

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

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IN THE MATTER OF THE FILING BY
SUPERIOR RENEWABLE ENERGY LLC
ET AL. AGAINST MONTANA-DAKOTA
UTILITIES CO. REGARDING THE JAVA
WIND PROJECT

EL04-016

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Transcript of Proceedings
September 30, 2004

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BEFORE THE PUBLIC UTILITIES COMMISSION,
ROBERT SAHR, CHAIRMAN
GARY HANSON, VICE CHAIRMAN (by telephone)
JIM BURG, COMMISSIONER (by telephone)

COMMISSION STAFF
Rolayne Ailts Wiest
John Smith
Karen Cremer
Sara Harens
Greg Rislov
Harlan Best
Keith Senger
Dave Jacobson
Tina Douglas
Pam Bonrud
Heather Forney

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SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

APPEARANCES
David Gerdes
Mark Meierhenry

Reported By Cheri McComsey Wittler, RPR, CRR

PRECISION REPORTING
L I M I T E D

1 THE PUBLIC UTILITIES COMMISSION
2 OF THE STATE OF SOUTH DAKOTA
3 -----
4 IN THE MATTER OF THE FILING BY
5 SUPERIOR RENEWABLE ENERGY LLC
6 ET AL. AGAINST MONTANA-DAKOTA
7 UTILITIES CO. REGARDING THE JAVA
8 WIND PROJECT
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EL04-016

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BEFORE THE PUBLIC UTILITIES COMMISSION,
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1 CHAIRMAN SAHR: The first item under
2 the agenda of the ad hoc meeting is under electric,
3 EL04-016, In the Matter of the Filing by Superior
4 Renewable Energy LLC et al. Against Montana-Dakota
5 Utilities Company Regarding the Java Wind Project.

6 And the questions today are shall the
7 Commission move to proceed with notice, to make
8 such investigation as it may deem necessary into
9 the matters raised in the Complaint of Superior
10 Renewable Energy LLC et al. against Montana-Dakota
11 Utilities Company regarding the Java Wind Project
12 and shall the Commission establish a procedural
13 schedule.

14 On the first item I think I'll turn it over to
15 Mr. Smith, our Commission counsel, and see if he
16 has any comments on that.

17 MR. SMITH: Thank you, Mr. Chairman.
18 This came about as a result of a conference call
19 that we had -- I think it was last week. Dave,
20 maybe you can correct me.

21 MR. GERDES: It was last Thursday.

22 MR. SMITH: Last Thursday. I've
23 been working on the LNP orders until 2 minutes ago
24 so unfortunately I haven't had a chance to get my
25 thoughts together here.

1 APPEARANCES BY TELEPHONE
2 Mary Lohnes
3 Joe Schuele
4 Ryan Taylor
5 Meredith Moore
6 Don Snyders
7 Suzan Stewart
8 Jeff Decker
9 Clyde Gross
10 Alan Dietrich
11 Jeff McKinney
12 Jim Wilcox
13 Chris Clark
14 Don Ball
15 Brian Iverson
16 Chris Kilpatrick
17 Larry Hettinger
18
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TRANSCRIPT OF PROCEEDINGS, held in the
above-entitled matter, at the South Dakota State
Capitol, Room 412, 500 East Capitol Avenue, Pierre,
South Dakota, on the 30th day of September 2004,
commencing at 2 o'clock p.m.

1 During the course of that conference call an
2 issue was raised by staff primarily but also by
3 Superior as to whether or not there might be some
4 issue concerning either jurisdiction or standing,
5 whichever you want to call it, related to the
6 procedure that's been followed under the applicable
7 statute, which is 49-34A-26. That's the statute
8 under which the Commission and/or certain classes
9 of persons can bring about an inquiry into utility
10 rates, rate matters.

11 This proceeding, particular proceeding, was
12 initiated by a Complaint filed by Superior
13 Resources. The issue that staff raised in our
14 conference call pertained to -- and also Superior I
15 think had some concerns, pertained to whether
16 Superior fits the definition of public utility
17 within that statute. The concern is that if they
18 do not, we might at some point, depending on -- you
19 know, somebody might get an unfavorable result in
20 their mind here. We might get to the end of the
21 road, and we could wind up having spent six months,
22 four to six months on this case, which I think the
23 Commission probably wants to hear, and find out
24 that the court believes that due to a technical
25 problem that we either lack -- that we lack

5

1 jurisdiction because of the party bringing the
2 Complaint lacks standing to bring it.
3 I suggested that I would raise the possibility
4 with the Commissioners that they might wish to
5 consider the Complaint as not only a Complaint but
6 also as a request that the Commission upon its own
7 Motion under 34A-26 move with notice to initiate
8 this particular investigation as defined in the
9 Complaint on its own Motion.

10 And my feeling on that is that by doing so we
11 would remove any potential jurisdictional objection
12 that might subsequently be raised in the
13 proceeding.

14 And with that, I would turn it over to either
15 comments of the parties or comments of the
16 Commissioners. Do any of the parties have anything
17 to add to that?

18 CHAIRMAN SAHR: Why don't we give
19 the parties an opportunity if they want to comment.
20 Especially if they intend to oppose the proposed
21 action of having the Commissioners take this under
22 consideration on their own Motion.

23 MR. GERDES: Good afternoon,
24 Mr. Chairman, members of the Commission. My name
25 is Dave Gerdes. I'm a lawyer from Pierre, and I

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1 represent Montana-Dakota in this proceeding. With
2 me is Mark Meierhenry who is local counsel for
3 Superior. I participated in that conference which
4 I believe was last Thursday, and I think there was
5 general agreement among the people that this would
6 be a good move to assure that the Commission does,
7 in fact, have jurisdiction.

8 Way back when this Docket first opened the
9 same discussion ensued, and that's why
10 Montana-Dakota intervened in the Docket, was to
11 hopefully avoid any jurisdictional or standing
12 issues. We, like the Commission, don't want to
13 invest four to six months in a proceeding and have
14 it be ineffective because of a procedural defect.
15 So we have no objection to what is proposed.

16 CHAIRMAN SAHR: Thank you.
17 Mr. Meierhenry.

18 MR. MEIERHENRY: Mr. Chairman,
19 members of the Commission, we likewise have no
20 objection. I think everyone agrees with staff and
21 both parties sitting here that the statutes did not
22 contemplate this particular type of issue, and
23 speaking for Superior we scratched our head exactly
24 where we fit as well. So we not only do not
25 oppose, we would urge the Commission to take this

7

1 up on their own Motion.

2 CHAIRMAN SAHR: Thank you. And I
3 know we have some of the Interveners on the line,
4 and I would encourage you if you oppose the
5 proposed course of action that we seem to be
6 prepared to take, if you would, please add or reply
7 to that proposed action.

8 And with that, why don't we see --
9 Northwestern, you're on the line. Do you have any
10 additional comments?

11 MR. DECKER: No. And we have no
12 objection.

13 CHAIRMAN SAHR: Thank you. Excel.

14 MR. WILCOX: No comments and no
15 objection.

16 CHAIRMAN SAHR: Thank you.
17 Black Hills. I don't know, Mr. Iverson and
18 Kilpatrick, if you're on the line for this Docket,
19 but if you are, I'll give you the opportunity to
20 comment.

