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SOUTH DAKOTA PUBLIC UTILITIES COMMISSION

THE PUBLIC UTILITIES COMMISSION

OF THE STATE OF SOUTH DAKOTA

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IN THE MATTER OF THE APPLICATION OF  
TRANSCANADA KEYSTONE PIPELINE, LP  
FOR A PERMIT UNDER THE SOUTH DAKOTA  
ENERGY CONVERSION AND TRANSMISSION  
FACILITY ACT TO CONSTRUCT THE KEYSTONE  
PIPELINE PROJECT

HP07-001

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Transcript of Proceedings  
March 11, 2008

ORIGINAL

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BEFORE THE PUBLIC UTILITIES COMMISSION,  
GARY HANSON, CHAIRMAN  
STEVE KOLBECK, VICE CHAIRMAN  
DUSTY JOHNSON, COMMISSIONER

COMMISSION STAFF

- Rolayne Ailts Wiest
- John J. Smith
- Karen Cremer
- Kara Semmler
- Greg Rislov
- Harlan Best
- Keith Senger
- Dave Jacobson
- Bob Knadle
- Daris Ormesher
- Brian Rounds
- Nathan Solem
- Deb Gregg
- Demaris Athelm

Reported By Cheri McComsey Wittler, RPR, CRR

1                   TRANSCRIPT OF PROCEEDINGS, held in the above-entitled  
2 matter, at the State Capitol Building, 500 East Capitol Avenue,  
3 Pierre, South Dakota, on the 11th day of March 2008, commencing  
4 at 9:30 a.m.

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1           CHAIRMAN HANSON: We are back on the web, and the  
2 meeting will come back to order. The last item on the agenda is  
3 the hydrocarbon pipeline item 1, Docket HP07-001, In the matter  
4 of the application of TransCanada Keystone Pipeline, LP for a  
5 permit under the South Dakota Energy Conversion and Transmission  
6 Facility Act to construct the Keystone Pipeline Project.

7           The questions before us today is shall the Commission  
8 grant, deny, or grant with conditions a permit to Keystone for  
9 construction of the project pursuant to SDCL 49-41B-24 or how  
10 shall the Commission proceed?

11           I'm speaking a little bit more slowly -- although  
12 Cheri, our court reporter, is able to keep up with auctioneers,  
13 I will purposely speak a little bit slower when I'm reading.

14           The action -- before we take the action on the  
15 questions, I would like to note today that this hearing is for  
16 Commission action. This is a contested case. All of the  
17 hearings and processes have been completed, and it's time for  
18 the Commission to take its action. The Commissioners will  
19 discuss the issues at this meeting among ourselves and possibly  
20 seek the opinions of our advisors or counsel, but we do not take  
21 comments or argument from parties or the public.

22           As a result, we will not be taking further comment  
23 from anyone here this morning unless a Commissioner has a  
24 specific question for someone.

25           We've held over 21 hours of public meetings. We've

1 held very, very lengthy evidentiary hearings. We've gone  
2 through an extensive process here. And now it's time for the  
3 Commission and it's opportunity for the Commission finally  
4 amongst ourselves to have some -- excuse me, for some  
5 discussion.

6           The process today will be as follows: A motion will  
7 be made. The motion is then held in abeyance until the  
8 Commission discusses and adopts the conditions of the permit if  
9 that's, in fact, what we do. And then after the conditions, if  
10 they are adopted, those members of the Commission who believe  
11 the applicant under the conditions has met the statutory  
12 requirements will vote in favor of the motion, and those  
13 Commissioners who believe or Commissioner who believe the  
14 conditions are insufficient or that the applicant has not met  
15 the statutory requirements will vote against the motion.

16           At this time I will move that the application by  
17 TransCanada Keystone Pipeline, LP for the construction of the  
18 Keystone Pipeline Project be granted subject to the conditions  
19 approved by the Commission today.

20           I further move that action on this motion be held in  
21 abeyance pending our action to finalize the conditions.

22           The purpose of this is that the Commissioners have  
23 chosen -- unlike years ago, this Commission has chosen not to  
24 discuss this docket amongst ourselves outside of an open  
25 meeting. We've chosen that in the flavor of the open meeting

1 laws and from the standpoint instead in order to -- it's made it  
2 challenging, of course.

3           Number one, we're curious what each other thinks about  
4 issues, and we feel that all of us are smarter than any one of  
5 us but at the same time it provides us this opportunity to have  
6 discussions. In this case in order to draw up the conditions,  
7 what we did was with our counsel, Mr. John Smith, we each  
8 independently wrote up those items which we felt were important  
9 enough to be conditions for this docket.

10           We sent them to him by e-mail, and we did discuss  
11 those with him. He went through a protracted process of putting  
12 those together and giving us drafts. We looked over and made  
13 comments with him on those and did not discuss it between  
14 ourselves.

15           The final draft that we actually have before us I  
16 don't think any one of us have actually had the opportunity to  
17 completely read through, although we have read through quite a  
18 few drafts, and it's a composite of those. We believe we've  
19 read the whole thing. But we're going to go through it  
20 paragraph by paragraph in order to be positive of that.

21           And I will note that it has 57 conditions to it, this  
22 particular draft. If we spent 5 minutes on each one of those,  
23 we will take five hours to go through this process so we do not  
24 intend by any means to spend that much time on it.

25           I will read each condition and I will ask then the

1 Commissioners if they have any comments, suggestions to that  
2 particular condition. In this manner everyone will have the  
3 opportunity to hear those conditions as we go through the  
4 process.

5           Once all of the conditions have been discussed, we  
6 will vote on the conditions, and if there are any contentious  
7 conditions, we will vote on them separately and the majority  
8 will rule on those conditions.

9           I will begin with the conditions -- the first two  
10 conditions are technical in nature, and anyone who is tuned in  
11 to this, I don't want you to think that those serve as  
12 precedence for all of the rest of the conditions, what they're  
13 going to sound like by any means. I think they are of  
14 significant interest. They do appear to cover all of the  
15 different instances that we are concerned with, and we are very  
16 concerned with making sure we have all of the Ts crossed and the  
17 Is dotted in this particular issue.

18           The first item -- and, by the way, I think all three  
19 of the Commissioners are just very much looking forward to this  
20 opportunity so that we can move this. I know Sandy is looking  
21 forward to having this off of the dining table at home, and I  
22 know that each one of us as Commissioners are very interested in  
23 making sure that we come to a conclusion on this and getting it  
24 right.

25           The first item is, Keystone shall comply with all

1 applicable laws and regulations in its construction and  
2 operation of the project. These laws and regulations include  
3 but are not necessarily limited to the Federal Hazardous Liquid  
4 Pipeline Safety Act of 1979 and Pipeline Safety Improvement Act  
5 of 2002. As amended by the Pipeline Inspection, Protection,  
6 Enforcement, and Safety Act of 2006 and the various other  
7 pipeline safety statutes currently codified at 49 U.S.C. 60101  
8 (collectively the PSA) the regulations of the United States  
9 Department of Transportation implementing the PSA, particularly  
10 49 C.F.R. Parts 194 and 195; temporary permits for use of public  
11 water for construction, testing, or drilling purposes,  
12 SDCL 46-5-40.1 and ARSD 74:02:01:32 through 74:02:01:34:02 and  
13 temporary discharges to waters of the state, SDCL 34A-2-36 and  
14 ARSD Chapters 74:52:01 through 74:52:11, specifically  
15 ARSD 74:52:02:46 and the general permit issued thereunder  
16 covering temporary discharges of water from construction  
17 dewatering and hydrostatic testing.

18 Do any of the Commissioners have any comments,  
19 suggestions on the first condition?

20 Seeing none, the second condition is Keystone shall  
21 obtain and shall thereafter comply with all applicable federal,  
22 state, and local permits, including but not limited to:  
23 Presidential Permit from the United States Department of State,  
24 Executive Order 11423 of August 16, 1968 (33 Federal Register  
25 11741) and Executive Order 13337 of April 30, 2004, (69 Federal

1 Register 25229) for the construction, connection, operation, or  
2 maintenance at the border of the United States of facilities for  
3 the exportation or importation of petroleum, petroleum products,  
4 coal or other fuels to or from a foreign country; Clean Water  
5 Act 404 and Rivers and Harbors Act Section 10 Permits; special  
6 permit issued by the Pipeline and Hazardous Material Safety  
7 Administration; temporary water use permit, general permit for  
8 temporary discharges and federal, state, and local highway and  
9 road encroachment permits.

10 Any of such permits not previously filed with the  
11 Commission shall be filed with the Commission upon their  
12 issuance.

13 Are there any considerations by the Commission on  
14 Item 2?

15 Condition number 3, Keystone shall comply with and  
16 implement the recommendations set forth in the final  
17 Environmental Impact Statement issued by the United States  
18 Department of State on January 11, 2008.

19 Any considerations by the Commission on item 3?

20 COMMISSIONER JOHNSON: I would just note,  
21 Mr. Chairman, this is something we've done in the past like the  
22 Big Stone II. And it makes maybe a little bit more sense in a  
23 situation like Big Stone II where we ruled prior to having the  
24 Final Environmental Impact Statement, but I think it makes quite  
25 a bit of sense here as well.



1 CHAIRMAN HANSON: Thank you. Any other  
2 considerations?

3 If not, item 4, the permit granted by this Order shall  
4 not be transferable without the approval of the Commission  
5 pursuant to SDCL 49-41B-29.

6 Any considerations?

7 Item 5, Keystone shall undertake and complete all of  
8 the actions that it and its affiliated entities committed to  
9 undertake and complete in its application and its testimony  
10 before the Commission at the hearing.

11 Any considerations on item 5?

12 COMMISSIONER KOLBECK: I just want to make sure that  
13 the testimony that's on the website, how long will that be  
14 available? Just in case --

15 COMMISSIONER HANSON: How soon will that be available?

16 COMMISSIONER KOLBECK: How long?

17 COMMISSIONER JOHNSON: Audio or transcript?

18 COMMISSIONER KOLBECK: The transcript. It should be  
19 available I would imagine for at least the next foreseeable  
20 future. If we're going to go to anything that was testified to,  
21 that transcript is going to be our record; correct?

22 MR. SMITH: May I answer that, please? This is  
23 John Smith, Commission counsel. As far as I understand, the  
24 Commission's policy with respect to maintenance of our files for  
25 public access on the website, I would anticipate that those

1 would be available forever or until such time as it's become  
2 obsolete and you decide to retire those. I really think that's  
3 an administrative decision for the Commission to make, but we  
4 treat those as public records.

5 COMMISSIONER JOHNSON: Well, in fact, I don't think  
6 we've ever put a docket up on the web and then later taken it  
7 down.

