

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

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

ROSEBUD SIOUX TRIBE'S  
REVISED EXHIBIT LIST

HP14-001

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The Rosebud Sioux Tribe submits the following updated Exhibit list for the evidentiary hearing scheduled on the above referenced docket number:

Exhibit List

Exhibit No. 11000	Rebuttal Testimony of Paula Antoine.
Exhibit No. 11001	May 5, 2010 PHMSA letter to David Chittick; Director Pipeline Engineering, TC Pipelines Limited re: Docket No. PHMSA-2009-0053.
Exhibit No. 11002	September 17, 2010 PHMSA letter to David Chittick; Director Pipeline Engineering, TC Pipelines Limited re: Docket No. PHMSA-2009-0061.
Exhibit No. 11003	June 27, 2011 PHMSA letter to David Chittick; Director Pipeline Engineering, TC Pipelines Limited re: Docket No. PHMSA-2010-0192.
Exhibit No. 11004	June 27, 2011 PHMSA letter to David Chittick; Director Pipeline Engineering, TC Pipelines Limited re: Docket No. PHMSA – 2010-0148.
Exhibit No. 11005	July 16, 2010 PHMSA letter to David Chittick; Director Pipeline Engineering, TC Pipelines Limited re: Docket No. PHMSA -2009-0055.
Exhibit No. 11006	July 16, 2010 PHMSA letter to David Chittick; Director Pipeline Engineering, TC Pipelines Limited re: Docket No. PHMSA -2009-0056.
Exhibit No. 11007	Madden Report “Assessment of Socioeconomic Impacts Expected with the Keystone XL Pipeline Project.”
Exhibit No. 11008	HP09-001 Prefiled Testimony of Michael Madden.
Exhibit No. 11009	South Dakota Codified Laws 49-41B-1, 49-41B-11 and 49-41B-22.
Exhibit No. 11010	Keystone’s Objections to Rosebud Sioux Tribe’s First Set of Interrogatories and Requests for Production of Documents

Exhibit No. 11011	Keystone's Responses to Rosebud Sioux Tribes First Set of Interrogatories and Request for Production of Documents
Exhibit No. 11012	Keystone's Responses to Rosebud Sioux Tribes Second Set of Interrogatories and Request for Production of Documents
Exhibit No. 11013	Rosebud Sioux Tribe's Motion to Compel Discovery
Exhibit No. 11014	Keystone's Response to Rosebud Sioux Tribe's Motion to Compel Discovery

Dated this 23<sup>rd</sup> day of July, 2015.

RESPECTLY SUBMITTED:

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REBUTTAL TESTIMONY OF  
PAULA ANTOINE

HP14-001

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Q: What is your name and where do you live?

A: My name is Paula Antoine and I live in Mission, SD.

Q: Are you currently employed? What is your occupation? Are you a member of the Rosebud Sioux Tribe?

A: I am an enrolled member of the Rosebud Sioux Tribe and am employed as the Director for the Sicangu Oyate Land Office.

Q: How long have you been employed there?

A: I have been employed as the Director of the Sicangu Oyate Land Office (SOLO) since November, 2010.

Q: What are your job responsibilities?

A: My current job responsibilities include a variety of responsibilities. As Director of SOLO I am responsible for the oversight of the day to day operations and functions of the Land Office. I report to Tribal Council and Committees on issues affecting the status of Tribally owned land. I am responsible for providing assistance with carrying out the Tribe's land use plan, assisting with land exchanges, title transfers, enforcement of tribal ordinances and assist with land leases. This is not intended to be an exhaustive list of responsibilities.

Q: Are you aware of any activities that are conducted on tribal land in close proximity to the proposed project route?

A: Yes, I am aware of tribal activities conducted in this area.

Q: Does the Rosebud Sioux Tribe oppose the construction of the Keystone XL pipeline?

A: Yes, The Rosebud Sioux Tribe has passed resolutions to deny the KXL any access to our lands and in opposition of the pipeline. We view the KXL pipeline as the threat of "the black snake coming from the north" that was revealed to us through prophecy by our ancestors many

years ago. This spiritual camp was established in March 2014 to publicly oppose the black snake and all of the negative things it represents.

Q: What is the location of the spirit camp?

A: The spiritual camp is on tribal land located very close to the proposed pipeline route. Rosebud Sioux Tribe Resolution 2014-42 provides the legal status of the land description where the route is located and is attached as RST Exhibit 16.

Q: Please describe the local area and activities associated with the operation of the spiritual camp.

A: The land is owned by the Rosebud Sioux Tribe and is within the boundaries of one of our 21 communities on the reservation. This area is known as the Winner-Ideal Community, and includes the small towns of Winner and Ideal in south-central South Dakota. The camp idea was sparked by Russell Eagle Bear, our Tribal Historic Preservation Officer, and Wayne Frederick, Okreek Community Council Representative who is also a 7<sup>th</sup> generation family rancher. It was then formed by a group of concerned tribal employees and tribal members. As a part of the founding members, I also serve as the Coordinator of the Sicangu Oyate (Rosebud Sioux Nation) Land Office.

The camp has been in existence for over a year now and it has hosted many visitors from all over the world. The place holds a special meaning to us all, and I feel it's within my charge, along with the others, to protect our land, water and cultural resources. The camp also hosts cultural, educational activities for tribal and non-tribal members. We are taught in our decisions for the Oyate (the People) to remember our ancestors and what sacrifices they have made to ensure our survival: and to remember the next seven generations and how our actions will ensure their survival. Visitors from nearby communities and from across the globe have visited the camp to make prayers for the future of Unci Maka (Mother Earth).

Our elders taught us that it is important as a Lakota person to be a good relative and to show your compassion and generosity through action and deeds. At our camp, a number of individuals work tirelessly to keep things going, and they embody these values of compassion and generosity. We protect Unci Maka (Mother Earth) for creation and all that we share this planet with, it is not just for the protection of our Lakota people, land or water, but rather for all of our relations. Our efforts and what occurs at our camp affect all of our relatives.

This area of land is a place that tribal members share a very close connection with. For me, my mother was born within two miles of the camp and from the camp you can see the old cemetery where our relatives - grandfathers, grandmothers, uncles, aunts and others - are buried. I grew up here, playing ball as a child out in the grass lands, going to church in this community named Ideal. I have raised my children here.

Q: Have you reviewed any testimony by any other witness or other documents in preparation for this hearing?

A: Yes

Q: Specifically what documents have you reviewed?

A: I have reviewed prefiled direct testimony of the following witnesses: Corey Goulet, Heidi Tillquist, Meera Kothari, Jon Schmidt, David Diakow, Brian Walsh, Derek Iles, Kim McIntosh, Daniel Flo, Christopher Hughes, Tom Kirschenmann, David Schramm, Darren Kearney, Jenny Hudson and Paige Olson.

I have also reviewed the Petition for Order Accepting Certification under SDCL 49-41B-27, dated September 15, 2014, Appendix A, B, and C as well as the accompanying Certification of Corey Goulet dated September 12, 2014. I have also reviewed the following portions of South Dakota Codified Laws 49-41B-1, 49-41B-11 and 49-41B-22 as well as the Amended Final Decision and Order and Exhibit A “Amended Permit Conditions.” I have also reviewed answers to Rosebud Sioux Tribes interrogatories provided by Keystone. I also reviewed Staff Exhibit 2 “Testimony of Michael Madden” from Docket HP09-001. South Dakota Codified Laws 49-41B-1, 49-41B-11 and 49-41B-22 are attached as Exhibit 17. The remaining materials referenced are located at the following website: <https://puc.sd.gov/Dockets/HydrocarbonPipeline/2014/hp14-001prefiledtestimony.aspx>

Q: What is the purpose of your testimony today?

A: The purpose of my testimony today is to rebut certain portions of Keystone and PUC Staff witnesses direct testimony specifically as it relates to Keystone’s demonstrated ability to meet their burden of proof under SDCL 49-41B-27.

Q: Are there specific findings of fact that your testimony will rebut?

A: Yes, my rebuttal testimony addresses Findings of Fact 107, 108, 109 and 110.

Q: Please summarize Findings of Fact 107, 108, 109 and 110.

A: Findings of Fact 107, 108 109 and 110 address the Socio-economic Factor requirements of SDCL 49-41B-22. FOF No. 107 specifically finds that the evidence offered by Keystone and Staff overall demonstrated that the welfare of the citizens of South Dakota will not be impaired by the project and that the project, if operated in compliance with the “Special Permit” and the other conditions, the project would not, from a socio-economic standpoint (i) pose a threat of serious injury to the socioeconomic conditions in the project area; (ii) substantially impair the health, safety, or welfare of the inhabitants in the project area; or (iii) unduly interfere with the orderly development of the region. Finding 108 finds that the Project will pay annual property

taxes to local governments. Finding 109 finds that the project will bring jobs to the State and Finding 110 finds that the project will have minimal effect in the areas of agriculture, commercial and industrial sectors, land values, housing, sewer and water, solid waste management, transportation, cultural and historic resources, health services, schools, recreation, public safety, noise and visual impacts.

Q: Does Keystone's Appendix C "Tracking Table of Changes" include reference to Finding of Facts 107, 108, 109 and 110?

A: Appendix C "Tracking Table of Changes" makes one reference to Finding of Fact 107. It does not include any information addressing Findings Numbers 108, 109 or 110.

Q: What does Appendix C "Tracking Table of Changes" state about Finding 107?

A: Regarding Finding 107, Appendix C "Tracking Table of Changes" states that ["Keystone has withdrawn its Special Permit application but will comply with the 59 additional conditions set forth in the DOS Final SEIS, Appendix Z, which provide an enhanced level of safety equivalent to or greater than those that would have applied under the requested Special Permit.] "The increased cost of the Project reflected in updated Finding 23 is likely to result in increased tax revenue to the affected counties."

Q: Can you identify Keystone's witnesses whose direct testimony addresses Findings of Fact 107, 108, 109 and 110?

A: Yes, Corey Goulet and Meera Kothari provide minimal testimony regarding Finding 107. No other Keystone witnesses offer any testimony regarding Findings 107, 108, 109 or 110.

Q: What information does Corey Goulet provide in his direct testimony regarding Finding 107?

A: Corey Goulet in Direct Testimony Question No. 4 states that he is responsible for updated information for Finding of Fact 107 as contained in Appendix C.

Q: What information does Meera Kothari provide in her direct testimony regarding Finding 107?

A: Meera Kothari states in Number 4 that she is individually or jointly responsible for Finding 107. In Question Number 12 of her direct testimony she states that to the extent that finding 107 referenced the application for a special permit, the request for a special permit was withdrawn. Her direct testimony further states that Keystone will comply with 59 Special Permit conditions.

Q: Can you identify the PUC Staff witnesses whose direct testimony addresses Findings of Fact 107, 108, 109 and 110?

A: Of the 10 witness who offered direct testimony on behalf of the PUC staff, only Daniel Flo makes reference to Findings of Fact 107. There are no other Staff witnesses who offer evidence or testimony regarding findings 107, 108, 109 and 110.

Q: What information does Daniel Flo provide in his direct testimony regarding Finding 107?

A: In response to Question No. 15 the answer provides “The updated project information provided by Keystone for Finding 107 is outside the scope of NRG’s 2009 review and testimony, and therefore results in no change to NRG’s original testimony.”

Q: Is it your understanding that in the original permit proceeding Keystone was applying for a special permit from PHMSA, but has since withdrawn that application?

A: Yes, it is my understanding that at the time the original permit for construction, operation and maintenance was issued, Keystone was applying for a special permit from PHMSA.

Q: Is it your understanding that the 59 PHMSA Special Permit Conditions referenced in Appendix C “Tracking Table of Changes” are new conditions that Keystone is required to comply with that were not a requirement of the Amended Permit Conditions?

A: Yes that is my understanding.

Q: Is it your testimony that other than the information that you previously testified to regarding evidence presented regarding FOF 107, 108, 109 and 110, that no other witness offers any evidence or testimony regarding the socio economic factors from FOF 107, 108, 109 or 110?

A: Yes, that is my testimony.

Q: Based on the review of all relevant materials and laws, does it appear to you that Keystone has put in sufficient evidence and testimony regarding FOF 107, 108, 109 and 110 to certify that the conditions of the permit are the same.

Q: Why is the testimony not sufficient?

A: The testimony is not sufficient because it does not support a finding that Keystone has properly certified that the conditions upon which the South Dakota Public Utilities Commission granted the facility permit in Docket HP09-001 for the Keystone XL hydrocarbon pipeline (the "Project") under the Energy Conversion and Transmission Facilities Act continue to be satisfied. The applicant has an affirmative burden to meet the requirements under SDCL 49-41B-27. The applicant must do more than state that they will continue to meet the requirements. They must demonstrate the continuing ability to meet the conditions. The identified testimony does not offer any evidence to support Keystone’s petition for certification. The testimony does not offer any evidence of how Keystone will actually demonstrate the ability to comply with the 59 PHMSA Special Conditions as they relate to Finding 107. None of the testimony offered by Keystone or the PUC Staff shows or attempts to even demonstrate that the welfare of the citizens of South Dakota will not be impaired by the project and that the project, if operated in

compliance with the “Special Permit” (which was withdrawn and replaced by 59 new PHMSA conditions) and the other conditions, the project would not, from a socio-economic standpoint (i) pose a threat of serious injury to the socioeconomic conditions in the project area; (ii) substantially impair the health, safety, or welfare of the inhabitants in the project area; or (iii) unduly interfere with the orderly development of the region. There is no testimony that certifies the Finding 109 regarding the project bringing jobs to the State. None of the testimony offers any evidence on Finding 110 regarding whether or not the project will continue to have minimal effects in the areas of agriculture, commercial and industrial sectors, land values, housing, sewer and water, solid waste management, transportation, cultural and historic resources, health services, schools, recreation, public safety, noise and visual impacts.

Q: Have you reviewed Michael Maddens testimony and report “Assessment of Socio-Economic Impacts Expected with the Keystone XL Pipeline Project” from the HP09-001 docket?

A: Yes I have reviewed those materials.

Q: Is there any indication from Maddens testimony or report that indicates that the socio economic concerns or effects upon the Indian population located in and around the pipeline corridor was considered or examined in the Madden report?

A: There is no information in the Madden report that address impacts of the project relating to Tribal members located within the project area.

Q: Is it your understanding that the project route traverses present day Tripp County South Dakota?

A: Yes, that is my understanding.

Q: Are there any tribal communities within Tripp County that are under the jurisdiction of the Rosebud Sioux Tribe?

A: Yes, there are several tribal communities located in Tripp County including Ideal. There is also tribal housing located in Winner, South Dakota.

Q: Will the proposed pipeline cross the White River near Rosebud Sioux Tribal land?

A: Yes, the pipeline crossing route on the White River is in close proximity to tribal land owned by the Rosebud Sioux Tribe.

Q: Do you know how close the Ideal Community is to the project route?

A: Yes, the Ideal community is located 2 and one half miles from the pipeline project route.

Q: Does any portion of the Madden report or any of the testimony reference Rosebud Sioux Tribal members or the Ideal community?

A: No, there is no portion of the Madden report or any testimony that makes reference to tribal members living within the project area, the Ideal community or Indian housing located in Winner. Additionally, there is no portion of the testimony or FOF 107, 108, 109 and 110 that references the Ideal Community or Tribal members living in Winner and the surrounding areas of Tripp County. There is nothing in the testimony or the record to indicate that the socio-economic concerns of the Rosebud Sioux Tribe and the impact of the pipeline was considered in Maddens report. There is no testimony or evidence offered to address law enforcement issues, emergency response plans or general public safety concerns. There is no evidence to demonstrate contact with the Rosebud Sioux Tribe Law Enforcement Services, which is necessary to show to determine appropriate socioeconomic concerns. The underlying socioeconomic factors that were considered in the Madden report forms the basis for the initial finding of compliance regarding the socioeconomic factors. It does not take into account the unique jurisdictional landscape that exists in the areas nearby the Rosebud Sioux Indian Reservation.

Q: How does this impact Keystone's ability to certify the conditions of the permit?

A: Without any showing that the conditions are the same regarding the Socio-Economic factors as required by FOF 107, 108, 109 and 110 and how those findings relate to continued compliance with Amended Permit Conditions 1 and 3 and in the absence of the proper consideration of the Rosebud Sioux Tribe as part of the socioeconomic consideration, Keystone cannot certify that the facility continues to meet the conditions upon which the permit was issued.

Q: Does this conclude your testimony?

A: Yes.

Dated this 26<sup>th</sup> day of June, 2015.



U.S. Department  
of Transportation

Pipeline and Hazardous Materials  
Safety Administration

1200 New Jersey Ave., SE  
Washington, DC 20590

**MAY 5 2010**

Mr. David Chittick  
Director, Pipeline Engineering  
TransCanada Pipelines Limited  
450 – 1st Street, S.W.  
Calgary, Alberta, Canada T2P 5H1

**Docket No. PHMSA-2009-0053**

Dear Mr. Chittick:

On February 6, 2009, TransCanada Pipeline Limited-American Natural Resources (TCPL-ANR) wrote to the Pipeline and Hazardous Materials Safety Administration (PHMSA) requesting a special permit to waive compliance from PHMSA's pipeline safety regulation in 49 CFR § 192.611 for four segments of the TCPL-ANR natural gas transmission pipeline system located in Lake County, Indiana, Outagamie and Winnebago Counties, Wisconsin and Fulton County, Ohio. The regulation requires confirmation or revision of the maximum allowable operating pressure (MAOP) of a pipeline segment where the class location has changed.

PHMSA is denying this special permit, which would have allowed TCPL-ANR to operate segments of 30-inch Line 1-100, two 24-inch Line 226, and 30-inch Line 501 pipelines in Lake County, Indiana, Outagamie and Winnebago Counties, Wisconsin and Fulton County, Ohio at their current MAOPs. The reason for this denial can be found in the special permit analysis and findings document enclosed with this letter. This document and all other pertinent documents are available for review in Docket No. PHMSA-2009-0053 in the Federal Docket Management System (FDMS) located on the internet at [www.Regulations.gov](http://www.Regulations.gov). PHMSA will grant TCPL-ANR twelve (12) months from the date of this letter to comply with the requirements of 49 CFR § 192.611.

My staff would be pleased to discuss this special permit or any other regulatory matter with you. John Gale, Director of Regulations (202-366-4046), may be contacted on regulatory matters and Alan Mayberry, Deputy Associate Administrator for Pipeline Safety (202-366-5124), may be contacted on technical matters specific to this special permit

Sincerely,

Jeffrey D. Wiese

Associate Administrator for Pipeline Safety

Enclosure: Special Permit Analysis and Findings

021358

U.S. DEPARTMENT OF TRANSPORTATION  
PIPELINE AND HAZARDOUS MATERIALS SAFETY ADMINISTRATION

**Special Permit Analysis and Findings**

**Special Permit Information:**

Docket Number: PHMSA-2009-0053  
Pipeline Operator: TransCanada Pipelines Limited, operator of American Natural Resources Pipeline (TCPL-ANR)  
Date Requested: February 6, 2009  
Code Section(s): 49 CFR § 192.611(a)

**Purpose:**

The Pipeline and Hazardous Materials Safety Administration (PHMSA) provides this information to describe the special permit application submitted by TransCanada Pipelines Limited, operator of American Natural Resources Pipeline (TCPL-ANR), to discuss any relevant public comments received with respect to the application, to present an engineering and safety analysis of the special permit application, and to make findings regarding whether the requested special permit should be granted and if so under what conditions.

**Pipeline System Affected:**

This special permit application applies to four *special permit segments* along the TCPL-ANR system of natural gas pipelines, where the class locations along these pipelines have changed from an original Class 1 location to a Class 3<sup>1</sup> location. These four *special permit segments* include 30-inch Line 1-100, 24-inch Line 226, 24-inch Line 226, and 30-Inch Line 501 located in Lake County, Indiana, Winnebago and Outagamie Counties, Wisconsin, and Fulton County,

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<sup>1</sup> The Class 3 *special permit segments* were originally Class 1 locations that were upgraded to Class 2 locations in accordance with § 192.611 (a) hydrostatic test.

Ohio, respectively. This special permit application applies to the *special permit segments* and *special permit inspection areas* defined below using TCPL-ANR Survey Station Numbers.

### **Lake and Porter Counties, Indiana**

- *Special permit segment 1 – 30-inch Line 1-100 – 3181 feet; from Survey Station Number 272+52 which is downstream of Valve 56 (St. John Compressor Station) to Survey Station Number 304+33 in Lake County, Indiana. (Milepost 860.63 to 861.20)*
- *Special permit inspection area 1 - 30-inch Line 1-100 – from Survey Station Number 0+00 feet downstream of Valve 56 (St. John Compressor Station) in Lake County, Indiana to Survey Station Number 840+44 feet downstream of Valve 57 in Porter County, Indiana. Special permit inspection area 1 is located in Lake and Porter Counties, Indiana. Special permit inspection area 1 extends from approximately 5.16 miles upstream of special permit segment 1 to approximately 25 miles downstream of special permit segment 1; a total of approximately 30.76 miles. (Milepost 855.42 to 885.95)*

### **Waupaca, Outagamie, and Winnebago Counties, Wisconsin**

- *Special permit segment 2 -24-inch Line 226 – 1309 feet; from Survey Station Number 462+30 feet which is downstream of Valve 8, to Survey Station Number 475+39 feet in Winnebago County, Indiana. (Milepost 91.24 to 91.49)*
- *Special permit inspection area 2 – 24-inch Line 226 – from Survey Station Number 766+74 feet downstream of Valve 6 in Waupaca County, Wisconsin to Survey Station Number 0+67 feet downstream of Valve 9 in Winnebago County, Wisconsin. Special permit inspection area 2 extends from approximately 25 miles upstream of special permit segment 2 to approximately 3164 feet downstream of special permit segment 2; a total of approximately 25.85 miles. (Milepost 66.24 to 92.88)*

### **Waupaca, Outagamie, and Winnebago Counties, Wisconsin**

- *Special permit segment 3 – 24-inch Line 226 – 102 feet; from Survey Station Number 727+37 feet which is downstream of Valve 7, to Survey Station Number 728+39 feet in Outagamie County, Wisconsin. (Milepost 82.38 to 82.40)*
- *Special permit inspection area 3 - 24-inch Line 226 – from Survey Station Number 298+94*

feet downstream of Valve 6 in Waupaca County, Wisconsin to Survey Station Number 0+67 feet downstream of Valve 9 in Winnebago, Wisconsin. *Special permit inspection area 3* is located in Waupaca, Outagamie, and Winnebago Counties, Wisconsin. *Special permit inspection area 3* extends from approximately 25 miles upstream of *special permit segment 3*, to approximately 9.69 miles downstream of *special permit segment 3*; a total of approximately 34.71 miles. (Milepost 57.38 to 92.88)

Note: *Special permit inspection areas 2 and 3* overlap.

#### **Defiance, Henry, and Fulton Counties, Ohio and Lenawee County, Michigan**

- *Special permit segment 4 – 30-inch Line 501 – 349 feet*; from Survey Station Number 288+29 which is downstream of Valve 71, to Survey Station Number 291+78 feet in Fulton County, Ohio. (Milepost 913.94 to 914.01)
- *Special permit inspection area 4 – 30-inch Line 501 – from Survey Station Number 0+00 feet downstream of Valve 70 in Defiance County, Ohio to Survey Station Number 181+48 feet downstream of Valve 73 in Lenawee County, Michigan. Special permit inspection area 4* is located in Defiance, Henry, and Fulton Counties, Wisconsin and Lenawee County, Michigan. *Special permit inspection area 4* extends from approximately 19.46 miles upstream of *special permit segment 4* to approximately 25 miles downstream of *special permit segment 4*; a total of approximately 44.52 miles. (Milepost 894.48 to 939.01)

The total length of all of the *special permit inspection areas* is approximately 111 miles.

#### **Special Permit Request:**

TCPL-ANR submitted an application to PHMSA on February 6, 2009, for a special permit seeking relief from the Federal pipeline safety regulations in 49 CFR § 192.611(a) for four segments of TCPL-ANR natural gas transmission pipeline where a change has occurred from an original Class 1 location to a Class 3 location in Lake County, Indiana, Winnebago and Outagamie Counties, Wisconsin and Fulton County, Ohio. This special permit would allow TCPL-ANR to continue to operate the pipeline segments at their current maximum allowable operating pressures (MAOP) of 850, 975, 975 and 858 pounds per square inch gauge (psig),

respectively. The Federal pipeline safety regulations in 49 CFR § 192.611(a) require natural gas pipeline operators to confirm or revise the MAOP of a pipeline segment after a change in class location. If granted, a special permit will allow TCPL-ANR to continue to operate each of the four *special permit segments* at their existing MAOP's despite a change in class location.

