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**SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION**

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

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IN THE MATTER OF THE APPLICATION BY
BUFFALO RIDGE II, LLC, A SUBSIDIARY OF
IBERDROLA RENEWABLES, INC., FOR AN ENERGY
CONVERSION FACILITY PERMIT FOR THE
CONSTRUCTION OF THE BUFFALO RIDGE II WIND
FARM AND ASSOCIATED COLLECTION SUBSTATION
AND ELECTRIC INTERCONNECTION SYSTEM

EL08-031

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Transcript of Proceedings
April 7, 2009

ORIGINAL

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BEFORE THE PUBLIC UTILITIES COMMISSION,
DUSTY JOHNSON, CHAIRMAN
STEVE KOLBECK, VICE CHAIRMAN
GARY HANSON, COMMISSIONER

COMMISSION STAFF
Rolayne Ailts Wiest
John Smith
Karen Cremer
Kara Semmler
Greg Rislov
Dave Jacobson
Deb Gregg
Bob Knadle
Jon Thurber
Terri Labrie Baker
Brian Rounds
Tim Binder

APPEARANCES
David A. Gerdes, May, Adam, Gerdes & Thompson
Darla Pollman Rogers, Riter, Rogers, Wattier & Northrup

PRECISION REPORTING

Cheri Wittler, RPR, CRR



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TRANSCRIPT OF PROCEEDINGS, held in the
above-entitled matter, at the State Capitol Building,
500 East Capitol Avenue, Pierre, South Dakota, on the
7th day of April, 2009, commencing at 9:30 a.m.

1 COMMISSIONER HANSON: EL08-031, In the matter of
2 the application by Buffalo Ridge II, LLC, a subsidiary of
3 Iberdrola Renewables, Incorporated for an energy
4 conversion facility permit for the construction of the
5 Buffalo Ridge II wind farm and associated collection
6 substation and electric interconnection system.

7 The question before the Commission today is
8 shall the Commission approve any settlement and
9 Stipulation agreements that have been filed.

10 And we were waiting for some of those to be
11 filed. I believe that they have been filed at this
12 juncture. And, Ms. Semmler, you'll bring us up to date?

13 MS. SEMMLER: Yes. The only -- the only one
14 executed has been filed. And I do understand this was
15 filed at the very late date. It was filed yesterday.
16 And if the Commission prefers, certainly we could defer
17 this. We have a hearing scheduled for next week. And we
18 could certainly take it up at that time.

19 Through staff's work with the Applicant and
20 several of the parties we were able to draft what you
21 have before you and what was filed yesterday. It is what
22 these parties recommend as the Commission's Findings of
23 Fact, Conclusions of Law, and does contain stipulated
24 terms.

25 This was filed. It was created by these parties

1 in attempt to keep next week's hearing as clean as
2 possible, to give the Commission a chance to review these
3 Findings as these parties recommend prior to the hearing.

4 These parties all looked at this Docket from a
5 very global perspective, and these were the terms that
6 were agreed upon. Several of the Interveners have issues
7 particular to them, and they have opted not to
8 participate in the signing of this document.

9 And such as the hearing next week. Next week on
10 the 15th will be at the Swiftel Center in Brookings at
11 1 o'clock to take up those particular issues that those
12 Interveners might have.

13 And at that time the Commission may certainly
14 find from the evidence put on at that hearing that it
15 needs to amend the Findings of Fact, Conclusions of Law,
16 and may choose to add to the conditions prior to granting
17 the permit.

18 We began working on this project and finding
19 party agreement a month or so ago. And I understand
20 there are some issues. And I think Ms. Rogers will
21 present those today. I heard from her right before the
22 meeting and she does have some issue with the process and
23 I know she'll share that with you today.

24 At this point staff respectfully requests that
25 the Commission take these suggestions and the signed

1 document and approve those at this point, certainly
2 subject to the changes and amendments that the Commission
3 may find appropriate after hearing the evidence at next
4 week's hearing.

5 Also, as I said, staff doesn't oppose to
6 deferring this item and handling it all at one time next
7 week if the Commission so chooses.

8 COMMISSIONER HANSON: What effect would a
9 deferral have that's your consideration?

10 MS. SEMMLER: I don't think it will have much
11 substantive effect at all. Staff put this on the agenda
12 today, simply an attempt to keep the process clean so the
13 Commission knows what these parties have agreed to thus
14 far. However, I think it may actually be messing things
15 up rather than keeping it clean. So deferral maybe the
16 best option at this time.

17 COMMISSIONER HANSON: All right. Thank you.
18 Mr. Gerdes, you're here to represent Iberdrola.

19 MR. GERDES: Commissioner Hanson, members of the
20 Commission, my name is Dave Gerdes. I'm a lawyer from
21 Pierre. And this is actually Brett Koenecke's file.
22 Mr. Koenecke had to be out of town today so he handed it
23 to me. Fortunately, Tim Seck is on the phone, and he is
24 with Iberdrola and knows the subject matter well. And so
25 if you have detailed questions, you should direct them to

1 Mr. Seck.

2 I will just tell you that Iberdrola is in favor
3 of this Stipulation and would ask you to approve it.

4 COMMISSIONER HANSON: Thank you. Is there
5 anyone else on the phone, Mr. Seck, who would like to
6 testify on this item? Or are you just standing by for
7 questions?

