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THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

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

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Transcript of Proceedings
December 9, 2014
10:12 a.m.

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BEFORE THE PUBLIC UTILITIES COMMISSION

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

COMMISSION STAFF

John Smith
Rolayne Wiest
Karen Cremer
Kristen Edwards
Greg Rislov
Brian Rounds
Darren Kearney
David Henry
Joseph Rezac
Eric Paulson
Patrick Steffensen
Debra Gregg
Katlyn Gustafson

Reported By Cheri McComsey Wittler, RPR, CRR

1 TRANSCRIPT OF PROCEEDINGS, held in the
2 above-entitled matter, at the South Dakota State Capitol
3 Building, Room 413, 500 East Capitol Avenue, Pierre,
4 South Dakota, on the 10th day of December, 2014.

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1 CHAIRMAN HANSON: HP14-001, In the matter of the
2 Petition of TransCanada Keystone Pipeline, LP for Order
3 Accepting Certification of Permit issued in Docket
4 HP09-001 to construct the Keystone XL Pipeline.

5 The question before the Commission is today
6 shall the Commission grant Keystone's Motion to define
7 the scope of discovery under SDCL 49-41B-27? And shall
8 the Commission issue a procedural schedule? Or how shall
9 the Commission proceed?

10 On October 30, 2014, Keystone filed a Motion
11 seeking to define the scope of discovery by limiting the
12 discovery to issues relating to whether the project
13 continues to meet the conditions in which the permit was
14 granted as provided by SDCL 49-41B-27. And many of the
15 Intervenors filed responses to Keystone's Motion.

16 So we have a Motion filed, and we have
17 Intervenors' filed responses.

18 On November 4, 2014, the Commission issued a
19 prehearing schedule conference order setting a prehearing
20 scheduling telephonic conference to be held by Commission
21 counsel on November 13, 2014, in an effort to reach the
22 consensus of the parties on an appropriate procedural
23 schedule for the Docket.

24 Ms. Edwards, were you a part of that? I'm
25 assuming since you're the Staff attorney were you a part

1 of that?

2 MS. EDWARDS: I was not. Ms. Cremer attended in
3 my stead. Thank you.

4 CHAIRMAN HANSON: Thank you. Ms. Cremer, I
5 understand that discussion was not successful.

6 MS. CREMER: That's correct, Mr. Chairman.

7 CHAIRMAN HANSON: Has a consensus been reached
8 at this time on a schedule?

9 MS. EDWARDS: No.

10 CHAIRMAN HANSON: Okay. Thank you. I was
11 hoping that in the last 11th hour or something it had
12 been accomplished. Thank you.

13 Do we have suggestions then from a standpoint of
14 how we would proceed on a schedule?

15 MS. EDWARDS: I guess I don't have mine up here,
16 what Staff submitted as a proposal. The only addition I
17 would have to Staff's proposal that we submitted was a
18 Motion to Dismiss was filed by the Yankton Sioux Tribe
19 last week. And Staff would request that be heard on
20 January 6 at the regular Commission meeting with
21 responses due by December 29.

22 CHAIRMAN HANSON: A hearing to dismiss the
23 Motion?

24 MS. EDWARDS: I believe the Yankton Sioux Tribe
25 filed a Motion to Dismiss the proceeding. And we would

1 request that be heard at the regular Commission meeting
2 or that afternoon if we need more time.

3 CHAIRMAN HANSON: I had missed that one. I
4 thought I had read all the --

5 MR. ELLISON: Could you give the January date,
6 please.

7 MS. EDWARDS: We're suggesting January 6 and the
8 responses due by December 29.

9 MR. ELLISON: Thank you.

10 MS. EDWARDS: Which I believe is a Monday.

11 MS. HILDING: This is Nancy Hilding --

12 CHAIRMAN HANSON: We can just barely hear you.
13 I believe your name is Nancy Hilding.

14 MS. HILDING: Yes. Can you hear me better now?

15 CHAIRMAN HANSON: Yes, we can. We're discussing
16 a scheduling item, and that is between Staff and the
17 Commission at this juncture.

18 I understand that meetings were held in an
19 attempt to schedule some other items, and those were
20 unsuccessful. So the Commission is going to make the
21 decision on scheduling.

22 And we have another scheduling item because of a
23 Motion from the Yankton Sioux Tribe. And that suggestion
24 has come from Ms. Edwards, and that is for a -- did you
25 say January 6 meeting with a December 29 responses?

1 All right. Thank you.

2 MS. REAL BIRD: Ms. Edwards, does that affect --

3 CHAIRMAN HANSON: Please, if you're going to
4 speak, you really need to use the microphone and identify
5 yourselves.

6 MS. REAL BIRD: Mr. Chairman, my name is
7 Thomasina Real Bird for the Yankton Sioux Tribe.

8 Ms. Edwards, does your proposed dates for the
9 Motion to Dismiss affect your suggested schedule that was
10 filed?

11 MS. EDWARDS: Thank you.

12 No. That would be just in addition to that. We
13 would still request the evidentiary hearing be the week
14 of March 24 through the 27th and final discovery due
15 February 6.

16 CHAIRMAN HANSON: Thank you.

17 At this juncture, are there any questions?

18 Who is interrupting?

19 MR. RAPPOLD: I'm sorry. I had a proposal -- a
20 suggestion, Mr. Commissioner. This is Matt Rappold on
21 behalf of the Rosebud Sioux Tribe.

22 In considering the final procedural schedule
23 the Commission may want to consider establishing a
24 motions deadline due date towards the front part of the
25 schedule.

1 CHAIRMAN HANSON: Thank you.

2 Right now we're discussing a January 6 and
3 December 9 [sic] meeting. All other ancillary discussion
4 is not appropriate at this time.

5 Thank you.

6 MR. RAPPOLD: Thank you.

7 CHAIRMAN HANSON: Do I have any discussion or
8 any questions from my fellow Commissioners on the
9 suggestion from Ms. Edwards?

10 Hearing none --

11 COMMISSIONER FIEGEN: So this is just dealing
12 with the Motion to Dismiss; correct?

13 CHAIRMAN HANSON: Correct.

14 COMMISSIONER FIEGEN: Okay. I have no questions
15 to that Motion.

16 MS. EDWARDS: I don't know what TransCanada's
17 position on that is. I haven't run it past them yet. I
18 suppose they'll be the ones with the biggest burden to
19 bear on that response.

20 CHAIRMAN HANSON: Thank you. No questions --

21 MS. HILDING: Hello. Can you hear me? Am I
22 heard?

23 CHAIRMAN HANSON: Yes. We can hear you.

24 Is this on the discussion for January 6,
25 December 29?

1 MS. HILDING: Yes. I'm suggesting that you make
2 the written response thing later than December 20. Give
3 us at least two weeks from whenever you issue the Order
4 to submit comments on the Motion to Dismiss.

5 CHAIRMAN HANSON: Are you planning on commenting
6 on the Yankton Sioux Tribe's Motion?

7 MS. HILDING: I don't know.

8 CHAIRMAN HANSON: Ms. Edwards.

9 MS. EDWARDS: I guess I'm not completely clear
10 on what her question is. The way that my proposal stands
11 is we would have -- or the parties would have until
12 December 29 to respond if they are in disagreement with
13 the Motion to Dismiss.

14 And that would provide almost a week for the
15 Yankton Sioux Tribe to file a response to their replies
16 and then that be heard at the regular meeting on
17 January 6. So there would be 20 days from today to get
18 any response to that Motion in.

19 CHAIRMAN HANSON: Thank you.

20 MS. HILDING: I thought you said December 20.
21 You said December 29?

22 MS. EDWARDS: Correct. The 29th.

23 MS. HILDING: All right.

24 CHAIRMAN HANSON: I'm limiting the questions at
25 this juncture and discussion to the Commission.

1 Mr. Smith.

2 MR. SMITH: This is John Smith, Commission
3 counsel. It's too high up. And pardon my cold here
4 too.

5 I would just note that I think the responses
6 could be people either supportive or in opposition to the
7 Motion. It's not limited to people who are opposed to
8 the Motion to Dismiss.

9 CHAIRMAN HANSON: Certainly. I'm going to ask
10 Keystone as the Applicant if the January 6 and
11 December 29 works. Or I guess it doesn't matter if it
12 works. I just want to know your comments.

13 MR. TAYLOR: William Taylor from TransCanada.
14 We'll have our brief in on the 29th, and we'll be here on
15 the 6th.

16 CHAIRMAN HANSON: Thank you.

17 Yankton Sioux Tribe, you made the Motion. Do
18 you have any challenges with the date of January 6 and
19 December 29?

20 Please, place your phones on mute.

21 MS. REAL BIRD: Thomasina Real Bird of the
22 Yankton Sioux Tribe. Those dates work.

23 And thank you for the comment, Mr. Smith, that
24 the responses may be in support as well as, we assume,
25 from the Applicant in opposition.

1 CHAIRMAN HANSON: Thank you.

2 Do we need a Motion on the scheduling? I don't
3 believe so. I'll just set it then as Chair that it is as
4 Ms. Edwards specified, January 6, with December 29
5 responses, and we'll move on then with the other
6 scheduling.

7 Do you have a suggestion for --

8 Excuse me. Mr. Smith.

9 MR. SMITH: I'm not going to override the
10 Chairman, but it occurred to me that maybe the Commission
11 ought to take up the Motion before so we know what we're
12 dealing with here. The Motion to limit discovery. And
13 then move on to scheduling so we know what we're dealing
14 with.

15 I don't know. It's up to you.

16 COMMISSIONER NELSON: Mr. Chairman, that will be
17 my preference also.

18 CHAIRMAN HANSON: If that's your preference, we
19 will do that. Six of one, half dozen the other. It
20 doesn't matter because we're still going to meet on the
21 issue, regardless of what the issue is.

22 But if that's preferable to anyone, that's fine.
23 I will acquiescent to your desires.

24 We will proceed then, and we'll look at
25 scheduling in a minute. Right now we will look at -- I

1 have some house cleaning announcements I need to make
2 first.

3 I understand that some of the Interveners did
4 not use Outlook or were otherwise challenged by the
5 system, using the State's computer system for the first
6 time. We're not here to discuss computer issues and we
7 generally do not do that, but I want to make certain with
8 the 42 some folks that have joined as parties to this
9 that they understand the process we must go through.

10 Ms. Edwards, I have it with me. You sent out an
11 explanation sheet. I believe it was to all of the
12 Interveners. And did you also post that on the web page?
13 Do you know?

14 MS. EDWARDS: Yes. That did go up on the web
15 page.

16 CHAIRMAN HANSON: All right. So is it your
17 understanding that all of the parties have received that,
18 and they now understand how they're to work through the
19 process?

20 MS. EDWARDS: That is my understanding, and if
21 any of them do have anymore questions, they can certainly
22 feel free to contact me or anyone at the PUC. Tina can
23 help them out too.

24 CHAIRMAN HANSON: Thank you.

25 Excuse me. Is there anyone who is still

1 challenged by that?

2 The question before the Commission right now is
3 shall the Commission grant Keystone's Motion to define
4 the scope of discovery under SDCL 49-41B-27. And as I
5 stated, we have written statements, the Motion and
6 replies from the parties.

