

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF SOUTH DAKOTA

0-0

IN THE MATTER OF THE	:	
APPLICATION BY TRANSCANADA	:	DOCKET NUMBER HP09-001
KEYSTONE PIPELINE, LP FOR A	:	
PERMIT UNDER THE SOUTH DAKOTA	:	
ENERGY CONVERSION AND	:	
TRANSMISSION FACILITIES ACT TO	:	
CONSTRUCT THE KEYSTONE XL	:	
PROJECT	:	
	:	

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**AFFIDAVIT OF JAMES E. MOORE**

STATE OF SOUTH DAKOTA    )  
  :SS  
COUNTY OF MINNEHAHA    )

James E. Moore, being first duly sworn, states as follows:

1.     I am one of the lawyers for TransCanada Keystone Pipeline, LP, in this matter and have personal knowledge of the contents of this affidavit.
  
2.     On August 12, 2009, Keystone served objections to Dakota Rural Action's first set of interrogatories and requests for production of documents. Keystone served the objections early in hopes that any discovery issues could be resolved sooner rather than later. A copy of Keystone's objections is attached as Exhibit A.
  
3.     On August 24, 2009, Keystone served responses to Dakota Rural Action's discovery. A copy of the responses is attached, without the documents produced, as Exhibit B.

4. On August 25, 2009, and September 3, 2009, Keystone served supplemental responses. Copies, without the documents produced, are attached as Exhibits C and D.

5. Keystone produced documents in response to DRA's request no. 5. They are attached as Exhibit E.


6. Keystone produced documents in response to DRA's request no. 7. A copy of a letter from Robert Jones to the Commission dated June 1, 2009, is attached as Exhibit F.

7. Keystone produced documents in response to DRA's request no. 8. A copy of the special permit application, amendment, and appendices, is attached as Exhibit G.

8. Keystone produced documents in response to DRA's request no. 9. A copy of the tariff under development with the Federal Energy Regulatory Commission is attached as Exhibit H.

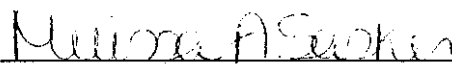
9. Keystone produced documents in response to DRA's request no. 23. Copies of documents from the Presidential Permit Application describing the process of determining the route are attached as Exhibit I.

Dated this 17<sup>th</sup> day of September, 2009.

  
\_\_\_\_\_  
James E. Moore

Subscribed and sworn to before me

this 17<sup>th</sup> day of September, 2009.

  
\_\_\_\_\_  
Notary Public - South Dakota  
My commission expires:

**My Commission Expires  
Sept. 13, 2011**

# Exhibit A

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF SOUTH DAKOTA

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IN THE MATTER OF THE APPLICATION	:	
BY TRANSCANADA KEYSTONE	:	DOCKET NUMBER HP09-001
PIPELINE, LP FOR A PERMIT UNDER	:	
THE SOUTH DAKOTA ENERGY	:	
CONVERSION AND TRANSMISSION	:	
FACILITIES ACT TO CONSTRUCT THE	:	
KEYSTONE XL PROJECT	:	
	:	

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**TRANSCANADA KEYSTONE PIPELINE, LP'S OBJECTIONS TO  
DAKOTA RURAL ACTION'S FIRST SET OF INTERROGATORIES  
AND REQUEST FOR DOCUMENTS**

TransCanada Keystone Pipeline, LP ("Keystone") makes the following objections to interrogatories pursuant to SDCL § 15-6-33 and objections to request for production of documents pursuant to SDCL § 15-6-34(a). Keystone will further respond, as indicated throughout the objections, on or before August 24, 2009. These objections are made within the scope of SDCL § 15-6-26(e) and shall not be deemed continuing nor be supplemented except as required by that rule.

**GENERAL OBJECTION**

Keystone objects to the instructions and definitions contained in Dakota Rural Action's First Set of Interrogatories and Request for Documents to the extent that they are inconsistent with the provisions of SDCL Ch. 15-6. *See* ARSD 20:10:01:01.02. In

particular, Keystone objects to the definition of “you” and “yours” to the extent that it encompasses TransCanada Keystone Pipeline, LP’s partners, corporate parents, subsidiaries, affiliates, or successors. Keystone will respond to the discovery only on its behalf as the Applicant and party before the Public Utilities Commission.

### INTERROGATORIES AND REQUEST FOR DOCUMENTS

1. Produce all documents concerning the potential damage caused by a crude oil pipeline rupture, including but not limited to the maximum distance that crude oil may be projected through the air from a rupture of a crude oil pipeline; the speed and force of the oil upon leaving a rupture of a crude oil pipeline; the potential for explosion or fire caused by a rupture of a crude oil pipeline; the potential damage that may be caused to residential or business structures by crude oil that is released by a rupture of a crude oil pipeline; the potential damage that might be caused to livestock or growing crops by a rupture of a crude oil pipeline; the potential harm that might be caused to natural persons by a rupture of a crude oil pipeline; any case studies or media accounts demonstrating the impacts of a rupture of a crude oil pipeline; and any modeling that predicts the potential damage caused by the rupture of a crude oil pipeline. The purpose of this request is to assist the Commission, impacted landowners, local governments, and the public in their determination of the adequacy, given the size and operating pressure and temperature of the proposed Keystone XL pipeline, of existing setbacks from structures, businesses,

thoroughfares, and other occupied land, as well as the identification of other mitigation measures that may limit damage caused by ruptures.

RESPONSE: Any responsive, non-privileged documents will be provided on or before August 24, 2009.

2. Produce all documents concerning the potential for pipelines to lose their earth cover due to soil erosion, movement of earth, or movement of the pipe, such that pipelines have less than required amounts of cover, as well as means to monitor the depth of a pipeline below the surface of the land over time and to maintain required depth of cover. The purpose of this request is to assist the Commission, impacted landowners, local governments, and the public in their determination of the potential that the proposed Keystone XL pipeline could lose required depth of cover during its expected operating life and the methods that you will use to ensure that required depth is constantly maintained over time in all soil types and landforms.

RESPONSE: Any responsive, non-privileged documents will be provided on or before August 24, 2009.

3. Produce all documents concerning abandonment of pipelines, including but not limited to documents that describe: the risks posed by abandoned pipelines to individuals, livestock, farm implements, vehicles, land, water, or other landowner interests; planning for pipeline abandonment; the costs of pipeline abandonment; options

for removal of abandoned pipelines; options for filling or stabilizing abandoned pipelines or other methods to mitigate risks posed by abandoned pipelines; alternative uses for abandoned pipelines; or materials prepared pursuant to 49 C.F.R. § 195.402(c)(10) or other regulatory requirement related to abandonment of pipeline facilities. The purpose of this request is to assist the Commission, impacted landowners, local governments, and the public in their determination of the risks, options, and costs of abandonment, as well as planning for abandonment.

RESPONSE: Any responsive, non-privileged documents will be provided on or before August 24, 2009.

4. Produce all documents concerning damage or wear to roadways resulting from the past and current construction of the first Keystone pipeline through eastern South Dakota, including records identifying roadways to be used during construction; descriptions of roadway damage caused by construction; investigations of roadway damage caused by construction; limitations on the use of roadways by the public due to construction damage; cost estimates for repair of roadway damage caused by construction; actual costs to repair damage caused by construction; claims against you by owners of roadways for the repair of damage caused by construction; and financial documents concerning your road repair costs. The purpose of this request is to assist the Commission, impacted landowners, local government officials, and the public in their



determination of whether the bond amount, form, terms, conditions, or claim process required by SDL § 49-41B-38 or other regulatory requirement are adequate.

RESPONSE: Any responsive, non-privileged documents will be provided on or before August 24, 2009.

5. Produce all documents concerning the scope of your liability for damages resulting from operation of the proposed Keystone XL pipeline in South Dakota, including but not limited to liability for cleanup costs; liability for permanent damage to land; liability for damage to business interests; liability for damages related to personal injury; liability for damages related to lost wages; or liability for other types of damages, where such documents have been disclosed to the public, governmental entities, or other persons the disclosure of which is not protected by the attorney-client privilege or other privilege. The purpose of this request is to assist the Commission, impacted landowners, local governments, and the public determine your scope of liability as it relates to particular types of damages.

OBJECTION AND RESPONSE: This request seeks legal conclusions beyond the scope of discovery and addressed to issues that are beyond the scope of the PUC's jurisdiction in this proceeding. The determination of liability for damages resulting from operation of the Keystone XL Pipeline is a matter for the courts. Without waiving the objection, Keystone will produce on or before August 24, 2009, a copy of the easement,

which addresses liability in paragraph 1, and relevant portions of documents that Keystone used in connection with the open houses that it hosted addressing the Keystone XL pipeline.

6. Produce all documents concerning your preparation of an Emergency Response Plan for the Keystone XL pipeline, including but not limited to the amount and placement of emergency response equipment and other emergency response materials; the number and placement of emergency response personnel; estimated deployment-to-incident-site times for emergency response personnel and equipment; emergency response planning; and coordination with local and state emergency personnel. The purpose of this request is to assist the Commission, impacted landowners, local governments, and the public understand of the measures that you plan to take to protect interests in South Dakota from a spill or leak of crude oil from the proposed Keystone XL pipeline.

OBJECTION: This request seeks information that is beyond the scope of the PUC's jurisdiction and Keystone's burden under SDCL § 49-41B-22. This request also seeks information addressing an issue that is governed by federal law and is within the province of the U.S. Department of Transportation, Pipeline and Hazardous Materials Safety Administration (PHMSA). The PUC's jurisdiction over the emergency response plan is preempted by federal law. *See* 49 C.F.R. Part 194; 49 U.S.C. § 60104(c). This request further seeks information that is confidential and proprietary. Public disclosure of

the emergency response plan could commercially disadvantage Keystone. This request is also unduly burdensome. Keystone has employees who have worked essentially full time for the better part of the last year preparing the emergency response plan for the Keystone XL Pipeline. Moreover, the emergency response plan will be completed as the pipeline is built, making the request premature.

7. Produce all documents concerning Advisory Bulletin ABD-09-01, prepared pursuant to Docket No. PHMSA-2009-0148, entitled "Potential Low and Variable Yield and Tensile Strength and Chemical Composition Properties in High Strength Line Pipe" as noticed and described at 74 Fed. Reg. 23930 ("Advisory Bulletin"), including but not limited to: your investigation of whether you have used or intend to use pipe from the steel or rolling mills that provided the defective pipe described in the Advisory Bulletin; your correspondence with the federal Pipeline and Hazardous Materials Administration ("PHMSA") concerning the Advisory Bulletin or the issues described therein; your participation in the April 23, 2009, New Pipeline Construction Workshop in Fort Worth, Texas, hosted by PHMSA; other investigations by you to confirm whether or not you have acquired substandard pipe; and measures you have taken to ensure that you do not use substandard pipe. The purpose of this request is to assist the Commission, impacted landowners, local governments, and the public understand the efforts you took related to

your possible use of pipe from a steel or pipe mill that provided the substandard pipe identified in the Advisory Bulletin.

