

1 TRANSCRIPT OF PROCEEDINGS, held in the
2 above-entitled matter, at the South Dakota State Capitol
3 Building, PUC Conference Room, 500 East Capitol Avenue,
4 Pierre, South Dakota, on the 3rd day of March, 2015,
5 commencing at 1:15 p.m.

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1 MR. SMITH: Again, I think I'll begin by letting
2 everybody know, you know, we sort of -- as I think you
3 all know and we've -- it's been put in communications
4 previously, but we're under a one-year deadline on this.

5 So what was the filing deadline again, Brett?
6 Do you recall?

7 MR. KOENECKE: We filed on December 15.

8 MR. SMITH: Okay. December 15. And we have at
9 least tentatively, but it's a relatively firm
10 tentatively, scheduled the hearing for September 29,
11 2015, through potentially if it were to go on that long,
12 through October 8. My guess is that it won't go on that
13 long, but one never knows. Keystone 1 was about that
14 long so it's possible.

15 So what I would suggest we do -- and, again, is
16 that we sort of work back from that. Now, again, I
17 realize that's some time, you know, about two and a half
18 months prior to the one-year deadline.

19 However, very frequently, you know, following
20 hearing a couple of processes usually take place. And
21 one is the filing of posthearing briefs, and the second
22 is -- and it's no mean task, is then order writing by me
23 or whoever may be the Commission Counsel at that time.
24 As old as I am, I might be dead. But whoever it is, it's
25 a tough job.

1 And so it takes two to three weeks to actually
2 write an order in one of these things. So usually we
3 like to leave some time after the hearing dates to handle
4 that kind of stuff. So I thought what we would do is
5 start with that 9-29-15 date, and then we've sort of got
6 to work backwards to get -- I mean, we've got to fit
7 everything in up until that point.

8 Now here are the things that I'm thinking we
9 would want to discuss. And, again, you guys are free to
10 think something different, but, first of all, discovery,
11 to define what we're going to do with discovery
12 deadlines.

13 And, again, sometimes the Commission -- I know
14 there's statutes that define discovery time tables and
15 all of that, but we very frequently have the Commission
16 issue an order establishing discovery dates so there's
17 some organization to this. Because these are tough with
18 all the parties involved and et cetera.

19 And so we like to have some organization in
20 that. And sometimes those dates do diverge somewhat from
21 the statutory discovery deadlines. And that's allowable
22 under the statutes, that the -- it basically says unless
23 otherwise set by the court. And in this case we're the
24 court.

25 And so I'm thinking, you know, discovery, that's

1 first. And then, second of all, is the issue of should
2 there be prefiled testimony? And I think the answer has
3 almost got to be yes.

4 MR. KOENECKE: We would resist any attempt
5 otherwise.

6 MR. SMITH: And the Commissioners made it really
7 clear in the Keystone XL certification that they want
8 prefiled. So I just think there's just no question
9 they're going to want prefiled testimony in a case like
10 this, and so we ought to assume that.

11 And, you know, I'm thinking the other things
12 that sometimes we include and sometimes we don't is a
13 date for prehearing motions, which usually we want it to
14 be relatively close to the hearing.

15 Sometimes we've also included a date for a final
16 prehearing conference shortly before the hearing to
17 discuss any issues that parties may have that could be
18 resolved through discussion. Not always, though. We
19 don't always put that in.

20 And then I don't know that parties would want
21 it -- whether you'd want a prehearing briefing schedule
22 or whether we just -- a lot of times we don't do that.
23 And then I think we probably would want a posthearing
24 briefing schedule.

25 Those are the thoughts I've had in terms of what

1 we should maybe look at here today. I don't know. Any
2 thoughts, Staff or Applicant, and then we'll go online
3 here. We'll go on the phone.

4 MS. EDWARDS: This is Kristen Edwards for Staff.
5 I guess I'd offer some of my general thoughts starting
6 with the September 29 through October 8 dates that Leah,
7 who's here, was nice enough to set up with the
8 Commission.

