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THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

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IN THE MATTER OF THE APPLICATION EL13-028
OF MONTANA-DAKOTA UTILITIES CO.
AND OTTER TAIL POWER COMPANY FOR A
PERMIT TO CONSTRUCT THE BIG STONE
SOUTH TO ELLENDALE 345 kV
TRANSMISSION LINE

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Transcript of Recorded Proceedings
August 6, 2014

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BEFORE THE PUBLIC UTILITIES COMMISSION

GARY HANSON, CHAIRMAN
CHRIS NELSON, VICE CHAIRMAN
KRISTIE FIEGEN, COMMISSIONER

COMMISSION STAFF

John Smith
Karen Cremer
Brian Rounds

APPEARANCES

Thomas Welk and Jason Sutton, Applicants
Bob Pesall, Intervener
Randall Schuring, Intervener
Bradley Morehouse, Intervener

Reported By Cheri McComsey Wittler, RPR, CRR

1 TRANSCRIPT OF RECORDED PROCEEDINGS, held in the
2 above-entitled matter, at the South Dakota State Capitol
3 Building, 500 East Capitol Avenue, Pierre, South Dakota,
4 on the 6th day of August, 2014.

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1 CHAIRMAN HANSON: Docket EL13-028, In The
2 Matter Of The Application Of Montana-Dakota Utilities
3 And Otter Tail Power Company For A Permit To Construct
4 The Big Stone South To Ellendale 345 kV Transmission
5 Line.

6 The questions before the Commission are today
7 shall the Commission grant the Motion For Leave To Submit
8 Documentary Evidence?

9 And shall the Commission grant the Joint Motion
10 For Approval of Settlement Stipulation and approve the
11 Amended Settlement Stipulation as the basis for its final
12 decision and order?

13 Or how shall the Commission proceed?

14 We will hear from all of the parties, including
15 those who are Interveners or represented. And we will
16 begin with MDU and OTP. And we have -- good afternoon.

17 We also have folks who have phoned in.
18 Mr. Welk, are you lead counsel --

19 MR. WELK: Yes. I'm representing --

20 CHAIRMAN HANSON: Lead counsel.

21 MR. WELK: (Inaudible).

22 MR. SMITH: Is your mic. on, Tom?

23 MR. WELK: Better? All right. Thank you.

24 The first Motion is the Motion For Leave To
25 Submit Documentary Evidence.

1 We ask that the Commission consider as part of
2 the administrative record in here Exhibits 26 and 26A and
3 Exhibit 301A.

4 Exhibit 26 and 26A relate to Intervener
5 Brad Morehouse's request of a route change. If you
6 recall, at the administrative hearing there was testimony
7 about several proposed route changes. The project was
8 uncertain as to what these changes were, and so they went
9 out and spoke with him, Mr. Schuring, and you'll see that
10 there was a letter that was written to him, which is
11 Exhibit 26 dated July 15, 2014, to both Mr. Schuring and
12 Mr. Morehouse, along with 26A, which was a map that was
13 signed by Mr. Schuring and Mr. Morehouse as to confirming
14 what their proposed reroutes were.

15 And after that the process that we described in
16 the evidentiary hearing of looking at the reroutes was
17 undertaken by the project. So these represent the
18 actions by the project in regard to Exhibits 26 and 26A.

19 Exhibit 301A is the Amended Settlement
20 Stipulation with the Staff. At the evidentiary hearing
21 there were questions asked by the Commissioners regarding
22 the Settlement Stipulation that was originally filed with
23 the Joint Motion For Approval.

24 Subsequent to the Commission's evidentiary
25 hearing we prepared an Amended Stipulation, which we

1 believed was consistent with what -- the discussion that
2 happened at the evidentiary hearing, provided a red line
3 copy of the changes to the original Stipulation and ask
4 that 301A be included as part of the record.

5 So I would move for the admission of
6 Exhibits 26, 26A, and 301A.

7 CHAIRMAN HANSON: Is there any objection from
8 any of the parties for these items to be entered as
9 exhibits?

10 MR. PESALL: No.

11 CHAIRMAN HANSON: Thank you. Hearing no
12 objections, they are accepted as exhibits.

13 MR. WELK: Mr. Morehouse is on the line. I
14 think he should be asked if he had any objections.

15 CHAIRMAN HANSON: I thought I was doing that as
16 I was.

17 MR. MOREHOUSE: Excuse me. This is Brad
18 Morehouse.

19 CHAIRMAN HANSON: Go ahead, Mr. Morehouse.

20 MR. MOREHOUSE: Thank you. I'm not really
21 understanding what you're actually trying to do today
22 with the exhibit or if you're voting on approval of the
23 project or what. But my thought -- and they were out and
24 they looked at different routes --

25 CHAIRMAN HANSON: Mr. Morehouse. Mr. Morehouse.

1 MR. MOREHOUSE: Go ahead.

2 CHAIRMAN HANSON: Just to help you out there a
3 little bit, Mr. Welk is just simply asking that the
4 map -- three different items, a letter, a map, and
5 another item be allowed to be a part of the exhibits that
6 are used in this hearing as evidence in the hearing
7 process. And we're just curious whether you have any
8 objection to -- if it's okay with you if those items are
9 included as part of this hearing process.

10 MR. MOREHOUSE: I have no problem with that.

11 CHAIRMAN HANSON: All right. Thank you very
12 much. We will give you -- and forgive me for assuming
13 that you knew what was taking place there when I asked
14 that question earlier. I'll be reminded of that and be
15 certain to make sure that you have the opportunity to
16 express any concerns as we go through this process.

17 Thank you.

18 MR. MOREHOUSE: Thank you.

19 CHAIRMAN HANSON: Thank you.

20 Mr. Welk.

21 MR. WELK: The other Motion that's pending is
22 the Joint Motion For Approval of the Settlement
23 Stipulation that was filed at the time of the evidentiary
24 hearing. My recollection was that the Commission did not
25 think it was appropriate to consider that Motion until

1 after the evidentiary record was concluded, which has now
2 been concluded and closed. And so we would ask the
3 Commission to approve what is now Exhibit 301A, which is
4 the Amended Settlement Stipulation pursuant to the Joint
5 Motion of the Staff and the project.

6 CHAIRMAN HANSON: Thank you.

7 Is there anyone who has any objection to 301A
8 being allowed as an exhibit?

9 Mr. Morehouse, this is another item that
10 Mr. Welk is asking to be included in the evidence as an
11 exhibit. Do you have any objection to that?

12 MR. MOREHOUSE: I do not.

13 CHAIRMAN HANSON: Thank you, sir.

14 MR. PESALL: No objection from Mr. Pesall.

15 CHAIRMAN HANSON: Thank you. Mr. Pesall is
16 represented by counsel, and counsel does not object to
17 it.

18 Please continue.

19 MR. WELK: Well, that concludes the two motions
20 that were set as part of the agenda item. The
21 discussion, not the voting. The discussion.

22 CHAIRMAN HANSON: Correct. Thank you.

23 I'm reading to see whether or not I've
24 trespassed my position as Chairman here.

25 The first question being shall the Commission

1 grant the Motion For Leave To Submit documentary
2 Evidence. And does that have to do with the three items
3 that -- the way you phrased that, counsel?

4 MR. WELK: What's that?

5 CHAIRMAN HANSON: Serious matter here.

6 MR. SMITH: I'm looking for my agenda.

7 CHAIRMAN HANSON: The question -- it's phrased
8 differently than what I would anticipate. It states
9 shall the Commission grant the Motion For Leave To Submit
10 Documentary Evidence.

