

1 (Rough draft of portion of
2 transcript from 8-13-15)

3 JUDGE ANN O'REILLY: Okay. Now,
4 Ms. Overland, you've been extremely patient?

5 MS. CAROL OVERLAND: Thank you.
6 Carol Overland, O-V-E-R-L-A-N-D. Legal
7 electric, and today for Residents and Rate
8 Payers against the Not So Great Northern
9 Transmission Line. First, I would like to be
10 under oath, but not oath, I would like to
11 affirm my comments.

12 JUDGE ANN O'REILLY: What do you
13 mean?

14 MS. CAROL OVERLAND: Well, you know,
15 like doing under oath.

16 JUDGE ANN O'REILLY: You want to
17 testify?

18 MS. CAROL OVERLAND: Well, that's
19 what a comment is in my view.

20 JUDGE ANN O'REILLY: Okay. Well, I
21 can put you under oath.

22 MS. CAROL OVERLAND: But affirming,
23 not under oath.

24 JUDGE ANN O'REILLY: Okay. Well --

25 MS. CAROL OVERLAND: I would like

1 that.

2 JUDGE ANN O'REILLY: You are an
3 officer of the Court, so I assume that
4 everything that you say is a fair
5 representation. But given that, you are on
6 officer of the court, do you affirm that the
7 information you will provide will be the truth
8 to the best of your knowledge?

9 MS. CAROL OVERLAND: Yes.

10 JUDGE ANN O'REILLY: Okay.

11 MS. CAROL OVERLAND: Thank you. I
12 appreciate that.

13 Also, for the record I would to say
14 I appreciate your providing an e-mail address
15 to supply comments to because. In the
16 notices -- and I put this on the website
17 yesterday, there is no way on the Commission's
18 website to put attachments, which is something
19 I always do with comments. So I appreciate
20 your recognition and --

21 JUDGE ANN O'REILLY: I just realized
22 that last night. Someone brought that to my
23 attention. I did not know that, that the
24 Speak Up doesn't allow that. So what I think
25 when I get back what I'll probably do is put

1 an order in the hearing record just advising
2 the public about the deadline for the public
3 notice, and then be specific as to how
4 comments can be submitted, including my e-mail
5 address. It'll just be easier.

6 MS. CAROL OVERLAND: Thank you.
7 It's greatly appreciated.

8 Then also regarding comments, there
9 are comments -- things in the eDockets are not
10 necessarily part of the record. And there are
11 comments from the DNR and the DOT and US Fish
12 and Wildlife, and maybe other agencies, but I
13 don't know off the top of my head. But I
14 think I have seen comments from those three
15 agencies and --

16 JUDGE ANN O'REILLY: From the DNR --

17 MS. CAROL OVERLAND: The DNR, the
18 DOT, and US Fish and Wildlife.

19 And in previous proceedings. It's
20 been a problem because they have been isolated
21 over in the DEIS section, and they haven't
22 made their way into the substantive routing
23 portion. And they have been about issues
24 that -- like DOT prohibitive of routing in a
25 particular way. Things that relate into

1 routing a line. So they should be
2 incorporated into the routing docket. And so
3 how can that happen?

4 JUDGE ANN O'REILLY: Well, one of
5 the things that I try to do -- first I'll let
6 you know how I handle it. I put the comments
7 in various ways, okay. So I organize comments
8 and public comments, and then within that I
9 have ones that are from municipalities and
10 agencies and handle them. Not that they are
11 given more weight necessarily, but they are
12 handled -- I do make sure that they are
13 summarized in my report. But if you have
14 those particular comments, obviously you can
15 offer them as exhibits.

16 MS. CAROL OVERLAND: I don't have
17 them, but I can get them. I don't have --

18 JUDGE ANN O'REILLY: Okay.

19 MS. CAROL OVERLAND: Or could we
20 just stipulate with the parties that are part
21 of this, to enter them into the record
22 formally? If I provide like a list of them?

23 MS. LINDA JENSEN: Your Honor, it
24 might be helpful, and there is an existing
25 procedure, and perhaps Mr. Storm can explain

1 how that's done.

2 JUDGE ANN O'REILLY: Okay.

3 MR. BILL STORM: Bill Storm,
4 Department of Commerce.

5 I believe the letters that Carol is
6 referring to are comments that came in from
7 the MnDOT the DNR and the PCA on the Draft
8 EIS.

9 JUDGE ANN O'REILLY: I actually have
10 them here because they came in last week.
11 That goes to the Draft EIS, so that goes to
12 him. Now, it is likely, as we heard Mr. Reed
13 say, that the -- say the DNR will be bringing
14 comments, will may be submitting comments to
15 the actual route -- to the route itself, you
16 know, as -- I'm sorry, submitting public
17 comment for this more general public comment,
18 if you will, of the route as a whole, not just
19 changes or -- when I read those comments, they
20 are pretty specific to the DES asking -- DEIS
21 asking that certain things be included or
22 changed. So are you talking about those
23 comments?

24 MS. CAROL OVERLAND: I am. Because
25 in the past, particularly in -- for example

1 the CapX Brookings case regarding DOT
2 easements that made a particularly route
3 prohibitive, comments were put in on the DEIS,
4 but they were, like, over there and in the
5 routing. It wasn't open knowledge
6 essentially. And the purpose -- the whole
7 purpose of the DEIS is to inform the record.
8 And in routing, a lot of the issues brought up
9 by the DOT because they are talking about
10 where can transmission go, can it over this
11 easement, how do we accommodate. Or to the
12 DNR, you know, where these MCBS sites, we
13 can't run over the protective turtle or
14 whatever. Those things do have an impact on
15 routing. And so I think that those -- they
16 shouldn't be isolated.

17 The purpose of the DEIS is to
18 inform, and those comments -- I don't believe
19 that they are intended by -- I mean, they are
20 labeled as DEIS comments, they go over there,
21 but they have an impact on routing and should
22 be in the routing docket as exhibits. I mean,
23 in the past I've had to subpoena the DNR and
24 DOT, and now they have become accustomed to it
25 and have shown up and are putting comments in

1 and are e-filing them now which they didn't do
2 before.

3 But I think it's a really important
4 to have those in the routing so that
5 applicants, you, Commerce -- Commerce is aware
6 of them, but so that you and the applicants
7 and whatever other parties -- but there aren't
8 any in this -- would know about their
9 concerns. Because that has an impact on
10 routing.

11 JUDGE ANN O'REILLY: Okay. Well,
12 one of the things that -- you know, they do
13 come into the record just because the record
14 includes everything. But, you know, you could
15 also submit them at -- you know, you can offer
16 them as exhibits if you so chose.