8 MR. SMITH: We have not.

9 COMMISSIONER KOLBECK: And I was just wondering in  
10 years and years to come.

11 MR. SMITH: As far as I'm concerned, the plan as of  
12 now -- and, again, we don't know what new technologies may bring  
13 or whatever, but I think the intent would be those files be  
14 maintained for public access forever.

15 COMMISSIONER KOLBECK: Okay. Thank you.

16 CHAIRMAN HANSON: The next set of items --

17 COMMISSIONER JOHNSON: I'm sorry, Mr. Chairman. I  
18 would just note that WEB filed some objections to the Findings  
19 of the Applicant, and a number of the objections had dealt with  
20 the fact that TransCanada or rather Keystone indicated that it  
21 will do something. And I just think that this Condition number  
22 5 makes it clear, you know, what TransCanada has promised to do  
23 this Commission expects it to do.

24 CHAIRMAN HANSON: Thank you.

25 Next set of items are under Reporting and

1 Relationships.

2           Item 6, the most recent and accurate depiction of the  
3 project route and facility locations is found in  
4 hearing Exhibits A and C of September 2, 2006 to the  
5 application, Exhibit TC 1A and 1C as modified by the valve and  
6 pump station relocations described in Exhibit TC 1C of  
7 March 5, 2007, risk assessment, "6 Overview Valve and Pump  
8 Station Relocation, (Overview of the Valve and Pump Station  
9 Relocation Rationale, March 2007)," and "7 Facility Relocation,  
10 070328, (Valve and Pump Station Relocation Rationale, Keystone  
11 Pipeline Project March 22, 2007)," and the route deviation maps  
12 introduced into evidence at the hearing.

13           Exhibit TC 13 and TC 14. The testimony of Keystone's  
14 witness Buster Gray indicated that the land acquisition and  
15 precise route finalization process was ongoing at the time of  
16 the hearing. Keystone shall notify the Commission and all  
17 affected landowners, utilities, and local governmental units as  
18 soon as practicable if material deviations are proposed to the  
19 route.

20           At such time as Keystone has finalized the  
21 preconstruction route Keystone shall file maps with the  
22 Commission depicting the final preconstruction route. If  
23 material deviations from this route must be made during  
24 construction, Keystone shall advise the Commission and all  
25 affected landowners, utilities, and local governmental units

1 prior to making such changes and afford the Commission the  
2 opportunity to review and approve such modifications. At the  
3 conclusion of the construction Keystone shall file detailed maps  
4 with the Commission depicting the final as-built location of the  
5 project and the facilities.

6 And certainly item 6 is a very important item as  
7 certainly all of them are. However, as we saw earlier today,  
8 how important it is to follow that particular condition.

9 Any suggestion by Commissioners on item 6?

10 If not, Condition number 7, Keystone shall provide a  
11 public liaison officer approved by the Commission to facilitate  
12 the exchange of information between Keystone, including its  
13 contractors and landowners, local communities, and residents and  
14 to promptly resolve complaints and problems that may develop for  
15 landowners, local communities, and residents as a result of the  
16 project.

17 Keystone shall file with the Commission its proposed  
18 public liaison officer's credentials for approval by the  
19 Commission prior to commencement of the construction. The  
20 public liaison officer shall be afforded immediate access to  
21 Keystone's on-site project manager, its executive project  
22 manager, and to contractors' on-site managers, and shall be  
23 available at all times to the Commission staff via mobile phone  
24 to respond to complaints and concerns communicated to the staff  
25 by concerned landowners and others.

1           Keystone shall also implement and keep an updated  
2 website covering the planning and implementation of construction  
3 and commencement of operations in this state as an informational  
4 medium for the public.

5           As soon as the Keystone public liaison officer has  
6 been appointed and approved, Keystone shall provide contact  
7 information for him or her to all landowners crossed by the  
8 project and to law enforcement agencies and local governments in  
9 the vicinity of the project. The public liaison officer's  
10 contact information shall be provided to landowners in each  
11 subsequent written communication with them.

12           Any comment from Commissioners?

13           COMMISSIONER JOHNSON: Mr. Chairman, Commissioner  
14 Kolbeck, I think we heard a lot during the summer meetings along  
15 the proposed route that people were concerned about information  
16 and about communication, and we also heard that a little bit  
17 this morning.

18           I think having this public liaison officer, this  
19 contact, everyone knows who it is, is going to greatly -- is  
20 going to work to really avoid I think what could be a lot of  
21 potential problems during construction.

22           And, additionally, I would just note that I think this  
23 will also be good for the Commission staff to be able to have  
24 somebody that is going to be on top of the information that we  
25 need as soon as we need it.

1           CHAIRMAN HANSON: Absolutely. This will certainly  
2 help to facilitate the entire project.

3           Item 8, until construction of the project is completed  
4 Keystone shall submit quarterly progress reports to the  
5 Commission that summarize the status of land acquisition and  
6 route finalization, the status of construction, the status of  
7 environmental control activities, including permitting status  
8 and emergency response plan and integrity management plan,  
9 development, implementation of other measures required by these  
10 conditions and the overall percent of physical completion of the  
11 project and design changes of a substantive nature.

12           Each report shall include a summary of consultations  
13 with the South Dakota Department of Environment and Natural  
14 Resources and other agencies concerning the issuance of permits.  
15 The reports shall list dates, names, and the results of each  
16 contact and the companies' progress implementing prescribed  
17 construction, land restoration, environmental protection,  
18 emergency response, and integrity management regulations, plans,  
19 and standards.

20           The first report shall be due for the period ending  
21 July 31, 2008. The reports shall be filed within 31 days after  
22 the end of each quarterly period and shall continue until the  
23 project is fully operational.

24           Are there any comments on item 8?

25           COMMISSIONER JOHNSON: If we go with traditional

1 quarters, perhaps the end of June might be easier to remember so  
2 you're dealing with end of March, end of June, end of September,  
3 end of December.

4 CHAIRMAN HANSON: Any concerns with that?

5 COMMISSIONER JOHNSON: I think that is what it says  
6 because the quarter will end in June, and they'll have to --  
7 ignore me. Thanks.

8 CHAIRMAN HANSON: Commissioner Kolbeck.

9 COMMISSIONER KOLBECK: I just have one concern. Each  
10 quarterly period shall continue until the project is fully  
11 operational. How are we defining fully operational?

12 Is that amount of barrels, or is that just as soon as  
13 all the welding is done and they pump any amount through?

14 COMMISSIONER HANSON: Mr. Smith, do you have an answer  
15 to that?

16 MR. SMITH: I think the understanding is is when the  
17 project is fully operational, meaning at least it's actively  
18 engaged in pumping product. My assumption is there will be a  
19 ramp-up period. But that's the way I understand that once  
20 you're pumping product through the pipeline, at least through  
21 that period, and perhaps the Commissioners want to -- we have  
22 some other reporting things in here as well and you can take a  
23 look -- this is for the general reports.

24 And, again, this is a condition that we've had on our  
25 similar permits we've issued. The language of this is very

1 similar to Big Stone II. And those reports have really proved  
2 valuable with respect to the Big Stone II project.

3 COMMISSIONER KOLBECK: I was just wondering, fully  
4 operational doesn't mean after hydrostatic testing is completed?

5 MR. SMITH: Not to me it doesn't, no.

6 COMMISSIONER KOLBECK: Okay.

7 CHAIRMAN HANSON: Thank you.

8 COMMISSIONER JOHNSON: Mr. Chairman, in an attempt to  
9 contradict myself yet again, I do think this says the period  
10 ends July 31. And that's fine. It probably doesn't matter. I  
11 just wonder if it won't be easier to remember if that period  
12 ends in a traditional quarter time frame.

13 Mr. Smith, did you have a rationale for the end of  
14 July rather than end of June?

15 MR. SMITH: I didn't. I was thinking report due on  
16 July 31. And frankly it's a drafting error, and you caught it.  
17 I think June would be June 30. There aren't 31 days in June in  
18 my recollection, would be the appropriate date for the period  
19 ending.

20 COMMISSIONER JOHNSON: Well, don't beat yourself up  
21 too much. I caught it before I did it, and then I did again.

22 CHAIRMAN HANSON: Shall we rephrase that to the first  
23 report shall be due July 31 for the period ending June 30, 2008?  
24 Yes? No.

25 COMMISSIONER JOHNSON: I like the way it's written. I



1 would just change July 31 to June 30.

2 CHAIRMAN HANSON: It has to say when the report is  
3 due. Oh, I see. You have another sentence then following that  
4 that states that the report shall be filed within 31 days.

5 All right. That looks good. Any concerns?  
6 Commissioner Kolbeck? We will change that to June 30.

7 Item 9 -- excuse me. Did you have something?

8 COMMISSIONER KOLBECK: I'm just mulling that over in  
9 my head whether to say fully operational with product or  
10 something. I imagine the interpretation is -- once the project  
11 is running on its own feet, I guess fully operational, I can  
12 live with that.

13 CHAIRMAN HANSON: Item number 9, until construction of  
14 the project is completed Keystone's public liaison officer shall  
15 report quarterly to the Commission on the status of the project  
16 from his or her independent vantage point. The report shall  
17 detail problems encountered and complaints received for the  
18 period of three years following completion of construction.

19 Keystone's public liaison officer shall report to the  
20 Commission annually regarding postconstruction landowner and  
21 other complaints, the status of road repair and reconstruction  
22 and land and crop restoration and any problems or issues  
23 occurring during the course of the year.

24 Concerns on item 9?

25 Condition 10, as soon as practicable, following the

1 issuance of the permit, Keystone shall commence a program of  
2 contacts with state, county, and municipal emergency response,  
3 law enforcement, and highway, road, and other infrastructure  
4 management agencies serving the project area in order to educate  
5 such agencies concerning the planned construction schedule and  
6 the measures that such agencies should begin taking to prepare  
7 for construction impacts and the commencement of project  
8 operations.

9 Any concerns on Condition 10?

10 COMMISSIONER KOLBECK: I guess one concern is that the  
11 financial burden lays on Keystone to get this done, not the  
12 local counties or emergency municipal responses.

13 Does that sound reasonable?

14 CHAIRMAN HANSON: I was trying to figure out how to  
15 phrase that and whether or not it was -- trying to figure out  
16 whether it was already included.

17 COMMISSIONER KOLBECK: Commence at its expense a  
18 program of contacts with state, county.

19 CHAIRMAN HANSON: I don't have a problem with that.  
20 Any concern?

21 COMMISSIONER JOHNSON: Well, I don't think it probably  
22 hurts to include it. Although from a practical standpoint I  
23 don't think Keystone has the ability to bill. It probably has  
24 the ability, but I don't think -- well, let's include it. It  
25 certainly isn't counterproductive.

1           COMMISSIONER KOLBECK: Well, and I guess my -- I guess  
2 my rationale for that thinking is if they're going to put on a  
3 seminar, is it the local fire department's responsibility to get  
4 the building and stuff like that? I would think that that would  
5 be Keystone's burden.