8 MR. SECK: I think I'm just -- I'm prepared to
9 answer any questions that the Commission has.

10 COMMISSIONER HANSON: All right. Thank you.
11 Then we will go to Commission questions.

12 Chairman Johnson, do you have questions?
13 Ms. Rogers, forgive me. Excuse me. Chairman Johnson,
14 excuse me. I neglected to ask Ms. Rogers if she had
15 comment.

16 CHAIRMAN JOHNSON: Oh, sure. Thank you. Yep.

17 COMMISSIONER HANSON: And being a good
18 barrister, she does have comment.

19 MS. POLLMAN ROGERS: Thank you. Commissioner,
20 Darla Rogers. I represent Sioux Valley Energy, HD
21 Electric, and SDREA who are Intervenors in this Docket.

22 I expressed some concern to Ms. Semmler this
23 morning about the process that we're following here.
24 It's my understanding that while some of the parties have
25 reached agreement on some of the terms and conditions,

1 this still is a contested case, and there are other
2 outstanding issues that apparently have not been agreed
3 upon.

4 And since that is the case, it appears to me
5 that in a contested case the actual Findings of Fact must
6 be based exclusively on all of the evidence. We have not
7 even had a hearing yet. And so it seems to me that while
8 the document that staff has presented is entitled a
9 Stipulation, what it actually is is Findings of Fact and
10 Conclusions of Law. And they are not designated as
11 Proposed Findings of Fact and Conclusions of Law.

12 And so it appears to me that it would be
13 premature for the Commission to approve this Stipulation
14 at this point because what this Stipulation actually is
15 is Findings of Fact and Conclusions of Law. And I
16 believe that it would be more appropriate to defer
17 approval of this Docket -- or document that has been
18 submitted and filed until after the hearing when all of
19 the evidence has been presented, and then I believe the
20 Commission would be in a position to determine what the
21 appropriate Findings of Fact and Conclusions of Law are
22 based on all of the evidence.

23 Now, you know, if the Commission wishes to
24 proceed today, I think that there are probably ways
25 procedurally that maybe this could be changed. I think

1 parties certainly can file Proposed Findings of Fact
2 prior to a hearing. But they would be -- need to be
3 designated proposed. And then I believe that under
4 1-26-25 that would mean that this Commission would need
5 to make a ruling in the final analysis on each of the
6 proposed Findings. And that may be simply we approve the
7 ones that are submitted. But my suggestion is that to
8 approve this Stipulation as it has been filed would be
9 premature and that actually Findings of Fact and
10 Conclusions of Law should not be entered and approved by
11 the Commission until after all of the evidence has been
12 submitted.

13 I'll stand by for questions.

14 COMMISSIONER HANSON: Thank you, Ms. Rogers.
15 Appreciate those comments. I had down that approval will
16 be conditioned on the outcome of the hearing for the
17 nonsettling parties, no force and effect if the
18 Commission imposes terms and conditions different from
19 those agreed to in the Stipulation.

20 If that were a part of the Motion, does that
21 answer the questions that you had?

22 MS. POLLMAN ROGERS: My concern is that the
23 rights of all the parties are protected. And so for
24 those of us that have not signed this particular
25 Stipulation, you know, where I'm having heartburn is that

1 because these are not designated as proposed, I'm having
2 a hard time fitting this process into the statutory
3 guidelines.

4 So I guess in response to your question my
5 concern is, A, does that follow the rules that I think
6 exist for entering Findings of Fact and Conclusions of
7 Law in a contested case? I'm not necessarily convinced
8 that it would.

9 And the second concern is -- I mean, I think if
10 they were -- I think that, you know, like I said, a party
11 can submit Proposed Findings and Conclusions, but I don't
12 think that the governing body would act on them finally
13 until they're final Findings of Fact that are based on
14 all of the evidence. I think that would maybe be a more
15 proper procedure.

16 Because you could have changes that would need
17 to be made to your Findings of Fact and Conclusions of
18 Law based on what happens at the hearing. And so if you
19 adopted Findings, even provisionally, I guess I tend to
20 think that that would make it harder. You would probably
21 have to go back and amend those. And that certainly may
22 be doable. I just think that it might be a cleaner
23 process as Ms. Semmler made mention of not to adopt
24 Findings and Conclusions until after the hearing when you
25 have all of the evidence in front of you upon which to

1 base those Findings.

2 COMMISSIONER HANSON: All right. Thank you. I
3 have down that you're representing SDREA, Sioux Valley,
4 and HD Electric; correct?

5 MS. POLLMAN ROGERS: Yes. That's correct.

6 COMMISSIONER HANSON: All right. Thank you very
7 much. I noticed we have quite a few other Intervenors,
8 and I believe all Intervenors were approved, which means
9 that Brookings County, Deuel County, and Ralph Terrell
10 Spence, and Catherine D. Carter are also -- have party
11 status; is that correct?

12 MS. SEMMLER: That is correct, Mr. Commissioner.
13 And Brookings County agrees with the terms and conditions
14 and Findings in this document. Deuel County has their
15 public meeting today. We fully expect them to adopt what
16 we've discussed. And we fully expect them to publicly
17 sign on to this document to submit to you so you
18 understand their agreement or for them to appear at the
19 hearing next week to express the same.

