

THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF SOUTH DAKOTA

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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

HP07-001

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Transcript of Proceedings  
June 26, 2007

**SOUTH DAKOTA PUBLIC  
UTILITIES COMMISSION**

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BEFORE THE PUBLIC UTILITIES COMMISSION,  
DUSTIN JOHNSON, CHAIRMAN  
GARY HANSON, VICE CHAIRMAN  
STEVE KOLBECK, COMMISSIONER

COMMISSION STAFF

John J. Smith  
Kara Van Bockern  
Greg Rislov  
Nathan Solem  
Martin Bettmann  
Bob Knadle

Reported By Cheri McComsey Wittler, RPR, CRR

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PRESENT

Randy Gerloff	Sara Greff
Emil Klavetty	Mary Negstad
Deanna Santema	Robert Hill
Dennis Falken	Doug Copplund
Christopher Moore	Larry Toll
Colleen Sevold	Bryan Roth
Dave Gerdes	Wayne Ortman
Sam Hawk	Jeff Carmor
Jennifer Scott	Brett Koenecke
Jeff Decker	James White

PRESENT IN PIERRE

R.H. Miller	Rich Coit
Darla Pollman Rogers	

PRESENT BY TELEPHONE

Christian Wojnar	Bill McClelland
Gregory Hlibok	Dennis Heinz
Ryan Taylor	Cindy Grosvenor
Sean Belanger	Karen Strauss
Clyde Gross	Rolayne Ailts Wiest
Heather Forney	Deb Gregg
Dave Jacobson	Keith Senger
Steve Wegman	Harlan Best

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TRANSCRIPT OF PROCEEDINGS, held in the above-entitled matter, at the USDSU Technology Center, Room 282, Sioux Falls, South Dakota, on the 26th day of June 2007, commencing at 10 o'clock a.m.

1 CHAIRMAN JOHNSON: Under hydrocarbon pipeline,  
2 HP07-001, in the matter of the filing of the application of  
3 TransCanada Keystone Pipeline for a construction permit.

4 The question before the Commission today deals with  
5 confidentially filed documents. Shall the Commission accept  
6 staff's recommendations regarding the confidentially filed  
7 documents, or in the alternative, how shall the Commission  
8 proceed?

9 There was a letter filed by Commission attorney  
10 Kara Van Bockern, and perhaps we'll start there.

11 Ms. Van Bockern.

12 MS. VAN BOCKERN: Thank you, Mr. Chairman. This is  
13 Kara Van Bockern for staff. I did file a letter on June 21 in  
14 which I hoped to outline the progress that we made with  
15 TransCanada in releasing confidentially filed documents.

16 Staff received the release documents on June 15. By  
17 June 20 we had it up on the website. And regardless of whether  
18 or not it should or should not have been marked confidential,  
19 that's ancient history at this point. It's out to the public.  
20 The public has access to all of it.

21 There are very few documents that have been kept  
22 confidential, and many of those are from other states. And it  
23 involves the culturally sensitive areas and environmental areas.  
24 And, again, I'll just reiterate that those South Dakota  
25 documents that are -- continue to remain confidential are very

1 limited, and TransCanada has relied on other federal agencies or  
2 federal law in marketing them as such. And I believe it's our  
3 duty as a Commission to keep such documents confidential.

4 So I would recommend that the Commissioners accept the  
5 filing as is and we continue to protect those documents that we  
6 marked as confidential.

7 CHAIRMAN JOHNSON: Thanks, Ms. Van Bockern. Before  
8 taking questions, perhaps we could turn to TransCanada to see if  
9 they have any comments regarding Ms. Van Bockern's letter.

10 MR. KOENECKE: Good morning, Commissioners.  
11 Brett Koenecke from TransCanada. We appreciate staff's letter  
12 that was filed and staff's comments here today. I think it's  
13 fair to say that we regret that this happened. But I do want to  
14 reiterate for your benefit and the benefit of anybody who might  
15 be listening the information which was marked confidential was  
16 done out of high regard for the public interest, the public's  
17 interest in keeping things confidential as outlined by other  
18 units of Government, whether they be federal or state, with  
19 respect to high concentrate areas with respect to cultural and  
20 archaeological resources and endangered species.