7 So at this juncture I will ask the Commission
8 members if you have any questions of any of the parties.

9 Commissioner Fiegen.

10 Commissioner Nelson.

11 No questions.

12 Do I have a Motion?

13 Please.

14 COMMISSIONER NELSON: I move to grant
15 TransCanada's Motion to the extent that discovery shall
16 be limited to only discovery regarding any matter not
17 privileged, which is relevant to, number one, whether the
18 proposed Keystone XL Pipeline continues to meet the
19 50 Amended Permit Conditions stated in Exhibit A to the
20 Amended Final Permit and Order dated June 29, 2010, or,
21 number two, the changes to the Findings of Fact and the
22 Amended Final Permit and Order identified in Keystone's
23 Tracking Table of Changes attached to Exhibit C to
24 Keystone's Petition for Order Accepting Certification
25 under SDCL 49-41B -27.

1 It is not grounds for objection that the
2 information sought will be inadmissible at the hearing if
3 the information sought appears reasonably calculated to
4 lead to the discovery of admissible evidence.

5 CHAIRMAN HANSON: Thank you. And as the maker
6 of the Motion, you can have first opportunity on
7 discussion of the Motion.

8 COMMISSIONER NELSON: Thank you, Mr. Chairman.
9 Let me begin, first of all, by saying thank you to all
10 the parties for your written submissions. That allowed
11 me to wrestle through the positions and the issues well
12 in advance of this meeting.

13 As I began to work through this, it became clear
14 to me that the very first question that needed to be
15 answered is in 49-41B-27 what does the word "conditions"
16 refer to? That's the first question we have to answer.

17 And I will tell you of all the written
18 submissions, there is only one that I thought really
19 attempted to address that. And is Tracey Zephier here
20 from Cheyenne River?

21 MS. ZEPHIER: Yes, I am here.

22 COMMISSIONER NELSON: Tracey, I simply want to
23 commend you. You went to the heart of that issue, and
24 you stepped through that. Now you and I ultimately came
25 to a different conclusion, but of everyone you were the

1 one that attempted to answer the question, and I
2 appreciate your endeavor there. So thank you.

3 So what does that word "conditions" mean? Does
4 it mean the conditions that were added to the permit, or
5 does it mean the circumstances under which the permit was
6 originally issued? And that's the question that I
7 thought Tracey did an admirable job of trying to work
8 through.

9 But, as I said, we came to a different
10 conclusion. And I want to explain how I arrived at my
11 conclusion.

12 As Tracey said in her brief the word
13 "conditions" is not defined in this chapter. And so what
14 does it mean in relation to this chapter? And so I went
15 elsewhere within the chapter to find is this word
16 "conditions" used elsewhere?

17 And when we go to 49-41B-24 the word
18 "conditions" is used there, and it specifically speaks to
19 the conditions that we attach to a permit.

20 The alternative possibility for the definition
21 of conditions are those circumstances that existed under
22 which the permit was given. And so I looked further back
23 into the statutes to see is the word "conditions" used to
24 describe those circumstances? And in 49-41B-22.1 we
25 don't find the word "conditions." We find the word

1 "criteria."

2 And so what that tells me is that in this
3 chapter when the word "conditions" is used it is used in
4 relation to those things that we the Commission attached
5 to the permit when it was originally granted, not the
6 circumstances under which the permit was originally
7 granted.

8 And so having in my own mind answered that
9 question first, I then moved to how do we deal with this
10 Motion of TransCanada? How extensive is this?

11 And as you will find in my Motion, all of the
12 language in the Motion you will all find to be familiar.
13 It comes from two places. First of all, it comes from
14 the two points that TransCanada believes are related to
15 the conditions that we had on the original permit. And
16 it is my opinion that the matter that we are dealing with
17 in this Docket relates to those conditions. And so you
18 will find that as part of my Motion.

19 But associated with that, and Staff made a
20 correct argument, that the discovery statutes of this
21 state are broad. And you will find that language in my
22 Motion also. And that -- and I think there are a couple
23 of things that I'd like to point out.

24 I use the word "relevant." The discovery needs
25 to be relevant -- that's the statutory word -- to the two

1 items that we are going to consider in this Docket.

2 And, secondly, at the end of my Motion you will
3 find the fact that TransCanada can't object to
4 information sought which might be inadmissible at the
5 hearing if the information sought appears reasonably
6 calculated to lead to the discovery of admissible
7 evidence. That's the statutory standard, and we will
8 live under that.

9 And so, Mr. Chairman, Commissioner Fiegen, that
10 is the rationale that I went through as I wrestled
11 through this in preparing the Motion that I have made.

12 CHAIRMAN HANSON: Thank you.

13 Commissioner Fiegen, did you have anything at
14 this juncture on the Motion that you wish to discuss?

15 COMMISSIONER FIEGEN: Not yet.

16 CHAIRMAN HANSON: All right. Then I will speak
17 to it.

18 Your Motion, Commissioner Nelson, is nearly
19 identical to one that I had written, and I was going
20 through the process of checking between the two for the
21 differences. I won't go through the rationale for mine
22 at this juncture.

23 Obviously, we all -- I'm sure we each work
24 through the state statute that states the utility must
25 certify to the PUC that such facility continues to meet

1 the conditions upon which the permit was issued. The
2 semantics of that, I didn't get into conditions as deeply
3 as that.

4 I did want to include that each discovery
5 request must identify by number the amended permit
6 condition or the finding to which it is addressed. I
7 think that would be beneficial to us.

8 You did not include that in yours so obviously
9 I'm sure you considered it. What are your thoughts on
10 that on your Motion?

11 COMMISSIONER NELSON: I think my only thoughts
12 are I think that goes beyond what the statute requires,
13 and that's why I did not put that into my Motion.

14 I understand that that's what the company
15 desires, but it goes beyond what the statute requires and
16 that's why I didn't go there.

17 CHAIRMAN HANSON: Well, that was my desire
18 before I read what the request was from the company.

19 From my standpoint -- actually we have
20 50 conditions, and then I believe we have 48 sub
21 conditions, and I think it would just be a lot easier for
22 me to track anything if I saw which one they were
23 referring to of the 98.

24 COMMISSIONER NELSON: Mr. Chairman, I don't
25 disagree with that at all. But, again, I didn't want to

1 go beyond what the statute required.

2 CHAIRMAN HANSON: All right. Would you oppose
3 that as a friendly amendment?

4 I'll tell you ahead of time if you're going to
5 oppose it, that's fine. I won't include it. I'll just
6 after this is all over bug you for all the additional
7 time it took me for --

8 COMMISSIONER NELSON: I'll be honest with you.
9 I mean, I think that would be beneficial to everybody
10 involved in the process. I think that would make our
11 work going forward much easier if that occurred. So, no,
12 I will not oppose that as an amendment.

13 CHAIRMAN HANSON: All right. Would you include
14 that at this juncture without me having to --

15 COMMISSIONER NELSON: I would, yes.

16 CHAIRMAN HANSON: All right. I'll state it that
17 this is in addition to the Motion, without going through
18 the amended process, that each discovery request must
19 identify by number the amended permit condition or the
20 finding to which it is addressed. And that will be a
21 part of the Motion.

22 Cheri has that? Thank you.

23 Commissioner Fiegen, at this time do you wish to
24 have us entertain your questions or discussion?

25 COMMISSIONER FIEGEN: You know, I don't have

1 questions. Mine is mostly discussion. I admire what
2 Commissioner Nelson has brought before us. He looks at
3 the conditions. He looks at the facts.

4 I believe the Legislature meant the discovery to
5 be very broad. And I believe that Commissioner Nelson
6 has broadened the discovery, but I believe we should
7 allow individuals to request discovery and then as they
8 arise it can be disallowed.

9 So that's the process that I believe. I will
10 not be supporting the Motion, but I admire it. I
11 certainly like the expansion that you've put together.
12 But I believe the Legislature has discovery very broad
13 for the general public and Interveners. And then that
14 discovery certainly can be challenged.

15 And I would assume a lot of them will be
16 challenged. And so that will be a lot of work to go
17 through as a Commission and Interveners and the
18 Applicant, but that's the process that I would like to go
19 through.

20 CHAIRMAN HANSON: Thank you.

21 Commissioner Nelson, do you have a response to
22 that?

23 COMMISSIONER NELSON: No response.

24 CHAIRMAN HANSON: Thank you.

25 Forgive us. Our website keeps shutting off. My

1 hands have not left my arms so I have not --

2 Excuse me. Commissioner Nelson, from your --
3 from the way yours is written, would it prohibit the
4 correcting of what I would -- might consider ambiguities
5 in the 98 conditions that we set?

6 COMMISSIONER NELSON: No. My Motion would allow
7 for discovery that is relevant to those conditions.

8 CHAIRMAN HANSON: Thank you. And I read your
9 Motion as perhaps expanding it a bit from what was -- it
10 doesn't seem to be constraining it as much as what it was
11 previously.

12 Would Keystone's past performance and Keystone's
13 affiliates' performance be allowed then to be considered
14 in assessing the ability to properly comply with
15 compliance?

16 COMMISSIONER NELSON: I'm not prepared to answer
17 specifics such as that, other than if those things were
18 relevant to either of the two items listed in the Motion
19 or if those items would reasonably lead to discovery that
20 would ultimately be admissible, the answer is yes.

21 CHAIRMAN HANSON: Okay. That's the way I read
22 it too. Because I believe past performance should be one
23 of the criteria that be allowed for examination.

24 I don't want to -- I don't think it's proper for
25 us to, for instance, examine the politics in Nebraska or

1 on a national level. Those do not have anything to do
2 with the State of -- other than ultimately they will have
3 something to do with the State of South Dakota, but
4 they're nothing that we have the ability to work with or
5 with eminent domain or carbon issues or anything of that
6 nature.

7 COMMISSIONER NELSON: Mr. Chairman, I think
8 that's well put. We've heard references thus far in the
9 proceeding to, you know, some of those kinds of things
10 that I'm not sure are relevant to the conditions that we
11 are examining. And so, again, the discovery that this
12 Motion would lead to would be those things that are
13 relevant to the conditions or might lead to the discovery
14 of admissible evidence.

15 CHAIRMAN HANSON: And those ultimately would be
16 decided by the Commission as to whether they're relevant
17 or not.

18 COMMISSIONER NELSON: That's correct.

19 CHAIRMAN HANSON: I don't want the impotence of
20 the Federal Government to deal with Keystone or with
21 carbon issues or economic issues in Saudi Arabia to be
22 part of the discussion.

23 And your intent is not opening it up to those
24 areas?

25 COMMISSIONER NELSON: I'm not sure that I can

1 answer that specific question beyond what my Motion is
2 today. I think if those issues come up as a discovery
3 request, we will then have to take a look at those, given
4 the constraint of this Motion, should it pass.

5 CHAIRMAN HANSON: All right. I will just state
6 at the beginning that from my perspective, we will
7 confine this to -- and I hope to be consistent throughout
8 the process, that my position will be that we will look
9 at this from the standpoint of how it affects
10 South Dakota and within our jurisdiction as set forth by
11 state statute, South Dakota State Statute.