20 Mr. Spence and Ms. Carter will be at the hearing
21 next week. They have some issues particular to them that
22 have prevented them from wanting to sign on to this
23 document as it is right now.

24 Now one of the reasons staff did work with
25 parties to draft this document is because of all of those

1 Intervenor and to make it easy for them to participate
2 and for them to make their concerns known and their --
3 the agreement known, this document seemed the easiest way
4 to do that.

5 COMMISSIONER HANSON: Well, that's what I'm
6 interested in hearing right now is the pluses. We've
7 heard that there's some challenges with this. What are
8 the benefits of having this at this juncture?

9 MS. SEMMLER: The benefit, I believe --

10 COMMISSIONER HANSON: You didn't argue real
11 strongly for passing this so I'm interested in hearing
12 why we should at this point.

13 MS. SEMMLER: And, again, I won't make this -- I
14 can't make this as a real strong argument, but I think a
15 benefit could be we have a starting point for next week's
16 hearing. We know what the majority of the Intervenor or
17 those that have looked at this from a more global
18 perspective without individual interests do agree to.
19 And we can then use this document and modify it as
20 necessary.

21 As of this time I know Mr. Spence and Ms. Carter
22 don't have any issue with the Findings of Fact. They
23 don't have any issue with the findings (sic) of law.
24 Their issues are very specific to them. And maybe
25 something the Commission includes as, you know, a

1 condition to the permit. But their concerns won't alter
2 the Findings in this case.

3 And I'm not sure if the -- if Ms. Rogers'
4 clients' concerns will alter the Findings of Fact either.
5 As I understand it, those issues are very particular to
6 them. So as I saw it, it would be easier at next week's
7 hearing to have a starting point.

8 COMMISSIONER HANSON: Thank you. Mr. Gerdes or
9 Mr. Seck, would you like to tell us why we should not
10 pause in this and pass it later?

11 MR. GERDES: Commissioner Hanson, members of the
12 Commission, I really can't speak against what Ms. Semmler
13 has said. It seems to me that Ms. Rogers has at the last
14 moment raised an issue that we didn't anticipate coming
15 into the hearing.

16 And so it seems to me that what Ms. Semmler is
17 suggesting is probably the best course of action.

18 COMMISSIONER HANSON: Thank you.

19 MS. POLLMAN ROGERS: May I respond?

20 COMMISSIONER HANSON: Ms. Rogers, are you
21 compelled to speak?

22 MS. POLLMAN ROGERS: I am. I would just point
23 out in response to the benefit, and that is that you
24 would have a starting point. I would suggest that you
25 would have that anyway. And that's why the statute

1 allows parties to file Proposed Findings.

2 My concern is that the Commission not adopt or
3 approve those Proposed Findings until after the hearing
4 and all of the evidence has been submitted. And I think,
5 you know, what the statute requires is that a proposed
6 decision contain the Findings of Fact on each issue and
7 Conclusion of Law necessary to the proposed decision.

8 And so I believe that, like I said, the
9 appropriate process here would be not to approve the
10 Stipulation that has been filed with you because it is,
11 in fact, Findings of Fact and Conclusions of Law, and I
12 believe that the Findings under the statute need to be
13 based on all the evidence. And so that's the reason I'm
14 asking this Commission to not adopt or approve of this
15 Stipulation at this time and wait until after the
16 hearing. Then you have Findings on each issue. And you
17 would still have the starting point because this has been
18 filed and is part of the record.

19 COMMISSIONER HANSON: Thank you very much.
20 Ms. Semmler, the Commission does not want to be dilatory,
21 especially in important electric capacity opportunities
22 for the state. And keeping that somewhat in mind, if we
23 do not approve the Stipulations, will this in any way
24 create a longer time frame for us?

25 MS. SEMMLER: Honestly, Commissioner, this was

1 an opportunity -- an attempt by staff to keep this Docket
2 moving. It's been difficult to make a lot of progress.
3 And I know Ms. Rogers has been real busy, but I heard
4 from her like a half-hour before the meeting this
5 morning. We've had a hard time getting things done on
6 this Docket.

7 That being said, the statute limits this
8 decision to a six-month time period. We're within weeks
9 of that six months. So May 11 is the deadline
10 regardless, which is why the hearing next week will be
11 very important. The Commission will have to collect all
12 the information it finds necessary to make its decision.
13 And that decision will have to be out by May 1. So we've
14 got a built in time frame.

15 COMMISSIONER HANSON: Thank you very much.
16 Chairman Johnson, do you have any questions?

17 CHAIRMAN JOHNSON: One for Ms. Rogers.
18 Ms. Rogers, I mean --

19 COMMISSIONER HANSON: Could we have just a
20 little more volume?

21 CHAIRMAN JOHNSON: Sure. It will have to come
22 from my body as opposed to any technological fix. But if
23 it's not good enough, let me know.

24 COMMISSIONER HANSON: You're doing great.

25 CHAIRMAN JOHNSON: Okay. Ms. Rogers, allowing

1 people basically to settle out of a pending Docket is not
2 unusual. And in civil cases for sure.

