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United States Department of State

Washington, D.C. 20520

05/11/2012

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Dear Senator Leahy:

Thank you for your letter to Secretary Clinton regarding the Keystone XL pipeline project. I have been asked to respond on behalf of the Department. The Secretary, like you, cares deeply about our country's environmental and energy future. During her tenure at the Department, the Secretary has elevated these issues in the pursuit of our national security objectives.

We currently are engaging with colleagues from other federal agencies and examining a wide range of issues, some of which you reference in your letter. Executive Order 13337 governing permits for transborder pipelines directs the Secretary, or her designee, to evaluate, taking into account the views of other federal agencies as well as other information, whether issuance of a permit serves the national interest – an assessment which includes economic, social, environmental, energy, and foreign policy considerations. At this point, neither the Secretary nor her designee has been presented with the relevant information and data to determine whether the issuance of a Presidential Permit for this project is in the national interest.

Your letter inquires about conflicts and the Department's process for selecting Entrix (now Cardno/Entrix<sup>1</sup>) to conduct the environmental impact assessment for this project. You also inquire about environmental and energy considerations regarding this project. As we are in the interagency consultation period of this administrative process, we are not yet in a position to respond to your detailed substantive questions. We do want to take this opportunity, however, to address the broader issues you raise, particularly about the process for reviewing the permit application.

The Honorable  
Patrick J. Leahy,  
United States Senate.

<sup>1</sup> In 2010, Cardno, an Australian firm, acquired Entrix.

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As you know, the Secretary has a long record of protecting the environment; she has an acute awareness of how human actions can affect the environment. During her tenure in the Senate, she sat on the Environmental and Public Works Committee, where she championed environmental causes. In New York, the Secretary supported the clean-up of Newton Creek in New York City, a spill whose ramifications were larger than the impact of the Exxon Valdez and whose effects are still being felt more than fifty years later.

The Obama Administration has taken on a global leadership role to address the complex challenge of climate change as well as working to ensure that our nation has a diversified energy profile pursuant to the President's Blueprint for a Secure Energy Future. At the Department and with USAID, Secretary Clinton has integrated and elevated environmental, energy and economic issues both within these agencies, as well as with bilateral and multilateral partners. We are engaging with countries throughout the world to integrate climate objectives into development strategies, promote clean energy deployment, reduce deforestation rates, and promote resilience to climate change impacts. We have created the Office of the Special Envoy for Climate Change dedicated to engaging on this critical issue; and in 2009, Secretary Clinton launched the Energy and Climate Partnership of the Americas to promote renewable energy and efficiency across the Western Hemisphere.

#### Selection of Entrix (now Cardno/Entrix) for Environmental Impact Assessment

The formal review of TransCanada's proposed Keystone XL pipeline project began in the fall of 2008. The environmental review process, consistent with the National Environmental Policy Act (NEPA), began shortly thereafter. NEPA's regulations provide for the federal government to hire an independent third-party contractor – at the expense of the company applicant – to perform an in-depth environmental impact assessment and prepare the required documentation for the government's use in its permit review process. Under agency procedures, company applicants may draft and circulate the request for proposal (RFP) to prospective contractors. Consistent with these agency rules, the Department reviewed, edited and approved the content of the RFP for this pipeline project and selected the contractor.<sup>2</sup> In selecting Entrix, the Department based its decision in

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<sup>2</sup> Other federal agencies that have similar procedures for screening and selecting environmental contractors include the Federal Energy Regulatory Commission (FERC), Federal Aviation Administration, Department of Transportation Surface Transportation Board, Army Corps of Engineers, and Coast Guard.

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large part on their experience conducting environmental reviews for similar projects for the federal government. The Bureau of Land Management concurred in that determination.

#### Questions of Conflicts

Several media reports have suggested that because a Cardno/Entrix press release listed TransCanada as a "major client" when Cardno acquired Entrix, that Entrix's selection for this project constitutes a conflict of interest. Cardno/Entrix identified TransCanada as a "major client" based on the fact that the federal government had selected Entrix to do third-party contract work for four TransCanada permit applications – two with Federal Energy Regulatory Commission (FERC) and two with the Department of State.<sup>3</sup> Under NEPA regulations, this does not constitute a conflict of interest; the federal government is the client – the federal government is selecting and directing the work of Entrix (now Cardno/Entrix) – not TransCanada (whose projects were being assessed). While the pipeline applicant pays the contractor – in this case Entrix (now Cardno/Entrix) – the contractor (Entrix) takes direction from, and reports solely to the Department in accord with NEPA's regulations, which prioritize the taxpayer over the applicant company by ensuring the taxpayer does not bear the financial burden of the assessment.

#### Keystone XL Pipeline Environmental Impact Assessment

In your letter you inquire about the Final Environmental Impact Statement (FEIS). The FEIS for the proposed project outlines, in more than 1,000 pages, many considerations and issues that would need to be addressed if a Presidential Permit were granted. There has been considerable public attention to the summary of findings in the FEIS. What has received less attention is that the Department has worked closely with other agencies and the applicant company to identify mitigation measures that would need to be put in place to achieve a minimal environmental impact if a permit were granted. For example, the Department has worked closely with the Department of Transportation Pipeline and Hazardous Materials Safety Administration (PHMSA) to identify a set of 57 conditions, with which the applicant agreed to comply should the permit be granted, that go above

<sup>3</sup> Entrix received approximately \$13 million in fees for their third-party work related to these four applications – approximately 2.7% of their net revenues. Entrix has advised that apart from these four projects, it only has performed independent work for two companies which, during the course of the engagement, were acquired by TransCanada. The amount received by Cardno/Entrix from TransCanada, after the time of acquisition for this work, totals less than \$35,000 or 0.01% of Cardno/Entrix's total net revenues during that period.

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and beyond the safety requirements of other pipelines. Pipeline safety experts at PHMSA have determined that following those additional conditions would provide a degree of safety over any typically constructed domestic pipeline under current regulations and a degree of safety for the entire proposed pipeline comparable to that provided only for high consequence areas under current regulations.

Nevertheless, there are enduring policy considerations that a project like this proposed pipeline implicates. They include several of the issues you have identified and that the FEIS discusses in depth with analysis that examines various perspectives, including greenhouse gas emissions, and, at the moment, continued dependence on oil as a primary form of energy for transportation. For these and other reasons, the FEIS is just one analysis in a comprehensive assessment of whether a pipeline project serves the national interest.

#### Going Forward

Cardno/Entrix produced the FEIS pursuant to the supervision and participation of Department officials, with input from outside experts and thousands of citizens who have shared analysis and submitted comments. The State Department has held two rounds of public meetings, more than 40 in total, along the proposed route – the first after the draft EIS and then again after the release of the FEIS to inform the national interest determination. We understand that this is the first time such an additional set of meetings has been held.

The Department is committed to a thorough and transparent review of the impact of the proposed Keystone XL pipeline project to ensure that the decision made serves the national interest. We are grateful for your attention to this matter, and thank you for the opportunity to clarify the issues you have raised.

Sincerely,



David S. Adams  
Assistant Secretary  
Legislative Affairs

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