

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

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IN THE MATTER OF THE APPLICATION OF
TRANSCANADA KEYSTONE PIPELINE, LP FOR A
PERMIT UNDER THE SOUTH DAKOTA ENERGY HP07-001
CONVERSION AND TRANSMISSION FACILITY ACT
TO CONSTRUCT THE KEYSTONE PIPELINE PROJECT

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Transcript of Proceedings
June 12, 2007

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BEFORE THE PUBLIC UTILITIES COMMISSION,
DUSTIN JOHNSON, CHAIRMAN (by telephone)
GARY HANSON, VICE CHAIRMAN (by telephone)
STEVE KOLBECK, COMMISSIONER

COMMISSION STAFF
Rolayne Ailts Wiest
Kara Van Bockern
Greg Rislov
Bob Knadle

PRESENT
Reed Rasmussen
Curt Hohn
Lillian Anderson
Brett Koenecke
Kent Moeckly
Jeff Rauh
Paul Lepaske
Dave Hausmann

Reported By Cheri McComsey Wittler, RPR, CRR

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PRESENT BY TELEPHONE
Jim White

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TRANSCRIPT OF PROCEEDINGS, held in the above-entitled
matter, at the Public Utilities Commission, 500 East Capitol
Avenue, Room 412, Pierre, South Dakota, on the 12th day of
June 2007, commencing at 1:30 p.m.

1 CHAIRMAN JOHNSON: This is the Ad Hoc Public Utilities
2 Commission meeting. It's Tuesday, June 12 at around 1:30 in the
3 afternoon. The meeting's being held in Room 412 of the State
4 Capitol Building. This meeting was called to address three
5 questions with regard to Docket HP07-001, and that is the
6 operation of TransCanada for the Keystone Pipeline.

7 The questions before the Commission today are: How
8 shall the Commission proceed regarding the request for public
9 release of documents filed by Keystone?

10 Secondly, shall the Commission grant invention to
11 requesting parties?

12 And, finally, third, how shall the Commission proceed
13 regarding our public hearings toward the end of the month?

14 My intention, if it's acceptable with my colleagues,
15 would be to handle each of these questions in a very separate
16 manner, deal with one completely, then move to the second, deal
17 with it completely, and move to the third. Unless there are any
18 objections, that will kind of serve as our rough agenda for the
19 questions today.

20 COMMISSIONER KOLBECK: No, sir. No objections from
21 me.

22 COMMISSIONER HANSON: That's fine, Dusty.

23 CHAIRMAN JOHNSON: Commissioner Kolbeck, we've got a
24 sign-in sheet. I think if you can let us know who's signed it,
25 that will be helpful to us on the telephone line.

1 COMMISSIONER KOLBECK: As I spoke earlier, we have
2 Mr. Curt Hohn with WEB Water, Reed Rasmussen with WEB Water,
3 Lillian Anderson, who is a landowner, Kevin Moeckly, landowner,
4 David Hausmann, South Dakota DOT, Brett Koenecke representing
5 Keystone, Jeff Rauh representing Keystone, and Paul Lepaska with
6 IWLA.

7 Those are the people who have signed in. I'll remind
8 who is sitting here if they would like to address the Commission
9 today, please grab this list and sign in.

10 Is there anyone's name who has not signed in who would
11 like to speak today?

12 CHAIRMAN JOHNSON: Great. Thanks very much,
13 Commissioner Kolbeck. I appreciate your help.

14 With that, let's proceed to the first question, and
15 that is how to deal with the documents filed confidential by
16 Keystone. We have had a request filed by staff and then earlier
17 today at least to my knowledge -- today a motion by Keystone or
18 rather some additional information filed by Keystone.

19 At this time let's go ahead and turn to staff and make
20 sure that I'm up to date with the filings that have come in
21 today.

22 Ms. Van Bockern.

23 MS. VAN BOCKERN: Thank you, Mr. Chairman. This is
24 Kara Van Bockern from staff. There were some late filings today
25 and late communication with both Keystone and staff, and I

1 believe we've come to some consensus regarding a great deal of
2 that information. And so I believe some maybe preliminary
3 motions staff would recommend on behalf of -- motions maybe the
4 Commissioners would like to make to eliminate those documents
5 we've agreed upon.

6 Staff would recommend, first of all, that those
7 documents addressing other states be removed from this filing
8 all together. If any of the interested parties question what's
9 happened in other states, certainly other State Commissions
10 would have that information and I believe it just confuses the
11 issue here in South Dakota and, in fact, the Commission does not
12 have jurisdiction over those states.

13 So staff would first recommend a preliminary motion to
14 remove non-South Dakota information from this filing. And I
15 would ask Mr. Koenecke to comment on that initial request by
16 staff.

17 MR. KOENECKE: Keystone has no objection to that and,
18 in fact, agrees with it. There's a substantial amount of
19 information in Exhibits C and D relative to other states up and
20 down the proposed route for the pipeline, and I agree that the
21 filing of that information is -- it's not helpful for our
22 purposes here that I can see. And I would think it could be
23 removed and should be done so.

24 CHAIRMAN JOHNSON: At this time it's probably
25 worthwhile to hear from any interested parties who may want to

1 comment on that.

2 Commissioner Kolbeck, I would just ask, you know,
3 presumably anybody who might have a comment would be here in
4 Pierre. So if you could just sort of chair this portion of the
5 public comment, I would appreciate it.

6 COMMISSIONER KOLBECK: Absolutely. Is there anyone in
7 the audience who would like to comment on this particular
8 motion?

9 Mr. Curt Hohn has indicated that he would.

10 MR. HOHN: Mr. Chairman, members of the Commission,
11 we'll have other comments later about why TransCanada was
12 allowed to file all of this information marked confidential in
13 the first place without any kind of public comment.

14 It seems that as an oil company coming from out of
15 country, foreign company, that they might want to give the
16 public some idea of what information could be viewed before they
17 limit what we're allowed to see. It's not full disclosure. And
18 to be a good neighbor in South Dakota, which is what they want
19 to do, I believe -- they say they want to do -- I think full
20 disclosure would be helpful.

21 The other is the information that's been filed in the
22 State of North Dakota does affect the route through
23 South Dakota. There is one alternative that was filed with the
24 U.S. State Department earlier last year that showed an alternate
25 route down the I-29 corridor. So depending on what they do in

1 North Dakota could affect us here in South Dakota as to a final
2 route.

3 The other is a high pressure oil pipeline. One of the
4 big risks from my concern and my company's perspective is the
5 effect of an oil leak from a crude oil pipeline, high pressure
6 line, at 14 to 1,700 PSI will have an aquifer. So unfortunately
7 the Oaks aquifer doesn't stop at the North Dakota line. It
8 continues on into South Dakota. And I would imagine there are
9 similar aquifers on the Nebraska border.

10 So I don't think out of hand necessarily just waiving
11 this out and taking it out of the file is appropriate.

12 TransCanada filed it in support of their application.
13 The Commission has had it on file since April. It would seem
14 that the people of South Dakota might have an opportunity to get
15 a look at it.

16 So I think that you should not just do this completely
17 out of hand and should take a look at each item and you might
18 even want to get some public comment. This information was
19 filed by this company. It was part of the original application.
20 Before its removed I think people have the right to look at it.

21 For example, are they treating landowners in
22 South Dakota differently than North Dakota or Iowa or Nebraska?
23 Why did they not locate this pipe in Iowa originally? Did they
24 run into resistance there? And what was the reason?

25 We can learn what other states are doing to address

1 this. We never had an oil pipeline, crude oil line, of this
2 size in our community, and I think limiting the information is
3 really not in the public interest. Full disclosure would be in
4 the public interest.

5 Thank you.

6 COMMISSIONER KOLBECK: Thank you. Anyone else?

7 State your name for the record, please. My name is
8 Kent Moeckly. I'm a landowner from Marshall County. I want to
9 echo the words that Curt just stated. There's an old adage now
10 you see it, now you don't. Apparently, this is going to be a
11 now you don't see it, now you don't see it.

12 If this was important enough to file for the public
13 record, then it should be important enough for everybody to view
14 this now and to consider it. This secrecy thing that's going on
15 is very upsetting. It should be upsetting to everybody in this
16 state.

17 If we can't have open Government, open dealings, then
18 we have nothing, absolutely. This flying in under the radar and
19 having this little meeting here and there, which are just little
20 dog and pony shows that don't get to the truth, don't get to the
21 facts, to me flies in the face of our country, our Government,
22 our forum.

23 If this information was filed, if TransCanada,
24 Keystone, thinks it was important enough to file, then let's get
25 it open. Let's see what it is. Let's have the public take a

1 look at this. And I would appreciate it if the Commission would
2 understand that for us too. Thank you.

3 COMMISSIONER KOLBECK: All right. Thank you. Anyone
4 else? Any comments from staff?

5 MS. VAN BOCKERN: Yes. This is Kara Van Bockern from
6 staff again. Again, I would like to make it clear that nothing
7 that the PUC has done, no decisions made by the PUC have been
8 done or ever will be done in secrecy. They'll all be very
9 public, which is why we're here today. We're here to discuss
10 this very issue in public.

11 My understanding of why the out-of-state documents
12 were filed in South Dakota really does not have anything to do
13 with their application and what the Commissioners have authority
14 and jurisdiction to study in South Dakota and how this affects
15 South Dakota as per statutory regulations.

16 So, again, I mean, I understand the concerns, and I
17 believe other states would certainly have that information
18 available for any of the concerned parties to examine and study
19 in other states.

20 I just will echo my recommendation that South Dakota
21 Commissioners have jurisdiction to examine those documents as
22 they relate to our state. And my recommendation remains.

23 COMMISSIONER KOLBECK: Mr. Koenecke.

24 MR. KOENECKE: I have not changed my position,
25 Commissioners. The documents we're talking about relate to

1 archaeological and wetlands and threatened and endangered
2 species in other states. They're simply not part of the public
3 discussion here in South Dakota, no matter what the proposed
4 Interveners might say. It won't ultimately have a bearing on
5 how this thing's decided.

6 I'm not going to pound the table one way or the other.
7 I really don't care. But I don't know that we're helping
8 provide the public with useful information by flooding them with
9 documents related to other states and specific concerns to those
10 other states. If people disagree with me, they're welcome to do
11 that. I don't see that myself.

12 COMMISSIONER KOLBECK: Any other staff comment?

13 CHAIRMAN JOHNSON: Commissioner Kolbeck, are there any
14 other public comments from folks in the public?

15 COMMISSIONER KOLBECK: Nope. I don't believe so.

16 CHAIRMAN JOHNSON: Then at this time I would like to
17 flush out a few of the issues with some Commissioner questions,
18 if that's appropriate. The question was raised, Mr. Koenecke,
19 about the fact that these documents were filed, these other
20 state documents.

21 Why were they filed with the South Dakota PUC?

22 MR. KOENECKE: They were part of the entire filing
23 which was filed with the State Department, and it's my
24 understanding that in order to be inclusive we had filed those
25 documents. They're extensive in nature and very state and

1 location specific. And upon review subsequent to staff's motion
2 being filed last week, I think the thinking is between
3 apparently staff who made the request and TransCanada is I don't
4 know that this is helping the discourse in South Dakota by
5 spreading it out that far.

6 You're free to disagree with me. You've done it in
7 the past and will in the future. I don't see how it helps.
8 Having seen the stuff myself, I don't see it.

9 CHAIRMAN JOHNSON: Mr. Koenecke, I understand the
10 argument that these documents are not helpful to the
11 South Dakota Commission. I understand the arguments they
12 wouldn't be helpful to South Dakotans.

13 How much information in those filings, though, would
14 TransCanada view as confidential? Not helpful perhaps but how
15 about confidential?

16 MR. KOENECKE: A substantial portion of it relates to
17 the three major public interest confidentiality thrusts covered
18 in my letter filed an hour or so ago, which I might add we
19 brought copies of that along for dissemination to the people in
20 the audience if they'd like to take a look at it.

21 But we're talking about hundreds of pages of
22 documentation relating to wetlands, which we think can be
23 released, to endangered and threatened species sites that we
24 don't think can or should be released, and in some limited cases
25 to the high consequence areas along the pipeline as found in my

1 letter.

2 As I said, Commissioner, I'm not going to pound the
3 table one way or the other. I don't think it's helpful. If
4 someone else disagrees with me, I'm not going to pound the table
5 and argue vehemently against that. That's simply our position.

6 CHAIRMAN JOHNSON: Okay. Thanks. I have a question
7 for Mr. Hohn. And I understand you're not a party to the case
8 yet, Mr. Hohn, but if you'd be willing to answer a question.
9 You noted -- you mentioned that it would be helpful for folks in
10 South Dakota to know what other states are doing.

11 And the documents filed by TransCanada would not give
12 us an indication what other states are doing. You know, for
13 that to be the case we'd need to monitor their regulatory
14 processes.

15 Given that, do you think this information really needs
16 to be a part of South Dakota record?

17 MR. HOHN: Mr. Chairman, yes, I think it should for a
18 number of reasons. One of them is effects on wetlands. For
19 example, if you're a hunter or fisherman, particularly a hunter,
20 the migratory issue is important and how this oil company,
21 particularly this Canadian oil company, is going to treat
22 wetlands as they cross them would affect you if you're a
23 South Dakota hunter, duck and goose.

24 Also I think it's important to know, for example, why
25 is it that the -- it might be important for landowners to know

1 why is it that TransCanada is avoiding federal fish and wildlife
2 lands and moving the pipe on to private farmland? Is there a
3 reason for that, and is that a pattern they follow all across
4 the length of the project?

5 This is a project that has to be consistent state to
6 state. And South Dakota would want to be treated the same. The
7 landowners and citizens here will be treated the same as other
8 areas. There is nothing confidential about wetlands. If you
9 flew the thing, you can see them.

10 It's not like we're hiding some best fishing site,
11 favorite fishing site. I mean, this is public information that
12 was filed. It is significant. And if you're someone who's
13 concerned in general about the pipeline, an oil line, crude oil
14 line, through the middle of the Midwest, knowing how many
15 wetlands are affected might be of interest to someone.

16 It's the totality of the project, how it affects those
17 who live here in the state and how it affects us in general. So
18 it's -- I think you can balance -- if you can see what they're
19 doing in other states, you can balance what's happening here and
20 is it being handled the same way?

21 So I didn't file it. They filed it initially. It was
22 part of the record. It seems like it ought to be opened. Let
23 the public decide if they're interested in what TransCanada's
24 doing in Kansas or North Dakota. But it would open the record
25 and make it available to the public. It would be a great way to

1 start this process.

2 CHAIRMAN JOHNSON: Mr. Hohn, I think there's some
3 validity to your comments about, you know, comparing what
4 they're doing in South Dakota with what they're doing in other
5 states. But isn't the -- isn't there the possibility that
6 allowing this other state information in at this point would be
7 actually doing a disservice because it might give people the
8 idea that's what's really going on in other states when, in
9 fact, if we were going to check out the state regulatory
10 websites, we might find out, in fact, there's been a substantial
11 change in the pipeline or route across another state or maybe
12 they've done some initial mitigation because of what another
13 state's requested?

14 To get really accurate information should we be
15 looking to those other state commissions as opposed to snapshot
16 in time filings with the South Dakota PUC?

17 MR. HOHN: I think that really everything is a
18 snapshot in time. Each of the states they'll file with various
19 regulatory agencies, and those states will process them as they
20 see fit. But nobody has the time -- no public has the time to
21 travel to various states and view how they're handling it in
22 those areas.

23 For example, the little bit of information you read in
24 the news media they're moving the pipeline to avoid drain tile
25 in irrigated areas. Why is that?

1 Well, if there's a leak, the drain tile will take the
2 oil right to the nearest water way. That's interesting. Why is
3 that such a concern in Nebraska but we shouldn't worry about it
4 here?

5 I think that the information they have filed is not --
6 it's not going to -- it's not going to hurt TransCanada if he's
7 saying they filed it with the United States State Department.
8 It's just not current now. So whatever they filed with
9 South Dakota would seem like residents should have a chance to
10 look at it to make their own decision. And it may not be
11 helpful or necessary, but it was and is part of the record so I
12 don't see any good reason to eliminate it.

13 It's hard to say why Transcontinental (sic) would want
14 to eliminate it unless they see it as a disadvantage for them in
15 terms of how they proceed with right-of-way or permit approvals.
16 I just think it's part of the record now. It ought to be
17 complete. There should be a full disclosure, should be open,
18 made available, and let the public and the taxpayers decide what
19 they think of it. And then leave it at that.

20 There should be nothing in that record that is secret
21 or shouldn't be available.

22 CHAIRMAN JOHNSON: Thanks, Mr. Hohn. Other
23 Commissioner questions, Commissioner Hanson, Commissioner
24 Kolbeck?

25 COMMISSIONER HANSON: Hello. This is Commissioner

1 Hanson. I do have some questions.

2 CHAIRMAN JOHNSON: Go ahead. Proceed.

3 COMMISSIONER HANSON: Can you hear me all right?

4 COMMISSIONER KOLBECK: Yeah. We can hear you.

5 COMMISSIONER HANSON: Thank you. This question is for
6 Mr. Koenecke or for Ms. Van Bockern. I'm curious to know if
7 these items have been filed in other states?

8 For instance, I would assume that the EISs that are
9 pertinent to North Dakota have been filed in North Dakota. Is
10 that the case?

11 MR. KOENECKE: Commissioner, this is Brett Koenecke.
12 Thanks for the question. I have not seen the other states'
13 filings and can't speak to that. All I can say is that the
14 filing that was prepared here in South Dakota was South Dakota
15 specific and based on the statutes we have.

16 Jim White for TransCanada is on the line, and he might
17 be able to further shed some light on that question. But I
18 can't speak to it myself.

19 MR. WHITE: Commissioner, would you like me to address
20 that?

21 COMMISSIONER HANSON: If you would, thank you.

22 MR. WHITE: My name is Jim White. I'm with the
23 Sidley, Austin law firm, and I oversee the federal and state
24 permitting with the project.

25 With specific regard to North Dakota, I would say some

1 of the information that we're discussing here today has been
2 filed in North Dakota. Not necessarily all of it. But I would
3 note that all of the information we're talking about today has
4 been filed with the U.S. State Department, and the U.S. State
5 Department has a website on which they've posted a large portion
6 of this information. I won't say all of it, but a significant
7 amount of the multistate information is currently posted on the
8 Department of State's website.

9 COMMISSIONER HANSON: So we have filings that pertain
10 to North Dakota, and we have filings for the entire project that
11 have been filed with U.S. State Department; is that correct?

12 MR. WHITE: That's correct.

13 COMMISSIONER HANSON: And if the Interveners wish to,
14 they can access that information and then provide that as part
15 of their testimony, if they wish, or introduce it.

16 And, of course, this isn't a question for Mr. White.
17 It's for more Ms. Van Bockern or Mr. Smith. It's my
18 understanding the Interveners may access any of that information
19 and may introduce it if they wish to the Commission during the
20 hearing process for our consideration. Is that correct?