3 I mean, isn't there some value in -- and I
4 understand maybe they should be labeled Proposed Findings
5 of Fact and Conclusions of Law. But for some Intervenors
6 like Brookings County and Deuel County now that they have
7 some confidence that their concerns and issues have been
8 taken care of isn't there some procedural value in
9 allowing them to move out of this case rather than
10 participate further?

11 MS. POLLMAN ROGERS: Oh, absolutely. I don't
12 disagree with that. I don't disagree with what staff and
13 those parties that have agreed are attempting to do in
14 this case.

15 If you look at the item on your agenda, it says
16 Today shall the Commission approve any settlement and
17 Stipulation agreements that have been filed. I
18 understand parties enter into settlement and Stipulation
19 agreements all the time and settle certain issues.

20 My concern is that that isn't what this document
21 that has been filed is actually doing.

22 CHAIRMAN JOHNSON: Ms. Rogers, I understand
23 that. Can that be rectified simply by relabeling the
24 sections and having the word "proposed"?

25 MS. POLLMAN ROGERS: I think that it could be --

1 maybe my bottom line answer is no. I don't think that it
2 could be rectified. I think that parties can submit
3 Proposed Findings of Fact and Conclusions of Law before a
4 hearing, but I don't believe that the Court or agency
5 should actually approve Findings of Fact and Conclusions
6 of Law until after all of the evidence has been
7 presented.

8 That's the way that I read the statutes
9 governing contested cases. And I'm referring
10 specifically to SDCL 1-26-23, 24, and 25.

11 If parties want to submit Proposed Findings of
12 Fact and Conclusions of Law, which they're free to do for
13 the Court's consideration, and that gives you the
14 starting point that Ms. Semmler talked about, parties are
15 free to do that.

16 My concern is that -- the approval process.
17 Because then when you actually do approve your final
18 Findings of Fact and Conclusions of Law you have to make
19 a ruling on every one of the proposed ones that have been
20 submitted. And so I don't think your actual approval
21 should be of Proposed Findings and Conclusions. I think
22 that they should be -- Findings of Fact and Conclusions
23 of Law should only be approved by the body who's hearing
24 the case after all of evidence is in.

25 Now if you want to take out -- I mean, if you

1 want to change this document that has been filed and say
2 this is just a Stipulation and Settlement Agreement and
3 here are the issues that these parties have agreed to,
4 and you don't need to have further proceedings on that, I
5 think that that could be done. I don't think that that's
6 what this document is. And that's my objection.

7 Did I answer your question? I'm sorry. That
8 was a long --

9 CHAIRMAN JOHNSON: Well, yeah. And then some.
10 You know, I understand the arguments you've made. And
11 I'm just looking for a short answer here. And I think
12 the answer is no.

13 My question was are there relatively, you know,
14 surficial changes that can be made to this document to
15 resolve your concerns? And I believe that I've heard a
16 no; is that right?

17 MS. POLLMAN ROGERS: I believe that's the
18 answer.

19 CHAIRMAN JOHNSON: Okay. Thanks very much,
20 Commissioner.

21 COMMISSIONER HANSON: Vice-chairman Kolbeck, do
22 you have any questions?

23 CHAIRMAN KOLBECK: No. I agree with Ms. Rogers.
24 I'm a little leery about the time for one thing and the
25 hearing date coming up. So I don't have any questions.

1 COMMISSIONER HANSON: It's interesting you said
2 that. Any further discussion?

3 CHAIRMAN JOHNSON: I might raise one other
4 question, Mr. Commissioner. This question would be for
5 Ms. Semmler. I mean, would there be some value in having
6 some sort of a parental guarantee for the subsidiary on
7 decommissioning? And I understand salvage value, but
8 those numbers are constantly in flux given market
9 conditions and always will be.

10 Was any consideration given in getting some sort
11 of guarantee?

12 MS. SEMMLER: This is Kara Semmler. It's not
13 something that we specifically discussed, but I can see
14 value in such a thing, and we'll take that up after this
15 meeting with the Applicant. And it can be agreed to we
16 can present that next week.

17 CHAIRMAN JOHNSON: Yeah. That would be great.
18 Thanks.

19 MS. SEMMLER: Also Brian, Mr. Rounds, has a
20 comment for you too, Mr. Commissioner.

21 MR. ROUNDS: Also the Brookings County
22 ordinance, which the project just got approval from I
23 think a month ago are or so also covers that
24 decommissioning a little bit more than our Stipulation
25 did. They have a little bit more strict requirements

1 than we do.

2 CHAIRMAN JOHNSON: Well, and I just -- to the
3 extent that each of these decisions becomes a little bit
4 of a template for the next one, I don't mind, you know,
5 if we believe a company has sufficient financial assets
6 for us not to require some sort of financial instrument
7 for decommissioning.

8 But it seems to me, you know, that this
9 subsidiary likely doesn't have much in the way of assets.
10 So I understand Brookings, you know -- this situation may
11 be taken care of at the local governmental level doesn't
12 mean that the next similarly situated wind farm would be.
13 So I kind of like to have -- if the Commission were to
14 approve this, I'd like the Stipulations to deal with that
15 situation.