21 We were zealous regarding that public interest, and we  
22 reviewed that and came up with a revised filing which I think  
23 meets the guidelines in all respects. Despite the claims of  
24 some people, there's nothing in that material related to any  
25 proposed oil refinery at Elk Point or anything else with respect

1 to TransCanada.

2 In every respect the confidential filings had to do  
3 with things other units of Government demanded and requested  
4 that we keep confidential. And we tried to respect that public  
5 interest.

6 So we think we're over that -- I hate to say this. We  
7 do have more information to provide to the citizens of  
8 South Dakota even after 12 hours of hearings yesterday. And we  
9 have more information to provide specifically to the county  
10 auditor's office as is required.

11 But we're getting there and we're working through this  
12 and I appreciate the Commission's indulgence and the work that  
13 staff has put into this at this time and we're hopefully past  
14 this at this point.

15 CHAIRMAN JOHNSON: Thanks, Mr. Koenecke. We have a  
16 number of people who have been granted party status. We'll  
17 pause for a moment to see if they have any comments on  
18 Ms. Van Bockern's letter.

19 Hearing none, Mr. Koenecke, you did note the 12 hours  
20 of hearings. At one time somebody mentioned to me,  
21 Brett Koenecke, the more time you spend with him, the more  
22 you'll get to like him. I'm not sure that's been the case.  
23 Perhaps it's been the nature of the meetings.

24 MR. KOENECKE: I'll refrain from commenting on the  
25 record, but thank you.

1           CHAIRMAN JOHNSON: You know, I -- let's go ahead and  
2 move to Commissioner or advisor comments or questions. I have a  
3 couple, but if my colleagues have some, they can certainly --

4           Let's start with Ms. Van Bockern with the pipeline  
5 landowner list containing confidential personal information. I  
6 understand why the personal information wouldn't be published.  
7 But was this an item that is totally confidential or one that's  
8 been redacted?

9           MS. VAN BOCKERN: It has been kept completely  
10 confidential at this point. And I know staff would certainly be  
11 willing to go through and redact all addresses and phone number  
12 information, unless TransCanada would like to keep individual  
13 landowner names private for any particular reason.

14          CHAIRMAN JOHNSON: I don't know that it makes a huge  
15 difference to me. Certainly that's publicly available  
16 information. At the county courthouse you can find out who has  
17 title to a particular piece of land. It does seem we have some  
18 questions about this particular item, and because it doesn't fit  
19 plainly into the cultural and environmental rationales given, I  
20 thought we should at least throw it out for discussion.

21          MR. KOENECKE: You know, I appreciate the tenor of the  
22 discussion. It's not an easy or simple question, and it's just  
23 been our position up to this point that that list is a very  
24 complete document with respect to people's really personal  
25 information. And if the Commission feels it has to put it out,

1 that will be the Commission's decision.

2 But I'd hate to say that it's over our objection, but  
3 we just don't think that in this day and age that's something --  
4 when we file lawsuits at State Court we have to file redacted  
5 personal information on people so that somebody from reviewing  
6 the public records up at the courthouse can't find out people's  
7 Social Security No., you know, phone numbers, so on and so  
8 forth. And it's not uncommon to hold that back. If you decide  
9 otherwise, that's your decision.

10 CHAIRMAN JOHNSON: Sure. Thanks, Mr. Koenecke. I  
11 would also ask Ms. Van Bockern about -- and Mr. Koenecke. You  
12 know, we've got a number of these documents that are still  
13 confidential. To what extent could redaction be a tool to move  
14 these documents from completely confidential to -- even if you  
15 might have whole pages or paragraphs blacked out, is that a  
16 mechanism that could be used additionally to at least allow  
17 people to believe they're getting access to every possible bit  
18 of information?

19 MR. KOENECKE: On the pump station list or on the --

20 CHAIRMAN JOHNSON: On any of the items that are on  
21 page 2 of Ms. Van Bockern's letter that you had filed. There  
22 are still some documents that are completely confidential, and  
23 redaction has not been a tool that has been used.

24 Is that because the document would have just been  
25 worthless with that much information redacted out?

1           MR. KOENECKE: That's my understanding, Commissioner.  
2 We reached a level of redaction that's possible under the  
3 structure of the documents, the rules under which -- and the  
4 request under which we've been operating. We're at the limit is  
5 my understanding.