17 MS. CAROL OVERLAND: Okay.

18 JUDGE ANN O'REILLY: If you can get
19 them printed out today, we can certainly -- I
20 mean, I think I have a couple here, if, you
21 know -- but I've written on them. But, you
22 know, that is something that you could offer
23 to include --

24 MS. CAROL OVERLAND: Okay. If I can
25 find a way to get copies made and bring them

1 in in the next --

2 JUDGE ANN O'REILLY: Well, they
3 might have a copier here.

4 MS. CAROL OVERLAND: Or I can find a
5 list.

6 MR. ERIC SWANSON: Your Honor, I
7 think Mr. Storm or Ms. Jensen can further
8 explain, but they will in fact become part of
9 the record when Mr. Storm submits his FEIS.
10 So they absolutely will be in the record of
11 this proceeding.

12 JUDGE ANN O'REILLY: Right, you'll
13 include them, Mr. Storm, right, in your
14 final --

15 MR. BILL STORM: Your Honor, all the
16 comments I received will be in the Final EIS.
17 All the comments we received in the Draft EIS,
18 agency comments, citizen comments, local and
19 government comments, they all will be
20 replicated in the final EIS.

21 MS. CAROL OVERLAND: And then the
22 issue, and this has been a long-time issue,
23 the FEIS comes out way at the end after the
24 public comment period is closed. So you know,
25 the public -- we are dealing with this -- we

1 are trying to deal with this in the rule
2 making for 7850 and 7849 and a part of this
3 for the last couple years on the volunteer
4 program. But this is an issue. And the
5 comments have not been incorporated into the
6 record sufficiently to inform routing
7 decisions.

8 And so that's what I'm asking. So
9 what I will do, I will try to come up with
10 copies. I can rather easily put together a
11 list of these comments with the, you know,
12 links. And so I think I can find a place to
13 get them copied somewhere today. I don't --
14 you know, I'm here without staff and without a
15 copier, and you know, blah, blah, blah. But I
16 can do what it takes to get those in. I think
17 it is very important, and to me it's worth my
18 while to have copies and bring copies in and
19 put them in the record. So I will do that.

20 JUDGE ANN O'REILLY: Okay. All
21 right. So that's the first thing. All right.

22 MS. CAROL OVERLAND: Oh, okay. Then
23 the next thing -- and we have a difference of
24 opinion on this with Commerce, I do, but I
25 wanted to introduce those two -- pages 18 and

1 19, which are -- I provided copies to
2 everyone. These are pages 18 and 19 of a
3 filing.

4 JUDGE ANN O'REILLY: I only have --
5 I have the certificate --

6 MS. CAROL OVERLAND: Right. Those
7 are two pages, that's page 18, the list is
8 page 18, and the certificate of service is
9 page 19 of the document that was filed July
10 27. It is also Exhibit -- part of it is
11 Exhibit 113 in this record. But those two
12 pages are pages 18 and 19 of the document
13 filed 7-27, and it is document number e-filing
14 document no. 20157-112741-01.

15 JUDGE ANN O'REILLY: Okay. Hold on
16 a second here. I'm going to mark this as
17 Exhibit 280, okay?

18 (Exhibit 280 marked.)

19 MS. CAROL OVERLAND: And it's a
20 portion of --

21 MS. CAROL OVERLAND: It's Exhibit
22 113.

23 JUDGE ANN O'REILLY: Exhibit 113.
24 Hold on. Hold on. Exhibit 113 is the form
25 letter sent to landowners. These are the --

1 and it is the letter to the landowners dated
2 February 9, 2015, attached to that Exhibit
3 113.

4 MS. CAROL OVERLAND: Correct.

5 JUDGE ANN O'REILLY: Is an affidavit
6 of service --

7 MS. CAROL OVERLAND: Correct.

8 JUDGE ANN O'REILLY: -- giving all
9 the names of the individuals who were served
10 with that particular letter.

11 MS. CAROL OVERLAND: Except --

12 JUDGE ANN O'REILLY: Okay.

13 MS. CAROL OVERLAND: The footers on
14 the first 13 pages of the listing of
15 landowners, that says something like newly --
16 new landowners.

17 JUDGE ANN O'REILLY: Yep.

18 MS. CAROL OVERLAND: Then if you
19 look at the last page of that Exhibit 113,
20 that is the same as the first page of Exhibit
21 280. And that has a different footer on it.
22 That footer says --

23 JUDGE ANN O'REILLY: Oh, additional.

24 MS. CAROL OVERLAND: Additional
25 landowners. And that Exhibit 113 is missing

1 the certificate of service that was filed as
2 eDocket No. 20157-112741-01 which is linked on
3 the bottom of page 2 of my motion from
4 yesterday. And it is missing that affidavit
5 of -- I mean, that certificate of service.

6 JUDGE ANN O'REILLY: Well, it's
7 attached to a certificate of service.

8 MS. CAROL OVERLAND: No, that's the
9 February 15th one. The certificate of service
10 that is in that 727 filing is 20157 --

11 JUDGE ANN O'REILLY: That doesn't
12 help me right now -- oh, for the record you
13 can do that.

14 MS. CAROL OVERLAND: I'm doing this
15 to build the record.

16 JUDGE ANN O'REILLY: Right. I get
17 it.

18 MS. CAROL OVERLAND: And this was
19 filed, and Exhibit 113 is missing the last
20 page of what was filed on July 27 of 2015.

21 JUDGE ANN O'REILLY: Okay. So
22 Exhibit 113 is missing?

23 MS. CAROL OVERLAND: Correct. Is
24 missing the last page of what was filed here.
25 Now, when I saw this -- and I want to get this

1 on the record, this is very important. And
2 they have objections, but this is my time.

3 JUDGE ANN O'REILLY: That's fine.
4 I'm just trying to figure out what you are
5 saying.

6 MS. CAROL OVERLAND: But I'm just
7 watching the expressions. These hearings were
8 coming up, so yesterday I'm looking at the
9 record. I don't want to come up north, I have
10 been up here so many times already. I live in
11 Red Wing. It's a long ways away. And in the
12 routing -- I'm on the volunteer plan. We
13 intervened in the certificate of need. But
14 the last thing I want to do is come up here.

15 But I saw this notice, I looked it
16 up. I saw that there was this additional new
17 landowners, a list of 24 people and a
18 certificate of service with that that said
19 that those additional landowners were the ones
20 served on the 27th. Now, they are shaking
21 their heads and saying no, but that's what it
22 said. And that's what this exhibit that was
23 the eDocket says, so --

24 JUDGE ANN O'REILLY: Let me get the
25 eDocket number again.

1 MS. CAROL OVERLAND: Okay. It is
2 20157-112741 --

3 JUDGE ANN O'REILLY: Okay.

4 MS. CAROL OVERLAND: -- -01.

5 JUDGE ANN O'REILLY: Okay.

6 MS. CAROL OVERLAND: And it's dated
7 7-27, 2015. So I saw that.

8 JUDGE ANN O'REILLY: Okay.

9 MS. CAROL OVERLAND: And the
10 distinction is in the 2-15 -- the February
11 15th certificate of service that says, you
12 know, new landowners, and then you look at the
13 July 27th one, which is not on 113 but is
14 attached to 280, okay?