### **Public Notice:**

On April 28, 2009, PHMSA posted a notice of this special permit request in the Federal Register (74 CFR 19264). PHMSA did not receive any comments for or against this special permit request as a result of this notice. The request letter, Federal Register notice and all other pertinent documents are available for review in Docket No. PHMSA-2009-0053 in the Federal Docket Management System (FDMS) located on the internet at [www.Regulations.gov](http://www.Regulations.gov).

### **Analysis:**

Background: On June 29, 2004, PHMSA published in the Federal Register (69 FR 38948) the criteria it uses for the consideration of class location change waivers, now called special permits. First, certain threshold requirements must be met for a pipeline section to be further evaluated for a class location change special permit. Second, the age and manufacturing process of the pipe; system design and construction; environmental, operating and maintenance histories; and integrity management program elements are evaluated as significant criteria. These significant criteria are presented in matrix form and can be reviewed in the FDMS, Docket Number PHMSA-RSPA-2004-17401. Third, such special permits may only then be granted when pipe conditions, integrity management, and additional permit conditions would provide a level of safety greater than or equal to a pipe replacement or pressure reduction.

Threshold Requirements: Each of the threshold requirements published by PHMSA in the June 29, 2004, FR notice is discussed below in regards to the TCPL-ANR special permit application.

- 1) No pipeline segments in a class location changing to Class 4 location will be considered. This special permit request is for segments of TCPL-ANR pipeline where a class location change has occurred from Class 1 location to Class 3 location.
- 2) No bare pipe will be considered. These TCPL-ANR *special permit segments* are coated with coal tar enamel or hot wax. TCPL-ANR has met this requirement.

- 3) No pipe containing wrinkle bends will be considered. There are no wrinkle bends in the *special permit segments*. TCPL-ANR has met this requirement.
- 4) No pipe segments operating above 72% of the specified minimum yield strength (SMYS) will be considered for a Class 3 location special permit. The *special permit segments* operate at or below 72% SMYS. TCPL-ANR has met this requirement.
- 5) Records must be produced that show a hydrostatic test to at least 1.25 x maximum allowable operating pressure (MAOP) and 90% of SMYS. TCPL-ANR records submitted showed that the sections of Lines 100-1, 226 and 501 pipeline containing the *special permit segments*, have been hydrostatically tested to the following pressures:

<i>Special Permit Segment 1:</i> 30-inch Line 100-1	1080 psig test pressure	1.27 X MAOP	90.5 % SMYS
<i>Special Permit Segment 2:</i> 24-inch Line 226	1411 psig test pressure	1.45 X MAOP	104% SMYS
<i>Special Permit Segment 3:</i> 24-inch Line 226	1411 psig test pressure	1.45 X MAOP	104% SMYS
<i>Special Permit Segment 4:</i> 30-inch Line 501	1222 psig test pressure	1.42 X MAOP	102% SMYS

TCPL-ANR has met this requirement.

- 6) In-line inspection (ILI) must have been performed with no significant anomalies identified that indicate systemic problems. The proposed *special permit segments* were last inspected by ILI in: *special permit segment 1* in 2003, *special permit segment 2* in 2008, *special permit segment 3* in 2008, and *special permit segment 4* in 2006 with no immediately actionable anomalies found. TCPL-ANR has met this requirement for wall loss, but would need to run an ILI tool to detect dents and re-run ILI for anomalies and corrosion.
- 7) The PHMSA criteria for consideration of class location change special permits define a waiver inspection area (*special permit inspection area*) as up to 25 miles of pipe either side of the waiver segment (*special permit segment*). The *special permit inspection area* must be inspected according to TCPL-ANR's integrity management program and periodically inspected with an ILI tool. The *special permit inspection areas* are approximately 25 to 34 miles long. Any special permit would be issued contingent upon TCPL-ANR incorporation

of each of the *special permit segments* in its written integrity management program as a “covered segment” in a “high consequence area” (HCA) per 49 CFR § 192.903.

**Criteria Matrix:** The original and supplemental data submitted by TCPL-ANR for the *special permit segments* have been compared to the class location change special permit criteria matrix. The data falls within the probable acceptance column of the criteria matrix except for:

- a. Possible acceptance – pipe coating, test failure, depth of cover, cathodic protection, ILI time frame, and compliance history. Some TCPL-ANR segments would require additional inspections to confirm coating quality, depth of cover and ILI inspections would be required. The subject pipelines have cathodic protection. Any special permit would require TCPL-ANR to identify and remediate areas along the pipeline with poor cathodic protection current and coating.
- b. Requires substantial justification - pipe manufacture, pipe material, girth weld inspection, and safety related condition report. Some TCPL-ANR segments contain pipe with manufacturing seam weld and girth weld issues.

The data falls within the “probable acceptance” column of the criteria matrix for all criteria except for the following:

**Lake and Porter Counties, Indiana - *Special permit segment 1 – 30-inch Line 1-100***

Pipe manufacture and material documentation, girth welds, and pipe coating: The 30-inch Line 1-100 pipeline was installed in 1960 and consists of American Petroleum Institute Specification 5L, *Specification for Line Pipe* (API 5L), double submerged arc welded (DSAW), X-52 steel pipe manufactured by National Tube in 1960. This pipe is of unknown toughness. TCPL-ANR documents indicate that the 30-inch DSAW pipe in this *special permit inspection area* was hydrostatically tested to 90.5% SMYS or 127% times MAOP, and has had no test or in-service failures. TCPL-ANR does not have documentation to verify the pipe mechanical and chemical properties of the pipe. Pipelines that are allowed to be upgraded from Class 1 to Class 3 locations must have mechanical and chemical properties documentation to ensure that the pipe is, in fact, of the strength that is being used in anomaly repair calculations. TCPL-ANR does not have any records documenting the non-destructive testing of pipeline girth welds. Girth weld

documentation confirms that the pipeline was constructed by quality assurance methods to ensure girth welds will not fail due to longitudinal stresses. The pipe external coating is coal tar enamel.

**Waupaca, Outagamie, and Winnebago Counties, Wisconsin - *Special permit segment 2 -24-inch Line 226***

Pipe manufacture, pipe material, pipe coating and girth weld inspection: The *24-inch Line 226* pipeline was installed in 1960 and consists of API 5L, low frequency electric resistance welded (LF-ERW), X-52 steel pipe manufactured by A.O. Smith. This pipe is of unknown toughness but TCPL-ANR has addressed this risk in their integrity management plan. TCPL-ANR documents indicate that the 24-inch LF-ERW pipe in this *special permit inspection area* was hydrostatically tested to 104% SMYS or 145% of MAOP. TCPL-ANR also reports that the 24-inch pipe in the *special permit inspection area* has never experienced a field hydrostatic test failure or operating failure in the 24-inch LF-ERW weld seam. However, this type of weld seam pipe is known for systemic manufacturing issues resulting in weld seam failure. This places the *special permit segments* in the “requires substantial justification” column of the criteria matrix. PHMSA has seen systemic weld seam issues on many pipelines with LF-ERW pipe seams including several failures linked to LF-ERW seams. There is no existing technology to thoroughly remediate and mitigate LF-ERW seam risks for this pipeline while in gas service in a Class 3 Location. TCPL-ANR does not have any records documenting the non-destructive testing of pipeline girth welds. The 24-inch pipeline is coated with hot applied wax.

**Waupaca, Outagamie, and Winnebago Counties, Wisconsin - *Special permit segment 3 – 24-inch Line 226***

Pipe manufacture, pipe material, and pipe coating: The *24-inch Line 226* pipeline was installed in 1960 and consists of API 5L, LF-ERW, X-52 steel pipe manufactured by A.O. Smith. This pipe is of unknown toughness but TCPL-ANR has addressed this risk in their integrity management plan. TCPL-ANR documents indicate that the 24-inch LF-ERW pipe in this *special permit inspection area* was hydrostatically tested to 90% SMYS or 125% of MAOP. TCPL-ANR also reports that the 24-inch pipe in the *special permit inspection area* has never experienced a field hydrostatic test failure. TCPL-ANR reports a reportable seam leak in 1971 and 2 non-reportable third party mechanical damage incidents in the special permit inspection

area. However, this type of weld seam pipe is known for systemic manufacturing issues resulting in weld seam failure. This places the *special permit segments* in the “requires substantial justification” column of the criteria matrix. PHMSA has seen systemic weld seam issues on many pipelines with LF-ERW pipe seams including several failures linked to LF-ERW seams. The 24-inch pipeline is coated with hot applied wax.

**Defiance, Henry, and Fulton Counties, Ohio and Lenawee County, Michigan - *Special permit segment 4 – 30-inch Line 501***

Pipe manufacture and pipe coating: The 30-inch Line 501 pipeline was installed in 1956 and consists of API 5L, electric flash welded (EFW), X-52 steel pipe manufactured by A.O. Smith in 1956. This pipe is of unknown toughness. TCPL-ANR documents indicate that the 30-inch EFW pipe in this *special permit inspection area* was hydrostatically tested to 102% SMYS and had one test failure in a pipe seam. This seam failure emphasizes the seam failure risks with this vintage seam manufacturing process. The pipe external coating is coal tar enamel.

**Class Location:**

The proposed *special permit segments* on subject pipelines are located in densely populated areas, in new Class 3 location population areas defined by § 192.5(a)(1), (a)(2) and (b)(3) – Class Locations as follows;

*(a) This section classifies pipeline locations for purposes of this part. The following criteria apply to classifications under this section.*

*(1) A "class location unit" is an onshore area that extends 220 yards (200 meters) on either side of the centerline of any continuous 1-mile (1.6 kilometers) length of pipeline.*

*(2) Each separate dwelling unit in a multiple dwelling unit building is counted as a separate building intended for human occupancy.*

*(b) (3) A Class 3 location is:*

*(i) Any class location unit that has 46 or more buildings intended for human occupancy; or*

*(ii) An area where the pipeline lies within 100 yards (91 meters) of either a building or a small, well-defined outside area (such as a playground, recreation area, outdoor theater, or other place of public assembly) that is*

*occupied by 20 or more persons on at least 5 days a week for 10 weeks in any 12-month period. (The days and weeks need not be consecutive.)*

### **Findings:**

PHMSA has determined that a special permit, even with the conditions described above, that would allow TCPL-ANR to leave the existing subject pipeline segments in service at their current MAOPs will not ensure equivalent safety in these highly populated Class 3 Locations for the following reasons:

- a) TCPL-ANR has not provided documentation of mechanical and chemical properties for its 30-inch Line 1-100-inch pipeline;
- b) TCPL-ANR's 24-inch Line 226 pipeline contains LF-ERW seam pipe, which has known seam failure risks based upon a vintage seam manufacturing process; and
- c) TCPL-ANR's 30-inch Line 501 pipeline contains EFW pipe, which has known seam failure risks based upon a vintage seam manufacturing process.

The failure risks of vintage seam pipe longitudinal welds (EFW and LF-ERW pipe) are documented in the "Integrity of Vintage Pipelines" prepared by the Interstate Natural Gas Association of America (INGAA) dated October, 2004 (Vintage Pipe Report). The Vintage Pipe Report documents several integrity and performance history reasons to be concerned with LF-ERW and/or EFW pipe due to:

- Lack of fusion and oxides along the weld seam bond line, due to poor process controls,
- Stitched seam welds, which are alternating from complete and incompletely fused or partially fused areas, due to uneven heating,
- Hook cracks near the weld seam bond line caused by inclusions in the steel,
- Excessive trim or grooving (wall thickness reduction), and
- Arc burns resulting from poor or intermittent welding electrode contact.

PHMSA plans to award a Research & Development contract to review the service history of LF-ERW (including EFW) longitudinal seam pipe and will also review integrity management/inspection tools to detect integrity issues with these pipe seams. This is a follow-up to a National Transportation Safety Board (NTSB) recommendation on the subject. Following

NTSB's investigation of the Dixie Pipeline failure in 2007, NTSB developed safety recommendations to PHMSA focused on preventing failures in LF- ERW pipe. Until the Research & Development project is finished, and PHMSA is satisfied that the inherent integrity risks associated with this type pipe seam can be reliably managed, PHMSA is not technically ready and will not issue special permits to allow operation of LF-ERW, EFW, or other pipe with a history of pipe seam integrity issues for original Class 1 location pipe installed in a sparsely populated area to be upgraded through a special permit process to operate in a densely populated Class 3 location.

The risks posed by these pipe seam characteristics and the lack of documentation are not acceptable in a populated Class 3 location. There is no existing technology to remediate these pipelines that would mitigate the safety risks in a Class 3 location consistent with replacing the pipe with modern steel pipe, external coatings, field welding, girth weld non-destructive testing, and in-place hydrostatic testing methods.

Based on the information submitted by TCPL-ANR and PHMSA's analysis of the technical, operational, and safety issues, PHMSA finds that granting this special permit to TCPL-ANR to operate segments of its natural gas transmission pipelines now in Class 3 locations, at the current MAOP, would be inconsistent with pipeline safety.

**MAY 5 2010**

Completed in Washington DC on: \_\_\_\_\_

Prepared By: PHMSA – Engineering and Emergency Support



U.S. Department  
of Transportation

Pipeline and Hazardous Materials  
Safety Administration

1200 New Jersey Ave., SE  
Washington, DC 20590

**SEP 17 2010**

Mr. David Chittick  
Director, Pipeline Engineering  
TransCanada Pipelines Limited  
450 – 1st Street, S.W.  
Calgary, Alberta, Canada T2P 5H1

**Docket No. PHMSA-2009-0061**

Dear Mr. Chittick:

On February 6, 2009, TransCanada Pipeline Limited-American Natural Resources (TCPL-ANR) wrote to the Pipeline and Hazardous Materials Safety Administration (PHMSA) requesting a special permit to waive compliance from PHMSA's pipeline safety regulation in 49 CFR § 192.611, for one (1) segment of the TCPL-ANR natural gas transmission pipeline system located in Lucas County, Ohio. The regulation requires confirmation or revision of the maximum allowable operating pressure (MAOP) of a pipeline segment where the class location has changed.

PHMSA is denying this special permit request, which would have allowed TCPL-ANR to continue to operate a segment of the 20-inch Line 515 pipeline in Lucas County, Ohio at its current MAOP of 858 pounds per square inch gauge (psig). The reason for this denial can be found in the Special Permit Analysis and Findings document enclosed with this letter. This document and all other pertinent documents are available for review in Docket No. PHMSA-2009-0061 in the Federal Docket Management System (FDMS) located on the internet at [www.Regulations.gov](http://www.Regulations.gov).

PHMSA will grant TCPL-ANR until September 30, 2011, to complete pipe replacements required to comply with the requirements of 49 CFR § 192.611.

My staff would be pleased to discuss this special permit or any other regulatory matter with you. John Gale, Director of Regulations (202-366-4046), may be contacted on regulatory matters and Jeff Gilliam, Director of Engineering (303-888-2587), may be contacted on technical matters specific to this special permit.

Sincerely,

Jeffrey D. Wiese  
Associate Administrator for Pipeline Safety

Enclosure:  
Special Permit Analysis & Findings

021369

**U.S. DEPARTMENT OF TRANSPORTATION**  
**PIPELINE AND HAZARDOUS MATERIALS SAFETY ADMINISTRATION**  
**Special Permit Analysis and Findings**

**Special Permit Information:**

Docket Number: PHMSA-2009-0061  
Pipeline Operator: TransCanada Pipelines Limited, operator of American Natural Resources Pipeline (TCPL-ANR)  
Date Requested: February 6, 2009  
Code Section(s): 49 CFR § 192.611

**Purpose:**

The Pipeline and Hazardous Materials Safety Administration (PHMSA) provides this information to describe the facts of the subject special permit application submitted by TransCanada Pipelines Limited-American Natural Resources<sup>1</sup> (TCPL-ANR), to discuss any relevant public comments received with respect to the application, to present the engineering and safety analysis of the special permit application, and to make findings regarding whether the requested special permit should be granted and, if so, under what conditions.

**Pipeline System Affected:**

This special permit request involves one (1) *special permit segment* on the TCPL-ANR 20-inch Line 515, a natural gas transmission pipeline, where changes have occurred from an original Class 1 location to a Class 3<sup>2</sup> location in Lucas County, Ohio. If granted, a special permit would allow TCPL-ANR to continue to operate the 20-inch Line 515 at its current maximum allowable operating pressure (MAOP) of 858 pounds per square inch gauge (psig).

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<sup>1</sup> American Natural Resources is owned and operated by TransCanada Pipelines Limited.

<sup>2</sup> This Class 3 location *special permit segment* was originally a Class 1 location that was upgraded to Class 2 location in accordance with § 192.611 (a) hydrostatic test.

TCPL-ANR's special permit request applies to the *special permit segment* defined using the TCPL-ANR Survey Station Number (including Mile Post) references as follows:

- *Special permit segment* – 20" Line 515 – approximately 3,368 feet in length located in Lucas County, Ohio, downstream of Valve 1 from Survey Station Number 430+69 to Survey Station Number 464+37 (Milepost 23.83 to 24.47).

### **Special Permit Request**

On February 6, 2009, TCPL-ANR submitted an application to PHMSA, for a special permit seeking relief from the Federal pipeline safety regulations in 49 CFR § 192.611(a) for the above listed segment. The Federal pipeline safety regulations in 49 CFR § 192.611 require natural gas pipeline operators to confirm or revise the MAOP of a pipeline segment after a change in class location. A special permit would allow TCPL-ANR to continue to operate the *special permit segment* at its existing MAOP despite a change in class location. If the special permit application is denied, TCPL-ANR would have to reduce pipeline pressure or replace the subject pipe.

### **Public Notice:**

On April 28, 2009, PHMSA posted a notice of this special permit request in the Federal Register (74 FR 19264). PHMSA did not receive any comments for or against this special permit request as a result of this notice. The request letter, Federal Register notice, and all other pertinent documents are available for review in Docket No. PHMSA-2009-0061 in the Federal Docket Management System (FDMS) located on the internet at [www.Regulations.gov](http://www.Regulations.gov).

### **Analysis:**

Background: On June 29, 2004, PHMSA published in the Federal Register (69 FR 38948) the criteria it uses for the consideration of class location change waivers, now being granted through a special permit. First, certain threshold requirements must be met for a pipeline segment to be further evaluated for a class location change special permit. Second, the age and manufacturing process of the pipe; system design and construction; environmental, operating and maintenance histories; and integrity management program elements are evaluated as significant criteria. These significant criteria are presented in matrix form and can be reviewed in the FDMS, Docket

Number PHMSA-RSPA-2004-17401. Third, such special permits will only then be granted when pipe conditions and active integrity management provides a level of safety greater than or equal to a pipe replacement or pressure reduction.

Threshold Requirements: Each of the threshold requirements published by PHMSA in the June 29, 2004, FR notice is discussed below in regards to the TCPL-ANR special permit request.

- 1) No pipeline segments in a class location changing to Class 4 location will be considered. This special permit request is for one (1) segment of TCPL-ANR pipeline where a class location change has occurred from a Class 1 to Class 3 location. TCPL-ANR meets this requirement.
- 2) No bare pipe will be considered. This TCPL-ANR *special permit segment* is coated with fusion bonded epoxy (FBE) coating. TCPL-ANR has met this requirement.
- 3) No pipe containing wrinkle bends will be considered. There are no wrinkle bends in the *special permit segment*. TCPL-ANR has met this requirement.
- 4) No pipe segments operating above 72% of the specified minimum yield strength (SMYS) will be considered for a Class 3 special permit. The *special permit segment* operates at or below 72% SMYS. TCPL-ANR has met this requirement.
- 5) Records must be produced that show a hydrostatic test to at least 1.25 x maximum allowable operating pressure (MAOP) and 90% of the specified minimum yield strength (SMYS). TCPL-ANR records submitted show that the sections of the Line 515 containing the *special permit segment* have been hydrostatically tested to 1293 psig, which is 1.51 x MAOP and 99% of SMYS. TCPL-ANR has met this requirement.
- 6) In-line inspection (ILI) must have been performed with no significant anomalies identified that indicate systemic problems. The proposed *special permit segment* was last inspected by ILI in 2005, with no immediately actionable anomalies found. TCPL-ANR would be required to run future ILI tools, if this special permit is granted.
- 7) Criteria for consideration of class location change waiver, now being granted through special permit, published by PHMSA in the Federal Register (69 FR 38948), define a *waiver inspection area (special permit inspection area)* as up to 25 miles of pipe either side of the *waiver segment (special permit segment)*. The *special permit inspection area* must be inspected according to TCPL-ANR's integrity management program and periodically

inspected with an in-line inspection technique. If granted, a special permit would be contingent upon TCPL-ANR's incorporation of the *special permit segment* in its written integrity management program as a "*covered segment*" in a "*high consequence area*" (HCA) in accordance with 49 CFR § 192.903.

#### Criteria Matrix and Operational Integrity Compliance:

As part of its review of TCPL-ANR's application, PHMSA evaluated the relevant regulatory compliance and enforcement history to determine the overall fitness of TCPL-ANR to receive a special permit. The *special permit segment* meets most of the threshold requirements; however a review of pipe material shows the following integrity issues:

- The 20-inch Line 515 pipeline consists of American Petroleum Institute Specification 5LX, *Specification for Line Pipe* (API 5LX), electric resistance welded (ERW), X-52 steel pipe manufactured by American Steel. TCPL-ANR has not provided mechanical and chemical properties reports (mill test reports) for the pipe in the *special permit segment* to document pipe strength for the pipeline operating pressure.

Prior to granting a special permit for a class location change, PHMSA requires operators to submit pipe strength documentation for Class 1 to Class 3 location upgrades. This documentation is necessary to confirm the pipe strength for usage in operating pressure determination and anomaly repair safe pressure calculations. This pipeline segment was constructed in 1991 and TCPL-ANR must maintain this critical pipe strength documentation to determine maximum allowable operating pressure (MAOP) in accordance with 49 CFR §§ 192.105 and 192.611.

#### Compliance History – 2000 through 2009:

A review of PHMSA enforcement actions for the TCPL-ANR pipeline system from 2000 through 2009, shows the following enforcement actions against TCPL-ANR, which are in the "possible acceptance justification category".

- Letters - of Concern or Warning - 8 matters
- Notices – of Amendment or of Probable Violation – 4 matters

- Collected Civil Penalties - \$51,000 collected, additional penalties have been proposed

TransCanada Pipelines Limited has operated the ANR pipeline system since February 22, 2007. The 10-year enforcement history of the ANR system reveals only a few compliance issues.

Given TCPL-ANR's lack of pipe mechanical and chemical properties reports to confirm the strength of the pipe in the *special permit segment*, issuance of a special permit would not be consistent with pipeline safety nor would it be in the public interest.

**Findings:**

For the reasons discussed above and having reviewed TCPL-ANR's application, analyzed the technical and safety issues involved, and the relevant operating and compliance history, PHMSA recommends that the special permit requested by TCPL-ANR for one segment of Line 515 in Lucas County, Ohio, be denied.

Completed in Washington DC on: **SEP 17 2010** \_\_\_\_\_

Prepared by: Engineering and Emergency Response



U.S. Department  
of Transportation

Pipeline and Hazardous Materials  
Safety Administration

1200 New Jersey Ave., SE  
Washington, DC 20590

**JUN 27 2011**

Mr. David Chittick  
Director, Pipeline Engineering  
TransCanada Pipelines Limited  
450 – 1st Street, S.W.  
Calgary, Alberta, Canada T2P 5H1

**Docket No. PHMSA-2010-0192**

Dear Mr. Chittick:

On June 24, 2010, TransCanada Pipelines Limited (TCPL) operator of the ANR Pipeline Company (ANR) wrote to the Pipeline and Hazardous Materials Safety Administration (PHMSA) requesting a special permit to waive compliance from PHMSA's pipeline safety regulation in 49 CFR § 192.611, for one (1) segment of the ANR natural gas transmission pipeline system located in St. Martin Parish, Louisiana. The regulation requires confirmation or revision of the maximum allowable operating pressure (MAOP) of a pipeline segment where the class location has changed.

PHMSA is denying your June 24, 2010, special permit application. PHMSA's denial is based on TGPL's compliance history, as an operator, with existing special permits. Specifically, TGPL's failure to perform weekly aerial patrols and quarterly ground patrols as required by the special permit conditions in the existing special permit (PHMSA-RSPA-2003-15733) that was issued to PNGTS Pipeline Company on March 4, 2004. For additional information concerning PHMSA's review of your application and the basis for our decision, please see the enclosed Special Permit Analysis and Findings document. This and all other pertinent documents are available for review in Docket No. PHMSA-2010-0192 in the Federal Docket Management System (FDMS) located on the internet at [www.Regulations.gov](http://www.Regulations.gov).

