

February 17, 2010

Dear Mr. Lauer;

Thank you for sending your comments to the PUC regarding TransCanada's request to construct the Keystone XL hydrocarbon pipeline. In order for the Commissioners and others interested in the siting case to see your comments, they will be made part of the official docket. The docket and its filings are posted online at www.puc.sd.gov. Click on "Commission Actions," "Commission Dockets," "Hydrocarbon Dockets," "2009 Hydrocarbon Dockets," and "HP09-001." If you do not wish your comments made part of the docket, please respond to me and I will remove them. Since this is an open docket and Commissioners will need to make a decision on it after reviewing the files, communication with them regarding the docket must be available to the public.

Pipeline siting and safety regulation involves both the federal and state government. Current regulations allow the construction and operation of pipelines within specific and extensive regulation. Without regulatory change, the siting process is legally available to all applicants such as TransCanada. I understand your concern, but wish to assure you the SD PUC does not grant a permit to build and the federal government does not allow the operation of a pipeline unless the facility meets all siting and safety standards. You may be interested in South Dakota siting regulation found at SDCL 49-41B. The chapter requires detailed study and findings with regard to threats to the environment, health, safety and welfare of inhabitants. "Need" is not, however an element an applicant must prove prior to receipt of a permit. (SDCL 49-41B-22) You may also be interested in the many hours of public input afforded interested individuals and the information available on our website produced through the discovery and hearing process.

Specifically, I understand you have concerns related to the EIS, or the Environmental Impact Study. The EIS is a study performed by the federal government to comply with NEPA, the National Environmental Policy Act. The EIS is intended as a mechanism to study environmental impacts on a national scale. The PUC on the other hand has jurisdiction on a state level only. South Dakota siting regulations require a state specific environmental study. The applicant in this case completed the study in ample time for expert and Commission review. I understand your concern and want to assure you an environmental study was done. The SD PUC studied a South Dakota specific environmental assessment.

You also question the status of the Emergency Response Plan. Interstate Hazardous Liquid pipeline safety and operations are regulated by the federal government through the Pipeline Hazardous Materials Safety Administration (PHMSA). The 8th Circuit Court of Appeals and the US District Court found the federal government has exclusive authority and state or local regulation in these areas is strictly preempted. Emergency Response plans are required by the federal pipeline safety code thus expressly regulated by the federal government. Before this or any other federally regulated pipeline can be operated, it must submit the emergency plan to (PHMSA). PHMSA examines the plan and will not allow operation of the pipeline until it is sufficient. The state of SD cannot impose regulations regarding this plan as we are strictly preempted by the federal government.

South Dakota siting regulations require this Commission issue a decision within one year of receipt of an application. We are approaching that one year deadline. While various federal processes are still in progress, I assure you, the PUC did not rush the process within its jurisdiction. Thank you

for taking the time to write. The PUC Commissioners appreciate hearing from the affected consumers about issues before them.

Sincerely,

Kara Semmler
SD Public Utilities Commission, Staff Attorney
500 E. Capitol
Pierre, SD 57501

From: Rich Lauer
Sent: Tuesday, February 16, 2010 10:40:47 AM
To: PUC
Subject: Keystone XL
Auto forwarded by a Rule

Gentlemen of the PUC.

Put a hold on the Keystone XL approval process until Transcanada has filed an Emergency Response Plan and the state has had an opportunity to review the completed Environmental Impact Statement.

Rushing to approve this project without the foregoing is not in the public interest and is certainly not an example of an enlightened, responsible PUC.

If this project were actually needed, which many industry experts question, public interest would still require you to act responsibly and do all that is required for a complete approval process. Anything less is a dereliction of duty, and that is not why we elected you to the PUC. Don't drop the "P" from the PUC by acting hastily. There is no upside to moving in haste and the downside, as happens so often, is the public gets stiffed.

Whatever you do here will of course be with you in your next election. Act wisely in the public interest.

Rich Lauer