no problem
22 with that. I guess I would throw that question out to
23 Commissioner Fiegen and Hanson.

24 COMMISSIONER FIEGEN: Correct. I would be open
25 to that. I believe the first week in August may be an

1 opportunity too. So I'm certainly open to discussing
2 that on Thursday or have the Staff work with the parties,
3 whatever works.

4 COMMISSIONER HANSON: I'm fine with that,
5 Mr. Chairman.

6 CHAIRMAN NELSON: Okay. I think all three of us
7 are in agreement with that. I will just say that, you
8 know, having looked at the Commission's schedule this
9 summer, there's not a lot of flexibility, but perhaps
10 some. And so --

11 And, Mr. Taylor, you know, I don't know if this
12 Motion's going to pass or not, but I certainly understand
13 the situation that you and your people are in should the
14 Motion pass.

15 MR. TAYLOR: It would be useful for us. If it
16 is the Commission's intention to continue the May hearing
17 date, it would be useful for us to know what other dates
18 are available so that we can at least suggest for our
19 witnesses that -- the last week of July, if there are
20 other weeks in August that are available.

21 CHAIRMAN NELSON: And that's a very reasonable
22 question. I believe the first week in August may also be
23 available.

24 Commissioner Hanson, is that your understanding
25 also?

1 COMMISSIONER HANSON: Yes, it is. Thank you.

2 CHAIRMAN NELSON: Beyond that, I think those are
3 probably the two weeks that the Commission is available.
4 Other weeks may open up, but at this point that's --
5 that's it.

6 So, with that, Commissioner Hanson, would you
7 consider it a friendly amendment to strip the dates off
8 with the understanding that we'll deal with that on
9 Thursday?

10 COMMISSIONER HANSON: Yes.

11 CHAIRMAN NELSON: Thank you.

12 At this point we have a Motion -- simply a
13 Motion to Grant the Motion to Continue the Hearing,
14 Motion for Continuance.

15 Further discussion on that Motion?

16 Let me -- let me say this is very difficult for
17 me to support, but at the end of the day I will be
18 supporting the Motion. I think Commissioner Hanson did a
19 nice job of laying out the difficulties with this.

20 We laid out a schedule very early on. I believe
21 it was a reasonable schedule. As I have indicated, I
22 think there was a couple of months that may not have been
23 used as wisely as they could have been by some of the
24 Intervenors.

25 The flip side to that is if back in January

1 Keystone would have turned over all of the information
2 that ultimately was compelled, the Intervenors could have
3 used those two months to review the documents. And so
4 there may be a little bit of fault on both sides that has
5 ultimately brought us to the situation that we're in
6 today.

7 Having said that, given the very, very large
8 volume of documents that were turned over, I understand
9 that it is probably humanly impossible for those to be
10 meaningfully reviewed for use in a hearing next week, and
11 that is the ultimate point that drives me to support this
12 Motion for Delay.

13 I would echo Commissioner Hanson's comments
14 about the fact that I can see no reason why there would
15 be any additional granting of additional requests to
16 delay. This gives us -- if we're towards the end of
17 July, it's going to be another two and a half months, and
18 the parties need to -- even if you're a sole practitioner
19 or whatever your situation is, this needs to be the
20 priority because we are going to have this hearing.

21 And I'll tell you just from a personal
22 perspective I was so mentally ready to do this next week,
23 I am anxious to get at this. I am anxious to hear the
24 arguments of both sides and to wrestle with that and make
25 the proper decision.

1 And so from a personal perspective, I wish this
2 wasn't happening. But I think in the interest of justice
3 and due process I'm going to need to support the Motion.

4 Additional discussion.

5 Hearing none, all those in favor of the Motion
6 to Grant the Continuance will say aye. Those opposed,
7 nay.

8 Commissioner Hanson.

9 COMMISSIONER HANSON: Aye.

10 CHAIRMAN NELSON: Commissioner Fiegen.

11 COMMISSIONER FIEGEN: Fiegen votes aye.

12 CHAIRMAN NELSON: Nelson votes aye.

13 The Motion carries with the understanding
14 that -- well, there's several outstanding motions that I
15 suspect we'll deal with on Thursday in addition to other
16 scheduling issues that will be resolved on Thursday.

17 Are there any other questions or issues that are
18 appropriate for our discussion today?

19 MR. TAYLOR: Commissioner Nelson, William
20 Taylor. I have a question.

21 CHAIRMAN NELSON: Yes.

22 MR. TAYLOR: Are we relieved of the obligation
23 to produce rebuttal testimony, witness lists, exhibit
24 lists, and so forth that are due today or tomorrow?

25 CHAIRMAN NELSON: Yes. And I'm just going to

1 make sure that my other fellow Commissioners have no
2 problem with that, but I think that would be understood.

3 Commissioner Hanson, any problem with that?

4 COMMISSIONER HANSON: No problem.

5 CHAIRMAN NELSON: Commissioner Fiegen.

6 COMMISSIONER FIEGEN: Yes. They are released.

7 CHAIRMAN NELSON: And, Mr. Taylor, thank you for
8 asking that question.

9 MR. TAYLOR: One other point. None of the
10 other -- there were three or four other motions filed on
11 Friday, none of which have been noticed for hearing, and
12 it would strike me that having a hearing on Thursday is a
13 little premature on some of those points.