11 And as the Chair, normally we turn over the
12 process to counsel to run it when we're going through
13 a -- an evidentiary hearing. And having presented the
14 evidence, I took it upon myself to accept that since
15 there was no objection.

16 I'm wondering, that question that was placed
17 there, did I overstep my bounds as Chairman? Do we need
18 to --

19 MR. SMITH: I don't think so. I mean, if the
20 Commission feels uncomfortable about it, go ahead and
21 vote on it. But I'm not hearing anyone step and say --
22 usually when I rule in the hearing, the ruling I make
23 stands unless the Commissioners object to my ruling.

24 So that said, I think your actions --

25 CHAIRMAN HANSON: Thank you.

1 MR. SMITH: You've already taken action.

2 CHAIRMAN HANSON: Just want to make sure we do
3 it properly. And I don't see either one of my
4 Commissioners objecting to it.

5 So without objection, they are accepted as
6 exhibits.

7 Thank you. That will turn to the second
8 question. And, Mr. Welk.

9 MR. WELK: That's the approval of the
10 Stipulation?

11 CHAIRMAN HANSON: Correct.

12 MR. WELK: We went into quite detail on this at
13 the evidentiary hearing. This Stipulation as amended by
14 the Commissioners' questions represent the agreement
15 between the project and the Staff as to additional terms
16 and conditions that would be placed on the project should
17 the Commission grant the facility permit.

18 The questions were asked at the evidentiary
19 hearing about all of those terms and conditions, and so
20 we would ask that if the Commission does grant the
21 permit, that these terms and conditions be included.

22 CHAIRMAN HANSON: Thank you. And I will hear
23 from Interveners at this juncture on that question.

24 MR. PESALL: Excuse me.

25 CHAIRMAN HANSON: Did he leave his notes for

1 you?

2 MR. PESALL: He did actually. They look like
3 ones that I've already been served with and printed many
4 copies in the office.

5 This is Bob Pesall. I'm an attorney for
6 Gerald Pesall. As the Commissioners know, he's my uncle.
7 He has throughout this process been very happy with the
8 thoroughness that the Commission has applied to this and
9 the other proceedings that he's had the opportunity to
10 witness.

11 Mr. Welk has not burdened the Commission with a
12 lengthy argument, and I don't anticipate doing so either.
13 I would ask the Commission on behalf of Mr. Pesall to
14 deny the Motion that's pending and to deny the permit at
15 this point.

16 The reasons behind it primarily are that we
17 don't feel that the proposed project is really in the
18 interest of the public in South Dakota, particularly the
19 folks that live in the siting area.

20 The testimony went on at length about the
21 interference that this is likely to cause with farms and
22 development in the area and that there wasn't evidence in
23 the record that really rebutted that.

24 In addition, there was lengthy testimony -- I
25 learned more about soybeans during this process than I

1 ever anticipated existed in the scope of human knowledge.
2 But we just have huge concerns about what's going to be
3 done if this project is built maybe not this time around
4 if the permit's denied but at some point in the future if
5 they revise the Application and try again in six months
6 or a year.

7 What do you do with 30 cubic yards of
8 contaminated soil for each and every individual tower?
9 How do you really intend to go about cleaning off the
10 equipment between each one of these construction sites?

11 In the proposed terms and conditions that have
12 been set forth they incorporate by reference the
13 mitigation plan. The mitigation plan has a sampling
14 method that a person can go out and look at and say
15 they're following their obligations there. Beyond that,
16 there isn't enough information for the Commission or
17 individual citizens to go out there and judge whether
18 they're doing it right.

19 That, combined with the other issues it creates
20 for the farmers in the area, we think really does create
21 a serious risk of damage to the environment. And damage
22 to the environment for a farmer means damage to your
23 social and economic status. It means damage to the
24 orderly development of the area.

25 So those are the grounds for which we ask that

1 the Commission deny the Motion and deny the permit under
2 this Application at least.

3 CHAIRMAN HANSON: Thank you.

4 Are there any other Interveners who are here or
5 either represented who wish to address this item?

6 MR. MOREHOUSE: Mr. Chairman, this is
7 Brad Morehouse.

8 CHAIRMAN HANSON: Yes, Mr. Morehouse.

9 MR. MOREHOUSE: If this is the proper time or
10 not.

11 CHAIRMAN HANSON: This is a great time.

12 MR. MOREHOUSE: Okay. I would just ask if the
13 permit is given, that the Stipulation be it has to be
14 within over a half a mile from my feedlot.

15 They moved it a mile from -- or I guess I've
16 seen the proposed line where I believe they have gotten
17 it moved a mile from the Schuring dairy, and they have
18 worked at moving it from my feedlot and with the excuse
19 that they can't do it because the neighbor doesn't want
20 that because it's too close to his house.

21 Well, it's way over 500 feet from his house.
22 And it can be moved. And there's got to be some
23 stipulation that it can't come close to a livelihood
24 where it can damage the livelihood of a farmer very
25 seriously. And this is a cattle feedlot operation, in my

1 situation.

2 So as far as needing the energy, having a line,
3 I'd say I don't have a problem with that, but do not let
4 them come within one half a mile of my feedlot, please.

5 CHAIRMAN HANSON: Thank you, Mr. Morehouse.

6 There are a number of Interveners. Are any of
7 the Interveners, other Interveners, represented, or are
8 they present today?

9 MS. CREMER: Excuse me. This is Karen Cremer of
10 Staff. And I spoke to Randy Schuring yesterday, and he
11 put some comments online, an e-mail that was put online
12 today. And then he said he would follow up with comments
13 when he returns I believe next week or about that time.

14 He did understand -- I did explain to him that
15 the decision could very well be today or within a very
16 short time frame as it has to be completed by the 22nd of
17 August.

18 CHAIRMAN HANSON: Thank you, Ms. Cremer. And
19 did you receive any similar contact with any of the other
20 Interveners?

21 MS. CREMER: I have not heard from anyone else.

22 CHAIRMAN HANSON: All right. I see none of them
23 are present today so I will turn to our Staff and,
24 Mr. Rounds, Mr. Kearney, who is -- Ms. Cremer.

25 MS. CREMER: Thank you. This is Karen Cremer of

1 Staff.

2 Staff would echo the comments of the Applicant
3 and recommend that the Commission grant the Joint Motion
4 For Approval of the Amended Settlement Stipulation and
5 adopt the attached Amended Settlement Stipulation without
6 modification.

7 I would note that the Commission's general
8 practice, their usual practice, is to write their own
9 Findings of Fact and Conclusions of Law so any problems
10 with the Applicant's proposed Findings of Fact and
11 Conclusions of Law are resolved by that practice.

12 Staff further believes that an appropriate
13 balance of the parties' interests has been reached and
14 the conditions address those issues that were raised by
15 the landowners in this matter. And Staff's analysts are
16 available should you have any questions.

17 Thank you.

18 CHAIRMAN HANSON: Thank you very much,
19 Ms. Cremer.

20 Turn to Commissioners at this time to see if the
21 Commissioners have any questions that they have of any of
22 the parties.

23 Commissioner Nelson.

24 COMMISSIONER NELSON: Well, the first question
25 deals with a comment that Mr. Morehouse just made and if

1 I heard him correctly he said that his understanding was
2 that the line had been moved a mile from the Schuring
3 dairy. That wasn't my understanding.

4 Mr. Ford, can you clarify whether there's been a
5 move or not?

6 MR. FORD: There has not been an official move.
7 We have been continuing to look at options for the line
8 in this area. And we do have a potential reroute that
9 would move the line an additional mile from the Schuring
10 farm.