6           CHAIRMAN JOHNSON: You know, and I ask that question  
7 and make that suggestion. I think that's -- I mean, I suspect  
8 that's right. Now my concerns aren't on the public policy  
9 sector. My concerns really are on the public perception  
10 perspective. And sometimes even if you can see the whole  
11 paragraph is blacked out, the context around the paragraph will  
12 allow you to understand, okay, this isn't anything -- they  
13 really are talking about gorillas. You know, this really is a  
14 document that is just describing the Topeka Shiner.

15           And, I don't know, I haven't gone through all of these  
16 documents yet and looked at the confidential versions and tried  
17 to imagine where would I redact if I was an environmental and  
18 cultural expert. So I just thought I would offer it up to get  
19 TransCanada's take on have we bored down to the deepest level.

20           And perhaps, Ms. Van Bockern, your opinion on that  
21 would be appreciated.

22           MS. VAN BOCKERN: A significant portion of those  
23 documents kept confidential are maps. And I don't know what  
24 good it would do to black out all the locations of particular  
25 cultural material or environmental material. So I think a lot



1 of them are maps and significant portions too are maps of highly  
2 sensitive areas where according to the federal pipeline  
3 agencies, the entire map is confidential. So they simply can't  
4 be as a whole document released.

5 And then I would echo that I think the documents would  
6 be very -- would not be useful at all to the landowners with the  
7 redactions that are necessary. And I understand the public  
8 perception is very important in this docket, but the documents  
9 that we're talking about are specific to environmental and  
10 cultural aspects that do not affect the landowner's ability to  
11 protect their rights as landowners.

12 CHAIRMAN JOHNSON: Well, thanks, Ms. Van Bockern. And  
13 you do note in your letter that we have received some  
14 information from both state and federal officials indicating the  
15 sensitivity of this information. So, you know, I think  
16 Commissioner Hanson at our last meeting made it really clear the  
17 Commission really wants a legal underpinning for any of this  
18 information to be kept confidential, whether that's state or  
19 federal rules or laws. And it appears that TransCanada has  
20 tried to operate in accordance with his articulation of that.

21 You know, one other thing that occurs to me -- I mean,  
22 reasonable people can probably disagree about whether or not a  
23 particular document could be further redacted. It is worth  
24 noting again for the record that we've got a large number of  
25 intervenors, any of which could presumably enter in to some sort

1 of agreement, a protective order so that they can take a look at  
2 it, and if they believe the information that they have access to  
3 the -- the broader public should have access to, they could  
4 certainly by their own action petition the Commission to examine  
5 this issue further.

6 That's my understanding. I'd look to the lawyers to  
7 make sure I haven't misstated anything.

8 MR. SMITH: I think that's true. I mean, the  
9 Commission very frequently permits parties to cases to have full  
10 access to all confidential information. It's just that they  
11 have to do so under some understanding that it won't be totally  
12 released out to the public.

13 Again, I think, you know, we get great benefits at the  
14 Commission from the Internet from electronic filing and the  
15 tremendous amount of availability of information we can provide.  
16 But it also makes the information extremely broadly available,  
17 you know, to a universe of people that, you know, is just -- is  
18 way beyond what normally we might have looked upon traditionally  
19 as people likely to come in to our office and seek access to  
20 information.

21 I might -- one observation on the landowner list.  
22 And, again, maybe that's the toughest item. I'd just note here  
23 that in other cases -- I'll give you an example, a recent one,  
24 S&S Communications, for example, where people out there are  
25 not -- they haven't elected to come to the Commission. This is

1 something that came to them.

2 And all of a sudden then to have your information not  
3 just in our files but on the Internet where everybody in the  
4 world can make up a list and do a mass mailing, you know, I  
5 think that's the kind of concerns we've had, you know, on some  
6 of these things is that a lot of times people when they haven't  
7 voluntarily elected to be in something, to all the sudden  
8 subject them to public display is maybe a reason to think about  
9 not doing that. And particularly obviously if there's identity  
10 type information involved. Just some thoughts.