15 JUDGE ANN O'REILLY: Okay.

16 MS. CAROL OVERLAND: Okay. If you
17 go to there and you look at the certificate of
18 service, attached to that, that says
19 additional new landowners, as does the footer
20 on that page. So in looking at that and that
21 last page there of 280, the certificate of
22 service is missing from 113. But that was
23 in -- that was filed here. Now, so I saw
24 that, so I got on the horn and talked to
25 Ms. Ferguson at the Department of Commerce who

1 was the one who had signed it and said, "Well,
2 do you remember this?" "Well, no." "Pull it
3 up." So she pulled it up, and we were talking
4 and went through it. So I'm saying, "Okay,
5 now is it correct" -- and I'm looking at this,
6 that the first 13 pages that say new land
7 owners. That was filed -- "that was served to
8 them on February 9th, 2015?" She's like,
9 "yes." And then looking at this other one
10 that says "additional new landowners," so is
11 it right that that was served out on the 27th
12 of July? And she said "Yes, it was." So
13 that's the information I have to go on.

14 JUDGE ANN O'REILLY: Okay.

15 MS. CAROL OVERLAND: And that's why
16 I think this is important if these landowners
17 were indeed served on the 27th of July, and
18 that's their notice, that's a problem.
19 Because I have worked in other -- you know,
20 there again, Minnesota Power is looking at me
21 with those funny looks too, but first CapX in
22 Brookings, landowners got notice during the
23 public hearings just days before evidentiary
24 hearings started. It happened in Brookings,
25 and it also then happened in Hampton to La

1 Crosse. In Brookings we got a remand, and it
2 was changed, and they didn't use the Myrick
3 route. It was a small alternative that was
4 proposed at the very last minute.

5 In the case of Hampton to La Crosse,
6 the Cannon Falls landowners got stuck with
7 this line with no notice. And the big focus
8 of what I do is to try to help people
9 participate in this process. And seeing
10 landowners run over is really a problem, so
11 that's what it looks like to me.

12 Now, I'm sure that the Department of
13 Commerce will have a lot to say about this
14 because they have a different interpretation
15 of this, but this is what I see. And I had a
16 conversation with the person who signed the
17 certificate of service, so -- and that's why I
18 want that in the record. And it's very
19 important. And if those people did not
20 receive notice until the 27th, there's a
21 problem here.

22 JUDGE ANN O'REILLY: So just to be
23 clear, so I have marked your exhibit as 280,
24 right? And it comes -- this was printed off
25 eDocket --

1 MS. CAROL OVERLAND: Correct.

2 JUDGE ANN O'REILLY: -- number --

3 I'm just going to write it -- do you mind if I
4 write it at the top of it so we know where
5 this came from?

6 MS. CAROL OVERLAND: Sure.

7 JUDGE ANN O'REILLY: 20157-112741-01
8 so we know where this came from.

9 MS. CAROL OVERLAND: Correct. And
10 that's pages 18 and 19 of that document.

11 JUDGE ANN O'REILLY: Okay.

12 MS. CAROL OVERLAND: And then the
13 other pages, I believe, are from the February
14 15th.

15 JUDGE ANN O'REILLY: Okay. I get
16 it.

17 MS. CAROL OVERLAND: So that's what
18 that is about.

19 JUDGE ANN O'REILLY: All right.

20 MS. CAROL OVERLAND: So I wanted
21 that entered into the record.

22 JUDGE ANN O'REILLY: Exhibit 280 is
23 received.

24 (Exhibit 280 offered and received.)

25 MS. CAROL OVERLAND: And then from

1 there -- oh, I left my computer.

2 JUDGE ANN O'REILLY: Go ahead and
3 get it. Whatever you need.

4 MS. CAROL OVERLAND: Okay. No, I
5 can do that in written comments. I'll do that
6 in written comments. It was regarding the
7 nonproliferation and, you know, to prove our
8 case about nonproliferation where they have to
9 use an existing corridor unless there is a
10 very good reason not to. And then that was
11 supplemented with the 216E.10. I think it was
12 7E -- oh, 21603, subdivision 7E in 2010.

13 JUDGE ANN O'REILLY: Right.

14 MS. CAROL OVERLAND: So that is a
15 little stronger than what the company's
16 representative was saying. But I'll --

17 JUDGE ANN O'REILLY: What's the
18 case?

19 MS. CAROL OVERLAND: Oh, yes. It's
20 PEER, P-E-E-R, capital letters. People for --
21 I don't know, enlightened environmental
22 responsibility or something like that. It's a
23 classic case in Minnesota. I'll write that in
24 the comments.

25 Let's see. One thing I didn't hear

1 much of and maybe it was in testimony in this
2 proceeding before when I wasn't here, but it's
3 the corridor that was discussed quite a bit
4 this evening or this morning or whatever. It
5 was about reasons why not to use it. But I
6 didn't hear much about -- or hear anything
7 about the impact of "Xcel owns this, not
8 Minnesota Power." And I'm wondering how this
9 plays into the choice of corridors. I'm
10 wondering if that could be addressed by the
11 company.

12 JUDGE ANN O'REILLY: What's your
13 question?

14 MS. CAROL OVERLAND: The question is
15 how does Xcel's ownership of that and not
16 Minnesota Power play into that decision to not
17 want to use that corridor?

18 MR. CHRISTIAN WINTER: It doesn't.
19 It didn't factor into our evaluation of that
20 route, who owned the line.

21 MS. CAROL OVERLAND: Okay.
22 Another -- someone else brought up the
23 reduction of use of coal today. And so I
24 would like to know, like, what coal plants
25 will be closed as a result of this project?

1 MR. DAVID MOELLER: I'm going to say
2 objection, that was covered in the certificate
3 of need and outside the scope of this route
4 permit.

5 JUDGE ANN O'REILLY: It is outside
6 of what this issue is. But do you have a
7 specific question for somebody in particular
8 here?

9 MS. CAROL OVERLAND: I'll just write
10 it into my comment.

11 JUDGE ANN O'REILLY: Okay. It's
12 something that, you know, if you have that
13 information, you can provide it. But it is --
14 we are trying to stick to the routing issues
15 here.

16 MS. CAROL OVERLAND: All right.
17 Well, there was a discussion of it earlier, so
18 I thought it was fair game.

19 JUDGE ANN O'REILLY: Oh, you mean
20 the public comment about --

21 MS. CAROL OVERLAND: Right, right.

22 JUDGE ANN O'REILLY: Okay. Well,
23 you know, we'll -- I don't really prevent the
24 public from bringing in policies issues and
25 things, but if they were going to go too far

1 into it, I probably would have, you know,
2 focused the issue more to the route. But I
3 mean, if you have a specific comment about it,
4 you are free to give that.

