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THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

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IN THE MATTER OF THE PETITION HP14-001
OF TRANSCANADA KEYSTONE PIPELINE,
LP FOR ORDER ACCEPTING CERTIFICATION
OF PERMIT ISSUED IN DOCKET HP09-001
TO CONSTRUCT THE KEYSTONE XL
PIPELINE

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Transcript of Proceedings
January 5, 2016

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BEFORE THE PUBLIC UTILITIES COMMISSION

CHRIS NELSON, CHAIRMAN
KRISTIE FIEGEN, VICE CHAIRMAN
GARY HANSON, COMMISSIONER (by teleconference)

COMMISSION STAFF

Rolayne Wiest
Kristen Edwards
Karen Cremer
Adam de Hueck
Darren Kearney
Eric Paulson
Brittany Mehlhaff
Lorena Reichert
Patrick Steffensen
Deb Gregg
Katlyn Gustafson

Reported By Cheri McComsey Wittler, RPR, CRR

1 TRANSCRIPT OF PROCEEDINGS, held in the
2 above-entitled matter, at the South Dakota State Capitol
3 Building, Room 413, 500 East Capitol Avenue, Pierre,
4 South Dakota, on the 5th day of January, 2016.

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1 CHAIRMAN NELSON: HP14-001, In the Matter of the
2 Petition of TransCanada Keystone Pipeline for Order
3 Accepting Certification of Permit Issued in Docket
4 HP09-001 to Construct the Keystone XL Pipeline.

5 And the questions that were in the agenda, shall
6 we rule on any pending motions? To my knowledge there
7 are none.

8 Secondly, shall the Commission find the
9 certification to be valid? Or how shall the Commission
10 proceed?

11 And what I intend to do is open it for
12 Commission questions. We've had obviously the
13 evidentiary hearing. We've had thorough briefing. And
14 at this point are there any additional questions from the
15 Commission?

16 I am not hearing any additional Commissioner
17 questions.

18 COMMISSIONER HANSON: I have none, if that's
19 what you're --

20 CHAIRMAN NELSON: Thank you, Gary. Appreciate
21 that.

22 If there are no additional Commissioner
23 questions, are there motions?

24 Commissioner Fiegen.

25 COMMISSIONER FIEGEN: Mr. Chairman, in HP14-001

1 move to accept the certification according to 49-41B-27
2 and find the certification is valid.

3 CHAIRMAN NELSON: Discussion on the Motion.
4 Commissioner Fiegen.

5 COMMISSIONER FIEGEN: Keystone XL Pipeline came
6 to the Commission in September of 2014 in a filing, and
7 the filing was certainly required by South Dakota
8 Codified Law 49-41B-27.

9 And regardless of what has been argued about
10 what's required under this statute and what should be and
11 has been the scope of this proceeding, the proceeding has
12 not been done in haste and not conducted in a way that
13 has been very fast.

14 And the record certainly has not been subject to
15 unreasonable limitations. The record, as the public can
16 view on the South Dakota Public Utilities Commission
17 website, is very large. The Commission has looked at a
18 host of motions.

19 The Commission actually has signed around
20 90 Orders. The Commission has allowed a very large
21 gathering of discovery. And the Commission provided the
22 opportunity for all Intervenors to argue their case
23 properly.

24 We also allowed the construction of a very large
25 oral and written record which addresses the Conditions

1 first established in HP09-001.

2 So today my vote takes proper account of the
3 controlling law passed by the Legislature and to guide
4 the actions of the certification Docket.

5 And my vote today also takes into account the
6 relevant facts given to us, which is based on our
7 decision in accordance with the requirement of the law.

8 CHAIRMAN NELSON: Additional discussion.

9 Commissioner Hanson.

10 COMMISSIONER HANSON: Thank you, Mr. Chairman.

11 I fully agree with fellow Commissioner Fiegen on
12 her comments. They're very appropriate, and I would
13 simply say that the Commission went through a protracted
14 hearing process, probably more than it actually needed
15 to, to examine whether or not XL should receive a
16 certification.

17 And I think everything has been thoroughly
18 vetted and that XL has proven -- to the extent that it is
19 able to prove, it has proven that it has met all of the
20 requirements that were first applied to its original
21 Permit.

22 Those areas which it did not prove are ones in
23 which simply it's impossible to prove until they have
24 started construction. So I think it's very appropriate
25 that this Motion pass.

