

October 8, 2009



VIA EMAIL

Patricia Van Gerpen
SD Public Utilities Commission
500 East Capitol
Pierre, SD 57501

Dear Ms. Van Gerpen:

Dakota Rural Action (“DRA”) appreciates the Commission’s recent actions that ordered TransCanada Keystone Pipeline, LP (“TransCanada”) to provide withheld information to DRA. DRA also appreciates that the Commission has clarified its jurisdictional limitations as this clarification should both facilitate the remainder of this proceeding and ensure that landowners and intervenors direct their limited time and resources into productive pathways, rather than into issues over which the Commission has no power. DRA believe that the Commission has a duty to clearly define the scope of its authority so that citizens do not waste their limited resources on nonjurisdictional matters.

DRA is in general agreement with Commissioner Hanson that further inquiry by the Commission into federal emergency oil spill planning is not merited. While DRA is very concerned that citizens have historically had no opportunity to participate in emergency planning for spills from crude oil pipelines, TransCanada’s recent disclosure that it is unwilling or unable to prepare a draft emergency plan before the end of this proceeding means, in practical terms, that the Commission will have no formal or informal opportunity to participate in the development of a federal emergency plan for the Keystone XL crude oil pipeline. The Commission cannot improve a plan that, for whatever reason, will not exist before the Commission is required by law to end this proceeding.

Further, the documents offered by TransCanada on emergency response planning contain no information specific to the Keystone XL pipeline. Rather, the documents, with few exceptions, are publically available government documents containing generic guidance on emergency oil spill planning. Even those few documents that are not government documents are essentially restatements of federal requirements. Since TransCanada has offered no documents containing information specifically about the Keystone XL pipeline and given that the Commission will have no practical opportunity to improve emergency planning for the Keystone XL pipeline, DRA has decided to not request that TransCanada produce any of these generic documents.

Commission staff has suggested that DRA could review the information gathered by staff on the risks posed by the Proposed Pipeline and apply complex federal emergency response planning guidance to such information as a means of advising the Commission on emergency response planning. DRA can see no point in undertaking such effort given the Commission’s

lack of any practical ability to influence federal emergency planning and the practical impossibility of performing this complex task before the Commission's November hearings.

Instead, DRA will work with other agencies that have legal authority and opportunity to improve emergency planning. In the remainder of the Commission's proceeding, DRA will focus its efforts on matters within the Commission's power.

Should the Commission seek to ensure proper emergency response planning, DRA respectfully suggests that the Commissioners formally request that DENR hold a public hearing on a draft Emergency Response Plan sufficiently prior to its approval by the federal government, so that landowners, first responders, state and local officials, and the public at large have an opportunity to participate in this emergency planning, especially since this planning is intended, first and foremost, to protect citizens.

Very truly yours,



Paul C. Blackburn
Attorney for Dakota Rural Action