Pursuant to § 190.341(i), reconsideration of this decision may be sought by petition to the Associate Administrator. Petitions must be received by PHMSA within 20 calendar days of the notice of the denial and must contain a brief statement of the issue and an explanation of why the petitioner believes the decision is not in the public interest. The Associate Administrator may grant or deny, in whole or in part, any petition for reconsideration without further proceedings.

For the special permit application segment identified in the Special Permit Analysis and Findings document, TCPL must complete all pipe replacements, hydrostatic tests, or pressure reductions required to meet the MAOP requirements of § 192.611 by May 31, 2012.

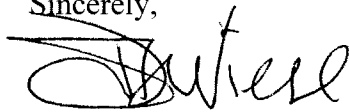
021375

**JUN 27 2011**

Docket No. PHMSA-2010-0192

My staff would be pleased to discuss this matter or any other regulatory matter with you. John Gale, Director of Standards and Rulemaking, 202-366-0434, may be contacted on regulatory matters and Jeff Gilliam, Director of Engineering and Research, 202-366-0568, may be contacted on technical matters specific to this special permit application.

Sincerely,

A handwritten signature in black ink, appearing to read "J. Wiese", with a stylized flourish at the end.

Jeffrey D. Wiese  
Associate Administrator for Pipeline Safety

Enclosure: Special Permit Analysis and Findings

U.S. DEPARTMENT OF TRANSPORTATION  
PIPELINE AND HAZARDOUS MATERIALS SAFETY ADMINISTRATION (PHMSA)

**Special Permit Analysis and Findings**

**Special Permit Information:**

**Docket Number:** PHMSA–2010-0192

**Pipeline Operator:** TransCanada Pipelines Limited, operator of ANR Pipeline Company<sup>1</sup>

**Date Requested:** June 24, 2010

**Code Section(s):** 49 CFR § 192.611(a)

**Purpose:**

The Pipeline and Hazardous Materials Safety Administration (PHMSA) provides this information to describe the facts of the subject special permit application submitted by TransCanada Pipelines Limited (TCPL), operator of the ANR Pipeline Company (ANR), to discuss any relevant public comments received with respect to the application, to present the engineering/safety analysis of the special permit application, and to make findings regarding whether the requested special permit should be granted and if so under what conditions.

**Pipeline System Affected:**

This special permit request involves one (1) *special permit segment* along the 30-inch ANR Lateral Loop 2-716 pipeline natural gas transmission pipeline in St. Martin Parish, Louisiana. The *special permit segment* class location along the pipeline has changed from an original Class 1 location to a Class 3<sup>2</sup> location.

This special permit, if granted, will allow TCPL to continue to operate the one (1) pipeline segment at its current maximum allowable operating pressure (MAOP) of 1050 pounds per square inch gauge (psig) for the 30-inch ANR Lateral Loop 2-716 pipeline.

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<sup>1</sup> ANR Pipeline Company is owned and operated by TransCanada Pipelines Limited.

<sup>2</sup> The Class 3 location *special permit segment* was originally a Class 1 location that was upgraded to Class 2 location in accordance with 49 CFR § 192.611 (a) hydrostatic test.

This special permit application applies to the *special permit segment* defined as follows using the ANR Lateral Loop 2-716 pipeline mile post and valve section survey station references:

- *Special permit segment* is defined as the 30-inch ANR Lateral Loop 2-716 pipeline beginning at Mile Post 54.02 (V4 584+66 feet) between Valve Site 3 and Valve Site 4. The *special permit segment* extends for 3,149 feet along 30-inch ANR Lateral Loop 2-176 and concludes at Mile Post 54.61 (V4 616+15), also between Valve Site 3 and Valve Site 4. The *special permit segment* is located in St. Martin Parish, Louisiana. (Note: The above ground Mile Posts do not correlate exactly with the below ground pipe lengths.)

This special permit application applies to the *special permit inspection area* defined as the area that extends 220 yards on each side of the centerline along the entire length of the 30-inch ANR Lateral Loop 1-716 and 2-716 pipelines as follows:

- *Special permit inspection area* is defined as the pipeline that begins at Mile Post 29.02 at Valve Site 2 (V3 427+75 feet) on Loop 1-716 in Iberia Parish, Louisiana. The *special permit inspection area* extends through Valve Site 3 to Mile Post 43.03 where the ANR pipeline lateral naming convention changes from Loop 1-716 to Loop 2-716 in St. Martin Parish, Louisiana. The *special permit inspection area* continues along Loop 2-176 to Valve Site 4 at Mile Post 55.52 where the ANR pipeline lateral naming convention reverts back to Loop 1-176, also in St. Martin Parish, Louisiana. The *special permit inspection area* continues along Loop 1-176 and concludes at Valve Site 5 at Mile Post 70.78 (V5 00+00 feet) in St. Landry Parish, Louisiana.

The total length of the proposed *special permit inspection area* is approximately 41.76 miles and includes the *special permit segment*.

### **Special Permit Request**

TCPL submitted an application to PHMSA on June 24, 2010, for a special permit seeking relief from the Federal pipeline safety regulations in 49 CFR 192.611(a) for one (1) segment of TCPL's 30-inch ANR Lateral Loop 2-716 natural gas transmission pipeline, where a change has occurred from a original Class 1 location to a Class 3 location in St. Martin Parish, Louisiana.

As requested, this proposed special permit would allow TCPL to continue to operate the pipeline segment at its current maximum allowable operating pressure (MAOP) of 1050 pounds per square inch gauge (psig). The Federal pipeline safety regulations in 49 CFR 192.611(a) require natural gas pipeline operators to confirm or revise the MAOP of a pipeline segment after a change in class location. A special permit, if granted, will allow TCPL to continue to operate the *special permit segment* at its existing MAOP's despite a change in class location.

In its application, TCPL suggested that the *special permit segment* be included in a *special permit inspection area* (see TCPL's application for the specific details). The *special permit inspection area* on the 30-inch ANR Lateral Loops 1-716 and 2-716 pipeline will begin approximately 25 miles upstream of the beginning of the *special permit segment* and approximately 16.17 miles downstream of the *special permit segment*. The *special permit inspection area* would be approximately 41.76 miles in length and will include the *special permit segment*.

**Public Notice:**

On March 3, 2011, PHMSA posted a notice of this special permit request in the Federal Register (76 FR 11853). The request letter, Federal Register notice, and all other pertinent documents are available for review in Docket No. PHMSA-2010-0192 in the Federal Docket Management System (FDMS) located on the internet at [www.Regulations.gov](http://www.Regulations.gov).

PHMSA received no public comments on this application for a class location special permit.

**Analysis:**

Background: On June 29, 2004, PHMSA published in the Federal Register (69 FR 38948) the criteria it uses for the consideration of class location change waivers, now being granted through a special permit. First, certain threshold requirements must be met for a pipeline section to be further evaluated for a class location change special permit. Second, the age and manufacturing process of the pipe; system design and construction; environmental, operating and maintenance histories; and integrity management program elements are evaluated as significant criteria.

These significant criteria are presented in matrix form and can be reviewed in the FDMS, Docket

Number PHMSA-RSPA-2004-17401. Third, such special permits will only then be granted when pipe conditions and active integrity management provides a level of safety greater than or equal to a pipe replacement or pressure reduction.

Threshold Requirements: Each of the threshold requirements published by PHMSA in the June 29, 2004, FR notice is discussed below in regards to the TCPL special permit petition.

- 1) No pipeline segments in a class location changing to Class 4 location will be considered. This special permit request is for one (1) segment of ANR's 30-inch Lateral Loop 2-716 pipeline where a class location change has occurred from Class 1 to Class 3 location.
- 2) No bare pipe will be considered. This TCPL *special permit segment* is coated with coal tar enamel coating. TCPL has met this requirement.
- 3) No pipe containing wrinkle bends will be considered. There are no wrinkle bends in the *special permit segment*. TCPL has met this requirement.
- 4) No pipe segments operating above 72% of the specified minimum yield strength (SMYS) will be considered for a Class 3 special permit. The *special permit segment* operates at or below 72% SMYS. TCPL has met this requirement.
- 5) Records must be produced that show a hydrostatic test to at least 1.25 x maximum allowable operating pressure (MAOP) and 90% of SMYS. TCPL records submitted show that the section of the ANR's 30-inch Lateral Loop 2-716 pipeline containing the *special permit segment* has been hydrostatically tested to 1450 psig, which is 1.38 x MAOP and 99% of SMYS. TCPL has met this requirement.
- 6) In-line inspection (ILI) must have been performed with no significant anomalies identified that indicate systemic problems. The proposed *special permit segment* was last inspected by ILI in 2009, with no immediately actionable anomalies found. TCPL has met this requirement.
- 7) Criteria for consideration of class location change waiver, now being granted through special permit, published by PHMSA in the Federal Register (69 FR 38948), define a *waiver inspection area (special permit inspection area)* as up to 25 miles of pipe either side of the *waiver segment (special permit segment)*. The *special permit inspection area* must be inspected according to TCPL's integrity management program and periodically inspected with an in-line inspection technique. The *special permit inspection area* is approximately

41.76 miles long, which is the entire length of the 30-inch ANR Lateral Loops 1-716 and 2-716 pipeline. This special permit is contingent upon TCPL's incorporation of the *special permit segment* in its written integrity management program as a "covered segment" in a "high consequence area" (HCA) per 49 CFR § 192.903.

The *special permit segment* meets the threshold requirements.

Criteria Matrix: The original and supplemental data submitted by TCPL for the *special permit segment* have been compared to the class location change special permit criteria matrix. The *special permit segment* falls in the probable acceptance column of the criteria matrix for all criteria except for:

- Possible acceptance – pipe manufacture, pipe coating, and depth of cover.
- Requires substantial justification – none.

The data findings above fall within the "possible acceptance" columns of the criteria matrix and would require some remediation measures as described below:

- 1) Pipe manufacture: ANR's 30-inch Lateral Loop 2-716 pipeline was installed in 1972, and consists of American Petroleum Institute Specification 5LX, *Specification for Line Pipe* (API 5LX), doubled submerged arc welded (DSAW), X-52 steel pipe manufactured by US Steel Corporation. This pipe is of sufficient toughness – 53 foot-pounds. The ANR Lateral Loop 1-716 and 2-716 pipeline in the *special permit inspection area* has had no leaks or ruptures. This pipe meets requirements for a special permit with no conditions for manufacture.
- 2) Pipe coating: The pipe is coated with coal tar enamel – Koppers 70-B primer and hi-melt enamel. If the special permit is granted, TCPL will be required to perform ILI assessments, anomaly repairs, close interval surveys, and stress corrosion cracking direct assessment (SCCDA) along the entire length of the ANR Lateral Loops 1-716 and 2-716 pipeline *special permit inspection area* and *special permit segment* according to the requirements of 49 CFR § 192.929 within one (1) year after the grant of this special permit
- 3) Depth of cover: TCPL has not conducted a pipeline depth of cover survey, and would be required to conduct a depth of cover survey in the *special permit segment* and implement remediation measures where depth of cover is reduced.

PHMSA has determined that imposing the special permit conditions, if granted, would address these concerns and provide equivalent safety for these areas.

Operational Integrity Compliance:

PHMSA reviewed this special permit request to ensure that integrity threats to the pipeline in the *special permit segment* and *special permit area* are in the operator's operations and management plan (O&M Plan) to provide a systematic program to review and remediate the pipeline for safety concerns. Additional operational integrity review and remediation requirements will be required for this *special permit segment* class location change, if a special permit is granted. The pipeline operational integrity requirements are to ensure that the operator has an ongoing program to locate and remediate safety threats. These threats to integrity and safety include pipe coating quality, cathodic protection effectiveness, operations damage prevention program for third party damage, weld seam and girth weld integrity, anomalies in the pipe steel, and material and structures either along or near the pipeline that could cause the cathodic protection system to be ineffective. PHMSA carefully designs a comprehensive set of conditions that an operator would be required to meet in order for the special permit to be granted. Among other things, the proposed conditions would include:

- A close interval survey to determine the effectiveness of the cathodic protection system must be performed within the *special permit inspection area* and all areas with inadequate cathodic protection must be remediated.
- A coating survey to determine the quality of the pipe coating must be conducted and ineffective coating areas must be required to be remediated.
- Stress corrosion cracking (SCC) surveys on the pipeline will be required to ensure that the pipe steel does not contain cracks due to the effects of high and near neutral pH SCC.
- The latest methods of damage prevention must be incorporated by the operator, such as the best practices of the Common Ground Alliance (CGA) within the *special permit inspection area*.
- Interference currents from electric transmission lines and other interfering structures in the *special permit inspection area* must be identified, controlled and mitigated by conducting surveys and installing grounding systems where required.

- An analysis of pipeline field coated girth welds that could have shielding coatings that could cause corrosion of the pipe steel must be undertaken in the *special permit segment* and in-line inspection logs that indicate 30% corrosion indications on shielding or unknown coatings must be exposed and evaluated.
- Anomalies and dents in the pipeline must be repaired, based upon the special permit repair criteria.
- Girth welds in the special permit segments must have been inspected to a non destructive test plan during construction, or a quality review and remediation program must be implemented by the pipeline operator.
- All shorted casing at road crossings and railroad crossings in the special permit segments (either metallic or electrolytic) must be cleared to prevent corrosion.
- Pipeline longitudinal seams within the *special permit inspection area* must have an engineering analysis to determine if there are any threats and remediated, if integrity threats are determined.
- Periodic close interval surveys and in-line inspection surveys (pipeline internal surveys to determine corrosion in the pipeline) must be performed on the *special permit segment* at the applicable reassessment intervals.
- In-line tool (ILI) inspections must be conducted through the *special permit segments* and the *special permit inspection area*, and anomaly findings remediated any in accordance with the 49 CFR Part 192, Subpart O, § 192.485, and the conditions of the special permit.
- A depth of cover survey of the *special permit segments* must be conducted. Any pipe in the *special permit segment* that does not meet 49 CFR § 192.327(a) must have additional safety measures implemented in areas with reduced depth of cover.

#### Compliance History – 2007 through 2011:

A review of PHMSA enforcement actions of ANR from February 22, 2007, through May 24, 2011, shows the following closed enforcement actions against TCPL. During this time interval, TCPL has owned and operated ANR (OPID 405).

- Letters - of Concern or Warning - 4 matters closed
- Notices – of Amendment or of Probable Violation – 1 matters closed
- Collected Civil Penalties - \$41,000 collected

This enforcement history reveals a few compliance issues, including pipeline maintenance issues. PHMSA would require TCPL to comply with Special Permit conditions to address these issues.

PHMSA reviewed the existing special permits issued to TGPL to ensure that TCPL is in compliance with the conditions of any existing special permits issued to them. PHMSA found that TGPL was not following all of the special permit conditions on the PNGTS<sup>3</sup> 24-inch mainline pipeline (PHMSA-RSPA-2003-15733) through-out the life of the special permit as follows:

**Special Permit Condition 5:** Findings, remediation, and documentation – Perform weekly aerial patrols and quarterly ground patrols over the entire 143.8 miles of the 24-inch pipeline. The ground patrols must include leak surveys on all Class 3 portions of the pipeline using appropriate instrumented leak detection equipment.

**PHMSA review of compliance documents:**

TCPL/PNGTS did not meet the special permit conditions for performing weekly aerial patrols and quarterly ground patrols.

- TCPL/PNGTS stopped conducting weekly aerial patrols in July, 2006, through early 2010. Bi-weekly aerial patrols were performed from 2008 through early 2010.. PHMSA was not notified of this special permit modification.
- TCPL/PNGTS performed quarterly ground patrols until the 4<sup>th</sup>-quarter of 2004, and annual ground patrols were conducted in 2005, 2006, and 2007. Quarterly ground patrols were resumed in 2008. PHMSA was not notified of this special permit modification.

PHMSA finds that TCPL/PNGTS's lack of diligence in following all of the conditions of the existing special permit to be inconsistent with pipeline safety.

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<sup>3</sup> TGPL is operator of the PNGTS Pipeline Company and was issued special permit (PHMSA-RSPA-2003-15733) on March 4, 2004.

**Findings:**

TCP requested a *special permit* to operate the ANR 30-inch Lateral Loop 2-716, a natural gas transmission pipeline, at the current MAOP where a change in class location has occurred from an original Class 1 location to a Class 3 location. Based on the information submitted by TCPL and PHMSA's analysis of the technical, operational, and existing special permit non-compliance issues on other TGPL operated pipelines, PHMSA finds that granting this special permit to TCPL is inconsistent with pipeline safety.

Completed in Washington DC on: ~~\_\_\_\_\_ JUN 27 2011 \_\_\_\_\_~~

Prepared by: Engineering and Research Division



U.S. Department  
of Transportation

Pipeline and Hazardous Materials  
Safety Administration

1200 New Jersey Ave., SE  
Washington, DC 20590

**JUN 27 2011**

Mr. David Chittick  
Director, Pipeline Engineering  
TransCanada Pipelines Limited  
450 – 1st Street, S.W.  
Calgary, Alberta, Canada T2P 5H1

**Docket No. PHMSA-2010-0148**

Dear Mr. Chittick:

On May 26, 2010, TransCanada Pipeline Limited (TCPL) operator of the PNGTS Pipeline Company (PNGTS) wrote to the Pipeline and Hazardous Materials Safety Administration (PHMSA) requesting a special permit to waive compliance from PHMSA's pipeline safety regulation in 49 CFR § 192.611, for one (1) segment of the PNGTS natural gas transmission pipeline system located in Coos County, New Hampshire. The regulation requires confirmation or revision of the maximum allowable operating pressure (MAOP) of a pipeline segment where the class location has changed.

PHMSA is denying your May 26, 2010, special permit application based on operator compliance issues relating to not performing weekly aerial patrols and quarterly ground patrols as required by the special permit conditions (PHMSA-RSPA-2003-15733) at another location on this pipeline. For additional information concerning PHMSA's review of your application and the basis for our decision, please see the enclosed Special Permit Analysis and Findings document. This and all other pertinent documents are available for review in Docket No. PHMSA-2010-0148 on the internet at [www.Regulations.gov](http://www.Regulations.gov).

Pursuant to 49 CFR 190.341(i), reconsideration of this decision may be sought by petition to the Associate Administrator. Petitions must be received by PHMSA within 20 calendar days of the notice of the denial and contain a brief statement of the issue(s) and an explanation of why the petitioner believes the decision is not in the public interest. The Associate Administrator may grant or deny, in whole or in part, any petition for reconsideration without further proceedings.

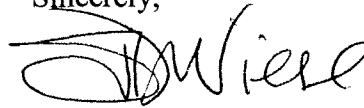
For the special permit application segment identified in the Special Permit Analysis and Findings document, TCPL must complete all pipe replacements, hydrostatic tests, or pressure reductions required to meet the MAOP requirements of § 192.611 by December 1, 2011.

021386

JUN 27 2011

My staff would be pleased to discuss this matter or any other regulatory matter with you. John Gale, Director of Standards and Rulemaking Division 202-366-0434, may be contacted on regulatory matters and Jeff Gilliam, Director of Engineering and Research Division 202-366-0568, may be contacted on technical matters specific to this special permit.

Sincerely,

A handwritten signature in black ink, appearing to read "J. Wiese", with a stylized flourish at the end.

Jeffrey D. Wiese  
Associate Administrator for Pipeline Safety

Enclosure: Special Permit Analysis & Findings

U.S. DEPARTMENT OF TRANSPORTATION  
PIPELINE AND HAZARDOUS MATERIALS SAFETY ADMINISTRATION (PHMSA)

**Special Permit Analysis and Findings**

**Special Permit Information:**

**Docket Number:** PHMSA–2010-0148

**Pipeline Operator:** TransCanada Pipelines Limited, operator of PNGTS Pipeline Company

**Date Requested:** May 26, 2010

**Code Section(s):** 49 CFR § 192.611

**Purpose:**

The Pipeline and Hazardous Materials Safety Administration (PHMSA) provides this information to describe the facts of the subject special permit application submitted by TransCanada Pipelines Limited (TCPL), operator of the PNGTS Pipeline Company (PNGTS), to discuss any relevant public comments received with respect to the application, to present the engineering/safety analysis of the special permit application, and to make findings regarding whether the requested special permit should be granted and if so under what conditions.

**Pipeline System Affected:**

This special permit request involves one (1) *special permit segment* along the PNGTS 24-inch Mainline pipeline, a natural gas transmission pipeline, located in Coos County, New Hampshire. The *special permit segment* class location along the pipeline has changed from an original Class 1 location to a Class 3<sup>1</sup> location.

This special permit would allow, if granted, TCPL to continue to operate the one (1) pipeline segment at its current maximum allowable operating pressure (MAOP) of 1440 pounds per square inch gauge (psig) for the PNGTS 24-inch Mainline pipeline.

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<sup>1</sup> The Class 3 location *special permit segment* was originally a Class 1 location that was upgraded to Class 2 location in accordance with 49 CFR 192.611 (a) hydrostatic test.

This special permit application applies to the *special permit segment* defined as follows using the PNGTS 24-inch Mainline pipeline mile post (MP) or survey station (Sta.) references:

- *Special permit segment* is defined as the PNGTS 24-inch Mainline pipeline beginning at Mile Post 70.18 (Survey Station 3705+59 feet) between Valve Site 7 and Valve Site 8. The *special permit segment* extends for 114 feet along the PNGTS 24-inch Mainline pipeline and concludes at Mile Post 70.20 (Survey Station 3706+73 feet), also between Valve Site 7 and Valve Site 8. The *special permit segment* is located in Coos County, New Hampshire.

This special permit application applies to the *special permit inspection area* defined as the area that extends 220 yards on each side of the centerline along the entire length of the PNGTS 24-inch Mainline pipeline as follows:

- *Special permit inspection area* is defined as the pipeline that begins at Mile Post 45.18 (Survey Station 2385+59 feet) between Valve Site 5 and Valve Site 6 in Coos County, New Hampshire. The *special permit inspection area* extends to Mile Post 95.20 (Survey Station 5026+73 feet) between Valve Site 9 and Valve Site 10 in Oxford County, Maine. The proposed *special permit inspection area* is located in Coos County, New Hampshire and Oxford County, Maine.

The total length of the proposed *special permit inspection area* is approximately 50.02 miles and includes the *special permit segment*.

### **Special Permit Request**

TCPL submitted an application to PHMSA on May 26, 2010, for a special permit seeking relief from the Federal pipeline safety regulations in 49 CFR 192.611(a) for one (1) segment of TCPL's PNGTS 24-inch Mainline natural gas transmission pipeline, where a change has occurred from an original Class 1 location to a Class 3 location in Coos County, New Hampshire. As requested, this special permit would allow TCPL to continue to operate the pipeline segment at its current maximum allowable operating pressure (MAOP) of 1,440 pounds per square inch gauge (psig). The Federal pipeline safety regulations in 49 CFR 192.611(a) require natural gas pipeline operators to confirm or revise the MAOP of a pipeline segment after

a change in class location. A special permit, if granted, would allow TCPL to continue to operate the special permit segment at their existing MAOP's despite a change in class location.

In its application, TCPL suggested that the *special permit segment* be included in a *special permit inspection area* (see TCPL's application for the specific details). The *special permit inspection area* on the PNGTS 24-inch Mainline pipeline, if granted, would begin approximately 25 miles upstream of the beginning of the *special permit segment* and approximately 25 miles downstream of the *special permit segment*. The *special permit inspection area* would be approximately 50.02 miles in length and would include the *special permit segment*, if granted.

**Public Notice:**

On March 3, 2011, PHMSA posted a notice of this special permit request in the Federal Register (76 FR 11853). The request letter, Federal Register notice, and all other pertinent documents are available for review in Docket No. PHMSA-2010-0148 in the Federal Docket Management System (FDMS) located on the internet at [www.Regulations.gov](http://www.Regulations.gov).

PHMSA did not receive any public comments on this application for a class location special permit.

**Analysis:**

Background: On June 29, 2004, PHMSA published in the Federal Register (69 FR 38948) the criteria it uses for the consideration of class location change waivers, now being granted through a special permit. First, certain threshold requirements must be met for a pipeline section to be further evaluated for a class location change special permit. Second, the age and manufacturing process of the pipe; system design and construction; environmental, operating and maintenance histories; and integrity management program elements are evaluated as significant criteria. These significant criteria are presented in matrix form and can be reviewed in the FDMS, Docket Number PHMSA-RSPA-2004-17401. Third, such special permits will only then be granted when pipe conditions and active integrity management provides a level of safety greater than or equal to a pipe replacement or pressure reduction.

