



702 H Street, NW, Suite 300, Washington, DC 20001  
Tel: 202-462-1177 • Fax: 202-462-4507

Mary L. Schapiro  
Chairman  
Securities Exchange Commission  
100 F Street, NE  
Washington, DC 20549

January 26, 2012

Dear Ms. Schapiro:

This letter is intended to inform you and the recipients listed below that TransCanada (“TRP”) is using false or misleading statements about the proposed Keystone XL pipeline project (“KXL”). TRP has consistently used public statements and information it knows are false in a concerted effort to secure permitting approval of KXL from the U.S. government. In the process, it has misled investors, U.S. and Canadian officials, the media, and the public at large in order to bolster its balance sheets and share price. We think these statements violate U.S. securities disclosure laws, notably *SEC Rule 10b(5) – Employment of Manipulative and Deceptive Practices*. It is incumbent on TRP to immediately and publicly correct this information – or be forced to do so by the Securities and Exchange Commission.

Specifically, TRP has asserted that each mile of KXL pipeline constructed in the U.S. would create American jobs at a rate that is 67 times *higher* than job creation totals given by the company to Canadian officials for the Canadian portion of the pipeline.

These false and misleading job creation numbers are part of TRP’s lobbying and public relations campaign designed to create congressional pressure on the U.S. government to issue a Presidential Permit approving construction of KXL. Without government approval, TRP will not be able to build KXL, which will significantly impact the company’s future earnings and share price. That government approval was thrown into serious doubt last week when President Obama rejected the current KXL pipeline proposal at the State Department’s recommendation.

### **High Stakes for Investors**

The President did, however, invite future modified proposals from TRP, and congressional leadership has indicated it wants to override the President’s decision – something the Congressional Research Service has determined Congress can do. This means the stakes for investors remain high.

In fact, TRP’s most recent investor disclosures highlight the importance of KXL to your company’s business model. TRP’s November 2011 presentation to investors states that KXL accounts for \$7.8 billion of its current \$12 billion capital spending program.<sup>1</sup> Your company claims the full Keystone pipeline complex will contribute \$1.7bn in EBITDA when fully operational – or 26% of TRP’s EBITDA in 2015, up from 0% in 2010. KXL alone is forecast to contribute around \$1 billion in EBITDA.

Equity analysts have used TRP’s disclosures in making bullish recommendations on TRP to investors. According to a September 2011 report from Canadian securities firm Desjardins Capital Markets, the entire Keystone pipeline project is worth C\$9-11 per share for TRP. Desjardins forecasts that upon completion of KXL, half of TRP’s revenue growth will be from the Keystone complex. Throughout 2011, Desjardins has recommended that investors buy TRP shares. It

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<sup>1</sup> In addition, according to investor disclosures, TRP has already spent or committed at least \$3.1 billion for KXL, mainly on pipes and pumping components.

claims that regulatory uncertainty has depressed TRP share prices and that final U.S. regulatory approval will provide a “catalyst” to rally undervalued company shares.

Therefore securing the Presidential Permit (or not) is a materially significant event that impacts TRP’s revenue forecasts and share price and, indeed, the very future of the company.

TRP CEO Russ Girling made the direct connection between the U.S. government granting the Presidential Permit and profits for the company on April 29, 2011 during TRP’s Q1 earnings conference call with equity analysts:

“We expect completion of the environmental review in July or August, and from there, there will be a 90-day national interest determination period. I'm confident that the Keystone XL project will pass that test, and that we'll receive a positive decision by the end of the year. The President of the United States this spring said that they will continue to rely on Canada as a steady and stable and reliable supplier of oil. And I think our Prime Minister said it even better after his meeting with the President. He said that the US faces a choice between the nation's receiving its ongoing needs for imported crude oil from unstable sources such as the Middle East, or from the most secure, most stable and friendliest location, which is Canada. The choice is clear, and TransCanada's Keystone pipeline can help provide that energy security. As well, it creates 20,000 jobs and injects CAD20 billion into the US economy without CAD1 of government support. So clearly, our view is this project is in the public interest.”

### **Use of the False Information**

KXL’s job creation potential is the central component of TRP’s lobbying and public relations campaign, which was launched in June 2010. It is almost entirely based on a misleading report TRP commissioned from economist Ray Perryman – *The Impact of Developing the Keystone XL Pipeline Project on Business Activity in the U.S.* Based on this report, TRP has claimed that the “\$7 billion (KXL) pipeline project is expected to directly create more than 20,000 high-wage manufacturing jobs and construction jobs in 2011-2012 across the U.S., stimulating significant additional economic activity.”

TRP and its allies also promote two other key Perryman claims – that construction of the pipeline will inject \$20 billion into the U.S. economy and create more than 118,000 “spin-off” jobs.

