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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
TRANSCANADA KEYSTONE PIPELINE, LP FOR
A PERMIT UNDER THE SOUTH DAKOTA ENERGY
CONVERSION AND TRANSMISSION FACILITY
ACT TO CONSTRUCT THE KEYSTONE XL PROJECT

HP09-001

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Transcript of Proceedings
February 18, 2010

ORIGINAL

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BEFORE THE PUBLIC UTILITIES COMMISSION,
DUSTIN JOHNSON, CHAIRMAN
STEVE KOLBECK, VICE CHAIRMAN
GARY HANSON, COMMISSIONER (by telephone)

COMMISSION STAFF

John Smith
Kara Semmler (by telephone)
Karen Cremer
Greg Rislov
Bob Knadle
Jon Thurber
Nathan Solem
Deb Gregg
Demaris Axthelm

Reported By Cheri McComsey Wittler, RPR, CRR

1 APPEARANCES BY TELEPHONE

2 Paul Blackburn
3 Jim White
4 John Schmidt

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6 TRANSCRIPT OF PROCEEDINGS, held in the
7 above-entitled matter, at the South Dakota State Capitol
8 Building, 500 East Capitol Avenue, Pierre, South Dakota,
9 on the 18th day of February, 2010 commencing at
10 3:05 p.m.

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1 CHAIRMAN JOHNSON: We are back from our break.
2 Thanks for your patience. Our last item on the ad hoc
3 agenda today is HP09-001. This is the filing made by
4 TransCanada for their Keystone XL Project.

5 The Commission is scheduled for a decision
6 today. As we've said all along, the Commission has three
7 options: It can approve, it can deny, or it can approve
8 with certain conditions that permit.

9 And we're not scheduled for any oral argument
10 today. I would indicate we've always exercised a little
11 bit of liberality. And certainly if the Commissioners
12 feel they have a question they need to ask staff or any
13 party, we will allow that. We're not scheduled for oral
14 arguments.

15 I think the easiest way to do this would be so
16 that we can sort of discuss something, I will make a
17 motion that we approve the project with certain
18 conditions. We haven't discussed the conditions. So
19 we'll say that motion is made. It is not required for
20 second, but we will hold that motion in abeyance so that
21 we can discuss any specific conditions the Commissioners
22 may want.

23 Now once we put those conditions together, we
24 can add those to the original motion, and then we can
25 either pass or reject that motion. Obviously, we'll have

1 lots of opportunities along the way to voice our consent
2 or dissent with particular conditions.

3 So we do have a letter from General Counsel
4 Smith that he provided to the Commissioners some
5 information yesterday. And we're putting that up on the
6 internet now so that people have it available if they're
7 listening on the internet. We have some hardcopies
8 available. I don't know that we have a lot of them.

9 Ms. Axthelm.

10 MS. AXTHELM: I do. I have like 10.

11 CHAIRMAN JOHNSON: And I don't need this one.
12 And I will just read right now Mr. Smith's letters. He
13 says, "Commissioners Johnson, Kolbeck, and Hanson: In
14 recent weeks I have met with you individually to discuss
15 possible conditions for HP09-001. Given the feedback and
16 direction you have independently provided to me, I have
17 prepared the attached draft set of potential conditions
18 for your discussion and consideration in the event the
19 Commission decides to grant a siting permit with
20 conditions for the HP09-001 Applicant."

21 If it pleases my colleagues, my intention is to
22 go through these conditions in groupings, discuss them as
23 groups, amend them if necessary by groups, and then vote
24 on them as groups. On the internet or in person you'll
25 notice that each grouping has a Roman numeral attached to

1 it. This is how I would intend to work through it.

2 Do Commissioners Hanson or Kolbeck have any
3 suggestions?

4 Okay.

5 COMMISSIONER HANSON: No. I think that would be
6 fine. I think that's a good way to do it. I would just
7 say I have -- I don't know about my fellow Commissioners
8 but I have so many notes and other things I have not had
9 time to look at the very last draft that he had sent to
10 us but I have in previous information that I have sent to
11 him and that he has sent to me and my notes are in four
12 different locations here. So if you can tolerate that as
13 I'm working through it, I'd appreciate that.

14 CHAIRMAN JOHNSON: I think it's an extra point
15 and that reminds me that this will seem no doubt a little
16 messy to some folks. And it's messy for two reasons.
17 Number one, we don't have deliberative powers, you know,
18 as most judges would. The Supreme Court, they get to sit
19 together and discuss decisions. We are prohibited from
20 doing that so you've got sort of the messiness there.

21 You also have I think an iterative process
22 messiness that like you, Commissioner Hanson, I have
23 notations all over from -- and it's trying to pull
24 everything together from different moments in time.

25 So with that, the first Roman numeral, the first

1 set of permit conditions deals with compliance with laws,
2 regulations, permits, standards, and commitments. It
3 will seem like a lot for me to read through them, but
4 Commissioner Hanson did it when he was Chair the last
5 time we had a similar docket, and I think it was helpful.
6 So I'll begin.

7 Condition No. 1 indicates that Keystone shall
8 comply with all applicable laws and regulations in its
9 construction and operation of the project. These laws
10 and regulations include but are not necessarily limited
11 to the Federal Hazardous Liquid Pipeline Safety Act of
12 '79 and Pipeline Safety Improvement Act of '02 as amended
13 by the Pipeline Inspection Protection Enforcement and
14 Safety Act of '06, and the various other pipeline safety
15 statutes currently codified at 49 U.S.C. 60101,
16 collectively the PSA; the regulations of the
17 U.S. Department of Transportation implementing the PSA,
18 particularly 49 CFR Parts 194 and 195, temporary permits
19 for use of public water for construction, testing, or
20 drilling purposes, SDCL 46-50-40.1, and ARSD 74:02:01:32
21 through 34.02, and temporary discharges to waters of the
22 state, SDCL 34A-2-36 and ARSD Chapters 74:52:01 through
23 74:52:11, specifically ARSD 74:52:02:46 and the General
24 Permit issued thereunder covering temporary discharges of
25 water from construction dewatering and hydrostatic

1 testing.

2 Condition No. 2 would indicate that Keystone
3 shall obtain and shall thereafter comply with all the
4 applicable federal, state, and local permits, including
5 but not limited to the Presidential Permit, in accordance
6 with executive orders, for the construction, connection,
7 operation, and maintenance at the border of the
8 United States. Facilities for the exportation or
9 importation of petroleum, petroleum products, coal, or
10 other fuels to or from a foreign country, the Clean Water
11 Act, and Rivers and Harbors Act, Temporary Water Use
12 Permit, the General Permit for Temporary Discharges, and
13 Federal, State, and Local Highway and Road Encroachment
14 Permits. Any of such permits not previously filed with
15 the Commission shall be filed with the Commission upon
16 their issuance.

17 Condition No. 3 would indicate that Keystone
18 shall comply with and implement the recommendations set
19 forth in the Final EIS when issued by the U.S. Department
20 of State, pursuant to its Amended Department of State
21 Notice of Intent to Prepare Environmental Impact
22 Statement and To Conduct Scoping Meetings and Notice of
23 Floodplain and Wetland Involvement and To Initiate
24 Consultation Under Section 106 of the National Historic
25 Preservation Act and the Proposed TransCanada Keystone

1 Pipeline; Notice of Intent - Rescheduled Public Scoping
2 Meetings in South Dakota, and extension of comments
3 period. The Amended Notice and other Department of State
4 and project documents are available on-line.

5 Condition No. 4 would indicate that the
6 permit --

7 COMMISSIONER HANSON: Excuse me.

8 CHAIRMAN JOHNSON: Yes.

9 COMMISSIONER HANSON: Would it be helpful --
10 forgive me for interrupting you, Chairman. In case
11 someone has something of concern to one of these items,
12 would it be helpful to address them just after we've read
13 it, or do you plan to go back on each one?

14 CHAIRMAN JOHNSON: My intention was to read --
15 and we can do it either way. To read a section.

16 COMMISSIONER HANSON: Doesn't matter to me.
17 Whatever you --

18 CHAIRMAN JOHNSON: Yeah. My thought is there
19 may be some efficiency to reading the whole section
20 without pausing and then going back within that section.

21 COMMISSIONER HANSON: Thank you.

22 CHAIRMAN JOHNSON: But please bring up other
23 suggestions that pop up.

24 No. 4, the permit granted by this Order shall
25 not be transferable without the approval of the

1 Commission pursuant to state law.

2 And, finally, No. 5 for this section, Keystone
3 shall undertake and complete all of the actions that it
4 and its affiliated entities committed to undertake and
5 complete in its Application as amended and its testimony
6 and exhibits received in evidence at the hearing and in
7 its responses to data requests received at evidence in
8 the hearing.

9 So now we will pause and see if there are any
10 comments, concerns, or questions on any proposed
11 amendments for Section I dealing with compliance.

12 COMMISSIONER HANSON: Thank you, Mr. Chairman.
13 I have a very minor and then a couple of more -- perhaps
14 more substantive questions.

15 The first real minor one is just from a future
16 reference from the standpoint of being able to go back
17 and look at this. I'm wondering if somehow this can be
18 found a little bit more easily -- rather than referring
19 to it as Keystone, didn't we -- wasn't the previous one
20 called Keystone as well?

21 And if we have two dockets where we're referring
22 to Keystone perhaps even at the very beginning we say
23 that Keystone -- TransCanada Keystone XL and then just
24 simply put in parenthesis Keystone so that from then on
25 we don't have to change everything. We just simply right

1 at the very beginning -- and I know it's very minor, but
2 I know that if I was looking at this from outside the
3 PUC, I might get confused and figure which Keystone am I
4 looking at?

5 CHAIRMAN JOHNSON: Well, I don't think it's that
6 minor. I think maybe one issue might be that Keystone is
7 the company name and Keystone XL would be the project
8 name. But let's see if the General Counsel thinks --

9 MR. SMITH: I might too -- if you recall,
10 Commissioner Hanson, and this may allay your concerns a
11 bit, that assuming you go on and grant a permit or even
12 if you don't, if you do grant it, I mean, if you do grant
13 it, these conditions will be appended to a very thorough
14 and lengthy Order. And in that Order we will do just
15 that. We will --

16 In other words, it's going to say Keystone XL
17 Pipeline up there. It just happens in a different place
18 in the ultimate document that will be the final
19 Commission's Order. This here refers to the company,
20 which is TransCanada Keystone Pipeline LP.

21 COMMISSIONER HANSON: Thank you. Appreciate it
22 very much.

23 On the third issue where -- one of my concerns
24 with constraints that we have, Mr. Chairman, and I'm sure
25 that everyone's expressed this at some time or another,

1 is the fact that State law requires us to complete this
2 within one year and it's a situation where the
3 Environmental Impact Statement is not received. Just
4 simply from a time standpoint we don't have the
5 opportunity to look at that prior to voting on this and
6 going through it.

7 So on No. 3 where it states that "Keystone shall
8 comply with and implement the recommendations set forth
9 in the Final Environmental Impact Statement," I'm
10 curious, is that all within the DENR and the Feds, or
11 does the PUC have an opportunity then because of
12 paragraph 3 to -- for a lookback, so to speak, and to
13 assure -- do we have any -- any hammer because of
14 paragraph 3?

15 And perhaps John could address that as well. Or
16 you can, Mr. Chairman.

17 CHAIRMAN JOHNSON: Well, they -- you know, State
18 law indicates that they need to follow our Order if
19 they're terminating an operation. So I think your
20 question is a good one, Commissioner, because it makes
21 it -- I mean, yes, there is a hammer. If they do not
22 comply with and implement the recommendations of the EIS,
23 this Commission would have the authority to shut the
24 operation down.

25 And Mr. Smith will correct me if I'm in error.

1 MR. SMITH: No. You're not in error. I think
2 that's the point is if there are recommendations in
3 there, the idea here is that they will be followed.

4 I think, you know, the only thing I could think
5 of -- and, again, this is pretty much the -- slightly
6 different language from the first one. This is pretty
7 much taken from the first Keystone, very similar.

8 The only thing is there we had the good fortune
9 that it just so happened that the EIS was issued
10 literally a week or so before you voted. And that was a
11 different situation. We don't have that here, and we
12 can't have it and comply with our law.

13 You know, if you wanted to -- I mean, if this is
14 the concern, I'll just throw it out and you guys can
15 maybe talk about it. If the concern is that the
16 conditions in the EIS would be inconsistent with the
17 conditions we're going to have in our -- in this, it
18 wouldn't bother me any if you put something in there,
19 say, to the extent not inconsistent or contradicted by
20 the conditions you're going to specifically impose here,
21 if that makes sense.

22 You know, in other words, if they have something
23 that -- I don't know, I would seriously doubt it, but if
24 there's something in there that is -- and you might -- if
25 your concern would be that they -- that it not be an out

1 for Keystone and that if we say something in here and
2 there's a different -- slightly different thing in the
3 EIS recommendations, I think what we would want is the
4 more stringent of those two to apply.

5 Is that the idea?

6 COMMISSIONER HANSON: Exactly. Exactly.

7 MR. SMITH: You know, I can't object myself to
8 that kind of a change.

9 COMMISSIONER HANSON: Mr. Chairman, Mr. Smith
10 articulated exactly what one of my concerns is, and you
11 allayed the other one.

