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 PIPELINE PROJECT	* * * * *	HP 07-001 INTERVENER WEB WATER DEVELOPMENT ASSOCIATION'S PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

* *

Attached hereto are Intervener WEB Water Development Association's Proposed Findings of Fact and Conclusions of Law.

Dated this 10th day of January, 2008.

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This matter came before the South Dakota Public Utilities Commission for the hearing which commenced on December 3, 2007, and concluded on December 11, 2007. Prior to the commencement of the hearing, the Applicant, the PUC staff and various Interveners submitted pre-filed direct, rebuttal and surrebuttal testimony, as well as various exhibits. Upon consideration of the pre-filed submissions and testimony and exhibits presented at the hearing, the Commission hereby enters its Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

1. Applicant TransCanada Keystone Pipeline, LP (TransCanada) seeks a permit from the South Dakota Public Utilities Commission (PUC) to construct and operate a crude oil pipeline and related facilities from Hardisty, Alberta, Canada, to Patoka, Illinois. (APPLICATION § 1.2).

2. The project, known as the Keystone Pipeline Project, is proposed to enter South Dakota in Marshall County and extend for 220 miles to the Missouri River at Yankton. The pipeline is proposed to cross the counties of Marshall, Day, Clark, Beadle, Kingsbury, Miner, Hanson, McCook, Hutchinson, and Yankton. (APPLICATION § 1.2).

3. Construction of the 30 inch pipeline is proposed to commence the end of May or the first part of June 2008. (TR 187).

4. The filling of the pipeline is scheduled to commence in approximately November 2009. (TR 583).

5. TransCanada has contracted to ship 495,000 barrels of tar sands crude oil per day. The pipeline is designed to move 591,000 barrels per day. (TR 40).

6. The pipeline's maximum operating pressure will be 1,440 pounds per square inch with a potential surge pressure of 1584 psi. (TR 44; KOTHARI 11/21/07 REBUTTAL TESTIMONY ¶ 16).

7. TransCanada does not currently operate any crude oil pipelines. (TR 48).

8. A total of eight rural water systems will be crossed by the proposed pipeline. (TR 713).

9. It is estimated the Keystone Pipeline will cross a total of approximately 200 rural water pipelines. (TR 1391).

10. Intervener WEB Water Development Association (WEB) is a regional water system serving 17 counties in north central South Dakota and North Dakota. (TR 1274).

11. The proposed Keystone Pipeline will cross WEB water lines at 8 to 10 locations, including a 12 inch line in Day County, and will run parallel to a WEB line for approximately 3,000 feet near Amsden Lake. (TR 1389-90).

12. WEB intervened in this matter because of its concern about the potential impact the Keystone Pipeline will have on ground water resources and rural water pipelines. (TR 1275).

13. The original proposed pipeline route would have caused the pipeline to cross wetland areas in Brown County to which the U.S. Fish and Wildlife Service objected. The Fish and Wildlife Service and the National Resource Conservation Service also objected to the pipeline crossing areas where those agencies had grassland easements. The pipeline route was moved to the east into Marshall County to avoid these easements. (TR 130-31, 196, 202, 1053; KOSKI DIRECT TESTIMONY ¶ 10; WEB EX 1).

14. The U.S. Fish and Wildlife Service would have required TransCanada to do detailed studies regarding the effect of the pipeline and, therefore, TransCanada found it easier to move the pipeline onto private land. (TR 131-32, 157).

15. The primary concern about routing the pipeline across grassland easements was weed invasion. This concern also applies to private landowners. (TR 156).

16. The revised pipeline route will run through an area in northeastern Marshall County where there are shallow and surficial aquifers, which are used by rural water systems, turns and landowners for human and livestock use. (TR 406, 427, 693).

17. A surficial aquifer is one that is usually touching the surface. A shallow aquifer is 50 feet deep or less. (TR 406).

18. According to Heidi Tillquist, TransCanada's environmental toxicologist, shallow aquifers with sandy, high permeable soils overlying them are considered vulnerable. (TR 365).

19. The proposed pipeline runs through sand deposits which are hydraulically connected to the Middle James Aquifer. According to Brenda Winkler, a geologist retained by the PUC staff, the middle James aquifer could be considered a potential hydrogeologic sensitive area. (TR 785, 1054; WINKLER SURREBUTTAL TESTIMONY, p. 1).

20. Sands in some areas of Marshall County are exposed at the surface and in contact with the middle James aquifer. (TR 790, 1054; STAFF EX 19).