21 MR. IVERSON: Mr. Chairman, we don't
22 have any comment on this Docket. Thank you.

23 CHAIRMAN SAHR: MidAmerican.

24 MS. STEWART: We have no problem
25 with that process.

8

1 CHAIRMAN SAHR: Thank you very much.
2 So I think we've heard from all the Interveners.
3 We've heard from the Petitioner.

4 COMMISSIONER BURG: I would just
5 move -- so that we can go ahead, I would move that
6 we do open it under our own -- by the Commissioners
7 to hear this. I think it's right for that -- this
8 particular issue is right for us to make these
9 kinds of decisions because I think we will probably
10 have this question going into the future.

11 CHAIRMAN SAHR: Thank you. I will
12 second that Motion.

13 VICE CHAIR HANSON: Hanson concurs.

14 CHAIRMAN SAHR: That takes care of
15 the first issue. The second one likely will take a
16 little bit longer is to talk about a procedural
17 schedule.

18 And with that I will either look for staff or
19 General Counsel to propose -- come up with any sort
20 of proposal to go forth with that.

21 MR. SMITH: There may be a couple of
22 issues here, and the first issue I think is just
23 the global procedural schedule, and we discussed
24 that at length the other day in your conference and
25 we came to no agreement at all. What I think we

1 ought to do probably is hear from the parties.
 2 The one thing I want to point out, though, is
 3 that in addition to what we've all talked about and
 4 the parties have outlined in their scheduling
 5 proposals -- and, I don't know, Mark, did you
 6 provide anything in writing because I can't seem to
 7 find it?
 8 MR. MEIERHENRY: I did. I have an
 9 extra copy.
 10 MR. SMITH: I've been scrambling
 11 here. It's probably down there in my pile
 12 somewhere. The other issues, though, that I want
 13 to bring up and we discussed it with your Texas
 14 counsel, and I forgot his name. I'm sorry.
 15 MR. MEIERHENRY: Brad Moodie.
 16 MR. SMITH: Brad Moodie. Was
 17 because we're initiating this on our own Motion and
 18 we've had kind of a confused procedure here from a
 19 pleadings standpoint, maybe some thought also ought
 20 to be given to what the parties think is
 21 appropriate now that the Commission has initiated
 22 this on its own Motion, whether or not you feel
 23 additional pleadings ought to be filed.
 24 I know Dave and I talked about that, and kind
 25 of the understanding I think we had is that, okay,

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1 right now we have a Complaint. We don't have
 2 anything really in the nature of a responsive
 3 pleading, like an answer. Brad Moodie expressed
 4 the desire to have an answer so he knew which
 5 issues were joined and which were not.
 6 And lastly if you want to have a reply or
 7 anything else, I'd be interested to hear on that.
 8 And other than that, I think the real issue is just
 9 establishing a procedural schedule that's
 10 achievable and that meshes with where you happen to
 11 be at right now with your discovery processes.
 12 MR. GERDES: Maybe I should go
 13 first, Mr. Smith. You had actually asked me if I
 14 could get an answer filed by today. I think we're
 15 on our second draft and it's being circulated and
 16 so it may be tomorrow. But we are expecting to
 17 file an answer so that may take care of that issue,
 18 unless there's something else the parties want to
 19 talk about.
 20 MR. SMITH: Do you want any kind of
 21 reply pleading, or is it your feeling, Mr. Gerdes,
 22 that that's sufficient?
 23 MR. GERDES: I believe it's
 24 sufficient.
 25 MR. SMITH: Mark.

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1 MR. MEIERHENRY: I would agree. In
 2 that respect, if there is a reply, it would
 3 hopefully narrow issues rather than expand them.
 4 But I can't see why we would need a reply. At this
 5 point from Superior's viewpoint really we're
 6 looking for a number more than anything else. I'm
 7 sure there will be other legal rulings.
 8 MR. SMITH: Okay. With that I
 9 think -- I don't know. Unless you have -- open it
 10 up to a general discussion of schedule globally.
 11 MR. MEIERHENRY: Mr. Chairman and
 12 Commissioners, we did talk about this on the phone,
 13 and MDU and Superior have exchanged -- through
 14 counsel exchanged their proposed scheduling orders.
 15 They're quite a bit different. I want to explain
 16 to the Commission why Superior would urge that the
 17 hearing take place during the week of January 4
 18 through the 7th, prior to the legislative session
 19 this year.
 20 We've proposed a schedule that is quick
 21 because of very practical reasons. Number one,
 22 it's our position this number should have been
 23 filed by MDU already, and it should have been on
 24 file.
 25 The other practical reasons from the wind

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1 energy Superior standpoint is that Congress passed
 2 the tax credit for wind energy, which is
 3 financially very important to the industry and
 4 important to this project, obviously. And that's
 5 good for a year. And no one can predict what the
 6 new Congress will do, but in order to complete the
 7 project by the end of 2005, MDU and Superior if
 8 after discovery they have issues left, and we got
 9 to anticipate that they will, would have to resolve
 10 all of the power purchase agreement matters by the
 11 end of March or April.
 12 Certain items have to be ordered should this
 13 project go forward, transformers, things of that
 14 nature, and in order to get the tax credits and
 15 make the wind energy project financially feasible
 16 we need an answer as quickly as possible. And so
 17 that's why we're urging a fast procedural schedule
 18 that we cut down on answers to discovery, that we
 19 have completed a big part of it and so we're asking
 20 that the Commission consider that any additional
 21 discovery items, data requests, be done by
 22 October 18, that the parties basically answer those
 23 in two weeks, rather than the usual 30 days, that
 24 by November 5 any objection to the lack of
 25 discovery be indicated by either party, that the

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1 Commission or staff or someone resolve all of those
2 issues by November 11 and we are done with our
3 discovery by November 18.

4 Superior would urge that we have joint filing
5 of direct testimony at the same time and joint
6 filing of rebuttal testimony on December 15 and
7 that the staff at that point would file any
8 testimony they would want and that the parties
9 would file any motions, for lack of a better term,
10 motions to determine any legal matters at the
11 hearing, that the staff and the parties have a
12 prehearing conference on December 20 and then a
13 January 4 through 7 hearing.

14 That is a tight schedule. If the Commission
15 were to adopt Superior's view, you can always
16 postpone it. So we would urge that the tight
17 schedule be done, and then if there are problems
18 from the staff, Superior, MDU, that then we
19 recognize that there are -- you know, there are
20 problems during the session. But if we want to
21 determine whether this is a feasible project, that
22 it needs to be done in January. And we're hoping
23 that -- we don't have to talk about appeals -- that
24 that can be done.

25 The last reason I would urge to adopt the

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1 fast-paced schedule is the quicker everyone can
2 know all the information the quicker we can
3 determine whether my client and MDU can reach an
4 agreement without further litigation. So that is
5 to me a very important reason to require these two
6 entities to get all the information to each other
7 as fast as possible and to determine where they're
8 at prior to the end of the year.

9 And so with that, we would urge the faster
10 schedule rather than the slower one proposed by
11 Montana-Dakota. We're not to the tax credits, so
12 forth. I think Montana-Dakota's proposal would be
13 generally okay. But we think this is an unusual
14 case.

