

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF SOUTH DAKOTA

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HP 14-001

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	:	KEYSTONE'S RESPONSE TO
CONSTRUCT THE KEYSTONE XL	:	ROSEBUD SIOUX TRIBE'S MOTION
PROJECT,	:	TO AMEND SCHEDULING ORDER
	:	
	:	

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The Rosebud Sioux Tribe has moved that the Commission amend its Order Setting Procedural Schedule ("Scheduling Order") dated December 17, 2014. The Tribe contends that it has not had sufficient time to conduct discovery and to resolve discovery disputes. For the following reasons, Keystone respectfully requests that the Tribe's motion be denied.

1. The Tribe has conducted substantial discovery. In its first round of discovery, the Tribe served 79 interrogatories and 49 document requests, not including subparts. (Taylor Aff. ¶ 2.) Keystone's responses to the discovery filled 51 pages. (*Id.*) In its second round of discovery, the Tribe served 20 interrogatories and 7 document requests, not including subparts. (*Id.* ¶ 3.) Keystone's responses to the discovery filled 35 pages. (*Id.*) Keystone provided timely answers or objections to both rounds of discovery. (*Id.* ¶¶ 2-3.)

2. While it is true that the Tribe and Keystone have discussed the Tribe's concerns about the sufficiency of Keystone's answers and objections, the Tribe's remedy if it is dissatisfied with discovery is a motion to compel, which it has not made. The Tribe first

addressed its concerns to Keystone’s initial discovery responses, which were made on February 6, in a letter dated March 3, 2015, almost one month later. (*Id.* ¶ 4.) Counsel for the parties discussed the Tribe’s concerns in a telephone conference on March 13, 2015. (*Id.* ¶¶ 5-6.)<sup>1</sup> Two weeks after Keystone served its responses to the second round of discovery on March 10, the Tribe addressed its concerns in a letter dated March 25, 2015. (*Id.* ¶ 7.) The length of the Tribe’s letters and the pace at which it has pursued its concerns are at odds with the Commission’s Scheduling Order and the impending hearing date. If the Tribe believed that Keystone’s discovery responses were legally insufficient and precluded it from preparing for the hearing, it could have expeditiously pursued a motion to compel discovery under SDCL § 15-6-37(a). It has not done so.

3. The Tribe does not explain how any unresolved discovery issues affect its ability to prepare for the hearing beginning on May 5 or to present its case. Despite lengthy letters addressing discovery issues, the Tribe does not explain in its motion how any discovery issues have prevented or hampered its hearing preparation. The Tribe bears the burden of proving good cause for an amendment of the scheduling order. SDCL § 15-6-16 (“[a] schedule shall not be modified except by leave of the judge upon a showing of good cause”). The South Dakota Supreme Court has noted that the most relevant factor to consider “is usually the effect that the amendment will have on delaying the ultimate disposition of the case.” *Tosh v. Schwab*, 2007 S.D. 132, ¶ 24, 743 N.W.2d 422, 430. Other relevant factors include prejudice to the opposing party; whether the continuance motion was motivated by procrastination, bad planning, or dilatory tactics; prejudice caused to the moving party by denial of the continuance; and prior

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<sup>1</sup> Per the March 13 discussion, counsel for the Tribe rephrased several interrogatories and narrowed the scope of others per a letter sent March 16, 2015. Keystone has not yet completed responses to the letter of March 16.

continuances or delays. *Id.* ¶ 25, 743 N.W.2d at 430. Ultimately, “a continuance may properly be denied when the party had ample time for preparation or the request for a continuance was not made until the last minute.” *State v. Moeller*, 2000 S.D. 122, ¶ 7, 616 N.W.2d 424, 431. Here, the Tribe has waited until the last minute to seek a continuance, a continuance would significantly delay the ultimate disposition of the proceeding, the Tribe does not state why a continuance is necessary other than in the broadest general terms, and it is clear that Keystone would be prejudiced if the motion were granted, as discussed below. The Tribe therefore has not met its burden.

4. Keystone would be prejudiced by the continuance that the Tribe proposes. Keystone has worked diligently to meet the deadlines in the Scheduling Order. Keystone answered 850 interrogatories and document requests, not including subparts, in the initial round of discovery. (Moore Aff., March 30, 2015, ¶ 3.) Keystone answered another 180 interrogatories and document requests, not including subparts, in the second round of discovery. (*Id.*) Keystone is prepared to serve its prefiled direct testimony on April 2; it has arranged its preparations to enable it to meet the deadline for prefiled rebuttal testimony; it is preparing its witnesses for the hearing beginning on May 5; its witnesses have arranged their schedules to appear at the hearing; and Keystone has made travel, hotel, and other logistical arrangements for the hearing. Changing the schedule at this late date for reasons previously stated by the Tribe and rejected by the Commission would prejudice Keystone. Moreover, the Tribe’s proposed continuance, which asks for an indefinite extension, would delay this proceeding well beyond the time necessary for resolution given the limited scope of a certification proceeding under SDCL § 49-41B-27.

5. The Tribe's due-process argument does not support the requested relief. Keystone does not dispute that due process requirements apply to this proceeding. *See In re Union Carbide Corp.*, 308 N.W.2d 753, 757-58 (S.D. 1981). In *Union Carbide*, the South Dakota Supreme Court held that a permit application for uranium ore exploration before the Conservation Commission was a contested case under SDCL Ch. 1-26, that the proceeding was adjudicatory in nature, and that due process applied. *Id.* at 757-58. That proposition, however, does not establish that the Commission's Scheduling Order or the proceedings in this case violate due process. The Scheduling Order, dated December 17, 2014, provided for two rounds of written discovery over almost three months. The Tribe argues that this is constitutionally insufficient because it has not had sufficient time to pursue discovery objections. Nothing in *Union Carbide*, however, dictates a certain amount of time for discovery. The parties have been given several months for discovery, they have a right to appear at a hearing, to be represented by counsel, to present testimony and documentary evidence, and to cross-examine witnesses. These opportunities are consistent with SDCL § 1-26-18. As the Tribe notes, the rules of civil procedure apply. Under those rules, however, it is within the Commission's discretion to determine discovery motions brought under SDCL § 15-6-37(a) and to address motions to amend the Scheduling Order, which can be granted only for good cause. The Tribe's suggestion that due process would be violated if the Commission exercised its discretion to deny the motion to amend is not supported by *Union Carbide*, any other authority, or the particular nature of this certification proceeding under SDCL § 49-41B-27, which is not a retrial of Keystone's permit application.

For all of these reasons, Keystone respectfully requests that the Tribe's motion to amend the Scheduling Order be denied.

Dated this 30<sup>th</sup> day of March, 2015.

WOODS, FULLER, SHULTZ & SMITH P.C.

By /s/ James E. Moore

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CERTIFICATE OF SERVICE

I hereby certify that on the 30<sup>th</sup> day of March, 2015, I sent by United States first-class mail, postage prepaid, or e-mail transmission, a true and correct copy of the foregoing Keystone's Response to Rosebud Sioux Tribe's Motion to Amend Scheduling Order, to the following:

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BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF SOUTH DAKOTA

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HP 14-001

IN THE MATTER OF THE APPLICATION :  
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CONSTRUCT THE KEYSTONE XL :  
PROJECT, :

AFFIDAVIT OF  
WILLIAM TAYLOR

0-0

STATE OF SOUTH DAKOTA     )  
  :SS  
COUNTY OF MINNEHAHA     )

William Taylor, being first duly sworn, states as follows:

1. I am one of the lawyers representing Petitioner TransCanada Keystone Pipeline, LP (“Keystone”) in this proceeding. I have personal knowledge of the facts stated in this affidavit.

2. In its first round of discovery requests, the Rosebud Sioux Tribe served 79 interrogatories and 49 document requests, not including subparts. Keystone’s timely responses to the discovery, a copy of which is attached as Exhibit A, filled 51 pages.

3. In its second round of discovery requests, the Rosebud Sioux Tribe served 20 interrogatories and 7 document requests, not including subparts. Keystone’s timely responses to the discovery, a copy of which is attached as Exhibit B, filled 35 pages.

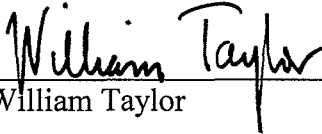
4. Counsel for the Tribe wrote a letter addressing its concerns about the sufficiency of Keystone's responses to the first round of discovery on March 3, 2015. A copy of the letter is attached as Exhibit C.

5. Counsel for the parties discussed the Tribe's concerns in a telephone conference on March 13, 2015.


6. Counsel for the Tribe wrote a follow-up letter dated March 16, 2015, summarizing the telephone conference. A copy is attached as Exhibit D.

7. Counsel for the Tribe wrote a letter addressing its concerns about the sufficiency of Keystone's responses to the second round of discovery on March 25, 2015. A copy of the letter is attached as Exhibit E.

Dated this 30 day of March, 2015.

  
\_\_\_\_\_  
William Taylor

Subscribed and sworn to before me  
this 30<sup>th</sup> day of March, 2015.

  
\_\_\_\_\_  
Notary Public – South Dakota  
My commission expires:

**My Commission Expires**  
**Sept. 13, 2017**

CERTIFICATE OF SERVICE

I hereby certify that on the 30<sup>th</sup> day of March, 2015, I sent by United States first-class mail, postage prepaid, or e-mail transmission, a true and correct copy of the foregoing Affidavit of William Taylor, to the following:

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Attorneys for Applicant TransCanada



BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF SOUTH DAKOTA

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IN THE MATTER OF THE APPLICATION : HP 14-001  
BY TRANSCANADA KEYSTONE  
PIPELINE, LP FOR A PERMIT UNDER : KEYSTONE'S RESPONSES TO  
THE SOUTH DAKOTA ENERGY : ROSEBUD SIOUX TRIBE'S FIRST  
CONVERSION AND TRANSMISSION : SET OF INTERROGATORIES  
FACILITIES ACT TO CONSTRUCT THE : AND REQUEST FOR  
KEYSTONE XL PROJECT : PRODUCTION OF DOCUMENTS

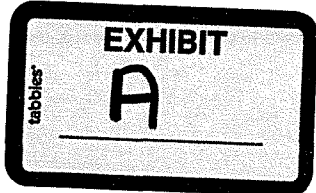
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Applicant TransCanada makes the following responses to interrogatories pursuant to SDCL § 15-6-33, and responses to requests for production of documents pursuant to SDCL § 15-6-34(a). These responses are made within the scope of SDCL 15-6-26(e) and shall not be deemed continuing nor be supplemented except as required by that rule. Applicant objects to definitions and directions in answering the discovery requests to the extent that such definitions and directions deviate from the South Dakota Rules of Civil Procedure.

GENERAL OBJECTION

Keystone objects to the instructions and definitions contained in Rosebud Sioux Tribe's First Set of Interrogatories and Requests for Production of Documents to the extent that they are inconsistent with the provisions of SDCL Ch. 15-6. See ARSD

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20:10:01:01.02. Keystone's answers are based on the requirements of SDCL §§ 15-6-26, 15-6-33, 15-6-34, and 15-6-36.

## INTERROGATORIES

1. Please identify the person or persons providing each answer to an Interrogatory and request for production of documents, or portion thereof, giving the full name, address of present residence, date of birth, business address and occupation. Identify the names of each person, other than legal counsel, who assisted with providing the answers and request for production of documents, or portion thereof giving the full name, address of present residence, date of birth, business address and occupation.

ANSWER: Given the extremely broad scope volume of more than 800 discovery requests received by Keystone in this docket, a range of personnel were involved in answering the interrogatories. Keystone will designate the following witnesses with overall responsibility for the responsive information as related to the Conditions and proposed changes to the Findings of Fact, which are identified in Appendix C to Keystone's Certification Petition: Corey Goulet, President, Keystone Projects, 450 1st Street S.W., Calgary, AB Canada T2P 5H1; Steve Marr, Manager, Keystone Pipelines & KXL, TransCanada Corporation, Bank of America Center, 700 Louisiana, Suite 700, Houston, TX 77002; Meera Kothari, P. Eng., 450 1st Street, S.W., Calgary, AB Canada T2P 5H1; David Diakow, Vice President, Commercial, Liquids Pipeline, 450 1st Street

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S.W., Calgary, AB Canada T2P 5H1; Jon Schmidt, Vice President, Environmental & Regulatory, exp Energy Services, Inc., 1300 Metropolitan Boulevard, Suite 200, Tallahassee, FL 32308; Heidi Tillquist, Senior Associate, Stantec Consulting Ltd., 2950 E. Harmony Rd., Suite 290, Fort Collins, CO 80528.

2. Prior to answering these interrogatories, have you made due and diligent search of all books, records, and papers of the Applicant with the view of eliciting all information available in this action?

ANSWER: Yes, to the extent reasonably practicable in attempting to respond to over 800 discovery requests within the time allowed.

3. Identify all oil and gas pipelines that TransCanada owns and/or operates in the United States and in Canada. Amended Permit Condition 1.

ANSWER: Please refer to TransCanada web site ([www.transcanada.com](http://www.transcanada.com)).

4. What is TransCanada's principal place of business?

ANSWER: Calgary, Alberta, Canada.

5. State all affiliates that have an ownership interest in the TransCanada Corporation.

ANSWER: TransCanada Corporation is the parent corporation; as such its affiliates do not hold an ownership interest.

6. Identify all other names that TransCanada may do business under, in the United States and Canada.

ANSWER: None.

7. Identify each of the applicable laws and regulations that apply to the construction of the Keystone XL Pipeline that are referred to in Amended Permit Condition 1 not including the laws listed in Amended Permit Condition 1.

OBJECTION AND RESPONSE: This request is vague, unclear, and cannot reasonably be interpreted. Without waiving the objection, applicable laws and regulations are discussed in the Department of State's Final Supplemental EIS, which is available at <http://keystonepipeline-xl.state.gov/finalseis/index.htm>.

8. Identify each state that TransCanada has applied for and received a permit from for the construction of Keystone XL Pipeline as referred to in Amended Permit Condition 2.

ANSWER: Montana, South Dakota, Nebraska.

9. Has TransCanada received any communications from any regulatory body or agency that may have jurisdiction over the construction, maintenance or operation of the Keystone XL Pipeline alleging that TransCanada has failed to comply with any applicable permits for the construction, operation or maintenance of the Keystone KXL Pipeline: Amended Permit Condition 2.

ANSWER: No. Keystone has not commenced the construction, operation, or maintenance of the Keystone XL Pipeline.

10. Has TransCanada received any communications from any regulatory body or

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agency that may have jurisdiction over the construction, maintenance or operation of any pipeline located in the United States alleging that TransCanada has failed to comply with any applicable permits for the construction, operation or maintenance of any pipeline located in the United States? Amended Permit Conditions 1 and 2.

OBJECTION: This request is not relevant, not likely to lead to the discovery of admissible evidence, and is overlybroad.

11. Has TransCanada received any communications from any regulatory body or agency that may have jurisdiction over the construction, maintenance or operation of any pipeline located in Canada alleging that TransCanada has failed to comply with any applicable permits for construction operation or maintenance of any pipeline located in Canada? Amended Permit Condition 2.

OBJECTION: This request is not relevant, not likely to lead to the discovery of admissible evidence, and is overlybroad.

12. What actions has TransCanada taken to comply with and implement any and all recommendations set forth in the Final Environmental Impact Statement from the United States Department of State regarding construction, operation or maintenance of the Keystone Pipeline? Amended Permit Condition 3.

ANSWER: Unless and until the Department issues a Record of Decision and a Presidential Permit, the recommendations in the Final EIS are not binding on Keystone.

13. Identify all permits that TransCanada has applied for within the State of South Dakota relating to the use of public water for construction, testing or drilling; for temporary discharges to waters of the state and temporary discharges of water from construction dewatering and hydrostatic testing referred to in Amended Permit Condition 1.

ANSWER: Keystone has submitted a Notice and Intent and Certificate of Application Form to Receive Coverage Under the General Permit for Temporary Discharges and a Temporary Water Use Permit.

14. Has TransCanada taken any action to transfer this permit to any other person? Amended Permit Condition 4.

ANSWER: No.

15. Has TransCanada obtained or applied for any permits in the State of South Dakota regarding railroad and road crossings from any agency or local government having jurisdiction to issue railroad and road crossing permits? Amended Permit Condition 2.

ANSWER: Two railroad crossing permits are being negotiated for the pipeline to cross under existing railroad rights-of-way. The South Dakota State Railroad application was filed November 23, 2012. The other is being negotiated with the Canadian Pacific Railway, which has been sold to the Genesee & Wyoming Railway. An agreement is pending.

16. Identify all actions undertaken and completed or attempted to complete that TransCanada and its affiliated entities committed to undertake and complete in its application, in its testimony and exhibits received in evidence at the hearing and in its responses to data requests received in evidence at the hearing on Public Utilities Commission Docket HP09-001. Amended Permit Condition 5.

ANSWER: See the quarterly and annual reports filed by Keystone in Docket No. HP 09-001.

17. Identify the most recent and accurate depiction of the Project route and facility locations as they currently exist as compared to the information provided in Exhibit TC-14. Amended Permit Condition 6.

ANSWER: Attached as Keystone 0470-0583 are maps showing changes to the route since the permit was granted.

18. Identify all route changes and the reasons for each change, since the issuance of the June 29, 2010 Amended Final Decision and Order. Amended Permit Condition 6.

ANSWER: Attached as Keystone 0470-0583 are maps showing changes to the route since Keystone's permit was granted.

19. Identify the dates, locations and names of person or persons, along with addresses, phone numbers, email addresses for each person responsible for conducting surveys, addressing property specific issues and civil survey information regarding Amended

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Permit Condition 6.

OBJECTION AND ANSWER: The identity of persons conducting civil surveys is not relevant or likely to lead to the discovery of admissible evidence. Without waiving the objection, American Burying Beetle Habitat Assessment was conducted by W. Wyatt Hoback, Department of Biology, University of Nebraska at Kearney; Biological Surveys (i.e., habitat, wetland delineations) were conducted by AECOM (Scot Patti was the principal investigator) and SCI (Scott Billing was the principal investigator); Phase I ESA Surveys were conducted by AECOM (Brian Bass was the principal investigator); Biological Surveys (i.e., threatened and endangered species, noxious weeds, reclamation) were conducted by Westech (John Beaver was the principal investigator); Cultural resources surveys were conducted by SWCA Environmental Consultants (principal investigator was Scott Phillips); the paleontological surveys were conducted by SWCA Environmental Consultants (principal investigator was Paul Murphey).

20. Identify all new aerial route maps that incorporate any adjustments made to the proposed project route. Amended Permit Condition 6.

ANSWER: Please refer to HP09-001 Open Docket Exhibit A for route maps and to the route variation maps attached as Keystone 0470-0583.

21. Provide the date of each communication and the name or names of person or persons responsible for providing each notification to the Commission, and all affected

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landowners, utilities and local governmental units regarding the requirements of

Amended Permit Condition 6.

ANSWER: In Keystone's opinion, there have been no material deviations made in the 2010 permitted route.

22. Has TransCanada identified a public liaison officer? Amended Permit Condition 6.

ANSWER: Yes. Sarah Metcalf, PO Box 904, Aberdeen, SD 57402, 1-888-375-1370, [smetcalf12@gmail.com](mailto:smetcalf12@gmail.com). Her appointment was approved by the PUC by order dated June 2, 2010, which is a matter of public record.

23. Does TransCanada consider the Rosebud Sioux Tribe to be a local government or local community within the vicinity of this Project? Amended Permit Condition 7.

ANSWER: No.

24. Does TransCanada consider the Rosebud Sioux Tribe to be a government that must be consulted with throughout the planning, construction, operation and maintenance of the project? Amended Permit Condition 7.

ANSWER: Keystone will provide contact information for the public liaison officer to the Tribe, as addressed in Amended Condition 7. Amended Condition 7 does not address "government consultation."

25. Has TransCanada made any modifications or changes to the Construction Mitigation and Reclamation Plan (CMR Plan)? Amended Permit Condition 13.

**OBJECTION AND ANSWER:** The current version of the CMR Plan is attached to Keystone's certification petition as Attachment A to Appendix C. Without waiving the objection, overall changes to the CMR Plan between the 2008 Rev1 version and the 2012 Rev4 version were made to clarify language, provide additional detail related to construction procedures, address agency comments, and incorporate lessons learned from previous pipeline construction, current right-of-way conditions and project requirements. The redline version of the CMR Plan Rev4 showing changes since the version considered in 2010 was provided in Attachment A to Appendix C of Keystone's September 2014 Recertification Petition to the Commission.

26. Has TransCanada incorporated environmental inspectors into the CMR Plan? Provide complete contact information for each environmental inspector. Amended Permit Condition 13.

**OBJECTION AND RESPONSE:** The identity of environmental inspectors is not relevant or likely to lead to the discovery of admissible evidence. Without waiving the objection, Section 2.2, Environmental Inspection of the CMR Plan Rev4 discusses the use of Environmental Inspectors during the construction of the Project. No Environmental Inspectors have been identified or hired, because the construction of the Project has not yet started.

27. Has TransCanada provided each land owner with an explanation regarding

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trenching and topsoil and subsoil rock removal, segregation and restoration method options for each landowners property that is consistent with the applicable Con/Rec Unit? Amended Permit Condition 16.

ANSWER: Landowners and a project representative complete a "Keystone Pipeline Project Landowner/Tenant Construction Restrictions Binding Agreement," which covers rock disposal, topsoil stripping, and restoration preferences. All agreements will be completed before construction begins, unless a landowner refuses to complete the agreement.

28. Has TransCanada implemented sediment control practices? Amended Permit Condition 20.

ANSWER: Keystone has not initiated construction of the Project. Therefore, Keystone has not implemented any sediment control practices to-date and will not until construction starts.

29. Has TransCanada developed best management practices to prevent heavily silt-laden trench water from reaching any wetland or water bodies? Amended Permit Condition 22 f.

ANSWER: Best management practices to prevent silt-laden trench water from reaching any wetland or waterbody are identified in the CMR Plan Rev4 in Section 4.7.1, Trench Dewatering/Well Points. This section includes the following text:

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“No heavily silt-laden trench water shall be allowed to enter a waterbody or wetland directly but shall instead be diverted through a well vegetated area, a geotextile filter bag, or a permeable berm (straw bale or Keystone approved equivalent).”

Additional sediment control best management practices are included in Sections 4.0, 6.0, and 7.0 of the CMR Plan Rev4 and in Appendix Z (Sections 4.0, 5.0, and 8.0 of the Department of State FSEIS (2014).

30. Has TransCanada developed policies that will permit TransCanada to comply with the requirements of Amended Permit Condition 23 a-f.

ANSWER: Yes, during the pre-construction planning period Keystone will develop and implement videotaping of road conditions prior to construction activities. Keystone, Contractor, and County Representatives will be present for evaluation and determination of road conditions.

Keystone will notify state and local governments and emergency responders to coordinate and implement road closures. All necessary permits authorizing crossing and construction use of county and township roads will be obtained.

31. Has TransCanada required that all of its shippers comply with its crude oil specifications in order to minimize the potential for internal corrosion? Amended Permit Condition 32.

ANSWER: No oil has been shipped as the pipeline has not been constructed.

Once transportation of oil commences, shippers are required to comply with the terms of Keystone's FERC tariff.

32. Have all of TransCanada's shippers agreed to comply with TransCanada's crude oil specifications? Amended Permit Condition 32.

ANSWER: Shippers are required to comply with the terms of a pipeline's FERC tariff.

33. Have any of TransCanada's shippers not agreed to comply with TransCanada's crude oil specifications? Amended Permit Condition 32.

ANSWER: Shippers are required to comply with the terms of a pipeline's FERC tariff.

34. Identify every person, along with the contact information for each, who has agreed to supply any type of product to be transported through the project. Amended Permit Condition 32.

OBJECTION: The identity of Keystone's shippers and the terms of their contracts have substantial commercial and proprietary value, are subject to substantial efforts by Keystone to protect them from actual and potential competitors, and are required to be maintained on a confidential basis pursuant to the terms of the contracts between Keystone and its shippers and Section 15(13) of the Interstate Commerce Act.

35. Has TransCanada filed any documents with the Public Utilities Commission that it

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considers to be "confidential" with respect to ARSD 20:10:01:41. If so, identify each filing consistent with appropriate Administrative Rules of South Dakota. Amended Permit Condition 36.

ANSWER: Not at this time in this docket.

36. Does TransCanada operate any other pipelines in the United States or Canada that have similar requirements of Amended Permit Condition 37?

ANSWER: All of TransCanada's pipelines meet this requirement.

37. Identify each pipeline in the United States and Canada that has requirements which are similar to the requirements of Amended Permit Condition 37.

ANSWER: All of TransCanada's pipelines meet this requirement.