21. The Middle James Aquifer is the only source of drinking water for the BDM rural water system. (TR 692-93).

22. The water in the aquifer below the area where the pipeline is to be installed flows toward BDM's wells, according to studies completed by the South Dakota Geological Survey and the U.S. Geological Survey. (TR 693; WADE EX 1).

23. A leak in the pipeline could reach the Middle James Aquifer immediately since the aquifer is at the surface in some areas. (TR 787).

24. WEB is looking at developing wells in the Middle James Aquifer to serve the Day County area. (TR 1317-19, 1404-05).

25. Drs. Perry Rahn and Arden Davis, geologists called as witnesses by WEB, both expressed concerns about the pipeline route in Marshall County and suggested that the threat to the Middle James Aquifer could be alleviated by the pipeline route being moved to the east and routed in an area of clay soil which would act as a barrier between the pipeline and aquifers. (TR 1058, 1079; WEB EX 3; DAVIS DIRECT TESTIMONY, p. 3; RAHN DIRECT TESTIMONY, p. 4).

26. Despite the concerns about the shallow and surficial aquifers in Marshall County, Ms. Tillquist never visited the area. Her only trip to any of the pipeline route involved a small area in Yankton. (TR 425).

27. According to Dr. Davis, if the proposed pipeline were to leak, it could affect ground water quality in several areas. (TR 1052).

28. The proposed pipeline crosses approximately 24 miles where there is an aquifer immediately underlying the proposed pipeline route. (TR 1079).

29. The proposed pipeline will cross some recharge areas of aquifers in Marshall, Clark, Miner and Day Counties. (TR 1053; DAVIS DIRECT TESTIMONY, p. 1).

30. The proposed pipeline will cross several areas where alluvium, which can sometimes have very permeable channels, is present, especially along the James River Valley. (TR 1053, 1055, 1079; RAHN DIRECT TESTIMONY, p. 3).

31. WEB Exhibit 3 shows the alluvium that the proposed pipeline will cross. (TR 1055).

32. There are also sensitive areas in Clark County about which Dr. Davis expressed concerns. (TR 1054-55; WEB EX 4).

33. Wetlands and areas where there are shallow aquifers are more environmentally sensitive than areas having clay soils. (TR 170).

34. TransCanada is not proposing to take any additional precautions or protections for the pipeline when it crosses through areas of shallow and surficial aquifers. (TR 406).

35. The current published geologic maps for the pipeline route do not contain enough detailed information about the distribution of surficial geologic materials and bedrock outcrops to allow for a complete evaluation of hydrogeologically and geologically sensitive areas. (TR 793; WINKLER DIRECT TESTIMONY, p. 3).

36. To obtain additional information regarding hydrogeologically and geologically sensitive areas, soil borings need to be done. (TR 793, 1069).

37. Derric Isles, state geologist and administrator of the South Dakota Geological Survey Program, was not consulted by TransCanada involving geology or hydrology issues in connection with the pipeline route. (TR 1100-01).

38. Historically, crude oil pipelines have had a poor safety record. (TR 387).

39. Although improvements in pipeline safety have been made, the risk of a leak cannot be eliminated. (TR 1534).

40. Ms. Tillquist acknowledged that, while rare, spills consisting of up to tens of thousands of barrels of oil do happen. (TR 387).

41. The potential for a crude oil release creates a significant risk to the environment and the health of the inhabitants of South Dakota. (TR 804).

42. DNV is an independent firm recognized as an industry expert on spill frequency and volume assessments. DNV was hired by Keystone to prepare a spill frequency and volume analysis report. (TR 409, 424, 523).

43. DNV's March 28, 2007, report is included as part of TC Exhibit 1C under the date March 5, 2007. The DNV study identified six distinct and independent possible causes of a pipeline leak applicable to the Keystone Pipeline. Those causes were corrosion (external or internal), excavation damage, material defect or construction deficiency, hydraulic (pressure surge) event, washout or seismic events. (DNV REPORT, p. 4).

44. Meera Kothari, an engineer with TransCanada, listed the threats to the Keystone pipeline as manufacturing defects, construction damage, internal and external corrosion, mechanical damage and a hydraulic event. (KOTHARI DIRECT TESTIMONY ¶ 25).