9 And, obviously, getting three Commissioners
10 together with time in their schedule is a bit of a
11 challenge so we thank her for that. And those apparently
12 are the dates that are available within the parameters
13 that we have.

14 As far as discovery deadlines, it would be
15 Staff's preference to have a final discovery due date
16 when the answers would be due, and then the parties would
17 be free to conduct discovery any time before that date.
18 If we had a due date, by statute, the final questions
19 would have to be out 30 days before that due date.

20 Our proposal for the final discovery answer due
21 date, right, would be August 21. Oh, I'm sorry.
22 Question date. So then September 21 for the final due
23 date.

24 MR. SMITH: It's for discovery?

25 MS. EDWARDS: Yes.

1 MR. SMITH: Man, that's awful close to the --

2 MS. EDWARDS: With that in mind, there might be
3 issues that come up in discovery that would be addressed
4 at the evidentiary hearing that were not in the prefiled
5 testimony because we had set that potentially
6 beforehand.

7 Direct testimony we were thinking filed by
8 July 26. And that would be for all parties
9 simultaneously. I'm sorry. Gosh. My handwriting's bad.
10 I'm sorry. June 26. That would have been late. With
11 rebuttal testimony by August 14.

12 It would be our preference not to do prehearing
13 dates and just rely on filing of testimony to cover those
14 issues.

15 MR. SMITH: What did you have for the rebuttal
16 date?

17 MS. EDWARDS: August 14. And then address any
18 motions as they come up at regular Commission hearings,
19 Commission meetings.

20 MR. SMITH: Okay. I guess just one observation
21 is that normally we set discovery deadline -- we try to
22 have the discovery concluded prior to the filing of
23 prefiled.

24 MR. KOENECKE: Right. And so it seems like, if
25 I understand Staff's proposal correctly, I think it was

1 offered in the intention of giving people a chance to ask
2 final little niggling bits of discovery, things that
3 might be left; is that correct?

4 MS. EDWARDS: Yes.

5 MR. KOENECKE: And not the main discovery
6 deadlines. People are going to need to get that
7 accomplished before they file their prefiled testimony?
8 That's the spirit in which that was conceived? Yeah?

9 MS. SEMMLER: Right. And then we were thinking
10 there would be bits of questions that would result from
11 testimony. And rather than -- you know, so people can
12 address those as testimony goes. Rather than having to
13 do it all through testimony and, you know, cross-examine
14 at a hearing or whatever.

15 MR. SMITH: Sure. Okay.

16 So then hearing that, with that final discovery
17 date, I'm just thinking that we should have some more
18 intermediate dates than that so that we make it clear we
19 want the bulk of this done and then call that last thing
20 something like -- you know, and I guess what I would
21 think was the final deal would be discovery in a sense is
22 meant to target in on prefiled testimony.

23 So if there are issues raised that haven't been
24 disclosed yet through discovery that are raised by
25 prefiled testimony, people would have one last

1 opportunity to get those answered.

2 I mean, I think this honestly in reality -- if
3 that were the case, I don't think it would be a problem
4 to come before the Commission and have that changed, you
5 know, the -- even if we set discovery final deadlines
6 prior to the first round of prefiled.

7 But okay. Well, why don't we hear what others
8 on the phone may think about that. What would you guys
9 think for discovery in general if we were to set up some
10 pre -- again, with the first round of direct prefiled
11 testimony due on June 26 -- and if I'm understanding
12 right, you guys are proposing everybody files at the same
13 time?

14 MS. EDWARDS: Yes.

15 MR. SMITH: Okay. So it's not going to be
16 Applicant first and then Staff and Interveners followed
17 by --

18 MS. EDWARDS: Everybody at once is our -- I
19 guess we can discuss it, but that's just what I'd throw
20 out there.

21 MR. SMITH: Okay. So, I mean, just thinking
22 about it, the first round direct testimony due June 26 in
23 terms of preparation time, assuming -- and, again,
24 there's a lot of people on the phone and I may have
25 different ideas here but what would you think for like an

1 initial round of discovery to be filed? It's March 3
2 today.

