

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

IN THE MATTER OF THE APPLICATION BY )  
TRANSCANADA KEYSTONE PIPELINE, LP )  
FOR A PERMIT UNDER THE SOUTH DAKOTA )  
ENERGY CONVERSION AND TRANSMISSION )  
FACILITIES ACT TO CONSTRUCT THE )  
KEYSTONE XL PROJECT )

HP 14-001

**AFFIDAVIT OF PETER CAPOSSELA**

I, Peter Capossela, under penalty of perjury, hereby state and affirm:

1. That I am counsel of record for the Standing Rock Sioux Tribe in the above-captioned matter.

2. I am informed and have personal information of the affirmations contained herein, except the affirmations that are stated upon information and belief.

3. On April 17, 2015, the Public Utilities Commission issued an order in the above-captioned docket compelling TransCanada to answer the Standing Rock Sioux Tribe Request for the Production of Documents, paragraphs 3-9 and 11-13.

4. I received an electronic mail message from TransCanada's counsel on April 16, informing me that on April 17, I would receive a user name and password for a cloud-based File Transfer Program (FTP), in which I would be able to access the documents.

5. On April 17, at 4:37 pm central time, I received an electronic mail message from TransCanada's counsel with an internet link to the site, and the user name and password to access the site.

Joint Motion to Exclude  
Exhibit B

6. I accessed the site in the early morning on Saturday, April 18. The site contained an incomplete response to the Requests for Production of Documents prescribed in paragraphs 3-9 and 11-13. With respect to cultural resources, paragraph 8 requests “All documents prepared or obtained for the purpose of demonstrating compliance with the National Historic Preservation Act.” The link in TransCanada’s FTP site captioned *Standing Rock Document Request\_8* was TransCanada’s response to this request.

7. TransCanada possesses documents on National Historic Preservation Act compliance that were not produced in *Standing Rock Document Request\_8*. For example, the Standing Rock Sioux Tribe is in possession of “Pipeline Route Variation Form” dated March 19, 2012 (attached). This TransCanada document, which was not produced to Standing Rock per request 8, states that, “site is currently ineligible but SD SHPO wants more work and consultation which could change the status and prolong the 106 process.” The reference to “106 process” means section 106 of the National Historic Preservation Act. But TransCanada did not produce it to the Standing Rock Sioux Tribe, as required in the Commission’s April 14, 2015 *Order Denying in Part and Granting in Part Motion to Compel*. It is reasonable to postulate that TransCanada possesses very many documents covered by the discovery requests, such as emails, and background and support data to documents that were produced, but which have not been made available.

8. Accessing and navigating TransCanada’s site has been very difficult and time-consuming. There are layers of folders and documents buried in the folders. It took 1-2 minutes to open most folders, and 1-2 minutes to open most files, although some files took up to 5 minutes to open. If, for example, one had to enter several folders to find a

document, with 1-2 minutes to open each folder, it could take 10 minutes to open the folders and then the document file. It could take 10 minutes to access one document.

9. Many of the documents listed on the menu for each folder were unavailable. In some instances, a window appeared which read “This page can’t be opened.” In others, a message appeared “file damaged.” Thus, I have been unable to access many of the documents purported to have been produced.

10. Some documents contained a file for every page. Upon my information and belief, the Class III Cultural Resources Survey, Addendum 4, Appendix C was comprised of 189 different files – for one document. Each file takes approximately one minute to download. For that document, it took approximately three hours to download.

11. Upon my information and belief, TransCanada’s FTP program made the users’ computers vulnerable to security breach. The data may also have been vulnerable to security breach.

12. On April 22, 2015, TransCanada took down the FTP site, and uploaded a new site, and provided new user names and passwords. Upon my information and belief, no new documents were produced.

13. The Standing Rock Sioux Tribe’s pre-filed testimony in the above referenced matter was filed on April 2, 2015. Access to the FTP program was first made available on April 17, two weeks after testimony was due. The documents have been produced too late to be used in developing rebuttal testimony, or to be of any use at any stage of this proceeding.