Threshold Requirements: Each of the threshold requirements published by PHMSA in the June 29, 2004, FR notice is discussed below in regards to the TCPL special permit petition for the PNGTS 24-inch Mainline.

- 1) No pipeline segments in a class location changing to Class 4 location will be considered.  
This special permit request is for one (1) segment where a class location change has occurred from Class 1 to Class 3 location. TCPL has met this requirement.
- 2) No bare pipe will be considered. This TCPL *special permit segment* is coated with fusion bonded epoxy (FBE). TCPL has met this requirement.
- 3) No pipe containing wrinkle bends will be considered. There are no wrinkle bends in the *special permit segment*. TCPL has met this requirement.
- 4) No pipe segments operating above 72% of the specified minimum yield strength (SMYS) will be considered for a Class 3 special permit. The *special permit segment* operates at or below 72% SMYS. TCPL has met this requirement.
- 5) Records must be produced that show a hydrostatic test to at least 1.25 x maximum allowable operating pressure (MAOP) and 90% of SMYS. TCPL records submitted show that the section of the PNGTS 24-inch Mainline pipeline containing the *special permit segment* has been hydrostatically tested to 1807 psig, which is 1.255 x MAOP and 90.3% of SMYS. TCPL has met this requirement.
- 6) In-line inspection (ILI) must have been performed with no significant anomalies identified that indicate systemic problems. The proposed *special permit segment* was last inspected by ILI on February 29, 2008, with no immediate or one (1) year actionable anomalies found. TCPL has met this requirement and would be required to re-inspect the *special permit inspection area* and *special permit segment* with ILI tools by February 29, 2015, if the special permit is granted.
- 7) Criteria for consideration of class location change waiver, now being granted through special permit, published by PHMSA in the Federal Register (69 FR 38948), define a *waiver inspection area (special permit inspection area)* as up to 25 miles of pipe either side of the *waiver segment (special permit segment)*. The *special permit inspection area* must be inspected according to TCPL's integrity management program and periodically inspected with an in-line inspection technique. The *special permit inspection area* is approximately 50.02 miles long. This special permit, if granted, would be contingent upon TCPL's

incorporation of the *special permit segment* in its written integrity management program as a “covered segment” in a “high consequence area” (HCA) in accordance with 49 CFR § 192.903.

The *special permit segment* meets the threshold requirements.

Criteria Matrix: The original and supplemental data submitted by TCPL for the *special permit segment* have been compared to the class location change special permit criteria matrix. The *special permit segment* falls in the probable acceptance column of the criteria matrix for all criteria except for:

- Possible acceptance – pipeline depth of cover.
- Requires substantial justification – none.

The data findings above fall within the “possible acceptance” columns of the criteria matrix and will require some remediation measures as described below:

- Depth of Cover: TCPL has not conducted a pipeline depth of cover survey, and would be required, if the special permit is granted, to conduct a depth of cover survey in the *special permit segment* and implement remediation measures where depth of cover is reduced.

Operational Integrity Compliance:

PHMSA reviewed the existing special permit (PHMSA-RSPA-2003-15733) to ensure that TCPL is following the conditions of this existing special permit on the PNGTS 24-inch Mainline pipeline. PHMSA found that TCPL has not followed all conditions in this special permit through-out the life of the special permit as follows:

**Special Permit Condition 5:** Findings, remediation, and documentation – Perform weekly aerial patrols and quarterly ground patrols over the entire 143.8 miles of the 24-inch pipeline. The ground patrols must include leak surveys on all Class 3 portions of the pipeline using appropriate instrumented leak detection equipment.

**PHMSA review of compliance documents:**

TCPL/PNGTS did not meet the special permit conditions for performing weekly aerial patrols and quarterly ground patrols.

- TCPL/PNGTS stopped conducting weekly aerial patrols in July, 2006, through the present time. Bi-weekly aerial patrols were performed from

2008 through the present time. PHMSA was not notified of this special permit modification.

- TCPL/PNGTS performed quarterly ground patrols until the 4<sup>th</sup>-quarter of 2004, and annual ground patrols were conducted in 2005, 2006, and 2007. Quarterly ground patrols were resumed in 2008. PHMSA was not notified of this special permit modification.

PHMSA finds that TCPL/PNGTS lack of diligence in following all of the conditions of the existing special permit to be inconsistent with pipeline safety.

#### **Compliance History – 2004 through 2011:**

A review of PHMSA enforcement actions of TCPL operations on the PNGTS pipeline from August 3, 2004, through April 28, 2011, shows the following closed enforcement actions against TCPL during the time interval they have owned and operated PNGTS (OPID 31145).

- Letters - of Concern or Warning - 1 matters closed
- Notices – of Amendment or of Probable Violation – 3 matters closed
- Collected Civil Penalties - none collected

This enforcement history reveals a few compliance issues, including pipeline maintenance issues. TCPL has owned and operated PNGTS pipeline since August 3, 2004.

#### **Findings:**

Based on the information submitted by TCPL and PHMSA's analysis of the technical, operational, and existing special permit non-compliance issues on the PNGTS pipeline, PHMSA finds that granting this special permit to TCPL to operate this *special permit segment* of the PNGTS 24-inch Mainline pipeline, a natural gas transmission pipeline, at the current MAOP where a change in class location has occurred from an original Class 1 location to a Class 3 location is inconsistent with pipeline safety.

Completed in Washington DC on: JUN 27 2011

Prepared by: Engineering and Research Division



U.S. Department  
of Transportation

Pipeline and Hazardous Materials  
Safety Administration

1200 New Jersey Ave., SE  
Washington, DC 20590

'JUL 16 2010

Mr. David Chittick  
Director, Pipeline Engineering  
TransCanada Pipelines Limited  
450 – 1st Street, S.W.  
Calgary, Alberta, Canada T2P 5H1

**Docket No. PHMSA-2009-0055**

Dear Mr. Chittick:

On February 6, 2009, TransCanada Pipelines Limited, operator of the American Natural Resources Pipeline (TCPL-ANR) wrote to the Pipeline and Hazardous Materials Safety Administration (PHMSA) requesting a special permit to waive compliance from PHMSA's pipeline safety regulation in 49 CFR § 192.611 for four (4) segments of the TCPL-ANR natural gas transmission pipeline system located in St. Martin Parish, Louisiana. The regulation requires confirmation or revision of the maximum allowable operating pressure (MAOP) for a pipeline segment where the class location has changed. If granted, the special permit would have allowed TCPL-ANR to continue to operate four (4) segments of the 20-inch Line 716 pipeline located in St. Martin Parish, Louisiana at their current MAOP of 1,050 pounds per square inch gauge (psig).

PHMSA is denying the special permit request due to Line 716 pipeline gas quality issues from gas supplies, the 1983 internal leak due to internal corrosion and the presence of pre-1970 EFW pipe in the Class 3 location *special permit segments*. The reasons for this denial are more fully described in the special permit analysis and findings document enclosed with this letter. This document and all other pertinent documents are available for review in Docket No. PHMSA-2009-0055 in the Federal Docket Management System (FDMS) located on the internet at [www.Regulations.gov](http://www.Regulations.gov). PHMSA is granting TCPL-ANR until September 30, 2011, to complete pipe replacements to comply with the requirements of § 192.611.

My staff would be pleased to discuss this denial or any other regulatory matter with you. John Gale, Director of Regulations (202-366-4046), may be contacted on regulatory matters and Alan Mayberry, Deputy Associate Administrator for Pipeline Safety (202-366-5124), may be contacted on technical matters specific to this special permit request.

Sincerely,

Jeffrey D. Wiese  
Associate Administrator for Pipeline Safety

Enclosure: Special Permit Analysis and Findings

021394

U.S. DEPARTMENT OF TRANSPORTATION  
PIPELINE AND HAZARDOUS MATERIALS SAFETY ADMINISTRATION (PHMSA)

**Special Permit Analysis and Findings**

**Special Permit Information:**

Docket Number: PHMSA-2009-0055  
Pipeline Operator: TransCanada Pipelines Limited - American Natural  
Resource (TCPL-ANR)  
Date Requested: February 6, 2009  
Code Section(s): 49 CFR § 192.611

**Purpose:**

The Pipeline and Hazardous Materials Safety Administration (PHMSA) provides this information to describe the facts of the subject special permit application submitted by TransCanada Pipelines Limited, operator of American Natural Resources<sup>1</sup> (TCPL-ANR), to discuss any relevant public comments received with respect to the application, to present the engineering/safety analysis of the special permit application, and to make findings regarding whether the requested special permit should be granted and if so under what conditions.

**Pipeline System Affected:**

This special permit application applies to four (4) *special permit segments* along the TCPL-ANR system of natural gas pipelines. These four (4) *special permit segments* are on the 20-inch Line 716 pipeline located in St. Martin Parish, Louisiana. The class locations along the pipeline *special permit segments* have changed from an original Class 1 Location to a Class 3<sup>2</sup> Location. This special permit application applies to the *special permit segments* and *special permit inspection area* defined using the TCPL-ANR Survey Station Numbers (including Mile Post) references as follows:

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<sup>1</sup> American Natural Resources is owned and operated by TransCanada Pipelines Limited.

<sup>2</sup> This Class 3 location *special permit segment* was originally a Class 1 location that was upgraded to Class 2 location in accordance with § 192.611 (a) hydrostatic test.

### **St. Martin Parish, Louisiana**

- ***Special permit segment 1*** – approximately 553 feet of 20-inch Line 716 located downstream of Valve 6 (end of line) from Survey Station Number 628+29 feet to Survey Station Number 633+82 feet in St. Martin Parish, Louisiana, Mileposts 58.90 to 58.80.
- ***Special permit segment 2*** - approximately 1,042 feet of 20-inch Line 716 located from Survey Station Number 634+62 feet to Survey Station Number 644+86 feet in St. Martin Parish, Louisiana, Mile Posts 58.78 to 58.59.
- ***Special permit segment 3*** - approximately 63 feet of 20-inch Line 716 located from Survey Station Number 656+30 feet to Survey Station Number 656+93 feet in St. Martin Parish, Louisiana, Mile Posts 58.37 to 58.36.
- ***Special permit segment 4*** - approximately 817 feet of 20-inch Line 716 located from Survey Station Number 703+51 feet to Survey Station Number 711+68 feet in St. Martin Parish, Louisiana, Mile Posts 57.48 to 57.32.

### **St. Martin, St. Landry and Iberia Parishes, Louisiana**

*Special permit inspection area* is the area that extends 220 yards on each side of the pipe centerline along the entire length of the 20-inch Line 716 pipeline from Station 0+00 0 of Valve 6 (end of line) in St. Landry Parish, Louisiana to 29,914 ft downstream of Valve 4 in Iberia Parish, Louisiana. The *special permit inspection area* is located in St. Landry, St. Martin, and Iberia Parishes, Louisiana. The *special permit inspection area* extends approximately 11.90 miles upstream of the *special permit segment 1* to approximately 25 miles downstream of the *special permit segment 4*; (Milepost 70.80 to 32.31). The total length of the *special permit inspection area* including the four *special permit segments* is approximately 38.48 miles.

Note: The *special permit inspection area* includes the four (4) *special permit segments*.

### **Special Permit Request**

TCPL-ANR submitted an application to PHMSA on February 6, 2009, for a special permit seeking relief from the Federal pipeline safety regulations in 49 CFR § 192.611(a) for four segments of the TCPL-ANR natural gas transmission 20-inch Line 716 pipeline where a change has occurred from a original Class 1 location to a Class 3 location in St. Martin, St. Landry and

Iberia Parishes, Louisiana. The special permit would have allowed TCPL-ANR to continue to operate the pipeline segments at their current maximum allowable operating pressure (MAOP) of 1,050 pounds per square inch gauge (psig), respectively. The Federal pipeline safety regulations in 49 CFR § 192.611(a) require natural gas pipeline operators to confirm or revise the MAOP of a pipeline segment after a change in class location.

**Public Notice:**

On April 28, 2009, PHMSA posted a notice of this special permit request in the Federal Register (74 FR 19264). PHMSA did not receive any comments for or against this special permit request. The request letter, Federal Register notice, and all other pertinent documents are available for review in Docket No. PHMSA-2009-0055 in the Federal Docket Management System (FDMS) located on the internet at [www.Regulations.gov](http://www.Regulations.gov).

**Analysis:**

Background: On June 29, 2004, PHMSA published in the Federal Register (69 FR 38948) the criteria it uses for the consideration of class location change waivers, now referred to as a special permit. Certain threshold requirements must be met for a pipeline section to be further evaluated for a class location change special permit. The age and manufacturing process of the pipe, system design and construction, environmental, operating and maintenance histories, and integrity management program elements are evaluated as significant criteria. These significant criteria are presented in matrix form and can be reviewed in the FDMS, Docket No. PHMSA-RSPA-2004-17401. Such special permits will only then be granted when pipe conditions and active integrity management provides a level of safety greater than or equal to a pipe replacement or pressure reduction.

Threshold Requirements: Each of the threshold requirements published by PHMSA in the June 29, 2004, FR notice is discussed below in regards to the TCPL-ANR special permit petition.

- 1) No pipeline segments in a class location changing to Class 4 Location will be considered.

This special permit request is for PHMSA 2009-0055 segments of TCPL-ANR pipeline where a class location change has occurred from Class 1 to Class 3.

- b. Requires substantial justification - pipe manufacture, pipe girth weld, and ILI inspections

The data findings below fall within the “probable acceptance” or the “requires substantial justification” column of the criteria matrix:

- 1) Pipe coating, leaks & failures, and depth of cover: The 20-inch pipe is coated with Koppers XXH enamel and primer and felt wrap. TCPL-ANR would be required to remediate this coating in the special permit segment by conducting Direct Current Voltage Gradient (DCVG) survey or an Alternating Current Voltage Gradient (ACVG) survey, and close interval surveys (CIS) and remediate poor quality coating. The pipeline did have a leak in 1983 due to internal corrosion caused by chlorines (salt) and water in the gas stream. Since 1995 TCPL-ANR has cleaned with scraper pigs this section of pipeline over 97 times to remove deleterious gas stream constituents from the *special permit inspection area*. Depth of cover was not confirmed by TCPL-ANR, so if a *special permit* was issued the conditions would require a survey and remediation of shallow areas.
- 2) Pipe manufacture, pipe girth weld, and ILI inspections: 20-inch Line 716 pipeline was installed in 1964 and consists of American Petroleum Institute Specification 5LX, *Specification for Line Pipe* (API 5LX), electric flash welded (EFW), X-52 steel pipe manufactured by A.O Smith. Pipe with EFW seams normally have systemic manufacturing issues. TCPL-ANR has tested this pipeline to 99.2% SMYS test levels, 1449 psig. TCPL-ANR reports no hydrostatic test and no in service leaks or failures on this 20-inch pipeline in the special permit inspection area due to selective seam corrosion. However, this type of weld seam pipe has been known for systemic manufacturing issues resulting in weld seam failure. This will place the *special permit segments* in the “requires substantial justification” column of the criteria matrix would place all *special permit segments* in the “requires substantial justification” column of the criteria matrix.

To further address these pipe manufacture, girth weld and internal corrosion issues, an operator of pipe such as the pipe involved in this application would have to meet conditions requiring TCPL-ANR to treat all *special permit segments* as “covered segments” in an HCA per 49 CFR § 192.903. TCPL-ANR did not have records to substantiate girth weld quality.

To address lack of ILI Tool inspections, a *special permit inspection area* would need to require be the 20-inch Line 716 pipeline to be inspected according to TCPL-ANR's integrity management program and periodically inspected with an in-line inspection technique. Any special permit issued would need to be contingent upon TCPL-ANR incorporation of each of the *special permit segments* in its written integrity management program as a "covered segment" in a "high consequence area" (HCA) in accordance with 49 CFR § 192.903.

The proposed *special permit segments* on the 20-inch Line 716 pipeline have had internal corrosion issues due to poor gas quality, poor pigging practices, and have EFW weld seams. These proposed *special permit segments* are located in densely populated areas, which are new Class 3 location population areas defined by § 192.5(a)(1), (a)(2) and (b)(3) – Class Locations as follows;

*(a) This section classifies pipeline locations for purposes of this part. The following criteria apply to classifications under this section.*

*(1) A "class location unit" is an onshore area that extends 220 yards (200 meters) on either side of the centerline of any continuous 1-mile (1.6 kilometers) length of pipeline.*

*(2) Each separate dwelling unit in a multiple dwelling unit building is counted as a separate building intended for human occupancy.*

*(b) (3) A Class 3 location is:*

*(i) Any class location unit that has 46 or more buildings intended for human occupancy; or*

*(ii) An area where the pipeline lies within 100 yards (91 meters) of either a building or a small, well-defined outside area (such as a playground, recreation area, outdoor theater, or other place of public assembly) that is occupied by 20 or more persons on at least 5 days a week for 10 weeks in any 12-month period. (The days and weeks need not be consecutive.)*

To further address these pipe design and construction issues, an operator of pipe such as the pipe involved in this application would have to meet conditions requiring TCPL-ANR to treat all *special permit segments* as "covered segments" in an HCA per 49 CFR § 192.903. A stress corrosion cracking direct assessment (SCCDA) of the 20-inch Line 716 pipeline would also be required along the entire length of the *special permit inspection area* according to the requirements of 49 CFR § 192.929.

PHMSA has determined that a special permit, even with conditions, that would allow TCPL-ANR to leave the existing 20-inch Line 716 pipeline in service will not ensure equivalent safety based upon the 49 CFR § 192.611 regulations for Class 3 location areas due to Line 716 pipeline gas quality issues from gas supplies, the 1983 internal leak due to internal corrosion and the presence of pre-1970 EFW pipe in the Class 3 location *special permit segments*.

### **Findings:**

Based on the information submitted by TCPL-ANR and PHMSA's analysis of the technical, operational, and safety issues, and given the additional measures required and conditions that would be imposed, PHMSA finds that granting this special permit to TCPL-ANR to operate four (4) *special permit segments* of the 20-inch Line 716 pipeline, a natural gas transmission pipeline, at the current MAOP of 1080 psig where a change in class location has occurred from an original Class 1 location to a Class 3 location would be inconsistent with pipeline safety.

The failure risks of vintage seam pipe longitudinal welds (EFW and LF-ERW pipe) are documented in the "Integrity of Vintage Pipelines" prepared by the Interstate Natural Gas Association of America (INGAA) dated October, 2004 (Vintage Pipe Report). The Vintage Pipe Report documents several integrity and performance history reasons to be concerned with LF-ERW and/or EFW pipe due to:

- Lack of fusion and oxides along the weld seam bond line, due to poor process controls,
- Stitched seam welds, which are alternating from complete and incompletely fused or partially fused areas, due to uneven heating,
- Hook cracks near the weld seam bond line caused by inclusions in the steel,
- Excessive trim or grooving (wall thickness reduction), and
- Arc burns resulting from poor or intermittent welding electrode contact.

PHMSA is advancing Research & Development to review the service history of LF-ERW (including EFW) longitudinal seam pipe and will also review integrity management/inspection tools to detect integrity issues with these pipe seams. This is a follow-up to a National Transportation Safety Board (NTSB) recommendation on the subject. Following NTSB's investigation of the Dixie Pipeline failure in 2007, NTSB developed safety recommendations to

PHMSA focused on preventing failures in LF- ERW pipe. Until PHMSA is satisfied that the inherent integrity risks associated with this type pipe seam can be reliably managed, PHMSA will not issue special permits to allow operation of LF-ERW, EFW, or other pipe with a history of pipe seam integrity issues for original Class 1 location pipe installed in a sparsely populated area to be upgraded through a special permit process to operate in a densely populated Class 3 location.

The risks posed by these pipe seam characteristics and the lack of documentation are not acceptable in a populated Class 3 location. The applicant has not described a plan or the use of technology to remediate these pipelines that would mitigate the safety risks in a Class 3 location consistent with replacing the pipe with modern steel pipe, external coatings, field welding, girth weld non-destructive testing, and in-place hydrostatic testing methods.

Based on the information submitted by TCPL-ANR and PHMSA's analysis of the technical, operational, and safety issues, PHMSA finds that granting this special permit to TCPL-ANR to operate segments of its natural gas transmission pipelines now in Class 3 locations, at the current MAOP, would be inconsistent with pipeline safety.

**'JUL 16 2010**

Completed in Washington DC on: \_\_\_\_\_

Prepared By: PHMSA – Engineering and Emergency Support



U.S. Department  
of Transportation

Pipeline and Hazardous Materials  
Safety Administration

1200 New Jersey Ave., SE  
Washington, DC 20590

**'JUL 16 2010**

Mr. David Chittick  
Director, Pipeline Engineering  
TransCanada Pipelines Limited  
450 – 1st Street, S.W.  
Calgary, Alberta, Canada T2P 5H1

**Docket No. PHMSA-2009-0056**

Dear Mr. Chittick:

On February 6, 2009, TransCanada Pipeline Limited operator of American Natural Resources Pipeline (TCPL-ANR) wrote to the Pipeline and Hazardous Materials Safety Administration (PHMSA) requesting a special permit to waive compliance from PHMSA's pipeline safety regulation in 49 CFR § 192.611 for one (1) segment of the TCPL-ANR natural gas transmission pipeline system located in Tate County, Mississippi. The regulation requires confirmation or revision of the maximum allowable operating pressure (MAOP) of a pipeline segment where the class location has changed.

PHMSA is denying this special permit due to insufficient information in the application demonstrating the adequacy of the pipe steel toughness properties to mitigate fracture propagation. The reasons for this denial are more fully described in the special permit analysis and findings document enclosed with this letter. This document and all other pertinent documents are available for review in Docket No. PHMSA-2009-0056 in the Federal Docket Management System (FDMS) located on the internet at [www.Regulations.gov](http://www.Regulations.gov).

TCPL-ANR should comply with the requirements of 49 CFR § 192.611 by September 30, 2011.

My staff would be pleased to discuss this special permit or any other regulatory matter with you. John Gale, Director of Regulations (202-366-4046), may be contacted on regulatory matters and Alan Mayberry, Deputy Associate Administrator for Pipeline Safety (202-366-5124), may be contacted on technical matters specific to this special permit

Sincerely,

Jeffrey D. Wiese  
Associate Administrator for Pipeline Safety

Enclosure: Special Permit Analysis and Findings

021402

**U.S. DEPARTMENT OF TRANSPORTATION**  
**PIPELINE AND HAZARDOUS MATERIALS SAFETY ADMINISTRATION**  
**Special Permit Analysis and Findings**

**Special Permit Information:**

Docket Number: PHMSA-2009-0056  
Pipeline Operator: TransCanada Pipelines Limited, operator of American Natural Resources Pipeline (TCPL-ANR)  
Date Requested: February 6, 2009  
Code Section(s): 49 CFR § 192.611

**Purpose:**

The Pipeline and Hazardous Materials Safety Administration (PHMSA) provides this information to describe the facts of the subject special permit application submitted by TransCanada Pipelines Limited, operator of American Natural Resources<sup>1</sup> (TCPL-ANR), to discuss any relevant public comments received with respect to the application, to present the engineering/safety analysis of the special permit application, and to make findings regarding whether the requested special permit should be granted and if so under what conditions.

**Pipeline System Affected:**

This special permit application applies to one (1) *special permit segment* along the TCPL-ANR system of natural gas pipelines. This *special permit segment* is on the 30-inch Line 1-501 pipeline located in Tate County, Mississippi. The class location along the pipeline *special permit segment* has changed from an original Class 1 Location to a Class 3<sup>2</sup> Location.

This special permit application applies to the *special permit segment* and special permit inspection area defined using the TCPL-ANR valve stationing references as follows:

---

<sup>1</sup> American Natural Resources is owned and operated by TransCanada Pipelines Limited.

<sup>2</sup> This Class 3 *special permit segment* was originally a Class 1 location that was upgraded to Class 2 location in accordance with § 192.611 (a) hydrostatic test.

- ***Special permit segment*** - Line 1-501, 872 feet, from Valve 27 Station 927 +05 to Valve 27 Station 935+77.
- ***Special permit inspection area*** means the area that extends 220 yards perpendicular on each side of the centerline of the Line 1-501, 30-inch, pipeline from the discharge of the Sardis Compressor Station at Valve 27 Station 0+00 (approximately 17.6 miles upstream of the special permit segment) to the Brownsville Compressor Station at Valve 29 Station 297+05 (approximately 25 miles downstream of the special permit segment). The *special permit inspection area* is approximately 42.77 miles long and 440 yards wide and includes the *special permit segment*.

