

**BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF SOUTH DAKOTA**

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HP14-001

IN THE MATTER OF TRANSCANADA  
KEYSTONE PIPELINE, LP  
FOR ORDER ACCEPTING CERTIFICATION  
OF PERMIT ISSUED IN DOCKET HP  
TO CONSTRUCT THE KEYSTONE XL

OPPOSITION TO KEYSTONE'S  
MOTION TO PRECLUDE CERTAIN INTERVENORS FROM OFFERING  
WITNESSES OR EVIDENCE AT HEARING AND A JOINT  
MOTION FOR SPECIAL MASTER, AND/OR NEW MOTION FOR  
PUC REVIEW AND CLARIFICATION

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This is Nancy Hilding's response to TransCanada's Keystone (TransCanada) Pipeline LP's Motion to Preclude Certain Interveners From Offering Witnesses or Evidence at Hearing. I urge the Commission to deny this motion. I also include some motions of my own towards the bottom of text.

TransCanada admits in its motion seeking to exclude interveners from further participation in this proceeding, that the Commission has broad discretion to address discovery issues. Precluding parties from fully participating in this important proceeding regarding the social, health, welfare and environment of the people of South Dakota, especially individual South Dakota citizens exercising their statutory right to intervene in South Dakota Public Utility Commission cases and whom are not represented by legal counsel, should not be the first action sought by opposing parties.

The step that TransCanada should have taken was to seek an order Compelling discovery. SDCL Sec.15---6---37(a). According to South Dakota Codified Laws of Civil Procedure, a party, upon reasonable notice to other parties and all persons affected thereby, may move for an order compelling an answer, or a designation, or an order compelling inspection in accordance with the request. The motion must include a certification that the *movant has in good faith conferred or attempted to confer* with the person or party failing to make the discovery in an effort to secure the information or material without court action. 15---6---37(a) (2).

As far as I know, the required good faith attempt to confer has not happened for many parties. I myself have called TransCanada Attorneys twice to discuss their responses to my discovery request and exchanged e-mails about such, however these calls were initiated by me. As far as I know, TransCanada attorneys are OK with my March 10th responses and subsequent supplemental answers to their discovery and we are working in good faith together to resolve my problems with their answers to my discovery. By phone and e-mail I released them from

compliance with my document request in my first (January 6th) discovery request.

TransCanada in its' motion to the PUC, misconstrues my March 10th, 2015 discovery response about my plans to have witnesses; I did not say I had no intention of presenting witnesses. I said in answer to interrogatory # 3 & # 4

*"While not waiving my general objections Nancy has no witnesses planned at this time, but Nancy is investigating a couple of them, and if allowed may add a few later, or not."*

*"While not waiving my general objection, Nancy has no witnesses planned at this time"*

I hope the PUC will note this error in TransCanada's motion. I do not want to be precluded from calling rebuttal witnesses or other witnesses if Dakota Rural Action's objections to pre-filed testimony prevail, because TransCanada did not carefully read or forgot my discovery responses.

If TransCanada, would have obtained the order and worked in good faith to confer with opposing parties to seek compliance of the order, then further action might have been warranted including sanctions and penalties. 15---6---37(a) (4). However, to my knowledge, TransCanada has so far taken none of these steps for many or some parties. Instead, they choose after the first discovery deadline, to send a letter threatening to seek parties' exclusion from proceedings and then promptly filed a motion when responses to final discovery, that were due on March 10<sup>th</sup>, 2015, arrived (or did not arrive).

I personally believe that TransCanada has not complied with the Commission's December 17<sup>th</sup>, 2014 Order Limiting the Scope of Discovery (that TransCanada had sought). On October 30<sup>th</sup>, 2014 TransCanada made a motion to "Define Scope of Discovery Under SDCL § 49-41B-27". They wanted discovery limited to the 50 Amended Permit Conditions from Exhibit A to the Amended Final Permit and Order dated 6/29/2010 and also limited to their proposed changes to Finding of Fact identified in Exhibit C to Keystone's Petition for Order Accepting Certification (2014). In TransCanada's 10/30/14 motion, on page 5 they state that: "Each Discovery Request must identify by number the Amended Permit Condition or Finding to which it is addressed".