14. Counsel for several intervenors consulted with counsel for TransCanada via teleconference on April 20, in an effort to avoid the filing of the Motion to Exclude.

Dated this 24<sup>th</sup> day of April, 2015

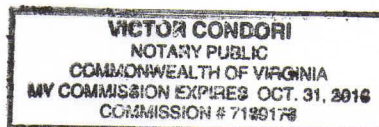
By: Peter Capossela  
Peter Capossela

COMMONWEALTH OF VIRGINIA )  
  :  
COUNTY OF FAIRFAX            )

SUBSCRIBED and SWORN to before me  
this 24<sup>th</sup> day of April, 2015

  
NOTARY PUBLIC

My Commission Expires 10/31/2016



KEYSTONE XL PIPELINE PROJECT PIPELINE ROUTE VARIATION FORM			
1	<b>VARIATION TYPE:</b> Refinement: _____ Centerline: <input checked="" type="checkbox"/>	Reroute: <input checked="" type="checkbox"/> X Pump Station: _____	Footprint: _____ Design: _____ Valve Site: _____ CAR: _____
2	<b>LOCATION:</b> State: <input type="text" value="SD"/> Township: <input type="text" value="20N"/> Section: <input type="text" value="28"/>	County: <input type="text" value="Harding"/> Range: <input type="text" value="04E"/> Centerline: <input type="text" value="3/14/2012"/>	Pictures: <input type="text" value="N/A"/> Quad Map: <input type="text" value="N/A"/> Aerial Map: <input type="text" value="See attached map sheet"/> MP: <input type="text" value="311.27"/> to <input type="text" value="311.53"/>
3	<b>REASON FOR ROUTE VARIATION</b> (Please include reason for route variation): The primary reason for this reroute is to avoid Cultural Site (CBRAVOHA001). Smith #36HN1133. Site is currently ineligible but SD SHPO wants more work and consultation which could change the status and prolong the 106 process in the state.  The reroute has been proposed based on a combination of Flyover video of Centerline, LIDAR data, Pictometry and other aerals.		
<b>DETAIL ROUTE VARIATION</b> (Please describe route variation in detail): Route variation starts near MP 311.3 and deviates ~25.5° east of current C/L. It extends in this direction for ~277 ft. Then it turns further east and continues in this direction for ~111 ft and thus avoids the cultural site and allows for all temporary workspaces to avoid it as well. Lastly, the reroute turns south for ~1,019 ft. to rejoin the C/L near MP 311.5.			
<b>ADDITIONAL IMPACTS</b> (Please include any additional impacts which may affect cost; crossings, induction bends, etc.): No New Landowners are impacted by this route variation. Reroute Impacts 2 tracts: ML-SD-HA-01310.000 (Niemi Ranch Limited Partnership A SD Domestic Limited Partnership) ML-SD-HA-01330.000 (State of South Dakota)  The reroute increases pipe length by ~ 60 ft.  Miscellaneous Cost savings include: ~\$15,000-\$20,000 to test the site, ~20,000 - 25,000 for treatment/mitigation.			
Is there an increase/decrease in the number of crossings? Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>			
If yes, please list: _____			
<b>COST ANALYSIS</b> (costs incurred or saved from the route variation)			
Additional length of route realignment:	60	ft.	\$ 21,729.22
Additional length of side-hill construction:		ft.	\$ -
Additional length of wetland construction:		ft.	\$ -
Additional bore length (Road, RR):		ft.	\$ -
Additional foreign line/pipeline crossings:		EA	\$ -
Additional water body crossing (streams, ponds, etc.):			
35 - 65' +	0	EA	\$ -
10' - 19'	0	EA	\$ -
Less than 10'	0	EA	\$ -
Additional survey required:			
Civil:	0.27	mile	\$ 1,330.31
Cultural:	0.18	mile	\$ 440.34
Biological:	0.18	mile	\$ 493.18
Miscellaneous costs saved or added due to route variation from <b>ADDITIONAL IMPACTS</b> listed above:			\$ (40,000)
Overall estimated costs of the route variation:			\$ (16,006.95) (See "Additional Impacts" above)