### **Special Permit Request**

TCPL-ANR submitted an application to PHMSA on February 6, 2009, for a special permit seeking relief from the Federal pipeline safety regulations in 49 CFR § 192.611(a) for one (1) segment of TCPL-ANR natural gas transmission 30-inch Line 1-501 pipeline where a change has occurred from an original Class 1 location to a Class 3 location in Tate County, Mississippi. This special permit request is to allow TCPL-ANR to continue to operate the pipeline *special permit segment* at its current maximum allowable operating pressure (MAOP) of 858 pounds per square inch gauge (psig). The Federal pipeline safety regulations in 49 CFR § 192.611(a) require natural gas pipeline operators to confirm or revise the MAOP of a pipeline segment after a change in class location.

### **Public Notice:**

On April 28, 2009, PHMSA posted a notice of this special permit request in the Federal Register (74 FR 19264). PHMSA did not receive any comments for or against this special permit request as a result of this notice. The request letter, Federal Register notice, and all other pertinent documents are available for review in Docket No. PHMSA-2009-0056 in the Federal Docket Management System (FDMS) located on the internet at [www.Regulations.gov](http://www.Regulations.gov).

### **Analysis:**

Background: On June 29, 2004, PHMSA published in the Federal Register (69 FR 38948) the criteria it uses for the consideration of class location change waivers, now referred to as a special

permit. Certain threshold requirements must be met for a pipeline section to be further evaluated for a class location change special permit. The age and manufacturing process of the pipe; system design and construction; environmental, operating and maintenance histories; and integrity management program elements are evaluated as significant criteria. These significant criteria are presented in matrix form and can be reviewed in the FDMS, Docket Number PHMSA-RSPA-2004-17401. Special permits will only then be granted when pipe conditions and active integrity management provides a level of safety greater than or equal to a pipe replacement or pressure reduction.

Threshold Requirements: Each of the threshold requirements published by PHMSA in the June 29, 2004, FR notice is discussed below in regards to the TCPL-ANR special permit petition.

- 1) No pipeline segments in a class location changing to Class 4 Location will be considered.  
This special permit request is for the PHMSA 2009-0056 segment of TCPL-ANR pipeline where a class location change has occurred from a Class 1 location to a Class 3 location.
- 2) No bare pipe will be considered. These TCPL-ANR *special permit segment* is coated with Allied cold tar enamel, primer, and felt wrap. TCPL-ANR has met this requirement.
- 3) No pipe containing wrinkle bends will be considered. There are no wrinkle bends in the *special permit segments*. TCPL-ANR has met this requirement.
- 4) No pipe segments operating above 72% of the specified minimum yield strength (SMYS) will be considered for a Class 3 special permit. The *special permit segment* operates at or below 72% SMYS. TCPL-ANR has met this requirement.
- 5) Records must be produced that show a hydrostatic test to at least 1.25 x maximum allowable operating pressure (MAOP) and 90% of SMYS. TCPL-ANR records submitted show that the sections of the 30-inch Line 1-501 pipeline has been hydrostatically tested to 1,150 psig which is 1.34 x MAOP and 96.5% of SMYS. TCPL-ANR has met this requirement. TCPL-ANR has mechanical and chemical properties test reports for the pipe to verify the pipe specifications, but these reports indicate the pipe has low toughness properties.
- 6) In-line inspection (ILI) must have been performed with no significant anomalies identified that indicate systemic problems. The proposed *special permit segment* was last inspected by ILI in 2003, with no immediately actionable anomalies found. TCPL-ANR has met this

requirement for wall loss, but would need to run in line inspection tools both high resolution MFL and geometry tools to detect corrosion and to detect dents.

- 7) TCPL-ANR has met this requirement for wall loss, but would need to run an ILI tool to detect dents and re-run ILI for anomalies and corrosion.
- 8) Criteria for consideration of class location change waiver, now referred to as a special permit, published by PHMSA in the Federal Register (69 FR 38948), define a *waiver inspection area (special permit inspection area)* as up to 25 miles of pipe either side of the *waiver segment (special permit segment)*. The *special permit inspection area* must be inspected according to operator's integrity management program and periodically inspected with an in-line inspection technique. The *special permit inspection area* is approximately 42.77 miles in contiguous length. This special permit, if issued, would be contingent upon the operator's incorporation of each of the *special permit segments* in its written integrity management program as a "covered segment" in a "high consequence area" (HCA) per 49 CFR § 192.903.

Criteria Matrix: The original and supplemental data submitted by TCPL-ANR for the *special permit segments* have been compared to the class location change special permit criteria matrix. The data fall within the *probable acceptance* column of the criteria matrix except for:

- a. Possible acceptable justification – pipe coating, depth of cover, hydrostatic test rupture, ILI, and cathodic protection.
- b. Requires substantial justification - pipe manufacture and girth weld inspections

The data findings below fall within the "possible acceptance" or the "requires substantial justification" column of the criteria matrix:

- 1) Possible Acceptable Justification - Pipe coating, leaks & failures, depth of cover and ILI inspections: The 30-inch pipe is coated with coal tar enamel coating. TCPL-ANR would be required to remediate this coating in the special permit segment by Direct Current Voltage Gradient (DCVG) survey or an Alternating Current Voltage Gradient (ACVG) survey and close interval surveys (CIS) and remediate poor quality coating. The pipeline did have a hydrostatic test failure in 1966, but has no leaks or failures since that time. Depth of cover was not confirmed by TCPL-ANR, so a survey and remediation of shallow areas would need

to be required if a special permit was issued. To confirm cathodic protection a CIS survey would be required in the special permit inspection area.

- 2) Requires substantial justification - pipe manufacture and girth weld inspections: TCPL-ANR indicates 30-inch Line 1-501 pipeline was installed in 1966 and consists of American Petroleum Institute Specification 5LX, *Specification for Line Pipe* (API 5LX), double submerged arc welded (DSAW), X-60 steel pipe manufactured by Kaiser Steel. TCPL-ANR states it has mill test reports to verify the strength and chemistry of the pipe, but the pipe steel toughness is low for fracture arrest. TCPL-ANR has tested this pipeline to 96.5% SMYS test levels, 1150 psig, and 134% of MAOP. TCPL-ANR reports no in service leaks or failure on this 30-inch pipeline in the special permit inspection area. This would place all *special permit segments* in the “requires substantial justification” column of the criteria matrix. TCPL-ANR would be required by the special permit conditions to hydrostatically test the 30-inch pipe in the special permit segment to 100% SMYS and to cut pipe samples to verify the pipe strength properties. TCPL-ANR does not have records to show that pipeline girth welds were non-destructively tested during construction. TCPL-ANR would be required to conduct tests to verify girth weld quality in the special permit conditions, if a special permit was issued.

To further address the pipe manufacture and girth weld quality, an operator of pipe such as the pipe involved in this application would have to treat all *special permit segments* as “covered segments” in an HCA per 49 CFR § 192.903. ILI assessments, anomaly repairs, CIS, and stress corrosion cracking direct assessment (SCCDA) of 30-inch Line 1-501 pipeline would be required to be performed along the entire length of the *special permit inspection area* and *special permit segments* according to the requirements of 49 CFR § 192.929 within one year after the grant of a special permit and on a 7 year reassessment interval. A special permit would need to include a condition that each *special permit segment* be operated at or below its existing MAOP. TCPL-ANR would be required by a special permit to evaluate girth weld quality and pipe strength.

PHMSA has determined that issuing a special permit with conditions would not provide equivalent safety for this area where an original Class 1 location is being upgraded to a Class 3 location. TCPL-ANR did not furnish documentation that shows the pipe steel toughness properties are high enough to mitigate fracture propagation and arrest cracks in the steel pipeline. Low toughness pipe can potentially increase the consequences of a pipeline failure in a Class 3 location. Class location upgrades that are considered by PHMSA for special permits in populated areas must meet pipe toughness standards, so that integrity evaluations for special permit conditions are technically sound.

**Findings:**

PHMSA has determined that a special permit, even with conditions, that would allow TCPL-ANR to leave the existing subject pipeline segment in service at its current MAOP will not ensure equivalent safety in this populated Class 3 location and would not be consistent with pipeline safety. Accordingly, we recommend that the special permit request be denied.

**JUL 16 2010**

Completed in Washington DC on: \_\_\_\_\_

Prepared By: PHMSA – Engineering and Emergency Support

# **ASSESSMENT OF SOCIOECONOMIC IMPACTS EXPECTED WITH THE KEYSTONE XL PIPELINE PROJECT**

**Prepared by:**

**Dr. Michael K. Madden**

**October 2009**

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## SECTION I - INTRODUCTION

The purpose of this report is to provide a summary of likely socioeconomic impacts that can be expected in connection with the construction of the Keystone XL pipeline that, if approved, will occur in Western South Dakota in 2011 and 2012. The purpose of this pipeline is to transport crude oil resources from locations in Canada into the central and southern United States for refining purposes.

The pipeline design shows that it will enter South Dakota's extreme northwest corner in Harding County and travel in a southeasterly direction bisecting Haakon County in the west-central part of the state and finally exiting South Dakota near the southeast corner of Tripp County east of the city of Winner. In all, construction costs for labor and materials that will occur in South Dakota approximates \$921.4 million of which \$154.4 million is labor costs. Of this amount of total labor costs, about half will occur as direct wages to workers.

A similar pipeline owned by the same company is being completed in Eastern South Dakota at the present time. Construction of this project began in 2008 and the portion of the project that traverses South Dakota will be essentially complete in 2009. The fact that this earlier pipeline has been nearly completed is extremely beneficial in determining the expected impacts of the second (Keystone XL) pipeline. This is reinforced by the fact that both projects are planned, engineered and administered by the same organization. Accordingly, the methodology leans heavily toward taking advantage of the experience witnessed in South Dakota over the span of time encompassed during the construction of the first Keystone project.

A lesser input to this assessment process consists of experience gained in Wyoming over many years of witnessing numerous pipeline projects of all types. Personnel from the Wyoming Industrial Siting Council and Wyoming Pipeline Authority were relied on for insight in this regard.

Sectors of interest in this analysis include retail sales that are similar to those impacted by the South Dakota travel industry such as eating and drinking establishments, lodging and general

retail trade. Other business sectors include health, housing and agriculture. Social services such as ambulance, police and fire are also discussed. Although it is not the major emphasis in this study, the visitor industry receives some discussion because so many of the spending sectors that are expected to be affected by pipeline construction activity are common to those affected by the visitor industry.

Focus is nearly exclusively directed to the construction phase of the project since the operational phase of the project is clearly minor with respect to the regional economy. Only 6 employees assigned to two locations will be required to operate and maintain the pipeline in South Dakota during its actual operation. Annual labor costs in current dollars is estimated to be \$860,000 for these workers. (Response to Staff's First Data Request, May 1, 2009, #1.7.) However, one significant impact that will be associated with the operation of the pipeline concerns *ad valorem* or property taxes that will accrue to school districts and county governments, a subject that will be explored in Section VI.

## SECTION II - METHODOLOGY

Evidence gained by historical comparison embodies objective qualities that cannot be gained using other methodologies.

### **Methodology of Historical Comparison**

An objective assessment of the likely impact in some sectors can be accomplished by historically researching the *actual* impact experienced during the construction of the first Keystone pipeline project nearing completion at the present time in 2009. Insight is gained by studying movements of business volume within sectors during peak construction periods of the Keystone pipeline in Eastern South Dakota. These inferences can be applied to the proposed pipeline by making comparisons in workforce requirements and adjusting for the current size of these local economies.

Taxable sales in the counties where the bulk of workers resided are compared with like months from the year previous in selected sectors. For the years of 2008 and 2009, this type of comparison is complicated by the fact that the national economic slowdown took place at the same time that increased economic activity produced by the pipeline project increased. Much of the likely pipeline economic impact was therefore offset by reduced activity by other spending units.

For a number of reasons expectations concerning social impacts related to the Keystone XL project can be determined with some degree of certainty in the present case. First, the new Keystone XL project is programmed to begin quite soon after the completion of the first project making long term changes in social behavior less of a factor. Second, the same company is planning and organizing Keystone XL as was the case for the first pipeline. There is accordingly some likelihood that many of the same subcontractors or at least the same standards for selecting subcontractors will be used for both projects. This increases ones confidence in the use of the historical comparison methodology. Finally, it may be expected that the standards and conditions imposed on the Keystone XL project will mirror those of the first project.

In the present instance, there are reasons to temper inferences derived from the outcomes experienced during the first project. First, significant demographic and geographic differences existed along the route of the first project in eastern South Dakota to that what will be encountered along the Keystone XL pipeline route in the western part of the state. The pipeline that is nearing completion in eastern South Dakota benefited by the geographical proximity of four relatively large cities somewhat equidistantly dispersed along the route. These four cities consist of Aberdeen, Huron, Mitchell and Yankton. Each of these cities contained ample businesses that were able to provide needed goods and services for pipeline employees. Together, their infrastructure includes thousands of lodging units and RV parks spaces supplemented by numerous apartment and other rentals. In addition, many smaller communities along the first pipeline route also provided basic employee needs while working near them.

Winner with a 2000 population of 3,137 is the largest city near the proposed Keystone XL route and is situated near the Nebraska border. Winner's population is about one-fourth the population of Huron, the smallest among the four larger cities relied on by workers along the eastern pipeline route. To complicate the logistical environment, the number and spacing of smaller communities are very limited along much of the Keystone XL route.

Apparently in response to this reality, the company has developed a housing plan to board and room workers in two worker camps for the duration of this construction in South Dakota. This matter will be more fully addressed later in this report.

### SECTION III - ECONOMIC IMPACTS

A general review of the economic impacts that occurred during the construction of the Keystone pipeline in Eastern South Dakota shows that a positive economic stimulus took place in the four larger communities of Aberdeen, Huron, Mitchell and Yankton. This is verified through interviews with chambers of commerce, and visitor bureaus of these towns. As expected, the eating and drinking establishments and lodging businesses were among the most significantly affected by spending that was required by employees living in these towns. However, evidence suggests that retail sales in general were also boosted in other communities along the pipeline route.

A field visit along much of the pipeline in September also verified that smaller communities, because of the familiarity of their localized trade patterns, were probably more noticeably impacted by increased business volumes. Smaller towns with only one or two moderate sized motels and a very limited number of eating and drinking establishments undoubtedly felt a more pronounced business impact than the better diversified larger communities referred to earlier. It was also apparent during interviews that a certain level of competitiveness developed among the smaller communities each vying for the potential economic benefits that pipeline workers afforded them.

It is appropriate to place in perspective the magnitude of the spending stimulus received by communities near the first pipeline project in South Dakota. The original application for the project indicated an expected cost of \$303 million in the state. This would imply that labor costs would approximate \$50 to \$70 million. Net wages to workers would be some fraction of this amount of perhaps \$35 to \$45 million. Thus, some portion of this amount would translate into spending in South Dakota while working in the state.

By way of comparison, taxable sales for retail purchases and services in the four counties of Brown (Aberdeen), Beadle (Huron), Davison (Mitchell) and Yankton (Yankton) amounted to 1,402 million during the last fiscal year. It can be concluded that economic stimulus, while positive for impacted communities was moderate by comparison of taxable sales in general.

Subsectors within services and retail sales sector that are likely to have been influenced to larger degrees consist of lodging services, eating and drinking establishments, and department store sales. The following table represents percentage changes in taxable sales in counties judged to be most significantly impacted by pipeline worker spending. (Source: Sales Tax Report, SD Department of Revenue.)

TABLE 1

<b>PERCENT CHANGE IN TAXABLE SALES BY SELECTED SECTOR MARCH- JULY 2008 COMPARED TO MARCH-JULY 2009</b>			
	<b>Dept. Stores</b>	<b>Eating and Drinking</b>	<b>Lodging</b>
Brown	3.0%	3.1%	-8.7%
Beadle	3.5%	2.7%	11.8%
Davison	-0.3%	7.4%	-3.1%
Yankton	0.0%	6.2%	-6.9%
Overall Average	1.1%	2.7%	5.6%

The reader is reminded that a sizeable portion of expenditures for lodging in hotels and motels are not subject to the sales tax. South Dakota statute exempts sales taxes on motel and hotel lodging when rental contracts are executed with guests that involve more than a 28 day stay. If no contract is pre-arranged, the expense of any length of stay beyond 28 days is also tax exempt. (Information provided by South Dakota Department of Revenue.)

Most, but not all of these sectors experienced growth in taxable sales in these counties from 2008 to 2009 during the March through July window of time that would have been associated with the largest number of pipeline employees in the state. When the overall changes in these sectors are averaged, department store taxable sales increased by 1.1 percent, eating and drinking establishments grew by 2.7 percent and taxable sales in lodging facilities grew by 5.6 percent.

It should be reiterated that the one year time period analyzed here was also associated with a dramatic deterioration in economic conditions nationally with similar, but less severe reductions in economic activity in South Dakota. It is likely that recessionary slowdowns that occurred because of the national economy were mitigated substantially in these and other counties located near the pipeline project.

The Keystone XL pipeline has the potential to be a larger economic stimulus to Western South Dakota than was the case with the earlier pipeline in Eastern South Dakota. First, the length of the Keystone XL pipeline is projected to extend 313 miles as compared to the first pipeline of 220 miles. Second, labor, material and other costs of the Keystone XL project is estimated to be \$924 million in South Dakota compared to \$302 million for the earlier Keystone pipeline. Finally, the existing regional economy in Western South Dakota is far smaller in terms of available retail and service capacity than was the case for the first Keystone pipeline.

Tempering this conclusion is the company's recognition of limited commercial services in this area of South Dakota.. This recognition probably influenced its decision to mitigate the capacity constraints by planning two worker camps for the duration of the construction phase. One of these camps is presently envisioned for the vicinity of Union Center and the other will be near Winner. Each is to be designed with a capacity of 600 workers. (Keystone XL Application, Final Draft.) Such facilities will mitigate the reality of limited retail and service facilities for transient workers near the construction corridor in Western South Dakota. This factor makes any attempt to estimate spending for goods and services in the private economy subject to considerable error.

The project in Eastern South Dakota benefitted by the proximity of ample opportunities for various forms of living accommodations. About 25 percent of the approximate one thousand workers rented apartments or houses, 25 percent stayed in RV parks and 50 percent lodged in motels and hotels. A distinct difference in spending patterns will be experienced during the construction of the Keystone XL project in Western South Dakota because of the operation of worker camps to house and feed the majority of the work force.

Yet, there will be a demand for a variety of goods and services in terms of ordinary living expenses such as transportation, recreation and other miscellaneous purposes in small towns and larger cities in the Black Hills and other communities near the Missouri River.

## **SECTION IV - SOCIAL IMPACTS**

For convenience, public safety and emergency services as well as health delivery services are herein referred to as social services. They all have a degree of separation from the economic system making them distinct from impacts that have been discussed earlier in this analysis. It is also common in most communities that these services are supported in part by local tax revenues and fees unlike the business sectors discussed earlier.

Perhaps the best barometer of social impacts for the Keystone XL pipeline is what was actually experienced in later 2008 and 2009 in counties along the pipeline corridor in eastern South Dakota. This is due to the fact that the same company that was involved in the eastern pipeline is also organizing, planning and will be hiring subcontractors for the proposed Keystone XL pipeline.

This factor was the compelling reason why a relatively detailed field study supplemented by telephone interviews was conducted of those closely connected to the delivery of these social services. During this field study process, various individuals representing these social services were contacted in person in the counties of Davison, McCook, Hutchinson and Yankton. City representatives in Mitchell, and Yankton were contacted. Telephone interviews were made with county representatives in Beadle and Brown Counties and also the town of Groton. Summaries of these personal and telephone interviews appear in the following classifications.

### **Law Enforcement**

Generally, all of the comments received from law enforcement personnel were positive. Contacts with pipeline employees were rare as reported by representatives in sheriff and police departments. In the northern section of the project, some law enforcement contact was made early in the process primarily involving traffic violations. However, it soon declined to a negligible level for the entire remainder of the project. In the vicinity of Mitchell and Huron even less contact was made with pipeline employees, referencing no more than three or four traffic related contacts. In the vicinity of Yankton, the comments were even more positive. For

example, the sheriff of Yankton County could not recall even one law enforcement contact with anybody connected with the project.

Some law enforcement personnel from smaller communities noted increased traffic going through certain parts of the community during peak construction periods. Such increased traffic did not produce a need for added patrol or other work detail, however.

Perhaps, most important was the fact that not a single instance of illegal drug contacts were made by any law enforcement body interviewed. The experience in Wyoming in connection with such projects is that if any law enforcement problems are encountered from pipeline crews the most serious are drug offenses. It was also pointed out that this problem is the most difficult to deal with among various communities in Wyoming when problems are encountered. (Source: Communication from Director, Wyoming Industry Siting Council.) Apparently all of the subcontractors involved in the earlier Keystone project had a zero tolerance for drug abuse among their employees.

No respondents reported that an added workload was imposed on their respective departments during peak periods of work activity. Also, respondents indicated that no added costs were added to departmental operations. No law enforcement respondents could cite instances where they had learned that their counterparts in other counties and communities experienced added workload or expenses of any kind.

## **Fire Protection**

No instances of calls for service for fire suppression were discovered during the field visit. It should be pointed out, however, that many areas along the construction corridor are served by rural fire protection districts for which contact is difficult to obtain. There was one instance of a small fuel spill that was not ignited but a call was made to a local department to assist in the proper clean-up of the area involved.

## **Emergency Services**

Public safety organizations interviewed could recall few if any instances where ambulances or EMT personnel were called out to a pipeline work area or a place of residence of a pipeline employee anywhere along the route.

## **Health Services**

Health delivery facilities in Mitchell, Salem and Yankton were contacted concerning added medical services required by pipeline employees or members of their families. Hospitals such as those found in Mitchell and Yankton could not cite any admissions due to accidents or illness during the project duration. Aberdeen and Huron hospitals reported similar experiences.

Medical clinics and doctors offices were utilized to a limited degree by families of pipeline workers within the communities in which they resided. All respondents reported that the added workload was easily accommodated by excess capacity in their clinics and all indicated that patients were covered by health insurance and collection of amounts due were not problematic.

## **Public Education Services**

Officials from administration offices of three large public school systems near the pipeline corridor were interviewed to determine the approximate number of students from pipeline construction families that were enrolled in kindergarten through twelfth grades in their respective

districts. In all cases the degree of impacts was sufficiently small that no formal tracking was warranted for any of the districts. One district reported less than twelve students, one estimated ten and the other estimated less than six. In no case were any extra costs imposed on the districts and no extra personnel were required. All of the responding school districts reported excess capacity in general within their districts.

In Summary, the experience from the standpoint of social service delivery organizations along the construction corridor was distinctly positive. This is not universally found in pipeline projects in other states. This outcome could perhaps be explained by a combination of company policy standards and conditions that were imposed in connection with the permitting process.

## SECTION V - OTHER SOCIOECONOMIC IMPACTS

### Agricultural Impacts

Agricultural criteria incorporated in the Keystone XL project application is similar to that which was included in the 2007 application for the first Keystone pipeline. This criterion highlights the nature of the unavoidable temporary disturbances to agricultural acreage during and immediately after construction and specifically outlines agricultural remediation measures. Because of the similarity of company policy with respect to agricultural issues, an effort was made to contact agricultural interests along the Keystone pipeline corridor in Eastern South Dakota. Informal interviews were conducted with farmers who owned or leased land on the corridor and two farm landlords were also contacted. In short, agricultural interests seemed satisfied with their negotiations, resulting agreements and the company's carrying out of details associated with the agreements.

Although exact numbers were not easily acquired from those interviewed, it appears that in the area where these interviews were conducted a typical access easement involved a payment of approximately \$40,000 per mile of land. In addition ample mitigation has been arranged for loss of crop or grassland production for the interruption in production caused by construction activity and post-construction restoration. No one interviewed indicated that the amounts involved were unfair. In talking to other farm operators who lived near the project, but had no land on the corridor, it was sensed that there was feeling of lack of good fortune on their part.

The primary reservation relative to the project was concern some farmers expressed about the return of their farm-to-market roads to original condition. Although those interviewed acknowledged that pipeline work near their operation was not complete, road conditions remained as the only issue they showed concerns about. By the same token, all of those interviewed had no major worry road rehabilitation would not be performed by the company.