3 MR. KOENECKE: Are you thinking 30 days from
4 now?

5 MR. SMITH: I mean, whatever you think. We can
6 set a different time. We have the authority to set
7 different dates.

8 MR. KOENECKE: I'll just throw that out as a
9 suggestion to get started. I think, you know, my
10 experience would be these dockets are large document
11 intensive with a lot of moving parts, and the sooner we
12 get started, the better off we'll all be. Recognizing of
13 course, we'll be the target of most of the discovery.

14 You know, we'll have to be doing a lot of the
15 responding. We'll have discovery for every Intervener,
16 but it won't be very intrusive.

17 UNIDENTIFIED SPEAKER: Can you talk up a little
18 more? I'm having a hard time hearing this.

19 MR. SMITH: I maybe need to move the phone over
20 a little bit.

21 MR. KOENECKE: I'm sorry. I was observing, for
22 everyone's benefit, my experience is that these dockets
23 are large and document intensive with a lot of moving
24 parts, and the sooner we get started, the better off
25 we'll be collectively.

1 So it was my thought to start with an initial
2 round of discovery due in -- you know, to be sent out
3 30 days from now and due subsequently.

4 I don't know what other people's thoughts might
5 be on that, but the sooner starting the better. My
6 client will have to respond to a substantial amount of
7 discovery both from Staff and Interveners. We'll have a
8 small amount of discovery for each of the Interveners,
9 which I don't think will be very voluminous at all and
10 not terribly difficult to respond to the first round at
11 least.

12 Those are just my thoughts off the top of my
13 head.

14 MR. SMITH: Okay. And I don't -- what day -- I
15 don't have a calendar in here. What day is 30 days out
16 or 31?

17 MR. KOENECKE: Let's just pick April 1 for ease.

18 MR. SMITH: For ease. First round discovery
19 April 1 is the suggestion.

20 MS. EDWARDS: This is Kristen again.

21 My only preference would be not to be locked
22 into only like two rounds of discovery. Because I just
23 don't know how many it will take and what questions will
24 come up.

25 MS. SEMMLER: I think it's tough to know until

1 direct testimony is filed.

2 MR. SMITH: Okay. Maybe we don't even want to
3 set a discovery schedule. Just my experience has been in
4 the past is if we don't, we end up with a crushing
5 combobulation at the end of the process.

6 And if things start early -- because so much of
7 the voluminous discovery is stuff that, you know, is
8 quite general in nature and, you know, I mean, it relates
9 to the overall picture of things. And then, yeah,
10 obviously, you get down to some detail stuff that is
11 raised by particular things that appear in testimony or
12 in discovery responses.

13 MR. KOENECKE: Can we simply set an initial date
14 of April 1? That gives everybody 30 days to respond then
15 to May 1 and gives two weeks then to put your direct
16 testimony together from that under the proposed schedule.

17 That seems to be reasonable to me. And I don't
18 know. Perhaps we don't need to set any other dates from
19 there. It should at least get people started. It will
20 get us started. We've got a lot of work to do.

21 MR. SMITH: Okay. So your suggestion is
22 discovery responses --

23 MR. KOENECKE: June 26 would be -- that would be
24 enough time for two rounds then, wouldn't it?

25 MR. SMITH: Okay. May 1 --

1 MR. KOENECKE: If June 26 is the proposal, then
2 that gives time -- I was reading upsidedown there. But
3 if June 26 is the initial deadline, that gives time for
4 two rounds, doesn't it?

5 Pretty close.

6 MR. SMITH: It would. I mean, the second round
7 would have to be crammed a little more.

8 MR. KOENECKE: May 15 to June 15. And then
9 you'd have, you know, 11 days to finalize your direct
10 testimony.

11 MR. SMITH: So what you'd want is like the
12 second round May 15?

13 MR. KOENECKE: Yeah. That makes sense to me.
14 Does that work for Staff?

15 That's two rounds before direct, and then the
16 window is still open for things that crop up later.

17 MR. KEARNEY: What if you have initial due like
18 April 1 and then what if we have questions two weeks
19 after that that we file?