12 So from my standpoint if Mr. Smith could come up
13 with some type of statement that would show then that the
14 more stringent of the conditions -- if our conditions are
15 more strict than the Feds, then I would want them to be
16 obliged to follow our restrictions.

17 CHAIRMAN JOHNSON: I certainly don't have any
18 problem making that change. I think legally if it's
19 silent, that would be the truth because they have to
20 follow all of our rules and our rules say they have to
21 follow the EIS. So I don't mind adding it. I don't know
22 that it's got any legal impact.

23 MR. SMITH: You know, if it adds clarity or --
24 you know, it doesn't bother me either way. We have said
25 that, that they need to follow both. You know, so to

1 me --

2 CHAIRMAN JOHNSON: Well, the suggestion has been
3 made. I think it's a good one. To keep things rolling,
4 unless there's any objection, we'll -- Mr. Smith will so
5 redraft.

6 Commissioner Hanson, other thoughts?

7 COMMISSIONER HANSON: I have one last one on
8 this section, and that is the definition of the word
9 "committed."

10 And I know that there are statements in other
11 parts of the suggestions here, the permit conditions, but
12 on Item No. 5 it says that "Keystone shall undertake and
13 complete all the actions that it and its affiliated
14 entities committed to undertake."

15 I'm wondering if "committed" is -- I know in
16 some areas we talk about what they've said that they
17 might do, things of this nature. Just exactly what is
18 "committed"? And I know I'm being perhaps a little too
19 stickler-ish here, but I like -- in contracts I like to
20 have -- I view this as a contract. I like to have things
21 very clear.

22 COMMISSIONER KOLBECK: Perhaps testifying to?

23 COMMISSIONER HANSON: Well, we've relied upon a
24 lot of other things, whether they are in writing or
25 whether they've stated that they would do in testimony,

1 whether they've sent a letter too.

2 What does Mr. Smith think of --

3 MR. SMITH: Well, you know, I guess --

4 COMMISSIONER HANSON: I hate to ask you those
5 type of questions since you wrote this --

6 MR. SMITH: This is verbatim language from the
7 first Keystone Order. And I think the idea is if you
8 said at the hearing or if you said in your Application
9 we're going to do this, then we want you to do it.

10 Like we're going to follow our CMR plan, you
11 know. Then that is going to actually have the force of a
12 legally binding obligation under these conditions.
13 That's the point of it. You made a commitment there.
14 You said you're going to do it.

15 COMMISSIONER HANSON: Thank you. As much as
16 anything, Mr. Chairman, I wanted that to be stated during
17 this hearing because then it does clarify to an extent
18 and it's not ambiguous as to what our intent is because
19 we have now stated it on the record.

20 Thank you.

21 CHAIRMAN JOHNSON: Good questions, Commissioner.
22 I don't have any.

23 Commissioner Kolbeck?

24 COMMISSIONER KOLBECK: I just want to be very
25 clear that No. 2 permit conditions, I understand that to

1 say that they cannot start any construction until they do
2 receive a valid Presidential Permit; correct?

3 And any other permit of an executive order
4 that's necessary?

5 MR. SMITH: That would be my understanding of
6 that, yes.

7 COMMISSIONER KOLBECK: Thank you.

8 CHAIRMAN JOHNSON: With that, perhaps I would
9 entertain -- what we did last time and I thought it
10 worked pretty well was to vote on the sections.

11 Does anybody want to move Conditions Section I?

12 COMMISSIONER KOLBECK: I'll move that we accept
13 the conditions in Section I of the permit.

14 CHAIRMAN JOHNSON: Motion has been made. No
15 second is required.

16 Hearing no further discussion, we'll proceed to
17 vote.

18 Hanson.

19 COMMISSIONER HANSON: Aye.

20 CHAIRMAN JOHNSON: Kolbeck.

21 COMMISSIONER KOLBECK: Aye.

22 CHAIRMAN JOHNSON: Johnson votes aye. The
23 motion carries 3-0.

24 With that, we'll proceed to Permit Section
25 No. II, which deals with reporting and relationships.

1 The most recent and accurate depiction -- this
2 is Condition No. 6. The most recent and accurate
3 depiction of the project route and facility locations is
4 found on the maps in the exhibit. The Application
5 indicates that Keystone will continue to develop route
6 adjustments throughout the preconstruction design phase.
7 These route adjustments will accommodate environmental
8 features identified during surveys, property specific
9 issues, and civil survey information. The Applicant
10 states that Keystone will file new aerial route maps that
11 incorporate any such route adjustments prior to
12 construction. Keystone shall notify the Commission and
13 all affected landowners, utilities, and local
14 governmental units as soon as practicable if material
15 deviations are proposed to the route. Keystone shall
16 notify affected landowners of any change in the route of
17 their land -- on their land. At such time as Keystone
18 has finalized the preconstruction route, Keystone shall
19 file maps with the Commission depicting the final
20 preconstruction route. If material deviations from this
21 route must be made during construction, Keystone shall
22 advise the Commission and all affected landowners,
23 utilities, and local governmental units prior to making
24 such changes and afford the Commission the opportunity to
25 review and approve such modifications. At the conclusion

1 of construction, Keystone shall file detailed maps with
2 the Commission depicting the final as-built location of
3 the project facilities.

4 Condition No. 7, Keystone shall provide a public
5 liaison officer approved by the Commission to facilitate
6 the exchange of information between Keystone, including
7 its contractors and landowners, local communities and
8 residents, to promptly resolve complaints and problems
9 that may develop for landowners, local communities, and
10 residents as a result of the project. Keystone shall
11 file with the Commission a proposed public liaison
12 officer's credentials for approval by the Commission
13 prior to the commencement of construction. The public
14 liaison officer shall be afforded immediate access to
15 Keystone's on-site project manager, its executive project
16 manager, and to contractor's on-site managers and shall
17 be available at all times to the Commission's staff via
18 mobile phone to respond to complaints and concerns
19 communicated to the staff by concerned landowners and
20 others. Keystone shall also implement and keep an
21 updated website covering the planning and implementation
22 of construction and commencement of operations in this
23 state as an informational medium for the public. As soon
24 as the Keystone public liaison officer has been appointed
25 and approved, Keystone shall provide contact information

1 for him/her to all landowners crossed by the project and
2 to law enforcement agencies and local governments in the
3 vicinity of the project. The public liaison officer's
4 contact information shall be provided to landowners in
5 each subsequent written communication with them.

6 Condition No. 8, until construction of the
7 project, including reclamation, is completed Keystone
8 shall submit quarterly progress reports to the Commission
9 that summarize the status of land acquisition and route
10 finalization, the status of construction, the status of
11 environmental control activities, including permitting
12 status and Emergency Response Plan and Integrity
13 Management Plan Development, the implementation of the
14 other measures required by these conditions and the
15 overall percent of physical completion of the project and
16 design changes of a substantive nature. Each report
17 shall include a summary of consultations with DENR and
18 other agencies concerning the issuance of permits. The
19 reports shall have dates, names, and the results of each
20 contact and the company's progress in implementing
21 prescribed construction, land restoration, environmental
22 protection, emergency response, and integrity management
23 regulations, plans, and standards. The first report
24 shall be due for the period ending June 30, 2010. The
25 reports shall be filed within 31 days after the end of

1 each quarterly period and shall continue until the
2 project is fully operational.

3 No. 9, until one year following completion of
4 construction of the project, including reclamation,
5 Keystone's public liaison officer shall report quarterly
6 to the Commission on the status of the project from his
7 or her independent vantage point. The report shall
8 detail problems encountered and complaints received for
9 the period of three years following completion of the
10 construction. Keystone's public liaison officer shall
11 report to the Commission annually regarding
12 post-construction landowner and other complaints, the
13 status of road repair and reconstruction of land and crop
14 restoration and any problems or issues occurring during
15 the course of the year.

16 Condition No. 10, not later than six months
17 prior to commencement of construction Keystone shall
18 commence a program of contacts with the State, County,
19 and municipal emergency response, law enforcement and
20 highway, road and other infrastructure management
21 agencies serving the project area in order to educate
22 such agencies concerning the planned construction
23 schedule and the measures that such agencies should begin
24 taking to prepare for construction impacts and the
25 commencement of project operations.

1 No. 11, Keystone shall construct a
2 preconstruction conference prior to the commencement of
3 construction to ensure that Keystone fully understands
4 the conditions set forth in this Order. At a minimum,
5 the conference shall include a Keystone representative,
6 Keystone's construction supervisor, and Commission staff.

7 Finally Commission 12, once known, Keystone
8 shall inform the Commission of the date construction will
9 commence, report to the Commission on the date
10 construction is started, and keep the Commission updated
11 on construction activities as provided in Condition 7.

12 Commissioners, do you have any comments on
13 Condition Set II?

14 COMMISSIONER KOLBECK: I did have one on 12, but
15 I -- I've been struggling with it, and I just wanted my
16 fellow Commissioner's opinion on it.

17 I know there was some concern along the pipeline
18 route that -- to receive compensation before the project
19 can start, that all landowners had to receive
20 compensation before the pipeline could start.

21 I've talked myself out of that. I know that
22 there's definitely concerns, and I know there isn't any
23 evidence in the record that we could do that.

24 However, I know even like bigger pipelines like
25 Lewis and Clark, the water pipeline, usually there's

1 going to be some holdouts on that. I understand that.

2 But I would hope that of an easement -- as an
3 easement is done, cash should be paid. And I believe
4 that they had stated that in testimony, which we've
5 already covered in a previous condition that whatever
6 they've committed to or testified to that they should do.

7 So I just wanted my fellow Commissioners'
8 thoughts on that. I know that they have to be paid --
9 Keystone testified they write a check as soon as the
10 easement is signed and that landowners are given their
11 money.

12 So do you think we need to add anything more in
13 12 before the start date?

14 Commissioner Hanson?

15 COMMISSIONER HANSON: I had to pause just for a
16 second when he said Lewis and Clark pipeline, trying to
17 figure out whether that was a compliment or not. You
18 understand, of course, I was the Chairman of the Lewis
19 and Clark pipeline.

20 COMMISSIONER KOLBECK: No. And I understand
21 that they're totally different, but I think I really
22 wanted to go down the easement road. I really did. But
23 I've talked myself out of it. I know it's not our
24 jurisdiction. I know that we can't do exactly what
25 people have wanted us to do.

1 But I guess I've never heard of an easement
2 grant for a major project without the consideration for
3 easement to be paid in full. I guess I'm just looking
4 for an opinion from either one of you that is contrary to
5 that.

6 COMMISSIONER HANSON: No. I -- if I understand
7 your question correctly, should the landowner expect
8 payment for the easement itself up front, or are you
9 saying for potential crop losses or things of that nature
10 up front as well?

11 COMMISSIONER KOLBECK: I was more specifically
12 looking for the easement up front. And the reason I
13 talked myself out of it was because we don't have
14 jurisdiction over that. And I know that. And this is
15 just something that I mostly want people to know that we
16 were listening them, but I also want to just convince
17 myself too that what we've done in the Order is the
18 appropriate thing and that no one should be able to start
19 construction on someone's land until they've received
20 payment.

21 COMMISSIONER HANSON: That's my feeling as well.
22 Whether it should be in the Order or not, I don't know.

23 COMMISSIONER KOLBECK: Sure.

24 CHAIRMAN JOHNSON: Perhaps I will segue. If
25 it's okay, Commissioner Kolbeck, perhaps I will segue to

1 looking at No. 7 which did deal with the public liaison
2 officer. I think later on we mention the independence of
3 the public liaison officer. I think that is really
4 important. And so I'd like to have some more structural
5 supports for that in 7.

6 Two in particular, that the Commission may
7 remove the public liaison officer and that, secondly, if
8 TransCanada wants to remove the public liaison officer,
9 that the Commission would need to approve that. This is
10 going to give in my estimation the liaison officer true
11 independence at least from TransCanada and that
12 TransCanada can't fire this person.

13 Thoughts?

14 COMMISSIONER HANSON: Mr. Chairman, I think
15 that's an excellent idea. I had underlined in 9 in red
16 ink the word "independent" on the second line because I
17 wondered just how truly independent that person is. And
18 I think that would certainly help in the process.

19 I'm also curious. I know this is our time to
20 discuss this, but I'm curious with Deb Gregg here who has
21 that direct relationship with the liaison officer if she
22 sees anything within -- I did not have an opportunity to
23 chat with her prior to this, and if she doesn't mind, how
24 did that process work for you?

25 And do you see any glaring challenges here that

1 we should consider?

2 MS. GREGG: Commissioner Hanson, it was a
3 perfect process. Consumers that contacted our office we
4 were able to get ahold of their liaison the same day.
5 She would get right back to us either via e-mail or
6 phone. And in most instances she was able to resolve the
7 consumer's or landowner's concerns the same day. She
8 always followed up. We never had a problem getting ahold
9 of her. Nothing.

10 There were times that -- I always have to
11 commend her. There were times that she even would get on
12 a four-wheeler with farmers, landowners, check the roads,
13 check the fences. She always was in contact with us. We
14 did not have a problem.

15 COMMISSIONER HANSON: Thank you, Ms. Gregg. And
16 thank you, Mr. Chairman, for giving me that leeway to go
17 outside the parameters here.

18 CHAIRMAN JOHNSON: I was curious to the answer
19 too so it's a good question. Is there any objection to
20 adding those two additional provisions into Condition 7?