## **Tourism**

Generally, the visitor industry is of considerable economic importance in Western South Dakota. In terms of employment, tourism is probably the largest employer in the private sector in this region of the state. Economic activity in this industry is geographically concentrated in the six county area of the Black Hills. The primary leisure travel corridor utilized by visitors who originate from the east is Interstate 90. In relative terms, other east-west highways such as state highway 34 and federal highways 18 and 212 together account for only a small fraction of annual travelers originating from eastern states.

Several smaller communities adjacent to Interstate 90 in Western South Dakota have evolved into service oriented economies catering to visitors with the Black Hills as their primary destination. One such community that lies a few miles west of the point at which the pipeline project intersects Interstate 90 is the town of Murdo. This small town contains between 200 and 300 lodging rooms, less than 100 RV spaces and a small number of eating and drinking establishments and local visitor attractions. Many of these ancillary businesses depend on lodging facilities for housing overnight travelers to increase the likelihood of visitor traffic into these establishments. A potential exists for capacity constraints in lodging facilities during the summer travel season.

This issue appears to have been addressed in connection with the worker housing plan according to a response to questions addressing the interaction the project may bear to the tourism industry. Work on the pipeline will be undertaken from May to November of 2011, but workers associated with this phase of construction will be housed in a worker camp operated by the company and located near Winner, South Dakota. Personnel associated with the project are accordingly confident that work activity during this span of time will have minimal impact to the Murdo vacation travel industry during the summer of 2011.

The 9 month span from September through May in Murdo is characterized by underutilization of lodging units. In similar situations, other communities adjacent to the first Keystone project such off-season lodging opportunities afforded by pipeline workers were welcomed. In this sense

opportunities may present themselves for Murdo motels to extend their traditional peak volume season in 2011 beyond the three summer months.

## **Housing**

Among all logistic issues associated with the proposed Keystone XL pipeline, housing is the most difficult to deal with along the corridor. With the exception of Winner, South Dakota there are very few motel or RV accommodations within practical daily drive times. Some very limited lodging facilities exist in Philip and Kadoka, South Dakota. Additionally, one small motel is located in Buffalo, SD near the extreme northern segment of the proposed Keystone XL corridor.

Living accommodations in the vicinity of the first pipeline project benefited by large communities within a reasonable distance of the project. Together the communities of Aberdeen, Huron, Mitchell and Yankton contain thousands of lodging units and RV spaces and other rentals. Many other smaller communities along the corridor supplemented these numbers which enabled the project employees to be easily supplied with many living options.

This lack of infrastructure within the private economy prompted plans by the company to construct and operate two temporary construction camps to be located in the general areas of Union Center and Winner, South Dakota. These facilities will have a design capacity of about 600 workers each and will therefore house virtually all of the workers on the project if needed. They will be constructed and operated in accordance with applicable county and state rules and standards.

## **Recreation**

Aside from attractions associated with the leisure travel industry, hunting is the main recreation activity in the vicinity of the Keystone XL pipeline. In the southern one-third of the project corridor, upland bird hunting is the major hunting activity. The northern two-thirds of the project is oriented more to big game hunting including deer and antelope. Each area possesses a variety of hunting opportunities so both big game and small game are pursued from one end of the Keystone XL project to the other.

There are a total of four Game and Fish Department game production areas within 2 miles of the proposed corridor in South Dakota. One is located near Harding County and the other three are located in Tripp County at the south end of the project. Two of them are located between 1.4 and 1.6 miles of the project corridor. These areas will likely experience very little conflict with the construction project. One game production area in Tripp County is located .2 miles from the corridor. (Response to Staff's third data request, August 21, 2009.) Construction of this segment of the project is programmed presently to occur in 2011. Given its proximity to the construction activity it seems apparent that there will be some temporary disturbance of the game production area during that year in terms of production and in sportsmen being able to utilize the area for recreation.

Commercial upland bird hunting in Tripp County is a particularly well developed sub-industry of the tourism industry. Several commercial hunting operations exist in the county and other land is leased for hunting purposes by these and other commercial hunting operations. Pipeline construction work may have to be coordinated time-wise to cause the least amount of conflict possible during the mid October and November periods of 2011 and 2012. There may be other cases where private game production on or near the corridor may experience disruption during the growing season. In such cases remediation for lost production would need to be compensated similar to other agricultural purposes.

Other conflicts with hunting activity primarily during the fall months of October and November could possibly arise on private land near the corridor. Mitigative measures may have to be

developed by the South Dakota Department of Game Fish and Parks in connection with issuing big game licenses that will guard against unsafe conditions for workers during open hunting seasons near work sites.

## SECTION VI - LONG RUN FISCAL IMPLICATIONS

State and local fiscal benefits occur both in the short run and the long run for projects such as the Keystone XL pipeline. Workers who would temporarily locate in South Dakota during the construction phase of the project would pay state and local sales tax on purchases of goods and services. It is recalled from earlier in this report that total labor costs are estimated to be about \$154.4 million. About one-half of this amount, or \$77.2 million occurs as direct wages to employees. Disposable income derived by subtracting payroll deductions from direct wages would reduce this number by an additional amount. Since most workers maintain permanent residences elsewhere a significant portion of net wages are exported from the South Dakota economy. Yet, it is reasonable to assume that at least \$20 million or more could find its way into the taxable sales stream. Other fiscal impacts in the form of fuel taxes and gaming revenue are other examples of benefits that could be received in the short run. Any such spending of this type is transitory in nature and relatively moderate during the construction phase of the project, however.

According to South Dakota Statute, a portion of the sales and use taxes associated with qualified purchases and use of equipment and supplies are refundable in many projects such as pipelines. (See SDCL 10-45B) Yet there are considerable sales taxes that will be paid by subcontractors and the company, itself.

The preceding discussion dealt briefly with the short run fiscal benefits to the state. A far more significant fiscal benefit to the state of South Dakota concerns the ad valorem or property tax that will accrue each year for the useful life of the project.

Property taxes in South Dakota are a main funding source for the public school system and for the operation of county governments. Typically two-thirds of property taxes paid are directed to various public school funds with the rest flowing to county governments. Some counties that contain school districts carrying bonded indebtedness will find more than two-thirds directed to school purposes.

The following chart summarizes the tax base upon which taxes are assessed for 2008 in the counties that contain a portion of the Keystone XL corridor.

TABLE 2

<b>ASSESSED VALUE PER COUNTY 2008*</b>	
<b>HAAKON</b>	260,542,837
<b>HARDING</b>	152,070,577
<b>JONES</b>	216,388,389
<b>LYMAN</b>	412,169,588
<b>MEADE</b>	1,440,383,063
<b>PERKINS</b>	265,769,914
<b>TRIPP</b>	530,093,550
<b>TOTAL</b>	<b>\$3,277,417,918</b>

\* Counties to be traversed by Keystone XL Pipeline

According to SDCL 10-37, the ultimate distribution of the assessed value of the pipeline will be determined by the revenue department according to the proportion of the pipeline value found in each county. Two counties, Perkins and Lyman, include very small distances of the planned pipeline so would not experience the degree of benefit as will the other listed counties.

The method of determining the assessed value of the pipeline described in the statute is complex and suggests that the appraisal technique is a blend of the replacement-cost-less-depreciation method and the income method. In essence, this means that initially, the focus is on the cost of the improvement modified by a mechanism that compares the rate of return of the company with the cost of doing business. This modification would allow the assessed value to exceed its replacement cost or fall short of the replacement cost - depending on this comparison. Exact valuation is determined by the South Dakota Department of Revenue.

There is no suggestion that this is the correct assessed valuation, but for purposes of this discussion it is assumed that the assessed value of the pipeline passing through South Dakota is equal to \$921.4 million, its expected total cost of design and construction. This would amount to a 28 percent aggregate increase in assessed value for the eight affected counties in Western South Dakota. Each specific county would experience a different relative increase depending on the level of their existing assessed value and depending on the proportion of the pipeline improvement lying within the county. Overall, the ad valorem tax impact to counties and school districts is very substantial, with some counties with small current valuations possibly experiencing a doubling of assessed valuation.

The reader is reminded that the above numeric example is for illustrative purposes only and any percentage change in assessed value is subject to the valuation that is ultimately established for the Keystone XL pipeline.

## EXECUTIVE SUMMARY

The major finding from the background research during this report is that the perceived risk and uncertainty which may have existed prior to the beginning of the first Keystone pipeline in Eastern South Dakota has been alleviated by community stakeholders through the actual experience of the pipeline construction process. Moreover, imminent completion of this project has provided a ‘proving ground’ for successive pipeline projects in the state. Many of the causes for concern in the earlier project have served to allay these same concerns connected to the pending Keystone XL project.

As in most projects of this magnitude, the positive economic benefits are usually unambiguous, but are frequently offset somewhat by social and environmental uncertainties. This document has dealt with the economic and social impacts. A central theme of the preceding analysis is that, given the similarity, proximity in time, and commonality of planning and organizational responsibilities ones confidence in a methodology of historical comparison is heightened. In the present case experience with most if not all of the economic and social impacts are positive or neutral.

The following table summarizes the findings discussed in more detail in the body of the report. The retail sector is projected to experience moderate growth in revenue. Retail businesses providing goods that are directly bought by construction workers will experience the largest growth. Other businesses will see revenues grow through indirect spending. Businesses that provide supplies directly required by the project itself will experience increased revenues, with moderate increases in labor requirements.

Displacement of traditional leisure travelers in Western South Dakota by construction workers demanding the same goods and services is likely to be limited to the summer season. Any potential impacts are likely to be mitigated because of the intent on the part of the company to utilize temporary worker camps within driving distance to the project. Murdo, the community

TABLE 3 - IMPACT SUMMARY

Industry	Source of Economic Impacts	Direction of Impact	Net Impact
Retail	Revenue	Positive	Positive
	Increase in Labor Costs	None Significant	
Leisure Travel	Revenue	Positive	Positive
	Labor Costs	None Significant	
	Displacement of Traditional Users	None Significant	
Health	Revenue	Positive	Positive
	Labor Costs	None Significant	
	Displacement of Traditional Users	None	
Law Enforcement	Volume	Somewhat Positive	Moderate Negative
	Labor Costs	None	
Emergency Services	Volume	None	None Significant
	Labor Costs	None	
Fire Services	Volume	None	None Significant
	Labor Costs	None	
Agriculture	Revenue	Positive	Positive
	Labor Costs	None Significant	
Recreation	Environmental competition	Somewhat Negative	Moderate Negative
	Displacement of Traditional Users	Somewhat Negative	
Housing	Revenue	Positive	Positive
	Displacement/Rent Increases	Minor	
Fiscal Resources	Sales Tax Revenue	Positive	Substantially Positive
	Property tax Base	Substantially Positive	

with potentially the largest tourism impact in proximity to the project, has specifically been addressed by the company through providing board and room for workers via a temporary worker camp near Winner. Any impacts to that community will occur in 2011 and is therefore expected to be minor during that year.

Most sectors are impacted by changes in gross revenues. Agriculture does not appear to have been significantly impacted, but landowners on the pipeline corridor have benefited significantly by access or easement fees. Any loss in production is projected to be compensated by the company. Labor expense for farmers is not expected to noticeably increase due to increased competition from the pipeline project since most of the workers will be coming in from other regions of the country. This conclusion is reinforced by the fact that the project is of a short-term nature for any positions that will be available for local residents. On balance, most sectors are projected to experience an economic benefit because increases in revenues will exceed increased labor expenses.

Moderately increased revenue is expected to be the primary economic impact accruing to the health industry in connection with the project.

An increased demand for labor created by the construction of the pipeline may induce higher local wages in the short term for businesses. Generally, sectors providing goods and services directly to the project will experience the highest growth in demand for labor, but will probably not significantly increase wage rates due to the very short-term nature of the growth in business volume.

Because of its unique nature, the need for housing has the potential to generate negative community impacts in towns such as Buffalo, Belle Fourche, Philip, Murdo and Winner. Any substantial increase in temporary housing demand may produce increased competition seen by

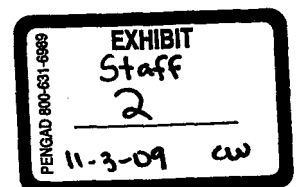
local tenants as competition from temporary construction workers, earning higher than average wages, takes place. This, in turn, may produce undesirable economic consequences in the long run if displaced tenants choose to leave the area permanently. However, the project plan provides a mitigation of these impacts by the operation of large construction camps in the vicinity of Union Center and Winner. It is important that these worker camps be a part of the company commitment to help ease the load on local housing stocks.

The major positive benefit associated with the project consists of long run additions to the property tax base. For counties and school districts traversed by the pipeline, ad valorem taxes will rise substantially or alternatively overall tax rates will decrease substantially for all property taxpayers. Moreover, this fiscal benefit will accrue each year as the pipeline continues to be utilized.

BEFORE THE  
PUBLIC UTILITIES COMMISSION  
STATE OF SOUTH DAKOTA

KEYSTONE XL PROJECT  
DOCKET HP09-001

PREFILED TESTIMONY OF MICHAEL K. MADDEN  
ON BEHALF OF THE COMMISSION STAFF  
SEPTEMBER 2009



021435

BEFORE THE PUBLIC UTILITIES COMMISSION STATE OF SOUTH DAKOTA

PREFILED TESTIMONY OF MICHAEL K. MADDEN

**Q: Please state your name and business address.**

A: Michael K. Madden, 63 Langdon Road, Buffalo, Wyoming 82834.

**Q: Describe your educational background.**

A: I received my Bachelor of Science Degree in 1965 from South Dakota State University with a major in Economics and a minor in Mathematics. I received my Doctorate with a major in Economics and minor in Statistics from Iowa State University in 1970.

**Q: What is your employment history?**

A: I served as Assistant Professor of Economics at the University of Wyoming from 1968 to 1972, Associate Professor of Economics at South Dakota State University from 1972 to 1975 and Associate Professor, Professor and Assistant Dean at the University of South Dakota from 1975 to 1999. From 1999 until 2003, I served as Dean of Graduate Studies at National American University in Rapid City. During all of this time, I also devoted significant time to private consulting activities.

**Q: By whom are you now employed?**

A: Since retiring from the academic field, I am now self-employed as a business and economic consultant. During the last three years, I have served as a Wyoming State Representative of Johnson and Sheridan Counties.

**Q: What work experience have you had that is relevant to your research on this project?**

A: I have conducted economic impact and feasibility studies for nearly three decades in South Dakota. Industries in which I have performed these analyses include electric power, mining, agriculture, health, banking and tourism.

**Q. On whose behalf was this testimony prepared?**

A. This testimony was prepared on behalf of the Staff of the South Dakota Public Utilities Commission (Staff).

**Q: What is the purpose of your testimony?**

**A:** My purpose in providing this testimony is to report my findings regarding various socioeconomic impacts that can be expected in connection with the construction and operation of the proposed Keystone XL hydrocarbon pipeline. The study I am preparing in providing a basis for this testimony will be entitled "Assessment of Socioeconomic Impacts Associated with Keystone XL."

**Q: Which socioeconomic areas are you studying?**

**A:** The retail sectors that are similar to those impacted by the travel industry, such as eating and drinking establishments, lodging and general retail trade. Other business sectors that are examined include health, agriculture and housing. Social services, such as emergency ambulance services, police and fire protection and transportation are also being examined.

**Q: What methodology are you employing?**

**A:** A primary basis of the analysis involves an examination of changes in socioeconomic factors that has occurred and is presently occurring during the construction cycle of the first Keystone Pipeline in eastern South Dakota. In economic sectors for which data is available, I am examining changes in business volume from secondary sources. This information is being supplemented by field interviews with representatives of key community business organizations and providers of social services. Since the same company is involved with both projects at nearly the same span of time, it is expected that reliable results for Keystone XL will be obtained. In addition, much useful information will be synthesized from the Wyoming Industrial Siting Council and the Wyoming Pipeline Authority. Both of these organizations have had detailed experience with dozens of pipeline projects in the state of Wyoming.

**Q: Is the study complete?**

A: No, the study could not be finalized until the specific communities which were impacted most from the first Keystone pipeline could be determined and until the bulk of these community impacts had transpired. I will, therefore, substantiate the findings relayed below prior to the hearing through the submission of the aforementioned report.

However, some preliminary findings have emerged.

**Q: Summarize the findings that have been determined to this point.**

A: The source and direction of impacts within the industries studied are summarized below.

Industry	Source of Economic Impacts	Direction of Impact	Net Impact
Leisure Travel	Revenue	Positive	Positive
	Labor Costs	None Significant	
	Displacement of Traditional Users	Somewhat Negative	
Health	Revenue	Positive	Positive
	Labor Costs	None Significant	
	Displacement of Traditional Users	None	
Law Enforcement	Volume	Somewhat Positive	Moderate Negative
	Labor Costs	None	
Emergency Services	Volume	None	None Significant
	Labor Costs	None	
Fire Services	Volume	None	None Significant
	Labor Costs	None	
Agriculture	Revenue	None	None Significant
	Labor Costs	None Significant	
Retail	Revenue	Positive	Positive

	Labor Costs	Negative	
	Displacement of Traditional Users	None	
Housing	Revenue	Positive	Positive
	Displacement/Rent Increases	Minor	

Most sectors are impacted by changes in gross revenues. Agriculture does not appear to have been impacted, but adjoining landowners may have benefited slightly by access fees.

Labor expense for farmers has not noticeably increased due to increased competition from pipeline businesses. Labor costs are not expected to rise in the Keystone XL project because of increased unit labor competition of the moderate amount of local labor demanded and because of the short-term character of the positions that will be available. On balance, most sectors are projected to experience an economic benefit because increases in revenues will exceed increased labor expenses.

Displacement of traditional leisure travelers in Western South Dakota by construction workers demanding the same goods and services is likely to be limited to the summer season. Any potential impacts are likely to be mitigated because of the intent on the part of the company to utilize temporary worker camps in two or three communities in close proximity to the project. Murdo, the community with potentially the largest tourism impact, will have specifically been addressed by the company by providing workers for the area a temporary worker camp near Winner. Any impacts to that community will occur in 2011 and is therefore expected to be minor.

Moderately increased revenue is expected to be the primary economic impact accruing to the health industry in connection with the project.

The retail sector is projected to experience moderate growth in revenue. Retail businesses providing goods that are directly bought by construction workers will experience the largest growth. Other businesses will see revenues grow through indirect spending. Providers of fuel and other supplies directly required by the project itself will experience increased revenues, with moderate increases in labor requirements. An increased demand for labor created by the construction of the pipeline will induce higher local wages. Generally, sectors providing goods and services directly to the project will experience the highest growth in demand for labor, but will probably not significantly increase wage rates due to the short-term nature of the growth in business volume.

Because of its unique nature, the need for housing has the potential to generate negative community impacts in towns such as Buffalo, Belle Fourche, Philip, Murdo and Winner. Any substantial increase in temporary housing demand may produce increased competition seen by local tenants as competition from temporary construction workers, earning higher than average wages, takes place. This, in turn, may produce undesirable economic consequences in the long run if displaced tenants choose to leave the area permanently.

The project plan, however, provides a mitigation of these impacts by the operation of large construction camps in the vicinity of Union Center and Winner. It is important that these worker camps be a part of the company commitment to help ease the load on local housing stocks.

**Q: How else can the possible negative remaining impact on the housing market be mitigated?**

**A:** If adequate sized worker camps providing board and room to temporary workers are provided, there is probably nothing else that needs to be done. Any remaining capacity

shortcomings to the worker camps can be supplemented by:

- Bus transportation could be provided for workers from larger and more distant communities such as Rapid City, Pierre or Chamberlain to the job site. This policy would mitigate the otherwise added cost of transportation to and from work for those living in more distant communities.
- Agreements could be negotiated with area motels guaranteeing a minimum quantity and price of lodging rooms throughout the region. These agreements could be negotiated with consideration given to geographic dispersion and to available capacity throughout annual cycles.

**Q: Aside from your study to substantiate your conclusions, does this conclude your testimony?**

**A: Yes**

**49-41B-1. Legislative findings--Necessity to require permit for facility.** The Legislature finds that energy development in South Dakota and the Northern Great Plains significantly affects the welfare of the population, the environmental quality, the location and growth of industry, and the use of the natural resources of the state. The Legislature also finds that by assuming permit authority, that the state must also ensure that these facilities are constructed in an orderly and timely manner so that the energy requirements of the people of the state are fulfilled. Therefore, it is necessary to ensure that the location, construction, and operation of facilities will produce minimal adverse effects on the environment and upon the citizens of this state by providing that a facility may not be constructed or operated in this state without first obtaining a permit from the commission.

**49-41B-11. Applications for permit--Filing deadline--Form--Contents.** All applications for a permit shall be filed with the Public Utilities Commission not less than six months prior to the planned date of commencement of construction of a facility in such form as prescribed by rules, and shall contain, but not be limited to, the following information:

- (1) The name and address of the applicant;
- (2) Description of the nature and location of the facility;
- (3) Estimated date of commencement of construction and duration of construction;
- (4) Estimated number of employees employed at the site of the facility during the construction phase and during the operating life of the facility. Estimates shall include the number of employees who are to be utilized but who do not currently reside within the area to be affected by the facility;
- (5) Future additions and modifications to the facility which the applicant may wish to be approved in the permit;
- (6) A statement of the reasons for the selection of the proposed location;
- (7) Person owning the proposed facility and person managing the proposed facility;
- (8) The purpose of the facility;
- (9) Estimated consumer demand and estimated future energy needs of those consumers to be directly served by the facility;
- (10) The potential short and long range demands on any estimated tax revenues generated by the facility for the extension or expansion of public services within the affected areas;
- (11) Environmental studies prepared relative to the facility;
- (12) Estimated construction cost of the facility.

**49-41B-22. Applicant's burden of proof.** The applicant has the burden of proof to establish that:

- (1) The proposed facility will comply with all applicable laws and rules;
- (2) The facility will not pose a threat of serious injury to the environment nor to the social and economic condition of inhabitants or expected inhabitants in the siting area;
- (3) The facility will not substantially impair the health, safety or welfare of the inhabitants; and

(4) The facility will not unduly interfere with the orderly development of the region with due consideration having been given the views of governing bodies of affected local units of government.

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 OBJECTIONS 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
	:	

0-0

TransCanada Keystone Pipeline, LP (“Keystone”) makes the following objections to interrogatories pursuant to SDCL § 15-6-33 and objections to request for production of documents pursuant to SDCL § 15-6-34(a). Keystone will further respond, as indicated throughout the objections, on or before February 6, 2015. These objections 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.

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

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: Keystone will answer this interrogatory on or before February 6, 2015.

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: Keystone will answer this interrogatory on or before February 6, 2015.

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: Keystone will answer this interrogatory on or before February 6, 2015.

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

ANSWER: Keystone will answer this interrogatory on or before February 6, 2015.

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

ANSWER: Keystone will answer this interrogatory on or before February 6, 2015.

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

ANSWER: Keystone will answer this interrogatory on or before February 6, 2015.

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: This request is vague, unclear, and cannot reasonably be interpreted.

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: Keystone will answer this interrogatory on or before February 6, 2015.

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: Keystone will answer this interrogatory on or before February 6, 2015.

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? Amended Permit Conditions 1 and 2.

ANSWER: Keystone will answer this interrogatory on or before February 6, 2015.

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.

ANSWER: Keystone will answer this interrogatory on or before February 6, 2015.

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: Keystone will answer this interrogatory on or before February 6, 2015.

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 will answer this interrogatory on or before February 6, 2015.

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

ANSWER: Keystone will answer this interrogatory on or before February 6, 2015.

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: Keystone will answer this interrogatory on or before February 6, 2015.

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: Keystone will answer this interrogatory on or before February 6, 2015.

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: Keystone will answer this interrogatory on or before February 6, 2015.

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: Keystone will answer this interrogatory on or before February 6, 2015.

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 Permit Condition 6.

OBJECTION: The identity of persons conducting civil surveys is not relevant or likely to lead to the discovery of admissible evidence.

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

ANSWER: Keystone will answer this interrogatory on or before February 6, 2015.

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 landowners, utilities and local governmental units regarding the requirements of Amended Permit Condition 6.

ANSWER: Keystone will answer this interrogatory on or before February 6, 2015.

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

ANSWER: Keystone will answer this interrogatory on or before February 6, 2015.

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: Keystone will answer this interrogatory on or before February 6, 2015.

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 answer this interrogatory on or before February 6, 2015.

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

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

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, Keystone will answer the first question in this interrogatory on or before February 6, 2015.

27. Has TransCanada provided each land owner with 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: Keystone will answer this interrogatory on or before February 6, 2015.

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

ANSWER: Keystone will answer this interrogatory on or before February 6, 2015.

