

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

IN THE MATTER OF TRANSCANADA
KEYSTONE PIPELINE, LP
FOR ORDER ACCEPTING CERTIFICATION
OF PERMIT ISSUED IN DOCKET HP09-001
TO CONSTRUCT THE KEYSTONE XL
PIPELINE

ROSEBUD SIOUX TRIBE'S
RESPONSE TO KEYSTONE'S
MOTION IN LIMINE TO
PRECLUDE REBUTTAL
TESTIMONY OF JENNIFER
GALINDO AND WASTE WIN
YOUNG

HP14-001

For its response to Keystone's Motion in Limine to Preclude Rebuttal Testimony of Jennifer Galindo and Waste Win Young, the Rosebud Sioux Tribe states the following:

By filing dated July 10, 2015, Keystone seeks to preclude the testimony of Jennifer Galingo, an archeologist for the Rosebud Sioux Tribe Tribal Historic Preservation Office and Waste Win Young, the Standing Rock Sioux Tribe's Historic Preservation Officer. Keystone seeks to exclude this testimony on the grounds that it is related to issues that are outside of Keystone's control and the Commission's jurisdiction. Once again Keystone demonstrates its ignorance of federally recognized Indian tribes by grouping the Rosebud Sioux Tribe's and Standing Rock Sioux Tribe's Tribal Historic Preservation officers together in its motion. Galindo's testimony is directed at PUC Staff witness, Paige Olson and not towards any of Keystone's witnesses. PUC Staff attorney has filed no Motion in Limine to exclude this testimony and has missed its deadline to do so. However, they regained this opportunity through their July 17, 2015 filing of a Motion in Support of Keystone's motion. If it was not apparent throughout these proceedings that the PUC Staff is Keystone's ally on the ground so to speak, it that should be crystal clear to the Commission at this point. Keystone's Motion in Limine to preclude the Rebuttal Testimony of Galindo and Young should be disregarded as it is an

improper filing and should be denied. Staff's response to Keystone's motion regarding Galindo and Young's testimony should be disregarded as well.

For clarity in the response, because Waste Win Young's testimony is offered by the Standing Rock Sioux Tribe and not the Rosebud Sioux Tribe, this response is limited to issues raised by Keystone as they relate to Galindo's testimony. The stated purpose of Galindo's testimony is to rebut testimony of one of the PUC Staff's witnesses, Paige Olson.

1. The Testimony Raises Matters outside of Keystone's control and the Commissions Jurisdiction

Keystone asserts that the rebuttal testimony raises issues that are outside of Keystone's control and outside of the Commission's jurisdiction and should be precluded as such. This is incorrect assumption to take and should be rejected. There are many things that are outside of Keystone's control, yet that does not excuse Keystone from abiding by those rules. A classic example of this is what is known as the law of gravity. Keystone has no control over the application of the law of gravity. However, they must still comply with the law of gravity in the design, operation, siting and maintenance of the project, should the certification permit be granted. Regardless of whether or not compliance with the National Historic Preservation Acts is outside of Keystone's control, it is still a condition of the permit that they must comply with its requirements.

In granting the original permit, the PUC gave no consideration to the fact that Keystone may have to comply with rules and regulations that are outside of their control and outside of the Commission's jurisdiction and that is not a relevant argument here. Another example of this is the requirement that Keystone comply with the Pipeline Safety Act and PHMSA rules that

regulate pipeline safety. The fact that compliance with a rule or law that is outside of the Commission's jurisdiction or beyond the control of Keystone is simply irrelevant to the matter before the Commission. Accordingly the argument should be rejected as it is without merit.

PUC Staff witness Paige Olson's testimony does not reach an opinion that Keystone can certify that there are no conditions that Keystone cannot continue to meet. Olson's testimony does not address or tell the commission how certain concerns that SHOP had in 2009 were addressed or resolved. At page 7, line 14 when the witness is questioned as to whether or not Keystone has complied with state and federal rules and regulations the witness states "to the best of my knowledge Keystone is in the process of complying with Section 106 of the National Historic Preservation Act through the programmatic agreement. In Staff's response to Keystone's instant Motion staff takes the position that Keystone has no burden to comply with the requirements of Section 106 of the NHPA and that burden rests with the federal government. At page 7, line 21 when questioned as to whether or not there are any conditions in the Amended Final Decision and Order, dated June 29, 2010, that you believe, at this time, that Keystone XL cannot continue to meet, the witness provides the lengthy response that "SHPO would like to ensure that proper monitoring measures are in place for the four proposed horizontal directional drilling (HDD) locations known as the Bad River HDD, Cheyenne River HDD, Little Missouri HDD and the White River HDD. As part of consultation under Section 106 of the NHPA, SHPO recommended that geomorphical/geoarchaeological monitoring of the four HDD installations be conducted. These recommendations were not included in Attachment F "Historic Trail and Archaeological Monitoring Plan" of the Programmatic Agreement. It is unclear if Keystone XL intends to follow these recommendations which will ensure that if deeply buried cultural deposits are present they can be taken into consideration. SHPO recommends including

these areas in the plan entitled “Keystone XL Pipeline Project, Historic Trail and Archaeological Monitoring Plan” to be monitored by a qualified geomorphologist/geoarchaeologist.” The witness goes on to further state that “SHPO would like to ensure that Keystone XL is aware of our continued concerns about the construction of electrical distribution/transmission facilities and the potential impacts to the Slim Buttes area.” This answer is completely responsive to the question asked, yet shows that Keystone cannot certify that the facility continues to meet the conditions upon which the permit was granted. Galindo’s testimony is put forward to specifically rebut this testimony.

As is consistent with Keystone’s actions throughout the entirety of this proceeding – Keystone does not want the Commission to hear any evidence or testimony that differs from what they want the Commission to hear. SHPO’s testimony flip flops in the issues and takes inconsistent positions. Galindo’s testimony raises legitimate issues and concerns with Olson’s testimony. It is up to the PUC to decide what weight to give Galindo’s and Olson’s testimony in reaching its decision.

CONCLUSION

Based on the above and foregoing, the Commission should reject Keystones Motion as without merit.

Dated this 17th day of July, 2015.

RESPECTIVELY SUBMITTED:

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