20 Would you be able to ask additional questions
21 before the second discovery dates in order to ensure
22 possibly maybe more than two rounds of discovery?

23 MR. KOENECKE: I anticipate being responsive to
24 Staff's questions whenever they crop up.

25 MR. SMITH: Yeah. I mean, when we set these

1 dates they're deadlines. You can send things in prior to
2 that any time, you know. But it's just -- it's just to
3 have a schedule so things get done, you know.

4 MR. ROUNDS: And we're not setting rounds of
5 discovery; correct? We're just setting a window of
6 discovery?

7 MS. SEMMLER: So maybe you could just do a
8 June 15 end date. So if you want to get discovery out,
9 you've got to have it out by May 15. Like two windows of
10 time?

11 MR. ROUNDS: If you want to be able to use it
12 for your direct testimony --

13 MR. KOENECKE: You've got to get it out.

14 MR. ROUNDS: I don't think you should even have
15 to cut it off. Because as long as people understand that
16 you get 30 days to respond, if they want to use something
17 for their direct testimony, they better get their request
18 to you 30 days prior. More than 30 days prior to that
19 due date.

20 MS. EDWARDS: In fact, I think Staff anticipates
21 being ready to go with a round of questions fairly soon.
22 So, you know, I guess that's to the benefit of everybody
23 if you just know that the more on the ball you are, the
24 more information you might get.

25 MR. SMITH: Okay. Any thoughts from folks on

1 the telephone?

2 I don't know. Ms. Craven, do you have any
3 observations?

4 MS. CRAVEN: Well, sure. Thank you for asking.

5 You know, we're involved in the other docket
6 proceeding, the HP14-001. And so some of these time
7 frames overlap, and it will cause some stress.

8 I was hoping, and Thomasina was of the same
9 mind, we could push it out a little bit more. Because of
10 the first hearing for KXL is the first week in May.
11 So (Inaudible) --

12 Well, we're having a hearing that first week in
13 May. It will take off the entire week. And then I just
14 know that that's going to create a lot of work for folks
15 who are working on these pipeline issues. Like Thomasina
16 and myself, we're both working on both pipeline issues.

17 MR. SMITH: Okay. Anybody else have any
18 thoughts on there?

19 I know some of you folks are relatively new to
20 this whole process. You know, it's -- we've got a lot of
21 stuff going on, I'll tell you that. I don't know.

22 Mr. Giles, do you have any thoughts?

23 MR. GILES: No.

24 MR. SMITH: You just disappeared.

25 MR. GILES: This is Mr. Giles. Can you hear me?

1 MR. SMITH: Yeah. Now we can.

2 MR. GILES: Those dates sound reasonable.

3 MR. SMITH: Okay. Thanks.

4 MS. EDWARDS: Which dates overlap with Keystone?

5 MR. SMITH: Well, the hearing on Keystone is --
6 what was it again?

7 MS. EDWARDS: May 5 through 8th.

8 MR. SMITH: 5th through 8th. Okay. So it kind
9 of punches in between, you know -- you know, to get a
10 second round of discovery done by May 15 might be kind of
11 tough, you know.

12 MS. SEMMLER: There's no deadline.

13 MR. SMITH: There's not really -- I mean, we're
14 going to allow discovery after that.

15 MR. KOENECKE: This is almost a guideline, not a
16 deadline.

17 MR. SMITH: Yeah. It's a guideline here just to
18 provide some structure in this thing so that we have --
19 because people will have the right to file subsequent if
20 we set that September 21 deadline.

21 I mean, that's punched awful close up toward the
22 hearing date, but what the heck. Things happen.

23 Anybody else have any thoughts?

24 MS. BEST: This is Diane Best.

25 MR. SMITH: Pardon me. There was two people

1 trying to talk.