38. Has TransCanada ever been found to be in non-compliance with any other permits, from any state regarding the Keystone KXL Pipeline, that have similar requirements as the requirements of Amended Permit Condition 37.

ANSWER: No.

39. Identify the dates and manner of all communications sent by TransCanada to the President of the Rosebud Sioux Tribe regarding the Project. Amended Permit Condition 7.

ANSWER: Lou Thompson and Robert Hopkins, Keystone Tribal Liaisons, and other Keystone personnel, met with Rosebud Chairman Rodney Bordeaux at various

times from 2009-2012 on matters relating to the Project. Meeting dates are memorialized in the Rosebud document production. See Keystone documents 1121-1169.

40. Does TransCanada have a Native American Relations policy? Amended Permit Condition 7.

ANSWER: Yes.

41. Does TransCanada believe that it has followed its Native American Relations Policy with respect to its applicability to the Rosebud Sioux Tribe? Amended Permit Condition 7.

ANSWER: Yes.

42. Does TransCanada consider the Federal Bureau of Investigations a law enforcement agency that they must communicate with regarding the Project? Amended Permit Condition 7.

ANSWER: TransCanada may communicate with the FBI if circumstances warrant.

43. If TransCanada does not consider the Federal Bureau of Investigations a law enforcement agency that they must communicate with regarding the Project identify the legal basis for asserting such a position. Amended Permit Condition 7.

ANSWER: TransCanada may communicate with the FBI if circumstances

warrant.

44. Does TransCanada consider the Rosebud Sioux Tribe Law Enforcement Services a law enforcement agency that they must communicate with regarding the project?

Amended Permit Condition 7.

ANSWER: TransCanada may communicate with the Rosebud Sioux Tribe Law Enforcement Services if circumstances warrant.

45. If TransCanada does not consider the Rosebud Sioux Tribe Law Enforcement Services a law enforcement agency that they must communicate with regarding the Project identify the legal basis for asserting such a position. Amended Permit Condition 7.

ANSWER: TransCanada may communicate with the Rosebud Sioux Tribe Law Enforcement Services if circumstances warrant.

46. Identify all protection and mitigation efforts that have been identified by the US Fish and Wildlife Service and the South Dakota Game Fish and Parks. Amended Permit Condition 1, 2 and 3.

ANSWER: All of the protection measures and mitigation measures efforts that have been identified by the US Fish and Wildlife Service and the South Dakota Game Fish and Parks are found in Sections 7.0, 8.0, and 9.0 of Appendix X of the Department of State FSEIS (2014); Sections 4.6, 4.7, and 4.8 of the Department of State FSEIS (2014); and the May 2013 Biological Opinion issued by USFWS (Appendix H of the

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Department of State FSEIS (2014)).

47. Has TransCanada kept a record of all drain tile system information throughout the planning and pre-construction phases of the Project? Amended Permit Condition 42.

ANSWER: Land agents work with landowners to complete a Construction Binding Agreement which identifies any drain tile systems. In South Dakota, no drain tile systems have been identified on the Keystone XL project.

48. Has TransCanada ever applied for any waivers for permit conditions with the U.S. Department of Transportation Pipeline and Hazardous Materials Safety Administration for any pipeline that it owns or operates in the United States? Amended Permit Condition 2.

OBJECTION AND RESPONSE: To the extent that this request seeks information unrelated to oil pipelines, it is not relevant or likely to lead to the discovery of admissible evidence. Without waiving the objection, TransCanada applied for a Special Permit to operate at 80% SMYS for Keystone Mainline, Cushing Extension, and KXL. The Special Permit was issued for Keystone Mainline and Cushing Extension in 2007 Docket Number PHMSA-2006-26617. TransCanada withdrew the Special Permit request for KXL.

49. If TransCanada has applied for any waiver from the U.S. Department of Transportation Pipeline and Hazardous Materials Safety Administration have any of the

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requests been denied? If any request has been denied, identify the appropriate pipeline and state the reason or reasons for each denial. Amended Permit Condition 2.

OBJECTION AND RESPONSE: To the extent that this request seeks information unrelated to oil pipelines, it is not relevant or likely to lead to the discovery of admissible evidence. Without waiving the objection, no.

50. Identify all applications for waivers for permit conditions that were filed with the U.S. Department of Transportation Pipeline and Hazardous Materials Safety Administration regarding the construction, operation or maintenance of Pipeline. Amended Permit Condition 1 and 2.

OBJECTION AND RESPONSE: To the extent that this request seeks information unrelated to oil pipelines, it is not relevant or likely to lead to the discovery of admissible evidence. Without waiving the objection, see answer to interrogatory no. 48.

51. Identify all sources of oil that will be transported on the proposed KXL pipeline. Appendix C # 14.

OBJECTION: This interrogatory is vague and unclear as to "all sources of oil." Without waiving the objection, crude oil for Keystone XL will primarily be sourced from the Western Canadian Sedimentary Basin and the Williston Basin. Sources could also include many other producing regions in North America for transportation services originating at Cushing, OK.

52. Identify all companies that have committed to use the KXL pipeline to ship oil.

Identify the country where each company that has committed to provide oil or gas to the pipeline is incorporated. Appendix C # 14.

OBJECTION: The identity of Keystone's shippers and the terms of their contracts have substantial commercial and proprietary value, are subject to substantial efforts by Keystone to protect them from actual and potential competitors, and are required to be maintained on a confidential basis pursuant to the terms of the contracts between Keystone and its shippers and Section 15(13) of the Interstate Commerce Act.

53. Has TransCanada in its operations of any pipeline in the United States, received communications from the U.S. Department of Transportation Pipeline and Hazardous Materials Safety Administration related to any of TransCanada's permits to operate a pipeline in the United States? Amended Permit Condition 1.

OBJECTION: This interrogatory is overlybroad, unduly burdensome, and seeks information that is not relevant and not likely to lead to the discovery of admissible evidence under SDCL 15-6-26(b). It is not limited in time and extends to all of TransCanada's pipeline operations of whatever kind in the United States.

54. Identify the date and substance of each communication from the U.S. Department of Transportation Pipeline and Hazardous Materials Safety Administration . Amended Permit Conditions 1 and 2.

OBJECTION: This request is overlybroad and unduly burdensome and is not reasonably calculated to lead to the discovery of admissible evidence under SDCL 15-6-26(b). It is not limited in time and extends to all of TransCanada's pipeline operations of whatever kind in the United States.

55. Provide copies of all safety reports submitted to any agencies with jurisdiction over the operation of the Southern Leg of the Keystone XL pipeline project. Amended Permit Conditions 1 and 2.

OBJECTION AND ANSWER: The U.S. Department of Transportation, Pipeline and Hazardous Material Safety Administration is the governing agency that has federal jurisdiction over the operations of the Keystone XL pipeline. This issue is therefore beyond the scope of this proceeding. Without waiving the objection, a spreadsheet showing leaks and spills on the Keystone XL Pipeline is attached as Keystone 0774-0784.

56. Identify all contractors that TransCanada will use to transport materials that will be used in the construction, operation or maintenance of the Keystone Pipeline. Amended Permit Condition 1.

ANSWER: Keystone anticipates the use of heavy equipment haulers to transport pipe, valves, fittings and other equipment required for the construction of the Keystone Project. There will also be a need for local transportation services for haulage of

ancillary materials and supplies required by both Keystone and its contractors and subcontractors. Keystone currently has no contractors retained to undertake trucking and hauling requirements.

57. Identify all contractors that TransCanada will use in the construction operation or maintenance of the Keystone Pipeline. Amended Permit Condition 1.

ANSWER: Keystone currently has no contractors in place to undertake construction, operation, or maintenance of the Keystone XL Pipeline.

58. Do you acknowledge that Appendix C from TransCanada's Petition for Certification identifies 30 conditions that have changed from the June 29, 2010 Order? If not, identify the number of each condition from Appendix C and state the legal basis that your denial is based on for each. Appendix C.

OBJECTION: This request is argumentative and not reasonably calculated to lead to the discovery of admissible evidence. The updated information contained in Appendix C speaks for itself.

59. Identify each contractor that TransCanada has hired to construct other pipelines in the United States. Amended Permit Condition 1.

OBJECTION: This request is overlybroad and unduly burdensome and is not reasonably calculated to lead to the discovery of admissible evidence under SDCL 15-6-26(b). It is unlimited in time and extends to all of TransCanada's pipeline

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operations of whatever land in the United States.

60. Have any contractors hired by TransCanada to construct any pipeline owned or operated by TransCanada or any of its affiliates received any communication from any agency or regulatory body having jurisdiction over each pipeline regarding alleged safety concerns or safety violations regarding the construction, maintenance or operation of any pipeline in the United States. Amended Permit Condition 1.

OBJECTION: This request is overlybroad and unduly burdensome and is not reasonably calculated to lead to the discovery of admissible evidence under SDCL 15-6-26(b). It also seeks information that is not in Keystone's custody or control and is not maintained by Keystone in the ordinary course of business.

61. Identify each contractor that TransCanada has hired to construct other pipelines in Canada. Amended Permit Condition 1.

OBJECTION: This request is overlybroad and unduly burdensome and is not reasonably calculated to lead to the discovery of admissible evidence under SDCL 15-6-26(b). It is not limited in time and extends to all of TransCanada's pipeline operations of whatever kind in Canada.

62. Have any contractors hired by TransCanada to construct any pipeline owned or operated by TransCanada or any of its affiliates received any communication from any agency or regulatory body having jurisdiction over each pipeline regarding alleged safety

concerns or safety violations regarding the construction, maintenance or operation of any pipeline in Canada. Amended Permit Condition 1.

OBJECTION: This request is overlybroad and unduly burdensome and is not reasonably calculated to lead to the discovery of admissible evidence under SDCL 15-6-26(b). It also seeks information that is not in Keystone's custody or control and is not maintained by Keystone in the ordinary course of business.

63. What role does TransCanada or any of its affiliates play in scheduling local public informational meetings and hiring security for the meetings? Amended Permit Condition 7.

OBJECTION: This request is vague and unclear. It also seeks information that is not relevant and not reasonably calculated to lead to the discovery of admissible evidence under SDCL 15-6-26(b). Amended Condition 7 does not address "local public informational meetings."

64. Is TransCanada or any of its affiliates aware of the social and law enforcement concerns associated with "man-camps" that will be established to facilitate the construction, operation or maintenance of the Keystone Pipeline? Amended Permit Condition 7.

ANSWER: TransCanada is aware of numerous socioeconomic and law enforcement concerns associated with the "man-camps". These impacts are addressed in

the following sections of the FSEIS: 4.10 Socioeconomics; 4.10.1 Introduction; 4.10.3 Impacts; 4.10.3.1 Construction (Population, Housing, Local Economic Activity, Public Services, Tax Revenues, Traffic and Transportation).

In addition, TransCanada is committed to ongoing consultation with law enforcement and has been advised of their concerns with respect to workforce camps. TransCanada will consider augmenting local law enforcement staffing shortages caused by the project. Policies and procedures have been developed to address law enforcement concerns and stakeholder engagement will continue to address future concerns.

65. Does TransCanada or any of its affiliates recognize that they have any obligations to obtain the free, prior informed consent under the United Nations Declaration of the Rights of Indigenous People regarding the construction, maintenance or operation of the Keystone Pipeline? Amended Permit Condition 1.

ANSWER: Keystone recognizes that the United Nations Declaration of the Right of Indigenous People was adopted by the United Nations on September 13, 2007. Canada and the United States voted against the adoption of the declaration. The declaration is not a legally binding instrument under international law or the law of the United States and, accordingly, Keystone is not legally bound by it.

66. What steps has TransCanada or any of its affiliates taken to ensure that all lands that the Rosebud Sioux Tribe have an interest in have had proper cultural and historic

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surveys completed to the satisfaction of the Rosebud Sioux Tribe? Finding of Fact 110.

ANSWER: Keystone believes that the pipeline right-of-way as currently permitted does not pass through Indian Country or cross any land owned or held in trust for the Rosebud Sioux Tribe.

67. Does TransCanada or any of its affiliates recognize that if approved and constructed, the Keystone Pipeline will travel through the identified Indian Country territory from the Fort Laramie Treaty of 1851 and 1868? Finding of Fact 110.

ANSWER: Keystone recognizes that the KXL Pipeline route passes through lands that were considered in the Fort Laramie Treaties of 1851 and 1868.

68. Does TransCanada recognize that the Winters Doctrine of reserved tribal water rights applies to any permit application to use water for the construction, operation or maintenance of the Keystone Pipeline project? Amended Permit Condition 1.

ANSWER: Keystone recognizes the so-called Winters Doctrine arising from *Winters v. The United States*, 207 U.S. 564 (1908) and its progeny. Keystone does not believe that the Rosebud Sioux Tribe's Winters Doctrine water rights, or the Winters Doctrine water rights of any other South Dakota resident tribe, are affected by Keystone's use of water for construction, operation, or maintenance.

69. What steps has TransCanada or any of its affiliates taken to insure that tribal water rights under the Winters Doctrine will be protected? Amended Permit Condition 1.

ANSWER: Keystone does not believe that any South Dakota resident tribe's Winters Doctrine water rights are affected by the use of the water for construction, operation, or maintenance of the Keystone Pipeline.

70. Are there any land areas or waterways where the pipeline will pass through or nearby subject to any designation under the Wilderness Act of 1964? Amended Permit Condition 1.

OBJECTION AND RESPONSE: To the extent that it seeks information outside South Dakota, this request is not relevant or likely to lead to the discovery of admissible evidence. Without waiving the objection, there are no land areas or waterways that the Project route in South Dakota will pass through that would be subject to any designation under the Wilderness Act of 1964.

71.a. Are any waterways situated on or near the Pipeline route subject to designation under the Wild and Scenic River Act of 1968? Amended Permit Condition 1.

OBJECTION AND RESPONSE: To the extent that it seeks information outside South Dakota, this request is not relevant or likely to lead to the discovery of admissible evidence. Without waiving the objection, the Project route does not cross any waterways that are subject to designation under the Wild and Scenic River Act of 1968. There are no waterways that are subject to designation under the Wild and Scenic River Act of 1968 near the Project route in South Dakota. An evaluation of Wild and Scenic Rivers as per

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related to the Project is found on page 4.3-24 of the Department of State FSEIS (2014).

71.b. Are there any land areas along or near the Keystone Pipeline route that have been designated as critical habitat under the Endangered Species Act? If so identify each of the land areas. Amended Permit Condition 1.

OBJECTION AND RESPONSE: To the extent that it seeks information outside South Dakota, this request is not relevant or likely to lead to the discovery of admissible evidence. Without waiving the objection, there are no lands along or near the Project route in South Dakota that are designated as critical habitat under the Endangered Species Act. Endangered species are discussed in Section 4.8 of the Department of State FSEIS (2014). The following federally-listed threatened or endangered species have the potential to occur along Project route in South Dakota: interior least tern; piping plover; rufa red knot; whooping crane; and the American burying beetle. Section 4.8.3 of the Department of State FSEIS (2014) and Appendix H, Biological Opinion in the Department of State FSEIS (2014) discusses the potential occurrence of these federally-listed threatened and endangered species along the Project route in South Dakota and Sections 4.8.3 and 4.8.4 and Appendix H of the Department of State FSEIS (2014) discusses the potential impacts and conservation measures the Project will implement to protect listed species.

71.c. Are there any land areas along or nearby the Keystone Pipeline route that have any

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Endangered Species located in that area? Amended Permit Condition 1.

OBJECTION AND RESPONSE: To the extent that it seeks information outside South Dakota, this request is not relevant or likely to lead to the discovery of admissible evidence. Without waiving the objection, there are no lands along or near the Project route in South Dakota that are designated as critical habitat under the Endangered Species Act. Endangered species are discussed in Section 4.8 of the Department of State FSEIS (2014). The following federally-listed threatened or endangered species have the potential to occur along Project route in South Dakota: interior least tern; piping plover; rufa red knot; whooping crane; and the American burying beetle. Section 4.8.3 of the Department of State FSEIS (2014) and Appendix H, Biological Opinion in the Department of State FSEIS (2014) discusses the potential occurrence of these federally-listed threatened and endangered species along the Project route in South Dakota and Sections 4.8.3 and 4.8.4 and Appendix H of the Department of State FSEIS (2014) discusses the potential impacts and conservation measures the Project will implement to protect listed species.

72. Has TransCanada obtained a National Pollutant Discharge Elimination System (NPDES) permit as required by the Clean Water Act in each state where the Keystone Pipeline will be constructed, operated or maintained? Amended Permit Condition 1.

ANSWER: In South Dakota, Keystone has received a General Permit for

Temporary Discharge Activities on April 11, 2013, from the South Dakota Department of Environment and Natural Resources. Other permits, as required, will be filed closer to the time period of construction.

73. Besides the changes identified in Appendix C of TransCanada's Petition for Certification, identify all other conditions that have changed since the Commission issued the Final Amended Order and Permit on June 29, 2010. Amended Permit Condition 1.

ANSWER: None.

74. State the name, current address, and telephone number of every fact witness that Keystone intends to call to offer testimony at the Commission's evidentiary hearing, currently scheduled for May 2015.

ANSWER: Keystone will offer prefiled direct testimony from the following persons, each of whom will testify to the changes identified in Keystone's tracking table for that person's area of expertise:

- (1) Corey Goulet, President, Keystone Projects, 450 1st Street S.W., Calgary, AB Canada T2P 5H1; (403) 920-2546; Project purpose, Overall description; Construction schedule; Operating parameters; Overall design; Cost; Tax Revenues
- (2) Steve Marr, Manager, Keystone Pipelines & KXL, TransCanada Corporation, Bank of America Center, 700 Louisiana, Suite 700, Houston, TX 77002; (832) 320-5916; same; CMR Plan, Con/Rec Units, HDD's
- (3) Meera Kothari, P. Eng., 450 1st Street S.W., Calgary, AB Canada T2P 5H1; (832) 320-5190; same; Design and Construction; PHMSA compliance
- (4) David Diakow, Vice President, Commercial, Liquids Pipeline, 450 1st Street S.W., Calgary, AB Canada T2P 5H1; (403) 920-6019; Demand for the Facility
- (5) Jon Schmidt, Vice President, Environmental & Regulatory, exp Energy Services,

Inc., 1300 Metropolitan Boulevard, Suite 200, Tallahassee, FL 32308; (850) 385-5441; Environmental Issues; CMR Plan, Con/Rec Units, HDD's

(6) Heidi Tillquist, Senior Associate, Stantec Consulting Ltd., 2950 E. Harmony Rd., Suite 290, Fort Collins, CO 80528; (970) 449-8609; High Consequence Areas, Spill Calculations

75. State the name, current address, employer name and/or organization(s) with which he or she is associated in any professional capacity, and telephone number of each expert witness pursuant to SDCL Ch. 19-15 that Keystone intends to call at the Commission's evidentiary hearing, currently scheduled for May 2015.

In addition, for each expert please provide:

- a. The subject matter on which the expert will testify;
- b. The substance of each opinion to which the expert is expected to testify;
- c. The facts on which the expert bases his or her opinion;
- d. The expert's profession or occupation, educational background, specialized training, and employment history relevant to the expert's proposed testimony;
- e. The expert's previous publications within the preceding 10 years; and
- f. All other cases or proceedings in which the witness has testified as an expert within the preceding four years.

ANSWER: Keystone does not intend to call any retained expert witnesses.

Keystone will provide a resume for each of its fact witnesses.

76. What steps, if any, has Keystone or any of its affiliates taken to ensure that the cultural and historic resources of the Rosebud Sioux Tribe are protected? Amended Permit Condition 44.

ANSWER: Keystone has taken all steps required by state and federal law to

ensure that the cultural and historic resources affected by the construction of the pipeline within the permitted right-of-way are protected.

77. Pursuant to Condition Forty-Four, has Keystone made any new cultural and/or historic surveys along the route of the Project since its original permit was granted?

Amended Permit Condition 44.

ANSWER: Yes, all cultural resources survey reports are listed in Section 3.11 of the Department of State FSEIS (2014), with results of the South Dakota surveys detailed in Table 3.11-3.

78. According to Keystone's original application, Keystone began cultural and historic surveys in May 2008 and at that time it had found several pre-historic stone circles were uncovered. Please provide a detailed description of these sites, including location.

ANSWER: These sites are addressed during the course of government to government consultation with the DOS. Site locations are confidential and cannot be disclosed outside of the consultation process.

79. Describe what effect the TransCanada Energy East Pipeline will have on the need for the Keystone KXL Pipeline Project.

OBJECTION AND RESPONSE: This request seeks information that is beyond the scope of the PUC's jurisdiction and Keystone's burden of proof under SDCL § 49-41B-27. It is within the purview of the United States Department of State to

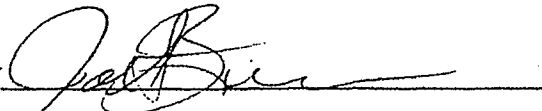
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determine whether the proposed project is in the national interest, under the applicable Presidential Executive Order. Without waiving the objection, TransCanada has long-term binding shipper agreements in support of both projects.



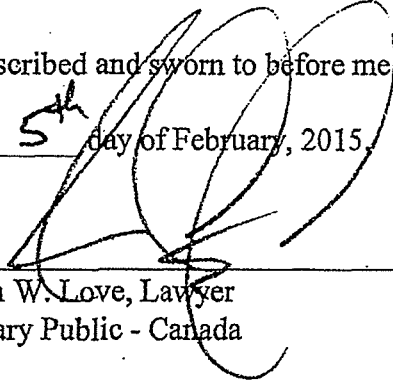
Dated this 5<sup>th</sup> day of February, 2015.

TRANSCANADA KEYSTONE PIPELINE, LP  
by its agent, TC Oil Pipeline Operations, Inc.

By 

Its Director, Authorized Signatory

Subscribed and sworn to before me  
this 5<sup>th</sup> day of February, 2015.

  
\_\_\_\_\_  
John W. Love, Lawyer  
Notary Public - Canada

## REQUEST FOR PRODUCTION OF DOCUMENTS

1. If the answer to Interrogatory No. 22 is in the affirmative, produce all documents related to and documenting Keystone's public liaison officer's immediate access to Keystone's on site project manager, Keystone's executive project manager and to each contractor's on site managers referenced to in Amended Permit Condition 7.

OBJECTION AND ANSWER: The request for "all documents" related to the public liaison officer's access to Keystone personnel is vague, overlybroad, unduly burdensome, not relevant, and not reasonably calculated to lead to the discovery of admissible evidence. Without waiving the objection, the liaison has contact information for all project team members, and can and does make contact at any time. Contractors for construction have not yet been selected.

2. Produce documentation that assures that Keystone's public liaison officer is available at all times to the PUC Staff as required by Amended Permit Condition 7.

ANSWER: The liaison's information is found on the SDPUC's website at <https://puc.sd.gov/dockets/hydrocarbonpipeline/2009/publicliaisonreports.aspx>.

Keystone has no documents responsive to this request.

3. Produce documentation of every concern and complaint that was communicated to the Staff and the public liaison officer from landowners or others as referenced in Amended Permit Condition 7.

**OBJECTION:** This request is overlybroad, unduly burdensome, not relevant, and not likely to lead to the discovery of admissible evidence. The liaison files quarterly and annual reports addressing her contacts with landowners and other members of the public.

4. Produce documentation that TransCanada has provided contact information for the public liaison to all landowners crossed by the project. Amended Permit Condition 7.

**ANSWER:** A letter dated December 22, 2010, from Robert E. Jones was sent to all landowners to provide information about Sarah Metcalf. A copy of the letter is attached as Keystone 0642.

5. Produce documentation that TransCanada has provided contact information for the public liaison to all law enforcement agencies and local governments within the vicinity of the project. Amended Permit Condition 7.

**ANSWER:** Notification to law enforcement agencies and local governments in the vicinity of the Project was completed in the first quarter of 2011 in conjunction with notice required by other conditions. The liaison continues to contact affected counties, townships and other governmental entities as the permit process takes place.

6. Produce documentation that TransCanada has provided contact information for the public liaison to the Rosebud Sioux Tribe Law Enforcement Services. Amended Permit Condition 7.

ANSWER: Notification was not made, since the project does not cross Rosebud Sioux Tribe lands, and Keystone does not consider the Rosebud Sioux tribe a "local government."

7. Produce documentation that TransCanada has provided contact information for the public liaison to the President of the Rosebud Sioux Tribe as well as the Rosebud Sioux Tribal Council. Amended Permit Condition 7.

ANSWER: Notification was not made, since the project does not cross Rosebud Sioux Tribe lands, and Keystone does not consider the Rosebud Sioux tribe a "local government."

