

1 CHAIRMAN FIEGEN: So, commissioners, it is
 2 10:43. I don't have any items for -- yes, we do.
 3 Excuse me? Yes. Okay. We do have commission
 4 counsel that's going to clarify the Navigator
 5 hearing.

6 MR. DE HEUECK: Chairman Fiegen, we still have
 7 a preemption issue that is tied to Navigator's
 8 motion wherein they asked if the PUC would be
 9 preempting county ordinances in this matter and
 10 the agenda notice that went out mentions that we
 11 won't be discussing that matter in detail, but we
 12 would address it procedurally.

13 COMMISSIONER HANSON: I don't -- I don't see
 14 that on my --

15 CHAIRMAN FIEGEN: So what you're saying,
 16 Mr. De Heueck, is it is not noticed that there is
 17 a question on preemption of county ordinances?

18 MR. DE HEUECK: Correct.

19 COMMISSIONER NELSON: Madam Chair, thank you.
 20 So in the -- in the notice of today's meeting in
 21 the agenda it talks about the fact that we would
 22 have discussion regarding the procedure for
 23 Navigator's motion to preempt and, obviously,
 24 we're not voting on anything today, but I really
 25 think we need to talk about this issue. This is

1 not -- a motion under that particular statute is
2 not something that I have ever dealt with. It is
3 an incredibly substantive motion asking us to
4 overrule county commission decisions in a number
5 of counties, incredibly substantive. I believe
6 from Mr. Moore's written filing, his anticipation
7 is that that would be considered as part of the
8 hearing.

9 And so here's the issue that I've got with
10 that -- and I'm really just kind of looking for
11 everybody to weigh in and see how to best handle
12 this. First of all, I think it's -- the statute
13 does not tie that decision to the permanent
14 application decision, so separate statute, they're
15 not tied together. And because of that, I don't
16 believe we're under the one-year time frame to
17 make a decision on the motion to preempt. So I
18 don't think we have to do it as quickly as we do
19 the hearing on the permit.

20 The other concern that I've got with doing it
21 during the hearing is that there are counties that
22 are parties to this that did not file any
23 witnesses, did not file any prefile testimony
24 because they didn't know that this motion was
25 coming. And so at this point, this motion -- if

1 we were to handle this during the hearing, this
2 motion has come up, those counties had no
3 opportunity to file -- prefile testimony relating
4 to this motion because, again, it's not a question
5 of the permit, it's an entirely different statute,
6 an entirely different motion. And so I don't
7 think those counties, if we do it as part of the
8 hearing, I don't think they've got an adequate
9 opportunity to represent their positions, and
10 understand that what's being asked is that we
11 essentially toss the work that those counties have
12 done.

13 And so, you know, kind of the question that I
14 think we need to wrestle with is what are people
15 anticipating? What is the best way to make sure
16 that everybody has due process as we deal with
17 this question, particularly the counties that are
18 most affected by this decision.

19 As I've wrestled it in my mind, it appears to
20 me that -- you know, I wrestle with the question,
21 does there need to be a separate docket or is it
22 part of this docket? I think I am okay with it
23 being part of this docket, but I think that having
24 a separate proceeding to deal with that very, very
25 large issue with the ability of, you know, those

1 affected to bring witnesses and be part of that is
2 probably appropriate at some time later than the
3 actual hearing.

4 That's really kind of the questions that are
5 going around in my mind and I want to throw it out
6 to everybody that's involved for some input
7 because it's a big deal.

8 CHAIRMAN FIEGEN: Go ahead.

9 COMMISSIONER HANSON: Madam Chair, thank you.
10 It is a big deal and I didn't -- I hadn't seen
11 anywhere that it was on the agenda here other than
12 I see now that it's a sentence within the history
13 of this docket that's presented here. I didn't
14 know it was going to be something we were going to
15 be discussing or voting on or anything of that
16 nature. It is a big deal. I -- I read, I believe
17 it was staff statements in regard to it, saying
18 something along the fact that this is something we
19 can't even really get into or make a decision on
20 until we get to the hearing and go through that
21 process and I agreed with that.