2 Diane, why don't you proceed.

3 MS. BEST: Okay. As I understand it, you would
4 be looking at discovery beginning April 1.

5 MR. SMITH: Yep.

6 MS. BEST: And then simultaneous initial
7 prefiled June 26.

8 MR. SMITH: Yep.

9 MS. BEST: And then rebuttal August 14, and then
10 the final discovery due date September 21 -- or, I mean,
11 I'm sorry. Yeah. September 21.

12 Frankly, I think those dates are just fine with
13 the City of Sioux Falls. I think the September 21 date
14 for final discovery may create some -- some problems from
15 those that wait for additional discovery until the last.
16 And so I would recommend that the discovery dates be
17 moved up a little bit earlier.

18 MR. SMITH: Okay.

19 MS. BEST: Like more like September 1 type time
20 frame.

21 MR. SMITH: Okay. And that would be right
22 before rebuttal.

23 MR. SMITH: September 1?

24 MS. BEST: Yeah. Somewhere in there. Because
25 rebuttal is due --

1 MR. SMITH: That's due on the 14th so that's
2 over --

3 MS. BEST: Yeah. Right.

4 MR. SMITH: So that's over two weeks later. And
5 by that point most of your discovery, everybody's ought
6 to be pretty well done, you know. So that would give you
7 16 days. I mean, that's a fair amount of time once
8 you've gone to the very end of this.

9 MS. BEST: Yeah. I was thinking the opposite
10 actually. I have never been in a proceeding before where
11 rebuttal would be before the final discovery but --

12 MR. SMITH: Well, I don't think I have either.
13 I mean, we've had situations where --

14 MR. KOENECKE: It happens, though.

15 MR. SMITH: We've had situations where people
16 have requested that due to circumstances that additional
17 discovery be allowed, and we've allowed it. That was
18 kind of my initial observation, Diane, as well. And this
19 is John Smith talking here.

20 I know like in Keystone, as Ms. Craven can
21 confirm, we've set that up to where the discovery is over
22 before the prefiled testimony goes in.

23 MR. ROUNDS: Are we talking about the discovery
24 request or the discovery response due date?

25 MR. SMITH: I think is the September 21, what is

1 that? Is that the responses?

2 MR. KOENECKE: That's how I understood it.

3 MR. SMITH: Okay. Yeah.

4 MR. ROUNDS: So I guess the point would be if
5 you had rebuttal testimony that you had questions about
6 prior to the evidentiary hearing, you wouldn't have the
7 chance to get questions out and responded to if this was
8 only two weeks after rebuttal testimony came in.

9 MR. SMITH: Okay. How about if we did this
10 then: How about if we have final discovery requests due
11 September 1? How does that work? Is September 1 --

12 MR. ROUNDS: Well, then people could file
13 responses during the hearing. You've got to pull that
14 back far enough --

15 MR. SMITH: No, they wouldn't. Not if we set a
16 September 21 due date.

17 MR. ROUNDS: Oh, sure. Why not. All right.

18 MR. SMITH: What's that? Well, what's your
19 suggestion then?

20 MR. ROUNDS: I guess the due date we had
21 basically you're just looking at a October 21 due date
22 for requests.

23 August. Sorry.

24 MR. SMITH: Okay. You're operating on the
25 statutory time frame?

1 MR. ROUNDS: Yeah. All we were thinking was
2 once you see that rebuttal testimony, you know, give
3 people a week to get questions out in case they have
4 questions prior to the evidentiary hearing.

5 MR. SMITH: But, you know, I think on that it's
6 almost like the request due date is -- I mean, both of
7 those are important, I think, you know. You've got to
8 have some order to this thing.

9 So what are you suggesting for a final discovery
10 request due date?

11 MR. KOENECKE: August 21.

12 MR. ROUNDS: Yeah.

13 MR. KOENECKE: And, John, you're advocating for
14 like a September 1 and a shortened discovery deadline?

15 MR. SMITH: That wouldn't bother me any. Again,
16 August 14, that would give people what, approximately 16,
17 17 days to get their final discovery out. And then there
18 would be a 21-day response period.

