STATE OF SOUTH DAKOTA) :SS	IN CIRCUIT COURT	
COUNTY OF HUGHES)	SIXTH JUDICIAL CIRCUIT	
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IN THE MATTER OF PUBLIC UTILITIES COMMISSION DOCKET NO. HP14-001,		32CIV16-000033	
ORDER ACCEPTING CERTIFICATION PERMIT ISSUED IN DOCKET HP09-001 CONSTRUCT THE KEYSTONE XL PIPELINE	OF .	APPELLEE'S REPLY BRIEF IN SUPPORT OF MOTION TO SUPPLEMENT THE RECORD ON APPEAL	

Appellee TransCanada Keystone Pipeline, LP ("Keystone") moved under SDCL § 1-26-33 that the Court supplement the record with the Presidential Permit authorizing the Keystone XL Pipeline to be constructed across the international border. The Presidential Permit was granted on March 23, 2017, after this Court held a hearing in this appeal on March 8, 2017. The Yankton Sioux Tribe alone objects to Keystone's motion.

The Tribe argues that Keystone's motion is untimely because SDCL § 1-26-34, not § 1-26-33, governs Keystone's motion, and under § 1-26-34, the motion had to be made before the hearing on March 8, 2017. Strict compliance with the statute would make no sense in this situation. Keystone's motion could not have been made before the hearing because the Presidential Permit was not granted until March 23, 2017. Evidence of the Presidential Permit is consistent with the Court's prior judicial notice, granted by order dated March 29, 2107, of the application that Keystone submitted for a Presidential Permit. The Presidential Permit is the logical consequence of the application which the Court noticed. The Permit is a public record. Evidence that it was granted is a fact that cannot be disputed. It is not subject to cross examination.

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Moreover, there is no dispute that the Presidential Permit is consistent with the Commission's decision accepting Keystone's certification. In response to the Intervenors' argument that Keystone could not comply with PUC Permit Condition 1 because its application for a Presidential Permit had been denied, the Commission concluded that nothing precluded Keystone from reapplying and obtaining a Presidential Permit in the future, and if that happened, Keystone would be in compliance with Condition 1, which is prospective. The Yankton Sioux Tribe can avoid the logic of this reasoning, combined with the undeniable fact that a Presidential Permit has now been granted, only by objecting to Keystone's motion on technical grounds and asking the Court to pretend that the Presidential Permit was not granted.

If the Court has any concerns that granting Keystone's motion would be contrary to SDCL § 1-26-34, then Keystone respectfully requests that the Court take judicial notice of the Presidential Permit, for the same reasons and on the same grounds that the Court took judicial notice of Keystone's application for the Permit.

Keystone respectfully requests that the Court grant its motion to supplement the record with the Presidential Permit, a public record. Alternatively, Keystone asks that the Court take judicial notice of the Presidential Permit.

Dated this 13th day of April, 2017.

WOODS, FULLER, SHULTZ & SMITH P.C.

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CERTIFICATE OF SERVICE

I hereby certify that on the 13th day of April, 2017, I electronically filed and served a true

and correct copy of the foregoing Appellee's Reply Brief in Support of Motion to Supplement

the Record on Appeal using the Odyssey File & Serve System, which will automatically send e-

mail notification of such service to the following:

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