12 Commissioner Fiegen, did you have anything to
13 add at this juncture?

14 Commissioner Nelson, any further discussion on
15 the Motion?

16 Without any further discussion on the Motion,
17 Commissioner Nelson.

18 COMMISSIONER NELSON: Aye.

19 CHAIRMAN HANSON: Commissioner Fiegen.

20 COMMISSIONER FIEGEN: Fiegen votes no.

21 CHAIRMAN HANSON: Hanson votes aye.

22 The Motion carries.

23 MR. ELLISON: Mr. Commissioner, may I ask a
24 point of procedural clarification?

25 CHAIRMAN HANSON: Yes, you may. And if you'd

1 take the stand please and state your name and make sure
2 the microphone's on.

3 MR. ELLISON: Yes, it is on.

4 Thank you. My name is Bruce Ellison. I'm one
5 of the counsel for Dakota Rural Action. I just wanted
6 to -- this is my first PUC hearing so I just wanted to
7 get an understanding of how we're going to be proceeding
8 in the future.

9 I understood that this was a hearing to decide
10 the issues of this Motion. And to me when I think of a
11 hearing that is more than discussion of the -- and with
12 all due respect, discussion by the decision-makers, that
13 it would include --

14 You know, we came prepared to give arguments.
15 And maybe that was our error thinking that that was the
16 way it was going to be. But that's what I'm kind of
17 asking for. We're going to have other hearing dates on
18 motions that are going to be coming up.

19 And so my question is are we coming just to
20 listen to -- you know, I'm happy to listen. I'm not
21 trying to suggest anything different from that. But we
22 may be able to answer questions. We may be able to give
23 further insight beyond our briefs. And I could see the
24 Commission saying, look, unless you have something to add
25 additionally, we've already read your briefs.

1 But I just want to understand whether -- to me
2 this is not a hearing. It's more of like a delivery of a
3 decision. So with all due respect, I would just like
4 clarification from how we are going to proceed from here
5 on, sir.

6 Thank you.

7 CHAIRMAN HANSON: Certainly. The purpose of
8 having prefiled statements to the Commission by all of
9 the parties is so that we don't spend three or four hours
10 here having everyone present their case and have
11 questions back and forth throughout the process. We have
12 had those hearings before.

13 But that's the entire purpose of filing
14 everything via paper. So that we have the opportunity to
15 read and reread and to research what you present and for
16 all of the parties to be able to exchange their ideas
17 with us.

18 We then, all of us, read those processes. We
19 highlight them. We reread them, and we do research
20 them, as you can tell, I think, by the presentation here
21 today.

22 MR. ELLISON: Sure. Yes.

23 CHAIRMAN HANSON: It becomes extremely
24 cumbersome from a time standpoint to go through a process
25 when you have 42 Interveners, 20 of which might wish to

1 make presentation. Those persons then would be given
2 opportunities to -- well, in a regular hearing process
3 when we do actually have the hearing will be allowed to
4 ask questions of witnesses and go through all of that
5 process just from a standpoint of a court process.

6 During the preliminary process we generally have
7 everything prefiled. We read through it, and then we go
8 from there.

9 We may also do that for a hearing certainly. We
10 will want to have people making prefiled. But then we
11 will get into the additional process of having witnesses
12 presented. The witnesses will present prefiled
13 testimony, if that's the case, if it gets to that
14 process, and then we will go through the long circle of
15 asking questions and have rebuttal and all of that
16 process.

17 MR. ELLISON: And I thank you for the
18 explanation. It gives me a better understanding.

19 I just urge the Commission to understand that
20 many of us within the state regard this as a very serious
21 issue and that it may be necessary to take more time than
22 usual, especially around some of the key questions.

23 I mean, we get, for example -- I mean, some of
24 the Petitioners had raised the question of is this the
25 cart before the horse by Keystone, TransCanada coming in

1 and trying to restrict discovery before there's even been
2 discovery request. Under South Dakota Law that's the
3 proper way to do it.

4 When we get down to discussing what is or is not
5 potentially relevant in a discovery request, I would just
6 urge a little bit of latitude. It may take a little bit
7 of time, but that's a critical aspect of these
8 proceedings.

9 And so with all due respect, I would just urge
10 some latitude under some of those more substantive
11 motions that perhaps there may be some additional matters
12 that could be presented or questions answered.

13 CHAIRMAN HANSON: Certainly. I'm sure you don't
14 mean to intimate the Commission does not take this
15 seriously --

16 MR. ELLISON: Oh, no. I'm not suggesting that,
17 sir.

18 CHAIRMAN HANSON: If I could continue.

19 MR. ELLISON: Oh, sorry.

20 CHAIRMAN HANSON: When you say that this is a
21 very serious matter to some folks, it's a very serious
22 matter to the Commission as well.

23 For the Keystone Pipeline running through the
24 eastern part of the state we held numerous meetings, went
25 out and met with folks, and one of our public meetings

1 lasted seven hours, in which we -- and I'm sure the
2 average was somewhere around four hours.

3 The Keystone XL we did hold four meetings in
4 different communities, and we waited until every single
5 person who wanted to speak to the issue had that
6 opportunity.

7 This is not the front end beginning of a
8 pipeline process. This is an expiration of a permit.
9 And to an extent we are not going to go through that
10 entire process again certainly and go through the --
11 because that is not called for in state statute, and it
12 would be redundant anyway.

13 Everyone has the opportunity to participate, to
14 provide their input. We're not excluding anyone from
15 this process. We went over and above the standard
16 operating procedure from the standpoint of making certain
17 that people who had even the slightest interest were
18 allowed party status. We went far beyond what was
19 necessary for us to do.

20 So yes. We're taking this very seriously.
21 We're making certain everyone has that voice and that
22 opportunity to participate.

23 MR. ELLISON: I'm sorry. I did not try to
24 suggest that you weren't. I was just trying to urge that
25 because we the people think it's an important issue, we'd

1 just urge a little latitude perhaps on some substantive
2 questions.

3 Thank you.

4 MS. HILDING: This is Nancy Hilding. I'm an
5 Intervener on the line. May I speak?

6 CHAIRMAN HANSON: You may. Although I wish to
7 caution everyone that we are at a juncture right now
8 where we are in a process of voting on a Motion.

9 And if you have questions regarding the process
10 itself, you should discuss that with the Staff or should
11 review -- I'm sure many of you are represented by
12 attorneys. You should review that with Staff so that you
13 understand the procedural process.

14 But we're not going to interrupt our motions.
15 This is very unusual for us to interrupt motions and then
16 have questions on procedures.

17 Please, go ahead.

18 MS. HILDING: The Commissioner who made the
19 Motion stated that only one entity, the Yankton Sioux
20 Tribe, addressed the issue of conditions. I would like
21 to say that I in my, you know, filing did, that Keystone
22 recognized that both Yankton and I, Nancy Hilding,
23 addressed the issue of what "conditions" meant.

24 However, they mischaracterized what I said, only
25 addressing half of it and not all of it. And you're

1 saying that we prefile things so that we argue. The man
2 who made the Motion apparently was not aware that I
3 addressed the issue and that Keystone argued about how I
4 addressed the issue.

5 CHAIRMAN HANSON: Ms. Hilding. Ms. Hilding.
6 Ms. Hilding. You're completely out of order.

7 MS. HILDING: Oh, sorry.

8 CHAIRMAN HANSON: We're not asking you to refute
9 or argue over a statement that may have been made or was
10 made pertaining to your filing. That's a personal issue
11 that you can send a letter or make a phone call if you
12 wish to discuss that.

13 I'm sure that the Commissioner meant no
14 disrespect towards you. His intent was to compliment an
15 individual who had made what he thought was a good
16 argument, and it was not intended to slight you in any
17 way, I'm sure.

18 And the Commissioner would like to have an
19 opportunity to address it.

20 COMMISSIONER NELSON: I just want to make it
21 clear for everybody that just listened to this that I
22 read and consider every single document that is filed.
23 And as Commissioner Hanson said, there was one filing
24 from Cheyenne River that I thought did an exceptional job
25 of trying to speak to what I thought was the first issue,

1 and that was my sole reason for pointing that out. So
2 thank you.

3 CHAIRMAN HANSON: Thank you. Yes.

4 MS. LONE EAGLE: My name is Elizabeth Lone
5 Eagle. I am an individual Intervener, and I live in
6 Bridger, South Dakota.

7 My question is -- and I'm not trying to argue
8 what your decision is on the Motion. My question is that
9 were there compelling evidence that, say, unexpectedly
10 came to light, would you reconsider that Motion? Would
11 we be able to file a Motion to reconsider this decision?

12 And I'm saying that because as of last night I
13 came across something that may very well be very
14 compelling evidence. I still need a few days to follow
15 through on it. But I was pretty shocked when I found out
16 last night, and it would involve being able to have that
17 Motion be reconsidered.

18 That's why I'm asking the question. For
19 example, if this --

20 CHAIRMAN HANSON: May I answer your question?

21 MS. LONE EAGLE: Would we be able to do that?

22 Thank you.

23 CHAIRMAN HANSON: Neither one of us individually
24 can answer that question for you. However, the Motion
25 that was made -- and I don't know if I have gavelled that

1 yet. Have I? Did I say carried?

2 That Motion states in part that it is not
3 grounds for objection, meaning that Keystone would not be
4 allowed to object to testimony.

5 If the information that is sought would be
6 inadmissible at the hearing -- if the information sought
7 appears reasonably calculated to lead to the discovery of
8 admissible evidence.

9 So if anyone who is a party to this presents
10 information that is -- appears to reasonably calculate to
11 lead to the discovery of admissible evidence, then it
12 would be allowed.

13 And that's a pretty big door that Commissioner
14 Nelson opened up. So it's not closing. It's opening it
15 up.

16 So let's reserve that -- that type of question
17 that you're asking us -- and I know a lot of you wish to
18 ask questions, but that -- at a Commission meeting is not
19 the place to ask those questions.

20 We have Staff to work with you and to answer
21 those questions for you, and they're available through
22 either in person stopping by, sending snail mail, an
23 e-mail, making a phone call. But it's not a part of
24 these Commission meetings.

25 So if you have Commission -- questions on

1 procedures and that type of thing, I understand that
2 there's going to be a lot of questions, but we can spend
3 a very long time here using up a lot of other people's
4 time trying to answer those questions.

5 But to answer your question as it is now, two
6 things: First of all, we as Commissioners cannot on an
7 ambiguous question of that nature even answer it.

8 MS. LONE EAGLE: Okay.

9 CHAIRMAN HANSON: The three of us do not meet or
10 discuss any of our dockets between the three of us,
11 outside of an open meeting. So when we sat down here
12 today none of us knew who was going to present -- I
13 didn't know if Commissioner Fiegen was going to present
14 one. I had one to present. Commissioner Nelson
15 presented one. Mine was close. He accepted. You
16 observed how it took place.

17 When we sit down here and start talking it's the
18 first time that we have an opportunity to know what has
19 been going on in the other person's mind since the last
20 time that we met in open meetings. We don't send e-mails
21 to each other on anything of this nature. We're not like
22 the Supreme Court that goes and sits down and discusses
23 the nuances of an issue.