21 MS. VAN BOCKERN: This is Kara Van Bockern for staff.
22 I agree with that. I believe if an Intervener has found
23 information they believe pertinent, relevant, important for the
24 Commissioners to consider when making their decision, it
25 certainly could be presented during the hearing process in which

1 we're just -- we're just beginning the process. And ultimately
2 I think that important information could be shown.

3 MR. KOENECKE: Commissioner, Brett Koenecke here. If
4 I could just take a minute. Past that, Commissioner, and those
5 of us who are familiar with PUC practice know that parties of
6 this case can observe information pursuant to the Commission's
7 protective order or confidentiality agreement among the parties.

8 So really I don't -- I think there are a number of
9 ways in which this information can be accessed, and whether the
10 South Dakota PUC website becomes the repository for all of it, I
11 guess you'll have to determine.

12 COMMISSIONER HANSON: Thank you, Mr. Koenecke. That
13 was going to be my second avenue of questioning -- I appreciate
14 Mr. Koenecke cutting to the quick on it -- is that the
15 Interveners to these hearings -- the Interveners will be able to
16 access certain information and introduce it if they wish.

17 And I think that it's important in this particular
18 discussion to note that so that people who are in the audience
19 now who have not been Interveners in these processes to know two
20 things: That, first of all, they have that access. And,
21 secondly, that the Public Utilities Commission has staff that
22 are advocates for the citizens with whom we as the Commissioners
23 are not allowed to communicate with because of the ex parte
24 rules, except at the actual hearing.

25 And so we have always -- at least during the period

1 that I have been with the Public Utilities Commission, we have
2 provided that access to the public so they could work with
3 knowledgeable, experienced individuals who are schooled in law
4 and schooled in the processes of the PUC so that they are helped
5 through that process.

6 And we don't provide free legal service to everyone.
7 However, we are -- we do have people that are advocates for the
8 citizens and provide the service to the citizens at no cost. So
9 I would say they at least access and work with those folks
10 during this process because it will be very beneficial.

11 COMMISSIONER KOLBECK: Commissioner Hanson?

12 COMMISSIONER HANSON: Yes.

13 COMMISSIONER KOLBECK: We're not sure if you have a
14 bad line. We need you to speak up. I don't think you're coming
15 through on the web is what we've been told.

16 COMMISSIONER HANSON: Thank you. I'm getting sort of
17 a double feedback actually. Every word I say I hear it twice
18 back at different times. So it's rather difficult to carry on a
19 conversation. And I will attempt to speak louder.

20 Can you hear me better now?

21 COMMISSIONER KOLBECK: Yeah. That helps. We just
22 want to make sure that it comes over to the web. What you were
23 doing just right then, it seemed to help.

24 COMMISSIONER HANSON: Thank you. That's all I have to
25 say. Thank you, Mr. Chairman.

1 CHAIRMAN JOHNSON: Certainly. Any other Commissioner
2 questions?

3 COMMISSIONER KOLBECK: Yes, Commissioner Johnson, I
4 have one question here. And I'm not sure. I think,
5 Mr. Koenecke, do we know that these are available somewhere
6 else?

7 I know that Mr. White had stated some but not all, and
8 you had stated some but not all. So is this the only place
9 where it's totally available is in South Dakota?

10 MR. KOENECKE: You know, it might be helpful,
11 Commissioner, in answering that question to address our filing
12 made earlier today.

13 We filed a document today expressing our intention
14 to -- we were talking about Exhibit C and D contained on one DVD
15 filed May 31. And we've got copies of the filing behind me.
16 Jeff Rauh has them.

17 COMMISSIONER KOLBECK: Could you pass those out,
18 please.

19 MR. RAUH: Yes, sir.

20 MR. KOENECKE: We think that the Exhibits C and D was
21 marked confidential right on the face of it and what can be
22 characterized as a zealous attempt to safeguard the public's
23 interest in keeping other information confidential.

24 That confidential information is high consequence area
25 maps relative to pipelines and to places that they cross for

1 security concerns from the Federal Department of Transportation,
2 the National Pipeline Mapping System, cultural resource location
3 information, very specific information relative to cultural
4 resources, which is commonly held confidential according to the
5 State Office of Historic Preservation, the Department of State,
6 and our agreements with the U.S. Fish and Wildlife Service
7 regarding our surveys of the location of threatened and
8 endangered species.

9 We have I think attempted to safeguard what other
10 public bodies have declared to be the public interest in
11 maintaining confidentiality with respect to those locations, and
12 we did it very, very zealously. And upon review we have come up
13 with a number of documents contained in the filing which we have
14 made today which we think can be released as of today and we
15 have committed to redacting or otherwise cleaning up some of the
16 other large computer files so that the specific information
17 required, we think by these federal agencies to be safeguarded,
18 remains so.

19 There is one question related to a pump station's line
20 list which we'd ask the Commission to take special attention to
21 before deciding that should be public. But I would think the
22 bulk of our efforts today would result in almost all of the
23 information that was previously marked confidential being
24 released to the public.

25 That said, I think what we'd end up with at the end of

1 that process is a twinning up of what's been marked confidential
2 here with what's marked confidential at that other source. To
3 be specific to your question, Commissioner, that's what I think
4 would happen if we followed that process.

5 We expect and intend to do that, and we've obviously
6 made a filing saying we're going to do that. And so I think
7 that helps give context to your question. And the specific
8 answer is we'll merge those two such that the information is the
9 same.

10 With respect to the endangered species in other states
11 that we don't have here, you know, I can't say. I haven't seen
12 what's filed elsewhere on that.

13 COMMISSIONER KOLBECK: Okay. Thank you.

14 CHAIRMAN JOHNSON: Any other questions, Commissioner
15 Kolbeck?

16 COMMISSIONER KOLBECK: I think Mr. Hohn would like to
17 say one last thing.

18 CHAIRMAN JOHNSON: Go ahead.

19 MR. HOHN: Mr. Chairman, members of the Commission, I
20 have last fall looked at the information on file with the U.S.
21 State Department. There are very large files. And our office
22 has a -- you know, a midsized server with the capability of
23 taking large documents.

24 It's not easy to access that file. It's in
25 Washington, D.C. and the State Department. You can't walk

1 across the street and go in and look at the paper file.

2 I talked to a landowner yesterday, a young farmer near
3 Huron, who told me that he tried to access a map that is
4 available now on your PUC website. He started it at 8 p.m., and
5 when he got up at breakfast it was open. And he said if I would
6 have saved it, it would have completely destroyed my computer.

7 While all of us use data and rely on data and as the
8 PUC does, you've got a great site, website, not everybody has a
9 computer. A lot of these landowners are elderly. The record --
10 you need to have a paper record as well as data. And it can't
11 be in Washington, D.C. It's got to be here.

12 TransCanada filed these documents. I don't know if
13 they're all the same documents that were filed in Washington.
14 This hearing is in South Dakota. This is where I and others who
15 are concerned about this live. We'd like to access them in
16 South Dakota and not wonder whether TransCanada has released
17 everything or part of it or decided what we're going to see.

18 Looking down the list, this June 12 letter which I
19 just saw a moment ago, what it really boils down to is
20 TransCanada's going to decide what South Dakota sees.
21 TransCanada's going to decide what South Dakota sees. And I
22 don't think that's right. I think that as elected officials --
23 and I know that you know the public, trust the public. They're
24 going to look at this information and make a judgment.

25 Nobody's interested in knowing where the Bald Eagles

1 are located to go find one. It's -- the historic cultural
2 preservation information, I deal with that on my water system.
3 If I build a pipeline extension, State Historic Preservation
4 walks the site, determines if there's anything historical there.

5 Those reports don't tell you where to find the
6 artifacts. They tell you that the report was done and that
7 maybe having the public look at it might help to see if anything
8 was missed.

9 So I think by excluding, it's the wrong step right off
10 the bat day one this restriction. And it's an attempt, I think,
11 by TransCanada to limit the information and limit the view.

12 And they -- frankly, the so-called public meetings
13 they've had in the areas, the ones I've attended were not public
14 meetings. They handled people. And they're handling you if you
15 agree to all of this. You need to open the documents, let them
16 see the light of day. Let people look at them.

17 Frankly, there's probably nothing there that's going
18 to shock anyone. It is the full file. Let people see it. Let
19 the 60 people that have filed and requested to be parties of
20 record see it and any others that might have an interest. Make
21 it available here in your office in Pierre, on the Internet, and
22 also in the county auditor offices, as I have stated, and then
23 let's move on with the hearing.

24 I don't think it's in anybody's interest, especially
25 TransCanada's, to limit. This is a maneuver that isn't really

1 in the public interest. Looking down the list, it's several
2 pages long, deciding what is and isn't released, I mean, I just
3 find that offensive. It's not their choice, I don't think.
4 Thank you for the time.

5 CHAIRMAN JOHNSON: Yes. Thank you, Mr. Hohn. And I
6 just might mention, you know, we'd had a couple of recent
7 speakers in the last 10 minutes I think really address some of
8 these broader issues. We are not going to be able to get our
9 work done today if we cannot laser in on each question that pops
10 up.

11 These are all important. They all deserve discussion.
12 When we resolve one we can move on to the next. But the
13 discussion at hand right now is the joint motion by staff and
14 the Applicant to remove the other state information from the
15 filing. That's what we're discussing. I'd ask all comments be
16 directed toward that.

17 Unless there are any other Commissioner questions, at
18 this point I would look to our General Counsel to get counsel's
19 take on this question.

20 MR. SMITH: Thank you, Mr. Chairman. I think in one
21 respect definitely I totally agree with Curt Hohn that with
22 respect to that alternative pipeline route, you know -- I forget
23 what it's called now. Well, it's the alternative that cuts off
24 I think to try to avoid maybe some of the wetlands and wildlife
25 areas.

1 CHAIRMAN JOHNSON: You're talking about another
2 state's filing?

3 MR. SMITH: No. It's filed here. But some of that
4 information would relate to another state. I mean, my
5 assumption is, for example, just to clarify, that alternative
6 route filing would stay in even under the proposal to remove
7 out-of-state documents?

8 MR. KOENECKE: Are you asking me?

9 MR. SMITH: Yes, I am.

10 MR. KOENECKE: Yes, I believe so. Essentially what
11 we're talking about here, Commission counsel, is I don't think
12 we need to have -- and really do feel free to disagree with me.
13 We don't need to have the multiple hundreds of pages on the
14 Indiana Bat locations in Missouri and Kansas on your server.
15 You can disagree with me. I'm serious.

16 I disagree with almost everything Curt Hohn just said
17 about TransCanada trying to limit the information. I'm telling
18 you I'm here to give you everything except something that the
19 Federal or State Government tells you I can't. I'm not making
20 that up. That's those agencies doing that.

21 That's what we're talking about, Mr. Smith. It's not
22 about the alternative route if we're talking about the Hecla
23 Wildlife Service Route. No. That's very pertinent to the
24 discussion here in South Dakota. I agree.

25 MR. SMITH: And with respect to North Dakota

1 information related to hydrologic effects, that would seem to me
2 to have direct relevance here potentially.

3 MR. KOENECKE: I don't think there's any information
4 related to that in Exhibits C and D.

5 MR. SMITH: Well, I didn't see it either. I mean,
6 that isn't what I see in there. The only thing -- I mean,
7 honestly I understand Curt's point. I don't really care. I
8 think the -- if I understood the request, this particular
9 suggestion, it was more as a matter of just cleaning things up
10 so we don't have that enormous amount of utterly irrelevant
11 stuff in there.

12 I certainly don't want to look at it. I'm not going
13 to look at what's in there related to the Illinois biological
14 studies because it's not relevant to anything we can decide here
15 or do anything about.

16 On the other hand, you know, I -- other than just
17 plainly just taking up space and confusing things and jumbling
18 it up, I don't know that it hurts if people out there are going
19 to believe some conspiracy is going on by removing it from the
20 website and from our files. I don't know that it's worth that.

21 It may be better just to leave it there and avoid the
22 accusation that we're hiding things from the public, which to me
23 with respect to Illinois and all of that is utterly nonsense,
24 but it avoids that argument that can be made. And why take that
25 risk, I guess is my point.

1 It's been filed. You know, it just opens up the
2 company and the Commission to an accusation of covering
3 something up. And I -- you know, I guess for me it's in there
4 now. Honestly, when I first looked at it I'm like what the heck
5 are you guys doing filing this stuff from Illinois and all of
6 that. But now it's in there.

7 And I think as we go along, frankly, as the process
8 goes along we'll very rapidly -- I think everybody that's
9 involved in this is very rapidly going to realize it's got
10 nothing to do with South Dakota and what we're talking about.

11 But, you know, again that's kind of a little bit of a
12 personal opinion there.

13 Some of the information I do agree, though, I think
14 with respect to pipeline location information regarding
15 North Dakota because that is as far as I can see -- and, again,
16 Curt's in the water business so maybe he knows what I don't
17 know. But I was the head of DENR for a long time. So I will
18 tell you that when you're up gradient in a watershed the
19 locations in North Dakota do -- to me they do have potential
20 direct effects down here.

21 I don't honestly think -- I don't know whether there's
22 anything we can do jurisdictionally about it, but there's
23 certainly a potential for locational effects in North Dakota --
24 at least impacts that might result here from what happens in
25 North Dakota.

1 CHAIRMAN JOHNSON: Thanks very much, Mr. Smith.
2 Appreciate it. Any other Commissioner advisors have any
3 comments?

4 COMMISSIONER KOLBECK: I'm sorry. Mr. Koenecke would
5 like to respond, Commissioner Johnson.

6 MR. KOENECKE: Thank you, Commissioner Johnson. I'd
7 just like to briefly say all of this information can be made
8 available to Interveners under a protective order or a
9 confidentiality agreement. So there are mechanisms for this
10 stuff to be made available to people who have chosen to
11 intervene which are readily apparent. Thank you.

12 MR. SMITH: And I wasn't addressing that
13 confidentiality issue. I'm just addressing the out-of-state
14 filing business right now. We'll turn to that confidentiality
15 next.

16 CHAIRMAN JOHNSON: If there are no other Commissioner
17 questions, I think we can progress to Commissioner comments and
18 perhaps action.

19 I would just note that I do think having all of that
20 information out there is confusing. I think it's
21 counterproductive, and I think in some instances it could do a
22 disservice to people by having them believe that's actually
23 what's going on in Illinois or Nebraska when other information
24 in some cases that might be readily available might give them a
25 clear understanding of exactly what's going on in that state.

1 With that being said, TransCanada did file the
2 information. And until we can ascertain for certain that this
3 information is readily available in other places like the State
4 Department website or other state regulatory sites, I do think
5 it probably better to sort of err on the side of having it
6 available. And so I would be inclined to deny the joint motion.

7 Other Commissioner comments?

8 COMMISSIONER HANSON: If I may, this is Commissioner
9 Hanson. I agree wholeheartedly with the comments that were made
10 by counsel Smith, and I appreciate the follow-up, Commissioner
11 Johnson, Chairman Johnson, that you made.

12 I do strongly believe that certainly if a person was
13 having challenges downloading one map showing the State of South
14 Dakota -- I downloaded the same map. It took a period of time
15 even on a fast, sophisticated computer. I can't imagine how
16 frustrating it would be for someone to wade through all of the
17 other states' information as well.

18 I think that if we do allow this information, which I
19 am inclined to do, on our server, then we need to have it
20 labeled as plainly as we can which state it pertains to so that
21 people will be able to access South Dakota if they wish
22 South Dakota and it will not be under headings such as
23 environmental information.

24 I know it can be extremely difficult when you're just
25 looking at the Docket numbers. And we need to make it as easy

1 for people to find information as we possibly can. So I support
2 what Chairman Johnson has stated. We certainly don't want
3 people to think for a second that we are attempting to work to
4 hide information from them.

5 We do want this to be as open a process as it is
6 legally possible to do without making it cumbersome for the --
7 for any of the parties. So with that, I will conclude my
8 comments and look forward to a motion.

9 COMMISSIONER KOLBECK: I agree. It's there now.
10 We'll just leave it.

11 CHAIRMAN JOHNSON: With that, I would go ahead and
12 move to deny the joint motion, and a second is not required.

13 Any further discussion on the motion?

14 Hearing none, we'd proceed to vote.

15 Kolbeck.

16 COMMISSIONER KOLBECK: Aye.

17 CHAIRMAN JOHNSON: Hanson.

18 COMMISSIONER HANSON: Aye.

19 CHAIRMAN JOHNSON: Johnson votes aye. Motion carries
20 3-0.

21 With that, I would again note that we have had a
22 filing by the Applicant this morning -- or sometime today that
23 indicated some documents that they were willing to have released
24 from confidential treatment.

25 I would look to Mr. Koenecke to see if he has any

1 comments other than what he submitted in writing with regard to
2 that issue.

3 MR. KOENECKE: Thank you, Commissioner. Perhaps I'll
4 use the letter as a template for those comments. I'm not sure
5 how many people listening in or sitting in the audience have had
6 a chance to look at them.

7 But, in any event, we filed I think on April 27 an
8 application which was fairly voluminous paperwise, and along
9 with that we filed a DVD containing literally thousands of pages
10 of information that we anticipated would be uploaded to the
11 Commission website briefly thereafter.

12 And, of course, that didn't happen due to limitations
13 of the either hardware or software. I can't say that I know
14 which it was.

15 But as the Commission staff and I well know, we worked
16 over the remainder of May to put documents in place and carve
17 them up so they would be more usable and able to be uploaded to
18 the Commission website, and that resulted in the provision of
19 the DVD labeled Exhibits C and D, which was labeled confidential
20 on its face and a number of the documents contained therein
21 labeled confidential as well.

22 So let's not lose sight of the fact that the
23 application and Exhibits A and B which contain a large amount of
24 information have never been labeled confidential either by
25 mistake or otherwise. That's been TransCanada's intention all

1 along.

2 The documents on Exhibits C and D are in almost
3 complete measure related to matters which I have said have been
4 deemed otherwise by other units of either federal or state
5 Government to be confidential in the public interest. It's not
6 in TransCanada's interest to keep the locations where the
7 Topeka Shiner has been found confidential. That's somebody
8 else's worry. U.S. Fish and Wildlife Service.

9 It's not in our interest specifically to keep the
10 archaeological sites that have been found up and down the
11 pipeline route confidential. That's the public's interest and
12 has been deemed so by somebody else.

13 And in respecting that we were very zealous in putting
14 together Exhibits C and D, which were ultimately uploaded to the
15 Commission website less than two weeks ago.

16 We have undergone since staff's motion was filed a
17 very rigorous examination of those documents, and I have filed
18 my attachment to my letter, which is my own assessment given the
19 parameters as I understand them to be of the files which can be
20 immediately released by my client, TransCanada, right here today
21 and now and which are on the Commission's website.

22 I will state from the record those files -- the names
23 of them came right off of the DVD and don't square up with the
24 files as they're listed on the Commission's website, and I
25 cannot explain why that is. But I took them off the DVD which

1 is the filing as I know it to be.

2 Those larger files, which if you're looking at my
3 attachment Exhibit C under 2-September '06, the first file,
4 Biological 09-15-06 contains within it some confidential
5 information pursuant to those Federal and State Government
6 parameters which I previously discussed.