1 Thank you, Mr. Chairman.

2 CHAIRMAN NELSON: Additional discussion.

3 I'm going to take a few moments, perhaps more
4 moments than my colleagues did, to share my thoughts
5 about the Motion but also just some maybe personal
6 reflection about the process that we've gone through over
7 the last little over a year.

8 As we went through the evidentiary hearing this
9 summer, that hearing took me personally back to 1981.
10 And I want to explain why that happened. I was a senior
11 in high school that year, and my Vo-Ag teacher asked me
12 or encouraged me to enter the FFA's public speaking
13 contest. And that was kind of a new thing for me.

14 And so I picked a topic. I researched it
15 thoroughly. I wrote the speech. I was prepared for all
16 the questions. The topic that I chose was ground water
17 contamination.

18 A lot of what we heard in the evidentiary
19 hearing this summer took me back to that research and
20 that speech that I gave. And I share that only because I
21 want you all to know that water contamination and water
22 quality are a big deal for me, and it has been for a
23 long, long time. It's not something that I take lightly
24 or something that I dismiss.

25 One of the other things that I try to do as I

1 work through cases is I like to try to figure out where
2 are people coming from. And I will tell you that, you
3 know, one of the things that maybe mystified me or had me
4 puzzled from the very beginning was the vehemence of the
5 opposition to this pipeline from our tribal members in
6 South Dakota.

7 You know, when Mr. Harter and Mr. Seamans come
8 up and they're opposed I can get that because I come from
9 a rancher background just like they do. But with our
10 Native American friends, that had me maybe a little bit
11 puzzled.

12 Until we received on July 19 a comment, one of
13 the comments in this Docket, a public comment. And we
14 received hundreds of public comments. But this one
15 really spoke to me and it was from Debra White Plume of
16 Manderson. And it spoke to me in a powerful way that I
17 think deserves my reading just a portion of it because it
18 helped answer for me I think what a lot of our tribal
19 members are feeling.

20 And she said in her e-mail "The Lakota world
21 view and the American world view about land and water are
22 different, as is our world view about time and space.
23 The American world view through its institutions and
24 policies and laws and regulations say that elected
25 officials and appointed officials have the final decision

1 on what happens in our shared space.

2 "To clarify this, by the word 'our' I'm
3 referring to the Lakota and the Americans and the
4 elected, appointed officials, and the rest of us. In the
5 Lakota world view everyone has a say. A collective
6 decision is made by consensus. There is no hierarchy of
7 one person being more important than another. All people
8 are important and have a right to their say.

9 "In my view, the space and distance between
10 where I live and where TransCanada, Inc. wants to put its
11 KXL tar sands pipeline is too close. Although the place
12 where I lay my head to rest at night, where I rise each
13 morning to live a life I'm thankful for and the
14 pipeline route through Mission, South Dakota or Murdo,
15 South Dakota or Lower Brule, South Dakota or Faith,
16 South Dakota may be hundreds of miles, but to me the
17 route is just right there. This whole area is my home.

18 "The KXL proposed route you are considering
19 would not only be insanely located over the Oglala
20 Aquifer, it would also recklessly cross waters, including
21 the Missouri River and the Cheyenne River. All of this
22 is sacred water. We say Mni Wiconi, through water there
23 is life. Without water there is no life."

24 And she goes on to say that water is part of all
25 Lakota ceremonies. We honor and respect water.

1 And perhaps Debra's right. We have a different
2 world view. And I appreciate her taking the time to
3 explain to me in a way that I could understand where our
4 Native American friends are coming from in this Docket.

5 I can't change the fact we have different world
6 views, but I appreciate knowing about that world view.

7 The other thing that I need to comment on was
8 from the opening statement of Dallas Goldtooth. And in
9 his opening statement at the evidentiary hearing Dallas
10 talked about how he thought we as Commissioners should go
11 about making our decision.

12 And his comments I thought were very striking
13 and a very small portion I think deserve reading. And
14 I'm going to read from the transcript where Mr. Goldtooth
15 says "If you go back in history of this great country, in
16 some instances if we stuck strictly to the rules of law,
17 we probably would have been in some tough situations.
18 Whether it's Jim Crow laws or whatever it may be down in
19 the south, we have to allow ourselves to be influenced by
20 our emotion and the greater context of our emotions as
21 human beings. I encourage each and every one of you to
22 push to that level."

