

THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF SOUTH DAKOTA

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IN THE MATTER OF THE APPLICATION BY  
TRANSCANADA KEYSTONE PIPELINE, LP FOR                   HP09-001  
A PERMIT UNDER THE SOUTH DAKOTA ENERGY  
CONVERSION AND TRANSMISSION FACILITY  
ACT TO CONSTRUCT THE KEYSTONE XL PROJECT  
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Transcript of Public Input Hearing  
November 3, 2009  
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BEFORE THE PUBLIC UTILITIES COMMISSION,  
DUSTY JOHNSON, CHAIRMAN  
STEVE KOLBECK, VICE CHAIRMAN  
GARY HANSON, COMMISSIONER

COMMISSION STAFF  
John Smith  
Kara Semmler  
Greg Rislov  
Tim Binder  
Stacy Splittstoesser  
Natham Solem  
Bob Knadle  
Anissa Grambihler  
Deb Gregg

APPEARANCES

Brett M. Koenecke    appearing as co-counsel on behalf of the  
                          Applicant

Reported By Cheri McComsey Wittler, RPR, CRR

1                   CHAIRMAN JOHNSON: We just went live on the  
2 internet. It's a little bit after 6 o'clock and we're  
3 here in the State Capitol Building in Pierre and this is  
4 the final of four public input hearings that we have had  
5 on the proposed Keystone XL Pipeline.

6                   I'm sure a lot of you know that there is a  
7 tremendous amount of information on the website on that  
8 project, and that website is puc.sd.gov. The complete  
9 Application and all prefiled testimony for all parties is  
10 available on that website.

11                  I'm Dusty Johnson. Joining me up here are my  
12 colleagues, Commissioner Steve Kolbeck and Commissioner  
13 Gary Hanson. And we are the three statewide elected  
14 utility Commissioners for South Dakota. And ultimately  
15 we'll have to rule on this permit.

16                  Generally we say that the Commission has three  
17 options: We can approve the permit, we can deny the  
18 permit, or we can approve the permit with certain  
19 conditions that we feel are necessary to protect a whole  
20 slough of things: Safety, the orderly development of a  
21 region, and those things are spelled out in statute. And  
22 if you've got questions on those, we'd be happy to talk  
23 about it.

24                  Also up here in the front is Commissioner  
25 Advisor Greg Rislov. Mr. Rislov has been with the

1                   TRANSCRIPT OF PROCEEDINGS, held in the  
2 above-entitled matter, at the South Dakota State Capitol  
3 Building, 500 East Capitol Avenue, Pierre, South Dakota,  
4 on the 3rd day of November, 2009, commencing at  
5 6 o'clock p.m.

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1 Commission for quite a number of years, 30 years or so,  
2 and advises the Commission on policy matters and economic  
3 matters. We've got Commission Counsel, General Counsel  
4 John Smith. He's an attorney, and he advises us on legal  
5 issues.

6                  Also we've got a court reporter up here, and  
7 Cheri is going to be taking down everything we say  
8 tonight. So we're going to ask that when you come up to  
9 these microphones you first make sure the green light is  
10 on. And it's a pretty bright light so sometimes it looks  
11 like it's on even when it's not. So even if you think  
12 it's on, press it one time so we can be sure that mic is  
13 on so that, A, people on the internet can hear you, B, we  
14 can all hear you, and C, that we can transcribe this, we  
15 can have this entered into the official record of this  
16 proceeding.

17                  We also have the staff of the Public Utilities  
18 Commission. And whereas Mr. Rislov and Mr. Smith are  
19 really just talking to the Commissioners and advising us,  
20 the staff is a separate party to the case. They're  
21 putting on their own case, they're calling their own  
22 witnesses, they are cross-examining the Applicant's  
23 witnesses.

24                  Kara Semmler is an attorney. Tim Binder is an  
25 analyst. Stacy Splittstoesser and Nathan Solem are

1 engineers and pipeline safety experts with our staff.  
 2 And I also believe Mr. Bob Knadle is there as well.  
 3 Mr. Knadle, another analyst.  
 4 We've got Anissa Grambihler with the office  
 5 who's handling some of our AE needs. I think that is the  
 6 Commission staff in place.

7 Before we go any further, Mr. Koenecke, if you  
 8 just want to quickly introduce some of the members of  
 9 your team here.

10 MR. KOENECKE: Yes. Thank you, Commissioner.  
 11 With me tonight is Robert Jones, the vice president of  
 12 TransCanada. Steve Hicks will be TransCanada's  
 13 construction manager for the XL project. Jim White is an  
 14 Associate General Counsel of TransCanada.

15 In the back we have Paul Fuhrer who's a  
 16 construction manager for the current Keystone Project.  
 17 We've got Buster Gray here who's also in construction  
 18 management for the current project. And Sara Metcalf  
 19 who's the PUC liaison to the project.

20 CHAIRMAN JOHNSON: Great. Thanks very much.  
 21 All right. Now, you know, let's hear from you all.  
 22 We're going to allow a certain amount of informality to  
 23 reign here because I know most of you are not attorneys.  
 24 I'm not an attorney. We want to have some structure but  
 25 ultimately don't get too nervous about the legal

1 formalities. We'll try to guide you on it. If you've  
 2 got questions, feel free to ask them.

3 What we want to do is take some of the shorter  
 4 comments or questions first so that if somebody's got a  
 5 longer speech, then we don't have everybody here have to  
 6 wait for that. If you want to say your piece and hit the  
 7 road, we understand. So we'll take shorter comments  
 8 first, and we'll kind of progress through that.

9 If you've got questions or issues that need to  
 10 be addressed by TransCanada, I don't have any problem  
 11 giving them an opportunity if you've got something you  
 12 want to address right then. I also don't want to bog  
 13 down the meeting too much. I don't want to keep all you  
 14 guys here real late.

15 So what I'm going to ask is that TransCanada try  
 16 to keep their answers relatively short. And if they  
 17 can't answer your question in a few minutes, then I'm  
 18 going to ask them to hold that over toward the end of the  
 19 meeting so we can hear from as many of you who want to  
 20 hit road as possible.

21 And then obviously we're going to make sure we  
 22 get the full answer, even if it can't fit within the  
 23 3 minutes, but we're going to try to take that a little  
 24 later so we're respectful of all of you all's time.

25 Again, when you come up here we'd like to hear

1 your name, we'd like to hear your town, and we'd like you  
 2 to spell your last name so that our court reporter can  
 3 get that. We want you to speak slowly and clearly.

4 And it's amazing so many of us get up toward a  
 5 mic, and we start talking really fast. And so just try  
 6 to take a couple of deep breaths and even, you know,  
 7 professional witnesses today really got moving pretty  
 8 fast once they got in front of a mic so it makes it  
 9 easier if we can all slow down.

10 With that, I'm going to pause and see if  
 11 Mr. Rislov or Mr. Smith or my colleagues have anything  
 12 else to add.

13 With that, let's go ahead, and we can take  
 14 questions or comments.

15 Come on up. You don't have to be recognized by  
 16 me. Just go ahead and grab a mic and if we have a  
 17 fight -- if we have a fight for the mic, then we'll let  
 18 the biggest guy take it first.

19 MR. TUCKER: My name is Bev Tucker. I'm a  
 20 Haakon County resident north of Philip. The pipeline  
 21 goes through about a mile and a quarter of my place in  
 22 two different areas. I've got three concerns. I've got  
 23 written remarks I'll leave when I'm finished which will  
 24 include my name and contact information.

25 The first is peculiar to my place. The first

1 section is native prairie, and it will go through so by  
 2 definition remediation is not really possible when you're  
 3 going through native grasslands.

4 Secondly, the proposed compensation scheme that  
 5 I've heard ever since the pipeline has been announced  
 6 seems quite strange to me, the concept of surface acres  
 7 that you can take a strip 50-feet wide through a section  
 8 of land and multiply 50 feet by 5,000 feet and get  
 9 6 acres of ground.

10 And I realize this is an issue for eminent  
 11 domain and compensation. But just for the Commission's  
 12 interest, this seems like a completely strange way to  
 13 look at it. And I would just offer for people who live  
 14 in towns and have backyards, you know, would you sell off  
 15 a strip through your backyard to somebody for 20 years  
 16 for the same thing that the lot is worth? And that's the  
 17 concept that's at play here.

18 There are some other ways to look at the  
 19 compensation issue, other -- per foot. The pipeline goes  
 20 through 300 miles in South Dakota, and it's going to cost  
 21 about 900 million so it's about \$3 million a mile. It  
 22 seems to me reasonable that the landowner would get some  
 23 small but fraction of that \$3 million a mile for the  
 24 right to go through his ground.

25 That's going to be a lot bigger number than

1 6 acres at 1,000 bucks an acre or something or whatever  
2 land is worth.

3 Or the revenue from the pipeline, which is a  
4 taxable income coming to South Dakota, a fraction of that  
5 annually is another -- could be another component of  
6 compensation.

7 Last now, I hope the Commission will set some  
8 kind of safeguard mechanism, realizing that the  
9 individual landowner is one person with legal fees and  
10 the pipeline is a huge entity with for all practical  
11 purposes unlimited resources when compared to one  
12 individual landowner. So there needs to be a mechanism,  
13 a reasonable mechanism so that if there are  
14 transgressions on agreements or legitimate grievances  
15 they can be addressed reasonably.

16 Thank you.

17 CHAIRMAN JOHNSON: Boy, I don't know if anybody  
18 could have done much better than you did, Mr. Tucker.  
19 That was great. Very specific areas of concern but very  
20 succinctly. That is a great model.

21 Applicant, you know, TransCanada, you're going  
22 to need to step up. If they don't ask for an opportunity  
23 for a specific answer from you, I'm not going to give you  
24 one, but if you bark up, you know, we may give you time.  
25 But, otherwise, I'm not going to give you time every

1 time.

2 And you've got written comments, Mr. Tucker?  
3 Commissioners, any questions?

4 Rather massive oversight on my part.

5 Ms. Deb Gregg is the director of our Consumer Affairs  
6 Division. Ms. Gregg, go ahead and stand up and give a  
7 wave, if you would, back there.

8 Ms. Gregg is not part of the staff team assigned  
9 to this particular Docket, but does get very involved  
10 anytime there's a consumer complaint really about any of  
11 the areas of jurisdiction over the Commission.

12 Okay. Good. Other comments? Questions.

13 MR. LYMAN: My name is Lon Lyman, L-Y-M-A-N. My  
14 name is Lon Lyman, L-Y-M-A-N. And I live 10 miles  
15 straight north of Okaton, South Dakota up on Dry Creek.  
16 My parents and grandparents have been there 100 years.  
17 My wife's family, the Iversen family, has been in  
18 Jones County over 100 years. We're good stewards of the  
19 land. We always have been and try to be. And I have  
20 some real concerns about TransCanada.

21 One of the main ones to begin with is I don't  
22 trust them, from very definite things that they've done  
23 and told me and then changed their mind and jerked us  
24 around.

25 And mainly a lot of my concerns are

1 environmental concerns. And I'm going to ask these  
2 questions for the board, and I hope -- I don't need an  
3 answer tonight, but I hope you gentlemen will definitely  
4 consider these things.

5 We live up on Dry Creek. They have to cross  
6 Dry Creek with this pipeline. I tried to talk to them  
7 about crossing these banks because they're like the  
8 Bad River. They're 20-foot drops on both sides. I had a  
9 way figured out that they could go across there they  
10 wouldn't have to do that. They gave me their word that  
11 they would do that. They've changed it twice since.

12 I won't let them go across there. I did let  
13 their surveyors walk through there. They said they were  
14 going to go there. Well, once they got down in there  
15 they found out what it was really like. And if there  
16 were to be a leak, it would go right down Dry Creek, dump  
17 into Bad River, and be down here before you knew it.

18 Okay. My questions are, and I'll try and be  
19 brief, will the land be repaired to its original contour,  
20 and will that be maintained as this packs down? Because  
21 Dry Creek, as all creeks that run, periodically change  
22 the channels, wash trees down there, and absolutely  
23 change things around. And if they cut these banks down  
24 or however they're going to go through a 20-foot bank on  
25 both sides, I don't see how you're going to keep that the

1 way it was originally.

2 The next concern is will the topsoil when they  
3 go through there be set aside and replaced, reseeded to  
4 what grass was originally there? Because this is prairie  
5 grass. They're going through where it has never been  
6 farmed, never been touched. And in Jones County if you  
7 tear up a bunch of ground, then you get Canadian thistles  
8 like you can't believe. Very big concern of ours.

9 Another concern, is this work going to be  
10 done -- when we have a year like this when it's so wet  
11 you can't hardly drive across there with an ATV or go  
12 through there with a saddle horse, are they going to go  
13 through there then, or are they going to wait until we  
14 would go, as good stewards of the land, and not tear this  
15 up and not track it up and make ruts and so on. We have  
16 to live there. We have to be there year-round.

17 How about crossing fences? They must cross me  
18 four or five times. Are those fences going to be  
19 repaired to their original condition? Because I'm very,  
20 very -- you can ask my neighbors. I'm really tough on  
21 fences, and I want those fences right.

22 If they go through there, are they going to put  
23 in gates where they go through, or are they going to drop  
24 that fence every time they have to go through that  
25 easement? Are they going to put those gates in there, a

1 decent gate?

2 Will we as landowners have the right to use the  
3 surface of this easement in any way if it doesn't affect  
4 the pipeline? Because I've got pastures. They're going  
5 to go right through the middle of my pastures. And I've  
6 got calving pastures where the cattle will be on one side  
7 and then on the other, and are they going to fix this so  
8 that these cattle can go back and forth without having  
9 problems?

10 Are we going to be reimbursed for this grass?  
11 And are they going to put in native grass when they come  
12 back in? The grass that was there. I don't want  
13 something else. I want the native grass. Because that's  
14 what grows, and I don't have to fight Canadian thistles  
15 all the time.

16 Are we going to, as landowners, be contacted if  
17 they do go in there and spray with what herbicides  
18 they're going to use? Are we going to know what they're  
19 going to put on this ground? Because I don't agree with  
20 a lot of the stuff that we do, the chemicals that we put  
21 on our ground anymore. And I'd like to know that, what  
22 are they going to dump on there? Are they going to kill  
23 the ground? You can do that.

24 There's a lot of trees down in Dry Creek. Are  
25 we going to be compensated for moving those trees around?

1 And those trees are what holds that ground so that we  
2 don't have a -- Dry Creek is getting wider and deeper,  
3 and the trees are what's holding that soil to what we  
4 have.

5 Are they going to be responsible for any damage  
6 caused directly or indirectly by the installation,  
7 operation, and maintenance or removal of this pipeline at  
8 some time? Who's going to be responsible for that? All  
9 this maintenance. If that soil goes in the ditch and  
10 they put it in when it's wet, it's going to sink. They  
11 going to go back in there and refill those like we have  
12 to do when we put in a pipeline?

13 I'm also concerned about the length of time that  
14 this pipeline's going to be in there, how long are they  
15 going to keep it in there. And if they go and it's full  
16 of that oil and that thing leaks, then who cleans that  
17 up? I'm sure you gentlemen don't want another warped  
18 resources that they had out in Rapid City. We're still  
19 cleaning that thing up up at Lead.

20 The other thing is that I don't believe that we  
21 should be subject to a foreign government. These people  
22 are not Americans. They're Canadians. This isn't an  
23 American company. We aren't going to get anything out of  
24 this in the end. That oil will be sent someplace else.

25 This isn't really, gentlemen, any good for our

1 United States. It isn't good for the state. It isn't  
2 good for us as individuals. And I hope you fellows will  
3 really consider this before you turn them loose. Because  
4 they have not dealt fairly with us. They haven't told us  
5 the truth. And it depends on which one you talk to on  
6 which day what's going on.

7 I do thank you, gentlemen. This has been  
8 respectfully submitted. Thank you.

9 CHAIRMAN JOHNSON: Wow, Mr. Lyman. There were a  
10 lot of really important issues to tackle there. Let's  
11 pause to see Applicant, did you want to respond to any  
12 specifically? He said he didn't need any answers now  
13 but, I mean, I feel like some of these issues raised  
14 there will be some commonalities tonight. I got a list  
15 from him so if you want me to repeat them, that's fine.

16 MR. JONES: Commissioner, you and I probably  
17 have a similar list. I don't think it's reasonable for  
18 me to answer them all because some of them are very  
19 specific obviously with Mr. Lyman's property and the  
20 crossing of Dry Creek.

21 And I don't personally know the specifics with  
22 regards to that construction. But I can certainly  
23 address a number of his concerns.

24 Now excuse me, Commissioners. Do you want me to  
25 speak from here, or do you want me to speak from --

1 CHAIRMAN JOHNSON: That's fine by me.

2 MR. JONES: Okay. Good.

3 So absolutely in general let's start with  
4 original contour. The pipeline when it comes through is  
5 going to follow the original contour. We have the  
6 ability to safely bend the pipeline, and when we do that  
7 we can maintain the original contour of the land.  
8 Topsoil conservation, one of the best practices  
9 TransCanada's learned over its 50 years of experience is  
10 topsoil conservation. And there's construction  
11 techniques out there today that have certainly allowed us  
12 to improve the impact when a pipeline goes through an  
13 individual property. So topsoil conservation is  
14 absolutely critical and maintained.

15 Native prairie is a challenge. We have a lot of  
16 experience working with native prairie and we appreciate  
17 the concern with regards to noxious weeds once the  
18 pipeline's gone through and we do certainly work with the  
19 local experts to make sure that we have the proper seed  
20 mix when we go to reseed these areas.

21 The fences are all repaired to their original  
22 state. And if a landowner requests a gate, we certainly  
23 will put in a gate.

24 One of the things that occurs is that when an  
25 easement is signed and executed it really allows the

1 landowner to continue to enjoy the land before we even  
2 arrive. And so when we talk about, you know, these  
3 different issues, one of the documents that is discussed  
4 with each landowner is a Construction Mitigation  
5 Reclamation Plan. And in this plan we write down the  
6 issues with regards to fencing and livestock and such.  
7 And so those are addressed. And even how the topsoil is  
8 to be handled as well.

9 CHAIRMAN JOHNSON: And so, Mr. Jones, that would  
10 be by a property-owner-by-property-owner evaluation? You  
11 all will have a conversation with them about what they  
12 want to do with their cattle or fencing; is that right?

13 MR. JONES: That's correct. And that's why I  
14 wanted to respond generally. Because many of the issues,  
15 of course, impact each and every landowner.

16 And so there is individual needs and individual  
17 concerns for each and every landowner.

18 You know, one of the questions with regards to  
19 herbicides, so we too are very concerned with herbicides.  
20 We never use a herbicide to do noxious weeds without the  
21 permission of the landowner.

22 Trees are only knocked down for access, for  
23 safety, and for maintenance. If we are doing what they  
24 call a directional drill around a large river, typically  
25 large rivers have a lot of trees associated with them,

1 then those trees aren't impacted. But along the right of  
2 way we do have to knock down trees so we can access the  
3 pipeline visually from air parole or we need to walk it  
4 through for maintenance.

5 We are responsible for the life of the pipeline.  
6 So when asked about who's going to maintain it, if  
7 there's slumping or there's settlement, TransCanada  
8 Keystone will be responsible for the ongoing maintenance  
9 of this pipeline.

10 CHAIRMAN JOHNSON: So but very specifically the  
11 question was about who's going to pay for damage caused  
12 by you all for maintenance or operation or construction,  
13 who pays for any of that damage. I mean, is there a  
14 situation where you all would cause damage that you would  
15 not be on the hook to compensate?

16 MR. JONES: No. There was a question with  
17 regards to us being a foreign company. And that's not  
18 true. Yes, we are a Canadian company, our head office.  
19 But the easement will be signed with a U.S. company.  
20 It's an LP based in the U.S. The U.S. head office is  
21 Houston. And all the workers are going to be, you know,  
22 based here in the U.S. And certainly ongoing operating  
23 staff will live right here in South Dakota.

24 CHAIRMAN JOHNSON: Okay. Thanks, Mr. Jones, for  
25 covering so many of those answers so quickly. I'm sure

1 we did not, Mr. Lyman, get the questions answered in the  
2 kind of depth you want so let's make sure to the extent  
3 that we need to in follow-up get you the answers and if  
4 there's something they can't answer, you let us know.

5 All right. Other comments? We've had a couple  
6 of good relatively short ones. They can be longer. We  
7 just want to save those for the end.

8 CHAIRMAN JOHNSON: It kind of always looks on so  
9 I think you want to hit it one time just in case.

10 MR. SEAMANS: My name is Paul Seamans, that's  
11 S-E-A-M-A-N-S. And I live at 27893 244th Street, Draper,  
12 South Dakota.

13 Keystone XL Pipeline crosses one and a half  
14 miles of my land south of Draper. I have registered as  
15 an Intervener in the permitting process and have decided  
16 to register my concerns at tonight's meeting. I have  
17 some reservations whether my concerns will be adequately  
18 addressed in this permitting process.

19 One of my major concerns with Keystone XL is  
20 what happens after the pipeline is abandoned. If the  
21 pipeline is not removed, it will rust, sinkholes will  
22 develop, and it will be a hazard to vehicles, livestock,  
23 and especially to people.

24 Although TransCanada has stated they will follow  
25 the laws in place at the time of abandonment, I would

1 rather see a fund established by TransCanada to pay for  
2 removal of the pipeline when the time comes.

3 I would ask that you as Commissioners require  
4 establishment of a bond for the removal of the pipeline  
5 as a condition to this permit.