15 CHAIRMAN SAHR: Thank you.
16 Mr. Gerdes, before we go forward with your comments
17 and the comments of the Interveners, I do want to
18 check -- I heard a beep on the phone line and I
19 just want to check to see, has anyone come on the
20 line since we first called the roll call? And it
21 may have been someone that dropped.

22 MR. HETTINGER: Chairman Sahr, this
23 is Larry Hettinger with Heartland Communications
24 and Consulting.

25 CHAIRMAN SAHR: I wanted to make

15

1 sure since we had a court reporter and this is on
2 the record that we knew everyone present. Thank
3 you very much, Larry.

4 With that, Mr. Gerdes, please proceed.

5 MR. GERDES: Mr. Chairman, members
6 of the Commission, I filed comments on our
7 scheduling proposal. Our scheduling proposal is
8 that the hearing be sometime after the legislative
9 session. Our proposal is that the hearing be on
10 April 4. I think probably it could be held any
11 time after about the middle of March. Basically
12 the idea is to avoid the legislative session. We
13 don't know what the legislative schedule is at the
14 present time, but typically based on the way things
15 have gone in the past the 39th legislative day
16 would be sometime around the 3rd or 4th of March
17 and the 40th legislative day would be somewhere
18 around the 21st or 22nd of March. So certainly any
19 time after that the hearing could start.

20 But we picked the dates we proposed to permit
21 enough time to do a good job on this. As we
22 mentioned in our filing, this is a novel issue for
23 the Commission. To our knowledge nothing like this
24 has occurred certainly within the memory of the
25 current Commissioners, and probably for some time

16

1 prior to that. The Order in Docket F3365 was in
2 1982. And as we mentioned in our filing, the rules
3 have changed since then, and so we are essentially
4 dealing with a new subject matter.

5 Discovery is currently underway. Discovery is
6 not concluded yet. There is certainly likely to be
7 further discovery between Superior and MDU. There
8 also is the matter of staff's discovery requests,
9 which were served on the 21st of September and
10 answers are not due until 30 days thereafter.

11 We haven't talked about experts. Certainly
12 this is the type of subject matter that may involve
13 experts, but we can't get to that until we get all
14 of the discovery done. The nature of the discovery
15 is such that we have to exchange information
16 sufficient for each party to make a computation as
17 to what they believe the avoided energy costs are
18 and the avoided capacity costs are. That can't
19 happen until we finish the discovery.

20 We have just finished -- I can report that we
21 do have a confidentiality agreement. I just got it
22 in the mail by overnight express this morning. And
23 so we can handle the confidential material. There
24 still is the matter of MDU's objections to certain
25 interrogatories or certain discovery requests filed

1 by Superior on the basis of relevancy which we do
2 not believe that we are required to file.

3 These deal with the relevancy of pollution
4 costs, the relevancy of whether or not we have to
5 produce purchase power, the actual purchase power
6 agreements as opposed to data in those agreements.
7 I mean, those are all issues that have to be
8 resolved before we can even think about drafting
9 testimony. And so I sat down and I tried to take a
10 very realistic view of the time that it would take
11 to prepare this case for trial based upon my
12 experience and based upon what appears to have to
13 be done. And I did make a typographical error on
14 my proposed schedule and had Superior filing
15 prefiled testimony twice, which I didn't intend.

16 Quite frankly, I've looked at the staff's
17 proposal and staff's proposal probably is a little
18 bit better in the sense that it gives everybody a
19 chance to file their testimony that uses the same
20 time frame that I had suggested. That would be
21 December 20 for the discovery deadline, January 20
22 for Superior's prefiled testimony, February 22 for
23 MDU's prefiled testimony, March 10 for staff
24 prefiled testimony, and then March 24 for Superior
25 rebuttal testimony. And I would also add MDU

1 rebuttal testimony. I inadvertently left that off
2 of our request. Obviously if Superior is entitled
3 to rebuttal testimony, I think we would be entitled
4 to it as well. March 28 for prehearing conference
5 and April 4 through the 8th for the hearing. Which
6 this occupies about the same time frame that we had
7 proposed.

8 The other problems that are associated with
9 the schedule that Superior proposes, even though
10 it's proposed that this hearing occur the week
11 before the legislature starts, we all know from
12 past experience there is a lot of pre-legislative
13 activity that occurs in Pierre. We are talking
14 about having a place to have the hearing. We're
15 talking about places for the witnesses to stay.
16 We're talking about airline capacity to get the
17 people here. We all know that when the
18 legislature's in session around this city, small
19 city, that other things are difficult to
20 accomplish.

21 This is an important proceeding for the
22 parties. Quite frankly, it's an important
23 proceeding for the state. Because it's the first
24 one, and we are going to be setting precedent for
25 what are hopefully lots of wind power projects and

1 lots of qualified facilities making requests for
2 avoided cost determinations.

3 I need to respond to one thing. Superior now
4 recognizes a need for speed yet Superior negotiated
5 for -- started negotiations well into last year yet
6 they did not qualify as a qualified facility until
7 April of this year. Certainly if Superior was in
8 such a hurry, they could have started this process
9 a lot more quickly. And so for us all to have to
10 do a hurry up job on this because Superior didn't
11 file their proceeding quickly enough is a
12 consideration I think that the Commission should
13 take into mind.

14 We believe that this schedule is really the
15 minimum -- this proposed schedule is really the
16 minimum that you can look at and do a good job on
17 this. This is a highly complex proceeding. We
18 just got done with a two-week LNP hearing back in
19 June and I think the run up to that was longer than
20 the period of time over which we're proposing here
21 and the subject matter is equally complex. You've
22 got to have consideration for staff and staff's
23 discovery and staff's experts. I mean, we've just
24 got a lot of work to do yet.

25 And it's not that we won't do it.

1 Montana-Dakota understands that they have an
2 obligation to purchase power under PURPA at what
3 are called avoided costs. We have negotiated at
4 great lengths in good faith with Superior, and we
5 have some honest differences of opinion as to the
6 type of information that we're required to provide
7 and that's been the hang-up all along.

8 And so we do need to have a determination from
9 the Commission, but we need a determination that's
10 fair to all parties and gives the Commission
11 adequate time to thoroughly ventilate the issues
12 that are present. And so we would advocate
13 essentially staff's proposed hearing schedule,
14 which would in effect be what we had proposed as
15 well.

16 CHAIRMAN SAHR: Thank you.
17 Ms. Stewart, do you have any additional comments?

18 MS. STEWART: The only additional
19 comments I have is that the proposed schedule does
20 not have any provision for Intervener testimony,
21 and as Mr. Gerdes has pointed out, this is an
22 important proceeding for the state, and we believe
23 there should be some kind of a recognition of
24 Intervener testimony responsive to the filings of
25 the other parties.

1 CHAIRMAN SAHR: Do you think the
2 Interveners' testimony would be sufficiently
3 similar to the Respondent's testimony that it could
4 be done simultaneously?

5 MS. STEWART: Normally when I work
6 with the Interveners normally there's a separate
7 day for Intervener testimony just because the
8 Interveners tend to respond to both of the other
9 main parties. I guess I would defer to my fellow
10 Interveners to see whether they think that is
11 acceptable, that we all file testimony on the same
12 day.