24 So we cannot tell you ahead of time how we're
25 going to vote in any respect. Our Staff are even

1 separated from us from the standpoint of sending out an
2 e-mail of information. That's how -- there's air between
3 all of the discussions that we have from the standpoint
4 of, for instance, if one of the staff members wanted to
5 communicate with me, he cannot or she cannot communicate
6 my thoughts to the other Commissioners. That's how
7 separated we are in the discussion.

8 MS. LONE EAGLE: Okay. I'm new to the process.
9 And part of the reason I asked that is because -- and it
10 was in my response that there were those of us who are
11 affected by this that were completely left out of the
12 process the first time. And so as -- the reason I came
13 to intervene this time was because I don't want to be
14 left out of that process again.

15 I mean, we were like completely ignored, no
16 notification or anything of anything going on. And so
17 that's why right now we have a bunch of us Interveners
18 that are completely unfamiliar with the process.

19 CHAIRMAN HANSON: All right. And I need to
20 caution you too and everyone. I understand you're new to
21 this, but when you make a charge -- you may or may not
22 realize you just did, but you made a charge against the
23 company.

24 As an Intervener to this you have a
25 responsibility. As a party you have a responsibility to

1 make certain that everything you say when you're
2 testifying to us and certainly outside this is accurate
3 and that the other parties have an opportunity to respond
4 to that.

5 So you just made a charge against Keystone that
6 they did not notify you and that you should have been
7 notified. Now it really is incumbent on us to allow them
8 to respond. But certainly they don't know necessarily --
9 they're not carrying their maps. They don't have the
10 individual who's responsible for that. They can't
11 respond to that at this juncture. So I caution you on
12 how you present things.

13 MS. LONE EAGLE: Actually I put that in my
14 response to their Motion. So they did have an
15 opportunity to respond to it, and they did not.

16 CHAIRMAN HANSON: All right. Thank you. That's
17 the challenge that we have here.

18 MR. SMITH: Could I make one comment too, if I
19 might, Mr. Chairman?

20 In response to your point -- I can't remember
21 now. What was your name again, the woman that was just
22 talking? Elizabeth?

23 I'd just like to note too on your original point
24 about the ability to come in here and request relief, for
25 example, from a previous Commission action, nobody's

1 prohibited from doing that. You have the right to come
2 in here and request --

3 If there is a particular discovery item that you
4 feel is important that the Motion here to define scope
5 will impede, you have every right to make a Motion to the
6 Commission to allow you to proceed with that at some
7 point in the future.

8 MS. LONE EAGLE: Okay. Thank you very much.

9 MR. SMITH: You're not prohibited from doing
10 that.

11 MS. LONE EAGLE: Okay. I appreciate that.
12 Thank you.

13 CHAIRMAN HANSON: That is why a number of
14 individual participants to this hire an attorney so that
15 they can go through the process.

16 MS. LONE EAGLE: I can't afford an attorney.

17 CHAIRMAN HANSON: Well, if you join with a
18 number of other folks.

19 MR. RAPPOLD: Mr. Chairman, this is
20 Matt Rappold.

21 CHAIRMAN HANSON: Sir, we can't hear you very
22 well.

23 MR. RAPPOLD: I'd like to request a point of
24 clarification. Can you hear me better now?

25 CHAIRMAN HANSON: Slightly.

1 MR. RAPPOLD: This is Matt Rappold on behalf of
2 the Rosebud Sioux Tribe.

3 If I understand the Motion that was passed
4 correctly, basically the Commission has decided that we
5 will follow the Rules of Civil Procedure on this matter
6 and, furthermore, have allowed basically the moving party
7 to define what the word "conditions" means under SDCL
8 49-41B-27 without any real proper filing in front of the
9 Commission to do so.

10 And there doesn't appear to be any statute or
11 law or administrative rule that would allow them to file
12 a Motion to restrict the scope of discovery and end up
13 with a result of defining what "condition" means under
14 the statute. And if that's what we've done, I'll go on
15 record as objecting to the Commission's Motion.

16 Thank you.

17 CHAIRMAN HANSON: If any party wishes to object
18 to it, they can either do so now or they can send a
19 written statement to the Commission, and we can have it
20 filed.

21 Does Commission counsel have anything to add?

22 MR. SMITH: There's another gentleman.

23 CHAIRMAN HANSON: I'm aware of that.

24 MR. SMITH: Not really, no.

25 CHAIRMAN HANSON: Thank you.

1 Yes, sir.

2 MR. CAPOSSELA: My name is Peter Capossela. I
3 represent the Standing Rock Sioux Tribe. In the audience
4 today is Ms. Avis Little Eagle, who is a Tribal Council
5 Member and Waste Win Young, who is the Tribal Historic
6 Preservation Officer. Just wanted to mention that for
7 the record.

8 I have just a brief point of clarification that
9 I'd like to mention, and it may help segue you into the
10 issue of the scheduling.

11 The conditions in the 2010 Amended Order for the
12 Keystone permit, some of them are written quite broadly.
13 And so, for example, the very first condition and the
14 first sentence in the first condition is "Keystone shall
15 comply with all applicable laws and regulations."

16 And so it's a broad subject when we're
17 discussing discovery relating to the conditions.

18 Consequently, the Standing Rock Sioux Tribe is
19 in a procurement for expert technical assistance to help
20 with this proceeding in identifying and clarifying the
21 issues before the Commission.

22 That procurement is in compliance with the
23 Federal Acquisition Regulations, and there's a
24 competitive bidding process and it takes a little bit of
25 time, is my point, in order to procure expert witnesses

1 to assist with the intervention in this proceeding.

2 And so I would respectfully request that the
3 Commission keep that in mind in considering the schedule
4 moving forward. As it also relates to discovery because
5 the expert assistance can help move discovery forward
6 also.

7 At this point it would be nearly impossible for
8 the Tribe to comply with the FARs, the acquisition
9 requirements for the Tribe, prior to the Standing Rock
10 Tribal Council meeting in the first week in February.
11 And so the schedule that Staff for the PUC has proposed
12 would make it very difficult for the Tribe to put its
13 team together and work through the discovery in a
14 meaningful way.

15 Of the filings that some of the Interveners have
16 made with respect to the schedule, I think the Dakota
17 Rural Action proposal may be the most reasonable as it
18 relates to giving the parties time to prepare for
19 discovery, to participate in discovery, and to resolve
20 any disputes that may arise in discovery. And I think
21 intuitively some of us may reach the conclusion this
22 morning that there may, in fact, be some disputes in
23 discovery moving forward.

24 So that's just a point I wanted to make as we
25 kind of move to the next issue of preparing a schedule

1 for the Commission's order on that issue.

2 CHAIRMAN HANSON: Thank you, Peter. And your --
3 if I pronounced your last name, Capossela?

4 MR. CAPOSSELA: Yes, Mr. Chairman. Capossela.

5 CHAIRMAN HANSON: You may go ahead.

6 MR. CAPOSSELA: Thank you, sir.

7 CHAIRMAN HANSON: My comment to that -- and this
8 is -- again, understand that my fellow Commissioners may
9 have a different opinion.

10 My thought on that is that we certainly want to
11 make certain that everyone has an opportunity to
12 participate fully.

13 Also, though, this -- for the past two years we
14 have been reading about the potential for this hearing to
15 take place. It's not a surprise by any means. And I am
16 as Chairman not going to slow up this process on a basis
17 that, gee whiz, we didn't -- we don't have enough time to
18 take a look at some of this information.

19 The fact is that numerous folks who are parties
20 to this have stated on the media, in the media, that
21 they're going to come with -- obviously didn't say this
22 but guns a blazing. They're going to be prepared.
23 They're going to have everything ready to go.

24 And now after at least a year and a half of
25 hearing that we're all ready to go, we've got lots of

1 things that we're going to present, I'm not going to
2 allow people to slow up this process just for the purpose
3 of slowing it up.

4 There has to be good reasons and good
5 presentations of -- to convince me that -- there's
6 nothing a surprise that this has come about. And having
7 heard repeatedly that parties are ready to go, it really
8 surprises me now to hear that we need time to look at
9 these things.

10 And I'm not going to listen to responses from
11 that right now. We've heard the presentation. I've
12 heard the presentation.

13 MR. ELLISON: I understand, sir, but you've made
14 an allegation. I would like you, sir, to please put on
15 the record what parties to these proceedings, what
16 counsel, what Interveners have made such statements?

17 This is the first that I've ever heard of this.
18 I mean, this is the first that I've ever heard of anybody
19 making such statements. I know it didn't come from
20 Dakota Rural Action. And I'm not aware of who else might
21 have made that.

22 I also respectfully, sir -- this proceeding
23 didn't start a year and a half ago, did it?

24 CHAIRMAN HANSON: Sir, you may have a chair.

25 MR. ELLISON: Thank you.

1 CHAIRMAN HANSON: Thank you.

2 I stand by my statement. And I think everyone
3 fully has seen in the news media statements by parties
4 saying that they were ready to go. It's been on the --
5 this is -- this is not new. This is not a surprise to
6 anyone.

7 Now we'll move to discuss on the scheduling.
8 Ms. Edwards, do you have a suggestion on the
9 scheduling?

10 MS. EDWARDS: At this point Staff stands by
11 their original proposal of the final discovery due date
12 being February 6, 2015, with prefiled testimony due
13 February 19, 2013, [sic] rebuttal testimony due March 12,
14 2015, and an evidentiary hearing March 24 through the
15 27th, 2015.

16 We predict it should take about three days. And
17 we're definitely sympathetic to everybody's scheduling
18 constraints and difficulty that may arise. We've faced a
19 lot of those ourselves. I'm on maternity leave, and here
20 I am. So we're all facing difficulties at this time, and
21 we're just trying to move this along.

22 Thank you.

23 CHAIRMAN HANSON: Thank you.

24 Commissioner Nelson.

25 COMMISSIONER NELSON: Ms. Edwards, in Staff's

1 recommendation I noticed you didn't have a deadline for
2 discovery requests. It seems to me that that --
3 particularly what we've heard today, that that would be a
4 crucial element to include.

5 Can you tell us why that wasn't included or if
6 you have any thoughts?

7 MS. EDWARDS: You're right. I did intentionally
8 leave that out. And I guess after today's comments that
9 might be necessary to put in there.

10 Generally with dockets the way Staff does it is
11 we just send out discovery requests as we come up with
12 them. And we don't have any idea at the beginning of a
13 Docket how many we'll have.

14 And also Mr. Rappold did address the need at one
15 point to have a Motion hearing, and that may be necessary
16 too. I guess my thoughts on that at this time would be
17 as those motions come in, put it on regular Commission
18 meetings.

19 CHAIRMAN HANSON: Commissioner Fiegen, do you
20 have a question?

21 COMMISSIONER FIEGEN: Sure.

22 Ms. Edwards, a couple of questions about your
23 schedule. I'm going to have some questions about
24 discovery, but I want to go into the prefiled testimony.

25 It appears to me that we have -- I mean, this is

1 the most Interveners that I have seen in a hearing
2 before. And prefiled testimony may get kind of
3 cumbersome. And this hearing may actually not lend
4 itself to prefiled testimony.

5 Our Interveners may like to come up and speak to
6 the Commissioners. And then, of course, our General
7 Counsel which will preside over the evidentiary hearing
8 can listen to the objections to make sure they're all
9 evidentiary, the facts that are put in.

