

**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)
)

ORDER GRANTING MOTION *IN LIMINE* TO RESTRICT TESTIMONY OF YANKTON SIOUX WITNESSES SPOTTED EAGLE AND UN-NAMED MEMBER OF THE B&C COMMITTEE

HP14-001

On September 15, 2014, TransCanada Keystone Pipeline, LP (TransCanada or Keystone) filed with the South Dakota Public Utilities Commission (Commission) a Petition for Order Accepting Certification under SDCL §49-41B-27 seeking an order accepting certification of the energy facility permit issued in Docket HP09-001 for construction of the Keystone XL Pipeline. On June 29, 2010, the Commission issued an Amended Final Decision and Order; Notice of Entry granting a permit to TransCanada for construction of the Keystone XL Pipeline. TransCanada now seeks an order accepting certification pursuant to SDCL 49-41B-27. The Commission has jurisdiction over this matter pursuant to SDCL Chapters 1-26 and 49-41B, specifically 49-41B-27, and ARSD Chapter 20:10:22.

On September 18, 2014, the Commission electronically transmitted notice of the filing and the intervention deadline of October 15, 2014, to interested individuals and entities on the Commission's PUC Weekly Filings electronic listserv. Applications for Party Status were received from forty-three persons, and on November 4, 2014, the Commission issued an Order Granting Intervention and Party Status to forty-two of the applicants. Three parties have since been granted withdrawal of party status. On December 17, 2014, the Commission issued an Order Granting Motion to Define Issues and Setting Procedural Schedule. On May 5, 2015, the Commission issued an Order Amending Procedural Schedule.

On July 10, 2015, the Commission received Keystone's Motion *in Limine* to Restrict Testimony of Yankton Sioux Witnesses Spotted Eagle and Un-Named Member of the B&C Committee (Motion). Its Motion, Keystone sought an order striking certain portions of the direct testimony and all of the rebuttal testimony of Faith Spotted Eagle and the rebuttal testimony of the un-named person, arguing that questions 24-33 in Ms. Spotted Eagle's pre-filed direct testimony addressed matters previously found to be outside the Commission's jurisdiction and not germane to the issue before the Commission in this proceeding and that the rebuttal testimony of Ms. Spotted Eagle and the un-named person do not comport with the requirements for hearing testimony, and in particular rebuttal testimony.

At its regularly scheduled meeting on July 21, 2015, the Commission considered the Motion. Finding that the testimony of Ms. Spotted Eagle set forth in questions 24-33 of her direct testimony is outside the jurisdiction of the Commission and the scope of the issue in this proceeding and that the rebuttal testimony of Ms. Spotted Eagle and the un-named witness does not comport with standards for pre-filed hearing testimony and addresses matters beyond the scope of the issue in this proceeding, the Commission voted unanimously to grant the Motion. With respect to Keystone's request for relief in the Motion that these witnesses be precluded from testifying at the hearing, since no discussion of this occurred at the motion hearing and the Commission is not precluding the entirety of Ms. Spotted Eagle's testimony, it is

not the intent of the Commission to preclude Ms. Spotted Eagle from testifying at the evidentiary hearing, subject to ordinary standards of evidence and objection.

It is therefore

ORDERED, that Keystone's Motion *in Limine* to Restrict Testimony of Yankton Sioux Witnesses Spotted Eagle and Un-Named Member of the B&C Claims Committee is granted, subject to the above qualifying statement.

Dated at Pierre, South Dakota, this 22nd day of July, 2015.

CERTIFICATE OF SERVICE
The undersigned hereby certifies that this document has been served today upon all parties of record in this docket, as listed on the docket service list, electronically or by mail.
By: <u>[Signature]</u>
Date: <u>7/22/15</u>
(OFFICIAL SEAL)

BY ORDER OF THE COMMISSION:

[Signature]
CHRIS NELSON, Chairman

[Signature]
KRISTIE FIEGEN, Commissioner

[Signature]
GARY HANSON, Commissioner