7 And we are committing to the public and to the
8 Commission and to the Interveners that we are going to undergo a
9 further rigorous examination of that specific document and any
10 other which I have said in my documents stay confidential to
11 determine what exactly the single page within the perhaps
12 hundreds that make up that file or pages which have to remain
13 confidential pursuant to federal law or state law or agreement
14 with the agencies that we've discussed. And we're able and
15 willing to talk about those matters.

16 But I just want to make abundantly clear that we're
17 here today to commit to release an extraordinary amount of
18 information off of Exhibits C and D and to go past that in the
19 next few days to finish up that job and make sure that these
20 documents are available for public inspection and use as the
21 Commission decides.

22 CHAIRMAN JOHNSON: Thanks, Mr. Koenecke. At this time
23 we would look toward staff, their comments.

24 MS. VAN BOCKERN: Thank you Mr. Commissioner. Kara
25 Van Bockern for staff. First, staff, of course, does not object

1 to all of the information that TransCanada would release to
2 public inspection.

3 Secondly, regarding the cultural and biological
4 information, that possibly needs to be redacted. Staff doesn't
5 see any harm in those documents remaining confidential until
6 such a time that TransCanada can go through and redact
7 particular locations, particular sites, those items they must
8 protect based upon other agency order or request.

9 Staff would recommend a motion to that same extent.

10 CHAIRMAN JOHNSON: Thanks very much. At this time
11 perhaps let's flush out the issues a little bit better with some
12 Commissioner questions, and I think we can take some public
13 comments once we square these issues away.

14 Mr. Koenecke, Chairman Johnson here. You did notice
15 that you are responding -- you want to keep some of this
16 information confidential because of promises made to other
17 entities of Government.

18 Is there any way that the Commission could verify
19 that, or is there --

20 MR. KOENECKE: I've been seeking to put together a
21 listing of those documents or other pieces of evidence. I'm not
22 sure what they would be. I didn't make the agreements and don't
23 know what they are. We certainly have references to state law
24 or state law as it's intended to be on July 1. And so we do
25 have some of that, but I don't think we have a complete listing

1 of that.

2 I'll ask Jim White if he can add anything to that
3 answer to that question.

4 MR. WHITE: Sure. Sorry about the feedback. One
5 suggestion, Mr. Chairman, might be we can provide contacts at
6 the relevant agencies.

7 For example, with respect to the high consequence area
8 material, we can provide a contact at the US DOT, Pipeline
9 Hazardous Material Safety Administration, who I believe could
10 and would confirm that the mapping information is to remain
11 confidential.

12 With respect to cultural resource location
13 information, we could provide a contact at the Advisory Council
14 on Historic Preservation, who I believe would confirm the need
15 to keep site locations confidential.

16 And with respect to location of threatened and
17 endangered species, I believe a contact at the U.S. Fish and
18 Wildlife Service could and would confirm the need to keep
19 locations of those species and habitat confidential.

20 CHAIRMAN JOHNSON: Thank you very much. It occurs to
21 me that as a preliminary matter before diving in to all of
22 the -- those documents TransCanada wants to continue to keep
23 confidential, perhaps we should just focus on those documents
24 that at this time both staff and TransCanada agree could be
25 released from confidential treatment.

1 Let's just focus on the low-hanging fruit, that which
2 there appears to be some consensus developing.

3 At this time, Commissioners Hanson and Kolbeck, if
4 it's all right with you, perhaps we can ask if there's any
5 public comment that would oppose making those documents --
6 releasing them for confidentiality. Again just focusing on
7 those documents that would be released according to staff and
8 the Applicants.

9 COMMISSIONER KOLBECK: Anyone in the audience that
10 opposes that that would like to speak?

11 I see none.

12 MR. KOENECKE: I don't think that came through,
13 Commissioner.

14 COMMISSIONER KOLBECK: Commissioner Johnson, I asked
15 if anyone would like to speak in opposition of that, and there
16 was no one.

17 CHAIRMAN JOHNSON: Great. Thanks very much,
18 Commissioner.

19 COMMISSIONER KOLBECK: You oppose?

20 MR. HOHN: I just have one comment. It relates to
21 opposing. When you look at this gentleman's letter we just got
22 a few minutes ago -- my name is Curt Hohn -- we're looking at
23 abbreviations. It would help if we had your website printout
24 that shows what is in the file marked confidential or not.

25 Because under January 4, '07, Biological Consultants,

1 I guess it's under Exhibit C, it says, Alternative State
2 Confidential. I think you really need to look closely at what
3 is being kept out by approving this. I feel all of it ought to
4 be open and made available. Just remove the confidential stamp.
5 But they are leaving things in that they're going to block.

6 Landowner information should be available.
7 Alternatives should be available. Pipeline Risk Assessment,
8 Emergency Response Plans should have never been blocked in the
9 first place because that's the only way to tell if, you know,
10 we're going to be affected.

11 But I think you want to look at every one of those
12 that they've said they're going to continue to make
13 confidential. Again, why -- it is a low-hanging fruit,
14 Mr. Chairman, but why not all of it? Why not the whole tree and
15 it would simplify this process?

16 They have no letters from any federal agency that say,
17 please, do not disclose this. Until you have those letters in
18 hand, it seems like this is premature. They should release
19 everything. And there are things in this letter -- there's,
20 Initial Summary TOC, FWS. I mean, some of these things I'm not
21 even sure what they mean.

22 So it seems like rather than deal with it at the time,
23 why not deal with the whole tree. Why not release the whole
24 tree and study it and look at it and verify what is going to be
25 left blocked.

1 CHAIRMAN JOHNSON: Mr. Hohn, thanks for your comments.
2 I'll give some explanation as to why I suggested proceeding the
3 way that I did. I think this does make it far more simple.
4 Rather than try to talk about, you know, hundreds of thousands
5 of pages all at once, let's narrow the focus to exactly those
6 documents that you addressed, the documents that TransCanada is
7 still requesting confidential treatment of. That's what we all
8 want to talk about.

9 So let's remove all of the extraneous possibilities.
10 Let's take those off the table. Let's make sure that today
11 those documents can be made available to the public regardless
12 of whatever else we might decide today.

13 But certainly if Commissioner Hanson or Commissioner
14 Kolbeck believe there are efficiencies to be gained with another
15 approach, I'm certainly happy to pursue another approach.

16 COMMISSIONER KOLBECK: No, Commissioner. I think
17 that's the correct way to go about it.

18 COMMISSIONER HANSON: I appreciate your comments.
19 Yes, I agree. This is Commissioner Hanson.

20 CHAIRMAN JOHNSON: A question for Ms. Van Bockern.
21 You know, I do -- and I realize that there were some time
22 pressures on all parties to the case in getting ready for
23 today's meeting. But that being said, you know, I do share some
24 of the concerns that have been mentioned about not all the
25 documents matching up.

1 Does Commission staff feel confident that if the
2 Commission were to vote on a motion at this time to release all
3 of those consensus documents, that we would be able to
4 relatively quickly determine what Mr. Koenecke is referring to
5 in his letter and how that matches up with the Commission
6 website?

7 MS. VAN BOCKERN: This is Kara for staff. I would
8 need to communicate more with those that manage our website and
9 the Capitol Technology Center. However, no, I don't feel
10 confident at this point that those documents would be easily
11 accessible and we could find them quickly.

12 I think it would take tomorrow for you here in the
13 office to identify those documents and make them easy, obvious,
14 apparent to all of those visiting our website.

15 But, I mean, if the Commissioners so vote, it will be
16 done tomorrow.

17 CHAIRMAN JOHNSON: Thanks very much, Ms. Van Bockern.
18 You know, I am -- my pause is because I'm trying to figure out
19 exactly how to proceed. Because I do think there are some
20 complications because we are dealing with, you know, two
21 different formats here about what we're naming documents.

22 MS. VAN BOCKERN: Staff does have a suggestion,
23 Commissioner, if I may speak.

24 CHAIRMAN JOHNSON: Oh, please.

25 MS. VAN BOCKERN: I definitely agree with your -- the

1 first direction you were taking this and that staff would
2 certainly recommend that we just have a vote and get all of that
3 that TransCanada is consenting to, they agree it's public.
4 Let's just first vote and remove all of the question regarding
5 those document, and let's get them out there.

6 And with such a vote Commission staff would get on
7 that immediately, and we would have all of those documents
8 available as quickly as possible.

9 I think the second question then is the information
10 that is questionable -- there may be some redaction necessary.
11 With some days' time, staff would be able to contact those
12 various Government agencies, staff would be able to research
13 TransCanada's assertion, and TransCanada has committed to
14 redacting those document in such a way that many of them could
15 possibly be out there for the public.

16 And staff would certainly undertake that research with
17 vigor and get that done quickly. So that would be my
18 recommendation.

19 I do not think that there is any harm to those
20 interested parties in these documents remaining confidential for
21 those days' time it would take to do such research. I don't
22 think there's harm in that. These document, as Mr. Koenecke has
23 expressed, address cultural endangered species type of evidence
24 and type of documents.

25 I don't believe that these documents remaining

1 confidential for some days' time would affect the landowners and
2 interested parties' ability to represent themselves at the
3 upcoming June public meetings.

4 CHAIRMAN JOHNSON: Ms. Van Bockern, any concerns -- if
5 the Commission were to act as you outlined, any concerns that
6 staff may not be able to match up with TransCanada what they're
7 calling a document, what we're calling a document?

8 MS. VAN BOCKERN: No. I do not have -- I'm not
9 concerned about that in that we have a disk we've been working
10 off of in our recent communications, TransCanada and staff. We
11 have a disk so we can look at those same documents.

12 If need be, we can redesign that part of our website
13 if need be, to make it very clear we can redesign how we put
14 that information out to the public.

15 As has already been expressed, Exhibit A and B are no
16 question that's out there. That can stay there. We don't need
17 to mess with that. We're looking at simply two exhibits, C and
18 D and Mr. Koenecke and TransCanada and staff are working off a
19 CD in our recent communications and I believe we can get that up
20 on our website.

21 First of all, those documents that can possibly be
22 released today we can get those out, identify those, pull them
23 off that list, and those that need to be redacted I believe we
24 can pull those off the disk.

25 CHAIRMAN JOHNSON: Commissioner Kolbeck, if you could,

1 I guess I would ask one more time to see if anybody opposes
2 making the consensus documents available to the public or to
3 remove that confidential treatment. I would just see if anybody
4 on the phone line or in person in Pierre wants to oppose that
5 approach.

6 COMMISSIONER KOLBECK: Sure. Anyone on the line?
7 Anyone in the room? I hear none, Commissioner -- Chairman.

8 CHAIRMAN JOHNSON: Thanks, very much Commissioner
9 Kolbeck. With that, I would move that in the -- in the letter
10 filed with this Commission by Mr. Koenecke on June 12 and that
11 the attachment lists those documents that can be released from
12 confidential treatment, that the Commission allows release of
13 those documents.

14 A motion has been made. No second is required. Is
15 there any discussion on the motion?

16 Hearing none, we'll proceed to vote.

17 Commissioner Kolbeck.

18 COMMISSIONER KOLBECK: Aye.

19 CHAIRMAN JOHNSON: Hanson.

20 COMMISSIONER HANSON: Aye.

21 CHAIRMAN JOHNSON: Johnson votes aye. The motion
22 carries 3-0.

23 With that, we will focus in on those documents in the
24 June 12 letter that TransCanada would like to keep confidential.
25 My intention would be to -- would be to work through each of

1 those line by line on those that TransCanada would like to keep
2 confidential and I'd like to get there and I think in many cases
3 on the titled -- on the June 12 it would be obviously what
4 rationale TransCanada is using requesting confidential
5 treatment.

6 I'd like to move line by line so we're all clear as to
7 why that particular document at least argued by TransCanada
8 should be kept confidential.

9 First let's pause and see if anybody has a better idea
10 on how to proceed.

11 MR. KOENECKE: Commissioner, this is Brett Koenecke.

12 CHAIRMAN JOHNSON: Yes. Go ahead.

13 MR. KOENECKE: I'll tell you that we're talking about
14 thousands of pages and that I have committed to releasing
15 similar thousands of pages and only wish to redact a very few of
16 those thousands. I'm not sure that what you're proposing is
17 going to work.

18 I'm more than willing to go there with you if you say
19 that's where we've got to go. But I -- I'm really telling you
20 that what I'm talking about is in each of those files that were
21 on that disk -- they were large files, multiple pages -- there
22 might only be one or two references out of hundreds that
23 required me to tell you that until we could redact it that
24 entire file had to stay confidential given the time constraints.

25 CHAIRMAN JOHNSON: Well, and I think some of them,

1 Mr. Koenecke, are going to be pretty obvious. Presumably under
2 the 2nd of September '06 line 1 says, Biological, stays
3 confidential. I mean, presumably you'll be using one of your
4 three rationales outlined in your letter.

5 I expect that the location of threatened and
6 endangered species -- to request that that remain confidential
7 treatment at least for a while. But I think some of them
8 probably are not quite so evident.

9 MR. KOENECKE: I think, Commissioner, and I'm not
10 disagreeing with you so much as I'm pointing out that in those
11 hundreds of pages I don't know that we can pinpoint exactly what
12 caused that designation for that particular file. That might
13 take 5 or 10 minutes to find the page or two within that.

14 CHAIRMAN JOHNSON: I apologize. If I made it sound
15 like that's what I was interested in doing, I am not. I'm just
16 looking for the broad legal rationale that you all are using to
17 try to keep this confidential, at least for some amount of time.

18 I'm certainly not looking for a line-by-line
19 blow-by-blow at this point.

20 MR. KOENECKE: I apologize if I ascribed that to you.
21 That's what I thought you were asking me for. If you'd like me
22 to start, I'd give it a try and see if it's working.

23 CHAIRMAN JOHNSON: Let's just pause and see if Ms. Van
24 Bockern or Mr. Smith have a better approach.

25 MR. SMITH: This is John Smith, Commission counsel. I

1 mean, I don't necessarily think it's a bad thing to do -- maybe
2 to generally go through these particular files. The fact is I
3 think what I've heard the company just say, they're going to
4 make a commitment to burrow into this, into the minutia, and
5 attempt to get it down to where only the things that either
6 state law or state policy or federal law or policy require
7 confidential treatment of, that all the rest of it will be
8 released.

9 Again, it's been emphasized over and over again that
10 when we get to that point -- the Commission pursuant to
11 protective order can allow access to any of that stuff by
12 parties.

13 But there's a reason -- and I'll just tell you guys
14 this. I mean, on July 1, for example, a law is going to go into
15 effect here in South Dakota that will require all cultural and
16 grave site type of information to be kept confidential. And
17 there's a reason for that. It's because not everybody out there
18 is a well-meaning participant in this proceeding.

19 My family happened to own one of those farms that had
20 a bunch of -- an Indian relic site on it. And believe me,
21 there's thieves out there. And there's a reason you don't
22 necessarily want every Tom, Dick, and Harry to know where every
23 Native American grave site is in this world.

24 Some of these things are sinister. They're for a good
25 reason. And we don't want to err on the side of doing that. I

1 mean, that's just common sense.

2 CHAIRMAN JOHNSON: And, Mr. Smith, that's what I'm --
3 and I don't necessarily want to get into a back and forth here,
4 but two comments. Number one, that's what I'm trying to get to.
5 You know, I don't have the same kind of personal interaction and
6 understanding with, you know, sensitive cultural sites as you
7 have.

8 And so I thought we could, you know, discuss a little
9 bit why in general those documents -- whether it's state law
10 that may be in effect next month or whether it's an existing
11 agreement with the Federal Government or some reason. We need
12 some reason why these documents should be confidential, even if
13 it's for just a little bit longer.

14 And then I would also note a number of people have
15 mentioned a protective order. And I do think a protective order
16 is an appropriate mechanism to use when a document has a legal
17 rationale for being confidential. I don't think it is any sort
18 of a rationale for, you know, keeping something confidential
19 that doesn't have a strong legal justification.

20 And I know nobody's suggesting that. But I just want
21 to make that clear that it's really the only mechanism that
22 helps intervene and not interested citizens.

23 MR. SMITH: Yeah. And I didn't mean to be unduly
24 strident in my comments here. I just think, as you well know,
25 once you've released things out in the public domain you don't

1 bring them back. And I agree with that. And I think what
2 you're asking Mr. Koenecke is just kind of generally go through
3 maybe, Brett, and go through with each of these categories on a
4 general level and explain and maybe, Mr. White, on the phone you
5 might chime in and give us your take as to why you would like
6 some additional time to carefully screen these to make sure
7 we're not releasing things that could do damage to public
8 resources.

9 MR. WHITE: Sure. And I've actually made such notes
10 on the document as the discussion was going forward. And if
11 it's helpful, I would quickly sort of go line by line and
12 indicate what the rationale is for each item.

13 CHAIRMAN JOHNSON: This is Commissioner Johnson.
14 John Smith, you mentioned categories, and I think that's
15 probably a better place to start than where I suggested. That
16 is, Mr. Koenecke did a good job on page 2 of his letter of
17 explaining the areas where Keystone would like to maintain
18 confidentiality. Perhaps that's the best place to start
19 explaining in a general way those three categories.

20 MR. SMITH: Do you want to proceed then, Brett and
21 Mr. White, and do that?

22 MR. KOENECKE: Jim, go ahead.

23 MR. WHITE: Sure. I want to be sure whether we want
24 to talk about which category applies to each of the items or
25 have a general discussion of the categories themselves.

1 CHAIRMAN JOHNSON: I'd like a discussion of the
2 categories. For instance, I'm pretty sure I know what high
3 consequence areas are. But I -- certainly filling in those
4 details I think would be helpful.

5 MR. WHITE: So the majority of the high consequence
6 areas as defined in the DOT regs are the so-called unusually
7 sensitive areas. And those are primarily drinking water
8 sources. So they would be, for example, the water intake for a
9 community water system, a source water protection area, and then
10 there are also ecological resources that qualify under the HCA
11 designation, and those would be areas containing critical and
12 imperiled species, multispecies assemblage areas, migratory
13 water bird concentration areas, just generally areas that are
14 deemed by the Department of Transportation to be unusually
15 sensitive areas, and they would fall under the high consequence
16 designation area.

17 So the concern here on the DOT's part is that this
18 detailed mapping information which provides the location of high
19 consequence areas not be generally available to the public. And
20 this was a post-9/11 concern that the DOT recognized. And so
21 they put additional restrictions on access to this mapping
22 material. And generally it's only made available to agencies
23 and also to pipeline operators, and it's made available on a
24 password restricted basis.

25 And so the company accesses that information under the

1 understanding that they will maintain this confidentiality for
2 those reasons.

3 MR. SMITH: Can I ask you a question about that,
4 Mr. White?

5 MR. WHITE: Yes.

6 MR. SMITH: Is there a DOT regulation site you could
7 give us to look at? Is it in the letter? Maybe you've got it
8 in the letter.