11 However, we don't have any options signed on
12 that reroute. We don't know if we have any landowner --

13 COMMISSIONER NELSON: Okay. And you have not
14 filed anything with us. I was thinking I had missed
15 something, but I have not missed something.

16 MR. FORD: That's correct. No, we have not.

17 COMMISSIONER NELSON: Okay. I just maybe want
18 to raise -- Mr. Chairman, are we at the point of kind of
19 laying our cards on the table as to what concerns we
20 might have or how do you want to proceed?

21 CHAIRMAN HANSON: Absolutely. I think that's
22 appropriate at this juncture.

23 COMMISSIONER NELSON: At this point I've really
24 only got two issues. One is an issue that Mr. Pesall
25 raised in his brief about the enforceability of the

1 soybean mitigation plan.

2 And, Mr. Ford, you'll remember at the hearing I
3 asked about that. I said, you know, this plan doesn't
4 appear to be very detailed to me. And you gave some
5 assurances that there was a reason for that and it would
6 be fleshed out and it would be workable.

7 I don't have any doubt about that, but I think
8 Mr. Pesall makes a very valid argument that as it exists,
9 from our perspective it's probably not enforceable as a
10 matter of law.

11 And so one of the things that I would like to
12 see as a condition, should the permit be issued, would be
13 that a complete soybean nematode mitigation plan be filed
14 with the Commission, one that both the public and the
15 Commission have the ability to evaluate, is the company
16 complying with that detailed plan or not.

17 Is that something that you'd be willing to
18 accept?

19 MR. FORD: What would be the timing on that?

20 COMMISSIONER NELSON: Certainly prior to
21 construction.

22 MR. FORD: Okay. We have no problem there.

23 COMMISSIONER NELSON: Yeah. Because we
24 understand you're going to need to consult with your
25 experts and kind of figure out what's the best way to

1 move forward with this. And, yeah, it would take some
2 time, it would seem to me, to be able to put that
3 together. But I think from our responsibility to the
4 people is to make sure that whatever we've asked of you
5 is actually enforceable.

6 MR. FORD: Sure. Sure. I could add here too
7 that I think it was you, Commissioner Nelson, that asked
8 about whether or not we had talked to the Soybean Council
9 in this matter. And we had not at that time.

10 But we have since spoken with Adam Herges, who
11 is with the Council, and had some conversation with him
12 about the project and what, you know, we're trying to do
13 and what this mitigation effort would look like.

14 He indicated that they -- you know, they're a
15 resource that works with farmers to try to help them get
16 the testing done in their own fields and so forth. So
17 they don't have the expertise in-house.

18 But he did recommend to us that we visit with
19 Emmanuel Byamukama who's with SDSU. He's our SCN expert.
20 He's also an extension pathologist with SDSU. Emmanuel
21 was actually the individual that we had visited with
22 prior to the evidentiary hearing. And we have since had
23 further conversation with him, and presently we are in
24 the process of putting together a scope of work document
25 and ultimately a contract where we will use Emmanuel as

1 our expert to help us develop three things really.

2 He's going to consult initially on the sampling
3 plan itself so that we make sure that we do sampling in a
4 manner that provides the accurate, correct results. So
5 that would be the first step.

6 Then he has offered essentially the college's
7 resources to perform the actual sampling for us on the
8 project. And we're looking at that sampling being done
9 in the fall of 2015. So that's well in advance of
10 construction.

11 Once we have the sampling results, then -- and
12 they're going to be the ones that will also do the
13 analysis of the samples -- he's further agreeing to
14 consult with us on our specific mitigation plan, which
15 then would be based on the results that we see.

16 I think as we talked about at the evidentiary
17 hearing, the reason our plan was vague was because we saw
18 a lot of different options in there for what we may or
19 may not need to do. And depending on how much we see as
20 contaminated or noncontaminated, that's going to affect
21 really how we execute our mitigation.

22 I mean, certainly the simple thing is that you
23 do not bring contaminated soil from a field that has SCN
24 present to a field that does not. That's the simple
25 thing that you can say.

1 And then there's various ways to avoid doing
2 that, which we talked about briefly in terms of what we
3 call a clean crew/dirty crew or potentially cleaning
4 equipment on site and those types of things.

5 So we're still, you know, looking to the good
6 doctor at SDSU to really -- as he is an expert in this
7 area, to help us determine what is the best and
8 presumably then most successful method of mitigation
9 here.

10 But we do believe, and he seems to agree, that
11 that mitigation plan is based on the results that we
12 find, not something that we can necessarily sit down
13 today. Although we could in general terms say, like I
14 said, we'll prevent the spread from contaminated to
15 noncontaminated fields.

16 COMMISSIONER NELSON: Right. I think it's the
17 general terms that we want to avoid. So it sounds to me
18 like we're headed in the same direction, but when you get
19 that that's what I think I'd like to have filed with us
20 so everybody's got access to that.

21 MR. FORD: Absolutely. So that means that that
22 plan would probably be filed in late 2015 is what I would
23 guess at this point.

24 COMMISSIONER NELSON: I'm just going to turn --
25 Mr. Smith, does that sound reasonable?

1 MR. SMITH: Yeah. And is this something that
2 you want -- I mean, do you want a condition in the -- in
3 the order that --

4 COMMISSIONER NELSON: That would be my
5 presumption, yes.

6 MR. SMITH: That makes some level of, I guess,
7 added detail to what the current condition --

8 COMMISSIONER NELSON: Right. And what he's
9 describing, I mean, that's what I think I'm looking for.
10 I mean, we're going the right direction. It's just a
11 matter of formalizing that and making sure that it's on
12 file with us.

13 MR. SMITH: Okay. Yes. I mean, I think I can
14 figure out what that -- you know, assuming that you vote
15 for it that I think I can write something up. Yes, it
16 is, but my head isn't in front of it.

17 Yeah. I think I'll be able to do that based
18 upon what Henry said and what the question was.

19 COMMISSIONER NELSON: Okay. Thank you.

20 Then the only other issue that I've got is the
21 issue that's kind of bubbled up the last couple days by
22 some of the folks who are affected but not Interveners.

23 Mr. Chairman, how do you want to handle that?
24 Are you going to take testimony from those folks?

25 CHAIRMAN HANSON: I was -- I don't know that we

1 need to get into necessarily an evidentiary hearing right
2 now because we can't really. But certainly they've
3 traveled a long ways, and we should hear from them.

4 At the same time, the MDU and Otter Tail are
5 asking us to bench this, and if there's any concerns at
6 all, then we should have an additional hearing where
7 evidence is presented to us.

8 MR. SMITH: Here we're talking, though -- I
9 mean, we're talking people that aren't parties to the
10 case.

11 CHAIRMAN HANSON: Yes.

12 MR. SMITH: And so we're not talking about -- to
13 participate in an evidentiary hearing you've got to be a
14 party.

15 What you could do is hear comment. That's not
16 evidence.

17 CHAIRMAN HANSON: Right. And what I'm alluding
18 to is Mr. Pesall's comments I'm going to ask him a
19 question on this too. But we're not done with this by
20 any means unless we accept the stipulations that have
21 been requested of us.

22 So I think it's incumbent upon us to listen to
23 those folks now and then decide whether or not the
24 Interveners do have an opportunity to present that
25 evidence and have an evidentiary hearing.

1 So there's still loose ends to the octopus at
2 this point.

3 COMMISSIONER NELSON: Okay. I think I'd be fine
4 as long as we can hear from them and then decide how to
5 proceed forward.