21 COMMISSIONER KOLBECK: Could you repeat them.
22 I'm sorry.

23 CHAIRMAN JOHNSON: That the Commission can
24 unilaterally remove the liaison and that, secondly,
25 TransCanada may not remove the liaison without the

1 Commission's explicit approval.

2 COMMISSIONER KOLBECK: Okay. Yes. I'm
3 comfortable with that.

4 CHAIRMAN JOHNSON: Okay. Hearing no objection,
5 that will be added to 7.

6 COMMISSIONER HANSON: Mr. Chairman, on No. 6 as
7 you were reading it I was -- it hadn't occurred to me
8 earlier, I was trying to figure out on -- just the
9 process of the reconstruction and the way it's worded,
10 the last few sentences of the -- of that paragraph the
11 very -- the second to last sentence at the end of it says
12 "and afford the Commission the opportunity to review and
13 approve such modifications."

14 Now that is for the -- excuse me. That is
15 when -- well, when modifications -- when there's material
16 deviations made to the route, that the Commission has the
17 opportunity to review and approve those changes.
18 However, I don't find -- and perhaps I'm just not
19 remembering correctly, but I don't find it as you read it
20 that we have that same right -- opportunity to review and
21 approve the reconstruction route, the actual route.

22 So it appears that we have the right to review
23 and approve modifications to the route but not the route
24 itself.

25 CHAIRMAN JOHNSON: Well, from a -- that's what

1 the application contained. And so I think we're
2 approving their application and saying, okay, this is
3 where you said the stuff is going. We did an
4 environmental analysis given those expectations. We did,
5 you know, a noise analysis given those expectations of,
6 say, pump stations and if you're going to deviate from
7 that, then we need to know.

8 As you're talking about, Commissioner Hanson,
9 I -- it seemed to me route probably makes it clear. I
10 might actually add material deviations from this route or
11 facility locations must be made during construction. I
12 mean, as you're talking it kind of made me think maybe we
13 could make that clearer.

14 COMMISSIONER HANSON: I'm wondering if just that
15 portion of that sentence basically could be added where
16 it's just a sentence earlier where it says Keystone shall
17 file maps with the Commission depicting the final
18 preconstruction route and afford the Commission the
19 opportunity to review and approve.

20 CHAIRMAN JOHNSON: I think if you look at the
21 first sentence in 6.

22 COMMISSIONER HANSON: Okay.

23 CHAIRMAN JOHNSON: It talks about how the route
24 is found on exhibits reviewed by the Commission. And so
25 if they're going to deviate from that -- we're saying

1 that is your route. If you're going to deviate from
2 that, you've got to let us know.

3 COMMISSIONER HANSON: I think it's implied but
4 I'm having a tough time seeing where it actually jumps
5 out and says that.

6 CHAIRMAN JOHNSON: Well, we're approving their
7 application -- I mean, we -- if there's a way we can make
8 it more explicit, I think that would be fine.

9 COMMISSIONER HANSON: If others are comfortable
10 the way it is, that's fine. I just find that to me it
11 says that -- and I know that's the whole purpose of this
12 document, but in this particular sentence, particular
13 section regarding construction and relationships, it's
14 saying that they'll file the maps, but it doesn't say
15 that the Commission has the opportunity to review and
16 approve. So if we can add that --

17 CHAIRMAN JOHNSON: That's what we do today. And
18 maybe -- and I understand now what you're saying. I
19 think if you look at it from reading that in context with
20 5, Condition 5 -- because there are literally thousands
21 of pages of information that we're not explicitly
22 approving today, but we're saying everything you said in
23 your testimony, everything you said in your filing is the
24 way it's got to be unless you have specific requests for
25 approval from us.

1 We're saying the exhibits you've got in TC 14,
2 that is the route, because we've got thousands of pages
3 of stuff that we're not explicitly approving today.

4 COMMISSIONER HANSON: Thank you. That makes me
5 more comfortable. Although I'm 99 percent comfortable
6 now.

7 MR. SMITH: Yeah. I might -- I think you pretty
8 well touched on where I was going. The TC 14 contains
9 the route that is currently the application route. And
10 that -- if you vote today to grant the permit, that's
11 what you're approving.

12 You know, in terms of this you'll note there's a
13 couple of times whereas Keystone makes refinements in all
14 of that, you know, we -- I don't think we want -- and,
15 again, I use the word "material." But every time there's
16 a minor little -- because you know that's going to
17 happen.

18 As things go along here and the planning process
19 goes along, landowners are going to want things moved
20 here or there, you know, to avoid things, little things
21 like that. But if there's material changes -- the way I
22 wrote it here is the same language as the first time.

23 But basically the idea is every time a map
24 deviation happens we don't want it in here. It's just
25 that at the end of the day if there are material

1 deviations from TC 14, right, prior to construction, the
2 preconstruction maps will be filed, and then if there are
3 material deviations and then we'd have to -- the
4 Commission would have to approve those.

5 COMMISSIONER HANSON: My concern --
6 Mr. Chairman, my concern stems from when it states that
7 "At such time as Keystone has finalized the
8 preconstruction route, Keystone shall file maps with the
9 Commission depicting the final preconstruction route."
10 So that has not been accomplished yet.

11 And then it says, if deviations from that route
12 take place, afford the Commission the opportunity to
13 review and approve such modifications. I don't know why
14 we would not want to be afforded the opportunity to
15 review and approve such modifications even if we --

16 CHAIRMAN JOHNSON: Okay. I'm sorry. Go ahead,
17 Commissioner.

18 COMMISSIONER HANSON: That's fine.

19 CHAIRMAN JOHNSON: If material modifications
20 from the route approved by the Commission must be made,
21 striking during construction -- so made at any point. If
22 material deviations from the route approved by the
23 Commission must be made, Keystone shall advise the
24 Commission and all affected landowners, utilities, and
25 local governmental units prior to making such changes and

1 afford the Commission the opportunity to review and
2 approve such modifications."

3 I think your point's well taken, Commissioner,
4 and those amendments make it true for at any stage of the
5 process.

6 COMMISSIONER HANSON: All right. I'm missing
7 the -- did you make a change there as you were reading
8 that?

9 CHAIRMAN JOHNSON: I did.

10 COMMISSIONER HANSON: I had a tough time
11 catching exactly where you were when you first started.
12 Where was the change?

13 CHAIRMAN JOHNSON: If material deviations from
14 the route approved by the Commission must be made,
15 striking during construction --

16 COMMISSIONER HANSON: Okay.

17 CHAIRMAN JOHNSON: So we're broadening this in
18 two ways. First off, from a time perspective we're
19 broadening it. And, secondly, we're broadening it that
20 deviations not just from the preconstruction filings but
21 from the filings in TC 14 referenced in the first
22 sentence.

23 COMMISSIONER HANSON: So you're striking the
24 words "during construction."

25 CHAIRMAN JOHNSON: And also getting rid of the

1 word "this" and replacing it with "the route approved by
2 the Commission."

3 COMMISSIONER HANSON: Excellent. Thank you.

4 CHAIRMAN JOHNSON: Well, and thanks for your
5 patience. It took me a while to get there, but slow and
6 steady wins the race. So thanks.

7 Okay. Good. Other -- other changes about
8 Condition Set II?

9 Hearing none, I will move that the Commission
10 approve Condition Set II.

11 Hearing no further discussion, we'll proceed to
12 vote.

13 Hanson.

14 COMMISSIONER HANSON: Aye.

15 CHAIRMAN JOHNSON: Kolbeck.

16 COMMISSIONER KOLBECK: Aye.

17 CHAIRMAN JOHNSON: Johnson votes aye. Motion
18 carries 3-0.

19 MR. SMITH: Can I butt in here, Mr. Chairman,
20 once?

21 CHAIRMAN JOHNSON: Yes.

22 MR. SMITH: I wanted to make -- I noticed
23 something regarding Commissioner Kolbeck's question on
24 Condition 2. And I -- and I responded to that, and it
25 occurred to me afterwards that I may -- I didn't want the

1 wrong implication or inference to be drawn from what I
2 said.

3 Some of those permits in Condition 2 will be
4 obtained after construction may have been commenced. And
5 what I'm going to -- for example, a discharge permit, for
6 example, for a discharge point in -- if construction
7 commences in Harding County, a Surface Water Discharge
8 Permit is probably not going to be obtained from DENR,
9 for example, down in Tripp County until it's relevant.
10 You know what I mean?

11 Road permits are probably not going to be
12 obtained necessarily in the first season if they're not
13 going to -- if construction isn't going to happen. So
14 there's going to be some sequential, and all of the
15 permits to which that section refers will not have been
16 obtained prior to the project commencing.

17 Okay?

18 COMMISSIONER KOLBECK: All right. Yes. And
19 thank you for clarifying that.

20 And I think what I had specifically asked was
21 about the Presidential Permit. I know we've gotten a lot
22 of information about clean energy and Clean Energy Future
23 for America. But if it receives a Presidential Permit, I
24 am assuming that those items and security and all of that
25 are contained in the Presidential Permit. And so I was

1 just basically after that fact.

2 MR. SMITH: Okay. Yep. Thanks.

3 CHAIRMAN JOHNSON: Okay. Construction is a
4 really long section. You know, maybe I'll just pause.
5 It's a little different than last time because
6 everybody's got a copy of last time.

7 Do we feel that the verbalization of each one is
8 still the best route, or should we summarize them and
9 allow people the opportunity to read them?

10 And, Commissioners, I'll defer to whatever you
11 like. I don't mind reading them. But as I look out in
12 the crowd when I'm reading, nobody's really listening to
13 me.

14 COMMISSIONER KOLBECK: One thing, I guess,
15 No. 18 is about --

16 CHAIRMAN JOHNSON: Well, we'll deal with them.
17 I mean, we're not going to just skip over them. We'll
18 just explain each of them rather than read each of the
19 words.

20 COMMISSIONER KOLBECK: Oh, I got you. I got
21 you. I thought you wanted to know if we have a specific
22 number we want to talk about --

23 CHAIRMAN JOHNSON: No. I'm sure we'll have
24 plenty in construction we'll talk about. But I don't
25 know. I don't mind reading them either.

1 And we have an electronic list, Cheri, if that
2 will be helpful to you. Because I was purposely reading
3 pretty fast in the last set of conditions. Very fast.

4 What do you think?

5 COMMISSIONER HANSON: Mr. Chairman, it's your
6 call. It all depends on how you highlight each one. I
7 think you just give a highlight, at least the first
8 sentence or something like that just to say No. 13 speaks
9 of this or however so that people have that opportunity
10 to look at them. But ultimately it's up to the three of
11 us to discuss and vote on it.

12 So I think it's a courtesy at this juncture to
13 let the citizens know.

14 CHAIRMAN JOHNSON: Yeah. We put it on the
15 internet. Not everybody has access to the internet.
16 Although they're not listening to us if they don't.

17 COMMISSIONER KOLBECK: I'm comfortable with the
18 current pace that we're going.

19 CHAIRMAN JOHNSON: So you would prefer that I
20 read them?

21 COMMISSIONER KOLBECK: Yeah.

22 CHAIRMAN JOHNSON: Okay. Great. Then we'll
23 read.

24 Condition No. 13 except as otherwise provided in
25 the conditions of this Order and Permit, Keystone shall

1 comply with all mitigation measures set forth in the
2 Construction Mitigation and Reclamation Plan, CMR Plan,
3 as set forth in Exhibit TC 1, Exhibit B. If
4 modifications to the CMR Plan are made by Keystone as it
5 refines its construction plans or are required by the
6 Department of State in its Final EIS Record of Decision
7 or the Presidential Permit, the CMR Plan as so modified
8 shall be filed with the Commission and shall be complied
9 with by Keystone.

10 Condition No. 14, Keystone shall incorporate
11 environmental inspectors into its CMR plan and obtain
12 follow-up information reports from such inspections upon
13 the completion of each construction spread to help ensure
14 compliance with this Order and Permit and all other
15 applicable permits, laws, and rules.

16 Condition 15, prior to construction, Keystone
17 shall in consultation with area NRCS staff develop
18 specific construction reclamation units, con/rec units,
19 that are applicable to particular soil and subsoil
20 classifications, land uses, and environmental settings.
21 The con/rec units shall contain information of the sort
22 described in responses to Staff Data Request 3-25 found
23 in Exhibit TC 16.

24 15, sub a, and the development of the con/rec
25 units in areas where NRCS recommends, Keystone shall

1 conduct analytical soil probing and/or soil boring and
2 analysis in areas of particularly sensitive soils where
3 reclamation potential is low. Records regarding this
4 process shall be available to the Commission and to the
5 specific landowner affected by such soils upon request.

6 15, sub b, through development of the con/rec
7 units and consultation with NRCS, Keystone shall identify
8 soils for which alternative handling methods are
9 recommended. Alternative soil handling methods shall
10 include but are not limited to the triple lift method
11 where conditions justify such treatment. Keystone shall
12 thoroughly inform the landowner regarding the options
13 applicable to their property, including their respective
14 benefits and negatives and implement the option for soil
15 handling selected by the landowner. Records regarding
16 this process shall be available to the Commission upon
17 request.

