

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

IN THE MATTER OF THE PETITION OF)	AMENDED
TRANSCANADA KEYSTONE PIPELINE, LP FOR)	PROTECTIVE ORDER
ORDER ACCEPTING CERTIFICATION OF)	
PERMIT ISSUED IN DOCKET HP09-001 TO)	HP14-001
CONSTRUCT THE KEYSTONE XL PIPELINE)	

On September 15, 2014, TransCanada Keystone Pipeline, LP (TransCanada) filed with the South Dakota Public Utilities Commission (Commission) a Petition for Order Accepting Certification under SDCL §49-41B-27 seeking an order accepting certification of the energy facility permit issued in Docket HP09-001 for construction of the Keystone XL Pipeline. On June 29, 2010, the Commission issued an Amended Final Decision and Order; Notice of Entry granting a permit to TransCanada for construction of the Keystone XL Pipeline. TransCanada now seeks an order accepting certification pursuant to SDCL 49-41B-27. The Commission has jurisdiction over this matter pursuant to SDCL Chapters 1-26 and 49-41B, specifically 49-41B-27, and ARSD Chapters 20:10:01 and 20:10:22.

On September 18, 2014, the Commission electronically transmitted notice of the filing and the intervention deadline of October 15, 2014, to interested individuals and entities on the Commission's PUC Weekly Filings electronic listserv. Applications for Party Status were received from forty-three persons, and on November 4, 2014, the Commission issued an Order Granting Intervention and Party Status to forty-two of the applicants. Three parties have since been granted withdrawal of party status. On December 17, 2014, the Commission issued an Order Granting Motion to Define Issues and Setting Procedural Schedule (Procedural Schedule) requiring parties to file pre-filed testimony by April 2, 2015. On April 3, 2015, the Commission issued an Order Granting in Part Motion to Amend Procedural Schedule, in which the Commission ordered that all pre-hearing motions would be heard on April 14, 2015. On April 10, 2015, the Commission issued an Order Granting Motion to Reconsider and Amending in Part Procedural Schedule to allow Rosebud Sioux Tribe until April 24, 2015, to file pre-filed expert witness testimony.

At its regularly scheduled meeting on April 14, 2015, the Commission considered a number of discovery related motions filed by Keystone and a number of intervenor parties. In response to objections raised by Keystone based on the confidential nature of many documents requested by intervenor parties, the Commission voted unanimously to impose protective provisions on parties' discovery of materials deemed confidential, subject to the provisions of ARSD 20:10:01:39 through 20:10:01:44, and on April 17, 2015, the Commission issued a Protective Order. On April 24, 2015, the Commission received Dakota Rural Action, Rosebud Sioux Tribe, Standing Rock Sioux Tribe, Cheyenne River Sioux Tribe, Yankton Sioux Tribe, Indigenous Environmental Network and Bold Nebraska's Joint Motion to Vacate or, in the Alternative, to Clarify or Amend Protective Order (Joint Motion). At its regular meeting on April 30, 2015, the Commission considered the Joint Motion and voted unanimously to amend paragraph 3 of the Protective Order. It is therefore

ORDERED, that TransCanada, Intervenor parties, and the Commission's Staff (Parties) shall treat information provided to them by any other Party to the case through discovery that is identified by the providing Party as "Confidential" as confidential information subject to the Commission's rules regarding confidential information and to the following additional protective provisions of this Amended Protective Order:

1. Documents to be filed or provided to a Party pursuant to this Order for which the filing or providing Party seeks confidential treatment shall be stamped or sealed as "Confidential" in accordance with the Commission rules regarding the marking and filing of confidential information or shall be identified as "Confidential" information on the document or in the cover document for such information or file.

2. All documents marked Confidential filed by a Party or provided or disclosed by any Party to any other Party through discovery, including depositions, shall be treated as confidential information by the receiving Party pursuant to ARSD 20:10:01:39 through 20:10:01:44 and SDCL 15-6-26(c), except that access to and use of such information by the receiving Party's counsel of record 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.