6           COMMISSIONER JOHNSON: Well, and I'm probably reading  
7 way too much -- this is not legislation so what little I know  
8 about statutory construction probably isn't helpful here. But  
9 it's sort of presumed this is all Keystone's expense. If we put  
10 it in one place, does that mean to imply that the  
11 preconstruction conference or the reports filing with the  
12 Commission wouldn't be on their own dime? But I wonder if  
13 putting it in only once isn't the right way to go.

14           COMMISSIONER KOLBECK: Well, and that was my concern.  
15 I assumed that it was too, and in my mind I got to thinking that  
16 we want to make sure it doesn't fall on those programs. I  
17 guess, Mr. Smith, I'll turn to you.

18           MR. SMITH: I guess, you know, I don't know.

19           COMMISSIONER KOLBECK: It says Keystone shall commence  
20 a program. So I would assume --

21           MR. SMITH: Right. I think we're really talking -- as  
22 long as we're talking meetings, et cetera, we're really talking  
23 minimal expense. I guess my thought, you know, on it, just my  
24 own mind, is when we're talking contacts with people my  
25 assumption was that this would be more a deal of you go to the

1 local fire department, you go to the local county officials, and  
2 physically go there and just begin -- and that's probably  
3 already begun is my understanding. But that this process be  
4 undertaken as soon as possible and just really make sure that  
5 local governments, et cetera, are geared up at the time this  
6 whole thing starts to roll here.

7 COMMISSIONER KOLBECK: Okay. Thank you.

8 MR. SMITH: I don't know that -- honestly, I don't  
9 know that there would be an enormous amount of expense  
10 associated with this in my view, but you guys can -- certainly  
11 you're the Commissioners.

12 COMMISSIONER KOLBECK: It just kind of tripped in my  
13 mind, and as soon as Commissioner Johnson stated that, I agree  
14 with him.

15 CHAIRMAN HANSON: Item 11, Keystone shall conduct a  
16 preconstruction conference prior to the commencement of  
17 construction to ensure that Keystone fully understands the  
18 conditions set forth in this Order. At a minimum the conference  
19 shall include a Keystone representative, Keystone's construction  
20 supervisor, and Commission staff.

21 Any concerns with Condition 11?

22 Condition 12, once known, Keystone shall inform the  
23 Commission of the date construction will commence, report to the  
24 Commission on the date construction is started, and keep the  
25 Commission updated on construction activities as provided in

1 Condition 7.

2 Any concerns on item 12?

3 Under Conditions Regarding Construction, item 13,  
4 except as otherwise provided in the conditions of this Order and  
5 Permit, Keystone shall comply with all mitigation measures set  
6 forth in the Construction Mitigation and Reclamation Plan, as  
7 set forth in Exhibit TC 1A as modified in the Final  
8 Environmental Impact Statement record of decision.

9 Any concerns with item 13?

10 Item 14, Keystone shall incorporate environmental  
11 inspectors into the Construction Mitigation and Reclamation Plan  
12 and obtain follow-up information reports from such inspections  
13 upon the completion of each construction spread to help ensure  
14 compliance with this Order and Permit and all other applicable  
15 laws and rules.

16 Are there any concerns with item 14?

17 Condition 15, during the course of the hearing  
18 Keystone submitted TC 28, a construction agreement it executes  
19 with all affected landowners. The construction agreement  
20 includes a landowner option regarding trenching and topsoil  
21 removal methods.

22 Keystone shall provide landowners with an explanation  
23 regarding these options and shall follow the landowners'  
24 selected preference as documented on the construction agreement.  
25 At a minimum, however, Keystone shall separate topsoil from

1 subsoil in agricultural areas, including shelter belts in  
2 agricultural areas and grasslands as provided in Keystone's  
3 Construction Mitigation and Reclamation Plan. Keystone shall  
4 utilize slope breakers to prevent erosion at a 2 to 4 percent  
5 gradient rather than Keystone's proposed 2 to 8 percent  
6 gradient.

7 Keystone's cleanup and reclamation efforts shall  
8 commence immediately following backfill operations. Except for  
9 where practicably infeasible, final grading topsoil replacement  
10 and installation of permanent erosion control structures shall  
11 be completed in nonresidential areas within 20 days after  
12 backfilling the trench and within 10 days in residential areas.  
13 In the event seasonal or other weather conditions prevent  
14 compliance with the time frames, temporary erosion controls  
15 shall be maintained until conditions allow completion of cleanup  
16 and reclamation.

17 Any comments on item 15, Condition 15? This appears  
18 to be -- at one juncture we had 60 some conditions. This  
19 appears to be one that brought in several of them. Appreciate  
20 your accomplishing that.

21 Condition 16, Keystone shall cover open bodied dump  
22 trucks carrying sand or soil while on paved roads and cover open  
23 bodied dump trucks carrying gravel or other materials that have  
24 the potential to be expelled onto other vehicles or persons  
25 while on public roads.

1 Any concerns with item 16?

2 Condition 17, herbicides or pesticides shall not be  
3 used in or within 100 feet of a water body except as allowed by  
4 the landowner and appropriate land management or state agency.

5 Concerns with 17?

6 Condition 18, rock excavation from the trench may be  
7 used to backfill a trench only to the top of the existing  
8 bedrock profile. All other rock shall be considered  
9 construction debris.

10 Any concerns over Condition 18?

11 Condition 19, mulch shall be applied on all slopes  
12 concurrent with or immediately after seeding where necessary to  
13 stabilize the soil surface and to reduce wind and water erosion.

14 Keystone shall implement staff's recommendations  
15 regarding liquid mulch binders and specifications for mulch use  
16 set forth in Staff Exhibit 7.

17 Any concerns with Condition 19?

18 Condition 20, erosion control matting fabric shall be  
19 installed on water body banks at the time of final bank  
20 re-contouring, unless riprap or other stabilization methods are  
21 employed in accordance with federal, state, and local permits or  
22 approvals.

23 Any concerns with Condition 20?

24 Condition 21, if trees are to be removed that have  
25 commercial or other value to affected landowners, Keystone shall

1 compensate the landowner for the fair market value of the trees  
2 to be cleared and/or allow the landowner the right to retain  
3 ownership of the felled trees. The environmental inspection in  
4 Condition 14 shall include forested lands.

5 Any concerns over Condition 21?

6 COMMISSIONER JOHNSON: Yeah. Mr. Chairman, we've had  
7 compensation a few places, but this is the one it stands out  
8 most clearly to me. You know, fair market value determined by  
9 whom? Is the only recourse that a landowner has -- if they  
10 disagree with the fair market value set by TransCanada, is their  
11 only recourse a court of law?

12 CHAIRMAN HANSON: I believe so, but we have attorneys  
13 here that can --

14 MR. SMITH: You know, I guess if you wanted to  
15 undertake some role in that yourself, you know, you probably  
16 could do so here.

17 COMMISSIONER JOHNSON: Well, "want" is an interesting  
18 word.

19 MR. SMITH: Well, if that's what you think is  
20 appropriate. We heard a dispute this morning about -- I guess  
21 not strictly speaking compensation but about easement and  
22 related issues. And we heard it. I don't know that we're going  
23 to get down to determining what compensation may be due.

24 But sometimes the Commission play a beneficial role in  
25 working in -- in allowing things to work out without that. And



1 usually -- I mean, quite frankly, the odds of timber value being  
2 worthy of a lawsuit is probably not that great in South Dakota.  
3 But, you know --

4 COMMISSIONER JOHNSON: Well, Mr. Smith, there are at  
5 least dozens and dozens of trees across much of -- no. I just  
6 wonder about -- and if it doesn't make sense, if this is going  
7 to be legally troublesome, that's fine. But I wonder if we  
8 don't put in before initiating court action, you know, the  
9 parties shall contact the Commission in an attempt to arbitrate.

10 I mean, I'm a little reticent to have us get involved  
11 in private disputes over, you know, compensation. I just also  
12 know there is the potential of a lot of landowners who feel like  
13 they're not getting a good deal but don't really want to hire an  
14 attorney.

15 COMMISSIONER KOLBECK: I guess my comment would be  
16 maybe they could come to the Commission and we will find someone  
17 to determine fair market value if it went to that. If they feel  
18 they're being mistreated, they come to us, and we can maybe  
19 designate a third party to determine market value of those trees  
20 instead of us doing it ourselves.

21 CHAIRMAN HANSON: I am going to guess that this is  
22 going to be a small claims court matter, that there won't be  
23 times in which there will be significant amounts. And there is  
24 already a process in place county by county for that purpose,  
25 and I personally would think that we'd want to allow that to

1 function as opposed to bringing it before us and acting in some  
2 capacity.

3           There's some confusion already with eminent domain and  
4 where it starts and ends, and I would prefer we don't confuse  
5 that.

6           COMMISSIONER JOHNSON: Well, and I think you both make  
7 very good points. You know, Mr. Rislov also suggested since  
8 this is a Commission Order, perhaps the typical complaint  
9 process we already have might be utilized or somebody who felt  
10 like they didn't have another recourse.

11           I don't feel like the wording of this condition  
12 probably needs to be changed so thanks.

13           CHAIRMAN HANSON: 22, unless a wetland is actively  
14 cultivated or rotated cropland or unless non-cohesive soil  
15 conditions require utilization of greater width, the width of  
16 the construction of right of way shall be limited to 75 feet or  
17 less in standard wetlands.

18           Any concern with item 22?

19           Probably shouldn't ask this. I guess I won't. I  
20 think that there were a number of issues as we went through this  
21 process on the feet, whether it should be 85 or 75 and such, and  
22 if everyone's agreeing to 75 at this juncture, I'll allow it to  
23 pass without disagreement. 75?

24           23, unless a wetland is actively cultivated or rotated  
25 cropland, extra work areas shall be located at least 50 feet

1 away from wetland boundaries except where site-specific  
2 conditions render a 50-foot setback infeasible.

3 Any concerns with item 23?

4 Condition 24, vegetation clearing shall be limited  
5 between extra work areas and the edge of the wetland to the  
6 construction right of way.

7 Any concerns?

8 A question on -- we didn't get to extra work areas.  
9 Do we define that? Is that necessary, Mr. Smith, to define  
10 that?

11 MR. SMITH: I don't think so. What that indicates is  
12 areas for the storing of materials, equipment, that is outside  
13 of the normal construction right of way.

14 CHAIRMAN HANSON: Okay. Thank you. Any concerns on  
15 item 24? Excuse me. Did you have one?

16 COMMISSIONER KOLBECK: No.

17 CHAIRMAN HANSON: Condition 25, wetland boundaries and  
18 buffers shall be clearly marked in the field with signs and/or  
19 highly visible flagging until construction-related ground  
20 disturbing activities are complete.