6 I also have a problem with TransCanada wanting a  
7 perpetual easement. I don't feel I should commit all  
8 future owners of my land to an easement with TransCanada  
9 or their successors. The easement should only be in  
10 force until such time as the pipeline is abandoned.

11 Perhaps the South Dakota Legislature should establish a  
12 maximum easement length for pipelines of 99 years rather  
13 than allowing perpetual easements.

14 On the subject of taxes to be paid by  
15 TransCanada to the counties, I feel TransCanada has been  
16 less than forthcoming. They are promising the affected  
17 counties large sums of tax money but will not reveal how  
18 they arrived at these figures. Even the South Dakota  
19 Department of Revenue is reduced to making assumptions in  
20 order to figure out the amount of taxes paid by  
21 TransCanada.

22 Being interested in history, I would like to see  
23 a walking cultural resource survey conducted by an  
24 independent party and paid for by TransCanada. This  
25 would be to mark and protect old trails, homesteads, and

1 Native American sites. Also there should be a walking  
2 survey done by qualified biologists as I have seen  
3 somewhat rare burring beetles along the pipeline route  
4 south of Draper.

5 In summary, I would like to express my  
6 appreciation to the PUC for this opportunity to make this  
7 statement. Thank you.

8 CHAIRMAN JOHNSON: Another great one,  
9 Mr. Seamans. Any questions?

10 Is there anything you needed addressed tonight,  
11 sir? Mr. Seamans, anything particularly you wanted  
12 TransCanada to respond to tonight?

13 MR. SEAMANS: No.

14 CHAIRMAN JOHNSON: Okay. Then we will note your  
15 concerns, absolutely.

16 COMMISSIONER KOLBECK: Paul, you did ask about  
17 historical monuments and such like that. We do have  
18 experts that are going to testify before us tomorrow  
19 about that. SHPO's involved. That's the State  
20 Historical Preservation, Paige Hoskins. She does that.  
21 And then there are other agencies in State Government  
22 like DENR that are going to testify about issues like  
23 that.

24 MR. SEAMANS: That's good to hear. Thank you.

25 MS. BRINK: Thank you. My name is Chandelle

1 Brink. I am from Boxelder here in Rapid City. My  
2 husband and I are parents of four young children. I was  
3 raised on a ranch where a portion of the pipeline will  
4 pass through. I am also on the board of directors for  
5 Breadroot, which is a natural foods cooperative in  
6 Rapid City.

7 Our goal at Breadroot is to source as much  
8 locally grown food as possible. Our goal is to stay  
9 within 100 miles if possible. We are very, very  
10 concerned about the quality of our food source and the  
11 water that is, of course, available to the growers. With  
12 over 1,000 active members at Breadroot we show with our  
13 dollars how important and how upset we would be if our  
14 local food source was contaminated because of a leak or  
15 other problem with this pipeline.

16 I do understand you are not responsible for  
17 overseeing the pipe thickness, but it is a grave concern  
18 of ours so please, please take into consideration before  
19 you approve any type of a waiver or something for this  
20 project to continue about that thickness.

21 I am very passionate about the health and  
22 wellness of my family and of all citizens of  
23 South Dakota. And elected officials please, please  
24 exercise the stewardship of your responsibility to  
25 protect my family's land from encroachment of the

1 contaminants and have our precious resources. Thank you.

2 CHAIRMAN JOHNSON: Very articulate, Ms. Brink.

3 Thanks. Anything from the Commissioners?

4 Other comments.

5 COMMISSIONER KOLBECK: Chandelle, you had  
6 mentioned a waiver that's on the PHMSA side, I think. We  
7 wouldn't actually issue a waiver. We would either say  
8 yes, no, or add things, conditions. We wouldn't waive  
9 any conditions. So just to clarify that.

10 MR. JONES: Yes. Just on that, as you know,  
11 that in order to request a design factor change with  
12 PHMSA, which by the way is the federal regulator for  
13 pipelines in the Department of Transportation, we have to  
14 go well above and beyond the current regulations and  
15 codes. And PHMSA has only authorized such a waiver to  
16 show that the pipeline would even be safer under this  
17 condition than otherwise is the standard code.

18 So I just want folks to realize that it actually  
19 improves the safety of the pipeline.

20 CHAIRMAN JOHNSON: Just as one additional point  
21 of clarification, that waiver has not been granted for  
22 this Keystone XL Pipeline yet. It is granted by the  
23 Federal Government if it's to be granted, but they have  
24 not finished their review yet. So it's worth noting.  
25 Your points are very well taken. Thank you.

1 COMMISSIONER KOLBECK: Just one more point. The  
2 waivers, the difference in size of the waiver is  
3 one-twentieth of an inch. That's the size.

4 MR. SMITH: Okay. Other questions? Or comments  
5 or concerns?

6 MR. HARTER: My name is John Harter,  
7 H-A-R-T-E-R.

8 CHAIRMAN JOHNSON: Mr. Harter, I wonder if we've  
9 got your mic on there.

10 MR. HARTER: It's bright green. Before coming  
11 here I was given a list of what the PUC could not make  
12 decisions on. I think our state leaders are passing  
13 their responsibility that they're elected to do. The PUC  
14 has the power to say no to the pipeline if federal laws  
15 and regulations won't protect our state.

16 Our state legislators and Governor have put our  
17 water supply in danger to my opinion twice already on a  
18 large scale with Keystone I Pipeline and underground lab  
19 in the gold mine in the Black Hills.

20 We're better to have a dump site out of the  
21 public's eye than in an old gold mine. In my opinion  
22 this could happen, accidental or on purpose.

23 Now you want to screw up the center part of the  
24 state. TransCanada's own expert witness testified that  
25 Tripp County with the High Plains Aquifer is highly

1 permeable. Where the pipeline crosses my land the City  
2 of Colome's water aquifer comes out into my land  
3 according to a map shown to me by TransCanada's survey  
4 crew, land agent, and engineer.

5 The distance between the pipeline and the  
6 aquifer is less than an estimated 100 yards. I did not  
7 measure this when they were out setting the points of  
8 this survey.

9 The distance between the aquifer and my dugout  
10 is one-eighth mile or less. The pipeline will be less  
11 than 200 foot from my new well. The pipeline cannot be  
12 placed across my land without endangering an important  
13 water resource.

14 You need to get stuck in your brains that our  
15 water source is more valuable than any amount of oil for  
16 any reason. It would make common sense not to endanger  
17 our water resources all over our state.

18 Other important points on my land besides a high  
19 water table are the land is highly erodible blow sand,  
20 and reclamation is a key issue. I don't see how it can  
21 be pastured until it is completely sodded back in. I  
22 estimate myself that this will take a minimum of a  
23 two- to five-year time line.

24 And that's because if you run the cattle on the  
25 area where the pipeline's been dug in, it's going to

1 break the grass down and cause it to start blowing.

2 There are cultural and historic resources that  
3 need to be inventoried by an independent expert parties  
4 have avoided or addressed. I have found numerous pieces  
5 of petrified wood and a tooth from an animal too large to  
6 be from a cow. Also my mother told me that arrowheads  
7 were found in the area. This is when she was a child.

8 It would make common sense to make sure that the  
9 first pipeline, Keystone I, works safely before cramming  
10 another pipeline down landowner taxpayers' throats.  
11 Especially in light of recent press reports that call  
12 into question Keystone XL's construction schedule.

13 When any citizen of our state wants to use  
14 property of another owner they have to pay rent for every  
15 day it's used. TransCanada, a foreign-owned company, is  
16 being treated better than our own citizens because they  
17 do not have to meet this standard.

18 It would make common sense to treat our  
19 landowner, taxpaying citizens equally if not better than  
20 a foreign-owned company backed by more foreign money. We  
21 are looking at returning an estimated \$55 million in  
22 contractor excise tax money to TransCanada. Has anyone  
23 been smart enough to figure out what this money would do  
24 if it was returned to South Dakota citizens? This is  
25 simple math. 55 million times a seven times turnover

1 factor equals \$385 dollars. \$385 million times 4 percent  
2 sales tax equals \$15,400,000 in revenue to our state.

3 Take care of our South Dakota citizens. It does pay.  
4 TransCanada cannot even get their lies straight  
5 between their own expert witnesses. They have to bring  
6 in an expert witness to refute what other expert  
7 witnesses say when it does not fit their agenda.

8 For example, Heidi Tillquist testified that the  
9 chance of a pipeline incident is no more than one spill  
10 in 7,400 years in a given mile and if a spill did occur  
11 it would be three barrels or less.

12 The Pipeline Hazardous Materials Safety  
13 Administration reported for the years 1986 through 2007  
14 that the average oil spill in the U.S. was 902 barrels.  
15 That's one spill. 902 barrels or 37,868 gallons of oil  
16 per spill. This is a long ways from three barrels.

17 A friend told me an old saying. It says figures  
18 lie and liars figure. I found this to be quite fitting  
19 to this example. It would be nice to -- it would be a  
20 nice change to see our government bodies look after its  
21 fellow taxpaying citizens instead of crawling in bed with  
22 big money oil companies or just big money companies to  
23 boot.

24 We have the power to make change in our federal  
25 laws and to keep our state safe, healthy, and beautiful.

1 Alls we have to do is say no until the changes are made  
2 that benefit all and not just the rich and greedy.

3 The responsibility -- this is the responsibility  
4 that you, the PUC, were elected to do by the people.

5 I'd like you to remember this as you're making  
6 your decisions on this oil line. Do unto others as you  
7 would have them do unto you, Luke 6:31. Thank you.

8 CHAIRMAN JOHNSON: Thanks, Mr. Harter. I  
9 just -- we're going to allow some leeway in people  
10 talking about things like taxation policies and  
11 easements. We've allowed that because I don't want to  
12 make them nervous about what they can legally talk about.  
13 But try to keep it tight because we don't set tax policy,  
14 I know you know that. We'll just ask you to keep your  
15 comments -- we'll take them into consideration because I  
16 think it's all part of the big economic and environmental  
17 picture we're trying to look at.

18 I do think we can make our points without  
19 insulting people, saying people are rich and greedy.  
20 Maybe people are, maybe they aren't. Saying our elected  
21 officials have crawled into bed with foreign  
22 corporations, maybe some have, maybe some haven't. I  
23 just think your concerns are your concerns. They're very  
24 legitimate, and I don't know that any of us need to  
25 resort to insults tonight to make our point.

1 Other questions or comments with regard to  
 2 Mr. Harter and his comments?  
 3 Okay. Thank you very much.  
 4 MR. HARTER: Thank you.  
 5 CHAIRMAN JOHNSON: Anybody with comments 3  
 6 minutes or so? Again, we'll hear from everybody. We'll  
 7 take long comments, but I want to be respectful of  
 8 people's time. Go ahead, sir.  
 9 MR. VIG: I'm Dwayne C. Vig, Mud Butte,  
 10 South Dakota. Landowner on a 100-year ranch that  
 11 TransCanada Keystone XL will cross our hay fields.  
 12 Just for thought purposes, the gentleman from  
 13 TransCanada said he chose not to be specific. And I  
 14 agree. I'll let him be general at the end of my comments  
 15 here.  
 16 The rancher is the original environmentalist.  
 17 We proved our land stewardship in the last 100 years.  
 18 TransCanada has a burden of proof of trust. If there's  
 19 anything I get out of this -- and I could say more. A  
 20 lot of the comments already have covered so it will save  
 21 us some time. But proof of trust is a concern to me.  
 22 And if the gentleman chooses to answer it, that's  
 23 certainly up to him.  
 24 In 2008 we first came in contact with land  
 25 agents from TransCanada. We trustingly signed a survey

1 form. Less than 24 hours later the trust was broken by  
 2 TransCanada. They chose to drive across and trespass  
 3 with unauthorized vehicles that we had not authorized on  
 4 the survey form.  
 5 Not much to say but TransCanada has proved to us  
 6 that they're understanding of trust, credibility is  
 7 nowhere's near those of us and our families, like I say,  
 8 four and five generations. They've been stewards of this  
 9 land.  
 10 Many of the comments were made tonight and  
 11 questions and the comments from the gentlemen at the  
 12 TransCanada table about what they would do, cover, pay  
 13 for, take care of. We've got to remember trust. We live  
 14 on trust and handshakes. And that may be too general for  
 15 what you guys need to cover, but that's what concerns us.  
 16 They have not been addressed to this day, those  
 17 issues from 2008. Private property rights are as dear to  
 18 us as our right to life. I've spoken to some of the  
 19 TransCanada officials who call themselves "upper  
 20 management" with the same disrespect, arrogance, right  
 21 down the line to the fellows who walked on our land and  
 22 we stopped them because they were trespassing with  
 23 vehicles we had not approved.  
 24 So to cut it a little bit shorter, we appreciate  
 25 your efforts, the citizens of South Dakota. We

1 appreciate that you would not consider planning to permit  
 2 this to go on in our state, no survey of our land, no  
 3 environmental impact statements, to our understanding has  
 4 to be reviewed and discussed. None of that's happened.  
 5 Locally as you call we've had about 10 years of  
 6 really dry weather except the last two. Myself and every  
 7 person alive out there has been fighting prairie fires.  
 8 We have nice little fire departments.  
 9 No plan whatsoever has been brought up about oil  
 10 line fires. We can read on the computer. You can see  
 11 quite often TransCanada's oil leaks. As has been  
 12 mentioned here tonight already, serious leaks. Deaths  
 13 involved.  
 14 So our closest fire departments that might even  
 15 be close to handling an oil line fire, over two hours  
 16 away. And yes, they can say we could come in and we'll  
 17 train the people. We have ranching duties. We do not  
 18 have time -- we'll gladly fight our prairie fires. We do  
 19 not have time to fight oil land fires. Never been  
 20 discussed or reviewed.  
 21 So if the gentleman cares to answer, rebuilding  
 22 trust, that would be pleasant. Trust or lack thereof.  
 23 Thank you for your time. I'll make one comment.  
 24 Dakota Rural Action has been a Godsend help for us to  
 25 keep us focused with information and direction. And I

1 would like to be here every day to visit with people and  
 2 help you out and get you information, but we've got  
 3 ranching duties. Thank you very much, sir.  
 4 CHAIRMAN JOHNSON: Mr. Vig, how do you spell  
 5 your last name?  
 6 MR. VIG: V-I-G. D-W-A-Y-N-E for the first  
 7 name.  
 8 CHAIRMAN JOHNSON: And you may have said that  
 9 already. Sorry.  
 10 MR. VIG: No, I didn't. I'm sorry.  
 11 CHAIRMAN JOHNSON: Did TransCanada apologize for  
 12 bringing unauthorized vehicles on your property?  
 13 MR. VIG: No, sir.  
 14 CHAIRMAN JOHNSON: Mr. Jones, I don't expect you  
 15 to know the details of this situation. You're dealing  
 16 with hundreds, maybe thousands of landowners along the  
 17 route. But just as a suggestion, if I were you, I'd want  
 18 my people to look into this and if an apology is in order  
 19 at some time in the next few days and weeks, I think that  
 20 would be appropriate.  
 21 MR. VIG: It's been brought to their attention.  
 22 And Mr. Calhoun, are you familiar with his name? From  
 23 Kansas City?  
 24 MR. JONES: Yes, sir.  
 25 MR. VIG: He was out. One of the most



1 disrespectful men that I've ever met with at the level he  
2 claims to be. And there was ladies present, and I won't  
3 even go into how disrespectful he was. Thank you for  
4 your time.

5 CHAIRMAN JOHNSON: Well, and I'm not going to  
6 make you go into that on the record. I do think, you  
7 know, if Mr. Calhoun, who we've met, he has presented to  
8 the Commission at many of the public input hearings he's  
9 been at. I mean, if he has been rude, if I were you, I  
10 would take an opportunity during the break or at the end  
11 to let the Applicant know specifically instances. I  
12 always think more information more formally presented can  
13 help us do our job better and then do their job better.

14 MR. VIG: He has the data.

15 COMMISSIONER KOLBECK: Perfect. I would say  
16 that's a perfect comment. You've got an instance.  
17 You've got a name. You're on the record with it. That's  
18 exactly what we need. Thank you.

19 MR. VIG: Thank you all.

20 MR. JONES: Commissioner Johnson, can I respond?

21 CHAIRMAN JOHNSON: Sure. Go ahead, Mr. Jones.

22 MR. JONES: I certainly can tell Mr. Vig right  
23 now that he doesn't have to wait too long for that  
24 apology. I'm absolutely willing to give it to him right  
25 now. Trespassing is absolutely not acceptable. And I

1 too would feel trust is broken if someone had indicated  
2 that they were going to do something and they did  
3 something else. So I do apologize for Mr. Calhoun's  
4 behavior. He is a contractor with us. In fact, I'm  
5 pretty certain he no longer works for us, but I will  
6 confirm that with the Commission. And so I understand  
7 Mr. Vig's frustration, and I do apologize.

8 I think a lot of folks need to recognize that a  
9 formal Environmental Impact Statement is being conducted  
10 under the auspices of the Department of State. It is an  
11 extremely lengthy and comprehensive -- extremely lengthy  
12 and comprehensive assessment that they do. Many, many  
13 independent experts are involved and certainly when you  
14 look at a public utility such as this pipeline, and we  
15 recognize that it -- it is new to a lot of people and  
16 whether it's a power line or a well way or a pipeline,  
17 there are a lot issues and concerns.

18 I want also people to recognize that an oil  
19 spill response plan will be established for this  
20 pipeline. It will be approved by the Department of  
21 Transportation. And there is absolutely no expectation  
22 that a local fire department will fight an oil spill.  
23 We've talked about everything we do to make sure that  
24 never ever happens. But in the unlikely event it did and  
25 there was a fire, we absolutely have no expectation the

1 local fire department would have to do anything there  
2 outside of protect the public.

3 So I think there's sometimes a lot of  
4 misconception about what happens during an oil spill. So  
5 we certainly work with the fire departments, the local  
6 fire departments because we recognize that they have a  
7 role to play with regards to protecting the public.

8 But, again, Mr. Vig, I'm sorry about the event.  
9 I have now received confirmation that Dennis Calhoun has  
10 been relieved of his employment with the project.

11 CHAIRMAN JOHNSON: Thanks, Mr. Jones. Any other  
12 brief comments? Sorry, Ms. Anderson. We'll get you up  
13 next.

14 MR. NIEMI: David Niemi from Harding County,  
15 South Dakota. N-I-E-M-I.

16 CHAIRMAN JOHNSON: Before you go, Mr. Niemi, I  
17 do want to thank you for submitting some written comments  
18 in advance of this week's hearing. Those are very  
19 helpful for us to be able to have them in writing in  
20 front of us in advance. So thank you very much for your  
21 efforts there.

22 MR. NIEMI: You're welcome. I have multiple  
23 miles of this line that is crossing my property. And  
24 along with that, pipelines need to have some safety  
25 measures that would help protect the property owners.

1 One of the largest -- one of those measures would be  
2 liability. Property owners need to be free of all  
3 pipeline liability, the spills, leaks, any damage that's  
4 done to property or to individuals should be the  
5 responsibility of the pipeline company.

6 The farmer or rancher cannot afford the  
7 insurance requirements of a hazardous materials spill  
8 that this foreign-owned pipeline would cause.

9 Bonding is a condition that should be part of  
10 this permit. Those bonding requirements should be for  
11 the reclamation of surface damages. There should be the  
12 bonding requirement for the spills and when leaks occur.  
13 Property owners need to be compensated for the loss of  
14 crop and damages that occur when a pipeline would  
15 rupture.

16 Bonding requirements should also be required for  
17 abandonment that if or when this pipeline company  
18 declares insolvency no property owner wants an abandoned  
19 gasoline station under their property. Bonding would  
20 provide a degree of protection for the property owners.

21 This PUC permit should have a termination date.  
22 There should be no permanent perpetual easement. This  
23 pipeline has a designated lifespan, it should also have a  
24 sunset clause on that agreement.

25 Time has been taken away from each one of us,

1 away from our business to have to talk and visit with  
2 these foreign land agents driving into the yard  
3 unannounced. The telephone calls that happen all hours  
4 of the day and night.

5 I had a lady that called me after 10 o'clock one  
6 evening that wanted to drop some paperwork off. I had  
7 mentioned to her that office hours are Monday to Friday  
8 9:00 to 5:00, I would hope she could abide by that.

9 The other annoying call I got was from, excuse  
10 me, Mr. Calhoun that was mentioned earlier. Called me on  
11 Mother's Day. That's outright harassment.

12 There should be no covenants or restrictions  
13 involving a property owner. There should be no  
14 restriction on travel or weight. After this pipeline's  
15 installed we should be able to cross with any type of  
16 equipment that we need to conduct in a farming or  
17 ranching or even a construction operation.

18 There should be no restrictions on development.  
19 If we want to put a housing development on a chunk of  
20 property that's somewhat adjacent to this line, we  
21 shouldn't have to call a foreign land to get an okay for  
22 that.

23 Covenants could also result in a devaluation of  
24 property. If this property is devalued, that also  
25 affects our borrowing ability. Somewhere we would need

1 to be compensated for that.

2 There should be no restriction on hunting. In  
3 Northwestern South Dakota predator control is something  
4 we take very seriously. We hunt every waking minute of  
5 every day that we possibly can just for coyotes. And if  
6 we cannot control coyotes, we're out of the sheep  
7 business. And it's going to be affecting the cow calf  
8 operator and partially is already if you do pasture  
9 calving. There should be no restriction on hunting.  
10 That would have a serious effect on us.