8. Produce all changes made to or contemplated to be made to the Construction Mitigation and Reclamation Plan (CMR Plan). Amended Permit Condition 13.

ANSWER: The current version of the CMR Plan is attached to Keystone's certification petition as Attachment A to Appendix C.

9. Produce all documentation showing that TransCanada filed all changes to the CMR Plan to the Commission. Amended Permit Condition 13.

ANSWER: The current version of the CMR Plan is attached to Keystone's certification petition as Attachment A to Appendix C.

10. Provide the qualifications and work history for each environmental inspector that TransCanada has incorporated into the CMR Plan. Amended Permit Condition 13.

OBJECTION AND ANSWER: This request is overlybroad, unduly burdensome, not relevant, and not likely to lead to the discovery of admissible evidence. Without waiving the objection, no environmental inspectors have been identified or hired, because the construction of the Project has not yet started.

11. Provide copies of each communication to all landowners that contains an explanation regarding trenching and topsoil and subsoil rock removal, segregation and restoration method options for each landowners property that is consistent with the applicable Con/Rec Unit? Amended Permit Condition 16.

ANSWER: A form Keystone Pipeline Project Landowner/Tenant Construction Restrictions Binding Agreement is attached as Keystone 1116-1118.

12. Provide maps that document the location of private and municipal wells along with proposed fuel storage facilities in the Project area. Amended Permit Condition 18.

OBJECTION AND ANSWER: This request is overlybroad, unduly burdensome, not relevant, and not likely to lead to the discovery of admissible evidence. In addition, it seeks documents not within Keystone's custody or control. Without waiving the objection, maps are not available for the locations of fuel storage facilities. The fuel storage facility locations will be determined at the time of construction. Refer to FSEIS 2.1.5.3 Fuel Transfer Stations. Wells will be identified prior to the fuel storage facility final locations and will adhere to HP09-001 Condition 18.

13. Provide all documents that formalize TransCanada's sediment control practices.

Amended Permit Condition 20.

ANSWER: The CMR Plan Rev4 and the Department of State FSEIS (2014).

14. Provide the frac-out plans TransCanada developed in compliance with Amended Permit Condition 21.

ANSWER: Keystone currently has no contractors retained to undertake construction. When Keystone employs a pipeline contractor, that contractor will develop the frac-out plan subject to Keystone's approval.

15. Provide all documents relating to TransCanada's compliance with all provisions of the federal Clean Water Act. Amended Permit Condition 22.

OBJECTION AND ANSWER: This request is vague, overlybroad, and unduly burdensome. Without waiving the objection, the Project has not started construction; therefore, Keystone has not initiated any activity that requires compliance with the federal Clean Water Act.

16. Provide copies of TransCanada's best management practices relating to the prevention of heavily silt-laden trench water from reaching wetland or water bodies.

Amended Permit Condition 22 f.

ANSWER: Appendix Z, Section 4.0 of the Department of State FSEIS (2014); the Project's CMR Plan Rev 4.

17. Provide copies of TransCanada's policies that will permit TransCanada to comply with Amended Permit Condition 22 a-f.

ANSWER: The following are Keystone's policies that will permit Keystone to comply with Amended Permit Condition 22 a-f.

22a. Appendix Z, Section 5.0 of the Department of State FSEIS (2014)

22b. Section 4.4.4 of the Department of State FSEIS (2014)

22c. Appendix Z, Section 4.0 of the Department of State FSEIS (2014); The Project's CMR Plan Rev4

22d. Appendix Z, Section 4.0 of the Department of State FSEIS (2014); The Project's CMR Plan Rev4

22e. Section 4.4.4 of the Department of State FSEIS (2014)

22f. Appendix Z, Section 4.0 of the Department of State FSEIS (2014); The Project's CMR Plan Rev4

18. Provide documentation regarding TransCanada's compliance with reclamation and clean up-efforts from all other construction activities related to any other pipeline that TransCanada owns or operates in the United States and Canada. Amended Permit Condition 26.

OBJECTION: This request is overlybroad and unduly burdensome and is not reasonably calculated to lead to the discovery of admissible evidence under SDCL

15-6-26(b). It is unlimited in time and extends to all of TransCanada's operations in the United States and Canada.

19. Provide copies of TransCanada's pipeline safety records for all other pipelines that TransCanada owns or operates in the United States and Canada.

OBJECTION: This request is overlybroad and unduly burdensome and is not reasonably calculated to lead to the discovery of admissible evidence under SDCL

15-6-26(b). It is unlimited in time and extends to all of TransCanada's operations in the United States and Canada.

20. Provide copies of all documentation concerning the requirement that all of TransCanada's shippers comply with its crude oil specifications. Amended Permit Condition 32.

OBJECTION: The identity of Keystone's shippers and the terms of their contracts have substantial commercial and proprietary value, are subject to substantial efforts by Keystone to protect them from actual and potential competitors, and are required to be maintained on a confidential basis pursuant to the terms of the contracts between Keystone and its shippers. *See* Section 15(13) of the Interstate Commerce Act.

21. Provide the most recent Integrity Management and Emergency Response Plan. Amended Permit Condition 35.

ANSWER: This request seeks information that is beyond the scope of the PUC's



jurisdiction and Keystone's burden under SDCL § 49-41B-27. This request also seeks information addressing an issue that is governed by federal law and is within the exclusive province of PHMSA. The PUC's jurisdiction over the emergency response plan and integrity management plan is preempted by federal law, which has exclusive jurisdiction over issues of pipeline safety. See 49 C.F.R. Part 194; 49 U.S.C. § 60104(c). This request further seeks information that is confidential and proprietary. See Amended Final Order, HP 09-001, Condition ¶ 36. Public disclosure of the emergency response plan and integrity management plan would commercially disadvantage Keystone. In addition, Keystone is not required to submit its Emergency Response Plan and Integrity Management Plan to PHMSA until sometime close to when the Keystone Pipeline is placed into operation. Keystone's Emergency Response Plan is addressed in The Final Supplemental Environmental Impact Statement at <http://keystonepipeline-xl.state.gov/documents/organization/221189.pdf>.

22. Provide documentation of any allegations from any jurisdiction in the United States or Canada that TransCanada was alleged to be in noncompliance with the operation, construction or maintenance other pipelines that have similar requirements as the requirements of Amended Permit Condition 37.

OBJECTION: This request is overlybroad, unduly burdensome, and not calculated to lead to the discovery of admissible evidence. It is unlimited in time and

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place, and therefore also exceeds the jurisdiction of the Commission.

23. Provide copies of documentation to include meetings of minutes, contact with all tribal chairman of federally recognized Indian Tribes located in South Dakota, notices to area tribes, that would demonstrate compliance with SDCL 49-41B-6. Amended Permit Condition 1.

ANSWER: *See* Keystone documents 1121-1340 attached.

24. Provide copies of all documentation sent to the President of the Rosebud Sioux Tribe regarding TransCanada's compliance with the National Environmental Policy Act. Amended Permit Conditions 1 and 3.

ANSWER: *See* Keystone documents 1121-1181, attached to response no. 23 above.

25. Provide copies of all documentation sent to the Rosebud Sioux Tribal Council regarding TransCanada's compliance with the National Environmental Policy Act. Amended Permit Conditions 1 and 3.

ANSWER: *See* Keystone documents 1121-1181, attached to response no. 23 above.

26. Provide copies of all documentation sent to the President of the Rosebud Sioux Tribal Council regarding TransCanada's compliance with the National Historic Preservation Act. Amended Permit Conditions 1 and 3.

ANSWER: *See* Keystone documents 1121-1181, attached to response no. 23 above.

27. Provide copies of all documentation sent to the Rosebud Sioux Tribe's Tribal Historic Preservation Office regarding TransCanada's compliance with the National Historic Preservation Act. Amended Permit Conditions 1 and 3.

ANSWER: *See* Keystone documents 1121-1181, attached to response no. 23 above.

28. Provide copies of all documentation sent to the President of the Rosebud Sioux Tribe regarding TransCanada's compliance with the Native American Graves and Repatriation Act. Amended Permit Conditions 1 and 3.

ANSWER: *See* Keystone documents 1121-1181, attached to response no. 23 above.

29. Provide copies of all documentation sent to the Rosebud Sioux Tribal Council that demonstrates TransCanada's compliance with the Native American Graves and Repatriation Act. Amended Permit Conditions 1 and 3.

ANSWER: *See* Keystone documents 1121-1181, attached to response no. 23 above.

30. Provide copies of all communications sent by TransCanada to the President of the Rosebud Sioux Tribe and the Rosebud Sioux Tribal Council regarding the Project.

Amended Permit Conditions 1 and 3.

ANSWER: See Keystone documents 1121-1181, attached to response no. 23 above.

31. Provide copies of all documentation that demonstrates that Keystone has identified all greater prairie chicken and greater sage and sharp tailed grouse leks within the buffer distances from the construction right of way set forth for each species in the Final Environmental Impact Statement and the Biological Assessment prepared by the Department of State and the US Fish and Wildlife Services. Amended Permit Condition 41.

ANSWER: The final Biological Assessment prepared by the USFWS and DOS provides a listing of all the studies and surveys that were conducted to comply with the USFWS requirements in addressing all listed species. These can be found at Section 3.8.3 of the FSEIS and Section 3.1 of the Biological Assessment (Appendix H2 of the FSEIS). In addition, the South Dakota Game, Fish, and Parks has also reviewed and agreed to the findings of the Biological Assessment as required by recent USFWS guidance on aligning species assessments with state resource agencies.

32. Provide copies of all documentation that demonstrates TransCanada's compliance with the requirements of Amended Permit Condition 42.

ANSWER: In South Dakota, no drain tile systems have been identified on the

Keystone XL project.

33. Provide copies of all documents that demonstrate that TransCanada has complied with the requirements of Amended Permit Condition 44 a-e.

ANSWER: Paleontological fieldwork methodology, literature search information, and results can be found in Sections 3.1.2.2 and 3.1.2.3 of the Department of State FSEIS (2014). A list of reports detailing the results of all pre-construction paleontological field surveys can be found in Table 3.1-4 of the Department of State FSEIS (2014). The paleontological mitigation report is titled: Second Confidential Draft – Paleontological Resources Mitigation Plan: Keystone XL Pipeline Project, South Dakota. The Plan is not provided because it is confidential/privileged information.

34. Provide copies of all documentation from the U.S. Department of Transportation Pipeline and Hazardous Materials Safety Administration regarding denied waiver from any Pipeline and Hazardous Materials Safety Administration pipeline safety regulations. Amended Permit Condition 1 and 2.

OBJECTION: This request is overlybroad, unduly burdensome, not relevant, and not likely to lead to the discovery of admissible evidence.

35. If the answer to Interrogatory No. 25 is in the affirmative; provide all documents that demonstrate that TransCanada has made changes to the CMR Plan and properly submitted them to the Commission. Amended Permit Condition 13.

OBJECTION: The current version of the CMR Plan is attached to Keystone's certification petition as Attachment A to Appendix C.

36. Provide all documents relating to each environmental inspector that TransCanada has incorporated into the CMR Plan as referred to by Interrogatory No. 26. Amended Permit Condition 13.

OBJECTION AND ANSWER: The identity of environmental inspectors is not relevant or likely to lead to the discovery of admissible evidence. Without waiving the objection, no environmental inspectors have been identified or hired, because the construction of the Project has not yet started.

37. If the answer to Interrogatory No. 27 is in the affirmative provide all documentation that supports the assertion that TransCanada has provided each landowner with an explanation regarding trenching and topsoil and subsoil rock removal, segregation and restoration method options for each landowners property that is consistent with each applicable Con/Rec Unit. Amended Permit Condition 16.

OBJECTION: This request is overlybroad and unduly burdensome.

38. If the answer to Interrogatory No. 28 is in the affirmative produce all documents that support that answer. Amended Permit Condition 20.

ANSWER: N/A.

39. If the answer to Interrogatory 22 is in the affirmative, provide the name,

credentials, address, phone number, email address and website for the public liaison officer which was approved by the Commission referred to in Amended Permit Condition 6.

ANSWER: Sarah Metcalf, PO Box 904, Aberdeen, SD 57402, 1-888-375-1370, [smetcalf12@gmail.com](mailto:smetcalf12@gmail.com), <https://puc.sd.gov/dockets/hydrocarbonpipeline/2009/publicliaisonreports.aspx>.

40. Provide copies of all communications with the Bureau of Indian Affairs regarding the construction, operation or maintenance of the Keystone Pipeline. Amended Permit Condition 1.

ANSWER: None.

41. Provide copies of all communications with the Federal Bureau of Investigation regarding the construction, operation and maintenance of the Keystone Pipeline. Amended Permit Condition 7.

OBJECTION: This request is not related to Amended Permit Condition 7. It is also not relevant and not reasonably calculated to lead to the discovery of admissible evidence. It is also overlybroad and unduly burdensome since the Keystone Pipeline has been in operation since 2010.

42. Provide copies of all communications with the Rosebud Sioux Tribe Law Enforcement Services regarding the construction, operation and maintenance of the Keystone Pipeline. Amended Permit Condition 7.

ANSWER: See Keystone documents 1121-1181 attached to response no. 23 above. See also Ms. Metcalf's reports, published as public liaison reports on the PUC website.

43. Provide copies of all communications with each local law enforcement agency regarding the construction, operation and maintenance of the Keystone Pipeline. Amended Permit Condition 7.

OBJECTION: This request is not related to Amended Permit Condition 7. It is also not relevant and not reasonably calculated to lead to the discovery of admissible evidence. It is also overlybroad and unduly burdensome since the Keystone Pipeline has been in operation since 2010.

44. Provide copies of all documentation regarding TransCanada's efforts to acquire land through eminent domain in the State of Nebraska. Amended Permit Condition 1.

OBJECTION: This request seeks information that is beyond the scope of the PUC's jurisdiction and is not relevant or reasonably calculated to lead to the discovery of admissible evidence under SDCL 15-6-26(b).

45. If the answer to Interrogatory No. 31 is in the affirmative provide copies of all

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documentation that support the affirmative answer. Amended Permit Condition 32.

OBJECTION: The identity of Keystone's shippers and the terms of their contracts have substantial commercial and proprietary value, are subject to substantial efforts by Keystone to protect them from actual and potential competitors, and are required to be maintained on a confidential basis pursuant to the terms of the contracts between Keystone and its shippers and Section 15(13) of the Interstate Commerce Act.

46. If the answer to Interrogatory No. 32 is in the affirmative provide copies of all documentation that supports the affirmative answer. Amended Permit Condition 32.

OBJECTION: The identity of Keystone's shippers and the terms of their contracts have substantial commercial and proprietary value, are subject to substantial efforts by Keystone to protect them from actual and potential competitors, and are required to be maintained on a confidential basis pursuant to the terms of the contracts between Keystone and its shippers and Section 15(13) of the Interstate Commerce Act.

47. If the answer to Interrogatory No. 33 is in the affirmative provide copies of all documentation that supports the affirmative answer. Amended Permit Condition 32.

OBJECTION: The identity of Keystone's shippers and the terms of their contracts have substantial commercial and proprietary value, are subject to substantial efforts by Keystone to protect them from actual and potential competitors, and are required to be maintained on a confidential basis pursuant to the terms of the contracts

between Keystone and its shippers and Section 15(13) of the Interstate Commerce Act.

48. Provide copies of all documents regarding all materials and types of products that will be transported into South Dakota for the construction, operation and maintenance of the Keystone Pipeline. Amended Permit Condition 32.

OBJECTION: This request is overlybroad, unduly burdensome, not relevant, and not likely to lead to the discovery of admissible evidence.

49. If the answer to Interrogatory No. 36 is in the affirmative provide copies of all documentation that supports the affirmative answer including the name of each pipeline along with the complete contact information for the contact person for each pipeline. Amended Permit Condition 37.

OBJECTION: This request is overlybroad and unduly burdensome. It is also not reasonably calculated to lead to the discovery of admissible evidence.

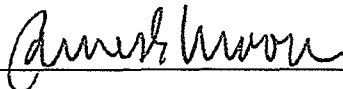
## OBJECTIONS

The objections stated to Rosebud Sioux Tribe's Interrogatories and Request for Production of Documents were made by James E. Moore, one of the attorneys for Applicant TransCanada herein, for the reasons and upon the grounds stated therein.

Dated this 6<sup>th</sup> day of February, 2015.

WOODS, FULLER, SHULTZ & SMITH P.C.

By



William Taylor

James E. Moore

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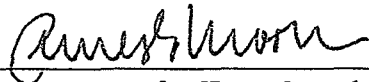
[James.Moore@woodsfuller.com](mailto:James.Moore@woodsfuller.com)

Attorneys for Applicant TransCanada

### CERTIFICATE OF SERVICE

I hereby certify that on the 6<sup>th</sup> day of February, 2015, I sent by e-mail transmission, a true and correct copy of Keystone's Responses to Rosebud Sioux Tribe's First Interrogatories and Request for Production of Documents, to the following:

Matthew L. Rappold  
PO Box 873  
Rapid City, SD 57709  
Matt.rappold01@gmail.com

  
\_\_\_\_\_  
One of the attorneys for TransCanada

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF SOUTH DAKOTA

0-0

IN THE MATTER OF THE APPLICATION	:	HP 14-001
BY TRANSCANADA KEYSTONE	:	
PIPELINE, LP FOR A PERMIT UNDER	:	KEYSTONE'S RESPONSES TO
THE SOUTH DAKOTA ENERGY	:	ROSEBUD SIOUX TRIBE'S
CONVERSION AND TRANSMISSION	:	SECOND SET OF
FACILITIES ACT TO CONSTRUCT THE	:	INTERROGATORIES AND
KEYSTONE XL PROJECT	:	REQUEST FOR PRODUCTION OF
	:	DOCUMENTS
	:	

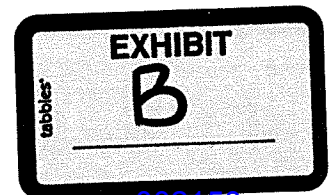
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Applicant TransCanada makes the following responses to interrogatories pursuant to SDCL § 15-6-33, and responses to requests for production of documents pursuant to SDCL § 15-6-34(a). These responses are made within the scope of SDCL 15-6-26(e) and shall not be deemed continuing nor be supplemented except as required by that rule. Applicant objects to definitions and directions in answering the discovery requests to the extent that such definitions and directions deviate from the South Dakota Rules of Civil Procedure.

GENERAL OBJECTION

Keystone objects to the instructions and definitions contained in Rosebud Sioux Tribe's Second Set of Interrogatories and Requests for Production of Documents to the extent that they are inconsistent with the provisions of SDCL Ch. 15-6. See ARSD

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20:10:01:01.02. Keystone's answers are based on the requirements of SDCL §§ 15-6-26, 15-6-33, 15-6-34, and 15-6-36.

## INTERROGATORIES

### INTERROGATORY NO. 1: References:

- (i) Findings 1, 19, 20, 33 in Appendix C - Tracking Table of Changes ("Appendix C")
- (ii) Amended Permit Condition 6 and 35
- (iii) Response 17 to Rosebud Sioux Tribe - Tribal Utility Commission ("RST") Information Request No. 1 ("IR No. 1"); RST Documents, Keystone 0470-0583.
- (iv) Response 39 to Bold Nebraska IR No. 1
- (v) Response 35 (g) to Cindy Myers IR No. 1.

### Requests:

- a) For the most recent and accurate Project route (as described in ref (iii)) and facility locations, provide an approximate elevation profile of the proposed pipeline (elevation vs. pipeline milepost), capturing the segments from the nearest upstream pump station north of the state border to the nearest pump station just south of the state border.
- b) On the elevation profile provided above, indicate (1) the location of the pump stations, (2) the location of all mainline valves, including check valves, by milepost; (3) the type of mainline valve actuation (i.e. manual, automatic, or remotely operated); and (4) the location of all valves in reference to water crossings.
- c) According to Finding 20 and ref (iv), Keystone is proposing a number of changes to both the type of valves and their location since the PUC decision of June 29, 2010. Please list these changes and indicate them on the elevation profile requested above.
- d) For the maximum design flow rate (i.e. the updated maximum design flow rate of 830,000 bpd as per Finding 20), indicate the suction and discharge pressures at each pump station identified on the above elevation profile.
- e) On the provided elevation profile, indicate the maximum operating pressure ("MOP") for the pipeline segments.

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f) Superimpose a hydraulic profile on the provided elevation profile for the stated design capacity/operation.

g) On the above pipeline elevation profile, indicate the approximate location of HCAs by milepost.

h) If the information in (g) is confidential as indicated on IR no. 1 responses to other parties, please indicate (on the above pipeline elevation profile) the approximate location by milepost of (i) water crossings; (ii) the High Plains aquifer (Ogallala Formation) in Tripp County; (iii) other areas of unconfined aquifers including alluvial aquifers associated with streams, and occasional unconfined stretches in the Hell Creek, Fox Hills, and Pierre Shale aquifers (as per ref (v)); and (iv) any Karst Aquifers, which are crossed by the Project.

i) If the information requested in (a) - (h) is not fully updated to incorporate all recent changes to the Project route (and to facilities and valves), please provide the information requested with an explanation of what pipeline routing it is based on (e.g. proposed route in Ex. TC-14 or another intermediate rerouting), when it was updated, and what rerouting was included.

ANSWER:

1a). OBJECTION. This request seeks information that is confidential for security reasons. It is also not relevant or likely to lead to the discovery of admissible evidence.

1b). OBJECTION AND ANSWER. This request seeks information that is confidential for security reasons. The milepost locations for each pump station and mainline valve are not relevant or likely to lead to the discovery of admissible evidence.

Without waiving the objection, each mainline valve located in South Dakota will be remotely operated. Mainline valves and pump stations are discussed in Section 2.1.4.4 of the FSEIS.

1c). OBJECTION AND ANSWER: The request for an elevation profile seeks  
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information that is confidential for security reasons. Without waiving the objection, all valve locations are in compliance with 49 CFR 195.260 and PHMSA Special Condition 32. Changes include remote control and actuation of any valves which were manually operated; the addition of backup power; and the addition/adjustment of intermediate mainline valve locations to ensure no more than a 20 mile spacing.

1d). OBECTION AND ANSWER: The request for an elevation profile seeks information that is confidential for security reasons. Without waiving the objection, the minimum suction pressure at the pump station is 50 psig and a maximum discharge pressure of 1,307 psig.

1e). OBJECTION AND ANSWER: The request for an elevation profile seeks information that is confidential for security reasons. Without waiving the objection, in accordance with 49 CFR 195.106 Design Pressure the mainline MOP will be 1,307 psig and at select locations downstream of pump stations, the MOP is 1,600 psig.

1f). OBJECTION. This request seeks information that is confidential for security reasons. It is also not relevant or likely to lead to the discovery of admissible evidence.

1g). OBJECTION. The location of High Consequence Areas is confidential and Keystone is required by PHMSA to keep this information confidential.

1h). The Department of State FSEIS discusses the High Plains Aquifer and other aquifers in Chapter 3, Water Resources, Section 3.3.2. The mile posts of the aquifers beneath the right of way are listed in Table 3.3-2.

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1i). The responsive information provided is based on the current project route, including the route deviations previously provided.

**INTERROGATORY NO. 2: References:**

- (i) Finding 20 in Appendix C
- (ii) Response 39 to Bold Nebraska IR No. 1
- (iii) Draft Supplemental EIS, pp. 2.1-19-2.1-23
- (iv) Final Supplemental EIS, pp. 2.1-24-2.1-27.

**Preamble:**

In Finding 20, Keystone has confirmed that there will now be 20 mainline valves located in SD and that all of these valves will be remotely controlled. Valve placement for critical safety involves the placement of remotely controlled shut-off valves on either side of a critical water crossing, as well as a check valve for additional safety depending on downstream elevation profile.

**Requests:**

- a) Please list each of the 20 remotely controlled valves (and any additional check valves) and their location by milepost. Please indicate which of these locations are proximate to water crossings and identify the water crossing.
- b) For each critical water crossing, please confirm the placement of remotely controlled shut-off valves on either side of critical water crossings. If not, please explain why not.
- c) For each critical water crossing, please confirm the placement of a check valve. If not, explain why not.
- d) Given that all 20 mainline valves will be remotely controlled, does this imply that there are no more check valves planned? If yes, please explain the absence of check valves for additional safety on critical water crossings. If not, please confirm if there are check valves located at critical water crossings; and provide the location of the check valves.
- e) According to refs (i)-(iv), Keystone is proposing a number of changes to both the {01844455.1}

type of valves and their location since the PUC decision of June 29, 2010. Please list these changes.