21 Any questions on 25?

22 Condition 26, extra work areas near water bodies shall  
23 be located at least 50 feet from the water's edge except where  
24 the adjacent upland consists of actively cultivated or rotated  
25 cropland or other disturbed land or where site-specific

1 conditions render a 50-foot setback infeasible. Clearing of  
2 vegetation between extra work space areas and the water's edge  
3 shall be limited to the construction right of way.

4 Concerns on 26?

5 Condition 27, in the water body areas, work area  
6 boundaries and buffers shall be clearly marked in the field with  
7 signs and/or highly visible flagging until construction-related  
8 ground disturbing activities are complete.

9 Questions? Concerns?

10 Condition 28, spoil from minor and intermediate water  
11 body crossings and upland soil from major waterway crossings  
12 shall be placed in the construction right of way at least  
13 10 feet from the water's edge or in additional extra work areas,  
14 except that in-stream spoil from streams greater than 30 feet in  
15 width may be temporarily stored in-stream when stream flow  
16 conditions warrant such treatment.

17 Any concerns on 28?

18 Condition 29, vegetation maintenance adjacent to water  
19 bodies shall be conducted in such manner to allow repairing and  
20 strip at least 25 feet wide as measured from the water body's  
21 mean high water mark to permanently re-vegetate with native  
22 plant species across the entire construction right of way.

23 Any concerns on 29?

24 Condition 30, the width of the clear cuts through any  
25 windbreaks and shelter belts shall be limited to 50 feet or

1 less. The width of clear cuts through extended lengths of  
2 wooded areas shall be limited to 85 feet or less.

3 Any concerns with item 30?

4 Condition 31, Keystone shall follow all of staff's  
5 recommendations regarding road protection and bonding. Such  
6 recommendations include:

7 A, Keystone shall coordinate road closures with state  
8 and local governments and emergency responders.

9 B, Keystone shall implement a regular program of road  
10 maintenance and repair through the active construction period to  
11 keep paved and gravel roads in an acceptable condition for  
12 residents and the general public.

13 C, after construction Keystone shall repair and  
14 restore any deterioration caused by construction traffic such  
15 that the roads are returned to at least their preconstruction  
16 condition.

17 D, Keystone shall use appropriate preventative  
18 measures as needed to prevent damage to paved roads and to  
19 remove excess soil or mud from such roadways.

20 E, pursuant to SDCL 49-41B-38, Keystone shall obtain  
21 and file with the Commission a bond in the amount of \$3 million  
22 in 2008 and \$12 million in 2009 to ensure that any damage beyond  
23 normal wear to public roads, highways, bridges, or other related  
24 facilities will be adequately compensated. Such bonds shall  
25 name the Commission as obligee in favor of, and for the benefit

1 of such townships, counties, or other governmental  
2 entities whose property is crossed by the project. Each bond  
3 shall remain in effect until released by the Commission, which  
4 release shall not be unreasonably denied following completion of  
5 the construction and repair period.

6 Are there any concerns with Condition 31?

7 COMMISSIONER KOLBECK: I just have one question. How  
8 are we going to get this information to -- obviously public  
9 highways and bridges would be the state. But these township  
10 people, are we going to send any -- and counties, are we going  
11 to send anything to the local township board and the county  
12 superintendent to make sure they're aware of this?

13 Is that an obligation we should maybe put on Keystone?  
14 Actually they have to speak to all of them already, don't they?

15 MR. SMITH: Yeah. We've provided for that, and we've  
16 provided for -- you know, I think we've provided for fairly  
17 continuous updates. If you want a more specific reference in  
18 here --

19 COMMISSIONER KOLBECK: Yeah. I think I kind of talked  
20 myself out of the question because I know they have to require  
21 the permits to go under the road in the first place. I just  
22 want to make sure that these county and township boards  
23 understand that there is this bond in place.

24 MR. SMITH: I will -- you know, if you want something  
25 in there, I'll sure put it in there.

1           COMMISSIONER KOLBECK: I guess other Commissioner  
2 suggestions on that, to require them to send out a letter or any  
3 type of notification that this exists?

4           COMMISSIONER JOHNSON: Commissioner Kolbeck, I think  
5 you're right in their meetings that they have to have with the  
6 local highway and road officials I think that will probably be  
7 sufficient.

8           COMMISSIONER KOLBECK: Or maybe mention that they have  
9 to mention this bond when they do acquire the permit?

10          MR. SMITH: If you want, I could just add a sentence  
11 in there.

12          COMMISSIONER KOLBECK: On receipt of their permit they  
13 need to mention --

14          MR. SMITH: Local governmental, including county and  
15 township officials, shall be advised of the existence of the  
16 bond.

17          COMMISSIONER KOLBECK: I would like that.

18          CHAIRMAN HANSON: I think that's reasonable for us to  
19 have them provide that information and make it clear.

20          MR. SMITH: I'll do that.

21          COMMISSIONER KOLBECK: Thank you.

22          CHAIRMAN HANSON: Condition 32, due to the nature of  
23 residential property, Keystone shall implement the following  
24 protections in addition to those set forth in its Construction  
25 Mitigation Reclamation Plan in areas where a project passes

1 within 500 feet of a residence:

2 A, to the extent feasible, Keystone shall coordinate  
3 construction work schedules with affected residential landowners  
4 prior to the start of construction in the area of the  
5 residences.

6 Keystone shall maintain access to all residences at  
7 all times, except for periods when it is infeasible to do so or  
8 except as otherwise agreed between Keystone and the occupant.  
9 Such periods shall be restricted to the minimum duration  
10 possible and shall be coordinated with affected residential  
11 landowners and occupants to the extent possible.

12 C, Keystone shall install temporary safety fencing  
13 when reasonably requested by the landowner or occupant to  
14 control access and minimize hazards associated with an open  
15 trench and heavy equipment in a residential area.

16 D, Keystone shall notify affected residents in advance  
17 of any schedule disruption of utilities and limit the duration  
18 of such disruption.

19 E, Keystone shall repair any damage to property that  
20 results from construction activities.

21 F, Keystone shall restore all areas disturbed by  
22 construction to preconstruction condition.

23 Are there any questions, concerns on Condition 32?

24 COMMISSIONER JOHNSON: I think with regard to F, I  
25 seem to recall a discussion during the tail end of our formal



1 hearing TransCanada, I mean, wanted to make sure that they had  
2 the flexibility to -- if it was better than, that they were in  
3 compliance. I can't imagine anybody complaining about having a  
4 road better than it was, but does F need to allow that  
5 flexibility? From a practical matter I'm not sure it matters.

6 MR. SMITH: Do you want me to just add in the words  
7 "at least or better"?

8 CHAIRMAN HANSON: At least is fine. Any further  
9 concerns with Condition 32?

10 Condition 33, Keystone shall coordinate project  
11 activities with the South Dakota State Fair Administration to  
12 make best use of fair resources for traditional users as well as  
13 construction workers.

14 Any concerns with 33?

15 Condition 34, construction must be suspended when  
16 weather conditions are such that construction activities will  
17 cause irreparable damage unless adequate protection measures  
18 approved by the Commission are taken.

19 Concerns?

20 COMMISSIONER KOLBECK: I would assume that this  
21 provision is if there's too much water, they're making too many  
22 ruts, that's what this condition is about, Mr. Smith?

23 MR. SMITH: I think so. And as we saw in an earlier  
24 condition, you know, when we're dealing with, for example,  
25 stream crossings, you know, in certain flow conditions, for

1 example, and I think we used a qualitative as opposed to  
2 quantitative concern but, you know, the definition of spoil  
3 in-stream when there are flow conditions that are going to  
4 result in excess turbidity is not a prudent thing to do.

5 And I think we're talking about the same thing here,  
6 yes. Or runoff. Excessive runoff or other damage could be  
7 reasonably expected to occur.

8 COMMISSIONER JOHNSON: Thank you. And I can think of  
9 at least one other instance where weather would be -- well,  
10 there was a line of questioning by one of the Interveners  
11 regarding the fusion bond epoxy application during conditions  
12 that were quite moist, and precautions can be taken but at some  
13 point you probably shouldn't apply the FBE in the field anymore.  
14 So that's one more that occurs to me.

15 CHAIRMAN HANSON: Any other concerns with item 34?

16 MR. SMITH: Can I just ask, is there anything you feel  
17 that needs to be added to this specifically or --

18 COMMISSIONER KOLBECK: No. I was just making a  
19 question in general to make sure that this is going the way I  
20 want it -- I thought it did. I didn't want to misunderstand  
21 it.

22 MR. SMITH: Okay. Thank you.

23 CHAIRMAN HANSON: Condition 35, reclamation and  
24 cleanup along the right of way must be continuous and  
25 coordinated with ongoing construction.

1 Any concerns?

2 Item 36, all preexisting roads and lanes used during  
3 construction must be restored to a condition that will  
4 accommodate their previous use, and areas used as temporary  
5 roads during construction must be restored to their original  
6 condition.

7 Concerns?

8 Condition 37 --

9 MR. SMITH: May I just -- again, I shouldn't be  
10 probably asking the question because I put this together largely  
11 from -- a lot of this is staff's recommended conditions, but one  
12 thing that occurred to me there, might there be circumstances  
13 where local Government or whatever would not want temporary  
14 roads if there are any?

15 I don't know if there will be, but if there are if  
16 they want them maintained, ought we put in an option here for  
17 the relevant local governments to opt to have those be less  
18 replaced rather than removed.

19 CHAIRMAN HANSON: Sure. Add something at the end  
20 unless otherwise agreed to -- or how would you phrase that?

21 MR. SMITH: Well, something to the affect except as  
22 otherwise requested or agreed to by the applicable local  
23 governmental entity.

24 CHAIRMAN HANSON: Or words to that effect?

25 MR. SMITH: Right.

1           CHAIRMAN HANSON: Any concerns with that?

2           Seeing none, Condition 37, Keystone shall prior to any  
3 construction file with the Commission a list identifying private  
4 and new access roads that will be used or required during  
5 construction and file a description of methods used by Keystone  
6 to reclaim those access roads.

7           Concerns?

8           Condition 38, in the event the winter season delays  
9 successful completion of decompaction, topsoil replacement, or  
10 seeding until the following spring, Keystone shall prepare and  
11 obtain a winterization plan. The Commission and affected  
12 landowners and/or governmental units shall be notified.

13          Any concerns?

14                           (Discussion off the record)

15          CHAIRMAN HANSON: The next section deals with  
16 operations, detection, and response conditions.

17          Item 39, Keystone shall construct and operate the  
18 pipeline in the manner described in the application and at the  
19 hearing, including the Keystone's exhibits, and in accordance  
20 with the conditions of this permit, the PHMSA Special Permit and  
21 the conditions of this Order and the construction permit granted  
22 herein.

23          Are there any concerns with Condition 39?

24          Condition 40, Keystone shall require compliance by its  
25 shippers with its crude oil specifications in order to minimize

1 the potential for internal corrosion.