6 CHAIRMAN HANSON: Absolutely. We won't continue
7 without hearing from everyone.

8 Yes, Mr. Welk.

9 MR. WELK: Yes. I have a procedural issue. And
10 I certainly don't have any objections to have them be
11 heard. What we were referring to, for the purposes of
12 the record, is that there was a letter filed by
13 Mr. Podoll dated August 3, 2004 [sic] and also a letter
14 from Carol Rydberg, R-Y-D-B-E-R-G, dated 8-1-04.

15 And as Mr. Smith indicated, these are not
16 Interveners. These were comments that were filed. I
17 just want to make an objection that the comments not be
18 included as part of the evidentiary record. That has
19 been concluded.

20 They had an opportunity to intervene in this
21 proceeding. The Commission provided multiple
22 opportunities to do so and was very -- we didn't object
23 to anybody who wanted to come in.

24 This submission is not under oath. It should
25 not be considered evidence. But these individuals are

1 citizens. They've come here. They should have a right
2 to talk. But I don't think it should be considered a
3 part of the evidentiary record, and we would object to
4 any consideration of their letters or comments being
5 considered part of the evidentiary record in this
6 proceeding.

7 But no objection to them stating their concerns
8 to the Commission.

9 CHAIRMAN HANSON: Thank you, Mr. Welk.

10 Would you object if Mr. Pesall presented
11 information of that nature from those folks and presented
12 it -- excuse me.

13 MR. WELK: You mean Mr. Pesall would act as a
14 lawyer in asking them questions? I don't understand.

15 CHAIRMAN HANSON: No. If he presented -- I'm
16 perhaps looking too far forward in this, but Mr. Pesall
17 might present some of that information in the questions
18 that I ask of him.

19 And are you objecting to him presenting
20 information of that nature? Or will you want to wait for
21 that bridge?

22 MR. WELK: I'll wait to see what he offers.
23 I've made the general objection that that shouldn't be
24 considered. The evidentiary record is closed. And these
25 are not parties.

1 So I've made my objection on that, and it's up
2 to the Chair to proceed. But, as I've said, the project
3 doesn't have any objection to listening to the comments.
4 But from a strictly legal standpoint the record is
5 closed.

6 CHAIRMAN HANSON: And that's the standard
7 operating procedure of this Commission is that only those
8 persons who are Interveners are allowed to present the
9 evidence; correct?

10 MR. SMITH: Well, yes.

11 And I think, you know, another side of that is,
12 you know, an evidentiary hearing has certain procedural
13 steps that need to be taken, such as we have to give
14 notice that there's going to be an evidentiary hearing.
15 And people need to have discovery option and -- you know,
16 I mean, we're just -- we're past that at this point. I
17 mean --

18 CHAIRMAN HANSON: Nevertheless, we're being
19 asked to consider a final passage of this item. And if
20 Mr. Pesall presents information and it's -- it's
21 incumbent upon us to hear that.

22 MR. SMITH: Well, if we're going to hear it in
23 an evidentiary sense, then we've got to go through --

24 CHAIRMAN HANSON: We'd have to have an ad hoc
25 and go through that process.

1 MR. SMITH: We'd have to serve notice, and we'd
2 have to have a hearing. We'd have to reopen the hearing
3 and begin again.

4 CHAIRMAN HANSON: Well, not begin again, but
5 yes --

6 MR. SMITH: Right.

7 CHAIRMAN HANSON: Thank you.

8 Does that answer your question, or does that
9 confuse you?

10 COMMISSIONER NELSON: Here's the thing that --
11 if I might, Mr. Chairman, you've referred to Mr. Pesall
12 several times, and it's not Mr. Pesall's issue that I
13 brought up. It's the Podoll issue that I brought up.

14 CHAIRMAN HANSON: Right. And Mr. Pesall is
15 representing his father. However, he's indicated some
16 things that I'm going to ask him a question on, and that
17 could lead to the other.

18 COMMISSIONER NELSON: Okay.

19 CHAIRMAN HANSON: There's a Pesall and Podoll.
20 Got you.

21 COMMISSIONER FIEGEN: Mr. Chairman, are you
22 willing to hear comments?

23 CHAIRMAN HANSON: Absolutely.

24 COMMISSIONER FIEGEN: Okay. Thank you.

25 CHAIRMAN HANSON: Are there any further

1 questions of Mr. Welk or Mr. Ford at this time?

2 Commissioner Fiegen.

3 COMMISSIONER FIEGEN: You know, I have several
4 questions. I don't know if we're going to go to comments
5 or if they're on the stand and that's who we're dealing
6 with right now.

7 CHAIRMAN HANSON: You know, we can move these
8 folks back and forth, back and forth, back and forth, to
9 your delight. So whatever you're comfortable with at
10 this point. You have them before you if you have
11 questions for them.

12 COMMISSIONER FIEGEN: Mr. Ford, are you ready?

13 It was reassuring to hear just now that you are
14 continuing to work with the dairy. Because I certainly
15 have concerns about that personally. I don't know if
16 it's going to affect the dairy or not. I just don't
17 know, and all of us don't know.

18 During the hearing they talked about --
19 Mr. Schuring talked about the Basin line by Bath, and he
20 brought that up during the evidentiary hearing. You
21 know, hard for us to see that line and that it comes
22 through the farm yard and how close is it to the dairy.
23 And we don't know that as Commissioners.

24 If you continue to work with the Schuring farm,
25 I probably won't offer a condition. If you choose not

1 to, I would look at a condition that looks at, you know,
2 we have the ability to look at serious injury, and
3 serious injury also deals with economic conditions and
4 that if there is serious injury to the dairy farm within
5 five years of the transmission line being in operation,
6 that the dairy farm can come in front of the Commission
7 again and present their facts to us.

8 Because I don't know if it's going to affect it
9 or not. And the evidence -- we have had evidence that it
10 can affect dairy, but we don't really know exactly the
11 entire evidence. So that's one item that we can continue
12 to talk about, or I can try to put a condition on our
13 order.

14 Any comments?

15 MR. FORD: I think that -- we want to do what we
16 can to get the permit approved, of course. And if you're
17 saying that -- us committing to a particular route --

18 COMMISSIONER FIEGEN: You can't do that?

19 MR. FORD: Yeah. But we are looking at another
20 option, and, you know, that's about all I can say right
21 now is that that option is being entertained.

22 COMMISSIONER FIEGEN: Right. And I understand
23 that.

24 We're going to go to the stands next. You have
25 a lot of your acres that are cropland and cultivated

1 cropland. It looks like about 1,500 and -- I don't know.
2 1,592 in the original map.

3 So how do you decide what you're going to test?
4 You talk about in your filing or your mitigation that
5 you're going to test the highly probable areas. What
6 does that look like?

7 MR. FORD: Are we talking testing for SCN?

8 COMMISSIONER FIEGEN: Yes. I'm sorry. Yes.

9 MR. FORD: Okay. No. We're testing all
10 cultivated fields.

11 COMMISSIONER FIEGEN: Right. All bean fields.
12 How about corn fields that have a rotation of only one
13 year away from beans?

14 MR. FORD: Yes. They will be tested.

15 COMMISSIONER FIEGEN: And so what did we hear in
16 the evidentiary? Is it three years of rotation? So how
17 many years of -- so what if it's corn two years in a row?
18 You'll be testing that cropland?