OBJECTION AND RESPONSE: This request seeks information that is beyond the scope of the PUC's jurisdiction and Keystone's burden under SDCL § 49-41B-22. In addition, this request seeks information concerning issues that are governed by federal law, and over which the PUC's jurisdiction is therefore preempted. *See* 49 U.S.C. § 60104(c). Without waiving the objection, Keystone previously filed with the PUC a response dated June 1, 2009, to an inquiry concerning the advisory bulletin. A copy of the response will be provided on or before August 24, 2009.

8. Produce all documents concerning whether a design factor of 0.80 is appropriate for use in crude oil pipelines instead of the 0.72 design factor contained in 49 C.F.R. § 195.106, including but not limited to: management of pressure fluctuations; modeling of rupture characteristics of crude oil pipelines in pressure surge events; the operational differences between crude oil pipelines and natural gas pipelines as these differences relate to the appropriate design factor for crude oil pipelines; the differences between crude oil and natural gas pipelines with regard to the different environmental impacts of leaks and ruptures of natural gas pipelines in comparison to crude oil pipelines; and documents related to the risks of operating a crude oil pipeline with a design factor of 0.80. The purpose of this request is to assist the Commission, impacted

landowners, local governments, and the public understand the risks of operating a crude oil pipeline built with a 0.80 design factor, as well as the means of mitigating these risks.

OBJECTION AND RESPONSE: This request seeks information that is beyond the scope of the PUC's jurisdiction and Keystone's burden under SDCL § 49-41B-22. In addition, this request seeks information concerning issues that are governed by federal law, and over which the PUC's jurisdiction is therefore preempted. *See* 49 U.S.C. § 60104(c). This request is also unduly burdensome because it requests all documents associated with the Special Permit application that Keystone filed with PHMSA. Moreover, many documents related to the Special Permit application have proprietary value to Keystone. Without waiving the objection, Keystone will provide a copy of the Special Permit application and amendment thereto, with the appendices, on or before August 24, 2009.

9. Produce all documents concerning the composition of the materials to be transported by the proposed Keystone XL pipeline, including but not limited to: the chemical and physical composition or characteristics of such materials; the capacity of such materials to corrode, abrade, or wear components such as the pipe walls, valves, or pumps of the proposed Keystone XL pipeline; comparisons of corrosion or abrasion characteristics of such material to the corrosion or abrasion characteristics of crude oil not derived from the tar or oil sands of Canada; the rate of internal corrosion or mechanical

erosion of internal components of the pipeline by such material; and other documents concerning the effect of transportation of such material on the operational life of the proposed Keystone XL pipeline. The purpose of this request is to assist the Commission, impacted landowners, local governments, and the public understand how the material to be transported may or will affect the internal components of the proposed Keystone XL pipeline.

OBJECTION AND RESPONSE: Keystone objects to this request on the grounds that it pertains to matters that are preempted by federal law and not relevant to the PUC's determination. Notwithstanding this objection, Keystone states that it cannot definitively identify the components of the crude oil to be transported through the pipeline, as the specific crude oil to be shipped through the Keystone XL Pipeline will be controlled by Keystone's shippers. A range of crude oil may be transported by the pipeline from time to time. The crude oil must meet the quality specifications contained in Keystone XL's Federal Energy Regulatory Commission tariff, which is still under development. Keystone will provide a copy of the current version of the oil quality specifications from the tariff on or before August 24, 2009.

10. Produce all documents concerning a worst case spill assessment for the proposed Keystone XL pipeline. The purpose of this request is to assist the Commission, impacted landowners, local governments, and the public understand where a worst case

spill might occur and the volume of oil that might be spilled so that an assessment may be made of the adequacy of your Emergency Response Plan.

OBJECTION AND RESPONSE: This request is unduly burdensome because it requests all documents reviewed in connection with the risk assessment prepared by AECOM for the United States Department of State in connection with Keystone's application for a Presidential Permit. This request also seeks information that is confidential because the risk assessment contains information related to High Consequence Areas that PHMSA requires operators to keep confidential. Without waiving the objection, that part of the risk assessment addressing estimated spill volumes, which was previously filed with the Department of State, will be provided on or before August 24, 2009.

11. Produce all documents concerning your calculation of estimated tax revenues to be provided by the proposed Keystone XL pipeline to governmental entities in South Dakota, as well as your calculations of the increased short and long range demands on such estimated tax revenues generated by the facility for the extension or expansion of public services, as required by SDCL § 49-41B-11, as well as any calculations related to estimated tax revenues of the proposed Keystone XL pipeline prepared for or distributed to public officials or the public either at meetings, in writing, or through newspapers or other press outlets. The purpose of this request is to assist the

Commission, impacted landowners, local governments, and the public understand your tax cost and benefit methodology and calculations.

OBJECTION AND RESPONSE: All such documents that were authored by counsel are privileged pursuant to the attorney-client privilege. Responsive non-privileged documents will be provided on or before August 24, 2009.

12. Produce all documents and data concerning western Canadian crude oil production forecasts used to support your statements in Section 3 of your Application to the Commission that Western Canadian Sedimentary Basin ("WCSB") crude oil production is increasing. The purpose of this request is to assist the Commission, impacted landowners, local governments, and the public to understand the demand for the proposed Keystone XL pipeline.

OBJECTION: This request seeks information that is beyond the scope of the PUC's jurisdiction and Keystone's burden of proof under SDCL § 49-41B-22.

13. Produce all documents and data concerning forecasted need for increased crude oil pipeline export capacity from Canada into the US through border crossings in Montana, North Dakota, or Minnesota. The purpose of this request is to assist the Commission, impacted landowners, local governments, and the public to understand the demand for the proposed Keystone XL pipeline.



OBJECTION: This request seeks information that is beyond the scope of the PUC's jurisdiction and Keystone's burden of proof under SDCL § 49-41B-22.

14. Produce all documents and data concerning US crude oil demand forecasts used by you to support your statements in Section 3 of your Application to the Commission that US demand for crude oil is increasing. The purpose of this request is to assist the Commission, impacted landowners, local governments, and the public to understand the demand for the proposed Keystone XL pipeline.

OBJECTION: This request seeks information that is beyond the scope of the PUC's jurisdiction and Keystone's burden of proof under SDCL § 49-41B-22.

15. Produce all documents concerning your statements in Section 3 of your Application to the Commission that binder shipper interest in the Keystone XL pipeline demonstrates a need for the project, including but not limited to: any agreements between you and shippers related to the Keystone XL pipeline; financial analysis of minimum shipper commitment necessary to construct the Keystone XL pipeline; the commercial terms contained in any agreements between you and shippers related to the Keystone XL pipeline; the cancellation or termination of or the withdrawal by shippers from any agreements between you and shippers; changes in any agreements between you and any shippers related to shipper pipeline utilization commitments; and correspondence between you and shippers related to shipper demand that may impact your statements in Section 3.

The purpose of this request is to assist the Commission, impacted landowners, local governments, and the public to understand the demand for the proposed Keystone XL pipeline.

OBJECTION: This request seeks information that is beyond the scope of the PUC's jurisdiction and Keystone's burden of proof under SDCL § 49-41B-22. This request also seeks information that has substantial commercial and proprietary value, is subject to substantial efforts by Keystone to protect it from actual and potential competitors, and is required to be maintained on a confidential basis pursuant to the terms of the contracts between Keystone and its shippers.

16. Provide a description of the use of the proposed Keystone pipeline system by shippers that addresses why your first Keystone pipeline currently under construction is not adequate for forecast demand and that provides an estimated date on which forecast shipper demand would exceed the capacity of the Keystone pipeline currently under construction. The purpose of this request is to assist the Commission, impacted landowners, local governments, and the public to understand the demand for the proposed Keystone XL pipeline.

RESPONSE: Keystone objects to this request on the grounds that it seeks information that is beyond the scope of the PUC's jurisdiction and Keystone's burden of proof under SDCL § 49-41B-22. It is within the purview of the United States Department

of State to make a determination whether the proposed project is in the national interest, under the applicable Presidential Executive Order.

17. Provide a description of the impact of the 2009 Canadian Association of Petroleum Producers June 2009 Crude Oil Forecast, Markets & Pipeline Expansions Report ("CAPP Report") that states in its Appendix B-3 that western Canadian crude oil supply will increase by only 1.164 million barrels per day between 2008 and 2017 instead of the 1.6 million barrels per day estimate provided in Section 3 of your application to the Commission. The purpose of this request is to assist the Commission, impacted landowners, local governments, and the public to understand the demand for the proposed Keystone XL pipeline.

OBJECTION AND RESPONSE: Keystone objects to this request on the grounds that it seeks information that is beyond the scope of the PUC's jurisdiction and Keystone's burden of proof under SDCL § 49-41B-22. It is within the purview of the United States Department of State to make a determination whether the proposed project is in the national interest, under the applicable Presidential Executive Order.

18. Provide a description of the impact of the Energy Information Agency's 2009 Annual Energy Outlook Report ("AEO 2009"), which shows that demand for petroleum-based liquids will be "flat" through 2030, on your statement in Section 3 of your Application to the Commission that "total US petroleum consumption is projected to

increase by approximately 1.0 million bpd over the next 10 years (EIA 2008), representing average demand growth of about 100,000 bpd," which statement is based on the Energy Information Agency's 2008 Annual Energy Outlook Report ("AEO 2008"). The purpose of this request is to assist the Commission, impacted landowners, local governments, and the public to understand the demand for the proposed Keystone XL pipeline.

OBJECTION AND RESPONSE: Keystone objects to this request on the grounds that it seeks information that is beyond the scope of the PUC's jurisdiction and Keystone's burden of proof under SDCL § 49-41B-22. It is within the purview of the United States Department of State to make a determination whether the proposed project is in the national interest, under the applicable Presidential Executive Order.

19. Provide a description of the impacts of increased imports into the US of crude oil from the WCSB on US domestic crude oil production in both the near and long term. The purpose of this request is to assist the Commission, impacted landowners, local governments, and the public to understand the demand for the proposed Keystone XL pipeline and its potential impacts on domestic crude oil production.

OBJECTION AND RESPONSE: Keystone objects to this request seeks information that is beyond the scope of the PUC's jurisdiction and Keystone's burden of proof under SDCL § 49-41B-22. It is within the purview of the United States Department

of State to make a determination whether the proposed project is in the national interest, under the applicable Presidential Executive Order.

20. Provide the number of South Dakota workers employed to date for construction of the Keystone pipeline currently under construction in South Dakota, as well as the number of workers who are not South Dakota residents employed to date for construction of the Keystone pipeline currently under construction; categorize the foregoing data using the categories contained in Table 10 (page 55) of your application dated April 2007 for the eastern South Dakota Keystone crude oil pipeline; describe the methodology used to estimate South Dakota employment in the preparation of your pipeline applications to the Commission; and explain any difference between estimated employment and actual employment to date in the eastern South Dakota Keystone Pipeline construction effort. The purpose of this request is to assist the Commission, impacted landowners, local governments, and the public in their understanding of the economic benefits to the State of South Dakota of your past employment of South Dakota workers as a means of understanding your estimates of future employment by you of South Dakota workers in the possible construction of the proposed Keystone XL pipeline.