45. TransCanada's coordinator of oil movements, Brian Thomas, identified potential causes of abnormal operation of a pipeline as unintended closure of valves or shutdowns, increase or decrease in pressure or flow rate outside normal operating limits, loss of communications, operation of any safety device and any other malfunction of a component, deviation from normal operation, or personnel error, which could cause a hazard to persons or property. (TR 500-01; THOMAS DIRECT TESTIMONY ¶ 8).

46. The likelihood of a leak anywhere along the pipeline greater than 50 barrels is estimated to occur once every 7 to 11 years, according to the DNV Report. (TR 410-11; DNV REPORT, p. 23).

47. Ms. Tillquist acknowledged that small leaks could leak for a long period of time and result in a large spill volume because the leak would not be detected as quickly as leaks from larger holes. (TR 410).

48. The DNV report indicates that 57% of spills along the Keystone main line would be from pinhole leaks. (DNV REPORT, p. 24).

49. A pinhole leak would not be detected by aerial inspection, unless oil was coming to the surface. (TR 283).

50. The DNV Report indicates that a leak of less than 1.5% of the pipeline flow could go undetected for up to 90 days. (TR 507; DNV REPORT, p. 20).

51. Mr. Thomas testified that the SCADA System can detect leaks down to a level of approximately 1.5% to 2% of pipeline flow. (TR 504-05; THOMAS DIRECT TESTIMONY ¶ 11).

52. Mr. Thomas testified the time threshold for detecting leaks of 1.5% to 2% cannot be definitively estimated. (TR 507).

53. At a rate of 591,000 barrels per day of pipe volume, a 1.5% leak would represent as much as 8,865 barrels or 372,330 gallons per day. (DAVIS DIRECT TESTIMONY, p. 2).

54. If a 2% leak went undetected, 415,800 gallons of oil could leak in one day based upon a flow rate of 495,000 barrels per day. (TR 505-06).

55. Based upon a 2% leak and a flow rate of 495,000 barrels per day, 37,000,000 gallons of oil could leak if the leak went undetected for 90 days. (TR 507).

56. Crude oil remains on the surface until it is cleaned up. (TR 103-04).

57. TransCanada witnesses Robert Jones and Brian Thomas both testified that fires and explosions can occur in connection with crude oil pipelines. Fire sometimes is used to help in clean up of crude oil spills. (TR 104, 522; EXs 21-25 attached to HOHN DIRECT TESTIMONY).

58. TransCanada witness Meera Kothari stated in her direct testimony that crude oil cannot cause an explosion and fire, but was unable to explain why there was an explosion and fire on the crude oil pipeline near Brookdale, Minnesota (TR 293; KOTHARI 11/21/07 REBUTTAL TESTIMONY ¶ 11).

59. A petroleum leak can result in dissolved constituents and toxins entering the ground water. (TR 796).

60. The constituents of crude oil which could cause the most damage to drinking water sources and wildlife are BTEX compounds, which consist of benzene, toluene, ethylene and xylene. (TR 374; EXs 18a through 18q attached to HOHN DIRECT TESTIMONY).

61. Petroleum products can cause residual contamination. (TR 795).

62. Accident rates on hazardous liquid pipelines are higher than they are on gas distribution and gas transmission pipelines. (TR 848; MILLER EX 3, pp. 15-16).

63. There have been several hydrocarbon pipeline releases in South Dakota since 1992. (TR 1148; WEB EX 6).

64. The Big Sioux Aquifer was nearly contaminated by a pipeline leak in 1992. (TR 1151).

65. Although it is hoped the use of fusion bond epoxy on the outside of the pipe will lessen the likelihood of external corrosion, there is a chance for human error when such coating is being applied by hand in the field. Fusion bond epoxy will not be applied to the inside of the pipe. (TR 285, 308, 1453).

66. One cannot say with certainty the pipe upon which fusion bond epoxy has been applied will not leak. (TR 1453).

67. A surge could cause over pressurization of the pipeline which could lead to a rupture. (TR 292).

68. As of the completion of the PUC hearing, TransCanada had not yet completed a detailed surge analysis. (TR 292).

69. Agricultural activities have historically been a cause of damage to pipelines. (TR 1566-67).

70. Dan Hannan, a corporate health and safety manager retained by the PUC staff, recommended that the spill frequency volume study be revised to better account for the likelihood of damage to the pipeline caused by excavation activities. (TR 1560-61; HANNAN DIRECT TESTIMONY, p. 3).

71. TransCanada will prepare an emergency response plan, also known as an oil spill response plan. That plan has not yet been completed and will not be completed until the first quarter of 2009, after the pipeline has been constructed. (TR 583).