19 MR. FORD: Yes.

20 COMMISSIONER FIEGEN: Okay.

21 MR. FORD: We're not going to take that into
22 account as part of the testing. Although, you know, like
23 I said, we're working with Dr. Emmanuel. If he has some
24 different recommendation, I guess I don't know about that
25 at this time.

1 But our intention was to test all cultivated
2 fields because if they've ever had soybeans on them, they
3 have the risk of having the nematode present in the soil.

4 COMMISSIONER FIEGEN: Sure.

5 MR. FORD: So that was our intention was to test
6 all cultivated fields.

7 COMMISSIONER FIEGEN: Thank you, Mr. Ford.

8 Commissioner Nelson went down a path of giving
9 us your plan in the future after you have it more
10 detailed. Also would it be probable that the Commission
11 at any time could audit your results under
12 confidential -- I'm sure it's very confidential because
13 usually scans is confidential information.

14 But could the Commission at any time audit the
15 results of your testing, or should we just ask in the
16 condition that Commissioner Nelson's working on that you
17 submit those results under a confidential treatment to
18 the Commission, your testing of scans?

19 MR. FORD: I would think we could do either.

20 COMMISSIONER FIEGEN: Okay. Thank you.

21 MR. FORD: Whatever your preference would be.

22 COMMISSIONER FIEGEN: And my other questions --
23 I guess I mostly will have comments on the letter that we
24 just received, Mr. Chairman, so I will wait until those
25 people come and give comments, and then I will give them

1 a comment back.

2 MR. SMITH: Okay.

3 COMMISSIONER FIEGEN: And, Mr. Morehouse, one
4 question of you. Is the line now 1,200 feet away from
5 your feedlot?

6 MR. MOREHOUSE: Yes. That's what -- that's what
7 they proposed.

8 COMMISSIONER FIEGEN: Okay. Thank you.

9 Oh. Sorry. I do have one more question --

10 CHAIRMAN HANSON: Please, go ahead.

11 COMMISSIONER FIEGEN: -- for Mr. Ford.

12 In your original Application you had 27
13 dwellings or homes. I think 21 were occupied. Six were
14 vacant. Is that still the same in your kind of revised
15 route?

16 And I know you're still working at it, but is it
17 about the same homes, number of homes or dwellings?

18 MR. FORD: I don't think I have the answer to
19 that right off the top of my head.

20 COMMISSIONER FIEGEN: And I know everything you
21 looked at you continued to say, oh, that affected too
22 many homes and dwellings; we're not going to do that.

23 MR. FORD: Right.

24 COMMISSIONER FIEGEN: Okay. That's it for now.
25 I might have a few more questions in a little bit,

1 Mr. Chairman.

2 CHAIRMAN HANSON: Thank you. One of my major
3 concerns is the construction process. It's my experience
4 that that is what creates the biggest challenges to the
5 landowner, during the -- with the pipelines that we've
6 had put through here, that seems to be the biggest
7 contention. And certainly a transmission line for
8 electricity is a lot different than burying a pipeline
9 every inch of the way through the property.

10 I'm curious. From your perspective, Mr. Ford,
11 are you familiar with past transmission lines,
12 distribution systems that you've participated in, have
13 you changed best practices over the years? I assume you
14 have.

15 And are you very confident -- very confident
16 that from a compaction standpoint and from other
17 challenges with construction that you have the challenges
18 that are created taken care of ahead of time?

19 MR. FORD: On this particular project a lot of
20 what procedures or processes that are going to be applied
21 have been modeled after the CapX2020 projects.

22 Being that Otter Tail was heavily involved in
23 the CapX projects, we've been looking hard at their
24 procedures and everything from those projects as to how
25 best to do things.

1 I've also met with some other individuals who
2 were involved in some of the CapX projects to kind of
3 find out things that worked and didn't work. At least in
4 an effort to try to make sure that the procedures that
5 we're going to incorporate or apply on this project are,
6 you know, successful, that they are not maybe antiquated
7 or obsolete processes compared to what people have
8 learned today.

9 So, you know, there is every effort made through
10 the process of construction to minimize to the extent
11 possible any damages to the landowners' property.
12 Obviously, though, when you have that number of crews
13 travel up and down the right of way to do the actual, you
14 know, structure erection, wiring stringing, foundation
15 pourers, you know, you're going to have compaction.

16 And that's why we have in our damage mitigation
17 process the plan to decompact or, you know, scarify or
18 turn over those areas and try to restore that compaction
19 at least to the extent that we can close to the original
20 level.

21 CHAIRMAN HANSON: So you're confident that in
22 your experience that the compaction problem will be taken
23 care of?

24 MR. FORD: I am, yes.

25 CHAIRMAN HANSON: I'd like to ask Staff a

1 question.

2 Mr. Rounds, the -- I believe it was Mr. Henry
3 stated that as a part of the condition of the permit
4 that -- regarding fuel conditions. This was at one of
5 the public meetings. That a construction manager for the
6 company would be present, will be certain that the land
7 will not be worked when the property is not fit to be
8 worked.

9 And I'm wondering from our past experiences and
10 your experience with other transmission systems we've
11 worked with, are you confident that's laid out properly
12 in this Stipulation?

13 MR. ROUNDS: Thank you, Mr. Chairman. This is
14 Brian Rounds for Staff.

15 I don't have any past experience with
16 transmission lines where we've had a problem with that.
17 I think what we had put in the Stipulation is pulled
18 straight from past stipulations on the same issue where
19 we haven't had a problem.

20 I think that is, you know, as you had stated
21 before, a bigger problem when you're doing something like
22 a pipeline. And so I can tell you in that case we
23 used -- and I wasn't involved in that Docket, but I
24 believe we used some sort of a third-party liaison that
25 could kind of be a go-between, between the company and us

1 for those types of issues.

2 When the company was out working fields if there
3 was a question of whether or not it was a good day to be
4 in the field or not, they could call that person, and if
5 it was a legitimate concern, that could be brought to the
6 Commission.

7 CHAIRMAN HANSON: Thank you.

8 And, Ms. Cremer, I'd ask you a similar question.
9 Although you don't run out boots on the ground and look
10 at it, it's more of the semantics how it's written that
11 I'm curious about from you if you see any challenges
12 there.

13 MS. CREMER: I do not. In all the years that we
14 have done these if there is a complaint, it has probably
15 come to Ms. Gregg, and it has been resolved very quickly.
16 But I just -- we get so very few complaints on
17 transmission lines.

18 I'm thinking of those large ones that were built
19 down by Brandon Valley. That was Xcel. I just don't
20 recall, that 345, there being an issue with that
21 whatsoever.

22 CHAIRMAN HANSON: All right. Okay. Thank you.

23 I have a comment, but I think I'll wait until
24 Mr. Pesall is up.

25 Are there any other questions of these folks?

1 If not, I think we'll turn to the folks who
2 would like to make a comment who are not Interveners, and
3 then we will turn to final questions of those who are
4 Interveners.

5 So is there anyone in the audience who wishes to
6 make comment at this time to the Commission?

7 Please come forward, and state your name for the
8 record. And we appreciate your time and the fact that
9 you traveled here. It's good to see you again.

10 MR. PODOLL: Good to see you too, Mr. Chairman.

11 I don't -- probably don't have any comments
12 further. We didn't know we would be allowed to comment
13 so we didn't bring our files.

