

- d. PHMSA Gulf Coast project inspection reports indicate that even though PHMSA engaged in minimal oversight over the pipeline right-of-way, multiple violations were found. PHMSA has never stopped TransCanada from constructing or required remediation of these shortcomings.
- e. TransCanada's failure to ensure that the land was properly restored has been documented from the original Keystone to Bison, to Keystone Gulf Coast. TransCanada's unwillingness to take care of other stakeholders and willingness to shift blame for their own shortcomings is systemic.
- f. Landowners along the Gulf Coast route of TransCanada's KXL pipeline took extensive photographs documenting substandard construction and reclamation practices. Noteworthy photograph showing peeling coating on the pipeline was taken by a family named Holland near Beaumont, Texas, and was one of hundreds of pictures of poor practices ranging from pipe handling damage, insufficient coverage of pipe to not skidding pipe correctly. OH&S violations with pipe falling of the skids were also documented similar to the allegations of the death on Keystone Gulf Coast. Many of these photographs document violations of both Part 195 and the 57 conditions agreed to by TransCanada as set forth in Appendix Z to the US State Department's FSEIS.
- g. The Toronto Star documented that TransCanada did not have sufficient organizational capacity to ensure compliance in the United States with respect to PHMSA's pipeline regulations, notwithstanding similar issues in Canada. Further evidence of failure to comply with Part 195 was documented by the Houston Chronicle, which published photographs showing multiple instances of non-compliance with Part 195 and OSHA conditions.

2. Information provided by TransCanada concerning Finding No. 68, with respect to issues concerning cathodic protection of pipeline coating due to alleged interference by an adjacent foreign utility is both incomplete and appears to be factually incorrect, in that the failure can be traced to several violations of Part 195 on the part of TransCanada. Regardless of TransCanada's assurances, the event occurred, it was severe, and it was due to TransCanada management's failure to comply with Part 195. Understanding that all corrosion is the exchange of metal electrons, the scenario should have been fully investigated, as TransCanada's explanation is not descriptive of what occurred. TransCanada's official public communications and communications with PHMSA show that the event which required instant shut-in of the Keystone pipeline was a very serious threat to public safety. This evidence of cathodic interference correctly belonged in Condition No.1, as it was not a coating failure.

3. Contrary to TransCanada's submitted testimony on Findings No. 68, problems exist with respect to its use of Fusion Bonded Epoxy (FBE) pipeline coatings. TransCanada failed to reveal that there was a mass disbondment on the GTN pipeline of newly-installed FBE coatings. It would be relevant for TransCanada's engineers to present this evidence of what can go wrong with FBEs. Additionally, when repairing damaged FBEs and coating of welds, some of TransCanada's practices have been flagged as substandard by PHMSA and TransCanada

contractors. TransCanada should be compelled to produce the reports on substandard practices taking place during Keystone system construction in 2009, the PHMSA audit and compare those to landowner observations of coating falling off the Keystone Gulf Coast Pipeline in 2013 under the same special permit conditions for enhanced inspections.

4. The dilbit mix shipped on the Keystone pipeline is subject to column separation. This requires particular engineering controls to ensure the mixture does not separate and overpressure segments of the pipeline. Not only is this an ongoing risk in the Keystone system, but it is also a risk in pipelines it feeds such as Pegasus in Mayflower, Arkansas. Column separation would explain many of the observations derived from the Mayflower incident – from the rupture, to the separation of dilbit in the water.

5. TransCanada has had a systemic problem with materials quality. In a public presentation, Kenneth Lee of PHMSA highlighted problems with TransCanada's construction of the Keystone system, including back-beveled transitions, substandard welding, but more importantly, elbows from Keystone. There are approximately 1,200 elbows of unproven quality in TransCanada's Keystone system, which have not been replaced. In October 17, 2013 an elbow with exactly the same non compliant microstructure blew out on a directional drill. The elbows at North Central Corridor Buffalo West and Keystone do not meet the minimum federal standards, yet are in service. Some of these elbows are now fiberglass reinforced but that does not make them compliant.