11 CHAIRMAN JOHNSON: No. Thanks, Mr. Smith. It's  
12 probably worth noting we did have a couple of public hearings on  
13 other issues regarding this docket yesterday. And this  
14 information's only been available for a week.

15 But, I mean, I do think it was good to see that a  
16 number of people quoted from information that they had found on  
17 the Internet that had previously been marked confidential. A  
18 number of people mentioned they appreciated having access to  
19 this information, and clearly there is hundreds and hundreds of  
20 pages for people to review out there. I think people appreciate  
21 having access to these documents.

22 Any other Commissioner or advisor comments or  
23 questions?

24 Commissioner Kolbeck.

25 COMMISSIONER KOLBECK: Yes. I guess I'm looking at

1 the letter from the Department of State. I understand the  
2 environmental consequences and why we have to do that because  
3 more on the federal side. I'm more concerned with the -- and  
4 I'll look to staff I guess for an answer to this question.

5 Is there anything that someone could go to the  
6 courthouse for and spend hours upon hours of research to find  
7 out that is marked confidential here? That's more my concern,  
8 well, I can get it at the courthouse, but I can't get it on your  
9 website type of deal.

10 MS. VAN BOCKERN: The landowner list, Commissioner, is  
11 the only thing I can think. I suppose someone could find the  
12 site, go to the Register of Deeds Office, look up parcel by  
13 parcel the owner. That would be the only type of information I  
14 think that would be accessible in a different venue.

15 COMMISSIONER KOLBECK: That is public information.

16 MS. VAN BOCKERN: It's just organized in such a way as  
17 I think Mr. Smith articulated, well, that we're really giving it  
18 to people -- I mean, I feel uncomfortable in giving that entire  
19 list. But that would be the type of information that is public.  
20 I mean, land ownership is a public recorded type of instrument  
21 at the Register of Deeds.

22 COMMISSIONER KOLBECK: Is there a way that we could --  
23 I'm uncomfortable with that being on the Internet. I'll be  
24 blatant about that. I just -- I totally very much understand  
25 that information being on the Internet and the ramifications of

1 that.

2 Is there any way that TransCanada would be willing to  
3 help landowners back to the county courthouses? Maybe the  
4 landowner list is at the county courthouse and not on the  
5 Internet? Is that legally a problem, John?

6 MR. SMITH: Well, there is really no cut and dried --  
7 if you look at our rule, which you guys don't have a copy of,  
8 there's no cut and dried category. There's a group of  
9 categories on here.

10 And one of the categories is trade secrets, you know,  
11 and we've got information which is made confidential under any  
12 other provisions of state or federal law. And I'm not aware of  
13 any particular -- I'm not aware of any particular federal  
14 privacy law or whatever. I mean, we're not dealing with medical  
15 information or any of that here.

16 But the last category is information which is  
17 determined confidential by the Commission. And, you know, to me  
18 it sounded just what level of disclosure of the people's -- you  
19 know, I just don't know. It's up to you. I mean, probably most  
20 of these people are listed in the phone book. It's up to you.  
21 If you feel you want to -- we've elected --

22 Like in the S&S case we elected not to reveal all of  
23 those customer names, you know, out to the -- and put a list of  
24 them on the public. And, again, there's reasons for doing that,  
25 for putting them on there. There's a reason for not doing so is

1 because these people aren't choosing to get a mailing from us.  
2 And all the sudden you're on a list. Somebody can go on there,  
3 and all the sudden you're getting more junk mail in the mail.  
4 And it might be a good thing, but it might be something that  
5 you -- it just -- I think it's a discretionary deal.

6 COMMISSIONER KOLBECK: It's kind of concerning that  
7 the raptor has more confidentiality than a person who owns land.  
8 But --

9 CHAIRMAN JOHNSON: The raptor doesn't even get junk  
10 mail.

11 MR. RISLOV: This is Greg Rislov for the Commission  
12 staff. One thing I wanted to point out, that if people really  
13 felt they wanted their name in public, I think there's a list of  
14 over 100 Intervenors and that would probably be a pretty good  
15 guess that would be a list of landowners who would choose to  
16 make their names public, and likely it would be a majority of  
17 people along that route.

18 And I would suggest that alone would likely represent  
19 a list of those who I guess would have no objection to having  
20 their name mentioned in public. And that may serve at least in  
21 some sense a substitute for the information you're talking about  
22 now.