ANSWER:

- 2a). OBJECTION AND ANSWER. This request seeks information that is confidential for security reasons. The milepost location of valve sites is not relevant and not likely to lead to the discovery of admissible evidence. Without waiving the objection, please refer to the FSEIS 2.1 Overview of the Proposed Project, Section 2.1.4.4 Mainline Valves. All valve locations are in compliance with PHMSA Special Condition 32 and 49 CFR 195.260. Per 49 CFR 195.260 (e) valves are placed on each side of a water crossing that is more than 100 feet from high-water mark to high-water mark.
- 2b). All valve locations are in compliance with PHMSA Special Condition 32 and 49 CFR 195.260. Per 49 CFR 195.260 (e) valves are placed on each side of a water crossing that is more than 100 feet from high-water mark to high-water mark.
- 2c) All valve locations are in compliance with PHMSA Special Condition 32 and 49 CFR 195.260. Per 49 CFR 195.260 (e) valves are placed on each side of a water crossing that is more than 100 feet from high-water mark to high-water mark.
- 2d) No. Select valve site locations contain remotely operable mainline isolation valve and a check valve. These valve assemblies are placed in proximity downstream to major waterbodies.
- 2e) All valve locations are in compliance with 49 CFR 195.260 and PHMSA Special

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Condition 32. Changes include remote control and actuation of any valves which were manually operated; the addition of backup power; and the addition/adjustment of intermediate mainline valve locations to ensure no more than a 20 mile spacing.

**INTERROGATORY NO. 3:** Reference:

- (i) Findings 14 and 15, Appendix C.

Preamble:

According to Finding 14, the purpose of the Project has now been updated to include the transportation of domestic production from the Williston Basin. Moreover, according the Finding 15, the maximum capacity has changed from 700,000/900,000 bpd to 830,000 bpd.

Requests:

- a) Please provide a breakdown of the annual capacity of Keystone XL to move: (1) light crude; (2) medium crude; (3) heavy crude.
- b) Is the projected 830,000 bpd annual capacity of Keystone XL based on moving light crude, medium crude and heavy crude? If not, please explain and provide a breakdown of the types of crude on which the 830,000 bpd annual capacity figure is based.
- c) To the extent to which the annual capacity to move crude varies by type of crude (i.e. light, medium and heavy) as per Question b), please comment on the change in annual capacity for each type of crude from (i) the Project as originally permitted by the SD PUC on June 29, 2010 (which would have a nominal capacity of 700,000 bpd expandable to 900,000 bpd with additional pumping capacity) to (ii) the Project as currently proposed with a maximum capacity of 830,000 bpd.

ANSWER:

- (a) Keystone XL is designed to transport different grades of crude oil. Its annual average capacity is approximately 830,000 bpd.

(b) Yes. Keystone XL is designed to transport different grades of crude oil. Its annual average capacity is approximately 830,000 bpd.

(c) Keystone received additional commitments on Keystone XL Pipeline that would support an expansion of its total capacity from 700,000 barrels per day to 830,000 barrels per day.

**INTERROGATORY NO. 4: References:**

- (i) Findings 22, 60, 90, Appendix C
- (ii) Final Supplemental EIS, Appendix Z.

**Preamble:**

According to Finding 22, "The Project will be designed, constructed, tested, and operated in accordance with all applicable requirements, including the U.S. Department of Transportation, Pipeline Hazardous Materials and Safety Administration (PHMSA) regulations set forth at 49 CFR Part 195, and the special conditions developed by PHMSA and set forth in Appendix Z to the Department of State ("DOS") January 2014 Final Supplemental Environmental Impact Statement ("FSEIS"). These federal regulations and additional conditions are intended to ensure adequate protection for the public and the environment and to prevent crude oil pipeline accidents and failures."

According to Finding 60, "Keystone will implement 59 additional safety measures as set forth in the DOS Final SETS, Appendix Z. These measures provide an enhanced level of safety equivalent to or greater than those that would have applied under the previously requested Special Permit."

According to Finding 90, "The Keystone pipeline will be designed, constructed, tested and operated in accordance with all applicable requirements, including the PHMSA regulations set forth at 49 CFR Parts 194 and 195, and the 59 PHMSA Special Conditions as set forth in DOS Final SEIS, Appendix Z. These federal regulations and additional conditions are intended to ensure adequate protection for the public and the environment and to prevent crude oil pipeline accidents and failures."

Requests:  
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- a) Will the pipeline operate in slack line (not liquid full) operation?
- b) If the pipeline will not be operated in slack line condition, how is the pipeline designed and controlled to maintain non-slack-line condition?
- c) How do the additional safety measures mentioned in ref (i) improve leak detection regardless of operating condition (non-slack-line or slack-line, if applicable)?
- d) Findings 22, 60, 90 refer to Keystone implementation of 59 PHMSA Special Conditions as set forth in ref (ii). According to ref (ii), pp. 95-107, Keystone has also committed to implement mitigation recommendations from the Battelle and Exponent risk assessment reports, including specifically addressing several issues in its Emergency Response Plan and Oil Spill Response Plan (and its risk analysis that is used in the development of those plans). Please explain what (if anything) Keystone has committed to in regard to implementation of mitigation recommendations from the Battelle and Exponent risk assessment reports, and how this affects Findings 22, 60, 90, and any other Findings.
- e) Findings 22, 60, 90 refer to Keystone implementation of 59 PHMSA Special Conditions as set forth in ref (ii). According to ref (ii), pp. 107-108, Keystone has also committed to a number of measures beyond the spill cleanup measures described above in ref (ii), including specifically addressing several issues in its Emergency Response Plan and Oil Spill Response Plan (and the detailed risk analysis used in developing those plans). Please explain what (if anything) Keystone has committed to in regard to additional spill cleanup measures, and how this affects Findings 22, 60, 90, and any other Findings.

ANSWER:

- 4a). TransCanada will not operate the line in slack conditions.
- 4b). Automated controls are in place to maintain minimum line pressures during operation.
- 4c). The Real Time Transient Model (RTTM) based Leak Detection System, installed and operated in line with the safety measures mentioned, helps to ensure state-of-the-art

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monitoring and control of the pipeline. This system compensates for different operating conditions by accounting for changes in several factors including pressures, temperatures and flows.

The additional safety measures encompass the leading industry practices and recommended measures based on pipeline incident root cause analysis conducted by agencies such as the National Transportation Safety Board (NTSB) and standards committees such as the American Petroleum Institute (API). The incorporation of such safety measures enhances all facets of OCC, SCADA and Leak Detection Systems inclusive but not limited to: system displays, audit of alarms, training, human factors (fatigue, work schedules, shift change), system testing and redundancy for hardware and software.

4d). Keystone will implement the additional mitigation measures included in Appendix Z.

4e) Keystone will implement the additional mitigation measures included in Appendix Z.

**INTERROGATORY NO. 5: References:**

- (i) Finding 50, Appendix C
- (ii) Response 50 (b) to Paul Seamans' IR No. 1
- (iii) Final Supplemental EIS, Appendix P, Pipeline Risk Assessment and Environmental Consequence Analysis by Keystone, p. 4-20, Table 4-12, July 6, 2009.2

Preamble:

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According to ref (i), "[t]he total length of Project pipe with the potential to affect a High Consequence Area ("HCA") is 19.9 miles." This distance has changed since the Final Decision and Order in June 2010 when "[t]he total length of Project pipe with the potential to affect a High Consequence Area ("HCA")" was evaluated at 34.3 miles.

According to ref (ii), the decrease from 34.3 miles to 19.9 miles is due to the adjustment of the pipeline route, in which the route was deviated away from HCA areas.

According to ref (iii), in the July 2009 evaluation, miles of pipeline in HCAs in SD were 14.9 miles (Total). All of these miles (14.9 miles) were in Ecologically Sensitive Areas, and none of these miles (0 miles) were in Populated Areas or Drinking Water Areas.

Requests:

- a) Please explain the increase in HCA mileage from the 2009 evaluation (14.9 miles of HCAs (ref (iii)) to the 2010 evaluation (34.3 miles of HCAs (ref (i))).
- b) For the 2010 evaluation (34.3 miles of HCAs (ref (i))), how many miles were in Ecologically Sensitive Areas, Populated Areas, and Drinking Water Areas?
- c) For the 2014 evaluation (19.9 miles of HCAs (ref (i))), how many miles were in Ecologically Sensitive Areas, Populated Areas, and Drinking Water Areas?

ANSWER:

5a). Keystone has determined that the 34.3 miles referenced in question 5 a) included overlaps between HCAs. The 19.9 miles shown in the certification table was a typographical error. Since the time the 14.9 mile calculation was completed, the Cheyenne River crossing was adjusted because of HDD access issues and for construction and engineering reasons, resulting in a slight increase in total HCA mileage. The current HCA calculation is 15.8 miles. The 15.8 miles are ecologically sensitive areas and do not encompass populated areas or drinking water areas.

5b). Please refer to FSEIS Appendix P Risk Assessment table 4-12.

5c). Ecologically Sensitive Areas were the only HCA types crossed.

**INTERROGATORY NO. 6:** Reference:

- (i) Finding 107, Appendix C and Finding 108 in Amended Final Decision and Order; HP09-001  
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- (ii) Response 59 to BOLD Nebraska IR No. 1
- (iii) Responses 107(a) and (b) to Paul Seamans' IR No. 1
- (iv) Responses 107 and 108 to Byron and Diana Steskal's IR No. 1
- (v) Steskal Documents, Keystone 0768-0773

Preamble:

According to ref (ii), "Keystone has not prepared a current estimate of real property taxes that will be paid on Keystone XL, once constructed."

According to refs (ii) and (v), in HP07-01, TransCanada had estimated that the first full year of operations of the base Keystone project would produce state-wide taxes of approximately \$6.5 million.

According to ref (iii), 107 (b), "Keystone paid \$653,194 in ad valorem property taxes for 2009; \$2,954,846 for 2010; \$3,145,207 for 2011; \$3,435,037 for 2012; and \$3,934,669 for 2013 in the counties transited by the Keystone base pipeline." A breakdown by county is available at ref (v); however the totals for 2011, 2012 and 2013 are not consistent between the two IR responses.

In ref (iii), 107(a), Paul Seamans asked to "explain TransCanada's methodology in arriving at a figure of combined new tax revenues of \$20 million a year for South Dakota counties along the Keystone XL route." Keystone's answer appears to focus only on the base Keystone property taxes and not the Keystone XL property taxes.

Requests:

- a) Please confirm that the slight differences in the total property taxes amounts in ref (iii) with the total tax amounts in ref (v) for 2011, 2012 and 2013 relate to the inclusion of tax payments for Keystone XL pump station sites for these years in ref (v). If not, please explain the differences in the amounts in ref (iii) and ref (v).
- b) Please explain the methodology for the original Keystone estimate of SD property taxes for Keystone XL (in HP09-001).
- c) Please explain if Keystone used a similar methodology to calculate the original Keystone property tax estimates for Keystone XL (in HP09-001) compared to the methodology used to calculate the base Keystone property tax estimates (in HP07-001). If not, why not and please explain the different approaches.



d) Please explain in detail if and how Keystone's methodology for estimating the revised Keystone XL property taxes will take into account the actual experience with property taxes for the base Keystone in order to improve the accuracy of the Keystone XL property tax estimates.

e) When will the revised estimates of the property taxes paid on the Keystone XL pipeline be available?

ANSWER:

6a). The difference between the amounts computed for 2011, 2012 and 2013 in the Seamans responses as compared to the Steskal document production represents the amounts paid in real property taxes on real estate owned by Keystone that will be employed in the Keystone XL project.

6b). The estimate of South Dakota ad valorem property taxes prepared for the Keystone XL proceedings in 2009 employed the then-estimated construction cost of the pipeline and pump stations in South Dakota. The per mile cost of construction multiplied by the mileage in each county was employed as the value of the pipeline for purposes of calculating assessed valuation. The estimated cost of the pipeline was added to the assessed value of all real property in the county. Hypothetical mill levies were calculated, employing the prior year's cost of government. The pipeline's contribution to resulting tax revenues was estimated. A more simplistic approach was employed in calculating the estimated property taxes before the 2007 proceedings. An estimate of the ratio of ad valorem real property taxes to fair market value was calculated. That percentage was applied to the then estimated cost of construction of the Keystone I

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project in South Dakota. Later a rough estimate of the impact of the Keystone I project on tax revenue was prepared, employing construction costs and prior year assessed valuations and mill levies.

6c) See answer to 6b).

6d) The South Dakota Department of Revenue has chosen to employ the economic//functional obsolescence approach in determining the value of the Keystone I pipeline in South Dakota for assessment purposes. Presumably, the Department of Revenue will continue using that approach with respect to the Keystone XL pipeline, but it is expected the assessed valuation will be computed recognizing that the Keystone I and Keystone XL pipeline will be operated as a single economic unit.

6e). There are no present plans to prepare new estimates of the ad valorem property taxes that will be levied against the Keystone XL pipeline.

**INTERROGATORY NO. 7: References:**

- (i) Amended Permit Conditions 35 and 36
- (ii) Response 48, 49 to Bold Nebraska IR No. 1.

**Preamble:**

According to ref (ii), oil spill response equipment (amounts, types and locations) that are owned by TransCanada are listed in Appendix A of the Keystone Emergency Response Plan in the FSEIS Appendix I. Page 2 of Appendix A indicates "The Company owns and operates oil spill response equipment contained within response trailers staged throughout the pipeline system. This equipment is maintained according to manufacturer's recommendations by Company and/or contracted personnel. An equipment summary detailing locations, type and amount stored in the response trailers is listed in Figure A.1. The Company also has contracts in place with Oil Spill Removal Organizations and other

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clean-up contractors that are capable of responding to all discharges along the Pipeline. Figure A.2 lists the contracted Oil Spill Removal Organizations.

Equipment trailers are located at the Hardisty Pump Station (Alberta), Regina Pump Station (Saskatchewan), in Valley City (North Dakota) at an external contractor site, in Brookings (South Dakota), Yankton (South Dakota), Cushing (Oklahoma) and St. Joseph (Missouri) at a TransCanada office location."

Figure A.2 (p. 8 of the same Appendix) indicates that the OSRO responsible for SD is National Response Corporation.

Requests:

a) Indicate the general sites of critical oil spill response equipment storage (both pipeline company and contractor-owned).

b) If this information (requested in (a) above) is confidential as indicated in IR no. 1 responses to other parties, please confirm (as per ref (ii) and the Preamble) that critical oil spill equipment owned by TransCanada relevant to spill response in SD is located in Valley City (North Dakota) at an external contractor site, in Brookings (South Dakota), Yankton (South Dakota) as per ref (ii). If not, please explain.

c) Similarly, please confirm (as per ref (ii) and the Preamble) that National Response Corporation is the designated OSRO for SD and also can respond to discharges along the pipeline in SD. If not, please explain.

d) Please provide the general sites of critical oil spill response equipment storage owned by National Response Corporation or any other OSRO in SD that would respond to spills along the pipeline route.

ANSWER:

7a). Oil spill response equipment (amounts, types and locations) that is owned by

TransCanada is listed in the FSEIS Appendix I Spill Prevention Control and

Countermeasure Plan and Emergency Response Plan Appendix A Response

Equipment/Resources.

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7b). As specified in Interrogatory 7a oil spill response equipment owned by TransCanada is listed in the FSEIS Appendix I.

7c). The National Response Corporation is the designated OSRO for Keystone in South Dakota as specified in the FSEIS Appendix I Spill Prevention Control and Countermeasure Plan and Emergency Response Plan Appendix A Response Equipment/Resources.

7d). All emergency response equipment owned by NRC is tracked and strategically placed. The emergency response equipment cache sites are listed in the original Keystone Emergency Response Plan which has been submitted to PHMSA and will be amended to include Keystone XL.

**INTERROGATORY NO. 8: References:**

- (i) Amended Permit Conditions 35 and 36
- (ii) Response 34 (c) to Cindy Myers IR No. 1 (p. 42 regarding the lessons learned from Marshall)
- (iii) Response 35 (d) to Cindy Myers IR No. 1
- (iv) Response 35 (g) to Cindy Myers IR No. 1.

**Preamble:**

According to ref (ii), in order to improve the remediation of a crude spill, Keystone has committed to strategically store equipment and employ personnel and contractors along length of the pipeline to ensure a maximum 6-hour response time.

According to ref (iii), HCAs and HSAs (Hydrologically Sensitive Areas) are subject to high levels of inspection and repair criteria.

**Requests:**

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- a) Does the maximum response time of 6 hours apply to HCAs and HSAs? If not, please provide the maximum response time for HCAs and HSAs.
- b) Does the maximum response time of 6 hours apply to (i) critical water crossings; (ii) the High Plains aquifer (Ogallala Formation) in Tripp County; (iii) other areas of unconfined aquifers including alluvial aquifers associated with streams, and occasional unconfined stretches in the Hell Creek, Fox Hills, and Pierre Shale aquifers (as per ref (iv)); and (iv) any Karst Aquifers, which are crossed by the Project. If not, please provide the maximum response time for these locations.
- c) Does the maximum response time of 6 hours take into account various worst-case conditions (road/traffic/weather/other)?
- d) Given a scenario involving poor (road/traffic/weather/other) conditions, has Keystone developed contingency plans to speed the emergency response (i.e. police escort, alternate routing or other). Please explain.

ANSWER:

- 8a). Maximum response times are identified in the FSEIS Appendix I Spill Prevention Control and Countermeasure Plan and Emergency Response Plan; Emergency Response Plan Section 3.1 Initial Response Actions.
- 8b). Maximum response times are identified in the FSEIS Appendix I Spill Prevention Control and Countermeasure Plan and Emergency Response Plan; Emergency Response Plan Section 3.1 Initial Response Actions.
- 8c). TransCanada locates equipment and people that are transported by air, land and water to ensure that regulatory guidelines are met.
- 8d). TransCanada locates equipment and people that are transported by air, land and water to ensure that regulatory guidelines are met.

**INTERROGATORY NO. 9: References:**

- (i) Amended Permit Conditions 45 - 49
- (ii) Response 7 to Bold Nebraska IR No. 1.

**Preamble:**

Amended Permit Conditions 45 - 49 concern Enforcement and Liability for damages, In order to evaluate changes since the PUC decision of June 29, 2010 and whether Keystone can and will comply with Amended Permit Conditions 45 - 49, particularly in the event of a costly spill, the following IRs (9-12) examine Keystone's financial assurances including spill liability coverage and ability to self-insure.

**Requests:**

Please provide:

- a) a corporate structure chart that shows TransCanada, the parent corporation (as per ref (ii)) and each affiliate entity;
- b) a description summarizing each entity's ownership and the operating relationships with each other. This description and the chart in (a) must show, but not be restricted to:
  - a. the ownership of each entity and the jurisdiction in which each entity is registered;
  - b. the general and limited partners in TransCanada Keystone Pipeline LP; and
  - c. the respective roles and responsibilities of TransCanada Keystone Pipeline LP and TransCanada in managing the limited partnership (TransCanada Keystone Pipeline LP) and operating the pipeline;
- c) confirmation as to whether the limited partners of TransCanada Keystone Pipeline LP and/or its parent or other affiliates would or would not provide financial backstopping to the limited partnership should it be unable to pay its creditors. If confirmation is not possible at this time, please indicate whether this backstopping would be an option these parties would consider when the Project is placed in service;
- d) the name of the legislation governing TransCanada Keystone Pipeline LP, as well as a reproduction of the parts of the legislation specifying a limited partner's liability and the conditions that apply to the sharing of a limited partnership's profits with partners; and

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e) a summary of TransCanada Keystone Pipeline LP's distribution policy that would determine how cash in the limited partnership would be distributed to the limited partners.

**ANSWER:**

9a). Objection and Response: This request seeks information that is not relevant and not likely to lead to the discovery of admissible evidence. The request also seeks information that is confidential and proprietary. Without waiving the objection, TransCanada PipeLines Limited wholly owns TransCanada PipeLine USA Ltd. which in turn wholly owns TransCanada Oil Pipelines Inc. ("TC Oil Pipelines"). TC Oil Pipelines holds 100% of TransCanada Keystone Pipeline GP, LLC and TransCanada Keystone Pipeline, LLC, which are the GP and the LP, respectively, of the TransCanada Keystone Pipeline, LP.

9b). Objection: This request seeks information that is not relevant and not likely to lead to the discovery of admissible evidence. The request also seeks information that is confidential and proprietary.

9c). Objection. This request seeks information that is not relevant and not likely to lead to the discovery of admissible evidence. The request also seeks information that is confidential and proprietary. In addition, this request calls for speculation about hypothetical events that Keystone cannot answer.

9d). TransCanada Keystone Pipeline, LP is organized under Delaware law, specifically Title 6, Chapter 17 of the Delaware Code.

9e). Objection: This request seeks information that is not relevant and not likely to lead to the discovery of admissible evidence. The request also seeks information that is confidential and proprietary.

**INTERROGATORY NO. 10: References:**

(i) Amended Permit Conditions 45 - 49.

**Requests:**

a) Please describe the type and amount of insurance that would be held by and/or for TransCanada Keystone Pipeline LP3 during the Project's construction phase. Please include details of the risk analysis performed, assumptions made, and supporting data {01844455.1}



considered in evaluating the coverage limits proposed.

b) Please describe the type and amount of spill liability insurance that would be held by and/or for TransCanada Keystone Pipeline LP4 during the Project's operation phase. Please include details of the risk analysis performed, assumptions made, and supporting data considered in evaluating the coverage limits proposed.

c) Please confirm that the spill liability insurance applies exclusively to TransCanada Keystone Pipeline LP's pipeline system and cannot be used for any other pipeline or any other TransCanada business unit. If this cannot be confirmed, please identify the TransCanada corporate entities covered by this insurance.

d) Please provide an overview of the key elements in the spill liability insurance including the facilities and business functions and related activity risks that are covered by the spill liability insurance program, the name of the insurance provider and the provider's credit rating.

e) Please describe the conditions, circumstances, or exclusions, if any, under which the spill liability insurance would not cover the losses of TransCanada Keystone Pipeline LP and/or third parties in the event of a large oil spill. For clarity include a list of the standard risks and non-standard risks that are excluded from this insurance program.

f) If the response to d) confirms that the spill liability insurance may not cover all losses and liabilities, please:

a. describe how TransCanada Keystone Pipeline LP would financially cover any losses and claims for spills, malfunctions, or other potential liabilities in excess of its insurance coverage during the life of the pipeline system; and

b. describe and quantify, to the extent possible, the role of cash from operations, tariff provisions, indemnities, bonds, letters of credit, parental guarantees, cash reserves, or other instruments that would be available to cover these potential liabilities. Regarding cash from operations and cash reserves, illustrate the financial capacity that these cash items could provide.

g) Please explain whether TransCanada Keystone Pipeline LP's spill liability coverage amount has changed (or will change) as a result of the increased capacity proposed for the pipeline system if the Project is approved and would operate in addition to Base Keystone. Include any risk analysis performed and assumptions made to determine this  
{01844455.1}



level of coverage for the period after the Project goes into service.

h) Regarding the spill liability insurance, please describe:

a. the priority of payments for the components of insurance claims for spill events, such as clean-up costs, remediation costs, and third party liability claims;

b. how first party (TransCanada Keystone Pipeline LP) and third party claims are managed, including the priorities and the allocation of coverage for each of these parties; and

c. whether the coverage is per event or for more than one event in an insurance year.

i) Please provide the total insurance coverage amount for spill liability for TransCanada Keystone Pipeline LP, and confirm that any cash recovery for spill claims would be in addition to and separate from any recovery from the General Liability insurance program for claims not involving spills. If this cannot be confirmed, please explain the methodology for allocating the total insurance coverage among competing claims if the total claims exceed the spill liability coverage limit.

ANSWER:

10a). During construction TransCanada Keystone Pipeline would look to secure a dedicated general liability insurance policy including sudden and accidental pollution coverage with a limit not less than US\$200 million.

10b). During operations TransCanada Keystone Pipeline would look to secure a dedicated general liability insurance policy including sudden and accidental pollution coverage with a limit not less than US\$100 million.

In addition to the dedicated policy, TransCanada's corporate general liability policy would provide excess coverage. This policy covers all of TransCanada's controlled companies and subsidiaries and would include TransCanada Keystone Pipeline operations. Should a specific claim or claims within a policy year result in significant decrease of these limits, TransCanada would seek to reinstate the limits.

10c). As described in b), the dedicated policy is just for TransCanada Keystone Pipeline, while the TransCanada corporate policy includes all TransCanada companies and

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subsidiaries.

10d). The policy would respond to the legal liability for third party liability claims, clean-up costs and remediation costs. There are a variety of insurance companies that participate in TransCanada insurance policies, but each must have a minimum Standard & Poor's rating of A-.