72. Mr. Hannan recommends that a cooperative program with federal, state and local authorities be developed to respond to emergencies before a permit is issued. (TR 1561-62).

73. Mr. Hannan recommends the PUC review the emergency response plan for adequacy prior to the pipeline becoming operative and should monitor compliance with the emergency response plan. (TR 1562-64, 1589).

74. The emergency response plan will identify emergency response personnel, their location and oil spill containment plans. Such information is unknown at this point and, therefore, has not been presented to the PUC. (TR 41, 61-62).

75. It is anticipated maintenance and emergency response personnel will be part-time contracted employees who will also work for numerous other pipeline companies, and may not be located in South Dakota. (TR 41-42).

76. There will be a maintenance facility in Yankton. It is undetermined as to where the next facility to the north or south of Yankton will be located. (TR 501-02).

77. There will be no facility in South Dakota manned 24 hours a day, 7 days a week. (TR 501).

78. Although TransCanada plans to have first responders to a leak able to be on site within four hours, no determination has yet been made as to the location of such first responders or how many people will make up the first responder group. (TR 514-15).

79. The first responders will not have heavy equipment which would allow them to repair a pipeline leak. (TR 520).

80. The individuals who would dig up the pipeline and repair a leak are included in what is referred to as Tier 1 resources. (TR 520-21).

81. Other than in the Yankton area, Tier 1 resources can take up to 12 hours to reach the leak site. (TR 521).

82. A SCADA system can give a false positive report or otherwise malfunction. (TR 511, 1319-22).

83. When a leak alarm is generated, an operator must take steps to verify whether there really is a leak, after which the operator determines whether the pipeline will be shut down. The pipeline does not automatically shut down. (TR 511-12).

84. A shutdown of the pipeline would be economically damaging to TransCanada. (TR 512).

85. In the United States, oil pipelines are required to use a .72 design factor for steel pipe unless a special permit is obtained. (TR 288-89).

86. TransCanada obtained a special permit to make use of a .80 design factor, which would allow for a thinner pipe. This resulted in the thickness of the pipe being reduced from .429 inches to .386 inches. (KOTHARI 11/14/07 REBUTTAL TESTIMONY ¶ 5; TC EX 11).

87. The TransCanada pipeline will be the first in the United States using the .80 design factor to move tar sands crude oil. (TR 298).

88. One of the primary reasons for seeking the special permit allowing for the use of thinner pipe was cost savings. (TR 118-19, 290).

89. The use of thinner pipe makes it more important to minimize the chance of pressure surges in the pipeline. (TR 1424).

90. In some areas, such as population areas, road crossings and under the Missouri River, the thickness of the pipe will be increased for safety purposes. (TR 105, 118, 210-11, 276-77).

91. Contaminated soils can and have posed serious threats to the longevity and structural integrity of pipes and elastomeric gaskets which can in turn affect water quality in the distribution system. (TR 418).

92. BTEX compounds can permeate gaskets used in water pipelines. (TR 420).

93. There have been cases of water lines in South Dakota being penetrated by petroleum substances. (TR 1165, 1356-57).

94. Despite some testimony to the contrary, Dr. Davis testified that the concentration of BTEX in refined gasoline is not necessarily significantly higher than that found in crude oil. (TR 1072).

95. TransCanada has refused to provide a sample of the crude oil it intends to ship in its pipeline for testing by an independent laboratory. (TR 53).

96. Rural water systems are considered community water systems, which is defined as a system that serves 25 or more year round customers or fifteen service connections. (TR 1199).

97. The permissible level of benzene in a water system is no more than five parts per billion. The maximum contaminate level for toluene is one milligram per liter and for xylene 10 milligrams per liter. (TR 1201).

98. Witnesses with knowledge testifying at the hearing were unaware of any South Dakota water system ever having BTEX in its water. (TR 1203, 1209, 1281).

99. WEB is concerned about its water pipes being exposed to hydrocarbons. (TR 1286-89).

100. TransCanada will typically enter into agreements with other utilities they cross as long as the requirements set forth by those utilities are reasonable. (TR 209-10).

101. Thicker pipe could be extended to protect water lines in areas where those water lines are located near roadways. (TR 211).

102. Most of WEB's water lines are located near roadways. Therefore, TransCanada could only extend its thicker pipe where it crosses the WEB lines and other rural water lines at minimal cost. (TR 1335-36).

