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STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

Environmental Law & Policy
Center and Dakota Resource
Council,

Case No. PU-18-223

Complainants/
Petitioners,

OAH File No. 2018-0356

vs.

Meridian Energy Group, Inc.,
Respondent.

TRANSCRIPT OF WORK SESSION

DATE: September 17, 2018

PLACE: Public Service Commission
State Capitol
Bismarck, North Dakota

1 COMMISSIONER CHRISTMANN: Good afternoon,
2 everyone. This is a work session of the North Dakota
3 Public Service Commission on Case No. PU-18-223.

4 It's probably not a common understanding, so
5 just a little background. A work session is not a
6 public hearing and it's not a meeting. At public
7 hearings is where we would take public input and that
8 sort of thing. At regular special meetings is when we
9 take final action. This is a work session. And because
10 of open records issues and things like that, when --
11 leading up to this, we're not able to sit down and
12 discuss these cases, so this is our chance to discuss a
13 case with our staff. And so that's why there's not
14 public input taken at it.

15 I'm Commissioner Randy Christmann, the chair of
16 the Commission, joined by Commissioner Brian Kroshus and
17 Commissioner Julie Fedorchak.

18 As far as opening comments other than that, I'm
19 just going to say that this is kind of a different
20 scenario than probably most of the cases that we have
21 for our work sessions.

22 And by the way, we are broadcasting, so
23 greetings to our viewing or listening audience.

24 In many cases, we get to the work session and we
25 have had hearings or something like that and it's a

1 matter of needing to prepare an order and what should be
2 in that order, and so we're sitting down to discuss the
3 details that we'd like staff to prepare for an order.
4 And then, of course, a commissioner might sense that
5 they're going to be not in the majority on that, and
6 thus, would want to go ahead and be preparing a dissent.

7 In this case, it's a little different than
8 normal. We have requested a recommended order from a
9 substantive administrative law judge, and we have that
10 recommendation here. And so I'm curious, before we
11 really get into the meat of the discussion, if my fellow
12 commissioners feel differently than I.

13 I guess I'm coming into this feeling like this
14 work session now is about this recommended order and
15 trying to prepare it so that if it were going to pass or
16 be approved at a regular special meeting, it would be
17 correctly written. And then at that point someone could
18 have a dissenting order. Or if it didn't pass, we could
19 go back to the drawing board and start fresh or
20 something. That's the way I'm looking at this work
21 session, as something to deal with this order and
22 getting it prepared to vote on, whether that's to vote
23 for it or against it.

24 Is this your portfolio?

25 I'll turn it to Commissioner Kroshus for opening

1 comments then and then we'll turn it to Commissioner
2 Fedorchak whose portfolio this is.

3 COMMISSIONER KROSHUS: Okay. I really don't
4 have any opening comments. I think I see it in a
5 similar way, but also want to hear from staff in terms
6 of what their recommendations are and next steps as
7 well.

8 COMMISSIONER CHRISTMANN: Commissioner
9 Fedorchak.

10 COMMISSIONER FEDORCHAK: Okay. Thank you, Randy
11 and Brian.

12 I'm comfortable with moving forward in the way
13 that you outlined. I didn't -- I view it slightly
14 different. I think the order from the judge was
15 presented as a recommended order that we can deny if we
16 so choose to move forward in a different path. And so I
17 don't think that we're limited to just talking about
18 this order but the broader issues at hand.

19 And so I'm -- I appreciated getting the judge's,
20 the ALJ, or substantive ALJ's recommendation and sought
21 that because there's a lot of issues at hand in this
22 case and there was a lot of briefs going back and forth,
23 back and forth, between the parties on this case, and
24 it's a lot for us with our limited staff to digest and
25 think about. I thought it was good to get another legal

1 mind in analyzing this, and I think the analysis is
2 pretty strong.

3 So I've had private conversations with staff on
4 this leading up to this meeting, and so I guess -- and I
5 have some thoughts myself on this case, but rather than
6 start there, I guess I'd be open to my colleagues asking
7 any questions that you'd like of staff and starting with
8 that, and then we can proceed from there, depending on
9 how the discussion goes.

10 COMMISSIONER CHRISTMANN: Okay. So, well,
11 again, as for me, unless this drifts a different way
12 than what I'm imagining -- first of all, I'll just say,
13 when you say "limited staff," I agree as far as size but
14 not as quality.