5 MS. CAROL OVERLAND: Okay. No, I'll
6 deal with it in writing.

7 JUDGE ANN O'REILLY: Okay.

8 MS. CAROL OVERLAND: Something else
9 I would ask of the -- we were having the
10 discussion of the Effie Route and other
11 corridors, and I know it's an issue with
12 people who have been dealing with, say, the
13 Masaba Project, which did not go through or
14 the Nashua Transmission which did not go
15 through. But there are people in particularly
16 near the Blackberry and near Trout Lake and
17 Taconite who have been dealing with corridor
18 fatigue, and has that been considered by the
19 company in their choices of routes?

20 MR. JIM ATKINSON: I think that
21 we've been very aware of corridor fatigue. I
22 don't -- I wouldn't say that it's been
23 necessarily a factor in deciding what
24 constitutes good routes.

25 MS. CAROL OVERLAND: Have you used

1 routes -- in coming up with your routes, did
2 you consider using -- did you consider or did
3 you use routes that were proposed by another
4 entity that weren't built?

5 MR. JIM ATKINSON: There is indeed
6 overlap between our route as it crosses the
7 iron formation and the Excelsior projects
8 generator outlet corridor as well.

9 MS. CAROL OVERLAND: And was that
10 intentional?

11 MR. JIM ATKINSON: It was -- we were
12 certainly aware of it. I don't know that we
13 looked at that as a corridor sharing
14 opportunity. What it really came down to was
15 that was the one place where we could get
16 across the iron formation without having an
17 immediate impact on one mining operation or
18 another.

19 MS. CAROL OVERLAND: Okay. Thank
20 you. I think that is it. And I will put
21 together my "Find the DOT and DNR and Fish and
22 Wildlife." And so would one hard copy be
23 sufficient?

24 JUDGE ANN O'REILLY: Yeah. I mean,
25 if it makes it easier for you, Carol, do you

1 want to just submit that by mail to me and we
2 can put that -- does anybody object to if she
3 puts it into the mail, that I'll just mark
4 those as three public exhibits to include, or
5 four, however many there are, and then that
6 way you don't have to run around and look for
7 a place to print it. Just go back to go your
8 office, do that, and if you want to put it in
9 the mail to me, and I will mark those as three
10 additional exhibits in this record. Any
11 objection to that?

12 MS. LINDA JENSEN: Just from an
13 administrative standpoint, it might be easier
14 for the court reporter to preserve an Exhibit
15 No. now.

16 JUDGE ANN O'REILLY: Okay. Why
17 don't I do that. I am going to mark Exhibit
18 281 -- how many are there?

19 MS. CAROL OVERLAND: Three, I
20 believe -- well, there would be three
21 categories. DNR, DOT, US Fish and Wildlife.
22 I think that that would be all. So maybe 281,
23 282, 283.

24 JUDGE ANN O'REILLY: Yeah, so I'm
25 going to give you 281, 282, and 283. 281 will

1 be DNR comments, 282 will be Minnesota
2 Department of Transportation comments that
3 have already been offered, and the 283 will be
4 US Fish and Wildlife comments that have been
5 submitted in this docket. And you were the
6 offering party for the record, so I want to
7 put that down here. And we will save those.

8 So Counsel, I will note those and I
9 will actually e-file them, okay? So that when
10 I receive them, I'll just e-file them with
11 these numbers. Any objection?

12 MR. ERIC SWANSON: No, Judge.

13 MS. LINDA JENSEN: No, objection,
14 Your Honor.

15 JUDGE ANN O'REILLY: Okay. I will
16 do that. I need to make myself a note.

17 MS. CAROL OVERLAND: Oh, I do have
18 one other question. Have the citizen advisor
19 task force reports been entered into the
20 record?

21 JUDGE ANN O'REILLY: Not that I know
22 of, no.

23 MR. BILL STORM: Yes.

24 JUDGE ANN O'REILLY: Oh, they are.

25 MS. CAROL OVERLAND: They are in the

1 record?

2 MR. BILL STORM: They are a part of
3 the scoping summary report. And I don't know
4 what the Exhibit No. is of that, but they are
5 in the record.

6 JUDGE ANN O'REILLY: Okay. The
7 scoping summary report is -- give me a moment,
8 it is Exhibit 107, and then they would be in
9 that, 107.

10 MR. BILL STORM: Yeah, they were
11 within this document. Probably as an appendix
12 to the document. They are summarized in the
13 document. The working group comments are part
14 of the scoping summary report. Appendix E is
15 where you'll find them in there.

16 MS. CAROL OVERLAND: Okay. Thank
17 you very much. I appreciate that. That
18 should do it.

19 MR. ERIC SWANSON: And Judge, just
20 for clarity in the record, that was a working
21 group as the Commission established, not a
22 citizen advisory task force.

23 MS. CAROL OVERLAND: Right, correct.

24 JUDGE ANN O'REILLY: Okay. What's
25 the exact name of it? Let me look and I'll

1 tell you.

2 MR. ERIC SWANSON: I believe, Judge,
3 it was just titled working group.

4 MS. CAROL OVERLAND: I would agree.
5 I think it was.

6 JUDGE ANN O'REILLY: It is. It's
7 summary of working group meeting. Very good.
8 That is in the exhibit list. If you have any
9 interest during the break, you can feel free
10 to look at our master exhibit list --

11 MS. CAROL OVERLAND: Okay.

12 JUDGE ANN O'REILLY: -- and go
13 through it to make sure that whatever else you
14 want to know is in the record.

15 MS. CAROL OVERLAND: And then that
16 will be posted, e-filed eventually?

17 JUDGE ANN O'REILLY: It will.
18 Probably -- I'll probably send this along with
19 the court reporter and usually the court
20 reporter e-files it for us. But I will also
21 do it if they don't. We'll figure that out.

22 MS. CAROL OVERLAND: Thank you. I
23 appreciate it.

24 JUDGE ANN O'REILLY: Yeah. Thank
25 you for your patience today. I'm sorry I

1 thought you would have much longer comments,
2 so that's why we had you go last, so that you
3 would have plenty of time.

4 MS. CAROL OVERLAND: Okay. Not a
5 problem. And I'll just have more in writing.

6 JUDGE ANN O'REILLY: Okay. Very
7 good. Thank you.

8 MS. CAROL OVERLAND: Thank you.

9 JUDGE ANN O'REILLY: Any other
10 public comments for this meeting?

11 MR. BILL STORM: Your Honor, would
12 you like me to address Carol's comments?

13 JUDGE ANN O'REILLY: Okay. Ms.
14 Overland, just a moment. Yes, if you could,
15 Mr. Storm, address the issues related to
16 Exhibit 113 and Exhibit 280.

17 MR. BILL STORM: Okay. Bill Storm,
18 Department of Commerce. I think the best way
19 is to just explain the process. As I said, we
20 scoped the document -- we released a scoping
21 decision on January 9th. At that time we then
22 become aware, as we always do, well now there
23 are newly affected landowners. So what I do
24 is I solicit from Minnesota Power, hey, here's
25 are all the routes I have, look at the draft

1 summary report. I need a newly affected
2 property owner list from you. They gave me
3 that list, and I think they gave it to me in
4 two chunks because it took awhile to do it.
5 As you can see, January 9 is when the scoping
6 decision went out and February 9th is when
7 the letter to the newly affected landowners
8 went out.

