THE PUBLIC UTILITIES COMMISSION

OF THE STATE OF SOUTH DAKOTA

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IN THE MATTER OF THE APPLICATION BY OTTER TAIL POWER COMPANY ON BEHALF OF BIG STONE II CO-OWNERS FOR AN ENERGY CONVERSION FACILITY PERMIT FOR THE CONSTRUCTION OF THE BIG STONE II PROJECT

EL05-022

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Transcript of Proceedings
Telephone Conference
March 1, 2006

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COMMISSION STAFF

Patricia Van Gerpen
John Smith
Karen Cremer

ORIGINAL

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Reported by Carla A. Bachand, RMR, CRR

WEDNESDAY, MARCH 1, 2006

MR. SMITH: What I'd like to do to start with, I am going to call the meeting to order and what I'm going to do first is call roll so that the court reporter and so that we all know who is on the call and make sure that we have all the participants whom we thought we would have on the call. Again, my name is John Smith, I am the commission's counsel in this case. Karen, do you want to introduce yourself.

MS. CREMER: Karen Cremer, staff attorney.

MR. WELK: This is Tom Welk and Chris Madsen from Boyce, Greenfield, Pashby & Welk, representing applicant.

MR. GUERRERO: Todd Guerrero, T-O-D-D G-U-E-R-R-E-R-O, with the law firm of Lindquist, L-I-N-D-Q-U-I-S-T, and Vennum, V-E-N-N-U-M, Minneapolis, also on behalf of the applicants.

MS. GOODPASTER: This is Beth Goodpaster, G-O-O-D-P-A-S-T-E-R, appearing on behalf of intervenors Minnesota Center for Environmental Advocacy, Izaak Walton League of America, Minnesotans for an Energy Efficient Economy, and Union of Concerned Scientists.

MR. SMITH: Anybody else on the call?

MR. NARAYAN: This is Sanjay Narayan, S-A-N-J-A-Y N-A-R-A-Y-A-N, from the Sierra Club Program on behalf of intervenor, the Sierra Club.

MR. SMITH: Others?

MS. STUEVE: This is Mary Jo Stueve, Mary space Jo

Stueve, spelled S as in Sally, T as in Tom, U-E-V as Victor, E, appearing pro say.

MR. SMITH: My recollection is that's everyone, but is there anyone else on the line that has not weighed in? I'd also like to note that Patty VanGerpen, who is the executive director of the South Dakota Public Utilities Commission, has also joined the meeting physically here in our conference room. Is there anything else that anybody wants to bring up before I commence the business of the meeting? I'd like -- Mary Jo, I'd like to thank you for reminding me that I had forgotten to send out the bridge number.

MS. STUEVE: You're welcome.

MR. SMITH: I appreciate that and I don't know what happened. I got distracted and just forgot about it. Okay, with that, the purpose of the meeting, the primary purpose, original purpose was to consider the items in -- that are stated in Otter Tail's motion to clarify scheduling and procedural order, and again when I refer to Otter Tail, I'm referring to Otter Tail as the representative company of all of the applicants. Mr. Welk or Mr. Madsen, would you like to begin and take your motion items one at a time and we will sort of just -- why don't we take them up in order and then we will just have a round robin discussion about them and see if we can't reach consensus, and if we can't with respect to anything, then we will have to bring it before the commission

at the next meeting. Does that sound like a reasonable procedure?

MR. WELK: I can do them all three at one time, whatever you would like.

MR. SMITH: However you want to do it. Do any of the rest of you have any preferences?

MR. WELK: This is Tom Welk that was just talking. I'll go ahead and we will take them one at a time and maybe we will work as John suggested. The first matter in the motion was a clarification as to the hearing date, and as Mr. Smith indicated, there must have been some confusion on the hearing date itself. We believed that we were going to have a complete week of the hearing and the hearing would have actually started on Monday, June 5th rather than on June 6th because we thought because of the number of witnesses that would be available and the cross-examination would take a full week. So that's why we made that portion of the motion saying we thought it was June 5. I understand that there may be some discussion on the date itself, but that's the first item. It was a simple was there a typo error on the order, the scheduling order, because we thought we had five days. That's the first matter.

MR. SMITH: The answer I can tell you from my standpoint, it was not a typo, it was a misunderstanding. I did not -- I had the 6th through the 9th written down for whatever reason, whether it was my mathematical ineptitude or

whatever, but that's what I had written down. But we did in fact block out that entire week and so it was available. The problem I now have is I have one commissioner with a serious conflict that has come to light, and I will say he regretted to have to admit that he had not checked his calendar as thoroughly as he thought before he gave us the okay on those dates, and now I've got a conflicted commissioner.

So that puts me in a tough spot and what I'd like to do is discuss the possibility of moving the hearing back approximately two weeks to June 26th through the 30th, and I apologize to everyone, all of the parties and their attorneys for having to bring this up, but at least to air it, I have no choice because the commissioner is my boss and the judge in the case. I'd like to hear from the parties, and I don't care, we can start with Otter Tail. Do you want to react to those dates and give us your take on it, Otter Tail?

MR. WELK: Well, the proposed date is June 26th through the 30th, is that the dates?

MR. SMITH: Those are the dates.

MR. WELK: That is a complete week, then, so it's not four days rather than five?

MR. SMITH: I believe it is. Let me see, 26th, 27th, 28th, 29th, yes, that's five days. That's an entire week. I am looking at an actual calendar.

MR. WELK: I wanted to explain to Mr. Smith and to

other counsel, just so you know, we are in the process as required by the order of preparing our prefiled testimony and right now it's anticipated that somewhere between 20 and 30 witnesses will file prefiled testimony. Right now if I were to ask for a reasonable estimate, it would be closer to the 25, and we have contacted those witnesses and we have asked and told them that the dates they need to be available for were the original hearing dates, although we did tell them we thought it was the entire week. We have sent, at the request of Mr. Smith, out just to try to check with all of our witnesses, we haven't heard back from them whether there may be an isolated witness who scheduled a vacation because of that or not, so I'm not in a position -- we have not heard back from all of our witnesses as to whether they will be available.

One of the concerns that the applicant has -- there's really two. Number one, that if this hearing was continued to the 26th through the 30th, would the statutory deadline still be met by the commission that was in the scheduling order? Because at this point in time, we would not intend to waive any argument that the commission must render it by the one-year statutory period. And secondly, if there is a continuance, we want to make sure that any continuance that would be granted here or extension of the time more appropriately would not be leveraged in any proceedings, particularly in Minnesota, to walk in and say, well, we set the Minnesota schedule based on

the South Dakota schedule and now the Minnesota schedule needs to be shifted another three weeks. So those are the concerns we have, and I guess I'd like to listen to others on their comments regarding those issues.

MR. SMITH: Well, shall we go down the list? Mr. Guerrero is your co-counsel, right, Tom?

MR. WELK: Yes.

MR. SMITH: Now we are down to Beth Goodpaster. Do you want to weigh in on the scheduling glitch here?