RESPONSE: Keystone will provide a response to this request on or before August 24, 2009.

21. Provide the dollar figure for expenses paid to date by you to South Dakota businesses related to construction of the Keystone pipeline currently under construction in South Dakota, including but not limited to for purchases of construction consumables, fuel, equipment maintenance, equipment rental, space leasing, and miscellaneous construction-related materials, as well as for other goods and services. The purpose of this request is to assist the Commission, impacted landowners, local governments, and the public in their understanding of the economic benefits to the State of South Dakota and South Dakota businesses of construction of the eastern South Dakota Keystone pipeline, as a means of determining the accuracy of the expenditure estimates contained in Section 6.1 of your Application.

RESPONSE: Keystone will provide a response to this request on or before August 24, 2009.

22. Provide the dollar figure for sales or other taxes paid to date by you to a South Dakota government where such tax revenue is derived from construction of the Keystone pipeline currently under construction in South Dakota. The purpose of this request is to assist the Commission, impacted landowners, local governments, and the

public in their understanding of the economic benefits provided by you to the State of South Dakota and South Dakota local and state government officials.

RESPONSE: Keystone will provide a response to this request on or before August 24, 2009.

23. Produce all documents related to and provide a description of your efforts to identify a alternative routes for the Keystone XL Pipeline that do not require a new right of way in South Dakota, including but not limited to: routes that parallel the Keystone Pipeline currently under construction or other routes that pass north of South Dakota; and routes that pass west and south of South Dakota, including routes that parallel existing pipelines in Montana and Wyoming including but not limited to the Express, Platte, West Corridor, Bridger, Butte, and Belle Fourche pipelines, as well as natural gas pipelines west and south of South Dakota; provide an explanation of why these alternative routes were either not considered or considered and rejected. The purpose of this request is to assist the Commission, impacted landowners, local governments, and the public in their understanding of why you need a new right of way through South Dakota when multiple existing pipeline rights of way exist between Alberta and the Gulf Coast.

OBJECTION AND RESPONSE: This request seeks information beyond the scope of the PUC's jurisdiction. Without waiving the objection, alternative routes and Keystone's iterative process in determining the preferred route for the Keystone XL

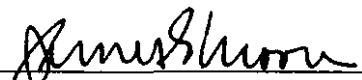
Pipeline are discussed in Keystone's application for a Presidential Permit and in the prepared direct testimony of its witness Richard Gale. A copy of the relevant portion of the Presidential Permit application will be provided on or before August 24, 2009. The testimony of Richard Gale is available on the PUC's website.

24. As an ongoing data request, provide Dakota Rural Action with a copy of all data, documentary, or interrogatory requests you send to any party to this docket, as well as a copy of or internet access to your responses to the data, documentary, or interrogatory requests of any party to this docket.

OBJECTION AND RESPONSE: Keystone objects to this request to the extent that it requires supplementation beyond the terms of SDCL § 15-6-26(e). Without waiving the objection, copies of all documents that Keystone has sent to the PUC staff as of that date will be provided on or before August 24, 2009.

Dated this 12<sup>th</sup> day of August, 2009.

WOODS, FULLER, SHULTZ & SMITH P.C.

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Attorneys for TransCanada

### CERTIFICATE OF SERVICE

I hereby certify that on the 12<sup>th</sup> day of August, 2009, I sent by United States first-class mail, postage prepaid, and/or e-mail transmission, a true and correct copy of the foregoing TransCanada Keystone Pipeline, LP's Objections to Dakota Rural Action's First Set of Interrogatories and Request for Documents, to the following:

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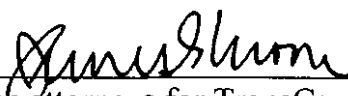
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\_\_\_\_\_  
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# Exhibit B

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF SOUTH DAKOTA

0-0

IN THE MATTER OF THE APPLICATION	:	
BY TRANSCANADA KEYSTONE	:	DOCKET NUMBER HP09-001
PIPELINE, LP FOR A PERMIT UNDER	:	
THE SOUTH DAKOTA ENERGY	:	
CONVERSION AND TRANSMISSION	:	
FACILITIES ACT TO CONSTRUCT THE	:	
KEystone XL PROJECT	:	
	:	

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**TRANSCANADA KEYSTONE PIPELINE, LP'S OBJECTIONS AND  
RESPONSES TO DAKOTA RURAL ACTION'S FIRST SET OF  
INTERROGATORIES AND REQUEST FOR DOCUMENTS**

STATE OF VIRGINIA	)
	:SS
COUNTY OF PRINCE WILLIAM	)

TransCanada Keystone Pipeline, LP ("Keystone") makes the following objections and responses to interrogatories pursuant to SDCL § 15-6-33 and objections to request for production of documents pursuant to SDCL § 15-6-34(a). These objections are made within the scope of SDCL § 15-6-26(e) and shall not be deemed continuing nor be supplemented except as required by that rule.

**GENERAL OBJECTION**

Keystone objects to the instructions and definitions contained in Dakota Rural

Action's First Set of Interrogatories and Request for Documents to the extent that they are inconsistent with the provisions of SDCL Ch. 15-6. *See* ARSD 20:10:01:01.02. In particular, Keystone objects to the definition of "you" and "yours" to the extent that it encompasses TransCanada Keystone Pipeline, LP's partners, corporate parents, subsidiaries, affiliates, or successors. Keystone will respond to the discovery only on its behalf as the Applicant and party before the Public Utilities Commission.

#### INTERROGATORIES AND REQUEST FOR DOCUMENTS

1. Produce all documents concerning the potential damage caused by a crude oil pipeline rupture, including but not limited to the maximum distance that crude oil may be projected through the air from a rupture of a crude oil pipeline; the speed and force of the oil upon leaving a rupture of a crude oil pipeline; the potential for explosion or fire caused by a rupture of a crude oil pipeline; the potential damage that may be caused to residential or business structures by crude oil that is released by a rupture of a crude oil pipeline; the potential damage that might be caused to livestock or growing crops by a rupture of a crude oil pipeline; the potential harm that might be caused to natural persons by a rupture of a crude oil pipeline; any case studies or media accounts demonstrating the impacts of a rupture of a crude oil pipeline; and any modeling that predicts the potential damage caused by the rupture of a crude oil pipeline. The purpose of this request is to assist the Commission, impacted landowners, local governments, and the public in their

determination of the adequacy, given the size and operating pressure and temperature of the proposed Keystone XL pipeline, of existing setbacks from structures, businesses, thoroughfares, and other occupied land, as well as the identification of other mitigation measures that may limit damage caused by ruptures.

OBJECTION AND RESPONSE: This request seeks information that is confidential to the extent that any responsive document contains information related to High Consequence Areas that PHMSA requires operators to keep confidential. Without waiving the objection, responsive documents, including an index, are attached as Exhibit A. In addition, counsel has several voluminous final or draft environmental impact statements for other pipeline projects that may be responsive to this request, namely: (1) a draft Environmental Impact Statement for Shell's New Mexico Products Pipeline dated April 2003; (2) an Environmental Assessment for the Longhorn Partners Pipeline; (3) the Final Environmental Impact Statement for Questar, Williams, & Kern River Pipeline Project dated June 2001; and (4) a draft Environmental Impact Statement for the Entrega Pipeline Project dated February 2005. Counsel will either make these documents available for review or produce copies on request.

2. Produce all documents concerning the potential for pipelines to lose their earth cover due to soil erosion, movement of earth, or movement of the pipe, such that pipelines have less than required amounts of cover, as well as means to monitor the depth

of a pipeline below the surface of the land over time and to maintain required depth of cover. The purpose of this request is to assist the Commission, impacted landowners, local governments, and the public in their determination of the potential that the proposed Keystone XL pipeline could lose required depth of cover during its expected operating life and the methods that you will use to ensure that required depth is constantly maintained over time in all soil types and landforms.

RESPONSE: Responsive documents, including an index, are attached as Exhibit B.

3. Produce all documents concerning abandonment of pipelines, including but not limited to documents that describe: the risks posed by abandoned pipelines to individuals, livestock, farm implements, vehicles, land, water, or other landowner interests; planning for pipeline abandonment; the costs of pipeline abandonment; options for removal of abandoned pipelines; options for filling or stabilizing abandoned pipelines or other methods to mitigate risks posed by abandoned pipelines; alternative uses for abandoned pipelines; or materials prepared pursuant to 49 C.F.R. § 195.402(c)(10) or other regulatory requirement related to abandonment of pipeline facilities. The purpose of this request is to assist the Commission, impacted landowners, local governments, and the public in their determination of the risks, options, and costs of abandonment, as well as planning for abandonment.

RESPONSE: Responsive documents are attached as Exhibit C.

4. Produce all documents concerning damage or wear to roadways resulting from the past and current construction of the first Keystone pipeline through eastern South Dakota, including records identifying roadways to be used during construction; descriptions of roadway damage caused by construction; investigations of roadway damage caused by construction; limitations on the use of roadways by the public due to construction damage; cost estimates for repair of roadway damage caused by construction; actual costs to repair damage caused by construction; claims against you by owners of roadways for the repair of damage caused by construction; and financial documents concerning your road repair costs. The purpose of this request is to assist the Commission, impacted landowners, local government officials, and the public in their determination of whether the bond amount, form, terms, conditions, or claim process required by SDL § 49-41B-38 or other regulatory requirement are adequate.

RESPONSE: Responsive documents are attached as Exhibit D.

5. Produce all documents concerning the scope of your liability for damages resulting from operation of the proposed Keystone XL pipeline in South Dakota, including but not limited to liability for cleanup costs; liability for permanent damage to land; liability for damage to business interests; liability for damages related to personal injury; liability for damages related to lost wages; or liability for other types of damages,



where such documents have been disclosed to the public, governmental entities, or other persons the disclosure of which is not protected by the attorney-client privilege or other privilege. The purpose of this request is to assist the Commission, impacted landowners, local governments, and the public determine your scope of liability as it relates to particular types of damages.

OBJECTION AND RESPONSE: This request seeks legal conclusions beyond the scope of discovery and addressed to issues that are beyond the scope of the PUC's jurisdiction in this proceeding. The determination of liability for damages resulting from operation of the Keystone XL Pipeline is a matter for the courts. Without waiving the objection, a copy of the easement, which addresses liability in paragraph 1, and a relevant portion of a document that Keystone used in connection with the open houses that it hosted addressing the Keystone XL pipeline are attached as Exhibit E.

6. Produce all documents concerning your preparation of an Emergency Response Plan for the Keystone XL pipeline, including but not limited to the amount and placement of emergency response equipment and other emergency response materials; the number and placement of emergency response personnel; estimated deployment-to-incident-site times for emergency response personnel and equipment; emergency response planning; and coordination with local and state emergency personnel. The purpose of this request is to assist the Commission, impacted landowners, local governments, and the

public understand of the measures that you plan to take to protect interests in South Dakota from a spill or leak of crude oil from the proposed Keystone XL pipeline.