6. Documents received from a Freedom of Information Act request relating to the October 2012 repair of Keystone shows that the pipeline was not restored to the original design conditions. The Armor Plate repair can compensate for hoop strength of a pipeline but it cannot restore the mandatory toughness of the original design and would not meet the requirement for puncture resistance under current PHMSA conditions.



EVAN VOKES

June 26, 2015

Date

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA**

IN THE MATTER OF THE PETITION OF)	Docket 14-001
TRANSCANADA KEYSTONE PIPELINE, LP)	
FOR ORDER ACCEPTING CERTIFICATION OF)	REBUTTAL TESTIMONY OF JOHN
PERMIT ISSUED IN DOCKET HP09-001 TO)	HARTER ON BEHALF OF DAKOTA
CONSTRUCT THE KEYSTONE XL PIPELINE)	RURAL ACTION
)	
)	

1. This is my testimony in rebuttal to the pre-filed testimony of TransCanada Keystone Pipeline, LP (“TransCanada”) officer Corey Goulet, in Paragraph 15 of his pre-filed testimony, in which he claimed that TransCanada “is or will be able to satisfy all the conditions imposed by the Commission.” My testimony is about how this is not the case.
2. Contrary to what TransCanada has publicly stated, it does not have an agreement with me. By letter dated 10/17/14 I terminated all agreements as a result of a breach of contract by TransCanada of its settlement agreement with respect to the forced taking of my property through eminent domain. At this point, any entry on my property will be deemed trespassing.
3. The State of South Dakota has allowed the Keystone 1 pipeline to be built and is considering recertification of the permit for the proposed Keystone XL pipeline primarily so the state can have an ongoing flow of revenue from TransCanada. The State of South Dakota has engaged in this while denying its residents who are having the pipelines forced upon them through a taking of their private property the ability to do the same. I am of the opinion that the State’s permitting TransCanada to exercise eminent domain to take citizens’ private property is unconstitutional.
4. My wife and I will have a loss of income as a result of the proposed KXL pipeline crossing our land. We will be unable to use our own property during construction and reclamation, resulting in losses in excess of \$35,000 per year. TransCanada’s use of eminent domain enabled it to leverage landowners to prevent them from being made whole for the economic losses that would be incurred should the pipeline cross their property.
5. Because I will have to travel to the property to check cattle and the land much more than normal, which will add thousands of dollars to my annual expenses. TransCanada was unwilling to compensate for these losses, even though they state that the property owners are their first eyes on the ground.
6. I informed Tim Irons, a TransCanada land agent, that I wanted to be fairly compensated for each day I was unable to use my own private property. I was told that TransCanada did not do business that way, meaning that TransCanada was not willing to negotiate with me in fair and good faith. Being unwilling to sign an easement I believed to be fundamentally unfair, TransCanada simply took my private property using eminent domain.
7. During Commission meetings held in Winner, SD, and in western South Dakota, TransCanada stated they would use almost 3/4 inch pipe under the roads and in high consequence areas. However, TransCanada has downgraded the pipe wall thickness from this baseline. The Commission witnessed these statements. TransCanada’s subsequent actions demonstrate that it does not intend

on building the safest pipeline, or to comply with their agreements.

8. I had a conversation with an employee of the South Dakota Department of Environment and Natural Resources, and asked why they allowed TransCanada to build a pipeline so close to the City of Colome's water source. I was told that it must have just been overlooked.
9. With respect to reclamation of land, based on TransCanada's conduct, we do not believe it intends to reclaim our land back to the condition it was in prior to their taking of our private property.
10. TransCanada stated in public documents (including the FSEIS) that they rely on property owners to provide oversight on the pipelines. I suggest this demonstrates that TransCanada's SCADA system does not detect the leaks to the extent needed.
11. When asked, TransCanada has no answer as to how they will clean up a spill into an aquifer. Eight years into their effort, with no emergency response plan disclosed to date, TransCanada has no answer for this question. Recent pipeline spills into waterways have demonstrated that South Dakota cannot risk our agriculture and tourism industries.
12. As it is not possible to cover all topics in this pre-filed testimony that may arise during a hearing, I reserve the right to rebut any additional testimony presented during the hearing by TransCanada.

Dated this 26th day of June, 2015.

/s/ John Harter

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