MS. GOODPASTER: Sure.

MR. SMITH: Before you begin, Beth, I'm going to tell you this. My feeling, Tom, is that the law is clear on the one-year time frame in this state. By moving the hearing date back two weeks, we are going to have to accomplish that by reducing the time for post hearing proceedings. It's that simple. One way or another, the order will come out within the statutory time frame. Okay?

MR. WELK: I understand.

MR. SMITH: Sorry about that, Beth. Do you want to proceed?

MS. GOODPASTER: Sure. I guess I came to this hearing with your stated preference in your e-mail, John, about the June 26th to the 30th date but also had in the back of my mind the alternative date that you had put out there of May, I can't remember the exact date, so I was going to let you know that

our witnesses aren't available on the May date, but the June one would be feasible. As far as interaction with the Minnesota proceeding, I don't see a direct conflict there. The proceeding is going there, but our testimony in the Minnesota proceeding isn't due until September and this change would not materially affect our participation there I don't think. So that I don't see as an issue. I am surprised to learn that there's 20 to 30 witnesses filing testimony on March 15th and so I guess that gives me added desire to have more time for case preparation, given other issues that we are going to be discussing on this call. That's all I have on that topic.

MR. SMITH: Next would be -- thank you. And we can talk about those other things as to whether any other schedule adjustments -- we are obviously going to have to make some on the back end, and I've got some thoughts on that. But whether the parties believe some should be made on the front end because of the moving back of the dates, assuming that's what's done, Sanjay, you want to proceed on behalf of Sierra Club?

MR. NARAYAN: The June dates are fine for us.

MR. SMITH: Mary Jo.

MS. STUEVE: Yes, June dates are fine.

MR. SMITH: I know, Mary Jo, you had expressed some concern actually at our first prehearing conference about the earlier June dates maybe even being sort of jamming it a little bit on time, and so I guess if there is a good thing to this,

it would push this back a little bit and allow more of the environmental impact process and those things to have occurred before we go to hearing.

MS. STUEVE: Yes, that's true.

MR. SMITH: Okay, it looks like everybody has those dates available, and so I'm going to -- I will redo the order and we will do an amended scheduling order that will reschedule the hearing for the five days of that week. I have also requested the commissioners, and just to let you guys know, because of the very large number of witnesses that Otter Tail has indicated it intends to call, I have requested that they not schedule anything on any of the evenings during that week as well. So that in case we feel it's prudent or necessary, that we can continue the hearings into the evening as we feel we must. Do any of you have any thoughts on that?

MR. WELK: No. This is Tom Welk. I don't and we are prepared to do that. The only thing that since I haven't heard back from the number of witnesses and I know that we have to deal with the reality of life, if somebody has -- if one of our witnesses has, as a result of the prior order, gone ahead and booked some ticket for their families going on some vacation at the end of June, I'm assuming what we are going to have to end up doing is probably taking that person's deposition or oral testimony to be included in the record. We can't hold the proceeding up for one or two, but I certainly don't want to be

precluded from making a full record because of a change that wasn't prompted by any of the parties but was a scheduling matter in deference to the commission. So I want that -- if I run into a problem with a witness or two, that's what I would intend to do.

MR. SMITH: Okay. And something we have done in the past, because we always have in complicated cases, we have scheduling problems with witnesses. Another thing that we do that sometimes will alleviate it is things like allow certain testimony out of order, as long as we can do it without prejudicing anyone's rights. I would probably -- it depends on the witness, too, I think, attorneys, that some witnesses are witnesses for whom cross-examination or with respect to whom hard cross-examination is not terribly valuable, you know, and for others like technical witnesses, it is. And so that makes a difference. But to the extent we can, we have a history here at least of doing what we can to accommodate the practical realities that parties may have. And just giving you a heads up on that and we do try to do that, though we insist on doing it in a way that affords everybody their full procedural rights here.

With that now, assuming, then -- I'm basically saying, then, that the hearing will be rescheduled to June 26th through the 30th. We will try to hold at least many of the nights open, and I think we will be able to get done fairly easily

with that amount of time set out.

Now, let's back up from that. Given that we are backing up the hearing dates, are there any thoughts any of the parties have about any of the other dates that we had put in the order? I'm talking now about prehearing dates, not post hearing dates. We are obviously going to have to change at least some of the post hearing procedure here. As of right now what we have got is we have got the prehearing conference scheduled for May 30th and all of the prefiled should have been done by then. When is the last prefiled date, Karen? I don't know if I have got my order. On May 19th. That would give a month and a week after the last prefiled date that we have under the current schedule. I don't know, does anybody feel we need to change the prefiled scheduling at all?

MS. GOODPASTER: Mr. Smith, this is Beth Goodpaster. And this is related, I think, to the applicant's next issue of clarifying what goes in when and all that, but I wanted to suggest that we have an opportunity following May 19th for surrebuttal to new issues, new material that is put in the record on May 19th, and by moving the schedule as we have to June 26th, that is more easily accommodated, but we were prepared to switch it in otherwise, but I think that a limited opportunity for surrebuttal would be appropriate for all parties.

MR. SMITH: Okay. And something else we have seen in

the past, it's not infrequent, especially in phone company cases, is when we finally get to the end of the line on prefiled, it's not unusual for one or more parties to have one last usually fairly limited round of discovery requests that they feel they need in order to obtain information regarding late or testimony filed in the last round. So that's another thing that I think can be beneficial about having a little more time between the last testimony filing and the hearing.

MR. WELK: This is Tom Welk. In reference to the request by Ms. Goodpaster, this will segue into the second issue. I don't mind moving things a little bit, you know, to give parties maybe an opportunity, but I am concerned of what I saw happening in the Minnesota proceedings about the perception of what the intervenors' direct testimony would rebut, and it is our position that when the applicant makes the filing on March 15th, that all of the testimony of the intervenors and staff that is going to be in opposition to that be filed on that date and that the final rebuttal then would be the applicant who bears the burden of proof that would have to rebut whatever is filed by the intervenors and staff testimony.

I understand there may be cross issues between the intervenors or staff perhaps that maybe don't go to the applicant, but maybe they want to respond to another intervenor. I don't mind having that all done at the same time, but the surrebuttal process is not something that I

believe ought to be appropriate. There ought to be a direct, there ought to be a filing of the intervenors and then if there's going to be a final rebuttal date, then we will file against all of that, and the intervenors, if they want to rebut cross rebuttal, that's fine, they should be responsible for that date. But there ought to be three separate filings, I don't want to deal with four, and that's at least our position.

MS. GOODPASTER: This is Beth Goodpaster. May I speak to the concern that the applicants have raised?

MR. SMITH: Please.