10 Is there any reason why you put in prefiled
11 testimony? Because I know we've done it before, but it
12 seems like to me this may lend itself not to prefiled
13 testimony and maybe we do that during an evidentiary
14 hearing where people can speak and objections can be
15 heard on the evidence and the facts.

16 MS. EDWARDS: The reason I put prefiled
17 testimony in here is because I guess I thought without it
18 we may not be able to get this done in three days or
19 maybe even a month, as far as an evidentiary hearing.

20 So we may need to get some of it out of the way.
21 But you're right. There may be quite a bit of it that
22 there's just no way we can prefile it, and it may have to
23 be orally argued and take the time that it takes.

24 COMMISSIONER FIEGEN: So we have four days
25 scheduled for the evidentiary hearing. And I don't know.

1 Does the presiding officer usually get new information,
2 or can everybody say the same thing over and over and
3 over again?

4 MR. SMITH: Are you asking that with respect to
5 if you were to go with prefiled testimony?

6 COMMISSIONER FIEGEN: No. If we did not go to
7 prefiled testimony and we did everything at the
8 evidentiary hearing, how would you rule the information
9 that is the same -- like when there's 43 Interveners, a
10 couple parties to the case, so you're looking at 45
11 people. If they continue to say the same thing over and
12 over -- like she said, it could take a month. Would you
13 limit that to new information, or how -- and that they
14 can --

15 MR. SMITH: Probably at some point, yes, I
16 think. In terms of just the same thing. I mean, without
17 knowing where this is going with no discovery, it's so
18 hard to know, you know, what --

19 I mean, I'm going to assume that of the
20 Interveners probably a significant number of them, their
21 testimony is probably going to be more in the nature of
22 opinions of what they just actually feel about the
23 project than probably hard evidence. That's just a gut
24 feeling. I might be wrong.

25 COMMISSIONER FIEGEN: So opinions are not

1 allowed in evidentiary hearing, but they can send
2 comments to us that we can read on our website; is that
3 correct?

4 MR. SMITH: Yeah. And we're usually pretty
5 liberal, especially with respect to individual
6 noninstitutional Interveners with respect to allowing
7 them to just express to the Commission their views. And
8 we're usually fairly liberal with that.

9 But yeah. In terms of just getting way off
10 track, we'll try to keep it to relevant information.

11 COMMISSIONER FIEGEN: Although the Staff
12 certainly has a lot of expertise, I wonder if it would be
13 easier for us to do two rounds of discovery, no prefiled
14 testimony, and then the hearing. And it might allow --
15 actually the Interveners, it may be easier for them, less
16 expensive for them because they don't have to hire
17 attorneys to put prefiled testimony in. And then they
18 can have their voice at the table at the evidentiary
19 hearing, but then they need to be facts.

20 That's my idea, fellow Commissioners.

21 CHAIRMAN HANSON: Thank you. I definitely want
22 prefiled testimony. It still gives us the opportunity to
23 bring people forward. Any Commissioner can ask any
24 person, any party, anyone who's filed, to come forward
25 and ask them questions.

1 As a matter of fact, the parties then have an
2 opportunity in the evidentiary hearing to ask questions,
3 especially of any evidence that's been presented. You
4 still have all of that opportunity. But it gives us an
5 opportunity ahead of time.

6 As Ms. Edwards stated, it will take
7 significantly, significantly longer than three or four
8 days to go through the process otherwise. My opinion.

9 Any further discussion at this juncture on the
10 proposed -- on the proposal for the scheduling?

11 Commissioner Nelson.

12 COMMISSIONER NELSON: Ms. Edwards, again, going
13 back to my initial question regarding a deadline for
14 discovery requests, if we were to adopt your time line,
15 would you suggest a date? Or have you not thought about
16 it?

17 MS. EDWARDS: I haven't given it a lot of
18 thought. I guess a lot of that might come from our
19 analysts. Maybe one of them has any input on what their
20 schedules look like as far as when discovery would --

21 MS. CREMER: This is Karen Cremer of Staff. You
22 were looking at -- what did you want to know? A final
23 discovery request date?

24 Because I think that would have to be 30 days
25 before because by law don't you have 30 days to respond

1 to discovery? And so I would think then your deadline
2 would have to be January 6 for -- right? Am I missing
3 something there?

4 MS. EDWARDS: Actually, yes. That sounds
5 right.

6 MS. CREMER: Would that be right? Okay.

7 CHAIRMAN HANSON: It sounds to me as if things
8 are compressed too much. Is there another date that
9 you've been working with?

10 Give me those dates again.

11 MS. EDWARDS: We had started with a March 27 to
12 24 evidentiary hearing date and kind of worked back from
13 there. I can throw out some other dates if you'd like
14 for an evidentiary hearing date, and then we can start
15 working back from those with sort of a clean slate.

16 CHAIRMAN HANSON: I just want to make sure that
17 we have -- as Ms. Cremer pointed out, we need to have
18 enough time to comply with all of the regulations from
19 the standpoint of notice and time that has to elapse
20 between each one.

21 COMMISSIONER FIEGEN: Mr. Chairman, could we
22 move it back a couple of weeks to that April 7 through
23 the 10th and move discovery more to like January 9 or
24 January 16 and then February -- I don't know when the
25 four weeks would be -- or the 30 days from January 9 or

1 January 16, but maybe we try to move our evidentiary
2 hearing back a couple of weeks to that April 7 through
3 the 10.

4 CHAIRMAN HANSON: We have -- with all of the
5 rate dockets that we have at this juncture, are you
6 saying April 7 through 10 is open right now?

7 COMMISSIONER FIEGEN: Leah, it is open;
8 correct?

9 MS. MOHR: Yes, it is.

10 COMMISSIONER FIEGEN: April 7 through the 10th
11 is open for the Commissioners and the Staff.

12 CHAIRMAN HANSON: And Leah Mohr stated, yes.

13 COMMISSIONER FIEGEN: Leah Mohr from the Public
14 Utilities Commission Staff, yes.

15 Just an idea to try to get our discovery on the
16 right time frame and then the 30 days that we need. I
17 mean, I want to make sure it gets off on the right foot.
18 I mean, I want to make sure our Interveners have time to
19 ask the questions and then they have time to respond.

20 CHAIRMAN HANSON: This is why this is best done
21 with --

22 Yes. Ms. Cremer.

23 MS. CREMER: Well, and I was going to try to get
24 Kristen's attention to say maybe we could -- and
25 Mr. Smith -- convene another prehearing and just try to

1 do it. Because it's just about impossible to do this
2 over a -- in this sort of forum and come up with some
3 more concrete dates.

4 Now I think we have an idea of what you guys are
5 looking for. And that is that you want a hearing date as
6 soon as possible but two rounds of discovery, which is
7 going to require --

8 COMMISSIONER FIEGEN: I'm not going to say two
9 rounds of discovery anymore after the prefiled testimony
10 is going to be filed. I'm pulling back on two rounds of
11 discovery.

12 MS. CREMER: It's hard to give -- you need an
13 amount of time to ask the questions, respond to the
14 questions, review the questions, and ask a second round.
15 At a minimum, you're going to have two rounds. So that's
16 another 30 days.

17 So if it would help, we could try, make one more
18 run at this, and the next meeting on the 23rd if we
19 haven't resolved it, make a run at it again with the
20 Commission.

21 CHAIRMAN HANSON: Thank you.

22 Mr. Smith.

23 MR. SMITH: Thank you. And I think -- again,
24 there's Interveners that would like to be heard here on
25 schedule, which I think is important to let happen.

1 But here's the deal. I mean, I think one of the
2 first decisions I think the Commission should maybe make
3 is whether or not to have prefiled testimony. And that
4 has -- I haven't heard you guys decide that yet.

5 And I think that's important because it has
6 about what, a month to six weeks type of time frame
7 associated with that, at least. And so I think it's
8 important first to know. Because then we can -- we
9 can -- then we can fit the discovery end of it, and then
10 we know what we're dealing with in terms of that.

11 But prior to knowing whether there's prefiled, I
12 mean, there we've got -- like I said, we're probably
13 talking a six-week extra time frame by adding that in,
14 something like that.

15 COMMISSIONER FIEGEN: So we're a one to one
16 vote, huh?

17 CHAIRMAN HANSON: Commissioner Fiegen and I have
18 granted you the opportunity to make the decision,
19 Commissioner Nelson.

20 COMMISSIONER NELSON: I appreciate both
21 arguments. I don't have a strong feeling one way or the
22 other, but I do think it may focus things a little better
23 with prefiled testimony. So I guess that would be my
24 preference.

25 CHAIRMAN HANSON: Thank you. We will have

1 prefiled testimony.

2 COMMISSIONER NELSON: Could I ask Mr. Smith a
3 question?

4 CHAIRMAN HANSON: Sure.

5 COMMISSIONER NELSON: When you mentioned a month
6 or six weeks, is that from the discovery deadline to
7 prefiled testimony deadline?

8 MR. SMITH: Yeah. I'm assuming the prefiled
9 because, you know, first of all -- probably you usually
10 think I want to have my discovery done, you know, before
11 I do my testimony so you know what you've learned in
12 discovery.

13 And then, you know, you think in terms of just
14 writing prefiled testimony, I mean, it's not a tiny
15 little job. I mean, maybe it doesn't need to take six
16 full weeks, but I'm going to say for two rounds of
17 prefiled is -- you know, and you've got rebuttal then.
18 You've got the initial round.

19 And it depends on how you want to do it. If you
20 want to require simultaneous and then simultaneous
21 responsive. Sometimes we do it in an ordinary witness
22 order.

23 So I think those are some questions. And I
24 notice there's a couple of Interveners here that look
25 like they'd like to be heard too.

1 CHAIRMAN HANSON: Right.

2 Commissioner Nelson has the floor.

3 COMMISSIONER NELSON: I'm okay. I've got some
4 maybe suggestive dates based on the discussion we've had,
5 but I'd like to hear some input.

6 CHAIRMAN HANSON: Sure. I believe Thomasina was
7 up first.

8 MS. REAL BIRD: Thank you, Mr. Chairman and
9 members of the Commission and Staff.

10 Ms. Cremer's point earlier is one that the
11 Yankton Sioux Tribe also has as far as two rounds of
12 discovery. Often in cases, especially this one
13 involving, you know, technical aspects and 50 plus
14 conditions and considering the Commission's earlier
15 granting of the Motion, it seems that the first round, so
16 to speak, might spur additional thoughts or items that we
17 might want to request in a second round.

18 That's not uncommon, and I think it's probably
19 going to be a given in this particular docket number
20 before the Commission.

21 My second point was also given the Commission's
22 granting of the Motion earlier, it seems -- I anticipate
23 there are going to be some motions for protective orders
24 probably or different disagreements as to whether the
25 discovery requests fit within the Motion wording that was

1 granted earlier. So I'd like to suggest that the
2 Commission and Staff account for that as well.

3 CHAIRMAN HANSON: Thank you.

4 MR. MARTINEZ: This is Robin Martinez. I'm on
5 behalf of Dakota Rural Action.

6 Commissioners, one of the things that I really
7 would like to do is echo Thomasina's comments that I
8 think it's really important to build in enough time to
9 allow all of this to get done.