OBJECTION: This request seeks information that is beyond the scope of the PUC's jurisdiction and Keystone's burden under SDCL § 49-41B-22. This request also seeks information addressing an issue that is governed by federal law and is within the province of the U.S. Department of Transportation, Pipeline and Hazardous Materials Safety Administration (PHMSA). The PUC's jurisdiction over the emergency response plan is preempted by federal law. *See* 49 C.F.R. Part 194; 49 U.S.C. § 60104(c). This request further seeks information that is confidential and proprietary. Public disclosure of the emergency response plan could commercially disadvantage Keystone. This request is also unduly burdensome. Keystone has employees who have worked essentially full time for the better part of the last year preparing the emergency response plan for the Keystone XL Pipeline. Moreover, the emergency response plan will be completed as the pipeline is built, making the request premature.

7. Produce all documents concerning Advisory Bulletin ABD-09-01, prepared pursuant to Docket No. PHMSA-2009-0148, entitled "Potential Low and Variable Yield and Tensile Strength and Chemical Composition Properties in High Strength Line Pipe" as noticed and described at 74 Fed. Reg. 23930 ("Advisory Bulletin"), including but not limited to: your investigation of whether you have used or intend to use pipe from the

steel or rolling mills that provided the defective pipe described in the Advisory Bulletin; your correspondence with the federal Pipeline and Hazardous Materials Administration ("PHMSA") concerning the Advisory Bulletin or the issues described therein; your participation in the April 23, 2009, New Pipeline Construction Workshop in Fort Worth, Texas, hosted by PHMSA; other investigations by you to confirm whether or not you have acquired substandard pipe; and measures you have taken to ensure that you do not use substandard pipe. The purpose of this request is to assist the Commission, impacted landowners, local governments, and the public understand the efforts you took related to your possible use of pipe from a steel or pipe mill that provided the substandard pipe identified in the Advisory Bulletin.

OBJECTION AND RESPONSE: This request seeks information that is beyond the scope of the PUC's jurisdiction and Keystone's burden under SDCL § 49-41B-22. In addition, this request seeks information concerning issues that are governed by federal law, and over which the PUC's jurisdiction is therefore preempted. *See* 49 U.S.C. § 60104(c). Without waiving the objection, Keystone previously filed with the PUC a response dated June 1, 2009, to an inquiry concerning the advisory bulletin. A copy of the response is attached as Exhibit F.

8. Produce all documents concerning whether a design factor of 0.80 is appropriate for use in crude oil pipelines instead of the 0.72 design factor contained in 49

C.F.R. § 195.106, including but not limited to: management of pressure fluctuations; modeling of rupture characteristics of crude oil pipelines in pressure surge events; the operational differences between crude oil pipelines and natural gas pipelines as these differences relate to the appropriate design factor for crude oil pipelines; the differences between crude oil and natural gas pipelines with regard to the different environmental impacts of leaks and ruptures of natural gas pipelines in comparison to crude oil pipelines; and documents related to the risks of operating a crude oil pipeline with a design factor of 0.80. The purpose of this request is to assist the Commission, impacted landowners, local governments, and the public understand the risks of operating a crude oil pipeline built with a 0.80 design factor, as well as the means of mitigating these risks.

OBJECTION AND RESPONSE: This request seeks information that is beyond the scope of the PUC's jurisdiction and Keystone's burden under SDCL § 49-41B-22. In addition, this request seeks information concerning issues that are governed by federal law, and over which the PUC's jurisdiction is therefore preempted. *See* 49 U.S.C. § 60104(c). This request is also unduly burdensome because it requests all documents associated with the Special Permit application that Keystone filed with PHMSA. Moreover, many documents related to the Special Permit application have proprietary value to Keystone. Without waiving the objection, a copy of the Special Permit application and amendment thereto, with the appendices, are attached as Exhibit G.

9. Produce all documents concerning the composition of the materials to be transported by the proposed Keystone XL pipeline, including but not limited to: the chemical and physical composition or characteristics of such materials; the capacity of such materials to corrode, abrade, or wear components such as the pipe walls, valves, or pumps of the proposed Keystone XL pipeline; comparisons of corrosion or abrasion characteristics of such material to the corrosion or abrasion characteristics of crude oil not derived from the tar or oil sands of Canada; the rate of internal corrosion or mechanical erosion of internal components of the pipeline by such material; and other documents concerning the effect of transportation of such material on the operational life of the proposed Keystone XL pipeline. The purpose of this request is to assist the Commission, impacted landowners, local governments, and the public understand how the material to be transported may or will affect the internal components of the proposed Keystone XL pipeline.

OBJECTION AND RESPONSE: Keystone objects to this request on the grounds that it pertains to matters that are preempted by federal law and not relevant to the PUC's determination. Notwithstanding this objection, Keystone states that it cannot definitively identify the components of the crude oil to be transported through the pipeline, as the specific crude oil to be shipped through the Keystone XL Pipeline will be controlled by Keystone's shippers. A range of crude oil may be transported by the pipeline from time

to time. The crude oil must meet the quality specifications contained in Keystone XL's Federal Energy Regulatory Commission tariff, which is still under development.

Without waiving the objection, attached as Exhibit H is Article 4 of the current version of the US Tariff for the Keystone Pipeline. The tariff is still under development and has not yet been filed with FERC. The Keystone tariff, including the quality specs, will also apply to Keystone XL.

10. Produce all documents concerning a worst case spill assessment for the proposed Keystone XL pipeline. The purpose of this request is to assist the Commission, impacted landowners, local governments, and the public understand where a worst case spill might occur and the volume of oil that might be spilled so that an assessment may be made of the adequacy of your Emergency Response Plan.

OBJECTION AND RESPONSE: This request is unduly burdensome because it requests all documents reviewed in connection with the risk assessment prepared by AECOM for the United States Department of State in connection with Keystone's application for a Presidential Permit. This request also seeks information that is confidential because the risk assessment contains information related to High Consequence Areas that PHMSA requires operators to keep confidential. Without waiving the objection, that part of the risk assessment addressing estimated spill volumes, which was previously filed with the Department of State, is attached as Exhibit I.

11. Produce all documents concerning your calculation of estimated tax revenues to be provided by the proposed Keystone XL pipeline to governmental entities in South Dakota, as well as your calculations of the increased short and long range demands on such estimated tax revenues generated by the facility for the extension or expansion of public services, as required by SDCL § 49-41B-11, as well as any calculations related to estimated tax revenues of the proposed Keystone XL pipeline prepared for or distributed to public officials or the public either at meetings, in writing, or through newspapers or other press outlets. The purpose of this request is to assist the Commission, impacted landowners, local governments, and the public understand your tax cost and benefit methodology and calculations.

OBJECTION AND RESPONSE: All such documents that were authored by counsel are privileged pursuant to the attorney-client privilege. Without waiving the objection, responsive non-privileged documents are attached as Exhibit J.

12. Produce all documents and data concerning western Canadian crude oil production forecasts used to support your statements in Section 3 of your Application to the Commission that Western Canadian Sedimentary Basin ("WCSB") crude oil production is increasing. The purpose of this request is to assist the Commission, impacted landowners, local governments, and the public to understand the demand for the proposed Keystone XL pipeline.

OBJECTION: This request seeks information that is beyond the scope of the PUC's jurisdiction and Keystone's burden of proof under SDCL § 49-41B-22.

13. Produce all documents and data concerning forecasted need for increased crude oil pipeline export capacity from Canada into the US through border crossings in Montana, North Dakota, or Minnesota. The purpose of this request is to assist the Commission, impacted landowners, local governments, and the public to understand the demand for the proposed Keystone XL pipeline.

OBJECTION: This request seeks information that is beyond the scope of the PUC's jurisdiction and Keystone's burden of proof under SDCL § 49-41B-22.

14. Produce all documents and data concerning US crude oil demand forecasts used by you to support your statements in Section 3 of your Application to the Commission that US demand for crude oil is increasing. The purpose of this request is to assist the Commission, impacted landowners, local governments, and the public to understand the demand for the proposed Keystone XL pipeline.

OBJECTION: This request seeks information that is beyond the scope of the PUC's jurisdiction and Keystone's burden of proof under SDCL § 49-41B-22.

15. Produce all documents concerning your statements in Section 3 of your Application to the Commission that binder shipper interest in the Keystone XL pipeline demonstrates a need for the project, including but not limited to: any agreements between



you and shippers related to the Keystone XL pipeline; financial analysis of minimum shipper commitment necessary to construct the Keystone XL pipeline; the commercial terms contained in any agreements between you and shippers related to the Keystone XL pipeline; the cancellation or termination of or the withdrawal by shippers from any agreements between you and shippers; changes in any agreements between you and any shippers related to shipper pipeline utilization commitments; and correspondence between you and shippers related to shipper demand that may impact your statements in Section 3. The purpose of this request is to assist the Commission, impacted landowners, local governments, and the public to understand the demand for the proposed Keystone XL pipeline.

OBJECTION: This request seeks information that is beyond the scope of the PUC's jurisdiction and Keystone's burden of proof under SDCL § 49-41B-22. This request also seeks information that has substantial commercial and proprietary value, is subject to substantial efforts by Keystone to protect it from actual and potential competitors, and is required to be maintained on a confidential basis pursuant to the terms of the contracts between Keystone and its shippers.

16. Provide a description of the use of the proposed Keystone pipeline system by shippers that addresses why your first Keystone pipeline currently under construction is not adequate for forecast demand and that provides an estimated date on which forecast

shipper demand would exceed the capacity of the Keystone pipeline currently under construction. The purpose of this request is to assist the Commission, impacted landowners, local governments, and the public to understand the demand for the proposed Keystone XL pipeline.

RESPONSE: Keystone objects to this request on the grounds that it seeks information that is beyond the scope of the PUC's jurisdiction and Keystone's burden of proof under SDCL § 49-41B-22. It is within the purview of the United States Department of State to make a determination whether the proposed project is in the national interest, under the applicable Presidential Executive Order.

17. Provide a description of the impact of the 2009 Canadian Association of Petroleum Producers June 2009 Crude Oil Forecast, Markets & Pipeline Expansions Report ("CAPP Report") that states in its Appendix B-3 that western Canadian crude oil supply will increase by only 1.164 million barrels per day between 2008 and 2017 instead of the 1.6 million barrels per day estimate provided in Section 3 of your application to the Commission. The purpose of this request is to assist the Commission, impacted landowners, local governments, and the public to understand the demand for the proposed Keystone XL pipeline.

OBJECTION AND RESPONSE: Keystone objects to this request on the grounds that it seeks information that is beyond the scope of the PUC's jurisdiction and

Keystone's burden of proof under SDCL § 49-41B-22. It is within the purview of the United States Department of State to make a determination whether the proposed project is in the national interest, under the applicable Presidential Executive Order.