13 CHAIRMAN SAHR: Well, I certainly
14 don't want to prejudice how the people may line up
15 in this case, but at the same time I think we all
16 are looking for the ability to pick up some
17 additional time.

18 MS. STEWART: At this point I really
19 don't have a -- I can't tell whether we're going to
20 be on the same page with MDU or whether we're going
21 to be close or not at all. I mean, I just think
22 this proceeding is unformed at this point in time.

23 MR. DIETRICH: This is Alan Dietrich
24 at Northwestern. I guess I would also agree with
25 counsel for MidAmerican that I would like the

1 opportunity to have Interveners prefile testimony
2 not only because it will allow us to submit
3 evidence in that way, but it also should shorten
4 the hearing by allowing that testimony to be
5 prefiled.

6 And one thing that I would offer, I guess, as
7 a suggestion is perhaps the Interveners and the
8 staff could prefile their testimony concurrently
9 after the MDU prefiled testimony but before
10 Superior's rebuttal.

11 CHAIRMAN SAHR: And that may make
12 some sense. Then we're looking at being able to
13 save a little bit of time without making it so you
14 can't get the ability to look at MDU's prefiled.

15 Is anyone on the line representing
16 Black Hills? I know Mr. Iverson and Kilpatrick are
17 on there. Are you representing Black Hills in this
18 Docket, or are you on for the other dockets?

19 MR. IVERSON: We're not appearing
20 today for this Docket, your Honor. I think we
21 would follow what the other intervening parties
22 would have to say here today.

23 CHAIRMAN SAHR: Thank you. Then
24 I'll go to Excel.

25 MR. WILCOX: Mr. Chairman, from

1 Excel Energy's standpoint I think we would see the
2 benefit of a separate Intervener testimony day. I
3 think we'd be certainly willing to work in a short
4 time frame, and if there's a date that can be
5 perhaps split in before staff prefiles their
6 testimony, I don't want to shorten staff's time but
7 I understand there's a desire to keep the overall
8 schedule so that's something we'd be willing to
9 work with.

10 MS. STEWART: This is Suzan Stewart
11 again. The only concern I have is what's been
12 suggested is the Interveners may want to respond to
13 staff as well.

14 COMMISSIONER BURG: But wouldn't
15 everybody want to reply to staff? This would give
16 staff an opportunity to see all of the parties.

17 CHAIRMAN SAHR: Then we could reply
18 to the reply.

19 MS. STEWART: On March 24 would we
20 all be able to file rebuttal to everyone else?
21 Right now it states Superior rebuttal testimony.

22 CHAIRMAN SAHR: Ms. Stewart, they're
23 diligently writing in Pierre so I think you're
24 going to get some agreement on that. I'd like to
25 hear from staff and if you could not just on the

1 issue of this prefiled but also on hearing dates.

2 And we have a three-month gap between what MDU
3 and what Superior has proposed. Is one right or
4 wrong, and is there some middle ground in there? I
5 know we've had hearings during session before. I
6 believe I even appeared perhaps at one time as an
7 attorney during session. I realize some of the
8 challenges involved with that, but I am kind of
9 curious to see if staff has any strong feelings
10 about when the hearing should take place.

11 MS. CREMER: Thank you,
12 Mr. Chairman. Staff did submit a letter setting
13 out its procedural schedule, and it is similar to
14 that of MDU.

15 Part of the issue with Superior's -- their
16 procedural schedule is staff filed Interrogatories
17 on September 22 and we told them at that time they
18 had 30 days. Their October deadline would make
19 that impossible not only for them to respond but
20 for us to review it and get out any further
21 questions that we would have.

22 Staff also has been intending to hire a
23 consultant. However, we were waiting for the
24 parties to get their numbers to each other, which
25 they have been giving all of that information to us

<p>1 so we have more of an idea of what kind of 2 consultant or expert we need to hire. That, of 3 course, has to still go before the Commission for 4 approval of a consultant. So, you know, we need to 5 know what we need to hire and then we need to get a 6 price on it and we need to get approval from the 7 Commission. I don't think any of that is going to 8 be possible based on Superior's time frame. 9 You know, there is the old saying haste makes 10 waste and I'd just as soon do it right the first 11 time rather than doing this thing two or three 12 times because we can't quite get it right. It 13 doesn't do us any good to set a hearing date in 14 January as Mr. Meierhenry suggested and just, well, 15 you know, we can continue it if need be. We all 16 know here how hard it is to get anything scheduled, 17 especially something like a week-long hearing and 18 to free up people's schedules. 19 And just on a personal note, we're planning 20 on -- I'm buying eight tickets to Cancun based on 21 this hearing date, and if it gets changed, someone 22 will get a bill and four very angry teenagers, one 23 of which is a 15 year old female. So keep that in 24 mind. So, you know, just keep that in mind when 25 you're picking a date here.</p>	<p>25</p> <p>1 like lining up experts it does seem that everyone 2 involved should have known that they probably 3 should be making some phone calls in that regard. 4 I realize some of the issues are still getting 5 flushed out with that, but do you, staff, have an 6 expert yet? 7 MS. CREMER: We have a company in 8 mind, but, again, until we can get to them with -- 9 we've been waiting for their discovery to be 10 completed, they being the parties, so that we can 11 give that to an expert so they can look at it and 12 tell us what we need, how much it's going to cost, 13 what they can do for us. 14 At this point to just give them what's been 15 filed, I don't know that they'd be able to give us 16 anything that we could put our arms around and say, 17 yes, you're the person we need. 18 CHAIRMAN SAHR: And I know from 19 Mr. Gerdes's comments I think very close to what 20 you had said previously about it's difficult to 21 choose the expert without the information and the 22 issues being flushed out a little bit more. 23 MR. GERDES: Mr. Chairman, if I may, 24 it may very well be that we'll exchange information 25 and agree.</p>
<p>26</p> <p>1 But what I would suggest is not only the dates 2 that I have set forth, but if the Interveners want 3 to file when we file on March 10, they could do 4 that. They could file the week ahead of that. 5 That would give us more of an opportunity to 6 respond to their testimony. Or you could leave 7 staff and Intervener at the same time and allow 8 everyone to file whatever rebuttal they want then 9 on March 24. 10 When you look at it, once discovery is 11 completed, which I think is going to take a long 12 time, really people only have about 30 days to get 13 their prefiled testimony in. And so that really 14 isn't -- not one that has to write prefiled 15 testimony but one that has to read it, it takes a 16 long time to write so I don't think 30 days in 17 between those deadlines is an unreasonable 18 occurrence. 19 CHAIRMAN SAHR: The Docket was 20 filed -- or the filing took place on May 12; right? 21 MS. CREMER: That's correct. 22 CHAIRMAN SAHR: And so I -- I do 23 think that there has been notice that this is 24 coming down the pike. I understand we've got 25 questions about the dates, but on certain things</p>	<p>28</p> <p>1 MS. CREMER: Right. 2 MR. GERDES: But I don't know that 3 until the information is exchanged and Superior's 4 people do their computations and we do our 5 computations. And it may be we don't need experts 6 too, but we have to see what the figures show and 7 what each side contends and whether or not there 8 are issues that require expert testimony concerning 9 all manner of issues when we talk about costing the 10 generation of electric power and the maintenance 11 capacity of the system. 12 I mean, just talk about scheduling issues on 13 the system as to whether or not that could be an 14 issue. It may not be an issue. We just don't know 15 until we get to that point. 16 We have been working on it. We finally got a 17 confidentiality agreement today, and we are looking 18 at now exchanging the first round of information 19 that was deemed confidential by both sides. 20 Hopefully we'll get that exchanged either tomorrow 21 or Monday. 22 CHAIRMAN SAHR: And I'm sympathetic 23 to both sides of plight here. I mean, one is the 24 need -- and especially with a business, a need to 25 have resolution so especially in light of the tax</p>

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1 write-off that's going to expire. And I certainly
2 understand the challenge that staff and Interveners
3 and Respondents face in trying to make sure that
4 they have the information necessary and that this
5 is heard in an appropriate manner as well.

