

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA**

IN THE MATTER OF THE APPLICATION BY)	ORDER AMENDING ORDER
TRANSCANADA KEYSTONE PIPELINE, LP)	GRANTING IN PART AND
FOR A PERMIT UNDER THE SOUTH DAKOTA)	DENYING IN PART MOTION
ENERGY CONVERSION AND TRANSMISSION)	TO COMPEL DISCOVERY
FACILITIES ACT TO CONSTRUCT THE)	
KEYSTONE XL PROJECT)	HP09-001

On September 18, 2009, Keystone (Keystone) filed Applicant's Response to Dakota Rural Action's Request for Further Discovery. On September 21, 2009, Dakota Rural Action (DRA) filed a Motion to Compel Responses and Production of Documents Addressed to TransCanada Keystone Pipeline, LP Propounded by Dakota Rural Action (Motion). At an ad hoc meeting on September 23, 2009, the Commission considered the Motion. On September 29, 2009, Chairman Johnson filed a letter requesting reconsideration of the Commission's ruling and decision on DRA's Request 6 regarding information related to Keystone's development of its emergency response plan (ERP) for submission to PHMSA. On October 2, 2009, the Commission issued its Order Granting in Part and Denying in Part Motion to Compel Discovery (Order). The procedural history of the proceedings leading up to the Order is set forth in the Order.

The Commission finds that it has jurisdiction over this matter pursuant to SDCL Chapter 49-41B, specifically 49-41B-1, 49-41B-2, 49-41B-2.1, 49-41B-4, 49-41B-11, 49-41B-12, 49-41B-13, 49-41B-15, 49-41B-16, 49-41B-17, 49-41B-17.1, 49-41B-21, 49-41B-22, 49-41B-26, 49-41B-33, 49-41B-38, SDCL Chapter 1-26, specifically, 1-26-19.2, ARSD Chapter 20:10:22 and ARSD Chapter 20:10:01, specifically, 20:10:01:01.02 and 20:10:01:22.01.

At its regular meeting on October 6, 2009, the Commission considered Chairman Johnson's request for reconsideration. At the meeting, Keystone produced a list of materials in its possession entitled "References for the Preparation of Emergency Response Manuals" containing a list of documents containing technical guidance information on ERP preparation that Keystone could produce to DRA to the extent DRA wants them. Keystone further represented that the only ERP currently in Keystone's possession is the one filed at PHMSA for the Keystone pipeline in Eastern South Dakota and that the specific ERP for Keystone XL had not been developed yet. Staff advised the Commission that it had sent out a great many data requests on the underlying environmental and other input data that would be used in tailoring an ERP for Keystone XL and that these documents had been provided to DRA. DRA stated that it had received those documents but had not had time to review them as of the meeting date.

Commissioner Kolbeck moved that Keystone be required to produce to DRA via email the References for the Preparation of Emergency Response Manuals before the close of business on October 6, 2009, that DRA communicate which documents on the list it wished Keystone to produce on or before the close of business on October 8, 2009, and that Keystone produce such documents to DRA on or before October 15, 2009. The motion was approved by a two to one vote with Commissioner Hanson dissenting.

It is therefore

ORDERED, that the Order Granting in Part and Denying in Part Motion to Compel Discovery dated October 2, 2009, is amended with respect to DRA's Request 6 and that Keystone shall be

required to produce to DRA via email the References for the Preparation of Emergency Response Manuals before the close of business on October 6, 2009, that DRA shall communicate which documents on the list it wishes Keystone to produce on or before the close of business on October 8, 2009, and that Keystone shall produce such identified documents to DRA on or before October 15, 2009.

Dated at Pierre, South Dakota, this 8th day of October, 2009.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that this document has been served today upon all parties of record in this docket, as listed on the docket service list, electronically.

By: *Delaine Kaelo*

Date: 10/8/09

(OFFICIAL SEAL)

BY ORDER OF THE COMMISSION:

Dustin M. Johnson
DUSTIN M. JOHNSON, Chairman *dk*

Steve Kolbeck
STEVE KOLBECK, Commissioner

GARY HANSON, Commissioner
Dissenting