MS. GOODPASTER: Speaking for the groups that I'm representing here, and I'm sure it's true for others, too, but we have absolutely no intention of holding back a part of our case. We will be putting our entire case in as we see it on the record that exists on April 28th, but I did want to -- and Mr. Welk has clarified this, too, there may be a need for us to file something on May 19th in response to staff or other intervenors, but then I come back to the potential for surrebuttal and that is, in Mr. Welk's terms, a fourth opportunity to say something prior to the hearing. Because as the South Dakota commission has already experienced in other cases, things come up that are new or involve new record development or whatever, but that are new issues that could not have been dealt with earlier and thus an opportunity is appropriate to respond in writing ahead of the hearing.

MR. SMITH: Do any of the other intervenor counsel or Ms. Stueve have any observations on this particular issue?

MS. STUEVE: I do not, this is Mary Jo.

MR. NARAYAN: I have nothing further on that.

MR. SMITH: Karen, on behalf of staff.

MS. CREMER: Staff would not object to a round of surrebuttal, but whatever commission counsel wants to do.

MR. SMITH: Well, we have had it in the past and when we have had it, it's been when we have had the situation happen that Ms. Goodpaster described, and that is when new material is -- when new material basically is interjected at the rebuttal phase. If we stick to pure, pure rebuttal, surrebuttal may not be appropriate. I will tell you this, too, in general the commission is relatively, because of the prefiled testimony limitations, you know, in terms of -- well, its inherent limitations, the commission is fairly liberal in allowing parties ample opportunity at hearing to address issues that may have been raised in later rounds of testimony. In fact of addressing anything. And so I wouldn't feel -- I wouldn't feel terribly paranoid about getting completely sandbagged and being left with no recourse of getting your record made.

That said, here is maybe a middle ground and maybe this is where I'll cut this. I agree with you, Tom, and that was what I meant in my original order and I apologize for not

making that more clear. What I was thinking is that would offer -- really I should have used the word response because what I meant with respect to staff and all parties and intervenors was that they would be responding to the testimony that's presented by the other party in the earlier round, and the other party being other intervenors and staff.

How about this, how about if we write into the order something that states to the effect that one or more parties, intervenors or staff, will have the opportunity to request surrebuttal if they can make a showing that new material has been interjected at the rebuttal stage. How does that grab you? And that way you can just make a showing to us, and again, I'm telling you the commission is liberal in terms of allowing such requests, provided there's some grounds for it. Beth, you have a response, or Tom?

MS. GOODPASTER: This is Beth, and that sounds reasonable, I just have a question. So that would happen in writing by motion following receipt and review of the May 19 testimony?

MR. SMITH: Yes. That's right. You would make -- if you looked at it and you said, hey, wait a minute, now they are bringing this up, again, I don't think we are trying to play gotcha in this proceeding, and so I think what we want is a full airing of the facts and if there's a situation develop where you haven't had an opportunity to do that, I believe

justice would require that an opportunity to do so be given. And I think we would want to do that, but I think what Tom is trying to get at is just that we not have people sitting on things and waiting and have this endless round of new material interjected in the case. I don't know, Tom, do you have any observations?

MR. WELK: No. I can't legitimately say that if there's a good cause, as long as there's a good cause and it's not I gotcha or we have got something new, if we haven't properly disclosed what should be disclosed, that's a different issue, but if there is a reason, legitimately something develops and they can make a showing of good cause as to why they didn't file it, then it's going to be up to the commission to allow them to do that. I just want it that that is an exception, that there must be a good cause requirement. I don't want it an automatic because at the end of the day, we carry the burden of proof and we have the opportunity to expound last.

MR. SMITH: And that would be -- I agree, that would definitely be the ordinary procedural flow. I will tell you in past cases, generally speaking, we do not schedule surrebuttal in the original procedural order, but we do very frequently receive requests by parties to file surrebuttal testimony and I am unaware of an instance in which we have not granted that request. So I think unless I hear a violent objection, that's

what I'm going to do, with the understanding that the threshold for leave to so file will be pretty low. All right?

MS. GOODPASTER: Okay.

MR. SMITH: Let's move on to point three, Tom.

MR. WELK: Point three, and I guess I want to make an understanding before I go on to that, then, John, as to the moving of the hearing date. We are going to retain the original filing dates, you are just going to expand in the amended scheduling order, to be clear, that as Ms. Goodpaster indicated, that the rebuttal to the applicant's case will be filed on April 28th and then we will have the original schedule on May 19th. Now, I don't know if we are going to continue to retain the May 30th prehearing conference at that point in time, because then there will be May 30th to now June 26th. Is that okay?

MR. SMITH: Maybe that's worth talking about now. The prehearing is on the 30th at 1:30. I can see good and bad to doing that, and again if we have had issues with respect to discovery testimony in that, a good thing about having that meeting early would be we could address those things, you know, if there are additional discovery problems or anything like that that might be lurking out there or things that might be done relative to readjusting the schedule or anything like that. The other thing we could do, though, is we could try to reach agreement here on another date for a date closer to the

hearing if you want to, so that we have an alternative date, for one thing, in case we have a round of surrebuttal, we may not be completely ready for a final prehearing conference yet. We have the other thing is the only thing I want to point out, immediately before the hearing, so we are going to have to schedule around that.

MS. CREMER: This is Karen Cremer from staff. What I was going to suggest is let's hold that May 30th prehearing conference, but then at that point we should be able to determine if we need another prehearing conference a couple weeks down the road, and we would have a better idea. So I don't know that we need to try to figure out a place between May 30th and June 26th, but if we need to, we could.

MR. GUERRERO: This is Todd Guerrero, if I could inject for a second. This may have bearing on the prehearing conference. With respect to the surrebuttal testimony, should there be a deadline under which a motion has to be filed and surrebuttal testimony filed?

MR. SMITH: Yes, I think there should and what would you recommend? How long should a party have to take to read the Otter Tail rebuttal? Intervenors, how long do you feel you will need to read and evaluate Otter Tail's testimony in order to know whether you feel you need to make a motion to submit surrebuttal?

MS. GOODPASTER: This is Beth Goodpaster and I was

thinking as Karen was speaking that the 30th prehearing conference would be a date by which we would be able to speak to the need for surrebuttal.

MR. SMITH: That's on a Tuesday. I'm going to throw something out. What about Friday, the 26th? That gives you more than a week, right? Or is that exactly a week? That's a week. How is that, if you file your motion by then? That way on the date of the conference, in case it's something that's disputed, we can discuss it on the Tuesday meeting.

MR. WELK: I have maybe a discussion that will help all of this. That is why don't we leave that they can file the motion on May 30th but it has to include the testimony itself, so in other words, it would be a motion, here is the testimony that we would like to file as surrebuttal and we know what the issues are then. That gives them a certain number of days not only to evaluate it but to write it and so we know when we look at the motion, we know what we are dealing with.

MR. SMITH: Okay. The only thing I was thinking is if the date for the prehearing is on the 30th, how are we going to -- we won't have been able to even look at it before we have our meeting.

MR. WELK: Well, except the obvious is we have a week on our calendar that was June 6th to the 9th.

MR. SMITH: That's true.

MR. WELK: We have all got five days on our calendar,

at least we had five, maybe you had four.

MR. SMITH: No, we had five.