9 What I do then is I take the two
10 lists that I got from Minnesota Power, and I
11 send a letter to my work -- then my letter, my
12 border plate letter, I send that whole packet
13 electronically to both Sharon at eDockets and
14 my word processing. And I say, "Look, you
15 guys have to meld this together and get it
16 out, and then, Sharon, I need affidavit of
17 service." Okay. So that happens.

18 As we move through the process and
19 I've got to start putting my exhibits
20 together, I go into my file, my iDrive and I
21 find Sharon's bill, is your affidavit of
22 service. And that's what is my Exhibit No.
23 113. And that exhibit number is exactly the
24 same as what appears on eDockets except for
25 that last page from Sharon.

1 Now, I don't necessarily file
2 everything on eDockets when I mail it out,
3 especially something like this. What I do is
4 as I'm assembling my exhibit list, I go to my
5 e-drive and say, "Oh, there's Sharon's
6 affidavit." I print it out, put my sticker on
7 it, that goes in the pile. I then send it to
8 Sharon, the thing she sent to me, and I say,
9 "Sharon, this needs to go in eDockets." And I
10 did that July 27th, so -- and then she put on
11 eDockets. I don't know why she put that last
12 page on there. I'll have to check with her on
13 that. But my exhibit that I put in, 113, has
14 everybody on the list.

15 The two, the big long list, and that
16 second page, they all went out to the
17 landowners. I don't know why when I asked
18 Sharon to put it up on eDockets that she added
19 that certificate at the end, because it
20 already had -- it already went out on the 9th
21 of February.

22 MS. LINDA JENSEN: Your Honor, the
23 real affidavit of service, I believe, is
24 page -- the affidavit of service is page 3 of
25 Exhibit 113 indicating the initial service.

1 And I know Mr. Storm is being kind not knowing
2 where that last page is on this. It appears
3 to be a clerical mistake, frankly, and --

4 JUDGE ANN O'REILLY: What, the last
5 page, meaning -- I'm showing you the last page
6 of 113, is that what you are talking about?

7 MS. LINDA JENSEN: No, the -- when
8 Ms. Ferguson e-filed the affidavit of -- her
9 affidavit of service at Mr. Storm's request in
10 July 27th, she put another affidavit of
11 service on it probably by mistake. And if it
12 would be helpful, the document that Mr. -- the
13 document that was served in February 9 is
14 Exhibit 113.

15 JUDGE ANN O'REILLY: And so let me
16 get this clear. So Exhibit 113 is the
17 February 9th, 2015, letter to landowners
18 advising them of this project, okay? On it
19 is -- attached with it is an affidavit of
20 service saying that Sharon Ferguson served
21 copies on all the attached lists on February
22 9th, 2015. All of the people listed on
23 Exhibit 13 here were served, including this
24 last page of around 25 people.

25 MR. BILL STORM: Correct.

1 JUDGE ANN O'REILLY: All right. And
2 was this then, this whole document e-filed?

3 MR. BILL STORM: Well, Sharon sends
4 that to me electronically saying "Bill, I did
5 what you asked. Here's everything you got in
6 your hand. Here's 113." Okay, months ago
7 when it went out. As I'm putting my record
8 together for this hearing, I then go through
9 and I see things that doesn't make it to
10 eDockets, so I send Sharon -- electronically
11 send that pack to her saying "Sharon, make
12 sure that gets on eDocket." And that's what
13 she did, but the only thing she did odd was
14 put that second certificate page on it.

15 JUDGE ANN O'REILLY: Okay. And
16 that's what you are talking about, the second
17 page of Exhibit 280?

18 MR. BILL STORM: Correct.

19 JUDGE ANN O'REILLY: Okay. So what
20 she did is then when she went to e-file it --
21 because it went out, okay, so the explanation
22 is Ms. Ferguson sent this February 9th letter
23 to everyone listed on -- that was attached to
24 the affidavit of service, including the last
25 25 people on the service list, okay. Then

1 when Mr. Storm realized that that document HAD
2 never been e-filed on or around July -- in
3 July, he realized that it was never e-filed.
4 Although it went out it, was never e-filed.
5 So he sent her an e-mail saying, "Please
6 e-file it." Then she did a new affidavit of
7 service indicating that she served it when she
8 didn't really serve it on that 27th; is that
9 correct?

10 MR. BILL STORM: That would be an
11 assumption on my part. Somehow that -- I
12 don't know how that last page got put on, why
13 she did that affidavit of service. Whether
14 she just confused it with, "Well, I'm putting
15 it up on" -- "well, I'm putting it up on
16 eDockets." EDockets has several service list
17 so she might have served the -- it's not the
18 project list, it's not the landowner list,
19 they have another list, a shorter list, she
20 might have serviced then, and that's maybe
21 that's why she did the second. I don't know.

22 JUDGE ANN O'REILLY: Well, why don't
23 you do this. Why don't you have Ms. Ferguson
24 prepare an affidavit explaining this
25 discrepancy.

1 MR. BILL STORM: I can do that.

2 JUDGE ANN O'REILLY: All right. So
3 Ms. Ferguson will be under oath, and she will
4 explain what happened here to ensure that the
5 service -- and I understand Ms. Overland, your
6 concern, and it's frankly my concern as well,
7 is that everybody who's affected by any of the
8 variations or any options on this route,
9 including any, you know, modifications that
10 have been proposed, have had notice and
11 sufficient notice of these hearings to have a
12 meaningful opportunity to respond.

13 And so why don't we -- thank you for
14 bringing it to our attention. I think it
15 would be helpful, however, if Ms. Ferguson in
16 her own words submitting an affidavit
17 explaining what happened, and then I can
18 figure out if there really is a problem or if
19 it was just a clerical error. Is that
20 sufficient for you?

21 MS. CAROL OVERLAND: Yes. I mean, I
22 think it's important to note that the
23 description in the two affidavits, the
24 certificates of service are different. And
25 that the first one talks about newly -- new

1 landowners, and this one specifically says
2 additional landowners which is only that one
3 page. And I did speak to Ms. Ferguson,
4 whereas, you know, Mr. Storm is making
5 assumptions. And I don't believe that neither
6 of them have spoken with Ms. Ferguson about
7 this.

8 JUDGE ANN O'REILLY: Well, that's
9 why --

10 MS. CAROL OVERLAND: That's why I
11 think it's important that she explain that.
12 Because what she told me is that that last
13 page, that page 18, was what was served on the
14 27th. And so that's --

15 JUDGE ANN O'REILLY: Right. And so
16 that's why I'm going to have Ms. Ferguson
17 submit an affidavit, No. 1, so we don't make
18 any assumptions about what Ms. Ferguson did,
19 she'll tell us. But also I do want to note
20 that -- just so that, you know, that the same
21 footers is on both of these, right?