9 MR. WHITE: There's actually a DOT website which talks
10 about this national pipeline mapping system, and I believe that
11 website would reflect the fact that it's deemed to be sensitive
12 on a national security basis. And I'll see if I have that
13 handy. I don't, Mr. Smith, but I think I could provide that to
14 you.

15 MR. SMITH: I note in the letter they appear there --
16 and I regret to say I just got the letter 10 minutes before the
17 hearing too. So I apologize I hadn't seen that.

18 MR. WHITE: So the second category is the cultural
19 resource location information. And essentially what happens
20 under the National Historic Preservation Act, the permitting
21 agency, which in this case is the Department of State, has an
22 obligation to consider the impact of the project on so-called
23 eligible sites under the National Register of Historic Places.

24 And in the practical reality the applicant conducts
25 those surveys on behalf of the agency. And the agency has the

1 authority under the regulations of the Advisory Council on
2 Historic Preservation to deem the location, character, and
3 ownership of historic property to be withheld from public
4 disclosure.

5 So because the applicant is collecting that
6 information on behalf of the agency, the applicant maintains
7 that information as confidential because were it to be
8 disclosed, we would effectively be preempting the agency from
9 its right to deem that material be confidential. And it's
10 typically maintained confidential, also consistent with the
11 desires of the State Historic Preservation offices and generally
12 for the reasons that Mr. Smith indicated, that making that
13 information publicly available could have consequences to the
14 resources.

15 CHAIRMAN JOHNSON: Commissioner Johnson here. I mean,
16 does the applicant do that as a courtesy to the federal agency
17 or under some sort of a formal agreement with them?

18 MR. WHITE: It's by direction of the agency. The
19 agency typically doesn't have resources to send teams out to
20 survey hundreds of miles of pipeline right away. So they rely
21 on the applicant. And then both the State Historic Preservation
22 Office and the Department of State review those surveys and
23 comment on them and require them to be adjusted if not done to
24 be adequate.

25 CHAIRMAN JOHNSON: Other questions on category 2?

1 Okay. Go ahead and proceed.

2 MR. SMITH: Can I ask one? And maybe this will be
3 preempted by the new statute that goes in on July 1. Are the
4 two discretionary ones, and I don't know if the DOT whatever
5 they are, high consequence areas are, but with respect to these
6 other ones where they're by agreement, I'm assuming that as you
7 go through and you reach some results, does it happen then that
8 the agency will look at those results and afterwards then
9 determine that the kind of highly sensitive, highly valuable
10 resources don't exist and then they can be -- they agree to
11 release those.

12 MR. WHITE: Well, the agency will look at the results.
13 And, for example, if the results say there are 17 sites
14 identified which qualify for listing, those sites could be
15 publicly listed.

16 On the other hand, the agency may decide that the
17 location of a specific site ought to be deemed and held --
18 withheld from public disclosure and that's their prerogative.
19 So while some of that information becomes public at the end of
20 the process, not all of it does. We're simply acting as a
21 prudent Applicant and not preempting the agency from making that
22 decision.

23 MR. SMITH: So at some point, you know, I'm assuming
24 that we may have a follow-on proceeding to this after we've
25 given the Applicant a chance here to scrutinize the materials a

1 little more thoroughly.

2 Would it be prudent for us to request the applicable
3 state and federal officers to be here to offer testimony
4 concerning these materials?

5 MR. WHITE: I'm not sure at which point in the process
6 you'd be referring.

7 MR. SMITH: Well, I'm assuming we'll have a follow-on
8 here at some point related to -- assuming. And the
9 Commissioners, I don't know what they're going to do today, but
10 if they were to accept Mr. Koenecke's offer and give them some
11 time to further attempt to really isolate down to what really is
12 the potentially damageable material here.

13 I tend to agree having looked through most of this
14 stuff. And I think we're going to end up with 99.999 percent of
15 everything here being public. But I think what you're asking
16 for is time. But at that point in time would it be advisable to
17 have officials from the State Historic Preservation Office,
18 et cetera, here to discuss these issues and why it's important
19 and what --

20 Mr. Koenecke, you don't think that's a good idea?

21 MR. KOENECKE: We don't oppose that, no. That's
22 perfectly fine. If you want us to call them as witnesses, we
23 can do that or staff. We don't oppose that.

24 MR. WHITE: Or we could ask them to provide an
25 Affidavit or participate in some other way to confirm it's their

1 view this information ought not to be made publicly available at
2 least at this time.

3 MR. SMITH: Because I think Mr. Koenecke did make the
4 point, and I think it's an important one, that the actual
5 interest being asserted here isn't their interest.
6 TransCanada's not in the artifact business or whatever. It's
7 the interest you're asserting is an interest of the Government,
8 either the State or at the Federal level. And maybe the
9 Government actually ought to -- we ought to have them here to
10 speak for themselves. I don't know.

11 COMMISSIONER KOLBECK: I think that's a very good
12 point. I don't want to say we're caught in the middle, but it
13 kind of seems like we're caught in the middle here at the PUC
14 because we'd like to have as much information out there as we
15 can but if we're endangering something that we obviously don't
16 know -- another agency's jurisdiction, we don't want to be
17 stepping on their feet either.

18 MR. WHITE: Right. In a sense I guess we're caught in
19 the middle as well. As was just noted, there's no interest on
20 TransCanada's part whether these sites are made public or not.
21 We're simply at this point protecting what we view to be the
22 Government agency's right to deem this material to be
23 confidential.

24 COMMISSIONER KOLBECK: I guess my question is what are
25 the ramifications if the Commission was to decide, say, high

1 consequence areas were to be released? Maybe counsel, staff
2 could give us what the consequences to the PUC Commission would
3 be, if we were to say yes, we want this information released.

4 MR. SMITH: Well, I haven't looked at those -- I
5 haven't looked at the regulations in the law that they
6 implement, and I honestly, Commissioner Kolbeck, right off -- I
7 can't tell you right now. That's why, you know, again, I'm all
8 for as public of disclosure as we can possibly make.

9 But, on the other hand, I'm not real hot on winding up
10 in a Federal Homeland Security lawsuit of some type either. If
11 we got to go another week or so, I'd rather err on the side of
12 caution on some of that stuff. And, again, with all due
13 respect, I know we do want a complete disclosure, but again I
14 certainly would want to take a look at this.

15 COMMISSIONER KOLBECK: That's all for me, Commissioner
16 Johnson. Sorry to get off track there a little bit.

17 CHAIRMAN JOHNSON: No. I think we need to have this
18 discussion pop up as he's explaining the category certainly. If
19 there's another question, we'd certainly take it. Otherwise,
20 let's proceed to Category 3.

21 COMMISSIONER KOLBECK: I have one more question, I
22 guess. How long, Mr. Koenecke, are you looking for as far as
23 we're going through these categories? Do you see one category
24 taking longer than cultural location, or do you figure cultural
25 location is a lock, there's no way we're going to get that

1 released? How much more time -- since we have these meetings
2 coming up next week, time is of the essence. We need people to
3 read this. We need people to understand this, if we can get it
4 out to them.

5 MR. KOENECKE: No longer than Friday of this week.

6 COMMISSIONER KOLBECK: Our meetings are next Monday,
7 Tuesday; correct?

8 MR. SMITH: Almost two weeks.

9 COMMISSIONER KOLBECK: All right. Thank you. That's
10 all I have.

11 MR. WHITE: Issue number 3. Issue number 3 is similar
12 to issue number 2. It falls under the Endangered Species Act.
13 Again, the Government agency, the State Department in this case,
14 is required to consider the impact of the project on threatened
15 and endangered species and their habitats.

16 And, again, surveys are conducted by the Applicant at
17 the behest of the agency, and the Applicant then identifies, for
18 example, the location of, let's say, raptor nests, which is a
19 relevant issue on this project. The U.S. Fish and Wildlife
20 Service, which oversees the ESA, requests that again the
21 locations of threatened and endangered species such as raptor
22 nests not be publicly disclosed simply to protect the species
23 and other activities. That's the reason we maintain that
24 information is confidential.

25 CHAIRMAN JOHNSON: Thanks very much, Mr. White.

1 Appreciate it. Any questions with regard to that third
2 category?

3 COMMISSIONER KOLBECK: Yes. You wouldn't happen --
4 this is Commissioner Kolbeck. I'm sorry, Mr. White. You
5 wouldn't happen to know maybe another permitting -- have you
6 ever released this, or has this never been released?

7 Because I kind of -- I've seen this in other places.
8 I should say it that way.

9 MR. WHITE: When you say this you mean --

10 COMMISSIONER KOLBECK: Some sort of endangered species
11 or actually more of a wildlife nature. And I use that in a very
12 broad sense. I'm not exactly pertaining to a specific species,
13 but I know that endangered species list, everyone should know
14 what animals are on the endangered species list.

15 MR. WHITE: There was absolutely voluminous
16 information on the wildlife species and endangered species that
17 would be releasable. It's simply the specific location of
18 habitat for threatened and endangered -- for individuals in
19 those species and habitat for those species that is under the
20 claimed confidentiality. So it's a relatively small part of the
21 threatened and endangered species analysis.

22 COMMISSIONER KOLBECK: So we're more concerned about
23 people finding a nest and camping out underneath it and waiting
24 for a Bald Eagle.

25 MR. WHITE: That's exactly what we're concerned about.

1 CHAIRMAN JOHNSON: Any other questions on categories?
2 An issue I'd like to have addressed just a bit, Mr. Koenecke, or
3 anybody from TransCanada, this pump station line list. Talk a
4 little bit about that information and what sort of treatment
5 you're requesting for that.

6 MR. KOENECKE: The pump station line list,
7 Commissioner, I'll attempt to call it up at my computer here at
8 the table so I can speak more fully about it. But it contained,
9 as I recall, the names, addresses, and telephone numbers of a
10 number of people up and down -- here. Just a minute. I'll pull
11 it up. Up and down the pipeline, 52 pages of information,
12 people's home, cell, work phone numbers, and related to the
13 tracts of land which they either control or own. And that seems
14 to me to be something that needs to be fully discussed before
15 anyone decides to make that information public.

16 As to exactly what it relates, whether it's the --
17 just to the pump stations or the line in total, I couldn't say.
18 I didn't compile the list. But as I was conducting my review, I
19 don't want my cell phone number out to the world. And, in fact,
20 when I find out who gave it to John Smith last Thursday, I'm
21 going to take out a retribution on them.

22 But anyway that's something you need to find out and
23 know in there and direct to be made public before we would take
24 the step ourselves.

25 CHAIRMAN JOHNSON: What does the line underneath that,

1 Mr. Koenecke, mean, the two PDF files may be released?

2 MR. KOENECKE: There were two PDF files which were a
3 larger part of the 2-September '06 subcategory on the list. One
4 is entitled Keystone Description Update September 15 filing.
5 Another is entitled Keystone Project Description Update
6 September 15 filing. And neither of those files under my review
7 contained information that I thought required them to be
8 confidential.

9 As you can see by the similar descriptions of the
10 files, if I would have written them out there, it would have
11 been less helpful rather than more as I was going down the list.

12 CHAIRMAN JOHNSON: Are there any documents that you
13 list in your attachment that -- because the pump station line
14 list was an example of one of them. Are there any others that
15 you're requesting continued confidential treatment for some
16 reason other than the three listed in your letter?

17 MR. KOENECKE: No.

18 CHAIRMAN JOHNSON: Okay. Any other questions for
19 Mr. Koenecke or staff regarding the attachment and letter?

20 MR. SMITH: I have just one little mini question if I
21 might, Mr. Chairman.

22 CHAIRMAN JOHNSON: Please go ahead.

23 MR. SMITH: This is John Smith. Just on our
24 website -- and I think again you've pointed out the fact that
25 our website portrayal of the documents doesn't match up

1 precisely with your disk. I think the reason for that and the
2 executive director is here and the assistant executive director
3 and they deal with that, not me, but I think the reason is we
4 attempt -- we try to put the information on there in a way so
5 that it's identifiable, you know, and comprehensible to an
6 ordinary human being who isn't going to know what your disk
7 designations mean. And I think that's the reason for it.

8 I note just like something like I note North Dakota
9 Route Map, for example, is on there. That's confidential. I
10 don't see it on your Exhibit C list of things. Maybe it's
11 included in something. But, I mean, you don't want that to be
12 confidential; right?

13 MR. KOENECKE: To the -- no. To the extent that I
14 know what it is. As long as it doesn't contain any information
15 as the staff -- I don't know what the staff chose to name
16 North Dakota Route Map Confidential, but as long as it doesn't
17 contain any information that we've discussed in the last 10 or
18 15 minutes, we have no objection to it being put out there.

19 MR. SMITH: Okay. I looked at it. It's just a map of
20 the route.

21 COMMISSIONER KOLBECK: Ms. Van Bockern.

22 MS. VAN BOCKERN: This is Kara for staff. I suggest
23 that we take Exhibit C and D off of the Internet as it's
24 currently on and we redo it in such a way that it will mesh with
25 the disk so that we can clearly identify exactly what documents

1 we're talking about. Because, like I said, Exhibit A and B
2 aren't at issue here. That can stay as is. It's just Exhibit C
3 and D that I think should be removed and we simply start over
4 with now the results of today's hearing.

5 CHAIRMAN JOHNSON: Ms. Van Bockern, my only concern
6 with that is I actually find it far easier to figure out what
7 documents are being referred to as to how we formatted our
8 website than as opposed to on the attachment.

9 MS. VAN BOCKERN: This is Kara again. I believe we
10 could maybe label the folders or the documents in such a way as
11 they're on the disk that the disk and our website will mesh, yet
12 will still have titles comprehensive to normal human beings, as
13 Mr. Smith called them.

14 CHAIRMAN JOHNSON: At some point here I do think we
15 should hear from those in the public, interested parties, about
16 this. Before we get there, let's see if there are any other
17 questions, Commissioners or advisor questions, on these specific
18 documents and why they deserve a confidential treatment
19 according to TransCanada.

20 COMMISSIONER HANSON: Mr. Chairman, this is Gary
21 Hanson.

22 CHAIRMAN JOHNSON: Please go ahead.

23 COMMISSIONER HANSON: Well, I have a number of
24 comments, not so much questions. I'll wait until after the
25 public has an opportunity to comment on that. Thank you.

1 CHAIRMAN JOHNSON: And if you think your comments
2 might spark questions in some of us, you know, please feel free
3 to go now or hold your comments. Whatever you prefer.

4 COMMISSIONER HANSON: Well, I will. I hesitate ahead
5 of time. I like to hear what the public has to say, but maybe
6 this will prime the pump, give an opportunity for folks to make
7 comments.

8 I think that all three of the Commissioners agree that
9 paramount to this entire process is the public's right to know,
10 and it's the highest priority. I am a bit frustrated. There's
11 sort of a Catch-22 that we are in with agencies requesting
12 information and then telling the Applicant that it needs to be
13 confidential information.

14 And there's some -- there's certainly some sincerity
15 and need for confidentiality as has been pointed out by
16 Mr. Smith. For instance, when he commented on historic
17 preservation. I know that that's one of the biggest challenges
18 along the Missouri River when water recedes and people are
19 attempting to -- a lot of people attempted to -- the
20 American-Indian sites, and that's a genuine concern certainly.

21 But we get into some of these things where there's
22 information that I think the public -- it's beneficial for the
23 public to know. And for a public agency to request the
24 information and then place that burden on the Applicant and say,
25 okay, now the Applicant has deemed it confidential, I think it's

1 counterproductive to what we want to accomplish.

2 It's like at what extent -- for instance, raptor
3 nests, I imagine there are some despicable people in this world
4 who would want to go out for some reason, as Commissioner
5 Kolbeck stated, camp beneath the raptor nests, and do them harm
6 or something of that nature.

7 But to say that information on a variety of things
8 should be kept confidential is like saying that, well, we
9 shouldn't -- we shouldn't tell the citizens where the
10 convenience stores are or the banks because somebody might go
11 and rob them.

12 You know, there is a point at which we have to say,
13 look, we have a responsibility to the public to let them know
14 what is taking place, and when other agencies just simply
15 request that something be placed in confidentiality I think we
16 have to -- personally I disregard those. I think that there
17 needs to be an actual statute. And in the absence of a statute
18 that requires it to be -- the information to be confidential, I
19 personally believe that it should not be confidential.

20 That's where I'm coming from on discussion and where
21 my vote will fall. I'm sensitive to some of the challenges, but
22 I think it needs to go through a legislative process where
23 either Congress or the State has had an opportunity through
24 citizen input at a legislative process to determine by statute
25 whether something is confidential or not as opposed to -- I

1 just -- I express that just simply as a frustration that I have
2 with this type of a process.

3 Thank you, Mr. Chairman.

4 CHAIRMAN JOHNSON: Yeah. No. I think your comments
5 are well taken, at least by me, Commissioner Hanson. And I
6 would -- I think particularly at the end there you hit on the
7 important point, which isn't do we -- do we believe as
8 individuals that particular pieces of information should be made
9 available to public, that that is an important question.

10 But the question that's got to be asked beforehand is
11 are there legal obligations to not release it to the public?

12 If I think something should be made available would be
13 in violation of Federal rule or statute or State rule or
14 statute, that limits my ability to act as I want to, certainly.

15 COMMISSIONER HANSON: Exactly.

16 CHAIRMAN JOHNSON: Questions about particular
17 documents or particular rationales by the Applicants?

18 COMMISSIONER KOLBECK: Yes, I have a question. This
19 is Commissioner Kolbeck.

20 Mr. Koenecke, under Exhibit C you have supplemental
21 material, and you have alternatives stay confidential. Is that
22 alternative routes, main line pipeline route alternative?

23 MR. KOENECKE: Are you looking under 4-January '07,
24 Commissioner?

25 COMMISSIONER KOLBECK: Yes, I am.

1 MR. KOENECKE: Yes. I think if the question is does
2 that pertain to routes, it does. And it looks to me upon a very
3 brief review of it like the majority, if not all, of that could
4 be declassified. I hate to elevate this proceeding any farther,
5 but I don't see anything that can't be taken out of that that's
6 very off-the-cuff cursory review.

7 But the short answer to your question is yes, and the
8 long answer is I think it will be ultimately made available.

9 COMMISSIONER KOLBECK: That is -- there are some
10 things in there that do pertain to South Dakota that I think
11 should be --

12 MR. KOENECKE: I agree.

13 COMMISSIONER KOLBECK: -- not confidential.

14 MR. KOENECKE: I agree. And I will make a particular
15 note to make sure that I go in that file that's not confidential
16 we provide a very broad rationale for and allow you to make a
17 decision.

18 Does that work for you?

19 COMMISSIONER KOLBECK: Yes. Again, when are these --
20 we have a commitment for Friday?

21 MR. KOENECKE: We do.

22 COMMISSIONER KOLBECK: Okay. That's all,
23 Mr. Chairman.

24 CHAIRMAN JOHNSON: Thanks, Commissioner Kolbeck. You
25 know, I think -- and I'll just sort of think out loud here a

1 little bit and sort of mention what I'm thinking, and then we
2 can get some public reaction or comment.