MR. WELK: That you could make that prehearing conference and just slip it into sometime of that week that we were going to have and then at that point in time, that would give them more than -- if they filed on May 30th, here is the motion, here is the testimony and we could just slide the prehearing conference a week.

MR. SMITH: Which date -- let's set aside a date that's certain here. Do you want to set aside Tuesday, the 6th, or Monday?

MS. CREMER: What's this for?

MR. SMITH: An alternative prehearing date.

MS. GOODPASTER: This is Beth. I'm not fully following on all the suggestions here. The 30th -- we are talking about not having a prehearing conference on the 30th but instead having one the following week but then having the 26th as a date?

MR. SMITH: No, I think Tom's suggestion is the 30th be your motion and that you file both your proposed surrebuttal, if you are going to have any, and your motion for leave to file it on the 30th; is that correct, Tom? Is that what you were suggesting?

MR. WELK: That is correct, Mr. Smith.

MR. SMITH: That is the date that we have set aside

right now for the prehearing conference, so we could end up in the position of both having a prehearing conference and having filings that we really haven't had a chance to look at.

MS. GOODPASTER: This is Beth again. I don't have a problem with filing any motions and generally identifying the issues for surrebuttal, but it seems a little bit aggressive to try to file the testimony with the motion. Compressing it that much seems somewhat unnecessary, given that the hearing is not the following week, so I would ask that we not -- that we file our motion with some general description of the pieces for it, which obviously tells you something about the surrebuttal, but not actually file the surrebuttal on that same day but perhaps the following week.

MS. CREMER: This is Karen Cremer from staff, and I would agree with Beth. I think requiring testimony by the 30th is very aggressive, and then the prehearing conference, too, would not -- are you anticipating, John, that -- the commissioners aren't going to be there to make a determination on the 30th as to whether or not -- I mean --

MR. SMITH: The surrebuttal would be allowed?

MS. CREMER: Right, it would be an issue for like this group so you may need the following week, the 6th or whatever for a meeting with the commissioners, but keep in mind they have a conflict then. So finding a date may be difficult that week.

MR. SMITH: What do we currently have for commission meeting dates in there, Patty? Just in case we have issues like this that we have to be aware of.

MS. CREMER: I think it was June 14th, wasn't it?

MR. SMITH: The commissioners that had conflicts, it's mainly one that had a serious conflict that week, it wasn't the entire week, but it was enough of it to make it impossible to have five full days, I'll put it that way. So that's what happened. And I think we could find a day within that week that we could set aside for any commission actions that will be -- that will have shaken out by then relative to necessary prehearing procedural rulings. We haven't gotten into this yet so I don't know what the issues are going to be in the case. By then, I don't know how you guys see it, but parties may have motions to make. Are there going to be motions in limine or any one of a number of things?

MR. WELK: We could use that date during that to have those motions heard. If you want to put a May 30th date as to the filing of all motions to be heard, including those, I still believe that it's not a burden on surrebuttal, that's what we are talking about here, we are not talking anything else but a filing of surrebuttal testimony on May 30th. But if we want to have motions, you can provide that they will be filed on May 30th and pick some day, the 6th to the 9th, that's available for the commission and we will have that be the prehearing

conference and motion date.

MR. SMITH: Any other thoughts? I don't know, and you guys, in terms of what you are planning, what you think in terms of time for possible surrebuttal. Normally I tell you, normally that final type of surrebuttal, if you want to call it that, those final rounds of responsive testimony when they are granted usually are relatively limited in their scope and don't involve -- unless something comes up, I don't think we want to see probably a couple hundred pages come in. I think what we are assuming is if there's one fairly outlying matter that has come in relatively new by a later filing, that the surrebuttal would stay relatively limited to those new matters. So I don't see a huge amount of time, but whatever. What would two weeks from the 19th be? What's that date?

MS. CREMER: For what?

MR. SMITH: That's June 2nd?

MS. CREMER: What do you want?

MR. SMITH: As a date for the surrebuttal testimony to be filed.

MS. CREMER: Well, wouldn't they be filing their motion and a general idea of what they want on the 30th?

MR. SMITH: On the 30th?

MS. CREMER: Right. It wouldn't have to be the testimony itself, but just an idea, and then sometime like that week of the 5th through the 9th we could find a day, if need

be, it may not require commission action.

MR. SMITH: The one thing, as you guys have seen, it's hard enough to get the commissioners, for me to -- I mean absolutely firm, firm commitments on schedule under the best of circumstances, so what I like is if possible to at least get them pinned down to some open dates so if we have to, we can get things resolved. Here is one, we have a commission meeting scheduled for June 13th. That would provide a little less than two weeks prior to the hearing and I don't know what you think about that as a possibility, in case we have things that have to be resolved by commission action, such as whether surrebuttal testimony will be allowed. To me that's getting pretty darn close to the hearing.

MS. CREMER: I still think we would be able to find something the week of the 6th.

MR. SMITH: What I'm suggesting is we set aside a time right now.

MS. CREMER: Until you know --

MR. SMITH: What the problem is?

MS. CREMER: And what the commissioner schedule is, we can pick any date we want.

MR. SMITH: That is the problem, I don't know. I guess you're right.

MS. CREMER: That's what I'm saying. You and I can find a date after this and put it in the procedural schedule.

MR. SMITH: What I'm going to do, you guys, then you are going to react, I'm going to find out what the commissioners could do that week of June 5th through the 9th in terms of scheduling a final prehearing conference, okay? And then I'm going to circulate that to you so that you can react to that date. How does that grab you?

MR. WELK: That's fine, and March 30th is going -- or May 30th is going to be the date for filing of any motions?

MR. SMITH: Any motions, and then I'm going to -- not just a prehearing conference, I'm going to try to find a date when the commissioners can potentially be available that week to decide any contested issues relative to these surrebuttal, prefiled testimony, discovery, that kind of thing, motions.

MR. WELK: Or any other motions that are filed?

MR. SMITH: Right. Any other motions that are filed. And again, May 30th is -- I will probably try and look at something later in that week so we have a little more time, especially if there are going to be complicated motions. Hopefully we don't have any. That should be plenty of time any time that week. Okay, I'll tell you what -- did somebody drop off? I heard something beep.

MS. GOODPASTER: I also heard something beep, so therefore I'm not off.

MR. SMITH: Beth is on there. Tom, are you on?

MR. WELK: I'm still on here.

MR. SMITH: Sanjay?

MR. NARAYAN: Still here.

MR. SMITH: Mary Jo?

MS. STUEVE: Yes.

MR. MADSEN: I'm here, John, I've got us linked in, I have got Tom linked in so you have got me.

MR. GUERRERO: Todd Guerrero. I dropped off, I apologize.

MR. SMITH: Why don't I see -- I think I know what you guys want. We have a reporter here this time so I at least have a way to remember. And what I'm going to do is circulate a revised order to you for comment before we spew anything forth. How is that?

MR. WELK: John, you will have in that order also the compression, I'll call them the compression dates after the hearing?