6 So, you know, don't necessarily take my
7 question the wrong way. It's just simply something
8 to be put out there because I want to make sure
9 that we do move on this in an appropriate time
10 frame.

11 MR. GERDES: Mr. Chairman, just on
12 the issue of tax breaks, I didn't mention this
13 before but that tax legislation has been around for
14 a long time and it's been renewed by Congress every
15 year and it doesn't expire until the end of next
16 year so it's not like we're looking at a deadline
17 that's very close to us and I think we can expedite
18 things but we just have to be able to do a good
19 job.

20 CHAIRMAN SAHR: Thank you.
21 Mr. Meierhenry, would you like to respond to any of
22 this?

23 MR. MEIERHENRY: Well, the only
24 thing I would say is I think there's a couple of
25 things to keep in mind. I am not the expert in

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1 this area as local counsel, but my understanding is
2 we need to come up with two numbers. One is the
3 number for avoided energy costs, and one's the
4 number for avoided capacity costs. And perhaps the
5 Interveners want to, you know, decide a whole bunch
6 of other type of issues, but as far as Superior's
7 concerned, those are the two issues that we need a
8 determination on from the Commission, if as
9 Mr. Gerdes says, there is disagreement between the
10 parties. And, again, we don't know that yet.

11 But on October 11 is kind of an important date
12 because that is the date that MDU has told Superior
13 that they will give their avoided costs
14 calculation, and then there's certain information
15 that's needed by MDU as to the amount of energy in
16 the wind, as I understand it, to do other
17 calculations.

18 So those are the calculations that Superior
19 wants to get to as quickly as possible. Everything
20 else as far as experts and so forth, you know, I
21 guess we would have to all agree that we don't know
22 until all of the information is exchanged. And
23 again, I would urge that especially the discovery
24 portion of our proposed scheduling order be
25 seriously considered.

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1 And, once again, this is an adversary
2 proceeding at this point. MDU criticizes Superior
3 for not having filed quick enough to make them do
4 the job they should have done in the first place,
5 but that has been on file for quite some time and
6 it would seem to me they should have known that
7 number as a federal law required them to know. So,
8 again, I would urge as fast as is prudent.

9 MR. GERDES: If I may about that
10 October 11 date, Mr. Chairman, we have agreed -- or
11 I should say Montana-Dakota has agreed to
12 provide -- so there's no misunderstanding, to
13 provide the generic avoided costs associated with
14 MDU's system, but until we get the wind data from
15 Superior, we cannot calculate avoided costs as it
16 relates to accommodating Superior's system.

17 So, I mean, there's still something more to be
18 done after we -- we're just calculating generic
19 avoided costs. Until we get their wind data we
20 don't know, you know, how much peaking availability
21 there is and lots of issues like that that deal
22 with scheduling their power into our system. And
23 we've got coal fired plants and we can't run them
24 up and run them down like you can turn on and turn
25 off a light switch. You have to be able to

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1 schedule these kinds of things, and so that's what
2 that computation will have to do.

3 MR. SMITH: Mark, you talked about a
4 number, and I'm -- we're not talking here about two
5 plus two equals four; right?

6 MR. MEIERHENRY: No.

7 MR. SMITH: There are going to be
8 philosophical and legal issues, are there not,
9 involved in many of the input values and other
10 issues that go into this thing potentially?

11 MR. MEIERHENRY: Well, Mr. Smith,
12 that's correct. But representing Superior who
13 wants to be in the wind energy business in
14 South Dakota in a big way, those are issues for the
15 Commission to decide, of course. What we don't
16 want is our one project to bear the load of the
17 discovery of all of these principles.

18 And that's my worry, frankly, about
19 Interveners and so forth, you know, unless all of
20 them want to file their avoided costs calculations
21 and so forth as a part of this, which I doubt that
22 they will or want to. So that -- I'm not
23 disagreeing, Mr. Smith, but from Superior's
24 standpoint this is a business question. Under the
25 federal law we have to determine these things and

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1 we have confidence that the Commission will decide
2 each and every issue. If that wants to be
3 litigated in the future by others, that's fine, but
4 it's pretty hard to put on my client alone's
5 shoulders from the wind energy side to decide all
6 of those issues in this case. I mean, they're
7 going to have to be decided, but we don't think
8 that it should be retarded, the speed should be
9 retarded, because you've got to make big decisions.

10 I mean, I think the Commission will make the
11 right ones. We're confident we will.

12 MR. SMITH: Back to the schedule, it
13 looks like the biggest single difference other than
14 the hearing date, of course, is the date by when
15 discovery can be completed. Okay. We have a
16 difference there of, as I understand it,
17 Mr. Meierhenry, you've got October 18 is your
18 proposal for when discovery is finished?

19 CHAIRMAN SAHR: November 18.

20 MR. SMITH: Oh, okay.

21 CHAIRMAN SAHR: I think the big
22 difference is the December 20 discovery deadline
23 and January 20 Superior prefiled testimony compared
24 to November 18 discovery and December 1 prefiled
25 testimony. I mean, that seems to be to me the

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1 biggest discrepancies.

2 MR. SMITH: Where are you guys at
3 really on discovery now? I mean, how far is
4 discovery away from legitimately being able to be
5 completed?

6 MR. GERDES: Each party has filed
7 initial discovery requests, and those have been
8 answered. MDU has filed a supplemental discovery
9 request, which is still pending, and that involves
10 confidential material.

11 All discovery requests have not been
12 completely answered because of the confidential
13 issue. And so, as I said, we're very close to
14 getting that information exchanged. Probably
15 tomorrow is probably too optimistic but certainly
16 early next week. As I said, we have got the
17 confidentiality agreements in place.

18 So then the question is the material has to be
19 reviewed, and undoubtedly there are going to be
20 additional discovery requests. I would expect.
21 That's the way it always works. Maybe it won't
22 work that way this time. That's the way it always
23 works. We also have the matter of staff's
24 discovery out there, which were served on
25 October 22. So we're not talking about them

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1 potentially being answered until November 22,
2 30 days, plus or minus a day.

3 MR. GERDES: By October 22. Excuse
4 me. I've never seen staff be satisfied with their
5 first discovery request so they're going to have
6 to -- and that wasn't a complaint. That was a
7 statement of fact. So what can I say? We're
8 talking, you know, probably 45 days for discovery
9 from this point forward easily, if not 60 days.

