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Kristie Fiegen, Vice Chairperson
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South Dakota

PUBLIC UTILITIES COMMISSION

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June 15, 2015

Bruce Albrecht

[REDACTED]
Mitchell, SD 57301

Dear Mr. Albrecht:

Thank you for your comments to the Public Utilities Commission regarding the proposed Keystone XL pipeline. As you are likely aware, the PUC is in the process of reviewing a request from TransCanada, the pipeline project's owner, to certify the construction permit granted in 2010.

The PUC has no authority over land acquisition for such projects. By law, that must be addressed by the circuit court and not by the commission. However, I will nonetheless provide some information in response to matters you raised in your letter.

You reference the pipeline company's national origin. TransCanada has Canadian and U.S. shareholders. This is an excerpt from the company's original construction permit application for the project as filed with the PUC, available on the commission's website:

1.5 Project Participants

The permit applicant is TransCanada Keystone Pipeline, LP, a limited partnership, organized under the laws of the State of Delaware, and owned by affiliates of TransCanada Corporation, a Canadian public company organized under the laws of Canada, and ConocoPhillips Company (ConocoPhillips), a Delaware corporation. Keystone's primary business address is 450 1st Street, S.W., Calgary, Alberta, Canada T2P 5H1.

It is legal for foreign investors to own property including common carrier property in the U.S. As far as eminent domain, as discussed above, that is not an issue over which the commission has jurisdiction. The PUC has authority to issue permits for certain pipelines. The South Dakota Energy Conversion and Transmission Facilities Act gives the PUC authority to grant, deny, or grant with conditions a permit to construct the crude oil pipeline in the state. See SDCL Chapter 49-41B and ARSD 20:10:22. Pipelines for which the commission has siting jurisdiction include those designed to transport coal, gas, liquid hydrocarbons, liquid hydrocarbon products, or carbon dioxide. The commission's primary duty is to ensure the location, construction and operation of the pipeline will produce minimal adverse effects on the environment and citizens and it must rely on definitions, standards and references our state's Codified Laws and Administrative Rules. Any decision of the commission can be appealed to circuit court, and ultimately, to the South Dakota Supreme Court.

The construction permit requested is for a pipeline of common carrier status, and thus, is deemed to be of value to consumers the common carrier serves. That delineates it from a land transaction in which one citizen wishes to purchase the land of another, but it is not for common carrier use or other such legal authority which allows eminent domain to acquire property in order to do so. The commission is not involved in any easement acquisitions and does not have a role in the eminent domain process, which is handled by the circuit court system. Landowners with concerns about these issues should refer such questions and seek counsel from their personal attorneys.

You are correct that the commission is not passing laws here, but is instead, following laws that provide for the PUC's legal authority. The commission is advised by four attorneys on staff. They assist in interpreting laws and advising the commission of the state and federal laws by which the commission must comply regarding the handling of and decisions on dockets.

The commission is currently processing the Keystone XL docket, HP14-001. I refer you to the Pipeline Siting Info Guide posted on our website's home page, www.puc.sd.gov, and the Keystone XL Pipeline Updates which includes a Frequently Asked Questions document providing some answers you may be seeking regarding legal authority. I urge you to read the key documents and legal cites in the pipeline dockets dealing with TransCanada's projects on the commission's website. Reference the original Keystone docket, HP07-001, the original Keystone XL docket, HP09-001, and the current Keystone XL docket, HP14-001.

Your letter and this response will be posted in the official HP14-001 docket record online so that commissioners and other parties to the docket may read them. Please feel free to contact the PUC should you have any more questions or concerns.

Sincerely,

A handwritten signature in cursive script, appearing to read "Kristen Edwards".

Kristen Edwards, Staff Attorney