11 Since 1992 there have been several significant  
12 paleontology specimens that have been unearthed off my  
13 property. Some of those have been prepared. They've  
14 been on a worldwide tour mainly to Asia, been back.  
15 Those are a very valuable resource. In Harding County we  
16 ended up going to court action with TransCanada so we  
17 could have our cultural experts accompany the survey team  
18 as they went through to survey so we could identify what  
19 is visible so far.

20 If this construction takes place there's a need  
21 for a cease-and-desist order on the pipeline construction  
22 if there is a specimen found until our experts can  
23 evaluate it.

24 There is a need for annual compensation.  
25 There's going to be unwanted traffic, whether it be

1 vehicle, whether it be on foot, or somebody doing  
2 surveillance by air. There's also going to be  
3 above-ground fixtures that's going to be either signing  
4 for signs, going to be valves, whatever that's associated  
5 with this pipeline. If it's sticking out of the ground,  
6 it's an annoyance, it's in the way. If it is, we need to  
7 be paid annually for that.

8 I guess that's all I have. Thank you for your  
9 time.

10 CHAIRMAN JOHNSON: No. Thank you, Mr. Niemi.

11 COMMISSIONER KOLBECK: Yeah. David, is there  
12 one thing or a couple of things about your operation that  
13 concerns you the most? Would it be chisel plowing?  
14 Anything that you do on a normal basis that -- you know,  
15 I want to make darn sure when I chisel plow that I'm not  
16 liable for that pipe? Is there anything like that  
17 specifically that you can think of? Normally -- would  
18 you just call everything normal farming operations?

19 MR. NIEMI: Yeah. To a degree. Where we're at  
20 in Northwestern South Dakota and Harding County, why,  
21 there is some oil and there's some gas developments going  
22 on and some potential uranium. And there is a lot of at  
23 times testing and exploration techniques that take place  
24 and that involves some very heavy equipment.

25 COMMISSIONER KOLBECK: Okay.

1 MR. NIEMI: And that line would need to be  
2 crossed. If there is any -- I would say with heavy  
3 equipment if there would be a weight restriction it would  
4 have to go to a safe harbor to get across and that's  
5 going to be some distance away, it also takes time. Time  
6 is money.

7 COMMISSIONER KOLBECK: That's exactly what I was  
8 looking for. Perfect. Thank you.

9 CHAIRMAN JOHNSON: Other comments?  
10 Ms. Anderson, we promised you next. You were moving that  
11 way and Mr. Niemi was just a little faster on the draw.

12 MS. ANDERSON: I've been here too many times  
13 when you know who I am.

14 UNIDENTIFIED SPEAKER: There's some pictures we  
15 have. Is there an extra seat that I can sit and show  
16 them?

17 CHAIRMAN JOHNSON: Let's go ahead and pull one  
18 up here. We'll help you out. Thank you, Ms. Semmler.

19 We need some Teamsters in here to --  
20 CHAIRMAN JOHNSON: Welcome, Lillian, go ahead.

21 MS. ANDERSON: My name is Lillian Anderson. I'm  
22 from Langford, South Dakota. I'm a landowner along the  
23 Keystone I pipeline in Northeast South Dakota. During  
24 the permit process of Keystone I the PUC set  
25 conditions --

1 COMMISSIONER HANSON: Could you pull that  
2 closer? I can see some people in the audience trying  
3 to --

4 CHAIRMAN JOHNSON: Good.

5 MS. ANDERSON: During the -- shouldn't have done  
6 that. You set conditions for TransCanada when you give  
7 them their permit. One recent problem with the pipeline  
8 construction deals with Condition No. 34 which states,  
9 "Construction must be suspended when weather conditions  
10 are such that construction activities will cause  
11 irreparable damage unless adequate protection measures  
12 approved by the Commission are taken."

13 From the beginning one of our major concerns  
14 when the construction started was that the soil could not  
15 withstand machinery on it while it was wet. This is  
16 something I --

17 Okay. From the beginning one of our major  
18 concerns when the construction started was that the soil  
19 could not withstand machinery when it was so wet. I  
20 testified to that in the Keystone I hearings. During the  
21 construction our fears were realized and an exceptionally  
22 wet year has happened causing problems with digging the  
23 land up to put the pipe in and reclaiming the black soil  
24 on the land afterwards.

25 Actually they quit constructing through our area

1 and came back in January and they dug it out in extremely  
2 hard frozen soil. Got down to where there was water,  
3 left it sit for two weeks and then put the frozen stuff  
4 back in. So frozen clay on top of the pipeline.

5 On one of these days this -- this was later this  
6 spring, Kent Moeckley -- and the reason Kent is not here  
7 is because his sister has been very ill. A landowner by  
8 Britton went out to his land to stop the reclamation  
9 because the construction was in direct opposition of the  
10 conditions set by the PUC.

11 While he was out on his land Kent took this  
12 picture on October 2. I would call that adverse  
13 conditions to be putting ground back together.

14 Later on the site TransCanada employees told  
15 Kent that if he did not allow them -- did not allow them  
16 to finish with the reclamation that he would be  
17 responsible for the reclamation bill.

18 They set that piece of machinery in over 5 feet.  
19 That stuck. He got them stopped. We've had a discussion  
20 with this with Buster Gray. And he stopped the  
21 reclamation up on Kent's land. I have many more pictures  
22 which are far more graphic than that one is.

23 The damage that the Keystone has done by putting  
24 our land back together when it was too wet all along this  
25 whole system is just unimaginable. They have been in

1 water that they should have never been in, they've been  
2 on land with heavy machinery they should have never been  
3 on. And they have compacted the problem by mixing the  
4 soils.

5 In many of these photos you can see it's clear  
6 that the top soils and clays were mixed, and that is also  
7 in direct opposition to the PUC's condition.

8 Another problem that has occurred with the  
9 Keystone I construction is dewatering and drainage. In  
10 the fall of 2008 Keystone contractors dewatered wetlands  
11 the pipeline easement. It is my understanding that they  
12 do not have to keep records of how much they pump, when  
13 they pump, and what the water condition is, whether it's  
14 alkaline or whatever. The DENR is not testing the water  
15 or watching water quality as they would if it was  
16 irrigation water.

17 In 2008 they did quit after we complained. But  
18 they promised to be back in two weeks. There are other  
19 landowners that are not -- people that have pipelines on  
20 their land that are affected because they're pumping  
21 water downhill. Helms construction -- or Helms  
22 Engineering from Aberdeen said water runs uphill in our  
23 country but it doesn't seem to really.

24 TransCanada again during October of 2009  
25 dewatered the pipeline easement and flooded one farmstead

1 and the land going to his farmstead and three other  
2 farmers. Buster Gray has agreed that damage was done and  
3 that TransCanada should be responsible for reimbursement  
4 for any damage done to landowners. As of yet, we have  
5 not submitted a bill. It is unfair and unreasonable that  
6 TransCanada can continue to destroy our land and crops  
7 while promising to do no damage and claim that they are  
8 good neighbors.

9 During the construction process -- this picture  
10 that he was just holding up is on Kent's like a week ago  
11 where they were draining water that they weren't supposed  
12 to be draining any water on his land but they were  
13 draining water.

14 Another problem is the damage to the roads. Oh,  
15 excuse me. I missed one.

16 During the construction process, if you'll  
17 remember, we repeatedly mentioned the water in our area.  
18 TransCanada wound up putting cement saddles on all of the  
19 pipe going through our area. I can't remember right now  
20 exactly how many miles it is but that's what the saddles  
21 look like that they've put on our -- that was not planned  
22 for.

23 Another problem that we have incurred with  
24 Keystone I construction is damage to the roads. That's a  
25 road on Kent's land. That's land down by Carpenter -- or

1 a road rather. Excuse me. And that's another road by  
 2 Carpenter. TransCanada continued to use roads when the  
 3 conditions were such that they should not have had any  
 4 equipment on them. Farmers do not use roads when they  
 5 are wet because they have to pay taxes to make sure they  
 6 are fixed. TransCanada used these roads when they were  
 7 wet, and they have severely damaged them. Although some  
 8 payments have been made to townships for road damage,  
 9 road conditions are still miserable. TransCanada's  
 10 solution for this does not seem to go far enough.  
 11 Complete road construction needs to be done. There is no  
 12 base left on these roads.

13 TransCanada has been working in our area after  
 14 payments were made to our township. And it is my  
 15 understanding that they have agreed that they will make  
 16 restitution. But what they need more than money, they  
 17 need to come and rebuild the road. There's no road left.

18 As a landowner of Keystone I, I would suggest  
 19 that each township and county receive cash bonds until  
 20 the construction company rebuilds the roads. The PUC  
 21 should guarantee that Keystone will keep good records of  
 22 water discharge, when, where, and the quality of the  
 23 water. The PUC should also guarantee that no one should  
 24 have to fight to have their land restored to precondition  
 25 by following PUC Condition No. 34. And in addition, any

1 conditions put on this new pipeline need to be fully  
 2 enforced.

3 Roads used by Keystone XL should be maintained  
 4 daily at the rate of construction with DOT oversight to  
 5 ensure damage to the bases of the roads is not done. I  
 6 would recommend inspectors paid for by TransCanada but  
 7 not working for them. They would be empowered to stop  
 8 the work when construction violations occur by the  
 9 company at each work site on each day.

10 Thank you.

11 UNIDENTIFIED SPEAKER: Commissioner Johnson,  
 12 could we see those pictures? See what we're going to be  
 13 fighting? I want our County Commissioners to see them.  
 14 Just the whole group of us, please.

15 CHAIRMAN JOHNSON: I tell you what, the best  
 16 sight lines are if you actually come up right in between  
 17 these two pieces of wood here. That way everybody on the  
 18 side gets a good look. And then if we could -- and then  
 19 you described the pictures already, Ms. Anderson. Why  
 20 don't you go ahead and quickly give people another --

21 MS. ANDERSON: Okay. This is a road by  
 22 Carpenter.

23 COMMISSIONER HANSON: It's going to be a  
 24 challenge for a lot of you to see that. Is it possible  
 25 for you to have them -- well, there's a table in the

1 lobby there and everybody could -- or pass them around.  
 2 That way everybody could see them. It's going to be  
 3 pretty challenging for a lot of the folks to see them.

4 UNIDENTIFIED SPEAKER: Tell us what they are,  
 5 please.

6 CHAIRMAN JOHNSON: I tell you what, Commissioner  
 7 Hanson I think has made a good suggestion. There's a  
 8 description on each one of those. Let's go ahead and put  
 9 them exactly as Commissioner Hanson suggested out there.  
 10 That way you can get right up close and look at them  
 11 because I do think they're compelling photographs. And  
 12 then if you've got questions, I'm sure Ms. Anderson will  
 13 be around. And we won't go too much longer here before  
 14 we would need to take a break. Not more than about an  
 15 hour or so.

16 Okay. We'll be taking a break in 20 minutes.  
 17 Ms. Anderson, why don't you post yourself back at the  
 18 table and if people have questions, they can ask you when  
 19 we take our break in 20 minutes.

20 (Discussion off the record)

21 CHAIRMAN JOHNSON: I would like to -- sorry,  
 22 Ms. Niemi, I don't want to put you off here but I would  
 23 like to have at least two things addressed by the  
 24 Applicant here. The first is Condition No. 34 of the  
 25 first Keystone Pipeline, the wet-weather cessation of

1 construction activities. And then Ms. Anderson mentioned  
 2 that Buster Gray had agreed that at some point  
 3 TransCanada was at fault or something and that there  
 4 should be compensation, and if anyone knows the specifics  
 5 of that situation, an update on that might be helpful.

6 MR. JONES: Yes, Commissioner, there's a couple  
 7 of things we could do to handle this. We do have some  
 8 materials we'd like to present but we think it's probably  
 9 best done at the end. Let everyone here have an  
 10 opportunity to speak and then we'll present some  
 11 information at the end.

12 We obviously recognize that some of the most  
 13 challenging conditions on the entire line were through  
 14 Mr. Moeckley's and Ms. Anderson's properties. So, you  
 15 know, I don't want to -- I would like to -- I certainly  
 16 would like to address a whole number of issues that she  
 17 identified, but maybe the best thing to do is for us to  
 18 present some of our responses towards the end of this  
 19 session. I'll look for your guidance on that.

20 CHAIRMAN JOHNSON: Well, I think that's fine but  
 21 I think there's a lot of concern about wet-weather  
 22 construction. I was just reading body language of the  
 23 crowd. So that one in particular, why don't we talk a  
 24 little bit about what your operating procedure was with  
 25 the first pipeline and if it deviated from the

1 Commission's order, I mean, obviously we want to know  
2 about that.

3 MR. JONES: Yes. Certainly I can address some  
4 of them right now, and I'd be glad to do that. I just  
5 don't want to take up too much time.

6 CHAIRMAN JOHNSON: No. I understand. I don't  
7 want to slow down. People have got, you know, real lives  
8 going on. But that one in particular I think we'll save  
9 time by answering people's questions.

10 MR. JONES: Absolutely. Appreciate there are  
11 environmental inspectors out there. They are independent  
12 of both TransCanada and the contractor and their job is  
13 to shut down work as described.

14 We certainly have seen a lot of water out there,  
15 and I think if you were to take a 360-degree picture you  
16 would see virtually that area's entirely under water.

17 Just a couple of points. Winter construction is  
18 very effective in extremely wet conditions. And that's  
19 what we ran into. And so that worked very well, by the  
20 way.

21 The cement weights that you saw, that is  
22 planned. That is not uncommon. When you've got high  
23 water tables, cement weights that are placed on the  
24 pipeline is an extremely common practice and makes for a  
25 continued safe operation of the land.

1 As for the topsoil conservation, my  
2 understanding is that continues to be monitored by our  
3 folks and we continue to meet our requirements there.  
4 Mr. Gray and Mr. Fuhrer are here to answer specific  
5 questions about that site. That's why I brought them  
6 here today. Because I always have the gentlemen that are  
7 responsible for that construction to be here. In fact,  
8 Buster, do you want to add anything to my comments or  
9 wait until the end?

10 CHAIRMAN JOHNSON: I think your point about not  
11 trying to address everything is a good one, Mr. Jones. I  
12 wanted to give you an opportunity to specifically talk  
13 about to what extent construction activities cease during  
14 wet weather because I think that's of a broad concern to  
15 a number of folks. Everything else we can take up later.  
16 I agree.

17 MR. JONES: Fair enough. It's hard to see, of  
18 course, pictures can be a challenge at times. We have  
19 what they call construction mats. And what you didn't  
20 see in there is either the equipment wasn't properly  
21 placed on these mats or it has come off them. So we have  
22 built thousands of miles of pipeline this year and used  
23 tens and tens of thousands of these construction mats and  
24 it's been very, very effective. But it certainly looks  
25 like at this situation that the equipment was no longer

1 on that.

2 But, again, Mr. Fuhrer and Mr. Gray can address  
3 the exact details with regards to that.

4 But we do have inspectors on the site, and they  
5 do have absolutely the ability to shut work down when  
6 required.

7 CHAIRMAN JOHNSON: In your opinion, Mr. Jones --  
8 and I know nobody's under oath here. Do you believe that  
9 TransCanada was in violation of Commission condition no.  
10 34 with regard to construction during wet periods?

11 MR. JONES: No, I don't.

12 CHAIRMAN JOHNSON: Okay. Go ahead. I'm sorry.  
13 Commissioner Kolbeck asked me to give him an opportunity  
14 to do something. I'm sorry.

15 COMMISSIONER KOLBECK: I just wanted to -- one  
16 thing that was addressed is what we do after the permit's  
17 been handled. And our staff has worked on these road  
18 conditions, and I was wondering if Kara, Ms. Semmler, if  
19 you could give them just a little bit of lowdown on who  
20 you've contacted, how you contacted them, and your  
21 process to handle complaints that you've received.

22 MS. SEMMLER: For roads specifically?

23 COMMISSIONER KOLBECK: For Roads.

24 MS. SEMMLER: Commissioner, my name is Kara  
25 Semmler, and I'm a staff attorney here at the PUC. And I

1 work very closely with Deb Gregg, the manager of our  
2 consumer affairs department. And, excuse me, we have an  
3 800 number. We really welcome the calls and enjoy  
4 helping consumers so please do call if you have any  
5 questions or concerns.

6 Now with that being said, we did contact the  
7 highway superintendents for all of the counties down the  
8 route of the first pipeline. And those highway  
9 superintendents are the members of your community that do  
10 represent you regarding the condition of your roads and  
11 they are the direct line to your local governments that  
12 can help you with your roads.

13 And the report consistently from those highway  
14 superintendents was that the process is underway. And it  
15 is a process, just like we're seeing here today. It's a  
16 process to understand the level of damage, to obtain the  
17 proper engineering quotes, and the process is underway  
18 and there wasn't a lot of dissatisfaction with the  
19 process. It is working.

20 It taxes everyone's patience at times and I  
21 appreciate that.

22 CHAIRMAN JOHNSON: So, Ms. Semmler, is it fair  
23 to say there were at times and still may be  
24 dissatisfaction, maybe even significant dissatisfaction,  
25 with those highway superintendents about the condition of

1 those roads at that moment, but that they felt like they  
2 were working through the process to get those issues  
3 resolved?

4 MS. SEMMLER: Yes. I believe that is very  
5 accurate. They all definitely indicated that roads were  
6 damaged. And they also all indicated that TransCanada  
7 was working with them to understand the level of damage  
8 and to get those repairs made. So --

9 CHAIRMAN JOHNSON: And I don't know the details  
10 so I'm asking sincerely. Have there been large monetary  
11 settlements that you're aware of between TransCanada -- I  
12 don't mean specifics, but have there been substantial  
13 payouts to pay for damages?

14 MS. SEMMLER: I don't know what large is because  
15 we don't have anything to, I guess, compare this to, but  
16 the number sure seemed big to me for relatively short  
17 amounts of road.

18 CHAIRMAN JOHNSON: Okay. Thanks.

19 COMMISSIONER KOLBECK: And one more thing just  
20 to -- we didn't have this luxury last time, but none of  
21 those payments affect the \$12 million in bonding that  
22 we've procured?

23 MS. SEMMLER: No. There have been no claims  
24 made on that bond. It's intact. And if ultimately this  
25 process does fail and these counties can't arrive at

1 numbers they're happy with, that bond's intact and it is  
2 there to protect the county infrastructure.

3 COMMISSIONER KOLBECK: Thank you.

4 CHAIRMAN JOHNSON: Thanks for your patience. Go  
5 ahead.

6 MS. NIEMI: Debra Niemi, N-I-E-M-I.

7 CHAIRMAN JOHNSON: And again, thank you. As I  
8 mentioned to David Niemi, I appreciate your willingness  
9 to file prefiled testimony in this proceeding.

10 MS. NIEMI: Like my brother David told you, our  
11 grandparents homesteaded over 100 years ago on the ranch  
12 we grew up on. And first my grandmother. She hauled her  
13 own water, provided her own shelter. A year later my  
14 grandfather applied for his homestead next to her.

15 During my life I've lived in the suburbs of a  
16 major metropolitan city. I've watched cornfields being  
17 tore up for some company's interests, and I felt the loss  
18 for the generations who had planted the corn and were  
19 good stewards of the land. I never thought in my  
20 lifetime that I would watch the same thing go on with my  
21 parents' ranch.

22 My parents are alive, although they have  
23 difficulty speaking. In time I could have more than a  
24 contingency interest in this property, in the ranch. But  
25 I tell you the following to give you an idea of how this

1 company acts.

2 Last March, I wrote this on the ranch calendar,  
3 I came out of the ranch house, which is four miles north  
4 of Buffalo. And I saw -- my brother keeps the calves and  
5 the lambs in a lot and because you feed, as any rancher  
6 would know, keep the livestock close for shelter, you can  
7 feed them right there. All he has to do is go over a  
8 cattle guard to go to them. They were running for their  
9 lives. My mother described it as scaring the tar out of  
10 them. I'm not sure she said the word "tar."

11 But anyway, I went out of the house to see what  
12 was going on and I heard this sound. It was a sound like  
13 none other. And I looked up and it looked like -- it was  
14 this huge 8 -- I'm sure it was an 8-person helicopter  
15 about down on our garage, the garage that sits out at the  
16 ranch. And I felt like I was in a Harrison Ford movie.  
17 I thought how strange that there would be a helicopter  
18 here because they had not contacted us. We did not know  
19 that they were coming.

20 And a helicopter coming to the ranch is a rare  
21 event. I mean, it has happened. I won't say that that  
22 hasn't happened. They've landed. They gave us notice  
23 and it was at the appropriate time of year. It wasn't  
24 when we had livestock in close.

25 Along the same line, at the PUC meeting in my

1 hometown of Buffalo that you were there a break was  
2 called and Mr. Jones, he'll remember, he came over to me.  
3 He sat in front of me and he asked me why I was so  
4 interested in their financial position. And I stated  
5 because it was due to the 2008 debt service coverage  
6 ratio. And it's more than enough to make your eyes  
7 bulge. Or something to that effect. I'm not sure I said  
8 bulge, but anyway. All of us know what amount was left  
9 after they paid their debts, their debt service payments  
10 in 2008. And to think I had read this -- I'm not sure I  
11 believe everything I read, but they have a 22 billion  
12 capital project program going on.