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: Keystone will answer this interrogatory on or before February 6, 2015.

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

ANSWER: Keystone will answer this interrogatory on or before February 6, 2015.

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: Keystone will answer this interrogatory on or before February 6, 2015.

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

ANSWER: Keystone will answer this interrogatory on or before February 6, 2015.

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

ANSWER: Keystone will answer this interrogatory on or before February 6, 2015.

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 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: Keystone will answer this interrogatory on or before February 6, 2015.

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

ANSWER: Keystone will answer this interrogatory on or before February 6, 2015.

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: Keystone will answer this interrogatory on or before February 6, 2015.

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: Keystone will answer this interrogatory on or before February 6, 2015.

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: Keystone will answer this interrogatory on or before February 6, 2015.

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

ANSWER: Keystone will answer this interrogatory on or before February 6, 2015.

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: Keystone will answer this interrogatory on or before February 6, 2015.

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: Keystone will answer this interrogatory on or before February 6, 2015.

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: Keystone will answer this interrogatory on or before February 6, 2015.

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: Keystone will answer this interrogatory on or before February 6, 2015.

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: Keystone will answer this interrogatory on or before February 6, 2015.

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: Keystone will answer this interrogatory on or before February 6, 2015.

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: Keystone will answer this interrogatory on or before February 6, 2015.

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, Keystone will respond to this interrogatory with respect to oil pipelines on or before February 6, 2015.

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 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, Keystone will respond to this interrogatory with respect to oil pipelines on or before February 6, 2015.

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, Keystone will respond to this interrogatory with respect to oil pipelines on or before February 6, 2015.

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, Keystone will respond to this request on or before February 6, 2015.

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.

ANSWER: Keystone will answer this interrogatory on or before February 6, 2015.

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 will answer this interrogatory on or before February 6, 2015.

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

ANSWER: Keystone will answer this interrogatory on or before February 6, 2015.

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 characterization of the content of Appendix C is a legal matter for the PUC.

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). Without waiving the objection, Keystone will respond to the request by identifying contractors for other crude oil pipelines in the United States on or before February 6, 2015.

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 seeks information that is not relevant and not reasonably calculated to lead to the discovery of admissible evidence under SDCL 15-6-26(b).

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: Keystone will answer this interrogatory on or before February 6, 2015.

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 will answer this interrogatory on or before February 6, 2015.

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

ANSWER: Keystone will answer this interrogatory on or before February 6, 2015.

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 will answer this interrogatory on or before February 6, 2015.

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 will answer this interrogatory on or before February 6, 2015.

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 will answer this interrogatory on or before February 6, 2015.

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, Keystone will answer this interrogatory limited to South Dakota on or before February 6, 2015.

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, Keystone will answer this interrogatory limited to South Dakota on or before February 6, 2015.

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, Keystone will answer this interrogatory limited to South Dakota on or before February 6, 2015.

71.c. Are there any land areas along or nearby the Keystone Pipeline route that have any 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, Keystone will answer this interrogatory limited to South Dakota on or before February 6, 2015.

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.

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, Keystone will answer this interrogatory limited to South Dakota on or before February 6, 2015.

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: Keystone will answer this interrogatory on or before February 6, 2015.

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 answer this interrogatory on or before February 6, 2015.

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 will answer this interrogatory on or before February 6, 2015.

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 will answer this interrogatory on or before February 6, 2015.

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: Keystone will answer this interrogatory on or before February 6, 2015.

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: Keystone will answer this interrogatory on or before February 6, 2015.

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 determine whether the proposed project is in the national interest, under the applicable Presidential Executive Order. Without waiving the objection, Keystone will respond on or before February 6, 2015.

## 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.

ANSWER: Any responsive, non-privileged documents will be provided on or before February 6, 2015.

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: Any responsive, non-privileged documents will be provided on or before February 6, 2015.

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: Any responsive, non-privileged documents will be provided on or before February 6, 2015.

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: Any responsive, non-privileged documents will be provided on or before February 6, 2015.

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: Any responsive, non-privileged documents will be provided on or before February 6, 2015.

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: Any responsive, non-privileged documents will be provided on or before February 6, 2015.

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

9. Produce all documentation showing that TransCanada filed all changes to the CMR Plan 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.

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

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

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: Any responsive, non-privileged documents will be provided on or before February 6, 2015.

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: 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.

13. Provide all documents that formalize TransCanada's sediment control practices. Amended Permit Condition 20.

ANSWER: Any responsive, non-privileged documents will be provided on or before February 6, 2015.

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

ANSWER: Any responsive, non-privileged documents will be provided on or before February 6, 2015.

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

OBJECTION: This request is vague, overlybroad, and unduly burdensome.

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: Any responsive, non-privileged documents will be provided on or before February 6, 2015.

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

ANSWER: Any responsive, non-privileged documents will be provided on or before February 6, 2015.

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.

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

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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.

ANSWER: Any responsive, non-privileged documents will be provided on or before February 6, 2015.

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: Any responsive, non-privileged documents will be provided on or before February 6, 2015.

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: Any responsive, non-privileged documents will be provided on or before February 6, 2015.

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: Any responsive, non-privileged documents will be provided on or before February 6, 2015.

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: Any responsive, non-privileged documents will be provided on or before February 6, 2015.

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: Any responsive, non-privileged documents will be provided on or before February 6, 2015.

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: Any responsive, non-privileged documents will be provided on or before February 6, 2015.

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: Any responsive, non-privileged documents will be provided on or before February 6, 2015.

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: Any responsive, non-privileged documents will be provided on or before February 6, 2015.

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

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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: Any responsive, non-privileged documents will be provided on or before February 6, 2015.

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

ANSWER: Any responsive, non-privileged documents will be provided on or before February 6, 2015.

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

ANSWER: Any responsive, non-privileged documents will be provided on or before February 6, 2015.

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 CM 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: The identity of environmental inspectors is not relevant or likely to lead to the discovery of admissible evidence.

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: Any responsive, non-privileged documents will be provided on or before February 6, 2015.

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: Any responsive, non-privileged documents will be provided on or before February 6, 2015.

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: Any responsive, non-privileged documents will be provided on or before February 6, 2015.

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.

ANSWER: Any responsive, non-privileged documents will be provided on or before February 6, 2015.

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: Any responsive, non-privileged documents will be provided on or before February 6, 2015.

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.

ANSWER: Any responsive, non-privileged documents will be provided on or before February 6, 2015.

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 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.

ANSWER: Any responsive, non-privileged documents will be provided on or before February 6, 2015.

Dated this 23<sup>rd</sup> day of January, 2015.

WOODS, FULLER, SHULTZ & SMITH P.C.

By /s/ James E. Moore  
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James E. Moore  
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Attorneys for Applicant TransCanada

### **CERTIFICATE OF SERVICE**

I hereby certify that on the 23<sup>rd</sup> day of January, 2015, I sent by e-mail transmission, a true and correct copy of Keystone's Objections 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](mailto:Matt.rappold01@gmail.com)

/s/ James E. Moore  
One of the attorneys for TransCanada

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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

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

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

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

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

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-2006-266I7. 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

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

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

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

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.

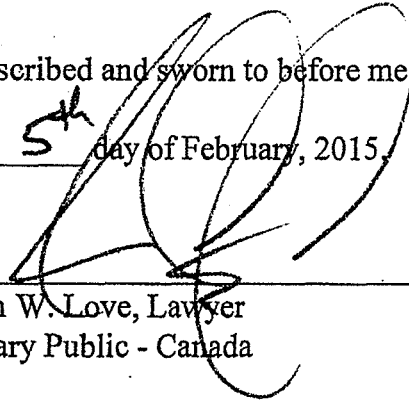
TRANSCANADA KEYSTONE PIPELINE, LP  
by its agent, TC Oil Pipeline Operations, Inc.

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

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,

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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](mailto: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 {01844455.1}

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.

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

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

- 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

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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.

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  
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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:  
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- (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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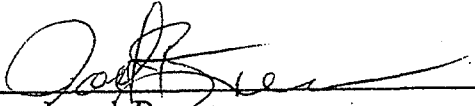
is aware of the following approximate distances from the proposed right of way to the tribally owned and/or properties held in trust for the Tribe in Tripp County: See responsive documents attached as Keystone 1926-1929. All properties are in proximity to the Rosebud Sioux Tribe's reservation.

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

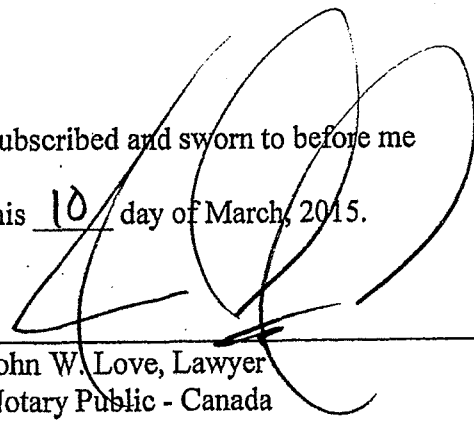
20g). Keystone objects to Interrogatory number 20(g) as burdensome. The known properties are identified by legal description in the exhibit supporting interrogatory answer 20(e) above.

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

## 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.

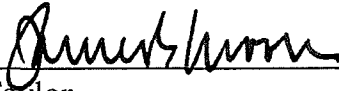
RESPONSE:       None located.

#### 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.

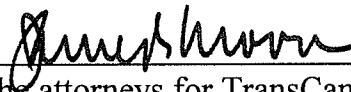
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Attorneys for Applicant TransCanada

### **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

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

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

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

ROSEBUD SIOUX TRIBE'S  
MOTION TO COMPEL  
DISCOVERY

HP14-001

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The Rosebud Sioux Tribe (RST), pursuant to SDCL 15-6-37(a), by and through counsel, moves the Public Utilities Commission to compel applicant, TransCanada Keystone Pipeline, LP (Keystone) to comply with their discovery obligations and fully produce responses and documents that are substantive and non-evasive, to the RST's First set of Interrogatories numbered 10, 11 and 78 and to the documents requested in the RST's First Set of Request for Production of Documents numbered 18 and 19 as well as interrogatories numbered 1 a-h, 2a-e, 4d and e, 8 a-d, 9b, c, and e, 10 a-i, 11 and 12 a-d from the RST's Second Set of Interrogatories.

Counsel for the RST certifies that pursuant to SDCL 15-6-37(a)(2), that he has in good faith conferred or attempted to confer with Keystone's counsel in a good faith effort to secure the information or material without the Public Utilities Commission action.

Curiously, in RST's First Set of Interrogatories and Request for Production of Documents, Interrogatory No. 2 the RST posed the following question "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?" Keystone responded by stating: "Yes, to the extent reasonably practicable in attempting to respond to over 800 discovery requests within the time allowed."

Based on this answer, it appears that Keystone has acknowledged that they have only responded to the RST's discovery requests to the "extent reasonably practicable" within the given time frame. Counsel for RST asserts that Keystone has not fully complied with South Dakota Rules of Civil Procedure by only responding to requests to the extent that it was "reasonably practicable" to do so. The South Dakota Rules of Civil Procedure do not permit parties to respond to discovery requests, to the "extent reasonably practicable." In addition to requesting for an order to compelling compliance with discovery, RST asks that the PUC order Keystone to pay attorneys fees and expenses pursuant to SDCL 15-6-37(a)(A).

#### FACTUAL AND PROCEDURAL BACKGROUND

The Rosebud Sioux Tribe served its First Set of Interrogatories and Request for Production of Documents on Keystone on January 6, 2015. Keystone responded to the First set of Interrogatories and Request for Production of Documents with objections on January 23, 2015 and then again responded to the First Set of Interrogatories and Request for Production of Documents with answers and objections on February 6, 2015.

The Rosebud Sioux Tribe served its second Set of Interrogatories and Request for Production of Documents on Keystone on February 20, 2015. Keystone responded with answers and objections to the same on March 10, 2015. It should be noted additionally that Keystone has supplemented some of its responses to the First and Second Set of Interrogatories and Request for Production of Documents as of this date of this filing.

Keystone supplemented its answers to Rosebud Sioux Tribes First Set of Interrogatories and Request for Production of Documents on March 10, 2015. Keystone provided additional responses to Rosebud Sioux Tribe's First Set Interrogatories and Request for Production of

Documents by sending documents related to Interrogatory No. 55 from the First Set of Interrogatories and Request for Production of Documents and Request for Production No.: 1 from the Second Set of Interrogatories and Request for Production of Documents by email dated March 30, 2015, which included electronic access to all of Keystone's responses to all other parties discovery requests.

### LEGAL STANDARD

SDCL 15-6-26(b) provides for liberal discovery. *Bean v. Best*, 76 SD 462, 80 N.W.2d 565, 566. It provides in part that “Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party, including the existence, description, nature, custody, condition and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter. It is not grounds for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.”

The party that is resisting production of documents and responding to interrogatories bears the burden of establishing lack of relevance or undue burden. *St. Paul Reins. Co., Ltd. vs. Commercial Fin. Corp.*, 198 F.R.D. 508, 511 (N.D. Iowa 2000). The objecting party should be required to demonstrate to the PUC that the requested information or documents (i) do not come within the broad scope of the definition of relevance as defined by the South Dakota Rules of Evidence; or (ii) are an undue burden to produce; or (iii) are of such marginal relevance that the potential harm of production through discovery would outweigh the ordinary presumption favoring broad disclosure. Relevant evidence means “evidence having any tendency to make

the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." SDCL 19-12-1 (Rule 401).

Keystone's responses are filled with numerous boilerplate objections to reasonable requests for information, including the following: "not relevant to the subject matter," "the requests are not likely to lead to admissible evidence," "the information requested is confidential or protected information," "the requests are overly broad or unduly burdensome." These types of boilerplate objections are objections that are routinely rejected by courts. The resisting party bears the burden to show specifically how each objection is irrelevant, overly broad or unduly burdensome, or protected by confidentiality laws. Boilerplate objections are not helpful to the finder of fact in ruling on discovery and boilerplate objections do not satisfy a party's burden to explain and support its objections. *St. Paul* at 512.

#### Keystone's Specific Objections

The discovery process in this case was bifurcated, meaning that discovery was broken down into two separate sets of Interrogatories and Request for Production of Documents. Keystone's responses and objections to RST's First Set of Interrogatories and Request for Production of Documents will be addressed first followed by Keystone's responses and objections to the Second Set of Interrogatories and Request for Production of Documents followed by arguments in support of the motion to compel compliance with discovery obligations.

The majority of objections presented by Keystone are boilerplate objections using such language as "not relevant" "not likely to lead to admissible evidence," "confidential and protected information," "overly broad and unduly burdensome." Keystone fails to provide any specific explanation as to why the objections are overly broad, irrelevant, confidential, unduly

burdensome, not likely to lead to admissible evidence or are confidential or proprietary. SDCL 15-6-26(b) (5) provides that “When a party withholds information otherwise discoverable under these rules by claiming that it is privileged or subject to protection as trial preparation material, the party shall make the claim expressly and shall describe the nature of the documents, communications, or things not produced in a manner that, without revealing information itself privileged or protected, will enable other parties to assess the applicability of the privilege or protection.” Keystone has failed to describe the nature of the documents, communications, or things not produced in a manner that enables the RST to assess the applicability of the claimed privilege or protection. Each of Keystone's objections on the grounds of privilege or confidentiality should be overruled based on Keystone’s failure to comport its objections to the requirements of the Rules of Civil Procedure.

Each of the requests is directly relevant to the matter before the Public Utilities Commission, namely certification that the conditions upon which the permit was issued in 2010 continue to exist today.

Keystone’s Responses and Objections to First Set of Interrogatories and Request for Production of Documents

The following section includes the Interrogatory No. along with Keystone’s answer and or objection to the Interrogatory followed by argument in support of the Motion to Compel.

Original Interrogatory Nos.10 and 11:

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? Amended Permit Conditions 1 and 2.

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 construction operation or maintenance of any pipeline located in Canada? Amended Permit Condition 2.

Keystone's Response:

Through its answers and objections dated February 6, 2015, Keystone objected to Interrogatory Nos. 10 and 11 on the grounds that the request is not relevant, not likely to lead to the discovery of admissible evidence and is overly broad.

Following the first meet and confer that took place between the parties RST agreed to narrow Interrogatories Nos. 10 and 11 to the following which were submitted to Keystone by letter dated March 16, 2015.

(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.

Argument:

To date, Keystone has not responded to the amended Interrogatories which were submitted to Keystone in good faith following our meet and confer dated March 13, 2015 at which time Keystone attorneys informed counsel for RST that they would revisit the Interrogatories as amended and consider supplementing or changing their responses based on the amended interrogatory Nos. 10 and 11.

Keystone's objections are boilerplate and "several courts across the country have taken a negative view of what have been deemed "boilerplate objections."" See PUC Staff Response to Keystone's Motion for Sanctions dated April 6, 2015, citing *McCleod, Alexander, Powel and Apffel, P.C. vs. Quarles*, 894, F2d 1482 (5<sup>th</sup> Cir. 1990) and *St. Paul Reinsurance Co. vs. Commercial Fin. Corp.*, 198 F.R.D. 508, 512 (N.D. Iowa 2000) (sanctioning lawyer for using boilerplate objections in response to requests for production of documents) . Boilerplate objections are those objections that fail to state with specificity how the discovery request is deficient and that also fails to detail how the objecting party would be harmed if required to respond.

Accordingly, the Rosebud Sioux Tribe requests that the PUC overrule the objections and require Keystone to answer the original, non-amended Interrogatory's No. 10 and 11 in their entirety. Should the PUC sustain Keystone's original objections to Interrogatories No. 10 and 11 the Rosebud Sioux Tribe requests that the PUC require Keystone to fully answer amended Interrogatories No. 10 and 11. The interrogatories are relevant because they seek information related to Keystone's compliance with any permit conditions from any other regulatory agency from any other jurisdiction related to the construction, operation or maintenance of any type of pipeline located in the United States or Canada. Certainly, Keystone's history of compliance or

non-compliance with other permit requirements concerning construction, operation or maintenance of other pipelines is relevant to the conditions of the amended permit conditions in docket HP09-001.

The Rosebud Sioux Tribe's understanding is that U.S. federal pipeline safety standards are not implemented through a permit process, but rather pipeline companies are required to comply with them subject to enforcement by the Pipeline and Hazardous Materials Safety Administration ("PHMSA"). As such, the best evidence of TransCanada's capacity and willingness to comply with federal pipeline safety standards, as required by Final Permit Conditions 1 and 2, are PHMSA's enforcement communications with TransCanada. Since the Final Permit requires compliance with federal pipeline safety standards, evidence of TransCanada's compliance or failure to comply with these standards, since issuance of the Final Permit in 2010, is relevant to the Commission's proceeding. Therefore, this information is subject to discovery and the Commission must require that TransCanada disclose it to the Rosebud Sioux Tribe.

It should be noted that at the time of the filing of this Motion to Compel, Keystone, submitted supplemental responses to amended Interrogatory 10 and 11. This information was sent by email transmission on April 7, 2015, several hours before the deadline to file Motions to Compel discovery. Counsel for RST and his witnesses have not had ample time to review said information for substance to determine if the information sent is sufficient under the Rules of Civil Procedure. Additionally, this information was sent 3 days prior to the due date for the filing of pre-filed testimony, in a late and delayed manner consistent with Keystones responses

that were sent to RST on March 30, 2015, which was 3 days before the original due date for Pre-filed testimony.

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: 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.

Argument:

Keystone's answer while not captioned as an objection is in effect an objection and the PUC should consider the objection to be a boilerplate and overrule the objections for the reasons previously stated and because the objections are not made properly consistent with SDCL 15-6-26(b) (5). Keystone has not referenced any statutory authority to support its assertion that the information sought is confidential and cannot be disclosed to the Rosebud Sioux Tribe outside of the consultation process.

The purpose of making cultural resource information confidential is to protect the cultural property and rights of Native Americans, including the Rosebud Sioux Tribe and the other tribes that are parties to this proceeding. The purpose of such confidentiality is not to protect TransCanada's interests. Further, there is no law or regulation stating that a tribe may protect its cultural resources only through the consultation process. Instead, Native Americans may seek to protect their cultural properties and rights through any means provided in law, including through state permitting processes. Therefore, disclosure of information about the location and nature of cultural sites and property to the Rosebud Sioux Tribe is proper. Moreover, such disclosure is

also necessary for the Tribe to evaluate and comment on protections required to protect our property. A failure to disclose such information to the Rosebud Tribe would violate its express right to meaningfully participate in the protection of cultural resources.

Although Keystone states that the sites are addressed in government to government consultation with the DOS, clearly Keystone has access to such information as they state in their original application that Keystone performed cultural and historic surveys in May 2008 and discovered several pre-historic stone circles. Keystone has the information requested and should be required to provide the same to determine if any of the sites are potentially located on land subject to the jurisdiction of the Rosebud Sioux Tribe.

Request for Production of Documents 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.

Amended Permit Condition 26.

Request for Production of Documents No. 19: Provide copies of TransCanada's pipeline safety records for all other pipelines that TransCanada owns or operated in the United States and Canada.

Keystone Response:

Keystone objected to the information requested in Request for Production of Documents No. 18 and 19 on the grounds that the 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.

Following the first meet and confer that took place between the parties on March 13, 2015, the RST agreed to narrow Request for Production No. 18 and 19 to the following which were submitted to Keystone by letter dated March 16, 2015.

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.

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.

To date, Keystone has not responded to the amended Request for Production of Documents No. 18 and 19 which were submitted to Keystone in good faith following our meet and confer dated March 13, 2015 at which time Keystone attorneys informed counsel for RST that they would revisit the RFP's as amended and consider supplementing or changing their responses based on the amended RFP's.

Since the U.S. Pipeline Safety Act, 49 U.S.C. § 60101 et seq., and its implementing regulations at 49 C.F.R Part 195 do not require that TransCanada acquire a permit before construction, the best evidence of its compliance with U.S. law includes the record of its actual compliance, or its failure to comply with reclamation and cleanup standards. Similarly, the record of TransCanada's actual compliance with its Canadian permits is relevant, because the existence of a Canadian permit for the Keystone XL Pipeline does not guaranty that TransCanada has a record of complying with its Canadian permits. Instead, the best evidence of

its capacity and willingness to comply with law includes records showing any actual non-compliance by TransCanada.

Based on the authority cited in the section addressing Interrogatories 10 and 11 the PUC should overrule the objections and require Keystone to fully respond to the information requested in RFP 18 and 19. If the PUC should sustain the objections RST requests that the PUC require Keystone to fully respond to the amended RFP Nos. 18 and 19.

Keystone's Responses and Objections to Second Set of Interrogatories and Request for Production of Documents

**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.
- 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.

Keystone 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.

Argument:

Interrogatory 1 in its entirety focuses on the elevation profile of the Project in South Dakota and highly relevant information associated with the elevation profile that is central to our ability to (i) evaluate the safety of the pipeline; (ii) assess the risks to the pipeline; (iii) determine worst-case spill scenarios; (iv) evaluate the oil spill response plan. None of the information requested is unusual and such information has been provided by other pipeline companies before other regulatory bodies relating to similar projects. Presumably an elevation profile exists

because it is necessary to prepare an elevation profile in order to design the pipeline. The following argument applies to Keystone's answers and objections relating to 1a-h, in that Keystone's objections are boilerplate objections, without merit and are not supported by law. Keystone has also not properly objected to the Interrogatory pursuant to SDCL 15-6-26(b)(5).

Keystone continues to assert that they will comply with all applicable regulations, but when questioned as to how they will actually comply with requirements they fail to state how they will actually comply and what specific actions they will take to ensure compliance. Furthermore, the Interrogatory requests information relevant to analyzing, quantifying and describing worst case spill scenarios and is central to the ability to evaluate the risk of spills from the pipeline, its overall design and operation, the potential harm that would be caused to the Rosebud Sioux Tribe and the people of South Dakota by a spill from the pipeline, TransCanada's planned on-the-ground capacity to respond to a spill from the pipeline, and TransCanada's compliance with spill cleanup standards. All of these matters relate to Final Permit Conditions 1 and 2, such that these requests are reasonably calculated to lead to the discovery of admissible evidence. The blanket assertion made by Keystone that the information is confidential without stating any law or regulation that supports the assertion is baseless and without merit and in violation of SDCL 15-6-26(b)(5). PUC administrative rules and SDCL 15-6 address when information may be considered confidential. The burden to establish that the information sought is confidential rests with Keystone. The PUC has made no determination that the information that Keystone claims is confidential is in fact confidential information worthy of protection from public disclosure and not discoverable. Even if the PUC determines that the information is protected by confidentiality, PUC's administrative rules address the extent to which the information may be obtained and used in the current proceedings.

