

1 TRANSCRIPT OF PROCEEDINGS, held in the
2 above-entitled matter, at the South Dakota State Capitol
3 Building, Room 413, 500 East Capitol Avenue, Pierre,
4 South Dakota, on the 14th day of May, 2015.

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1 CHAIRMAN NELSON: I'm going to call the Public
2 Utilities Commission Ad Hoc Meeting to order.

3 This is Chairman Nelson. I have with me in the
4 meeting room Acting Commissioner Sattgast. We have
5 Commissioner Hanson on the phone line.

6 We are here in the matter of Docket HP14-002, In
7 the Matter of the Application of Dakota Access, LLC for
8 an Energy Facility Permit to Construct the Dakota Access
9 Pipeline.

10 In particular on May 12, 2015, Yankton Sioux
11 Tribe, Rosebud Sioux Tribe, Indigenous Environmental
12 Network, and Dakota Rural Action filed a Joint Motion for
13 Reconsideration of our Order dated May 11, 2015.

14 And the question today then, shall the
15 Commission reconsider its Order for and Notice of Motion
16 Hearing dated May 11, 2015, and if so, when should the
17 Commission hear the Joint Motion?

18 I'm going to go back to the phone lines.
19 Glenn Boomsma, have you joined us?

20 Not hearing Glenn.

21 Kimberly Craven, have you joined us?

22 Not hearing Kimberly.

23 Thomasina Real Bird, have you joined us?

24 MS. REAL BIRD: Yes, Mr. Chairman. I'm here.

25 CHAIRMAN NELSON: Excellent.

1 Again, I'd remind everybody if you're not
2 speaking, please have your phones on mute.

3 With that, I am going to turn it over to
4 Ms. Real Bird.

5 MS. REAL BIRD: Thank you, Mr. Chairman and
6 members of the Commission.

7 We brought the Motion for Reconsideration
8 because it seems that the point of the Motion to Amend
9 the Procedural Schedule in part was to bring to the
10 Commission's attention the deadlines that are -- we feel
11 need to be reset.

12 In particular, there's a deadline for May 22 for
13 parties to submit their second round of discovery. And
14 when the Commission set the hearing on the Motion to
15 Amend the Procedural Schedule we understand the
16 Commission did not waive the 10-day notice requirement
17 and instead set the hearing for May 26 and set a short
18 schedule for a response deadline.

19 We're asking the Commission to reconsider the
20 May 26 date because it falls after the May 22 date for
21 parties to submit their second round. And, you know, we
22 still -- the Commission granted the Motion to Compel in
23 part from the Yankton Sioux Tribe, and we still aren't in
24 receipt of those documents or information from the
25 Applicant. And so now we're faced with this May 22

1 deadline, but the hearing on whether to amend that date
2 falls after.

3 And so that's from our perspective a very --
4 that's really why we're here today, I think, to
5 reconsider the setting of that May 26 date.

6 And also -- and I know that we didn't put this
7 in Motion form, but we noticed in the Order Granting the
8 Motion to Compel in part that there was no deadline for
9 the Applicant to provide the answers. And so figuring
10 out how that all fits in, we think it might be relevant
11 today for the Commission to discuss and consider.

12 Thank you.

13 CHAIRMAN NELSON: Thank you. I appreciate that.

14 And on your very last point I will admit to you
15 that was my oversight, not including a deadline date. I
16 actually had one written on my paper but it didn't get
17 enunciated in the Motion and that was my error. And
18 hopefully we can come to an agreement on that today
19 also.

20 With that, others that are part of this Motion.

21 Mr. Rappold, anything to add?

22 MR. RAPPOLD: Yes. Thank you, Mr. Commissioner.
23 Matt Rappold on behalf of Rosebud.

24 We would echo Ms. Real Bird's concerns regarding
25 the Procedural Schedule and then add just a little bit to

1 that concerning the overall schedule. And one of our
2 concerns is the way the schedule is set up, and we ran
3 into these concerns in another Docket as it relates to
4 the requirement to prefile direct and rebuttal testimony
5 prior to discovery actually being complete.

6 If you'll notice in the Procedural Schedule
7 parties are not required to file their final discovery
8 responses until September 24, which is about almost three
9 weeks after the final prefiled rebuttal testimony is due
10 and then several months after the prefiled direct
11 testimony would be due under the current schedule.