23 CHAIRMAN JOHNSON: Commissioner Hanson had a comment  
24 or question.

25 COMMISSIONER HANSON: Well, I did, and I do, but it's

1 one of those situations that you -- out of a 12-hour meeting you  
2 might say one sentence, and then it gets quoted wrong.

3           The S&S situation was one in which people had been  
4 bilked out of a significant amount of funds and some of them  
5 were embarrassed and some of them were in situations where they  
6 had businesses and they didn't want the rest of the world to  
7 know they had been duped out of thousands of dollars. So there  
8 was an entirely different reason at that juncture for having  
9 those confidential.

10           The situation that we have here is that it's  
11 interesting because one of the gentlemen that I spoke with  
12 yesterday when we were in Alexandria only wanted to give me his  
13 first name. He was very concerned about Government and  
14 Government at every level and what they might do to him.

15           And at the same time there were several people that  
16 came up to speak with me at the breaks who wanted to know -- and  
17 these are landowners -- wanted to know, is there a list of names  
18 so we can kind of get together and instead of each one of us  
19 hiring different attorneys, maybe we can all get together and --  
20 or a bunch of us in different areas and hire the attorneys and  
21 share the cost.

22           And so there's pros and cons here of different  
23 challenges. And I suspect most of these folks have their name  
24 in a phone book somewhere, and if someone really wanted to go  
25 through the process of sending them letters, all they've got to

1 do is go to the county courthouse or drive down the road and  
2 they can do it.

3           Granted, that's a little more difficult than picking  
4 it off the Internet. But there are some advantages to these  
5 folks in being able to know who else is in the boat with them  
6 and how they can contact those people and work with them. Some  
7 of the people were asking for sign-up sheets yesterday so --  
8 we've got to recognize that there's benefits to these folks too  
9 to having their names -- and if we're insisting on open  
10 Government, then it would seem to make sense to have it open.

11           CHAIRMAN JOHNSON: Yeah. Commissioner Hanson, this is  
12 Dusty Johnson. You know, I think you're right. I mean, I  
13 understand the dangers of this, but a suggestion that I might  
14 make to the Commissioners is perhaps we could ask TransCanada to  
15 provide only the list of landowners and the town of residence,  
16 you know, the mailing address that that person is sent to. That  
17 way if somebody knows --

18           I mean, John Smith from Canova may be different than  
19 the John Smith from Carthage, and if we help them narrow that  
20 down, I can see a public interest from people at least knowing  
21 who's affected by this pipeline.

22           I would maybe pause to see if staff or TransCanada  
23 have any objections to that.

24           MS. VAN BOCKERN: Staff does not have any objections  
25 to that and would certainly work with TransCanada to redact that



1 information, but they may have some comments.

2 MR. KOENECKE: If the Commission orders it, we will do  
3 it.

4 CHAIRMAN JOHNSON: Well, if TransCanada believes we're  
5 doing the wrong thing, we want to know that too.

6 (Pause)

7 MR. KOENECKE: That's still the bottom line. If the  
8 Commission orders it, that's what we'll do. We've listed the  
9 competing concerns here very well, and you've framed it up. And  
10 we -- if it's done, it won't be at our request or our agreement.  
11 If you tell us to do it, we'll do it. That's the best I can do  
12 for you, Commissioner.

13 CHAIRMAN JOHNSON: Well, thanks, Mr. Koenecke. And I  
14 appreciate -- we'll pause for a moment again.

15 MS. SCOTT: Jennifer Scott from TransCanada. I would  
16 just like to clarify the concern is the experiences, as  
17 John Smith has identified, where these people are not  
18 voluntarily wanting their information put on the -- on  
19 broadcast.

20 This has been an issue in other jurisdictions, and I  
21 just want to be sure that it's the Commission's decision to do  
22 this. It's your decision. So --

23 COMMISSIONER KOLBECK: You're more worried about the  
24 ramifications of you publishing their names and numbers and  
25 coming back after TransCanada and saying why did you put this on

1 the Internet? Is that what you're saying?

