

Commission consider the brief, and then enter an order as it sees appropriate.

Dated at Pierre, South Dakota, this 5th day of November, 2007.

A handwritten signature in black ink, reading "Kara Semmler", written over a horizontal line.

Kara Semmler
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**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA**

IN THE MATTER OF THE APPLICATION BY)	BRIEF IN SUPPORT OF
TRANSCANADA KEYSTONE PIPELINE, LP)	MOTION IN OPOSITION OF
FOR A PERMIT UNDER THE SOUTH)	WEB WATER ASSOCIATION'S
DAKOTA ENERGY CONVERSION AND)	MOTION FOR EXTENSION OF
TRANSMISSION FACILITIES ACT TO)	TIME TO FILE DIRECT
CONSTRUCT THE KEYSTONE PIPELINE)	TESTIMONY
PROJECT)	

HP07-001

COMES NOW Commission Staff (herein 'Staff'), by and through its attorney, Kara Semmler, in support of its Motion wherein it requested the Public Utilities Commission (herein 'Commission') deny WEB Water Association's (herein 'WEB') two week extension request to file direct testimony. Rather, as an equitable alternative, Commission Staff recommends the direct testimony supplemental filing date for all parties who previously filed testimony, including WEB, be extended to November 13, 2007, at noon Central Standard Time. As a result, TransCanada's rebuttal testimony due date should also be extended. Staff proposes applicant rebuttal testimony be extended to November 26, 2007 at noon Central Standard Time. Staff recommends pre-filed surrebuttal be eliminated and introduced in person at the hearing.

INTRODUCTION

Staff will first brief its concerns as they relate directly to WEB's request. Additionally, Commission Staff is troubled by the apparent lack of good faith in the requesting party's conduct and direct testimony extension request. Such lack of good faith hinders the legal process in place to properly examine the Applicant's filing. Staff believes WEB's behavior should be considered when making potential scheduling modifications.

ARGUMENT

A. Equitable treatment of all parties

As the Commission is aware, One Hundred Sixty individuals or other entities intervened in this docket. Due to the extensive number of interveners, it has been difficult for the parties to agree regarding a variety of procedural issues. The parties have, therefore, been forced to bring issues normally resolved privately to this Commission's attention. Due to the level of disagreement and the sheer number of interested individuals, Staff believes it is important to treat all parties equally. Staff's first concern with allowing a two week extension to one intervener lies in equitable treatment for all parties.

If the Commission believes an extension is necessary and warranted, all interveners who previously filed testimony should be granted the same extension to supplemental testimony. The PUC, at publicly noticed meetings and hearings discussed the time frames in extreme depth. In addition, John Smith, Commission Counsel, conducted extensive research to determine the best possible schedule for all parties to adequately prepare, yet allow the Commission to meet its statutory decision deadline. Ultimately, the Commission Scheduling Order was drafted as the best compromise possible considering all party's interests. The Commission has an obligation to treat all parties to a docket as equal participants. WEB does not highlight any particular circumstance that sets it aside or makes it different from other interveners. WEB did not highlight different circumstances necessitating a different schedule than all other interveners. The timeframe required extensive work by all interveners. All other interveners intending to testify met the deadline and none requested more time.

Commission Staff asks the Commission to treat all parties as equals with equal schedule deadlines in the absence of extenuating circumstances. WEB has not indicated any such circumstance.

B. Complete evidence

The interests of the various parties to this docket differ and are numerous. It is important to allow as much participation as possible. The Commission has, therefore, structured a hearing and hearing preparation in such a way to provide for the same. Although WEB's request appears to be in bad faith, as detailed below, it is in the Commission's interest to collect and study all relevant information. It appears from WEB's request, see Exhibit A, that its evidence will be supported by the named expert witnesses. As it currently exists, WEB's testimony, contains unsupported statements without necessary foundation. Staff therefore, understands the necessity for expert testimony and believes it can potentially be useful in the hearing process. With that being said, WEB requested an extension of its deadline and did not provide an opportunity for Applicant's rebuttal. Staff therefore, not only requests all parties be treated the same, but that the rebuttal time be extended. The Commission has an obligation to create a clean record. Without adequate rebuttal time, the record will not be clear.

C. Requesting party's bad faith behavior.

The Applicant filed with the PUC on April 27th, 2007. Mr. Hohn, the director of WEB, began publicly speaking and publishing his opinion regarding the pipeline as early as May 16, 2007. See Exhibit B. The PUC held all four public hearings in June where the PUC listened to hours of public statements and concerns. Mr. Hohn attended all public hearings and presented his concerns at all meeting locations. WEB clearly

outlined its concerns at the meetings and through mass mailings it sent out in the months thereafter. The Commission process and the necessary evidence all parties were required to present should have been known by all parties.

After a lengthy schedule discussion at a Commission Meeting on August 7, 2007, Commission Counsel, John Smith, drafted a Scheduling Order. The Scheduling Order was sent to all parties on August 23, 2007 per Commission Order. See Exhibit C. The deadlines were, again, clearly outlined. Staff sent its Interrogatories to all parties on September 19, 2007. Staff requested an answer per Civil Procedure Rules by October 19, 2007. WEB did not answer basic legal discovery obligations. See Exhibit D. After discussions with WEB's lawyer, Mr. Hohn agreed to answer the discovery requests. His answers were, however, incomplete. One such incomplete answer was a request to list witnesses the party intends to call at the December hearing. On October 19, 2007, WEB responded, "Unknown at this time. WEB will comply with PUC's Scheduling Order regarding the filing of written testimony."

Staff was concerned with the response, as thirteen days before the direct testimony due date is clearly not enough time to compile witness testimony. Due to the concern, Commission Staff once again contacted WEB's attorney. Its attorney confirmed that WEB had not yet decided on experts or witnesses. Clearly no good faith attempt was made to comply with the Commission's Scheduling Order. This direct testimony extension request was not made until it was too late to comply with the Commission Scheduling Order. Staff does not believe such behavior shows any intent to follow Commission procedure and other legal rules throughout the process. Finally, this extension request was not made until Staff questioned WEB's expert list submission.

Staff again contacted WEB's lawyer after the deadline had passed, after Staff received WEB's expert list submission. Only then did WEB indicate its intent to request an extension. Again, it does not appear any good faith effort was made to comply with the Commission's Scheduling Order.

CONCLUSION

It is certainly in the Commission's best interest to learn as much as possible about all party's concerns. It is also necessary for the Commission to treat all parties as equal and further to follow its own Orders and procedural rules. For all aforementioned reasons, Commission Staff requests the Commission to deny WEB's request. However, asks it to consider an alternative and grant a direct testimony extension to all parties who previously filed Direct Testimony, including WEB, until November 13, 2007, noon Central Standard Time; grant a rebuttal extension until November 26, 2007, noon Central Standard Time; and to eliminate pre-filed surrebuttal.

Dated at Pierre, South Dakota, this 5th day of November, 2007.



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