22 MS. CAROL OVERLAND: Well, right.
23 It's on both of those. But if you look at the
24 rest of the pages, they have a different
25 footer.

1 JUDGE ANN O'REILLY: Right. So she
2 needs to look at what she actually served,
3 right --

4 MS. CAROL OVERLAND: Yes.

5 JUDGE ANN O'REILLY: -- on February
6 9th, 2015, and confirm who she served it on.
7 And that's what she needs to make certain,
8 that this last page of landowners, the
9 additional new landowners, were included in
10 the service on February 9th, 2015. That's
11 what we want to make sure of.

12 MS. CAROL OVERLAND: And what
13 happened on the 27th of July.

14 JUDGE ANN O'REILLY: And I get -- I
15 get Mr. Storm's explanation of what happened
16 on the 27th of July, and she can explain that
17 too in her affidavit. And that Mr. Storm's
18 explanation makes sense, you know. He told
19 her to make sure -- you know, to e-file it,
20 and she might not have understood the
21 significance and put -- but we'll have her
22 explain that. I'm concerned about both, but
23 most particularly concerned that on February
24 9th is when everybody got their notice, and
25 that a new notice didn't go out to only some

1 people on July 27th.

2 MS. CAROL OVERLAND: Yes.

3 JUDGE ANN O'REILLY: Okay.

4 MS. CAROL OVERLAND: That should
5 handle it. And there may be an eDocket
6 filing, I haven't checked recently on that.

7 JUDGE ANN O'REILLY: Right.

8 MS. CAROL OVERLAND: In February,
9 for the -- in February.

10 JUDGE ANN O'REILLY: Okay. All
11 right. So Exhibit 280 is admitted into the
12 record. 213 is already in the record. We'll
13 hold the record open for Exhibits 21 -- I'm
14 sorry, 8 -- 281, 282, and 283. Anything
15 further?

16 MR. ERIC SWANSON: Judge, just a
17 question of when you intended to address
18 Ms. Overland's petition to intervene if she --
19 if she is still pursuing party status.
20 Because we would be prepared to address that
21 at any time.

22 JUDGE ANN O'REILLY: Okay.

23 Ms. Overland, do you have time to come on up?

24 It's my understanding, although I
25 haven't seen it, is that you have filed a

1 petition to intervene. So I've been up here,
2 I haven't checked eDockets and haven't gotten
3 any of my mail at my office, so have you --
4 what's your position on your petition at this
5 point?

6 MS. CAROL OVERLAND: Yes, I would
7 like to go forward with this petition to
8 intervene for -- it would not delay anything,
9 it would be an opportunity to write a brief
10 to -- you know, I'm not talking about stopping
11 everything, doing testimony, pulling in expert
12 witnesses, nothing. There's no change in the
13 schedule. And it would just be an opportunity
14 to write a brief which would then be due later
15 than the September 1st deadline for public
16 comment.

17 JUDGE ANN O'REILLY: And do you
18 have -- and here's my question for you. Who
19 are your clients?

20 MS. CAROL OVERLAND: RRANT,
21 Residents and Rate Payers Against the Great
22 Northern Transmission Line. Yes and one of
23 the members was here earlier, but she left.

24 JUDGE ANN O'REILLY: R-R-A-N-T. And
25 so is this an actual group? Do you have

1 individuals that are members of this group?

2 MS. CAROL OVERLAND: Yes. As I
3 said, one the members was here earlier Dee
4 White. She was here in pink standing right
5 there, yeah.

6 JUDGE ANN O'REILLY: Okay. Any
7 other members of that group?

8 MS. CAROL OVERLAND: Yes.

9 JUDGE ANN O'REILLY: How many
10 members are in that group, can I ask?

11 MS. CAROL OVERLAND: 15 to 20, and
12 it's primarily the people that I worked with
13 on the Masaba project, fighting that. Which
14 again, David Moeller knows many of them, and
15 this has been a largely, you know, unfunded,
16 varied budget, and this has been totally
17 volunteer on my part for this routing
18 proceedings.

19 JUDGE ANN O'REILLY: But my concern
20 is with your late petition -- well, first, my
21 concern is not that it would stop anything,
22 because my -- or delay anything because my
23 prehearing order was very specific about the
24 intervention deadline.

25 MS. CAROL OVERLAND: Right, it was

1 August 15th.

2 MR. ERIC SWANSON: April.

3 MS. CAROL OVERLAND: Right, April,
4 April.

5 JUDGE ANN O'REILLY: Hold on one
6 moment.

7 MS. CAROL OVERLAND: That's in the
8 petition.

9 MR. ERIC SWANSON: It was originally
10 in February, Judge, and then we pushed it back
11 to April given the timing of the scoping
12 decision.

13 JUDGE ANN O'REILLY: Right. And I
14 was just looking for the language I had in
15 here about late intervention would not -- and
16 in one of my prehearing orders, I don't know
17 if it's in here anymore -- oh, it is here.
18 Under paragraph three it says -- it gives the
19 deadline of April 15th, 2015, and then in all
20 bold it says, "All interveners will be held to
21 the schedule set forth above unless
22 extraordinary circumstances exist the schedule
23 would not be modified to accommodate late
24 intervention; therefore, parties intending to
25 intervene should do so as early as possible --

1 as early in the process as possible," so --

2 MS. CAROL OVERLAND: May I offer
3 something?

4 JUDGE ANN O'REILLY: Right, yes.

5 MS. CAROL OVERLAND: You know, my
6 major concern is if there are landowners who
7 did not get notice and have not had a
8 chance --

9 JUDGE ANN O'REILLY: Okay.

10 MS. CAROL OVERLAND: -- based on
11 past experience, because that did happen who
12 unrepresented people all the way up to
13 appellate court, and they ended up with a
14 transmission line in their yard. It's a very
15 important issue. But if it's developed that
16 there are none, could I -- well, just a
17 minute. On the schedule when our initial
18 briefs -- may I ask?

19 JUDGE ANN O'REILLY: Sure.

20 MS. CAROL OVERLAND: Because I think
21 if I could have until that time to write a
22 comment as opposed to intervening and writing
23 a brief if that would be acceptable.

24 JUDGE ANN O'REILLY: No, because
25 here's the deal. Unless you are an

1 intervening, you have the same status as any
2 public commenter.

3 MS. CAROL OVERLAND: Right.

4 JUDGE ANN O'REILLY: So what I don't
5 want to do is just open up the flood gates to
6 people who didn't get their comments in by the
7 comment deadline to say, "Well, I'll just
8 become an intervener now. Just call me an
9 intervener, and that'll give me more time."
10 Here's the deadline, and I'm going it take --
11 by the way, I'm taking your motion under
12 advisement, your petition under advisement, so
13 I'm not going to answer today. I'm going to
14 let the parties -- I'm going to let Minnesota
15 Power and the EERA weigh in on it, but I'm
16 talking it under advisement. I just want to
17 give you the dates so you know. September
18 25th is the deadline for initial briefs.