22 Frankly, I jumped through my socks, an old
23 saying, I guess, I jumped out of my socks when I
24 saw that. I said, Wow. A motion to preempt
25 county ordinances? Seriously? You know, that's

1 one of the things that we're always priding
2 ourselves on is making certain that everybody has
3 an opportunity to participate. And, my gosh,
4 county ordinances, that's -- the saying that the
5 government that's closest to the people is the
6 best government, et cetera, et cetera, and most
7 representative of the citizens, and preempt their
8 ordinances? And now there's -- in 49-41B-28, the
9 four different issues that have to be adhered to
10 and complied with in order to get a permit,
11 there's not -- not in this docket, but in all of
12 the wind, solar, and electric, they're required to
13 have a CUP, a conditional use permit, from the
14 county.

15 And I just -- I'll say this. Unless I am
16 reading it completely wrong when I first read it,
17 I just -- I couldn't believe it. So I just -- I
18 would have to really be -- hear some outstanding
19 information, reasoning that I just have never been
20 able to see in why we want to preempt those. So,
21 yeah, I -- that's my thoughts on it.

22 CHAIRMAN FIEGEN: Thank you. Yes, when I
23 received this filing, it was quite interesting,
24 but I do agree with Commissioner Nelson that
25 everybody needs to be able to testify in this.

1 And when we have parties that are counties that
2 haven't submitted testimony, we would do it in a
3 hearing, that probably wouldn't be proper. We do
4 have an evidentiary hearing of -- I mean --
5 evidentiary -- we have a commission meeting, of
6 course, July 28th, and then we have some in August
7 that we may have to deal with this.

8 But do you want comments from the parties in
9 the docket?

10 COMMISSIONER HANSON: Absolutely. Yes. I'd
11 love to hear how the parties are thinking about
12 this. And let me be clear, if we do this at a
13 separate meeting or hearing, other than the main
14 hearing, it definitely has to be after the main
15 hearing because I would want everything we've
16 taken in during the main hearing to be judicially
17 noticed for this particular question.

18 CHAIRMAN FIEGEN: So we're going to start with
19 Navigator and then we'll do the intervenors and
20 the docket. Comments on our dilemma.

21 MR. MOORE: Thank you, Commissioner. James
22 Moore on behalf of Navigator. I understand the
23 unprecedented nature of the motion under the
24 statute because it has not been applied before,
25 but clearly what the legislature contemplated with

1 respect to the entire chapter on permitting
2 pipelines is that this is a process over which the
3 Public Utilities Commission as an agency at the
4 state level has control. And while some local
5 regulation is appropriate, to the extent that that
6 regulation is unreasonably restrictive and
7 conflicts with the goals and the decisions of this
8 commission with respect to whether a permit ought
9 to be granted under South Dakota law, those local
10 regulations can be preempted.

11 So I don't think there's anything
12 extraordinary about that. It's part of the
13 statutory framework of SDCL Chapter 49-41B. I
14 understand that the commission has not previously
15 encountered this before, likely because an
16 applicant for a permit has not been in this
17 situation where counties have adopted restrictive
18 zoning related ordinances during the hearing
19 process after a permit application has been filed.

20 The difficulty that I have with the idea that
21 this should be considered during some sort of
22 separate proceeding is the statutory language in
23 49-41B-28, and specifically the last sentence of
24 the statute says, Without such a finding by the
25 commission, i.e., a finding of preemption that

1 local regulation is unreasonably restrictive, no
2 route shall be designated which violates local
3 land use zoning or building rules or regulations
4 or ordinances.

5 So if the commission has a hearing and
6 concludes that Navigator has satisfied its burden
7 of proof and is entitled to a permit, by -- by
8 granting the application, the commission, in
9 effect, has approved the route because the
10 application is based on a particular route that is
11 in evidence before the commission.