23 I think that comment from Mr. Goldtooth bears
24 addressing. And I think everyone needs to understand
25 that on January 8 of 2013 I stood in this building, and I

1 took an oath of office to uphold the laws of the State of
2 South Dakota. It was not an oath that directed me to
3 make decisions based upon emotion. I was directed by
4 that oath and I am bound by that oath to make my
5 decisions based upon the facts and the law as has been
6 established through this proceeding.

7 So let's for a moment talk about that law. It's
8 acknowledged by everyone that Keystone has the burden of
9 proving that they complied with SDCL 49-41B-27. It's a
10 pretty simple statute. All of us probably have it
11 memorized, but it says in part, "The utility must certify
12 to the Public Utilities Commission that such facility
13 continues to meet the conditions upon which the Permit
14 was issued."

15 On September 15, 2014, a certification was
16 received by the PUC, signed by Corey Goulet on behalf of
17 TransCanada. The requirement to certify was met with
18 that filing.

19 Now previously I served this State as Secretary
20 of State. And in that capacity I worked with
21 certifications all the time. This is not a new concept
22 to me whatsoever.

23 The certification that came in was accompanied
24 by a Petition asking that the certification be accepted.
25 Along with that Petition was Appendix C, which we've come

1 to know as the Tracking Table of Changes.

2 The Petition states that the changes outlined in
3 Tracking Table don't prevent TransCanada from meeting the
4 Permit conditions. Throughout this proceeding the
5 Commissioners have urged the opponents to show us the
6 specific conditions that could no longer be met. Very
7 simply, prove to us that the certification was not valid.

8 Indeed, and I went back and I read through the
9 transcript of the close of the evidentiary hearing, and
10 Commissioner Hanson and I nearly begged the opponents in
11 your final briefs, identify for us specific conditions
12 that could not be met.

13 And, frankly, as I read through those briefs,
14 there's only one that I thought attempted to do that, and
15 that was Gary Dorr. He pointed to a specific Condition
16 and tried to make his case that the company couldn't
17 comply with that. Now at the end of the day I think his
18 argument fell short, but he tried.

19 Very simply, SDCL 49-41B-27 does not require a
20 rehashing for the requirements of the initial Permit
21 under 49-41B-22. And if there's been a very what I think
22 unfortunate part of this whole proceeding is that the
23 opponents spent their time and energy trying to litigate
24 Section 22 instead of 27, which is the one that is before
25 us.

1 So longwinded speech. What is my conclusion?
2 My conclusion is that nothing presented by the opponents
3 proves that the Permit Conditions cannot continue to be
4 met, even with the circumstances found in the Tracking
5 Table of Changes.

6 As we know, one of the Conditions, one of the
7 absolute requirements, is obtaining a Presidential
8 Permit. We all know that's not going to happen in the
9 next 12 months. What we don't know is what will happen
10 after that point in time. There remains the possibility
11 that a Presidential Permit can be obtained and,
12 therefore, that is not a reason to find the certification
13 invalid.

14 What we do know is that should this Motion pass,
15 the Permit will remain conditionally valid.

16 And so with that, I intend to support the
17 Motion.

18 Additional Commissioner discussion.

19 Hearing none, all those in favor of the Motion
20 will vote aye. Those opposed, nay.

21 Commissioner Hanson.

22 COMMISSIONER HANSON: Aye.

23 CHAIRMAN NELSON: Commissioner Fiegen.

24 COMMISSIONER FIEGEN: Fiegen votes aye.

25 CHAIRMAN NELSON: Nelson votes aye. The Motion

1 carries. The certification is accepted and found to be
2 valid.

3 MS. BRAUN: It shall never pass Lakota Country.
4 It shall never pass. This is a zombie pipeline.

5 CHAIRMAN NELSON: Anything else for the good of
6 the order of the Commission?

7 Is there a Motion to adjourn?

8 MS. BRAUN: (Speaks Lakota) on the PUC. This is
9 a zombie pipeline. It shall never pass Lakota Country.
10 We shall stand ready. Our horses are ready.

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STATE OF SOUTH DAKOTA)

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CERTIFICATE

COUNTY OF SULLY)

I, CHERI MCCOMSEY WITTNER, a Registered Professional Reporter, Certified Realtime Reporter and Notary Public in and for the State of South Dakota:

DO HEREBY CERTIFY that as the duly-appointed shorthand reporter, I took in shorthand the proceedings had in the above-entitled matter on the 5th day of January, 2016, and that the attached is a true and correct transcription of the proceedings so taken.

Dated at Onida, South Dakota this 25th day of January, 2016.

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

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