18 15, sub c, Keystone shall in consultation with
19 NCRS ensure that its construction planning and execution
20 process, including con/rec units, CMR Plan, and its other
21 construction documents and planning shall adequately
22 identify and plan for areas susceptible to erosion, areas
23 where are sand dunes are present, areas with high
24 concentrations of sodium bentonite, areas with sodic,
25 saline, and sodic-saline soils, and any other areas of

1 low reclamation potential.

2 15, sub d, the con/rec units shall be available
3 upon request to the Commission and affected landowners.
4 Con/rec units may be evaluated by the Commission upon
5 complaint or otherwise, regarding whether proper soil
6 handling, damage mitigation, or reclamation procedures
7 are being followed.

8 15, sub e, areas of specific concern or of low
9 reclamation potential shall be recorded in a separate
10 database. Action taken at such locations and the results
11 thereof shall also be recorded and made available to the
12 Commission and the affected property owner upon request.

13 Perhaps to share the load a little bit,
14 Commissioner Kolbeck, why don't you take a little bit and
15 when you tap out we'll just keep round robbing it.

16 COMMISSIONER KOLBECK: I've got 16.

17 Keystone shall provide each landowner with an
18 explanation regarding trenching and topsoil and subsoil
19 rock removal, segregation, and restoration method options
20 for his or her property consistent with the applicable
21 con/rec unit, shall follow the landowner's selected
22 preference as documented on its written construction
23 agreement with the landowner as modified by any
24 subsequent amendments or by other written agreements.

25 Sub a, 16, Keystone shall separate and segregate

1 topsoil from subsoil in agricultural areas, including
2 grasslands and shelter belts, as provided in the CMR Plan
3 and the applicable con/rec unit.

4 b, Keystone shall repair any damage to property
5 that results from construction activities.

6 c, Keystone shall restore all areas distributed
7 (sic) by construction in their preconstruction condition,
8 including their original preconstruction topsoil,
9 vegetation, elevation, and contour or as close thereto as
10 is feasible, except as is otherwise agreed to by the
11 landowner.

12 d, except where practicably infeasible, final
13 grading and topsoil replacement and the installation of
14 permanent erosion control structures shall be completed
15 in nonresidential areas within 20 days after backfilling
16 the trench. In the event that seasonal or other weather
17 conditions, extenuating circumstances, or unforeseen
18 developments beyond Keystone's control prevent compliance
19 with this time frame, temporary erosion controls shall be
20 maintained until conditions allow completion of cleanup
21 and reclamation.

22 e, Keystone shall draft specific crop monitoring
23 protocols for agricultural lands. If requested by the
24 landowner, Keystone shall provide an independent crop
25 monitor to construct yield testing and/or such other

1 measurements of productivity as he shall deem
2 appropriate. The independent monitor shall be a
3 qualified agronomist, range land specialist, or otherwise
4 qualified with respect to the species to be restored.
5 The protocols shall be available to the Commission upon
6 request and may be evaluated for adequacy in response to
7 a complaint or otherwise.

8 f, Keystone shall work closely with landowners
9 or land management agencies to determine a plan to
10 control noxious weeds. Landowner permission shall be
11 obtained before the application of herbicides.

12 g, Keystone's adverse weather plan shall apply
13 to improved hay land and pasture lands in addition to
14 crop lands.

15 h, the size, density, and distribution of rock
16 within the construction right of way following
17 reclamation shall be similar to adjacent undisturbed
18 areas. Keystone shall treat rock that cannot be
19 backfilled within or below the level of natural rock
20 profile as construction debris and remove it for disposal
21 offsite except when the landowner agrees to the placement
22 of the rock on his property. In such cases the rock
23 shall be placed in accordance with the landowner's
24 directions.

25 i, Keystone shall utilize the proposed trench

1 line for its pipe stringing trucks where conditions allow
2 and shall employ adequate measures to decompact soil as
3 provided in the CMR Plan. Topsoil shall be decompacted
4 if requested by the landowner.

5 j, Keystone shall monitor and take appropriate
6 mitigation actions as necessary to address salinity
7 issues when dewatering the trench, and field conductivity
8 and/or other appropriate constituent analysis shall be
9 performed prior to disposal of trench water in areas
10 where salinity maybe expected. Keystone shall notify
11 landowners prior to any discharge of saline water or of
12 any spills of hazardous materials on their lands.

13 k, Keystone shall install trench and slope
14 breakers where necessary in accordance with the CMR Plan
15 as augmented by staff's recommendations in Post Hearing
16 Commission Brief pages 26 and 27.

17 l, Keystone shall apply mulch when reasonably
18 requested by landowners and also wherever necessary
19 following seeding to stabilize the soil surface and to
20 reduce wind and water erosion. Keystone shall follow the
21 other recommendations regarding mulch application in
22 Post Hearing Commission Brief page 27.

23 m, Keystone shall reseed all lands with
24 comparable crops to be approved by landowners in
25 landowner's reasonable discretion, or in a pasture, hay,

1 or native species areas with comparable grass or forage
2 crop seed or native species mix to be approved by
3 landowner in landowner's reasonable discretion. Keystone
4 shall actively monitor revegetation and all disturbed
5 areas for at least 2 years.

6 n, Keystone shall coordinate with landowners
7 regarding his or her desires to properly protect cattle,
8 shall implement such protective measures as are
9 reasonably requested by the landowner, and shall
10 adequately compensate the landowner for any loss.

11 p. I'm sorry.

12 o, prior to commencing construction, Keystone
13 shall file with the Commission a confidential list of
14 property owners crossed by the pipeline and update this
15 list if route changes during construction result in
16 property owner changes.

17 No. 17, Keystone shall cover open-bodied dump
18 trucks carrying sand or soil while on paved roads and
19 cover open-bodied dump trucks carrying gravel or other
20 materials having the potential to be expelled onto other
21 vehicles or persons while on a public road.

22 18 --

23 CHAIRMAN JOHNSON: Commissioner, I don't want to
24 revisit because I know that we've already talked about
25 it. I do wonder because I don't know if anybody's paying

1 attention to us. I mean, I wonder if people's time who
2 really are concerned this, if their time might be better
3 spent -- if we talk about areas where we disagree or
4 areas that the conditions they have in their own hands
5 are not consistent with our beliefs.

6 COMMISSIONER KOLBECK: Okay.

7 CHAIRMAN JOHNSON: If we talk about ways to
8 amend this, I think that may be a better use of their
9 time as well as ours. But I don't want to -- I just want
10 to suggest this once more and see if I'm supported.

11 COMMISSIONER KOLBECK: No. I'm fine -- actually
12 when I said I was comfortable with the proper cadence I
13 was thinking that you were summarizing a little bit
14 already. But that's okay.

15 We can hurry it along here -- not hurry it
16 along. I shouldn't say that. But I have specific things
17 like 18, 23, 43, 44.

18 CHAIRMAN JOHNSON: And I think we all do. And
19 so my intention is not to -- I want to focus on that.

20 COMMISSIONER KOLBECK: Okay.

21 CHAIRMAN JOHNSON: I want to focus on the
22 problems I've got with 16d, and the problems you've got
23 with 18, and let's talk about that. So I think we're all
24 in agreement. Let's do that, if that's okay.

25 So with that being said, you know,

1 Commissioner Hanson did say we should summarize them, and
2 I think that makes sense.

3 Condition 18 does deal with fuel storage
4 facilities and refueling activities and their proximity
5 to both private and municipal wells.

6 19 deals with the treatment of trees, ensuring
7 that landowners are compensated and limiting the width of
8 the clear cuts, particularly for windbreaks and shelter
9 belts.

10 And No. 20 deals with sediment control
11 practices.

12 No. 21 deals with the development of a frac-out
13 plan specific to South Dakota in those areas where
14 horizontal drilling is going to be happening -- would be
15 happening.

16 No. 22 deals with -- has a number of specific
17 sub conditions regarding construction near wetlands.

18 No. 23 has some specific conditions regarding
19 road protection and bonding. I think at least two sub
20 conditions are worth verbalizing.

21 b, that Keystone shall implement a regular
22 program of road maintenance and repair through the active
23 construction period to keep paved and gravel roads in an
24 acceptable condition for residents and the general
25 public.

1 No. e requires a \$15.6 million road bond for the
2 year in which construction begins and a second bond in
3 the amount of 15.6 million for the ensuing year.

4 Condition 20 deals -- makes it clear that
5 although no residential property's expected to be
6 encountered, that there are a number of explicit
7 protections for properties that the pipeline would pass
8 within 500 feet of.

9 Condition 25. And that one is also probably
10 worth saying out loud. Construction must be suspended
11 when weather conditions are such the construction
12 activities will cause irreparable damage unless adequate
13 protection measures approved by the Commission are taken.

14 No. 26 deals with reclamation and cleanup of the
15 right of way and that it would be continuous during
16 construction activities.

17 No. 27 makes it clear that all roads used during
18 construction must be restored to at least their
19 preconstruction condition.

20 No. 28 requires Keystone to file a list
21 identifying private and new access roads that will be
22 used.

23 No. 29 requires a winterization plan for the
24 applicant.

25 No. 30 deals with affected landowners and their

1 property and that the Applicant may encounter physical
2 conditions along the route which make following certain
3 conditions infeasible. After providing a copy of this
4 Order -- or rather the Applicant is required to provide a
5 copy of this Order to the landowner. And if the
6 Applicant and the landowner agree to specific
7 modifications, that Keystone may do what the landowner
8 wants rather than what this Order says. In essence, this
9 gives a lot of discretion to the landowner.

10 So with that, let us discuss any of the
11 specifics of Condition Set III, dealing with
12 construction.

13 And maybe I will start for -- 16d. I think this
14 is a great condition. This says you've got to clean up
15 your mess within 20 days. I wonder -- it says unless
16 it's practicably infeasible.

17 I'd like to add a section where this says, hey,
18 listen. If it is practicably infeasible, if you're not
19 going to get your cleanup done within 20 days, then you
20 have to provide notice to landowners, and such notice
21 must also include an estimate of when such restoration is
22 expected to be completed.

23 Any thoughts on that?

24 COMMISSIONER HANSON: That's perfectly
25 acceptable with me.

1 CHAIRMAN JOHNSON: Okay. Hearing no objection,
2 General Counsel Smith, if you could add that into the
3 language of 16d.

4 I've got an issue with 18, but Commissioner
5 Kolbeck mentioned he had an issue with 18. So I'll go
6 ahead and let you go.

7 COMMISSIONER KOLBECK: I guess my -- Condition
8 18 basically deals with the refueling stations. I know
9 that there is rural population out there, and I'm a
10 little concerned with the fire dangers that are out
11 there.

12 They've done a good job in the CMR about their
13 refueling stations. However, I would like that we
14 require all TransCanada vehicles to carry handheld fire
15 suppression, a shovel, and a radio for emergency contact,
16 whether they're refueling or not.

17 So the only reason I mentioned 18 is because
18 they're required to do that at a fueling station, but I'd
19 also like them to be required to do that under their CMR.
20 It's 2-16 where they do have fire prevention and control.
21 I'd like to add that to that.

22 CHAIRMAN JOHNSON: I don't have any objection to
23 that. I do think maybe we could give -- if we approve
24 it, give John Smith the opportunity to fit that in in
25 some area other than construction.

1 COMMISSIONER KOLBECK: Sure.

2 CHAIRMAN JOHNSON: Somewhere --

3 COMMISSIONER KOLBECK: Well, and that's what I
4 was wondering, if 18 was the exact spot. The only reason
5 I brought up 18 is because it addresses the refueling
6 station, which is in their CMR and what they do at a
7 refueling station.

8 CHAIRMAN JOHNSON: Sure.

9 COMMISSIONER KOLBECK: It includes fire
10 suppression in there, and so I thought maybe we could
11 blend it in that way.

12 CHAIRMAN JOHNSON: Commissioner Hanson, any
13 concerns with that suggestion?

14 COMMISSIONER HANSON: No. I think it's very
15 appropriate. I think it's a good suggestion.

16 COMMISSIONER KOLBECK: One thing I would like to
17 mention, that I want it to apply to off road vehicles
18 too.

19 CHAIRMAN JOHNSON: Great. So fire suppression
20 equipment, a shovel, and a radio.

21 COMMISSIONER KOLBECK: Yep. Handheld fire
22 suppression -- fire extinguisher, shovel, and radio for
23 emergency ground check on all TransCanada vehicles and
24 all off road vehicles.

25 CHAIRMAN JOHNSON: Great. Hearing no objection,

1 that condition will be added somewhere to the list of
2 conditions. And we'll vote on it as part of the
3 Condition Set III.

4 COMMISSIONER KOLBECK: Okay.

5 CHAIRMAN JOHNSON: So okay. Any other thoughts?
6 We'll go round robin style here.

7 Gary, why don't you go, and we'll keep rolling.

8 COMMISSIONER HANSON: Mr. Chairman, on 15
9 subsection b, I'm wondering whether a reasonable standard
10 should be included in that as well. We've included those
11 in 16 -- well, in a number of areas, 16m, n, and o have
12 standards of reasonability.

13 And I was looking at that statement from the
14 standpoint of implement the option for soil handling
15 selected by the landowner. And certainly that should be
16 a reasonable -- there should be some standard of
17 reasonability.

18 I wasn't quite certain how to phrase that, but
19 implement a reasonable option for soil handling selected
20 by the landowner. The challenge always is defining
21 reasonable but --

22 CHAIRMAN JOHNSON: Yeah. You're right. We've
23 got that issue throughout here. I think it's a good
24 suggestion. If I would wordsmith a little, implement
25 whatever reasonable option for so handling?