2 Any concerns with Condition 40?

3 41, Keystone's obligation for reclamation and  
4 maintenance of the right of way shall continue throughout the  
5 life of the pipeline.

6 Are there any concerns with 41?

7 Condition 42, in accordance with 49 C.F.R. 195,  
8 Keystone shall continue to evaluate and perform assessment  
9 activities regarding high consequence areas. Prior to Keystone  
10 commencing operation all unusually sensitive areas as defined by  
11 49 C.F.R. 195.6 that may exist whether currently marked on DOT's  
12 HCA maps or not should be identified and added to the Emergency  
13 Response Plan and Integrity Management Plan. In its continuing  
14 assessment and evaluation of environmentally sensitive and high  
15 consequence areas Keystone shall seek out and consider local  
16 knowledge, including the knowledge of the South Dakota  
17 Geological Survey and the Department of Game, Fish, and Parks  
18 and local landowners and Government officials.

19 Are there concerns over 42?

20 43, the evidence in the record demonstrates that in  
21 some reaches of the project in northern Marshall County, the  
22 Middle James Aquifer is present at or very near ground surface  
23 and is not overlain by sufficient impermeable material to  
24 isolate it from surficial infiltration of contaminants.

25 The evidence also demonstrates that this aquifer

1 serves as the water source for at least one significant public  
2 water supply system and several domestic farm wells. Keystone  
3 shall identify the Middle James Aquifer area in Marshall County  
4 as a hydrologically sensitive area in its Integrity Management  
5 and Emergency Management Plans, except in areas where Keystone  
6 can demonstrate that the aquifer is overlain by sufficient  
7 unoxidized glacial till or other impermeable material to isolate  
8 it from infiltration of contaminants in the event of a release  
9 from the project.

10 Keystone shall similarly treat any other surficial  
11 aquifers of which it becomes aware during construction and  
12 continuing route evaluation.

13 Are there any concerns with item 43? 43, of course,  
14 deals with an extremely important part of this whole process and  
15 something that a lot of the folks were quite concerned with.

16 Item 44, prior to putting the Keystone Pipeline into  
17 operation, Keystone shall prepare, file with PHMSA, and  
18 implement an Emergency Response Plan as required under 49 C.F.R.  
19 194 and a manual of written procedures for conducting normal  
20 operations and maintenance activities and handling abnormal  
21 operations and emergencies as required under 49 C.F.R. 195.402.

22 Keystone shall also prepare and implement a written  
23 integrity management program in the manner and at such time as  
24 required under 49 C.F.R. 195.452. At such time as Keystone  
25 files its Emergency Response Plan and Integrity Management Plan

1 with PHMSA or any other state or federal agency, it shall also  
2 file such documents with the Commission. The Commission's  
3 confidential filing rules found at ARSD 20:10:01:41 may be  
4 invoked by Keystone with respect to such filings to the same  
5 extent as with all other filings at the Commission.

6           If the information is filed as confidential, any  
7 person desiring access to such materials or the Commission staff  
8 or the Commission may invoke the procedures of ARSD 20:10:01:41  
9 through 20:10:01:43 to determine whether such information is  
10 entitled to confidential treatment and what protective  
11 provisions are appropriate for limited release of information  
12 found to be entitled to confidential treatment.

13           Are there any concerns with 44?

14           Condition 45, to facilitate periodic pipeline leak  
15 surveys during operation of facilities in wetland areas a  
16 corridor centered on the pipeline and up to 15 feet wide shall  
17 be maintained in a herbaceous state. Trees within 15 feet of  
18 the pipeline greater than 15 feet in height may be selectively  
19 cut and removed from the permanent right of way.

20           Are there any concerns with 45?

21           Condition 46, to facilitate periodic pipeline leak  
22 surveys in repairing areas, a corridor centered on the pipeline  
23 and up to 10 feet wide shall be maintained in an herbaceous  
24 state.

25           Are there any concerns with 46?

1           Condition 47, at the hearing Keystone's expert  
2 witness, Brian Thomas, testified that there do not currently  
3 exist any viable and cost-effective remote sensing or monitoring  
4 systems that could either be installed along the pipeline,  
5 particularly at sensitive locations, or employed in aerial  
6 and/or ground surveillance activities to detect volatile organic  
7 compounds or other indicators of potential leaks.

8           The Commission believes that such technologies when  
9 available could increase the effectiveness of visual  
10 surveillance and augment the SCADA system and mass balance and  
11 other leak detection methods that Keystone will employ. The  
12 Commission accordingly directs Keystone to keep abreast of the  
13 latest developments in such technologies and report to the  
14 Commission on or before April 1, 2010 on the status of  
15 innovation in such pipeline leak detection equipment and  
16 methods.

17           Are there concerns on 47? I have one. If anyone  
18 has --

19           I know in at least one of the communications that  
20 there was additional time frames on this that we required -- I  
21 believe it was this one, that we required Keystone to not only  
22 report to us on or before April 1, 2010 but in subsequent years.

23           MR. SMITH: Again, obviously I've been in a tough  
24 place here because I've got three of you to try to please, and  
25 I -- I've tried to do that and at least there were opinions that



1 having ongoing endless reporting is probably both  
2 counterproductive and not fair. And I think the idea here was  
3 to just have the company take a -- I think this is perhaps  
4 somewhat similar to -- I think it's somewhat analogous to the  
5 kind of condition we put on Big Stone regarding innovations in  
6 CO2 capture, et cetera.

7 But I think the thought here was that to require that  
8 forever may not be reasonable. But that's for the Commissioners  
9 to talk about and decide.

10 CHAIRMAN HANSON: I appreciate that. Thank you. I  
11 also appreciate the difficult situation you were in serving  
12 three masters, so to speak, and having to select and pick -- as  
13 we've been going through this I'm sure all of us are noticing  
14 different areas where you've had to make that decision.

15 I would ask the fellow Commissioners on this. My only  
16 concern with this is that we provide a situation where they have  
17 to report to us by April 1, 2010, but then they can report,  
18 gosh, it's not available yet and a year later, two years, three  
19 years later when it is available what about then? What do we do  
20 to be certain? Have we given up our hammer, so to speak?

21 I would like to see -- I don't know that they need to  
22 report to us annually, but when that technology is available I  
23 would like to see them implement it.

24 How do we get to that point?

25 COMMISSIONER JOHNSON: Well, and here was my concern,

1 Mr. Chairman. The Commission -- I mean, this is a siting  
2 docket, and we don't have authority over, you know, interstate  
3 crude oil pipelines and their safety mechanisms. And I think  
4 there's a lot of case law that bears that out.

5 And so I was increasingly uncomfortable with a  
6 reporting requirement in perpetuity with regard to what  
7 technologies they had in place for leak detection. And it seems  
8 to me if we did it on this slice of leak detection, could we do  
9 it for any technologies with leak detection?

10 And at some point -- you know, and I don't know if  
11 it's 10 years from now or 50 years from now. At some point we  
12 get a little far away from what the purpose I think of the  
13 siting process was.

14 CHAIRMAN HANSON: Those are all very good points. I  
15 guess I'm going to lean on the side of -- I know it may be  
16 cumbersome. It gives us an opportunity to meet with them. I  
17 don't think it's really a huge challenge for them to stop by and  
18 chat with us a little bit.

19 It is so important. And I don't mean by any of my  
20 statements to reflect on how you feel about this because I know  
21 that mitigation and remediation -- I know that you're very  
22 concerned with where we go from here and make sure that we  
23 safeguard the waters of the state. I just -- not withstanding  
24 what you said and the strength of your argument, which I have to  
25 agree with, I'm being arbitrary and capricious in wanting to see

1 it take place anyway.

2 COMMISSIONER JOHNSON: Well, and to me, you know, this  
3 is technology that doesn't currently exist. To me what about  
4 breakthroughs in SCADA technology or what about breakthroughs  
5 in, you know, satellite communication links with SCADA systems?  
6 There are just dozens of ways that leak detection mechanisms can  
7 improve over the course of the next 100 years, and I wasn't  
8 clear as to why we should single out this one.

9 CHAIRMAN HANSON: Well, I would be comfortable in  
10 saying that the Commission accordingly directs Keystone to keep  
11 abreast of the latest developments in technology -- in such  
12 technologies and report to the Commission on or before April 1,  
13 2010 and in all subsequent years on the status of innovation in  
14 pipeline leak detection equipment and methods until such time as  
15 the Commission -- well, I wouldn't phrase it quite like that,  
16 but similarly along that line.

17 COMMISSIONER JOHNSON: Is there any difference between  
18 doing that and requiring that they keep us up to date on  
19 technologies with regard to, you know, the remediation of oil  
20 spills? I just think there are so many different pieces to this  
21 puzzle that the Federal Government -- that both law and case law  
22 has made it clear that this is their sole responsibility.

23 And I'm not saying that I'm happy about that. But I'm  
24 just nervous about putting in conditions that I feel like are  
25 not appropriate given the jurisdiction of this Commission. And,

1 again, I think it's -- I'm not sure why we would single out, you  
2 know, leak detection systems as opposed to, you know, other  
3 technologies and other parts of operating a pipeline.

4 CHAIRMAN HANSON: Sure. For me I can only speak for  
5 my own feelings towards it, and that is that the detection --  
6 this process is the detection process. It's to prevent the need  
7 for going in and having to remediate a challenge. I just think  
8 that detection is so important that we need to make sure that we  
9 have the absolute highest capability to accomplish that.

10 COMMISSIONER JOHNSON: Would you be -- would it grant  
11 you greater comfort, Mr. Chairman, if we had reporting perhaps,  
12 you know, every third year until some date certain, say 2016 or  
13 2019?

14 Again, I'm going to have a real hard time I think  
15 getting -- I want to reach consensus on this but I think  
16 reporting in perpetuity is a big burden and if we did this for  
17 every energy conversion or transmission facility, we'd have  
18 dozens upon dozens. We just haven't done this in the past, and  
19 I don't know if this is the right precedence, at least in  
20 perpetuity.

21 CHAIRMAN HANSON: Absolutely. I think that was, in  
22 fact, one of the positions in one of the sentences that existed  
23 there, that in approximately every three years there would be  
24 reporting up to a certain date, and that certainly would be  
25 acceptable.

1           COMMISSIONER JOHNSON: Perhaps, you know, for such  
2 triennial reports and so concluding in 2019.

3           CHAIRMAN HANSON: Technology has been advancing rather  
4 rapidly. I think that that would be -- that would work out for  
5 me. I'm comfortable with that.

6           Commissioner Kolbeck.

7           COMMISSIONER KOLBECK: I guess with that, the  
8 triennial report, I'm very comfortable with that. Could we put  
9 something that could be continued if needed by the Commission in  
10 2019 for review after the Commission -- because it will be  
11 different -- I mean, different Commission, different day,  
12 different time. And maybe then things may have changed. That's  
13 my only worry about going to 2019.