3 My thought would be we should view -- we should really
4 view this as a two-step process. And I think Mr. Koenecke has
5 tried to articulate that. The first step we've already taken
6 and that is the documents that staff is going to endeavor to
7 get, you know, online and available to the public as soon as
8 possible.

9 The second step really is this question about
10 documents that for some legal reason in dealing with the Federal
11 Government may -- it may be necessary to have confidential
12 treatment. And during that second step, I mean, I do think it's
13 important to note that I think redaction is the right approach.
14 Rather than keeping whole documents confidential, I think
15 redacting the highly sensitive information so people can at
16 least see what the document's getting at.

17 And then the public can raise additional concerns,
18 which is, well, this sentence here is redacted. We believe that
19 it points to something we need to know. We'd like to request a
20 Commission hearing. And I think that's important. The more
21 they can see on these documents, the more they can understand
22 what the redacted information is getting at.

23 You know, I wonder, you know, after the -- if the
24 Commission moves forward as requested by TransCanada, there
25 shouldn't be some meeting next week where we review the new

1 information submitted by TransCanada on Friday and give
2 individuals an opportunity to raise concerns about how that
3 confidential information was made available.

4 COMMISSIONER KOLBECK: I agree, Commissioner Johnson.
5 I would imagine that more questions are going to be raised after
6 Friday. Hopefully 99.9 percent will be answered. But we need
7 to provide an avenue for the public to ask those questions. I
8 agree next week we should maybe look in to another date.

9 CHAIRMAN JOHNSON: Well, and, you know, I'm also
10 thinking that we would request, you know, that staff work with
11 the Applicant to get -- and I don't know, you know, maybe
12 letters will suffice from the federal agencies. Affidavits are
13 certainly better. I don't need anybody to come to Pierre. I
14 don't need the Federal Government to fly somebody in.

15 If I can get an Affidavit where they're explaining why
16 they think confidential treatment is important and in fact
17 consistent with federal law, that's going to go a long way to
18 easing my concern about redaction of information in these
19 documents.

20 So I'm thinking, you know, a motion will be made to
21 instruct staff and the Applicant to get that information as
22 well.

23 COMMISSIONER KOLBECK: Ms. Van Bockern. Commissioner
24 Hanson, was that you?

25 COMMISSIONER HANSON: Yes. I was just saying I concur

1 with those statements.

2 COMMISSIONER KOLBECK: Ms. Van Bockern.

3 MS. VAN BOCKERN: Are Commissioners looking for an
4 Affidavit from such agencies regarding the information that will
5 be redacted and why it's redacted, or did you want more general
6 statements from such agencies regarding, you know, the three
7 points as we just went through?

8 CHAIRMAN JOHNSON: This is Commissioner Johnson. And
9 initially I think a general statement is appropriate. I mean,
10 you know, we've been told that there are federal statutes that
11 require this. You know, I'm neither an attorney nor an expert
12 in many of these issue areas. So I think some verification from
13 the Federal Government that that is indeed their understanding
14 of the law would be helpful.

15 Then I think as the redacted documents are made
16 available to the public then Commission staff and Commissioners
17 and the public can raise some concerns about specific sentences
18 or phrases or paragraphs and what the legal rationale would be
19 for them to be redacted if we get to that point. And it may be
20 that the redacted documents meet, you know, everyone's needs to
21 make sure they have adequate information about this project.

22 That's my take. Commissioners Hanson and Kolbeck may
23 have a different one certainly.

24 COMMISSIONER KOLBECK: No. No. I agree with you,
25 Commissioner Hanson -- or Johnson.

1 COMMISSIONER HANSON: I agree.

2 CHAIRMAN JOHNSON: Okay. It may be -- it's likely we
3 would not want to schedule a meeting for next week at this
4 point. I mean, we should give the Applicant an opportunity to
5 file the documents that they've mentioned they're going to file
6 on Friday. And then we can give all the interested individuals,
7 all of the Interveners, all of the staff, an opportunity to look
8 at the filings, if that's the direction we go.

9 But, again, who knows. Unless somebody has some other
10 initial comments, I do think it's probably appropriate at this
11 time to look toward any public comment from interested parties
12 we might have.

13 Before we do that, Ms. Van Bockern, Mr. Koenecke,
14 anything else?

15 (Discussion off the record)

16 COMMISSIONER KOLBECK: Ms. Van Bockern.

17 MS. VAN BOCKERN: Just a quick comment. We'll
18 certainly need to have enough time in between TransCanada's
19 filing to not only get that information up on the website, but
20 to get that released information out to the county offices so
21 all of those who don't have access to the website can look at
22 that information and have enough time to raise concerns if they
23 exist.

24 CHAIRMAN JOHNSON: Well, and it's the understanding of
25 some of these logistics that made me decide rather than to rush

1 to a meeting next week, we want to make sure we get the
2 appropriate information out to people, give people time to
3 evaluate, you know, what has been refiled. And, you know, the
4 Commission does have a year to make this decision. We want to
5 make sure we get accurate information out as soon as possible.

6 We also want to make sure we don't do something wrong
7 by rushing ahead when this is going to be a deliberate process.
8 It's going to take lots of time from all of us. It's certainly
9 not going to be resolved by June. Lots of work to come.

10 Mr. Koenecke, anything else before we open it up for
11 public comment?

12 MR. KOENECKE: No, Commissioner. Thank you.

13 CHAIRMAN JOHNSON: Commissioner Kolbeck, I would ask
14 with regard to the public comment portion if you could assume
15 chairmanship and moderate and work on that end, please.

16 COMMISSIONER KOLBECK: Okay. We'll take public
17 comment from the audience now. Anyone?

18 Mr. Hohn.

19 MR. HOHN: Mr. Chairman, members of the Commission,
20 first of all I'd like to thank the Chairman for extending the
21 time which people can make the determination as to whether they
22 want to be a party of record. Given some of the confusion, I
23 think it will be helpful.

24 It's difficult, as you can imagine, for the average
25 South Dakotan busy with their own life trying to figure out

1 whether they have an interest in this hearing, you know, with
2 the issue of records and information being where it is at this
3 point. So there may be more people that have an interest once
4 they are aware of what's in the record and what's available.

5 I'd like to comment on three items. The high
6 consequence areas issue does not only deal with utilities and
7 water systems, it also deals with things like under federal law,
8 as far as I have read, schools, public parks, public places.
9 Should an oil line be located near a Hutterite school as a
10 proposal is near Britton?

11 Should it be near a park that's frequented by campers
12 in Carlsbad, New Mexico? That was a bad situation. 12 people
13 died in an explosion.

14 High sensitive and high consequence areas are not just
15 utilities and not just water. There are other issues like where
16 people congregate. Is there a good idea to have something in
17 that kind of an area?

18 Now the issue of high consequence area, the issue for
19 the public is how do we know you've identified them if we can't
20 see them.

21 I'll give you an example in my own business. When I
22 look at the information filed with the Federal Government, State
23 Department, I was surprised to see that the TransCanada
24 documents made no mention of the eight rural water systems that
25 this pipeline would cross which virtually cover the eastern part

1 of this route, eastern South Dakota.

2 That's highly consequential drinking water. We didn't
3 even show up. So until we submitted a map to them I don't know
4 if they knew we existed. That's why the public does need to
5 know what they're telling you is high consequence. Because if
6 it's not complete, you're not getting the whole picture before
7 you make your decision.

8 Example two, in the area of water. The BDM rural
9 water system, sister project to WEB, that covers the area from
10 Britton all the way to Summit and Sisseton relies on ground
11 water that is directly under the route of this pipeline.

12 I'm not speaking for them, but if you were to identify
13 a high consequence area that area needs drinking water, they
14 rely on that system. I would think that would be on the list.
15 I have no way of knowing and neither do they until you see that
16 record.

17 As to the things like risk assessment, that tells you
18 what kind of risk you're going to have by putting this through
19 your community. The volume studies tell you how they're going
20 to track for leaks. The SHPO information, State Historic
21 Preservation Office in South Dakota actually has a very
22 aggressive effort. When we build water lines we have to pay
23 people to walk the line, look for sensitive areas. They don't
24 report to WEB. They report to the State.

25 I get a summary report, but I can't tell you where all

1 of those places were. Nor would I want to know. I think you
2 might want to look to your State agencies that can review this
3 and tell you whether any of it ought to be confidential. I
4 would feel more confidential if SHPO looked at that and decided
5 versus the gentleman from TransCanada.

6 The same thing with fish and wildlife issues. We have
7 a great resource in the state in the South Dakota Game, Fish &
8 Parks, the U.S. Fish and Wildlife Service. Maybe they should
9 either come before you or submit a statement as to what they
10 consider sensitive. They need to look at these documents and
11 give you an opinion because above and beyond the consultants
12 that TransCanada hired again I think most people would look to
13 our own people in South Dakota who were very qualified to tell
14 you where the sensitive areas are. And I would be happy with
15 that.

16 And then the third item, the -- I think that the --
17 there's an issue of time obviously. I don't think it's good to
18 delay your hearings. I think you need to go on with the
19 hearings so the public can start to learn about this. You may
20 have to have additional hearings once the data is out.

21 But I think the real concern is is that should
22 TransCanada make the decision -- I think you're better off if
23 you can find some state or federal agency that can look at it
24 for you and decide what should be blocked and blacked out and
25 what should be made available. I'd feel more comfortable if it

1 were done that way.

2 And then as far as people looking at the information,
3 some of it people may not even review. But it was filed, and it
4 would seem that you should be able to release, like John said,
5 99.5 percent of it.

6 Thank you.

7 COMMISSIONER KOLBECK: Thank you, Mr. Hohn. Questions
8 by Commissioners? I do have one, I guess, question for
9 Mr. Hohn.

10 SHPO and those other agencies are involved already.
11 There have been some studies, I believe, conducted by them. One
12 thing, I guess I'm confused as to -- I'm not a big landowner or
13 run a WEB or anything like that. But if you -- you would know
14 where your water sources are; correct?

15 MR. HOHN: Yes.

16 COMMISSIONER KOLBECK: Okay. So when you put your
17 pipelines in was all of this conducted?

18 MR. HOHN: Very similar. Ours is a water line, of
19 course, and theirs is petroleum product, a big difference in
20 terms of liability. If my pipe leaks, the worst that will
21 happen is we'll get wet and I'll have to pay crop damage to
22 someone. If this fails, it's a bigger concern probably for a
23 landowner.

24 But I guess my point is this gentleman said that a
25 water source was a high consequence area. And yet the

1 information they submitted to the Federal Government saying
2 we're crossing South Dakota and for the federal environmental
3 impact statement here's who we're going to affect, those water
4 systems did not show up.

5 So my point is is that the reason the public needs to
6 see these documents, whoever has an interest in any one of
7 them -- and I don't have an interest in all. I have an interest
8 in some -- is going to help you because they're going to point
9 to the things that maybe got missed, as much as you can legally
10 make it available.

11 Someone who is an avid fisherman or a hunter -- which
12 I'm a hunter, but I wouldn't call myself avid -- is going to
13 have a concern about where they're going with this. Someone
14 who's concerned about wetlands and how many they're cutting and
15 what that does to it is going to come and talk to why they might
16 want to see some of it adjusted and routed around.

17 If the process works, which I hope it will, you'll get
18 all of that input, and you'd have a slight adjustment of where
19 that pipe goes. And frankly when we built 6,600 miles of water
20 line that's exactly what happened. WEB has the right of eminent
21 domain and we've never used it and we live here. And the reason
22 we didn't is because there were all the dynamics of those
23 contacts where landowners said I don't want you to go here
24 because that's where the family homestead was or I don't want
25 you to go there because that's a rural grave site that no one

1 knows about. Or maybe I don't want you to go there because
2 that's my best field.

3 I think the public input -- the question is who
4 decides the route? Is it decided by TransCanada and they come
5 in and decide what they share with us, or is it a collective
6 process where the communities out there come to their Commission
7 and say, you know, here's what bothers me about this route. I
8 don't care about the farmland. I'm only interested in the
9 wetland. Maybe I don't care about the wetland. I'm more
10 interested in the farmland.

11 You're going to get a lot of input, and out of all of
12 that hopefully the Commission can set conditions on this permit
13 if it did pass through the state, it was done in a way we could
14 all live with it.

15 It's going to take a time. TransCanada said in a news
16 story they'd like to have the decision from you by September 30.
17 I think that's pretty ambitious. It may take a bit longer than
18 that. But the process -- I didn't get to put my water line
19 wherever I wanted to. I had to negotiate. And there's places
20 where I went around people because they just didn't want me on
21 their land.

22 And we brought drinking water to the community, a
23 benefit. This brings a benefit to the nation, but nobody in
24 South Dakota's going to get a cheaper gas price because we put
25 this oil line through. If you're a landowner, you'd just as

1 soon be left alone. This is not a benefit.

2 So I think the process -- the reason that I've been
3 adamant about documents being open is am I going to look at
4 every document? No. Do I have an interest in every one? No.
5 Personally and professionally I'm interested in a number of
6 them. But that's not to say that somebody else isn't concerned
7 about did they count all the sensitive areas? Do they identify
8 all the critical fish and wildlife areas? That's not my
9 expertise.

10 I think the federal agencies, state agencies can tell
11 you what's in those documents that is really confidential. I
12 doubt that they would block much of it. I think they'd rather
13 the people know. Frankly, I've heard from some who are
14 concerned about where this is going in terms of wetlands and
15 what it does to wildlife and ducks and pheasants and so forth.
16 I think they would err on the side of more information.

17 COMMISSIONER KOLBECK: All right. Thank you. Any
18 other Commissioner questions? All right. Anyone else? I'm
19 sorry.

20 Mr. Smith.

21 MR. SMITH: I just wanted to note one thing. And I'm
22 not suggesting you misspoke here. But I do know the risk
23 assessment and frequency studies have been released today by the
24 company.

25 Thank you.

1 COMMISSIONER KOLBECK: Any other public comment?

2 Yes. Ms. Anderson.

3 MS. ANDERSON: I'm Lillian Anderson. I represent a
4 group of landowners. And as far as a landowner list, we don't
5 need the names. What we want are land maps that are easily
6 downloaded.

7 I've had many people calling me wanting to know where
8 the land is, where the line is going to go because they have
9 received PUC letters saying it will be within a half a mile of
10 their residence. They want to know where this is.

11 The landowners who are being affected, some of them
12 know, some of them don't know. A legal description on a map
13 that's easily downloaded would be appreciated. That way I could
14 tell those people -- either I could mail them the list, or I
15 could mail them the map.

16 I've had people call me from Oklahoma, Texas,
17 Illinois, Nebraska, North Dakota, and South Dakota asking me
18 where this line is going and how they will be affected.

19 Therefore, we think that they should have a right to
20 know where it's going to be, and we should have the ability to
21 go in and pick out a legal description and tell them exactly how
22 close it will be to their home.

23 We also feel that the PUC has -- until they've made a
24 final decision that TransCanada should stop trying to acquire
25 land. It's kind of funny that they're trying to acquire land

1 before they actually have approval.

2 We also think that they should stop trying to threaten
3 landowners and harassing the landowners. I have names of people
4 from North Dakota, Nebraska, South Dakota, who feel they've been
5 threatened and harassed by TransCanada.

6 Thank you.

7 COMMISSIONER KOLBECK: Ms. Anderson, do you think --
8 we're going to have our meetings here in the next couple of
9 weeks. Do you think it would be helpful if maybe we strongly
10 suggested to TransCanada to bring a -- maybe leave their
11 handouts maybe with the court reporter, with a map of something,
12 proposed route somewhere, or would you rather an easily
13 downloaded file?

14 MS. ANDERSON: I can't be in Pierre for every meeting.
15 So easily downloaded. A lot of people have Internet. When they
16 call me I can say go to this site. And if they don't have, I'm
17 willing to run them off and send them to them.

18 COMMISSIONER KOLBECK: I mean, I was more referring to
19 the meetings that we're going to have in Yankton, Alexandria.
20 Is there anything that maybe you could suggest that TransCanada
21 could leave, information, booklets, packets? Would you like to
22 see it at the county courthouses? Any other information like
23 that that would be of assistance?

24 MS. ANDERSON: Whatever will tell the people who are
25 affected by this -- should have an exact place of how close it

1 will be to their home, whether it's a handout or whatever. At
2 every meeting the people should know exactly where that line is
3 going to be so they know exactly how they will be affected when
4 this is over.

5 COMMISSIONER KOLBECK: All right. Thank you. Any
6 other questions?

7 MR. SMITH: I have -- this is John Smith, Commission
8 counsel here. I'm directing this to the deputy executive
9 director, kind of catching her out of the blue here. But this
10 map business has been of concern not just for the public out
11 there but our own staff has had a heck of a time with that. And
12 it's my understanding that the administrative staff here is
13 attempting to create some file formats that aren't so huge, are
14 we not, so that people can -- like all of us can look at these
15 maps without this problem. Is that -- am I correct in that?

16 MS. FORNEY: This is Heather Forney with Commission.
17 The part of the problem that we are having is that the size of
18 the maps are huge, and it's very hard for people to download
19 those relatively easily. And last I knew is that we were
20 working with TransCanada to get something out there that was
21 easier for people to access, faster, et cetera.

22 I don't know that it has the type of detail, though,
23 that Ms. Anderson is looking for as far as legal descriptions
24 and that type of thing. So --

25 MR. SMITH: I mean, maybe it's just something

1 TransCanada should think about. I mean, could we have more maps
2 that aren't so big or something like that?

3 Again, I'm not a computer guy, but this map thing is a
4 problem for people, you know.

5 MR. KOENECKE: I appreciate the input. This is
6 Brett Koenecke again. And I'm sure TransCanada does as well.
7 Jeff Rauh is here, and I'm sure people are listening online from
8 TransCanada and will certainly discuss that concern after this
9 meeting and work diligently toward a resolution.

10 MS. FORNEY: This is Heather Forney again with staff.
11 I just think one of the suggestions I might make is smaller
12 sections, maybe county -- by county or by -- you know, something
13 smaller. And then when we put those online we can also place
14 those -- you know, map for the county of, you know, so that
15 people aren't having to download the entire file.

16 MR. KOENECKE: Thank you.

17 COMMISSIONER HANSON: Commissioner Kolbeck.

18 COMMISSIONER KOLBECK: Yes, sir. Go ahead.

19 COMMISSIONER HANSON: This is Gary Hanson. I very
20 much appreciate the comment that was made by Heather just now.
21 I don't think that it's a matter that we want smaller maps or
22 maps with less detail. The challenge is that the maps that were
23 placed on the WEB, at least the ones that I accessed, were a
24 series of maps. And they all had to be downloaded when you
25 accessed the particular site.

1 And if it were made so that instead of having a series
2 of maps all being downloaded as one packet, if people could --
3 if there could be a menu that would direct people to particular
4 areas in South Dakota -- people are interested in their
5 particular area. I'm sure some people are interested in the
6 entire area, but they are going to access and reaccess the area
7 that is where they are living or where the -- where they have
8 property.

9 And so if the series can be broken up so that people
10 can access just that particular area -- it seems like the series
11 had about five or six maps in it -- it would significantly
12 reduce the amount of data and speed up the downloading time and
13 make it much easier for people.

