

Gary Dorr
27853 292d St.
Winner, SD 57580
Cell: (605) 828-8391
gfdorr@gmail.com

December 1, 2014

Executive Director
South Dakota Public Utilities Commission
500 E. Capitol Ave.
Pierre, S.D. 57501-5070

Regarding: HP 14-001

Public Utilities Commission of the State of South Dakota,

In the matter of the TransCanada-Keystone's Motion to Define the Scope of Discovery Under SDCL 49-41B-27, I am requesting that the Public Utility Commission to allow completely open discovery of all of the original permit dated June 29, 2010 and any supporting documents and any and all pertinent South Dakota Codified Laws related to the original permit. There is a reason that there is a discovery process at all, and that is to determine whether original factors relating to granting the permit are still valid.

If there had been a major fault line discovered since 2009 that would have relegated this area unsafe for a pipeline, I am sure that this Public Utilities Commission (PUC) would not unnecessarily expose the public to the construction of a pipeline. If, since 2007, (which is a year used to make multiple references for facts in the original permit dated June 29, 2010), there had been 3,500 earthquakes in South Dakota, then the PUC would be able to strike the fact that "South Dakota is not prone to earthquakes" from supporting evidence; that would mean that the pipeline could not be built safely here, now, today, in the present. Conditions do change and whether they are physical, or economic, or societal, they need to be reviewed. This will ensure that a project of such magnitude is not being built with disregard for the best interest of the citizens who live inside the boundaries of South Dakota and the Great Sioux Nation's 1851 and 1868 boundaries which still carry treaty stipulations despite changing ownership.

TransCanada mistakenly said "The scope of discovery cannot be whether the Permit should have been granted in the first place," in an effort to discredit statements that will show that the conditions under which the permit were issued have changed. As an intervener, I don't dispute that a permit was issued. What I will request is that the PUC review the conditions that were time-sensitive when the permit was issued. This can only be accomplished in the best interest of the public if the scope of discovery is not limited in any fashion and opened to the entirety of the permit conditions, which are beyond the 50 amended permit conditions.

There are statements purported to be factual which are contained in the “Findings of Fact.” Those “facts” require the PUC’s review to ensure that the best interest of the public is still being served today, and we aren’t instead walking into a flurry of earthquakes or hazardous public conditions.

In fact, there are 22 statements purported to be factual in the “Findings of Fact” that are time-sensitive. In other words they are bound to either deteriorate as facts or become more firmly founded in fact by their relation to time. To use facts from 2007 today as still being factual to support this project, would be to risk public ridicule in the least, and bring detrimental public conditions at the worst.

I believe that the 22 time-sensitive facts contained in the Amended Final Decision and Order dated June 29, 2010, under Statements of Fact, need to be addressed to ensure the integrity of this process, instill faith in the public forum, and better address the concerns of the public where a foreign corporation’s pipeline is concerned—a pipeline that today in 2014 can have the negative effect of undermining the energy independence of the United States, and subtracting from a beneficial economic outlook for farming business in South Dakota.

That a statement was made and no one disputes it does not make the statement factual. So it goes for some of the statements made in 2009. Some of those statements made in 2009 rely on bits of “data” that together make ‘information,’ and were harvested from as far back as 2007. There are so-called facts contained in the above referenced order dated June 29, 2010, that can be directly refuted with testimony. Appropriately SDCL § 49-41B-33 states that a permit may be revoked or suspended by the Public Utilities Commission for:

- 1) *“Any **misstatement of a material fact** in the application or in accompanying statements or studies required of the applicant, if a correct statement would have caused the commission to refuse to grant a permit...”*

Today in December 2014, to rely on bits of data from 2007 as factual, would undermine the integrity of this commission whose responsibility it is to ensure that the conditions under which this permit was issued have not changed since 2010. If I tell you there are no grizzly bears in South Dakota in 2007, and today in 2014 we find out there are 300 grizzly bears in South Dakota, when would this material fact have become a **misstatement of a material fact**? The answer is that as a fact changes with time, the fact can change into what today would be untrue, a misstatement of a material fact. There are statements made by the commission and TransCanada which I alluded to earlier in this letter which are time-sensitive. For the commission or TransCanada to quote those same expired facts contained in the “**Findings of Fact**” from 2010 would mean that the Commission or TransCanada would be misstating a material [expired] fact. The PUC cannot ignore that a misstated material fact can come from a statement that is not true today even though it might have been true in 2007. For this reason, a “fact” from 2007 may have changed status to being untrue, thus rendering it a changed condition.

To believe facts were actually factual from 2007-2009 and deny testimony today in 2014 that will show the facts are simply not true would also undermine the goal of protecting the public best interest. We are not here in this process with the Public Utilities Commission to protect the interests of the foreign corporation, TransCanada. We are here in the process because while we were busy in the American

pursuit of happiness, a foreign corporation came to disturb the ground where we live. The public interest is always the most important goal of this process. To deny open review of the entire permit, a review of all the data stated as factual, and all the South Dakota codified laws applicable to the original permit would be a stand against the public interest.

I ask for the Public Utility Commissioners for these reasons to deny the TransCanada-Keystone's request for limiting the scope of discovery. I ask for the Public Utility Commissioners to open discovery to the entire permit issued on June 29, 2010 and all the supporting documents which contain data from 2007.

Sincerely,

Gary Dorr