1 COMMISSIONER HANSON: That's fine.

2 CHAIRMAN JOHNSON: Selected by the landowner?

3 COMMISSIONER HANSON: Correct.

4 CHAIRMAN JOHNSON: Any objection to the Hanson
5 addition?

6 Hearing none, it's added to b, 15b.

7 You know, Dakota Rural Action suggested an
8 adverse weather plan in their Brief. I thought it was a
9 good suggestion. It has not made the final cut here that
10 I can see. And so I would like to add to what would be a
11 new -- well, the end of the construction section, add
12 filing of an adverse weather plan with the Commission.

13 This really is one area where the Commission has
14 learned from the first Keystone Pipeline. You know, that
15 weather was so bad for so long, I'm not entirely clear
16 that having a plan -- I'm sure that TransCanada had a
17 plan. I just think if we have weather like that again,
18 particularly out west with highly erodible soils, I think
19 it will make the Commission and landowners feel better
20 knowing such a plan is on file with the Commission for
21 our review and, frankly, for our follow up if it's not
22 being followed.

23 Any concerns?

24 MR. SMITH: Which one was that, Mr. Chairman? I
25 apologize.

1 CHAIRMAN JOHNSON: Well, that would be a new --
2 that would be a new section. I mean, I guess for right
3 now for numbering purposes it would be 30B, not 30
4 sub b, or 30.5. It would be between 30 and 31.

5 Incidentally, Mr. Smith, you could add it
6 wherever the numbering most made sense from a flow
7 perspective, but we would add it in this section.

8 Hearing no objection, it will be so added.

9 Commissioner Kolbeck, you're up.

10 COMMISSIONER KOLBECK: On 23e, that would be the
11 bonding, I would like to require that all roads be
12 videotaped by TransCanada. I know -- this may be
13 something that we've learned from the first one too. I
14 know some counties had videotaped it, some counties
15 hadn't.

16 Then when it came to our liaison trying to work
17 out deals with certain county organizations and county
18 commissions, I think videotape was very accurate. For
19 both sides. It was an advantage for both sides. So I'd
20 like to add that.

21 CHAIRMAN JOHNSON: I don't have a problem with
22 that.

23 Commissioner?

24 COMMISSIONER HANSON: No. I don't have a
25 problem with that.

1 CHAIRMAN JOHNSON: Okay. Hearing no objection,
2 that will be added to 23e.

3 Anyone have anything else for Section III?

4 COMMISSIONER HANSON: Mr. Chairman.

5 CHAIRMAN JOHNSON: Yes.

6 COMMISSIONER HANSON: I cannot find it right
7 now. I had the section all marked out from Protect
8 South Dakota Resources, and that's one of the challenges
9 with all of the notes that we have here.

10 We have a section in ours on 23e pertaining to
11 bonding that I believe is adequate. Although, as I
12 recall -- and perhaps someone else, if I can jar their
13 memory, Protect South Dakota Resources had some real
14 good -- I thought it was a worthwhile document, a lot of
15 information in it, and they had a suggestion for the
16 bonding.

17 I think it's toward the bottom of their first
18 page. And I'm wondering if -- I don't wish to put staff
19 on the dime here, but if Mr. Smith could -- I know he
20 read those and understood them thoroughly, but it's the
21 second section at the beginning of their proposed
22 conditions now that I find it.

23 And I'm wondering whether in his consideration
24 and deliberation of just what to put there, what he
25 thought of that. Because this one that we have is

1 slightly different from what we had with the first
2 Keystone Pipeline, the 23, subsection e, that's being
3 suggested.

4 Do you find that, Mr. Smith, or have I disarmed
5 you to an extent here?

6 MR. SMITH: You're talking about the second
7 paragraph of the proposed conditions of Protect
8 South Dakota Resources? Is that --

9 COMMISSIONER HANSON: They have a statement --
10 they have a lengthy statement about general liability
11 bond and amount equal to 1.5 times the estimated cost of
12 remediation, removal, cleanup, site restoration of the
13 property. How long the security shall remain in effect,
14 issuer of the security shall provide 180 days. I was
15 just wondering.

16 Like I say, I'm comfortable with what we have.
17 And perhaps I shouldn't have even brought it up since I
18 am comfortable with what you wrote. But at the same time
19 I was just wondering what thoughts you may have had on --
20 maybe that's a private conversation for sometime later
21 over coffee, but I just thought that they had presented
22 some interesting thoughts there.

23 Although it's -- as I read it, it seemed a
24 little bit of a challenge to implement and follow through
25 and such. So a little more challenging.

1 Excuse me. Commissioner Kolbeck has --

2 COMMISSIONER KOLBECK: I was just going to -- I
3 just wanted you to know that I had the same thoughts.
4 And then once I went through the numbers, 31.2 million
5 for roads after two years, I looked back at the first
6 one. We still have \$25 million worth of bonding intact
7 on the first side.

8 COMMISSIONER HANSON: Correct.

9 COMMISSIONER KOLBECK: And that's what
10 alleviated my fears on Section e. Now I don't know if
11 that does it for you, but that's how I felt the 31.2 is
12 sufficient on this one.

13 COMMISSIONER HANSON: And that is a larger
14 amount than what we had on the first Keystone Pipeline.
15 And that was adequate. At least it appears to have been.

16 CHAIRMAN JOHNSON: Well, and as I thought
17 through this same issue, one other consideration is, I
18 mean, you've still got a multibillion dollar asset. Even
19 if there was no bond, they would still have a legal
20 obligation to fix those roads. So there's additional
21 protection beyond just the 31.2.

22 COMMISSIONER HANSON: Well, I have no suggestion
23 for a change from that. And, like I say, I'm comfortable
24 with it. But I thought that it was a worthwhile
25 document, and it was an interesting one. So I appreciate

1 your thoughts. Thank you.

2 Thank you, Mr. Chairman.

3 CHAIRMAN JOHNSON: Thank you. Mr. Koenecke, you
4 were hovering a bit. I want to give you very little
5 latitude to speak. How can we help?

6 MR. KOENECKE: Thank you, Commissioner. I'm
7 willing to accept very little latitude. I appreciate the
8 process you're using, and I don't intend to abuse it.

9 I have a message from Mr. Hicks on behalf of
10 TransCanada looking at 16d on the bottom of page 4. He
11 would like me to share with you the concern about the use
12 of the word "final" in the first sentence of 16d on the
13 bottom of 4.

14 And he informs me that we proposed rough
15 grading and topsoil replacement in those sorts of
16 matters, and I wish I had a message from him telling me
17 more than that.

18 CHAIRMAN JOHNSON: I understand the concern. I
19 agree final may not be the right word. Rough also
20 doesn't seem like the right word. Rough appears like it
21 could be in far rougher shape than maybe we would
22 anticipate it would be.

23 Do you have another word, Mr. Koenecke?

24 MR. KOENECKE: I don't, but if you'd allow me to
25 get one, I'd come back to you.

1 CHAIRMAN JOHNSON: Okay. Great. Let's do it.

2 MR. SMITH: I would point out or at least I
3 believe this language is verbatim from the first -- from
4 the first project. It was buried a little bit
5 differently in the middle of a paragraph, but I think
6 this is absolutely identical language, Mr. Koenecke. But
7 we'll take a look at that.

8 CHAIRMAN JOHNSON: Well, and just because a lot
9 of this wording is different. Some of this wording is
10 the same. Regardless, we want to make sure that it's the
11 right wording. And I do immediately understand why final
12 grading might not be the right word.

13 So okay. Were there any -- were there -- were
14 there any other suggestions over Section III?

15 I am not hearing any. So we will proceed to
16 vote on Condition Set III as amended.

17 Hanson.

18 COMMISSIONER HANSON: Aye.

19 CHAIRMAN JOHNSON: Kolbeck. I'm sorry.
20 Commissioner Kolbeck, we're voting on Condition Set III
21 as amended.

22 COMMISSIONER KOLBECK: Aye.

23 CHAIRMAN JOHNSON: My apologies. Johnson votes
24 aye. Motion carries 3-0. There were a number of
25 amendments to that area.

1 With that, we'll take up Condition Set IV, which
2 is Pipeline Operations, Detection, and Emergency
3 Response.

4 Condition 31 deals with following the PHMSA
5 Special Permit, if issued.

6 32 deals with Keystone requiring compliance by
7 its shippers with crude oil specifications. And that's
8 for internal corrosion, to eliminate internal corrosion,
9 mitigate it, reduce it.

10 33 indicates that Keystone would have an
11 obligation for reclamation and maintenance of the right
12 of way throughout the life of the pipeline.

13 34 deals with assessment activities regarding
14 high consequence areas and specifically instructs
15 Keystone to consult with Geological Survey, Department of
16 Game, Fish & Parks, and local landowners and governmental
17 officials.

18 35 makes special note of Southern Tripp County
19 and the High Plains Aquifer, which in that area is very
20 near ground surface and is overlain by highly permeable
21 sands, which is more of a concern. So it does have some
22 special requests -- rather demands, special treatment for
23 that High Plains Aquifer area.

24 36 requires that before the pipeline is put into
25 operation that Keystone would file with PHMSA and

1 implement an Emergency Response Plan and I believe also
2 Integrity Management Program and that those would also be
3 filed with the Commission.

4 37 deals with periodic pipeline leak surveys
5 and instructs that a corridor centered on the pipeline up
6 to 15 feet wide shall be maintained in a herbaceous
7 state.

8 38 deals with up to a 10-foot-wide corridor
9 centered on the pipeline should be remained herbaceous
10 state in repairing areas.

11 That completes Condition Set IV, a summary of
12 it. Those are Conditions 31 through 38. Does anyone
13 have any comments or suggestions?

14 Commissioner Kolbeck.

15 COMMISSIONER KOLBECK: I just have some
16 comments. I think 33 is an extremely important one. I
17 know Ms. Neimi had mentioned that she got stuck in a rut.
18 It may be something that was put in a long time ago, but
19 it's my understanding that this one obligates them to
20 maintain that right of way for as long as that pipeline
21 is in the ground.

22 That's what we're after, Mr. Smith?

23 MR. SMITH: I guess -- I think so. You know, if
24 you want clarification of it, I can add something to it.

25 COMMISSIONER KOLBECK: Well, and I think it is

1 clear. I just -- it's their obligation for reclamation
2 and maintenance. I don't know of any other word, unless
3 you can help me, that would pertain to ruts, washouts,
4 anything like that.

5 We could probably clarify it like that. But do
6 you see any reason to do that?

7 CHAIRMAN JOHNSON: Now I would -- I would want
8 to make it clear that if -- this is my analysis so
9 someone correct me if I'm wrong. I mean, if there's an
10 agreement reached -- number one, let's say the pipeline
11 is approved. Number two, let's say it gets constructed.

12 That if the county government looks at the roads
13 and says that's great and we're going to sign this and
14 you're going to give us a million dollars to take care of
15 it, they take care of it. That obligation, that
16 agreement that's going to be signed between the local
17 government and the Applicant, makes that obligation go
18 away.

19 Now that being said, you're right, Commissioner,
20 33 indicates that you have a continuing obligation. If
21 you go out and do something to the pipeline, if you
22 change out a part, if you doing some, if you cause damage
23 your obligation to clean up your mess, in essence, never
24 goes away.

25 COMMISSIONER KOLBECK: Exactly. I just wanted

1 to make sure that -- there's a lot of plains out there
2 and they run cattle on them and I just want to make sure
3 that that pipeline right of way is maintained so that
4 there's not ruts or anything else in it. And I think 33
5 does that for me.

6 The other thing I'd like to mention is 36 I
7 think it's very important that -- I don't think we can
8 emphasize that, that Keystone is going to prepare and
9 submit to PHMSA an Emergency Response Plan and the first
10 three letters -- first three words are probably the most
11 important. That's prior to putting the Keystone Pipeline
12 into operation there, they have to have an Emergency
13 Response Plan and emergency conditions. So I think this
14 section may be short, but it's extremely important.

15 CHAIRMAN JOHNSON: Well, and, of course, the
16 Integrity Management Program is also of huge importance.
17 And those will be filed with the Commission, and they
18 will, you know -- the typical confidentiality procedures
19 and the ability to request that information be made on
20 confidential will pertain to this document as it does for
21 all others.

22 Any other comments on Condition Set IV?

23 Hearing none, we will proceed to vote.

24 Hanson.

25 COMMISSIONER HANSON: Aye.

1 CHAIRMAN JOHNSON: Kolbeck.

2 COMMISSIONER KOLBECK: Aye.

3 CHAIRMAN JOHNSON: Johnson votes aye. The
4 motion carries 3-0. I'm sorry.

5 We will proceed to Condition Set No. V dealing
6 with the environmental.

7 39 deals with noise and setting a standard of 55
8 decibels unless that's waived by the owner in writing.
9 And it describes some point of measurement and some
10 process by which people can seek relief if that level is
11 not being met.

12 40 deals with public water supply system and
13 providing the necessary access to Keystone and
14 particularly puts onto Keystone an obligation to replace
15 a portion of any piping that passes through or under a
16 basement wall -- or rather that they are not required.