14 We're ready. We've got our responsive materials
15 ready. If you've got the time, we'll argue them.

16 CHAIRMAN NELSON: I'll just make two points on
17 that. The reason they were not noticed for today is that
18 the notice dealing with the issue that we just resolved
19 was completed prior to some of those others coming in.
20 And those others were so late on Friday that I thought we
21 were really pushing things to attempt to get them on
22 today. That's the reason we didn't do that.

23 So far as whether we'll deal with those on
24 Thursday, which will mean we will do a special Notice of
25 Hearing, I will leave that up to Staff to determine, but

1 I guess in my mind probably the sooner rather than the
2 later on those to get those issues behind us I think
3 would be prudent.

4 MR. TAYLOR: We're ready. We've got our brief
5 ready to file so we'll be ready Thursday if you want.

6 CHAIRMAN NELSON: Excellent. Well, I'm hoping
7 that's the direction we can go. Other issues?

8 MS. HILDING: This is Nancy Hilding. You have
9 done a public notice of a public hearing on May 4 and a
10 public comment period. Are you going to stand by that,
11 or are you going to still have the public meeting on
12 May 4? Are you going to extend the written comment
13 deadline?

14 I'm just pointing out that there's another event
15 and deadline that was tiered to the May 5 start of the
16 hearing that you might want to think about it and if
17 you're going to retract that, the sooner you get the news
18 out the better.

19 CHAIRMAN NELSON: We certainly understand that,
20 and that will be part of the things we deal with as we
21 reshuffle the deck on this.

22 MS. HILDING: All right. I have a question. I
23 want to discuss with you guys having you guys make the
24 Final Environmental Impact Statement and the Final
25 Supplemental Impact Statement somehow part of the

1 administrative record.

2 Should I be making a Motion about that?

3 CHAIRMAN NELSON: Nancy, this is not the time
4 for that. We only have one issue on the agenda today.

5 MS. HILDING: I was just asking for guidance,
6 but that's okay. All right. Thank you.

7 CHAIRMAN NELSON: Yes. You can file a Motion on
8 any issue that you wish.

9 MS. HILDING: All right.

10 CHAIRMAN NELSON: Is there a Motion to Adjourn?

11 COMMISSIONER FIEGEN: Move to adjourn,
12 Mr. Chairman.

13 CHAIRMAN NELSON: Moved to adjourn.

14 All those in favor will vote aye. Opposed,
15 nay.

16 Commissioner Hanson.

17 COMMISSIONER HANSON: Aye.

18 CHAIRMAN NELSON: Commissioner Fiegen.

19 COMMISSIONER FIEGEN: Fiegen votes aye.

20 CHAIRMAN NELSON: Nelson votes aye.

21 We are adjourned.

22 (The hearing is adjourned at 10:32 a.m.)

23

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1 STATE OF SOUTH DAKOTA)

2 :SS

CERTIFICATE

3 COUNTY OF SULLY)

4

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

8 DO HEREBY CERTIFY that as the duly-appointed
9 shorthand reporter, I took in shorthand the proceedings
10 had in the above-entitled matter on the 27th day of
11 April, 2015, and that the attached is a true and correct
12 transcription of the proceedings so taken.