12 So we're asking substantively to kind of
13 rearrange some of those dates so that we can have
14 prefiled, direct, and rebuttal testimony be filed with
15 the Commission and all the parties after the discovery
16 period has been fully resolved.

17 So that's one of the things that we would ask
18 the court -- sorry. Not the court -- the Commission to
19 consider is to kind of move some of those dates around a
20 little bit so that discovery is done, we have a
21 sufficient time period to review, respond, and file
22 Motions to Compel if it comes to that, prior to actually
23 being required to file our prefiled and rebuttal
24 testimony.

25 Thank you.

1 CHAIRMAN NELSON: Thank you. I'm going to go to
2 Ms. Edwards with Staff.

3 MS. EDWARDS: Thank you. Kristen Edwards for
4 Staff.

5 Staff does in this circumstance support the
6 Motion to Reconsider. I typically would not support a
7 motion on less than 10 days' notice because as the
8 Commission's well aware we work with one of the smallest
9 staffs in the nation so having a motion on less than
10 10 days' notice puts an incredible amount of stress on
11 us.

12 However, we are very dedicated to effectively
13 processing this docket and are more than prepared to hear
14 the underlying Motion as soon as the Commission prefers.
15 And, in fact, we plan to submit our written response as
16 early as this afternoon or right after the Commission
17 meeting.

18 In addition, as I'm sure the Commission is
19 aware, the 26th meeting when this is currently scheduled
20 is going to be quite a long meeting so this would
21 actually take some pressure off the Staff and Commission
22 to have this heard on a different date.

23 As far as the comments by Mr. Rappold, I'm not
24 going to get into at this time Staff's position on moving
25 all of those dates because that was not noticed for

1 hearing today. However, if the Commission does grant
2 this Motion, Staff does stand prepared to offer up
3 alternative dates. We have discussed the matter with
4 administrative staff so that we can move into that
5 quickly, if necessary.

6 Thank you.

7 CHAIRMAN NELSON: Thank you.

8 At this point we will turn it over to
9 Mr. Koenecke and Ms. Semmler with the Applicant.

10 MR. KOENECKE: We are going to take no position
11 on the question here today.

12 CHAIRMAN NELSON: Wow. Which means then we need
13 no rebuttal. Thank you.

14 With that, questions from the Commission.

15 I'm going to start with one for the Applicant.
16 As Ms. Real Bird noted, it was my oversight in not
17 establishing a date for you to comply with the Motions to
18 Compel.

19 Can you tell us when that will be accomplished?

20 MR. KOENECKE: Thanks for asking that question,
21 Commissioner. I appreciate it.

22 I should point out here the Intervenors have
23 done a great job of telling the Commission and everybody
24 else involved in this what they didn't get by way of
25 discovery from us. And I want to point out here today we

1 answered a lot of questions, and we provided a lot of
2 information.

3 Numerous questions were asked. I would say next
4 time I'm going to ask for a limit on the number of
5 discovery questions that can be asked if there is another
6 Docket.

7 But we've answered a bunch of them. They've got
8 a lot of discovery and a lot of places to go to start
9 putting together their testimony.

10 We now have a lot of information to give back to
11 them. It's not going to come all at once. People have
12 started -- as of Tuesday afternoon 2 o'clock already we
13 were talking about gathering information. It's going to
14 best come out as we get it.

15 I think the smartest thing to do is to send it
16 out as it comes in and keep it moving forward. We don't
17 want to prejudice the interest of the Intervenors or the
18 Docket and the schedule.

19 But to put a hard date on when it's going to be
20 all done, that is -- I can't tell you that here today.
21 But I'm willing to work it out. And if you want to give
22 me a date, then I'll tell them that's what the date is.
23 But I can't offer one up and say it's definitely going to
24 be done by Tuesday next or Thursday next.

25 My plan would be -- and it's a practical plan --

1 is to start getting it out in their hands as soon as it
2 gets through mine and put it in theirs.

3 CHAIRMAN NELSON: Thank you. I'll be honest.
4 That was more of an oblique answer than I was hoping for.
5 But I understand what you are saying.

