

STATE OF SOUTH DAKOTA)
) ss.
COUNTY OF HUGHES)

IN THE CIRCUIT COURT

SIXTH JUDICIAL CIRCUIT

IN THE MATTER OF PUBLIC UTILITIES) Case No. 32CIV16-33
COMMISSION DOCKET HP14-001,)
PETITION OF TRANSCANADA)
KEYSTONE PIPELINE, LP FOR ORDER) **JOINT MOTION FOR LEAVE TO**
ACCEPTING CERTIFICATION OF PERMIT) **PRESENT ADDITIONAL**
ISSUED IN DOCKET HP09-001 TO) **EVIDENCE/REMAND AND**
CONSTRUCT THE KEYSTONE XL) **MOTION FOR STAY OF**
PIPELINE) **PROCEEDINGS**
)

The Appellants Dakota Rural Action, Yankton Sioux Tribe, Cheyenne River Sioux Tribe, Inter-Tribal Council on Utilities Policy, Joyce Braun, Dallas Gold Tooth, Paul Seamans, Terry and Cheri Frisch, Bruce Boettcher, Arthur Tanderup, Elizabeth Lone Eagle, Chastity S. Jewett, John Harter, Wrexie Lainson Bardaglio, and Gary Dorr (hereinafter, collectively, the “Appellants”), pursuant to SDCL §1-26-34, hereby seek leave of and move this Court for an Order remanding this matter to the South Dakota Public Utilities Commission (“PUC”), with instructions to open the record to receive new evidence surrounding the cause(s) and effect(s) of the 400-plus barrel hazardous tar sands crude oil spill near Freeman, South Dakota from the Keystone Pipeline, reported on or about April 2, 2016, and for the PUC to consider modifying its findings and decision.

According to the Pipeline and Hazardous Materials Safety Administration (“PHMSA”) preliminary report, the spill was the result of a flawed weld joining on a juncture of different size pipe. As shown and detailed in the accompanying Memorandum of Law and attached exhibits, the Appellants wish to present new and developing evidence which is both relevant and material

to issues in this appeal of the PUC's order granting re-certification of the 2010 construction permit (in PUC Docket No. HP 09-001) for the hazardous transportation KXL Pipeline granted in HP 14-001, the subject of this appeal. More specifically, the new evidence is material as to whether substantial evidence exists in the record that TransCanada, "continues to meet the conditions upon which the permit was issued," pursuant to SDCL §49-41B-27.

Appellants proffer the new evidence, that relates to the nature, extent, cause, and environmental damage from the recent spill, is relevant to the history of TransCanada's spills and near spills due to non-compliance with its own construction plans, violations of PHMSA regulations, and permit conditions. Such evidence constitutes additional new, but non-cumulative evidence relevant to TransCanada's continuing compliance with at least PUC Original Permit Conditions 1, 7, 31, and 36-38. The new evidence will further enhance evidence presented in the PUC hearing record of issues related to compliance failures involving design, construction, inspection, spill detection, and emergency response plans for the KXL Pipeline, which were said to be virtually identical to those involved with the Keystone Pipeline. Such evidence further corroborates the hearing testimony of former TransCanada engineer and whistle-blower Evan Vokes regarding safety issues involving critical welds. It also constitutes material impeachment evidence impacting the credibility of TransCanada witnesses and their testimony that was relied upon by the PUC in making its Final Decision.

Good reason exists for the Appellants' inability to present the proposed material evidence prior to the PUC's issuance of its Final Determination, for the simple reason that the Freeman Spill had not yet occurred, and that PHMSA, DENR, and other agencies have not yet conducted or completed their findings and conclusions as to the cause(s) of the spill, the failures of detection equipment, the adequacy of submitted emergency response plans, and the

environmental damage which has resulted. Such evidence was therefore unavailable to present to the PUC prior to its Final Decision.

Appellants further request that an Order Granting Remand include instructions to the PUC to permit discovery limited to obtaining the most complete documentation and other evidence regarding the Freeman Spill prior to conducting any hearing on the additional evidence, and prior to making any subsequent determination as to whether and how the Freeman Spill affects the PUC's prior determination that TransCanada continues to meet the Amended Conditions in the Original Permit.

Appellants further request the Order Granting Remand include a stay of judicial review in the instant proceedings before the Circuit Court, pending further action on the remand by the PUC.

Respectfully submitted this 18th day of July, 2016.

/s/ Bruce Ellison

Bruce Ellison, SD #462
P.O. Box 2508
Rapid City, South Dakota 57709
Telephone: (605) 348-1117
Email: belli4law@aol.com

and

THE MARTINEZ LAW FIRM, LLC

By: /s/ Robin S. Martinez

Robin S. Martinez, MO #36557/KS #23816,
admitted pro hac vice
1150 Grand Blvd., Suite 240
Kansas City, Missouri 64106
816.979.1620 phone
816.398.7102 fax
Email: robin.martinez@martinezlaw.net

Attorneys for Dakota Rural Action

By: /s/ Peter Capossela
Peter Capossela, P.C.
Attorney at Law
Post Office Box 10643
Eugene, Oregon 97440
(541) 505-4883
pcapossela@nu-world.com

and

/s/ Chase Iron Eyes
Chase Iron Eyes, S.D. Bar No. 3981
Iron Eyes Law Office, PLLC
Post Office Box 888
Fort Yates, North Dakota 58538
(701) 455-3702
chaseironeyes@gmail.com

***Attorneys for Joye Braun, Dallas Goldtooth,
Paul F. Seamans, Terry and Cheri Frisch,
Bruce Boettcher, Arthur R. Tanderup,
Elizabeth Lone Eagle, Chastity S. Jewett,
John H. Harter, Wrexie Lainson Bardaglio,
and Gary F. Dorr***

/s/ Tracey Zephier
Tracey Zephier

/s/ Travis G. Clark
Travis G. Clark
Fredericks Peebles & Morgan LLP
910 5th St., Suite 104
Rapid City, SD 57701
Phone: 605-791-1515
Fax: 605-791-1915
Email: tzephier@ndnlaw.com

Attorneys for the Cheyenne River Sioux Tribe

/s/ Jennifer S. Baker
Jennifer S. Baker, *Pro Hac Vice*

/s/ Thomasina Real Bird
Thomasina Real Bird, SD Bar No. 4415

Fredericks Peebles & Morgan LLP
1900 Plaza Drive
Louisville, Colorado 80027
Telephone: (303) 673-9600
Facsimile: (303) 673-9155
Email: jbaker@ndnlaw.com
Email: trealbird@ndnlaw.com

Attorneys for the Yankton Sioux Tribe

/s/ Robert P. Gough
Robert P. Gough, SD SB# 620
P.O. 25, Rosebud, SD 57570
605-441-8316
gough.bob@gmail.com

*Secretary of, and Attorney for the
Intertribal Council On Utility Policy (ICOUP)*