15 (Laughter)

16 COMMISSIONER FEDORCHAK: Very good
17 clarification.

18 COMMISSIONER CHRISTMANN: Small size,
19 extraordinary quality.

20 COMMISSIONER FEDORCHAK: Very good
21 clarification.

22 COMMISSIONER CHRISTMANN: I guess as I try and
23 -- I think I feel my responsibility at this point is I'm
24 trying to get this order into -- there's a couple things
25 that I see that I think should be changed slightly in

1 case it passes. Doesn't mean I'm going to vote for it,
2 doesn't mean I'm going to vote against it, but I think
3 we have a proposed order from a judge. I think we, at
4 some point in a meeting, need to deal with it, up or
5 down. But in case it's up, I think we need to get it in
6 the proper order.

7 So I'll throw out a couple things that I had
8 concerns about. And I don't know who's going to --

9 Jack, are you going to be taking the questions
10 or --

11 MR. SCHUH: I'm sure I will.

12 COMMISSIONER CHRISTMANN: On page 10 in the
13 Findings of Fact, the fourth one, if this were to be
14 adopted, this says when plan -- and it's a small
15 technicality but it's the kind of thing I hate watching
16 people get caught up in. It says that when plans to
17 increase the facility beyond the forty-nine-five barrel
18 per day are implemented, that plan subjects the entire
19 facility to review and approval process.

20 Actually, they could, under this order, increase
21 it by another 499 barrels. So that should be, instead
22 of beyond forty-nine-five, it should be to 50,000 or
23 more, correct?

24 MR. SCHUH: That's correct, Commissioner.

25 COMMISSIONER CHRISTMANN: And then I'm not sure

1 why I started there, but earlier on, on pages 4 and 5,
2 regarding -- the argument regarding Meridian's motion to
3 dismiss being timely, in the first paragraph it mentions
4 that the argument was withdrawn.

5 And so is there really a reason for three more
6 paragraphs explaining why the timeliness is not an
7 issue, or could it just end after the fact that it was
8 withdrawn?

9 MR. SCHUH: Mr. Chairman, it's probably not
10 necessary but I really wouldn't see the need to remove
11 it as well. I mean, he does just do the full analysis
12 on it, and it certainly doesn't harm anything by having
13 it in there.

14 COMMISSIONER FEDORCHAK: Jack, just from a
15 technicality standpoint, is this like a settlement
16 agreement where you'd adopt the order and have, like, a
17 sheet on the front that says the Commission adopts this
18 order with the following changes? Is it that? Or do we
19 actually, if we were to go this route, take this as a
20 basis and write our own from scratch?

21 MR. SCHUH: Commissioner, there are a number of
22 ways this can be done. I wouldn't view it as a
23 settlement, similar to that. But ultimately, how we
24 could go about it is we --

25 COMMISSIONER FEDORCHAK: I mean, I don't want it

1 -- it's not a settlement, but you know what I mean, the
2 process that we use in a settlement where it's like just
3 the process, not the idea that this is somehow a
4 settlement. No, I don't mean that at all.

5 MR. SCHUH: For the purposes of writing the
6 order, we could process it in that manner, as in writing
7 the order adopting this with --

8 COMMISSIONER FEDORCHAK: Okay.

9 MR. SCHUH: -- subject to our changes.

10 COMMISSIONER FEDORCHAK: Okay.

11 MR. SCHUH: Or we could take the whole thing and
12 rewrite it too.

13 COMMISSIONER FEDORCHAK: Okay. Yeah. And do we
14 have to take any formal action on this at all, or can it
15 just be under advisement? Like Randy was suggesting
16 that we had to, at some point, vote on this actual
17 order.