17 At least 45 days prior to commencing
18 construction Keystone shall publish notice in at least
19 one newspaper of general circulation in each county
20 advising landowners and public water systems of their
21 requirements to replace at no cost polyethylene water
22 piping within 500 feet of the project.

23 41 instructs Keystone to follow all protection
24 and mitigation efforts as identified by the U.S. Fish &
25 Wildlife Service. And then some specific species are

1 noted.

2 Condition 42 deals with drain tile systems and
3 Keystone's obligations regarding those.

4 Are there particular comments regarding
5 subset -- or rather Condition Set V?

6 I perhaps will -- not perhaps. I will raise
7 one. I know it's standard to say make a notice of one
8 newspaper of general circulation. There's at least one
9 county, Meade County, that it's really two universes. I
10 mean, you've got the Faith universe. You've got the
11 Sturgis universe. It just seems to me to be extra
12 cautious -- there aren't that many more newspapers picked
13 up by us saying shall publish notice in all newspapers of
14 general circulation located in each county. It may only
15 be another three newspapers, but it seems to me it makes
16 sure we have proper notice.

17 Are there any concerns regarding that?

18 COMMISSIONER KOLBECK: No.

19 CHAIRMAN JOHNSON: Okay. Then that -- hearing
20 no objection, then that amendment is made to
21 Condition 40.

22 Are there other changes?

23 COMMISSIONER HANSON: Mr. Chairman, on item 40
24 it states that Keystone shall replace at no cost such
25 landowner. Is that how it was phrased in our original --

1 I guess it doesn't matter how it was phrased in our
2 original one or not. I assume it is.

3 Should we not state that they shall replace
4 what? I was -- I was always under the belief that they
5 were to replace it with ductile iron or something of that
6 nature or a nonpermeable pipe.

7 Isn't that the intent? Shouldn't we say that
8 they shall replace at no cost such landowner polyethylene
9 water piping with ductile iron, if that's their intent?

10 MR. SMITH: Well, I don't know that it would
11 necessarily be -- I would say the normal replacement
12 would be PVC, polyvinyl chloride. The difference is
13 polyethylene is highly permeable to BTEX and PVC is not
14 and neither is ductile iron. But I don't know that this
15 one -- the idea was to reduce at least where you have
16 polyethylene where it has a -- a much, much greater
17 probability -- in the event there were a very slow
18 dribble type leak, it's got a much greater probability of
19 being penetrated whereas the evidence, you know,
20 regarding PVC that's been developed by the American Water
21 Works Association demonstrates that PVC is actually a
22 highly impervious to BTEX.

23 COMMISSIONER HANSON: That's good information.
24 I appreciate that. So I would be comfortable if we
25 stated what it's -- perhaps just simply stating with

1 nonpermeable piping.

2 MR. SMITH: That would suit me fine. Yep. I
3 think that's okay.

4 CHAIRMAN JOHNSON: Any objection to that
5 suggestion?

6 Hearing none, so amended.

7 Okay. Good. Any other suggestions to subset V?
8 Condition Set V.

9 Hearing none, we'll proceed to vote.

10 Hanson.

11 COMMISSIONER HANSON: Aye.

12 CHAIRMAN JOHNSON: Kolbeck.

13 COMMISSIONER KOLBECK: Aye.

14 CHAIRMAN JOHNSON: Johnson votes aye. Motion
15 carries 3-0.

16 No. 6 deals with cultural and paleontological
17 resources.

18 No. 43 deals with archaeological resources,
19 cultural resources, historical resources, or grave sites
20 and requires that Keystone follow an unanticipated
21 discoveries plan reviewed by the State Historic
22 Preservation Office.

23 44 goes a bit further. Requires procedures
24 dealing with paleontological resources and has a number
25 of subconditions to make sure those are treated properly.

1 I will indicate under 43 if resources are found,
2 the work must immediately cease under that portion of the
3 site.

4 Any thoughts or comments on Condition Set VI?

5 COMMISSIONER KOLBECK: On 43 I think that
6 Keystone should have to pay for the excavation of a
7 fossil that is disturbed.

8 When I was a Commissioner in Brandon I know that
9 there were many fossils that dealt with human artifacts,
10 human bones. And that's more specifically what I'm
11 talking about is human bones. Not necessarily possibly
12 an arrowhead or something like that. The human remains,
13 if they were to come across, oh, something similar to the
14 Indian village in Mitchell or something where there would
15 be human remains, I know in Brandon that was the
16 responsibility of the landowner, that if they found
17 those, the landowner had to pay and then the Flandreau
18 Sioux Tribe would come and take them and rebury them.

19 I don't want the landowner responsible for that,
20 if the Keystone Pipeline was to unearth anything like
21 that.

22 CHAIRMAN JOHNSON: I would want to make sure our
23 wording is pretty tight on that. I mean, it does seem to
24 make sense to me that if you come across a fossil -- I
25 mean, the landowner has to pay to get that out of there.

1 The work's got to stop. Something's got to happen. And
2 so if that's the intent of your motion, I'm fine. What I
3 wouldn't want is somebody to stumble across a corner of a
4 prehistoric Indian village as you mentioned in Mitchell,
5 have it be a multimillion dollar obligation for
6 TransCanada, even though that area is not affected by the
7 pipeline at all --

8 (Discussion off the record)

9 CHAIRMAN JOHNSON: Even if that area wasn't
10 affected by the pipeline at all, I wouldn't want the
11 Applicant to have some multimillion dollar excavation
12 obligation to excavate the entire area. I would want it
13 focused more on the fossil or the cultural item that was
14 directly affected by the construction activity.

15 Is that what you intended?

16 COMMISSIONER KOLBECK: Well, I've thought about
17 that. And I think that the most reasonable compromise
18 that I could come to would be that they would be
19 responsible for the width of the easement. So if they've
20 got a 50-foot easement, they would be responsible for
21 that -- the 50 feet.

22 Because in my mind I debate on whether -- well,
23 it never would have been unearthed if they wouldn't have
24 been there so it's their responsibility, that they
25 unearthed it in the first place so they should be

1 required to pay for the entire excavation.

2 But then as Mr. Smith and I had talked about,
3 you know, the Indian village in Mitchell, no, I don't
4 think that they should have to go for acres and acres of
5 an old fossil town or settlement.

6 So I would think that maybe just the easement --
7 the width of the easement, contained to the width of the
8 easement would be --

9 CHAIRMAN JOHNSON: So you would put into our
10 conditions an obligation to continue the excavation of an
11 item that was not even disturbed by trenching activities?

12 I mean, to me if you stumble into a house that,
13 yeah, okay, excavate the house. I understand. Let's not
14 hit the landowner for that, although they may have a very
15 valuable item as a result.

16 But if there's a house next to it that was not
17 disturbed, I mean, I just feel like you deal with what
18 you hit, not what you didn't. And discussing a whole
19 easement, I mean, you know, dozens and dozens feet, that
20 would make me a little nervous because then you're
21 dealing with things that were not unearthed but may be
22 considered to be part of the same excavation -- I mean,
23 you don't have to dig them up.

24 COMMISSIONER KOLBECK: No. That's a very good
25 point. And maybe -- I would still think because of the

1 easement and because they were the cause of the
2 unearthing of one artifact that could be related to
3 dozens, I think that TransCanada would be -- should
4 excavate with the -- I understand that you could go north
5 and south quite a ways for the easement.

6 CHAIRMAN JOHNSON: But, I mean, you're dealing
7 with things that have not even been touched, I mean, have
8 not been disturbed. I mean, TransCanada hasn't done
9 anything wrong. They have not disturbed these items.

10 COMMISSIONER KOLBECK: Except the first one.

11 CHAIRMAN JOHNSON: Right. And so if you've got
12 this, you know, creature skeleton, you can unearth that,
13 but that does not require any obligation to then go
14 15 feet away and maybe some paleontologist might say,
15 well, this is part of sort of the same area.

16 I mean, I just want us to just deal with the
17 particular item or fossil or resource that they
18 disturbed. That to me seems like a reasonable condition.

19 COMMISSIONER KOLBECK: And I do understand --
20 and believe me. I've thought about it for weeks on how
21 to handle this. But the easement north and south is
22 hundreds of miles long. So you could -- and in your
23 example that's very true. You could go north and south
24 within the easement for a mile.

25 And in my first thoughts I was thinking side to

1 side. But I -- I do agree with you that the one item for
2 sure they should be liable for that -- the cost of
3 excavating that.

4 CHAIRMAN JOHNSON: So I don't know how we write
5 this in. And we won't wordsmith too much, but let's make
6 sure we give General Counsel Smith enough guidance.

7 If we say TransCanada will bear the economic
8 burden of excavation of individual resources unearthed or
9 discovered during construction activity.

10 COMMISSIONER KOLBECK: I would agree with that.
11 And back to my example in Brandon, they unearthed, well,
12 tens of skeletons, and then they were -- that landowner
13 was responsible to do that. And to your point they were
14 only responsible for what they unearthed so I agree with
15 you.

16 CHAIRMAN JOHNSON: Any thoughts, objections,
17 Commissioner?

18 COMMISSIONER HANSON: I just -- from the way
19 you've phrased it just now, Mr. Chairman, it almost
20 sounded like they were responsible for continued
21 excavation outside of the easement almost. And I don't
22 think that's your intent at all.

23 CHAIRMAN JOHNSON: No. By individual resource I
24 meant that animal, that clay pot, that home, that
25 particular individual item. I tend to throw the

1 adjective "individual" in.

2 COMMISSIONER HANSON: Sure. As long as
3 Mr. Smith understands that that individual resource would
4 not -- a village would not be considered an individual
5 resource so that it couldn't be extrapolated to that.

6 CHAIRMAN JOHNSON: Well, my wording is
7 cumbersome. I mean, if you've got --

8 COMMISSIONER HANSON: No. I think we placed
9 that burden on our general counsel to figure out how to
10 say it. But the intent at least from what you're saying
11 is clear to me that if within that trenching area they
12 disturb something, then they are required to complete the
13 excavation of that item, even if it is outside the
14 trenching area, as long as it's not an entire cemetery or
15 something or an entire village.

16 I'm not sure just how to phrase it myself, but I
17 think it's clear in our minds at least.

18 CHAIRMAN JOHNSON: I think it is. Mr. Smith,
19 would you be able to so amend the conditions?

20 MR. SMITH: I could. I mean, I definitely want
21 to bring up at least a couple of things and at least make
22 sure you guys have thought about it, I guess.

23 One of them is there's a significant difference
24 between 43 and 44. There's a big, big difference between
25 resources that are covered under the federal native

1 population and other burial type site laws -- again, I'm
2 not an expert on that and I haven't looked at the
3 evidence here lately but that Paige Hoskinson testified
4 about. There's a huge difference between those things
5 and paleontological resources.

6 Those resources, first of all, the grave site
7 type resources are the ones that are required by law to
8 be dealt with as sacred objects, I guess, for lack of a
9 better term of native peoples. Those are the ones that
10 put a mandatory financial burden on a landowner.

11 The discovery of a dinosaur does not. It does
12 not. There's no obligation to dig up a dinosaur.
13 There's no -- the landowner has no legal obligation to do
14 anything, you know. So there's a huge difference there.

15 And, I mean -- and I'm not saying you're wrong.
16 I'm not saying not to do that. I'm just saying the only
17 reason a landowner would dig that up is because he wants
18 the dough, you know. I mean, just to be blunt about it.
19 All of a sudden he's a lucky man.

20 And, I mean, I just want to have you ask the --
21 now it's one thing for the portion of the dinosaur that's
22 been -- that's been disturbed and maybe damaged by
23 Keystone. We have a condition in here that requires
24 Keystone to compensate the landowner for damage to
25 property. A dinosaur is landowner's property. Native

1 American bones are not. Those are not. Those are by
2 federal law -- they're not under the same status. Okay.

3 So, you know, I think that's the point is I
4 think we took some experience you had, Commissioner
5 Kolbeck, on the discovery of a certain kind of site that
6 is required to be treated a certain way under the federal
7 laws pertaining to cultural resources -- and mainly we're
8 talking Native American cultural resources -- and we're
9 extrapolating that to something that is not related to
10 that. And that's prehistoric animal bones and the like,
11 and those are not similar. Okay.

12 I just want you guys to know that. Okay.

13 COMMISSIONER KOLBECK: Well, I understand that
14 43 deals with such things as human artifacts whereas 44
15 would be -- is damages. That's what you're saying.

16 MR. SMITH: 44 is paleontological resources.

17 COMMISSIONER KOLBECK: Yes.

18 MR. SMITH: We're talking dinosaurs.

19 COMMISSIONER KOLBECK: Yes.

20 MR. SMITH: 43 deals with cultural resources
21 such as --

22 COMMISSIONER KOLBECK: Human bones.

23 MR. SMITH: Human bones and funerary objects,
24 sites, that kind of thing. And those have a different
25 legal system governing them. Dinosaurs are private --

1 that's property. That's private property. Okay. That's
2 a different kettle of fish totally.

3 And, I mean, I want to at least ask you this
4 because I think you need to consider this on this, is
5 with respect to something, okay, where a landowner had no
6 obligation, okay, which might happen with discovered
7 prehistoric Native American funerary discovery, that kind
8 of a thing, and all the sudden now the landowner's
9 potentially faced with an excavation obligation he didn't
10 have.