19 I mean, we could punch that 21 days up a little
20 tighter too. And, again, it's kind of tightened up from
21 the normal discovery time frames, but these are oddball
22 cases and require some differences sometimes from the
23 normal statutory routine.

24 I don't know, though.

25 MR. KOENECKE: I don't think it matters either

1 way. I'm satisfied with either.

2 MR. SMITH: So should we set it to September 1
3 final discovery requests? And that would be -- then
4 there would be a 21-day response period.

5 Or do we want to punch it up one week so there's
6 a little more room between there and the hearing date?
7 But it's fine with me.

8 MR. KOENECKE: I think it sounds like Staff
9 likes the earlier.

10 MR. ROUNDS: It doesn't matter. Maybe we should
11 ask Diane.

12 MR. SMITH: Diane, what do you think?

13 MS. BEST: I don't know. I'm agreeable to
14 whatever you come up with. My only point was is that I
15 just thought we were -- the original dates were a little
16 close to hearing. But once it's been explained that
17 there shouldn't be that much discovery at the tail end,
18 I'm not sure.

19 MR. SMITH: I mean, I hope not, assuming
20 everybody acts in good faith and whatever. But my guess
21 is by the time we get to that point in this proceeding
22 there's just going to have been a mass of discovery
23 that's going to have exchanged hands here.

24 If history holds true here, we're talking a
25 massive amount of documents that will have been exchanged

1 by this point in time.

2 (Mr. Koenecke exits the conference.)

3 MS. SEMMLER: If any party doesn't act in good
4 faith and they bombard somebody with discovery at the
5 end, it would be subject to objection, and the Commission
6 could hear that.

7 MR. ROUNDS: Would it make sense to, within the
8 scheduling order, limit discovery, you know, past a
9 certain date to only that which pertains to the direct or
10 rebuttal testimony?

11 MR. SMITH: It might. Or to changes in
12 whatever. You know, in -- material changes in something,
13 you know, out there. You know what I mean? I mean,
14 things happen, you know, and --

15 Okay. Let me see here.

16 MS. EDWARDS: So is this maybe more within your
17 comfort zone, Ms. Craven, then, I mean, what we're
18 talking about now, pushing it back to whatever Mr. Smith
19 had said?

20 MS. CRAVEN: Would you repeat what we were
21 coming up with? Because I'm kind of lost.

22 MR. SMITH: Well, I think the one you were
23 mainly bothered about was, right, the May 15 date for
24 second round discovery.

25 MS. CRAVEN: Uh-huh.

1 MR. SMITH: Because of the fact that it lays
2 right over the top of the Keystone certification hearing.

3 MS. CRAVEN: So we get that pushed out?

4 MR. SMITH: Maybe we -- let me see. Direct
5 testimony, June 26. Maybe, what, if we pushed it out
6 to -- and I don't know what day of the week. I hope I'm
7 not on Sundays and stuff here. But maybe we should push
8 that out to say May 20 or May 22.

9 MS. CRAVEN: That would help.

10 MR. SMITH: And then, again, second round,
11 again, if we stuck to the June 15 date, that would
12 provide pretty close to what?

13 That will be over three weeks for response;
14 right?

15 MS. EDWARDS: May 22 is a Friday.

16 MR. SMITH: That's not a bad day. Okay.

17 MS. SEMMLER: I just don't know that it matters
18 because parties can conduct discovery as they want.

19 MR. ROUNDS: Well, yeah. The problem is if
20 people are trying to get two rounds of discovery in and
21 they wait until too close to the rebuttal, then they
22 might not get their responses in time to write their
23 rebuttal testimony.

24 So the question is -- I mean, the question is
25 are you talking about writing in rounds of discovery in

1 which you limit or restrict the amount of time people
2 have to respond to less than 30 days?