10e). General liability insurance policies have standard exclusions typical for a company in the liquid pipeline industry including but not limited to i) liabilities arising from gradual seepage, ii) fines and penalties, iii) and other exclusions not relevant to spills. TransCanada Keystone Pipeline is unable to confirm that the exclusions in place today will remain in effect for the life of the project or if new exclusions will be added at a later date.

10f).

a. We can't confirm how the insurance policy will or will not respond to losses and claims in the future, as every spill incident is unique.

b. Keystone is still preparing an answer to this interrogatory, and will provide a supplemental answer as soon as possible.

10g). Our approach has not changed.

10h).

a. There is no priority of payments for the components of an insurance claim for spill events.

b. TransCanada Keystone Pipelines has a separate property insurance policy to respond to damage to its property from an incident. The general liability policy would respond to third party claims, cost to clean-up and remediation.

c. The policy is per occurrence, with an aggregate for the policy year.

10i). This can't be confirmed. Insurance claims are made to the policy on a first occurring basis.

**INTERROGATORY NO. 11: References:**

(i) Amended Permit Conditions 45 - 49.

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Requests:

a) Please provide the following for TransCanada Keystone Pipeline LP for the first full year and the fifth full year following Project commissioning:

a. operating cash flow projections that identify net income and other components of cash flow; and

b. the estimated total asset and liability values and their main components.

b) Please describe the following aspects of TransCanada Keystone Pipeline LP's cash management as anticipated at this time:

a. the estimated per cent of total cash flow from TransCanada Keystone Pipeline LP's operations that would be distributed to the partners of the limited partnership over the first five years of operation following Project commissioning; and

b. the estimated cash or near cash that TransCanada Keystone Pipeline LP plans to retain on its balance sheet by the end of the fifth full year of operation after Project commissioning.

c) With respect to the potential for self-insurance (should the spill liability coverage be exceeded), please explain how TransCanada Keystone Pipeline LP would ensure that it has unfettered access to these funds at all times, and indicate if TransCanada Keystone Pipeline LP will segregate the self-insurance funds from its general funds.

d) In the case of a spill incident, please explain the amount of cash that TransCanada Keystone Pipeline LP could access within 10 business days to pay some or all of the clean-up and remediation costs and to compensate third parties for some losses and damages while any insurance claims are being processed. Please describe the financial instruments that TransCanada Keystone Pipeline LP will use to ensure this unfettered access to funds.

ANSWER:

11a). OBJECTION. This request seeks information that is confidential and proprietary and the disclosure of which would be damaging to Keystone. This request also seeks information that is not relevant and not likely to lead to the discovery of admissible evidence.

11b). OBJECTION. This request seeks information that is confidential and proprietary and the disclosure of which would be damaging to Keystone. This request also seeks information that is not relevant and not likely to lead to the discovery of admissible evidence.

11c). OBJECTION. This request seeks information that is confidential and proprietary and the disclosure of which would be damaging to Keystone. This request also seeks information that is not relevant and not likely to lead to the discovery of admissible evidence.

11d) OBJECTION. This request seeks information that is confidential and proprietary and the disclosure of which would be damaging to Keystone. This request also seeks information that is not relevant and not likely to lead to the discovery of admissible evidence. In addition, this request calls for speculation about a hypothetical future event at an unspecified date and cannot be answered.

**INTERROGATORY NO. 12: References:**

- (i) Amended Permit Conditions 45 - 49
- (ii) Final Supplemental EIS, p. 4.13-1185
- (iii) Final Supplemental EIS, Appendix Z, Compiled Mitigation Measures, p. 108, July 6, 2009.

**Preamble**

According to ref (ii), financial assurance requirements seem to have been established in Nebraska and Montana, and "Keystone is willing to adopt a similar requirement in South Dakota."

Keystone would commit to file annually with the Nebraska DEQ by May 1 of each year:

(a) A certificate of insurance as evidence that it is carrying a minimum of \$200 million in third-party liability insurance as adjusted by calculating the gross domestic product implicit price deflator from the date a Presidential permit is issued for the Project and adjusting the amount of the third-party liability insurance policy by this percentage. The third-party liability insurance shall cover sudden and accidental pollution incidents from Keystone XL Pipeline in Nebraska.

(b) A copy of Keystone's Securities and Exchange Commission Form 10-K and (01844455.1)

Annual Report. Keystone's Major Facilities Siting Act (MFSA) Certificate contains a similar requirement.

Keystone is willing to adopt a similar requirement in South Dakota.

According to ref (iii), financial assurance requirements seem to have been established by both Nebraska and Montana. Keystone has committed to:

8. File the following documents with Nebraska Department of Environmental Quality (NDEQ) by May 1 of each year:

a. Certificate of insurance as evidence that it is carrying a minimum of \$200 million in third-party liability insurance, with the NDEQ, as specified in the NDEQ's December 2012 Final Evaluation Report, and with the Montana Department of Environmental Quality (MDEQ), as required by Keystone's Certificate issued by MDEQ under the Montana Major Facility Siting Act (MFSA).

b. Copy of Keystone's Securities and Exchange Commission (SEC) Form 10-K and Annual Report. (Keystone's MFSA Certificate contains a similar requirement.)

9. On request, file the documents listed in item 8 above with other appropriate state agencies.

Requests:

a) Please confirm that Keystone has committed to \$200 million in third-party liability insurance in both Nebraska and Montana. If not, please explain.

b) Does this imply that there is \$200 million in third-party liability insurance available specifically to cover a spill in Nebraska; and another \$200 million in third-party liability insurance available specifically to cover a spill in Montana? If not, please explain.

c) Does Keystone plan to offer third-party liability insurance available specifically to cover a spill in South Dakota? If not, please explain.

d) Has Keystone considered what level of third-party liability insurance should be available specifically to cover a spill in South Dakota? Please explain.

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ANSWER:

12a). Keystone is still preparing an answer to this interrogatory, and will provide a supplemental answer as soon as possible.

12b). Keystone is still preparing an answer to this interrogatory, and will provide a supplemental answer as soon as possible.

12c). Keystone is still preparing an answer to this interrogatory, and will provide a supplemental answer as soon as possible.

12d). Keystone is still preparing an answer to this interrogatory, and will provide a supplemental answer as soon as possible.

**INTERROGATORY 13:** What was the last date of any communication with any tribal government official with the Rosebud Sioux Tribe? Amended Permit Condition 7.

ANSWER: July 13, 2014.

**INTERROGATORY 14:** Did TransCanada attempt to secure the services of the Rosebud Sioux Tribe's Tribal Historic Preservation Office to perform cultural surveys of land in the vicinity of the proposed route at any time between January 1, 2009 and October 31, 2014? Amended Permit Condition 7, 43 and 44.

ANSWER: Yes.

**INTERROGATORY 15:** Describe the process that TransCanada used to identify appropriate tribal cultural monitors and or surveyors along the pipeline route in South Dakota. Amended Permit Condition 7, 43 and 44.

ANSWER: Keystone identified interested tribes early in the project planning.

Funding for Traditional Cultural Property studies was offered to every interested tribe. Four tribes have completed Traditional Cultural Property studies. Keystone will provide interested tribes the opportunity to participate as tribal monitors during ground disturbing construction activities to help identify previously unidentified historic and culturally important properties as part of the implementation of the Unanticipated Discovery plan.

**INTERROGATORY 16:** The document at page "KEYSTONE 1179" located in the file TransCanada sent in response to the First Set of Interrogatories and Request for Production of Documents titled "Rosebud Tribe Documents 01829983x9FB59" states that representatives from TransCanada, a land's representative and a few Utilities Commission members would visit the land located near the community of Ideal to determine if the pipeline route crossed Indian land. Did these people ever visit the land in Ideal community for the stated purpose? Amended Permit Condition 7, 43 and 44.

ANSWER: No.

**INTERROGATORY 17:** In a letter dated May 11, 2013 to the Cheyenne River Sioux Tribal Chairman, TransCanada states that "Keystone XL does not cross any Tribal (fee or allotted) lands but we respect your traditional territories." This letter is located at page "KEYSTONE 1179" in the file TransCanada sent in response to the First Set of Interrogatories and Request for Production of Documents titled "Rosebud Tribe Documents 01829983x9FB59." What does TransCanada mean when they state that they "respect your traditional territories"? Amended Permit Condition 7, 43 and 44.

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ANSWER: Keystone Document 1179 does not correspond with the reference in your interrogatory. There is a letter dated May 11, 2013 to Kevin Keckler, dated May 11, 2013, Keystone Document 1182. Presumably that is the letter to which you refer. Keystone respects the special relationship that tribal members have with their traditional territories and aspires to protect cultural and archaeological resources in collaboration with tribes whose traditional territories are impacted.

**INTERROGATORY 18:** Does TransCanada respect the traditional territories of the Rosebud Sioux Tribe as it respects the traditional territories of the Cheyenne River Sioux Tribe? Amended Permit Condition 7.

ANSWER: See answer to interrogatory 17, above.

**INTERROGATORY 19:** By what manner has TransCanada defined what the traditional territories of the Rosebud Sioux Tribe are? Amended Permit Condition 7, 43 and 44.

ANSWER: See answers to interrogatories 15, 17 and 18, above. Cultural studies were performed along the proposed pipeline route. Tribal relations personnel have had contact with the Rosebud Sioux Tribe and if allowed, will continue to have contact with the Rosebud Sioux Tribe. Tribal members have been invited on and have attended company sponsored trips and events related to the construction and operation of the pipeline.

**INTERROGATORY 20:** References:  
{01844455.1}



- (i) Amended Permit Condition 1 and 7
- (ii) Response 7 to RST Request for Production of Documents (in IR No. 1)
- (iii) Response 40 to RST Request for Production of Documents (in IR No. 1)
- (iv) Response 17 to RST IR No. 1

Preamble:

In ref (i), Keystone claims "the project does not cross Rosebud Sioux Tribe lands." In ref (ii), Keystone indicates that there are no copies of communications with the Bureau of Indian Affairs regarding the construction, operation or maintenance of the Keystone Pipeline.

Requests:

- a) Given the references and Preamble, please confirm that the proposed Project does not cross Indian Country (and therefore does not cross any reservations or off-reservation trust land).
- b) If the proposed Project does not cross Indian Country, how has Keystone ascertained this?
- c) If the proposed Project does cross Indian Country, please indicate the names of the communities (and associated tribe) where the Project crosses Indian Country.
- d) If the proposed Project does cross Indian Country, please indicate any Indian lands crossed by the Project using the aerial maps provided in Keystone 0470-0583 (provided in Response 17 to RST IR No. 1). In identifying Indian Country, in the case of a reservation, provide the name of the reservation (and associated tribe); or in the case of off-reservation trust lands, provide the name of the nearest community and the tribe associated with the off-reservation trust land.
- e) Please indicate the sections of the proposed Project by milepost that are located within:
  - a. less than 0.5 miles from Indian Country
  - b. 0.5 to 1 mile from Indian Country
  - c. 1 to 3 miles from Indian Country

- d. 3 to 5 miles from Indian Country
- e. 5 to 10 miles from Indian Country

f) For each of the sections of the Project identified as being in 0-10 miles of Indian Country in the previous answer, please provide:

a. in the case of a reservation, the name of the reservation (and associated tribe), or

b. in the case of off-reservation trust lands, the name of the nearest community and the tribe associated with the off-reservation trust land.

g) For each of the sections of the Project identified as being in 0-10 miles of Indian Country in d), please identify these sections of Project using the aerial maps provided in Keystone 0470-0583 (provided in Response 17 to RST IR No. 1). Again in identifying Indian Country, in the case of a reservation, provide the name of the reservation (and associated tribe); or in the case of off-reservation trust lands, provide the name of the nearest community and the tribe associated with the off-reservation trust land.

ANSWER:

20a). To Keystone's knowledge, the proposed pipeline route does not cross Indian Country as that term is defined by 18 U.S.C. § 1151.

20b). Keystone performed a title study of all properties transited by the proposed right-of-way. At the time of completion the title study demonstrated that the proposed right-of-way did not transit Indian Country as that term is defined by 18 U.S.C. § 1151, or any tribally owned land.

20c). Not applicable.

20d). Not applicable.

20e). Keystone does not have a study of distances to Indian Country as such. Keystone  
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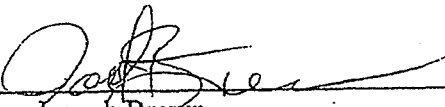
is aware of the following approximate distances from the proposed right of way to the tribally owned and/or properties held in trust for the Tribe in Tripp County: See responsive documents attached as Keystone 1926-1929. All properties are in proximity to the Rosebud Sioux Tribe's reservation.

20f). See the answer to interrogatory 20(e) above.

20g). Keystone objects to Interrogatory number 20(g) as burdensome. The known properties are identified by legal description in the exhibit supporting interrogatory answer 20(e) above.

Dated this 10 day of March, 2015.

TRANSCANADA KEYSTONE PIPELINE, LP  
by its agent, TC Oil Pipeline Operations, Inc.

By   
Joseph Brown  
Its Director, Authorized Signatory

Subscribed and sworn to before me

this 10 day of March, 2015.

  
John W. Love, Lawyer  
Notary Public - Canada

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002181

## REQUEST FOR PRODUCTION OF DOCUMENTS

**REQUEST FOR PRODUCTION 1:** As per Bold Nebraska's Request for Production No. 18 in IR No. 1, and in order to make this proceeding more efficient and effective, provide electronic access to all parties in this proceeding to all responses by TransCanada in response to discovery requests (first and second rounds) submitted to TransCanada by all parties in this proceeding.

**RESPONSE:** A way to access copies of all responses to discovery requests submitted to Keystone will be separately provided.

**REQUEST FOR PRODUCTION 2:** Provide copies of all communications with any government official for the Rosebud Sioux Tribe from January 1, 2009 through October 31, 2014. Amended Permit Condition 7.

**RESPONSE:** See Keystone Documents 1121, 1122, 1124, 1129, 1135, 1136, 1138, 1140, 1145, 1150.

**REQUEST FOR PRODUCTION 3:** If the answer to interrogatory 14 is in the affirmative, provide copies of all communications that document TransCanada's attempts to secure the services of the Rosebud Sioux Tribe's Tribal Historic Preservation Office to perform cultural surveys of land in the vicinity of the proposed route between the dates of January 1, 2009 and October 31, 2014. Amended Permit Condition 7, 43 and 44.

**RESPONSE:** See responsive documents attached as 1922-1925.

**REQUEST FOR PRODUCTION 4:** Provide the final report from the Yankton Sioux  
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Tribe's Tribal Historic Preservation Office referenced in the email correspondence on page number "KEYSTONE 1311" located in the file TransCanada sent in response to the First Set of Interrogatories and Request for Production of Documents titled "Rosebud Tribe Documents 01829983x9FB59." Amended Permit Condition 7, 43 and 44.

RESPONSE: See Keystone Documents 1312-1332.

**REQUEST FOR PRODUCTION 5:** Provide the spread sheet referenced in email communication dated March 18, 2011 between Jon Schmidt and Kirk Ranzetta on page "KEYSTONE 1272" located in the file TransCanada sent in response to the First Set of Interrogatories and Request for Production of Documents titled "Rosebud Tribe Documents 01829983x9FB59." Amended Permit Condition 7, 43 and 44.

RESPONSE: Keystone is attempting to locate this document, but it is stored in an off-site server which has not yet been accessed.

**REQUEST FOR PRODUCTION 6:** Provide the results of all of the survey work referenced in the email communication dated December 3, 2009 between Mike Wamboldt and Arthur Cunningham as contained on page "KEYSTONE 1263" located in the file TransCanada sent in response to the First Set of Interrogatories and Request for Production of Documents titled "Rosebud Tribe Documents 01829983x9FB59." Amended Permit Condition 7, 43 and 44.

**OBJECTION AND RESPONSE:** The survey work referred to in the referenced email were Traditional Cultural Properties (TCP) Surveys. The results of TCP {01844455.1}

survey are confidential information and were submitted to the DOS. For the results of the TCP survey, a request would have to be made to the DOS.

**REQUEST FOR PRODUCTION 7:** If the answer to interrogatory 16 is in the affirmative provide all documents related to that interrogatory. Amended Permit Condition 7, 43 and 44.

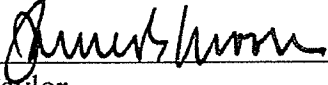
RESPONSE:           None located.

#### OBJECTIONS

The objections stated to Rosebud Sioux Tribe's Interrogatories and Request for Production of Documents were made by James E. Moore, one of the attorneys for Applicant TransCanada herein, for the reasons and upon the grounds stated therein.

Dated this 10<sup>th</sup> day of March, 2015.

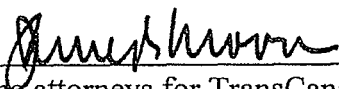
WOODS, FULLER, SHULTZ & SMITH P.C.

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Attorneys for Applicant TransCanada

**CERTIFICATE OF SERVICE**

I hereby certify that on the 10<sup>th</sup> day of March, 2015, I sent by e-mail transmission, a true and correct copy of Keystone's Responses to Rosebud Sioux Tribe's Second Interrogatories and Request for Production of Documents, to the following:

Matthew L. Rappold  
PO Box 873  
Rapid City, SD 57709  
[Matt.rappold01@gmail.com](mailto:Matt.rappold01@gmail.com)

  
\_\_\_\_\_  
One of the attorneys for TransCanada



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March 3, 2015

Woods Fuller Shultz and Smith, PC  
300 S. Phillips Avenue, Suite 300  
Sioux Falls, SD 57104

Re: In the Matter of the Application by TransCanada Keystone Pipeline, LP  
HP14-001  
Rosebud Sioux Tribes Response to TransCanada's Response to First Set of  
Interrogatories and Request for Production of Documents

Dear Mr. Taylor,

I am writing in response to Keystone's Responses and Objections to the Rosebud Sioux Tribe's First Set of Interrogatories and Request for Production of Documents to address some concerns that I have with your responses. It is my intention that we can resolve these disputes without warranting involvement of the Commission. Each concern will be identified and addressed in turn. I welcome the opportunity to further discuss these concerns and look forward to hearing from you.

My first two concerns are initially with your statement that within the scope of SDCL 15-6-26(e) your responses shall not be deemed to be continuing nor are the answers to be supplemented and your general objection to the instructions and definitions contained in the First Set of Interrogatories and Request for Production of Documents. SDCL 15-6-26(e) - "Supplementation of Responses" - provides that "a party who has responded to a request for discovery with a response that was complete when made is under a duty to supplement or correct the response to include information thereafter acquired." Accordingly, your statement that your responses are not deemed to be continuing appear to be in conflict with SDCL 15-6-26(e) unless your initial response were not complete when it was made. It necessarily follows that if your responses were not complete when made then your initial answers and production will need to be supplemented accordingly.

The following addresses specific concerns that I have with your responses to the interrogatories and request for production of documents.



**Specific Responses to TransCanada's Objections and Responses to Interrogatories:**

**Interrogatory No. 10:** Has TransCanada received any communications from any regulatory body or agency that may have jurisdiction over the construction, maintenance or operation of any pipeline located in the United States alleging that TransCanada has failed to comply with any applicable permits for the construction, operation or maintenance of any pipeline located in the United States?

**Response:** This request is not relevant, not likely to lead to the discovery of admissible evidence and is overly broad.

**Concerns:** Amended Permit Condition No. 1 requires Keystone to comply with all applicable laws and regulations in its construction and operation of the Project. Amended Permit Condition No. 1 does not limit this compliance to applicable South Dakota laws and regulations. Amended Permit Condition 2 requires Keystone to comply with all applicable federal, state and local permits in its construction and operation of the Project. Amended Permit Condition No. 2 does not limit this compliance to applicable South Dakota permits. TransCanada also operates pipelines located in different locations in the United States. If TransCanada is eventually granted the authority to construct the project then TransCanada's compliance with other permit conditions becomes of paramount importance to the current application. The interrogatory seeks information relevant to TransCanada's compliance with other permits from any pipeline that TransCanada operates in the United States. The information sought is reasonably calculated to lead to the discovery of admissible evidence in the present case. TransCanada's history of compliance or non-compliance with other permit conditions for other pipelines located in the United States is relevant to the matter currently pending before the PUC.

**Interrogatory No. 11:** Has TransCanada received any communications from any regulatory body or agency that may have jurisdiction over the construction, maintenance or operation of any pipeline located in Canada alleging that TransCanada has failed to comply with any applicable permits for the construction, operation or maintenance of any pipeline located in the United States?

**Response:** This request is not relevant, not likely to lead to the discovery of admissible evidence and is overly broad.

**Concerns:** Amended Permit Condition No. 1 requires Keystone to comply with all applicable laws and regulations in its construction and operation of the Project. Amended Permit Condition No. 1 does not limit this compliance to applicable South Dakota laws and regulations. TransCanada is required to comply with numerous permit conditions under the Amended Permit issued from the Commission. TransCanada also operates pipelines located in different locations in Canada. If TransCanada is eventually granted the authority to construct the project then

TransCanada's compliance with other permit conditions becomes of paramount importance to the current application. The interrogatory seeks information relevant to TransCanada's compliance with other permits from any pipeline that TransCanada operates in Canada. The information sought is reasonably calculated to lead to the discovery of admissible evidence in the present case. TransCanada's history of compliance or non-compliance with other permit conditions for other pipelines located in Canada is relevant to the matter currently pending before the PUC.

**Interrogatory No. 34:** Identify every person, along with contact information for each, who has agreed to supply any type of product to be transported through the project.

**Response:** The identity of Keystone's shippers and the terms of their contracts have substantial commercial and proprietary value, are subject to substantial efforts by Keystone to protect them from actual and potential competitors, and are required to be maintained on a confidential basis pursuant to the terms of the contracts between Keystone and its shippers and Section 15(13) of the Interstate Commerce Act.

**Concerns:** While the information sought to be obtained may be subject to the provisions of Section 15(13) of the Interstate Commerce Act, and the sought information may be considered confidential by the PUC in conformance with applicable Administrative Rules of the PUC I suggest that you ask the PUC to consider the information as confidential pursuant to ARSD 20:10:01:41.

**Interrogatory No. 49:** If TransCanada has applied for any waiver from the U.S. Department of Transportation Pipeline and Hazardous Materials Safety Administration have any of the requests been denied? If any of the requests have been denied, identify the appropriate pipeline and state the reason or reasons for each denial.

**Response:** To the extent that this request seeks information unrelated to oil pipelines, it is not relevant or likely to lead to the discovery of admissible evidence. Without waiving the objection, no.

**Concerns:** A showing of any history of seeking to have pipeline safety permit conditions waived by the U.S. Department of Transportation Pipeline and Hazardous Materials Safety Administration may show Keystone's willingness to seek waiver of South Dakota conditions in the construction, operation and maintenance of the project in South Dakota. The information sought is reasonably calculated to lead to the discovery of admissible evidence in the present case. TransCanada's history of compliance with other permit conditions, requests and denial of requests for waiver of conditions for other pipelines located in the United States is relevant to the matter currently pending before the PUC.

**Interrogatory No. 52:** Identify all companies that have committed to the use of the KXL pipeline to ship oil. Identify the country where each company that has committed to provide oil or gas to the pipeline is incorporated.

**Objection:** The identity of Keystone's shippers and the terms of their contracts have substantial commercial and proprietary value, are subject to substantial efforts by Keystone to protect them from actual and potential competitors, and are required to be maintained on a confidential basis pursuant to the terms of the contracts between Keystone and its shippers and Section 15(13) of the Interstate Commerce Act.

**Concerns:** While the information sought to be obtained may be subject to the provisions of Section 15(13) of the Interstate Commerce Act, and the sought information may be considered confidential by the PUC in conformance with applicable Administrative Rules of the PUC. I suggest that you ask the PUC to consider the information as confidential pursuant to ARSD 20:10:01:41.

**Interrogatory No. 55:** Provide copies of all safety reports submitted to any agencies with jurisdiction over the operation of the Southern Leg of the Keystone XL pipeline project.

**Objection and Answer:** The U.S. Department of Transportation, Pipeline and Hazardous Material Safety Administration is the governing agency that has federal jurisdiction over the operations of the Keystone XL pipeline. This issue is therefore beyond the scope of this proceeding. Without waiving the objection, a spreadsheet showing leaks and spills on the Keystone XL Pipeline is attached as Keystone 0774-0784. The referenced documents page numbers "Keystone 0774-0784 were not provided as stated.

**Concerns:** The Rosebud Sioux Tribe does not contest that the U.S. Department of Transportation, Pipeline and Hazardous Materials Safety Administration is the governing agency that has jurisdiction over the Southern Leg of the Keystone XL pipeline. A showing of any history of safety concerns and safety reports submitted to the federal agency with jurisdiction over TransCanada's Southern Leg of the Keystone XK pipeline is relevant to show TransCanada's safety record related to the operation and maintenance of the current project and within the scope of this proceeding. The information sought is reasonably calculated to lead to the discovery of admissible evidence in the present case.