19 September 1st is the comment period ending.

20 The final EIS is due tentatively October 30th.

21 MS. CAROL OVERLAND: So after both
22 comments and briefs are due?

23 JUDGE ANN O'REILLY: Right. And
24 November 6th is the reply briefing time frame.
25 Okay. So there is a short window, assuming

1 that the final EIS is done by October 30th,
2 that -- there is a short window for reply
3 briefs in there, so. And then I think what
4 I'm going -- I'm going to end up amending my
5 fourth prehearing order extending out the time
6 for my order because of all the -- how this is
7 coming -- if the final EIS doesn't get done
8 October 30th, we are pushing into November.
9 So I'm just giving us all some room in there.

10 So I'm extending my date out to
11 December 31st, which extends out the decision
12 for the PUC into March time frame. So I will
13 take your petition under advisement. I will
14 take it and issue an order next week when I
15 return. But do you want to be heard more
16 right -- other than your petition, do you want
17 to give my oral argument about it?

18 MS. CAROL OVERLAND: I don't think
19 there's anything more to say. And they may
20 object, I don't know.

21 JUDGE ANN O'REILLY: Well, don't be
22 surprised if they object.

23 MR. ERIC SWANSON: We do.

24 MS. CAROL OVERLAND: You object, and
25 you know, that's your job. But, you know, it

1 wouldn't change the schedule.

2 JUDGE ANN O'REILLY: No, it wouldn't
3 -- but first of all, I can tell you I don't
4 need to take time to consider that issue.
5 It's not going to change our schedule.

6 MS. CAROL OVERLAND: Right.

7 JUDGE ANN O'REILLY: And I made that
8 clear in my -- from the very beginning here.
9 But why don't I turn then -- I'm going to hear
10 the objection so that there doesn't have to be
11 any written objections, then you can make --
12 unless you want to, but you can make your
13 argument now if you so chose if it's easier.

14 MR. ERIC SWANSON: Thank you, Judge,
15 I think it's easier, and we are happy to just
16 do it orally than in writing.

17 We do object to the petition
18 intervene on multiple grounds. First, as I
19 think will become apparent, the whole premise
20 of the petition to intervene is, I believe,
21 faulty. There are no landowners who only
22 received notice for the first time on July
23 27th. Second, at least -- Ms. Overland can
24 certainly correct us if this is wrong -- but
25 the apparent members of RRANT are all people

1 who have known about this project from day
2 one. We filed in April of 2014, the
3 intervention deadline was 16 months after
4 initial filing, which was the longest
5 intervention deadline I can remember in 30
6 years of practice. So simply extending
7 because of a potential error, that I don't
8 think is an error, that doesn't include any of
9 the members of RRANT is, I think, an abuse of
10 the process and feels much more like an
11 attempt to gain three-and-a-half weeks to file
12 comments rather than filing public comments.

13 Of course Ms. Overland or RRANT,
14 whether she wants to do it individually as she
15 did with the Draft EIS or whether she wants to
16 do it on behalf of RRANT, can file public
17 comments September 1st, but I don't believe
18 there is any cause for an extension just for
19 Ms. Overland of the public comment period.

20 So the lack of timeliness, the
21 factual errors, I do think it is prejudicial
22 to the company as the Applicant and as the
23 party to have a new party admitted to the
24 record at this stage without providing any
25 testimony, without putting its position

1 forward. So I do think there's prejudiced
2 there, and then I do think there's a standing
3 issue as well. Perhaps RRANT would have had
4 standing had they chosen to intervene earlier
5 if their members are actually along the route.
6 But at this point, there is -- the concern
7 that's been expressed that has prompted this
8 is there may be some people that got late
9 notice. But we haven't heard anything yet
10 that establishes those people are members of
11 RRANT. So those are the multiple basis for
12 our objection.

13 JUDGE ANN O'REILLY: Ms. Overland,
14 are any of your members listed on the
15 additional new landowners mailing list that
16 you submitted on Exhibit 280?

17 MS. CAROL OVERLAND: No, they are
18 not. And I have made it clear in this
19 petition that it in no way is RRANT
20 representing or representing those landowners.
21 That that was clear in the petition.

22 JUDGE ANN O'REILLY: Okay. So I
23 haven't read your petition, I'm sorry.

24 MS. CAROL OVERLAND: Okay. And I
25 think it's important to know, there are no

1 interveners here. There are none in this very
2 large project, a 500kv project that's a couple
3 hundred miles long where the capacity is
4 higher or equal to the biggest transmission
5 line in Minnesota, and no interveners.

6 And it's not the Department of
7 Commerce's job to represent of the public
8 interest, and that was on the record in the
9 Brookings case. You know, it's not their job.
10 They don't do it. Who's representing the
11 public interest here? And it's a concern, and
12 that's the foundation.

13 MR. ERIC SWANSON: And, Judge, if I
14 can just reply very briefly to that. The
15 public is representing the public interest
16 here. And we would deposit that the reason
17 there are no interveners is because of the
18 robust public participation process that has
19 been part and parcel of this project from day
20 one. So it seems ironic that a company that
21 works very, very hard to engage the public and
22 involve the public is then chastised for not
23 having any intervening parties.

24 MS. CAROL OVERLAND: Your Honor, I'm
25 not chastising the parties, I'm making the

1 statement of fact. And the public does not
2 have the same -- the general public does not
3 have the same standing as a party. I think
4 that's really important. Minnesota Power has
5 done a great job in outreach, as did our
6 friends at Xcel or CapX, but no, it's a
7 problem. It's how do you get people to care?
8 How do you get people to intervene in an
9 issue? It's very difficult.

10 JUDGE ANN O'REILLY: Okay. So your
11 only intention as an intervener then would be
12 to submit a brief?

13 MS. CAROL OVERLAND: Essentially,
14 yes.

15 JUDGE ANN O'REILLY: Or briefs.

16 MS. CAROL OVERLAND: A brief, and
17 perhaps exceptions, you know, if there are
18 things. And it would be a very narrow scope,
19 you know. There is no new testimony, I mean,
20 based on what the record is. And our position
21 is very clear, it's Residents and Rate Payers
22 Against the Not So Great Northern Transmission
23 Line. I mean, that's the position.

24 JUDGE ANN O'REILLY: I figured that
25 one out.

1 MS. CAROL OVERLAND: But, you know,
2 we are very open about that. We have been
3 from the beginning.

4 MR. ERIC SWANSON: But Judge,
5 therein lies the problem. And that's why
6 RRANT was -- while we didn't explore the
7 standing issue, we didn't object to RRANT's
8 intervention in the need docket because the
9 position was clear, this isn't a needed line.
10 That issue has been decided. We aren't
11 rearguing that now. And I would continue to
12 assert that granting one particular member of
13 the public party status on the last day of the
14 public party status the last day of the public
15 hearings and just a couple of weeks before
16 public comments are due to the filed and
17 thereby giving that one member of the public
18 an additional three-and-a-half weeks is
19 prejudicial to the Company.