18 MR. SCHUH: Yes. We would ultimately have to do
19 a formal motion and order on that.

20 MS. JEFFCOAT-SACCO: It becomes final if you
21 don't do anything --

22 COMMISSIONER FEDORCHAK: Okay.

23 MS. JEFFCOAT-SACCO: -- by law.

24 COMMISSIONER FEDORCHAK: All right.

25 MS. JEFFCOAT-SACCO: You know, for a situation

1 where a decisionmaker just doesn't deal with it or
2 something, it becomes final. But the law also says that
3 you can accept it or reject it and make changes to it,
4 so --

5 COMMISSIONER CHRISTMANN: But no action is
6 acceptance, correct?

7 MS. JEFFCOAT-SACCO: Right. It's going to
8 become final.

9 COMMISSIONER CHRISTMANN: Is there a time on
10 that? Is it --

11 MS. JEFFCOAT-SACCO: I don't think --

12 COMMISSIONER CHRISTMANN: -- 60 days or
13 something like that?

14 MS. JEFFCOAT-SACCO: I'm looking.

15 (Pause)

16 MS. JEFFCOAT-SACCO: Subject to check, I don't
17 see a time on the page I printed. If it's on the
18 previous page, I don't know it right now.

19 COMMISSIONER FEDORCHAK: Okay.

20 COMMISSIONER CHRISTMANN: Commissioner Kroshus,
21 did you have questions?

22 COMMISSIONER KROSHUS: No, not right now.

23 COMMISSIONER FEDORCHAK: So, Jack, do you want
24 to speak to your review of the proposed order, your
25 analysis, and the strengths, weaknesses of it as you

1 see, things that we should be thinking about?

2 MR. SCHUH: Sure, Commissioner, I'd be happy to
3 do that. I did go through it. It seemed like a
4 reasonable legal analysis, if that's the interpretation
5 the Commission would like to take, on the Siting Act.

6 There were some things that I did have some
7 concern. I think I expressed them to all three of you
8 at some point in time or another, at least some things
9 for the purposes, if we were probably writing the order,
10 that we may not have gone about writing, such as on page
11 9, the last sentence on the first paragraph:

12 However, even taking these assumptions as
13 true, the PSC does not have statutory
14 authorization to assert jurisdiction below
15 its threshold of 50,000 barrels per day or
16 engage in speculation now about the
17 company's plans for future expansion.

18 The second half of that sentence, the "or to
19 engage in speculation now about the company's plans for
20 future expansion," for that -- that portion, I'm not
21 sure if I would have expressed that from legal counsel's
22 perspective for the Commission. I would think probably
23 the fact that we already had them in here to have a
24 discussion would indicate that we would be able to
25 investigate that already, and I would assert that we

1 should be able to as well.

2 COMMISSIONER FEDORCHAK: How does that relate to
3 our, though -- that second piece, speculating about the
4 plans for future expansion, how does that relate to our
5 obligation right now?

6 MR. SCHUH: (Indiscernible) sure you can clarify
7 that, Commissioner.

8 COMMISSIONER FEDORCHAK: How does that line that
9 says that basically the PSC does not have the current
10 jurisdiction -- or the jurisdiction to below the
11 50,000-barrels-per-day threshold or to engage in
12 speculation now about the company's plans for future
13 expansion. So are you saying that we do have the --
14 even though it isn't jurisdictional now as proposed at
15 forty-nine-five, we do have the ability or should have
16 or have some reason to speculate about what their plans
17 for future expansion are?

18 Either of you, Illona or Jack?

19 MR. SCHUH: I would argue that we should be able
20 to have the ability to investigate that. With regards
21 to this current circumstance, we did to some degree as
22 well. We called them in. We had a sit-down discussion
23 with them. And that was an investigation as well as a
24 request about the information they would provide
25 regarding the jurisdictional determination as well, if

1 you recall that.

2 COMMISSIONER FEDORCHAK: So then what you're
3 saying is we have the ability to investigate in a way
4 whether we believe what's being said, whether we have
5 additional concerns or reason to believe or they provide
6 evidence to suggest at the time that they're going to be
7 larger than the threshold, something of that nature, but
8 just --

9 MR. SCHUH: Sure.

10 COMMISSIONER FEDORCHAK: -- keeping open the
11 door that we have that ability to ask those questions,
12 is what you're saying.

13 MR. SCHUH: I would like to keep that door open.

14 COMMISSIONER FEDORCHAK: Okay.

15 COMMISSIONER CHRISTMANN: Does the fact that
16 we've done this work keep that door open, or would
17 leaving that line in here, if this order were approved,
18 close that door?

19 MR. SCHUH: Mr. Chairman, I believe that we
20 could probably accept the order as recommended and then
21 we could probably just clarify our position on that
22 particular item itself. The fact that we did it, I'm
23 not sure that would indicate much. I mean, maybe it was
24 all voluntary. But that would be a simple clarification
25 that we could provide in any order that we do.