MR. SMITH: I didn't get to that yet. I haven't thought about that. I'm going to throw out a couple of possibilities.

MR. GUERRERO: Mr. Smith, before you do that, this is Todd Guerrero again. When I dropped off, maybe you decided this. Did you come up with a date for when the actual surrebuttal testimony would have to be filed, assuming it will have a motion for surrebuttal and the motion was granted?

MR. SMITH: No. Here is what we decided to do and

part of the problem is we don't know the commissioners' schedule. What we are going to do is require the motion to file surrebuttal or to file anything else related to prefiled testimony by May 30th, or any motion. Obviously I don't think -- we are not going to preclude a motion that's justifiably filed later if there's a reason for it, but what I think we will do is set the May 30th as sort of a motion deadline for any prehearing motions. What we are then going to do is look for a date in the week of June 5th through the 9th, most of which had been blocked out by the commissioners and by us, all of us, and we will try to find a date and I'm going to send that out by e-mail to you as soon as I can get a firm date and the reason is I want a date when the commission can meet and vote and get this decided. Okay?

If we can't voluntarily decide it or it isn't stipulated to, then we will have a commission meeting and vote and they can vote on it. But I don't have that particular date yet. Is there any date that week that is not good? I'm assuming we all have it blocked off, so I'm assuming any day that week is okay. If that's not true for someone, say so right now. Or if there's a day you would prefer. I believe the date that is the least desirable from the commission's standpoint might be Tuesday, I think.

MR. WELK: This is Tom Welk. I don't think anybody right now has anything scheduled because until this moment we

didn't know it was moving. So you just pick the date. But to follow up, this is Tom Welk, on Todd Guerrero's point, I think in the order we also ought to include that if there's a motion filed on May 30th for surrebuttal, there should be some date between May 30th and whatever date you pick that the actual surrebuttal testimony has to be filed.

MR. GUERRERO: This is Todd Guerrero. Just as a question to you, Tom, would it make sense to recommend one week after whatever date we come up with for the prehearing conference?

MR. SMITH: Right, or the commission. That could be. I was assuming, you guys, that the commission would just set that, if we have got to go to commission action on it, that we would just set that. What I think I'm going to do right now, you guys, if you don't mind, we are going to have that motion filed on the 30th. What I think we ought to do is set aside a time on June 6th, which is the Tuesday, to have a prehearing conference, which we can always cancel, but that would at least allow us an opportunity as counsel to discuss any issues that might be raised by a motion, including the surrebuttal issue, and we may be able to resolve them without commission action. How does that grab you?

MR. WELK: That's fine.

MR. SMITH: And I'm going to suggest that on June 6th, and I'm going to suggest this same time of 2 o'clock. I don't

know, for west coast, Sanjay, is this a good time?

MR. NARAYAN: Yeah, this is fine.

MR. SMITH: I'm going to set June 6th for a prehearing conference. And then you will be hearing from me hopefully later today, but maybe today or tomorrow morning about a date that I'm going to get the commissioners to commit to for commission action on any outstanding prehearing issues or action on motions. Okay? And I would like to do that later that week of June 6th through the 9th.

MS. GOODPASTER: This is Beth Goodpaster. If I could ask for one more clarification, I apologize. My understanding is that we would make a motion and that we have talked about not actually submitting the testimony for which we are making the motion. I would assume that we would submit that testimony after our motion was granted.

MR. SMITH: Yes. But here is what I'm going to say, is we are going to get a commission date, because if we get to where it can't be stipulated to, that you can submit it, then it's going to have to require commission action up or down. The commission can set the time for your response in their order.

MS. GOODPASTER: Okay.

MR. SMITH: If you are planning to submit surrebuttal, although I don't want to put you guys to the expense of it, but I think you need to have it pretty well in mind what you plan

to say, because you won't be given a lot of time after the commission votes.

MS. GOODPASTER: This is Beth, and I recognize that it is a limited scope, and that it wouldn't be an enormous expense to put together, but it would be an expense that we would prefer not to incur if we are not -- if our motion isn't going to be granted, but it sounds like that's what everybody else is thinking, too.

MR. SMITH: Any objections to that, Tom and/or --

MR. WELK: You just cut the order, John. I would prefer to have the testimony filed sometime between May 30th and June 6th so we know what we are dealing with. I am assuming it's going to be limited in scope, but John, are you just going to then when we move on to filing of briefs, proposed findings, oral argument, are you going to change those dates as well?

MR. SMITH: They will have to be because we won't have the hearing -- the hearing will not have been held until June 30th, so all of the briefing dates that we had are going to be not workable, because they all occurred on or before June 30th. Here is a thought I had because we are going to be really crammed. Sometimes what we do is we wait until the hearing and we let the commissioners set the post hearing schedule at the hearing, based sort of upon how the hearing goes, and we have a much better idea at that point in time what we are dealing

with. I don't know that I would want to give up -- we have a July 6th date set aside right now and July 11th date. I hate to allow the commissioners to reschedule anything on those days, but I don't know what you think.

We are going to be pretty compressed right now. If the parties have suggestions on what they would like to see, I'm certainly open to that. But the briefing schedule is going to have to be abbreviated. And I'm going to throw out an assumption and maybe this is wrong, but it's what I just kind of intuitively feel about this case, is that this is going to be, because of the nature of the siting law here and the way it is, I don't know that -- are legal issues, do the parties assume that issues of law are going to be a predominant feature of this case that will require extensive briefing and citing of authority, or are we mainly talking here about arguing the meaning of facts in briefs?

MR. WELK: From the applicant's standpoint, we believe it's going to be more factual in context with what the regulations and the statutes provide.

MR. SMITH: That's what I would assume, without knowing how things are going to go. Do any of you others, Beth or Sanjay, have observations on that?

MS. GOODPASTER: I don't have observations on that at the present time. I feel that this question is a little bit on a tangent, but it does come back to the question that you are

presenting and that is, when is the final EIS expected to be prepared? I know we talked at the last prehearing conference about the draft EIS that WAPA is doing. Is it anticipated that that final EIS is going to be available for parties to incorporate into the record?

MR. SMITH: I don't know. I went on the Web site right before -- WAPA's Web site right before we had the call here to reacquaint myself with their dates, and the only date I see on there is the April date, and there's nothing after that. So I don't know. Now, I've heard rumors about them thinking they are not going to release the final final EIS until November. But I don't know why it would take them that long, if the public process is going to be over before May 1st. I don't know, Karen, are you privy to any of that?

MS. CREMER: I'm just trying to remember, but I believe I have an e-mail from WAPA and I think it's November 2nd is the final final. There will be a final draft and I can't remember, like in May or early June or something like that, and they anticipate very little changes in that. Again, it depends on public comment, but a lot of times when that final draft comes out in, say, June, they don't anticipate much will change before November, but for some reason November 2nd is what sticks in my mind.

MR. SMITH: We are going to have to roll along here because our court reporter has to leave fairly soon because of

a personal commitment. Tell me what you want to do and unless I've got a strong objection, we will just do it that way.

