

BEFORE THE SOUTH DAKOTA PUBLIC UTILITIES COMMISSION

DOCKET NO. HP07-001

IN THE MATTER OF THE APPLICATION OF TRANSCANADA KEYSTONE PIPELINE,
LP FOR A PERMIT UNDER THE SOUTH DAKOTA ENERGY CONVERSION AND
TRANSMISSION FACILITY ACT TO CONSTRUCT THE KEYSTONE PIPELINE
PROJECT

Surrebuttal Testimony of Tom Janssen on Behalf of the
Staff of the South Dakota Public Utilities Commission

November 28, 2007

1 BEFORE THE SOUTH DAKOTA PUBLIC UTILITIES COMMISSION

2 SURREBUTTAL TESTIMONY OF TOM JANSSEN

3 **Q: Please state your name and business address.**

4 A: Tom Janssen of Merjent, Inc. of 615 First Avenue Northeast, Suite 425, Minneapolis,
5 Minnesota 55413.

6 **Q: Did you provide direct testimony in this proceeding?**

7 A: Yes.

8 **Q: In surrebuttal, to whose rebuttal testimony are you responding?**

9 A: I am responding to the rebuttal testimony of L.A. Buster Gray.

10 **Q: Can you comment on L.A. Buster Gray's rebuttal testimony regarding dust control.**

11 A: Mr. Gray's rebuttal testimony on dust control suggests that covering open bodied
12 trucks to control dust is not necessary because dust from open-bodied trucks is
13 inconsequential relative to dust from agricultural operations or from dust created by
14 wheels from construction vehicles on non-paved roads.

15 Agricultural operations occur in fields, frequently away from the public roads,
16 residences, buildings, developments, *etc.* Hauling soil and sand to and from the project
17 area, on the other hand, would occur on public roads which pass by residences, buildings,
18 developments, *etc.* As such, dust from hauling would be more likely to affect the public
19 and would not necessarily be inconsequential relative to dust from agricultural
20 operations. Furthermore, dust-generating agricultural operations typically occur during
21 certain periods in the spring and fall. Hauling soil and sand would likely occur
22 throughout the construction season (spring, summer, and fall).

1 Mr. Gray is correct that fugitive dust from open-bodied trucks could be
2 inconsequential relative to dust created by wheels from construction vehicles on non-
3 paved roads. However, this is not the case on paved roads, where fugitive dust would be
4 created mainly from the open-bodied trucks.

5 The dust control mitigation recommended in my direct testimony was intended to
6 be consistent with the mitigation also recommended by the United States Department of
7 State in its Environmental Impact Statement for the project. However, when trucks are
8 traveling on the construction right-of-way in the remote locations away from roads,
9 residences, businesses, *etc.*, or when trucks are traveling on non-paved roads, the need to
10 cover open-bodied trucks is greatly diminished. As such, the South Dakota Public
11 Utilities Commission may want to consider less stringent mitigation. Following is a
12 suggested less-stringent alternative:

- 13 • **Keystone should cover all open-bodied trucks while in motion on paved**
14 **roads to reduce fugitive dust emissions.**

15 **Q: Can you comment on L.A. Buster Gray's rebuttal testimony regarding topsoil**
16 **segregation?**

17 **A:** In his rebuttal to my direct testimony Mr. Gray stated that it is Keystone's
18 position to let the landowner determine the topsoil stripping method that is preferred on
19 their land. The mitigation in my direct testimony stated, "unless the landowner
20 specifically approves otherwise, topsoil shall be segregated either along the full right-of-
21 way or from the trench and subsoil storage area in actively cultivated or rotated crop
22 lands and pastures, residential areas, hayfields, and other areas at landowner request."
23 This mitigation is entirely consistent with Mr. Gray's rebuttal and allows the landowner

1 to specifically approve a preferred topsoiling method. However, in the absences of a
2 landowner preference, Keystone would be required to conduct topsoil segregation in
3 accordance with my original testimony. I would like to clarify that some areas, such as
4 wetlands and native prairie, may contain special resources that could require topsoiling
5 methods different from my recommendations. Topsoil methods to protect special
6 resources should supersede the generic methods recommended in my original testimony.

7 **Q: Can you comment on L.A. Buster Gray's rebuttal testimony regarding easement**
8 **and workspace requirements in wetlands and forested areas?**

9 A. Mr. Gray's rebuttal testimony was in response to my direct testimony in which I
10 recommended the width of the construction right-of-way shall be limited to 75 feet or less
11 in standard wetlands unless a wetland is actively cultivated/rotated cropland or non-
12 cohesive soil conditions require utilization of a greater width.

13 In his rebuttal testimony, Mr. Gray stated that a 75-foot-wide construction right-
14 of-way through wetlands was a requirement developed by the Federal Energy Regulatory
15 Commission in the early 1990s. This is true. In 1992, the Federal Energy Regulatory
16 Commission began requiring a 75-foot-wide construction right-of-way through wetlands
17 for pipelines of all sizes, including large-diameter pipelines. This limitation was required
18 even prior to 1992, although it was not "written policy" until the Federal Energy
19 Regulatory Commission issued the first version of its Wetland and Waterbody
20 Construction and Mitigation Procedures in 1992. The Federal Regulatory Commission
21 has reaffirmed its position on a 75-foot-wide construction right-of-way through wetlands
22 for pipelines of all sizes by including this requirement in all revisions of its "Wetland and
23 Waterbody Construction and Mitigation Procedures," the most recent of which was

1 issued in 2003. Furthermore, the Federal Energy Regulatory Commission has
2 incorporated by reference this requirement into its regulations (see 18CFR 157.206 and
3 18 CFR 380.12), which applies to all interstate natural gas pipeline construction, large
4 and small.

5 In his rebuttal testimony, Mr. Gray stated that a contractor cannot excavate a
6 trench for large diameter pipe, place spoil, and maintain workspace within 75 feet,
7 particularly in locations of non-cohesive soils. The mitigation in my direct testimony
8 stated that the width of the construction right-of-way should be limited to 75 feet or less
9 in wetlands, unless non-cohesive soil conditions require utilization of greater width. As
10 written, the mitigation addresses Mr. Gray's concern that extra workspace may be needed
11 in areas of non-cohesive soils. Where wetlands do not contain non-cohesive soils, the
12 pipeline right-of-way should be limited to 75 feet.