**Interrogatory No. 65:** Does TransCanada or any of its affiliates recognize that they have any obligations to obtain the free, prior informed consent under the United Nations Declaration of the Rights of Indigenous People regarding the construction, maintenance or operation of the Keystone Pipeline.

**Answer:** Keystone recognizes that the United Nations Declaration of the Rights of Indigenous People was adopted by the United States on September 13, 2007. Canada and the United States voted against the adoption of the declaration. The declaration is not a legally binding instrument under international law of the United States and accordingly, Keystone is not legally bound by it.

**Concerns:** Canada and the United States signed onto the United Nations Declaration of the Rights of Indigenous People in 2010.

**Interrogatory No. 70, 71a, 71b:** Are there any land areas or waterways where the pipeline will pass through or nearby subject to any designation under the Wilderness Act of 1964, (71a – the Wild and Scenic River Act of 1964, 71b – are any land areas designated critical habitat under the Endangered Species Act.)

**Objection and Response:** To the extent that it seeks information outside South Dakota, this request is not relevant or likely to lead to the discovery of admissible evidence. Without waiving the objection, there are no land areas or waterways that the Project route in South Dakota will pass through that would be subject to any designation under the Wilderness Act of 1964, (71a – the Wild and Scenic River Act of 1964, 71b – are any land areas designated critical habitat under the Endangered Species Act.)

**Concerns:** Amended Permit Condition No. 1 requires TransCanada's compliance with all applicable laws and regulations in its construction and operation of the Project. While the PUC does not have jurisdiction over TransCanada's activities outside of the State of South Dakota, TransCanada's activities related to compliance with laws that apply to locations outside of the State of South Dakota are relevant to the matter before the PUC. The information sought is reasonably calculated to lead to the discovery of admissible evidence in the present case. TransCanada's history of compliance with all applicable laws and regulations is relevant to the matter currently pending before the PUC.

**Interrogatory No. 78:** According to Keystone's original application, Keystone began cultural and historic surveys in May 2008 and at that time it had found several pre-historic stone circles were uncovered. Please provide a detailed description of these sites, including location.

**Answer:** The sites are addressed during the course of government to government consultations with the DOS. Site locations are confidential and cannot be disclosed outside of the consultation process.

**Concerns:** You have cited no rule or law that supports TransCanada's assertion that this information is confidential and cannot be disclosed outside of the consultation process. The sought information may be considered confidential by the PUC in conformance with applicable Administrative Rules of the PUC. I suggest that you ask the PUC to consider the information as confidential pursuant to ARSD 20:10:01:41.

**Specific Responses to TransCanada's Objections and Responses to Request for Production of Documents:**

**RFP No. 1:** If the answer to Interrogatory No. 22 is in the affirmative, produce all documents related to and documenting Keystone's public liaison officer's immediate



access to Keystone's on-site project manager, Keystone's executive project manager and to each contractor's on site managers referenced in Amended Permit Condition 7.

**Objection and Answer:** The request for "all documents" related to the public liaison officer's access to Keystone personnel is vague, overly broad, unduly burdensome, not relevant and not reasonably calculated to lead to the discovery of admissible evidence. Without waving the objection, the liaison has contact information for all project team members, and can and does make contact at any time. Contractors for construction have not yet been selected.

**Concerns:** The documents requested that are related to the public liaison office are directly related to TransCanada's compliance with Amended Permit Condition No. 7 and should be documents that are maintained in the normal course of business and therefore the request to collect and provide the documents is not burdensome. The documentation requested is reasonably calculated to lead to the discovery of admissible evidence in the present case. Keystone's compliance with the Amended Permit Conditions is relevant to the matter pending before the PUC.

**RFP No. 5:** Produce documentation that TransCanada has provided contact information for the public liaison to all law enforcement agencies and local governments within the vicinity of the Project.

**Answer:** Notification to law enforcement agencies and local governments in the vicinity of the Project was completed in the first quarter of 2011 in conjunction with notice required by other conditions. The liaison continues to contact affected counties, townships and other governmental entities as the permit process takes place.

**Concerns:** No documents have been provided to support the assertion that Keystone has complied with the requirements of the Amended Permit Condition.

**RFP No. 18:** Provide documentation regarding TransCanada's compliance with reclamation and clean up efforts from all other construction activities related to any other pipeline that TransCanada owns or operates in the United States and Canada.

**Objection:** This request is overly broad and unduly burdensome and is not reasonably calculated to lead to the discovery of admissible evidence under SDCL 15-6-26(b). It is unlimited in time and extends to all of TransCanada's operations in the United States and Canada.

**Concerns:** The information and documents requested are not overly broad nor are they unduly burdensome because they are activities that would normally be carried out as regular business practices. TransCanada's overall history of compliance with other permit conditions for all of their other operations is demonstrative of TransCanada's regular business practices, particularly as it relates to compliance with clean-up efforts and reclamation requirements for all of their pipelines. If permitted to

construct in South Dakota they will be required to comply with numerous clean-up and reclamation requirements in South Dakota. The documentation requested is reasonably calculated to lead to the discovery of admissible evidence in the present case. We would agree to confining the requested documents and information to a specified period of time.

**RFP No. 19:** Provide copies of TransCanada's pipeline safety records for all other pipelines that TransCanada owns or operates in the United States and Canada.

**Objection:** This request is overly broad and unduly burdensome and is not reasonably calculated to lead to the discovery of admissible evidence under SDCL 15-6-26(b). It is unlimited in time and extends to all of TransCanada's operations in the United States and Canada.

**Concerns:** The information and documents requested are not overly broad nor are they unduly burdensome because they are activities that would normally be carried out as regular business practices. TransCanada's overall pipeline safety records for all of their other operations is demonstrative of TransCanada's regular business practices, particularly as it relates to pipeline safety practices for all of their pipelines. If permitted to construct in South Dakota they will be required to construct, operate and maintain the pipeline in a safe manner. The documentation requested is reasonably calculated to lead to the discovery of admissible evidence in the present case as it pertains to the previously reference condition. We would agree to confining the requested documents and information to a specified period of time.

**RFP No. 20:** Provide copies of all documentation concerning the requirement that all of TransCanada's shippers comply with its crude oil specifications.

**Objection:** The identity of Keystone's shippers and the terms of their contracts have substantial commercial and proprietary value, are subject to substantial efforts by Keystone to protect them from actual and potential competitors, and are required to be maintained on a confidential basis pursuant to the terms of the contracts between Keystone and its shippers. See Section 15(13) of the Interstate Commerce Act.

**Concerns:** The sought information may be considered confidential by the PUC in conformance with applicable Administrative Rules of the PUC. I suggest that you ask the PUC to consider the information as confidential pursuant to ARSD 20:10:01:41.

**RFP's 24 through RFP 30:**

**Answers:** See Keystone's documents 1121-1181 attached to response 23.

**Concerns:** The documents provided for each RFP are non responsive to the specific request for production.

**RFP No. 33:** Provide copies of all documents that demonstrate that TransCanada has complied with the requirements of Amended Permit Condition 44a-e.

**Answer:** Paleontological fieldwork methodology, literature search information , and results can be found in Sections 3.1.2.2 and 3.1.2.3 of the Department of State FSEIS (2014). A list of reports detailing the results of all pre-construction paleontological field surveys can be found in Table 3.1-4 of the Department of State FSEIS (2014). The paleontological mitigation report is titled: Second Confidential Draft – Paleontological Resources Mitigation Plan: Keystone XL Pipeline Project, South Dakota. The Plan is not provided because it is confidential/privileged information.

**Concerns:** That the “Paleontological Resources Mitigation Plan: Keystone XL Pipeline Project, South Dakota” was not provided for the reason asserted that it is confidential/privileged information without including the basis for that conclusion. If the information sought is confidential I suggest that you ask the PUC to consider the information as confidential pursuant to ARSD 20:10:01:41.

**RFP No. 45:** If the answer to Interrogatory No. 31 is in the affirmative provide copies of all documentation that support the affirmative answer.

**Objection:** The identity of Keystone’s shippers and the terms of their contracts have substantial commercial and proprietary value, are subject to substantial efforts by Keystone to protect them from actual and potential competitors, and are required to be maintained on a confidential basis pursuant to the terms and contracts between Keystone and its shippers and section 15(13) of the Interstate Commerce Act.

**Concerns:** If the information sought is confidential I suggest that you ask the PUC to consider the information as confidential pursuant to ARSD 20:10:01:41.

**RFP No. 46:** If the answer to Interrogatory No. 32 is in the affirmative provide copies of all documentation that support the affirmative answer.

**Objection:** The identity of Keystone’s shippers and the terms of their contracts have substantial commercial and proprietary value, are subject to substantial efforts by Keystone to protect them from actual and potential competitors, and are required to be maintained on a confidential basis pursuant to the terms and contracts between Keystone and its shippers and section 15(13) of the Interstate Commerce Act.

**Concerns:** If the information sought is confidential I suggest that you ask the PUC to consider the information as confidential pursuant to ARSD 20:10:01:41.

**RFP No. 47:** If the answer to Interrogatory No. 33 is in the affirmative provide copies of all documentation that support the affirmative answer.

**Objection:** The identity of Keystone’s shippers and the terms of their contracts have substantial commercial and proprietary value, are subject to substantial efforts by Keystone to protect them from actual and potential competitors, and are required to be maintained on a confidential basis pursuant to the terms and contracts between Keystone and its shippers and section 15(13) of the Interstate Commerce Act.



**Concerns:** If the information sought is confidential I suggest that you ask the PUC to consider the information as confidential pursuant to ARSD 20:10:01:41.

Thank you in advance for your response to our concerns and I look forward to visiting with you to resolve these issues. Please feel free to contact me at your convenience.

Best Regards,

/s/Matthew L. Rappold  
Matthew L. Rappold

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March 3, 2015

Woods Fuller Shultz and Smith, PC  
300 S. Phillips Avenue, Suite 300  
Sioux Falls, SD 57104

Re: In the Matter of the Application by TransCanada Keystone Pipeline, LP  
HP14-001  
Rosebud Sioux Tribes Response to TransCanada's Response to First Set of  
Interrogatories and Request for Production of Documents

Dear Mr. Taylor,

I am writing in response to Keystone's Responses and Objections to the Rosebud Sioux Tribe's First Set of Interrogatories and Request for Production of Documents to address some concerns that I have with your responses. It is my intention that we can resolve these disputes without warranting involvement of the Commission. Each concern will be identified and addressed in turn. I welcome the opportunity to further discuss these concerns and look forward to hearing from you.

My first two concerns are initially with your statement that within the scope of SDCL 15-6-26(e) your responses shall not be deemed to be continuing nor are the answers to be supplemented and your general objection to the instructions and definitions contained in the First Set of Interrogatories and Request for Production of Documents. SDCL 15-6-26(e) - "Supplementation of Responses" - provides that "a party who has responded to a request for discovery with a response that was complete when made is under a duty to supplement or correct the response to include information thereafter acquired." Accordingly, your statement that your responses are not deemed to be continuing appear to be in conflict with SDCL 15-6-26(e) unless your initial response were not complete when it was made. It necessarily follows that if your responses were not complete when made then your initial answers and production will need to be supplemented accordingly.

The following addresses specific concerns that I have with your responses to the interrogatories and request for production of documents.

**Specific Responses to TransCanada's Objections and Responses to Interrogatories:**

**Interrogatory No. 10:** Has TransCanada received any communications from any regulatory body or agency that may have jurisdiction over the construction, maintenance or operation of any pipeline located in the United States alleging that TransCanada has failed to comply with any applicable permits for the construction, operation or maintenance of any pipeline located in the United States?

**Response:** This request is not relevant, not likely to lead to the discovery of admissible evidence and is overly broad.

**Concerns:** Amended Permit Condition No. 1 requires Keystone to comply with all applicable laws and regulations in its construction and operation of the Project. Amended Permit Condition No. 1 does not limit this compliance to applicable South Dakota laws and regulations. Amended Permit Condition 2 requires Keystone to comply with all applicable federal, state and local permits in its construction and operation of the Project. Amended Permit Condition No. 2 does not limit this compliance to applicable South Dakota permits. TransCanada also operates pipelines located in different locations in the United States. If TransCanada is eventually granted the authority to construct the project then TransCanada's compliance with other permit conditions becomes of paramount importance to the current application. The interrogatory seeks information relevant to TransCanada's compliance with other permits from any pipeline that TransCanada operates in the United States. The information sought is reasonably calculated to lead to the discovery of admissible evidence in the present case. TransCanada's history of compliance or non-compliance with other permit conditions for other pipelines located in the United States is relevant to the matter currently pending before the PUC.

**Interrogatory No. 11:** Has TransCanada received any communications from any regulatory body or agency that may have jurisdiction over the construction, maintenance or operation of any pipeline located in Canada alleging that TransCanada has failed to comply with any applicable permits for the construction, operation or maintenance of any pipeline located in the United States?

**Response:** This request is not relevant, not likely to lead to the discovery of admissible evidence and is overly broad.

**Concerns:** Amended Permit Condition No. 1 requires Keystone to comply with all applicable laws and regulations in its construction and operation of the Project. Amended Permit Condition No. 1 does not limit this compliance to applicable South Dakota laws and regulations. TransCanada is required to comply with numerous permit conditions under the Amended Permit issued from the Commission. TransCanada also operates pipelines located in different locations in Canada. If TransCanada is eventually granted the authority to construct the project then

TransCanada's compliance with other permit conditions becomes of paramount importance to the current application. The interrogatory seeks information relevant to TransCanada's compliance with other permits from any pipeline that TransCanada operates in Canada. The information sought is reasonably calculated to lead to the discovery of admissible evidence in the present case. TransCanada's history of compliance or non-compliance with other permit conditions for other pipelines located in Canada is relevant to the matter currently pending before the PUC.

**Interrogatory No. 34:** Identify every person, along with contact information for each, who has agreed to supply any type of product to be transported through the project.

**Response:** The identity of Keystone's shippers and the terms of their contracts have substantial commercial and proprietary value, are subject to substantial efforts by Keystone to protect them from actual and potential competitors, and are required to be maintained on a confidential basis pursuant to the terms of the contracts between Keystone and its shippers and Section 15(13) of the Interstate Commerce Act.

**Concerns:** While the information sought to be obtained may be subject to the provisions of Section 15(13) of the Interstate Commerce Act, and the sought information may be considered confidential by the PUC in conformance with applicable Administrative Rules of the PUC I suggest that you ask the PUC to consider the information as confidential pursuant to ARSD 20:10:01:41.

**Interrogatory No. 49:** If TransCanada has applied for any waiver from the U.S. Department of Transportation Pipeline and Hazardous Materials Safety Administration have any of the requests been denied? If any of the requests have been denied, identify the appropriate pipeline and state the reason or reasons for each denial.

**Response:** To the extent that this request seeks information unrelated to oil pipelines, it is not relevant or likely to lead to the discovery of admissible evidence. Without waiving the objection, no.

**Concerns:** A showing of any history of seeking to have pipeline safety permit conditions waived by the U.S. Department of Transportation Pipeline and Hazardous Materials Safety Administration may show Keystone's willingness to seek waiver of South Dakota conditions in the construction, operation and maintenance of the project in South Dakota. The information sought is reasonably calculated to lead to the discovery of admissible evidence in the present case. TransCanada's history of compliance with other permit conditions, requests and denial of requests for waiver of conditions for other pipelines located in the United States is relevant to the matter currently pending before the PUC.

**Interrogatory No. 52:** Identify all companies that have committed to the use of the KXL pipeline to ship oil. Identify the country where each company that has committed to provide oil or gas to the pipeline is incorporated.

**Objection:** The identity of Keystone's shippers and the terms of their contracts have substantial commercial and proprietary value, are subject to substantial efforts by Keystone to protect them from actual and potential competitors, and are required to be maintained on a confidential basis pursuant to the terms of the contracts between Keystone and its shippers and Section 15(13) of the Interstate Commerce Act.

**Concerns:** While the information sought to be obtained may be subject to the provisions of Section 15(13) of the Interstate Commerce Act, and the sought information may be considered confidential by the PUC in conformance with applicable Administrative Rules of the PUC. I suggest that you ask the PUC to consider the information as confidential pursuant to ARSD 20:10:01:41.

**Interrogatory No. 55:** Provide copies of all safety reports submitted to any agencies with jurisdiction over the operation of the Southern Leg of the Keystone XL pipeline project.

**Objection and Answer:** The U.S. Department of Transportation, Pipeline and Hazardous Material Safety Administration is the governing agency that has federal jurisdiction over the operations of the Keystone XL pipeline. This issue is therefore beyond the scope of this proceeding. Without waiving the objection, a spreadsheet showing leaks and spills on the Keystone XL Pipeline is attached as Keystone 0774-0784. The referenced documents page numbers "Keystone 0774-0784 were not provided as stated.

**Concerns:** The Rosebud Sioux Tribe does not contest that the U.S. Department of Transportation, Pipeline and Hazardous Materials Safety Administration is the governing agency that has jurisdiction over the Southern Leg of the Keystone XL pipeline. A showing of any history of safety concerns and safety reports submitted to the federal agency with jurisdiction over TransCanada's Southern Leg of the Keystone XK pipeline is relevant to show TransCanada's safety record related to the operation and maintenance of the current project and within the scope of this proceeding. The information sought is reasonably calculated to lead to the discovery of admissible evidence in the present case.

**Interrogatory No. 65:** Does TransCanada or any of its affiliates recognize that they have any obligations to obtain the free, prior informed consent under the United Nations Declaration of the Rights of Indigenous People regarding the construction, maintenance or operation of the Keystone Pipeline.

**Answer:** Keystone recognizes that the United Nations Declaration of the Rights of Indigenous People was adopted by the United States on September 13, 2007. Canada and the United States voted against the adoption of the declaration. The declaration is not a legally binding instrument under international law of the United States and accordingly, Keystone is not legally bound by it.

**Concerns:** Canada and the United States signed onto the United Nations Declaration of the Rights of Indigenous People in 2010.

**Interrogatory No. 70, 71a, 71b:** Are there any land areas or waterways where the pipeline will pass through or nearby subject to any designation under the Wilderness Act of 1964, (71a – the Wild and Scenic River Act of 1964, 71b – are any land areas designated critical habitat under the Endangered Species Act.)

**Objection and Response:** To the extent that it seeks information outside South Dakota, this request is not relevant or likely to lead to the discovery of admissible evidence. Without waiving the objection, there are no land areas or waterways that the Project route in South Dakota will pass through that would be subject to any designation under the Wilderness Act of 1964. , (71a – the Wild and Scenic River Act of 1964, 71b – are any land areas designated critical habitat under the Endangered Species Act.)

**Concerns:** Amended Permit Condition No. 1 requires TransCanada’s compliance with all applicable laws and regulations in its construction and operation of the Project. While the PUC does not have jurisdiction over TransCanada’s activities outside of the State of South Dakota, TransCanada’s activities related to compliance with laws that apply to locations outside of the State of South Dakota are relevant to the matter before the PUC. The information sought is reasonably calculated to lead to the discovery of admissible evidence in the present case. TransCanada’s history of compliance with all applicable laws and regulations is relevant to the matter currently pending before the PUC.

**Interrogatory No. 78:** According to Keystone’s original application, Keystone began cultural and historic surveys in May 2008 and at that time it had found several pre-historic stone circles were uncovered. Please provide a detailed description of these sites, including location.

**Answer:** The sites are addressed during the course of government to government consultations with the DOS. Site locations are confidential and cannot be disclosed outside of the consultation process.

**Concerns:** You have cited no rule or law that supports TransCanada’s assertion that this information is confidential and cannot be disclosed outside of the consultation process. The sought information may be considered confidential by the PUC in conformance with applicable Administrative Rules of the PUC. I suggest that you ask the PUC to consider the information as confidential pursuant to ARSD 20:10:01:41.

**Specific Responses to TransCanada’s Objections and Responses to Request for Production of Documents:**

**RFP No. 1:** If the answer to Interrogatory No. 22 is in the affirmative, produce all documents related to and documenting Keystone’s public liaison officer’s immediate



access to Keystone's on-site project manager, Keystone's executive project manager and to each contractor's on site managers referenced in Amended Permit Condition 7.

**Objection and Answer:** The request for "all documents" related to the public liaison officer's access to Keystone personnel is vague, overly broad, unduly burdensome, not relevant and not reasonably calculated to lead to the discovery of admissible evidence. Without waving the objection, the liaison has contact information for all project team members, and can and does make contact at any time. Contractors for construction have not yet been selected.

**Concerns:** The documents requested that are related to the public liaison office are directly related to TransCanada's compliance with Amended Permit Condition No. 7 and should be documents that are maintained in the normal course of business and therefore the request to collect and provide the documents is not burdensome. The documentation requested is reasonably calculated to lead to the discovery of admissible evidence in the present case. Keystone's compliance with the Amended Permit Conditions is relevant to the matter pending before the PUC.

**RFP No. 5:** Produce documentation that TransCanada has provided contact information for the public liaison to all law enforcement agencies and local governments within the vicinity of the Project.

**Answer:** Notification to law enforcement agencies and local governments in the vicinity of the Project was completed in the first quarter of 2011 in conjunction with notice required by other conditions. The liaison continues to contact affected counties, townships and other governmental entities as the permit process takes place.

**Concerns:** No documents have been provided to support the assertion that Keystone has complied with the requirements of the Amended Permit Condition.

**RFP No. 18:** Provide documentation regarding TransCanada's compliance with reclamation and clean up efforts from all other construction activities related to any other pipeline that TransCanada owns or operates in the United States and Canada.

**Objection:** This request is overly broad and unduly burdensome and is not reasonably calculated to lead to the discovery of admissible evidence under SDCL 15-6-26(b). It is unlimited in time and extends to all of TransCanada's operations in the United States and Canada.

**Concerns:** The information and documents requested are not overly broad nor are they unduly burdensome because they are activities that would normally be carried out as regular business practices. TransCanada's overall history of compliance with other permit conditions for all of their other operations is demonstrative of TransCanada's regular business practices, particularly as it relates to compliance with clean-up efforts and reclamation requirements for all of their pipelines. If permitted to

construct in South Dakota they will be required to comply with numerous clean-up and reclamation requirements in South Dakota. The documentation requested is reasonably calculated to lead to the discovery of admissible evidence in the present case. We would agree to confining the requested documents and information to a specified period of time.

**RFP No. 19:** Provide copies of TransCanada's pipeline safety records for all other pipelines that TransCanada owns or operates in the United States and Canada.

**Objection:** This request is overly broad and unduly burdensome and is not reasonably calculated to lead to the discovery of admissible evidence under SDCL 15-6-26(b). It is unlimited in time and extends to all of TransCanada's operations in the United States and Canada.

**Concerns:** The information and documents requested are not overly broad nor are they unduly burdensome because they are activities that would normally be carried out as regular business practices. TransCanada's overall pipeline safety records for all of their other operations is demonstrative of TransCanada's regular business practices, particularly as it relates to pipeline safety practices for all of their pipelines. If permitted to construct in South Dakota they will be required to construct, operate and maintain the pipeline in a safe manner. The documentation requested is reasonably calculated to lead to the discovery of admissible evidence in the present case as it pertains to the previously reference condition. We would agree to confining the requested documents and information to a specified period of time.

**RFP No. 20:** Provide copies of all documentation concerning the requirement that all of TransCanada's shippers comply with its crude oil specifications.

**Objection:** The identity of Keystone's shippers and the terms of their contracts have substantial commercial and proprietary value, are subject to substantial efforts by Keystone to protect them from actual and potential competitors, and are required to be maintained on a confidential basis pursuant to the terms of the contracts between Keystone and its shippers. See Section 15(13) of the Interstate Commerce Act.

**Concerns:** The sought information may be considered confidential by the PUC in conformance with applicable Administrative Rules of the PUC. I suggest that you ask the PUC to consider the information as confidential pursuant to ARSD 20:10:01:41.

**RFP's 24 through RFP 30:**

**Answers:** See Keystone's documents 1121-1181 attached to response 23.

**Concerns:** The documents provided for each RFP are non responsive to the specific request for production.

**RFP No. 33:** Provide copies of all documents that demonstrate that TransCanada has complied with the requirements of Amended Permit Condition 44a-e.



**Answer:** Paleontological fieldwork methodology, literature search information , and results can be found in Sections 3.1.2.2 and 3.1.2.3 of the Department of State FSEIS (2014). A list of reports detailing the results of all pre-construction paleontological field surveys can be found in Table 3.1-4 of the Department of State FSEIS (2014). The paleontological mitigation report is titled: Second Confidential Draft – Paleontological Resources Mitigation Plan: Keystone XL Pipeline Project, South Dakota. The Plan is not provided because it is confidential/privileged information.