1 COMMISSIONER FEDORCHAK: And those kind of
2 conversations occur all the time here with companies
3 talking about their plans, their -- lots of times they
4 come to us asking for clarification on whether we have
5 jurisdiction or not. So those are things that we do
6 investigate pretty regularly.

7 MR. SCHUH: Commissioner Fedorchak, that's
8 correct, we do do that frequently.

9 COMMISSIONER FEDORCHAK: Okay. What else, Jack?

10 MR. SCHUH: For the most part, I -- that was the
11 specific item that I had the most concern on. I did
12 want to bring to the attention of the Commission that
13 there was a filing this morning as well. And so before
14 we could take action on this, I would recommend that we
15 would wait until the ALJ has provided some sort of order
16 or decision on that as well.

17 COMMISSIONER FEDORCHAK: Is this Docket No. 22?

18 MR. SCHUH: I don't have the docket numbers in
19 front of me, it's the motion to re-open and consider
20 additional information.

21 COMMISSIONER FEDORCHAK: Okay.

22 COMMISSIONER KROSHUS: But it's correct in that
23 it hasn't been closed?

24 MR. SCHUH: Commissioner Kroshus, I believe that
25 the record is still open.

1 COMMISSIONER FEDORCHAK: So is there a timeline
2 on that, on this new thing?

3 MR. SCHUH: Subject to check, Commissioner
4 Fedorchak, I expect that we'd have something in ten
5 days.

6 COMMISSIONER FEDORCHAK: Okay.

7 MR. SCHUH: Or it would be open for ten days and
8 then the opportunity for the ALJ to provide something
9 back to us.

10 COMMISSIONER FEDORCHAK: And he does that within
11 the ten days or it's open for ten days and then --

12 MR. SCHUH: It's open for ten days for response
13 and then after that. But I imagine it will be fairly
14 quickly after that.

15 COMMISSIONER FEDORCHAK: Okay.

16 COMMISSIONER CHRISTMANN: So does the company
17 respond to that? Am I understanding that it's open for
18 ten days for the company or for others to respond to
19 that, and then after those ten days the judge weighs in?

20 MR. SCHUH: Mr. Chairman, it would be a ten-day
21 period for which the company, if they chose to respond,
22 would respond within.

23 MS. JEFFCOAT-SACCO: I think the legal counsel
24 will say subject to check on that too, because it's
25 possible that it's slightly longer, but ten days to

1 two weeks. I just don't remember if that particular
2 rule changed. I apologize.

3 COMMISSIONER FEDORCHAK: Well, neither of you
4 guys have more questions?

5 COMMISSIONER CHRISTMANN: I do not.

6 COMMISSIONER FEDORCHAK: Brian?

7 COMMISSIONER KROSHUS: No, I do not.

8 COMMISSIONER FEDORCHAK: Okay. Well, I guess
9 it's always helpful for me at least if I get a sense
10 where you guys are on things during these work sessions
11 too since this is our opportunity to talk with staff and
12 to hear each other's thoughts. So I'm assuming it's
13 helpful if you hear from your colleagues as well, so
14 I'll share mine in the hopes that maybe you guys will
15 share yours as well so we can get a sense on where
16 people are at least at this point.

17 So we've had a lot of information come in over
18 this -- on this subject and this issue. And I've spent
19 a lot of time looking at the law and talking with our
20 attorneys about this. And for me, it really comes down
21 to the Siting Act and the conditions under which it was
22 created or its purpose, so -- and it seems clear to me
23 that the legislature developed the Siting Act to provide
24 for orderly development of our energy resources and to
25 ensure that there's minimal impact in that development

1 process on the environment and the human -- well,
2 basically, in the words of the Siting Act, Minimal
3 adverse human and environmental impact.

4 And in doing so, they provided definitions that
5 -- for projects which, in effect, declare the point --
6 I'm assuming during the legislative process they
7 developed those definitions to provide a point at which
8 they, the policymakers, determined that these projects
9 no longer can be assumed to have minimal impact. So
10 here's the threshold.

11 And so in each of the various energy conversion
12 facility and transmission facilities that we have
13 jurisdiction over, there's a threshold for our action
14 that triggers the environmental and cultural review.
15 And so that threshold for the oil refineries is
16 50,000 barrels per day. After that point, the companies
17 have to come here for a permit. We do the environmental
18 review, we do the cultural resources review, we had the
19 public hearings, the whole process. Under that point
20 there is assumed -- the projects are assumed to have
21 minimal impact based on the law.