2 MS. SCOTT: Yeah. I mean, I as a landowner I think  
3 there are probably landowners who would be concerned about broad  
4 dissemination and personal information, just for the purpose of,  
5 you know, as you said, it was involuntary. So it's -- but it's  
6 the Commission's decision if you wish to release this  
7 information. That's not something we would do.

8 CHAIRMAN JOHNSON: Well, thank you very much. And I  
9 would say that my comfort level with this is pretty low. I  
10 mean, I understand -- I understand all the reasons why the  
11 Commission shouldn't, you know, ask TransCanada to provide this  
12 information redacted, again so it's just name and mailing  
13 location.

14 Ms. Van Bockern.

15 MS. VAN BOCKERN: As Mr. Bettmann and I are talking  
16 back here, just a note for the Commissioners, that such a list  
17 is not normally something that we even ask for. It's not  
18 normally part of an application.

19 And I'm wondering if that document was filed maybe  
20 with the Department of State or why we even received it. But  
21 it's not something we normally receive. It's not something we  
22 normally have in the application process.

23 MR. BETTMANN: We asked for this as part of a staff  
24 data request, which isn't put on the Internet. Our data request  
25 responses are not part of the docket. It's for our use, for

1 staff's use. We've never asked for -- we've never had one -- in  
2 my recollection it's never been a part of a docket before.

3 CHAIRMAN JOHNSON: Yes, Mr. Smith.

4 MR. SMITH: Well, I just note we do have that new  
5 notice requirement too. So I don't know that the landowner --  
6 in terms of specific pipeline crossing landowners that we could  
7 identify. But that particular list is a list that we've been  
8 required to compile since July 1.

9 MS. VAN BOCKERN: I'll note, Mr. Smith, we've kept  
10 that list confidential.

11 MR. SMITH: That's what I thought. I guess the other  
12 list you're talking about, I didn't even know that existed until  
13 today.

14 MS. VAN BOCKERN: I don't think it's part of a data  
15 request. I think it's part of something that -- who knows. We  
16 don't require it in this state. It's not something we asked  
17 for.

18 CHAIRMAN JOHNSON: You know, I do want to do a little  
19 more legal research on this. I mean, I would just, you know,  
20 suggest to my colleagues we take this under advisement. And I  
21 actually think the motion that was put on the agenda is probably  
22 not necessary. We don't normally formally accept applications  
23 in the Commission meetings.

24 So, I mean, Commission's been refiled and TransCanada,  
25 it appears as though with the exception of maybe this one

1 possible issue they've complied with all the Commission's  
2 requests. I don't know that any action's required by the  
3 Commission. But on this particular component maybe we could  
4 take it under advisement, bring it up at a future meeting.

5 Anybody have any concerns with that? If that's the  
6 case --

7 COMMISSIONER KOLBECK: That's the -- nothing would  
8 change then; correct?

9 CHAIRMAN JOHNSON: No.

10 COMMISSIONER KOLBECK: We're going to take --  
11 basically our only issue is the names of landowners.

12 CHAIRMAN JOHNSON: And I want to do a little more  
13 legal research for my own purposes before forcing any action  
14 that my comfort level isn't real high with.

15 Unless anybody has any objection with that,  
16 Commissioners, I would say no objection under this item, take it  
17 under advisement.

18 And we would certainly publicly thank TransCanada and  
19 staff for the quick turnaround time for all this information.  
20 Again Ms. Van Bockern thought it might take a week, and it took  
21 a couple of days. So thanks for everybody getting that  
22 information out there.

23 With that, we will stand adjourned.  
24  
25

1 STATE OF SOUTH DAKOTA )

2 :SS

CERTIFICATE

3 COUNTY OF HUGHES )

4  
5 I, CHERI MCCOMSEY WITTLER, a Registered  
6 Professional Reporter, Certified Realtime Reporter and  
7 Notary Public in and for the State of South Dakota:

8 DO HEREBY CERTIFY that as the duly-appointed  
9 shorthand reporter, I took in shorthand the proceedings  
10 had in the above-entitled matter on the 26th day of June  
11 2007, and that the attached is a true and correct  
12 transcription of the proceedings so taken.

13 Dated at Pierre, South Dakota this 13th day of  
14 July 2007.

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18 Cheri McComsey Wittler,  
19 Notary Public and  
20 Registered Professional Reporter  
21 Certified Realtime Reporter  
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