

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF SOUTH DAKOTA

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

ORDER GRANTING
RECONSIDERATION OF ORDER
GRANTING KEYSTONE'S
MOTION TO STRIKE TESTIMONY
AND EXHIBITS OF
CINDY MYERS

HP14-001

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 Chapter 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. On October 1, 2014, the Commission issued an Order Assessing Filing Fee. 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. The Commission subsequently granted the requests of three of the intervenors for withdrawal of party status. On December 17, 2014, the Commission issued an Order Granting Motion to Define Issues and Setting Procedural Schedule. An evidentiary hearing was held on July 27 - August 1, and August 3 - 5, 2015.

Individual intervenor Cindy Myers filed pre-filed testimony and provided testimony at the evidentiary hearing. Ms. Myers also offered several exhibits. On September 21, 2015, TransCanada filed Keystone's Motion to Strike Testimony and Exhibits of Cindy Myers (Motion to Strike). In its Motion to Strike, TransCanada requested that certain exhibits be excluded and that certain prefiled testimony and live testimony offered by Cindy Myers at the evidentiary hearing be stricken. TransCanada sought to exclude the following exhibits: 6001, 6003, 6004, 6005, 6016, 6022, 6024, 6027, 6028, 6030, 6031, 6032, 6034, 6035, 6036, 6037, Cindy Myer's Power Point, and the Plastic Water Line Survey Results.

At its October 29, 2015, regular Commission meeting, the Commission considered the Motion to Strike. Chairman Nelson moved to grant the Motion to Strike with the clarifications discussed at the meeting. After a majority of the Commission voted to deny Commissioner Hanson's motion to amend Chairman Nelson's motion by removing Cindy Myers's Exhibit 6001 from the exclusion list, the Commission voted unanimously to grant Chairman Nelson's motion and grant Keystone's Motion to Strike (October 29 Commission Action).

On November 4, 2015, Commissioner Hanson filed a request for reconsideration of the October 29 Commission Action in order to separately address Exhibit 6001. At its regular Commission meeting

on November 12, 2015, the Commission unanimously voted to reconsider its October 29 Commission Action. The Commission then unanimously voted to bifurcate the Motion to Strike in order to consider Exhibit 6001 separately. With Commissioner Hanson dissenting, a majority of the Commission voted to exclude Exhibit 6001. The Commission then voted unanimously to exclude the remaining testimony and exhibits addressed in the October 29 Commission Action.

ORDERED, that Commissioner Hanson's request for reconsideration of the October 29 Commission Action is granted. It is further

ORDERED, that Cindy Myers's Exhibit 6001 is excluded. It is further

ORDERED, that all the exhibits and testimony of Cindy Myers, other than Exhibit 6001, set forth in the Motion to Strike as clarified by the discussion at the Commission's October 29, 2015 meeting, are excluded.

Dated at Pierre, South Dakota, this 19th day of November, 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: <u>[Signature]</u>
Date: <u>11/19/15</u>
(OFFICIAL SEAL)

BY ORDER OF THE COMMISSION:

[Signature: Chris Nelson]
CHRIS NELSON, Chairman

[Signature: Kristie Fiegen]
KRISTIE FIEGEN, Commissioner

[Signature: Gary Hanson]
GARY HANSON, Commissioner,
dissenting in Part