MS. CREMER: This is Karen Cremer. I would like to see, just let the commission determine if we need briefs, because if we are just briefing to brief, that's of no value, and there's no way I can sit in a hearing all week and then turn around and put a brief out the next week. The court reporter won't even have the transcripts to us.

MR. WELK: She will, Karen, because there will be daily transcripts.

MS. CREMER: But I'm sitting up there all day, I can't write while I'm sitting up there is my issue. You have other people to work with you. I am it here. So it doesn't work for me.

MR. SMITH: What about this? On that whole matter, if we are talking facts, and again if that's all we are going to be talking about, and I don't think we know that yet, we haven't heard the case yet. There could be legal issues here, and then briefs are -- if we are not -- if all we are talking about is facts, I don't know what you guys think, but don't you think oral argument is a more effective way of presenting factual context to the commissioners than briefs? I don't know, maybe that's not true.

MR. WELK: This is Tom. I have a quick suggestion and that is that I am sympathetic to what Karen said about getting

them in maybe the 6th but there's no reason why we shouldn't say that the 11th, if we could get all the briefs in and findings and conclusions, and if there is going to be oral argument, you can find some day between July 11th to July 21st because, John, that's your time frame.

MR. SMITH: Right, and I'm willing to push that back and we looked at that. When is the next date, Patty, the next commission date?

MS. CREMER: In July?

MR. SMITH: I remember something came up and we have got something that's popping up at the end of the month. The 11th is fine with me, that's the date we could get. I think that was -- wasn't that a commission meeting date?

MS. CREMER: You are looking at June.

MR. SMITH: July 11th.

MS. CREMER: July 11, you want everyone to have whatever is going to be required in by the 11th, is that what you are saying, Tom?

MR. WELK: Right, findings of fact, briefs and everything in by that day.

MR. SMITH: Are you just assuming we are going to have one round of briefs, Tom?

MR. WELK: I am assuming one round.

MR. SMITH: One round of briefs, and everybody submit by July 11th and then I'll have to find a date for --

MS. CREMER: Oral argument, if needed, or as I have said, if the commission decides they don't want briefs, I don't think that we should have to just because.

MR. SMITH: We will set aside some dates so that they are there.

MS. CREMER: So they are there, but the commission can always tell us at the end of the hearing we don't need briefs out of you.

MR. SMITH: Tom has requested the opportunity to file proposed findings and conclusions, and I did write that into the original order as an optional thing. If you guys don't want to, I don't --

MR. WELK: I think we have to do it to preserve -- the parties have to do it to preserve any rights of appeal, so I think you have to provide us an opportunity to do that and I just as soon do it before the commission looks at it and everybody can put their positions out in proposed findings and conclusions.

MR. SMITH: Well, I don't know, Tom. Maybe you are right. My recollection of the APA here is that an agency in this state is not actually required to allow anyone to submit proposed findings and conclusions. If they are submitted, then the agency is required to rule upon each one. But I don't think -- we have never here treated the submission of proposed findings and conclusions as necessary to preserve issues on

appeal. I don't know, Karen, do you have anything?

MS. CREMER: I would have to look, Tom, I don't know.

MR. SMITH: We will set aside that date and if it's true, then obviously if you guys want to -- if you research the law and you feel you need to do that to preserve your rights on appeal, by all means --

MR. WELK: July 11th, if there are going to be briefs and if you want to propose anybody -- if anybody wants proposed findings, July 11th is fine with us.

MR. SMITH: And I am going to have to try to schedule probably -- I think what we are going to have to do -- just a sec, can we take a short break? The reporter needs to make a phone call quickly.

(Brief pause.)

MR. SMITH: We were just discussing again the last scheduled commission event between the 11th and the 21st, which is our statutory deadline for issuance of the decision, is the 11th. So what I thought is if we had that originally scheduled for decision date, maybe what we should do is schedule that now for oral argument date. Then Patty, we are going to have to find an alternative date in there for an ad hoc for decision. And I would like to have that absolutely by the end of the week or absolutely no later than the 18th because that's going to give me -- that would only give me four days after that to put an order together and out. Actually, if we could get them to

maybe go to decision on or about like the 12th or -- or like the 13th or the 14th would be better. We will look for that date and that really isn't one that involves action by the parties. So we will search for an available date for that. Any other observations or comments on schedule, on dates?

MR. WELK: This is Tom, one final thing. I think in a case of this magnitude, I think we should move the filing of the briefs and everything to like the 9th so it gives us at least a day, because what you have down here is 9:30 on July 11th. I think that's not fair to everybody to look at 5 p.m. on the 10th, so if we could move it to at least look at a day to give us what other people file.

MR. SMITH: The 9th is Sunday. Yeah, the 9th is Sunday, you want to do it then or you want to do it, say, like 9 o'clock in the morning on the 10th?

MR. WELK: At least give us a day, 24 hours to look at them.

MR. SMITH: We will say you file it by midnight on the 9th, how is that?

MR. WELK: Okay.

MR. SMITH: Is that okay?

MR. WELK: That's fine.

MS. STUEVE: This is Mary Jo and I appreciate having that extra time because if we are looking at these filed on the online electronic reading room, everybody is trying to access

that at the same time, it may be very slow.

MR. SMITH: Well, I'm assuming, too, all these filings should be being done via e-mail attachment to everybody. So I'm hoping you should all get those and you should all get them in a format everybody can read. All right?

MS. STUEVE: Okay.

MR. SMITH: We are done with scheduling for now, and again I will circulate a draft so you guys can see what we are planning to do before I etch this in stone. Tom, do you want to move on to issue number three?

MR. WELK: Yes, the third issue that's raised by the motion that the applicant has filed has to do with the reservation of exhibit numbers, and the reason -- this may appear to be something that would be deferred to a prehearing conference, but because of the number of witnesses and the amount of time and effort that people are going to, we have proposed that the commission's file, in other words, what is in the commission's file itself, the application and that, that there be certain exhibit numbers reserved for that, that each party be allocated a certain number of exhibit numbers so they can clearly use those, and because of the number of parties, this will be impracticable to do this the morning of the hearing or perhaps even a week or two before the hearing, because I would like to have our exhibit numbers, and say for example, the applicant is given numbers 2000 to 3000, we can

then have our prefiled numbered with those exhibits so everybody will know there's going to be one exhibit number 2000, nobody else is going to use it.

And it will make things a lot easier as we progress to the hearing where we will have an exhibit list that we can reserve numbers and work off of those, especially with the amount, and I guess I'm the only one that is probably on the call other than our own lawyers for the applicant have seen the volume that we are going to generate, and I think it's going to make the hearing more productive and then people don't have to worry about somebody -- how they are going to number their exhibits, if we can just reserve the exhibit numbers.