3. Any Party, and their attorney, receiving Confidential information from another Party, or from the Commission in the case of filed documents, is responsible to the Commission and to the providing Party for limiting disclosure only to such Party's attorneys of record, their co-counsel, and professional staff. In addition, expert witnesses retained by the parties entitled to access to confidential information pursuant to the terms of this Protective Order may review confidential documents provided that each such expert is identified to the Applicant in advance of the disclosure and each such expert has signed the Non-Disclosure Agreement appended hereto as Exhibit A agreeing to be bound by the terms of this Protective Order. In addition, non-expert witnesses or any intervenor may be entitled to access to confidential information if the Applicant agrees to such access. All confidential documents provided to BOLD Nebraska and the Rosebud Sioux Tribe as a result of their requests for access to documents provided to other parties shall be subject to the protective provisions of this Protective Order, and all persons receiving such documents shall have previously executed the Non-Disclosure Agreement as referenced above.

4. The Parties, their attorneys and other employees, agents, consultants and representatives shall be subject to a standard of good faith in their election to designate information as confidential and their disclosure, receipt, custody and use of Confidential information. The producing Party (i) will only seek confidential treatment for information having bona fide trade secret or proprietary value, containing sensitive personal identification information, or required to be maintained as confidential by state or federal law or regulation or by contract, (ii) will make reasonable efforts to narrow the scope of information designated as confidential, and (iii) upon request of the receiving Party, will confer in good faith to narrow the scope of information designated as confidential to the minimum redaction that will not compromise the confidentiality or propriety value of the information for which confidential treatment is justified.

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 and, in the case of filed documents, filed in accordance with the Commission's filing rules for confidential information. The Commission shall conduct all hearings involving Confidential Information in camera with only Commission employees, the Parties' attorneys and other authorized persons present during the portion of the hearing in which such information is offered or discussed. Any person, other than a Commission employee 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.

6. 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 out of it, and shall not use such information for any purpose unrelated to the conduct of this

proceeding, including business, governmental, commercial, political, or public relations 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.

7. Documents, including Confidential Information, received by a Party through discovery shall be subject to SDCL 15-6-5(g) and shall not be filed except in accordance with the exceptions set forth in that statute or an order of the Commission.

8. If an attorney for purposes of another proceeding, a court, or another administrative agency subpoenas or orders production of the Confidential Information, the Party or person having access to the Confidential information to whom the order or subpoena is directed shall promptly notify the providing Party of the pendency of such subpoena or order.

9. Nothing in this Order shall prevent or otherwise restrict counsel for a Party 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 other counsel of record except in accordance with the procedures set forth in this Protective Order, the Commission's rules, or a subsequent order of the Commission.

10. The Parties and their attorneys 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 information identified by the providing Party as Confidential except working copies and for filing at the Commission under seal.

11. This Order shall not be construed as a determination by the Commission or an agreement or concession by any Party that any document or data provided under the terms of this Order in fact contains Confidential information entitled to protection. This Order is not intended to diminish any Party's right, through appropriate motion, to contest the entitlement of any particular document or data to confidential treatment or to request a more limited scope designation with respect to a document or data, such as redaction of only the particular information required by law, rule or contract to be kept confidential, sensitive personal identity information, competitively valuable material or other material properly entitled to confidential treatment.

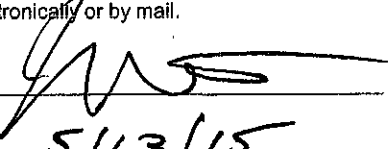
12. This Order is not intended to prohibit any Party from (i) objecting to production, or to production only subject to special protective measures, of any material having particular sensitivity, such as material subject to homeland security or other federal or state statutes, rules or orders, (ii) objecting to production of documents on grounds of relevancy, materiality, admissibility, undue burdensomeness or other recognized grounds for objection to discovery, or (iii) objecting to the relevancy, materiality, or admissibility into evidence in this proceeding of any of the Confidential information furnished or received pursuant to this Order.

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 providing Parties or their attorneys, 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.

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

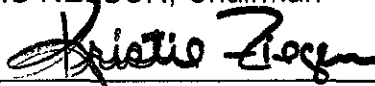
Dated at Pierre, South Dakota, this 13th day of May, 2015.

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 or by mail.	
By:	
Date:	<u>5/13/15</u>
(OFFICIAL SEAL)	

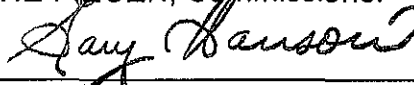
BY ORDER OF THE COMMISSION:



CHRIS NELSON, Chairman



KRISTIE FIEGEN, Commissioner



GARY HANSON, Commissioner