18. Provide a description of the impact of the Energy Information Agency's 2009 Annual Energy Outlook Report ("AEO 2009"), which shows that demand for petroleum-based liquids will be "flat" through 2030, on your statement in Section 3 of your Application to the Commission that "total US petroleum consumption is projected to increase by approximately 1.0 million bpd over the next 10 years (EIA 2008), representing average demand growth of about 100,000 bpd," which statement is based on the Energy Information Agency's 2008 Annual Energy Outlook Report ("AEO 2008"). The purpose of this request is to assist the Commission, impacted landowners, local governments, and the public to understand the demand for the proposed Keystone XL pipeline.

OBJECTION AND RESPONSE: Keystone objects to this request on the grounds that it seeks information that is beyond the scope of the PUC's jurisdiction and Keystone's burden of proof under SDCL § 49-41B-22. It is within the purview of the United States Department of State to make a determination whether the proposed project is in the national interest, under the applicable Presidential Executive Order.

19. Provide a description of the impacts of increased imports into the US of crude oil from the WCSB on US domestic crude oil production in both the near and long term. The purpose of this request is to assist the Commission, impacted landowners, local governments, and the public to understand the demand for the proposed Keystone XL pipeline and its potential impacts on domestic crude oil production.

OBJECTION AND RESPONSE: Keystone objects to this request seeks information that is beyond the scope of the PUC's jurisdiction and Keystone's burden of proof under SDCL § 49-41B-22. It is within the purview of the United States Department of State to make a determination whether the proposed project is in the national interest, under the applicable Presidential Executive Order.

20. Provide the number of South Dakota workers employed to date for construction of the Keystone pipeline currently under construction in South Dakota, as well as the number of workers who are not South Dakota residents employed to date for construction of the Keystone pipeline currently under construction; categorize the foregoing data using the categories contained in Table 10 (page 55) of your application dated April 2007 for the eastern South Dakota Keystone crude oil pipeline; describe the methodology used to estimate South Dakota employment in the preparation of your pipeline applications to the Commission; and explain any difference between estimated employment and actual employment to date in the eastern South Dakota Keystone

Pipeline construction effort. The purpose of this request is to assist the Commission, impacted landowners, local governments, and the public in their understanding of the economic benefits to the State of South Dakota of your past employment of South Dakota workers as a means of understanding your estimates of future employment by you of South Dakota workers in the possible construction of the proposed Keystone XL pipeline.

RESPONSE: Keystone, through the use of third-party contractors, has employed 2,580 workers in the State of South Dakota, including 282 South Dakota permanent residents over the project life through July, 2009 for the Pipeline and Facilities construction. For a further breakdown of the job positions of these workers see Exhibit 20.1.

**Exhibit 20.1: Number of South Dakota Staff Employed to Date for Keystone Construction**

Position Type	# of South Dakota Resident Workers	# of Non South Dakota Resident Workers	Total Workers
Supervision (Superintendents, foremen, office manager, clerical, etc.)	20	281	301
Welders, Welder Helpers, Pipe Fitters, etc.)	3	395	398
Truck drivers	32	241	273
Equipment operators	27	542	569
Laborers	110	691	801
Construction management, surveyors, inspectors, etc.	90	148	238
Total	282	2298	2580

A comparison of the actual labor to the amount submitted in the Keystone April 2007 application is detailed below:

**Exhibit 20.2: Actuals Labor Compared to Table 10 (Page 55) of April 2007 Application**

<b>Position Type</b>	<b>Required Range of Workers</b>	<b>Actual Total Workers</b>	<b>Variance</b>
Supervision (Superintendents, foreman, office manager, clerical, etc)	180 to 225	301	+ 76 to 121
Welders, Welder Helpers, Pipe Fitters, etc)	270 to 330	398	+ 68 to 128
Truck Drivers	90 to 120	273	+ 153 to 183
Equipment Operators	340 to 405	569	+ 164 to 229
Laborers	300 to 360	801	+ 441 to 501
Construction management, surveyors, inspectors, etc	120 to 150	238	+ 88 to 118
<b>Total</b>	<b>1300 to 1900</b>	<b>2580</b>	<b>+ 680 to 1280</b>

As indicated in ¶ 6.1.1.3 of the April 2007 permit application, Keystone estimated that 10-15% of the total construction workforce could be hired locally. The actual percentage was approximately 11%.

The methodology used to estimate employment in the preparation of the pipeline application to the commission was to utilize a resource loaded construction schedule and manpower plan that was derived from various sources including contractor work plans and estimating databases. The actual number of workers has been derived from actual payroll and cost information from our contractors.

The increase in estimated to actual employment has been primarily the result of greater than anticipated construction labor requirements. This is partially due to increased

construction duration caused by the inclement weather. Keystone would estimate that during a typical construction and weather season, that the actual number of workers would be more consistent with the estimates provided in the April, 2007 filing. 21.

Provide the dollar figure for expenses paid to date by you to South Dakota businesses related to construction of the Keystone pipeline currently under construction in South Dakota, including but not limited to for purchases of construction consumables, fuel, equipment maintenance, equipment rental, space leasing, and miscellaneous construction-related materials, as well as for other goods and services. The purpose of this request is to assist the Commission, impacted landowners, local governments, and the public in their understanding of the economic benefits to the State of South Dakota and South Dakota businesses of construction of the eastern South Dakota Keystone pipeline, as a means of determining the accuracy of the expenditure estimates contained in Section 6.1 of your Application.

RESPONSE: Through July, 2009, Keystone through the use of its third party contractors has contributed approximately \$45,956,000 in reimbursed costs incurred by third-party contractors to the state of South Dakota. A further breakdown of expenses paid to date related to South Dakota pipeline and facilities construction is in exhibit 21.1.

**Exhibit 21.1: Costs Spent to Date on Keystone in the State of South Dakota**

Item	\$ Spent
Construction Consumables	\$5,711,000
Fuel	\$5,023,000
Equipment Maintenance	\$2,023,000
Equipment Rental	\$6,051,000
Space Leasing	\$467,000
Miscellaneous Construction Materials	\$5,883,000
Others Goods and Services	\$20,799,000
Total	\$45,956,000

22. Provide the dollar figure for sales or other taxes paid to date by you to a South Dakota government where such tax revenue is derived from construction of the Keystone pipeline currently under construction in South Dakota. The purpose of this request is to assist the Commission, impacted landowners, local governments, and the public in their understanding of the economic benefits provided by you to the State of South Dakota and South Dakota local and state government officials.

RESPONSE: To date, Keystone has indirectly contributed \$6,233,000 through July, 2009, in tax revenue that was derived from construction of the Keystone Pipeline construction effort in South Dakota.

23. Produce all documents related to and provide a description of your efforts to identify a alternative routes for the Keystone XL Pipeline that do not require a new right of way in South Dakota, including but not limited to: routes that parallel the Keystone Pipeline currently under construction or other routes that pass north of South Dakota; and



routes that pass west and south of South Dakota, including routes that parallel existing pipelines in Montana and Wyoming including but not limited to the Express, Platte, West Corridor, Bridger, Butte, and Belle Fourche pipelines, as well as natural gas pipelines west and south of South Dakota; provide an explanation of why these alternative routes were either not considered or considered and rejected. The purpose of this request is to assist the Commission, impacted landowners, local governments, and the public in their understanding of why you need a new right of way through South Dakota when multiple existing pipeline rights of way exist between Alberta and the Gulf Coast.

OBJECTION AND RESPONSE: This request seeks information beyond the scope of the PUC's jurisdiction. Without waiving the objection, alternative routes and Keystone's iterative process in determining the preferred route for the Keystone XL Pipeline are discussed in Keystone's application for a Presidential Permit and in the prepared direct testimony of its witness Richard Gale. A copy of the relevant portion of the Presidential Permit application is attached as Exhibit K. The testimony of Richard Gale is available on the PUC's website.

24. As an ongoing data request, provide Dakota Rural Action with a copy of all data, documentary, or interrogatory requests you send to any party to this docket, as well as a copy of or internet access to your responses to the data, documentary, or interrogatory requests of any party to this docket.

OBJECTION AND RESPONSE: Keystone objects to this request to the extent that it requires supplementation beyond the terms of SDCL § 15-6-26(e). Without waiving the objection, copies of all documents that Keystone has sent to the PUC staff as of August 24, 2009 are attached as Exhibit L. The documents are Keystone's responses to the PUC Staff's first two data requests. The response to the first data request is provided on disk. Keystone's response to the PUC Staff's third data request will be provided by a supplemental response.

Dated this \_\_\_\_ day of August, 2009.

TransCanada Keystone Pipeline, LP

By \_\_\_\_\_  
James P. White

Its \_\_\_\_\_

Subscribed and sworn to before me

this \_\_\_\_ day of August, 2009.


\_\_\_\_\_  
Notary Public - Virginia  
My Commission Expires:

## OBJECTIONS

The objections stated to Dakota Rural Action's First Set of Interrogatories and Request for Documents were made by James E. Moore, one of the attorneys for TransCanada Keystone Pipeline, LP, herein, for the reasons and upon the grounds stated therein.

Dated this 24<sup>th</sup> day of August, 2009.

WOODS, FULLER, SHULTZ & SMITH P.C.

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Attorneys for TransCanada

## CERTIFICATE OF SERVICE

I hereby certify that on the 24<sup>th</sup> day of August, 2009, I sent by United States first-class mail, postage prepaid, and/or e-mail transmission, a true and correct copy of the foregoing TransCanada Keystone Pipeline, LP's Objections and Responses to Dakota Rural Action's First Set of Interrogatories and Request for Documents, to the following:

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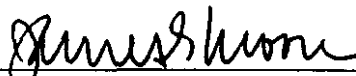
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Glen Iversen  
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\_\_\_\_\_  
One of the attorneys for TransCanada

# Exhibit C

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF SOUTH DAKOTA

0-0

IN THE MATTER OF THE APPLICATION	:	
BY TRANSCANADA KEYSTONE	:	DOCKET NUMBER HP09-001
PIPELINE, LP FOR A PERMIT UNDER	:	
THE SOUTH DAKOTA ENERGY	:	
CONVERSION AND TRANSMISSION	:	
FACILITIES ACT TO CONSTRUCT THE	:	
KEYSTONE XL PROJECT	:	
	:	

0-0

**TRANSCANADA KEYSTONE PIPELINE, LP'S SUPPLEMENTAL  
OBJECTIONS AND RESPONSES TO DAKOTA RURAL ACTION'S FIRST SET  
OF INTERROGATORIES AND REQUEST FOR DOCUMENTS**

STATE OF VIRGINIA	)
	:SS
COUNTY OF PRINCE WILLIAM	)

TransCanada Keystone Pipeline, LP ("Keystone") makes the following objections and responses to interrogatories pursuant to SDCL § 15-6-33 and objections to request for production of documents pursuant to SDCL § 15-6-34(a). These objections are made within the scope of SDCL § 15-6-26(e) and shall not be deemed continuing nor be supplemented except as required by that rule.

**GENERAL OBJECTION**

Keystone objects to the instructions and definitions contained in Dakota Rural Action's First Set of Interrogatories and Request for Documents to the extent that they are

inconsistent with the provisions of SDCL Ch. 15-6. *See* ARSD 20:10:01:01.02. In particular, Keystone objects to the definition of “you” and “yours” to the extent that it encompasses TransCanada Keystone Pipeline, LP’s partners, corporate parents, subsidiaries, affiliates, or successors. Keystone will respond to the discovery only on its behalf as the Applicant and party before the Public Utilities Commission.

