

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

IN THE MATTER OF THE APPLICATION BY)
TRANSCANADA KEYSTONE PIPELINE, LP)
FOR A PERMIT UNDER THE SOUTH DAKOTA)
ENERGY CONVERSION AND TRANSMISSION)
FACILITIES ACT TO CONSTRUCT THE)
KEYSTONE XL PROJECT)

HP 14-001

**STANDING ROCK SIOUX TRIBE
STATEMENT IN OPPOSITION TO TRANSCANADA’S MOTION IN LIMINE
TO PRECLUDE THE REBUTTAL TESTIMONY OF JENNIFER GALINDO
AND WASTE’WIN YOUNG AS APPLIED TO WASTE’WIN YOUNG**

The Commission must deny TransCanada’s *Motion in Limine to Preclude Rebuttal Testimony of Jennifer Galindo and Waste’ Win Young* with respect to Ms. Young, because she filed no rebuttal testimony. Ms. Young was listed as a direct witness for the Standing Rock Sioux Tribe in the Tribe’s List of Witnesses, and the Tribe disclosed to TransCanada that she would give direct testimony in its Response to TransCanada’s First Set of Interrogatories, served on February 6, 2014. This was in compliance with the timelines for such disclosures established by the Commission in this docket. *Order Granting Motion to Define Procedural Issues and Setting Schedule*, December 17, 2014. Ms. Young’s pre-filed testimony was timely submitted on April 5, 2014.

TransCanada’s motion as drafted does not request an order precluding Ms. Young’s direct testimony, but instead her non-existent rebuttal testimony. The motion cannot be applied to Ms. Young’s direct testimony unless it is re-written or re-filed, but the deadline established by the Commission for motions in limine has expired. *Order Amending Procedural Schedule*, May 5, 2015. As written, the motion does not request an order precluding the direct testimony. Consequently, the Commission may not preclude Ms. Young’s testimony based upon the motion.

The courts strike or dismiss pleadings with such vague, ambiguous or confusing language. *See e.g. Argesta v. City of Philadelphia*, 694 F. Supp. 117, 119 (E.D. Pa. 1988)

(complaint struck as to parties referred to in body of complaint but not properly identified in caption); *Stratton v. Boston*, 731 F. Supp. 2d 42, 45 (D. Mass. 1989) (complaint dismissed for failure to sufficiently identify defendant). That should occur here.

The arguments in the motion and in the Staff Response that Ms. Young's direct testimony is not relevant are superfluous. No timely motion in limine challenging her direct testimony has been filed. The arguments, even were they to have merit, which they do not,¹ are not properly before the Commission. The *Motion in Limine to Preclude Rebuttal Testimony of Jennifer Galindo and Waste' Win Young* must be denied with respect to Waste'Win Young.

RESPECTFULLY SUBMITTED this 17th day of July, 2015

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¹ The law in South Dakota on relevance under Rule 401 has been set out in the Standing Rock Sioux Tribe *Brief in Opposition to Motion in Limine to Preclude Kevin Cahill* and the *Brief in Opposition to Motion in Limine to Preclude Linda Black Elk*, filed herewith. Ms. Young's direct testimony touches upon the exact same issues as the testimony of Paige Olson pre-filed by the staff. If Ms. Young's testimony is not relevant, neither is Ms. Olson's. The direct testimonies of both cultural resources officers are obviously relevant, as they relate to compliance by the Keystone XL Pipeline project with important state and federal historic preservation laws. 16 U.S.C. §470 *et seq.*, see HP 09-001 *Amended Final Order*, Conditions 1, 3, 43-44. But neither have been challenged by a timely motion in limine in any event.