

5. If necessary to ensure timely completion of the hearing, the Commission should limit the time allowed for any party to cross-examine a witness. Navigator has identified 13 witnesses for hearing, including rebuttal witnesses. The unions that intervened have identified three witnesses. Staff has identified nine witnesses for hearing. The landowner Intervenor represented by Brian Jorde have filed 48 pieces of testimony for hearing. Navigator has filed a separate motion addressing duplicative and redundant testimony, but even if that motion is granted, it will not be possible to complete the hearing within the time allowed if counsel do not reasonably limit cross-examination.

Limits on cross-examination, including reasonable time limits, are consistent with due process and are within the scope of the Commission's ability to regulate the hearing process. In general, a court "should exercise reasonable control over the mode and order of examining witnesses and presenting evidence so as to (1) make those procedures effective for determining the truth; (2) avoid wasting time; and (3) protect witnesses from harassment or undue embarrassment." SDCL § 19-19-611. The South Dakota Supreme Court has held many times that reasonable limits on cross-examination are within a court's discretion and do not amount to a denial of due process. *See, e.g., Matter of Guardianship of I.L.J.E.*, 2018 S.D. 81, ¶ 24, 921 N.W.2d 463, 471 ("In civil cases, while the suppression of all cross-examination may amount to a denial of due process, restriction of cross-examination will rarely rise to constitutional dimensions, although it might amount to an abuse of discretion where the probative value of the excluded evidence is sufficiently high."); *City of Sioux Falls v. Johnson*, 1999 S.D. 16, ¶ 18, 588 N.W.2d 904, 909 ("The trial court retains broad discretion concerning the limitation of cross-examination and it will be reversed only when there is a clear abuse of discretion and showing of prejudice."); *State v. Kryger*, 2018 S.D. 13, ¶ 16, 907 N.W.2d 800, 808 ("An individual is only

guaranteed an opportunity for effective cross-examination, not cross-examination that is effective in whatever way, *and to whatever extent*, the defense might wish” (emphasis added).)

Navigator understands that some witnesses will require more time than others and so has not proposed a set limit for all witnesses. Nevertheless, this motion is appropriate to raise the issue before the hearing as a help to completing the hearing on time and as a reminder that limits on cross-examination are common and consistent with due process. Navigator requests that the Commission act on this motion by advising the parties that they should be attentive to time when examining witnesses because if they are not, an order precluding further testimony of a witness may be necessary.

Conclusion

Navigator respectfully requests that this motion be granted.

Dated this 26th day of June, 2023.

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CERTIFICATE OF SERVICE

I hereby certify that on the 26th day of June, 2023, a true and correct copy of the foregoing Applicant's Motion to Address Procedural Issues was served via e-mail upon the following:

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