

be six months after the petition was filed, and a decision could follow soon thereafter. By comparison, Keystone's permit application in Docket HP09-001 was filed on March 12, 2009. The 2009 process started with a series of statutorily-required public meetings, organized and hosted by the Commission, in Winner, Phillip, and Buffalo. All discovery and pre-hearing activity was concluded, and the evidentiary hearing on the application was held beginning on November 2, 2009, less than eight months after the application was filed.

By statute, the underlying permit application had to be decided within one year after filing. SDCL § 49-41B-24. It would make no sense for proceedings in this certification docket, in which the issues are much narrower than the scope of the initial permit application, to take longer than in the underlying docket. Because of national politics, some of the Intervenor's may think strategically that they would benefit from a protracted proceeding, but the schedule should be based on the scope of the issues and should account for Keystone's interest in an orderly and expeditious process.

Second, the issues are narrow, as explained in Keystone's motion to define the scope of discovery. South Dakota law clearly states that the Commission may not reconsider a final decision in a contested case under the guise of certification under SDCL § 49-41B-27. The statute requiring that Keystone certify that the project continues to meet the conditions on which the permit was granted is not a window for the

Intervenors to ask the Commission to relitigate the issues in the initial permit proceedings, HP09-001. In its petition for certification, Keystone has identified matters that affect any of the Commission's findings of fact in the underlying docket. Discovery related to those issues will be necessarily narrower than was discovery in the underlying docket, so there is no reason why discovery cannot be completed with the schedule Keystone proposes.

In conclusion, the Commission's procedural schedule should reflect the limited nature of the proceeding, account for the interests of all parties, and provide for resolution in less time than it took to reach a decision on the initial permit application. Keystone respectfully requests that the Commission adopt its proposed schedule.

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