**Concerns:** That the “Paleontological Resources Mitigation Plan: Keystone XL Pipeline Project, South Dakota” was not provided for the reason asserted that it is confidential/privileged information without including the basis for that conclusion. If the information sought is confidential I suggest that you ask the PUC to consider the information as confidential pursuant to ARSD 20:10:01:41.

**RFP No. 45:** If the answer to Interrogatory No. 31 is in the affirmative provide copies of all documentation that support the affirmative answer.

**Objection:** The identity of Keystone’s shippers and the terms of their contracts have substantial commercial and proprietary value, are subject to substantial efforts by Keystone to protect them from actual and potential competitors, and are required to be maintained on a confidential basis pursuant to the terms and contracts between Keystone and its shippers and section 15(13) of the Interstate Commerce Act.

**Concerns:** If the information sought is confidential I suggest that you ask the PUC to consider the information as confidential pursuant to ARSD 20:10:01:41.

**RFP No. 46:** If the answer to Interrogatory No. 32 is in the affirmative provide copies of all documentation that support the affirmative answer.

**Objection:** The identity of Keystone’s shippers and the terms of their contracts have substantial commercial and proprietary value, are subject to substantial efforts by Keystone to protect them from actual and potential competitors, and are required to be maintained on a confidential basis pursuant to the terms and contracts between Keystone and its shippers and section 15(13) of the Interstate Commerce Act.

**Concerns:** If the information sought is confidential I suggest that you ask the PUC to consider the information as confidential pursuant to ARSD 20:10:01:41.

**RFP No. 47:** If the answer to Interrogatory No. 33 is in the affirmative provide copies of all documentation that support the affirmative answer.

**Objection:** The identity of Keystone’s shippers and the terms of their contracts have substantial commercial and proprietary value, are subject to substantial efforts by Keystone to protect them from actual and potential competitors, and are required to be maintained on a confidential basis pursuant to the terms and contracts between Keystone and its shippers and section 15(13) of the Interstate Commerce Act.

**Concerns:** If the information sought is confidential I suggest that you ask the PUC to consider the information as confidential pursuant to ARSD 20:10:01:41.

Thank you in advance for your response to our concerns and I look forward to visiting with you to resolve these issues. Please feel free to contact me at your convenience.

Best Regards,

/s/Matthew L. Rappold  
Matthew L. Rappold

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March 16, 2015

Woods Fuller Shultz and Smith, PC  
300 S. Phillips Avenue, Suite 300  
Sioux Falls, SD 57104

Re: In the Matter of the Application by TransCanada Keystone Pipeline, LP  
HP14-001  
Discovery – Follow up to March 13, 2015 conversation

Dear Mr. Taylor,

I am writing as a follow up to our conversation on March 13, 2015 when we discussed concerns about TransCanada's responses to the Rosebud Sioux Tribe's First Set of Interrogatories and Request for Production of Documents. The following consists of my recollection of the matters we discussed pertaining to this conversation along with proposed options to resolve my disputes and indications where you informed me that you would be maintaining your original objections and positions.

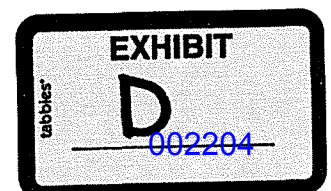
Please advise if you have a differing recollection of our conversation. Thank you and I look forward to hearing from you.

Interrogatory No.: 10 and 11: Based on our conversation you informed me that upon narrowing of the original Interrogatory No's 10 and 11 you would reconsider your original answers. Accordingly the following amended Interrogatory No. 10 and 11 are submitted:

(Amended) Interrogatory No. 10:

From 2005 through the present, has TransCanada received any communications from any regulatory body or agency that may have jurisdiction over the operation of any crude oil pipeline located in the United States alleging that TransCanada has failed to comply with any applicable permits regarding the operation of any crude oil pipeline located in the United States? Amended Permit Conditions 1 and 2.

(Amended) Interrogatory No. 11: Has TransCanada received any communications from any regulatory body or agency that may have jurisdiction over the operation of any crude oil pipeline



located in Canada alleging that TransCanada has failed to comply with any applicable permits regarding the operation of any crude oil pipeline located in Canada? Amended Permit Condition 2.

Interrogatory No. 34: Based on our conversation on March 13, 2015 you will be maintaining your objection, but did give general categories of customers including national and international companies that operate facilities in the tar sands region and informed me that the requested information can be found on the internet.

Interrogatory No. 52: Based on our conversation on March 13, 2015 you will be maintaining your objection to the Interrogatory.

Interrogatory No. 55: I informed you that I would review the documents sent for the inclusion of page numbers identified as “Keystone 0774-0784.” I have reviewed the documents sent that referenced a “spread sheet showing leaks and spills on the Keystone XL pipeline as Keystone 0774-0784” and have not been able to locate the requested page numbers. Please provide the spreadsheets.

Interrogatory No. 65: Based on our discussions we agreed to leave the interrogatory and your response as it is.

Interrogatories No. 70, 71 a and b: Based on our conversation you advised that you were satisfied with your answer provided in your responses.

Interrogatory No. 78: Based on our conversation you advised that you would maintain your position that the requested information is confidential and not subject to disclosure.

RFP's No. 1: You indicated that the requested information could be obtained on the PUC website.

RFP No. 5: You indicated that the Public Liaison reports to the PUC and will stand by your answer.

RFP No.:18: Based on our conversation you advised that upon amendment of the original RFP you would revisit your original answer to RFP No. 18. Accordingly, RFP No. 18 is amended as follows:

Amended RFP No.18: Provide documentation regarding TransCanada's compliance with reclamation and clean up-efforts from all other construction activities related to any other crude oil pipeline that TransCanada operates in the United States and Canada since 2005. Amended Permit Condition 26.

RFP No.:19: Based on our conversation you advised that upon amendment of the original RFP you would revisit your original answer to RFP No. 19. Accordingly, RFP No. 19 is amended as follows:

Amended RFP No.19: Provide documentation regarding TransCanada's compliance with pipeline safety requirements for any other crude oil pipeline that TransCanada has operated in the United States and Canada since 2005. Amended Permit Condition 26.

RFP No. 20: Based on our conversation you advised that you were standing by your objection as previously stated.

RFP No's 24-30: Based on our conversation you advised that I should ask the PUC for a ruling on the confidentiality of the information requested.

RFP No's 45 and 46: Based on our conversation you advised that you were maintaining your position that the requested documents are confidential in nature and protected as such.

Thank you for your attention to this matter and I look forward to hearing from you.

Sincerely,

/s/ Matthew L. Rappold  
Matthew L. Rappold

Rappold Law Office

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March 25, 2015

Woods Fuller Shultz and Smith, PC  
300 S. Phillips Avenue, Suite 300  
Sioux Falls, SD 57104

Re: In the Matter of the Application by TransCanada Keystone Pipeline, LP  
HP14-001  
Concerns with Keystones Responses to Second Set of Interrogatories and  
Request for Production of Documents

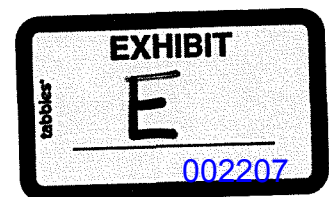
Dear Mr. Taylor,

I am writing in response to Keystone's Responses and Objections to the Rosebud Sioux Tribe's Second Set of Interrogatories and Request for Production of Documents to address concerns that I have with your responses. Each concern will be identified and addressed in turn. I welcome the opportunity to further discuss these concerns and look forward to hearing from you.

My first two concerns are initially with your statement that within the scope of SDCL 15-6-26(e) your responses shall not be deemed to be continuing nor are the answers to be supplemented and your general objection to the instructions and definitions contained in the First Set of Interrogatories and Request for Production of Documents. SDCL 15-6-26(e) - "Supplementation of Responses" provides that "a party who has responded to a request for discovery with a response that was complete when made is under a duty to supplement or correct the response to include information thereafter acquired." Accordingly, your statement that your responses are not deemed to be continuing appear to be in conflict with SDCL 15-6-26(e) unless your initial responses were not complete when made. If your responses were not complete when made then your initial answers and production will need to be supplemented accordingly. Your first answers were supplemented on March 19, 2015.

The following addresses specific concerns that I have with your responses to the interrogatories and request for production of documents.

**Specific Responses to TransCanada's Objections and Responses to Interrogatories:**



**Interrogatory No.:** 1a, b, c, d, e, f, g and h.

- a) For the most recent and accurate Project route (as described in ref (iii)) and facility locations, provide an approximate elevation profile of the proposed pipeline (elevation vs. pipeline milepost), capturing the segments from the nearest upstream pump station north of the state border to the nearest pump station just south of the state border.
- b) On the elevation profile provided above, indicate (1) the location of the pump stations, (2) the location of all mainline valves, including check valves, by milepost; (3) the type of mainline valve actuation (i.e. manual, automatic, or remotely operated); and (4) the location of all valves in reference to water crossings.
- c) According to Finding 20 and ref (iv), Keystone is proposing a number of changes to both the type of valves and their location since the PUC decision of June 29, 2010. Please list these changes and indicate them on the elevation profile requested above.
- d) For the maximum design flow rate (i.e. the updated maximum design flow rate of 830,000 bpd as per Finding 20), indicate the suction and discharge pressures at each pump station identified on the above elevation profile.
- e) On the provided elevation profile, indicate the maximum operating pressure ("MOP") for the pipeline segments.
- f) Superimpose a hydraulic profile on the provided elevation profile for the stated design capacity/operation.
- g) On the above pipeline elevation profile, indicate the approximate location of HCAs by milepost.
- h) If the information in (g) is confidential as indicated on IR no. 1 responses to other parties, please indicate (on the above pipeline elevation profile) the approximate location by milepost of (i) water crossings; (ii) the High Plains aquifer (Ogallala Formation) in Tripp County; (iii) other areas of unconfined aquifers including alluvial aquifers associated with streams, and occasional unconfined stretches in the Hell Creek, Fox Hills, and Pierre Shale aquifers (as per ref (v)); and (iv) any Karst Aquifers, which are crossed by the Project.

**Response:**

1a. This request seeks information that is confidential for security reasons. It is also not relevant or likely to lead to the discovery of admissible evidence.

1b. This request seeks information that is confidential for security reasons. The milepost locations for each pump station and mainline valve are not relevant or likely to lead to the discovery of admissible evidence. Without waiving the objection, each mainline valve located in

South Dakota will be remotely operated. Mainline valves and pump stations are discussed in Section 2.1.4.4 of the FSEIS.

1c. This request for an elevation profile seeks information that is confidential for security reasons. Without waiving the objection, all valve locations are in compliance with 49 CFR 195.260 and PHMSA Special Condition 32. Changes include remote control and actuation of any valves which were manually operated; the addition of backup power; and the addition/adjustment of intermediate mainline valve locations to ensure no more than a 20 mile spacing.

1d. The request for an elevation profile seeks information that is confidential for security reasons. Without waiving the objection, the minimum suction pressure at the pump station is 50 psig and a maximum discharge pressure of 1,307 psig.

1e. The request for an elevation profile seeks information that is confidential for security reasons. Without waiving the objection, in accordance with 49 CFR 195.106 Design Pressure the mainline MOP will be 1,307 psig and at select locations downstream of pump stations, the MOP is 1,600 psig.

1f. This request seeks information that is confidential for security reasons. It is also not relevant or likely to lead to the discovery of admissible evidence.

1g. The location of High Consequence Areas is confidential and Keystone is required by PHMSA to keep this information confidential.

1h. The Department of State FSEIS discusses the High Plains Aquifer and other aquifers in Chapter 3, Water Resources, Section 3.3.2. The mile posts of the aquifers beneath the right of way are listed in Table 3.3-2.

**Concerns:**

1a. The interrogatory seeks information relevant to analyzing and determining worst case spill scenarios and is central to the ability to evaluate the safety of the pipeline as well as its overall design and operation. The information sought is reasonably calculated to lead to the discovery of admissible evidence. The responses make no reference to any specific confidentiality laws regarding the information sought. Rather, a blanket assertion is provided that the information is protected. While the information may be considered confidential by the PUC under applicable Administrative Rules, no such determination has been made. Please provide the requested information.

1b. The interrogatory seeks information relevant to analyzing and determining worst case spill scenarios and is central to the ability to evaluate the safety of the pipeline as well as its overall design and operation. The information sought is reasonably calculated to lead to the discovery of admissible evidence. The responses make no reference to any specific confidentiality laws regarding the information sought. Rather, a blanket assertion is provided that the information is



protected. While the information may be considered confidential by the PUC under applicable Administrative Rules, no such determination has been made. Please provide the requested information.

1c. The interrogatory seeks information relevant to analyzing and determining worst case spill scenarios and is central to the ability to evaluate the safety of the pipeline as well as its overall design and operation. The information sought is reasonably calculated to lead to the discovery of admissible evidence. The responses make no reference to any specific confidentiality laws regarding the information sought. Rather, a blanket assertion is provided that the information is protected. While the information may be considered confidential by the PUC under applicable Administrative Rules, no such determination has been made. Please provide the requested information.

1d. The interrogatory seeks information relevant to analyzing and determining worst case spill scenarios and is central to the ability to evaluate the safety of the pipeline as well as its overall design and operation. The information sought is reasonably calculated to lead to the discovery of admissible evidence. The responses make no reference to any specific confidentiality laws regarding the information sought. Rather, a blanket assertion is provided that the information is protected. While the information may be considered confidential by the PUC under applicable Administrative Rules, no such determination has been made. Please provide the requested information.

1e. The answer provided is incomplete and provides only general MOPs for the Project, whereas our request asked for MOP by pipeline segment. The interrogatory seeks information relevant to analyzing and determining worst case spill scenarios and is central to the ability to evaluate the safety of the pipeline as well as its overall design and operation. The information sought is reasonably calculated to lead to the discovery of admissible evidence. The MOP by pipeline segment is essential for evaluating the safety of the pipeline during operation. The responses make no reference to any specific confidentiality laws regarding the information sought. Rather, a blanket assertion is provided that the information is protected. While the information may be considered confidential by the PUC under applicable Administrative Rules, no such determination has been made. Please provide the requested information.

1f. The interrogatory seeks information relevant to analyzing and determining worst case spill scenarios and is central to the ability to evaluate the safety of the pipeline as well as its overall design and operation and is necessary to understand the pressure safety factors on specific segments of the pipeline. The information sought is reasonably calculated to lead to the discovery of admissible evidence. The responses make no reference to any specific confidentiality laws regarding the information sought. Rather, a blanket assertion is provided that the information is protected. While the information may be considered confidential by the PUC under applicable Administrative Rules, no such determination has been made. Please provide the requested information. The hydrologic profile should be superimposed on the elevation profile and expressed as the maximum stream daily rate (in barrels per stream day) for

a specific gravity of crude. Note: we are not asking the calendar rate of 830k bpd (i.e. the average rate over the year for all types of crudes).

1g. The requested information is not confidential and TransCanada is not required by the PHMSA to keep the location of High Consequence Areas confidential. The interrogatory seeks information relevant to analyzing and determining worst case spill scenarios and is central to the ability to evaluate the safety of the pipeline as well as its overall design and operation. The location of the updated High Consequence Areas on the elevation profile is key to Integrity Management, and central to the ability to evaluate the safety of the pipeline. The information sought is reasonably calculated to lead to the discovery of admissible evidence.

1h. While the FSEIS does discuss water crossings, as well as the High Plains Aquifer and other aquifers in the reference provided in response to this question, it is impossible to know if the information in the FSEIS is still up-to-date given the changes in the routing (particularly around HCAs) in South Dakota, which may post-date the FSEIS. Furthermore, Table 3.3-2 (FSEIS) does not categorize the aquifers as "unconfined" and therefore does not answer the question. Nor does Table 3.3-2 provide the information requested about the location of occasional unconfined stretches in Hell Creek, Fox Hills and Pierre Shale aquifers. Finally, the question asks for the location of any Karst Aquifers crossed by the Project. (We are seeking confirmation of our understanding that no Karst aquifers are crossed by the project.) For the above reasons, the response is incomplete, potentially out of date, and ambiguous. Please provide a complete, direct, updated and unambiguous response to each of the specific questions in this request.

**Interrogatory No. 2a through 2e.:**

- a) Please list each of the 20 remotely controlled valves (and any additional check valves) and their location by milepost. Please indicate which of these locations are proximate to water crossings and identify the water crossing.
- b) For each critical water crossing, please confirm the placement of remotely controlled shut-off valves on either side of critical water crossings. If not, please explain why not.
- c) For each critical water crossing, please confirm the placement of a check valve. If not, explain why not.
- d) Given that all 20 mainline valves will be remotely controlled, does this imply that there are no more check valves planned? If yes, please explain the absence of check valves for additional safety on critical water crossings. If not, please confirm if there are check valves located at critical water crossings; and provide the location of the check valves.
- e) According to refs (i)-(iv), Keystone is proposing a number of changes to both the type of valves and their location since the PUC decision of June 29, 2010. Please list these changes.

**Response:**

2a. This request seeks information that is confidential for security reasons. The mile post locations of valve sites is not relevant and not likely to lead to the discovery of admissible evidence. Without waiving the objection, please refer to FSEIS 2.1 Overview of the Proposed Project, Section 2.1.4.4 Mainline Valves. All valve locations are in compliance with PHMSA Special Condition 32 and 49 CFR 195.260. Per 49 CFR 195.260 (e) valves are placed on each side of a water crossing that is more than 100 feet from high water mark to high water mark.

2b. All valve locations are in compliance with PHMSA Special Conditions 32 and 49 CFR 195.260. Per 49 CFR 195.260 (e) valves are placed on each side of a water crossing that is more than 100 feet from high water mark to high water mark.

2c. All valve locations are in compliance with PHMSA Special Conditions 32 and 49 CFR 195.260. Per 49 CFR 195.260 (e) valves are placed on each side of a water crossing that is more than 100 feet from high water mark to high water mark.

2d. No. Select valve site locations contain remotely operable mainline isolation valve and a check valve. These valve assemblies are placed in proximity downstream to major water bodies.

2e. All valve locations are in compliance with 49 CFR 195.260 and PHMSA Special Condition 32. Changes include remote control and actuation of any valves which were manually operated; the addition of back-up power; and the addition/adjustment of intermediate mainline valve locations to ensure no more than a 20 mile spacing.

**Concerns:**

2a. The interrogatory seeks information relevant to analyzing and determining worst case spill scenarios and is central to the ability to evaluate the safety of the pipeline as well as its overall design and operation and is necessary to understand the pressure safety factors on specific segments of the pipeline. The information sought is reasonably calculated to lead to the discovery of admissible evidence. The information provided is outdated as the FSEIS gives mileposts locations for 15 valves in South Dakota and now there are 20 valves as well as check valves in South Dakota. The responses make no reference to any specific confidentiality laws regarding the information sought. Rather, a blanket assertion is provided that the information is protected. While the information may be considered confidential by the PUC under applicable Administrative Rules, no such determination has been made. Please provide the requested information.

2b. The interrogatory seeks information relevant to analyzing and determining worst case spill scenarios and is central to the ability to evaluate the safety of the pipeline as well as its overall design and operation and is necessary to understand the pressure safety factors on specific segments of the pipeline. The information sought is reasonably calculated to lead to the

discovery of admissible evidence. The information provided is outdated as the FSEIS gives mileposts locations for 15 valves in South Dakota and now there are 20 valves as well as check valves in South Dakota. The responses make no reference to any specific confidentiality laws regarding the information sought. Rather, a blanket assertion is provided that the information is protected. While the information may be considered confidential by the PUC under applicable Administrative Rules, no such determination has been made. Please provide the requested information.

2c. The interrogatory seeks information relevant to analyzing and determining worst case spill scenarios and is central to the ability to evaluate the safety of the pipeline as well as its overall design and operation and is necessary to understand the pressure safety factors on specific segments of the pipeline. The information sought is reasonably calculated to lead to the discovery of admissible evidence. The information provided is outdated as the FSEIS gives mileposts locations for 15 valves in South Dakota and now there are 20 valves as well as check valves in South Dakota. The responses make no reference to any specific confidentiality laws regarding the information sought. Rather, a blanket assertion is provided that the information is protected. While the information may be considered confidential by the PUC under applicable Administrative Rules, no such determination has been made. Please provide the requested information.

2d. The interrogatory seeks information relevant to analyzing and determining worst case spill scenarios and is central to the ability to evaluate the safety of the pipeline as well as its overall design and operation and is necessary to understand the pressure safety factors on specific segments of the pipeline. The information sought is reasonably calculated to lead to the discovery of admissible evidence. The information provided is outdated as the FSEIS gives mileposts locations for 15 valves in South Dakota and now there are 20 valves as well as check valves in South Dakota. The responses make no reference to any specific confidentiality laws regarding the information sought. Rather, a blanket assertion is provided that the information is protected. While the information may be considered confidential by the PUC under applicable Administrative Rules, no such determination has been made. Please provide the requested information.

2e. The interrogatory seeks information relevant to analyzing and determining worst case spill scenarios and is central to the ability to evaluate the safety of the pipeline as well as its overall design and operation and is necessary to understand the pressure safety factors on specific segments of the pipeline. The information sought is reasonably calculated to lead to the discovery of admissible evidence. The information provided is outdated as the FSEIS gives mileposts locations for 15 valves in South Dakota and now there are 20 valves as well as check valves in South Dakota. The responses make no reference to any specific confidentiality laws regarding the information sought. Rather, a blanket assertion is provided that the information is protected. While the information may be considered confidential by the PUC under applicable

Administrative Rules, no such determination has been made. Please provide the requested information.

**Interrogatory No's:** 3a and 3c

- a) Please provide a breakdown of the annual capacity of Keystone XL to move: (1) light crude; (2) medium crude; (3) heavy crude.
- c) To the extent to which the annual capacity to move crude varies by type of crude (i.e. light, medium and heavy) as per Question b), please comment on the change in annual capacity for each type of crude from (i) the Project as originally permitted by the SD PUC on June 29, 2010 (which would have a nominal capacity of 700,000 bpd expandable to 900,000 bpd with additional pumping capacity) to (ii) the Project as currently proposed with a maximum capacity of 830,000 bpd.

**Response:**

3a. Keystone XL is designed to transport different grades of crude oil. Its annual average capacity is approximately 830,000 bpd.

3c. Keystone received additional commitments on Keystone XL Pipeline that would support an expansion of its total capacity from 700,000 barrels per day to 830,000 barrels per day.

**Concerns:**

3a. The answer provided is incomplete and non-responsive to the interrogatory. The interrogatory requested a breakdown of the annual capacity of Keystone XL to move: (1) light crude; (2) medium crude; and (3) heavy crude. Please provide a complete answer to the interrogatory. Note: we are not asking the calendar rate of 830k bpd (i.e. the average rate over the year for all types of crudes).

3c. The answer provided is incomplete and non-responsive to the interrogatory. Please provide a complete answer to the interrogatory. Note: again 700k bpd and 830k bpd are calendar rates (i.e. the average rate over the year for all types of crudes).

**Interrogatory No.** 4d and 4e

4d. Findings 22, 60, 90 refer to Keystone implementation of 59 PHMSA Special Conditions as set forth in ref (ii). According to ref (ii), pp. 95-107, Keystone has also committed to implement mitigation recommendations from the Battelle and Exponent risk assessment reports, including specifically addressing several issues in its Emergency Response Plan and Oil Spill Response Plan (and its risk analysis that is used in the development of those plans). Please explain what (if



anything) Keystone has committed to in regard to implementation of mitigation recommendations from the Battelle and Exponent risk assessment reports, and how this affects Findings 22, 60, 90, and any other Findings.

4e. Findings 22, 60, 90 refer to Keystone implementation of 59 PHMSA Special Conditions as set forth in ref (ii). According to ref (ii), pp. 107-108, Keystone has also committed to a number of measures beyond the spill cleanup measures described above in ref (ii), including specifically addressing several issues in its Emergency Response Plan and Oil Spill Response Plan (and the detailed risk analysis used in developing those plans). Please explain what (if anything) Keystone has committed to in regard to additional spill cleanup measures, and how this affects Findings 22, 60, 90, and any other Findings.

**Response:**

4d. Keystone will implement additional mitigation measures included in Appendix Z.

4e. Keystone will implement additional mitigation measures included in Appendix Z.

**Concerns:**

The answer provided is incomplete as you only answer part of the interrogatory by referring to Appendix Z, without attempting to specify how TransCanada will actually implement the 59 special conditions or the mitigation recommendations in the Battelle and Exponent reports (contained in Appendix Z). The response does not address how the implementation of the mitigation measures in Appendix Z will affect Findings 22, 60, 90 and any other relevant findings. A more complete answer would involve Keystone describing with specificity how it is going to apply the 59 special conditions and the mitigation recommendations in Battelle and Exponent to the Project in South Dakota and how the application of these new conditions is going to result in changes that are "either neutral or positive to the Commission's concerns."