14           COMMISSIONER JOHNSON: I mean, as such, Commissioner,  
15 I just view that as a reporting requirement in perpetuity. I  
16 mean, it's principally the same thing. It's saying the  
17 Commission has the authority to do that. I do think if we look  
18 out to a date certain -- of course, it doesn't really matter  
19 what I think. It matters what two of us think.

20           To me if it's date certain, this is tied to specific  
21 concerns regarding this siting docket -- I mean, this thing  
22 could be around for decades, and if we feel like the Federal  
23 Government's current jurisdiction over safety and leak detection  
24 and operation of a pipeline isn't sufficient, then I'm excited  
25 to go -- I'd like to get that changed. I'd work with you. But

1 this thing perpetuity is tough.

2 COMMISSIONER KOLBECK: I guess my feeling is leak  
3 detection is the one thing that could lead to our involvement.  
4 If there was a release, leak detection is the one thing I think  
5 that would prevent that. And I guess that's why that would be  
6 my --

7 COMMISSIONER JOHNSON: Well --

8 COMMISSIONER KOLBECK: Put it higher on my list of  
9 concerns.

10 COMMISSIONER JOHNSON: Sorry to interrupt. My  
11 apologies. This Commission wouldn't be involved with any  
12 release.

13 COMMISSIONER KOLBECK: That's very true.

14 CHAIRMAN HANSON: Involvement I guess is a relative  
15 term to an extent there. Obviously we wouldn't be out working  
16 with the process, but I think it would affect the Commission to  
17 an extent.

18 COMMISSIONER JOHNSON: Well, and I just am looking  
19 historically like with the Williams release. If that was sited  
20 by the Commission, you know, I'm not aware that they had any  
21 involvement, formal. And I think your point is well taken. You  
22 know, involvement can come in a lot of different ways, but I  
23 don't think there was any formal involvement in that  
24 remediation.

25 CHAIRMAN HANSON: I would be comfortable with

1 reporting every three years at the Commission's request. And  
2 then that way if they came up with new technologies, then the  
3 Commission at that juncture three years, six years from now,  
4 12 years from now, would just simply at that point abandon its  
5 request.

6 COMMISSIONER JOHNSON: Well, and maybe that's not a  
7 bad way, you know, to say report to the Commission on or before  
8 April 1, 2010 and then thereafter as specifically requested by  
9 the Commission, no more often than every three years.

10 Because I do think at some point future commissions --  
11 I don't know. That's not -- that's more acceptable to me than a  
12 hard and fast perpetual reporting requirement certainly.

13 CHAIRMAN HANSON: That would eliminate some of the  
14 challenges I think on both sides. It allows for the reporting.  
15 At the same time could eliminate that from a standpoint of every  
16 three -- the perpetuity. Is there a challenge --

17 COMMISSIONER KOLBECK: I would agree with that, that I  
18 think that's a good compromise.

19 COMMISSIONER JOHNSON: I've done it again. I'm sorry.  
20 Go ahead. I thought you were done.

21 CHAIRMAN HANSON: We're going to give him a ruler.

22 COMMISSIONER JOHNSON: To me one of the reasons I've  
23 exhibited some resistance to this is this is really -- these end  
24 up being, you know -- and I don't know whether it's five years  
25 or 10 years or 100 years after the fact -- paperwork exercises,

1 not only for the Applicant but for the Commission staff.

2 And, again, we have dozens of big transmission  
3 projects and energy conversion facilities and wind farms. And  
4 at some point if we required them all to do this but we don't  
5 have the authority say in the year 2040 to require that they  
6 instill such remote detection devices and so we've got the  
7 information which presumably we could have found on the Internet  
8 in the first place, we made them put it together but we don't  
9 have any ability to force them to do anything.

10 So that's part of my concern, that the Commission  
11 doesn't have any statutory authority to do anything with the  
12 reports once they're with us.

13 CHAIRMAN HANSON: I understand that fully. The  
14 situation is it brings them before us and gives us the  
15 opportunity to query why they're not using it and it's a public  
16 forum and it gives the opportunity for news media and for  
17 everyone to question the veracity at that point.

18 And I think that knowing a company that's especially  
19 the size of Keystone that they would want to implement  
20 especially -- I would assume they'll want to implement anyway  
21 but this will ensure us that they are, in fact, accomplishing  
22 that.

23 COMMISSIONER JOHNSON: And it's -- and it's probably  
24 worth noting for us we've got 6,000 miles of hydrocarbon  
25 pipelines in this state, and we haven't -- you know, this



1 Commission hasn't seen a need for that information from those  
2 facilities. We've never asked for it. They wouldn't have to  
3 give it to us if we did. Again, to me I believe that we've got  
4 environmental regulators in place or looking at this. And at  
5 some point this is going to be outside of the Commission's  
6 bailiwick.

7 CHAIRMAN HANSON: So we're at a juncture where we've  
8 discussed a potential of having a sentence regarding -- and  
9 we'll allow our wordsmith, Mr. Smith, to figure that out. On  
10 the reporting every three years at the Commission's request,  
11 something along that line.

12 Is there agreement on that sentence?

13 COMMISSIONER JOHNSON: If there was a way that the --  
14 you know, and I don't want to for next week then the Commission  
15 to say now we've got a request for you to do this on an ongoing  
16 basis. If we could somehow tailor the wording very narrowly so,  
17 you know, the Commission would have to ask it for each instance  
18 as opposed to just a blanket request.

19 Because, again, I'm opposed to sort of a blanket  
20 request or a blanket requirement.

21 CHAIRMAN HANSON: That's why I stated reporting every  
22 three years at the Commission's request. So if the Commission  
23 doesn't request it, then it wouldn't be required.

24 COMMISSIONER JOHNSON: And as long as the request  
25 is -- that wording is tailored to mean a request for a single

1 report and not a series of reports, I'm fine with that.

2 CHAIRMAN HANSON: I'm not following what the series of  
3 reports would be.

4 COMMISSIONER JOHNSON: If the Commission were to send  
5 a letter to the applicant in the year 2010 saying we request  
6 that you file reports every three years for the next 40 years,  
7 that is a request for reports no more often than every three  
8 years. But I do not believe that that request would be  
9 appropriate or within the authority of the Commission to make.

10 CHAIRMAN HANSON: And it's certainly not within the  
11 intent of this -- the sentence that I was suggesting.

12 Commissioner Kolbeck, I saw you reaching there.

13 COMMISSIONER KOLBECK: No. I just -- I think that  
14 the -- I think that we need to stay away from -- as Commissioner  
15 Johnson said -- I'm trying to rationalize on both sides. I'd  
16 like to see -- if there's things that they can do and they're  
17 not doing, as I think Commission Hanson is saying -- I  
18 understand Commission Johnson is saying that if even they could  
19 do something, we can't enforce them to do it, and it's a  
20 request. I would just like to see at a Commission's request  
21 they must come in and tell us. I would like to stay away from  
22 years or anything just to give us an option of a request.

23 CHAIRMAN HANSON: My concern there would be -- of  
24 course, I don't think a Commission would do this, but who knows.  
25 You know, they report and six months later some other folks get

1 elected and they decide they want to hear a report or there's  
2 pressure put on the Commission from a particular area of the  
3 state and they decide, well, we better have another one and it  
4 becomes a political challenge there. I do agree that it should  
5 be at least somewhere in the three-year vicinity.

6 COMMISSIONER JOHNSON: The Commission accordingly  
7 directs Keystone to keep abreast of the latest of developments  
8 and technologies and shall report to the Commission on the  
9 status of innovations of such pipeline leak detection equipment  
10 methods when requested by the Commission no more often than  
11 every three years.

12 And I would take out the reference to 2010 because to  
13 me if we're just saying that when we ask for the information  
14 they've got to provide it, that makes more sense than  
15 formalizing some sort of a report schedule.

16 CHAIRMAN HANSON: I don't mean to be cantankerous here  
17 or anything. I like the April 1, 2010 being in. The sentence  
18 that you added at the end of that, that we presently have, is  
19 certainly acceptable and in the spirit of what we're talking  
20 about. Would you repeat that.

21 I had said reporting every three years at the  
22 Commission's request. And I think you were saying something  
23 reporting not more than every three years at the Commission's  
24 request.

25 COMMISSIONER JOHNSON: Could we -- yeah. And I don't

1 mind putting April 1, 2010 back in. Could we have a sunset  
2 date? To me that's just a lot more defensible from a legal  
3 standpoint. And I don't have anything specific in mind, but to  
4 me we need to I think try to tie it to this particular  
5 proceeding rather than some ongoing newfound jurisdiction  
6 that --

7 CHAIRMAN HANSON: Excuse me. Commissioner Kolbeck,  
8 did you have -- you had expressed concern about that earlier.

9 COMMISSIONER KOLBECK: No. Actually I understand what  
10 Commissioner Johnson's getting at. We need to make sure that it  
11 pertains to us and our Commission as we sit here today and not  
12 future commissions and future authority that's not granted.

13 I liked his sentence that he had stated, and I think  
14 that if we mesh the two, the not to exceed every three years I  
15 think is a good idea but to leave April 1, 2010. In that would  
16 be the first one, and then we continue on from there with  
17 Commissioner Johnson's sentence at the end.

18 COMMISSIONER JOHNSON: Did you have a sunset date,  
19 Commissioner Kolbeck, that would be acceptable to you?

20 COMMISSIONER KOLBECK: Technology's moving very  
21 rapidly but -- gosh, I would think that nothing sooner than 2015  
22 would be my sunset date, which would give us --

23 CHAIRMAN HANSON: That's only two reports.

24 COMMISSIONER KOLBECK: That's why I would like the  
25 Commission request because a different time, a different day.

1 It's like, well, these reports are a burden to the company,  
2 they're a burden to the Commission. Maybe the information isn't  
3 coming out. I guess it's hard to predict if technology's going  
4 to meet or exceed standards how quickly that will happen.

5 COMMISSIONER JOHNSON: And I think one concern I have  
6 about this request is that, I mean, we won't know. We do have  
7 engineers on staff. We do understand siting dockets. We do  
8 have that in place.

9 I mean, one of the issues about receiving these  
10 reports is are we going to hire a consultant to review them for  
11 accuracy? Are we going to know exactly what the technology  
12 means or what's been omitted?

13 To me, I am increasingly disliking this condition.  
14 Now I understand and respect the fact that you all see some  
15 value. To me if we can put a sunset date on it, it becomes at  
16 least acceptable.

17 COMMISSIONER KOLBECK: I guess I viewed them as kind  
18 of our -- similar to our gas hedging meetings that we have or  
19 reports or some of the electrical companies that we give -- why  
20 would you consider them to be different than that?