12 And to the extent that that's proved and there
13 is a local zoning ordinance that makes it
14 effectively impossible to construct that route
15 through the county because of setbacks or whatever
16 else, that is a classic situation where local
17 regulation has made what is otherwise lawful
18 conduct according to state law and state statute,
19 it has made it impossible to do that. And that is
20 the classic preemption situation and it's the
21 situation that was, I think, contemplated by the
22 legislature in adopting 49-41B-28.

23 So my concern is if you -- if you have the
24 first hearing and you grant a permit, but the
25 evidence is that we can't construct through Moody

1 County with a 750-foot setback, there's simply no
2 way to do that, then the permit is essentially
3 invalid, but not because of state law, because of
4 local law. And that's the reason for the
5 preemption.

6 So it makes sense to me, given the last
7 language in the statute and the overall framework
8 and the -- the -- again, the legislative findings
9 as part of this chapter that these projects are
10 not merely a matter of local concern, that there
11 are statewide issues here involving interstate
12 linear infrastructure projects that ought to be --
13 that ought not to be frustrated by purely local
14 concerns.

15 And it makes sense to me that the evidence
16 that the commission is going to have to consider
17 in deciding the preemption issue relates to
18 whether the -- whether the local regulation is
19 unreasonably restrictive in view of existing
20 technology, factors of cost, economics, or the
21 needs of the parties, that those are issues that
22 evidence is going to be presented on in the
23 context of the permitting proceeding, because
24 whether -- whether a 750-foot setback is
25 unreasonably restrictive may depend on Navigator's

1 pipeline integrity program, it may depend on the
2 particular design of the pipe, it may depend on
3 the emergency response protocols that are going to
4 be in place. All of that evidence will be
5 presented at the hearing. So, simply, in terms of
6 efficiency, I think it makes sense that this would
7 be -- that this would be one proceeding.

8 I obviously can't speak for the counties.
9 Moody County is a party to the docket. Moody
10 County has not actively participated in the
11 docket. It seems unlikely to me that any
12 commissioners would be offering testimony about
13 why they did or did not adopt an ordinance. That
14 would be sort of extraordinary. There is evidence
15 that can be presented with respect to Moody County
16 because we served discovery on Moody County in the
17 docket and have answers to questions about the
18 information on which they relied in adopting the
19 ordinance and what kind of background
20 investigation they did. And I think all of that
21 can be presented as part of the proceeding.

22 And, Commissioner Nelson, with respect to your
23 question about the one-year deadline, I appreciate
24 the comment that this can be part of the same
25 docket and yet not be subject to the one-year

1 deadline, and I am not sure that I agree with that
2 given the language of the statute because if
3 you're going to -- if you're going to act on the
4 permit application and conclude again that
5 Navigator has met its burden of proof and that a
6 permit is appropriate and yet don't know whether
7 that might -- well, if the evidence suggests that,
8 in fact, the route that would otherwise be
9 permitted conflicts with local zoning, then the
10 conflict is set up and I don't know how you grant
11 the permit.

12 In which case, now you're denying a permit
13 that otherwise would be appropriate under state
14 law based on -- based on local regulation. So I
15 think the one-year statute is still in effect here
16 unless you -- unless you say it's just a totally
17 different issue and subject to a separate docket
18 and then that sort of a parade of horrors to me
19 because now there's no -- no framework in place
20 for how long you would have to consider that and
21 who would be allowed to intervene and what that
22 process would look like. There's no regulation on
23 it. There's no statute on it.

24 COMMISSIONER NELSON: I greatly appreciate
25 your explanation. That helps -- helps me work

1 through this. My question for you, though, is I
2 am still greatly concerned that the three counties
3 that are intervenors, and, granted, Moody County
4 is the only one that has done this that I think is
5 an intervenor, has not had an opportunity to bring
6 a witness forward. And, you know, you said you
7 doubted a county commissioner would want to
8 testify. I don't know. If they aren't willing to
9 come up and raise their hand and support what
10 they've done back home, that surprises me. And
11 whether they do or don't, I think they need to
12 have the opportunity to do that.