The SDPUC agreed that discovery should be limited to not privileged matters relevant to the 50 permit conditions or the proposed changed Findings of Facts in the Decision identified in Keystone's Tracking Table of Changes attached to the Petition as Appendix C and the SDPUC wrote on page 2 of the Dec 17<sup>th</sup>, 2014 Order that: "ORDERED,...that parties shall identify by number and letter the specific Condition or Finding of Fact addressed". (*Emphasis added*)

None of TransCanada 's requests for documents or interrogatories given to me identifies by number and letter the specific Condition or Finding of Fact addressed by each interrogatory or document request (*emphasis added*). I thus question this entire discovery effort by TransCanada. Does TransCanada subscribe to a "double standard"

& believes interveners and SDPUC staff must comply with SDPUC Dec 17th orders, but they themselves are exempt from the SDPUC December 17th Order? Or did TransCanada not fully anticipate the difficulties the Order, would pose them during discovery?

I raised these and other objections in my discovery response, but in spite of objections, I answered many of their questions and document requests. I have attached my March 10th responses to TransCanada's discovery. Since March 10th, I continue to supplement my responses. Given that I am not represented by an attorney, and am not sure of law and what "good faith" implies, I answered many of their questions in some way, despite my belief and my written objections, that their questions were not proper or legal for many reasons.

Many of us interveners are not represented by attorneys, and are representing ourselves pro-se and thus don't have the depth of legal experience to interpret the conflict between law and PUC orders or TransCanada's demands, particularly when law seems vague.

Nancy Hilding joins with Dakota Rural Action, Standing Rock Sioux Tribe and other parties objecting to TransCanada's Motion and urges the Commission to deny TransCanada's attempt to preclude participation by these citizens and organizations thus effectively limiting robust civic participation in further proceedings for this docket.

I also join in Dakota Rural Action's, Rosebud Sioux Tribe, Cheyenne River Sioux Tribe, Indigenous Environmental Network to request that you appoint a special master to help oversee discovery.

I alternatively ask and move, that if the Commission chooses not to appoint a special master, it review TransCanada's Dec 18th discovery request and answer for all us, "pro-se" interveners and those with lawyers, our objections and questions about which of their interrogatories or requests for documents are legal (in part or wholly), and which we do or do not have to keep supplementing. I think parties have a good faith duty to keep on supplementing our discovery answers, as we gather new information that would allow us to better answer the interrogatories and requests for documents. Thus after March 10th, it is not mute, as to whether TransCanada's discovery requests are legal.

These objections include at least: that all of their interrogatories and requests for documents don't comply with the PUC order of Dec 17th, 2014, as their discovery was not tiered to a permit condition or Finding of Fact listed in Appendix C of their application. This problem seems to be a universal concern of many interveners

Please also address if some interrogatories are overly broad, vague, or burdensome, or some interrogatories ask us to repeat facts readily available to them or some interrogatories violates "work product doctrine" as TransCanada wants us to disclose our trial strategy. I have attached my discovery response as a sample of some objections to their discovery.

There is an irony at work, TransCanada alleges it meets all 2010 PUC permit conditions and TransCanada prepared Appendix C. Thus interveners, can't (like TransCanada) ask the "fishing expedition" type questions, as to which permit conditions or Facts in Appendix C, TransCanada objects to. Intervenors had to research & understand their concerns in relation to Dec 17th order, before writing

compliant discovery requests. TransCanada sent their not-compliant discovery request out the next day. If the PUC allows that under the Dec 17th order, TransCanada can ask such "fishing expedition" questions (like which permit conditions does Intervener object to), without violating the Dec 17th order, it creates a not level or prejudicial playing field, where TransCanada can use an "easy to create" discovery "fishing expedition" tactic, but we can't engage in similar "fishing expedition" back at them.

There are two attachments of exhibit A and exhibit B, which are my 3 documents from my responses to TransCanada's discovery on March 10th 2015 (all in one PDF file) and the original Dec 18th, 2014 TransCanada discovery request.

Dated this 8th Day of April, 2015.

A handwritten signature in black ink that reads "Nancy Hilding". The signature is written in a cursive style with a long, sweeping tail on the final letter.

Nancy Hilding  
6300 West Elm  
Black Hawk, SD