MR. SMITH: Okay, this is John Smith. I'm going to interject just a comment on the commission's normal way of doing things in cases that involve many parties and lots and lots and lots of exhibits. The way we have done this in the years I've been here is they usually do it, Tom, by party identification, and I think one reason is for the commissioners, it makes it an easy way for them to keep track of who's got what. I'll give you an example, in the LNP cases, for example, the LNP dockets, which was a three-week and you know what, Karen, a huge proceeding, in that docket we had about 25 or 30 parties and the way we organized exhibits in that case was to designate each party's exhibits with respect quite simply to that party's name.

An example would be for in that case Western Wireless Company, corporation, their exhibits were all designated WWC 1 through 75. In this case if we were to do it the way we normally would do it, we would do it by Otter Tail, we would say your exhibits are OT 1 through a million or OTP, however you want to do it. And your exhibits would all be sequentially numbered, but we would identify yours as opposed to other people's through the initial letters on the exhibit. I don't know, at least for us that's worked easily and that way we can -- we don't have to -- we can easily remember who's who.

Now, I don't care, I honestly don't care. I'm just telling you it works good because the commissioners, they think like that, Otter Tail Power, so they will say this is Otter Tail's No. 25. And it's Sierra Club, what I would recommend for Sierra Club is that yours be labeled SC or Sierra. And usually we call staff's, we just call them staff's one through however many they are. I don't know, is that objectionable or does that not work as well for people? We are trying to think --

MS. CREMER: Beth, you would have to come up with something.

MS. GOODPASTER: I'm thinking good guys.

MR. SMITH: And you have a multiplicity of them. For yours it would be like -- maybe it would be, you know, just one of your lead parties, but that's what we have done in the past.

We don't have to do it that way, we can do it with number blocks, too. It does hit me that that will be harder for the commissioners to figure out and remember who's who and whose exhibits go to which groups of numbers go where and when they are looking for stuff.

MR. WELK: This is Tom Welk. I don't think there's a right way or wrong way. I think we are trying to make this to make sure that there's no duplicates to the extent we can avoid that and it's clear what the exhibits are. I've tried cases with 10,000 exhibits and it's a matter of whatever the judge or the finder of fact wants. The effort is to save the parties time and expense, we don't have to duplicate things, we don't have to watch for duplicates and if you want to do it by designations, that's fine.

One thing that's always difficult for everybody and that we need to know is what's in the commission's file and what's been numbered, and so if you want to, John, take it upon yourself to send out a preexhibit list and say commission, if you want to call it commission exhibits, which I would view of what's in the file are exhibits blank to blank, and the rest of us can take the acronym of whatever is appropriate for our party and use it, but there is going to be an OTP one and there is going to be a staff one and that's okay if you want to do that, as long as it's clear what's in the record. That's the only point of the motion.

MR. SMITH: Okay, and I think we can do that. We normally don't do an actual appeal type docket until an appeal has been filed, in terms of the APA's requirement of docket numbering, of page numbering in preparing the appeal docket. That's usually done by our docket manager at the point when we receive a notice of appeal. I don't have an objection with necessarily doing a docket numbering system.

MR. WELK: I don't want to refile an application that's 1,000 pages long when I know it's in the commission file. If I know it's in the commission as Exhibit 1, I don't have to file it for OPT, because we are dealing with a great amount of paper here and I think to the extent it's already there and if when it gets around to the rebuttal testimony and Beth looks and says, OTP has got this in there, then she doesn't need to file that as an additional exhibit.

MR. SMITH: Okay, and I want to make one caveat here, just so everybody understands. The filing of an application or any piece of paper in the docket, right, is not an admission of that piece of paper into evidence. That will have to be done via an offer and an admission into evidence at the hearing. Okay? Now, we may have copies, Tom, and they may be there, but I think in general one should think of this from a hearing standpoint in terms of thinking in terms of having to lay a foundation and request admission of everything you want as part not of the docket file but as part of the hearing evidentiary

record done via a formal offer at the hearing into evidence. And the commission will then make a ruling upon that. And we have forms, which I could send you guys right now, which we give to all the parties so you can keep track exactly of what's going on and what's been admitted and not admitted. Does that make sense to everybody?

MR. WELK: John, but the point of it is, if it's in your file and it's Commission 1 and I make the proper showing on foundation, why should we burden all the other people and us of having to recopy what everybody has that's already in the commission file? I know how to put the evidence in, but why should we be compelled and why should anybody else be compelled to reproduce that when it's already in the commission's file?

MR. SMITH: Right, the only reason I could see would be there -- that we keep one copy in the commission file and we have copies and normally I would say that's true, Tom, that with things like the exhibits in these kind of cases, you have the application, which may end up being an admissible exhibit. I don't know. Some of the parties may object to some of it as hearsay. You have the prefiled testimony, which we will have copies of all that, and yes, normally with those things that have been prefiled, we usually don't require parties to bring a whole lot of copies because we all have that. And you guys can -- all we will deal with at the hearing on those things which have been presubmitted is to rule on their admissibility

and whether they are going to be admissible in whole or whether there will have to be redactions because of objections or whatever. That's a point well taken, and we can do that if you want to. If you want us to index the file and let you know what's in there, we can do that.

What I will say, though, is because -- what happens at these is these documents get referenced over and over and over again and they are used to -- they are subjected to cross-examination, they are subjected to scrutiny and testimony, rebuttal testimony by other parties, that physical copies of everything that we need to have up there will have to be there so that the witnesses and all the multitude of uses that are going to be made of the exhibits, so that we have actual physical copies of that up there so that we have them for use, if that makes sense. But yes, in terms of -- in terms of bringing up 10, 15, 20 copies so that everybody -- I would assume that parties will bring the things that are in the file already, their copies of that, to the extent they have them. And that when they have been marked and entered into evidence, and we could do that, if you are suggesting, Tom, that everything in our file, that we have that premarked, we can do that.

MR. WELK: Yep, as Commission 1 through whatever it is and everybody knows what they are ahead of time and they bring their copies and we start from there. We will lay the

foundation, but it will just save a lot of trees for people and especially when they know what's there.

MR. SMITH: Do you have any objections, Karen?

MS. CREMER: No, I don't.

MS. GOODPASTER: I don't have objection to the numbering of exhibits. I do have a further question.

MR. SMITH: Why don't you go with that. Then I want to get this straight and what each party is going to be. Basically I don't really care, you can call yourselves anything you want to. Beth, shall we go with your question first so you don't forget it?

MS. GOODPASTER: That would be helpful to me. My question is related to the killing of trees, I guess, but I'm concerned about having actual copies of the testimony as opposed to 20 e-mails that I'm printing out. And I don't know what the expectation is, I know we have been doing e-service to facilitate things, but I just wanted to clarify that we are going to get paper copies of, say, the applicant testimony and if they also submit it electronically, that's great.

MR. SMITH: We provided in the order that at least one copy of that testimony should be provided to what I'd call the counsel of record, the local counsel of record.

MS. GOODPASTER: I didn't check that before.

MR. SMITH: That should be done. Again, we were trying to prohibit too much paper being done here, and it will

be helpful I think once we know like things like prefiled, those I think would be smart to have those prefiled testimony in paper form, because they are very highly probable of becoming exhibits.

