

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

IN THE MATTER OF THE APPLICATION BY)	PROTECTIVE ORDER
TRANSCANADA KEYSTONE PIPELINE, LP)	
FOR A PERMIT UNDER THE SOUTH DAKOTA)	HP07-001
ENERGY CONVERSION AND TRANSMISSION)	
FACILITIES ACT TO CONSTRUCT THE)	
KEYSTONE PIPELINE PROJECT)	

On April 27, 2007, TransCanada Keystone Pipeline, LP, (Applicant) filed a siting permit application (Application) for the South Dakota portion of the Keystone Pipeline Project (Project). The Project will transport crude oil starting in Hardisty, Alberta, Canada and ending in Patoka, Illinois. The proposed 30 inch diameter pipeline will have a nominal capacity of 435,000 barrels of oil per day (bpd) with a possible expansion to 591,000 bpd. The proposed route will enter South Dakota at the North Dakota/South Dakota border in Marshall County and extend in a southerly direction, exiting the state at the South Dakota/Nebraska border in Yankton County. The length of the pipeline in South Dakota will be approximately 220 miles and it will cross the counties of Marshall, Day, Clark, Beadle, Kingsbury, Miner, Hanson, McCook, Hutchinson and Yankton. The Project also includes four pump stations in South Dakota located in Day, Beadle, Miner and Hutchinson counties along with 15 mainline valves with an average spacing of 15 miles between valves.

The Commission finds that it has jurisdiction over this matter pursuant to SDCL 1-26-19.2, 15-6-26(c), chapter 49-41B, particularly 49-41B-1, 49-41B-4 and 49-41B-24 and ARSD 20:10:01:01.02, 20:10:01:22.01 and 20:10:01:39 through 20:10:01:43.

On September 6, 2007, Applicant filed a Motion for Entry of Protective Order. At its regular meeting on October 9, 2007, the Commission considered the motion. Finding that the parties had been unable to reach agreement on a confidentiality agreement or protective order and that good cause was shown pursuant to SDCL 15-6-26(c) that a general protective order would facilitate discovery while protecting information produced and filed by the parties entitled to confidential treatment, the Commission voted unanimously to grant Applicant's Motion for Entry of Protective Order and to direct its legal counsel to prepare a Protective Order for issuance by the Commission which contains provisions substantially in the form of those in either or a combination of the protective orders issued in Dockets EL04-016 and TC06-176. The Commission also directed that the order contain a clear directive that the parties exercise good faith in marking documents as confidential and only seek confidential treatment for information having a bona fide basis for confidential treatment. The Commission further directed that the order contain a provision advising parties to comply with SDCL 15-6-5(g) regarding filing of discovery materials and special provisions regarding the treatment of maps obtained by Applicant from the United States Department of Transportation (USDOT) depicting the areas within the general project area designated by USDOT as "High Consequence Areas" (HCA Maps).

It is therefore:

ORDERED, that Applicant, Intervenor parties and Commission Staff (Parties) shall treat Confidential Information provided to them or any of them by any other Party to the case through discovery, or filed in this case, as confidential information subject to the Commission's rules regarding confidential information and to the following additional protective provisions of this 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" (Confidential Information) in accordance with the Commission rules regarding the marking and filing of confidential information.

2. All Confidential Information 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 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 (i) for limiting disclosure only to such third party experts, employees, attorneys and other persons acting on the 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. The receiving Party 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. Before a Party discloses Confidential Information received by it to its Authorized Recipient, the Party shall assure itself that the Authorized Recipient to whom the Confidential Information is to be disclosed has read and understands this Protective Order, has agreed to abide by its terms, understands that unauthorized disclosure or use of the Confidential Information is prohibited and has signed a Non-Disclosure Agreement in the form attached hereto as Exhibit A.

4. The Parties, their attorneys and Authorized Recipients and their 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 the 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 proprietary 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 has been 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 the Authorized Recipients 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. Because the High Consequence Area information contained on the HCA Maps has been deemed proprietary by the USDOT and was released to Applicant subject to a license containing disclosure restrictions, the following provisions shall apply to the viewing and use by Parties and Authorized Recipients of the HCA Maps, and the information contained on them (HCA Information), in accordance with the instructions given to Applicant by the USDOT:

a. No hard or electronic copies of the HCA Maps will be provided to the Parties or their Authorized Recipients. The Parties and their Authorized Recipients will only be permitted to view the information.

b. Applicant shall maintain a list of the names of persons who have viewed the HCA Information. The burden is on the Applicant to enforce the USDOT policy.

c. Parties and their Authorized Recipients that view the HCA information are to clearly understand that the information consists of eco-sensitive locations which have been very specifically designated by USDOT as locations that require extraordinary measures, to aid pipeline operators in developing their integrity management plans.

d. If any member of the public desires to obtain the HCA Maps or Information, they are to call the USDOT, National Pipeline Mapping System.

9. If a court or another administrative agency subpoenas or orders production of the Confidential Information, the Party or Authorized Recipient to whom the order or subpoena is directed shall promptly notify the providing Party of the pendency of such subpoena or order.

10. 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 the Authorized Recipients except in accordance with the procedures set forth in this Protective Order, the Commission's rules or a subsequent order of the Commission.

11. 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 Confidential Information except working copies and for filing at the Commission under seal.

12. 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.

13. 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.

14. 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.

15. The provisions of this order shall not terminate at the conclusion of this proceeding.

Dated at Pierre, South Dakota, this 15th day of October, 2007.

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:	<u>Helaine Kolbeck</u>
Date:	<u>10/16/07</u>
(OFFICIAL SEAL)	

BY ORDER OF THE COMMISSION:

Dustin M. Johnson
DUSTIN M. JOHNSON, Chairman

Gary Hanson
GARY HANSON, Commissioner

Steve Kolbeck
STEVE KOLBECK, Commissioner

EXHIBIT A

NONDISCLOSURE AGREEMENT

I hereby certify that I have read and understand the terms and conditions of the Protective Order entered by the South Dakota Public Utilities Commission in Docket HP07-001 and agree to be bound by the terms and conditions of the Protective Order. I further agree that any Confidential Information received or reviewed by me in connection with this case will be used only for the valid purposes of these proceedings as provided in the Protective Order.

DATED this _____ day of _____, 200____.

Signature: _____

Name (type or print): _____

Address and Telephone: _____

Representing: _____

Position or Title (if any): _____