16 COMMISSIONER HANSON: Thank you. And I -- the
17 substance -- probably one of the more substantive issues
18 is the decommissioning. And I understand that
19 Applicant's -- am I correct that Applicant's
20 decommissioning plan shows that the salvage costs are
21 likely to cover all but a fairly small percentage of the
22 total decommissioning costs?

23 MR. ROUNDS: That's true.

24 COMMISSIONER HANSON: Okay. Thank you.
25 Mr. Smith, did you have something?

1 MR. SMITH: Not much really. I think that
2 decommissioning -- I wanted to raise that issue just
3 because that's an actual substantive issue. And if
4 nothing else, that might provide -- I think that provides
5 a practical reason maybe to give the parties a week to
6 talk that over.

7 And, again, I think Mr. Gerdes, the only
8 question there really is, again, where you have -- I
9 totally agree with the statement made in the
10 decommissioning plan that Iberdrola itself is an enormous
11 company and has a very healthy balance sheet and a high
12 credit rating and all of that. And Lord knows we can't
13 necessarily presume that if it's a bonding company or
14 whatever that we would be in a better spot, to wit AIG,
15 which we've recently seen become -- I'd sure trust
16 Iberdrola's balance sheet over theirs.

17 But, you know, I think that issue is out there
18 at least -- at least to address. And, again, I just
19 didn't see anything in the plan. I didn't --
20 Commissioner Johnson raised it, Commissioner Hanson,
21 about, you know, the commitment of somebody with some
22 assets to stand behind the LLC's commitment.

23 So I think that's maybe reason enough to push it
24 over. I mean, it does -- the whole thing does kind of
25 put us with the vote on this in a slightly awkward

1 position. Personally, I believe the Stipulation is
2 agreement between parties, and when it's submitted to us
3 it is effectively proposed despite whether that word is
4 in front of those or not.

5 You know, I think technically the Commission
6 could probably conditionally approve today. But I don't
7 know that we gain anything. Because one way or another
8 we're going to hearing, you know, next week. So I don't
9 know that we gain anything. And it would give you a
10 chance to talk about the decommissioning. So I guess I'd
11 kind of chime in on going along with the deferral idea.

12 I did want to raise one issue on that if I
13 might, though. You know, again, it appears as though at
14 least like Ms. Semmler characterized it, the parties with
15 a very generalized public interest obligation, namely
16 staff and the local governmental agencies, have reached
17 their agreement, and they're satisfied with the vast
18 majority of issues in the way they've resolved them.

19 I mean, one thing maybe to think about is if
20 we're going to go over to Brookings, I mean, whether or
21 not we might be able to over the next week engage in some
22 issue limiting so we don't have to waste time on a
23 mountain of generalized testimony that there's really no
24 dispute over.

25 I don't know. Ms. Rogers, does that make sense?

1 You know, I mean, if you guys don't have problems, for
2 example, with site restoration, access roads, you know --
3 as far as we know, the two individual Intervenors, their
4 issues are quite specific based on their latest filing.
5 And they don't have any general objections to the
6 project. They just have very specific things.

7 And based on past involvement of your clients in
8 these cases, your issues are usually pretty defined, you
9 know. And I guess what I'm asking is it may -- prior to
10 the hearing if we could try to do what I think
11 Ms. Semmler was trying to do by filing this and get this
12 down to where when we go over there we only need to hear
13 that which is truly at issue.

14 I don't know. What are your thoughts on that?
15 I'm not beating you up. I'm just asking really.

16 MS. POLLMAN ROGERS: I appreciate that. And,
17 quite frankly, it was my hope that we would have, you
18 know, the issues of my clients resolved as well and we
19 could be part of this whole movement. But,
20 unfortunately, that has not happened to date, and whether
21 it will or not, I don't know.

22 I have no objection and certainly would agree
23 with issue -- or limiting issues that need to be tried.
24 You know, one of the ways that we have done that in
25 other, you know, court cases is that the parties would

1 agree to undisputed facts or, you know, those facts to
2 which there is no dispute. And in that case we would,
3 you know, maybe enter for the fact finder a statement of
4 undisputed facts. That's one way that we have addressed
5 that in other cases, and I think in Federal Court that's
6 the way we do it. That might be one suggestion or
7 procedure that we could follow here.

8 MR. SMITH: Is that something where maybe we
9 ought to ponder within the next day or two trying to
10 schedule a conference call or a conference and see if we
11 can't reach some narrowing of the issues so that we can
12 focus this as much as possible on the 15th?

13 MS. POLLMAN ROGERS: That's certainly agreeable
14 to me. But I do not represent all of the other
15 Intervenor's so I certainly cannot speak for them and I
16 can't speak for the Applicant either.

17 MR. SMITH: No. I understand. I just wanted
18 your take on it. And I'd also -- I wouldn't mind hearing
19 from Mr. Gerdes and Ms. Semmler whether that would be
20 useful.

21 CHAIRMAN JOHNSON: Mr. Smith, I hate to
22 interrupt, but if the hearing's only scheduled for a half
23 day, I would presume some suggestion along the lines of
24 what you've suggested has taken place. Maybe we should
25 see what Ms. Semmler if she had a road map for how this

1 is going to unfold.