While Keystone has failed to provide complete answers to IR 1a.-h., further explanation is provided for the missing information in IRs 1e., 1g., and 1h. The answer to IR 1e is incomplete in that it provides only general MOPs for the Project whereas the request calls for MOP by pipeline segment. Keystone's blanket objection that the information sought is protected information is a boilerplate objection because Keystone has made no reference to any statute that supports the assertion and has failed to make any connection to the provision of the answers and harm to Keystone in disclosing the information. The objection should be overruled. Keystone next alleges that the PHMSA requires them to keep High Consequence Areas confidential without stating with particularity the statute or rule that supports their objection also in violation of SDCL 15-6-26)b)(5). This assertion is not supported by any law that requires Keystone to treat High Consequence Areas as confidential.

The answer to IR 1g is incomplete. The location of High Consequence Areas on the elevation profile is key to integrity management and central to the ability to evaluate the overall safety of the pipeline. PUC administrative rules and SDCL 15-6 address when information may actually be considered confidential and the burden to establish that the information sought is confidential rests with Keystone. The PUC has made no determination that the information that Keystone claims is confidential is in fact confidential information worthy of protection from public disclosure. Even if the PUC determines that the information is protected by confidentiality, PUC's administrative rules address the extent to which the information may be obtained and used in the current proceedings.

The answer to IR 1h is incomplete. 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. RST requests that the PUC issue an order compelling Keystone to fully answer the interrogatory in a manner consistent with their obligations under the Rules of Civil Procedure.

By email communication dated April 7, 2015 Keystone committed to providing at least partial supplemental answers to Interrogatory 1. They informed counsel for RST that they are preparing a response to Interrogatory 1 regarding pump station locations, an elevation profile and a hydraulic profile. Keystone indicated that these documents will be available on Wednesday April 8, 2015 and that they will email them to RST counsel upon completion. It is anticipated that a full and complete response to Interrogatory 1 will satisfy the inquiries presented in Interrogatory 2a. However, because the information has not actually been provided yet and because of its close proximity to the deadline for filing pre-filed testimony it is impossible to determine if the response will be considered full and complete. Moreover, in the April 7 email, Keystone has not committed to answering IR 1 in its entirety. Beyond the pump station locations, an elevation profile and hydraulic profile, in order to evaluate the safety of the Project, RST's experts require (a) updated valve types and locations superimposed on the elevation profile; and (b) MOPs per pipeline segment on the elevation profile. Without this key information, the experts cannot adequately evaluate the safety of the Project. And unless IR 1 is

answered completely, then IR 2 is not answered. Also, it is worthy to note that the email pertaining to these responses were sent at the approach of the discovery motions deadline and 3 days prior to the deadline for Rosebud Sioux Tribe to pre-file its direct testimony.

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

changes.

Keystone Responses:

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.

Argument:

Again, in its response to Interrogatory 2, Keystone makes boilerplate objections and fails to assert any statutory authority to support its assertion that the requested information is confidential for security reasons in violation of SDCL 15-6-26(b)(5). The information sought is relevant to analyzing, quantifying and describing 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.

Additionally, the information sought is reasonably calculated to lead to the discovery of admissible evidence. The information provided is non-responsive to the questions posed in that the information provided by Keystone is outdated as the FSEIS gives milepost locations for 15 valves in South Dakota and now there are 20 valves as well as check valves located in South Dakota. While the information may be considered confidential by the PUC under applicable administrative rules and statutes, no such determination has been made. The Rosebud Sioux Tribe requests that the PUC overrule Keystone's objections and to compel Keystone to fully answer the interrogatory.

**Interrogatory 4d and 4e:**

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 SEIS, 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.”

- 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.

Keystone Responses:

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

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

Argument:

The answer provided is deficient and improper and not made in good faith as Keystone only answered part of the interrogatory by referring to Appendix Z, without attempting to specify how Keystone will actually implement the 59 special conditions or the mitigation recommendations in the Battelle and Exponent reports which are 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" (rather than stating that Keystone will implement additional mitigation measures as included in Appendix Z).

For example, the answer provided does not address how Keystone plans to implement Special Condition 6 "Monitoring for Seam Fatigue from Transportation." A complete answer would address how Keystone plans to avoid Double Submerged Arc Weld (DSAW) cracking

introduced during transportation and installation along the pipeline. Furthermore, an answer that describes Keystone's plans to implement other measures to avoid DSAW cracking introduced during transportation and installation along the pipeline would be a more complete response. The answer provided does not specifically address the implementation of Special Condition 22 "Pressure Test Level," and an answer that confirms that Keystone will conduct a pre-in-service hydrotest on the Project in SD at a minimum of 100% SYMS for 8 hours would be fully responsive to the question presented. Special Condition 16 sets out conditions for the inspection of welds. A complete answer would specify how weld inspections will actually be carried out on the Project and if Keystone will in fact radiologically inspect every girth weld (even if not required by regulation), and maintain the weld inspection records for the life of the pipeline.

Keystone makes no attempt to explain how they will implement the additional conditions from Appendix Z. Keystone merely purports to answer a question about Appendix Z by referring to Appendix Z as their answer. Clearly this type of answer is not a full or proper answer as contemplated by the Rules of Civil Procedure and the PUC should compel Keystone to fully respond and properly answer the question.

**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:

- 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.

Keystone Responses:

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.

Supplemental answers to Interrogatory 8 were provided by email communication dated April 7, 2015 several hours before the due date for filing motions to compel discovery. Counsel and his experts have not had sufficient time to determine if the responses are full and complete and otherwise consistent with Keystone's obligations under the Rules of Civil Procedure.

8a) No. The maximum response time is 12 hours.

8b) No. The maximum response time is 12 hours.

8c) The answer is yes.

8d) Keystone will develop contingency plans to speed emergency response during adverse conditions as part of the ERP. Keystone has emergency ingress plans for its existing pipelines and will formulate the same type of plan for the KXL pipeline.

Argument:

The answers to Interrogatory 8a-d are incomplete and non responsive and not made in a good faith effort to comply with Keystone's requirements under the Rules of Civil Procedure. The questions specifically pertain to the maximum response time required by federal law in an effort to determine that it has learned lessons from the Enbridge pipeline rupture in Marshall, MI. Keystone's answers ignore this specific response time commitment and references regulatory guidelines. Keystone's answers fail to state how much equipment and personnel it plans to provide in order to comply with response standards. Instead Keystone merely references the existence of regulations without stating how it intends to comply with these regulations. Accordingly, the Rosebud Sioux Tribe requests that the PUC issue an order compelling Keystone to provide a responsive and full answer consistent with the requirements of the Rules of Civil Procedure.

Again, due to the late filing of these supplemental responses, counsel for RST and his experts have not had ample opportunity or time to review the answers provided to determine if they are full and complete responses which are consistent with the requirements of the Rules of Civil Procedure. Also, this information has been provided several hours prior to the deadline for filing motions to compel and just a few days prior to the deadline established by the Commission for Rosebud to pre-file its written testimony.

**Interrogatory No. 9:**

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.

**Keystone's Responses:**

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.

Supplemented Answers:

9a) TransCanada Pipelines Limited wholly owns TransCanada Oil Pipelines, Inc. (TC Oil pipelines). TC oil Pipelines holds 100% of TransCanada Keystone Pipeline GP, LLC respectively, which are general partner and limited partner, respectively, of TransCanada Keystone Pipeline, LP.

Argument:

Again, due to the late filing of these supplemental responses, counsel for RST and his experts have not had ample opportunity or time to review the answers provided to determine if they are full and complete responses which are consistent with the requirements of the Rules of Civil Procedure. Also, this information has been provided several hours prior to the deadline for filing motions to compel and just a few days prior to the deadline established by the Commission for Rosebud to pre-file its written testimony.

TransCanada's capacity to fully clean up a spill in accordance with law depends to a substantial degree to ability to access the funds necessary to such effort. The spill cleanup from Enbridge Line 6b to date has cost approximately \$1.2 billion, which is a substantial sum even for a large company such as TransCanada. Therefore, TransCanada's financial capacity and its ability to acquire funds from affiliated entities for the purpose of responding to a spill in South Dakota is directly related to its ability to comply with Final Permit Conditions 1 and 2.

Furthermore, Keystone asserts boilerplate objections which should be rejected and overruled by the PUC. The boilerplate objections are asserted without any effort to provide a

nexus between the information sought and the objection raised. The objection is made in violation of SDCL 15-6-26(b)(5). The questions seek information that is relevant to the evaluation of Keystone's financial coverage in the event of a spill. As such, the information sought is likely to lead to admissible evidence. Furthermore, as in other objections, Keystone makes no reference to any law conferring protected status over the answers to the questions. The Rosebud Sioux Tribe asks the PUC to overrule the objection and to compel Keystone to fully and properly answer the question consistent with the Rules of Civil Procedure.

**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 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.
- 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

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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.

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 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.

#### Keystone Responses:

- 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.

Argument:

Consistent with the spirit and intent of broad discovery as previously stated the answers provided, including the supplements, are non responsive to the questions and incomplete and were not provided in good faith effort to comply with the Rules of Civil Procedure. The answer does not include details of the risk analysis performed, assumptions made and supporting data that was considered in evaluating the coverage limits proposed. A proper answer would include these details.

10a) The answer provided is incomplete and nonresponsive as it does not include details of the risk analysis performed, assumptions made and the 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 Keystone's answer to 10 b), Keystone states that "[i]n addition to the dedicated policy, TransCanada's corporate general liability policy would provide excess coverage." A complete, responsive answer would indicate if this excess coverage also applies

in the construction phase and would describe the type and the amount of insurance held in TransCanada's corporate general liability policy. A complete, responsive answer would 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, the answer would explain what the \$200 million dedicated general liability insurance policy for the construction period covers (in terms of states and project).

10b) 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), Keystone states that "[i]n addition to the dedicated policy, TransCanada's corporate general liability policy would provide excess coverage." A complete answer would describe the type and the amount of insurance held in TransCanada's corporate general liability policy and would 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, Keystone should be required to 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, Keystone confirms 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). A complete answer would identify if this \$200 million in aggregate third party liability insurance is 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? It would also state if the \$100 million in dedicated general liability insurance is a subset of the \$200 million in aggregate third party liability insurance? We asked for Keystone to 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), which Keystone has refused to do. Given the supplemental answer to IR 12, we requested Keystone to 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. Keystone has failed to correct these responses and requests for information.

10d) The answer is incomplete. We have asked Keystone for an overview of the key elements in the spill liability insurance coverage 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. Keystone has not provided this information. Keystone did tell us that the policy would respond to the legal liability for third party liability claims, clean-up costs and remediation costs; but Keystone has 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 has Keystone told us the names of the insurance providers and amounts and types of coverage for the "variety of insurance companies that participate in TransCanada insurance policies."

10e) 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. The answer is non responsive to the question and incomplete.

10f) (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.

10g) The answer is incomplete. The Interrogatory asks Keystone to 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)including any risk analysis performed and assumptions made to determine the change in the level of coverage.

The answer is non-responsive to the Interrogatory and incomplete.

10h) (a) This answer seems unlikely. We asked Keystone to confirm the answer that "[t]here is no priority of payments for the components of an insurance claim for spill events." In other words, we are asking for confirmation that TransCanada's spill liability insurance would have no plan to prioritize clean-up costs, remediation costs and third party liability claims? We also asked that if there is a priority of payments between these costs, to describe it. (c) TransCanada has not provided

the aggregate amount of the insurance policy. We requested Keystone to provide a complete answer with details on the aggregate amount for the insurance year and ask the PUC to compel the same.

10i) The answer is incomplete. We asked Keystone to confirm that the answer is complete at this time, which they have failed to do.

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.

Keystone Responses:

- 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.

Argument:

Keystone fails to properly raise its objections consistent with the requirements of 15-6-26(b)(5) in that they asserted a blanket objection based on confidentiality. Contrary to Keystone's position, its annual and quarterly filings with the U.S. Security and Exchange Commission ("SEC") likely show its lines of credit and available cash. Similarly, the costs of any major spill cleanup would be reported on its Form 6 filings to the Federal Energy Regulatory Commission ("FERC") as a "casualty or loss." Thus, information showing Keystone's general ability to finance the costs of response to a major spill is not confidential information.

This interrogatory seeks information that is 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. RST requests the commission to overrule the objections and compel Keystone to produce an answer that is responsive to their obligations under the Rules of Civil Procedure.

**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.

**Keystone Responses:**

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.

**Argument:**

The answers provided are confusing and raise ambiguity with responses to other IRs. Rosebud's understanding from Keystone's 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 the supplemental response to IR 12, we have found a seeming ambiguity with the **response in 10b**, in which Keystone 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." The response leads to confusion as to whether the \$200 million in aggregate third party liability insurance (referred to in response to IR 12) is 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 10b). 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)? Keystone failed to adequately and responsively 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 10b.. The supplemental answer in IR 12 may also require Keystone to modify answers to 10b, d, and h to be consistent with the new information provided in response IR 12. Rosebud requests that the Commission compel Keystone to fully and responsively answer the Interrogatory.

### Conclusion

Keystone has indicated that they will stand on the remaining answers/and or objections as contained in their responses. Based on the foregoing reasons the Rosebud Sioux Tribe requests the Public Utilities Commission to grant the Rosebud Sioux Tribe's Motion to Compel and to order Keystone to produce answers to the Rosebud Sioux Tribe's First and Second Set of

Interrogatories and Requests for Production of Documents as enumerated in the foregoing Motion and to issue an order requiring the payment of costs and expenses consistent with statute.

Dated this 7<sup>th</sup> day of April, 2015.

RESPECTFULLY SUBMITTED:

/s/ Matthew L. Rappold  
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IN THE MATTER OF THE APPLICATION  
BY TRANSCANADA KEYSTONE  
PIPELINE, LP FOR A PERMIT UNDER THE  
SOUTH DAKOTA ENERGY CONVERSION  
AND TRANSMISSION FACILITIES ACT TO  
CONSTRUCT THE KEYSTONE XL  
PROJECT,

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**2. Interrogatory No. 78.** The Tribe seeks information concerning the location of several prehistoric stone circles uncovered during cultural and historic surveys in May, 2008. Keystone

responded that the identity of the sites is confidential and cannot be addressed outside of the government-to-government consultation process conducted by the Department of State, which is responsible for the surveys under Section 106 of the National Historic Preservation Act as explained in Paige Olson's prefiled testimony for Staff. This process is also explained in Section 1.6 of the Supplemental Final Environmental Impact Statement. The Department of State works with the South Dakota Historic Preservation Office on the surveys. Keystone further responded on March 13 with a citation to state law for the confidentiality of the sites, which is found at SDCL § 1-20-21.1. (Moore Aff. ¶ 4, Ex. C.) The Tribe's motion does not acknowledge this statute or the fact that Keystone provided it. The Tribe is not entitled to further discovery from Keystone.

**3. Document Request No. 18.** The Tribe seeks "documentation regarding TransCanada's compliance with reclamation and cleanup efforts from all other construction activities related to any other crude oil pipeline that TransCanada operates in the United States and Canada since 2005." Keystone objected that the request was overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. The request was not initially limited to reclamation issues since 2005, but that limitation does not resolve Keystone's objections. TransCanada operates 35,000 miles of natural gas pipelines that it wholly owns; its affiliated entities operate the following natural gas pipelines: Great Lakes Gas Transmission Company; Iroquois Gas Transmission System; North Baja; Northern Border; Portland; Trans Quebec and Maritimes; Tuscarora; Gas Transmission Northwest; and Bison Pipeline. Keystone is TransCanada's only crude oil pipeline. Reclamation efforts in South Dakota related to the Keystone Pipeline are well-known to the Commission and much information is publicly available through the Public Liaison's quarterly and annual reports that are posted on the

Commission's website. The Tribe does not explain how its request is not overbroad and unduly burdensome, nor does it explain how the information it seeks is reasonably calculated to lead to the discovery of admissible evidence in this proceeding, which concerns Keystone's ability to meet the permit conditions based on facts or circumstances that have changed since 2010.

**4. Document Request No. 19.** The Tribe seeks "documentation regarding TransCanada's compliance with pipeline safety requirements for any other crude oil line" operated by TransCanada. Keystone objected as in response to Document Request No. 18, but has since provided information on April 7 regarding two notices from PHMSA related to the Gulf Coast Project and the Houston Lateral. Keystone's objection and response are sufficient.

**5. Second round, Interrogatory No. 1.** The Tribe seeks in 1(a) and (b) an elevation profile for the Keystone XL Pipeline, including the location of pump stations, mainline valves, the type of valves, and the location of all valves in reference to water crossings. Keystone objected that the information was confidential and not likely to lead to the discovery of admissible evidence. Keystone also answered subparts (b), (c), (d), (e), and (h). Keystone objected to subpart (f), asking it to superimpose a hydraulic profile on the elevation profile, and subpart (g), asking for the location of High Consequence Areas by milepost, which PHMSA requires be kept confidential. (Moore Aff. ¶ 5.) The Tribe objects that Keystone has not sufficiently identified the maximum operating pressure of the pipeline by segment, but Keystone's answer to subpart (e) states that the MOP is 1,307 psig for the mainline, except for locations downstream of pumpstations, where it is 1,600 psig. Keystone's objections and responses are sufficient.

**6. Second round, Interrogatory No. 2.** The Tribe seeks the location of mainline valves and other information that Keystone provided in its responses to subparts (b), (c), (d), and (e).

Keystone also provided the elevation profile on April 8, which contains the location of mainline valves. Keystone's responses are sufficient.

**7. Second round, Interrogatory No. 4(d) and (e).** In 4(d), the Tribe asked: "Please explain what (if anything) Keystone has committed to in regard to implementation of mitigation recommendations from the Batelle and Exponent risk assessment reports, and how this affects Findings 22, 60, 90, and any other Findings." Keystone answered: "Keystone will implement additional mitigation measures included in Appendix Z." Appendix Z to the FSEIS contains the 59 special conditions imposed by PHMSA based on the Batelle and Exponent reports. Keystone does not know how else to answer the question: it is committed to implementing the 59 special conditions imposed by PHMSA, which PHMSA has the responsibility to enforce. The Tribe now argues that what it meant by its question is that Keystone must describe "how it is going to apply the 59 special conditions" in South Dakota, but this is a new and different question. It is overbroad, vague, and not reasonably calculated to lead to the discovery of admissible evidence in this limited proceeding. The Tribe contends that Keystone should have addressed each of the 59 special conditions and stated what measures it will take in each instance to comply. That is not what was asked, and it is not a reasonable request given the scope of this proceeding. In Interrogatory No. 4(e), the Tribe asks about additional spill cleanup measures based on the 59 special conditions. Keystone provided the same answer as to 4(d), which, for the reasons argued above, is sufficient.

**8. Round two, Interrogatory No. 8.** Keystone answered Interrogatory No. 8 without objection, referring to information contained in Appendix I to the FSEIS. The Tribe responded that the answers were insufficient, so Keystone provided additional responses on April 7, as reflected in the Tribe's motion. Keystone stands on those responses. To the extent that the Tribe

argues that Keystone must explain how it will comply with the maximum response times, that is not the question that was asked. With respect to 8(d), asking about contingency plans to speed emergency response during adverse conditions, Keystone responded that it will formulate specifics as part of its emergency response plan, which has not yet been prepared for Keystone XL, but which will be filed with PHMSA and the Commission as required by the Permit.

**9. Round two, Interrogatory No. 9.** In 9(b), the Tribe asked for information about legal entities involved in the Keystone XL Pipeline; in 9(c), the Tribe asked for confirmation whether the limited partners of TransCanada Keystone Pipeline LP would provide financial backstopping to the limited partnership; and in 9(e), a summary of the Limited Partnership's distribution policy. Keystone has provided a supplemental answer to 9(b) explaining the relationship between TransCanada Pipelines Limited, TransCanada Oil Pipelines, Inc., TransCanada Keystone Pipeline GP, LLC, and TransCanada Keystone Pipeline, LP. With respect to 9(c), Keystone stands on its objection that the request is speculative because it is unknown what the circumstances may be, and with respect to 9(e) asking for the distribution policy of TransCanada Keystone Pipeline, LP, that the request is confidential, proprietary, and not likely to lead to the discovery of admissible evidence.

**10. Round two, Interrogatory No. 10.** The Tribe asked for information about insurance, which Keystone answered and provided. The Tribe includes a detailed argument about the sufficiency of Keystone's responses, but the Tribe is asking new, additional questions beyond what it originally asked, and what Keystone answered. For purposes of this limited proceeding, Keystone's answers were appropriate and sufficient and the Tribe should not be allowed to ask new questions in a motion to compel discovery.

**11. Round two, Interrogatory No. 11.** In subpart (a), the Tribe seeks operating cash flow projections for TransCanada Keystone Pipeline, LP, for the first full year and fifth full year following project commissioning, and the estimated total asset and liability values for the limited partnership. Keystone objected that this request sought information that is proprietary, confidential, and not likely to lead to the discovery of admissible evidence. The Tribe's request for cash flow projections obviously seeks information that Keystone would not want made public. Nor does the Tribe explain how it is relevant to this limited proceeding, other than to state that Keystone's ability to respond to a major spill is at issue. Given the information that Keystone has disclosed about insurance coverage and its operating relationships, Keystone has provided sufficient responsive information about that issue. In subpart (b), the Tribe asks for details about the estimated cash management of TransCanada Keystone Pipeline, LP. Keystone stands on its objection for the same reasons as related to subpart (a). Although it is not clear from the Tribe's motion whether it challenges the responses to both subparts (c) and (d), Keystone stated the same answer to each, that in the event of a spill at some future date under future unknown circumstances, it would identify the costs associated with spill response activities, remediation and potential third party damages, and based on that analysis, would identify the levels and types of financial resources required to meet its obligations. Keystone cannot reasonably be expected to provide a more specific response to a question based on hypothetical and unspecified future conditions.

**12. Round two, Interrogatory No. 12.** In subpart (a), the Tribe asked for Keystone to confirm its commitment to purchase \$200 million in third-party liability insurance in Nebraska and Montana. Keystone answered that it would do so when required. In subpart (b), the Tribe asked whether there would be separate coverages available for spills in Nebraska and Montana.

Keystone answered no, that there would be a \$200 million policy covering Keystone XL on an aggregate basis. In subpart (c), the Tribe asked if there would be a separate policy dedicated to South Dakota. Keystone answered that there would not be. In subpart (d), the Tribe asked whether Keystone had considered what level of insurance should be available to cover a spill in South Dakota. Keystone answered yes, a minimum of \$200 million. The Tribe now argues that this answer creates an ambiguity, because in response to Interrogatory No. 10(b), Keystone stated that it would secure spill liability coverage with a limit not less than \$100 million. There is no ambiguity. The coverages discussed in Nos. 10 and 12 are separate, with a dedicated policy with \$100 million limits for the Keystone XL Pipeline during operation, and an additional corporate policy with limits of \$200 million.

### **Conclusion**

Keystone has worked diligently and in good faith to respond to the Rosebud Sioux Tribe's voluminous and detailed discovery responses. In its first set of requests, the Tribe asked 79 interrogatories and 48 document requests, not including subparts. (Moore Aff. ¶ 2, Ex. A.) The Tribe has challenged three interrogatory answers and the responses to two document requests. In its second round of requests, the Tribe asked 20 interrogatories, each containing multiple subparts, and seven document requests. (Moore Aff., ¶ 3, Ex. B.) The Tribe has challenged eight of the interrogatories and none of the document requests. Keystone maintains that its objections and responses were sufficient, proper, and made in good faith. Keystone respectfully requests that the Tribe's motion to compel be denied.

Dated this 13<sup>th</sup> day of April, 2015.

WOODS, FULLER, SHULTZ & SMITH P.C.

By /s/ James E. Moore

William Taylor

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Attorneys for Applicant TransCanada

### **CERTIFICATE OF SERVICE**

I hereby certify that on the 13<sup>th</sup> day of April, 2015, I sent by United States first-class mail, postage prepaid, or e-mail transmission, a true and correct copy of Keystone's Response to Rosebud Sioux Tribe's Motion to Compel Discovery, to the following:

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## CERTIFICATE OF SERVICE

I certify that on this 24<sup>th</sup> day of July, 2015, the originals of behalf of the Rosebud Sioux Tribe – Revised Exhibit List consisting of Exhibit No.'s 11000 through 11014, was filed on the Public Utilities Commission of the State of South Dakota e-filing website and also that on this day and a true and correct copy was sent via email and/or U.S. Mail first class postage prepaid to the following persons, as designated:

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