14 MR. WHITE: This is Jim White from Keystone. I guess
15 what I'm hearing is the preference would be that perhaps each
16 page of the route map book be captioned as a single file with a
17 menu then that identified the individual route maps as
18 individual files. And I don't have the technical ability to
19 absolutely commit to that, but I can commit that we will take
20 that suggestion back and try to implement it as close as
21 possible.

22 COMMISSIONER HANSON: Exactly, from my standpoint.

23 COMMISSIONER KOLBECK: Just a little clarification for
24 people who -- E filing is new. It's new to the Commission.
25 It's kind of new to regulatory process. So some of these things

1 probably haven't been encountered before. There's different
2 size limitations. That's kind of the struggles we're having.
3 And that's the conversation we were having just in case you were
4 wondering why we were discussing maps. It's very important, I
5 feel. It's just part of the process. It's something that we
6 need to get worked out.

7 Any other public comment?

8 Yes, sir. Mr. Rasmussen.

9 MR. RASMUSSEN: Very briefly. I guess from my
10 standpoint looking at this, I think this got off on the wrong
11 foot due to the fact that TransCanada said virtually everything
12 was designated as confidential. I think that's caused certainly
13 some distrust. And that's a problem.

14 But under the administrative rules the party
15 requesting confidentiality has the burden of proving by a
16 preponderance of the evidence that the information qualifies as
17 confidential, and so I believe the Commission should require
18 TransCanada on each piece of information they want to redact or
19 consider confidential that they explain to the Commission and
20 show why it is it's being disclosed and the nature of the
21 determination so the public can make a determination as to
22 whether a preponderance of the evidence has been established and
23 whether further proceedings are necessary.

24 Thank you.

25 COMMISSIONER KOLBECK: Thank you, Mr. Rasmussen. Any

1 questions from Commissioners? Any further comment from anyone
2 in the audience?

3 Back to you, Commissioner Johnson.

4 CHAIRMAN JOHNSON: Thanks very much, Commissioner
5 Kolbeck.

6 At this time, you know, let's go ahead and give
7 Mr. Koenecke, Ms. Van Bockern, anyone else on staff an
8 opportunity to respond if they wish to anything that was brought
9 up on public comment.

10 MS. VAN BOCKERN: This is Kara Van Bockern from staff.
11 My recommendation remains regarding the information that may
12 contain some information necessary for redaction, that we have a
13 commitment that by Friday those documents will be redacted and
14 staff will have -- the Commission will have some reasoning --
15 the Commission and the public will have reasoning behind it.

16 And from there internally we assess how long is
17 necessary for the public to obtain that information, and we hold
18 a hearing if necessary as schedules allow.

19 CHAIRMAN JOHNSON: Great. Thanks very much.

20 Mr. Koenecke.

21 MR. KOENECKE: Thanks, Commissioner. I speak on my
22 own behalf and that of TransCanada. We appreciate the give and
23 take today. It's been mostly give as to the rest of you and
24 mostly take as to TransCanada, and I think that's just fine. We
25 look forward to resolving this issue and to the public hearings

1 in the next couple of weeks and more give and take as we move
2 forward in the process.

3 Thank you very much for your patience today. I
4 appreciate it.

5 CHAIRMAN JOHNSON: Great. Thanks. At this point
6 let's look to any Commissioner, advisors, counsel, and see if
7 they have anything else to add before we move toward action.

8 MR. SMITH: I really don't. I think I've made my
9 comments previously. Again, I believe we should ultimately try
10 to attain the absolute maximum level of public disclosure that
11 we can within the limits of the law but that we take this
12 limited amount of time that's being requested to use caution.

13 And I agree with Mr. Rasmussen that in the end it's
14 the Applicant's burden to show why something should be
15 confidential. But because we're dealing with public interest
16 confidentiality here, not the company's, I also think we should
17 use prudence in getting to that point. And I think the process
18 that's been suggested here today is as good of one as I can
19 think of to do that.

20 CHAIRMAN JOHNSON: Okay. Thanks, Mr. Smith. At this
21 time let's move toward any Commissioner comments with regard to
22 action or Commission motion -- a Commission motion if they so
23 desire.

24 Commissioner comments?

25 COMMISSIONER KOLBECK: Yes. This is Commissioner

1 Kolbeck. I just wanted to -- since we have a commitment for
2 Friday on releasing more information, I guess I would turn to
3 maybe Mr. Hohn, Mr. Rasmussen, or maybe Ms. Anderson since you
4 were the ones who took the time to get here and give us the
5 comments.

6 Would you feel that appropriate, maybe the PUC having
7 a press release, or I guess I'm looking for input as to how can
8 we let people know that there is new information on the web?
9 Would a press release be sufficient, or are you -- what is your
10 suggestion on how we handle that?

11 MR. HOHN: Mr. Chairman, members of the Commission,
12 Curt Hohn with WEB Water. I think all of those avenues would be
13 helpful. You have had people -- it looks to me like from the
14 last time I checked your list yesterday there were like 60 to 65
15 people who had filed as part of your record or wrote the
16 Commission with concerns, scattered all across the state from
17 Nebraska to North Dakota. I think you've got e-mails and
18 addresses there. I think it would be good to let them know
19 because they're probably leaders in their community who speak as
20 to others.

21 I think the news media and press release would be
22 good. I think one issue that's on your agenda, the issue of the
23 public hearings which are about 13 days away, the question I
24 suppose comes to mind is this issue of the information, does
25 that affect whether those public meetings go on?

1 I hope they do because I don't think you want to delay
2 the public meetings because of this issue. And I think at the
3 public meetings maybe you just convey what you're struggling
4 with in terms of getting the information out.

5 This is a big project, and there's a lot of
6 information to look at. We've never had an oil pipeline go
7 through South Dakota. It's a big deal for us. TransCanada may
8 do it every year, but for us it's sort of a new thing. And I
9 think the public will be interested in knowing the efforts being
10 made to get the information out, and I think they'd be tolerant
11 or willing to accept it in pieces as long as the information is
12 out before a decision is made, I mean, by you and long enough
13 for the community to study it to see what they really think
14 about it.

15 So I think that's the issue, how long will people have
16 to look at this.

17 One thing that concerns the people I talk to -- I
18 serve farmers on our water system and we have an 800 number and
19 they call me whenever they have a problem or question. And one
20 thing I hear out of the Day County area is there's a lot of
21 concern about why TransCanada is pursuing acquisitional land
22 when they don't have a permit from the PUC to build at all in
23 the first place.

24 The other is they are using -- and I've heard it from
25 people I know and respect who tell me that they feel threatened.

1 Somebody drives in the yard at 10 in the morning and says we
2 want an answer by 5 o'clock and by the way you could be
3 condemned and you can't beat an oil company. That's not how we
4 do business here.

5 I think one thing you may want to try to think about
6 is how does the Commission give TransCanada some advice on how
7 you approach and court South Dakota to accept a pipeline.
8 That's not the way to do it. And until all the information is
9 out and people have a chance to study it and you have a chance
10 to study it that no permit will be issued. Obviously as the
11 Chairman has said in the news media, we have time to do this.
12 And they're rushing, and I think they're making a huge mistake.

13 I don't think they should be threatening condemnation
14 of anybody until we know whether you're going to let them
15 through and where.

16 Thank you.

17 COMMISSIONER KOLBECK: All right. Thank you. Just
18 one thing. Eminent domain is not -- that's a judicial matter
19 and not a PUC matter.

20 MR. HOHN: I understand.

21 COMMISSIONER KOLBECK: Any other -- that was my only
22 question is how we wanted to get this information out.

23 CHAIRMAN JOHNSON: If there are other Commissioner
24 questions, obviously we want to make sure we get asked. At this
25 point are there any Commissioner comments with regard to

1 possible action?

2 If there aren't any, I mean, I will just note that I
3 think Mr. Hohn did a good job of trying to talk about some of
4 the merits of having this information public. You know, I think
5 he and I end up in the same place. I take a little bit
6 different tack.

7 I mean, I'm not very interested in the merits of why
8 something should be public because whether we can come up with a
9 good reason why it should be public or not, the bottom line is
10 it really should be public even if it's not particularly useful
11 and it should be public unless, as Commissioner Hanson noted,
12 there's some particular reason it needs to be remained
13 confidential. So even if a lot of this information wouldn't be
14 helpful, I just think it's good that TransCanada has committed
15 toward undertaking quite a process in the next few days to
16 making as much of it available as possible.

17 I'm not sure exactly what, you know, Commission action
18 would be appropriate right now. We do have a commitment from
19 TransCanada that they'll file something on Friday. That's
20 probably significant. I mean, that's probably -- probably
21 enough at this point. I don't know.

22 Do the other Commissioners feel we need a particular
23 motion on this item?

24 COMMISSIONER HANSON: Mr. Chairman, this is
25 Gary Hanson. No. I don't believe we need a motion. I believe

1 I stated in my intentions earlier I do believe in the
2 preponderance rule, and I do believe that there needs to be a
3 statute requiring the confidentiality. Otherwise, I will not be
4 able to support those items. And I'll just send that flag out
5 ahead of time so that everyone in working through the process
6 will at least know where I'll be coming down.

7 Thank you.

8 CHAIRMAN JOHNSON: Yeah. And good comments. And
9 perhaps we can do this just so we have some Commission action
10 and so there is some clarity as far as what's going to take
11 place next.

12 Maybe I'll move that the Commission ask TransCanada
13 that if they're unable to refile those documents, those
14 confidential documents redacted, that they indicate so to the
15 Commission by a letter before Friday close of business with an
16 explanation as to why the delay is taking place and an
17 estimation of when those documents would be able to be refiled.

18 The motion has been made. A second is not necessary.
19 Any Commissioner discussion on the motion?

20 COMMISSIONER KOLBECK: I think that's a good idea. We
21 need to keep this process moving and avoid as many delays as we
22 can.

23 CHAIRMAN JOHNSON: I would pause quickly to look
24 toward TransCanada and their representation to see if they have
25 any objection to that motion.

1 MR. KOENECKE: No. None, Commissioner. Thank you.

2 CHAIRMAN JOHNSON: Any objection from staff?

3 MS. VAN BOCKERN: No, Commissioner.

4 CHAIRMAN JOHNSON: Any further Commissioner comments
5 on the motion? Hearing none, we'll proceed to vote.

6 Commissioner Kolbeck.

7 COMMISSIONER KOLBECK: Aye.

8 COMMISSIONER HANSON: Excuse me. Would you repeat it.
9 I believe I heard the motion -- there was a little noise in the
10 background just during a portion of it.

11 CHAIRMAN JOHNSON: Absolutely. I'd be happy to. The
12 motion by the Commission is we instruct TransCanada if they're
13 unable to file -- refile the confidential information in a new
14 format, a redacted format available to the public, that they
15 indicate so to the Commission by Friday close of business why
16 that information has not been filed, explain why it hasn't been
17 filed, and give an estimated time when the filing would be
18 complete from that perspective.

19 COMMISSIONER HANSON: Thank you very much for that,
20 Chairman Johnson. I vote yes.

21 CHAIRMAN JOHNSON: And Johnson votes yes. Motion
22 carries 3 to 0. I believe that resolves the first question on
23 the agenda.

24 I'm going to pause to see if any parties or
25 Commissioners or advisors feel otherwise.

1 Hearing nothing, we will proceed to the second
2 question on the agenda which deals with intervention for
3 requesting parties.

4 By my count before the meeting started we had 57
5 requests for intervention, request for party status.

6 MR. SMITH: Mr. Chairman, I think our reporter needs a
7 short break if that's acceptable.

8 CHAIRMAN JOHNSON: No. That makes a lot of sense, and
9 it's a great time to take a short break. 5 minutes, 10 minutes,
10 what's appropriate?

11 MR. SMITH: She says 5.

12 CHAIRMAN JOHNSON: We will be back. Commissioner
13 Kolbeck will turn off the Internet and we'll be in recess 5 to
14 10 minutes and we'll take up questions 2 and 3.

15 (A short recess is taken)

16 COMMISSIONER KOLBECK: The Internet's on,
17 Mr. Chairman.

18 CHAIRMAN JOHNSON: Thanks very much. We've -- we're
19 back from our break, our 5- to 10-minute recess, which was just
20 at 10 minutes, and I'll address the second question on the
21 agenda for today meeting, which is shall the Commission grant
22 intervention to requested parties.

23 Prior to meeting today or rather as of yesterday there
24 were 53 requests for party status. I believe four more came in
25 this morning. And at least one came in during this meeting.

1 I don't know how many of those we want to take. I
2 don't know if there are any objections to any of them. I think
3 probably the most appropriate thing to do at this point -- I
4 think our standard operation would be to hear from the
5 Interveners why they're interested.

6 I think perhaps for efficiency sake we'll look first
7 to staff and then TransCanada to see if they have any concerns
8 about any of the requests for party status. If anybody's got
9 any objections to the approach, let me know. Otherwise, we will
10 turn to Ms. Van Bockern and staff.

11 MS. VAN BOCKERN: Hearing no objections, I will go
12 forward here. Thank you, Commissioner. This is Kara for staff.

13 You know, looking at our statute that allows for
14 intervention, SDCL 49-41B-17 -- and it's not an intervention
15 statute. Rather, it designates the parties to a proceeding
16 under the siting chapter. And it's a very broad statute.
17 Section 3 of that lists persons residing in the area, nonprofit
18 organizations, to promote conservation, natural beauty. At the
19 very end of that list the statute reads "or any interested
20 person."

21 So the statute's very, very broad. And arguably any
22 citizen, resident, landowner of this state could certainly be
23 interested, drinking water, environmental concerns, you name it,
24 the list goes on.

25 Staff would, therefore, recommend that the

1 Commissioners grant intervention for all of these parties.
2 However, staff would also recommend that those Interveners be
3 divided in to two separate groups, those Interveners that own
4 land to be affected and those Interveners that are interested
5 simply as a resident of the State of South Dakota.

6 And the interests represented by those two groups will
7 be different. The testimony, evidence, discussion they provide
8 will be different, and I believe it's important for the
9 Commission and those Interveners to understand that their
10 intervention extends to their interests.

11 CHAIRMAN JOHNSON: Ms. Van Bockern, Commissioner
12 Johnson -- well, perhaps we'll hear from TransCanada before
13 moving into questions.

14 TransCanada, any concerns about request for party
15 status.

16 MR. KOENECKE: Thanks, Commissioners.

17 Commissioners, we don't object to any of the
18 applications for party status. We will note that the -- the
19 burden for becoming a party has apparently been lowered by the
20 legislature in the form of this statute. And then I -- you
21 know, I don't know whether any of the applications which were
22 filed would have risen to the usual level that's applied in
23 Commission proceedings. And we don't really know at all what
24 interest any of these people have in this matter.

25 But I presume under the statute and in concert with

1 our agreement to extend the intervention deadline it would be
2 tremendously inconsistent to object to any of these applications
3 on this basis.

4 We'd just -- please do go ahead and grant those
5 interventions, and let's get the process continuing along.
6 Thank you.

7 CHAIRMAN JOHNSON: At this time perhaps Commissioner
8 or advisor questions for either staff or the Applicant, and I
9 will just ask Ms. Van Bockern, is the -- the bifurcation you're
10 talking about, I mean, breaking the Interveners into two
11 different groups, I mean, that largely a cosmetic rather than a
12 legal distinction?

13 Is that just how we will refer to them generally and
14 how they'll be listed in categories, or will they be treated any
15 differently with regard to this proceeding?

16 MS. VAN BOCKERN: I think they will be treated
17 differently, Commissioner, when providing testimony at a future
18 date. Certainly the Commissioners have the ability to weigh the
19 testimony and weigh the evidence provided. And the weighing of
20 such information will depend upon that party's -- that party's
21 interest and that party's involvement in this process.

22 So at this point I'm sure -- it is very -- it is
23 largely cosmetic, and it will, however, require some weighing of
24 testimony and information down the road as we proceed with
25 hearings as I see the process.

1 CHAIRMAN JOHNSON: Okay. And then I will -- I have a
2 question for either the Applicant or Commission staff. You
3 know, we have had intervention requests continued to come in.

4 Is there some point at which we will draw the line for
5 intervention requests, you know, yesterday close of business or
6 noon today, for today's action? Obviously we'll have future
7 Commission meetings where presumably we would have action on
8 other intervention requests.

9 Or are staff and TransCanada fine with anybody who's
10 been received -- received, you know, even up to this very point?

11 MS. VAN BOCKERN: Well, staff would propose that at
12 this particular meeting we address all of those interventions
13 that were filed up to this meeting time. And, again, that would
14 be for efficiency sake. TransCanada is not objecting to those,
15 and, as I indicated, the statute's very broad.

16 Moving forward the intervention dates as of course
17 you're aware, Commissioners, ends July 10. And we will as we
18 accumulate a second list of Interveners schedule an Ad Hoc
19 Meeting if necessary and certainly address it at normally
20 scheduled Commission meetings as needed to allow intervention
21 for those parties.

22 Did that answer the question?

23 CHAIRMAN JOHNSON: It did for me. Yes.

24 Mr. Koenecke, any comments?

25 MR. KOENECKE: No, Commissioner.

1 CHAIRMAN JOHNSON: Go ahead.

2 COMMISSIONER KOLBECK: I'm sorry. I just had one
3 question. Are they going to be separated on the Internet, or is
4 this purely in your office? We won't be having separate
5 meetings for one and the other? They'll all be in the same
6 meeting, won't we?

7 MS. VAN BOCKERN: And certainly I think my comment was
8 more just for clarification to those Interveners. Again, I
9 think the Commissioners will have the job of weighing testimony
10 and evidence based upon those Interveners -- those Interveners'
11 specific interests.

12 So no, there will not be separate proceedings. No,
13 they will not be divided up in any way. But maybe it was just
14 more of a comment than part of my recommendation.

15 COMMISSIONER KOLBECK: I understand your reasoning. I
16 just wanted to make sure we were clear before we went ahead with
17 the motion.

18 That's all, Mr. Chairman.

19 CHAIRMAN JOHNSON: Yeah. Thanks. Are there any other
20 Commissioner questions?

21 COMMISSIONER KOLBECK: Not from me.

22 CHAIRMAN JOHNSON: At this point let's -- you know, we
23 don't have any objections to any of the interventions. Let's
24 pause to see if anyone in attendance in Pierre has any objection
25 to any of the interventions? I know they're not -- you know,

1 the people who might be doing the objections aren't party to the
2 case, but in allowing a free flow of information and
3 participation let's continue to pause to get their take at this
4 time.

5 Commissioner Kolbeck, does anybody have any
6 objections?

7 COMMISSIONER KOLBECK: Any objections here in Pierre?
8 I hear none.

9 CHAIRMAN JOHNSON: Okay. Great. Then we'll move
10 to -- we'll see if we have any recommendations or concerns by
11 any of the Commission advisors.

12 MR. SMITH: You know, I'm not so sure how I like the
13 idea of having these two categories myself. To me I kind of
14 think if you're a party, you're a party. You know, I think my
15 concern honestly -- and it has nothing to do with whether or not
16 I think you should -- there's no objection, and I personally
17 think you ought to grant the interventions.