#### INTERROGATORIES AND REQUEST FOR DOCUMENTS


24. As an ongoing data request, provide Dakota Rural Action with a copy of all data, documentary, or interrogatory requests you send to any party to this docket, as well as a copy of or internet access to your responses to the data, documentary, or interrogatory requests of any party to this docket.

OBJECTION AND RESPONSE: Keystone objects to this request to the extent that it requires supplementation beyond the terms of SDCL § 15-6-26(e). Keystone also objects to the extent that the request seeks information related to High Consequence Areas, which PHMSA requires be kept confidential. Without waiving the objection, Keystone’s response to the PUC Staff’s third data request, except for information related to HCAs, is attached as Exhibit M.



Dated this 25<sup>th</sup> day of August, 2009.

WOODS, FULLER, SHULTZ & SMITH P.C.

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- and -

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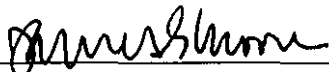
Attorneys for TransCanada

## OBJECTIONS

The objections stated to Dakota Rural Action's First Set of Interrogatories and Request for Documents were made by James E. Moore, one of the attorneys for TransCanada Keystone Pipeline, LP, herein, for the reasons and upon the grounds stated therein.

Dated this 25<sup>th</sup> day of August, 2009.

WOODS, FULLER, SHULTZ & SMITH P.C.

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One of the attorneys for TransCanada

## CERTIFICATE OF SERVICE

I hereby certify that on the 25<sup>th</sup> day of August, 2009, I sent by United States first-class mail, postage prepaid, and/or e-mail transmission, a true and correct copy of the foregoing TransCanada Keystone Pipeline, LP's Supplemental Objections and Responses to Dakota Rural Action's First Set of Interrogatories and Request for Documents, to the following:

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\_\_\_\_\_  
One of the attorneys for TransCanada

# Exhibit D

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF SOUTH DAKOTA

0-0

IN THE MATTER OF THE APPLICATION	:	
BY TRANSCANADA KEYSTONE	:	DOCKET NUMBER HP09-001
PIPELINE, LP FOR A PERMIT UNDER	:	
THE SOUTH DAKOTA ENERGY	:	
CONVERSION AND TRANSMISSION	:	
FACILITIES ACT TO CONSTRUCT THE	:	
KEYSTONE XL PROJECT	:	
	:	

0-0

**TRANSCANADA KEYSTONE PIPELINE, LP'S SECOND SUPPLEMENTAL  
OBJECTIONS AND RESPONSES TO DAKOTA RURAL ACTION'S FIRST SET  
OF INTERROGATORIES AND REQUEST FOR DOCUMENTS**

TransCanada Keystone Pipeline, LP ("Keystone") makes the following objections and responses to interrogatories pursuant to SDCL § 15-6-33 and objections to request for production of documents pursuant to SDCL § 15-6-34(a). These objections are made within the scope of SDCL § 15-6-26(e) and shall not be deemed continuing nor be supplemented except as required by that rule.

**GENERAL OBJECTION**

Keystone objects to the instructions and definitions contained in Dakota Rural Action's First Set of Interrogatories and Request for Documents to the extent that they are inconsistent with the provisions of SDCL Ch. 15-6. *See* ARSD 20:10:01:01.02. In particular, Keystone objects to the definition of "you" and "yours" to the extent that it

{00531004.1}

encompasses TransCanada Keystone Pipeline, LP's partners, corporate parents, subsidiaries, affiliates, or successors. Keystone will respond to the discovery only on its behalf as the Applicant and party before the Public Utilities Commission.

## INTERROGATORIES AND REQUEST FOR DOCUMENTS

2. Produce all documents concerning the potential for pipelines to lose their earth cover due to soil erosion, movement of earth, or movement of the pipe, such that pipelines have less than required amounts of cover, as well as means to monitor the depth of a pipeline below the surface of the land over time and to maintain required depth of cover. The purpose of this request is to assist the Commission, impacted landowners, local governments, and the public in their determination of the potential that the proposed Keystone XL pipeline could lose required depth of cover during its expected operating life and the methods that you will use to ensure that required depth is constantly maintained over time in all soil types and landforms.

RESPONSE: Attached as Exhibit N are two public brochures. One is entitled Pipeline Construction in Sand Hills Native Rangelands. The other is entitled Pipeline Construction Topsoil Management.

5. Produce all documents concerning the scope of your liability for damages resulting from operation of the proposed Keystone XL pipeline in South Dakota, including but not limited to liability for cleanup costs; liability for permanent damage to

land; liability for damage to business interests; liability for damages related to personal injury; liability for damages related to lost wages; or liability for other types of damages, where such documents have been disclosed to the public, governmental entities, or other persons the disclosure of which is not protected by the attorney-client privilege or other privilege. The purpose of this request is to assist the Commission, impacted landowners, local governments, and the public determine your scope of liability as it relates to particular types of damages.

OBJECTION AND RESPONSE: This request seeks legal conclusions beyond the scope of discovery and addressed to issues that are beyond the scope of the PUC's jurisdiction in this proceeding. The determination of liability for damages resulting from operation of the Keystone XL Pipeline is a matter for the courts. Without waiving the objection, attached as Exhibit O is a public brochure entitled What Landowners Can Expect.

6. Produce all documents concerning your preparation of an Emergency Response Plan for the Keystone XL pipeline, including but not limited to the amount and placement of emergency response equipment and other emergency response materials; the number and placement of emergency response personnel; estimated deployment-to-incident-site times for emergency response personnel and equipment; emergency response planning; and coordination with local and state emergency personnel. The purpose of this



request is to assist the Commission, impacted landowners, local governments, and the public understand of the measures that you plan to take to protect interests in South Dakota from a spill or leak of crude oil from the proposed Keystone XL pipeline.

OBJECTION AND RESPONSE: This request seeks information that is beyond the scope of the PUC's jurisdiction and Keystone's burden under SDCL § 49-41B-22. This request also seeks information addressing an issue that is governed by federal law and is within the province of the U.S. Department of Transportation, Pipeline and Hazardous Materials Safety Administration (PHMSA). The PUC's jurisdiction over the emergency response plan is preempted by federal law. *See* 49 C.F.R. Part 194; 49 U.S.C. § 60104(c). This request further seeks information that is confidential and proprietary. Public disclosure of the emergency response plan could commercially disadvantage Keystone. This request is also unduly burdensome. Keystone has employees who have worked essentially full time for the better part of the last year preparing the emergency response plan for the Keystone XL Pipeline. Moreover, the emergency response plan will be completed as the pipeline is built, making the request premature. Without waiving the objection, attached as Exhibit P is a public brochure entitled Emergency Response Plan.

8. Produce all documents concerning whether a design factor of 0.80 is appropriate for use in crude oil pipelines instead of the 0.72 design factor contained in 49 C.F.R. § 195.106, including but not limited to: management of pressure fluctuations;

modeling of rupture characteristics of crude oil pipelines in pressure surge events; the operational differences between crude oil pipelines and natural gas pipelines as these differences relate to the appropriate design factor for crude oil pipelines; the differences between crude oil and natural gas pipelines with regard to the different environmental impacts of leaks and ruptures of natural gas pipelines in comparison to crude oil pipelines; and documents related to the risks of operating a crude oil pipeline with a design factor of 0.80. The purpose of this request is to assist the Commission, impacted landowners, local governments, and the public understand the risks of operating a crude oil pipeline built with a 0.80 design factor, as well as the means of mitigating these risks.

OBJECTION AND RESPONSE: This request seeks information that is beyond the scope of the PUC's jurisdiction and Keystone's burden under SDCL § 49-41B-22. In addition, this request seeks information concerning issues that are governed by federal law, and over which the PUC's jurisdiction is therefore preempted. *See* 49 U.S.C. § 60104(c). This request is also unduly burdensome because it requests all documents associated with the Special Permit application that Keystone filed with PHMSA. Moreover, many documents related to the Special Permit application have proprietary value to Keystone. Without waiving the objection, attached as Exhibit Q is a public brochure entitled PHMSA Special Permit.

9. Produce all documents concerning the composition of the materials to be

transported by the proposed Keystone XL pipeline, including but not limited to: the chemical and physical composition or characteristics of such materials; the capacity of such materials to corrode, abrade, or wear components such as the pipe walls, valves, or pumps of the proposed Keystone XL pipeline; comparisons of corrosion or abrasion characteristics of such material to the corrosion or abrasion characteristics of crude oil not derived from the tar or oil sands of Canada; the rate of internal corrosion or mechanical erosion of internal components of the pipeline by such material; and other documents concerning the effect of transportation of such material on the operational life of the proposed Keystone XL pipeline. The purpose of this request is to assist the Commission, impacted landowners, local governments, and the public understand how the material to be transported may or will affect the internal components of the proposed Keystone XL pipeline.

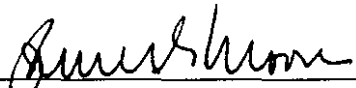
OBJECTION AND RESPONSE: Keystone objects to this request on the grounds that it pertains to matters that are preempted by federal law and not relevant to the PUC's determination. Notwithstanding this objection, Keystone states that it cannot definitively identify the components of the crude oil to be transported through the pipeline, as the specific crude oil to be shipped through the Keystone XL Pipeline will be controlled by Keystone's shippers. A range of crude oil may be transported by the pipeline from time to time. The crude oil must meet the quality specifications contained in Keystone XL's

Federal Energy Regulatory Commission tariff, which is still under development.

Without waiving the objection, attached as Exhibit R is a public brochure entitled About Crude Oil.

Dated this 3<sup>rd</sup> day of September, 2009.

WOODS, FULLER, SHULTZ & SMITH P.C.

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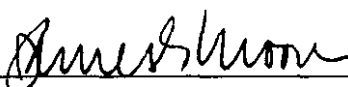
Attorneys for TransCanada

## OBJECTIONS

The objections stated to Dakota Rural Action's First Set of Interrogatories and Request for Documents were made by James E. Moore, one of the attorneys for TransCanada Keystone Pipeline, LP, herein, for the reasons and upon the grounds stated therein.

Dated this 3<sup>rd</sup> day of September, 2009.

WOODS, FULLER, SHULTZ & SMITH P.C.

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[bill.taylor@woodsfuller.com](mailto:bill.taylor@woodsfuller.com)

One of the attorneys for TransCanada

## CERTIFICATE OF SERVICE

I hereby certify that on the 3<sup>rd</sup> day of September, 2009, I sent by United States first-class mail, postage prepaid, and/or e-mail transmission, a true and correct copy of the foregoing TransCanada Keystone Pipeline, LP's Second Supplemental Objections and Responses to Dakota Rural Action's First Set of Interrogatories and Request for Documents, to the following:

{00531004.1}

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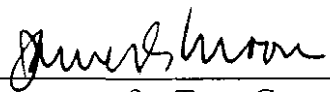
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One of the attorneys for TransCanada

# Exhibit E



Exhibit A

Prepared by:

TRANSCANADA KEYSTONE PIPELINE, LP  
7505 NW Tiffany Springs Parkway, Suite 400  
Kansas City, MO 64153  
(816) 801-7063

---

(Above Space for Recorder's Use Only)

Tract No.