13 And so my question is: Would you have any
14 objection to them at this very late date
15 introducing witnesses?

16 MR. MOORE: I think, off the cuff,
17 Commissioner, that -- that I think that would be
18 preferable than trying to hold a separate hearing
19 on the issue.

20 COMMISSIONER NELSON: And after your
21 explanation, I think I might be able to get there,
22 understanding, though, that this may end up
23 burning up quite a bit more time during our
24 regular hearing and so it will simply extend that.

25 MR. MOORE: Again, I think it's possible that

1 it not -- that it not eat up a bunch of additional
2 time. To the extent that there is additional
3 testimony specifically related to whether the
4 aspects of the local regulation are unreasonably
5 restrictive, I think a lot of that -- the facts
6 related to that testimony are going to be in
7 evidence anyway in this proceeding. And to the
8 extent that there may be additional witnesses
9 specifically related to this issue, my guess is
10 it's not going to significantly expand the reach
11 or the scope of this hearing.

12 COMMISSIONER NELSON: Okay. Thank you.

13 CHAIRMAN FIEGEN: We're going to other
14 intervenors. And South Dakota Rural Electric is
15 coming to the witness stand.

16 MS. BAILEY: Madam Chair, Ellie Bailey on
17 behalf of South Dakota Rural Electric Association
18 and the South Dakota Association of Rural Water
19 Systems. I object to the commission taking any
20 action on this today. If you look back at the
21 June 27th order of the commission noticing this
22 for hearing today, it specifically says the motion
23 to preempt will be considered at a later time and
24 is not included in this notice of hearing. So I
25 certainly don't want to limit good discussion, but

1 I agree it's an important, very significant
2 component for everyone to consider, but I do
3 object to any commission action on this today
4 given it was not noticed for this hearing. Thank
5 you.

6 CHAIRMAN FIEGEN: A quick question for you.
7 Because we're --

8 COMMISSIONER NELSON: Would you object to us,
9 if we can, coming to a consensus on whether this
10 issue would be resolved during the main hearing or
11 in a separate proceeding?

12 MS. BAILEY: I defer to you, Commissioner
13 Nelson, however, given this wasn't noticed for
14 today's hearing and given your concerns about
15 other parties that may want to have an opportunity
16 to provide input, I would ask that the commission
17 bear that in mind.

18 COMMISSIONER NELSON: Fair enough. Thank you.

19 CHAIRMAN FIEGEN: There are a couple
20 intervenors online. Landowners.

21 MR. SWACK: Yes, Madam Chair and
22 Commissioners, Ryan Swack here. You know, I
23 appreciate the discussion we're having.
24 Commissioner Nelson, your comments at the
25 beginning really echoed a lot of my feelings, you

1 know, upon reading this motion. And, you know,
2 the one thing I would add to that is I -- there is
3 such a lack of specificity in the motion that as
4 landowners, obviously, we would resist, you know,
5 this motion.

6 It's hard to know what exactly in the
7 ordinance they're objecting to. And -- because I
8 understand it to read that they're objecting to
9 the entire ordinance of three separate counties
10 including the filing fees that the county has
11 imposed. And I am not clear that this statute
12 gives you the authority to address the filing fees
13 that the county may require or the fee that they
14 may require, you know, for each mile of pipe.

15 I -- I don't see where that's something that you
16 can -- where that is clearly articulated. And so
17 I -- you know, we have eight days and, you know,
18 we can go into the night on those eight days, but
19 to have to potentially defend three separate
20 ordinances, you know, without necessarily having
21 witnesses ready to go on that because it's just
22 been brought up, and then for the counties to
23 maybe not even be there to participate, I really
24 think that this is going to hurt the hearing and
25 hurt the ability on the bigger question of the

1 overall permit.

