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THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

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IN THE MATTER OF THE APPLICATION	EL18-003
BY DAKOTA RANGE I, LLC AND DAKOTA	
RANGE II, LLC FOR A PERMIT OF A WIND	
ENERGY FACILITY IN GRANT COUNTY	
AND CODINGTON COUNTY, SOUTH DAKOTA,	
FOR THE DAKOTA RANGE WIND PROJECT	ORIGINAL

=====

Transcript of Proceedings
April 3, 2018

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BEFORE THE PUBLIC UTILITIES COMMISSION,
KRISTIE FIEGEN, CHAIRWOMAN
GARY HANSON, VICE CHAIRMAN
CHRIS NELSON, COMMISSIONER

COMMISSION STAFF
Karen Cremer
Adam de Hueck
Kristen Edwards
Amanda Reiss
Greg Rislov
Darren Kearney
Brittany Mehlhaff
Patrick Steffensen
Lorena Reichert
Joseph Rezac
Jim Mehlhaff
Katlyn Gustafson
Paul Kenefick-Aschoff

APPEARANCES

Mollie Smith,
appearing on behalf of Dakota Range.

Reported By Cheri McComsey Wittler, RPR, CRR
Precision Reporting, 213 S. Main, Onida, South Dakota

1 The following transcript of proceedings was
2 held in the above-entitled matter at the South Dakota
3 State Capitol, 500 East Capitol Avenue, Pierre,
4 South Dakota, on the 3rd day of April, 2018, commencing
5 at 9:30 a.m.

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1 CHAIRWOMAN FIEGEN: EL18-003, In the Matter
2 of the Application of Dakota Range I, LLC and Dakota
3 Range II, LLC for the Permit of a Wind Energy Facility in
4 Grant County and Codington County in South Dakota for the
5 Dakota Range Wind Project.

6 The question before the Commission is shall the
7 Commission grant party status to those who have filed?
8 And shall the Commission issue a procedural schedule?

9 We will go with -- let's see. There is one on
10 the line with party status that has filed for party
11 status. I think one of them has a conflict. So we will
12 start with the party status applications first.

13 So I think we only have Teresa.

14 MS. KAAZ: I'm here.

15 CHAIRWOMAN FIEGEN: Any comments on your
16 application?

17 MS. KAAZ: No. I know they're trying to remove
18 me from the party status, but I am included in the
19 description of their application so I request that I do
20 not be dismissed and continue on.

21 CHAIRWOMAN FIEGEN: Thank you.

22 Are there other members that have applied for
23 party status in the application that are online that I
24 haven't called?

25 Otherwise, we're going to go to staff, and then

1 we'll go to Dakota -- oops. We'll go to Dakota Range and
2 then staff.

3 MS. SMITH: Madam Chair, this is Mollie Smith on
4 behalf of Dakota Range.

5 So as we laid out in our brief, we had some
6 opposition to some of the applications, and there are a
7 few that we don't oppose.

8 To start with, those that we do not oppose, the
9 applications of Diane Redlin, Daniel Seurer, and
10 Christian Reimche -- if I'm saying those incorrectly. We
11 did not oppose those. And then maybe breaking the other
12 two down by category.

13 There were four of them that did not state any
14 reason that they wanted to be an Intervenor. So they
15 didn't complete the application. Teresa Kaaz, Kelly
16 Owen, Kristi Mogen, and Wade Bauer, our request is that
17 they be denied unless those people identified an interest
18 that would warrant party status at our hearing today.

19 We do not oppose now Teresa Kaaz's petition
20 given that her stated interest is that she is a project
21 within the project footprint. But we do oppose the other
22 three that did not provide any statement as to why they
23 wanted to be a party to this docket.

24 Regarding the remaining applicants, there -- our
25 concern is that they -- they, on the information that's

1 been provided to date, have not stated an adequate
2 interest in the proceeding in part or that their
3 interest -- there's a couple of them that their interest
4 does not appear to be accurate. For instance, they say
5 they're adjacent to the project, but they are miles away
6 from the actual project footprint.

7 And so with the information provided we'd
8 request that those petitions be denied or that additional
9 information be provided to support their being parties to
10 this action.