22 So people can have opinions about whether the
23 jurisdiction and the levels are appropriate. And those
24 have changed over the years for various energy
25 conversion facilities. But the law is pretty clear that

1 it's when the sites become greater than the
2 jurisdiction.

3 They even contemplated this phased-in approach
4 and said clearly, if they're phased in, when it becomes
5 above the threshold, then it is jurisdictional. They
6 could have said if a company anticipates a phase-in
7 approach or is going to be above this jurisdictional
8 threshold within a certain amount of years, you need to
9 come in on the front end. They did not.

10 They also have been watching this happen over
11 the course of the last ten years, various -- not maybe
12 in refineries but certainly in gas processing
13 facilities. Many have come in under the threshold and
14 come -- and not been sited and then sought the siting
15 approval when they got over the threshold. Policymakers
16 knew this is happening. They didn't change this. So
17 that leads me to believe that the policymakers of our
18 state want it this way.

19 And this project is not jurisdictional. So we
20 just -- that's -- to me, we just -- we don't have the
21 siting jurisdiction. They could have come in
22 voluntarily. We urged them to do that. They chose not
23 to. So here we are.

24 And I think that, for me, I agree with the
25 judge's analysis on his order and am willing to move

1 forward in that direction with the tweaks that you
2 identified, Jack. I think that's good. So we probably
3 need some work on that to clarify the language. But
4 that's kind of where I'm standing on this issue right
5 now.

6 COMMISSIONER CHRISTMANN: I'm going to save
7 reaching an opinion until we're in a meeting. And the
8 latest filing that came in, I guess I don't know when it
9 was filed. I was out of town on Friday. I got it
10 today, so to me, that's what I'm talking about, that
11 just came in. And so I've read that and read it
12 thoroughly, but we're still waiting on the company to
13 respond to that, on the judge to do something. So I
14 guess I'm going to keep my options open.

15 But I will say this. I do think, at a meeting
16 very soon, we need to address this and have it in the
17 best form possible. And so if the issue on page 9 that
18 you talked about, if that needed to be adjusted some or
19 something, then I'm open to that.

20 As I also mentioned, I think that other thing,
21 instead of forty-nine-five, should say 50 or above and
22 -- and fix that up. But other than that, I guess I want
23 to get into a meeting and reach a decision on this and
24 -- and then at that meeting, if someone has a possible
25 dissenting opinion, they can bring it, or if this is not

1 approved and there is no dissenting opinion, we'll be at
2 that stage then to start the next step of deciding what
3 to do with it.

4 Anything else? I'm done.

5 COMMISSIONER KROSHUS: You're wrapped up?

6 While the ALJ opinion is certainly compelling
7 and consistent with a number of conversations I've had
8 internally, I still have several things that I'm
9 following up with. And so I'm not willing to offer a
10 final opinion on my own behalf, but I will say this --
11 at least not at this time. So I want to wrap up some
12 more research that I've been working on, actually for
13 quite some time.

14 But I do want to make one point, and that is,
15 you know, we had different opinions when the company
16 came in. And maybe they were the same, maybe they
17 weren't. But I think it was -- at the time it was
18 reported out that we had urged the company to come in
19 for a permit. But just to be clear for the press in the
20 room, I never offered an opinion on that, but the word,
21 I believe, "we" in the coverage was used.

22 So just keep in mind three different
23 commissioners, potentially three different opinions.
24 And maybe they're consistent, maybe they're not, but
25 maybe -- maybe that's a desaveu from my days in the

1 media business.

2 But yeah, this is an important decision. So I
3 still have to complete my work on it and then we'll move
4 forward from there in terms of the process.

5 COMMISSIONER FEDORCHAK: So from a procedural
6 standpoint, we won't take it up in a meeting until the
7 ten days expires and we hear back from the ALJ on this
8 issue that was filed on Friday or this morning, whenever
9 it was officially entered into the docket.