103. The bottom of the Keystone pipeline will be buried at approximately 6½ to 7 feet below the surface. Rural pipelines in South Dakota are generally buried at approximately 6½ feet. (TR 263).

104. TransCanada has acknowledged that existing pipelines have a senior right to the rights of a newly constructed pipeline. (TR 264).

105. TransCanada stated it would consider relocating rural water system pipelines at its expense in order to cross those lines. (TR 264).

106. Both BDM and WEB have suggested that their lines be cased and relocated to run below the TransCanada pipeline. (TR 695, 1294-95).

107. The South Dakota Rural Water Association approved a resolution on December 6, 2007, requesting that conditions be imposed by the PUC upon any permit granted to TransCanada. (TR 1353; WEB EX 8).

108. The Rural Water Association requested that TransCanada be required to use pipe with a .551 inch wall thickness where crossing aquifers and rural water system. A similar request was made by the manager of the BDM Rural Water System. (TR 694; WEB EX 8).

109. The Rural Water Association Resolution requested that a fee or tariff be imposed on oil transported through the water line. Other parties have requested that TransCanada be required to contribute to a fund which could be used to clean up an oil spill that might occur on the pipeline in the future. (TR 697, 1284; WEB EX 8).

110. Cash bonds have been required for mining operations in South Dakota. (TR 706).

111. TransCanada stated it will be responsible for cleaning up oil spills but is unwilling to provide money, a cash bond, or pay a tariff for a cleanup fund. (TR 114).

112. On November 27, 2007, the Marshall County Commission passed a resolution expressing concerns about the proposed pipeline. (TR 1222; G. CASSELS EX 2).

113. Shallow wells could be negatively impacted by a crude oil spill. (TR 815-16).

114. In preparing the map listing source water protection areas along the pipeline route, TransCanada only asked the South Dakota Department of Environment and Natural Resources for a list of all source water protection areas within a mile of the proposed pipeline route. (TR 371-72).

115. Ms. Tillquist did nothing to determine if there were any farms in the area of the pipeline with private wells that would draw water out shallow veins of sand. (TR 437).

116. In its preliminary risk assessment, TransCanada evaluated the potential impact of a spill within five miles of a leak. Mr. Hannan recommended that downstream planning should be extended to at least 20 miles. Brian Murdock, an environmental and industrial services manager with Bay West, a PUC staff witness, made a similar recommendation. (TR 443, HANNAN DIRECT TESTIMONY, p. 6; HANNAN SURREBUTTAL TESTIMONY, pp. 3-5; MURDOCK DIRECT TESTIMONY, pp. 3-4).

117. TransCanada does not have to complete its integrity management program until one year after the pipeline commences operation. (TR 1474).

118. Mr. Hannan suggests TransCanada should submit to the PUC, prior to operation of the pipeline, any draft versions of their integrity management plan. (TR 1563).

119. Mr. Hannan suggests the PUC should monitor TransCanada's integrity management plan. (TR 1589).

120. Staff witness Jenny Hudson, a geological engineer, recommends that TransCanada incorporate local knowledge into the development of its integrity management program. (TR 1477).

121. Local knowledge could include state geological reports and comments from local landowners. (TR 1481).

122. If TransCanada learns information regarding highly consequential areas, even if such HCA's are not included in the national pipeline mapping system, that information should be included in their integrity management program. (TR 1480).

123. Ms. Hudson recommends that, prior to the pipeline commencing operation, TransCanada review the pipeline route and identify all unusually sensitive areas having the ability to be affected in the event of a pipeline release. (TR 1475).

124. According to Mr. Murdock, information provided by the United States Department of Transportation is inadequate to do a full analysis of ecologically sensitive areas shown on HCA maps. Consequently, TransCanada must obtain and seek out additional information to properly protect ecologically sensitive areas. (TR 1515-17).

125. Mr. Murdock and Mr. Hannan both recommend that TransCanada identify field drain tile systems so as to determine the potential effect of such systems on oil flow in case of a leak. Tom Janssen, a PUC staff witness who evaluated TransCanada's mitigation and reclamation plan, made a similar recommendation. (TR 1518-19; HANNAN DIRECT TESTIMONY, p. 3; JANSSEN SUMMARY TABLE, p. 5; MURDOCK DIRECT TESTIMONY, p. 3).