MS. GOODPASTER: Yes.

MR. SMITH: Prior to the hearing, of course. I mean, prior to the preparation of all of the exhibits, it's difficult to know what's going to turn into an exhibit or not until somebody offers it.

MS. GOODPASTER: Right.

MR. SMITH: I never know. I don't know, Tom, do you have any thoughts on that?

MR. WELK: We assumed we would give a paper copy on the prefiled, but one per party, so staff will get one, Beth will get one, Sierra Club will get one, Mary Jo will get one for the respective parties, and we assume we will get one paper copy from them as well. Then you will get the electronic versions.

MR. SMITH: That's kind of what we thought and we thought it would save a whole lot on shipping large volumes of paper around all over. Again, it does put some copying burdens sometimes on lots of us, but there's tradeoffs in everything.

MR. WELK: John, here is another thing to follow up on Beth. When we make the filing with the commission, I'm not in my office, but we can file one paper copy and then electronic

copies as well, or do you want under the rule ten paper copies of the testimony?

MR. SMITH: We were trying to avoid having to do all that here. Are we just going to print here, Karen?

MS. CREMER: Anybody who would need a copy here can then print it or copy it or whatever. I would just send one.

MR. SMITH: That's what we have been doing. Now, the only -- what I provided in the order is that then any party can request paper copies, if it's with respect to some particular thing that you want a paper copy of. Examples of what's good to get paper copies of are things like maps, which are extremely hard, they are probably impossible like for Mary Jo to print, and they are even difficult for us to print. We have to go to DOT and use their huge map printer in order to do that. Things like that. Tabbed, bound documents are tough to take from electronic into paper form. I think common sense here and communication. If people want paper copies of a particular document, request that. Otherwise I think what we are assuming, it's sort of like in the phone business you call reciprocal compensation, we are assuming that paper is going to flow both directions here and that everybody is probably going to be better off if we are not sending huge stacks of paper in both directions.

MR. WELK: I think, John -- this is Tom Welk -- I understand. Insofar as the commission filing is concerned, I'm

trying to avoid the ten copies. We will file one paper and then we will file everything and then if there's something peculiar like a map or something, we will give the necessary ten copies.

MR. SMITH: Exactly, and I think -- do we require ten or four? Ten would probably be good, if it's like something that's going to be tough to reproduce for us, if it's not just text and/or Excel spread sheets and that kind of stuff.

MR. WELK: I understand, and everybody else will get one paper copy then.

MR. SMITH: Is that okay with everybody? Again, with the understanding if you want to request paper copy of something, you can do that.

MS. GOODPASTER: This is Beth. I may be in the position, Tom, of asking for an additional paper copy just because I am -- we are consolidating our parties by having me be the lawyer, but we might need more than one.

MR. WELK: Okay. It will be coming out of Todd's office, Beth.

MS. GOODPASTER: I will work that out with Todd, then.

MR. SMITH: On terms of numbering, you tell me, how do you want to deal with the numbering issue? Do you want to do it with reservations of blocks of numbers or would you like to do it through party identification followed by a number?

MR. WELK: We will do it the way that you have used it

by party designation with an acronym. Ours will be either OTP or applicant and we will come up with the acronym and use it. Everybody must commit to using an acronym, though.

MR. SMITH: Are you guys all okay with that? I don't know, Beth, are your people going to be submitting exhibits for each entity separate already or will those be common to all of your entities?

MS. GOODPASTER: This is Beth. We will be doing things jointly and so we will pick a lead intervenor in our group to use it for an acronym.

MR. SMITH: That would be great. Then Sierra Club, is there a problem with that?

MR. NARAYAN: No, no problem.

MR. SMITH: That sounds von da bar (phonetic). One last thing that we have had -- the reporter didn't like my German -- one last thing, too, I'll just note so you guys think about this, and that is ehibits to be prefiled and how that interplays with hearing exhibits. That has caused some confusion before. Maybe we don't need to resolve that right now, but you might want to think about that when you are preparing your exhibits to testimony and how that's going to fit in with your presentation at the hearing.

MS. CREMER: Well, in the past, John, a lot of times it could be Staff's Exhibit 1 and then what we generally do is we call it like Tim Gates attachment one as opposed to an

exhibit. To me you have your exhibit and then you have attachments to your exhibit and so we would refer to it as Gates attachment one. But that's how we have done it.

MR. SMITH: Any thoughts on that? I really don't know that we care. It's just something to think about when you are putting your attachments or exhibits to prefiled, is that eventually that prefiled itself will become an exhibit and sometimes there's issues and you might want to think about factoring in some of those exhibits to prefiled within your exhibit scheme.

MR. WELK: I know this might create a situation with someone as multiple, but what cries out to me is if it's OTP, then you make the attachments A, B, C, D.

MR. SMITH: That sounds good, something like that works good. Then you got 1A, 1B, yep, that sounds like a way to do it.

MR. WELK: 1A, OTP 1B and then there will be an OTP2. If somebody has more than 26, attachments you are in the double As, but that would be limited.

MR. SMITH: You will sound like a Missouri county road. Do you guys -- any other matters that we need to discuss?

MS. GOODPASTER: This is Beth, none from my end.

MR. SMITH: Sanjay?

MR. NARAYAN: None for me.

MR. SMITH: Otter Tail?

MR. WELK: Anything, Todd or Chris, we haven't talked about that I have missed?

MR. MADSEN: I don't have anything else. We have covered everything on the agenda that I had.

MR. GUERRERO: This is Todd Guerrero. The discussion regarding the exhibits, et cetera, that will be in the draft order?

MR. SMITH: Yes. I'll put something in there on that.

MR. GUERRERO: Thank you.

MR. SMITH: Thanks very much, and again, I apologize for the glitch on the hearing, but I think we got it resolved and hopefully things will go well. Appreciate your time.

(Whereupon, the proceedings were concluded at 3:30 p.m.)

CERTIFICATE

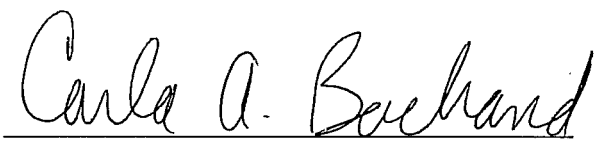
STATE OF SOUTH DAKOTA)
) ss.
COUNTY OF HUGHES)

I, Carla A. Bachand, RMR, Freelance Court Reporter for the State of South Dakota, residing in Pierre, South Dakota, do hereby certify:

That I was duly authorized to and did report the testimony and evidence in the above-entitled cause;

I further certify that the foregoing pages of this transcript represents a true and accurate transcription of my stenotype notes.

IN WITNESS WHEREOF, I have hereunto set my hand on this the 3rd day of March 2006.



Carla A. Bachand, RMR
Freelance Court Reporter
Notary Public, State of South Dakota
Residing in Pierre, South Dakota.

My commission expires: June 10, 2006.