KEYSTONE XL PIPELINE PROJECT

4 **LAND / TransCanada** *Tina Hall*

a) Is a new landowner affected by the proposed variation? Yes  No

b) Is the affected landowner/tract a possible condemnation? Yes  No

c) Does proposed route variation impact Tribal Lands? Yes  No

d) Does proposed route variation impact any Federal/State Lands? Yes  No   
 -If yes, name type (i.e. USFWS, BLM, etc.): State of South Dakota

e) Is proposed realignment outside the easement/workspace? Yes  No

f) Is realignment proposed to satisfy landowner request? Yes  No   
 -If yes, name of landowner(s)/track number(s): \_\_\_\_\_

g) Has all the evaluation criteria been examined/provided for this specific discipline? Yes  No   
 If no, please explain why: \_\_\_\_\_

5 **ENGINEERING/CONSTRUCTION - TransCanada** *Meera Kothari*

a) Maximum deviation perpendicular to proposed alignment: 145 ft.

b) Does variation (CL) (including workspaces) falls within 500 ft. MDEQ Corridor? Yes  N/A  No

c) Has the centerline been staked for construction? Yes  No

d) Does route variation affect HDD crossing alignment? Yes  No

e) Is realignment proposed for engineering/construction reasons? Yes  No

f) Will the route variation require the relocation of a pump station? Yes  No

g) Has all the evaluation criteria been examined/provided for this specific discipline? Yes  No   
 If no, please explain why: \_\_\_\_\_

6 **ENVIRONMENTAL / exp** *Jonathan Minton*

a) Has the corridor been environmentally surveyed? Yes  No

b) Has the proposed variation been environmentally surveyed? Yes  No

c) Does proposed route variation impact Sage Grouse areas? Yes  No

d) Does route variation impact ABB areas? Yes  No

e) Was variation proposed to satisfy environmental issues? Yes  No

f) Was realignment proposed to satisfy agency request? Yes  No   
 -If yes, name of agency(s): \_\_\_\_\_

g) Environmental features:  
 Added (+):  Subtracted (-):   
 Wetland ID # for newly impacted wetlands: \_\_\_\_\_

h) Has all the evaluation criteria been examined/provided for this specific discipline? Yes  No   
 If no, please explain why: \_\_\_\_\_

7 **ENGINEERING / FACILITIES AND HYDRAULICS (if applicable)** *Sandra Gigovic*

a) Will the route variation require the relocation of a pump station? Yes  No

b) Will route variation impact hydraulics? Yes  No

c) Are additional valves required at HCA's or water crossing? Yes  No

d) Has all the evaluation criteria been examined/provided for this specific discipline? Yes  No   
 If no, please explain why: \_\_\_\_\_

8 **STAKEHOLDER RELATIONS / TCPL (if applicable)** *Bud Andersen*

a) Does the variation result in any new stakeholders? Yes  No

b) Does the variation require follow-up with specific stakeholder groups? Yes  No

c) Was the variation proposed to satisfy stakeholder request? Yes  No   
 -If yes, please specify issue type (as it aligns to stakeholder database): \_\_\_\_\_

d) Has all the evaluation criteria been examined/provided for this specific discipline? Yes  No   
 If no, please explain why: \_\_\_\_\_

9 Originator: Environmental  
 Date: 3/19/2012

10 Received by: \_\_\_\_\_  
 Date: 3/19/2012  
 Fax to: ?

11 Assigned Tracking Number: 0269-SD-P4-311.3-311.5-I

12 Filed by: \_\_\_\_\_  
 Date: \_\_\_\_\_  
 Fax to: ?

0269-SD-P4-311.3-311.5-I