126. Mr. Hannan recommends that preplanning should be done by TransCanada to insure availability of alternative drinking water sources should a drinking water system be adversely affected for an extended period of time. (TR 1561; HANNAN DIRECT TESTIMONY, p. 4).

127. There are three types of surveys which can be done when identifying cultural and historic resources. The first is a level one survey which is a literature or record search. A level two is a sample survey. A level three is a 100% survey of the project area. (TR 1010).

128. According to Paige Hoskinson Olson from the South Dakota State Historic Preservation Office, a level three survey would be the recommended course of action in attempting to locate and protect or avoid cultural and historic resources along the pipeline route. (TR 1011-12).

129. TransCanada has done only a level two survey. TransCanada has surveyed only 38 miles of the proposed 219.9 mile route in South Dakota which amounts to 17% of the route. (TR 151-52, 1010).

130. A cultural resource was found at one location along the pipeline route which caused the route to be deviated away from that cite. (TR 176-77).

131. John Muehlhausen, a staff witness who is an anthropologist and chief financial officer of MerJent, Inc., recommends that TransCanada should monitor the yield of agricultural lands for a period of time to determine the extent of damage to the land unless such monitoring is waived by the landowner. (TR 1604).

132. Mr. Muehlhausen recommends that TransCanada should implement steps for road maintenance and repair. (TR 1604-05).

133. Mr. Muehlhausen recommends that TransCanada should take steps to protect native prairie grasses. (TR 1605).

134. Mr. Janssen recommends that TransCanada should employ trench plus spoil side, or full row segregation techniques in connection with topsoil segregation. (TR 1663-64; JANSSEN SUMMARY TABLE, p. 2).

135. Mr. Janssen recommends at least one environmental inspector should be required for each construction spread during construction and restoration to help insure compliance with the PUC's permit, other environmental agency permit conditions and landowner requirements. (JANSSEN SUMMARY TABLE, p. 1).

136. Mr. Janssen recommends the PUC should consider retaining an independent onsite monitor or inspector to insure TransCanada complies with federal and state rules and regulations. (TR 1679-80).

137. TC Exhibit 14, dealing with estimated taxes TransCanada will pay, was prepared by an unidentified accounting firm. (TR 45).

138. The South Dakota Department of Revenue was not asked to review TransCanada's property tax estimates. (TR 1283-84; WEB EX 9).

139. TransCanada plans to claim a 75% refund of sales and contractors' excise tax which they claim is available under South Dakota law. This could amount to a savings of $13,500,000. (TR 50-51).

140. The taxable value of the pipeline will decrease over time. (TR 1621-22).

141. The following language is included in an easement TransCanada has presented to some landowners:

> Grantor (on behalf [of] itself and its heirs, assigns, agents, successors in interest and any other person or entity taking through or under it) does hereby release, acquit, waive and forever discharge Grantee, and its successors and assigns, its parent, subsidiary and related companies and their officers, directors, employees, shareholders, agents, successors, assigns, attorneys, insurers, subcontractors, consultants, or any other person or entity taking through or under them, or any of them, of all and from all manner of action, causes of action, lawsuits, claims and demands of every kind and nature whatsoever, whether known or unknown and whether arising in law or in equity, that Grantor has or may have against Grantee (its successors and assigns) in connection with this Agreement.

(EX 2 attached to HOHN DIRECT TESTIMONY).

CONCLUSIONS OF LAW

1. Applicant TransCanada Keystone Pipeline, LP has applied for a permit to construct a liquid hydrocarbon transmission line across South Dakota pursuant to SDCL 49-41B-4.

2. Pursuant to SDCL 49-41B-22, to be entitled to issuance of a permit, TransCanada has the burden of proof to establish the following:

(1) The proposed facility will comply with all applicable laws and rules;

(2) The facility will not pose a threat of serious injury to the environment nor to the social and economic condition of inhabitants or expects inhabitants in the citing area;

(3) The facility will not substantially impair the health, safety or welfare of the inhabitants; and

(4) The facility will not unduly interfere with the orderly development of the region with due consideration having been given the views of governing bodies of affected local units of government.

3. The Applicant has failed to meet its burden of proof under SDCL 49-41B-22.

4. Due to TransCanada's failure to meet its burden of proof, its application for a permit to construct the Keystone Pipeline Project is denied.

Dated this _____ day of _____, 2008.

BY ORDER OF THE COMMISSION:

_____
Dustin M. Johnson, Chairman

_____
Gary Hanson, Commissioner

_____
Steve Kolbeck, Commissioner