20 JUDGE ANN O'REILLY: But that's what
21 my company was going to be. What's the
22 prejudiced that the Company would suffer if
23 Ms. Overland's group was able to intervene
24 here today? I mean, what's the prejudice,
25 having to respond to their brief? Because

1 they are not bringing any late testimony. You
2 are not going to have any prefiled testimony.
3 It's too late.

4 MS. CAROL OVERLAND: Too late.

5 JUDGE ANN O'REILLY: Okay. So it
6 would just be that -- I guess the argument
7 about special treatment for, you know, like
8 becoming an intervener so that you are
9 extending the time frame for comment, but
10 what's the prejudiced to the Company, to the
11 Applicant, if they were to submit briefs?

12 MR. ERIC SWANSON: I think there's a
13 prejudice to both the process and to the
14 Applicant. To the process it suggests that an
15 intervention deadline doesn't really mean
16 anything as long as you don't want to sponsor
17 a witness. That any time until the close of
18 the public comment period you can step forward
19 and say I would rather be considered a party.
20 There is a difference.

21 While I will continue to assert that
22 the public interest has been vigorously
23 represented by the public in this proceeding,
24 there is a difference between party status and
25 nonparty status, and it does give Ms. Overland

1 then a unique ability to file reply briefs, to
2 file exceptions, to argue as a party before
3 the Commission rather than as a member of the
4 public, before the Commission. I would need
5 to think about whether it gives her different
6 standing on appeal than she would otherwise
7 have. So it is not a late thing to become a
8 party to a proceeding, and there are
9 responsibilities that accompany becoming a
10 party to the proceeding, responsibilities that
11 to date RRANT has not engaged in.

12 We have not had the opportunity
13 obviously to do any discovery to do any
14 questioning because they didn't put forward a
15 witness. It is not a trivial thing to become
16 a party.

17 JUDGE ANN O'REILLY: Is it RRANT or
18 RRANT?

19 MS. CAROL OVERLAND: We are just
20 calling it RRANT because I can't trill my Rs,
21 I'm German.

22 JUDGE ANN O'REILLY: So RRANT is
23 okay. We don't have to say RRANT?

24 MS. CAROL OVERLAND: Right. May I
25 make a short rebuttal to that?

1 JUDGE ANN O'REILLY: Yep.

2 MS. CAROL OVERLAND: As far as
3 extending special rights for exceptions, any
4 effected persons, so anyone, can submit
5 exceptions. I just remembered that one. So
6 that doesn't count as a special treatment.
7 And so then to -- and then same goes for
8 motion for reconsideration, I believe, someone
9 who's actually affected by the decision. So I
10 don't think it would give me or RRANT, me as
11 an individual or --

12 JUDGE ANN O'REILLY: For exceptions?

13 MS. CAROL OVERLAND: -- any special
14 opportunity. It would though, as you said, a
15 reply brief that opportunity, yep. That is
16 there.

17 JUDGE ANN O'REILLY: And you want
18 the opportunity to do a reply brief to be able
19 to address issues that might be addressed in
20 the final EIS because that --

21 MS. CAROL OVERLAND: Because it's
22 coming out so late, which we are working on
23 addressing in rule changes, but it's coming
24 out so late in the process that people don't
25 have a chance to address whether it's adequate

1 or not. And that's, you know, part of the
2 Commission's job, part of I think your job --
3 I don't know if they have to specify if you
4 make a recommendation about adequacy. I think
5 so, but the public has no opportunity to weigh
6 in on the adequacy of the FEIS. And that's
7 part of the -- one of the points the
8 Commissioner must rule on.

9 JUDGE ANN O'REILLY: Well, I'm going
10 to take it into consideration. I'm going to
11 think about it over the weekend, and I will
12 issue an order next week.

13 MS. CAROL OVERLAND: Thank you.

14 JUDGE ANN O'REILLY: All right.

15 MS. CAROL OVERLAND: I appreciate
16 that.

17 JUDGE ANN O'REILLY: I'm sorry, I
18 didn't mean to ignore you, Ms. Jensen. Go
19 ahead.

20 MS. LINDA JENSEN: Very briefly,
21 Your Honor, and the Department doesn't take a
22 position on this other than it may be helpful
23 to note that it's on this issue of whether
24 there's been some identifiable prejudiced or
25 extraordinary circumstance to the movement's

1 members. In addition to the information
2 that's already before you, the notice that's
3 been under scrutiny is one that's not required
4 to be given at all. It's not by statute or by
5 rule required. The Department in its February
6 9, 2015, notice to the landowners does that
7 just as an excess of caution. It's considered
8 to be an extraordinary notice that they make
9 in order to address what I believe is
10 Ms. Overland's legitimate concern about
11 ensuring that members of the public receive as
12 much notice as possible. And the Department
13 does that by offering routinely a notice that
14 is not required but is given anyway.

15 And the statute that I'm referring
16 to is Minnesota Statute 216 -- I'm sorry,
17 Minnesota Rule 7850.2500 regarding the EIS
18 preparation, subpart eight indicates that the
19 Commissioner of Commerce should provide notice
20 of its informational meetings to each person
21 on the project contact list that's maintained
22 for the project. The project contact list is
23 the only requirement for notice, and that's
24 not the document -- not the list that's in a
25 trial Exhibit 113, that's a list that people

1 can put their name on voluntarily, and the
2 Commissioner does provide that notice. In
3 this case, the Department went above and
4 beyond that providing notice not only to
5 people on the project list, but also to the
6 individuals identified on Exhibit 113. And so
7 for that reason, there's not only no
8 prejudiced, there's no possible prejudiced.
9 This is something that was done gratuitously,
10 so.

11 MS. CAROL OVERLAND: May I address
12 that?

13 JUDGE ANN O'REILLY: Yes.

14 MS. CAROL OVERLAND: I believe their
15 notice requirements in a routing proceedings
16 for the Applicants to provide notice to
17 potentially affected landowners. But I don't
18 have my books or computer in front of me right
19 now, so I can't say. But I believe there may
20 be a different provision not related to the
21 EIS in there about landowner notice. I'll
22 have to --

23 JUDGE ANN O'REILLY: Sure. I'm sure
24 there are with respect to notice hearings and
25 things like that. This is kind of a hybrid

1 letter about, you know, here's this project,
2 here's what the process is, and we are
3 preparing this Draft EIS. It's not a notice
4 of any hearings or notice of the scoping
5 meetings or anything like that, which I think
6 are by statute or rule required. But I
7 understand both points that are being made.

8 So anything further before we close
9 that issue?

10 MR. ERIC SWANSON: No, Judge.

11 JUDGE ANN O'REILLY: All right.
12 Well, thank you so much for your comments.
13 Thank you. All right.

14 So we will adjourn. That concludes
15 the 11 a.m. hearing. We will reconvene at 6
16 p.m. Thank you very much.

17 (Hearing adjourned at 5:00 p.m.)

18
19
20
21
22
23
24
25