3 MR. SMITH: We can do that. We've done that.

4 MR. ROUNDS: But that wasn't what we were
5 talking about before. So if you push this out to the
6 22nd, then you might need to consider doing something
7 like that. Or maybe you just push everything back a week
8 then.

9 MR. SMITH: Yeah. The only thing that hit me,
10 if you push back the second round -- oh, that's May 1 are
11 the discovery requests. And then we would be moving back
12 the responses for the second round too.

13 Well, we set that originally for June 15; right?
14 Yeah. The requests.

15 MR. ROUNDS: Well, we -- I guess our
16 understanding was we weren't setting due dates. We were
17 setting a begin time. So if you put your initial round
18 of discovery in on April 1, then by statute you've got to
19 get a response on May 1 about. And then you have -- then
20 you have until June 26 to conduct another round of
21 discovery if you need it.

22 MR. SMITH: Yeah.

23 MR. ROUNDS: But that's not how we have to do
24 it. That was our --

25 MS. CRAVEN: Well, that June -- the second date

1 for discovery June 22 that works. I thought it was May
2 something. But if it's in June, that's a good amount of
3 time.

4 MR. SMITH: No. I had May 22 is what I had
5 written down, Kim.

6 MS. CRAVEN: Okay. I thought you said June 22.

7 MR. SMITH: Second round responses due. This is
8 the second round of requests. And the second round
9 responses would be -- I had marked down June 15. And,
10 again, is that the statutory 30 days? It's not. It's a
11 change from that.

12 Here's the dates. Let me see if I can follow
13 them in order here. We'd be talking first round of
14 discovery, which would be really the first item on this
15 whole thing, I've got April 1. Okay?

16 First round discovery responses due May 1.
17 Second round discovery requests due on or before -- you
18 can always do it before. There's no reason you can't do
19 it before, but by May 22. With second round discovery
20 responses due June 15.

21 Now, again, direct testimony due on June 26. I
22 mean, you know, it wouldn't bother me any if people
23 wanted to push that second round responses a little
24 farther back than that. I don't care. But I figure that
25 gives everybody about two weeks then from the end of

1 hopefully the mass of discovery prior to having to file
2 your testimony, to do the analysis and file.

3 Then what I've got as the next date is direct
4 testimony due June 26 by all parties. And then the next
5 date I've got is rebuttal testimony due August 14. And
6 then I've got final discovery requests, and, again,
7 limited to that pertaining to prefiled testimony or other
8 change in circumstance type of -- type of questions.

9 MS. CRAVEN: What's the date for the final
10 discovery? August 14? Or is that a different date?

11 MR. SMITH: The final one that we've set now --
12 we've talked about it. We haven't set it. We talked
13 about was September 1 with the final responses due
14 September 21.

15 And, again, we've talked about putting some kind
16 of a limit on that so people don't fudge and push things
17 back is that we limit the final rounds to questions
18 pertaining to items raised by the prefiled testimony or
19 other material change in circumstance type questions.

20 You know, you never know what's going to happen
21 out there. Is that --

22 MR. ROUNDS: So will you have something like
23 additional discovery is allowed beginning June 26 through
24 September 1 so long as whatever restriction you put
25 down?

1 MR. SMITH: Maybe that's a good idea.

2 MR. ROUNDS: Because basically, you know, if any
3 discovery after that second round can't -- you know, has
4 to pertain to the actual testimony, it would really make
5 sense to allow discovery until June 26.

6 MR. SMITH: Right. Well, direct testimony is
7 June 26. But I see what you're saying. Well, the final
8 discovery request, that's the deadline you would be able
9 to file.

10 But what I'm hearing is after the second round
11 that we have some level of limitation to provide an
12 incentive for people not to sit on their hands. Is that
13 okay?

14 And, again, what I can do here is write
15 something up, a draft, and circulate it to everybody for
16 people to comment before we finalize it. Because, again,
17 after talking about it here, people may have other
18 thoughts too.

19 I'll check it against -- I'll check it against
20 the discovery statutes and make sure we're not crosswise
21 with that. If we are, then I'll probably have to
22 recommend some changes.