6 Just so that everybody knows, the date that I
7 had written on my sheet which should have been enunciated
8 was May 18. But that's not part of the Order, but that I
9 think would have kept us on track.

10 And so I guess at this point based on your
11 answer that's an open question, but it may come back
12 around if this particular Motion passes and we end up
13 meeting on the changing of the Procedural Schedule. So
14 won't be the last time I ask the question.

15 Other Commissioner questions.

16 Not hearing any Commissioner questions. Is
17 there a Motion?

18 I will move that in HP14-002 that the Commission
19 grant the request from Yankton Sioux Tribe, Rosebud Sioux
20 Tribe, Indigenous Environmental Network, and Dakota Rural
21 Action for reconsideration of our Order dated May 11,
22 2015, and should this Motion pass, we anticipate a date
23 immediately as to when that would occur.

24 Discussion on the Motion.

25 I will say to everybody, I'm not convinced we

1 need to do this, but by the same token I don't think it
2 hurts anything. And as Ms. Edwards has indicated, the
3 agenda that we have got already for May 26 is going to be
4 lengthy anyway and perhaps taking this much off of that
5 agenda would be helpful to us as well. And so, hence, my
6 Motion.

7 Additional discussion.

8 Hearing no discussion, all those in favor of the
9 Motion will vote aye, those opposed, nay.

10 Commissioner Sattgast.

11 ACTING COMMISSIONER SATTGAST: Aye.

12 CHAIRMAN NELSON: Commissioner Hanson.

13 COMMISSIONER HANSON: Aye.

14 CHAIRMAN NELSON: And Nelson votes aye. The
15 Motion carries. The Motion is granted.

16 At this point then I'm going to turn to
17 Ms. Edwards for possible dates for scheduling.

18 MS. EDWARDS: Monday the 18th is available all
19 day, or we could do May 19 on Tuesday after 1:30. And I
20 guess I might suggest checking with Cheri as well since
21 she's here.

22 COMMISSIONER HANSON: Ms. Edwards dates for --
23 her voice was rather soft. I would like to have her
24 repeat those, please.

25 MS. EDWARDS: Monday the 18th, any time that day

1 or Tuesday the 19th in the afternoon after 1:30.

2 COMMISSIONER HANSON: Thank you.

3 CHAIRMAN NELSON: I'm sorry. I was having a
4 side bar conversation with our counsel.

5 Commissioner Hanson, did you have a preference?
6 Commissioner Sattgast?

7 ACTING COMMISSIONER SATTGAST: I'm good either
8 date.

9 CHAIRMAN NELSON: Applicants?

10 MS. SEMMLER: Whatever works for the Commission.

11 CHAIRMAN NELSON: Ms. Real Bird, do either of
12 those work for you?

13 MS. REAL BIRD: Either are fine with me,
14 Mr. Chairman.

15 CHAIRMAN NELSON: We are going to take a
16 five-minute recess so our court reporter can check her
17 schedule, and we will be right back.

18 (A short recess is taken)

19 CHAIRMAN NELSON: Welcome back into session.
20 Our court reporter has told us that either of those work
21 for her. So it looks like it's good to go.

22 If nobody has any objection, I would suggest we
23 do 1:30 on Tuesday. And I'm looking around, and it looks
24 like that's going to work for folks here. So we will
25 plan on 1:30 on the 19th.

1 Anything further for the good of the order?

2 Seeing none, is there a motion to adjourn?

3 ACTING COMMISSIONER SATTGAST: So moved.

4 CHAIRMAN NELSON: Moved to adjourn.

5 All those in favor will vote aye. Those

6 opposed, nay.

7 Commissioner Sattgast.

8 ACTING COMMISSIONER SATTGAST: Aye.

9 CHAIRMAN NELSON: Commissioner Hanson.

10 COMMISSIONER HANSON: Aye.

11 CHAIRMAN NELSON: Nelson votes aye. We are

12 adjourned.

13 (The proceeding concluded at 12:19 p.m.)

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1 STATE OF SOUTH DAKOTA)

2 :SS CERTIFICATE

3 COUNTY OF SULLY)

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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 14th day of May,
11 2015, and that the attached is a true and correct
12 transcription of the proceedings so taken.

13 Dated at Onida, South Dakota this 17th day of
14 June, 2015.

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

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