10 CHAIRMAN SAHR: Any questions from
11 the Commissioners?

12 COMMISSIONER BURG: Yeah. I have a
13 question. This is Commissioner Burg. If, for
14 example, numbers came through that Superior was
15 satisfied with that a contract could go forward, is
16 that any kind of a likelihood? In other words, I
17 see a possibility that there should be discovery
18 requests and issues that we should settle for the
19 big picture but that there could be a situation
20 where Superior and MDU come close enough together
21 that they're able to make a contract even though
22 this issue should go forward.

23 Is that an accurate thought process for me?

24 MR. GERDES: Yes, Mr. Commissioner,
25 there is. As a matter of fact, we've been having

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1 conversations about trying to settle this, but, you
2 know, you can't plan on settling the case, but,
3 yes, we have had those discussions and there will
4 be face-to-face discussions in the very near future
5 on that issue, I believe.

6 COMMISSIONER BURG: Let me ask you,
7 Dave, and the other parties if that occurred since
8 we've opened a Docket under our own issue is there
9 issues that we should still continue even if you
10 end up with settlement?

11 MR. GERDES: Not from the standpoint
12 of the main parties. And I think that takes care
13 of the Interveners too. I may be wrong about that,
14 but I believe that's right.

15 MR. SMITH: I think -- Jim, this is
16 John Smith. I really don't think so in the sense
17 of this being an adjudicatory proceeding. If you
18 wanted to undertake some kind of just generalized
19 factual inquiry or maybe at some point in the
20 future a rule-making to lay down some principles, I
21 think that would be the forum to do that general
22 policy setting stuff.

23 COMMISSIONER BURG: I guess part of
24 what I'm thinking of here is I would hate to see us
25 postpone this out so that they basically lost two

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1 or three months of construction season if they --
 2 basically all the requests have been answered or
 3 satisfied. So I guess I'd like to see a process by
 4 which we get to that point and then if they are
 5 able to settle, of course, that's it, but that we
 6 not have stretched this out so that they lose a
 7 couple three months because we're trying to work
 8 around the legislative session when there really
 9 isn't that much left.

10 MR. SMITH: Do you guys have any
 11 idea how far you are apart now?

12 MR. MEIERHENRY: I don't.

13 MR. SMITH: Has anything been
 14 exchanged in that regard as to the bottom line?

15 MR. GERDES: Excuse me. I didn't
 16 mean to interrupt. The answer is no, because we
 17 still have to get the confidential information
 18 exchanged and have the analysis done.

19 MR. SMITH: Uh-huh.

20 MR. MEIERHENRY: You know, one thing
 21 I might propose, which is allowed under the civil
 22 rules and I don't have a total recall of whether
 23 the Commission rules provide for it, but at least
 24 from Superior's standpoint, yes, it's normally
 25 30 days to answer discovery or data requests. If

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1 it's like most things, everybody puts it aside for
 2 14 days because they have 30 days. Certainly
 3 shortening this to two weeks turnaround for
 4 information for each party with the
 5 understanding -- and I think the parties have
 6 worked -- the two main parties have worked pretty
 7 well actually on these discovery requests, that we
 8 could shorten these time periods on some of this
 9 information with the understanding that just like
 10 all rules, if someone can't do it.

11 But there's a number of these things.
 12 Speaking from Superior's standpoint, we have the
 13 staff's information. If we knew everybody had to
 14 respond within 14 days rather than 30, it would
 15 certainly speed things up. Now, if you can't do
 16 it, and sometimes you can't, that might make a
 17 difference too.

18 MR. GERDES: Well, if I may, MDU
 19 will do everything it can to comply with any
 20 scheduling order the Commission enters, but I need
 21 to tell you that in addition to this proceeding
 22 they have three rate cases going on right now that
 23 they are also responding to. One here and then two
 24 other states. And so -- and it's the same people
 25 that are doing all the work. And so there's only

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1 so much work people can do within a given time.
 2 So I really can't say that it would be easy
 3 for Montana-Dakota to shorten things up
 4 appreciably. That's just the way it is. As a
 5 matter of fact, the Commission knows we've got a
 6 gas rate case pending right now as well here, and
 7 there's two others in other states.

8 MR. SMITH: I think there's nothing
 9 legally that prohibits us from shortening discovery
 10 requests. I mean, we do that. We've had several
 11 motions and orders and shortening discovery. But,
 12 again, you know, when it gets down to it, Mark,
 13 it's always practically speaking what can you
 14 really do?

15 Do you want to see what the other
 16 Commissioners feel?

17 CHAIRMAN SAHR: First of all, I want
 18 to see if Commissioner Hanson or Commissioner Burg
 19 has any questions or additional questions.

20 VICE CHAIR HANSON: No. I'm
 21 comfortable with the decision that I'm about to
 22 make.

23 CHAIRMAN SAHR: That almost sounds
 24 like a Motion. Commissioner Burg, do you have any
 25 additional questions?

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1 COMMISSIONER BURG: That was the one
 2 question I had. I guess I'm comfortable also with
 3 moving forward. I guess what I heard
 4 Mr. Meierhenry say, if we shorten that to 14 days
 5 in their case they can make 14 days. Then it will
 6 be up to MDU to ask for an extension or not.

7 CHAIRMAN SAHR: And one thing I will
 8 note, I do think everyone's coming into this with
 9 important perspective and legitimate positions. I
 10 will note the PUC staff does not lobby so if the
 11 consideration is time frames during January and
 12 February, if there's any time to be gained or if
 13 there's any delays that are built in because of PUC
 14 staff, I don't think that should be really a
 15 consideration at all.

16 You know, the question of January 4 versus
 17 April 4 is just with quite a discrepancy here, and
 18 I don't think we've heard a lot of suggestions one
 19 way or the other where we can either pick up more
 20 time or anyone's willing to give more time. So we
 21 are faced a little bit with either/or here.

22 COMMISSIONER BURG: Commissioner
 23 Hanson, did you say you were about to make a
 24 Motion?

25 VICE CHAIR HANSON: I'm sorry. I

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1 had my mute on. We're entertaining two babies over
 2 here. Once in awhile they get a little loud so I'm
 3 trying to -- the Motion that I would make is that
 4 we adopt the time line that has been recommended by
 5 staff.
 6 CHAIRMAN SAHR: Do we have a second?
 7 COMMISSIONER BURG: Well, I'm a
 8 little reluctant to -- I think there could be some
 9 time gained in here with everybody with not a great
 10 disagreement. Again, I repeat, I see that
 11 Superior's ready to move forward with half the
 12 response time that is allowed in the rule with at
 13 least their portion. And I'd like to leave the
 14 flexibility to do that and still leave MDU and the
 15 Interveners with the opportunity to request the
 16 full amount of time if they were not able to meet
 17 that short time frame.
 18 CHAIRMAN SAHR: And I'll add -- this
 19 is Chairman Sahr. I'll add that I'd like to have
 20 at least a few minutes to look at these two
 21 schedules and with the parties' input that we've
 22 heard this afternoon and not to do anything too
 23 rash and hopefully be able to arrange some type of
 24 executive session where at the very least we can
 25 talk it over with our attorney and chief advisor