23 Any other thoughts?

24 I'm not hearing anything.

25 Any other thoughts?

1 MS. BEST: This is Diane again. Is it typical
2 with the PUC to do a final date for at least a list of
3 exhibits or exchange exhibits, or would that be a
4 separate procedural order?

5 MR. SMITH: Yes, it is. We usually -- like
6 should we do -- usually what we require -- because,
7 again, we have prefiled so it's a little different, you
8 know. But we do usually require a witness list and
9 exhibit list X number of days before hearing.

10 And usually we're pretty close, Diane, to
11 hearing. But I don't know. What would you think? How
12 many days prior?

13 MS. BEST: Well, most of the time anymore people
14 are willing to do that electronically.

15 MR. SMITH: Yeah. Everything we do is
16 electronic except for the very few people who don't have
17 electronic means.

18 Well, what if we set the -- what day of the week
19 is September 24? Is that not enough time?

20 I mean, another option too is we could have
21 final discovery responses due September 21 and should we
22 also have -- we could also have the witness and exhibit
23 lists due that day?

24 MS. SEMMLER: I like that. This is Kara.

25 MR. SMITH: How does that work, Diane?

1 MS. BEST: That's fine.

2 MR. GILES: This is Chris Giles. I guess my
3 concern would be you just get those responses and then
4 you're supposed to submit your list of witnesses the same
5 day? It should probably be a little bit of gap to review
6 the last minute discovery responses.

7 MR. SMITH: Well, that's kind of a good point.
8 What do you think?

9 I mean, normally witness lists and that aren't
10 too -- we usually have those pretty -- pretty close to
11 hearing is usually when they're filed. Because by then
12 the cases usually have been pretty well laid out through
13 the discovery and prefiled testimony process.

14 What do you think, Chris, and --

15 MR. GILES: Give about two weeks after those
16 last discovery responses are supposed to have been
17 submitted before your witness list is due. That way if
18 you wanted to add someone based on the discovery
19 responses, you'd have time to do that.

20 MR. SMITH: Well, the only problem is the way
21 we've set this up now is the final responses are only
22 eight days before the hearing.

23 MR. GILES: Cut it down one week then. You've
24 got to review those things in one week, and then you'd
25 have a little time to add.

1 MR. SMITH: What day would five days after be?

2 MR. ROUNDS: The 25th. Friday.

3 MR. SMITH: How about the 25th? And that way
4 they'd be four days before hearing.

5 MR. GILES: Sounds reasonable.

6 MR. SMITH: Okay. Well, any other thoughts?
7 And, again, I'll write something up and circulate it so
8 people will have a chance to ponder after the
9 conversation today and see if we can come up with
10 something that we think can work here.

11 All right?

12 MS. CRAVEN: Thank you very much.

13 MR. SMITH: Yep. Any other thoughts?

14 MS. MOHR: I don't believe Mr. Stratmeyer is on
15 the line.

16 If we can have the gentleman from the Minnehaha
17 County Attorney's office identify himself, I didn't get
18 his name.

19 MR. KAPPEMEYER: Sure. It's Kersten,
20 K-E-R-S-T-E-N. Last name name is Kappmeyer,
21 K-A-P-P-M-E-Y-E-R. I'm a deputy state's attorney here.

22 MR. SMITH: M-E-Y-E-R?

23 Okay. All right. Thank you, everyone.
24 Anything else?

25 All right. Thanks. It's been a pretty

1 cooperative group here, and I appreciate it.

2 (The proceeding is concluded at 2:10 p.m.)

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CERTIFICATE

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5 I, CHERI MCCOMSEY WITTNER, 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 3rd day of
11 March, 2015, and that the attached is a true and correct
12 transcription of the proceedings so taken.

13 Dated at Onida, South Dakota this 9th day of
14 March, 2015.

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16

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18 Cheri McComsey Wittner,
19 Notary Public and
20 Registered Professional Reporter
21 Certified Realtime Reporter

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