11 And on the part of -- I know that there's been a
12 broad interpretation of who can be a party to the actions
13 before the Commission, but under 49-41B-17 there's three
14 categories. There's any person residing in the area. So
15 like if Ms. Kaaz is in the area. So any person residing
16 in the area where the facility is proposed to be sited.
17 Any nonprofit organization that meets the requirements of
18 the specified statute. There's certain purposes
19 outlined. And then any interested person.

20 And so an interested person still has to have an
21 interest in the proceeding. And if it was any person,
22 there would be no point in having the other two
23 categories in the statute. They could simply say anyone
24 who wants to can come be a party to the action.

25 And so because these people are up to 25 miles

1 away and they're listing interests like concerned
2 landowner, that does not provide a specific reason why
3 they have an interest in this proceeding. And so those
4 are the reasons that we are opposing those particular
5 provisions. And we believe that there should be more
6 required to at least show what their interest is.

7 Under the Commission's rules the requirements
8 for an application to intervene are to show why you have
9 an interest in the proceeding and your position, if it's
10 known, regarding the application.

11 So we would ask that -- for additional
12 information to be required or that they be denied.

13 CHAIRWOMAN FIEGEN: We'll hold --

14 MS. KAAZ: If I may speak for a moment, this is
15 Teresa Kaaz.

16 CHAIRWOMAN FIEGEN: Just wait one minute.

17 Ms. Smith, we're going to hold on the procedural
18 schedule, and we will take that after party status.

19 MS. SMITH: That sounds good. Thank you.

20 CHAIRWOMAN FIEGEN: Ms. Teresa.

21 MS. KAAZ: Yes. I was going to say many of the
22 landowners who expressed an interest in this, they do
23 have land adjacent such as land that they own in other
24 places besides their addresses. So in that sense of them
25 being dismissed, I think they should do more discovery

1 into where their lands are located before they are
2 dismissed.

3 And some of them still -- even though they don't
4 have time at this time today to be included in this
5 procedure, I ask that they still do not be dismissed
6 until they do other studies to see if they are impacted.

7 CHAIRWOMAN FIEGEN: Thank you. We're going to
8 go to staff next.

9 MS. REISS: Thank you, Madam Chair. This is
10 Amanda Reiss for staff.

11 Staff would support the intervention of all
12 parties who have filed for party status. Historically
13 the Commission has taken a very broad, expansive view of
14 intervention, and staff would rely on that interpretation
15 and support for these parties.

16 CHAIRWOMAN FIEGEN: Questions of the Commission.
17 Commissioner Nelson.

18 COMMISSIONER NELSON: For Ms. Smith, in your
19 filing, subset number 2, you very helpfully figured out
20 where each of these folks resided and the distance from
21 the nearest turbine.

22 Did you do that same calculation for the four
23 individuals in Subsection 1, how far their residence was
24 from the nearest turbine?

25 MS. SMITH: I believe I looked at it, however --

1 you know, based on the address. But two things:

2 One, it is not our obligation to identify the
3 interests of those that petition. It is their obligation
4 to identify their own interests. And in the prior
5 Crocker docket where there were petitions to intervene
6 and they did not state an interest at all, those were
7 denied. And so I believe they don't meet the
8 requirements, and we shouldn't have to search to figure
9 that out.

10 We did look at the ones where they did provide
11 an interest, but we are trying to understand if their
12 interest actually was legitimate or, you know, a true
13 interest in the proceeding, given where they live.

14 All we had was their address. We mapped their
15 address from their petition. We didn't do research
16 because, again, don't feel that it's our obligation to
17 identify their interests. Rather, it's their obligation
18 to identify their interests.

19 COMMISSIONER NELSON: And so just so I am clear,
20 you're telling me for Teresa Kaaz, Kelly Owen,
21 Kristi Mogen, and Wade Bauer you did not calculate how
22 far their distance is from the nearest proposed turbine;
23 is that correct?

24 MS. SMITH: If we did have it on a map, I
25 didn't -- that was not my concern. I don't believe that

1 Kelly Owen lives in the project area, but I don't
2 remember where the other ones -- the addresses are.

3 I do believe we mapped them. I do not believe
4 that we identified -- I didn't focus on that in preparing
5 the response because they didn't have any interests
6 identified at all.

