

**United States Department of State***Bureau of Oceans and International
Environmental and Scientific Affairs**Washington, D.C. 20520*

June 22, 2007

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Patty Van Gerpen, Executive Director
South Dakota Public Utilities Commission
Capitol Building, 1st Floor
500 E Capitol Avenue
Pierre, South Dakota 57501-5070

**SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION**

Re: TransCanada Redacted Filing

Dear Ms. Van Gerpen,

TransCanada Keystone Pipeline, L.P. ("TransCanada" or "Keystone") currently has pending before the U.S. Department of State an application for a Presidential Permit at the border of the United States for the construction, connection, operation, and maintenance of a pipeline and associated facilities for the Keystone Pipeline Project, involving importation of crude oil from Canada to the United States. The Department of State receives and considers such applications pursuant to the authority delegated to it by the President of the United States under Executive Order 13337 (69 Federal Register 25299). Issuance of other related permits for the Project falls within the jurisdiction of various federal and state agencies.

In conjunction with its consideration of TransCanada's Presidential Permit application, the Department of State is cooperating with other federal and state agencies and is serving as the lead agency for purposes of preparing an Environmental Impact Statement ("EIS") for the Keystone Pipeline Project under Section 102(C) of the National Environmental Policy Act ("NEPA"), 42 U.S.C. 4332(C), and the parallel process under Section 106 of the National Historic Preservation Act ("NHPA"), 16 U.S.C. 470f. These statutes require, respectively, that federal agencies consider the environmental impact of proposed actions and take into account the effects of their undertakings on historic properties. I am the Department of State's Project Manager for the EIS and NHPA Section 106 process and I am working with counterparts in other federal and state agencies and consulting with State Historic Preservation Officers ("SHPOs") and Tribal Historic Preservation Officers ("THPOs") to fulfill our statutory mandates.

The Department appreciates the good relationship it has developed with the South Dakota Public Utilities Commission ("SDPUC"). As mentioned in SDPUC Staff Attorney Kara Van Bockern's June 21, 2007, letter to you, she and I have been in contact regarding TransCanada's redacted filing before the SDPUC. The Department of State welcomes the SDPUC staff recommendation to approve TransCanada's supplemental filing with redactions and withheld documents, which is

consistent with the Department of State's processing of TransCanada's Presidential Permit application, and our handling of materials developed in conjunction with that application.

The Department of State's NHPA Section 106 process is accomplished in accordance with government-wide implementing regulations set forth at 36 CFR Part 800. Our process involves extensive consultations with SHPOs and THPOs in order to identify historic properties within the area of a proposed project's potential effects. We work assiduously to develop and maintain the trust of our tribal contacts, which is essential to our efforts to obtain information regarding properties warranting protection. Many tribes' belief systems require that the location or even existence of traditional religious and cultural properties not be divulged. Accordingly, generally, the biggest fear that tribes have is that any disclosure(s) will be released to the public, and will jeopardize such sites and destroy their inherent value.

As contemplated by 36 CFR 800.4, the Department of State takes into account any confidentiality concerns raised by Indian tribes during the identification process. NHPA Section 302 (16 U.S.C. 4702-3) and 36 CFR 800.11(c)(1) mandate that a federal agency withhold from disclosure to the public, information about the location, character, or ownership of a historic resource if the Secretary of Interior and the agency determine that disclosure may: (1) cause a significant invasion of privacy; (2) risk harm to the historic resource; or (3) impede the use of a traditional religious site by practitioners.

NHPA implementing regulations also note that other Federal laws and program requirements may limit public access to information concerning an undertaking and its effect on historic properties. 36 CFR 800.11(c)(3). The regulations provide that, "[w]here applicable, those authorities shall govern public access to information developed in the section 106 process. . . ." In our role as lead agency for preparation of the EIS and NHPA Section 106 documentation, we take into account our coordinating agencies' relevant agency-specific guidance, including, in this case, guidance established by the Natural Resources Conservation Service ("NRCS") to the effect that, "In the absence of a resource specific agreement between the NRCS Chief and the Secretary of the Interior, it is assumed that public disclosure of such information would create a substantial risk of harm to either the resource or to the place where the resource is located." National Cultural Resources Procedures Handbook Section 601.42(A)(3).

In connection with preparation of the EIS and NHPA Section 106 documentation for the Keystone Pipeline Project proposal, a number of cultural resource sites have been identified that the Project may affect. With support from our expert consultant, Entrix, Inc., the Department of State is in the process of analyzing the information that has been developed and consulting with SHPOs, THPOs, cooperating agencies, and others regarding these sites and any confidentiality concerns that may be applicable. Our main concern is that if specific information on the resources is released without taking into account these confidentiality concerns, there is a strong potential for irreparable harm. We are also concerned that disclosure could have a significant detrimental effect on our tribal relationships.

In accordance with the statutory and regulatory framework described above, as well as with the other federal statutes cited in SDPUC Staff Attorney Kara Van Bockern's June 21, 2007, letter,

the Department of State supports the SDPUC staff recommendation that the Commission approve TransCanada's supplemental filing with redactions and withheld documents.

If you have any further questions, I would welcome an opportunity to address them. I can be reached at (202) 647-4284 and via e-mail at OrlandoEA2@state.gov.

Sincerely,



Elizabeth Orlando
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cc: Kara Van Bockern, Staff Attorney, South Dakota Public Utilities Commission
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