

**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 FACILITES ACT TO)
CONSTRUCT THE KEYSTONE XL)
PROJECT.)

SUBPOENA
HP09-001

THE STATE OF SOUTH DAKOTA TO: Kim McIntosh
Dept. of Environment and Natural Resources
Joe Foss Building
523 East Capitol
Pierre, SD 57501
e-mail: kim.mcintosh@state.sd.us

YOU ARE HEREBY COMMANDED to submit written testimony and attend a hearing on the above captioned matter. You will be notified of the hearing time and place under separate cover upon scheduling. You shall give testimony as a witness in the above captioned action pending before the Public Utilities Commission.

Issued in the name of the Public Utilities Commission this 23 day of March, 2009



Kara Semmler, Staff Attorney
PUC Staff
500 E. Capitol Ave
Pierre, SD 57501

DENR – Petroleum Spill and Remediation

TO: Kim McIntosh, Environmental Senior Scientist
CC: Steven M. Pirner, Department Secretary
Joe Nadenicek, Staff Attorney

FROM: PUC Staff
RE: TransCanada, Keystone XL

BACKGROUND:

On March 12, 2009, TransCanada Keystone Pipeline, LP, (Keystone) filed a siting permit application for the South Dakota portion of the proposed Keystone XL Pipeline Project (Project). The Project will transport crude oil starting in Hardisty, Alberta, Canada and ending in Port Arthur and East Houston areas of Texas. The proposed 36 inch diameter pipeline will have a nominal capacity of 900,000 barrels of oil per day (bpd). The proposed route will enter South Dakota at the Montana/South Dakota border in Harding County. It will extend in a southeasterly direction through portions of Harding, Butte, Perkins, Meade, Pennington, Haakon, Jones, Lyman, and Tripp counties. It will exit the state at the South Dakota/Nebraska border in Tripp County. The length of pipeline through South Dakota is approximately 313 miles. The Project also includes seven pump stations in South Dakota located in Harding (2), Meade, Haakon, Jones, and Tripp (2) counties along with 16 mainline valves. Mainline valves are proposed at each pump station and along the right-of-way with spacing intervals based upon the location of the pump stations, water bodies greater than 100 feet in width, high consequence areas and other considerations.

PUC SITING STANDARDS:

According to the PUC siting statutes we must examine the filing to determine whether the Applicant met the following burden of proof:

SDCL 49-41B-22. Applicant's burden of proof. The applicant has the burden of proof to establish that:

- 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 expected inhabitants in the siting 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.

As you know from your participation in HP07-001, the first TransCanada siting docket, South Dakota's role, history and experience in petroleum spills are of interest to the Commission and the public. Attached you will find a subpoena as was requested by your department. We request your assistance in the presentation of our case to the commission. Specifically we request your assistance with our pre-filed testimony and your presence at the hearing to move your testimony into the formal record.

We expect pre-filed testimony to be due late August 2009. Please reply to the questions below by May 1, 2009. I will format your responses, and send you a copy of my filing draft for your review and editing prior to submission to the commission. The hearing date has not yet been set. We will communicate with you as soon as we know the date but anticipate the hearing will be held late September or October.

1. State your full name.
2. State your employer.
3. Explain the specific program for which you work.
4. State what you do for this program.
5. Explain the range of activities and duties your program covers and what you specifically do for the program.
6. What federal and state standards exist for petroleum spills?
7. Which of those standards do you personally work with?
8. What level of cleanup is required in the case of a petroleum spill?
9. Can there be hydrocarbon left in the soil after a cleanup?
10. What kind of remediation activities are conducted in response to a hydrocarbon spill in soil?
11. What kind of remediation activities are conducted in response to a hydrocarbon spill in groundwater?
12. Explain other activities you use for remediation?
13. What are the leak size requirements for a reportable spill?
14. Has there been any permanent natural resource damage in SD as the result of a hydrocarbon pipeline leak?
15. Are there spills that cannot be remediated?
16. Who is obligated to remediate a spill?
17. How do you remediate hydrocarbon contaminated wells?
18. What if you can't achieve remediation of a well?
19. What is the extent of landowner involvement in remediation?
20. Does DENR have the resources to deal with a spill from a hydrocarbon pipeline such as Keystone XL?
21. Does this pipeline place any additional burden on your program?
22. Please explain the Regulated Substance Release Fund, the Superfund and/or any other program available to help fund a remediation project.
23. Any other information you believe the commission and the public will find useful.

In addition to presentation of the above information in pre-filed testimony and at the hearing, we intend to share your information with our environmental consultant. Our environmental consultant will review your information and determine whether the

Applicant completely prepared its application and related materials. For you information, below you will find the environmental consultant Scope of Services. We welcome any suggestions regarding specific areas of interest along the route where our consultants should pay particular attention and perform additional analysis. We appreciate your help and look forward to working with you.

Environmental Scope of Services:

Contractor agrees to provide consulting services to the Staff of the Commission in the following Commission Docket: HP09-001, In the Matter of the Application by TransCanada Pipeline, LP for a Permit under the South Dakota Energy Conversion and Transmission Facility Act to Construct the Keystone XL Pipeline

At a minimum, the Contractor shall perform a desktop review of the application, associated docket filings and the risk factors as identified by other South Dakota state agencies to:

- Evaluate the Applicant's risk assessment, environmental consequences, Environmental Report and all other associated filings to determine if all environmental issues relative and unique to South Dakota have been properly and completely observed and make appropriate risk mitigation recommendations regarding the same.
- Review the Applicant's identification of unusually sensitive areas (USAs) and High Consequence Areas (HCAs) in South Dakota and further, determine the adequacy of the mitigation measures for all such areas
- Recommend specific Emergency Response Plan additions or specific spill remediation plan inclusions based on the evaluation specified above.
- Determine the adequacy of the Applicant's proposed construction, mitigation and reclamation plan to restore affected areas back to full productivity in a reasonable amount of time keeping in mind issues unique to South Dakota.
- Evaluate the Applicant's identification of any specific hydrological and geological areas vulnerable to crude oil spills and evaluate the Applicant's proposed mitigation measures.
- Review the Application for compliance with the NEPA and any other federal environmental process.
- Determination whether the proposed project poses a safety risk, particularly for spill damage, above acceptable standards for a crude oil pipeline considering both pipeline risk factors and environmental vulnerability of the land crossed

The contractor shall make a determination from its review and within its scope of service as to whether the applicant's proposed facility:

- Will pose a threat of serious injury to the environment or the social and economic condition of inhabitants or expected inhabitants in the siting area
- Will substantially impair the health, safety, or welfare of the inhabitants in the siting area
- Will comply with all applicable laws and rules.
- Will unduly interfere with the orderly development of the region with due

consideration being given the views of governing bodies of affected local units of government.

Contractor is expected to complete the following tasks in the course of its work:

- Prepare data requests as necessary to complete the analysis
- Review applicant and intervener pre-filed testimony
- Prepare testimony
- Provide expert witnesses to testify at the hearing and respond during the hearing and briefings to applicant and intervenor's submissions
- Assist in preparation of legal briefs
- Share results with other contractors working for Staff on this docket and coordinate work with the other contractors to avoid overlap particularly in the areas of HCA and USA review and construction method risk assessment