7 COMMISSIONER NELSON: If I might, Ms. -- Madam
8 Chair, if I could ask Ms. Kaaz a question.

9 Ms. Kaaz, how far is your residence from the
10 nearest proposed turbine?

11 MS. KAAZ: The nearest proposed turbine would
12 completely surround my property. I have leaseholders on
13 all four sides, and at this time I know of at least three
14 to four turbines that are going to be adjacent to my
15 property within 1,500 feet from my residence.

16 And Kelly Owens does own land adjacent to the
17 properties. She has a large amount of acres and is
18 adjacent to those properties so she'll specify. For
19 those that didn't put the reasons on there, I'm sure they
20 didn't see that paragraph on that information because
21 this is the first time they've been included in any type
22 of PUC regulations and meetings. And I know that that
23 was just an oversight on them. But we have many
24 landowners who do have land adjacent to this project.

25 COMMISSIONER NELSON: Ms. Kaaz, you know, we're

1 going to be involved in this process through June or July
2 of this year, and I'm just going to advise you that
3 you're not in a position to represent the other
4 Intervenors. And so you might want to be very careful in
5 trying to represent them and answer questions for them.

6 And so I want to ask a question about your
7 situation again. And so I'm understanding that you've
8 told me that your residence is within 1,500 feet of at
9 least one of the proposed turbine locations; is that
10 correct?

11 MS. KAAZ: Well, it's -- it's very hard to
12 understand the maps as they do change, but at this time I
13 am going to have a minimum of three turbines surrounding
14 my property. As to how far away they will be will be
15 determined by the setbacks at our county level which have
16 not been determined yet at this time.

17 But the two landowners that own land adjacent to
18 my property -- one owns land on three sides of my
19 property. The other owns land on one side. They are all
20 leaseholders with the potential of turbines surrounding.

21 COMMISSIONER NELSON: Right. I understand that.
22 But as far as I'm aware, there's only been one map that's
23 been filed with this that showed the proposed turbine
24 locations.

25 So my question was not where the perimeter of

1 the project is but where the actual turbine locations
2 were compared to your residence. And if you don't know
3 that at this point, that's fine.

4 MS. KAAZ: Yeah. I'm not sure how many feet
5 away because that's not been provided yet.

6 COMMISSIONER NELSON: I have no further
7 questions.

8 CHAIRWOMAN FIEGEN: Thank you. Other questions
9 of Commissioners?

10 Seeing none, is there a motion?

11 Commissioner Hanson.

12 COMMISSIONER HANSON: Madam Chair, in docket
13 EL18-003 I move that the Commission grant party status to
14 those who have filed.

15 CHAIRWOMAN FIEGEN: Thank you. And just to
16 clarify, I believe was it -- did we get the filing of
17 Mark Kriesel, that he pulled out; correct?

18 Okay. Thank you.

19 Comments on your motion.

20 COMMISSIONER HANSON: I would just say that the
21 Commission has always been -- I hate to use the word
22 liberal in allowing those persons who have applied for
23 party status. We haven't required that they show that
24 they're next door. In many respects we've been overly
25 liberal with it.

1 But certainly the precedence that's been set by
2 this Commission would allow for every one of these folks
3 to fall well within the categories that we have provided
4 in the past. So I think that we -- it's incumbent upon
5 us to continue with that policy.

6 CHAIRWOMAN FIEGEN: Other comments on the
7 motion.

8 COMMISSIONER NELSON: I would move to amend
9 the motion by removing Kelly Owen, Kristi Mogen, and
10 Wade Bauer from the motion.

11 CHAIRWOMAN FIEGEN: Comments on your amendment.

12 COMMISSIONER NELSON: This is obviously a
13 difficult decision. Primarily because I think the
14 statute is not well worded as it relates to who is and is
15 not allowed intervention.

16 But, as Ms. Smith pointed out, the statute does,
17 in fact, use the word "interested," and that has to mean
18 something. And in the case of the three that I
19 mentioned, they have not in any way indicated what their
20 interest is in this process. Hence, my motion to amend.