11 Okay. Now to me that makes sense. But I think
12 you have to ask yourself on discovery of a
13 paleontological resources where that's an asset of the
14 landowner the extent to which Keystone should bear the
15 burden of that when the burden of that -- the cost of
16 doing that excavation would in the first instance have
17 been totally on the landowner so that he could make money
18 off his property.

19 CHAIRMAN JOHNSON: Okay. What's your pleasure,
20 Commissioner Kolbeck?

21 COMMISSIONER KOLBECK: I guess as long as
22 Commissioner Smith is comfortable knowing that I
23 understand Condition 43 is human artifacts and human
24 bones and there would be requirements by the federal law
25 and expenses by the landowner, that Keystone would be

1 responsible for excavation within the trench itself of
2 those human artifacts and human bones.

3 CHAIRMAN JOHNSON: So you just wanted to deal
4 with 43?

5 COMMISSIONER KOLBECK: Just 43. I have
6 different stuff on 44.

7 MR. SMITH: Under 43 I can even see the idea
8 that to the extent the pipeline excavation causes the
9 landowner to have to incur costs, to me it wouldn't be
10 ridiculous if some of that went outside the trench. But
11 I don't know that it does. I don't think so.

12 But I think you have to look at it completely
13 different in areas where it's a completely voluntary
14 thing for anyone to decide to excavate paleontological
15 resources on your property.

16 CHAIRMAN JOHNSON: Okay. The Kolbeck amendment
17 deals with 43. There has been no objection to its
18 application.

19 Commissioner, did you have another comment?

20 COMMISSIONER KOLBECK: No. As long as we all
21 understand what I'm getting after here. Okay. Good.

22 CHAIRMAN JOHNSON: Good. Any further comments
23 on Condition Set VI?

24 Hearing none -- additional comments?

25 COMMISSIONER KOLBECK: Yep. These are

1 additional comments. Now on 44 now when we are talking
2 about paleontological, dinosaurs, I feel that if you're
3 going to dig that trench through there and say you've got
4 a full skeleton of a Tyrannosaurus Rex out there and you
5 just hit the tail, I think that TransCanada should be
6 liable for the difference between the value of a full
7 complete fossil and now one that is incomplete.

8 CHAIRMAN JOHNSON: And I think further
9 conditions make that clear that when you damage the
10 property you're paying for the damage. But I shouldn't
11 have answered.

12 Frankly, you know, Mr. Smith, what's your legal
13 analysis of that?

14 MR. SMITH: I think it does. I mean, if you
15 want to put in any of the damage section, which is later
16 on, some specific things on damaged paleontological
17 resources, I don't think that would necessarily hurt.

18 You know, and I'm understanding -- you're not
19 now saying -- because the fact that they would pay for
20 damage to the resource -- which could happen. I mean,
21 you know, a trenching machine can conceivably damage a
22 valuable piece of property. That's one thing. You're
23 not again saying -- we're not back on required
24 excavation, though; right?

25 COMMISSIONER KOLBECK: Yes. And I understand

1 that.

2 MR. SMITH: Okay. Okay.

3 COMMISSIONER KOLBECK: The only reason I brought
4 it up on 44 is because it's specifically procedures
5 regarding paleontological resources. But we can -- I
6 know that you addressed that in 45 and 47 also so I'm not
7 sure where the correct place for you to put it in would
8 be.

9 CHAIRMAN JOHNSON: Let's -- my thought would be
10 let's go -- let's see if we add 45 and 47 to the list of
11 conditions and at that time if you don't think that is
12 explicit enough with regard to paleontological resources,
13 we can go back into 43 and 44 -- or rather 44.

14 COMMISSIONER KOLBECK: Sounds good.

15 CHAIRMAN JOHNSON: Great. Further comments on
16 Condition Set VI?

17 Hearing none, we'll proceed to vote.

18 Hanson.

19 COMMISSIONER HANSON: Aye.

20 CHAIRMAN JOHNSON: Kolbeck.

21 COMMISSIONER KOLBECK: Aye.

22 CHAIRMAN JOHNSON: Johnson votes aye. Motion
23 carries 3-0.

24 With that, we have our final Condition Set VII,
25 which deals with enforcement and liability for damage.

1 Condition 45 deals with an obligation Keystone
2 would have to repair or replace all property removed or
3 damaged during construction, which would not be limited
4 to fences, gates, utilities, water supply, irrigation,
5 and drainage systems. And Keystone would compensate the
6 owners for damages or losses that could not be fully
7 remediated.

8 46 deals with a person's individual well and
9 possible contamination of that resource and that Keystone
10 would have to supply water of at least similar quality
11 until that was resolved.

12 47 deals with damage caused by Keystone as a
13 result of soil disturbance on a person's property and
14 makes them financially liable for all of that damage.

15 48 indicates that no person will be held
16 responsible for a pipeline leak that occurs as a result
17 of his or her normal farming practice.

18 Condition 49 indicates that Keystone shall pay
19 commercially reasonable costs and indemnify and hold the
20 landowner harmless for any loss, damage, claim, or action
21 resulting from Keystone's activities or use of the
22 easements.

23 Finally Condition 50 indicates that the
24 Commission's complaint process would be available to
25 landowners in dealing with these subjects.

1 Okay. Any comments on Condition Set VII?

2 COMMISSIONER KOLBECK: I understand that we
3 already approved 44. And I understand that that has
4 paleontological resources specifically mentioned. But
5 maybe on 46 where we mention but not limited to -- I'm
6 sorry. 45 where we say could but not limited to fences,
7 gates, water, supplies, irrigation, drainage, maybe could
8 mention it there too.

9 CHAIRMAN JOHNSON: What about 47? I'm not sure
10 if 47 and 45 both need to be in here. And I'm
11 surprised -- because 47 is much broader in some ways.
12 Maybe not. Any damage that occurs -- well, that's
13 because of soil disturbance. 45 doesn't deal just with
14 soil disturbance. Does 47?

15 COMMISSIONER KOLBECK: I'm comfortable with
16 Mr. Smith making the determination. I guess my biggest
17 concern is fossils are included in there, and it's made
18 very clear that -- I kind of like 47 the way it's written
19 already. And I would rather it go into 45 where we're
20 listing specific things, but that's just --

21 CHAIRMAN JOHNSON: But you don't think 47 is
22 clear enough without explicit notice in 45 to fossils?

23 COMMISSIONER KOLBECK: I do. I think that 47,
24 any damage that occurs as a result of soil disturbance to
25 personal property, which would include a fossil, I

1 understand what it means. I just want to make sure that
2 the landowners know that when they read these conditions
3 they know that we took into account -- that we're
4 concerned about those fossils and TransCanada is liable
5 for them. And I just don't know where the best place to
6 put that in is.

7 CHAIRMAN JOHNSON: Okay. Well, we have a
8 suggestion to add fossils into the list in 45. I think
9 the damage section is really clear that TransCanada owns
10 all of this so I would probably resist it.

11 Now that being said, let's see what Commissioner
12 Hanson says. Because if he wants fossils in, then
13 fossils are in.

14 COMMISSIONER HANSON: With all due respect to
15 Commissioner Kolbeck, I really appreciate his passion.
16 My concern is that once we start itemizing or grocery
17 listing items -- it says repair or replace all property
18 removed or damaged.

19 And we agree that paleontological resources are
20 property; therefore, one would necessarily have to
21 conclude that they have to repair or replace those items.
22 So I'm not sure -- you know, I don't have a problem with
23 putting it in because I think it's included. I'm just --
24 we'd have to say replace all property including but not
25 limited to paleontological resources. So either is fine.

1 CHAIRMAN JOHNSON: All right. Commissioner, it
2 sounds like we're both not sold on the idea, but neither
3 of us is really objecting to it either. So let's go
4 ahead and put it in.

5 Mr. Smith, is that clear to you that that will
6 be inserted into 45, paleontological resources?

7 MR. SMITH: Right. Let me see. Repair,
8 replace -- and we have other conditions, and I think if
9 we've included that as property -- obviously repairing --
10 I don't know. I suppose you can repair a dinosaur. I
11 suppose they do it all the time. You probably can't
12 replace him.

13 CHAIRMAN JOHNSON: Well, it does --

14 MR. SMITH: But we have the condition, the hold
15 harmless condition in 49, so I'm assuming, you know, if
16 it can't be -- to the extent it can't be repaired, I
17 would assume it would be a loss. It would be recoverable
18 under 49.

19 Does that make sense?

20 COMMISSIONER KOLBECK: Yes. That's -- and maybe
21 I'm not explaining myself very well. But say a fossil's
22 worth 5 bucks and they broke it and now it's worth \$2.50.
23 I think TransCanada now would be liable for \$2.50.

24 CHAIRMAN JOHNSON: And I think we're all in
25 agreement that's the case. If you want to make that more

1 clear for people reading this, sounds like we're all fine
2 with that. We'll make that inclusion.

3 Hearing no objection to it, other suggestions to
4 Condition Set VII?

5 COMMISSIONER KOLBECK: I don't have anything
6 specifically to that.

7 CHAIRMAN JOHNSON: Okay. With that, we will
8 proceed to vote on Condition Set VII. All those in favor
9 will signify by saying aye.

10 Hanson.

11 COMMISSIONER HANSON: Aye.

12 CHAIRMAN JOHNSON: Kolbeck.

13 COMMISSIONER KOLBECK: Aye.

14 CHAIRMAN JOHNSON: Johnson votes aye. The
15 motion carries.

16 Are there new sections or new conditions not
17 listed within the draft conditions you want to suggest?

18 COMMISSIONER KOLBECK: I have one.

19 CHAIRMAN JOHNSON: Go ahead.

20 COMMISSIONER KOLBECK: I know that it's slightly
21 covered in here, but I think that I'd like to see a
22 paleontologist on-site the whole time the pipeline passes
23 through Hell's Kitchen (sic).

24 MR. SMITH: When you say -- do you mean Hell
25 Creek formations?

1 COMMISSIONER KOLBECK: Did I say kitchen? No,
2 we're not in New York.

3 MR. SMITH: That's my old neighborhood in
4 New York City.

5 CHAIRMAN JOHNSON: I understand the purpose
6 behind it. I mean, it's -- I want to think about it some
7 more, but I will likely resist the suggestion for two
8 reasons.

9 We are already making it clear that they're
10 supposed to conduct, you know, a literature review and
11 then go out in those areas where we have indication -- or
12 reason to believe that it's sensitive, actually have
13 someone out there doing a field survey.

14 We've also got -- it's not just -- I know we've
15 got a lot of recent focus on paleontological. But water
16 systems are also really important, and we're treating
17 southern Tripp County separately.

18 And I don't want to send the message since we're
19 not having a hydrologist on site throughout that area,
20 that we in some respects think paleontological resources
21 are more valuable than water resources. Or, you know,
22 wetlands. We have special treatment for wetlands. We
23 have special treatment for areas with low reclamation
24 potential for soils.

25 And it seems to me that we've got a lot of rules

1 that have to be followed, and it is really TransCanada's
2 obligation to make sure that they have the trained
3 environmental monitors on site to deal with all the
4 issues we're talking about. I would be a little nervous
5 about picking and choosing first children among those
6 important priorities.

7 COMMISSIONER HANSON: Mr. Chairman, you say it
8 very articulately. It's interesting, Commissioner
9 Kolbeck. I hadn't considered that. And certainly,
10 Mr. Chairman, your arguments are quite valid.

11 The first thing I thought of is the job market
12 and the fact that this is an opportunity to, yes, include
13 every one of those and have full employment by
14 instituting that particular rule.

15 However, from a practical standpoint it would
16 seem that people can recognize the responsibility for
17 those instances that you enumerated, that they'd have
18 someone there. And looking at this from the first
19 glance, as I am now, from my practical experience I am
20 aware of a pipeline that was constructed and that I went
21 out and I always enjoyed going out and seeing
22 construction take place.

23 And I was speaking to one of the workmen and he
24 stated, Did you hear about the huge clam that we dug up?
25 And I was like, No. And he said, It took a bunch of us

1 to haul it out and we had it roped up and everything and
2 we drug it up. I said, Where is? And he said, Oh, gosh.
3 When the foreman saw it he said throw it back. And
4 something that -- I don't know what the value is of a
5 huge clam that was -- you know, and I asked, Whereabouts
6 was it? And he said, None of us know exactly where it
7 was thrown.

8 And I don't know. I think it -- the suggestion
9 has some merit. You know, how would any one of us or
10 someone else know when we saw a small bone that that was
11 part of a larger fossil or something of that nature. And
12 I don't know what the value is of having -- when you have
13 a great big trencher just digging through as it goes
14 along, it's going to be very unlikely that someone's
15 going to be able to point to one item through those huge
16 drifts of soil and figure it out.

17 As we inspected the Keystone Pipeline, the first
18 one, as it was being trenched, I visited that in a number
19 of areas and, gosh, with all that mud and everything else
20 in there it would be pretty hard to identify anything.
21 So I don't know the value of it but at the same time I
22 think there's a potential in this part of the -- neck of
23 the woods that there would be some value to it.

24 On the other hand, my brother who's a rancher in
25 that area, you can just walk through his land and pick up

1 fossils all over the place. So I don't know -- it's a
2 tough call for me.