14 As far as the evidentiary hearing, I -- I'm not
15 a real computer buff. I don't know if anyone had sent
16 notices. I didn't see notices of when that was. When we
17 did find out, it was after the deadline date so it's
18 probably our fault --

19 MR. SMITH: Sir, can you introduce yourself?

20 MR. PODOLL: I'm sorry. I'm Lyle Podoll,
21 Westport, South Dakota.

22 And I have no other comments than what was in
23 the letters, kind of the way things have been handled,
24 and that was our concern. We were told by two staffers
25 of KLJ that they weren't even considering the third route

1 proposal that we had lined up. And it's explained in the
2 letter that it is.

3 The manager of that company said it was still
4 well into consideration so we didn't know who to believe.
5 So that was our concerns.

6 I do find it interesting that they -- I know the
7 evidentiary hearing has passed, but apparently we have
8 some merit in what we were saying because they don't want
9 it to be part of the record.

10 So with that, that's all I have to comment on.

11 CHAIRMAN HANSON: Thank you.

12 MR. PODOLL: And thank you for your time.

13 MR. BUNTROCK: Mr. Chairman, Lloyd Buntrock.

14 And I think that's been the biggest discretion
15 on this is when we contact those that are out in the
16 field contacting us and stuff with these different
17 details, they tell us one thing, and then we're told
18 different when we come to a meeting. So it's a little
19 confusing.

20 And then they're talking about like your
21 distance from the dairy and all of that, but to me even
22 from the household the line that's going to run like by
23 my place is going to be probably about a quarter of a
24 mile. And so to me that would be -- you know, if you're
25 talking moving the lines for a feedlot or something like

1 that, personally I guess a human being I would think more
2 of that than something like that.

3 But and then another question that I've never
4 really been answered, what benefit is really South Dakota
5 going to get from this if this is approved? I mean,
6 what -- what are we -- not any of us in South Dakota are
7 going to get any electricity from this, and yet we're the
8 ones that's going to have to put up with going around the
9 poles and farming through it and so on and so forth.

10 And so what benefit is South Dakota going to
11 get? I guess as Commissioners my thought is, you know,
12 if you're for South Dakota, we had a South Dakota based
13 utility company that was willing to supply. You know
14 where the electricity is going, that company, and yet
15 they didn't want it from them.

16 And that don't make sense to me. Why not back
17 up our own utility company when Big Stone was willing to
18 go ahead and send electricity to Minnesota but they
19 didn't want to accept it because it was made out of
20 coal.

21 And that's a fact. They were ready to dig the
22 shovel in the ground. And yet now then, you know, we go
23 and obstruct all of this view in South Dakota, and really
24 we're not benefiting from it at all.

25 Now there's probably a tax layout or something I

1 assume the State would get from the poles and so on and
2 so forth. But some of these are the things that are a
3 little discouraging to everybody that we talk to is that
4 we're told one thing and then another thing and then
5 another thing, and we don't know where we're at. They're
6 willing to move the line, but yet they're not willing to
7 move the line when we contact them.

8 So I guess just based on all of this, it's just
9 kind of -- it's been kind of a confusing project, and I
10 can't really see and I've never got a direct answer what
11 is South Dakota going to benefit from it, the people in
12 South Dakota?

13 And as a South Dakota Utility Commission I guess
14 if I was on it, I would have a hard time saying yes
15 because I can't see where anybody in South Dakota is
16 going to benefit from it. And they've admitted that.
17 We're not going to get one little kilowatt of electricity
18 from it.

19 So that's just my comments. So thank you.

20 CHAIRMAN HANSON: Thank you, sir.

21 MR. PODOLL: Can I ask one question?

22 CHAIRMAN HANSON: Please, go ahead.

23 MR. PODOLL: At the meeting I don't know if it
24 was the one at Northern or the other one. It was
25 mentioned that these companies were supposed to contact

1 the households that may not have property on the line
2 but may be within a half-mile. Was that correct that
3 they should give them consideration or at least contact
4 them?

5 Was that -- yes or no? I don't remember
6 100 percent for sure.

7 MR. SMITH: Yes. And there are two -- there are
8 exhibits in the record that list --

9 MR. PODOLL: Because there's two households
10 there that they were going to be extremely close that
11 have not received any contact whatsoever, that they're
12 going to actually be the closest to the original
13 proposal.

14 No one has contacted them that this could be
15 right out their front door. Not on their property, but
16 out their front door.

17 So that was, I mean, just another thing like
18 Lloyd said. There's just so many things. What's
19 disturbing is that the representatives in the field and
20 it's in the letter about this slander thing. And that
21 still may become an issue because that guy's furious.

22 But they're representing their own company.
23 They're representing two powerful electric companies.
24 And is that going to be a reflection on the PUC if that's
25 allowed to be standard procedure to go out and deceive

1 people intentionally. Because even these companies got
2 to be in on the planning on what's happening out in the
3 field.

4 So thank you.

5 CHAIRMAN HANSON: Thank you.

6 And we'd need to have special information on
7 addresses and things like that if people were not
8 contacted because the parties -- the Applicant has
9 records of where they've sent information. And if
10 they -- it's really up to people too to contact them if
11 they feel they need information. So appreciate you doing
12 that.

13 MR. SMITH: Yeah. And it's important to note
14 too that it isn't people who live within -- it's the
15 owners of property as reflected by the -- yeah. The
16 person who's -- who's authorized to receive the tax
17 notice from the Director of Equalization. That's the
18 list of people who gets the serve. Not necessarily --

19 People can reside within a half a mile and won't
20 get a notice because they're not the record owner of the
21 property. There's nothing in our statutes or anything
22 that requires that, no, there isn't.

23 CHAIRMAN HANSON: Yes, sir.

24 MR. DENNERT: Bud Dennert, Westport,
25 South Dakota.

1 And really wasn't planning on talking today, but
2 somebody needs to say something. The line is scheduled
3 to go within 60 rods of my buildings.

4 CHAIRMAN HANSON: Is it on your property, sir?

5 MR. DENNERT: What was that?

6 CHAIRMAN HANSON: Is it on your property?

7 MR. DENNERT: It is on my property. And then
8 the line turns and goes east, and it goes by two -- two
9 houses that are probably within 20 rods of the line.

10 Lyle's house is probably 60 rods, maybe a little
11 bit more, from the line. His other son's house is
12 probably in that 40 to 60 rods. Then it goes on east
13 from there, no buildings, for two and a half miles, turns
14 south, and goes right in front of Lloyd's buildings.

15 Now we figured up a route that they could use.
16 Everybody was agreeable except two quarters of land. Now
17 you've got the Schonsenbachs [phonetic], myself, Lyle,
18 the fellow that raises dogs -- I don't know him -- Lyle's
19 family. All of them are against it.

20 Would it not be better to fight two people than
21 to fight the whole herd of us?

22 You know, we've got kind of a love for that land
23 that these shiny-shoed fellows that run these big
24 companies, they don't understand. They don't realize
25 that the one farm I have my grandfather homesteaded. He

1 put his life into that. My dad put his life into it.
2 And I put quite a bit of mine into it.

3 And to come out and just dig a hole 50 foot deep
4 and start running cement in there and -- we're giving you
5 a blotch on our land title. That blotch is going to be
6 there forever. There's no way that we can get that off
7 of there or anything else, but it's going to stay there
8 as long as what there -- as what there's life in this
9 country, I guess.

10 And, you know, those are things I think maybe
11 you should be thinking about. You're thinking about some
12 high fancy things that I'm not understanding what you're
13 talking about, but I do understand my walking on that
14 land, my owning it, my paying taxes on it, and my
15 stewardship of taking care of it, that the land is
16 fertilized properly, that it's sprayed properly, and we
17 don't try to overcrop it. Those are things that I'm
18 concerned about.