2 MS. SEMMLER: Well, that's what the document
3 filed today was intended to accomplish. I believe these
4 are the facts that as of to date none of the opposing
5 Intervenor's have had issue with. You know, like
6 Mr. Smith said, state restoration, all of that, I don't
7 believe that Ms. Rogers' clients have issue with any of
8 that. That's what today was intended to do. These are
9 the facts that I believe we can go into the hearing
10 already having accepted.

11 Now I can just simply amend this document and
12 resubmit it and it can be entitled something entirely
13 different but I think this document could serve as that.
14 And those issues that I know Mr. Spence and Ms. Carter
15 have are very specific. And they don't oppose any of
16 these facts.

17 MR. SMITH: Well, what about a conference within
18 the next couple of days? We talk it over and we, if
19 nothing else, reach a resolution on that?

20 MS. SEMMLER: Yeah. I'm certainly available.

21 MR. SMITH: Pardon me, Chairman Johnson.

22 CHAIRMAN JOHNSON: I mean, Ms. Semmler, how did
23 you envision this taking place? I mean, will -- I mean,
24 how will the Applicant know which issues to address in
25 their -- and any evidence they may offer up in the

1 hearing?

2 I mean, did they already understand the limited
3 issues? I mean, Mr. Smith, I think it's a good
4 suggestion. I just don't know if it hasn't already taken
5 place over the last couple of months.

6 MS. SEMMLER: I think the issues are limited to
7 those Intervenors. I think the Applicant very much does
8 know those. However, certainly I would believe that the
9 Applicant's counsel will probably confirm that those are
10 the issues that we are dealing with.

11 But I think it would be easy for us to arrive at
12 the issues for next week's hearing without necessarily
13 trying to schedule a conference call. Although
14 communication's always good. But I don't know if -- if
15 it's necessary.

16 MR. SMITH: Well, I just think -- pardon me,
17 Mr. Acting Chairman. The only concern I have --

18 COMMISSIONER HANSON: You're acting as the
19 Chairman right now.

20 MR. SMITH: I'm sorry. I can't help myself. I
21 have to undo the severe damage that was done to me by
22 being named John Smith.

23 The only concern I have is that we have
24 something that formally recognizes prior to the hearing
25 that parties have agreed to a limitation. Otherwise,

1 don't we have to begin with the Applicant putting on its
2 full prima facie case and going over effects on wetlands
3 and, you know, the whole 10 yards.

4 I guess that's my concern, that we waste hours
5 and hours on something that isn't at issue by a -- that
6 would be my concern.

7 COMMISSIONER HANSON: Thank you, Mr. Smith. I
8 would like to hear from either Mr. Seck or Mr. Gerdes if
9 they have comments at this juncture.

10 MR. SECK: This is Tim Seck. And my
11 understanding from the correspondence I've seen from
12 Mrs. Rogers and her clients, the bigger issues are beyond
13 what's included in this Stipulation Agreement. It's
14 related to (Inaudible). It's related to selling of
15 retail and it's related to kind of how the
16 interconnection is metered and so on and so forth, which
17 I don't think is addressed in the Stipulation Agreement.

18 Then, you know, I think that we're going to come
19 to an agreement. Just what we received from Ms. Rogers,
20 I just received a copy of it Monday, but I was out all
21 last week. So there's a couple of things that we need to
22 have some more discussion between the parties. But my
23 understanding is that she and her clients don't have any
24 issue with the Stipulation Agreement, other than it
25 doesn't include some of the issues that they would like

1 to have addressed.

2 COMMISSIONER HANSON: Mr. Gerdes. Thank you,
3 Mr. Seck.

4 MR. GERDES: Mr. Chairman, members of the
5 Commission, I don't have the best understanding of this
6 file because, of course, I haven't worked on it
7 throughout the course of its development. But it seems
8 to me that if there are issues that are outside the four
9 corners of this Stipulation, they can certainly be
10 addressed at a hearing next week.

11 And this Stipulation that you see in front of
12 you by all accounts deals with issues that are not
13 related to any of the collateral issues that have been
14 posited.

15 So it seems to me that one of two things can be
16 done. The Commission can either approve this Stipulation
17 now subject to it being amended at the hearing next week,
18 or the parties can agree that this can be taken up next
19 week. But certainly it would put everything to rest if
20 the Commission approved this Stipulation.

21 And if it needs to be amended next week, it can
22 certainly be done. I mean, it's not a final -- it's not
23 a final act until the Commissioners have said so. So it
24 could certainly be approved now and if it needs to be
25 modified next week, it can be modified. That would be my

1 view of it.

2 COMMISSIONER HANSON: I believe we've heard from
3 all of the parties at this juncture. Anyone compelled
4 for one last go around? If not --

5 CHAIRMAN JOHNSON: Mr. Chairman, sorry, this is
6 Commissioner Johnson. I wonder, I mean, is there value
7 in the Commission saying, okay, these -- we would want
8 any of the Intervenors to indicate which of these
9 Findings or Conclusions they have issue with and those
10 will be the issues upon which the Applicant will make
11 their case next week?

12 I mean, if Mr. Smith is looking for something
13 more formal to let the Applicant know what to be
14 addressing, is that one way to do it?