21 CHAIRWOMAN FIEGEN: Other comments on the
22 motion.

23 Commissioner Hanson.

24 COMMISSIONER HANSON: I very much appreciate my
25 fellow Commissioner's motion to amend. The Commission

1 has struggled with this a number of times. We have
2 examined whether or not and how to rephrase this -- the
3 statute. We've worked on it with legislators even trying
4 to figure out -- even in this past legislative session.

5 However, the law does state any interested
6 person. And these are obviously persons, and they are
7 obviously interested. The word "interested" can be
8 defined for me as a person who's willing to go through
9 the process of filling out the application and sending it
10 in. They're obviously interested, or they wouldn't have
11 gone through all of that process to put it together.

12 So while I -- while I feel the pain of my fellow
13 Commissioner, I have to -- I cannot support the motion to
14 amend.

15 CHAIRWOMAN FIEGEN: Other comments on the
16 amendment?

17 All in favor of the amendment say aye; opposed,
18 nay.

19 Commissioner Nelson.

20 COMMISSIONER NELSON: Aye.

21 CHAIRWOMAN FIEGEN: Commissioner Hanson.

22 COMMISSIONER HANSON: No.

23 CHAIRWOMAN FIEGEN: Commissioner Fiegen votes
24 no. Amendment fails.

25 We're back to the main motion. Comments on the

1 main motion.

2 Commissioner Nelson.

3 COMMISSIONER NELSON: In regard to the
4 individuals listed under Subsection 2 of the Applicant's
5 filing, where individuals did, in fact, list an interest
6 but in looking at where they actually reside, I'm
7 having -- I struggle to figure out how they would, in
8 fact, be impacted by this particular project.

9 And so because they did list an interest I think
10 they do have a right to be involved, although I'm
11 struggling to figure out exactly how they may be
12 personally impacted by it. But at this point I will
13 certainly support Commissioner Hanson's motion.

14 CHAIRWOMAN FIEGEN: Other comments on the
15 motion.

16 All in favor say aye; opposed, nay.

17 Commissioner Nelson.

18 COMMISSIONER NELSON: Aye.

19 CHAIRWOMAN FIEGEN: Commissioner Hanson.

20 COMMISSIONER HANSON: Aye.

21 CHAIRWOMAN FIEGEN: Commissioner Fiegen votes
22 aye.

23 Motion carries.

24 That brings us -- no. We're doing procedural
25 schedule. Got ahead of myself.

1 The procedural schedule is the next question
2 before the Commission. Shall the Commission issue a
3 procedural schedule? We're going to start with staff
4 this time. Then we will go to Dakota Range and then
5 Intervenors.

6 Public Utilities Commission staff, you're on.

7 MS. REISS: Thank you, Madam Chair. This is
8 Amanda Reiss for staff.

9 Staff filed a Motion for Adoption of Procedural
10 Schedule on March 28. Staff is very aware that the
11 procedural schedule we proposed is extremely time
12 limited. We have a six-month deadline to process this
13 application. And so staff proposed the most appropriate
14 schedule we could find and discussed this with the
15 Applicant, as well as sending the proposed schedule to
16 the Intervenors to their e-mail addresses for input.

17 At this time staff would request the Commission
18 adopt that procedural schedule.

19 As a side note, within discussions with the
20 Applicant there was a question about one of their
21 witnesses who has a potential conflict from June 13
22 through the 15th, and within their response to the motion
23 they requested that they allow that witness to testify on
24 June 12. Staff has no objection to that and would
25 support that request at this time.

1 As to the -- never mind. I'm sorry about that.

2 CHAIRWOMAN FIEGEN: Dakota Range.

3 MS. SMITH: Thank you, Commissioner.

4 So yes. We agree and support the proposed
5 schedule that has been laid out by staff and they took
6 our input into consideration and we very much appreciate
7 that.

8 And, yes, we do have one expert witness that we
9 anticipate calling who is not available on the 13th
10 through 15th but could be in Pierre on the 12th, and so
11 we would ask that he be able to testify following the
12 prehearing conference that day.

13 And then we also have some requests that -- some
14 outline requirements that we would ask be included in the
15 Commission's order accompanying the schedule, and those
16 are outlined in our brief. And some of it comes from
17 some of the items that we've discussed in other dockets
18 regarding discovery and regarding conduct at the hearing
19 and the requirements of filing prefiled testimony,
20 cross-examination.

