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From: Smith, John (PUC)

Sent: Thursday, March 19, 2009 2:37 PM

To: 'Stephanie Trask, DRA'

Subject: RE: Landowner Concerns about the Keystone XL Proposal

Ms. Trask,

Thank you for forwarding Mr. Niemi's email with comments and questions concerning the proposed Keystone XL pipeline. The Commission welcomes comments, especially constructive ones, regarding all of its cases, and we understand that a major transmission project like Keystone XL raises a number of legitimate concerns for those affected, particularly landowners.

I wanted to make you aware of the Commission's procedures for submitting comments, and also for participating in the case formally for those who feel the need to be involved at the formal party level. Although we will accept comments, however submitted, we encourage people to follow the Commission's document submission procedures, both because they are required by South Dakota statute and the Commission's rules and because our docket filing and management systems are set up to ensure that communications become part of the official record in the case and made public to all out there who wish to view them, including those of us here at the Commission.

As Chairman Johnson notified Mr. Niemi in his reply to him, we will treat Mr. Niemi's comments and questions as intended for filing as public comments in the case, and we will file them in the docket as public comments. In the future we would ask that comments submitted by you or others as public comments be submitted to the Commission in accordance with the Commission's public comment submission procedures.

There are two problems with direct communications with Commissioners outside the process. The first is legal. SDCL 1-26-26 provides:

Unless required for the disposition of ex parte matters authorized by law, members of the governing board or officers or employees of an agency assigned to render a decision or to make findings of fact and conclusions of law in a contested case shall not communicate, directly or indirectly, in connection with any issue of fact, with any person or party, nor, in connection with any issue of law, with any party or his representative, except upon notice and opportunity for all parties to participate.

Once Keystone filed its application for a permit with the Commission, this matter became a contested case. The Commission's rules deal with this statutory directive by specifying how communications to the Commission are to be made in contested cases. The first is ARSD 20:10:01:02.01:

All correspondence with the commission shall be addressed to the commission's executive director at the commission's principal office. Correspondence with the commissioners shall not be addressed to an individual commissioner unless otherwise specifically authorized or directed by the commission.

Our on-line comments and contacts system follows this rule by directing all submitted communications to the Executive Director. ARSD 20:10:01:02.05 specifies how case filings at the Commission are to be made:

Unless otherwise allowed, any document filed with the commission shall be filed electronically as a .pdf file by accessing the commission's website. If the document is unable to be filed as a .pdf file, the document shall be filed using a widely used file format. Documents larger than eight and one-half by fourteen inches or that otherwise may not be practicably filed by email attachment shall be filed by mail or hand delivery. If a person is requesting confidential treatment of any information, that information shall be filed electronically as a separate document. If a person is unable to file the document electronically due to technical reasons or lack of electronic filing capabilities, the person shall file the original document with the commission by mail or hand delivery and is not required to file electronically. If a person has the computer capability and it is technically feasible, any document that is not filed electronically shall be filed with the commission on a recordable compact disc. These filing requirements apply to all documents unless otherwise specified in this article or required by the commission.

Although we encourage electronic filings, interested persons may also submit public comments via U.S. mail, personal delivery, commercial courier or fax.

Besides the legal reasons for following the Commission's communication and filing procedures, there is a practical reason as well. These procedures are designed to both identify submittals as intended to be formal docket filings or informal public comments in a case (as opposed to improper *ex parte* communications) and to ensure that such submittals are filed in the docket, made a part of the record in the case and made available, almost instantaneously, to all parties and the public on the Commission's web site. You can have confidence that the Commissioners will personally receive any filings or public comments in the case, as they are immediately transmitted to all Commissioners and staff via email at the same time as they are made available to parties and the public on the Commission's web site and by e-service.

With respect to formal intervention, the statutes and rules applicable to siting cases establish the intervention deadline as the date 60 days following the filing of the application. The application was filed on March 12, 2009, and the intervention deadline is therefore May 11, 2009. The Commission has available on its web site forms for Application for Party Status. We will also bring these forms to the public input hearings referenced below. Formal party status through intervention is appropriate for people who intend to actively participate in the case through legal motions, discovery, the preparation and presentation of actual evidence (as opposed to comments, questions and opinions) and participation in the formal hearing. Intervention as a party renders a person legally obligated to respond to discovery from other parties and to submit to cross-examination at the formal hearing.

The Commission will hold informal public input hearings on the Keystone XL application on April 27, 2009 at 12:00 p.m. noon in Winner at the Winner Play House, on April 27, 2009 at 7:00 p.m. in Phillip at the Fine Arts School, and on April 28, 2009 at 6:00 p.m. in Buffalo at the Memorial Recreation Center. These hearings are for the purpose of having the applicant present information about the project to the public and of taking comments and questions concerning the project from members of the public. As these hearings are informal, there is no sworn testimony and no cross-examination.

To help facilitate the public comment process, the Commission's staff will be posting information on our Web site that will describe how people can submit informal public comments and the appropriate procedure for making formal party docket filings. We expect this information to be accessible from the PUC's home page within the next few days.

For your reference and use, here are some links to sections of our Web site that may be helpful to you:

PUC home page: www.puc.sd.gov

E-filing "Docket Filings" page: www.puc.sd.gov/DocketFiling.aspx

Keystone XL Docket HP09-001 docket page: www.puc.sd.gov/Dockets/HydrocarbonPipeline/2009/hp09-001.aspx

Application for Party Status Form: www.puc.sd.gov/commission/Publication/partystatusfillin.pdf

For U.S. mail, commercial courier or personal delivery, the Commission's address is South Dakota Public Utilities Commission, 500 E. Capitol Ave., Pierre, SD 57501 (this is in the Capitol Building on the first floor). The Commission's phone numbers are: 605-773-3201 and 800-332-1782. The Commissioner's toll free fax number is: 866-757-6031.

Again, thank you for forwarding Mr. Niemi's comments and questions and for taking the time to read this admittedly lengthy reply. Please feel free to give me a call if you want to discuss any of this informally. Thanks.