EASEMENT AND RIGHT-OF-WAY  
AGREEMENT

For and in consideration of the sum of Ten Dollars (\$10.00) paid in accordance with this Easement and Right-of-Way Agreement (this "Agreement"), the mutual promises of the parties herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged,

a

\_\_\_\_\_, whose mailing address is \_\_\_\_\_,  
(hereinafter called "Grantor") does hereby grant, sell, convey and warrant unto TransCanada Keystone Pipeline, LP., a Delaware Limited Partnership, having its principal place of business at 7505 NW Tiffany Springs Parkway, Suite 400, Kansas City, Missouri 64153, its successors and assigns (hereinafter called "Grantee"), a perpetual permanent easement and right-of-way (the "Easement") for the purposes of surveying, laying, constructing, inspecting, maintaining, operating, repairing, replacing, altering, reconstructing, removing and abandoning in place one or more pipelines, together with all fittings, cathodic protection equipment, pipeline markers and all other equipment and appurtenances thereto (it being expressly understood, however, that this Easement shall not give Grantee the right to construct or operate above-ground high voltage electrical transmission lines), for the transportation of oil, natural gas, hydrocarbons, petroleum products and all by-products thereof, on, under, across and/or through a strip of land 50 feet in width, as more particularly described in Exhibit "A", consisting of Attachment "A" (Property Sketch) and Attachment "B" (Aerial Photo Sketch), which is attached hereto and made a part hereof (the "Easement Area"), located on real property situated in the County of \_\_\_\_\_, State of South Dakota as more particularly described in Exhibit "B" attached hereto and made a part hereof (the "Property"). In addition, during the original construction of the pipeline, the easement and right-of-way granted hereunder shall also include the area described under the headings "Temporary Work Space" and "Additional Temporary Work Space" and are more particularly described in Exhibit "A" hereto (the "Temporary Work Space").

The aforesaid Easement is granted subject to the following terms, stipulations and conditions which are hereby covenanted and agreed to by Grantor. By acceptance of any of the benefits hereunder, Grantee shall be deemed to have agreed to be bound by the covenants applicable to Grantee hereunder.

1. The liabilities and responsibilities of the Grantor and Grantee for claims for damages and losses relating to the Easement, the Easement Area or Temporary Work Space are described in the paragraphs below:

(00443908.1)

A. Grantee will pay all commercially reasonable costs and expenses that result from the Grantee's, or anyone acting on the Grantee's behalf, use of the Easement Area or Temporary Work Space, including but not limited to damages caused by petroleum leaks and spills and damages to Grantor's crops, pastures, drainage systems, produce, water wells, livestock, bridges, lanes, improvements, equipment, fences, structures or timber, except to the extent the damages are caused by the negligence, recklessness, or willful misconduct of the Grantor or anyone acting on the Grantor's behalf.

B. If claims or legal actions for damages arise from Grantee's, or anyone acting on the Grantee's behalf, use of this Easement, Grantee will be responsible for those claims or legal actions, and will defend, indemnify and hold the Grantor harmless in this regard, except to the extent that those claims or legal actions result from the negligence, recklessness, or willful misconduct of the Grantor or anyone acting on the Grantor's behalf.

C. If claims or legal actions arise from the Grantor's, or anyone acting on the Grantor's behalf, entry into, or use of, the Easement Area or Temporary Work Space, Grantor will be responsible for those claims or legal actions, and will defend, indemnify and hold the Grantee harmless in this regard, except to the extent that those claims or legal actions result from the negligence, recklessness, or willful misconduct of the Grantee or anyone acting on the Grantee's behalf.

D. Grantor waives the right, now or in the future, to challenge the validity of this Easement or, except as provided in Section 6, to seek additional compensation relating to the grant of this Easement.

2. Grantee shall have the right to remove all fences from the Easement Area and the Temporary Work Space, as required for purposes of construction or repairs of Grantee's pipeline(s) and Grantee shall repair all such fences promptly upon completion of construction or repairs on Grantor's Property to substantially the same condition as such fences were in prior to removal by Grantee. Grantee shall also perform other restoration activities as reasonably required upon such completion of construction or repairs. Such restoration activities shall include, without limitation, backfill of subsoil and topsoil, restoring the land to original contours, as near as practicable, and if applicable restoring drainage and irrigation systems, relieving compaction in the equipment travel lanes of agricultural land, removing excess rock and reseedling.

3. Provided its use of the Property does not in any manner interfere with or prevent the exercise by Grantee of its rights hereunder, or create an actual or potential hazard to the pipeline(s) or its appurtenances, the undersigned Grantor, its successors, heirs or assigns, reserve all oil, gas and minerals on and under the Property and the right to farm, graze and otherwise fully use and enjoy the Property; provided, however, that Grantee shall have the right hereafter to cut, keep clear and remove all trees, brush, shrubbery, structures and other obstructions or facilities, without additional compensation, in the Easement Area being conveyed that are deemed by Grantee to injure, endanger or interfere in any manner with the proper and efficient construction, use, inspection or maintenance of said pipeline(s), or fittings, cathodic protection equipment and other appurtenances thereto; and, provided, further, that Grantor shall not build or construct any structure, excavate or otherwise alter the ground elevation, construct any dam or otherwise create a water impoundment within or over the Easement Area without prior authorization of Grantee. Grantee shall have all privileges necessary or convenient for the full use of the rights herein granted, together with reasonable ingress and egress over and across that part of the Property located adjacent to the Easement Area and the Temporary Work Space.

4. All notices under this Agreement shall be in writing, addressed to the addresses first set forth above and be delivered by certified mail, postage prepaid, and return receipt requested, next business

day delivery via a reputable national courier service, regular United States mail, facsimile, e-mail or hand delivery. A party may change its address for notice by giving notice of such change to the other party.

5. The undersigned hereby bind themselves, and their respective heirs, executors, administrators, successors and assigns, to this Agreement unto Grantee, its successors and assigns. The Easement granted hereby shall create a covenant and burden upon the Property and running therewith.

6. Grantor and Grantee acknowledge that the actual location of the Easement Area and/or Temporary Work Space may change because of various engineering factors. In such event, Grantee shall prepare at its expense the necessary documents needed to correct the description of the Easement Area and/or Temporary Work Space to conform with the actual location of the required Easement Area and/or Temporary Work Space, and Grantor agrees to execute any such documents as reasonably requested by Grantee. Grantee may further define the location of the Easement Area by recording a "Notice of Location" referring to this instrument and setting forth a legal description of the Easement Area and the location of the pipelines contained therein, which description may be set forth by map attached to the Notice of Location. A copy of the Notice of Location shall be delivered to the Grantor. Grantor shall receive additional reasonable compensation only if the acreage within the Easement Area and/or Temporary Work Space increases as a result of the changed location.

7. It is agreed that this Agreement constitutes the entire agreement between the parties and that no other agreements have been made modifying, adding to or changing the terms of the same. Except as provided in Section 6, this Agreement shall not be abrogated, modified, rescinded or amended in whole or in part without the consent of Grantor and Grantee, in writing and executed by each of them, and duly recorded in the appropriate real property records.

8. The rights granted hereby to Grantee may be assigned by Grantee in whole or in part, in Grantee's sole discretion.

9. The terms, stipulations, and conditions of this Easement are subject to all applicable laws, regulations, and permit conditions.

10. This Agreement shall be governed by the law of the State of South Dakota in which the Easement Area is situated.

11. This Agreement may be executed in counterparts, each of which shall be considered an original for all purposes; provided, however, that all such counterparts shall together constitute one and the same instrument.

IN WITNESS WHEREOF, Grantor has executed this Agreement as of the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

GRANTOR:

By: \_\_\_\_\_

Name: \_\_\_\_\_

After Recording, Return to:

STATE OF \_\_\_\_\_ )

) SS

COUNTY OF \_\_\_\_\_ )

Before me, \_\_\_\_\_, a Notary Public in and for said County and State on  
this \_\_\_\_\_ Day of \_\_\_\_\_, 20\_\_\_\_ personally appeared \_\_\_\_\_  
and \_\_\_\_\_, to me personally known to be the identical person \_\_\_\_\_ who executed  
the within and foregoing instrument, and acknowledged to me that \_\_\_\_\_  
executed the same as \_\_\_\_\_ free and voluntary act and deed for the uses and purposes therein set forth.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal the day and year last above written.

My Commission expires: \_\_\_\_\_

\_\_\_\_\_  
NOTARY PUBLIC

\_\_\_\_\_  
ADDRESS  
\_\_\_\_\_

STATE OF \_\_\_\_\_ )

) SS

COUNTY OF \_\_\_\_\_ )

Before me, \_\_\_\_\_, a Notary Public in and for said County and State on  
this \_\_\_\_\_ Day of \_\_\_\_\_, 20\_\_\_\_ personally appeared \_\_\_\_\_  
and \_\_\_\_\_, to me personally known to be the identical person \_\_\_\_\_ who executed  
the within and foregoing instrument, and acknowledged to me that \_\_\_\_\_  
executed the same as \_\_\_\_\_ free and voluntary act and deed for the uses and purposes therein set forth.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal the day and year last above written.

My Commission expires: \_\_\_\_\_

\_\_\_\_\_  
NOTARY PUBLIC

\_\_\_\_\_  
ADDRESS  
\_\_\_\_\_

CORPORATE ACKNOWLEDGMENT

STATE OF \_\_\_\_\_ )  
 ) SS  
COUNTY OF \_\_\_\_\_ )

Before me, a Notary Public in and for said County and State, on this \_\_\_\_\_ day of \_\_\_\_\_ ,  
20 \_\_\_\_\_ , personally appeared \_\_\_\_\_ , to me known to be the identical person who  
Subscribed the name of the maker thereof to the foregoing instrument as its \_\_\_\_\_ ,  
and acknowledged to me that he executed the same as his free and voluntary act and deed and as the free and voluntary  
act and deed of such corporation for the uses and purposes therein set forth.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal the day and year last above written.

My Commission expires:

\_\_\_\_\_  
NOTARY PUBLIC

\_\_\_\_\_  
ADDRESS  
\_\_\_\_\_

CORPORATE ACKNOWLEDGMENT

STATE OF \_\_\_\_\_ )  
 ) SS  
COUNTY OF \_\_\_\_\_ )

Before me, a Notary Public in and for said County and State, on this \_\_\_\_\_ day of \_\_\_\_\_ ,  
20 \_\_\_\_\_ , personally appeared \_\_\_\_\_ , to me known to be the identical person who  
Subscribed the name of the maker thereof to the foregoing instrument as its \_\_\_\_\_ ,  
and acknowledged to me that he executed the same as his free and voluntary act and deed and as the free and voluntary  
act and deed of such corporation for the uses and purposes therein set forth.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal the day and year last above written.