10 COMMISSIONER CHRISTMANN: Assuming a more
11 thorough analysis of the law says that that's what the
12 case is, if --

13 COMMISSIONER FEDORCHAK: Whatever the time
14 period is --

15 COMMISSIONER CHRISTMANN: If there's a clear
16 time period, then we'll follow that and wait that many
17 days. Maybe since no one remembers it for sure, maybe
18 it doesn't say, and maybe the company responds in a
19 couple days and the judge responds in a couple days and
20 it goes faster. I don't know. But we'll certainly, I
21 think -- we certainly will follow the law and leave time
22 for a response and for the judge, I think, to --

23 COMMISSIONER FEDORCHAK: Okay. So meanwhile,
24 there really is nothing for staff to be developing,
25 correct?

1 COMMISSIONER CHRISTMANN: I think they should be
2 thinking about these two little changes in case the
3 judge doesn't change anything, but --

4 COMMISSIONER FEDORCHAK: And we'll --

5 MS. JEFFCOAT-SACCO: I would expect that staff
6 would at least begin to prepare draft orders they're
7 sure, but if you were adopting an order in hold, I mean
8 there's a form we use, sort of a template, and we would
9 at least get the package ready. Whether it's ever used
10 or not is another question. But in the time we have, I
11 think we should be doing that much.

12 COMMISSIONER CHRISTMANN: Or it's possible,
13 we've seen it with other cases, where the staff ends up
14 spending some time working with a commissioner on a
15 dissenting opinion.

16 MS. JEFFCOAT-SACCO: Right. There could be
17 three or four different things staff is working on
18 related to this. But what I mean is we -- I think we'll
19 be doing that during this time. Right?

20 MR. SCHUH: That's correct.

21 MS. JEFFCOAT-SACCO: Yes, we won't wait.

22 MR. SCHUH: A couple other housekeeping issues.
23 Looking back through a number of the filings, there was
24 some reference to some information we gathered in the
25 past, including the jurisdictional determinations.

1 With regards to the discussion that we had with
2 the company when they came in here, I would also request
3 that we move that into the record as part of this
4 determination. It's related to everything that's been
5 filed already as well.

6 And if there's anything that a commissioner,
7 through their own investigation or discussions, if
8 there's any information that they plan on making a
9 determination upon, that that also be presented for
10 inclusion in the record as well, if there's any
11 documentation.

12 COMMISSIONER CHRISTMANN: Would we need to do
13 that in advance of the meeting at which we reach a
14 decision?

15 MR. SCHUH: Mr. Chairman, yes, we would need to
16 have that prior to that as well.

17 COMMISSIONER CHRISTMANN: So we might have to
18 have a special commission meeting to add that
19 information to the record.

20 MR. SCHUH: That's correct.

21 COMMISSIONER CHRISTMANN: Would there be any --
22 I mean, the example you stated is sitting there. It is
23 what it is.

24 MR. SCHUH: Yes. I think a -- sorry.

25 COMMISSIONER CHRISTMANN: Would it be possible

1 to, for just that purpose of that one thing, have a
2 special commission meeting right now and add that, or is
3 that not --

4 MR. SCHUH: Mr. Chairman, I don't think we need
5 a special meeting for that. For the purpose of that, we
6 just need an approval from --

7 MS. JEFFCOAT-SACCO: Direction.

8 MR. SCHUH: -- direction from the three
9 commissioners to move that.

10 COMMISSIONER CHRISTMANN: Okay.

11 MR. SCHUH: Because we do have to do some
12 procedural things with that as well.

13 COMMISSIONER FEDORCHAK: What are you talking
14 about with that? Did I miss something?

15 MS. JEFFCOAT-SACCO: We're talking about the --

16 COMMISSIONER FEDORCHAK: A document?

17 MS. JEFFCOAT-SACCO: The first thing we're
18 talking about is the I-file, the contents of the I-file.

19 COMMISSIONER FEDORCHAK: Okay.

20 MS. JEFFCOAT-SACCO: That has been provided to
21 people, right? The first part of it is the contents of
22 the I-file.

23 MR. SCHUH: If anybody requests, the contents of
24 that file has been presented. And looking from the
25 complaints and different filings, it has been

1 referenced, the documents from that. So because of
2 that, we want to make sure that that actual works --
3 discussion that was in there is actually put into the
4 record as well.

