

**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)	DAKOTA RURAL ACTION'S
PERMIT ISSUED IN DOCKET HP09-001 TO)	SUGGESTIONS IN OPPOSITION TO
CONSTRUCT THE KEYSTONE XL PIPELINE)	TRANSCANADA'S PROTECTIVE
)	MOTION IN LIMINE REGARDING
)	DRA'S EXHIBIT LIST
)	

In reading TransCanada Keystone Pipeline LP's ("**TransCanada**") protective motion *in limine* concerning Dakota Rural Action's ("**DRA**") exhibit list, we are reminded of Queen Gertrude's memorable line in Hamlet: "The lady doth protest too much, methinks."¹

TransCanada's motion should be summarily denied. To summarize, TransCanada's complaint largely concerns the number of exhibits disclosed by DRA in its exhibit list filed with the South Dakota Public Utilities Commission (the "**Commission**") on July 7, 2015 – the date by which the Commission ordered parties in these proceedings to file their exhibit lists. TransCanada apparently feels it has somehow been disadvantaged by the fact that DRA listed 1,073 separate exhibits for possible use in the upcoming hearing.

The reality lies rather distant from TransCanada's protests, as the vast majority of the exhibits listed by DRA consist of documents produced by TransCanada in response to DRA's discovery requests – the majority of those constituting a portion of the mass document dump of approximately 68GB of data TransCanada produced after being compelled by the Commission in response to DRA's motion to compel discovery. To give the Commission a sense for the range of documents included by DRA, the exhibits can be aggregated into a number of distinct categories:

¹ William Shakespeare, *Hamlet*, Act 3, Scene 2.

1. Exhibits 1-3 consist of publicly-available information – including the US Department of State’s Final Supplemental Environmental Impact Statement and the pre-filed testimony in these proceedings and from the Commission’s HP09-001 docket.
2. Exhibits 4-26 constitute documents produced by TransCanada in response to DRA’s initial discovery requests.
3. Exhibits 27-28 consist of the Commission’s staff responses to discovery requests.
4. Exhibit 29 is a publicly-available document – in fact, it is TransCanada’s presentation to investors at its 2015 annual corporate meeting.
5. Exhibits 30-33 are publicly-available documents.
6. Exhibit 34, the Battelle engineering assessment, is a document prepared on behalf of TransCanada that was disclosed to DRA by TransCanada in response to discovery requests.
7. Exhibits 35-37 are publicly-available documents, either on the web or obtained from the Pipeline and Hazardous Materials Safety Administration (“**PHMSA**”).
8. Exhibits 39-65 are documents obtained from the South Dakota Department of Environment and Natural Resources (“**DENR**”) pursuant to an open records request, with the majority of these documents constituting records actually prepared by TransCanada or communications between TransCanada officials and DENR staff.
9. Exhibits 66-128 are a combination of publicly-available documents obtained from PHMSA and from DRA’s witness, Evan Vokes, the former TransCanada engineer and now-whistleblower who has been shedding light on TransCanada’s shoddy pipeline construction practices and corporate culture of valuing profits over the safety of its pipelines. The documents produced by Mr. Vokes largely constitute email communications among TransCanada staff and documents prepared by TransCanada relating to pipeline construction methods. These are documents that, in reality, should have been produced by TransCanada in response to discovery requests by the intervening parties, but which were not. Regardless, they are documents that are in TransCanada’s possession.

10. Exhibits 129-178 consist of documents produced by TransCanada in response to DRA's discovery requests.
11. Exhibits 179-396 are documents that, again, were produced by TransCanada, but which have been designated as confidential. By means of general description, the majority of these documents are TransCanada's Issued for Construction ("IFC") plans for building the proposed Keystone XL pipeline. The remaining documents are internal TransCanada documents such as its Integrity Management Plan for High Consequence Areas, System Controls and Data Acquisition ("SCADA") specifications, and confidential portions of its responses to DRA's interrogatories.
12. Exhibits 397-409 are photographs and a video from DRA witness Sue Sibson documenting the damage done to her family's land by TransCanada during pipeline construction and TransCanada's subsequent failure to properly remediate that damage.
13. Exhibits 410-1057, the bulk of all exhibits listed, are again documents produced by TransCanada in response to the Commission's order compelling discovery. These documents largely consist of route variation maps, as well as wetlands data sheets and corresponding photos prepared by or on behalf of TransCanada.
14. Exhibits 1058-1061 are scholarly articles and a geologic map of South Dakota, each of which were previously referenced in pre-filed testimony submitted on behalf of DRA on April 2, 2015, by Dr. Arden Davis of the South Dakota School of Mines and Technology.
15. Exhibit 1062 is a publicly-available document – the original Final Environmental Impact Statement from the US Department of State for the Keystone XL pipeline project.
16. Exhibits 1063-1073 are photographs obtained by Mr. Vokes that, in part, document his statements concerning TransCanada's substandard pipeline construction practices.

To summarize, TransCanada has no basis to complain. The vast majority of the exhibits listed by DRA are documents prepared or produced by TransCanada itself, with the balance (other than referenced photographs from Ms. Sibson and Mr. Vokes) consisting of publicly-available documents that TransCanada either prepared or has within its possession. On this basis, TransCanada's motion should be denied.

Respectfully submitted,

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