My Commission expires:

\_\_\_\_\_  
NOTARY PUBLIC

\_\_\_\_\_  
ADDRESS  
\_\_\_\_\_

ATTACHMENT A OF EXHIBIT A

Address of Property:

Permanent Real Estate Index Number:

ATTACHMENT B OF EXHIBIT A

Address of Property:

Permanent Real Estate Index Number:

## Liability

**209. Due to your activities, who will be responsible for injuries to your agents?**

We will be responsible for the safety of our employees, contractors and other service providers.

**210. Due to your activities, who will be responsible for injuries to my family and guests?**

Safety is a top priority for us. In the unlikely event of an incident, responsibility regarding any injury would have to be determined on a case-by-case basis.

**211. If a third party damages your facilities, who will be held accountable?**

We will repair any damages to its pipeline system caused by third parties. Liability for the damages will be determined on a case-by-case basis.

**212. Will you pay for the cost of a rider to my insurance policy due to your presence?**

No. We carry our own insurance and landowners are not required to carry any additional insurance due to the presence of a pipeline on their property.

**213. If I call a hotline before digging and your facilities have been improperly located, who will be responsible for any ensuing damages?**

We are responsible to properly locate and mark all our facilities. The types and causes of damage are dependent on the circumstances involved and responsibility will be determined on a case-by-case basis.

**214. Who will be responsible for damages to third parties caused by your operations?**

The types and causes of damage are dependent on the circumstances involved and responsibility will be determined on a case-by-case basis.

**215. Will you pay for all damage done in and outside the easement that you or your contractors may cause?**

Assessment of damages and liability will be determined on a case-by-case basis depending on the circumstances that gave rise to the damage.

**216. Who will handle this damage reimbursement and how do you guarantee that this person will be fair and knowledgeable of the business that you affect?**

Our land agents will be primarily responsible for resolving construction related losses with the landowners. They have extensive experience in issues involving farmland and are guided by TransCanada's standards and codes of conduct and ethical performance.

**217. Who will handle reimbursement the year after the project?**

The Keystone XL Field Representatives will be responsible for the post-construction assessment of construction-related losses. Once the losses have been assessed and agreed upon by the parties involved, payments will be distributed.

**218. What insurance company insures this project and possible future liabilities?**

Because the pipeline is not yet operational, insurance has not been placed.



# Exhibit F



**TransCanada**

*In business to deliver*

TransCanada PipeLines Limited  
450 - 1st Street S.W.  
Calgary, Alberta, Canada T2P 5H1

**tel** 403.920.2033  
**fax** 403.920.2325  
**email** robert\_jones@transcanada.com  
**web** www.transcanada.com

June 1 2009

Robert Jones, Vice President  
TransCanada Keystone Pipeline LP  
450 1<sup>st</sup> Street SW  
Calgary, Alberta, T2P 5H1  
Canada

Patricia Van Gerpen  
Executive Director  
South Dakota Public Utilities Commission  
500 East Capitol Avenue  
Pierre, South Dakota 57501-5070

Dear Ms. Van Gerpen

TransCanada Keystone Pipeline, L.P. (Keystone) is in receipt of your letter dated May 21, 2009, which references the Advisory Bulletin (ADB-09-01) recently issued by the Pipeline and Hazardous Materials Safety Administration (PHMSA) 74 Fed. Reg. 23930 (May 21, 2009). As you note, the Advisory Bulletin advises pipeline system owners and operators of the potential for high grade line pipe installed on pipeline projects to exhibit inconsistent chemical and mechanical properties. Your letter indicates that this issue is of concern to the Public Utilities Commission, given that the PUC issued an order for a construction permit to the Keystone Pipeline project in Docket HP07-001. As directed in your letter, TransCanada (as lead developer and operator of the Keystone pipeline) is submitting this letter as its report to the Commission in response to the Advisory Bulletin.

The Advisory Bulletin indicates that several recently installed natural gas transmission pipeline systems experienced field hydrostatic test failures or excessively expanded pipe joints of large diameter, microalloyed high grade line pipe. According to the Advisory Bulletin, tests of the line pipe in these cases have shown that some of the pipe material had yield strengths, tensile strengths, and/or chemical compositions that did not meet the requirements of American Petroleum Institute Specifications for Line Pipe – 5L (API 5L), for PSL 2<sup>1</sup> and the specified pipe grade. Accordingly, PHMSA issued its Advisory Bulletin, which sets forth specific actions that pipeline owners and

operators of recently constructed pipeline systems should undertake or consider to investigate whether their pipelines contain joints of pipe that do not meet minimum specification requirements.

TransCanada is already in compliance with the actions outlined in the Advisory Bulletin, with respect to both line pipe that has already been installed on the Keystone Pipeline system in 2008 and line pipe that is planned to be installed this year. Indeed, it should be noted that TransCanada has incorporated these steps as part of its line pipe policy for over 30 years.

Set forth below are the specific actions outlined in the Advisory Bulletin and a discussion of how TransCanada is in compliance with each of those actions:

- 1. Pipeline owners and operators should closely review the manufacturing procedure specifications (MPS) for the production and rolling of the steel plate or coil that is to be used in the production of new microalloyed high strength line pipe steel to ensure that pipe steel was properly rolled into steel plate or coil prior to the pipe mill rolling process.**

TransCanada's contracts with its pipe manufacturers set forth the specifications that all line pipe must meet in order to be accepted. The pipe manufacturers then work with the steel manufacturers to develop manufacturing procedure specifications for the production and rolling of steel that will satisfy TransCanada's line pipe specifications. TransCanada must review and approve the manufacturing procedure specifications for the production and rolling of steel before the pipe manufacturers may accept the steel for pipe production. These procedures ensure that TransCanada reviews and approves the steel manufacturing procedure specifications to ensure that pipe steel is properly rolled into steel plate or coil prior to the pipe mill rolling process.

- 2. Pipeline owners and operators should request detailed manufacturing procedure specifications from the pipe manufacturer as a basis for ensuring critical steel processing parameters such as the detailed rolling schedule, including, but not limited to rolling temperature, heating temperature and temperature uniformity, are controlled throughout the steel rolling process.**

TransCanada reviews and approves the detailed manufacturing procedure specifications for each of its pipe manufacturers prior to the pipe mill initiating purchase of steel supply to ensure it meets the API 5L Line Pipe Specification, TransCanada's specifications, and project-specific requirements. This review and approval serves as a basis for ensuring that steel processing parameters such as the rolling

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<sup>1</sup> Product Specification Level, as defined in API 5L Specification for Line Pipe 43<sup>rd</sup> Edition

schedule, rolling temperature, heating temperature, and temperature uniformity are controlled throughout the steel rolling process.

- 3. Mechanical and chemical composition tests should be conducted throughout the steel making, rolling and pipe manufacturer process to ensure uniformity of chemical and mechanical properties of the pipe prior to being shipped from the steel and pipe rolling mills.**

As part of the pipe purchase contract and its line pipe specification TransCanada's requires the pipe mill to conduct mechanical and chemical composition tests throughout the pipe manufacturing process, at the frequency required under the API 5L specification. Under technical supply conditions between the pipe mills and steel suppliers TransCanada's uses, mechanical and chemical composition tests are conducted during steel making and rolling process at a frequency determined by the pipe mill and the steel supplier to meet API 5L Line Pipe Specification, TransCanada's specifications, and project-specific requirements. The testing protocol is included in the MPS described in bullet #2. It should be noted that TransCanada's mechanical and chemical composition requirements for high strength steel are more stringent and exceed the requirements in API 5L.

- 4. Pipeline owners and operators should review all MPS mill test reports and other appropriate documentation with their pipe suppliers to determine if all specification requirements have been met.**

TransCanada reviews the pipe suppliers' MPS mill test reports and other appropriate documentation, including production logs, steel quality, fabrication, welding rejection summaries, lab results and non-conformance reports. These reports are reviewed by qualified individuals as part of the acceptance of the line pipe to the specification. These reports are reviewed at several stages throughout the manufacturing process and at delivery of the line pipe.

- 5. Pipeline owners and operators should be aware that small deviations in steel rolling schedule parameters can have a pronounced effect on final mechanical properties. The MPS should provide adequate information concerning process details and inspection methods to ensure that the materials are uniform and will meet all specification requirements.**

TransCanada is aware of this fact and has provisions in its pipe specifications to ensure that specified mechanical properties are met. The pipe mill's MPS provide adequate information concerning steel rolling process and inspection methods to ensure that the line pipe delivered is uniform and meets all specification requirements.

**6. Pipeline owners and operators review all hydrostatic test failure results for both pipe mill and in-place hydrostatic tests.**

There have been no hydrostatic test failures on line pipe that have occurred in the pipe mills producing pipe for the Keystone order. Field hydrostatic testing in South Dakota for Spread 2A (2008 construction) is scheduled to begin mid June. Field hydrostatic testing for Spread 3B (2009 construction) in South Dakota is tentatively scheduled to commence this fall. As part of TransCanada's quality management program and as cited in Keystone Special Permit, any pipe failure during in-service hydrostatic test must undergo a root cause failure analysis to include a metallurgical examination of failed pipe. The results of this examination must preclude a systemic pipeline material issue.

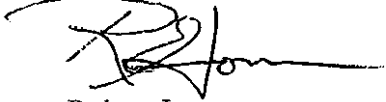
**7. Pipeline owners and operators should consider using methods to detect pipe expansion in recently installed line pipe, such as running deformation tools, if they have any knowledge, findings, or pipe history that lead them to believe their newly constructed high grade line pipe systems contain line pipe joints that do not meet specification requirements.**

TransCanada undertakes all of the specification actions outlined above to ensure that the high grade line pipe it purchases and installs meets all specification requirements. While undertaking these actions, TransCanada has no knowledge, findings, or pipe history that would lead it to believe that newly constructed high grade line pipe systems – and specifically the Keystone Pipeline system – contains line pipe joints that do not meet specification requirements. Accordingly, TransCanada has considered whether it is advisable to utilize expansion detection methods and has determined that such methods are not necessary or advisable.

In addition to the foregoing, it should also be noted that TransCanada purchases line pipe for its pipeline project from only qualified pipe suppliers and trading houses. Qualification encompasses comprehensive evaluation of steel and pipe manufacturing facilities, extensive technical discussions with lead quality and metallurgy personnel and requirements for the mill to produce and test pipe to TransCanada standards and specification. In addition, TransCanada has a quality management system which it implements for each pipe order. Surveillance personnel are stationed in the pipe mill during all pipe production and coating for the Keystone pipeline. TransCanada's steel and pipe mill qualification procedures and pipe quality management system are described in the testimony of its witness Meera Kothari in Docket HP07-1.

TransCanada appreciates this opportunity to address the Commission's concerns regarding the PHMSA Advisory Bulletin. If there are further questions in this regard, please contact the undersigned.

Sincerely,

A handwritten signature in black ink, appearing to read 'R. Jones', with a long horizontal flourish extending to the right.

Robert Jones  
Vice President  
TransCanada Keystone Pipeline LP

cc. Brett Koenecke, Adam, Gerdes and Thompson LLC