

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

IN THE MATTER OF THE APPLICATION)	BRIEF IN SUPPORT OF
BY TRANSCANADA KEYSTONE)	MOTION FOR RELEASE OF
PIPELINE, LP FOR A PERMIT UNDER THE)	INFORMATION FILED
SOUTH DAKOTA ENERGY CONVERSION)	CONFIDENTIAL
AND TRANSMISSION FACILITIES ACT TO)	
CONSTRUCT THE KEYSTONE PIPELINE)	HP07-001
PROJECT)	

Public Utilities Commission Staff (Staff) requests information filed as “confidential” in the above captioned docket be released for public inspection.

TransCanada filed its application with the Commission on April 27, 2007.

On May 24 and 31, 2007, TransCanada filed the application and attachments with the Commission in an electronic format for the purpose of posing the same on the Commission Website. Only some of documents were available for public inspection. Most documents were marked “confidential” without explanation or legal justification. Staff now Moves for release of such confidential documents for public inspection and viewing. Staff filed the documents accordingly. ARSD 20:10:01:42 specifies, “a request for confidentiality generates confidential treatment of information...”. Additionally, “the information will be treated as confidential and shall not be released until after confidentiality determination has been made.” The Commission has yet to make such a determination. Staff now Moves for this Commission to Order public release of the “confidential documents” unless TransCanada can show justification and legal purpose for withholding the same.

The South Dakota Administrative Rules specify the type of information subject to confidential treatment. ARSD 20:10:01:39 excludes the following information from public inspection:

- 1) Personal information in confidential personnel records of the commission;
- 2) Communications between counsel retained by the commission or staff and the commission and staff;
- 3) Any information, records, or documents that constitute the work product of an attorney;
- 4) Trade secrets or other confidential research, development, or commercial information recognized and protected by SDCL 15-6-26(c)(7) or other law;
- 5) Information which is made confidential under any other provisions of state or federal law; and
- 6) Information which is determined by the commission to be confidential and entitled to protection from disclosure or improper use.

The following documents were submitted to the PUC along with the application as Confidential:

- I. Exhibit C - Supplemental Filings with the Department of State,
 - a) Pipeline Risk Assessment and Environmental Analysis
 - b) Appendix A DNV Frequency Volume Study
 - c) Emergency Response Plan
 - d) Keystone Pipeline Project - Description Plan
 - e) Update Keystone Pipeline Project - Description Plan
 - f) North Dakota Route Map
- II. Summary and Table of Contents for Illinois, Kansas, Missouri, Nebraska, North Dakota, Oklahoma, and South Dakota Supplement Filing
- III. Work Plan Memo for Illinois, Kansas, Missouri, Nebraska, North Dakota, Oklahoma, and South Dakota Supplement Filing
- IV. Contents of Supplemental Filing Cushing Extension Part 1 and Part 2
- V. Cultural Resource Surveys and Reports
- VI. REX Cultural Surveys
- VII. Supplemental Filing for: Illinois, Kansas, Missouri, Nebraska, North Dakota, Oklahoma, South Dakota
- VIII. September 2006 Supplement Filing Wetlands
- IX. Native American Consultations
- X. List of Tribes Contacted Part 1 and Part 2
- XI. Native American Response Part 1 and Part 2

XII. State Historical Preservation Office Part 1 and Part 2

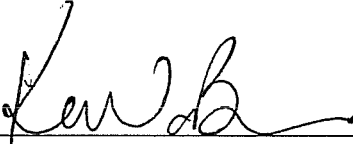
XIII. Mainline Pipeline Route Alternative

XIV. Exhibit D - Biological Reports

Although Staff fails to see how the above documents qualify as confidential under our rules, Staff argues the burden to show a need for confidential treatment falls on TransCanada. Further Staff argues the Keystone project affects numerous landowners. Project specifics are essential for landowners to fully understand the project. The process is designed to involve the public. Additionally, the process is designed to allow those directly affected by this project to share concerns with the Commission. As a result you, the decision makers, are better equipped to make a final siting decision. It becomes impossible for such an exchange when essential information is withheld from the public domain.

Staff, therefore, respectfully requests the Commission determine and Order that all information filed as confidential with the TransCanada application is not subject to confidentiality rules and, therefore, available for public inspection. Staff further requests the Commission Order TransCanada supplement the material filed with individual Counties to include all documents subject to this Motion.

Signed and dated this 6th day of June, 2007.



Kara Van Bockern
Staff Attorney
South Dakota Public Utilities Commission
500 E. Capitol Ave
Pierre, SD 57501
(605) 773-3201