13 And this -- I don't mean -- give me a word or  
14 two here, but the quote or the question that came from  
15 Mr. Jones to me was, I'll have you know that our company  
16 made 3 billion with a B last year, meaning in 2008. And  
17 like I say, it was within a word or two. And he could  
18 probably tell you exactly what the quote was. And I  
19 said, well, how interesting is that. The annual report I  
20 read says 1 billion, 440 million and that was before the  
21 debt service payments.

22 Also, the way I felt about it was he was just  
23 telling me something I wanted to hear. Does he tell you  
24 that too, just whatever you want to hear?

25 And prior to that meeting when you guys came to

1 my hometown of Buffalo, the Secretary of State's office  
 2 held their scoping meeting there. In fact, it was in the  
 3 same place, the rec center. And I asked Elizabeth  
 4 Orlando at that meeting about the financial condition and  
 5 if we as landowners end up with NSF checks or a white  
 6 elephant and she said that's not my department, that's  
 7 your State Commission. They are approving this permit.

8 And so they will be the responsible party. And  
 9 I will tell you I know what you can do about it. I spent  
 10 every morning in appropriations one legislative session.  
 11 I think it may be in this room, although it's been  
 12 remodeled since I was here last.

13 And I guess lastly, and it's more rhetorically,  
 14 you don't have to answer me, but I've been reading about  
 15 Spink County and what their Commissioners have been going  
 16 through. And I would just think that one nightmare in  
 17 South Dakota is enough.

18 CHAIRMAN JOHNSON: Thanks very much, Ms. Niemi.  
 19 Mr. Jones, did you want an opportunity?

20 MR. JONES: Please. Thank you.

21 CHAIRMAN JOHNSON: Is that okay, Ms. Niemi?

22 MR. JONES: Thank you, Commissioner. I have two  
 23 comments. First, I did go and talk to Ms. Niemi and I  
 24 was trying to help her with regards to the annual report.  
 25 I noticed she had it in her hands. And we were -- I was

1 trying to explain the difference between revenue and  
 2 returns.

3 I think the comfort she can have is that  
 4 TransCanada Corporation, which is listed on the New York  
 5 Stock Exchange and is listed on the Toronto Stock  
 6 Exchange, continues to be an A grade credit company. We  
 7 are a utility company, which means we take a very  
 8 low-risk outlook when it comes to our investments. There  
 9 is no -- no doubt there continues to be a need for  
 10 utilities. And so we do have a large program in place.

11 We talked about a number of things like the  
 12 companies that were involved in our debt and how much  
 13 debt we had raised --

14 CHAIRMAN JOHNSON: Mr. Jones, I don't want to  
 15 cut you off, but given the number of people here, I want  
 16 to give you an opportunity to respond, but if it can be  
 17 like this rather than like this, that would be great.

18 MR. JONES: Certainly. Thank you, Commissioner.  
 19 I just wanted to put in context my conversation just  
 20 because it does deal with me personally, that's why I'm  
 21 fairly passionate about responding to it.

22 The other thing, I do not know and never heard  
 23 of this incident, but I certainly do apologize for the  
 24 helicopter incident and I will personally investigate  
 25 what happened there.

1 CHAIRMAN JOHNSON: Okay. I know you're up at  
 2 the mic but our court reporter has asked for a break, so  
 3 if that's acceptable to you we're going to go ahead and  
 4 hold you over and I would think -- you know, I was going  
 5 to say 10 but there aren't a lot of bathrooms on this  
 6 floor so let's go ahead and make it 15, but let's make  
 7 that a hard 15. And so at 20 to we will start.

8 Thank you. And with that we'll be off the web,  
 9 but we'll come back on the web at 20 to.

10 (A short recess is taken)

11 CHAIRMAN JOHNSON: Okay. We're going to go back  
 12 on the web.

13 All right. Just to remind everybody, speak  
 14 slowly, speak clearly, say your name and location, spell  
 15 your last name, and if you've got comments that are  
 16 shorter in nature let's take you first so we can get you  
 17 back on the road if you want to get back on the road.

18 And with that, unless any of my colleagues have  
 19 anything to add to improve from the first session, go  
 20 ahead and begin, sir.

21 MR. IVERSEN: Yes. My name is John Iversen,  
 22 I-V-E-R-S-E-N. I'm from Murdo. Keystone comes cross  
 23 about a mile of my ranch about five miles east Murdo.  
 24 Sorry it's been addressed, I'm going to address it again  
 25 is the perpetual easements. I don't know how you can let

1 a foreign company come in here and just absolutely take  
 2 our land. I'm very much against that.

3 Also, I guess I don't think they're very  
 4 trustworthy either. I read their pamphlets. I guess,  
 5 first of all, all the testimony you hear from them is  
 6 their experts. They own them. I mean, they're paying  
 7 them. It makes me a little bit nervous.

8 I've got all their pamphlets the last month or  
 9 six weeks or whatever. I mean, I could just about burn  
 10 my furnace all week or all month or year with a lot of  
 11 it. But one thing, I'm going to be honest, I never read  
 12 it all. I read a lot of it. After a while it just got  
 13 to be pretty much all the same. They kind of sidestep  
 14 the issues, and they don't really tell the truth. They  
 15 tell you what they think you want to hear.

16 After a while I just kind of -- you know, to me  
 17 it was all the same, pretty much the same business.

18 There was one other thing but I can't think of  
 19 what it was. I guess I'd like to know who's the  
 20 president of that company and what capacity and where he  
 21 resides. I would like to know, and it comes from a  
 22 pretty good source and I don't know and I can't divulge  
 23 names, but it was told to me that they purchased just  
 24 about all the pipelines and lines they own. They built  
 25 very few of them. I guess I'd like a response to that

1 and how much they've built actually, not bought, how much  
2 they've actually physically built like this one in  
3 Eastern South Dakota. I guess that's about all I have to  
4 say.

5 CHAIRMAN JOHNSON: Very good, Mr. Iversen.  
6 Thanks. Yeah. Mr. Jones, why don't you describe who's  
7 the president of the Applicant and then how many miles of  
8 pipeline has that entity or its affiliates built, miles  
9 of pipeline.

10 MR. JONES: Sure. Yes. Thank you, sir, for  
11 your questions. The president of TransCanada Keystone is  
12 a gentleman named Mr. Russ Girling, and Keystone today  
13 has approximately 2,000 miles that we've constructed and  
14 oil is scheduled to start operation by the end of the  
15 year.

16 CHAIRMAN JOHNSON: What about, you know, parent  
17 company?

18 MR. JONES: Yes. TransCanada Corporation owns a  
19 number of pipelines in the United States and operates a  
20 number of them including well over 20 years here in  
21 South Dakota, Northern Border Pipeline. We have a  
22 maintenance office in Brookings. And we have well over  
23 40,000 miles of pipeline operation throughout North  
24 America.

25 CHAIRMAN JOHNSON: Mr. Iversen asked

1 specifically about miles of pipeline constructed by this  
2 company or its parent. Of that 40,000, how many were  
3 constructed by you all?

4 MR. JONES: I don't have the number on top of my  
5 head, but it would -- I would estimate about half of  
6 that. About -- seriously, we're probably now the largest  
7 pipeline company in North America. And very few pipeline  
8 companies have constructed as much long -- large diameter  
9 pipelines as we have.

10 CHAIRMAN JOHNSON: So I'm not trying to nail you  
11 down to a specific figure, but it wouldn't be  
12 unreasonable for someone to presume that TransCanada may  
13 have constructed as much as 20,000 miles of pipeline in  
14 recent decades?

15 MR. JONES: I'd have to confirm that number but  
16 that wouldn't be unreasonable.

17 CHAIRMAN JOHNSON: And the president of  
18 Keystone, the Applicant, Russ something, and where does  
19 he live? That was another question Mr. Iversen asked,  
20 his place of residence.

21 MR. JONES: Mr. Girling's place of business is  
22 in Calgary and he's the president not only of Keystone  
23 but of all the pipelines TransCanada owns and operates.

24 CHAIRMAN JOHNSON: Great. Thanks very much. Go  
25 ahead.

1 MR. IVERSEN: I guess that answers pretty much  
2 all my questions. The worst scenario case for me if you  
3 would decide to grant them a permit, I hope you also do  
4 it with a lot of conditions. And I hope maybe down the  
5 road if you do that, I hope that you will give some of  
6 the landowners maybe a chance, an informal roundtable to  
7 visit and maybe pass some ideas around if that's  
8 possible.

9 CHAIRMAN JOHNSON: That's a good suggestion,  
10 Mr. Iversen. Thanks.

11 MR. IVERSEN: Yep. Thank you.

12 CHAIRMAN JOHNSON: Next up. And while we're  
13 having somebody come up, Mr. Iversen raised I think a  
14 very, very legitimate issue, which is hey, are all the  
15 experts testifying on this stuff paid for by TransCanada?  
16 And the answer to that is yes, although not all of them  
17 are working for TransCanada.

18 Commission staff has called a number of expert  
19 witnesses from across the country to testify on this.  
20 Those witnesses are paid for by TransCanada through a  
21 filing fee they have to pay with the Commission, but  
22 those experts don't correspond with TransCanada except  
23 through the normal legal channels. They are working for  
24 staff to really vet and question, ask the same kind of  
25 questions you're asking. So very good point.

1 Okay. Go ahead, sir.

2 MR. LARSON: My name is Peter Larson. I'm a  
3 geologist and paleontologist with Black Hills Institute  
4 of Research in Hill City, South Dakota. And we've been  
5 working scientifically in Harding County since 1992  
6 working on the Niemi ranch and other ranches around the  
7 county.

8 I am an expert in paleontology but I am not paid  
9 by TransCanada nor am I paid by anyone else. I am here  
10 as well as my people have been working on this project in  
11 defense of the fossils that are very abundant in  
12 Harding County and elsewhere throughout the state.

13 It's interesting that I was only allowed -- or  
14 pardon me. I was allowed to accompany the pipeline  
15 survey crew, I and five of our people as they worked  
16 through Harding County.

17 They also in Harding County hired a consulting  
18 firm to look at paleontology and that's as far as I know  
19 the only place that they looked at paleontology, and it  
20 was done only because the ranchers in that county  
21 actually brought legal action to allow me to accompany  
22 that pipeline. And they spent literally thousands of  
23 dollars of their money to make sure that paleontology was  
24 looked at.

25 I have some statements, a couple of letters that



1 I have sent to various people during this process and I'd  
2 like to give those to you before I leave the -- before I  
3 leave the podium.

4 In working in Harding County we did actually a  
5 map here that I'm including as well of a portion of  
6 Harding County which shows the extreme density of fossil  
7 sites that are found just on one ranch alone. And it  
8 lists the various fossils that were found there.

9 Through following the pipeline survey crew it's  
10 important to note that there was only about 5 percent of  
11 that land which actually goes through exposures of the  
12 Hell Creek formation, but more like 90 percent of the  
13 county where we go through the Hell Creek formation,  
14 which is one of the most important time frames in terms  
15 of the science of paleontology. It helps us to  
16 understand about global climate change.

17 This is the period surrounding the impact of  
18 this giant asteroid that occurred about 65 million years  
19 ago. And we're still learning a tremendous amount about  
20 what effect that had on life forms here on earth, which  
21 is very important in our understanding as to what damage  
22 we can be doing to the planet today and not even -- not  
23 even realizing when you pass thresholds what happens to  
24 life.

25 Again, only about 5 percent of the county where

1 this pipeline went across was exposures of the Hell  
2 Creek. However, 90 percent will actually be digging into  
3 the Hell Creek through Harding County itself. And that  
4 is when they will find fossils. It's not like  
5 archaeological sites or historical sites where you see  
6 things on the surface.

7 On the contrary, if it's grassed over, you're  
8 not going to see anything until you dig. And when you  
9 dig you will find things. And we're very concerned that  
10 these fossils, which when they are found there needs to  
11 be a mechanism where if it's something of importance they  
12 should have a paleontologist on site at all times. While  
13 they're digging they dig, I've been told, something at a  
14 rate of a mile to a mile and a half a day, so they're  
15 going to be going through a lot of land in a very fast  
16 order and you're not going to see something until in some  
17 cases it's going to be too late.

18 But still you may be able to salvage a lot of  
19 these fossils that otherwise would be lost. And I think  
20 it's important if this plan goes through that these  
21 fossils are taken into consideration.

22 The Federal Government has just recently this  
23 year passed the Paleontological Protection Act which was  
24 part of the Omnibus Spending Bill for the Department of  
25 Interior, and that makes it a felony on public land, on a

1 public federal land for someone to destroy a fossil or  
2 even to collect a fossil without the proper permit  
3 papers. That shows how important the Federal Government  
4 thinks these fossils are.

5 And it is always the Bureau of Land Management,  
6 for instance when they cross their land, pipeline  
7 companies always have to have a paleontologist with them  
8 and those paleontologists have the ability to shut this  
9 down.

10 Now county also owns a lot of land. I know  
11 there's a little bit of state land that's crossed in  
12 Harding County.

13 It would be, I think, very advisable not just to  
14 have the paleontologists in Harding County but through  
15 the other counties, as well. As one of the other  
16 speakers mentioned from Tripp County that there are  
17 fossils there as well. Now it's not, perhaps, as  
18 critical of a time period. We're looking more something  
19 that's more like 10 million years old, but still, there  
20 could be something that's significant and of significant  
21 scientific value and significant economic value to the  
22 ranchers themselves, which will be lost if somebody's not  
23 watching out for it.

24 So I guess I'm -- my basic statement is that I'm  
25 very concerned about these fossils and what's going to

1 happen when this pipeline goes through if nobody's  
2 watching over them.

3 CHAIRMAN JOHNSON: Thanks very much, Mr. Larson.  
4 And Commissioner Kolbeck did bring up your comments today  
5 during our hearing and made reference to your letter and  
6 your comments in Buffalo. So certainly the Commission is  
7 listening and even brought you up today. Commissioner  
8 Kolbeck, anything else to add?

9 COMMISSIONER KOLBECK: I just wanted to thank  
10 you for your letter. It actually prompted me to ask some  
11 questions. It's good information to have so I appreciate  
12 you sending that to us.

13 I don't think this is speaking of -- there were  
14 experts who talked on paleontology today and we did  
15 discuss them and it is in the record. I think that's  
16 probably all I can say --

17 MR. LARSON: Could you tell me who those experts  
18 were?

19 COMMISSIONER KOLBECK: I guess, Mr. Smith, how  
20 does that work?

21 CHAIRMAN JOHNSON: Let's go ahead and have  
22 Ms. Semmler and Mr. Larson speak, and she can kind of  
23 brief you on what sort of witness lineup she's had today  
24 and plans to have tomorrow.

25 MR. LARSON: And if you would like some more

1 information from me at any time, I'll leave this with my  
2 telephone numbers and all of that too. And e-mail and  
3 I'll leave that with, I guess, whoever I'm going to be  
4 talking to.

5 COMMISSIONER KOLBECK: Are any of those maps  
6 confidential, Mr. Larson?

7 MR. LARSON: I think I wouldn't publish them,  
8 no.

9 COMMISSIONER KOLBECK: Because we can mark them  
10 as confidential if you'd like.

11 MR. LARSON: Just so they stay within the  
12 committee so you can see some of the density of some of  
13 these fossil sites. And this is all on a private ranch  
14 and I'm sure we don't want them put out for everybody and  
15 their kids.

16 There's three T Rex sites, by the way, where the  
17 pipeline goes -- there are three T Rex sites which are  
18 within a quarter section of land and it goes right  
19 through that. And it's a historic site, as well as  
20 because these specimens have been collected. But this is  
21 an historic site where these specimens were located and  
22 paleontologists need access to those sites to go back  
23 because we learn more and more about how to take data and  
24 how to, you know, understand life of the past. And  
25 without access to those sites or if these sites are

1 destroyed, it's not a good thing.

2 CHAIRMAN JOHNSON: Before you hand any papers  
3 over, if you don't want them -- everything we get gets  
4 published on the web. If you don't want those published  
5 on the web, we need you to write "Confidential" at the  
6 top of every single page.

7 MR. LARSON: Okay. Just the map.

8 CHAIRMAN JOHNSON: Okay. Anything that can't go  
9 on the web and is confidential, go ahead and mark  
10 "Confidential" on the top. Thanks very much.

11 COMMISSIONER HANSON: I do have a question.

12 CHAIRMAN JOHNSON: Oh, I'm sorry.

13 COMMISSIONER HANSON: That's no problem. I very  
14 much appreciate your testimony or the information that  
15 you've provided to us it seems like when we were in  
16 Buffalo; correct?

17 MR. LARSON: Yes.

18 COMMISSIONER HANSON: As you said earlier and  
19 this evening as well. We had in part of the discussion  
20 that we had today and we're going to have a little bit  
21 more I believe tomorrow on paleontology. And I'm curious  
22 what your thought would be pertaining to prioritization  
23 of fossils to an extent.

24 We heard a little bit today that there may be  
25 somewhat of a prioritization in invertebrates compared to

1 vertebrates recognizing that there's a host of  
2 cephalopods and trilobites seem to be fairly plentiful in  
3 that area from the standpoint of fossil -- T Rex are  
4 pretty rare. What would you think of a prioritization to  
5 an extent of fossils?

6 MR. LARSON: In terms of my research and my view  
7 of what the priorities would be, Harding County is  
8 probably the most sensitive -- one of the most sensitive  
9 spots in the nation. And actually as they go through  
10 Montana near Baker, Montana they're going to have the  
11 same problems and up near Ft. Peck, Montana, and this  
12 pipeline is going to encounter things which are quite  
13 possibly very, very significant in our understanding of,  
14 again, global climate change as well as just how much a  
15 population can change from just small amounts of change  
16 in our climate.

17 And so that that would be my priority is  
18 Harding County, the most important. There are fossils  
19 throughout the line, and I think it would be advantageous  
20 to have a paleontologist there to try to salvage what  
21 they could as they're going through and make things -- to  
22 watch it. But almost the entire length of Harding County  
23 where the pipeline goes is through the Hell Creek  
24 formation, and right at that KT boundary it goes above  
25 the impact zone or above the extinction event and it goes

1 back down into it again several times and could be some  
2 really, really significant things that will show up while  
3 that's happening and they need to be paid attention to.

4 CHAIRMAN JOHNSON: Thanks, Mr. Larson. Two  
5 comments. We are trying to work on the windows. We're  
6 not trying to sweat anybody out of the room. They have  
7 foolproofed the windows and we've managed to get an  
8 expert here to help us out. So thanks very much.

9 Secondly, and people have been pretty good about  
10 not reiterating public comment they've made at other  
11 locations. But this was a good example about how we all  
12 took very, very strong mental notes and written notes  
13 about what Mr. Larson said in Buffalo, referred today to  
14 his letter, referred today to his testimony, so to a  
15 certain extent, you know, we want to avoid redundancy so  
16 that we can be respectful of everybody's time tonight.  
17 So if you've already said it, we've got it. It's in the  
18 official record. That said, we don't mind you coming up  
19 and giving a brief reminder of, you know, what you told  
20 us.

21 MS. VIG: Welcome. My name is Zona Vig, V as in  
22 Victor I-G. My husband and I own a ranch in northern  
23 Meade County. We are members of Dakota Rural Action.  
24 And I'm the current executive board secretary. We are  
25 thankful that this organization has been so helpful to

1 the landowners and the people of South Dakota.

2 I would like to make note that there would be  
3 other ranchers here tonight but the ones that we visited  
4 with and said sorry, we can't come. And these were some  
5 of the things that are going on in our country: One was  
6 preg testing cows, another was weaning calves. Some were  
7 hauling hay and digging water lines for a neighbor. So  
8 our numbers may not be as much as we would have liked to  
9 have been here this evening to visit with you, but they  
10 are thinking about you.

11 And to perhaps explain, it's just as this is  
12 your full-time job, ranching is our full-time job and  
13 it's very hard to work in extra meetings.

14 Landowners along the Keystone XL Pipeline are  
15 passionate about a foreign country having the ability to  
16 use our American laws against us. It's a hurtful thing.

17 As a landowner, we did not ask for nor did we  
18 want this invasion onto our precious resource. We are  
19 stewards of this land that has been in our family nearly  
20 100 years. However, if this has to happen, we are  
21 adamant that all possible safeguards be in place.

22 We have questions that haven't been answered  
23 factually. And we've visited with many people from  
24 TransCanada. And they, meaning TransCanada, can only  
25 say, and obviously we're talking with people who

1 represent them but certainly if they represent them they  
2 should be able to answer our questions.

3 They say things like we don't know, we haven't  
4 had a question like that before, or we think so and so or  
5 thus and so. Think. We want to know about things like  
6 how the heat from the pipeline will affect the top of the  
7 ground. How it will affect deep-rooted crops like  
8 alfalfa. Because when we asked about crops all we got  
9 was, well, it will grow better. And they were talking  
10 about corn and wheat and such. And then when we asked  
11 about alfalfa it was like oh, we've never thought of that  
12 one.

13 How are we liable if our ranching equipment  
14 drops through and hits the pipe? How far the crude oil  
15 will spew from a break? How much oil will be leaked from  
16 a small break that can't be detected from a pressure  
17 drop?

18 I spent a couple of days in the last couple of  
19 weeks visiting with county officials and landowners in  
20 North Dakota. We went on a tour and we visited with  
21 people from a county that would be equal to, say, our  
22 county highway superintendent. They're specialists on  
23 weeds, fire, police, and sheriff, and also their -- if  
24 they had a catastrophic incident in their county.

25 And the recurring theme was that TransCanada

1 said one thing at the beginning but in actuality payment  
2 for damages had to be fought for and then they had to  
3 settle for less. And this is county officials. This is  
4 not just landowners. Because we did visit with  
5 landowners. But this is county officials.

