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RECEIVED
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 SOUTH DAKOTA PUBLIC
 UTILITIES COMMISSION

December 5, 2017

South Dakota Public Utilities Commission
 Capitol Building, 1st Floor
 500 E. Capitol Ave.
 Pierre, SD 57501-5070

Re: Protecting the Land and People of South Dakota

Dear Commissioners:

I write this letter in the wake of the catastrophic crude oil pipeline failure that spilled at least 210,000 gallons of toxic Alberta tar sands oil into the earth near Amherst, South Dakota on November 16, 2017. This was the third oil spill in South Dakota this year and the largest spill associated with the Keystone Pipeline project thus far. It occurred in our State, above the aquifer that millions of Americans rely on, and on my Tribe's aboriginal homeland.

As set forth below, I write to discuss the current spill of the existing Keystone Pipeline. But also I write to urge you to take action to reopen your consideration of the proposed Keystone XL Pipeline in light of the unacceptable rate of spills on the existing pipeline and TransCanada's repeated construction and operation failures in our State. TransCanada has shown us that it cannot be trusted and that further investigation into its methods and practices is warranted to protect our people, lands, and waters from harm.

As an initial matter, I have watched your statements in the days since this most recent spill occurred and I believe that we agree about this serious issue. If the ongoing forensic analysis that

The blue represents the thunderclouds above the world where live the thunder birds who control the four winds. The rainbow is for the Cheyenne River Sioux people who are keepers of the Most Sacred Calf Pipe, a gift from the White Buffalo Calf Maiden. The eagle feathers at the edges of the rim of the world represent the spotted eagle who is the protector of all Lakota. The two pipes fused together are for unity. One pipe is for the Lakota, the other for all the other Indian Nations. The yellow hoops represent the Sacred Hoop, which shall not be broken. The Sacred Calf Pipe Bundle in red represents Wakan Tanka – The Great Mystery. All the colors of the Lakota are visible. The red, yellow, black and white represent the four major races. The blue is for heaven and the green for Mother Earth.

the State of South Dakota is currently conducting demonstrates that TransCanada violated the conditions of the permit that you granted them to operate in our State, then that permit must be revoked. Unfortunately, the Pipeline Hazardous Materials Safety Administration (“PHMSA”) has already approved TransCanada to resume flowing oil through the compromised pipeline by Tuesday, December 5, 2017. It is unacceptable that the pipeline company should be permitted to flow oil across our State before your Commission has had an opportunity to determine whether this State’s license has been violated. Therefore, I have contacted Governor Dugaard to urge him to exercise his executive authority to impose an immediate moratorium on pipelines, including the existing Keystone Pipeline, until the safety and legality of those pipelines has been assessed. I have enclosed a copy of that letter for your reference.

My letter to the Governor also details the multiple different documented ways in which TransCanada has failed to meet the minimal safety regulations imposed by the federal government over the past two years. While you are surely aware of these issues, I will repeat them here.

The existing Keystone Pipeline became operational just eight short years ago and since that time has had a disturbing safety record. So far, PHMSA has opened 13 enforcement actions against TransCanada related to the company’s failure to properly address such important issues as corrosion control, operations and maintenance, control room management, procedure manuals, fire protection, incident reports, design, and public awareness. An enforcement action related to operations and maintenance is currently open.

In June of this year, PHMSA assessed TransCanada a \$135,400.00 penalty for three major violations of federal pipeline safety regulations. First, PHMSA found that TransCanada failed to operate at the required level of safety because it had failed to properly or timely install cathodic protection to the pipeline pursuant to either PHMSA rules or even TransCanada’s own procedures. Pipelines require cathodic protection to prevent corrosion caused by the numerous chemicals that make up crude oil. If the pipeline corrodes, it leaks. TransCanada had notice that the pipeline was not properly protected from corrosion in 2010 and did not do anything about it until 2012-13 according to PHMSA. A TransCanada investigation of itself revealed that its cathode protective system had not been designed properly and did not meet the company’s own procedure.

Second, PHMSA found that, in addition to failing to properly protect its pipeline from corrosion in the first place, TransCanada had also refused to correct deficiencies in its corrosion controls for *multiple years*. Finally, TransCanada failed to minimize the effects of stray electrical currents on various vulnerable parts of the pipeline. You may not be surprised to learn after reading all of this that stray electrical current contributes to corrosion of the pipeline, which leads to leaks.

TransCanada is a foreign corporation that stands to make billions of dollars from pipelines that cross through the heart of the lands that our constituents rely on for their homes, their health, and their livelihoods. In exchange for this privilege (which is borne on all of our backs), we ask TransCanada and other pipeline companies to follow minimal safety regulations.

TransCanada and other energy companies have proved to us that they will not follow these important regulations. And they have no incentive to. When they violate our laws and regulations,

as TransCanada has for the last ten years, they are assessed a fine that their CEO could pay out of his checking account and nothing changes.

They will not follow regulations. They will not regulate themselves. So we must tell them no. They cannot exploit the lands and the people of South Dakota for profit while failing to follow our rules. We will not stand for it.

In 2016 the Commission granted another permit to TransCanada to cross our state with the Keystone XL pipeline. The Keystone XL Pipeline is very personal to the people of the Cheyenne River Sioux Tribe. It will cross within 3 miles of our Reservation, though the last camp of our Chief Bigfoot before he was massacred at Wounded Knee, and under a tributary that flows into the Missouri at our water intake. **We are highly sensitive to the fact that this is the same company. Keystone XL will be guided by the same nonexistent commitment to the laws of South Dakota, the laws of the United States, and the safety of the lands, water, and people.**

As you are aware, TransCanada made numerous promises and projections about the safety of the existing Keystone Pipeline to your Commission and upon which your Commission relied to grant the TransCanada's permit. They projected that the Pipeline would leak no more than 50 barrels every seven to 11 years across the *entire length of the pipeline*. For South Dakota, TransCanada projected that the line would spill no more than once every 41 years. The existing Keystone Pipeline has leaked in South Dakota twice in just the past year.

That is why your action to reopen fact finding and investigation in the Keystone XL matter is imperative. These pipelines are an existential threat to the people of South Dakota and the rest of the Nation that relies upon the ancient, clean, pure aquifer below our feet. TransCanada has shown us time and again its willingness to endanger our lands and skirt federal and state regulations in an effort to make a profit on our lands and on the backs of our people. This cannot be allowed.

As the Cheyenne River Sioux Tribe has an appeal of your 2016 decision on the Keystone XL Pipeline now pending in the South Dakota Supreme Court, I will also instruct the Tribe's attorneys to investigate methods to seek your response to this urgent matter via that process. In the meantime, I look forward to your response.

Sincerely,



Harold C. Frazier, Chairman
Cheyenne River Sioux Tribe

HF/nd
Enclosure