

RE: HP14-001

To: South Dakota Public Utilities Commission, TransCanada and Intervenor in the Keystone XL Permit Hearings.

RESPONSE TO KEYSTONE'S MOTION TO DEFINE THE SCOPE OF DISCOVERY UNDER SDCL 49-41 B-27

I wish to make an objection to Keystone's motion for the following reasons:

The first point made in the motion to define the scope of discovery, TransCanada states that every Intervenor in the docket could have applied for party status during the original permit application. This is not true. My family moved back to South Dakota in 2004. We settled in Bridger in 2006. Bridger is located within the exterior boundaries of the Cheyenne River Sioux Tribe. The local newspaper is the West River Eagle. There was no public notice posted locally, none published in the local newspaper, nor was there any word of mouth announcement of the TransCanada permit application. In fact, until a couple of years ago when a local truck stop owner mentioned it, I had no idea there was such a project slated for South Dakota at all.

If TransCanada and any other responsible party had practiced due diligence I would have applied for party status during the original process. Lack of notice of the permit application was a denial of my right to Due Process and equal access. It is impossible for me to "**relitigate**" issues and **revisit** information to which I was originally denied knowledge and access.

Under the United States Constitution I am entitled to Due Process. Lack of notification is equivalent to a violation of my right to Due Process which includes **complete** discovery. Negligence in providing notification to **all** affected parties is also a violation of the conditions under which a permit for such a project can be granted in the first place.

The argument TransCanada makes in their first point is that the permit as it currently stands is basically etched in stone and there is nothing anyone, including the South Dakota Public Utilities Commission (SD PUC) commissioners can do to reverse or revoke the permit. At the least, this is an incorrect assumption as demonstrated by the second point made in TransCanada's motion to define the scope of discovery.

In direct contradiction to the argument made in their first point, TransCanada cites SDCL 49-41B-33 when they state that the permit can be revoked or suspended for certain conditions which include misstatements of fact, failure to comply with terms or conditions or violation of material provisions. This is the very process by which misstatements of fact, failure to comply with terms or conditions and violations of material provisions by TransCanada can be determined. However, the only way to insure that all facts needed to determine the credibility of TransCanada with respect to the current permit is to deny their motion to dictate which information is pertinent, how and where it can be obtained, whether or not it can be presented and with what weight it can be considered.

Also in the second point TransCanada states that Keystone only needs to certify that the project continues to meet the conditions under which the permit was granted if construction commences more than four years after the permit was issued. Then TransCanada asserts that they only want to certify to a limited number of the 50 conditions and findings of fact from the original permit rather than in its entirety.

I assert that TransCanada cannot pick and choose what it wants the SD PUC and the Intervenors to discover. A project that is as large scale as the Keystone XL pipeline with the amount of land required and the extent to which it will affect the state of South Dakota needs complete transparency to insure the health, safety and welfare of all citizens and resources. Limiting the scope of discovery enshrouds TransCanada in a cloak of mistrust. What is it that TransCanada is hiding?

TransCanada argues that during the proceedings that the “issues presented in this docket are narrow.” I was present during the “proceedings” that are referenced. The only limit that was issued during the proceedings was directed at the out of state Intervenors. That statement was to insure that out of state Intervenors understood that the SD PUC only has jurisdiction in South Dakota. There was no limit placed on the scope of issues, the discovery of facts nor the information that could be submitted for consideration during these proceedings.

Because I was denied my right to Due Process in the original proceedings I have no idea what has already been presented and discussed. However, since becoming aware of the permit and the pipeline project I am certain I have pertinent information which was not addressed in the original proceedings. My right to Due Process entitles me to present this information as well as to have my questions and concerns addressed. The original violation of my Constitutional Right to Due Process calls into question the proceedings and appeal structure for the original permit. The current proceedings including a denial of “Keystone’s Motion to Define the Scope of Discovery” would assist in correcting that violation.

Respectfully Submitted;

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