

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

**TransCanada Keystone Pipeline, LP
30-Inch Crude Oil Pipeline/Cavalier to Sargent Cty
Siting Application**

Case No. PU-06-421

**STAFF RESPONSE TO TRANSCANADA KEYSTONE PIPELINE'S
2009 APPLICATIONS FOR TRADE SECRET PROTECTION**

On October 5, 2009, November 20, 2009, December 18, 2009 and July 20, 2012, TransCanada Keystone Pipeline, LP (TransCanada) filed applications for trade secret protective orders under North Dakota Administrative Code section 69-02-09-01 for protecting against public disclosure trade secret information as defined by North Dakota Century Code section 47-25.1-01(4).

North Dakota Administrative Code § 69-02-09-04 requires that the Commission staff examine the information and application and make a recommendation to the Commission. Upon initial review, staff questioned the company further about whether the filings could be considered protected under North Dakota law and asked for confirmation and supporting documentation that the filings are protected under federal law. In May, 2012, the company provided the Commission's General Counsel with a memo from the company's attorney setting forth additional support for the application and citing to specific federal protections.

Staff has reviewed the information filed by TransCanada for protection of information. North Dakota Century Code § 44-04-18.4(2) authorizes protection for commercial, financial, proprietary and trade secret information if privileged and if the information has not been previously publically disclosed. N.D.C.C. § 44-04-18.4(1).

Commercial and financial information can be protected from disclosure if the information has not been previously disclosed and disclosure would impair the Commission's ability to obtain similar information in the future or would cause competitive injury to the person providing the information. N.D.C.C. §§ 44-04-18.4(2)(a) and 44-04-18.4(2)(b). Proprietary and trade secret information can be protected when the information derives independent economic value from not being generally known to or readily ascertainable by other persons, and is the subject of reasonable efforts to maintain its secrecy. N.D.C.C. §§ 44-04-18.4(2)(c) and 44-04-18.4(2)(d).

Staff believes that the application of TransCanada satisfies the requirements of the North Dakota Century Code for protection of the information filed in this proceeding. The Commission's process provides a means for interested parties to review trade secret documents upon signing a nondisclosure agreement.

For reasons set forth above, staff recommends that the Commission grant TransCanada's Applications Requesting Trade Secret Protection in this case.

Dated this 10th day of September, 2012.


Mark Gruman
Legal Counsel