6 And they were very strong about it. They  
7 visited very forthrightly with us. And they said you be  
8 careful. Things started out wonderful and by the end he  
9 said I wanted to bury the guy. I mean, that's how hard  
10 it got to be. And I don't think that's what we want. I  
11 think we want it up front. And he mentioned several  
12 things that he said I wish we would have done. And one  
13 of them was big bonds. He said we had one but he says it  
14 scares me, it wasn't big enough.

15 So the line that they heard, and when I say  
16 line, the sentence that they heard and we've heard many  
17 times is your roads will be as good or better than when  
18 we came. Now I've personally heard that many times and  
19 they said it up there. And they said -- and according to  
20 this North Dakota official he says that's very close to a  
21 lie. He didn't say it. He said it's very close to a lie  
22 because that's not what happened.

23 And he gave me specifics. We stood there and  
24 visited after the meeting quite a while. And he talked  
25 about how they said this but when it came time -- they

1 even said are you sure we even drove on that road? And  
2 if he hadn't taken pictures and had people sign things  
3 that they saw them, they would have dismissed it  
4 entirely.

5 So please don't be gullible and just because  
6 they say one thing, please don't accept it without facts  
7 and in writing. Because that's what he said, I wish I  
8 had got more in writing.

9 Please stand up for South Dakota and don't let  
10 possible dollar signs blind you. We implore you to have  
11 an independent on-site construction inspector paid for by  
12 TransCanada to ensure construction follows rules and if  
13 TransCanada does not, they have the power to shut them  
14 down.

15 And I've been hearing different things. And we  
16 ran into them saying, oh, you don't have somebody you can  
17 call -- and we did meet a liaison, but that's a  
18 TransCanada person. I'm talking about somebody who  
19 doesn't have anything to gain from them. That's what I'm  
20 asking for.

21 Thank you.

22 CHAIRMAN JOHNSON: Thank you, Ms. Vig.

23 MR. JONES: Thank you, Ms. Vig, for your  
24 comments and your questions. I certainly think this  
25 process, and I think the Commissioners would agree with

1 me, will address most of those concerns, whether it be  
2 her concerns with regards to weeds or fire or police or  
3 leak detection. I mean, these are all issues that are  
4 addressed by the Application and certainly over the last  
5 two days we've had some discussion with regards to this.

6 CHAIRMAN JOHNSON: Okay. We're going to pause  
7 for just a minute to see -- and all the comments have  
8 been great. I don't dispute any of them. We've gotten  
9 three folks in in the last 35 minutes, which I think is  
10 fine. Allow people to say what they want to say.

11 Let's just pause to see if anybody's got a  
12 relatively quick comment or a relatively quick question,  
13 something along the 1 or 2 minutes of comment. We'll  
14 take them first and then we'll get back to the longer  
15 conversations we've been having.

16 Yeah. Go ahead. And since we've already given  
17 you one shot, this will be real short? Go ahead. Great.

18 MR. HARTER: My name's John Harter, H-A-R-T-E-R,  
19 Winner, South Dakota.

20 One of the first things I wanted to address was  
21 on Keystone I I read a state geology report that  
22 recommended that the line be moved 8 miles east of where  
23 it's presently at. And I can't tell you what county.  
24 But 8 miles east into heavier till soil to protect the  
25 chance of a spill from reaching the ground water.

1 And this was -- this line was approved to run as  
2 it was put into -- or backed by TransCanada. So it was  
3 not moved to protect the ground water. So this is kind  
4 of disturbing, I think, so I would like that to be in  
5 record and that this be looked at. It's an important  
6 issue.

7 Okay. To TransCanada, I worked for several  
8 years in a mechanic shop and we bent exhaust pipe for  
9 vehicles. I would like to know how you bend this heavy  
10 steel pipe without changing the strength factor of the  
11 pipe.

12 CHAIRMAN JOHNSON: Do you have other questions,  
13 Mr. Harter?

14 MR. HARTER: Yes, I do.

15 CHAIRMAN JOHNSON: Okay. Let's run through them  
16 real quick because we're giving you a second chance here,  
17 which I'm happy to do. But let's get your questions and  
18 we can get them answered.

19 MR. HARTER: Where the saddles were used on the  
20 pipeline, the pipeline my understanding floated back up  
21 out of the ground. I think this needs to be looked at  
22 because the -- when something floats back up out of the  
23 ground when it's been covered with quite a bit of dirt  
24 it's got to have stress in some area, so maybe this  
25 pipeline should have been replaced instead of just

1 saddled and reburied.

2 The second question along that same agenda is  
3 when they put these saddles on, is it by law required  
4 that it's supposed to have a heavier pipeline where these  
5 are in place?

6 Okay. And then a neighbor, or he's actually my  
7 banker but his son works with pipeline from a company and  
8 it was -- he told me that it was stated that the larger  
9 diameter of the line the more of a chance of a problem  
10 with the line. So a question is we went from a 30-inch  
11 line to a 36-inch line so maybe this changes the safety  
12 factor. Maybe we should go back to a 30-inch line to be  
13 more safe.

14 Another issue that this kind of relates back to  
15 a comment that I made earlier that may have offended some  
16 people and I apologize if it did. But I was told, and I  
17 don't know if it happened in Tripp County, that  
18 TransCanada took some of our local governing bodies out  
19 and wined and dined them. I think this compromises the  
20 whole effect of this whole procedure. So just so you  
21 know where some of my statements could come from. Okay?

22 Then I was also told by a very reliable source  
23 that Keystone I was welding the pipeline when it was  
24 raining. I would like this issue addressed to know is  
25 this a standard procedure and is it a safe procedure.

1 Okay. I think that's all.

2 CHAIRMAN JOHNSON: Those are great questions,  
3 Mr. Harter. I want to make sure we get thorough answers  
4 to all of them. So I'm going to not give TransCanada an  
5 opportunity to respond right now. But again, being  
6 conscious of the hour I want to hear from anybody who  
7 wants to get on the road first. At some point we'll come  
8 back and make sure you get your answers. Thanks for your  
9 questions. Very good ones.

10 MR. HARTER: Thank you very much.

11 CHAIRMAN JOHNSON: All right. We'll pause again  
12 just to see if anybody's got relatively brief comments.  
13 Welcome, Commissioner.

14 MR. JOHNSON: Thank you. Robert Johnson,  
15 Buffalo, South Dakota, Harding County where this pipeline  
16 is going to run about 73 miles through, about a fourth of  
17 it.

18 And I do believe that the issues as far as  
19 reseeding and taking care of the land and the issues of  
20 compensation need to be addressed. And I think they will  
21 be and I hope that they will be.

22 But I also think that, you know, we're hearing a  
23 lot of negative comments. And some of them are due.  
24 They needed to be made. But there's also some good  
25 things that are going to happen with this pipeline. I

1 know taxes are something that you don't deal with. I am  
 2 a Commissioner at Harding County, although these comments  
 3 are strictly mine. It is going to be a benefit to a lot  
 4 of these counties and to the taxpayers in those counties.  
 5 I know in Harding County they talked that it could cut  
 6 our taxes in half. Now I don't know whether that's right  
 7 or wrong. If it cuts them by a quarter it's quite a  
 8 benefit and it will help everybody.

9 And we're in the process of trying to build a  
 10 new school in Harding County. And it's going to be a  
 11 burden for our taxpayers but if this thing comes through  
 12 and it will work like everybody says it will or even  
 13 close to what they say, it's going to help us build that  
 14 school. It's going to help us make probably one of the  
 15 best schools in the area. And I think that's important  
 16 and I think that that is an issue in this thing too is  
 17 that there is some good points to this pipeline that will  
 18 help everything.

19 You know, as far as the oil and coming out of a  
 20 foreign country, I think we use a lot of oil out of  
 21 foreign countries and I think maybe Canada could be just  
 22 as good a partner as some of the others.

23 But anyway, that's my comments. And I do think  
 24 that they should --

25 Now on the paleontology, the thing that bothers

1 me is if we start getting so tough on our paleontology --  
 2 we need to be concerned with it, but I don't want to have  
 3 to put a water pipeline in that goes 6 feet deep and have  
 4 to hire a paleontologist to follow me along to put a  
 5 pipeline in my property. So I think we've got to be a  
 6 little bit careful when we go with some of these things  
 7 that we don't set standards maybe all of us can't deal  
 8 with. Thank you.

9 CHAIRMAN JOHNSON: Thanks, Mr. Johnson. Other  
 10 comments of approximately that length?

11 Come on down.

12 MR. BARDESON: Good evening. My name is Pete  
 13 Bardeson, B-A-R-D-E-S-O-N. And I am the business manager  
 14 for the laborers union for the State of South Dakota. I  
 15 live in Sioux Falls, South Dakota.

16 I've been involved with the TransCanada Keystone  
 17 Pipeline for the last year and a half, and I've recruited  
 18 laborers. I've sent them to our pipeline training and  
 19 safety programs and sent them out to work on these  
 20 pipelines -- on the existing pipeline.

21 This year the pipeline employed approximately  
 22 100 South Dakotans, which is just one of the crafts that  
 23 helped construct the pipeline.

24 The construction of the TransCanada XL pipeline  
 25 will over double that amount of labor jobs for South

1 Dakotans at a time when the economy is on a down swing.  
 2 And these are good-paying jobs with health insurance,  
 3 prescription card, dental and optical insurance.

4 Each of these spreads roughly will have 5 to 600  
 5 people from every aspect of the project that will be  
 6 living in this state for the duration of the project.  
 7 This is good for all the local economies because of they  
 8 will be renting hotels, houses, apartments, the  
 9 contractors will be renting, you know, property for their  
 10 yards, warehousing, people will be, you know, buying  
 11 food, eating in the restaurants, clothing, everything  
 12 that us South Dakotans purchase in our state to live  
 13 these people will be doing the same.

14 I would like to read -- I brought in hundreds of  
 15 testimonies. I brought in three small quick ones that  
 16 kind of touch three areas.

17 Now this is from an individual. "My name is  
 18 Jason Silvernail. I live in Yankton, South Dakota where  
 19 I've resided all my life. I am a family man. I was  
 20 unemployed December 15 of 2008 through May 20 of 2009  
 21 due to the downturn in the economy. I found out about  
 22 the pipeline coming through South Dakota so I called  
 23 Laborers Local 620 in Sioux Falls, South Dakota for a  
 24 job.

25 "I became a union member in March of 2009. I

1 went to Omaha, Nebraska and took the pipeline classes,"  
 2 which that's where our training fund is. It is actually  
 3 a small scale of a pipeline with the right of way, and we  
 4 train every aspect and what a job responsibility the  
 5 laborer has on the pipeline along with terminology. It's  
 6 90 percent on-hands work and 10 percent classroom work.  
 7 So we get our men and women prepared and familiarized  
 8 with what the responsibilities are so they are  
 9 knowledgeable when they go up on these lines to perform  
 10 this work.

11 Okay. He started work. He worked with Price  
 12 Gregory which started in the southern part of  
 13 South Dakota around the Yankton area on May 20. "It was  
 14 one of the best moves I've ever taken. This job has  
 15 helped me save our home and transportation. The benefits  
 16 are outstanding, especially when we were paying high  
 17 COBRA insurance."

18 Here's another one. This is from a small  
 19 business owner in South Dakota. "My name is Bruce  
 20 Pearson. I have lived in South Dakota all my life and in  
 21 the Sioux Falls area since 1996. I have been a small  
 22 business owner for the past eight years and managed well.  
 23 My concrete business supported me and my family. We have  
 24 four children ages 6, 4, and twins age 2. We have  
 25 purchased a home in Crooks and lived well on my salary.

1 "This year, however, I couldn't find work. I  
2 was out looking talking to people day after day but there  
3 was no work. When Michels hired me to work on the  
4 pipeline I was desperate. We struggled to make our house  
5 payment and paid 1,200 monthly for health insurance  
6 because my twins have health problems. I was afraid we  
7 were going to lose our home and all of our equity. And  
8 where do you put four kids, my wife and I.

9 "I feel the pipeline saved us. They pay good  
10 money and provide insurance. There were 600 people  
11 working on the crews. All of them lived in small  
12 communities in South Dakota, bought groceries, clothing,  
13 gasoline for their vehicles. They had to make an impact  
14 on those communities.

15 "I have talked to other businessmen and it  
16 doesn't look like my business is going to recover for the  
17 next few years and I need a job to be a productive father  
18 and South Dakotan. I hope South Dakotans will support  
19 the pipeline construction."

20 And I have one more. This is from a manager of  
21 a small business. "We, the people on the eastern part of  
22 the state, have been reading and listening to the people  
23 trying to stop TransCanada from putting the pipeline  
24 through the western part of our state. May I take a few  
25 moments of your time and have my say in this matter.

1 "We've had manufacturing close and major layoffs  
2 in the past few years. I manage a SUBWAY on I-90 exit  
3 353 at Spencer, South Dakota. It's a gas station/SUBWAY  
4 in the middle of nowhere surrounded by nothing but  
5 farmland. We have a truck fueling and gas store. We  
6 have a small convenience store with a SUBWAY in it. We  
7 are in the middle of four small towns. The layoffs have  
8 hurt our business. We noticed the vacationers were also  
9 down this year.

10 "In July, TransCanada pipeline workers started  
11 to arrive. Our small town of Spencer had 150 residents  
12 up until the apartments and campers started filling our  
13 village. We probably have 225 people. Now the workers  
14 use our banks, post office, small gas station in Spencer.  
15 Our SUBWAY sales have soared. We have increased sales  
16 from last year about 35 to 40 percent because of the  
17 pipeline.

18 "The towns from Mitchell all the way to Sioux  
19 Falls have pipeline workers in their towns. All the  
20 empty apartments, farmhouses, and campgrounds all have --  
21 have been full of the workers. If your small towns west  
22 hurt by the economy, you need to think about how the  
23 money the workers spend while in our state can help their  
24 towns.

25 "My employees and myself have and still enjoy

1 waiting on the workers. My SUBWAY hit highest sales  
2 records with the pipeline employees -- with the pipeline  
3 employees here. Reality will hit our area when the  
4 pipeline work leaves us. We have friends for life with  
5 some of these workers.

6 "Thank you for taking a moment of your time.  
7 Feel free to call me at work for more information if need  
8 be. Thank you, Sue Moorhead."

9 And here's two -- two e-mails for -- states,  
10 "Congratulations on highest sales week ever, nice job.  
11 Second week in a row. Get this -- second week in a row.  
12 Tell the pipeliners thank you." This comes from the vice  
13 president of Pork Petroleum Company Products.

14 CHAIRMAN JOHNSON: Mr. Bardeson, do you have a  
15 lot more?

16 MR. BARDESON: No. I'm wrapping up right now.  
17 The TransCanada pipeline will be a win-win situation for  
18 landowners, business owners. And South Dakota workers.  
19 Thank you for your time.

20 CHAIRMAN JOHNSON: Good to see you again,  
21 Mr. Bardeson. Thanks.

22 MR. BARDESON: Good to see you Dusty, Steve,  
23 Gary.

24 COMMISSIONER KOLBECK: Thank you.

25 CHAIRMAN JOHNSON: Other comments? We'll do one

1 last call for people with shorter comments. Okay. Go  
2 ahead.

3 MR. DOOLITTLE: Thank you. My name is Jim  
4 Doolittle, D-O-O-L-I-T-T-L-E. And my family and I own  
5 and operate a ranch in Harding County right east of  
6 Buffalo. We own property that for the proposed -- that  
7 the proposed pipeline may cross that probably 3 or 4  
8 miles potentially.

9 And one and a half years ago we gave permission  
10 to TransCanada to do some of the preliminary survey work.  
11 And so far at this point we haven't had any problems with  
12 any of the land people that we've had contact with.  
13 They've been polite. And they've been easy to work with.  
14 And really haven't had any problems.

15 I'm glad I came here tonight because I think  
16 I've heard a lot of things I hadn't heard before as far  
17 as concerns. And I think they're legitimate and, you  
18 know, I trust, and I trust that you will ensure that the  
19 safety and environmental concerns that have been brought  
20 out this evening will be resolved.

21 But at this point in time my family and I have  
22 been and currently are in favor of the project for a  
23 couple of reasons: One is, of course, we believe that --  
24 or I believe at least it serves a national interest in  
25 the sense that the project or projects like this may

1 lessen dependence on foreign oil, particularly Middle  
2 Eastern.

3 Second issue that I think has been brought out  
4 earlier too is it will have a major economic impact in  
5 South Dakota during not only the construction phase but  
6 the long-term tax revenue that will be utilized to  
7 support local schools, counties and other local  
8 governments. So we think that's major.

9 I have a couple support letters that I'll leave  
10 with you that essentially support the project in the same  
11 manner that I've briefly indicated. One is from Black  
12 Hills Community Economic Development which I serve as the  
13 executive for and some of the same reasons I just  
14 mentioned. And by the way, I live in Belle Fourche most  
15 of the time.

16 The other is from Black Hills Council of Local  
17 Governments, which is the regional planning and community  
18 development organization that covers the counties of  
19 Bennett, Butte, Custer, Harding, Lawrence, Meade,  
20 Pennington, and Fall River, and their board went on  
21 record at their last meeting, and their board consists of  
22 county officials or like County Commissioners or city  
23 council people from those counties I mentioned. Went on  
24 record in supporting the project as well.

25 So I'll leave those with you and thank you for

1 your time.

2 CHAIRMAN JOHNSON: Thank you, Mr. Doolittle.  
3 Other short comments?

4 MS. LYMAN: Good evening. My name is Susan  
5 Lyman, L-Y-M-A-N, and I live in the Okaton-Murdo area.  
6 My family is involved in both ranching, as well as in the  
7 hotel-motel business in the Murdo area.

8 And my comment is in regards to the man previous  
9 to this last gentleman. And he had commented that the  
10 economic impact in the small communities with the  
11 TransCanada employees living in the communities. I  
12 recently read an environment impact study that stated  
13 that that would not be the case, that these workers would  
14 indeed be living in work camps. They were hoping to put  
15 600 people in the Winner area as well as there was also  
16 going to be a work camp in another area of the state.  
17 And I was wondering if anyone could answer if that is,  
18 indeed, going to be the way it is.

19 CHAIRMAN JOHNSON: Great question. Do you have  
20 other questions?

21 MS. LYMAN: No.

22 CHAIRMAN JOHNSON: Okay. Mr. Jones.

23 MR. JONES: The plan right now is to use work  
24 camps. However, we have used them in the past in  
25 different regions and there still is tremendous economic

1 benefits to the community. People do come and go. The  
2 work camps are mainly focused right now for the main  
3 pipeline spread, but there are seven unique pump stations  
4 that need to be constructed in the state. And those  
5 workers are not right now scheduled to use the work camps  
6 and will continue to use like hotels or they may use the  
7 local motels or camping situations. Whatever they may  
8 choose to do.

9 But the same kind of economic benefit may be  
10 somewhat diminished because they're in work camps but  
11 this also helps balance the fact that there just isn't  
12 enough hotels, there just isn't enough restaurants in  
13 some of these remote regions.

14 MS. LYMAN: Thank you.

15 COMMISSIONER KOLBECK: Mr. Jones, do your  
16 workers on the existing pipeline, do they just -- they  
17 can't just live anywhere along the pipeline while they're  
18 here?

19 MR. JONES: So on the first project that's  
20 pretty much the description. They were living literally  
21 everywhere, I think farmhouses and motels and hotels and  
22 such. And there are -- a lot of communities will tell  
23 you that the no-vacancy sign was up pretty much regularly  
24 when the pipeline was going through those communities.  
25 You know, really the arrangements with our prime

1 contractor when he makes the arrangements with his  
2 workers and sometimes they have a labor arrangements with  
3 the various unions, as well, as described earlier.

4 So but there is options. And so we still don't  
5 know all the full details of those options. And so  
6 that's still an outstanding question.

7 COMMISSIONER KOLBECK: All right. Thank you.

8 MR. IVERSEN: Can I make one more comment,  
9 please?

10 CHAIRMAN JOHNSON: Go ahead, sir.

11 MR. IVERSEN: My name is John Iversen. The  
12 other fella, I don't know his name, was just outside  
13 there being -- dependency on foreign oil. I think that's  
14 a good thing. But what guarantees do we have after we --  
15 this line's all in and this oil's refined down in Texas.  
16 We have no guarantees it's not going to be exported to  
17 Japan or China. Is TransCanada going to put something in  
18 writing that it will stay in the United States or Canada?  
19 I mean, we go through all of this headache for maybe  
20 nothing. Do they have a response for that?

21 MR. JONES: I could probably spend the rest of  
22 the night talking about this. I have a lot of passion.  
23 The U.S. right now --

24 CHAIRMAN JOHNSON: I'll just interrupt by saying  
25 I have seen Mr. Jones get heated up a couple of times on

1 the discussion of global demand for petroleum products  
2 and he is quite knowledgeable.

3 MR. IVERSEN: I guess all I want to know is if  
4 it's staying in the United States or not. That's my  
5 question.

6 CHAIRMAN JOHNSON: Right. Perhaps we can give  
7 30 seconds to Mr. Jones.

8 MR. JONES: Absolutely. The fundamental  
9 principle is the U.S. imports between 7 and 9 million  
10 barrels every single day, and it just seems reasonable  
11 when you think about the fact that we consume about 17 to  
12 20 million barrels every day that that principle will  
13 remain the same.

