

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

IN THE MATTER OF THE PETITION OF TRANSCANADA KEYSTONE PIPELINE, LP FOR ORDER ACCEPTING CERTIFICATION OF PERMIT ISSUED IN DOCKET HP09-0001 TO CONSTRUCT THE KEYSTONE XL PIPELINE)) Docket 14-001)) NANCY HILDING'S) RESPONSE TO TRANSCANADA'S) MOTION TO DEFINE THE SCOPE) OF DISCOVERY UNDER SDCL § 49-) 41B-27)) AND)) MOTION TO EXPAND THE SCOPE) OF DISCOVERY UNDER SDCL) §§49-41B-22, 27 AND 33
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Nancy Hilding hereby responds to the Motion filed by TransCanada Keystone Pipeline, LP (“TransCanada”) to Define the Scope of Discovery under SDCL § 49-41B-27. TransCanada’s Motion should be overruled by the Public Utilities Commission of the State of South Dakota (the “Commission”).

TransCanada relies entirely upon *Jundt v. The Hon. A.P. Fuller*, 2007 S.D. 62, 736 N.W.2d 508 in support of its position. Reliance on the *Jundt* decision by TransCanada is misguided. The *Jundt* decision did not apply to discovery issues.

The *Jundt* decision also did not apply to a situation where an Agency was directed by statute to certify a permit; as the Commission has been, pursuant to SDCL § 49-41B-27. Once a permit for construction of a pipeline is issued, under SDCL § 49-41B-27 “if such construction, expansion and improvement commences more than four years after a permit has been issued, then the utility must certify to the Public Utilities Commission that such facility continues to meet the conditions upon which the permit was issued.” TransCanada failed to begin construction of the Keystone XL Pipeline within this four-year period and is therefore required to comply with the statute and seek certification.

On June 29, 2010, the Commission issued its Amended Final Decision and Order (Docket HP 09-001) (the "Permit") for construction of the Keystone XL Pipeline through South Dakota. The Permit contained fifty (50) amended Permit Conditions but also 115 Findings of Fact & 16 Conclusions of Law. SDCL § 49-41B-27 uses a lower case word for "conditions" in the clause "conditions upon which the permit was issued " (emphasis added), not upper case words. Specifically the statute does not say: "Permit Conditions set forth in a permit".

The June 29th Decision and Order states on page 4:

'Having considered the evidence of record, applicable law and the arguments of the parties, the Commission makes the following Findings of Fact, Conclusions of Law and Decision:"

The June 29th Decision and Order states on page 22:

"It is therefore ORDERED, that a permit to construct the Keystone Pipeline Project is granted to TransCanada Keystone Pipeline, LP, subject to the Conditions set forth in Exhibit A. "

In Exhibit B it states

"As Applicant is the prevailing party, most of Applicant's Proposed Findings of Fact have been accepted in their general substance and incorporated in the Findings of Fact, with additions and modifications to reflect the Commission's understanding of the record."

I argue that the conditions upon which the permit was issued in 2010 can include any and all of the 115 Findings of Fact and the 16 Conclusions of Law in the June 29th, 2010 Decision, and any documents, allegations/arguments, evidence and testimony by Keystone and others presented before the 2010 Decision, that the PUC would have opportunity to study and base it's decision on. Some of that evidence, facts, laws, rules and/or conditions may have changed in 4 plus years, thus all need to be available for study.

Nancy Hilding hereby moves that the Commission issue an order facilitating the most expansionist or broadest discovery permissible in these proceedings.

A handwritten signature in black ink, appearing to read "Nancy Hilding". The signature is fluid and cursive, with a small flourish at the end.

Nancy Hilding
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December 1, 2014