

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

IN THE MATTER OF THE APPLICATION) HP 07-001
BY TRANSCANADA KEYSTONE PIPELINE,)
LP FOR A PERMIT UNDER THE SOUTH)
DAKOTA ENERGY CONVERSION AND) **MOTION FOR ENTRY**
TRANSMISSION FACILITIES ACT TO) **OF PROTECTIVE ORDER**
CONSTRUCT THE KEYSTONE PIPELINE)
PROJECT)

COMES NOW the Applicant, TransCanada Keystone Pipeline, who moves the Commission for an Order adopting the attached draft protective order or a version of it for use by the parties during the discovery phase of the docket proceeding.

Should there be discovery disputes of a confidentiality nature during the pendency of the pre-hearing discovery and testimony filing stages, it will be difficult to get them resolved in time to keep the schedule. Therefore, the Applicant offers this draft for the Commission's consideration and possible Order in order to keep the matter on schedule.

Respectfully submitted this 6th day of September, 2007.

MAY, ADAM, GERDES & THOMPSON LLP

BY: 

BRETT KOENECKE

Attorneys for TransCanada Keystone Project
503 South Pierre Street
P.O. Box 160
Pierre, SD 57501
(605) 224-8803

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

IN THE MATTER OF THE APPLICATION) HP 07-001
BY TRANSCANADA KEYSTONE PIPELINE,)
LP FOR A PERMIT UNDER THE SOUTH)
DAKOTA ENERGY CONVERSION AND)
TRANSMISSION FACILITIES ACT TO) **PROTECTIVE ORDER**
CONSTRUCT THE KEYSTONE PIPELINE)
PROJECT)

ORDERED, that Commission Staff and Parties shall treat Confidential Information, filed with the Commission or provided through discover by APPLICANT or another party, as confidential information subject to the Commission’s rules regarding confidential information, subject to the following protective provisions:

1. All marked Confidential Information filed by APPLICANT, or provided by a party, and not released pursuant to the terms of another order in this case shall be treated as confidential information pursuant to ARSD 20:10:01:39 through 20:10:01:44, except that access to and use of such information by parties for purposes of preparation for the proceedings in this matter and use in the proceedings shall be permitted subject to the provisions of this Protective Order.

2. Any party receiving confidential information pursuant to this Order is responsible to the Commission and to the providing party (i) for limiting disclosure only to such third party experts and persons acting on a party’s behalf who have a bona fide need to review such information for purposes of preparing for the proceedings in this case (“Authorized Recipients”) and (ii) for the use, return and destruction of the disclosed information as provided by this Protective Order.

3. Any party receiving confidential information shall limit its Authorized Recipients to the minimum number of persons necessary to analyze the information and prepare for and present its evidence in this proceeding.

4. Documents provided pursuant to this Order for which a party seeks confidential treatment shall be stamped or sealed as “Confidential” (Confidential Information). Before any disclosure of Confidential Information shall occur to a Party or Authorized Recipient, the Intervenor shall assure himself that the Authorized Recipient to whom the Confidential Information is to be disclosed has read and understands this Protective Order, has signed and agreed to abide by its terms, and understands that unauthorized disclosure or use of the Confidential Information is prohibited.

5. The Commission shall treat Confidential Information produced pursuant to this Order as confidential information subject to ARSD 20:10:01:39 through 20:10:01:44, provided

that such confidential information is marked as confidential.

6. The Commission shall conduct all hearings involving Confidential Information in camera with only Commission employees, the parties' attorneys and the Authorized Recipients present during the portion of the hearing in which such information is offered or discussed. Any person other than Commission employees or a party who desires to have access to confidential information shall comply with the procedures of ARSD 20:10:01:42 and 20:10:01:43.

7. Persons obtaining access to Confidential Information under this Order shall use the information only in the conduct or settlement of this proceeding and any judicial proceeding arising therefrom, and shall not use such information for any purpose unrelated to this proceeding, including unrelated business, governmental or commercial purposes. Persons obtaining access to Confidential Information under the terms of this Order may disclose, describe, or discuss the confidential information in any pleading filed in this proceeding, provided that such pleading is stamped confidential and filed under seal, and provided that a separate public version is filed in which all Confidential Information is redacted.

8. If a court or another administrative agency subpoenas or orders production of the Confidential Information, a party with knowledge of the subpoena or order shall immediately notify the providing party of the pendency of such subpoena or order.

9. Nothing in this Order shall prevent or otherwise restrict counsel from rendering advice to their client regarding this proceeding and, in the course thereof, making professional analysis and use of the Confidential Information, provided, that in rendering such advice and otherwise communicating with such client, counsel shall not make disclosure of any confidential fact or assertion except to the Authorized Recipients and only in accordance with the procedures set forth in this Protective Order.

10. The provisions of this Order shall not terminate at the conclusion of this proceeding.

11. The parties are responsible for employing reasonable measures to control, consistent with this order, duplication of, access to, and distribution of copies of the Confidential Information. Parties shall not duplicate any stamped confidential document except working copies and for filing at the Commission under seal.

12. The parties, their Authorized Recipients and their other employees, agents, consultants and representatives shall be subject to a standard of good faith in their disclosure, receipt, custody and use of the Confidential Information.