5 COMMISSIONER FEDORCHAK: Okay.

6 MR. SCHUH: Since it encompasses all those
7 filings that everyone has been referencing.

8 COMMISSIONER FEDORCHAK: And what do you need to
9 do that?

10 MR. SCHUH: Just Commission direction.

11 MS. JEFFCOAT-SACCO: Just Commission direction.

12 COMMISSIONER FEDORCHAK: Quite honestly, I
13 thought we had already done that, so yeah, I think
14 that's important.

15 COMMISSIONER CHRISTMANN: I think it's
16 absolutely important, so go ahead.

17 MR. SCHUH: Thank you.

18 MS. JEFFCOAT-SACCO: And then the second part is
19 if Commissioners are obtaining information to use in
20 reaching a decision, then that needs to be disclosed to
21 the parties. And the way you do that is --

22 COMMISSIONER FEDORCHAK: And to the other
23 Commissioners. I mean, I'd like to know what this
24 information is too.

25 MS. JEFFCOAT-SACCO: Once it's in the record,

1 you can look it up yourself, too.

2 But the point is -- and there could be, if you
3 played that out, the hypothetical all the way out, you
4 know, someone could say, well, I'm objecting to that
5 going in, or I want to cross-examine someone, produce
6 that information, or whatever. We don't exactly know
7 what that is so we -- because we don't know what the
8 information is so we can't advise you.

9 The I-file, we think, pretty much everybody's
10 already seen, but it will be in the record and they all
11 have the same right to question or bring something up.
12 But I -- we have produced that record for people
13 previously, reproduced it and distributed it. So I
14 don't know that there will be a lot of surprises in the
15 I-file that goes into the record.

16 COMMISSIONER CHRISTMANN: And that includes the
17 informal discussion we had at this table with the
18 company.

19 MS. JEFFCOAT-SACCO: I believe that -- I don't
20 think that was recorded.

21 Was it?

22 MR. SCHUH: I believe it was recorded.

23 MS. JEFFCOAT-SACCO: If it was recorded, it's in
24 the I-file.

25 COMMISSIONER KROSHUS: So in terms of research

1 that -- for example, I'm not interacting with other
2 agencies, but I'm aggressively looking into different
3 types of records, etcetera, that would be included? Or
4 just interaction?

5 MS. JEFFCOAT-SACCO: I think that you don't want
6 to mix up the concept of ex parte communication with the
7 record. If it's something you're going to use to help
8 you make a decision, then it needs to go in the record,
9 and parties have a right to dispute it or whatever,
10 question someone about it, whatever.

11 COMMISSIONER FEDORCHAK: Do you anticipate
12 another work session or do you want to just go to make a
13 decision?

14 It's awfully helpful for me to hear what you
15 guys are thinking. Like I don't -- and if it's a lot
16 different than what's out here or what -- maybe I'd
17 think things differently too if I was hearing what your
18 analysis is and arguments. So I think it's helpful,
19 although it's difficult when there's, you know -- when
20 we're doing this publicly, having these discussions,
21 it's really helpful. So I hope at some point we can
22 talk about where you guys are on this too.

23 COMMISSIONER CHRISTMANN: Well, if, for example,
24 company weighs in or chooses not to weigh in, the judge
25 responds at the end of whatever the time period,

1 whenever he decides to do it and says, I don't change --
2 it doesn't change my mind a bit, so it's this exact same
3 thing.

4 If our staff tweaked the two things that we've
5 talked about, which are important but not complex
6 tweaks, I would be ready to just vote on this thing. I
7 wouldn't say what we would really talk about that we
8 wouldn't talk about at the meeting. But if it's -- if
9 things are changed significantly, then I would expect we
10 would need a work session.

11 Does that make sense?

12 COMMISSIONER FEDORCHAK: Kind of. Sure.

13 COMMISSIONER CHRISTMANN: I don't feel I need
14 another work session to discuss basically this same
15 thing. If it changes a lot, then I would.

16 COMMISSIONER FEDORCHAK: Okay. All right.

17 COMMISSIONER CHRISTMANN: The last thing then I
18 will say is, I expect it's the same for both of you,
19 I've got good friends that feel completely opposite on
20 this and have been good to this point. And so if we can
21 get up and walk out of the room and you don't engage us
22 in any ex parte discussions, then I don't have to be
23 rude and deny the conversation, or stop the
24 conversation. So we can't engage in these discussions
25 outside of these kind of -- this formal atmosphere. So

1 thank you for respecting that.

2 We're concluded.

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