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1 and see if we can come up with something that we
 2 feel comfortable with without necessarily picking
 3 either/or right at this moment.
 4 Now if we can do that what I would propose --
 5 and I'm going to look primarily at our court
 6 reporter. What I would propose is we finish the
 7 rest of the meeting. Then we'd be able to drop
 8 everybody off the line and then -- or else we'd
 9 have the Commissioners go to a separate room, have
 10 a short executive session and then come back and
 11 resolve that.
 12 (Discussion off the record)
 13 CHAIRMAN SAHR: If that works and we
 14 can come up with something with all three
 15 Commissioners, I would feel best about that. If
 16 not, we could even take it under consideration.
 17 But I realize with the deadlines we do need to give
 18 you a resolution one way or the other fairly soon.
 19 So if we had to, we could schedule another ad hoc
 20 hearing sometime in the very near future.
 21 MR. MEIERHENRY: Mr. Chairman,
 22 Superior certainly agrees with that. There's one
 23 other thing I want to bring up. It has not been
 24 noticed, but I don't know that there's big
 25 argument. I have provided the staff and Mr. Gerdes

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1 with the proposed order. I believe we have on
 2 file, Mr. Chairman, a Motion to Compel
 3 Montana-Dakota Utilities to respond to certain
 4 Interrogatories.
 5 To just put it in plain language,
 6 Montana-Dakota Utilities has signed a
 7 confidentiality agreement with other utilities as
 8 to a Vision 21 study. And in effect Montana-Dakota
 9 Utilities has to be ordered by this Commission --
 10 otherwise they're bound by the confidentiality
 11 agreement. I mean, this is one of these issues
 12 that we respect where Montana-Dakota Utilities is
 13 at.
 14 The only reason I bring it up is we're all
 15 here together, and I would propose -- we have to
 16 notice it and so forth. Mr. Gerdes and I have
 17 talked about that and we will do so but I thought
 18 we could do it in writing as opposed to have any
 19 argument. And I simply want to point out that this
 20 Motion to Compel is necessitated by a
 21 confidentiality agreement and my understanding
 22 is -- and obviously Dave will speak to it, but that
 23 it is not a contentious issue between the parties.
 24 CHAIRMAN SAHR: Thank you.
 25 Mr. Gerdes.

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1 MR. GERDES: Very briefly, obviously
 2 the Motion has to be noticed properly and heard at
 3 a later time. I mean, I don't believe the
 4 Commission can hear it now, and I can't stipulate
 5 to it. I have to look at this Vision 21. It's
 6 actually among utility companies and the State of
 7 North Dakota. And the confidentiality agreement
 8 requires -- only permits any signor of the
 9 agreement to disclose information if pursuant to
 10 the order of the court or other tribunals so MDU
 11 can't provide any information until there's such an
 12 order.
 13 But I really haven't looked at all of the
 14 information. I don't know if some of it is
 15 otherwise objectionable because of relevancy or
 16 not. My sense is most of it is not, but I just
 17 don't know without talking. So we would have to
 18 insist that it be noticed in the ordinary way.
 19 CHAIRMAN SAHR: Thank you. And I
 20 know you two gentlemen are very experienced in
 21 these type of matters, but I'd just remind everyone
 22 if we do get into something that's confidentiality,
 23 please let us know and we can clear the room, take
 24 people off the phone lines and make sure it's not
 25 accidentally leaked to where it shouldn't be leaked.

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1 We'll keep that in mind.

2 Commissioner Hanson's Motion fails for a lack

3 of a second. And I will move that we defer this

4 decision until later in the meeting with the

5 proviso that we'll try to set up an executive

6 session to discuss the matter, hopefully resolve

7 it, and if not, look at an ad hoc meeting in the

8 very near future.

9 COMMISSIONER BURG: I'll second

10 that.

11 VICE CHAIR HANSON: I'll concur.

12 COMMISSIONER BURG: Mr. Chairman, I

13 have one other question on this.

14 CHAIRMAN SAHR: Please go ahead,

15 Commissioner Burg.

16 COMMISSIONER BURG: I don't know

17 what the rules or what the policy or how we follow

18 as far as paying for the cost for this, whether it

19 was under the way we were proceeding, whether that

20 would have been the cost for the parties and now

21 that we're taking it under our own initiative,

22 whether that changes or not, but I don't recall

23 what that is. Is that an issue we need to address?

24 That's all I'm asking.

25 CHAIRMAN SAHR: Heather, I don't

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1 know if you heard that question or not or maybe

2 staff knows the answer to it. Commissioner Burg

3 asked a question about costs.

4 MS. CREMER: Commissioner Burg, this

5 is Karen Cremer. At this point we have not been

6 able to determine that the companies pay. At this

7 point everybody would be paying for their own time

8 and experts.

9 COMMISSIONER BURG: Including the

10 Commission if we had to hire an expert witness?

11 MS. CREMER: Yes. That's true,

12 whether you take it by your own Motion or as it was

13 originally filed.

14 COMMISSIONER BURG: Okay. That

15 answers my question adequately at this time anyway.

16 (A short recess is taken)

17 CHAIRMAN SAHR: I want to note for

18 the record that I am Bob Sahr, Chairman of the

19 Commission, and Commissioner Gary Hanson is joining

20 us via telephone conference call and that

21 Commissioner Jim Burg is no longer present or on

22 the telephone line.

23 I'm going to ask Mr. Smith to run through a

24 couple of questions that the Commissioners had for

25 the parties, and actually I should note one more

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1 thing. Present here in Pierre we have Dave Gerdes

2 representing MDU and Mark Meierhenry representing

3 Superior Renewable Energy. And we are attempting

4 to get the other Interveners back on the conference

5 call.

6 MR. SMITH: I think I'm going to

7 start out by prefacing the general gist. I think

8 the Commissioners don't feel that that January 1

9 date's workable, Mark. I just think the thoughts

10 from everyone were it's jamming the discovery

11 schedule too tight. Then we get into the spiral of

12 things getting delayed and pushed back and pretty

13 soon we've got Christmas. You know, lots of people

14 are going to have conflicts and plans and Dave's

15 got the legislature and I think we just think

16 that's not workable.

17 And, by the way, the Commissioners I think if

18 they felt it was workable, they would have done it

19 truthfully. Because they want to try to

20 accommodate Superior's needs.

21 I think the first thing we think is, that

22 said, they would like to try to move the hearing up

23 somewhat. And I think what we're looking at, and I

24 don't know if we set specific dates but something

25 along the lines of moving it up by two to three

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1 weeks into mid-March. The 21st through the 25th is

2 the week they'd want to be looking at.

3 MR. GERDES: Yeah.

4 MR. SMITH: Now there's a couple of

5 things we can do. The one thought is what we

6 thought is we could either crunch this schedule

7 down and since Superior wants to have a shorter

8 time frame, one thing that could happen is Superior

9 could agree to yield some time on its prefiled.

10 Another thing is I don't know whether you

11 really need all the way until December 20 or not

12 for discovery. I mean, could we yield up maybe a

13 week there? We could take off a week off

14 Superior's schedule -- and I don't know your

15 people's problems there, Mark.

