

July 6, 2015

Chris Nelson, Chairperson
Kristie Fiegen, Vice Chairperson
Gary Hanson, Commissioner
South Dakota Public Utilities Commission
500 East Capitol Avenue
Pierre, South Dakota 57501-5070

Dear Chairperson Nelson, Vice Chairperson Fiegen and Commissioner Hanson:

The undersigned Tribal leaders, community leaders and everyday South Dakotans are writing to register our serious concerns with the process for the certification of the permit for the Keystone XL Pipeline. Under South Dakota law, the PUC must ensure that "the location, construction and operation of facilities will produce minimal adverse impacts on the environment and citizens of this state." SDCL §49-42B-1. If construction has not begun within four years of a permit, "the utility must certify to the Public Utilities Commission that such facility continues to meet the conditions upon which the permit was issued." SDCL §49-42B-27.

The law requires a thorough review, on your part, of all information relating to the project that may be available. An open process in which South Dakotans from all walks of life are provided an opportunity to provide information is necessary in order for the PUC to fulfill its statutory mission.

We are concerned that in considering whether to accept certification of the permit for the Keystone XL Pipeline, the PUC has taken repeated actions to limit the voice of the Indian nations and many concerned South Dakotans. On June 15, the PUC issued orders prohibiting consideration of Native American aboriginal title and gathering rights, as well as issues relating to the crossing by Keystone XL with the Mni Wiconi Project of the Oglala, Rosebud and Lower Brule Sioux Tribes. The PUC has also issued an order precluding the testimony and evidence of dozens of South Dakota landowners and ranching families, Indian and non-Indian, for alleged violations of procedural rules. TransCanada was found to have violated the very same rules, but has suffered no equivalent sanction. We believe this demonstrates a clear bias in favor of a Canadian corporation and against the concerns of South Dakota Tribes and their non-Indian neighbors.

The process for re-certifying the 2010 permit has been compromised by PUC rulings allowing TransCanada to hide important plans and documents from disclosure. At the outset, the Commission granted TransCanada's request for an expedited hearing schedule. On April 17, the PUC granted TransCanada a protective order, severely limiting the ability of the interveners to access and utilize information for the certification hearing.

At the April 14 hearing on the discovery of documents, TransCanada admitted that it had not prepared an Emergency Response Plan for the Keystone XL Pipeline. Condition 36 of the 2010 permit for the Keystone XL Pipeline requires filing an emergency plan. TransCanada has not bothered to comply and prepare an emergency response plan, instead spending millions of dollars on lobbying and television advertising.

TransCanada's performance with existing pipelines demonstrates that the PUC must closely scrutinize safety claims and promises to landowners. There have been at least 14 spills of dangerous tar sands crude from TransCanada's existing Keystone Pipeline and the Cushing Extension. In the face of

this dismal record, TransCanada consistently downplays the possibility of a significant oil spill in South Dakota, putting our land and water in jeopardy. Documents that intervenors have been able to obtain demonstrate that TransCanada is unprepared for an adequate emergency response in the event of a release of tar sands crude in rural South Dakota.

TransCanada has failed to comply with proper reclamation and mitigation of landowners' properties that are impacted by the original Keystone Pipeline. TransCanada has acted like a bully to South Dakota landowners and ranching families.

TransCanada and the United States federal government have both failed to properly consult with Indian Nations to acquire free, prior and informed consent for the construction of the Keystone XL pipeline across treaty and traditional territories.

TransCanada has not assessed the negative social impacts the construction of the Keystone XL pipeline will have upon native and non-native communities of South Dakota, in particular, the increased risks of sexual violence and the lack of emergency service infrastructure.

In the process of certifying the permit for the Keystone XL Pipeline, there has been a lack of transparency and due process by the PUC, and the appearance of bias in favor of TransCanada. This was epitomized by scheduling a single public comment hearing on July 6, the Monday after a holiday weekend -- which seems designed to minimize the important role of public comment in the decision whether to certify the permit for Keystone XL.

For these reasons, we urge the PUC to immediately schedule additional public hearings. All environmental issues must be thoroughly reviewed by the PUC, including impacts on water resources, climate change from the extraction of tar sands crude, fish and wildlife, medicinal plants, cultural resources and Tribal lands. The concerns of the Indian Nations must receive particularly judicious consideration -- acknowledging the simple reality that the Tribes were here first.

The PUC should vacate existing orders in HP 14-001 precluding certain intervenors from testifying and precluding consideration of Native aboriginal title and gathering rights. Full due process must be afforded to all intervenors, Tribal governments, and all concerned South Dakotans. There must be no bias or favoritism by the PUC toward TransCanada in the certification proceeding for the permit for the Keystone XL Pipeline.

Respectfully Submitted,

**No KXL Dakota Coalition
Indigenous Environmental Network
Dakota Rural Action
South Dakota Peace and Justice Center
BOLD Nebraska
Ihanktonwan Treaty Council
Kul Wicasta Treaty Council
Oyate Wahacanka Wocun
Rosebud Sioux Tribe
Yankton Sioux Tribe**

William Kindle, Chairman of the Rosebud Sioux Tribe

William Bear Shield, Chairman of Land and Natural Resources, Rosebud Sioux Tribe

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