These claims are false and in conflict with TRP’s own filings to Canadian and U.S. regulators. Yet they have been used by TRP executives and representatives in public forums, the company website, investor presentations, and press releases. TRP executives have also used them under oath before Congress.

Here are recent examples:

- In late September 2011 TRP repeatedly stated in press releases: “Within days of receiving regulatory approval for Keystone XL, TransCanada would begin to put 20,000 Americans directly to work during the construction phase.”
- TRP’s November 2011 investor report claims KXL will provide “20,000 high-quality, well-paying jobs for American workers.”
- TRP executive Alex Pourbaix used the 20,000 construction and 118,000 spin off jobs totals in testimony before Congress on December 2, 2011.
- The most recent company press release on KXL, dated December 17, 2011, uses the 20,000 jobs and \$20 billion economic stimulus figures.
- In a TRP press release dated January 10, 2012, the company claimed: “The \$7 billion oil pipeline is the largest infrastructure project on the books in the U.S. right now. It would

create 20,000 jobs: 13,000 in construction, 7,000 in manufacturing... As Keystone XL supports oil sands development, the impact on jobs in America becomes even more pronounced. The Canadian Energy Research Institute (CERI) predicts a \$521 billion increase in the U.S. gross domestic product and the creation of 465,000 U.S. jobs."

Moreover, TRP'S KXL job creation numbers are being routinely recycled by corporate trade association promoters of the pipeline, including the American Petroleum Institute (API) and U.S. Chamber of Commerce, in advertisements, at public events, on websites, and in lobbying efforts. TRP is a member of the API.

Here are several examples:

- The API "Keystone XL Pipeline" website, accessed January 23, 2012, states, "Approval of the Keystone XL pipeline, now in its fourth year of review, could also create 20,000 construction jobs over the life of the project. Projects like this, along with additional investment in oil sands development in Canada and expansion of pipelines and refineries in the U.S., make it possible to realize an additional 500,000 U.S. jobs in 2035."
- API President Jack Gerard, in a speech on January 4, 2012, attacked the Obama Administration's delay of the KXL pipeline, calling it, "... the largest shovel-ready project promising 20,000 construction-related jobs over the next two years, enabling more than half a million new U.S. jobs by 2035."
- The U.S. Chamber Of Commerce asserted that KXL will create "up to 250,000" jobs. In a speech delivered on January 12, 2012, Thomas J. Donohue, President of the U.S Chamber of Commerce, said: "Labor unions and the business community alike are urging President Obama to act in the best interests of our national security and our workers and approve the pipeline. We can put 20,000 Americans to work right away and up to 250,000 over the life of the project."
- The U.S. Chamber of Commerce, in a full-page ad in *The Washington Post* dated January 18, 2012, said, "Mr. President: DON'T SAY 'NO' TO 20,000 JOBS." The text of the ad continues, "The Keystone XL Pipeline project is good for America. It will create 20,000 well-paying jobs in the short term, thousands more in the long term..."

### **Why the Perryman Numbers Are False or Misleading**

The false and misleading TRP statements are based on one report, which is flawed in several important ways.

1. The Perryman report does not reveal its "proprietary" methodology or provide the data inputs it used to derive its job creation numbers.<sup>2</sup> However it does provide the macro figure on which all the analysis is based – the supposed \$7 billion budget for building KXL. Simple arithmetic shows that this figure is grossly overstated, possibly *by more than 350 percent*, because Perryman included three major budget items that have little or nothing to do with investment or job creation in the U.S.:
  - The \$1.6 billion Canadian portion of KXL;
  - The \$683 million section of Keystone Phase II in Kansas that is already built;<sup>3</sup> and
  - The \$3.1 billion already spent or committed, most of it on pipes and pumping components from companies outside the U.S.<sup>4</sup>

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<sup>2</sup> In Texas, official bodies, including the Public Utility Commission and courts, have long rejected Perryman's findings as usable evidence for making material decisions.

<sup>3</sup> Perryman includes 10,000 person-years of employment for this section, which was completed last year. As recently as September 26, 2011, TRP used the Perryman figures for future job creation in Kansas in a press release.

This means the total spending in the U.S. may be \$2 billion or even lower. That translates into significantly fewer jobs simply because the true budget for KXL in the U.S. is less than a third of Perryman's budget. Dividing TRP's claim of 20,000 jobs by three equals 6,667 – a number that may still be overstated but is much closer to reality for a project such as KXL.

2. Compared to employment figures TRP provided to Canada's National Energy Board (NEB), Perryman's job totals are up to 67 times higher per mile of pipeline construction in the U.S. than in Canada. In its NEB application, TRP stated: "Total direct and indirect construction employment... will amount to about 5,310 person-months of employment..."

