

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA**

IN THE MATTER OF THE PETITION OF TRANSCANADA KEYSTONE PIPELINE, LP FOR ORDER ACCEPTING CERTIFICATION OF PERMIT ISSUED IN DOCKET HP09-001 TO CONSTRUCT THE KEYSTONE XL PIPELINE)))))))	Docket 14-001 INTERVENORS’ JOINT MOTION TO DISMISS
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The Intervenor in this proceeding, including John H. Harter, Elizabeth Lone Eagle, Paul F. Seamans, Cindy Myers, Diana L. Steskal, Byron T. Steskal, Arthur R. Tanderup, Lewis GrassRope, Carolyn P. Smith, Nancy Hilding, Gary F. Dorr, Wrexie L. Bardaglio, Joye Braun, Chastity Jewett, Dallas Goldtooth, Bonny J. Kilmurry, Viola Waln, Louis T. Genung, Terry Frisch, Cheryl Frisch, Dakota Rural Action (“DRA”), the Indigenous Environmental Network (“IEN”), the Intertribal Council on Utility Policy (“ICOUP”), Bold Nebraska (“Bold”), the Rosebud Sioux Tribe (“Rosebud”), Yankton Sioux Tribe (“Yankton”), Cheyenne River Sioux Tribe (“Cheyenne River”) and the Standing Rock Sioux Tribe (“Standing Rock”) jointly move to (a) dismiss the petition for certification filed by TransCanada Keystone Pipeline, LP (“TransCanada”), and (b) to revoke the permit for construction of the proposed Keystone XL Pipeline (the “Project”) through South Dakota which was granted by the Commission on June 29, 2010 in its Amended Final Decision and Order (the “2010 Permit”). This joint motion should be granted because both TransCanada’s petition and the underlying 2010 Permit are moot as a result of public positions taken by TransCanada with respect to the future of its development of the Project, and due to the November 6, 2015 denial of Keystone’s application for a presidential permit to cross an international border. With respect to the scheduling of this motion for hearing, the Intervenor assert the statutory right to 10-day notice prior to the date of the hearing.

For proposed petroleum pipelines (such as the Project) that cross international borders of the United States, the President of the United States, through Executive Order 13337, directs the Secretary of State to

decide whether a project serves the national interest before granting a Presidential Permit. On November 6, 2015, in a widely-publicized announcement, the President determined that Keystone XL Pipeline would not serve the national interest of the United States and denied TransCanada's application for a Presidential Permit for the Project.¹

TransCanada was originally granted a permit for construction of the Project through South Dakota under the terms of the 2010 Permit, subject to fifty separate conditions and multiple sub-conditions. The conditions imposed on TransCanada by the 2010 Permit ranged from compliance with all federal and state environmental laws, to compliance with a variety of other matters as set forth in the 2010 Permit. Because TransCanada failed to commence construction of the Project within four years of the date of the 2010 Permit, under SDCL § 49-41B-27 it was required to file a petition with the Commission certifying that it could continue to meet the conditions upon which the 2010 Permit was issued. Condition No. 1 requires TransCanada to comply with all applicable laws and rules. Condition No. 2 of the 2010 Permit specifically provides that:

“Keystone shall obtain and shall thereafter comply with all applicable federal, state and local permits, including but not limited to: Presidential Permit from the United States Department of State, Executive Order 11423 of August 16, 1968 (33 Fed. Reg. 117 41) and Executive Order 13337 of April 30, 2004 (69 Fed. Reg. 25229), for the construction, connection, operation, or maintenance, at the border of the United States, of facilities for the exportation or importation of petroleum, petroleum products, coal, or other fuels to or from a foreign country ...” [*emphasis added*]

SDCL § 49-41B-33(b) further provides the Commission with authority to revoke the 2010 Permit for “[f]ailure to comply with the terms or conditions of the permit”. With the denial of the Presidential Permit, TransCanada is unable to comply with these key conditions imposed by the Commission in the 2010 Permit in that it cannot obtain the Presidential Permit for which it applied and it cannot comply with all applicable laws and rules. For this simple reason, TransCanada's petition for certification filed in these

¹ <https://www.whitehouse.gov/the-press-office/2015/11/06/statement-president-keystone-xl-pipeline>

proceedings pursuant to SDCL § 49-41B-27 should be summarily dismissed and the 2010 Permit revoked pursuant to SDCL § 49-41B-33.

Respectfully submitted,

Date: November 9, 2015

By the Following Individual Intervenors:

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John H. Harter

/s/ Elizabeth Lone Eagle
Elizabeth Lone Eagle

/s/ Paul F. Seamans
Paul F. Seamans

/s/ Cindy Myers
Cindy Myers

/s/ Diana L. Steskal
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/s/ Byron T. Steskal
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/s/ Arthur R. Tanderup
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/s/ Lewis GrassRope
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*Secretary of, and Attorney for the
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**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA**

IN THE MATTER OF THE PETITION OF)	Docket 14-001
TRANSCANADA KEYSTONE PIPELINE, LP)	
FOR ORDER ACCEPTING CERTIFICATION OF)	CERTIFICATE OF SERVICE
PERMIT ISSUED IN DOCKET HP09-001 TO)	
CONSTRUCT THE KEYSTONE XL PIPELINE)	
)	
)	
)	

I hereby certify that on this 9th day of November 2015, a copy of the *Intervenors' Joint Motion to Dismiss* filed in the foregoing action on behalf of the intervenors named therein was transmitted via e-mail to the following:

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And on November 9, 2015, a true and accurate copy of the *Intervenors' Joint Motion to Dismiss* filed in the foregoing action on behalf of the intervenors named therein was mailed via U.S. Mail, first class postage prepaid, to the following:

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