21 It's very important for all of the parties who
22 are official parties to actually understand what the
23 obligations and responsibilities are of being a party in
24 the action, and particularly given that it appears that
25 there are several unrepresented parties now to the

1 action, we think it's even more important that those
2 requirements and obligations be outlined by the
3 Commission in the order setting the schedule so that
4 everybody is aware of them up front to avoid issues with
5 compliance later on and also hopefully -- you know, also
6 we anticipate there could be withdrawals if there is a
7 lack of understanding of what is required up front.

8 So those are -- that's our request, and I'm
9 happy to answer any questions about what we've outlined
10 in our brief.

11 CHAIRWOMAN FIEGEN: Thank you.

12 We will go to anyone that has been granted party
13 status that would like to comment on the procedural
14 schedule.

15 Hearing none, questions of the Commission.

16 And I am going to ask staff -- sorry. Amanda
17 Reiss, do you have another comment?

18 MS. REISS: Yes, Madam Chair. I apologize.

19 With the discussion between the Intervenors and
20 the procedural schedule, I overlooked one item that staff
21 wanted to comment on.

22 In the Applicant's response, the Applicant did
23 request limiting the scope of discovery to a certain
24 extent regarding using information provided only for this
25 proceeding and that information not be posted publicly on

1 the Commission's docket and that materials be returned or
2 destroyed.

3 Staff obviously would like to point to the
4 Commission's discussion on the last docket. At this time
5 staff wants to be clear that the Commission's aware of
6 this and that staff does not support any limitation
7 regarding how the materials are used in this docket.

8 Staff would defer to the Commission on any
9 limitation that would be appropriate beyond that.

10 Thank you.

11 CHAIRWOMAN FIEGEN: Thank you. A question for
12 the staff.

13 The final prehearing conference, normally that's
14 not in a formal procedural schedule. And, you know, the
15 staff and the parties actually deal with that. Could we
16 pull that off the formal procedural schedule?

17 MS. REISS: Madam Chair, that was a request of
18 the Applicants, and she graciously agreed to discuss that
19 if there was a question regarding that. So I would defer
20 to the Applicant.

21 MS. SMITH: Certainly. This is Mollie Smith
22 again. I can address that.

23 I think what we were hoping is that if there
24 were any last-minute issues regarding, you know, the
25 witness list, witnesses that have come in or pending

1 motions that still had not been decided, that those would
2 be decided at the time of that prehearing conference.
3 And so for that it is -- if those decisions would be made
4 by the Commissioners, we would ask that then the
5 Commissioners would be present.

6 If those decisions are to be made by someone
7 identified by the Commission such as the Commission's
8 counsel acting in sort of an administrative judicial
9 role, then we'd ask that that person be present.

10 So it depends on who's making the ultimate
11 decisions on the motions in the procedure. But that's
12 why we wanted to keep the prehearing schedule on the
13 formal schedule for the docket.

14 CHAIRWOMAN FIEGEN: Okay. I have another
15 question of staff then.

16 It appears that the evidentiary hearing will be
17 changed to June 12. That's what you guys are asking for.
18 If that's voted on today, I don't know. But it would be
19 June 12 through the 15th because of the person that wants
20 to testify on the 12th.

21 So then we could possibly delete the prehearing
22 conference and be heard on the 12th if there's any issues
23 that need to come in front of the Commission. Would that
24 be proper?

25 MS. REISS: Yes. Madam Chair, staff would be

1 comfortable with that. And I believe there is a
2 Commission meeting that morning as well so we can include
3 any items on the agenda if required.

4 CHAIRWOMAN FIEGEN: Right. So we could get rid
5 of that in the procedural schedule and still take care of
6 business.

7 Okay. Questions of the Commission.

8 Commissioner Nelson.

9 COMMISSIONER NELSON: I guess a question for
10 staff. In the Applicant's response for the procedural
11 schedule on the top of page 5 dealing with prefiled
12 testimony -- and they've made a request that prefiled
13 testimony be a prerequisite to giving live testimony at
14 the hearing, and we've done that in the past -- does
15 staff support that?