15 COMMISSIONER HANSON: I'll let Mr. Smith answer
16 that.

17 MR. SMITH: Yeah. I think that's kind of what I
18 had in mind is that we -- if we got -- I mean, sometimes
19 it's just amazing how in 15 minutes of just sitting down
20 and talking about something you can reach kind of a
21 consensus on where the outstanding issues are at pretty
22 darn quickly.

23 And I suspect when we look at this particular
24 document that just from past I doubt if the REA
25 Intervenors are going to have a terrible lot of objection

1 to what's in there because these Findings and Conclusions
2 don't address interconnection. They don't address
3 station power.

4 You know, it's at least possible I would assume
5 that Applicants might even have some objection to the
6 relevancy of some of that in a siting case, but I'm not
7 presuming the outcome of that. I could possibly see
8 that.

9 I think that's exactly what I'm assuming is that
10 we go through all of this. And I think where I see it,
11 Mr. Chairman, is the REA, they have some issues that are
12 not addressed in here. They're not mentioned at all.
13 And the two individual Intervenors' issues primarily
14 relate to a particular setback circumstance that is only
15 pertinent to their particular situation, as I understand
16 it.

17 And I don't think they're requesting an
18 amendment of the generalized setback terms or anything.
19 It's a very particularized issue based on that last
20 submission I saw.

21 In fact, I heard them say in there that they
22 were very supportive of the project itself. So that's
23 kind of what I had in mind, yeah, was --

24 COMMISSIONER HANSON: Thank you, Mr. Smith.
25 Commissioner Johnson, did you have anything further?

1 CHAIRMAN JOHNSON: No. Thank you.

2 COMMISSIONER HANSON: Commissioner Kolbeck?

3 CHAIRMAN KOLBECK: No.

4 COMMISSIONER HANSON: I would like to dispose of
5 this then at this juncture and turn to Commission action.

6 I would like to as opposed to -- I'd like to
7 have positive motions as opposed to saying the Commission
8 shall not approve or something of that nature. I'd like
9 to phrase it in a positive fashion so that people
10 understand what a yes and a no vote is.

11 I am going to move that on EL08-031 that the
12 Commission approve the proposed Settlement and
13 Stipulation Agreement with the condition that approval
14 will be dependent upon the outcome of the hearing for the
15 nonsettling parties and that with the Stipulation that
16 there be no force and effect if the Commission imposes
17 terms or conditions different from those that are agreed
18 to in the Settlement and Stipulation Agreement.

19 Is there any other verbiage that anyone sees
20 needs to be in that Motion?

21 And then I would like to make remarks. I'm
22 going to vote against my Motion because although there
23 have been some good arguments posed as to why it should
24 pass on the basis that it does not apply -- that the
25 issues in the Stipulation do not apply to those parties

1 that are opposed to the passage of the Stipulation, it
2 just -- the lateness of having the Stipulations before
3 us, information exceeds my comfort level at this point.
4 And the settling parties, it's awkward because the
5 settling parties have reached an agreement. However, we
6 also have to recognize that the interests of those
7 parties who have intervened are not identical to those
8 parties.

9 We've basically heard from the parties who have
10 reached an agreement that the Intervenors should not be
11 concerned with the Stipulations that have been agreed to.
12 But I'm not so certain that that's the case.

13 I recognize that the parameters of the
14 Stipulations do somewhat set a foundation and a precedent
15 for the decisions that we will be making. And also
16 recognize that this is -- regardless of whether we pass
17 this or not, it is not a final disposition anyway. So I
18 think that it behooves us to give the parties an
19 opportunity to continue those discussions knowing that
20 the Commission is under a state law mandate for the
21 duration of which we can have a Docket before us, and
22 they -- even though it can be extended with the parties'
23 request, it is beneficial to everyone if we reach those
24 agreements as soon as we possibly can.

25 Commissioners, do you have any discussion on the

1 Motion?

2 CHAIRMAN KOLBECK: This is Commissioner Kolbeck.
3 I have one -- I kind of agree with Commissioner Hanson.
4 I think that's the proper Motion that should be moved.

5 However, I don't know if I will support it. I
6 would rather have the hearing and then have the
7 Stipulation after the Finding of Fact. I don't like the
8 fact that all parties involved are not represented.

9 I do understand that we can change it later by
10 leaving that door open, but I just don't like the -- what
11 it alludes to if we do approve a Stipulation without all
12 parties being present and accounted for.

13 COMMISSIONER HANSON: Commissioner Johnson.

14 CHAIRMAN JOHNSON: Well, I mean, I too will vote
15 against the Motion but not necessarily for the reasons
16 that have been stated. I mean, I do think
17 decommissioning hasn't been addressed. I mean, all
18 parties have had an opportunity to review it. This was
19 properly noticed. If any party had a concern with a
20 particular -- the merits of a Conclusion or a Finding,
21 they would have had an opportunity to raise that issue.

22 The only issues that were raised were
23 procedural. And even the people who raised those
24 indicated that they felt there were workarounds to that.

25 With that being said, I certainly don't have any

1 problem, you know, denying Commissioner Hanson's Motion.
2 We're all acting like this is next week. My one comment
3 would be, I mean, who knows? This could be months and
4 months. I mean, sometimes you let parties out of
5 something because you don't know how much longer it's
6 going to go on.