For example, the answer provided does not address how Keystone plans to implement Special Condition 6 "Monitoring for Seam Fatigue from Transportation." Specifically, how does Keystone plan to avoid Double Submerged Arc Weld cracking introduced during transportation and installation along the pipeline? Additionally, does Keystone have plans to implement other measures to avoid DSAW cracking introduced during transportation and installation along the pipeline? Related to Special Condition 22 "Pressure Test Level," will Keystone conduct a pre-in-service hydrotest at a minimum of 100% SYMS for 8 hours? And following the test, will Keystone ensure no marked pipe permanent expansion? Special Condition 16 sets out conditions for the inspection of welds. Can Keystone confirm that Special Condition 16 implies that Keystone will radiologically inspect every girth weld, even if not required by regulation and that the weld inspection records will be maintained for the life of the pipeline?

In the spirit of providing a more complete response, will Keystone elaborate on which conditions and mitigation measures in Appendix Z that are the most important of the numerous additional conditions and mitigation measures and have the largest impact in supporting your claim that the

changes are either neutral or positive to the Commission's concerns. A complete answer will help us evaluate the basis of your claim that the changes are "either neutral or positive to the Commission's concerns."

**Interrogatory No. 8a, 8b, 8c, 8d**

- a) Does the maximum response time of 6 hours apply to HCAs and HSAs? If not, please provide the maximum response time for HCAs and HSAs.
- b) Does the maximum response time of 6 hours apply to (i) critical water crossings; (ii) the High Plains aquifer (Ogallala Formation) in Tripp County; (iii) other areas of unconfined aquifers including alluvial aquifers associated with streams, and occasional unconfined stretches in the Hell Creek, Fox Hills, and Pierre Shale aquifers (as per ref (iv)); and (iv) any Karst Aquifers, which are crossed by the Project. If not, please provide the maximum response time for these locations.
- c) Does the maximum response time of 6 hours take into account various worst-case conditions (road/traffic/weather/other)?
- d) Given a scenario involving poor (road/traffic/weather/other) conditions, has Keystone developed contingency plans to speed the emergency response (i.e. police escort, alternate routing or other). Please explain.

**Response:**

8a. Maximum response times are identified in the FSEIS Appendix I Spill Prevention Control and Countermeasure Plan and Emergency Response Plan; Emergency Response Plan Section 3.1 Initial Response Actions.

8b. Maximum response times are identified in the FSEIS Appendix I Spill Prevention Control and Countermeasure Plan and Emergency Response Plan; Emergency Response Plan Section 3.1 Initial Response Actions.

8c. TransCanada locates equipment and people that are transported by air, land and water to ensure that regulatory guidelines are met.

8d. TransCanada locates equipment and people that are transported by air, land and water to ensure that regulatory guidelines are met.

**Concerns:**

8a. The response is not responsive to and is an incomplete response to the interrogatory.

8b. The response is not responsive to and is an incomplete response to the interrogatory.

8c. The response is not responsive to and is an incomplete response to the interrogatory. The answer references meeting regulatory guidelines, however the question is about the maximum 6 hour response time that Keystone has committed to.

8d. The response is not responsive to and an incomplete response to the interrogatory. The answer references meeting regulatory guidelines however the question is about contingency plans designed to speed up the maximum response time.

**Interrogatory No.:** 9b, 9c, 9e

- b) a description summarizing each entity's ownership and the operating relationships with each other. This description and the chart in (a) must show, but not be restricted to:
  - a. the ownership of each entity and the jurisdiction in which each entity is registered;
  - b. the general and limited partners in TransCanada Keystone Pipeline LP; and
  - c. the respective roles and responsibilities of TransCanada Keystone Pipeline LP and TransCanada in managing the limited partnership (TransCanada Keystone Pipeline LP) and operating the pipeline;
- c) confirmation as to whether the limited partners of TransCanada Keystone Pipeline LP and/or its parent or other affiliates would or would not provide financial backstopping to the limited partnership should it be unable to pay its creditors. If confirmation is not possible at this time, please indicate whether this backstopping would be an option these parties would consider when the Project is placed in service;
- e) a summary of TransCanada Keystone Pipeline LP's distribution policy that would determine how cash in the limited partnership would be distributed to the limited partners.

**Response:**

9b. This request seeks information that is not relevant and not likely to lead to the discovery of admissible evidence. The request also seeks information that is confidential and proprietary.

9c. This request seeks information that is not relevant and not likely to lead to the discovery of admissible evidence. The request also seeks information that is confidential and proprietary. In addition, this request calls for speculation about hypothetical events that Keystone cannot answer.

9e. This request seeks information that is not relevant and not likely to lead to the discovery of admissible evidence. The request also seeks information that is confidential and proprietary.

**Concerns:**

9b. The request seeks information relevant to the evaluation of TransCanada's financial coverage in the event of a spill. The sought information is likely to lead to the discovery of



admissible evidence. The responses make no reference to any specific confidentiality laws regarding the information sought. Rather, a blanket assertion is provided that the information is protected. While the information may be considered confidential by the PUC under applicable Administrative Rules, no such determination has been made. Please provide the requested information.

9c. The request seeks information relevant to the evaluation of TransCanada's financial coverage in the event of a spill. The sought information is likely to lead to the discovery of admissible evidence. The responses make no reference to any specific confidentiality laws regarding the information sought. Rather, a blanket assertion is provided that the information is protected. While the information may be considered confidential by the PUC under applicable Administrative Rules, no such determination has been made. Please provide the requested information.

9e. The request seeks information relevant to the evaluation of TransCanada's financial coverage in the event of a spill. The sought information is likely to lead to the discovery of admissible evidence. The responses make no reference to any specific confidentiality laws regarding the information sought. Rather, a blanket assertion is provided that the information is protected. While the information may be considered confidential by the PUC under applicable Administrative Rules, no such determination has been made. Please provide the requested information.

The following website links are to Interrogatories from the Canadian National Energy Board to Kinder Morgan in the Trans Mountain Expansion Project in relation to financial coverage. These are provided as an example of what another similar pipeline company has provided recently to another regulatory body for a similar project and demonstrative of the responses we are seeking from Keystone.

Cover Letter to Trans Mountain response to NEB IR set 1

<https://docs.neb-one.gc.ca//eng//lisapi.dll/fetch/2000/90464/90552/548311/956726/2392873/2451003/2454322/B32-1 - Trans Mountain Letter NEB IR No. 1 May 1 2014 - A3W9H7.pdf?nodeid=2462073&vernum=-2>

Trans Mountain response to NEB IR set 1, see specifically response to NEB IRs 1.7-1.19 [https://docs.neb-one.gc.ca//eng//lisapi.dll/2456419/B32-2 Trans Mountain Response to NEB IR No. 1 1 of 2 - A3W9H8.pdf?func=doc.Fetch&nodeid=2456419 pp. 18-30 \(PDF pp. 20-32\)](https://docs.neb-one.gc.ca//eng//lisapi.dll/2456419/B32-2 Trans Mountain Response to NEB IR No. 1 1 of 2 - A3W9H8.pdf?func=doc.Fetch&nodeid=2456419 pp. 18-30 (PDF pp. 20-32))

Re: response to NEB IR 1.7a, the corporate structure is provided in Attachment 1 to NEB IR No. 1.07a (NEB IR No. 1.07a– Attachment 1).

<https://docs.neb-one.gc.ca//eng//lisapi.dll/fetch/2000/90464/90552/548311/956726/2392873/2451003/2454322/B32-4 ->

[Trans Mountain Response to NEB IR No. 1.07a-Attachment 1 - A3W9I0.pdf?nodeid=2454402&vernum=-2](https://docs.neb-one.gc.ca/ll-eng/llisapi.dll/fetch/2000/90464/90552/548311/956726/2392873/2451003/2454322/B32-5 - A3W9I0.pdf?nodeid=2454402&vernum=-2)

Re: response to NEB 1.9a, the requested financial projections are provided in Attachment 1 to the response to NEB IR No. 1.09a (NEB IR No. 1.09a – Attachment 1).

[https://docs.neb-one.gc.ca/ll-eng/llisapi.dll/fetch/2000/90464/90552/548311/956726/2392873/2451003/2454322/B32-5 - Trans Mountain Response to NEB IR No. 1.09a-Attachment 1 - A3W9I1.pdf?nodeid=2454323&vernum=-2](https://docs.neb-one.gc.ca/ll-eng/llisapi.dll/fetch/2000/90464/90552/548311/956726/2392873/2451003/2454322/B32-5 - A3W9I1.pdf?nodeid=2454323&vernum=-2)

**Interrogatory No.'s:** 10a, 10b, 10d, 10e, 10f(a) and (b), 10g, 10h (a), 10h(c), 10i

- a) Please describe the type and amount of insurance that would be held by and/or for TransCanada Keystone Pipeline LP<sup>1</sup> during the Project's construction phase. Please include details of the risk analysis performed, assumptions made, and supporting data considered in evaluating the coverage limits proposed.
- b) Please describe the type and amount of spill liability insurance that would be held by and/or for TransCanada Keystone Pipeline LP<sup>2</sup> during the Project's operation phase. Please include details of the risk analysis performed, assumptions made, and supporting data considered in evaluating the coverage limits proposed.
- d) Please provide an overview of the key elements in the spill liability insurance including the facilities and business functions and related activity risks that are covered by the spill liability insurance program, the name of the insurance provider and the provider's credit rating.
- e) Please describe the conditions, circumstances, or exclusions, if any, under which the spill liability insurance would not cover the losses of TransCanada Keystone Pipeline LP and/or third parties in the event of a large oil spill. For clarity include a list of the standard risks and non-standard risks that are excluded from this insurance program.
- f) If the response to d) confirms that the spill liability insurance may not cover all losses and liabilities, please:
  - a. describe how TransCanada Keystone Pipeline LP would financially cover any losses and claims for spills, malfunctions, or other potential liabilities in excess of its insurance coverage during the life of the pipeline system; and
  - b. describe and quantify, to the extent possible, the role of cash from operations, tariff provisions, indemnities, bonds, letters of credit, parental guarantees, cash reserves, or other instruments that would be available to cover these potential

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<sup>1</sup> Insurance held for TransCanada Keystone Pipeline LP could include insurance held directly by TransCanada Keystone Pipeline LP, as well as insurance held by TransCanada (the parent corporation) and affiliated entities if that insurance provides coverage for TransCanada Keystone Pipeline LP.

<sup>2</sup> Insurance held for TransCanada Keystone Pipeline LP could include insurance held directly by TransCanada Keystone Pipeline LP, as well as insurance held by TransCanada (the parent corporation) and affiliated entities if that insurance provides coverage for TransCanada Keystone Pipeline LP.

liabilities. Regarding cash from operations and cash reserves, illustrate the financial capacity that these cash items could provide.

- g) Please explain whether TransCanada Keystone Pipeline LP's spill liability coverage amount has changed (or will change) as a result of the increased capacity proposed for the pipeline system if the Project is approved and would operate in addition to Base Keystone. Include any risk analysis performed and assumptions made to determine this level of coverage for the period after the Project goes into service.
- h) Regarding the spill liability insurance, please describe:
  - a. the priority of payments for the components of insurance claims for spill events, such as clean-up costs, remediation costs, and third party liability claims;
  - c. whether the coverage is per event or for more than one event in an insurance year.
- i) Please provide the total insurance coverage amount for spill liability for TransCanada Keystone Pipeline LP, and confirm that any cash recovery for spill claims would be in addition to and separate from any recovery from the General Liability insurance program for claims not involving spills. If this cannot be confirmed, please explain the methodology for allocating the total insurance coverage among competing claims if the total claims exceed the spill liability coverage limit.

**Response:**

- a) During construction TransCanada Keystone Pipeline would look to secure a dedicated general liability insurance policy including sudden and accidental pollution coverage with a limit not less than US\$200 million.
- b) During operations TransCanada Keystone Pipeline would look to secure a dedicated general liability insurance policy including sudden and accidental pollution coverage with a limit not less than US\$100million.

In addition to the dedicated policy, TransCanada's corporate general liability policy would provide excess coverage. This policy covers all of TransCanada's controlled companies and subsidiaries and would include TransCanada Keystone Pipeline operations. Should a specific claim or claims within a policy year result in significant decrease of these limits, TransCanada would seek to reinstate the limits.

- d) The policy would respond to the legal liability for third party liability claims, clean-up costs and remediation costs. There are a variety of insurance companies that participate in TransCanada insurance policies, but each must have a minimum Standard & Poor's rating of A-.

- e) General liability insurance policies have standard exclusions typical for a company in the liquid pipeline industry including but not limited to i) liabilities arising from gradual seepage, ii) fines and penalties, iii) and other exclusions not relevant to spills. TransCanada Keystone Pipeline is unable to confirm that the exclusions in place today will remain in effect for the life of the project or if new exclusions will be added at a later date.
- f) (a) we can't confirm how the insurance policy will or will not respond to losses and claims in the future, as every spill incident is unique. (b) Keystone is still preparing an answer to this interrogatory, and will provide a supplement as soon as possible. Supplement provided for (a) – We can't confirm how the insurance policy will or will not respond to losses and claims in the future, as every spill incident is unique. In the event of a spill, Keystone will identify the costs associated with spill response and recovery activities, remediation, and potential third-party damages. Based on such an analysis, Keystone will identify the levels and types of financial resources required to meet its obligations. Supplement provided for (b) – In the event of a spill, Keystone will identify the costs associated with spill response and recovery activities, remediation, and potential third-party damages. Based on such an analysis, Keystone will identify the levels and types of financial resources required to meet its obligations.
- g) Our approach has not changed.
- h) (a) There is no priority of payments for the components of an insurance claim for spill events.  
(c) The policy is per occurrence, with an aggregate for the policy year.
- i) This can't be confirmed. Insurance claims are made to the policy on a first occurring basis.

**Concerns:**

- a) The answer provided is incomplete as it does not include details of the risk analysis performed, assumptions made and supporting data that was considered in evaluating the coverage limits proposed. The request seeks information relevant to the evaluation of TransCanada's financial coverage in the event of a spill. In your answer to 10 b), you state that "[i]n addition to the dedicated policy, TransCanada's corporate general liability policy would provide excess coverage." Would this excess coverage also apply in the construction phase? Please describe the type and the amount of insurance held in TransCanada's corporate general liability policy.

Confirm that this \$200 million dedicated general liability insurance policy for the construction period is specific to Keystone XL in South Dakota, Nebraska and Montana. If not, please explain what the \$200 million dedicated general liability insurance policy for the construction period covers (in terms of states and project).

- b) The answer provided is incomplete as it does not include details of the risk analysis performed, assumptions made and supporting data that was considered in evaluating the coverage limits proposed. In answer to 10 b), you state that "[i]n addition to the dedicated policy, TransCanada's corporate general liability policy would provide excess coverage." Please describe the type and the amount of insurance held in TransCanada's corporate general liability policy.

Confirm that this \$100 million dedicated general liability insurance policy for operations is specific to Keystone XL in South Dakota, Nebraska and Montana. If not, please explain what the \$100 million dedicated general liability insurance policy for operations would cover (in terms of states and project).

In the supplemental answer to IR 12, you confirm that Keystone XL will have \$200 million in aggregate third party liability insurance to cover spills in SD and all other states (including MT and NE). Is this \$200 million in aggregate third party liability insurance a separate policy from the "dedicated general liability insurance policy including sudden and accidental pollution coverage with a limit not less than US\$100 million" for operations? Or is the \$100 million in dedicated general liability insurance a subset of the \$200 million in aggregate third party liability insurance? Please explain in detail how the \$200 million in aggregate third party liability insurance (described in response to IR 12) relates to the \$100 million in dedicated general liability insurance for operations referred to in response to IR 10 b).

Given the supplemental answer to IR 12, please modify the answer to 10 b) to integrate the new information from IR 12 if applicable, including the details of the risk analysis performed, assumptions made, and supporting data considered in evaluating the coverage limits proposed.

- d) The answer is incomplete. We have asked for an overview of the key elements in the spill liability insurance including the facilities and business functions and related activity risks that are covered by the spill liability insurance program, the name of the insurance provider and the provider's credit rating. You have not provided this information. You have told us that the policy would respond to the legal liability for third party liability claims, clean-up costs and remediation costs; but you have not told us how the \$200 million in aggregate third party liability insurance (described in response to IR 12) relates to the \$100 million in dedicated general liability insurance for operations referred to in response to IR 10 b). Nor have you told us if the names of the insurance providers and amounts and types of coverage for the "variety of insurance companies that participate in TransCanada insurance policies."

- e) The answer provided is incomplete as it does not describe the conditions, circumstances or exclusions, if any, under which the spill liability insurance would not cover the losses of TransCanada Keystone Pipeline LP and or third parties in the event of a large oil spill. The answer did also not provide the requested standard risks and non-standard risks that are excluded from the insurance program.
  - f) (a) The answer provided is incomplete and non responsive to the interrogatory. The question asked about how Keystone would potentially cover losses in excess of its insurance, not for a confirmation of how the insurance policy will or will not respond to a loss or claim. The answer tells us nothing about how Keystone would cover losses in excess of its insurance. This non-responsive answer impacts our ability to evaluate the adequacy of financial coverage in the event of a spill. (b) The answer, although supplemented is incomplete and non responsive to the interrogatory. The question asked Keystone to describe and quantify the role of cash (from various sources, including operations, and cash reserves) that would be available to cover liabilities (such as spills and malfunctions) and then to illustrate the financial capacity that cash from operations and cash from reserves could provide. Simply telling us that Keystone will identify the costs associated with a spill after the fact does not answer the interrogatory. This non-responsive answer also impacts our ability to evaluate the adequacy of financial coverage in the event of a spill.
  - g) The answer is incomplete. Please confirm if the spill liability coverage will change and by how much it will change, as result of the increased capacity proposed for the Project (from Base Keystone to Base Keystone + Keystone XL). Include any risk analysis performed and assumptions made to determine the change in the level of coverage.
  - h) (a) This answer seems unlikely. Can TransCanada confirm the answer that "[t]here is no priority of payments for the components of an insurance claim for spill events." In other words, confirm that TransCanada's spill liability insurance would have no plan to prioritize clean-up costs, remediation costs and third party liability claims? If there is a priority of payments between these costs, please describe it.
- (c) TransCanada has not provided the aggregate amount of the insurance policy. Please provide a complete answer with details on the aggregate amount for the insurance year.
- i) The answer is incomplete. Do you consider the answer to be complete at this time?

**Interrogatory No.: 11**

- a) Please provide the following for TransCanada Keystone Pipeline LP for the first full year and the fifth full year following Project commissioning:
  - a. operating cash flow projections that identify net income and other components of cash flow; and
  - b. the estimated total asset and liability values and their main components.



- b) Please describe the following aspects of TransCanada Keystone Pipeline LP's cash management as anticipated at this time:
  - a. the estimated per cent of total cash flow from TransCanada Keystone Pipeline LP's operations that would be distributed to the partners of the limited partnership over the first five years of operation following Project commissioning; and
  - b. the estimated cash or near cash that TransCanada Keystone Pipeline LP plans to retain on its balance sheet by the end of the fifth full year of operation after Project commissioning.
- c) With respect to the potential for self-insurance (should the spill liability coverage be exceeded), please explain how TransCanada Keystone Pipeline LP would ensure that it has unfettered access to these funds at all times, and indicate if TransCanada Keystone Pipeline LP will segregate the self-insurance funds from its general funds.
- d) In the case of a spill incident, please explain the amount of cash that TransCanada Keystone Pipeline LP could access within 10 business days to pay some or all of the clean-up and remediation costs and to compensate third parties for some losses and damages while any insurance claims are being processed. Please describe the financial instruments that TransCanada Keystone Pipeline LP will use to ensure this unfettered access to funds.

**Response:**

- a) This request seeks information that is confidential and proprietary and the disclosure of which would be damaging to Keystone. This request also seeks information that is not relevant and not likely to lead to the discovery of admissible evidence.
- b) This request seeks information that is confidential and proprietary and the disclosure of which would be damaging to Keystone. This request also seeks information that is not relevant and not likely to lead to the discovery of admissible evidence.
- c) This request seeks information that is confidential and proprietary and the disclosure of which would be damaging to Keystone. This request also seeks information that is not relevant and not likely to lead to the discovery of admissible evidence. (Supplemented Answer) Notwithstanding the objection, in the event of a spill, Keystone will identify the costs associated with spill response and recovery activities, remediation and potential third party damages. Based on such an analysis, Keystone will identify the levels and types of financial resources required to meet its obligations.
- d) This request seeks information that is confidential and proprietary and the disclosure of which would be damaging to Keystone. This request also seeks information that is not relevant and not likely to lead to the discovery of admissible evidence. (Supplemented Answer) Notwithstanding the objection, in the event of a spill, Keystone will identify the costs associated with spill response and recovery activities, remediation and potential third party damages. Based on such an analysis, Keystone will identify the levels and types of financial resources required to meet its obligations.

**Concerns:**

Interrogatory No. 11 seeks information relevant to analyzing and determining financial coverage in case of a spill scenario and is central to the ability to evaluate the adequacy of financial coverage in the event of a spill scenario. The information sought is reasonably calculated to lead to the discovery of admissible evidence. The responses make no reference to any specific confidentiality laws regarding the information sought. Rather, a blanket assertion is provided that the information is protected. While the information may be considered confidential by the PUC under applicable Administrative Rules, no such determination has been made. Please provide the requested information.

**Interrogatory No.12:**

- a) Please confirm that Keystone has committed to \$200 million in third-party liability insurance in both Nebraska and Montana. If not, please explain.
- b) Does this imply that there is \$200 million in third-party liability insurance available specifically to cover a spill in Nebraska; and another \$200 million in third-party liability insurance available specifically to cover a spill in Montana? If not, please explain.
- c) Does Keystone plan to offer third-party liability insurance available specifically to cover a spill in South Dakota? If not, please explain.
- d) Has Keystone considered what level of third-party liability insurance should be available specifically to cover a spill in South Dakota? Please explain.

**Response:**

First response to IR 12(a-d): Keystone is still preparing an answer to this interrogatory, and will provide a supplemental answer as soon as possible.

**Supplemented Responses:**

- a) Keystone XL undertakes to commit to \$200 million in third party liability insurance in both Nebraska and Montana when required.
- b) No, there will be a \$200 million third party liability policy covering Keystone XL on an aggregate basis.
- c) No, Keystone XL would have an aggregate third party liability insurance to cover spills in South Dakota and all other states.
- d) Yes, a minimum of \$200 million.

**Concerns:**



Our understanding from your supplemental response to IR 12 is that Keystone XL will have \$200 million in aggregate third party liability insurance to cover spills in SD and all other states (MT and NE). In evaluating the adequacy of this new response (to IR 12), we have found a seeming ambiguity with the **response in 10b**, in which you confirmed that "[d]uring operations, TC would look to secure a dedicated general liability insurance including sudden and accidental pollution coverage with a limit of no less than US\$100M."

Is the \$200 million in aggregate third party liability insurance (referred to in response to IR 12) a separate policy from the "dedicated general liability insurance policy including sudden and accidental pollution coverage with a limit not less than US\$100 million" for operations (referred to in response to IR 10 b)? Or is the \$100 million in dedicated general liability insurance (as per the response to IR 10b) a subset of the \$200 million in aggregate third party liability insurance (as per the response to IR 12)? Please explain in detail how the \$200 million in aggregate third party liability insurance (described in response to IR 12) relates to the \$100 million in dedicated general liability insurance for operations referred to in response to IR 10 b).

If applicable, please modify any of the previous answers (to IR 10 b), d) and h), in particular) to take into account the new information regarding \$200 million in aggregate third party liability insurance provide in response to IR 12.

**Request for Production of Documents:**

**REQUEST FOR PRODUCTION 1:** As per Bold Nebraska's Request for Production No. 18 in IR No. 1, and in order to make this proceeding more efficient and effective, provide electronic access to all parties in this proceeding to all responses by TransCanada in response to discovery requests (first and second rounds) submitted to TransCanada by all parties in this proceeding.

**Response:** A way to access copies of all responses to discovery requests submitted to Keystone will be separately provided.

**Concerns:** The same answer was provided in response to Bold Nebraska Interrogatory dated February 6, 2015. Initial response to the same question posed by RST prompted the same response provided to Bold Nebraska. To date the requested information has not been provided.

Thank you for your attention and consideration of these matters. I look forward to visiting with you so that we may discuss these matters fully.

Sincerely,

/s/Matthew L. Rappold  
Matthew L. Rappold