13. Within two weeks after final resolution of this proceeding (which includes administrative or judicial review), parties and their attorney(s) shall return all copies of Confidential Information and all analyses or other compilations which contain any of the Confidential Information in their possession to attorneys for providing parties, or destroy all such Confidential Information and certify, under penalty of perjury, that such destruction has occurred. In the case of analyses or compilations containing Confidential Information, all

Confidential Information set forth in such document shall be redacted if the document is to be retained and a copy of the redacted version shall be served on the disclosing party(ies) at least ten (10) days before disclosure of the redacted version is made to anyone other than the Authorized Recipients.

Dated at Pierre, South Dakota, this _____ day of _____, 2007.

CERTIFICATE OF SERVICE

I hereby certify that the above Motion for Entry of Protective Order was served upon all of the parties listed on the attached Service List on the 6th day of September, 2007, either electronically or by mailing a true and correct copy thereof to them by first class mail, postage prepaid, at their last known addresses.

MAY, ADAM, GERDES & THOMPSON LLP

BY: 

BRETT KOENECKE

Attorneys for TransCanada Keystone Pipeline
503 South Pierre Street
P. O. Box 160
Pierre, SD 57501
(605) 224-8803

Service List

HP07-001

MS PATRICIA VAN GERPEN
EXECUTIVE DIRECTOR
SOUTH DAKOTA PUBLIC UTILITIES COMMISSION
500 EAST CAPITOL
PIERRE SD 57501
patty.vangerpen@state.sd.us
605-773-3201 – voice
866-757-6031 – fax

MS KARA VAN BOCKERN
STAFF ATTORNEY
SOUTH DAKOTA PUBLIC UTILITIES COMMISSION
500 EAST CAPITOL
PIERRE SD 57501
kara.vanbockern@state.sd.us
605-773-3201 – voice
866-757-6031 – fax

MR MARTIN BETTMANN
SOUTH DAKOTA PUBLIC UTILITIES COMMISSION
500 EAST CAPITOL
PIERRE SD 57501
martin.bettmann@state.sd.us
605-773-3201 – voice
866-757-6031 – fax

MR BOB KNADLE
STAFF ANALYST
SOUTH DAKOTA PUBLIC UTILITIES COMMISSION
500 EAST CAPITOL
PIERRE SD 57501
bob.knadle@state.sd.us
605-773-3201 – voice
866-757-6031 – fax

MR NATHAN SOLEM
STAFF ANALYST
SOUTH DAKOTA PUBLIC UTILITIES COMMISSION
500 EAST CAPITOL
PIERRE SD 57501
nathan.solem@state.sd.us
605-773-3201 – voice
866-757-6031 – fax

MR BRETT M KOENECKE
ATTORNEY AT LAW
MAY ADAM GERDES & THOMPSON LLP
PO BOX 160
PIERRE SD 57501-0160
koenecke@magt.com
605-224-8803 – voice
605-224-6289 – fax

MR DEAN COWLING
DIRECTOR – OPERATIONS & ENGINEERING
TRANSCANADA PIPELINES LIMITED
450 1ST STREET SW
CALGARY ALBERTA CANADA T2P 5H1
dean_cowling@transcanada.com
403-920-6504 – voice
403-920-2325 – fax

BEADLE COUNTY AUDITOR
CONNIE MUTH
PO BOX 845
HURON 57350-0845
beadle@midco.net
605-353-8400 - voice
605-353-8402 - fax

CLARK COUNTY AUDITOR
NANCY WORTH
PO BOX 294
CLARK 57225-0294
nmw@itctel.com
605-532-5921 - voice
605-532-5931 - fax

DAY COUNTY AUDITOR
SANDRA RAAP
711 W 1ST ST
WEBSTER 57274
sandra.raap@state.sd.us
605-345-9500 - voice
605-345-9507 - fax

HANSON COUNTY AUDITOR
RANDY DOYLE
PO BOX 500
ALEXANDRIA 57311-0500
randy.doyle@state.sd.us
605-239-4714 - voice
605-239-4296 - fax

HUTCHINSON COUNTY AUDITOR
JEANIE SIMONSEN
140 EUCLID RM 128
OLIVET 57052-0128
jeanie.simonsen@state.sd.us
605-387-4212 - voice
605-387-4209 - fax

KINGSBURY COUNTY AUDITOR
JENNIFER ALBRECHT
PO BOX 196
DESMET 57231-0196
jennifer.albrecht@state.sd.us
605-854-3832 - voice
605-854-3833 - fax

MARSHALL COUNTY AUDITOR
JULIE HAGEN
PO BOX 130

BRITTON 57430-0130
mcauditor@sbtc.net
605-448-2401 - voice
605-448-2116 - fax

McCOOK COUNTY AUDITOR
GERALYN SHERMAN
PO BOX 190
SALEM SD 57058
geralyn.sherman@state.sd.us
605-425-2791 - voice
605-425-2534 - fax

MINER COUNTY AUDITOR
SUSAN CONNOR
PO BOX 86
HOWARD 57349-0086
minerauditor@alliancecom.net
605-772-4671 - voice
605-772-4821 - fax

YANKTON COUNTY AUDITOR
PAULA JONES
PO BOX 137
YANKTON 57078-0137
paula@co.yankton.sd.us
605-260-4400 - voice
605-260-4494 - fax