14 And so what's going to happen over the next 20  
15 to 40 years is that the rest of the world's consumption  
16 is going to grow rapidly. China, Russia, India, and so  
17 the competition for oil is going to continue to grow.  
18 And so I don't see a situation where the refineries in  
19 the Gulf Coast would export the refined product when they  
20 consume and they import so many, many millions of  
21 barrels.

22 So experts independent of TransCanada have  
23 already, you know, shown long-term forecast is for  
24 continued dependence on foreign sources. And it just is  
25 logical to put the second largest crude oil proven

1 reserves in Canada and marry them up with the largest  
2 refining complex in the world in the Gulf Coast.

3 And so when you think of that natural hedge,  
4 that natural marriage, I cannot see or foresee an  
5 opportunity where it would make sense to turn around and  
6 export that to a different country.

7 MR. IVERSEN: Thank you.

8 CHAIRMAN JOHNSON: Thank you, Mr. Iversen. All  
9 right. We've given the short talkers some opportunity --  
10 go ahead.

11 MR. WILSON: My name is Tom Wilson, W-I-L-S-O-N,  
12 from Buffalo, South Dakota. I'm a rancher that the  
13 pipeline does not cross my land. It does not. I am here  
14 because of the economic -- what I feel could be an  
15 economic stimulus to the economy of Harding County.

16 Here we've got a government that's trying to  
17 give economic stimulus to people and we're looking at  
18 ways to shut one down.

19 This could help tremendously if TransCanada,  
20 which they have said they will use as much local  
21 contractors which will help limit the damage to local  
22 infrastructure such as your roads. If they use such  
23 things as fencing crews, utilizing the local weed board  
24 which would utilize your local sprayers, you have  
25 knowledge right there that would help eliminate a lot of

1 problems. The seeding with your local conservation  
2 district.

3 The impact could be tremendous if they utilized  
4 the gravel trucks, blades, your independent fire trucks  
5 and independent EMTs, that would eliminate a tremendous  
6 amount of pressure on the local infrastructure.

7 TransCanada, I contacted them about assisting  
8 with a local project up there that supports -- it's a  
9 local youth protection program. And they were very  
10 helpful. They donated quite financially, enough to  
11 actually pay for everything we did in one year. And they  
12 basically said that they would look at it again next  
13 year.

14 I have, and I'm not going to read them all. I  
15 will give these to you for your use. 31 signed letters  
16 of support for the pipeline. 16 verbal. These people  
17 could not get their -- we had given these out and did not  
18 get them mailed back to us but they said they would sign  
19 them. And then there are two letters of support that I  
20 will mail down to you or fax them that the gentleman was  
21 coming and he was going to come down and testify and he  
22 had to go into Wyoming on a land deal. And he is a local  
23 rancher also and local contractor.

24 Okay.

25 CHAIRMAN JOHNSON: Thanks very much, Mr. Wilson,

1 and a good reminder that this is not anyone's last  
2 opportunity to be heard. Certainly the Commission's  
3 still happy to take any comments that you might have in  
4 writing. In some respect written comments can be of more  
5 value. We do have a transcript here but sometimes it  
6 will take a couple of weeks before the transcript is  
7 polished, ready to go and up on the web.

8 Commissioner Kolbeck, did you have something?

9 COMMISSIONER KOLBECK: No. That's exactly what  
10 I was going to mention. You hit the nail on the head.  
11 The door is always open and we can't discuss specifics of  
12 the case but we can continue to take your comments and  
13 concerns. We want to hear them. That was a perfect  
14 example of a guy couldn't make it in. We will always  
15 take those.

16 CHAIRMAN JOHNSON: Well, in fact, I don't think  
17 there's a single month, maybe not even a week but I don't  
18 think there's a month that's gone by that I haven't  
19 talked about or dealt with the TransCanada I pipeline,  
20 some aspect of it. If a permit were to be granted, we're  
21 certainly not done by any stretch of the imagination. If  
22 that were to happen. Not saying it's going to.

23 Other comments. Any comments? Ms. Trask,  
24 welcome.

25 MS. TRASK: Stephanie Trask, staff for Dakota



1 Rural Action. And I'm reading these comments on behalf  
2 of Mike and Sue Sibson, landowners from Howard,  
3 South Dakota along the Keystone I pipeline.

4 "Greetings, South Dakota Public Utilities  
5 Commissioners and staff. Due to the late soybean harvest  
6 we are unable to attend tonight's comment period. We  
7 want to thank Dakota Rural Action for agreeing to read  
8 the following testimony:

9 "This is our story of some of the construction  
10 process, the PUC conditions not being followed, and the  
11 construction agreement with TransCanada that was breached  
12 many times. We want the Commissioners to understand that  
13 what we have to say all has documentation to prove that  
14 what we went through is the truth.

15 "June 23, 2009: Michels' construction workers  
16 and vehicles knowingly trespassed on our property. They  
17 drove across a vacated unimproved section line to put up  
18 goal posts for transmission power lines. The workers  
19 left garbage and when leaving our property failed to  
20 properly close the gate. We did not press charges  
21 against them even though they lied about the incident.  
22 We gave the company a free pass.

23 "August 24 through the 26th, 2009: The pipe  
24 bending crew. They had no respect for our property.  
25 They left their garbage all over our property at the end

1 of the day. In our construction agreement we asked to  
2 have all our garbage removed. It was not followed. The  
3 crew was busy writing messages to each other on the pipe.  
4 Maybe that is why they left the garbage. We still would  
5 like to know who Jim and Sally are. We had to make phone  
6 calls to the construction company and Sara Metcalf  
7 before the garbage was finally taken care of.

8 "June through October 2009: As we live close to  
9 the township road we requested reduced-speed signs and  
10 dust control. Many construction vehicles did not follow  
11 the reduced-speed signs. We do have documentation of the  
12 speeding trucks. We also witnessed loaded fuel trucks  
13 failing to follow the law about stopping at stop signs  
14 even in fog.

15 "September 3, 2009: PUC condition 34. We feel  
16 that this condition was not followed on our property.  
17 After an overnight rain of 1.3 inches construction  
18 continued. This was probably the worst day of our lives.  
19 There were many construction vehicles lugging mud to dig  
20 the trench. It was not a pretty sight. Water was pumped  
21 off the easement area to our property. The construction  
22 company did not follow the construction agreement again.  
23 We did not give permission to dewater. The wetland areas  
24 on our property were a big mess.

25 "September 2009: PUC condition 15. We were

1 told that to complete and sign a construction agreement  
2 would help protect us as landowners. We did sign the  
3 agreement July 9, 2009." And as a subset, "Our copy says  
4 water pumping may be allowed but must get Mike Sibson  
5 before pumping. No one contacted Mike to get permission  
6 to pump the water. The construction company went ahead  
7 and did what they wanted. Another breach of the  
8 agreement.

9 "September 2009: PUC condition 18. Rock  
10 excavation from the trench may be used to backfill the  
11 trench only to the top of the existing bedrock profile.  
12 All of the rock shall be considered construction debris.

13 "Construction agreement 13, rock removal. We  
14 requested that we did want rock removal and we wanted the  
15 rocks hauled off. Once again, our request was not even  
16 considered. The huge rock pile was buried on our  
17 property. Some single rocks on the easement area were  
18 pushed into the clay and covered with topsoil. This  
19 condition states that all rock is to be considered  
20 construction debris. Why were the rocks not hauled away?

21 "We just wanted you to know that the permit  
22 conditions that you granted to TransCanada Keystone  
23 Project were not followed. Commissioners, maybe now you  
24 know how the landowners feel when conditions, requests,  
25 and rights are totally ignored.

1 "In closing, we want to thank Lillian Anderson,  
2 Kent Moeckley, and Curt Hohn for all the help they gave  
3 us these past three years. We need to elect more people  
4 like them to public office.

5 "Thank you for your time. Respectfully  
6 submitted, Mike and Sue Sibson."

7 And they have also enclosed a copy of the  
8 construction conditions agreement and pictures of the  
9 construction conditions agreement violations.

10 CHAIRMAN JOHNSON: Do you know, Ms. Trask --  
11 tough situation to put you in because you're not the  
12 Sibsons, obviously. Do you know to what extent -- they  
13 mentioned Sara Metcalf once. They never mentioned PUC  
14 staff.

15 Do you know to what extent they contacted  
16 Commission staff with their concerns.

17 MS. TRASK: I think you'll have to get in touch  
18 with the Sibsons.

19 CHAIRMAN JOHNSON: Count VII or VIII, you know,  
20 alleged violations of the Commission's order.  
21 Mr. Semmler, were you contacted by the Sibsons with that  
22 kind of frequency?

23 MS. SEMMLER: No. We do have a complaint  
24 process here at the PUC, an informal complaint process  
25 where Deb Gregg and I work closely with company

1 representation to try to understand the problem and solve  
 2 things informally. And if we can't find a sufficient  
 3 solution either by our standards or by the landowner's  
 4 standards, we have a formal complaint process. And no  
 5 one has used that process from the first pipeline.  
 6 CHAIRMAN JOHNSON: Okay. And I don't want to  
 7 minimize what Mike and Sue, their comments. Because  
 8 they're very earnest people, they're very sincere people,  
 9 I know them. I know they've got concerns. I just want  
 10 to reiterate for those of you that are along the existing  
 11 pipeline route, the Keystone E, if you do have concerns,  
 12 Ms. Semmler, Ms. Gregg, other members of the team I think  
 13 are willing to try to resolve those concerns.  
 14 Okay. Thanks, Ms. Trask.  
 15 COMMISSIONER KOLBECK: And that just brings up a  
 16 good point that if we do start a complaint process, you  
 17 need to be willing to sign your name to the facts, which  
 18 is not a big deal. But without that, then we can't start  
 19 our process. So it's very informal. We'll help you as  
 20 much as we can. But if you do have trouble, please  
 21 contact the people that we have working on it. Sign a  
 22 complaint, and then we can drive the bus from there. But  
 23 we've got to take that route.  
 24 MR. CARRELS: My name is Peter Carrels. I work  
 25 for the Sierra Club. I live in Aberdeen.

1 CHAIRMAN JOHNSON: Spell your last name,  
 2 Mr. Carrels.  
 3 MR. CARRELS: I'm sorry. C-A-R-R-E-L-S. It's  
 4 commonly misspelled. I should do that automatically.  
 5 CHAIRMAN JOHNSON: That's why I asked. There  
 6 were five that immediately sprung to my mind, the  
 7 spellings. Go ahead.  
 8 MR. CARRELS: So much of this proceeding has  
 9 focused on landowner concerns, and I think that that's  
 10 vitally important and very appropriate. But I wanted to  
 11 comment on the -- a big-picture perspective related to  
 12 this pipeline, and it relates to the conversation that  
 13 you had about the global uses of petroleum that you were  
 14 commenting on earlier. I hadn't even intended to comment  
 15 here but after hearing that I had to jot a few things  
 16 down and I think give a flip side to that, the point that  
 17 the fellow from TransCanada has made.  
 18 We can't forget that this pipeline has a  
 19 beginning. It begins in the tar sands area of Alberta  
 20 and it's going to have an end point, whether it's  
 21 refineries or shipping locations. We know that tar sands  
 22 crude is probably the dirtiest crude oil on this  
 23 continent. Tar sands crude requires more  
 24 energy-intensive and emissions-heavy processing than any  
 25 other oil.

1 We can't know how the current debate over  
 2 climate change legislation will shake out, but it seems  
 3 certain that it's going to address carbon emission  
 4 problems. It's already doing that in some ways with  
 5 different regulations from various agencies. Tar sands  
 6 refiners will most certainly be affected by these  
 7 regulations.  
 8 I was looking at an article the other day and it  
 9 contains a quote by a fellow named Peter Whitman who's a  
 10 policy analyst with the U.S. Department of Energy. He  
 11 told an industry conference in Houston on October 28,  
 12 "Because oil sands requires more energy-intensive  
 13 emissions-heavy processing, the cost of producing  
 14 gasoline and diesel from the Alberta crude will climb  
 15 more steeply than it would for refining light grades of  
 16 oil." He went on to say, "The refining emissions costs  
 17 could represent a significant portion of current refining  
 18 margins and would disadvantage the domestic refiners  
 19 versus the importer who does not have to pay for  
 20 emissions at the refining level."  
 21 We have to wonder about the future of tar sands  
 22 mining and tar sands refining. I trust that a company  
 23 like TransCanada has assembled a business plan that  
 24 accounts for these many contingencies, but it also seems  
 25 clear that the future marketplace for tar sands crude oil

1 is going to be very volatile.  
 2 If U.S. refineries can't refine tar stands crude  
 3 because of legislation-mandated costs related to carbon  
 4 regulations, where will the tar sands be sent for  
 5 refining? Also many analysts, and this contradicts what  
 6 you also said, believe U.S. gasoline consumption has now  
 7 peaked. If true, where will the tar sands that are going  
 8 to be piped beneath South Dakota soil be refined and  
 9 used? And I think South Dakotans need to know the  
 10 destination, domestic or otherwise, for tar sands oil.  
 11 Thank you.  
 12 CHAIRMAN JOHNSON: Thanks very much,  
 13 Mr. Carrels. And, Mr. Jones, I'm sure you've got  
 14 comments but I'm going to skip past them because I do  
 15 want to be cognizant of the hour and I know we have other  
 16 people who want to speak. So take some notes and if you  
 17 want to make some comments at the end we'd be happy to  
 18 hear them.  
 19 Mr. Lawrence, welcome.  
 20 MR. LAWRENCE: Craig Lawrence from Sioux Falls,  
 21 L-A-W-R-E-N-C-E. I know that you know a lot about this  
 22 project and this is a hard meeting, isn't it? A pressing  
 23 national need. XL and Keystone together would replace  
 24 almost 30 percent of what we import from OPEC. A good  
 25 economic benefit to our state, tens of millions in

1 property taxes from a company that will become our  
 2 largest property taxpayer over decades, against  
 3 landowners, very sincere who will be disrupted, no doubt,  
 4 and who are very sincere about their concern for the  
 5 land. Tough call. I just bring you a perspective  
 6 tonight based on what my experience has been.

7 If I were in your shoes what I be asking myself  
 8 all the time would be based on what we've experienced in  
 9 Keystone, is this something we want to put our people  
 10 through again? I'd be asking did they keep their word?  
 11 Did they respect our landowners? Did they listen to  
 12 complaints and respond? In short, should we just  
 13 willingly let them carve another trench through our ranch  
 14 and farmlands knowing that some will disapprove, there  
 15 will be some who are angry that we crossed their lands by  
 16 force of law, some who will be inconvenienced for a time  
 17 by damaged roads and disrupted lands.

18 I believe I bring a unique perspective on these  
 19 questions because last year Robert Jones hired our firm  
 20 to document the construction of Keystone in video form to  
 21 get on tape what really happens up and down the line, to  
 22 get out there and report. I suppose some might say that  
 23 in being so hired I'm no longer objective, but if you'll  
 24 look me straight in the eye I want to talk to you as a  
 25 34-year South Dakota businessman who employs 200 people

1 and cares deeply about our economic, our social, and your  
 2 environmental future.

3 During the construction of the Keystone we've  
 4 been all the way from the oil sands at Fort McCurney  
 5 (phonetic) to the terminal at Hardisty, then across  
 6 Canada and down through all the states ultimately to the  
 7 Wood River station at Wood River, Illinois where the  
 8 pipeline terminates there at the refineries, and we've  
 9 talked to dozens and dozens of landowners, mayors, county  
 10 commissioners, pipeline workers, chambers of commerce,  
 11 restaurant operators, and many more of the faces and  
 12 communities touched by Keystone.

13 We would summarize our experience by telling you  
 14 three things that we've observed about TransCanada as  
 15 they near completion of the Keystone Project.

16 First, I find in them a genuine concern about  
 17 listening and responding to the wishes of landowners. We  
 18 can all imagine how difficult it is for a farmer to watch  
 19 a pipeline trencher rip through his most productive  
 20 fields and wonder if it's ever going to be put back the  
 21 way it was. But we've watched TransCanada time and again  
 22 go the distance in working with landowners to create  
 23 satisfaction. I've seen leaders from TransCanada travel  
 24 hundreds of miles to work out a single complaint and to  
 25 try to make things right.

1 One of the first areas completed was in North  
 2 Dakota. There, among others, we talked with Walhalla  
 3 farmer Jim Mettleman (phonetic) who said on the basis of  
 4 his experience they're good to work with, quote, "What  
 5 they say, they do." North Dakota State Senator Curt  
 6 Olafson, who serves in their legislature, looked out over  
 7 the lands reclaimed and across the scenic Pembina Gorge  
 8 and said, "This has been a great project for North  
 9 Dakota."

10 To be candid, there were sinkholes caused by the  
 11 pipeline that only became evident last winter but they  
 12 were repaired early this spring to the Senator's  
 13 satisfaction.

14 Last year I traveled through Marshall and Beadle  
 15 Counties where record rainfall has made things very  
 16 difficult and if patience is short there it's no wonder  
 17 because the farmers are waiting and waiting to harvest  
 18 one of the best crops in memory. And I don't know if  
 19 you've been there, but it's just a moisture mess. It's  
 20 unbelievable. I couldn't believe that TransCanada could  
 21 actually put a pipeline in under those conditions, and I  
 22 was almost astounded to see how well they can get the  
 23 land back in nearly its original condition when it's so  
 24 wet.

25 But I looked at the details of the work as well.

1 I noted how the edges of the dirt were carefully blended  
 2 with the undisturbed fields as though the person doing it  
 3 really cared about what they were doing. I saw roads  
 4 repaired effectively with a base of crushed red granite.  
 5 Next to the Carpenter pumping station, an area just  
 6 pounded by trucks, the road was back in shape.

7 I was elected supervisor of my township for 20  
 8 years in Lincoln County and I've overseen repair of a lot  
 9 of moisture-damaged gravel roads. TransCanada is getting  
 10 them back in shape. Admittedly some are still pretty  
 11 bad, but I'm confident they'll be fixed right.

12 Further down the line at Conde, South Dakota  
 13 farmer Lynn Sanderson (sp) summed up his experience with  
 14 Keystone, "Everything that's been promised has happened."

15 At Yankton the chamber of commerce rolled out  
 16 the red carpet for TransCanada in a community-wide  
 17 barbecue tribute. Signs all over town thanked pipeline  
 18 workers. The pipeline went through the city's east side  
 19 through one of their beautiful city parks and then under  
 20 the Missouri River. TransCanada did the work with  
 21 diplomacy and skill. And by the way, Yankton's sales tax  
 22 for 2009 is up while most other cities in the state's are  
 23 down. The Yankton chamber of commerce says it's due to  
 24 the Keystone Pipeline.

25 Charles Kemper, 20-year mayor of Troy, Illinois

1 agrees. He told us the pipeline was just the boost they  
 2 needed, and he didn't fail to note that the pipeline's  
 3 path would take it right through their city's 18-hole  
 4 pride and joy. So TransCanada did it right and bored  
 5 quietly, unobtrusively under the golf course, we laughed,  
 6 while a tournament was in progress.

7 But while the building -- while building the  
 8 pipeline with extreme sensitively to landowners and  
 9 communities along the way, TransCanada has also respected  
 10 the environment. If you fly the pipeline's path, as some  
 11 you have, you'll see jogs everywhere for this wetland and  
 12 that. You'll find horizontal bores under rivers and  
 13 streams and lakes accomplished with an attention to  
 14 detail that's surprising.

15 We've been to the Carlisle Lake Wildlife  
 16 Preserve near St. Louis. You wouldn't expect wildlife  
 17 biologists and preserve managers to be very complimentary  
 18 of a pipeline built through their prime waterfowl  
 19 habitat, but TransCanada did it to their satisfaction  
 20 despite almost unbelievably wet conditions, completed  
 21 precisely on time right before the duck season opened.

22 Lastly, TransCanada has built Keystone with a  
 23 steadfast, almost over-the-top commitment to safety due  
 24 to the safety of everyone who works on it or who is  
 25 impacted by the pipeline. Giant projects like the Hoover

1 Dam or the interstate highway system are infamous for the  
 2 amount of lives they claim, but the Keystone Pipeline  
 3 record is attributed to a steadfast safety program.

4 A month ago I was north of St. Louis with the  
 5 president of TransCanada, with its chief operating  
 6 officer, its chairman of the board, and with Robert  
 7 Jones. We were going out to inspect the line and check  
 8 progress at the end at Wood River. Before we got  
 9 anywhere, and you'll remember this, Gary, from our  
 10 experience last fall, before we went out even the  
 11 president of TransCanada went through safety training and  
 12 wore the required safety gear. At TransCanada nobody  
 13 sets safety or procedure aside. And that kind of  
 14 attention to detail does overlap into careful land  
 15 reclamation, into extreme regard for the environment, and  
 16 a commitment to doing it right that makes me think I  
 17 believe they have genuinely endeavored to keep their  
 18 word, that they have acted responsibly. I know there  
 19 will be hardships with XL, but I still believe XL will be  
 20 good for America and good for South Dakota.

21 Thank you.

22 CHAIRMAN JOHNSON: Thank you, Mr. Lawrence.  
 23 Other comments? Welcome.

24 MS. WADDELL: Good evening. My name is Holly,  
 25 H-O-L-L-Y, last name Waddell, W-A-D-D-E-L-L.

1 CHAIRMAN JOHNSON: I wonder if that mic's on.  
 2 Sorry for the interruption.

3 MS. WADDELL: Thank you for taking comments this  
 4 evening. As I said, I'm Holly Waddell. I've been a  
 5 member of Dakota Rural Action for about 11 years, and I  
 6 currently serve as the chairman of the board. I'm  
 7 third-generation ranching on land homesteaded by my  
 8 paternal grandmother, so stewardship of land and  
 9 resources is paramount to my ability to stay on the land  
 10 that I love.