10 We've looked at prior Commission proceedings.
11 And, frankly, combing through the records, it looks like
12 we've only been able to find really one fairly recent
13 recertification proceeding. And that was in the
14 Otter Tail Power case. I think the Docket No. was
15 EL12-063.

16 And in that case it was an uncontested
17 recertification, and it was a nine-month process with
18 only one intervener. And that Intervener withdrew prior
19 to the hearing. So that's something that I think
20 probably does need to be taken into account thinking of
21 the overall scheduling.

22 Second, I think two rounds of discovery are
23 certainly going to be very appropriate. I mean, in terms
24 of having been involved in fairly protracted civil
25 litigation against large corporate interests, it is very

1 unusual to get everything you ask for the first go
2 around. And a lot of the times documents or items will
3 turn up in a first round of discovery that really do
4 require a second round of discovery for follow up. So
5 that is not, you know, sort of outside the norm.

6 The other issue is there will inevitable be
7 discovery disputes. Never seen discovery occur with any
8 large entity where the requests have been responded to in
9 a way that one side or the other deems to be meaningful.
10 And that in and of itself engenders a fair number of
11 motions to compel discovery, motions for protective
12 orders. I think in a proceeding like this I think it is
13 inevitable that we're going to see that happen.

14 And so I just want to be really I think
15 cautionary about at least trying to schedule a hearing
16 date right off the bat without first getting a sense for
17 what the overall scope of discovery is going to wind up
18 being and what types of disputes may run from that.

19 The other, you know, issue is there may be some
20 additional motions filed prior to of the hearing date,
21 such as motions to dismiss. I noticed that the
22 South Dakota statutes, for instance, allow parties to
23 make a Motion to even ask for a denial of the -- or
24 essentially a denial of the underlying permit that's
25 something that's permitted in the statutes.

1 So I would see -- you know, I would suggest
2 that we just allow enough time to -- for those factors to
3 unfold.

4 CHAIRMAN HANSON: Thank you.

5 MS. REAL BIRD: And Chairman and the
6 Commissioners, one more point.

7 The Yankton Sioux Tribe did file a proposed
8 schedule that does account for what we describe as two
9 rounds of discovery as well as some hearing dates with
10 each round to sort out conflicts with discovery.

11 And it also allows for some time before the
12 prefiled testimony is prepared. And we heard from
13 Mr. Smith earlier that that often involves, you know,
14 meaningful preparation where we consult with our clients
15 and the volumes of discovery in order to prepare those
16 meaningful statements for the Commission. And so the
17 Yankton Sioux Tribe's position is set forth in the
18 schedule.

19 The one addition, and ironically the one we
20 didn't include, is for motions that my colleague here
21 pointed out that we believe there will be additional
22 probably dispositive motions, motions to revoke, and then
23 our pending Motion to Dismiss.

24 So we would urge the Commission to consider
25 the probability that there will be additional motions

1 filed.

2 CHAIRMAN HANSON: Thank you, Ms. Real Bird.

3 Question by Mr. Nelson.

4 COMMISSIONER NELSON: Mr. Martinez, my question
5 is for you. Is it true -- if I understand correctly,
6 your client is believing that it takes 10 weeks between
7 the response to initial discovery and second round of
8 discovery? Does it really take 10 weeks?

9 MR. MARTINEZ: It certainly could.

10 COMMISSIONER NELSON: Does it need to? Can we
11 compress that?

12 MR. MARTINEZ: I would be very hesitant to say
13 yes. I would be very hesitant to try to compress that
14 any further.

15 Because if you look at what the actual scope is
16 of the overall items that can be inquired about during
17 the course of discovery, even if we go ahead and do limit
18 it as you've done via the Motion you've passed to those
19 50 conditions and various sub conditions, there's a lot
20 of ground there to cover, I mean.

21 And that includes a lot of technical
22 information, everything from hydrological information to
23 compliance with any number of environmental rules.

24 I know, Commissioner Hanson, you earlier said
25 you didn't want to get into issues about carbon. Well,

1 you know, EPA could very well act on new carbon rules.
2 Suddenly, that does come into play, regardless if -- by
3 the very way that the Motion has been worded.

4 So when you look at all of those factors and a
5 lot of the technical information that is encompassed
6 within those different conditions, that's a lot of
7 material to dig through. And you're talking input not
8 just from the lawyers but you're talking inputs from
9 scientists. You're talking input from, you know,
10 historic preservation consultants. I mean, the list goes
11 on.

12 And that's why I -- you know, I would think that
13 in order to really afford the due process that these
14 proceedings, I think, demand I think we would want to
15 have that time -- that amount of time built in in order
16 for this to occur in a really meaningful way.

17 COMMISSIONER NELSON: Thank you for your
18 response.

19 MR. CAPOSSELA: May I be heard briefly to
20 supplement my colleague's feedback to the Commission?

21 CHAIRMAN HANSON: All right.

22 MR. CAPOSSELA: Thank you. Peter Capossela,
23 Standing Rock Sioux Tribe.

24 I would hope that the procurement of expert
25 assistance to an Intervener is not equated with that

1 Intervener's dragging its feet unnecessarily. I would
2 hope that those two things are not looked at as the same
3 thing. Because in reality they're not.

4 And the approval of the interventions were
5 ordered by the Commission just a few weeks ago. And I
6 would hope that a request for time to take that important
7 step in the process isn't interpreted by the Commission
8 to warrant an insult to the motivations of the Tribe.

9 CHAIRMAN HANSON: Thank you. And we --
10 certainly we attempt to approach everything without a
11 bias. But there is a history of persons attempting to
12 protract the hearings and just simply stall them.
13 Especially in this particular docket. And not in this
14 docket of this time, but on the previous one when it
15 first received the certification. So there are some who
16 come with a history of attempting to do that.

17 MR. CAPOSSELA: I appreciate --

18 CHAIRMAN HANSON: You, sir, do not. However,
19 there are those who have. So we'll try to approach this.
20 But having gone through the process -- and I'm the only
21 Commissioner here who did go through that process, but I
22 think that's probably why I am as short as I am on some
23 of these.

24 I want to make certain that there is legitimate
25 reason to expand the process and take longer. Because

1 there is a history of some folks attempting to create
2 delays and create delays and create delays. And then
3 just walk away from it. So I want to make sure that
4 doesn't happen on my watch.

5 MR. CAPOSSELA: The Standing Rock Sioux Tribe is
6 not here for the purpose of creating delays. In fact,
7 this morning walking into the hearing room a member of
8 the media requested that I do an interview on behalf of
9 the Tribe, and I declined.

10 And so those concerns as it relates to Standing
11 Rock -- and I would suggest that all of the -- our fellow
12 organizational Interveners and the personal Interveners,
13 that those concerns -- that the concerns that are being
14 expressed are good-faith concerns that are not being
15 expressed for the purpose of dragging this out for no
16 reason.

17 CHAIRMAN HANSON: Thank you for your comments.

18 MR. CAPOSSELA: Thank you.

19 Approach the bench.

20 MR. HARTER: John Harter, a rancher proposed to
21 be crossed by Keystone XL.

22 Just on a little bit of a lighter note but from
23 what I have to do for a living and when these hearings
24 tend to always fall it seems like an unintentional
25 conspiracy that it's during calving season and snowstorm

1 season.

2 But I just wanted to remind you of that while
3 you're looking at your schedule. Because this does cross
4 mostly farm and ranch land so just keep that in mind.
5 And I thank you for your inputs and decisions.

6 COMMISSIONER NELSON: Okay, Mr. Harter. You
7 know where my soft spot is, and you hit it.

8 MR. HARTER: Thank you.

9 CHAIRMAN HANSON: Thank you.

10 All right. I'm looking for direction at this
11 point on whether we allow Staff to go back and try and
12 work this out or whether you have a discussion as to a
13 time line that we should go for.

14 COMMISSIONER NELSON: Mr. Chairman, I appreciate
15 Ms. Cremer's offer to try to work this out, but I'm not
16 optimistic that that would be successful. If you'd give
17 me just a minute -- unless you've got something that
18 you'd like to run. About if you'd give me a minute, I'm
19 working on a time frame based on everything we've heard
20 here this morning and would be willing to share it.

21 CHAIRMAN HANSON: No. My calendar says it's
22 just simply impossible to meet any time. Whatever
23 happens, I will have to move other items. So that's
24 fine. I'll certainly do that. And Leah will take care
25 of that for me. So you just figure out what's --

1 COMMISSIONER NELSON: And I'm looking at Leah.
2 I mean, the dates that you've put on our calendar as open
3 are open; correct?

4 Okay. And I'm going to work off of that. If
5 you'd give me just a couple of moments.

6 CHAIRMAN HANSON: Let's take a relief break and
7 start again at a quarter to 12:00.

8 (A short recess is taken)

9 CHAIRMAN HANSON: We will continue the
10 Commission meeting on our Docket. And we left with
11 Commissioner Nelson attempting to figure out a schedule.

12 COMMISSIONER NELSON: Mr. Chairman, I will move
13 that we adopt the following procedural schedule.

14 CHAIRMAN HANSON: Okay. You'll give it to us
15 slowly enough for everyone to write it down?

16 COMMISSIONER NELSON: Initial discovery
17 requests would be due January 6. Initial discovery due
18 February 6.

19 COMMISSIONER FIEGEN: That's the response?

20 COMMISSIONER NELSON: That would be the response
21 to the initial discovery requests, yes.

22 COMMISSIONER FIEGEN: Thank you for the
23 clarification.

24 COMMISSIONER NELSON: Final discovery requests
25 would be due February 20. Final discovery would be due

1 March 20.

2 COMMISSIONER FIEGEN: That's the response?

3 COMMISSIONER NELSON: Correct.

4 Prefiled testimony would be due April 2. Second
5 response for final discovery being due is March 20.

6 Prefiled testimony due April 2. Rebuttal testimony due
7 April 23. And an evidentiary hearing May 5 through the
8 8th.

9 CHAIRMAN HANSON: May 6?

10 COMMISSIONER NELSON: May 5 through the 8th.

11 Mr. Chairman, if I might speak to the Motion.

12 CHAIRMAN HANSON: Please.

13 COMMISSIONER NELSON: Those that have observed
14 the Commission for any length of time know that I am the
15 last guy to move items down the calendar. I am usually
16 pretty determined to keep things on schedule and on a
17 quick schedule. Because I believe it's important for us
18 to dispatch our business as quickly as possible.

19 But I think some compelling arguments were made
20 in the written testimony that was filed and also what we
21 heard this morning. And what I have attempted to do with
22 this schedule is balance comments from all the parties.
23 It's not going where -- as far as a number of the parties
24 wanted so far as length of time. It's not as short of
25 time as what Staff had proposed or the Applicant had

1 proposed. But I think it gives adequate time for all
2 parties to do what is needed.

3 And so in the interests of balancing those
4 interests, I have brought this particular proposal.

5 CHAIRMAN HANSON: Thank you.

6 Does Staff have any comments on that?

7 MS. EDWARDS: That works for Staff.

8 CHAIRMAN HANSON: And the Applicant, Keystone?

9 COMMISSIONER NELSON: Mr. Chair, as the
10 Applicant approaches, if I could just make one additional
11 comment.

12 There was a question about needing a date for
13 motions. And I concur with Staff fully that we will take
14 any motions that come up at our regularly scheduled
15 meetings. Or if we need to, we'll schedule them ad hoc.
16 But we'll take those as they come as opposed to try and
17 pre-establish dates for those.