19 And I think maybe we should be starting to look
20 at those considerations, look at the shortage we've got
21 of beef. A little area out in western South Dakota loses
22 its cow herd. Look what it's done to the price of beef.
23 What would one crop failure do to the price of corn, the
24 availability of corn? And, you know, maybe we better
25 look at some of those things and take care of them,

1 rather than somebody coming in and saying, hey, we're
2 going to build a line across your land; we're going to
3 give you \$140,000.

4 Well, we've been fighting income tax for the
5 last few years. You hand me \$140,000, probably 70,000 of
6 that will go back to the Internal Revenue. Now that
7 don't make much sense, does it? But I've got the blotch
8 on my land.

9 I guess there's other things I'd like to talk
10 about, but you guys want to go home too so -- okay.
11 Thank you very much. I appreciate it.

12 CHAIRMAN HANSON: Thank you, sir. Appreciate
13 it, Mr. Dennert. And we're not trying to fight anybody.
14 When you said it's better to fight two of them than all
15 of --

16 MR. DENNERT: I wanted to make -- are you having
17 kind of a brown out? It seems like your P.A. system, you
18 aren't getting much volume out of it. I'm having a heck
19 of a time here.

20 CHAIRMAN HANSON: Well, I guess that makes two
21 of us then. Thank you. I thought it was me.

22 Thank you.

23 Mr. Pedall -- Pesall. Excuse me. Did I say
24 Pedall all of these times? I'll call you Bob then. How
25 is that?

1 MR. SMITH: Is your mic. on there, Bob?

2 CHAIRMAN HANSON: She tricked you.

3 You had said in your remarks that there were
4 some statements that were not refuted by -- regarding
5 farms and development and such that were not refuted and
6 that they are still, in essence, bones of contention that
7 need to be resolved in order for us to arrive at a
8 conclusion.

9 I'm wondering if you could -- in reading all
10 material I'm not aware of what those might be.

11 MR. PESALL: The point I was trying to make with
12 respect to that is we had three farmers come in and
13 testify to the Commission that they believed, using
14 various language, using this line if it was permitted to
15 be built, would unduly interfere with their ability and
16 would cause them severe economic harm.

17 There were no farmers or anybody else really
18 qualified to talk about how farming works that came in
19 and testified on behalf of the Applicants. So when I say
20 there was unrefuted testimony that's what I'm referring
21 to.

22 CHAIRMAN HANSON: Okay. Thank you. Are there
23 other questions by the Commissioners of Mr. Pesall?

24 MR. PESALL: I guess since I have the mic. if I
25 can offer just a couple of comments.

1 First of all, I have some legal concern with the
2 prospect of authorizing the Applicants to come up with a
3 plan after the permit is granted. I don't know if that's
4 appropriate delegation.

5 So as much as we're on the record, I would raise
6 that objection. I don't think that's the right way to go
7 about it. I think the right way to go about it is to use
8 the Commission's authority to deny on specific grounds
9 and then allow them to reapply.

10 Beyond that, the Commission is looking at what
11 has been done in the past. I try to avoid ever coming
12 out to Pierre without invoking the founding fathers at
13 least once. Thomas Paine was famed for having said long
14 history if not thinking a thing wrong gives it the
15 superficial appearance of being right.

16 I would encourage the Commission to stick with
17 the evidence that we've got this time around and, of
18 course, ask that you deny the permit.

19 CHAIRMAN HANSON: Thank you.

20 Any further questions by the Commission?

21 Hearing none, there will be time for comment.

22 Is there a Motion at this time?

23 COMMISSIONER FIEGEN: Do you mind if I just make
24 one quick comment?

25 CHAIRMAN HANSON: Absolutely.

1 COMMISSIONER FIEGEN: First of all, I want to
2 thank the three people that drove up to Pierre today to
3 give us comments. It's always good to hear them.

4 When I was a legislator that would have worked
5 perfectly and we could have listened to you and we could
6 have taken your comments and we could have taken the
7 letter that you sent us.

8 But when I became a Public Utilities
9 Commissioner I remember my boss at the time was
10 Judith Meierhenry because I ran a nonprofit. And she was
11 my boss, and she was a Supreme Court Justice. And she
12 said to me, Kristie, you are now a quasi-judicial, and
13 now your steps are more judicial than legislative.

14 And so although you sent me this letter and I
15 appreciate your comments, I so wish you would have become
16 parties in the case and that you could have been at the
17 hearing.

18 We try at the Commission to be so open. Our
19 goal is to make sure that the public is absolutely
20 informed and involved. I mean, agriculture is very
21 important to me.

22 I sent a picture to one of our Commissioners on
23 Sunday night that I was throwing 100-pound alfalfa bales
24 and I haven't done that for quite a few years but my
25 brother needed those picked up before it rained so I went

1 and helped him. And I just love agriculture; it's just
2 down in my heart.

3 But, unfortunately, we cannot take the evidence
4 that you gave us today into our consideration of our
5 decision because it's legally wrong. I legally can't do
6 it. Not because there's not merit to what you're saying
7 because there may be.

8 I think all three Commissioners had great
9 concern when we got your letter because of conflicting
10 information. And all the sudden all three of us -- and
11 we don't get to talk so I don't know, but I know them
12 personally that they want to do what's best for the
13 public.

14 And we're like, oh, my goodness. We just got
15 this. We can't really do a lot about it because it's not
16 in the evidentiary hearing. And there's conflicting
17 information and it's late and I so wish you would have
18 become parties in the case.

19 So I just want to thank you for coming up.
20 We're all in a learning process. If this was a
21 legislature, we certainly could have taken your comments.
22 But today it's not. This is a judicial type of process.
23 So thank you.

24 CHAIRMAN HANSON: Please, go ahead.

25 COMMISSIONER NELSON: Commissioner Fiegen, you

1 did an outstanding job of really summarizing exactly what
2 I've been wrestling with since we got this information,
3 and everything you said is exactly right. And I
4 appreciate your saying that.

5 If this permit moves forward today, there's
6 going to be probably one issue that I'm not going to feel
7 good about, and this is it. Because I don't believe that
8 we've been able to grill to the bottom of the truth.

9 And I will say for your all's benefit, when we
10 had the evidentiary hearing I asked -- and I believe it
11 was Mr. Ford that I asked the specific question in your
12 area are there landowners that oppose the alternate
13 route, and the answer was yes.

14 And now we get this information this week that
15 says, well, that might not be the case. But on the
16 record we've got that statement. And that's what I've
17 got to work with.

18 And as Commissioner Fiegen said, unfortunately,
19 you know, if you folks were parties to this, we could
20 have played a little bit differently and maybe gotten to
21 exactly what the truth is. But at this point I've got to
22 deal with what I've got on the record. And that's what
23 I've got.

24 (Inaudible)

25 CHAIRMAN HANSON: No. Thank you.

1 COMMISSIONER FIEGEN: Mr. Chairman, I don't know
2 how to proceed here. Or Mr. Smith. Like the Stipulation
3 and how can we present conditions that other
4 Commissioners can deny or vote for?

5 CHAIRMAN HANSON: Perhaps I can help a little
6 bit with that.

7 COMMISSIONER FIEGEN: Thank you.

8 CHAIRMAN HANSON: On my comments.
9 I think I'm about 80, 90 percent, somewhere in
10 that vicinity in a position of voting in favor of this.
11 However, that 80, 90 percent -- that 10 to 20 percent
12 causes me to reflect on this and want to review it,
13 review the -- now that I've actually been able to hear
14 your thoughts from the two of you.

