

SOUTH DAKOTA TRANSPORTATION COMMISSION SPECIAL CONFERENCE CALL MEETING

Tuesday, July 13, 2021 at 1:00 p.m. CDT

Becker-Hansen Building/Commission Room - 700 East Broadway Avenue, Pierre, South Dakota

COMMISSIONERS PRESENT: Larry Nelson, Chairman
Ron Rosenboom
Rod Fouberg
Mike Vehle
Kathy Zander

**COMMISSIONERS PRESENT
VIA CONFERENCE CALL:** Bruce Cull, Vice Chairman
Don Roby

DOT STAFF PRESENT: Karla Engle, Kyle Weinman and Kari Kroll

**DOT STAFF PRESENT
VIA CONFERENCE CALL:** Joel Jundt

OTHERS PRESENT: Judge Gienapp – Hearing Examiner and Cindy Pfingston -
Court Reporter

**OTHERS PRESENT
VIA CONFERENCE CALL:** Steve Williams – Legal Counsel for Rapid City, Pierre &
Eastern Railroad Inc. (RCP&E); Jeff Collins – Legal
Counsel for RCP&E; and Patrick Burns – Legal Counsel
for Dena Kinsella

Chairman Larry Nelson called the meeting of the South Dakota Transportation Commission (the “Commission”) to order at 1 p.m. CDT. A roll call was taken and a quorum was determined.

Nelson opened the floor to the Commissioners to disclose potential conflicts of interest and to present a request for waiver pursuant to the South Dakota Codified Law (SDCL) chapter 3 – 23.

Commissioner Ron Rosenboom disclosed that Jeff Collin’s sister used to work for him 3 years ago. Rosenboom indicated he was not aware of this potential conflict of interest at the previous meeting and that he did not believe this matter was a disqualifying conflict.

A MOTION WAS MADE by Vehle and seconded by Fouberg that Commissioner Rosenboom’s disclosure of a former working relationship with Jeff Collin’s sister was not a conflict of interest that requires recusal. All present voted aye by roll call vote, except Rosenboom who abstained. The motion carried.

No other conflicts were disclosed, and no waivers were requested.

Karla Engle, Office of Legal Counsel, informed the Commission that the hearing officer, the Honorable David Gienapp, has issued revised proposed findings of fact and conclusions of law, dated July 13, 2021, in the matter of RCP&E's application for authority to exercise eminent domain over the real property of Dena Kinsella. Engle reviewed the changes made since the issuance of the hearing examiner's original findings and conclusions, dated July 3, 2021. Engle also pointed out a typo in finding of fact 8, which should refer to "construction" rather than "constriction."

Judge David Gienapp opened the hearing in the matter of RCP&E's application for authority to exercise eminent domain over real property owned by Dena Kinsella. Gienapp explained that the purpose of the hearing was to allow the parties the opportunity to make objections to the hearing examiner's proposed findings of fact and conclusions of law. Counsel for RCP&E, Steve Williams, stated RCP&E had no objections to the proposed findings and conclusions. Counsel for Dena Kinsella, Patrick Burns, discussed his written objections to the proposed findings and conclusions, which had been submitted to the Commission the morning of July 13, 2021. On behalf of RCP&E, Steve Williams provided a verbal response to the objections made by Mr. Burns. Judge Gienapp closed the hearing and Chairman Nelson opened the matter for deliberations and action by the Commission.

A MOTION WAS MADE by Fouberg and seconded by Vehle to accept the Hearing Officer's proposed Findings of Fact and Conclusions of Law as revised on July 13, 2021, with the correction of the word "constriction" with "construction" in Finding of Fact #8. Cull, Fouberg, Roby, Rosenboom, Vehle, and Nelson voted aye and Zander voted nay by roll call vote. The motion carried.

A MOTION WAS MADE by Rosenboom and seconded by Fouberg to authorize the Commission Chairman to execute an order incorporating and adopting the Hearing Officer's proposed Findings of Fact and Conclusions of Law as revised on July 13, 2021, and including the correction of the word "constriction" with "construction" in Finding of Fact #8. Cull, Fouberg, Roby, Rosenboom, Vehle, and Nelson voted aye and Zander voted nay by roll call vote. The motion carried.

Nelson opened the floor to public input. No members of the public addressed the Commission or offered input.

With no other business to come before the Commission, Nelson adjourned the meeting at 1:27 p.m. CDT.