18 CHAIRMAN HANSON: Mr. Fuller.

19 MR. TAYLOR: Thank you. William Taylor for
20 TransCanada.

21 CHAIRMAN HANSON: Mr. Taylor. Excuse me.
22 Getting you mixed up with your partner.

23 MR. TAYLOR: I would only comment that there
24 seems to be about a four-week period twixt now and the
25 6th of January that's not absorbed or consumed in the

1 system.

2 TransCanada can live with your dates.
3 TransCanada would prefer an April hearing date.
4 Construction issues, construction season coming.

5 I'd also remind the Commission discovery is not
6 going to be difficult. The first TransCanada Keystone
7 Pipeline Project was proposed in 2006. In your files
8 alone there are feet of relevant information.

9 This process began March 14 of 2009. By statute
10 you are obligated to conduct a series of public meetings
11 which you conducted within a span of 30 days after the
12 Petition was filed. The Petition was filed March 14.
13 The hearing was November 2.

14 Dakota Rural Action who speaks for a lengthy
15 period was an Intervener in that process represented by
16 counsel, participated in discovery. We had discovery
17 motions, exchange. We had issues that were resolved
18 before the Commission over the breadth, scope, and depth
19 of discovery and discovery responses, and we accomplished
20 that entire process between June and November.

21 There are many feet of information produced by
22 that hearing. And none of that has -- even touches on
23 the scope of the federal work that's been done. Four
24 environmental statements and supplemental environmental
25 studies have been accomplished. Mountains of

1 information. There are no questions that have not been
2 asked, and there are no questions that have not been
3 answered. And it all is within the public domain. So
4 discovery, relatively simple.

5 I agree with you, we can handle motions on an
6 ad hoc basis as they go. It's easy to get before the
7 Commission if it's necessary to get before the
8 Commission. My contemporary and colleague, Mr. Ellison,
9 is a very experienced trial lawyer. He knows exactly how
10 to conduct negotiations among counsel to resolve these
11 kinds of problems.

12 We think you can push this back a month. If you
13 push this back a month into that April time frame, we'd
14 be very happy.

15 Questions?

16 CHAIRMAN HANSON: Hearing none, thank you.

17 Do parties have concerns or challenges with this
18 suggested schedule?

19 MR. ELLISON: Mr. Chairman, members of the
20 Commission, the one question that I would raise -- and I
21 appreciate this expanded schedule. I think this will
22 really resolve a lot of issues. Although I am still
23 concerned about the Tribal Interveners and their --

24 CHAIRMAN HANSON: Please. I know we know you,
25 but there's folks on the phone that don't recognize your

1 voice.

2 MR. ELLISON: I'm sorry. Bruce Ellison on
3 behalf of -- one of the attorneys for Dakota Rural
4 Action. Thank you.

5 CHAIRMAN HANSON: Thank you.

6 MR. ELLISON: The one question I have is, and
7 I'll pose it as a hypothetical, the final response for
8 the second round of discovery as proposed by
9 Commissioner Nelson, if that deadline was March 20 and
10 then we look at that material and we feel either that
11 TransCanada has not fully complied with our request or in
12 some way the response is inadequate, so we then bring a
13 Motion. We bring a Motion within a week. We would then
14 have to have time for responses and a hearing.

15 And that's my only concern. My only concern is
16 we get to the end of a discovery process and we still
17 have a few things to work out. And then we only have,
18 under the current schedule -- my math is terrible --
19 probably a little over two weeks to prepare final
20 testimony.

21 So I'm concerned about a crunch being during
22 that time period, should that arise. Maybe it won't
23 arise. But I am concerned that if we don't build into
24 the structure to account for that as a real
25 possibility -- because I'm a criminal defense lawyer, not

1 really a civil practitioner. But my civil friends tell
2 me that discovery issues are often critical and take a
3 lot of sometimes times back and forth.

4 And that's my concern. My concern is that after
5 the second response of discovery we have two recent
6 prefiled testimony, no time for objections or hearings or
7 whatnot. And that's my only comment about that.

8 Thank you.

9 CHAIRMAN HANSON: Thank you. Thank you. Is
10 there anyone else who's a party to this that feels
11 challenged from this?

12 MR. HARTER: John Harter, Winner, South Dakota.
13 The dates proposed by Mr. Nelson are
14 considerably better. I should be halfway maybe through
15 calving season.

16 Mr. Taylor to me is presuming that they are
17 going to get a presidential permit probably trying to --
18 again Congress going through another motion to bypass the
19 process, and that's what I see is, as maybe backing this
20 off to his request for a time schedule is there is a fair
21 amount of presumption there that they are going to have
22 their presidential permit and history has shown that not
23 to be true. So I would request that you stick with
24 Mr. Nelson's if anything.

25 Thank you.

1 CHAIRMAN HANSON: Thank you.

2 MR. RAPPOLD: Matt Rappold on behalf of the
3 Rosebud Sioux Tribe.

4 CHAIRMAN HANSON: Please, go ahead.

5 MR. RAPPOLD: We've submitted our proposed
6 schedule. It conflicts significantly, I believe, with
7 the schedule just proposed by one of the Commissioners.
8 We would stand by our original schedule as proposed to
9 the Commission and not be in agreement with the proposed
10 schedule that was just put forth.

11 CHAIRMAN HANSON: Are you constrained in some
12 way with the schedule that was presented? Can you give
13 us a challenge that you have with it?

14 MR. RAPPOLD: Well, it's interesting one of our
15 colleagues earlier referenced the only previous case that
16 they could find regarding recertification, which was a
17 noncontested case, and that took nine months to get done.

18 So this issue being -- this case obviously being
19 a contested case, there's a lot more at stake than was in
20 the Otter Tail case. I think it's reasonable to request
21 that we have a recertification process that would be at
22 least the same as the Otter Tail case for
23 recertification.

24 CHAIRMAN HANSON: So you're basing it solely on
25 that particular one? You don't have -- you personally

1 don't see a challenge other than a previous one took a
2 certain amount of time?

3 You understand that every docket is different,
4 and there's different reasons for the duration, whether
5 the Commission has a challenge from the standpoint of
6 rate cases or if there's -- well, every rate case is
7 different so there's different reasons for the time line.

8 I'm looking for any particular challenge that
9 you see for yourself.

10 MR. RAPPOLD: The first one you have there is
11 there's two items will be scheduled at the same time.
12 The Motion on the Yankton Sioux Tribe Motion to Dismiss
13 would be the same day as the initial discovery requests
14 are due.

15 And then I think it's unreasonable to require
16 less time for a recertification process as compared to --
17 in a case where there's more information. I think it's
18 unreasonable to have less time for that case as compared
19 to the only other case in front of the PUC as far as
20 recertification goes where (Inaudible) --

21 CHAIRMAN HANSON: You trailed off at the end
22 there.

23 MR. RAPPOLD: I think it's unreasonable in this
24 case where we have a much larger body of work that we're
25 dealing with to restrict the time for discovery on the

1 entire process when you compare it to the only other PUC
2 recertification case, which took nine months.

3 CHAIRMAN HANSON: All right. Thank you.

4 Ms. Real Bird.

5 MS. REAL BIRD: Mr. Chairman and members of the
6 Commission, Thomasina Real Bird on behalf of Yankton
7 Sioux Tribe. Also with permission from my colleague,
8 Tracey Zephier, on behalf of the Cheyenne Sioux Tribe.

9 The concern that we have with the proposed
10 schedule -- and thank you, Commissioner Nelson, for
11 proposing it -- is the April 2 date for prefiled
12 testimony. That's only 12 days after the final discovery
13 response is due.

14 And given your statements earlier, Chairman
15 Hanson, of the importance that's placed on prefiled
16 testimony that came at somewhat of a surprise to some of
17 us that are new to the PUC process. We didn't realize
18 that prefiled testimony played such an important role.

19 Our position is the 12 days for prefiled
20 testimony to be filed is too short of a time from the
21 final discovery response deadline of March 20. So we
22 would propose pushing back that particular date. And
23 then if it fits within having that be heard at the May
24 meeting, that might work. Or if it works so that it gets
25 pushed back to the June.

1 But our particular concern is with the April 2
2 deadline being only 12 days from the March 20 deadline.

3 COMMISSIONER NELSON: Mr. Chairman, if I might
4 address that.

5 CHAIRMAN HANSON: Please.

6 And I'd like to make a comment that you can
7 digest as you're looking at that. I thought that the
8 January 6 to February 6 was a little long to go from
9 initial discovery request to the initial discovery, but I
10 think we have to do that just because of the time that's
11 required by law.

12 COMMISSIONER NELSON: Yes. What I would like to
13 do to address -- and I think you've got a valid concern.
14 Mr. Ellison had a valid concern.

15 What I would propose -- and I'm going to look to
16 my attorneys. What I would propose is changing the
17 deadline for the final discovery to March 10. It would
18 be my presumption that on the second round of discovery
19 the volume of that discovery is going to be much, much
20 less than the initial round. And, therefore, allowing
21 20 days for that ought to be sufficient.

22 But I'm going to look at my attorneys. Does the
23 statute require 30 days for a second round?

24 MR. SMITH: Not that I'm aware of. I know of
25 nothing that would so limit it.

1 MR. TAYLOR: Commissioner, William Taylor.
2 There's no provision in the Rules of Civil Procedure
3 about when a second round of discovery must take
4 place --

5 CHAIRMAN HANSON: Please, always use the mic
6 because of the number of people listening in.

7 MR. TAYLOR: There's no provision in the Rules
8 of Civil Procedure that governs the period of time in
9 which second round discovery must be undertaken.

10 The only rule is is that there's 30 days to
11 respond, unless the Judge or the Commission sets an
12 earlier time for a good reason.

13 So you have that discretion at both ends of the
14 spectrum.

15 COMMISSIONER NELSON: Thank you. If there's no
16 objection from my fellow Commissioners, I would adjust
17 the final discovery due date to be March 10 instead of
18 March 20.

19 CHAIRMAN HANSON: I do not object.

20 MS. HILDING: This is Nancy Hilding on the
21 telephone. I have a comment. Should I wait or make the
22 comment now?

23 CHAIRMAN HANSON: Not knowing what your comment
24 is, why don't you go ahead and make it now.

25 MS. HILDING: I'm going to object to the

1 January 6 deadline. I think it's for the first discovery
2 request. I believe that's the date you're having a
3 hearing on the Motion to Dismiss. And there is a
4 potential that you will agree to the Motion to Dismiss.

5 I assume you haven't decided on your decision on
6 that yet, and we haven't had an opportunity to file on
7 it. So why should we be submitting discovery requests on
8 something that may be dead on January 6?

9 So, you know, the deadline to submit discovery
10 requests should at least be a day after you have the
11 hearing on the Motion to Dismiss, that they should not
12 be simultaneously because I think that indicates that
13 you're not taking the Motion to Dismiss as seriously
14 perhaps?

15 So I think there should be a few days' delay
16 between the hearing on the Motion to Dismiss and the
17 deadline to submit discovery requests.