11 Dakota Rural Action is a grassroots family  
 12 agriculture and conservation group that works to organize  
 13 South Dakotans to preserve our family farmers, ranchers,  
 14 natural resources, and our unique way of life.

15 We have about 650 members all across the state.  
 16 40 of those members are directly impacted by nearly 100  
 17 miles of the TransCanada pipeline.

18 My local chapter of DRA invited folks in our  
 19 chapter area to an informational meeting on July 22 of  
 20 2008. I helped put that meeting together. And we had  
 21 about 75 people in attendance that night to learn about  
 22 the pipeline proposed to cross our part of South Dakota.

23 I maybe didn't mention where I'm from. I'm from  
 24 Perkins County, which is up in the northwest corner right  
 25 next door to Harding.

1 Dakota Rural Action has standing policy  
 2 supporting only oil and gas pipeline development that is  
 3 built to the highest standards for safety and  
 4 environmental protection and which does not conflict with  
 5 private property rights and good land stewardship.

6 In addition to the comments you have heard thus  
 7 far tonight, I would also want the Commission to address  
 8 the following concerns:

9 We have requested, and I again ask you tonight  
 10 to release a detailed list of the names of the landowners  
 11 who are facing the arrival of the pipeline on their  
 12 property, including a detailed map of the route.

13 In regard to the historical sites, those types  
 14 of issues on our lands, you've already heard that some of  
 15 the landowners have expended \$20,000 of -- out of their  
 16 own pocket to have the sites documented, and this has  
 17 been a big economic drain for those on the land. And so  
 18 we're wondering do you as our public servants intend to  
 19 permit this pipeline without an official Environmental  
 20 Impact Statement?

21 Mr. Jones alluded to the filing of an Emergency  
 22 Response Plan. Where is that response plan? What will  
 23 TransCanada's response time be? I live about 18 miles  
 24 from the now famous Mcfarthest spot, a place on the map  
 25 deemed to be the farthest distance from a McDonald's. I

1 figure the nearest emergency response team is likely at  
 2 least as far away as my McDonald's, if not further.  
 3 And then what about educating our citizens who  
 4 live near this pipeline thinking about -- you know,  
 5 they've already said they don't expect our fire  
 6 departments to respond, but there are some things that  
 7 our local folks should know, such as, you know, maybe  
 8 allowing for some safety drills so that if a fracture  
 9 should occur, the folks on the land will know kind of the  
 10 first things they should do. And also they should make  
 11 sure that all of those who are in immediate proximity to  
 12 the pipelines have those emergency numbers to call like  
 13 to the nearest pump station so they can be alerted to  
 14 shut the flow off, those kinds of things. I think you  
 15 need to build that into the expectations and the  
 16 accountability.  
 17 A condition of the permit should be the  
 18 establishment of a bond for cleanup after spills and  
 19 after abandonment. The socioeconomic impact statement  
 20 already submitted to this Commission prepared by expert  
 21 witness Madden failed to address the pipeline's impact on  
 22 land valuations, salability, and insurability. We find  
 23 this inadequate and imprudent on your part. We feel it  
 24 is your responsibility to take these impacts into  
 25 consideration as you consider the permit.

1 We would like this Commission to do a study on  
 2 the worst-case scenario. That's kind of something my  
 3 husband and I, as we think about business decisions for  
 4 our ranch, what's the worst thing that can happen. We'd  
 5 like you to think about the worst-case scenario should  
 6 the pipeline fracture. This information is important for  
 7 our counties to have on hand. This would be like  
 8 distance of spray, volume, pressure. Because as our  
 9 counties look to site or grant sitings in the county for  
 10 roads or building permits, parks, any public use, that  
 11 type of information we feel should be on record for all  
 12 of the counties that have pipeline going through them so  
 13 they can make informed decisions.  
 14 So in closing, in accordance with Dakota Rural  
 15 Action's policy, we are depending on you to approach this  
 16 with due diligence and protecting the folks on our side  
 17 of the state as well.  
 18 Thank you for your time.  
 19 CHAIRMAN JOHNSON: Excellent comments,  
 20 Ms. Waddell. Thanks very much. Very specific and  
 21 solution oriented. Thanks.  
 22 MS. WADDELL: Thank you.  
 23 CHAIRMAN JOHNSON: Other comments. Good  
 24 evening, sir.  
 25 MR. INGALLS: My name is Hugh Ingalls, that's

1 I-N-G-A-L-L-S. I'm from Faith. I don't have any  
 2 prepared statement. And my comments will be categorized  
 3 as short.  
 4 Appreciate the opportunity we've had this  
 5 evening of visiting with you.  
 6 My concern is property rights. I feel that we  
 7 need to be protected. I think we need to be justly  
 8 compensated. I doubt whether my friends and relatives in  
 9 urban areas would agree to selling a piece of the back  
 10 lawn for an undetermined time.  
 11 The last time I looked up "perpetual" in the  
 12 dictionary, if I remember right, it was a long time. If  
 13 we're talking about a 30-year, 40-year, 20-year pipeline,  
 14 that's all the longer the easement needs to be. If --  
 15 you'll probably get -- TransCanada will probably get to  
 16 exercise due process in eminent domain. I probably won't  
 17 be the only one because I will not sign a perpetual  
 18 easement. I think that's really out of line.  
 19 And I have one more question. Just a question  
 20 now. And I don't know who can answer it. But we're  
 21 selling a narrow strip of land, as I understand it, we're  
 22 given a perpetual easement on it. And when it's all said  
 23 and done, who owns the land? Who owns the 50-foot strip  
 24 of land?  
 25 CHAIRMAN JOHNSON: You've asked a specific

1 question, let's get you a specific answer. Anybody from  
 2 the Applicant wish to respond? Who owns the land?  
 3 MR. JONES: Certainly. Of course we're talking  
 4 about the definition of a permanent easement. The  
 5 easement only gives the pipeline company the rights to  
 6 the subsurface. The landowner owns the land. An  
 7 easement isn't a change in ownership of the land.  
 8 MR. INGALLS: I guess my concern is down the  
 9 road when the pipeline wears out, how many more are they  
 10 going to put in on that easement on my land? Thank you,  
 11 gentlemen. Appreciate your time.  
 12 CHAIRMAN JOHNSON: Thanks, Mr. Ingalls. Good  
 13 question. Other comments? Probably try to get a couple  
 14 more in before break, before our second break.  
 15 Other comments? Other comments? Boy, perhaps a  
 16 break isn't even going to be necessary. You can collect  
 17 your thoughts, but let's double back a little bit and  
 18 Mr. Harter had some specific questions that I promised  
 19 him we'd get back to. So at this time while folks are  
 20 collecting their thoughts we're going to look to  
 21 Mr. Koenecke, Mr. Jones and their team. We had a number  
 22 of questions. I wrote some of them down. But Mr. Jones,  
 23 if you've got them you can sort of take them and --  
 24 MR. JONES: Commissioner Johnson, I wonder if a  
 25 break isn't a good time for us to set up for -- we were

1 going to respond to Ms. Anderson's comments and so, you  
2 know, while doing that I certainly can also respond to  
3 the other issues that have come up. So I look for your  
4 direction on what you'd like us to do.

5 CHAIRMAN JOHNSON: I'm going to make the  
6 suggestion subject to either of my colleagues redirecting  
7 me here. If there are other comments, let's take them.  
8 And then once we've heard from you all, we'll take a  
9 short break, we'll come back, we'll get TransCanada on  
10 the record, make sure we get the information out to you  
11 that you've asked. But we will want to give you 10  
12 minutes, we want to give Cheri 10 minutes, also want to  
13 give them 10 minutes to pull their information together.

14 Instead of making those of you who don't want to  
15 wait around for that wait, let's see if you've got other  
16 comments or questions.

17 Mr. Harter, since you're going to be around  
18 anyway to get your questions answered, let's pause on you  
19 a little bit and then let's see if anybody else has  
20 anything. Because we can always take you after the break  
21 because we know you'll be around.

22 This isn't your last opportunity. Commissioner  
23 Kolbeck did mention that, of course, there are  
24 opportunities to get your written comments in yet for  
25 quite a while prior to the Commission decision. At least

1 weeks. A few.

2 Let's get you to the mic, Mr. Harter, if you've  
3 got a quick question.

4 MR. HARTER: What is the last date that we can  
5 enter our public comments?

6 CHAIRMAN JOHNSON: From a practical standpoint  
7 public comments can affect the Commission's decision  
8 right up to the point where they vote. We have not yet  
9 set a date for a decision. There is a statutory  
10 deadline, but with the time frame that we're on we may  
11 not exhaust that time line.

12 Here's what I think, and Mr. Smith or others  
13 will correct me. We'll complete the hearing this week.  
14 The parties will almost certainly and I think  
15 Commissioners will want them to take the opportunity for  
16 written briefs for them to brief the legal issues  
17 surrounding the testimony that was introduced this week.

18 It is not unusual for parties to want some time,  
19 a couple of weeks or more to do that.

20 Then it would not be unusual for the Commission  
21 to want a couple of weeks or more to consider those  
22 written briefs before rendering a decision. At the very  
23 tightest time frame I think a decision would be far more  
24 than a month off. Mr. Smith?

25 MR. SMITH: I agree. Probably more than that.

1 Yes.

2 CHAIRMAN JOHNSON: I'm really trying to be very  
3 conservative in my estimate.

4 Commissioners Hanson, Kolbeck, any?

5 COMMISSIONER HANSON: No. Unless that person is  
6 an Intervener, there are different rules for Interveners  
7 but for the public, certainly we've been receiving --  
8 throughout the entire duration we've been receiving  
9 e-mails and letters, things of that nature and if we  
10 receive them they'll be part of the public record. So if  
11 you want to get those to us, obviously sooner the better  
12 in case there's a response that you're asking for.

13 CHAIRMAN JOHNSON: If memory serves, it was two  
14 months from the deadline -- from the hearing on the Big  
15 Stone II case before we released a decision and it was  
16 two months from the hearing on the Keystone Pipeline  
17 before we released a decision. Does that jive with what  
18 you remember, Mr. Smith?

19 MR. SMITH: I think it was considerably longer  
20 than that in the case of Keystone. I'm going to say --  
21 by decision I'm taking that to mean your vote as opposed  
22 to the writing of an order like this is a job, let me  
23 tell you. But the --

24 My recollection, Commissioner, is that it was  
25 close to -- it was pretty close to 90 days, I believe,

1 before the Commission voted. We had an extended briefing  
2 schedule and -- but it may be different this time.

3 CHAIRMAN JOHNSON: No. I think that's right. I  
4 think your recollection is closer than mine. So  
5 Mr. Harter, I don't think we're looking at coming out  
6 with anything next week, that's for sure.

7 COMMISSIONER HANSON: Mr. Chairman, a point of  
8 interest to the audience may be the fact that under state  
9 law we are required to make a decision within one year  
10 after the filing. It's not a -- so if at any point you  
11 feel that things are being rushed along or something of  
12 that nature, we're trying to meet statutory deadlines  
13 here. And we're certainly not trying to rush. We're  
14 trying to make certain that everybody has an opportunity  
15 to make presentation to us. But we do have a deadline  
16 that we're required to meet under the state legislature.

17 CHAIRMAN JOHNSON: Excellent point. Comments.  
18 Questions.

19 With that, we will go ahead and take a short --  
20 yeah. Go ahead, Representative Wink.

21 MR. WINK: I'm Dean Wink, representative from  
22 District 29. I'm wearing basically three hats tonight.  
23 I come here mostly to listen, but just a comment. One, I  
24 would like to applaud the Commission for your latitude in  
25 giving people the opportunity for public testimony. It's

1 great that everybody has a chance to have their say.  
 2 I come here as a landowner. I have a ranch in  
 3 Meade County. And TransCanada will have its pipeline  
 4 going down through part of my ranch so I come here with  
 5 that's one hat. I'm a former County Commissioner, and I  
 6 think the concerns of the counties with their county  
 7 roads are very important. I think you really need to  
 8 keep that in mind. And thirdly, as a state  
 9 representative I can see the benefits, and I'm sure you  
 10 can too, the potential that this pipeline has for the  
 11 State of South Dakota.

12 And so I think you have a tough decision. I  
 13 would just ask that you not let the benefits to the state  
 14 overshadow the concerns that the counties have and that  
 15 the landowners have. As I'm sure you're well aware we  
 16 take private property rights very seriously in Western  
 17 South Dakota.

18 And I did introduce a bill last year. If I ask  
 19 you to do one thing, I'd say look at the perpetual  
 20 easement. I did introduce a bill last year in the  
 21 legislature. It didn't make it out of committee. It was  
 22 pointed out by several attorneys representing natural gas  
 23 companies and oil companies some of the flaws in the  
 24 language. And looking at it closely, I agreed and  
 25 withdrew the bill.

1 But I do think that it's a travesty to have a  
 2 perpetual easement for this oil pipeline. I do think  
 3 that putting a time line on the length of the useful life  
 4 of a pipeline is in order and that you would limit the  
 5 easement to that time line if there is one thing I would  
 6 ask you to do. Thank you very much.

7 CHAIRMAN JOHNSON: I do want to good naturedly  
 8 rib you about the person with the biggest problem with  
 9 our sound system tonight was the person who paid for it  
 10 and uses it professionally at least two months a year.  
 11 So other comments.

12 COMMISSIONER HANSON: You do understand,  
 13 Chairman, that he has our purse strings.

14 CHAIRMAN JOHNSON: "Good naturedly" was the  
 15 first two words of my comments.

16 COMMISSIONER KOLBECK: I'm just happy that  
 17 Commissioner Johnson, Buffalo County Commissioner, got to  
 18 see a real live Democrat in person again tonight.  
 19 Doesn't get to see them out there very much.

20 CHAIRMAN JOHNSON: Other comments. Well, before  
 21 we take a break I'll just, you know, say quickly this has  
 22 really been impressive. People kept their comments I  
 23 think very succinct, to the point, stayed focused by and  
 24 large on issues that are part of the Commission's  
 25 concern. I think there were very legitimate issues

1 raised.

2 And I will tell you that comments that were  
 3 raised during the first three public input hearings have  
 4 been mentioned as we've gone through this proceeding,  
 5 just in the last two days, things that you all and folks  
 6 that you live with and work with mentioned have been  
 7 brought up by Commissioners specifically in questions.

8 So this is not all for vein. This does become  
 9 part of the process, even if it's not evidence in the  
 10 strictest sense. If we hear it, it's not like it just  
 11 goes away.

12 So thank you for your time. And I know we are  
 13 not done. We are coming back after a 10-minute break.  
 14 But since some of you may want to hit the road, I did  
 15 want to make that clear. And since I took the personal  
 16 latitude, maybe I'll see if Commissioners Hanson or  
 17 Kolbeck have anything else to add.

18 COMMISSIONER KOLBECK: No. Other than to say  
 19 thank you very much for your time. It makes a difference  
 20 and we appreciate it.

21 CHAIRMAN JOHNSON: So with that, it is 17 after.  
 22 We will return at 27 after 9:00 and attempt to get  
 23 started again. Thanks. We will be off the web until 27  
 24 after.

(A short recess is taken)

1 CHAIRMAN JOHNSON: We are back on the record and  
 2 back on the internet. The Applicant has asked to respond  
 3 to some of the concerns raised by Mr. Harter,  
 4 Ms. Anderson, and some other people generally about  
 5 violations of the Commission's order with the first  
 6 pipeline. We have agreed to give them some limited  
 7 latitude. We understand it's late but to the extent that  
 8 you can move through this information and to the extent  
 9 that it's valuable, we're happy to hear it. So the clock  
 10 is running and we are interested in what you have to say.  
 11 Proceed.

12 MR. KOENECKE: Thank you very much,  
 13 Commissioner. Brett Koenecke for TransCanada. I have  
 14 some copies of the presentation Mr. Fuhrer and Mr. Gray  
 15 are about to make. I'll make some of them available to  
 16 Commissioners and some of them available to parties in  
 17 the room, as well, and we'd like to proceed.

18 CHAIRMAN JOHNSON: Yeah, it's probably also  
 19 worth noting for those folks listening on the web that we  
 20 do have a presentation that is up on television screens  
 21 here in the state capitol. Mr. Koenecke, this  
 22 presentation, we'll put this on the web, unless you  
 23 indicate we should not and so people will be able to  
 24 access it tomorrow.

25 MR. KOENECKE: I will provide it in electronic

1 form as soon as I can.

2 CHAIRMAN JOHNSON: It will be provided in  
3 electronic form. So great. Proceed.

4 MR. FUHRER: All right. My name is Paul Fuhrer,  
5 project manager for the Keystone construction in  
6 South Dakota. Just provide a quick restoration update.

7 The first slide just shows the 6 to 8 inches of  
8 rain in October that was more than normal. The route of  
9 the Keystone Pipeline through South Dakota. Probably the  
10 two counties there that have the wettest areas, Marshall  
11 and Beadle County.

12 There's an article that talks about the 9.45  
13 inches above the 100-year average from June through  
14 September. I don't think that we need to belabor the  
15 fact that it's been very wet in this area.

16 The first shot is a picture of 416th Avenue just  
17 south of 113th Street where the road has been closed  
18 throughout much of the summer because of the saturated  
19 conditions there.

20 Picture of looking south from 108th Street at  
21 restored right of way in Marshall County. This right of  
22 way was restored in June. This is 108th Street where --  
23 approximately where the pipeline crosses the road.

24 This is at 111th Street looking towards Highway  
25 10. This is some right of way that's being restored when

1 the subsoil is saturated. There has been damage to the  
2 roads. We are very cognizant of that. Where many of  
3 these areas are you can see in this particular photo  
4 where it is wetlands on both sides, a low spot in the  
5 road. As that's used for construction it does require  
6 constant maintenance and will require some additional  
7 effort at the end of construction.

8 Again, restored right of way in Day County,  
9 approximately 130th Street, County Road 4.

10 Looking the opposite side of 130th Street in Day  
11 County. About 8 miles further down the road, restored  
12 right of way in Day County.

13 The road at 138th Street, evidence of the fresh  
14 surfacing that's been placed where the pipeline crossed  
15 the road.

16 Looking the other way at 138th Street, restored  
17 right of way. Restored right of way looking from  
18 South Dakota Highway 28 looking north into Clark County.

19 Looking south into Beadle County, restored right  
20 of way. The facility in the background is the Carpenter  
21 pump station.

22 This is 190th Street. Actually, this is  
23 Carpenter Road. This is the road that the photo  
24 Ms. Anderson had of the -- where the road had been pretty  
25 well driven out. We have spent considerable expense and

1 time there and this was the road as of last Wednesday.

2 Restored right of way at 191st Street, 415th  
3 Avenue in Beadle County. This is a minimum-maintenance  
4 road at 191st Street. During construction this road had  
5 much deeper ruts. It's been somewhat maintained and as  
6 the construction is finished there we are working with  
7 the township to properly restore that road.

8 Restored right of way in Beadle County. This is  
9 a road in Beadle County that was not used by the  
10 pipeline. Restored right of way in Beadle County, 196th  
11 Street.

12 COMMISSIONER KOLBECK: I just have a quick  
13 question. While we're looking at all of these  
14 restored right of ways, is this stuff that you planted or  
15 is this stuff that the landowner planted?

16 MR. FUHRER: It's a combination. In some places  
17 we planted a cover crop and in others the landowner went  
18 in and planted either a cover crop or a crop that he then  
19 cut baled or made what use he could of it.

20 COMMISSIONER KOLBECK: Okay. Who makes that  
21 decision?

22 MR. FUHRER: It's a combination. Our  
23 environmental folks will determine what the proper  
24 restoration is in reseeding, and then it's either worked  
25 out with the landowner for them to do it or our

1 construction crews do that as part of the reclamation.

2 COMMISSIONER KOLBECK: Okay. Who has ultimate  
3 control over that, the landowner or the environmental  
4 person?

5 MR. FURHER: Well, I would say that our  
6 requirements for the project under the reclamation plan  
7 govern and then it's a matter of what's the most  
8 efficient way to accomplish that.

9 COMMISSIONER KOLBECK: But the landowner's  
10 included; correct?

11 MR. FURHER: Yes.

12 COMMISSIONER KOLBECK: Okay. Sorry to  
13 interrupt.

14 MR. FURHER: That's fine. Beadle County Road,  
15 again showing that the roads have been used. Also the  
16 truck, the grain truck coming in in the background there,  
17 I guess just to show that there are other folks using  
18 those roads other than us in these areas.

19 Restored right of way at 198th Street.

20 Showing a piece of equipment, the paraplow to do  
21 the deep ripping of the subsoil. And the harrow to break  
22 up the topsoil when it's been spread over the right of  
23 way.