21 COMMISSIONER JOHNSON: Because we have broad authority  
22 over the regulation of the operation of those companies. And  
23 this company it's -- economically it's regulated by FERC.  
24 Environmentally it's regulated by a slough of departments and  
25 agencies. And we don't have a grant of authority to do this in

1 my opinion.

2 COMMISSIONER KOLBECK: Well, and that actually poses  
3 more doubt that the FERC rulings are what's going to make them  
4 change their SCADA system if they have to come into compliance  
5 with their PHMSA rulings.

6 CHAIRMAN HANSON: May I offer a sentence that would  
7 read reporting not more than every three years thereafter at the  
8 Commission's request until the year 2022? Can that get us off  
9 the dime?

10 COMMISSIONER JOHNSON: Can we peel it back to sometime  
11 before 2022? That is a long time down the road. I mean --

12 CHAIRMAN HANSON: Well, the reporting at 2010 it only  
13 gives -- if it's reporting every three years, that's only four  
14 reports.

15 COMMISSIONER JOHNSON: Well, it would also be four  
16 reports at 2019. I mean, it's not much of a practical  
17 difference. I mean, I just --

18 CHAIRMAN HANSON: That's three reports.

19 COMMISSIONER JOHNSON: 10, 13, 16, and 19.

20 CHAIRMAN HANSON: Excuse me. And three years later at  
21 2022. Excuse me. I was adding the 2010 and --

22 COMMISSIONER JOHNSON: Oh, sure.

23 CHAIRMAN HANSON: Is that a problem if --

24 COMMISSIONER KOLBECK: It's not a problem with me.

25 COMMISSIONER JOHNSON: 2019 or -- I mean, if we're

1 looking for four reports, 2019 gets us there, and for me the  
2 sticker shock is less if we don't go into other decade. And I  
3 know that's arbitrary and absurd, but this is going to be a lot  
4 to swallow as it is.

5 CHAIRMAN HANSON: Well, I'm going for infinity here.

6 COMMISSIONER KOLBECK: Just don't start talking in  
7 your auctioneer language and really lose me. No. 2019 is okay  
8 with me. Four reports I think is not a huge burden. Yet I  
9 think it's a good amount of information. I can get off the dime  
10 for 2019.

11 CHAIRMAN HANSON: All right. We're going to go with a  
12 sentence that will read -- and I don't mind if Mr. Smith  
13 polishes it up, but the spirit of the sentence will state  
14 reporting not more than every three years thereafter at the  
15 Commission's request until the year 2019.

16 Do we have agreement? Excellent.

17 The next section deals with environmental conditions.  
18 Condition 48, except to the extent waived by the owner or lessee  
19 in writing or to the extent the noise levels already exceed such  
20 standard, the noise levels associated with Keystone's pump  
21 station and other noise-producing facilities will not exceed the  
22 L10 55 decibel A standard at the nearest occupied existing  
23 residence, office, hotel, motel, or nonindustrial business not  
24 owned by Keystone. The point of measurement will be within  
25 100 feet of the residence or business in the direction of the

1 pump station facility. Postconstruction operational noise  
2 assessments will be completed by an independent third-party  
3 noise consultant approved by the Commission to show compliance  
4 with the noise level at each pump station or other noise  
5 producing facility. The noise assessments will be performed in  
6 accordance with the applicable American National Standards  
7 Institute standards. The results of the assessments will be  
8 filed with the Commission.

9           In the event the noise level exceeds the limit set  
10 forth in this condition at any pump station or other noise  
11 producing facility, Keystone shall promptly implement noise  
12 mitigation measures to bring the facility into compliance with  
13 the limits set forth in this condition and shall report to the  
14 Commission concerning the measures taken and the results of the  
15 post mitigation assessments demonstrating that the noise limits  
16 have been met.

17           Are there any concerns with Condition 48?

18           COMMISSIONER JOHNSON: Is 55 decibels what we set for  
19 Groton 2 and Groton 1 for our other hearings?

20           MR. SMITH: Yes. This language was taken essentially  
21 from the Groton and Groton 2 permits.

22           COMMISSIONER JOHNSON: Thank you.

23           CHAIRMAN HANSON: Condition 49, at the request of any  
24 landowner or public water supply system that offers to provide  
25 the necessary access to Keystone over his or her property or



1 easements to perform the necessary work Keystone shall replace  
2 at no cost to such landowner or public water supply system any  
3 polyethylene water piping located within 500 feet of the  
4 project. Keystone shall not be required to replace that portion  
5 of any piping that passes through or under a basement wall or  
6 other wall of a home or other structure.

7           At least 45 days prior to commencing construction  
8 Keystone shall publish a notice in at least one newspaper of  
9 general circulation in each county through which the project  
10 will be constructed advising landowners and public water supply  
11 systems of this condition.

12           Are there any concerns on 49?

13           COMMISSIONER JOHNSON: And I don't have any concerns.  
14 The reason that I think this one is important is I think there  
15 is adequate evidence in the record that PVC pipe is not  
16 particularly susceptible to being permeated by hydrocarbon  
17 products. That evidence doesn't really exist to the same extent  
18 in the record with regard to polyethylene pipe. And I think  
19 with this we can ensure that landowners within the proximity of  
20 the pipeline will be better protected than they otherwise would  
21 have been.

22           CHAIRMAN HANSON: Any concerns?

23           Condition 50, if during construction Keystone or its  
24 agents discover what may be an archaeological resource, cultural  
25 resource, paleontological resource, historical resource, or

1 gravesite, Keystone or its agents shall immediately cease work  
2 at that portion of the site and notify the Commission and the  
3 State Historic Preservation Office. If the SHPO determines a  
4 protectable resource is present, Keystone shall develop a plan  
5 that is acceptable to the SHPO -- I'm sure there's a way to  
6 pronounce that acronym. SHPO? -- to salvage, avoid, or protect  
7 the archaeological resource. If such a plan will require a  
8 different route than that approved by the Commission, Keystone  
9 shall obtain Commission approval for the new route before  
10 proceeding with any further construction.

11 Are there any concerns on Condition 50?

12 Condition 51, Keystone shall promptly report to the  
13 Commission the presence in the permit area of any critical  
14 habitat of threatened or endangered species that Keystone  
15 becomes aware of and that were not previously reported to the  
16 Commission.

17 Any concerns on 51?

18 52, Keystone shall keep a record of drain tile system  
19 information throughout construction. Location information shall  
20 be collected using a sub-meter accuracy global positioning  
21 system where available or where not available by accurately  
22 documenting the pipeline station numbers of each exposed drain  
23 tile. Keystone shall maintain the drain tile location  
24 information and tile specifications and incorporate it into its  
25 Emergency Response and Integrity Management Plans where drains

1 might be expected to serve as contaminant conduits in the event  
2 of a release.

3 Are there any concerns over 52?

4 Liability for Damage is the next section, the last  
5 section.

6 Item 53, Keystone shall repair or replace all property  
7 removed or damaged during all phases of construction and  
8 operation of the proposed transmission facility, including but  
9 not limited to all fences, gates, and irrigation of drainage  
10 systems. Keystone shall compensate the owners for damages or  
11 losses that cannot be fully remedied by repair or replacement,  
12 such as lost productivity in crop and livestock losses.

13 Are there any concerns with item 53?

14 Condition 54, in the event that a person's well is  
15 contaminated as a result of the pipeline operation, Keystone  
16 shall pay all costs associated with finding and providing a  
17 permanent water supply that is at least of similar quality and  
18 quantity and any other related damages, including but not  
19 limited to any consequences, medical or otherwise, related to  
20 water contamination.

21 Are there any concerns over 54?

22 55, any damage that occurs as a result of soil  
23 disturbance on a person's property shall be paid for by  
24 Keystone.

25 Any concerns on 55?

1           56, no person will be held responsible for a pipeline  
2 leak that occurs as a result of his or her normal farming  
3 practices over the top of or near the pipeline.

4           Any concerns on 56?

5           57, Keystone shall pay commercially -- excuse me.  
6 Keystone shall pay commercially reasonable costs and indemnify  
7 and hold the landowner harmless for any loss, damage, claim, or  
8 action resulting from Keystone's use of the easement except to  
9 the extent such loss, damage, claim, or action results from the  
10 gross negligence or willful misconduct of the landowner or its  
11 agents.

12           Any concerns on Condition 57?

13           Hearing none, those are the conditions. I believe  
14 we've in spirit agreed with all of them. We will entertain a  
15 motion to approve them at this time and then have any discussion  
16 that anyone wishes to pursue.

17           COMMISSIONER JOHNSON: Mr. Chairman, I would move to  
18 amend the main motion with the inclusion of the discussed  
19 conditions.

20           CHAIRMAN HANSON: There is a motion to approve the  
21 Conditions 1 through 57 inclusive and amend the motion with  
22 that.

23           Do you wish to discuss that motion at this time, or do  
24 you wish to discuss the main motion after we've voted on this  
25 portion?

1           COMMISSIONER JOHNSON: To me, Mr. Chairman, just  
2 attaching these onto the main motion and discussing the whole  
3 enchilada probably makes sense.

4           CHAIRMAN HANSON: Commissioner Kolbeck, is that  
5 satisfactory?

6           COMMISSIONER KOLBECK: Absolutely.

7           CHAIRMAN HANSON: Then we have a motion to amend the  
8 main motion by adding conditions 1 through 57 inclusive.

9           Commissioner Johnson.

10          COMMISSIONER JOHNSON: Aye.

11          CHAIRMAN HANSON: Commissioner Kolbeck.

12          COMMISSIONER KOLBECK: Aye.

13          CHAIRMAN HANSON: Hanson votes aye. The motion  
14 carries. The main motion is amended to include the conditions  
15 as we have agreed to here.

16                 Ladies and gentlemen, we're back to the main motion as  
17 amended, and I certainly have things that I would like to say,  
18 but I would love to hear what my compatriots have to say at this  
19 time. So I'll allow them to chat.

20          COMMISSIONER JOHNSON: Do you want to go first or  
21 second? Your choice?

22          COMMISSIONER KOLBECK: I'll go first. I guess even  
23 though the pipeline actually has 51 tons of force to puncture  
24 the pipeline, which is an extraordinary amount, our Order  
25 specifies that normal farming activity will not be held

1 responsible.

2           The Order also states that the company must provide  
3 \$12 million in bonding to fix roads until we release that bond.  
4 I feel very good about that.

5           Our State DENR has testified that they can handle a  
6 project of this size, if something was to happen. They  
7 testified they handle hundreds of hydrocarbon releases a year.  
8 And they made first contact with the company -- and that their  
9 first contact with this company was in February of '05, contrary  
10 to the theory that this was pushed through.

11           Federal law states any release must be cleaned up at  
12 the company's expense, and the company has testified that they  
13 will, if something happens.