18 I do see some logistical issues looming on the horizon
19 with a very large number of parties. For those of us -- I'm
20 assuming at least I know Mr. Koenecke and Mr. Rasmussen and
21 people who have been through litigation before, it's tough to
22 run things with a huge number of parties. And we're going to
23 have some challenges.

24 And it may be that there might be some -- I don't know
25 if classification is the right word, but I suspect there may be

1 people who are intervening as parties who -- are all of them
2 going to want to participate, for example, in discovery? I
3 mean, those kind of issues. We're going to have to -- we're
4 going to have some challenges in this case, really, we are,
5 dealing with all of that, that we haven't had even with a case
6 like Big Stone where we had a whole lot of parties. We didn't
7 have this many.

8 And those are going to be tough things, you know, just
9 something -- a matter as simple as a scheduling conference is
10 going to be tough to manage with that number of people.

11 But we'll work our way through it. And I'm just --
12 there may come a time when it may be that I'm just not sure
13 whether all of the people who are intervening as "parties" --
14 I'm not sure yet at this point in time, are they all going to
15 want to have that level of involvement? That might be a
16 legitimate question, but I don't know that we want to resolve
17 that here today.

18 CHAIRMAN JOHNSON: Thanks, Mr. Smith. We'll move
19 toward Commissioners comments and/or action.

20 I would just note by way of comment that I think I
21 understand what Commission staff is trying to get at. I would
22 think at this point I would just grant intervention without any
23 particular classification. And then we can certainly on an
24 informal basis, you know, deal with different types of
25 Interveners in a different way.

1 But I think from a formal process just have one
2 category, and down the road if we feel the need to subcategorize
3 that, we can do that at the time. That would be my preference.

4 Any other Commissioner comments?

5 Hearing none, I would make a motion to grant party
6 status to all of those that have requested, including those
7 intervention requests that have come in today, including Feller,
8 Liberty, Burger, and Burger, but not including Merrill Walters,
9 the application for party status that came in after this meeting
10 began.

11 A motion has been made. No second is required. Is
12 there any discussion about the motion?

13 Hearing none, we'll proceed to vote.

14 Kolbeck.

15 COMMISSIONER KOLBECK: Aye.

16 CHAIRMAN JOHNSON: Hanson.

17 COMMISSIONER HANSON: Aye.

18 CHAIRMAN JOHNSON: Johnson votes aye. Motion carries.

19 I believe that is all that we have to take care of
20 with regard to the second question, intervention.

21 And I would maybe before we move on to the third
22 question, you know, Mr. Smith, I think you're probably right. I
23 think probably there's likely some misunderstanding about party
24 status. I wonder if some people who want to be active
25 participants at the public hearings at the end of the month

1 think that they have to do one to do the other.

2 And it's probably just a good reminder for everyone
3 that, you know, we are soliciting input regardless of someone's
4 legal status in this case. If someone sends us a letter, that
5 can become part of the record. If someone wants to make
6 comments at a hearing, that becomes part of the record. One
7 need not be a legal Intervener to have your voice heard in this
8 case.

9 And, in fact, being an Intervener may end up being a
10 burden on some people. If they're scheduling conferences that
11 they don't really care about but we would ask they attend once
12 they have party status, obviously reviewing discovery,
13 requesting discovery, you know, being -- making objections to
14 evidence. It may be that that is a little bit deeper legally
15 than they want to get.

16 But, you know, certainly I trust people will look out
17 for their own interests, and if anybody out there doesn't want
18 to get that deep, certainly the Commission would entertain a
19 request on their part to change their legal status. But at this
20 point welcome to the proceeding to everyone.

21 The third question is how shall the Commission proceed
22 regarding procedure at its June 25, 26, and 27 public meetings.
23 And I -- you know, I asked that this be put on the agenda
24 because I wanted to make sure that everybody understood sort of
25 what our typical mode of operation is. And we do everything we

1 can to try to maximize, you know, public input. Because I do
2 think there are going to be a lot of people who are going to be
3 interested in this proceeding. And I want to make sure that we
4 hear from as many of them as possible.

5 And one moment. I typed up a few -- I want to pull
6 this up.

7 My apologies for the delay, Commissioners Kolbeck and
8 Hanson. Here we go.

9 I don't want to limit the number of people that can be
10 allowed to speak, obviously. And I certainly don't want to put
11 limits on how long they'll be allowed to speak because I think
12 we want to gather as much information as reasonably possible as
13 part of this proceeding to make sure we're able to hear from as
14 many people as possible.

15 I have three suggested guidelines for us to consider.
16 First off, that individuals with short comments, less than 5
17 minutes long, be allowed to speak first. I'm sure we've all
18 been at meetings where we just have two minutes of input to say
19 and we end up having to wait 2 hours to make our voice heard. I
20 think those people who have relatively short comments should be
21 allowed to go first at public hearings.

22 Secondly, articles, reports, brochures, or letters, or
23 other written information should not be read out loud into the
24 record at the meetings. Instead, I think people should ask to
25 submit the written information itself to the Commission so it

1 can be made part of the official record. Obviously, that would
2 be put on the website so it can be available to everybody in a
3 far more user-friendly format than having to read the
4 transcript.

5 Of course, interested persons at the meeting would be
6 able to make brief comments about the information that they have
7 submitted in writing. You know, in past proceedings I think we
8 have had people attempt to read an article that they think is
9 relatively short, but then when you read it out loud it takes a
10 long time. And I actually think that's counterproductive to our
11 interests in getting as much input as possible. So that would
12 be my second suggestion.

13 The third would be that interested individuals or
14 groups not make the exact same public comments at each of the
15 four public hearings. I do think we want to hear from as many
16 people as possible all along the pipeline route. And if we have
17 an individual landowner from, say, you know, Yankton County,
18 they make the exact same 12-minute presentation at each meeting,
19 you know, that is frankly 36 minutes of input that could have
20 been used to hear from other people to gain their input. And
21 having it entered into the record once I think is really
22 sufficient and is in the public interest.

23 And I think if we do those three things, we will have
24 an opportunity to hear from as many people as possible and gain
25 as much new information as possible about the project. And

1 just, again, a reminder. I think these suggestions are pretty
2 consistent with how we've done business in the past, but I do
3 want to make sure that Commissioners Hanson and Kolbeck concur
4 and all of the parties think that that will make more smooth and
5 effective hearings.

6 And with that, I would just offer that up as
7 suggestions, possibilities for conversation, and see if the
8 Commissioners or any of the parties have any concerns or
9 suggested revisions.

10 Any comments?

11 COMMISSIONER KOLBECK: Yes. This is Commissioner
12 Kolbeck. I just wanted to make one comment before I believe
13 Mr. Koenecke would like to make a comment also. And this is
14 actually directed towards Mr. Koenecke.

15 Is there any way -- I still think it might be a good
16 idea to have pictures -- or I know we're having trouble with the
17 maps and things like that on the line like we talked before --
18 to maybe leave at the county courthouse. Say we have a meeting
19 at Day County, whichever, just so this information if there was
20 some request out there, that someone needed information didn't
21 have a computer we could say it's at the county courthouse?

22 Is there anything like that we could do in
23 correspondence with these meetings?

24 MR. KOENECKE: I'm sure that there is, Commissioner.
25 And I wouldn't know what would be the road blocks to doing that.

1 I can't think of anything that would be that serious we couldn't
2 overcome, but I haven't discussed it with my client.

3 COMMISSIONER KOLBECK: I understand that.

4 MR. KOENECKE: Stepping out a bit on that. I
5 appreciate the input, and we'll consider that fully.

6 COMMISSIONER KOLBECK: I want to make sure as we go
7 through and make this first band of meetings and make this first
8 swing up state we're not there and gone like a cloud of smoke.
9 We want to make sure we leave behind a presence, people know
10 where to get ahold of us, where the information is we left
11 behind, something like that.

12 CHAIRMAN JOHNSON: I think it's a good suggestion.
13 Let's, you know, work through the different parties to see if
14 they have any concerns with the suggestions made by me or
15 Commissioner Kolbeck.

16 First we'll look to the Applicant. Any concerns with
17 any of the suggestions offered up?

18 MR. KOENECKE: No, Commissioner. I have no concerns
19 except to say that my client has been planning on putting
20 together an introductory exposition, if you will. That's
21 probably elevating it two levels above what it's going to be.
22 But we're planning on having a number of people there and having
23 a presentation of maybe up to an hour which is explaining the
24 project from our viewpoint and in order to give context to --
25 and information to the people who are at the meeting and context

1 to their comments.

2 If that's not in your view of how these meetings
3 should go, I'd like to know that.

4 CHAIRMAN JOHNSON: No. Mr. Koenecke, I think you're
5 right. I'm in error. I did not make it clear enough that -- I
6 mean, I think people are coming to these hearings for two
7 purposes.

8 Number one, they definitely want to know more about
9 the project. And, secondly, to the extent that they're having
10 concerns they're beginning to form or questions they're
11 beginning to form, they want to make those known to TransCanada,
12 the Commission staff, and Commissioners. And I think that those
13 interests would very much be served by a presentation by
14 TransCanada.

15 And my comments and suggestions dealt more with the
16 public input end. And we're certainly not looking to limit
17 TransCanada nor limit anybody's amount of time to speak. We
18 just want to make sure we get the right information out there.
19 Thanks for the clarifying question.

20 MR. KOENECKE: I'd appreciate that, Commissioner, very
21 much. We again stress how much TransCanada looks forward to
22 these hearings and hearing the input that you are going to get
23 as well. And we are going to be ready with a presentation at
24 all four of those meetings and look forward to the process.

25 I don't have any comments on your other ideas. I

1 think they're well taken and look forward to the rest of the
2 discussion on that.

3 CHAIRMAN JOHNSON: At this time we'll look toward the
4 staff and see if any staff members have any concerns or
5 suggested improvements.

6 MS. VAN BOCKERN: This is Kara from staff. I have no
7 concerns regarding your recommendations. I had one other
8 brainstorm, and that was maybe to allow the landowners the
9 opportunity to speak first. Again, along the same lines as
10 the -- the simple statement that Interveners may want to make
11 and not have to wait the whole meeting. I thought maybe those
12 landowners would appreciate the opportunity to speak first as
13 well for those same reasons.

14 CHAIRMAN JOHNSON: Okay. Thanks for the suggestion.
15 We just granted party status to a large number of individuals
16 and organizations. Do any of them have any concerns or comments
17 regarding the suggestions made -- the three made by myself, one
18 by Commissioner Kolbeck, and the one made by Ms. Van Bockern?

19 COMMISSIONER KOLBECK: Yes. I believe there's someone
20 in Pierre.

21 Mr. Hohn.

22 CHAIRMAN JOHNSON: Yes. Go ahead. And, Commissioner
23 Kolbeck, feel free to chair this portion of the meeting.

24 MR. HOHN: Mr. Chairman, members of the Commission, I
25 think the Chairman's suggestion that those with shorter comments

1 be allowed to speak first and landowners first is a good idea.
2 And I concur -- I think it also should apply to TransCanada.
3 I've had the pleasure of seeing their presentation, their
4 Power Point presentation, which I believe takes about two hours,
5 not one. And I think you would get reaction from people up to
6 this point.

7 There have been public meetings for the last year that
8 TransCanada has held up and down the gauntlet or the pipe route.
9 I think if you hear from the landowners first and interested
10 parties, TransCanada can actually be keeping a list of the
11 number of people that have this question or that or this concern
12 or that and pick it up at the end.

13 If you start out with an hour, which with all due
14 respect to my friends from TransCanada, can easily turn into two
15 hours -- I sat at a meeting that started in Britton one evening.
16 I think it was 8 o'clock, and I think we got out of there at
17 10:30. I think it would be best to have the shorter comments up
18 front. And probably TransCanada's going to comment at every
19 hearing, I would imagine.

20 It's going to -- I think it's going to discourage
21 people, and you may actually have some people leave. They have
22 heard it, many of them, the presentation, and this would be the
23 public's hearing before you to at least express their interests
24 or concerns or support for the project.

25 TransCanada could then have a list of questions at the

1 end of every meeting that they would answer. And if people
2 wanted to stay and hear that, and I'm sure they would, I think
3 it would be more productive.

4 COMMISSIONER KOLBECK: Thank you, Mr. Hohn.

5 CHAIRMAN JOHNSON: Commissioner Kolbeck, I might have
6 a response. You know, I think your suggestion is intriguing,
7 Mr. Hohn, and I find myself being nervous about it because I
8 believe, you know, as somebody -- as a Commissioner who's -- you
9 know, you've got to make some decisions at the end of this
10 process, I think I might -- I think I would understand the
11 questions and the concerns of the landowners and interested
12 parties better after having heard the -- what TransCanada's
13 putting forth.

14 Obviously, I'll review the information in advance, but
15 I just wonder if we wouldn't have more effectiveness by having
16 the presentation first so we understand what the information is
17 before people start asking questions about it. That's sort of
18 my counterthought, but I'm certainly still considering your
19 suggestion.

20 COMMISSIONER KOLBECK: Yes. This is Commissioner
21 Kolbeck. Maybe we could have the first 30 minutes to anyone who
22 wants to speak with no presentations, and then after that maybe
23 it would be the first 5 minutes, you know, if no one gets up,
24 then we could proceed on.

25 But I'm also intrigued by Mr. Hohn's suggestion, given

1 people -- somebody who's coming to the meeting who's seen the
2 presentation, they just want to say something maybe we do want
3 to handle those people first.

4 But maybe in Yankton it's the first half-hour, maybe
5 at the next one it's the first 3 minutes because maybe they're
6 not aware of it. We could run it like that.

7 The other thing I wanted to mention before I forget to
8 is TransCanada will have land acquisition -- we can't stop
9 the -- we can't get into that business, but you will definitely
10 be explaining that process to us at those meetings?

11 MR. KOENECKE: Thanks, Commissioner. Brett Koenecke
12 again. That is certainly a part of the outline of the
13 presentation that we're trying to create for these public
14 meetings is -- I'm thinking that 10 -- we were talking about a
15 45-minute presentation, trying to get it down to that sort of a
16 level. We didn't see how half an hour would do it justice.

17 And my recollection of it is that 10 minutes is on
18 acquisition. But I could be wrong about that. I haven't looked
19 at it for a few days.

20 MR. WHITE: Commissioner, this is Jim White for
21 Keystone. I think our intention was to touch only very briefly
22 on the acquisition process and to focus primarily on the issues
23 that are jurisdictional to the Commission.

24 CHAIRMAN JOHNSON: This is Commissioner Johnson. And
25 I think that's probably the better way to go. On a personal

1 level I'm as interested in the acquisition activity as I am
2 anything. But on a professional level, I mean, I can only do
3 what I can only do, and the statute is pretty clear about the
4 things we're supposed to consider.

5 So I think your approach, Mr. White, probably is the
6 wrong one from my personal perspective, but my colleagues may
7 have a different opinion.

8 COMMISSIONER KOLBECK: This is Commissioner Kolbeck.
9 I would think that -- I guess my personal opinion, that's why
10 people are coming. It deals with their land, the acquisition of
11 their land, what their legal rights are. I would think that
12 that's information that they would want out of this meeting.

13 Now obviously I understand that we don't have
14 jurisdiction over that, but if we're going to have a meeting, I
15 would like to have it very useful to the people that show up. I
16 would think that that's something very important to them.

17 MR. WHITE: I understand. The other concern that we
18 have, of course, is that easement negotiation is a very personal
19 and private and one-on-one event. And we certainly don't want
20 to get involved in that in front of a large crowd of people.
21 It's sort of bringing people's private business out into the
22 public.

23 So, again, you know, I think we can touch briefly on
24 the philosophy behind the acquisition program without getting
25 into a great deal of detail on specific acquisition.

1 COMMISSIONER KOLBECK: I understand. Thank you.

2 COMMISSIONER HANSON: Commissioner Hanson. I agree
3 with my two contemporaries, and from the experience that I have
4 had in these type of meetings we -- the Applicant simply needs
5 to be prepared to answer all of the questions that are asked and
6 put to them by the landowners and that that is the best way
7 to -- strictly from experience on each side of the table from
8 myself and in every position I've ever been in, I certainly
9 would think that TransCanada understands that.

10 And I don't think that there was anything intended by
11 the comments but it sounded for a second that there might be.
12 And certainly we need to have as open a forum as we can and
13 answer -- and TransCanada has to be prepared to answer all of
14 the questions that are put to them by the landowners that are
15 proper.

16 Thank you.

17 CHAIRMAN JOHNSON: Commissioner Kolbeck, are there any
18 other public comments on -- with regard to the suggested process
19 for running the public hearings at the end of the month?

20 COMMISSIONER KOLBECK: I don't believe so.

21 CHAIRMAN JOHNSON: Okay.

22 MR. SMITH: Can I ask one question, Mr. Chairman?

23 CHAIRMAN JOHNSON: Of course. Go ahead, Mr. Smith.

24 MR. SMITH: I might want to direct this to you,
25 Mr. Rasmussen. And I know you didn't say anything, but you do

1 represent a party. Just Curt Hohn's suggestion about the order
2 of presentation. And I guess just talking to you as an
3 attorney, you know, the only kind of concern I have with that is
4 it sort of -- we're going to sort of be upside down, if you know
5 what I mean, where generally the parties' case in chief is sort
6 of a tee up of the ball a little bit.

7 And again maybe that's purely aesthetic. And I'm just
8 curious as to what you think. This will be the first time we've
9 had a whole series of hearings, which makes this kind of
10 unusual. And I was just curious as to if you had any thoughts
11 on whether that's going to work as well if we haven't sort of
12 tee'd up what it is we're talking about and then let everybody
13 comment on what it is.

14 MR. RASMUSSEN: Unlike Mr. Hohn, I have not been to
15 any of the other previous hearings so I haven't had that
16 experience. I certainly appreciate what you're saying. I guess
17 the only thing I would say is a court can limit what is done and
18 how things are presented, and I certainly think, you know, it
19 might be appropriate for TransCanada to go first, but I think
20 you should put some limitations on how long they're allowed to
21 go.

22 Because people are going to be there, and they're
23 going to want to make comments. They're not going to want to
24 sit there for an hour and a half or even an hour listening to a
25 long presentation before they throw their 2 cents in. Because

1 most of the people who are going to come are at least going to
2 have some idea what this is about and don't need to hear a long
3 presentation. They're going to have questions.

4 So I think it's more appropriate -- you know,
5 certainly TransCanada should have an opportunity to present
6 something. But I think the more important thing is going to be
7 for TransCanada to answer the questions that are raised by the
8 public.

9 MR. SMITH: Thank you. Pardon me for interrupting.

10 CHAIRMAN JOHNSON: No. Mr. Smith, I think your
11 question brought a pretty good answer from Mr. Rasmussen. I
12 think there's some -- I think there's some merit there in
13 perhaps giving TransCanada a strong indication of how long we
14 want their initial presentation to be.