24 And restored right of way in McCook County.

25 This picture was taken as it was raining last week.



1 And that's the slides. Thank you.  
 2 CHAIRMAN JOHNSON: Thank you. Very quick,  
 3 Mr. Fuhrer. Appreciate it.  
 4 Did you have specific comments in response,  
 5 Mr. Jones, Mr. Koenecke?  
 6 MR. JONES: Sir, I'd look for your guidance.  
 7 It's late in the evening. I know that a lot of these  
 8 questions are addressed during the hearing procedures and  
 9 have been put on record before, but if you wish I can go  
 10 through them. I look for your guidance on that.  
 11 CHAIRMAN JOHNSON: Well, I mean, I do think  
 12 these people are sticking around for some reason, and  
 13 it's not because I'm very good looking. So my thought  
 14 would be let's do a little bit of triage here. We've had  
 15 a lot of issues raised. I don't expect that you'll  
 16 address all of them, but let's start with taking the  
 17 three or four that rise to the top in your mind and then  
 18 we'll check with folks that asked questions and if there  
 19 are important ones that didn't get answered, we'll double  
 20 back.  
 21 MR. JONES: That's great because there were  
 22 certainly a number of questions that were left  
 23 unanswered. We did that intentionally because this  
 24 really is the evening for other folks to come and speak.  
 25 One of the questions was how do you bend pipe.

1 Commissioner Hanson and I have been out to the right of  
 2 way together and he's been able to witness how we safely  
 3 bend pipe. It is a specialized machine that uses an  
 4 anvil inside the pipe and then is only allowed to make a  
 5 computer bend in degrees. And it's a very effective  
 6 tool, but it allows us to keep the contours of the right  
 7 of way. So certainly also not unconventional. It's  
 8 very, very conventional to bend pipe.  
 9 CHAIRMAN JOHNSON: So, Mr. Jones, earlier  
 10 tonight you mentioned 40,000 miles of pipeline. I mean,  
 11 let's get specific to the extent you've had failures on  
 12 those pipelines, have those failures been at bend  
 13 locations?  
 14 MR. JONES: There's no uniqueness with regards  
 15 to bends whatsoever.  
 16 CHAIRMAN JOHNSON: Okay. Thank you.  
 17 MR. JONES: There was a question with regards to  
 18 does pipe float and why are you putting those saddles on.  
 19 So when you're in very saturated soils, even swamps or  
 20 muskeg, the pipe without the oil in it requires some  
 21 buoyancy resistance and so those concrete saddles are put  
 22 on top of the pipe so that it prevents it from lifting.  
 23 Certainly there was talk about this pipe floated  
 24 out of the ground. I can assure you that it did not  
 25 float out of the ground until it had those saddles on it

1 that allowed it to be secured to the bottom of the ditch.  
 2 Do saddles require heavier wall pipe? They do  
 3 not. However, they tend to be in what you call HCAs or  
 4 in wetlands anyways so the pipe's traditionally designed  
 5 to a different factor, design factor.  
 6 Does the diameter matter? 30 inch versus 36  
 7 inch. And again, I'm being quick here, Cheri. I'm  
 8 sorry, I apologize for speaking so quickly. I'm just  
 9 trying to be cognizant of the time. Pipelines are built  
 10 safely well into the 52, 56, 58 diameter. In Russia  
 11 they've got those kind of diameters. In North America  
 12 pipelines traditionally don't get any larger than  
 13 48-inch. They're all regulated by PHMSA. They have the  
 14 same code. There's no safety difference, whether it's a  
 15 12-inch diameter or it's a 48-inch diameter. It's the  
 16 same code and the same regulation.  
 17 I'm not even going to respond to the Tripp  
 18 County official. I think that's, as we know, fairly  
 19 inappropriate and does not occur.  
 20 Welding in the rain, I can tell you for the  
 21 Keystone XL Project we're going to use welding, automatic  
 22 welding units. These sit in shacks, so even if it is  
 23 raining the rain doesn't impact the weld. Even if you  
 24 have a weld that is outside and exposed to the rain, this  
 25 pipe is preheated to well over hundreds of degrees

1 Fahrenheit, like -- I don't know the exact numbers, but  
 2 the pipe needs to be preheated before it's welded and  
 3 then every weld is 100 percent inspected and then  
 4 retested with water.  
 5 So there is very little concern about welding in  
 6 rain because of the intense heat and then the additional  
 7 testing that is done. But typically if it rains too much  
 8 you just can't physically get the welding done, and so  
 9 you then bring in tarps or umbrellas to keep the rain off  
 10 the welders.  
 11 The debate about tar sands or oil sands being  
 12 the -- using the most energy to be able to extract the  
 13 bitumen from the sand has actually been now proven to be  
 14 no different than unconventional oil that is derived from  
 15 other sources. So, in fact, if you even compare oil  
 16 sands crude to California, an independent study has shown  
 17 that the energy required to extract that crude oil from  
 18 California is no different than in the oil sands.  
 19 And one of the advancements in the technologies  
 20 and is being driven by some of the legislation is to  
 21 reduce the energy component required to be able to  
 22 extract the bitumen out of the sand and then convert it  
 23 to crude oil.  
 24 The Emergency Response Plan was another  
 25 question. We've already filed the oil spill response

1 plan with the PUC and it has been approved by PHMSA.  
 2 That will be the template for the Keystone XL Emergency  
 3 Response Plan, and we are going to commence detailed  
 4 activities with PHMSA on that in the start of the year.

5 It has to be filed and approved even before the  
 6 pipeline can begin operation.

7 There was a question asked about educating the  
 8 citizens with regards to the pipeline safety. This is a  
 9 great question. And we really feel we're a member of the  
 10 community. We have an ongoing relationship with members  
 11 of the community and we do get actively involved and meet  
 12 with, for example, fire departments, police departments,  
 13 County Commissioners, and over time, you know, we revisit  
 14 them. And this is an ongoing process that we continue to  
 15 do through the life of the pipeline.

16 That's my list, Commissioner Johnson. Did I  
 17 miss anything?

18 CHAIRMAN JOHNSON: Those were the big issues  
 19 that I had sort of indicated we needed to get follow-up  
 20 on, but let's see -- go ahead, Commissioner.

21 COMMISSIONER KOLBECK: I remember pipe temp.  
 22 There was some question about the long-root alfalfa and  
 23 how hot the pipe gets in the buried ground. Could you --

24 MR. JONES: Oh. Sorry. Yes. Okay. There was  
 25 a lot of debate today about pipe depth of cover. The

1 legislation -- or, sorry, the code is 30 inches. This  
 2 pipeline's minimum depth of cover will be 48 inches. And  
 3 then because of that, then the oil which, by the way, is  
 4 not heated -- there's a misconception sometimes that the  
 5 oil is heated at its processing in Alberta, but it's not.  
 6 The oil has ground temperature, but when it goes through  
 7 a pump station it does heat up because of the energy that  
 8 is impressed in the oil as it goes through the pump  
 9 station. But because it's 4 feet down and it's insulated  
 10 by the ground which is ground temperature, by the time  
 11 that bulb reaches maybe even a foot the temperature is  
 12 significantly knocked down.

13 And there are hundreds of thousands of pipelines  
 14 throughout the United States and I'm not aware of any  
 15 significant long-term issues with root crops. And  
 16 there's people that are -- I'm not an expert on this, but  
 17 I'm advised that there is a very small or unlikely chance  
 18 that there will ever be a problem with root crops.

19 COMMISSIONER KOLBECK: And then the other one  
 20 that I remember is the nonsufficient fund check. Is  
 21 there any -- what are the means that people get paid by  
 22 you? Could they get a cashier's check or how is that  
 23 taken care of?

24 MR. JONES: Buster, you probably know that  
 25 answer better than I do. I don't know. I don't believe

1 our land man has the ability to write a check. And I'm  
 2 not aware of any checks that have been NSF or anything.  
 3 COMMISSIONER KOLBECK: I think one of the -- I  
 4 think Debra had mentioned that she's just worried about  
 5 getting an NSF check. I'm curious to know what are the  
 6 options to alleviate that concern? Could you get a  
 7 cashier's check or --

8 MR. GRAY: As far as the payment mechanism  
 9 goes --

10 CHAIRMAN JOHNSON: Mr. Gray, perhaps let's have  
 11 you introduce yourself.

12 MR. GRAY: My name is L.A. Buster Gray and I'm  
 13 the construction manager -- yep. My name is L.A. Buster  
 14 Gray and I'm the construction manager over the Keystone  
 15 phase 1 pipeline project in Eastern South Dakota.

16 The land agents that work for us, I believe that  
 17 the monetary value of their authority is \$30,000 that  
 18 they can write a check. I would have to verify that  
 19 amount. But I believe it's \$30,000 on occurrence.

20 Anything greater than that has to be processed  
 21 through a financial institution in Calgary for payment to  
 22 be made directly from the bank. But to my knowledge over  
 23 the past two years we've not written a bad check.

24 COMMISSIONER KOLBECK: And that's -- I don't  
 25 claim to have authority over that. I just --

1 MR. JONES: I'm not aware that this is an issue  
 2 in any of the states that we've crossed.

3 CHAIRMAN JOHNSON: All right. Well, this is not  
 4 really billed as a Q-and-A session but again, we do want  
 5 to let informality rule to the extent it can. So if  
 6 someone's got an issue that they want to raise and have  
 7 TransCanada address, we're happy to take some time for  
 8 that. Yeah. Mr. Johnson. Let's get you to a mic just  
 9 so we -- we'll kick Mr. Fuhrer to the curb here.

10 MR. JOHNSON: I just have a short question,  
 11 Robert Johnson from Harding County. The question was  
 12 brought up how much weight can you go over the pipeline,  
 13 I believe a lady or someone brought that up, and I guess  
 14 that was a concern I was just wondering what that might  
 15 be.

16 CHAIRMAN JOHNSON: That's a great question.  
 17 Weight limits over the pipeline. Excellent one.

18 MR. JONES: Yes. My understanding the question  
 19 is, and I've heard it in many of these hearings, is can  
 20 my farm tractor or can my farm implements go across  
 21 safely over the pipeline? And the answer is yes.

22 If you're concerned at all that there's a depth  
 23 of cover problem, you should certainly give us a call.  
 24 We have a website or a 1-800 number. But I'm not aware  
 25 of any conventional farm implement that can't cross the

1 pipeline considering, again, the 4-foot minimum depth of  
2 cover that we're going to build this pipeline to.

3 CHAIRMAN JOHNSON: Is there a specific weight  
4 limit?

5 MR. JONES: I knew you were going to ask me  
6 that. And I don't know the specific weight limit, but  
7 I'm confident there isn't -- that conventional farm  
8 implements, any axle load can cross the pipeline.

9 If you consider the conditions that would be a  
10 problem, which would be obviously the saturated soil  
11 conditions, you couldn't move that grain truck anyway.  
12 So, you know, kind of the rule of thumb is if you can  
13 move it across your land, then you can cross the  
14 pipeline. We assume you cross it at 90 degrees or 45  
15 degrees and you wouldn't run parallel the whole way and  
16 get it all rutted up. But even if you did, I'm not aware  
17 of any conventional farm equipment that would damage the  
18 pipeline.

19 CHAIRMAN JOHNSON: So, I mean, that's a really  
20 good way to put it. So in your experience, and I know  
21 you're not under oath here, but I mean, has TransCanada  
22 had an instance when farm machinery has -- damage to  
23 pipeline has caused a pipeline failure?

24 MR. JONES: Certainly not caused a pipeline  
25 failure. Where we get concerned about is just stress and

1 then do we need to go and have a look at it. So we have  
2 had an occasion where somebody took like a D6 or D8 Cat  
3 and they were building a road or something and they all  
4 of a sudden went off their -- went onto the easement with  
5 that D8 Cat in wet conditions and struck the line. I've  
6 personally experienced this. And we ended up having to  
7 investigate -- first of all, you had to get the Cat off  
8 the pipe. Had to shut down the line. Had to safely  
9 bring in a crane to move this D8 Cat. And then we had to  
10 dig up the pipeline, inspect it for any damage, and  
11 repair it on site. And it was successfully done.

12 CHAIRMAN JOHNSON: That's when there was a  
13 striking.

14 MR. JONES: That's correct.

15 CHAIRMAN JOHNSON: Okay. Questions. And not  
16 just questions. Certainly if there are comments,  
17 wouldn't tell you you couldn't make comments. We want to  
18 hear from you if you've got any. Go ahead, Mr. Niemi.  
19 Sorry, Commissioner Kolbeck.

20 MR. NIEMI: Will this pipeline be  
21 manufactured -- pipe manufactured in the United States?

22 CHAIRMAN JOHNSON: Mr. Jones?

23 MR. JONES: This Keystone XL pipe, we are in the  
24 middle of doing the final negotiations for acquiring the  
25 pipe. I can tell you that right now the overwhelming

1 majority of this pipeline will be fabricated in the  
2 United States and with -- and in North America and with  
3 steel that is also in North America.

4 There's been a big change in, as you know, the  
5 economy over the last couple -- certainly the last year.  
6 And when we were building the original pipeline all the  
7 pipe mills in all the steel manufacturing in North  
8 America was saturated. Now we are finding that the mills  
9 in North America have got capacity and we are taking  
10 advantage of that. So the overwhelming majority of this  
11 pipeline will be fabricated in North America.

12 CHAIRMAN JOHNSON: Okay. Great. Oh, I'm sorry.

13 COMMISSIONER KOLBECK: By "saturated," you mean  
14 you couldn't buy it in America if you wanted to for your  
15 first pipe?

16 MR. JONES: Yes. Thank you for that  
17 clarification, Commissioner Kolbeck. The market was  
18 saturated so the North American steel pipe market was  
19 saturated and we had to go offshore.

20 CHAIRMAN JOHNSON: Okay. Well, any final  
21 comments or questions? Mr. Harter.

22 MR. HARTER: The first thing I want to address  
23 is that I did not say you wined and dined Tripp County  
24 Commissioners. It happened at a different county that I  
25 was told this.

1 The second one is that the -- my question about  
2 bending the pipeline. I kind of had an idea how they do  
3 it because I figured it was a glorified pipe bender.  
4 Okay. So that was pretty simple and that's pretty much  
5 what he stated.

6 My question was does it change the original  
7 strength of the pipeline. I would say from what I've  
8 seen of bending pipelines and the ones, the pipes, the  
9 ones we did had aluminum in them which allowed them to  
10 bend and keep their form, and they were probably bent to  
11 sharper turns than what they're doing. But when you bend  
12 steel it does change how it's connected. I mean, that's  
13 just common sense. So does it change the original  
14 strength of the steel?

15 CHAIRMAN JOHNSON: Well, I was thinking exactly  
16 like you were, which is why I asked specifically, you  
17 know, let's talk about specific real-world statistics  
18 and, you know, we'll give the Applicant an opportunity to  
19 respond. But I asked well, tell me if that's where the  
20 failures have been because, Mr. Harter, I was thinking  
21 like you are. Mr. Jones, anything to add?

22 MR. JONES: Again, the code's very specific  
23 about this. There's limits with regard to how much  
24 you're allowed to bend the pipe. So those limits are  
25 designed so that the remaining molecular properties well

1 exceed the standard we need to operate the line.  
 2 CHAIRMAN JOHNSON: Okay. Do you have some more?  
 3 MR. HARTER: Yes.  
 4 CHAIRMAN JOHNSON: Okay. Then let's go ahead  
 5 and get all your questions and we'll have efficiencies in  
 6 how to answer them that way.  
 7 MR. HARTER: Okay. One of the reasons that I'm  
 8 quite I guess you can say emotional or whatever about  
 9 what's going on here is the economic downturn that I  
 10 think that happened in this country was in large part to  
 11 high oil prices. So with that in mind, we seen cattle  
 12 prices drop over \$40 a hundred. That took a significant  
 13 impact on our operation. And with the benefit with the  
 14 fact of building a new house at the same time, it wasn't  
 15 a good deal. So if I have no love for oil companies, I  
 16 guess now you understand why.  
 17 Next question is why do some of the contracts  
 18 with some of the people have to have gag orders put on  
 19 them?  
 20 I guess you already stated about the information  
 21 for longer input. I'm kind of a slow typer so -- and  
 22 then something that I'd like to add is that each pipeline  
 23 location where you put your sign up, put a phone number  
 24 on the sign.  
 25 Then the last thing is that the way it was

1 stated to me is that when TransCanada comes in they buy  
 2 the line and we get to use it.  
 3 Thank you.  
 4 CHAIRMAN JOHNSON: Sure. And I think we've had  
 5 the legal answer to that last one, but let's go ahead and  
 6 get comments on phone numbers on signs and contracts with  
 7 gag orders.  
 8 MR. JONES: All the road crossing signs have the  
 9 1-800 number on them, Commissioner.  
 10 CHAIRMAN JOHNSON: Okay. Did you want to  
 11 address the contract issue?  
 12 MR. JONES: I'm not -- I don't understand the  
 13 question and I don't believe it's an appropriate  
 14 question. I'm not aware of any gag orders.  
 15 CHAIRMAN JOHNSON: Mr. Harter, are you talking  
 16 about vendors or are you talking about landowners?  
 17 MR. HARTER: Can you restate the question?  
 18 CHAIRMAN JOHNSON: Are you talking about  
 19 easement agreements with landowners or are you talking  
 20 about contracts with vendors and contractors doing work  
 21 for the Applicant?  
 22 MR. HARTER: I'm talking about easement  
 23 agreements with the landowners.  
 24 CHAIRMAN JOHNSON: Okay. Perfect. Mr. Jones,  
 25 to what extent are there gag orders in a landowner

1 easement agreement?  
 2 MR. JONES: There's nothing in the easement that  
 3 I'm aware of that precludes discussion.  
 4 CHAIRMAN JOHNSON: Okay. Other questions? I  
 5 think we've done really a very good job of not being  
 6 redundant. I mean, people have really unearthed  
 7 different issues and we've done a good job of covering a  
 8 lot of ground tonight. Other questions or comments?  
 9 Other questions or comments?  
 10 Other questions or comments?  
 11 Hearing none, it's been mentioned a couple of  
 12 times but we'll reiterate it so that you understand we  
 13 understand that you're real people, you have real lives,  
 14 and certainly thank you for making time for this process.  
 15 And with that, we'll see if Commissioner Hanson  
 16 or Commissioner Kolbeck have anything to add.  
 17 With that, we will call to a close this public  
 18 input meeting. Thank you. Have a good night.  
 19 MR. JONES: Commissioner Johnson, just before  
 20 you close can I just --  
 21 CHAIRMAN JOHNSON: Hold on everyone. My  
 22 apologies. Mr. Jones wanted to make another comment  
 23 before we draw to a close here. Yes, Mr. Jones.  
 24 MR. JONES: I just want to thank the  
 25 Commissioners and the staff of the Public Utilities

1 Commission for hosting this session and having all these  
 2 folks here this evening and their ongoing work to  
 3 evaluate this important public utility. I also want to  
 4 thank all of you folks for coming here tonight and taking  
 5 the time here this evening to share your concerns.  
 6 CHAIRMAN JOHNSON: If we could have it quiet in  
 7 the back. Mr. Jones is still speaking. Thank you.  
 8 MR. JONES: You know, we do hear your concerns.  
 9 We hear them loud and clear. We understand your  
 10 priorities for your land, your family, your communities,  
 11 and your country. But building a pipeline is complex and  
 12 it's an important utility in the interest of the nation.  
 13 You know, we clear the topsoil, dig a trench 2,  
 14 300 miles across the state. We haul, weld, bury, and  
 15 test pipe that requires things that you normally don't do  
 16 on your land. However, once this work is finished and  
 17 there's many -- all of these miles of pipeline are in the  
 18 ground, the roads will be repaired and the land will be  
 19 restored to its productivity as best as we can.  
 20 You know, we're finishing construction on the  
 21 east side of the state and will continue to work to  
 22 restore the roads and put the land back together  
 23 appropriately. And with respect to the new pipeline, you  
 24 have my commitment on behalf of Keystone and of  
 25 TransCanada that we will design and construct this

1 pipeline and operate this pipeline safely and in an  
 2 environmentally responsible manner. And we will work --  
 3 continue to work constantly to treat landowners with  
 4 fairness and respect.

5 We've heard this evening about some of the  
 6 benefits of this project. We know that we're committed  
 7 to being a good neighbor and making a positive difference  
 8 in the community in which you live and work. We have  
 9 established a direct link between -- this pipeline, this  
 10 Keystone XL Pipeline, will ensure a direct link between  
 11 the secure, safe, reliable crude oil source from Canada  
 12 to the markets here in the U.S.

13 So I thank you very much again for your time.  
 14 Thank you, Commissioner.

15 CHAIRMAN JOHNSON: Thank you, the Applicant.  
 16 Everyone travel safely, and we will resume our formal  
 17 hearing tomorrow morning at 8:30 in this room. Good  
 18 night.

19 (The proceeding is concluded at 10 o'clock p.m.)  
 20  
 21  
 22  
 23  
 24  
 25

1 STATE OF SOUTH DAKOTA )  
 2 :SS CERTIFICATE  
 3 COUNTY OF SULLY )  
 4

5 I, CHERI MCCOMSEY WITTLER, a Registered  
 6 Professional Reporter, Certified Realtime Reporter and  
 7 Notary Public in and for the State of South Dakota:  
 8 DO HEREBY CERTIFY that as the duly-appointed  
 9 shorthand reporter, I took in shorthand the proceedings  
 10 had in the above-entitled matter on the 3rd day of  
 11 November, 2009, and that the attached is a true and  
 12 correct transcription of the proceedings so taken.

13 Dated at Onida, South Dakota this 23rd day of  
 14 November, 2009.  
 15  
 16  
 17

18 \_\_\_\_\_  
 19 Cheri McComsey Wittler,  
 20 Notary Public and  
 21 Registered Professional Reporter  
 22 Certified Realtime Reporter  
 23  
 24  
 25

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