15 And I think that would give us some time for you
16 to prepare -- or for me to prepare, for Commissioner
17 Nelson to prepare any concerns that they have for
18 amendments to conditions or anything of that nature.

19 After all, this is a proposal to us as to
20 whether or not we should accept it. And I'm just not
21 100 percent there. Although, when I heard Commissioner
22 Nelson's discussion on the SCN, again, we may have an
23 opportunity not to agree on some things.

24 And I'll make some comments on that along with
25 the comments that I'm going to make now. Mr. Pesall

1 stated -- I believe that Mr. Pesall stated that he
2 learned more about soybeans than he ever thought he
3 would.

4 I've been learning more about soybeans than I
5 ever wanted to. I helped my grandfather plant soybeans
6 for a long time and never thought that I'd be involved
7 with cysts and nematodes and things of that nature.

8 But when I look at the SCN -- and I don't mean
9 to downplay the importance of the process of construction
10 to make certain that contamination is held to as minimal
11 as possible, but when we heard the presentation by the
12 professor, Mr. Tylka, on the soybean cyst nematode and a
13 life cycle being four weeks, a pregnant female having
14 2 to 300 eggs the size of a period, that anything, in his
15 words, can transport SCN, even the wind can transport it,
16 deer and badger and other rodents, rabbits, hunters,
17 neighbor helping in a harvest, birds, it's just -- it's
18 just amazing how this hasn't -- well, it has.

19 I remember reading about it years ago, not that
20 long ago, where it was just in the southeastern part of
21 the United States. And it has spread rapidly. I just
22 don't see how -- how it's -- you know, we've got to do
23 everything we can responsibly to make sure that it's
24 not -- the contamination is not spread unnecessarily, but
25 it seems that this is something that's going to happen

1 everywhere. And I appreciate the challenges of making
2 certain that we keep it down to a minimum.

3 But I still -- my concerns are strongly going to
4 be piercing -- looking at the construction process itself
5 which is part of the SCN. And I'm just not 100 percent
6 there ready to support this. It's not to say that in two
7 weeks I won't be, but I just need to have a little more
8 time to look at that.

9 Perhaps that's the time you need to look at
10 the concerns you have. So I'm interested in your
11 thoughts.

12 COMMISSIONER NELSON: I think I've pretty well
13 resolved everything in my mind and could probably vote
14 through most or all of this today. Although it probably
15 would be prudent to work with Mr. Smith to word the
16 condition properly, especially if you've maybe got some
17 concerns so we know exactly what I'm asking for and what
18 I'm asking you all to vote for.

19 CHAIRMAN HANSON: Correct.

20 COMMISSIONER NELSON: But two weeks. I don't
21 know if we've got two weeks, Mr. Smith.

22 MR. SMITH: I mean, the day the Order by law has
23 to be out by is the 22nd.

24 CHAIRMAN HANSON: All right.

25 MR. SMITH: So if you want to defer taking

1 action until a later date, we need to look for a date. I
2 would appreciate it if we can get a date as soon as
3 possible, like a week, to give me at least two weeks
4 after that then to fashion an order.

5 What's that?

6 CHAIRMAN HANSON: That means in two days --

7 MR. SMITH: I mean, like next week. If there's
8 a date available next week.

9 CHAIRMAN HANSON: If you're saying the 22nd and
10 two weeks --

11 MR. SMITH: I've got to have it out by the --

12 CHAIRMAN HANSON: Today's the 6th. And the
13 22nd. That's two days from now that we would have to
14 have --

15 MR. SMITH: Well, I don't absolutely need a full
16 two weeks, but it would be nice to have at least one full
17 working week. I'll put it that way. Because it's some
18 work to write up one of these orders.

19 CHAIRMAN HANSON: Absolutely.

20 MR. SMITH: Although, I don't think this will be
21 on the Keystone level, but it takes a little while.

22 CHAIRMAN HANSON: I don't need that long of a
23 period of time to go through what I have.

24 But I'm interested in hearing what the other
25 Commissioners have to say. If you're ready, you're

1 ready.

2 COMMISSIONER NELSON: I would be, but I'll
3 certainly defer.

4 CHAIRMAN HANSON: Okay.

5 COMMISSIONER FIEGEN: And, Mr. Chairman, you
6 know that you have always been gracious to all of us when
7 we need more time to study. And so I would certainly be
8 willing to do that.

9 I am certainly willing to vote today. My
10 conditions that I'm proposing aren't perfectly written,
11 but I know our General Counsel could help me with those.
12 But I would be very happy to defer and wait until you're
13 ready because you have always been gracious to us.

14 CHAIRMAN HANSON: Well, it makes sense if you
15 have any conditions you wish to propose at this time,
16 that they should at least be laid out on the table and
17 discussed at this juncture.

18 MR. SMITH: Or, you know, if you're going to
19 defer taking action, if you want, I can -- you know, that
20 will -- I can work on helping you draft language so
21 that -- for whatever it is you want to do.

22 COMMISSIONER FIEGEN: The one condition will be
23 the dairy farm on the serious injury for economic
24 conditions. So that will be one of my conditions that I
25 kind of have written down. But sure you can help me

1 wordsmith that.

2 And then the scans on being able to audit the
3 findings or present the findings to the Commission
4 confidentially and attach that or make an amendment to
5 Commissioner Nelson's final plan submitted to the
6 Commission.

7 MR. SMITH: Okay.

8 Well, maybe if you want to defer taking action
9 today, what -- maybe you should discuss what days are
10 available and when we could get back together again.

11 CHAIRMAN HANSON: Yeah. I don't have a calendar
12 that tells me that.

13 MR. SMITH: Well, then maybe we can't do that
14 right now then. Okay.

15 CHAIRMAN HANSON: We'll have Staff do that with
16 the idea that they put it together for within the next --
17 well, as soon as possible. This week even, if possible.

18 COMMISSIONER FIEGEN: Mr. Chairman.

19 CHAIRMAN HANSON: Yes.

20 COMMISSIONER FIEGEN: Also could we let the
21 parties and the Interveners know that it is certainly
22 okay to participate by phone. Because I would guess many
23 of the Commissioners have other scheduled events or
24 conflicts so we will probably be participating by phone.

25 So just so you know, when we come back,

1 everybody doesn't have to fly back or drive back or
2 whatever. That's my opinion as a single Commissioner,
3 just so you know.

4 CHAIRMAN HANSON: Absolutely. Absolutely. Good
5 point.

6 Anything further on this -- on this item on the
7 agenda at this time?

8 Seeing none --

9 COMMISSIONER FIEGEN: So, Mr. Chairman, do we go
10 into recess, or do we post another date for an ad hoc?

11 CHAIRMAN HANSON: We'd have to post a date for
12 an ad hoc.

13 MR. SMITH: Yeah. And we'll have to notice
14 that.

15 COMMISSIONER FIEGEN: Okay.

16 MR. SMITH: So once we can take a look at the
17 calendar and determine what's open, we'll have to
18 schedule something and then we'll have to, you know, give
19 notice to everyone who's a party to the case.

20 COMMISSIONER FIEGEN: Thank you. And thank you
21 to all the people who attended the hearing today. We
22 certainly appreciate your attendance.

23 CHAIRMAN HANSON: Okay. With the understanding
24 we're setting up an ad hoc on this, is there any further
25 discussion on this item?

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If not, we will turn to announcements.

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 transcribed the audio recording of
10 the foregoing proceedings.

11 Dated at Pierre, South Dakota this 14th day
12 of September, 2014.

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

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