

LAW OFFICES
MAY, ADAM, GERDES & THOMPSON LLP
503 SOUTH PIERRE STREET
P.O. BOX 160
PIERRE, SOUTH DAKOTA 57501-0160

DAVID A. GERDES
CHARLES M. THOMPSON
ROBERT B. ANDERSON
TIMOTHY M. ENGEL
MICHAEL F. SHAW
BRETT KOENECKE
CHRISTINA L. FISCHER
PATRICK M. GRODE
JUSTIN R. JOHNS

SINCE 1881
www.magt.com

February 12, 2009

OF COUNSEL
THOMAS C. ADAM
RETIRED
WARREN W. MAY
GLENN W. MARTENS 1881-1963
KARL GOLDSMITH 1885-1966
BRENT A. WILBUR 1949-2006
TELEPHONE
605 224-8803
TELECOPIER
605 224-6289
E-MAIL
brett@magt.com

Patricia Van Gerpen
Executive Director
Public Utilities Commission
500 East Capitol Avenue
Pierre, South Dakota 57501

RE: **APPLICATION OF TRANSCANADA KEYSTONE PIPELINE LP**
Docket HP07-001
Our file: 5057

Dear Ms. VanGerpen

Pursuant to permit condition #44, Keystone has filed the Emergency Response Plan for the Keystone Pipeline with the PUC. We were able to upload it on Friday, February 6th using the Commission's newly developed File Transfer Protocol site. The document contains confidential and proprietary information. Therefore, Keystone requests that the ERP be accorded confidential treatment pursuant to ARSD 20:10:01:39 and specifically subsections (4) and (6).

Keystone requests confidentiality for

- (1) The Keystone Pipeline System Emergency Response Plan
- (2) For the operating life of the Pipeline
- (3) Brett Koenecke
May Adam Gerdes and Thompson, LLP
Box 160
Pierre SD 57501
605-224-8803
- (4) SDCL 37-29, ARSD 20:10:01:39 et. Seq. and SDCL 49-1-11(6)

Patricia Van Gerpen
February 12, 2009
Page 2

- (5) The document does meet the trade secret standard in its entirety, as found in SDCL 37-29-1(4). It contains a number of factual determinations and findings, and plans to respond to emergencies, which meet that definition. Furthermore, the contents of the ERP, should they be made public, would jeopardize Keystone's security and ability to respond to emergencies. The disclosure of the contents of the ERP would be improper and the document should be protected.

The condition specifies that the ERP be filed with the Commission at such time as the document is filed with PHMSA. We regret that Keystone misunderstood the intent of the Condition and filed the ERP with PHMSA without copying the PUC. The ERP has been approved by PHMSA. The ERP, however, is a living document, subject to updating over the lifetime of the pipeline's operation. Accordingly, Keystone commits to engaging in dialogue with the Commission and Staff, with respect to the contents of the ERP, in the same manner now, as we would have done previously. We look forward to that dialogue.

Yours truly,

MAY, ADAM, GERDES & THOMPSON LLP



BRETT KOENECKE

BK:mw