16 MS. REISS: Staff does support that. As you
17 mentioned, the Commission has ordered that in the past
18 and has taken that stance.

19 If there is an issue with prefiled testimony,
20 staff is confident that the parties can file a written
21 request, and we can address that issue if it comes up.

22 COMMISSIONER NELSON: Thank you. And then my
23 follow-up question would be for Ms. Smith. The very next
24 sentence in that same paragraph. Talking about, however,
25 each party may have the right to have witnesses available

1 that have not filed prefiled testimony to address things
2 that may be raised by the Commission.

3 That just seems pretty broad to me. Give me
4 some comfort into what you're really asking there.

5 MS. SMITH: Certainly. So and we're sort of
6 learning as we go through these proceedings, but what we
7 found is applicants filing their testimony primarily up
8 front in the docket and addressing in rebuttal comments
9 made by the parties to the action. But sometimes it
10 appears that the Commissioners themselves, that you may
11 have questions that are outside of what's been covered in
12 rebuttal.

13 So we're not asking that the person be -- you
14 know, get up there and testify unless the Commissioners
15 themselves raise a question. So if you, Commissioner
16 Nelson, were to raise a question that hadn't been
17 addressed in rebuttal but you wanted to have the
18 information in order to make your decision, we would want
19 to be able to have that witness present and call them to
20 address your question.

21 COMMISSIONER NELSON: Thank you. I appreciate
22 that, and that certainly works for me.

23 Now, Madam Chair, if I might, on the procedural
24 schedule itself I'm going to be very transparent. I've
25 got on June 15 a conflict. It's not 100 percent set in

1 concrete conflict, but I would really much prefer not to
2 be here on the 15th. And so I'm wondering if we could
3 begin the hearing at 1 o'clock on the 12th with the
4 intention of trying to push pretty hard and wrap up by
5 the 14th. And if we're not wrapped up by the 14th, we
6 will continue on to the 15th, and I'll be here.

7 Does anybody have objection to that?

8 CHAIRWOMAN FIEGEN: And I think we actually
9 talked about starting the 12th now. So 1 o'clock, I
10 mean, or whatever is fine.

11 COMMISSIONER NELSON: Ms. Smith, does that work
12 with you?

13 MS. SMITH: Yes. That's fine with us.

14 COMMISSIONER NELSON: And we're seeing a lot of
15 heads shaking yes on this side. So and again if we don't
16 get done by the 14th, we absolutely want to give
17 everybody the opportunity that they need to be heard and
18 so we'll be here on the 15th and I'll be here on the
19 15th.

20 I think that's all the questions I've got.

21 CHAIRWOMAN FIEGEN: Perfect.

22 And I believe the deadline for prehearing
23 motions is fine for the 11th with all parties. If not,
24 because we're moving it up to the 12th, the evidentiary
25 hearing, say now or forever hold your peace.

1 And the only other comment I have is, you know,
2 thank you for Dakota Range for suggesting some ideas for
3 the Commission. As you know, the Commission makes
4 decisions on many of these things throughout the hearing,
5 but I appreciate your suggestions. But a lot of those
6 decisions will be made throughout the hearing.

7 Other comments on the motion? -- I mean, not on
8 the motion. Any other questions?

9 Is there a motion?

10 COMMISSIONER NELSON: I will move in EL18-003
11 that we establish the procedural schedule as provided by
12 staff with the exception that the final prehearing
13 conference would be removed from the schedule, that that
14 would be handled by the parties off line.

15 However, if there are any last minute issues
16 that need to be resolved, that we could put them on the
17 agenda for the meeting the morning of the 12th, that we
18 begin the evidentiary hearing at 1 o'clock on the 12th,
19 and we'll schedule it to run through the 15th. I think
20 that's only fair.

21 The other parameter, and I'm going to the -- the
22 applicants made a number of different requests. I think
23 the only one that I would include in my motion is the one
24 that we talked about that each party may submit prefiled
25 testimony on behalf of the party's witnesses.

1 The submission of prefiled testimony is a
2 prerequisite to giving live testimony at the hearing.
3 However, each party may have persons who have not
4 submitted prefiled testimony available to testify at the
5 hearing in the event issues not addressed in prefiled
6 testimony are raised by the Commission.