18 CHAIRMAN HANSON: Thank you, Ms. Hilding.

19 If I were arguing your case, I would probably
20 have said the very same thing. That's all the more
21 reason why it shouldn't stand.

22 No. I'm kidding. You've made some very, very
23 good points, and they've been made previously.

24 And you have the floor, believe it or not.

25 MS. REAL BIRD: Thank you, Nancy. This is

1 Thomasina Real Bird. We concur with your point. That's
2 our Motion. And if there's any flexibility in just a few
3 days, it would seem that that would give the public the
4 confidence that you're fully considering the Motion
5 before you.

6 CHAIRMAN HANSON: Thank you, Ms. Real Bird.

7 Looking for further comments and concerns, any
8 challenges that folks -- that parties have with the
9 proposal?

10 Mr. Taylor.

11 MR. TAYLOR: William Taylor again with
12 TransCanada. I'd make this observation. Prefiled
13 testimony is not prepared in a vacuum.

14 As you prepare your case for trial you start
15 thinking -- we're thinking already today about what our
16 prefiled testimony is going to be. So there does not
17 need to be -- and I've done this many times. There does
18 not need to be a long span between the final round of
19 interrogatory discovery responses and the filing of
20 prefiled testimony.

21 You're probably going to have your prefiled
22 testimony down to 90 percent of what is ultimately going
23 to be filed before the final discovery request deadline
24 comes in.

25 As to the public perception that you have a

1 hearing on a Motion to Dismiss on the 6th and the
2 discovery deadline for early submissions is also the 6th,
3 that's not uncommon in the court systems at the State.
4 We very routinely prepare for alternate outcomes in
5 virtually every form of litigation that we're involved
6 in.

7 CHAIRMAN HANSON: Thank you.

8 Mr. Capossela, you were -- back there I thought
9 I'd call on you.

10 MR. CAPOSSELA: Thank you, Mr. Chairman,
11 Commission members.

12 Make the point TransCanada has requested that
13 the hearing be moved back to April. And I would just
14 request that the Commission not exceed to that request
15 and not move the hearing any sooner than Commissioner
16 Nelson's proposed date of May 5 through 8, to decline
17 that request made by TransCanada.

18 CHAIRMAN HANSON: Thank you.

19 MS. LONE EAGLE: Elizabeth Lone Eagle,
20 individual Intervener.

21 And I just wanted to say that as -- this is my
22 first time, and for many of us Interveners it is -- I
23 have no idea at this point what my pretrial testimony is
24 going to be.

25 And, you know, the lawyers have experience, but

1 we don't. So I'd ask you to take that into consideration
2 also.

3 Thank you.

4 CHAIRMAN HANSON: Thank you, Ms. Lone Eagle.

5 Further parties who have concerns with the
6 schedule as proposed by Commissioner Nelson? If you have
7 a challenge with it, please come forward.

8 MS. SMITH: This is Carolyn Smith from
9 Plainview, Nebraska. Can you hear me?

10 CHAIRMAN HANSON: Mrs. Smith; is that correct?

11 MS. SMITH: Yes. I just want to state that I
12 also would like it to be extended to the May deadline
13 rather than any sooner than that.

14 That's all.

15 CHAIRMAN HANSON: Thank you.

16 Is there anyone else?

17 MS. KILMURRY: Mr. Chair, this is Bonnie
18 Kilmurry.

19 I too agree with the spring work, calving and
20 stuff, it is a hardship in April to be involved in this.
21 We have taxes. We have other things that have to be
22 filed also.

23 I appreciate the May date rather than the April
24 date.

25 CHAIRMAN HANSON: Thank you.

1 Thank you very much for your comments. Anyone
2 else? Anyone on the phone? Anyone present?

3 MS. CRAVEN: Mr. Chairman, this is Kimberly
4 Craven. I'm representing the Indigenous Environmental
5 Network.

6 And I would echo having the May evidentiary
7 hearing date. Just given the weather in South Dakota,
8 it's sometimes very difficult to travel during those
9 winter months.

10 And also I would also request that the initial
11 discovery deadline not be the same day as the hearing for
12 the Motion to Dismiss and that it be pushed back a week.
13 I would say at least a week because I think there are
14 going to be other parties then including Indigenous
15 Environmental Network that are going to be joining that
16 Motion to Dismiss. So I think it would show that you are
17 giving that Motion its due diligence and weight by not
18 having the same deadline.

19 Thank you.

20 CHAIRMAN HANSON: Thank you.

21 MS. WYNNE: If I may address you, this is
22 Mary Wynne. I represent the Rosebud Sioux Tribal Utility
23 Commission, and I'm online.

24 CHAIRMAN HANSON: Yes. Please, go ahead.

25 MS. WYNNE: First of all, I wanted to support

1 the schedule being submitted by the Rosebud Sioux Tribe.
2 But even more importantly, in my extensive litigation
3 experience in cases like this there are frequently
4 disputes regarding what is relevant or may lead to
5 relevant information. And there are refusals to turn
6 over information that results in cases that need to be
7 argued to the body who is overseeing the case. And those
8 take up time.

9 I would ask that the Order that does set the
10 schedule reference the fact that in the event that those
11 become time-consuming, I heard you loud and clearly that
12 you like to keep on schedule once you set it, but those
13 it seems to me become good cause for asking for variance
14 to a scheduling order.

15 Thank you.

16 CHAIRMAN HANSON: Thank you very much. And I
17 was looking for -- you are an attorney for the IEN?

18 MS. WYNNE: I'm an attorney representing the
19 Rosebud Sioux Tribal Utility Commission.

20 CHAIRMAN HANSON: Okay. I'm sorry. I know
21 Kimberly Craven is an attorney for the IEN. I thought
22 you had stated you were too. Forgive me.

23 Is there anyone else?

24 MS. EDWARDS: Chairman, could I add one thing?

25 CHAIRMAN HANSON: Please.

1 MS. EDWARDS: Well, I would strongly discourage
2 anyone from comparing this docket to any previous dockets
3 as far as time lines. The availability of parties and
4 attorneys is completely different, and the issues are
5 completely different.

6 I would like to point out that the previous
7 docket referenced, which was the certification by Otter
8 Tail Power was a five-month docket, not a nine-month
9 docket.

10 CHAIRMAN HANSON: Okay. Thank you.

11 Any further discussion at this juncture?

12 Commissioner Nelson.

13 COMMISSIONER NELSON: If I could respond to the
14 comments regarding the simultaneous January 6 deadlines.
15 I would concur with Mr. Taylor that all parties need to
16 be prepared for two possible outcomes of our decision. I
17 think that is not unreasonable.

18 And for those that have made statements about us
19 not seriously considering a Motion that's coming before
20 us, I can strenuously state that that is not the case,
21 that we take very seriously everything that comes before
22 us.

23 And I would just -- you know, folks, we're going
24 to be together on a number of occasions between now and
25 May, and I think respecting each other and the roles that

1 we play will go a long way towards making this a better
2 proceeding. And insinuating that we don't take things
3 seriously doesn't go to that. So I'd just like to say
4 that, and I do support the January 6 date.

5 CHAIRMAN HANSON: Thank you. Did you have
6 something? I thought you had -- forgive me.

7 COMMISSIONER FIEGEN: Whenever.

8 CHAIRMAN HANSON: All right. Well, now's a good
9 time if you want to present something.

10 COMMISSIONER FIEGEN: I'm not presenting
11 anything. So the Motion's on the table. We're ready to
12 vote.

13 CHAIRMAN HANSON: I'm looking for final
14 discussion on the Motion.

15 COMMISSIONER FIEGEN: All right.

16 First of all, thank you, Commissioner Nelson,
17 for bringing this forward. Of course, I had the April
18 dates without prefiled testimony so that would have had
19 to have been moved back because the fellow Commissioners
20 want prefiled testimony.

21 So I appreciate your Motion here, Commissioner
22 Nelson. And I think it gives our parties ample time to
23 ask for discovery. We have a second round of discovery
24 that will be helpful for all parties involved.

25 So that's what we want to make sure, that

1 everybody feels like they have public access to the
2 Public Utilities Commission. I believe that we really
3 try to be open. We allow people to call in and actually
4 be part of any type of hearing by calling in. Our Staff
5 works really hard.

6 And when I first was called to take this
7 position on the Public Utilities Commission I secretly
8 spent a week investigating our Staff. Nobody asked why I
9 was investigating the PUC Staff. I wanted to know their
10 ethics. I wanted to know how hard they worked and how
11 they were perceived in South Dakota.

12 What I found out is they're very hard working
13 and that they work with all parties involved. And, in
14 fact, two weeks ago I was -- about three weeks ago I was
15 at a national type of meeting, which people stop me in
16 the hallway and said, you know what, your Staff is
17 incredibly -- really helps us with the process and helps
18 us answer questions.

19 And so I just want you to know they are
20 available to you. Now are they available at 3 a.m.? No,
21 they're not. They're probably feeding a baby that's
22 crying. They're not available at 3 a.m. But they are
23 available normally from 8:00 to 5:00. So I sure want you
24 to call them, make sure you understand the procedure. It
25 is different than being in the Legislature.

1 When I was in the Legislature you could come and
2 testify. You could come any time. You just had to sign
3 in. Well, this is different. Now you're an Intervener,
4 which, I mean, that is certainly a privilege, and it's a
5 right in the U.S., which I am very happy about. But also
6 there's a cost to be an Intervener.

7 And it takes a lot of time to study. It takes a
8 lot of energy. It takes all of those things that we're
9 not necessarily used to when we testify in front of the
10 Legislature. This is different. This is a judicial
11 hearing.

12 So make sure that you ask our Staff questions.
13 There are attorneys, I'm sure, from all sides that will
14 also help answer your questions. Because we want to make
15 sure that you feel comfortable with the process that the
16 State Legislature has put in front of us that we need to
17 follow but that you are actually Interveners and parties
18 to the case that can be involved in our process and the
19 openness.

20 So I appreciate that. I appreciate this
21 schedule, Commissioner Nelson, and I believe it gives
22 everybody an ample opportunity to be involved.

23 Thank you.

24 CHAIRMAN HANSON: Thank you.

25 Any further discussion on the Motion?

1 Hearing none, Commissioner Nelson.

2 COMMISSIONER NELSON: Aye.

3 CHAIRMAN HANSON: Commissioner Fiegen.

4 COMMISSIONER FIEGEN: Commissioner Fiegen votes
5 yes.

6 CHAIRMAN HANSON: Hanson votes aye. The Motion
7 for the schedule presented by Commissioner Nelson
8 carries.

9 Is there any further business on this Docket
10 that we need to -- any further motions at this time?

11 Seeing none.

12 (The proceeding is concluded.)

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1 STATE OF SOUTH DAKOTA)

2 :SS

CERTIFICATE

3 COUNTY OF SULLY)

4

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

8 DO HEREBY CERTIFY that as the duly-appointed
9 shorthand reporter, I took in shorthand the proceedings
10 had in the above-entitled matter on the 10th day of
11 December, 2014, and that the attached is a true and
12 correct transcription of the proceedings so taken.

13 Dated at Onida, South Dakota this 2nd day of
14 January, 2015.

15

16

17

18

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

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