If that figure is converted from months to years and then adjusted for the longer (4x) pipeline length in the U.S., the total person-years of employment in the U.S. would be 1,770 – a fraction of Perryman's claim of 118,000 person-years for direct and indirect job creation.

3. Moreover the NEB determined from TRP's submission that in Canada: "(T)he socio-economic impacts of the Keystone XL Project will be of a temporary nature and limited to the relatively short duration of pipeline construction without significant long term effect on the surrounding communities." The U.S. Department of State (DoS) came to similar conclusions using TRP's data. It concluded that just 500 to 900 workers are expected to be hired locally — roughly 10-15% of the total workers that it estimates would be hired on short-term contracts to help build KXL.
4. Below is a state-by-state breakdown comparing the DoS findings versus those used by TRP in its September 2011 press releases promoting job creation in each state along KXL's planned route:

	<u>State Department</u>	<u>TRP</u>
• Montana	93-257	5,531
• South Dakota	121-133	5,102
• Nebraska	90-248	7,551
• Kansas	6-18	6,721
• Oklahoma	41-113	14,440
• Texas	156-470	15,365

5. The Department of State numbers are reinforced by TRP disclosures regarding construction jobs in South Dakota for Keystone Phase I, which was completed in 2010. Responding to an inquiry from the South Dakota Public Utilities Commission, TRP reported that during the construction of Keystone Phase I it contracted a total of 2,580 workers in South Dakota, but only 282 workers (11%) were residents of the state.

**The Public Use of Misleading Numbers by TRP Executives and Allies**

The Perryman report has become TRP's central tool for attempting to secure the Presidential Permit, mainly through efforts aimed at convincing government officials, media, and the public that KXL is in the national interest.

TRP's website contains the Perryman report and numerous documents derived from it. In addition to the report, the website contains sections on KXL's economic benefits and contribution to U.S.

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<sup>4</sup> Despite not yet receiving permitting from the U.S., a significant portion of the \$1.7 billion already invested in KXL by TRP has been used for the manufacture and import of the pipe. TRP has contracted with Indian company Welspun and Evraz, a Russian company with Canadian mills, to manufacture steel pipe for KXL. This is consistent with its contracting for Keystone Phases I and II.

energy security that rely completely on the Perryman report. Many of the posted letters of support and media articles use the Perryman data.

Ever since the June 2010 release of the Perryman report, TRP has used its findings with the media. A number of press releases highlight the job creation and spending totals for the U.S. as well as each of the states KXL will cross. This includes Kansas, which has no new pipeline construction. Yet according to a September 26, 2011, TRP press release, Kansas will benefit from 6,700 person-years in employment and \$683 million in spending from the KXL construction.

TRP executives have used the Perryman data in investor conferences and quarterly earnings calls, as well as in front of Congress. Some examples:

- “The choice is clear, and TransCanada's Keystone pipeline can help provide that energy security. As well, it creates 20,000 jobs and injects CAD20 billion into the US economy without CAD1 of government support. So clearly, our view is this project is in the public interest.” -- CEO Russ Girling, 2Q 2011 Earnings Call
- “Keystone has many benefits, including 20,000 high paying jobs for American families, and the economic benefits of an initial CAD20 billion for the US economy.” -- CEO Russ Girling, 2Q 2010 Earnings Call
- “In addition to energy security, our project will also create valuable jobs for Americans. Twenty thousand high-paying jobs and 118,000 person years of employment in spinoff jobs in communities along the pipeline route. Keystone is expected to inject \$20 billion into the U.S. economy...” -- TransCanada Pipelines President Alex Pourbaix at a Congressional hearing in March 2011

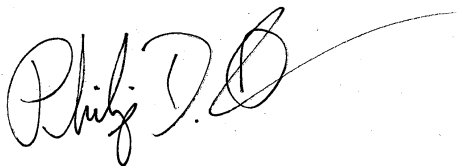
## Conclusion

TRP uses its standard public disclosure disclaimer on all information containing data from the Perryman report, which includes this sentence: “All forward looking statements reflect TransCanada's beliefs and assumptions based on information available at the time the statements were made.” It seems unlikely TRP would consider the findings in the Perryman report consistent with the company's beliefs and assumptions.

Rather, it is clear that TRP has consistently used public statements and information it knows are false in a concerted effort to secure permitting approval of KXL from the U.S. government. In the process, it has misled a large number of people – investors, U.S. and Canadian officials, state officials, the media, and the public at large – in order to bolster its balance sheets and share price. This is a direct violation of SEC public disclosure regulations and must be addressed.

We look forward to a response on the progress of your investigation into this matter while we consider legal options to hold TransCanada accountable.

Regards,



Phil Radford  
Executive Director  
Greenpeace

Cc: TransCanada Corporation Board of Directors