2 I -- you know, I am glad to hear that you
3 haven't dealt with this before because I did my
4 research and I could only find one case that even
5 addressed this statute, and that case was from the
6 '80s, and it essentially said that you guys have
7 the authority -- or the commission has the
8 authority to do this. And I was like, well,
9 that's not very helpful that that's what they're
10 saying, of course they do.

11 And so, you know, I agree that no action
12 should be taken as the Rural Electric Co-op's rep
13 had mentioned. But I really think it would be
14 inappropriate to try and squeeze this in to the
15 other hearing. And I wish we had known that this
16 was going to be an issue. And, of course, you
17 know, no one can control local -- local counties.
18 They're making their decisions while you guys
19 are -- while the commission is wrestling with its
20 own decisions. But the beauty of democracy is
21 that it's messy and things conflict and we get to
22 work through that and try and reach the right
23 resolve.

24 But I just don't see how this can be done --
25 these three specific counties on such a broadly

1 based motion could be -- could be done in addition
2 to the overall hearing. And so this ability to
3 kind of bifurcate the hearing, I mean, I --
4 frankly, if Navigator is going to challenge the
5 ordinances through the Public Utilities
6 Commission, I think the bifurcation of the hearing
7 is probably the only way that we can reasonably
8 get this adjudicated.

9 Otherwise, I mean, you're looking at what I
10 feel like is going to be -- we're going to be
11 rushing the hearing on a lot of different topics
12 and that is going to prevent, I think, us from
13 presenting our facts, I think it might prevent
14 other parties from presenting their facts and it's
15 going to make the decision, you know, much, much
16 harder for -- for the commission.

17 And so while I don't think we should take any
18 action, to the extent that Navigator wants to ask
19 the commission to do this, I do think the
20 bifurcation on a separate hearing, maybe even a
21 separate small discovery window so we can really
22 dig into the details of what Navigator's
23 objections are to these ordinances, and the
24 counties have an opportunity to justify -- which I
25 think is important, because, you know, I was

1 looking at Minnehaha and they set it at, like,
2 330 feet. And if you read the press clippings,
3 they had a good reason for that, that there's some
4 evidence that that's how far the toxic plume -- if
5 there was a toxic plume, they would evacuate
6 330 feet and that's the decision they made there,
7 so -- and there's probably other -- that's just
8 the one example that was in the press. These are
9 complex ordinances that they --

10 CHAIRMAN FIEGEN: So we're not taking the
11 whole motion today. We just want to figure out a
12 procedure and a time frame. So if you can kind of
13 limit your discussion to your time frames, that
14 will be great.

15 MR. SWACK: Well, the reason I brought that up
16 is because -- and thank you, Madam Chair -- is
17 just because there are probably a lot of facts and
18 issues that could be discovered, you know, if this
19 was handled at a separate hearing with maybe some
20 short discovery should Navigator decide they want
21 to continue with it. Thank you.

22 CHAIRMAN FIEGEN: Thank you. PUC staff.

23 MS. EDWARDS: Thank you. This is Kristen
24 Edwards for staff. And I want to say I greatly
25 appreciate having this discussion today even

1 though it won't lead to final action because at
2 the very least it puts it out for the counties
3 that were grappling with this issue, if they
4 didn't know before. And one of the counties in
5 particular is not an intervenor and that's
6 Minnehaha County. So hopefully they're following
7 along and understand that this is pending here and
8 something that they should be keeping an eye on.

9 Staff's original position was no secret, it
10 was filed in the testimony of Jon Thurber and in
11 Summit in the testimony of Darren Kearney.
12 However, the hangup that we've run into is exactly
13 what Mr. Moore laid out, and so we kind of talked
14 about walking that back. And our big issue is
15 that that final sentence, which says without such
16 a finding, and so what we're running into is is
17 there a way to legally go forward without --
18 without addressing this issue? If there is,
19 certainly that would be the most preferable route
20 because one of the counties that has been talked
21 about hasn't even passed a final ordinance yet and
22 what would happen if another county passed one on
23 the eve of the hearing and we may or may not know
24 about it?

