

Public Service Commission

Memo

To: Commissioner Cramer
Commissioner Clark
Commissioner Kalk

From: Darrell Nitschke, Director of Administration
Pat Fahn, Director of Compliance and Competitive Markets

Subj: Case No PU-06-421: 3rd Party Inspector and Emergency Commission Request
Date: July 7, 2009

On June 23, 2009, Annette Bendish wrote an email to Matthew Sagsveen at the State Auditor's Office:

"The Commission has contract with a third-party inspector for the TransCanada Keystone pipeline project. This contract expires on June 30, 2009. The funds for this contract come from the company's siting application under North Dakota Century Code section 49-22-22, siting process expense recovery. Under this section application fees are capped at \$100,000. At the request of the commission and with the approval of the emergency commission, the applicant shall pay such additional fees as are reasonably necessary. There is approximately \$69,000 in the fund for this biennium which, based on communications between staff and the contractor, will be exhausted this month and construction is not complete. The next emergency commission meeting is in September. The Commission staff intends to terminate the contract for lack of funding authority as soon as those funds are exhausted this month. The Commission staff would then enter into a new contract on July 1 with the same contractor using sole-source procurement. This contract would be paid out of general fund dollars because the emergency commission does not meet again until September. Once the Commission receives emergency commission approval to obtain additional fees from the applicant, the Commission intends to replace the general fund dollars that were expended since July 1 and place the remaining additional fees into the special fund for completion of the contract. Following this course of action would protect the public during construction by continuing the third-party inspection and would prevent state funds from being used. Section

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Public Service Commission Staff
Darrell Nitschke, Pat Fahn

49-22-22 intends that the applicant's funds be used for siting project expenses and not state funds. By replacing the general fund dollars after the Commission receives emergency commission approval to obtain additional fees from the applicant the Commission would be carrying out this intent. The Commission has consulted the Auditor's office, the Office of Management and Budget, and your office about this course of action. Does this seem reasonable to you?"

On June 18, 2009, Gloria Geiger wrote an email to Commission staff, with copies to the Commissioners stating that:

"Per discussion with OMB regarding Case No. PU-06-421:

If we were to expend general funds for siting expenditures in TransCanada PU-06-421, July 1, 2009 – September 30, 2009. The Emergency Commission after the expenditures have been incurred would have to approve our request to assess TransCanada additional siting fees. After the company has been assessed an additional amount and we have received money from the company, a journal voucher would be issued and general fund appropriation would be restored. Similar to the way we now handle reimbursed travel.

The Emergency Commission request would have to clearly state that the funds we are requesting from the company would be for expenses that were incurred and paid from the Commission's operating budget between July 1, 2009 and the meeting date of the Emergency Commission. Upon approval of the Emergency Commission, the approved funding would be used to restore the Commission's operating budget. The additional funds requested from the Emergency Commission would be for expenditures after the Emergency Commission meets. These additional funds would be deposited in the special fund and paid directly out of the fund for future expenses per our current procedure.

The Emergency Commission is scheduled to meet sometime in September, we have no specific date. There is risk that the request may be denied which would mean the expenses incurred between July 1 and the meeting date would not be reimbursed and our 2009 – 2011 operating budget would be severely impacted."

In visiting with Sheila Peterson, OMB in reference to the Commissioners inquiry on having an emergency meeting with the Emergency Commission requesting an additional \$50,000 for the Siting Process Expense Recovery Fund to continue the 3rd party inspections contract for TransCanada pipeline.

Ms. Peterson recommended that the PSC wait and submit the Emergency Commission Request at the next scheduled meeting of the Emergency Commission. It would be more correct to authorize general fund money for the contract until the additional money is approved and the general fund be replenished.

Staff has prepared a motion for Commission consideration to pursue a sole source contract for Commission approval to continue the 3rd party inspections contract for TransCanada pipeline in Case No. PU-06-421.