13 Dated at Onida, South Dakota this 18th day of
14 May, 2015.

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16

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18

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

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| <p style="text-align: center;">1</p> <p>1,000 [3] - 24:18, 27:5, 27:14 10 [9] - 18:10, 28:13, 30:20, 35:23, 39:10, 39:16, 39:21, 39:25, 40:2 100 [1] - 46:25 10:32 [1] - 56:22 11 [1] - 28:13 11th [1] - 17:24 12 [1] - 28:13 14 [3] - 7:8, 22:12, 24:25 14th [2] - 5:21, 28:4 15 [1] - 48:14 17 [7] - 7:9, 7:11, 17:6, 18:11, 19:7, 22:17, 22:20 17th [6] - 6:20, 11:15, 23:1, 23:7, 30:15, 36:3 18th [2] - 23:8, 57:13</p> | <p style="text-align: center;">4</p> <p>4 [3] - 10:24, 55:9, 55:12 419 [1] - 17:14</p> <p style="text-align: center;">5</p> <p>5 [1] - 55:15 500 [1] - 2:3</p> <p style="text-align: center;">6</p> <p>6 [1] - 39:5 6,000 [2] - 17:21, 19:11 6.84 [1] - 17:14</p> <p style="text-align: center;">7</p> <p>7 [4] - 10:16, 22:10, 25:12, 36:13</p> | <p>ad [1] - 3:1 add [1] - 14:10 addition [3] - 10:11, 23:24, 53:15 additional [10] - 9:21, 10:18, 38:14, 44:5, 45:13, 45:19, 46:4, 52:15, 53:4 additionally [2] - 27:23, 28:21 address [3] - 4:25, 13:11, 38:19 addressing [1] - 5:11 adequacy [1] - 17:20 adjourn [3] - 56:10, 56:11, 56:13 adjourned [2] - 56:21, 56:22 administrative [2] - 18:7, 56:1 admissible [2] - 26:22, 26:24 admonished [1] - 7:6 affected [1] - 28:11 Affidavit [10] - 4:7, 6:13, 7:12, 7:13, 24:22, 27:10, 29:9, 29:12, 29:13, 29:21 affirms [1] - 7:14 afternoon [4] - 22:17, 23:1, 23:6, 30:17 afterwards [1] - 36:14 agencies [3] - 24:16, 24:17, 32:24 agenda [1] - 56:4 ago [1] - 32:18 agree [2] - 42:5, 44:15 agreed [2] - 10:13, 10:20 agreeing [1] - 23:22 agreement [1] - 50:7 agrees [1] - 29:19 ahead [12] - 4:11, 4:14, 5:20, 8:20, 15:6, 15:16, 21:2, 25:15, 34:12, 44:7, 47:11, 49:9 airline [1] - 48:14 aligned [1] - 48:19 allow [7] - 5:4, 5:23, 9:19, 33:5, 35:10, 45:6 allowed [4] - 11:6, 18:22, 24:22, 25:18 allowing [1] - 22:13 aluded [1] - 7:12 almost [1] - 9:2 alone [1] - 32:24 alternatives [1] - 48:16</p> | <p>amend [8] - 44:8, 44:9, 45:9, 45:11, 46:5, 46:7, 46:19, 49:5 Amend [7] - 46:20, 46:24, 47:7, 47:8, 47:15, 49:4, 49:11 amended [1] - 32:2 amendment [2] - 45:5, 51:7 amount [3] - 17:5, 31:13, 35:25 ample [1] - 43:20 analyze [3] - 18:12, 19:11, 31:2 ancillary [1] - 46:8 answer [2] - 41:5, 41:6 anticipate [1] - 36:9 anxious [2] - 52:23 apartments [1] - 20:7 application [1] - 48:20 Application [3] - 18:25, 25:23, 31:23 applied [1] - 31:18 appointed [1] - 57:8 appreciate [12] - 4:16, 10:6, 14:7, 30:6, 32:7, 34:6, 41:5, 41:6, 44:17, 44:21, 46:9, 46:23 appropriate [3] - 32:24, 41:21, 53:18 April [17] - 1:9, 2:4, 5:21, 6:20, 7:8, 7:9, 7:11, 7:18, 10:25, 17:6, 19:7, 22:10, 22:12, 22:20, 24:25, 25:12, 57:11 arbitrary [1] - 19:4 areas [4] - 28:1, 28:10, 28:14, 28:24 arguably [2] - 31:9, 40:23 argue [1] - 54:15 argued [2] - 30:3, 41:3 argues [1] - 31:4 arguing [1] - 43:1 argument [4] - 28:17, 31:19, 33:1, 37:9 arguments [8] - 8:23, 10:9, 11:1, 14:6, 14:14, 20:5, 21:21, 52:24 arise [1] - 33:4 arranged [1] - 23:4 assertion [2] - 26:18, 26:20 asserts [1] - 31:22 assess [1] - 17:20 assistance [1] - 23:4</p> | <p>assume [2] - 15:25, 45:25 assuming [1] - 32:17 attached [2] - 29:23, 57:11 attempt [1] - 54:21 attend [1] - 48:2 attention [1] - 28:8 attorneys [2] - 18:9, 37:6 August [3] - 49:25, 50:20, 50:22 available [10] - 3:13, 6:10, 7:17, 9:12, 23:4, 47:17, 50:18, 50:20, 50:23, 51:3 Avenue [1] - 2:3 average [1] - 36:6 avoid [1] - 40:7 aye [8] - 53:6, 53:9, 53:11, 53:12, 56:14, 56:17, 56:19, 56:20</p> <p style="text-align: center;">B</p> <p>background [1] - 3:21 bad [1] - 12:11 based [8] - 9:11, 17:4, 22:2, 22:3, 24:12, 25:3, 43:10, 43:16 basis [2] - 32:3, 35:9 bears [1] - 17:10 BEFORE [1] - 1:11 beginning [4] - 30:1, 30:4, 43:22, 45:10 behalf [4] - 4:12, 8:22, 9:7, 36:10 behind [1] - 55:2 benefit [2] - 3:6, 19:12 best [5] - 18:7, 37:18, 37:20, 38:16, 39:17 better [3] - 23:14, 55:18 between [4] - 3:13, 4:20, 24:16, 39:8 beyond [8] - 13:9, 20:13, 33:24, 41:5, 41:8, 42:6, 42:7, 51:2 Bill [4] - 21:13, 46:12, 48:9, 49:13 Bird [3] - 9:25, 21:23, 23:7 BIRD [2] - 10:2, 10:4 bit [7] - 7:25, 33:20, 37:24, 40:5, 41:17, 45:22, 52:4 Blackburn [1] - 16:17 BLACKBURN [2] -</p> |
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