25 So this is definitely an issue that is

1 causing, you know, a lot of consternation and
2 causing me to pull my hair out and I fear that by
3 the end of this I will have less hair than James
4 Moore, but -- you're welcome -- thank you for the
5 discussion today.

6 CHAIRMAN FIEGEN: So questions of
7 commissioners or comments? And I guess for staff,
8 my question is: Do you think we can have a
9 separate meeting noticed after our evidentiary
10 hearing so we can make sure the counties have a
11 voice?

12 MS. EDWARDS: After the evidentiary hearing
13 but before the issuance of any final decision, I
14 think -- and take additional testimony from
15 potentially Minnehaha County, they're not a party.
16 And both ordinances that we've been talking about
17 passed after the time that prefile testimony was
18 required. I mean, we'd have to have leave from
19 the procedural schedule to do that, I guess. On
20 the fly, I hate to opine too much.

21 CHAIRMAN FIEGEN: It's tricky because it's
22 hard to know if you have to -- you need a new
23 docket or if it's in within this docket or how
24 that is. Discussion from commissioners.

25 COMMISSIONER HANSON: Well, I'll help,

1 Madam Chair. I'll help you to keep some of your
2 hair there. Because the first writing, as I
3 recall, and it's been a while, mixed in with the
4 writings from Summit, et cetera, it seemed like
5 you stated in your memo that we should wait
6 until -- this is something that cannot be decided
7 until after the hearing. Was that you? Did you
8 state that? I thought I read that somewhere.

9 MS. EDWARDS: My best guess is that you were
10 diligently reading staff's prefile testimony and
11 that it was in there. After we filed that, we
12 spoke with others about the statute and
13 specifically spoke with Mr. Koenecke in reference
14 to his docket as well, and that was the concern
15 that -- I think it was Mr. Koenecke pointed out
16 that last sentence, made us reconsider how we
17 could make that legally workable.

18 COMMISSIONER HANSON: Would you -- maybe we
19 should look at the ordinance here in that last
20 sentence because I have read that so many times
21 and gone through that and my -- Title 49 is at my
22 house right now and filled with stickers and
23 underlines and everything else, but I don't recall
24 that particular sentence. I just don't -- you
25 know, Madam Chair, I have such a huge problem with

1 saying that we're going to preempt county
2 ordinances and if we have a finding that -- I just
3 -- I don't know how we can do it until after we've
4 had the hearing and we've heard all the
5 information and we know what we're talking about,
6 you know, just preempt them on the front end, I
7 just -- that's just -- that's just contrary and
8 intuitively wrong, so that's what I'm struggling
9 with.

10 MS. EDWARDS: And maybe you got that from the
11 original motion, too. I think within Mr. Moore's
12 motion, his request was to address it after the
13 evidentiary hearing. I could be misremembering.

14 MR. MOORE: James Moore on behalf of
15 Navigator. We requested that the commission not
16 take action on the motion at this point, but
17 consider the motion in connection with the
18 evidence presented at the hearing and that the
19 parties would be allowed to brief the matter based
20 on the evidence presented at the hearing. That's
21 what the original motion said.

22 COMMISSIONER HANSON: That was very good --
23 very good counsel, so now you've changed your
24 thoughts?

25 MR. MOORE: No, not at all, Commissioner. I

1 think it's appropriate to consider the preemption
2 issue in this docket. The original motion
3 contemplated that evidence needs to be presented
4 on this and that it would be presented at the
5 evidentiary hearing and that the issue could be
6 briefed as part of the standard post-hearing
7 briefing process.

8 COMMISSIONER HANSON: I greatly appreciate all
9 of the parties discussion. I think I understand
10 and probably agree with Mr. Moore's comments as to
11 why this statute is closely tied with the permit
12 statute and understand that you could certainly
13 end up with an absurd result if we don't tie those
14 two together. That is making sense to me and I
15 appreciate that.