15 If 45 minutes is a number, great. If they can't get
16 it down shorter than that, maybe at the 45-minute point we can
17 pause, give the shorter commenters an opportunity to do that and
18 for the die-harders who really want information, if TransCanada
19 has opportunity to wrap up after that, we can go back to that.

20 Because, again, I don't want to tell anybody that they
21 don't have an opportunity to make their views known, whether for
22 2 minutes or 5 minutes or 30 minutes. But I think order is
23 important to make sure we're respectful to all the people there.

24 COMMISSIONER KOLBECK: Yes. This is Commissioner
25 Kolbeck again. As it was eloquently put to me here, you can't

1 take a test before you hear the lecture. So maybe the best is
2 to listen to the TransCanada presentation and then if that
3 answers some people's questions, that would be fantastic. But
4 again the TransCanada presentation right away may either insight
5 questions or answer them. So that should probably be first on
6 the list.

7 CHAIRMAN JOHNSON: That's well said, Commissioner
8 Kolbeck. Let's turn at this point to any of the Commission
9 advisors to see if they have any concerns with any of the
10 suggestions that have been offered.

11 But at this point I sort of see four suggestions with
12 regard to how this should run. Shorter presenters first -- or
13 maybe there are five. Shorter presenters first, number one.
14 Number two, that written material not be read into the record.
15 Number three, that people don't make -- other than obviously the
16 Applicant, the individuals not make the exact same public
17 comments at each of the four hearings. That landowners also be
18 afforded an opportunity to go earlier than perhaps other
19 interested individuals. And, you know, finally that the
20 TransCanada presentation be -- that they make every effort to be
21 in that 45-minute region so that we can make sure that we don't
22 have people have to dash out before we get into the questions
23 and answers.

24 Advisors, any concerns for those five recommendations?

25 MR. SMITH: I don't. I just might note because you're

1 not here in the room, Mr. Chairman, Mrs. Anderson, it looks to
2 me like you might want to weigh in. I've noticed your facial
3 expressions. And this is your time to do that. So I wouldn't
4 sit there and be bashful if you have something to say.

5 Is that okay, Mr. Chairman?

6 CHAIRMAN JOHNSON: Absolutely. By all means.

7 MR. SMITH: I don't mean to put you on the spot, but I
8 noticed it looked like you had some concerns.

9 MS. ANDERSON: I also have sat through their
10 presentation. It's very one-sided. It's very -- very much
11 TransCanada. If I go to a meeting and I'm going there to
12 testify and you're going to force me to sit for 45 minutes, let
13 alone drag in a husband who's a farmer who's not going to sit
14 anywhere for 45 minutes, it's not going to -- there's going to
15 be people leave.

16 My suggestion would be at least you give people
17 forewarning that there's going to be extra minutes of
18 TransCanada with their whatever. If they want to come and
19 listen to that, that's their prerogative. If they don't want
20 to, then they may come in the door later and not have to listen
21 to it. Because people, you know, if they've seen it and heard
22 it, you don't want 45 minutes more of it.

23 CHAIRMAN JOHNSON: Thanks for the suggestion,
24 Ms. Anderson. I would have a question for Ms. Forney.

25 Ms. Forney, are some logistic concerns or, I don't

1 know, maybe not financial concerns, but are there logistical
2 concerns with maybe making a second notice to that effect and
3 newspapers?

4 COMMISSIONER KOLBECK: We'll have Mr. Smith answer
5 that.

6 MR. SMITH: Heather actually -- I don't know.
7 Something was going on here and she was up here and she just
8 walked out about 3 minutes before you asked her that.

9 CHAIRMAN JOHNSON: Sure.

10 MR. SMITH: She may be listening downstairs and could
11 get back up here. I mean, obviously we're getting -- we can
12 send out another notice. Or maybe we could do it via just -- I
13 know we've got Mr. Mercer in the back. I don't know if the
14 media would want to help us out. Maybe we could do it via press
15 release or something.

16 I notice Curt Hohn now has a comment too. And one
17 other thing to note, of course, we haven't heard the
18 presentation, you know, obviously. So at least at one of the
19 meetings -- and we don't know how many other -- I mean, we've
20 really gotten a lot more publicity out on that. We don't know
21 how many hundreds or maybe thousands of people out there we
22 don't know who haven't heard it, Mrs. Anderson.

23 We haven't heard it. We don't know what it is yet.
24 So at least once, of course, we want to hear it. Because
25 it's -- it's also a point of view that we need to hear, you

1 know. They are the Applicants. So at some point we're going to
2 have to -- we want to hear it. I think we're just talking
3 mechanically how do we do this so it's fair and not oppressive
4 to people.

5 I don't know, Kara. What do you think in terms of
6 renoticing it?

7 Heather must have been listening. Here she is again.

8 MS. FORNEY: I'm sorry. I missed the question. I was
9 downstairs trying to process payroll.

10 CHAIRMAN JOHNSON: Well, this is Commissioner Johnson.
11 You know, it's been suggested perhaps if we're going to have
12 TransCanada give a 45-minute presentation, that we let people
13 know that in advance.

14 In these sort of siting cases we've always had the
15 Applicant provide a presentation first for exactly the reasons
16 Commissioner Kolbeck has mentioned. It generally sparks a lot
17 of questions in people's minds, and it answers a lot of
18 questions. I mean, it sort of sparks more knowledgeable
19 questions, and it answers some of the initial baseline
20 questions.

21 But, you know, Ms. Anderson made the suggestion we let
22 people know we're going to do that. Are there logistical
23 concerns, Ms. Forney, to renoticing our meeting?

24 MS. FORNEY: This is Heather Forney for staff. Part
25 of the problem that we might run into with renoticing is that

1 some of the papers that we notice in are weeklies, and we may
2 miss publication deadlines, et cetera.

3 I might suggest that we go the route of something more
4 like a press release or something to that effect. It's a lot
5 more timely. People will get the information more quickly. And
6 not everybody reads those public notices as much as we would
7 hope that they would.

8 So I might just suggest something, like I said, like a
9 press release, letting people know the format of the public
10 meeting, that we will start with approximately a 45-minute
11 presentation by the Applicant followed by a question and answer.

12 CHAIRMAN JOHNSON: Thanks very much. That's not a bad
13 suggestion.

14 Mr. Smith, you mentioned Mr. Hohn had comments he
15 wanted to make.

16 MR. SMITH: It appeared that way. Again, Curt,
17 comment?

18 MR. HOHN: Mr. Chairman, members of the Commission, I
19 think if there's restraints shown by TransCanada -- I mean, if
20 the Power Point presentation I saw were given, it was two hours,
21 and it sort of starts out with and then God created oil. And
22 it's probably more than we wanted to know. There are a lot of
23 things we know. We know about the Mid East problem. We know
24 about energy and dependance.

25 If they focus it on what's relevant, it's the land

1 issues. It's the location of the oil. It's issues like what
2 about the pressure and how high -- if there's a leak. It's
3 those kind of issues. We all know the international issues. We
4 don't need to hear that. And I think if it starts out that
5 way -- the one I've seen several times they're going to gobble
6 up a lot of your time.

7 Some of your hearings start at 7 p.m. and, you know,
8 everybody probably wants to get out of there at some reasonable
9 time. So I just think it's a matter of restraint. I think what
10 they need to convey initially -- the outline of this plan
11 they're going to be conveying to you probably in this chamber at
12 some point down the road in more greater detail.

13 But they're going to convey a general outline of the
14 project. 30 minutes. And then the public comments. You're
15 going to get a reaction from people from that. And then they
16 ought to maybe have a closing comment, here's some of the things
17 we've heard and here's some answers.

18 We don't really need to hear about what's happening in
19 Nigeria and the oil issues or whatever. It's more a matter of
20 what's happening right here within the state.

21 And I think that's the -- they tell you how big a
22 company they are and how small you are, and they go through
23 these things. If that's the case, you'll get another reaction
24 at your hearing I don't think you'll want.

25 I think what you want is a precise clinical

1 explanation of what they're going to do. And then the public
2 will react to what they know about it, and there will be
3 questions. And hopefully they'll be able to answer them right
4 there or follow up.

5 But, you know, I don't know. Maybe I'm being
6 skeptical. I sat through it a couple of times. And I probably
7 don't have the frustration that Lillian does, but it's a bit
8 long.

9 I think what you're going to hear from landowners,
10 they may repeat themselves, whether you're at Yankton or Clark
11 or whatever, but I think you're going to get the gist of the
12 initial reaction. And then it may give you something as to what
13 you want to pursue or what you want to see -- what conditions
14 you might want to place on a permit approval for the company.

15 So I would hope the majority of the time is spent
16 getting public input. And I'm going to wait until the very end
17 of every one of them so I'm not dominating.

18 CHAIRMAN JOHNSON: Thanks, Mr. Hohn. Any other
19 Commission advisor comments?

20 COMMISSIONER KOLBECK: Mr. Koenecke would like to make
21 a comment.

22 MR. KOENECKE: I would, thank you. Commissioners,
23 I'll be brief. I'm going to make a couple of comments.

24 One is I think it's unreasonable for TransCanada as
25 the Applicant to somehow be expected to sit there and wait until

1 the end and not give those people who haven't -- you know, an
2 hour and a half ago we were hearing that nobody knew what was
3 going on with the pipeline, and now we're hearing everybody's
4 been to our presentation. And I expect the truth is somewhere
5 in the middle.

6 But we really do insist -- give us a time limit.
7 You've imposed not really a time limit but a guideline on other
8 people. We'll take that, and we'll work with that. And that's
9 quite all right. But I think to not allow us to go first and
10 give a presentation and give context to the people who are
11 hearing it the first time is a big mistake. I really do.

12 The second comment that I'd like to make, and this
13 goes back to Commissioner Hanson's comments of quite some time
14 ago actually now, these are public hearings for the Commission
15 to get input from people, and they're not public inquisitions of
16 my client, TransCanada.

17 That said, we intend to be able to answer people's
18 questions at all of the meetings. And in a lot of cases it's
19 not going to be to anyone's satisfaction. There are going to be
20 rhetorical questions posed. There are going to be questions
21 posed that don't have answers.

22 And I want to make it abundantly clear these are
23 public hearings. So the Commission gets input and not public
24 inquisitions of TransCanada. And to the extent people might get
25 that impression, I'd hope to reeducate them this is really their

1 chance to tell you three what they think about the project and
2 the siting of it and not their chance to somehow put TransCanada
3 on public display and ask questions in order to make political
4 points or otherwise. So thank you very much.

5 COMMISSIONER KOLBECK: That's very well said,
6 Mr. Koenecke.

7 COMMISSIONER HANSON: Mr. Kolbeck, if I could at this
8 point, this is Gary Hanson. I appreciate very much
9 Mr. Koenecke's statement, clarification, just now.

10 There was a statement by Mr. White that was in reply
11 to a statement pertaining to the presentation, and I just wanted
12 to make certain that they were open, completely open, to
13 answering the questions that were put before them.

14 I believe his reply caused me some concern. And
15 that's what I was expressing, nothing that Mr. Koenecke had said
16 up to that point.

17 Thank you, Mr. Kolbeck.

18 CHAIRMAN JOHNSON: Any other -- we'll look to
19 Commissioner comments or Commissioner advisor comments or
20 questions?

21 COMMISSIONER KOLBECK: Yes. Mr. Rislov would like to
22 address us.

23 CHAIRMAN JOHNSON: Go ahead, Mr. Rislov, please.

24 MR. RISLOV: This is Greg Rislov speaking.

25 The one thing I think it's important to remember, I

1 think we do need to have input of those interested parties when
2 they show up at the meeting. But we've been talking all
3 afternoon about providing information and full opportunities for
4 those to participate and receive all the information they need.
5 I think that's -- took up the first hour of the day.

6 I think when you go out in public you can't assume
7 that everyone has done a long study of what TransCanada intends
8 to do. And it seems to me that there will be some showing up
9 for the first time, and they will need some context for that
10 meeting.

11 Now with that said, Mr. Hohn's comments were I think
12 very good as far as the content of what needed to be presented
13 at those meetings. But I certainly think we can't assume
14 everybody who walks into that meeting room is a second-year
15 student on this particular project. I think we have to assume
16 some are freshmen.

17 Thank you.

18 CHAIRMAN JOHNSON: Thanks, Mr. Rislov. Other
19 Commissioner or advisor comments?

20 COMMISSIONER KOLBECK: Yes. There's actually
21 Mr. Smith would like to address us, and then also I just wanted
22 to make the comment that there are somewhere in the neighborhood
23 of 3,000 landowners. And like Mr. Rislov had just stated, that
24 we cannot take for granted that they know anything about
25 TransCanada. We need to start from zero.

1 CHAIRMAN JOHNSON: Okay. Mr. Smith, go ahead.

2 MR. SMITH: This is going to be real short. I'm just
3 again picking up on Mr. Koenecke's comment about the nature of
4 these hearings. Again, just a -- I don't know who's listening
5 in out there on the Internet, and there's a few people here in
6 the crowd.

7 But just to let people know, these public input
8 hearings are the first step -- it really is truly the first step
9 in this process. It's not the end of the line.

10 We now have Interveners in the case. If the
11 Interveners' concerns are not resolved through either reaching a
12 satisfaction through discovery or whatever or through
13 stipulations with the company -- which happens a lot. That
14 frequently is the way these get resolved is Interveners get
15 their concerns resolved, and they're resolved through agreement.

16 Ultimately, we're going to wind up in a formal case
17 where then we are talking something not -- hopefully not an
18 inquisition in the middle ages context but that will be a formal
19 proceeding where the company -- where the Interveners in the
20 case and their lawyers will have the opportunity to put the
21 company through the paces and vice versa. And everyone will
22 have the opportunity to put on evidence and probably more
23 importantly, to subject the other party, including the
24 Applicant's evidence, to as vigorous of cross-examination as
25 they want to undertake.

1 So I just wanted to make that clear that this is
2 really -- these initial public hearings are more informative.
3 They're like scoping meetings. But it's nowhere near -- the
4 decision doesn't get made after this first round of four
5 hearings. This is just the start. And sometimes these go on a
6 long time, just to let everybody know that.

7 CHAIRMAN JOHNSON: Thanks, Mr. Smith. Points well
8 taken. I think we've got some suggestions before us. I think
9 we've reiterated them. I'll go through them quickly.

10 Short comments go first. Articles, other written
11 terms should not be read into the record at the public hearing.
12 The repetitive comments by the same individual at multiple
13 meetings should not happen. Landowners will be afforded an
14 opportunity to go earlier than some other. And the TransCanada
15 presentation is somewhere in the neighborhood of 45 minutes up
16 to an hour, no longer than an hour.

17 If those are the five proposals, do Commissioners
18 Hanson or Kolbeck have any concerns about those or any comment
19 about those?

20 COMMISSIONER KOLBECK: No, Dusty. I think that's a
21 very good start.

22 CHAIRMAN JOHNSON: Okay. Great. We'll presume that
23 that motion has been made then. Second isn't necessary.

24 Any discussion -- any further discussion on that
25 motion?

1 COMMISSIONER HANSON: I think those are --

2 CHAIRMAN JOHNSON: Go ahead.

3 COMMISSIONER HANSON: Should be standard operating
4 procedure of the Commission and should probably look towards
5 adopting those on all of our processes.

6 CHAIRMAN JOHNSON: That is a pretty good idea so that
7 we don't do this on an ad hoc basis, rather have something
8 people can refer to in advance. That's a really good idea,
9 Commissioner.

10 Any other comments? Hearing none, we'll proceed to
11 vote.

12 Kolbeck.

13 COMMISSIONER KOLBECK: Aye.

14 CHAIRMAN JOHNSON: Hanson.

15 COMMISSIONER HANSON: Aye.

16 CHAIRMAN JOHNSON: Johnson votes aye. The motion
17 carries.

18 Any further business to come before the Commission
19 today? I think we have handled our third question
20 satisfactorily.

21 Anybody --

22 MR. SMITH: Mr. Chairman, this is John Smith again.

23 CHAIRMAN JOHNSON: Please go ahead.

24 MR. SMITH: Just following up on Commissioner
25 Kolbeck's suggestion about the filing of maps, et cetera, at the

1 county.

2 Ms. Van Bockern, it's my understanding we are required
3 by law -- again I think it's Section 15 of the Siting Act to
4 file the "application" at the auditor's office.

5 I'm assuming we've done that.

6 MS. VAN BOCKERN: As per agreement with TransCanada
7 they sent those applications directly from their office so we
8 knew there -- it would be accurate and we weren't making copies
9 of copies. So I understand the auditor's office have all of
10 those copies. And, of course, they'll need to be supplemented
11 now --

12 MR. SMITH: As additional information that we have
13 done here today is made public, those records will be augmented?

14 MS. VAN BOCKERN: Yes. And staff will communicate
15 with TransCanada to understand whether that comes from our
16 office or if it comes from TransCanada's office.

17 MR. SMITH: And let me ask you this: And I know
18 you've filed that in disk form, Brett, but I think we'll have to
19 get paper materials that are fileable in the auditor's office so
20 the public has that. And maybe -- maybe the map issue will
21 resolve itself.

22 But if I understood Commissioner Kolbeck's suggestion,
23 and maybe the company could just do this, is that we get maps at
24 least for that particular county that are clear and easy to
25 comprehend for the public and are precise enough for them to be

1 able to clearly see pipeline locations, et cetera.

2 Is that fair?

3 MR. KOENECKE: Yes. Yes, it is.

4 MR. SMITH: Thank you. That's all I had.

5 CHAIRMAN JOHNSON: Yeah. No. Good point to follow up
6 on, Commissioner Kolbeck. Good suggestion. And I might just --
7 we had asked for -- or rather we moved and passed the motion
8 asking TransCanada to file a letter with the Commission Friday
9 if they weren't able to supplement their filing.

10 I might just ask the same thing with staff. Staff
11 made a commitment to work as quickly as possible to get the
12 documents released from confidential treatment today. If that
13 can't be done by Friday, if the Commission staff could also file
14 an order with the Commission indicating when they expect that
15 that process would be done and what was causing the holdup.

16 And I don't think we need a formal motion. That would
17 just be a request we would make of Ms. Van Bockern and
18 Mr. Solemn and everybody else on staff there.

19 MS. VAN BOCKERN: Yes. Staff will submit such a
20 letter. Thank you.

21 CHAIRMAN JOHNSON: Commissioners Hanson, Kolbeck,
22 anything else?

23 COMMISSIONER KOLBECK: Nothing from me.

24 COMMISSIONER HANSON: No.

25 CHAIRMAN JOHNSON: Great. With that, then we will

1 stand adjourned, and thanks very much to the Applicants, all the
2 Interveners, and all the Commission staff.

3 (The hearing is concluded at 2:51 p.m.)
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1 STATE OF SOUTH DAKOTA.)

2 :SS

CERTIFICATE

3 COUNTY OF HUGHES)

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 12th day of
11 June 2007, and that the attached is a true and correct
12 transcription of the proceedings so taken.

13 Dated at Pierre, South Dakota this 20th day of
14 June 2007.

15
16
17
18 _____
19 Cheri McComsey Wittler,
20 Notary Public and
21 Registered Professional Reporter
22 Certified Realtime Reporter
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