14           Unfortunately, most concerns about the pipeline were  
15 due to the route, and we do not have jurisdiction over the  
16 route. A lot of concerns were about mistreatment or  
17 misunderstandings with land agents concerning easements and  
18 again we do not approve of such behavior but we do not have  
19 jurisdiction over those matters.

20           Some concerns which upset me the most were caused by  
21 gross misstatements of fact in the case. Anyone who tries to  
22 put fear in landowners' minds or hearts with misrepresentation  
23 of facts has done a misservice to their neighbors in my opinion.

24           Multiple divisions of South Dakota State Government  
25 have been involved for just over three years. County

1 Commissioners were informed, legislators were informed, and  
2 numerous officials. The PUC, however, has been working on their  
3 part for 11 months.

4 I feel we did do a very thorough and detailed analysis  
5 of the pipeline and utilized our legislative grant of authority  
6 to the maximum I thought possible. I feel we made extraordinary  
7 steps to keep the process open.

8 I understand the fear, and I understand the love of  
9 the land. And I understand that no one knows what will happen  
10 in 50, 10, or 5 years from now. The pipeline may be carrying  
11 ethanol or soy diesel. We don't know. I don't know. But I do  
12 feel comfortable with the conditions we have put on this  
13 pipeline, and I feel it will be held to a safe and accountable  
14 manner.

15 So on the initial motion I vote aye.

16 COMMISSIONER JOHNSON: I'll make some comments too if  
17 it's acceptable, Mr. Chairman.

18 CHAIRMAN HANSON: Yes, please.

19 COMMISSIONER JOHNSON: This Commission by law must,  
20 you know, base its decision on facts and evidence. And I think  
21 that fact has been very helpful to me to focus on the facts  
22 rather than the rhetoric. Because several major concerns I had  
23 at the beginning of the process and they are concerns that I  
24 think have been shared by many people across the state, those  
25 concerns were alleviated a great deal as a part of this process.

1           There are three key facts in the record that I think  
2 I'd like to bring out quickly. First the pipelines are safe and  
3 getting safer. In the last five years the number of spills on  
4 crude oil pipelines has decreased 57 percent, and for 28 years  
5 TransCanada has been applying fusion bond epoxy along with  
6 cathodic protection to their pipelines. In that time the record  
7 shows that none of those pipelines have had a leak.

8           Secondly, that oil pipelines are usually small. The  
9 data indicates that 90 percent of the crude oil spills are less  
10 than 300 barrels. And, in fact, since 2002 the median spill  
11 size in this country has been three barrels.

12           And the final fact that I'd like to bring out is that  
13 South Dakota has dealt with spills successfully. As  
14 Commissioner Kolbeck noted, our State DENR has experience with  
15 this. They have a database with more than 11,000 hazardous  
16 material releases that have happened in this state. And they  
17 testified that no permanent natural resource damage has ever  
18 occurred as a part of a hazardous material spill in this state.

19           The conditions I think that we have just approved to  
20 the main motion are good ones, and I think they're reasonable.  
21 There are no doubt some that would have preferred that the  
22 Commission go a lot further, that we require that the Applicant  
23 double the thickness of the pipe or that we require that the  
24 Applicant pay a particular dollar amount for easements.

25           And I think ultimately it comes down to whether you



1 want a Commission that follows the law or a Commission that  
2 plays political games. And we could have ignored the law to  
3 score political points. And if that would have been the case,  
4 our decision would have been overturned by a higher court, and  
5 then we could have made the court out to be the bad guy.

6           Instead, I am proud that I think it appears like this  
7 Commission will choose to make a difficult but what I believe is  
8 the proper decision.

9           In its reply brief one of the opponents of this  
10 pipeline referenced the Titanic and the collapse of the World  
11 Trade Center buildings. See, they essentially said, manmade  
12 things fail so this pipeline should not be approved.

13           And, actually, I took a very different lesson from  
14 their example. Because despite the tragedies of the World Trade  
15 Center and despite the tragedy of the Titanic, we haven't quit  
16 building ships, and we haven't quit building buildings. We  
17 haven't been paralyzed by the problems of the past. And instead  
18 we have learned from those tragedies, and we have made  
19 improvements through technologies and safeguards and standards  
20 and those improvements have made everybody's life a little bit  
21 better. And that's exactly what has happened and what is  
22 happening in the pipeline industry, and the numbers prove it.

23           I will close by noting that some will attempt to boil  
24 down the literally hundreds of exhibits and 20,000 pages of  
25 testimony and comment into 30 second sound bites that don't

1 accurately reflect the record. That's inevitable but  
2 unfortunate. This was a long process for a reason. There are  
3 57 conditions attached to the main motion for a reason. There  
4 was a lot of work to get done, and I think there were a lot of  
5 questions answered.

6 I believe this project has met its burden under state  
7 law, and as a result I will be voting yes on the pending motion.

8 And, Mr. Chairman, Commissioner Kolbeck, and everyone  
9 else involved in the process, thank you for your countless hours  
10 of hard work.

11 CHAIRMAN HANSON: One of the opportunities of going  
12 last is that I can be more succinct because I can cross things  
13 off as you folks articulated your thoughts.

14 I would like to make an announcement first of all. To  
15 facilitate the news media because of interest shown in this  
16 docket after the Commission votes on the conditions and the  
17 final motion, we will take a 30-minute recess. We will then  
18 return to this room to answer news media questions.

19 There's a little bit of a challenge in that from the  
20 standpoint, of course, that there are a number of news personnel  
21 who are not here who would certainly like to ask questions who  
22 are listening over the web cast.

23 The web cast will continue. And those news persons  
24 who are interested in asking questions but who are not present  
25 may obtain a telephone bridge by calling the PUC office at

1 773-3201 and asking for Leah Mohr. There are a limited number  
2 of bridges available so if you would like to -- gosh, I  
3 shouldn't have said that before I make my comments. That way  
4 all the news media doesn't pay attention to what I'm saying.  
5 But I appreciate the statements, the eloquent statements, by my  
6 fellow two Commissioners, and I do very much appreciate working  
7 with both of them.

8           This has been not necessarily an arduous task by any  
9 means, but it's been a task. And when I think of all of the  
10 work that we have had to do as Commissioners and then I reflect  
11 on the amount of work that staff had to do in order to provide  
12 that information, go through the process, I really truly  
13 appreciate the tremendous amount of work that staff went  
14 through.

15           With every docket this Commission wants to get it  
16 right. We want to be absolutely certain that we make the right  
17 decision when it comes to our dockets. We're especially  
18 concerned that we get it right the first time, and this -- one  
19 of the big reasons is that for this docket especially is that  
20 this docket may very well serve as a precedent to future  
21 pipelines.

22           Certainly future commissions are not totally strapped  
23 by any means to what position this Commission takes. However,  
24 this Commission and in working through this process does in  
25 essence set somewhat of a precedent for future pipelines. And

1 with the proposed refinery there will be no doubt pipelines  
2 associated with that. So it's especially true that we need to  
3 get this prepared the right way the first time.

4 Mitigation and remediation are of utmost concern to  
5 us. Our state's natural environment must not be unnecessarily  
6 disturbed. Our water, our air and soils are not replaceable  
7 assets, and they must be selfishly protected.

8 Eminent domain -- during the process we were contacted  
9 numerous times regarding easements and eminent domain. Frankly,  
10 it's important to us that our citizens' property rights are not  
11 trampled. At the same time we during that process expressed  
12 several times, numerous times through the news media, that we in  
13 fact as a Commission have no legal authority over eminent  
14 domain.

15 As my fellow Commissioners have stated, there's a  
16 process here that we are required by law to go through. And  
17 it's incumbent upon us to do the right thing, to follow the law,  
18 to apply the law as it should be applied. We have -- through  
19 that process there was an obfuscation that took place that -- of  
20 an attempt to create a challenge amongst the citizenry who we  
21 serve that in some way that we do in fact -- should be making  
22 decisions and stepping in into the path of the court, the legal  
23 process.

24 That was a disservice. As Commissioner Kolbeck  
25 pointed out, that was one of the disservices to the citizenry

1 because they were led to believe that we, in fact, had this  
2 authority when we, in fact, did not.

3 As I started out this -- my words on this docket I  
4 started to thank the staff people. And I would like to thank  
5 also the Applicant. I would like to thank the Interveners. I  
6 would like to thank the staff counsel that represented the  
7 citizens of South Dakota.

8 I don't know how many of you in the audience are aware  
9 but that is the way the PUC is structured. There are staff  
10 counsel, staff attorneys, who represent the citizens and who as  
11 the Commissioners do not chat back and forth between ourselves.  
12 We certainly do not discuss with them because they are a  
13 separate party to this docket. So I thank them profusely for  
14 their work.

15 I'd also like to say thank you to John Smith who --  
16 and there are others I should probably point out by name for the  
17 work that they did, but John just did a tremendous, tremendous  
18 amount of work on this, working until late in the evenings,  
19 early in the mornings many, many times, reading every document,  
20 poring through them numerous times. And we are truly indebted  
21 to him for his work.

22 I especially appreciate the citizens who are affected  
23 by this pipeline and thank them for their participation as well  
24 as we went through this process, their participation and their  
25 patience as we went through it. Because when your property's

1 being affected by any entity, it's -- it has to be a challenge.  
2 And so we sincerely appreciate their participation and patience  
3 as we went through this process.

4 If there is not anything further to state at this  
5 time, we are back to a main motion as amended.

6 Is there any further discussion on the main motion as  
7 amended?

8 If not, Commissioner Johnson.

9 COMMISSIONER JOHNSON: I vote aye.

10 CHAIRMAN HANSON: Commissioner Kolbeck.

11 COMMISSIONER KOLBECK: Aye.

12 CHAIRMAN HANSON: Commissioner Hanson votes aye. The  
13 main motion as amended carries. And we thank all of you for  
14 your participation.

15 We will be in recess until 20 minutes after. I  
16 believe that's -- has that clock been turned forward? We'll  
17 call it 25 minutes after 1 o'clock.

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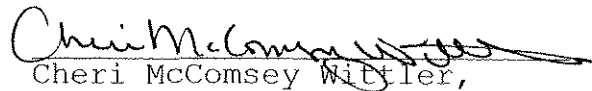
CERTIFICATE

COUNTY OF HUGHES )

I, CHERI MCCOMSEY WITTLER, a Registered Professional Reporter, Certified Realtime Reporter and Notary Public in and for the State of South Dakota:

DO HEREBY CERTIFY that as the duly-appointed shorthand reporter, I took in shorthand the proceedings had in the above-entitled matter on the 11th day of March, 2008, and that the attached is a true and correct transcription of the proceedings so taken.

Dated at Pierre, South Dakota this 31st day of March, 2008.



Cheri McComsey Wittler,  
Notary Public and  
Registered Professional Reporter  
Certified Realtime Reporter







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