16 But this also, in my mind, is a clearly
17 separate decision, big decision, that needs to
18 be -- at least the counties that are most directly
19 affected need to have the opportunity to be part
20 of that if they wish, and maybe they don't, but if
21 they wish, they certainly need to. And I greatly
22 fear whether adding this new issue to an
23 already -- what will be an already crammed hearing
24 is doable. And, you know, maybe that's where we
25 disagree. You're seeing it as being something

1 much simpler maybe than I.

2 And so I do not have an answer today. Really,
3 today, all I wanted was discussion to kind of
4 figure out where everybody is coming from and,
5 unfortunately, though, I don't know how to resolve
6 this, you know, prior to the hearing because we
7 don't have any more meeting dates unless we do an
8 ad hoc -- and I'm not opposed to that either -- to
9 resolve this, but go ahead.

10 MR. DE HEUECK: On that end note of
11 Commissioner Nelson, Mr. Moore -- yes. This is
12 Adam De Heueck, general counsel for the three
13 commissioners. Mr. Moore, is there a reason you
14 made this type of motion at the front end of the
15 hearing? Why not wait until the hearing was
16 completed, be confident that you had proven that
17 the county law should be preempted, and then at
18 the tail end make your case for a motion to
19 preempt?

20 MR. MOORE: Thank you. We made the motion at
21 the -- basically the earliest opportunity we could
22 after the ordinances had actually been passed and
23 wanted to make sure that we were not waiving our
24 right to ask the commission to act based on the
25 statute 49-41B-28. So, again, I think that it is

1 an issue that's closely connected to the
2 permitting decision. I think it's appropriately
3 considered as part of this docket. I think the
4 timing is the direct result of when the counties
5 acted. And we took action to raise this issue
6 with the commission as soon as we were able to.

7 That's why the -- you know, Lincoln County has
8 not adopted an ordinance, but we raised the -- we
9 brought it up because it was addressed in
10 testimony because it's a possibility and, again,
11 we want to give notice that this is a concern for
12 us and an issue that we may ask the commission to
13 address if, in fact, they act.

14 I personally have a lot of problems, on behalf
15 of my client, with the idea that the commission
16 could permit her out and that a county could
17 thereafter adopt a more restrictive zoning
18 ordinance that would be contrary to the
19 commission's permit, if one is granted, and think
20 that that would not be preempted by state law.
21 That just doesn't seem right to me at all.

22 So, again, I think that we brought this to the
23 commission's attention at the first opportunity we
24 could and we did so to give notice and not to
25 waive our ability to ask the commission to act

1 under the statute.

2 CHAIRMAN FIEGEN: I have a question right
3 after Commissioner Nelson, I guess, has a quick
4 question for you.

5 COMMISSIONER NELSON: No, I was going to make
6 a -- maybe a final comment.

7 CHAIRMAN FIEGEN: Okay. Just a thought for
8 the three commissioners. We have asked for a
9 prehearing to look at exhibits and, et cetera, or
10 a pre-conference hearing, so there's going to be
11 two now that Adam De Heueck is setting with all
12 parties in the docket. Would it be appropriate
13 that at one of those hearings they discuss this
14 and possibly work with Leah more on finding a date
15 for after the evidentiary hearing? I mean, we are
16 so busy. Our schedules are so packed, so I don't
17 even know if we -- how we do that.

18 COMMISSIONER NELSON: So let me just say where
19 I think I am at the moment and, you know, parties
20 can react to that. I think, given the discussion
21 today, I am okay moving forward with kind of the
22 default position that this be heard during the
23 main hearing. But I will also say that if any of
24 the three counties that are parties to this docket
25 wish to come forward with witnesses, I will be

1 very uncustomarily lenient in allowing them to
2 become part of that proceeding. So that's where I
3 am at. And, obviously, any of the parties have an
4 opportunity to file a motion to require something
5 other than what appears to be maybe the default
6 path that we're on.

