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SOUTH DAKOTA PUBLIC UTILITIES COMMISSION

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June 21, 2007

Patricia Van Gerpen

Via e-mail only: patty.vangerpen@state.sd.us

Re: TransCanada Redacted Filing

Dear Ms. Van Gerpen:

Commission Staff (Staff) reviewed TransCanada's June 15, 2007, document filing. The documents TransCanada submitted supplement its previously filed application for a siting permit. TransCanada, according to the Commission's Order, redacted and withheld all confidential documents as legally required by other state and federal law. As a result, out of the thousands of pages now posted on the PUC Commission Website only limited documents, of which I will discuss separately, have been completely withheld from public inspection.

Originally Staff believed complete inspection and release of the documents at issue would require one complete work week. In the end, however, it took only two days. All redacted and newly released documents were up and available on our Website for use the morning of June 20th, at 8:00 a.m.

The following non-South Dakota documents remain confidential and unavailable to the public:

- 1) North Dakota cultural maps and a resources description specifying protected archeological site description by township and range.
- 2) Kansas cultural resource inventory, maps and data regarding location of culturally relevant material.
- 3) Missouri topographic maps, and cultural resources maps specifying locations of culturally relevant materials.
- 4) Oklahoma cultural resource inventory and accompanying maps.
- 5) Pipeline land owner list containing confidential personal information.

- 6) North Dakota, Nebraska, and Missouri Cultural investigations were redacted in part to protect the following information:
 - a. Cultural inventories
 - b. Study units specifying areas of historical relevance
 - c. Results from a confidential file search regarding historical sites
 - d. Field codes, maps and probing results
 - e. Geoarchaeological analysis sample results
 - f. Archaeological and historical site forms
- 7) Kansas and Missouri outlines regarding methodology for cultural research and accompanying maps.
- 8) Specific North Dakota relevant site locations, inventory and results of resource studies.
- 9) High Consequence area maps of all states.

The following South Dakota documents remain confidential and unavailable to the public:

- 1) South Dakota cultural research design and accompanying maps specifying township, range along with a description of the culturally relevant sites.
- 2) Cultural Investigation results were redacted in part to protect the following information:
 - a. Cultural inventories
 - b. Study units specifying areas of historical relevance
 - c. Results from a confidential file search regarding historical sites
 - d. Field codes, maps and probing results
 - e. Geoarchaeological analysis sample results
 - f. Archaeological and historical site forms
- 3) High Consequence Area Maps.
- 4) South Dakota maps regarding endangered bird nesting sites.

As the Commission can see, and as previously provided by TransCanada, the protected information falls into three categories. The majority of the information pertains to cultural resource location information. Staff was in personal contact with Ms. Elizabeth Orlando, Foreign Affairs Officer from the U.S. Department of State regarding such materials. She stressed the importance of the confidential nature and supported TransCanada's redactions and withheld documents according to 36 CFR part 800. Ms. Orlando will submit the Department of State's opinion in writing on or before Friday June 22, 2007. In addition, the South Dakota Historical Preservation Office supports the redactions. Please find the attached E-mail from the director of the South Dakota State Historical Society, as was filed with the Commission office on June 20, 2007. Staff recommends all culturally and historically sensitive data, as marked, remain confidential.

The National Pipeline Mapping System (NPMS) is owned by the US Department of Transportation, Office of Pipeline Safety. NPMS data was used to create the High Consequence Area Maps (as defined in 49 CFR 19.450) marked confidential in this docket. NPMS limits public exposure of its data due to September 11, 2001, increased

security. The NPMS is the mechanism used by the federal government to disseminate information about the United States' critical pipeline infrastructure. Government agencies and pipeline operators are the only members according to NPMS to have access to its mapping data. Government agencies and pipeline operators may share NPMS data under particular circumstances provided a confidentiality agreement exists. In addition NPMS has a "public viewer" of the maps on its website. The "public viewer" maps lack security sensitive data, yet provide the public with relevant information. Staff recommends the Commission respect the policies of NPMS and keep High Consequence Area Maps filed in this docket confidential.

Finally, location information and corresponding maps as they relate to endangered bird nesting areas have been marked confidential. The raptor nest mapping and related documents are part of TransCanada's filing with the US Department of State. Chapter 7 of the Endangered Species Act of 1973 requires the Department of State, as a federal agency, insures any action, "authorized, funded, or carried out by such agency is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the distraction or adverse modification or habitat of such species..." In compliance with the Act, nesting locations have been withheld from the public in the TransCanada siting application. Staff supports the confidential filing and recommends the documents remain marked as such. TransCanada did not mark documents confidential to protect an interest of its own. The documents have been kept confidential, rather, to protect environmental and public interest at large.

In conclusion, the Commission now has two versions of all TransCanada's siting application supporting material. Both versions are available on our Website. Confidential material is, however, accessible only to the Commission and Staff. The majority of such material pertains to neighboring states, not within the Commission's jurisdiction. It remains our obligation to protect it from public dissemination. All redacted and withheld material, regardless of its subject state, pertains to cultural, biological or national protection and federal law is instructive regarding its confidential nature. Further, the protected material does not inhibit landowners from protecting his or her rights. In the event a landowner believes protected document inspection is necessary, mechanisms exist for viewing. Staff recommends the Commission approve TransCanada's supplemental filing with redactions and withheld documents.

Sincerely,

A handwritten signature in black ink, reading "Kara Van Bockern". The signature is written in a cursive, flowing style.

Kara Van Bockern
Staff Attorney

VanBockern, Kara

From: Vogt, Jay
Sent: Wednesday, June 20, 2007 3:51 PM
To: VanBockern, Kara
Cc: Van Gerpen, Patty; Rogers, Stephen; Campbell, Roger; Hoskinson, Paige; Johnson, Dustin (PUC)
Subject: Confidentiality of Archaeological Sites
Importance: High

It is the policy of the South Dakota State Historical Society to keep the location of archaeological and unmarked human burial sites *confidential*. The National Historic Preservation Act (NHPA) and the Archaeological Resources Protection Act (ARPA) provides protection to archaeological sites identified through the NHPA Section 106 process. Effective July 1, two new sections are being added to SDCL Chapters 1-20 and 34-27 to provide for the confidentiality of archaeological and unmarked human burial sites. The reason for these laws is to protect the integrity of these sites from looters, relic hunters, and vandals. If information about the location and ownership of archaeological and unmarked human burial sites were made public, many of these properties would be vulnerable to "pot hunters," people looking to vandalize the sites for their benefit. I strongly encourage you to keep records confidential concerning archaeological and unmarked human burial sites from public proceedings. If you have any questions, feel free to contact me. Thank you.
jdv

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