3 CHAIRMAN JOHNSON: At least if these conditions
4 are imposed by the Commission and if the project is
5 approved, you know, throwing the clam back in would be a
6 violation of --

7 COMMISSIONER HANSON: Right.

8 CHAIRMAN JOHNSON: I mean, I think. I guess I'd
9 want to see the clam. I'd want to know if it was
10 prehistoric. That kind of wanton carelessness can also
11 be done with refueling of vehicles, you know, and you
12 could do -- frankly, refined gasoline product, as we all
13 know, is many, many times -- or has many higher
14 concentration of BTEX than the crude oil product actually
15 in the pipeline. Should we have a refueling supervisor?

16 I mean, we're requiring the liaison and the
17 construction manager and the environmental monitors to
18 try to make sure that these things are followed upon
19 penalty of law to TransCanada. I just don't know that I
20 can be comfortable carving out this as opposed to
21 refueling.

22 COMMISSIONER HANSON: Sure.

23 CHAIRMAN JOHNSON: Or any number of 50
24 apparently other things.

25 COMMISSIONER KOLBECK: And you make good points,

1 Commissioner Johnson. You really do. The only reason
2 that I separated this out was if an aquifer was damaged,
3 we'd know that. If a wetland was damaged, we'd know
4 that. They leave permanent marks.

5 As Commissioner Hanson alluded to, kicking a
6 bone back in the trench is tough to discover once it's
7 passed. So I guess that's one thing that I've -- why
8 I've kind of carved it out. You make excellent points,
9 and Commissioner Hanson does too.

10 If the landowner requested a paleontologist,
11 would that be acceptable through Hell Creek?

12 CHAIRMAN JOHNSON: There are -- if this project
13 moves forward, there are to be a number of construction
14 spreads. So how many paleontologists are we talking? I
15 mean, how many are there in the state?

16 So you've got three landowners whose land is
17 being worked on, you know, at the same time. Do we need
18 three paleontologists? And if there's only one, are we
19 still -- I mean --

20 COMMISSIONER KOLBECK: I was just going to say
21 Hell Creek isn't --

22 CHAIRMAN JOHNSON: Right. You just have
23 Hell Creek.

24 COMMISSIONER KOLBECK: Only through there. So
25 we're talking about a very well-known -- that's where Sue

1 came from. That's where all the finds came through.

2 CHAIRMAN JOHNSON: I don't want to get too
3 philosophical, but when we start talking about -- because
4 you're right. These resources are incredibly valuable.
5 But the fact that weeks after horrible damage would
6 happen to an aquifer would be discovered, that to me
7 doesn't make me feel any better about potential damage.

8 I mean, if you want to talk about Maslow's
9 hierarchy, I mean, survival is -- that's really
10 important. So, again, I would be nervous about saying,
11 well, that fossil is more important than -- because we'll
12 figure out the environmental damage after the fact. That
13 doesn't make me feel any better.

14 COMMISSIONER KOLBECK: And I understand that. I
15 understand that, but I do think that aquifers are more
16 important. I'm not going to -- I'm not going to debate
17 that. I do think that there's a lot of things that are
18 more important, but the law gives them more weight, I
19 feel.

20 As far as Mr. Smith had mentioned, this is a
21 personal asset. It's not necessarily defined under
22 federal law. It's not defined under state law.
23 Paleontological resources are a property owner's asset.

24 CHAIRMAN JOHNSON: And that under Condition 44
25 at least if they're discovered, construction must

1 immediately cease.

2 COMMISSIONER KOLBECK: Yes. If they're
3 discovered. I guess I'm wondering if we're -- we're
4 giving our best on the discovery end of it.

5 CHAIRMAN JOHNSON: Any other thoughts?

6 COMMISSIONER KOLBECK: But I will amend it to if
7 the landowner requests one. Not as a -- I'm not saying
8 that they have to through the whole creek. I'm saying if
9 the landowners who own land through Hell Creek feel that
10 they would like a paleontologist on site, then
11 TransCanada should provide one.

12 CHAIRMAN JOHNSON: And you do understand that, I
13 mean, this resource if it's found, all of the financial
14 benefits accrue to the landowner?

15 COMMISSIONER KOLBECK: Yes.

16 CHAIRMAN JOHNSON: Other thoughts on the
17 suggestion?

18 COMMISSIONER HANSON: Mr. Chairman, I'll support
19 the suggestion.

20 CHAIRMAN JOHNSON: Okay. Then it sounds like we
21 have that suggestion added.

22 COMMISSIONER KOLBECK: And just to be clear, I
23 don't think that aquifers are unimportant or fire or
24 fueling stations or anything are unimportant. I just
25 feel that the amount of knowledge that is out there about

1 this puts the landowner at a -- more of a disadvantage
2 than -- we have the DENR. We have the federal
3 government. We have all of these other resources
4 available to landowners on other conditions.

5 CHAIRMAN JOHNSON: Well, I will tell you that
6 the concern I have with this is that either this
7 mechanism works or it doesn't. And we're saying for one
8 area we think the Commission's word, the force of law,
9 and the people on staff --

10 Well, it's been added. And so it's been added,
11 and we'll move on.

12 Are there other suggestions to the addition of
13 the conditions, the set of conditions?

14 Hearing none, we will go ahead -- we have held
15 our main motion in abeyance to be able to have this kind
16 of back and forth conversation about what the draft
17 conditions should look like.

18 I would now move that the conditions as amended
19 be added to the main motion, and we'll proceed to vote on
20 adding those amendments to the main motion.

21 Hanson.

22 COMMISSIONER HANSON: Aye.

23 CHAIRMAN JOHNSON: Kolbeck.

24 COMMISSIONER KOLBECK: Aye.

25 CHAIRMAN JOHNSON: Johnson votes eye.

1 We will now open up discussion for the main
2 motion to approve the Keystone XL Pipeline with the
3 conditions -- with conditions.

4 COMMISSIONER HANSON: Mr. Chairman, if I may,
5 first I'd like to compliment you, and with that I should
6 compliment my fellow -- Commissioner Kolbeck,
7 vice-chairman, for the work that you did and how you
8 proceeded with this. It's challenging as we go through
9 this process, especially one this complex. If not that
10 our other duties are not complex, but this is extremely
11 difficult when the three of us do not have the
12 opportunity to discuss these issues prior to open
13 meeting.

14 And I'm glad to see the meeting wasn't
15 necessarily protracted in duration by any means. It went
16 well, and I think a lot of that has to do with you. But
17 certainly a lot of it has to do with staff.

18 I wish to commend Mr. Smith. I want to call
19 everyone by their first name. Mr. Smith for the work
20 that he did in preparing the draft. I know we had a lot
21 of discussions with him individually. And he took the
22 pieces of what we said to him and put a very admirable
23 conditions permit together.

24 And I'd also -- I don't wish to supersede
25 anything that either of you feel towards staff, but I

1 think they did a tremendous job, especially in
2 representing the citizens of South Dakota. I don't think
3 the citizens really recognize or appreciate the fact that
4 we are basically a trifurcated agency where certain staff
5 people, including Kara Semmler who's an attorney,
6 basically represents the citizens of South Dakota and
7 goes through all the processes in representing them.

8 And I appreciate the information that they
9 provided to us. The draft suggestions that they made
10 were all incorporated into this. And I did compliment
11 Protect South Dakota Resources at one juncture. I
12 thought that the information that they provided to us was
13 very good.

14 I would like to say that I found it very
15 counterproductive for the Sierra Club to send out
16 basically 60 e-mails to me all saying the very same thing
17 from people from New York and Kansas and places of that
18 nature. I thought that it was much more valuable -- and
19 certainly that was of little value, just more or less
20 a -- well, a lot of e-mails were obviously the same.
21 They were distorted, and I just don't think that it
22 provided much for us at all.

23 I thought the public hearings, public meetings
24 that we held were extremely valuable. I noticed
25 Paul Seamans was in the audience and I went up and

1 chatted with him momentarily during the break. And I
2 still have his notes in front of me from when he appeared
3 along with all of the other individuals. I know that
4 each of us were taking notes with each person who
5 attended.

6 And I reviewed those after we had the
7 information, and I saw that for the most part people just
8 were concerned about the environmental aspects of it,
9 remediation, reclamation, mitigation. They wanted to be
10 certain that they were going to be treated right. And
11 I'm very pleased that with the final outcome. I think it
12 accomplished that.

13 So I just want to say kudos all around for those
14 people who participated in this process from West River
15 and the staff and my fellow Commissioners.

16 Thank you, Mr. Chairman.

17 CHAIRMAN JOHNSON: I think that's well said,
18 Commissioner Hanson. Lots of work has gone into this.
19 And maybe just some additional context. When you look at
20 the record that's been compiled on this it's pretty
21 impressive. You know, thousands of hours of staff time,
22 numerous outside consultants with, you know, true
23 expertise in the areas that they were retained to
24 investigate. And, you know, frankly, hundreds of
25 landowners showing up and providing their feedback too.

1 I mean, I think that's well said on your part.

2 COMMISSIONER HANSON: I really don't mean to --
3 thank you. I really don't mean to leave out any staff
4 by -- and I probably shouldn't have even mentioned the
5 two that I did because there are so many different
6 members of the staff that did such a fantastic job.
7 There's a lot of work that goes into this process, and
8 regardless of whether it's setting up meetings to putting
9 information together and gathering it and checking --
10 fact checking and things of this nature, it was just I
11 thought handled very well. I was very pleased with it.

12 Forgive me for interrupting.

13 CHAIRMAN JOHNSON: No. I think it was important
14 to say. And I think a lot of people probably wouldn't
15 understand the due diligence that all the parties in this
16 proceeding do. I mean, not just the Commissioners as the
17 decision-makers but all parties. I said thousands of
18 hours. That's no overstatement for the amount of due
19 diligence that is done in something like this.

20 Safety. You mentioned safety, Mr. Hanson. I
21 think that's important to hit on. We've got in the
22 record which was not challenged that the average spill in
23 this country in recent years has been about three
24 barrels. The spill frequency for any given mile of the
25 pipeline to be one in about every 7,400 years. There

1 will be full-time staff located within South Dakota to be
2 able to respond to any detected emergency within hours.

3 And I think when you contextually put all of
4 that together you realize that this project can be done
5 in a way that is sensitive to the needs of South Dakota,
6 to her land and her people, and it's been our job to try
7 to make sure that if this thing happens, it happens in
8 the right way. And I think our 50 conditions if we vote
9 to approve it will be evidence of that.

10 Any other comments?

11 COMMISSIONER KOLBECK: I just want to -- this is
12 our second pipeline, devoted years of staff time to this
13 actually now between the two of them. There's no doubt
14 that people are passionate about it.

15 But I hope that everyone has been treated with
16 respect from our Commission, from our employees, and from
17 the Commissioners. So we really want to help you as
18 landowners and Applicants. Hopefully respect was one of
19 the things that we have given you.

20 I do feel that we've done our due diligence.
21 The law is hard to understand sometimes, and silence of
22 the law and what it means without saying what it means
23 are sometimes very difficult things to interpret.

24 We do do more in South Dakota than most of the
25 states south of us. Nebraska doesn't even have this

1 ordinance. I know that all the conditions that will be
2 put on the pipeline at the state border can cease to
3 exist. I do think that we do more than the majority of
4 the states south of us. And I feel very comfortable with
5 that.

6 I hope that the landowners understand why we
7 made the decisions that we've made. And if they don't,
8 we'd sure feel that we can still help them as we have in
9 the first pipeline on the east side of the state. We
10 stand ready to help the landowners on the west side of
11 the state.

12 Thank you.

13 CHAIRMAN JOHNSON: Any further discussion on the
14 pending motion?

15 Hearing none, then we will proceed to vote.

16 Hanson.

17 COMMISSIONER HANSON: Aye.

18 CHAIRMAN JOHNSON: Kolbeck.

19 COMMISSIONER KOLBECK: Aye.

20 CHAIRMAN JOHNSON: Johnson votes aye. The
21 motion carries 3-0.

22 And a special thanks to Mr. Smith for trying to
23 articulate what the Commissioners were telling them. And
24 a special thanks to our court reporter. We went far, far
25 longer without a break than we normally do.

1 With that, is there a motion to adjourn?

2 COMMISSIONER KOLBECK: So moved.

3 CHAIRMAN JOHNSON: Motion has been made. We'll
4 proceed to vote.

5 Hanson.

6 COMMISSIONER HANSON: Aye.

7 CHAIRMAN JOHNSON: Kolbeck.

8 COMMISSIONER KOLBECK: Aye.

9 CHAIRMAN JOHNSON: Johnson votes aye. Motion
10 carries 3-0.

11 Have a great evening. Thank you.

12 (The proceeding is concluded at 5:10 p.m.)

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1 STATE OF SOUTH DAKOTA)

2 :SS

CERTIFICATE

3 COUNTY OF SULLY)

4
5 I, CHERI MCCOMSEY WITTLER, a Registered
6 Professional Reporter, Certified Realtime Reporter and
7 Notary Public in and for the State of South Dakota:

8 DO HEREBY CERTIFY that as the duly-appointed
9 shorthand reporter, I took in shorthand the proceedings
10 had in the above-entitled matter on the 18th day of
11 February, 2010, and that the attached is a true and
12 correct transcription of the proceedings so taken.

13 Dated at Onida, South Dakota this 26th day of
14 February, 2010.

15
16
17 

18 Cheri McComsey Wittler,
19 Notary Public and
20 Registered Professional Reporter
21 Certified Realtime Reporter
22
23
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