7 COMMISSIONER HANSON: I don't have any fault
8 with anything that Commissioner Nelson has just
9 said. I believe this is something that -- a
10 motion that can be made at a later date,
11 obviously, once we have gone through the hearing
12 process and we know what the ordinances are at
13 that juncture and we know what has been presented,
14 what we believe to be proper testimony that has
15 been presented and our understanding of what
16 safe -- you know, safety is extremely important,
17 safety distances, and making certain that the fees
18 are not punitive and going through all of that
19 process.

20 Once we've gone through that hearing process
21 and understand that, then having a motion of this
22 nature, and I just brought it up and read the --
23 the statute again. And to me it can be presented
24 at any time and at that juncture, then, yes, we
25 need to hear from the counties and their reasoning

1 of why they have come up with setbacks or whatever
2 regulations they have come up with. And we at
3 that time can -- may pick some of them as being
4 legitimate and some of them as not being
5 legitimate.

6 CHAIRMAN FIEGEN: Thank you. A good
7 discussion today. I just want to make sure the
8 counties are noticed. I appreciate you bringing
9 this up to us now. I just want to make sure
10 whatever we decide to do is that they have the
11 ability to present testimony and be
12 cross-examined.

13 Is there any other discussion on this major
14 topic? Okay. Commission counsel, you have one
15 item for item discussion. I think you just want
16 to announce the schedule of the hearing.

17 MR. DE HEUECK: That's correct. Again, this
18 is Adam De Heueck. I just thought we'd take the
19 opportunity since a lot of parties to this docket
20 are either listening or with us today to remind
21 everyone that we did send out an e-mail that there
22 needed to be a schedule adjustment, so everyone
23 should be aware of it. I just wanted to grab the
24 public's attention while we had it and make note
25 that although the trial was scheduled for July

1 25th through August 3rd, the venue where we're
2 holding the hearing was unavailable Friday through
3 Sunday, so we rescheduled and we will recess at
4 the end of the day on July 27th and reconvene on
5 July 31st through August 5th. That's all. Thank
6 you.

7 CHAIRMAN FIEGEN: Other items for discussion
8 of the commission? Public comment, I do not see
9 anybody that has signed in for public comment and
10 no one has dedicated a line or reserved a line for
11 public comment today. So with that, as you have
12 heard, the evidentiary hearing starts July 25th at
13 9:00 a.m. at Casey Tibbs South Dakota Rodeo
14 Center, the only place we could find in the whole
15 area for a long evidentiary hearing in the summer.
16 We -- the three commissioners will be attending
17 NARUC July 15th through July 19th in Austin,
18 Texas. Our next commission meeting is Friday,
19 July 28th at 10:00 a.m. And then we have
20 commission meetings August 15th and August 29th.
21 Anything else before the commission?

22 COMMISSIONER HANSON: Motion to adjourn.

23 CHAIRMAN FIEGEN: You may not know, but 47
24 years -- Greg Rislov has been with the commission
25 47 years and he was on SPP call on his

1 anniversary, so thank you. And July 10th is your
2 wedding anniversary.

3 MR. RISLOV: It was.

4 CHAIRMAN FIEGEN: It was. That's right. I
5 even missed saying congratulations 47 times two.
6 We're waiting for the golden. So anybody have
7 comments about Greg Rislov?

8 MR. RISLOV: Best not said in public.

9 CHAIRMAN FIEGEN: Motion to adjourn. Is there
10 a motion to adjourn?

11 COMMISSIONER HANSON: Yes. Move to adjourn.

12 CHAIRMAN FIEGEN: Move to adjourn. All in
13 favor say aye, opposed nay. Commissioner Nelson?

14 COMMISSIONER NELSON: Aye.

15 CHAIRMAN FIEGEN: Hanson?

16 COMMISSIONER HANSON: Aye.

17 CHAIRMAN FIEGEN: Fiegen says aye.

18 (End of transcription)

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