7 It would be hard to imagine, you know, next week
8 after the hearing that all of a sudden at the end of that
9 we'll have -- you know, that we'll be able to rule.
10 Generally it takes us a little bit of time to get things
11 in the proper order. But that being said, I certainly
12 don't think turning this down is going to cause us any
13 hardship.

14 COMMISSIONER HANSON: Thank you. Any further
15 questions or discussion on the Motion?

16 CHAIRMAN KOLBECK: I just have one question. I
17 was under the impression that Mr. Spence or Ms. Carter
18 hadn't been a part of this.

19 MS. SEMMLER: No. They were. We had a
20 conference call last week, and we all spoke about the
21 settlement. And prior to that there had been a variety
22 of written correspondence regarding this Stipulation.
23 And they don't have issue with the Stipulation. They
24 have issues unique to them that they will present to you
25 next week.

1 CHAIRMAN KOLBECK: Okay. Okay.

2 COMMISSIONER HANSON: Thank you. And before we
3 take the vote, I'd like to say that I do appreciate very
4 much staff's efforts at trying to move this along and
5 help all the parties get together and reach some
6 conclusions and some agreements so that it can -- in
7 order to facilitate this process. Appreciate the effort
8 very, very much.

9 I will call the vote.

10 Mr. Kolbeck. Excuse me. Commissioner Kolbeck.

11 CHAIRMAN KOLBECK: Nay.

12 COMMISSIONER HANSON: Commissioner Johnson.

13 CHAIRMAN JOHNSON: Nay.

14 COMMISSIONER HANSON: Hanson votes no. Motion
15 fails. I believe that's the last item on our agenda.

16 CHAIRMAN JOHNSON: Mr. Chairman, I do have
17 another Motion.

18 COMMISSIONER HANSON: All right.

19 CHAIRMAN JOHNSON: I would move that the
20 Commission request the parties review these Proposed
21 Findings of Fact and Conclusions of Law and be prepared
22 sometime between now and the hearing to indicate which
23 issues they disagree with so that the Applicant
24 understands --

25 I mean, as Mr. Smith's pointed out, I do think

1 we need to limit the issues. That is one way to do it.
2 And then, furthermore, that if parties have issues beyond
3 the scope of the Proposed Findings of Fact and
4 Conclusions of Law that they would want the Applicant to
5 address as part of their prima facie case, that they --
6 that they specify in some detail those issues to the
7 Applicant in advance of next week's hearing.

8 COMMISSIONER HANSON: That's a good Motion.
9 Let's put a little more particular to in advance so that
10 we don't receive like we did today something minutes
11 before the meeting, if that's all right, a friendly --

12 CHAIRMAN JOHNSON: Oh, I think it's a great
13 idea. I mean, we can certainly pause and see what the
14 parties think. But, you know, by the end of this week
15 would that be enough? Although we may not have reviewed
16 them in depth, certainly all the Intervenors have.

17 COMMISSIONER HANSON: Exactly. And they've
18 obviously discussed them prior to meeting and understand
19 them and I think could probably put such -- unless they
20 have some other work -- and certainly they don't have
21 anything else to do. But if they didn't, they could
22 probably have it done yet today. Let's give them -- what
23 date is our -- is that next meeting?

24 MS. SEMMLER: It's on the 15th.

25 COMMISSIONER HANSON: 15th?

1 MR. SMITH: Wednesday.

2 COMMISSIONER HANSON: And the Thursday before
3 that would be the 8th -- 9th. Excuse me. Is that
4 sufficient?

5 MS. POLLMAN ROGERS: How about the 10th?

6 MR. SMITH: I would note that we're closed on
7 Friday here. So on Friday is not a legal day here.

8 COMMISSIONER HANSON: Right. It's a holiday.
9 So Thursday the 9th? Does that work for the parties?
10 Obviously it works for the Commission staff.

11 Mr. Gerdes, can you speak for Mr. Koenecke? I
12 don't know that there's a great deal that you guys have
13 to work with on this.

14 MR. GERDES: That's fine.

15 COMMISSIONER HANSON: Ms. Rogers?

16 MS. POLLMAN ROGERS: We'll work with it.

17 COMMISSIONER HANSON: Commissioner Johnson, is
18 that part of your Motion then?

19 CHAIRMAN JOHNSON: Oh, absolutely, yes.

20 COMMISSIONER HANSON: The 9th? All right.

21 Thank you. We'll vote on that Motion if there isn't any
22 further discussion.

23 Commissioner Kolbeck.

24 CHAIRMAN KOLBECK: Aye.

25 COMMISSIONER HANSON: Commissioner Johnson.

1 CHAIRMAN JOHNSON: Aye.

2 COMMISSIONER HANSON: Hanson votes yes. The
3 Motion carries.

4 I believe that dispenses with our agenda.

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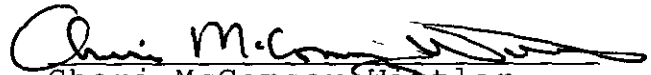
CERTIFICATE

COUNTY OF HUGHES)

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

DO HEREBY CERTIFY that as the duly-appointed shorthand reporter, I took in shorthand the proceedings had in the above-entitled matter on the 7th day of April, 2009, and that the attached is a true and correct transcription of the proceedings so taken.

Dated at Pierre, South Dakota this 17th day of April, 2009.



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

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