16 MR. MEIERHENRY: I don't know at all

17 either, Mr. Smith. You know, the one thing, and

18 I've talked briefly to Brad Moodie about this, you

19 know, it's kind of unique procedurally that really

20 MDU and its information and its testimony should

21 almost come first in a way. And I'm not making a

22 Motion. Don't get me wrong.

23 But my point being in so far as Superior's

24 concerned, yes, you can crunch our time because,

25 you know, we will file our prefiled information,

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1 and we would rather be crunched as to the first
2 filing than the rebuttal is where I was going.

3 Because if you think this through, in a way
4 until the testimony is actually filed, you know,
5 again, assuming the parties can't reach some
6 accommodation before that, I think it would be more
7 the rebuttal time that Superior would want a little
8 more time for, even with our proposal to respond to
9 their filing. So that's my only comment.

10 MR. SMITH: Well, let's talk
11 discovery deadline. Go ahead, Dave.

12 MR. GERDES: I just wanted to
13 respond. I think Superior filed the Complaint.
14 They have the burden of proof.

15 CHAIRMAN SAHR: I don't think you
16 have to respond.

17 MR. MEIERHENRY: I agree.

18 CHAIRMAN SAHR: I think it's a point
19 well taken. We did have somebody join us on the
20 line. Did someone just join us?

21 MR. DIETRICH: Alan Dietrich.

22 CHAIRMAN SAHR: I'll just give you
23 the quick summary. We're talking about dates and
24 trying to see if the discovery deadline might be
25 able to be moved up just a short amount of time

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1 with a corresponding and maybe even a little bit
2 shorter period for Superior as to file its prefiled
3 and then generally keep the rest of the time frames
4 in the same venue, which I think puts us to a third
5 week in March hearing. So that's kind of getting
6 you up to speed.

7 And the question that Mr. Smith just posed to
8 everyone is how firm is that December 20 date and
9 can you pick up a week or two.

10 MR. GERDES: I think we can.

11 MR. SMITH: Could we move it, say,
12 back to -- what would you suggest? Back to
13 December 10?

14 CHAIRMAN SAHR: We only need to pick
15 up two weeks, right, in the whole thing?

16 MR. SMITH: Right.

17 CHAIRMAN SAHR: Because April 4 is
18 two weeks after March 21. Am I right?

19 MR. SMITH: Yes.

20 MR. GERDES: December 10 is a
21 Friday.

22 MR. SMITH: Is that a bad day for
23 the last day?

24 MR. GERDES: Well, it might be
25 easier to put it on a Monday.

51

1 MR. SMITH: What is the Monday?

2 MR. GERDES: The 13th.

3 MR. SMITH: What about the week
4 before Monday?

5 MR. GERDES: December 6. Excuse me.
6 To finish it, the 20th is a Monday so if you want
7 to move it up one week, it would be the 13th. If
8 you want to move it up two weeks, it's the 6th.

9 MR. SMITH: You guys are the ones
10 doing it.

11 MR. GERDES: I don't have a problem
12 with moving it until the 6th.

13 MS. CREMER: Because otherwise if
14 you gain a week by putting that at the 13th and you
15 gain a week on Superior's prefiled --

16 CHAIRMAN SAHR: Well, we only need
17 to gain two weeks. If we move it to December 6,
18 everything else moves up two weeks as long as
19 Mr. Meierhenry and his client -- they'll still have
20 a month but you are going to be dealing with two
21 holidays but we're doing this at your request at
22 the same time, though, too.

23 MR. MEIERHENRY: That was going to
24 be my reply. We've got to live with what we asked
25 for.

52

1 CHAIRMAN SAHR: Or else the other
2 alternative is December 13 and only give you three
3 weeks to respond. Because we all are acknowledging
4 this is not an easy case.

5 MR. SMITH: One thing I wanted to
6 ask, as a clarifying thing, Mark, right now we have
7 from March 10 to 24 for rebuttal. It says on this
8 sheet Superior rebuttal, but I think there was a
9 suggestion that all parties be allowed to file
10 rebuttal.

11 MR. MEIERHENRY: Yeah.

12 MR. SMITH: I understood you to say
13 you would maybe like to add some on the rebuttal
14 side, or do you feel two weeks is adequate?

15 MR. MEIERHENRY: I think two weeks
16 is adequate. We had, as I recall, 10 days or
17 something. I think two weeks is adequate. So
18 given the dates set by the Commission as March 21
19 and 25, that will work.

20 MR. SMITH: Okay. So the way it
21 looks like, we're going to move the discovery
22 deadline back to December 6. Your prefiled,
23 Superior, will be on January 6 -- well --

24 CHAIRMAN SAHR: The 6th is a
25 Thursday, if that makes any difference.

1 MR. SMITH: I don't think it makes
2 any difference.

3 CHAIRMAN SAHR: Not going to Cancun?

4 MR. SMITH: And then what I'm going
5 to do is this, if you don't mind. I'm going to
6 prepare the rest of the schedule myself, and it
7 will just basically back everything else out.

8 MR. GERDES: That second date was
9 January 11?

10 MR. SMITH: January 6.

11 MR. GERDES: Okay.

12 MS. CREMER: Don't forget the
13 Interveners.

14 MR. SMITH: I'm going to sandwich
15 them in midway between MDU and staff.

16 MS. CREMER: Okay.

17 CHAIRMAN SAHR: I know all of you
18 know this, but I think it is notable that we're
19 going to have the hearing in March but we all know
20 there's a briefing schedule after that. So, I
21 mean, when we're talking about April I am mindful
22 of the fact that it probably is two months after
23 that by the time we're all done. So we're picking
24 up some time, and I think hopefully it is
25 significant and gets this resolved without giving

1 anybody the inability to properly put on a case.

2 MR. GERDES: I'd love for Meierhenry
3 and I to come back here in a month and say we
4 settled it. We'll see.

5 MR. SMITH: You're not the only one.

6 CHAIRMAN SAHR: Don't get Keith's
7 hopes up. With that in mind, I will go ahead and
8 make a Motion that we set the discovery deadline
9 for December 6, the prefiled testimony deadline for
10 January 6, and then instruct Commission General
11 Counsel to make the corresponding dates to the rest
12 of the schedule, keeping the same sort of time
13 frames in place.

14 MR. GERDES: Do you want to add the
15 hearing date to your Motion?

16 CHAIRMAN SAHR: I think that's
17 appropriate. And a hearing date of March 21
18 through 25.

19 VICE CHAIR HANSON: Second.

20 MR. GERDES: Thank you.

21 CHAIRMAN SAHR: Thank you very much.
22
23
24
25

1 STATE OF SOUTH DAKOTA)

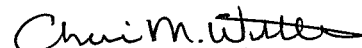
2 :SS CERTIFICATE

3 COUNTY OF HUGHES)
4

5 I, CHERI MCCOMSEY WITTLER, a Registered
6 Professional Reporter and Notary Public in and for the
7 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 30th day of
11 September 2004, and that the attached is a true and
12 correct transcription of the proceedings so taken.

13 Dated at Pierre, South Dakota this 3rd day
14 of November 2004.
15
16

17 
18 Cheri McComsey Wittler,
19 Notary Public and
20 Registered Professional Reporter
21
22
23
24
25

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