7 CHAIRWOMAN FIEGEN: Other comments -- comments
8 on the motion.

9 COMMISSIONER HANSON: Just a clarification.
10 Were you excluding that information, or were you
11 including?

12 COMMISSIONER NELSON: Which information?

13 COMMISSIONER HANSON: That you just read.

14 COMMISSIONER NELSON: No. That, I am including.
15 That is the only part of what the Applicant asked for
16 that I'm specifically including.

17 And, if I might, I think the rest of it will
18 kind of take care of itself. And if there needs to be
19 something specific addressed to the rest of it, we can do
20 that as things proceed.

21 CHAIRWOMAN FIEGEN: Comments on the motion. And
22 then I'm going to ask staff a question about your motion.

23 COMMISSIONER NELSON: I'm going to ask staff a
24 question also.

25 Regarding my motion, the requirement for

1 prefiled testimony, do we have a mechanism for adequately
2 communicating that to the lay Intervenors so that they
3 clearly understand that requirement?

4 MS. REISS: Thank you for the question,
5 Commissioner. Staff will be sure to send a copy of the
6 Commission's order through mail to each Intervenor and
7 through e-mail and we'll attempt to explain this
8 requirement and we'll accept any questions the
9 Intervenors have regarding this requirement.

10 COMMISSIONER NELSON: Thank you.

11 Yeah. I think an explanation that a layperson
12 could understand accompanying that would be great. But
13 understand I do not expect you to prepare their testimony
14 or handhold them through the preparation of that. That
15 is their responsibility.

16 MS. REISS: I appreciate that. Thank you,
17 Commissioner.

18 COMMISSIONER NELSON: You're welcome.

19 CHAIRWOMAN FIEGEN: You might have answered this
20 so I'm sorry. I wasn't listening.

21 So what happens if staff or someone asks a
22 question of Dakota Range or Dakota Range asks a question
23 of staff that's not in their prefiled testimony and they
24 need to get an expert to check the facts or whatever?
25 They can't do that anymore? Or how can we make sure

1 that --

2 Like right now it's Commissioners. They can
3 rebut Commissioners' questions, but they can't --

4 MS. REISS: Can you rephrase that question a
5 little bit, Commissioner?

6 CHAIRWOMAN FIEGEN: I'm going to go try to find
7 the -- let's see. So however each party may have a
8 person who may not have submitted prefiled testimony, but
9 the only time that that person can come up is if the
10 question is asked by the Commission.

11 What if it's asked of you? The staff? Or what
12 if it's asked as the Intervenor? Or what if it's
13 asked -- I'm trying to figure out have we ever let
14 somebody come in and testify or check a fact that hasn't
15 filed prefiled testimony?

16 MS. EDWARDS: I do believe we had testimony in
17 one docket on a Wall Lake issue. That person had filed
18 prefiled testimony, but that was outside of the scope of
19 the prefiled testimony. And as a general practice it has
20 been our position that the -- any party would have a due
21 process right to rebut new information that came up.

22 So to the best of their abilities, include your
23 case in prefiled. If new information comes up, it's our
24 position, I believe, that you have a due process right to
25 address that.

1 CHAIRWOMAN FIEGEN: Great. Thank you. I just
2 wanted to be sure that everybody had that. So perfect.
3 And I think we'll have that.

4 Other comments, questions on the motion?

5 All in favor say aye; opposed, nay.

6 Commissioner Nelson.

7 COMMISSIONER NELSON: Aye.

8 CHAIRWOMAN FIEGEN: Commissioner Hanson.

9 COMMISSIONER HANSON: Aye.

10 CHAIRWOMAN FIEGEN: Commissioner Fiegen votes
11 aye.

12 Motion carries.

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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 3rd day of
11 April, 2018, and that the attached is a true and correct
12 transcription of the proceedings so taken.

13 Dated at Onida, South Dakota this 2nd day of
14 May, 2018.

15

16

17

18 /s/ Cheri McComsey Wittler
19 Cheri McComsey Wittler,
20 Notary Public and
21 Registered Professional Reporter
22 Certified Realtime Reporter

21

22

23

24

25

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